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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS
DISCOVERY CONFERENCE

In the Matter of the Petition)
of Union Electric Company d/b/a)
Ameren Missouri for a Financing)
Order Authorizing the Issue of) File No. EF-2024-0021
Securitized Utility Tariff Bonds)
for Energy Transition Costs)
related to Rush Island Energy)
Center)

THURSDAY, MARCH 21, 2024
10:00 a.m.

Jefferson City, MO 65101
via WebEx

VOLUME I

JOHN CLARK, Presiding
SENIOR REGULATORY LAW JUDGE

(Due to the quality of the recorded media, portions were unable to be transcribed and include inaudible portions. The transcript may also include misinterpreted words and/or unidentified speakers. The transcriber was not present at the time of the recording; therefore, this transcript should not be considered verbatim.)

TRANSCRIBED BY: MELISSA EICKEN

1 LAW JUDGE CLARK: Sounds good.

2 All right. I've got everybody present. It
3 is 9:05. So let's go ahead and go on the record. I
4 do not have a court reporter. This proceeding is
5 being recorded. It is going to be sent out to be
6 transcribed and that transcription will be filed in
7 EFUS once I look it over to see that it is correct.

8 The commission has set aside time today for
9 what we are going to call an immediate phone
10 conference, though it is Webex, but I believe that it
11 is within the definition, and this is file number
12 EF-2024-0021 which is in the matter of Union Electric
13 Company, doing business as Ameren Missouri request to
14 securitize costs related to the retirement of its Rush
15 Island generation facility.

16 For the sake of the record, will counsel
17 enter their appearances starting with staff.

18 MS. SCURLOCK: Whitney Scurlock on behalf
19 of staff of the Missouri Public Service Commission.

20 LAW JUDGE CLARK: And on behalf of public
21 counsel.

22 MR. WILLIAMS: Nathan Williams appearing on
23 behalf of the Office of the Public Counsel and the
24 public.

25 LAW JUDGE CLARK: Okay. Thank you. No

1 other parties are appearing here today.

2 This discovery dispute is between public
3 counsel and staff. So no other parties are, in fact,
4 required for this. I'm going to go ahead and ask some
5 of the rule requirement questions just to see that
6 they've been accomplished.

7 Mr. Williams, did you informally attempt to
8 work out this discovery dispute with staff?

9 MR. WILLIAMS: Yes, I did.

10 LAW JUDGE CLARK: And how did you attempt
11 to do that?

12 MR. WILLIAMS: I sent a -- I did it in two
13 ways. I called and left a message with Ms. Scurlock,
14 and I also sent her an e-mail attempting to have a
15 verbal conversation with her, and I received an e-mail
16 back indicating there was no point in having that
17 occur in which led to my contacting you to set up this
18 conference.

19 LAW JUDGE CLARK: Okay. I feel that that
20 satisfies the requirement as to 20-CSR-4240-20908 A
21 and B in regard to that.

22 I'm just going to go ahead and dive in
23 here. It looks like there are, basically, all of
24 these relate to staff's (inaudible) is that correct,
25 Mr. Williams?

1 MR. WILLIAMS: Yes, it is.

2 LAW JUDGE CLARK: And it looks like there's
3 kind of two sets, 44 through 50, and 51 through 64.
4 And it looks like staff objected. They said, in
5 regards to 44 through 50, irrelevant, not reasonably
6 calculated to lead to discovery of admissible evidence
7 violates the attorney/client privilege, not the
8 custodian of some of these records, and some of the
9 information not being controlled by staff, and it
10 looks like a very similar set as to the 51 through 64,
11 and the 51 through 64 appears to apply to the
12 commission's previous three securitization cases in
13 which I believe the Ducera was also staff's expert
14 witness and retained counsel therein.

15 Without getting into too trial strategy,
16 but really getting into the relevance question,
17 Mr. Williams, what's the purpose behind needing these?

18 MR. WILLIAMS: All right. The costs of the
19 financial advisor are costs that will be included in
20 the securitization, so we're wanting to look at,
21 basically, the reasonableness of those costs. It
22 doesn't mean we necessarily will get relief on that in
23 this case, but we think that we should be able to
24 explore the reasonableness of the costs in this case,
25 and part of how to do that is to see what was done in

1 the prior cases with regard to the scope of work and
2 the pricing.

3 LAW JUDGE CLARK: Okay. Ms. Scurlock, I'll
4 hear staff's argument as to why this information
5 should not be released, and you can address them
6 with -- particularity if there's ones over which staff
7 does not control the information, I'd like to know
8 those.

9 MS. SCURLOCK: So first of all, I would
10 cite to 393.1700, sub two, sub three, sub C, sub B,
11 which permits the costs of outside counsel for both
12 the staff of the commission and the commission itself
13 to be included in securitized amounts. There's no
14 provision for how those costs are determined or any
15 particularities in how the staff or the commission
16 chooses its outside counsel just so that it's
17 permitted outside counsel and that those costs will be
18 included in the ultimate securitized amount or -- or
19 dealt with by the company. Second of all, I would say
20 that I'm not certain how OPC intended to utilize this
21 information considering the data requests were
22 submitted on the 20th. We were given five days to
23 object and ten days to respond -- or I'm sorry, on the
24 15th, and we objected properly on the 20th, but the
25 data request information was not due until March 25th.

1 And surrebuttal testimony is to be filed on March
2 22nd, tomorrow, so I don't know that OPC intended to
3 use this information in its surrebuttal testimony, but
4 there was no guarantee they would have had this
5 information in time. I also looked at the requests
6 were attributed to Mr. Dave Murray, OPC's witness, and
7 in reviewing the testimony that was filed by him for
8 rebuttal, I do not see where an argument was made by
9 OPC against the -- the process that staff uses to
10 choose outside counsel or the costs that would
11 ultimately incur, so I'm not certain that OPC has even
12 properly raised this issue to be presenting this
13 evidence at trial. So I'm not even entirely certain
14 how that would be attributed to the case, and that's
15 part of the reason why I feel it's irrelevant.

16 Finally, let's see. What I would say is
17 that the process of choosing outside counsel is
18 handled administratively by the commission staff is
19 given some weigh in, but it's done in conjunction with
20 the office of administration through the State of
21 Missouri's process, and I'm not sure that the office
22 of the public counsel certainly understands that
23 process as an agency of the state itself, so I'm not
24 sure what dispute that they would have about the
25 process that's used for that.

1 LAW JUDGE CLARK: Now -- now, it's -- it's
2 my believe -- and correct me if I'm wrong -- Ducera's
3 contract would be publicly available; is that correct?

4 MS. SCURLOCK: That's correct. And it is
5 on missouribuys.gov.com or.gov, if I'm not mistaken.

6 LAW JUDGE CLARK: Now, putting aside the --
7 the timing issue that -- that answers to discovery
8 were not due until after surrebuttal was to be filed,
9 it's fairly standard, wouldn't you agree, in any case
10 where there's kind of a -- a hired gun or expert, I
11 would say, in almost every case where that occurs,
12 there's -- there's questions at the hearing about what
13 the individual was paid to do the work they did.
14 Would you agree that that's fairly standard?

15 MS. SCURLOCK: That is a standard question
16 that is asked at hearing. These data requests, I
17 mean, obviously, there are 40 separate -- 20 separate
18 requests are far more intrusive than just asking
19 the -- the amounts that's being paid. Particularly,
20 the set that regards prior cases, which I do not find
21 relevant at all. The Office of Public Counsel had the
22 opportunity to be a party to those cases, certainly,
23 has some knowledge of what happened in those cases.

24 LAW JUDGE CLARK: And I'll leave that
25 argument to Mr. Williams to make. But I'm going to

1 ask a few more questions. What -- you said -- you
2 said more invasive. What information do you believe
3 is attorney/client privileged?

4 MS. SCURLOCK: I believe that to the
5 extent -- I apologize. Let me pull up the specific --

6 LAW JUDGE CLARK: I know we only have a
7 half hour, so I'm trying to roll pretty fast.

8 MS. SCURLOCK: Yeah. Yeah. And I -- I
9 apologize for the -- the tight schedule. Thursdays
10 are -- are always complicated.

11 LAW JUDGE CLARK: I understand.

12 MS. SCURLOCK: I am concerned that the
13 decision making process in determining to award
14 Ducera's partners, the financial advisor contract, for
15 this case was done in conjunction with counsel and
16 senior staff, so that would have been legal advice.

17 Let's see. That is probably -- and then to
18 some degree, the invoices for services. It's possible
19 that some of the information that would be on those
20 would include more specific trial strategy type
21 things, depending on how -- the -- the detailed nature
22 in which they keep their invoices.

23 LAW JUDGE CLARK: That would be as to the
24 specific issues they might be working on; correct?

25 MS. SCURLOCK: Correct.

1 LAW JUDGE CLARK: And I believe we've had
2 cases previously where invoices have been requested
3 and that information has been redacted out.

4 MS. SCURLOCK: That's correct.

5 LAW JUDGE CLARK: Has -- does staff have
6 invoices from the company? Are those in staff's
7 possession?

8 MS. SCURLOCK: They are not in staff's
9 possession.

10 LAW JUDGE CLARK: Whose possession would
11 those be in?

12 MS. SCURLOCK: That would be in our
13 administrator's possession. I believe our department
14 of budget and fiscal services.

15 LAW JUDGE CLARK: Mr. Williams, why --
16 why -- in regards to the past cases, I mean, the
17 commission's only done -- this is, what, the fourth
18 securitization, and essentially, what OPC has asked
19 for is all of the invoices, all of the hiring
20 information, all of the -- the associated expert
21 witness costs for every securitization case that the
22 commission has done. Certainly, we wouldn't allow
23 that in a rate case to go back and -- and get a hired
24 expert for every rate case they've gone back. Now,
25 obviously, with there only being a few cases, that

1 narrows the scope of the request on its own, but given
2 that one of these is a -- given that two of these are
3 requests for Winter Storm Uri costs which are
4 different than energy transition costs, and given that
5 the circumstances regarding the Asbury closure in the
6 Empire -- in one of the Empire securitization, I -- I
7 fail to see why those would be relevant.

8 MR. WILLIAMS: Well, okay. It has to do
9 with the work product and the billing -- or the cap
10 amount and the fact that in the prior proceeding, the
11 caps -- the maximum payment to the financial advisors
12 were reached. I'm not sure if that's true for the
13 attorneys or not, the legal counsel. But what we're
14 looking for is, why is the cap in this case higher
15 than in the prior case? Is it all to be the
16 appropriateness of the contractual arrangements and
17 the work product that the financial advisor and
18 perhaps legal counsel are providing under the contract
19 terms in relationship to the cost? I would point out
20 there's been no objection based on it being overly --
21 the request being overly burdensome and I don't know
22 if you're aware of 386.480 in the statutes or not, but
23 it provides that the public counsel shall have full
24 and complete access to Public Service Commission files
25 and records.

1 LAW JUDGE CLARK: I was not. But certainly
2 I will take a look at that. Thank you for providing
3 me that information.

4 MR. WILLIAMS: And as you're probably also
5 aware, to the extent that staff does have an
6 attorney/client privilege, it doesn't -- doesn't have
7 to object to assert that privilege. It -- the way it
8 waives that privilege is by providing the information
9 that's privileged to some other party and pretty much
10 under Missouri law that has to be done intentionally,
11 not by accident.

12 LAW JUDGE CLARK: Who are you saying are
13 the other party they're providing it to?

14 MR. WILLIAMS: If they were to give it to
15 us, something that they're asserting as
16 attorney/client privilege, that would waive the
17 privilege if they do so intentionally. But if they
18 answer the data request and redact what they're
19 viewing to be attorney/client privilege information,
20 we had an issue with that. We would bring it to your
21 attention to get a resolution of it, but the way they
22 don't disclose attorney/client privilege information
23 is asserting a privilege and not providing the
24 information.

25 LAW JUDGE CLARK: Yeah. I believe the

1 requirement is, if you're asserting the privilege, you
2 have to give an explanation as to why that particular
3 data request is privileged or why the information --
4 that particular information is privilege.

5 MR. WILLIAMS: I concur. I also have a
6 problem with how the objections were done, because
7 what I'm hearing now is that not all of these
8 objections pertain to all of these data requests, that
9 some of them only pertain to certain data requests.

10 LAW JUDGE CLARK: Well, I'm going to jump
11 ahead just for a moment. Given that -- and it seems
12 that Ms. Scurlock hit on this momentarily. If these
13 issues related to the hiring of the expert were not
14 issues were introduced previously in testimony, and I
15 don't know whether OPC is going to be attempting to
16 introduce these in surrebuttal, which I don't,
17 depending on the circumstances, may not even be
18 allowed, is this issue -- do you see this as delaying
19 OPC and filing surrebuttal timely?

20 MR. WILLIAMS: No. But I do see that --
21 there's no guarantee we're going to actually introduce
22 anything based on the information we receive. If we
23 get all of this information. We're going to look at
24 it and decide what to do with it. It's not a
25 automatic, this is going in the case. We don't know.

1 I mean, this is discovery. That's the purpose. But
2 it may lead us to do things on cross examination and
3 use some of this material. It just depends on what we
4 see in it.

5 MS. SCURLOCK: And I would raise that the
6 argument, if it wasn't brought in testimony, it would
7 be improper cross examination.

8 MR. WILLIAMS: Well, I disagree. I think
9 the commission can see anything, and I've seen things
10 where this commission's allowed recross and redirect
11 and lots of process, whenever it wants to get the
12 information before it out of fairness to the parties.
13 Certainly, the -- I mean, it is a cost that will be
14 imposed on customers, whatever the cost the commission
15 includes in the securitization amount for the
16 commission and the staff's advisors, financial
17 advisor, and attorney.

18 LAW JUDGE CLARK: Okay. I -- I -- I am of
19 the opinion that the scope of cross is unlimited in
20 that it's only limited by relevance. Certainly,
21 redirect and recross are subject limited, but don't
22 believe cross examination is, except like I said to
23 the point that -- that it's relevant and some other
24 objection doesn't apply. I'm not going to rule on
25 this during this discovery conference. I do want to

1 do a little bit of research, but I understand that,
2 that the clock is ticking. So I will try and do that
3 relatively quickly.

4 MR. WILLIAMS: My understanding is that the
5 conference is to get the, I guess, commission's
6 perspective on the parties' dispute. I was
7 anticipating I would probably end up filing something
8 more formal if we don't get a resolution to -- I don't
9 know what you're contemplating here, I guess.

10 LAW JUDGE CLARK: Well, I think -- I think
11 you've certainly -- if you want to go that route and
12 given that I don't believe that -- that ruling on
13 discovery disputes was delegated to me in this
14 particular notice order, I do believe that you've
15 satisfied the rule sufficient that if it is public
16 counsel's desire to file a -- a motion to compel that,
17 that would be appropriate, and I -- I will certainly
18 give you leave to do so. Why don't we leave it there.
19 That's actually -- I think that's actually -- that's
20 actually good, because that way if I have to research
21 anything, it would be more pointed, so. Public
22 counsel, why don't you go ahead and file a motion to
23 that effect if you want to.

24 MR. WILLIAMS: Yeah. I -- it's my
25 intention to bring this staff's objections in front of

1 the commission to get a ruling on them.

2 LAW JUDGE CLARK: Absolutely. And that's
3 what the commission is here for, so I'm -- I'm
4 certainly happy to -- to look at that. Is there
5 anything else that anybody wanted to bring to my
6 attention at this time?

7 MR. WILLIAMS: I guess the only thing I'd
8 ask is whether you have any intention to giving us any
9 insight as to what your thoughts about the staff's
10 objections at this point or if, you know, you just
11 view that the rules have been satisfied so that the
12 next step follows.

13 MS. SCURLOCK: Your Honor, if I'm allowed
14 to respond, I will say that the -- counsel for OPC has
15 suggested that it tried to negotiate with staff prior
16 to raising this to your attention, and I can tell you
17 that what I received was an e-mail that said, do I --
18 do I take this letter of staff objecting to the DRs?
19 And I said, that's correct, and he said, well, then I
20 guess we need to contact the judge for a call, and I
21 said, well, I guess that would be the next step. So
22 there was no meeting arranged or attempt to discuss
23 what OPC needed this information for or alternatives
24 that might be reasonable.

25 LAW JUDGE CLARK: Okay. And -- and the

1 rule as to this states that -- that the moving party
2 must, in good faith, confer or attempt to confer by
3 telephone or in person with opposing counsel in the
4 matter prior to filing a motion. Nearly writing a
5 demand letter is not sufficient. And this does -- and
6 it did spark me when I initially heard it. It's kind
7 of a -- a -- a -- it's kind of on the fence about that
8 in that it doesn't appear that you guys ever
9 communicated personally outside of this conference
10 beyond the brief e-mail exchange. My tendency,
11 however, with these is to be more liberal, because if
12 there's an issue, I do want to get it in front of the
13 commission, but it sounds like, Ms. Scurlock, that
14 what you're saying is that there's some potential for
15 staff and public counsel to maybe work out some of
16 these issues. So certainly, if something needs to be
17 brought in front of the commission, it is narrowed in
18 nature; is that -- is that something that would be
19 fair to say?

20 MS. SCURLOCK: I'm suggesting that it could
21 have been an approach, but I -- I think at this point
22 that that bridge has been burned, so I would -- I
23 would suggest that OPC go ahead, proceed with a motion
24 to compel.

25 LAW JUDGE CLARK: Okay. So you're not

1 arguing that they haven't met the rule requirements
2 sufficient to do so.

3 MS. SCURLOCK: No. Just the
4 characterization of it.

5 LAW JUDGE CLARK: Okay. And -- and I
6 understand that. I understand that it barely meets
7 the requirement, but I -- like I said, I tend to be
8 fairly liberal with these, because I think discovery
9 on its whole is meant to be fairly liberal. Based
10 upon what you've said, though, at this point I'm not
11 going to -- well, I will weigh in with my thoughts
12 into this. While certainly I think some of it might
13 be relevant and discoverable as to the current case,
14 I'm not yet convinced in require -- in relation to
15 past -- past securitization cases, but that doesn't
16 mean that I -- that the commission cannot be
17 persuaded. So Mr. Williams, you can go ahead and file
18 your motion.

19 MR. WILLIAMS: Thank you.

20 LAW JUDGE CLARK: With that, is there
21 anything else that the commission needs to address?
22 Given that it can only address things on this narrow
23 discovery issue due to the nature of the parties in
24 attendance?

25 All right. Then I'm going to let everybody

1 get off the phone. I hope I've met my 30-minute time
2 commitment. And thank you for bringing this to me. I
3 look forward to seeing your motion.

4 MR. WILLIAMS: All right. Thank you.

5 MS. SCURLOCK: Thank you, Judge.

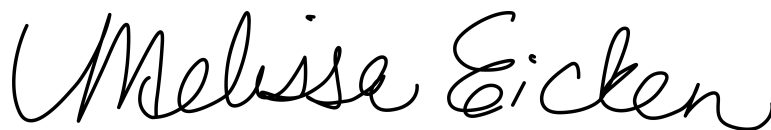
6 LAW JUDGE CLARK: We'll go off the record,
7 and this discovery conference is adjourned.

8 (Audio ended.)
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1 CERTIFICATE OF REPORTER

2
3 I, Melissa J. Eicken, Certified Court
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5 Illinois and Registered Professional Reporter, do
6 hereby certify that I was asked to prepare a
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17 

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19 Melissa J. Eicken, CCR, CSR, RPR

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