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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
On-the-Record Presentation
July 16, 2012
Jefferson City, Missouri
Volume 4

In the Matter of Union Electric)
Company d/b/a Ameren Missouri's)
Filing to Implement Regulatory)File No. EO-2012-0142
Changes in Furtherance of Energy)
Efficiency as Allowed by MEEIA)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE
KEVIN D. GUNN, Chairman,
TERRY M. JARRETT,
ROBERT S. KENNEY.
COMMISSIONERS

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

2 JUDGE WOODRUFF: Good morning. And we'll go on
3 the record proceeding concerning the stipulation agreement
4 that's been filed in EO-2012-0142, which concerns Union
5 Electric Company doing business as Ameren Missouri's MEEIA
6 filing. We'll begin today by taking entries of
7 appearance, and then we'll move directly into questions
8 from Commissioners. So entries for Ameren?

9 MS. TATRO: Wendy Tatro, 1901 Chouteau Avenue,
10 St. Louis, Missouri, 63103.

11 MR. LOWERY: Jim Lowery of the law firm of Smith
12 Lewis, LLC, P.O. Box 918, Columbia, Missouri 65205,
13 appearing on behalf of Ameren Missouri

14 JUDGE WOODRUFF: Thank you. And for the Staff?

15 MR. WILLIAMS: Nathan Williams, Jennifer
16 Hernandez, John Borgmeyer, P.O. Box 360, Jefferson City,
17 Missouri, 65102.

18 JUDGE WOODRUFF: Public Counsel?

19 MR. MILLS: On behalf of the Office of Public
20 Counsel and the public, my name is Lewis Mills. Address
21 is Post Office Box 2230, Jefferson City, Missouri, 65102.

22 JUDGE WOODRUFF: The NRDC parties?

23 MR. ROBERTSON: Henry Robertson, Great Rivers
24 Environmental Law Center, 705 Olive Street, Suite 614, St.
25 Louis, Missouri, 63101, NRDC, Renew Missouri and Sierra

1 Club.

2 MS. FRAZIER: Jennifer Frazier with the
3 Attorney's General's Office representing the Department of
4 Natural Resources, P.O. Box 899, Jefferson City, Missouri.

5 JUDGE WOODRUFF: MIEC? Okay. Barnes Jewish
6 Hospital?

7 MS. LANGENECKERT: Lisa Langeneckert, Sandberg
8 Phoenix & von Gontard, 600 Washington Avenue, 15th Floor
9 St. Louis, Missouri, 63101.

10 JUDGE WOODRUFF: For Laclede?

11 MR. ZUCKER: Rick Zucker, 720 Olive Street, St.
12 Louis, Missouri, 63101, appearing on behalf of Laclede Gas
13 Company.

14 JUDGE WOODRUFF: And for KCPL and GMO?

15 MR. FISCHER: James M. Fischer, Fischer &
16 Dority, PC, 101 Madison Street, Suite 400, Jefferson City,
17 Missouri, appearing on behalf of Kansas City Power & Light
18 and KCP&L Greater Missouri Operation Company.

19 JUDGE WOODRUFF: All right. And Ms. Vuylsteke
20 just walked in room, so I'll ask you to enter your
21 appearance for MEIC.

22 MS. VUYLSTEKE: Diana Vuylsteke, with the law
23 firm of Bryan Cave, LLP, 211 North Broadway, Suite 3600,
24 St. Louis, Missouri, 63102.

25 JUDGE WOODRUFF: I believe that's all the

1 parties. I don't see anybody raising their hand that I
2 missed anybody, so we'll go ahead and proceed now with
3 questions from the Commissioners concerning the
4 stipulation agreement. We'll begin with the Chairman.

5 CHAIRMAN GUNN: Well, why don't we begin with
6 the question that was raised in agenda the other day,
7 which is on subsection -- or Section 5, subsection A,
8 which specifies the particular amount of costs that will
9 be added to the revenue requirements, which is one-third
10 of the estimated cost, and then -- and then in two
11 subsequent -- subsequent years, that cost is -- is added.

12 Some of the other Commissioners -- and they can
13 -- I'll let them follow up on this question just to make
14 sure we're getting it right, but the question was how does
15 -- how can this stipulation agreement in the MEEIA filing
16 bound -- bind the Commission in the subsequent rate case?
17 And can it?

18 Or does this stipulation and agreement become a
19 joint -- really bind the parties to a joint position
20 statement in the rate case in that the Commission can do
21 what it wants to do?

22 But there's a second part of that that I'd like
23 people to answer that if that is the case and in the Order
24 approving the stipulation and agreement we make that
25 clear, does that become a modification that nullifies the

1 stipulation and agreement that's provided for later in --
2 later in the stipulation and agreement? So I will let the
3 -- the parties, whatever order you're in, address that
4 question.

5 JUDGE WOODRUFF: Let's let Ameren address it
6 first and anybody else that wants to jump in.

7 MS. TATRO: Thank you, your Honor. Mr. Chair,
8 Ameren agrees that this Commission can't bind the actions
9 of a future Commission or even of this Commission in a
10 rate case.

11 The stipulation doesn't ask the Commission to do
12 so. Paragraph 29, for example, reflects the legal
13 realities that approval of the stipulation doesn't forgo
14 any power of the Commission, meaning, among other things,
15 the power that the Commission decide future rate cases
16 based upon the record developed in those cases and the
17 law.

18 What this approval of the stipulation in this
19 case does is approve disposition of this case on the
20 stipulated terms. But as you stated early, yes, this
21 stipulation does bind the signatories to support the terms
22 of the stipulation in the company's current rate case and
23 in future rate cases.

24 Now, a non-signatory who is a party to a future
25 rate case would be free to argue against the stipulation,

1 and the signatories to the stipulation would be bound to
2 defend the stipulation. But the Commission itself is not
3 bound to take any particular action. However, I think the
4 parties are fairly confident, at least Ameren Missouri is
5 confident, that because the stipulation benefits both
6 company and its customers, the record in the current rate
7 case and any future rate cases will lead a future
8 Commission to continue the implementation of the
9 stipulation.

10 I think if the Commission approved the
11 stipulation with the language that you discussed at this
12 end of your remarks there, it does not modify -- I don't
13 consider that a modification of the stipulation, so I
14 wouldn't believe that it would in any way impact the
15 stipulation.

16 CHAIRMAN GUNN: And right now -- and just to
17 follow up -- and right now, the prefiled testimony in the
18 rate case is consistent with the stipulation and
19 agreement?

20 MS. TATRO: I think it -- it's mostly
21 consistent. I -- if you remember, it built in a hundred
22 -- a third of a hundred percent.

23 CHAIRMAN GUNN: Right.

24 MS. TATRO: So their numbers would be modified
25 slightly. But, conceptually, I think it's relatively

1 similar.

2 CHAIRMAN GUNN: Okay.

3 MR. LOWERY: Just one other -- one of the
4 nuances. The company filed its rate case based on a \$12
5 customer charge, and the stipulation simply says, That's
6 an issue for the rate case.

7 CHAIRMAN GUNN: Sure. And --

8 MR. LOWERY: And the charge today is \$8.

9 CHAIRMAN GUNN: And I guess -- I guess I just
10 want to say that all the signatories to the stipulation,
11 their -- their prefiled testimony up to this point is
12 conceptually consistent with the stipulation that is
13 agreed.

14 So to the extent that this has become a joint
15 statement that bind the signatories in a -- in another
16 case that we have seen evidence at least initially that
17 has been filed that shows that those parties are sticking
18 with that agreement to this point.

19 MS. TATRO: Yes.

20 CHAIRMAN GUNN: Okay. All right. I'll let the
21 other folks address the issue.

22 JUDGE WOODRUFF: Any other parties wish to
23 address making comments about what Ameren just said?

24 CHAIRMAN GUNN: Agree? Can I just get everybody
25 on the record to say that they agree with that position

1 statement?

2 MR. MILLS: Yes, I do. Although, you know, I
3 think with respect to your question about the order
4 approving and whether that would constitute a modification
5 of the stipulation agreement, you could certainly write it
6 so it would be a modification, but I don't think that
7 would be your intent.

8 And if you simply acknowledge the reality that
9 you mentioned and that Ms. Tatro just outlined, then I
10 don't think that would constitute a modification of the
11 agreement.

12 CHAIRMAN GUNN: Well, and the stipulation
13 agreement says we can modify it as long as no party
14 objects to it.

15 MR. MILLS: Right.

16 CHAIRMAN GUNN: If the language wasn't --
17 whatever language we put in, as long as it wasn't
18 objectionable, whether or not it was considered a
19 modification later on.

20 MR. MILLS: Right.

21 JUDGE WOODRUFF: Staff?

22 MR. WILLIAMS: Staff views this agreement to be
23 similar in operation to the Kansas City Power & Light
24 Company regulatory plan, and that -- that was set to
25 operate over a term of years.

1 And there was anticipation about how the
2 Commission would operate under that, which it carried
3 forward. But it didn't bind the Commission into doing
4 that necessarily, other than the Commission had that
5 limitation of not being arbitrary and capricious. So we
6 view this agreement to be along those same lines.

7 JUDGE WOODRUFF: Mr. Robertson, are you still in
8 agreement also with what Ameren said?

9 MR. ROBERTSON: We agree with what Ameren and
10 OPC have said, yes.

11 JUDGE WOODRUFF: Ms. Frazier?

12 MS. FRAZIER: Yes, your Honor, the Department
13 agrees with Ameren and Staff. And in our prefiled
14 testimony, we did support the stipulation as well in
15 answer to your other questions.

16 JUDGE WOODRUFF: Ms. Vuylsteke?

17 MS. VUYLSTEKE: MIEC is also in agreement.

18 JUDGE WOODRUFF: Ms. Langeneckert?

19 MS. LANGENECKERT: We also agree.

20 JUDGE WOODRUFF: Mr. Zucker?

21 MR. ZUCKER: Laclede agrees.

22 JUDGE WOODRUFF: And Mr. Fischer?

23 MR. FISCHER: Well, to the extent KCPL and
24 Greater Missouri -- or KCPL Greater Missouri are not a
25 signatory to -- to the agreement itself, so to the extent

1 that's true, I guess we're not bound by it. But we -- I
2 would defer to Ameren in their analysis today. And we
3 think that any record in any rate case would certainly
4 have the necessary support for implementing it.

5 JUDGE WOODRUFF: Is KCPL GMO a party in the
6 current rate case for Ameren?

7 MS. TATRO: I believe they are.

8 MR. FISCHER: Yes.

9 JUDGE WOODRUFF: Okay. I believe that's
10 everybody.

11 CHAIRMAN GUNN: All right. I'm going to allow
12 -- this was questions that were brought up by both
13 Commissioner Jarrett and Commissioner Kenney, so we may
14 come back, but I'm going to let them clarify or ask any
15 follow-up questions that they need to ask. Commissioner
16 Jarrett?

17 COMMISSIONER JARRETT: Thank you. That answers,
18 really, a lot of my questions. So if somebody could just
19 sort of set out -- let's assume for purposes of argument
20 we approve this. What happens next? This goes for the
21 rate case?

22 Somebody -- somebody just explain sort of what
23 the -- what the steps are as we go into the rate case if
24 we approve it.

25 MS. TATRO: If you approve it in this case, then

1 will be implemented in the rate case in that there will be
2 a third of the program costs added to the revenue
3 requirement. There is an amount also added to the revenue
4 requirement that is a sharing of the net benefits of the
5 program that deals with the through-put that helps offset
6 through-putness incentive that the company faces when it
7 implements energy efficiency.

8 Of course, it's a third of 90 percent with the
9 other 10 percent being held back. The company will file
10 as compliance tariffs the tariffs that implement the
11 energy efficiency programs. A couple of the tariffs are
12 attached to the stipulation and agreement so you can see
13 what those tariffs are going to look like.

14 COMMISSIONER JARRETT: Okay Kay. And just so
15 I'm clear, as the Chairman asked the question the way he
16 asked it was that this is -- for purposes of the
17 Commission treated as a joint position statement in the
18 rate case, we still have the same duties as the
19 decision-makers, consider all relevant factors.

20 This has to be based on competent and
21 substantial evidence in the record. Other parties who are
22 not signatories have the chance to object and put on
23 evidence to the contrary or to support their position, and
24 then we would just decide this issue as any other issue in
25 a rate case; is that correct?

1 MS. TATRO. Right. I don't believe that
2 approval of this stipulation takes away or adds to
3 anything that you have to do in a rate case.

4 MR. WILLIAMS: Commissioner Jarrett, if I might?

5 COMMISSIONER JARRETT: Sure.

6 MR. WILLIAMS: As structured, the agreement
7 contemplates setting a revenue requirement in association
8 with the Missouri Energy Efficiency Investment Act Charge
9 for this company. And it's -- it's limited to that.

10 But it is -- that will be a relevant factor for the
11 Commission for consideration when its setting the general
12 rates in the rate case.

13 And the agreement itself simply contemplates
14 that rate of return factor that could be affected by this
15 case, a factor in the rate case that could be affected by
16 this case.

17 COMMISSIONER JARRETT: Anyone else have any
18 comments?

19 MR. LOWERY: The only thing I'd add,
20 Commissioner Jarrett, is, you know, there are many aspects
21 of a revenue requirements filed in a rate case. And to
22 the extent those do not become contested, the Commission
23 doesn't generally explicitly deal with or -- or, you know,
24 resolve a contested issue.

25 And so Ms. Tatro, I think, was ably correct. It

1 doesn't impede or take away from or change your
2 rate-making powers. But I don't know that it's
3 necessarily the case. The Commission, I think, could make
4 it an issue, but I don't think it's necessarily the
5 case that it is an issue that you resolve in the way you
6 do contested RE issue or another kind of revenue -- not
7 necessarily. Doesn't necessarily have to be.

8 COMMISSIONER JARRETT: I mean, in rate cases,
9 normally, there are certain issues that will settle and we
10 don't necessarily site -- delve into those deeply.

11 MR. LOWERY: Or they never become -- they don't
12 even really settle. They just never -- they never have
13 any discussion. The company's filing is what it is and
14 nobody has an issue with it and it just ends up rolling
15 the revenue requirement.

16 COMMISSIONER JARRETT: Right. But there is the
17 opportunity as a Commission to delve into it if we feel it
18 necessary.

19 MR. LOWERY: Correct. And you have that same
20 opportunity with this.

21 COMMISSIONER JARRETT: Thank you, your Honor. I
22 don't have any further questions.

23 JUDGE WOODRUFF: Commissioner Kenney?

24 COMMISSIONER KENNEY: Thank you for answering
25 the question. I think I have some additional ones, but I

1 want to follow up on something that Mr. Williams just
2 said.

3 You said that this stipulation is something that
4 we could take into account in the rate case in dealing
5 with the rate of return. What do you -- what do you mean
6 by that?

7 MR. WILLIAMS: Stipulation expressly
8 contemplates that the Commission can look at the impact of
9 this stipulation on what effects it may have on Ameren
10 Missouri's rate of return in the upcoming rate case and
11 future rate cases.

12 COMMISSIONER KENNEY: Okay.

13 MR. WILLIAMS: In other words, ROE is
14 contemplation. It also may -- the risk may change so it
15 may affect what their return on equity should be and their
16 cost of debts may be.

17 MS. TATRO: And to be clear, the rates may not
18 change.

19 COMMISSIONER KENNEY: I saw you. So -- okay.
20 So let me ask this, then. Okay. So what we're doing in
21 this is determining that the rate -- that the revenue
22 requirement, rather, in the current rate case is going to
23 have \$30 million added to it, right? We're deciding that
24 today in the context of this stipulation and agreement?

25 MR. WILLIAMS: I think it's more like 80

1 million.

2 COMMISSIONER KENNEY: It's one-third of the
3 whole cost, right? And the other two-thirds would be
4 recovered in two subsequent rate cases?

5 MR. LOWERY: It's one-third of program cost,
6 which is approximately the -- the --

7 COMMISSIONER KENNEY: Oh, you're talking about
8 the TDNSB?

9 MR. LOWERY: But there's also -- right. There's
10 also 90 percent TDNSB. I think what's being decided today
11 as soon as the Commission approves the stipulation is that
12 all the parties are in agreement that that should happen
13 in the rate case.

14 COMMISSIONER KENNEY: Then -- okay. That was my
15 thinking. So then why doesn't it say that this is the
16 thinking of the parties and the parties agree not to
17 contest in a future rate case, but -- rather than
18 attempting to bind this Commission and future Commissions?

19 MR. LOWERY: It's not attempting to bind -- if
20 there's -- if it says will be or shall be or whatever,
21 that's what the parties are agreeing that this will happen
22 and the parties are agreeing that it shall happen but it
23 doesn't -- doesn't -- you're not agreeing to anything.
24 You're not -- you're not a party to that agreement. And,
25 in fact, stipulation expressly disavows that's it's a

1 contract with the Commission.

2 COMMISSIONER KENNEY: That's paragraph 22 --
3 that's paragraph 29, right?

4 MR. LOWERY: That one or -- yeah. There may
5 have been another one, but, yeah, that's probably
6 paragraph 29.

7 COMMISSIONER KENNEY: And that's -- well, I
8 guess my question is, have we ever done anything like this
9 before where we have said in a stipulation and agreement
10 not necessarily in the context of a MEEIA filing,
11 obviously, because this is all brand new.

12 But in the context of a stipulation agreement
13 where we've said that the revenue requirement in a future
14 rate case shall include X, Y and Z. And other -- and let
15 me add another caveat. Other than the Kansas City Power &
16 Light -- or Kansas City Power & Light regulatory forum.

17 MR. WILLIAMS: If I might respond?

18 COMMISSIONER KENNEY: Please.

19 MR. WILLIAMS: MEEIA is different than anything
20 I've ever seen here before. It's contemplating returning
21 to a company that the costs of engaging in doing demand
22 side management for its customers. It's contemplating a
23 sharing of the benefits, the result from the -- those
24 programs, and it's also contemplating incentives.

25 I mean, that's the way the rules have been set

1 up. So we're not dealing with traditional rate-making
2 where you have historical test you're using for your costs
3 in going forward with it.

4 What the parties did in this agreement was agree
5 about what the revenue requirement would be for
6 accomplishing all those things, which will be separately
7 stated as a separately stated charge on the bills to
8 those customers who lawfully can be billed for it.

9 The parties are agreeing in this and asking the
10 Commission to agree that this dollar amount is the
11 appropriate revenue requirement to go along with doing the
12 MEEIA programs for this company.

13 Now, if the Commission changes its mind about
14 that in the rate case, I think this whole agreement is
15 off. But it -- I don't think the Commission's necessarily
16 bound by it other than if it agrees with these numbers in
17 this case, it would be unlawful for it to be arbitrary and
18 capricious in rejecting those numbers later.

19 But that doesn't mean there couldn't be a change
20 in circumstances before the rate cases or something else.

21 COMMISSIONER KENNEY: Say that last part again.
22 If we accepted those numbers and this stipulation, it
23 would be arbitrary and capricious for us to object in a
24 future rate case?

25 MR. WILLIAMS: No. You would be limited. It

1 wouldn't be lawful for you to be arbitrary and capricious
2 in rejecting them in a future rate case. There would have
3 to be some lawful basis for changing your position as to
4 accepting that.

5 COMMISSIONER KENNEY: Well, it's never lawful
6 for us to be arbitrary and capricious, is it?

7 MR. WILLIAMS: Correct. I'm just saying if you
8 make a determination now that this isn't the appropriate
9 revenue requirement to be associated with the MEEIA charge
10 for AmerenUE, you would have to have some basis for moving
11 off of that in the future if you were to reject it.

12 COMMISSIONER KENNEY: Absent some change in
13 circumstances, we would be subject to the argument that we
14 were acting arbitrarily and capriciously?

15 MR. WILLIAMS: You would always be subject to
16 being presented with that argument.

17 COMMISSIONER KENNEY: Sure. I'm just trying
18 make sure I understand the significance of --

19 MR. WILLIAMS: I'm just saying I think there is
20 some significance to the Commission in accepting this
21 agreement with regard to these revenue requirement
22 figures.

23 COMMISSIONER KENNEY: I think so, too. And
24 that's why I'm asking the questions.

25 MR. LOWERY: Commissioner, if I could add

1 something, too. Whether or not we reached the stipulated
2 resolution of this case or let's say we litigate the case
3 and there had been some resolution where some -- some --
4 some parameters about implementing the MEEIA programs
5 would have been approved by the Commission.

6 In the absence of using a rider, which under
7 your rules, a rider is only available for certain things,
8 and even probably more important than that, the rider is
9 on -- you know, if it's being challenged in the Western
10 District -- and as you know, the company made a conscious
11 decision that it wasn't in a position to use a rider right
12 now, no matter how a MEEIA case under those facts is
13 resolved, you're going to be in the same position where a
14 MEEIA order is going to have to be made and it's going to
15 have to be implemented through base rates in a -- either a
16 rate case that's still pending or one that might be filed
17 thereafter.

18 So the fact that there's a stipulation here
19 really doesn't change how the case would have had to be
20 resolved otherwise, even if there hadn't have been a
21 stipulation.

22 COMMISSIONER KENNEY: In the absence of a rider?

23 MR. LOWERY: In the absence of a rider.

24 COMMISSIONER KENNEY: Which the stipulation
25 seems to argue in the alternative in certain respects,

1 because there are other things that are contemplated as
2 being rate case or being recovered in future case.

3 But I think the reason for a rider is held to be
4 lawful by the Western District, then these comments will
5 be limited by a rider which would then arguably make it
6 lawful to recover these things outside of a rate case or
7 in between rates cases.

8 MR. LOWERY: Right. I think it was important to
9 all the parties and not the just the company, and Staff
10 can speak to this, that if the rider becomes available, I
11 think the preferred mechanism would be to use a rider
12 because, as Mr. Williams points out, this is an unusual, I
13 think, unique matter of first impression sort of because
14 of the construct, because of the terms of MEEIA, because
15 of the uncertainty about a rider, we are -- we are
16 attempting to use the -- essentially the traditional base
17 rate process to accommodate a new statute that -- that has
18 some parameters that are different than what we've dealt
19 with before.

20 COMMISSIONER KENNEY: I think Mr. Zucker was
21 going to respond as well.

22 MR. ZUCKER: I just wanted to, Commissioner
23 Kenney, address your comment about whether this has
24 happened before.

25 COMMISSIONER KENNEY: Yes.

1 MR. ZUCKER: And I think, just recently, the
2 Commission approved an agreement in a KCPL case which they
3 set a depreciation rate for a new asset, which was, I
4 think, a bridge, and then there was some other kind of
5 asset.

6 And -- and the theory become that that was not
7 approved and that expense would be approved. And then
8 when it came to the rate case, that amount in the rate
9 case would also be approved unless the Commission had some
10 good reason to change it. So I think that's a very
11 similar example.

12 COMMISSIONER KENNEY: You don't agree with that
13 analysis?

14 MR. MILLS: No. I don't believe that's
15 analogous at all. There was a -- there was a new asset
16 for KCPL that did not have a depreciation rate. The
17 Commission simply said for booking purposes, here's how
18 you're going to book it. The actual cost recovery
19 associated with that won't be determined until the rate
20 case.

21 But I do think there are some other analogies.
22 I think in the early 2000s, there were a couple of
23 different IECs, Interim Energy Charge program with the
24 Empire District Electric Company that had the effect of
25 carrying over from rate case to rate case as sort of a

1 mechanism for recovering fuel costs that implicitly the
2 Commission says, Here's how we're going to treat it in the
3 next case. There weren't specific dollars that said,
4 You're going to put this many dollars in, but there was
5 sort of a formula for how to calculate what would be in
6 there.

7 And to a certain extent, that -- the
8 approval of those agreements had the -- the -- the effect
9 as this stipulation, which is to not bind, but sort of
10 tentatively commit, I should say, future actions for
11 future Commissioners.

12 MR. LOWERY: And Commissioner Kenney, the --

13 COMMISSIONER KENNEY: I'm sorry. Was that one
14 of the FACs?

15 MR. MILLS: The Interim Energy Charge is -- it's
16 intended to serve the same purpose, generally, as an FAC.
17 It's intended to remove some of the risk of fuel price
18 from the company to the customers, but it operates a
19 little differently from an FAC. And those were
20 implemented by agreement among parties, and then they
21 carry over for a series of years.

22 MR. LOWERY: Pardon me, Commissioner Kenney.
23 And Ms. Tatro actually though of -- or at least thought of
24 the concept -- and this predates everybody on the
25 Commission, I think. I don't think it predates Mr. Mills

1 at least in some role here at Commission. But in the --
2 in the late 1990s and early 2000s, Ameren had an
3 experimental alternative regulation plan, and Southwestern
4 Bell also has similar plans in the 1990s and the
5 performance-based regulation, whatever you want to call
6 it.

7 But those two were situations where an approval
8 of how rates were going to be dealt with in the future had
9 been given. But that didn't necessarily mean that a
10 future Commission had to follow through.

11 The contemplation of the parties were that the
12 Commission would follow through, but it wasn't a rider.
13 It was essentially a stipulated agreement about how rates
14 were going to be set using your traditional powers by
15 stipulations, probably not something that the Commission
16 could have imposed on any company. I'm not sure that the
17 statutory authority to do that would exist.

18 But it's not a perfect analogy. I don't -- I
19 think it is somewhat analogous to this Commission in that
20 the Commission said, yes, we approve this plan, that
21 didn't necessarily mean that the Commission over the six
22 years of that plan couldn't -- couldn't have changed it
23 and all the parties would have had to then react in terms
24 of what they would do in response.

25 It didn't happen, but that -- it could have

1 happened.

2 COMMISSIONER KENNEY: Okay. I've got other
3 questions separate and apart from this specific question.
4 So -- but I think we're confining ourselves for the moment
5 to questions regarding recovery outside of the -- or
6 binding ourselves in a future rate case.

7 The reason I guess this becomes a big deal is
8 not because of the requirement that we make our decision
9 based upon the substantial and competent evidence an the
10 whole record, but we're dealing with a situation now where
11 in an unrelated case where the parties said something a
12 long time ago, and today, they're bickering about what
13 that actually meant in the context of an existing rate
14 case.

15 And so I fear that and I worry that at some
16 future point when MEEIA left, perhaps, that the future
17 Commission will be placed in the situation of having to
18 figure out what we all meant as we sit here today in 2012.

19 So I want to make sure it's as clear as possible
20 what we're attempting to accomplish. I appreciate the
21 analogies, but I guess the answer to my question is no, we
22 haven't done anything exactly like this. I mean, we've
23 got some analogous situations that we can look to for
24 guidance.

25 But, ultimately, this is the first time we've

1 done something exactly like this. Because it is not just
2 the program costs that are going to be recovered through
3 the revenue requirement, but TDNSB, and is the performance
4 incentive award also getting covered, or is that added in
5 the base rates some other way?

6 MR. WILLIAMS: Not during the three years of the
7 plan. It will be after.

8 COMMISSIONER KENNEY: Okay. So I've got some
9 other questions about the specific components, but I will
10 wait to ask those after -- when it's my turn.

11 MR. WILLIAMS: If I might, Mr. Lowery said that
12 Staff, he thought, believed that it was preferable to have
13 the rider if it was available. That is, in fact, the
14 case.

15 COMMISSIONER KENNEY: That is the case. Okay.

16 JUDGE WOODRUFF: Commissioner Jarrett, I believe
17 you had some follow-up questions?

18 COMMISSIONER JARRETT: Yeah. I had a question
19 for Mr. Mills. Now, I know the -- I know the MEEIA
20 statute has -- in order for the company to recover certain
21 criteria has to be met with the program. It has to be
22 successful, and there's certain criteria that has to be
23 met.

24 And I -- I believe that the -- the stipulation
25 agreement agrees that, you know, this is subject to

1 true-up, subject to prudence. Do you believe from a --
2 from a consumer standpoint that there's enough protections
3 in here that make this a good agreement?

4 MR. MILLS: Definitely. Yeah. And, you know,
5 their -- Commissioner Kenny's reference to bickering and
6 Mr. -- Mr. Williams' reference to the -- to the KCPL
7 regulatory plan kind I of gave me shivers because if
8 that's our best analogy, I'm getting more nervous by the
9 minute.

10 But, you know, any time that you enter an
11 agreement that's this complicated that's going to last
12 this amount of time, it's -- it's likely that there may be
13 some issues in implementation as we go down the road.

14 We have tried very, very hard and it took us
15 weeks to get this agreement drafted, and we've tried very
16 hard to limit the amount of uncertainty and ambiguity.
17 But, inevitably, something will have slipped by us, and,
18 you know, two rate cases from, we may be -- we may be
19 bickering over this agreement.

20 But nonetheless, I think the way it's
21 structured, I'm as confident as I can be that we have got
22 the appropriate protections in here.

23 COMMISSIONER JARRETT: Well, thank you,
24 Mr. Mills. And I want to thank all the parties, really,
25 for coming to an agreement on -- on this. This is -- as

1 everyone says, this is a new law, and we're kind of
2 feeling our way through this. So to the extent that the
3 parties were able to work together and come to an
4 agreement, I do appreciate that.

5 I don't know if it makes our jobs any easier in
6 deciding what to do, but it's -- at least not going to be
7 all that contested during the rate case, and that does
8 make it easier for us. So thank you.

9 MR. WILLIAMS: If I might?

10 JUDGE WOODRUFF: Sure.

11 MR. WILLIAMS: Mr. Mills mentioned, and it's
12 been brought up, the possibility of bickering over this
13 agreement down the road. It wouldn't matter if it's done
14 in this fashion or if it's done with a rider. The
15 possibility of bickering over the meaning of terms always
16 exists. And the Commission has seen that with regard to
17 appeal clauses.

18 MR. LOWERY: And if I might, just very briefly,
19 I do want to echo what Mr. Mills said, though. This is --
20 this agreement -- I think perhaps, Louis, what you were
21 saying is none of us can guarantee that we actually did
22 this perfectly.

23 We worked very hard to come as close to that as
24 we possibly could. But this agreement was put together --
25 it was a product of a great deal of work and back and

1 forth and input from really every party in this room. And
2 -- and we think we did a good job, and we think we
3 minimized, to the extent humans can minimize it, the
4 potential for bickering.

5 We may bicker, but we don't intend to. And none
6 of us -- none of us have an interest to bicker, and we all
7 have an interest to try and avoid that. And so we worked
8 very hard to try to resolve those potential ambiguities
9 that you might have.

10 MR. MILLS: And that is what I meant.

11 MR. WILLIAMS: And Staff echoes that. We
12 wouldn't have signed onto the thing if we thought it was
13 going to blow up.

14 JUDGE WOODRUFF: Mr. Chairman?

15 CHAIRMAN GUNN: I'll just make one final
16 comment. What drives me crazy and I think some of the
17 fellow Commissioners as well, we think that terms and
18 settlement agreements are purposely left ambiguous in
19 order to have a fight later on.

20 I don't think that's the case here. I think
21 that has been in cases past because it's a difficult issue
22 so they kind of, Oh, we'll say this and everybody kind of
23 agrees generally what it means, but they all figure
24 they're going fight about it later on.

25 And we'd rather deal with it at the time so

1 everybody's memory and all the testimony is fresh. I
2 don't think that's the case here. I mean, I think this is
3 a lot more explicit than we've seen with some other ones.

4 I'm going to move on to some Ellington
5 questions. So the first question is the EM&B contractor,
6 is that solely chosen by Ameren?

7 MS. TATRO: Ameren will hire an independent EM&B
8 contractor. It's Ameren's decision. But I think the
9 stipulation contemplates there will be stakeholder input
10 as part of that process.

11 And, of course, that EM&B contractor is
12 different than the Commission's auditor or --

13 CHAIRMAN GUNN: Right. And that was my second
14 point. And then the second point is that the Commission
15 hires a separate independent auditor to audit the results
16 of the -- of the EM&B contractor.

17 MS. TATRO: Right. And the stipulation
18 contemplates, if at all possible, that that person -- it's
19 not waiting until you get the EM&B would be somewhat
20 involved in the process before so they see what's
21 happening to make it a little bit easier at the back end
22 of the process.

23 CHAIRMAN GUNN: And then the final EM&B report,
24 is that the -- is that the final report issued by the EM&B
25 contractor as audited by the Commissioner -- by the

1 Commission's auditor?

2 MS. TATRO: Well, there will be three reports,
3 one after each program.

4 CHAIRMAN GUNN: Right.

5 MS. TATRO: It will be issued. Parties -- well
6 I think what it contemplates was a draft that comes out.
7 The parties have comments. Staff's comments will include
8 the auditor's comments. Then the Commission will look at
9 that and resolve any disagreements, if there are any at
10 that point in time.

11 CHAIRMAN GUNN: And then -- and then once that
12 is approved by the Commission, the parties are all bound
13 by them --

14 MR. LOWERY: That's right.

15 CHAIRMAN GUNN: -- as contemplated in the
16 stipulation?

17 MR. LOWERY: Yes.

18 CHAIRMAN GUNN: Page 17, the -- all signatories
19 will be bound by the impact evaluation portion of the
20 final --

21 MS. TATRO: You're right. You know, you think
22 you're never going to forget the terms of these things.

23 CHAIRMAN GUNN: All right. I just -- I just
24 wanted to -- I just wanted to get the sequence and see
25 what checks there are on the EM&B contracts.

1 MS. TATRO: Okay. And Ameren Missouri wanted
2 that process because if there is something that the
3 Commission decides needs to be modified, we wanted the
4 opportunity to make that change.

5 We have every incentive to get as much energy
6 efficiency as possible through this program. So that's
7 why it's every year we're looking at instead of waiting in
8 the end of three years.

9 CHAIRMAN GUNN: Well, I -- I think the EM&B
10 stuff is incredibly important because we have the lost
11 revenue in here. That's -- that's the connection that
12 makes the -- that makes the lost revenue component
13 palatable is the EM&B portion of this. So, Lewis, did you
14 have something else?

15 MR. MILLS: Actually, Judge, Mr. Kind wanted to
16 add something to that if -- I don't know what procedure
17 you want to follow to -- to hear from the subject matter
18 experts.

19 JUDGE WOODRUFF: We generally swear them in, so
20 I'll do that.

21 RYAN KIND,
22 being first duly sworn to testify the truth, the whole
23 truth, and nothing but the truth, testified as follows:

24 JUDGE WOODRUFF: Identify yourself.

25 MR. KIND: My name is Ryan Kind. I'm the Chief

1 Energy Economist with the Missouri Office of Public
2 Counsel.

3 JUDGE WOODRUFF: All right.

4 MR. KIND: I just wanted to respond to the
5 question from Commissioner Gunn about does -- is it Ameren
6 that has the discretion to hire the EM&B contractor
7 because that is an important issue.

8 I just wanted to point out that while I
9 certainly agree with the responses you got that, yes, it
10 is their choice of the EM&B contractor, that there is a
11 provision that is important to Public Counsel, I think,
12 and some other parties that's part of the -- of paragraph
13 14 on stakeholder meetings.

14 And it appears on page -- that begins -- that
15 section begins on page 19, continues on page 20 and on the
16 fifth line of page 20, Item C, begins at the end of that
17 line and outlines one of the rules of the stakeholder
18 committee, and it is to consult with and advise Ameren
19 Missouri on issues related to EM&B and including Ameren
20 Missouri's proposed EM&B request for proposals, the scope
21 of the work for future EM&B and issues related to that
22 gross and may be used in future MEEIA plans.

23 And so while Ameren had -- makes the ultimate
24 choice, we would have an opportunity to be involved in
25 reviewing their RFPs before they go out to contractors

1 and, specifically, especially the scope of work in those
2 RFPs. And it's not unusual for stakeholders to also be
3 involved in giving Ameren feedback on specific proposals
4 they get in response to the RFPs.

5 CHAIRMAN GUNN: I don't have any more questions,
6 but I want to make a quick statement. You know, the fact
7 that -- well, regardless of what we do here, I think the
8 fact that you have -- and I think, Mr. Mills, you summed
9 it up.

10 This is a very complex issue. And -- and with
11 the number of parties that were involved, the ability to
12 come up with kind of a rational agreed-upon stipulation
13 that can be used not only today but into the future, just
14 the fact that you're all sitting in the same room all
15 agreeing with each other is pretty extraordinary event.

16 And so regardless of we -- what we do, I think
17 it's an example of what the Commission likes to see on a
18 moving forward basis is that people understand that there
19 are -- there can be benefits to both sides, that you can
20 get in win-win situations and that it takes just good
21 communication, Sometimes a lot of hard work, sometimes lot
22 of intense fighting on particular issues.

23 But there -- we can get to a point where
24 everybody can get in the same room and say, We agree, this
25 is the best thing for Missouri consumers. It's the best

1 thing for Missouri ratepayers at any level and it's good
2 for the utility as well.

3 And when we can do that, I think that the
4 regulation works better when you get the stakeholders in
5 the room doing it. So I applaud you for that, I thank you
6 for that, and I hope to see that continue.

7 We're going have a lot of tough fights coming
8 up, obviously. We've got a lot of stuff before us. And
9 so I hope this kind of spirit of cooperation can -- can
10 continue through those events. So I appreciate the work
11 here, and I want to thank you for it.

12 JUDGE WOODRUFF: Commissioner Jarrett, do you
13 have other questions?

14 COMMISSIONER JARRETT: I don't, Judge. Thanks.

15 JUDGE WOODRUFF: Commissioner Kenney?

16 COMMISSIONER KENNEY: I do. Sorry. Well, let
17 me just say thank you for the hard work that went into
18 this. This is something I've paid quite a bit of
19 attention to. And I'm encouraged by the fact that
20 everybody seems to agree, so that's -- that's a positive.

21 Let me just ask some general questions about the
22 through-putness incentive, net shared benefits portion and
23 make sure I understand exactly what it is. I mean, the
24 intent with the TDNSB is to deal with through-putness
25 incentive, right? So, primarily, my question is going to

1 be for Ameren, and then anybody else can chime in as well.

2 And the concern with the through-putness
3 incentive is the lost -- loss of revenue that otherwise
4 would have been present had it been selling the same
5 number kilowatts, correct?

6 MS. TATRO: Yes.

7 COMMISSIONER KENNEY: Okay. And a portion of
8 that problem is that fixed costs don't get recovered,
9 correct?

10 MS. TATRO: Correct.

11 COMMISSIONER KENNEY: So this is designed to
12 take care of that problem of lost revenue that results in
13 lost recovery of fixed costs?

14 MS. TATRO: Right.

15 COMMISSIONER KENNEY: Okay. And then the
16 performance incentive award at the end of the three years,
17 right, is -- what does that represent exactly? What will
18 that be?

19 MS. TATRO: The performance incentive at the end
20 of the three years?

21 COMMISSIONER KENNEY: Yes.

22 MS. TATRO: That addresses the third requirement
23 of the MEEIA statues which talks about timely earnings
24 opportunities. And depending on how well Ameren Missouri
25 performs under this stipulation, meaning megawatt hours

1 saved under energy efficiency programs. It's something
2 additional that the company can earn, and it ranges like
3 from 70 percent to 130 percent of the -- of the goal.

4 COMMISSIONER GUNN: Okay. And -- and what
5 component of traditional rates is that designed to
6 compensate for? What's --

7 MS. TATRO: Well, if you invest in a -- if a
8 utility invests in a supply side option, it gets recovery
9 for its cost. It doesn't have a through-put disincentive
10 so you don't have to address that aspect, and it has an
11 opportunity to earn on that investment.

12 COMMISSIONER KENNEY: Okay. Now, in the rate
13 case -- and I don't know if it's addressed in the body of
14 the stipulation somewhere or in the MEEIA report, but
15 there's being contemplated that the customer charge will
16 increase from 4 to \$12. Is that in the rate case or is
17 that in the stipulation somewhere?

18 Ms. TATRO: Well, the rate case, the company
19 requested that the customer charge be set at \$12.

20 COMMISSIONER KENNEY: ALL RIGHT.

21 Ms. TATRO: In the MEEIA report, the initial
22 report that was filed, it was filed presuming \$12. I
23 think the numbers in the stipulation are at \$8, and if you
24 improve -- if you approve an increase, then it will be
25 adjusted.

1 COMMISSIONER KENNEY: And then what will be
2 adjusted?

3 MS. TATRO: Well, the sharing percentage will
4 change.

5 COMMISSIONER KENNEY: Of the TDNSB?

6 MS. TATRO: Yes.

7 COMMISSIONER KENNEY: From what to what?

8 MR. LOWERY: Commissioner Kenney, this was
9 addressed in paragraph 15 of the stipulation on pages 20
10 and 21.

11 COMMISSIONER KENNEY: Okay.

12 MR. LOWERY: And we can have -- we can have --
13 and there's also a chart, I believe. We can have
14 Mr. Davis give you more specificity. But, effectively, if
15 the customer charge, let's say it was set at \$10, and
16 right now, we're just making that up. We've requested 12.
17 There are numbers that are available and the parties
18 agreed upon that -- that we would -- we would possess
19 interpolate the eight and 12 and figure out what the
20 percentage is.

21 I can't give the exact percentage, but --

22 COMMISSIONER KENNEY: Okay.

23 MR. LOWERY: -- it's sliding scale. It's a
24 linear scale, and, effectively, we can figure out the
25 number.

1 COMMISSIONER KENNEY: I guess my -- my
2 over-arching point is that the increase in the customer
3 charge is intended to recover fixed costs, right? And so
4 as that is increased, the sharing benefit between --
5 should -- the amounts that you recover, that Ameren
6 recovers should decrease.

7 MR. LOWERY: The sharing percent would go down.
8 Correct. And the stipulation expressly provides for that
9 to happen.

10 COMMISSIONER KENNEY: So at \$12, how much of
11 Ameren's fixed costs are being recovered through the
12 customer's charge versus a volumetric rates? Do you know
13 that?

14 MR. LOWERY: I don't know that. Mr. Davis
15 might. But I think it's probably -- I think the fixed
16 costs are in the neighborhood of 60 or \$70. So it's --
17 it's a fairly small percentage at \$12.

18 COMMISSIONER KENNEY: Okay. That helps.

19 MR. KIND: Commissioner?

20 COMMISSIONER KENNEY: Yes.

21 MR. KIND: Could I respond to that discussion of
22 fixed costs?

23 COMMISSIONER KENNEY: Sure.

24 MR. KIND: I guess I'm a little troubled by
25 making generalizations about customer charge and the

1 relationship between a customer charge and fixed cost and
2 the extent to which what proportion of fixed costs are
3 recovered.

4 I think it is a very complicated issue. And the
5 way Public Counsel went would often see this is that there
6 are really three categories of cost. There's costs that
7 vary with usage on a kilowatt hour basis. There's costs
8 incurred with demand. And then there's costs that vary by
9 the number of customers, costs that vary per customer.

10 And a lot of people will look at cost of varied
11 per customer. Those costs themselves, there's some
12 important distinctions whether they vary in the short run
13 or long run. And then, also, a large portion of the cost
14 can be considered demands cost, and a lot of people
15 consider those also to be fixed costs.

16 So I just think it's -- it's the kind of issue
17 that really needs to be sorted out in a -- in a rate case
18 where you're take an in-depth look at the class cost of
19 service studies and all of these different categories of
20 cost for the various customer classes.

21 COMMISSIONER KENNEY: Okay. But I --

22 MR. LOWERY: We may -- we may or may not
23 disagree with all that. I think the larger point here is
24 that this is designed to prevent double dipping, so to
25 speak. If you're concerned about customer charge goes up,

1 but we sort of double recover this issue, it's
2 specifically designed to avoid that result.

3 COMMISSIONER KENNEY: And I'm sure there were
4 some, you know, complex arithmetic formula that said \$12
5 is the optimal customer charge or -- how do you arrive at
6 \$12 versus 10 versus 8?

7 MR. LOWERY: I don't know that I can answer that
8 question today. But there is -- there is arithmetic
9 behind where we end up on the NSB depending on where you
10 want to set the customer charge.

11 COMMISSIONER KENNEY: Got you. All right. Now,
12 this is -- this is just an over-arching question. The
13 statute requires the Commission to essentially do three
14 things, provides timely cost recovery, ensure that
15 financial incentives are aligned, and provide timely
16 earnings opportunities.

17 And as to the second one, the ensure the utility
18 financial incentives are aligned with helping customers
19 use energy more efficiently. And the rest of that says,
20 And in a manner that sustains or enhances the customer's
21 incentives to use energy more efficiency.

22 Is this is kind of high level question. Does
23 everybody feel comfortable with that second portion of the
24 clause that satisfies that this is doing so in a manner
25 that sustains or enhances the customers' incentives to use

1 energy more efficiently?

2 MS. TATRO: Absolutely. I mean, it allows the
3 energy efficiency programs to be offered to customers, and
4 programs themselves help customers use energy more
5 efficiently.

6 But if you don't deal with that alignment of the
7 financial incentives, the utility can't sustain the
8 program and it's not available to -- to the customers at
9 least from the utility. So it's all tied up together.

10 COMMISSIONER KENNEY: Mr. Kind?

11 MR. KIND: Thank you. And I -- I pretty much
12 agree with what Ms. Tatro said, although, you know, being
13 designed to encourage customers to use energy more
14 efficiently, I would just note that that is -- that, from
15 our perspective, that is a -- an issue that's related to
16 level of customer charge because, as you increase the
17 customer charge, decrease the per kilowatt hour rate,
18 which has two impacts.

19 It diminishes the price signal to customers for
20 increased usage, and the second and also very important
21 impact is that increasing the customer charge and
22 decreasing the per kilowatt hour effectively increases the
23 period of time that's needed for a customer to break even
24 on their energy efficiency investment, so their pay-back
25 period a lengthened as well.

1 MS. TATRO: Of course, the stipulation
2 specifically reserves that argument for the rate case.
3 That's not addressed in this stipulation.

4 COMMISSIONER KENNEY: Okay. So this is another
5 question about the third component of what the statute
6 requires, the earnings opportunities, that's essentially
7 the requiring us to treat equivalently your DSM programs
8 with what investment and new plant would be treated as,
9 right?

10 MS. TATRO: Well, it's -- that's part of it.
11 There's three parts to that requirement, timely cost
12 recovery, removal of the financial disincentive to
13 aligning of the incentives, and then opportunity for --
14 for timely earnings.

15 COMMISSIONER KENNEY: And -- and so the
16 performance incentive is designed to satisfy that third
17 component?

18 MS. TATRO: Yes.

19 COMMISSIONER KENNEY: Okay. And am I correct --
20 and I think I read this pretty clearly. The phrase lost
21 revenue doesn't appear in there, does it?

22 MS. TATRO: It does not.

23 COMMISSIONER KENNEY: It's the through-put
24 disincentive.

25 MS. TATRO: Yes.

1 COMMISSIONER KENNEY: And that's exactly the
2 same as lost revenue?

3 MS. TATRO: Not as you define lost revenue.

4 COMMISSIONER KENNEY: Explain -- explain the
5 difference to me.

6 MS. TATRO: I believe through-put disincentive
7 is a larger number than lost revenue because it doesn't
8 ask the utility to offset its lost sales by natural
9 growth.

10 COMMISSIONER KENNEY: Okay. So from -- all
11 right. Let me come back to that.

12 MS. TATRO: I mean, just to clarify, I think it
13 should be the definition of lost revenue, but it's not
14 your definition of lost revenue.

15 MR. KIND: Commissioner, if I could elaborate on
16 that. I mean, lost revenues are -- they have a certain
17 definition within the Commission's rule. Just the common
18 usage of the term lost revenue is a little bit different
19 as well.

20 The through-put disincentive concept that you
21 see in here, the number is the result of an analysis
22 that's done to essentially hold Union Electric Company
23 harmless for reductions in sales with respect to their
24 return on equity. And it -- so there's an analysis says,
25 Okay, here is how -- here's the number you need to get to

1 the through-put disincentive that's associated with the
2 load reductions that translate into decreases in revenues
3 news. Here's the number that you need to -- to hold the
4 company harmless.

5 And it's -- it's fairly complicated because
6 you're looking at a lot of different factors. One of the
7 things that simplifies it is you are not looking at the
8 fuel adjustment clause piece. But -- well, and, actually,
9 when I say that, that's not true because the 5 percent --
10 the 95/5 percent split is in the fuel adjustment clause is
11 taken into account as well in that. So it -- there's a
12 lot of complexity to that calculation.

13 But the -- the goal of that calculation is to
14 hold the company harmless from an earnings perspective,
15 not to make up the exact dollar amount of the revenues
16 that are lost due to the decline in sales from its DSM
17 programs.

18 COMMISSIONER KENNEY: And, Ms. Tatro, you said
19 as you define lost revenues. You meant as the Commission
20 defines it in our rules?

21 MS. TATRO: Yes. That's what I mean.

22 COMMISSIONER KENNEY: All right.

23 MS. TATRO: And so we avoid --

24 COMMISSIONER KENNEY: We've not voted against
25 them, so I'm just --

1 MS. TATRO: Well, you did not mean you
2 specifically. And we tried to -- we avoided the
3 word/phrase lost revenue in this stipulation just as to
4 avoid any conflicts.

5 COMMISSIONER KENNEY: I -- that was notable to
6 me. It jumped out, that conspicuous absence of the phrase
7 lost revenues.

8 So, Mr. Kind, when you say the goal is to hold
9 the utility harmless, is that another way of saying it's
10 to leave the earnings neutral?

11 MR. KIND: Earnings neutral.

12 COMMISSIONER KENNEY: Earnings neutral. All
13 right. That's helpful. There -- there will references
14 throughout to items that are to be recovered through an
15 amortization to be included in rates. How -- and it's --
16 in different places throughout, so I can't find a specific
17 paragraph.

18 I mean, I could, but I don't know if it's
19 relevant for the purposes of my question. What's the
20 length of the amortization intended to be?

21 MR. LOWERY: For the performance incentive, I
22 know it has to be within two years. And that's driven by
23 the GAAP account rules. To be honest, I can't --

24 COMMISSIONER KENNEY: That may be the only one
25 that I had in mind.

1 MR. LOWERY: Program cost is three years.

2 COMMISSIONER KENNEY: Okay.

3 MR. LOWERY: You're catch me flat-footed on the
4 other one.

5 COMMISSIONER KENNEY: Sorry.

6 MR. LOWERY: It's going to be in 6-B, I think,
7 for TDNSB.

8 MS. TATRO: Oh, amortization? Two years.

9 MR. LOWERY: And it's two years, also, for the
10 TDNSB.

11 COMMISSIONER KENNEY; So -- all right. I have a
12 couple of other questions. Thank you. The MEEIA report
13 has a chart on page 6. It's -- it's pulled from the ACEEE
14 at the top and states, State fixed cost recovery. All but
15 two of those have a decoupling mechanism as the preferred
16 mechanism for recovering lost revenue.

17 Does anybody have an opinion about their
18 preference for the decoupling mechanism versus some other
19 mechanism for delineating the through-putness incentive?

20 MS. TATRO: I don't know if the question could
21 be answered quite that simply. It would depend on what
22 the coupling mechanism is and how it's structured. So I
23 don't know -- I mean, obviously, a lot of states believe
24 that's the solution. But we haven't had those discussions
25 as to if it would be coupled based on rate per customer,

1 revenue requirement per customer or the entire revenue
2 requirement, and those are all details that would shape my
3 answer. So I don't know that I can give you a straight up
4 yes or no.

5 JUDGE WOODRUFF: Mr. Kind? Or Lewis? Mr.
6 Mills?

7 MR. MILLS: You know, there are -- you can
8 certainly make hypothetical theoretical arguments that the
9 decoupling or, you know, revenue adjustment mechanisms,
10 one is better than the other.

11 We really have not gotten very far along in
12 Missouri in the discussion of particulars about how you
13 would put either of those together other than the current
14 mechanism we've created here.

15 So it's -- it's hard to tell -- you can't just
16 say one is better than the other. It depends -- the devil
17 is in the details. So you can't -- I don't think you can
18 answering that question in the abstract.

19 COMMISSIONER KENNEY: Do we have a docket that
20 was designed to examine alternative rate design in the
21 context of the MEEIA statute. Just remind me where that
22 docket is and --

23 MS. TATRO: I think there was a workshop, and I
24 don't think anything else has happened. John?

25 MR. MILLS: The word languishing springs to

1 mind.

2 COMMISSIONER KENNEY: And perhaps that would be
3 the context in which to explore my question in more depth.

4 MS. TATRO: And in defense of Staff or anyone
5 else, it might be languishing because there was a lot of
6 work went on in this case and in KCP&L's case.

7 COMMISSIONER KENNEY: Fair enough. And let me
8 just say this, and then I'm finished. The reason I voted
9 against the rules wasn't because I wasn't in favor of
10 energy efficiency. Quite the contrary. I think energy
11 efficiency is the most cost efficient way to help
12 customers in terms of reducing the need invest in the
13 expense of power plants. So I'm a big supporter of energy
14 efficiency.

15 I just was very concerned with the lost revenue
16 recovery component based upon the research that I've read
17 and the success that other states have not had in
18 implementing a lost revenue recovery component. So to
19 some extent, I'm very encouraged by what stipulation
20 provides and I'm look forward to seeing how it ultimately
21 develops. Thank you all for your hard work in putting it
22 together and for answering our questions. That's it for
23 me. Thank you.

24 JUDGE WOODRUFF: Mr. Williams?

25 MR. WILLIAMS: Just briefly. This is something

1 new for the Commission. It's being done in the context of
2 this case. But I think that you can anticipate that if
3 companies like what they see coming out of this case,
4 you'll see something similar in other cases. That
5 certainly occurred with the fuel adjustment clause.

6 JUDGE WOODRUFF: Ms. Tatro?

7 MS. TATRO: I would also remind the
8 Commissioners there's one other stipulation that we didn't
9 discuss and perhaps a more minor one because it doesn't
10 resolve all the issues. But it dealt with the some issues
11 between Laclede and Ameren Missouri and how those programs
12 would work. And I know Mr. Zucker is here to talk to the
13 Commission about any questions about that.

14 JUDGE WOODRUFF: And that stipulation is before
15 the Commission to be approved. It's not part of the
16 overall stipulation?

17 MS. TATRO: Right. I think it is referenced.
18 And, obviously, after it was filed, no one filed any
19 objection.

20 JUDGE WOODRUFF: Okay. Mr. Chairman, anything
21 else?

22 CHAIRMAN GUNN: I don't have anything.

23 JUDGE WOODRUFF: Okay. I do just have one
24 question. How soon would these programs, these energy
25 efficiency programs, take effect after this stipulation is

1 approved?

2 MS. TATRO: January 2nd is the anticipated start
3 date.

4 JUDGE WOODRUFF: Okay.

5 MS. TATRO: It takes time to hire all the
6 contractors and get everything started. And we kind of
7 started undertaking some of that process, and it's quite
8 an undertaking.

9 COMMISSIONER KENNEY: I'm sorry. I do have
10 another question about the EM&B contract. So the statute
11 -- I mean, the stipulation has some pretty specific
12 language about the rule that the stakeholders should be
13 allowed to play in helping to determine who that
14 contractor is and what the RFP looks like while it's being
15 developed.

16 Is there a mechanism in place that provides the
17 stakeholders with some ability to halt the issuance of an
18 RFP or stop Ameren from acting if there is no agreement
19 incumbent on the Commission for approval -- or assistance,
20 rather.

21 MS. TATRO: There is not a mechanism where a
22 stakeholder can stop the process if they don't like what
23 Ameren month is doing. But, obviously, Ameren Missouri is
24 held right to prudence review when it's -- later on, so
25 there's incentive not to ignore thoughtful and helpful

1 input that comes from stakeholders. But Ameren Missouri
2 alone is responsible for the performance of its programs.

3 MR. LOWERY: Commissioner Kenney, if I might?

4 COMMISSIONER KENNEY: Sure.

5 MR. LOWERY: We've had multiple analogous
6 situations, at least for Ameren Missouri. RTO cost
7 benefit studies come to mind as being a very similar kind
8 of construct where we have a formal process for keeping
9 other stakeholders informed, getting their input.

10 And those, frankly, have always been -- we may
11 have had a disagreement about RTO matters, but not about
12 that aspect of it. And I think the company has a tracker
13 where they were taking into account people's input. And,
14 as Ms. Tatro said, if folks are raising legitimate
15 problems and we just ignore them, we're going hear about
16 that later, and we're at risk for adverse action from you
17 folks if we were to do that.

18 COMMISSIONER KENNEY: And stakeholders are
19 always free to raise that issue with us. And that can be
20 -- an issue, whatever issue they're having that -- can be
21 an issue that we put in for our RFP, we're having our
22 auditor look at it when that auditor is evaluating the
23 EM&B contracts.

24 MR. LOWERY: That's absolutely true.

25 MR. MILLS: And even beyond that, I think the

1 whole -- the whole structure of this agreement sets up
2 sort of an ongoing relationship. And -- and it really
3 does more closely align the utilities interests in its
4 customers interests.

5 And so while there may be some short-term gain
6 that Ameren could get by gaining, you know, the first
7 round of the EM&B contract, or, in the long term, you
8 know, doing something that would -- that would kill the
9 other party's interest in cooperating, I think, would be
10 something that the utility -- in this -- in this instance
11 would want to do because they would have an interest in
12 continuing this. So there's an alignment of incentives
13 there as well, I believe.

14 COMMISSIONER KENNEY: Thank you.

15 JUDGE WOODRUFF: All right. With that, we are
16 adjourned. Thank you all.

17 (The proceedings were concluded at 11:10 a.m. on
18 July 16, 2012.)

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