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In The Matter Of:
The Consideration And)
Implementation of Section)
393.1075, The Missouri Energy)File No. EX–2010–0368
Efficiency Investment Act)

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SENIOR REGULATORY LAW JUDGE
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JUDGE STEARLEY: All right. Good morning. Today is Monday, December 20, 2010. Commission has set this time for a hearing on the rulemaking in the matter of the consideration and implementation of Section 393.1075, the Missouri Energy Efficiency Investment Act. This is File No. EX–2010–0368.

My name's Harold Stearley and I'm the presiding officer over this hearing today. This is not a contested case, and I'm not going to take formal entries of appearance at this time; however, when various participants go to offer comments, they can introduce themselves at that time period.

As far as preliminary matters, Missouri Industrial Energy Consumers had late–filed their comments in this case, and I have a pending motion for leave for them to late–file. Unless I hear any objections, I intend to grant that motion.

(No response.)

JUDGE STEARLEY: Hearing none, the motion shall be granted. And as with all of our hearings, I do need to advise you–all to please turn off all of your cell phones, Blackberries, any other electronic devices which can interfere with our recording and webcast.

And with that brief introduction, are there any other preliminary matters we need to take up?

(No response.)

JUDGE STEARLEY: All right. Very well. We'll begin by hearing comments. There's no particular set order here. Do I have any volunteers who want to go first? If any participant just wishes to reiterate what they've already filed in writing, they may.

We have a volunteer from Staff. Please introduce yourself for our court reporter.

MR. ROGERS: I'm John Rogers, utility regulatory manager for the Public Service Commission Staff. Is this mic on?

COMMISSIONER CLAYTON: It's on. Just speak into it. Yeah.

MR. ROGERS: Okay. Staff would like to make a few opening remarks to supplement the comments which it has already submitted in File No. EX–2010–0368. These remarks are in response to written comments by other stakeholders and will focus on the areas of: One, the relationship of the proposed Missouri Energy Efficiency Investment Act, M–E–E–I–A, or MEEIA, rules to the Chapter 22 Electric Utility Resource Planning Rules and also; two, the recovery of lost revenue.

Considering the relationship of the MEEIA rules and the Chapter 22 rules: In formal comments filed by the Missouri Department of Natural Resources, Natural Resource Defense Council, Sierra Club, Renew Missouri, and the Great Rivers Environmental Law Center, there is great concern expressed regarding the relationship between the Chapter 22 rules and the proposed MEEIA rules.

This stakeholder group's focus is primarily on the assertions that first, Chapter 22 rules mesh imperfectly with the MEEIA rules; second, where there is conflict, MEEIA rules must prevail because MEEIA, and not Chapter 22, is a legislative directive; third, Chapter 22 uses numerous analyses and a decision–making process that goes beyond what is needed or desired for compliance with MEEIA; and fourth, the demand–side portfolio that satisfies the criteria of MEEIA should automatically become part of the Chapter 22 Preferred Resource Plan and not the other way around.

Staff does not agree with these concerns and assertions, and Staff supports the inclusion of the requirement that proposed demand–side programs be analyzed through the integration analysis process required by Chapter 22 for the following reasons: The first reason, MEEIA states, "The Commission shall consider the total resource cost test "a" preferred cost–effectiveness test."

MEEIA does not state the total resource cost test shall be "the" cost–effectiveness test, or even as the formal comments of the stakeholder group suggested "the primary" cost–effective test, so clearly there's additional opportunity for the Commission to choose a more comprehensive process to determine what demand–side resources constitute all cost–effective demand–side savings than simply using the total resource cost test.

If the Commission stops with the results of the TRC, then demand–side analysis is given preferential treatment over supply–side analysis, which is contrary to the MEEIA.

The second reason: While a goal of MEEIA is to achieve all cost–effective demand–side savings, the stated fundamental objective of the proposed Chapter 22 rules is to provide the public with energy services that are safe, reliable, and efficient and just in reasonable rates in a manner that serves the public interest.

These objectives require that the utility: A, consider and analyze demand–side resources and supply–side resources on an equivalent basis; B, use minimization of the present worth of long–run utility costs as the primary selection criteria in choosing the Preferred Resource Plan and; C, explicitly identify, and where possible, quantitatively analyze any other considerations which are critical to meet any fundamental objective of the resource planning process, but which may constrain or limit minimization of the present worth of the expected utility cost.

These considerations shall include, but are not necessarily limited to: Mitigation of risk associated with critical uncertain factors such as future electricity loads, future economic conditions, future fuel and purchase power prices, and future legal mandates including environmental regulations.

Finally, Chapter 22 risk analysis also considers the mitigation of rate increases associated with alternative resource plans. The third reason: The stakeholder group is suggesting that the total resource cost test is the only analysis needed to determine all cost–effective demand–side savings.

Staff notes that the TRC may use as few as a single–avoided cost amount for a given year. Chapter 22 uses the total resource cost test to screen demand–side resources. Chapter 22 then requires further analysis of all resources that have passed the screening analysis, both supply–side resources and demand–side resources, through integration analysis.

The integration analysis process required by Chapter 22 requires the utilities to look at all 8,760 hours of the year. The demand–side and supply–side resources that best meet the load requirements of all 8,760 hours each year are included in the Preferred Resource Plan.

The integrative process is followed by risk analysis and, finally, strategy selection by the utility decision–makers. Programs that survive this rigorous screening should be the programs for which the utilities request the Commission approval and receive nontraditional ratemaking treatment. These programs are also the most likely to be the best use of the ratepayers' money.

Fourth reason: While the stakeholder group asserts that it is inappropriate that the judgment of the utility decision–makers be used for the determination of all cost–effective demand–side savings for its utility, ultimately the utility decision–makers who decide –– the utility decision–makers decide which alternative resource plans best meet the Chapter 22 objectives for the utility.

The utility decision–makers, not the total resource cost test, decide which DSM programs and demand–side programs investment mechanics are proposed to the Commission, and the same utility decision–makers will be accountable for the delivery and performance of their utilitiy's demand–side programs.

To summarize the Staff's position on this issue, Chapter 22 rules and the MEEIA rules can and should work hand–in–glove together to accomplish the goal of all cost–effective demand–side savings.

Chapter 22 supply–side resource analysis, demand–side resource analysis, integration analysis, risk analysis, and strategy selection processes should be used to determine the demand–side resources that minimize the expected cost to customers while evaluating risk associated with critical uncertain factors.

The total resource cost test by itself cannot provide such a robust analysis and cannot by itself inform decision–makers at the utilities and at the Commission on all the information needed to make informed decisions to accomplish the goal of all cost–effective demand–side savings which minimize the expected cost to customers.

Concerning the recovery of lost revenues, SB 376 statute is silent regarding the recovery of lost revenues. This is one of the reasons why the draft of the MEEIA rules, which staff created to start discussions, was also silent on recovery of lost revenues.

Ultimately, Staff recommends that the throughput incentive be addressed through the utility incentive component of the DSIM due to the problems experienced by other states that have tried and abandoned the explicit recovery of lost revenue's approach.

Staff is unable to support the proposed lost revenue language contained in the Missouri Energy Development Association's formal comments for the following reasons: First reason, at the April 4, 2010, agenda meeting the Commission directed Staff to draft language stating that the Commission may approve recovery of lost revenues. The language, as drafted, is permissive in nature and provides for the opportunity for recovery of lost revenues rather than a guarantee. The proposed MEDA language is more explicit regarding the ability to recover lost revenues.

The second reason: MEDA has provided an alternative definition for lost revenues in their comments based on the definition used in the Chapter 22 rules. Staff opposes MEDA's proposed use of the Chapter 22 definition of lost revenues because the Chapter 22 definition is used exclusively to exclude lost revenues from the definition of annualized cost of end–use measures from the definition of cost for the utility cost test and from the definition of cost for the total resource cost test.

Chapter 22 does not contemplate the use of its definition of lost revenue for any other purposes, and it should not be assumed that it is the appropriate definition for the MEEIA rules.

Third reason: The MEDA language also removes the requirement for evaluation measurement and verification of DSIM program results prior to recovery of lost revenue and therefore allows for recovery of lost revenue without any measurement and verification of program results by an independent evaluator.

Staff believes that if recovery of lost revenue is included in the MEEIA rules, measurement and verification of lost revenue should be required and should only be accomplished through independent EM&V on a retrospective basis. Lost revenues are based on energy uses that did not occur. In Staff's opinion, it is not appropriate to increase customers' rates on guesses as to what the customer who participated in the programs would have used absent the programs without a rigorous EM&V conducted by an independent evaluator.

Finally, I have an illustration of Staff's interpretation of the definition of lost revenues contained in the proposed MEEIA rules. I can provide this illustration at this time, if desired.

JUDGE STEARLEY: That would be great, Mr. Rogers. Come up to the court reporter and we'll mark that as Exhibit 1.

(Exhibit No. 1 was marked for identification.)

MR. ROGERS: This concludes my comments. I'll be glad to answer any questions.

JUDGE STEARLEY: Any questions from the bench for Mr. Rogers?

COMMISSIONER CLAYTON: I do.

With handing out this document, can you just walk through this document before you leave. I'll defer to the Commissioner.

MR. ROGERS: Okay. There's two parts to the document. The first page is a flow diagram, which shows the process to determine what the lost revenue amount will be recovered through the definition of "lost revenue" in the rules.

There's four pieces of information that you need to make that determination, and they're listed on both the flow chart page and also on the second page, which gives numeric examples.

The first piece of information is what is the weather–normalized annual kilowatt hours used to set electricity rates for the 12–month reporting period. And that comes from the last rate case for that utility.

The second piece of information necessary is what is the actual kilowatt hour retail sales for a 12–month reporting period. And this depends upon how the DSIM is set up and defined, but that would come from the utility financial reports, so that is –– these two pieces of information give you what is the normalized –– the weather–normalized annual sales and then what were the actual retail sales.

The third piece of information is the demand–side program's kilowatt–hour savings for the 12–month reporting period. And what Staff is proposing and what the rules require right now is that that information be determined through the EM&V report on a retrospective basis; in other words, you know what amount of energy, what amount of demand have been estimated to have occurred as a result of the programs, and the EM&V contractor, the independent contractor, who would be audited by the Commission, EM&V auditor under the proposed rules, would determine what the amount of kilowatt-hour savings on a 12-month basis are through the measurement and verification of the program results.

And then the final piece of information that you need is what is the revenue impact of the demand-side programs for the 12-month reporting period and, again, I believe within the construct of the proposed rules, including the lost revenue definition, which this would be done by the EM&V contractor.

So with those four pieces of information, you can go through a process here, through the process flow or through the three examples, and you'll get a different outcome depending upon whether the actual retail sales are greater or less than the weather-normalized annual sales in the rate case, and then depending upon the other variables you can get either a partial recovery of lost revenue or a full recovery of lost revenue.

Through the definition in the proposed rules, there would be no recovery of lost revenue if the actual sales, retail sales, exceed the level of annual sales in the last rate order, because if -- if the actual sales exceed what's in the sales in the last rate order, then the utility is recovering its fixed costs, all else equal.

COMMISSIONER CLAYTON: Mr. Rogers -- may I go, Judge?

JUDGE STEARLEY: Certainly.

COMMISSIONER CLAYTON: I want to make sure I understand this chart.

The first three variables, A, B, and C, indicate -- they basically represent kilowatt hours. We're talking about actual energy usage for those three.

MR. ROGERS: Yes.

COMMISSIONER CLAYTON: And then Variable D is actually a dollar amount.

MR. ROGERS: Yes.

COMMISSIONER CLAYTON: It would represent a dollar sign.

MR. ROGERS: Yes.

COMMISSIONER CLAYTON: Now, at first glance at this chart, I thought that C would equal A minus B, and yet there's a section here that says if C is greater than A minus B, and it works through the flow chart. So basically C does not equal A minus B. C is an independent number that is derived from the EM&V report; is that correct?

MR. ROGERS: And the reason C will never equal A minus B is that there's other influences on the actual sales.

COMMISSIONER CLAYTON: For example?

MR. ROGERS: I mean, if the economy is robust and new customers are coming on the utility, there's additional sales that are completely independent of any influence that the demand-side programs might have.

COMMISSIONER CLAYTON: So how do you compute the dollars that are part of Variable D if you -- if C is less than -- I'm trying to work backwards here. Just give me a sense of how you change the kilowatt hours to the dollars for Variable D.

MR. ROGERS: Well, in Variable D the EM&V contractor for the utilities will do this. First, they'll estimate the annual energy savings and the annual demand savings as a result of the DSM programs, and then they'll take those energy and demand savings times the billing determinants that are in the rate case for energy and demand and derive a revenue requirement impact for the DSM programs.

COMMISSIONER CLAYTON: I'll stop right there.

JUDGE STEARLEY: Commissioner Kenney.

COMMISSIONER KENNEY: Thank you.

I just want to ask this very kind of broad—level question. Is there a certain way, even with an EM&V program in place, where you could say with any certainty that a particular drop in kilowatt hours was attributable to a specific DSM program?

In other words, could you determine that particular consumers stopped using a particular amount of energy directly attributable to a specific program, or would it decrease their energy uses absent that program?

MR. ROGERS: Well, the EM&V process is completely independent of what's actually occurred. Again, that —— this goes back to my comment about there's other influences on what the actual sales are for energy, but through the EM&V process you're looking at each individual program —— the contractor will look at each program and what data is available to analyze that program, in other words, what measures were implemented, and if we do have a technical resource manual for this state, which I'm hoping we do, then within that technical resource manual there'll be a lot of what's called "deemed savings" that can be used, so if a measure is implemented, here's a conservative engineering estimate of what the energy and demand savings are for that measure, and so it's a process of going through and looking at each program and calculating, as best you can, what the estimated energy and advanced savings are for that program and then for all the programs in aggregate, what has the utility's demand–side programs achieved?

COMMISSIONER KENNEY: Does Staff have an opinion about whether the allowance of lost revenue or the recovery of lost revenue would have the effect of a particular consumer, allowing the consumer to reduce their overall energy use but seeing no change in their bill or even maybe an increase in their bill?

MR. ROGERS: Assuming that lost revenue is included in the effective rule, I'm not sure I understand your question. Can you ask that again, please.

COMMISSIONER KENNEY: Lost –– if you have a user allowed to recover lost revenues ––

MR. ROGERS: Uh–huh.

COMMISSIONER KENNEY: –– could it have the effect on a particular consumer that a consumer could reduce their kilowatt–hour usage and still see no decrease in their bill?

MR. ROGERS: That can occur. You know, it -- a lot depends on whether you're participating in the program or not and what steps you're actually taking.

COMMISSIONER KENNEY: Okay.

JUDGE STEARLEY: Any other questions for Mr. Rogers?

COMMISSIONER GUNN: I just have a couple follow-up, and I think Commissioner Kenney brought up a good point. So theoretically what you could have is you could have a large industrial consumer, for example, that you could directly attribute certain -- under certain conditions their reduction in electricity use to a demand-side -- to a demand-side program, and so you have that bucket, but then you would have only, say, one residential consumer that decides to take advantage of the -- of the programs, and so that lost revenue that was directly attributable to the demand-side program, if spread out over all the other ratepayers, then you could, theoretically, have a residential ratepayer that may not see a huge difference in their bill or any difference in the bill, so that's theoretically possible, just to --

MR. ROGERS: Yes.

COMMISSIONER GUNN: All right. But -- and a second follow-up: While it may not be possible to -- will there be any kind of -- because the EM&V program, you're saying, is an estimate, is there any kind of procedure where you would gather information from —— the actual data from, let's say, a large industrial or participants in the program or to compare against the EM&V at some point in order to make sure you're not ——

MR. ROGERS: Yeah, for the large industrial customers, especially for the —— not the prescriptive, but the other —— where the large—end —— large industrial customers are making changes to their process ——

COMMISSIONER GUNN: Right.

MR. ROGERS: —— there's no standard or deemed savings that you can use for that, so there's more detailed engineering estimates that are used specific to those large projects, and that would be part of EM&V, and it would be included in the overall estimate of energy and demand savings.

COMMISSIONER GUNN: But at some point if someone's participating in the program, the consumer themselves, if they're sophisticated and electricity is a portion of their costs, right, and they can look at historical data and they know they haven't changed anything and they're instituting the program, they should be able to determine with pretty good certainty what the reduction is based on the program that they're participating in, because they'll have that data.

I think it's less sure with residential consumers because, you know, my kids may leave lights on or something like that, so I'm not exactly sure what's going on or I don't necessarily have the detailed information, but at some point is that actual detailed information used to audit or take a look at the estimates in order to make sure we're not ——

MR. ROGERS: Well, the EM&V process will look at actual data.

COMMISSIONER GUNN: Actual, okay. That was my confusion.

MR. ROGERS: The administrator of the programs will be keeping records of how many measures are implemented for each program, and so you will know if it's installing CFL bulbs there will be a number, and it shouldn't be an estimate. It should be an actual number of how many bulbs were installed.

COMMISSIONER GUNN: But that doesn't necessarily translate ——

MR. ROGERS: To the individual ratepayer?

COMMISSIONER GUNN: Or to the actual savings that could occur. Maybe I'm getting too far in the weeds, but just because you implement —— I mean, so let's say I put all CFLs in my building, okay, so everything is in the building, but then I decide that I'm going to leave my lights on twice as long or three times as long as I normally would, so you're not going to have —— you're not going to have that exact —— it's not a precise comparison, but there are going to be times when you're going to be able to make that precise comparison because you've got a manufacturing process that uses a certain amount of electricity, using the same every day, you're doing a tweak to something, again, to a program, and you know exactly how much electricity you're not using based on that one tweak to the manufacturing process, so I'm just trying to figure out exactly how that information is going to be used to be able to tie it —— or if it's going to be used.

I mean, I may be perfectly fine with the way the program is going, but I'm just trying to understand a little better.

MR. ROGERS: I think your example is a good one in that, say, a customer installed the measures but then they changed their ——

COMMISSIONER GUNN: —— behavior.

MR. ROGERS: —— habits ——

COMMISSIONER GUNN: Right.

MR. ROGERS: —— their behavior and there may be offsetting conditions. Well, the EM&V contractor won't be able to see that ——

COMMISSIONER GUNN: Okay.

MR. ROGERS: —— because all they'll see is the data on how many measures were installed, what the measures were, and they'll have no idea what the other changes in behavior were and what the impact was there.

COMMISSIONER GUNN: So the question then becomes that the lost revenue piece that we're talking about is based on the EM&V reports, so there is a certain amount of uncertainty as to what exactly that lost revenue actually is.

MR. ROGERS: Sure. It's an estimate.

COMMISSIONER GUNN: It's an estimate. And that's what we have to struggle with, is to figure out how —— whether we're comfortable enough with those estimates in order to say that that gets included back, that we're going to go ahead and give you the lost revenues to the extent that we're doing that. Okay. All right. Thank you.

I don't have anything else.

JUDGE STEARLEY: Any other questions for Mr. Rogers?

COMMISSIONER CLAYTON: No.

COMMISSIONER JARRETT: I don't have any questions.

COMMISSIONER CLAYTON: From Staff's perspective, high level, if we did not have Senate Bill 376 before us, would Staff generally be supportive of energy efficiency programs?

MR. ROGERS: Yes.

COMMISSIONER CLAYTON: And why is that?

MR. ROGERS: Because it's a low–cost resource, and we see that every time we do an integrated resource plan.

COMMISSIONER CLAYTON: So is it purely an economic ––

MR. ROGERS: No.

COMMISSIONER CLAYTON: –– analysis?

Are there any other noneconomic analyses that would go into making energy efficiency a priority or something important to consider?

MR. ROGERS: Well, I think Chapter 22, as I stated in my opening comments, does the best job of looking at this from all aspects, and that's not just through the engineering estimates but in getting down to the critical uncertain factors in evaluating those, because the low–cost option is not always the best because the future is uncertain.

If the future wasn't uncertain, then we would know low–cost is the best, but it's not. The future is uncertain, so that's where Staff believes it's really important that we link Chapter 22 analysis with these MEEIA rules.

COMMISSIONER CLAYTON: Do you believe the link with the Chapter 22 analysis, that it's a –– that basically what is found in the IRP is what will dictate what happened associated with the implementation of a DSIM, or is it just a suggestion or one, you know, preferred suggestion? Are you –– ask–– is Staff asking for a firm link between Chapter 22 and these rules?

MR. ROGERS: That's what the proposed rules include is a firm link. If –– if a program is not already in the Preferred Resource Plan, then the proposed rules require that it at least go back and run the integration analysis to determine what the impact on the net present value revenue requirements is from that program, and we've already been doing that with the utilities.

COMMISSIONER CLAYTON: Okay. And with lost revenue, Staff is opposed to a lost revenue component in the DSIM; is that correct?

MR. ROGERS: Yes.

COMMISSIONER CLAYTON: Is that based on legal grounds, or is that based on policy grounds, or both? Do you know?

MR. ROGERS: Both. Both.

COMMISSIONER CLAYTON: Okay. And on the policy side -- just setting aside the legal arguments, from a policy side why is it that Staff believes lost revenue should not be part of a DSIM?

MR. ROGERS: Because of problems that have occurred in other states that have tried to take this approach, and many states have gone --

COMMISSIONER CLAYTON: For example, what -- can you give me examples of problems.

MR. ROGERS: Problems with utilities over earnings. If you're in a situation like I described before where, say, you have a favorable economy and you're able to increase sales significantly, then the utility can be taking out good steps to increase sales, and they should.

I mean, there's nothing wrong with a strong economy and growing utility sales. In that case they're recovering their fixed costs and then some. At the same time they can be promoting, and they should be promoting, the demand-side programs because they're a least-cost resource, and so Staff believes that the best way to address this initially in Missouri, lost revenue, is through the utility incentive component of the DSIM.

There's enough room there for the utilities to come in and propose a DSIM mechanism that recovers lost revenue as well as provides a performance incentive to the utility, and in that way we're able to avoid the problems associated with lost revenue recovery.

The normal process that states have taken —— a lot of states have started off with the lost revenue recovery component, explicit recovery of lost revenue, and they've —— you know, they've seen where there's been problems specific to overearning, and they've changed course and they've gone to the decoupling. Through decoupling a utility can't overearn. They can't underearn.

MR. WILLIAMS: Commissioner, I don't know if it was clear to you by his response or not, but what he was responding to was why the demand–side investment mechanism shouldn't —— cost recovery should be included in the rule as opposed to barred completely, and Staff's not saying there couldn't be some kind of a cost recovery mechanism and a demand–side investment mechanism.

We're just saying it shouldn't be something that's explicitly set out in the rule in the way some commentors are proposing.

COMMISSIONER CLAYTON: I understand that, but by Staff's perspective, you don't want the Commission to approve a rule that is permissive in allowing for a component of lost revenue; correct?

MR. ROGERS: We prefer not to. If you do ——

COMMISSIONER CLAYTON: Right. Well, that's what I was asking. I'm not —— aside from being prescriptive or using mandatory language versus permissive language, Staff's perspective is to not include a component for lost revenue; correct?

MR. ROGERS: That's our proposal.

COMMISSIONER CLAYTON: All right. Thank you.

JUDGE STEARLEY: Any other questions for Mr. Rogers? Commissioner Kenney.

COMMISSIONER KENNEY: Just one additional question, maybe for Mr. Williams. You said the Staff's opposed on both legal and policy grounds. Could you please explain the legal basis.

MS. WILLIAMS: It's the same basis that we've put in the brief that we filed earlier and in our comments, that the –– it's Staff's position the Act doesn't permit the Commission to do anything to change rates between general rate cases, and it could be something that was done in the context of a rate case, but not outside, in our view.

COMMISSIONER KENNEY: So it's not an objection based upon the notion that there's a provision statute that requires us to allow for timely cost recovery, so wouldn't the recovery of lost revenue fit within the definition of "timely cost recovery"?

MR. WILLIAMS: It's Staff's position that it was done in the context of rate case that would satisfy timely cost recovery, and if the Legislature had wanted something more explicit in terms of –– or had wanted recovery between general rate cases, it very easily could've done so, and it has in the past in the context of other mechanisms.

COMMISSIONER KENNEY: So the only objection is that –– would be to allowing it in between rate cases, not an objection that lost revenue isn't, in fact, a cost?

MS. WILLIAMS: Correct.

COMMISSIONER KENNEY: Okay. Thank you.

JUDGE STEARLEY: Any other questions of Mr. Rogers?

COMMISSIONER DAVIS: There in the Staff comments –– which I assume that was either you or somebody from the General Counsel's office that drafted that portion of the Staff comments, because it was unsigned; is that correct?

MR. WILLIAMS: I drafted it with input from other members of the Staff Counsel's office.

COMMISSIONER DAVIS: Okay. In those comments you stated with some authority that timely cost recovery and timely earnings opportunities don't mean "contemporaneous."

MR. WILLIAMS: Yeah.

COMMISSIONER DAVIS: Is that fair to say?

Would you agree that those terms are not defined?

MR. WILLIAMS: Timely cost recovery?

COMMISSIONER DAVIS: Yes.

MR. WILLIAMS: Within the context of that statute, I would agree that they're not defined to mean something specific other than plain language of those words.

COMMISSIONER DAVIS: Right. Is it equally possible that the phrase "timely cost recovery" could mean something less than 11 months?

MR. WILLIAMS: Yes.

COMMISSIONER DAVIS: And in your brief you stated that the –– I'm just going to paraphrase what your comments were here this morning and what your brief said, that, you know, the General Assembly included some very prescriptive language in the ISRS Law from 2003, and some somewhat prescriptive language in the Senate Bill 179 from 2005 but, I mean, we —— I mean, it's your interpretation of the language included in Senate Bill 376 is just that you would agree with me that that's just your interpretation, that that's not hard and fast?

MR. WILLIAMS: Until the Court decides what the language means, it's certainly subject to interpretation and potentially different interpretations.

Staff just looked at it from the perspective of the case law in the past, the long history of how the courts have said you can't have single–issue ratemaking, that you can only consider all relevant factors in the context of general rate cases, and whenever the Legislature, and also by voter initiative, have desired to change that, it's been done with very explicit language. I wouldn't call it prescriptive, but explicit, and that sort of language does not appear in this Act.

COMMISSIONER DAVIS: When they say, Public Service Commission, make sure that these utilities are able to recover this money in a timely fashion, I mean, isn't that a fairly explicit instruction?

MR. WILLIAMS: It's explicited the Commissions to allow timely recovery, but there's no clarification or explanation as to what the Legislature intended by "timely recovery," but if it intended "timely recovery" to mean something besides within the context of a rate case, it would've been very simple to have done so.

COMMISSIONER DAVIS: It would've been also very simple to have just let that phraseology out altogether and then it be clear that it would be 11 months, wouldn't it?

MR. WILLIAMS: In some people's minds, perhaps.

COMMISSIONER DAVIS: All right. Do you think the Commission has some discretion in determining what "timely" means?

MR. WILLIAMS: The Commission always gets the first shot as to what Legislation is implementing means.

COMMISSIONER DAVIS: All right. Mr. Williams, I'm going to go back to Mr. Rogers now, but you feel free to jump in here. It's considered the lightning round.

Mr. Rogers, if you would, would you go to —— I guess it would be page 2 of the unmarked —— well, the —— I don't recall seeing page numbers on my Staff comments so ——

MR. ROGERS: No.

COMMISSIONER DAVIS: The last sentence of the first full paragraph on what I think is page 2 states, quote, "There are no incentives or penalties tied to the goals in 4 CSR 240–20.094 (2)." Are you familiar with that?

MR. ROGERS: Yes.

COMMISSIONER DAVIS: Okay. For purposes of interpreting this section of the rule, would you agree with me that "no" means "not any"?

MR. ROGERS: Yes.

COMMISSIONER DAVIS: Mr. Williams, would you agree with that?

MR. WILLIAMS: I'm sorry. I didn't find the language you're referring to.

COMMISSIONER DAVIS: Okay. Your pleading that you filed here most recently, and then you've got Mr. Rogers' comments —— or whoever Staff's comments are —— that are attached as a document that doesn't have any page numbers on it ——

MR. WILLIAMS: I see that.

COMMISSIONER DAVIS: I think it's the second page of that attached document, first full complete paragraph, last sentence of that paragraph where it says, There are no incentives or penalties tied to the goals in 4 CSR 240–20.094 (2). Are you following now?

MR. WILLIAMS: Yes.

COMMISSIONER DAVIS: Would you agree with me that "no" means "not any"?

MR. WILLIAMS: Yes.

COMMISSIONER DAVIS: Okay. Would you a agree with me that the language in 4 CSR 240–20.094 (2), does seem to imply —— as it's currently drafted does imply that some penalty or adverse consequences can apply to the utility in part because it failed to meet a goal established pursuant to the rule?

MR. WILLIAMS: I'd say it would be a fair reading as it could be considered a factor.

COMMISSIONER DAVIS: So you're saying that it can be considered a factor?

MR. WILLIAMS: The way it's drafted.

COMMISSIONER DAVIS: The way it's drafted.

I mean, do you think —— the way the language in the rule is actually drafted and the way that Staff has characterized how it should be interpreted in its comments, do you think those two are consistent?

MR. WILLIAMS: Yes, I would read the Staff comments as saying that there is no requirement or direct relationship. The way the rule's drafted indicates it's permissive at best.

COMMISSIONER DAVIS: So it's permissive at best for an incentive or a penalty?

MR. WILLIAMS: The way I'm reading it is saying that the Commission could consider it as a —— it doesn't mean that the Commission couldn't consider it as a —— make it as a consideration for assessing a penalty or adverse consequence, but it doesn't require it.

In other words, it's permissive in that it's acknowledging the Commission could take that into consideration, which I think it could regardless of the rule. It's just not taking something off the table.

COMMISSIONER DAVIS: Would you agree that the entire statute is permissive for the utility to use?

MR. WILLIAMS: Yes, in the sense that —— well, it requires the utilities to seek to obtain all cost—effective energy and demand—side savings so, in that regard, I don't think it's permissive, but how they accomplish that certainly is.

COMMISSIONER DAVIS: All right.

I'm going to digest those thoughts, Mr. Williams. I may come back to you and Mr. Rogers later. Thank you.

MR. WILLIAMS: I mean, it expresses a policy. It doesn't impose some kind of a penalty, so to that extent it's permissive.

COMMISSIONER DAVIS: All right. Thank you, Mr. Williams.

JUDGE STEARLEY: Any other questions for Mr. Rogers?

(No response.)

JUDGE STEARLEY: Seeing none, thank you, Mr. Rogers. There may be further questions.

Would anyone else like to offer any comments?

(No response.)

JUDGE STEARLEY: If not, I'm going to open things up to the Commissioners just to direct questions to whomever they wish.

MR. MILLS: Judge, can I ask a question procedurally?

JUDGE STEARLEY: Certainly.

MR. MILLS: I think you may get more volunteers if the volunteers that go early have a chance to come up again later and do some rebuttal. I think people are holding back with respect to making comments.

JUDGE STEARLEY: This is a wide–open forum, Mr. Mills.

MR. MILLS: Okay.

JUDGE STEARLEY: We'll stay here till everyone's tired of talking.

MR. MILLS: Okay.

COMMISSIONER DAVIS: Be careful what you wish for. Christmas is on Saturday.

JUDGE STEARLEY: Please introduce yourself.

MR. ROBERTSON: Thank you.

My name is Henry Robertson. I'm an attorney with Great Rivers Environmental Law Center. I filed comments jointly with DNR, NRDC –– that's the Natural Resources Defense Council –– Renew Missouri, and the Sierra Club.

I'm not authorized this morning to speak for –– DNR and NRDC will have comments to offer in addition to what I say.

I agree with Staff's comments on the MEDA lost revenue proposal; however, I do not agree with Staff on the relationship between IRP and the 376 rule. The IRP, Chapter 22, and SB 376 take –– are meant to accomplish different purposes and they take different approaches to demand–side resources.

Chapter 22 requires equal treatment of demand–side and supply–side resources. 376 uses the term "equally valued," which I think is indicative of the difference in approach. Under 376, the policies and the criteria are cost recovery, aligning incentives between the utilities and their customers, earnings opportunities for the utility; a goal of all cost–effective demand–side savings that all programs must equally benefit all customers within a class, but low–income programs do not need to pass the total resource cost test.

The IRP is a long–range planning exercise based on lowest PVRR, performance measures, critical uncertain factors, and the subjective judgment of utility decision–makers. I think that subjecting 376 to these planning requirements of Chapter 22 has the effect of amending the statute through the form of an administrative rule, which is not allowed.

So far Chapter 22 has not, in its 15–year history, resulted in significant demand–side investments, and SB 376 was meant to correct that. As I read the Chapter 22 rules, the Preferred Resource Plan won't necessarily include an optimal demand–side portfolio. There's –– a resource plan is a mix of supply–side and demand–side components, and so the best demand–side portfolio could be defeated, could fail the test and become the Preferred Resource Plan if it was packaged with less than optimal set of supply–side resources.

I also don't see how –– I look at the alternative resource plans in 22.060 and how you get from there to the 22.070, the Preferred Resource Plan, and I see a disconnect. I don't see quite how you get there. I think there are different alternative resource plans, and some of them are specifically demand–side plans, but the

Preferred Resource Plan, as I read the rule, doesn't even necessarily have to be one of those alternative resource plans. And while it says it will maximize demand—side resources, there's nothing in 22.060 that says that.

You've got a minimal compliance plan in 22.060. You've got an optimal compliance plan, which is that plus something a little more, and you've got what they call an aggressive plan, but all that is is a plan that would meet maximum technical potential which, you know, by definition is not cost—effective and would never be the preferred plan, so these criteria from Chapter 22 would result in a failure, I believe, of 376 because you are not maximizing utility investments in keeping with the statutory goals, performance incentives to motivate the employees to more demand—side resources.

Again, 376 is a legislative delegation of authority; Chapter 22 is not, therefore 376 outranks Chapter 22 and cannot be subordinated to Chapter 22.

Now, one more brief comment. I mean, there's been a lot of comment on the timely cost recovery, and it's been briefed exhaustively already. The critics say that they point out to the legislative history that the phrase "cost adjustment clause" was at some point deleted from the bill. They neglect to mention that the word "timely" was substituted in the bill.

Now, whatever "timely" means, I think it's clear that if cost recovery only in a regular rate case does not lead utilities to maximize, to optimize their demand—side investments, then it's not timely. Something more is required.

"Timely" has to have some meaning and, I mean, something other than cost recovery in a general rate case if necessary to meet the statutory goals. And I quoted in an earlier brief, and I'll repeat it now, from the National Action Plan for Energy Efficiency: The longer the time between an expenditure and its recovery, the greater the perceived financial risk and the less likely the utility will be to aggressively pursue energy efficiency.

And that's the position the utilities are taking here: Without more timely cost recovery than just in a regular rate case, they won't be incentivized to pursue demand—side resources aggressively, and while I'm not here in the interest of seeing the utilities make more money, I am here in the interest of seeing energy efficiency maximized in Missouri.

That's all I have, unless there are questions.

JUDGE STEARLEY: Questions for Mr. Robertson? Commissioner Jarrett.

COMMISSIONER JARRETT: Wouldn't allowing recovery for lost revenue outside of the rate case maximize the energy efficiency programs?

This is —— we are —— other than maybe the tobacco industry, I don't know of any other industry that we're saying, What we really want you to do is we want you to encourage people to buy less of our product. And eventually —— I mean coal is cheap, but eventually it's going to go away, so eventually we have to have a different generation mix than we have today in Missouri.

I don't know. We can disagree over what time frame that is, but eventually that's going to have to happen because we're not going to have coal, and coal's going to be so expensive it's not going to work.

So isn't —— the whole point in this energy efficiency is that we're trying to stretch that time line out, we're trying to make, potentially, lower costs for individual consumers, on the one hand, but potentially lower costs —— as we figure out what that generation mix is going to be, we can —— you know, maybe we don't have to build peaker plants, maybe we don't have to do other things in order to meet demand but —— so if that's the general goal, under this rule —— which I don't know of which, as you said, unless we give timely cost recovery —— utilities simply aren't going to do it because they're not required to. Why wouldn't you do the same thing for lost revenue?

Let's put aside the fact that there may be some imprecise calculations of what that lost revenue is, and let's put aside for the fact that maybe the definition of "lost revenue" we may not all agree on, but just the basic concept of giving a certain lost revenue, at least in the interim, at least —— because aren't we —— we're trying to change behaviors here, so aren't we —— and since there's no market in order to help change the behavior, isn't that a way to kick–start the market a little bit and move you to incentivize utilities to get people into the program, start changing the behavior, and whether that continues for 50 years on or not, may be an open question, but isn't that general concept of lost revenue recovery, won't that give you any more incentive to institute these programs?

MR. ROBERTSON: Yeah, I mean, the statutory phrase is "timely cost recovery." It doesn't apply to that same word to earnings opportunities. I am far from being an expert in this field. I know the utilities are pushing for getting everything outside the rate case in the DSIM. They want not only the cost to ––

COMMISSIONER JARRETT: I understand, but the Staff –– you said you agree with Staff. Staff said they believed lost revenue was a cost, and the –– what they –– and, like, they can correct me if I'm wrong –– but what they say is they don't necessarily disagree with the fact that you can get lost revenue at some point as a cost in a general rate case.

MR. ROBERTSON: Yeah, I agree with them that it should be limited to fixed costs and the utilities should not be allowed to overearn ––

COMMISSIONER JARRETT: Sure.

MR. ROBERTSON: The way to reward the utilities is through a performance incentive, not through lost revenues beyond their fixed costs.

COMMISSIONER GUNN: But if you were to give them that, you certainly

—— the utilities would certainly have a greater incentive to implement energy efficient programs.

MR. ROBERTSON: Yeah.

COMMISSIONER GUNN: So I just wanted to clarify, because you said what you're trying to do is maximize these energy efficiency programs that are implemented, and so that's —— I mean, limit it —— we should clarify it —— limit it to the ability to recover fixed costs through a general rate case, rather than actually maximizing it, because if you actually maximize it, you'd have to give them lost revenues outside of a rate case, because then they'd have the most incentive to implement ——

MR. ROBERTSON: Yeah.

COMMISSIONER GUNN: —— or the least risk, I should say. Maybe not the most incentive, but the least risk and the most ability to have zero impact on their bottom line.

MR. ROBERTSON: Oh, sure. I mean, maximize it subject to cost effectiveness, subject to protecting consumers and not to —— and truly incentivizing utilities rather than allowing them to kind of windfall in the form of lost revenues.

COMMISSIONER GUNN: Okay. I just wanted to clarify that. Thank you. I don't have anything further.

JUDGE STEARLEY: Any other questions for Mr. Robertson?

(No response.)

JUDGE STEARLEY: Seeing none ——

COMMISSIONER DAVIS: Wait. Can I -- I've just got one question for Mr. Robertson.

Can you go back and just briefly summarize your position, again, with between -- or the -- detailing the difference between this rulemaking and the Chapter 22 rulemaking again and the differences and why -- I mean, obviously we have a specific statute that authorizes -- you know, the Commission may adopt rules, and that specific is going to trump, you know, more generalized statutes. I get that.

But, you know, what are the issues, again, just if you would hit those for me real quick?

MR. ROBERTSON: They are that there are a number of criteria in Chapter 22: Performance incentives, critical uncertain factors, subjective judgment of utilitymakers that do not apply under 376 and should not be added to the criteria of 376.

Secondly, I see a disconnect between how you get from demand-side programs and alternative resource plans through to a preferred resource plan that has the -- has the demand-side portfolio that would meet the goals of 376. I think that basically sums it up.

COMMISSIONER DAVIS: Does anybody out there in our viewing audience want to respond to that?

MR. KIDWELL: Yeah, Steve Kidwell, Ameren, Missouri.

I guess what I'd say is -- and what we're going to be talking about all day is that SB 376 has a policy that it is intending to implement. In our view, that policy is to make it the policy to value demand–side and supply–side equally.

There's some directions as to what the Commission shall do, you know, three basic tasks that the Commission has, with a "shall" in front of it, to make that happen, and then there's a goal of pursuing all cost–effective in DSM. You can't have –– you must do both of those. Okay?

I think the theme of what you hear from MEDA today is, if you don't do the three "shalls," all of them, you're not going to get all cost–effective DSM, and it's the reason that we don't have it today in Missouri. You know, we don't have that policy today.

There's nothing wrong with Chapter 22 itself. Integrated resource planning is a perfectly good way of going about planning for the future. The reason we don't have energy efficiency in this state today is because we have a lot of disincentives for utilities to pursue it, and that's why SB 376 exists.

So implementing it administratively is critical to achieving all cost–effective DSMs on all three fronts.

MR. ROBERTSON: I think I can add one bullet point to my answer to Commissioner Davis, and that is that historically Chapter 22 has not resulted in equal treatment of demand–side and supply–side and somehow often always turned out that supply–side is referred –– preferred, and I think 376 was meant to correct that. To that extent it overrides Chapter 22.

COMMISSIONER DAVIS: Would you agree with the characterization that in those IRP discussions that demand–side advocates have sort of been just swatted away like flies?

MR. ROBERTSON: I don't think I've actually seen that personally, but that has been the effect.

COMMISSIONER DAVIS: Okay. That's fine. No further questions.

JUDGE STEARLEY: Any other commissioners?

(No response.)

JUDGE STEARLEY: Okay. Thank you, Mr. Robertson.

Any other volunteers?

MR. KIND: I don't see the lack of the crowd or mob approaching the podium, so I thought I'd come up, so good morning, Commissioners. Public Counsel is appreciative of the opportunity to come and speak to you about this important rulemaking that you're having.

I'll be addressing, for the most part, policy issues. Mr. Mills, of course, is here to address some of those legal issues that have already come up in the discussion this morning.

I wanted to start my comments just by saying that Public Counsel had proposed some extensive changes to rule language in some comments that we filed in Case No. EX–2010–0368 on July 23, 2010. Those changes were presented in all four rules, contract changes format, and included important changes to rule language.

The areas in which those changes that we've supported in that track changes document cover included changes to the rule to take care of legal issues with respect to cost recovery between rate cases and lost revenues and also changes to the definition section of the rules.

Other important changes that were made included language to address market transformation programs, programs for hard–to–reach customers, and joint programs with other gas and electric utilities.

The language in the rule as it stands today does not have anything in it to address hard–to–reach customers. We feel like that's an important omission. All customers will be paying for these programs, and we should be making attempts to make sure that all customers have an opportunity to participate.

There is a little bit of language in the current rule about joint programs. We think it should be made a lot stronger than currently in there, and I don't believe there's any language in the current rule with respect to market transformation programs. We feel like there should be language in there, especially giving some guidance as to how the EM&V should be performed for market transformation programs.

Mentioned legal issues. You can find OPC's views on legal issues in the September 14, 2010, brief on legal issues that Public Counsel filed in EX–2010–0368. As noted in that file, language on surcharges between rate cases and lost revenues was in the initial early versions of SB 376 and its counterpart that was introduced in the Missouri House, that this language was not in the final bill as passed, and that final bill was supported by Public Counsel partly because it did not contain any of that language.

And just because the issue of lost revenues has come up this morning, I wanted to make a couple of comments specifically that –– you know, from an accounting perspective.

We have costs. We have revenues. Lost revenues does not fit in the cost category. It's not a cost. It's simple. And SB 376 only allows recovery of DSM–related costs. A decline in revenues will impact the utility's earnings level, but it's not going to impact the level of cost for a utility.

If you want to stop me at any time during these comments, feel free, or save your questions for the end. Either way I'm comfortable with. Okay.

Getting past, for now at least, legal issues, I wanted to address some of the written comments that were filed last week by other parties in this case. Just briefly, comments that were filed by DNR, NRDC, Sierra Club, and others, I wanted to state specifically that Public Counsel supports the statewide collaborative language on page 15 of those comments.

That collaborative language also strengthened or provides –– I guess I should say it provided a mandate for there to be a technical reference manual produced in Missouri as opposed to it being an option. Public Counsel feels like that's very important to make progress on energy efficiency issues in Missouri and just get everybody on the same page, hopefully avoid all of the disagreements that we might have over simple and routine issues like the level of deemed savings that would be associated with different energy efficiency measures.

Another aspect of the DNR comments by others in that group had to do with the goals that are contained in the Commission's rule, and we believe that their language explained the need for goals, and supporting goals was very persuasive, very clear, and Public Counsel does support the goals that are currently contained in the rule.

Regarding the Commission's Staff comments, Public Counsel is generally supportive of all the comments that Staff made, and in particular I want to highlight a few of their areas that they addressed, their comments regarding the inappropriateness of having both deferrals and interim rate treatments due to redundancy potential in that approach.

Also support their comments regarding the end balance of interest rate treatments for customers and shareholders. If deferrals are allowed, we had weighted cost to capital for -- that would go to support payments to shareholders versus the short-term interest rate that would accrue to benefit of customers and obvious imbalance there that should not be in the rule.

And lastly, the changes that the Staff proposed to the lost revenue recovery provisions, we thought those were good changes, if the Commission chooses to move forward with provisions on lost revenue recovery despite the legal issue.

And finally, regarding MEDA's comments, Public Counsel does not support any of the changes that are recommended in the MEDA comments and, yes, I did read all the comments in order to be able to make that assessment.

With that I welcome any questions from the Commission.

JUDGE STEARLEY: Questions for Mr. Kind?

COMMISSIONER CLAYTON: I have a question. Mr. Kind, from the perspective of the Office of Public Counsel, the positions that you–all are taking with regard to how the DSM would be set up, how it would be implemented, how it would be tracked over time, can you just walk me through from just kind of a procedural level and high–level overview of how Public Counsel thinks that process should work.

And I assume it would start in a general rate case, setting up a DSIM, having an incentive mechanism, and then can you just walk me through how, from your perspective, it should function, because I'm assuming it's not going to allow for changes between rate cases, so I just –– could you do that for me?

MR. KIND: I'd be glad to. Well, like you said, we would see that as starting a rate case, and costs that would be incurred to implement, administer, and evaluate DSM programs subsequent to a rate case would be booked to a deferral account.

The rule requires that savings from programs be verified, measured and verified, before cost recovery occurs, so when you get to the next rate case where we have accumulated some deferred DSM costs and where the savings from those programs have been verified, then we would start recovering those costs in a subsequent rate case.

And in addition to the recovery of costs in a subsequent rate case, there would presumably have been utility requests for an incentive rate–making mechanism in the same rate where the programs get initiated, and then in the subsequent rate case there would be some credit for that –– the incentive based on the extent to which the targets that were established were met and the extent to which there is verification that those targets were met.

I think those would be the main pieces. Obviously, in that subsequent rate case you would have to decide over what period of time the costs and the incentives would be recovered from ratepayers, whether that's going to be an asset that gets advertised over, for example, a five–year period, ten–year period, something like that.

COMMISSIONER CLAYTON: Can you describe for me the similarities and the differences between how we deal with energy efficiency investments today.

Each of the utilities have different programs. Some do different things. We have some rate–based treatment for some utilities for certain investments.

Can you give me a comparison of things that are done today that would be similar and then how they would be different under your version of the rule ——

MR. KIND: Okay.

COMMISSIONER CLAYTON: —— if that makes any sense.

MR. KIND: It makes sense, certainly. There's a couple things, important differences that come to mind. First would be that the programs would be approved by the Commission prior to implementation.

Currently, programs may get approved in the sense that there's a tier filing; however, tier filings can just go into effect without any action by the Commission, so it's really not clearly an explicit approval process, so that's one big difference, that programs would be approved. There would be a proceeding or —— I think the best way it would work is that the entire portfolio of programs being proposed would be proposed and then others would have a chance to review that proposal and some time to review it and respond to it and provide some information to the Commission on which to make that decision about approving programs.

And I think even part of that process could be part of you saying that we think these programs should be a little different, that there's a requirement here for us to try to get all cost—effective DSM. Here's some tweaks to program design that would help in achieving that.

Then on to the second major difference, is that currently I don't believe any of our utilities are recovering any incentives for doing their DSM programs, and Public Counsel thinks that's really one of the most important parts of SB 376, that it provided explicit legal authority for the Commission to give performance–based incentives for DSM programs.

COMMISSIONER CLAYTON: When you use the term "incentive," what is Public Counsel –– what does your office –– what does it mean? What is the word "incentive," because we talk "disincentive," we talk sending the wrong messages, but what does "incentive" mean in setting up the DSIM?

MR. KIND: Well ––

COMMISSIONER CLAYTON: Setting a target and then having a reward that goes with the target?

MR. KIND: Yes.

COMMISSIONER CLAYTON: What is that reward?

How would you see that operating?

MR. KIND: Well, the reward is –– is –– you know, it's going to be –– as the rule is written, it would happen on a case–by–case based on a utility's proposal and response to that proposal, but it could be, for example, something like ––

COMMISSIONER CLAYTON: Give me an example.

MR. KIND: –– a utility is allowed to retain, say, 10 percent of the shared savings from implementation of the program where savings would be measured by, here's what this costs you versus some other supply–side options, so if –– you know, just rough example, if you can do energy efficiency for –– on a levelized basis, four cents per kilowatt hour, and you've got a generation option, your next best option –– or I shouldn't say a single generation option, because it would probably be some group of supply–side assets that would be an alternative to the demand–side, but let's say that that costs you on a levelized basis six cents per kilowatt hour.

Then the difference between those costs, there would be a sharing of that difference with the utility, and the extent to which that sharing occurred would be related to the utility's progress on achieving the targets that were specified in its incentive mechanism.

COMMISSIONER CLAYTON: And I cut you off. Are there any other similarities or differences that you want to mention, or you think you got ––

MR. KIND: The other difference, I think, is what's come up today, a little bit, versus, you know, the idea of doing –– figuring out what demand–side programs would be primarily within the context of integrated resource planning and then some additional planning that takes place between every three–year IRP filing of this, you know, moves that to a different venue.

But, like Staff, we agree that what happens, you know, with treatment of DSM programs here and approval, that we should consider the integrated analysis from IRP in figuring out which programs to approve and move forward with.

COMMISSIONER CLAYTON: So you would agree with Staff, or Public Counsel agrees with Staff, that there needs to be a firm connection between this rule and Chapter 22? Is it just a presumption, rebuttable presumption, or should there be a firm lock in the analysis conducted in IRP with what gets approved through the MEEIA Rule?

MR. KIND: We think that Staff got it right in the way they have proposed linking the two rules, which is just that if the company is proposing DSM programs that were not in its preferred plan or didn't already go through integrated analysis, then there should be a separate integrated analysis done of those programs in order to inform the companies the Commission's decision in determining approval of the programs.

The –– the –– the statute contains explicit language that the TRC would be the preferred test and that –– that's what we have to deal with, but even with that in mind, I think that you can gain a lot of additional information from integrated resource analysis.

And even in saying the TRC is the preferred test, I think Mr. Rogers mentioned, you know, there could be –– TRCs could be as simplistic as just looking at a one–year time frame, avoid cost in a single period as opposed to avoid cost over the life of the measures in the program. You've got to get TRC right to use it as preferred test.

COMMISSIONER CLAYTON: Thank you.

JUDGE STEARLEY: Any other questions? Commissioner Gunn.

COMMISSIONER GUNN: I do. I just need some clarifying. When you were walking through an answer in response to Chairman Clayton's questions, you used the word "targets" ––

MR. KIND: Uh–huh.

COMMISSIONER GUNN: –– and so you think there should be hard targets in the rule?

MR. KIND: Targets are different from the goals that are contained in the rule.

COMMISSIONER GUNN: Can you make that distinction for me.

MR. KIND: Well, I referred to the comments made by DNR, NRDC, with respect to targets versus goals because I thought they did a really good job in the written comments of doing that, but the –– but the key difference is that the goals that are contained in the rule are –– they've been characterized as soft goals.

These are something to –– to seek –– you know, sort of encourage you to push towards what's realistically achievable in DSM planning, and then the targets, those are part of the incentive mechanism that gets proposed by the utility and ultimately approved by the Commission.

COMMISSIONER GUNN: And that's what –– so you have, like, aspirational goals, which say we really want you to work towards this, but then you say in order to get the incentive you have to hit a certain number.

Now my question is: Let's say you have —— and this has no relation to anything. I'm just using it for illustration purposes —— that you have a 10 percent goal. If you hit 10 percent, you get 100 percent of the incentive. Are you in favor of saying if you get 9.8 you get zero of the incentive, or are you okay with a benchmark?

So if you hit —— if there is a target in there, and it's 10 percent, and you hit 1 percent, you know, you get 10 percent of the incentive and so on and so forth. Is there any opposition to that happening?

MR. KIND: I think we would need to look at that, of course, in any case in the context of all the other aspects of the proposal, but just a general view is that the incentives, that there should be a scale of incentives that increases as you get closer to the target, and there's a certain point at which —— if you're, let's say, only achieving 50 percent of your target, then you shouldn't be getting any incentive at all.

COMMISSIONER GUNN: Even though you're relying somewhat on customer behavior in order to do this? I mean, the programs themselves may be incredibly effective, but you have people that either —— because they don't care or they don't just choose to implement, I mean, and so aren't you risking that a good program that worked that you get a substantial number of people in, but you're not hitting, you know, a target, that it would go away? Because the goal here really is to change behavior. I mean, as was mentioned, this isn't something that we can -- you can just order it and it'll be done.

I mean, basically we're saying you got to offer programs, but people have to take -- customers have to take advantage of those programs, and part of what we have to do is from a policy perspective is give people access to it and encourage it, and that's going to take time, for one. It's going to take education.

So isn't there a huge risk that if you don't -- if you kind of don't chop it up, that really, good, effective programs that we see take a while to really start changing some behavioring will go away?

MR. KIND: I think -- I don't think I disagree with your point. I think I would just have a different take on how to take that into account, probably, which is -- which would be that the different targets would be appropriate for different programs, and different targets even over time as to the level of participation you expect to achieve.

For the most part, the programs that we will be implementing, since Missouri is sort of a latecomer to the energy efficiency business, will be programs that have already been proven elsewhere, and that when implemented well elsewhere have achieved the projected participation rates.

And I would just add that, you know, when you look at the experience that our utilities have had, a lot of them are actually achieving the expected participation rates. Some are exceeding them.

And I think my main —— the main utility that I would refer to in that assessment is the one utility case B.O. That we have the longest experience with in implementing a broad portfolio of programs. They really aren't having difficulties achieving desired levels of participation, and they're actually sometimes surprised that participation is stronger than expected.

The only difference might be something like, you know, in the —— say in the large customer category you've got lots of different sizes and types of large customers, and you may have one program that's —— that's, you know, trying to address all those customers, say, with prescriptive rebates, and you might get pretty different participation levels from different—sized customers, but that doesn't mean the overall program is not achieving its targets.

COMMISSIONER GUNN: I get it, and I think it's a fair point. But just to go back and just get my mind clear, so you think that there should be —— whatever they are for each individual program, if there is a target, there should be bright lines set within those targets about over what threshold you have to meet in order to get a percentage —— or in order to get the incentive?

MR. KIND: For most programs. I mean, there's ——

COMMISSIONER GUNN: There might be some that are solo, if you're not doing anything; you do it when there may be something that's so unique that we haven't tried yet that you'd be willing to say, You know what? This is one where we're just going to see how it goes, and we'd be willing to kind of go along for the ride in order to see what happens.

MR. KIND: Right. I would agree with that.

COMMISSIONER GUNN: Okay. All right. I don't have any other questions.

JUDGE STEARLEY: Any other questions for Mr. Kind?

(No response.)

COMMISSIONER DAVIS: Is this an opportunity to ask questions of Mr. Mills too?

JUDGE STEARLEY: Certainly.

MR. KIND: Just before you start, I have just an outline of the comments that I gave today, and we'll be distributing that.

COMMISSIONER DAVIS: Okay.

Mr. Mills, Mr. Kind alluded to it in his testimony, that initially OPC was opposed to the bill and then, I guess, became neutral on it after the cost recovery language was —— the rider language was removed. Is that fair?

MR. MILLS: Well, mostly. There were a lot of changes made through the drafting process. I was involved pretty much all the way through, and there were a number of things that I suggested be changed.

A lot of them were changed; some of them weren't. One of the most significant —— well, two of the most significant were the —— What was the phrase that was in there originally? —— a fixed investment recovery mechanism to recover lost margins and a cost adjustment clause for collection of costs.

Both of those were explicitly in the original draft, and both of those were explicitly taken out in the final truly —— agreed to file a past version that was enacted. As I said, there were other changes that helped me along that the —— removing those two things were the biggest thing that got me off the fence from opposing to not —— from opposing to somewhere in the range of not opposing to even supporting.

COMMISSIONER DAVIS: Okay. So in the end you were supportive?

MR. MILLS: Pretty much. I mean, there's some things that I don't like about it still, but it's —— you know, they tried to put me on the spot in the Senate when we testified, the Senate Commerce Committee, because they don't allow people to testify for information purposes and, you know, I'm supportive, but I think there should've been changes made, so I'm not entirely supportive, but if I had to pick supportive or opposed, I would have to have said supportive.

COMMISSIONER DAVIS: Okay. And were you not supportive of the "timely" language, or do you have ——

MR. MILLS: You know, "timely cost recovery" based on —— I mean, you have to take —— you have to take a statute and assume that the Legislature knows the current framework of the law, and this ——

COMMISSIONER DAVIS: I agree with that.

MR. MILLS: And this —— I don't think the insertion of the word "timely" in two places in a statute, I don't think, creates a new cost recovery mechanism, so I am not bothered by the word "timely." I don't think that changes the current law.

COMMISSIONER DAVIS: But if it doesn't, then what does it mean? I mean, if it didn't mean anything, then why would they put it in?

MR. MILLS: It just means that you can't unduly delay cost recovery, but it doesn't mean you accelerate cost recovery from the way the cost recovery is currently in the law.

"Timely" doesn't mean "faster." It doesn't necessarily mean "slower." It just means "in due course, in the proper time," and the proper time is the time established by law.

COMMISSIONER DAVIS: Okay. I will ponder that, Mr. Mills. Thank you.

MR. MILLS: Judge, for the record, I have budget hearings this afternoon, so if there are questions from the Commissioners of me, I will only be here this morning. I won't be here this afternoon.

JUDGE STEARLEY: All right. Very good. I did want to note that we're marking Mr. Kind's outline as Exhibit No. 2.

Any other questions for Mr. Mills, keeping in mind his limited availability today?

MR. KENNEY: Just briefly. Mr. Mills, just to follow up on Commissioner Davis' questions, is your analysis particularly so given the fact that the language was in the introduced bill but we will not find it in the agreed bill?

MR. MILLS: Oh, I think that's absolutely critical. I mean, I think it gives us –– I mean, yeah, that's a –– that's a critical part of my analysis, the fact that the Legislature –– it really has –– it has –– it represents two separate arguments.

One is it gives evidence the Legislature knew how to draft a statute that would allow this recovery, so the fact that they –– you know, you can't presume that the word "timely" does this, because both in the earlier drafts of this statute and other statutes like the ISRS, the Legislature has demonstrated they can clearly create an extra record recovery mechanism.

And I think it's critical for an interpretation of legislative intent. We don't really do legislative intent in Missouri, but when you've got something that is this clear, it's difficult to ignore.

MR. KENNEY: That's my only question. Thank you.

JUDGE STEARLEY: Any other questions for Mr. Mills?

(No response.)

JUDGE STEARLEY: All right. Mr. Coffman –– I think we have another gentleman in the back here too.

MR. WILLIAMS: Judge, if I might in response to Commissioner Kenney and Mr. Mills' response, that legislative history was not a part of Staff's analysis in its position on the legal end, although we view that it is supportive.

JUDGE STEARLEY: Thank you, Mr. Williams.

Mr. Coffman.

MR. COFFMAN: Good morning. May it please the Commission. I'm John Coffman. I'm here today representing both AARP as well as the Consumers Council of Missouri. I hope I'm not jumping ahead of somebody that wanted to speak, I just felt that my comments would be appropriately dovetailing after the Office of Public Counsel, because I think both my clients generally concur in all of the comments that have been made thus far by the Office of Public Counsel.

We specifically concur in the July filing by OPC as well as the brief to legal issues filed by OPC on September 14. Both my clients, AARP and Consumers Council, were actively engaged in the negotiations that went on in the Legislature about 20 months ago, and we are actually very pleased that despite a lot of controversy, this was a piece of legislation that we reached general agreement upon, and a very difficult negotiated situation where you have more than a bilateral situation. You have environment groups. You have differing consumer interests as well as differing utility interests.

And I completely agree with Mr. Mills' legal analysis, as well as I would like to convey our perspective on what occurred in the Legislature. We, like Mr. Mills, like OPC –– there were several things in the legislation that caused us concern, primarily the apparent language that would have allowed a single–issue ratemaking that changes new rates in between general rate cases.

And when filing, they were told by supporters of the legislation that that language would be taken out and the bill would no longer allow for changes in between general rate cases. We felt that that change alone was significant enough that we could compromise on other parts of the legislation, so we are today here somewhat distressed to see utilities now arguing that this legislation allows what we were –– what we understood would not allow after that language was taken out of the bill.

I suppose someone could interpret other language to allow what –– you know, what had originally been in the legislation be taken out. This will certainly have an effect going forward for my clients in being able to, you know, feel that these kind of negotiations are worthwhile.

Probably lead to some future weariness and increased cynicism if this legislation does result in a rule that allows for single–issue ratemaking. In my opinion, if that does occur, that would not be consistent with the Missouri law.

As to the words "timely recovery," of course we were aware that was in the legislation. It was not an understanding that that would allow us an exception to the UCCM, Utility Consumer Council of Missouri, case. In our opinion, that is language that merely says that rates should -- should go up when it is time, and that's consistent with 386.270 (4), which says all relevant factors need to be taken into account, so we would urge that the Commission would recognize that law, and to the extent that mechanisms are approved in this case, make no rights until they are timely; that is, they will be timely only after all relevant factors have been baked into those rate changes.

We have -- we recognize that the law does allow for mechanisms, and there are several things that the law does allow, even though it does not allow single-issue rate changes. It allows capitalization of investments and expenditures for demand-side programs and rate design modifications, accelerated depreciation on demand-side investments and allowing the utility to retain a portion of net benefits for those programs.

Those are the things that are in the legislation that do give demand-side programs a leg up or a boost, a jump-start, but we believe that those -- to the extent there is a mechanism, it could allow for a deferral account and then a rate change only after all the factors are taken into account.

These days with electric rate cases every year, every other year, that seems certainly timely to us. That is, by far, the most important thing that my clients wanted to convey to the Commission, is our opposition to surcharges between rate cases and recovery of lost revenues in that manner.

I believe that I can speak for both my clients that we concur in the outline of comments by the Office of Public Counsel. I'm not sure I can necessarily take a position on everything that Mr. Kind said in response to questions, but we certainly agree in all the written things that have been put forth by Public Counsel.

And I would answer any questions that you might have.

JUDGE STEARLEY: Questions of Mr. Coffman?

COMMISSIONER CLAYTON: I just wanted to ask a couple of general questions. Mr. Coffman, you've been around the Public Service Commission for quite a few years now. You have experience in the processes that we have.

This is new statutory obligation that we are taking up with this rulemaking. I wanted to ask you, Do we have -- should we anticipate growing pains as we implement energy efficiency changes in terms of policies, incentives, targets and goals as we look at these?

Is it going to take some time working through a handful of these to see how they work to provide everyone a greater comfort level, or in your opinion, are those issues just very challenging?

MR. COFFMAN: Well, as far as demand-side management, we've been talking about that as long as I can remember. I mean, the IRP process always included a lot of discussion about it, and I certainly agree that it has not moved forward as much as folks would like, and my clients are certainly very supportive of demand—side management and energy efficiency.

I mean, there are some manners in which those might be implemented that might seem to be compulsory, certainly oppose some mandatory requirements on customers. I believe that program should be voluntary and customers should be encouraged ——

COMMISSIONER CLAYTON: Could you give me some examples of "mandatory in nature" versus "voluntary."

MR. COFFMAN: Well, more recently those involve ——

COMMISSIONER CLAYTON: And give me an example of something that we would do where we would actually go out and mandate something on a customer.

MR. COFFMAN: I'm not aware of anything that's been proposed in Missouri that would fall into that category. There are many things involved in meters in the homes that —— and I want to say mandatory time of use, that sort of thing.

COMMISSIONER CLAYTON: Okay.

MR. COFFMAN: But, no, I mean, these —— the policy issues, I think, have been around for a long time and are certainly implemented in many other states that we can draw lessons from.

I don't think the topic that —— of course the way a particular mechanism works usually involves growing pains the first time it's implemented, but I appreciate all the comments that Ryan Kind for OPC and the Staff have put together as to how these mechanisms might work. There are some good technical information.

COMMISSIONER CLAYTON: Your comments specifically only referenced the issue of single–issue ratemaking and modifications outside of a general rate case; is that correct?

Are you also saying –– I can't remember if your comments that you –– do you also sign onto everything that Public Counsel is ––

MR. COFFMAN: Yes, at least as far as their written comments. We also recognize that lost revenues was in the original legislation and was removed, wasn't potentially taken out, but by far the most important thing for my clients is trying to avoid this rulemaking implementing a single–issue rate change.

COMMISSIONER CLAYTON: Aside from the legal issue of whether we can authorize lost revenue as part of a DSIM, is there ever an occasion where the Consumers Council would think it would be appropriate to have such a part of a DSIM since you are changing the whole model of utility sales emphasizing fewer sales?

Is there ever a possibility where, in your opinion, that would be appropriate?

MR. COFFMAN: Yeah, I think it's possible. I'm not ––

COMMISSIONER CLAYTON: Is the problem just measurement verification? Is it lack of trust in the process or that this process is just too imperfect?

MR. COFFMAN: First of all, obviously, we would oppose changes in between rate cases in the rates, and then there's a concern of verification. We want to make sure that rates are not higher than they need to be either because there has been a change in the economy, either a positive one that allows overearnings and excess rate recovery, or say another recession, and that is, you know, some adjustment that in some way would reward utilities if usage is down simply because of a bad economy or some other external force which is outside the utility's control.

COMMISSIONER CLAYTON: Are you aware of any state that has included lost revenue as a component of a similar DSIM program that has sufficient consumer safeguards to provide you sufficient comfort in implementing such a program?

MR. COFFMAN: If you're asking me of an example, that is of ——

COMMISSIONER CLAYTON: Any state where lost revenue would be included where there would be sufficient consumer protections to provide you greater comfort, or is it simply impossible —— as a matter of practice, it is impossible to do a lost revenue component in such a mechanism?

MR. COFFMAN: I can't say it's impossible, and I don't have a good example for you right now, but I probably could find one and maybe get back to you later about that.

COMMISSIONER CLAYTON: Okay. Thank you very much.

JUDGE STEARLEY: Commissioner Davis.

COMMISSIONER DAVIS: Good morning, Mr. Coffman.

MR. COFFMAN: Yes.

COMMISSIONER DAVIS: Is there any difference between the AARP comments and the CCM comments, and if there is, what is it?

MR. COFFMAN: Not on the legal and policy issues, no.

COMMISSIONER DAVIS: Okay. Do you have anything else to add on the whole timely cost recovery issue? I mean, you know, I read your statements. I've been querying Mr. Williams and Mr. Mills.

Did you have anything else that you wanted to add?

MR. COFFMAN: Nothing other than my legal interpretation, and that is that under the UCCM case, the Commission is not allowed to engage in ratemaking that doesn't consider all relevant factors, unless specifically authorized to do so, and we've had, I think, four examples now in Missouri law that very specifically say you can change rates in between general rate cases in this manner, and I don't believe that a phrase that says —— that will allow for timely recovery is authorization to create a mechanism of that nature.

COMMISSIONER DAVIS: Okay.

MR. COFFMAN: I do think that the —— as far as legislative history goes, Missouri law does not consider things such as speeches by senators and newspaper articles and so forth to be considered by the courts, but I think the court can consider the legislative history as far as what proposed —— how proposed legislation changed during the process, and I think it's a further indication ——

COMMISSIONER DAVIS: Right, whether amendments were adopted, defeated.

MR. COFFMAN: Right. And I think the history here is clear that there was specific authorizing language such that would've been comparable, say, to the Fuel Adjustment Clause Statute, and that was taken out.

And I can -- I can testify that that was taken out in response to negotiations with consumer groups, and it was our belief and understanding, and it was represented to us, that that was taken out so that single-issue rate changes in between general rate cases could not occur.

COMMISSIONER DAVIS: Okay. I don't think I have any more questions, Mr. Coffman. Thank you.

MR. COFFMAN: Thanks.

JUDGE STEARLEY: Please introduce yourself.

My name is Chris Grant and I'm with Renew Missouri, but I'm speaking today on behalf of Natural Resources Defense Council. They've asked me to read into the record some comments from Rebecca Stanfield, if that's okay with the Commission.

Good morning, and thank you for providing an opportunity for public comments on these important proposed rules which have been the subject of an extensive public process over the past year. NRDC considers it a privilege to have been part of that process.

We would like to commend the Commission and the Staff on its diligence in working through contentious and complex issues with the stakeholders in an attempt to forge consensus where possible and address areas of disagreement.

It is important to maintain focus on the reason these rules are so important to the residents of Missouri. There is tremendous untapped potential for energy efficiency to reduce customer bills and avoid the need for polluting forms of electric resources.

According to a 2009 analysis by the Midwest Energy Efficient Alliance, if Missouri utilities were to meet the goals contained in proposed 4 CSR 240–20.094, ratepayers would save cumulatively more than an estimated $4.5 billion on their energy bills over a 15–year ramp–up period, net of program costs.

This savings could be used by consumers to create economic growth as residential ratepayers have more to spend on goods and services and businesses have more to spend on production and workers.

The Missouri Legislature recognized the benefits of energy efficiency in passing the Missouri Energy Efficiency Investment Act, which establishes a goal of capturing all cost–effective demand–side savings.

The Legislature further recognized that central to achieving this goal was to encourage electric utilities to invest in efficiency and did so by requiring the Commission to provide utilities with timely cost recovery for energy efficiency program investment, provide utilities with an opportunity for earnings in that investment and ensure that utility financial incentives are aligned with helping utility customers use energy more efficiently.

NRDC, along with several other stakeholders, submitted written comments in this docket on December 15, addressing a number of provisions in the proposed rules. In interest of time, I will not reiterate each of these comments today, but refer you to that written submission.

My comments today are in two parts. The first part concerns how the proposed rules seek to ensure that utility plans are sufficiently aggressive to lead to the capture of all cost—effective potential for energy savings in Missouri.

The second part concerns how the proposed rules seek to ensure that utilities are able to recover their costs, overcome financial disincentives to energy efficiency, and earn a return on their investment in efficiency.

All cost—effective energy efficiency: The statute is clear that in considering utility energy efficiency plans, the Commission must evaluate whether the plans will meet the goal of capturing all cost—effective energy —— efficiency potential; therefore, the Commission must have some guidelines by which it makes that assessment.

The proposed rules properly give the Commission two sets of inputs for that determination. The first is a set of gradually–increasing goals that mirror the level of savings that have been adopted in other Midwestern states by statute or by Commission order.

Second is the potential studies performed by Missouri utilities. NRDC agrees that these –– that with these two sets of inputs the Commission should be able to evaluate whether a proposed program portfolio is designed to achieve the goal of capturing the cost–effective potential for energy savings.

Several stakeholders have argued that the numerical goals in Section 4 CSR 240–20.094(2)(A) should be omitted. They argue that goals set by other states are not relevant to the realities of Missouri and that the utility potential study alone can guide the Commission in this determination.

We strongly disagree. Utilities should not be in the position of designing a study, the outcome of which will be an energy efficiency target against which their own performance incentives will be awarded.

Such an arrangement would inevitably result in studies that underestimate the efficiency potential so that higher performance incentive rewards can be earned. This outcome does not serve utility customers and will not result in the accomplishment of the statutory goal of achieving all of the cost–effective potential that exists.

The goals in the rules provide an important and reasonable backstop to the temptation by utilities to manipulate the assumption in their potential studies.

The goals are not mandatory, and no penalty is assessed as a result of failure to meet them; however, they do reflect the trajectory that many other utilities in the region and around the nation have set for electric utilities.

There is nothing about Missouri that would suggest that these goals are inappropriate here. The Commission should seriously question a utility efficiency portfolio that fell significantly short of these goals, and the proposed rules appropriately require the utilities to provide documentation as to the reason why a portfolio fails to achieve this level of savings.

NRDC generally supports the use of demand—side investment mechanism to allow utilities to recover program costs and to earn an incentive for excellent performance toward the savings targets set by the Commission in the plan approval process; however, as we have stated previously and will reiterate here, we do not believe that the proposed rules adequately address the throughput incentive currently faced by utilities, and therefore the rules fall short of faithfully implementing the statutory directive.

It is well understood and extensively documented that under traditional ratemaking policy, utility revenues rise when sales rise, and the converse is equally true: Declining sales mean declining revenues.

Thus, Missouri utilities can earn more than their authorized fixed costs revenue requirement if sales are higher than was projected during the rate case. This throughput incentive amounts to a strong disincentive for utilities to invest in energy efficiency or to support energy savings policies and measures outside their control, and the magnitude of the disincentive is substantial.

In a 2008 report to the Minnesota Public Utility Commission on decoupling, the Regulatory Assistance Project provided an example to illustrate the effect of change in sales, both up and down, on a utility's earnings.

In the hypothetical, a 1 percent change in revenues had an effect of about ten times greater on utility earnings. For example, a 2 percent gain or loss in revenues caused a nearly 24 percent gain in loss —— or loss in earnings.

The statutory direction to the Commission to align utility and financial incentives such that utilities are encouraged to support energy efficiency investments that save customers money is rendered meaningless if this powerful disincentive is not addressed in the meaningful and timely manner in this rulemaking.

The current proposed rules purport to address this misalignment of incentives by offering the utilities an opportunity to file a mechanism by which it can recover lost revenues; however, under such a mechanism, utilities would continue to seek higher levels of revenue recovery with higher sales, therefore, the utility will find itself facing the same conflict it currently faces at the prospect of taking actions or supporting policies to save energy and thereby save their customers money, knowing that such actions would cause their shareholders to miss out on the benefit from higher sales.

Under such a mechanism, utility management would face this conflict at the prospect of supporting State building codes for energy efficient construction, federal appliance standards that have successfully transformed the market for products ranging from refrigerators and televisions to air conditioning and lighting or any action outside its own programs for advancing the use of increasingly efficient technologies.

Such a mechanism would ultimately fail to align the utilities' financial incentives with the goals of the statute to capture all cost—effective energy efficiency for the benefit of ratepayers.

Our view is that the rule should be less prescriptive regarding the way in which a utility might propose to address the throughput incentive. The rulemaking process did not attempt to force consensus on this matter; rather, it should be for the Commission to decide in the context of a specific proposal by a utility during a DSIM filing.

In our written comments filed last week, we described a simple change in the rule language that would allow utilities to file and the Commission to either approve or reject the mechanism that works for their specific needs. Rather than repeating that change in wording here, I simply direct you to that December 15 submission in this docket.

In conclusion, again on behalf of thousands of NRDC members residing in Missouri, we would like to commend the Commission and the Staff on its work to implement the provisions of the Missouri Energy Efficiency Investment Act and thank you for allowing our participation. I look toward to working together to review and refine the programs and plans submitted pursuant to these rules in realizing the goal of maximizing the potential for energy efficiency for Missouri taxpayers -- ratepayers.

JUDGE STEARLEY: Any questions?

COMMISSIONER CLAYTON: I have a few questions.

My first question is about the issue of when a DSIM is set up from NRDC's perspective. Is it your position that a mechanism such as this can be set up in a general rate case, between general rate cases? Do you have to start it at a rate case and amend later on? Do you have any comments on that debate?

MR. GRANT: We have supported cost recovery outside of the rate case as a means to be more flexible for the utilities so they'll -- because our ultimate goal is to encourage the utilities to pursue EE, so whether -- if -- if you have to wait till the next rate case, you know, to adjust within a rate case, and that precludes a utility from pursuing EE, then we think that would not be timely, so that would —— we want the flexibility.

COMMISSIONER CLAYTON: Can you give me an example of states that have successfully included a lost revenue component with sufficient consumer protections to avoid inappropriate returns on the part of the utility?

MR. GRANT: Well, I'm actually not from NRDC, and I do not have ——

COMMISSIONER CLAYTON: —— the information.

MR. GRANT: —— the information for that.

COMMISSIONER CLAYTON: Thank you.

MR. GRANT: I can get that to you. I could contact NRDC.

COMMISSIONER CLAYTON: Well, I'm not sure what you can get to me or not. I don't know the rulemaking process, whether we can accept additional comments or not. I'll leave that to the judge this morning. Thank you.

MR. GRANT: I do have a hard copy of these comments to turn in.

JUDGE STEARLEY: We will mark that as Exhibit 3.

It's just a couple minutes after noon. Mr. Mills ——

MR. MILLS: Judge, was Exhibit 2 admitted or was simply marked?

THE COURT REPORTER: I haven't marked it yet. I need a copy of it.

JUDGE STEARLEY: I had marked it.

MR. MILLS: Okay. I'd like to move for its admission.

JUDGE STEARLEY: Were there any objections to the admission of Exhibit No. 2?

(No response.)

JUDGE STEARLEY: Hearing none, it shall be received into the record. It was my intent to receive all of these exhibits into the record.

This looks like a good breaking point for us. We've been going for about two hours, and we can take a lunch break and resume back here approximately, oh, 1:30.

COMMISSIONER CLAYTON: Judge, can we get a sense of just how many more witnesses we have so we can plan our afternoon?

JUDGE STEARLEY: Certainly. If we can see a show of hands by those who are going to offer additional comments ––

COMMISSIONER CLAYTON: One, two, three, four, five six ––

COMMISSIONER DAVIS: One, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve.

JUDGE STEARLEY: All right. Thank you very much. We'll stand in recess.

COMMISSIONER DAVIS: Judge, while we're in recess here, can I get Mr. Mills, and could I get someone from Ameren and anyone else who's interested in me asking MISO questions to come up to the bench.

MR. WILLIAMS: Judge, also we have written comments for Mr. Rogers' comments.

COMMISSIONER DAVIS: Well, just consider this a scheduling question, because I've got questions and I want answers.

MS. TATRO: Absolutely.

JUDGE STEARLEY: We still haven't gone off the record. I am taking another exhibit from Staff, Mr. Roger's comments, which I am going to mark as Exhibit 4.

(Exhibit Nos. 2, 3, and 4 were marked for identification.)

JUDGE STEARLEY: Now I'm taking us off.

(A lunch recess was taken.)

JUDGE STEARLEY: All right. Good afternoon. We are back on the record in our rulemaking hearing on Section 393.1075, and before we start up again with additional comments, I would like to remind everyone to please introduce yourself when you come to the podium, and if additional comments are made as we are proceeding, if you would all please reintroduce yourself so that our court reporter's got a good, clear record of who's speaking, that would be greatly appreciated.

All right. Who would like to go next?

MS. WILBERS: Good afternoon. My name is Brenda Wilbers. I'm with the Missouri Department of Natural Resources, Division of Energy. We appreciate the PSC's thorough working group process which has provided numerous opportunities for comments and input into this rule development.

On December 15, as you heard this morning, the Department filed comments with several other parties on the proposed rules. I won't repeat those comments here, but I would like to highlight a few of the main issues that the Department has been stating and talking about during the workshop process and whether we believe the current proposed rules adequately address these issues right now.

So the first one is the achieving of all cost–effective energy efficiency, and two parts to that: The inclusion of the energy savings performance goals, I believe this is adequately addressed with the proposed rule. We are in strong support of the inclusion of these goals and have been proponents of the goals throughout the process.

Again, you have heard that these are not hard targets. We consider them interim steps that demonstrate progress toward the statutory goal of achieving all cost–effective demand–side savings.

Targets are to be informed by utilities' potential study, and it clearly demonstrates that the targets are not obtainable, though the rules allow the Commission to approve targets that fall short of the numeric goals. It's critical to include these goals as a benchmark against which to measure whether utilities' DSM plans represent appropriate progress and are sufficiently aggressive but attainable.

So I think we all want to guard against allowing performance incentives that are based on energy savings targets that are set too low.

The second piece to this achieving all cost–effective is achievable potentials. Right now the rule refers to realistic achievable potential. We continue to recommend adoption of the nationally–accepted and defined definitions of the various levels of potential in the rule as we believe the current definitions could limit the Commission's view of the potential for cost–effective demand–side savings, the level of funding and aggressiveness of implementation that a utility elects to assume in its potential study.

The rule doesn't provide direction or standards for how a potential study is to be conducted, and as a result, such studies are likely to focus on establishing a single level of realistic achievable potential when, in fact, there can be many levels of achievable potential depending on the utility's assumptions regarding levels of funding or aggressiveness of implementation.

The second point I'd like to make is this interaction of this rulemaking in Chapter 22. We continue to advocate for removal of the additional criteria for approval of DSM plans.

This additional criteria is not included in the statute; however, we recognize that it's desirable to submit the DSM programs to integration analysis under the resource planning rule, and the rule currently requires this analysis to be submitted in the reporting requirements. We just do not believe it should be a condition of approval of the DSM plans, and we further elaborate on this in our written comments.

And the third issue is demand–side programs' investment mechanism. This was talked about extensively. I don't really have a lot to add to this, but we believe the rules do provide for timely recovery of DSM costs by allowing for recovery of the costs of the Commission—approved programs between rate cases.

We also believe the rules allow for timely earnings opportunities associated with efficiency savings by allowing utilities to propose a performance incentive; however, we believe the statutory provision of 393—1075.3, that the Commission must ensure that utility financial incentives are aligned with helping customers use energy more efficiently. It's not adequately addressed in the rule.

We propose a simple modification to the rule to add this —— add an additional component that the utilities can propose in a DSIM filing that mirrors that additional statutory reference of aligning financial incentives, and the way the rule is written, it contemplates the utility proposing what components and how their DSIM would be structured, so we're looking at just allowing them the opportunity to propose something in addition to what is listed in the rule right now. Then that would be discussed and deliberated in the context of that filing.

Thank you. That's all my comments.

JUDGE STEARLEY: Are there any questions from the commissioners?

COMMISSIONER GUNN: I don't have anything. Thank you.

JUDGE STEARLEY: Mr. Chairman? Commissioner Davis?

COMMISSIONER DAVIS: Ms. Wilbers, I apologize if you already covered this, because you may have. Having read the comments of DNR and NRDC, Sierra Club, Renew Missouri, GRELC, you take the position that Section 393–1075 (11) gives the Commission the authority to establish interim goals; is that correct?

MS. WILBERS: Yes.

COMMISSIONER DAVIS: Are there any points you want to add in further support of what's in your brief?

MS. WILBERS: Regarding the interim goals, the numeric goals?

COMMISSIONER DAVIS: Right. Right.

MS. WILBERS: Well, I don't know if –– I believe that I have.

COMMISSIONER DAVIS: I mean, if it speaks for itself and you can't add anything, that's fine.

MS. WILBERS: I think I would just be repeating myself.

COMMISSIONER DAVIS: Okay. All right.

Now, DNR concurs with the position of –– I guess it was NRDC and Mr. Robertson about the differences between this rulemaking and the Chapter 22 rulemaking; is that correct?

MS. WILBERS: Yes.

COMMISSIONER DAVIS: Okay.

Judge, I don't have any further questions.

JUDGE STEARLEY: Commissioner Kenney, I know you've just joined us. Do you have any questions for Ms. Wilbers from DNR?

MR. KENNEY: No. No, thank you.

JUDGE STEARLEY: All right. Thank you.

Commissioner Jarrett, any questions for Ms. Wilbers?

MR. JARRETT: No questions, but thanks.

MS. WILBERS: Thank you.

JUDGE STEARLEY: Thank you very much.

Mr. Blanc, did I see you standing earlier?

MR. BLANC: You did.

Good afternoon. My name is Curtis Blanc, here on behalf of KCP&L. Thank for having us this afternoon. I'm just going to touch upon three subjects, and largely they're policy determinations to be made by this commission dealing with lost revenues, the timeliness to recovery, and from a policy standpoint, which is more effective penalties or incentives.

None of these issues are new. They've been discussed quite a bit at the round tables and they've been commented on extensively, so I will try to be brief. Lost revenues is key. It's kind of a white elephant in the room that everyone's talking about and trying to find a way to deal with.

I guess from our point of view, silence is not an answer. Silence on lost revenues will not further the development of energy efficiency policy in the state of Missouri. What the utilities want and need more than anything else right now on this topic is certainty.

Before we invest more dollars in energy efficiency, we need to know the rules of the game, what recovery's going to look like, and lost revenue's probably the biggest component of that.

Then I wanted to speak for a moment to Staff's example on how if lost revenues are permissible, how that would work, and why from the utilities' perspective this wouldn't be adequate.

And the simple example is -- if you have Staff's example in front of you -- is the first point, is B greater than A? If yes, lost revenues equal zero. Now, I don't think that matches how reality would work. I think what you would most likely see is if our natural load growth, without any energy efficiency, say, would be 3 percent, with really good, successful energy efficiency, maybe that's 1 percent. Maybe it's half a percent.

That's a real benefit to customers and a real cost to the utility, but under Staff's model, that would be zero lost revenues, and my broader concern is not only does it not adequately reflect what goes on, it would drive the utilities to file rate cases more often. We would need to reset that benchmark as often as we could to minimize that cost.

The second is timeliness of recovery. I'm not going to get into the legal argument around that. I think the lawyers can adequately do that, and I know it's been briefed extensively. My testimony, or my comments, have more to do with the policy considerations around that.

First, is that I -- the statute itself says that the goal is to further -- further encourage investment in DSM, and in order to further encourage, you have to do what is better than the status quo now.

The companies currently have traditional test year rate case, test year—based rate case, and so we can basically come to you now with our historical costs, but that doesn't further the ball. I don't think that's what the statute intended to do.

And I guess more than that from a policy perspective, if the encouragement —— if the goal is to encourage further investment, based on a historical test year, that could be two years, three —— two, three, or four years ago, the utility has no incentive to spend more money on energy efficiency than it did in a test year three or four years ago. If you want to remove that disincentive, you have to move the ball from traditional cost—of—service ratemaking.

And also it was suggested earlier by OPC that our company's weighted average cost of capital isn't the appropriate return to give our DSM. I strongly disagree. That is the return we could get on an investment in real steel assets. We built a CT. If we built any kind of generation, we would get our weighted average cost of capital, so to give us any less than that for an investment in energy efficiency is a disincentive in those investments.

And finally, penalties versus incentives. This is kind of an age—old regulatory question. It's in environmental circles and these circles. Penalties are difficult to enforce. They require a lot of enforcement resources, a lot of monitoring, and companies work hard, work within what framework, whatever rules exist. The statute uses the expressed words "align incentives," and I think that makes a lot of sense.

If you align incentives, we have the financial incentives to do what the Commission's policy is, and so it doesn't require the enforcement, it doesn't require those resources to happen.

So basically what I see when I look at these three issues, lost revenues, timeliness of recovery, and the potential for penalties, is why would a utility invest in that area with that kind of uncertainty out there?

Looking at those three issues and the way they're being treated right now in the draft rule, it doesn't further encourage investment in DSM, which is the stated goal of the statute.

Any questions?

JUDGE STEARLEY: Commissioner Clayton.

COMMISSIONER CLAYTON: Thank you, Judge.

MR. BLANC, I wanted to just ask you a few questions. In the workshop process that we had, KCP&L filed joint comments with another group that had filed comments in the formal rulemaking process, and you haven't —— or KCP&L hasn't joined in those comments that were filed by that stakeholder group at this point in the proceedings; correct?

MR. BLANC: That's correct.

COMMISSIONER CLAYTON: Can you describe for me today where KCP&L

differs in position from the positions filed by the stakeholders that filed joint comments, including NRDC, Missouri DNR, I think Sierra Club's in it. There are a number of groups that are a part of that.

Can you describe for me where you differ in position on the existing draft or the rule.

MR. BLANC: Yeah, at the risk of mischaracterizing their position, I think we're largely in agreement that incentives are necessary to align the financial interests of the company with the policies that they're trying to move forward.

I think that the main point is the benchmarks, goals, targets, whatever you want to call them, and the potential that a penalty be associated with them, and perhaps more importantly, how those benchmarks are set.

If benchmarks are used, they should be based on a specific utility and what's reasonable and achievable for that utility in their diminishing returns, their rural versus urban. There are a lot of issues, and it's just not appropriate to pull an arbitrary target out of the air and hold a utility accountable for it.

COMMISSIONER CLAYTON: Does KCP&L believe that there should be no specific references to goals or targets within the rule?

MR. BLANC: Our position would be that it should be tied to the incentive mechanism, and so when the company comes in and applies for the incentive piece, that that be set then for a particular program, because different programs are going to operate differently and have different potential benefits, and so you should look at –– if it's air conditioner rebates, whatever it is, and look at the potential in that utility service territory for those benefits and then tie it to that specific program. So it should be done when the program goes into place.

COMMISSIONER CLAYTON: Okay. But other than that, no other specific references to overall goals associated with either the National Action Plan on Energy Efficiency or any other overarching goals in terms of setting energy efficiency hopes and desires as we move forward?

MR. BLANC: Aspirational goals for the state ––

COMMISSIONER CLAYTON: Thank you. "Aspirational" sounds a lot better.

MR. BLANC: Sure. Aspirational goals for the state are fine, but when it comes down, particularly, to the potential for penalties, I don't think that kind of lofty unutility–specific goal is appropriate.

COMMISSIONER CLAYTON: Would you agree with the statement that any aspirational goals –– would you agree that those should all be built into the DSIM when they were approved at whatever point in the process, setting out targets? I'm taking out –– I don't want to talk about penalties right now.

You don't have a problem setting targets associated with a DSIM when you implement a program setting out, We will accomplish the following to receive an incentive? You don't disagree with having that type of target?

MR. BLANC: No, if tied to the performance incentives and the level of intent of the facility to potentially get and tied to that specific program, no.

COMMISSIONER CLAYTON: Okay. Thank you.

JUDGE STEARLEY: Any other questions?

COMMISSIONER GUNN: I just have a couple.

To go back to the lost revenue, the example between the 3 percent where you were actually reducing the increase by 2 percent but the lost revenues looks zero because of the formula, how —— and we don't have to get into specifics. How would you calculate that?

Would you do a hypothetical, you know, growth and then compare it against it? Would you come in a year ahead of time and ask the Commission to basically approve what they think that would be and then you would compare it against actuals or —— because this is one of the —— I think you bring up a good point. It's a real problem, is if you're talking about a reduction, you have to take it into account with potential growth or the heading off of potential growth and potential usage.

So how would you fix kind of the figuring out, because it's going to be hypothetical? I mean, it's going to be, This is what we projected if we came in under it.

MR. BLANC: Sure, and that is a real challenge I readily acknowledge. I think, as has been acknowledged before, we are not reinventing the wheel. We are not starting from scratch. These programs exist elsewhere in the country and have been studied extensively, and I think you would find data to support that a given program given "X" number of participants will save "X" number of kilowatt hours a year, and our proposal would be to set that up ahead of time and then go ahead and get recovery based on the lost revenues associated with that, and then later on there could be a true–up process.

If we didn't get the number of participants that we should have or data suggests the savings weren't what it should have been, you can make that adjustment, but I think those estimates, that data, is pretty extensive.

COMMISSIONER GUNN: Just one other –– thank you. Just one other quick question.

You said the legal stuff is for the lawyers, but I'm going to throw –– you may have a position, but don't –– feel free to say you don't. Do you think the statute requires us to give you the weighted average cost of capital, I mean, because doesn't it say that the policy is that these investments are viewed the same as ––

MR. BLANC: Yes, it does.

The short answer is yes. They should be treated on –– supply of resources. That's the weighted average cost of capital. Absolutely.

COMMISSIONER GUNN: All right. Thank you. I don't have anything else.

JUDGE STEARLEY: Commissioner Davis?

COMMISSIONER DAVIS: I don't think I have anything for MR. BLANC.

JUDGE STEARLEY: Commissioner Jarrett.

COMMISSIONER JARRETT: Yes, I had a question.

You talked a little bit earlier about, I guess, maybe different rate designs when you were talking about getting away from the traditional historical cost–base to a forward–looking test year, that type of thing.

Do you think the best way to achieve the goals in the statute is to look at things like decoupling or forward test years? I mean, I guess my question is, Is any rule we draft going to be as effective as changing the way we determine rates?

MR. BLANC: That's a good point. I think the statute gives you the discretion to do just that, but I agree and, actually, it was one of the points raised by counsel for the environmental group earlier, that what's being sought here is a game changer, that basically we have many, many decades of regulatory ratemaking history to look at, and historical test year and looking at how supply resources are valued compared to DSM hasn't resulted in much DSM, so what you raise, those are great levers that can be pulled, a forward–looking test year projecting our DSM costs going forward. Absolutely. That would further incentivize investments in DSM. Absolutely.

COMMISSIONER JARRETT: Thank you. Appreciate it.

JUDGE STEARLEY: Any other questions from the bench?

COMMISSIONER GUNN: No, thank you.

JUDGE STEARLEY: Thank you, MR. BLANC.

MR. BLANC: Thank you.

JUDGE STEARLEY: Yes, Mr. Kind.

MR. KIND: Judge, I think there's been a mischaracterization of Public Counsel's position with respect to the weighted average cost of capital and how those apply, if I could speak to that real briefly.

JUDGE STEARLEY: Certainly.

MR. KIND: Thank you.

If you look at our written comments I talked about in the section on Staff comments, number four, we supported the Staff comments regarding interest rate treatment for customers and shareholders for deferrals. This all has to do with deferrals. It doesn't have to do with what the return would be once investments are put into rate case -- in a rate case.

We were just saying there's an imbalance to give customers credit for time, value, money at a short-term interest rate and to give credit to shareholders at the weighted average cost of capital. In fact, the way -- the way deferrals would come -- sometimes work is, the rate is the allowance for funds used during construction, which is less than the weighted average cost of capital.

Thanks.

JUDGE STEARLEY: Any questions for Mr. Kind on that point?

(No response.)

JUDGE STEARLEY: Seeing none, let's move forward.

MR. DORITY: Your Honor? Excuse me, Judge. Judge Stearley?

JUDGE STEARLEY: Yes.

MR. DORITY: Larry Dority, for the record, appearing on behalf of Kansas City Power and Light Company and KCP&L Greater Missouri Operations Company.

I just wanted to clarify and give my understanding in terms of prior documents that were filed in the EX docket. I'm specifically referring to the memorandum that addressed some of the legal issues that was previously filed by the companies.

Do I need to reintroduce that as an exhibit or will the Commission be taking notice of that, or should we be referring to it and incorporating it by reference? I'm just looking for guidance here.

JUDGE STEARLEY: Right. I believe Ms. Tatro came to me at the break to ask the same question regarding whether comments that were filed during the 30—day comment period, you need to incorporate those by reference, so why don't I just take all of these matters up together and say that all of the briefs that the Commission asked to be filed ahead of time, which I believe came in in September ——

MR. DORITY: September 14, I believe.

JUDGE STEARLEY: —— in the legal issues, if you're all wishing to have those moved into —— that we take notice of those in today's hearing record, the Commission shall so do that.

MS. TATRO: Ameren Missouri requests you do so. Thank you.

MR. DORITY: KCP&L would also. Thank you, Judge.

JUDGE STEARLEY: The Commission will take notice of all of those filings that we received on September 14, which were briefs that the Commission actually directed the parties to submit.

MR. COOPER: Judge, this is Dean Cooper on behalf of the Empire District Electric Company. Just to, I guess, get the full range of those documents, I'd point out that Empire had a response to legal briefs filed on September 23, and I ask that that be included in the same consideration.

JUDGE STEARLEY: That, too, shall be included.

Any other responses out there that I've missed in trying to pull all of those in today's record?

Mr. Robertson.

MR. ROBERTSON: Yes. I'd like the briefs that we previously filed to be part of the record.

JUDGE STEARLEY: I'm sorry. Could you ——

MR. ROBERTSON: I'd like the briefs that we previously filed be considered part of the record.

JUDGE STEARLEY: Very well. That will be granted, and those, too, will be considered part of the record.

Yes.

MR. KIND: Public Counsel. It sounds like you intend to give the same treatment to all parties, and so I just want to make sure that would be the case for Public Counsel.

JUDGE STEARLEY: That was what I had hoped my statement had encompassed, was I was letting all of those into this record.

MR. KIDWELL: Judge Stearley, my name is Steve Kidwell. I am vice president of corporate development for Ameren Corporation. Pleased to have the opportunity to speak with the Commission today on the SB 376 rules. I, too, will be brief.

Curtis covered, you know, several of the points I would have covered as well, but I want to step back to the policy level for just a moment and simply ask the question: You know, the statutory goal in Paragraph 4 is to achieve all cost–effective demand–side savings, to try to move toward that statutory goal.

And I'd ask you as you think about how you want to approach this rulemaking to ask yourselves the question, Do all five of you, you know, agree with that as a statutory goal? Do you support that?

And I think –– and I don't want to speak for you, but I think this is one place where all five of you might actually agree, which is, you know, given the –– you know, the spectrum of opinions that we have on the Commission, that's a –– that's a, you know, victory in and of itself.

COMMISSIONER CLAYTON: Let's not get carried away.

MR. KIDWELL: I know it's an assumption, but bear with me on the assumption for a moment. There may be a spectrum there, but if you are, you know, inclined toward that position, then I -- you know, we go to the "shall" paragraphs, you know, the "shall" requirements, and providing timely cost recovery, you know, insuring the utility financial incentives are aligned, and providing timely earnings opportunities.

I would ask you to think about, as you develop the policy that implements these rules, thinking about, as Commissioner Gunn said, this is one of the few times when you're actually asking a privately-held company to encourage people to not use its product.

I think we're on a new -- in terms of aligning incentives to do that, I think we're in a different place, and that may require, you know, you to use some of your discretion in ways maybe you haven't before, so think about that in terms of -- and as NRDC's comments said, you really need to think about all three of those requirements. They work together, you know, and making sure that the policy truly does encourage utilities to do something, which it is not in their economic interest, usually, to do. Do everything you can within -- within the legal framework that you have to make that happen.

And I'll, again, speak directly to lost revenues and lost fixed cost recovery. This is a serious issue. As the comments that were read into the record from NRDC said, if you can't deal with this, if you don't deal with this in this rulemaking, it really does make it meaningless.

And thinking about a way to do that in a way that does what Curtis was talking about, which is, we go through a long process in the -- in the integrated resource plan already of estimating these impacts, okay? And to the extent that we have an estimated energy impact that goes into the integrated resource planning rules, that's a one-for-one trade-off with what the estimate is for lost fixed cost recovery.

So why can't we use that as a basis for something that would, you know, be recognized as needed to be trued-up once you had actual, you know, EM&V evaluation results in, but why couldn't we use that as something to basically be our first estimate and then true-up around.

I don't see any real problem with that in terms of policy, and that would send a strong signal to senior management of utilities that you are -- that position of supporting us in terms of trying to pursue all cost-effective energy efficiency.

It is tough right now for energy efficiency to compete for funding. When I go and, you know, the folks who are involved in implementing energy efficiency go before our financial people, think about the question we have to answer: Okay, so we're going to spend tens of millions of dollars on this; we're going to ramp into this new business and we're going to lose tens of millions of dollars while we do it. Tell us why we should do this as opposed to investing in substations or investing in power plants. It really does not make sense to them, you know, at this point.

So we need your help in terms of helping to level the playing field in that competition for scarce resources at the utility to send a clear regulatory message with you guys behind this.

The only other thing I'll say is that in terms of the benchmarks, as we're characterizing them, I think Curtis said it well, that as long as it's something where you have a goal that we are seeking to achieve through time and you're looking for an external benchmark to reference what your utilities are telling you, that's a perfectly fine, you know, way of dealing with having some external numbers.

Now, they do need to be realistic, and we have Rick Voytas here to talk a little bit about the realisticness of what's in the rules right now, especially as you get longer term. But when you get to the point of setting incentives, again, as Curtis said, it really does need to be utility–specific. You need to look at all the evidence, and in particular the potential studies that you've done.

With that I want to thank you. Having all five of you here, you know, all day –– I don't know if you're going to be here all day, but so far –– means a lot to us in terms –– you know, in terms of demonstrating that this issue is important to the Commission, so thank you for your time and I'll take any questions you have.

MR. KIDWELL: Mr. Chairman.

COMMISSIONER CLAYTON: Thank you. Mr. Kidwell, we are at your service, and we're glad to be here. Appreciate that.

I appreciate your involvement on these issues. We've been involved on a number of panels and other collaborative groups so, I mean, this isn't the first time we've had this interaction.

I want you —— I want to ask that you maybe give me a little more detail. If one were to want to put into this rule some aspirational goals, let's throw out some —— doesn't have to be the most aggressive in the country, doesn't have to be groundbreaking in terms of what other states have done, but if we want to send a strong message on energy efficiency in this state where we really haven't had significant steps towards that goal, not to diminish the collaboratives that all the utilities are in right now, I think we've made some big steps over the last couple of years. This is the next logical step.

But if we want to just be aggressive, and let's set some lofty goals out there, take out —— and I understand the penalty discussion that has been raised in a number of the comments, but how can the Commission set out some lofty aspirational goals on energy efficiency and do that in a way that provides the utilities comfort in terms of how those numbers are derived, whether it be through ongoing rulemakings or dockets or cases, or something like that?

And I know you—all have done a study, and you have your realistic numbers, and we've got a study that's going on, and I think some other utilities have some studies going on and, as you know, it's really hard to get everybody in the room on the same page.

I mean, it just —— and this is another example. I mean, there are people that are going to be unhappy no matter what we do in this case.

MR. KIDWELL: Yeah.

COMMISSIONER CLAYTON: But how can we send a message that we want to be aggressive, set out these lofty aspirational goals but give you the comfort that you'll be treated fairly, because I don't like the idea of just removing all of this language, which is what it seems that the utilities are united saying, We don't want these arbitrary figures?

How can we write that section setting aside all the other —— there are a number of other issues that are onboard?

MR. KIDWELL: Yeah.

COMMISSIONER CLAYTON: But how can we —— how can we address these in a way that would be treating you fairly, in your opinion?

MR. KIDWELL: Thanks for your question.

The first way I might think about doing it is to call them benchmarks, okay? And by using that term —— if you use "goal," it —— it assumes that those numbers have probably more analytical weight and, really, analytical materiality behind them than maybe they do.

So you might think about saying, You know, we're going to set these benchmarks of where we think Missouri needs to be based on how we've seen things evolve in other states.

If you're —— what you're trying to do is set up a good, healthy debate around what is possible, you know, in Missouri and have people bring evidence to you, you know, to kind of rebut, you know, or support, you know, that benchmark. Then I think that's an okay thing to do.

And as Curtis said, as long as it's not —— you're going to need to take that information into account, plus what comes from the utilities and others about what realistically achievable potential is and all that sort of stuff.

You'll need to weigh all that when you come up with a specific target, you know, for the utility to meet. Having it be part of —— you know, we're always the ones that say, It's nice to look at what goes on in other states, so I think we'd be a little hypocritical if we didn't say you need to have something in here in a process by which we're looking at what happens in other states.

So if it is something where you're forming that long–term goal and you're trying to have some good, healthy debate every time somebody comes in front of you about that long–term goal, then I think that's fine.

If there's a punitive aspect in it, which the way things are kind of written right now, that basically makes those rebuttable presumptions by the utilities, and you can face penalties, if you're going to have them, then that's where the problem comes in. That's –– that's my opinion.

COMMISSIONER CLAYTON: It's strictly from –– it's strictly the penalty language that causes you the most grief?

MR. KIDWELL: Right. It's that and the fact that these numerical targets which, really, have not gone through the same process that our material is going to go through in the IRP –– you know, just being kind of thrown out there without –– without the ability to really question.

COMMISSIONER CLAYTON: Let me ask you this question: Ameren has conducted an energy efficiency potential study.

MR. KIDWELL: Yeah.

COMMISSIONER CLAYTON: What if we took the figures that you–all came up with in that study, the conclusions of that, and put those in there? Would you support these goals and targets if we took your numbers and had penalty language attached to them?

MR. KIDWELL: I think –– I think there's two things, you know –– and what the Staff tries to do is –– is –– is draw distinction between two types of numbers, and I think they're on the right track.

So one is a target that you're going to set for incentive purposes, okay? If you were to say to us, Okay, we're going to accept your realistically–achievable potential, and that's what we're going to base whatever incentive mechanism we have around it, absolutely, we'd be —— you know, because that's —— you know, we feel like that's ——

COMMISSIONER CLAYTON: That's the hard target associated with getting the incentive; correct?

MR. KIDWELL: Right. Right. But in terms of the goal ——

COMMISSIONER CLAYTON: On the lofty aspirational goals.

MR. KIDWELL: Yeah. I —— I think we should only be one voice you look at there. You know, I mean, we've got —— we've got —— I think we did a pretty good job with our study, but you should be looking at, you know, what other leading states are accomplishing too.

COMMISSIONER CLAYTON: But if we took your numbers and put those in as the aspirational goals and left the penalty language in there, would that make Ameren be comfortable and push you towards reaching those lofty aspirational goals?

MR. KIDWELL: Yeah. I think —— I think the problem there becomes the linkage between the aspirational goals and the penalty. We think —— we think that the penalty should be more tied to looking at what happened in our integrated resource plan, looking at what happened —— so that should be a piece of evidence, looking at our own potential study, looking at our own program performance, so you need to take those into account.

And maybe you need —— you want to weight what's happening in other states, but right now it looks like the rebuttable presumption, if we don't make what happens in other states, we look bad, and that's –– that's the problem.

COMMISSIONER CLAYTON: Not to belabor this, but it sounds to me that the answer to the question was no, that basically even if we took Ameren's numbers, focused on a portion of the rule that was just going to be Ameren, that you still wouldn't be comfortable with having the aspirational goals.

MR. KIDWELL: Right, and I should have started with "no." Yeah, you're right.

COMMISSIONER CLAYTON: I mean, I think that's ––

MR. KIDWELL: Yeah, you're right.

COMMISSIONER CLAYTON: I mean, you kind of talked around and got there but ––

MR. KIDWELL: Yeah.

COMMISSIONER CLAYTON: –– it seems to me that in a space that is regulated where we are the regulator, you are the regulated, you're always going to like the carrot rather than the stick; right?

MR. KIDWELL: Sure.

COMMISSIONER CLAYTON: And we may think differently about the carrot–and–stick approach.

MR. KIDWELL: Right.

COMMISSIONER CLAYTON: Are you saying in this instance that we should never have any stick for not trying harder? Is there –– in energy efficiency is there any room to have something other than just offering you the carrot and the incentive and the lost revenue and the shared savings and ——

MR. KIDWELL: Right. Right.

COMMISSIONER CLAYTON: —— and, you know, enhanced weighted average cost of capital and everything else?

I mean, I've been to some seminars where you've got to have everything. You've got to have ——

MR. KIDWELL: Right.

COMMISSIONER CLAYTON: I understand the carrot approach, and that's what that's about.

MR. KIDWELL: Yeah.

COMMISSIONER CLAYTON: Is there any room for the stick in this rule at all, in your opinion?

MR. KIDWELL: In my opinion, I think there are three —— well, first, let me correct what I did last time. I'll say "yes" at the beginning ——

COMMISSIONER CLAYTON: Good.

MR. KIDWELL: —— and then we'll go through it.

I think cost recovery, that's not a stick, you know, aspect. There needs to be ——

COMMISSIONER CLAYTON: Sure.

MR. KIDWELL: In terms of aligning our incentives, in terms of, you know, lost revenue, I really don't think that's a place where you should put a stick.

But there is ——in terms of encouraging us to go after the aggressive all—cost—effective pursuit, I think there's a possibility. You know, if you put an incentive mechanism in place after taking care of the first two, that can have some carrot and stick associated with it. They can have some —— some shareholder skin in the game to achieve excellence, yes.

COMMISSIONER CLAYTON: So the stick would be risk of —— you're saying you don't want the stick to not be recovering your costs. Would the stick just not be getting the incentive? It's basically the stick would be the deprivation of the carrot, so to speak. That's not really ——

MR. KIDWELL: Well, yeah. I can also say ——

COMMISSIONER CLAYTON: This is bizarre for me.

MR. KIDWELL: I mean, there's also —— no. I mean, there's also —— I mean, in terms of if we —— if we are —— it always goes, If we're not prudent, you know, in terms of implementing and the gut—improved costs, we're not going to recover those anyway, so that stick is there, regardless.

But in terms of —— and, you know, if you go into a program and you're, you know, anticipating —— if I'm making a business case, you know, to my senior management, and I say, You know, we're going to get that incentive, you know, because we're going to make our goals, and we don't, I guarantee you that's a stick, okay, because we're not going to achieve —— we will —— we could contigually not achieve parity between that and supply–side investment, if that's the case.

COMMISSIONER CLAYTON: It sounds to me that basically not getting the incentive is about as strong as punishment. Let me give you an example. Let's say –– let's say a utility doesn't make any progress towards energy efficiency; you don't see any reductions in loads, no progress, or negative progress ––

MR. KIDWELL: Right.

COMMISSIONER CLAYTON: –– you've had an increase in load growth. And just assume for a second that all other things being equal.

MR. KIDWELL: Okay.

COMMISSIONER CLAYTON: Is there any room for punitive or just punishment or just –– how should the Commission, if it doesn't believe the utility's even trying, not taking it seriously, at what point should there be some punitive action or some policy decision that the utility needs to do better?

MR. KIDWELL: Clarifying question, if you don't mind. Do you mean under the current set of regulations and laws that we have or are you thinking about once SB 376 is actually implemented in a way that truly removes the disincentives?

COMMISSIONER CLAYTON: I guess I'm thinking in a world where we have a policy statement by the General Assembly making energy efficiency a priority and we want to see the utilities make progress on this, and so I think I understand your question.

You're saying, Well, are we going to be treated fairly on the other aspects of it?

MR. KIDWELL: Right.

COMMISSIONER CLAYTON: Assume that everything else you have. Let's say you get what you want ——

MR. KIDWELL: Okay.

COMMISSIONER CLAYTON: —— just to simplify.

MR. KIDWELL: So the three "shalls" in the statute have been satisfied in a way that these ——

COMMISSIONER CLAYTON: There are no disincentives and ——

MR. KIDWELL: Right.

COMMISSIONER CLAYTON: —— there's a clear mechanism that provides timely cost recovery, whatever you would be asking for.

MR. KIDWELL: Right. Then if we've gone for a period of time when we've spent what would be, you know, tens of millions of dollars, maybe hundreds of millions of dollars, and we haven't seen any impact from them, absolutely you should be thinking of that.

COMMISSIONER CLAYTON: Let's say you just decide you're not going to spend any money but you decide you're not going to move forward, Oh, we'll get to that next year; we'll see what the General Assembly does with the statute next year; we're just going to defer, defer, defer, defer.

MR. KIDWELL: Yeah.

COMMISSIONER CLAYTON: In fact, I'm not making a suggestion. I'm just trying to find a clear–cut scenario where a utility is saying, We're not going to move forward with energy efficiency.

MR. KIDWELL: Yeah, I think my response to that hypothetical, Chairman, would be, it's not really in our best interest to even do that. I mean, you know, we want to do energy efficiency. There's –– there's some reasons for it that are in our own self–interest, so as long as the disincentives are removed, you know, in a way that's contemplated by SB 376, I think we're going to move forward, but absent that, I really –– you know, you're asking me almost a legal question.

Do –– do you have any –– any remedy, any legal remedy, to order us to do things? And I'm going to leave that one to the lawyers.

COMMISSIONER CLAYTON: Well, it's not really a legal question. It's a policy question of, If we have a utility that's a bad actor that's not embracing ––

MR. KIDWELL: Right.

COMMISSIONER CLAYTON: –– these new concepts and they just completely ignore moving forward with any energy efficiency ––

MR. KIDWELL: Uh–huh.

COMMISSIONER CLAYTON: –– I'm trying to ask –– what I'm trying to get from you is ––

MR. KIDWELL: Yes.

COMMISSIONER CLAYTON: –– at that point where you have a clear bad actor, at what point in the process can the Commission step in and assert its prerogative to push these issues?

MR. KIDWELL: Yeah, I'm afraid that it sounds to me like you are —— I know that it's a frustrating potential position to be in, to not be able to force, you know, given the legislative, you know, framework you have, to force us to do it, but I'm not sure you really can. You know, again, I'm not a lawyer. So if you had a bad actor, I'm not —— I'm not sure ——

COMMISSIONER CLAYTON: It sounds to me never is a good time for penalties, is what it sounds like.

MR. KIDWELL: I think —— I think sending a message that there's some downside to not achieving your goals and your incentive structure, I think that —— that could be meaningful.

COMMISSIONER CLAYTON: Let me ask —— let me ask this —— it's just my last section —— if you had a mechanism that was set up where the incentive to meet a certain target by the utility is a certain percentage shared savings —— you know, savings are determined because of a certain program, the utility is going to get 20, 30, 40, or whatever the percent of savings, can you help me understand a situation where there are savings, where the utility has saved money, it's going to be able to pocket a percentage of savings as its incentive but also has lost revenue that you're trying to recover?

So I have this disconnect, or maybe it's a contradiction that you have savings that are to be realized, and the utility is to receive a share of those savings while also the utility is hurt because of lost revenue and needs to get additional compensation to cover for not making those additional sales. Can you help align that? I don't understand.

MR. KIDWELL: In our proposal, in the MEDA proposal, you would not have that happen because -- because the mechanism that you would put in place would first, you know, take care of, you know, program costs, then it would put a mechanism in place -- I don't know exactly what it would be -- balancing account, we can think about that in particular DSM procedures, but you would -- and there may be adjustments in between rate cases. That's also being discussed.

So those first two buckets, costs and lost revenues, would already be taken care of, in our mind, so there would never be a time. If we're going to share savings, shared savings is that third bucket, the incentives piece. That's the only place we see that come into play. That's one place where we differ with Staff.

COMMISSIONER CLAYTON: Thank you very much.

JUDGE STEARLEY: Any other questions for Mr. Kidwell?

(No response.)

COMMISSIONER DAVIS: All right, Mr. Kidwell. Now, are we going to offer Mr. Voytas an opportunity to come up here and expound on the reasonableness or unreasonableness of the targets and the goal?

MR. KIDWELL: I would prefer the word "summarize" to "expound."

COMMISSIONER DAVIS: Summarize.

MR. KIDWELL: Yeah. Yeah. That would be my expectation, too, because I want to go home, too, at some point.

COMMISSIONER DAVIS: You act like there's some sort of holiday coming up or something.

Is MEDA here today?

MR. KIDWELL: MEDA is actually not here today. That's right. MEDA has filed ––

COMMISSIONER DAVIS: Let's let the record reflect that there's no one here from MEDA today.

MR. KIDWELL: Yes, I agree with that.

COMMISSIONER DAVIS: Mr. Paisley, he's not here either, is he?

MR. KIDWELL: Not that I know of though. Yeah.

COMMISSIONER DAVIS: Is it fair to say that Senate Bill 376 was his baby?

MR. KIDWELL: It was –– as others have said, it was jointly–negotiated, but was it moved and challenged –– championed by KCPL, yes.

COMMISSIONER DAVIS: And he's not here either. He was kind of like the Godfather of this thing here in the Legislature, wasn't he?

MR. KIDWELL: Yeah. Yeah, he was definitely one of the prime movers, yes.

COMMISSIONER DAVIS: He was one of the prime movers, okay.

This rulemaking deals only with Section 393.1075 and Senate

Bill 376; correct?

MR. KIDWELL: Yes, sir.

COMMISSIONER DAVIS: Do any of the attorneys here present disagree with that statement?

(No response.)

COMMISSIONER DAVIS: Okay. So Mr. Kidwell, I know that you're not an attorney ——

MR. KIDWELL: Yes, that is definitely true.

COMMISSIONER DAVIS: —— but you do ——

MR. KIDWELL: —— occasionally play one on TV? Maybe, yeah.

COMMISSIONER DAVIS: Is there —— I mean, is there any authorization in 393.1075 for penalties?

MR. KIDWELL: As far as I know, no. I think the authorization here is really to —— the policy is to remove disincentives, as I understand it as a nonlawyer.

COMMISSIONER DAVIS: Okay. Does anybody disagree with that characterization?

(No response.)

COMMISSIONER DAVIS: Let the record reflect that nobody responded.

MR. WILLIAMS: Commissioner, there is a reference to penalties.

COMMISSIONER DAVIS: That's right. There is a —— there is a reference to penalties for a Class A misdemeanor, is there not?

MR. WILLIAMS: Yeah, for false documentation.

COMMISSIONER DAVIS: For filing —— filing a false document. Okay. So as long as you file correct documents ——

MR. KIDWELL: Which we will endeavor to do.

MR. WILLIAMS: Actually, it pertains to customers.

COMMISSIONER DAVIS: Oh, that's right. It only pertains to customers.

MR. KIDWELL: Oh, okay. Good.

COMMISSIONER DAVIS: But I think there are other provisions that would prohibit Mr. Kidwell from filing false documents with a government agency, wouldn't there be?

MR. WILLIAMS: Probably.

COMMISSIONER DAVIS: Mr. Kidwell, I mean, there's no one here from MEDA today. I'm going to just —— you may hear me ask that question ——

MR. KIDWELL: Yes, sir. Yes.

COMMISSIONER DAVIS: So I mean, I don't know who to ask about some of the MEDA's comments but, you know, the timing of the request for the hearing, which was numbered paragraph 12 on page 9, you know, asking for a shift from 180 days to 150 days, I mean, what is the significance of that and ——

MR. KIDWELL: That one I think I may need to defer so ——

MS. McCORMICK: Sherry McCormick, Empire District.

The reason for that was just to provide more time toward the end so that the request for a hearing would not necessarily be at the very deadline of the Commission hearing. It was to give more opportunity for response by lengthening the opportunity.

COMMISSIONER DAVIS: Okay. Okay. Thank you, ma'am.

Mr. Kidwell, I think some of the utility speakers may have already touched on this, but numbered paragraph 9 at the bottom of page 7 of the MEDA comments talked about the utilities need to have some sort of right of —— I don't know if I'd call it a right of first refusal or that they have to have the ability to —— you know, they have to file to have the agreement approved, but then if the Commission alters it, you know, I mean what that says is the utilities should —— you know, has to be —— has the flexibility to either accept or reject it, or something of that nature; is that correct?

MR. KIDWELL: Yes, that's our —— that's our comment and our recommendation.

COMMISSIONER DAVIS: And anything else that you or any of your utility colleagues wanted to comment on that?

MR. KIDWELL: Well, I think from my perspective —— and we'll see who else, you know, may want to weigh in, I think that due to —— as it says in our comment, you know, underscores the voluntary nature of the act of permissive language for electric utilities offering such programs, so I think, you know, at the end of the day we believe that, you know, we need to be in agreement, you know, with —— with, you know, what comes out in terms of what the Commission approves.

MS. TATRO: Commissioner Davis, can I expand upon that just a moment? Obviously, when the DSIM plan is filed with the Commission, utility management's going to have approved that, and if an intervener comes in and wants something different or the Commission decides they want to do something different, may not —— maybe a different budget, it may be —— I don't know what could be different, but the management of the utility is still the one who has to be making those decisions, so we think there ought to be the opportunity for the utility to say that is or is not an acceptable alternative to our management.

MR. KIDWELL: Thank you, Wendy. That gets back to some of the things that Staff was saying about accountability.

COMMISSIONER DAVIS: Okay. Commissioner Kidwell, did you have a chance to read the PSC Staff's comments?

MR. KIDWELL: Yes, I did.

COMMISSIONER DAVIS: And they had a number of concerns listed beginning —— I believe it was on numbered page 10 all the way through the end of their document, which I think I counted it right. Hopefully it was pages 10 through 17.

Would you like to respond to any of those concerns that they listed on those pages or ——

MR. KIDWELL: I think, you know, for myself, and there may be other utility —— yes. Yes. There may be other utility commentors that want to, you know, talk about the Staff's concerns.

I think the only —— the major one —— there's a couple, you know, from me. One is the idea of waiting to deal with lost revenues until, you know, much later than when the expenditures are actually made and the energy savings actually starts to occur.

There's no way that that is -- that's going to be a disincentive, okay? That will not meet the second criteria in terms of -- in terms of the three statutory criteria that the Commission needs to implement in support of the stated policy SB 376. That doesn't make it, as far as the utilities are concerned. I think just as a practical matter you can understand why that might be.

In terms of the relationship between Chapter 22 and the SB 376 rules that we're considering today, I fail to see any reason why you should have two different definitions of lost revenues between those two.

If they're going to work hand-in-glove the way the Staff, you know, said they should, the definitions of lost revenues in those should be identical. I don't see any reason -- you heard some things about cost benefit tests. I didn't understand any of that. I think that they should be identical, and that's -- that's what -- that's what MEDA's proposal is.

And finally, the idea that -- I was a little troubled by John Rogers' comments that what we put into the integrated resource plan, the estimates that we have at the beginning of this process were guesses. They are not guesses, okay? They are -- they're the best estimates we know how to make given metered data, engineering–modeled data. They're really the best estimates we know how to make, so as I said earlier, I don't see any reason why you could not use those as the basis for some kind of balancing account, some sort of, you know, up–front determination of what a lost revenue component would be and then true it up later.

As a matter of fact, I think there's several states –– Kentucky, Oklahoma, being a couple of examples –– that do something very akin to that, and I encourage you to take a look at that data.

I think that would be it in terms of my own comments, Commissioner.

COMMISSIONER DAVIS: Commissioner Gunn, did you have a couple of questions?

COMMISSIONER GUNN: Yeah, I just have a couple of questions.

COMMISSIONER DAVIS: Go ahead and jump in there.

COMMISSIONER GUNN: Just a couple of questions. So your concern, your main concern, about the aspirational goals that we set out is that if those are somehow unrealistic and then they are used to set the targets for the incentive, the targets would be, then, unrealistic?

MR. KIDWELL: Yeah. We'd be set up for failure, essentially, yes.

COMMISSIONER GUNN: But, I mean, there's an argument to be made that if you can divorce –– just say, Hey, you know –– it's almost a policy statement that says, Hey, we want to get to where we want to be, because each individual program is going to have to be approved, essentially ——

MR. KIDWELL: Uh—huh.

COMMISSIONER GUNN: —— that it's okay to push those a little, but to be a little bit —— and I'm not saying you say, you know, we want to have 50 percent of our generation to be energy efficiency by 2012 (sic) ——

MR. KIDWELL: Right. Right.

COMMISSIONER GUNN: —— but if we're going to move in that direction, as long as we make it clear that the individual targets are based on —— you know, you could have —— you could, theoretically, have an aspirational goal that is not necessarily realistic achievable to potential today ——

MR. KIDWELL: Yes.

COMMISSIONER GUNN: —— as long as the targets are based on the data gathering studies that have been —— have been coming.

MR. KIDWELL: Yes.

COMMISSIONER GUNN: And if that was made clear, would you guys have less of a problem with that?

MR. KIDWELL: Yes, we would have less —— less of a problem. If what you're trying to do is encourage some really healthy debate around where Missouri needs to go, you know, long—term and have some good testimony and evidence put in front of you, I'm totally in support of that.

COMMISSIONER GUNN: I guess I want to come back to this —— the stick approach. Would the Commission be able to, in a general case outside of this process, say, You know, you haven't done anything to encourage energy efficiency, which we view as a low–cost resource, so the stick would show up in a general case –– I guess you said it before, almost in a prudency review in the resources that you're choosing or in an IRP planning process where you say –– you don't say anything about energy efficiency, which is a severe deficiency in your IRP.

MR. KIDWELL: Yes. Yes. Yes to both. I think the one we think about the most, quite honestly, Commissioner, is the first one. You know, when we come in for a contract or when we come in for a new power plant, you know, at some point, there's going to be an issue of, you know, what happened on energy efficiency ––

COMMISSIONER GUNN: Right.

MR. KIDWELL: –– so that is –– that's –– that's going to be –– that's really why you do integrated resource planning, so you have records of those cases and, you know, I think we're going to be –– if –– okay. If we have implemented policies in Missouri that are supportive of the goals of SB 376, if we still, you know, come in and say we haven't –– we haven't invested in energy efficiency, I think that could create a issue.

COMMISSIONER GUNN: Okay. All right. I don't have anything else. Thanks.

JUDGE STEARLEY: Any other questions for Mr. Kidwell?

COMMISSIONER DAVIS: Would this be a good time to inquire of —— well, you know, Mr. Kidwell, I'm just going to say that I have more questions of MEDA, but if MEDA doesn't show up then, I mean, it's kind of like, Why should I take their comments seriously?

MR. KIDWELL: Understood.

COMMISSIONER DAVIS: Is this a good time to inquire of Mr. Voytas ——

MR. KIDWELL: Yes. I can have Rick ——

COMMISSIONER DAVIS: —— you know, bring him up and summarize?

MR. KIDWELL: Yeah, he can summarize.

COMMISSIONER DAVIS: I mean, he's been sitting there all day, and I ——

MR. KIDWELL: Thank you for your questions.

COMMISSIONER GUNN: Thanks, Steve.

MS. TATRO: Commissioner Davis, while he's going up there, I would say that while there's not an attorney here that's appearing on behalf of the MEDA organization, every MEDA utility that's involved in this is here, took part in preparation of these comments, and can probably answer most of your questions and are happy to do so.

COMMISSIONER DAVIS: All right. Well, then we'll get to that after Mr. Voytas then. All right.

MR. VOYTAS: Good afternoon. My name is Rick Voytas and I'm the manager of energy efficiency and demand response for Ameren services.

I was here to talk about the benchmarks proposed in this rulemaking, but Steve did such a good job that I think I can summarize my comments quickly. But Steve said this: Ameren Missouri is not opposed in any way, shape, or form to benchmarks as long as they are reasonable. So the two key words are "benchmarks," not "mandates," and "reasonable."

And what we're currently seeing in the law, there's some short–term numbers and there are some long–term numbers, and as far as we can tell, there's no basis for the numbers.

If there is a basis, it's something of the nature that we found another state in the union that ascribes to these numbers, and it just leaves it at that.

One of the things I wanted to bring to the Commission's attention is: There is an article in the September 2010 Public Utilities Board Nightly called Extreme Efficiency, and the tagline on the article is, Performance standards are a bad idea if the targets are achievable. I'm 100 percent in agreement.

And the article goes through the various states, the history of the states, what states are doing, and I guess if I could summarize the article –– it's probably five, six, seven pages long, but if I could summarize the article, it's that most targets in most states are not sustainable. They'll point to some states where at the target set in the states they'll run out of energy efficiency potential in the year 2018.

The other point I would make in this article is that most states allow flexibility. When you look at these targets, some include codes and standards, some include combined heat and power, some include infrastructure, things on the utility side of the meter within these targets, so I would say of the articles that I read, this one is extremely timely.

This does a real good job of just outside looking in at what all the states do and what the nature of the targets are. One of the things that article talks about is the disconnect between historic performance and future performance.

In history, the greatest —— the greatest test energy efficiency measure in the past 20 years has been the CFL. The amount of savings per dollar cost, it'll probably be difficult, if not impossible, to replicate those type of savings.

In the —— I don't know if the Commission is familiar with the ACEEE State Energy Efficiency Scorecard, but every year the American Council for Energy Efficient Economy, that's A—C—E—E—E, publishes a ranking of the states on various parameters, and in 2010, they did a publication of all 50 states, and I just wanted to refer to a couple of numbers for you to talk about the disconnect between future targets and historic performance.

But there is one state in the 2010 ranking, Vermont, that achieved 2.59 percent savings as a percent of electricity sales. Hawaii achieved 1.97. Then you have three more, ending in California at 1.14. After that all the states' savings went from

0.79 down to 0.01, so to ascribe savings of 1 percent or 2 percent, just because other states, other legislatures, other people for whatever reason set those, we think is wrong.

We think those numbers should be based on science, and that science is a utility–specific potential study.

That's all that I have to say.

MS. TATRO: I have copies of both of the ——

COMMISSIONER DAVIS: Could you supply those copies to the Bench, Ms. Tatro.

MS. TATRO: Can we mark them as an exhibit?

JUDGE STEARLEY: Yes. I believe we're at Exhibit No. 5.

COMMISSIONER DAVIS: Commissioner Gunn, do you want to jump in here?

COMMISSIONER GUNN: I don't want to jump in front of you, Commissioner.

So I understand what you're saying, but here's the problem with what you just said: We have had low energy —— low electricity prices in the state and we've had extra power, so there's been no need, either from a customer side or the utility, and no incentive on the utility side to put any energy efficiency measures in whatsoever, so we haven't tried it in the —— in this state.

I mean, it just hasn't been part of —— part of what we're doing so, I mean, you know —— and this may be cliche, but in 1960 when President Kennedy said, Hey, I want to put a man on the moon by the end of the decade, it wasn't feasible at the time when he said it, but they achieved it because they decided to put resources into it and they decided to achieve -- and they made -- they made it technically feasible, when at the time it was announced it wasn't technically feasible.

So I always have a little bit of a hard time saying, you know, Okay, we can't achieve it so it shouldn't be the goal. Now, that's different than the question that I was talking with Steve about, because I understand what the concern is, is that -- is that you don't want the hard targets on the programs to be -- to be set at such a place where you don't get incentives if you don't -- if you can't -- if you don't make progress towards a goal.

And I actually kind of like the idea that if you have a hard target, you don't -- you aren't necessarily excluded from receiving at least a -- you can't prorate incentives based on the percentage that you do achieve, because I think we want to keep pushing in the right direction.

And I'm a fan of the carrot approach where we say, Look, if we're pushing in the right direction, we don't want to punish anybody, but we want you to -- want you to keep trying. We want you to try harder than you've been trying or you have -- you know, you had to have tried.

So I guess I don't quite understand why -- let me go back to this question. So I'll ask a similar question that I asked Steve: So if the goals are aspirational, and, yes, they are a little bit far out of reach, does that matter as much if the hard targets that are needed for the incentive —— and, like I said, I'd probably be in favor of some sort of partial —— getting a partial incentive, that the bright line may not necessarily be there if progress is being made, because good programs are going to need time. You can't do that.

Do you have as big a problem with the goal number if the —— and what it's based on if it may be, today, slightly unrealistic if the targets within the programs are not —— are somewhat divorced from that goal?

MR. VOYTAS: The question is: Do I have a problem with slightly more aggressive goals? And the answer is yes, with qualifications. I have to distinguish myself. Steve is a policy—level witness, and I'm more of a hands—on worker bee type, but ——

COMMISSIONER CLAYTON: No offense.

MR. VOYTAS: Steve is my boss. There goes that.

COMMISSIONER GUNN: That in no way reflects Steve's work.

MR. VOYTAS: But what I wanted —— you know, your analogy with President Kennedy and the space flight to the moon, this technical potential, this is a bottom—up analysis. It starts with looking at the lay of the land, all the appliances, all the energy consuming devices in our service territory. You can't save more than that.

You —— if you got rid of all —— there is a finite amount to what you can achieve. If you set an aspirational goal that exceeds the energy consumption that you have, it doesn't make any sense.

COMMISSIONER GUNN: Isn't that based on the current technology, the 2010 technology?

MR. VOYTAS: It's based on the number of things that we haven't used energy --

COMMISSIONER GUNN: You know, this one -- I'll give you an example, okay?

MR. VOYTAS: Yeah.

COMMISSIONER GUNN: When I travel around somewhere, many times I won't take a laptop computer. I'll take this (indicated), okay, and so, you know, when this didn't do all the things that a laptop can do, when I traveled and plugged in and run my laptop off electricity, it consumed more energy than this does.

This is -- and iPhones and iPads and all that stuff are relatively young technology, so are the limits you're talking about based on 2010 technology and, if they are, then aren't we incenting other industries -- not just the utility industry, but the other industries, if we have these goals to get -- to -- to make more energy-efficient products than they are today and continue to research and continue to try to make, you know -- plug -- you know, set-it-and-forget-it appliances that can save even more energy or software that integrates with your appliances even better than they do right now?

And if you're saying, no, I'm just going to look at 2010 technology, I'm going to say what they have, and I'm going to say that's what my goal is -- and, again, I take the point, and it's an extremely fair point, that the targets -- where you're saying, Okay, look, I understand, but if you're saying that I can't reach an incentive unless I achieve, you know, science-fiction type, you know, targets, I get that, and I think that's an excellent point, but I'm talking about the policy goals where we're saying -- why are we saying we're limiting ourselves to 2010 technology when we're not just writing a rule for 2010?

MR. VOYTAS: Well, Commissioner, I beg to differ you. We're not limiting ourselves to 2010 technology at all. When we look at a 20-year potential study, we're looking at a forecast. We're looking at technologies over time. Our forecasters have studies with electronics changing and the percent --

COMMISSIONER GUNN: Okay.

MR. VOYTAS: That's in the forecast.

COMMISSIONER GUNN: So the technically-achievable results assumes advances in technology and assumes lower use of energy by certain technology?

MR. VOYTAS: That's true. May I give you one example?

COMMISSIONER GUNN: Sure. Absolutely. No.

MR. VOYTAS: One of the -- the neatest new technologies for electric hot-water heaters are heat pump hot-water heaters. We've got those in mass in our forthcoming integrative resource planning process; however, beginning in 2016, the federal government is going to codify many of the things that we're trying to do.

Where we go, then, from 2016, we switch from heat pump hot–water technology to solar technology for those, so we're constantly, throughout that 20–year plan, looking at new technology. Nothing is based in 2010 technology.

COMMISSIONER GUNN: Great. Okay.

MR. VOYTAS: So I wanted to assure you that everything is as forward–looking as we can make it. I'm sure there's things that we've missed, but it's something that we've worked very hard to make certain that we're looking at new technology.

COMMISSIONER GUNN: And that's very helpful because –– because –– so you're saying that you can't –– that the studies are forecasting things out, and so you don't want to get farther beyond the studies because the studies themselves take all this into account and are saying, even under our wildest forecasts and our most rosy scenarios about energy efficiency, you don't want to outkick that coverage; you don't want to get any farther 'cause it's already baked in. They're already baked into the goals.

MR. VOYTAS: It is. I mean, we do scenario and sensitivity analyses in all our studies, so we try to look at that broad range but, yes. Yes, that's true.

COMMISSIONER GUNN: All right. So you are confident that Ameren study, for example, has taken into account potential technological changes and advancement in technology; that you don't believe that forecasting this out, there's no more energy efficiency savings left to be squeezed out of Ameren, so setting a goal higher than that makes absolutely no sense?

MR. VOYTAS: Well, I'm sure we've missed a few, but in general, yeah.

COMMISSIONER GUNN: Granted. Granted.

MR. VOYTAS: Again, I try to set that aspirational goal on something that's got a basis in a scientific study.

COMMISSIONER GUNN: Okay. That's very helpful. I appreciate it. Thank you.

JUDGE STEARLEY: Any other questions for Mr. Voytas?

COMMISSIONER DAVIS: Mr. Voytas, let me just go back here. Your problem is not with establishing goals, it's with establishing goals that is a part of this rulemaking that —— I'm going to use a legal term here, but aren't based on competent and substantial evidence. Is that a fair statement? Competent ——

MR. VOYTAS: That are based on competent ——

COMMISSIONER DAVIS: I mean, your problem is that they are not based on competent and substantial evidence that is specific to the individual utilities; is that correct?

MR. VOYTAS: If "competent" and "substantial" means it's not based on a study that has some merit ——

COMMISSIONER DAVIS: Right.

MR. VOYTAS: -- then I agree with that statement.

COMMISSIONER DAVIS: Right. So you're saying it needs to be based on a utility-specific study or at least some Missouri-specific information as opposed to what the Arkansas Public Service Commission adopted?

MR. VOYTAS: That's a good start.

COMMISSIONER DAVIS: Okay. Give me just a second, Mr. Voytas. Let me look at the -- Mr. Voytas, is there anything else that you want to add?

MR. VOYTAS: Not at this time.

COMMISSIONER DAVIS: All right. Then thank you, Mr. Voytas.

COMMISSIONER GUNN: Thank you.

JUDGE STEARLEY: Let me inquire: How many more people are we going to be hearing comments from? All right. At this time we're going to take about a ten-minute recess, and we'll come back and pick up with the main commentators.

COMMISSIONER DAVIS: Judge, I've got probably two or three questions for Ms. Tatro and her colleagues.

JUDGE STEARLEY: All right. Very good.

(A recess was taken.)

JUDGE STEARLEY: And we are back on the record.

Mr. Kind, I believe you wanted to make a comment.

MR. KIND: Yeah, if I could, Judge. I just wanted to follow up on this discussion of goals while -- after we spent a considerable amount of time on that. And first I want to mention that I appreciate Ameren bringing the ACEEE 2010 scorecard information here.

I had reviewed that before, myself, along with some other information, and as part of my assessment that the level of goals here are, in fact, reasonable, and I just didn't have time to bring copies to get circulated myself.

And I think Mr. Voytas was speaking to some of the information in Table 8 on page 15 with respect to results that have been achieved by Vermont and Hawaii. I just wanted to make note that if you look at this Table 8 on page 15, you'll see that 8 utilities —— I'm sorry —— 18 utilities had achieved one half of 1 percent in savings during the year 2008, and the goals that we have in our rule, we expect Missouri utilities to get there in 2013, to where 18 utilities already were in 2008, and I would strongly suspect there are many more utilities at that .5 percent level today.

And then just one other thing I wanted to add. There's been a lot of discussion, concerns, about penalty provisions with respect to goals, and I just to wanted to raise the point of how this language evolved in this part of the rule, in 094, Section 2, that I look at the June 30th version of the rule before the Commission had extensive deliberations over the summer in their agenda sessions, and I would characterize that much more as a hard goal, which potentially someone could argue had some punitive implications.

And then when I look and see it today, I do not see in the same way. The language has been softened in several ways, and as I watch the Commissioners deliberate, you know, over this proposed rule over the summer and agenda sessions —— I think I caught most of them —— I would note that the reference in the rule that's there today regarding penalties or adverse consequences, I believe that's in there primarily because of the Commissioners who had the highest level of concern about penalties or adverse consequences, but now I'm seeing Commissioners and other people point to that language as that raises the concern that there could be penalties or adverse consequences, so it's —— it's sort of a confusing situation to me.

And that's all. I appreciate being able to add some comments with respect to the goals.

JUDGE STEARLEY: Any questions from the Bench for Mr. Kind?

COMMISSIONER DAVIS: I want to go back to Mr. Kind here, because Mr. Kind, I'm just going to express this statement. I mean, Staff has consistently said, you know, no penalties, no penalties, no penalties, but then when you look at this language, then it's like, well, it can't be the only reason for a penalty, but it could be in combination with some other factors that could be, and I'm just not sure the Section 393.1075 authorizes us to have penalties.

I mean, maybe it is implicit that if you're going to have incentives that you would also have penalties, too, but the problem is, I'm just not sure that the expressed language in the statute says that. Do you want to respond to that?

MR. KIND: Sure. I think I would agree with that statement, that there is no explicit language in the statute authorizing penalties of –– you know, I think if Mr. Mills were here, he would probably say that the Commission has authority from other sources in order to assess penalties.

But regardless of that, I mean, somehow this particular provision has gotten worse with this reference to –– you know, to penalties. I wonder if people would think it was an improvement if that sentence was removed. I mean, it sure wouldn't bother Public Counsel.

COMMISSIONER DAVIS: Okay. Oh. Did not Public Counsel suggest a phase–in in some of the earlier ––

MR. KIND: That is correct. In our comments in July, we –– we suggested a phase–in of these goals, and that was because of the review I had done at that point in time, and in particular had been looking at some –– a rulemaking that was underway in Texas and their assessment of different goals, and we are no longer in supporting pushing back any of these goals in light of more recent information that I reviewed, which included the ACEEE 2010 scorecard.

I also reviewed –– there's some fresh information out of FERC this fall that is a survey of all the goals that the different states have, and it's also my understanding that the Arkansas Commission has recently decided that goals in this range are reasonable, just in the last month or so.

COMMISSIONER DAVIS: Okay. Thank you, Mr. Kind.

JUDGE STEARLEY: All right. Who do we have next?

MR. CHAMBERLAIN: Good afternoon, Commissioners. My name is Rick Chamberlain. I'm representing Walmart Stores East, LP, and Sam's East, Inc., and just for convenience, I'll refer to both entities as Walmart.

I'm going to focus my comments on the provision of the proposed rules that allows for the election of nonparticipation. As I'm sure you're aware, the rule provides –– allows customers to elect not to participate in utility–provided DSM programs.

In particular, I'm focused on the provision that allows customers with an aggregate demand of 250 kilowatts or more to elect not to participate. As proposed, the rules are acceptable to Walmart. Some of the written comments that have been filed seek to impose additional requirements on customers wishing to elect out.

Walmart's opposed to that. We think the statute's pretty clear in that regard. It provides that the customer is the one that elects to notify the electric utility that it wants to opt out. It doesn't leave room, in my estimation, for the imposition of these additional requirements that some parties seek to impose, so I would just urge the Commission not to make any changes in that portion of the proposed rule. We would be happy with the proposed rule as it is.

And that's all I have, unless you have some questions.

JUDGE STEARLEY: Any questions for Mr. Chamberlain?

(No response.)

JUDGE STEARLEY: Seeing none ––

MR. CHAMBERLAIN: Thank you.

JUDGE STEARLEY: Thank you very much.

I thought I saw one other person that wanted to give comments earlier. Yes, please come forward.

MR. KAPSIS: Good afternoon. Thank you, Commissioners, for the opportunity to appear today. My name is Jim Kapsis. I'm the director of policy strategy and market development at Opower. We are a behavior–based energy efficiency company that helps utilities meet their efficiency goals by helping the residential customers, like you and me, use less energy and save money on our bills.

In 21 states, including Illinois and Minnesota, we're helping households to use between 1 1/2 to 3 1/2 percent less energy than business as usual and to save between 25 and $50 on their bills. We're doing so year after year.

We're already saving enough energy a year to power 100,000 homes, and we do so at only three to five cents for kilowatt hour avoided. I'm proud to say, and this is a bit of a reference to some comments earlier today from the Public Counsel's office, that there's no statistical difference in results among different demographic groups. All classes of residential ratepayers benefit, rich and poor, old and young, homeowners and renters, Chiefs fans and Rams fans. You get the picture.

In short, we can cost—effectively help utilities meet their efficiency goals and we can deliver energy efficiency benefits to all Missouri ratepayers; however, we cannot deliver these types of benefits in Missouri without the proper regulatory framework in place. That's why Opower applauds the Commission and Staff for the work to draft this rule in a way we believe would fulfill the intent of Missouri energy efficiency to pass the Investment Act.

We believe it made serious strides forward to save energy and money for Missouri's ratepayers and to create a market for innovative energy efficiency companies like ours to do business in this great state.

As the Commission moves to finalize this rule, we have three recommendations that we respectfully submit for your consideration, and the first two, just to sort of lay out a bit, speak to the goals, on the one hand, and the incentives that are being discussed, on the other, both of which we believe are critically important.

First, Opower would like to strongly urge the Commission to retain clear efficiency goals in the final rule. In our experience partnering with 47 utilities in 21 states, energy efficiency goals are necessary to stimulate cost—effective utility investments in demand—side savings.

Every state where we have a significant presence has some form of state energy efficiency target or goal. Efficiency goals motivate utilities to add innovative programs to their portfolios and to do more than business as usual.

In Illinois, in Minnesota, which both have efficiency goals since 2007, we are working with utilities like CenterPoint, ComEd, Xcel, Ameren Illinois, and several others to help ratepayers save energy and money.

Both states are benefiting from efficiency goals. 2008, the economic benefit to Minnesota's ratepayers due to efficiency programs was nearly $300 million. Similarly, ComEd plans to save Illinois ratepayers nearly $500 million and 2,000,000 megawatt hours of electricity.

Other states in the region that have been discussed by a few folks today are taking notice. Arkansas, basically, just passed a rule with very similar goals to what the Commission here is considering for the state of Missouri; therefore, we believe the goals set forth in the draft rulemaking can be achieved cost–effectively here in Missouri.

In fact, the behavior–based efficiency, which hasn't been discussed at length in today's proceedings, we believe could, frankly, meet a large portion of those goals, particularly in the initial years.

To give you an example, if Opower's home energy reporting program were to ploy to just a million Missouri households, it alone could save up to 245 gigawatt hours in the state and save ratepayers 20 to $30 million a year on their bills, and that would only be at a cost of about three cents per kilowatt of what it is.

Based on our experience in Illinois, Minnesota, and 19 other states, we think Missouri's goals are reachable and achievable. Above all, we believe they're necessary to fulfill the intent of the Missouri Energy Efficiency Investment Act and should be retained in the final rule.

Second, and I think here I'd like to associate our comments with MEDA and Ameren and some of the other utilities who have commented today: Demand–side incentives are very important and should be included in the final rule.

Under typical regulatory structures, utilities do not have economic incentive to help their customers be energy–efficient. Across the country, utilities have proven to be effective at reducing demand for energy when they are properly incentivized to do so.

Establishing performance incentives seem to motive utilities to meet and even exceed efficiency goals. I'll give you an example. In Texas, utilities have a performance incentive for every 2 percent they achieve beyond their efficiency goal.

In 2010, a local utility named Encore plans to exceed its state energy efficiency target by 85 percent. Here in Missouri the Commission has proposed demand–side incentive mechanism that includes a performance incentive that would allow utilities to receive a percentage of net benefits of energy efficiency or demand–side programs. Again, we think this is important.

To give you a sense of our own business, right now we're very happy to be working with one –– the co–op utility here in Missouri, White River Valley Electric, and the reason we're able to work with White Valley is because there is money coming from the federal government through the DNR to –– again, to provide an incentive for White River Valley to want to pursue efficiency with us.

Opower recommends, however, that the Commission clarify in the final rule the exact incentive that it will award utilities and on what time line. I know you've heard a lot today about timeliness.

I also just wanted to note, there has been some discussion in some of the comments of the definition of demand–side programs and different ways this is discussed in Chapter 22 and elsewhere. I would just caution or put forward a broad definition that would include both installed measures and behavior–based–type programs like ours we would like to see sort of clarified.

We had seen at least one comment that appeared to be confining efficiency and cost recovery for efficiency to install measures alone, and certainly we would want utilities, if they were partnering with us, to be able to get the same incentives they would get through other programs.

Based on our experience with our utility clients, it's important that approval incentives and associated costs of lost revenue recovery be provided expeditially to utilities so as to minimize uncertainty.

And again, I know there's a lot of question here about timing and how to finance some of those —— those incentives and recovery mechanisms. I'm not going to get into much detail there, but I will say that providing certainty and timeliness do allow utilities better to incorporate efficiency programs into their bottom line and reduce business risk. We believe that approach serves ratepayers and shareholders alike.

And if I might, how I sometimes look at this is that the —— that goals kind of are the beginning of the conversation. Where we see goals in states, we see action where there might not have been action before. Where we see cost recovery and goals, we see a little bit more action. Where we see lost revenue recovery or in some cases decoupling, we see a little bit more, and when we see performance incentives on top of that, we see even more.

So I think you've heard this from a number of speakers today, that in order to get to the intent of the law, which is all cost–effective energy efficiency or demand–side savings, the more the merrier, to a certain extent here, from our perspective.

Finally, one last point. I was just —— more of a technical point, but we think fairly important. This has come up, it's been —— all associates and comments from NRDC and Sierra Club and others and also with the Office of Public Counsel, and this relates to the PSC's consideration of establishing a technical resources manual.

Commissioner Kenney, I think you had some comments very early in this proceeding about measurement verification and how do we know, you know, whether the results are real. I think Commissioner Gunn had similar comments to that effect as well.

The nice thing about a technical resources manual is it is a way for the state to come up with very transparent, very clear, guidelines for utilities to know how to evaluate their programs and how -- and for stakeholders and for the Commission and taxpayers to, frankly, hold third-party providers like Opower and utilities accountable for the results that they're trying to pursue.

I will also note that behavior-based programming -- because it's fairly new, there have been a number of states that have incorporated and developed protocols to measure behavior-based programming in their states and incorporated them into their technical resources manual so that moving forward there's just a clear, transparent process for measuring results.

And I'm happy to take more questions about that, if you are interested. To give you a sense of a couple other states that have those manuals: Pennsylvania, Vermont, Massachusetts, and there are others.

In closing, Opower applauds efficiency goals proposed by the Commission rulemaking, encourages conditions further to develop incentive mechanisms for utilities and proposes that the Commission work with utilities and stakeholders to develop a technical resources manual to facilitate the transparent measurement and verification with different types of programs.

Thank you for your time and your leadership, and I'm happy to take any questions you may have.

JUDGE STEARLEY: Any questions for Mr. Kapsis? Commissioner Gunn.

COMMISSIONER GUNN: Is there a danger, or how high is the danger when you have kind of a blurred line between installing behavior-based -- that a utility may potentially double-count?

So for example, a programmable thermostat. Someone goes in and buys and installs a programmable thermostat; someone gets a rebate or recovery for that because it's part of their program, but then the individual resident doesn't actually use it in the manner in which it's done. Is that a danger, or do we have to worry about that?

MR. KAPSIS: Let me, maybe, step back and sort of walk through a little bit how we measure and verify results for behavior-based programming, because I think it'll -- it'll illuminate a little bit the question that you've asked.

So we don't -- we're not going to solve cancer, but the way we measure results is similar to how drug companies measure results of drugs. We create a test group and a control group that are demographically exactly equal. They're randomly selected.

And then one group receives our reports and the other group doesn't, and if there are savings attributed, it's because of our reports, and so, for example, if there are rebates for other programs in the marketplace, both groups are receiving those rebates equally, so the behavior piece is separated out so we know that, you know, the group that's receiving behavior–based programming is actually saving more energy compared to this other –– this other group.

I would also note that we can –– our programs can actually increase the participation in the rebate programs or any other efficiency programs that the state or utility might want to put forward. We do this on a regular basis where –– because we are targeting very specific households based on their demographics and the size of their house and their kind of energy mix, so we're not going to send someone who's renting their house a rebate to install insulation or attics –– they don't own their attic –– but we'll send the people who do own their house, and that way we're able to increase performance and participation.

I don't know if that answers –– did it only partially answer you question?

COMMISSIONER GUNN: No, I think it does, and I think what you're saying is you can break out the behavior piece from the installed piece.

MR. KAPSIS: To break out that piece. I guess the other part, too, and I think this addresses your comment a little bit, has to do with the rebound effect, which is the idea that if you weatherize someone's house or install some kind of new technology, how do we know they're going to use it; right?

So definitely you kind of go with the thermostat. You know, people might buy it, but are they actually using it effectively, and I think it is hard to know that exactly. But what we can do is by reminding people to use energy in a particular way —— which is kind of what we do, sort of like in your car: Your little bell goes off in your ear so you remember to put your seat belt on. We kind of have that effect, hopefully in a more sophisticated way on how you use your energy.

So if you received the weatherization program and the state's invested in you, utilities invested in you, we can make sure that you're reminded to not —— you know, not up your AC or heat or keep your lights on because you're starting to feel wealthier because your bills went down.

COMMISSIONER GUNN: And I'm assuming from Staff's perspective, that would all be figured out in the EM&V process, how you break out those different types of behaviors, first installed ——

MR. ROGERS: Yes. Yeah, I think through a presentation by Opower —— this is John Rogers —— and, yes.

COMMISSIONER GUNN: Okay.

MR. KAPSIS: The hard thing —— sir, if I might just add one more thing, our program is an opt—out program, which is how we're able to reach so many different kinds of people, so we're able —— we basically —— we don't —— the customers don't know who we are. They get it, our reports, from the utility itself, so it's actually, we believe, a benefit to the utility because it's helping them improve their relationship with their customers, but they get —— we can send to lower–income folks, people who are renting their, you know, apartment, all different kinds of people, but they can choose not to receive it, because everyone receives a bill, so everyone receives —— can receive this as well.

So unlike a rebate program where typically you have to market it to, you know, everybody and then hope that someone actually picks up the phone and calls, you know, we're able to just reach a much broader —— 'cause people in our program actually opt out. We only get, usually, about half a percentage point of people actually taking the action, you know, to not receive their reports because they like them.

COMMISSIONER GUNN: Thank you. I don't have anything further.

JUDGE STEARLEY: Any other questions?

(No response.)

JUDGE STEARLEY: None? Thank you, Mr. Kapsis.

MR. KAPSIS: Thank you so much.

JUDGE STEARLEY: Ms. Langeneckert.

MS. LANGENECKERT: Yes, Lisa Langeneckert from Missouri Energy Group. I just had more of a procedural inquiry. You noted that the briefs would be part of the record. I'm wondering if the written comments will be as well?

JUDGE STEARLEY: Written comments that were filed during the comment period?

MS. LANGENECKERT: Yes.

JUDGE STEARLEY: Yes.

MS. LANGENECKERT: Okay. Thank you.

JUDGE STEARLEY: Anyone else wish to offer any comments today? Mr. Kind.

MR. KIND: Just sort of in the nature of concluding remarks: OPC would strongly encourage the Commission to approve a rule that's clearly within the bounds of the statutory authority provided by SB 376.

We believe that otherwise the court challenges will likely lead to uncertainty that will probably cause utilities to hold back on energy efficiency implementation.

We think that if there are not -- there is not sufficient authority in the existing statute that that would be a good reason for people to go to a legislature and seek legislation that actually has the authority people think is necessary, if that's more incentives, that's something there that could be a discussion at the Legislature.

I would note that at some point the level of incentives add so much to the cost of energy efficiency that the Legislature should also consider the type of third–party administrative approach that's been very successful in states like Oregon.

JUDGE STEARLEY: All right. At this time we're going to open things up with just questioning from the Bench. Commissioners, you can fire away at any person still remaining in our audience.

COMMISSIONER KENNEY: I have a general question I'll just throw out to whoever wants to answer it, and I know it's probably dangerous. Anybody that wants to come up and discuss this question: Why would revenue decoupling either be more or less effective than allowing for lost revenue recovery? Kind of open–ended. Whoever wants to take a shot ––

MR. KIDWELL: Steve Kidwell, Ameren Corporation. Very good open–ended question. Let me just start by saying that I think potentially implemented correctly, some form of revenue decoupling could be more effective than –– than –– I may characterize what we're doing here as maybe a Band–Aid that might, you know, get us to that point.

I think –– and we've said before that if we wanted to open a workshop or a dialogue about what decoupling might look like on the electric side of Missouri, Ameren Missouri is interested in participating in that, because I think that could be a more permanent and a better solution long–term.

MR. BLANC: Curtis Blanc, KCP&L. We would certainly agree that's a more wholistic way to deal with it, but I think the challenge before us now is the difficulties, the complexities of what we're trying to do now as a small incremental step.

Decoupling would be more —— significantly more complicated, and if you look across the states that have done it, there are probably a dozen states that have done something that they call decoupling, but I don't think you would find two of them that have done the same thing.

But I agree it would be a lengthy endeavor to do, but I agree it would accomplish the goal.

COMMISSIONER KENNEY: But it would be a substitute for any lost revenue recovery mechanism; correct?

MR. BLANC: Yeah, you wouldn't need both. That's true.

MR. KIND: I'm going to just provide some comments that are more in the nature of personal observations than these of my office. Decoupling is a much broader approach than lost revenue recovery.

Lost revenue recovery usually deals with sales that are lost exclusively due to the implementation of utility–sponsored DSM programs, and there's a lot of other reasons why a utility could have lost sales. Could be that whoever is cooler than normal during the summer, a downturn in the economy, as some other people have mentioned. Could be new building codes, new appliance standards, so the utility —— if the lost revenues from utility–sponsored DSM programs would just be a small subset of that, and likewise depending on how decoupling is done, it can protect utilities from risks that are well beyond what's taking place in terms of energy efficiency but also protect them from weather risks and a risk of downturn in the economy.

I just to want add, you know, as Mr. Kidwell suggested, that they'd be glad to engage in a statewide dialogue about that. Public Counsel certainly would as well.

MR. BICFORD: Good afternoon. My name is Adam Bicford. I'm with the Missouri Department of Natural Resources, Division of Energy.

I can speak a little bit to the history of lost revenue adjustment mechanisms. They tend not to be –– they tend not to work very well. We have experience following the case of Minnesota where there was several years of extreme over–recovery by utilities without reasonable structure of verification.

In terms of replacing decoupling, I agree with MR. BLANC. There are a lot of different procedures that one might consider and that we do need to have this discussion, I believe, in the state. For the time being, however, DNR believes that we can structure an incentive that will capture, sufficiently capture, lost revenues, perhaps not make the utilities whole in the short–term, but it can do some of the things that we want for the lost revenue proceedings to do.

Thank you very much.

JUDGE STEARLEY: Thank you.

Anyone else want to offer a comment to Commissioner Kenney's question?

(No response.)

JUDGE STEARLEY: All right. Commissioners, any other questions?

COMMISSIONER DAVIS: All right. This question, I guess, is for the utilities. In her comments, Ms. Langeneckert made the point that, in essence, utilities are arguing for an increase every time a customer joins the DSM program, but that her clients and consumers in general don't get a reduction every time a new customer is added to the system. Would any of the utilities like to respond to that point?

MR. KIDWELL: This is Steve Kidwell from Ameren Missouri. I'll take a shot at it. I guess our point of view is that -- well, first of all, when we have a customer that participates in a program, the rates that are in effect at the time that participation happens, basically we're assuming that that customer's going to cover fixed costs that they aren't going to recover -- that they aren't going to cover anymore. That's the definition -- you know, that's kind of a paraphrasing, but that's the definition of lost revenues that I think you find in the Chapter 22 rules.

I think what Ms. Langeneckert is talking to is the fact that there is no one-for-one that happens in between rate cases, okay? There's no in-between rate case adjustment for the fact that there may be growth on the system.

I guess I'd say that that's sort of single–issue ratemaking, and that's sort of the thing that, you know, the MEG usually argues against, so once we come in for another, you know, rate case, she'll have plenty of opportunity to look at all relevant factors and deal with that.

But the real question is: We have rates in effect that we're assuming that we were going to have some fixed cost recovery that now isn't going to happen, and that needs to be fixed.

COMMISSIONER DAVIS: Okay. So let's just say that we're going to fix this. Should we fix it where we would net out the –– net out the –– the energy efficiency revenue and measure that against customer growth?

MR. KIDWELL: I would say no. I guess that doesn't surprise you, but here's why I would say no: In between rate cases, at least under current conditions –– under current conditions costs are going up, utilities are, in general –– the hot summer here, maybe notwithstanding, are, in general, you know, realizing returns that are less than what their allowed returns are, certainly on a weather–normalized basis, at least as far as I'm aware, with Ameren Missouri. That's the case for as long as we can see.

All that –– all that that adjustment would do would essentially add to regulatory lag and disadvantage energy efficiency programs as utility executives were making a decision as to what level of funding they were going to assign to energy efficiency. That's my take on that.

COMMISSIONER DAVIS: And so basically under current economic circumstances, you're not earning anywhere close to your allowed return on equity anyway, and so ––

MR. KIDWELL: I think given the summer –– I think given this summer on a –– because of the fact that it's maybe the second hottest summer on record, we may be doing okay at least for a while, but on a weather–normalized basis going forward, that's not the case.

COMMISSIONER DAVIS: Okay.

Anybody else want to add anything to that discussion?

MR. BLANC: I'd say in the type of netting you described is a definition of "decoupling." I think taking out the impact of load growth and the impact of energy efficiency, that is in a broad term decoupling, so I don't think it's what we are talking about today, but could it be a longer–term solution? Absolutely.

COMMISSIONER DAVIS: Whoa, MR. BLANC. You volunteered. Another one of Ms. Langeneckert's points was that DSM programs are all based on estimated savings, that weather and other factors could potentially drive utility sales above their forecasts and utilities would still be collecting for their insufficiency charge.

I think Mr. Rogers has tried to address that in the rule, but I get the feeling that the utilities don't necessarily think that that's the most –– that that's the appropriate course of action, I guess, so would you care to comment on that?

MR. BLANC: Sure. I guess a couple of points: The first would be that our rates are set on normal weather, so when weather's more favorable and normal, there's a benefit, but when it's less favorable than normal, there's a detriment, and if the normalization process works out, that should net to zero over time, so I don't see weather being a huge driver in terms of measuring the benefits of energy efficiency.

And the other point would be what Mr. Kidwell mentioned early on: The IRP process measures the impact of energy–efficiency demand response programs over an extended period of time, and that takes into account the potential impacts of load growth, weather, the other issues she mentioned being concerned about.

COMMISSIONER DAVIS: Okay. I think Ms. Langeneckert made one final point, which is —— I don't think she called it this, but essentially something along the lines of price elasticity, or at least there's, you know, a correlation between rising electric rates and reduced energy consumption that can be attributed to the rate increases themselves and not to any particular program.

I mean, is it fair that utility customers should be penalized under this mechanism or should we be okay with it because, you know, in the words of Mr. Kidwell, in all likelihood on a consistent basis we're not going to be —— the utilities will not be earning their allowed ROE anyway?

MR. BLANC: Well, first, I would say KCP&L finds itself in the same position now historically and in the future of not being near earning our authorized return on equity, so I would say that we are in the same boat there. But I am not sure I understand her argument, if you could ——

COMMISSIONER DAVIS: Well, I mean, there's a certain amount of naturally—occurring DSM no matter what, and as rates rise, there's going to be more DSM, because if you live in San Diego and you're paying 24 and 28 cents a kilowatt, you're obviously a lot more concerned about it than in Missouri if you're paying eight, nine cents a kw.

MR. BLANC: Sure. That's a great point, especially looking at going back to the threshold or benchmarks or goals discussion, that what's achievable here in an eight—cent—per—kilowatt area may not be what's achievable in a 20—cent—a—kilowatt—hour jurisdiction.

I think you have to look at that, absolutely, to see what's achievable here in this area. And as you see, I've read a lot of studies, as I'm sure the Commission has, on the impacts of demand elasticity, and while economic theory tells you the more something costs the less of it people will consume, but if you look at unbundling, it could potentially —— one of the many things the Commission is going to have to weigh is it could push you in a different direction, but if you recover all of your fixed costs in a fixed charge and all of your variable costs in a variable charge, which is one of many definitions of decoupling, then that potentially creates the exact opposite economic incentive of what you're talking about.

The variable costs could go down and therefore remove any incentives to consume less so, I mean, it's one of many factors this commission will have to balance.

MR. KIDWELL: Commissioner, can I add maybe one comment on that point?

COMMISSIONER DAVIS: Jump on in there, Mr. Kidwell, any time.

MR. KIDWELL: Thank you, Commissioner. The concept I want to bring up is called "net to gross." As we do our evaluation work, one of the things we have to do is to figure out what the net impact of our program is.

I think it was Commissioner Kenney early on that said that this is one of the difficulties you have -- you have to, essentially, estimate what would have happened otherwise, because you're really trying to get to the net impact of the program, so as we do those net-to-gross calculations, if I'm understanding Ms. Langeneckert's question correctly, I think that's where an adjustment happens.

What we're trying to do is look at the net impact, and so to the extent that the program had a net impact, not only is that the energy savings that it had, but it's also the lost fixed cost recovery that the utility's realizing. It's not the net -- it's not the gross, it's the net.

COMMISSIONER DAVIS: Anybody else want to add anything?

(No response.)

COMMISSIONER DAVIS: All right. This can go out to Curtis or Mr. Kidwell or Ms. Tatro, or whatever: Going to the MEDA comments, on lost revenue ——

JUDGE STEARLEY: Excuse me, Commissioner Davis. Can Mr. Blanc be seated, or do you still want him at the podium?

COMMISSIONER DAVIS: Don't you think he looks good standing there? You don't have to stand up there for long. If his knees buckle and he starts to fall one way or the other, I'll say something loud and wake him up.

MR. BLANC: Thank you, Your Honor.

COMMISSIONER DAVIS: Should the definition for "lost revenues" be made consistent with the Chapter 22 definition?

MR. BLANC: I think there were comments on that earlier by Mr. Kidwell that I would certainly agree with, that I haven't heard a persuasive argument for using the different definition.

It seems to me that Chapter 22 definition and the IRP definition would work equally well here as it does there. It seems the only incentive would maybe (sic) to undervalue or overvalue lost margins depending in the context you're talking about them in, and in my mind they should be the same.

COMMISSIONER DAVIS: Okay.

Mr, Rogers, can you refresh my recollection where Staff is on that issue again.

MR. ROGERS: In my prepared comments I did address that, and Staff does not believe that the Chapter 22 definition is appropriate since it's only used to exclude costs from the definitions in the -- in the California test, and the definition for the -- what costs are associated with an end-use measure, and there was no intention in the Chapter 22 to find lost revenue for the use of the lost revenue recovery mechanism.

COMMISSIONER DAVIS: Okay. Does anybody that works for Ameren or KCP&L want to reply?

MR. BLANC: It may not have been the intent when the Chapter 22 rules were drafted, not knowing that Senate Bill 376 was on the horizon, but that isn't a persuasive reason for not using it here.

COMMISSIONER DAVIS: Okay.

MR. KIND: Commissioner Davis?

COMMISSIONER DAVIS: Mr. Kind, I'm sorry if I've ignored you. Feel free to jump in here at any time.

MR. KIND: I appreciate that. Thank you.

I just wanted -- I think the rationale behind the Staff proposal is that lost revenues are seen as something to remove a disincentive and to essentially make the utilities whole for getting recovery of fixed costs at the same level that they were -- would otherwise absent the DSM program, and to me, the approach recommended by the Staff makes sense, that it's directed at the alleged, you know, ill that we're trying to cure: Fixed cost recovery.

If there's —— if because of actual revenues due to variations in the weather or the economy overwhelming apart of the decline in fixed cost recovery and the recovery of fixed costs, we only want to get the patient back to their initial condition prior to when this disease occurred.

We're not trying to fix other problems that they may have. There may be other problems there. Maybe there's some problem that —— some other reasoning why they need enhanced revenues and enhanced earnings, but this is not the place to solve it.

COMMISSIONER DAVIS: Thank you, Mr. Kind.

Intervention. Is MEDA really serious about that point, that, you know, someone intervenes in the underlying authorization; that they should not be automatically made a party, that instead they should have to opt in?

I mean, Mr. Kidwell? MR. BLANC?

MR. BLANC: If I understand the question, I think the answer is that a commission has a longstanding policy rules (sic) regarding intervening in a matter before it, and it wasn't clear why special or different rules would be necessary.

COMMISSIONER DAVIS: Well, as of lately in certain comprehensive energy plans that were assigned to by your colleagues there at KCP&L, I believe that there were provisions made that people would be automatic interveners in subsequent cases, too, weren't there?

MR. BLANC: As part of a settlement agreement, yes.

COMMISSIONER DAVIS: So it's okay for a settlement agreement; it's not okay for a rule?

MR. BLANC: Well, I think if the parties can agree to something that is distinguishable and different from it being imposed in a rule, yes, I do.

COMMISSIONER DAVIS: Okay.

MR. WILLIAMS: Commissioner, if I may?

COMMISSIONER DAVIS: Mr. Williams, jump on in there.

MR. WILLIAMS: The Commissioner has done so in other rules involving the fuel adjustment clause, and probably -- I don't recall specifically, but I suspect that it's in the environmental cost recovery mechanism as well.

COMMISSIONER DAVIS: You know, I think you're right. All right. On the -- do you have a copy -- does anyone have a copy of the MEDA comments? MR. BLANC?

MR. BLANC: I do not have one with me. I can go get one.

COMMISSIONER DAVIS: Here comes Mr. Dority.

MR. BLANC: Thank you, Mr. Dority.

MR. DORITY: Yes, sir.

COMMISSIONER DAVIS: Page 8, what is the significance of numbered comments 10 and 11?

MS. TATRO: If I may, I'll speak to 10.

COMMISSIONER DAVIS: Go ahead, Ms. Tatro.

MS. TATRO: The language in that portion of the rule, that 2(E), that paragraph, seems to indicate that the Commission under these rules could decide not to give a utility a DSIM if the expected magnitude of the impact of the cost of the demand–side programs wasn't enough to, in the Commission's eyes, negatively impact earnings or those types of things.

It was modeled, obviously, off of the FAC language, but the statute, SB 376, doesn't talk about that. It says the Commission "shall" provide for timely cost recovery. It doesn't say "provide timely cost recovery if the magnitude is so large and has this type of impact."

The language of SB 376 is talking about removing disincentives, and so I think it's very distinguishable, and it is not appropriate to have that type of a qualifier in the rule.

COMMISSIONER DAVIS: Anybody from Staff want to respond to that?

(No response.)

COMMISSIONER DAVIS: While Mr. Rogers is looking, let's go ahead and look at the next numbered paragraph, No. 11. Ms. Tatro, do you want to take a stab at that or ––

MR. BLANC: Paragraph 11, I'll take that one. The current language would appear to limit the ability to change the rate through a DSIM to just the timely program cost recovery, and that change is to expand to what Mr. Kidwell described as the three "shalls" in the statute: Timely cost recovery, timely earnings opportunities, and aligning the financial incentives, so just to make sure that the clause, that adjustment, applied to all three of the "shalls" and not just cost recovery.

COMMISSIONER DAVIS: Okay. We'll go ahead –– Mr. Williams, Mr. Rogers, I'll get back to you. I'll let you keep studying there.

Okay. I think this is my last question, MR. BLANC. What are the significance of numbered paragraphs 13 and 14 on page 10? Those are DSM comments, so 13 and 14, pages 10. It goes on over to page 11 a little bit.

MR. BLANC: Starting with paragraph 13, that's largely transitional in nature, basically recognizing that the different utilities, KCP&L, in particular, has programs existing in place today and a recovery mechanism in place.

And 13 is just designed to minimize the pain or challenges of transitioning what we have today to what would exist under the rule.

COMMISSIONER DAVIS: Okay. So Mr. Rogers, Mr. Williams, do you have any other responses to –– I mean, other than I note your earlier general opposition to everything that MEDA's sponsored, I mean, any specific thoughts on numbered paragraph 10, 11, 13, and 14 in MEDA's draft, which would be pages 8, 10, going over to 11?

MS. TATRO: Commissioner, if I could explain the rationale for paragraph 14, I don't think that you dealt with that one, Curtis. The idea there is to allow some flexibility between –– within the plan, so that if one of your programs is highly successful and you want to move some funding from one to the other, that you might have the ability to do that without —— and you have that flexibility without coming back in and getting modification approved, but yet it's not complete flexibility because it still contains the 20 percent. It's just a difference of whether it's within each measure or program or if it's the flexibility between the entire plan. We'd like the flexibility to go between the entire plan.

COMMISSIONER DAVIS: All right. Mr. Rogers.

MR. ROGERS: Starting with comment 10, I don't have strong feelings on this, however I think the language that we put in about the expected magnitude of the impact of utility–approved demand–side programs on utility cost revenue and earnings had to do with this general idea that, you know, in order to get the mechanism, you really have to have something material; in other words, the magnitude of the impact on the cost and revenues and earnings and the size of the program needs to be considered by the Commission.

On No. 11, we do not agree with that and we have stated why. On No. 12, 13, and 14, I think Staff would be supportive, that it would be okay to consider those changes.

COMMISSIONER DAVIS: All right. That's all I've got.

MR. KIND: Commissioner?

COMMISSIONER DAVIS: Yes. I'm sorry, Mr. Kind.

MR. KIND: Could I weigh in on some of those items?

COMMISSIONER DAVIS: Absolutely, but you have to speak up because it's getting late.

MR. KIND: All right. Well, let's see. Going back to the first one that you had inquired about, I guess was ——

COMMISSIONER DAVIS: Number 10 on page 8.

MR. KIND: —— No. 10, which changes the language in "E," we're concerned about removal of this criteria, making an assessment of the utility to manage all aspects of the approved demand–side programs, seems like that's certainly something that should be considered when you look at a portfolio program that's being proposed.

Also concerned about other aspects of this with regard to —— you know, it sort of depends on where the Commission goes with this rule in terms of permitting incentives and lost revenue recovery, but particularly if you are to include provisions on lost revenue recovery, we think that when you initially look at the programs and the entire portfolio, you ought to be looking at the impact that it's going to have, the forecasted financial impacts, of there's programs ultimately on utilities' earnings.

But basically back to my other analogy, let's make an assessment of the extent of the illness. Let's do a diagnosis before we figure out what the appropriate treatment is in terms of incentives and lost revenue recovery.

We don't want to just —— sorry to use a tired, worn–out phrase: We don't want to just throw money at the utilities and hope good things happen. We want to direct the appropriate amount of money at the utilities and protect consumers from directing more money at the utilities than is necessary to do the job.

COMMISSIONER DAVIS: Mr. Kind, can I stop you there for a minute?

MR. KIND: Certainly.

COMMISSIONER DAVIS: I mean, you kind of sounded like a utility there for just a second in a sense that, you know, we're like –– because, I mean, isn't that the same argument that they are using against the goals that –– you know, the goals, you need to actually do a diagnosis, do a study and base it on something competent and substantial other than the fact we've looked –– peered over the horizon to Arkansas and saw something and said, Well, that looks good. I mean, isn't that the crux of what they're arguing with regard to the goals?

MR. KIND: That is the crux of what they're arguing, and I guess I would reject the analogy, because with respect to goals, we're talking about sort of what people have characterized as soft goals, aspirational goals, not goals that are going to directly relate to how they are either compensated or rewarded for doing programs.

Here we're talking about the nitty–gritty of specific, you know, DSIM mechanisms for rewarding them, and we should get into the details of financial modeling to look at what is the impact on earnings of these different variables that affect their business, whether it's the risk of doing DSM and actually achieving participation that is –– they hope for or whether it's lost revenues. We should dig into those specifics when we get past just talking about aspirational goals.

Just one other thing that I wanted to comment on. It had to do with changing the reporting of being 20 percent away from projected targets to a program–by–program type of notification to only notification if we are varying in terms of the broad, entire portfolio DSM programs varying by 20 percent.

I think the program–by–program assessment is –– isn't appropriate for accountability of utilities given the enormous expenditures that we're going to start making on energy efficiency if our efforts here are truly successful, as Public Counsel hopes we are, in encouraging substantial investment in energy efficiency in Missouri.

COMMISSIONER DAVIS: All right.

I'm done. I don't have anything else, unless somebody wants to add anything.

JUDGE STEARLEY: Any other questions?

(No response.)

JUDGE STEARLEY: You may be seated, Mr. Blanc.

MR. BLANC: Thank you.

JUDGE STEARLEY: Any other matters we need to take up before adjourning today?

(No response.)

JUDGE STEARLEY: Well, hearing none, the rulemaking hearing in File No. EX 2010—0368 is hereby adjourned.

(Exhibit Nos. 5 and 6 were marked for identification.)

(The hearing adjourned.)

CERTIFICATE

I, Nancy L. Silva, a Certified Court Reporter, CCR No. 890, the officer before whom the foregoing hearing was taken, do hereby certify that the witness whose testimony appears in the foregoing hearing was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Nancy L. Silva, RPR, CCR