

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Rulemaking Hearing

May 12, 2016

Jefferson City, Missouri

Volume 1

In The Matter of the Proposed)	
Amendments to 4 CSR 240-3.105, Filing)	
Requirements For Electric Utility)	File Number
Applications For Certificates Of)	EX-2015-0225
Convenience And Necessity)	

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE
DANIEL Y. HALL, Chairman
SCOTT T. RUPP
COMMISSIONERS

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PROCEEDINGS

10:03 JUDGE WOODRUFF: Welcome, everyone, to this rulemaking hearing concerning the Commission's proposed amendments to 4 CSR 240-3.105. It's Commission File Number EX-2015-0225, and this is a rulemaking hearing. We're here to take comments from the public, and I see there's a -- we have -- let me, in fact, get the webcast on here. And we have a fairly full house with people who are anxious to comment.

10:03 This is a rulemaking hearing, and I won't be swearing in witnesses. I'll have people who want to comment come up to the podium and you can state your peace and then the Commissioners may have questions for you, so just remain at the podium. And there's no cross-examination or anything like that. It's not a contested case.

10:04 A number of parties went ahead and filed written comments. And some of them are here. They are certainly welcome to give further comments here today. I have no particular order in which we'll take commenters, other than I'll ask Staff to wait until the end so they can give us response to any of the comments that are made today.

10:04 At this point, then, anyone who wants to step forward first, I'll give you an opportunity.

1 10:04 Mr. Dottheim first.

2 10:04 MR. DOTTHEIM: Judge Woodruff, for the
3 entities that filed additional comments, is there any
4 need to mark those as exhibits?

5 10:05 JUDGE WOODRUFF: Yes, that is my intent.
6 The notice in this case indicated that the written
7 comments were to have been filed a few days ago.
8 Several of the commenters filed additional comments,
9 which is fine, because the alternative would be to have
10 you read them all into the record today and I don't
11 want to do that. So when you come up, I'll go ahead
12 and mark those additional comments as exhibits for the
13 proceeding today.

14 10:05 MR. DOTTHEIM: Thank you.

15 10:05 JUDGE WOODRUFF: And if any other
16 commenters have other comments in writing, we'll handle
17 them the same way. Okay.

18 10:05 MR. LOWERY: I can go first, your Honor,
19 if that's okay.

20 10:05 JUDGE WOODRUFF: That will be fine, for
21 Ameren.

22 10:05 MR. LOWERY: And we can go ahead and get
23 out of the way, I do I have -- and we filed ours in
24 advance for that very reason so we wouldn't be reading,
25 you know, long passages, but I do have copies of the

1 additional comments that we filed yesterday. I'll give
2 you enough for yourself and for all the Commissioners.

3 Good morning, my name's Jim Lowery and I
4 represent Ameren Missouri in connection with this
5 Certificate of Convenience and Necessity rulemaking,
6 which we commonly refer to as the CCN rule. We
7 appreciate the opportunity to submit comments on
8 10:06 April 29th, and as I just indicated, we submitted
9 additional comments yesterday, and did send those to
10 the parties so nobody -- or those that we thought would
11 be parties, at least, so nobody would be surprised by
12 them so that we could abbreviate our verbal comments
13 today.

14 10:06 (Exhibit Number 1 was marked for
15 identification by the court reporter.)

16 10:06 MR. LOWERY: With me here today is Tom
17 Byrne, who is Ameren Missouri's senior director of
18 regulatory affairs. I think you know that Mr. Byrne
19 was an attorney for Ameren Missouri for a number of
20 years. Prior to that, Laclede Gas Company and other
21 utilities, and actually started his career as a Staff
22 attorney working with Mr. Dottheim, not to date you too
23 much, Steve, but working with Mr. Dottheim and the
24 Commission back in the 1980s. Mr. Byrne is going to
25 provide an overview of our position on the proposed

1 rules. He'll amplify some of the key points, but
2 again, we're going to endeavor not to repeat the
3 comments that we've already filed to the extent we can.

4 10:07 Also with me here today is Matt Michaels.
5 Matt is the senior director -- senior manager of
6 corporate analysis for Ameren Missouri. Mr. Michaels
7 has been extensively involved in the IRP process. He
8 is the lead person at Ameren Missouri on the integrated
9 resource planning in Ameren Missouri. He was involved
10 in the rulemaking that revised those rules back in
11 2011. He's going to discuss the IRP process in general
12 and more particularly the role of the IRP process and
13 why it remains the appropriate place to consider the
14 complexities and issues that arise when you are
15 considering the use of purchase power agreements, or
16 PPAs, in lieu of the utility building and owning
17 generation.

18 10:08 I also have with me here today Mr. Ryan
19 Martin. Mr. Martin is vice-president and treasurer for
20 Ameren Services. Mr. Martin does not have any prepared
21 remarks or comments this morning, but he is here if
22 Commissioner questions were to arise within his area of
23 expertise.

24 10:08 Before I ask Mr. Byrne to come up and
25 give you an overview and hit some of the high points, I

1 wanted to cover a few things myself. As our written
2 comments cover, we believe -- we believe they cover the
3 material provisions of the proposed rules. We believe
4 they cover the material issues that have been raised by
5 other commenters, including the Staff's modified
6 competitive bidding language which the Staff proposed
7 some changes to what had been proposed in the rule when
8 they filed their comments on April 29th, and we also
9 believe we've fully addressed a proposal from OPC to
10 deal with notice to landowners and public meetings in
11 transmission line cases.

12 10:09 Regarding the Staff's revised competitive
13 bidding language, for the reasons that we gave in our
14 written comments, we continue to believe that it's not
15 appropriate to inject those issues into CCN cases at
16 all. For design, construction, procurement-type
17 contract issues, no party has suggested that there was
18 any problem, any need to do so. Those contracts and
19 those activities often take place after a CCN is
20 granted as part of the execution of the project and we
21 just don't see any need at all to inject those into a
22 CCN process.

23 10:09 In terms of competitive bidding related
24 to PPAs, as Mr. Byrne will address in some additional
25 detail, such provisions in a CCN rule make an

1 assumption about PPAs that we think is a false
2 assumption. That is that you you're talking about
3 apples and apples when you're looking at PPAs and
4 utility-owned generation, and we believe we're really
5 talking about apples and oranges.

6 10:10 Staff's revised proposal is less onerous,
7 but at the end of the day, it still remains ill-advised
8 because the right place to be discussing how we should
9 go about getting resources, what those resources should
10 be, should we be purchasing energy and capacity as
11 opposed to building it, and the complex issues that
12 arise from that is in the IRP process. And that
13 happens in the IRP process and it should continue to
14 happen there.

15 10:10 In fact, when I look at Staff's comments
16 on April 29th and I look at the comments that Staff
17 filed yesterday, I don't -- and this is just my
18 opinion. I'm not putting words in Staff's mouth, but
19 in my opinion, when I look at what Staff has proposed,
20 I don't see a ringing endorsement on the Staff's part
21 for competitive bidding provisions in the CCN rule
22 either. I see sort of a, I don't know, an attempt to
23 put something on the table, is sort of how I take it.

24 Now, in terms of OPC's proposal about
25 landowner notice and public meetings, we don't object

1 to the spirit of OPC's proposal. In fact, we didn't
2 object to many of the terms of the proposal. But we
3 felt as originally written, the proposal lacked some
4 clarity and we felt it lacked an appropriate level of
5 balance between what is practical and fair between the
6 landowner and the utility who's trying to give the
7 notice and trying to have the public meetings, and we
8 also didn't think the language was entirely consistent
9 in certain respects.

10 10:11 So what we did is we very specifically
11 took OPC's language and we marked it up and you'll see
12 that in the comments we filed yesterday to try to
13 preserve what OPC, we think, is trying to do, but not
14 to do it in a way that would be disadvantageous to the
15 utility or unfair to the landowners. And we'd ask you
16 to consider that.

17 10:11 Other major issues in this rulemaking
18 include Dogwood's efforts to get the Commission to
19 extend the application of what really is a Missouri
20 citing statute, the CCN Statute 339.170, to be a citing
21 statute that would apply to citing of power plants in
22 other states. And such an interpretation would be
23 opposite of 103 years of practice here at the
24 Commission. There's never been an instance where the
25 Commission has applied the statute in that fashion. We

1 don't think the Commission lawfully can apply it in
2 that fashion.

3 10:12 Something we didn't mention in our
4 comments but I want to point out to you, there is a
5 specific jurisdictional statute for the Commission,
6 386.250, and it specifically says that your
7 jurisdiction extends to the manufacturer of electricity
8 within the state. But I don't think it extends to the
9 manufacturer of electricity outside the state.
10 Certainly not the citing of a power plant.

11 10:12 Finally, I'll be interested to hear
12 Staff's explanation of the change that it made
13 yesterday in its additional comments. It's use of the
14 word "new construction" instead of retrofit, rebuild,
15 renovation, et cetera. That's a change from the
16 position, I think, that -- from what Staff had been
17 suggesting before.

18 10:13 I'll be interested to understand what
19 Staff intends by that language. I don't know if I
20 think it's entirely clear, although it might be, and
21 also have a discussion about the -- the aspects of
22 Staff's rules in terms of what would I call
23 environmental projects and so on because I'm not
24 entirely clear on Staff's position on that, but I'm
25 sure Mr. Dottheim will make that clear for us today.

1 With that, that concludes my prepared
2 remarks. If you have any questions at this time, I'd
3 be happy to answer them, and as the day proceeds, if
4 you have a question that would be directed to the
5 company, any one of us can answer it.

6 10:13 JUDGE WOODRUFF: Mr. Chairman?

7 10:13 CHAIRMAN HALL: No questions, thank you.

8 10:13 COMMISSIONER RUPP: Not at this time,
9 thank you.

10 10:13 MR. LOWERY: With that, I'll ask
11 10:13 Mr. Byrne to come up.

12 10:13 MR. BYRNE: Good morning, Commissioners
13 and Judge Woodruff. As Mr. Lowery said, my name is Tom
14 Byrne. I'm senior director of regulatory affairs for
15 Ameren Missouri, and you know, as Mr. Lowery pointed
16 out, we filed pretty extensive written comments on
17 April 29th. We filed reply comments yesterday, and so
18 I'm not going to repeat all the things in those
19 comments, but I would like to at least briefly hit the
20 high points, you know, try to give an overview of
21 Ameren Missouri's position on the issues that we think
22 are most important.

23 10:14 First of all, we support the general idea
24 of this proceeding. And in our mind, the general idea
25 of this proceeding was to amend the certificate rules

1 to accommodate the StopAquila and Cass County
2 decisions, and we think that's appropriate. We think
3 it had been awhile since the certificate rules had been
4 looked at and those cases did provide some clarity
5 about when you need a certificate that wasn't there
6 before in the law. And so we support the changes that
7 are designed to conform the rule to StopAquila and Cass
8 County.

10:14

9 But we also think a lot of the proposed
10 changes go far beyond that. And we think some of the
11 proposed changes are beyond the Commission's
12 jurisdiction and some of them just represent policy
13 that we don't support. And I think looking back at the
14 agenda notes, I think the Commission decided to put as
15 many things into the proposed rule as possible to
16 generate discussion about these issues and I think
17 you've been successful. We're having some good
18 discussion about these issues.

10:15

19 But at the end of the day, we don't think
20 a lot of the things that are in the proposed rule ought
21 to be adopted. And first -- the first change in the
22 proposed rule I'd like to discuss is the definition of
23 "construction." And we believe the definition that's
24 in the rule that includes, you know, things like
25 renovation and expansion goes beyond the statutory

1 definition of "construction" in the certificate
2 statute.

3 10:15 And as the Commissioners undoubtedly
4 know, you know, the Commission's a creature of statute,
5 it has only powers that the General Assembly has given
6 it, and the General Assembly's given the Commission
7 broad powers to regulate public utilities. No question
8 about that. But in the specific area of issuing
9 certificates, it's a little bit more narrow.

10 10:16 And in particular, Section 393.170, which
11 is the rule that everyone has cited that gives the
12 Commission authority to issue certificates and pass
13 these rules, that statute requires a utility or
14 electric utility to seek a certificate from the
15 Commission before beginning construction of an electric
16 plant. Those are the words in the statute, and
17 specifically the sentence that's at issue here says,
18 "no gas corporation, electrical corporation, water
19 corporation, or sewer corporation shall begin
20 construction of a gas plant, electric plant, water
21 system or sewer system without first having obtained
22 the permission and approval of the Commission."

23 10:16 And -- and the proposed rules are trying
24 to change the meaning of the term "begin construction"
25 to include, I guess out of the proposed rule, it says

1 any substantial rebuild, renovation, improvement or
2 retrofit that will result in a substantial increase in
3 capacity or a material change in emissions.

4 10:17 In addition, they want to expand the term
5 "begin construction" to include when an electric
6 utility purchases a plant that's already been
7 constructed by somebody else. We disagree with this
8 definition of construction for several reasons. First
9 and most significantly, as we explained in our
10 comments, you know, the standard for statutory
11 interpretation, probably the first principal of
12 statutory interpretation is you're to give terms their
13 plain meaning.

14 10:17 And in our view, the term "begin
15 construction" of electric plant has a plain meaning
16 that does not encompass all those other terms that are
17 now in the proposed definition of "construction." And
18 -- and this construction, I hate to use the word
19 "construction," but this construction of the statute is
20 consistent with how the Commission has construed it
21 over its entire 103-year-old -- or 103-year history.
22 Sadly, about a third of which I've been involved in
23 personally, but you know, the Commission has never
24 required certificates for, you know, renovations or
25 rebuilds or scrubbers put on a plant, and we don't

1 think they should start now.

2 10:18 The Commission has a lot of ways -- we're
3 not saying the Commission can't regulate those things.
4 The Commission has a lot of ways to regulate all of
5 those things. As Mr. Lowery mentioned, there's, you
6 know, there's an exhaustive IRP process. Every three
7 years, every electric utility has to come in and work
8 with stakeholders, and it's actually a couple-year
9 process to put it together and get it filed and
10 processed by the Commission, but every three years,
11 there's a resource planning exercise that the electric
12 utilities go through and then they have to update it
13 every year. That's a venue where the Commission can
14 consider renovations of plants and expansions and
15 things like that.

16 10:19 Of course rate cases, when -- whenever
17 the electric utility is done with their renovation or
18 expansion, they ask -- they ask to include the cost of
19 those projects in rates. That's an opportunity that
20 the Commission can look at those things.

21 10:19 The Commission could open an
22 investigation docket, if they wanted to, to look at
23 what a utility is doing with its electric plants. If
24 the Commission thought there was anything that the
25 utility was doing wrong, it could file a complaint.

1 There are all kinds of opportunities for the Commission
2 to get as involved as they want to in supervising, you
3 know, plant expansions or renovations or plant
4 purchases.

5 10:19 But what they can't do, in our opinion,
6 at least, is expand the terms of the certificate
7 statute to require a certificate in places where the --
8 where the law doesn't -- doesn't require one.

9 10:20 We also think there's a problem with the
10 vagueness of the terms that are proposed. So the
11 question is, you know, what is a substantial plant
12 renovation or what is a substantial increase in
13 capacity as opposed to an insubstantial. What is a
14 material change in emissions? Does the emissions
15 criteria apply to increases and decreases in emissions?
16 It looks like it does, but it's unclear.

17 10:20 And I guess, you know, we think the
18 vagueness of those terms is going to lead to litigation
19 in certificate cases and in courts, but even worse is
20 the issue of if you don't -- if you don't get a
21 certificate and you have a project that changes the --
22 that changes the emissions or changes the capacity of
23 the plant in some amount, do you have to worry -- do
24 you have to look back over your shoulder for the next
25 hundred years that somebody's going say you should have

1 gotten a certificate and you didn't because my view of
2 substantial is different than your view of substantial.

3 10:21 And finally, if it was true that
4 certificates are required for all plant purchases,
5 expansions, renovations, et cetera, then that's been
6 the case since 1913. And all of the plant expansions,
7 renovations, and purchases that have happened between
8 1913 and today, if that's true, have been unauthorized.

9 And I don't know how -- how familiar
10 you-all are with the StopAquila and Cass County cases,
11 but in that case, Aquila built a plant and didn't get
12 the required certificate ahead of time. And the Court
13 held the Commission can't retroactively after the fact
14 grant a certificate. You know, if the Aquila didn't
15 get the certificate ahead of time that it was supposed
16 to, it was going to have to tear down the plant and
17 ultimately the legislature passed, I hate to call it
18 special legislation, but they passed legislation that
19 allowed that not to happen, which was probably a good
20 thing.

21 10:22 But if all the utilities -- if all the
22 electric utilities were supposed to get certificates
23 for all that stuff, there's a lot of unauthorized
24 facilities out there and someone could argue they
25 should be torn down.

1 10:22 So for all those reasons, we oppose the
2 language in the rule that would expand the definition
3 of "construction" beyond what we believe is its plain
4 meaning.

5 10:22 Ameren Missouri's also opposed to the
6 portion of the rule, as Mr. Lowery said, that would
7 require utilities to go through an RFP process to
8 consider purchasing power from third parties every time
9 it seeks a certificate to build facilities. This
10 proposal is primarily being advocated by Dogwood
11 Energy, in my opinion, for its own private financial
12 interests, and it's a bad idea for the state, for
13 customers, for utilities, for several reasons.

14 10:22 First, as Mr. Lowery said, the unspoken
15 premise for this proposed change is that purchasing
16 electricity from a third party is the equivalent, you
17 know, is an apples-to-apples comparison to building a
18 facility. And we believe that it's not.

19 10:23 As our written comments note, the
20 Commission and the utility really have no control over
21 the facilities of a third party selling power to the
22 electric utility. They can't monitor operations or the
23 safety of those facilities. For our facilities, you
24 know, we provide operational reports to the Commission,
25 you know, the Commission monitors the fuel

1 availability, if our coal piles get down below a
2 certain amount and there's a risk that the power plant
3 will run out of fuel and go offline and there will be a
4 blackout, the Commission keeps track of that, and of
5 course the utility does, too. If there are operational
6 problems or threatened operational problems, we can
7 prepare and know about them and all of that would be --
8 is missing if you replace a power plant with a purchase
9 power agreement.

10 10:24 There are also opportunities -- we have
11 opportunities sometimes to expand plants, to improve
12 heat rates at plants, and of course if a utility owns a
13 plant and they take those steps, all the benefit goes
14 to the customers.

15 10:24 Contracting with independent power
16 producers also injects a level of financial risk into
17 -- to the utility and its customers that isn't present
18 when the utility builds the plant. A lot of merchant
19 generators are highly leveraged. They have a lot of
20 debt. You know, utilities are typically, of course,
21 the -- their capital structure is regulated by the
22 Commission, they're typically close to 50/50 capital
23 structure. A lot of merchant generators are highly
24 leveraged, which subjects them to a lot of financial
25 risk.

1 10:25 We provided a list of the ones that have
2 gone bankrupt. There have been a lot of bankruptcies
3 in the merchant generation function. And again, you
4 know, if we're buying power from merchant generators,
5 there's no way -- well, if they're publicly traded, you
6 can look at their finances, I guess, but a lot of them
7 aren't publicly traded, so it's very hard to see what
8 the financial risk you're taking on is.

9 10:25 And you know, if they go bankrupt or have
10 financial problems and it affects their operation or
11 bankruptcy court voids the contract, you know, those
12 are -- those are things that affect reliability to
13 customers. You know, there could really be a
14 consequence to that to customers. And as I said, a lot
15 of cases, there's no way to even evaluate their
16 financial condition.

17 10:25 Even where a third-party supplier
18 operates responsibly and is financially stable, there
19 are benefits to owning facilities as opposed to sort of
20 renting them through a power purchase agreement. To my
21 mind, it's kind of like owning a car versus renting a
22 car, but at the end of the power purchase contract, you
23 have nothing, you know. No -- you've got to enter into
24 a new contract to get additional power.

25 10:26 Whereas if you build the plant, even at

1 the end of the depreciable life of the plant, you know,
2 there -- oftentimes plants are still running. I know
3 Ameren Missouri has all kinds of plants that were built
4 in the -- well, our oldest plant was built in the
5 1950s, a lot of them were built in the '70s. Callaway
6 plant was built in '83, those are still good-running
7 plants and if we had purchased -- had a purchase power
8 agreement instead of the Callaway nuclear plant, it
9 would have expired by now and, you know, customers
10 wouldn't have had the benefit. So for that reason as
11 well, we think it's better.

12 10:26 I mean, the simple fact is steel in the
13 ground is better for customers than a promise to
14 deliver power on a piece of paper, in our opinion.

15 10:26 And I guess, you know, attempting to sort
16 out -- it's not that we should never use a purchase
17 power agreement. We have purchase power agreements to
18 some degree. They don't -- they don't significantly
19 replace our generation, but -- but attempting to sort
20 these issues out and compare an apple to an orange in
21 -- in a certificate case is -- is difficult -- would be
22 difficult and time-consuming. It would complicate and
23 delay certificate proceedings significantly.

24 10:27 A lot of times when a utility comes in
25 for a certificate for one reason or another, time is of

1 the essence. Sometimes there's construction schedules,
2 there's contracts of the people who are building the
3 plant. If you're buying something, if you don't -- you
4 know, if the certificate rules applied to purchasing
5 plants, you'd -- you know, you might not be able to
6 purchase it if it's delayed too long. Sometimes like
7 if you're building a renewable facility, you've got to
8 meet a statutory deadline in order to get a tax credit,
9 so there's a lot of reasons that most certificate
10 proceedings, there's a time deadline.

11 10:28 And if you have to engage in a pretty
12 complicated analysis of various PPA offers versus
13 building, that's not practical to do in a certificate
14 case. It is practical, on the other hand, to do it in
15 an IRP case where you have sort of an exhaustive
16 examination of the entire resource plan for the
17 utility. And again, as Mr. Lowery said, in our
18 opinion, the IRP is the right forum for these analyses
19 to be done, certificate cases are not.

20 10:28 Finally, I'd like to just briefly touch
21 on the point that Mr. Lowery raised. You know, we
22 believe this Commission is not authorized to rule on
23 citing of plants in other states. There's at least two
24 statutes, 386.250, which is the -- sort of the overall
25 general jurisdictional statute of the Commission

1 specifically talks about electric plants located in
2 Missouri, 386.030 is also relevant to this issue and
3 talks about the limits of the Commission's power being
4 within the state.

5 10:29 We wouldn't want other states dictating
6 the citing of facilities in Missouri and, you know, the
7 other side of that coin is Missouri can't really
8 dictate citing of facilities in other states. Again,
9 it's not that the Commission doesn't have comprehensive
10 jurisdiction over construction of facilities in other
11 states. Again, the IRP process, rate cases,
12 investigations, complaints, there are all kinds of
13 forums where you can look at that, but I don't believe
14 that you can make a ruling on the citing of a facility
15 in another state through a certificate proceeding.
16 Those are all the comments I have.

17 10:29 So if you have any questions, I'd be glad
18 to answer them or Mr. Michaels is going to briefly
19 comment on the IRP process.

20 10:30 CHAIRMAN HALL: No questions, thank you.

21 10:30 COMMISSIONER RUPP: None.

22 10:30 MR. MICHAELS: Good morning. My name is
23 Matt Michaels, I'm a senior manager of corporate
24 analysis for Ameren Missouri, and my responsibilities
25 include preparation and filing of Ameren Missouri's

1 integrated resource plan filing.

2 10:30 You heard Mr. Byrne briefly describe the
3 difference in scope and purpose of the Commission's CCN
4 process and its IRP process. I want to elaborate on
5 that a little bit now. The utility and other parties
6 and ultimately the Commission give full consideration
7 to all factors relevant to resource decisions as part
8 of the IRP process. For practical reasons, those
9 factors should only be considered in the IRP process.

10 The IRP process by its nature is
11 comprehensive and time consuming. Certainly other
12 cases offer an appropriate forum in which to consider
13 some of the factors that contribute to a particular
14 decision, but only the Commission's IRP process is
15 designed to ensure consideration of all factors backed
16 by appropriate analysis.

17 10:31 And promulgating the original IRP rules
18 in 1993 and then revising them in 2011, the Commission
19 held firm to the belief that the IRP rules should
20 ensure that utilities follow a robust process that
21 considers a wide range of options and a wide range of
22 future conditions in making its resource decisions.

23 The IRP process fully examines the need
24 for resources to meet customer demand and the options
25 available for meeting such needs, including both supply

1 side and demand side options over a period of no less
2 than 20 years.

3 10:31 Supply side options include full or
4 partial ownership of resources as well as resources
5 secured through contracts, that is purchase power
6 agreements or PPAs. Options are evaluated based on
7 cost and other factors, including environmental
8 financing and offerability considerations.

9 10:32 Alternative resource plans are developed
10 to incorporate accommodations of the most promising
11 options, both supply side and demand side and evaluated
12 under a range of future conditions. These future
13 conditions include ranges of assumptions for resource
14 cost and performance, energy market variables such as
15 fuel and power prices, and the expected future costs of
16 debt and equity financing to name a few.

17 10:32 Utility management selects a preferred
18 resource plan from among these alternative plans based
19 on consideration of overall costs, customer rates,
20 environmental considerations, economic impacts,
21 financial implications, and other factors. An
22 implementation plan is also developed and approved by
23 management to execute the near-term steps required to
24 implement the chosen preferred resource plan.
25 Contingency options and ranges of parameters that may

1 lead to a change of plans are also included.

2 10:33 The development of a tri-annual IRP
3 filing typically takes well over a year. This is
4 attributable to the comprehensive and collaborative
5 nature of the process. Each utility is required to
6 convene meetings of a stakeholder group and share its
7 assumptions and parameters for the evaluation of
8 alternative resource plans, including drafts of
9 significant portion of the documentation to be filed
10 and solicit their feedback. The stakeholders
11 also have an opportunity to fully review and comment on
12 the utilities IRP after it is filed. The Commission
13 considers the comments of the stakeholders and makes a
14 determination as to whether the utility followed a
15 process that complies with the IRP rules. Notably, the
16 Commission does not approve a utility's preferred
17 resource plan.

18 10:33 The Commission has made clear in adopting
19 and later revising its IRP rules that it focuses on
20 ensuring that utilities follow a robust decision
21 process and that decisions of prudence are to be made
22 when utility seeks to include costs in customer rates.

23 10:34 Because the Commission has adopted IRP
24 rules requiring utilities to follow a robust process
25 and because that process is necessarily comprehensive

1 and collaborative, attempting to duplicate the
2 functionality of this process as part of reviewing CCN
3 applications is at best unnecessary in my judgment.
4 More likely doing so would be counterproductive and
5 frustrate the ability of the utility to provide safe
6 and adequate service.

7 10:34 As our comments indicate, there are a
8 number of differences between PPAs and utility-owned
9 and operated generation and consideration of the
10 balance between those different factors can be complex.
11 The IRP process is well suited to consider those, but a
12 CCN case is not. Trying to duplicate the IRP process
13 as part of a CCN application review would waste time
14 and money and would frustrate the ability of the
15 utility to provide safe, reliable and cost effective
16 service to customers.

17 10:35 For these reasons, the Commission should
18 continue to ensure appropriate resource decision-making
19 by utilities through its IRP process and avoid such
20 unnecessary and wasteful duplication.

21 10:35 With that, I am happy to take any
22 questions.

23 10:35 CHAIRMAN HALL: No questions, thank you.

24 10:35 JUDGE WOODRUFF: Anything else from
25 Ameren?

1 10:35 MR. LOWERY: No, Your Honor. Thank you
2 very much.

3 10:35 JUDGE WOODRUFF: If I didn't say it
4 before, Exhibit 1 will be received into the record.

5 10:35 MR. LOWERY: Thank you.

6 10:35 (Exhibit Number 1 was received into the
7 record by Judge Woodruff.)

8 10:35 JUDGE WOODRUFF: Who wants to go next?
9 Mr. Fischer?

10 10:35 MR. FISCHER: Thank you, Judge. May it
11 please the Commission. My name is Jim Fischer and I'm
12 here today appearing on behalf of Kansas City Power &
13 Light and KCP&L Greater Missouri Operations Company, or
14 GMO.

15 10:36 KCP&L and GMO generally agree with what
16 was just said by Mr. Byrne, Mr. Lowery, Mr. Michaels.
17 I think they did a nice job of summarizing the
18 utilities's concerns with the rule. I don't want to be
19 too redundant, but I do want to highlight a couple
20 things.

21 10:36 We have really five areas that we have
22 concerns with. Particularly, the expansion of the
23 definition of the word "construct" to mean what we
24 think would be "seek to acquire" or the application
25 requiring the CCN for retrofits, environmental

1 retrofits or upgrades, rebuilds. We think that's
2 beyond the statutory authority for that kind of thing.

3 We have concerns about the mandatory
4 competitive bidding that's being discussed for the CCN
5 process. We have concerns about the new proposed
6 requirements to obtain a CCN for an out-of-state plant,
7 that's the third area we have a concern about. And
8 then Wind on the Wires has included an independent
9 third-party evaluation of competitive bids. This isn't
10 consistent with how the electric utilities have been regulated
11 here in Missouri for the past number of years and we
12 don't think that's a necessary idea and it should be
13 rejected. And then finally, the fifth area was the
14 Public Counsel's proposal to provide notice to the
15 landowners on route selection.

16 10:37 A lot of times a route isn't definitely
17 known at the time the CCN is sought and that is a
18 problem with providing specific notice to -- to
19 specific landowners, but Ameren has proposed some
20 language which -- which KCP&L and GMO can agree with to
21 try to address that. And I think that would take care
22 of that.

23 10:37 We believe that some of the changes of
24 the CCN rule that are made to address the StopAquila
25 case and the State, ex rel. Cass County case should be

1 made. That makes a lot of sense and that's where the
2 workshop originally began. But many of the other
3 changes go beyond addressing those specific
4 certification questions in an attempt to expand the CCN
5 process beyond what's generally considered the
6 Commission's lawful authority by adding unnecessary and
7 duplicative provisions regarding competitive bidding
8 and the retrofitting in the acquisition of generation
9 resources.

10 10:38

I think I agree with Mr. Michael's
11 statements about the IRP process, too. That is a very
12 extensive process that -- that we think is where a lot
13 of these questions should be addressed and not in the
14 -- not in the CCN process. When you look at that --
15 that IRP process, we look at everything from range of
16 future load growth and cost of capital, changes in
17 legal mandates, fuel prices, citing and permitting
18 costs, schedules for new generation and all the kinds
19 of choices that we'd be making. That's the kind of
20 place where -- and it's a very extensive process as you
21 all know.

22 10:39

That's the process where a lot of these
23 questions about things like should you be retiring a
24 plant or retrofitting it rather than going through that
25 in a CCN process where you're considering doing the

1 environmental upgrade.

2 10:39 We have filed written comments that go to
3 specific areas of the rule that I have addressed.
4 Rather than go through those in a lot of detail, I'd be
5 happy to answer your questions. I would like to ask
6 Mr. Burt Crawford to come up to describe the IRP
7 process in more detail because we think that is really
8 the heart of this, where it should -- where these
9 issues should be addressed.

10 10:39 I also have Mr. Tim Rush, who is the
11 senior director of regulatory to answer questions that
12 you might have regarding the practical aspects of this,
13 if this was adopted. But with that, I'll stop and ask
14 -- address any questions you might have.

15 10:40 CHAIRMAN HALL: I have no questions,
16 thank you.

17 10:40 COMMISSIONER RUPP: None.

18 10:40 MR. FISCHER: Mr. Crawford?

19 10:40 MR. CRAWFORD: Good morning. I am, as
20 Mr. Fischer said, Burton Crawford. I'm responsible for
21 the integrated resource planning process at KCP&L, and
22 am in agreement with the comments that you've already
23 heard from Ameren regarding IRP. I'd like to mention a
24 couple of what I can see as practical considerations
25 from a resource planning perspective that these -- this

1 proposed rule would -- difficulties it would cause.

2 And the first one is related to requiring
3 a CCN, if we were to do what I would call an
4 environmental retrofit at a power plant. Requiring
5 support for -- environmental retrofits can be very
6 contentious. You saw in the last KCP&L rate case where
7 we were before you asking for recovery of the LaCygne
8 investment and retrofits there. You had several
9 parties that are on one side of the fence who say you
10 shouldn't put another nickel in the old plant versus
11 the analysis that we had proposed that showed it made
12 sense to continue this -- the service of this plant.

13 And rolling -- having us have to do a CCN
14 for that kind of investment is going to bring a lot of
15 contention. We estimate that it's going to add about
16 seven to eight months of time required to complete an
17 environmental retrofit, which in some cases can be
18 under a rather tight EPA deadline, which then means you
19 might have to accelerate that particular project. And
20 we've seen cases where environmental retrofits have
21 doubled in price, from say \$50 million to \$100 million
22 because you were under a tight deadline to get it done
23 and these are requirements from the EPA that you would
24 have to meet.

25 10:42 And the timing -- the additional time

1 required is based on actual experience that we had in
2 Kansas where we were before the Kansas Commission
3 asking for predetermination of the LaCygne retrofit.
4 They've got a statute in Kansas that allows us to go in
5 ahead of time and ask for approval of building it,
6 basically decisional prudence. And since it was over a
7 \$600 million project and we knew it would be
8 controversial, we did take advantage of that statute in
9 Kansas and ask for permission.

10 10:42

And from the time we filed direct
11 testimony until the time we got an order in that case,
12 it was -- it was a six-month period of time. And a lot
13 of parties involved, a lot of consultants, a lot of
14 Ph.Ds, a lot of modeling, a lot of expense. And that
15 really, if you were -- that really isn't the
16 appropriate -- the CCN case wouldn't be the appropriate
17 place to do that.

18 10:43

As you've heard, it's really in the IRP
19 where these decisions are thoroughly reviewed,
20 thoroughly analyzed, we filed the information with
21 Commission, the parties have had the opportunity if
22 they didn't like the conclusions that were reached to
23 do it there. And then subsequent to that when we come
24 in and ask for it in rates, parties have got another
25 chance to -- to complain about what we've done and try

1 to prove that it wasn't prudent.

2 10:43 So they've already got two opportunities
3 at these types of retrofits to get before the
4 Commission and say why we shouldn't be doing it, and it
5 doesn't make sense, really, to add a third yet
6 opportunity to come in and potentially delay, which is
7 a project that the delay can result in significant
8 additional expense for retail customers.

9 10:43 The other example that I've got is that
10 if you were to go out -- say a plant became available
11 for purchase and the way we read the proposed rule, you
12 would actually have to go out and seek a CCN to be able
13 to buy that plant. Well, if I had someone come to me
14 who had, say, a wind plant that was for sale and said,
15 you know, here's our offer, we can sit down and pretty
16 quickly analyze that in the context of the IRP
17 framework. We've already got the models, we've got the
18 structure, we can turn that around pretty quickly and
19 say whether this made sense from a financial
20 perspective, whether it made sense to a customer
21 perspective to acquire that facility.

22 10:44 And the way it would work today once we
23 reach that conclusion, you'd bring the lawyers in, you
24 sit down and you negotiate a deal. Then the next rate
25 case, you come in and seek recovery. But under the

1 proposed CCN rule, we would have to say, well, you
2 know, your facility makes some sense to us. We think
3 we can work out a deal, but now we're going to have to
4 go out to bid to see if somebody else can provide that
5 capacity and energy, either building a new power plant
6 or selling us a power plant or selling us a PPA, and
7 we'll analyze that and then -- and then if your project
8 still makes sense, we've got to go before the
9 Commission with all this where we're going to be having
10 parties that will likely be somebody who doesn't want
11 us to do this, and -- and yeah, it's going to probably
12 take at least seven or eight months.

13 10:45 There's no clock on this thing. It could
14 -- it could last a number of months and they say oh,
15 well, you know, we're talking with another set of
16 parties that's interested in our facility, and you
17 know, it may be gone in the next month. So tying the
18 hands of utility management in this case would not be
19 in the best interest of retail customers because you
20 would always subsequently have the rate case procedure
21 to -- to review the decisions of what the company had
22 made and determined whether it was prudent or not.

23 10:46 So both of these cases, you're really
24 tying the hands of utility management to make timely
25 decisions where there's already the IRP process to

1 review these decisions, there's already the rate case
2 where it's already going to be reviewed. There's
3 really no sense in setting up a procedure to do this a
4 third -- a third time where you potentially are going
5 to result in more cost for retail customers. With
6 that, I'll stand for questions.

7 10:46 CHAIRMAN HALL: I have one.

8 10:46 Good morning.

9 10:46 MR. CRAWFORD: Good morning.

10 10:46 CHAIRMAN HALL: Would your position on
11 including retrofits in the CCN process be the same if
12 -- if the CCN process also included some kind of
13 decisional prudence component?

14 10:46 MR. CRAWFORD: That's probably a better
15 question for Mr. Rush, who is going to be following me.

16 10:47 CHAIRMAN HALL: Okay.

17 10:47 MR. CRAWFORD: It worked out pretty well
18 in Kansas where we went in and decisional prudence was
19 decided. Because you're going to have to decide it at
20 one time or another. And it was decided up front, and
21 then when it came time for the rate case, you know, as
22 long as the facility was under budget, then it was just
23 -- it was accepted. And it had come in under budget
24 and we didn't have anymore debates about it. It was
25 resolved ahead of time and it worked out pretty well.

1 10:47 CHAIRMAN HALL: Okay. That's it. Thank
2 you.

3 10:47 JUDGE WOODRUFF: Thank you.

4 10:47 MR. RUSH: My name is Tim Rush, I'm with
5 Kansas City Power & Light. I am the director of
6 regulatory affairs.

7 10:48 And essentially, my comments have already
8 been presented. Mr. Byrne did a very good job of
9 articulating what I was going to do, but I wanted to be
10 able to respond to the question you had about
11 decisional prudence. And that I think's a tough
12 question, but it is very possible that that is a very
13 good thing to have.

14 10:48 I know that during the IRP process, that
15 the Commission has not gone through and agreed that
16 they would have decisional prudence. They simply
17 basically wanted to say yes, they followed the process
18 and here's what you need to do next time or whatever.
19 But decisional prudence makes a whole lot of sense if
20 there's a time frame associated with it that says that
21 in a timely manner, things can get -- can be done. So
22 I would say yes, we would agree, but I think there's
23 some other things that would have to go along with that
24 to make it make sense.

25 10:48 CHAIRMAN HALL: Such as?

1 10:48 MR. RUSH: I think a time frame
2 associated with --

3 10:48 CHAIRMAN HALL: Like what kind of time
4 frame? You mean a set number months?

5 10:49 MR. RUSH: A set number of months or a
6 procedure -- you know, in the IRP process, there are
7 conditions set that here's when you need to do
8 something, here's the actions that need to take place,
9 here's when we'll -- and it concludes itself. With
10 regard to the CCN, there really is no time frame
11 associated with it, which could cause a lot of problems
12 as been mentioned earlier trying to meet EPA
13 requirements or trying to make a decision that
14 literally has to occur very quickly or you're going to
15 lose -- if it's a deal as mentioned about Mr. Crawford.
16 But I think that a time frame would help with that.

17 There's just been a lot of particular
18 avenues that would have to be really thought through to
19 see if decisional prudence would help. And it's also
20 according to how you would expand things.

21 10:49 CHAIRMAN HALL: Okay. Thank you.

22 10:49 JUDGE WOODRUFF: Thank you.

23 10:49 CHAIRMAN HALL: I would also be curious
24 from the lawyers the extent to which that kind of
25 addition to the CCN rule would be statutorily

1 authorized.

2 10:50 MR. LOWERY: Well, Chairman Hall, I was
3 going to weigh in, I guess briefly, and I'll try to
4 answer that question as well. If you were going to
5 have a decisional prudence process in Missouri about
6 resource acquisition, and we haven't thought about this
7 a lot and honestly didn't know it was going to come up
8 today, but the appropriate place for it, if you were
9 going to do it at all, it seems to me would be in the
10 IRP process, not in a CCN rule.

11 10:50 The CCN statute I don't think is well
12 suited for that process. The whole point of the IRP is
13 to look at the planning, to come up with a preferred
14 plan, to sort of test whether or not the utility is
15 making good resource decisions, and of course things
16 can change, obviously, but -- but it seems to me that
17 would be a process that's much better suited for -- if
18 you were going to go down that road -- on a CCN.

19 10:51 Now, in terms of is it lawful, that's a
20 great question. What the standard under the CCN
21 statute as the courts have told us is that necessary or
22 convenient for the public service means is an
23 improvement justifying the cost. And that's never been
24 applied in the sense that we're going to do a
25 comprehensive financial analysis because it just has

1 never worked that way. And the other issue in CCN
2 cases, the whole genesis of 393.170 in the first place
3 was to prevent wasteful duplication. Not to have
4 multiple sets of power lines in the same area or have,
5 you know, generation that we didn't need, those kinds
6 of things.

7 10:51 So I guess off the top of my head, I
8 don't think the CCN statute was ever intended to get
9 into, you know, rate-making determinations like that,
10 because that's really kind of what decisional prudence
11 is. It's sort of a rate-making circumstance. The IRP
12 process would be better suited, some might say you
13 couldn't even finally get decisional prudence in an IRP
14 case either because when you get to the rate case,
15 don't you have to consider all factors and one of the
16 factors might be decisional prudence? I think we would
17 probably hear some parties say you can't do it at all,
18 but I don't think the CCN case is the right place for
19 it, even if you could.

20 10:52 JUDGE WOODRUFF: Anything else from
21 KCP&L?

22 10:52 MR. FISCHER: Judge, I would just
23 mention, as you may recall in the solar CCN case we
24 recently completed, we did -- we did have a fairly
25 contested issue about whether the plant should be built

1 or not, and we did request that it -- if that was going
2 to be the position of several of the parties,
3 decisional prudence would be helpful to know that we
4 were making the right decision given the information
5 that was available at the time.

6 10:53 The KCP&L regulatory plan also was a very
7 comprehensive plan that asked the Commission to look at
8 decisional prudence before we went through the process
9 of doing all the things that was included in the plan.
10 That was helpful and we felt appropriate for the
11 Commission to look at. However, I would, I guess,
12 caution that if that became the way of the world, so to
13 speak, folks that might disagree or have significant
14 questions, that might make those cases much, much more
15 litigious up front and then we'd still have to debate
16 whether they should be included in rates after the
17 fact. So I hope that is helpful.

18 10:53 CHAIRMAN HALL: Thank you.

19 10:53 JUDGE WOODRUFF: Anything else for KCP&L?
20 For Empire.

21 10:54 MR. BOUDREAU: Good morning. May it
22 please the Commission. My name is Paul Boudreau, I'm
23 here representing the Empire District Electric Company.
24 And what I would like to do just as a mechanical
25 matter, Empire filed supplemental comments yesterday,

1 and I'd like to go ahead and get those marked as an
2 exhibit and offer those into the record.

3 10:54 JUDGE WOODRUFF: That will be Exhibit 2.

4 10:54 (Exhibit Number 2 was marked for
5 identification by the court reporter.)

6 10:54 MR. BOUDREAU: Those are Exhibit 2?

7 10:54 JUDGE WOODRUFF: Yes. And Exhibit 2 will
8 be received into the record.

9 10:54 (Exhibit Number 2 was received into
10 evidence by Judge Woodruff.)

11 10:55 MR. BOUDREAU: Thank you. May it please
12 the Commission. I'll keep my comments short because a
13 lot of the terrain that I had proposed to address this
14 morning has been plowed pretty thoroughly. And
15 basically in terms of the legal issues and some of the
16 larger picture items, Empire's views are fairly closely
17 aligned with the ones that have already been
18 articulated by Ameren and by the KCP&L companies.
19 There's a little bit of difference in emphasis and
20 approach, but essentially, I think we share those views
21 that have already been expressed.

22 10:55 I wanted to address kind of starting from
23 the back end and work towards the front the Chairman's
24 question about decisional prudence, and I'm not going
25 to get into the other issues. One other thing I'd

1 offer, though, just something that I've given this some
2 thought in the past and -- when it's come up before.
3 And one of the concerns -- one of the legal issues that
4 is always out there is whether or not any particular
5 Commission can bind a subsequent Commission. And that,
6 to me, is another issue that I think needs to be
7 considered in the context of decisional prudence.

8 10:56 In other words, if the Commission that
9 had preceded this current Commission had made a
10 decision previously about the prudence of a particular
11 build, the question is: Is anything that they've said
12 previously, is that necessarily binding on this
13 Commission when it addresses the issue? And that's
14 just another legal overlay to be considered.

15 10:56 I do think that Mr. Fischer's comments
16 about complicating the CCN process with the bigger
17 issue of decisional prudence could drag that one down
18 into a much larger sort of contested environment than
19 -- than is probably appropriate or even prudent. So
20 just another thought from the legal perspective.

21 10:56 I do want to echo Mr. Byrne's comment
22 that really the genesis of this entire rulemaking was
23 the need -- and I think there is a need -- to conform
24 the CCN filing requirements to address the Western
25 District Court of Appeals decisions in what I call the

1 Aquila 1 and Aquila 2 cases. But it's basically
2 Aquila.org and Cass County. And I think that that's
3 really what started this and I think that that's where
4 the Commission's attention ought to be focused is
5 addressing that need.

6 10:57 And in terms of keeping in mind that the
7 rule is -- is the implementation of a statute, probably
8 the starting point for that, is just read what the
9 statute says. And you know, it says what it says. It
10 covers the terrain it's supposed to cover and the
11 history as has already been addressed by other
12 witnesses testifying today is basically regulating the
13 nature of competition, either through the extension of
14 facilities into a new area or the exercise of municipal
15 franchises. That's kind of the historical context.
16 And that hasn't changed. It's the same law that was
17 enacted in 1913. And there's nothing new. It doesn't
18 address any other matters in terms of competitive
19 bidding for resources or any of those things.

20 10:58 So the starting point for the analysis,
21 and kind of the beginning and ending, actually, is what
22 does the statute address and what does the rule need to
23 do to faithfully carry out what the statute addresses.
24 And I would recommend to the Commission to keep that in
25 mind as it considers some of the proposed amendments to

1 this rule.

2 10:58 I'm not going to reiterate the comments
3 that were filed by Empire, both on the 29th and as
4 contained in Exhibit 2, which has been accepted into
5 the record. I'm certainly willing to answer questions
6 about anything that has been -- anything that is
7 contained in either of those two documents.

8 10:58 The only other thing that I do before I
9 hand this off to another witness for the company is to
10 address the third-party manager proposal that was
11 contained in Wind on the Wires comments that was filed.
12 Not only do I think it's an inappropriate and unwise
13 decision to get a third party involved in that process,
14 but I also think that it really, what it does, is it
15 takes away the Company's authority to manage its own
16 affairs.

17 10:59 And basically, I don't think the
18 Commission can do that because it's been noted
19 previously, the Commission has broad regulatory powers
20 but it doesn't have any managerial powers. And if it
21 doesn't have any, it can't confer any of that on a
22 third party either. So I think there's a legal
23 obstacle and a serious legal obstacle to do that.

24 10:59 I think with that, I'll conclude my
25 comments unless the Commissioners have -- or the

1 hearing officer has a question it wants to ask me.

2 Also with me here today is Todd Tarter,
3 who's the manager of strategic planning for the Empire
4 District Electric Company. I'm going to ask him to
5 come up and address the issue of the competitive
6 bidding aspect of some of the proposed language in the
7 rule.

8 11:00 But with that, if there's anything
9 contained in my comments, either in the filed comments
10 or the comments that I've made this morning, I'm
11 perfectly happy to answer those at this time.

12 11:00 CHAIRMAN HALL: No questions, thank you.

13 11:00 COMMISSIONER RUPP: Thank you.

14 11:00 MR. BOUDREAU: With that, I'll ask

15 11:00 Mr. Tarter to come to the podium. Thank you.

16 11:00 MR. TARTER: Good morning. My name is
17 Todd Tarter, I am the manager of strategic planning for
18 the Empire District Electric Company. And one of my
19 duties is to be the project manager of our integrated
20 resource plan, and I've worked on the company's last
21 four IRPs, including the one that we just filed in
22 April 1st of 2016 of this year.

23 11:00 Going third, I mean, a lot of things have
24 already been said about the IRP, so I'm not going to
25 stake a whole lot of time to reiterate those. I do say

1 that I support those. As we just worked on the IRP, I
2 can confirm that it is a very comprehensive and robust
3 planning study. It does take over a year. It took us
4 over a year to do that.

5 11:01 I will also add that it is a very costly
6 procedure, too. You know, we have to hire a lot of
7 consultants and gather a lot of data and put a lot of
8 hours and stuff into this.

9 11:01 Also, I'll mention that we have an annual
10 update process that goes along with these tri-annual
11 filing every three years. The years that we don't file
12 that, we give an annual update to the stakeholders. We
13 also have a stakeholder process so that they're
14 involved along the way.

15 11:01 As I mentioned, we just filed our IRP but
16 it begins a new phase of the project in my eyes because
17 now parties will have their opportunity to review it
18 and we will work together with them towards the rules
19 required to the joint filing on that.

20 11:01 Also, if at any time our preferred plan
21 from IRP has a material change, we also file a letter
22 to the Commission and allow the Commission and the
23 stakeholders to be advised of that, too.

24 11:02 So with that, I also, you know, just
25 wanted to reiterate and echo what the other parties

1 have said with the integrated resource plan, too. If
2 you have any questions, I would be glad to try to
3 answer them.

4 11:02 CHAIRMAN HALL: I do have a couple.

5 11:02 MR. TARTER: Okay.

6 11:02 CHAIRMAN HALL: Good morning. Empire,
7 along with Ameren and KCP&L, have all emphasized how
8 costly the IRP process was, and I guess it took the
9 third time for -- to trigger this question. Isn't a
10 lot of the cost related to the IRP process the planning
11 that the utility would undertake irregardless of an IRP
12 process?

13 11:02 MR. TARTER: Possibly. I guess what I
14 would say there is it kind of goes back to the --
15 probably the prescriptive nature of the rule, I think
16 we talked a lot about in past rulemaking, like the IRP
17 rulemaking. A lot of times I think we have to focus on
18 following the rule and maybe, say for example, if we
19 were planning on one type of thing, instead of focusing
20 on that, we may have to do something like, for example,
21 I think there's one section of the IRP rule that makes
22 us look at the value of perfect information or
23 something like that, which, you know, may not be
24 important to what we're studying, but we still have to
25 do it, so there are some kind of extraneous things that

1 I feel are required in the rule.

2 11:03 CHAIRMAN HALL: But would you agree that
3 the bulk of the cost associated with the process is --
4 is costs that you would incur just as part and parcel
5 of the utility's planning for the future.

6 11:03 MR. TARTER: Yes, I do. But part of the
7 reason for bringing it up that it's costly and robust
8 and long is also, you know, the nature of not being
9 duplicative.

10 11:03 CHAIRMAN HALL: I understand that. I
11 mean, I think the IRP process is very important, and I
12 -- but I don't think that it's just a bunch of
13 bureaucratic processes that don't have a significant
14 role in the planning process that the utility
15 undertakes for the future.

16 11:04 And so the IRP process is designed to
17 allow the Commission and the public to understand what
18 the utility's planning is going forward. It's not
19 designed to create a bunch of hurdles and expense
20 that's unrelated to that.

21 11:04 So I just wanted to vent for a moment.
22 Thank you.

23 11:04 MR. BYRNE: Mr. Chairman, can I weigh in
24 on that? I agree with what you're saying. I think
25 from Ameren's standpoint, and probably from the other

1 utilities's standpoint, I mean, our IRP process has
2 become our planning process, and I mean, I think when
3 it first came along, there was some resistance to it or
4 thought of here's just another bureaucratic thing
5 layered on top of us, but that's not what it's become
6 at all. It really is a useful planning process that we
7 go through. You know, it's probably not perfect, but I
8 agree with you.

9 11:05 CHAIRMAN HALL: Okay. Thank you.

10 11:05 JUDGE WOODRUFF: Thank you. Anything
11 else from Empire?

12 11:05 MR. BOUDREAU: Just a closing comment in
13 response to what the Chairman observed. I don't think
14 the intention of the reference to the cost, as the
15 witness said, was a critique. It was just that we
16 already have a lengthy-involved process and we just
17 didn't see the need to duplicate that. That was the
18 only -- the only purpose of that reference.

19 11:05 CHAIRMAN HALL: I understand. Thank you.

20 11:05 JUDGE WOODRUFF: All right. Mr. Lumley?

21 11:05 MR. LUMLEY: Good morning. Carl Lumley
22 representing Dogwood Energy in this hearing today.

23 11:05 As quick background, Dogwood is the
24 majority owner of a 650-megawatt, natural gas,
25 combined-cycle generation plant located in Pleasant

1 Hill, Missouri. Some of the Commissioners have been
2 able to tour that facility and those that haven't we
3 hope will get out there sometime soon and we'll try to
4 make that available. The plant is owned with --
5 co-owned with municipal interests. It's not just a
6 private enterprise. It's got a local government aspect
7 to it.

8 11:06 It's the largest combined-cycle facility
9 in the state. Dogwood's been a substantial contributor
10 to this process, as the Commission knows. We submitted
11 the initial petition a few years ago to prompt a
12 rulemaking that led to very serious workshops that we
13 participated in along with others. A lot of people
14 spent a lot of time working hard on this. We've
15 provided, you know, many rounds of written comments,
16 including pursuant to the notice of rulemaking.

17 11:06 Yes, Dogwood is pursuing its for-profit
18 interests, just as the for-profit, industrial-owned
19 utilities are doing so today as well. We believe our
20 interests coincide with those of ratepayers, and
21 frankly, the shareholders of the investor-owned
22 utilities on this issue.

23 11:07 The ultimate goal is to avoid the
24 extremely negative market impact of an unwise \$100
25 million decision. That's what this is all about. This

1 is not about buying paperclips. This is about very
2 major facility decisions and nobody wins if there's a
3 bad decision, and that's why the Commission's given
4 supervision over this because we are talking about
5 monopoly enterprises that are not subject to the same
6 -- in all respects, the same pressures as the
7 competitive marketplace. They've got their own
8 pressures, they're not saying it's easy.

11:07

9 Our comments today will focus on the
10 construction aspect of the statute, not the service
11 area portion of the rule. And in particular,
12 construction of generation plants. We believe the
13 comments about what the Commission has done for a
14 hundred years have no place in this discussion. The
15 courts have made clear that things were not being done
16 as required by the statute. And parties have conceded
17 that point. That's why we're here.

11:08

18 The courts have given new direction. The
19 statute means something different than folks thought
20 for a long time and, you know, frankly the phrase
21 "that's the way we've always done it" is probably the
22 largest obstacle to progress in our country. It really
23 does take a paradigm shift to see what the courts have
24 said and say, okay, we have to reinvent this to some
25 degree.

1 11:08 The statute regulates the construction of
2 generation plants buying Missouri-regulated utilities.
3 11:08 It requires preapproval based on a determination of
4 necessity regardless of location. This is not a site
5 selection process. This is a rate-based decision.
6 Cost justification, prudence are all aspects of this.
7 Location may be a factor in terms of cost and public
8 interest, and certainly you hear from folks that feel
9 they're impinged on by the proximity of their property
10 to the selected location.

11 11:09 But as the Commission knows from the
12 recent series of cases you've handled, when you're
13 considering these certificates, you're looking at the
14 Tartan factors. The Tartan factors aren't, is this the
15 right location. The Tartan factors are, do we need
16 this, do we have a qualified applicant, does it have
17 the financial ability to do it, is the project
18 economically feasible, and does it promote the public
19 interest. That's not a site selection process.

20 11:09 The substantial capital investments
21 require Commission review to protect the public
22 interest. It is complicated, it is detailed. And
23 there's no disconnect between the certificate process
24 and the IRP process. The IRP information would be the
25 natural foundation of the evidence to be supplied to

1 show it's time to build plant X. We've studied it in
2 this plan for seven years, we've updated it, it's the
3 right decision, please authorize us to do it now. I
4 mean, that's just a natural next step.

5 11:10 We completely disagree with the
6 assertions that matters of prudence are not part of
7 this analysis, and I submit that a decision from the
8 Commission that a plant is necessary for the public is
9 a decisional prudence determination. If the Commission
10 feels it needs to make that clear in the rule, that's
11 probably a good idea.

12 11:10 Decisional prudence is not rate-making
13 prudence. Yes, you should have built the plant; no,
14 you did this one aspect wrong, so that part's not in
15 rates. I mean, there's still separate analysis, but
16 it's not the analysis of should we have built the plant
17 or not. We authorized you to build the plant and you
18 built it. And I believe that a certificate is binding
19 on future Commissions.

20 11:11 The idea that these decisions should be
21 reserved to rate cases misses the whole point of the
22 two Western District court cases. The court says the
23 Commission shouldn't wait until rate cases because now
24 you have the collision of ratepayer and shareholder
25 interest. You have to pick a winner and a loser.

1 Decide it up front before the project is done, before
2 the money is spent so that there is no winner or loser.

3 11:11 There's just the decision to go forward and it's
4 implemented.

5 11:11 The references to -- that Ameren made in
6 its latest comments that were filed yesterday about
7 exclusion from rates of major portions of the Callaway
8 and Tom Sauk plants, it proves the point. The
9 shareholders lost. The Commission, yes, did have the
10 power to protect the ratepayers, but the shareholders
11 lost.

12 11:12 Likewise on the scene, better off in
13 Kansas where it's preapproved and the debate is over
14 instead of fighting about it in the rate case. The
15 statute, as the courts say, contain contemporaneous
16 hearing before the investment. And the statute allows
17 you to impose reasonable conditions and it requires
18 exercise of authority within two years.

19 11:12 In general, we support the proposed rule.
20 It adds important clarification about the types of
21 construction projects that require your approval, and
22 it requires that sufficient information be supplied
23 with the application so the Commission can make a
24 decision.

25 11:12 There's also a key emission that we want

1 to talk about today and others have touched on it, and
2 that is that it doesn't address Missouri-regulated
3 utilities building projects out of the state.

4 11:13 With regard to our support, the proposed
5 rule, there does a couple things. First of all, it
6 adds good clarification between generation projects and
7 service areas and bifurcates the approach a little more
8 clearly. And more importantly than that, it adds a
9 proper clarification of what constitutes
10 "construction."

11 11:13 The statute is not limited to just the
12 first work that's done at a site. We agree with Staff
13 that the proposed rule is not changing the law, it's
14 just clarifying that there's a difference between
15 construction and maintenance. If you look at the
16 definition of electric plant, which is the phrase
17 that's used in the CCN statute, it's not generation
18 plants. It's all the components and all the equipment
19 and all the facilities that are to be built. Major
20 renovation, conversion projects, they're just as
21 important, they're just as impactful and they're
22 construction.

23 11:14 Construction is construction.
24 Construction contractors get construction permits using
25 construction plans to build something and the court

1 cases that we've cited to you under a wide variety of
2 Missouri statutes, the Missouri Supreme Court and the
3 Courts of Appeals have said repeatedly, this is all
4 construction.

5 11:14 These statutes are broad. There's no
6 reason to read it differently. Can you imagine
7 standing in front of a court saying well, yes, this was
8 construction for purposes of prevailing wage, which
9 does apply to public utilities, not just government,
10 but it's not construction for purposes of a
11 certificate. If somebody's challenging a project,
12 they're going have the upper hand if the word
13 construction is artificially narrow.

14 11:14 The rule also addresses the possibility
15 of basically a turnkey project. Well, I'm not building
16 it, they're building it for me. That's the whole
17 intent. It's not addressing situations where a plant's
18 been in use by somebody for five years and now you're
19 buying it. There's probably a hole in our statutes
20 about that because the statutes really -- the other
21 statutes really focus on sale of assets, but it is what
22 it is. And Staff has proposed a clarification in that
23 regard that makes sense.

24 11:15 I mean, this is the definition of
25 construction. Obviously buying a plant that's been

1 used for five years, you can't defend that as being
2 construction anymore. But if you've got a contract
3 that says build this for me and hand it over, that is
4 construction. So with Staff's clarification, perhaps
5 that eases some people's concerns on that point. And
6 again, the ratepayers and the shareholders are better
7 served by making decisions ahead of time.

8 11:15 The sort of sky is falling warning about
9 plants that have been built in the past, I think is
10 really just -- just that. First of all, the rule
11 changes tomorrow didn't apply yesterday. Secondly,
12 you've got lots of issues like statute of limitations
13 and estoppel and waiver and latches. And if somebody
14 were to try and challenge a plant that was built 25
15 years ago, I would wish them good luck.

16 11:16 There is no identified Missouri case law
17 holding that only the initial work at a site must be
18 approved under the statute. And it's just not an
19 appropriate interpretation of the word "construction."
20 Ameren cites the Narragansett case from Rhode Island.
21 It's contrary to Missouri law, but it's also not on
22 point. It involved a dispute whether a plant that was
23 being changed constituted a new source of pollution.
24 That's a completely different issue than whether you
25 need a permit to build something. The Sikeston case

1 cited by Empire didn't involve construction in any
2 form. It was a franchise area case and isn't
3 applicable either.

4 11:16 The proposed rule does not micromanage
5 utilities. It's a yes-or-no review of a project.
6 Doesn't get into all the details. KCP&L put out an
7 extreme scenario about the Montrose plant. If the
8 utility can come forward and show that a retrofit of
9 the plant is one-fifth the cost of scrapping it and
10 building a new plant, your decision will be obvious.

11 11:17 That's not going to be a controversial decision.

12 11:17 The Commission can accommodate time
13 constraints, it can accommodate analysis of renewables,
14 but a broad interpretation of construction is in the
15 benefit of all concerned. With regard to competitive
16 bidding, the rule simply requires that the Commission
17 be provided with sufficient information to see that a
18 sensible decision is being proposed. It's consistent
19 with the IRP process and the affiliated transaction
20 rules, it's consistent with practices in other states
21 that we've cited.

22 11:17 It's more critical than the IRP context
23 because in the IRP context, it's simply long-range
24 planning. It's not the actual implementation decision.
25 Now is the time to spend the money. Doesn't make

1 sense.

2 11:18 The Commission declines to approve
3 specific projects in the IRP process. It's looking at
4 whether the planning process itself is sufficient. It
5 is thorough, it is detailed, but it's not
6 determinative. But again, once all that information's
7 available and kept up-to-date, it's there to support
8 the application to implement.

9 11:18 Ameren concedes in its comments that it
10 uses competitive bidding procedures on major projects,
11 as you would hope it would. So there's not a burden
12 here. We don't think that the proposal should be
13 diluted the way Staff has proposed yesterday because we
14 think this is the kind of information the Commission
15 needs to address the Tartan factors. You need this
16 kind of detail to make those very specific
17 determinations.

18 11:18 And again, it's not interfering with
19 management. There's not anything in the rule that says
20 you have to pick the lowest and best bid or how to make
21 the selection. What the rule says is show us that you
22 have a thorough process.

23 11:19 The part about PPAs, purchase power
24 agreements, the reaction to that is really just an
25 overreaction. First of all, there's nothing in the

1 rule that tries to convert a construction rule into an
2 approval of PPA process. What the proposed rule says
3 is show us that you considered these alternatives in
4 lieu of construction. Again, it's just showing that
5 there's a thorough analysis.

6 11:19 The point of this statute is to decide
7 the prudence now and not defer to a rate case and avoid
8 the trainwreck such that we had in the South Harper
9 situation. So the one point that we disagree with, the
10 one point that we think is deficient in the proposal is
11 the fact that it's expressly over and over again
12 limited to facilities that are built in Missouri.

13 11:20 The Commission has jurisdiction over
14 Missouri-regulated utilities. The Commission has the
15 authority to regulate everything that they do. The
16 cases that the IOUs have cited state that broad
17 authority. A company that you regulate can't evade
18 your scrutiny by putting the plant a foot over the
19 state line, which is easier to do in Kansas than
20 Illinois, obviously. The idea that a company that you
21 regulate, that the public is dependent on can basically
22 bet the Company on a huge project and evade your
23 scrutiny in total just doesn't make any sense.

24 11:20 The statutes that the companies have
25 cited, they underline the part about regulating the

1 facilities, but the statutes go on to say you also
2 regulate the companies engaged in the business.
3 11:20 We're not talking about site selection in other states.
4 We're talking about this Commission reviewing whether a
5 company that's responsible to you should undertake a
6 \$100 million project just across the state line, or
7 does that jeopardize the interest of ratepayers and
8 reliability?

9 11:21 This Commission has exercised
10 jurisdiction over plants out of the state before.
11 We've cited those examples, including authorizing
12 Ameren to sell Illinois plants. The Commission
13 expressly said that the statutes it's governed by do
14 not make a distinction based on the location of the
15 property, whether it's in Missouri or elsewhere. And
16 if the Commission's going to regulate the sale of a
17 plant in Illinois, it can also look at whether the
18 plant should have been built in the first place.

19 11:21 These utilities have the ability to
20 decide, we're going have a Missouri-specific company,
21 all of its activities are going to be confined to
22 Missouri. That's their prerogative and they can do
23 that. But if they choose to be a multi-state entity,
24 then they have to accept the consequences of that, and
25 that is that they're subject to review from multiple

1 Commissions.

2 11:22 It's not an interference with interstate
3 commerce. As the Commission knows, we have very
4 complicated merger cases pending before you. Those
5 cases involve multiple states so they're interstate,
6 they involve multiple countries. They're international
7 cases. That doesn't strip the Commission of its role
8 in looking at the proposal. And all the applications
9 that you receive in those cases acknowledge we have to
10 get approval from all these different jurisdictions,
11 including the Missouri Commission.

12 11:22 And again, it's not a negative. It's a
13 positive for the utility to get approval from the
14 Commission and know that it can go forward with the
15 project.

16 11:22 So we urge the Commission to amend the
17 final rule to address out-of-state projects, otherwise
18 we're generally in support of the rule. There's been
19 some clarifications proposed that make sense. We
20 submitted a redline with our comments to show
21 specifically the changes that we would propose. As I
22 indicated, Staff's clarification with regard to the
23 turnkey projects makes sense to avoid the confusion
24 apparently that it's engendered.

25 11:23 One final, and it's kind of an arcing

1 point, but this is our opportunity to raise it. We
2 felt that the addition of the word "substations" was
3 sufficient. I think I read Ameren's comments correctly
4 that they thought it was a good addition as well.
5 Staff had noted in their comments in the footnote that
6 they saw a difference between substations and switching
7 stations. In our view, a switching station is a form
8 of substation that's subsumed by that, but if there's
9 confusion about that, perhaps that needs to be added as
10 well for clarity.

11 11:23 But otherwise, that's the end of my
12 comments. I appreciate the opportunity.

13 11:23 CHAIRMAN HALL: No questions, thank you.

14 11:23 MR. LUMLEY: Thank you.

15 11:23 JUDGE WOODRUFF: Thank you. Who wants to
16 go next?

17 11:24 MR. KNOTT: Thank you for this
18 opportunity to comment. My name is Andy Knott. I am a
19 senior campaign representative for the Sierra Club.
20 Sierra Club has more than 8,500 members in Missouri.

21 The Sierra Club strongly supports a
22 requirement for a CCN for environmental retrofits.
23 This rule change is good policy and it's timely, given
24 the potential of billions of dollars needed over the
25 next several years in environmental upgrades.

1 Requiring a CCN for environmental
2 retrofits will ensure that significant retrofit
3 decisions facing Missouri utilities are viewed in light
4 of true alternatives before money is spent and this
5 will give greater confidence in those decisions. For
6 example, in the Commission's cost of environmental
7 compliance docket, that's taught us that these retrofit
8 options will be in the billions.

9 11:25 In a report to the Commission, the Staff
10 recognized that based on current information, not
11 including the -- at that time proposed affluent and
12 coal combustion rules, the cost estimates for the
13 utilities were in the range of \$2.9 to \$3.2 billion to
14 comply with all these environmental regulations.
15 According to the Sierra Club's calculations, when you
16 now add those new rules, the affluent and coal ash
17 rules, it goes up to about \$12.6, almost \$13 billion.

18 These are major potential investments
19 that are being phased. We believe there must be a
20 transparent and accountable process in place to ensure
21 that electric plant retrofits are prudently incurred.

22 11:25 To be meaningful, this process must include a full and
23 fair opportunity for the Commission and stakeholders to
24 compare a company's proposed investment to alternatives
25 and seek a hearing on the merits of the company's

1 proposal .

2 11:26 If the Commission can only review
3 alternatives after the utility has chosen a path
4 forward and spent the money, again, potentially
5 hundreds of millions of dollars for some of these
6 retrofits, the Commission's only recourse is to
7 disapprove rate recovery. This punitive outcome
8 prevents a better alternative from being chosen and is
9 wasteful outcome if the money could have been more
10 efficiently spent.

11 11:26 We believe -- we would argue that all
12 parties should support this change. The utility's --
13 preapproval for the utilities means greater certainty
14 that approved projects will be recoverable from
15 ratepayers. This should also be -- this would also
16 provide more certainty to investors and lenders.

17 11:26 For ratepayer advocates and other
18 parties, the rule change will provide greater
19 transparent accountability. A ballot was being
20 proposed and approved. Put simply, it makes far more
21 sense to discuss the merits and prudence of a project
22 prior to commencing construction than well after the
23 project is complete.

24 11:27 Missouri is not carving out new territory
25 here. Many states rely on CCNs for plant retrofits to

1 help ensure just and reasonable rates. We also -- we
2 do believe the Commission has authority to -- to make
3 this change. We agree with Dogwood's comments earlier
4 about the authority. We also believe the Commission
5 has legal authority under its general statutory grant
6 of authority to ensure that electric service is
7 provided to ratepayers at just and reasonable rates.

8 11:27 That concludes my comments.

9 11:27 JUDGE WOODRUFF: Questions?

10 11:27 CHAIRMAN HALL: No questions, thank you.

11 MR. KNOTT: Thank you.

12 11:27 JUDGE WOODRUFF: I do have one to
13 clarify. Sierra Club did not file written comments; is
14 that correct?

15 11:27 MR. KNOTT: I don't believe we have. We
16 participated in the workshops. I think we went to all
17 the workshops. I know we didn't submit any comments
18 recently. I'm not an attorney. Our attorney's out of
19 state to file our comments, so...

20 11:28 JUDGE WOODRUFF: Okay. That's fine.
21 You're certainly welcome to comment today.

22 11:28 MR. KNOTT: Thank you.

23 11:28 JUDGE WOODRUFF: Thank you. Who's next?
24 Public counsel.

25 11:28 MR. OPITZ: Good morning. Please the

1 Commission. Tim Opitz on behalf of Public Counsel.

2 I'll start with our prefiled comments. I
3 filed comments that add language requiring CCN
4 applicants to submit proof of actual notice to affected
5 land owners in their minimum filing requirements for
6 the CCN. And the reason for this is because in a
7 recent case, there were landowners that made clear that
8 notice for some of them, at least, was an issue or a
9 perceived issue. After a series of filings in that
10 case, the Commission issued an Order stating that there
11 is no legal authority requiring an applicant to provide
12 notice of its application to affected landowners.

13 11:29

OPC believes that requiring notice to
14 affected landowners can facilitate dialogue between
15 those directly impacted by the project and the
16 applicant. Such a dialogue might result in greater
17 public acceptance of the project, or at a minimum, it
18 will allow the Commission to consider the impact of
19 their decision relating to end their deliberations on
20 public necessity of those affected landowners versus
21 the greater public good.

22 11:30

OPC believes that the language we
23 prefiled ensures that affected Missourians will receive
24 notice of CCN applications, and I asked the Commission
25 to adopt those modifications as filed.

1 11:30 I note and express appreciation for the
2 thoughtful reply comments and suggestions to my
3 proposed language by counsel for Ameren Missouri.
4 Should the Commission prefer to adopt that language,
5 there are a few areas I'd like to comment on. The
6 first is the insertion of "electric transmission line"
7 in paragraph 7 I believe is too narrow. For example, I
8 think all the parties here agree that a CCN should be
9 required for gas transmission lines to a power plant as
10 well.

11 11:30 In the definition of "directly affected"
12 within my proposed language, Ameren inserts the word
13 "permanent" before the word "easement." I believe that
14 that is also too narrow. For purposes of notice, even
15 if the easement is only temporary, I believe those
16 affected landowners should be notified.

17 11:31 The third point is the habitable
18 structure distance in my comments was 500 feet from the
19 centerline. Ameren proposes to reduce that to 300
20 consistent with conditions approved in other cases.
21 Again, I would say that is too restrictive for purposes
22 of notice. If it comes to that's the limitation for
23 conditions, that should be determined later.

24 Subparagraph C, I believe it's
25 appropriate that there should be a meeting held in each

1 county, if required by the proposed language.

2 Subparagraph D, the comments of Ameren changed priority
3 mail to certified mail. I had used Priority Mail
4 because these landowners are already receiving late
5 notice in that subsection, and I understood Priority
6 Mail to be one to three days delivery, which is, as I
7 understand, quicker than certified mail.

8 11:32 And in subparagraph E, OPC believes it's
9 appropriate to include extensions of deadlines for
10 intervention in cases where the landowner has not
11 received notice.

12 11:32 Having addressed those prefiled comments,
13 I have a few comments about other parties' comments.
14 First as it relates to Wind on the Wires comments on
15 page 9, they seek clarification of 3.105(1)(d), and
16 they wanted to make clear that the CCN applicant must
17 not necessarily receive county consent based on the
18 premise that the statute underlying this rule says
19 proper municipal authorities. Public Counsel disagrees
20 with Wind on the Wire's interpretation, and I believe
21 the Commission's Orders in recent CCN's conditioning
22 approval upon county consent would agree.

23 11:33 As it relates to preapproval, which has
24 been discussed here today a little bit, Dogwood's
25 comments discuss approval of CCN in terms of

1 preapproval of that specific project. On page 7 of
2 Dogwood's comments, that particular company states, in
3 rate cases subsequent to a preapproval proceeding,
4 Commission review can then focus upon prudence of
5 specific implementation costs rather than the prudence
6 of the utility's decision to move forward with a
7 project. That appears to be that Dogwood wants
8 decisional prudence to be a part of the CCN process,
9 and although Dogwood does not offer revisions to the
10 rule that would effectuate this preapproval concept as
11 I believe their comments describe, OPC notes its
12 disagreement.

13 11:34 There is a distinction between approval
14 of a CCN and preapproval of a project. The Commission
15 may grant a CCN, or in other words approve the CCN,
16 after determining the construction and operation are
17 necessary or convenient for the public service. In
18 making that determination, the Commission has, in the
19 past, relied on the Tartan criteria, and then
20 ultimately if the CCN is granted, then during the rate
21 case, the Commission should examine the project and all
22 other cost and relevant factors to ensure the prudently
23 incurred costs are not included in rates.

24 11:34 In rate cases, there is initially a
25 presumption that the utility's expenditures to provide

1 utility service are prudent. Of course, that
2 presumption can be rebutted by other parties to the
3 case at which point the utility must dispel questions
4 of prudence. A recent example of this was mentioned
5 earlier, and that was the LaCygne environmental
6 retrofit project considered in the ER-2014-0370 case.

7 The Sierra Club raised the issue of
8 whether that project was prudent in light of natural
9 gas prices falling shortly after the project
10 construction began. Preapproval as suggested by
11 Dogwood and today's Sierra Club may inappropriately
12 relieve the company of having to continually evaluate
13 the prudence of that project. Public Counsel believes
14 that the utility should continually evaluate the
15 prudence of construction projects, and the utility must
16 have the managerial discretion and the incentive to
17 halt going forward with a project if circumstances
18 change.

19 11:36 As it relates to certain legal issues
20 with decisional prudence, I would comment again on
21 Empire's comment about the Commission cannot bind
22 future Commissions. I would note that preapproval may
23 lead to shifting of burdens and disadvantaging certain
24 parties in other cases -- rate cases.

25 11:36 There is a section -- as it relates to if

1 it's a determination -- a rate base determination as
2 counsel for Dogwood said today, I think that there may
3 be an issue with Section 393.135, which is a statute
4 related to including projects that are not operational
5 in rates. I guess as it relates to decisional
6 prudence, Public Counsel believes that's inappropriate.
7 11:37 And particularly, it would be inappropriate in the CCN
8 rulemaking.
9 11:37 That concludes my prepared comments and
10 responses to the comments filed in this case and heard
11 today. I'm happy to answer any questions the
12 Commission may have.
13 11:37 JUDGE WOODRUFF: Questions?
14 11:37 CHAIRMAN HALL: No questions, thank you.
15 11:37 MR. OPITZ: Thank you.
16 11:37 JUDGE WOODRUFF: Mr. Opitz, I do have one
17 question. It was about your -- much of Public
18 Counsel's comments were about notice concerns. And I
19 was just curious, were those concerns discussed during
20 the process before the rule was promulgated or --
21 during the workshop process?
22 11:37 MR. OPITZ: That -- I don't believe that
23 was discussed during the workshop process. Those
24 concerns were, I guess, brought to my attention during
25 the ATXI transmission case ending in 0146.

1 11:38 JUDGE WOODRUFF: Okay.

2 11:38 MR. OPITZ: And I believe that -- the
3 filings that precipitated my concern about that
4 occurred after the rule had been submitted.

5 11:38 JUDGE WOODRUFF: Okay.

6 11:38 MR. OPITZ: I'm not sure if that -- on
7 the exact dates, however.

8 11:38 JUDGE WOODRUFF: That's fine.

9 11:38 MR. OPITZ: Thank you.

10 11:38 JUDGE WOODRUFF: Thank you.

11 11:38 CHAIRMAN HALL: A question, and maybe,
12 Judge, this is a question for you. If -- it would
13 appear to me that OPC and Ameren are relatively close
14 on the notice provision language. There are still some
15 issues, there are some differences, but they seem to me
16 to be reasonably close. If they were to -- what would
17 the deadline be for them to file something else which
18 might reflect further development of -- well, it hasn't
19 been negotiations yet, but negotiations on that notice
20 provision?

21 11:39 JUDGE WOODRUFF: It would really have to
22 be by the end of the hearing because --

23 11:39 CHAIRMAN HALL: Okay.

24 11:39 JUDGE WOODRUFF: -- because time frames
25 for us to actually promulgate a rule are 59 days from

1 conclusion of this hearing. So really can't be any
2 further negotiation.

3 11:39 CHAIRMAN HALL: Okay.

4 11:39 JUDGE WOODRUFF: But if they have any
5 other comments they want to make, we'll take them up
6 till the end of the hearing.

7 11:39 CHAIRMAN HALL: Okay. Thank you.

8 11:39 JUDGE WOODRUFF: Thank you.

9 11:39 MR. OPITZ: Thank you, Judge.

10 11:39 MR. LOWERY: I guess the only comment I
11 would make about that is while there are a lot of
12 things we agree on, the things that Mr. Opitz
13 highlighted today are pretty important, and we -- all
14 of the things I heard, I don't think we do agree on.
15 Those would be very significant concerns. And so I
16 think that those are going to be hard to traverse the
17 impasse if OPC's sort of sticking to their guns on
18 those.

19 11:40 We tried to -- truly be balanced and not
20 just say no. We tried to be balanced and be practical
21 -- the priority and the certified mail, surely we can
22 work that out. I didn't think certified mail was
23 slower, actually, but the other things were very
24 substantive.

25 11:40 CHAIRMAN HALL: Thank you.

1 11:40 JUDGE WOODRUFF: All right. Anyone else
2 wish to go make comments other than Staff? Mr. Harden?

3 11:40 MR. HARDIN: Thank you, I'm going to be
4 very quick. Joshua Harden with Clean Line Energy.
5 Clean Line, as you know, is a proposed 780-mile HVDC
6 line, which will connect wind in western Kansas with
7 various load centers further to the east in Illinois
8 and Indiana. We have a very limited dog in this fight,
9 so I'm not going to cover everything.

10 11:41 I am baffled as to how this proposed rule
11 is going to work with Transcos, with merchant wholesale
12 transmission lines. It seems to me that it's based
13 upon a particular model, that being the -- obviously
14 the vertically integrated incumbent utility and the
15 plan and process that it goes through, and whether or
16 not that planning process-- what should be entailed in
17 that.

18 11:41 Obviously every electric plant, every
19 electric corporation which this Commission has
20 jurisdiction, and you're going to see this more and
21 more in the future, does not fall into that particular
22 business model of being vertically integrated, et
23 cetera. You see that with ATXI, you see it with
24 TranSource Missouri, you're going to see it with Clean
25 Line Energy.

1 11:42 These are wholesale transmission lines,
2 and we have a proposed rule here which I'm just
3 uncertain as to if it were to go forward and the
4 Commission were to approve it and this then becomes
5 law, how does that apply to those companies which don't
6 have the IRP process, that have an entirely different
7 business model.

8 11:42 I think it was grid lines who pointed
9 out, well, we already, you know -- our planning process
10 goes through the RTO process, so you know, with this --
11 with this bidding process, would that be redundant. So
12 this is just something to consider. I'm not asking it
13 rhetorically, I legitimately have no idea how a company
14 like Clean Line Energy, when we come in for a CCN, what
15 are we supposed to do? Bid out the -- I mean, okay,
16 bid out the construction aspect of it. That's got very
17 distinct problems in terms of our desire to use
18 Missouri vendors and et cetera for the construction of
19 it. That's just a very acute problem.

20 11:43 But in terms of capacity or energy, bid
21 it out to who? I mean, we're a -- it's a merchant
22 transmission line. It's not vertically integrated, we
23 don't go through this process. So again, that's --
24 that's a problem that I see in terms of, you know, we
25 have a proposed rule here that is designed for a

1 particular type of utility business model and that
2 utility business model with each passing year, you are
3 seeing different models come in -- come into being.

4 So, I thought that -- the other issue and
5 Tim spoke on this, OPC. On the county assents, the
6 Commission was really clear in that ATXI. You're
7 waiting for a judicial resolution to the issue of the
8 229, you know, whether or not -- to what degree those
9 are needed. I have no idea why this Commission would
10 codify a regulation before getting that judicial
11 answer. That doesn't seem to make very much sense to
12 me.

13 11:44 Any legal interpretation for the, you
14 know, you have to have your 229 county assents, you
15 don't have to, maybe it's someplace in the middle. My
16 suggestion would be, really, pursuant to the Order in
17 ATXI that says, hey, we understand this is going to get
18 taken to court, et cetera, why would you pass a reg
19 that codified any legal interpretation of that before
20 the courts have opined on it.

21 11:45 So anyway, like I said, this is going to
22 be short, if you have any questions, I'd be happy to do
23 my best.

24 11:45 JUDGE WOODRUFF: Questions?

25 11:45 CHAIRMAN HALL: Yeah, I have a few. Good

1 afternoon -- or good morning. Excuse me.

2 11:45 Do you have any comments related to OPC's
3 notice provision.

4 11:45 MR. HARDIN: Yeah, as -- we're not
5 necessarily opposed to it, as long as what's being
6 asked is not actual, as a legal term of art, actual
7 notice. As long as we can do it in -- in such a way to
8 where, you know, we go to a, you know, whatever county
9 office it is, we get the landowner of record.

10 11:45 If you're asking us to make sure that --
11 that people have notice which we can get to them in a
12 reasonable way, then -- then we're fine with that.
13 Now, if you're asking us to ensure that the person
14 living at such-and-such address, even though they're
15 not the -- the legal owner or the owner of record, then
16 I think it gets more cumbersome and more difficult.

17 11:46 CHAIRMAN HALL: Well, do you interpret
18 the language proposed by OPC as requiring actual
19 notice?

20 11:46 MR. HARDIN: Well, I saw this -- the -- I
21 would need to look more closely at that, Chairman. We
22 like the language that Ameren suggested on that.

23 11:46 CHAIRMAN HALL: And then your -- your
24 discussion of the -- the county consents issue, if --
25 if there is a judicial determination that those county

1 assents are required, then -- then you would be fine
2 with the rule as drafted or do you believe regardless
3 of what is the -- the judicial resolution of that issue
4 we should not have this requirement in our rule?

5 11:47 MR. HARDIN: Honestly, for the latter. I
6 think if the Court comes back, the Court says what it's
7 going to say, and then the Commission is going to have
8 to live with that. I don't -- I honestly don't -- I
9 don't know why the Commission would feel compelled to
10 necessarily put it in the reg. The law is what the law
11 is. Once the Court of Appeals makes that
12 determination, your general counsel's office is going
13 to know it, you're going to know it, the law will be
14 set. I don't -- personally, I just -- I don't see what
15 the need would be to then codify it within the
16 regulation.

17 11:48 CHAIRMAN HALL: What if it said something
18 along the lines of if the assents are required, provide
19 them with the application? Something along that line
20 -- along those lines.

21 11:48 MR. HARDIN: If the Court of Appeals made
22 it very clear that all county assents --

23 11:48 CHAIRMAN HALL: Well, I'm not sure we're
24 going to be able to get this rule out prior to a final
25 decision on that issue.

1 11:48 MR. HARDIN: I agree.

2 11:48 CHAIRMAN HALL: So what I'm wondering is
3 assuming that we have to send this rule to the
4 Secretary of State before we have a final decision on
5 that, if the rule were to say something along the lines
6 of if the -- if county assents are required, then they
7 must be provided with the application. Or I guess
8 language along the line of giving the Commission the
9 option of a conditional CCN.

10 11:49 MR. HARDIN: Well, now the latter, I
11 mean, I've got no problem with -- with the language in
12 the rule which is more or less mirrors 393.170.3, which
13 clearly gives the Commission the authority to
14 conditionally grant the CCN. I've got no issue with
15 that. All it's doing is basically restating the
16 statutory language.

17 11:49 I would be really hesitant to put
18 anything into a reg that said well, if there is a
19 future court case that makes us do this, then you've
20 got to do that, you know. I mean, I just don't see
21 11:49 that as a -- as a -- I don't see it as necessary, first
22 of all. And quite honestly, I think it would just tend
23 to clutter things up.

24 11:50 CHAIRMAN HALL: Okay. Thank you.

25 11:50 JUDGE WOODRUFF: Thank you.

1 11:50 MR. LOWERY: Mr. Chairman, would you
2 i ndulge me to address your question briefly since I
3 certainly have a lot of involvement in this? We didn't
4 -- and there's only one party, I think, that was in a
5 comment filed April 29th brought up something about
6 putting something in your rule. There's nothing in
7 your proposed rule to address this at this point.

8 11:50 Your existing rule, I think, and I think
9 maybe this is what Mr. Harden was just saying is, I
10 think it gives you the latitude to do what you've
11 already done, what you did in the ATXI case, for
12 example, and I don't -- I haven't identified any need
13 to address what happened in that case and what may or
14 may not happen in the courts later in the rule at all.
15 I think you already have done what you did. I think
16 your rule authorized you to do what you did.

17 11:50 I don't know that any court decision that
18 arises out of whatever may happen, if we ever get there
19 in that case, is going to address the applicability of
20 229.100. It might end up addressing the circumstances
21 when a county could or could not tell a utility no. I
22 think that might happen, but I'm not sure that it's
23 going to really illuminate your authority or your
24 processes at all. I think it may eliminate county
25 latitude to just say no for political reasons, we --

1 which if a no is given, I think is what would be
2 happening.

3 11:51 So I'll agree with Mr. Harden to the
4 extent that I don't -- I don't see any need to do
5 anything in this rulemaking what's going on about
6 229.100.

7 11:51 CHAIRMAN HALL: Thank you.

8 11:51 MR. DOTTHEIM: Mr. Chairman, and maybe
9 this is the point where the Staff jumps in. There is
10 language, and Mr. Lowery did refer to one entity
11 commenting, and that was Staff. There is language that
12 -- that does address this matter and it -- it was not
13 the intention when it was drafted to be addressing the
14 ATXI matter because it didn't anticipate the ATXI
15 matter.

16 11:52 MR. WILLIAMS: And I'm right here if
17 you're looking for me.

18 11:52 MR. DOTTHEIM: Yes, I was looking for
19 11:52 Mr. Williams, and I'll now turn it over to
20 11:52 Mr. Williams.

21 11:52 MR. WILLIAMS: Chairman, Commission,
22 basically, it's already addressed in the rule as it
23 currently exists. The rule currently says when
24 approval of the effective governmental body is
25 required, evidence must be provided as follows: When

1 consent or franchised by a city or county as required,
2 approval should be shown by, and it goes through how
3 the showing should be made. So there's already
4 language in the rule as it currently exists that
5 addresses contingency. And if the Court decision comes
6 out and says it's not required, then it won't be
7 required.

8 11:53 And as to the ATXI decision and the
9 Commission's approach, that's addressed, Staff
10 believes, by the new sub 3 -- new sub 3 that gives the
11 Commission the authority to grant certificates subject
12 to conditions. So if an assent is required -- well,
13 basically Staff believes that that language is
14 consistent with what the Commission did in its Report
15 and Order in EA-220-15-0146 [sic], the Mark Twain line
16 case. If that helps.

17 11:54 CHAIRMAN HALL: Yes, thank you.

18 11:54 JUDGE WOODRUFF: Thank you. Before we
19 move fully into Staff's comments, is there anyone else
20 in the room who wants to comment? Wind on the Wires
21 and Heartland have both filed written comments. Are
22 there any representatives from either entity that wants
23 to comment?

24 11:54 All right. Then we'll move to Staff.

25 11:54 MR. DOTTHEIM: May it please the

1 Commission. The Staff did file some additional
2 comments, which at this time, I'd like to have marked
3 as Exhibit 3.

4 11:55 (Exhibit Number 3 was marked for
5 identification by the court reporter.)

6 11:55 JUDGE WOODRUFF: And Exhibit 3 will be
7 received into the record.

8 11:55 (Exhibit Number 3 was received into
9 evidence by Judge Woodruff.)

10 11:56 MR. DOTTHEIM: Thank you. With me this
11 morning are Natelle Dietrich the Staff director, and
12 Nathan Williams. I really don't have a presentation.
13 I'd like to address comments that have been made and
14 entertain questions.

15 11:56 It's already been described this morning
16 that this rulemaking process has been arduous. I think
17 that's -- can be seen from the various iterations that
18 have already been commented upon regarding the Staff's
19 suggestions as far as language is concerned regarding
20 the term "construction" as the Staff has attempted to
21 deal with the StopAquila.org decision and the comments
22 and meetings that have occurred over the last couple of
23 years, and as the issues have developed amongst the
24 various stakeholders.

25 11:57 Of course -- well, one thing that the

1 parties -- or I should say not parties, the
2 stakeholders have attempted to deal with is that the
3 StopAquila.org decision deals with a new plant that was
4 built and the entities in dealing with the rulemaking
5 have been attempting to work with the matter of
6 retrofits, environmental upgrades, rebuilds, and -- and
7 what have you.

8 11:58 And the language of -- of new
9 construction that is in the StopAquila.org decision.
10 And how that is likely to be dealt with by a court
11 based upon the fact that the various entities that have
12 been working in this rulemaking process seem to be upon
13 pursuing their positions if they are not satisfied with
14 the rulemaking itself.

15 11:59 And as the process has continued, what
16 the Commission and other parties have seen is the Staff
17 trying to deal with the uncertainty that exists and at
18 the same time present that to the Commission. In the
19 Staff's initial comments, on page 5, the Staff lists a
20 number of cases that have come before the Commission
21 involving environmental upgrades in the last several
22 years.

23 12:00 I probably was too bold myself in making
24 a statement that these cases would not meet the
25 standard of the rule for requiring a CCN. I expect

1 that the companies involved would probably tell the
2 Commissioners that under today's circumstances, they
3 would probably expect one or more parties to file with
4 the Commission a pleading requesting a CCN proceeding
5 involving environmental upgrades.

6 12:01 One of the interesting things is that
7 there's been reference this morning several times to
8 the LaCygne environmental upgrades. The LaCygne units
9 owned by -- in part owned by Kansas City Power & Light,
10 the LaCygne units are in Kansas and although parties
11 have been talking about those LaCygne units being
12 subject to possibly a CCN proceeding because of the
13 environmental upgrades, the Staff and other parties
14 would say that they shouldn't be subject to a CCN
15 proceeding because they're in Kansas, and therefore,
16 not subject to a 393.170. So they wouldn't qualify for
17 a CCN proceeding from that perspective alone.

18 12:02 The Staff would note it's been commented
19 upon, but it -- it may not have been noticed and it may
20 be viewed as a subtlety that in the proposed rule, when
21 it talks about a CCN proceeding being required, and it
22 talks about substantial rebuild, renovation,
23 improvement, retrofit, and/or other construction in
24 Missouri that will result in, one, a substantial
25 increase in the capacity of the electric-generating

1 plant, and then it says, two, a material change in the
2 discharges, emissions, or other environmental
3 byproducts where it says, one, a substantial increase
4 in the capacity, it says two, a material change in the
5 discharges. It doesn't say a material change -- it
6 doesn't say a material increase and it doesn't say a
7 material decrease. It just says a material change.

8 12:04 So the Commission, if it would adopt the
9 rule as is, should expect to see entities argue that a
10 decrease in discharges, emissions, or other
11 environmental byproducts require a CCN case.

12 12:05 Another item that is -- is not as clear
13 as it should be or is -- I don't know if it's --
14 possibly could be called a rarity, is -- is listed in
15 the attachment to the Staff's comments where the Staff
16 has listed generating units that have gone through the
17 CCN process, and it lists some instances such as plants
18 and other states that are owned by, for example, Union
19 Electric Company or Kansas City Power & Light or Empire
20 that have not gone through the CCN process because they
21 are in another state, and as a consequence are not
22 deemed subject to the CCN process.

23 12:06 On page 5 and 6, there's listed item ten,
24 the Venice plant in Venice, Illinois. Union Electric
25 Company, which didn't go throughout CCN process, but

1 the reason I mention it, and please, UE, or Ameren
2 Missouri, correct me if I'm mistaken, if I'm not
3 mistaken, the original Venice plant was taken down, was
4 removed. And -- and new plant was built.

5 12:06

And what is -- what I have listed on
6 pages 5 and 6 are the new CTGs, combustion turbine
7 generators, that were built. And I digress and the
8 reason I mention this, when you're talking new
9 construction, and unfortunately this is not a plant
10 site in Missouri, it's a plant site in Illinois, is
11 probably highly unlikely that any plant site that a
12 utility has will ever be Greenfielded. It will be
13 reused for another plant site so there may be even
14 actually totally new construction on a plant site, with
15 a plant site, with a plant torn down. So but I,
16 offhand, am not aware of that having occurred in
17 Missouri as opposed to that having occurred on the
18 Venice site in -- in Illinois.

19 12:08

Mr. Lumley earlier this morning made the
20 point of generating facilities that are in other states
21 that do not go through the CCN process, if I understood
22 him correctly, get no scrutiny. And that is not the
23 case. If anything, if they're newer units, they get
24 scrutiny from the IRP process to start with. And they
25 get scrutiny through the rate-making process, so to

1 assert that they get no scrutiny, it is not -- is not
2 the case.

3 12:09 At this point, unless the Commissioners
4 have questions and -- I will be here regardless,

5 12:10 Ms. Dietrich will address some -- some other points
6 that were raised this morning.

7 12:10 MS. DIETRICH: Good morning. Natelle
8 Dietrich, Staff director. I have two issues to address
9 this morning based on the exhibits that were submitted
10 this morning and also some of the verbal comments.

11 12:10 The two issues are competitive bid
12 process and the OPC notice. In our original comments,
13 we spelled out quite a bit on the IRP rule, Chapter 22,
14 various provisions related to competitive bid and
15 what's required during the IRP process. We agree with
16 the various parties that have said they think the
17 competitive bid process should be a part of the IRP
18 process, not a part of the CCN process.

19 12:11 And that was one reason why in our
20 supplemental comments, we proposed -- actually, it may
21 have been in our original comments, we proposed the
22 change from facts showing, which is more prescriptive
23 in my opinion to a discussion.

24 12:11 In the rule, there are a couple of
25 provisions that when an application is filed, there

1 will be a discussion of various things. Some of the
2 parties in their comments proposed changes to those,
3 but they generally agree to the idea of a description,
4 and I think it was KCP&L who even said the parties and
5 the Commission have a right to know what's going on
6 with the project.

7 12:11 And that was our intent with the
8 competitive bid process was that it would just be a
9 discussion of whether there was a competitive bid
10 process, whether there was not, and not getting into
11 the details or have the Commission analyze. And
12 perhaps where it was throwing some confusion was in our
13 comments, we said something to the effect of the
14 Commission would review that process. And we didn't
15 mean an extensive review and tie their decision to
16 that, but be informed of the process.

17 12:12 As for the OPC notice, in our comments,
18 we agreed with the concept of the notice, noting that
19 it may be too late in the process under the Secretary
20 of State guidelines to add that language, but if it is
21 able to be incorporated, we agreed with the concepts.
22 We then reviewed the changes that Ameren's proposed and
23 we generally are okay with the changes, but some of
24 them are some good clarification, for instance how to
25 identify landowners.

1 12:12 In the various larger transmission cases,
2 we've had even the landowners tell us that they realize
3 it's difficult to be identified because who may be the
4 landowner of record may not be the person that's living
5 there. They may live in another state, but it's their
6 property and those types of things. So I think for
7 those reasons, Ameren proposes some good changes.

8 12:13 One concern we have with the Ameren
9 changes is that perhaps it's too restrictive on who
10 receives notice. For instance, they talk about
11 directly affected. We're concerned that that may be
12 too limited in some of the especially larger cases.
13 When the application is filed, there may be a proposal
14 or at that time they're looking at six different
15 routes. A couple different routes get refined as the
16 process goes through.

17 12:13 I think there was one where it wasn't
18 even until the end of the process where the actual
19 route was identified and then there's also some
20 provisions where routes can change once they get in
21 there and start the construction and that type of
22 thing, although it wouldn't be large changes. And so
23 our concern would be by directly affected, is that
24 encompassing all the people that may be affected
25 throughout the process and as it's narrowed down, or is

1 it only the people that receive notification are the
2 ones that are on the ultimate route, which may be some
3 point later in the process farther down than what's
4 anticipated. So those are our only two comments.

5 12:14 JUDGE WOODRUFF: Questions? Thank you.

6 MS. DIETRICH: Thank you.

7 12:14 JUDGE WOODRUFF: Anything else from
8 Staff? Mr. Lowery?

9 12:14 MR. LOWERY: Judge, can I -- and this is
10 because these things have come up so late, and I think
11 the record's unclear on some things. And I don't want
12 to get engaged in a tit-for-tat, back-and-forth
13 commenting on everybody else's comments, but I'm hoping
14 to clarify a couple things.

15 12:14 JUDGE WOODRUFF: I'd appreciate that.

16 12:14 MR. LOWERY: On Staff's language that
17 they have about they've changed substantial rebuild,
18 renovation, improvement, they've said new construction
19 in Missouri that will result in a substantial increase.
20 And I'm going to state how -- what I think Staff is
21 saying, and maybe Mr. Dottheim can confirm if I'm right
22 or wrong about that.

23 12:14 I think what they're saying is take the
24 Venice example, but imagine Venice was in Missouri,
25 that site was in Missouri, that that would be new

1 construction. You've torn down the old coal plant.
2 You have land there, now you're going to build a new
3 CTG plant. And I think that would trigger that
4 language.

5 12:15 I don't take the languages as talking
6 about retrofitting and improving or rehabbing or so on
7 an existing coal plant, CTG plant, whatever, but I'd be
8 interested to know -- because I don't think it's
9 crystal clear.

10 12:15 The other part of that is new
11 construction, and then they go to this material change
12 and discharges. I guess I would just point out that
13 under the plain meaning of the term "construction" that
14 even they cite in their comments, it's not new
15 construction if you're retrofitting or glomming
16 something onto that existing power plant.

17 12:15 And I don't really know why you would
18 have a situation where you're worried about material
19 changes. So I'm just not clear on what the intention
20 is. And maybe Staff could clarify that.

21 12:16 The only other thing I'd like to respond
22 to is Ms. Dietrich's comment on the routes and so on.
23 OPC had proposed the directly affected concept and
24 OPC's directly affected concept that I read their rule
25 was, if you come into the CCN case and you're proposing

1 to put the line here or you come into the CCN case and
2 you've still got two or three routes under
3 consideration, then you've got to show that you gave
4 notice to all of those people of the CCN proceeding of
5 that project.

6 12:16 But if the -- if a company's planning and
7 looked at eight different routes across the area, OPC's
8 language wasn't proposing that we have to give actual
9 notice or go to the assessors and give notice to
10 everybody on those eight different routes. Ultimately,
11 before we come in and get a CCN, yes, if we've narrowed
12 down to two routes, all of these people we have to
13 prove we've given notice to.

14 12:17 If you broaden it to everybody that could
15 have been affected by any route that we might have
16 considered, you sort of drive the utility to narrow the
17 consideration at an early stage and you could be
18 talking about something that is incredibly unwieldy. I
19 think at the end of the day, if we don't come in for a
20 -- if those other routes aren't part of the CCN
21 application, none of those folks are going to be
22 affected.

23 12:17 And I think what OPC was trying to do,
24 and Mr. Opitz will disagree with me if I'm saying it
25 wrong, was trying to make sure that people who

1 ultimately could end up having this line on their
2 property, those people should get actual notice of the
3 proceeding. And I think Ms. Dietrich maybe was
4 suggesting it ought to be broadened beyond that, and
5 that I don't think was even what OPC was saying and I
6 think it would be very problematic. And if I
7 misunderstood you, Natelle, you can tell me that.

8 12:17 MS. DIETRICH: And I think what you were
9 describing is what I was saying, that whatever is -- if
10 there are multiple routes at the time of the filing of
11 the CCN, all of those customers should -- or excuse me,
12 landowners should receive notice. Not over the
13 two-year planning process where it's narrowed down at
14 that point.

15 12:18 MR. LOWERY: And I believe our language
16 does say that very directly.

17 12:18 JUDGE WOODRUFF: Mr. Opitz, do you want
18 to respond?

19 12:18 MR. OPITZ: Yes, I think that Mr. Lowery
20 has characterized our intention appropriately. I would
21 point out that I did mention the difference between 500
22 feet and 300 feet as a proposed, but other than that, I
23 think he accurately portrayed our position.

24 12:18 MR. DOTTHEIM: Mr. Lowery, the Staff does
25 not want to be limited to the Venice situation by the

1 term "new construction." I literally can't list for
2 you and don't want to try to list for you the type of
3 new construction that might be built on the plant site
4 that would fall into that category.

5 12:19 JUDGE WOODRUFF: Okay.

6 12:19 MR. LOWERY: Well, if that's the case, I
7 guess -- I now understand, but I guess if that's the
8 case, I would have concerns about we're not going to
9 know -- we're not going to know when we have to get a
10 CCN or not, if it's that open.

11 12:19 JUDGE WOODRUFF: All right.

12 12:19 MR. DOTTHEIM: I accept your statement.

13 12:19 JUDGE WOODRUFF: Any further comment?

14 Mr. Lumley?

15 12:19 MR. LUMLEY: Just to that specific point,
16 I wanted to call attention in our redline, we proposed
17 adding a section that would allow a company to come in
18 and say, please confirm we don't need approval of this
19 project to eliminate those concerns.

20 12:20 JUDGE WOODRUFF: Okay. Is there anything
21 else? Any other comments? All right. Then thank you
22 all for coming and we are adjourned.

23 12:20 (WHEREUPON, the hearing was adjourned.)
24
25

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1 12:20

2 12:20

CERTIFICATE OF REPORTER

3 12:20

STATE OF MISSOURI

)

ss:

4 12:20

COUNTY OF WARREN

)

5 12:20

6 12:20

I, JENNIFER L. LEIBACH, Registered

7

Professional Reporter, Certified Court Reporter, CCR

8

Number 1108, and Certified Realtime Reporter, the

9

officer before whom the foregoing matter was taken, do

10

hereby certify that the testimony of said witness/es

11

was taken by me to the best of my ability and

12

thereafter reduced to typewriting under my direction;

13

that I am neither counsel for, related to, nor employed

14

by any of the parties to the action in which this

15

matter was taken, and further that I am not a relative

16

or employee of any attorney or counsel employed by the

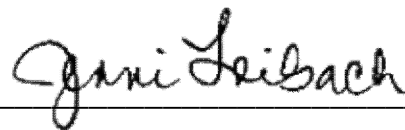
17

parties thereto, nor financially or otherwise

18

interested in the outcome of the action.

19 12:20





20 12:20

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