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BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI  
TRANSCRIPT OF PROCEEDINGS  
DISCOVERY CONFERENCE

City of Fulton, Hannibal )  
Board of Public Works, )  
Kirkwood Electric, City of )  
Marceline, and City of New )  
Madrid, )  
Complainants, ) Case No.: EC-2026-0156  
v. )  
Union Electric Company d/b/a )  
Ameren Missouri, )  
Respondent. )

FRIDAY, APRIL 3, 2026  
8:30 A.m.

Jefferson City, MO  
via WebEx

VOLUME 1

JOHN CLARK, Presiding  
SENIOR REGULATORY LAW JUDGE

KAYLA HAHN, Chair,  
MAIDA J. COLEMAN,  
GLEN KOLKMEYER,  
JOHN MITCHELL,  
COMMISSIONERS

Transcribed by:  
Vivekanandan Kasiraj

1 JUDGE CLARK: Today's date is April 3rd  
2 of 2026, and the current time is 8:30 a.m. Now, the  
3 Commission has set aside this time today for a discovery  
4 conference in the case captioned as City of Fulton,  
5 Hannibal Board of Public Works, Kirkwood Electric, City  
6 of Marceline, and the City of Madrid (sic), complainants  
7 v. Union Electric Company doing business as Ameren  
8 Missouri. And that is case number EC-2026-0156.

9 My name is John Clark. I'm the  
10 regulatory law judge presiding over this matter. I'm  
11 going to ask the parties to enter their appearance for  
12 the record. I am going to state that the way our  
13 practice for these now is not to have a court reporter  
14 present, but this will be recorded and then sent out to  
15 be transcribed. And that transcription will then be put  
16 into the case and EFIS.

17 All right. On behalf of the  
18 municipalities?

19 MS. WHIPPLE: Yes, Your Honor. Peggy  
20 Whipple of the Healy Law Offices, and Jacqueline Whipple  
21 of Dentons' US LLP. And our contact information is in  
22 the record, if that's sufficient for these purposes.  
23 Otherwise, I'm happy to rattle it off.

24 JUDGE CLARK: No, that is plenty  
25 sufficient for these purposes.

1 MS. WHIPPLE: Thank you.

2 JUDGE CLARK: On behalf of Ameren  
3 Missouri?

4 MR. LOWERY: Thank you, Judge. James  
5 Lowery and Michael Tripp, JBL Law, on behalf of Ameren  
6 Missouri. Our contact information is also in the  
7 record.

8 JUDGE CLARK: On behalf of the Commission  
9 staff?

10 MR. PRINGLE: Yes, Judge. Travis  
11 Pringle, Ray Cunneen, and Mark Johnson. Staff's contact  
12 information is also already in the record.

13 JUDGE CLARK: Very much. The Office of  
14 the Public Counsel asked to be excused, but I believe  
15 they're here. Is that correct?

16 MR. WILLIAMS: That is correct, although  
17 I don't anticipate actively participating. My name is  
18 Nathan Williams appearing on behalf of The Office of  
19 Public Counsel of the public, P.O. Box 2230, Jefferson  
20 City, Missouri 65102.

21 JUDGE CLARK: Thank you, Mr. Williams.  
22 Okay. Just kind of briefly recite what's happened to  
23 date. The municipalities, and you don't mind if I refer  
24 to them as municipalities, correct?

25 MS. WHIPPLE: No, that's fine, Your

1 Honor.

2 JUDGE CLARK: Okay. The municipalities  
3 filed a complaint against Ameren Missouri. And then an  
4 answer was received from Ameren Missouri that was  
5 followed up with a motion asking the Commission to grant  
6 summary determination in favor of the municipalities.  
7 And my understanding after that is that Ameren had  
8 issued a number of DRs, I think a handful, about 10 to  
9 13 for each municipality, that were objected to.

10 And then Ameren -- then -- and I  
11 apologize, I was out of town on vacation, so Judge  
12 Pridgen had to fill in for me, and that's why this was  
13 set over. But my understanding is that the parties had  
14 agreed to expeditiously file response and reply, which  
15 is what happened. And here we are today.

16 So I'm, kind of, just going to give  
17 everybody a brief chance to, kind of, lay out their  
18 perspective, and then I may have some questions. So I'm  
19 going to start. Since it is your motion to stay  
20 discovery, I'll start with municipalities.

21 MS. WHIPPLE: Thank you, Your Honor.  
22 And, and yes, most certainly, because, Your Honor, has  
23 allowed us to fully brief it. I'll -- I will just  
24 really hit the high points and then stand ready to  
25 answer any questions you may have. Yes, we have a

1 motion for summary determination pending. And the  
2 deadline for Ameren's opposition to that is April 13th.

3 In the meantime, Ameren has served 13  
4 discovery requests to each of my five municipalities'  
5 clients. And Ameren -- as, as I even set forth in the  
6 reply brief that we filed yesterday morning, Ameren has  
7 honestly and fully admitted that the scope and intent of  
8 those discovery requests are not to respond to any of  
9 the 32 material undisputed facts that are within the  
10 handing's motion for summary determination, but are  
11 rather to explore causation and the calculation of  
12 damages.

13 And our, our motion to stay discovery is  
14 really one of efficiency and the conservation of time  
15 and resources according to the law, both case law, the  
16 Commission's rule, and the Missouri Rules of Civil  
17 Procedure. It is our intent and, of course, Ameren  
18 counsel and I talked -- even talked about this before we  
19 filed this complaint last December. It is our intent to  
20 put before this commission the issues that this  
21 commission will rule upon in its exclusive primary  
22 jurisdiction.

23 There is some lack of understanding, if,  
24 if you will, Your Honor, about how much of this case the  
25 Commission will be comfortable exercising its

1 jurisdiction over. Because we all know, of course, that  
2 the Commission is a creature of statute and it cannot  
3 issue or, or make money awards.

4 And so what we've done with this motion  
5 for summary determination deliberately is we have teed  
6 up the seven issues that we all understand are  
7 comfortably within the Commission's jurisdiction.

8 The thinking was that -- of course, I  
9 have shared with Ameren counsel since the beginning.  
10 The thinking was that we would then allow the Commission  
11 to rule on those clearly jurisdictional issues. And  
12 then perhaps the Commission would be inclined to  
13 indicate to us what remaining issues of this case it  
14 would comfortably exert jurisdiction over.

15 The reason that we even have this  
16 concern, Your Honor, comes up from the securitization  
17 case, number EF-2024-0021, where multiple parties,  
18 apparently my clients were not parties to that case.  
19 But of course we have the report in order.

20 Multiple parties had put before the  
21 Commission issues for determination, specifically  
22 whether or not Ameren's decisions about the way it  
23 operated the Rush Island plant and whether or not those  
24 were prudent in, you know, the timing of, shall we say,  
25 not seeking permits or, or, or continuing to operate the

1 plant without certain air quality controls.

2 Several parties asked the Commission to  
3 rule on the prudence of those issues, and the  
4 Commission, in its report and order at the conclusion of  
5 the case, declined to do that and, you know, articulated  
6 that it was beyond its jurisdiction.

7 And so since we've got a case here where  
8 we've got a complaint for a violation of both the CCN  
9 and the tariff, everybody understands that the  
10 Commission has jurisdiction to say yes or no, Ameren  
11 violated the CCN and the tariff, but no one seems to  
12 have a clear understanding. I haven't found it in the  
13 law whether or not the Commission will wish to or be  
14 able to exercise its jurisdiction over the determination  
15 of the causation of the city's damages and the amount of  
16 the damages, or, or whether the Commission would rather  
17 have that go to a civil court.

18 And so, frankly, that's why we are where  
19 we are. It's even why we were able, when we filed the  
20 complaint, to ask for expedited treatment. Certainly,  
21 if we rule on this, get a ruling on, you know, within a  
22 month after Ameren's opposition, later this month; if we  
23 get a ruling in May, we will most certainly be able to  
24 resolve this case before the Commission by the requested  
25 deadline, which was the end of June.

1                   And so that, that was our thinking all  
2 along. That's the strategy that we shared with Ameren  
3 last December before we filed the complaint. Getting  
4 bogged down now in voluminous discovery requests that  
5 have nothing to do with the 32 undisputed material facts  
6 in the determination motion, will definitely slow this  
7 down and possibly even waste resources if in the end,  
8 the Commission says that it is not going to exercise  
9 jurisdiction over every part of this case. And so  
10 that's why we are where we are, Your Honor.

11                   JUDGE CLARK: Thank you, Ameren Missouri?

12                   MR. LOWERY: Judge, the problem we have  
13 here is a problem of the municipalities' making, because  
14 while they claim that these 32 -- they list 32 facts  
15 that they claim are undisputed material facts. The  
16 problem is there are seven of them that are not  
17 undisputed material facts. And all seven of them, in  
18 one form or fashion, go to the causation question.

19                   Number 26 and 27 both claim that but for  
20 causation of the price separation, first of the -- of  
21 the load clearing -- the load clearing requirement  
22 shortage, the LCR shortage, which they refer to as  
23 capacity shortage.

24                   26 and 27 claim that, that but for  
25 causation has been determined by MISO and that that's an

1 undisputed material fact. That is not true. We did  
2 dispute it in our answer, and we will do intend to  
3 dispute it in our response to the summer determination  
4 motion.

5           They also in, in number 28 claim that  
6 they are aggrieved. Well, aggrieved has to mean that  
7 they have been harmed by our actions or inactions that  
8 we have caused them harm. And then 29 to 31 of their  
9 undisputed material facts, which in fact are disputed,  
10 go to the question of whether or not these are the  
11 parties that have been harmed by the conduct that they  
12 claim that we engaged in.

13           I will agree with one thing that, that I  
14 guess is implied or said by Ms. Whipple this morning,  
15 that was mentioned in the reply filed yesterday. It's  
16 true that the word "causation" does not appear in their  
17 summary determination motion, but they rely on these so  
18 called undisputed material facts, which are not  
19 undisputed, by the way. They rely on them for their  
20 motion. They say that all 32 of those material facts  
21 are material necessary to be found in order to grant  
22 them summary determination.

23           Well, if some of those facts are  
24 undisputed or some of those facts are disputed, then,  
25 then summary determination wouldn't lie. But those

1 facts -- those facts are dealing with causation. They  
2 have injected causation into the summary determination  
3 motion.

4 If you also look at page 17 of their  
5 motion, they specifically claim that our aggravation of  
6 the harm resulting from these violations aggrieved them.  
7 Well, in other words, caused them harm resulting from  
8 and caused by are the same thing. And they say that  
9 what we did, they, they, they have damages that resulted  
10 from our actions. Well, that's causation, there's no  
11 difference. It's form over substance at this point.

12 So since they are resting their motion on  
13 facts that deal with causation that they claim are  
14 undisputed, that aren't undisputed, they are in fact or  
15 they certainly appear to be seeking a determination via  
16 summary determination on the causation question. The  
17 other thing that you need to keep in mind is their  
18 primary motion is for a determination on the pleadings.

19 Well, paragraph 7 and 8 of the prayer in  
20 the complaint and other provisions of the complaint  
21 itself specifically asked this commission to find that  
22 we caused the -- what they call -- capacity shortfall  
23 and that we caused their damages, that we caused the  
24 price separation because of that capacity shortfall.  
25 And those are requests on their part that you find

1 causation.

2           So if there's a lack of clarity about  
3 what their motion is asking for or isn't asking for,  
4 it's of their own making. If, if, if they are -- if  
5 what they really are asking for is a partial to summary  
6 determination on two questions, the question of whether  
7 or not we violated the 1971 CCN order and whether or not  
8 we violated Tariff Sheet Number 102 and whether or not  
9 it applies, and so on. If that's all they were asking  
10 for, then most of our discovery, I agree, would be moot.  
11 But that's not all that they're asking for by the terms  
12 of their very own motion.

13           JUDGE CLARK: Thank you, Mr. Lowery.  
14 While this dispute -- this discovery dispute is between  
15 Ameren and the municipalities, we do have other parties  
16 here, and I'm going to allow them to weigh in.

17           Does staff have anything that they would  
18 like to say in regard to this?

19           MR. PRINGLE: Nothing at this time,  
20 Judge. Thank you.

21           JUDGE CLARK: Okay. And Mr. Williams,  
22 you indicated that you did not think you would be  
23 participating, but I am still going to give you the  
24 opportunity.

25           MR. WILLIAMS: Thank you. I have nothing

1 -- no input at this point. Thank you.

2 JUDGE CLARK: Thank you, Mr. Williams.

3 Well, then we're going to jump right into my questions.

4 And the first question is one you've kind  
5 of talked about, but I really don't have an answer to,  
6 and I'm going to ask the municipalities. Is the scope  
7 of the summary determination motion narrower than the  
8 scope of your complaint?

9 MS. WHIPPLE: Yes, Your Honor.

10 JUDGE CLARK: Is it restricted to those  
11 two questions that Mr. Lowery said, whether or not it  
12 violated that particular order and that particular  
13 tariff sheet?

14 MS. WHIPPLE: No, Your Honor. The scope  
15 of the motion for summary determination is seven very  
16 specifically set forward issues that appear on pages 1  
17 and 2 of the motion. And maybe this will help answer  
18 your question and also speak to something Mr. Lowery  
19 said. It is true that the statements of undisputed  
20 material fact numbered 25 through 32, according to the  
21 law we have argued in the motion, would be undisputed by  
22 operation of various laws as cited.

23 Now, of course, Ameren, in its response  
24 that it's opposition that it will file to this motion on  
25 the 13th of this month, it can argue that that law

1 doesn't apply or that, you know, there's some exception  
2 to that law or whatever. But then those issues will  
3 also be fairly teed up for the Commission to rule one  
4 way or the other.

5           And obviously, if the Commission rules in  
6 the favor of my clients on all seven issues, that would  
7 resolve all seven of those issues that are set forth on  
8 pages 1 and 2 of the motion. But at the very least,  
9 what I hear Ameren saying is that we ought to be able to  
10 resolve certainly the first one, two, three, four; five  
11 issues that are set forth in the motion.

12           Ameren is subject to the jurisdiction of  
13 the Commission. It violated its tariff and its CCN. So  
14 at the very least, we can resolve five of the seven  
15 issues that the cities have put forward in this motion.  
16 And honestly, my hope is, Your Honor, for everyone's  
17 sake, the Commission itself, as well as staff and OPC  
18 and both parties, perhaps, in issuing its order in, in,  
19 you know, ruling on the pending motion for  
20 determination, perhaps the Commission might see fit to  
21 give us some guidance as to what it thinks it wishes to  
22 do regarding its jurisdiction for the remaining issues  
23 in the complaint.

24           JUDGE CLARK: Okay. Thank you. And  
25 we're going to show how little I know about certain

1 subjects here. I am somewhat confused by the affidavit  
2 requirement that you are asserting is necessary for them  
3 -- for Ameren to seek discovery for a summary  
4 determination motion.

5 MS. WHIPPLE: Yes, according to the case  
6 law that I have cited in my motion to compel -- I'm  
7 sorry, to stay. And then in, in my reply in support of  
8 that motion to stay, when there -- and this is case law  
9 for Rule 74.04, I did not find any -- and I'm being  
10 candid, of course, I did not find any case law specific  
11 to the Commission's rule on summary determination.

12 But regarding Rule 74.04, and we all  
13 know, of course, the civil rules govern as well, when  
14 there is a motion for summary judgment pending, and the  
15 defendant to that motion needs to serve discovery in  
16 order to reply to the pending motion, the defendant's  
17 counsel is supposed to submit an affidavit and explain  
18 what discovery is needed and why that particular  
19 discovery is needed in order to respond or oppose the  
20 alleged statements of material fact.

21 And all of that case law is set forth in  
22 my motion to stay and in my reply motion. And Ameren's  
23 opposition did not -- in my opinion, of course, as I set  
24 forth in the reply -- did not dispute any of that case  
25 law.

1 MR. LOWERY: Judge, may I address a  
2 couple of these questions before we get to --

3 JUDGE CLARK: I will give you an -- I  
4 will give you an opportunity to, Mr. Lowery, but please  
5 wait.

6 MR. LOWERY: Okay. Thank you.

7 JUDGE CLARK: I did not see anywhere in  
8 Rule 74, as a matter of fact, it seems to say a lot,  
9 with or without affidavit. I did not see a specific  
10 requirement for an affidavit. And as I indicated, this  
11 is not an area that I have extensively researched. So  
12 is there specific legal authority that is not case law  
13 requiring an affidavit to issue discovery for a summary  
14 determination motion?

15 MS. WHIPPLE: Yes, the case law that I've  
16 cited is referencing Missouri Civil Rule 74.04, and it's  
17 subsections F and G -- I'm sorry, E, F, and G.

18 JUDGE CLARK: Now, I read the -- I read  
19 the case because I was quite curious. And in the case,  
20 if I understand correctly, they were seeking -- the  
21 party seeking to, well, I'm just going to summarize  
22 this. The award for damages was exceeded by the  
23 attorney's fees in that case.

24 And they had been given a -- they'd  
25 requested an accounting, and they'd been given a ledger.

1 And that ledger laid out all the payments that had been  
2 made for legal expenses. And they said, that's not good  
3 enough, we want the canceled checks and other  
4 information.

5 MS. WHIPPLE: Yes.

6 JUDGE CLARK: And that was objected to as  
7 overly burdensome. And then it went to the court, and  
8 the court, among other things, said, because Anaconda  
9 had already been provided with an accounting report that  
10 identified all the payment for work.

11 MS. WHIPPLE: Yes.

12 JUDGE CLARK: So in that case, the  
13 discovery they were seeking was actually duplicative of  
14 discovery they had. And that --

15 MS. WHIPPLE: Yes. And you are -- I'm  
16 sorry. Go ahead.

17 JUDGE CLARK: No, you're fine. I had a  
18 secondary thought, so.

19 MS. WHIPPLE: That's okay. It's hard  
20 when it's remote. You know, there's no, no intent to  
21 talk over one another, but there's -- the little pause  
22 is difficult.

23 JUDGE CLARK: I, I, I like to try and  
24 keep these as informal as possible. Well, I've lost my  
25 thought. Go ahead.

1 MS. WHIPPLE: Well, I was -- I was, like  
2 you, I was going to go back to the Acoma development  
3 case. And I think the, the point you make is, is right  
4 on. I mean, in that case, the parties had fully briefed  
5 the summary judgment, and there was then a decision by  
6 the defending party saying, you know, even though we've  
7 already got evidence before the court in the --

8 As you know, Your Honor, when a defending  
9 party defends a motion for summary judgment and you deny  
10 or attempt to controvert each of the allegedly  
11 undisputed material facts, you can't just deny it by, by  
12 denying it when you've got a site to evidence, right?  
13 And so that had already happened, and that's how that  
14 ledger was already before the court.

15 And then the defending party came back  
16 and said, "Well, we, we need the underlying information  
17 what Your Honor just said, the invoices or canceled  
18 checks or whatever it was." And the court said, "No,  
19 I've already got it in front of me, the ledger, which  
20 gives me all the detail I need, and therefore, you don't  
21 need this additional discovery."

22 JUDGE CLARK: And that actually, kind of,  
23 I do remember what I was going to say now, because that  
24 dovetails into it nicely. And in that -- in that case,  
25 isn't it because what they're requesting is duplicative

1 that the affidavit needed to lay out why this was  
2 necessary or what more would be brought to the table?

3 MS. WHIPPLE: I don't know that the case  
4 answers that question, Your Honor. I don't see that it  
5 does. But perhaps what helps us here is that in the --  
6 in that Acoma case, neither of the parties were  
7 disputing or arguing with each other even, that the  
8 issue before the court was the fees and charges that  
9 were now being sought to be recovered. And so everybody  
10 agreed that the issue for which the discovery was being  
11 requested was indeed an issue presented in the motion  
12 for summary judgment that both parties had briefed.

13 Here we have Ameren admitting that the  
14 discovery it is requesting is not related to the  
15 statement of undisputed material facts that is in the  
16 pending motion for summary determination. And that is  
17 why we have objected. It may well be depending on how  
18 the court rules on the motion for summary determination.  
19 It may well be that down the road we must address  
20 Ameren's request to discover causation, calculation of  
21 damages. But that is not currently before the  
22 Commission as our case is different from the Acoma case.

23 JUDGE CLARK: Okay. Obviously, you filed  
24 a complaint and that initiated this case.

25 MS. WHIPPLE: Yes.

1 JUDGE CLARK: And once this case is  
2 running, it's running under that complaint with that.  
3 And the Missouri Scope of Discovery Rule says that in  
4 general, parties may obtain discovery regarding any  
5 matter, not privilege, that is relevant to the subject  
6 matter involved in the pending action. Isn't the action  
7 the overall case in this?

8 MS. WHIPPLE: The action is indeed the  
9 overall case. That is true. And both the Missouri Rule  
10 on Summary Judgment 74.04 and even this Commission's  
11 Rule on Summary Determination, both have -- as courts  
12 have said -- both have as part of their very purpose,  
13 the, the mechanism by which parties can narrow the  
14 issues in a pending case and resolve them more  
15 expeditiously than just, you know, all out warfare on  
16 absolutely everything through the -- through the body of  
17 the case.

18 And that's, of course, why even our  
19 Commission rule in subsequent in -- you know, talk about  
20 discovery as is necessary to permit a response to the  
21 motion for summary judgment. It's a bad public interest  
22 to be (indiscernible). And so I think, I mean, that's  
23 why you have summary judgment in the first place, right?  
24 Otherwise, every case would always go through a full  
25 trial and, you know, be ruled at the end, and there

1 would never be any kind of legal ruling to narrow issues  
2 until you put every single issue before the forum.

3 JUDGE CLARK: And, well, actually, I'm  
4 just going to move on for a second. I think that  
5 answers my question in regard to that. In your -- I'm  
6 going to bounce from that for my last question to you --  
7 in that -- I'm going to -- in the complaint, the motion  
8 for expedited treatment requests that the Commission  
9 resolve this by issuing an order no later than, is it  
10 June 30th, is that correct?

11 MS. WHIPPLE: Yes, that was our original  
12 request. Yes, Your Honor.

13 JUDGE CLARK: It says to prevent the  
14 collateral negative consequences of increased rates,  
15 depleted emergency reserves, curtailed service or  
16 maintenance, and downgrading by bond relating entities.  
17 And that's, that's, that's a statement. And so I'm, I'm  
18 unsure what's supporting that. Why is it -- what is  
19 going to happen that is going to cause these collateral  
20 negative consequences?

21 MS. WHIPPLE: Well, certainly, if we --  
22 if we get beyond the five to seven issues that are in  
23 the pending motion for summary judgment and the  
24 Commission tells us that, yes, it is going to exercise  
25 jurisdiction over the question of causation and

1 calculation of damages, then, of course, I will sit down  
2 with a joint procedural scheduling order to offer to  
3 Your Honor, and it will include, I'm sure, production of  
4 documents and discovery and that sort of thing.

5 And yes, some of my clients, you know,  
6 would then offer up evidence by way of documents or  
7 testimony that they have already, you know, raised rates  
8 in their cities. They've already suffered a reduction  
9 in, you know, the grading of their municipal bonds as a  
10 result.

11 And so that would -- that would all come  
12 in as evidence of damages. And yes, it would be  
13 discovered. We, we -- like I said, we may or may not be  
14 doing that before this commission because we, we need  
15 the Commission to tell us just how far it wants to exert  
16 its jurisdiction here, which we're open to, of course.

17 JUDGE CLARK: And that sort of answers my  
18 question. But not exactly. That doesn't, I mean, if  
19 these collateral consequences have already occurred, and  
20 Rush Island has been closed for quite a while now, I  
21 still don't understand the need for a June 30th, 2026,  
22 date.

23 MS. WHIPPLE: Not all of my clients have  
24 had to raise their rates. Not all of them have yet  
25 suffered a reduction in bond ratings. Some have, some

1 have not. So it's, kind of, like, you know, the axe is  
2 still hanging over the head of some of them. So that,  
3 that is a direct answer to your question.

4           Going back to -- I said a little earlier,  
5 the other main reason that we thought we could resolve  
6 this case by June 30th is because, like I said, I talked  
7 with Ameren counsel last December. We always intended  
8 to present a summary determination motion. And  
9 depending on how the Commission rules on the summary  
10 determination motion, we could easily be done by June  
11 30th.

12           JUDGE CLARK: Okay. I'm going to  
13 clarify. I, I appreciate the explanation. What if the  
14 Commission fails to rule on this by June 30th? What  
15 happens on July 1st?

16           MS. WHIPPLE: You mean if the Commission  
17 fails to rule on the pending summary determination  
18 motion?

19           JUDGE CLARK: If the Commission fails to  
20 issue an order by June 30th resolving this case, --

21           MS. WHIPPLE: Yes.

22           JUDGE CLARK: -- what, what, what happens  
23 July 1st?

24           MS. WHIPPLE: Well, I, I confess, I don't  
25 have a crystal ball. I, I don't know exactly what will

1 happen, except I know that, you know, probably Mr.  
2 Lowery and I, by that time will be, you know, deeply  
3 involved in, in some kind of discovery battle. And  
4 maybe, you know, maybe by then we'll -- we will have  
5 even had a procedural scheduling order because, you  
6 know, we're both trying to move this case along.

7           You know, maybe we'll have -- maybe we'll  
8 have witness testimony filed by then, and I can give  
9 Your Honor, more detail. Certainly by then, you may  
10 well have the evidence of the harm that's already  
11 happened. Hard to say, Your Honor.

12           JUDGE CLARK: Now, in general, I like  
13 summary determination motions because they tend to  
14 clarify what the major issues between the parties are.

15           MS. WHIPPLE: Yes.

16           JUDGE CLARK: Before I move on to Ameren  
17 Missouri, is there anything else you wanted to say?

18           MS. WHIPPLE: I don't think so, but I  
19 certainly stand ready to do my best to answer your  
20 questions.

21           JUDGE CLARK: Thank you very much, and I  
22 appreciate you taking the time to answer them. Mr.  
23 Lowery, you said you wanted to respond?

24           MR. LOWERY: I do, Judge. And I'm going  
25 to maybe take these out of order. I want to go back to

1 the Acoma case and this affidavit requirement. And I  
2 want to make, make sure, Your Honor, and I was on  
3 vacation last week as well, and -- and/or maybe the week  
4 before. It's already running together. Yes, it was  
5 last week. But I want to make sure you understand where  
6 we are procedurally. I think you do, but I just want to  
7 make it clear, because I think some of Ms. Whipple's  
8 discussion with you a moment or two ago wasn't making  
9 that clear.

10 They filed a motion to stay discovery  
11 after we propounded discovery. We have not, as of yet,  
12 filed anything under Rule 74.04 or under your rule. And  
13 by the way, I think by analogy, the Commission generally  
14 has applied 74.04 sort of along with its own summer  
15 determination rule. But there's nothing in the Chapter-  
16 2 of procedural rules before the Commission that says,  
17 "All of the civil rules apply to Commission  
18 proceedings."

19 There is a -- as you know, Judge, there  
20 is a specific rule on discovery that says discovery may  
21 be had on the same terms and conditions as the rules of  
22 civil procedure for discovery. But that's not true of  
23 all the rest of the civil rules. So Rule 74.04 does not  
24 literally apply to a summary determination motion before  
25 the Commission. Your summary determination rule does.

1           But we have not, as of yet, asked this  
2           commission to continue to either delay our summary  
3           determination response or to continue its ruling on our  
4           summary determination response. And if we do that, and  
5           we may, and we are -- we will make that determination  
6           probably pretty quickly, since our response is due 13th  
7           April.

8           But if we do, and I will just assume for  
9           the sake of argument that 74.04(f) applies, I'm not, not  
10          sure that it does, but I will assume for purposes of  
11          discussion that it does.

12          If we do, then I'm not going to take  
13          issue with the idea that counsel would file an affidavit  
14          at that time and explain in greater detail. We've  
15          really already explained it in our response to the  
16          motion for stay, but explain in greater detail or  
17          explain it in the form of an affidavit why the discovery  
18          is necessary to respond to the summary determination  
19          motion.

20          But all of the 74.04(f) material that Ms.  
21          Whipple points to the Acoma case points to has nothing  
22          to do with where we are in this case procedurally,  
23          because we have simply served discovery requests that we  
24          were entitled to serve. They seek information on  
25          causation that is clearly, as you recognized, part of

1 this case because it's in the complaint itself.

2 Today, it's been made very clear that the  
3 cities are not sort of giving up on the Commission  
4 finding that we cause damages. In fact, they've gone  
5 farther than they went before, and they even seem to now  
6 be saying that perhaps the Commission could determine  
7 damages for them, although their complaint acknowledges  
8 that they can't -- you can't determine damages, don't  
9 have the authority to do that. There's a lot of case  
10 law that says that.

11 But clearly this whole issue about Acoma  
12 and 74.04, it actually isn't even right because we  
13 haven't even made, made, made the request for any kind  
14 of continuance at this point. So that's the first point  
15 I wanted to clear up. I, I, I -- we've spent a lot of  
16 time talking about 74.04(f) because complainants spent a  
17 lot of time talking about it. And it really, even if it  
18 applied, hasn't even been triggered yet because we  
19 haven't asked for a continuance about anything. If it  
20 is, we'll, we'll do what we need to do to make sure we  
21 justify such a request beyond what we've already done.

22 MR. TRIPP: And Judge, Jim, do you mind  
23 if I just --

24 JUDGE CLARK: Sure.

25 MR. TRIPP: -- offer a point of

1 clarification? Actually, in 74.04(c)(2), it addresses  
2 responses to motions for summary judgment. And that's  
3 where the affidavit requirement really lies. It says,  
4 if you can't respond within the 30-day time period, then  
5 you -- then what you have to do is you can set forth a,  
6 a, -- an affidavit or an affidavit that says that you  
7 need additional time. I think, I'm sorry, I lost my  
8 place here in my rule Book here.

9 But, but, and that's what the Acoma case  
10 actually says. It says, and I'm reading from it, that  
11 what the court found was they've not established that  
12 the trial court abused its discretion, refusing to  
13 afford it additional time to obtain discovery. And so  
14 I, I, I didn't mean to interrupt you. I just was trying  
15 to offer some clarification there.

16 MR. LOWERY: No, that's fine. At the end  
17 of the day though, we haven't asked for that relief and  
18 really the most to say was completely premature for that  
19 reason alone. But regardless, we, we didn't -- we  
20 didn't -- we, we didn't -- we didn't make that the  
21 central part of our opposition to it. We're really -- I  
22 think the substance of this is more important.

23 The other issue, well, that I've -- that  
24 I've got to once again be direct about because Ms.  
25 Whipple said it again and what she said was not

1 accurate. We have not admitted that the 32 so-called  
2 undisputed material facts are undisputed. We have not  
3 admitted that, we don't admit it, and we intend to  
4 dispute the ones I listed my opening remarks in the  
5 summary determination motion.

6 Those facts that we intend to dispute  
7 deal with causation, and they are about seven of them or  
8 7 of the 32 that they rely on. So they are relying on  
9 causation as a basis for their summary determination  
10 motion. They've chosen to do that. They don't have to  
11 do it, but they've chosen to do it. If they want to  
12 narrow this case, they don't have to do that. And I do  
13 think it's -- I do think it's slight of hand and I don't  
14 mean in a dishonest way, but I mean it in a clever  
15 procedural way.

16 In the complaint, Judge, these facts that  
17 they allege about causation are alleged as -- are  
18 alleged as facts that we denied. When they get to the  
19 summary determination, instead of alleging them --  
20 instead of alleging them in that fashion, they then try  
21 to turn them into undisputed material facts and, and  
22 then they claim, and I want to address this operational  
23 law. Then they claim. They claim, well, you've  
24 admitted them by operation of law.

25 Now, Ms. Whipple referred to citing

1 authority for that proposition. They have cited no  
2 authority for that proposition at all. And if you look  
3 at the case law, the only place that that concept comes  
4 up is under Rule 74.04. And where it comes up is when a  
5 -- when a respondent on a summary determination responds  
6 to -- has to respond to the numbered material undisputed  
7 facts that the movement is claiming are undisputed. The  
8 respondent and Ms. Whipple agreed with this.

9           The respondent has got to reply by  
10 numbered paragraph and can't just deny it with a bald  
11 denial. The respondent has to have evidence, has to be  
12 an affidavit, discovery, and exhibit, something that  
13 backs up that denial, right?

14           And what the rule says is if you don't  
15 comply with that requirement, then you will be deemed to  
16 have admitted those facts. That only happens if your  
17 summary determination response is deficient in that way.

18           So you're deemed to -- deemed to admit of  
19 those facts, if you don't properly respond with evidence  
20 to dispute those facts. That's the concept of admission  
21 by a -- admission of facts by operation of law.

22           That hasn't happened yet. We haven't  
23 even filed a response to summary determination motion  
24 yet. We can't have admitted that those seven claimed  
25 undisputed facts aren't undisputed by operation of law

1 because we haven't got procedurally to the point where  
2 that is even possible.

3 And because they are claiming these  
4 causation-related facts are undisputed and they're  
5 material, we need discovery on them so that we don't get  
6 in the position where we will have admitted them by  
7 "operation of law" because we lack evidence to back up  
8 our denial of them. That's exactly what we are seeking  
9 by the discovery so that we will have evidence that we  
10 can then properly deny them under the summary judgment  
11 rules.

12 The discovery was -- if -- was and is due  
13 four days before the summary determination motion or  
14 before our response is due. If they had time -- if they  
15 were to timely and fully respond, then we could use that  
16 discovery to properly deny those facts, those claimed  
17 undisputed facts in our response to summary  
18 determination.

19 Now, I don't expect that they're going to  
20 do that as much time as we've already lost and that  
21 we're wrangling about the discovery. But they've  
22 actually proven our point by relying on those facts and,  
23 and then claiming that, you know, we've, we've admitted  
24 them of operation of law, which we can't even do until  
25 we get to that point.

1                   One last -- I guess, one last point I  
2 want to make, well, maybe two. I want to talk about  
3 this timing issue just a little bit, too. But the --  
4 but the other point I want to make, and I made it  
5 earlier, but I want to make it again because Ms. Whipple  
6 keeps bringing up the seven principles on the first two  
7 pages of their summary determination motion.

8                   I agree that the Commission can deal with  
9 the first five and their summary determination motions  
10 teed those up and we can deal with those in a response  
11 without most of this discovery. I generally agree with  
12 that.

13                   But the seventh one, the seventh of those  
14 bullet points on page 2 of the summary determination  
15 motion, again, is their allegation that they've been  
16 aggrieved by our actions.

17                   And then if you go to page 17 of their  
18 summary determination motion, they say, "For purposes of  
19 this motion," their summary determination motion, "the  
20 undenied facts," well, those facts are denied, but  
21 putting that aside, "it's CCN and this commission orders  
22 and Ameren's aggravation of the harm resulting from  
23 those violations." Resulting from, I believe that  
24 resulting from and caused by -- are, are the same coin.  
25 They're just two different sides. They mean the same

1 thing.

2                   They have -- they are claiming that we  
3 caused -- that they have harm resulting from our  
4 actions. And they are claiming that in their summary  
5 determination motion and here this morning, they are not  
6 backing off that claim. And if they're not going to  
7 back off the claim, then that is part of their summary  
8 determination motion. And we're entitled to defend  
9 ourselves, and we're entitled to discovery that we need  
10 in order to do so.

11                   JUDGE CLARK: I'm going to ask you a few  
12 questions about the stay. You know, the municipalities  
13 indicated that the scope of the summary determination  
14 motion is smaller than the scope of the complaint. And  
15 as you indicated, you indicated you believe Ameren could  
16 answer the first five of the summary determination  
17 motion without the DRs you issued.

18                   A motion to stay or a stay of discovery  
19 is not a termination of discovery. It is more a  
20 possible delay of discovery as discovery could  
21 conceivably be unstayed. I think what -- it sounds  
22 like, what the municipalities are saying is that given  
23 the scope of their summary determination motion, the  
24 discovery is unnecessary at this time.

25                   You have pointed out that there are in

1 fact in that summary determination material facts in  
2 dispute. But just looking at the first five -- hold on  
3 just a second. Just looking at the first five, now that  
4 they've said that at a minimum, they believe those could  
5 be ruled on by the Commission. Is that discovery  
6 necessary?

7 MR. LOWERY: Judge, when you refer to the  
8 -- I'm sorry, to answer your question asked -- answer  
9 your question with a question, but I need to. I have a  
10 clarification to try to answer it. When you say the  
11 first five, are you talking about the bullet points on  
12 pages 1 and 2 of their motion?

13 JUDGE CLARK: Hold on just a second.

14 MR. LOWERY: Because those aren't factual  
15 allegations.

16 JUDGE CLARK: Well, just as to the --  
17 just as to whether Ameren violated that tariff sheet and  
18 that Commission order in regards to obtaining permits,  
19 is it -- is, is discovery still necessary then to answer  
20 the summary determination motion?

21 MR. LOWERY: If, if those were the only  
22 two questions, discovery would not be necessary. The  
23 problem, Judge, is they claim that there are 32 facts  
24 upon which they grant -- ground their summary  
25 determination motion, several of which are both disputed

1 and deal with causation.

2 So if they're entitled this -- if they  
3 say we need to prove these 32 facts, and when they do,  
4 because they claim their material. If they need to  
5 prove those 32 -- those 32 material facts in order to  
6 grant summary determination and those facts are still  
7 part of their motion and we still have to respond to  
8 them in order to avoid summary determination -- summary  
9 determination that finds those facts to be admitted,  
10 which we don't admit them, then the discovery remains  
11 necessary.

12 I mean, I think what you're -- what  
13 you're -- what you're trying to get to, and I completely  
14 agree with you, is if, if what you are telling me or  
15 they are telling me, but that's not what Ms. Whipple  
16 said a few minutes ago. But if they are telling me and  
17 you are telling me that the only thing that would be  
18 ruled upon in this summary determination is whether we  
19 violated the CCN order of 1971 and whether we're in  
20 violation of the tariff sheet, then I would agree, we  
21 don't need the discovery right now to deal with those  
22 two issues alone.

23 But if you're going beyond that and  
24 you're finding and, and we are -- we are subject to  
25 having been found to have admitted these other

1 undisputed material facts, which actually are disputed  
2 relating to causation because we couldn't respond to  
3 them properly in our response to summary determination,  
4 then we absolutely need the discovery.

5 MR. TRIPP: Judge, in addition, they,  
6 they have a judgment on the pleadings, and that their --  
7 the summary -- that they say on page 11 that they only  
8 offer these facts in the alternative that you don't  
9 grant judgment on the pleadings. And certainly judgment  
10 on the pleadings would require -- raises the very issues  
11 we pointed to in our response in terms of where they  
12 raise the causation issue.

13 So if they're withdrawing also the  
14 judgment on the pleadings request, then the discovery  
15 wouldn't be necessary. But if they're not, discovery  
16 would be necessary.

17 MR. LOWERY: Or, or if you -- or if you  
18 were to overrule a judgment for the pleadings request  
19 and if you were to rule that the only issues the  
20 Commission is going to rule upon on their summary  
21 determination motion are the order -- the 71 order, and  
22 the Tariff Sheet 102, then I would agree we don't need  
23 the discovery right now.

24 But you haven't ordered that yet. Maybe  
25 you're going to. You haven't ordered that. And they

1 certainly have not limited their motion to that.

2 Right now, that of causation issue is  
3 live and we are at risk if we can't get the discovery  
4 and we can't properly deny those facts in our response  
5 to their motion. We are at risk of admitting facts by  
6 operation of law, to use the phrase Ms. Whipple had  
7 used.

8 We are at risk of admitting those facts  
9 by operation of law because we couldn't do the  
10 discovery. And that's the -- that's the conundrum,  
11 that's the pinch that we are in because their summary  
12 determination motion relies upon these causation  
13 principles. And they've been clear this morning. They  
14 haven't given that up even in the summary determination  
15 motion.

16 They're hoping you will rule on that in  
17 the summary determination motion. But at the same time,  
18 they don't want us to get the discovery. We need to  
19 defend ourselves to whether or not those facts are true.

20 JUDGE CLARK: Thank you, Mr. Tripp, for  
21 clarifying. I'd almost forgotten that we also have an  
22 alternative motion for judgment on the pleadings.

23 Now, Ameren Missouri also in its  
24 response, included a motion to compel. Is there  
25 anything beyond what you've already argued? Because it

1 seems like it speaks on its face that you wanted to  
2 argue in regard to that.

3 MR. LOWERY: I think the only thing I  
4 would mention and it's -- and it's because of the reply  
5 that was filed yesterday. Well, I guess it's -- I guess  
6 -- I guess I just want to illuminate one point because  
7 there's the last two data requests, I think they're 12  
8 and 13. They have slightly different objections.

9 I mean, most of their objections to these  
10 13 DRs, they're predominantly are all about this dispute  
11 we're having about the timing of the discovery and the  
12 summary determination motion. The other ones, I think  
13 on their face simply don't hold up. If they -- if they  
14 have trade secrets or whatever and they -- I think, they  
15 need more protection, they need to file a protective  
16 order. If they don't have possession, custody, and  
17 control, then they can say so.

18 We didn't ask them to do analyses that  
19 they haven't already done. I will point out the staff  
20 asked for certain data and they had no problem giving it  
21 to them. And some of the data we're asking for is more  
22 specific, but it's in the same nature. The only one  
23 other one I'll mention is they raise a question about  
24 whether we're asking for legal conclusions and pure  
25 legal conclusions.

1 I'll point out that Rule 57.01, the  
2 interrogatory rule, which does apply to data requests by  
3 virtue of the Commission's discovery rule, specifically  
4 allows inquiry into mixed questions of law or fact.

5 When they answered staff's discovery,  
6 they told staff that they were assuming that when staff  
7 asked about the resource adequacy requirement in MISO --  
8 resource adequacy requirement, they were referring to  
9 MISO's resource adequacy requirement.

10 They didn't seem to have any trouble  
11 identifying what MISO Tariff provisions did or not --  
12 did not apply. We asked a couple questions about that  
13 in terms of the resource adequacy requirement in MISO,  
14 and one of their objections, it calls for a legal  
15 conclusion. I don't believe that's a good objection.

16 We can essentially ask a contingent  
17 interrogatory like that. We can ask one that seeks  
18 mixed questions of law and fact, which that does. I'm  
19 not asking for legal opinions or analysis on it. We're  
20 just asking, do you agree that's the tariff provision  
21 that we're talking about? And I think we're entitled to  
22 answer that question -- ask that question, pardon me.

23 JUDGE CLARK: Before I wrap up, I'm going  
24 to jump back to something that you had indicated, Mr.  
25 Lowery. As was -- has been noted, a summary

1 determination motion is very similar to a motion for  
2 summary judgment, and as such, we do tend to look at  
3 Rule 74. But you indicated that some of that applied  
4 and some of that does not apply. What provisions of  
5 74.04 do you not believe apply to a commission summary,  
6 summary determination?

7 MR. LOWERY: I didn't mean to at least,  
8 Judge. If I did, I apologize. What I said was or at  
9 least what I meant to say was, there's nothing in  
10 Chapter-2 of the Commission's rules that applies any  
11 part of the Missouri Rules of Civil Procedure to  
12 Commission practice other than the discovery rule. So  
13 literally, it's not clear that Rule 74.04 apply,  
14 "actually applies at all."

15 However, and I don't have a problem with  
16 this at all, I recognize that the Commission certainly  
17 looks to the case law and the general process under Rule  
18 74.04 when it applies its own summary determination  
19 rule. But these specifics and particulars of 74.04, I,  
20 I think there's a question about whether the Commission  
21 actually has done anything that says they apply.

22 I think, as you know, Judge, those rules  
23 of civil procedure apply to the -- to the circuit courts  
24 in the state. Of course, there's other ones that apply  
25 to the appellate courts, and 74.04 is one that by its

1 terms, applies to the circuit courts. I don't believe  
2 the Commission has actually adopted its own rule that  
3 says we hereby adopt or we shall apply 74.04 when, when  
4 you follow our summary determination rule.

5 Having said that, by analogy,  
6 informative, however, you want to say it, there's no  
7 question the Commission is generally, generally looked  
8 at least to the case law and the process in applying its  
9 own rule. That's all I meant.

10 JUDGE CLARK: Thank you very much. I  
11 greatly appreciate that the parties recognize the mix of  
12 jurisdictions involved here, and that's been a little  
13 bit confusing to me at this point, in that at points in  
14 complaint -- the complaint, there are points that quote  
15 the Commission, quoting the federal court.

16 So I'm not saying there's some overlap  
17 here, but certainly there is a question as to who has  
18 jurisdiction over what. As, as the municipalities have  
19 put forth, they, they believe at a minimum level, we  
20 have jurisdiction over the two questions as of to  
21 whether -- as to whether the tariff sheet or the  
22 commission order in the underlying securitization was  
23 violated. And I believe you said that, too, Mr. Lowery.  
24 Is that correct? You believe we have --

25 MR. LOWERY: Well, I, I believe that

1 there is plenty of case law that would indicate that the  
2 Commission in the first instance gets to interpret its  
3 own orders. So to that extent, I would agree with that.  
4 What the -- what, what the review would be, either if  
5 they got what they want or we got what we want, that's a  
6 different question. But we, we haven't sought to  
7 dismiss the complaint on the grounds that you can't  
8 address those two issues. If that answers your  
9 question.

10 If I may, I did want to just say one  
11 other thing because of something else that Ms. Whipple  
12 said, and it relates to, kind of, where you're going  
13 with this. And Ms. Whipple, if you specifically said  
14 this to Ms. Tetro and I, and I have forgotten it, then I  
15 apologize, but I do not recall it.

16 Certainly Ms. Whipple reached out to us  
17 before the complaint was filed and explained that they  
18 were going to be bringing this complaint and, and, and  
19 their end of goal really was to get a commission order,  
20 I had understood, on the question of the violation of  
21 the tariff or the order, I -- I'm not sure that we knew.  
22 Maybe we did know that those were the two documents that  
23 they were claiming violation.

24 I don't recall at all being advised that  
25 the complainants intended to ask the Commission define

1 that we caused their damages, but the end game here for  
2 them, Judge, and, and Ms. Whipple can say that I'm not  
3 right about this if she wants to, but I don't think  
4 she's going to say that.

5 The end game for the municipals here is  
6 to get an order from the Commission that they can then  
7 take to a circuit court or I don't know if they're going  
8 to go to federal court or state court, but I'll just  
9 assume state court for now.

10 And under some kind of theory, and I  
11 don't know exactly what it is, claim that at least the  
12 liability portion of their cause of action, their cause  
13 of action for damages -- at least the liability portion  
14 of their cause of action for damages has been satisfied  
15 and they don't have to do anything in circuit court to  
16 establish liability.

17 Probably by saying your order can't be  
18 collaterally attacked, you've already said that we  
19 violated, in their world, the order or the tariff. And  
20 the circuit court has to accept that because that order  
21 can't be collaterally attacked. And then they will  
22 prove their damages. I mean, they've, they've even  
23 admitted in the case laws absolutely clear, you can't  
24 determine damages, you know, what award damages. And,  
25 and I think the same thing is true of causation.

1 I, I don't -- I'm not sure I've ever seen  
2 anybody ask the Commission to make a causation finding  
3 about damages. But, but, but that's the end game here.  
4 And so that's -- and that's why, Judge, it's really  
5 important we can't just -- we can't just sit by and  
6 allow these claims about causation to go forward and not  
7 answer in the summary determination. If they're live,  
8 and, and right now they're live, you can make them  
9 unlive, I guess, but right now, they're live, and that's  
10 why we are where we are here today.

11 MR. TRIPP: And to some extent, Judge,  
12 it's a jurisdictional issue in terms of if they're in a  
13 great party, that that's actually a jurisdictional issue  
14 in the first instance. And if you're agreed, that again  
15 implies the determination of causation in some sense.

16 JUDGE CLARK: Well, Mr. Lowery, while  
17 rational, some of that was speculative, and I really  
18 don't want to cross into the grounds of why they brought  
19 this case in relation to any possible future actions at  
20 this time. I don't think that that's within our  
21 wheelhouse at this point at all.

22 MR. LOWERY: Nor do I think it's improper  
23 what they've done. I'm not suggesting it was. I just  
24 wanted -- I was trying to just make sure that you  
25 understood why this causation issue is very important.

1 We can't just assume. We can't just assume. You're not  
2 going to rule on causation when they keep causation live  
3 in their motion. That's the problem.

4 JUDGE CLARK: And I hadn't forgotten  
5 about causation. I just didn't have any questions about  
6 it.

7 MR. LOWERY: Thank you.

8 JUDGE CLARK: I know this dispute is  
9 primarily between the municipalities and Ameren  
10 Missouri. I do have other parties here. I do like to  
11 give an opportunity for response at this time. Do any  
12 other parties wish to say anything to the Commission?

13 MR. PRINGLE: No, it's nothing, Judge.  
14 Thank you.

15 JUDGE CLARK: Thank you, Staff. Thank  
16 you all for your time. I appreciate you taking the time  
17 to be out here.

18 MS. WHIPPLE: Your Honor, this, this is  
19 Peggy Whipple. Might I make just a closing statement  
20 for clarification that I think may assist all and will  
21 probably not cause any quarrel with anybody, since I've  
22 got the burden.

23 JUDGE CLARK: Absolutely. Go ahead.

24 MS. WHIPPLE: Because I am the master of  
25 the pending motion for summary determination, I thought

1 it might help if I clarified the reason that we pleaded  
2 in the alternative, judgment on the pleadings or in the  
3 alternative for summary determination. The first 24  
4 undisputed material facts in the motion are based only  
5 on the answer and the complaint. And if the Commission  
6 ruled on the first 24, the Commission could enter  
7 judgment on the pleadings for the first five of the  
8 seven issues that are set forth on pages 1 and 2.

9 Ameren is subject to the jurisdiction.  
10 Ameren violated its tariff and its CCN. And the  
11 Commission, you know, has authority to hear that. That  
12 could be the judgment on the pleadings. Because those  
13 first 24 undisputed material facts are based only on my  
14 verified complaint and Ameren's admissions in its  
15 answer.

16 Mr. Lowery has indicated today, and I  
17 appreciate it because both of us are working to clarify  
18 and narrow issues here. We're both doing that. And I  
19 think this hearing today has been very helpful I hope --  
20 I hope also to the Commission.

21 Mr. Lowery has indicated today that his  
22 quarrel with the undisputed material facts is for  
23 numbers 26 through 32. He's apparently not worried  
24 about number 25. Your, Your Honor, numbers 25 through  
25 32 would become undisputed by admission by operation of

1 various laws, not Rule 74.04. Never relied on that law  
2 at all.

3 Mr. Lowery, I don't think, is quarreling  
4 with number 25 because it's simply the language of the  
5 Ameren's CCN. And what -- and that is why because we've  
6 got issued statement of undisputed material facts 25  
7 through 32, that is why we gave the alternative. If the  
8 Commission believes that if it uses operation of law to  
9 make its decisions, then we can turn this into a motion  
10 for summary judgment. And we're happy to do that.

11 Now, I would ask that, Your Honor, look  
12 carefully at just issues or statement of undisputed  
13 material facts 26 through 32. All the Commission needs  
14 to do with those is say, "Yes, I will apply that  
15 particular law for 26 and 27." We're talking about  
16 administrative notice.

17 The Commission can apply administrative  
18 notice and say, "Yes, I'll take that fact as  
19 undisputed," or the Commission can decline to apply  
20 administrative notice and take facts 26 and 27 as  
21 undisputed.

22 There's no discovery needed for that at  
23 all. It's, it's, it's totally the Commission's  
24 authority to decide to use administrative notice of  
25 MISO's findings or not. As for 28 through 32, there is

1 nothing there about causation. Those undisputed  
2 material facts have been described here today by Ameren  
3 as all about harm and causation.

4 No, not so. Look at what they say. The  
5 City of Fulton is a person and a public utility  
6 authorized to file this complaint, period. That relies  
7 only on the definitions in the -- in the Commission's  
8 rules of person and public utility and, and corporation,  
9 because it incorporates that. And the facts that the  
10 City of Fulton pled about how it's governed and that it  
11 is a municipality. I mean those --

12 JUDGE CLARK: Ms. Whipple, we're getting  
13 dangerously into the territory where you're arguing how  
14 the Commission should rule on the summary determination  
15 motion. That's not something I really want to go into.

16 MS. WHIPPLE: No, all I want to say is  
17 for those statement of undisputed material facts, the  
18 Commission can decide to apply the law or not. That's  
19 the Commission's ability, authority to decide it or not.  
20 And you don't need discovery for that. That was my  
21 point. And that -- and I also wanted you to know that's  
22 why we gave you the alternative between ruling on a  
23 summary judgment motion or ruling on a judgment on the  
24 pleadings.

25 MR. LOWERY: Judge, I, I, I am compelled

1 to, if, if you'll please allow it to respond briefly,  
2 because that was not just --

3 JUDGE CLARK: There was a lot said there.  
4 I'll give you a brief response.

5 MR. LOWERY: Judge, the complainants -- a  
6 couple things. The complainants did list their facts 1  
7 through 24, and we didn't dispute those in our answer.  
8 What they fail to mention to you, though, is their  
9 complaint contains allegations in paragraphs 33 and 35  
10 that also go to these issues, and they didn't list them  
11 as materially -- material undisputed facts. And so with  
12 and without their ability to prove those, you will be --  
13 you will see that we will be continuing. You can't  
14 grant judgment as a matter of law.

15 So this picture that's been painted that,  
16 oh, well, there's nothing -- there's absolutely nothing  
17 to dispute about the, you know, the first five bullet  
18 points on the first two pages of summary determination  
19 motion. And you can just freely grant judgment on the  
20 pleadings on those issues because 1 to 24 undisputed.  
21 That doesn't hold water because the pleadings also  
22 include 33 and 35. And we did dispute them, and we do  
23 dispute them, so that doesn't get them there.

24 As for 26 and 27 and the summary  
25 determination, and I'll be very brief about this, we're

1 still where we've been since this hearing started. And  
2 that is they deal with causation. They want in the  
3 alternative for you to grant summary determination based  
4 on those facts, those claimed undisputed facts. And if  
5 we can't get the discovery, we can't properly dispute  
6 them as we're required to do, assuming 74.04 literally  
7 does apply or is applied by analogy. And so we need the  
8 discovery.

9 So Ms. Whipple didn't -- doesn't give --  
10 there, there isn't a path for you to just grant judgment  
11 on the pleadings or to deny the discovery if we are --  
12 if, if the scope of the summary determination continues  
13 to include causation.

14 JUDGE CLARK: Okay, thank you. I will  
15 remind everyone this is a discovery conference and not  
16 an argument on the propriety of the summary  
17 determination motion. We did have to cross the bounds a  
18 little bit because we have to get into that as to why  
19 discovery is needed, if it is needed. And I will take  
20 these under advisement.

21 There is, as is indicated, a deadline of  
22 the 13th at this time for Ameren to respond to the  
23 summary determination motion in regards to the motion to  
24 stay discovery and the motion to compel discovery. I  
25 will try and have an answer for the parties as quickly

1 as possible next week. Is there anything else?

2 MR. LOWERY: Appreciate your time, Judge.

3 MS. WHIPPLE: Thank you, Your Honor.

4 JUDGE CLARK: Thank you all.

5 MR. PRINGLE: Thank you, Judge.

6 JUDGE CLARK: Thank you. We will go off

7 the record.

8 (End of audio recording.)

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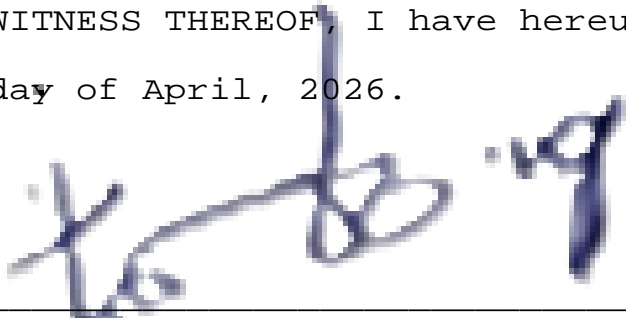
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IN WITNESS THEREOF, I have hereunto set  
my hand this 14th day of April, 2026.



\_\_\_\_\_  
Vivekanandan Kasiraj

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