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Witness: John J. Reed
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Case No.: EF-2024-0021
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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

SURREBUTTAL TESTIMONY

OF

JOHN J. REED

ON BEHALF OF

AMEREN MISSOURI

March 2024

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FOR THE SURREBUTTAL TESTIMONY OF JOHN J. REED
AMEREN MISSOURI
BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
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1 **I. INTRODUCTION AND PURPOSE**

2 **Q. Please state your name and business address.**

3 A. My name is John J. Reed. I am Chairman of Concentric Energy Advisors, Inc.
4 ("Concentric"), which has its headquarters at 293 Boston Post Road West, Suite 500,
5 Marlborough, Massachusetts 01752.

6 **Q. Have you previously filed direct testimony in this docket?**

7 A: Yes.

8 **Q. On whose behalf are you testifying in this proceeding?**

9 A. I am testifying on behalf of Ameren Missouri ("Ameren Missouri" or
10 "Company").

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

12 A. The purpose of my surrebuttal testimony is to respond to the rebuttal testimony
13 filed by Commission Staff ("Staff") witnesses Claire Eubanks and Keith Majors
14 regarding their assertions about the prudence of the permitting decisions related to the
15 projects undertaken at the Rush Island Generating Facility ("Rush Island" or "Facility")
16 in 2007 and 2010 and the prudence of the decision to retire the Facility and
17 securitization of the costs associated with the retirement. My surrebuttal testimony
18 addresses these issues from a regulatory policy perspective based on my extensive
19 experience performing prudence reviews for utilities, customers of utilities, and
20 regulators over a more than 35-year period.

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II. EXECUTIVE SUMMARY

Q. Please summarize your response to Staff witnesses.

A. Staff witnesses Eubanks and Majors both recommend approving the securitization of the costs associated with the retirement of Rush Island based on their positions that the decision to retire the Facility was prudent. Witness Eubanks recommends deferring the decision about the prudence of Ameren Missouri’s permitting decisions related to the projects undertaken at Rush Island Unit 1 in 2007 and Unit 2 in 2010 (collectively, the “Rush Island Projects”) in order to assess the future harm associated with these decisions. Witness Majors’ position is that Ameren Missouri was imprudent in its decision to not seek permits for the Rush Island Projects based on his belief that a decision by the United States District Court for the Eastern District of Missouri – St. Louis (“District Court”) was a decision on the prudence of Ameren Missouri’s actions. In fact, the District Court’s decision did not address the prudence of Ameren Missouri’s permitting decision, and nowhere in any of the District Court’s orders does the Court make a prudence finding or otherwise conclude that Ameren Missouri’s beliefs about when permits would or would not have been required were unreasonable at the time the permitting decisions were made. Rather, the District Court found that Ameren Missouri was mistaken in its legal understanding at the time and opines about certain actions the Court found to be unreasonable based on the results of Ameren Missouri’s actions and how things actually turned out, not on what was known and knowable at the time.

1 In deciding on the issue of securitization of the costs associated with the
2 retirement of Rush Island, the Commission should utilize its established and court-
3 sanctioned prudence standard to assess the matters in this case and decide on the
4 prudence of both the permitting decisions and the retirement decision. There should be
5 no “reserved” issues for potential future disallowance relating to these decisions taken
6 to date regarding Rush Island. The prudence of these decisions made as much as 17
7 years ago must be evaluated now, and this assessment provides an important and
8 necessary foundation for the Commission to evaluate whether the 2021 decision to
9 retire Rush Island was prudent.

10 **III. RESPONSE TO STAFF WITNESS EUBANKS**

11 **Q. Please summarize witness Eubanks’ position regarding the question that**
12 **the Commission must answer in considering Ameren Missouri’s request to**
13 **securitize the costs associated with the retirement of Rush Island.**

14 A. Witness Eubanks states that, in considering Ameren Missouri’s securitization
15 request, the Commission must decide if it is “reasonable and prudent for Ameren
16 Missouri to comply with the District Court’s modified Remedy Order to retire the Rush
17 Island plant no later than October 15, 2024”.¹

18 **Q. What is witness Eubanks’ recommendation?**

19 A. Witness Eubanks recommends that the Commission find that Ameren
20 Missouri’s decision to comply with the District Court’s modified Remedy Order to
21 retire Rush Island no later than October 15, 2024 is reasonable and prudent. Ms.

¹ Rebuttal Testimony of Claire M. Eubanks, February 2024, pg.4, lines 22-24.

1 Eubanks therefore indicates that the Commission should allow Ameren Missouri to
2 securitize the remaining net book value of Rush Island and other costs associated with
3 the retirement of the Facility.²

4 **Q. Does witness Eubanks provide an opinion, in this case, on whether the**
5 **Commission must find that all of Ameren Missouri’s decisions related to the Rush**
6 **Island Projects were reasonable and prudent at the time they were made?**

7 A. Yes. Witness Eubanks states that she does not believe the Commission must
8 make that determination in this case.

9 **Q. How does witness Eubanks recommend the Commission address the**
10 **prudence issue around the permitting of the Rush Island Projects?**

11 A. Witness Eubanks suggests that the Commission wait to assess the future harm
12 that she alleges Ameren Missouri customers may experience due to its decisions related
13 to the Rush Island Projects, subsequent litigation, and its planning for the outcome of
14 the litigation. Specifically, witness Eubanks outlines her concerns with a projected
15 capacity shortage, required transmission projects to accommodate the retirement of
16 Rush Island, and future Department of Justice (“DOJ”) actions and potential additional
17 District Court-ordered remedies related to Rush Island.

18 **Q. Do you agree with witness Eubanks’ position?**

19 A. No, I do not. Contrary to Ms. Eubanks’ statements in her deposition, an
20 evaluation of prudence determination should not be dependent on results. While she

² Subject to a few adjustments recommended by Staff witness Majors, which have nothing to do with prudence.

1 has concluded that the decision to prematurely retire the unit is reasonable and prudent,
2 she also wishes to separate out and reserve on some issues of potential harm:

3 I think they have to decide about the securitization request. To the extent
4 that there is other factors—you know, Staff outlined concerns of things
5 that could happen in the future or ongoing right now.³ ...Part of my
6 concerns are harm that isn't known for sure right now, it is capacity
7 shortfalls that may or may not occur. And the reliability project is a little
8 bit more known, right? But those are the elements that I'm concerned and
9 the remedies, potential for future remedies.⁴

10 A finding of prudence or imprudence should not be influenced by how things
11 turned out or on an evaluation of information that was not knowable to the decision-
12 maker at the time. Ms. Eubanks' desire to apparently reserve some prudence issues for
13 later determination, after the potential for future harm or "things that could happen in
14 the future" is better known, is antithetical to the key element of the prudence standard.

15 Furthermore, the position witness Eubanks takes regarding future harm has no
16 reference to or grounding in the Commission's long-established prudence standard.
17 This approach is an entirely unprincipled application of deciding what costs should be
18 recoverable based on how decisions turned out years after they were made.

19 **Q. Why do you believe that the Commission needs to decide on the prudence**
20 **of Ameren Missouri's permitting decisions for the work related to the Rush Island**
21 **Projects?**

22 A. The statutory requirement in Section 393.1700 of Missouri's Securitization
23 Law is that the Commission determine whether the early retirement of the plant is
24 reasonable and prudent. The prudence of the decision to not seek permits for the Rush

³ Deposition of Claire M. Eubanks, File No. EF-2024-0021, March 11, 2024, pg. 175-176, lines 22-25.

⁴ Deposition of Claire M. Eubanks, File No. EF-2024-0021, March 11, 2024, pg. 184 line 23 – pg. 185, line 3.

1 Island Projects is central to this question because it is those decisions that did,
2 ultimately, cause the retirement as there is no claim or evidence that but for those
3 decisions, the retirement would occur in 2024 anyway. Put another way, had the
4 Company made different decisions back then and gotten New Source Review (“NSR”)
5 permits, there would be no retirement now.

6 This is an example of compound decision-making that I have seen on multiple
7 occasions in the utility industry. For example, there have been a number of
8 circumstances where a firm decided not to seek a license extension for a nuclear plant,
9 which is a process that typically requires years of effort by the licensed operator. Then,
10 some years later, as the end of the license life approached, having not initiated the long
11 and substantial process of seeking a license extension earlier, the only reasonable
12 option is to retire the plant, even though it could be that not retiring the plant would be
13 a better outcome for the utility and its customers. If the earlier decision not to move
14 forward with a license extension was prudent, then the retirement would be prudent but
15 if the earlier decision was imprudent, the retirement too would be imprudent because it
16 was the product of – was caused by – the earlier imprudence.

17 Here, similarly, the question of the prudence of Ameren Missouri’s actions
18 related to the permitting of the Rush Island Projects needs to be decided as part of the
19 securitization analysis because it had a very direct and consequential impact on whether
20 retirement of the Facility was prudent. Put simply, the Facility almost certainly would
21 be retired in 2024 without the decisions made as much as 17 years ago, and you can’t

1 properly evaluate the prudence of the retirement without evaluating the earlier
2 decisions that led to it.

3 In this case, it was the decision to not seek those permits that led to not installing
4 the Flue Gas Desulphurization (“FGD”) system and now to the retirement of Rush
5 Island. A Commission decision permitting these costs to be securitized is warranted in
6 this case based on the evidence provided by the Company.

7 **Q. How should the Commission assess the prudence of Ameren Missouri’s**
8 **actions related to the Rush Island Projects?**

9 A. As stated in my direct testimony, one of the key tenets of the prudence standard
10 is the total exclusion of hindsight from a properly constructed prudence review. A
11 utility’s decisions must be judged based upon what was known or reasonably knowable
12 at the time the decision was made by the utility. Information that was not known or
13 reasonably knowable at the time of the decision being made cannot be considered in
14 evaluating the reasonableness of a decision, and subsequent information on “how
15 things turned out” cannot influence the evaluation of the prudence of a decision.

16 Another key tenet of the prudence standard is that decisions being reviewed
17 need to be compared to a range of reasonable behavior; prudence does not require
18 perfection, nor does prudence require achieving the lowest possible cost. This standard
19 recognizes that reasonable people can differ and that there is a range of reasonable
20 actions and decisions that is consistent with prudence. Simply put, a decision can only
21 be labeled as imprudent if it can be shown that such a decision was outside the bounds
22 of what any reasonable person would have done under those circumstances.

1 Finally, whether a decision is judged to be imprudent or not, in order to disallow
2 the recovery of any costs that were impacted by that decision, there must be a
3 demonstration of economic harm to customers that arose from those decisions. As
4 Company witness Matt Michels illustrates in great detail in his surrebuttal testimony in
5 this proceeding, customers are not harmed by the Rush Island retirement as compared
6 to an alternative where the Company had made different decisions that would have
7 resulted in the addition of expensive pollution control equipment to the Facility.

8 **Q. Does the Commission have the information needed to make a decision on**
9 **the prudence of Ameren Missouri’s 2007-2010 actions related to the Rush Island**
10 **Projects?**

11 A. Yes. Ameren Missouri has provided the testimony and exhibits of witnesses
12 Birk, Moor, Holmstead and Whitworth to address this issue. Ms. Eubanks has offered
13 no basis for judging the decisions discussed by these witnesses to have been imprudent,
14 nor does it appear that she is taking that position. However, Mr. Seaver’s testimony
15 filed by the Missouri Office of the Public Counsel (“OPC”) and Mr. Majors’ testimony
16 filed by Staff do offer the opinion that Ameren Missouri acted imprudently, thus
17 squarely putting that issue before the Commission.

18 The prudence of Ameren Missouri’s decisions can only be judged by putting
19 ourselves in the position of the decision-maker at that time. In this case, all of the
20 information that the Commission needs to place itself in the shoes of Ameren Missouri
21 and assess the prudence of its decision-making related to the Rush Island Projects is in
22 the record in this proceeding.

1 **IV. RESPONSE TO STAFF WITNESS MAJORS**

2 **Q. What is witness Majors’ recommendation regarding the securitization of**
3 **costs associated with the retirement of Rush Island?**

4 A. Witness Majors recommends the securitization of various Energy Transition
5 Costs as defined in Section 393.1700 of Missouri’s Securitization Law, including the
6 net book value of Rush Island, certain abandoned capital project costs, and materials
7 and supplies.

8 **Q. Does witness Majors offer a position on the prudence of Ameren Missouri’s**
9 **permitting decisions related to the Rush Island Projects?**

10 A. Yes. Witness Majors’ position is that Ameren Missouri was imprudent in not
11 seeking air permits for the Rush Island Projects.

12 **Q. What is the basis for witness Majors’ opinion?**

13 A. Witness Majors relies on the District Court Opinion, which he states, “explains
14 in great detail how Ameren Missouri engaged in faulty and imprudent decision making
15 given the facts and circumstances known at the time the Rush Island improvements
16 were planned and installed”.⁵

17 Q. Outside of those Court opinions, are you prepared to offer to the
18 Commission any evidence that Ameren Missouri in its permitting
19 decisions was imprudent? A. No.⁶

⁵ Rebuttal Testimony of Keith Majors, Case No. EF-2024-0021, February 2024, pg. 4, lines 11-13.

⁶ Ibid, pg. 31, lines 8-12.

1 **Q. Did the District Court opine on the prudence of Ameren Missouri's**
2 **decisions surrounding the permitting of the Rush Island Projects?**

3 A. No. Witness Majors inappropriately conflates the District Court's decision on
4 permitting for the Rush Island projects in 2007 and 2010 with a regulatory
5 determination of imprudence which would disallow costs from being recovered from
6 customers. The District Court found that certain of Ameren Missouri's actions relating
7 to its decision to not seek NSR permits were not reasonable. However, this was not a
8 prudence determination on the question of whether Ameren Missouri, knowing what it
9 knew or should have known at the time, was prudent in not seeking the permits. In fact,
10 the District Court based its decision on its later determinations that Ameren Missouri
11 misunderstood the legal requirements at the time, including the legal standards
12 governing actual emissions. Given what the District Court later determined was
13 Ameren Missouri's mistaken understanding of the law, the District Court criticized as
14 unreasonable Ameren Missouri's failure to perform pre-project quantitative actual
15 emissions analysis and criticized as unreasonable the Company's post-project
16 quantitative actual emissions analysis. But the question for this Commission is whether
17 it was unreasonable, i.e., imprudent, for Ameren Missouri to have understood the law
18 as it did. The District Court made no ruling on that question. A prudence determination
19 by the Commission would need to be based on facts that were known and knowable at
20 the time, and whether the decision was within a range of reasonableness, not on how
21 things turned out.

1 **Q. Does witness Majors believe that if a utility is found liable for violating a**
2 **federal Prevention of Significant Deterioration (“PSD”) program, its actions could**
3 **still be found to be prudent?**

4 A. Yes. In his deposition, Witness Majors agrees that it is possible for a utility to
5 be found in violation of the federal PSD program and still to have acted prudently at
6 the time it made its permitting decisions:

7 Q. Right. So is it possible in your mind for a utility to be found in violation
8 of the federal PSD program and still to have acted prudently at the time it
9 made its permitting decisions? A. Sure.⁷

10 **Q. Do you agree with witness Majors?**

11 A. Yes. Basing a prudence determination on how things turned out is a results-
12 based approach to prudence that is not consistent with Missouri’s regulatory prudence
13 standard, which looks at whether the decisions made were within a range of reasonable
14 actions. On matters as complex as environmental regulations, there can certainly be
15 room for differing opinions even though at the end of the process one opinion may be
16 shown to be a violation of the Clean Air Act and another may not, which is exactly
17 what happened here. There have been many court cases where utilities’ interpretations
18 of environmental regulations have turned out to be wrong, as has been true for positions
19 taken by state environmental regulators and federal environmental regulators.
20 However, that does not mean that those parties’ views were “imprudent” or outside of
21 a reasonable range of opinions at the time of those parties' decision-making. The same
22 has been true for court opinions that overturned decisions by state utility regulators,
23 which does not mean that the regulators were acting in an imprudent manner.

⁷ Deposition of Keith Majors Volume 1 March 12, 2024, pg. 8, lines 21-25.

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V. CONCLUSIONS

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Q. What conclusions have you reached in this surrebuttal testimony?

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A. I have concluded that:

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1. In deciding on the issue of securitization of the costs associated with the retirement of Rush Island, the Commission should apply its well-defined prudence standard to the issues in this case and make a determination on the prudence of the earlier decision-making regarding NSR permitting that led to the retirement of Rush Island.

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2. There should be no “reserved” issues for potential future disallowance relating to these decisions taken to date regarding Rush Island. The prudence of the decisions should be decided now, and that determination should govern the cost recovery for the consequences of those decisions and the eligibility of those costs for securitization.

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Q. Does this conclude your Surrebuttal Testimony?

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A. Yes, it does.

VERIFICATION

I, John J. Reed, under penalty of perjury, on this 22nd day of March 2024, declare that the foregoing is true and correct to the best of my knowledge and belief.

/s/ 
