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MISSOURI PUBLIC SERVICE COMMISSION

FILE NO. EA-2018-0202

SURREBUTTAL TESTIMONY

OF

TOM BYRNE

ON

BEHALF OF

UNION ELECTRIC COMPANY

d/b/a Ameren Missouri

St. Louis, Missouri
September, 2018

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SURREBUTTAL TESTIMONY

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I. INTRODUCTION

Q. Please state your name and business address.

A. Tom Byrne, Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), One Ameren Plaza, 1901 Chouteau Avenue, St. Louis, Missouri 63103.

Q. What is your position with Ameren Missouri?

A. I am Senior Director of Regulatory Affairs.

Q. Please describe your educational background and employment experience.

A. In 1980, I graduated from the University of Missouri-Columbia with Bachelor of Journalism and Bachelor of Science-Business Administration degrees. In 1983, I graduated from the University of Missouri-Columbia law school. From 1983-1988, I was employed as an attorney for the Staff of the Missouri Public Service Commission ("Commission"). In that capacity, I handled rate cases and other regulatory proceedings involving all types of Missouri public utilities. In 1988, I was hired as a regulatory attorney for Mississippi River Transmission Corporation, an interstate gas pipeline company regulated by the Federal Energy Regulatory Commission ("FERC"). In that position, I handled regulatory proceedings at the FERC and participated in some cases at the Missouri

Commission. From 1995-2000, I was employed as a regulatory attorney for Laclede Gas Company. In that position, I handled rate cases and other regulatory proceedings before the Commission. In 2000, I was hired as a regulatory attorney by Ameren Services Company and I originally handled regulatory matters involving local gas distribution companies owned by operating subsidiaries of Ameren Corporation (now Ameren Illinois Company and Ameren Missouri). In 2012, I was promoted to the position of Director and Assistant General Counsel, and I was assigned to handle both gas and electric cases in Missouri. In 2014, I was promoted to my current position, Senior Director of Regulatory Affairs.

II. PURPOSE OF TESTIMONY

Q. What is the purpose of your surrebuttal testimony in this proceeding?

A. The purpose of my surrebuttal testimony in this proceeding is to address three issues raised in the rebuttal testimony of other parties. First I will briefly address issues related to guaranteeing certain economic outcomes raised by Missouri Industrial Energy Consumers' ("MIEC") witness Maurice Brubaker that have now been resolved between Ameren Missouri and MIEC by virtue of the Second Non-Unanimous Stipulation and Agreement filed September 24 (the "Second Stipulation"). Second, I will address the policy concerns implicated by the arguments advanced by the Missouri Department of Conservation ("MDC"). MDC argues that the Commission should make specific, substantive decisions in this proceeding regarding the appropriate protections for endangered species and non-endangered species that may be impacted by this project. I believe that any such decisions are beyond the scope of this proceeding and should be addressed by the environmental agencies with the jurisdiction and expertise to make those decisions. Finally, I will respond to the legal argument raised by Office of the Public

Counsel ("OPC") witness Dr. Geoff Marke that Senate Bill 564 ("SB 564") effectively repealed the Missouri Renewable Energy Standard ("RES") statute and does not permit that part of the return and depreciation that will not be recovered through plant-in-service accounting ("PISA") to be reflected in the Renewable Energy Standard Rate Adjustment Mechanism ("RESRAM"). Dr. Marke's argument is inconsistent with the letter and the spirit of both statutes and should be rejected.

III. GUARANTEE ISSUES

Q. What guarantee issues were raised by Mr. Brubaker?

A. Mr. Brubaker raised three guarantee issues. First, he specifically requested that Ameren Missouri be required to guarantee that customers receive the full value of the production tax credits ("PTCs") associated with the project. He also suggested that the Commission could impose additional requirements for Ameren Missouri to guarantee the production from the wind facilities and the expected revenues from the sale of the wind production from the facilities.

Q. Have these issues been fully resolved as between Ameren Missouri and MIEC?

A. Yes. Under the terms of the Second Stipulation, signed by Ameren Missouri, MIEC, the Commission Staff, and Renew Missouri, Ameren Missouri has voluntarily agreed to provide a guarantee of the PTCs unless a change in law or an identified *force majeure* event creates a situation where Ameren Missouri is unable to realize the full value of the PTCs. The Second Stipulation further provides that the other guarantees suggested in Mr. Brubaker's testimony should not be required as conditions of the CCN to be issued in this case.

Q. Would it be appropriate for the Commission to require Ameren Missouri to provide additional guarantees, beyond the guarantee it has agreed to in the Second Stipulation, as a condition of a certificate of convenience authorizing construction and operation of these facilities?

A. No it would not. To my knowledge, based on having worked in the public utility industry in Missouri for over 30 years, it has not been the Commission's practice to condition the issuance of Certificates of Public Convenience and Necessity ("CCNs") on guarantees by the utility that the project's economics would turn out exactly as estimated over the course of the project's life, often many decades long. And it would not make sense to impose such conditions on its approval of CCNs.

Q. Why would it not make sense to impose such conditions?

A. When electric utilities seek CCNs, it is typically to authorize the construction and operation of facilities that are required to enable them to meet their legal obligations. In many cases, facilities are necessary for the utility to provide "safe and adequate" service to customers as required by Section 393.130, RSMo. In some instances, utilities seek CCNs to construct facilities to meet other legal obligations. For example, in this case Ameren Missouri is proposing to construct the wind facilities to meet its obligations under the Missouri RES statute. Under Missouri statutes, CCNs have to be issued in advance of construction—before one spadeful of earth is turned. As a consequence, there are invariably significant uncertainties regarding the operation of certificated facilities and the economics that will play out over the life of facilities that are typically in operation for decades into the future. The utility's obligation is to act prudently—make the best decision it can based on the information available to it at the

time. But it would be completely illogical and unfair to require utilities to guarantee the results of plant operations as the "price of admission" for receiving CCNs to build facilities needed to meet their statutory obligations.

Q. Are there any legal problems with the Commission imposing such guarantees as a condition of a CCN?

A. In my opinion, yes. Imposing such guarantees likely violates the prohibition against single-issue ratemaking. If a utility was required to make such a guarantee and the expected economics of the project didn't pan out, the impact would be a mandatory adjustment in future rate cases that would effectively force the utility to accept a return on equity below that which the Commission would have authorized, even though the utility would not have in any way acted imprudently. The Commission simply can't impose ratemaking determinations outside of a rate case in which all relevant factors are considered.

Q. Does the fact that the utility could avoid the condition by declining to exercise the CCN matter?

A. In my view, this makes no difference at all. As a practical matter, Ameren Missouri is facing a requirement to comply with the increasing renewable requirements of the Missouri RES statute, so its options to decline the certificate are somewhat limited. More importantly, the Commission cannot do indirectly (through a condition on a CCN) what it cannot do directly. *See, e.g.*, 73 C.J.S. § 148 (Public Administrative Law and Procedure) ("Clearly, a government agency may not do indirectly what it is prevented by

law from doing directly").[1] For example, the Commission could not require a utility to absorb the reasonable cost of operating a facility, or to accept a below-cost rate of return on the facility through the indirect means of conditioning the CCN for the facility. Similarly, the Commission cannot impose a condition requiring a utility to guarantee the operational or economic uncertainties surrounding the construction and operation of a new generating facility. The Commission can require the utility to act prudently based on the best information available at the time it makes a decision—no more and no less.[2]

Q. But shouldn't the Commission be able to take some action to protect customers against project risks?

A. The manner in which the Commission mitigates the risk to customers in a CCN case is to fairly and impartially evaluate why a project is being proposed—i.e. determine if there is a legitimate need for the project—and then decide whether the utility is proposing a reasonable and prudent means to satisfy that need, based upon the best information available when the decision has to be made. The imposition of guarantee conditions, beyond those that a utility has agreed to accept, goes far beyond that standard and forces the utility to become the insurer of an inherently uncertain future. Such conditions run directly counter to a fundamental tenet of public utility regulation: "[The] test of prudence should not be based on hindsight, but upon a reasonableness standard. [T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its

[1] Missouri law has long recognized this simple proposition. *See, e.g., Whitmore v. Supreme Lodge Knights & Ladies of Honor,* 13 S.W. 495, 496-97 (Mo. 1890); *Myers v. Scott*, 789 S.W.2d 802, 803-04 (Mo. App. W.D. 1990).

[2] For the same reasons, OPC witness Geoff Marke's request that the CCN be conditioned on Ameren Missouri having to hold customers harmless if a violation of applicable conservation laws causes a penalty is inappropriate. In the unlikely event that such a penalty is incurred, the question will be: Did Ameren Missouri incur the penalty due to its imprudence? If so, the penalty would not be reflected in rates or the RESRAM.

problem prospectively rather in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company." *State ex rel. Associated Natural Gas v. Pub. Serv. Comm'n,* 954 S.W.2d 529 (Mo. App. W.D. 1997) quoting *In re: Union Electric Company,* 27 Mo. PSC (N.S.) 183, 193 (1985), quoting *Anaheim, Riverside, etc. v. Fed. Energy Reg. Comm'n,* 669 F.2d 799, 809 (D.C. Cir. 1981).

Q. Has Ameren Missouri acted prudently and reasonably with respect to the facilities that are at issue in this case?

A. The evidence that Ameren Missouri has submitted shows that it has. First, the Company has a legal obligation to comply with the RES statute. The Company is not asking the Commission for permission to build a project it doesn't need. Second, as Ameren Missouri witness Ajay Arora explained in detail in his direct testimony, the Company has exercised appropriate diligence in planning the project, selecting a contractor, negotiating the terms of the build-transfer agreement ("BTA") contract, and overseeing the purchase of the materials and construction of the project. To the extent it could, the Company negotiated protections for itself and ultimately its customers that are reflected in the BTA. In short Ameren Missouri has been prudent in pursuing the project, including in its planning and execution, and that is all it is required to do.

Q. Do you have any other comments regarding imposition of guarantee conditions in this case?

A. Yes. In addition to the other considerations addressed in my testimony, it would be a bad decision from a policy standpoint to condition a CCN for a renewable project on required guarantees. As I mentioned earlier, I do not believe that any such

conditions have been imposed in Missouri in CCN proceedings for past projects. For example, Ameren Missouri has constructed several large baseload power plants, including the Callaway Nuclear Energy Center and fossil fuel plants, which faced significant uncertainties over the decades of their expected operations. Yet no guarantees were required in those CCN cases. It would make little sense to require guarantees, and thereby raise the bar for getting a CCN for renewable generation projects, when no such guarantees are required for non-renewable projects.

The RES statute, as well as other state initiatives, reflect a clear state policy to promote renewable generation development and in particular, renewable generation development located within the state.[3] The Commission recognized this in its recent order in The Empire District Electric Company's ("Empire's") recent wind development case (File No. EO-2018-0092) where it stated:

> It is the public policy of this state to diversify the energy supply through the support of renewable and alternative energy sources. In past decisions, the Commission has stated its support in general for renewable energy generation, which provides benefits to the public. Empire's proposed acquisition of 600 MW of additional wind generation assets is clearly aligned with the public policy of the Commission and the state.

I can see no reason why those statements would not apply with even more force to this project, given that it is a project driven by the RES requirements. And given this clear state policy favoring renewable generation, it makes no sense for the Commission to create hurdles for renewable generation projects that have not been applied in CCN proceedings authorizing fossil and nuclear generating plants.

[3] Section 393.1030.1 RSMo. (2016) provides an incremental credit of 25% for renewable electricity generated by facilities located in Missouri.

IV. CONSERVATION ISSUES

Q. What conditions has the Missouri Department of Conservation proposed for the certificate?

A. MDC has proposed numerous specific conditions primarily designed to mitigate the impact of the project on eagles and bats. With regard to eagles, MDC would have the Commission impose a condition requiring a two-mile buffer zone around present and future eagle nests. If a new eagle's nest appears in the future, turbines within two miles of the nest would not be able to operate. In addition, MDC would have the Commission impose a condition requiring specific monitoring and reporting protocols. (Haslerig Rebuttal, pp. 9-10).

In the case of bats, the proposed conditions are much more extensive. Among other things the proposed conditions would require:

(a) A minimum one-year active season preconstruction monitoring program including both acoustic and mist net surveys with radio telemetry to find roost trees;

(b) A 1,000-foot buffer from known bat maternity roosts and avoidance of tree removal that fragments the landscape;

(c) Implementation of a 6.9 meters per second cut-in speed for the turbines from March 15 to October 31 whenever temperatures are above 50 degrees Fahrenheit from 30 minutes before sunset until 30 minutes after dawn;

(d) Feathering of turbine blades during maternity colony breakup and fall migration;

(e) Extensive monitoring: for the first year of the project, from March 15 to October 31, Ameren Missouri would be required to mow in a 90-meter radius around each of the 175 turbines and search for bat carcasses every day at each turbine;

(f) Additional monitoring for six years following construction; and

(g) Extensive monitoring of the bat colonies. (Womack Rebuttal, pp. 39-42).

Q. Are these conditions necessary to protect eagles and bat species?

A. I don't know. I am not a bird or bat scientist. I do know that what specific conditions are warranted can be the subject of much debate among experts. And in my opinion, this Commission should not be the referee of these debates. This Commission can legitimately expect Ameren Missouri to comply with all applicable laws and regulations, and obtain all permits necessary from appropriate regulatory agencies. That is no different from the situation that exists with regard to existing infrastructure—the Company has to comply with state and federal air, water, waste, and land use requirements, and has to obtain a number of permits for any project. But the Commission is not the appropriate agency to make determinations about whether a two-mile or one-mile buffer zone from an eagle's nest is needed, or whether 90 meters is the right radius for mowing around turbines, or whether 6.9 or 5.0 meters per second or some other speed is the appropriate cut-in speed for turbines during the summer months.

Q. Is there a forum in which these issues will be appropriately addressed?

A. Yes. As explained in the surrebuttal testimonies of Ameren Missouri witness Terry VanDeWalle, these issues will be—and are being—addressed through the

regulatory processes administered by the United States Fish and Wildlife Service ("USFWS") with the participation of the MDC. The Commission need not and should not insert itself into that process by requiring specific monitoring, mitigation, and reporting protocols as conditions of the CCN in this case.

Q. Isn't it true that the USFWS process deals only with federally listed threatened and endangered species and not non-threatened or endangered bats?

A. MDC has expressed concerns about non-threatened or endangered species, but as Mr. VanDeWalle explains, the USFWS process will require measures that will provide additional protection for, and monitoring and reporting about, other state species of concern. My understanding, based on Mr. VanDeWalle's testimony, is that the permits to be obtained from USFWS will specifically cover the two species of federally listed threatened or endangered bats which may be impacted to some extent by the project, plus two additional species which are on MDC's species of conservation concern list. In addition, a "bat and bird conservation plan" which the Company intends to implement will also become a part of the regulatory process at USFWS, which will provide protections benefitting all bat and bird species.

Q. MDC, the Missouri Department of Economic Development-Division of Energy ("DE"), and OPC suggest that all of these conservation issues are the concern of the Commission because those issues could impact project cost and ultimately rates. How do you respond?

A. The idea that Ameren Missouri should be required to go beyond the legal standards otherwise applicable to this project based on the fear that it might be sued by persons unknown is not logical in my opinion. As with all utility projects, if Ameren

Missouri is not prudent in pursuing this project and, as a result it is the subject of a successful lawsuit, then the Company will bear the consequences of its imprudence. If the Company acts prudently and in compliance with all applicable laws and regulations, then the risk of a successful lawsuit is minimal. In any event, fear of speculative future lawsuits should not determine whether Ameren Missouri is given a CCN in this case, or whether renewable generation can be built in Missouri.

Q. Are there any other policy reasons why the Commission should not allow itself to become, effectively, a regulatory instrument for MDC when it comes to conservation issues with wind facilities?

A. Yes. There currently exists approximately 1,000 MW of wind generation already constructed and in operation in Missouri. None of that wind generation is owned by a Commission-regulated utility and therefore none of that wind generation was required to receive a CCN from this Commission. As a consequence, with respect to all of that wind generation, MDC has had no forum in which to argue for the imposition of conservation conditions beyond what the law would otherwise require. It is my understanding that MDC has been actively examining conservation issues related to wind development for several years and wind farms have been developing in the state over the past several years as well. Yet MDC has not developed a process for permitting wind development, and in fact currently has no process for wind developers to take the steps that Ameren Missouri is taking through the USFWS process—i.e. put into place a habitat conservation plan and obtain interim and final take permits that fairly balance the lawful operation of wind farms (and the benefits renewable generation provides) with legitimate conservation concerns. It makes no sense that regulated electric utilities facing obligations under the RES statute to

increase renewable generation should be subject to conservation requirements that MDC has failed to apply to all wind generation. In other words, regulated utilities should not be penalized, or subject to higher standards in building wind generation facilities, simply because they are required to obtain a CCN. This is particularly true given that regulated utilities have a RES mandate to meet while other electric providers do not. And the Commission should not allow itself to be transformed into an agency that must develop and enforce new conservation standards when MDC, the agency charged with that function, has failed to do so.[4]

Q. MDC suggests that the Commission has been concerned with conservation and environmental-related issues by citing to a few instances where the Commission made mention of such issues in the context of safety. Is MDC's suggestion an accurate one?

A. MDC clearly had to strain to find support for its theory. In the cited Missouri-American Water case involving lead service line replacements, what MDC overlooks is that public utilities have a statutory duty enforceable *by the Commission* to provide "*safe* and adequate service." Section 393.130, RSMo. *See Report and Order*, File No. WR-2017-0285, p. 17 ("MAWC is electing to perform the replacements for purposes of providing safe and adequate service by avoiding the risks of partial LSL replacements."). Consequently, that the Commission decided that the costs associated with lead service line replacements should be reflected in the water company's revenue requirement is unsurprising. And stating matter-of-factly in the Report and Order in the first Mark Twain

[4] For the same reasons, MDC's requested condition to the effect that a report on conservation impacts be provided annually to the Commission (apparently for the 30-plus year life of the facility) is inappropriate. MDC is the conservation authority in Missouri and USFWS plays that role at the federal level. Reports required by applicable statutes and regulations of those agencies should (and will) be provided to them.

Transmission Line case that the proposed line would not cross locations identified as known habitats for Indiana bats doesn't demonstrate that the Commission is or should get in the business of imposing conservation-related operating conditions on wind farms in Missouri.

Q. MDC points to its significant investment in bat and eagle conservation as another reason that the Commission should get involved in deciding conservation issues in this case. DE witness Martin Hyman makes a similar point. How do you respond?

A. I do not dispute that significant investments in bat and eagle conservation have occurred and there are benefits to Missourians from those investments, but the habitat conservation plan/incidental take permit process discussed by Mr. VanDeWalle is designed to protect such investments. At the same time, it is worth noting that this project will result in hundreds of millions of dollars of incremental investment in Adair and Schuyler Counties, and substantial economic development benefits for this area of the state. These very real economic benefits have to be taken into account as well.

Q. Do you agree that MDC should be involved in the USFWS process?

A. Absolutely. MDC should have a seat at the table when the habitat conservation plan is developed and when the environmental conditions of operation are developed in the USFWS process. Ameren Missouri has committed to providing MDC with notice of every meeting and conference call that takes place as part of the USFWS process, and providing MDC with copies of reports and other documents that it provides to USFWS.

V. OPC'S SB 564 ARGUMENT

Q. Please explain Dr. Marke's position on the interaction between the Missouri RES statute and Senate Bill 564.

A. Dr. Marke argues that SB 564 effectively repealed the provisions of the Missouri RES statute that specifically contemplate utilization of a rider (i.e. the RESRAM) to enable full recovery of the costs of renewable projects in between rate cases. Dr. Marke argues that this is supported by the language in SB 564 which allows for the recovery of some (85%), but not all, of the return and depreciation on an investment in "qualifying electric plant" which would include wind generation facilities, through PISA. He also argues that the effective repeal of the cost recovery provisions of the RES statute was the intent of the General Assembly, as evidenced by the language in various proposed (but not adopted) versions of SB 564 and HB 2265, the companion bill that was introduced in the Missouri House of Representatives.

Q. Do you agree with Dr. Marke's legal opinion?

A. No. Dr. Marke is not a lawyer and to my knowledge has no legal training. As a consequence, Dr. Marke's opinion on this issue is simply not competent, and should be dismissed out of hand by the Commission. Regardless, Dr. Marke is simply wrong. Not only does nothing in the language of SB 564 suggest that it repeals any portion of the RES statute, but if anything it reaffirms the complete effectiveness of the RES statute, as it exists on the books today.

Q. Please explain.

A. SB 564 enacted two different new sections that are relevant to the question, Section 393.1400 (PISA) and Section 393.1655 (the rate moratorium/rate cap provision).

Subsections 3 and 4 of Section 393.1655 impose rate caps on an electric utility electing to use PISA. Ameren Missouri has made that election. Subsection 5 of Section 393.1655 prevents rate riders approved under Section 393.266 (a fuel adjustment clause, an environmental cost recovery mechanism, a conservation mechanism) or under Section 393.1030 (the RESRAM) from causing a utility to exceed the applicable cap. Subsection 5 provides that if the rate under one of those riders would cause the average overall rate to exceed the cap, the rate charged to customers under that rider must be reduced to a level so that the cap is not breached. If that happens, a pool of dollars (the rider rate reduction necessary to prevent the breach times the units) will be created and those dollars will get added to the PISA regulatory asset created by Section 393.1400. So what does the existence of these two sections tell us? They tell us that the General Assembly knew that riders (including the RESRAM) could be in place and that customers could be paying rates under the RESRAM at the same time that a utility had made a PISA election. The General Assembly did not eliminate the RESRAM, either in whole or in part. Indeed it *recognized and reaffirmed* its existence through SB 564. The fact that only 85% of return and depreciation on plant-in-service (including wind) additions can be deferred to the PISA regulatory asset doesn't speak at all to the operation of a RESRAM, other than it of course has to be the case that a utility can't both recover that 85% of return and depreciation through base rates and then double-recover it again in the RESRAM. To allow double-recovery would be an illogical and absurd result, in violation of basic principles of statutory interpretation. *See, e.g., Aquila Foreign Qualifications Corp. v. Dir. Of Revenue*, 362 S.W.3d 1, 4 (Mo. *banc* 2012). SB 564 did not need to call out a prohibition on double-recovery any more than there needs to be a statute that states that if a level of a particular

cost (e.g., fuel costs; RES compliance costs) is already reflected in the revenue requirement upon base rates are set those same costs can't also be reflected in a rider. The bottom line is that Dr. Marke's claim that "Ameren Missouri should not be able to have it both ways" is nothing more than hyperbole. Ameren Missouri is simply recovering its RES compliance costs as the RES statute contemplates– no more and no less.

Q. Is there other evidence that Section 393.1030 (the RES statute) was reaffirmed by SB 564?

A. Yes. SB 564 also enacted new Section 393.1670. Section 393.1670.1 specifically addressed Subdivision (1) of Subsection 2 of Section 393.1030. That subdivision of that subsection sets the 1% maximum retail rate impact limit on the RES. It does not, however, have anything to do with the rider (RESRAM) provisions of the RES statute, which are found in Subdivision (4) of Subsection 2. Section 393.1670 did not amend the RES statute, but it meant that if the new solar rebates mandated by Section 393.1670 would cause the utility to exceed the 1% RES cap, the rebates were to still be paid. Moreover, Subsection 2 of new Section 393.1670 makes specific reference to the "rate adjustment mechanism under Section 393.1030" (i.e., to the RESRAM). If the provisions of the RES requiring the Commission to offer a rider to recover prudently-incurred RES compliance costs was repealed by SB 564, SB 564 would not have specifically referred to the rider. What Dr. Marke is arguing for is called "repeal by implication," which (a) is disfavored,[5] and (b) certainly can't have occurred when the bill at issue expressly reaffirms the existence of the very provision that Dr. Marke claims was repealed.

[5] *See, e.g., Crawford v. Div. of Employment Security*, 376 S.W.3d 658, 665 (Mo. *banc* 2012) ("Repeal by implication is disfavored.")

Q. Dr. Marke argues that the language in Section 393.1400 that requires the PISA regulatory asset (where 85% of the return and depreciation on the wind facility would be recorded) must be included in rate base without an offset shows that the General Assembly "knew about the RESRAM, FAC, and other adjustments and instead chose to expressly exclude them from PISA." (Marke Rebuttal, p. 14). Do you agree?

A. Absolutely not. Dr. Marke is conflating two entirely different things. Including the PISA regulatory asset in rate base – which only deals with 85% of the depreciation and return costs -- has absolutely nothing to do with the existence and operation of the RESRAM, which will only deal with the remaining 15%.

Q. Are there other reasons that Dr. Marke is simply wrong?

A. Yes. The guiding principle of statutory interpretation is to give effect to the intention of the General Assembly. *See, e.g., Ports Petroleum Co., Inc. of Ohio v. Nixon,* 37 S.W.3d 237, 240 (Mo. *banc* 2001). If a statute needs to be construed, a basic tenet of statutory construction is that if two statutes can be interpreted in harmony, the court must do so to give effect to both statutes and to avoid conflicts between them. *See, e.g., South Metropolitan Fire Protection Dist. v. City of Lee's Summit,* 278 S.W.3d 659, 666 (Mo. *banc* 2009). Ameren Missouri's election of PISA means that 85% of the return and depreciation of the wind facility incurred between rate cases will be recovered through PISA, which gives effect to Section 393.1400. Inclusion of the remaining 15% in the RESRAM gives effect to the requirement that utilities be allowed to recover RES compliance costs in a rider (unless, as noted, they are being recovered elsewhere). This gives effect to both statutes, and is logical.

Q. Would you agree that in certain circumstances the General Assembly's intention can be informed by a bill's history?

A. Yes, in theory, but as the Missouri Supreme Court has indicated, "it is often difficult to tell what the General Assembly would have done simply by looking at the legislative history of a given bill. And it is nearly impossible in most situations to tell why a given legislator voted, or did not vote, on a particular bill." *Missouri Roundtable for Life v. State of Missouri*, 396 S.W.3d 348, 354 (Mo. 2013). There is not a single word anywhere in any of the versions of SB 564 (or a companion bill in the House, HB 2265) that discusses or mentions a repeal of or amendment to the RES statute.

Q. Despite the lack of any such mention, since Dr. Marke has gone down the road of making claims about legislative intent, do you have any further comment on that issue?

A. Yes, I do. I was deeply involved in the legislative process that led to the enactment of SB 564 and spoke on many occasions with the bill sponsors in the House and the Senate and with a number of other legislators about the bill and various versions of it that ultimately did not become law. To my knowledge, there was absolutely no discussion of repealing any part of the RES statute. Indeed, legislators debated to what extent additional renewable energy could be required through the bill. In the end, the bill contained additional requirements for solar rebates and for the construction of additional utility-scale solar facilities. But to my knowledge, no legislator ever mentioned creating a new barrier to renewable energy by repealing the existing cost recovery provisions in the RES statute.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Union Electric Company d/b/a Ameren Missouri for Permission and Approval and a Certificate of Public Convenience and Necessity Authorizing it to Construct a Wind Generation Facility.	)))))	File No. EA-2018-0202

AFFIDAVIT OF TOM BYRNE

STATE OF MISSOURI)
) **ss**
CITY OF ST. LOUIS)

Tom Byrne, being first duly sworn on his oath, states:

1. My name is Tom Byrne. I work in the City of St. Louis, Missouri, and I am employed by Union Electric Company d/b/a Ameren Missouri as Director of Regulatory Affairs.

2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Union Electric Company d/b/a Ameren Missouri consisting of 20 pages and Schedule(s) N/A, all of which have been prepared in written form for introduction into evidence in the above-referenced docket.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct.

TOM BYRNE

Subscribed and sworn to before me this 27th day of September, 2018.

Cathleen A. Dehne
Notary Public

My commission expires: March 7, 2021

CATHLEEN A DEHNE
Notary Public - Notary Seal
St. Louis City - State of Missouri
Commission Number 17119727
My Commission Expires Mar 7, 2021