

Power & Light Company's Notice Of Intent To File An Application For Authority To

EO-2019-0132 & EO-2019-0133 VOL 2

September 24, 2019



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

September 24, 2019

Jefferson City, Missouri

Volume 2

| | | |
|--------------------------------|---|-----------------------|
| In The Matter Of Kansas City |) | |
| Power & Light Company's Notice |) | |
| Of Intent To File An |) | File No. EO-2019-0132 |
| Application 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. EO-2019-0133 |
| Application For Authority To |) | |
| Establish A Demand-Side |) | |
| Programs Investment Mechanism |) | |

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REGULATORY LAW JUDGE

WILLIAM P. KENNEY,
DANIEL Y. HALL,
SCOTT T. RUPP,
COMMISSIONERS

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P R O C E E D I N G S

1
2 JUDGE CLARK: Let's go on the record. Good
3 morning. Today is September 24, 2019. The current time
4 is 10:02 a.m. We're in Room 310 of the Governor Office
5 Building in Jefferson City, Missouri. We're here for
6 day two of the hearing of In the Matter of Kansas City
7 Power & Light Company's Notice of Intent to File an
8 Application for Authority to Establish a Demand-Side
9 Programs Investment Mechanism and that is File No.
10 EO-2019-0132 and In the Matter of KCP&L Greater Missouri
11 Operations Company's Notice of Intent to File an
12 Application for Authority to Establish a Demand-Side
13 Programs Investment Mechanism. That is File
14 EO-2019-0133. That 133 file is consolidated. Both of
15 those files were consolidated under the EO-2019-0132
16 number.

17 We're in day two. I'm going to have counsel
18 that's here enter their appearance for the record again
19 starting with Kansas City Power & Light Company?

20 MR. STEINER: Roger W. Steiner and James
21 Fischer.

22 JUDGE CLARK: For the Commission Staff?

23 MS. MERS: Nicole Mers and Travis Pringle.

24 JUDGE CLARK: For the Office of Public
25 Counsel?

1 MR. HALL: Caleb Hall appearing on behalf of
2 the Office of Public Counsel.

3 JUDGE CLARK: City of St. Joseph was excused
4 from the hearing. From Midwest Energy Consumers Group?
5 Mr. Woodsmall does not appear to be here. From the
6 Missouri Division of Energy?

7 MR. WESTEN: Jacob Westen appearing on behalf
8 of the Division of Energy.

9 JUDGE CLARK: For Renew Missouri?

10 MR. OPITZ: Tim Opitz for Renew Missouri.

11 JUDGE CLARK: The National Housing Trust
12 appears to be absent today, and that was with
13 permission. The National Resources Defense Council?

14 MR. ROBERTSON: Henry Robertson for NRDC.

15 JUDGE CLARK: Spire Missouri was excused from
16 the hearing, and the West Side Housing Organization is
17 also represented by Mr. Linhares who was excused from
18 the hearing.

19 Yesterday before I left as a last matter of
20 housekeeping I'd ask the parties to give me a list of
21 witnesses that they had all agreed to waive appearance
22 on. I have a couple questions and then I'm prepared to
23 go through that list and say who's going to be excused.

24 In regard to Byron Murray, is he going to be
25 testifying about anything other than EV charging

1 stations?

2 MS. MERS: No.

3 JUDGE CLARK: Okay. In that regard then, is
4 there anybody who having thought about it now has any
5 questions that they wanted to ask Kory Boustead? I hear
6 none. Byron Murray? I hear none. Seoung Joun Won?
7 I hear none.

8 Jane Epperson? I hear none. Philip
9 Mosenthal? I hear none. James Owen? I hear none. And
10 I'm going to mispronounce this name. I know you
11 corrected me yesterday. Philip Fracica?

12 MR. OPITZ: Fracica.

13 JUDGE CLARK: Fracica. Any questions for
14 Philip Fracica? Okay.

15 MR. STEINER: Your Honor, we also don't have
16 any questions for Robin Kliethermes. We mentioned we
17 might yesterday but we don't.

18 JUDGE CLARK: Does anybody else have any
19 questions for Robin Kliethermes? And for my information
20 what is it that Ms. Kliethermes would be testifying
21 about?

22 MS. MERS: She had testified on components of
23 the DSM mechanism, but I think most of those have been
24 resolved to my understanding. But there was also the
25 remaining live issue of the home energy reports.

1 JUDGE CLARK: Actually I'd like to have her.
2 I might have a question or two about the home energy
3 reports. I'm going to leave her on that. Those other
4 witnesses are excused from appearance. I'm going to
5 rely on counsel to enter their testimony at the
6 appropriate time, or do we just want to do that now?

7 MR. WESTEN: Judge, if there's no objection
8 from the parties, DE would be happy to offer its
9 testimony for Mr. Martin Hyman and Jane Epperson at this
10 point in time and if that testimony is so admitted then
11 move to be excused.

12 JUDGE CLARK: Does anybody have any objection
13 to admitting Division of Energy Exhibit 350 and 351 onto
14 the hearing record and those are the Rebuttal Testimony
15 of Martin Hyman and Rebuttal Testimony of Jane
16 Epperson? I hear no objections. Those are offered and
17 350 and 351 are admitted onto the hearing record and the
18 Division of Energy is excused from the hearing if the
19 Division of Energy wishes to be.

20 MR. WESTEN: Thank you, Judge. I appreciate
21 that very much.

22 (DE EXHIBITS 350 AND 351 WERE RECEIVED INTO
23 EVIDENCE AND MADE A PART OF THIS RECORD.)

24 MR. OPITZ: Your Honor, since we're on the
25 topic, I'd offer our remaining three exhibits and that's

1 Exhibit 451, the Rebuttal Testimony of James Owen;
2 Exhibit 452, the Surrebuttal Testimony of James Owen;
3 and Exhibit 453 is the Rebuttal Testimony of Philip
4 Fracica.

5 JUDGE CLARK: Okay. Is there any objection
6 from any of the parties to admitting 451, 452 or 453
7 onto the hearing record? I hear no objection. 451, 452
8 and 453 are admitted onto the hearing record.

9 MR. OPITZ: Thank you, Your Honor.

10 (RENEW MISSOURI EXHIBITS 451, 452 AND 453 WERE
11 RECEIVED INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

12 JUDGE CLARK: Mr. Robertson, did you have
13 testimony that you wanted to admit onto the hearing
14 record?

15 MR. ROBERTSON: It was admitted yesterday.

16 JUDGE CLARK: It was admitted yesterday. And
17 you had discussed being excused yesterday; is that
18 correct?

19 MR. ROBERTSON: Yes.

20 JUDGE CLARK: Do you wish to be excused?

21 MR. ROBERTSON: Yes. I'll be here for a
22 little while.

23 JUDGE CLARK: Okay. Whenever the Natural
24 Resources Defense Council wants to leave the hearing,
25 you're welcome to do so.

1 MR. ROBERTSON: Thank you, Judge.

2 JUDGE CLARK: That just leaves the remaining
3 three Staff witnesses. They don't have individual
4 testimony, do they? It's just included in Staff's
5 Surrebuttal Report?

6 MS. MERS: Actually Staff Witness Brad Fortson
7 has Surrebuttal Testimony.

8 JUDGE CLARK: I didn't see where Brad Fortson
9 was excused.

10 MS. MERS: I apologize. The witnesses who
11 have been excused do not have individual testimony.

12 JUDGE CLARK: That's inclusive -- Well, no, I
13 didn't excuse her. Okay. I think we're up to speed.

14 Staff, you can call your next witness.

15 MS. MERS: Staff would call John Rogers to the
16 stand.

17 JUDGE CLARK: Mr. Rogers, would you raise your
18 right hand and be sworn?

19 (Witness sworn.)

20 JUDGE CLARK: Please be seated and state and
21 spell your name for the record.

22 THE WITNESS: John Rogers, J-o-h-n
23 R-o-g-e-r-s.

24 JOHN ROGERS, being sworn, testified as follows:

25 DIRECT EXAMINATION BY MS. MERS:

1 Q. Mr. Rogers, who are you employed by and in
2 what capacity?

3 A. Missouri Public Service Commission as a
4 miscellaneous professional.

5 Q. And you retired from the Commission; is that
6 correct?

7 A. Yes, March 1 of this year.

8 Q. All right. And prior to your retirement, what
9 was your position at the Commission?

10 A. Utility regulatory manager of the energy
11 resources department for ten years.

12 Q. Okay. And did you contribute to the Staff
13 Rebuttal Report that's been marked as Exhibit 101 in
14 public and confidential form?

15 A. Yes, I did.

16 Q. Do you have any corrections to that testimony?

17 A. Yes, I do.

18 Q. Okay.

19 A. On pages 33, 34 and 35, I have the same
20 correction to the two charts on each of those three
21 pages. So there's six corrections and they're all the
22 same and they're all in the header for each of those six
23 charts, and the correction is to change the
24 parenthetical at the end of the header from (\$nominal)
25 to (\$2019) making that correction to be consistent with

1 the fact that the second table on page 32, the amounts
2 in that table are all in dollars discounted to 2019.

3 Q. That change doesn't change any of the
4 underlying analysis or figures?

5 A. No. It just makes the underlying analysis in
6 the presentation of the charts consistent.

7 Q. Thank you for clarifying that. Do you have
8 any other changes?

9 A. The other change is on page 40, line 3. At
10 the end of that line it ends with some market energy. I
11 would like to insert the words, after energy, insert and
12 demand benefits.

13 Q. Do you have any other corrections or is that
14 the final one?

15 A. No other corrections.

16 Q. Okay. And with those corrections in mind, is
17 this testimony true and accurate to the best of your
18 knowledge and belief?

19 A. Yes, it is.

20 Q. With those corrections in mind, if I asked you
21 the same questions today would your answers be the same?

22 A. Yes.

23 MS. MERS: All right. I will go ahead and
24 tender the witness for cross.

25 JUDGE CLARK: Cross-examination by the Office

1 of Public Counsel?

2 MR. HALL: Mr. Rogers, good morning.

3 THE WITNESS: Good morning.

4 CROSS-EXAMINATION BY MR. HALL:

5 Q. You mentioned that your position now is
6 miscellaneous professional, correct?

7 A. Correct.

8 Q. This is a new position. When did you start
9 this position?

10 A. August 7 I believe was the date of this year.

11 Q. This new position was preceded by your
12 retirement in March did you say?

13 A. March 1, 2019.

14 Q. As late as March then, you were Staff's
15 utility regulatory manager then?

16 A. My last day of employment was the last day of
17 February 2019.

18 Q. Up until then, you oversaw all of Staff's
19 recommendations on demand-side management programs,
20 correct?

21 A. I was on the team, yes, as department head.
22 The oversight has always been provided by Ms. Dietrich.

23 Q. And I take it your institutional knowledge was
24 so vital, is that why you came back?

25 A. I was asked to come back and help out with

1 these two cases and these two cases only.

2 Q. Mr. Rogers, did you review the testimony of
3 Dr. Geoff Marke?

4 A. Yes.

5 Q. Did you review his rebuttal testimony?

6 A. Yes.

7 Q. Do you have a copy of it in front of you?

8 A. I do.

9 Q. Could you please turn to pages 5 through 7?

10 A. Okay.

11 Q. I'm looking at a back and forth that was
12 quoted between you and Commissioner Hall. Are you
13 following me?

14 A. Yes.

15 Q. Could you please briefly review what was
16 quoted and then try to explain what context was this
17 conversation given?

18 A. Okay. This context was in the agenda meeting
19 on November 15 of 2018. On the docket, the agenda
20 docket that day was discussion of the joint filing that
21 parties had made in the IRP case for Kansas City Power &
22 Light and for GMO for their 2018 IRP that's the Chapter
23 22 triennial compliance filing.

24 Q. Does that have any relation to this case?

25 A. Yes, it does.

1 Q. Explain or please explain.

2 A. The analysis in the IRP was similar to a lot
3 of the analysis that we see in this MEEIA case for KCP&L
4 and GMO. The IRP was the first time that Staff raised
5 issues that are now being heard today related to the
6 avoided capacity -- well, the avoided cost of capacity.
7 And Staff identified that we had an issue with the
8 avoided cost of capacity for KCP&L only in their 2018
9 IRP and not a problem with the avoided cost of capacity
10 for GMO in their 2018 IRP.

11 And the reason we did have a difference of
12 opinion between KCP&L and GMO was that at that time both
13 utilities were being evaluated through the Chapter 22
14 process as separate utilities. This is very important
15 to this case, because if GMO were a standalone utility,
16 we don't have a problem with using the combustion
17 turbine as the avoided cost of capacity for GMO.

18 Q. But together you're not finding avoided costs?

19 A. In the IRP we were not. We were evaluating at
20 that time the two utilities separately and to our
21 knowledge, to Staff's knowledge and understanding at
22 that time, SPP, the joint integrated transmission
23 service agreement was not in play in the IRP.

24 Q. Mr. Rogers, you voiced this opinion back in
25 November of 2018. Is that accurate?

1 A. Yes.

2 Q. Were you in the room yesterday when your
3 counsel Mr. Pringle was questioning Mr. Caisley from the
4 Company?

5 A. Yes.

6 Q. Do you recall the questioning Mr. Pringle
7 asked about any of Staff's prior public expressions of
8 concern regarding the application?

9 A. Not specifically, but I don't remember the
10 specific questions and the answers that he gave.

11 Q. Do you remember the subject area though?

12 A. Yes.

13 Q. Do you believe that -- These comments you made
14 in this agenda meeting, this was public, right?

15 A. Yes.

16 Q. Do you believe this may have been what
17 Mr. Pringle was referring to?

18 A. Yes.

19 Q. Mr. Rogers, could you please turn to pages --
20 look through pages 7, 8 and 9. Dr. Marke has in bullet
21 point form highlighted several of the deficiencies that
22 Staff noted that we just discussed. Could you please
23 review and confirm that these are accurate to your
24 knowledge?

25 A. Yes. I've read these and they are accurate to

1 my knowledge.

2 Q. For the benefit of the record and the parties,
3 could you please read off the bolded and highlighted --
4 bolded and underlined portions of what Dr. Marke has
5 listed?

6 A. Right. Part of this is confidential and it's
7 not marked that way.

8 Q. Wherever you noted something is -- Wherever
9 you note something is confidential, please refrain from
10 noting that -- please refrain from stating that
11 publicly, of course.

12 A. KCP&L's use of, and there's the capacity,
13 avoided cost of capacity that was used in the IRP which
14 is confidential, drastically overstates KCP&L's avoided
15 capacity cost of generation, transmission, and
16 distribution facilities adjusted to reflect reliability
17 reserve margins and capacity losses on the transmission
18 and distribution systems.

19 Because KCP&L considered and analyzed
20 alternative resource plans with demand-side resources
21 when it is not in need of any new non-renewable
22 supply-side resources for the entire 20-year planning
23 horizon and did not consider nor analyze alternative
24 resource plans with new low cost supply-side resources
25 to compete with the new demand-side resources on an

1 equivalent basis.

2 Because KCP&L has used drastically overstated
3 avoided capacity cost benefits when calculating the
4 total resource cost test results for its demand-side
5 programs and portfolio, the programs may not comply with
6 the MEEIA statute Section 3.

7 Because KCP&L's demand-side programs do not
8 defer any non-renewable supply-side resources during the
9 20-year planning horizon, it is expected that there will
10 be little, if any, benefits for customers who do not
11 participate in the programs, resulting in violation of
12 the MEEIA statute Sections 3 and 4.

13 Because KCP&L did not include any analysis
14 required by, then this is a citation to a MEEIA rule,
15 20.094(4)(C)4 in its 2018 IRP. Staff is concerned that
16 the earnings opportunity component of a DSIM included in
17 the IRP and in the anticipated KCP&L MEEIA Cycle 3
18 application may not be as well informed as it should be.

19 The last bullet is KCP&L's decision makers may
20 have selected an adopted preferred resource plan which
21 includes a MEEIA R-A-P, RAP, R-A-P, portfolio of
22 demand-side programs which does not comply with the
23 legal mandate in 393.1075.4, because the RAP programs
24 may not provide benefits to all customers, including
25 those customers who do not participate in the programs.

1 Q. Thank you, Mr. Rogers. You were in charge of
2 a filing that listed out these deficiencies, correct?

3 A. Yes.

4 Q. And you personally believe these were accurate
5 deficiencies, correct?

6 A. Yes.

7 Q. Do you still have the same concerns today as
8 you did approximately a year ago?

9 A. Yes, I do.

10 Q. One of the programs that I noted that Staff is
11 critical of is the home energy reports but then there's
12 the issue of persistence that's cited. Can you explain
13 persistence as to a home energy report and what Staff is
14 meaning by that?

15 A. That's probably a better question for
16 Mr. Fortson. Persistent basically means that a program
17 has a one-year life so it's only creating savings for
18 the period of time that the measures are being
19 installed, and in this case it would be, since it's a
20 report, home energy report, the savings are only
21 effective during the period of time that the report is
22 being delivered to the customers.

23 Q. Okay. Mr. Rogers, do you recall Mr. Caisley
24 explaining his frustration with Staff's supposed
25 inability to settle?

1 A. Yes.

2 Q. And do you recall him explaining his prior
3 experience with the MEEIA programs and applications?

4 A. Generally.

5 Q. Given your experience in this field, have you
6 ever interacted with Mr. Caisley at a demand-side
7 management quarterly meeting?

8 A. I do not recall him attending any meetings,
9 although I may have missed one or two in ten years.

10 Q. That answers my next question. Have you ever
11 interacted with Mr. Caisley at an EM&V meeting?

12 A. No.

13 Q. At an IRP meeting?

14 A. No.

15 Q. Have you interacted with Mr. Caisley at a
16 market potential meeting?

17 A. No.

18 Q. Have you been involved with all the MEEIA
19 applications?

20 A. Yes, I have.

21 Q. And Staff hasn't always recommended approval
22 in every MEEIA application?

23 A. Correct.

24 Q. Do you agree with the characterization that
25 Staff is being inconsistent now in recommending a

1 disapproval of a MEEIA application?

2 A. No, I do.

3 MR. HALL: No further questions.

4 JUDGE CLARK: Any cross-examination from
5 National Resources Defense Council?

6 MR. ROBERTSON: No, Judge.

7 JUDGE CLARK: Any cross-examination from Renew
8 Missouri?

9 MR. OPITZ: No, thank you, Judge.

10 JUDGE CLARK: Any cross-examination from the
11 Company?

12 MR. STEINER: Yes, Your Honor. Good morning,
13 Mr. Rogers. Welcome back.

14 THE WITNESS: Good morning.

15 CROSS-EXAMINATION BY MR. STEINER:

16 Q. Staff Rebuttal Report. Let's go to page 39.

17 A. Okay.

18 Q. And looking at lines 18 and 19, I'm having
19 some trouble figuring out this \$88 number on line 19.
20 Do you see that?

21 A. Yes.

22 Q. Look at your work papers. I'm going to give a
23 copy of them to you.

24 MR. HALL: Roger, what page?

25 MR. STEINER: 39.

1 BY MR. STEINER:

2 Q. And it's a spreadsheet so that always throws
3 me off immediately. If you look at -- I'm seeing that
4 the \$88 number should be \$85.88?

5 A. Looking at the work paper, I would -- let's
6 see. Looking at the work paper that you provided to me,
7 I would have to agree.

8 Q. Okay. So can we make that correction there in
9 the testimony the \$88 figure?

10 A. That should be \$86.

11 Q. Or \$85.88?

12 A. That would be fine.

13 Q. Okay. All right. So the point of the now
14 corrected number \$85.88 is because a nonparticipant
15 customer pays approximately \$86 more over seven years,
16 Staff is saying that Section 393.175.4 is not satisfied
17 by the application; is that correct?

18 A. Yes.

19 MR. STEINER: Okay. Thank you. I think
20 that's all I have.

21 JUDGE CLARK: Just for my clarity, can
22 somebody tell me what that 175.4 you just talked about
23 was?

24 MR. STEINER: That's the MEEIA statute that
25 says --

1 JUDGE CLARK: I just want to know what that
2 section says that relates to that.

3 MR. STEINER: It says that programs need to be
4 approved by the Commission, result in energy demand
5 savings and are beneficial to all customers in the
6 customer class in which the programs are proposed
7 regardless of whether the programs are utilized by all
8 customers. That's the MEEIA statute, part of it.

9 JUDGE CLARK: Thank you. Any questions from
10 the Commission?

11 COMMISSIONER HALL: No questions. Thank you.

12 JUDGE CLARK: I've got a few questions,
13 Mr. Rogers. It may take a little bit just for the
14 clarity of the record from my perspective.

15 QUESTIONS BY JUDGE CLARK:

16 Q. What is MEEIA?

17 A. Missouri Energy Efficiency Investment Act.

18 Q. And what are the components of MEEIA?

19 A. The act allows the utilities to voluntarily
20 request approval from the Commission of energy
21 efficiency programs and demand response programs. And
22 if approved, it also includes approval of a demand-side
23 programs investment mechanism which allows the utilities
24 to recover cost of the programs to deliver the programs,
25 as well as a throughput disincentive to recover the cost

1 of basically the lost margin revenue through a reduction
2 in sales as a result of the programs. The third
3 component of the investment mechanism is an earnings
4 opportunity.

5 Q. What is a throughput disincentive?

6 A. Throughput disincentive, let me explain it
7 this way. Utilities under traditional regulation are
8 incented to make more sales because more sales means
9 more revenue and all else equal it means more profit.
10 So there's a disincentive for the utilities to engage in
11 energy efficiency programs because it reduces the level
12 of sales that they would otherwise have. And so the
13 throughput disincentive is to recognize that and provide
14 a way to make the utility whole for those sales that
15 they otherwise would have made if there were no
16 programs.

17 Q. And how does the MEEIA mechanism work? That's
18 not a very good question. Why are avoided costs
19 important to Staff?

20 A. Avoided costs provide the benefits to the
21 customers in several different ways. The primary issue
22 in this case is the avoided cost of capacity. I
23 mentioned earlier, Judge, that in the IRP Staff had no
24 problem with the GMO avoided cost and the reason we
25 didn't is because GMO needs new supply-side resources.

1 And so the energy efficiency programs have a lot of
2 value for a utility that needs supply-side resources and
3 especially when they need them as soon as GMO does.

4 GMO needs resources, supply-side resources
5 very early in the planning horizon. So to the extent
6 that the programs can reduce in particular the need for
7 new capacity, avoided capacity, the programs add a lot
8 of value. What's happened since the IRP and the MEEIA
9 case is that KCP&L and GMO now have a joint network
10 integrated transmission service agreement with SPP. And
11 they operate differently than they've operated prior to
12 that agreement.

13 Prior to that agreement they were standalone
14 utilities and they were analyzed that way in both the
15 IRP and the MEEIA. Once that joint agreement, the
16 network integrated transmission services agreement was
17 put in place, we have to analyze GMO and KCP&L as one
18 utility. When we do that, the benefits to GMO go away
19 in this case because on a combined basis now the
20 combined utilities does not need any new generation for
21 20 years at least. And so the benefits from the program
22 to the avoided cost of capacity on a joint basis are
23 very minimal.

24 Staff has -- to contrast the vast difference
25 in the application that the Company has and what Staff's

1 position is we've just calculated everything using zero,
2 although Mr. Luebbert recognizes that there are some
3 other benefits through SPP but they're very minor.

4 Q. Now, yesterday when Mr. Luebbert was
5 testifying, he indicated that it was so many years out
6 in the future, that there was capacity for GMO in so
7 many years out in the future, that there was capacity
8 for Kansas City Power & Light. And those were two
9 different numbers and maybe I just don't understand.

10 Both those numbers I believe were in the teens. It was
11 like 14 and 16 or 13 and 16. Does that small a
12 difference in the number make a difference in the need
13 for supply-side resource or is it just because the SPP
14 where you're looking at it as approval?

15 A. If I'm recalling what you're referring to was
16 the need to have some generation added in the 14th year
17 of this 16th year.

18 Q. That's correct.

19 A. That's true. What you have to look at is the
20 difference between when those generating units are
21 needed without any demand-side programs and then with
22 demand-side programs. And what happens in this case is
23 it doesn't matter. If you have the Cycle 3 programs or
24 you don't, the same resource supply-side resources are
25 needed. So it doesn't postpone the need for any

1 supply-side resources having the programs, if that makes
2 sense.

3 Q. It does. There's been a lot of questions
4 regarding the belief by the Company that there's been a
5 change in how Staff evaluates avoided costs. Has there
6 been a change in how Staff evaluates avoided costs?

7 A. There's been a change over time. There's not
8 been a change in the Ameren Cycle 3 case and the KCP&L
9 and GMO Cycle 3 cases. I can talk more on that but --

10 Q. I'm not so much interested in the comparison
11 as I'm interested in what it is that has made Staff
12 change the way in which it looks at avoided costs.

13 A. Staff has not changed the way it looks at
14 avoided costs. We follow the Commission rules in each
15 IRP case or MEEIA case. I don't believe we have changed
16 the way we view avoided cost.

17 Q. Now, Ms. Dietrich testified yesterday that
18 there was a rule revision to the MEEIA rules in 2017 in
19 regards to the 4240-20.094 the impacts of retirements
20 and postponed new plant that may have affected how Staff
21 is examining avoided costs. You don't believe that's
22 the case?

23 A. Well, the rule did change. Even prior to the
24 rule change Staff was performing its analysis consistent
25 with the rule change. Let me be sure I have the right

1 rule reference. I have the MEEIA rules with me. It's
2 09 -- is it -- can you tell me --

3 Q. I'm sorry. I think it was 4240-20.094
4 subdivision 3 and 4.

5 A. Okay.

6 Q. If I'm off, I apologize. I just wrote it down
7 yesterday when it was being talked about.

8 A. Okay. Subdivision -- okay. Section (4)(C)
9 and then subsection 4 under (C). So when -- this is in
10 the MEEIA rule, but it's using analysis from Chapter 22
11 to express the impact of, and this is what 094(4)(C)4
12 reads. The impact from all demand-side programs
13 included in the application on any postponement of new
14 supply-side resources and the early retirement of
15 existing supply-side resources including annual and net
16 present value of any lost utility earnings related
17 thereto. So this is -- This part of the MEEIA rule is
18 requiring that the utilities calculate the impact and
19 present it in the MEEIA application, the impact for any
20 postponement of new supply-side resources or the early
21 retirement of any existing supply-side resources as a
22 result of the MEEIA programs.

23 Q. And that's what Staff is looking at as the
24 avoided cost?

25 A. It's actually what Staff is looking at is the

1 earnings opportunity impact of having the demand-side
2 programs. Because no supply-side resources are being
3 postponed, there's no lost future earnings opportunity
4 from those supply-side resources that are being invested
5 in. Utility earns on its investments. And if the MEEIA
6 programs are not moving in time the need for those
7 investments, there's no lost earnings opportunity and
8 that's the case in this MEEIA application.

9 Q. Okay. That makes sense. You'll have to bear
10 with me. As I said, a lot of these questions are
11 foundational. What do you mean when you say net present
12 value?

13 A. The net present value is just taking a stream
14 of annual cost or in the MEEIA case they could be annual
15 benefits over time. So the cost of the programs occur
16 in the three years and a little more. The second three
17 years for the low income programs. So you have costs in
18 each year. The benefits from the programs occur over a
19 longer period of time.

20 In fact, some of the benefits go out as much
21 as 20 or 25 years depending upon what the efficiency
22 measure is. And those benefits result from the
23 reduction in the need for energy or capacity and the
24 valuing of those savings, energy and capacity savings,
25 by using the avoided cost of energy or the avoided cost

1 of capacity. So you have a stream of costs over time.
2 You have a stream of benefits that occur over time and
3 even a longer time in the future. What the net present
4 value does is it uses the utility's cost of capital to
5 discount that stream of cost and benefits back to the
6 first year of the stream. So in this case when the
7 application was filed the first year of the program was
8 to be 2019. So you would present value the cost and
9 benefits back to that year so that you can compare
10 everything on an equivalent basis. This recognizes the
11 time value of money.

12 Q. Okay. What are the components that you look
13 at when determining whether a program is cost effective?

14 A. The statute says that the total resource cost
15 test, the TRC, is a primary test, it's not the only one.

16 Q. Can you explain that total resource cost test
17 to me?

18 A. Total resource cost test will take the -- it
19 will present value, as I just described, the cost of the
20 program and so that's the utility's cost to deliver the
21 programs including the incentives they pay to customers,
22 the cost to administer the programs and to do the
23 evaluation, measurement and verification. The TRC also
24 includes the participant's cost of the upgrade in the
25 measure. So there's some out of pocket costs from the

1 customer that engages in the program. So there's the
2 cost, and they occur over time, so that gets present
3 value, and then the TRC also calculates the present
4 value of the benefits from a program or the whole
5 portfolio. Again, those benefits occur over a long
6 period of time. We talked about how you value those
7 benefits.

8 Energy savings in kilowatt hours times the
9 avoided cost of energy plus if there's any capacity
10 savings times the avoided cost of capacity and it gets
11 present value. The TRC just takes the present value of
12 the benefits and divides it by the present value of the
13 cost. If the TRC is greater than one, it tells you that
14 the benefits on a net present value basis are greater
15 than the cost on a net present value basis. TRC greater
16 than one we say that measure or that program or that
17 portfolio is cost effective.

18 Q. Now, you said because of SPP and because of
19 both companies participation in SPP that Staff
20 determined that it was necessary to examine the
21 companies, the two companies as a singular unit. Do you
22 believe that because of SPP, the Commission has two
23 applications before it, that because of SPP that the
24 Commission has to look at these two applications as
25 linked? In other words, I mean, would the Commission be

1 free to, say, approve one application and reject the
2 other?

3 A. As I've already testified, prior to the joint
4 network integrated transmission service agreement, Staff
5 would have said, you know, this is a wonderful program
6 for GMO and we're not so sure about KCP&L. But because
7 of that agreement, the joint NITS agreement, Staff has
8 taken the position in this case that they should be
9 evaluated as a joint utility.

10 Q. Are the programs between the two companies
11 substantially similar?

12 A. Yes.

13 Q. Is the only difference that resulted in, if
14 Staff looked at them individually, between GMO, is the
15 only difference between Staff would have recommended
16 approving GMO and not recommending approving Kansas City
17 Power & Light Company, is the only difference the
18 availability of supply-side resources?

19 A. Yes.

20 Q. I think one final --

21 A. That's the overwhelming difference.

22 Q. Actually that does bring up one other
23 question. I'm not exactly sure, and maybe I just didn't
24 understand from your testimony, why Staff was -- well,
25 actually I think I understand but maybe you can

1 reiterate to me, why Staff was okay with them using a
2 hypothetical combustion turbine as an avoided cost for
3 GMO and not for Kansas City Power & Light Company?

4 A. The reason is GMO is a standalone utility,
5 needs additional resources right now.

6 Q. And that's what I thought you were going to
7 say. My last question is, I've heard a lot of mention
8 about the IRP. I've heard a lot of -- I remember
9 reading testimony that there was -- that in the way the
10 Company had valued avoided cost fundamentally violated
11 the future resource planning as required by the IRP. Do
12 you understand what I'm talking about?

13 A. Let's go through that again.

14 Q. Okay. That did get a little convoluted. I'll
15 start simply. I've heard a lot about the IRP. Why are
16 we talking about the IRP in relation to MEEIA? Is there
17 a relationship between them?

18 A. There's definitely a relationship between the
19 two.

20 Q. How would they relate?

21 A. Well, in the IRP -- the primary function of
22 the IRP is for the utility to perform a comprehensive
23 planning study in order to understand the impact on
24 revenue requirements, on rates, the impact on their
25 financial metrics for different alternative resource

1 plans. The utility selects an adopted preferred
2 resource plan and then they're expected to execute that
3 plan. Under the Chapter 22 rules they have to select an
4 adopted preferred resource plan. The plan that they
5 select in Chapter 22 should be the same plan that they
6 file in MEEIA.

7 Chapter 22 also includes a requirement that if
8 the utility's business plan that they're executing is
9 different than their adopted preferred resource plan
10 that they need to come to the utility and explain why
11 their plan is different or have a new adopted preferred
12 resource plan. There has to be a linkage between
13 Chapter 22 and the preferred resource plan in Chapter 22
14 and what you do in MEEIA.

15 Q. In this case, did the plan put forth in MEEIA,
16 was that the same plan that was put forth in their
17 preferred resource plan?

18 A. Generally, but the problem we have here is
19 that the same deficiencies and concerns that Mr. Hall
20 had me read off they still apply today except they now
21 apply to both utilities and not just to Kansas City
22 Power & Light because in the IRP we were still reviewing
23 the utilities as separate utilities because there was no
24 -- at that time there was no joint network integrated
25 transmission service agreement with MISO -- excuse me,

1 with SPP.

2 JUDGE CLARK: Okay. Thank you. I appreciate
3 that. Those are all the questions that I have. Any
4 recross based upon bench questions? The Office of
5 Public Counsel?

6 MR. HALL: Yes, briefly.

7 RECROSS-EXAMINATION BY MR. HALL:

8 Q. Mr. Rogers, in response to a question from
9 Judge Clark, you remarked about changes in the Company's
10 position as from IRP to the MEEIA application. Is the
11 Company's election of PISA another change from during
12 the IRP planning to now?

13 A. The last part of the question?

14 Q. Let me rephrase that. Has the Company's
15 election of plant-in-service accounting been another
16 change from the IRP planning until now?

17 A. I believe so. I believe that future IRPs
18 would include the new legislation for plant-in-service
19 accounting.

20 THE COURT REPORTER: I'm sorry?

21 THE WITNESS: Plant-in-service accounting; is
22 that right?

23 MR. HALL: Yes. No further questions. Do we
24 need to take a moment for the court reporter to get the
25 answer correctly? I think I spoke over the witness for

1 a moment.

2 JUDGE CLARK: Ms. Bentch, do you need a
3 moment? If you want to read the question and answer
4 back to him, that might help him.

5 THE COURT REPORTER: How about if I read the
6 question?

7 THE WITNESS: Maybe I can answer it this way
8 that Senate Bill 564 will impact future IRP filings.

9 JUDGE CLARK: Go on.

10 MR. HALL: No, thank you. I have no further
11 questions.

12 JUDGE CLARK: Natural Resources Defense
13 Council is gone. Any questions from Renew Missouri?

14 MR. OPITZ: Thank you, Judge.

15 RECROSS-EXAMINATION BY MR. OPITZ:

16 Q. Mr. Rogers, you were discussing with Judge
17 Clark about the benefits to GMO going away, do you
18 recall that, related to avoided capacity cost?

19 A. Yes.

20 Q. But that's a pretty narrow view of benefits of
21 the MEEIA program; is that right? Would you agree that
22 a MEEIA portfolio can result in environmental benefits?

23 A. Yes.

24 Q. And a MEEIA portfolio can result in certain
25 economic benefits in terms of spending on measures in

1 the KCPL market area?

2 A. Actually the environmental benefits are
3 already included in the avoided cost of energy. Our
4 issue in this case and in the IRP was with the avoided
5 cost of capacity only.

6 Q. And I think you mentioned you were in the room
7 yesterday when Mr. Luebbert was testifying that offering
8 a MEEIA portfolio can have the benefit of purchasing
9 less high margin power in the SPP?

10 A. Yes.

11 Q. Would you agree that there are certainly
12 benefits to the customers who participate in MEEIA?

13 A. Yes.

14 Q. So all of these different ways of looking at
15 benefits do show some benefits of the Company offering a
16 MEEIA portfolio; would you agree with that?

17 A. There are a number of different benefits other
18 than the avoided cost of capacity, yes.

19 Q. And even under Staff's scenario where it uses
20 a zero capacity benefits, your analysis in the Staff
21 Rebuttal Report shows a lifetime net benefit for the
22 KCPL side of the business; is that correct?

23 A. It does.

24 MR. OPITZ: Okay. Thank you. That's all I
25 have.

1 JUDGE CLARK: Any recross based upon bench
2 questions from the Company?

3 MR. STEINER: Yes.

4 RECROSS-EXAMINATION BY MR. STEINER:

5 Q. Do you recall discussing with Judge Clark
6 about SPP?

7 A. Yes.

8 Q. Do you recall, Mr. Rogers, didn't the Company
9 propose to view KCPL and GMO as a single -- view them
10 together several IRPs ago?

11 A. The Company has presented the combined utility
12 in their IRP for a long time.

13 Q. Right. Do you recall didn't Staff oppose it
14 at that time?

15 A. There may have been an IRP prior to the 2018
16 integrated resource -- or the triennial compliance
17 filing where Staff had opposed including the analysis
18 that we didn't feel it added value because the rule
19 required that the utilities be evaluated as separate
20 utilities but I would agree.

21 Q. Okay. You had a discussion with Judge Clark
22 about rule changes. Do you recall that?

23 A. Yes.

24 Q. The rule that you were discussing, I believe
25 it specifies how work papers are provided by the

1 Company.

2 A. It does.

3 Q. Isn't that what the rule is specifying?

4 A. It lists what the work -- what work papers
5 need to be provided and so work papers have to include
6 that requirement.

7 Q. That's a totality of that rule change how work
8 papers -- it specifies how the work papers should be
9 provided?

10 A. But there was a new requirement and that was
11 this subsection 094(4)(C)4.

12 Q. Right.

13 A. That was a new requirement.

14 Q. New requirement of the work papers, correct?

15 A. New requirement that work papers be provided,
16 yes.

17 Q. Got it. Do you recall discussing with the
18 judge about how Staff has not changed its position?

19 A. Yes.

20 Q. Okay. In MEEIA 1 and 2, did Staff recommend
21 an avoided cost of zero for KCPL?

22 A. No.

23 Q. Did KCPL need capacity in those cases?

24 A. I don't recall. I don't recall.

25 Q. Do you recall in those cases was the Company

1 building Iatan 2 to meet its capacity needs?

2 A. No. Iatan 2 was already installed in 2010.

3 Q. So the Company wouldn't have needed capacity
4 at that time for MEEIA 1 and 2; is that correct?

5 A. The IRP is a long range plan of 20 years, and
6 what I'm struggling with is to recall the capacity
7 balance sheet and the need to add resources after Iatan
8 2 and when those resource, supply-side resource needs
9 occurred and not just in the preferred plan but again
10 you have to look at the adopted preferred plan with the
11 demand-side resources compared to the plan, the
12 alternative resource plan that had no demand-side
13 resources. And I can't recall all the detail.

14 Q. But you do recall that Staff did not recommend
15 an avoided cost of zero in those cases?

16 A. I do. I recall that.

17 Q. You did not recommend that, correct? You used
18 the cost of a CT in those cases?

19 A. Actually, to my best recollection, this is the
20 first case that the utility has used the cost of a CT in
21 the first year and every year of the 20-year planning
22 horizon. My best recollection is that the avoided cost
23 of capacity in earlier triennial compliance filings
24 began with a low level of avoided cost of capacity
25 because of the capacity, the existence of capacity in

1 the marketplace even in the SPP. So you start with a
2 low number and the avoided cost would ramp up to a CT in
3 later years. That's my best recollection. This is the
4 very first time in an IRP where I recall seeing that CT
5 used even though there's no need for additional capacity
6 for the entire 20 years and yet the utility was using
7 the avoided cost of a CT in every year to evaluate the
8 demand-side programs.

9 Q. But Staff accepted KCPL's avoided cost number
10 in MEEIA 1 and 2 and that number was not zero; is that
11 correct?

12 A. Yes.

13 Q. Do you recall discussing with Judge Clark the
14 avoided -- what avoided cost of capacity meant?

15 A. Yes.

16 Q. Did you have a chance to review the Company's
17 alternative market based approach for avoided cost
18 values that was in its surrebuttal?

19 A. I didn't really focus on that. Mr. Luebbert
20 would have done that for Staff.

21 Q. So you didn't review it?

22 A. Not for comprehension.

23 MR. STEINER: Okay. Thank you.

24 JUDGE CLARK: Any redirect by Staff?

25 REDIRECT EXAMINATION BY MS. MERS:

1 Q. Counsel for the Company asked you about your
2 work papers. Do you recall?

3 A. Yes.

4 Q. What was that work paper comparing?

5 A. The work paper was comparing -- this work
6 paper was to try to understand what the impact of a
7 nonparticipant customer bill would be recognizing that
8 there are some benefits from the energy market through
9 lower prices that would flow through to a little lower
10 bill for a nonparticipant.

11 Q. What are the primary ways that nonparticipants
12 would benefit in general, not in this application?

13 A. In general and not in this application?

14 Q. Like in a successful MEEIA program.

15 A. The primary benefit for a nonparticipant, and
16 the reason I think we have MEEIA legislated in the first
17 place, is to use energy efficiency programs to postpone
18 the need for large expensive supply-side resources.

19 Q. Would another benefit be in the form of
20 increased off systems sales revenue?

21 A. That does occur. That was actually part of
22 the analysis that was performed in this work paper.

23 Q. Did you recall testimony yesterday about
24 plants running less and the possibility of off systems
25 sales then being reduced?

1 A. Yes.

2 Q. How would that impact your work paper?

3 A. Well, it's included in this work paper. This
4 work paper was the result of Staff Data Request 0019
5 where we basically asked the utility to tell us what the
6 benefit was from lower energy prices from the SPP, and
7 so the work papers actually looking at okay, here's a
8 nonparticipant, they're paying the MEEIA charge, and so
9 we're pro forming what the entire MEEIA charge would be
10 under the application and then what the reduction in the
11 price of energy would be as a result of the programs and
12 that comes from the integrated resource analysis which
13 is modeling the SPP marketplace.

14 Q. You received a question from Judge Clark about
15 the throughput disincentive and what that's designed to
16 compensate for. Do you recall?

17 A. Yes.

18 Q. What is the earnings opportunity designed to
19 compensate for that the throughput disincentive does not
20 cover?

21 A. Okay. I'm just going to read the definition
22 of the earnings opportunity in the MEEIA rules so that I
23 don't get this wrong.

24 Q. Okay.

25 A. The earnings opportunity component of a DSIM

1 means the methodology approved by the Commission in a
2 utility's filing for the demand-side program approval to
3 allow the utility to receive an earnings opportunity.

4 An earnings opportunity component of a DSIM shall be
5 implemented on a retrospective basis and all energy and
6 demand savings used to determine the DSIM earnings
7 opportunity amount shall be verified and documented
8 through EM&V reports. So the programs save energy and
9 they save demand.

10 And what we've had in recent MEEIA cases is a
11 recognition that some programs save energy, some
12 programs save demand. And there's actually the earnings
13 opportunity are not just the lost earnings. Can be and
14 there has been approved by the Commission some component
15 of the earnings opportunity to recognize that there's
16 value to the customers and the utility is compensated
17 for some of the lost -- some of the energy saved from
18 specific programs.

19 Q. But the demand component is the largest part
20 of?

21 A. Normally it is and that's what recent rulings
22 by the Commission has pointed in that direction.

23 Q. Okay. You were asked some questions by the
24 judge about the rule revision. Do you recall?

25 A. Yes.

1 Q. And you responded with Staff's prior analysis
2 was consistent with how that rule changed. Do you
3 recall that answer?

4 A. Yes.

5 Q. Can you explain if Staff weighted or valued
6 its analysis differently due to that rule change?

7 A. We did not.

8 Q. You were also asked about the differences
9 between the KCPL and GMO application in this case by the
10 judge and if avoided costs were the only reasons Staff
11 had issue. Do you recall?

12 A. In the MEEIA case?

13 Q. Yes, in this current case.

14 A. Can you ask that again?

15 Q. Sure. You were asked a question by the judge
16 about the -- if there were differences, I believe it was
17 in reference to programs, between the GMO and KCPL cases
18 or if it was primarily the avoided cost issue that Staff
19 had issue with the application. Do you recall that line
20 of questioning?

21 A. Yes.

22 Q. Did Staff have recommendations regarding
23 program design though?

24 A. Yes.

25 Q. Who would be the best witness for that topic?

1 A. Mr. Fortson.

2 Q. You were also asked some questions by counsel
3 for Renew about benefits. Do you recall that question?

4 A. Yes.

5 Q. Do any of the other benefits that Mr. Opitz
6 was referring to overcome Staff's issue about benefits
7 to nonparticipants?

8 A. No.

9 Q. And you were also asked by the Company's
10 counsel about objecting to a combined IRP. Do you
11 recall that?

12 A. Yes.

13 Q. When in time was that?

14 A. Well, that's what I was -- I think I testified
15 to. It was prior to the most recent IRP so it would
16 have been at least the 2015 IRP if not the 2012 IRP.

17 Q. Okay.

18 A. Or possibly both, but I don't recall
19 specifically.

20 Q. So prior to the SPP agreement being in place?

21 A. Yes.

22 Q. And you were also asked by counsel for the
23 Company about the change to the rule regarding work
24 papers. Do you recall that?

25 A. Yes.

1 Q. What's the importance of work papers in a
2 case?

3 A. The MEEIA applications are really built on a
4 lot of assumptions. And the work papers are very
5 important to allow transparency to see exactly how
6 different parts of the application were developed. I'll
7 stop at that point.

8 Q. Would a change in work paper focus, do you
9 have any belief on if that would indicate a change in
10 what should be analyzed or proven in a case?

11 A. Yes. The revision to the MEEIA rules were
12 made and effective 2000 -- yeah, September of 2017. So
13 the initial rules were in effect 2011 and some time went
14 by and we all learned through experience with Cycle 1
15 and Cycle 2 that there was the need to revise the rules
16 to make them more consistent with some of the
17 Commission's orders as well as just some of the
18 experience that we've had with what's working well and
19 not working well and how can we make this whole process
20 better. And the addition of the rule that -- the rule
21 change in 094(4)(C)4 was actually one that at that time
22 Chairman Hall initiated as part of the rulemaking
23 because he was interested in that. He was interested in
24 understanding how the MEEIA programs were impacting the
25 utilities earnings opportunity.

1 Q. You were also asked by counsel for the Company
2 about previous -- their previous MEEIA applications. Do
3 you recall that line of questioning?

4 A. Yes.

5 Q. Are there differences in this case in the
6 cycle's application from the prior two?

7 A. Well, of course, yes.

8 Q. Turned my mike off. I apologize. Could you
9 explain or shed some color on how with each review of
10 each proposed cycle that Staff has developed more
11 understanding of how MEEIA programs are designed, how
12 they're evaluated and ultimately how they benefit
13 customers or how benefit for customers may be derived?

14 A. Yes. In Cycle 1, there wasn't much focus on
15 the benefits for all customers, and my recollection is
16 that there was no real analysis of benefits for all
17 customers including nonparticipants in Cycle 1. We were
18 too busy moving up the learning curve. MEEIA was brand
19 new. And we learned a lot from Cycle 1. As we moved
20 into Cycle 2, we started to see things a little
21 differently and some different issues were raised during
22 the process of processing MEEIA Cycle 2 and benefits for
23 all customers became an issue in the MEEIA Cycle 2 case
24 and specifically in the Ameren application for their
25 MEEIA Cycle 2, and the Commission had three -- when they

1 rejected Ameren's MEEIA Cycle 2, they had three areas
2 that they were really focused on and one was benefits
3 for all customers. And the direction that we got from
4 the Commission as a result of their Report and Order in
5 the Ameren MEEIA Cycle 2 case caused all the parties and
6 the utilities to consider benefits for all customers as
7 they negotiated the settlement that resulted in both the
8 Ameren and the KCP&L and GMO MEEIA Cycle 2 stipulation
9 and agreements that made Cycle 2 possible.

10 Q. Finally, you had some discussion with the
11 judge regarding how the IRP and MEEIA are interrelated.
12 Do you recall that line of questioning?

13 A. Yes.

14 Q. Did the Company vary the timing of the
15 demand-side -- the DSM implementation within the IRP
16 analysis?

17 A. Did they vary -- In other words, did they
18 start the implementation later than the first year?

19 Q. Yes.

20 A. No, they did not.

21 Q. And how would that have been helpful to
22 understand the net present value revenue requirement
23 effects of a MEEIA Cycle 3 compared to future cycles?

24 A. Well, this would not be -- well, it could be
25 part of an IRP. It was not. So you're basically asking

1 me if there were no Cycle 3 now but there were a Cycle 3
2 later in time; is that the question?

3 Q. Would that analysis have been helpful to
4 understand the most beneficial or lowest net value --
5 present -- net present value of revenue requirement?

6 A. Possibly. I mean, what we have presently and
7 for this case it's primarily the analysis that's in the
8 application's updated Appendix 8.11. We have a number
9 of different alternative resource plans that were
10 evaluated for the MEEIA case. We don't have any that do
11 what you're suggesting. We have no MEEIA and then we
12 have a variation of different levels of MEEIA and
13 different assumptions that Mr. Crawford offered for
14 consideration.

15 Let me just say this related to the question.
16 We've never looked at postponing a MEEIA, the timing of
17 MEEIA. So we've never really -- any of us have had any
18 experience with doing that kind of analysis.

19 MS. MERS: Did -- I have nothing further.
20 Thank you.

21 JUDGE CLARK: Mr. Rogers, you can step down.
22 (Witness excused.)

23 JUDGE CLARK: Staff, you can call your next
24 witness.

25 MR. HALL: Your Honor, if I may. If the next

1 witness is Tammy Huber, I indicated last night that we
2 may have questions. We've determined that Public
3 Counsel has no questions. So unless any other party has
4 questions of that witness, or the Commission, of course,
5 I believe she can be waived.

6 JUDGE CLARK: Is there any party that has
7 questions for Ms. Huber? Does Ms. Huber have individual
8 testimony or just as part of the report?

9 MS. MERS: Just part of the report.

10 JUDGE CLARK: And what does her part of the
11 report concern?

12 MS. MERS: She discusses the customer feedback
13 and the surveys that the Company has performed.

14 JUDGE CLARK: Does the Commission have any
15 questions in regard to that? If all the parties are
16 willing to waive Ms. Huber's appearance, that would be
17 fine with the Commission.

18 MS. MERS: All right. Then Staff would call
19 Brad Fortson to the stand.

20 JUDGE CLARK: Mr. Fortson, would you raise
21 your right hand to be sworn?

22 (Witness sworn.)

23 JUDGE CLARK: Please be seated and state and
24 spell your name for the record.

25 THE WITNESS: Brad, B-r-a-d, Fortson,

1 F-o-r-t-s-o-n.

2 MR. PRINGLE: Good morning, Mr. Fortson.

3 THE WITNESS: Good morning.

4 BRAD FORTSON, being sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. PRINGLE:

6 Q. Could you please tell us by whom are you
7 employed and in what capacity?

8 A. I'm employed by the Missouri Public Service
9 Commission as a utility regulatory manager.

10 Q. Did you contribute to the Staff Report in this
11 matter that has been marked as Exhibit 101?

12 A. I did.

13 Q. Did you also provide a Surrebuttal Testimony
14 in this case?

15 A. I did.

16 Q. That Surrebuttal Testimony has been marked as
17 Exhibit 103?

18 A. Yes.

19 Q. Do you have any changes or corrections to the
20 Staff Report or your Surrebuttal Testimony?

21 A. I do not.

22 Q. And the information contained in both the
23 report and your surrebuttal testimony is true and
24 correct to the best of your belief and knowledge?

25 A. Yes.

1 MR. PRINGLE: At this time I would move to
2 enter into the record Exhibit 103.

3 JUDGE CLARK: I believe 103 is the data
4 request interrogatories for Mr. Luebbert. I think 102
5 is the surrebuttal.

6 MR. PRINGLE: 102 is the surrebuttal.

7 JUDGE CLARK: Am I incorrect on that?

8 MR. PRINGLE: Yes, you are correct, Judge.
9 That's my mistake.

10 JUDGE CLARK: So you're moving for the
11 admission of Exhibit 102?

12 MR. PRINGLE: 102, yes.

13 JUDGE CLARK: Any objections to admitting
14 Exhibit 102 onto the hearing record? I hear no
15 objections. Exhibit 102 will be admitted onto the
16 hearing record.

17 (STAFF'S EXHIBIT 102 WAS RECEIVED INTO
18 EVIDENCE AND MADE A PART OF THIS RECORD.)

19 MR. PRINGLE: At this time I tender Mr.
20 Fortson for cross-examination.

21 JUDGE CLARK: Any cross-examination from the
22 Office of Public Counsel?

23 MR. HALL: Yes, thank you. Good morning,
24 Mr. Fortson.

25 THE WITNESS: Good morning.

1 CROSS-EXAMINATION BY MR. HALL:

2 Q. Did you hear Mr. Rogers explain that you would
3 be a better witness to describe home energy reports and
4 persistence?

5 A. I did, yes.

6 Q. Let me rephrase the question for you then.
7 What is Staff's issue with the home energy reports as
8 proposed by the Company as to this issue of persistence?
9 Could you explain that?

10 A. Yeah, that's an issue that we've actually
11 brought up in the past that we've had concerns with. As
12 it relates to persistence, as Mr. Rogers touched on,
13 it's with the home energy report that they have a
14 one-year measured life or assumed to have a one-year
15 measured life. So with a majority of energy efficiency
16 measures, they have a longer measured life. So there is
17 more persistence. Once that energy efficiency measure
18 is installed, is assumed to have multiple years of
19 savings, hence the persistence with the home energy
20 report. Given that it's assumed to have just a one-year
21 measured life, there is no persistent savings and the
22 thought behind that is then that the home energy report
23 has to be received year after year and those costs have
24 to be -- would ultimately be borne by ratepayers year
25 after year in order to get those savings each year.

1 Q. Mr. Fortson, when I read your testimony you
2 respond to Mr. Mosenthal and you talk about energy
3 efficiency resource standards; is that correct?

4 A. Correct.

5 Q. Is Missouri an energy efficiency resource
6 standard state?

7 A. No, it is not.

8 Q. Has anyone in this docket purported to say
9 that Missouri is an energy efficiency resource standard
10 state?

11 A. No. Mr. Mosenthal just compared Missouri to
12 other states that have energy efficiency resource
13 standards.

14 Q. I think that actually touches upon my follow
15 up. I was going to ask why did you bring it up in your
16 testimony then?

17 A. It was mainly to illustrate -- well, one, to
18 point out that Missouri does not have an energy
19 efficiency resource standard but second to illustrate
20 just where Missouri ranks within all states,
21 specifically those that have an energy resource standard
22 and to point out those savings of those states with an
23 energy efficiency resource standard compared to
24 Missouri.

25 Q. Under an energy efficiency resource standard,

1 regulated utilities are required to produce so much
2 energy efficiency, correct?

3 A. Correct.

4 Q. It's similar to a renewable energy standard?

5 A. Correct.

6 Q. You stated earlier that Missouri is not an
7 energy efficiency resource standard state. Are energy
8 efficiency programs an entitlement under Missouri?

9 A. Utilities are not obligated to provide energy
10 efficiency programs in Missouri.

11 Q. Thank you. Mr. Fortson, were you in the
12 hearing room yesterday when I spoke with KCPL witness
13 Brian File?

14 A. Yes.

15 Q. Do you recall me asking him about the number
16 of, quote, events called in the residential demand
17 response program?

18 A. I remember that discussion.

19 Q. Can you speak to the residential demand
20 response program?

21 A. Yeah. At a high level.

22 Q. Can you tell me what it means to call an event
23 then?

24 A. In the residential demand response?

25 Q. Yes.

1 A. Basically within that program customers that
2 want to participate are ultimately given a free
3 thermostat on the notion that the company can call an
4 event that would adjust their thermostat. I don't
5 recall the actual numbers that were thrown out, numbers
6 of events, but it was very minimal.

7 Q. Do you remember me -- Do you remember Mr. File
8 noting that the number of events called has decreased
9 from 2016 to 2018?

10 A. Yes, I do recall that.

11 Q. Is that decreasing number concerning for you?

12 A. Yeah, it is a concern. Actually I believe
13 that Staff witness Mr. Luebbert spoke to that and
14 Staff's overall concern with just that entire design and
15 lack of events being called.

16 Q. Mr. Rogers noted that you could speak to
17 program design. What exactly is Staff's problem with
18 the design of residential demand response program?

19 A. Actually as it pertains to demand response
20 Mr. Luebbert can speak to that better or in more detail.
21 I believe his testimony does that. But ultimately with
22 the program design as I mentioned there is a big concern
23 with the giving of thermostats and the minimal use of
24 events called.

25 Q. Thank you. Mr. Fortson, can you speak to

1 Staff's position on cost recovery?

2 A. Yes, actually I can. So we made a
3 recommendation that only programs that are cost
4 effective should be eligible for cost recovery and
5 earnings opportunity recovery. That's really in my mind
6 just our position has evolved to that. I would point to
7 the statute that really is the basis for that
8 recommendation 393.1075 (3.) I'll just read it and try
9 and emphasize on the part that we really focused on. It
10 shall be the policy of the state to value demand-side
11 investments equal to traditional investments in supply
12 and delivery infrastructure, and here's what I would
13 emphasize, and allow recovery of all reasonable and
14 prudent costs of delivering cost-effective demand-side
15 programs.

16 I would then refer down to subsection (3) that
17 states provide timely earnings opportunities associated
18 with cost-effective measurable and verifiable efficiency
19 savings.

20 Q. Am I understanding you correctly that that
21 recommendation is being made because of your reading of
22 the statute?

23 A. Yes.

24 Q. Has Staff made a similar recommendation before
25 regarding cost savings in a MEEIA application?

1 A. Not to this extent. I would say that the
2 timing of this compared to say, for instance, Ameren's
3 application, we had ultimately reached settlement by the
4 time this thought came to be.

5 Q. When you say Ameren's application, are you
6 referring to Cycle 3?

7 A. I am, sorry.

8 MR. HALL: No further questions. Thank you.

9 JUDGE CLARK: Any cross-examination from Renew
10 Missouri?

11 MR. OPITZ: No, thank you, Judge.

12 JUDGE CLARK: Any cross-examination from the
13 Company?

14 CROSS-EXAMINATION BY MR. FISCHER:

15 Q. Mr. Fortson, you were talking about I think
16 the cost effectiveness of the programs and you found
17 that there weren't very many that were cost effective.
18 Do you recall that?

19 A. Based off Staff's avoided cost analysis, yeah.

20 Q. Did you have the occasion to review the
21 Company's market-based capacity approach in reviewing
22 cost effectiveness? Did Staff do that?

23 A. No, not to my knowledge. I did not do that.

24 MR. FISCHER: Judge, can I go in-camera?

25 JUDGE CLARK: Yes, hold on. Okay. We are

1 in-camera.

2 BY MR. FISCHER:

3 Q. Mr. Fortson, would you turn to page 8.

4 JUDGE CLARK: Wait two seconds. I'm sorry.

5 If there's anybody in the room who's not authorized to
6 hear this information, is not part of a party that's in
7 the room, I'm going to have to ask you to exit. Okay.
8 I don't see anybody. You can continue.

9 (REPORTER'S NOTE: The hearing went into an
10 in-camera proceeding.)

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(REPORTER'S NOTE: At this point, public session resumed.)

MR. FISCHER: With that, Judge, I think that's all the questions I have. Thank you.

JUDGE CLARK: Any questions from the Commission?

COMMISSIONER RUPP: None from me.

JUDGE CLARK: Any redirect from Staff?

MR. PRINGLE: One moment, Judge.

REDIRECT EXAMINATION BY MR. PRINGLE:

Q. Mr. Fortson, I just want to ask you real quick about the component of Ameren's EO. Did any component of Ameren's earnings opportunity matrix require the program to be cost effective?

A. Yes. I believe the home energy report had a requirement within the matrix of being cost effective.

MR. PRINGLE: And also, Judge, this is where I would like to go in-camera. I'll be basing question off of the Company's.

JUDGE CLARK: Okay. We'll go in-camera. Go ahead.

(REPORTER'S NOTE: The hearing went into an in-camera proceeding.)

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(In-camera proceeding.)

(REPORTER'S NOTE: At this point, public session resumed.)

MR. PRINGLE: That's all I have, Judge.

JUDGE CLARK: Okay. So you have no more. That concludes Mr. Fortson's testimony. You may step

1 down.

2 (Witness excused.)

3 JUDGE CLARK: Staff, you may call your next
4 witness.

5 MS. MERS: Staff would call Dana Eaves to the
6 stand.

7 JUDGE CLARK: Would you raise your right hand
8 and be sworn?

9 (Witness sworn.)

10 JUDGE CLARK: Please be seated and state and
11 spell your name for the record?

12 THE WITNESS: My name is Dana Eaves, D-a-n-a.
13 Last name is E-a-v-e-s.

14 DANA EAVES, being sworn, testified as follows:

15 DIRECT EXAMINATION BY MS. MERS:

16 Q. By whom are you employed and in what capacity?

17 A. I'm employed with the Missouri Public Service
18 Commission as a Utility Regulatory Auditor V.

19 Q. Did you contribute to Staff's Rebuttal Report
20 that has been marked as Exhibit 101 public and
21 confidential?

22 A. Yes.

23 Q. Do you have any changes to that testimony?

24 A. No.

25 Q. Is that testimony true and accurate to the

1 best of your knowledge and belief?

2 A. Yes.

3 Q. If I asked you the same questions today, would
4 your answers be the same?

5 A. Yes.

6 MS. MERS: I will tender the witness for
7 cross.

8 JUDGE CLARK: Any cross-examination from the
9 Office of Public Counsel?

10 MR. HALL: None at this time. Thank you.

11 JUDGE CLARK: Any cross-examination from Renew
12 Missouri?

13 MR. OPITZ: No, thank you, Judge.

14 JUDGE CLARK: Any cross-examination from the
15 Company?

16 MR. FISCHER: Just briefly, Judge. Good
17 morning, Mr. Eaves.

18 THE WITNESS: Good morning, Mr. Fischer.

19 CROSS-EXAMINATION BY MR. FISCHER:

20 Q. I understand that you're the Staff witness,
21 the technical witness sponsoring the topic of earnings
22 opportunity in Staff's rebuttal testimony. I think it
23 begins on page 81 of the report; is that right?

24 A. Yes.

25 Q. Would you agree with Ms. Dietrich, as she

1 testified yesterday, that there are also public policy
2 reasons to support energy efficiency programs and DSM
3 programs?

4 A. Yes.

5 Q. Do you agree with her that MEEIA creates an
6 opportunity to change that financial incentive to better
7 align the utility's financial interest with the public
8 interest in encouraging efficient use of energy?

9 A. Pretty long question. One more time.

10 Q. Let me ask it this way. Do you agree that one
11 of the purposes of MEEIA is to better align the
12 utility's financial interest with the public interest in
13 encouraging the efficient use of energy?

14 A. Yes.

15 Q. Now, as I understand your statements in the
16 Staff Report at page 86, lines 14 and 15 you say for
17 these reasons Staff cannot recommend approval of the
18 earnings opportunity proposed by GMO and KCPL in their
19 application; is that right?

20 A. Yes, and that sentence relates to the previous
21 paragraph.

22 Q. And that explains your concerns with what the
23 Company proposed, right?

24 A. Correct.

25 Q. Did you propose an alternative earnings

1 opportunity level in the Staff's Rebuttal Report?

2 A. No.

3 Q. Is it correct that Staff is not recommending
4 the adoption of any earnings opportunity for KCPL and
5 GMO in this case?

6 A. Based upon the application that's filed,
7 correct.

8 Q. Without an earnings opportunity to financially
9 benefit from offering energy efficiency programs or DSM
10 programs, do you believe that public utilities in
11 Missouri are likely to promote wholeheartedly energy
12 efficiency and demand-side management programs?

13 A. Yes.

14 Q. They'll do that without any financial benefit?

15 A. I think there are financial benefits to MEEIA
16 absent an EO. I think you can get there. You won't
17 have the EO. You won't have that part of it, but you do
18 have the recovery of the throughput disincentive and
19 expedited recovery of costs.

20 Q. Hasn't the Commission recognized that under
21 traditional regulation the financial incentive or the
22 financial incentive is really for the electric utility
23 to try to sell as much electricity to its customers as
24 it can?

25 A. That's correct. But the EO as a substitute

1 for that. I think just as there can be other benefits
2 to the utility's customers because of energy efficiency
3 there can be benefits absent an EO to the utility as
4 well.

5 Q. So Staff believes that there is a financial
6 reason for the Company, absent any opportunity to earn
7 anything on the programs, for the Company to provide
8 energy efficiency and demand-side management programs?

9 A. I think it depends on which perspective you're
10 looking at. I mean, if you're not delaying or pushing
11 off a resource, absent -- there would be no avoided
12 investment and therefore you would have no return. If,
13 you know, if you're looking from a perspective of
14 providing energy efficiency programs and a timely cost
15 recovery of those as well as recovery of any lost sales
16 margins that you would have through the throughput
17 disincentive, then, yeah, I think there can be
18 advantages to the Company for that.

19 Q. I may misunderstand Staff's position I guess,
20 but you're suggesting that the Company will benefit even
21 if there is no earnings opportunity given for getting
22 customers to reduce their consumption levels?

23 A. I think we may be talking past each other.

24 Q. Probably so.

25 A. Are you talking about Staff's position or are

1 you having an open question about I think you asked me
2 can a utility benefit without an EO and I tried to
3 explain what my position was, not necessarily Staff's
4 position.

5 Q. Okay. Well, from your perspective, would it
6 be better to let successful energy efficiency and DSM
7 programs expire than give the opportunity an opportunity
8 to earn a return on that?

9 A. I think as the Company has presented their
10 application, the application doesn't meet the statutory
11 requirements that would allow Staff to move forward on
12 working with the Company as far as designing an EO that
13 would be appropriate.

14 Q. Well, that wasn't my question. It was really
15 would it be better to let successful energy efficiency
16 programs and DSM programs expire than to give the
17 Company an opportunity to earn a return on their
18 investment in those programs?

19 A. I guess I'm not seeing the connection there.
20 Are you saying should we allow -- should Staff -- or
21 should the Commission allow the Cycle 2 to expire as
22 designed and not replace it with a Cycle 3; is that what
23 you're asking?

24 Q. What I'm asking is, yes, whether it would be
25 better for the Commission from a public policy

1 standpoint to let all the energy efficiency and DSM
2 programs expire than to give the Company an earnings
3 opportunity which it's had in MEEIA 1 and 2? In this
4 case Staff is recommending zero for earnings
5 opportunity, right?

6 A. That's correct, because you haven't met the
7 statutory requirements that would allow Staff --

8 Q. And that's based upon your view of what's cost
9 effective programs --

10 JUDGE CLARK: Mr. Fischer --

11 MR. FISCHER: I'm sorry?

12 JUDGE CLARK: -- you asked two questions
13 there. He answered the second one. First I'd like to
14 go back to the first one.

15 MR. FISCHER: Could I ask the court reporter
16 to read that back?

17 (The last question was read back by the court
18 reporter.)

19 JUDGE CLARK: That's the question.

20 THE WITNESS: I think you're going to need to
21 rephrase the question. I don't think I can answer that.
22 I'll let you rephrase.

23 BY MR. FISCHER:

24 Q. What don't you understand about that?

25 A. The last part of it giving an EO to the

1 Company somehow.

2 Q. Let's not use the term EO. Maybe that's the
3 problem. Would it be better to let the Company's
4 successful energy efficiency and demand-side management
5 programs expire so we have those no longer in our
6 service territory if that meant that the Company needed
7 to have a financial benefit from doing the --

8 A. I think I know what you're asking me but I
9 don't know that I can answer the question you've posed
10 in the way that you've posed it. Cycle 2 for KCP&L and
11 GMO will expire absent a Cycle 3 or even with a Cycle 3,
12 Cycle 2 will expire. The Company has presented an
13 application to move forth with a Cycle 3 as designed.
14 That Cycle 3 Staff has posed no earnings opportunity
15 because of in Staff's view the programs are not cost
16 effective because of an erroneous avoided cost
17 projection and there's not benefits for all customers.
18 The third leg of that stool would be verified savings
19 through EM&V, and I don't know that Staff has an
20 argument with the verified savings part in its current
21 case.

22 Q. MEEIA, I believe, says that it shall be the
23 policy of the state to value demand-side investments
24 equal to traditional investments and supply and delivery
25 infrastructure and allow recovery of all reasonable and

1 prudent costs of delivering cost effective demand-side
2 programs. In support of this policy the Commission
3 shall, and then if you go to the part about earnings
4 opportunity, it says in subsection 3 provide timely
5 earnings opportunities associated with cost effective
6 measures and verifiable efficiency savings. Is that
7 your understanding?

8 A. Yes. If you go to like the next paragraph 4,
9 it says beneficial to all customers in the customer
10 class. There's a lot more words but basically that's
11 the key phrase.

12 Q. I'd like for you to turn to page 81 of your
13 testimony -- I'm sorry. It's not 81 -- where you lay
14 out KCPL and GMO's earnings opportunity what they
15 propose from 7.9 million to 11.3 million for KCPL and
16 10.1 to 14.4 for GMO.

17 A. Yes, I'm there.

18 Q. What page are you on?

19 A. I'm on 82, Table 7 GMO.

20 Q. That's right. Okay. That's where I wanted to
21 go. Assuming that the Commission found that all of the
22 programs were cost effective, would the Staff have an
23 issue with granting the earnings opportunity that the
24 companies have proposed on those pages?

25 A. Yes.

1 Q. Staff doesn't see the earnings opportunity as
2 the financial incentive for the Company to do a good job
3 in implementing the energy efficiency programs; is that
4 right?

5 A. Say that again. I'm sorry.

6 Q. Staff does not see the earnings opportunity as
7 the financial incentive for the Company to do a good job
8 of implementing cost effective energy efficiency
9 programs and DSM programs?

10 A. I don't think that's correct. I think we do.

11 Q. You do.

12 A. Earnings opportunity -- we used to call it
13 performance incentive back in other cycles. The
14 performance incentive was just that. It was an
15 incentive for the Company to deliver the programs in a
16 cost effective --

17 Q. I totally agree with you. And if that's the
18 case, then why does it matter whether we're deferring
19 capacity?

20 A. Because that's part of the statute. They need
21 to be treated on an equal basis supply side and demand
22 side.

23 Q. And if the provision of these programs reduces
24 the present value revenue requirements to all customers,
25 doesn't that mean that those programs are cost effective

1 and should be implemented by the Company?

2 A. I don't believe so. Not how the modeling is
3 done because it's absent some other -- can be absent of
4 some other components.

5 Q. Let's set that aside and assume that the
6 Commission found that these were cost effective
7 programs. Now, under the statute, shouldn't the Company
8 -- or shouldn't the Commission provide a timely earnings
9 opportunity associated with cost effective measures?

10 A. Yes, and they have.

11 Q. But your Staff is recommending zero in this
12 case, but that's based upon your concern that they're
13 not cost effective and that there's no deferral of
14 capacity, right?

15 A. And not benefits for all customers.

16 Q. If the Commission finds that they are cost
17 effective based upon the companies, then would the Staff
18 find that an earnings opportunity is appropriate?

19 A. I don't think the Commission needs Staff
20 approval to find anything that they would like to do.
21 They can find what they want to do.

22 Q. So how would you recommend to the Commission
23 to develop an earnings opportunity in its order in this
24 case?

25 A. I don't know that the Commission has -- I

1 think all earnings opportunity for all the various
2 cycles for all the various companies have been in
3 negotiated settlement. I don't know how to -- I don't
4 know if there's a tried and true approved methodology to
5 do it.

6 Q. So how did you develop the earnings
7 opportunity that totaled \$30 million in the Ameren case?

8 A. I don't know.

9 Q. You don't know?

10 A. I was not involved in settlement, no.

11 Q. It was just a matter of negotiation?

12 A. I was not involved in the settlement
13 discussions. I do not know.

14 Q. Assuming the Commission found that all of the
15 Company's programs were cost effective since they reduce
16 the revenue requirements in this case, and assuming that
17 the Company accepted Staff's conditions and suggested
18 modifications to its programs, what total earnings
19 opportunity would Staff support for the Company in this
20 case?

21 A. I haven't done any calculations on what would
22 be an appropriate earnings opportunity based upon facts
23 and circumstances that I'm not aware of.

24 Q. What specific principles does Staff use to
25 come up with an earnings opportunity recommendation in

1 the aggregate?

2 A. Again, I don't know if there's a specific
3 matrix that I would have in mind in order to do it. I
4 think it would have to be as a result of appropriate
5 values that were taken into consideration either in
6 another application filed by the utility or through some
7 negotiation process.

8 Q. So Staff can't give the Commission
9 recommendations on general principles about how to come
10 up with an earnings opportunity?

11 A. I think we could, but I can't do it sitting
12 here today on facts and circumstances.

13 Q. Does Ameren's three-year plan specifically
14 defer any supply-side resources?

15 A. Again, not being involved in -- directly
16 involved in negotiations, my best recollection is no.

17 Q. So they didn't defer any resources but you did
18 come up with a \$30 million earnings opportunity, right?

19 A. The parties came up with that number, yes. I
20 did not.

21 Q. So it was just a matter of negotiation out of
22 the air we came up with 30 million?

23 A. I doubt that I would use the phrase out of the
24 air. It has to be --

25 Q. I'm sorry. That's pejorative. I'll withdraw

1 that. If Staff's overall goal in this case is a zero
2 for earnings opportunity, is Staff really just trying to
3 tell the Company they should terminate these programs
4 and do not do energy efficiency and demand-side
5 management programs?

6 A. That is not Staff's goal is to provide a zero
7 earnings opportunity. The zero earnings opportunity is
8 based upon the Company's application as filed.

9 Q. And the Company has requested 7.9 to 11.3
10 million for KCPL and 10.1 to 14.4 for GMO and Staff has
11 said it ought to be zero, right?

12 A. Yeah. On the high side quick math is about 25
13 million if you meet the cap. And based upon the three
14 factors that I've talked about before, yes, it would be
15 zero and it revolves around the avoided cost issue.

16 Q. Yeah, the avoided cost issue is really the
17 ball game here, isn't it? If the Commission decides
18 that you have to defer capacity in order to have an
19 energy efficiency program, then we might as well go
20 home, right, because we're not deferring capacity for
21 quite awhile, right?

22 MR. HALL: Objection, argumentative at this
23 point.

24 MR. FISCHER: I'm sorry. I don't want to be
25 argumentative. Let me ask -- excuse me. Go ahead,

1 Judge.

2 JUDGE CLARK: I was going to overrule it. Why
3 don't you just rephrase it so it's not argumentative,
4 because I think you have a legitimate question. I think
5 you can get there.

6 MR. FISCHER: Ms. Bentch, would you read that
7 back? I'm getting old. I can't recall exactly how I
8 phrased that.

9 JUDGE CLARK: That would be sustained as to
10 the form of the question.

11 MR. FISCHER: Thank you.

12 (The last question was read back by the court
13 reporter.)

14 THE WITNESS: That's the question you'd like
15 for me to answer?

16 MR. FISCHER: If you can, please.

17 JUDGE CLARK: That's the question you were
18 going to rephrase.

19 MR. FISCHER: That's the question I'm going to
20 rephrase. Okay.

21 BY MR. FISCHER:

22 Q. Okay. So as you pointed out, avoided cost is
23 a major issue in this case and that's because the
24 Company as a combined company doesn't need to defer
25 capacity or to build a new power plant or come up with a

1 supply-side resource for about 16 years; is that right?

2 A. I think that's the -- I think that can be a
3 quick answer. I would like to expand on that a little
4 bit.

5 Q. Okay. Well, in redirect they'll do that for
6 you. That was also the issue in the Ameren case, right?
7 They didn't need any capacity for about 16 years either,
8 correct?

9 A. That's true.

10 Q. And yet you came up with an earnings
11 opportunity in settlement of \$30 million for their
12 programs, right?

13 A. I did not. Staff did. It was negotiated.

14 Q. Okay, Staff did.

15 A. I think there was significant program changes,
16 program design changes. There was some other
17 significant issues. But again, I was not in on
18 settlement negotiations.

19 Q. So the capacity situation is similar and that
20 means the avoided cost situation is similar and so I
21 would take it that Staff would conclude that they
22 weren't cost effective if they had a zero avoided cost,
23 correct, in Ameren?

24 A. Determining cost effectiveness, a key
25 component of that is the savings or the avoided cost

1 that you experience as a result of the programs, yes.

2 Q. And yet you have come up with an earnings
3 opportunity of about \$30 million for Ameren; but as I
4 understand your testimony, you don't have an alternative
5 for the Company in this case, right?

6 A. That \$30 million again was developed through
7 settlement negotiations and significant redesign of
8 programs and I'm sure that there was a lot of other give
9 and take in order to get that earnings opportunity or
10 the performance incentive for delivering, you know,
11 strong, robust, meaningful energy efficiency programs in
12 the state.

13 Q. Let me ask you one more time I guess. I don't
14 mean this to be argumentative. But if the Commission
15 finds that these programs are cost effective and statute
16 says that they are to provide a timely earnings
17 opportunity associated with cost effective measures, how
18 would Staff recommend that you develop an earnings
19 opportunity? How should they do that from the bench?

20 A. Again, I think that's a key component is the
21 cost effectiveness, but again I think that's leaving out
22 the very important issue of benefits for all customers.
23 And I think John Rogers touched on that showing that
24 nonparticipants, they don't get the benefits, and so I
25 think we have to address that. I don't know that just

1 solving the avoided cost issue resolves all the issues
2 with your application.

3 Q. Well, Mr. Eaves, do you agree that if the
4 programs reduce the net present value revenue
5 requirements to all customers that there would be
6 benefits to all customers?

7 A. No.

8 MR. FISCHER: Okay. I think we've got a
9 fundamental disagreement. I have no further questions.
10 Thank you.

11 JUDGE CLARK: Any redirect by Staff?

12 Well, actually, I'm sorry. Hold on. Are
13 there any Commission questions?

14 COMMISSIONER RUPP: I have some.

15 JUDGE CLARK: Go ahead. I apologize.

16 COMMISSIONER RUPP: Good afternoon.

17 THE WITNESS: Good afternoon.

18 QUESTIONS BY COMMISSIONER RUPP:

19 Q. I'm just trying to clarify. So Staff's
20 position is is that it is better for the ratepayers to
21 let MEEIA 2 expire and to replace it with nothing than
22 to approve this application?

23 A. Yes, because it doesn't meet the statutory
24 requirements as I'm aware of.

25 Q. It's better for ratepayers or it doesn't meet

1 the words in the statute?

2 A. All ratepayers -- as the utility's application
3 stands today, it doesn't provide benefits to all
4 customers. So when you say ratepayers, ratepayers that
5 participate in the programs may receive some benefit.
6 Participants that -- or customers that do not
7 participate in the programs do not receive any benefits.
8 In fact, it's a material detriment to them whether it's
9 \$88 or \$86 or whatever from the analysis, and that's
10 based upon a lot of assumptions going forward as well.
11 So there could be more. There could be less. But as
12 the application is filed and stands, there's not
13 benefits for all customers. All customers will receive
14 -- all residential customers will receive the MEEIA
15 charge whether they participate or not.

16 The application is unclear whether or not
17 there's benefits for nonparticipating customers and, you
18 know, my experience with MEEIA programs are, you know,
19 we have to really take a close look at the benefits
20 provided to participants. If I buy just one light bulb
21 and receive a rebate or markdown on that light bulb,
22 what benefits do I receive? I'm a participant but do I
23 receive the full benefits. I think there's some real
24 questions there about that.

25 Q. Let me ask a question. Thank you for that

1 answer. So does Staff believe that the benefits to
2 nonparticipants need to be the same as the benefits to
3 participants?

4 A. I'm sorry. One more time.

5 Q. Does Staff believe that the benefits to
6 nonparticipants needs to be the same as benefits to
7 participants?

8 A. I think there needs to be some level of
9 benefits to all customers.

10 Q. But they don't need to be the same?

11 A. You would hope that there would be some equity
12 there; but if you participate in a program, you may
13 receive more benefits by participating in a program than
14 if you do nothing.

15 Q. So like where does Staff decide that cutoff
16 is? If you don't participate, you need to have this
17 amount of benefit regardless if you did or where is the
18 magic number for Staff for the nonparticipating benefit?

19 A. Well, I think the magic number would be, you
20 know, the customer is no better off and no worse off
21 because of the program and if you have strong robust
22 energy efficiency programs there's sufficient long-term
23 benefits to nonparticipating customers that they benefit
24 just by the existence of the programs. That's not what
25 we have here in this application.

1 Q. Just help me. I'm just trying to get the big
2 picture. If you have a program, the whole idea of the
3 program is to encourage energy efficiency, is to
4 encourage participation and you have a program that I'm
5 going to benefit or I'm not going to be harmed or it's
6 going to be the same if I don't participate, would there
7 not be a larger incentive for me to participate if there
8 wasn't as much of a benefit to the nonparticipant as
9 there is to the participant from a price signal
10 standpoint?

11 A. Price signals are a key. You know, utility
12 sponsored energy efficiency programs as they're designed
13 under MEEIA, it's not the same as if I'm -- my utility
14 doesn't have a MEEIA program and I go out and I provide
15 energy efficiency measures at my own expense to my own
16 home. I'm going to see a direct benefit by less energy
17 consumption, therefore hopefully a cheaper bill. The
18 way the MEEIA programs are designed and why the avoided
19 cost or the benefits for all customers are so important
20 is that the Company is being rewarded with not only a
21 timely cost recovery of the actual program costs as well
22 as the throughput disincentive has been described before
23 it's the incremental or the marginal cost of the lost
24 energy sales as well as an earnings opportunity or a
25 profit for providing that. So there's a lot of costs

1 involved in the utility sponsored MEEIA program and
2 that's why it's so important to maximize the benefits
3 provided to customers that participate and customers
4 that don't participate. You know, the barriers involved
5 in participating in these programs can be substantial to
6 a certain class of customers. So you know, I think, you
7 know, I know Staff is very sensitive to benefits for all
8 customers. The statute is very sensitive to benefits
9 for all customers. So you know, the details are very,
10 very important on these types of applications and that's
11 why we're here today is because these details are so
12 important. I hope that answered your question. I don't
13 know if it did.

14 Q. I appreciate it. I'm just trying to
15 understand and learn here. I appreciate your expertise.
16 So the fact that the revenue requirement would be
17 lowered under the program is not enough of a benefit for
18 non-customers in Staff's opinion?

19 A. Well, I think -- again, I think there may be
20 some fundamental disagreements about what that actually
21 represents and I think a big piece that it may exclude
22 is the opportunity to make additional off system sales
23 revenue. And so, you know, I think that is something
24 the Commission and others can take a look at, but I
25 don't think it's just we meet that therefore we need to

1 bless it and go forward. I think there can be some
2 nuances that that calculation doesn't show.

3 Q. And then you made a statement in your
4 interaction with the Company's counsel about in the
5 absence of a MEEIA program you said there's a benefit or
6 a financial benefit for the Company to have an energy
7 efficiency program. Can you explain to me without any
8 financial incentive from the Commission or what-have-you
9 how is there a financial benefit to a company to reduce
10 electricity sales?

11 A. Well, again, if you look at it from a cash
12 flow standpoint, you know, with the riders that they
13 have, the FAC. Just by having an FAC, fuel adjustment
14 clause, or fuel adjustment clause rider, that's a
15 benefit. Having a MEEIA rider and allowing for costs to
16 be recovered outside of a general rate case, that's a
17 benefit. And I think, you know, there's, you know,
18 we've talked a lot about non financial benefits. I
19 think those benefits occur any time a utility has an
20 energy efficiency plan.

21 Q. I guess I'm not -- Maybe I didn't make my
22 question clear because I'm not following your answer. I
23 thought you had stated with the Company's counsel that
24 there's a financial incentive for the Company to have an
25 energy efficiency program without having a MEEIA

1 program; that they have a benefit to sell, there's a
2 financial benefit to sell less electricity even though
3 their model is to sell more electricity. I didn't
4 understand how you came to that statement.

5 A. I think I was putting that in the context of
6 it not having an EO component. The three-legged stool
7 and you have timely cost recovery, throughput
8 disincentive recovery, as well as EO. You don't have as
9 much of a financial incentive. You take that reward
10 away for offering.

11 Q. If MEEIA 2 is allowed to expire and not
12 replaced with anything, would the Company have a
13 financial incentive to have an energy efficiency program
14 all on their own?

15 A. We do have a utility in the state, a regulated
16 utility in the state that provides some level of energy
17 efficiency outside of MEEIA. And so how much of a
18 financial incentive that would be, I think the big
19 picture was can you do energy efficiency without an EO
20 and my response was yes, you can.

21 Q. I agree with you you can, but is there a
22 financial incentive?

23 A. Is there a financial responsibility. I think
24 there can be.

25 Q. Explain to me how there can be a financial

1 incentive. I'm just trying to understand. I'm not
2 being combative. I don't understand how -- the business
3 model is to sell more electricity.

4 A. Certainly.

5 Q. I understand there's a social benefit, there's
6 a public perception benefit. I get all that of why a
7 company might have one. When it comes down to
8 financially to have energy efficiency program to sell
9 less electricity, explain to me how there's a financial
10 benefit to that company.

11 A. Well, I think the utility that we currently
12 have in the state provides energy efficiency programs
13 although limited. I don't think they would sign on to
14 it if they lost money with it. So I think there can be
15 some financial component built into a non MEEIA program.
16 What that would be, I don't know, be based on the
17 program design I think and some other issues. You know,
18 I think there can be -- out there for utilities to
19 provide energy efficiency programs outside of MEEIA.
20 That being said, I think MEEIA is probably the most
21 effective way to provide energy efficiency programs in
22 the state. We've got the legislation, we've got
23 certainly we have experience Cycle 1, Cycle 2 and one
24 utility has a Cycle 3. I think we can get there under
25 MEEIA. We have -- but with the application as filed,

1 Staff hasn't been able to get there.

2 COMMISSIONER RUPP: I think that's all I have.
3 Thank you.

4 JUDGE CLARK: Redirect by Staff?

5 MR. HALL: Your Honor, can the parties have a
6 chance to respond to questions from the bench?

7 JUDGE CLARK: I apologize. Recross from the
8 Office of Public Counsel?

9 MR. HALL: Thank you. I will be brief.

10 RECROSS-EXAMINATION BY MR. HALL:

11 Q. Mr. Eaves, you had a back and forth with
12 Commissioner Rupp regarding I think he called it the
13 cutoff for determining benefits and I trust that your
14 answer explained that cutoff. I want to try to have
15 that rephrased for people like me who failed in law
16 school. Assume we're neighbors. You're a participant
17 in an energy efficiency program and I'm not. So you've
18 got the energy efficient HVAC. I'm not in your house so
19 I'm literally not getting the benefit you're having of
20 whatever benefits come from the energy efficient HVAC,
21 correct?

22 A. That's fair.

23 Q. The benefits I'm going to receive, that's the
24 avoided costs that the utility would have to incur, may
25 have to occur in the future but for the energy

1 efficiency programs you're adopting, correct?

2 A. I think I follow, yes.

3 Q. And we know that there's an avoided cost
4 because the measure you've adopted wouldn't be cost
5 effective, correct?

6 A. One more time on that question.

7 Q. To ensure that I the nonparticipant got a
8 benefit of there being this avoided cost?

9 A. And you're a participant?

10 Q. No, you're the participant.

11 A. I'm the participant.

12 Q. Yes, I'm the nonparticipant. For me to have
13 received the benefit of the avoided cost, that's
14 determined by showing that there's cost effectiveness to
15 the measure you've adopted as a participant, correct?

16 A. Part of it, yes.

17 Q. Thank you. You were also asked about why a
18 utility would pursue energy efficiency without an
19 earnings opportunity. Are you familiar with the utility
20 Empire District Electric Company?

21 A. I am.

22 Q. It has an energy efficiency program, correct?

23 A. It does.

24 Q. You're familiar with Empire's Gas Utility as
25 well, correct?

1 A. Not as much. I've been in electric for a long
2 time.

3 Q. You're familiar with --

4 A. I am.

5 Q. And gas is a different form of energy, but are
6 you aware that Empire Gas has another energy efficiency
7 program?

8 A. Yes, I think so.

9 Q. Again, gas being a different form of energy.
10 Does Ameren Gas have an energy efficiency program?

11 A. I believe they do, yes.

12 Q. Do you know about Spire Gas?

13 A. I believe all the gas utilities have some form
14 of energy efficiency program.

15 Q. Including Summit in Liberty?

16 A. I believe all the gas utilities within the
17 state that's regulated by the Commission has some form
18 of energy efficiency program outside of MEEIA. Those
19 gas utilities, I don't believe they meet the MEEIA
20 criteria.

21 Q. This isn't technically energy at all, but
22 American-Water, does that have a water use or water
23 efficiency program?

24 A. I don't know.

25 Q. Of those programs that you know, of all the

1 gas and Empire Electric we discussed, do any of those
2 have an earnings opportunity associated with those
3 energy efficiency programs?

4 A. I doubt it.

5 MR. HALL: Thank you. No further questions.

6 JUDGE CLARK: Any recross from Renew Missouri?

7 MR. OPITZ: No, thank you, Judge.

8 JUDGE CLARK: Any recross from the Company?

9 MR. FISCHER: Mr. Eaves, thank you very much
10 for your patience with my questions. I don't have any
11 other questions. Thank you.

12 THE WITNESS: Thank you, Mr. Fischer.

13 JUDGE CLARK: Okay. Before we do redirect,
14 we're going to break for lunch. Why don't we break
15 until -- it's almost 12:30 now. Why don't we break
16 until 1:30. We'll come back and pick up with the
17 redirect. We'll go off the record.

18 (Off the record.)

19 JUDGE CLARK: Let's go back on the record.
20 When we left off, it was an opportunity for the
21 Commission Staff to redirect its witness, Dana Eaves.

22 MS. MERS: Good afternoon.

23 THE WITNESS: Good afternoon.

24 REDIRECT EXAMINATION BY MS. MERS:

25 Q. You were asked some questions about if it

1 would be better public policy to allow programs to
2 expire or for customers just to pay the earnings
3 opportunity. Do you recall that?

4 A. Yes.

5 Q. Could you explain what would be better public
6 policy out of the options to let the MEEIA programs
7 expire or for customers to pay for not cost effective
8 programs?

9 A. I think that's the problem here is that, you
10 know, MEEIA is designed to provide timely cost recovery,
11 recovery of lost margin sales, as well as provides for
12 an earnings opportunity to the Company to provide energy
13 efficiency programs to their customers. That regulatory
14 compact is that there's some guidelines that need to be
15 followed in order to grant the Company the authority to
16 do such and a privilege to do such.

17 And so it is, you know, in my mind it's
18 Staff's and other parties' duty to review the Company's
19 application and make sure that that regulatory compact
20 is being followed. So you know, it's really the
21 Company's choice. It's not my choice or the Staff's
22 choice as to whether or not Cycle 3 continues. Cycle 2
23 for KCP&L and GMO was approved and it has an end,
24 although it has been extended. And so in my mind it's
25 really up to the Company to provide an application that

1 the other parties can sign onto in order to allow for a
2 Cycle 3 to be implemented.

3 Q. You mentioned guidelines. What guidelines are
4 you referring to and where can they be found?

5 A. It's statutory language to protect ratepayers.

6 Q. You were also asked by the Company's counsel
7 about allowing an earnings opportunity for cost
8 effective programs. Do you recall?

9 A. Yes.

10 Q. Could you explain if there's a difference
11 between allowing an earnings opportunity versus allowing
12 what the Company has requested for an earnings
13 opportunity?

14 A. Certainly. I'll try at least. MEEIA is
15 comprised of basically three components and that is a
16 timely cost recovery of costs associated with the
17 implementation of programs, a throughput disincentive
18 which I've talked about before which is a recovery of
19 lost sales, the marginal component of lost sales, as
20 well as an opportunity to earn a return for an
21 investment that would otherwise have been made. And so
22 that balance between those three components I think is
23 important.

24 One thing to realize in that three-legged
25 stool, the Company is made whole under timely cost

1 recovery of program costs and incentives, as well as the
2 throughput disincentive. So the Company is whole. The
3 earnings opportunity is just that next step of incentive
4 for the Company to provide these programs. It doesn't
5 say in the statute at what level it needs to be
6 provided. And so I think that's where a lot of our
7 discussion is today about the EO is what level of EO
8 should exist.

9 Q. So then it sounds like what you were saying is
10 that the throughput disincentive is what's making the
11 utility whole for the lost revenues?

12 MR. FISCHER: Objection, Your Honor, leading
13 questions here.

14 MS. MERS: Could you explain.

15 JUDGE CLARK: I'm going to sustain the
16 objection.

17 BY MS. MERS:

18 Q. Could you explain when you said that the
19 earnings opportunity is the next part, you know, the
20 addition to that making the utility whole about how that
21 comes into play if there is not a missing piece, you
22 know, the foregone investment?

23 A. Okay. Sometimes looking at this and being
24 involved in it so close sometimes it's hard to explain
25 in a way that others that are not so immersed into it is

1 difficult sometimes. So let me see if I can explain
2 this.

3 In the Company's application, they clearly
4 state the program budgets that they plan to spend for
5 both companies is approximately \$96 million. They will
6 recover that on a timely basis through a MEEIA charge on
7 a customer's bill. There's mechanisms in place in order
8 to change that rate, true that rate up, making sure that
9 any over/under recovery is recognized. So the Company
10 is made whole with the program costs that are spent.

11 The other part is the throughput disincentive.
12 That's a large part as well. And in the Company's case
13 I believe it's approximately \$42 million that they're
14 going to be able to recover as far as what's termed lost
15 sales. So they're going to recover that. That can be
16 an economic benefit for the Company because these are
17 lost sales are projected, estimated. We know what the
18 costs are. But still lost sales even through EM&V is an
19 estimated value. So if the programs -- if the customers
20 don't save as much as what was thought to be saved, the
21 Company will keep that additional throughput
22 disincentive so there can be a financial incentive, as
23 well as any earnings opportunity which is a substitute
24 for the earnings that they would have foregone if they
25 would have had to build or invest in a plant. Here in

1 this case there is no investment being made by the
2 Company.

3 Q. You mentioned that sometimes it's hard to step
4 back and explain this in simpler terms. Is there a
5 definition that exists for like throughput disincentive
6 anywhere?

7 A. There is. In the statute and the rules. See
8 if I can find. Earnings opportunity, there does --
9 there is one that exists in the rules. Would you like
10 me to read that?

11 Q. Yeah, for the record that would be great.

12 A. It's 4 CSR -- take that back. They've
13 renumbered them. But it is in the MEEIA section of the
14 rules. It's paragraph S earnings opportunity component
15 of a DSIM means the methodology approved by the
16 Commission in a utility filing for demand-side program
17 approval to allow the utility to receive an earnings
18 opportunity. It goes on, any earnings opportunity
19 component of a DSIM shall be implemented on a
20 retrospective basis and all energy and demand savings
21 used to determine a DSIM earnings opportunity amount
22 shall be verified and documented through EM&V reports.

23 Q. And is there a definition for throughput
24 disincentive?

25 A. Yes, I believe it's VV is the paragraph.

1 Throughput disincentive component on the DSIM means the
2 methodology approved by the Commission in a utility
3 filing for a demand-side program approval to allow the
4 utility to receive recovery of throughput disincentive
5 with interest.

6 Q. Is there also a definition under 1 TT for
7 throughput disincentive?

8 A. I'm sorry. On what?

9 Q. On 1 TT, letter T twice?

10 A. I'm not seeing that reference.

11 MS. MERS: If I can approach.

12 THE WITNESS: Oh, I do see it. I'm sorry.
13 Yes. Throughput disincentive means the electric
14 utility's lost margin revenues that result from
15 decreased retail sales volumes due to the demand-side
16 programs.

17 BY MS. MERS:

18 Q. Do you recall being asked if in its MEEIA
19 Cycle 3 application if Ameren deferred an investment?

20 A. Yes.

21 Q. Do you recall a generation facility being
22 deferred for two years in that case?

23 A. I think that's correct, yes.

24 Q. You were having an exchange with Mr. Fischer
25 at one point regarding the lack of capacity needs in

1 KCPL/GMO and you were going to expand on a response and
2 counsel directed you to do so during redirect. Would
3 you like to expand on the response you were giving about
4 the lack of capacity needs in the KCPL/GMO application?

5 A. Well, I think the subject was brought up
6 yesterday by a witness as far as being familiar and
7 being around the process for awhile. And I think, you
8 know, my tenure here has been such that I do remember a
9 time absent MEEIA and working through the MEEIA
10 processes in order to get to allow utilities an
11 opportunity to take advantage of MEEIA. That being
12 said, my belief is that when MEEIA was enacted it was a
13 different time than it is today. I think regulatory
14 wise there was some looming on her horizon, some EPA
15 regulations, some generation requirements that may not
16 be at play today because of market changes, specifically
17 the entrances into the regional transmission
18 organizations as they exist today. They're a fully
19 integrated market on both sides of the state today which
20 has changed the generation capacity needs and energy
21 prices. That being said, you know, trying to establish
22 MEEIA programs today ten years past when the legislation
23 was enacted, we have a lot of naturally occurring energy
24 efficiency taking place as well as technology changes.
25 It changed the landscape as well. So avoided costs that

1 may have been present or future environmental costs as
2 well as capacity costs when this legislation was
3 enacted, that market is not clearly there today. It has
4 changed.

5 I think from what we've heard capacity can
6 range anywhere from nominal dollars up to 60 or \$70 is
7 what the Company has provided in some market analysis.
8 So capacity cost probably has dropped. Does that make
9 energy efficiency programs less valuable? I don't know.

10 Q. Again returning to the line of questioning
11 regarding lapse in programs. Did Staff offer an
12 alternative level of MEEIA?

13 A. I don't know that I was directly involved in
14 any of the discussions related to that, but I know
15 through dialogue in my department that different levels
16 of MEEIA was offered.

17 Q. You were also asked some questions by
18 Commissioner Rupp about if the net present value of the
19 revenue requirement is lower does that benefit all
20 customers. Do you recall that?

21 A. Yes.

22 Q. Do you know whose avoided cost figure was used
23 in the calculation -- used in the IRP process to
24 calculate that net present value of revenue requirement?

25 A. Did you say do I know?

1 Q. Do you know whose number it is?

2 A. It would have been the Company's, I think.

3 Q. Then you were asked by both the Company's
4 counsel and Commissioner Rupp about financial incentives
5 that exist to offer energy efficiency programs without
6 MEEIA. Do you recall that line of questioning?

7 A. I do.

8 Q. Could you explain were there energy efficiency
9 programs prior to the MEEIA legislation?

10 A. Yes.

11 Q. Do you recall if the Company took place -- or
12 took part in those programs?

13 A. Yes.

14 Q. You were asked some questions by the Company's
15 counsel about alternative earnings opportunities
16 recommendations. Do you recall that?

17 A. Yes.

18 Q. Do you have the Staff Rebuttal Report up
19 there?

20 A. Yes.

21 Q. Could you turn to page 86 of that report?

22 A. I'm there.

23 Q. So from lines 16 through 27, you kind of
24 outlined -- can you just explain that proposal that can
25 be found in line 16 through 27?

1 A. I've read it. Did you have a question?

2 Q. Yeah. Can you just explain to the Commission
3 if that's an alternative earnings opportunity proposal
4 and how that would work?

5 A. Yes, it is. And yeah, I think basically it
6 says avoidance of additional distribution, targeted
7 distribution costs such as the need not to build a
8 substation or some other type of facility if you can
9 avoid those costs with targeted energy efficiency
10 programs, then that would be of benefit and one way to
11 base an earnings opportunity on.

12 Q. And would a reason that you under questioning
13 from counsel for the Company could not come up with an
14 alternative value for that number, have you seen or can
15 you recall any demonstration that that has happened in
16 this case?

17 A. I think Staff Witness Luebbert said that he
18 asked for that information. They were not able to
19 provide any analysis of the savings associated with
20 targeted distribution plant needs.

21 Q. And finally you were questioned about the
22 Ameren's Cycle 3 application and then the KCPL/GMO
23 application by the Company's counsel. Do you recall
24 that?

25 A. Yes.

1 Q. And it's been kind of a reoccurring theme that
2 the implication being the utilities are the same so how
3 could we get there in one case and not in the other.
4 Can you explain is there any RTO differences between
5 KCPL/GMO and Ameren?

6 A. Can I just state that there are a lot of
7 differences between the RTOs. I think the one that's
8 really germane to this case is MISO which Ameren
9 operates under as a transparent capacity market and I
10 think some of the other witnesses have explained how
11 Ameren is able to offer in their capacity and they buy
12 back capacity. SPP doesn't have one and from what I
13 read they really don't have an appetite to develop a
14 capacity market like MISO does.

15 MS. MERS: No further questions. Thank you.

16 THE WITNESS: Thank you.

17 JUDGE CLARK: Thank you, Mr. Eaves. You can
18 step down.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 JUDGE CLARK: Staff, you may call your next
22 witness.

23 MS. MERS: Staff calls Robin Kliethermes to
24 the stand.

25 JUDGE CLARK: Would you raise your right hand

1 to be sworn?

2 (Witness sworn.)

3 JUDGE CLARK: Please be seated and state and
4 spell your name for the record.

5 THE WITNESS: Robin Kliethermes,
6 K-l-i-e-t-h-e-r-m-e-s.

7 JUDGE CLARK: You may proceed.

8 MR. PRINGLE: Good afternoon, Ms. Kliethermes.

9 THE WITNESS: Good afternoon.

10 ROBIN KLIETHERMES, being sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. PRINGLE:

12 Q. By whom are you employed and in what capacity?

13 A. I'm employed by the Missouri Public Service as
14 the rate and tariff examination manager of the tariff
15 and rate design department.

16 Q. Did you contribute to the Staff Report in this
17 matter that has been marked Exhibit 101?

18 A. Yes.

19 Q. Do you have any corrections or changes to that
20 Staff Report?

21 A. I do not.

22 Q. And the information contained in that report
23 is true and correct to the best of your belief and
24 knowledge?

25 A. Yes.

1 MR. PRINGLE: With Ms. Kliethermes being our
2 final witness, I now move to enter into the record Staff
3 Exhibits 101C and P, the confidential and public Staff
4 Rebuttal Report.

5 JUDGE CLARK: Any objections to admitting
6 Staff Exhibit 101C and 101P onto the hearing record? I
7 hear none. Those will be admitted onto the hearing
8 record.

9 (STAFF EXHIBITS 101C AND 101P WERE RECEIVED
10 INTO EVIDENCE AND MADE A PART OF THIS RECORD.)

11 MR. PRINGLE: I now tender the witness for
12 cross-examination.

13 JUDGE CLARK: Any cross-examination by the
14 Office of Public Counsel?

15 MR. HALL: None. Thank you.

16 JUDGE CLARK: Any cross-examination by Renew
17 Missouri?

18 MR. OPITZ: No, thank you, Judge.

19 JUDGE CLARK: Any cross-examination by the
20 Company?

21 MR. STEINER: No, Judge.

22 JUDGE CLARK: That just leaves me.

23 QUESTIONS BY JUDGE CLARK:

24 Q. And my questions are going to be a little bit
25 more general because I don't really understand the home

1 energy reports like I would like to and from the portion
2 I've read of the Staff's Surrebuttal Report I'm just
3 left wondering some things that are implied but not
4 really spelled out.

5 Is this a program that existed in previous
6 MEEIA cycles for these companies?

7 A. For GMO and KCPL, they had a home energy
8 report program in Cycle 1 and Cycle 2.

9 Q. And Staff is proposing discontinuing them for
10 Cycle 3?

11 A. Yes. So there's -- earlier Brad Fortson
12 testified he has a part of the report on the cost
13 effectiveness of the program. My testimony specifically
14 for MEEIA Cycle 3 talks about how the savings are
15 evaluated and some concern Staff has for MEEIA Cycle 3
16 in the evaluation process of the savings.

17 Q. And that's actually getting into kind of what
18 information do these home energy reports cover and why
19 is it -- in your opinion, why is it unsuccessful?

20 A. So in my understanding of what the home energy
21 reports, the information that they provide to customers
22 is a comparison of usage of an average household, your
23 household and, you know, a larger household and then
24 will have information on the report about general energy
25 efficiency measures that you can do to save energy, may

1 also provide links to the Company's website on where
2 their measures are located. It's just a report given to
3 the customer.

4 And to answer the rest of your question as to
5 whether or not they are successful, Staff's concern is,
6 or the testimony that I have in the report is that the
7 savings that is being evaluated at this point that is
8 attributable to the program seems high and we have
9 concerns with the evaluation process that make that that
10 level of savings may not be accurate.

11 When I say savings, that means that report has
12 caused that customer collectively over the year to save
13 that level of kWh.

14 Q. Can you point to something in particular?

15 A. Something?

16 Q. When you say we believe it overestimates
17 savings, why do you believe that?

18 A. So a few things. So the way the evaluation
19 process is done, there's a few questions about
20 pretreatment periods. So the comparison in time and
21 where energy savings is being measured for the customer
22 and secondly other home energy report programs for other
23 utilities do not result in that level of kWh by about
24 half.

25 Q. Okay. So at least one metric is comparison to

1 other companies' home energy reports?

2 A. Yes.

3 Q. Additionally, I believe I read in there that
4 you had an independent auditor who expressed concerns
5 that they're just not being read?

6 A. Yes. So Evergreen Economics has raised
7 several concerns. One, there's a large number of
8 reports that aren't being opened. Secondly, that they
9 had concerns that a customer within the treatment group,
10 which is a customer receiving a home energy report,
11 their participation in other energy efficiency programs
12 isn't properly being accounted for.

13 JUDGE CLARK: That I think answers all my
14 questions.

15 THE WITNESS: Thank you.

16 JUDGE CLARK: Any cross-examination or
17 recross-examination based upon Commission questions?
18 Office of Public Counsel?

19 MR. HALL: No, thank you.

20 JUDGE CLARK: Renew Missouri?

21 MR. OPITZ: No, thank you, Judge.

22 JUDGE CLARK: Company?

23 RECROSS-EXAMINATION BY MR. FISCHER:

24 Q. Ms. Kliethermes, as I understood what you were
25 saying just now on home energy reports, it's not as

1 effective as Staff would like it to be?

2 A. I don't know that that's the -- it's just that
3 the savings that currently are being reported as due to
4 that program Staff has concerns that those are
5 overstated, whether that leads to effectiveness which is
6 probably more related to Brad's testimony but yes.

7 Q. The Company would like for those reports to be
8 read but they're not all read?

9 A. True.

10 Q. Would it be better just not to try at all?

11 A. I don't know.

12 MR. FISCHER: Okay. Thank you.

13 QUESTIONS BY JUDGE CLARK:

14 Q. Actually since you brought that up, you
15 proposed some changes. You've indicated to the
16 Commission that if the Commission retains this program
17 that there should be some changes. What's an overview
18 of what those changes are?

19 A. Again, there was a couple Staff witnesses that
20 had testimony on this topic, but for the part of the
21 evaluation changes such as in the methodology of the
22 evaluation is defining the pretreatment and
23 posttreatment periods, making sure energy efficiency
24 measures that customers previously participated in are
25 properly being accounted for. And if there is a high

1 number of customers who aren't opening the reports that
2 that's accounted for in the estimation of savings
3 attributable to that program.

4 Q. Why would that last one matter?

5 A. Well, because if customers aren't opening the
6 report, if they're not seeing it, then is changes in
7 their usage attributable to the report.

8 JUDGE CLARK: Okay. That makes sense. All
9 right. I'll ask again. Any cross based upon my
10 questions? OPC?

11 MR. HALL: No.

12 JUDGE CLARK: Renew?

13 MR. OPITZ: No, thank you.

14 JUDGE CLARK: Company?

15 MR. FISCHER: No, thanks.

16 JUDGE CLARK: Any redirect by the Commission
17 Staff?

18 MR. PRINGLE: Yes, Judge.

19 REDIRECT EXAMINATION BY MR. PRINGLE:

20 Q. Ms. Kliethermes, could you just explain to us
21 who is Evergreen or what is Evergreen?

22 A. So Evergreen is Staff's independent auditor.

23 Q. Staff has worked with Evergreen besides simply
24 this case?

25 A. That is my understanding.

1 MR. PRINGLE: No further questions, Judge.

2 JUDGE CLARK: Okay. Ms. Kliethermes, you can
3 step down.

4 THE WITNESS: Thanks.

5 (Witness excused.)

6 JUDGE CLARK: Staff has no more witnesses?

7 MR. PRINGLE: No more witnesses from Staff.

8 JUDGE CLARK: The Office of Public Counsel, it
9 is your turn to call your first witness.

10 MR. HALL: At this time Public Counsel calls
11 Geoff Marke to the stand.

12 JUDGE CLARK: Dr. Marke, would you raise your
13 right hand to be sworn?

14 (Witness sworn.)

15 JUDGE CLARK: Please be seated and state and
16 spell your name for the record.

17 THE WITNESS: My name is Geoff Marke, my card.
18 It's G-e-o-f-f Marke, M-a-r-k-e.

19 GEOFF MARKE, being sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. HALL:

21 Q. And Dr. Marke, by whom are you employed and in
22 what capacity?

23 A. I'm employed by the Missouri Office of Public
24 Counsel.

25 Q. And in what capacity?

1 A. As the chief economist.

2 Q. And on whose behalf are you testifying today?

3 A. The Office of Public Counsel.

4 Q. Are you the same Dr. Marke who caused to be
5 filed in this docket rebuttal testimony both public and
6 confidential which has been premarked for filing as
7 Exhibit 200?

8 A. Yes.

9 Q. If I asked you the same questions contained
10 therein, would your answers be the same or substantially
11 similar?

12 A. Yes.

13 Q. Do you have any corrections to make to your
14 testimony?

15 A. Perhaps one quick change.

16 Q. Please explain.

17 A. It was pointed out in Mr. Rogers' testimony,
18 live testimony that I had previously disclosed an HC
19 number. I'm under the impression that since no party is
20 adhering to this cost, this avoided cost number at this
21 point that it doesn't exist, but I would say page 5,
22 line 23 the value that's listed on my rebuttal testimony
23 should be HC. I apologize for that.

24 Q. Do I also see this number on page 7, line 25
25 of your rebuttal?

1 A. That's there too, yeah.

2 COMMISSIONER RUPP: Line 25, right?

3 JUDGE CLARK: Line 25, the same page?

4 THE WITNESS: Page 7. You know what, I found
5 it again. Page 8, line 4.

6 JUDGE CLARK: How do the parties want me to
7 address that? Do we want to make his testimony, his
8 filed testimony that's going I assume to be offered as
9 an exhibit here make it confidential in its entirety or
10 redact that portion or file a separate public version in
11 addition to a confidential version, because I don't want
12 to make just pages or portions?

13 MR. HALL: If it's at all amenable to the
14 parties, this did not come to our attention until just
15 within the past few hours. So the documents that have
16 been prefiled with the court reporter don't have that
17 redacted. It would be fairly easy for our office to
18 print out copies with those numbers redacted for filing
19 before the Commission later. Otherwise, I just want to
20 state for the record we had been operating under months
21 or with weeks for this filed testimony with no
22 indication that that number should have been
23 confidential and this is purely a mistake and oversight
24 on our part and there was no intent.

25 JUDGE CLARK: Well, can you mark them as

1 they're being offered now as confidential?

2 MR. FISCHER: Judge, it's a 2015 number. It's
3 not confidential. We don't need to have it confidential
4 any more.

5 MR. STEINER: We appreciate you making the
6 effort but I think it's okay right now.

7 JUDGE CLARK: You're okay with it?

8 MR. STEINER: Just leave it the way it is.

9 JUDGE CLARK: All right.

10 THE WITNESS: Thanks. I'm sorry.

11 MR. HALL: Thank you.

12 JUDGE CLARK: Do you still want me to make
13 those changes to your testimony, Dr. Marke?

14 THE WITNESS: No.

15 BY MR. HALL:

16 Q. Dr. Marke, are there any other corrections
17 that should be considered for your testimony?

18 A. There are none.

19 Q. Are the answers contained in your rebuttal
20 testimony true and accurate to your belief?

21 A. Yes.

22 MR. HALL: At this time, Your Honor, I move
23 for the admission of Exhibit 200 into evidence both
24 public and confidential.

25 JUDGE CLARK: Any objection to admitting

1 Exhibit 200 both public and confidential onto the
2 hearing record? I hear none. Exhibit 200 public and
3 Exhibit 200 confidential will be admitted onto the
4 hearing record.

5 (OPC EXHIBITS 200P AND 200C WERE RECEIVED INTO
6 EVIDENCE AND MADE A PART OF THIS RECORD.)

7 BY MR. HALL:

8 Q. Dr. Marke, are you the same Geoff Marke who
9 caused to be filed in this docket Surrebuttal Testimony?

10 A. Yes, I am.

11 Q. If I asked you the questions and answers
12 contained therein, would your answers be the same or
13 substantially similar?

14 A. Yes, they would be.

15 Q. Do you have any corrections to make to your
16 surrebuttal testimony?

17 A. No, I do not.

18 Q. Are the answers contained in your surrebuttal
19 testimony true and accurate to your belief?

20 A. Yes.

21 MR. HALL: At this time, Your Honor, I move
22 for the admission of Exhibit 201 into evidence, the
23 Surrebuttal Testimony of Geoff Marke that does not have
24 a confidential version.

25 JUDGE CLARK: Any objection to admitting

1 Exhibit 201 onto the hearing record? Hearing none,
2 Exhibit 201 is admitted onto the hearing record.

3 (OPC EXHIBIT 201 WAS RECEIVED INTO EVIDENCE
4 AND MADE A PART OF THIS RECORD.)

5 MR. HALL: At this time I tender the witness
6 for cross.

7 JUDGE CLARK: Cross-examination from the
8 Commission Staff?

9 MS. MERS: Good afternoon, Dr. Marke.

10 THE WITNESS: Good afternoon.

11 CROSS-EXAMINATION BY MS. MERS:

12 Q. Your background is in public policy; is that
13 correct?

14 A. That's correct.

15 Q. As far as that background, are you familiar
16 with the concept of a cycle of denial as explained on
17 page 13 of the Company's surrebuttal?

18 A. I did read the surrebuttal and came across
19 that.

20 Q. Do you have any response to the concept of a
21 cycle of denial?

22 A. I would dismiss it out of hand. If you'd
23 like, I could explain why.

24 Q. Maybe briefly to clarify for the record.

25 A. The cycle of denial, as the Company posits, is

1 that because there's no need for a MEEIA program right
2 now there might be sometime in the future but we won't
3 be able to ramp up programs in time to do that. We've
4 gone through this period before. Ameren Missouri is a
5 really good example of that.

6 Ameren Missouri had programs in place for a
7 number of years without a MEEIA. Then they stopped.
8 MEEIA statute was passed. We got -- they put forward a
9 MEEIA application and program started up. They started
10 up at a level that they exceeded their savings within
11 one year.

12 KCPL has gone through similar situations. In
13 short, both Company and OPC have put forward other
14 options to essentially keep a skeleton level, a default
15 is what we call it, a default level of programs in place
16 where if they needed to be scaled up they could be. So
17 I don't put a lot of stock in the catch phrase a cycle
18 of denial. I really -- I would go out of our way that
19 the energy efficiency collaboratives here in the state
20 of Missouri are well invested in the concept of energy
21 efficiency and trying to make things work when sometimes
22 it doesn't even make sense for it to make work.

23 Q. Do you have a copy of the Company's
24 surrebuttal report with you?

25 A. Unfortunately I don't.

1 MR. HALL: Your Honor, may I approach my
2 witness?

3 JUDGE CLARK: Yes.

4 THE WITNESS: Okay.

5 BY MS. MERS:

6 Q. And can you turn to page 16?

7 A. Okay.

8 Q. Are you familiar with the Company statements
9 on that page about parties supporting previous MEEIA
10 cycles although the Company was long on capacity during
11 those cycles as well?

12 A. Yes.

13 Q. Were you involved in the previous two MEEIA
14 cases?

15 A. I was.

16 Q. And could you explain why OPC supported the
17 previous two cycles but has concerns with Cycle 3?

18 A. MEEIA has been an evolving policy issue from
19 its inception. There's been a lot of testimony already
20 on the record about previous MEEIA rules, MEEIA 1 and
21 MEEIA 2.

22 The initial MEEIA 1 actually adhered to
23 something called the net shared benefit model. The net
24 shared benefit model, and the rules were designed around
25 that model. The preferred nomenclature for it is called

1 the lost revenue adjustment mechanism, an LRAM. In
2 short, the problem that we learned as stakeholders in
3 that first cycle was that the LRAM overstated the amount
4 of savings that were actually attributable to the
5 programs and there was no cap.

6 So what happened was the amount of earnings
7 opportunity allotted to the companies became really big.
8 It was more of a problem on the Ameren side than it was
9 for KCPL. On the flip side, when we talk about our
10 experience with Kansas City Power & Light, with the
11 first year programs it was largely precipitated by what
12 I would characterize as a bank run for lack of a better
13 term. There was a fear going into Cycle 2 after the
14 Commission rejected Ameren Missouri's application that
15 KCPL would not get their application granted either.

16 What happened was that light vendors in
17 particular in the Kansas City area started selling out
18 light left and right, light bulbs everywhere. Within
19 the span of about four or five months, the Company
20 doubled their approved budget just for commercial
21 lighting. So the Company met its goal but at a cost of
22 literally doubling what happened. At the end of the day
23 the Commission approved it and moved forward with it.

24 The unfortunate sort of back story behind that
25 is that same year the Company came in for a rate case

1 and actually asked for a rate design that put a greater
2 demand charge on commercial lighting or commercial --
3 they created a greater demand charge. That demand
4 charge nullified a lot of their energy savings that
5 would have been attributed to the lighting. So to put
6 that in context, when those commercial customers bought
7 their lighting, they bought it with the assumption that
8 these things would pay back at a certain year, two
9 years, three years because they're keeping the lights on
10 at the same time. That works if you keep rates designed
11 as they were. Unfortunately the rates changed and
12 instead of putting those savings on energy -- the
13 collection of those savings on the demand charge.

14 So in that case the savings were overstated
15 too. But these are things that we've learned. We've
16 learned it through experience. That fed into Cycle 2
17 and the applications that we experience there and the
18 rules. And quite honestly, it's informing what's gone
19 on to this case as well when we're looking at avoided
20 costs and the programs that we should approve. It's
21 been a learning experience.

22 Q. Were you part of the Ameren's MEEIA Cycle 2
23 and MEEIA Cycle 3 applications?

24 A. I was involved in both, yes.

25 Q. And did you join, I believe there's a

1 non-utility stip that opposed the Ameren MEEIA Cycle 2
2 application; is that correct?

3 A. That is correct.

4 Q. You didn't support their initial application?

5 A. That's true.

6 Q. But you did support the Cycle 3 application?

7 A. We did.

8 Q. And again, there's been a lot of questions
9 about KCPL and GMO and why parties supported Ameren and
10 not the Company's application. Can you explain why OPC
11 was willing to join in in the Ameren MEEIA Cycle 3
12 stipulation but couldn't get there in this case?

13 A. We were able to work with Ameren is the long
14 and short of it. It's a different utility. It's a
15 different situation. It's a different market. I know a
16 lot of the testimony to date -- or a lot I guess the
17 direct from counsel has been that well, Ameren has got
18 it, why can't we get it. I think that's doing -- I
19 think that does energy efficiency a real disservice. To
20 suggest that if the Commission were to reject this
21 application the Company wouldn't go ahead and try to
22 refile something else, A, goes against history, because
23 we've clearly had that happen before where utilities
24 have come back after discretion and direction from this
25 Commission to refile something else and, two, really

1 does a disservice about having an open and honest
2 conversation about really what's wrong with this
3 application and how we can make it better.

4 I can tell you in Cycle 2 we went to great
5 lengths working with Ameren Missouri to come to a
6 conclusion that made sense for Missouri for Ameren
7 Missouri ratepayers. I can tell you in Cycle 3, as much
8 as I can go into settlement discussion, the situation
9 was different. You know, if KCPL hadn't withdrawn their
10 application, they filed first. It's important to
11 remember that. At the end of the day, they filed their
12 application more than a year ago. They withdrew it
13 because Ameren then filed theirs. They sat back and
14 they waited for Ameren to go ahead and settle.

15 We're a year forward. All right. If we had
16 to swallow maybe not a perfect application because of
17 settlement for Ameren, understand that was almost two
18 years ago at this point. KCPL is still relying on 2015
19 data. If this was 2017, maybe it would be a little bit
20 easier and we can look at it. Now we're looking at a
21 position where we're not going to start programs until
22 2020. That means every day that's gone by it's gotten
23 worse. It's gotten more pronounced.

24 Q. Do you have a copy of your surrebuttal with
25 you?

1 A. I do.

2 Q. Could you turn to page 8.

3 A. I'm there.

4 Q. From lines 15 to 16 you state you did not
5 believe sales of excess energy would create enough
6 savings to justify this MEEIA application. Is that
7 accurate?

8 A. That is accurate.

9 Q. I guess to start with, do you believe one of
10 the most important evaluation metrics for a MEEIA
11 application is the avoided cost?

12 A. Yes.

13 Q. Do you believe that avoided capacity costs
14 should be tied to the deferral of the supply-side
15 investment?

16 A. Yes.

17 Q. Would that be because an actual deferral of
18 supply-side investment would be the biggest driver of
19 benefits to all customers regardless of participation?

20 A. That's correct.

21 Q. And would you believe that benefits to all
22 customers is one of the other most important evaluation
23 metrics for a MEEIA application?

24 A. Absolutely.

25 Q. Do you believe this MEEIA application provides

1 benefits to all customers?

2 A. Not as presently filed.

3 Q. Would that be because they're not avoiding any
4 supply-side investment?

5 A. In part, yes.

6 Q. So the two evaluation metrics we mentioned, do
7 you believe that the application has met either of them?

8 A. No, I do not.

9 Q. And did that play into your ultimate
10 recommendation to the Commission?

11 A. It did. If I may. I would say that my
12 testimony, my rebuttal testimony is I think about 60
13 pages. More than half of that testimony is not saying
14 no. More than half of my testimony is saying here's how
15 you make it better. Here's what you can do to make it
16 better. Here's what you can do to go ahead and try to
17 find benefits for nonparticipants, to find deferral
18 savings where none currently exists.

19 I can't remember a time, and I've been active
20 in a lot of these MEEIA cases where we've gone to such
21 lengths to try to find money for the company.

22 Q. To your knowledge, in the Company's
23 Surrebuttal Report, did they accept or agree to any of
24 your suggestions?

25 A. I was very disappointed in the Company's

1 response almost across the board with every one of my
2 recommendations. The sole exception is that they would
3 entertain the urban heat island to a capped amount.
4 Keep in mind this was literally created I found a
5 problem for the company to make money, and their concern
6 is that well, we won't have enough R&D to spend on a
7 load building electric vehicle charging station.

8 Q. Do you believe that the fact there's not a
9 deferral of a supply-side resource impacts what the
10 appropriate earnings opportunity should be?

11 A. Absolutely.

12 Q. What would OPC find to be a more appropriate
13 earnings opportunity for the Company?

14 A. I have zero problem with incentivizing Company
15 behavior that produces benefits for customers. We've
16 put out several different ideas for earnings
17 opportunities that could come out of MEEIA discussions,
18 a future MEEIA application. At the end of the day,
19 quite honestly, I mean, the reality is these markets are
20 changing.

21 When this statute passed years ago, SPP was
22 just starting. The renewable price for solar and wind
23 hadn't anywhere reached the price parity point that it
24 is today. All you have to do is really look at other
25 states that border Missouri. Iowa has abandoned energy

1 efficiency, Ohio has, Illinois recently moved back on
2 Ameren Illinois energy efficiency programs in part
3 because the market is very cheap, because you've got an
4 abundant amount of natural gas. You've got for our case
5 here on SPP a ton of wind coming on line. Spent a
6 greater part of, you know, this past year talking about
7 how much wind is coming on line.

8 These aren't bad things, okay, but it does
9 change the metrics and evaluation of this statute and I
10 think, you know, to the Staff's credit they did a very
11 thorough job in that evaluation.

12 Q. Do you believe the Company has appropriately
13 taken into account the lack of the supply-side
14 investment when they structured their earnings
15 opportunity?

16 A. No.

17 Q. And you mentioned looking to other states
18 about how they're addressing energy efficiency. Do you
19 have any knowledge of how Kansas, the other state that
20 KCPL/GMO's affiliates operate in, has approached the
21 issue?

22 A. My understanding, and I'm going to make the
23 Company correct me if I'm wrong, but at least once,
24 perhaps twice now they've attempted to try to get a
25 KEEIA which is the Kansas Energy Efficiency Investment

1 Act and have failed. And both situations -- I've got --
2 I know people over there at the KCC. Largely the same
3 sentiment is that the Company is long on capacity,
4 they're not deferring any identified supply-side
5 investment.

6 If you rebate that HVAC today, that HVAC is
7 going to be obsolete or break down or not be the high
8 efficiency HVAC by the time you'd actually have to put
9 on that investment. So your plant investment today is
10 going to last longer than any sort of demand-side
11 investment we're going to make at somebody's house.
12 That's the rub.

13 Q. On page 12 of your surrebuttal testimony you
14 stated that the most direct cost effective way, this is
15 lines 4 through 6, to implement energy efficiency
16 measures is qualified low income household -- is through
17 low income weatherization assisted programs and that can
18 be accomplished outside of MEEIA; is that correct?

19 A. Yes.

20 Q. Was that in response to calls to expand the
21 low income portion of MEEIA?

22 A. Yeah. You know, it's unfortunate. There was
23 a time when NRDC was pretty active and involved in these
24 DSM discussions. They've since sort of fallen off.
25 Mr. Mosenthal made a recommendation for a low income

1 component to this portfolio. That used to exist. We
2 used to have a low income component to KCPL's MEEIA
3 portfolio. That ceased to exist in Cycle 2 in part
4 because of rule changes. The long and short of it is
5 low income -- a MEEIA low income direct install program
6 is not a cost effective way of doing things. We've
7 already got that today. It's called weatherization.
8 Weatherization does that. It does a better job than the
9 direct install method.

10 So instead of having to pay third-party
11 contractors a throughput and an earnings opportunity to
12 go ahead and put in light bulbs in a low income home, we
13 can have money go through traditional rates, through
14 weatherization and they can do a whole home approach
15 through a nonprofit that does not tie to MEEIA. And our
16 basic argument was this, and the Commission agreed
17 ultimately in the MEEIA rules, is that if a MEEIA didn't
18 exist, then KCPL wouldn't have weatherization dollars.
19 There wouldn't be weatherization in place because it
20 would be going through MEEIA. So we wanted to make sure
21 that weatherization was always in place. That's why
22 it's -- today it's why it's in rates. So I would
23 disagree respectfully with Mr. Mosenthal's suggestion.

24 Q. Are you familiar with the Company's home
25 energy reports?

1 A. I am.

2 Q. Do you support continuation of the program?

3 A. No.

4 Q. Do you believe that the Company's optimized
5 billing system and improved customer portals as
6 described in the last rate case make the home energy
7 reports obsolete?

8 A. Amongst other things.

9 Q. Is the Company currently collecting costs for
10 that new CSI system in rates?

11 A. Yes.

12 Q. Are you familiar with the ongoing discussion
13 regarding time of use and the educational materials
14 stemming from the last rate case stipulation and
15 agreement?

16 A. Yes. I've been an active participant in that.

17 Q. Do you believe that those time of use reports
18 would also be a more effective tool than the home energy
19 reports?

20 A. I think it's a better report. If you'd like,
21 we've had a lot of discussions about home energy reports
22 here. The Company uses Opower. It's an Oracle.
23 They're top shelf. What I mean by that they're very
24 expensive. We're outsourcing that to a third party
25 through Oracle Opower. All it is is a one-page document

1 that is predicated on this concept of shaming. The idea
2 is that you'll use less energy if you're aware that your
3 neighbors are using less.

4 There's a whole science behind it. It's sort
5 of got a negative connotation with shaming, but it's
6 been shown in small sample sizes to work. The problem
7 with it is two fold. One, it's very expensive. It's
8 like \$4 million, four and a half million dollars is what
9 the Company is allocating for costs right now.

10 If we're looking to make a portfolio better,
11 more efficient, then let's cut out the fat. Let's cut
12 out the stuff that's not going to matter. Instead of
13 passing out mailers, let's put those towards HVACs.
14 Let's put those towards something that's actually going
15 to have deep savings. I want that money to go there.
16 Right? The other part is like Ameren is a really good
17 example of this. Ameren has a home energy report and
18 they do it in house at a fourth of the cost.

19 I'm not sure what you're getting out of
20 Opower. And then you throw on the fact that we dropped
21 over a hundred million dollars on a customer service
22 information system that's tied to that AMI technology.
23 We spent plenty of time and ratepayer dollars invested
24 in rolling out time of use rates at some point in the
25 near future. All of that information is redundant. All

1 of that information is being already sent to customers.

2 So what's Opower doing here at this point?

3 It's not doing anything that that sunk cost isn't
4 already doing. That's why we're against the home energy
5 report. Again, it's not us being contrary. It's not us
6 sitting here saying no, no, no. It's here's how you
7 make it better and you make it better by not focusing on
8 stuff that doesn't really matter at this point or is
9 redundant.

10 Q. Do you still have the copy of the Company's
11 surrebuttal with you?

12 A. Yes, I do.

13 Q. If you turn to page 28 or 27, I apologize.
14 Are you familiar with the Company's argument that all
15 customers benefit from energy efficiency because energy
16 efficiency puts downward pressure on energy market
17 prices?

18 A. Yes, I am.

19 Q. Have you seen any analysis from the Company
20 showing where this application or any previous MEEIA
21 application will or has impacted SPP market prices?

22 A. I have seen none.

23 Q. Have you seen hourly load shapes for energy
24 efficiency products to verify if the products are
25 shaving demand?

1 A. No.

2 Q. Are market prices generally set by the lowest
3 offered price for a service or by the average offer?

4 A. The lowest.

5 Q. And then finally, to the best of your
6 knowledge are interruptible or curtailable rates
7 typically voluntary on behalf of the customer?

8 A. Yes, they are voluntary.

9 Q. Do you believe that in this case the -- you
10 don't support the Company's demand response programs; is
11 that right?

12 A. No, I don't. Our office does not support the
13 currently filed business demand response or the
14 residential demand response for different reasons for
15 both.

16 MS. MERS: Okay. Thank you for your time.

17 THE WITNESS: Thank you.

18 JUDGE CLARK: Any cross-examination from Renew
19 Missouri?

20 MR. OPITZ: Yes, Judge.

21 CROSS-EXAMINATION BY MR. OPITZ:

22 Q. Dr. Marke, I understand that you just
23 testified that you would support earnings opportunity
24 for programs that produce benefits to customers; is that
25 right?

1 A. Yes.

2 Q. But that's not necessarily limited to whether
3 those benefits are simply deferring the generation.
4 Would you agree with that?

5 A. I think there's a lot of ways for you -- for
6 us to get there.

7 Q. So if I understand your rebuttal testimony
8 correctly, you are proposing a number of additional
9 programs that may not be necessarily aimed at deferring
10 future generation in the sense that the Staff seems to
11 be desiring to do?

12 A. I think I would agree with that.

13 Q. And for those programs that you are proposing,
14 you're open to offering the companies some kind of
15 earnings opportunity to pursue those programs?

16 A. Yes.

17 Q. One of those programs that you propose is
18 similar to a Renew Missouri proposal and that's the PAYS
19 program; is that correct?

20 A. That is correct.

21 Q. Now, due to the modifications to the
22 procedural schedule in this case, your rebuttal
23 testimony was filed after Renew Missouri filed its
24 rebuttal; is that correct?

25 A. That is correct.

1 Q. So in your rebuttal testimony when you
2 reference that there are fundamental flaws and
3 misunderstandings in how the PAYS tool has been
4 characterized, you're not referring to how Renew
5 Missouri characterized it, are you?

6 A. No, I'm not. Thank you for that
7 clarification.

8 Q. Yesterday I believe it was KCPL's Witness File
9 who talked about the Company's position on PAYS. Were
10 you here for his testimony?

11 A. I was.

12 Q. And as best I can remember, the issues he
13 raised were about liens, participation level, defaults
14 by customers and the availability of other financing
15 options. Do you recall those concerns?

16 A. I do.

17 Q. And are those the kinds of misunderstandings
18 that you believe you were addressing in your rebuttal?

19 A. Yes.

20 Q. Okay. So what is -- What do you believe is
21 misunderstood about liens?

22 A. I think just about everything under PAYS has
23 been misunderstood. It's been a source of great
24 frustration, Mr. Opitz. We went out of our way to in
25 three separate filings now we've had feasibility studies

1 with KCPL, with Ameren, with Empire. In each one of
2 those studies we've also filed comments in response to
3 those third-party studies.

4 Now, every one of those studies came back
5 positive. Every one of the studies say that it's a good
6 way to go ahead and promote energy efficiency for really
7 the vast majority of people that don't have up front or
8 disposable capital today. I count myself in that
9 category, mind you. I don't have just a thousand
10 dollars just hanging around where I'd go ahead and
11 replace my air-conditioner with right now. That money
12 is going to something else. I'm going to wait quite
13 honestly until that air-conditioner probably, you know,
14 is at the end of its useful life.

15 Under a PAYS program, I'd be able to go ahead
16 and take advantage of that. The Company would be
17 designed to go ahead and incentivize from that as well.
18 You had Mark Cayce come up here. You had a cooperative
19 general manager in really a largely rural poor area of
20 Arkansas that's had success, a 10 percent adoption rate
21 in a very tough market. 10 percent adoption rate in
22 KCPL, you're talking 65,000 people. That would be
23 enormous.

24 If the Company is serious, really serious
25 about energy efficiency or we are as a state, you've got

1 to figure out a way to go ahead and tap into the market
2 of really just about everybody that doesn't have that
3 capital that doesn't have that amount of money.

4 There are a number of questions surrounding
5 PAYS, around liens or default rates, loans. I strongly
6 encourage stakeholders, and we had a Q&A, we brought in
7 the creators of PAYS to go ahead and solicit Q&As from
8 every stakeholder during our technical conferences to
9 ask questions. They took out free of charge, mind you,
10 they went ahead and answered every one of those
11 questions. We had a webinar devoted to it. I filed
12 every one of those in my testimony. All of that stuff
13 is included.

14 The fact that you've got investor-owned
15 utilities now taking advantage of it with Georgia,
16 Hawaii. The fact that, you know, I like Mr. File. It's
17 not a personal reflection on him by any means, but I am
18 disappointed with his response with PAYS. To me it just
19 showed a fundamental lack of understanding of the
20 program and what the potential is there.

21 Q. So one of the points that Mr. File and I
22 mentioned earlier was about the Company's concern that a
23 PAYS program wouldn't necessarily increase customer
24 participation in MEEIA programs. Do you agree with that
25 assessment?

1 A. You know, I would disagree. I would disagree
2 wholeheartedly, but I'm willing to live with being
3 wrong. But give it a chance. I mean, that's ultimately
4 what our rebuttal testimony did was we teed it up as
5 just a pilot. Cap it up from a certain amount of
6 dollars, make sure there's not that much exposure to the
7 company and see if it works. If it does work, man, the
8 payoffs are going to far outweigh the costs that we're
9 talking about here.

10 Q. You don't normally advocate for the utility to
11 spend more on these energy efficiency programs, do you?

12 A. That's the irony here, right?

13 Q. But for PAYS you do propose in your rebuttal a
14 capital budget?

15 A. I do.

16 Q. Is that correct? You also propose an
17 operating budget?

18 A. I do.

19 Q. And I guess to the extent that that budget is
20 going to increase what the utility recovers through its
21 program costs, would you support that increased budget?

22 A. I would. We want to hit nonparticipants.
23 That's clearly what you've heard throughout these last
24 24 hours is that there's a nonparticipant problem.
25 Okay. Well, let's solve it. Let's redesign it to make

1 it where we're targeting those nonparticipants.

2 Q. So PAYS -- I mentioned that you offered a
3 number of other programs in your rebuttal. PAYS isn't
4 the only one; is that correct?

5 A. No, I made three other recommendations.

6 Q. One is urban heat island?

7 A. Yes.

8 Q. And one is called WattTime?

9 A. Yes.

10 Q. And another is the energy efficiency equitable
11 baseline?

12 A. Yes.

13 Q. For each of those programs, and PAYS included,
14 would you support funding these through MEEIA?

15 A. Yes.

16 Q. And would you be willing to support offering
17 the Company an earnings opportunity in the event they
18 successfully implement those programs?

19 A. I mean the short answer is yes. The programs
20 are a little bit different. Some of them aren't
21 actually a program. For example, the energy efficiency
22 equitable baseline is a study. That would help inform
23 future MEEIA applications. So I'm not sure we would
24 recommend an earnings opportunity associated with that.

25 Q. Okay. I guess what about the urban heat

1 island? Is that a study or is that something that would
2 have an earnings opportunity?

3 A. The urban heat island is something that we're
4 extremely -- The urban heat island is a problem. When
5 you look at the greater Kansas City, and I would
6 recommend that you just get on YouTube and YouTube urban
7 heat island Kansas City. You'll see a dissertation
8 defense out of UMKC over the topic. You'll see local
9 news stories talking about it. It's one of the worst in
10 the nation. It's going to get progressively more worse.

11 The urban heat island is an opportunity to
12 rethink how we've done MEEIA in the past.

13 Q. Would addressing the urban heat island within
14 MEEIA be a way that the Company could provide benefits
15 to all customers whether they participate or not?

16 A. I believe so based off of the research that
17 has already been conducted today. Granted, you know, I
18 would refer you back to my rebuttal testimony and my
19 discussion of the urban heat island. It is admittedly
20 outside the box thinking in terms of MEEIA and would
21 require more coordination than really the amount of time
22 that we're talking about here offers.

23 Q. So would your WattTime proposal offer benefits
24 to all customers including nonparticipants if it was
25 offered in a MEEIA program?

1 A. I think the WattTime would be an application
2 that would enhance the company's -- a future company
3 application. What WattTime would allow you to do -- As
4 an economist, we talk a lot about price signals, you
5 know, and moving the needle. What WattTime is, it's an
6 emission signal in short. And what I would say is that
7 when you've got really high emission levels that's going
8 to be strongly correlated with high energy prices, so to
9 the extent that I feel like the data to date
10 substantiates that people if they're given that signal
11 will change their behavior.

12 Speaking with WattTime, the utility that comes
13 to mind is Con Ed out of Illinois is exploring a
14 WattTime feature in their energy efficiency
15 applications.

16 Most recently the Staff, Office of Public
17 Counsel and Ameren Missouri have agreed to explore
18 WattTime with EV charging stations and sending those
19 signals. So I think it's a natural complement to KCPL's
20 application as well or a future application anyway.

21 Q. So you've read the Company's surrebuttal
22 report, haven't you?

23 A. Yes.

24 Q. One of the concerns that is raised about some
25 of your I guess pilot programs by the Company is that

1 your proposals would be outside of the research and
2 development levels as the Company had been proposing?

3 A. Yes.

4 Q. Just to be clear, your testimony and your
5 position is that you would be okay with expanding those
6 research and development budgets to accommodate these
7 programs?

8 A. I'm confident you could get to a MEEIA 3 Cycle
9 application through the urban heat island in a future
10 application. The way we set up the default application
11 is really designed to incentivize the company to look at
12 that, to examine that. Yes, you're right, it would
13 increase the R&D budget.

14 MR. OPITZ: Okay. Thank you. That's all I
15 have, Judge.

16 JUDGE CLARK: Company?

17 CROSS-EXAMINATION BY MR. FISCHER:

18 Q. Dr. Marke, I think you indicated you've been
19 involved in the MEEIA process for a decade or so?

20 A. For awhile.

21 Q. And you've been involved in the IRP process as
22 well?

23 A. Yes.

24 Q. Do you recall several years ago that there
25 were parties that were encouraging the Company to put

1 more scenarios into the IRP to look at more and more
2 energy efficiency in DSM programs to make sure that we
3 were capturing the maximum amount that we should to make
4 revenue requirements as low as possible?

5 A. Yes.

6 Q. And Public Counsel was one of those parties?

7 A. Yes.

8 Q. Assuming the Commission decides that because
9 the Company is long on capacity and doesn't have a lot
10 of avoided costs under the Staff's analysis and decides
11 to terminate the energy efficiency and DSM programs,
12 will Public Counsel be okay with us taking those
13 scenarios out of the IRP in the future?

14 A. No.

15 Q. No? Okay. What about the potential study?
16 Will there be a need for a potential study, a market
17 study?

18 A. By Commission rules, yes.

19 Q. But other than that?

20 A. Yes. I think there would still be a need for
21 the study.

22 Q. Even though we're long on capacity and
23 shouldn't be doing energy efficiency?

24 A. Mr. Fischer, what would happen if EV charging
25 stations take off tomorrow and you need to go ahead and

1 all of a sudden your load increases? My God, if there's
2 anything I've learned about the IRPs that they're wrong,
3 they're constantly changing. So it's in part why we're
4 okay with at least a default MEEIA level doesn't make
5 sense right now with what's been filed but something
6 could change.

7 MR. FISCHER: That's all I have, Judge. Thank
8 you.

9 JUDGE CLARK: Thank you. I don't know. I
10 believe Commissioner Rupp may have some questions. In
11 the meantime, I'm going to fill in with a few of my own
12 questions. My first one is kind of a minor housekeeping
13 matter. I did not see where, and I could be wrong on
14 this, did OPC offer Exhibit 202 or did you intend to?

15 MR. HALL: I had not. We intend to. There
16 was no foundation laid to offer that into evidence when
17 Dr. Marke first took the stand. I was hoping to address
18 that on redirect later.

19 JUDGE CLARK: One reason I was coming back to
20 that is he had indicated that maybe we should Google or
21 otherwise heat islands. That is really not permitted as
22 an extra record of resource. So absent that exhibit and
23 you telling us anything, we're really not going to go
24 out and look for it.

25 THE WITNESS: Sure.

1 JUDGE CLARK: I guess I've got a few
2 questions. Actually I believe Rupp had a few questions
3 and then I'll go, or do you want me to go ahead?

4 COMMISSIONER RUPP: You can go ahead.

5 QUESTIONS BY JUDGE CLARK:

6 Q. My first question is in regards to you were
7 generally opposed to putting low income programs into
8 MEEIA; is that correct?

9 A. The single family low income.

10 Q. Single family low income. But you would agree
11 with me that MEEIA does contemplate having low income
12 programs?

13 A. Uh-huh, yes.

14 Q. And you were opposed to putting those programs
15 in because they're not cost effective?

16 A. No.

17 Q. And yet MEEIA contemplates those programs not
18 being cost effective?

19 A. Would you like me to elaborate a little?

20 Q. I would. And that's kind of why I'm bringing
21 this up. MEEIA does, in fact, contemplate -- there's no
22 cost effective requirement in MEEIA for low income
23 programs; is that correct?

24 A. That is correct.

25 Q. Please expound.

1 A. We're absolutely not against low income
2 programs per se. We're against the low income direct
3 install program proposed by NRDC. In part because a
4 much more cheaper, more effective way already exists
5 through weatherization. And those are administered
6 through rates collected through the normal course of
7 bills in a given rate case. So both Staff, the Company,
8 our office went to great lengths of taking that out of
9 past MEEIAs because if a MEEIA didn't happen for
10 whatever reason, then you wouldn't have low income
11 weatherization because it would have been in MEEIA. But
12 because weatherization is in our rates, we're
13 maintaining that those stay there.

14 We're not against low income multi family.
15 We're not against low income PAYS, for example. Those
16 are all arguably better ways because that empowers the
17 customers as opposed to just giving them something for
18 free.

19 Q. Okay. My next question is in regard to you
20 had mentioned at the very beginning of your testimony
21 that when Ameren -- I'm sorry, when KCPL/GMO first came
22 in for MEEIA Cycle 1 there was a net shared benefits
23 model and you called it something else, LARS; is that
24 correct?

25 A. An LRAM.

1 Q. LRAM. Sorry. Thank you. I'm going to call
2 it net share benefits because that's what I know. In
3 MEEIA Cycle 1 they used a net shared benefits model,
4 correct?

5 A. That's correct.

6 Q. That overstated savings?

7 A. Yes.

8 Q. That was not used in MEEIA Cycle 2?

9 A. That's correct.

10 Q. I believe I remember reading somewhere that
11 that was what was being proposed in MEEIA Cycle 3; is
12 that correct?

13 A. In part, yes.

14 Q. Explain that to me in part.

15 A. Let me follow up I guess with a question. Did
16 you mean that the net share benefit model would be used
17 in Cycle 3?

18 Q. From the Company's perspective.

19 A. I think the Company misspoke if that's the
20 case. Nobody here is proposing a net shared benefit
21 model. That's gone away.

22 Q. That's what I misunderstood.

23 A. Yeah.

24 Q. The other is a question regarding you
25 indicating old data. I know we're talking about data

1 from 2015. But it's my understanding in reading your
2 testimony that you had some problems with them, they
3 received a variance from doing a 2000 I believe it's '18
4 or '19 --

5 A. '19.

6 Q. -- 2019 IRP update on the triennial filing,
7 and you indicated that allowed them to go off 2018 data
8 which you believe was incorrect, and this is just an odd
9 question to ask. Wasn't the Office of the Public
10 Counsel, didn't they support that variance?

11 A. We did.

12 Q. Wouldn't that have been the time to argue
13 against how that was going to throw everything else off?

14 A. It's a valid question. It's a valid point. I
15 guess, you know, as an office we made a collective
16 decision that if we say no to everything sometimes it
17 tends to get crowded out. If there was going to be --
18 our hope is that we would settle, we would settle this
19 MEEIA case. That was the hope when we elected not to
20 contest the 2019 back in the spring. Unfortunately
21 talks deteriorated and we're here.

22 Q. My next question is just one that was kind of
23 unclear. At some point yesterday somebody said that
24 Ameren was going to be implementing a PAYS program and
25 then another party or another person said they weren't

1 sure, that they didn't remember that being part of the
2 agreement. Do you know if Ameren is going to be
3 implementing the PAYS program in any fashion?

4 A. That's a great question, and I'm glad you
5 brought it up because there's some confusion on this.
6 The PAYS program was not part of the Ameren stipulation.
7 We misspoke earlier.

8 Ameren Missouri put forward in our DSM meeting
9 that they were willing to look at a PAYS RFP this fall.
10 Empire District Electric has put in that they're
11 interested in that as well. I guarantee both of those
12 utilities are watching this case right now to see the
13 Commission's reaction to PAYS off of that. So they've
14 put forward that they were going to file an RFP
15 regarding PAYS. I guess I'll take them at their word
16 that that's what they're going to do. But you're right,
17 I mean, as of right now nothing is set. An RFP hasn't
18 been filed. I'll put it that way.

19 Q. Certainly in regard to the PAYS program I had
20 some confusion yesterday when questioning a witness as
21 to who owns what, and I think I understand, maybe I
22 don't and you can correct me if I'm wrong, that if this
23 investment is made into improving the property -- well,
24 if it's like an HVAC system that has value and can then
25 be removed and sold, then certainly that's property but

1 nobody is going to pull the caulk out from underneath
2 the window --

3 A. Insulation, right.

4 Q. -- that's already been shot in or the
5 insulation that's been cut to size. So it's not really
6 a matter -- ownership really isn't the issue when it has
7 no value without the particular property. Is that kind
8 of where that was going?

9 A. It is. Judge, what I would recommend too, the
10 Q&A addresses that in my attachments to my testimony,
11 but PAYS is designed to be ultraconservative to only do
12 measures that are going to guarantee savings. You're
13 not going to get an energy efficient toaster out of PAYS
14 because you're not going to get the payback off of that.
15 What you're going to get is insulation because you're
16 going to get savings. Putting insulation you're going
17 to start to see those savings almost immediately both in
18 heat and in cool. If you were going to save, say, 15
19 bucks off of your bill, there would be a fixed fee on
20 that bill each month that would be less than 15 bucks
21 that would go to paying down that insulation. So you're
22 paying off the insulation in installments and you're
23 getting those savings that you otherwise wouldn't have.

24 Q. I know I'll take a look at that. In regard,
25 and Mr. Opitz from Renew kind of covered this, very

1 early in the proceeding I saw like the whole Office of
2 Public Counsel table kind of go no when it was put forth
3 that the Office of Public Counsel and the Staff were
4 proposing no earnings opportunity.

5 A. Right.

6 Q. And Mr. Opitz kind of fleshed out with you a
7 little bit that you're not opposed to an earnings
8 opportunity, and you've listed some particular including
9 this PAYS program. Is your earnings opportunity as
10 you've put it out there limited to those programs or
11 would you be -- do you see that as part of a larger
12 earnings opportunity for them?

13 A. I mean, I feel like -- Well, they're two parts
14 to that question if I may. One, with the urban heat
15 island in that, and I'm open to criticism or feedback if
16 we ever do go back to settlement, but I had thrown out
17 the concept of the 10 percent return on any dollars that
18 they could generate towards mitigating the urban area
19 heat island. So if they were able to raise a hundred
20 million dollars, they would get a ten million dollar
21 return on that investment. That's one example.

22 The other example that I've put out there it's
23 the default MEEIA level. I would say that our office is
24 so committed to this that we went above and beyond what
25 we've done for any other utility, and Mr. Eaves pointed

1 out or when we asked in redirect just about every
2 utility in the state has got an energy efficiency
3 program. Only two have an earnings opportunity. That's
4 Ameren and KCPL. All those other utilities don't have
5 an earnings opportunity. There's reasons why those
6 other utilities do those programs without an earnings
7 opportunity. But putting that issue aside, we've said
8 that if you spent your default levels just to maintain
9 the programs until things get better, I think we set up
10 to \$333,000 of an earnings opportunity per year on
11 maintaining that is what we put forward. So we're not
12 -- I think in that regards our office's position did
13 differ from Staff. I think in just about every other
14 instance I think Staff and our office is in alignment
15 which is rare.

16 Q. Just jump subjects again. In regard to the
17 business demand response program, the Company says
18 that's an interruptible or curtailable program.

19 A. Uh-huh.

20 Q. Staff has for whatever reason said they can't
21 determine whether it is or not. Does OPC have an
22 opinion on whether or not it is an interruptible or
23 curtailable program?

24 A. The Company, I think it's a legal question. I
25 would defer to my counsel in his, I guess, brief. But

1 my testimony spoke to the business demand response
2 program. Ultimately -- we spoke to this in the last
3 rate case KCPL because there was a lot of discussion and
4 a lot of interest from the Commission about the Indiana
5 model and demand response programs. We had a workshop
6 devoted to this. We had expert speakers from RAP, from
7 MSA, from SPP all attended to speak on this. One of the
8 settled conditions from that KCPL/GMO case was to create
9 an interruptible curtailable program and it was in part
10 because if the Company didn't get a MEEIA you would
11 still have that program available.

12 We also argued that if you've opted out of
13 MEEIA, you've adopted out of MEEIA. It means you can't
14 opt back in to get its benefits. But having an
15 interruptible curtailable program, which the Company
16 does have, allows those customers to still participate
17 in an interruptible and curtailable program. That's how
18 you get around that statute.

19 JUDGE CLARK: Okay. Those are all the
20 questions I have. Commissioner Rupp?

21 QUESTIONS BY COMMISSIONER RUPP:

22 Q. There's been a lot of discussion over
23 nonparticipant benefits. Real quickly, try to lay out
24 urban heat island and how that solves that problem. Do
25 you think it would solve that problem enough for the

1 detractors on this application to say that there's not
2 enough benefit for nonparticipants?

3 A. Commission guidance would certainly help that.
4 I do. I think you've got a lot of empirical data that
5 exists today. That's the great thing about this.
6 Lawrence Berkeley National Labs just released a study
7 specifically for Kansas City and the Greater Kansas City
8 region. We've got not only that study but a Leidos
9 study which is attached to my testimony that speaks to
10 what would happen if you did nothing, right, and what
11 would happen if you started mitigating this. In short,
12 it will generate savings for nonparticipants over the
13 life span in my opinion. It will be a difficult thing
14 to accomplish in the time frame that we're talking about
15 because it really is outside the box thinking. This
16 isn't about light bulbs. This is about really a
17 coordinated effort with the City of Kansas City, the
18 Kansas City's Water Utility, regional actors like
19 Mid-America Regional Council, EPA, DOE, other actors.
20 We contacted a group out of the Netherlands, Silvolde.
21 All of this is in my testimony. They're all interested.
22 They're all very, very interested in this.

23 And then having it through a utility just
24 makes so much sense to me too. So I'm very optimistic.
25 I think this is something that, you know, KCPL prides

1 itself on outside the box thinking and being innovative.
2 This is it. I mean, I can't think of a more outside the
3 box thinking innovative opportunity for the company
4 really to do some good.

5 Q. And it was brought up I think the first day of
6 testimony that previous MEEIA programs kind of got some
7 of the low hanging fruit and it's harder to get more
8 savings as we go on. Do you believe that ideas like the
9 urban heat island are the natural progression for a
10 MEEIA program moving forward?

11 A. Yes. I mean, that's the short answer. I
12 think there's still a lot of low hanging fruit, to be
13 honest. We're a home ruled state. There's a lot of
14 people that aren't replacing their HVAC like myself. I
15 think there is a lot of low hanging fruit and you can
16 design it to get and tap into that low hanging fruit.
17 The larger issue is that avoided cost, right, and I
18 think we can get there by outside the box thinking like
19 that.

20 Q. And you think the low hanging fruit like HVAC
21 and everything, the best way to do that is through PAYS?

22 A. Absolutely. I'll hear hell about it.
23 Reasonable minds can differ on what low hanging fruit
24 is. I think most people would probably say low hanging
25 fruit is light bulbs. Yes, we've moved beyond light

1 bulbs.

2 COMMISSIONER RUPP: That's all I have.

3 Thanks, Judge.

4 JUDGE CLARK: Any recross based upon
5 Commission questions? Staff?

6 MS. MERS: Just one.

7 RECROSS-EXAMINATION BY MS. MERS:

8 Q. You were asked by the judge about the business
9 demand response program and your view on it if was
10 interruptible or curtailable. To your knowledge, has
11 the Company indicated that it will physically withhold
12 the supply of electricity from customers that sign up
13 for the program?

14 A. No.

15 MS. MERS: Thank you.

16 JUDGE CLARK: Is that your only question?

17 MS. MERS: Yes.

18 JUDGE CLARK: Renew Missouri?

19 RECROSS-EXAMINATION BY MR. OPITZ:

20 Q. Dr. Marke, I think it was Judge Clark who was
21 asking you about some details about PAYS and how it
22 works. Do you recall that?

23 A. I do.

24 Q. And in terms of prior MEEIA cases, one issue
25 has been free ridership; is that correct?

1 A. Yes.

2 Q. With PAYS, is free ridership an issue at all?

3 A. That's a great question. It is not an issue,
4 which is even more of a reason for the utility to
5 support that. Real briefly. Their whole earnings
6 opportunity is predicated on this idea that absent these
7 programs people wouldn't actually do this measure. If
8 they did, if you were going to replace your HVAC anyway
9 because it's dead and you're taking advantage of it, of
10 their rebate, you're considered a free rider. And the
11 Company is actually penalized for that. They're not
12 allowed to get a return on their earnings opportunity if
13 free riders are identified in their EM&V. By default
14 PAYS wouldn't have any free riders because these are
15 people that just literally can't, they don't have the
16 money to do this. This is allowing them the opportunity
17 to bring the stuff on. That is absolutely an incentive
18 for the Company. That's a huge risk of mitigation at a
19 minimum.

20 Q. So related to the free ridership, how is that
21 associated with NTG?

22 A. It would be one.

23 Q. So one would be there's no free ridership
24 that's caused by the Company's program?

25 A. That's right.

1 Q. And so I think there was some discussion
2 yesterday about proposals for a .85 NTG for certain
3 programs?

4 A. Yes.

5 Q. And that would basically limit the Company's
6 ability to recover down to 85 percent, right?

7 A. Yes. I believe the .85 is referring to the
8 throughput disincentive.

9 Q. Okay. So that's a separate issue then?

10 A. It is. I think we recommended .70 for the
11 throughput disincentive.

12 MR. OPITZ: That's all I have, Judge.

13 JUDGE CLARK: Thank you. Any recross from the
14 Company?

15 RECCROSS-EXAMINATION BY MR. FISCHER:

16 Q. In your conversation with Judge Clark, I think
17 you were talking about the Ameren RFP on PAYS. Do you
18 recall that?

19 A. (The witness nodded his head.)

20 Q. Do you know, Dr. Marke, whether the Ameren RFP
21 or their plans are focused only on the specific PAYS
22 program or might it also be broader looking for other
23 alternatives?

24 A. I can tell you what they've told me which was,
25 Geoff, we're going to look at PAYS, you won. I'll wait

1 to see the RFP I guess.

2 Q. The PAYS is a specific program though. There
3 are others out there that are what you might call
4 creative financing approaches?

5 A. Creative financing approaches. PAYS is an on
6 tariff program. If you're referring to low income
7 financing through other means that there are other
8 options.

9 Q. Would you agree that Ameren has indicated
10 they're going to look at PAYS but not necessarily that
11 they're going to implement it yet?

12 A. I think that's a fair characterization at this
13 point. I guess, yeah, they can do what they want at the
14 end of the day.

15 MR. FISCHER: That's all I have, Judge. Thank
16 you.

17 JUDGE CLARK: Any redirect from the Office of
18 the Public Counsel?

19 REDIRECT EXAMINATION BY MR. HALL:

20 Q. Dr. Marke, do you recall counsel for Renew
21 Missouri asking you about NTG?

22 A. Yes.

23 Q. Just for the record, is that net to gross?

24 A. That's correct.

25 MR. HALL: Your Honor, may I approach?

1 JUDGE CLARK: Go ahead.

2 BY MR. HALL:

3 Q. Dr. Marke, in response to a question from
4 Commissioner Rupp, you had mentioned that Lawrence
5 Berkeley National Labs had just released a new report on
6 Kansas City urban heat island phenomenon. Do you recall
7 that?

8 A. Yes.

9 Q. It was in, was it in your surrebuttal or your
10 rebuttal testimony where you mentioned that you wished
11 to update the Commission once a forthcoming report from
12 Lawrence Berkeley National Labs became available?

13 A. I think it was my rebuttal.

14 Q. Is that report now available now?

15 A. It is.

16 Q. For purposes of the record I went around the
17 room and distributed copies of a report from Lawrence
18 Berkeley National Labs. Is that report the new
19 forthcoming report that you're referring to?

20 A. This is the report. These are the authors
21 that our office has been working with that we've held
22 several meetings at KCPL with a variety of different
23 actors.

24 Q. And just for clarity sake, could you read the
25 title of the report for the record?

1 A. Heat Island Mitigation Assessment and Policy
2 Development for the Kansas City Region.

3 MR. HALL: Your Honor, I had this previously
4 premarked as Exhibit 202. At this time I move for its
5 admission.

6 JUDGE CLARK: Any objections to admitting
7 Exhibit 202 onto the hearing record? I hear none.
8 Exhibit 202 will be admitted onto the hearing record.

9 (OPC EXHIBIT 202 WAS RECEIVED INTO EVIDENCE
10 AND MADE A PART OF THIS RECORD.)

11 BY MR. HALL:

12 Q. Dr. Marke, you were asked by counsel for Staff
13 about the cycle of denial. Do you remember that
14 conversation?

15 A. I do.

16 Q. Do you understand the cycle of denial to be a
17 theory?

18 A. Yes.

19 Q. But in your experience with the Public
20 Counsel, you've had a real life experience with actual
21 denial of energy efficiency applications?

22 A. That's correct.

23 Q. Have you not? In your experience with -- Has
24 the rejection of any MEEIA application received
25 attention from media in the state?

1 A. Yes.

2 MR. HALL: Your Honor, may I approach again.

3 JUDGE CLARK: Go ahead.

4 MR. HALL: For the purposes of the record, I
5 went around the room and distributed copies of a
6 newspaper article and I've given the newspaper article
7 itself along with that copy to Dr. Marke.

8 BY MR. HALL:

9 Q. Now, Dr. Marke, do you recognize this article?

10 A. I do recognize it.

11 Q. Can you explain what it is?

12 A. This is an article from the St. Louis
13 Post-Dispatch. The date is July 26, 2015, so
14 approximately four years ago we were having a hearing
15 with Ameren Missouri over Cycle 2. And at the time the
16 concern was well, if the Commission doesn't adopt
17 Ameren's application they'll at least walk away because
18 MEEIA is voluntary and nobody can make Ameren do
19 anything that Ameren doesn't want to do. I was asked
20 point blank do you think they'll walk away, Dr. Marke?
21 I'm quoted at the top there saying I don't think they'll
22 walk away. I think there's too much money here. The
23 Post-Dispatch quoted me on that. And it turned out to
24 be true. The Company came back, they negotiated with
25 both Staff, OPC and other parties and we got a better

1 MEEIA. And they ended up getting a MEEIA 3 on top of
2 that later.

3 Q. After reviewing this article, do you believe
4 this to be an accurate portrayal of the events of
5 Ameren's MEEIA Cycle 2?

6 A. I can unequivocally say that Missouri is
7 better off the Commission having said no to Ameren
8 Missouri's one-sided application in MEEIA Cycle 2 and
9 allowing parties to reconvene with guidance from the
10 Commission in that case. I hope the same thing will
11 happen here.

12 Q. And as I posited, the copies that's been
13 distributed to everyone is the copies of the actual
14 newspaper in front of you. Do you know the origin of
15 that newspaper?

16 A. The St. Louis Post-Dispatch?

17 Q. Yes.

18 A. Yes.

19 Q. Would you care to explain where you got that
20 newspaper?

21 A. I don't remember where we got it. I'm sorry.
22 I don't. Where I got the paper?

23 Q. Yes.

24 A. We have a subscription in our office.

25 MR. HALL: At this time, Your Honor, I would

1 move for the admission of this as an exhibit marked 203
2 relevant to the purposes of discussing whether or not a
3 future application could be seen after a rejection of a
4 MEEIA proposal.

5 JUDGE CLARK: Any objection?

6 MR. FISCHER: Yeah, Judge. I'm going to
7 object.

8 JUDGE CLARK: Hold on just a second. Any
9 objections? Go ahead. Well, I'll object first on the
10 grounds that this was dated 2015. It could have been
11 included in his direct or his rebuttal or any other
12 filing he made. He's already quoted I think what's
13 important to him is I don't think they'll walk away.
14 Otherwise, it's hearsay. It's improper to be added in
15 now on redirect in this case.

16 MR. HALL: Your Honor, if I may respond.

17 JUDGE CLARK: Hold on just a second. I'm
18 going to overrule that. I think that the Company by
19 comparing themselves in regard to both Ameren's MEEIA
20 Cycle 2 and MEEIA Cycle 3 negotiations have at least
21 made it relevant. So that will be admitted onto the
22 hearing record as Exhibit 203.

23 MR. HALL: Thank you, Your Honor.

24 (OPC EXHIBIT 203 WAS RECEIVED INTO EVIDENCE
25 AND MADE A PART OF THIS RECORD.)

1 MR. HALL: On that point, I have no further
2 questions.

3 COMMISSIONER RUPP: Who gets the coupons in
4 the subscription when the Sunday paper comes to your
5 office?

6 THE WITNESS: We only get it during the week.
7 We don't get the weekend version.

8 COMMISSIONER RUPP: You don't get the Sunday.

9 JUDGE CLARK: Any recross based on Commission
10 questions? Okay. I don't believe and I want to clarify
11 this. Dr. Marke, you can step down.

12 (Witness excused.)

13 JUDGE CLARK: I don't believe that there are
14 any parties with any remaining witnesses that haven't
15 already been waived. What I'd like to do at this time,
16 and let me go wide with the view here, what I'd like to
17 do at this time is briefly go through the exhibits.
18 Hold on just a second. I'd like to briefly go through
19 the exhibits for the parties and be sure that they've
20 gotten everything admitted that was admitted and if a
21 party is not present that I at least understand that all
22 the parties are in agreement as to what those parties
23 had entered onto the hearing record.

24 So I'll start with the Company's exhibits. It
25 appears that the Company has six exhibits that were

1 admitted onto the hearing record. Those would be 1C,
2 2P, 3C, 4P, 5 and 6. Is that what you have for what has
3 been admitted?

4 MR. STEINER: That's what I have, Your Honor.
5 Thank you.

6 JUDGE CLARK: Thank you. In regard to Staff's
7 exhibit list, I have 100, 101 public and confidential,
8 102, 103, 104 and 105 confidential.

9 MS. MERS: Yes, Your Honor, that's what I have
10 as well.

11 JUDGE CLARK: In regard to the Public
12 Counsel's exhibits, I have 200 public, 200 confidential,
13 201, 202 and the just added 203.

14 MR. HALL: That is my understanding as well.
15 Thank you.

16 JUDGE CLARK: In regard to the Division of
17 Energy who is not here, I believe both the testimony of
18 Martin Hyman, 350, and the testimony of Jane Epperson,
19 351, have been offered and admitted onto the hearing
20 record. Is that what everybody else has? I see nods.
21 I'll take that as a yes.

22 I think a better way to do the parties that
23 are not here is to do it by objection. So I'll ask if
24 there's any objection to those. In regard to NRDC's
25 exhibit list, they have 400, the rebuttal testimony of

1 Phil Mosenthal, 400 confidential, so that would make
2 400, 400 public, also the rebuttal testimony of Phil
3 Mosenthal and 401 the affidavit of Mr. Mosenthal. Any
4 objections? I see none.

5 In regard to Renew Missouri Advocates, for you
6 I have Exhibit 450, the rebuttal testimony of Mark
7 Cayce, 451, the rebuttal testimony of James Owen, 452,
8 the surrebuttal testimony of James Owen and 453, the
9 rebuttal testimony of Philip who I can't pronounce.

10 MR. OPITZ: That's correct, Judge.

11 JUDGE CLARK: Thank you. As to the National
12 Housing Trust who is not here for day two, I have 550A
13 and B with one being the confidential version and one
14 being the public version and 551, and both of those are
15 the rebuttal and surrebuttal testimony of Annika Brink.
16 Any objections? I see none.

17 Now, it's my understanding -- Let me ask at
18 this time are there any matters before going into
19 cleanup that need to be handled by the Commission? Any
20 post-hearing motions, anything like that? I see none.

21 It's my understanding, Ms. Bentch, that
22 transcripts for this case will be available on September
23 26; is that correct?

24 THE COURT REPORTER: That's correct.

25 JUDGE CLARK: And since that is -- is that

1 tomorrow? No, that's Friday. I don't assume that
2 there's any reason to expedite those beyond that.

3 THE COURT REPORTER: I think that's Thursday.

4 JUDGE CLARK: Is that Thursday? Yeah, that's
5 right. Today is Tuesday. Thank you.

6 THE COURT REPORTER: But I'd take Friday.

7 JUDGE CLARK: Well, if that's what we've asked
8 for, I'm going to go ahead and stick with that and
9 that's because of the briefing times that have been
10 given. And I have down, and do all the parties agree
11 that initial briefs are due, according to the procedural
12 schedule, on October 11 with reply briefs due on October
13 21.

14 I'd indicated at the beginning that because I
15 felt that the issues were not sufficiently -- didn't
16 sufficiently cover the issues in a way that gave the
17 Commission a lot of insight in terms of what needed to
18 be determined in anything other than a broad sense that
19 I might add some additional areas to briefing. And I'm
20 going to do that now.

21 There's been a lot made of avoided costs. So
22 I would like a separate section of briefs addressing why
23 avoided costs are important to this if, in fact, they
24 are. Multiple times the Company brought up that they
25 should be allowed an earnings opportunity and Staff

1 multiple times brought up that the earnings opportunity
2 should also be zero like their recommended avoided cost.
3 So I'd like the parties and obviously in regard to Renew
4 Missouri, the parties that are interested in that issue,
5 would like them to brief why the Company should or
6 should not be allowed an earnings opportunity.

7 Skip that. I want to know from all the
8 parties why the business demand response program is or
9 is not an interruptible or curtailable program. I'm
10 going to lump together, just because I want to know more
11 about it, I'm going to lump together the NRDC's
12 request to have the Commission approve an order, a
13 modification to the MEEIA as supported by them and I'm
14 going to lump that together with the PAYS program in
15 regards to addressing the particular low income issues
16 put forth. I don't really want to hear about the Watts
17 or the other ones. I believe those are sufficiently
18 explained in surrebuttal. I'd like some arguments as to
19 why the Company should be required to adopt PAYS and
20 from the Company why they don't think they should.

21 I'll leave this as optional, but it would be
22 helpful and I've stressed several points, I don't see
23 since these are two different applications and I have a
24 very limited understanding of how SPP works why the
25 Commission couldn't approve one application and deny the

1 other or modify them both accordingly to align. So I'll
2 allow the parties to put forth whether or not they
3 believe -- to argue why they believe the Commission
4 should address these either together or these
5 applications together or separately. And you're free to
6 mention SPP or not. It sounds like SPP is the driving
7 force behind that. If that has an effect, I'd like to
8 know.

9 Finally, the first issue as put out which was,
10 I believe, should the Commission accept, reject or
11 modify the Company's MEEIA Cycle 3 and approve its
12 variances is extremely broad. I'd like to address the
13 variances if not individually at least into a block of
14 the first four and the last one separated out if not
15 individually and I believe in response to one of the
16 questions, or maybe it was in one of the attorney's
17 openings, I can't remember, they said in regard to the
18 fifth variance they said either deny or approve with
19 alterations, and I don't know what that means. So that
20 how is Staff wanting to alter that I guess would be a
21 question for me. And the other parties can address
22 whether or not it should be approved.

23 I will leave -- I did not ask a lot of
24 questions about peak reduction. So I'm not going to go
25 back into that. Those are the additional briefing

1 topics that I would like.

2 Of a procedural nature, that's all I have. Is
3 there anything else that the Commission needs to
4 consider before we adjourn this hearing? I see nothing.
5 I appreciate all of your time today. I appreciate
6 everybody's cordiality. I know that at times there were
7 some things over which parties were passionate or got
8 heated over, but I think everybody conducted themselves
9 very well. So I appreciate that. With that in mind,
10 this evidentiary hearing is now adjourned and we'll go
11 off the record.

12 (Off the record.)

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CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640, Certified Court Reporter with the firm of Tiger Court Reporting, LLC, within the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

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