

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

January 12, 2016

Jefferson City, Missouri

Volume 3

In The Matter Of Kansas City)
Power & Light Company's Notice)
of Intent to File an Application) File No. E0-2015-0240
for Authority to Establish a)
Demand-Side Programs Investment)
Mechanism)

In the Matter Of KCP&L Greater)
Missouri Operations Company's)
Notice of Intent To File An) File No. E0-2015-0241
Application For Authority To)
Establish A Demand-Side Programs)
Investment Mechanism)

MICHAEL BUSHMANN, Presiding
SENIOR REGULATORY LAW JUDGE

DANIEL Y. HALL, Chairman,
STEPHEN M. STOLL,
WILLIAM P. KENNEY,
SCOTT T. RUPP,
MAIDA J. COLEMAN,
COMMISSIONERS

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1 (KCPL Exhibits 100, 101, 102, 103 and
2 Staff Exhibits 200, 201, 202 and 203 were marked for
3 identification.)

4 THE COURT: Good morning. Today is
5 January 12th, 2016. The Commission has set this time
6 for an evidentiary hearing for In the Matter of Kansas
7 City Power & Light Company's filing for approval of
8 demand-side programs and for authority to establish
9 demand-side programs investment mechanism, File Number
10 E0-2015-0240, and the similar companion case for KCP&L
11 Greater Missouri Operations Company, File Number
12 E0-2015-0241.

13 My name's Michael Bushmann. I am the
14 Regulatory Law Judge that will be presiding over this
15 hearing. Let's have counsel make their entries of
16 appearance. Kansas City Power & Light.

17 MR. FISCHER: Thank you, Judge. Let the
18 record reflect the appearance of Roger W. Steiner and
19 James M. Fischer on behalf of Kansas City Power &
20 Light Company and KCPL Greater Missouri Operations
21 Company. Our contact information is on the written
22 form.

23 Are the mics working? I couldn't hear
24 you very well. I'm not sure --

25 JUDGE BUSHMANN: It's on. I'll move it

1 closer.

2 MR. FISCHER: Thank you.

3 JUDGE BUSHMANN: Commission Staff.

4 MR. BERLIN: Thank you, Judge. Appearing
5 on behalf of the Staff of the Missouri Public Service
6 Commission are Kevin Thompson, Robert S. Berlin,
7 Marcella Mueth and Nicole Mers at the Commission's
8 office located at Post Office Box 360, Jefferson City,
9 Missouri 65102.

10 JUDGE BUSHMANN: Public Counsel.

11 MR OPITZ: Thank you, Judge. For the
12 Office of Public Counsel, I'm Tim Opitz, PO Box 2230,
13 Jefferson City, Missouri 65102.

14 JUDGE BUSHMANN: Brightergy, LLC.

15 MR. ZELLERS: Thank you, your Honor.
16 Andrew J. Zellers and David L. Woodsmall on behalf of
17 Brightergy, LLC. The contact info is on the form.

18 JUDGE BUSHMANN: Natural Resources
19 Defense Council.

20 MR. ROBERTSON: For NRDC, Henry
21 Robertson, Great Rivers Environmental Law Center, 319
22 North Fourth Street, Suite 800, St. Louis, 63102.

23 JUDGE BUSHMANN. Division of Energy.

24 MR. ANTAL: Alex Antal with the Missouri
25 Department of Economic Development appearing on behalf

1 of the Missouri Division of Energy, PO Box 1157,
2 Jefferson City, Missouri .

3 JUDGE BUSHMANN: United for Missouri .

4 MR. LINTON: Good morning, your Honor.
5 On behalf of United for Missouri , David Linton, 314
6 Romaine Spring View, Fenton, Missouri .

7 JUDGE BUSHMANN: Renew Missouri .

8 MR. LINHARES: Thank you, Judge.
9 Appearing for Renew Missouri , the National Housing
10 Trust and Westside Housing Organization, Andrew
11 Linhares, 910 East Broadway, Suite 205, Columbia,
12 Missouri 65201.

13 JUDGE BUSHMANN: Thank you. And Missouri
14 Industrial Energy Consumers has been excused from the
15 hearing.

16 Is there anyone from Ameren Missouri? No
17 appearance.

18 I'd like to remind everybody in the
19 audience to please silence all cell phones and mobile
20 devices at this time.

21 As far as preliminary matters, there is a
22 pending motion by OPC to reject tariff sheets, but as
23 I had mentioned previously in a conference, I've
24 decided to defer ruling on that and take that with the
25 case. So there won't be a ruling on that at this

1 time.

2 Do the parties have any preliminary
3 matters that we need to take up? I don't hear
4 anything.

5 As far as the order of witnesses, we'll
6 follow the order that was filed by the parties in
7 their joint list of issues and witnesses. And if
8 there's any parties now that need to have any of their
9 exhibits pre-marked -- I know some of you have done
10 that already. If anybody needs to do that, now would
11 be a good time. Everybody already got that finished?
12 Very good.

13 In that case, we're ready for opening
14 statements. And the first opening would be Kansas
15 City Power & Light Company.

16 MR. STEINER: May it please the
17 Commission. Good morning. My name's Roger Steiner.
18 I am representing Kansas City Power & Light Company
19 and KCPL Greater Missouri Operations Company today. I
20 refer to both entities as KCPL or Company today.

21 I am here to ask you to ac-- to approve
22 the stipulation filed in this case. The Company's
23 energy efficiency programs ended December 31st, 2015
24 and the stipulation allows the Company to begin the
25 next generation of energy efficiency programs. Those

1 programs are popular. They include home lighting
2 rebates, energy audits, programmable thermostat
3 programs just to name a few.

4 The Company is a pioneer in energy
5 efficiency in Missouri. The Company's first programs
6 began in 2007, which was before the enactment of the
7 Missouri Energy Efficiency Investment Act or MEEIA.
8 It was before that legislation was enacted.

9 That legislation encourages utilities to
10 offer and promote energy efficiency programs that are
11 designed to reduce the amount of energy used by
12 customers. Both the Company's pre-MEEIA energy
13 efficiency program and its MEEIA Cycle 1 programs,
14 which I mentioned have just ended, have been
15 successful in this regard.

16 The Company seeks approval to begin MEEIA
17 Cycle 2 so it can continue its energy efficiency
18 progress. The Commission's approval of the stip will
19 enable the Kansas City Power & Light to continue this
20 momentum. The Company filed its application for MEEIA
21 Cycle 2 in late August of last year. The technical
22 conferences and settlement negotiations began almost
23 immediately afterwards. These were marathon meetings,
24 which were often held at Missouri Department of Energy
25 headquarters. They often lasted four to six hours at

1 a time. The Company made many trips to Jefferson City
2 to meet with stakeholders and advance these
3 discussions.

4 Following those negotiations, the Company
5 and eight parties filed a non-unanimous stipulation on
6 November 23rd. The stip represents a compromise among
7 a diverse group of parties that have different
8 interests. And despite these different interests, the
9 signatories were able to bridge their differences and
10 reach a comprehensive settlement. Not only did the
11 stipulation represent a compromise, it also meets the
12 requirements of the MEEIA statute and the requirements
13 that the Commission believes a MEEIA program needs to
14 have.

15 First, there is a retrospective
16 evaluation measurement and verification process,
17 what's called an EM&V process. And that will be used
18 to determine the energy and demand savings that
19 actually occurred. The Commission recently held that
20 a retrospective EM&V is a necessity for a MEEIA
21 program.

22 Next, an earnings opportunity will place
23 shareholders in a financial position comparable to the
24 earnings opportunity of a future supply-side
25 investment. And this earnings opportunity will also

1 be subject to a full retrospective EM&V.

2 Third, non-participating ratepayers will
3 be better off paying to help some ratepayers reduce
4 usage and demand with MEEIA programs than they would
5 be under the scenario of paying to build a power
6 plant. Approval of the stipulation means that the
7 MEEIA programs can continue and that the goals of the
8 MEEIA statute can be met.

9 The only party that objects to the
10 stipulation is Brightergy. Brightergy is an installer
11 and seller of energy efficiency equipment. It is
12 what's called the trade ally, an entity that sells and
13 installs energy efficiency products to customers. The
14 more energy efficiency products installed and sold by
15 Brightergy, the more money it makes. Brightergy is
16 about -- is 1 of about 200 trade allies in KCPL's
17 service territory. None of the other trade allies
18 have raised an objection to the stipulation.

19 Now, Brightergy complains about two
20 aspects of the stipulation. The Commission must first
21 remember when listening to these complaints, that
22 Brightergy is a beneficiary of the incentives which
23 customers receive under the MEEIA programs.
24 Brightergy does not pay for the incentives.
25 Customers, both participating in MEEIA and those that

1 don't participate in MEEIA, must ultimately pay for
2 these incentives through the DSIM charge; that is,
3 demand-side investment mechanism charge which is on
4 their monthly bills.

5 The first area of Brightergy's -- of
6 Brightergy's complaints is the C and I custom rebate
7 program. C and I stands for commercial and
8 industrial. And the C and I custom rebate program is
9 an important program in the Company's suite of energy
10 efficiency offerings. The program provides a rebate
11 for qualifying high-efficiency products such as
12 heating and air conditioning systems, pumps for
13 motors, for lights.

14 In Cycle 1, this C and I rebate was
15 calculated as the lesser of the buy-down of a two to--
16 a-two-year payback or 50 percent of the incremental
17 cost of that equipment that was installed. In Cycle
18 2, which is in the stipulation, the Company wants a
19 flat incentive of 10 cents per first year kilowatt
20 hour savings and has a \$500,000 cap. This flat rate
21 that the Company's proposing is a bit higher than
22 Ameren's 7 cent rebate, which was used in Ameren's
23 successful MEEIA 1 program.

24 In developing the Cycle 2 incentive, the
25 Company evaluated market information -- I just

1 mentioned Ameren had a similar level of rebate -- in
2 order to determine the level of incentive needed to
3 incent customers while not over-compensating them.

4 KCPL made the changes to the rebate
5 levels based on advice from its potential study
6 consultant, from its program design consultant and
7 from its rebate implementer. The Company also
8 discussed these changes with a DSMAG advisory group
9 and with its trade allies, including Brightergy, at
10 two separate forums where over a hundred trade allies
11 were present. None of the trade allies or the
12 advisory group had an issue with the proposed changes.
13 By making these adjustments to the incentive level,
14 the Company is helping to ensure that the program is
15 sustainable.

16 Now, Brightergy wants to maintain the
17 status quo with regard to C and I program. It wants
18 the levels of incentives to remain the same as in
19 Cycle 1. It's easy to understand why Brightergy wants
20 this incentive at the same level. Brightergy
21 benefited greatly from the Cycle 1 incentive level and
22 they want the good times to continue.

23 This benefit that Brightergy received
24 came without cost to Brightergy because Brightergy
25 doesn't pay for those incentives. KCPL customers pay

1 through a DSIM rider on the monthly bills.

2 The Commission must concern itself with
3 more than Brightergy's bottom line. It must look at
4 the MEEIA programs as a whole. The incentives are
5 paid for by customers. The Company's proposal allows
6 it to achieve its goals in a cost-effective manner.
7 The customers will still continue to make energy
8 investments under the flat incentive.

9 If the Company was going to go back to
10 the Cycle 1 incentive levels, the additional impact to
11 customers is estimated at \$11 million and that would
12 have to be recovered through an increase in a DSIM
13 charge. Reverting back to that old incentive level
14 means the Company would pay almost twice what it needs
15 to pay to incent customer behavior.

16 Finally on this issue, the Commission
17 must be aware that the Cycle 2 C and I incentive level
18 is variable. It can range from 6 cents to 40 cents
19 per kilowatt hour. So it can be adjusted to meet
20 changing conditions experienced by the Company. It's
21 not set at one level.

22 Kim Winslow is here today. She's the
23 expert on this issue and she's here to answer your
24 questions on the C and I custom rebate program.

25 Paragraph 13 of the stip-- of the

1 stipulation contains a regulatory flexibility section.
2 That's the second area that Brightergy has raised an
3 issue with. The parties to the stipulation agree that
4 the Cycle 2 tariffs should contain a section which
5 permits the Company to discontinue its MEEIA programs
6 when certain conditions occur.

7 Brightergy claims this provision creates
8 unnecessary certainty for customers who want to invest
9 in energy efficiency. This is not the case. In order
10 to -- under the tariffs, under -- to discontinue the
11 MEEIA programs, the Company must provide 30 days'
12 notice. Thus, the existing commitments that the
13 Company has made to those customers that have
14 requested energy efficiency, those will be met and
15 companies that are planning to make energy efficiency
16 investments won't be arbitrarily cut off from making
17 those investments. Those companies can apply for the
18 programs during the month following the notice.

19 The Commission should also remember that
20 the regulatory flexibility has a provision that if
21 it's exercised by the Company, the Company will lose
22 out on the earnings opportunities in connection with
23 those programs. So the earnings opportunities go
24 away. That means that the Company will have to
25 evaluate carefully any decision to terminate the

1 program.

2 It also means that the possibility that
3 the Company will exercise regulatory flexibility will
4 lessen as Cycle 2 progresses and the earnings
5 opportunity increases. There's more at stake as
6 the -- as the Cycle 3 continues -- Cycle 3 -- Cycle 2
7 continues. The Company fully intends to implement and
8 deliver its Cycle 2 programs for the entirety of its
9 36-month term.

10 Regulatory flexibility; that provision is
11 designed as a last resort way to discontinue all of
12 the MEEIA programs should a material unforeseen
13 circumstance change the economics of delivering those
14 programs. An example -- a good example is the Clean
15 Power Plan. The rules are not finalized. There's
16 potential that those rules could make it more
17 advantageous for the Company to offer its programs in
18 future years, and this stipulation would allow the
19 Company to discontinue the programs now and start the
20 programs in a more optimal year depending on what
21 those rules say. At this time we just don't know what
22 those rules will look like.

23 Tim Rush is here. He's the witness on
24 this issue. He would be happy to answer your
25 questions on regulatory flexibility, why it is

1 necessary for the Company. Thank you.

2 CHAIRMAN HALL: Good morning.

3 MR. STEINER: Good morning.

4 CHAIRMAN HALL: I have a couple of
5 questions about the regulatory flexibility provision.
6 Does Ameren have that component in their -- well, did
7 they have it in their Cycle 1 and are they -- were
8 they seeking it in their Cycle 2?

9 MR. STEINER: I don't believe so in
10 either case, no.

11 CHAIRMAN HALL: Is there something
12 different about Ameren's position compared to either
13 KCP&L or GMO that -- that makes Ameren not concerned
14 about regulatory uncertainty in this area that causes
15 concern for KCPL and GMO?

16 MR. STEINER: I would think they would be
17 just as concerned as we are.

18 CHAIRMAN HALL: So you don't know why
19 they didn't seek it and why they're not concerned
20 about it?

21 MR. STEINER: I do not know why, no.

22 CHAIRMAN HALL: In your application on
23 page 4 -- is this working?

24 MR. WOODSMALL: We can't hear very well,
25 but we can hear certain attorneys so it seems to be

1 very hit and miss.

2 MR. FISCHER: Maybe the volume just needs
3 to be up.

4 CHAIRMAN HALL: I didn't know there was a
5 volume.

6 COMMISSIONER KENNEY: I don't think you
7 control it.

8 CHAIRMAN HALL: Story of my life.

9 Okay. On page 4, you list five on -- at
10 paragraph 9. And I don't know if you want to get the
11 document in front of you or if you have it in front of
12 you.

13 MR. STEINER: I don't have it here, but
14 go ahead.

15 CHAIRMAN HALL: You list five initiatives
16 that are related to your -- to your need to have this
17 kind of flexibility. And I was wondering if we could
18 go one by one through those and if you could explain
19 to me how that initiative -- and that's the term that
20 you use -- how that relates to your need for
21 regulatory flexibility.

22 MR. STEINER: Okay.

23 CHAIRMAN HALL: First, on the -- on the
24 Clean Power Plan, you said that the rules are not set.
25 I assume by that what you really mean is that the

1 state's implementation plan is not set --

2 MR. STEINER: That's right.

3 CHAIRMAN HALL: -- because the rule is --

4 MR. STEINER: That's what I meant.

5 Yeah. There's still some uncertainty in how they'll
6 actually be implemented in the states.

7 CHAIRMAN HALL: So can you explain to me
8 how that could impact your need for flexibility?

9 MR. STEINER: We just don't know what the
10 states will do. And I don't -- I'm not an expert in
11 this area, but we think that if there's a -- if
12 there's a provision that would make it more likely or
13 more advantageous to have those programs at a later
14 time, it would be good to have the ability to stop the
15 programs and take advantage of the benefits under the
16 Clean Power Plan.

17 CHAIRMAN HALL: So I assume what you mean
18 by that is -- is that the state plan might have some
19 kind of base year and then a requirement for energy
20 efficiency vis-a-vis the base year and so it might be
21 advantageous to move any energy efficiency into --
22 into later years? Is that what you're saying or is
23 that --

24 MR. STEINER: That's a good way to put
25 it. I don't know exactly all the details of the Clean

1 Power Plan, but I know that the Company feels that
2 because we don't really know the environment we'll be
3 operating under, we don't want to lock ourselves into
4 something that would be more advantageous to delay the
5 programs.

6 CHAIRMAN HALL: Okay. Well, I'll -- I'll
7 ask more questions --

8 MR. STEINER: I think Mr. Rush might be
9 able to answer that question better, but --

10 CHAIRMAN HALL: How about the Missouri
11 State Energy Plan?

12 MR. STEINER: Again, I think Mr. Rush
13 could answer that. I'm not sure exactly -- I think
14 that's final.

15 CHAIRMAN HALL: It is final.

16 MR. STEINER: I don't think there's any
17 uncertainty left.

18 CHAIRMAN HALL: It has no local
19 significance. It's just a set of recommendations. So
20 I don't have any understanding as to how that could
21 affect your need for regulatory flexibility.

22 The ongoing MEEIA rulemaking?

23 MR. STEINER: I don't think that the
24 rules have been finalized yet. We don't know what the
25 new rules will look like. The -- could be the rules

1 totally change the -- the change the world as we -- so
2 to speak, for how MEEIA is handled in Missouri. I
3 just -- it's the ground rules of what we'd be
4 operating under. That just goes back to the
5 uncertainty that we feel that exists under MEEIA.

6 CHAIRMAN HALL: KCP&L/GMO's evaluation
7 measurement verification for Cycle 1?

8 MR. STEINER: Right. Even though
9 Cycle 1's complete, we don't know how the performance
10 incentive will fall out of there. That still has to
11 be done through the EM&V process. That has to be
12 approved by the Commission. All the parties get to
13 weigh in. We don't know exactly how Cycle 1 -- how
14 the Company will be compensated for its lost margins
15 and performance incentives.

16 CHAIRMAN HALL: In other words, if they
17 were not compensated in a manner advantageous to the
18 Company in Cycle 1, that might impact your -- your
19 interest in eliminating Cycle 2?

20 MR. STEINER: That could be -- that could
21 be an issue, yes. If we don't believe that this
22 program makes sense going forward because we can't
23 recover performance incentive, yes.

24 CHAIRMAN HALL: And Staff's recent
25 complaint filing in 2016-0012?

1 MR. STEINER: That was just another
2 example of the uncertainty. We thought we had a way
3 to go forward with Cycle 1 with the EM&V with the
4 performance incentive. Staff then filed a complaint
5 about the avoided cost, which is something we weren't
6 anticipating. It just goes to show how uncertain
7 Cycle 1 is.

8 CHAIRMAN HALL: Where is that complaint
9 now?

10 MR. STEINER: I believe it's -- we've
11 answered and I believe it's sort of in limbo right now
12 waiting on -- on the Ameren decision.

13 CHAIRMAN HALL: Okay. Concerning the
14 C and I custom rebate program, it would -- it would
15 start at 10 cents and then it could go up to 40?

16 MR. STEINER: That's correct.

17 CHAIRMAN HALL: And pardon my ignorance.
18 I guess I could have read the proposed tariff and that
19 would answer this, but would you -- would the Company
20 need to come back to the Commission and get approval
21 for that change or could you do that on your own?

22 MR. STEINER: If it's in that range,
23 we -- there's an 11-step process of how we change that
24 and we would not need to go back to the Commission.
25 We would have to go to Staff, OPC and Department of

1 Energy, I believe, and make sure that they were okay
2 with it. We'd have to provide notice. It's all
3 contained in the 11-step process that's in the
4 tariffs.

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

7 JUDGE BUSHMANN: Questions? Thank you.
8 Commission Staff.

9 MR. THOMPSON: May it please the
10 Commission. Mr. Steiner did a good job of laying out
11 what's before you today. All of the stakeholders
12 except for Brightergy are asking the Commission to
13 approve the Company's proposed plan as modified by the
14 Non-unanimous Stipulation and Agreement.

15 As Roger pointed out, that was a
16 compromise of many different viewpoints and many
17 different interests. Staff believes that the result
18 meets all the requirements of the MEEIA statute and
19 that it should, therefore, be approved.

20 The lone hold-out is Brightergy, as you
21 heard. Brightergy has two concerns. First of all,
22 the change in the custom rebate program for commercial
23 and industrial customers; and secondly, the regulatory
24 flexibility, what you might call the kill switch. The
25 Company gets a kill switch now just in case conditions

1 change so that it's no longer economically feasible to
2 continue.

3 With respect to the first of Brightergy's
4 concerns, Mr. Steiner pointed out that continuing the
5 MEEIA Cycle 1 custom rebate would cost approximately
6 \$11 million more. I think that's what you should
7 focus on.

8 Brightergy is a trade ally, as you heard.
9 Brightergy is a company that designs and installs and
10 sells energy efficiency products. Brightergy is
11 exactly who would be doing energy efficiency programs
12 for commercial and industrial customers of KCPL and
13 GMO. If there's less money available for incentives,
14 then Brightergy necessarily will make less money.

15 What Brightergy's witness says in his
16 testimony is that the change in the incentive causes
17 the Company's plan to no longer meet the statutory
18 obligation, the statutory requirement of providing all
19 reasonably attainable energy efficiency because the
20 lowered incentive will cause -- I think he called them
21 fence sitters; the companies that are sitting on the
22 fence, companies that wouldn't do an energy efficiency
23 program but for the incentive.

24 Mr. Blake testifies that, well, those
25 guys won't do it. So we can say those are energy

1 efficiency savings that have not been obtained because
2 there's a class of commercial and industrial customers
3 who just will not bother to do the energy efficiency
4 program because they're not going to recover the costs
5 on the two-year horizon. He feels the two-year
6 horizon is kind of the break-even point; that's the --
7 if it's going to take longer than that, then a lot of
8 companies will say no, we're not going to invest where
9 the return is more than two years away.

10 Staff will tell you that that's a
11 fallacy. Looking at the results of Ameren Missouri's
12 MEEIA Cycle 1 program, which is very similar to a
13 Cycle 2 program that KCPL and GMO have proposed and
14 that's in front of you today, AMMO's program was
15 extremely successful. There was savings -- sufficient
16 savings were obtained. So Mr. Rogers will explain
17 that fallacy to you.

18 Let's turn to the regulatory flexibility,
19 the kill switch. In a recent decision having to do
20 with Ameren Missouri's Cycle 1 MEEIA program, the
21 Commission -- and rightfully so -- insisted on EM&V to
22 determine the actual savings, the actual energy saved
23 when calculating Ameren's performance incentive.
24 You've heard that mentioned already today.

25 Well, this is kind of the other side of

1 that coin. This is the other side of that coin.
2 Because these programs have to exist in a real world.
3 And the real world is dynamic, the economy is always
4 changing. And because of that, it makes sense that if
5 conditions change such that it is not economically
6 feasible to continue, if costs are going to be higher
7 than savings, then it only makes sense for everyone
8 involved, the ratepayers, the Company, the Commission,
9 that the Company have the opportunity to pull that
10 kill switch.

11 Now, that's something that's only going
12 to happen in an extreme circumstance. It's not
13 likely, but nonetheless, it can happen. We've all
14 seen what the economy has done in the past ten years.
15 I don't think it's something that anybody could have
16 predicted. So the future, we can't predict it, we
17 don't know what's going to happen. It's prudent to
18 have a kill switch just in case extreme conditions
19 occur, even though you think they're not likely.

20 The experts that you need to hear from
21 are assembled here for you today. The experts have
22 provided testimony, most of them in favor of the plan
23 as modified by the Stipulation and Agreement;
24 Mr. Blake in opposition. I urge you to ask your
25 questions of these experts, to learn what you need to

1 know and in the end, to approve the plan as modified
2 by the Stipulation and Agreement. Thank you.

3 JUDGE BUSHMANN: Questions?

4 CHAIRMAN HALL: Good morning.

5 MR. THOMPSON: Good morning, sir.

6 CHAIRMAN HALL: It sounds like Staff's
7 taking the position that the regulatory flexibility
8 provision is something that we should put in all our
9 MEEIA programs. Is that -- is that what Staff is
10 saying today?

11 MR. THOMPSON: Speaking for myself, I
12 think that makes sense. I have not discussed that
13 point with Staff's experts so I can't say that that's
14 Staff's position. I don't think Staff would be
15 opposed to it though. I mean we're -- we're willing
16 to accept it here.

17 CHAIRMAN HALL: If we were to put this
18 regulatory -- if we were to approve a MEEIA plan that
19 had this regulatory flexibility component, my
20 understanding is that -- well, let me ask you this:
21 The Company might pull -- might terminate the programs
22 upon what basis? What -- what's the standard that
23 would be employed?

24 MR. THOMPSON: I got it. Let me find it.

25 The Company has to make a demonstration

1 that changed factors or circumstances have materially
2 and negatively impacted the economic viability of the
3 programs.

4 CHAIRMAN HALL: And what does economic
5 viability mean to you?

6 MR. THOMPSON: That costs outweigh the
7 savings -- outweigh the benefits.

8 CHAIRMAN HALL: Could it not also be that
9 the Company performed a calculation and it's no longer
10 beneficial for shareholders to continue the program,
11 or do you believe that it's essentially the same thing
12 as the cost benefit analysis that you just described?

13 MR. THOMPSON: Well, I think the Company
14 would be required to be particularly solicitous of the
15 shareholders. If -- if the economy -- economic
16 conditions were to change so that the shareholders
17 would ultimately be subsidizing the program, I think
18 that would be a reasonable reason for the Company to
19 pull the kill switch.

20 CHAIRMAN HALL: And isn't that really the
21 only reason why they would?

22 MR. THOMPSON: Perhaps.

23 CHAIRMAN HALL: So is it Staff's position
24 that -- that whether or not it's beneficial for
25 shareholders to continue a program is exactly the same

1 thing as a determination that it is -- it would --
2 it's no longer beneficial for -- for all ratepayers to
3 continue the program?

4 MR. THOMPSON: Well --

5 CHAIRMAN HALL: And it might be. I'm
6 not --

7 MR. THOMPSON: Yeah.

8 CHAIRMAN HALL: -- I haven't done an
9 analysis to say that it's not. I just want to
10 understand Staff's position on --

11 MR. THOMPSON: The shareholders are
12 stakeholders in this matter; the ratepayers are
13 stakeholders in this matter; in fact, all the people
14 of the state of Missouri are stakeholders in this
15 matter, whether they're customers of this Company or
16 not.

17 So in terms of what the Company officers
18 have to do -- I'm thinking about the laws of corporate
19 governance -- they have to act as fiduciaries for the
20 shareholders. So I think, as I said, they're going to
21 be particularly solicitous of the effect of changing
22 economic conditions on the shareholders, but I don't
23 for a minute think that they're blind to the effects
24 on the ratepayers as well.

25 In fact, that's part of the reason that

1 they're changing the incentive structure. They don't
2 want to over-compensate those -- those entities that
3 undertake an energy efficiency program. And the
4 changed incentive structure is expected to stay at
5 11 million dollars. And those would be ratepayer
6 dollars.

7 CHAIRMAN HALL: Thank you.

8 MR. THOMPSON: Thank you, sir.

9 JUDGE BUSHMANN: Questions? Thank you.

10 MR. THOMPSON: Thank you, Judge.

11 JUDGE BUSHMANN: Office of Public
12 Counsel .

13 MR. OPITZ: Thank you, Judge. I will
14 waive my opening statement.

15 JUDGE BUSHMANN: Brightergy, LLC.

16 MR. ZELLERS: Thank you, your Honor. I'm
17 going to get some instruction on the PowerPoint before
18 I begin.

19 Good morning, Commissioners. Thank you
20 for being here this morning to hear us out. My name
21 is Andy Zellers. I represent Brightergy, LLC in both
22 matters E0-2015-0240 and in 0241.

23 Lost in all of the discussions thus far
24 in developing this plan through-- throughput
25 disincentives, total resource cost tests and

1 net-to-gross ratio is the question of how efficiency
2 measures come to be a part of a residence or a
3 business. The answer is that someone has to sell
4 them, someone has to install them, someone has to put
5 them there.

6 At the end of these proceedings, in
7 short, some company is going to have to go out and
8 make this plan work. More than 50 percent of the time
9 in KCP&L's territory, that company is Brightergy. I
10 can tell you that during the sales process, there's no
11 discussion of a net-to-gross ratio. I can tell you
12 there's no discussion of how much the overall MEEIA
13 budget will be.

14 Instead, a potential investor is
15 interested in how much time it takes to see a return
16 on that investment. Not surprisingly, the longer the
17 payback time on the investment, the less likely it is
18 that that potential investor is going to make the
19 investment.

20 KCP&L's job today is to convince you that
21 the Cycle 2 proposal is going to be as effective as
22 the Cycle 1 proposal. In short, what they have to do
23 is convince you that a payback time that's nearly
24 twice as long is going to be effective a sales
25 mechanism as the payback time that was half the time

1 under Cycle 1.

2 I don't envy them in that job. It's not
3 an easy sell. It's so difficult, in fact, that they
4 rely on convoluted studies that go on for hundreds of
5 pages. They rely on baffling equations that I'm sure
6 that no one person in this building can explain fully.

7 Essentially the program takes -- the
8 proposal takes a program that guarantees an upfront
9 payment to cover the cost of an efficiency project
10 which will pay you 50 percent with a check upfront of
11 the entire project cost and shifts it to one with a
12 much lower incentive structure and also one that
13 includes only advantages for first-year savings. So
14 what we're doing is incentivizing people to invest in
15 technologies that are going to last only for the first
16 year.

17 Who will be affected by this?

18 Disproportionately Brightergy's include schools,
19 churches, municipalities. It's these types of
20 entities that require the incentive investments to be
21 able to make -- make the payments to install the
22 energy efficiency incentives. If you're a large
23 business, you can raise the cost, you can raise more
24 revenue, you can pay for these things. If you're a
25 school, if you're a municipality, you can't. You've

1 got so-called a fixed budget. And if you have
2 competition for hiring, for infrastructure
3 investments, something else is going to win out as
4 opposed to an energy efficiency measure, which is what
5 MEEIA is encouraging you to do.

6 We'll be hitting on four basic themes
7 today. First of all, this C and I portion is the
8 largest part of KCP&L's energy efficiency savings.

9 Secondly, when KCP&L announced this to
10 shareholders, they got a rush of applications at the
11 very last minute. This should tell you that this is
12 a -- that this is a popular program and that KCP&L
13 should know that people wanted to get in on this
14 before the program changed.

15 Third, free ridership. We'll demonstrate
16 that most Cycle 2 dollars will be spent on projects
17 that would have happened in the absence of the MEEIA
18 Cycle 2 program.

19 Finally, KCP&L tells a story about a
20 process that involved internal analysis, outside
21 consultants and stakeholder input. The story is much
22 closer to, in fact, a story in which the decision was
23 made, the decision was presented to the marketplace
24 and then the marketplace spoke and rebelled back.

25 But let's start with a little bit about

1 who Brightergy is. Brightergy was founded about five
2 years ago by our witness, Adam Blake. You'll be able
3 to question him today. Brightergy is, in fact,
4 KCP&L's most active C and I trade ally. Brightergy
5 believes its customers represent more than 50 percent
6 of the MEEIA Cycle 2 C and I program budget. We have
7 around a hundred employees.

8 But that doesn't capture our total
9 employment footprint. If you count all of the
10 contractors that we employ outside to install panels,
11 to install energy efficiency measures, those number in
12 the hundreds. These are the types of jobs that are
13 going to be directly affected by the change in
14 programming.

15 Brightergy did have two objections to the
16 amended plan. First of all, it's quite simply not
17 going to work. There is a real concern that this will
18 result in wasted ratepayer money with such low
19 incentive levels. What we're doing is shifting the
20 custom program from the Cycle 1 -- the Cycle 1 system,
21 which allowed a 50 percent upfront payback for the
22 cost of a project, or a buy-down to a two-year pay
23 back.

24 Now, what this means is that if you're a
25 business and you're looking at how long it's going to

1 take to pay back your investment, it cannot be less
2 than two years. This is a safety valve. It -- the
3 genius of the Cycle 1 program is that it could not be
4 over-incentivized. If it got too rich, then the
5 program had to be stopped.

6 The Cycle 1 program, in fact, has been in
7 place for several years and is used widely across the
8 country. Every project under Cycle 1 and any project
9 that Brightergy would propose to this Commission or to
10 KCP&L would have to pass the total resource cost test.

11 Secondly, KCP&L's request to be allowed
12 to end the entire program with 30 days notice. This
13 is what the other parties to the case have come to
14 call the nuclear option. In fact, they can press a
15 button a wipe out all efficiency programs in their
16 space within 30 days. The same 30 days, by the way,
17 that the rule requires the Commission make a decision
18 now.

19 The difference is under the current rule,
20 the Commission can say no, you haven't demonstrated
21 it. What KCP&L is asking is to remove that. They want
22 a variance from this rule to allow them to
23 unilaterally end the program if they feel that they're
24 not being properly compensated.

25 The goals of MEEIA will not be met if the

1 program is changed. Under the statute, the Commission
2 shall permit electric corporations to implement
3 Commission-approved demand-side programs proposed
4 pursuant to this section with a goal of achieving all
5 cost-effective demand-side savings. The "all" word is
6 typically overlooked in these type of proceedings.

7 What it's saying is you have to look at
8 everything that could get you cost-effective savings.
9 I doubt that the writers of this statute intended for
10 you to do a 50-state survey or to come up with ideas
11 that weren't presented to you. However, if you have a
12 program that's working well, that's a large part,
13 certainly that should be considered as part of the all
14 cost-effective measures that the statute demands.

15 Secondly, there's three barriers that the
16 utility has to meet in order to get a program
17 approved. First, it must be approved by the
18 Commission. Second, it must result in energy or
19 demand savings. And third, it must be beneficial to
20 all customers in the customer class in which the
21 programs are proposed.

22 This is also something that's typically
23 overlooked in this statutory analysis. These C and I
24 programs don't necessarily have to benefit
25 non-participating residential customers. They do have

1 to benefit all non-participating C and I customers.

2 The Commission has also given us
3 guidance. In the only other MEEIA case to be
4 litigated, in Ameren's case, the Commission told us
5 that it cannot approve a MEEIA plan in this case that
6 results in ratepayers paying more for energy savings
7 than the MEEIA plan actually causes.

8 So at the end of these proceedings,
9 you're going to have to ask yourself if -- is this
10 MEEIA plan actually causing energy savings or is it
11 capturing free ridership. Is it capturing those types
12 of customers already who are properly incentivized to
13 invest.

14 Secondly, the Commission has told us that
15 it would approve a MEEIA plan if the non-participating
16 ratepayers would be better off paying to help some
17 ratepayers reduce usage than they would be paying a
18 utility to build a power plant. This is a very simple
19 analysis. If you're not getting any new energy
20 efficiency measures from the plan, you've got nothing.
21 If you're paying for a new utility power plant, you've
22 got a power plant. So if we don't answer the free
23 ridership question, then the simple answer here is no.

24 KCP&L's proposal does, in fact, fall
25 short of compliance. The Company has not proposed all

1 cost-effective measures. It's, in fact, ignored the
2 one that's the biggest part of their energy savings.
3 It's ignored the one that's worked the best for them
4 and that has been most attractive to their customers
5 that need it the most.

6 Secondly, the plan will not cause
7 significant energy and demand savings. Free ridership
8 does not result in new savings.

9 Finally, all commercial and industrial
10 customers will not benefit. Many schools, churches,
11 municipalities -- Brightergy's type of clients -- will
12 be immediately priced out of the market. Those that
13 are not priced out of the market are probably already
14 probably incentivized.

15 Those types of customers are new
16 buildings customers. If you're constructing a new
17 building from scratch, you may be properly
18 incentivized to invest in LED lights that are more
19 expensive than florescent. If you're rehabbing a
20 building and gutting it and starting over and redoing
21 all the electricity, you're also properly -- properly
22 pardon me -- probably properly incentivized to invest
23 in those measures.

24 But if you have a lighting system that's
25 working perfectly well right now, it's a much

1 di ffi cul t -- much more di ffi cul t sell . You're much
2 more likely to invest those dollars in something
3 that's not working quite right for you; therefore,
4 MEEIA's goals are not met. We want you to be
5 investing in energy efficiency.

6 COMMISSIONER COLEMAN: Tell me, please,
7 what the --

8 MR. ZELLERS: Commissioner.

9 COMMISSIONER COLEMAN: -- Last sentence
10 is on that slide on page 3, the proposal to the
11 complaint.

12 MR. ZELLERS: Did it get cut off?

13 COMMISSIONER COLEMAN: It's cut off.

14 MR. ZELLERS: Because ratepayers will be
15 paying more for free riders, they won't receive any
16 benefit.

17 COMMISSIONER COLEMAN: Thanks.

18 MR. ZELLERS: Now, what part of the
19 program are we talking about? We're talking about the
20 largest and most important part of KCP&L's C and I
21 program. KCP&L's own testimony will demonstrate this.
22 Kim Winslow will tell you that it is, in fact, the
23 lion's share of the energy efficiency savings in the
24 program. Fully 41 percent of GMO's realized energy
25 savings come from this program. 55 percent of KCP&L's

1 realized savings come from this program. And she
2 tells you that it is a key program to the Company's
3 success in MEEIA in reaching its energy targets.

4 Now, again, what you have to ask yourself
5 is that are we taking a program, nearly doubling its
6 cost and going to achieve the same results with a key
7 program necessary for reaching MEEIA's energy goals.
8 What the market will tell us is that it responds to
9 incentives. This proposal incentivizes short-term
10 thinking by rewarding only first-year savings over
11 higher quality and longer lasting products.

12 KCP&L saw this, when after it announced
13 the change, it received a flood of daily applications
14 to review in anticipation of the program ending. This
15 should suggest to you that this is a popular program
16 and that if you wanted to get your application in
17 under the deadline, it's not something you would
18 invest in following the change.

19 So what will the results be? Because the
20 payback time will be increased, fewer schools, fewer
21 hospitals, fewer businesses and municipalities will
22 invest in these measures and it will be more difficult
23 to achieve the Commission's goals of getting more
24 energy efficiency projects out in the market.

25 Secondly, jobs will be lost directly

1 because of fewer installations, companies like
2 Brightergy, but also the 200 other trade allies that
3 participate in this program and the contractors they
4 hire. There will be more free riders than under
5 MEEIA 1 and, thus, fewer benefits for all ratepayers.

6 So what is the proposed change? Under
7 Cycle 1, an individual project had to pass the cost
8 benefit test. Therefore, it had to demonstrate its
9 value to all ratepayers. When it passed that value
10 test, it would get a 50 percent rebate for the cost of
11 the entire project upfront.

12 Under Cycle 2, KCP&L's proposing to pay a
13 flat rate per kilowatt hour on first-year savings for
14 each project no matter what the payback is. So if the
15 payback is under two years, that project gets the same
16 amount of rebate. Therefore, the free ridership
17 exists that wouldn't have existed under Cycle 1 where
18 we had a safety valve to stop it.

19 I would like to talk to you about a
20 couple of case studies; Brightergy clients, how they
21 fared under Cycle 1 and how they would fare under the
22 stipulation in Cycle 2. First, a large Kansas City
23 hospital. Brightergy performed an energy audit and
24 was able to identify savings of \$67,000. The total
25 project price was 450,000. Under Cycle 1, the

1 50 percent rebate resulted in a \$225,000 rebate
2 payback immediately upon application. The payback
3 time for that client was 3.3 years. Under the
4 stipulation, under the flat per kilowatt hour, the
5 payback was only \$69,000, a little less than 70, and
6 the payback time shot up to 5.7 years.

7 What we'll tell you and what Mr. Blake
8 will tell you is that we're the market experts here.
9 The reason that we're in this case is to represent the
10 market and to tell you what will work and what will
11 not work. Quite simply, the longer the payback time,
12 the less likely it is for these customers to invest.
13 It's difficult to say exactly what that payback time
14 is, but we know under Cycle 1 that it worked so it's
15 difficult for me to imagine why we would change it to
16 something that might not.

17 Secondly, the Kansas City Area
18 Transportation Authority. After performing an audit,
19 Brightergy was able to identify \$40,000 of ongoing
20 yearly savings if they invested in energy efficiency.
21 The total project price was \$344,000. Under Cycle 1,
22 they would have received a 50 percent rebate, around
23 170,000 dollars. That gave them a payback time of
24 4.2 years. This was a compelling reason for them to
25 invest. Under the stipulation, the rebate would only

1 be 37,000 dollars and would result in a payback time
2 of 7.5 years. Again, far less compelling for a
3 municipal organization, which does not have the
4 ability to simply raise revenue to pay for projects.
5 If the payback time goes up too far, they're going to
6 invest in something else and not energy efficiency.

7 Finally, the Adrian School District.
8 It's a little bit smaller example. We were able to
9 identify annual savings of 5,000 dollars. Their total
10 project price, 28,000 dollars. The 50 percent rebate
11 very simply gave them a 14,000 dollars payback,
12 resulting in a 2.8 year payback period. Under the
13 stipulation, the total rebate was only 5,000 dollars
14 and resulted in a 4.6 year payback.

15 Customers are telling us that that's too
16 long. They're going to invest in something else.
17 You're not going to get your energy efficiency goals.

18 Let's talk about KCP&L's rationale for
19 this change. KCP&L's argued, first of all, that
20 Cycle 1 puts them out of the mainstream with other
21 utilities in surrounding states; that other utilities
22 have programs more similar to Cycle 2. In reality,
23 several utilities offer a program virtually the same
24 as KCP&L had in Cycle 1 or nearly identical. KCPL has
25 recognized the effectiveness of this program.

1 Secondly, KCP&L argues that this will be
2 simpler to explain to customers. I can tell you, as I
3 said before, no customer has ever been persuaded by a
4 good net-to-gross ratio. What a customer does
5 understand is here's the cost of the project, your
6 rate -- your rebate is going to be 50 percent.
7 Nothing could be simpler.

8 It may very well be simpler to process
9 these applications under the new process with a flat
10 10 cent per kilowatt rebate, but that should not be
11 your guidepost. Your guidepost should be what is
12 driving energy efficiency investment.

13 Next, the nuclear option that the Company
14 has asked for, regulatory flexibility. This is a
15 voluntary program. Everyone understands that.
16 However, there are many things in life and in business
17 that are voluntary until you sign on a piece of paper
18 and then you have to see things through. A new lease,
19 new employment, any of these things require some level
20 of commitment.

21 What the Commission should do is ask for
22 that level of commitment from KCP&L. There's already
23 a rule in place that allows them to ask for permission
24 to end the program, but you would have to approve
25 that. What KCP&L wants to do is remove that right and

1 end it unilaterally.

2 In conclusion, to be approved, a MEEIA
3 plan must utilize all cost effective measures. They
4 have not done so. They have ignored probably their
5 best investment mechanism they have.

6 Secondly, it must result in energy
7 savings. Because we're going to see less energy
8 savings, because we're going to see more free
9 ridership, they have not met the statutory standard.

10 Finally, to be approved, a plan must
11 benefit all customers in the customer class in which
12 it's proposed. It's difficult to see how this
13 happens. Many customers are going to be priced out
14 immediately. The others who participate are also
15 going to be paying for free ridership.

16 So what are we asking? In the Ameren
17 case, the Commission was concerned with some of the
18 issues the parties brought before them. They weren't
19 ready to end the program or to say no. So what the
20 Commission did was say please, go back, take a look at
21 this, reevaluate it, come back to us with something
22 that addresses these concerns.

23 That's what we're asking you to do. Put
24 your foot on the brake, hold back a little bit, ask
25 them to come back to the table, come back with

1 something that's going to really drive investment and
2 to cut down on free ridership. I'm available for any
3 questions.

4 CHAIRMAN HALL: Good morning.

5 MR. ZELLERS: Good morning.

6 CHAIRMAN HALL: You are aware of the fact
7 that when the Commission asked Ameren and stakeholders
8 to go back to the table and neg-- and attempt to
9 negotiate a deal, it failed.

10 MR. ZELLERS: Yes.

11 CHAIRMAN HALL: Yet that's what you're
12 asking us to do here, is to make that same request?

13 MR. ZELLERS: Yes. And I think the
14 difference is going to be that right now KCP&L does
15 not think that this is an important issue for you. If
16 you make it clear that it is an important issue, I'm
17 sure that all the other parties will come on board.

18 And by the way, Mr. Chairman, it's not
19 something you have to wait on. You don't have to wait
20 until briefing is complete to make that request. You
21 could do it in any open agenda session.

22 CHAIRMAN HALL: You do agree that MEEIA
23 is voluntary?

24 MR. ZELLERS: Yes.

25 CHAIRMAN HALL: And that the Company --

1 the companies can at any time, before a plan is in
2 place, simply pull the plug on it?

3 MR. ZELLERS: Before a plan is in place?

4 CHAIRMAN HALL: Yes.

5 MR. ZELLERS: They wouldn't have to pull
6 the plug.

7 CHAIRMAN HALL: Right now. I mean, the
8 companies could stand up right now and say, Never
9 mind.

10 MR. ZELLERS: Yes, they could.

11 CHAIRMAN HALL: So your only ask is that
12 we ask the parties to go back and negotiate, realizing
13 that our only power is to approve a plan submitted to
14 us by the utilities?

15 MR. ZELLERS: Yes. What I'm asking you
16 to do is in an open agenda session say there's been
17 some issues raised in the hearing that are of great
18 concern to us and we'd like to see some adjustments
19 made.

20 CHAIRMAN HALL: If you're right about the
21 C and I rebate amount being -- being insufficient
22 to -- to incentivize the projects --

23 MR. ZELLERS: Yes.

24 CHAIRMAN HALL: -- you understand that --
25 that the Company has the ability under the stipulated

1 agreement to increase the rebate amount?

2 MR. ZELLERS: And no obligation.

3 CHAIRMAN HALL: Well, aren't they --
4 wouldn't they be economically motivated to increase
5 the rebate amount? I mean if there's insufficient
6 interest in the program, their incentive award
7 would -- would be relatively small. So --

8 MR. ZELLERS: Yeah.

9 CHAIRMAN HALL: -- so aren't they
10 economically motivated under the stipulated plan to --
11 to assure popularity of the program? And so if you're
12 right that ten cents is insufficient, won't they be
13 motivated to increase that amount?

14 MR. ZELLERS: Well, a couple of things.
15 They -- they've set their numbers pretty low. Their
16 targets are so low, in fact, that they'll probably be
17 able to reach them with a very low incentive in just
18 capturing free ridership.

19 So if the numbers were higher, if you had
20 set a goal that was twice as much, I'd agree with you.
21 But as it stands, I don't think they would be properly
22 motivated, no.

23 CHAIRMAN HALL: Well, then why aren't you
24 focused on that? Why -- why not -- why are you not
25 focused on the stipulated agreement as to the

1 incentive award?

2 MR. ZELLERS: Other parties had
3 represented that position. They didn't object to it.

4 CHAIRMAN HALL: Everyone's on board with
5 it.

6 MR. ZELLERS: Everyone is now, that's
7 correct.

8 CHAIRMAN HALL: So but -- that seems to
9 me to be a more logical area of concern for you.

10 MR. ZELLERS: Well, I guess I would
11 answer that by saying I'm bringing you what we have
12 market expertise in. And I don't necessarily have
13 expertise in designing overall programs and setting
14 those targets and numbers, but I agree with you it's
15 probably something we should have brought up.

16 CHAIRMAN HALL: All right. Thank you.

17 JUDGE BUSHMANN: Questions, Commissioner?

18 COMMISSIONER RUPP: Good morning.

19 MR. ZELLERS: Good morning.

20 COMMISSIONER RUPP: In your examples

21 just -- that you gave us --

22 MR. ZELLERS: Yes.

23 COMMISSIONER RUPP: -- of a couple school
24 districts and stuff, your typical client, are they
25 paying cash? Are they financing these? How are they

1 going about coming up with the upfront investment?

2 MR. ZELLERS: Well, it's a couple of
3 different ways. And Mr. Blake can tell you a lot more
4 about that, but they have options. They can -- we
5 have a so-called lease option that lasts about five
6 years or they can pay cash.

7 COMMISSIONER RUPP: Okay. Do they -- do
8 they -- do many of them seek outside financing from
9 traditional banks or things of that nature? Do they
10 go through you or do they pay in cash? What is
11 their --

12 MR. ZELLERS: I -- I don't know if they
13 go seek outside funding. For the most part, I think
14 it would be difficult for a municipality or a school
15 district to go find a bank to finance something like
16 this. But again, that may be something you'd ask
17 Mr. Blake about.

18 COMMISSIONER RUPP: And give me some more
19 examples on your claims of free ridership. Paint me a
20 word picture that I can see in my head of, you know,
21 some examples to help me follow that train of thought.

22 MR. ZELLERS: Well, it's a little like
23 the building that we're in now on 17th and Main in
24 Kansas City. It sat empty for 20 probably years. So
25 when you go in to rehab a building like that, you're

1 going to do everything. You're going to look at the
2 electrical, you're going to look at the plumbing,
3 you're going to look at the floors. Is it time to
4 invest in LEDs? Yeah, I'm signing long-term leases
5 for these buildings, you know, 10, 20 years. So it
6 makes sense for me to realize the savings from those
7 types of lights.

8 Now if you go into the public -- pardon
9 me, the Public Service Commission building where the
10 lights are already functioning, it's going to be
11 tougher for me to say, Come in and let us replace all
12 these and spend money on that and less on HVAC or less
13 on more parking or whatever else it is you may want to
14 do.

15 COMMISSIONER RUPP: Ball park, if you can
16 say this, you present X number of proposals to
17 X number of companies. What's your conversion rate
18 with the old program? I don't know if that's
19 confidential to your company, but --

20 MR. ZELLERS: That -- that is information
21 that's not known to me. And I -- and I will attempt
22 to get that before we're done today.

23 COMMISSIONER RUPP: And you are
24 estimating and it was brought up earlier on -- Staff
25 said there's X percent of what they call fence

1 sitters, of people that --

2 MR. ZELLERS: Sure.

3 COMMISSIONER RUPP: -- would not pull the
4 trigger.

5 MR. ZELLERS: Sure.

6 COMMISSIONER RUPP: What percentage --
7 was it 20 percent that Staff had brought up? Was that
8 accurate in your history of meeting with people that
9 are on the fence that --

10 MR. ZELLERS: You know, I really wish I
11 had my sales director here. But 20 percent is
12 probably low. Put yourself in the position of a
13 superintendent of a school district, for example. And
14 you've got \$10,000 to invest in infrastructure. The
15 lights are already working and someone comes in and
16 tries to sell you on this efficiency; a very valiant
17 effort to meet the goals of postponing building the
18 giant new coal plant.

19 You say that's fine, but my lights are
20 working and my parking lot is kind of busted up
21 outside, you know. I need to redo the steps, I need
22 to redo the phone system. We don't have wireless
23 internet in this building. There's a lot of other
24 priorities. So it has to be a compelling value
25 proposition to get them to invest.

1 COMMISSIONER RUPP: And then so back to
2 where you mentioned you had a financing program for
3 you guys. Did you say it's a five-year lease?

4 MR. ZELLERS: That's typically what we
5 do, uh-huh. We're flexible. Clients have different
6 needs and we'll work with them.

7 COMMISSIONER RUPP: Okay. That's all I
8 have at this point. Thank you.

9 MR. ZELLERS: Thank you.

10 JUDGE BUSHMANN: National Housing Trust?

11 MR. LINHARES: Thank you, Judge. May it
12 please the Commission. I'm here to represent Renew
13 Missouri, the National Housing Trust and Westside
14 Housing Organization. I just have a very brief
15 opening statement today.

16 We urge the Commission to approve Kansas
17 City Power & Light's proposed MEEIA plan as modified
18 by the November 23rd Non-unanimous Stipulation and
19 Agreement filed in this case. The stipulation is a
20 product of extensive negotiations among the Company,
21 Staff and Public Counsel, the Division of Energy, as
22 well as consumer advocates, advocates for the
23 environment and clean energy and low-income advocates.

24 Its approval will enable significant
25 growth of the energy efficiency sector in western

1 Missouri , an industry whose success is crucial to the
2 energy future of our state. In addition, the
3 stipulation provides for new, meaningful program
4 offerings for tenants and owners of affordable,
5 multi-family housing who have been largely neglected
6 by energy efficiency programs thus far.

7 We appreciate the concerns of Brightergy
8 and we agree that measure incentives should be set at
9 levels most likely to achieve all cost effective
10 energy savings, but we think the incentive range
11 proposed by the stipulation does not prevent this
12 goal .

13 In addition, the Company's proposed
14 regulatory flexibility or so-called kill switch is
15 mitigated by the Company's inherent financial
16 incentive to capture as much energy efficiency as
17 possible. So we recommend that the Commission approve
18 the non-unanimous stipulation and allow KCPL to begin
19 launching its Cycle 2 MEEIA programs. Thank you very
20 much.

21 JUDGE BUSHMANN: Questions?

22 CHAIRMAN HALL: Good morning. Just a
23 couple of very quick questions. If the non-unanimous
24 stipulation were to be modified by the two provisions
25 sought by Brightergy, would Renew Missouri still

1 support it?

2 MR. LINHARES: We would, yes. Very
3 likely.

4 CHAIRMAN HALL: Thank you. Actually why?

5 MR. LINHARES: Renew Missouri's overall
6 goal, and I believe the overall goal of the housing
7 parties as well, is to achieve approval of these
8 programs particularly in a timely fashion. Because
9 right now we're -- we've passed the first of the year
10 and although we've gotten this extension to Cycle 1,
11 we really do not want to see a disruption of program
12 offerings.

13 CHAIRMAN HALL: So in terms of the
14 conflict between Brightergy and the rest of the
15 parties here, you're not really weighing in one way or
16 the other as to -- as to which is more consistent with
17 MEEIA or would be a more significant benefit for
18 ratepayers or the State of Missouri?

19 MR. LINHARES: I'm not weighing in one
20 way or the other per se. I think the Company and
21 Brightergy will have more expertise on that -- on the
22 specific issue of the incentive range and the
23 incentive structure.

24 CHAIRMAN HALL: Thank you.

25 MR. LINHARES: Thank you.

1 JUDGE BUSHMANN: Questions? Thank you.
2 Natural Resources Defense Council.

3 MR. ROBERTSON: May it please the
4 Commission. We filed Direct Testimony in support of
5 the Non-unanimous Stipulation and Agreement, but we
6 have not filed testimony directly addressing
7 Brightergy's objections.

8 However, KCPL and Staff have shown in
9 their testimony, they have made the case in favor of
10 the revised business custom rebate. They have shown
11 that other utilities have had success with comparable
12 incentives and they have concluded that further
13 negotiations in this case would be fruitless and we
14 agree with that.

15 MEEIA Cycle 2 plan should not be derailed
16 because of a single party's objection to the incentive
17 in a single program. The Commission may order a
18 modification to the plan, but only if it is acceptable
19 to the Company, which in this case it is not.
20 Therefore, we ask the Commission to approve the plan
21 in the Non-- Non-Unanimous Stipulation and Agreement
22 to save customers money and mitigate climate change.
23 Thank you.

24 JUDGE BUSHMANN: Questions?

25 CHAIRMAN HALL: I guess the same set of

1 questions that I just had for prior counsel. You're
2 not weighing in on the merits of Brightergy's position
3 vis-a-vis the rest of the parties in this case on
4 those two issues?

5 MR. ROBERTSON: No, we're not.

6 CHAIRMAN HALL: Thank you.

7 JUDGE BUSHMANN: Missouri Division of
8 Energy.

9 MR. ANTAL: Good morning. May it please
10 the Commission. My name is Alex Antal and I'll be
11 representing the Missouri Division of Energy.

12 The Division of Energy recommends that
13 the Commission approve the stipulation filed by the
14 Company as well as several other parties to this case,
15 including the Division of Energy. The stipulation is
16 a compromise. It's not perfect, but it's a good step
17 in the right direction and it will continue to offer
18 demand-side programs to KCP&L and GMO's customers in
19 its Missouri service territory.

20 It will provide benefits -- both energy
21 and demand savings benefits to those customers who
22 participate in those programs and it will provide
23 benefits to all of KCPL's and GMO's customers in the
24 form of deferring or reducing the need for costly
25 supply-side investments in the future.

1 Now, I -- we did think that there --
2 while this is -- we -- we recommend approval of this
3 plan today, this stipulation, there are some concerns,
4 some issues that the Division of Energy believes it
5 should point out to the Commission and it hopes that
6 in the Commission's order, it will provide direction
7 to the parties going forward.

8 As one of the provisions of the
9 stipulation is that parties to it have agreed to a
10 collaborative process to look at ways to find
11 additional cost-effective energy savings for
12 programs -- program years 2017 and 2018, the Division
13 of Energy believes that guidance from the Commission
14 on how do this would be appropriate.

15 The first issue that I'll address is
16 energy savings goals. As described in the Direct
17 Testimony of the Natural Resource Defense Council
18 witness Cliff McDonald, the savings level in the
19 stipulation are only 50 percent of the levels
20 identified as realistically achievable potential, or
21 commonly referred to as RAP in the Company's market
22 potential study, and 40 percent of the levels
23 identified as maximally achievable potential, or
24 usually referred to as MAP levels, in that same market
25 potential study.

1 These comparisons show that the
2 stipulation's energy savings levels are modest and
3 significant expansion of cost-effective energy savings
4 programs are possible. Mr. McDonald's testimony also
5 shows that the savings in the MEEIA rules are within
6 one and two-tenths of a percent of the RAP efficiency
7 savings levels identified in the Company's market
8 potential study. So there's a lot of room for
9 improvement and expansion of the current programs.

10 The second issue that I'll address is the
11 calculation of benefits to all customers. And if I
12 may, I'd like distribute a handout. Okay. So the
13 calculation of benefits to all customers is a point of
14 concern that the Division of Energy addressed in
15 the -- in the Ameren MEEIA case and it's a -- still an
16 issue for us here today. While we think that the
17 stipulation today complies with the statutes, we
18 believe it's not -- that Staff's interpretation of
19 Section 393.1075.4 is not correct and we believe that
20 the Commission should consider this alternative
21 interpretation of the statute, which I'll address here
22 today.

23 The questions -- or the sentence in --
24 the relevant sentence here is -- it says, Recovery for
25 such programs shall not be permitted unless the

1 programs are approved by the Commission, result in
2 energy or demand savings, are beneficial to all
3 customers in the customer class in which the programs
4 are proposed, regardless of whether the programs are
5 utilized by all customers.

6 To break this down, there are three
7 requirements in order for the programs to be approved
8 or to receive cost recovery. One, approved by the
9 Commission; two, result in energy or demand savings;
10 and the third, are beneficial to all customers in the
11 customer class in which the programs are proposed,
12 regardless of whether the programs are utilized by all
13 customers. I believe this is the most important
14 portion of this sentence because it modifies
15 requirement number three.

16 A dictionary of Modern Legal Usage
17 by Bryan A. Gardner defines the word "regardless" as
18 without regard to. Similarly, the Black's Law
19 Dictionary, also edited by Bryan A. Garner, defines
20 the word "regard" as attention, care or consideration.
21 An example: Without regard to the consequences.

22 Putting two and two together, if we
23 substitute "without consideration" for the word
24 "regardless" in the statutes, the effective sentence
25 or the effective requirement would read, Recovery for

1 such programs shall not be permitted unless the
2 programs are beneficial to all customers in the
3 customer class in which the programs are proposed,
4 without consideration of whether those programs are
5 utilized by all customers.

6 The neces-- the conclusion that we arrive
7 by this substitution is that the plain and ordinary
8 meaning of the word "regardless" modifies the
9 requirement that programs be beneficial to all
10 customers in such a way that the benefits should be
11 determined by calculating the benefits to customers as
12 a whole and without considering which customers in
13 their respective classes receive those benefits.

14 Believe that the canons of statutory
15 interpretation require the Commission to give the
16 words of the statute their plain and ordinary meaning.
17 In this case, the dictionary defines these words in
18 such a way that the programs should not be approved by
19 considering their impact on non-participants, as Staff
20 advocates.

21 Just to show in another way how this
22 would impact the Commission's analysis of the programs
23 in this stipulation, I'll put up a slide on the
24 overhead projector. I'm guessing this isn't very
25 readable. Okay. So try to make do.

1 All right. The slide that I'm putting up
2 here is Schedule JAR-D-2-1, which is an attachment or
3 an appendix to the Direct Testimony of Staff Witness
4 John Rogers. And his testimony, both his Direct and
5 Surrebuttal, has a lengthy discussion of Staff's
6 analysis of cost benefit of these programs.

7 Based off of Mr. Rogers' calculations, he
8 points to the non-participant -- participating
9 customers' cost benefit analysis as the most crucial
10 and important cost benefit analysis for approval of
11 MEEIA programs. And you can see his cost benefit
12 ratios in the bottom-most column of the
13 non-participating customers' section of that schedule.

14 What the Division of Energy is saying is
15 that under this appropriate interpretation of the
16 statutes, non-participating customers' analysis does
17 not apply and need not be considered by the
18 Commission. What the Division of Energy is saying is
19 the more appropriate analysis for the Commission to
20 consider is the customers-as-a-whole-cost-benefit
21 analysis. And this is the primary consideration that
22 the Commission should look at in determining whether
23 or not MEEIA programs are beneficial to all customers.

24 And as you can see by this schedule, and
25 Mr. Rogers' analysis, that these co-- these programs

1 in the stipulation are extremely beneficial to
2 customers as a whole. In fact, they're over -- you
3 know, their cost benefit ratios are over twice the
4 amount that they need to be in order for the
5 Commission to approve them.

6 So I pointed out Division of Energy's
7 concerns or points of clarification that the
8 Commission should consider in approving this
9 stipulation. I'd like now to turn to some of the
10 highlights that the Division of Energy sees in the
11 stipulation that we have here today.

12 As I've mentioned, the Commission
13 provides for a collaborative process to address new
14 and underserved customer markets identified by -- that
15 are cost effective with a goal of achieving 200
16 gigawatt hours of additional savings for program years
17 2017 to 2018. Division of Energy sees this posit--
18 provision as integral to increasing the energy and
19 demand savings targets for the Company's MEEIA Cycle 2
20 programs consistent with the levels identified in the
21 Company's most recent market potential study and the
22 savings targets in the MEEIA rules themselves.

23 Additionally, there's agreement that the
24 Company will promote the Missouri Home Energy
25 certification program in conjunction with its energy

1 efficiency programs by highlighting the program's
2 ability to increase the marketability of homes that
3 have been improved through energy efficiency
4 investments.

5 And third, there's also agreement that
6 combined heat and power or CHP projects can qualify
7 under the Company's business custom program.

8 While the concerns of -- Brightergy
9 raises regarding the C and I customer program and
10 regulatory flexibility provisions have some merit,
11 ordering the parties to continue negotiations or, in
12 the alternative, to reject the stipulation outright
13 will only further delay the implementation of the
14 Company's MEEIA Cycle 2 programs, creating additional
15 uncertainty for customers, program partners and the
16 Company while reducing the potential markets for
17 energy efficiency in Missouri in the short term and
18 increasing the need for future capacity additions at
19 greater expense to all the Company's customers.

20 DE is optimistic that the provision in
21 the stipulation providing for the collaborative
22 process to address these new and underserved customer
23 markets will encourage stakeholders, including trade
24 allies such as Brightergy, to have constructive
25 discussions about increasing the energy and

1 demand-savings targets for the Company's MEEIA Cycle 2
2 programs for the forthcoming years.

3 Additionally, DE expects the Company will
4 not want to jeopardize the goodwill it has built with
5 customers, program partners as well as local and state
6 government officials in its MEEIA Cycle 1. Therefore,
7 we feel that it's highly unlikely that the Company
8 will exercise the regulatory flexibility provision
9 unless dire circumstances arise.

10 In conclusion, Division of Energy
11 recommends that the Commission approve the
12 stipulation, which will provide energy and demand
13 savings to the Company's participating customers and
14 provide benefits to the Company's customers by
15 reducing the need for future capacity additions.

16 Additionally, if the Commission agrees
17 with Division of Energy's legal analysis on the
18 appropriate interpretation of Section 393.1075.4, DE
19 would recommend that the Commission provide
20 clarification in its order on the appropriate method
21 for calculating benefits to all customers in the
22 customer class going forward in which the MEEIA
23 programs are offered to require that benefits to all
24 customers in the customer class be calculated as a
25 whole and without considering whether MEEIA programs

1 are utilized by all customers. Thank you.

2 JUDGE BUSHMANN: Questions?

3 CHAIRMAN HALL: Good morning.

4 MR. ANTAL: Good morning.

5 CHAIRMAN HALL: I take it from your
6 comment that the Division agrees with Brightergy as to
7 the two issues that Brightergy -- the two objections
8 that Brightergy has raised. You just believe that
9 something is better than nothing and if the Commission
10 were to require that the plan include the two
11 provisions sought by Brightergy, that there wouldn't
12 be a MEEIA plan. Is that --

13 MR. ANTAL: I would say that the great
14 should not be the enemy of the good and that we have a
15 stipulation here that the vast majority of parties
16 have signed on to. And that we know from past
17 experience that ordering parties to go back to the
18 negotiation table or rejecting those stipulations
19 outright jeopardizes energy efficiency in the state.
20 And -- because as of January 1st of this year, we have
21 no MEEIA-approved programs in the state, the Division
22 sees that as detrimental to customers and Missouri as
23 a whole.

24 CHAIRMAN HALL: So the answer to my
25 question was yes?

1 MR. ANTAL: Yes.

2 CHAIRMAN HALL: Okay. I am, frankly,
3 utterly befuddled by your statutory argument.

4 MR. ANTAL: Okay.

5 CHAIRMAN HALL: I mean, I agree that
6 "regardless" in that provision means -- or could mean
7 without consideration. And that's how I've pretty
8 much always looked at this statutory provision,
9 speaking on behalf of myself exclusively.

10 What I'm trying to understand though, are
11 you taking issue with the ambiguity in that -- in the
12 statute where it -- where it says, Are utilized by all
13 customers, but doesn't say utilized by all customers
14 in that class? Is that the ambiguity that you're
15 focused on?

16 MR. ANTAL: I don't know that I would say
17 that that's the ambiguity. I think the ambiguity is
18 in that modifying clause. I believe that Staff is
19 interpreting that to say whether or not the programs
20 are utilized by all customers.

21 CHAIRMAN HALL: How is that any different
22 from without consideration?

23 MR. ANTAL: Whether or not would imply
24 that benefits to all customers have to accrue to each
25 individual customer in that customer class. However,

1 regardless of whether the programs are utilized by all
2 customers, limits the analysis that the writers of the
3 statute wanted to happen. It's a limiting clause.

4 CHAIRMAN HALL: Do you -- looking at the
5 statute --

6 MR. ANTAL: Yes.

7 CHAIRMAN HALL: -- do you believe that we
8 could assume that where it says, Whether the programs
9 are utilized by all customers, that that means all
10 customers in that class? Is that implicit in the
11 statute? Because I'll be honest, that's how I've read
12 it.

13 MR. ANTAL: And just to make a point of
14 clarification, when you said that statement, you left
15 out the word "regardless of." You just said "whether
16 the programs are utilized by all customers."

17 CHAIRMAN HALL: Well, I started the quote
18 earlier. Correct?

19 MR. ANTAL: And I would say if the word
20 "regardless to" was not in there, then Staff's
21 correct -- Staff's interpretation would be correct.

22 CHAIRMAN HALL: I'm asking what is the
23 Division's interpretation. Are you -- when you read
24 that statute, do you believe that in that class is
25 implicit at the end of that quote?

1 MR. ANTAL: Yes.

2 CHAIRMAN HALL: Yes?

3 MR. ANTAL: It has to be at a customer
4 class analysis.

5 CHAIRMAN HALL: Okay. Do you believe --
6 so Staff is accurate. Because it would appear that
7 Staff takes that same position.

8 MR. ANTAL: Staff takes the position,
9 yes, that the analysis has to be done on a customer
10 class basis.

11 CHAIRMAN HALL: Does anybody disagree
12 with that that you're aware of?

13 MR. ANTAL: Not that I'm aware of.

14 CHAIRMAN HALL: Okay. I --

15 MR. ANTAL: The distinction where we see
16 it is that Staff utilizes a non-participating
17 customer's analysis to determine what the benefits --
18 cost and benefits are to non-participating customers,
19 and we are stating that that is incorrect. That you
20 have -- you only and should only look at customers as
21 a whole at -- on a customer class level.

22 CHAIRMAN HALL: Okay. Thank you.

23 COMMISSIONER STOLL: No questions. Thank
24 you.

25 COMMISSIONER RUPP: I have a question for

1 you real quick.

2 MR. ANTAL: Yes, Commissioner.

3 COMMISSIONER RUPP: I heard several
4 people testify that this is -- well, they have an
5 agreement and it's not perfect. So who -- did the
6 Company and the Staff first come out and then
7 everybody else is like, well, I don't know, I guess
8 they got an agreement, let's -- who came up with it?
9 Were you involved in a discussion of, Hey, there's an
10 agreement, are we going to sign on? Or was it, Hey,
11 they've already signed -- Staff and the Company have
12 already signed on. Who else has?

13 I'm getting the opinion here that there's
14 a little bit of just kind of group think going on.
15 Can you comment on how you guys signed on to the
16 stipulation, when -- at what process, who had already
17 signed on? Can you walk me through that?

18 MR. ANTAL: I don't know that I can get
19 into the details of the confidential settlement
20 negotiations. I believe that, you know, the Division
21 of Energy wasn't -- didn't agree with all of the
22 points the Commission made in the Ameren case. This
23 analysis that I presented here today wi -- I did not
24 present in the Ameren case. It's -- it's a fairly new
25 analysis that -- that I've, you know, come to believe

1 is correct. And the Division agrees.

2 That being the case and the outcome that
3 we saw in the Ameren case and the Division of Energy's
4 desire to have MEEIA programs in the state, we signed
5 onto this because we thought that it would get them
6 approved in the most expedient manner and that it
7 provided opportunity for parties to continue a
8 dialogue about increasing those savings levels, you
9 know, going forward; and that further delay would only
10 hurt customers who -- all customers who are in KCPL's
11 service territory.

12 COMMISSIONER RUPP: Thank you.

13 MR. ANTAL: Uh-huh.

14 JUDGE BUSHMANN: Thank you.

15 Opening by United for Missouri.

16 MR. LINTON: United for Missouri has no
17 opening statement. Thank you.

18 JUDGE BUSHMANN: Thank you. That takes
19 care of all of the opening statements. We've been
20 going for about an hour and a half. Why don't we take
21 a short break. We'll be in recess until about 10:15.

22 (A recess was taken.)

23 JUDGE BUSHMANN: Let's go back on the
24 record. Before we take the first witness, we have one
25 more appearance for an attorney.

1 MR. MITTEN: Your Honor, my apologies for
2 not doing this earlier. Please let the record reflect
3 that Russ Mitten of the law firm of Brydon, Swearingen
4 and England is appearing on behalf of Union Electric
5 Company, doing business as Ameren Missouri.

6 JUDGE BUSHMANN: Thank you, Mr. Mitten.

7 We're ready for our first KCPL witness.

8 MR. STEINER: The Company calls Kim
9 Winslow.

10 (Witness sworn.)

11 JUDGE BUSHMANN: Thank you.

12 Proceed.

13 KIMBERLY WINSLOW, testified as follows:

14 DIRECT EXAMINATION BY MR. STEINER:

15 Q. Please state your name for the record.

16 A. Kimberly H. Winslow.

17 Q. Where do you work?

18 A. I work at Kansas City Power & Light.

19 Q. Ms. Winslow, did you cause to be filed
20 Direct Testimony, which is marked as Exhibit Number
21 102, and Surrebuttal Testimony, which is marked as
22 Exhibit 103 in this case?

23 A. Yes.

24 Q. Do you have any changes or corrections to
25 that testimony?

1 A. No, I do not.

2 Q. If I were to ask you the same questions
3 that are contained in that testimony, would your
4 answers today here be the same?

5 A. Yes.

6 Q. Are the answers contained in the
7 testimony true and correct to the best of your
8 knowledge and information?

9 A. Yes.

10 MR. STEINER: Your Honor, I would offer
11 that -- I'd offer Exhibit 102 and 103 into the record
12 and ask that they be admitted.

13 JUDGE BUSHMANN: Any objections to the
14 receipt of those exhibits?

15 Hearing none, they're received into the
16 record.

17 (KCP&L Exhibits 102 and 103 were received
18 into evidence.)

19 JUDGE BUSHMANN: And the first
20 cross-examination would be by Staff.

21 Ms. Winslow, could you also -- when
22 you're responding, could you make sure that microphone
23 is a little bit closer to you so we make sure we get a
24 good response?

25 THE WITNESS: Thank you.

1 CROSS-EXAMINATION BY MS. MUETH:

2 Q. Good morning, Ms. Winslow. How are you
3 today?

4 A. Good morning. Hi. Good.

5 Q. How many trade allies does KCPL and
6 KCPL/GMO have?

7 A. We have an estimated 200 trade allies.

8 Q. And those trade allies participate in
9 MEEIA?

10 A. That's correct.

11 Q. Okay. How many of these trade allies
12 have expressed concern over the proposed flat rate
13 incentive?

14 A. Very few have had any issue with the flat
15 rate incentive, but largely Brightergy has responded
16 with, you know, their concern.

17 Q. And when did Brightergy first raise its
18 concerns regarding flat rate incentive?

19 A. We first began to discuss the change --
20 KCP&L first began to discuss the change in April of
21 2015. It was around that time that we first did a
22 trial balloon, I guess, if you will, to trade allies
23 and we sent communication that we were planning on
24 changing the program to the 10 cent flat rate
25 incentive. And we offered at that time 60 days for

1 trade allies to submit pro-- projects on behalf of the
2 customers.

3 Q. And did Brightergy submit something at
4 that time?

5 A. So at that time there was a discussion
6 with our executive management and Brightergy.

7 Q. Okay. I have no further questions.

8 A. All right. Thank you.

9 JUDGE BUSHMANN: Public Counsel .

10 MR. OPITZ: No questions, your Honor.

11 JUDGE BUSHMANN: Renew Missouri and the
12 housing organizations.

13 MR. LINTON: No questions for the
14 witness, your Honor.

15 JUDGE BUSHMANN: Division of Energy.

16 MR. ANTAL: No questions.

17 JUDGE BUSHMANN: United for Missouri .

18 MR. LINTON: I have no questions, your
19 Honor.

20 JUDGE BUSHMANN: NRDC.

21 MR. ROBERTSON: No questions.

22 JUDGE BUSHMANN: Brightergy.

23 MR. ZELLERS: A few questions, your
24 Honor.

25 CROSS-EXAMINATION BY MR. ZELLERS:

1 Q. Good morning, Ms. Winslow.

2 A. Good morning.

3 Q. Let's discuss the trial balloon that you
4 just referenced for a moment. Do you have a copy of
5 your Direct Testimony in front of you?

6 A. I do, yes.

7 Q. Okay. Could you please turn to page 7
8 for me and look at lines 14 onto 15?

9 A. Yes.

10 Q. I'm going to hand you an e-mail.

11 MR. WOODSMALL: And we're going to be
12 marking this as an exhibit.

13 JUDGE BUSHMANN: I believe your number is
14 501.

15 MR. ZELLERS: I believe that's correct,
16 your Honor.

17 (Brightergy Exhibit 501 was marked for
18 identification.)

19 BY MR. ZELLERS:

20 Q. Ms. Winslow, are you familiar with this
21 document?

22 A. Yes, I am.

23 Q. How are you familiar with it?

24 A. During the process review that we did
25 that I had also mentioned in my testimony, we -- I was

1 part of the review process to send this out.

2 Q. Is this a reasonable copy of the
3 original?

4 A. Yes, it is.

5 MR. ZELLERS: Your Honor, I'd like to
6 offer Exhibit 501 into evidence.

7 JUDGE BUSHMANN: Any objections?

8 JUDGE BUSHMANN: Hearing none, Exhibit
9 501 is received into the record

10 (Brightergy Exhibit 501 was received into
11 evidence.)

12 BY MR. ZELLERS:

13 Q. And, Ms. Winslow, when is the date of
14 this e-mail communication?

15 A. April 23rd.

16 Q. Could you read the text that follows
17 number one under the first paragraph?

18 A. The effective? Effective July 1st, 2015,
19 all custom lighting and non-lighting rebates will be
20 award on a per kWh energy savings at a flat rate
21 structure. These projects will receive 10 cents per
22 kilowatt hour saved, up to 50 percent of the project
23 cost. Example 150,000 kilowatt energy savings equals
24 a \$15,000 rebate incentive.

25 Q. So is it fair to say at some point prior

1 to April 23rd, 2015, the Company had made the decision
2 to change to a flat per kilowatt hour rebate
3 structure?

4 A. Correct.

5 Q. Let's take a look at your Surrebuttal
6 now. Do you have a copy of that in front of you?

7 A. Yes.

8 Q. Let's turn to page 6 and look at line 22.
9 Do you see where we're looking?

10 A. Yes, I do.

11 Q. So it's your testimony today that other
12 trade allies have expressed minimal or no concern to
13 the change?

14 A. Correct.

15 Q. Okay. I'm going to hand you what we're
16 going to mark as Exhibit 502.

17 (Brightergy Exhibit 502 was marked for
18 identification.)

19 BY MR. ZELLERS:

20 Q. Are you familiar with this document?

21 A. Yes, I am.

22 Q. And how are you familiar with this
23 document?

24 A. Well, this was a document that was sent
25 to our trade allies after determining that we would

1 not change the rebate incentive level based on that
2 April communication.

3 Q. Okay. Is this a reasonable copy of the
4 original document?

5 A. I did not see the original document.

6 Q. Okay. Do you have any reason to believe
7 that this deviates from the original document?

8 A. I would assume that this is the original
9 document based on the fact that it's signed by Angie
10 Boone, who's our trade ally manager, yes.

11 MR. ZELLERS: Your Honor, I'd like to
12 offer this into evidence as Exhibit 502.

13 JUDGE BUSHMANN: Any objections?

14 Hearing none, Exhibit 502 is received.

15 (Brightergy Exhibit 502 was received into
16 evidence.)

17 BY MR. ZELLERS:

18 Q. And, Ms. Winslow, the copy you've been
19 handed has a highlighted portion. Could you read that
20 out loud for us, please?

21 A. Sure. Over the past two weeks, since
22 announcing the incentive payment plan changes, many
23 trade allies and customers have expressed concern
24 regarding the impact of this change to ongoing and
25 potential projects.

1 Q. Thank you very much. So you agree --
2 well, let's turn to page 7 of your Surrebuttal now.

3 A. I'm sorry. What page?

4 Q. Let's turn to page 7 of your Surrebuttal.

5 A. Okay.

6 Q. And look at lines 4 through 6.

7 A. Okay.

8 Q. Now here you say that Brightergy was in
9 attendance at a meeting held on December 6th, 2015 and
10 did not address its concerns with the Company or with
11 the larger trade ally population in either setting.
12 That's your testimony?

13 A. That's my testimony, yes.

14 Q. You don't have any corrections to that
15 testimony?

16 A. No, I don't.

17 Q. You just told your attorney that
18 Brightergy did express some concerns maybe outside
19 those settings; is that correct?

20 MR. STEINER: Objection. I don't believe
21 she told me anything.

22 MR. ZELLERS: Let me rephrase the
23 question.

24 BY MR. ZELLERS:

25 Q. Did Brightergy have any objections

1 outside of those two settings and make those
2 objections known to the Company?

3 MR. STEINER: I want to clarify. What
4 are the two settings?

5 MR. ZELLERS: Well we're talking about a
6 trade ally forum in July 2015 and another one in
7 December -- on December 6th, 2015.

8 THE WITNESS: Correct.

9 BY MR. ZELLERS:

10 Q. And how did Brightergy make those
11 concerns known?

12 A. Not during those settings. Not during
13 either one of those settings in July or in December,
14 as my testimony states.

15 Q. But at private meetings Brightergy made
16 those concerns known?

17 A. I was not at the private meeting.

18 Q. Okay. I'm going to hand you an e-mail.
19 We're going to mark this as Exhibit 503, I believe.

20 (Brightergy Exhibit 503 was marked for
21 identification.)

22 BY MR. ZELLERS:

23 Q. Are you familiar with this e-mail
24 exchange printed out?

25 A. Yes, I am.

1 Q. Okay. And does this represent an e-mail
2 conversation between you and Paul Snider?

3 A. Yes. Correct.

4 Q. Is this an accurate representation of the
5 e-mails that were exchanged between you and
6 Mr. Snider?

7 A. This is the e-mail that we exchanged.

8 MR. ZELLERS: Your Honor, I'd like to
9 admit that as Exhibit 503.

10 JUDGE BUSHMANN: Any objection?

11 Hearing none, it is received.

12 (Brightergy Exhibit 503 was received into
13 evidence.)

14 BY MR. ZELLERS:

15 Q. Did you and Mr. Snider have a meeting at
16 the conclusion of the second forum, as you had offered
17 to have in this July 15th, 2015 e-mail?

18 A. I don't remember that we talked at the
19 day of the forum afterwards.

20 Q. You could have talked, but you don't
21 remember now?

22 A. I -- I don't remember, no.

23 Q. But you do agree that this e-mail agrees
24 to set up such a meeting?

25 A. That's correct.

1 Q. Let's go back to your Direct Testimony
2 for a moment and let look at page 7. So on page 7,
3 lines 15 to 16, you cite discussions with the DSM
4 Advisory Group during quarterly meetings in 2015; is
5 that correct?

6 A. That's correct.

7 Q. Who are the members of the DSM Advisory
8 Group?

9 A. The DSM Advisory Group represents
10 different signatories of the MEEIA Cycle 1. So it
11 includes Office of Public Counsel, Staff, I believe
12 Sierra Club, the Division of Energy, Renew Missouri,
13 NRDC. I believe that's about -- about the number of
14 people or those that are involved with the DSM
15 Advisory Group.

16 Q. Are there any businesses or trade allies
17 as a part of that group?

18 A. No, there are not.

19 Q. Are there any customers as a part of that
20 group?

21 A. I'm not sure. I don't know if there's
22 the large util-- or user group. I'm not sure if
23 they're included in it or not.

24 Q. Could the group be expanded?

25 A. I don't know.

1 Q. Okay. Do you think it would be important
2 to get input from trade allies and from customers as a
3 part of the DSM Advisory Group?

4 A. No, I do not.

5 Q. Why not?

6 A. Well, the DSM Advisory Group -- none of
7 those people, I guess, have any type of a motive, if
8 you will, to promote their products or their services.
9 By including others, possibly as Brightergy if that's
10 what you're inferring, is that we feel like having
11 those trade allies there would give an unfair
12 advantage to certain trade allies who participate in
13 our programs.

14 Q. So you would oppose including any trade
15 allies in the program?

16 A. I would.

17 Q. Let's go back to your Surrebuttal now,
18 page 7. You cite an e-mail and attach the e-mail as
19 an exhibit to your testimony that you represent as
20 supportive of the change; is that correct?

21 A. That's correct.

22 Q. And who was this e-mail from?

23 A. This e-mail is from Navitas, which is
24 also a trade ally that participates in our programs.
25 Specific-- specifically this is an e-mail from Amy

1 Nemeth.

2 Q. Was this e-mail solicited by you or
3 anyone else at KCP&L?

4 A. We did ask through our -- our
5 implementer, Clear Result, we asked that they, you
6 know, check with trade allies to see if there was any
7 supportive e-mails that they could provide as we were
8 preparing for our -- preparing for, you know, this
9 case.

10 Q. And Clear Result provided this one?

11 A. No. This e-mail actually went to Kevin
12 Brannon (phonetic), who's our business rebate manager,
13 product manager.

14 Q. So after soliciting e-mails of support
15 through Clear Result, you received one supportive
16 e-mail; is that correct?

17 A. No. We also received others as well.

18 Q. Do you mention any others in your
19 testimony?

20 A. I did not.

21 Q. Why not?

22 A. This one was very specific to the schools
23 that Mister -- Mr. Blake had very much said within his
24 testimony that public schools would be at a
25 disadvantage. So this demonstrates that there is

1 another very similar trade ally who works within that
2 space who does not believe that schools would be at a
3 disadvantage.

4 Q. Okay. Tell me about the other e-mails
5 you received.

6 A. Sure. So some of the other e-mails that
7 were received, I want to say there was four to five of
8 those e-mails from some of the larger trade allies.
9 They also stated support for our programs and through
10 the MEEIA Cycle 1.

11 Q. They were supportive of MEEIA Cycle 1?

12 A. Yes. They were supportive of our energy
13 efficiency programs that we've been offering pre-MEEIA
14 and for Cycle 1.

15 Q. Okay. So the e-mails you received in
16 support were in support of the Cycle 1 program?

17 A. In its entirety, yes.

18 Q. Okay. And you didn't receive any e-mails
19 other than this one in support of the proposed change
20 for MEEIA Cycle 2?

21 A. This one was very specific in support of
22 the Cycle 2 changes.

23 Q. I understand. I'm asking if you received
24 any others in support of Cycle 2?

25 A. No. Did not.

1 Q. Okay. And Navitas is a Kansas-based
2 company; is that correct?

3 A. I don't -- I don't know.

4 Q. Could you turn to the Schedule KHW-1.

5 A. Yes.

6 Q. Under Ms. Nemeth's name and various
7 credentials, could you read the address approved?

8 A. 25501 West Valley Parkway, Olathe,
9 Kansas.

10 Q. How many Missouri customers does Navitas
11 have?

12 A. I don't know.

13 Q. How many rebate applications has Navitas
14 submitted on behalf of Missouri customers?

15 A. I believe over a hundred.

16 Q. Is Navitas a vendor to Kansas City Power
17 & Light in any fashion other than being a trade ally?

18 A. I don't know.

19 Q. You don't know if there's any other
20 dollars going from KCPL to Navitas in any fashion
21 other than being a trade ally?

22 A. No, I don't know.

23 Q. Ms. Nemeth, do you know what her position
24 is with Navitas?

25 A. On her e-mail it says that she's an

1 engineering manager and that she works primarily with
2 K through 12 schools.

3 Q. Do you know if her responsibilities go to
4 marketing or otherwise incentivizing customers to
5 purchase energy incentive products?

6 A. I don't know.

7 Q. I'm going to hand you another exhibit
8 here. We're going to mark this as Exhibit 504.

9 (Brightergy Exhibit 504 was marked for
10 identification.)

11 BY MR. ZELLERS:

12 Q. Ms. Winslow, do you recognize this
13 exhibit as pages A25 and A26 from Kansas City Power &
14 Light's MEEIA Cycle 2 2016 to 2018 filing?

15 A. Yes.

16 JUDGE BUSHMANN: Excuse me. Is this
17 highly confidential?

18 MR. ZELLERS: The HC stuff is marked out.
19 This is a public document.

20 JUDGE BUSHMANN: Okay. Thank you.

21 BY MR. ZELLERS:

22 Q. Is this a reasonable copy of the original
23 filing for pages A25 and A26 of the Cycle 2 filing?

24 MR. STEINER: Just for clarification,
25 this is the application, Andy, not the stipulation?

1 MR. ZELLERS: Correct. That's right,
2 Roger. This is not the stipulation.

3 THE WITNESS: Yes. Correct. This was
4 submitted within our application.

5 MR. ZELLERS: Okay. I'd like to offer
6 this into evidence as Exhibit 504.

7 JUDGE BUSHMANN: Any objections?

8 Hearing none, it will be received.

9 (Brightergy Exhibit 504 was received into
10 evidence.)

11 BY MR. ZELLERS:

12 Q. And could you -- there's the subject
13 Headings on the left-hand column there. I'd like to
14 draw your attention to the one labeled Risk
15 Management. I've highlighted a section of text there.
16 Could you please read that out loud?

17 A. Many customers have internal return on
18 investment hurdles that are quite aggressive,
19 sometimes as short as a one-year payback.

20 Q. Thank you. Is it your testimony here
21 today, Ms. Winslow, on behalf of the Company that in
22 Cycle 2, we'll see the same levels of schools,
23 municipalities and churches invest in energy
24 efficiency measures as we saw in Cycle 1?

25 A. I'm sorry. Could you repeat that

1 question?

2 Q. Is it your testimony today on behalf of
3 the Company that during Cycle 2 if -- if the
4 stipulation is approved as filed, will the Commission
5 and the Company see the same level of C and I
6 customers invest in energy efficiency measures as we
7 saw in Cycle 1?

8 A. Yes.

9 MR. ZELLERS: That's all I have, your
10 Honor.

11 JUDGE BUSHMANN: Any cross by Ameren
12 Missouri? Any cross by Ameren Missouri?

13 MR. MITTEN: No, your Honor.

14 JUDGE BUSHMANN: Thank you.

15 Questions from the Bench, Mr. Chairman.

16 QUESTIONS BY CHAIRMAN HALL:

17 Q. Good morning.

18 A. Good morning.

19 Q. Let me start with the first exhibit, 501,
20 where the Company says, Effective July 1, 2015,
21 certain changes will take place to the -- to the -- to
22 the MEEIA program.

23 A. Correct.

24 Q. What authority does KCP&L have to
25 unilaterally change the reimbursement rate for a MEEIA

1 program without going to the Commission and getting
2 approval for that? Is there something in -- in the
3 MEEIA plan that would allow that?

4 A. Well, we ran this process through our --
5 as we ad-- as I submit within my testimony, we
6 discussed this with trade al-- or I'm sorry, we
7 discussed this with the DSM Advisory Group over I
8 believe two times during our quarterly DSMAG meetings.
9 And it was determined at that time that the tariff
10 allowed us to be able to make that change to the flat
11 rate incentive.

12 So it wasn't a un-- I wouldn't consider
13 it a unilateral decision. We did have other input
14 from Staff, for example, and OPC on -- and others that
15 were in the meetings regarding this change.

16 Q. So it's your understanding that under the
17 MEEIA plan approved by the Commission, the Companies
18 had the authority to make those changes?

19 A. Yes. And I believe that would have been
20 the perspective of the other stakeholders as well.

21 Q. Okay. Let me turn to just some mechanics
22 of how Cycle 1 MEEIA worked and compare it to what
23 you're proposing in --

24 A. Uh-huh.

25 Q. -- your MEEIA 2. Turning to page 3 of

1 your Direct Testimony -- and I believe you have that
2 in front of you.

3 A. Yes.

4 Q. I understood the calculation that's
5 contained on this page, lines 12 and 13, but I do have
6 a couple questions about it.

7 A. Sure.

8 Q. In this -- in this hypothetical, the
9 customer was to receive a \$6,670 rebate; is that
10 correct?

11 A. Correct.

12 Q. Okay. How was that to be paid?

13 A. So --

14 Q. Or how would that be paid in this
15 hypothetical case?

16 A. Sure. I mean there's different ways that
17 the utility, KCP&L, can pay the customer. They can
18 either be through a bill credit or we send them a
19 check for that rebate amount once the project is
20 completed and verified.

21 Q. So it's -- so that -- that check is
22 received -- is -- would be sent or the credit would be
23 received very soon after the project is completed?

24 A. Yes. We try and -- I mean depending
25 on -- on -- we do try to send the check within a

1 couple weeks after the completion of the project.

2 Q. And I assume that customers would -- if
3 they had the choice, would prefer to have a -- to have
4 the money earlier rather than later. So if they had
5 the choice between getting it all in one lump sum when
6 the project was completed as opposed to receiving it
7 over a longer period of time, they would prefer the
8 former?

9 A. I would assume. I think most people
10 would prefer money today as opposed to money in the
11 future.

12 Q. Right. That makes good economic sense.

13 A. Uh-huh.

14 Q. So under the Cycle 2 stipulated agreement
15 proposal, how -- how are customers to be reimbursed?

16 A. In the same manner.

17 Q. In a one-time lump sum payment?

18 A. Correct.

19 Q. It was my understanding that Brightergy
20 was making an argument that under -- under the
21 proposed Cycle 2, the payment period was -- was to be
22 extended. If that's, in fact, true, they're
23 incorrect?

24 A. Yes. I'm sorry. I guess I'm not -- I'm
25 not understanding what -- what you think that they

1 were asking or they were requesting.

2 Q. Well, I guess -- well, it's only relevant
3 is that under the proposed Cycle 2, that it would be a
4 lump sum payment reimbursement --

5 A. Right.

6 Q. -- as soon as the project was completed
7 and verified?

8 A. Yes. Yes.

9 Q. Okay. Okay. Mr. Blake in his Rebuttal
10 Testimony says that -- and you don't have his
11 testimony?

12 A. I do not.

13 Q. He says, and I quote, on page 4, lines 29
14 to 30 that the critical point is that level of rebate
15 necessary to tip the customer that is sitting on the
16 fence to make the energy efficiency investment, end of
17 quote.

18 Do you agree with that assessment, that
19 that's -- that's what we are looking for in terms of
20 setting the rebate amount in this program?

21 A. I think to a degree. I mean I think when
22 you look at rebate programs, all customers have
23 different payback ranges upon which they are operating
24 their business on. I know that Mr. Blake has specific
25 responsibility or he delivers programs specifically to

1 churches and to schools. And I believe -- I mean
2 schools and municipalities, I mean they're --
3 they're -- they're established businesses or
4 customers. I mean they're planning to be there for a
5 long time. So not necessarily is their payback always
6 going to be based on a very short amount of time.

7 So I think depending on the business that
8 a company is in and how long they expect -- expect to
9 be in a particular place, I think their payback
10 changes.

11 Q. I think then the answer is yes?

12 A. Yes.

13 Q. So if you set the rebate too high, then
14 you're giving a windfall to the customer. If you set
15 the rebate amount too low, you're not going to
16 incentivize the behavior that you're trying to
17 incentivize?

18 A. That's correct.

19 Q. So under Cycle 2 proposed in -- in the
20 stipulation, the Company would have -- it would -- the
21 reimbursement would start at 10 cents but it could go
22 up to 40 cents?

23 A. Yes.

24 Q. What type -- what would happen that would
25 cause the Company to increase the reimbursement rate?

1 A. We would continue to look at the number
2 of applications that we're receiving and continue to
3 get feedback from trade allies, feedback from our EM&V
4 evaluator as well as our implement-- implementer to
5 determine whether or not we feel it's necessary to
6 make that change.

7 **Q. What type information would you receive**
8 **and consider that would cause you to increase the**
9 **reimbursement rate?**

10 A. I think initially, you know, I do --
11 could I -- I'd like to explain one issue that I don't
12 feel like has been discussed yet. I mean, what we're
13 looking at is we're looking at just a one-for-one
14 across the custom program and Cycle 1 to the custom
15 program in Cycle 2.

16 One thing that the Company has done that,
17 I mean, is very different in Cycle 2 is that we moved
18 a majority of those projects that were going through
19 the custom program into the prescriptive program. So
20 for example, a lighting project that would have
21 otherwise been done under the custom program will now
22 have the opportunity to go through the prescriptive
23 program.

24 And the prescriptive program gives, for
25 an example, a flat rate. For an example, for an exit

1 sign -- for an LED exit sign we will give I'll say \$10
2 to replace that exit sign. So that \$10 is based on
3 the incremental meas-- the incremental cost to be able
4 to replace that. So we have gone through significant
5 studies with all of our -- with our -- with our
6 implementer, with our program design consultant, with
7 Navigant to set those levels.

8 So essentially the levels that are set
9 within that prescriptive program are based on the
10 45 to 50 percent of the incremental cost. Again, the
11 incremental cost could be argued by many different
12 people; however, again, we're relying on the expertise
13 of our -- of the -- of the consultant that we utilized
14 and we -- again, we do have the flexibility to change
15 those incentive ranges as well.

16 But, you know, it's difficult to say -- I
17 mean it's -- I think it's -- you're not drawing apples
18 to apples when you look at how the change between
19 Cycle 1 and Cycle 2 of the custom program are
20 happening, because, you know, one thing that we did
21 whenever we did do the initial trial balloon back in
22 April is that we are -- we're not proposing any
23 changes to our prescriptive program. However, now we
24 are. So a significant amount of those projects that
25 would have otherwise been done under the custom

1 program are now going to be done under the
2 prescriptive program.

3 Q. I assume that you would want to increase
4 the reimbursement rate if there was not sufficient
5 interest in the program?

6 A. Correct.

7 Q. And that would be the main cause.
8 Correct?

9 A. Yes.

10 Q. Do you -- under the Cycle 2 proposed
11 plan, do the companies have an economic incentive to
12 increase the reimbursement rate if there is
13 insufficient interest in the program?

14 A. Yes. I mean --

15 Q. Could you explain that?

16 A. Sure. I mean, KCPL has no motive to
17 suppress the -- the custom rebate incentive for
18 Cycle 2. In fact, we have every reason that we would
19 want to increase that rebate. However, we have --
20 we -- I mean we're stewards, I believe, of our -- of
21 obviously of how we spend our customers' money. And
22 by offering an incentive rate that is higher than is
23 necessary, that puts that increased burden on the rest
24 of the customers who participate and who don't
25 participate in the program.

1 So, for example, the DSIM charge, if all
2 those projects or th-- if we went back to the current
3 program for Cycle 1, customers have to bear -- I mean
4 based on the modeling that we've done, customers would
5 have to bear an additional \$11 million. That's a
6 significant amount of money. But KCP&L wants to make
7 sure that we are incenting at the right level. And so
8 we believe strongly that going ba-- going to this
9 10 cent model based on the experience that we have
10 seen from Ameren -- Ameren had a very successful
11 program for Cycle 1 and they only had a 92 percent
12 free ridership. That free ridership was also the same
13 free ridership for KCP&L Cycle 1 program.

14 So we shared the same free ridership
15 based on our design for Cycle 1 versus the flat rate
16 incentive. But we have -- I mean we have every motive
17 or every inclination to want to be able to meet our
18 goals. We have fi f--

19 **Q. Okay. And that's where --**

20 **A. Sure.**

21 **Q. -- I want -- I really am interested in**
22 **getting you to focus.**

23 **A. Yeah.**

24 **Q. What are the financial incentives for the**
25 **Company to increase the reimbursement rate if -- if**

1 **participation is insufficient?**

2 A. Sure. So we have -- we're rewarded -- or
3 we are co-- we're compensated for both program --
4 program costs, a throughput disincentive and an
5 earnings opportunity. So obviously on the throughput
6 disincentive, that's based on a calculation of any
7 lost margin times a mar-- or lost kilowatt hour sales
8 times the marginal rate. So the more that -- the more
9 sales or more energy efficiency projects, we get that
10 throughput disincentive as well.

11 But in addition, the earnings
12 opportunity, we have at stake up to 35 million dollars
13 to be able -- that -- that we could receive if we're
14 able to reach our targets, have -- and minimize free
15 ridership because the earnings opportunity is based on
16 a full retrospective EM&V.

17 So we are obviously very, very concerned
18 that offering a low incentive such as the 10 cents --
19 and, you know, Mr. Blake has asserted that that would
20 result in a very high free ridership. I mean we want
21 to minimize the free ridership so we can accomplish
22 our earnings opportunity.

23 Q. I believe you indicated that there were
24 at least a few other complaints or concerns by trade
25 allies concerning this possible change in the

1 reimbursement process --

2 A. Yes.

3 Q. -- and amount. Can you be any more
4 specific than that?

5 A. No. I mean, you know, the -- the
6 feedback that we have received is that customer -- or
7 that, you know, trade allies would like more
8 simplicity in the program so that they can explain
9 that to our customers. But as I had mentioned in my
10 testimony, there was, you know, minimal concern
11 expressed by other utilities -- or other customers,
12 excuse me.

13 Q. If -- if there was a trade ally that was
14 concerned, how would that trade ally have expressed it
15 and would you be aware of the concern?

16 A. Yes. So a trade ally could have
17 expressed it through the trade ally forums. We had
18 one trade ally forum in July and then a second one in
19 December of 2015. At each of these trade ally forums,
20 we had between 75 to over 100 trade allies that
21 attended.

22 Q. And of those 100, how many expressed
23 concern about this possible change in the
24 reimbursement rate?

25 A. During the forums, I don't believe that

1 there was any. I didn't -- I was not present at the
2 entir-- entirety of the forum, but from the feedback
3 that I have received from my direct reports, there was
4 min-- none to minimal.

5 Q. Do you have Exhibit 502 in front of you?

6 A. Yes. The one May -- from May 6th?

7 Q. Yeah.

8 A. Yes.

9 Q. Counsel for Brightergy asked you a couple
10 questions about it, but you didn't get the question
11 that I -- you weren't given the question that I have.
12 So the third -- I guess fourth sentence down where it
13 says, Over the past two weeks, since announcing the
14 incentive payment plan, many trade allies and
15 customers have expressed concern.

16 A. Yes.

17 Q. Well, how do you reconcile that statement
18 with what you just said about there being little
19 concern about the change? Those seem irreconcilable
20 to me.

21 A. And I cannot reconcile those two based on
22 the information that I have and that has been provided
23 to me.

24 Q. What was the effect in terms of interest
25 in this particular program after KCP&L announced that

1 it was considering changing the reimbursement rate?

2 A. So again, we first ran that by the trade
3 allies and told them that we were planning on making
4 that change in our -- at our July forum and then
5 secondary in our December forum, giving them an update
6 on the status of the filing. I'm sorry. The question
7 was what has been the impact of projects?

8 Q. Yeah. I mean, was there -- was there a
9 surge in applications for --

10 A. Yes, there was. There is -- there was
11 definitely a surge of applications during the last --
12 the month of December.

13 Q. And what do you attribute that to?

14 A. That the program is changing.

15 Q. So why would that cause a surge in
16 interest in the program? I think you said a moment
17 ago that it's your expectation that under Cycle 2
18 proposed, the interest in this -- in the program would
19 be the same as it was under Cycle 1.

20 A. Right.

21 Q. So how can that be true if -- if it's
22 also true that there was a surge in applications when
23 there was a possibility of a change at a future date?

24 A. Right. I mean there was definitely a
25 surge of applications. We're currently still working

1 through all those applications. From my perspective,
2 you know, we are going from a custom program that was
3 at -- the average has been 22 cents per kilowatt hour.
4 And so what we communicated to the marketplace, that
5 would be going to 10 cents per kilowatt hour.

6 So I would, I mean, equate it very
7 similarly to a sale at a retail store. I mean, if
8 they hear that, I mean, you're going to be cutting
9 that significantly -- again, just drawing numbers to
10 numbers, 10 cents to an average of 22 cents, they're
11 going to come in and they're going to submit multiple
12 applications.

13 Q. But I guess you're assuming that those
14 were applications that would come in regardless. They
15 were just submitting them earlier to take advantage of
16 more lucrative reimbursement?

17 A. I would assume so, yes.

18 Q. Okay. What is the basis for that
19 assumption? I mean isn't it -- isn't it also possible
20 that there were certain applicants that would not
21 apply at all at a lower reimbursement rate?

22 A. I -- I don't know. I mean without
23 questioning all those customers, I'm not sure.

24 Q. Yeah.

25 A. I don't know what that would be.

1 Q. And this may be a question for Mr. Rush
2 and if so, simply let me know.

3 A. Uh-huh.

4 Q. But as you know, one -- one purpose of
5 MEEIA is to value demand-side investment on par with
6 supply-side investment.

7 A. Uh-huh.

8 Q. So there is -- so related to that is the
9 assumption that if a Company makes demand-side
10 investments, to some extent, it will not need to make
11 certain other supply-side investment. Would you agree
12 with that?

13 A. Yes.

14 Q. So at what point does KCP&L decide
15 because of a demand-side program, at what point does
16 it decide, okay, well, we don't need to make this a
17 supply-side investment?

18 A. So that process is done through our
19 integrated resource plan that's done --

20 Q. Right.

21 A. -- through the triennial report.

22 Q. I understand the mechanics of how it is
23 made public. I'm asking more internally is there --
24 does -- does the demand-side program need to go on for
25 a certain number of years before there is a

1 supply-side effect in terms of investment? Or is it a
2 matter of the size of the demand-side? I mean, what
3 factors would affect the decision to not increase
4 generation in a particular plant or not build another
5 plant?

6 A. Right. So I mean, from my understanding,
7 that's -- that's done through the development of
8 their re-- of our supply resource plan. And as long
9 as the cost of the programs are less than the cost of
10 the replacement resource, then we would continue to do
11 the energy efficiency programs.

12 Q. Okay. That's it. Thank you very much.

13 A. Thank you.

14 JUDGE BUSHMANN: Commissioner Kenney?

15 COMMISSIONER KENNEY: Thank you.

16 QUESTIONS BY COMMISSIONER KENNEY:

17 Q. Good morning.

18 A. Good morning.

19 Q. I understand Brightergy's concerns and I
20 want to go back to -- so I just understand the formula
21 exactly, how all the numbers balance.

22 A. Uh-huh.

23 Q. I want to go back to some questions that
24 Chairman Hall asked you.

25 A. Okay.

1 Q. Okay. Go back to your Direct Testimony,
2 page 3, that hypothetical chart.

3 A. Yes. Uh-huh.

4 Q. I just want to make sure I understand
5 everything. So when customer -- project costs of
6 13,340 so the allowable rebate is 6,670, which the
7 customer can get that as a rebate check within a month
8 or so?

9 A. Uh-huh.

10 Q. So their total investment now is \$6,670.
11 Correct?

12 A. Yes. It's the less -- yes.

13 Q. And the avoided costs are \$2,668
14 annually?

15 A. Uh-huh.

16 Q. So if I take the -- the incremental cost
17 of 6,670 and divide it by the 2,668, I get my payback,
18 right, my 2.5 years?

19 A. Yes.

20 Q. Now, using that same chart in your
21 hypothetical -- because I know Commissioner Hall asked
22 a question, but I don't think it was answered. Not
23 that you didn't. I don't know if it was -- anyway, if
24 you take -- the estimated savings are 23,232
25 kilowatts. Correct?

1 A. Uh-huh.

2 Q. So -- and the hypothetical , using this
3 chart for Cycle 2 --

4 A. Yes.

5 Q. -- if we multiply that by 10 cents, we'd
6 have \$2,323.20 that would be a rebate. Correct?

7 A. Correct.

8 Q. So if we subtract that from the project
9 cost --

10 A. Uh-huh.

11 Q. -- and divide that by the avoided cost of
12 2,668, we get a payback of about 4 years and --
13 4.2 years --

14 A. Correct.

15 Q. -- or 4 years and 2 or 3 months.
16 Correct?

17 A. Yes.

18 Q. So you understa-- now, that being the
19 case, KCP&L does not believe that that's going to --
20 companies would look at that and that it would affect
21 the -- the program going forward? You think as many
22 customers would continue to jump on if that was the
23 case? Because I'm a businessman. I've been in
24 business all my life.

25 A. Sure.

1 Q. That would make me look at it and say,
2 you know -- payback. My son works for a company and
3 he designs machines and he automates their machinery.
4 And he has to come up with the program cost. And it's
5 the payback period. The company only cares about the
6 payback period, when's the payback.

7 A. Uh-huh.

8 Q. That's all they care about. And then
9 their annual savings going down. So everything has to
10 be paid back within 12 months and they're happy with
11 the annual savings.

12 A. Uh-huh.

13 Q. So do you think that has an effect on the
14 customers?

15 A. I think customers have an understanding
16 of the payback, yes.

17 Q. So do you think that will affect demand,
18 going from 2.5 years to 4.5 years?

19 A. Well, again, I think -- again, if you're
20 drawing the -- a comparison between not understanding
21 what project this was, this project could -- will
22 likely also fall within our prescriptive program. So
23 our prescriptive program has lighting incentives where
24 incentives can range -- or can go up to 20 cents per
25 kilowatt hour. So there is a similar -- I mean,

1 again, we're taking a majority of those projects that
2 would have otherwise been done under the custom
3 program and we're moving them to the prescriptive
4 program.

5 Q. Let's say this hypothetical --

6 A. Sure.

7 Q. -- is just a hypothetical that's not
8 necessarily in that category.

9 A. Sure.

10 Q. Just a hypothetical. But I have all
11 those numbers correct. Right?

12 A. You do. Yes.

13 Q. Okay. Great. Thank you.

14 A. Yes.

15 JUDGE BUSHMANN: Commissioner Rupp?

16 COMMISSIONER RUPP: Thank you.

17 QUESTIONS BY COMMISSIONER RUPP:

18 Q. Help me understand the possibility of
19 increase of 10 cents up 40 cents.

20 A. Uh-huh.

21 Q. You're six months into the program. You
22 decide, okay, we're not getting the response, we're
23 going to up to 20 cents. Is that retroactive to all
24 the customers that previously had signed up that were
25 getting under 10 cents?

1 A. No, it would not be.

2 Q. Does that create an incentive if there is
3 reason to not participate in the program in the fact
4 that if there's not enough participation, that KCPL or
5 GMO would be forced to increase the -- would that add
6 to the hesitancy of, I'm afraid I missed the boat on
7 the good program, this one's not -- I don't want to
8 miss it again. Have you looked at any of the modeling
9 on how many people would delay in the hopes that there
10 would be an increase down the road?

11 A. We have not done any modeling
12 specifically on that. You know, we have -- again,
13 we're just taking information that we have from
14 programs that have been successful such as Ameren.
15 Ameren also has a mid, a min and a max. So their
16 program -- again, we're -- we've looked, you know, at
17 their program and seen the success of their program.

18 Again, their program is six and seven
19 cents. Six cents for lighting and seven cents for
20 non-lighting. So we've seen the success of their
21 programs at that lower incentive rate. So we believe
22 that we will be able to make that same change in the
23 marketplace as well. I don't think --

24 Q. And so does Ameren have the ability to
25 increase it by six-fold?

1 A. I don't know what their maximum is, but I
2 mean, again, I would -- I don't think that customers
3 are holding out, you know, trying to force Ameren to
4 change their incentive, knowing that they have a
5 range.

6 Q. Do you believe that in the psychology of
7 a shopper that if they've missed a big sale, they will
8 be more focused on their sun-- their -- what they did
9 not get and what they could get in the next sale and
10 they choose not to participate because they've missed
11 the big discount in the psychology of how people
12 purchase?

13 A. I think it's a possibility, yes.

14 Q. Thank you.

15 JUDGE BUSHMANN: Recross based on Bench
16 questions. Commission Staff.

17 MS. MUETH: Yes, your Honor.

18 RE CROSS-EXAMINATION BY MS. MUETH:

19 Q. Ms. Winslow, I believe it was Chairman
20 Hall who was asking you about a surge in
21 participation -- or applications, I should say, at the
22 end of Cycle 1. Do you recall those questions?

23 A. Yes.

24 Q. Is it possible that that surge could have
25 been due to uncertainty in the existence at all of a

1 MEEIA Cycle 2?

2 A. Yeah, that's a possibility as well.

3 Q. Under the custom program in Cycle 1, do
4 all projects receive a 22 cent average per kilowatt
5 hour?

6 A. That's the average. I mean currently if
7 you were to take the amount of incentives that we've
8 paid and divided it by the first year kilowatt hours
9 that we're reporting.

10 Q. So there's a range there. Some are above
11 and some are below that?

12 A. Yes.

13 Q. Is it possible that if the Cycle 2 as
14 laid out in the stipulation, was approved, that some
15 customers might see a higher incentive if the -- if
16 their project was moved to the prescriptive program?

17 A. There's a possibility, yes.

18 Q. Okay. I have no further questions.

19 JUDGE BUSHMANN: OPC.

20 MR. OPITZ: No questions, your Honor.

21 JUDGE BUSHMANN: Renew Missouri and
22 housing organizations.

23 MR. LINHARES: No questions, Judge.

24 JUDGE BUSHMANN: Division of Energy?

25 MR. ANTAL: No questions.

1 JUDGE BUSHMANN: Uni ted for Mi ssouri .

2 MR. LINTON: I have no questi ons.

3 JUDGE BUSHMANN: NRDC.

4 MR. ROBERTSON: No questi ons.

5 JUDGE BUSHMANN: Ameren Mi ssouri ?

6 MR. MITTEN: No questi ons.

7 JUDGE BUSHMANN: Bri ghtergy.

8 MR. ZELLERS: Brief follow-up, your

9 Honor.

10 RECROSS-EXAMINATION BY MR. ZELLERS:

11 Q. You -- you told the Chairman that this
12 would be an increase in cost to the program budget of
13 \$11 million; is that correct?

14 A. That's correct.

15 Q. What's the total program budget right now
16 as proposed by the Company?

17 A. The total program budget for a custom
18 program?

19 Q. For overall I.

20 A. Oh, for overall I. We're around I believe
21 50 million in KCPL MO and about 52 million in GMO.

22 Q. So this would be about 10 percent of the
23 total budget; is that correct?

24 A. That's correct.

25 Q. What's the current DSIM charge for a

1 typical customer?

2 A. I don't have that in front of me.

3 Q. Would you agree that that charge might go
4 up approximately 10 percent?

5 A. I believe the analysis that we provided
6 in my testimony indicated that the DSIM charge would
7 increase by 15 percent for a non-residential customer.

8 Q. Why would it go up 15 percent when it's
9 only 10 percent of the total budget?

10 A. I don't have those calculations in front
11 of me.

12 Q. Okay. Chairman Hall also asked you about
13 the circumstances that might lead to a change in
14 incentive levels during Cycle 2. Can you explain
15 again what circumstances might lead to such a change?

16 A. Again, the Company will continue to
17 evaluate the participation within the program. We
18 will be reviewing this with our EM&V provider. You
19 know, as -- you know, we will be having a new EM&V
20 provider for Cycle 2 and we will begin to work through
21 that process with them.

22 And so, you know, through that process
23 we'll just have to determine whether or not we feel
24 like a change in the incentive level is necessary in
25 order to achieve those goes-- goals as well as

1 continue to balance that against the cost to the
2 customer.

3 Q. Will that be a public process?

4 A. That process would be part of the 11-step
5 process as defined within the tariff.

6 Q. So is the answer it would be part of the
7 public process?

8 A. I don't believe that there's a public
9 piece of it. I do believe that -- I mean, we would --
10 I mean just as a -- as a trade ally partner, we would
11 talk with trade allies regarding that.

12 Q. Would you talk with Brightergy about
13 that?

14 A. They are a trade ally.

15 Q. So the answer is yes?

16 A. Yes.

17 Q. So before such a change would be made,
18 you would consult with trade allies, including
19 Brightergy?

20 A. Yes.

21 Q. If Cycle 2 sees -- you know, scratch
22 that.

23 MR. ZELLERS: That's all I have, your
24 Honor.

25 JUDGE BUSHMANN: Redirect by KCPL.

1 MR. STEINER: Just briefly, your Honor.

2 REDIRECT EXAMINATION BY MR. STEINER:

3 Q. Ms. Winslow, do you recall Commissioner
4 Kenney's questions about payback periods?

5 A. Yes.

6 Q. Were there projects under Cycle 1 that
7 had a payback of longer than four years?

8 A. Yes.

9 Q. What was the range of paybacks for
10 Cycle 1 C and I projects?

11 A. The range of C and I projects as stated
12 within my testimony, which -- which included a smaller
13 subset of lighting projects was 2 to 10 years. But we
14 have seen through 2015, that data indicates that some
15 of those payback periods could be even as high as
16 15 years.

17 Q. You had some questions from Commissioner
18 Hall about the exhibits that Brightergy had. Exhibit
19 501 was I believe one that he spoke about. If you
20 could refer back to that.

21 A. Is that the May 6th letter?

22 Q. That is the April 23rd.

23 A. Yes.

24 Q. So that -- that exhibit says that there
25 would be a change that will -- that the projects --

1 the C and I custom projects will go to 10 cents
2 kilowatt saved and 50 percent of the project; is that
3 correct?

4 A. Up to the 50 percent, yes.

5 Q. And was that change made by the Company?

6 A. No. That change was not made.

7 Q. And why wasn't it made?

8 A. After -- as indicated in the e-mail that
9 was sent on May the 6th, it says, Over the past two
10 weeks, since announcing the incentive payment plan,
11 trade allies had expressed concern regarding the
12 impact of this change.

13 In addition, one thing that we did not --
14 one thing that was part of that consideration was that
15 we had not ch-- we had not considered changing yet our
16 prescriptive rebate program to be more expansive and
17 include a lot of those lighting projects that were
18 currently going through Cycle 1.

19 Q. So with regard to that change, you
20 listened to trade ally and customer concerns; is that
21 correct?

22 A. Correct.

23 Q. Now, for the change to Cycle 2 that's
24 presented in the April -- in the stipulation today,
25 have you heard concerns from trade allies other than

1 **Brightergy about that change to a flat rate incentive?**

2 A. No. I mean -- well, you know, there's --
3 there's other trade allies that are -- are concerned
4 obviously because I mean this will impact -- or may
5 impact, I mean, their -- you know, their
6 profitability. So from that perspective, some are
7 not -- you know, kind of -- you know, have expressed
8 some concern over that, but no great concern as what
9 we've heard from Brightergy.

10 Q. Okay. Did any trade ally express
11 appreciation that the Company was trying to simplify
12 the incentive level?

13 A. Yes. We had received feedback that they
14 were very appreciative of the simplification of the
15 model.

16 Q. Do you recall asking -- being asked
17 questions about a surge applications from Chairman
18 Hall?

19 A. Yes.

20 Q. Have the trade alligi -- trade allies,
21 including Brightergy, been doing any additional
22 marketing to customers at the end of last year that
23 you're aware of?

24 A. Yes, they did.

25 MR. ZELLERS: I'm going to object to that

1 question. The witness doesn't have any firsthand
2 knowledge of what 200 other companies may or may not
3 be doing at this time.

4 JUDGE BUSHMANN: Well, I'll allow it and
5 allow him to lay that foundation for the question.

6 BY MR. STEINER:

7 Q. Were you given any copies of marketing
8 that trade allies had done at the end of last year?

9 A. Yes. I was given some information from
10 Brightergy that Brightergy had sent to customers.

11 Q. What did that marketing say?

12 A. The marketing information said that, you
13 know -- again, I don't have that in front of me, but
14 it was simply trying to -- you know, it was trying to
15 get the customer to move ahead with projects before
16 the year end and that KCP&L was changing the program
17 by 50 percent.

18 MR. ZELLERS: Your Honor, I'm going to
19 object to this testimony. Again, if the Company has
20 documentary evidence of this, that's what they should
21 be admitting and not hearsay evidence based on what
22 this witness may have seen.

23 JUDGE BUSHMANN: Overruled.

24 BY MR. STEINER:

25 Q. Did you see any other marketing from

1 other companies besides Brightergy?

2 A. Not that I recall.

3 Q. Now, you talked to Staff counsel and I
4 believe the Commissioners about trade allies. I think
5 you said you had over 200 trade allies; is that
6 correct?

7 A. That's correct.

8 Q. What's the breakdown as far as the number
9 of applications of those 200 trade allies?

10 A. Sure. So certainly we have some trade
11 allies that participate more than others. We have
12 approximately 3 trade allies that make up about
13 30 percent of our -- of the kilowatt hour savings
14 achieved through the program.

15 Q. Could you name those trade allies?

16 A. I could, yes.

17 Q. Would you?

18 A. Yes. I believe it's FSG, Sarin and
19 Brightergy.

20 Q. Thank you. That's all I have.

21 JUDGE BUSHMANN: Ms. Winslow, that
22 completes your testimony. You may step down now.
23 Thank you.

24 THE WITNESS: Thank you.

25 JUDGE BUSHMANN: Why don't we go ahead

1 with the next KCPL witness?

2 MR. FISCHER: Company would call Tim
3 Rush.

4 (Witness sworn.)

5 JUDGE BUSHMANN: Please be seated. You
6 may be seated.

7 TIM RUSH, testified as follows:

8 DIRECT EXAMINATION BY MR. FISCHER:

9 Q. Mr. Rush, please state your name and
10 address for the record.

11 A. Tim Rush. My address is 1200 Main
12 Street, Kansas City, Missouri.

13 Q. Are you the same Tim Rush that caused to
14 be filed in this proceeding Direct Testimony, which
15 has been marked as Exhibit 100?

16 A. I did.

17 Q. And did you also file Surrebuttal
18 Testimony, which I understand it's been marked as 101?

19 A. I did.

20 Q. Do you have any corrections or changes
21 that need to be made in that testimony, either piece?

22 A. I do not.

23 Q. If I were to ask you the questions
24 contained in that testimony, would your answers be the
25 same today?

1 A. Yes, they would.

2 Q. And are they true and accurate to the
3 best of your knowledge and belief?

4 A. They are, yes.

5 MR. FISCHER: Judge, with that, I would
6 move for the admission of Exhibit 100 and 101 and
7 tender Mr. Rush for cross-examination.

8 JUDGE BUSHMANN: Any objections to the
9 receipt of those exhibits?

10 Hearing none, they are received into the
11 record.

12 (KCPL Exhibits 100 and 101 were received
13 into evidence.)

14 JUDGE BUSHMANN: And first cross would be
15 Commission Staff.

16 CROSS-EXAMINATION BY MR. BERLIN:

17 Q. Good morning, Mr. Rush.

18 A. Good morning.

19 Q. Mr. Rush, in your testimony you testified
20 on the matter of the regulatory flexibility
21 provisions.

22 A. I did. Yes.

23 Q. And just to be clear, does KCP&L
24 management view that the approval of those provisions
25 are necessary for the Company to go forward with a

1 MEEIA Cycle 2 plan?

2 A. We do, yes.

3 Q. Okay. Thank you. That's the only
4 question I have.

5 A. Okay.

6 JUDGE BUSHMANN: Public Counsel .

7 MR. OPITZ: No questions, your Honor.

8 JUDGE BUSHMANN: Renew Missouri and
9 housing organizations.

10 MR. LINHARES: No questions, your Honor.

11 JUDGE BUSHMANN: Division of Energy.

12 MR. ANTAL: No questions.

13 JUDGE BUSHMANN: United for Missouri .

14 MR. LINTON: No questions.

15 JUDGE BUSHMANN: Ameren -- or excuse me,
16 NRDC.

17 MR. ROBERTSON: No questions.

18 JUDGE BUSHMANN: Ameren Missouri .

19 MR. MITTEN: No questions.

20 JUDGE BUSHMANN: Brightergy.

21 MR. ZELLERS: No questions, your Honor.

22 JUDGE BUSHMANN: Any questions from the
23 Bench? Mr. Chairman?

24 QUESTIONS BY CHAIRMAN HALL:

25 Q. Good morning, Mr. Rush.

1 A. Good morni ng.

2 Q. Concerning regulatory flexibility, could
3 you explain to me why that is so important to KCP&L
4 and GMO that if the Commission were to disapprove the
5 proposal on that basis, that you would not submit --
6 you would not participate in MEEIA? Why is it so
7 important?

8 A. I think I'll start with I tried to
9 describe it in my testimony. Essentially MEEIA is
10 still in its infancy. There's a lot of things that
11 have not been completed at this stage. While greater
12 Missouri -- KCPL Greater Missouri Operations Company
13 as well as Kansas City Power & Light have had MEEIA's
14 in place, they've only gone through the program period
15 of that.

16 We've actually gone through a prudence
17 review at KCP&L Greater Missouri Operations Company
18 for some of the programs and that's been successful.
19 But a lot of things are still uncertain with -- with
20 MEEIA. We have not gone through a full EM&V with
21 regard to the performance incentive of Cycle 1 and so
22 there's a lot of questions yet to be answered.

23 During that process, there's also a
24 rulemaking that's going -- that's in place with MEEIA
25 with regard to, you know, actions that --

1 modifications that may occur with the rule. So
2 there's a lot of uncertainty with what may occur
3 there. We don't know what will happen out of the
4 EM&V. And when you get into a performance review,
5 there's potential for a lot of issues that may surface
6 from various participants' interests in that.

7 Other things that may happen with regard
8 to that is a Clean Power Plan. There's a lot of
9 uncertainty. When it first came out, it was fairly
10 clear that you shouldn't be doing energy efficiency
11 now. You should wait until I think it was 2019 and
12 then you get to get the benefits of that reflective in
13 the Clean Power Plan. I don't think that's maybe what
14 will occur ultimately, but that's how it started out.
15 And so there's still a lot of questions on that.

16 And that -- that's really the -- the
17 reasoning behind it is simply, you know, we're in the
18 early stages of MEEIA, we've not completed a full
19 cycle of it yet and we don't know what will happen
20 there. And there's some questions about other things
21 that may occur with regard to rule makings and other
22 things.

23 Q. Well, under the MEEIA rules, if
24 circumstances were such that the Company wanted to
25 eliminate the program, it would simply have to come to

1 the Commission and get approval for that. Correct?

2 A. There is a provision in -- in the rule
3 that essentially, in my mind, would say if you're
4 going to shut down a program, you need to come and go
5 through this process. And we're not trying to get rid
6 of that issue. But what we're talking about is the
7 full MEEIA program itself, all -- the entirety of it.

8 Q. Under the existing rules, how would the
9 Company get rid of all the programs? It would need to
10 come to the Commission and get approval. Correct?

11 A. I believe without this provision, we
12 would.

13 Q. So is it -- are you essentially concerned
14 that the Company might -- might deem it necessary to
15 shut the entire program down and the Commission might
16 not agree? Is that your concern?

17 A. I don't think that's our real concern. I
18 think our real concern is the timeliness of that
19 process where you guys have a hearing -- I know it has
20 a 30-day provision it says in the rule, but there are
21 a lot of questions surrounding that -- about that
22 process because it also has a hearing associated with
23 it.

24 So -- so again, the -- the process
25 involved with that is -- has a lot of uncertainty --

1 uncertainty to it also. It's a -- it's a very
2 significant issue and there's just an awful lot of
3 uncertainty to it. I realize -- I mean, the programs
4 are voluntary. I understand that. I think the
5 Commission recognizes that. But what we're trying to
6 make sure is, is that we protect the interest of our
7 customers, our shareholders and -- and all of the
8 constituents involved.

9 It's something that we will -- absolutely
10 will not take lightly. I mean it is -- if you -- if
11 you shut down the programs, it will have a huge impact
12 on -- on everyone involved in our territory so it's
13 not something you would take lightly.

14 **Q. How would the existence of this**
15 **regulatory flexibility, in your view, affect, if at**
16 **all, the interest customers might have in any of these**
17 **MEEIA programs?**

18 A. I don't think it has a bearing at all on
19 the interest of customers in the programs. I mean, I
20 think, you know, it -- the only thing I think what's
21 been tried to imply is that there's some kind of a
22 threat the Company puts out and that's not an issue in
23 my mind.

24 **Q. Right. But I'm wondering what the effect**
25 **would be in the marketplace. And in fact, I could**

1 actually see a scenario where the fact that the
2 Company could pull the plug at any time might increase
3 interest in the program, initially at least.

4 A. You know, it might -- it may. I mean,
5 because -- but honestly what we -- how we've
6 positioned it is if we decided to terminate it, we
7 would give a 30-day notice and we would honor
8 everything that was done during that entire period.
9 So maybe it d-- would encourage. I don't -- that's
10 not the intent of it.

11 Q. Do you know what kind of planning or
12 investment need is -- is required for a customer to
13 take advantage of this particular program? I mean is
14 there -- can a customer make a decision in that short
15 a time frame?

16 A. Oh, absolutely, yes.

17 Q. And -- and that is typical in your view?

18 A. From my perspective, if -- if somebody
19 were very much wanting to do something quickly,
20 30 days is a very easy time. Because these are not
21 building-a-power-plant kind of decisions that take
22 months and months and months of engineering, et
23 cetera.

24 Most customers though typically have, you
25 know, made evaluations internally of what they need to

1 do and kind of have an idea of what they might like to
2 do. They may have not acted on it that quickly. You
3 know, they may have not acted on it at that point.

4 Q. It's my understanding based on comments
5 from counsel -- from your counsel, that Ameren
6 Missouri does not have this provision or did not have
7 this provision in their Cycle 1 and did not seek it in
8 their Cycle 2; is that correct?

9 A. That's my understanding, but yet they
10 don't have a Cycle 2 at this stage.

11 Q. Correct. Correct. Is there something
12 different in the circumstances of the two companies
13 that would cause KCP&L to need this provision and
14 Ameren to not need it?

15 A. I don't know Ameren's circumstances, but
16 I do know that our Company really feels it's necessary
17 to move forward and -- and feels that, you know, the
18 risk of terminating the programs is very, very, very
19 slim, but there is lots of uncertainty that brings
20 that into question of the necessity to have that
21 provision.

22 Q. I have no further questions. Thank you.

23 COMMISSIONER STOLL: No questions. Thank
24 you for your testimony.

25 JUDGE BUSHMANN: Recross based on Bench

1 questions. Commission Staff.

2 MR. BERLIN: No questions. Thank you.

3 JUDGE BUSHMANN: OPC.

4 MR. OPITZ: No questions, your Honor.

5 JUDGE BUSHMANN: Renew Missouri.

6 MR. LINHARES: No questions, your Honor.

7 JUDGE BUSHMANN: Division of Energy.

8 MR. ANTAL: No questions.

9 JUDGE BUSHMANN: United for Missouri.

10 MR. LINTON: No questions.

11 JUDGE BUSHMANN: NRDC.

12 MR. ROBERTSON: No questions.

13 JUDGE BUSHMANN: Ameren, Missouri.

14 MR. MITTEN: No questions.

15 JUDGE BUSHMANN: Brightergy.

16 MR. ZELLERS: No questions, your Honor.

17 JUDGE BUSHMANN: Redirect by KCPL.

18 MR. FISCHER: Just briefly.

19 REDIRECT EXAMINATION BY MR. FISCHER:

20 Q. Mr. Rush, just going backwards a little
21 bit, in answer to one of the Commissioner questions,
22 you indicated that you felt the risk that we would
23 exercise that regulatory flexibility provision is
24 very, very, very slim risk. Do you recall that?

25 A. Yes, I do.

1 Q. Would you explain why you believe that
2 would be a very, very slim risk?

3 A. Well, I think, first of all, the Clean
4 Power Plan, there -- there's still a lot of
5 uncertainty with that kind of an issue. With regard
6 to -- to this, we're now kind of to the stage of
7 starting to understand where things are laying out.

8 But the farther we get into the program,
9 that if -- if the programs are approved and
10 implemented, the less likelihood that we would want to
11 exercise this. Because what we do is -- what we're
12 saying here is if we terminate these programs, we give
13 up the right to any recovery for an earnings
14 opportunity.

15 So we basically say, you know, we --
16 we're foregoing anything and we will continue our
17 obligations for the cost of the programs, for the
18 throughput disincentive, but any earnings opportunity
19 that we may have earned at that stage, we forego that.
20 So we're taking as big a -- we're taking a significant
21 cut or -- or, you know, earnings to do this. And it's
22 very substantial.

23 You know, as mentioned and as in the
24 stipulation, there's the potential that we could make
25 up to 35 million dollars. So the farther we get into

1 this, we're going to give that up. So to take -- take
2 that and say, oh, yeah, we're going to shut these
3 programs down, we wouldn't do that lightly so
4 that's --

5 Q. Is the 35 million a total Company number
6 or does that break down between KCPL and GMO?

7 A. It breaks -- it's between KCPL and GMO.
8 I think GMO is somewhere in the order of 20 million
9 dollars and I think KCPL is in the order of 15 million
10 dollars as far as that. It's laid out in the plan.
11 And there are actually -- you know, if we do more
12 programs and do other things, it could change, but --
13 but that's kind of where we're at at this stage
14 achieving where we think we will be.

15 Q. You were also asked a question about why
16 you felt the regulatory flexibility provision was
17 important and you discussed -- and you mentioned that
18 in the Clean Power Plan as was originally proposed, it
19 might not make sense to do this until 2019 --

20 A. That's my --

21 Q. -- do you recall that?

22 A. That's my understanding, yes.

23 Q. Are those rules still in flux?

24 A. They are.

25 Q. And would you explain what it would be

1 about the Clean Power Plan that would make sense
2 potentially to have to delay implementation of energy
3 efficiency plans?

4 A. Well, essentially they don't recognize
5 the reduction of energy in their measurement or their
6 threshold levels of measurement. And so it's better
7 to wait until a certain time frame to implement
8 programs and, therefore, you get to utilize that as a
9 reduction of the clean air requirements that are out
10 there.

11 Q. So are you saying you wouldn't get credit
12 for what you did in 2016 if that provision --

13 A. Right.

14 Q. -- was in effect?

15 A. That is correct.

16 Q. I believe you also mentioned in answer to
17 one of the questions some of the supply-side options
18 of building a power plant. And --

19 A. Yes.

20 Q. -- does MEEIA suggest that DSMs should be
21 evaluated on the same basis as supply-side options?

22 A. It does, yes.

23 Q. If you were building, say, a wind farm,
24 would you have to come in to the Commission and ask
25 for approval to decide that it no longer made economic

1 **sense to do that?**

2 A. We would not. If -- if, you know, we
3 were in the process of building some kind of a
4 generation element, whether it's a wind turbine or a
5 gas -- you know, a CT or -- or whatever, and it -- the
6 economics decided that it's -- we've got to shut it
7 down, we -- we would be able do that. There's not a
8 mandate that we'd have to -- we would have to do that
9 today.

10 MR. FISCHER: I think that's all I have,
11 Judge. Thank you.

12 JUDGE BUSHMANN: Thank you for your
13 testimony, Mr. Rush. You may step down.

14 THE WITNESS: Thank you.

15 JUDGE BUSHMANN: We're ready for Staff
16 witness.

17 (Witness sworn.)

18 JOHN A. ROGERS, testified as follows:

19 DIRECT EXAMINATION BY MR. BERLIN:

20 Q. Good morning, Mr. Rogers.

21 A. Good morning.

22 Q. Please state your name for the record.

23 A. John Rogers.

24 Q. And your job title?

25 A. Utility -- regulatory utility manager.

1 Q. And how long have you worked in that
2 posi ti on?

3 A. Seven years.

4 Q. And are you the same John Rogers who has
5 prepared pre-filed Direct and Surrebuttal Testimonies
6 pre-marked as Exhibit Numbers 201 and 202
7 respectivel y?

8 A. Yes.

9 Q. And you prepared both your Direct and
10 Surrebuttal Testimonies in a question and answer
11 format?

12 A. Yes.

13 Q. And do you have any corrections to make
14 to either your Direct or Surrebuttal Testimonies?

15 A. Only one. And that's on my Surrebuttal
16 Testimony, page 4, line 13. The word "customer"
17 should be "custom. "

18 Q. Okay. And are the answers that you
19 provided to questions in your Direct and Surrebuttal
20 Testimonies true and correct to your best information
21 and belief?

22 A. Yes, they are.

23 Q. And if I were to ask you the same
24 questions in your Direct and Surrebuttal Testimonies
25 today, would your answers be substantially the same?

1 A. Yes.

2 MR. BERLIN: Your Honor, I move to admit
3 into the record Mr. Rogers' Direct Testimony marked as
4 Exhibit 201 and Surrebuttal Testimony marked as
5 Exhibit 202.

6 JUDGE BUSHMANN: Are there any
7 objections?

8 Hearing none, they are received into the
9 record.

10 (Staff Exhibits 201 and 202 were received
11 into evidence.)

12 MR. BERLIN: Okay. Thank you, Judge.
13 I tender the witness for cross-examination.

14 JUDGE BUSHMANN: First cross-examination
15 is by KCPL.

16 MR. STEINER: No questions.

17 JUDGE BUSHMANN: OPC.

18 MR. OPITZ: No questions, your Honor.

19 JUDGE BUSHMANN: Renew Missouri

20 MR. LINHARES: No questions, your Honor.

21 JUDGE BUSHMANN: NRDC.

22 MR. ROBERTSON: No questions.

23 JUDGE BUSHMANN: Division of Energy.

24 MR. ANTAL: No questions.

25 JUDGE BUSHMANN: United for Missouri.

1 MR. LINTON: No questions.

2 JUDGE BUSHMANN: Ameren Missouri .

3 MR. MITTEN: No questions.

4 JUDGE BUSHMANN: Brightergy.

5 MR. WOODSMALL: Thank you, your Honor.

6 CROSS-EXAMINATION BY MR. WOODSMALL:

7 Q. Good morning, Mr. Rogers.

8 A. Good morning.

9 Q. I'm going to be asking you some questions
10 about your Direct and Surrebuttal Testimony. Do you
11 have copies of those pieces of testimony before you?

12 A. Yes, I do.

13 Q. As an initial matter, would you agree
14 that Brightergy's objection to the non-unanimous
15 stipulation consists of two issues; the regulatory
16 flexibility provision and the structure of the custom
17 rebate program?

18 A. Yes.

19 Q. Now, you address the regulatory
20 flexibility provision at pages 8 and 9 of your Direct
21 Testimony. Do you recall that?

22 A. Yes, I do.

23 Q. Okay. Is it correct that part of Staff's
24 consideration in agreeing to this regulatory
25 flexibility provision is that a utility's offering of

1 MEEIA programs is voluntary?

2 A. Yes.

3 Q. Is it your belief that once MEEIA
4 programs are approved by the Commission, the utility's
5 continuation of those programs is still voluntary?

6 A. Under the terms of MEEIA or under the
7 terms of the Stipulation and Agreement?

8 Q. Under the terms of MEEIA.

9 A. I don't think MEEIA provides specific
10 guidance on that situation.

11 Q. Do the MEEIA rules provide some guidance
12 on that?

13 A. The MEEIA rules provide guidance on
14 discontinuing programs and discontinuing the DSIM.

15 Q. And, in fact, that rule I believe is
16 contained at 4 CSR 240-20.094(5) requires Commission
17 approval before discontinuing MEEIA programs; is that
18 correct?

19 A. It does.

20 Q. Now, under the proposed regulatory
21 flexibility provision as contained in the stipulation,
22 KCP&L and GMO would not have to seek that Commission
23 approval to discontinue its MEEIA programs; is that
24 correct?

25 A. Correct. However, they would have to

1 comply with the terms and conditions in the
2 Stipulation and Agreement.

3 Q. But there would be no Commission approval
4 necessary; is that correct?

5 A. There would be no Commission approval
6 necessary. My Direct Testimony summarizes that the
7 regulatory flexibility basically has all the
8 requirements of the rule for terminating programs
9 except for the requirement that there be a hearing --
10 possibly a hearing and an order from the Commission.

11 Q. But -- okay. So it does not require --
12 the stipulation will not require any Commission action
13 prior to can-- the utility canceling the programs; is
14 that correct?

15 A. Correct.

16 Q. Okay. You've been employed by the
17 Missouri Commission since December of 2008; is that
18 correct?

19 A. Correct.

20 Q. Is it your understanding that the MEEIA
21 legislation was enacted in 2009?

22 A. Yes.

23 Q. Since the MEEIA legislation was enacted
24 in 2009, the Commission has approved MEEIA plans for
25 KCP&L, GMO and Ameren. Correct?

1 A. Yes.

2 Q. And did any of those MEEIA programs,
3 MEEIA plans include a regulatory flexibility
4 provision?

5 A. No. None did.

6 Q. Is it your understanding that Ameren has
7 also filed an application -- did also file an
8 application for a MEEIA Cycle 2 plan?

9 A. Yes.

10 Q. And Ameren executed a non-unanimous
11 stipulation in the context of that MEEIA Cycle 2 plan;
12 is that correct?

13 A. Correct.

14 Q. And that non-unanimous stipulation was
15 rejected by the Commission. Correct?

16 A. Correct.

17 Q. But that aside, that non-unanimous
18 stipulation also did not include a regulatory
19 flexibility provision; is that correct?

20 A. Correct.

21 Q. Now, I think you -- we've established
22 that under the Commission's rule, the Commission makes
23 the decision as to whether a MEEIA plan should be
24 terminated; is that correct?

25 A. Correct. They approve or reject the

1 application to discontinue.

2 Q. And under the stipulation, KCP&L would be
3 the one making the decision subject to some notice?

4 A. Subject to many terms and conditions in
5 the Stipulation and Agreement regarding the regulatory
6 flexibility.

7 Q. But the -- but KCP&L, the regulated
8 utility, is the one making the decision; not the
9 Commission. Correct?

10 A. Yes.

11 Q. So as I read this, the stipulation then
12 removes authority from the Commission and places that
13 with the regulated utility. Correct?

14 A. As a result of the terms and conditions
15 and the waiver of this rule, that's true.

16 Q. Does Staff believe that it is advisable
17 for the Commission to cede its authority to regulated
18 utilities?

19 A. The Staff --

20 MR. BERLIN: Objection, that's
21 speculative.

22 MR. WOODSMALL: He testified on this
23 issue. I'm asking what his opinion is as to whether
24 the -- whether he thinks it's advisable for the
25 Commission to cede its authority to regulated

1 utilities in this matter.

2 JUDGE BUSHMANN: Overruled.

3 THE WITNESS: Staff is recommending
4 approval of the Stipulation and Agreement as filed.

5 BY MR. WOODSMALL:

6 Q. Do you believe -- would you be in
7 favor -- I believe your counsel was asked a question
8 during his opening statement about whether this
9 provision should be extended to other Missouri
10 utilities. Would you be in favor of providing this
11 provision to other Missouri utilities?

12 A. This provision was reached in the context
13 of a global settlement of the issues in this case.
14 Staff would have to consider the -- the issues in any
15 other case before it could make that decision.

16 Q. But I believe there were five -- four or
17 five considerations that were mentioned that went into
18 the need for this provision. If another utility met
19 those same considerations, would Staff be in favor of
20 such a provision?

21 A. It all depends upon the other issues at
22 stake.

23 Q. Is the Commission currently doing a
24 rewrite -- reconsideration of its MEEIA rules?

25 A. Yes.

1 Q. And Staff, as part of that process, will
2 be allowed to suggest changes to the rule; is that
3 correct?

4 A. Yes.

5 Q. Did Staff suggest eliminating this
6 provision from the current MEEIA rule?

7 A. I don't recall, but I don't think we did.

8 Q. Okay. And would you have knowledge of
9 the Staff's comments in such a MEEIA rewrite rule?

10 A. I would.

11 Q. Okay. Would you agree that the MEEIA
12 rules -- excuse me.

13 Would you agree that under the MEEIA
14 rule, utilities are allowed to recover three different
15 items? First, they are allowed to recover all their
16 program costs; is that correct?

17 A. Correct.

18 Q. And the recovery of program costs is on a
19 dollar-for-dollar basis?

20 A. Correct.

21 Q. So virtually the recovery of program cost
22 is guaranteed?

23 A. I believe that's fair.

24 Q. There's no risk to the utility of
25 under-recovering program costs?

1 A. Correct.

2 Q. Second, the utility is allowed to recover
3 lost revenues associated with reduced sales that
4 result from MEEIA programs; is that correct?

5 A. Correct.

6 Q. Again, the recovery of lost revenues is
7 on a dollar-for-dollar basis; is that correct?

8 A. It is.

9 Q. So the recovery of lost revenues is
10 guaranteed to the utility?

11 A. Right. Subject to --

12 Q. EM&V.

13 A. -- EM&V, the conditions in MEEIA.

14 Q. Subject to that though, the utility
15 recovers dollar for dollar all their lost revenues?

16 A. Yes.

17 Q. Okay. So there's no risk subject to
18 EM&V, no risk of not recovering lost revenues; is that
19 correct?

20 A. Correct.

21 Q. And the third component of the MEEIA
22 rules is what's called an earnings opportunity award.
23 Is that your understanding?

24 A. Yes.

25 Q. Okay. Moving on, talk about regulatory

1 flexibility. The other aspect of Brightergy's
2 objection concerns the structure of the custom rebate
3 program. Is that your understanding?

4 A. Yes.

5 Q. Would you agree that the custom rebate
6 program is also known in Cycle 2 as business energy
7 efficiency rebate custom?

8 A. That sounds familiar.

9 Q. Okay. So are you comfortable using those
10 terms interchangeably?

11 A. I'm more comfortable with custom rebates
12 since that's what I use in my testimony.

13 Q. I am too so that -- good. My questioning
14 will be okay.

15 Now, just for clarity, is it your
16 understanding that the custom rebate program only
17 applies to commercial and industrial customers?

18 A. Yes.

19 Q. It will have no effect -- as far as costs
20 being charged, it will have no effect on residential
21 customers; is that correct?

22 A. I believe that's correct.

23 Q. Would you agree that commercial and
24 industrial customers are generally more sophisticated
25 than residential customers?

1 A. Not necessarily.

2 Q. You believe that on --

3 A. I -- I -- I think there's some pretty
4 sophisticated residential customers as well.

5 Q. I agree. But generally if you went
6 out -- you have no --

7 A. I have no opinion.

8 Q. Okay. So you have no opinion as to then
9 the need to simplify programs for one group of
10 customers versus another?

11 A. No, I don't.

12 Q. Okay. Would you agree with -- have you
13 read Mr. Blake's Rebuttal Testimony on behalf of
14 Brightergy?

15 A. Yes, I have.

16 Q. Would you agree with his comment that
17 commercial and industrial customers are primarily
18 concerned with the length of time it takes to recover
19 their energy efficiency investments?

20 A. I don't have any reason to dispute that.

21 Q. Okay. Are you comfortable with
22 Mr. Blake's use of the term "payback period" to
23 describe this length of time?

24 A. I understand that term.

25 Q. And you're comfortable with that term?

1 A. I understand the term, yes.

2 Q. Okay. Would you accept that there are
3 some business customers that will invest in energy
4 efficiency simply because the energy savings alone
5 will justify the investment?

6 A. Yes.

7 Q. Okay. And then that an energy efficiency
8 rebate is not necessary to incentivize these customers
9 to make such an investment?

10 A. Correct.

11 Q. And if these customers receive a rebate,
12 they could be called what -- what we've used the term
13 "free riders;" is that right?

14 A. That's right.

15 Q. And you're comfortable with that term
16 "free ridership"?

17 A. Yes.

18 Q. Would you agree that it should be a goal
19 of the MEEIA plan to avoid giving rebates to free
20 riders?

21 A. No.

22 Q. No?

23 A. To --

24 Q. To avoid giving rebates to free riders.

25 A. To avoid giving rebates. A goal of MEEIA

1 to avoid giving rebates to free riders?

2 Q. And if you need me to rephrase it, I can.
3 I'm not trying to trip you up.

4 A. Since it's not a part of MEEIA --

5 Q. I'm asking -- okay. Let me scratch that
6 and just -- so we can move on.

7 Do you agree that it should be a goal to
8 not give rebates to free riders?

9 A. Well, free ridership exists in many
10 programs. If it were the goal to not give any free --
11 have any free riders, there may not be any programs.

12 Q. Should we attempt to structure programs
13 in a manner to minimize the number of free riders?

14 A. I would say that's a good objective.

15 Q. Okay. Have you considered that in the
16 context of Staff's review of the commercial -- or the
17 custom rebate program?

18 A. In terms of the two alternative incentive
19 mechanisms that --

20 Q. Well, let -- you were responsible -- or
21 at least under your supervision, part of your job
22 description was to review the Cycle 2 programs; is
23 that correct?

24 A. Yes.

25 Q. Did you or anybody on Staff under your

1 supervision consider the possibility of free ridersh--
2 free riders getting rebates as part of your review?

3 A. Well, I think for the custom rebate
4 program, there's always going to be some free
5 ridership.

6 Q. Did you consider whether free ridership
7 will increase or decrease under Cycle 2 versus Cycle
8 1?

9 A. I -- I did. And the only data point
10 that -- that I have to consider that issue is to look
11 at the Ameren program, because the Ameren program has
12 been through full impact EM&V for two different years.
13 And my review of the Ameren EM&V reports is that with
14 the Ameren low incentive levels, which are even lower
15 than the flat 10 cents, that the free ridership for
16 the Ameren program was close to 10 percent.

17 Q. Are you finished? I'm sorry.

18 A. So I would not expect -- limited data,
19 but I would not expect that the free ridership at a
20 flat 10 percent, which is higher than what Ameren
21 has -- had offered in its Cycle 1, would generate
22 more -- or would result in any more free ridership
23 than 10 percent.

24 Q. Do you have --

25 A. Short of any EM&V for the KCPL/GMO

1 programs specifically.

2 Q. Do you have any knowledge or any belief
3 as to the amount of free ridership under KCP&L Cycle
4 1?

5 A. The EM&V impact analysis has not been
6 performed. It's being performed now and it will be
7 reported within a few months.

8 Q. But you have no independent thoughts
9 about that given the structure of the Cycle 1 custom
10 rebate program?

11 A. I don't.

12 Q. Okay. Do you believe that the Cycle 1
13 custom rebate -- well, let me scratch that and move on
14 and we'll come back around.

15 Now, in Cycle 1 the custom rebate program
16 provided for rebates that were equal to the lesser of
17 two different considerations; is that correct?

18 A. Correct.

19 Q. And the first one of those or one of
20 those is a rebate of 50 percent of incremental cost;
21 is that correct?

22 A. Correct.

23 Q. And the second one considers two-year
24 payback; is that correct?

25 A. Correct.

1 Q. Can you tell me how that works?

2 A. Two-year payback?

3 Q. Yes, please.

4 A. Basically the incremental costs of a
5 measure is the cost between the more efficient measure
6 and the standard measure.

7 Q. The incremental cost is?

8 A. The incremental cost.

9 Q. Okay. Let me backtrack then and make
10 sure I come back around to that. I believe we might
11 be using the term "incremental cost" two different
12 ways and so I want to distinguish that. We talked
13 about one of the considerations is a rebate may get
14 50 percent of incremental cost.

15 A. Correct.

16 Q. And as we're using incremental cost
17 there, it refers to the cost of the capital investment
18 for the customer; is that correct?

19 A. Yes.

20 Q. Okay. So if a customer has to spend
21 \$10,000 --

22 A. Right.

23 Q. -- they may receive a rebate up to
24 \$5,000; is that correct?

25 A. Correct.

1 Q. Okay. So we use incremental cost there
2 to refer to the capital investment. Now, would you
3 discuss the other consideration regarding the two-year
4 payback?

5 A. The two-year payback would look at the
6 bill reduction as a result of the lower energy
7 consumption as -- as one component and then it would
8 look at the -- the bill reduction's relationship to
9 the incremental capital cost. And to the extent that
10 the incremental cost -- or the bill reduction cost
11 takes more than two years to reach a payback, then the
12 incentive would be -- would come into play.

13 So there would be an additional incentive
14 to build up the benefits for the customer such that
15 those benefits would basically be one-half of the
16 capital cost; therefore, two-year payback.

17 Q. But the custom rebate program is
18 structured in a manner that the maximum rebate is the
19 lesser of those two considerations?

20 A. It's the lesser of the two.

21 Q. Okay. Would you agree that by
22 structuring it so that it's the lesser of the two, you
23 seek to address to some degree the problem with free
24 ridership?

25 A. Yes.

1 Q. Okay. And that structure won't exist
2 under the proposed Cycle 2 stipulation; is that
3 correct?

4 A. That same structure will not.

5 Q. Okay. Under the non-unanimous
6 stipulation, the new rebate would be 10 cents for
7 every kilowatt hour of expected energy savings in the
8 first year; is that correct?

9 A. Correct.

10 Q. Okay. I'm going to try to run through a
11 hypothetical. And I don't know how well this is going
12 to work, but I'm going to put it up on an easel and
13 we'll try to work through some numbers. And let me
14 know if anybody has problems hearing me. I'm usually
15 pretty loud so --

16 JUDGE BUSHMANN: You may want to try and
17 stay near the mic on the podium so the broadcast --

18 MR. WOODSMALL: Okay. I'll walk back and
19 forth then.

20 BY MR. WOODSMALL:

21 Q. Now, I want you to assume a particular
22 commercial industrial customer. So because they're a
23 commercial industrial customer, they would be eligible
24 for a custom rebate program rebate; is that correct?

25 A. Yes.

1 Q. Okay. Now, assume a customer -- assume a
2 customer that makes a capital investment for energy
3 efficiency of \$10,000. \$10,000 investment. Okay?
4 Now, let's say that that investment is expected to
5 result in savings in the first year of 50,000 kilowatt
6 hours.

7 A. Okay.

8 Q. Now, I want to consider what the rebate
9 would be under Cycle 1 versus Cycle 2. Now, under
10 Cycle 2, it's my understanding, okay -- so 50,000
11 kilowatt hours. And let's say they have a 10 cent per
12 kilowatt hour rate. That would mean the first year
13 savings would be 5,000 dollars; is that correct?
14 50,000 time 10 cents?

15 A. Yes.

16 Q. Okay. So under Cycle 1, it's my
17 understanding that this customer would not be eligible
18 for any rebate; is that correct?

19 A. Correct.

20 Q. And that's because it's already a
21 two-year payback; is that correct?

22 A. Right.

23 Q. Can you tell me what the rebate would be
24 for this customer under -- under the proposed Cycle 2?

25 A. 5,000 dollars.

1 Q. 5,000 dollars. So then the customer --
2 the payback period has now been reduced from two years
3 down to one year.

4 A. In that example, yes.

5 Q. Okay. Now, Brightergy objects to the
6 change in the structure for the custom rebate program;
7 is that correct?

8 A. Yes.

9 Q. Brightergy would prefer to maintain the
10 structure of the custom rebate program as contained in
11 Cycle 1. Is that your understanding?

12 A. Yes.

13 Q. And under that Cycle 1, this customer
14 would not be receiving a rebate; is that correct?

15 A. Correct.

16 Q. Okay. So I believe you testified earlier
17 that you believe the structure under Cycle 1 will
18 attempt to address free ridership to some degree.

19 A. Under Cycle 1 or Cycle 2?

20 Q. Under Cycle 1 because it's a lesser of
21 two considerations.

22 A. Yes.

23 Q. Okay. Do you believe that this customer
24 with a two-year payback should make that investment
25 absent of any rebates?

1 A. Yes.

2 Q. Okay. But under cycle -- under the MEEIA
3 stipulation, this customer's going to get a rebate; is
4 that correct?

5 A. That's correct.

6 Q. Okay. So would you consider this an
7 example of free ridership?

8 A. Yes.

9 Q. And Cycle 1 would have prevented this
10 free ridership, but Cycle 2 won't; is that correct?

11 A. In that example.

12 Q. Okay. In your Surrebuttal Testimony, you
13 provided an analysis designed to measure net benefits
14 associated with the custom rebate program as
15 structured in the non-unanimous stipulation. Do you
16 recall that?

17 A. Surrebuttal?

18 Q. Yes. I believe it's contained at
19 Schedule JAR-SR-2.

20 A. Oh, yes.

21 Q. Okay. And that is an analysis designed
22 to measure net benefits associated with the custom
23 rebate program?

24 A. Yes, it is.

25 Q. That schedule also compares the actual

1 costs of the custom rebate program under Cycle 1 with
2 the plant cost for the program under the non-unanimous
3 stipulation. Is that your understanding?

4 A. Yes.

5 Q. Okay. And the reason it compares actual
6 for Cycle 1 with projected for Cycle 2 is we don't
7 know what the actual costs will be for Cycle 2 yet, do
8 we?

9 A. Correct.

10 Q. Okay. So we're comparing actuals with
11 projected. Let me flip to the right page here. You
12 have that schedule, Schedule JAR-SR-2 to your
13 Surrebuttal Testimony?

14 A. Yes, I do.

15 Q. Let me -- are you familiar with the term
16 "net benefits"?

17 A. Yes.

18 Q. Can you tell me what net benefits are
19 designed to measure?

20 A. Net benefits measure the benefits -- the
21 present value of the benefits from energy and demand
22 savings as a result of avoided costs for energy and
23 demand. So there's a present value of the benefits
24 divided by the present value of the program costs. Or
25 in this case we're not looking at a ratio, we're

1 Looking at the absolute dollar amount. So it would be
2 the present value of the benefits less the present
3 value of the program costs.

4 Q. Okay. At the bottom of Schedule
5 JAR-SR-2, you have two rows setting forth net benefits
6 for program costs. Do you see that?

7 A. Yes.

8 Q. Can you tell me what this metric is
9 designed to measure?

10 A. This is the ratio of the net benefits
11 divided by the program cost in both cases. One is for
12 planned and one is for actual.

13 Q. Okay. You anticipated my next question.
14 Thank you. And again, at the bottom of the schedule
15 you have a note. Would you read that, please?

16 A. Note: All annual energy savings, demand
17 savings and net benefits are based on deemed savings
18 and deemed avoided costs.

19 Q. Would you agree that -- in that note you
20 use the word "deemed avoided cost." Would you agree
21 that is designed to quantify the savings associated
22 with postponing supply-side capital investment?

23 A. That's a part -- a part of the deemed
24 savings.

25 Q. Of the deemed avoided cost?

1 A. For capacity --

2 Q. Okay.

3 A. -- only.

4 Q. Now, tell me -- and I believe you hit
5 this some in your testimony. You talk about the
6 ratios there of net benefits to program costs and
7 one's projected and once's actual, and I understand
8 that. Can you tell me the significance when that
9 ratio is greater than 1.0?

10 A. When it's greater than 1.0, the benefits
11 exceed the cost.

12 Q. Okay. Does that have significance though
13 in your consideration as to whether a program is
14 appropriate?

15 A. Yes.

16 Q. Okay. Can you tell me what that is?

17 A. Well, in order for the programs to be
18 cost effective, the benefits need to be greater than
19 the cost.

20 Q. Okay. And it's your conclusion from your
21 analysis here that the Cycle 1 customer rebate program
22 had actual net benefits per actual program costs of
23 1.8; is that correct?

24 A. Yes.

25 Q. And that's greater than 1.0; is that

1 correct?

2 A. It is.

3 Q. And so is it your conclusion then that
4 the custom rebate program in Cycle 1 was cost
5 effective?

6 A. The Cycle 1 custom rebate program was
7 cost effective.

8 Q. Okay. Thank you. And I believe you
9 would agree then that the Cycle 1 custom rebate
10 program provided benefits to all customers, even those
11 that did not participate in the program; is that
12 correct?

13 A. I did not perform that analysis so I
14 can't say.

15 Q. Okay. I have no further questions.

16 MR. WOODSMALL: Thank you, your Honor.

17 JUDGE BUSHMANN: Questions from the
18 Bench.

19 QUESTIONS BY CHAIRMAN HALL:

20 Q. Good afternoon.

21 A. Oh, good afternoon.

22 Q. Turning to page 6 of your Direct
23 Testimony, lines 6 through 10, and I believe that this
24 is related to what you were just testifying about, but
25 I want to make sure I understand it. Are you -- your

1 analysis is that the Cycle 2 plan as proposed in the
2 stipulation would benefit all KCP&L and GMO customers;
3 is that correct?

4 A. Correct.

5 Q. How does it benefit KCP&L and GMO
6 customers compared to Cycle 1? Or have you done that
7 calculation?

8 A. I have not done that calculation.

9 This -- this was just comparing the application to the
10 stipulation to show how through the settlement process
11 and the changes that were made to both the programs
12 and to the throughput disincentive and the earnings
13 opportunity mechanism, that the benefits for customers
14 were enhanced in the stipulation relative to the
15 application.

16 Q. So an improvement in the stipulation
17 vis-a-vis the application?

18 A. Correct.

19 Q. Would you wager a guess as to how those
20 benefits might compare to Cycle 1 or is that too
21 complex a --

22 A. I just haven't done the analysis so I
23 would not want to guess at how it would come out.

24 Q. Well, if it -- if it was true that the
25 Cycle 1 program was more beneficial for KCP&L and GMO

1 customers then the Cycle 2 proposed stipulation,
2 would -- would Staff still recommend to the Commission
3 that we approve the Cycle 2 proposal?

4 A. I -- I'm referring back to my Surrebuttal
5 Testimony when I answer that question and the Schedule
6 JAR-SR-2. We're talking about -- we're really looking
7 at benefits for all customers.

8 Q. Where in your Surrebuttal Testimony are
9 you?

10 A. It's Schedule JAR-SR-2. Chairman, your
11 question is whether there's benefits for all --
12 whether benefits for all customers are enhanced
13 through Cycle 2?

14 Q. Compared to Cycle 1.

15 A. Compared to Cycle 1. Okay. This
16 schedule does -- for the custom rebate program, which
17 is the issue here --

18 Q. Correct.

19 A. -- compare the benefits to all customers
20 for Cycle 1 for this custom rebate program for both
21 KCP&L and GMO combined. And that indicates -- in the
22 right-hand column it indicates that the cost for Cycle
23 2 for the custom rebate program is planned to be
24 18.2 million dollars and the planned benefits -- net
25 benefits are 47.5 million dollars. For Cycle 1, the

1 actual program costs are 24.6 million and the actual
2 net benefits are 44.5 million.

3 The ratio in blue for the Cycle 1 is 1.8,
4 the ratio for Cycle 2 is 2.4. So Cycle 2 is
5 providing -- or is planned to provide more benefits
6 per dollar of spend than we've actually incurred in
7 Cycle 1.

8 Q. I don't see the 2.4.

9 A. Did I say 2.4?

10 Q. You did.

11 A. 2.6.

12 Q. Okay. So the second -- the row second
13 from the bottom is planned net benefits per planned
14 program costs.

15 A. Correct.

16 Q. Cycle 1 had 4.0.

17 A. That was the plan.

18 Q. But the actual was 1.8. I understand.
19 Okay. And what do you attribute that improved ratio
20 to specifically, if you can?

21 A. It's very complex. You have -- in
22 Cycle 1 there was -- lighting was a part of the custom
23 program. In Cycle 2, there's no lighting in the
24 custom program. It's all in the standard program. So
25 I think -- and --

1 Q. Let me -- go ahead. I'm sorry.

2 A. So you have a different mix of measures
3 that were actually installed in Cycle 1 versus what's
4 planned in Cycle 2. The avoided cost is -- is
5 different. The avoided cost for Cycle 2 is lower than
6 Cycle 1. So when you look at these net benefits,
7 Cycle 1 versus Cycle 2, if you were doing it on a
8 common avoided cost basis, Cycle 2 -- the spread
9 between Cycle 2 as planned would be even greater than
10 what was experienced in Cycle 1.

11 Q. Do you attribute the change -- the
12 proposed change in the reimbursement rate as affecting
13 the -- that ratio?

14 A. You know, the -- let me answer it this
15 way: The plan for Cycle 1 was not to have -- you
16 know, the experience of the Company prior to MEEIA
17 Cycle 1, they have been offering the same rebate
18 structure, the buy-down to the lesser of a two-year
19 payback or 50 percent of the incremental cost. The
20 plan for Cycle 1 was only 12 million dollars to spend.
21 And the plan benefits were 49 million.

22 What happened in Cycle 1 -- and the
23 Company didn't know -- I don't believe they knew this
24 was going to happen, but the spending on Cycle 1
25 turned out to be double what they had planned. And

1 yet the benefits were less than -- than planned.

2 Q. Proportionally?

3 A. Correct.

4 Q. Okay. Well, let me -- help me out now,
5 Mr. Rogers. The issue before us is the reimbursement
6 amount.

7 A. Right.

8 Q. Brightergy is saying that -- that it is
9 too low to incentivize the kind of behavior that we
10 all are trying to incentivize and that there will be
11 more free ridership related to that.

12 A. Okay.

13 Q. I'm trying to understand by looking at
14 your analysis here, is there -- is -- can we
15 extrapolate from this in any way, shape or form that
16 the -- the reimbursement rate that's in the
17 application and that's in the stipulation will lead to
18 a higher planned net benefit per planned program costs
19 in MEEIA 2 vis-a-vis MEEIA 1?

20 A. We don't know what the outcome is going
21 to be. However, I put this schedule together to
22 illustrate that Ameren Missouri has been able to
23 achieve significantly more benefits per dollar spend.
24 So it doesn't necessarily follow that a lower
25 incentive is going to result in a less successful

1 program.

2 Q. But it also doesn't mean that a lower
3 reimbursement rate will increase the -- the planned
4 net benefits per plan program costs?

5 A. No, it doesn't. And our position is that
6 the Company has done -- Staff's position is that
7 Company has worked hard with the stakeholders to
8 design all the programs, including the custom program.
9 And with the flexibility to increase the incentive for
10 the custom rebate program within the range of 6 cents
11 to 40 cents, that the Company will be able to achieve
12 its objectives should the market not respond to
13 10 cents.

14 But looking at the Ameren program and the
15 results that they have, there's no reason to believe
16 that they can't be successful at 10 cents.

17 Q. Do you agree with what is set forth in
18 Mr. Blake's Rebuttal Testimony -- and I alluded to it
19 earlier today? On page 4, lines 28 through 30, that
20 the critical point is that the level of rebate
21 necessary to tip the customer that is sitting on the
22 fence to make the energy efficiency investment, that's
23 the -- that's the goal of whatever the reimbursement
24 rate is?

25 A. I agree.

1 Q. Because if it's -- if it's too high,
2 you're going to give that customer a windfall at the
3 expense of all ratepayers; if it is too low, it's
4 going to be ineffective?

5 A. Correct.

6 Q. Now, if it's too low -- well, Brightergy
7 has taken the position that this particular
8 reimbursement rate is too low, which will increase
9 free ridership. Does that connection make sense to
10 you? If it is -- if it is too low -- and I know
11 you're not taking the position that this one is too
12 low, but if it is too low, will that increase free
13 ridership?

14 A. Yes.

15 Q. Explain that to me.

16 A. Well, I think it's best illustrated
17 through the example that Brightergy's counsel put on
18 the board. That some -- some customers, without any
19 incentive, will invest in energy efficiency just
20 because of the -- the bill reduction savings are
21 enough for them. And a low incentive is going to be
22 just above that scenario where some customers will
23 invest in energy efficiency without an incentive. So
24 a low incentive will likely result in some free
25 ridership.

1 Q. Because --

2 A. The question is --

3 Q. Because all the customers who were going
4 to do it anyway will still do it and you will
5 eliminate those customers that might have been
6 incentivized to --

7 A. Right.

8 Q. -- to participate?

9 A. However, for those same customers, a
10 higher incentive is just giving them -- those free
11 riders more money that they wouldn't need in the first
12 place.

13 Q. Okay. How typical is that --

14 A. That --

15 Q. -- scenario with that -- an investment at
16 that amount with savings at that amount?

17 A. I think that's an extreme example.

18 Q. Explain that to me.

19 A. Because it's a one-year payback. It's a
20 very, very short payback. That particular decision
21 is -- is not one that, from my experience, many
22 businesses would be -- would be faced with in our
23 programs.

24 Q. Because the savings are inordinately high
25 for that investment?

1 A. The payback is one year just on the
2 energy savings.

3 Q. But is that because in that hypothetical ,
4 the savings are inordinately high?

5 A. Yes.

6 Q. Okay. Turning to your Surrebuttal
7 Testimony on page 6, you have some written testimony
8 concerning a particular table on Mr. Blake's Rebuttal
9 Testimony where he takes the position that the Cycle 1
10 reimbursement amounts are comparable or similar to
11 many other customer rebate programs across the
12 country.

13 And you were asked whether or not you
14 agree with -- with that assessment, that they are --
15 and you say that you -- you do not. And the only
16 reason that you cite that I could understand or see
17 is -- is that in those other states, they have a
18 mandatory EERS standard and we do not in Missouri .

19 A. Correct.

20 Q. Okay. And can you explain that to me,
21 please? Why is that such a significant data point?

22 A. Well, because there's -- there's a legal
23 requirement for utilities in states with an Energy
24 Efficiency Resource Standard to achieve those targeted
25 levels of savings. And we don't have that in

1 Missouri. We have a voluntary program and our rules
2 have what I call soft goals, which are not binding as
3 well. And so I -- I think the fact that utilities
4 that have a statutory requirement to achieve, in many
5 cases stretch goals for savings, are going to spend
6 more money. They're going to spend whatever it takes
7 for them to achieve the legal requirement.

8 Q. So in other words, a customer would have
9 to be offered a higher reimbursement rate in order to
10 take advantage of the program in a state that has the
11 mandatory requirements because -- because if he was
12 going to take advantage of it anyway, he already would
13 have already been covered in the EERS standard? And I
14 could rephrase if that --

15 A. I think the incentives in those states
16 with an EERS are just inherently higher because the
17 goals are higher and they're binding. And the
18 utilities design their programs so that they can --
19 they can meet those -- those legal -- the binding
20 goals in those states.

21 Q. Turning to page 7, you note that no other
22 state has a requirement similar to the MEEIA
23 requirement in this state, that the demand-side
24 program would be beneficial to all customers in the
25 customer class; is that correct?

1 A. That's -- that's my testimony.

2 Q. And could you explain to me why that
3 requirement -- how that -- how that fact impacts your
4 testimony here on this issue?

5 A. Because to the extent that incentives are
6 higher for a program, that will reduce the net
7 benefits, all else equal. And that was part of what
8 we did through this settlement process here was to
9 design the -- the throughput disincentive and the
10 earnings opportunity so that they aligned with the
11 statutory requirements. And in the process, the --
12 the amount of money that all customers will be paying
13 for those two components of the program costs were
14 reduced. And through that effort, net benefits were
15 increased for all customers.

16 Q. Okay. Let me just turn briefly to the
17 regulatory flexibility provision.

18 A. Okay.

19 Q. Is it your testimony that that is a
20 provision that Staff can live with or is it your
21 testimony that that is a provision that the Staff
22 likes and -- and would like to see in future MEEIA
23 plans?

24 A. I have no opinion on future MEEIA plans.
25 Staff would have to see the entire body of terms and

1 conditions for a plan before we could -- we could
2 decide to support a similar regulatory flexibility
3 provision.

4 Q. So you can't, sitting here today, say
5 that all else equal, holding all other variables
6 constant, that that is a provision that you support?

7 A. If all the terms and conditions were the
8 same, then it would be part of the -- the package.
9 It's hard to imagine.

10 Q. I mean, let me -- let me -- let me
11 rephrase. Do you -- in -- in this case do you -- do
12 you think that that provision is -- is good and --
13 and -- and you support that provision in this case?

14 A. We support it because we perceive that it
15 is necessary.

16 Q. For a settlement?

17 A. For KCP&L to agree to do their MEEIA
18 Cycle 2.

19 Q. So if you could wave a magic wand --

20 A. And --

21 Q. -- and get that provision out and still
22 have KCP&L supportive of this plan, would you do so?

23 A. Yes.

24 Q. Okay. Why is that?

25 A. Well, I think the regulatory flexibility

1 terms and conditions basically comply with the rule in
2 that they provide --

3 Q. No. Why would you get rid of it if you
4 could?

5 A. Because we have a rule that basically
6 does the same thing.

7 Q. Except it -- the rule requires Commission
8 approval.

9 A. Requires Commission approval.

10 Q. And the stipulation does not. So -- so
11 if -- if you had that magic wand, you would -- you
12 would -- you would use it so that the Commission still
13 had the authority to approve any -- any elimination of
14 the entire program?

15 A. If I had the magic wand, I would. I
16 would use it.

17 Q. Okay.

18 A. But I don't.

19 Q. You don't. Nor do I. Thank you,
20 Mr. Rogers.

21 COMMISSIONER STOLL: No questions.

22 JUDGE BUSHMANN: Any questions,
23 Commissioner Kenney?

24 COMMISSIONER KENNEY: No, thank you.

25 JUDGE BUSHMANN: Recross based on

1 questions from the Bench. KCPL.

2 MR. STEINER: No, your Honor.

3 JUDGE BUSHMANN: Public Counsel .

4 MR. OPITZ: No, your Honor.

5 JUDGE BUSHMANN: Renew Missouri .

6 MR. LINHARES: No. Thank you, your
7 Honor.

8 JUDGE BUSHMANN: NRDC.

9 MR. ROBERTSON: No questions.

10 JUDGE BUSHMANN: Division of Energy.

11 MR. ANTAL: No questions.

12 JUDGE BUSHMANN: United for Missouri .

13 MR. LINTON: No questions.

14 JUDGE BUSHMANN: Ameren Missouri .

15 MR. MITTEN: No questions.

16 JUDGE BUSHMANN: Brightergy.

17 MR. WOODSMALL: Yes, your Honor. Very
18 briefly.

19 RE-CROSS-EXAMINATION BY MR. WOODSMALL:

20 Q. Working backwards, you were asked some
21 questions about the Commission's rule for
22 discontinuing MEEIA programs. Do you recall that?

23 A. Yes.

24 Q. Okay. Now, just so I'm clear, under the
25 regulatory flexibility provision, the utility would be

1 able to cancel those programs with 30 days notice; is
2 that correct?

3 A. All the programs.

4 Q. All the programs?

5 A. Yes.

6 Q. With 30 days notice; is that correct?

7 A. Yes.

8 Q. So it would take 30 days to get it
9 accomplished; is that correct?

10 A. Yes.

11 Q. Okay. Under the rule, is it your
12 understanding that the Commission is required to act
13 to approve or reject such an application to
14 discontinue within the same period of time, 30 days?

15 A. Yes.

16 Q. Okay. So the only difference is who
17 makes the decision?

18 A. Basically, yes.

19 Q. Okay. You were asked some questions
20 about this hypothetical and you said -- I don't want
21 to put words in your mouth, so you can correct me if
22 you need to -- that you thought this was an extreme
23 example?

24 A. I think so.

25 Q. Okay. I was looking through -- certainly

1 in your role with the Commission in the seven, eight
2 years you've been with the Commission, you're not in a
3 position of going out and marketing energy efficiency
4 programs; is that correct?

5 A. Correct.

6 Q. So you don't know, just from that
7 experience, whether this is an extreme example?

8 A. That's correct.

9 Q. Okay. And as I was looking through your
10 educational background contained -- or attached to
11 your Direct Testimony, it appears you have lots of gas
12 experience, but I don't see anything in there where
13 you were out marketing energy efficiency programs; is
14 that correct?

15 A. I did for the gas company in Arkansas
16 before I came to the Commission.

17 Q. But not electric energy efficiency?

18 A. No. Gas programs.

19 Q. Okay. So you don't have yourself any
20 direct experience marketing electric energy efficiency
21 programs; is that correct?

22 A. Correct.

23 Q. Did you talk to anybody at Brightergy or
24 any other trade allies to determine whether this is an
25 extreme example?

1 A. No.

2 Q. Do you believe that Mr. Blake may have
3 some knowledge as to whether this is happening out in
4 the marketplace?

5 A. He may.

6 Q. But you never talked to him about such a
7 situation?

8 A. No.

9 Q. Okay. You were asked about free
10 ridership by the Chairman and some questions about the
11 level of con-- the level of the rebate, the level of
12 the incentive and whether that prevents free
13 ridership. And I want to ask you, is it your
14 understanding that it's the interplay between the two
15 considerations, 50 percent of investment costs or the
16 payback period -- it's the interplay that prevents
17 free ridership; that is, it's the lesser of the two
18 amounts?

19 A. That helps, yes.

20 Q. Okay. So it's not the compensation level
21 directly which prevents free ridership. It's the fact
22 that it's the lesser of two considerations?

23 A. That helps.

24 Q. Okay. And that -- again, that lesser of
25 two considerations is not contained in the Cycle 2

1 provision, is it?

2 A. No.

3 Q. Okay. You were asked some questions on
4 your Surrebuttal Testimony, page 6, where you were
5 talking about the different energy efficiency
6 standards between states, some being voluntarily and
7 some being mandatory. Do you recall that?

8 A. Yes.

9 Q. And you said that in some states it's a
10 legal requirement; is that correct?

11 A. Yes.

12 Q. And that in those states where it's a
13 legal requirement, I believe you used the term here
14 on -- on line 16 that it's natural that those
15 utilities would be, quote, more aggressive, unquote.
16 Do you recall that?

17 A. Yes.

18 Q. So those utilities that are more
19 aggressive are likely attaining higher levels of
20 energy efficiency savings; is that correct?

21 A. Because they have to.

22 Q. Okay. Do you believe that that is a goal
23 of the MEEIA statute?

24 A. It's one of the goals of the MEEIA
25 statute.

1 Q. Okay. So the MEEIA statute sets a goal
2 of achieving all energy efficiency savings, doesn't
3 it?

4 A. That's -- that's a goal of MEEIA, yes.

5 Q. Okay. And if the utility here is not
6 being as aggressive as those utilities, then they're
7 not meeting that goal, are they?

8 A. The goal of MEEIA is a long-term goal.
9 The utility is planning demand-side resources in the
10 context of its business plan, including the evaluation
11 of demand-side resources and an equivalent basis with
12 supply-side resources. So it's not just as simple as
13 more DSM is always better.

14 Q. But --

15 A. The real -- the real test is -- in my
16 mind, is in the Chapter 22, integrated resource
17 analysis.

18 Q. Okay. But just looking at the MEEIA
19 statute, it seems to appear -- since it says all
20 energy efficiency savings, it seems to set the same
21 goal as what appears in those mandatory requirement
22 states, doesn't it?

23 A. The statute also says --

24 Q. Yes or no and then I'll let you continue.

25 A. Restate your question.

1 Q. The goal in MEEIA is all energy
2 efficiency savings. It uses the word "all," is that
3 correct?

4 A. Cost-effective demand-side savings.

5 Q. But it does use the word "all," is that
6 correct?

7 A. All cost-effective demand-side savings.

8 Q. Okay. And you believe that utilities in
9 mandatory states would be more likely to achieve such
10 a goal of all cost-effective energy efficiency
11 savings; is that correct?

12 A. They're really concerned with all cost
13 effective. They have a target that have to meet.
14 Whether it's cost effective or not is irrelevant.

15 Q. Okay. Do you believe utilities in
16 Missouri -- absent the fact that -- let me start
17 completely over.

18 Absent the fact that MEEIA is voluntary,
19 do you think that Missouri utilities could achieve a
20 greater level of energy efficiency savings that are
21 cost effective?

22 A. I go back to the Chapter 22 analysis
23 whenever I'm asked that question on how to define
24 what's all cost effective. And what KCP&L and GMO are
25 including in this case are the level of demand-side

1 programs and program designs that they have in their
2 integrated resource plan analysis in their adopted
3 resource plan. So I have to -- I have to say that
4 what they're doing is compliant with our rules and
5 regulations and the law.

6 Q. Do you have any belief, given your
7 expertise, that if MEEIA was mandatory, whether
8 Missouri utilities would be achieving a greater level
9 of cost-effective energy efficiency savings?

10 A. It all depends on what the mandate is.

11 Q. If the mandate is the same as in other
12 states.

13 A. The mandates vary from state to state.
14 It all depends upon what the -- what the mandate is.

15 Q. So you don't believe the fact that it is
16 a voluntary program hinders the ability of Missouri
17 utilities of achieving a higher level of
18 cost-effective energy efficiency savings?

19 A. No. The key, in my mind, is whether the
20 demand-side resources are cost effective and whether
21 they're being evaluated consistent with supply-side
22 alternatives. And the Company has done that.

23 Q. I believe you said earlier that you have
24 to just take them at their word on that. Did I
25 misquote you on that?

1 A. No, I don't. I mean, we -- myself --

2 Q. I think you said on the interplay with
3 the IRP. I didn't understand quite where you were
4 going with that.

5 A. Myself and my staff spend five months
6 reviewing the triennial compliance filings in great
7 detail before we make our findings and recommendation.

8 Q. Thank you, sir.

9 JUDGE BUSHMANN: Redirect by Staff.

10 REDIRECT EXAMINATION BY MR. BERLIN:

11 Q. Mr. Rogers, you were asked some questions
12 earlier by Mr. Woodsmall related to the current MEEIA
13 rulemaking. Do you recall those questions?

14 A. Yes.

15 Q. And I believe that he had a question
16 whether Staff filed comments related to the
17 regulatory -- let me back up a second here. Sorry.

18 To your knowledge, has Staff submitted
19 formal comments on that rulemaking?

20 A. No. I think -- I thought the question
21 was am I familiar with the comments that were filed.
22 Staff does not file comments. In the formal
23 rulemaking we will, but up until this point, we have
24 not.

25 Q. Okay. So we're not in the formal

1 rulemaking yet?

2 A. Correct.

3 Q. And it would be true that the draft
4 proposed rule has not been submitted to the Secretary
5 of State?

6 A. Correct.

7 Q. Okay. Mr. Rogers, you participated in
8 the Ameren Cycle 2 case, didn't you?

9 A. Yes.

10 Q. You're familiar with the Commission's
11 Report and Order in that case?

12 A. Yes.

13 Q. And is it fair to say that you have
14 accepted the Commission's guidance from that Report
15 and Order in that case --

16 A. Yes.

17 Q. -- as you approach this case?

18 A. Yes.

19 Q. And in that case, the Commission did not
20 order Ameren to initiate a program that it rejected,
21 did it?

22 A. No.

23 Q. Okay. Now, Mr. Woodsmall had asked you
24 quite a few questions about free ridership. Do you
25 recall those questions?

1 A. Yes, I do.

2 Q. Is free ride-- is free ridership one of
3 the primary considerations of the evaluators?

4 A. Yes.

5 Q. And that makes up a good portion of the
6 EM&V, does it not? Or it is a big consideration?

7 A. It's a part of the impact analysis during
8 evaluation measurement and verification.

9 Q. And ultimately doesn't free ridership
10 bear on or determine the earnings opportunity that the
11 Company might -- might have at the end?

12 A. Yes.

13 Q. So doesn't the Company have an economic
14 incentive to minimize free ridership?

15 A. I would agree.

16 Q. Okay. Now, you were also asked about
17 free ridership in the context of Ameren Missouri's
18 program and with regard to C and I programs. Why is
19 the Ameren Missouri C and I program that you analyzed
20 in your Surrebuttal a good surrogate for this analysis
21 for the program that the signatories are recommending
22 that the Commission approve?

23 A. Well, the main issue is the incentive
24 level that KCP&L and GMO are proposing for Cycle 2 is
25 a flat 10 cents per kilowatt hour. And the Ameren

1 MEEIA Cycle 1 incentive was closer to that than
2 KCP&L's Cycle 1 and -- and even less than that,
3 6 cents for lighting and 7 cents for non-lighting.
4 And so I put this schedule together with the intent of
5 showing that a lower incentive does -- does not
6 necessarily result in lower benefits. There's --

7 Q. And the schedule you're referring to is
8 Schedule JAR-SR-2; is that correct?

9 A. Correct.

10 Q. And that's the schedule that the
11 Commission should look at with regard to your analysis
12 of those programs. Correct?

13 A. That was the reason I put it together.

14 Q. Right.

15 A. Yes.

16 Q. Right. And it's your understanding that
17 Brightergy wants the Cycle 1 C and I program to be
18 continued into Cycle 2; is that right?

19 A. Yes.

20 Q. The Company has not agreed to that.
21 Correct?

22 A. Correct.

23 Q. And yet based on your analysis in your
24 Schedule JAR-SR-2, you have listed the planned program
25 cost of some 12 million and you've listed the actual

1 program costs of 24 million; is that correct?

2 A. Correct.

3 Q. So the result basically in terms of the
4 program spend was --

5 A. Double.

6 Q. -- twice --

7 A. Right.

8 Q. -- the plan?

9 A. Yes.

10 Q. And yet the point you're trying to make,
11 as I understand, is that Ameren Missouri's Cycle 1
12 program at the lower 6 cents and 7 cents per kilowatt
13 hour incentive levels was a highly effective program?

14 A. Yes. And produced significantly more net
15 benefits for customers for the same dollar of spend
16 that -- than did KCPL and GMO's during the same time
17 period.

18 Q. So is it fair to say that the amount of
19 money spent on incentive levels does not provide a
20 direct correlation or a direct relationship to
21 increasing energy efficiency savings?

22 A. That's my testimony, yes.

23 MR. BERLIN: That's all my questions.

24 Thank you.

25 JUDGE BUSHMANN: Thank you for your

1 testimony, Mr. Rogers. You may step down now.

2 Why don't we take a lunch break. We'll
3 be in recess until 1:45.

4 (Brightergy Exhibit 500 was marked for
5 identification.)

6 JUDGE BUSHMANN: Let's go back on the
7 record. Ready for our next Staff witness.

8 MS. MUETH: Staff calls Brad Fortson.
9 (Witness sworn.)

10 JUDGE BUSHMANN: Be seated.

11 BRAD FORTSON, testified as follows:

12 DIRECT EXAMINATION BY MS. MUETH:

13 Q. Good afternoon, Mr. Fortson.

14 A. Good afternoon.

15 Q. Please state your name for the record.

16 A. Brad Fortson.

17 Q. And what is your job title?

18 A. Regulatory economist three.

19 Q. And how long have you worked in that
20 position?

21 A. For about six months in this specific
22 position.

23 Q. Are you the same Brad Fortson who has
24 prepared pre-filed Direct Testimony premarked as
25 Exhibit Number 200?

1 A. I am.

2 Q. And did you prepare your Direct Testimony
3 in question and answer format?

4 A. I did.

5 Q. Do you have any corrections to make to
6 your testimony?

7 A. No, I don't.

8 Q. Is your testimony true and correct to
9 your best information and belief?

10 A. It is.

11 Q. And if I were to ask you the same
12 questions in your testimony today, would your answers
13 be substantially the same?

14 A. They would.

15 MS. MUETH: Your Honor, I move to admit
16 into the record Mr. Fortson's Direct Testimony marked
17 as Exhibit 200.

18 JUDGE BUSHMANN: Any objections?

19 Hearing none, it is received.

20 (Staff Exhibit 200 was received into
21 evidence.)

22 MS. MUETH: And I tender the witness.

23 JUDGE BUSHMANN: First cross would be by
24 KCPL.

25 MR. STEINER: No questions.

1 JUDGE BUSHMANN: Public Counsel .

2 MR. OPITZ: No questions, your Honor.

3 JUDGE BUSHMANN: Renew Missouri .

4 MR. LINHARES: No questions, your Honor.

5 JUDGE BUSHMANN: NRDC.

6 MR. ROBERTSON: No questions.

7 JUDGE BUSHMANN: Division of Energy.

8 MR. ANTAL: No questions.

9 JUDGE BUSHMANN: United for Missouri .

10 MR. LINTON: No questions.

11 JUDGE BUSHMANN: Ameren Missouri .

12 MR. MITTEN: No questions.

13 JUDGE BUSHMANN: Brightergy.

14 MR. WOODSMALL: No questions.

15 JUDGE BUSHMANN: Do any of the

16 Commissioners have any questions?

17 All right. No questions from the Bench,
18 no need for recross, no need for redirect. Thank you,
19 Mr. Fortson.

20 THE WITNESS: Thank you.

21 JUDGE BUSHMANN: You may step down, sir.

22 MS. MUETH: Staff calls Michael Stahlman.

23 (Witness sworn.)

24 JUDGE BUSHMANN: Please be seated.

25 THE WITNESS: Thank you.

1 MICHAEL STAHLMAN, testified as follows:

2 DIRECT EXAMINATION BY MS. MUETH:

3 Q. Good afternoon, Mr. Stahlman.

4 A. Good afternoon.

5 Q. Please state your name for the record.

6 A. Michael L. Stahlman, S-t-a-h-l-m-a-n.

7 Q. And what is your job title?

8 A. I'm a regulatory economist.

9 Q. How long have you worked in that
10 position?

11 A. Approximately five years.

12 Q. Are you the same Michael Stahlman who has
13 prepared pre-filed Direct Testimony premarked as
14 Exhibit Number 203?

15 A. Yes.

16 Q. Did you prepare your Direct Testimony in
17 question and answer format?

18 A. Yes.

19 Q. Do you have any corrections to make to
20 your testimony?

21 A. No.

22 Q. Is your testimony true and correct to
23 your best information and belief?

24 A. Yes.

25 Q. If I were to ask you the same questions

1 in your testimony today, would your answers be
2 substantially the same?

3 A. Yes.

4 MS. MUETH: Your Honor, I move to admit
5 into the record Mr. Stahlman's Direct Testimony marked
6 as Exhibit 203.

7 JUDGE BUSHMANN: Are there any
8 objections?

9 Hearing none, it's received into the
10 record.

11 (Staff Exhibit 203 was received into
12 evidence.)

13 MS. MUETH: And I tender the witness.

14 JUDGE BUSHMANN: Cross by KCPL.

15 MR. FISCHER: Just briefly, your Honor.

16 CROSS-EXAMINATION BY MR. FISCHER:

17 Q. Good afternoon, Mr. Stahlman.

18 A. Good afternoon.

19 Q. I notice from your resume that's attached
20 to your testimony, it appears this isn't the first
21 energy efficiency case that you've been involved with
22 here at the Commission; is that right?

23 A. That's correct.

24 Q. Sometimes it's hard to know what all work
25 goes on on this side of the Bench, but can you explain

1 what level of efforts the Staff would typically go to
2 in looking at a case like this one? How would you go
3 about processing it?

4 A. Well, the Company provides a significant
5 amount of data and -- that Staff goes through. We
6 look at other reports done by other companies, we look
7 at other market reports, we examine the academic work
8 behind it and try to come up with are these reasonable
9 numbers that the Company is providing us and analyze
10 what their approximations of free ridership and things
11 like that are based on market reports. There's a lot
12 of work that has to go into these in a short amount of
13 time.

14 Q. Would that span over a number of days,
15 weeks or months or what kind of time frame are we
16 talking about?

17 A. Months.

18 Q. I notice we have three Staff people that
19 filed testimony in this case. Is that the Staff team
20 that would have looked at this kind of data?

21 A. In part. There's also broader teams.
22 Ms. Sarah Kliethermes also participated a lot in this
23 and there has been at other times other Staff people
24 that -- I think Mr. Curtis Gateley would be one
25 that -- and historically there's been other Staff who

1 are no longer here.

2 Q. And once you've done that kind of work,
3 then we had a number of technical conferences, is that
4 right, in this case?

5 A. Yes.

6 Q. Do you recall how many we would have had?

7 A. Other than a lot, no.

8 Q. Other than a lot. Is a lot more than a
9 dozen?

10 A. I think so. It was probably nearly once
11 a week at least, sometimes more often.

12 Q. Once a week over a period of how many
13 weeks do you think?

14 A. In other -- this was a more abbreviated
15 schedule so this started in -- was it November or
16 December, somewhere in there. In the other cases it
17 would have been over sometimes four or five months, I
18 think.

19 Q. And were there also settlement
20 conferences where all the parties were included or at
21 least invited to participate?

22 A. Yes.

23 Q. And then were there additional conference
24 calls to deal with drafting stipulations?

25 A. Yes.

1 Q. Did you see several drafts of
2 stipulations?

3 A. Very -- yes.

4 Q. Very --

5 A. A great quantity.

6 Q. Okay. Was this Stipulation and Agreement
7 an agreement between Staff and Kansas City Power &
8 Light that was just handed to the other parties for --

9 A. No.

10 Q. -- their approval?

11 A. No. The settlement was done in
12 conferences with all parties attending.

13 Q. And would you describe the give and take
14 as being significant?

15 A. Yes.

16 Q. That's all the questions I have. Thank
17 you.

18 JUDGE BUSHMANN: Public Counsel.

19 MR. OPITZ: No questions, Judge.

20 JUDGE BUSHMANN: Renew Missouri.

21 MR. LINHARES: No questions, your Honor.

22 JUDGE BUSHMANN: NRDC.

23 MR. ROBERTSON: No questions.

24 JUDGE BUSHMANN: Division of Energy.

25 MR. ANTAL: No questions.

1 JUDGE BUSHMANN: Uni ted for Mi ssouri .

2 MR. LINTON: No questi ons.

3 JUDGE BUSHMANN: Ameren Mi ssouri .

4 MR. MITTEN: No questi ons, your Honor.

5 JUDGE BUSHMANN: Bri ghtergy.

6 MR. WOODSMALL: Yes, very bri efly.

7 CROSS-EXAMINATION BY MR. WOODSMALL:

8 Q. You were j ust asked some questi ons and
9 you talked about the procedure and the, quote, give
10 and take that went on in this process. Do you recal l
11 that questi on?

12 A. Yes.

13 Q. Are you aware that the custom rebate
14 program was part of KCP&L's ini tial applicati on?

15 A. I believe so, yes.

16 Q. Are you aware that the custom rebate
17 program as it is in the stipulation is exactly what
18 KCP&L sought in their applicati on?

19 A. I'm not posi tive, but I'll take your word
20 for that.

21 Q. So at least on that point, there was no
22 give and take; is that correct?

23 A. I would di sagree wi th that.

24 Q. Can you tel l me what the changes were?

25 A. Wel l , di fferent parti es had di fferent

1 positions. And as part of the settlement, it may have
2 ended up at the exact starting point, but that
3 wouldn't have been without give and take from other
4 parties.

5 Q. Thank you. No further questions.

6 JUDGE BUSHMANN: Any questions from
7 Commissioners?

8 CHAIRMAN HALL: I have no questions.
9 Thank you.

10 COMMISSIONER STOLL: No questions. Thank
11 you.

12 COMMISSIONER KENNEY: No questions.
13 Thank you.

14 JUDGE BUSHMANN: Redirect by Staff.

15 MS. MUETH: No questions, your Honor.

16 JUDGE BUSHMANN: Thank you, Mr. Stahlman.
17 You may step down, sir.

18 THE WITNESS: Thank you.

19 JUDGE BUSHMANN: We're ready for witness
20 by NRDC.

21 MR. ROBERTSON: Your Honor, all other
22 parties have waived cross-examination of our witness,
23 so he will not be appearing today. I would like to
24 move into evidence the testimony -- Direct Testimony
25 of Cliff McDonald, which has been marked Exhibit 650.

1 JUDGE BUSHMANN: All right. Does any
2 other party have an objection to either the appearance
3 of Mr. McDonald or the entrance of 650 into the
4 record? Hearing no objections, his appearance will be
5 waived and Exhibit Number 650 is received into the
6 record.

7 (NRDC Exhibit 650 was received into
8 evidence.)

9 MR. ROBERTSON: Thank you, your Honor.

10 (NRDC Exhibit 650 was marked for
11 identification.)

12 JUDGE BUSHMANN: All right. Our final
13 witness then would be from Brightergy.

14 (Witness sworn.)

15 JUDGE BUSHMANN: Please have a seat. You
16 may proceed.

17 MR. ZELLERS: Thank you, your Honor.

18 ADAM BLAKE, testified as follows:

19 DIRECT EXAMINATION BY MR. ZELLERS:

20 Q. Could you please state your name and
21 address for the record.

22 A. Adam Blake, 1712 Main Street, Floor 6,
23 Kansas City, Missouri 64108.

24 Q. Are you the same Adam Blake who caused to
25 be filed Rebuttal Testimony in this case labeled

1 Exhibit 500?

2 A. Yes.

3 Q. Do you have any changes or corrections to
4 that testimony?

5 A. I do have one minor one. On page 8, the
6 last line there, line 36, \$2,800 should be \$2,400.
7 That was just a simple math error.

8 Q. Do you have any other changes or
9 corrections?

10 A. No.

11 Q. Save from that one change, would your
12 answers, if asked today to these same questions, be
13 the same?

14 A. Yes.

15 Q. And save that one correction, are the
16 answers true and correct to the best of your
17 knowledge?

18 A. Yes.

19 MR. ZELLERS: Your Honor, I'd ask that
20 Exhibit 500 be admitted into the record and I tender
21 the witness.

22 JUDGE BUSHMANN: Any objections to the
23 receipt of that exhibit?

24 Hearing none, it's received.

25 (Brightergy Exhibit 500 was received into

1 evi dence.)

2 JUDGE BUSHMANN: And first cross would be
3 NRDC.

4 MR. ROBERTSON: No questions, your Honor.

5 JUDGE BUSHMANN: Uni ted for Mi ssouri .

6 MR. LINTON: No questi ons.

7 JUDGE BUSHMANN: Ameren, Mi ssouri .

8 MR. MITTEN: No questi ons.

9 JUDGE BUSHMANN: Di vi sion of Energy?

10 MR. ANTAL: Yes, a few questi ons.

11 CROSS-EXAMINATION BY MR. ANTAL:

12 Q. Hello, Mr. Blake.

13 A. Hi .

14 Q. Have you reviewed the Surrebuttal
15 Testimony of Staff Witness John A. Rogers?

16 A. Yes. I mean, it's been a while so I
17 don't know it all off the top of my head, but yeah, I
18 read it.

19 Q. And did you review the -- his Schedule
20 JAR-SR-2, Summary Analysis of C and I Custom Programs?

21 A. Yes. Very briefly.

22 Q. Okay. Do you have a copy of that with
23 you now?

24 A. No.

25 MR. ANTAL: Okay. May I approach the

1 witness?

2 JUDGE BUSHMANN: You may.

3 MR. WOODSMALL: I got it.

4 BY MR. ANTAL:

5 Q. Mr. Blake, is the document that
6 Mr. Woodsmall just handed you, can you read the title
7 of it?

8 A. Summary Analysis of C and I Custom
9 Programs.

10 Q. And would you agree that this is a
11 comparison of the C and I customer programs in Ameren
12 Missouri and KCPL/GMO territories during Cycle 1?

13 A. Yes.

14 Q. Okay. And in the bottom-most column
15 titled Actual Net Benefits Per Actual Program Costs,
16 would you submit that the benefits in the Ameren
17 Missouri's C and I custom program were higher than in
18 KCPL?

19 A. Well, I mean if you're asking if that
20 6.4 is greater than 1.8, yes.

21 Q. Okay. That was my question.

22 A. But I mean, I -- I don't know what
23 exactly that definition means though.

24 Q. Okay. And does Brightergy operate in
25 Ameren Missouri service territory?

1 A. Yes.

2 Q. Okay. Has Brightergy had customers
3 participate in Ameren Missouri's C and I custom
4 program?

5 A. You know, I'm not 100 percent sure on
6 that. I would think so. I mean, we've done a lot of
7 projects in Ameren's territory.

8 Q. Okay.

9 A. But I'm not 100 percent certain on that.

10 Q. Do you know the nature of those projects?

11 A. Solar primarily. Energy efficiency
12 secondarily.

13 Q. Okay. Do -- were they -- were those
14 projects in public schools or private schools?

15 A. Yeah. We do a lot -- a lot of work with
16 both public and private schools.

17 Q. Do you know specifically if those Ameren
18 projects -- those projects in the Ameren service
19 territory were in schools or is that just a
20 generalization of Brightergy's market segment?

21 A. I know that we have a lot of school
22 clients in Ameren's territory, especially solar
23 clients. I mean, across the state of Missouri we have
24 I think 400 different schools that -- school buildings
25 that are -- we've done some form of energy project

1 for. I think that's at about 80 or 90 different
2 school districts or schools.

3 Q. All right. Do you know were any of the
4 projects in the Ameren service territory with
5 non-profit organizations?

6 A. Yes.

7 Q. Okay. Do you know how many?

8 A. No. Not off the top of my head. I mean,
9 I can tell you generally speaking the tax exempt
10 organization represent a material amount of our
11 revenue.

12 Q. Okay. And those are primarily the ones
13 that you were concerned with in your testimony?

14 A. You know, I -- I made the point that
15 these types of organizations are, comparatively
16 speaking, disadvantaged more so than typical
17 businesses.

18 Q. Okay. If you know, are there any
19 differences in Ameren Missouri's Cycle 1 C and I
20 custom program and the C and I custom program that
21 KCPL had in Cycle 1?

22 A. Yeah. There's -- I mean, they're pretty
23 significant differences. My understanding is that the
24 Ameren program was a 6 cent per kilowatt hour based on
25 the first-year savings, compared to the custom program

1 with KCPL that had the buy-down to a two-year payback
2 period or 50 percent of project costs.

3 Q. Okay. So the only difference that you
4 know of is in the customer incentive levels?

5 A. Well, I mean I have to think about that.
6 I -- I'm sure there's a lot of differences, but I
7 mean, you asked me about the custom program one.

8 Q. Okay. Well, given that you just stated
9 that the only difference that you know of right now is
10 the customer incentive level and your testimony is
11 that lower incentive levels than what KCPL had in
12 Cycle 1 would be detrimental to the number of free --
13 number of people taking advantage of these programs,
14 can you -- do you have any insight as to why in
15 Staff's analysis Ameren Missouri's custom rebate
16 program was able to achieve higher net benefits
17 compared to what KCPL was able to achieve?

18 A. I mean, I -- I haven't studied their --
19 their report or their EM&V in detail but I -- so I'm
20 going to speak very generally here. The program over
21 there is pretty small relative to the population in
22 St. Louis. There are going to be a significant amount
23 of customers that do energy efficiency just because
24 they're going to do it. And then it becomes a
25 situation of is there an incentive in place -- is it

1 enough to be worth my time to fill out the
2 application.

3 And what I would suggest is that that's
4 actually what's happening a lot on the Ameren side
5 when they're only paying 6 cents per kilowatt hour.
6 We've done thousands of proposals. We know that that
7 incentive level really might only provide 5 to --
8 5 percent of the project cost. So that's enough time
9 for -- it's worth somebody's time to fill out the
10 application and take the free money, but it's not
11 enough to get them off the dime and actually do a
12 project.

13 One other thing I'd point out on that
14 topic, we have decreased our staff over on the
15 St. Louis side -- we have an office in Webster
16 Groves -- because we -- we used to do a lot of solar
17 projects there back when there was a state level or
18 utility level solar incentives.

19 Because Ameren's custom program was
20 relatively low at 6 cents, we just don't feel like
21 that incentivizes the market so we don't really have
22 employees actively targeting energy efficiency
23 customers in St. Louis, you know, at least relative to
24 Kansas City. That staff is a fraction of the Kansas
25 City side.

1 Q. Okay. Mr. Blake, I think you just said
2 that you have a significantly smaller staff in the
3 Ameren service territory than you do in the KCPL
4 service territory. Is that -- am I --

5 A. Yeah. As of right now, we do. You know,
6 at one point that -- that wasn't necessarily the case,
7 but we have a lot more employees in Kansas City.

8 Q. Okay. But -- and correct me if I'm
9 wrong, you said that that reduction in staff was due
10 to solar rebates, not the ending of Ameren's energy
11 efficiency programs under MEEIA?

12 A. Correct. There's not -- there -- there's
13 not a direct correlation between Ameren ending their
14 efficiency program and us reducing staff in St. Louis.
15 But I -- but I will say that we have not staffed up
16 there to sell energy efficiency projects in Ameren's
17 territory because we don't think that 6 cents per
18 kilowatt hour actually incentivizes the customer to
19 create more demand.

20 Q. And yet the net benefits that the Ameren
21 program achieve in Cycle 1 were larger than KCPL's net
22 benefits?

23 A. I mean, that's -- that's what this study
24 apparently says. I mean --

25 Q. Okay.

1 A. -- I find that -- I mean, you know, I'm
2 not an expert on -- on the specific study that was
3 done in Ameren's territory.

4 Q. All right. Okay. Have you reviewed the
5 Surrebuttal Testimony of KCPL Witness Kimberly H.
6 Winslow?

7 A. Yes.

8 Q. Okay. In your testimony you stated that
9 the 10 cents per kilowatt hour incentive level would
10 increase free ridership; is that correct?

11 A. Yes.

12 Q. Okay. Ms. Winslow called into question
13 your claim stating that the Ameren program, which she
14 described as similar to what they had proposed for
15 Cycle 2, had a net-to-gross ratio of over 92 percent
16 in 2013 and '14 with custom-- with customer incentive
17 rates of 7 cents per kilowatt hour for non-lighting
18 measures and 6 cents per kilowatt hour for lighting
19 measures. Would you consider 92 percent to be a good
20 net-to-gross ratio?

21 A. Again, I haven't read that report so I
22 don't even know how to guess that. I'm sorry.

23 Q. Okay. Ms. Winslow also stated that you
24 don't provide any evidence to support your anecdotal
25 claims that customers would not do projects with the

1 10 percent incentive level. Did you cite to any
2 studies or reports in your testimony?

3 A. So I don't think this report is
4 necessarily cited in my -- in my testimony. I mean, I
5 am aware of such reports. I mean, one that just pops
6 in my mind is the Synapse study, for example, that was
7 done that talks a lot about payback periods and, you
8 know, really need to be at that two-year threshold --

9 Q. Mr. Blake, my question was did you cite
10 to any of them in your testimony?

11 A. No. I don't think so. We did cite some
12 specific examples of customers though that -- you
13 know, specific project levels that would be before and
14 after, you know, under Cycle 1 versus Cycle 2 and --
15 and suggest that the ones under Cycle 2 simply would
16 not move forward because the economics just aren't
17 compelling enough.

18 Q. Okay. So the criticisms of the cus-- of
19 KCPL's custom rebate program as it's proposed in the
20 stipulation were based off of your personal
21 experiences, personal knowledge?

22 A. I'd say it's based on the vast experience
23 that Brightergy has in the marketplace with the
24 thousands of proposals that we've done and the
25 hundreds of customers that we have in the state of

1 Missouri and our experience with the KCPL Cycle 1
2 program.

3 Q. Okay. Now, you in your testimony have
4 asked the Commission to instruct or order parties to
5 go back to the negotiation table; is that correct?

6 A. Yes.

7 Q. Okay. If you know -- and let me scratch
8 that for a second. I'll go back and ask -- you're
9 aware that in the Ameren case they did -- the
10 Commission took such action; is that correct?

11 A. Yes.

12 Q. Okay. Are you aware that when the
13 Commission took that action in the Ameren case, that
14 parties were not able to reach a negotiation -- a
15 settlement?

16 A. My understanding is that -- that's, you
17 know, a very different case and the issues and
18 disputes were much broader. You know, I think in our
19 situation here, there's not a whole lot that's being
20 disputed here. It's a relatively simple fix. And --
21 you know, so I think that everybody's much closer than
22 they were in the Ameren case, for example.

23 Q. Okay. And you've also suggested in the
24 alternative, that the Commission -- if the parties
25 aren't able to meet an ultimate agreement, that it's

1 to Brightergy's liking that the Commission should not
2 approve this stipulation; is that correct?

3 A. Yes. I mean, we've -- we've raised some
4 concerns that we want to see addressed.

5 Q. Okay. And to your knowledge, are there
6 any -- Ameren doesn't have any MEEIA programs in the
7 state of Missouri currently, do they?

8 A. No.

9 Q. And that is as -- partially a result of
10 their -- the stipulation that they submitted was not
11 approved?

12 A. Yes.

13 Q. Okay. So the remedies that Brightergy is
14 requesting, would they delay the implementation of the
15 Company's MEEIA Cycle 2 programs more than they've
16 been delayed already?

17 A. No. I don't think so. I mean, again, I
18 think it's a pretty simple fix that could be fixed
19 right away, you know, and programs start shortly
20 thereafter.

21 Q. So if parties have to go back to the
22 negotiation table, you don't believe that it will take
23 any additional time then if the Commission were to
24 approve the stipulation as it's been submitted today?

25 A. I think that we -- the parties should be

1 able to compromise and, you know, see the programs
2 actually developed.

3 Q. Okay. You're hopeful that they will?

4 A. Yeah. I mean, I think we're a very
5 reasonable party here and have been in our attempts to
6 compromise on this. And I don't see any reason why --
7 again, this is a simple fix here that we're talking
8 about. I don't see any reason why it would take very
9 long.

10 Q. Hypothetically -- you've stated that you
11 don't believe that there will be any delay.
12 Hypothetically if it does delay program
13 implementation, would that create additional
14 uncertainty for KCPL's customers who want to take
15 advantage of these programs?

16 A. Yeah. I mean I think not having a
17 program and not knowing if there is going to be a
18 program or not, you know, does create some
19 uncertainty.

20 Q. Okay. Would you also -- would you also
21 state that it will increase the uncertainty to trade
22 allies such as Brightergy if there is a delay?

23 A. Well, yeah. I think back to what I just
24 said, yeah. If -- if -- and -- and -- the sooner that
25 people know if there's going to be a program or not,

1 you know, I think that -- that that's generally a good
2 thing.

3 Q. So --

4 A. You know, the worst thing, you know,
5 is -- is not knowing and not having that business
6 certainty, you know, which is part of the reason why
7 we've objected to this whole concept of the nuclear,
8 scorched earth option that the utility wants.

9 I mean, that would create a pretty
10 unfriendly business environment for us to operate in
11 or any other trade ally, for that matter, you know,
12 that are make investments, that are hiring people,
13 that are providing professional development and
14 training and paying people to do audits and buying
15 trucks and all the stuff that comes with providing
16 energy efficiency. The certainty, you know -- or the
17 lack of certainty is very concerning similar to, you
18 know --

19 Q. So based off what you've just said about
20 uncertainty, would it be your recommendation to the
21 Commission that they pursue the option that will
22 implement -- implement energy efficiency programs as
23 quickly as possible?

24 A. No. I -- my recommendation is to get
25 this right.

1 Q. Okay. If there -- again, hypothetically
2 if there is a delay in the implementation of these
3 programs, will that hurt the market for energy
4 efficiency in the state of Missouri?

5 A. I think that getting the program right is
6 much more important to the energy efficiency market
7 than -- than having a plan just to have a plan, which
8 is really what I feel like is -- is happening right
9 now in this case.

10 Q. Okay. Now, are you aware in the terms of
11 the stipulation that Brightergy is opposed to, that
12 there is a provision for a collaborative process to
13 look at new and underserved customer markets?

14 A. Generally I'm aware of that, but I -- I
15 do not know any of the specifics.

16 Q. Okay. If the Commission does not grant
17 Brightergy the relive it's seeking, will Brightergy be
18 a stakeholder in the collaborative process?

19 A. Yeah. I think so. I mean, we've
20 attempted to be a stakeholder in as many of these
21 discussions and technical conferences as possible.

22 Q. So you would agree then it's in
23 Brightergy's best interest to be an active stakeholder
24 in any collaborative?

25 A. I -- I think it's -- yeah, yeah, of

1 course. And I think it's in every -- anyone that
2 participates in these programs should have a voice and
3 should participate. You know, a lot of times
4 customers -- they don't understand what goes on here
5 at the Public Service Commission.

6 A lot of people certainly can't afford --
7 especially small businesses -- to hire lawyers to go
8 through the dozens of technical conferences that
9 everybody's been talking about. I mean, you can rack
10 up a six-figure legal bill just to participate in this
11 case, for example.

12 So, you know, absolutely I think that
13 people should be participating as much as they can,
14 you know, where they have -- when they have the time
15 and the resources to do so. It's really expensive
16 to -- to, you know, be in these things from start to
17 finish.

18 Q. As part of that collaborative process, if
19 parties were to look into developing, either as a
20 stand-alone program or as a subpart of an existing
21 program, incentive levels that were geared towards
22 public facilities, including schools and non-profit
23 organizations, would that help alleviate some of
24 Brightergy's concerns?

25 A. I mean, I think depending on -- on that

1 certain level. I mean that -- that certainly makes it
2 better than -- than, you know, the status quo.

3 Q. Okay. And you'd agree that under the
4 terms of the stipulation, the Company, with the
5 collaboration of other parties, has the ability to
6 increase the incentive levels for the C and I custom
7 program?

8 A. I believe they have the -- you know, my
9 understanding at least is they have the ability and
10 they have to follow a multi-step process to do that.
11 I do not believe that -- I cannot foresee any scenario
12 under which they would actually increase those custom
13 incentive levels.

14 Q. Okay. No further questions. Thank you.

15 JUDGE BUSHMANN: Cross by Renew Missouri.

16 MR. LINHARES: No questions, Judge.

17 JUDGE BUSHMANN: Public Counsel.

18 MR. OPITZ: No questions, your Honor.

19 JUDGE BUSHMANN: Commission Staff.

20 CROSS-EXAMINATION BY MS. MERS:

21 Q. Good afternoon, Mr. Blake. My name's
22 Nicole Mers and I'm the attorney for Staff counsel. I
23 have some questions today -- yes or no questions
24 related to the testimony and the testimony filed in
25 this case.

1 You state in your Rebuttal Testimony that
2 you're the chief executive officer of Brightergy, LLC.
3 Is it fair to say as CEO, that you have the ultimate
4 responsibility for the sales and accounting functions
5 of your company?

6 A. I mean, I have a CFO, we have an
7 accounting department, we have an accounting staff.

8 Q. Are you also owner of the company?

9 A. I am one of the owners, yeah.

10 Q. One of the owners. What is your
11 ownership -- ownership percentage?

12 A. I can answer that, but it's highly
13 confidential.

14 MS. MERS: Can we go in-camera?

15 MR. ZELLERS: Yeah. I'm sorry. I'm
16 going to object to that. It's a private company. We
17 can't discuss the ownership structures.

18 MS. MERS: Can we go in-camera and
19 discuss?

20 JUDGE BUSHMANN: You can ask in-camera.

21 (REPORTER'S NOTE: At this point, an
22 in-camera session was held, Volume 4, pages 238
23 through 241.)

24
25

1 JUDGE BUSHMANN: All right. We're back
2 in public session. You may proceed.

3 BY MS. MERS:

4 Q. In your testimony, you state that
5 Brightergy is a trade ally to KCPL/GMO; is that
6 correct?

7 A. Yes.

8 Q. Let's unpack the term "trade ally." Is
9 it fair to say that Brightergy is an independent
10 contractor?

11 A. I mean, I think depending on your
12 definition of independent contractor. I mean -- so
13 I'm not going to agree with that.

14 Q. And Brightergy installs various energy
15 efficiency projects for commercial and industrial
16 customers. Correct?

17 A. Yes.

18 Q. Okay. And as part of that, KCPL/GMO and
19 Brightergy serve some of the same commercial and
20 industrial customers?

21 A. Yes.

22 Q. Okay. And as a trade ally, the revenue
23 then would come from those customers from ind--
24 implementing energy efficiency projects. Correct?

25 A. Say that again.

1 Q. Part of your revenue would come from
2 customers implementing energy efficiency projects,
3 those --

4 A. Yes.

5 Q. Okay. And those projects qualify for the
6 incentive rebate from KCPL/GMO?

7 A. Some do.

8 Q. Okay. So it follows then that KCPL/GMO
9 is paying the incentive rebate dollars to your
10 customers?

11 A. On certain projects, yes.

12 Q. On certain projects. Would you agree
13 that money spend on program incentives and rebates
14 are, in the end, paid for by all utility customers
15 through demand-side investment mechanism charge on
16 their monthly bills?

17 A. Yes. The ones that don't opt out.

18 Q. Yes. Mr. Blake, are you aware that KCPL
19 currently has over 200 trade allies that participate
20 in the custom rebate program?

21 A. I am, yeah, after today.

22 Q. Okay. Is Brightergy the only trade ally
23 that has intervened in this proceeding?

24 A. Yes. Yeah. And I --

25 Q. Thank you.

1 A. -- I'd say that -- I think a lot of them
2 would like to intervene in these types --

3 Q. You've --

4 A. -- of things and my understanding is a
5 lot of them have written letters --

6 Q. It was a yes or no question. Thank you
7 for your answer.

8 A. All right.

9 Q. Okay. Are you familiar with the
10 testimony of Tim Rush?

11 A. I mean I've read it, but --

12 Q. Okay.

13 A. -- not recently.

14 Q. Are you familiar with Mr. Rush's
15 testimony that KCPL/GMO will not move forward with
16 MEEIA Cycle 2 without the regulatory flexibility
17 language?

18 A. Yes. I've heard that today.

19 Q. Okay. And you also realize that MEEIA
20 programs are voluntary?

21 A. Yes.

22 Q. Thank you. You're familiar with Kim
23 Winslow's testimony as well?

24 A. Yes.

25 Q. So you were aware that Clear Result

1 performed an analysis of other Midwestern utilities
2 and they recommended the change in custom rebates
3 structure for Cycle 2?

4 A. I mean, I think that's part of the
5 testimony, but I'll say this, you know, the -- the
6 program administrators get paid to implement -- or
7 they get paid to process applications. So, yeah, it's
8 in their best interest to have --

9 Q. So on page --

10 A. -- simple applications, but doesn't mean
11 it's better for the customers. I mean -- and I don't
12 know what Clear Result recommended or not. I know
13 that Clear Result's the one that processed the
14 applications and they probably --

15 Q. Okay. And --

16 A. -- prefer them to be simpler.

17 Q. Did -- so you're also familiar with the
18 testimony that Clear Result found significant savings
19 could be achieved with custom programs when the
20 rebates are directly tied to energy savings?

21 A. I -- I'm not sure what you're referring
22 to.

23 Q. That would be in Kim Winslow's Direct
24 Testimony, page 10, line 4.

25 A. I don't have her testimony in front of

1 me.

2 Q. Okay. Would you take my word for it
3 then?

4 A. Yeah. Well, say it again so I can keep
5 up.

6 Q. That Clear Result found significant
7 savings could be achieved with custom programs when
8 the rebates are directly tied to energy savings.

9 A. Okay.

10 Q. Okay. Were you also aware that AEG,
11 KCPL's/GMO's program design consultant, evaluated
12 vendor and customer feedback, reviewed utility best
13 practices, conducted potential studies and performed a
14 vigorous cost benefit analysis to decide on the
15 incentive range for the custom rebate programs?

16 A. Yes.

17 Q. Okay. And it is true that KCPL/GMO has
18 the flexibility to offer above or below the 10 cents
19 per kilowatt hour to further incent projects. Right?

20 A. You know, I'm not 100 percent sure on
21 that. I think that they -- I know that there's an
22 incentive range --

23 Q. I believe -- you don't have Kim Winslow's
24 testimony in front of you, you said?

25 A. No.

1 Q. Okay. That would be on page 11, line 2
2 if you had it in front of you.

3 Okay. Your testimony didn't have any
4 schedules, work papers or data attached to it or cited
5 to support the testimony. Correct?

6 A. I don't think so.

7 Q. Okay. So would you say then you did not
8 perform or submit any program benefit analysis, work
9 papers, modeling or empirical evidence to support your
10 position?

11 A. I -- no. I think we submitted a lot of
12 information to different parties throughout the whole
13 process.

14 Q. But not as part of your testimony on this
15 record?

16 A. Not as part of --

17 Q. Thank you.

18 A. -- this testimony, correct.

19 Q. Are you familiar with John Rogers'
20 Surrebuttal Testimony?

21 A. Yes. Generally familiar.

22 Q. Are you familiar with the schedule
23 contained that was the analysis of the C and I custom
24 rebate programs of Ameren and KCPL/GMO? That would be
25 Schedule JAR-SR-2.

1 A. I've got it in front of me, but I'm
2 not --

3 Q. Okay.

4 A. -- I mean, I haven't studied this in --

5 Q. You do have a copy in front of you?

6 A. Yes.

7 Q. Okay.

8 MS. MERS: May I approach?

9 JUDGE BUSHMANN: You may.

10 MS. MERS: Just in case you guys don't
11 have copies as well. Nice color printed ones.

12 BY MS. MERS:

13 Q. Ameren Missouri MEEIA Cycle 1 C and I
14 custom incentives were 6 cents per kilowatt hour for
15 lighting measures and 7 cents per kilowatt hour for
16 non-lighting measures. Correct?

17 A. Yes.

18 Q. Okay.

19 A. That's my understanding at least.

20 Q. And KCPL/GMO Cycle 1 C and I custom
21 program incentive was a buy-down to the lesser of the
22 two-year payback or 50 percent of the incremental
23 cost. Correct?

24 A. Yes.

25 Q. And that's the program you wish to

1 continue?

2 A. Yes.

3 Q. Can you read on the schedule that you
4 have in front of you what Ameren Missouri actual
5 program costs were for Cycle 1 through September 30th,
6 2015?

7 A. What line are you talking about? Is it
8 the bottom one, 6.4?

9 Q. It would be the program cost actual,
10 second bar down. I have a nice color-coded copy if it
11 helps.

12 A. I've got a color one.

13 Q. Okay. It's the blue line.

14 A. 23,488,357 dollars.

15 Q. Okay. And can you read what KCPL/GMO's
16 actual program costs were for the same period of time?

17 A. 24,601,687.

18 Q. And that would be double the plan cost,
19 correct, the KCPL/GMO?

20 A. A little bit less than that, but close
21 enough.

22 Q. So it's fair to say through September
23 30th, 2015, KCPL/GMO and Ameren Missouri each spent
24 approximately 24 million dollars in program costs?

25 A. Yes.

1 Q. And is it -- is it your understanding
2 that program costs include all the costs of delivering
3 the programs, including the cost of incentive payments
4 to program participants?

5 A. I believe so, but I'm not 100 percent
6 sure.

7 Q. Okay. And these program costs are borne
8 by all customers, not just program participants.
9 Correct?

10 A. It's -- yeah, the ratepayers that have
11 not opted out of -- of the demand -- or the DSIM
12 charge.

13 Q. Yes. And these program costs are
14 incurred with the expectation that the program will
15 result in actual net benefits for all customers to
16 comply with the MEEIA statute. Correct?

17 A. Yes.

18 Q. Not just program participants, but for
19 all utility customers?

20 A. Yes.

21 Q. Okay.

22 A. In that specific class.

23 Q. Yes. Thank you. So with approximately
24 the same amount of money spent on program costs,
25 Ameren Missouri achieved 151,275,503 dollars in net

1 benefits while KCPL/GMO only achieved 44,456,170
2 million according to that analysis. Correct?

3 A. Yes. I mean, according to this analysis.

4 Q. Can you read what the ratio of actual net
5 benefits per actual program costs for Ameren Missouri
6 is for Cycle 1?

7 A. Which one is that?

8 Q. That would be the -- at the very bottom
9 in the blue.

10 A. 6.4.

11 Q. Okay. And what is it for KCPL/GMO?

12 A. 1.8.

13 Q. Okay. So isn't it true that Ameren
14 Missouri's lower flat per kWh was more successful at
15 providing actual demand and actual energy savings,
16 thus, actual net benefits for all customers than the
17 KCPL/GMO Cycle 1 program, which has higher incentives
18 but you believe should be continued?

19 A. No. I mean, I wouldn't agree with that.
20 And I'm hesitant to opine on it because I haven't read
21 the EM&V to support this analysis.

22 Q. Okay. Would you say it's true that
23 Ameren Missouri's flat kilowatt hour rate is lower
24 than what KCPL/GMO proposes for its Cycle 2? Correct?

25 A. If I understand you correct, you're

1 asking me if 6 cents is lower than 10 cents?

2 Q. Yes.

3 A. Yes.

4 Q. Okay. Mr. Blake, if the Commission
5 approves the C and I customer rebate program as
6 proposed by the stipulation of the parties and is
7 supported by the record testimony, would Brightergy
8 continue to participate in the program as a trade
9 ally?

10 A. Yes.

11 Q. Okay. No further questions.

12 JUDGE BUSHMAN: Cross by Kansas City
13 Power & Light.

14 MR. STEINER: Thank you.

15 CROSS-EXAMINATION BY MR. STEINER:

16 Q. Good afternoon, Mr. Blake.

17 A. Good afternoon.

18 Q. I want to go to a question or response
19 that you had from the Department of Energy counsel. I
20 think you said there was a simple fix. Do you recall
21 that?

22 A. Are you talking about just today?

23 Q. Today.

24 A. Yes.

25 Q. Has Brightergy been meeting with Kansas

1 City Power & Light and GMO since the settlement
2 agreement was filed on this simple fix?

3 A. Yes. We've had some discussions.

4 Q. Isn't it true that KCPL has made several
5 offers to settle the issue?

6 A. No. I mean, not -- not several offers.
7 I mean if we're talking -- I thought we weren't
8 allowed to talk about that, but can I talk about the
9 settlement? We made probably ten offers to try and
10 settle it.

11 Q. I'm asking you about our offer. Isn't it
12 true that we made an offer to settle it?

13 A. There was one -- there was one offer that
14 was made, yeah.

15 Q. Okay.

16 A. Out of -- you know, and that came well
17 after -- I think just within the last two weeks or so.
18 And we probably presented I'd say ten -- ten different
19 options to try and settle this.

20 Q. So -- so in your mind it's a simple fix?

21 A. When I say "simple fix," yeah, there's an
22 existing custom program that's working, that's
23 representing the lion's share of the savings that's
24 popular with customers -- I think that's been
25 demonstrated. In my view, a simple fix is continuing

1 the existing program that's already successful .

2 Q. Got it. Okay. That's what you meant by
3 simple fix.

4 Let's go to page 1 of your testimony.

5 A. Okay.

6 Q. There at line 28 you say, Brightergy has
7 more than 600 commercial customers. Do you see that?

8 A. Yes.

9 Q. How many of those commercial customers
10 are in Missouri?

11 A. A lot. Top of my head, I don't know.
12 Probably the majority.

13 Q. Majority. 595?

14 A. No. Not that many.

15 Q. 90 percent of 600 are in Missouri?

16 A. I don't know. I mean, I'm comfortable
17 saying greater than 50 percent of Brightergy's
18 customers are in Missouri, but beyond that, without
19 the data in front of me -- I mean, I can get that
20 data, but I just don't know off the top of my head.

21 Q. Okay. So greater than 50 percent. Of
22 those 50 percents that are in Missouri, how many are
23 in the Kansas City area?

24 A. I don't know.

25 Q. Would it be the majority of that

1 50 percent is in the Kansas City area?

2 A. You know, I don't know. I mean we have
3 done projects in probably 50 different cities in the
4 state of Missouri.

5 Q. Right.

6 A. All over -- every corner of the state.

7 Q. How many of those 50 percent of 600 are
8 in the St. Louis area?

9 A. Again, I don't know. Quite a bit. We've
10 done -- I'd say significant amount of work in
11 St. Louis.

12 Q. Okay. And then you say that those
13 600 customers have completed 1,400 commercial energy
14 projects. Do you see that?

15 A. Yes.

16 Q. So how many of those 1,400 energy
17 projects are located in Missouri?

18 A. Again, a lot, but I don't know the exact.

19 Q. Would it be greater than 50 percent?

20 A. Probably.

21 Q. How many of those 50 percent are located
22 in Kansas City?

23 A. I'd give you the same answer. I'm not
24 100 percent sure.

25 Q. Would it be greater than 50 percent?

1 A. I don't know.

2 Q. How many are in St. Louis, the St. Louis
3 area?

4 A. A lot.

5 Q. A lot?

6 A. I don't know the exact number. I mean --

7 Q. Okay. All you can do is give me what you
8 know so I appreciate --

9 A. I know. What I can tell you --

10 Q. -- your candor.

11 A. -- is we -- we've done a lot of business
12 in both Kansas City and St. Louis.

13 Q. Right. So when you say "business," I
14 want to get an idea of what you mean there. You say
15 you have experience providing energy products, at line
16 30, and energy services. So what is --

17 A. We say pr--

18 Q. -- an energy product?

19 A. Projects.

20 Q. Projects. Excuse me.

21 A. Well, let me read my testimony to be sure
22 I understand the context. We would define energy
23 projects in this context as some -- some sort of
24 project related to energy. Could be energy
25 efficiency, it could be solar, could be combined heat

1 and power. There's a number of different kind of
2 projects that we do.

3 We really differentiate here between
4 projects and services, services being some sort of,
5 you know, non-capital investment-type -- type service
6 that we're offering that might be more continuous.
7 Like we do a lot of energy services with customers and
8 help them analyze tariffs, for example, we help
9 customers purchase energy, we review bills, we audit
10 bills. I mean, we store the data for bills, we do
11 real-time energy monitoring. There's a lot of
12 services related to energy that we do.

13 Q. Okay. So an energy product could be an
14 energy efficiency project, it could be a solar
15 project; is that correct?

16 A. Correct.

17 Q. Could it be anything else?

18 A. I mean I think I said CHP.

19 Q. Okay.

20 A. That's another type of project that we
21 offer. And -- we do -- we do a lot of different types
22 of projects. It's kind of hard -- I think I could
23 categorize them primarily as solar energy efficiency
24 or CHP though.

25 Q. Okay. So then you have 1,400 commercial

1 energy projects. Commercial energy project, as you
2 just defined it, was energy efficiency, solar and CHP.

3 What's the breakdown of those 1,400 projects?

4 A. I don't know off the top of my head.

5 Q. Are the majority solar projects?

6 A. I would -- if I had -- I'm not
7 100 percent certain on that. If I had to guess, I'd
8 say yes. But I -- yeah, I'll just leave it at that.

9 Q. Okay.

10 A. But we have done hundreds of energy
11 efficiency projects. I mean it's -- it's a pretty
12 good mix there. It's not -- I mean, I don't have
13 exact breakdown, but it's a good mix of energy
14 efficiency, solar, CHP.

15 Q. Okay. So then we continue on 31, we've
16 got 4,000 sales proposals for energy projects?

17 A. Yes. I see that.

18 Q. Would you have any idea how that would
19 break down between energy efficiency, solar and CHP?

20 A. Again, not off the top of my head. I
21 mean, a lot of this -- we have the exact number
22 somewhere, you know, but this would be contained in
23 some of our internal software.

24 Q. So you didn't provide any of that
25 information as work papers to your testimony; is that

1 correct?

2 A. Correct. We didn't provide the breakdown
3 like you're asking for.

4 Q. Did you provide any work papers for your
5 testimony?

6 A. Not as part of the testimony. I know we
7 provided a lot of information that various parties
8 requested though.

9 Q. Okay. We'll keep on this paragraph.
10 You've got providing energy services or projects for
11 85 school clients, representing 400 schools. How many
12 of those 85 school clients are in Missouri?

13 A. I don't know off the top of my head. I
14 mean --

15 Q. That's fine.

16 A. -- a lot. I mean, probably almost all of
17 them.

18 Q. Almost all of them. Okay.

19 A. I -- let me read this again, because I
20 don't know if this is referring just to Missouri or
21 not. I know these other numbers in this paragraph are
22 referring just to Missouri, but we didn't qualify this
23 one with just from Missouri.

24 I'll say this. It's safe to say that
25 there's a significant -- probably the super majority

1 of those -- those numbers on line 33 or 34 are in the
2 state of Missouri.

3 Q. So something you said previously, you
4 said, all these other numbers apply to Missouri. I
5 thought you told me that at least half the commercial
6 customers of the 600 commercial customers are not in
7 Missouri?

8 A. No, I didn't say that.

9 Q. Okay. Well, how many of those commercial
10 customers are in Missouri?

11 A. I told you I don't know the exact
12 breakdown.

13 Q. Right. And I thought you said at least
14 half of those --

15 A. I'm -- I believe that's the case.

16 Q. Okay. That's -- that's why when you --
17 when -- you threw me because you said no, all these
18 numbers are Missouri. I think you're saying that you
19 don't know if they're Missouri or not?

20 A. I'm not saying they're -- I was talking
21 out loud here. You're asking me -- I mean, certain --
22 there's like five or six sentences in there --

23 Q. Well, when you talk out loud, the court
24 reporter gets it so --

25 A. I know, I know. You know, sentence 2

1 through 4 in that paragraph refer to Missouri. And it
2 specifically says, you know, in the state of Missouri,
3 we've done 4,000 sales proposals for energy projects
4 in state of Missouri.

5 Q. Okay. Okay. So we're on schools. You
6 believe the majority of those 85 school clients are in
7 Missouri. The majority of those 400 schools are in
8 Missouri; is that correct?

9 A. Yes.

10 Q. Okay. How many of those school
11 districts -- or excuse me, school clients are in the
12 Kansas City area?

13 A. I don't have the exact number off the top
14 of my head.

15 Q. Would it be the majority of those
16 clients?

17 A. I don't know.

18 Q. Okay. If you don't know that, would you
19 know how many of those 85 school clients are in
20 the St. Louis area?

21 A. Not off the top of my head.

22 Q. Would you know how many of those energy
23 services that you -- excuse me, energy projects you
24 provided those 85 school clients are solar projects?

25 A. Not off the top of my head.

1 Q. Okay. So sort of got an answer on
2 Missouri. I want to go to the other geographic
3 markets besides Missouri that you provide energy
4 projects, whether that's energy efficiency, solar and
5 CHP.

6 A. Okay.

7 Q. So what are your other states that you
8 provide -- you provided energy projects?

9 A. Jeez. I'm not going to be able to name
10 all 15 states off the top of my head.

11 Q. Okay. So do you know how many projects
12 in the --

13 A. In my testimony it says we've completed
14 over 1,400. Brightergy's done over 1,400 projects
15 across 15 different states.

16 Q. Okay. And that's -- again, you didn't
17 know how many were in Missouri and how many were
18 outside of Missouri; is that right?

19 A. I don't -- no. I don't have the specific
20 number. That -- the specific numbers were not part of
21 my testimony.

22 Q. Okay.

23 A. I'm doing my best to give you general
24 answers, but you're asking very specific questions
25 that I -- you know, I just don't have the data in

1 front of me.

2 Q. Got it. I understand. Please bear with
3 me. I'm probably going to ask some more specific
4 questions so -- would you know how many rebates you
5 received for those states outside of Missouri?

6 A. Not off the top of my head, I don't.

7 Q. Okay. And would the energy projects that
8 you -- that Brightergy has completed outside of
9 Missouri, would the majority of those projects be
10 solar projects?

11 A. I can say that we've done both energy
12 efficiency and solar projects in multiple states.

13 Q. Do you have offices in other states?

14 A. Yes. In Massachusetts.

15 Q. Okay. Let's go back to Missouri. Can
16 you tell me how many business -- custom rebate
17 projects have been submitted by Brightergy in the C
18 and I custom rebate program?

19 A. I don't have that exact number off the
20 top of my head. I just know that it's -- I mean it's
21 a lot. It's probably well over 100. I know that.

22 Q. Okay. Is that for both companies, KCPL
23 and GMO?

24 A. We've -- I know we've participated in
25 both of them.

1 Q. But would the hundred be --

2 A. But I don't -- when I say a hundred, I'm
3 talking about them together.

4 Q. Okay.

5 A. And it might be more like two or three
6 hundred. I don't know the exact number off the top of
7 my head.

8 Q. Okay. And how many of those same type of
9 projects have been submitted by Brightergy in the
10 Ameren service territory?

11 A. I mean we've submitted -- well, we've
12 done LED projects on the St. Louis side of the state,
13 if that's what you're asking. Exact number, I don't
14 know.

15 Q. Is it less than 2- to 300 that you say
16 you did in KCPL and GMO territory?

17 A. Less applications submitted?

18 Q. Yes.

19 A. Yes. I can say that -- I can confidently
20 say we've submitted less on -- less to Ameren than we
21 have to KCPL/GMO.

22 Q. Is it less than a hundred?

23 A. It is -- is what?

24 Q. Is the applications you submitted to
25 Ameren for their C and I custom rebate program less

1 than a hundred?

2 A. I don't know.

3 Q. When you enter into these agreements with
4 customers, does your typical customer lease the energy
5 efficiency improvements from you?

6 A. It varies. So I -- I think it's about
7 half and half.

8 Q. Okay. So half lease?

9 A. Generally speaking. I mean give or take
10 10 or 20 points there.

11 Q. And how long is that lease?

12 A. It varies anywhere from -- I don't know.
13 Maybe -- we have really short-term leases and then we
14 have leases that go seven-plus years.

15 Q. So how long is a short-term lease?

16 A. I would consider short-term like a year,
17 two years. And you could call it a lease. I mean,
18 you could also call it a finance sale. The -- you
19 know, there's -- I think you have to be kind of
20 careful here. Technically, you know, for tax reasons,
21 these are considered sales. You know, it might look
22 and feel like a lease because there's payments made
23 over a period of time, but it's essentially a finance
24 sale.

25 Q. Okay. So I'm trying to understand that.

1 So let's stay with the seven-year -- seven-plus-year
2 lease which you -- which the -- Brightergy does enter
3 into those with customers; is that correct?

4 A. What? Seven-year leases?

5 Q. Uh-huh.

6 A. You know, I don't know off the top of my
7 head. I know five years is the stan-- the one that
8 I'm most familiar with and I know we do a lot of
9 five-year leases.

10 Q. A lot of five-year leases. Okay.

11 A. So I'll just run with that one.

12 Q. Okay.

13 A. I -- I -- I -- I just don't know how
14 often we do seven-year leases.

15 Q. Okay. So in the five-year lease, does
16 the customer not take title to the equipment that it
17 leases; is that correct?

18 A. I -- you know, without having the
19 contract in front of me, I don't know.

20 Q. Okay. How about in the one- to two-year
21 lease? Does the customer take title in that case?

22 A. Again, without having the specific
23 contract in front of me, I don't know.

24 Q. Okay. So let's stay with the five-year
25 lease. Doesn't seem like that customer would be

1 concerned with a two-year payback; isn't that correct?

2 A. I don't understand the question.

3 Q. They're making a lease payment over five
4 years. Correct?

5 A. Correct.

6 Q. Okay.

7 A. They're very concerned about payback, I
8 can assure you of that.

9 Q. Okay.

10 A. I mean the -- the lease payments is
11 simply, you know, stretching the payments out over
12 time. It doesn't necessarily, you know, change the
13 project economics.

14 Q. Correct.

15 A. I mean, everything still comes back to
16 payback. I mean, payback is keen when you're talking
17 to --

18 Q. Everything comes back to the payback to
19 the -- in the five-year lease question, does the
20 customer get the rebate check in that case?

21 A. My understanding is yes, that the way
22 that -- well, I take that back. You know, some
23 utilities have an assignment form where you can assign
24 it to -- to a bank, to trade ally. Off the top of my
25 head, I don't know exactly how KCPL does it.

1 Q. So they could assign it to you; is that
2 correct? To Brightergy?

3 A. In certain markets, yeah. Yeah, they
4 have a form that basically assigns it to, like I said,
5 a bank or anyone for that matter.

6 Q. Does that happen with rebate checks that
7 come from KCPL or GM0? Does that go straight to
8 Brightergy?

9 A. I don't -- I don't know.

10 Q. You don't know?

11 A. You guys can tell me. I think -- I think
12 it goes to the customer.

13 Q. Okay.

14 A. But I'm not 100 percent certain on that.

15 Q. Does that check then get signed over to
16 Brightergy?

17 A. Some of the times. You know, I don't
18 know the exact mechanics of it, but I know that the
19 rebate is part of the economics for a project that a
20 customer takes into consideration. And whether or not
21 they deposit that check or assign it to us, I -- I
22 don't know the specifics on that.

23 Q. Does Brightergy receive the proceeds to
24 defray its installation costs of the rebate check?

25 A. Through what?

1 Q. Do they get the rebate check to -- and
2 they receive the proceeds of that to defray their
3 installation costs?

4 A. I'm not sure I understand the question
5 you're asking.

6 Q. Okay. Let's stay with that lease. The
7 lower rebate that a customer receives, that would mean
8 the customer has to pay more in a monthly lease
9 amount. Wouldn't that be correct?

10 A. Depends on how the lease is structured.
11 It's not necessarily always just evenly prorated.
12 I -- I mean, I think generally speaking, the more
13 expensive the net cost is of a project, the higher
14 the -- any type of lease payments would be, generally
15 speaking. But again, it can depend on the specific
16 project and the specific payment terms.

17 Q. And a rebate check would lower the cost
18 of the project. Correct?

19 A. I -- a rebate -- you asked me a rebate
20 check --

21 Q. Uh-huh.

22 A. -- would lower the cost of a project?

23 Q. Right.

24 A. A rebate from the utility would lower the
25 cost of the project.

1 Q. Right. And that means that the customer
2 would have to pay a lower monthly lease amount.

3 Correct?

4 A. Again, it depends on how the payments are
5 structured with a customer. I mean there's -- there
6 are some leases that might not have an even amount of
7 payments. It might be -- let's just say it's a
8 \$10,000 lease. I mean, there are some leases that
9 could have \$1,000 a year for two years and then it
10 goes to \$3,000. I mean, leases can -- you know,
11 structured finance can look differently, you know,
12 depending on the specific project.

13 Q. Okay. So we've talked about leases a
14 little bit and let's go to the other route where the
15 customer wants to own the energy efficiency
16 improvements right away, it's not a lease.

17 A. Okay.

18 Q. Does that happen with Brightergy
19 customers?

20 A. Yes.

21 Q. Okay. Do you know how often that
22 happens?

23 A. I think I told you earlier roughly
24 50/50 --

25 Q. Okay.

1 A. -- give or take 20 points so maybe 60/40,
2 maybe 70/30, but it's a lot. I mean, it's pretty
3 evenly split.

4 Q. **So in that case does that rebate check**
5 **from KCPL/GMO get sent to the customer?**

6 A. That's my -- I mean it's going to be the
7 same answers to your questions on the leases. My
8 understanding is that, yes, that KCPL sends the rebate
9 check to the customer. However, I know that a lot of
10 utilities in territories where we operate in have a
11 form where the customer signs it and then it dir--
12 goes directly to Brightergy or directly to their -- to
13 their lender, to their bank.

14 Q. **Does that happen in KCPL Missouri**
15 **territory?**

16 A. I don't know.

17 Q. **Okay.**

18 A. You guys should know that. I don't know.
19 I mean --

20 Q. **Okay.**

21 A. -- I don't personally process those
22 things --

23 Q. **We're just asking what you know --**

24 A. -- you know.

25 Q. **-- so I appreciate it.**

1 Does the check that the customer receive,
2 does that get signed over to Brightergy?

3 A. I think so-- well, I think some of the
4 times it might.

5 Q. Okay.

6 A. But some of the times I would say that it
7 probably doesn't get signed over.

8 Q. Okay. When we are talking about C and I
9 projects, in the situation where the com-- the
10 customer wants to own the energy efficiency
11 improvement, does Brightergy charge a mark-up on those
12 improvements?

13 A. Don't understand the question. I mean
14 we -- we make -- I mean as a company when we deliver a
15 proposal, of course, yeah, there's profit built into
16 it. We're not -- we can't do everything with no
17 profit, but -- wouldn't work.

18 Q. So if you sell a company a lamp, there's
19 a mark-up on that lamp; is that correct?

20 A. I mean, I don't think I necessarily look
21 at it that way. We typically roll everything into one
22 project cost and don't necessarily allocate mark-up on
23 materials versus engineering versus installation
24 laborer. We typically have one contract price.

25 Q. But that -- the cost that you -- that you

1 have in that contract, the customer pays more than
2 that cost; is that correct?

3 A. I don't understand your question.

4 Q. Well, you said --

5 A. The customer pays the contract price.

6 Q. You're not doing this for free though.

7 Right? So there's a -- you don't want to call it a
8 mark-up, but there's some level of profit built in for
9 Brightergy; is that correct?

10 A. On a per project basis, yes.

11 Q. On any basis.

12 A. Well, I mean, can you be more specific
13 with your question? I mean, if you're --

14 Q. Well, I had tried to be and you said you
15 couldn't answer it. How much mark-up is there on a --
16 profit is there on a lamp that you would supply to a
17 customer?

18 A. I wouldn't even know how to answer that
19 question. I mean, we -- we -- most of the stuff --
20 we're -- we're not in the business of just selling
21 materials or selling lamps, for example. So that's
22 why I couldn't -- I don't know how to answer that
23 question.

24 Q. Okay. If the customer was to own the --
25 the lighting improvement, is there -- does Brightergy

1 make money on the labor to install that lamp?

2 A. Again, we look at it as all the costs go
3 in a project and then we put a price on top of that.
4 We don't necessarily break it down by labor with
5 mark-up or materials with a mark-up or any other
6 outside cost with a mark-up.

7 Q. But that price that you set sets a profit
8 for Brightergy. Correct?

9 A. Correct.

10 Q. Okay. How much is that profit?

11 A. I would say -- I mean it varies
12 significantly from project to project kind of -- you
13 know, a lot of that is just based on the competitive
14 market and where competitors are pricing deals at.

15 Q. Well, what's a range?

16 A. I mean, I'd -- I can answer that, but
17 again, that's going to be HC.

18 Q. Okay.

19 MR. STEINER: Should we go in-camera?

20 JUDGE BUSHMANN: Do you want to go
21 in-camera?

22 MR. STEINER: Yeah.

23 (REPORTER'S NOTE: At this point, an
24 in-camera session was held, Volume 4, pages 275
25 through 276.)

1 JUDGE BUSHMANN: We're back in public
2 session.

3 BY MR. STEINER:

4 Q. Mr. Blake, how many C and I custom
5 projects have you done in KCPL or KCPL/GMO territory
6 that you have not received a rebate on behalf of the
7 customer for?

8 A. I don't know that off the top of my head.

9 Q. Have you ever seen such a project?

10 A. Yes. I think so. I think a good example
11 would be the hypothetical that David drew over there.
12 Those projects do exist.

13 Q. You've seen a project such as the
14 hypothetical?

15 A. Oh, yes.

16 Q. How many?

17 A. I don't know off the top of my head, but
18 they -- they're out there. I mean --

19 Q. Do you ask customers if they need a
20 rebate when they work with a -- when you work with a
21 customer on designing a C and I custom program?

22 A. I'm not sure I'm following that question.

23 Q. Do you ask them if they need a rebate in
24 order to proceed with this project?

25 A. Okay. I think that -- I mean do we

1 specifically ask them do you need a rebate to this
2 project? I don't know if our -- if the sales guys
3 specifically ask that question.

4 Q. Okay.

5 A. I mean I know that it's clearly part of
6 the overall value proposition and customers are very
7 focused on payback. So to the extent that it impacts
8 payback and if the payback is going to be too long,
9 then, yeah, I mean, it does matter. I'm sure our
10 sales guys talk about that.

11 Q. And the sales guys report to you?

12 A. Yeah. We have sales -- sales guys, sales
13 managers and -- sales managers and we have a chief
14 revenue officer that reports to me.

15 Q. Okay.

16 A. Manages the sales guys and sales
17 managers.

18 Q. Does Brightergy submit projects to
19 KCPL/GMO under the C and I custom with a longer than
20 two-year payback?

21 A. Yes.

22 Q. What percentage of those projects are
23 longer than two years?

24 A. I don't know off the top of my head.

25 Q. So on that easel example that you pointed

1 to, what would that be? A lighting program? What
2 would that be?

3 A. It could be a lighting project. I mean
4 it could be -- it could be an energy automation
5 system. It could be a system with building
6 installation or building controls. I mean, but let's
7 just use lighting for discussion purposes. It's
8 easier -- I think I know where you're going with this,
9 but --

10 Q. Good. Please tell me.

11 A. -- this would be an example of a customer
12 that would have like a 24/7 operation, for example.
13 Where if you're going to install LED lighting, you're
14 going to significantly, you know, cut their -- their
15 lighting bill, which can be pretty significant,
16 especially with operations -- you know, they're
17 running 24/7.

18 So that's very common to see paybacks,
19 you know, that are that attractive. It's not -- my --
20 the point I'm making is it's not necessarily an
21 extreme example if you're looking at a customer set
22 that runs their business or operates out of a building
23 24/7 for a lighting project.

24 Q. So -- strike that.

25 I think that's all I have. Thank you.

1 JUDGE BUSHMANN: Questions from the
2 Bench. Mr. Chairman.

3 QUESTIONS BY CHAIRMAN HALL:

4 Q. Good afternoon, Mr. Blake.

5 A. Good afternoon.

6 Q. I think I know the answer to this
7 question, but just -- just -- I'm going to ask it
8 anyway. If you had a choice between no MEEIA program
9 for KCP&L or the MEEIA program as stipulated, which
10 would you prefer?

11 A. I think our testimony says that just no
12 program.

13 Q. You would prefer no program at all?

14 A. We don't think that this program moves
15 the needle. I mean, I think that we're -- what we're
16 saying is that with these types of incentive levels,
17 the same amount of efficiency is going to happen so it
18 doesn't necessarily drive the market, which is our
19 biggest issue here.

20 Q. Wouldn't the elimination of the MEEIA
21 program severely adversely affect your business?

22 A. I mean, I think it depends on how -- I
23 mean yes and no. I mean, we're not going to go out of
24 business if there's no MEEIA program. Are we going to
25 lose jobs? Yes. But I think we're going to lose jobs

1 if this -- we will -- we will lose jobs -- let me be
2 very clear there -- if this gets approved as
3 stipulated. Because what I'm saying is that it
4 doesn't -- the 10 cents per kilowatt hour doesn't move
5 the market, doesn't create new demand that the current
6 Cycle 1 program does. I mean, the Cycle 1 program
7 works. It actually causes people to do projects.

8 Q. Are there some projects where the amount
9 of the reimbursement is directly related to the profit
10 to -- to your Company? So if the -- if the
11 reimbursement were 50 percent less, your -- your
12 profit would -- or your -- your revenue would be
13 50 percent less?

14 A. No. So -- you know, this is a very
15 competitive market, to be very clear here. The market
16 dictates the profit. You know, the market price for a
17 specific project. Not necessarily a specific
18 incentive level. And then we are -- you know, we
19 operate with 200 trade allies so we're competing on
20 everything.

21 Q. It sounds like you're -- the contracts
22 that you enter into with your -- with your clients --
23 is that the term you use, clients?

24 A. Yes. Customers, clients.

25 Q. They vary a great deal and there's not a

1 set formula that you use. And so sometimes is it
2 directly tied to the reimbursement rate?

3 A. Yes.

4 Q. Okay. But that's a minority of the
5 contracts?

6 A. When you say the re-- I mean the
7 reimbursement rate, the rebate amount ultimately
8 impacts whether or not a customer's going to do the
9 project. That is definitive. That happens every time
10 because customers looks at paybacks. The shorter the
11 payback, the more likely they're going to do the
12 project. But it doesn't necessarily link up to
13 Brightergy's profit on a given deal.

14 Q. Okay. So your concern is whether or not
15 the program, as designed, would incentivize the type
16 of activity that you engage in?

17 A. Correct. Yeah. We just don't think it's
18 going to drive demand for these types of projects.

19 Q. I believe you said in response to
20 questions from the -- from counsel for the Division of
21 Energy, that you could not imagine -- and I'm not
22 going to get this exactly right, but you couldn't
23 imagine a scenario where KCP&L would increase the
24 reimbursement rate from the 10 cents up; is that
25 correct?

1 A. Correct.

2 Q. Why do you say that?

3 A. The targeted savings are so low relative
4 to their service territory and the number of
5 commercial and just buildings -- you know, customers
6 in that territory, that they're going to hit those
7 goals, you know, with -- with virtually no incentives.
8 I mean, that I e-- I mean, basically what's happening
9 is that -- all that activity that would happen, even
10 without any incentives, is being captured under MEEIA
11 because people will still submit applications and --
12 and take it.

13 And that's, you know, the biggest issue
14 that I see here is this -- these goals are so little
15 and so small, that you can have virtually no
16 incentives and still technically meet those goals.

17 Q. So I guess I'll ask you the same question
18 I asked your -- your counsel. Shouldn't -- shouldn't
19 your concern then be with -- with the incentive award
20 amount and how that's structured as opposed to -- or
21 maybe in conjunction with this provision?

22 A. You know, I think it's a bit of
23 semantics. What we're suggesting will create demand,
24 which will result in exceeding the targets, very
25 similar to what happened in the Cycle 1. They had a

1 program that was successful and they exceeded their
2 goals. So I think that's what would happen. But
3 yeah, would -- would it be better? Do I think it
4 would be better if the goals were larger? Yes.

5 Q. There's been some -- some testimony that
6 there was a surge in applications some time after
7 KCP&L announced its interest in changing the
8 reimbursement rate. Are you familiar with that?

9 A. Yes.

10 Q. What do you attribute that surge to?

11 A. If you're a customer and the incentive is
12 going to be cut in half, which is typically what it
13 is, you know, then -- then that gives a great
14 incentive to do something, to act sooner than later.

15 So I mean it's just -- I think it's as
16 simple as customers that were looking at efficiency
17 saw that my incentive today -- my payback today might
18 be two or three or four years; whereas, under these
19 new incentive levels, it might be ten years.
20 Obviously they're not going to do that, so that's what
21 resulted in the surge of applications.

22 Q. Did you market that -- that potential
23 change in the reimbursement rate to potential clients
24 or customers?

25 A. Yes. Yeah. Our sales guys liked it

1 because it created urgency.

2 Q. Couldn't you also create the same kind of
3 urgency with -- with the provision that the Company
4 could shut down under -- under the Cycle 2 proposal or
5 they could shut down the program with -- unilaterally?
6 Couldn't -- couldn't your marketing folks also use
7 that to stimulate interest?

8 A. Theoretically. But I think in -- in
9 actuality it would scare people. Because if they
10 think a program's going to go nuclear and just be
11 gone, I think people get nervous are they going to get
12 that rebate check. So no, I think that it cre-- it
13 causes more concerns, you know, than it does any type
14 of benefit. And we haven't even thought through
15 exactly how we would position that with customers.

16 But I think, generally speaking -- and
17 another point on that topic about this nuclear
18 scorched earth option, a lot of customers just can't
19 make a decision in 30 days to do a project. I mean,
20 most of our customers can't. I wish they could. You
21 know, a lot of these are school boards that might only
22 meet once every couple months or, you know, or they
23 have budgeting processes. There's just -- there's a
24 lot that goes into this.

25 So that's -- that's our biggest issue

1 with this whole 30-day nuclear option here is that
2 there's going to be a lot of customers that are just
3 going to be really frustrated at the end of the day
4 because they were planning on doing a project and they
5 can't do it now. Not to mention all the -- the issues
6 with companies like ours that are investing and
7 looking at state statutes and policies and thinking,
8 okay, there's -- there's a market here and then for us
9 to invest in that -- I mean, that's a very hostile
10 business environment.

11 Q. When -- when a potential client comes to
12 you and wants to discuss a potential energy efficiency
13 plan, what is the typical amount of time between that
14 first interaction and a contract?

15 A. So it -- it can range.

16 Q. I'm sure.

17 A. We call them one-call closes, which is
18 you meet with them one time and you sign the contract
19 on the spot essentially. Other times it can take
20 several months. And, you know, I think that -- one
21 thing I will point out is that just -- it's very
22 rarely a one-call close. You know, typically it will
23 take -- I think our average sale cycle for active
24 opportunities that we track is probably 100 plus days,
25 100 to 130 days.

1 Q. So is it -- is it those clients that
2 might require a couple of months of negotiation and
3 discussion, those are the clients that might be scared
4 off by a provision that would allow the Company to
5 terminate the program unilaterally? Are those the
6 customers that you're concerned about?

7 A. I -- I'm concerned about a lot of
8 customers. That's one bucket. Let's talk about that
9 customer for a second. If they think that that's a
10 possibility and we lay it all out to them and they
11 know that their decision process might take four or
12 five months, if you're that person making the
13 decision, you're just going to forget about it.
14 You're not going to want to invest the time.

15 Now, one thing that -- these customers
16 invest so much time in these projects, it's not just a
17 simple making a decision, yeah, we're going to do
18 this. I mean, they have to get internal buy-in, they
19 have to do their own studies and analysis. And if
20 they think that this is just going to go away, they're
21 probably not even going to want to waste the time with
22 it.

23 Then you also have the customers that --
24 that will look at this and say what if I don't get
25 paid, you know, if I invest in this project and don't

1 get the rebate? And we could point and say, Well,
2 technically, you know, they say they're going to pay
3 you. But I think it's enough to, you know, spook
4 customers. That's why all around, that whole nuclear
5 option is just bad for business, bad for our
6 customers, bad for companies like Brightergy.

7 **Q. Are you familiar with the PowerPoint that**
8 **your counsel used and distributed at the beginning of**
9 **this hearing?**

10 A. Yes.

11 CHAIRMAN HALL: Judge, is that in
12 evidence?

13 JUDGE BUSHMANN: It's not.

14 CHAIRMAN HALL: If I'm going to ask about
15 it, should we get it in evidence?

16 JUDGE BUSHMANN: You don't have to, but
17 if you'd like to, we can have it marked as an exhibit.

18 CHAIRMAN HALL: Yeah, let's do that.

19 JUDGE BUSHMANN: It would be Exhibit 1.

20 BY CHAIRMAN HALL:

21 **Q. Do you have it in front of you or --**

22 A. No. I'm -- you want to give me that?
23 Thank you.

24 MR. WOODSMALL: We'll get it for him.

25 THE WITNESS: I got it.

1 BY CHAIRMAN HALL:

2 Q. Pages 6 and 7, there are three -- three
3 case studies here. And what I'm wondering, the first
4 is a large Kansas City hospital, the second is the
5 KCATA, the third is the Adrian School District. And
6 what I'm wondering is do you have any information to
7 believe that if the -- if the Cycle 2 stipulation were
8 agreed to or had been in existence in place of the
9 Cycle 1 reimbursement amounts, that those clients
10 would not have gone forward with those energy
11 efficiency projects?

12 A. Yes. That's part of the reason we
13 included them.

14 Q. Well, I understand how -- okay. What is
15 that firsthand information?

16 A. Sales guys talking to customers.

17 Q. Okay. So I mean -- I know we're getting
18 into like triple hearsay here, but so you -- you have
19 received information from -- from your staff that in
20 that situation, this particular client would not have
21 gone forward?

22 A. Yes. And I think generally speaking
23 here, when paybacks start getting above two, four
24 years, you know, we don't even consider those
25 qualified opportunities because the conversion rate is

1 so low.

2 Q. Conversion rate meaning from contact with
3 the client to an actual consummation of a contract?

4 A. Yes. The way our funnel works is you
5 start off with the contacts, you go talk to them,
6 you -- you know, you basically qualify the
7 opportunity. And if the payback is going to be -- I
8 don't know exactly what that payback number is, but
9 let's just use four years, for example, with energy
10 efficiency, which is probably a safe number to use,
11 we -- we typically don't pursue that opportunity
12 because our probability of converting that sale is
13 very low because the payback is just not good enough.

14 Q. Okay. So it's based on a rule of thumb.
15 It's not based on any -- based on specific information
16 from these potential clients?

17 A. A lot of the times customers will tell
18 you, Our payback requirement is one year, two years.
19 And it's typically in that one- to three-, four-year
20 range.

21 Q. I'm just trying to understand and I --
22 and I understand the significance of your rule of
23 thumb, but it is just a rule of thumb. It's not
24 specific information from these clients?

25 A. Not from these specific clients. No, but

1 I'll say this: I think if you read all these -- all
2 these studies, even the ones that are presented as
3 part of KCPL's filing, they repeatedly say that you
4 need to be at that two-year, one-year payback -- I
5 think one study says one-year and another says
6 two-year payback to motivate customers. And that's
7 typically our experience.

8 I mean we try and sell, you know, three-,
9 four-year payback-type projects because a lot of these
10 are LED lights, for example, that are going to last
11 for 10-plus years.

12 Q. Let me go back to where I started and
13 then I'll be about done. You said that you didn't
14 believe that KCPL would ever increase the
15 reimbursement rate from 10 cents up, regardless of
16 what was going on with the program?

17 A. I don't think they will.

18 Q. Do you believe that there is some
19 economic incentive for KCP&L to keep that 10 cents
20 low?

21 A. Yeah. I -- I -- well --

22 Q. What is it?

23 A. -- let me -- let me say this: I think
24 that philosophically -- and this is generally
25 speaking -- utilities are not crazy about

1 incentivizing their customers to use less of their
2 product.

3 Q. Right. But that's generally because
4 there is -- they're incentivized to sell as much as
5 possible. And that's the whole point of MEEIA is to
6 incentivize efficiency projects. And so if --

7 A. I 100 percent agree with you, but I don't
8 believe that the utilities feel that way. I think
9 that's evident with the nuclear, you know, switch that
10 they want and part of the reason why that these --
11 these budgets are so low. I think there's a bit of
12 nervousness around recovery and how this is going to
13 play out. And I think you more or less have heard
14 that today through some of the testimony. But I agree
15 with you, they should -- you know, the rules say that
16 they're going to get recovery.

17 Q. But you think they think that they may
18 not?

19 A. That's my opinion.

20 Q. Okay. I have no further questions.
21 Thank you.

22 JUDGE BUSHMANN: Mr. Chairman, just to
23 clarify on this Commission Exhibit 1, did you just
24 want to question the witness about it or do you want
25 to include it in the record of the hearing?

1 CHAIRMAN HALL: I'd like it included in
2 the record.

3 JUDGE BUSHMANN: Any objections to the
4 receipt of that exhibit into the record?

5 MR. STEINER: So is it an exhibit that
6 can be cited in the brief so that --

7 JUDGE BUSHMANN: If it's admitted and
8 received, then it could be.

9 MR. STEINER: I just -- I hate to a
10 Commissioner-appointed exhibit but it really didn't
11 withstand any -- I saw it today. It didn't withstand
12 any cross. I could see it --

13 CHAIRMAN HALL: You know, I'll just --
14 I'll withdraw the request. It's not that important.

15 JUDGE BUSHMANN: All right. That offer's
16 been withdrawn. Any other Commissioner have
17 questions?

18 COMMISSIONER STOLL: I have no questions.
19 Thank you for your testimony.

20 QUESTIONS BY COMMISSIONER KENNEY:

21 Q. Hi, Mr. Blake. I have just a couple
22 short questions. On your Rebuttal Testimony on page
23 4, you give an explanation about free ridership and
24 then on lines 25 through 30, you started talking about
25 critical point of the success of rebates. And it's --

1 that critical point is that level of rebate necessary
2 to tip a customer that's sitting on the fence.

3 Is that kind of like a hypothetical
4 though where -- is that even distinguishable? Can you
5 here today say this is the critical point, this is the
6 measure?

7 A. I think I can give you a range based on
8 our experience talking with a lot of customers. And I
9 think it's typically around two years. That's --
10 that's -- that's a very compelling payback. When you
11 get into certain types of projects like LED lighting,
12 three and four years can become a compelling payback
13 because those projects are going to last -- those
14 lights are going to last for so long.

15 That's one other thing -- one other issue
16 we have with the first year kilowatt hour savings is
17 you are -- for LED projects, for -- for example, you
18 don't get any additional credit, if you will, even
19 though these projects and lights are going to last for
20 a really long time.

21 Q. Okay. So when you were on -- on the
22 Cycle 1 plan, looking at a 50 percent rebate and then
23 the kilowatt hour savings annualized -- so that
24 customer is going to realize that savings and get it
25 back. Now we're looking at just a kilowatt hours

1 sav-- or towards the rebate. What -- in order -- is
2 there a set -- I mean, is there a -- through all your
3 sales, a kilowatt savings hours per dollar range that
4 you shoot for in these projects?

5 A. Nece-- it's not a metric that we track.

6 Q. Not at all.

7 A. Let me try and understand the question
8 so --

9 Q. So if you get like two and a half
10 kilowatt hours per dollar is -- needs to be hit in
11 order to achieve something -- or do you even track
12 that?

13 A. We don't track that. We track payback.
14 Customers care about payback. I mean it when I say
15 payback is keen. And they're used to comparing that
16 with other types of projects they have in their
17 business.

18 Q. So whether it's two or three or four or
19 five or six kilowatt hour saving per dollar, you
20 couldn't -- you don't track that?

21 A. I mean, we -- we track that information,
22 but it's not necessarily part of the sales pitch.
23 It's not -- it's not a KPI --

24 Q. So is that hypothetical realistic?

25 A. Yeah. It's -- it's -- it's realistic.

1 Q. You get that type of like five-to-one
2 payback?

3 A. We love those customers. That's --

4 Q. I think the customers would love you.

5 A. Well, we can sell that all day long
6 because that's doesn't need any type of --

7 Q. Yeah. But do you see it? Because
8 that -- to me, that seems -- just as a novice, that
9 just seems pretty high. Because I would think that
10 anybody who has that, you ought to be able to sell
11 them.

12 A. I agree. Those are the customers we're
13 tracking. That's why our market development
14 specialists that are pounding the phones every day,
15 they're trying to target people that have high run
16 hours. Because people that have high run hours where
17 they're operating their business and running multiple
18 shifts, we can --

19 Q. Those are the type that can achieve
20 those --

21 A. Yes.

22 Q. Okay. Especially --

23 A. We like -- yes.

24 Q. Okay.

25 A. Those are the ideal customers, because

1 clearly the better -- the shorter the payback, the
2 higher the probability we're going to be able to make
3 that sale.

4 Q. Okay. Do you do anything -- have you
5 done anything with -- around the states with any auto
6 dealerships or anything like that?

7 A. Yeah. We got a lot of auto dealership
8 clients.

9 Q. Thank you very much. I have no more
10 questions.

11 JUDGE BUSHMANN: Recross based on Bench
12 questions. NRDC.

13 MR. ROBERTSON: No questions.

14 JUDGE BUSHMANN: United for Missouri.

15 MR. LINTON: No questions.

16 JUDGE BUSHMANN: Division of Energy.

17 MR. ANTAL: No questions.

18 JUDGE BUSHMANN: Renew Missouri.

19 MR. LINHARES: No questions.

20 JUDGE BUSHMANN: Public Counsel.

21 MR. OPITZ: No questions, Judge.

22 JUDGE BUSHMANN: Commission Staff.

23 MS. MERS: I do. And I'm going to go
24 in-camera already so might want to kick the same
25 people out again.

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JUDGE BUSHMANN: If those folks would
step out for just a few minutes, please.

(REPORTER'S NOTE: At this point, an
in-camera session was held, Volume 4, page 299.)

1 JUDGE BUSHMANN: We're back in public
2 session now.

3 RE-CROSS-EXAMINATION BY MS. MERS (CONT'D):

4 Q. Other than the offers to settle this case
5 that were provided only to the Company, can you cite
6 at least one other specific instance where Brightergy
7 provided any data or information to parties to this
8 case?

9 A. My understanding is that there was --

10 MR. ZELLERS: Adam, hang on a second.
11 I'm going to object to that as beyond the scope of
12 Bench questions.

13 JUDGE BUSHMANN: Your response?

14 MS. MERS: I believe it came up in cross.

15 MR. ZELLERS: If it came up in cross,
16 then it's beyond the scope.

17 MS. MERS: Yeah, that's fine.

18 BY MS. MERS:

19 Q. Okay. I'll talk about some of the things
20 Chairman Hall brought up then. You stated to Chairman
21 Hall that you thought the goals for Cycle 1 and Cycle
22 2 were too low and too easy to be achieved. Correct?

23 A. I think that the goals will -- I think
24 KCPL's going to achieve those goals outlined because
25 they're so low, yes.

1 Q. Was that for Cycle 1 as well?

2 A. I'm referring to Cycle 2.

3 Q. Just for Cycle 2. Okay.

4 A. Well, I wouldn't say just. I don't --
5 I'm not -- I didn't review all those details in
6 preparation for this, but I -- I did review the
7 Cycle 2 numbers.

8 Q. Okay. If you would refer back to
9 Schedule JAR-SR-2, it's the Surrebuttal attachment
10 from Mr. Rogers' testimony.

11 A. Okay.

12 Q. Okay. Can you read -- or the -- okay.
13 Yes, I'm sorry.

14 Can you read the program cost variance
15 for KCPL/GMO for Cycle 1?

16 A. The 12 million number?

17 Q. Right underneath that. The percentage.
18 I should have clarified.

19 A. 99 percent.

20 Q. Okay. And then the energy savings --
21 saving variance in percentage?

22 A. 7.

23 Q. Okay. And the demand saving variance in
24 percentage?

25 A. 3.1.

1 Q. The net benefits variance in the
2 percentage?

3 A. Negative 10.3.

4 Q. Okay. Is it fair to say that --

5 MR. ZELLERS: Your Honor, I'm going to
6 object again. I don't remember any Commissioner
7 asking Chairman or asking questions about the
8 schedule.

9 MS. MERS: He asked about -- Chairman
10 Hall asked and in the response Mr. Blake gave -- he
11 referenced his opinion that the goals were too easily
12 achieved; therefore, KCPL will meet them, but not
13 because of the incentive measures but because the
14 goals themselves were too low. I'm getting at that
15 point.

16 JUDGE BUSHMANN: Overrule.

17 BY MS. MERS:

18 Q. The net benefits for KCPL/GMO through
19 September 30th, 2015 were 44,456,170. Correct?

20 A. Correct.

21 Q. The plan benefits are actually higher for
22 Cycle 2. Correct? At 47,467,589?

23 A. Yes.

24 Q. Okay. And it's a higher goal, but the
25 plan program cost is 18,223,176. Correct?

1 A. Correct.

2 Q. Which is lower than the actual cost in
3 KCPL/GMO Cycle 1. Correct?

4 A. The 18 million I think is higher than
5 the -- other than the actuals, 24?

6 Q. Yes.

7 A. Yes.

8 Q. What was actually spent. You said in
9 response to a question from Chairman Hall that you
10 would like no MEEIA rather than the MEEIA that is
11 stipulated. Correct?

12 A. Yes. I mean our -- I think that's
13 outlined in our testimony. Our opinion is that
14 there's some concerns that should be addressed if
15 we're going to have a MEEIA program. We just don't
16 think that the current stipulation meets the goals or
17 the statute.

18 Q. So rather than the current stipulation
19 as-is, you'd rather have no MEEIA?

20 A. Yes.

21 Q. You also said to me, as my last question,
22 that if it was approved as stipulated though, that
23 Brightergy would still participate. Correct?

24 A. Yes.

25 Q. Thank you. No further questions.

1 JUDGE BUSHMANN: Recross by Ameren
2 Mi ssouri

3 MR. MITTEN: No questions.

4 JUDGE BUSHMANN: KCPL.

5 MR. STEINER: Yes.

6 RE CROSS-EXAMINATION BY MR. STEINER:

7 Q. Mr. Blake, you were discussing payback
8 periods with I think both Commissioners. What is the
9 average payback period of Brightergy C and I projects?

10 A. I don't have that off the top of my head.

11 Q. Are there C and I projects that have
12 payback periods longer than four years that Brightergy
13 has submitted to KCPL/GMO?

14 A. I'm not -- I assume so. I mean I'm not
15 100 percent confident, but I think so.

16 Q. So this funnel that you spoke of, it
17 doesn't kick out projects that have payback periods
18 longer than one to two years; is that correct?

19 A. Not necessarily. I mean I think it --
20 no, it doesn't.

21 Q. It doesn't kick them out. Right?

22 A. Well, I think we -- there is no funnel
23 that kicks anything out. I mean I think --

24 Q. Okay. That's all I needed.

25 A. All right.

1 Q. And you don't know the average payback
2 period of your projects?

3 A. Not like a specific number, no. I mean
4 not off the top of my head.

5 Q. You said in response to I believe
6 Chairman Hall's question that you would rather have no
7 MEEIA than the MEEIA as stipulated; is that correct?

8 A. Yes.

9 Q. And I believe you also said that there
10 has been a large number of projects that have been
11 submitted by Brightergy's -- Brightergy at the end of
12 2015; is that correct?

13 A. I don't think I said that.

14 Q. You said there's been increased
15 applications?

16 A. I acknowledged that the representation
17 was made that there was a surge in applications.

18 Q. Has Brightergy made more applications at
19 the end of 2015?

20 A. I mean, generally we've submitted
21 applications throughout 2015. Was a higher -- was
22 there more in December than there was in November?
23 Probably.

24 Q. Okay. And was that because of the
25 marketing that you agreed with Chairman Hall that you

1 did to clients saying that the rebate was going away?

2 A. I think it's because the incentive
3 levels -- the proposed changes in incentive levels
4 were significantly lower than what they would be
5 under cus-- or under the Cycle 1 program most of the
6 time and that's enough to motivate customers.

7 Q. That's something you're marketing guys
8 liked, I believe you testified?

9 A. Any time there's a drop off --

10 Q. Just a yes or no.

11 A. When there's a drop-off in incentives --

12 Q. Just a yes or no.

13 A. -- that typically --

14 Q. Did you testify that your marketing guys
15 liked the facts that the rebates were going away?

16 A. I don't remember if I specifically said
17 that or not.

18 Q. How many applications did Brightergy
19 submit in December?

20 A. I don't know that off of the top of my
21 head.

22 Q. Okay. Those applications you submitted,
23 that work will continue for Brightergy into 2016; is
24 that correct?

25 A. Yes.

1 Q. How far into 2016 will it go?

2 A. I don't know off the top of my head.

3 Probably through the first quarter or so.

4 Q. Okay. You spoke to both Commissioners
5 about the nuclear option. Do you remember that?

6 A. Yes.

7 Q. If a customer has an application for
8 rebate and it gets approved, under the terms of the
9 Stipulation and Agreement, those customers would not
10 be impacted; is that correct?

11 A. I'm not 100 percent sure. I think that
12 there's a -- there's certainly a risk and their -- and
13 if there's not an actual -- technically a risk because
14 the stipulation says that they would be approved,
15 there will be a perceived risk by customers.

16 Q. But they would get their payment under
17 the terms of the Stipulation and Agreement?

18 A. I'm not -- I don't have that stipulation
19 in front of me to know exactly what sections you're
20 referring to.

21 Q. Do those people have a risk if the budget
22 do-- if the total budget dollars are reached in a
23 program and the Company can't pay any more?

24 MR. ZELLERS: I'm going to object here.
25 I think we're beyond the scope of what was discussed

1 in the Commission questions.

2 MR. STEINER: I don't believe so. I
3 mean, he's went -- provided a lot of testimony on how
4 the nuclear option has sort of a chilling effect on
5 the market and I'm trying to explore that.

6 JUDGE BUSHMANN: All right. I'll
7 overrule.

8 THE WITNESS: It's not clear to me
9 exactly the breakdown between specific programs and
10 overall budget and when you have to go back to the
11 Commission to get approval to exceed that budget. My
12 understanding was that the C and I budget under Cycle
13 1 was very successful and the Company went to the
14 Commission seeking approval to go beyond the budget
15 and it was granted.

16 BY MR. STEINER:

17 Q. Right. But a customer would feel that if
18 that -- would have the same level of risk that it may
19 not get a -- it may not get a rebate if the Commission
20 doesn't allow an increased budget; is that correct?

21 A. I don't think that -- I don't believe
22 that the Company advertises the program budget
23 relative to where it's at as far as incentives.

24 Q. Right.

25 A. I think that would be a good thing so

1 customers could understand that risk, but today I -- I
2 don't think that -- for example, even as a trade ally,
3 we -- I don't believe that we know where they're at --
4 where KCPL is at on the budget.

5 Q. Okay.

6 A. But I think it's a good point you're
7 making, that there should be transparency around
8 incentive levels and when you're approaching certain
9 incentive levels. We saw that whole thing happen with
10 the solar rebate where --

11 Q. Okay. Thanks.

12 A. -- the Company went above --

13 Q. Thanks for telling me I made a good
14 point.

15 Thanks, Mr. Blake.

16 A. Thank you.

17 JUDGE BUSHMANN: Redirect.

18 MR. ZELLERS: Thank you, your Honor. As
19 a preliminary matter, I think we can accommodate
20 Chairman Hall's request if we offer into evidence just
21 the slides from the opening that refer to the case
22 studies. That would be just pages 6 and 7. Those
23 have been verified by Mr. Blake and he's been
24 questioned on it, so I'll go ahead and offer those as
25 Exhibit 505.

1 JUDGE BUSHMANN: What pages again?

2 MR. ZELLERS: Pages 6 and 7.

3 JUDGE BUSHMANN: Do any parties have a
4 problem with those two pages or objection they'd like
5 to raise?

6 MR. STEINER: I still am going to object,
7 your Honor. This could have been included in his
8 testimony very easily and it wasn't -- instead of
9 surprising us at the hearing.

10 MR. ZELLERS: Do you have any legal
11 objection why it couldn't be received into the record?

12 MR. STEINER: I do not.

13 JUDGE BUSHMANN: Any other party have an
14 objection?

15 All right. Do you have a copy of that
16 that you can mark and provide to the court reporter of
17 just those two pages?

18 MR. ZELLERS: We do, your Honor.

19 MR. STEINER: So, Judge, which ones are
20 getting admitted? Which pages?

21 JUDGE BUSHMANN: That would be pages 6
22 and 7 of the Brightergy PowerPoint presentation.

23 MR. STEINER: I don't believe that he was
24 asked questions on page 7 about KCPL's rationale. I
25 think they were just offering the three case studies.

1 MR. ZELLERS: We can block that part out.

2 JUDGE BUSHMANN: Do you have any
3 objection if that final slide on page 7 is blocked
4 out, Mr. Steiner?

5 MR. STEINER: No.

6 JUDGE BUSHMANN: All right. In that
7 case, I will admit Exhibit 505, which consists of
8 pages 6 and 7, Brightergy PowerPoint presentation,
9 except for the final slide at the bottom of page 7,
10 which is not included in the record.

11 (Brightergy Exhibit 505 was received into
12 evidence.)

13 JUDGE BUSHMANN: And the court reporter
14 has been provided with a copy of that with the
15 redacted portion?

16 MR. WOODSMALL: Yes, your Honor.

17 MR. ZELLERS: Well, it hasn't been
18 redacted yet.

19 MR. WOODSMALL: No. Can we just X
20 through that or do you need it completely taken out?

21 JUDGE BUSHMANN: If you X through it,
22 that would be fine because it's in the record now that
23 I've taken that out.

24 MR. WOODSMALL: I can clean it up and try
25 to get it to her so it's not even there with an X on

1 it. I can take care of that.

2 JUDGE BUSHMANN: I'm almost ready.

3 All right. You may proceed

4 MR. ZELLERS: Thank you, your Honor.

5 REDIRECT EXAMINATION BY MR. ZELLERS:

6 Q. Just a few questions, Mr. Blake, and then
7 we'll get everybody home at a decent time.

8 The Division of Energy attorney asked you
9 a question about Brightergy's school and non-profit
10 clients in Ameren territory. Do you recall that?

11 A. Yes.

12 Q. Is there a reason that Brightergy has
13 fewer efficiency clients that are schools and
14 non-profits in the Ameren territory?

15 A. Yes. It's -- it's because the incentive
16 level is just so low that it doesn't really move the
17 needle for those specific types of customers.

18 Q. Division of Energy attorney also asked
19 you if you were aware of the collaborative process
20 that was included in the non-unanimous stipulation.
21 Are you aware of that?

22 A. Yes.

23 Q. Are you aware if non-signatories are
24 allowed to participate in that collaborative process?

25 A. No.

1 Q. Are you aware what this is not a
2 requirement for the Company; that they don't have to
3 take any action following the collaborative process?

4 A. Yes.

5 Q. You were also asked whether you were
6 aware of any studies that supported your positions.
7 You mentioned the Synapse study. I'm going to hand
8 you a partial copy of that study. Well, we'll hand it
9 to everybody. I've handed you the front page and page
10 34 of a larger study. Are you aware of this larger
11 study?

12 A. Yes.

13 Q. Can you read the title of the study?

14 A. Synapse Energy Economics Commercial and
15 Industrial Customer Perspectives on Massachusetts
16 Energy Efficiency Programs.

17 Q. You've got page 34 there?

18 A. Yes.

19 Q. Can you read the first full paragraph
20 beginning with the word, Another theme.

21 A. Another theme we heard from most of our
22 interviews was that payback period is the main
23 criteria for evaluating energy efficiency investments
24 and the energy efficiency investment payback periods
25 compete with the payback periods for other capital

1 investment projects. The payback threshold for moving
2 forward with energy efficiency investments was
3 remarkably consistent across industries and regions.

4 Most customers require projects to have
5 payback periods of four years or less. However,
6 project periods of three to four years are rarely
7 approved. Projects with payback periods of two to
8 three years are sometimes considered, but approval is
9 uncertain and depends largely on the -- largely on the
10 economics of the other projects that are competing for
11 capital on a given year. A project with a payback of
12 two years or less is typically considered to be
13 worthwhile and is approved.

14 **Q. What's the date of that study?**

15 **A.** April 3rd, 2012.

16 **MR. ZELLERS:** Your Honor, I'm going to
17 offer into evidence -- yeah, we're going to mark this
18 as Exhibit 506 and offer it into evidence.

19 **JUDGE BUSHMAN:** Any objections to its
20 receipt?

21 **MR. STEINER:** Yes, your Honor. We don't
22 think there's been proper foundation.

23 **JUDGE BUSHMANN:** What's your objection to
24 the foundation?

25 **MR. STEINER:** We don't think that he's an

1 expert in this area that can rely on this study,
2 especially one page out of the study.

3 MR. ZELLERS: Well, we can offer the
4 entire thing, your Honor. It's a fairly voluminous
5 study. It's 237 pages and I've --

6 MR. STEINER: He's never said he read the
7 whole study.

8 MR. ZELLERS: Well, he said he was
9 familiar with the study.

10 MR. STEINER: That's not something an
11 expert relies on, his familiarity with a page of a
12 study. He's got to know the whole thing and be able
13 to explain it to get it in.

14 MR. ZELLERS: Well, we -- we can offer
15 the entire thing and we can provide electronic copies
16 to parties if that's -- if that's the issue.

17 JUDGE BUSHMANN: I'm going to overrule
18 the objection. I think the objection will go to the
19 weight, not to the admissibility. So I'll admit
20 Exhibit 506.

21 (Brightergy Exhibit 506 was received into
22 evidence.)

23 BY MR. ZELLERS:

24 Q. Mr. Blake, let's move on to the questions
25 that Staff attorney had asked you. You were asked

1 some very detailed questions about the company's
2 ownership and the company's finances. Do you remember
3 that?

4 A. Yes.

5 Q. Do you recall ever receiving a data
6 request from Staff regarding any of these issues
7 before this hearing?

8 A. No.

9 Q. You were asked a question about trade
10 allies intervening. Do you recall that question?

11 A. Yes.

12 Q. Do you have an opinion as to why other
13 trade allies have not intervened in other cases like
14 this?

15 MS. MERS: Objection, calls for
16 speculation.

17 THE WITNESS: I think that --

18 MR. ZELLERS: It's the same question that
19 Staff attorney asked.

20 THE WITNESS: I think that --

21 JUDGE BUSHMANN: I'll overrule. Go
22 ahead. You may answer.

23 THE WITNESS: Trade allies, you know,
24 generally speaking, are concerned with these program
25 changes. I mean, it's a drastic reduction in the

1 incentive levels, which are clearly going to reduce
2 the demand for these types of projects. Intervening
3 in cases and participating in all the stakeholder
4 workgroups and technical conferences and having
5 lawyers here for an entire day, for example, and
6 traveling here, I mean it's extremely expensive.

7 So, you know, I think the question was
8 something about why -- or the fact that other trade
9 allies have not intervened. You know, I think that
10 it's important to point out that these are -- this is
11 a tough process for average companies, especially
12 contractors, to participate in this -- to overall
13 participate, you know, in -- in all these different
14 regulatory hearings.

15 But I also feel very strongly though that
16 there is an overwhelming majority of participants are
17 afraid of the program changes from Cycle 1 to Cycle 2
18 and I think that's demonstrated by the influx of
19 applications and then the push-back that KCPL got when
20 they sent out those letters. They sent out that
21 letter in April and then quickly pulled back on it,
22 you know, in that July letter saying that they were
23 going to postpone any changes because -- you know, my
24 opinion is that probably a lot of customers and trade
25 allies pushed back pretty hard.

1 BY MR. ZELLERS:

2 Q. Staff attorney also asked you if
3 Brightergy would continue to participate in the MEEIA
4 program if it were passed over our objection. Do you
5 recall that question?

6 A. Yes.

7 Q. Would Brightergy participate at the same
8 level or be installing the same number of projects if
9 the proposal were passed over Brightergy's objections?

10 A. No. I mean our -- our level of
11 participation would drop quite significantly because
12 the incentive levels under the proposed stipulation
13 simply will not cause as many projects to occur, you
14 know, that have occurred under Cycle 1.

15 Q. Counsel for Kansas City Power & Light
16 asked you some pretty specific questions about
17 settlement talks. Do you recall that?

18 A. Yes.

19 Q. Do you recall any offer of settlement
20 being made before Brightergy filed its objection in
21 this case?

22 A. Not --

23 MR. STEINER: I'm going to object --

24 THE WITNESS: -- not from KCPL.

25 MR. STEINER: -- to that as -- I'm going

1 to object that's confidential settlement information.

2 MR. ZELLERS: I am kind of astounded,
3 your Honor. The door was open by KCP&L counsel asking
4 specific questions about specific offers.

5 MR. STEINER: I don't believe it was. I
6 said what did KCPL do. I can ask about my offer. I'm
7 not asking about what Brightergy said. I don't have
8 to keep what I said in settlement confidential if I
9 don't want to.

10 MR. ZELLERS: So I guess his point is
11 that -- that he can talk about his offer, but I'm not
12 allowed to rebut what he says about his offer.

13 MR. STEINER: No, you can ask --

14 JUDGE BUSHMANN: There were no objections
15 and I think confidential settlement is a privileged
16 matter, so I will sustain the objection.

17 MR. ZELLERS: I'll move on.

18 BY MR. ZELLERS:

19 Q. Disregarding anything that Kansas City
20 Power & Light may have said during settlement talks,
21 do you believe that there is settlement ground
22 somewhere between what the Company has proposed for
23 Cycle 2 and what the program was in Cycle 1 that would
24 drive investment but may result in a longer payback
25 time, say, than Cycle 1 offered? Does that question

1 make sense to you?

2 A. Yeah. Well, are you asking do we think
3 there's a compromise or some middle ground there --

4 Q. Yes.

5 A. -- or would we be willing to make a
6 compromise?

7 Q. Yes.

8 A. Yes. And that's basically what we've
9 been trying to do is compromise on this so we could
10 avoid all this uncertainty that we've been talking
11 about today. So, yeah. Absolutely, I think there's
12 an opportunity to find middle ground and compromise.

13 Q. Kansas City Power & Light's counsel also
14 asked you a series of very detailed questions about
15 Brightergy's business operations and clients and
16 rebate applications. Do you recall that?

17 A. Yes.

18 Q. Are you aware of Kansas City Power &
19 Light ever sending a data request on any of those
20 topics before this hearing?

21 A. No.

22 Q. Does Brightergy employ people who assist
23 in processing rebate applications?

24 A. Yes.

25 Q. Does Brightergy employ people who install

1 efficiency projects?

2 A. Yes.

3 Q. You don't do those things yourself?

4 A. We -- no. As -- me individually?

5 Q. Yes.

6 A. Correct.

7 Q. Why do you do that?

8 A. Why do I not install projects and --

9 Q. Correct.

10 A. -- process applications? I mean there's
11 just not enough time in the day. I mean, that's why
12 we have a great team for. We have over a hundred
13 employees and dozens of contractors that we work with.

14 Q. You're focused on other things?

15 A. I am focused on a lot of other things.

16 Q. Okay. One final question. Commissioner
17 Kenney asked you about a hypothetical. Was he
18 referring to the hypothetical that your attorney was
19 questioning Staff witness about that's on that easel
20 over there right now?

21 A. Yes.

22 Q. That's all I have. Thank you.

23 JUDGE BUSHMANN: Mr. Blake, that
24 concludes your testimony. You may step down. Thank
25 you.

1 I believe that's all the testimony we
2 have scheduled for today. Are there any final matters
3 that the parties need to discuss at this point?

4 MR. WOODSMALL: Your Honor, just so my
5 records are clear, it's my understanding that every
6 exhibit has been accepted; is that correct?

7 JUDGE BUSHMANN: Yes, except for the one
8 Commission exhibit that's offer was withdrawn.
9 Otherwise, all the exhibits I show have been received
10 into the record.

11 MR. WOODSMALL: Thank you.

12 JUDGE BUSHMANN: Expedited transcript
13 should be available on January 15th. Initial briefs
14 are due on January 29th. Reply briefs are due on
15 February 5th. Is there any other business before the
16 Commission at this point? Hearing none, this hearing
17 is adjourned. Thank you.

18 (Brightergy Exhibits 505 and 506 were
19 marked for identification.)

20 (Commission Exhibit 1 was marked for
21 identification.)

22 (WHEREUPON, the hearing was concluded.)
23
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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within the State of Missouri, do hereby certify that the testimony appearing in the foregoing matter was duly sworn by me; that the testimony of said witnesses was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



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