

OFFICIAL CASE FILE
MISSOURI PUBLIC SERVICE COMMISSION

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT

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MISSOURI PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE COMMISSION

CASE NO. : EX-92-299

In the matter of the proposed Commission
Rules 4 CSR 240-22.010 through 22.080.

CASE NO. : OX-92-300

In the matter of the proposed amendments to
Commission Rules 4 CSR 240-14.010 through
.040 and proposed rescission of 4 CSR 240-14.050.

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MISSOURI PUBLIC SERVICE COMMISSION

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Hearing of the Public Service
Commission, held at Jefferson City,
Missouri, on the 10th day of
September, 1992.

CASE NO. EX-92-299

In the matter of the proposed
Commission Rules 4 CSR 240-22.010
through 22.080.

CASE NO. OX-92-300

In the matter of the proposed
amendments to Commission
Rules 4 CSR 240-14.010 through
.040 and proposed rescission of
4 CSR 240-14.050.

Missouri Public Service Commission

1 **BEFORE:**

2 CECIL I. WRIGHT, Presiding,
3 CHIEF HEARING EXAMINER.
4 JOSEPH A. DERQUE III,
5 HEARING EXAMINER.
6 KENNETH McCLURE, Chairman,
7 ALLAN G. MUELLER,
8 DAVID L. RAUCH,
9 PATRICIA D. PERKINS,
10 DUNCAN E. KINCHELOE,
11 COMMISSIONERS.
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23 **REPORTED BY:**

24 GINGER R. METTERNICH, RPR, CSR
25 ERIN C. HARRISON

Missouri Public Service Commission

P R O C E E D I N G S

We're on the record.

This is a rulemaking hearing with regard to proposed Rule 4 CSR 240-22, Integrated Resource Planning Rule, Commission Case No. EX-92-299; and the proposed amendments to the Commission's Promotional Practices Rule, 4 CSR 240-14, Commission Case No. OX-92-300.

In conformance with the Commission's rules with regard to rulemakings, we will take comments in this order: first pros and then cons and then those people who have indicated that they wish to speak after the pros and cons. And per our agreement prior to going on the record, Laclede Gas Company will go last.

I think what we'll do first then is, Staff, are you prepared to make your opening statements?

MR. FRENCH: Mr. Examiner, before we start, I would like to note Laclede's continuing objection to the hearing procedures, which you have, off the record, stated will be followed, which include no opportunity for cross-examination of the parties. These objections are more particularly set out in our reply comments we filed with this Commission. And I would just like to state our continuing objection along those lines. Thank you.

EXAMINER WRIGHT: As you are aware, this is a rulemaking proceeding. And I don't believe there's any

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1 provision made for cross-examination in a rulemaking
2 proceeding.

3 Staff.

4 MR. DOTTHEIM: Yes. The Staff would call
5 Martin Turner as the member of the Staff who will make the
6 opening statement regarding the proposed rules in Chapter 22
7 and the amendments to Chapter 14.

8 (Witness sworn.)

9
10 EXAMINER WRIGHT: Before you begin, let me
11 just restate what I indicated off the record. The notice of
12 this hearing indicated that there would be no additional
13 comments. And the purpose of the hearing was for
14 Commissioner questions.

15 As I indicated, we're asking those
16 commenters who wish to come forward and state whether they
17 still have major concerns with regard to the rule after the
18 initial comments and reply comments have been filed and
19 especially those of the Staff where they've proposed certain
20 changes to try to attempt to accommodate some of those
21 concerns or they have addressed those concerns.

22 So when you come forward, the Staff, of
23 course, we've asked that they address what the purpose of
24 the rule is and maybe give a general idea of what they have
25 gone through in an attempt to meet some of the concerns

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1 raised by the comments.

2 Again, when you make your comments, address
3 that initial question. And then you can make additional
4 comments if there's other matters with regard to the rule
5 that you'd like the Commission to be informed of. We will
6 hold the person who is on the stand for Commissioner
7 questions.

8 And as I indicated earlier, if that person
9 is not the one best qualified to respond to those questions,
10 we will allow the parties or the person that they're
11 representing to provide us with an additional person who is
12 better qualified to respond.

13 Mr. Dottheim.

14 MR. DOTTHEIM: Excuse me. You may have
15 addressed this, and I just missed it. Is there a time limit
16 as far as the comments by each of the commentators?

17 EXAMINER WRIGHT: We would prefer that you
18 limit these initial comments to 15 minutes, if at all
19 possible, around that time, so that we can get Commissioner
20 questions and we can maybe get through everyone today.

21 EXAMINER WRIGHT: Thank you.

22 MARTIN TURNER testified as follows:

23 THE WITNESS: Thank you. The Staff
24 appreciates this opportunity to give a little introduction
25 and history to the process that we've gone through in

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1 developing these rules.

2 I think most of the Commissioners are aware,
3 but some others may not be, that this is part of a process
4 that has been going on fairly actively for about three years
5 within the Staff and, in some form or another, for almost
6 ten years. And so it's not a sudden and recent thing. It
7 is part of an ongoing developmental process.

8 Three years ago, the Commission established
9 a staff project team to investigate the general subject of
10 resource planning at electric utilities. That project team
11 sent out a detailed questionnaire to the five principal
12 investor-owned electric utilities in the state and asked in
13 detail how they currently do their planning for long-range
14 resource needs.

15 The outcome of that staff project team work
16 was a recommendation to the Commission that a rulemaking,
17 such as this, on the subject of resource planning, be
18 undertaken.

19 I should emphasize that the project team
20 itself, as well as the drafting of these proposed rules, has
21 been an interdepartmental and interdisciplinary effort.
22 These rules and the project team's work were not the work of
23 any one individual, any one department, or any one
24 discipline. There were accountants, engineers, economists,
25 and, of course, lawyers and financial analysts involved in

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1 the process throughout.

2 The Staff believes that the need for rules
3 such as this and, in particular, the need for more thorough
4 and comprehensive planning procedures at electric utilities
5 are based in some very fundamental and massive changes that
6 have occurred not only in the electric utility business but
7 world energy markets generally over the last 20 years or so.
8 I won't go through the particulars of those changes.
9 They're set out in the Staff's initial comments.

10 But suffice it to say that the result of
11 these changes has been a dramatic increase in the level of
12 uncertainty that surrounds almost every aspect of electric
13 utility resource planning and the decisions that are
14 required of electric utilities in order to plan for future
15 resource needs.

16 In an environment where uncertainty is
17 large, information is critical. And good, solid, thoroughly
18 researched information is the absolute requirement for the
19 decisions. Even good information doesn't guarantee good
20 decisions. But bad information almost certainly guarantees
21 bad decisions.

22 Information in this context means anything
23 that reduces the range of these uncertainties or that allows
24 utilities to be more flexible in their response to changed
25 circumstances. Even the best research can't eliminate

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1 uncertainty; but it can put bounds on it and it can reduce
2 it in some instances. And where it can't be further
3 reduced, these efforts can be directed toward developing and
4 building in flexibility and adaptability into the planning
5 process and the implementation process.

6 There are two aspects of the traditional
7 view of electric utilities that need to be expanded to cope
8 with this new environment of major uncertainty. The first
9 of these is that, whether we like it or not, electric
10 utilities are in the business of providing energy services.
11 They are not any longer, if they ever were, exclusively in
12 the business of providing a supply of electricity.

13 What this means is that utilities have to be
14 concerned, from a strategic point of view, with what happens
15 on the customer's side of the electric meter. It's no
16 longer sufficient to simply deliver kilowatt-hours to the
17 meter and not worry about what happens on the other side,
18 because customers' choices about the characteristics of
19 buildings, equipment, and the way they use those buildings
20 and equipment have a great deal to do with the final
21 production of energy services. And that is the ultimate
22 product that the utility is providing.

23 The second aspect of the utility business
24 that has to be rethought is the fact that this uncertainty
25 is pervasive. There is no escaping it; and, therefore, it

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1 has to be hit head on. This means that there has to be a
2 solid and rigorous analysis of this uncertainty, efforts to
3 reduce it have to be undertaken; and where it can't be
4 reduced, methods to understand fully the implications of
5 this uncertainty need to be implemented.

6 We believe that this proposed chapter of
7 rules specifically is necessary because Missouri utilities
8 have not, in general, currently put in place planning
9 procedures that take account of these major changes that
10 have occurred. Some of the utilities have made substantial
11 progress along these lines; others have just begun. And
12 still others appear to believe that no such changes are
13 necessary.

14 In drafting these rules, the Staff has
15 worked within two basic design constraints or criteria that
16 have shaped the entire scope and focus of the rules. The
17 first of these is that the requirements that the rules set
18 out should be firmly within the area of Commission authority
19 under existing Missouri law.

20 Now, I'll be the first to admit I'm not a
21 lawyer. But we do believe that the provisions set out here
22 are clearly within the range of Commission authority.

23 It would be unwise and a waste of resources
24 to push these requirements into areas where the Commission's
25 authority is uncertain and spawn an industry and litigation

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1 over whether the Commission has the authority to do certain
2 things.

3 We believe that ensuring that utilities have
4 good information on which to base decisions is clearly
5 within the Commission's realm of authority. And that is a
6 fundamental guiding principle in drafting these rules.

7 The second consideration that has shaped
8 these rules is a more pragmatic one. And that is that, as a
9 practical matter, they should be able to be implemented
10 without major expansion of Commission resources or staff.

11 This is, as I say, a pragmatic concern more
12 than a philosophical question. But it would be exceedingly
13 dangerous, we feel, for the Commission to take on itself
14 responsibilities that it doesn't currently have the
15 resources to carry out and then find out, down the road,
16 that it can't get these resources to do the job that it has
17 set out for itself.

18 So those two constraints have been foremost
19 in our minds in drafting these rules. And we feel that they
20 are satisfied by the current shape of the proposed rules.

21 We believe that the proposed rules will
22 achieve a substantial improvement and derive important
23 benefits for both the shareholders and the ratepayers of
24 Missouri's electric utilities.

25 As I say, the primary focus is on ensuring

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1 that good, solid information is developed to support the
2 utility's decisions. We would emphasize that the final
3 decisions remain with the utility. And we believe that they
4 should. But without good decisions, even the most wise and
5 intelligent person will be handicapped in making good
6 decisions.

7 One of the major issues that several parties
8 have raised is concerns on whether the Commission should
9 approve or disapprove specific resource acquisition
10 strategies that the utilities file.

11 The Staff believes that this would be unwise
12 for the Commission to do this. And I'm sure you'll hear
13 more about both sides of that argument as the hearing
14 proceeds.

15 Part of the reason why we feel that would be
16 unwise is a resource question. Such a review that would be
17 sufficient to support the Commission's decision to approve
18 or disapprove the plan would require substantially more
19 resources than are currently available. And it would not
20 necessarily result in better decisions.

21 With regard to specific areas that have been
22 addressed and concerns that have been raised, I should
23 mention that part of the process that the Staff went through
24 involved a series of several -- I don't remember exactly how
25 many. Half a dozen at least -- meetings, informal workshops

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1 and discussions, between all interested parties, which I
2 think everybody involved in the process feels was worthwhile
3 and resulted in the resolution of many, many areas of
4 concern.

5 And, in particular, with regard to technical
6 areas, many things were resolved. And the Staff did make
7 many changes in the initial draft of the rules as a result
8 of those discussions.

9 And what is left for the Commission to
10 decide are primarily policy-related issues. They're not
11 technical issues, for the most part. Approval, disapproval,
12 is a major question that remains to be ruled on by the
13 Commission. Specific provisions for cost recovery is an
14 important area that remains outstanding. And promotional
15 practices revisions and the relationship between those
16 revisions and the promotional practices rule and the
17 question of fuel switching and whether electric utilities
18 should be required to analyze fuel switching away from
19 electricity toward other energy sources as part of their
20 demand-side resource efforts, I believe those are the major
21 outstanding issues that remain. There are still a few, what
22 I would characterize as, more minor issues. I won't try and
23 enumerate all of them from memory here.

24 I think that's all I need to say by the way
25 of introduction, and I'm open for questions.

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1 EXAMINER WRIGHT: Questions from the
2 Commissioners.

3 Chairman.

4 QUESTIONS BY CHAIRMAN McCLURE:

5 Q. Regarding the approval/disapproval question,
6 you mentioned the resource problem that you saw from the
7 Staff's point of view. How much of the Staff's position on
8 the approval issue is because of fear of the resource
9 problem?

10 A. Well, here I should make a disclaimer that,
11 since the law is not my area of training, I'm not really
12 qualified to speak about the legal issues. But I think it's
13 safe to say that the resource question is secondary to the
14 legal concern with approval and disapproval.

15 If it became clear that approval was
16 necessary and a good policy, it may be possible to go to the
17 legislature and get more resources. But before a commitment
18 was received for additional resources, I think it would be
19 extremely risky to become obligated to do something that we
20 don't currently have the resources to do.

21 Q. You mentioned, regarding resource
22 acquisition strategies, that you thought Commission action
23 in reviewing those was unwise. Could you elaborate a little
24 more on that, please.

25 A. Well, the ultimate balance between the many

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1 competing interests that have to be considered in making
2 resource choices requires a pretty solid history in the
3 utility business and a pretty thorough understanding of what
4 all is involved.

5 And I think it would just be certainly more
6 than -- I mean, given the fact that there are five utilities
7 involved and, at least under the current proposed schedule,
8 these plans are going to be submitted on roughly an every
9 seven-month basis, that's an extremely short time frame
10 within which to make the kind of detailed determination that
11 would need to be made to support that kind of decision.

12 And the Staff just feels that it's not
13 realistic to expect the Commission or the Staff to be that
14 thorough, in terms of that time frame, to support a
15 unilateral decision by the Commission as to whether those
16 plans are, in fact, prudent or not.

17 Q. The Staff stated in the initial comments
18 that there were three arguments off of nontraditional
19 accounting and ratemaking treatment. And then you went on
20 to say that it was the Staff's view that traditional
21 accounting and ratemaking treatment should be applied to
22 demand-side programs.

23 My question relates to the three reasons you
24 offered as to why nontraditional methods would be possibly
25 used. And I confess to not understanding your statement on

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1 lines on traditional accounting methods of regulation.

2 Would it not be safe to assume that, were this rule to be
3 promulgated, that there would be an increased reliance upon
4 nontraditional methods?

5 A. I'm probably not your best witness on that
6 specific question. I think --

7 Is Mark here?

8 Mark Oligschlaeger of the accounting
9 department is probably more qualified to address that
10 directly.

11 MR. DOTTHEIM: Martin is correct on that.
12 We would like to offer Mark Oligschlaeger on the question in
13 particular of traditional and nontraditional accounting or
14 ratemaking as it relates to cost recovery.

15 BY CHAIRMAN McCLURE:

16 Q. There's a waiver provision in the draft
17 rules. What type of requests for waiver would you
18 anticipate from the Staff's point of view?

19 A. We would expect, especially in the
20 beginning, that the utilities that are farthest from
21 compliance would request and would be granted waivers from
22 the provisions of the rules that require extensive data
23 development and development of primary information that is
24 needed to support the activities outlined in the rules.

25 Many of these -- much of this kind of

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1 information requires long-term research and data gathering
2 that has to be undertaken as a long-term project to bring it
3 to the point where it becomes useful.

4 And since, in many cases, that process
5 hasn't begun yet, it would require a period of years for
6 utilities that are in that position to get up to speed and
7 meet these requirements. And we certainly would be flexible
8 in terms of allowing waivers for that sort of reason.

9 Q. The Staff believes the waiver provision is
10 sufficient as it's written to meet any possible situation
11 that would arise?

12 A. Yes, we do.

13 Q. Should incentives be given to companies to
14 get into demand-side management?

15 A. Again, I'm probably not the best witness on
16 that question.

17 Q. Let me be a little more specific for
18 whomever the Staff determines needs to answer.

19 One of the commenters stated that perhaps a
20 higher rate of return might be offered. And I would like to
21 here some discussion about that aspect of it.

22 A. Well, I could just say that there are -- and
23 you probably should direct that question generally to other
24 staff witnesses as well.

25 But as a general matter, I would say that

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1 there are, out there in the world, currently being tried in
2 other states, a whole array of different mechanisms; some of
3 which go by the name of incentives, some of which are not
4 really aimed at providing positive incentives as much as
5 they are aimed at removing so-called disincentives to
6 pursuing these kinds of activities.

7 Whether it turns out that such procedures
8 are necessary remains to be seen. It is true that many of
9 them involve quite major departures from established
10 ratemaking procedure. And I think it's prudent to be
11 extremely careful in any major wholesale overhaul of the
12 ratemaking process. Their existing process certainly isn't
13 perfect. I don't think any of us that have been involved in
14 it for any length of time would argue that it is. But
15 changing it in a massive way, without a lot of careful
16 thought and analysis, would probably not be wise.

17 So I think our point of view is that we
18 should proceed incrementally here and find out how far we
19 can go with the existing procedure. And if it turns out
20 down the road that there are still things that aren't
21 working right and need to be fixed, that will be the time to
22 entertain more major changes to the procedure.

23 CHAIRMAN McCLURE: Thank you.

24 EXAMINER WRIGHT: Commissioner Rauch.

25 What we'll do is, we'll wait and go through

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1 the questions. And then we'll bring Mr. Oligschlaeger up to
2 answer the questions concerning nontraditional ratemaking
3 treatment. And then, do you want him to respond to the
4 question regarding incentives or do you have another witness
5 for that?

6 MR. DOTTHEIM: I think he will respond to
7 the incentives also.

8 EXAMINER WRIGHT: Okay.

9 Commissioner Rauch.

10 QUESTIONS BY COMMISSIONER RAUCH:

11 Q. Martin, you indicated that one of the
12 reasons that we're considering this rule is because, up
13 until now, at least as I understood it, you feel like the
14 utilities have not had in place the proper planning
15 mechanisms or inadequate planning exists out there. Can you
16 explain about why you think that is the case? And are there
17 not incentives, natural incentives, to encourage companies
18 to be doing this without the direction of this Commission?

19 A. Well, there are probably quite a few
20 incentives. And I think that accounts for the fact that
21 many of the companies have already started in this direction
22 before this procedure got under way. I think the more
23 farsighted of the utilities realizes that the world has
24 changed and that they do need to improve the way they
25 approach these problems and the question of strategic

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1 planning in general.

2 So, yes, there are, as you say, natural
3 incentives for them to do this. But it's not necessarily
4 universally recognized that this is important or that it has
5 a priority. And even where it is recognized, I mean,
6 sometimes we need a little encouragement to do what we even
7 know we ought to do. And I think this can provide that kind
8 of encouragement.

9 Q. Tell me something. If the Commission
10 resource question was not a factor and there were not legal
11 questions involved in the approval of resource strategies,
12 do you feel like that approval, preapproval would be
13 appropriate and beneficial?

14 If those two factors, you know, you were
15 talking about why this is not the appropriate course to
16 follow. And as I understood it, we've been given two basic
17 reasons why that is. What about if those factors are taken
18 care of. Do you think it's wise?

19 A. I would -- and, again, you might ask that
20 question of other witnesses as well. But I would hold that
21 it probably is not wise for the reason that, in the long
22 term and as a general matter, the Commission and the
23 Commission Staff are not utility professionals. We do not
24 have typically the long history of experience within the
25 industry that utility managers have. And our role is to

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1 provide oversight and to make sure that the public interest
2 is served.

3 But taking on the mantle of management in
4 actually making key resource and investment decisions, I
5 don't believe, is an appropriate role for a public body such
6 as this.

7 Q. It would be a significant step toward
8 micromanaging the utility companies?

9 A. That's right.

10 COMMISSIONER RAUCH: That's all the
11 questions I have. Thank you.

12 EXAMINER WRIGHT: Commissioner Kincheloe.

13 QUESTIONS BY COMMISSIONER KINCHELOE:

14 Q. I have a question regarding the specific
15 language of the environmental issues and the language
16 relating to nonzero probability. Would you be the person to
17 direct that to?

18 A. Yes.

19 Q. In the reply comments of the Staff, first of
20 all on Page 48, under B there, you start, on the third line
21 at B, if there were a deletion of the words after the word
22 "utility," a deletion of the words of "mitigating the
23 environmental impacts of the resource" and ending deletion
24 there, could you think for a moment and tell me if that has
25 any impact on that subsection?

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1 A. Let's see. If I understand right, then it
2 would read "The probable environmental costs of each
3 supply-side resource option shall be quantified by
4 estimating the cost to the utility to comply with additional
5 environmental laws or regulations."

6 Q. Yes. Would that make any substantive
7 difference?

8 A. No. I don't think so. I think the phrase
9 "mitigating the environmental impacts of the resource"
10 essentially assumes that that is what the purpose of those
11 increased laws are regulating.

12 Q. Mitigating environmental impacts only
13 contemplated complying with the --

14 A. That's correct.

15 Q. On Page 20 then. I just need your help in
16 looking at this proposed revision. It doesn't yet work for
17 me in that it seems that it attempts to quantify the
18 probability of imposition of the regulation by some gauge
19 relating to the costs of compliance in the event of
20 imposition. I'm not following how that would work.

21 A. The basic idea here is that -- well, as
22 originally written, the phrase "nonzero probability,"
23 several parties objected to that on the grounds that that
24 would require the utilities to estimate in detail the cost
25 of complying with regulations that could conceivably cover

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1 every possible pollutant that could conceivably be
2 controlled at some future time. Even if the probability of
3 that additional control was infinitesimally greater than
4 zero, they would still be required to analyze in detail the
5 costs of mitigating that pollutant.

6 Since the purpose of this whole area in the
7 rules is to mitigate risk, we felt like, to answer that
8 concern here, there needed to be -- I mean, several parties
9 suggested that the way to fix this potential problem is,
10 instead of "nonzero," say "a significant probability."

11 Well, the risk involved is a function not
12 only of the probability that a control will be imposed but
13 also of the cost associated with satisfying that control.
14 And so, if we want to maintain the focus on the potential
15 risk, the rule needs to be phrased so that it recognizes
16 that as the principal concern.

17 And so the idea here is to get away from
18 saying "nonzero probability" and to say, well, it's a
19 probability that is large enough -- and I guess,
20 parenthetically, you can read into that -- and the cost of
21 meeting that regulation is also large enough that it could
22 have a significant impact on utility rates. That's what we
23 mean by risk in this context. And that, we feel, will limit
24 the list of pollutants that the utility has to analyze to a
25 manageable number, which was the basic concern.

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1 Q. I understood that to be the thrust of the
2 discussion on Page 47 of the issue. And I think that's, you
3 know, I appreciate what's being attempted there. And I
4 think I understand that as the basis upon which the changes
5 proposed on Page 48 are made. But I still do not see that
6 it works in terms of the definition here, when there is an
7 attempt to quantify, what I understand to be, the
8 probability of an imposition of the regulation.

9 A. Well, it is true that what's contemplated
10 here -- the probability of the regulation being imposed is
11 one of two considerations that have to be looked at in
12 determining what the list of environmental pollutants ought
13 to be. The other concern is if the -- assuming that such a
14 regulation were imposed, whatever its probability, what
15 would be the cost to the utility of complying with it.

16 Q. And what you're saying makes perfect sense
17 to me. But I don't see -- it's not clear to me yet how that
18 definition achieves it. I guess that's all we can achieve
19 right now.

20 A. Well, I'd certainly be willing to entertain
21 suggestions on how to improve it.

22 Q. All I want to do is make clear -- I'm
23 willing to entertain suggestions further today too, if
24 anybody has any thoughts about that.

25 Okay. Thank you.

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1 EXAMINER WRIGHT: Commissioner Perkins.

2 COMMISSIONER PERKINS: I don't have any
3 questions.

4 EXAMINER WRIGHT: Thank you. You may step
5 down.

6 (Witness excused.)

7
8 EXAMINER WRIGHT: Mr. Oligschlaeger.

9 (Witness sworn.)

10
11 EXAMINER WRIGHT: We'll go back to questions
12 from the Commissioners. The Chairman had one.

13 MARK OLIGSCHLAEGER testified as follows:

14 QUESTIONS BY CHAIRMAN McCLURE:

15 Q. Mr. Oligschlaeger, you heard the question
16 regarding nontraditional accounting procedures and, I
17 assume, primarily the discussion that related to Accounting
18 Authority Orders, the statement in the Staff's comments that
19 primarily we should continue to rely on traditional
20 ratemaking treatment as opposed to nontraditional methods,
21 such as Accounting Authority Orders, et cetera. Would you
22 elaborate on why you think that we need to look at
23 traditional methods.

24 A. I think that up to now we have not really
25 seen any compelling evidence which would suggest that

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1 traditional accounting and ratemaking for these costs will
2 not work in every case for every utility. I think a lot
3 depends upon the magnitude of the expenditures being
4 discussed and the impact, the expected impact, on the
5 utility's earnings as to whether nontraditional methods
6 should be considered.

7 And I believe it's the Staff's perspective
8 that it's somewhat the utility's burden to demonstrate that
9 there is something so, I would guess, extraordinary about
10 demand-side expenditures and the accounting and rate impacts
11 of those costs that would justify nontraditional methods.

12 I would add that, as you noted, the
13 discussion, I think, so far has centered on Accounting
14 Authority Orders as they have been used recently in Missouri
15 to defer costs for future recovery. And perhaps the
16 discussion has suffered a little bit by being so focused on
17 that one method. There are other methodologies out there.
18 There are other approaches being used by other jurisdictions
19 which might have equal or more merit.

20 Q. Could you elaborate on that, please.

21 A. Quite a few jurisdictions have taken the
22 approach, I believe, premised on the theory that demand-side
23 costs should be made more consistent, or in an accounting
24 sense, with the supply side, that these costs should be
25 capitalized and amortized over a certain period of time.

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1 Certainly, before the Missouri Staff would approve such a
2 concept, we want to look at it in far more depth than we
3 have to date.

4 But I would note that that kind of approach
5 would avoid some of the concerns we have in terms of
6 guaranteed recovery of expenditures and single-issue
7 ratemaking that we have to some degree with the Accounting
8 Authority Order deferral approach.

9 Q. The Staff still would not dispute, though,
10 the recovery of prudently incurred costs?

11 A. Generally speaking, we believe prudently
12 incurred costs should be recovered, of course, with the
13 caveat that, when we look at such costs within the test
14 year, we would seek to have them moved to a normalized or
15 annualized level and so on.

16 Q. Let me focus now on incentives. Should
17 companies be given incentives to enter into demand side and,
18 specifically, rate of return, any other incentives that may
19 come to mind. Do you have a reaction to that?

20 A. I guess it somewhat depends upon the intent
21 of the incentives. If the incentives are meant to
22 counteract some valid disincentives which the utilities
23 demonstrate is present under the current regulatory scheme
24 for demand-side costs, then, yes, such incentives should be
25 considered.

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1 To the extent such incentives, I guess,
2 would have the impact of skewing the debt towards
3 demand-side costs versus supply-side options, I guess that
4 would really be more a policy decision by the Commission. I
5 wouldn't necessarily have an opinion on that. I'm not sure
6 that was helpful to you.

7 Q. Well, I think you're right. I think it
8 would be a policy decision first as to whether it should be
9 skewed and, secondly, if there is an equal balance now that
10 would necessitate some sort of review. I appreciate your
11 answer.

12 Thank you.

13 EXAMINER WRIGHT: Commissioner Rauch.

14 QUESTIONS BY COMMISSIONER RAUCH:

15 Q. Mark, I assume that you would agree that the
16 Commission should not be considering prior approval of
17 resource strategies.

18 A. I would agree with that, yes.

19 Q. If we did, though, if we considered that,
20 would you agree that that eliminates an element of risk as
21 far as the company is concerned?

22 A. If there was some mechanism where we would
23 basically sign off on the decision-making process prior to
24 the actual rate case in which the costs would come into
25 effect, yes, I would agree that would cut their risk.

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1 Q. And I'm curious. As we discussed that
2 question, I know that's come up again and again in this
3 discussion, the level of preapproval or whether or not
4 preapproval should be part of our consideration. Can you
5 discuss that factor of risk and how that might be reflected
6 as far as return on equity or, you know, can you help
7 quantify what the significance of that elimination of
8 risk -- or not elimination of risk perhaps but decrease of
9 risk or whatever the --

10 A. Well, I can respond to that as an accountant
11 to what is really a financial analysis question. And
12 certainly my perception of a utility's required return is
13 impacted by its level of risk; the higher the risk, the
14 higher its required return.

15 To the extent this Commission would take
16 steps to reduce risk over the perceived levels that
17 currently exist today, then to me at least, as a lay person,
18 from the financial analysis perspective, that would suggest
19 that the required returns by the utilities would be reduced.

20 Q. I'm trying to understand the larger picture
21 of the utility, the larger questions of return and how
22 significant this aspect of the overall operation would be
23 and how that might be quantified as far as that return issue
24 is concerned. I'm not sure I'm even clear on what I'm
25 trying to get at.

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1 How much of the overall risk of the company,
2 or the natural risk of being in the utility business, would
3 this alleviate, I guess? And would it be such that it would
4 have a significant impact on rate of return if it were
5 adjusted for that?

6 A. I'm afraid you're getting out of my realm of
7 expertise.

8 COMMISSIONER RAUCH: Thank you.

9 EXAMINER WRIGHT: Commissioner Kincheloe.

10 QUESTIONS BY COMMISSIONER KINCHELOE:

11 Q. Mark, I understand your response to
12 Commissioner Rauch's question about your belief that
13 approval of plans is not appropriate and approval to be on
14 policy considerations rather than the other considerations
15 that Martin was referring to, legal and resource; is that
16 correct?

17 A. Yes. Absent those considerations, I would
18 still be opposed to that.

19 Q. The ratemaking or accounting mechanism that
20 you referred to that would be available, conceptually, is it
21 fair to say that those mechanisms are mechanisms that would
22 attempt to hold harmless the companies within a framework in
23 which we are trying to compel, by way of planning, that
24 which is unnatural to the companies in terms of the profit
25 dynamics of the industry as opposed to those methods having

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1 capacity to create a different profit incentive for the
2 industry that we would then regulate?

3 A. I think the discussion on nontraditional
4 accounting and ratemaking methods, I think primarily focuses
5 on your first point that demand-side planning costs, which,
6 under normal accounting, should be expensed, has a different
7 ramification upon the company in terms of its timing for
8 rate relief, the impact on regulatory lag, and so forth,
9 than the normal supply-side options which are capitalized
10 and put into service and the cost hit the cost of service at
11 one point in time as opposed to on an ongoing basis
12 incrementally increasing.

13 COMMISSIONER KINCHELOE: Thank you.

14 EXAMINER WRIGHT: Thank you. You may step
15 down.

16 (Witness excused.)

17 _____
18 EXAMINER WRIGHT: Public Counsel.

19 MR. MILLS: Thank you. I'll call Ryan Kind
20 to the stand, please.

21 (Witness sworn.)

22 _____
23 RYAN KIND testified as follows:

24 THE WITNESS: Well, I appreciate this
25 opportunity to comment on the proposed rule. And I'd like

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1 to state that Public Counsel is generally supportive of the
2 rule. Our main area of disagreement is the area of plan
3 approval.

4 And I think our disagreement there is
5 largely as to whether or not plan approval constitutes
6 micromanagement of a utility. And we don't feel that it
7 does. We feel that it's an appropriate role for the
8 Commission to set goals for management and that this doesn't
9 interfere with the utility's discretion to manage their
10 day-to-day affairs.

11 We feel that, without plan approval, there
12 is less likelihood that the fundamental objective of the
13 resource planning process, as stated in 010 of the rules,
14 will be achieved. And I would just like to elaborate on
15 that point a little bit.

16 A few advantages of plan approval that I'd
17 like to comment on: We feel like plan approval is going to
18 reduce the likelihood of cream skimming by utilities by
19 giving them some assurance that they will probably be
20 allowed to recover most of their DSM costs that are
21 prudently incurred.

22 And we feel like, in the resource planning
23 process, if there is plan approval, the Commission and all
24 parties involved will be able to make use of a more diverse
25 supply of information and that better decisions, as far as

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1 resource planning, will be made because of that.

2 We also feel that there's an advantage that,
3 with an approval process, you're focusing on decisions
4 earlier in the planning process and at a time when changes
5 can actually be made to a plan, if the plan is deemed to not
6 be in the public interest as opposed to just, without plan
7 approval, having a utility have total discretion of
8 implementing whatever plan they choose to implement and then
9 later analyzing whether or not they did implement the plan
10 once it's been implemented.

11 We also feel like the utility managers and
12 planners likely have a bias in making their planning
13 decisions, that they'll be biased towards the interests of
14 shareholders. And we feel that it's an appropriate role for
15 the Commission to balance the interests of shareholders and
16 ratepayers in making planning decisions.

17 Something that I'll probably get back to
18 later when I make some comments on the Staff's reply
19 comments are that we feel like the Staff generally ignored
20 our suggestions for plan approval and didn't really address
21 the kind of plan approval that we were proposing. They
22 addressed the plan approvals as proposed by the utilities
23 and made lots of arguments against that type of approval.
24 And our office feels like the kind of approval that we
25 proposed was somewhat of a compromise between what's

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1 currently in the plan and what the utilities were proposing.

2 And the main way in which our plan approval
3 was to work is that, in 080, we changed a lot of references
4 from where it referred to 010(2) (A)-(C) to referring to
5 010(2) where, by making that change, parties could review
6 plans as to whether or not they accomplished the fundamental
7 objective of the resource planning process instead of just
8 the requirements in 010(2) (A)-(C).

9 And just then also another change we made
10 that went along with that was in changing the language in
11 010(2)(C) so that it wasn't worded in a way that there was
12 total utility discretion in deciding on the appropriate
13 balance between competing objectives in the resource
14 planning process.

15 I'd like to make just a couple of brief
16 corrections to our comments. On Page 9 of our initial
17 comments, the paragraph that begins at the bottom of the
18 page there, the second line from the bottom, at the
19 beginning of that line, the word "effectively" should have
20 been "effectiveness."

21 And then one other correction.

22 COMMISSIONER KINCHELOE: Could you tell me
23 again where that is?

24 THE WITNESS: Yeah. That's our initial
25 comments, at the bottom of Page 9, the second line from the

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1 bottom. The first word in that line is "effectively," and
2 it should have been "effectiveness." I read our comments
3 through several times, and I finally caught it last night.

4 And then one other change is in our appendix
5 to our initial comments. And that's on Page A-3 under
6 050(6)(E). The first line of (6)(E) reads "Cream skimming,
7 lost revenues" And it should have been "lost
8 opportunities" instead of "lost revenues." So that same
9 text in (6)(E) actually appears earlier in our comments
10 here, and it is stated as "lost opportunities" there. But
11 we didn't catch the problem here.

12 Next I'd like to comment on the Staff's
13 reply comments. As was suggested, that's an appropriate
14 thing to do here. And I'd like to -- first of all, I've
15 just got a list of some changes that we had suggested that
16 I'm not sure the Staff incorporated in the changes they made
17 in their reply comments. I didn't really know that I would
18 have an opportunity to do this this morning, so I wasn't
19 completely prepared. And I haven't really verified whether,
20 in fact, these changes were made.

21 In our initial comments, on Page 7, we had
22 suggested a change to 040 in the last paragraph there. I'd
23 suggested a change to clarify the meaning of one of the
24 filing requirements that was included at the end of 040.
25 And the Staff didn't, as far as I know, address that change.

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1 And it was just a change that I thought
2 clarified the meaning of that filing requirement. It's for
3 (9)(C) and 040. And it reads "A summary of the results of
4 the uncertainty analysis described in Section 8 that has
5 been completed for candidate resource options." And so that
6 change would also be included in our appendix in our initial
7 comments as would all the other changes.

8 Another change is on Page 12 of our initial
9 comments. That was a change to 060, in the last two
10 paragraphs. And this change involved requiring the
11 utilities to analyze the impact of load-building programs,
12 analyze the impact that those programs had on their
13 preferred resource plan.

14 And I think, as the rule now states, that
15 those load-building impacts will be analyzed. And it's
16 worded something like "on set alternative plans." And we
17 feel that it's important that the impacts be analyzed on the
18 preferred resource plan that the utility chooses in order to
19 make sure that the fundamental objective of the resource
20 planning process is met.

21 Another change is on Page 13 of our initial
22 comments. We had suggested that an executive summary be
23 required in Section 080. And I don't believe that was
24 addressed by the Staff. I think it was addressed by Union
25 Electric. And they did not object to the idea. But they

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1 objected to the idea of being required to make a separately
2 bound executive summary.

3 And that was part of the point of our whole
4 suggestion actually was that there would be just a
5 separately bound summary of each utility's resource plan
6 that would be available to the general public.

7 Another change that I don't believe was
8 addressed in the Staff's reply comments was a change we
9 suggested on Page 15 of our initial comments. And that was
10 a change that would require the utility to schedule sessions
11 for previewing its resource acquisition strategies. And we
12 feel that that is important. It's something that we raised
13 in the workshops and generally didn't get any large
14 opposition to it, I don't feel like, from anybody. And I
15 would note that the League of Women Voters supported this
16 idea in their reply comments.

17 Also, on that subject of that particular
18 change that we had suggested in reference to some of the
19 Staff's concerns about having only seven months to analyze
20 the resource plans of different utilities, I think that the
21 suggestion for having sessions for previewing plans before
22 that seven-month period begins is something that will help
23 to decrease the constraints that are placed on the Staff's
24 resources by only having seven months to review plans. And
25 that's in reference to the Staff's concern that seven months

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1 is not enough time to be able to make decisions regarding
2 plan approval.

3 One last change and perhaps the most
4 important change that Public Counsel has suggested in our
5 comments which was not addressed in the Staff's reply
6 comments and I mentioned earlier is just a change that we
7 recommended in our initial comments.

8 And I don't have a page number to refer you
9 to. But it would be in our appendix, I guess, on A-5 and
10 080. And that would be -- well, actually on Page 7; in
11 fact, I think this is a correction that we made in our reply
12 comments about something that we neglected to do here in
13 Section 13 where there's a reference to (2)(A)-(C). We had
14 intended to change that to just (2) of 010.

15 And we did make that change at the top of
16 the page there where you see the bottom part of Paragraph
17 (6) where we have struck out (A)-(C) and included just (2).
18 And we've also struck out the word "planning" before
19 objectives.

20 As I say, this is a major suggestion that
21 our office made. And it's the kind of plan approval we'd
22 like to see where different parties would have a chance to
23 review how well the utility's plans met the objectives in
24 010(2). And that would include the objective in
25 Paragraph 2, which is the resource planning process at

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1 electric utilities shall -- the fundamental -- sorry.

2 Excuse me.

3 The fundamental objective of the resource
4 planning process shall be to provide the public with energy
5 services that are safe, reliable, and efficient at just and
6 reasonable rates and in a manner that adequately serves the
7 public interest. And I'm really not sure why it wasn't
8 addressed in the Staff's comments, why they didn't address
9 our suggestion that that would be the type of review.

10 And as I stated earlier, I think it's a
11 fairly good compromise position, especially when you look at
12 the type of review we proposed there with a change of
13 language we propose for 010 at the end of Paragraph 1 where
14 we say, "Commission approval of a utility's resource plan
15 shall not be construed as an acceptance by the Commission of
16 the assumptions or estimates involved therein, nor as a
17 finding as to the prudence of actions taken pursuant to the
18 plan."

19 And the last part of that sentence there
20 where we specify there would be no finding of the prudence
21 of actions taken pursuant to the plan, I think there is
22 where we clearly specify that the type of approval that
23 we're suggesting is not what several other parties have
24 referred to as preapproval.

25 Well, what I'd like to do now --

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EXAMINER WRIGHT: Mr. Kind.

THE WITNESS: Yes.

EXAMINER WRIGHT: That's over 15 minutes. If you have a few additional comments, we'll allow you to make them. This is for Commissioner questions.

THE WITNESS: Okay. Well, I guess you'd suggested that we go through the changes that were made by the Staff in their reply comments. And there's probably close to 100 of them. And we do have views on them. I could maybe just skim through some of those changes.

EXAMINER WRIGHT: Well, I think what I suggested was that you address any major concerns you still had with the proposed rule and if there's anything the Staff hadn't addressed.

I think you've probably addressed what you're discussing here in your comments and I think the Commission will be reviewing all the written comments and will take those into account at the time that they determine whether to make the changes you propose.

We were looking more for any major concerns or anything that you thought was still wrong with the rule with regard to fulfilling its purpose. And I think you're addressing the question of how your preapproval is different than those proposed by the utilities. I mean, that's appropriate. But I think going through maybe the individual

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1 details, as long as they're in your comments, you don't need
2 to repeat those now.

3 So if you have any additional general
4 comments about the rule, especially some of the policy
5 questions that the Commission has faced, I'll give you a few
6 minutes to address those.

7 THE WITNESS: Okay. I think I'll just
8 address one, which is that a lot of different parties tried
9 to resolve this problem with the probable environmental
10 cost. And we talked about the nonzero probability question.
11 And the Staff, I think, in their reply comments, attempted
12 to resolve that problem in a way similar to the way we tried
13 to resolve it in our reply comments. And I would just like
14 to make a pitch and say that I feel that the way we resolved
15 it was a little bit clearer than the way it was resolved in
16 the Staff's reply comments.

17 EXAMINER WRIGHT: Commissioner questions.

18 Chairman McClure.

19 CHAIRMAN McCLURE: Thank you.

20 QUESTIONS BY CHAIRMAN McCLURE:

21 Q. Mr. Kind, let me put a couple of questions
22 to you. One would be a similar question as I addressed to
23 Mr. Oligschlaeger on incentives or perhaps, in the negative,
24 disincentives.

25 Does Public Counsel think that incentives

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1 are required or disincentives currently exist that the
2 companies must deal with?

3 A. We feel that it's pretty clear that there
4 are disincentives for utilities to engage in demand-side
5 management. And the disincentives would include the matter
6 of lost revenues and also the way in which supply-side
7 resources are treated differently than demand-side
8 resources.

9 We feel that, as far as the question of
10 incentives goes, for demand-side resources, probably some
11 limited use of incentives would be proper initially just to
12 prod the utilities to move in the direction of exploring the
13 implementation of demand-side resources. But that would
14 just be a short-run need for any incentives.

15 Q. But you would not be adverse to looking at
16 them, given the right set of circumstances and conditions?

17 A. That's right.

18 Q. Secondly, I think you characterized your
19 position regarding strategies and resource acquisition
20 correctly as being middle ground as I read your comments.

21 My question relates to your middle ground on
22 plan approval versus your statement in your comments that
23 the utility still should bear the risk for ineffective
24 programs. And how do we balance that overall plan approval
25 as suggested by Public Counsel and with still requiring the

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1 company to compare that risk with programs that don't work
2 as they should?

3 A. Well, I think that's a very difficult
4 question. I guess we feel like that's the area where really
5 the Commission would just have to examine things on a
6 case-by-case basis and, you know, make a judgment on things.

7 I think we feel like that coming out of the
8 kind of plan approval that we have proposed is that the
9 utilities will still have a burden of proof but they will
10 have something on their side in demonstrating that burden of
11 proof by showing that the decisions had been found to be
12 prudent at the time they were made.

13 Q. Do you think the Commission would have
14 enough latitude within that overall plan improvement
15 umbrella to still perhaps find a decision imprudent?

16 A. I think so and I think that's where our
17 changes to 010 come in that we state that the individual
18 estimates and assumptions on which those decisions are made
19 are not proving that those, in fact, were the correct
20 estimates.

21 CHAIRMAN McCLURE: Thank you.

22 EXAMINER WRIGHT: Commissioner Rauch.

23 COMMISSIONER RAUCH: I have no questions.

24 EXAMINER WRIGHT: Commissioner Kincheloe.

25 COMMISSIONER KINCHELOE: No questions.

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EXAMINER WRIGHT: Commissioner Perkins.

COMMISSIONER PERKINS: No questions.

EXAMINER WRIGHT: Commissioner Mueller.

COMMISSIONER MUELLER: No questions.

EXAMINER WRIGHT: Thank you. You may step
down.

(Witness excused.)

EXAMINER WRIGHT: Missouri Industrial Energy
Consumers.

MS. SCHMIDT: May it please the Commission,
the Missouri Industrial Energy Consumers would like to offer
Mr. Don Johnstone to the stand.

(Witness sworn.)

EXAMINER WRIGHT: You may proceed.
DONALD E. JOHNSTONE testified as follows:

THE WITNESS: Good morning, Commissioners,
and Mr. Examiner. We have two fundamental aspects of the
rule that we feel strongly about that I'd like to address
this morning. The first deals with the objectives of the
rule as set out in Section 10 and the other deals with the
issue of plan approval.

With respect to the objectives, the rule, as
it was proposed, set forth the minimization of utility costs

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1 as the primary objective with a number of other objectives
2 as being secondary.

3 Among those secondary objectives was the
4 minimization of rates. In our comments we suggested that
5 the minimization of rates should have an equal footing with
6 the minimization of costs.

7 I would note that Union Electric addressed
8 that position and went on to say that, in fact, all those
9 that had been characterized as secondary should be placed
10 equal. And then it's a management responsibility, if you
11 will, to balance those objectives.

12 We agree with that position; but I'd like to
13 really just focus on, for the moment, the minimization of
14 rates versus the minimization of costs.

15 We don't think either one would be
16 appropriate to the exclusion of the other because you can
17 end up with some unusual and perhaps perverse incentives or
18 results.

19 The most fundamental problem we have with
20 the minimization of cost is that you can minimize costs
21 simply by not providing the service. If we're talking about
22 encouraging industrial development, for example, you could
23 minimize costs by not encouraging development. And that
24 seems to me to be fundamentally incorrect if we're going to
25 institute a planning process which has as an objective

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1 something on its face which would be antigrowth.

2 From the point of view of rates versus cost
3 for the minimization, we think there is also an implication
4 with respect to the promotional practices. And while we've
5 not looked at that issue in great detail, I would note that,
6 if you're going to minimize costs, you could do that by
7 promoting gas versus electricity. You would sell less
8 electricity, and that would minimize costs.

9 On the other hand, if the electric utilities
10 were simply encouraged to minimize rates, they could do that
11 by taking certain notes from the gas utilities without
12 consideration of the impact on the gas utilities.

13 And so, for those reasons, we think that
14 there needs to be a consideration of both factors, the costs
15 and the rates, when we're setting the objectives for this
16 planning process.

17 The other important issue, from our
18 perspective, is that of plan approval. Fundamentally, we
19 see the planning process as a management responsibility.
20 And the Commission would, in fact, be getting into an area
21 of making management decisions.

22 There has been some discussion about the
23 management of risk throughout this process. And from our
24 point of view, if we get into the issue of plan approval,
25 we're really not talking about minimizing any risk overall

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1 but we're talking about a shift in the risk.

2 There is a shift from the utilities to the
3 ratepayers. For example, in Mr. Kind's opening comments,
4 one of the first things he mentioned with plan approval was
5 a guarantee of cost recovery. And that's a fundamental
6 problem that we have with the approval concept, is that it
7 leads to, in fact, a guarantee of cost recovery that we feel
8 is inappropriate.

9 The specific language that we found
10 offensive was in the purpose section of Section 80. The
11 Staff has suggested a change in their reply comments which
12 would focus on Section 10 as a requirement as opposed to
13 objectives. We don't think that that reply comment and
14 those changes really get to what needs to be changed. If
15 we're going to have this compliance review, which we think
16 makes some sense, it should really focus not on Section 10,
17 which is the objectives, but compliance would really get to
18 Sections 30, 40, 50, 60, and 70, which deal with the
19 forecasting and the supply analysis and that type of thing.

20 So we would entertain a change in that
21 direction, which we think would assure compliance by the
22 utilities; we'd move to encourage good planning by the
23 utilities without crossing the line and getting into the
24 area of plan approval, which we think would be incorrect.

25 I'd be happy to take any questions you have.

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1 EXAMINER WRIGHT: Chairman McClure.

2 QUESTIONS BY CHAIRMAN McCLURE:

3 Q. Mr. Johnstone, if there was no plan
4 approval, as you would advocate, then I would assume it's
5 your position that no incentives then would be required for
6 the companies to enter into these proceedings?

7 A. That's correct. I think that the utilities
8 fundamentally have an incentive to have good management and
9 good plans. And if they don't have good plans, there's
10 certainly going to be a risk later on when it comes around
11 to answer to their rates and their resources that they have
12 in place.

13 So I think there is a very strong incentive
14 that presently exists for the utilities to engage in
15 effective planning. And I'd add that, while we certainly
16 support this rule, we're not here to find fault necessarily
17 with what the utilities have done in the past. On the other
18 hand, we think this does provide proper encouragement to
19 improve planning in the future.

20 CHAIRMAN McCLURE: Thank you, sir.

21 EXAMINER WRIGHT: Commissioner Rauch.

22 COMMISSIONER RAUCH: I have no questions.

23 COMMISSIONER PERKINS: No questions.

24 EXAMINER WRIGHT: Thank you.

25 THE WITNESS: You're welcome.

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1 (Witness excused.)

2 _____
3 EXAMINER WRIGHT: The League of Women
4 Voters.

5 (Witness sworn.)

6 _____
7 EXAMINER WRIGHT: You may proceed with your
8 statement.

9 WINIFRED COLWILL testified as follows:

10 THE WITNESS: I was not really expecting to
11 have an opportunity to make a statement this morning. I was
12 more prepared to answer questions on it. But I would just
13 emphasize that the League of Women Voters, in making
14 comments on this rule, is attempting to add in the public
15 interest. We are very supportive of comprehensive utility
16 planning. We think it will benefit the public, the
17 customers, and the state as a whole in controlling the
18 growth of energy costs, thereby leaving more dollars within
19 the state to circulate and strengthen the economy.

20 At the same time, we are very concerned
21 about conservation of resources, energy resources, which are
22 depletable. And so we feel that this type of planning, and
23 especially if it does encourage demand-side management
24 programs, can move in this direction of conserving resources
25 and developing renewable resources, which is the ultimate

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1 goal, energy goal, of the League of Women Voters nationally.

2 We've had a position on energy issues for
3 over a decade. And so one of the things that we have
4 supported very strongly has been controlling, a wise use of
5 resources and planning that leads to conservation of these
6 resources and controlling costs.

7 The things that we emphasized in our
8 statement, I think, are that we do agree the minimum of
9 long-run utility costs should be the primary focus. We
10 think ultimately this will produce the goals, the
11 objectives, that I just mentioned.

12 One of our concerns has been, as we pointed
13 out, that all societal costs are not addressed in this rule,
14 are not accounted for, as they are in some other states.
15 The environmental costs are limited to those which have a
16 fee or a penalty attached to them. And many environmental
17 impacts are not addressed in any regulations and yet are
18 borne by the taxpayers ultimately.

19 And so we would like to encourage the
20 Commission to look further at this issue and perhaps apply a
21 benefit of a certain percentage, such as Wisconsin has done,
22 to give more weight to demand-side management programs and
23 calculating avoided costs and evaluating the relative
24 benefit of demand side versus supply side.

25 I think we indicated one of our major

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1 concerns was greater public participation. And we've
2 heartily supported the executive summary suggested by Public
3 Counsel to make this plan more available to the public.

4 And we also supported proposals that
5 would -- for a preview of plans and an advisory group being
6 formed to address some of these issues. We think that this
7 kind of participation is beneficial in the long run and will
8 reduce costs ultimately and would be beneficial to all
9 parties concerned.

10 Finally, we also support the plan approval
11 ideas as presented by Public Counsel. We think that, here
12 again, more careful analysis at an early stage and review is
13 going to be very cost-effective rather than -- and reduce
14 mistakes or wrong directions that might be proposed early on
15 instead of later when the costs will have to be borne by the
16 ratepayers.

17 We think that any incentives that are given
18 the utilities should be strictly tied to performance, either
19 in the form of shared savings or a certain amount of peak
20 demand reduction, something on that, which, again, we see
21 other states doing. After experimenting with other types,
22 they've realized that, if we want to get the most value for
23 these incentives, we want to control the amount of costs
24 going into it. And the results is what we're looking for.

25 So I'd be happy to -- I think that's all

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1 that I wish to say at this point. If there are any
2 questions, I can try to answer them.

3 EXAMINER WRIGHT: Chairman McClure.

4 CHAIRMAN McCLURE: Thank you.

5 QUESTIONS BY CHAIRMAN McCLURE:

6 Q. As I read your comments, you were agreeing
7 with the Public Counsel on a more broadly based Commission
8 review initially of the company's plans as opposed to each
9 individual assumption; is that correct?

10 A. As opposed to each individual assumption.

11 Q. That the company would be making, for
12 example, on its resource position.

13 A. Yes. I think the broader critical look at
14 whether the fundamental objectives are being met.

15 Q. You made one statement I want to tie into
16 this. You were talking about it being more cost-effective
17 if the Commission were to review them at that stage, perhaps
18 prevent unnecessary expenditures. If that is the
19 assumption, would it not then be more cost-effective for the
20 Commission to review as many assumptions as possible?

21 A. Well, my problem is that I don't have a
22 legal background. And I hear all the terms of the
23 presumption of prudence and so forth, and I don't know at
24 what level one can get into full plan approval without
25 threatening the ability of the Commission to question

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1 prudence. So I would leave that -- the breadth of that
2 approval to be left to people more expert than I in knowing
3 the ramifications.

4 EXAMINER WRIGHT: Commissioner Rauch.

5 COMMISSIONER RAUCH: No questions.

6 EXAMINER WRIGHT: Commissioner Kincheloe.

7 COMMISSIONER KINCHELOE: No questions.

8 EXAMINER WRIGHT: Commissioner Perkins.

9 COMMISSIONER PERKINS: No questions.

10 EXAMINER WRIGHT: Thank you. You may step
11 down.

12 THE WITNESS: Thank you very much for that
13 opportunity.

14 (Witness excused.)

15
16 EXAMINER WRIGHT: Okay. We do have
17 representatives from the Department of Natural Resources.
18 They have indicated that they do not wish to make any
19 comments. As we take the opportunity to make any additional
20 comments, do the Commissioners have any questions for
21 representatives from the Department of Natural Resources?

22 (No response.)

23 EXAMINER WRIGHT: Thank you.
24 Why don't we take about a ten-minute break
25 now.

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1 Off the record.

2 (A recess was taken.)

3
4 EXAMINER WRIGHT: Back on the record.

5 While we were off the record, Armco
6 indicated that they would like to make a brief statement.
7 And, as indicated, they are generally in support of the
8 rule.

9 So the representative from Armco, would you
10 come forward.

11 (Witness sworn.)

12
13 CHARLES MCKEE testified as follows:

14 THE WITNESS: Thank you, Mr. Examiner.

15 My name is Charles McKee. I'm appearing on
16 behalf of Armco today. I have very brief comments to make;
17 namely, because one issue that we were concerned about was
18 not raised this morning.

19 First of all, I would like to say that we
20 generally are in support of the rule as proposed and only
21 have limited qualifications, which were generally addressed
22 by the Missouri industrials.

23 The first concern and primary concern we
24 have is with any implication that this rule would give plan
25 approval. And that plan approval would represent a

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1 fundamental shift in the risks that are now borne by the
2 various parties in ratemaking proceedings.

3 One issue that was not raised earlier was
4 the substantive procedures which are proposed under
5 Rule 22.080 which provide, for the establishment of the
6 docket, hearing mechanisms for the review of proposed plans.

7 The concern that Armco has is that these
8 procedures appear to give some form of substantive due
9 process in the review of proposed plans. And that
10 appearance of substantive due process, in turn, seems to
11 imply the existence of some substantive right which is
12 established through those hearings.

13 Due to the nature of the rule and the
14 shortened time period in which all parties would be required
15 to act, it would be awkward, if not impossible, for
16 intervenors to effectively present their views in these
17 limited hearing mechanisms. And, accordingly, we see no
18 reason for establishing a docket but rather requiring filing
19 of the plan alone.

20 In other words, there would be no necessity
21 for a hearing to determine whether or not the plan was
22 acceptable in light of the fact that that finding alone may
23 imply plan approval. Now, I understand the Staff feels that
24 the general objective, as set forth in 010, addresses that.
25 And I'm certainly in agreement with the general policy

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1 provisions as set out in 010. Our concern is merely not to
2 have any implication that there is preapproval or plan
3 approval.

4 In conjunction with that, I would make a
5 brief statement as to the comments about a middle ground or
6 possible compromise on plan approval. Our concern is that
7 such a compromise would merely create a gray area which
8 would then present serious difficulties in future ratemaking
9 proceedings.

10 For instance, the comment was made earlier
11 that the burden would still be on the utility to demonstrate
12 that its assumptions were correct; yet, there would be some
13 presumption or allowance given to the utility that it had
14 made appropriate steps. Although not stated in this way,
15 that sounds to us like there's a prima facie case made that
16 the plan is reasonable and that the burden then shifts to
17 opposing parties to demonstrate that the plan was not
18 reasonable, which is a fundamental shift.

19 Those are the only concerns that we want to
20 express. Generally, as I say, we are in agreement with the
21 statements earlier made by the Missouri industrials but
22 wanted to emphasize, on behalf of Armco, our concern that
23 plan approval should not be a part of this rule.

24 EXAMINER WRIGHT: Questions?

25 Chairman McClure.

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1 CHAIRMAN McCLURE: Does the Commission have
2 the authority under existing statutes for final approval, in
3 your opinion?

4 THE WITNESS: I may be speaking somewhat out
5 of my area of expertise; however, I believe the Commission
6 would be stretching itself to commit itself to plan
7 approval, given the limited nature of the review that is set
8 out in the procedures established under the rule.

9 CHAIRMAN McCLURE: Thank you.

10 EXAMINER WRIGHT: Commissioner Kincheloe.

11 COMMISSIONER KINCHELOE: The Public Counsel
12 characterizes its plan approval proposal as being a finding
13 that, if the utility's assumptions and estimates were
14 correct, then the utility's plan, based upon those
15 assumptions and estimates, is reasonable. Would you comment
16 on that.

17 THE WITNESS: Our response to that is the
18 rule, as it is set up now, should address the Public
19 Counsel's concern while still leaving the present allocation
20 of risk as they have been treated in the past; that is, we
21 agree you cannot approve the assumptions being made by the
22 utility because that is an assumption of the risk by the
23 Commission that is not necessary or prudent.

24 If the utility has complied with the rule,
25 then it will have undertaken the necessary planning steps

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1 that the Commission wishes it to undertake without having
2 the Commission attempting to go through and determine, on an
3 issue-by-issue basis, whether each step has been taken.

4 I would also note that another problem is
5 that you've -- when you have a plan in reality you have an
6 assumption on top of an assumption. And sometimes many more
7 layers than that. And, although the Commission may be able
8 to address some of those assumptions, it is, I believe,
9 treading in dangerous waters to try and approve one layer
10 which, in turn, is going to be based upon a lot of other
11 assumptions that may or may not be reviewed by the
12 Commission.

13 EXAMINER WRIGHT: I have one question since
14 you did address the proposal in the rule to establish the
15 docket.

16 QUESTIONS BY EXAMINER WRIGHT:

17 Q. If the Commission were to decide that it was
18 unnecessary for the utility companies to file their plan in
19 a docket, would you contemplate that interested persons,
20 such as Armco, be allowed to participate in the review of
21 that plan if there is no docket?

22 A. Given the public nature of the filing, Armco
23 would have the opportunity to review the plan. But I do not
24 believe it would be necessary for Armco to have a hearing
25 procedure or a filing procedure for comments on that plan,

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1 because Armco, in effect, would have -- would not be able to
2 invest the resources at that early planning stage to
3 determine whether or not that plan was going to work. It's
4 outside of our expertise and not something that we're going
5 to be able to do within that short time frame.

6 Q. So Armco's position is then they'd -- if
7 there was no docket, you would expect to review the plan;
8 but you wouldn't necessarily expect to participate in any
9 substantive changes to the plan or be allowed to come down
10 and make comments with regard to the plan or be involved in
11 any process where the plan was reviewed by the Staff?

12 A. No.

13 EXAMINER WRIGHT: Thank you. You may step
14 down.

15 (Witness excused.)

16
17 EXAMINER WRIGHT: Now we're going to those
18 who stated that they're in general opposition to the rule.
19 And we will begin with St. Joseph Light & Power.

20 Would you step forward.

21 (Witness sworn.)

22
23 JOE NORTON testified as follows:

24 THE WITNESS: As I said, my name is Joe
25 Norton. I am Manager of Marketing and Customer Service for

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1 St. Joseph Light & Power.

2 I want to thank the Commission and the Staff
3 for the opportunity over the past 18 months to participate
4 with them in this ongoing process. I would like to add I am
5 not totally prepared because I was unaware that we were
6 going to have this opportunity to make comments.

7 I would like to further add, for
8 clarification of some parties, we do not view our position
9 at St. Joseph Light & Power as one of hostility. We view
10 that we have raised some legitimate questions on how these
11 rules will operate, their impact on our customers and our
12 shareholders.

13 Our basic position in our filings with you
14 are that we should be exempted from these rules. Should you
15 find that -- excuse me. If you should find that untenable
16 for you, we believe that you should consider allowing us to
17 file a modified plan under modified rules. Should both of
18 those be untenable to you, we have proposed specific changes
19 in the rule that we feel will improve it.

20 Let me talk on the first point, the waiver
21 issue. The Staff has already agreed and the rules already
22 note that there is a size issue. They have decided that
23 that size issue should be at one million megawatts. We feel
24 that that is not a natural breakpoint, and we filed numbers
25 indicating that in our reply comments. The next utility in

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1 size to us is two times our operational size. The largest
2 utility in this state is 22 times our operational size; yet,
3 these rules are proposed to be equal and fair to all.

4 We specifically respond and indicate that,
5 if you will look at our statements, a 5 percent breakpoint,
6 if you are so positioned to want to have a breakpoint, of
7 the energy produced would be a much more natural breakpoint
8 for the state of Missouri.

9 We further say that you should consider the
10 possibility, given the impact of these rules, of having a
11 single utility test these rules on a modified basis, be a
12 model, then sit down with them debugged and file official
13 rules for everybody.

14 If you are unwilling to exempt or grant a
15 waiver to us, we would like to point out that we as a
16 utility have utilized integrated strategic plans for years.
17 We utilize a multi-team approach. And this is again
18 clarified in our filing with you.

19 And the results have been very successful.
20 We have one of the lowest rates in the state. We have
21 enough capacity to supply our customers. Let us do our job
22 in deciding what process and what procedures we will adopt
23 in resource acquisition and judge the resulting plan.

24 The issue here is not how well a team looks
25 on paper but how well it does in the field. We submit

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1 that -- and agree with Commission Staff's earlier statement
2 that we have the experience in running the utility. We have
3 existed for nearly 110 years. We have seen many more
4 extreme changes than this industry is going through today.
5 We started in the 1880s and now exist in 1992. We know our
6 job. Judge us by the results.

7 Further, in the seven points that we
8 outline, we feel the issues that you can read are:
9 Cost/benefit analysis is not adequately addressed. We feel
10 that the competition impact on a utility is not adequately
11 addressed. We feel that cost recovery is not adequately
12 addressed. We feel that lost revenue is not adequately
13 addressed. We feel the load-building requirements are
14 unnecessary. We feel that the Commission approval, given
15 that they want such a prescriptive standard, should follow.
16 If we follow the rules, we should have approval. And,
17 finally, we believe the rules -- or the procedure is way too
18 detailed and prescriptive.

19 We agree with Staff witness that, if they
20 were to accept new cost recovery mechanisms and lost revenue
21 mechanisms, a significant amount of additional study needs
22 to be done and submitted. It has not been done. And to
23 proceed with the rules minus that is something other states
24 are not doing. Again, this is addressing our comments.

25 Finally, let me note on the cost/benefit

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1 issue, the established procedures -- the value of
2 information is important; but when you start spending more
3 to capture information than the results are worth, you are
4 spending both your customers' money and your shareholders'
5 money unwisely. We submit that no cost/benefit analysis to
6 the value of information at this detail has been furnished,
7 period.

8 We would also say that the responsibility of
9 that being that is proposed by the Staff is to be furnished
10 by the Staff. We have attached details in these items and
11 feel that that should be a major consideration. Any
12 individual or company who is proposing to go out and over
13 every year spend, in our case, 2 1/2 percent of their gross
14 revenue for increased information needs to know the value of
15 that information. And at what point you stop gathering it
16 deals with cost-effectiveness.

17 We would also submit that there is a
18 criteria that all utilities live by and have lived by. If
19 we do resource planning and acquisition wrong, we will, one,
20 be disciplined by the Commission when we attempt to run
21 those incorrect expenses and rate basing by them. Two,
22 those costs will drive us and our prices so high that we
23 will be forced out of business, period.

24 We have done a successful job. We would
25 like to be judged on the results. We would like you to

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1 consider our position to be exempted or to file modified
2 comments.

3 To address Examiner Wright's concerns and
4 request about commenting on Commission Staff's reply, which
5 I did not mean to ignore, in all honesty, I cannot in ten
6 minutes reply to Staff's 104 pages of reply comments. I
7 would say, in all fairness, I think the Staff worked with us
8 and we worked with them. I think we have reached a point
9 where we agree to disagree on some philosophical issues.
10 And there's nothing wrong with that. That's the nature of
11 the beast, so to speak.

12 Thank you for your time, and I appreciate
13 the opportunity.

14 EXAMINER WRIGHT: Commissioner McClure.

15 QUESTIONS BY CHAIRMAN MCCLURE:

16 Q. The question of exemption you dealt with
17 quite a bit in your comments, both verbal and written. My
18 question to you simply is, does the existing waiver
19 provision in there, assuming that your company would apply
20 under that and possibly be granted a waiver, address your
21 concern.

22 A. We don't feel it adequately addresses our
23 concern. That's why we're requesting the waiver now.
24 Secondly, we feel, if you look at the size breaks, that a
25 percentage figure makes a lot more sense than an arbitrary

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1 number. If there is any argument to Staff's position that
2 utilities of X size should not fall under these rules, that
3 energy efficiency for them is not a benefit, then we submit
4 that figure of X should be 5 percent of the production
5 capability versus an arbitrary one million.

6 Q. I'm sorry. Back up again.

7 A. Do you want me to restate it?

8 Q. Please, if you would.

9 A. We believe that, if Staff's position that
10 certain energy producers in the state should not be required
11 to fall under this rule because of their size, which is what
12 the rule today proposes -- I believe it's a million
13 megawatts -- then we submit that is the wrong formula line
14 to use. We submit that the formula line should be a
15 percentage of energy produced in the state.

16 And, if you look at the numbers, that
17 becomes a much more natural breaking point than the
18 selected million megawatt-hours. And our point exactly is
19 that, you know, the next one up from us is two times our
20 size. And they continue upward extensively. I'm not sure
21 on what page that is. But it's in our reply comments, I
22 believe, on Page 17 where you can see the megawatt-hour
23 sales.

24 Q. One other question I have. I recall reading
25 in your initial comments and found the notation. You had

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1 mentioned one flaw, one of several flaws you noted in the
2 rule, from your opinion, dealt with competition and the lack
3 of applicability of these rules to specifically co-ops. And
4 you request that these rules not be applied to your company
5 until such time as they are applied to your competitors. My
6 question simply is how do we do that?

7 A. Well, you are asking, obviously, a legal
8 question; but I assume --

9 Q. It would require a law change.

10 A. And I submit that, if these type of energy
11 efficiency rules are good for the utilities that they are
12 proposed for, who cover approximately 20 percent of the
13 geographic area, they certainly should be good for the rest
14 of the 80 percent geographic area of the state of Missouri,
15 and that it would be unfair to layer on extensive planning
16 costs to a utility of our size that competes extensively
17 with co-ops, especially in the industrial bases.

18 We noted, and it was announced in our
19 community -- although probably it didn't make a ripple out
20 across the state -- one of our major customer's new
21 expansion, the Wire Rope Corporation, is going to go to a
22 rural electric service territory based on price competition
23 and their flexibility and ability to set prices, so to
24 speak, internally.

25 CHAIRMAN McCLURE: Thank you, sir.

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1 EXAMINER WRIGHT: Commissioner Rauch.

2 QUESTIONS BY COMMISSIONER RAUCH:

3 Q. I'm sorry I was not in here to hear your
4 comments.

5 A. It was something else.

6 (Laughter.)

7 Q. But your last comment regarding your
8 competitors in the REC world, I guess the assumption is
9 that, whatever is required of your utility, it's going to
10 cost money to do so. It's not going to be a way to offset
11 potential costs in the future or avoid potential costs; but
12 whatever these rules end up looking like, there will be
13 additional costs to the utility.

14 Now, do you see no hope that this may be a
15 way to help avoid unnecessary costs in the future by
16 appropriate planning where your competitors may not, in
17 fact, be doing the same kind of thing and therefore make the
18 competitive disadvantage to you?

19 A. What I submit, Commissioner, in the rules
20 and in my comments, is that the costs of implementing these
21 rules, as they are, have not today been shown to us to be
22 cost beneficial. That study by the Staff's reply comments
23 indicate it would be, in their opinion, too costly and too
24 time-consuming to do and should be done by individual
25 utilities versus the Commission Staff undertaking that.

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1 We submit that, before being required to
2 spend, in our situation, somewhere between 2 percent of our
3 gross revenue, that the results should already have been
4 shown on a statewide basis before we implement statewide
5 rules. If we're going to spend tens of millions of dollars
6 implementing these plans, which is what the numbers come out
7 to every year, now, I submit we need to know at least
8 approximately what the return on the investment is. That
9 number is not available today. And I think it should be.
10 So we do not know whether that cost is there.

11 Secondly, as I said earlier, we have been in
12 operation for 110 years. We've changed our resource
13 purchase planning technique for years and years. About five
14 years ago, when I came to work for this utility, we moved
15 into the concept of integrated resource planning.

16 And we work -- and it's laid out in our
17 comments -- in a multi-team approach with, for lack of a
18 better term, demand-side management people like myself,
19 supply-side people, the load forecast people, all working in
20 a multi-team approach to look at the options in front of us
21 and the feasibility therein. You don't start acquisition
22 purchases 110 years ago and stay with the same system. We
23 change to survive. We have the highest incentive in the
24 world to change the life of our own company.

25 And even more importantly or of equal

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1 importance, in a system of our size, our customers are not
2 customers. They're our friends and neighbors. Keeping the
3 prices low allows us to live in the area. Being efficient
4 allows that. We've done surveys, and it literally shows
5 that 50 percent of our customers know a Light & Power
6 employee. That's how small we are in size. That's how
7 close these small rural communities are.

8 So we believe that there is not shown to us
9 a direct benefit but there is shown a direct added cost.
10 And all I'm asking is to be either exempted or allowed to
11 file modified rules. Modified procedures, due to size, have
12 been accepted not only in this state but other states. Let
13 us set the procedure. Your staff and yourself can judge the
14 results.

15 What you're interested in is not trying to
16 adopt a model procedure; i.e., like model government, you're
17 interested in adopting a working and productive plan that
18 helps the customers and maintains the shareholders. Model
19 governments don't work. America is not a model. But it
20 works very well. Judge us on the results.

21 Q. You may have discussed the waiver
22 provisions. The waiver provisions that are built into this,
23 are they not adequate to --

24 A. We did discuss those, Commissioner. And,
25 basically, to keep it short, what we propose is, if you'll

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1 look at Page 17 of my reply comments, that the utilization
2 of a flat number, which is what the Staff utilizes, is
3 inappropriate, that there is not an actual breakpoint there.

4 In actuality, the natural breakpoint should
5 be a percentage of energy produced. The next largest
6 utility to us is two times our size. The largest utility in
7 the state is 22 times our size. But we feel there's a
8 natural breakpoint if you -- if you want to have a
9 breakpoint, it should be based upon production, not a flat
10 selected number.

11 Q. So you're suggesting that because of size
12 that you'd be treated differently? As I understand it,
13 you're saying you don't see any cost benefit than what's
14 before us right now. Part of what you're saying also, I'm
15 hearing, is that you feel like that you have adequate
16 planning.

17 A. We think the results of being one of the
18 lowest-priced utilities with adequate capacity for our
19 customers, which is what the intent is, is low prices and
20 adequate power and quality service. Yeah, we think the
21 results of our acquisition process show that.

22 What we're also saying is, you know, to let
23 us do our job. And you judge the -- you know, we're not
24 grid-locked on this. We're trying to be very flexible. If
25 a total waiver is not something you're capable or willing to

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1 do, consider a modified plan where you look again at the
2 plan and judge the plan that results from whatever process
3 we establish rather than establishing a specific procedure,
4 which is what this does. And it's a very specific
5 procedure.

6 Q. It's a specific procedure that allows you to
7 establish your plan, though.

8 A. The procedure will result in a plan. Maybe
9 I --

10 Q. You're saying that the procedure will
11 dictate a plan that may not be --

12 A. We're saying it will be too costly. It
13 seems to us the cost of developing that plan will not be any
14 better than our developing plans the way we have. Nobody
15 can show me how following this plan would have lowered the
16 cost to my customers versus the increased cost of following
17 this planning procedure.

18 Let me summarize one thing that you weren't
19 here for. We submit three basic positions. One is a
20 waiver, if you believe that there should be some kind of
21 size issue. Two, minus that, a modified plan, judging on
22 the basis of the plan and assuming you can't do that, we
23 give seven very specific points on concerns we have. And I
24 read them off, but they are listed in my original comments.
25 So we have almost stages of positions that we can look at.

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1 We're not trying to be unreasonable.

2 COMMISSIONER RAUCH: Thank you.

3 EXAMINER WRIGHT: Commissioner Kincheloe.

4 QUESTIONS BY COMMISSIONER KINCHELOE:

5 Q. Mr. Norton, I wonder if you could describe
6 for us the major differences between the concept and
7 procedures involved in your planning process than that
8 described in the proposed rule.

9 A. That is not easy to do. As you're aware,
10 the rule in itself is very extensive. Let me put it in
11 simplest terms.

12 We think our style and difference, that we
13 don't need -- you know, some things, when you're our size,
14 you automatically don't look at. The Staff inferred in
15 their reply comments that we should consider not looking at
16 building our own base load plants. Well, we haven't looked
17 to building our own base load plant in nearly 40 years.
18 It's just not a feasible alternative. And we take those
19 steps now, and is such, we would like to have the options of
20 looking at the screening processes and judging which ones
21 are most effective and bring those plans to you and say,
22 "Here's what we've come up with and here's how we got
23 there."

24 Q. Can you tell me something more about the
25 current efforts in that regard?

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1 A. I have the manager of the supply side here,
2 and he could walk you through, in fairly extensive detail,
3 the processes we go through. Again, we use a multi-team
4 approach. We have a representative here from the load
5 forecasting. These come together in a single meeting, each
6 one representing the position that they want and believe is
7 cost-effective. We lay out those positions; and the
8 managers and the officers of the company, at that point in
9 time, have to make the final decisions. This will happen
10 under any plan.

11 At some point in time, a human decision has
12 to be made that we go with, you know, 10 megawatts of
13 demand-side management and 50 megawatts of combustion
14 turbine to meet the mix we have. What we do is, each one
15 does their job; but we don't do it, I would tend to say,
16 through as many hoops. And we sit down and exchange
17 information in a fairly vigorous debate.

18 And it is, we believe, more cost-effective
19 and will not require the maintenance of hugh amounts of data
20 that this does. And we submit that the results have been
21 more than adequate if you judge us on our acquisitions and
22 costs. And that is laid out in there how we do that. I'm
23 not sure what page. I do think we talk about the team
24 approach we use.

25 Then again, I could have either Mr. Ferry,

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1 you know, talk about how he walks through the supply side,
2 what we look at, how we set a base case. I can have
3 Mr. Fangman discuss how we do DSM screenings and what
4 consultants we've used and what our plans are.

5 Basically, in the past, we've used
6 consultants and done DSM screening. I'm more familiar with
7 that one. We have listed ten programs that we have sat down
8 with system of operations planning. And they have said,
9 yes, these look feasible and reasonable and more
10 cost-effective than the programs we were going to look at.
11 And those are in our resource plan today.

12 Q. What's the frequency of that process?

13 A. That process, in a modified basis, is done
14 yearly. We look at the plan. We generally look at the plan
15 somewhat like many utilities in -- more extensively, the
16 closer the numbers get to looking like we're going to have
17 to do something of significant size.

18 So, as you get closer to saying you're 50
19 megawatt short of base load unit, you start really doing a
20 lot more in that area. I'm not sure -- and I could ask
21 systems operation planning -- when the last formal plan was
22 done; but I think that was about -- I'd better not guess.

23 But, at that point in time, we brought in a
24 consultant. And, in fact, as you'll read in your comments
25 that we furnish, Commission Staff, when they looked at our

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1 plan, while finding the planning process maybe not to their
2 liking -- and there's, again, I think, a difference in
3 style -- they found the result was a robust plan. That's a
4 quote from their own study.

5 Q. What's the forecast period for the plan?

6 A. If you'll allow me, I could just turn and
7 check.

8 Do you know what the forecast period for the
9 plan is?

10 MR. FERRY: We produce --

11 THE WITNESS: This is Steve Ferry, Manager
12 of Systems Operation Planning.

13 MR. FERRY: We plan on a ten-year basis.
14 We'll produce a revised ten-year plan every year. As our
15 resource picture would change, if there's a major change to
16 the plan, we will look at 20 years and provide our planning
17 based on that. But every year we do review that for our
18 ten-year forecast.

19 COMMISSIONER KINCHELOE: Thank you.

20 EXAMINER WRIGHT: Thank you. You may step
21 down.

22 THE WITNESS: Thank you, gentlemen, for your
23 time. And madame.

24 (Witness excused.)

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1 EXAMINER WRIGHT: Empire District
2 representative.

3 (Witness sworn.)

4
5 ROBERT FANCHER testified as follows:

6 THE WITNESS: I think the only thing I would
7 say initially is that Empire is not opposed to integrated
8 resource planning. We have altered our planning process
9 annually since I've been with the company. We improve that
10 each year as we see opportunities to improve the process and
11 result in better decisions. We've done a number of things
12 over the last several years, and I think we've probably
13 moved towards this process even without these rules.

14 There are some things proposed in the rules
15 that, quite frankly, we don't do that way at the present
16 time. This will add additional cost. We're not opposed to
17 integrated resource planning rules being issued in any form.
18 I think there's a basic philosophical difference between
19 what the rules should contain.

20 These rules are proposed mainly to control
21 the process with no approval of the final result of that.
22 And we believe that, if there's a benefit -- and there is a
23 benefit -- that it should be in the decisions that result
24 from these plans. And yet we focused here on the process.

25 So we believe that rules that are issued

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1 should focus on getting a plan out, leave the process and
2 the flexibility in that process up to each utility; that we
3 should focus on the decisions that are made and that would
4 involve Commission approval.

5 I think the other things that we've stated
6 are all in the written comments, and I don't need to comment
7 further on those.

8 EXAMINER WRIGHT: Questions?

9 Chairman McClure.

10 CHAIRMAN McCLURE: Nothing. Thank you.

11 EXAMINER WRIGHT: Commissioner Rauch.

12 COMMISSIONER RAUCH: I have no questions.

13 EXAMINER WRIGHT: Commissioner Kincheloe.

14 COMMISSIONER KINCHELOE: Well, I wonder if
15 you could just comment along the general lines that I
16 inquired of Mr. Norton about your process and the concept
17 and procedures.

18 THE WITNESS: Okay. Most of the things
19 we're doing in some form at the current time are probably
20 not linked together the way they need to be in a fully
21 integrated process. And the problem right now where they're
22 not linked as well as they should be is in the supply-side
23 planning and the demand-side planning and tying those
24 together in an integrated process. We are moving in that
25 direction, and we believe that is key to the overall

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1 process.

2 There are some things in the rules that
3 specify a lot more detail, I think, than we'd like to see in
4 the rules. We don't disagree with the flow of the process
5 at all.

6 COMMISSIONER KINCHELOE: Thank you.

7 EXAMINER WRIGHT: Commissioner Mueller.

8 QUESTIONS BY COMMISSIONER MUELLER:

9 Q. Have you or your company investigated some
10 of the integrated resource planning of other utilities in
11 the United States, the East Coast or the West Coast?

12 A. We have not in any specific company, no.
13 Most of our knowledge of what other companies do is gained
14 from seminars where presentations are made. We have not
15 checked with other utilities on what their process is.

16 Q. Have you conferred with EPRI on any of the
17 processes?

18 A. Not on the process overall. We have some of
19 the EPRI software programs.

20 Q. But you haven't looked into any other
21 utilities that have actually gone through this process that
22 could give you firsthand advice or information?

23 A. As I say, only in contact at seminars, not
24 going to the company or anything like that.

25 COMMISSIONER MUELLER: Thank you.

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1 EXAMINER WRIGHT: Thank you. You may step
2 down.

3 (Witness excused.)

4 _____

5 EXAMINER WRIGHT: We will now go to those
6 persons who indicated that -- weren't necessarily proponents
7 or necessarily against the rule. We will begin with
8 Kansas City Power & Light.

9 MR. RIGGINS: Kansas City Power & Light
10 calls Steve Cattron.

11 (Witness sworn.)

12 _____

13 STEVEN W. CATTRON testified as follows:

14 THE WITNESS: I'd like to just first start
15 by saying that, similar to St. Joe, we would like to thank
16 the Commission and the Staff for the process. I think the
17 process that we've gone through, specifically when we
18 modified that process and went to the workshops, there was
19 an awful lot of consensus building and an awful lot of
20 progress made through that process.

21 What I would like to do with respect to our
22 filed comments is maybe just summarize those into two basic
23 categories, those being what I have categorized as policy
24 issues, which I would like to address in a little more
25 detail, and then specifically the technical issues that we

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1 basically separated out in our comments. I really have
2 nothing further to add to those comments today. We'd just
3 ask that the Commission take those into consideration. The
4 Staff did not fully consider those, in our opinion, in their
5 reply comments; so we would ask that the Commission take
6 those into consideration.

7 With respect to the policy issues, we
8 basically identified three fundamental policy issues, one
9 being plant approval, one being shareholder interests being
10 adequately considered, and the other was the flexibility of
11 the rule to -- I'll use a quote that has been used
12 throughout the industry -- level the playing field for the
13 supply-side and the demand-side resources.

14 What I'd like to do is first hit on the plan
15 approval issue. That seems to be receiving the primary
16 focus this morning. I would like to address plan approval
17 really in the sense of more of a timing issue. And I would
18 suggest that this Commission has, in fact, approved past
19 planning decisions. It's just been approving those within
20 the framework of general rate cases.

21 Each and every time Kansas City Power &
22 Light has added a new investment to its rate base and come
23 to this Commission in a general rate proceeding, those
24 decisions have either been approved or disapproved in the
25 setting of a general rate proceeding. We could look at the

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1 Iatan disallowance. We could look at the Wolf Creek
2 imprudencies as well as excess capacity issues.

3 Those are all planning issues. Those are
4 all issues that have been decided, in a lot of respects, 10,
5 15, 20 years after some of the decisions were made in that
6 process. So I would suggest that, in fact, the Commission
7 is approving planning decisions.

8 And what Kansas City Power & Light is
9 suggesting is, let's move that process up. Let's move the
10 timing up to where, at the time decision makers are making
11 their decisions, the Commission is more actively involved in
12 it at the time those decisions are being made. To me that's
13 not micromanagement either.

14 Prudency issues are still going to exist.
15 We're still going to have issues that, even though at the
16 time a decision was made to invest in a supply-side option
17 or a demand-side option, as things change, prudency issues
18 are still going to exist, whether a unit is delayed, whether
19 the timing of a DSM program moves a year further out. All
20 those issues are still present.

21 Kansas City Power & Light is not here -- and
22 we've never suggested to the Staff that we want a guarantee.
23 In fact, our initial comments specifically state we're not
24 looking for a blank check. We're not looking for a rubber
25 stamp. We are looking for a process, though, that, I think,

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1 allows us to have a better understanding of where the
2 Commission -- and specifically where the Commission's
3 guidance might be going. And, when I say that, I think that
4 reduces the uncertainty.

5 Dr. Turner earlier this morning talked about
6 one of the goals was that the plan should try to minimize
7 and reduce uncertainties and adequately address that. We
8 feel this is an uncertainty. And how the Commission
9 provides us guidance would minimize some of that
10 uncertainty. So we see some real benefits there.

11 We also feel that the plan approval would
12 streamline the regulatory process. As the current rule is
13 structured, Kansas City Power & Light envisions -- and it's
14 not unlikely; in fact, we could easily see it going through
15 the exact same issues in three separate proceedings.

16 As the rule is currently set out, we could
17 go through the litigation of a supply-side resource, let's
18 say, within the planning process proceeding within that
19 docket if it were established. In addition, we could go
20 through that same issue in a promotional practice filing
21 where we've recommended a DSM program or pilot program.

22 And, thirdly, when we come to the Commission
23 in a general rate proceeding, we will once again revisit
24 each and every one of those issues and then make the final
25 decision on whether those costs would be reflected in rates.

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1 And it seems that, as we go through this process, again,
2 let's move that decision-making process back.

3 And, in our reply comments, as I know as
4 well as UE, the term "rolling prudence" was mentioned. And,
5 in some respects, I think that's a direction that our
6 comments are really going. Let's start moving that process
7 up and let's keep it on a moving basis.

8 The other area I'd like to touch on is
9 specifically with respect to Commission and Staff resources
10 that would be dedicated to this process. Kansas City
11 Power & Light, in its comments, makes specific mention that
12 it is a dedication of resources. I think, if we want to
13 adequately address this planning process, there is a
14 commitment of resources that does need to be made to this.

15 We have faced the same issues within the
16 utilities, and it's no different on the regulator's side.
17 There is definitely a commitment of resources. I think
18 there are things that the Commission can look at and that
19 the Staff can look at in trying to minimize some of those
20 resources.

21 And I might just mention a couple. And, in
22 some respects, it's consistent on the general rate case
23 process also. And that is, I have envisioned personally
24 that this would probably be a ground-up development. And
25 what I mean by that is that, rather than taking the

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1 company's resource plan and reviewing that plan and making
2 proposed modifications, at least in the general rate case
3 setting, what historically happens is the company's case is
4 filed and then the Staff will develop its own case. And the
5 resources, obviously, to develop its own case is going to be
6 significantly different than if they were reviewing the
7 filing that the company had made.

8 From a timing standpoint, that process is
9 occurring now when we make a general rate case filing in 11
10 months. I mean, as a practical standpoint, that's the
11 timing that it would actually occur in now.

12 I would also maybe give the Staff some
13 credit on their qualifications. I think past proceedings
14 have shown that the Staff has, in fact, had the
15 qualifications to make significant recommendations in
16 policy, as well as operations, with respect to utility
17 companies, whether that's in the operations of power plants
18 to the forecast decisions to the impact those forecast
19 decisions might have on resource plans. In fact, the Staff
20 has made those specific recommendations.

21 The last area on plan approval that -- and
22 it's really more of a summary just to the planning process
23 in general. And Kansas City Power & Light sees the planning
24 process as an evolutionary process. You can go back and
25 look at when we first filed our first KCPLAN with the

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1 Commission in 1980-1981. And Kansas City Power & Light has
2 moved significantly forward in its planning process. We
3 anticipate moving further as the whole planning process
4 evolves. It's going to continue to improve.

5 And with or without this rule, Kansas City
6 Power & Light has been moving in that direction and will
7 continue to move in that direction. Whether it's
8 integration, whether it's supply-side screening, demand-side
9 screening, we're going to be moving in that direction.
10 We've been moving in that direction prior even to the
11 consideration of this rule.

12 With respect to the other two policy
13 issues -- and I'll really comment on those together. And
14 that is shareholder interests and the flexibility to ensure
15 the level playing field. The key to that -- to both of
16 those issues is that this rule permits flexibility in
17 several different areas.

18 And the first one that I'd like to hit on is
19 specifically on some of the questions this morning which was
20 in the area of incentives.

21 I'll refer to them as incentives or
22 disincentives, Chairman McClure, as you have.

23 And I would urge the Commission to be
24 careful of "incentives." And when I say that, I'm saying
25 that from the standpoint as -- Kansas City Power & Light

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1 views it more as trying to remove the disincentives from the
2 process and looking at performance-based philosophies rather
3 than incentives.

4 Kansas City Power & Light is already
5 engaging currently in DSM activities. We see the benefits
6 of DSM. But at the same time, the unknown to us today is
7 how would those programs, No. 1, be reflected in rates and,
8 secondly, what type of contribution and what type of risk is
9 the shareholder carrying with those programs. Those are
10 unknowns to us today. And to the extent this Commission can
11 provide us guidance in that area, it doesn't necessarily
12 have to be in the form of "an incentive."

13 Performance-based programs are, in my
14 opinion, probably as well based as anything. Let's
15 establish performance-based systems and look at providing
16 utilities for rewards for performance and move forward in
17 that fashion rather than trying to move the utility.

18 I would suggest that a prodding of a utility
19 could actually be to the detriment of the ratepayers and the
20 shareholders if the sole reason the utility is moving
21 forward is solely because of the prodding that the
22 Commission may be providing in a given area and that some of
23 those investments, in fact, would be done solely because of
24 an incentive return as an example. I would suggest let's do
25 DSM and other alternative resources for the right reasons,

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1 not solely because of incentives that might be out there.

2 I also see how the shareholder and the
3 flexibility to ensure a level playing field could be
4 addressed. I see this as an opportunity for us to start
5 looking at maybe some regulatory reform, starting to look at
6 the traditional regulation that we've all known over the
7 past years, which is the basic rate base regulation that
8 we've known.

9 It's a real opportunity for us to start
10 focusing on incentives from the standpoint of performance.
11 And overall, whether that's a DSM program or whether that's
12 power plant performance, it's an opportunity, I think, for
13 us to start to look at some of those significant issues.

14 The last thing I would offer is that, again,
15 to the extent some guidance can be provided by the
16 Commission in the area of the impact on earnings and how
17 traditional regulation, when I listen to Mr. Oligschlaeger's
18 comments earlier this morning with respect to continuing
19 traditional accounting, traditional regulation does not
20 provide any earnings to the shareholder if the program is,
21 in fact, an operating expense.

22 Many of our DSM programs will, in fact, have
23 heavy incentives which would traditionally be accounted for
24 as operating expense, marketing costs, customer surveys. A
25 lot of costs that is traditionally expensed is going to

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1 absolutely make no difference to the shareholder. It's
2 going to be a straight flow through and cost recovery only.
3 And, again, it's an opportunity here for us to look at some
4 new opportunities in the realm of regulation.

5 And with that I'm available for any
6 questions.

7 EXAMINER WRIGHT: Commissioner Mueller.

8 COMMISSIONER MUELLER: Has your company
9 consulted with any other utilities that have been down the
10 path of resource planning, integrated resource planning, in,
11 say, the East Coast or West Coast?

12 THE WITNESS: We've not, to my knowledge,
13 and I might defer to some of my associates also. But I'm
14 not aware of any specific contacts where we've had on those
15 utilities. I think what we're -- I don't think this rule is
16 significantly different in concept in what's occurring
17 primarily across the nation.

18 The process is relatively consistent.
19 Again, Kansas City Power & Light supports the process.
20 We're proceeding with the process with or without this rule.
21 So I think it's fairly consistent. I mean, there are
22 certain aspects of the rule that are going to vary. But, in
23 general, it's pretty consistent.

24 EXAMINER WRIGHT: Thank you. You may step
25 down.

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(Witness excused.)

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EXAMINER WRIGHT: I think, rather than start another witness at this time, we'll take our lunch break and return at 1:15.

(The noon recess was taken.)

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1 EXAMINER WRIGHT: We're back on the record
2 continuing with the statements from interested persons
3 concerning the higher fee rule and the promotional practices
4 rule.

5 Why don't we go to Union Electric next.

6 MR. RAYBUCK: Examiner, Gary Rainwater will
7 speak on our behalf.

8 (Witness sworn.)

9
10 GARY L. RAINWATER testified as follows:

11 THE WITNESS: I think everybody here has
12 probably heard enough on all of the issues since we've been
13 through most of them two or three times. I'll try to keep
14 my comments fairly brief.

15 I'd like to start by noting that, of all the
16 utilities in the state, I think Union Electric probably is
17 the closest to already being in compliance with the Missouri
18 rules because we have complied for several years now with
19 rules in Illinois and with the rules in Iowa.

20 Those planning processes are fairly
21 detailed, probably not quite as detailed as the process that
22 we have in Missouri. So we don't feel that the detail of
23 the rules is quite as onerous, I guess, as it is for the
24 smaller companies. Being a larger company and already being
25 substantially in compliance, it's not going to be as much a

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1 burden on us as it is on some of the smaller companies;
2 although I can see how it is a burden for the smaller
3 companies.

4 There are two issues I'd like to just
5 briefly mention. And those are the ones you have already --
6 a couple that you have already heard about, plan approval
7 and cost recovery for DMS measures.

8 On the plan approval side, I don't think
9 many of the utility people here really expect the rules to
10 be changed to allow for plan approval because we've all seen
11 the recent Kansas City Power & Light decision on their acid
12 rain plan. We know that you did not allow plan approval for
13 plan approval in that case.

14 I just want to point out that this case is
15 slightly different in that in the Kansas City Power & Light
16 case it was Kansas City Power & Light's decision process.
17 Theirs entirely. Their analysis. Their decision criteria
18 that led to their decision in their acid rain case.

19 In this case, it isn't entirely our process.
20 The process is prescribed largely by the Commission Staff in
21 very much detail. The analysis is prescribed in great
22 detail. Decision criteria is prescribed by the Commission
23 Staff, which almost effectively prescribes the decision.
24 And then, for the process to be that detailed and
25 prescriptive but still stopped short of plan approval --

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1 MR. DUFFY: Please speak into the microphone
2 or cut the volume. We can't hear.

3 THE WITNESS: Okay. Yeah, I was just saying
4 that, for the process to be as prescriptive as it is but to
5 still stop short of plan approval, I think, strikes me and
6 strikes most of the utilities as being just somewhat
7 unreasonable, not completely unreasonable but slightly
8 unreasonable.

9 A cure for that would be to make the process
10 much less prescriptive. If the process were entirely up to
11 us, I don't think we would have a problem. I know Union
12 Electric wouldn't have a problem with not having plan
13 approval. We didn't seek plan approval for our acid rain
14 plans. Instead, we've documented that we expect that, if
15 the prudence of those plans is raised in a future rate case,
16 we've documented it sufficiently to cover it; although it
17 certainly would be easier to hear those issues when the
18 issues are fresh rather than going to a great deal of detail
19 and documentation.

20 The practical effect on us of not having
21 plan approval is that we'll have to document our case for
22 our decisions in much more detail than we would have
23 otherwise. And there's the possibility, I think, for most
24 companies that, without plan approval, of course, it shifts
25 the risk to stockholders more than it would otherwise be.

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1 That's what the issue is all about.

2 Do you want to preserve the right to
3 hindsight prudence review? It shifts the risk to
4 stockholders. Without plan approval there's the possibility
5 that utilities have to weigh the risks for stockholders
6 versus reducing costs for customers.

7 The criteria in the entire planning process
8 is to minimize costs for customers. So, in a sense, if you
9 want to look at this as a policy objective -- and there are
10 a couple of tradeoffs here. One policy objective may be to
11 preserve the hindsight prudence review in order to shift
12 risk to stockholders. If you do that it compromises the
13 decision process in the planning process to some extent,
14 maybe weakens that process. It moves it away from the
15 criteria of minimizing costs for customers, requires
16 utilities to balance that with the risk to their
17 stockholders.

18 The other issue I want to talk -- just
19 mention briefly, is cost recovery for DSM. You all know
20 that, in some states, commissions allow incentives for DSM,
21 incentives for cost recovery. We haven't asked for
22 incentives in Missouri. I think most of us believe, Union
23 Electric believes, that those are not really necessary.

24 But, if you really want to put DSM on a
25 level playing field, as people talk about it, you need to

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1 remove the disincentives. And there still is a -- one
2 remaining disincentive in that cost recovery for DSM will be
3 more difficult than cost recovery for supply-side options
4 because, with supply-side options, we can defer those costs
5 through AFDC, have a greater possibility of cost recovery.

6 If DSM options are going to be -- if the
7 cost of those is going to be recovered under traditional
8 methods, some of the cost is going to be lost. It's going
9 to be borne by stockholders. It's going to make decisions
10 and make the budgeting decisions within companies for DSM a
11 little more difficult than they would be if cost recovery
12 was essentially the same as it is for supply-side options.

13 Now, the plans allow utilities to propose
14 nontraditional recovery. They do that on one hand but, on
15 the other hand, they make it difficult to do that because
16 they also require us to essentially prove that we're
17 underearning in order to get -- based on Staff's position,
18 in order to get approval of nontraditional cost recovery.

19 The only point I want to make from that -- I
20 don't know that our company would want to use nontraditional
21 cost recovery in any case unless the expenses for DSM are
22 significant. And I don't know exactly what significant is.
23 I don't believe that what we have planned over the next five
24 years or so are significant enough that we want to use
25 nontraditional cost recovery accounting methods.

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1 But I just want to point out to you that
2 there is still a disincentive and, if you really want to
3 make this a level playing field, that disincentive needs to
4 be removed.

5 No other company here has commented so far
6 on the promotional practices, so I think I need to make at
7 least one comment on the promotional practices. I think all
8 of the utilities -- I don't know if I can speak for
9 everybody. But Union Electric supports the changes to the
10 promotional practices rules. Without those changes, there
11 would be another barrier to DSM in that we would have to ask
12 for a waiver from promotional practices rules in order to
13 implement DSM programs. That seems sort of silly to do
14 that, and we think that ought to be done as a part of the
15 resource planning process.

16 And with that, that's all I have.

17 EXAMINER WRIGHT: Commissioner McClure.

18 QUESTIONS BY CHAIRMAN McCLURE:

19 Q. Let me explore a couple of areas with you,
20 Mr. Rainwater, that you mentioned.

21 In discussion of the preapproval aspects,
22 you mentioned that not having preapproval shifts the risk to
23 the shareholders. Would the flip side of that be true,
24 having preapproval shifts the risk to the ratepayers?

25 A. Wherever the risk is now, if we had

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1 preapproval, it's going to shift it a little bit more toward
2 the customers. The criteria for the decision process is
3 benefit for customers. And, if the criteria is to benefit
4 the customers, shouldn't the risk of those decisions also go
5 to the customers primarily?

6 Now, in the way we view the approval
7 process, the only thing that I see that doing is making a
8 judgment as to whether or not the decisions we've made at
9 the time of our filing are reasonable and prudent. And that
10 doesn't rule out disallowance of any cost after that point.
11 It doesn't rule out disallowance even for imprudent planning
12 beyond the point of our filing.

13 For our company, we expect to be the first
14 company to file. We'll have to submit a plan about next
15 September. If we had approval, what we'd like to know from
16 the Commission is that the Commission believes that plan as
17 filed in September is prudent. That doesn't mean that in
18 October the world may change and we should react to that
19 and, if we don't react to that, that that failure to amend
20 our plan or change our plans couldn't be considered
21 imprudent.

22 And it doesn't mean that we're going to get
23 automatic cost recovery for everything that we do because of
24 what we filed in our plan if we mismanage the implementation
25 of that. And costs may still be disallowed. But it just

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1 seems reasonable to me that we ought to make a judgment
2 about the plan -- the prudence of the decisions that are
3 being made when they're being made.

4 Q. You also talked about the nontraditional
5 accounting procedures. As I read comments that UE
6 submitted, you were talking about accounting authority
7 orders. But you mentioned specifically the need to indicate
8 that the utility would be allowed to recover all prudently
9 incurred costs. Now, was it UE's intent that that
10 indication be included in any accounting authority order
11 that the Commission might issue?

12 A. Well, I'm not sure that you might be reading
13 more into that than was intended. But I guess our intent
14 there was, if we ask for an accounting authority order and
15 were granted an accounting authority order and that occurs
16 between rate cases, the amount of money spent between rate
17 cases for those DSM measures could be deferred.

18 There may be some other methods of
19 nontraditional accounting. It could be deferred, and it
20 could be considered in a future rate case. And, in that
21 future rate case then, the prudence issues as to whether or
22 not the money was well spent could be considered. Some of
23 that could be disallowed. It wasn't our intent to get
24 automatic cost recovery of everything.

25 Although, when we compare the Missouri

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1 process with the Illinois and Iowa process, Illinois and
2 Iowa have both gone quite a bit further toward trying to
3 remove those disincentives.

4 In Iowa we have virtual automatic recovery
5 through special rate cases -- mini-rate cases they're called
6 in Iowa -- to recover just DSM expenditures.

7 In Illinois, Illinois allows us to set up
8 special accounts for DSM expenditures and to recover those
9 separately. And I can't remember now if that's done outside
10 the normal ratemaking process or if it's just deferred until
11 a normal rate case.

12 CHAIRMAN McCLURE: Thanks.

13 EXAMINER WRIGHT: Commissioner Rauch.

14 QUESTIONS BY COMMISSIONER RAUCH:

15 Q. Meanwhile, regarding Iowa and Illinois, you
16 were saying earlier that the planning process anticipated
17 with the Missouri plan is more extensive but not greatly
18 more extensive than what you've experienced in Illinois and
19 Iowa; is that correct?

20 A. It's somewhat more detailed in the
21 requirements, more prescriptive in terms of requiring
22 certain types of methodologies. In both Illinois and Iowa,
23 those sort of decisions are left more up to the utility.
24 The requirements are more general.

25 Q. The resource needs that you have though or

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1 that are created because of these requirements are similar,
2 I guess?

3 A. The decision criteria are similar, and the
4 results of the process are going to be similar. Hopefully,
5 they'd be identical. And we would much prefer to be -- if
6 we're going to be driven by regulatory requirements in one
7 state or another, we'd prefer it would be Missouri because
8 that's our largest jurisdiction.

9 Q. But, again, generally the requirements are
10 going to be similar in Missouri and Iowa and Illinois as far
11 as the planning process is concerned; is that correct?

12 A. They should be.

13 Q. And that's why this planning process that we
14 are talking about here in Missouri is not that worrisome to
15 you because it's not unlike what you've experienced in those
16 two states?

17 A. Yeah. That's right. It's very similar to
18 what we're doing. It's just slightly more detailed than
19 what we're doing already.

20 Q. Now, I've heard the industry say we're more
21 interested in you looking at the final product and then
22 making an assessment about the product rather than the
23 process. The Staff recommendation is to look at the
24 process, to clarify the process, to make sure that's correct
25 and let the utilities then take that process and conclude

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1 what they will and be accountable for whatever that is.

2 In Illinois and Iowa -- and I probably have
3 encountered this before. I just can't recall it right now.
4 What kind of a preapproval process or approval process is
5 there in Iowa and in Illinois?

6 A. I don't know if I can answer that in enough
7 detail to satisfy you. But the result of the process is
8 that we have an order -- we go through hearings, as proposed
9 in Missouri, following the filing of our plan. And our
10 final order grants approval or disapproval of the plan.
11 And, if the plan is disapproved, we have to amend the plan
12 to get it approved.

13 And it's -- I don't know if I can explain
14 this well enough. If I can't, I'll get one of our more
15 technical people to answer your question. But the approval
16 is slightly different than the approval proposed here
17 because it's an approval of the final decisions rather than
18 an approval of just the process as we've proposed in
19 Missouri.

20 Q. So there's less risk involved -- are we
21 talking about Illinois or Iowa or both?

22 A. There is probably -- both Illinois and Iowa.
23 There is probably slightly less risk -- and I guess this is
24 a personal view, but I don't -- I personally don't view that
25 risk to be a substantial risk for our company.

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1 I guess we have a fundamentally different
2 point of view on the issue, say, than Kansas City Power &
3 Light because Kansas City Power & Light asked for approval
4 of their acid rain plan. We've taken a different approach.
5 We haven't asked for approval. Instead, we've documented
6 our decision in a great deal of detail in order to be
7 prepared to defend it in our next rate case if it becomes
8 an issue in our next rate case or whenever it becomes
9 an issue.

10 As I pointed out a minute ago, the downside
11 of that is that it requires a great deal more work to defend
12 something to be litigated ten years from now when no one
13 remembers the specifics and the details and the
14 circumstances at the time you made the decision. I guess
15 it's partly because we feel confident enough in our decision
16 to think that we're not going to have a problem there, that
17 that is not of great concern to us.

18 And I don't want to talk you out of the
19 approval process. But, for our company, it is not as great
20 of a concern as it is for some of the other companies.
21 Still we prefer to have it than not have it.

22 Q. Let me go to the disincentive issue. Would
23 you go over with me again, if you would, please, how you are
24 recommending that we correct the disincentive?

25 A. Well, the plans, as they're written, allow

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1 utilities to request an accounting authority order, which is
2 fine. And I think that's all that's required. And I'm
3 fuzzy on the specifics here. But the plans also require
4 that, if we request an accounting authority order, we have
5 to file some sort of earnings statement or projected
6 earnings statement with the implication that, if our
7 earnings are adequate, then obviously we don't need an
8 accounting authority order because we're earning enough
9 already.

10 And that gets to, I guess, a difference in
11 point of view between us and the Commission Staff. And the
12 Commission Staff would view that as theoretically you're
13 earning enough therefore you're not harmed by spending more
14 for DSM. But the fact is, if we spend that money between
15 rate cases, it comes off the bottom line and it comes out of
16 earnings.

17 And, if I go to our CEO in our budget
18 process and I tell him we want to spend \$10 million for DSM
19 programs next year, the first question he's going to ask is,
20 well, how do we get cost recovery of that? And my answer
21 is, well, we have to wait until our next rate case. And, if
22 we spend \$10 million per year over the next five years, that
23 will be \$50 million. And, in the next rate case, we can ask
24 for cost recovery of that level of spending, \$10 million a
25 year; in other words, the stockholders eat the \$50 million

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1 between now and the next rate case.

2 So, from a practical point of view -- you
3 know, the CEO is going to be concerned about, does that
4 allow him to meet dividend targets? Does that allow him to
5 meet dividend growth targets? And it's going to be
6 an impediment to getting the funding to do the programs that
7 we want to do.

8 Q. So the disincentive ends with DSM. When you
9 apply for the accounting authority order, you would
10 accompany that request with a statement as far as earnings
11 are concerned. With a supply-side or supply-side accounting
12 authority order you would not?

13 A. Well, with supply side, if we build a power
14 plant, the costs are going to be capitalized, first of all,
15 make some assumptions about the costs -- how the costs would
16 be handled. But they're going to be capitalized rather than
17 expensed. DSM expenses may also be capitalized if we ask
18 for nontraditional accounting.

19 But the costs are also going to be
20 deferred -- and you need -- this is about as much as I know
21 about it. You need to talk to an accountant. -- through
22 AFDC where they accrue with interest until the plant goes in
23 service, and then that money goes into the rate base and we
24 earn a return on it.

25 So the costs are treated significantly

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1 differently for supply-side options than they are for
2 demand-side options unless the Commission decides that it
3 wants to capitalize demand-side options or defer the
4 expenses. They can still be expensed but deferred, so
5 utilities may get some cost recovery outside of a rate case.
6 The argument against that is going to be that that's non --
7 that's single issue ratemaking.

8 But I think the real issue -- and it may be
9 single issue ratemaking. The real issue is, do you want to
10 make -- do you want to make the playing field level. Do you
11 want utilities to consider those options from the same point
12 of view that they consider supply-side options.

13 For our company, I -- to bring it back to a
14 practical level, I don't think it's going to make a lot of
15 difference to us which way they're treated. That's why I
16 said I don't really see us asking for an accounting
17 authority order unless the level of spending is so
18 significant or the earnings are so low that we need to do
19 that. For some of the other companies, particularly the
20 smaller companies, that may be different.

21 COMMISSIONER RAUCH: Thank you.

22 EXAMINER WRIGHT: Commissioner Kincheloe.

23 QUESTIONS BY COMMISSIONER KINCHELOE:

24 Q. As you know, some of the consumer groups
25 think that the proposed rule already goes too far toward

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1 approval of a plan or has the implications, at least, of
2 approval.

3 In providing that the Staff has
4 an obligation to file a report indicating its view of
5 deficiencies with methodologies or analysis in the plan or
6 deficiencies in the strategy because it failed to meet the
7 planning objectives, do those sorts of provisions provide
8 any comfort or have any value or might they just as well be
9 deleted and we should listen to the other side of this
10 issue?

11 A. I guess -- you're getting to the issue of
12 how much oversight or direction does the Staff really
13 provide. And I guess -- when you're talking about where you
14 place the risk, if utilities feel that the risk is going to
15 be placed primarily on the stockholders -- we are human and
16 we have to respond to that. That is somewhat of a
17 disincentive that forces utility companies to start looking
18 at how they can mitigate that risk rather than focusing on
19 how can we reduce costs to customers, which we would prefer
20 to do.

21 I remember one of the people who spoke today
22 mentioned that he thought utilities traded off stockholder
23 versus customer interests in general. And, in general, that
24 isn't true. If you all know anything about the culture in
25 utility companies, in general, utility companies make their

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1 decisions based on what's in the best interest of their
2 customers. Where we move away from that sometimes is when
3 we're forced to -- like in rate cases where it becomes very
4 adversarial and the issues are made to be a tradeoff between
5 stockholder and customer interests.

6 In rate cases maybe that's necessary. I
7 think in resource planning it isn't necessarily necessary.
8 Utility companies, if they don't view the risks being
9 allocated unfairly, are going to be predisposed to do
10 everything they can to minimize costs for their customers.
11 That's the culture in the utility industry. It's been like
12 that for 40 years. It may have changed somewhat in the last
13 ten years or so because of the prudence reviews.

14 Within our companies now, we're starting to
15 see some people arguing that we need to pay more attention
16 to the stockholders. We don't need -- we can't just make
17 decisions based on lowest cost for customers. You've got to
18 consider the stockholder's side of it as well. That
19 didn't -- 15 years ago that wasn't the case.

20 But, whenever, by policy, you make a
21 decision, that shifts risk one way or the other. And, like
22 I said, I'm not sure which way the risk is being shifted
23 because I'm not clear of where that risk really lies right
24 now. But, if you make a policy decision that shifts risks
25 to stockholders instead of customers, that almost forces

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1 utilities to start weighing customer versus stockholder
2 interests and, again, we'd rather not do that. We'd rather
3 act in the customer interest. But, based on the principle
4 that, if we do everything we can to take care of the
5 customers, stockholders will be taken care of. That's the
6 way we prefer to do it.

7 Q. I'm not clear on exactly where you're coming
8 down. But the basic question of whether the process that
9 requires the Staff to report on its view of deficiencies and
10 for there to be a potential Commission Order regarding
11 compliance with the planning process, at least, whether that
12 has any value to the company or to the stockholders as
13 compared with just not having that, just having a process by
14 which you would file a plan, comply presumably with the
15 requirements, file it and let it sit there until the --

16 A. Well, there are really pluses and minuses.
17 It has some additional assurance as far as risk for
18 stockholders in that it -- I think it reduces stockholder
19 risk somewhat, but the difference is -- for our -- speaking
20 for our company, at least, I think the difference is almost
21 immaterial.

22 On the minus side, there is an additional
23 burden of work for both the company and for the Commission
24 Staff in reviewing the final decision and deciding whether
25 or not those are reasonable. So there is a tradeoff there.

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1 I guess the -- where I finally come down on the issue is,
2 it's more reasonable to look at those issues when they're
3 fresh than it is five to ten years from now when no one
4 really remembers what the issues were.

5 Q. Thank you. Could you give me your position
6 with the company?

7 A. I'm General Manager of Corporate Planning,
8 which includes resource planning.

9 COMMISSIONER KINCHELOE: Thank you.

10 EXAMINER WRIGHT: Commissioner Perkins.

11 COMMISSIONER PERKINS: No questions. Thank
12 you.

13 EXAMINER WRIGHT: Mr. Rainwater, I've got at
14 least one question.

15 QUESTIONS BY EXAMINER WRIGHT:

16 Q. Since Union Electric Company has had
17 experience with integrated resource planning, I was
18 wondering what their experience shows that the major portion
19 of the cost related to that planning comes in; in personnel,
20 software? Where is it that the company is spending the
21 money with regard to integrated resource planning?

22 A. Well, it's probably split 50/50, or close to
23 that, between personnel and between outside consultants. In
24 fact, in the last year or so, we may have spent more money
25 for outside consultants to get ourselves up to speed in the

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1 DSM area, particularly in Iowa because of the Iowa
2 requirements.

3 Q. And, with regard to the planning process
4 proposed by the rule, you have indicated that it could be
5 less prescriptive. What one or two changes would you make
6 that would reduce what you consider to be the prescriptive
7 nature of it?

8 A. Well, we've outlined that in some detail in
9 our comments and our reply comments. I think the one area I
10 would focus on more than any other is in the environmental
11 requirements and the requirements to quantify the costs of
12 any environmental problem or costs that might be proposed.
13 And the Staff has softened that requirement somewhat in
14 their reply comments. I don't think it's been softened
15 quite enough.

16 I don't know if you can go with a strict
17 probability and say that, if there's a 10 percent
18 probability, then you need to quantify those costs or if
19 it's a more subjective judgment. If you stick with a 10
20 percent probability and that requires you to quantify costs
21 for 150 different environmental problems, that's going to be
22 a real burden in terms of time to do that.

23 I think what really -- maybe I'm just
24 thinking about this off the top of my head. But what it's
25 going to come down to is, how are you staffed, how many

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1 issues can you really look at and when have you covered all
2 that you can cover in the time you've got allowed. So it's
3 maybe a half dozen or so that you can really look at.

4 Q. Aren't the environmental issues -- are you
5 not required to review or analyze those in either Illinois
6 or Iowa?

7 A. I'm not sure how it's handled in Illinois or
8 Iowa.

9 Can somebody help me out, like Dan or Steve?

10 MR. STEVE KIDWELL: No. Steve Kidwell,
11 Supervising Engineer, Demand-side Planning. No, we are not.
12 It's a simple adder in Iowa, and it's still under advisement
13 in Illinois.

14 THE WITNESS: Now, overall in Missouri, the
15 way the environmental has been handled, I think, is the
16 proper way, that you assess the costs that are going to be
17 imposed ultimately on customers rather than assessing the
18 societal costs which may or may not be imposed on anybody.

19 BY EXAMINER WRIGHT:

20 Q. With regard to preapproval, would you expect
21 the Commission to modify the rule to state that there would
22 be preapproval or is that something you see occurring in one
23 of the filings later with regard either to the plan or to
24 the accounting authority order or some other method?

25 A. Well, we would prefer to see it happen as

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1 part of this process. And, when the final order is issued,
2 we'd prefer to see that the -- maybe plan approval is too
3 strong a word and maybe what we've asked for, which is put
4 together by attorneys, maybe goes further than what we
5 really think is reasonable.

6 (Laughter.)

7 THE WITNESS: Sorry about that, gentlemen.

8 CHAIRMAN McCLURE: That's usually the case.

9 (Laughter.)

10 THE WITNESS: I guess all we're really
11 looking for is a determination by the Commission that what
12 we've decided in this plan is reasonable. And the
13 presumption of prudence, of course, is what we're looking
14 for and, of course, that does shift the risk. So, again, it
15 goes back to a policy decision from you all. Is it more
16 important to preserve the hindsight review which, of course,
17 allows Staff another tool to use in future rate cases or is
18 it more important to make the planning process a better
19 planning process?

20 BY EXAMINER WRIGHT:

21 Q. I don't know how familiar you are with the
22 Clean Air Act and some of the strategies that were proposed
23 with regard to the Keystone report and the NARUC report with
24 regard to the commissions making policy decisions and not
25 necessarily preapproving specific issues. Is that the kind

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1 of -- is that what you're suggesting here is that the
2 Commission address more the policy issues rather than the
3 specifics of a plan? Is that the kind of preapproval that
4 you're discussing?

5 A. I guess I'm thinking of approval in a very
6 general sense, not necessarily approval of every single
7 assumption made in the planning process. But, when you
8 look -- I'm thinking of approval from the sense that top
9 management in a utility company would look at it. When they
10 look at the final decision, does that seem reasonable to
11 them.

12 EXAMINER WRIGHT: Thank you. You may step
13 down.

14 (Witness excused.)

15
16 EXAMINER WRIGHT: Go off the record.

17 (Discussion off the record.)

18 EXAMINER WRIGHT: Back on the record.

19 Next will be Western Resources, Inc.

20 MR. PENDERGAST: Mr. Examiner, I was going
21 to testify; but in the interest of moderation, we have a
22 nonattorney to present our comments.

23 (Laughter.)

24 EXAMINER WRIGHT: You're afraid to say
25 anything after those last comments?

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1 (Laughter.)

2 MR. PENDERGAST: Yes, I am. Thank you.

3 (Witness sworn.)

4
5 GEORGE L. FITZPATRICK testified as follows:

6 THE WITNESS: Good afternoon. I'm here to
7 present Western Resources' comments, and there will be other
8 people helping me if there are other questions that come up
9 that are not in my area of expertise.

10 Overall, Gas Service supports an IRP process
11 for both electric and gas utilities. However, we do have
12 specific concerns about the IRP rules as they currently
13 stand.

14 The problems that we have center in the
15 areas of, one, lack of a fuel substitution provision that is
16 fair to all companies and protects both ratepayers and
17 stockholders; two, proper treatment and monitoring of pilot
18 programs; three, the definition of cost-effectiveness to be
19 embraced by the IRP; four, incentive treatment for and
20 evaluation of DSM programs as part of the IRP; and, five,
21 preapproval of the IRP process versus results by the
22 Commission.

23 Concerning fuel substitution. For many
24 years, the Commission has attempted, through its
25 promulgations and enforcements of the promotional practices

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1 rule, to ensure that the choice of an energy supplier will
2 not be influenced by artificial financial incentives. In
3 an effort to further ensure that utilities will have every
4 incentive to encourage the efficient use of energy rather
5 than focus only on supplying energy, the Commission has
6 proposed IRP rules that are ostensibly designed to promote
7 this objective.

8 Unfortunately, absent the inclusion of an
9 equitable fuel substitution provision that requires
10 utilities to consider demand-side measures without regard to
11 which fuel they utilize, this rule actually represents a
12 step backward from this important objective.

13 As Dr. Turner stated this morning, the
14 primary purpose of the proposed rule is to ensure that
15 utilities have, quote, good information, closed quote, upon
16 which to base their decisions. By urging the inclusion of a
17 fuel substitution provision, what we're asking is that the
18 information developed by the utility not be artificially
19 excluded data relating to demand-side resources that utilize
20 natural gas.

21 It is true, as Dr. Turner indicated, that
22 bad information is likely to result in bad decisions. The
23 absence of any -- on fuel substitution alternatives is
24 likely to result in even worse decisions.

25 As indicated in Gas Service's initial and

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1 reply comments, inclusion of a fuel substitution provision
2 is essential to achieving the stated goals of the rule. It
3 would be a serious oversight, in our opinion, to embark upon
4 an elaborate, complex and costly planning process that is
5 seriously flawed from the outset since it selectively
6 excludes consideration of demand-side options that could be
7 cost-effective choices under any party's analysis.

8 To include this point, Gas Service would
9 like to make it clear what it is we are really asking for.
10 No. 1, only that all options be considered and that a
11 utility can ask for waiver if it can show harm to its
12 shareholders or customers. And, No. 2, we also understand
13 that this rule would be applicable to Gas Service; and we
14 accept that and embrace that.

15 In the same regard, we also believe that
16 modifications to the promotional practices rule should be
17 structured so that biases favorable to electric utilities
18 are not created.

19 To simply delay the imposition of a fuel
20 substitution provision to some future date, even one year
21 from now, for example, is not an acceptable solution. The
22 financial harm that could be inflicted in one year would
23 last 15 to 20 years because of the measures that we put in
24 that one year will have a life of 15 to 20 years.

25 The second point is that our proposals will

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1 place restraints on pilot programs. We believe that pilot
2 programs should be short duration, market research efforts
3 that fine tune conceptual design for real world application.
4 Any use of pilot programs beyond this we do not believe is
5 appropriate.

6 Three, our definition of cost-effectiveness
7 is to ensure that the impact of demand-side measures will be
8 evaluated based on the overall effects of both the electric
9 and gas utility customers in the state of Missouri.

10 Gas Service would define a DSM program to be
11 cost effective if the present value of the life cycle
12 benefits received by electric and/or gas utilities is
13 greater than the present value of the life cycle costs
14 incurred by electric and/or gas utilities in providing the
15 energy service.

16 We don't understand why any electric utility
17 would be opposed to this change since consideration of gas
18 utilities' marginal costs and benefits serves to reduce the
19 cost-effectiveness of electric utility fuel substitution
20 programs and serves to increase the likelihood the electric
21 utility load-building programs will pass the
22 cost-effectiveness test. Of course, the converse would
23 apply as well to gas programs.

24 In essence, the proposed definition serves
25 to accommodate the concern that any one utility's

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1 load-building program is another utility's fuel substitution
2 program. If, as stated in our reply comments, appropriate
3 nontraditional accounting mechanisms are allowed and if
4 these types of programs pass proposed cost-effectiveness
5 definitions, then electric and gas utility customers will
6 benefit and shareholders will be protected.

7 The next issue is incentive treatment of and
8 evaluation of DSM programs. As pointed out by other
9 witnesses, a utility's reward for DSM activity is currently
10 the recovery of prudently incurred expenses at some future
11 date. Other jurisdictions, notably New York, have
12 identified DSM targets for cost-effective conservation and
13 load-management programs, collectively referred to as
14 demand-side management programs. And they've allowed for
15 the recovery of expenses, including revenue erosion.

16 If targets that have been set by the
17 Commission in some planning process are met, adjustments to
18 rates of return ranging from 20 to 70 basis points most
19 recently have been granted by the Commission. Incentive
20 regulation along these lines places DSM efforts on a level
21 playing field with supply-side measures.

22 Concerning the evaluation of DSM programs,
23 this Commission should consider imposing a requirement that
24 evaluations focus not only on evaluating the impacts on the
25 authoring utility's loads but also any other utility or fuel

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1 source that may be affected as a result of such programs.
2 Identification of DSM program induced revenue erosion for
3 all utilities will more accurately capture each program's
4 true impacts.

5 Commission preapproval issue. Gas Service
6 recognizes that this Commission cannot provide carte blanche
7 approval of the results of a utility's IRP to ensure full
8 rate base treatment of each element of the plan.

9 However, it seems reasonable that, given the
10 complexity of Staff's IRP prescription and the IRP review
11 process contemplated, the Commission should be able to at
12 least come to a finding that decisions made as part of
13 an IRP process that met the Staff's approval could be found
14 to be, quote, prudent when made. This would remove at least
15 one element of future planning risk from utility investments
16 and would generally guarantee a return of invested capital
17 should future IRPs dictate a shift to other paths.

18 In our opinion, if the Commission does not
19 provide some level of assurance, it is possible that
20 utilities would always opt for a mix of IRP resources that
21 minimize capital expenditures and thus stockholder risk.

22 To anticipate a follow-up question that I
23 heard earlier, I don't believe that this would materially
24 affect the market's perceived need for a return on equity,
25 rather it would ultimately benefit ratepayers since

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1 utilities would not be faced with trading off least cost
2 paths to alleviate stockholder risk.

3 In summary, Gas Service and its parent,
4 Western Resources, submit that the positions taken here on
5 the subjects of fuel substitution incentive treatments, DSM
6 evaluation and cost-effectiveness will affect Western
7 Resources' electric business in Kansas and Oklahoma. Our
8 proposals are not self-serving in a global sense but have
9 been decided upon as the best proposals to achieve long-run
10 equity for all of our ratepayers and stockholders.

11 That concludes my comments.

12 EXAMINER WRIGHT: Chairman McClure.

13 CHAIRMAN McCLURE: Nothing. Thank you.

14 EXAMINER WRIGHT: Commissioner Rauch.

15 COMMISSIONER RAUCH: Nothing.

16 EXAMINER WRIGHT: Let me just ask one
17 question.

18 QUESTIONS BY EXAMINER WRIGHT:

19 Q. With regard to the fuel substitution
20 provision, if and when the Commission requires integrated
21 resource planning for gas utilities, is that something that
22 Gas Service would expect to take into account in their
23 integrated resource planning process, fuel substitution?

24 A. Yes, it would.

25 EXAMINER WRIGHT: Okay. That's all I have.

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1 Thank you.

2 (Witness excused.)

3 _____
4 EXAMINER WRIGHT: UtiliCorp United.

5 (Witness sworn.)

6 _____
7 KEITH A. STAMM testified as follows:

8 THE WITNESS: Keith Stamm, Missouri Public
9 Service Division of UtiliCorp United. Missouri Public
10 Service is generally supportive of the planning process
11 that's been outlined in the rules. However, we have five
12 points that we'd like to make.

13 First, we agree that a fully integrated plan
14 does include demand-side management; however, we disagree
15 with the evaluation procedures that have been outlined in
16 the rules. We think that, in order to fully evaluate
17 demand-side management costs, it's necessary to look at the
18 costs that are borne by the customer but not by the utility;
19 otherwise, there may be a tendency to overestimate the
20 benefits of a demand-side management program.

21 Essentially, we have to look at the decision
22 from the customer's perspective, not just our own because
23 the customer will be making the decision on the demand-side
24 management programs. This is going to be a difficult
25 process; but, at the same time, we think it's one that needs

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1 to be addressed.

2 Second, I think the utilities and the Staff
3 have a different perspective on the cost of complying with
4 this rule, although through the reply comments and the
5 testimony that we've heard this morning, we're optimistic
6 that there's some flexibility in terms of variances and --
7 that we may request during the initial filing and subsequent
8 filings.

9 Third, we think that there's too much
10 emphasis on the analysis of load building as a strategy.
11 Load building is a single strategy along with a number of
12 other strategies, including fuel substitution, peak
13 clipping, valley filling, load shedding, load shifting. Any
14 number of these are strategies that should be looked at by a
15 utility, but we don't see a need to specifically address how
16 you look at a single strategy within these rules because
17 it's just one of a number of strategies.

18 Fourth -- and I think this point has been
19 made several times today, so I won't dwell on it. The DSM
20 disincentives we believe need to be removed. I think that
21 there are -- there's a natural weariness of making a
22 significant investment in demand-side management programs
23 without some direction on the cost recovery of those
24 demand-side management expenditures.

25 And then, finally, we are in favor of

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1 strategy approval versus plan approval; and we think that
2 there's a very big distinction. The difference is that,
3 with a strategy approval, essentially we would be told we
4 agree with the alternatives that you have identified in your
5 method of analysis; whereas, with plan approval, we would be
6 told we agree with your plan to put in power plant XYZ at a
7 total cost of "X" dollars per kilowatt. We're not looking
8 for plan approval per se but rather strategy approval.

9 And then, finally, we'd like to reiterate
10 that we would like to see greater flexibility in order to
11 react to opportunities that may come up. In other words,
12 with a plan that we file every 35 months, we cannot plan on
13 opportunities that may become available, for example,
14 through a purchased power contract. Since that's
15 an opportunity and we don't plan for opportunities, that
16 would not be within a plan per se; but we would like the
17 flexibility to address that if it does become available.

18 That concludes my comments.

19 EXAMINER WRIGHT: Questions. Chairman
20 McClure.

21 CHAIRMAN McCLURE: Nothing. Thank you.

22 EXAMINER WRIGHT: Commissioner Rauch.

23 COMMISSIONER RAUCH: Nothing.

24 EXAMINER WRIGHT: Commissioner Kincheloe.

25 COMMISSIONER KINCHELOE: Nothing.

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1 EXAMINER WRIGHT: Thank you. You may step
2 down.

3 (Witness excused.)

4
5 EXAMINER WRIGHT: Next is Laclede Gas
6 Company.

7 MR. FRENCH: Mr. Examiner, when we discussed
8 comments yesterday, you indicated that attorneys could make
9 comments. I took the trouble of writing these comments out,
10 and it's not fair to make anyone else read my handwriting.
11 I guess that I'm stuck with making them. How would you wish
12 to proceed?

13 EXAMINER WRIGHT: Why don't you come up and
14 use the microphone to make --

15 MR. FRENCH: I don't think I've ever sat in
16 this chair.

17 EXAMINER WRIGHT: I've always been under the
18 assumption or under the belief that attorneys are bound by
19 their own code of ethics, so I don't think it's necessary to
20 swear you.

21 CHAIRMAN McCLURE: That's correct.

22 (Laughter.)

23 EXAMINER WRIGHT: You may proceed.

24 MR. FRENCH: Thank you very much.

25 RICHARD W. FRENCH testified as follows:

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THE WITNESS: May it please the Commission.

Laclede will limit its oral comments to the proposed modification to the promotional practice rule, which I'll sometimes refer to as the rule, that's 4 CSR 240-14.010, which is the subject of Case No. OX-92-300.

Chris Baker, Supervisor of Marketing Services for Laclede, will be available to answer any questions the Commission may have on these oral comments or any of the written comments filed by Laclede in OX-92-300 or the IRP rule, EX-92-299.

Laclede's concerns regarding the proposed modifications to the rule center on proposed changes to Section 14.010, which creates blanket exceptions from designation as prohibited promotional practices for all programs designed to evaluate and acquire cost-effective demand-side resources.

Laclede opposes the creation of these exceptions, and I would like to discuss two reasons for that opposition. First, as written, the proposed modifications to Section 14.010 are overly broad and vague and create undue confusion as to what incentive programs might qualify for the exceptions.

In our opinion, the modifications also create loopholes for utilities who are interested in buying load from their competitors. This point is more completely

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1 discussed on Pages 9 through 13 of Laclede's initial
2 comments.

3 Secondly, these proposed modifications,
4 which weaken and confuse the rule, are simply not necessary
5 to promote the stated IRP goals which apparently led to the
6 drafting of these modifications.

7 Laclede does not want all the discussion
8 regarding the need for the IRP process to cause the
9 Commission to lose sight of the continued need for a strong
10 and vital promotional practice rule. The promotional
11 practice rule has worked effectively since its inception in
12 1971 to prevent institution of costly incentive wars between
13 competing utilities.

14 Prior to the adoption of the rule by this
15 Commission, competing utilities wasted millions of dollars
16 on incentives which sought to induce energy choices on the
17 basis of cash and other considerations instead of the
18 economics and efficiency of that energy source. This buying
19 of load led to inefficient and uneconomic choices of energy,
20 especially where builders and developers got the incentives
21 and homeowners were saddled with the inefficient energy
22 choice.

23 The promotional practice rule, like the one
24 currently in effect in Missouri, was implemented to prohibit
25 the offering of incentives to buy load. That purpose

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1 remains as important today as it was in 1971.

2 In response to Staff's reply comments, the
3 only stated basis for instituting the modifications to
4 14.010 is to more timely approve incentive based demand-side
5 programs. As currently written, the promotional practice
6 rule will not delay the institution of valid demand-side
7 programs as set out in our written comments.

8 The waiver procedure currently available in
9 the rule will provide as timely approval for these programs
10 as will be available under the tariffed procedure proposed
11 in the modifications. That's more fully discussed on
12 Page 14 of our initial comments.

13 Since there is no need to change the rule to
14 promote the proposed modifications -- I'm sorry. -- to
15 promote the IRP process and since the proposed modifications
16 create undue confusion and loopholes to the rule's general
17 provisions, it is Laclede's opinion that the proposed
18 modifications to Section 14.010 should be rejected.

19 In further response to Staff's reply
20 comments, Laclede is somewhat concerned with comments
21 regarding perceived shortcomings to the language of the
22 proposed modifications in areas such as exceptions for pilot
23 programs and the definition of cost-effective demand-side
24 programs discussed previously by Western Resources and Staff
25 stating that these shortcomings could be overcome by the

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1 vigilance of competing utilities.

2 Laclede has no desire to usurp the role of
3 this Commission and its Staff in carrying out and enforcing
4 the provisions of the promotional practice rule.

5 Heretofore, the Staff has been a strong supporter of the
6 rule and its purposes. And Laclede would hope that it will
7 continue to be so in the future.

8 The Staff's reply comments state the intent
9 that the proposed modifications should not apply to
10 incentive based load-building programs. However, the intent
11 is not borne out by the actual language contained in the
12 proposed modifications to Section 14.010.

13 Further in its reply comments, Staff has
14 made an attempt to remedy this gap between its intent and
15 the proposed language by adding language to the proposed
16 modifications which attempt to exclude load-building
17 programs from qualifying for the exceptions created for
18 demand-side programs.

19 Laclede appreciates Staff's efforts in this
20 regard but continues to believe that there is no need to
21 modify the current rule to promote valid demand-side
22 programs. If, however, this Commission decides to adopt the
23 proposed modifications to Section 14.010, as a last
24 alternative and as stated in Laclede's initial comments, the
25 Commission should at least modify the Staff's new proposed

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1 language, which is stated on Page 103 of Staff's reply
2 comments, regarding the definition of load-building programs
3 so that the definition would be limited to load-building
4 programs which attempt to influence energy choices through
5 the use of any consideration as defined in the promotional
6 practice rule.

7 This is consistent with Laclede's
8 alternative position expressed on Pages 15 and 16 of
9 Laclede's initial comments. This change appears to be
10 minor, but it is extremely important since it is incentive
11 based programs which the promotional practice rule is
12 designed to prohibit and, therefore, as written, Staff's
13 definition of load building is too broad as it relates to
14 the purposes of the promotional practice rule. And,
15 therefore, if it is adopted it must be modified as I have
16 discussed.

17 Frankly, absent this change to Staff's
18 definition, Laclede would prefer the proposed modifications
19 set out in the July 1 Missouri Register to the alternative
20 expressed by Staff in its reply comments.

21 In conclusion, Laclede strongly believes
22 that all of the purposes of the IRP process, which is
23 apparently the genesis for these proposed modifications to
24 the promotional practice rule, can be accomplished without
25 any change to Section 14.010. There is simply no credible

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1 evidence which has been presented to this Commission that a
2 change is needed to this section of the rule; and,
3 therefore, the Commission should not weaken the rule through
4 the introduction of confusing, vague and overbroad
5 exceptions to its provisions.

6 Thank you. Mr. Baker is available to answer
7 any questions.

8 EXAMINER WRIGHT: Why don't you go ahead and
9 take the stand.

10 (Witness sworn.)

11
12 EXAMINER WRIGHT: Questions.

13 Chairman McClure.

14 CHAIRMAN McCLURE: I have nothing. Thank
15 you.

16 EXAMINER WRIGHT: Commissioner Rauch.

17 COMMISSIONER RAUCH: Nothing.

18 EXAMINER WRIGHT: Commissioner Kincheloe.

19 COMMISSIONER KINCHELOE: Nothing.

20 CHRISTOPHER BAKER testified as follows:

21 QUESTIONS BY EXAMINER WRIGHT:

22 Q. Have you reviewed Staff's reply comments?

23 A. Yes, I have.

24 Q. And the language that they propose with
25 regard to load building?

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1 A. Yes, I have.

2 Q. Could you go through that and explain either
3 why that doesn't satisfy your concerns or what changes you
4 would make to that specific language that would satisfy your
5 concerns other than removing it altogether?

6 A. Well, again, our primary position is that we
7 don't feel that there are any necessary changes to the
8 promotional practices rule as it stands and that is what we
9 would primarily like to see, that it stays that way.

10 Beyond that, we're concerned with removing
11 the incentive based load-building programs from being deemed
12 as activities that would fall under the guise of demand-side
13 resource planning. So it really zeros in on the incentive
14 based end of it versus just the load building being included
15 in the definition of the demand-side resource as being a
16 sentence that was added there that indicated that it would
17 be exempt, that the demand-side resource would not be
18 including the load building.

19 So the real key is on the incentive end of
20 it. We don't feel that load-building programs were
21 prohibited promotional practices; whereas, the incentive
22 based ones were.

23 Q. Have you considered what additional language
24 that could be added that would satisfy your concerns?

25 A. Well, Laclede offered a suggestion that

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1 would add a paragraph. This was in our initial comments.
2 And they would -- specifically it was 14.010, Paragraph 6,
3 adding "Nothing contained in paragraphs (4) and (5) above
4 shall be construed in any way to exempt promotional
5 load-building programs from designation as prohibited
6 promotional practices," and then adding a definition of what
7 the promotional load-building program was, which
8 specifically mentioned the consideration that was so defined
9 in the rule.

10 Q. You would propose to use that language other
11 than the language that's -- the modified language that Staff
12 is proposing in their reply comments?

13 A. We would -- if we have to have changes, we
14 would prefer our changes, yes.

15 EXAMINER WRIGHT: Thank you.

16 (Witness excused.)

17
18 EXAMINER WRIGHT: What we need now, I think,
19 is we need to take about five minutes and decide whether we
20 want to ask additional questions of people or whether we've
21 received all the -- asked all the questions and received all
22 of the additional comments we need.

23 So why don't we just take a short break and
24 then everybody come back and then we'll either conclude or
25 we'll go forward with additional comments.

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1 (A recess was taken.)

2
3 EXAMINER WRIGHT: Back on the record.

4 We've taken a short recess and, during that
5 recess, I indicated to the persons and the entities that
6 have presented comments -- can you hear me, Gary?

7 MR. DUFFY: Just barely.

8 EXAMINER WRIGHT: The first thing we're
9 going to do is we're going to come in and remove all of the
10 air conditioning units out of the --

11 (Laughter.)

12 EXAMINER WRIGHT: As I indicated while we
13 were off the record, the Commission's final question and
14 what they would like the commentors to respond to, if they
15 wish, is exactly what do they consider to be the appropriate
16 method or mechanism for dealing with the nontraditional
17 ratemaking proposals that have been discussed with regard to
18 recovering costs related to the integrated resource planning
19 proposals or plans of the companies that have filed.

20 And the question is: How much detail would
21 you think that we can or should put into the rule? If you
22 don't think we can put it in the rule, can you suggest a
23 vehicle for dealing with those; in other words, should they
24 be dealt with at the time the plans are filed? Should it be
25 a separate filing? What we're just trying to get are

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1 general comments with regard to, procedurally, how do you
2 expect or would you propose that the Commission deal with
3 requests for nontraditional ratemaking treatment?

4 And as I said, we'll --

5 MR. DUFFY: Are we still off the record?

6 EXAMINER WRIGHT: No, we're on the record
7 now.

8 MR. DUFFY: Are we going to have any time to
9 talk about this before we give you a decision?

10 EXAMINER WRIGHT: If you need some time, we
11 can give you some time, but -- sometime today.

12 (Laughter.)

13 MR. DUFFY: I was talking in terms of ten
14 minutes or something.

15 EXAMINER WRIGHT: Do you feel like you need
16 some time to get together and discuss and prepare an answer?
17 Would that be appropriate?

18 Do you have any questions about the
19 question?

20 MS. SCHMIDT: I do. Are you talking about
21 accounting treatment in particular or rate case -- excuse
22 me. Are you talking about accounting?

23 EXAMINER WRIGHT: Well, basically, the
24 nontraditional -- if you went into a rate case, then I'd
25 assume that's the traditional ratemaking treatment and we

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1 would deal with it traditionally. I'm talking more about,
2 you know, capitalization and accounting authority orders or
3 any other nontraditional method that might be proposed with
4 regard to treating the costs or how to recover those costs.

5 MR. RAYBUCK: Mr. Examiner, on Union
6 Electric's behalf, we do not feel like we need to think
7 about this and ask for a recess. We're prepared to give you
8 comments now; and that is simply to repeat that, in our
9 initial comments, we addressed this issue when we asked you
10 to add a sentence to the appropriate section dealing with
11 the utility being able to request nontraditional accounting
12 procedures.

13 And that sentence basically would say the
14 Commission intends to allow for the recovery of prudently
15 incurred costs. And we've explained in some detail in our
16 comments why we think that's necessary. I would refer you
17 to Mr. David Wucher, who is our accountant at Union
18 Electric, who can explain to you why we think this language
19 is necessary in light of statements from the Financial
20 Accounting Standards Board. So we're prepared to respond
21 right now.

22 EXAMINER WRIGHT: Okay. Are there any other
23 questions with regard to the question?

24 (No response.)

25 EXAMINER WRIGHT: Why don't we take an

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1 additional -- why don't we take 15 minutes and come back at
2 three o'clock. And then we'll go around and -- UE -- if
3 Mr. Wucher wants to respond at that time, whenever we get to
4 UE, then he can respond.

5 Thank you.

6 (A recess was taken.)

7
8 EXAMINER WRIGHT: Back on the record.

9 For those of you who wish to provide
10 additional comments on the question presented by myself
11 earlier, we'll begin with Staff.

12 Does Staff have a response?

13 MR. DOTTHEIM: Yes. The Staff would refer
14 to the language of 4 CSR 240-22.080, Subsection 2, which
15 addresses the nontraditional accounting procedures and
16 ratemaking treatment, and refer back to the comments that
17 the Staff has filed. Based on what has been said at this
18 point by the Bench, the Staff wouldn't change its
19 suggestion, recommendation to the Commission.

20 Things at this stage seem to run together
21 and years are a blur, but -- and I don't think the Staff
22 made reference to this in its reply comments. But, if I'm
23 understanding the Bench correctly about the possibility of
24 addressing ratemaking in a rule, the Commission has
25 addressed that previously if I understand the suggestion

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1 correctly.

2 And, in a mad dash through my files, the
3 first case I was able to find -- and it's not, as I recall,
4 specifically addressed in the particularity that it was
5 addressed in a subsequent case. But it was Case
6 No. 00-82-277, which is captioned "In the matter of the
7 inquiry into certain matters of concern to the Commission,"
8 which was kind of a laundry list of many items that were of
9 concern to the Commission.

10 And, as I recall, part of that involved
11 ratemaking by rulemaking or it was addressed in some manner.
12 But there is a more specific rulemaking docket, if my memory
13 serves me correctly, which unfortunately I'm not able to
14 access at the moment. And it's my recollection --

15 CHAIRMAN McCLURE: The docket or your
16 memory?

17 (Laughter.)

18 MR. DOTTHEIM: Both, because I actually had
19 a conversation with someone about this in the last several
20 weeks and pulled the file. Now, I can't find it and I can't
21 remember who I talked with.

22 But it was a rate -- it was a rulemaking
23 docket which, if I recall correctly, the Commission
24 established to address whether it might set rules on flow
25 through versus normalization, that question. And I think it

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1 was in the 1982-83 time frame that the Commission, I
2 believe, actually issued a notice of proposed rulemaking and
3 ultimately withdrew the rule because of the comments it
4 received respecting the inappropriateness or the
5 unlawfulness of proceeding on ratemaking matters by a
6 rulemaking.

7 Unfortunately, the only docket I can recall
8 right now is the 00-82-277. I would suggest that an effort
9 be made, and if I -- I certainly am willing to make that
10 effort if the Commission would like something submitted to
11 it. Of course, I don't know, this being a rulemaking in
12 itself or this being the local -- excuse me. -- the public
13 hearing, whether there's really any provision or
14 appropriateness for anything else being submitted.

15 But that's the best I can do at the moment
16 with my recollection, is, again, if I understood the Bench
17 correctly, I think this matter has been addressed previously
18 by the Commission. And I suggest to the Commission that
19 maybe it can take Administrative Notice of that matter if
20 that docket can be accessed in some manner.

21 EXAMINER WRIGHT: I appreciate the
22 references. I'm sure we can do the research and come up
23 with both the 00 docket and the other rulemaking from the
24 Commission's records. So I think it's not necessary to file
25 anything in addition. I think we can do the research.

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1 MR. DOTTHEIM: At this moment, Staff would
2 not offer anything further; although, in response to
3 anything that Union Electric Company might suggest regarding
4 accounting authority orders and the necessity of indicating
5 that costs -- prudently incurred costs, there being some
6 guarantee that those costs would be recovered, I could
7 attempt to address that matter now or if given
8 an opportunity to respond to whatever Union Electric Company
9 might say in furtherance of the comments that have been
10 already filed.

11 The Staff's concern on a matter of that is
12 another item that's been raised previously with the
13 Commission; recent accounting authority orders, the question
14 of difficulties with the accounting authority orders being
15 treated as a guarantee and then the question of -- if
16 subsequently if the Commission really is reserving the right
17 to subsequently, in a ratemaking context, in a ratemaking
18 case, to make the ratemaking determination respecting the
19 accounting authority order, the company may well come back
20 as has already been one case before the Commission where a
21 company came back and said, "Commission, the integrity of
22 the process is destroyed by you now not allowing ratemaking
23 to effectuate the accounting authority order. Integrity of
24 the process is destroyed, and also our financials do not
25 look very good when we have to write off these funds."

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1 So that's all I'd say at the moment on the
2 matters that have been raised to this point.

3 EXAMINER WRIGHT: Let me just recap to make
4 sure I understand. Basically you're saying that the
5 Commission has addressed the appropriateness or the legality
6 or their authority to do nontraditional ratemaking through a
7 rulemaking in the previous rulemaking concerning flow
8 through versus normalization?

9 MR. DOTTHEIM: I wouldn't characterize it as
10 nontraditional ratemaking. But the question of -- if I
11 understood correctly -- of trying to treat ratemaking in the
12 context of a rulemaking. That has been addressed and the
13 Staff's comments or the way the rule is presently drafted, I
14 think, address the Staff's concern in this area; that is,
15 providing the opportunity for nontraditional accounting
16 being proposed and nontraditional ratemaking being proposed.

17 EXAMINER WRIGHT: And so -- I assumed this
18 to begin with. But Staff supports its comments in the --
19 with regard to the proposed rule?

20 MR. DOTTHEIM: Yes.

21 EXAMINER WRIGHT: I appreciate your
22 putting -- it always helps -- that may be one reason why we
23 ask the question, to put this in the context of other cases
24 which the Commission has dealt with.

25 MR. DOTTHEIM: And, of course, there's the

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1 fairly recent legislation which places penalties upon
2 improperly proceeding by a rulemaking, which are other items
3 that the Commission might want to consider in looking at
4 this matter.

5 EXAMINER WRIGHT: You're talking about the
6 amendments to Chapter 536?

7 MR. DOTTHEIM: Yes.

8 EXAMINER WRIGHT: Office of the Public
9 Counsel.

10 MR. MILLS: Yes. Thank you. We don't -- I
11 don't have a whole lot to say. We believe that the
12 provisions in .080 dealing with nontraditional accounting
13 are adequate. I don't know that you really need to reach
14 the question of the legality of prescribing ratemaking
15 treatment in a rulemaking because I don't think it would be
16 wise to do so even if it was legal.

17 I think that the rule, as proposed, has
18 sufficient guidance and yet sufficient flexibility to allow
19 the utilities to propose whatever sort of accounting they
20 believe is necessary in order to later do the kind of
21 ratemaking treatment they want when ratemaking -- when the
22 costs are to be put into rates.

23 So we believe that Paragraph 2 of .080 is
24 sufficient as it stands. We've got a few comments on it in
25 our reply comments at Pages 13 and 14. I won't reiterate

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1 those.

2 That's all I have.

3 EXAMINER WRIGHT: Missouri Industrial Energy
4 Consumers. And could you identify yourself for the record,
5 please.

6 MS. SCHMIDT: Yes. Diana Schmidt. The
7 position of the Missouri Industrial Energy Consumers is that
8 DSM costs should not be treated any differently than any
9 other type of costs incurred by the utility. We disagree
10 that supply side and demand side are not on an equal
11 footing. If the DSM measure is an investment, then it
12 should be treated as such and capitalized. And the utility
13 can earn a rate of return, and that's its reward and its
14 incentive for doing so.

15 We'd like to add that we're opposed to any
16 kind of financial incentives in addition to the rate of
17 return for DSM because right now the utilities have a
18 statutory duty to provide efficient service. If DSM is
19 efficient and cost-effective, then they have the duty to
20 provide it. And, if they can ask for a reward, an
21 additional reward beside their rate of return, that is
22 unjust. This is, I believe, illegal.

23 We also believe that guaranteed cost
24 recovery for DSM, echoing the Staff's comments, would
25 constitute single-issue ratemaking. And, along the lines of

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1 what Steve Dottheim stated, the MIEC has proposed additional
2 language to the rule -- which we did not mention earlier,
3 but it's in our initial comments -- that states, "The
4 determination of just and reasonable rates will continue to
5 be in accordance with the ratemaking procedures established
6 by Missouri law, and this rule is not intended to alter or
7 vary those procedures."

8 We feel like -- language like that would
9 ensure that it's all handled in a rate case.

10 Thank you.

11 EXAMINER WRIGHT: League of Women Voters.

12 MS. COLWILL: I think I address the issue in
13 my comments on Page 6 -- 5 and 6. The overall philosophy is
14 that we think demand-side management programs should be made
15 as profitable as supply side and the disincentives removed.

16 EXAMINER WRIGHT: St. Joseph Light & Power.

17 MR. NORTON: Joe Norton, St. Joseph Light &
18 Power. We, of course, are hopeful to be exempted or receive
19 a waiver. However, should the Commission decide not to do
20 that, we believe and have addressed in our original comments
21 on Pages 6, 7 and 10 that the issue of cost recovery and
22 lost revenue are not adequately addressed in these rules.
23 What basically we are being told is to operate under the
24 traditional standards. Traditional standards will mean, in
25 general, that most DSMS will be expensed and most supply

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1 side will be rate base.

2 For a small utility such as ours, if we were
3 to expend \$20 to \$30 million or had a choice of expending it
4 on a DSM program or supply-side program, the difference
5 between rate basing and, i.e., increasing our rate base
6 because we purchased a supply-side product, that would raise
7 us from a \$100 million rate base to \$130 million, a 30
8 percent increase.

9 If we expense it and -- unless we file every
10 year those expenses will not be recouped and the playing
11 field will, I submit, not be level for those two products by
12 a pure economic analysis.

13 It is a realistic problem in 23 states that
14 have adopted IRP. Many of them have at best addressed it.
15 They have not left it to a case-by-case basis because, when
16 we run DSM programs through our computer, the same programs
17 do not fall out when they're expensed that fall out when
18 they are rate based. It's an issue that needs to be
19 addressed. We would prefer it, if we are under the rule, to
20 be addressed in this rule. If we are not under the rule, we
21 would prefer that there would be some kind of a study
22 ongoing addressing the issue so that it can be addressed in
23 a timely manner.

24 Now, for the legality of the issue. I
25 guarantee you that you have many more lawyers in state

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1 government than we do, for good or ill, and that they can
2 answer the question of whether it is appropriate for that.
3 But it's a major issue. NARUC, your own association,
4 addresses the lost revenue issue and says it needs to be
5 talked about and discussed and it's a disincentive to not
6 address. And I believe we furnished you that quote on
7 Page 10.

8 Does that answer your question?

9 EXAMINER WRIGHT: Let me just recap. Since
10 you're not giving a legal opinion, what you're saying is,
11 from St. Joe Light & Power's perspective, they would like
12 for the Commission to make a statement with regard to, what,
13 capitalization or some nontraditional ratemaking treatment
14 in the rule?

15 MR. NORTON: Yes. That's our primary
16 choice.

17 EXAMINER WRIGHT: Okay.

18 COMMISSIONER KINCHELOE: Where do you think
19 you're being told in the rule that those costs are not
20 eligible potentially for capital treatment?

21 MR. NORTON: They are potentially. But it
22 says in the rule, I believe, that we are to deal with them
23 on a traditional basis. Traditionally, most DSM programs
24 would be expensed programs. They don't have as high a
25 capital investment 20 to 30 years out.

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1 They would not be capitalized to rate base.
2 How do you deal with an educational informational program
3 encouraging your customers to have high efficiency air
4 conditioning?

5 COMMISSIONER KINCHELOE: I understand the
6 point you're making there. I'm trying to find the source of
7 your reference to traditional ratemaking.

8 MR. NORTON: I don't have the direct quote
9 in front of me of the rule.

10 COMMISSIONER KINCHELOE: Okay. Thank you.

11 EXAMINER WRIGHT: Empire District.

12 MR. FANCHER: I think it would be nice to
13 have all of those answers today. I really don't see all of
14 those coming as a part of this rulemaking proceeding. I'm
15 not too sure that all of us would propose the same treatment
16 for demand-side management. Empire has not proceeded far
17 enough along to know today whether we would recommend rate
18 base treatment or expensing DSM. We don't know what
19 programs are going to turn out.

20 Somewhere along the way those answers have
21 to come; and it will probably come after this rule is in
22 effect, I believe. But there will be some shaking out, as
23 you will, of how those are going to be treated. I think the
24 statement that UE has proposed would definitely help that,
25 yes, we are going to look at these. We are going to treat

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1 these as recovery items as a minimum for the rule. Beyond
2 that we don't have anything to propose today.

3 EXAMINER WRIGHT: Thank you.

4 Kansas City Power & Light.

5 MR. CATTRON: Steven Cattron on behalf of
6 Kansas City Power & Light.

7 As we summarized on Page 8 of our initial
8 comments, flexibility in this whole issue, I think, is the
9 key. I think the Commission could at least provide
10 Kansas City Power & Light some additional guidance by
11 addressing it from the standpoint that the Commission shall
12 consider those alternatives, either traditional or
13 nontraditional accounting, for recovery mechanisms.

14 But I think fundamentally the key is
15 flexibility, both in the options that we have available --
16 we listed several options that are being utilized throughout
17 the nation at this point in time, not to have those
18 prescriptively stated in the rule but just to bring those to
19 the Commission's attention. There are numerous ways that it
20 could be approached.

21 In addition, as the current rule is drafted,
22 the timing issue is that you make that request at the time
23 you make your resource planning process. Kansas City
24 Power & Light would like to have flexibility in the timing
25 of that issue, whether it be prior to the filing of that IRP

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1 process or whether it be, say, in a general rate proceeding.
2 We would want flexibility that, if we were a year after
3 an IRP process and in a general rate case and saw a more
4 appropriate means to address this issue, we would sure want
5 that ability. The way the rule is currently drafted I'm not
6 sure that we would.

7 I might just -- Commissioner Kincheloe, I
8 wouldn't mind responding to your question if you could
9 restate it for me one more time that you just asked Empire.

10 COMMISSIONER KINCHELOE: I was inquiring, I
11 think, of St. Joe Power & Light in regard to what I
12 understood to be a reference in the proposed rule that there
13 would be traditional treatment of these costs. And I was
14 trying to get at the source of that reference or where that
15 exists in the proposed rule.

16 MR. CATTRON: I would suggest that it's not
17 necessarily a concern with the specific statement -- at
18 least from Kansas City Power & Light's standpoint, a
19 specific concern with a statement outside of the comments I
20 just made, more so in looking at the Staff comments with
21 respect to the rule. And, as Mr. Oligschlaeger testified to
22 this morning, that the Staff recommendation is still
23 traditional accounting, is still traditional recovery.

24 Even though the rule is being written -- at
25 least in our opinion, the clear direction from the Staff

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1 recommendation is traditional is the way to go. And -- I
2 mean, that's already -- the foundation is already being
3 established. And, whether the rule is specific, I think the
4 trend and with the numerous competing interests that are
5 going to be out there, the more we can start to wrap this
6 up, the sooner the better.

7 EXAMINER WRIGHT: Union Electric Company.

8 MR. RAYBUCK: I would like to ask Mr. Wucher
9 to elaborate on our comments, to explain why we think our
10 additional language is necessary and what it would do and
11 what it would not do.

12 EXAMINER WRIGHT: Please state your full
13 name for the record.

14 MR. WUCHER: David L. Wucher, Union Electric
15 Company.

16 I would just like to say that we're not
17 asking, you know, for automatic or guaranteed recovery of
18 these costs. We're only asking for recovery of prudently
19 incurred costs. As Mr. Rainwater stated in his comments, we
20 will be incurring these DSM costs in between rate cases.

21 In this interim, if we would use deferred
22 accounting to set up these costs and to satisfy the FASB
23 requirements and the requirements of our outside auditors,
24 we need some assurance from the regulatory commission that
25 the recovery of these costs is probable. And, for that

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1 reason, I think the statement that we have included in our
2 comments would satisfy that requirement.

3 MR. RAYBUCK: If I may, let me add the
4 observation that, in our opinion, that would not constitute
5 ratemaking being incorporated into this rulemaking
6 proceeding. That would simply be a statement of intent by
7 the Commission to support the use of the deferred asset and
8 to indicate its intent to allow for the later recovery of
9 prudently incurred costs.

10 EXAMINER WRIGHT: Western Resources.

11 MR. MARTIN: Jim Martin, Western Resources.

12 As an accountant, I don't know if I always
13 understand exactly the break between traditional and
14 nontraditional accounting. It's become a buzz word, if you
15 will, especially given light to the commissions, not just
16 this Commission, but a lot of commissions using accounting
17 authority orders or special capitalization in treating, in
18 our case, gas safety costs or FAS 106 costs.

19 But I think what we would like to see in the
20 rule is that the rule provide perhaps the flexibility that
21 the other utilities have asked for but definitely leave open
22 the option of the accounting authority order or the
23 capitalization. And, as UE just spoke, with some degree of
24 probability of recovery of the prudently incurred costs,
25 which satisfies our accountants and keeps us happy.

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1 As one final note -- I didn't want to leave
2 this unsaid. Often a cost that is discussed in these terms
3 is from lost revenues or earnings erosion. And, although we
4 are focusing here on electric IRP rules, and although we
5 have brought up a number of times the impacts of fuel
6 substitution and whatnot, that we would like to see in there
7 that there will definitely be the likelihood of earnings
8 erosion, for example, on a gas utility as an electric
9 utility proceeds with their IRP plans. And we would like to
10 see that be covered in the rules.

11 EXAMINER WRIGHT: UtiliCorp.

12 MR. STAMM: Keith Stamm on behalf of
13 Missouri Public Service.

14 Our position on this issue is outlined on
15 Page 10 of our initial comments. In addition to that, we
16 believe that the issue needs to be addressed prior to the
17 first filing because it will affect the analysis of the
18 alternatives. Right now, we're not in a position to make a
19 blanket statement as to whether we believe that they should
20 be rate based or expensed; but it should be addressed prior
21 to the first filing.

22 EXAMINER WRIGHT: When you say that,
23 Mr. Stamm, you mean it should be in the rule or it should
24 be -- would you provide it in the rule that there be an
25 additional filing before you file your plan or what --

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1 MR. STAMM: Yes. That the rule at least
2 address that the issue be addressed prior to the first
3 filing. In other words, it might not be resolved within
4 this rulemaking process; but the rulemaking does note that
5 it's an unresolved issue and needs to be addressed prior to
6 the first filing.

7 EXAMINER WRIGHT: Laclede.

8 MR. FRENCH: Laclede has no comment to make
9 on this issue.

10 EXAMINER WRIGHT: Mr. Stamm, could you just
11 go through that one more time. Explain when you would
12 expect the Commission to address the issue, if not in the
13 rulemaking -- the way I understand it, you want it addressed
14 before you file your plan; is that correct?

15 MR. STAMM: Set out a time frame within this
16 rulemaking as to when it will be resolved.

17 EXAMINER WRIGHT: In other words, we'd have
18 to set up a docket or something in which we address this
19 issue or some vehicle for addressing it prior to your
20 company or any of the companies filing their integrated
21 resource plan?

22 MR. STAMM: Yes. Yes. We don't believe
23 it's reasonable that it can be resolved within this
24 particular rulemaking in this time frame, but we do believe
25 it needs to be resolved prior to the first filing. And that

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1 should be addressed --

2 EXAMINER WRIGHT: In the rule?

3 MR. STAMM: -- in this rulemaking, yes.

4 EXAMINER WRIGHT: I believe that's all of
5 the questions the Commissioners had.

6 If there's nothing further, we appreciate
7 your coming down and we appreciate your comments and your
8 time. The hearing is concluded.

9 WHEREUPON, the hearing of this case was
10 concluded.

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