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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Rulemaking Hearing  
  
June 19, 2018  
  
Jefferson City, Missouri  
  
Volume 1

In The Matter Of The Amendment of)  
The Commission's Rule Regarding )  
Applications For Certificates of ) File No. EX-2018-0189  
Convenience and Necessity )

MORRIS L. WOODRUFF, Presiding,  
CHIEF REGULATORY LAW JUDGE.

DANIEL Y. HALL, Chairman  
COMMISSIONER

REPORTED BY:  
  
Chevon D. McFadden, CVR, CCR NO. 1399  
TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

FOR THE OFFICE OF PUBLIC COUNCIL:

MR. HAMPTON WILLIAMS  
Acting Public Counsel  
Office of Public Counsel  
200 Madison Street, Suite 650  
Jefferson City, Missouri 65102  
573.751.4857  
opcservice@ded.mo.gov

FOR AMEREN MISSOURI & AMEREN TRANSMISSION COMPANY OF  
ILLINOIS:

MR. JAMES B. LOWERY  
Smith Lewis, LLP  
111 South Ninth Street, Suite 200  
Columbia, Missouri 65205  
lowery@smithlewis.com

and

MR. THOMAS BYRNE  
Senior Direct of Regulatory Affairs  
One Ameren Plaza  
1901 Chouteau Avenue  
St. Louis, Missouri 63103

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A P P E A R A N C E S (cont.)

FOR KANSAS CITY POWER & LIGHT COMPANY; KCP&L GREATER  
MISSOURI OPERATIONS COMPANY INCORPORATED:

MR. JAMES FISCHER  
Fischer & Dority, P.C.  
101 Madison Street, Suite 400  
Jefferson City, Missouri 65101  
573.636.6758  
jfisherpc@aol.com

FOR EMPIRE DISTRICT ELECTRIC COMPANY:

MR. PAUL R. BOUDREAU  
Brydon, Swearengen & England, P.C.  
P.O. Box 456  
Jefferson City, Missouri 65102-0456  
573.635.7166

FOR WIND ON THE WIRES:

MR. SEAN R. BRADY  
Regional Policy Manager - East  
P.O. Box 4072  
Wheaton, Illinois 60189  
312.867.0609  
sbrady@windonthewires.org

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A P P E A R A N C E S (cont.)

FOR STAFF OF MISSOURI PUBLIC SERVICE COMMISSION:

MR. KEVIN A. THOMPSON, Chief Staff Counsel

and

MS. NATELLE DIETRICH, Commission Staff Director

Public Service Commission

Governor Office Building, Suite 800

200 Madison Street

P.O. Box 360

Jefferson City, Missouri 65102

573.751.6514

FOR MISSOURI DIVISION OF ENERGY:

MR. MARC POSTON

Senior Counsel

301 West High Street

Jefferson City, Missouri 65102

573.751.5558

marc.poston@ded.mo.gov

1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Good morning everyone.  
3 We'll go ahead and get started on the Rulemaking  
4 Hearing in Commission File No. EX-2018-0189. This is a  
5 proposed rule that would rescind an existing Chapter 3  
6 Rule, 3.105, and replace it with a new Chapter 20  
7 Rule 20.045.

8 This is a Rulemaking Hearing, so it's a  
9 chance for the public to offer their comments on  
10 Commission's proposed rule changes. It's not a  
11 contested case. There won't be any cross-examination  
12 or anything like that.

13 What I'll ask the -- anyone who wishes to  
14 make a comment, I'll ask you to come up to the podium  
15 and the Commission will hear what you have to say. Of  
16 course, we're being webcast and we're also making a  
17 transcript of this. After you've make your  
18 presentation, the Chairman or I may have some questions  
19 for you as well.

20 We'll begin today with -- with -- with Staff  
21 to make their initial comments. And thereafter, we  
22 may -- this is going to be kind of informal, so Staff  
23 may have -- we'll give Staff a chance to make comments  
24 at the end as well. So we'll begin with Staff.

25 MR. THOMPSON: Thank you, Judge. Staff's

1        comments will be made by Natelle Dietrich.

2                MS. DIETRICH: Good morning. Natelle  
3        Dietrich, Commission Staff Director.

4                After reading the comments provided by the  
5        various stakeholders in the rulemaking, Staff would  
6        like to go on record and state that I think the -- the  
7        stakeholders are reading the rule much more literally  
8        and much more restrictive than probably was intended.

9                As the Commission's aware, in order for the  
10       Commission to consider all possible alternatives, it  
11       has to have before it a comprehensive rule. Since at  
12       this stage of the game we cannot add new provisions.  
13       So some of the language was intended to get the issue  
14       out there in order for the Commission to consider it.  
15       But, then, again, like I said, some of it based on the  
16       comments -- people are reading it much more restrictive  
17       than what, I think, was intended. So we do have some  
18       recommendations to -- to start things off that will  
19       hopefully address some of the concerns.

20               The first recommendation: Dogwood and its  
21       comments recommend that the Commission state in the  
22       rule directly what applications are required under  
23       Section 393.170. We would agree with that  
24       clarification. I don't think it can be done the way  
25       Dogwood suggests since it would be adding a new

1 section, but I think it can be incorporated in a  
2 definition or in current Rule Section 2 in order to  
3 acknowledge that section. I think it would also need  
4 to be clarified that it's not only Section 393.170.1,  
5 but also .2, and Mr. Thompson may need to explain the  
6 legal implications of the different sections of the  
7 Statute.

8           There was some comments about if the rule was  
9 implemented as it's current written, that it would  
10 require significant number of CCN applications above  
11 and beyond what we currently receive. So we would  
12 recommend that the rule -- final rule be clarified that  
13 it is not re-- a CCN is not required for distribution  
14 for things such as sub-- substations and those types of  
15 things within the service territory.

16           For transmission, we would recommend that the  
17 rule be limited to the transmission facilities that are  
18 within the State of Missouri. We had tried to clarify  
19 the difference between the RTO process and the Missouri  
20 process, and I think by the comments we didn't  
21 accomplish what we were trying to do. We were trying  
22 to limit it to those transmission facilities that are  
23 used by Missouri rate payers for Missouri service. And  
24 so I think if -- if we limit the CCN to within Missouri  
25 for transmission, it will take care of that.

1 I would recommend that the rule be clarified  
2 that a CCN is required for any new generation in  
3 Missouri when it is to be paid for by Missouri rate  
4 payers. This is consistent with the current draft,  
5 but, again, the limitation is for gen-- generation, not  
6 for distribution, not for transmission that might be  
7 across the country, those types of things.

8 There was some comments about --

9 CHAIRMAN HALL: Ms. Die-- Ms. Dietrich, I'm  
10 not sure I -- I heard you correctly on that. You're --  
11 you're not suggesting that the rule be limited to new  
12 generation only in Missouri. You're saying new  
13 generation anywhere paid for by Missouri rate payers?

14 MS. DIETRICH: Correct, yes.

15 CHAIRMAN HALL: Okay. Thank you.

16 MS. DIETRICH: No matter where the generation  
17 is located, if it's paid for by -- and serves Missouri  
18 rate payers, it would be subject to a CCN.

19 There was a lot of comments about the  
20 definition of construction and whether the statute  
21 allows the commission to require a CCN for a  
22 construction versus acquisition. And looking at the  
23 statute and talking with Mr. Thompson, I think a better  
24 word would be "operation." So where the rule talks  
25 about acquiring and acquisition, I think if we



1 substitute the word "operation" or  
2 "operations/operating," depending on the proper tense,  
3 that would take care of a lot of the concerns and be  
4 consistent with the statute.

5           There was also concerns about retrofits,  
6 rebuilds, and those types of things. That was one of  
7 the areas that was addressed in a previous rulemaking  
8 of 2015-2016 CCN rulemaking. There were comments on  
9 it. We were trying to come up with a standard that  
10 would say: If it's a significant retrofit, then a CCN  
11 is required. For instance, there are EPA requirements  
12 that require environmental requirements that are  
13 multi-million dollar projects, but it was hard to come  
14 up with a standard or a number that would say if it's,  
15 you know, this amount it's -- a CCN's required. If  
16 it's this type of project, a CCN is not required. So  
17 that's why we recommended the percentage of rate base.

18           In the rule, we recommend 10 percent of rate  
19 base. There were comments that it wasn't clear as to  
20 what was meant by that so we would suggest clarifying  
21 10 percent of rate base as determined in the last rate  
22 case. And then remove any of the other language  
23 talking about how to define retrofits, rebuilds, and  
24 those types of things. Remove the language that talks  
25 about substantial and material, and just have a

1 requirement that if it's a retrofit or rebuild that  
2 is -- cost more than 10 percent of rate base of the  
3 cur-- last rate case, that would be the standard for  
4 retrofits, rebuilds.

5           There was comments about the competitive bid  
6 process and the recommendations about considering  
7 alternative energy. We would suggest that that be --  
8 that is something that the Commission would like to  
9 consider when it's determined in public interest as  
10 part of the CCN process. But we're not intending for  
11 the Commission to have any kind of management role into  
12 the determinations -- into the competitive bid process.  
13 We're not trying to expand the IRP process, so we would  
14 suggest that that language be modified to say: Include  
15 in your app-- application that you've looked at  
16 alternative energy sources, you've considered  
17 competitive bidding or you use competitive bidding,  
18 whatever the case might be, and why you went the way  
19 you went. Not necessarily any kind of decision making.  
20 Not -- not evidence, I think is the rule word that the  
21 rule uses. But just a statement that you did consider  
22 these other alternative processes -- excuse me --  
23 alternative energy sources and that you did or did not  
24 consider competitive bidding because.

25           There were also comments about we used the

1 term "nonincumbent electric provider" in some of the  
2 provisions of the rule. The reason for that term was  
3 to make the distinction between, for instance, like, an  
4 Ameren Missouri and an ATXI. So ATXI had a suggestion  
5 on how to define "nonincumbent electric provider," and  
6 we support the definition. Again, I don't think it can  
7 be added as a definition, but could be clarified when  
8 the term is used. Something like incumbent provid--  
9 incumbent electric -- excuse me -- "nonincumbent  
10 electric provider" means whatever or something along  
11 those lines.

12 And finally, there were some comments about  
13 the recent passage of Senate Bill 564 and the provision  
14 in the bill that excludes energy generation unit that  
15 has a capacity of 1 megawatt or less, and Staff would  
16 be supportive of making that clarification in some part  
17 of the rule that we do recognize that that is a  
18 limitation that is now in effect.

19 JUDGE WOODRUFF: Do you have a recommendation  
20 as to exactly where in the rule it would go?

21 MS. DIETRICH: I -- I think it could  
22 potentially be in one of the definitions. Perhaps,  
23 where it says: Construction does not include a  
24 generation facility that's 1 megawatt or -- capacity  
25 of 1 megawatt or less. Something along those lines.

1 JUDGE WOODRUFF: Okay. Anything else?

2 MS. DIETRICH: Oh, one -- one more thing.

3 There -- there were comments about Staff or the  
4 Commission not completing the proper fiscal impact  
5 review. I'd just like to clarify that we did complete  
6 a fiscal impact review. The -- the review that was  
7 completed with this rule is the exact same review that  
8 we complete with many of our rules. There are certain  
9 forms and documents that we have to complete when it's  
10 presumed that there would not be a fiscal impact  
11 greater than \$500, and there is a different set of  
12 forms that we have to complete if it's presumed that  
13 there would be a fiscal impact of greater than \$500.

14 Since we were interpreting the rule as  
15 largely clarifying, what the Commission currently  
16 does -- and not anticipating the number of applications  
17 that different stakeholders indicated that this -- the  
18 changes to the rule would -- would increase, we did not  
19 view the rule as having a significant fiscal impact, so  
20 we used the previous rulemaking as guidance and the  
21 previous CCN rulemaking, again, from 2015, 2016. It  
22 was an estimate of \$500 or less and that fiscal impact  
23 was not challenged, so that was the basis we used for  
24 determining the fiscal impact on this rule. Again,  
25 viewing it not as restrictive as what a lot of the

1 stakeholders had -- were reading it, and viewing it as  
2 the main addition would be the CCN requirement for  
3 facilities located in other states or outside of  
4 Missouri.

5 So we did complete a review process. We just  
6 had a different interpretation of the implications of  
7 the rule than the different commenters providers. And  
8 I think with some of these changes that we discussed it  
9 gets us back to what we originally intended.

10 JUDGE WOODRUFF: Okay. Mr. Chairman, do you  
11 have any questions at this point?

12 CHAIRMAN HALL: Well, just a few now and  
13 perhaps a few more after parties have responded to  
14 these additional recommendations.

15 Concerning the -- the 10 percent figure as  
16 the -- the threshold for retrofits and rebuilds that  
17 would require a CCN. Do you have some examples of  
18 projects that would be included above that threshold  
19 and then some projects that would be below that  
20 threshold?

21 MS. DIETRICH: I -- I don't have -- excuse  
22 me. I don't have specific projects to come up with  
23 the 10 percent number. We did meet with the  
24 Commission's engineering analysis group, and that was a  
25 percentage that they felt would encompass the big

1 projects, such as the multimillion dollar environmental  
2 compliance-type projections, but would not encompass  
3 kind of your just general run of the mill maintenance  
4 and those types of things. So that was a percentage  
5 under the advice of the engineering analysis  
6 department.

7 CHAIRMAN HALL: Okay. Well, I'll be  
8 interested in hearing from counsel for the utilities  
9 that are present as to what types of projects  
10 that 10 percent figure would encompass and which ones  
11 it would -- it would not. Thank you.

12 JUDGE WOODRUFF: All right. Let's move on  
13 then to Public Counsel.

14 MR. WILLIAMS: Thank you, Judge. Hampton  
15 Williams appearing on behalf of the Office of the  
16 Public Counsel. I just wanted to correct that we had  
17 filed comments in the case. It sounds like with  
18 respect to some of the comments that Staff has made it  
19 has addressed several of the concerns. Generally  
20 speaking, our comments pertain to any discussion of the  
21 geographical limitations to the Commission's authority.  
22 It sounds like some of the edits that Staff proposed  
23 addresses that; however, it seems like they are  
24 continuing with a recommendation on one. A requirement  
25 for CCNs for new generation constructed beyond the

1 state, which I believe we would recommend that the  
2 Commission may not have the authority to propagate that  
3 rule.

4 We've also included an attachment on kind of  
5 the maturation of -- of the certif-- certificate  
6 requirements through the Commission's history to  
7 provide a little context as to how we got to the  
8 existing rule today. And then concluded our comments  
9 with -- just to identify that there are several issues,  
10 such as the guidance on what kind of plant is necessary  
11 and convenient for public service. Those -- those few  
12 issues that are not addressed in this rulemaking. I  
13 think that those issues would be contentious, and  
14 ultimately may be made more appropriate for -- for  
15 another rulemaking. But we certainly identified that  
16 there are some areas of clarification that could be  
17 explored in this rule that I think would certainly be  
18 of benefit to the Commission and the regulated entities  
19 to have some clarification on.

20 CHAIRMAN HALL: What is OPC's position on the  
21 provision in the proposed rule regarding decisional  
22 prudence?

23 MR. WILLIAMS: I don't have a comment on that  
24 right now. I'll be happy to provide you a supplement  
25 as far as what our view is on the decisional prudence.

1 We've obviously presented an argument in a recent  
2 proceeding on our view of the use of decisional  
3 prudence, and I would have to investigate the proposed  
4 rulemaking more to provide an opinion with respect to  
5 that specific provision.

6 CHAIRMAN HALL: I believe at the conclusion  
7 of this hearing the record will be closed.

8 JUDGE WOODRUFF: That's correct.

9 CHAIRMAN HALL: So if -- if you've got  
10 something to add on that issue, you'd need to do it  
11 during the course of today's proceeding.

12 Regarding -- and I would be very interested  
13 in OPC's position on that. Because that would -- it  
14 seems to me that that requirement would be consistent  
15 with OPC's longstanding concern that large expensive  
16 projects get started and then get presented to the  
17 Commission and historically it's sometimes difficult  
18 for the Commission to make a prudence decision at that  
19 point that does not include it in rates. And so I  
20 would think that -- I mean, this is your job, not mine.  
21 But I would think OPC would be very open to the concept  
22 that a -- that a utility needs to get a decision on --  
23 on decision prudence before -- before commencing  
24 certain projects.

25 MR. WILLIAMS: You know, certainly through



1 the CCN process and -- and what the Commission is  
2 outlining, there is absolutely a consideration of cost  
3 and public interest. I believe that the Commission has  
4 facility to accomplish that, the manner or  
5 consideration within the CCN application itself, but  
6 certainly the general statement are accurate. Those  
7 are concerns that we have raised and argued for in the  
8 past with respect to the construction of large  
9 projects.

10 CHAIRMAN HALL: Thank you.

11 MR. WILLIAMS: Thank you.

12 JUDGE WOODRUFF: Let's move to KCPL and GMO.

13 MR. FISCHER: Thank you, Judge. Jim Fischer  
14 on behalf of KCPL and GMO.

15 In light of Staff's comments I might just  
16 address a few things that I think would still be  
17 concerns to us. Some of their -- their comments were  
18 helpful, but there are continuing concerns, I think,  
19 regarding requiring CCNs for any out-of-state power  
20 plants that would go beyond the jurisdiction of the  
21 Commission.

22 If I understood what Ms. Dietrich was saying,  
23 too. She was saying it would be for new generation  
24 within Missouri that are paid for by ratepayers and  
25 served by Missouri ratepayers. Perhaps, it's just a

1 technical thing, but I think ratepayers don't pay for  
2 generation, they pay for electricity. She's probably  
3 meaning though it'd be included in rate base of the  
4 public utility.

5 I think we would also continue to -- to be  
6 concerned about requiring CCNs for significant  
7 retrofits or rebuilds of more than 10 percent of the  
8 rate base. I think that's not consistent with  
9 Section 393.170. I am trying to get some information  
10 about how much 10 percent of our rate base would be.  
11 Of course that would be substan-- a substantial number,  
12 but I don't think that 393.170, which is the statute  
13 that gives the Commission authority in this area  
14 would -- would be expensive enough to cover retrofits  
15 and rebuilds and that's not been the historical  
16 practice of the Commission in the past to grant that.

17 With regard to the Chairman's concerns or  
18 comments about the decisional prudence. Kansas City  
19 Power and Light and GMO have requested decisional  
20 prudence in some context in the past including a recent  
21 solar CCN case where Staff and Public Counsel had  
22 opposed the grant of that CCN and we felt it was  
23 appropriate to have a decision by the Commission that  
24 under those circumstances and the evidence at the time,  
25 that the decision to go forward with that made sense

1 and was reasonable.

2           We've also suggested, too, that in the  
3 context of IRP proceedings, that the Commission rules  
4 allow acknowledgment, that the decisions that were  
5 being made under it were appropriate, if you want to  
6 call it that. It's similar to decisional prudence, and  
7 I think the folks at the Division of Energy had  
8 suggested the acknowledgment language be included in  
9 that rule. That gives the -- did give the company some  
10 protection, if you want to say, that their decision  
11 making was appropriate under the IRP rule. And, then,  
12 I think in that context it might be better than  
13 actually proposing it on every CCN.

14           Regarding competitive bidding, I'm not sure  
15 that we would have a concern if we were just asked to  
16 explain whether we looked at competitive bidding or not  
17 and why we didn't. In -- in some of the past cases,  
18 like -- I believe (inaudible), competitive bidding was  
19 not practical and it would have been difficult to get  
20 the project done had that been required, and often in  
21 some of these situations like that really competitive  
22 bids are not -- are not available. You need to get it  
23 done on a fast track and you don't have a lot of  
24 options that are out there given the marketplace or the  
25 supplies that are available. We certainly wouldn't

1 have a problem if the Commission wanted to clarify the  
2 rule to be consistent with the Stop Aquila and the Cass  
3 County decision and SB 564.

4 And I -- I guess as far as the fiscal  
5 impacts, we still think that this would be a  
6 significant fiscal impact if we're required to get CCN  
7 for out-of-state power plants or for significant  
8 increases in the -- in the retrofits or what Staff was  
9 suggesting.

10 So with that I may have missed something, but  
11 I think that would generally cover. We just believe  
12 you need to be consistent with 393.170 and not go  
13 beyond the parameters that that addresses today or go  
14 beyond where your -- where the historic practice of  
15 this Commission has been. And I'd be happy to answer  
16 questions.

17 JUDGE WOODRUFF: Thank you, Mr. Fischer. Any  
18 questions?

19 CHAIRMAN HALL: Yes. Concerning 393.170  
20 Sub 2. Do you believe that under -- under the terms of  
21 that provision a utility would need to have -- need to  
22 obtain the permission and approval of the Commission  
23 before operating a new generation facility that it  
24 acquired?

25 MR. FISCHER: No. I -- I believe that it

1 would need the requ-- the approval of the Commission to  
2 begin construction. Once they completed construction I  
3 don't think any --

4 CHAIRMAN HALL: Well, that's under -- that's  
5 under Section 1. I'm looking at Section 2. And  
6 Section 2, no such corporation shall exercise any right  
7 or privilege under any franchise hereafter granted.

8 MR. FISCHER: I don't think that expands that  
9 to -- to what you're contemplating there. I think that  
10 would -- that would mean that you had to get approval  
11 up front on number one to construct. Number two, if  
12 you're -- if you're in an area certificate situation  
13 and you're -- you're going to be operating or  
14 exercising a municipal franchise, that would require  
15 the approval of the Commission in the context of an  
16 area certificate. But I think -- I think number one is  
17 really what we're talking about in terms of  
18 construction of a power plant.

19 CHAIRMAN HALL: Yeah. Well, I'm -- that's --  
20 I'm talking about Section 2. And -- and I think that  
21 there is a -- there's an argument and there's some --  
22 some precedent to this effect or some prior examples of  
23 such that -- that -- in order to -- to -- to operate a  
24 facility, there is a need to get the permission and the  
25 approval of the Commission prior thereto.

1           MR. FISCHER: I'm certainly aware of  
2 situations where utilities have come in to -- with a  
3 municipal franchise and sought to exercise that  
4 franchise by providing, for example, gas service to an  
5 area, and requested the Commission to give them an area  
6 certificate to exercise that franchise and serve that  
7 area. I'm not familiar with any situation where a  
8 power plant has been built and then prior to actually  
9 operating it the Commission -- or the company had to  
10 come back and ask for an additional approval to operate  
11 that power plant.?

12           CHAIRMAN HALL: So in the -- in the case  
13 of -- of the Crossroads, which you spend some amount of  
14 time in your brief on, the company after the purchase  
15 did not seek the Commission's approval to operate that;  
16 is that correct?

17           MR. FISCHER: That's correct.

18           CHAIRMAN HALL: And so instead, the issue  
19 came up in a rate case.

20           MR. FISCHER: Yes. And that's often where  
21 the -- the Commission has -- has looked at the issues  
22 in the context of should it be included in rates; what  
23 expenses should be included in rates; what's the  
24 investment that's appropriate to be included in rates.  
25 Certainly, the Commission has brought authority in the

1 ratemaking area. It doesn't have that same authority,  
2 though, to do -- to exercise management functions  
3 determining whether to purchase it out of state or to  
4 exercise or to bring it in and -- and begin operating  
5 it to certain ratepayers.

6 CHAIRMAN HALL: From a public policy  
7 perspective, because at least to me I think the law is  
8 a little unclear on this. So let's put that aside and  
9 just focus on public policy.

10 What is the difference between a company  
11 building a new generation plant or acquiring a plant in  
12 terms of the affect on ratepayers? What's the  
13 difference?

14 MR. FISCHER: Well, from a public policy  
15 standpoint I'm not sure there's much difference in  
16 terms of how -- if it's included in rates and rate  
17 base, the investment, and all that. But I think the  
18 law gives the Commission --

19 CHAIRMAN HALL: Okay. I -- I -- I -- I  
20 understand. I mean, I don't mean to interrupt. I  
21 mean, I -- I understand your position on the statute  
22 and I'm not sure that we're on the same page there, but  
23 I wanted to make sure that I understood that there  
24 really is not a public policy distinction.

25 MR. FISCHER: But I would suggest, with all

1 due respect, that the Commission's authority is limited  
2 by the statutes --

3 CHAIRMAN HALL: Oh, of course.

4 MR. FISCHER: -- too.

5 CHAIRMAN HALL: Of course. Yeah. We are on  
6 the same page on that.

7 MR. FISCHER: Okay.

8 CHAIRMAN HALL: Okay. And then I'm going to  
9 ask a similar question regarding the geographic reach  
10 of the -- of the Commission's jurisdiction. From a  
11 public policy perspective, is there really a difference  
12 between the construction of a facility one block east  
13 of state line and one block west of state line in terms  
14 of its impact on ratepayers?

15 MR. FISCHER: Well, certainly we've had power  
16 plants from out of state come into rate base and  
17 they're used to serve Missouri ratepayers just like the  
18 ones are that are on our side of the state line. But,  
19 again, I'd guess I would have the same answer that the  
20 Commission's restricted by the statute.

21 CHAIRMAN HALL: And I'd have the same  
22 response. I would agree that we are restricted by  
23 statute. But I'm looking at 393.170 and I don't see  
24 anything in there that -- that limits the CCN  
25 requirement to construction within Missouri.



1           MR. FISCHER: Well, I think it -- we have  
2 addressed that in the brief just generally that the  
3 State doesn't have authority to go outside of its  
4 boundaries.

5           CHAIRMAN HALL: Yeah. And that's just -- I  
6 mean, I've -- I've found that to be kind of a red  
7 herring and it's been raised by a number of -- a number  
8 of parties to this case.

9           There is nothing in the proposed rule that  
10 would in essence preempt another state's role in the  
11 process. All that the proposed rule says is if you're  
12 going to make Missouri ratepayers pay for that, then  
13 the Commission has a role in determining whether it's  
14 in the public interest at the outset. So if you're  
15 going to construct a new natural gas facility one block  
16 west of state line to be paid for by Missouri  
17 ratepayers, the Commission has a role in determining  
18 whether it's in the public interest just like if that  
19 plant was built one block east.

20           MR. FISCHER: Mr. Chairman, I would suggest  
21 you do have that authority from a ratemaking standpoint  
22 to determine what should be included in Missouri  
23 ratepayers or customer's rates. I don't think you have  
24 the authority to have any role of the sighting of a  
25 power plant outside the State of Missouri or to

1 determine necessarily where or under what circumstances  
2 that should be built. But you certainly do have the  
3 authority to determine what should be included in  
4 Missouri's rates.

5 CHAIRMAN HALL: Well, I think I agree with  
6 you on part of that. I -- I -- I agree that -- that  
7 the Commission doesn't have a role in sighting. But  
8 I -- but I maybe perhaps disagree with you as to  
9 whether or not under the statutes the Commission has  
10 the authority to determine on the front end whether a  
11 particular project is in the public interest and should  
12 be paid for by Missouri ratepayers. But that's --

13 MR. FISCHER: I understand.

14 CHAIRMAN HALL: Yeah. Okay. And, perhaps,  
15 just one more line of questioning and that concerns the  
16 retrofits and rebuilds. So it's -- it's -- it's your  
17 position that if -- if there is construction of a -- of  
18 a new facility in Missouri, there is a -- a requirement  
19 for -- for the utility to obtain a CCN, but that is not  
20 the case for a retrofit even if the retrofit  
21 essentially changed 98 percent of the existing  
22 facility?

23 MR. FISCHER: I believe that would be the  
24 case under the statute. I -- the 10 percent I am  
25 informed that under that kind of a number, like the

1 La Cygne retrofit that was done several years ago would  
2 have -- would have required a CCN.

3 And our position would be that to begin  
4 construction of a new plant you need it, but not to --  
5 not to modify or -- or to retrofit it for environmental  
6 purposes. Certainly, though, we've come in the context  
7 of the KCPL regulatory plant or the CEP and it  
8 discussed a lot of things including retrofits and --  
9 and sought the Commission's counsel about those kinds  
10 of things, but it's not required by the co-- by the  
11 stat-- by the statutes.

12 CHAIRMAN HALL: You sought our counsel, but  
13 not our permission?

14 MR. FISCHER: Well, we sought the approval of  
15 the plants, so I guess in that sense we did.

16 CHAIRMAN HALL: So back to my hypothetical.  
17 If there was a retrofit that involved changing  
18 98 percent of a particular facility, it would be your  
19 position that there'd be no need for a CCN?

20 MR. FISCHER: Well, I don't know where you  
21 draw the lines. But, yeah --

22 CHAIRMAN HALL: Well, that --

23 MR. FISCHER: -- our position -- our position  
24 would be that new power plants require a CCN. Once you  
25 have that plant there you don't -- you can modify it,

1 you -- you've been doing maintenance and changing it  
2 throughout the life of that plant and that that does  
3 not require a CCN.

4 CHAIRMAN HALL: What about a retrofit that  
5 turned a coal facility into a gas facility?

6 MR. FISCHER: I guess that depends on whether  
7 you have a new power plant or not. But I'd suggest,  
8 no, that's not -- that wouldn't require a CCN.  
9 Although, I would suggest that we might come in and ask  
10 you whether that -- whether you thought that needed  
11 your approval or not.

12 CHAIRMAN HALL: Well, if -- if the approval  
13 is not needed and you're requesting it, I'd say that's  
14 an advisory opinion and we can't give it to you.

15 MR. FISCHER: Well, that's --

16 CHAIRMAN HALL: That's why -- that's one of  
17 the reasons why I want to put that requirement in a  
18 rule so that it will not be an advisory opinion and --  
19 and will be right for our resolution.

20 MR. FISCHER: Well, it's even more advisory  
21 now when we don't know the facts I think. But --

22 CHAIRMAN HALL: It's hypothetical. It's not  
23 advisory.

24 MR. FISCHER: Okay.

25 CHAIRMAN HALL: Okay. That's all I have for

1 now.

2 MR. FISCHER: Thank you.

3 JUDGE WOODRUFF: All right. Thank you.

4 Let's move over to Empire.

5 MR. BOUDREAU: Thank you.

6 JUDGE WOODRUFF: If you'd identify yourself  
7 for the --

8 MR. BOUDREAU: Certainly. My name is Paul  
9 Boudreau. I'm with the law firm of Brydon, Swearengen  
10 & England. I'm here to present some comments on behalf  
11 of the Empire District Electric Company with respect to  
12 the proposed CCN rule.

13 And I think what I'd like to do is -- well,  
14 first thing is -- is I was going to add an additional  
15 comment to the prepared comments that I filed earlier.  
16 But I think that Ms. Dietrich may have -- may have  
17 addressed that in a way that is satisfactory to the  
18 company, and that is that aspect of her comments that  
19 related to substations and additional distribution  
20 lines within an area. And I -- and I think that under  
21 the Harline Case, that once an area of certificate's  
22 been issues, the idea is the company can build whatever  
23 distribution facilities that it needs to service within  
24 that area. And I think that's consistent -- I believe  
25 that's consistent with Staff's comments. So I'm

1 gratified to hear that.

2 I do think it's -- I want to work from the  
3 general to the specific. And -- and -- and Mr. Fischer  
4 touched on this. And -- and the point is that whatever  
5 authority the Commission has, it has under statute.  
6 Primarily, you'll find that, as everybody's been  
7 talking about, under Section 393.170. And the only  
8 change that's been made to that statute since 1913 when  
9 it was enacted, actually, just happened in Senate  
10 Bill 564, which doesn't really, in my view, change much  
11 other than give a safe harbor under a certain sort of  
12 capacity for the building a power plant under  
13 Section 1.

14 But you have to kind of look back at the --  
15 if you look at court decisions, what they talk about is  
16 what was the legislative intent. And in order to  
17 figure that out, what was the legislative intent in  
18 1913? That's -- that's really the question before the  
19 Commission. What was the statute intended to address  
20 in 1913?

21 And there's -- I've got some -- I was going  
22 to hand out some pictures to -- to -- in fact, I think  
23 I will. I'm not going to make this an exhibit. What  
24 I'd like to do is just show a couple of pictures that I  
25 got from an absolutely impeccable and unimpeachable

1 source that is the internet. And I think it  
2 illustrates what -- what was trying to be addressed  
3 primarily by this statute in 1913.

4 This is the first picture and I've got  
5 supplement picture.

6 JUDGE WOODRUFF: You didn't ask them to be  
7 marked as exhibits?

8 MR. BOUDREAU: No.

9 JUDGE WOODRUFF: I'm going to mark them as  
10 exhibits anyway just so we can have them in the record.

11 MR. BOUDREAU: It's -- it's your discretion.  
12 That's -- that's fine with me.

13 JUDGE WOODRUFF: Did you give a copy to the  
14 court reporter?

15 MR. BOUDREAU: Well, if you're going to mark  
16 them as an exhibit, I guess I should.

17 JUDGE WOODRUFF: Yes.

18 MR. BOUDREAU: That will be the first one I'm  
19 referring to. Then this one on top.

20 (Exhibits 1 and 2 were marked for  
21 identification.)

22 JUDGE WOODRUFF: So everyone knows the man --  
23 the one with the blizzard of lines with the man on the  
24 pole will be one and the one with the street car will  
25 be two.

1 MR. BOUDREAU: These -- these --

2 JUDGE WOODRUFF: If you'll wait for the court  
3 reporter to be ready.

4 COURT REPORTER: Go ahead.

5 JUDGE WOODRUFF: Okay.

6 MR. BOUDREAU: I'm sorry. The pictures that  
7 I've just handed out, the first one that -- that the  
8 hearing examiner's identified is according to the  
9 information I have -- a picture of Pratt, Kansas  
10 in 1911. And the second picture is a picture taken of  
11 New York City in 1887 if you -- if we can rely on the  
12 information that I got off the web page. But it's --  
13 it's not really the specifics of the picture that are  
14 important, but what the picture illustrates. And a lot  
15 of this was duplication of facilities. Numerous --  
16 numerous utilities, both telephone and electric serving  
17 metropolitan areas. And the hearing examiner's  
18 description of it as a "blizzard of lines" is almost  
19 literally true. And so I would suggest to you a lot of  
20 what the -- of what the New York Public Service  
21 Commission or what New York was trying to address when  
22 they enacted their Public Service Commission law was to  
23 have more control over who was providing service in a  
24 certain area, who could put out facilities.

25 In 1913, Missouri essentially adopted the



1 New York Public Service Commission Act. There were --  
2 there were some changes, but it was largely based on  
3 what New York did. And the idea, I would suggest to  
4 the Commission, was to get some control over what  
5 the -- what the courts refer to in their decisions as  
6 unnecessary duplication of service and undesirable  
7 competition. Well that's undesirable competition.  
8 That's the public policy.

9 And so looking at the statute, the statute  
10 hasn't changed other than the more recent safe -- the  
11 most recent safe harbor has been adopted. And so I  
12 think that you need to take a look at the statute for  
13 what it was intended to address, which was to control  
14 this sort of helter skelter bit of wiring mostly  
15 through metropolitan areas because at the time there  
16 wasn't much electrification in the rural areas.

17 And so this statute doesn't exist in a  
18 vacuum. It has a historical context and it's -- that  
19 was the legislative intent. The legislative intent  
20 hasn't changed since then. Like I said, other than the  
21 most recent little additional clause that's been put  
22 in. And so I'd encourage the Commission when they're  
23 looking at the various features of the rule that are  
24 being proposed is: Was this actually the legislative  
25 intent? Does this address something that was meant to

1 be addressed in 1913?

2 Excuse me while I kind of take a look at my  
3 notes here.

4 And I also want to kind of go back to  
5 something that -- that the chairman asked Mr. Fischer  
6 about, which was the purpose of -- of Subsection 2 of  
7 the statute. And if you keep in mind that before the  
8 Public Service Commission Act was enacted, the way a  
9 utility got its -- got its authority to provide service  
10 was to get a municipal franchise. That was really  
11 about the only regulation out there. And so the  
12 purpose of the statute in 19-- in 1913 was to say that  
13 basically we're going to have essentially a statewide  
14 authority that has some -- has some say in whether or  
15 not an electric utility can operate within a particular  
16 municipality. And it -- and it goes to -- to  
17 addressing the same topic as we've got here.

18 The idea was to give a statewide authority to  
19 the Public Service Commission to have some say in who  
20 served and where they served. And just because the  
21 utility was able to go in and get a municipal franchise  
22 from a town, doesn't mean that they could start putting  
23 poles and wires and building a utility plant to serve  
24 it. And that -- that -- that is the historical context  
25 for the statute. That hasn't changed and I think it

1 limits the topics that are -- that you can put forth in  
2 terms of what was intended, what authority the  
3 Commission was granted in 1913. And it may be much  
4 more limited than -- than a lot of people would like it  
5 to be, but it is what it is.

6 The only other thing I'll address at this  
7 point and then I'll be glad to answer some questions,  
8 if there are any is -- is some of Staff's comments on  
9 the rule. Like I said, I was -- I was somewhat  
10 gratified to hear that the -- that the -- what they're  
11 suggesting is some language that would going forward  
12 not -- certainly not put the -- the rule that's  
13 adopted at odds with the Harline decision in terms of  
14 putting distribution systems throughout an area  
15 certificate.

16 I think Staff is still pushing the idea that  
17 the Commission has some extrater-- extraterritorial  
18 jurisdiction when it comes to issuing certificates.  
19 And in that case, not only does 393.170 have something  
20 to bear on that, but in the prepared comments you also  
21 need to take a look at Subsection 1 of 386.270, which I  
22 think is expressly limiting.

23 I'm not sure that I understood what's being  
24 proposed in terms of construction versus operating or  
25 operations, so I have to say I can't meaningfully

1 respond to that -- that comment by Staff.

2 I think I've addressed retrofits in -- in --  
3 in the written comments, and I'm just going to stand on  
4 the comments that I -- that I submitted in written  
5 form.

6 The competitive bidding concept. I don't  
7 think that I ever -- I think what Staff said about that  
8 was largely consistent with my initial read. Is that  
9 I'm not sure that the Commission -- or that the Staff  
10 was suggesting that the CCN process -- open it up to  
11 kind of a competitive bidding analysis. I do think it  
12 becomes more pertinent if the Commission -- or if the  
13 company -- excuse me -- if the utility asks for  
14 decisional prudence. Then I think it kind of opens --  
15 opens the door to looking at what process did it go  
16 through. I think that's kind of unnecessary -- der--  
17 necessarily derivative of the idea of getting a  
18 decisional prudence decision. But I think in that --  
19 and I think my written comments, if you take a look at  
20 those, suggest that if the Comm-- if the company is  
21 looking for decisional prudence, perhaps, the features  
22 of the filing that the company has to submit ought to  
23 be somewhat different than if they don't. And with  
24 that I'll conclude my -- my comments. I'll be happy to  
25 answer any questions.

1           CHAIRMAN HALL: Concerning the competitive  
2 bidding process, what would your position be if -- if  
3 the only requirement was that the applicant has to  
4 indicate what alternatives it had explored, and why  
5 they won't work, at least with regards to purchasing  
6 power or alternative energy? And then concerning  
7 design engineering procurement, construction  
8 management, the applicant would be required to set  
9 forth what its process will be with regards to entering  
10 into such contracts for such services and -- and why.

11           MR. BOUDREAU: I think my response to that is  
12 that it depends on what door that opens. If -- if --  
13 if the -- if the representations are made, does that  
14 make that an issue in terms of the Commission issuing a  
15 certificate? And if somebody wants to take issue with  
16 certificate, does that open the opportunity to say,  
17 Well, the Commission -- the Commission's rule ask for  
18 this information, therefore it's a relevant line of  
19 inquiry for us to make.

20           CHAIRMAN HALL: Well, that is exactly, I  
21 think, the goal. And -- and -- and -- I mean, at least  
22 for me, those are two subject areas that would be  
23 relevant in a CCN case.

24           MR. BOUDREAU: Okay.

25           CHAIRMAN HALL: And so therefore, what the

1 proposed rule does is it requires that there be  
2 something in the filing setting those -- setting that  
3 forth.

4 MR. BOUDREAU: I -- I guess my response to  
5 that would be that if -- if that's only pertinent in  
6 the -- in the circumstance where the Commission is  
7 asking for -- or where the company is asking for  
8 decisional prudence. If it's not asking for decisional  
9 prudence, I don't think that that's an appropriate area  
10 of inquiry.

11 CHAIRMAN HALL: So if -- well, under the --  
12 under the rule decisional prudence would be something  
13 that the Commission could -- could grant whether or not  
14 it was expressly asked for or not. But let me just  
15 step back -- okay?

16 MR. BOUDREAU: Okay. I guess my point --  
17 I've been going on the assumption that if -- if -- it  
18 only seemed to make sense to me that the issue would  
19 come up if the company asks for it. And that was kind  
20 of an assumption in my comments. But I'm not sure that  
21 as you pointed out that the rule as proposed by the  
22 Commission necessarily would -- would -- I don't know.  
23 It's -- it's interesting. I -- let me back up.

24 I think it's only appropriate to go down that  
25 road if the company, if the utility that's asking for

1 the certificate, asks for a decision -- a decisional  
2 prudence determination. I'm not sure if it's  
3 appropriate for anybody else to open that door.

4 CHAIRMAN HALL: So if -- if a company was  
5 seeking CCN to build a new natural gas facility, and it  
6 so happened that it would be far cheaper, far cheaper,  
7 to -- for the utility to instead construct a wind farm,  
8 take advantage of some demand response possibilities,  
9 other DER avenues, and perhaps purchase power from a --  
10 from another facility, don't you think that all of  
11 those things would be relevant when the Commission  
12 determined whether it was in the public interest for  
13 the company to construct that facility? Aren't those  
14 directly relevant issues?

15 MR. BOUDREAU: I think they're directly  
16 relevant in the context of a rate case. I don't think  
17 they're directly relevant in the context of  
18 certification.

19 CHAIRMAN HALL: Oh. I couldn't disagree more  
20 with that. I mean, to me it's part and partial to the  
21 public interest. If it -- if it is far better for  
22 ratepayers for the generation to occur in a different  
23 way or for -- for the company to procure the energy in  
24 a different manner, I can't think of anything that  
25 would be more -- more relevant to the public interest.

1           MR. BOUDREAU: Well, I -- I suppose that --  
2 and I understand where you're coming from,  
3 Mr. Chairman. I -- I honestly do. I don't think that  
4 the -- the CCN process, that the statutes that have  
5 been adopted for certification are an economic inquiry.  
6 I think they're more -- more a sighting inquiry than  
7 they are anything else.

8           CHAIRMAN HALL: Okay. We'll just have to  
9 agree to disagree.

10          MR. BOUDREAU: I -- I -- I think that's the  
11 case. I think that you just have a different view of  
12 it than I do. But, thank you.

13          CHAIRMAN HALL: What is -- what is the  
14 company's position as to Dogwood's recommendation  
15 that -- that the rule directly state what the  
16 applications -- what applications are required under  
17 393.170?

18                Because from my perspective all that's really  
19 doing is summarizing what's in the rule in terms of  
20 when applications are required and when they're not,  
21 and though some people may say that they weren't on  
22 notice as to that proposal, everybody has looked at --  
23 or the utilities have all looked at the rule as  
24 requiring applications whenever they're doing  
25 construction as set for under the definition of



1 construction. So I think everyone was on notice that  
2 applications would be required for those types of  
3 things. And so all this provision does is summarize it  
4 in one spot.

5 Do you -- do you have a thought on that?

6 MR. BOUDREAU: I'm not sure that I -- that I  
7 have anything to offer on that. I'm not -- I'm not as  
8 familiar I'll concede -- as familiar with Dogwood's  
9 comments as I probably should be at this point.

10 CHAIRMAN HALL: I have not further questions.  
11 Thank you.

12 MR. BOUDREAU: Thank you.

13 JUDGE WOODRUFF: We'll move to the Division  
14 of Energy. If you want to come up to the podium.

15 MR. POSTON: Good morning. My name's Marc  
16 Poston. I'm here on behalf of the Missouri Division of  
17 Energy.

18 And we did file comments. They were not very  
19 lengthy. Our comments are generally supportive of the  
20 added oversight of outage restoration plans. As  
21 outages can have significant affects on public health  
22 and safety, as well as significant economic impacts.

23 We also support the attempt to encourage DER,  
24 renewable energy efficiency, those types of resources  
25 by requiring that they be considered when constructing

1 assets.

2 On that same note, as we stated in our  
3 comments, we're concerned with the new requirement for  
4 nonincumbent electric providers. If not properly  
5 defined it leaves open for interpretation of who would  
6 qualify. We worry it could be interpreted to apply  
7 to customer-owned generation, which we don't believe is  
8 the intent of the Commission here. Ms. Dietrich  
9 brought up the definition proposed by ATXI, which  
10 limits nonincumbent electric providers to  
11 FERC-regulated transmission companies that do not have  
12 retail Missouri customers, and that definition would  
13 satisfy our concerns.

14 And just the last point I'll make is that we  
15 raised in our comments is about SB 564 and we ask that  
16 you carefully consider that legislation with finalizing  
17 this rule. That's all I have.

18 JUDGE WOODRUFF: Okay. Any questions.

19 CHAIRMAN HALL: No questions. Thank you.

20 JUDGE WOODRUFF: Thank you, Mr. Poston.

21 Wind on the Wires.

22 MR. BRADY: Good morning. I am Sean Brady  
23 with Wind on the Wires.

24 We filed comments, which we appreciate, on  
25 the 15th. We still have a motion that's pending to

1 accept those. So --

2 JUDGE WOODRUFF: To interrupt you -- we will  
3 accept those.

4 MR. BRADY: Okay. Great. Thank you.

5 JUDGE WOODRUFF: The comments were filed a  
6 day late.

7 MR. BRADY: Yes.

8 We appreciate Staff's comments. They  
9 addressed -- today they addressed a number of our  
10 issues.

11 One of the topics we had raised was on the  
12 definition of construction. And the topic of excluding  
13 transmission lines that -- whose costs are allocated  
14 and gone through RTO cost allocation process. We asked  
15 for clarification of that -- we -- based on and  
16 explained what we understood to be the process or the  
17 intent of Staff and we would have supported that  
18 language. As we understand where Staff is going now is  
19 to move from a cost allocation process to transmission  
20 facilities in Missouri for Missouri. Which at a  
21 conceptual level it -- it makes sense. You know,  
22 that's what the scope of the Commission's authority. I  
23 still think the -- what's at tension here is part of  
24 the need and the public interests that's been  
25 determined at the RTO level for a transmission line

1 that's other than a reliability project. There's part  
2 of a determination that's been made at the RTO level  
3 and if the language were to be kept, our interpretation  
4 was those -- you would have been giving deference to  
5 the RTO's decision. Now, as I understand it, and maybe  
6 it's closer to status quo, where you're at right now,  
7 it would just be one factor considered in the CCN  
8 process. Which is effective as well. I think it's  
9 probably just not as clear and one of the concerns we  
10 have is the -- the potential conflict where you have an  
11 RTO determining the need for a line that's economic or  
12 beneficial and you come in and reaching a different  
13 decision based on the same facts. So I -- I caution  
14 you or recommend you consider that in moving forward on  
15 that topic.

16 Another topic we had addressed was the  
17 competitive bidding language. We didn't address the  
18 legality of that. A lot of the utilities addressed  
19 that. We don't -- we came at this more from a public  
20 policy perspective of having transparency and open  
21 information on a bidding process is useful and  
22 beneficial in making decisions. We don't have really a  
23 position whether it is better in the IRP process or  
24 whether it is in the CCN process. I think that's more  
25 of a policy position as to what's effective for the

1 Commission. Although, maybe the utilities might differ  
2 on the actual legality of that. Again, I'm just  
3 speaking from a policy and an administrative efficiency  
4 perspective.

5 One topic that we did not address in  
6 comments, but based -- was raised by KCPL as well as  
7 Ameren Transmission was the phrase "nonincumbent  
8 electric providers." When I read that I originally  
9 thought that you were just kind of carving out existing  
10 status quo. After listening and reading KCPL's and  
11 Ameren's comments, I -- I share KCPL's concern that  
12 that language would apply to entities not subject to  
13 Commission jurisdiction. It's my understanding that  
14 Staff has proposed language that I believe adopts  
15 language that Ameren Transmission put forward. Which I  
16 guess is -- which is all right for Section 6, which  
17 addresses the approval of transmission lines. But the  
18 language "nonincumbent electric provider" is also used  
19 relative to approving construction of new assets. And  
20 so my concern -- so generation assets. And so my  
21 concern would be that the use of that phrase -- well,  
22 it may no longer be -- that definition may no longer be  
23 applicable in -- in Section 5. The definition -- so  
24 I'll -- I'll leave that at that.

25 And then -- and those are the topics I wanted

1 to address. And with that I'll make myself available  
2 for questions.

3 CHAIRMAN HALL: Well, I -- I -- I agree with  
4 you that there is a problem with ATXI's defin--  
5 definition for "nonincumbent electric provider" as it  
6 relates to Section 5. And I appreciate you pointing  
7 that out.

8 Do you have a suggestion as to how we can fix  
9 that? Or I'll also leave that question open to other  
10 counsel when they have the opportunity to speak,  
11 because I do think that: A, I think we need to define  
12 it. B, I think the definition proposed doesn't --  
13 doesn't cover generation and it probably needs to.

14 MR. BRADY: So the concern that I have with  
15 the term "nonincumbent electric providers" is it would  
16 under Section 5 related to generation, encompass  
17 independent power producers who are building a plant  
18 that is in Missouri, but not being sold in Missouri  
19 utilities. It wasn't clear to me from this language  
20 that they would necessary being excluded.

21 The other topic would be an independent power  
22 producer generating plant built in Missouri and who is  
23 a PPA with a Missouri utility is now delivering  
24 electricity to be used in Missouri for Missouri. Both  
25 situations I would think they would be excluded from

1 the scope -- be oversight of this. Now if --

2 CHAIRMAN HALL: Correctly so or incorrectly  
3 so from a -- from a -- from a public policy  
4 perspective?

5 MR. BRADY: Correctly so because they are  
6 operating under -- for wholesale jurisdiction. Now --  
7 so that's -- now, if there was another interpretation  
8 of "nonincumbent electric providers" that Staff was  
9 intending to capture with that, I'm unaware and I'd be  
10 happy to answer that if hypothetical.

11 CHAIRMAN HALL: Okay. Well, it is -- it  
12 is -- it is a known problem that I'll be interested  
13 in -- in hearing others address as to how to fix.

14 So what is your organization's position on  
15 the proposed rule as modified by Staff at the beginning  
16 of -- or at least proposed to be modified by Staff at  
17 the beginning of this hearing that transmission outside  
18 the State of Missouri would not require a CCN? Are  
19 you -- are you in support of that or opposed to that?

20 MR. BRADY: We don't have a position one way  
21 or another on that.

22 CHAIRMAN HALL: But where you -- where you  
23 did stake out a position was it would be your  
24 preference that if there was an RTO determination as to  
25 a need for a project within Missouri, you would prefer

1 that the Commission not have -- not exert the authority  
2 to review that determination?

3 MR. BRADY: Yeah. I think you would give  
4 deference to the need on that. So a little bit -- a  
5 little bit of background. Transmission lines  
6 developed -- now, speak -- Wind on the Wires, folks, is  
7 strictly on the MISO footprint. I'm unfamiliar with  
8 SPP's process and any cost allocation there.

9 There are transmission lines that are  
10 developed bottom up and top down. Bottom up are --  
11 comes from the utility. The utility says, Hey, we see  
12 a need where there is a reliability of a congestion,  
13 and we need to build it to meet our customers needs.  
14 And that would be something potential that I could see  
15 within the scope of in Missouri for Missouri.

16 There are other projects that are top down that  
17 involved other aspects, such as congestion for the --  
18 relieving congestion for the entire -- for the grid at  
19 large and providing economic benefits. That kind of  
20 determination is made by MISO. I think there's kind of  
21 an overlap -- potential overlap conflict between  
22 State's ability to look at that as well as MISO, and so  
23 we've got federal and state tension there.

24 Either way, I think my preference would be to  
25 leave those out, but if the -- it would be within the



1 State's purview to and ensuring what is prudent for its  
2 electric customers. If they want to review this, I  
3 would want to see it being reasonable and it would be  
4 one factor as part of the overall test.

5 CHAIRMAN HALL: Yeah. And I -- and I -- and  
6 I think that's probably where things are going to land.  
7 I'm not sure this Commission can delegate the authority  
8 that is given the under the statute to -- to -- to an  
9 RTO, which is in essence what would happen. If --  
10 if -- if -- if -- if the Commission were not to make a  
11 determination as to public interest and -- and -- and  
12 need even after the RTO did so.

13 MR. BRADY: Yeah. And if I might say that  
14 there are a number of top down types of projects where  
15 the factors are slightly different that the Commission  
16 would probably want to look at and weigh. So it's  
17 not -- you know, they're not all the same category. So  
18 you wouldn't say that they're all similar going  
19 forward.

20 The other aspect on the -- is in the public  
21 interest evaluations. You know, my experience has been  
22 on CCNs here -- the discussion has been the cost  
23 bene -- we've raised issues regarding cost-benefits  
24 savings to Missouri ratepayers. So public interest has  
25 been -- cost-benefit has been an aspect to public

1 interest, though I've heard from some of the utility  
2 counsel here that they view CCNs as being focused more  
3 on sighting. Maybe I'm taking that out of context, but  
4 I defer -- you know, I think what's -- there's room  
5 here for you to decide what's best for Missouri.

6 CHAIRMAN HALL: I have no further questions.  
7 Thank you.

8 JUDGE WOODRUFF: Thank you. Dogwood? Anyone  
9 here for Dogwood?

10 Seeing no one.

11 Ameren Missouri and ATXI?

12 MR. LOWERY: Thank you, Judge. This is Jim  
13 Lowery. I'm here on behalf of both Ameren Missouri and  
14 Ameren Transmission Company of Illinois or ATXI.

15 Where to begin? First of all, I don't envy,  
16 Judge, your task in trying to sort the changes that are  
17 being suggested this morning and trying to figure out  
18 how to actually implement those.

19 I'll try to have some level of organization,  
20 but we've obviously jumped around a lot this morning.

21 One thing that I'm not clear about from  
22 Staff's comments. Mr. Boudreau discussed Harline,  
23 discussed the fact that it seems to be clear from  
24 Staff's comments that they don't intend -- it's just  
25 their intention -- I mean, it's the Commission's

1 proposed rule, but they don't intend to reach  
2 distribution facilities within the service territory.  
3 Harline actually dealt with the transmission line. And  
4 I think a question that has to be answered, certainly  
5 by the Commission, and I hope it's answered in the  
6 affirmative, is that the rule should also not be  
7 addressing transmission facilities including  
8 substations within the service territory.

9 Another thing that I'm not clear about from  
10 Staff's comments. Staff sort of says, Well, we didn't  
11 really interpret the rule as applying to a lot more  
12 projects. The problem is, and I think this is still  
13 the intent, and if I'm wrong Ms. Dietrich or  
14 Mr. Thompson can correct me, but the rule as written  
15 still does apply to rebuilds of transmission lines,  
16 rebuilds of substations. It applies as written to  
17 changes in easements or in the route. And we explain  
18 in our comments that we didn't even attempt to quantify  
19 those, but those come up as well on a fairly frequent  
20 basis. So we're not clear about the scope of the rule.  
21 But I think even with the changes that Staff indicated  
22 earlier today, that they perhaps are supporting, that  
23 most of the projects that we indicated in our written  
24 comments on June 14, would have required CCNs under  
25 this rule, both over the last ten years and looking

1 forward over the next five, most of those projects  
2 still would. So we're -- we're not talking about the  
3 seven CCN applications that the company in Ameren  
4 Missouri's case filed in the last ten years. We're  
5 looking at probably 40 or 50 applications that would  
6 have been required under the rule, even as I think,  
7 perhaps, amended from Staff's position.

8 CHAIRMAN HALL: Well, let's -- let's -- let's  
9 stay there for a little bit. Because I know you're  
10 having to respond, you know, in real time to a -- to a  
11 proposal and that's -- but -- so if you -- if you limit  
12 the number of CCNs required from the proposed rule and  
13 you -- you don't require a CCN for distribution within  
14 the service territory, that's a significant amount of  
15 CCNs that -- that in your -- in your brief you -- you  
16 included would be required.

17 MR. LOWERY: No, that's -- that's incorrect.  
18 None of the -- none of the CCN applications in the 51  
19 additional applications that we cited in our comments  
20 were distribution facilities. They were all  
21 transmission facilities or generation projects.

22 CHAIRMAN HALL: Well, distribution including  
23 substations is -- is -- is --

24 MR. LOWERY: There are transmission  
25 substations and there are distribution substations.

1 These were -- to the extent a substation was involved  
2 in those 51, those were transmission substations.

3 CHAIRMAN HALL: Well, why did -- why is that?  
4 I mean --

5 MR. LOWERY: Because -- because as I read the  
6 rule and -- and -- and maybe it's in the context of the  
7 workshop process and the last rulemaking and this  
8 rulemaking, my takeaway was that the focus here was on  
9 generation facilities and transmission facilities. And  
10 we have a footnote in our comments that said that isn't  
11 clear, but we're interpreting it that way. We also  
12 explained in our comments that if it weren't the  
13 case -- and I don't have the numbers at the ready --  
14 but over the last ten years there would have been 20  
15 or 30 additional distribution --

16 CHAIRMAN HALL: Okay. Well, that's the  
17 number that I was referring to when I said --

18 MR. LOWERY: Okay.

19 CHAIRMAN HALL: Okay.

20 MR. LOWERY: But I'm talking -- but the 51  
21 that I cited don't involve distribution. So -- so  
22 you're right. Later in the comments we say If it  
23 applied to distribution there would have been 20 and  
24 maybe 100 over the next three years. Those would go  
25 away.

1                   CHAIRMAN HALL: Okay. So -- so we're  
2 limiting under -- under the proposal we're limiting the  
3 CCNs so that they don't include distribution. We're  
4 limiting them in terms that they don't relate to  
5 transmission outside the State of Missouri. We're  
6 limiting them to -- on retrofits and rebuilds to those  
7 that are in excess of 10 percent of your rate base.  
8 Now, those -- that has to have a significant impact on  
9 the hundreds of CCNs that you're -- that you're  
10 concerned are going to be required over the next  
11 certain number of years.

12                  MR. LOWERY: I did not necessarily hear this  
13 morning -- and maybe -- when you say "we" I don't know  
14 who for sure "we" is. Staff has position and the  
15 Commission is going to have to make a decision. But  
16 I'm not clear on what the rate base limit --  
17 Ms. Dietrich went through -- in the rule you have a  
18 construction definition and first part of it deals with  
19 transmission gas lines for -- that would connect to a  
20 power plant substations. Second part which dealt with  
21 retrofits and improvements and you had material  
22 increases and substantial increases, and the other  
23 10 percent of rate base dealt with generation. I don't  
24 know where we are in terms of this 10 percent of rate  
25 base in terms of does that apply to only the generation

1 retrofits and improvements or does it -- would it only  
2 apply. I don't -- I don't know that. If it only -- if  
3 -- if it applies to everything that no CCN is required  
4 for a rebuild, retrofit, improvement, etc., unless the  
5 project would raise -- and this is another uncertainty  
6 -- but -- but unless the project would raise the  
7 company's entire rate base by more than 10 percent,  
8 then, yes, it would -- it would reduce and it might  
9 eliminate the numbers that we have in our comments.  
10 But it isn't clear to me where we are on that issue.

11 CHAIRMAN HALL: And well, let's -- let's --  
12 let's assume it's -- it's -- it is where -- where you  
13 suggested at the end of that -- of that comment. But  
14 the question does -- does present itself that rate base  
15 as of what date. And -- and do you have a suggestion  
16 as to what -- what date should be used for  
17 determination of rate base?

18 MR. LOWERY: Well, I have a couple  
19 suggestions. One, it doesn't matter what the threshold  
20 is if the statute doesn't allow you to apply CCN  
21 requirements to rebuilds and retrofits.

22 CHAIRMAN HALL: Yeah. I know you --

23 MR. LOWERY: And I understand that you  
24 disagree --

25 CHAIRMAN HALL: I know you have to say that

1 first.

2 MR. LOWERY: I understand you disagree. I  
3 understand you disagree with me on that. But -- but it  
4 doesn't matter.

5 CHAIRMAN HALL: Well, no, actually. I mean,  
6 I don't disagree with you that if the statute doesn't  
7 allow it, we can't do it. I am on the same page there,  
8 but it's an interpretation of the statute.

9 MR. LOWERY: Sure. Sure. I mean,  
10 Ms. Dietrich, I think, said -- gave -- gave a  
11 suggestion about that and she said, rate base as  
12 established in the last general rate proceeding.  
13 That's probably as good as any. I don't know whether  
14 we're talking about net rate base or gross rate base.  
15 That -- that's -- that makes a big difference. A huge  
16 difference as a matter of fact in terms of what the  
17 number would be. That's not defined at this point.  
18 And, again, I don't -- I don't even know if we're  
19 talking about total rate base.

20 CHAIRMAN HALL: Okay. All right.

21 MR. LOWERY: Let me try to go back through  
22 the other comments from -- from the Staff. This  
23 Dogwood suggestion -- and I agree. This is one place  
24 we do agree, Mr. Chairman. I'm not really sure what  
25 Dogwood is saying when you say you should state what



1 all CCN, you know, applications are required. I mean,  
2 the rule's going to apply what the rule -- to what the  
3 rule is going to apply to. So it really would amount  
4 to a summary, and I'm not exactly sure. I've never  
5 seen a rule summarize the rule I guess. So I'm not --  
6 I'm not sure that I understand. And maybe that's not  
7 what Mr. Lumley intended, but -- but I'm not exactly  
8 sure either.

9 I want to talk -- I want to go back to -- and  
10 this was -- you had a lot of exchange with Mr. Fischer  
11 in particular about this. You talk a lot about the  
12 public interest and public policy and 393.170 and  
13 isn't -- isn't public interest and public policy --  
14 don't we have essentially -- and these are my words, so  
15 if I'm putting words in your mouth you can correct me.  
16 But don't we have a carte blanche to use 393.170 to  
17 address public interest concerns that we may have  
18 and -- and it is an interpretation issue. But that's  
19 where we differ I'm afraid. And that's particularly  
20 true when you look at what's really at issue in this  
21 rulemaking and that's the interpretation of  
22 Subsection 1.

23 For a 100 years this statute, and  
24 particularly Subsection 1, has -- has been interpreted  
25 primarily as a citing statute. The reason the Stop

1 Aquila Court said as to new generating plants you've  
2 got to get a CCN that's roughly -- that's issued  
3 roughly and contemporaneous with the construction of  
4 that plant before you constructed it is so that the  
5 Commission could consider and I think the Court set a  
6 broad range of issues including zoning. But what the  
7 court was focused on were those impacts to Missourians.  
8 Those impacts of that power plant in that area. If you  
9 read the opinion, that's what the Court was focused on.  
10 If it wasn't focused on that, the logic of the decision  
11 would say, well, you have to get one for every  
12 transmission line and even now on every distribution  
13 line, you'd have to get a CCN. But they carve power  
14 plants out. They carve new power plants out. And they  
15 did that because it's pretty clear to me, and it would  
16 have to be flushed out by further judicial opinion  
17 because they didn't actually say this exactly this way,  
18 but it's pretty clear to me that what they were saying  
19 is, That's primarily a citing statute and you need to  
20 exercise your citing authority for new generating  
21 plants.

22           The CCN statute -- the Commission as a  
23 general matter under it's enabling statutes is  
24 concerned with the public interests and has a lot of  
25 regulatory authorities to ensure that the public

1 interest is being served. But the CCN statute's not  
2 the primary vehicle for it to do so. And I think our  
3 problem with this rulemaking and the breath of the  
4 expansion that's being proposed is that the CCN rule is  
5 attempting -- you're attempting to use the CCN rule as  
6 a vehicle to do a whole bunch of other things that you  
7 can do, but not in this particular context. And  
8 that's -- that's the debate. That's the -- that's the  
9 tension that's going on and that's why -- that's why we  
10 disagree. And I -- there hasn't been a lot of  
11 litigation about that. There may be some in the  
12 future, but that's the fundamental disagreement, I  
13 think that we have.

14           It also, I think, this -- and you had asked a  
15 question about this, Mr. Chairman. Ms. Dietrich said,  
16 If you just change acquire to operation, you'll solve  
17 all the problems. Well, construction doesn't mean  
18 operation. Construction means construction. And the  
19 meaning of that term hasn't changed in 100 years. And,  
20 again, if the plants already there, we don't have these  
21 sighting issues. Ameren Missouri bought a gas plant in  
22 Audrain County, I don't know, 12, 15 years ago. It was  
23 already there. No CCN was sought, no CCN was  
24 necessary. Ameren Missouri has bought other plants in  
25 other states, again, same thing. Utilities have built,

1 constructed plants in other states. No CCN was sought.  
2 If, in fact, this statute requires a CCN in all of  
3 these circumstances we're talking about, then the  
4 Commission has in effect been ignoring its statutory  
5 duty for the last 100 years. I mean, it either -- it  
6 either required it or it didn't. It didn't suddenly  
7 start requiring things in 2018, that it didn't require  
8 40 years ago. The statute gave the Commission the  
9 authority it gave it a 100 years ago and the Commission  
10 still has that same authority.

11 CHAIRMAN HALL: So it's not possible that the  
12 statute gives the Commission authority that it didn't  
13 exercise? You feel, like, if the statute give the  
14 Commission authority, it must exercise it at every  
15 instance and opportunity?

16 MR. LOWERY: I don't think the Commission's  
17 give sort of prosecutorial discretion to say, Well,  
18 we're not going to enforce it in that instance. No, I  
19 don't.

20 CHAIRMAN HALL: It's not a matter of  
21 enforcing it, it's a matter of giving authority. And  
22 giving -- giving authority to do something does not  
23 mandate that the Commission exercise that authority in  
24 every instance. I would think -- because if it is,  
25 that's something that you're not going to like very

1 much at some point in time. Because there's a lot of  
2 authority in there that -- that the Commission makes a  
3 prudential decision to not -- to not act on.

4 MR. LOWERY: I'm not honestly sure that I can  
5 think of an example that you're pointing to there  
6 where -- where the Commission doesn't act on it's  
7 authority, but.

8 CHAIRMAN HALL: There's -- there's --  
9 we'll --we'll -- go ahead and continue.

10 MR. LOWERY: I mean, the Commission  
11 certainly, for example, would have the discretion to  
12 say if a -- if a utility failed to follow a Commission  
13 order, the Commission doesn't have to ask the general  
14 counsel to go over and seek penalties for example. I  
15 agree with that. It doesn't have to. It gives -- the  
16 statute specifically gives the Commission the option to  
17 make that decision. But I don't think the Commission  
18 is in a position where it can just not exercise the  
19 authority that it's been given or not given by the  
20 General Assembly. I -- I -- I guess I don't agree with  
21 that.

22 CHAIRMAN HALL: So you think that -- that  
23 this Commission -- let's continue.

24 MR. LOWERY: So I'm jumping around and I  
25 apologize for jumping around, but it is a little bit

1 difficult.

2 CHAIRMAN HALL: That's my fault.

3 MR. LOWERY: No, no, not your fault at all.  
4 It's difficult to have the -- have the field of play  
5 change a little bit right before you take the field.

6 A few other things that have come up this  
7 morning. These competitive bidding provisions. The  
8 IRP process requires a great deal of information in  
9 consideration of competitive bidding. And this issue  
10 came up in the last rulemaking. And the Staff is not  
11 the Commission, so the Commission can come down on this  
12 issue in a different place if it chooses, assuming it  
13 has the authority to do so, which I won't debate any  
14 further at this point about that.

15 But I will tell you, remind you, that in the  
16 last rulemaking the Staff specifically said that it  
17 didn't consider competitive bidding provisions  
18 appropriate in the ceasing statute at all. And it  
19 admonished the Commission, I guess reminded the  
20 Commission -- admonished is probably not the right  
21 word, that to go beyond the review of the electric  
22 utility process for deciding whether to competitive bid  
23 would be too intrusive on the rule regarding operation  
24 of utility. And also reminded the Commission that  
25 management of the utility is ultimately held to

1 accountable for the prudence of its decisions, whether  
2 competitively bid, what competitive bidding to do, etc.  
3 So to the extent that Staff supports something  
4 different in this case, it's an inconsistency, and it  
5 is what it is.

6           Staff also specifically told the Commission  
7 in prior proceedings involved in this rule that the CCN  
8 statute address the siting of the construction of an  
9 electric plant in the State of Missouri, but does not  
10 address the siting of such facility out of the state.  
11 So, again, to the extent that we're talking about going  
12 outside the state, that's also an inconsistency that  
13 has arisen in this rulemaking and this rulemaking  
14 alone.

15           Before I forget it, Your Honor, Mr. Byrne  
16 reminded me but there's also a provision in Senate  
17 Bill 564, in addition to the 1 megawatt or less new  
18 generating plant provision that's exempted under 564,  
19 there's also a provision for electric utilities to  
20 build a certain amount of utility scale solar, and I  
21 believe it also exempts that solar -- those solar  
22 facilities from the CCN rule. So that's something else  
23 you should make sure that I'm right about that, but  
24 that's something else that would need to be addressed  
25 or else your rule would be too broad.

1           Let me talk just a little bit about this  
2   fiscal note problem that exists. What I'm hearing  
3   today is that some kind of estimation or analysis maybe  
4   was done in the 2016 rulemaking and that in reliance  
5   upon that a judgment was made that the rule would not  
6   have an impact of \$500 or more on private entities.  
7   Even if that's true, I think under the Air Conservation  
8   Commission case that we cite, that's not good enough.  
9   And that rule in 2016 was not the same rule that was  
10  proposed today. There's a lot of similarities, but  
11  this one certainly goes farther.

12           I also heard some discussion about, Well,  
13  we're -- we're limiting this in certain ways and so we  
14  sort of didn't interpret it to be as broad. But we're  
15  still talking about -- or in Staff's positions, we're  
16  still talking about applying CCN applications to new  
17  generating plants outside the state, completely new  
18  provision. We're still -- we're talking about  
19  requiring evidence of competitive bidding and various  
20  kinds of things that -- that didn't exist before. So I  
21  think that the larger point remains that it's patently  
22  obvious that however you interpret this rule, as it was  
23  proposed, and that's what you have to look at when  
24  you're determining the fiscal note. You can't come in  
25  later and say, Well, we ultimately adopted one that



1 didn't cost \$500 more cost, therefore we didn't have to  
2 do a fiscal note, the test -- that's not the test. The  
3 test is what would the rule as proposed do in terms of  
4 cost? And what the Court says is the agency is  
5 required to take reasonable steps to consider and  
6 identify all public and private entities significantly  
7 affected by any proposed rule and to investigate and  
8 consider and comprehensively estimate the full range of  
9 cost over the entire operation of the rule. In this  
10 case, for example, the agency argued, Well, we only  
11 have to estimate the first couple years. It's too hard  
12 to do it beyond that. The Court said, No, that's not  
13 what the statute says.

14           So I don't think that there's been a cure for  
15 the fiscal note problems that exists with the rule.  
16 Certainly, nothing was produced when we made the  
17 Sunshine Law request that would indicate that the kind  
18 of process that the Court indicates is required was  
19 actually followed. And that's a concern.

20           One minor correction to the record. I don't  
21 remember, I think it might have been Mr. Boudreau and I  
22 think Mr. Boudreau cited the 386.270 and was talking  
23 about the provision that -- he indicates the  
24 Commission's jurisdiction extends to the manufacture of  
25 electricity in the state. I believe, Mr. Boudreau,

1 it's 250. I believe it's 386.250. You can check me on  
2 that, Judge, but I think it's 250.1.

3 MR. BOUDREAU: If I misstated it, that my  
4 mistake.

5 MR. LOWERY: Bear with me, Your Honor, just a  
6 moment if you don't mind.

7 There is one other point I wanted to make.  
8 And, obviously, this comes back to what the scope of  
9 the ultimate rule that is adopted is. If it is pared  
10 back in a drastic way, in a way that perhaps is being  
11 suggested is really in play, then these comments, I'll  
12 admit, won't have as much force.

13 But I think the Commission needs to step  
14 back. And I don't feel like that's been done and say,  
15 What harm are we trying to address here? What problems  
16 have we had in the past that need to be addressed in  
17 this CCN rule? What -- what are the benefits that we  
18 are going to get from all of this as compared to the  
19 costs? We see a lot of potential costs. We see an  
20 expansion of jurisdiction, but we -- I don't see in any  
21 of the comments that were filed two years ago, that  
22 were filed now, where anyone really said, You know  
23 what, we have a problem here. A lot of imprudent  
24 decisions have been made and the utilities are doing  
25 things they didn't get permission for when they should

1 have, and we are unable to -- we are unable to deal  
2 with these things properly in the IRP process and in  
3 rate cases. I -- I haven't heard anybody really  
4 articulate anything like that throughout what's now  
5 been about four years of -- of rulemaking or related  
6 proceedings related to the CCN rule. So you have to  
7 juxtapose what benefits you may be getting or not  
8 getting against the cost of doing the things that  
9 you're proposing to do. And I don't feel like that's  
10 been done in this rulemaking and I think that's in part  
11 what's led us to where we are today. I don't have  
12 anything else, at least that I can think of at this  
13 point, but I'd be happy to answer any further  
14 questions, Judge, you have or, Mr. Chairman, that you  
15 might have.

16 CHAIRMAN HALL: Okay. Concerning the  
17 definition of "nonincumbent electric provider," do you  
18 have a suggestion to encompass the examples raised by  
19 Mr. Brady?

20 MR. LOWERY: I was trying to follow your --  
21 your discussion there, and I'll be honest I'm not sure  
22 I entirely was.

23 Was the concern about non-transmission  
24 entities in some fashion?

25 CHAIRMAN HALL: Yes, exactly. So I'm

1 wondering if it's FERC regulate wholesale generation  
2 providers, if there's a definition to encompass that --  
3 in addition to the one proposed by ATXI.

4 MR. LOWERY: The nonincumbent provisions in  
5 the rule, if I remember, basically require -- let me  
6 find it here. I don't off the top of my head, Your  
7 Honor, because I -- okay. Overview of plans for  
8 restoration of safe and adequate service for unplanned  
9 or forced outages.

10 So, Mr. Brady, if I can just maybe ask it.  
11 So the issue is you don't want non-Missouri commission  
12 regulated generators to have to provide -- I guess -- I  
13 guess where I struggle is when those folks are filing a  
14 CCN application at all?

15 CHAIRMAN HALL: Yes. That's what we're  
16 talking about.

17 MR. LOWERY: And of course this wouldn't --  
18 the rule wouldn't apply if they're not before you at  
19 all for a CCN. So I -- I don't -- I guess I don't have  
20 a precise fix. I think the language that we propose  
21 solves the problem for people like ATXI, which is all  
22 we were really thinking about at the time. If there's  
23 some gap that needs to be addressed, I can't off the  
24 top of my head tell you exactly how to do that. I  
25 guess as I sit here today.

1           CHAIRMAN HALL: Concerning the competitive  
2 bidding process would you be opposed to the -- to the  
3 suggestion of -- of Ms. Dietrich concerning purchase  
4 power or alternative energy?

5           MR. LOWERY: Yes, we would.

6           CHAIRMAN HALL: Why?

7           MR. LOWERY: We believe -- because we believe  
8 the proper place for that debate and discussion to take  
9 place is in the IRP process.

10          CHAIRMAN HALL: And so you're making a public  
11 policy argument?

12          MR. LOWERY: It certainly has aspects to  
13 public policy, but it goes back to what's the purpose  
14 of a CCN proceeding under Subsection 1 in particular.  
15 And we believe it's primarily a sighting discussion.

16          CHAIRMAN HALL: So you don't believe that in  
17 determination of the public interests is -- might be  
18 impacted by what alternatives there were to the  
19 construction of the generation?

20          MR. LOWERY: I don't see in the statute, and  
21 particularly Subsection 1, that a determination of the  
22 public interests is the standard under 393.170.1 case.

23          CHAIRMAN HALL: Well, isn't there case law  
24 out there that -- that sets public interest as one of  
25 the factors that the Commission is to determine with

1        regards to CCNs?

2                MR. LOWERY: I can't recall -- I can't recall  
3 exactly the standards that are enumerated in those  
4 cases. I know that the standard for what is necessary  
5 or convenient for the public service is -- it's a  
6 fairly malleable standard. It's one about which --

7                CHAIRMAN HALL: (Inaudible.)

8                MR. LOWERY: -- the Commission has a lot --  
9 that very well may be the case, I don't recall the  
10 phraseology as I sit here today.

11               CHAIRMAN HALL: No further questions. Thank  
12 you.

13               JUDGE WOODRUFF: Mr. Brady, you had -- looked  
14 like you wanted to say something back there. Was there  
15 anything you wanted to add?

16               MR. BRADY: On the "nonincumbent electric  
17 providers" in -- in Section 4. I'm sorry.  
18 Section 5G. It talks about "nonincumbent electric  
19 providers" provide an overview of plans for operating  
20 and maintaining the electric generating plant,  
21 substation or gas transmission, and if I underst-- if I  
22 recall the language proposed by Ameren transmission,  
23 I'm -- I'm -- I thought it was basically limited to --  
24 well, I didn't think an entity like Ameren Transmission  
25 Company would be owning electric generating plant. So

1 that's what made that kind of -- that asset part of 5G  
2 potentially unapplicable but -- if that helps the  
3 discussion at all. I don't know if --

4 MR. LOWERY: Again, I -- I don't know that I  
5 can address Mr. Brady's comments about the definition  
6 on the fly here this morning. We didn't have any of  
7 that in mind.

8 Your Honor, I did have -- if Your Honor  
9 pleases, one other thing -- and Mr. Byrne is also here.  
10 And Mr. Byrne would like to offer some comments on  
11 behalf of Missouri -- Ameren Missouri as well.

12 I would like, Your Honor, to mark the  
13 additional comments that we filed late last night and  
14 have them made part of the hearing record. Because  
15 I'm -- you don't I'm sure want me to recite everything  
16 that's in them this morning.

17 JUDGE WOODRUFF: You're absolutely correct.  
18 We'll mark it as No. 3.

19 (Exhibit No. 3 was marked for  
20 identification.)

21 MR. LOWERY: Thank you, Judge. And with  
22 that, Your Honor, I'll yield before to Mr. Byrne.

23 JUDGE WOODRUFF: All right. Mr. Byrne,  
24 identify yourself.

25 MR. BYRNE: Okay. My name's Tom Byrne. I'm

1 the Senior Director of Regulatory Affairs for Ameren  
2 Missouri, and I'd like to thank the Chairman for  
3 showing up to listen some comments that maybe aren't  
4 exactly consistent with his views on things. But I  
5 think -- I really appreciate your willingness to come  
6 out and discuss these issues in person. And I think --  
7 I think that will help the Commission have the best  
8 decision possible. With that having been said, I'm  
9 probably going to say some things that you don't agree  
10 with.

11 CHAIRMAN HALL: I'm used to that.

12 MR. BYRNE: I -- I guess we -- we do support  
13 changes to the rule, basically, in three areas as I  
14 think as our comments and maybe Mr. Lowery said. We  
15 support -- including the fact that under the Stop  
16 Aquila in Cass County decisions. You've got to get  
17 certificate for a generating plant located in Missouri.  
18 And that wasn't -- that isn't clear in the existing  
19 rule. That needs to be clear in the existing rule to  
20 comply with Stop Aquila in Cass County.

21 We also agree there's some other relatively  
22 minor clarifications that should be done. And then,  
23 also, thirdly, incorporating the changes from Senate  
24 Bill 564 is a good idea.

25 But beyond that we think the changes that are



1 proposed in this are really increasing the scope of  
2 what's covered by certificate beyond what's been --  
3 what's been considered by the Commission over the last  
4 100 years. I think one thing that gives me a little  
5 bit of a comfort is Ms. Dietrich early on said, you  
6 know, everything was sort of put into the draft rule,  
7 because the thought is maybe to stimulate discussion or  
8 maybe the thought is there's some legal requirements  
9 that if you don't put it in the draft rule, you can't  
10 adopt it. So I hope that's the case. I hope a lot of  
11 these provisions were put in there just to stimulate  
12 discussion. And, of course, if that was the purpose,  
13 it's been very successful.

14 But I guess -- and I'm going last. I don't  
15 want to repeat things that everybody else has said, but  
16 there's three problems we see with the law. One -- or  
17 the proposed rule, and I'm addressing the proposed  
18 rule. I know Staff made some changes here on the fly  
19 that have been addressed and it improves it a little  
20 bit, but it doesn't -- I don't think it gets to the  
21 heart of the problem that we see.

22 I guess the three problems we see is we think  
23 it's unlawful and inconsistent with Section with  
24 393.170. We think there's a whole bunch of practical  
25 problems that would be caused by adding all these

1 different circumstances where you have to get a  
2 certificate. And we also think it's unnecessary, you  
3 know -- Mr. Chairman, you've talked about the pol-- you  
4 know, protecting the public interest and the public  
5 policy considerations. Those are really important, but  
6 I guess, we think there's a bunch of other ways -- a  
7 bunch of other vehicles besides the certificate rule  
8 that give the Commission authority to fully protect the  
9 public interest.

10 So let me just -- this is the one you're  
11 going to hate the worst. Unlawful. I just want to  
12 briefly touch base on why we think it's unlawful.  
13 Again, as everyone -- other people have said, the  
14 Commission's a creature of statute. It's only given  
15 the powers that are in the statutes, no more and no  
16 less. And the words in Missouri statutes are to be  
17 given their plain and ordinary meaning, dictionary  
18 definitions.

19 And so on Subsection 1, what the authority of  
20 the Commission has is to issue a certificate before the  
21 utility begins construction of a gas plant, electric  
22 plant, water system, or sewer system. And to our mind,  
23 the things that are included in this rule are not  
24 beginning construction of an electric plant. If a  
25 plant's capacity is expanded or contracted, that's not

1 beginning construction of a plant. If a -- if  
2 emissions are increased or decreased, that's not  
3 beginning construction of a plant. If -- if you  
4 purchase a plant, you are not beginning construction of  
5 a plant. If you build substations or transmission  
6 facilities, and maybe that's not an issue given the  
7 Staff's amendment, but, again, you're not -- you're not  
8 beginning construction of an electric plant.

9 You know -- and I think --

10 CHAIRMAN HALL: Let's stay there for a  
11 second.

12 MR. BYRNE: Sure.

13 CHAIRMAN HALL: So you would say that adding  
14 a smokestack on a facility is not adding new plant?

15 MR. BYRNE: It's not beginning construction  
16 of an electric plant. It's not --

17 CHAIRMAN HALL: Why would it not be --

18 MR. BYRNE: It puts the words --

19 CHAIRMAN HALL: Why would it not be beginning  
20 construction of new plant? It's a new smokestack.

21 MR. BYRNE: If you look at the words in the  
22 statute, and you've got to -- I mean, it's a -- what is  
23 says is: Beginning -- let me go back to it.

24 It says -- it says beginning construction of  
25 "a gas plant, electric plant --

1           CHAIRMAN HALL: Well, but -- but --

2           MR. BYRNE: -- water system or sewer system."

3           CHAIRMAN HALL: -- go look at what  
4 electric -- how electric plant is defined. Electric  
5 plant includes a new smokestack.

6           MR. BYRNE: I mean, I think this says that  
7 beginning construction of an electric plant. I think  
8 that's what -- I think that's what --

9           CHAIRMAN HALL: Well --

10          MR. BYRNE: -- Section 1 -- and, I mean,  
11 this -- that's -- I understand.

12          CHAIRMAN HALL: Yeah.

13          MR. BYRNE: That's the disagreement. I --  
14 I -- I -- I don't -- I'm not sure I'm going to be able  
15 to convince you of it, so -- so -- but I would like to  
16 at least, you know, put on the record what I think.

17          CHAIRMAN HALL: Okay.

18          MR. BYRNE: And, you know, the other thing  
19 is -- and, of course, other parties have -- have raised  
20 the issue that the -- the statutes and maybe even the  
21 Constitution suggest that the jurisdiction of the  
22 Public Service Commission is -- ought to be within the  
23 state and it really doesn't have the sighting authority  
24 over plants in other states, and I agree with that.

25                 And I think it's important -- I think it's

1 important, at least, that it's not just me and the  
2 other utilities that are saying this. I mean, that's  
3 the way all the -- all the Commissioners whose pictures  
4 line this room over the last 100 years have interpreted  
5 the statute that way. And I -- I -- you're right, I  
6 mean, I guess -- I guess, maybe over a 100 years they  
7 could have just decided not to use their authority, but  
8 it -- that doesn't --

9 CHAIRMAN HALL: Okay. I'm going to have bite  
10 on that one, too. Do you have a case where any one of  
11 the Commissioners voted on a decision that said that a  
12 plant to be constructed outside the State of Missouri  
13 is not subject to a CCN? Find a -- find me that  
14 decision by a Public Service Commission with one of  
15 those Commissioners.

16 MR. BYRNE: That's a -- that's a fair point.  
17 There isn't -- there isn't a section --

18 CHAIRMAN HALL: Okay. And so that means  
19 that -- that the issues was not brought forth to the  
20 Commission for a determination.

21 MR. BYRNE: I mean, the -- I can't say there  
22 was and I bet it wasn't, but the truth is all these  
23 plants were constructed outside the state and the  
24 Commission knew about them. And so maybe they --  
25 maybe -- it's possible they just dropped the ball, I

1 guess. But the --

2 CHAIRMAN HALL: The parties -- the parties  
3 dropped the ball in bringing it to the Commission, so  
4 the Commission didn't have the opportunity to exert its  
5 authority over those.

6 MR. BYRNE: I mean, like, for example, when  
7 the Wolfe Creek generating plant was built, there was a  
8 huge construction audit that went on. The Commission  
9 was deeply involved in that -- in that project. And  
10 so, you're right, no one -- no one brought the  
11 certificate before them, but they -- they clearly knew  
12 that was going on and to my mind if they though they  
13 had certificate authority, I think they would have said  
14 something, but --

15 MR. FISCHER: Judge, if I can followup on  
16 that part. I think there might be an example you might  
17 want to look at, because at the time Wolfe Creek was  
18 being proposed, there is a -- a decision -- or I guess  
19 is a decision by the Commission requesting the company  
20 to come and say why aren't you building this in  
21 Missouri? We want it built in Missouri. And the  
22 decision was made to build it in Kansas without a  
23 certificate from the State of Missouri. I think there  
24 probably was some kind of sighting thing in Kansas,  
25 but. There is a case in our books. They read -- they

1 wanted the jobs here in Missouri and they wanted -- it  
2 would have required CCN, but anyway.

3 MR. LOWERY: That case Mr. Fischer is talking  
4 about was cited either by Staff in Dogwood's rulemaking  
5 petition docket or by Staff in the last rulemaking.  
6 And it was a formal investigatory docket the Commission  
7 did open and then the Commission closed. And it was  
8 about Wolfe Creek. So that issue did come before the  
9 Commission that Wolfe Creek was being built by Missouri  
10 utility to serve Missouri customers in Kansas and the  
11 Commission did not proceed with any kind of proceeding.

12 MR. BYRNE: I guess let me move on to my  
13 second point, which might be a little less  
14 controversial than the legal issue, which is the  
15 practical problems. We think there's some pretty  
16 significant practical problems.

17 First of all, the number of certificates  
18 is -- and maybe it's less with the changes that the  
19 Staff has proposed. But there's still going to be a  
20 bunch more certificates. The 51 that we said were --  
21 as Mr. Lowery said are generation and transmission,  
22 probably most of those even with the Staff changes  
23 would still be required. You know, there's a lot of  
24 vagueness and maybe the Staff changes address the  
25 vagueness, but a lot -- in the proposed rule, the word

1 "substantial" is used a lot; "material" is used a lot.  
2 Subjective phrases, and since the penalties for not  
3 getting a certificate are so high, if you need a  
4 certificate and you don't get one, that's really bad.  
5 So people are going to err on the side of -- if  
6 those -- if those words remain in the -- in the final  
7 rule, people are going to have to err on the side of  
8 asking for certificate anytime they think it might be  
9 warranted. And that's going to -- that's going to pose  
10 a bunch of costs and delays and uncertainties that  
11 probably, in our opinion at least, aren't warranted.

12 But I think -- but I think the worst  
13 practical problem is this problem some people have  
14 eluded to -- Stop Aquila, you know, the whole -- the  
15 really extreme thing about Stop Aquila is when they  
16 didn't get a certificate when they were supposed to,  
17 the Court said, You have to tear down the plant. So --  
18 so you know, they built the plant and -- and they were  
19 faced with an injunction that the Court of Appeals, you  
20 know, sustained were they had to tear down the plant.  
21 And the only reason they didn't have to tear down that  
22 plant is because the legislative acted and issued some  
23 special legislation.

24 So if we were -- if we're supposed to get  
25 certificates for all these things and we didn't do it,



1 if they were supposed to get a certificate for the  
2 Wolfe Creek plant and they didn't do it, do they have  
3 to tear down the Wolfe Creek plant? Do we have to tear  
4 down facilities outside the jurisdiction?

5 CHAIRMAN HALL: So it's your legal analysis  
6 that this rule would be retroactive?

7 MR. BYRNE: Well, the rule doesn't create the  
8 right -- the rule can't create the obligation to get a  
9 certificate, only the statute can. So the statute --

10 CHAIRMAN HALL: So then --

11 MR. BYRNE: The statutes been in effect since  
12 1913, so if we need a certificate now, we needed every  
13 since 1913. The Commission can't expand its  
14 jurisdiction to issue certificates. All it's doing is  
15 interpreting the statute.

16 CHAIRMAN HALL: Nor can -- nor can in a  
17 rulemaking it retroactively change the process for  
18 getting a CCN.

19 MR. BYRNE: Right. I mean, no matter -- put  
20 it this way: No matter what this rulemaking says,  
21 either we needed a certificate or we didn't. This  
22 rulemaking can't change when you need a certificate,  
23 only the statute can.

24 CHAIRMAN HALL: Okay. So then I don't  
25 understand your concern.

1           MR. BYRNE: Well, if the Commission -- if the  
2 Commission were to enact this rule and -- you know, I  
3 guess that means as a practical matter -- and if the  
4 Commission was right -- let's say the Commission was  
5 right and we needed a certificate for out-of-state  
6 facilities, contrary to what's happened for the last  
7 100 years, then I think that raises the risk that  
8 you're going to have to tear down those facilities, and  
9 that's a -- that's a pretty bad -- that's a pretty bad  
10 thing to have.

11           CHAIRMAN HALL: So you don't think it's  
12 possible that this rule could be given just perspective  
13 application?

14           MR. BYRNE: I do not. I think -- I think the  
15 requirement to get a certificate is -- is in statute,  
16 not in the rule. So, no. As Mr. Lowery said, it's not  
17 in 2018 all of a sudden you need a certificate for  
18 something that you didn't used to need a certificate.  
19 If you need a certificate in 2018, you always needed a  
20 certificate.

21           CHAIRMAN HALL: I'll be interested in  
22 Mr. Thompson's reaction to that argument.

23           MR. BYRNE: So, anyway, I think -- I think  
24 that's a big practical problem. I mean, look. Even  
25 if -- even if you just looked at the emission. Ameren

1 Missouri has over the last 30 years we have  
2 significantly reduced our emissions of our coal-fired  
3 power plants. We've put a \$700,000,000 scrubber on the  
4 soot plant. We transformed all of our coal-fired  
5 plants to use low sulfur powder river basin coal, so  
6 that was a significant retrofit of every coal-fired  
7 plant that we had. If we needed certificates to do all  
8 that, you know, I don't know what's going to happen  
9 with those plants. So -- and I -- I'm sure of the  
10 utility --

11 CHAIRMAN HALL: So are you suggesting that  
12 all of those retrofits cost more than 10 percent of the  
13 company's rate base?

14 MR. BYRNE: I don't know. The temp-- I mean,  
15 I don't know. It depends on -- I mean, this is a new  
16 thing we just heard today. I don't really with the  
17 10 percent --

18 CHAIRMAN HALL: It's not a new thing. It's  
19 been in the proposed rule, the 10 percent figure.

20 MR. BYRNE: Okay. I don't -- I don't know  
21 off the top of my head, so --

22 CHAIRMAN HALL: Okay.

23 MR. BYRNE: And I guess the final point I'd  
24 like to make, is I don't think it's necessary for you  
25 guys to do this from a public policy standpoint. You

1 know, people have talked about the IRP and I think  
2 that's a years' long process, the IRP is, where all the  
3 resource planning decisions of the utility are  
4 consider; it's a stakeholder-driven process, everybody  
5 gets to participate. And it results in an exhaustive  
6 analysis of all the resource planning decisions the  
7 utility makes. Of course, as other people have pointed  
8 out, you can 100 percent protect ratepayers in a rate  
9 case from paying for anything that's imprudently  
10 incurred. So -- and, of course, the Commission does  
11 that, but there's other -- there's other opportunities.  
12 The Commission has construction audits sometimes.  
13 Like, sometimes if there's a big project that the  
14 Commission wants to closely examine -- I know, in the  
15 case of our soot scrubber they had a construction  
16 audit. They had a construction audit for the nuclear  
17 plants. If you've got a -- if you've got a project  
18 that's giving you concern, you can initiate a  
19 construction audit or some other kind of investigation.  
20 You have authority to do that.

21           You can -- you can require reporting,  
22 different kinds of reporting that gives you  
23 information. You can file a complaint against the  
24 utility. Those are all -- I mean, we're all -- I guess  
25 to my mind we're not asking you to abdicate your

1 authority to provide oversight and protect the public,  
2 but we think all those other vehicles give you the  
3 power to do that, and there's no need to expand what's  
4 in the -- what -- you know, what a 100 years of  
5 precedent -- or, you know, Commission precedent have  
6 sort of interpreted what the -- what the certificate  
7 statute allows.

8 So, thank you for listening to me. I'm sorry  
9 I don't completely agree with you.

10 JUDGE WOODRUFF: That's all the people that  
11 who filed prefiled documents comments. Is there anyone  
12 in the room who would like to make a comment?

13 MR. FISCHER: Judge, I might just add a data  
14 point. On the Cass County decision, you might look at  
15 that to Mr. Byrne's concern about if we didn't have a  
16 CCN in the past, what would be the effect of that, if  
17 it as always required. That particular decision found  
18 that the statute authorizing the Commission to grand  
19 permission and approval for construction of an electric  
20 plant did not confer authority on the PSC to grant  
21 construction and approval after the plant had been  
22 built and did not confer authority on the Commission to  
23 grand post-hoc construction approval.

24 That's, I think, the concern that would be  
25 there -- is that even today from a perspective basis we

1 can't correct it. If that had been required for  
2 100 years, we wouldn't be able to go ahead and now and  
3 ask the Commission to approve that.

4 CHAIRMAN HALL: So then doesn't that decision  
5 take care of Mr. Byrne's concern?

6 MR. FISCHER: No. I think it goes to his  
7 concern that if the statute had required a CCN for all  
8 this time and the Commissioners for all these years had  
9 not granted CCNs for a particular plant, you couldn't  
10 now come forward and say, Please provide the CCN on a  
11 perspective basis.

12 Under Stop Aquila, the Court said you've got  
13 to tear it down because you didn't get authority. And  
14 it was only because of legislature stepped in and said,  
15 the Courts that said you can't get it on a perspective  
16 basis, but without that special legislation, they would  
17 have had a real problem with Safe Harbor.

18 MR. LOWERY: Consider this: Consider if the  
19 statute required that Ameren Missouri get a CCN for the  
20 Callaway nuclear plant before it began construction and  
21 that the Commission hold a hear roughly  
22 contemporaneously with that pro-- with the  
23 consideration of that project and made a decision, if  
24 the statute required that, then it always required it.  
25 And if somebody tomorrow says, Well, apparently, it

1 always required it because the Commission has the  
2 authority to do this, then somebody could make the  
3 argument, Go tear down the Callaway plant, and we can't  
4 come to you and ask you to give us post-hoc permission  
5 that we -- that we apparently needed all along.

6 CHAIRMAN HALL: Well, I guess I don't  
7 understand. If the statute required it -- the statute  
8 required is, so anybody at any time could come forward  
9 with that complaint. What we do in this rulemaking  
10 doesn't affect that one iota.

11 MR. LOWERY: But if you -- but if it required  
12 it -- but what you're saying is -- you're saying the  
13 statute does require it, because you're saying you have  
14 the authority under this rulemaking to require the  
15 certificate.

16 CHAIRMAN HALL: And that doesn't affect  
17 whether or not someone comes forward or what a court  
18 would ultimately do with that. I guess my point -- and  
19 maybe this goes back to the discussion we had -- we had  
20 earlier. I think the statute give us a lot more  
21 authority than -- than we had been exerting. And I  
22 think that is -- I don't think there's anything wrong  
23 with that. I think we could go a lot further under this  
24 statute, but we're -- we're not. We have not  
25 historically. What is being proposed here, I would

1 suggest is -- is a -- is a modest expansion of -- of --  
2 of authority that exists under the statute. But that  
3 in no way affects whether or not a CCN was -- was  
4 required for a projects that began construction 10, 20,  
5 30, 40 years ago. Either the statute required it or  
6 the statute didn't.

7 MR. LOWERY: Yeah. I guess we're just going  
8 to have to disagree. The statute says prior -- before  
9 beginning construction the utility must do X, Y, and Z.  
10 And the only authority to -- what you're calling an  
11 expansion of the --

12 CHAIRMAN HALL: A modest expansion.

13 MR. LOWERY: -- authority -- a modest  
14 expansion -- my apologies. The only authority you have  
15 is under that statute.

16 CHAIRMAN HALL: I would agree with that.

17 MR. BYRNE: I'd like to add one more point.  
18 We did get a certificate for the Callaway nuclear plant  
19 so there's no circumstance that we're going to have to  
20 tear down the Callaway plant.

21 MR. LOWERY: Bad example.

22 CHAIRMAN HALL: Mr. Thompson, I'd like to  
23 hear your thoughts on any of the issues raise here.

24 MR. THOMPSON: Thank you, Mr. Chairman. I  
25 have -- I have a few thought for whatever they're



1     worth. I've enjoyed listening to all the comments of  
2     very able counsel and interested stakeholders today.

3             First of all, I -- I agree completely with  
4     what you just said about how the statute confers more  
5     authority than the Commission has exerted. And whether  
6     or not previous constructions by utilities company may  
7     or may not have required a CCN, that horse is out of  
8     the barn. If they didn't have one and they did  
9     construct, then, yes, that can be challenged I think by  
10    someone at any time.

11            I will just point out with respect to the  
12    Peculiar situation that there was more involved there,  
13    than simply the lack of the CCN. There was also the  
14    fact that it was built in complete violation of the  
15    local land use plan and the local zoning arrangements.  
16    And I think that had a lot to do with the fact that  
17    coupled with the lack of certificate, prior to breaking  
18    ground, had a lot to do with Judge Dan Duran ordering  
19    that it be torn down. And has been observed, in fact,  
20    it was not torn down. It did not happen.

21            What we did learn form the situation in  
22    Peculiar, is that you have to go to the statute and  
23    read the statute. We can't simply rest easy in our  
24    understanding of all the cases and what has or has not  
25    already occurred that that's going to tell us exactly

1    what can be done or what can't be done in the future.  
2    You have to read the statute and apply it to the facts  
3    in front of you to see what can or cannot happen.

4               As you pointed out, again, Mr. Chairman,  
5    where you have a definition in the law that, then you  
6    are supposed to use the definition that the law  
7    provides. And the definition of electric plant is  
8    broad enough that every single item that is used in  
9    providing electricity technically could require a  
10   certificate of convenience and necessity. Now, there  
11   may be prudential and practical reasons that the  
12   Commission does not choose to extend its reach that  
13   far, but that's not because the statute would not  
14   support it, it simply because it might be impractical  
15   or too costly and the like.

16              And speaking of costly, I don't think that  
17   this first Section 393.170.1 -- I don't know why we're  
18   continually being told it has to do with sighting. The  
19   statute -- the jurisprudence that I have found with  
20   respect to what exactly is means talks about whether or  
21   not a proposed construction will provide a benefit that  
22   is worth the cost. And that's an economic  
23   determination, that's not a sighting determination.

24              So convenient for the public has to do with  
25   is it going to provide a benefit that is worth the

1 cost. That's money. That's economic. Sighting is  
2 perhaps part of it, but I think the primary thrust has  
3 always been economic.

4 And secondly the Courts read this Section to  
5 provide to two -- two different certificate  
6 authorities. The first one having to do with  
7 construction. The second one having to do with the  
8 exercise of a right or privilege under a franchise.

9 What exactly does that mean? I come to this  
10 from a slightly different direction than the other  
11 lawyers in the room, because they do primarily, as far  
12 as I know, electrical work. Well, being on the Staff,  
13 I do electrical work; I also do gas work and steam heat  
14 work, and most importantly water and sewer work. They  
15 may not know that we are constantly faced with the  
16 discovery of road, water and sewer operations where  
17 someone is selling water or selling sewer service in  
18 the State of Missouri with no certificate. As you know  
19 those are activities that require certification  
20 under -- under many circumstances just like the sale of  
21 electricity. And in those cases, we do grant  
22 certificates to those newly discovered water and sewer  
23 operations. Clearly, we can't be granting a  
24 certificate under 393.170.1 because once the  
25 installation is constructed our authority is gone. But

1 we are granting certificate 393.170.2.

2 Again, in understanding what the Section  
3 means, we have to look to other provisions of the law.  
4 And I would direct you to 386.020.15, Electrical  
5 Corporation, which discusses several different  
6 relationships that an entity can have to an electric  
7 plant that makes it subject to regulation. And those  
8 would include owning, operating, controlling, and  
9 managing. So if you do any of those four things with  
10 respect to electric plant and you are also, as we know  
11 from Supreme Court decisions, holding yourself out as  
12 willing to sell power to the general public, then, yes,  
13 you need a certificate. And that has nothing to do  
14 with construction. That has to do with exercising a  
15 right or privilege under a franchise.

16 So when we talk about changing the word  
17 "acquisition" to operation, what Ms. Dietrich was  
18 referring to was looking at the authority granted to  
19 the Commission under 393.170.2, to authorize someone to  
20 enter into that relationship with electric plant for  
21 the purpose of selling electricity to the public.

22 And that brings me to 386.250, which -- which  
23 was argued as limiting the Commission's jurisdiction  
24 because it talks about the manufacture of electricity  
25 for light, heat, and power with the State. Well, yes,

1 it does say that. But it also speaks of the sale or  
2 distribution of electricity within the State.

3 Now, when one of these company builds or buys  
4 a generating plant in an adjacent state for the purpose  
5 of bringing that power into Missouri and selling or  
6 distributing it to the people of Missouri, that is  
7 squarely within the language and intendments of  
8 386.250. It would be the sale or distribution of  
9 electricity for light, heat, and power within the  
10 state. And the Commission clearly has jurisdiction  
11 over that.

12 And this is consistent with Staff's reports  
13 that were provided in the fairly recent cases of Great  
14 Plains Energy's purposed acquisition of Westar and  
15 Spire's several acquisitions in Alabama and elsewhere,  
16 where the Staff suggest that the Commission has  
17 jurisdiction over those mergers, despite the fact that  
18 there are mergers outside of Missouri, or should I say  
19 of a Missouri entity with an entity outside of  
20 Missouri.

21 I think we get some guidance from -- from the  
22 world of taxation where the rule is that a state may  
23 tax the income of its domiciliary wherever earned --  
24 wherever earned. If I own a business in Florida and I  
25 drive income from a business in Florida, but I am a

1 Missouri domiciliary, guess what? I owe Missouri taxes  
2 on my Florida income. Missouri may give me a credit  
3 for taxes I pay elsewhere, but it doesn't have to. And  
4 no one has ever suggested that that's a contravention  
5 of a dormant commerce clause. It is not.

6 So the extraterritorial scope over projects  
7 that are going to result in electricity sold into  
8 Missouri or distributed into Missouri, that raises no  
9 questions and it's squarely within the statute as I  
10 read it, Mr. Chairman.

11 Finally, who says the word "construct" cannot  
12 extend to and encompass reconstructing? I think that  
13 it can and I think that it is a reasonable reading of  
14 that word and of the intention behind 393.170.1 and I  
15 would be happy to argue that in any court.

16 Those are the remarks that I have. Thank  
17 you.

18 JUDGE WOODRUFF: Mr. Chairman, anything  
19 further?

20 CHAIRMAN HALL: I have no questions. Thank  
21 you.

22 JUDGE WOODRUFF: All right. Well, thank you  
23 all for coming today. We've had a productive two  
24 hours. And with that we are adjourned.

25 (Off the record.)

CERTIFICATE

I, Chevon D. McFadden, a Certified Verbatim Reporter, Certified Court Reporter, CCR No. 1399, the officer before whom the foregoing hearing was taken, do hereby certify that the foregoing hearing was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

*Chevon D McFadden*

Chevon D. McFadden, CVR, CCR No. 1399

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