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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Rulemaking Hearing

May 4, 2017
Jefferson City, Missouri
Volume 1

In the Matter of Proposed)
Amendments to the Missouri)Case No.
Public Service Commission's)EX-2016-0334
Rules Relative to the Missouri)
Energy Efficiency Investment Act.)

JUDGE MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

COMMISSIONERS PRESENT:

Mr. Hall, Chairman

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P R O C E E D I N G S

JUDGE WOODRUFF: We are here today for a comment hearing regarding -- or regarding the Proposed Amendments of the MEEIA rules, which are Chapters 4 CSR 240.20.092, .093 and .094.

As indicated this is a rule-making hearing, which is a fairly -- which is a fairly informal process. We're taking comments today, not testimony. Therefore, we're not going to swear in witnesses.

You don't need to be an attorney to give comments. Just anyone who wants to come forward and make your statement. We'll allow you to do that.

You're not subject to cross-examination. Like I say, it's not an evidentiary hearing. I have already received written comments from a number of interested entities, specifically, Staff, Public Counsel, Ameren, Kansas City Power & Light Company and G-MO, Renew Missouri, Natural Resources Defense Counsel, Wal-Mart Stores and National Trust.

People who made comments are certainly -- or written -- gave us written comments are certainly welcome to speak again today. Don't feel like you need to repeat your comments, except as you wish to emphasize them.

Even if you didn't file written comments, you can certainly speak again today, come up and testify -- or excuse me -- comment again today.

I don't have a set schedule for when people are going to testify. I'll leave that up to you. I'll just call for volunteers. I do, however, ask that Staff go last so that we can get the benefit of Staff's responses to the other -- the other comments.

All right. Let's go ahead and get started. But before I call the first witness, I wanted to bring up one matter that you can address in your comments if you want to.

When Staff filed this motion, they -- or filed these rulemakings, they intended to rescind Chapter 3 rules about the procedures. That didn't get done. Those were not filed along with these rules.

Just if you were watching the agenda yesterday, the Commission authorized me to go ahead and file those at this point, but they will be on a different schedule.

So what I want to ask you is does it -- do you want to delay the effective date of these Chapter 20 rules to match the recision of the Chapter 3 rules?

It looks like they would be -- if we get the Chapter 3 rules rescinded as quickly as possible that it looks like it would try to be the end of November and the recision will be effected.

The effective date of these rule changes would probably be October 30th. So we'd have about 30 days where we would have inconsistent rules out there. But it is possible also to delay the effective date of these rules to match the effective date of the recisions.

So I'll -- if anybody wants to comment on that when they -- during their comments, they can -- they can tell me that.

Let's go ahead and begin, then, with whoever want wants to go first as far as comments. Anybody out there want to step forward?

MS. MEISENHEIMER: Division of Energy has comments, but they're members of the public that wanted to comment. We're certainly going to follow any members of --

JUDGE WOODRUFF: I don't see anybody else coming forward, so go ahead. And first off, if you will tell us who you are and who you represent.

MR. HYMAN: Yes. My name is -- is that better? Yeah. My name is Martin Hyman. I am presenting these comments on behalf of the Division of Energy. Thank you, everybody, for your time here and for the year's long effort that we have been through to get here.

DE's comments aim at achieving the statutory goal of all cost effective demand side savings. We are concerned that some of the other comments that we have seen would result in back-sliding and the remarkable process we've made in energy efficiency over the last few years.

And thisprogress is exemplified by our most improved status in the American Council for an Energy Efficient Economy's yearly score card rating.

But more important than making sure we get a good score on a report card is finding ways that Missouri businesses and families have the opportunity to save money, which they can reinvest in the Missouri economy.

Part of achieving all cost effective savings will be the use of a state-wide technical reference manual, or TRM, for as many investor owned utilities as possible along with a collaborative update process.

On March 31st of this year following a year of work between a lot of the people in this room, we released the first version of the state-wide TRM. And I'm hoping that that will be available on our web site soon, if not already.

That followed, as I said, intensive stakeholder collaboration. And we see that as a good model moving forward having a diverse group of stakeholders that can provide a broad array of propesctus on energy efficiency in Missouri. And that would include natural gas and water utilities as appropriate.

We also support the idea of having the collaborative facilitated by a neutral third party. And we believe once the TRM is implemented, it will streamline planning and evaluation of MEEIA programs and provide greater opportunity for stakeholders.

Now, there was some illusion in comments by Renew Missouri and National Housing Trust to consensus language. And what that was about was we were trying to get some consensus on TRM-related language prior to the comment filing date.

We, unfortunately, did not reach full consensus, but we did incorporate language that we had circulated largely into our own comments.

We also support the inclusion of non-energy benefits, or NEBs, in cost effectiveness testing, possibly through an add or determined by the collaborative, the state-wide collaborative.

Now, I know this is contrary to what the Office of the Public Counsel has said. But non-energy benefits can and have been quantified. There's a broad array of research, for example, from Lisa Schumotz (ph.).

And they have applications in a variety of cost effectiveness access tests, not just the societal tests, but the TRC as well. They're already used in other states such as Iowa.

And I would note that there also may be some confusion about what we're asking for with NEBs. We're not asking to include them in the cost recovery part of MEEIA. We're just asking them to include them in programs for TRC evaluations.

We also strongly support including combined heat and power as an exclusively eligible resource under the definition of demand side programs in the rule.

CHP has the ability to shave peak load. It can -- it provides resiliency and security benefits for the Missouri communities. And it's also already being -- something that's eligible under the utility -- under KCP&L and Ameren's MEEIA plans.

Now Staff is apparently of the opinion that only the electric savings should count from CHP under MEEIA. And if the Commission decides to go that route, then we suggest that the Commission treat CHP symmetrical in terms of its costs and benefits.

If only the electric savings are counted, then the non-electric costs should not be included in cost effectiveness testing.

We also support keeping the savings targets that are found in the rules as amended to be more along the lines of first year, second year.

We realize that MEEIA is, indeed, a voluntary statute. But we think that it is appropriate once utilities determine they want to participate under the statute that they show some progress toward achieving all cost effective demand side savings.

We also strongly support great language

that completely codifies the exemption of low income and general education programs from cost effectiveness testing at the program and portfolio levels.

The MEEIA statute is unequivocal that these programs are not subject to cost effectiveness tests regardless -- and it doesn't say anything about their -- what scores they may or may not have.

What we have seen in practice is that these tests -- even if these programs aren't included in cost effectiveness tests at the program level, they're included at the portfolio level. And that is effectively an indirect cost effectiveness test of these programs.

It would artificially deflate portfolio scores and incorrectly signal to utilities that maybe they should reduce the scope of their programs, and that prevents us from achieving all cost effective demand side savings, not to mention the adverse effects on low income customers.

We also agree with stakeholders, such as Wal-Mart, that there should be greater transparency and certainty in the opt-out process. As it stands, there is not really any sort of clear expectation of what customers must do to opt-out.

We support, for example, a solution that Renew Missouri has where customers would have to meet the same percentage savings targets that utilities are expected to meet in order to opt out.

And in terms of providing transparency, we support having customers who wish to opt out provide some sort of documentation that's publicly posted on the Commission's web site with appropriate protections for confidential information, of course.

We believe that that will not only allow stakeholders a better view of the opt-out process, but will allow the public to see which Missouri businesses are saving money and energy.

And my last point would be that we still support removing the integrated resource plan process from the MEEIA definitions -- or from the MEEIA rules period.

The IRP process in the MEEIA statute are fundamentally incompatible. The MEEIA statute focuses on the achievement of all cost effective demand side savings where the TRC is a preferred test while the IRP process focuses on, typically, least cost resource planning. And that's not appropriate when you need to be talking about best cost resource planning.

That's all I had for now, and I am happy to answer any questions about our comments or what I've just said.

JUDGE WOODRUFF: Chairman have any questions?

CHAIRMAN HALL: Yeah. I have a few. Good morning.

MR. HYMAN: Good morning, sir.

CHAIRMAN HALL: Let me start with your last point because I don't understand it. Why do you believe that we should not incorporate the IRP process in determining what it costs?

MR. HYMAN: So I don't -- I don't know if that's exactly where we were coming from. I mean, we do see the value of the IRP process.

But what we have seen in practice is that it's focused on least cost planning. So, basically, the primary criterion under the current IRP rules effectively requires utilities to minimize the net present value of revenue requirements.

CHAIRMAN HALL: Okay. Slow down. So my understanding of the IRP process is that it's -- it is designed to develop a preferred resource plan. And -- and, yes, that may be the least cost. I understand that.

But if we are to look at a MEEIA program and try to determine the extent to which avoided costs would result from that, don't we need some kind of baseline understanding for what the cost would be but for the MEEIA program? And -- and what is better than the preferred resource plan for that?

MR. HYMAN: Well, I think I would personally make a distinguished -- distinguish between the preferred resource plan and the avoided costs.

You can have avoided cost calculations based on the IRP process without basing whether or not you file a MEEIA or what MEEIA you file on the preferred plan.

The preferred plan is once you take into account avoided cost, what is the lowest present value revenue requirement that you can achieve? And that's not the same thing as what is the most cost effective program.

The most cost effective program may have higher costs than net present value MEEIA requirement, but it also may have higher benefits than you would get otherwise.

CHAIRMAN HALL: What question would Staff have in response to that? I'm not -- it seems to me like it's almost two ships passing in the night here, and I'm -- and I'm --

MR. ROGERS: Well, I think our position is that -- our position is to keep the linkage between MEEIA and Chapter 22 because --

CHAIRMAN HALL: I understand that. What I'm really -- this is not exactly how these rule-makings typically go. But this is a particular subject matter that may warrant this kind of -- I'm wondering if you -- if you have a question for DE on -- on -- on that issue to help us clarify -- help me understand the difference between what you're saying and what he's saying. And -- and --

MR. ROGERS: What is DE's process to assure that the -- whatever all cost effective ends up being is included in the adopted preferred resource plan of a utility? Because the adopted preferred resource plan of a utility should be the business plan of the utility.

MR. HYMAN: So I think that what should

appear in the preferred resource plan would ultimately be what is the most cost effective MEEIA resource, not necessarily what leads to the lowest overall cost for the utility's net present value revenue requirement.

And what we've seen with the most recent MEEIA cases, for example, is there has been discussion about, Oh, rates are going to go up in the immediate future.

But that's not the appropriate criterion to use when evaluating MEEIA plans. It's one of many considerations. But what ultimately needs to be considered is all cost effective demand side resources.

MR. ROGERS: And I -- and I agree about rates going up. We're seeing that now with MEEIA. It is costly. But the IRP doesn't -- doesn't determine -- it doesn't -- the primary selection criteria is revenue requirements. It's the bills that customers end up paying. It's not the rates.

MR. HYMAN: I -- I guess I would respectfully disagree with you on a few points. One is that the revenue requirement is not the same as the bills the customers will pay. That's based on cost of service, class cost of service and rate design ultimately.

The other thing that I would disagree with is that rates are going up because of MEEIA. That may be a small part of the current rate increases, but some of the -- a lot of those rate increases are due to other factors. For example, property taxes.

So I don't think we can squarely blame MEEIA for some of the rate increases that we have been seeing in the past just based on my work in the rate cases.

MR. ROGERS: I didn't mean to imply that's the only thing. But there are rates -- rate increases as a result of MEEIA. It's a separate line on the bill.

MR. HYMAN: There are rate increases, but there are also benefits to customers that accompany those rate increases, which is where I think the fundamental incompatibility comes with using present value revenue requirement and cost effectiveness testing.

CHAIRMAN HALL: Okay. Let me -- let me -- if we were to not use the IRP process or the preferred resource plan to determine avoided costs, what -- what would we use instead?

MR. HYMAN: So I'm not saying that you wouldn't use the IRP process to determine avoided costs. There may be another way. But that is the way I am familiar with.

You could still use that to determine avoided cost. But you wouldn't be using the IRP process to determine what is the lowest cost plan for a utility investment.

You would be -- you would be using the MEEIA and its cost effectiveness testing, including IRP avoided costs as the input.

CHAIRMAN HALL: Mr. Rogers, what's wrong with that?

MR. ROGERS: Well, I think what he's -- when he says MEEIA, what he's talking about is the TRC. And the TRC is a preferred test under MEEIA.

CHAIRMAN HALL: It's the preferred?

MR. ROGERS: No. It's a preferred test.

CHAIRMAN HALL: Well, are there any other preferred tests?

MR. ROGERS: Not specified in MEEIA.

CHAIRMAN HALL: Okay.

MR. HYMAN: The MEEIA statute says a preferred cost effectiveness test is what he's referring to, I believe.

MR. ROGERS: A preferred test. One of the big issues and differences in the rule-making comments is that some parties want to make the TRC the only threshold to determine what should be done under MEEIA.

And Staff feels that there's a -- there's a better way to do it. And -- and that's to use Chapter 22 to determine what the demand side resources should be in the adopted preferred resource plan based upon the comprehensive analysis that's required under Chapter 22 as opposed to a TRC.

MR. HYMAN: And to clarify, we are not saying that TRC is the preferred test or the only preferred test.

We believe that there can be additional tests including -- such as the societal test, the inclusion of non-energy benefits in cost effectiveness tests.

I think where our disagreement comes in is that the use of the present value revenue requirement simply doesn't match with the use of a cost effectiveness test.

CHAIRMAN HALL: Okay. Well, let me -- let me switch gears for a moment and go into the voluntary targets in the -- in the rule. What do you think the purpose of those are?

MR. HYMAN: I see the purpose of those, obviously, not as imposing some sort of mandate, but as a way -- as -- as the rules roughly say and I'd have to go back and look at what we have in our revisions.

But, basically, it has benchmarks to determine that the utility is moving towards all cost effective savings. And that, in combination with the potential studies, is where the value of the benchmarks comes in.

CHAIRMAN HALL: Do you think that the voluntary targets cause any confusion?

MR. HYMAN: I don't personally think so, no. I think they're a useful tool.

CHAIRMAN HALL: I mean, for example, I'm involved in a -- in a MISO process right now where we're looking at some DER throughout footprint. And they hired a -- a consultant to -- to -- to look at the status of the DER throughout the footprint.

And they came back taking our voluntary targets as -- as more than voluntary. And just as one example for me where -- where these voluntary targets do, in fact, cause some -- some confusion, explain to me how using them as benchmarks is valuable.

MR. HYMAN: It's important to have them so that we see what the utilities are doing compared to what they could be doing, for example, in other states.

There are a lot of states that are moving farther faster than we are in energy efficiency. And it's important to have some sort of benchmarks based on not only Missouri circumstances but what we are seeing in other states rather than solely relying on potential studies.

Potential studies have been a bit problematic in that they tend to have certain assumptions and limitations, but they are taken by the parties often as the upper limit when, in fact, there may be more cost effective savings that can be achieved.

CHAIRMAN HALL: And then on the -- I -- I understand your argument on -- on CHP. Do you have a similar argument on -- on DG?

MR. HYMAN: I believe the distributed generation was something that Renew Missouri wanted, so I would probably better leave that to them.

CHAIRMAN HALL: Okay.

MR. HYMAN: But I would say CHP is one type of DG, so I think there are some similar arguments to be made there in terms of what and should not be included as a demand side resource.

CHAIRMAN HALL: And then, I guess, lastly, for my questions for you, what do you believe is the value from the -- from the state-wide collaborative?

MR. HYMAN: I guess there may be two state-wide collaboratives in the rule. I'm not entirely sure.

But I think the value of the state-wide collaborative more generally is that it brings -- can bring stakeholders together to discuss opportunities for moving forward with things such as the use of a net adder, new program designs that have been seen in other states that we might want to try.

Basically, something closer to -- there's something called the Stakeholder Advisory Group in Illinois. And I realize Illinois has different policy circumstances than us. But they have pretty regular meetings, like more than annually.

CHAIRMAN HALL: Uh-huh.

MR. HYMAN: And they discuss a lot of issues. It's open to the public. They post documents online.

CHAIRMAN HALL: Have you been present to the last couple COI collaboratives?

MR. HYMAN: I think I missed the last one because of Thanksgiving.

CHAIRMAN HALL: You didn't miss much.

MR. HYMAN: And I think that's what we're trying to move away from.

CHAIRMAN HALL: Yeah. Because I'm not sure -- I'm not sure of the value. And -- and -- so --

MR. HYMAN: I think there is value if we move it towards something closer to the Illinois model where there is some more substantive discussion and collaboration as opposed to just having presentations and calling it a day.

The other part of this, though, is that we have experience with using a collaborative effort to create the first version of the state-wide TRM.

And it is a very good product with a lot of measures. Even includes some gas savings for some measures. And we think that kind of tool, which we have proven can be done through a collaborative effort, is very helpful for providing certainty.

CHAIRMAN HALL: Is it -- and my last line of questioning is -- is on the state-wide TRM. Is that a PDF document, or is that a -- some kind of database that can be updated with new inputs as new inputs are received?

MR. HYMAN: PDF?

MS. MEISENHEIMER: It is -- it is currently a paper copy.

JUDGE WOODRUFF: If you want to come up to the microphone. Otherwise, they wouldn't be able to hear you on the broadcast. Tell us who you are.

MS. MEISENHEIMER: I am Barb Meisenheimer with Division of Energy. It's currently a paper copy. But we are moving toward the process of determining how best to create an electronic and more functional and potentially real-time accounting of measures within the TRM and data related to those measures.

MR. HYMAN: And I would add to that that at the release of the state-wide TRM there was a demonstration of how one could do that with an Excel file.

And there's some stuff in the rules, I think, with creating an electronic platform as a part of the collaborative efforts.

CHAIRMAN HALL: Okay. Thank you.

MR. HYMAN: Thank you.

JUDGE WOODRUFF: Thank you. Who wants to go next?

MR. LINHARES: Good morning. May it please the Commission. My name is Andrew Linhares, staff attorney for Renew Missouri.

So I've been involved in this MEEIA rule-making process for nearly two and a half years when we started I think in the fall of -- of '14.

We think the Commission's rule -- the proposed rule includes a whole bunch of beneficial changes that are going to enhance our state's energy efficiency efforts and further the primary goals of MEEIA.

Many of these revisions and additions are a product of years of discussion, and they reflect the input of dozens of stakeholders after nearly -- we're coming up on two complete cycles of MEEIA portfolios.

So I want to strongly encourage the Commission to maintain these additions where they make sense and not succumb to some pressure of reverting back to current language, or perhaps even worse, weakening MEEIA even further than the status quo as some parties have recommended in some cases.

In addition, there are a couple areas where the Commission can provide some further guidance for parties. So I want to call that out as well.

The first issue I want to touch on is the definition of demand side programs, which we've had some disagreement about. And this agreement -- this disagreement centers around the addition of the phrases combined heat and power and distributed generation as you were hinting at, Chairman.

So Staff has an argument that these additions should be removed as it deviates from the definition in the MEEIA statute. Staff argues that these technologies can only be demand side programs or measures where they modify the customer's net consumption.

So I would -- I would note that I believe this interpretation is overly strict and would have the effect of limiting the use of technologies and measures that are -- that are clearly on the demand side here.

The demand side measures certainly -- and they're definitely lowering the customer's use of electricity purchased from the utility, which I would argue is the point of MEEIA programs.

The fact that the customer's total net consumption here may stay roughly the same is, to me, a distinction without meaning. It doesn't change the fact that the customer is employing a technology or demand side strategy to lower their bill and use energy more efficiently.

Also, I would note that the statute says, including, but not limited to, and I believe this grants the Commission authority to specifically enumerate other -- other technologies that can be included here. So including CHP and distributed generation, I believe, is well within the Commission's authority.

And, of course, I would also note that the Commission maintains authority to approve or disapprove the inclusion of these technologies where they're included in a MEEIA -- MEEIA plan application.

And Staff and other parties may object on -- on the practical grounds of these -- using these programs and measures. So I'd urge the Commission to maintain that definition.

Briefly, I want to touch on the definition for non-energy benefits. There's a four-part definition for NEBs in the proposed rule that we would urge the Commission to maintain. OPC and perhaps some other parties recommend removing the definition.

Staff has a stripped down version of that definition they'd like to use. I just want to note here that NEB -- NEBs are not supposed to be limited to societal concerns, but, really, they're supposed to be the economic benefits that result from energy efficiency not having to do with energy.

So they are real in that sense. And where they're capable of being estimated with a reasonable degree of certainty, I think it makes sense to use them. We've got precedent across the nation on this.

CHAIRMAN HALL: Give me an example of that. Give me an example of quantifying a non-energy benefit.

MR. LINHARES: Yeah. Well, there's -- so someone like Lisa Schumotz, I believe there's papers filed in -- in this docket. And if there's not, we can provide those.

But they're numerous. And I'm certainly not the expert. But let's see if I can find a practical example of a -- of non-energy benefits.

So the benefit to the utility of reducing arrearages, I believe that's a benefit that we can -- that can be quantified. So if you're able to lower a customer's bill and increase their ability to pay other expenses such as utility bills, that's a direct benefit to the utility that results from a demand side management measure. It might be small, but that would be a good example.

CHAIRMAN HALL: Okay. Because I was under the impression that the majority of these are environmental. Is that not -- is that not true?

MR. LINHARES: No. I wouldn't say the majority of them are environmental. An environmental benefit is a really hard thing to quantify because it, you know, enures to the population in general.

So we don't want -- we're not asking for a situation where you're -- we're trying to account for every health benefit resulting from incremental reductions in -- you know, the reduced number of hospital visits because homes are more livable.

And every single benefit -- especially where they're not capable of being quantified. But if they are benefits -- particularly if they're benefits to the utility, they are providing economic benefit to the utility.

If the utility is increasing its revenue or lowering its cost and they don't have do with energy, I think it's very sensible to include them.

CHAIRMAN HALL: And your argument is that -- is that they should be used in -- in TRC evaluations analysis?

MR. LINHARES: That's right. That they're primarily for cost effectiveness. Staff had a comment, I believe, where they -- that -- from what I was understanding, they were saying that they had to do with cost recovery or they were -- they were -- it was authorizing the recovery of additional costs due to NEBs.

And I think that there's -- that this is a bit off base if that's what they meant. They're primarily for cost effectiveness, meaning that they increase the amount of measures that can qualify under a utility's portfolio, therefore, increasing the energy and demand savings overall.

CHAIRMAN HALL: Okay.

MR. HYMAN: Andrew? I'm sorry, Andrew. I am --

JUDGE WOODRUFF: Come up to the podium so we could hear you.

MR. HYMAN: Martin Hyman again. I would point you to -- I believe we cited it in our comments, One of the Schumotz papers that he mentioned.

There is a chart on page 4 of that report, and it was something that was done for the state of Maryland that shows -- well, it says Summary of Ranges and Typical Values for NEBs for the Weatherization Program as one example.

And it includes quantification of things like benefits to water and other bills, economic development and hardship. But, also, I -- there are examples in here, I believe, of environmental benefits, so these are things that can be quantified.

MR. LINHARES: Okay. And I don't want to have to spend too -- too long on NEBs. But I think the main point here in our context, in the rule-making context is let's go ahead and authorize them.

We can argue about these. Perhaps the

NEBs adder approach is the way to go, which is what most states seem to be tending towards. Maybe we need to do a full NEBs study. Maybe the Commission doesn't want to approve plans using NEBs in a -- in a way that is too overly brash.

But let's certainly not go through another three-year rule-making without at least authorizing their use and allowing progress. So I would just urge the Commission to maintain the definition at the very least because they've always got the authority to approve or disapprove.

So moving on to the energy and demand savings goals topic, this is in 094(2), so we -- we submitted a lot in our comments on this. I just want to make sure we're focusing on the fact that MEEIA's primary goal -- one of the primary goals is to achieve -- to achieve all cost effective demand side savings.

And the Commission's ability to approve a portfolio is linked to this question of whether or not the utility's plan is designed to achieve all cost effective.

So there's OPC and a few other parties recommend doing away with these savings goals. This is something we've discussed for many years.

This is tied to the fact that MEEIA is voluntary, as we all like to say.

I just would like to note there that the fact that the utilities have the freedom not to pursue a MEEIA plan does not make every rule provision or aspect of MEEIA voluntary.

The Commission maintains substantial authority to decide how the utility is going to direct its portfolio.

You know, Missouri utilities are living under a privilege of a system that grants them a tremendous earnings opportunity for pursuing a resource that many would argue is mandatory under a pier prudence perspective.

We haven't had that legal fight fully, but many would argue that you should be obligated to pursue the lowest cost resource. And MEEIA is granting utilities a tremendous opportunity to earn profit from these investments.

So I think it's extremely reasonable for the Commission to demand that the primary goal of MEEIA be met, which is all cost effective -- all cost effective energy savings.

So I would really encourage those goals to stay in there and keep that link between approval of a portfolio and whether or not it's achieving all cost effective savings.

Quickly, I want to note the -- the issue of program budgets and exceeding them by 20 percent. I believe the -- the proposed rule says 40 percent.

Regardless of which one of those it is, we urge the Commission to maintain this flexibility. It's important for a utility to be able to exceed its -- its program's budget.

If doing so would result in a whole bunch of savings, it's still cost effective. I think that this is completely reasonable. So we would -- we would urge maintaining either 20 percent or 40 percent, whatever is in the Commission's discretion there. But that flexibility is important.

I can skip the state-wide collaborative. We're very in favor of that language. We're thrilled that that's in there. Again, the Commission maintains the authority to approve or disapprove decisions as a collaborative or how -- how active things get with that. But I would really urge us to maintain the progress that we've made in formulating that language.

So the state-wide TRM is -- is one of

these areas where I think the Commission could provide further guidance. I believe subsection 10 of 094 is fairly long, the section on state-wide collaborative that I believe should stay in there, and the Commission should take careful note of the Division of Energy's proposed comments in this area.

There's some helpful additions there that were a product of stakeholder collaborative efforts. Staff suggests deleting Section A, which is the requirement that stakeholders create and implement a state-wide TRM.

I would suggest keeping this in because we have not yet implemented the collaboratives, and we may need that provision to continue implementing and updating the -- I'm sorry -- the TRM as we go.

OPC that a -- several arguments about why the TRM should be done away with. And these include things like the power plant is effectively no longer a factor of the proliferation of AMI meters that is expected in the coming decade here. They argue that may make TRM less meaningful.

They also raise a concern about not using -- not relying on deemed savings. I have a couple reactions here. One is that the TRM -- the state-wide TRM, there's been a lot of effort that's gone into that. We've talked about it forever. We finally have a product. Twenty-six states, so a majority of states are using these documents. A majority of states are using a state-wide approach to technical reference manuals.

So any -- any state you want to point to that has a successful demand side management regime is using this approach.

On the topic of AMI meters, I really think it's important to stipulate here to -- to note that even if every property in the entire state had an AMI meter, you're still having the problem of how do they prospectively deem savings?

That's the approach we've taken so far is prospectively setting a goal and verifying that through EM&V. So if the AMI meter helps you on your EM&V side, it doesn't necessarily solve your problem of how do you -- how do you prospectively deem a number on a given measure? I believe we're still going to need TRMs for that purpose.

Regarding deemed savings, we're in full agreement with Public Counsel there. It's -- it's important that we always true-up deemed savings with accurate EM&V results. So there's -- there

there's no -- energy efficiency advocates are on board with that concept. I think almost everyone in the room is on board with that concept. Absolutely.

So we recommend that the Commission maintain this state-wide technical reference manual language and not -- not take us back a step of having wasted the time for that because that is the preferred approach nationally -- nationally, and it's an effective way of removing Commission's need to review up to three different technical reference manuals and -- and keep track of the conflicts that might exist there and for all regulators to have a consequently document that they can rely on across the utilities and a common approach state-wide.

So quickly, a note on the Chapter 22 process and the IRP. We agree with -- with Division of Energy here that MEEIA should not be needlessly tied to Chapter 2 (sic). The -- it's worth noting that the MEEIA statute makes no reference to Chapter 22.

It -- it very well may be the best place to deal with resource planning for demand side portfolios. The -- the issue here is we probably shouldn't have an overly legalistic link between the two given that MEEIA's goal is not to have a level of savings chosen by a preferred resource plan but, rather, to accomplish all cost effective energy savings. So those -- those are different things.

Industrial opt-out is an issue that hasn't been brought up yet today. Or I believe Division of Energy briefly touched on it. I think the Commission can provide some clarity here. This has been noted by several parties.

And I would suggest the area that needs most clarification is how to confirm that these middle ground C&I customers between 2500 and 5,000 kilowatts how they demonstrate that they're self-directing energy efficiency investments.

And I would just suggest that we use the language in our comments or something similar to it, which is an annual percentage energy and demand savings goal, which the utility expects to achieve in that customer's class as part of the most recently approved demand side savings programs.

So whatever that percentage annual goal is would be what's expected of an opting out customer. And, again, it's important for that -- for those several direct reports to be publicly available.

Or at least -- at the very least filed in the documents -- docket so that stakeholders can review what's going on with these opted out customers.

The final point I want to touch on here is the annual reports, the MEEIA annual reports.

CHAIRMAN HALL: Let me stop you -- stop you for a second.

MR. LINHARES: Sure.

CHAIRMAN HALL: Do you know or could someone tell me how many opt -- industrial opt-outs are there state-wide? Ballpark?

MR. WOODSMALL: 30 to 40.

CHAIRMAN HALL: 30 to 40 state-wide.

MR. WOODSMALL: Yeah. Between G-MO -- between all four. Yeah. Maybe 50. But -- yeah.

MR. FORTSON: You mean under all three thresholds or just --

MR. ROGERS: All three.

MR. FORTSON: I would say a lot more than that, though.

MR. WOODSMALL: If you look at the annual reports that they've filed --

JUDGE WOODRUFF: We're losing kind of control here as who's --

CHAIRMAN HALL: I'm sorry. It's all my

fault.
JUDGE WOODRUFF: I just need to clarify who was speaking. The first speaker was David Woodsmall.
MR. WOODSMALL: Correct.
JUDGE WOODRUFF: And in the back?
MR. FORTSON: Brad Fortson.
JUDGE WOODRUFF: Okay. Thank you.
MR. FORTSON: Do you want me to come up?
CHAIRMAN HALL: Sure.
MR. FORTSON: So, again, I'm Brad Fortson with Staff. And quickly this morning in case this has come up, I wanted to bring one of the spreadsheets that we have. And so under 094(6)(A)(1), I just quickly added up the ones that we had under Threshold 1. And I come up with 63.
Now, granted, that's going to be -- we have everyone that's ever attempted to opt out. So I would have to --
CHAIRMAN HALL: I'm sorry. You said Threshold 1. What's --
MR. FORTSON: I'm just referring to it as Mr. Woodsmall did. Under 094(6)(A), there's three criteria, so 1, 2 and 3. Threshold 1 has to do with the 5,000 KW.

CHAIRMAN HALL: Okay.

MR. FORTSON: Threshold 2 is pipelines. Yeah. And then Threshold 3 is the 2500 over the aggregate with the comprehensive demand side program and demonstration of equal savings to utility.

CHAIRMAN HALL: Okay.

MR. FORTSON: So we have -- so we have three different criteria. Under 1, I -- I show 63. But that's not taking into account the ones that have potentially been denied in the multiple. So I would say within 1, we probably have 40 -- 30 to 40.

I show eleven under the second criteria, but, again, that's -- that looks like that might encompass multiple -- or the same customer over three or four different utilities. So that number is probably be just a few then.

And then under Criteria 3 or Threshold 3, I show just the number that I quickly come up with as a sum of everything was 48. But, again, that doesn't take into account like the Wal-Marts that are in Empire, KCP&L and Ameren.

So, again, we probably have 20 to 30 there. So I would say total is upwards of 60 to

70. But we could get that number exact or much more exact.

CHAIRMAN HALL: Okay. All right. Thank you.

MR. LINHARES: Just to conclude here, the issue of MEEIA annual reports the utilities owe each year, this is under 093(8), We would urge the Commission here to add a provision for publicly filing utilities annual reports on the Commission's web site.

I think the good analogy here is the renewable energy standard compliance plans, net metering plan which are both due on April 15th every year and they go up on the Commission's web site. Easy for non-parties public stakeholders to find these documents.

We believe it makes sense to handle these in the same way as the RES. And without this provision, Missourians are either stuck with requesting it from their own utility only, which the law allows them to do, or to use Missouri's Sunshine Law to sunshine these.

There's a lot of interest in these reports, and it seems to me it would be easy to publicly file them if it's not too burdensome. The other issues is that, oftentimes, these reports are highly confidential, meaning that even the parties advertise to the MEEIA cases can't view these filings. So at the very least there, should be publicly filed versions of these in the most recent docket or preferably on the Commission's web site. That's a suggestion that we threw out there for the Commission.

So I realize I've taken too much of the Commission's time already. But happy to answer any further questions if there are any.

CHAIRMAN HALL: Thank you.

JUDGE WOODRUFF: Thank you.

MR. LINHARES: Thank you.

JUDGE WOODRUFF: Who wants to go next?

MR. FRACICA: Thank you. And may it please the Commission. My name is Phil Fracica, and I'm a Policy Organizer at Renew Missouri. You just heard from my colleague, Andrew.

Today, I'm not speaking solely on behalf of Renew Missouri, but for a low income advocacy coalition called Energy Efficiency For All or EEFA.

EEFA has multiple partner organizations across the state of Missouri in coordination with National Housing Trust and Natural Resource Defense

Council.

EEFA is a dedicated to linking energy and housing sectors together in order to tap the benefits of energy efficiency for millions of low income families across the country.

EEFA had a series of St. Louis and Kansas City convenings -- convenings in recent years to investigate demand side management multi-family low income programs for Ameren and Kansas City Power & Light.

And there was also a publication of a white paper that helped make the case for or encourage the approval of multi-family low income programs for both of the utilities.

The National Housing Trust submitted comments for the MEEIA proposed rules along with eight different low income housing allies from across the state, and these comments consisted of a few different topics.

There was strong support from the non-energy benefits language in the proposed rules. And we recommend to allow for the use of a non-energy benefits adder for low income energy efficiency.

We talked about this a little bit earlier, but one part and thing I would like to note here is there is a lot of societal benefits and possible health outcomes that can come from this, and part of that being asthma, living in a home and the ability to then go to school, getting out of ER visits, which can then have societal and community impacts through economic development because they're able to expand their community. And, otherwise, they would not able to.

And these communities also pay their bills and particularly energy bill. And NEBs would be a way to help them do so consistently.

We also have strong support for proposed rules regarding potential studies and applications for approval of plans. And we strongly support the provision and the proposed rules that require utilities to provide an opportunity for Commission, Staff and stakeholder review and input in the planning stages of the potential study.

And, additionally, we support the Division of Energy's proposed language in regards to the Technical Reference Manual. And this comes from the belief that universal adoption by utilities of a state-wide TRM supported by a robust and open stakeholder process will create economies of scale, promote efficiencies, lead to greater accountability and result in a group of beneficial and energy efficient programs across the state, not only for the utilities, but, also, rural electric cooperatives

And with that, I have nothing else to say. Do you have any questions for me?

CHAIRMAN HALL: No questions. Thank you.

JUDGE WOODRUFF: Thank you. One -- one question, please. You indicated you're supporting the National Housing Trust comments. They actually came in late. They were mailed on the 27th and didn't come in till May 2nd. Just for clarification, would you like to adopt them as an exhibit to your testimony today?

MR. FRACICA: Yes.

JUDGE WOODRUFF: All right. They will be adopted as an exhibit.

MR. FRACICA: Thank you.

MR. LINHARES: And, Judge, I helped advise National Housing Trust on that. They actually filed their comments as a public comment on the -- on EFIS given that they weren't represented by counsel. I think -- I believe the Missouri Energy Efficiency Association on MEEIA did the same.

JUDGE WOODRUFF: Okay. Which other one did it that way?
MR. LINHARES: MEEIA? Is that right, Phil?
MR. FRACICA: Midwest Energy.
MR. LINHARES: Midwest Energy Efficiency Alliance.
JUDGE WOODRUFF: I will check into that and make sure it's properly put in the record then, also. I just don't want to have any questions about --
MR. LINHARES: If it's necessary for me to offer their comments as an exhibits, I can do so.
JUDGE WOODRUFF: If you would. Yes. I'll accept it that way also.
MR. LINHARES: And I would do so.
MR. FRACICA: Thank you.
JUDGE WOODRUFF: Thank you.
JUDGE WOODRUFF: Okay. Who wants to go next? Mr. Opitz?
MR. OPITZ: May it please the Commission. Judge, I have some handouts.
JUDGE WOODRUFF: All right.
MR. OPITZ: There's five there.
CHAIRMAN HALL: Thank you.

MR. OPITZ: May it please the Commission. My name is Tim Opitz with the Office of Public Counsel.

This morning and in the pre-filed, a variety of interested parties have filed their various positions on the Commission's proposed rule.

And many of these comments, in my view anyway, the ones pre-filed and heard today reflect that there is disagreement about what MEEIA is meant to do and disagreement about what can be accomplished through this rule-making.

You know, some parties, in my belief, invite you to make rules that go beyond the statutory authority of the Commission.

So with that, what I'd like do and what I handed you is -- is some information about the statute and how Public Counsel views how the MEEIA statute applies as well as some discussion, which I'll talk about, as to how the Commission has applied it in the most recent MEEIA Cycle 2.

So on page 2, you know, what is MEEIA? 393.1075 Revised Statutes of Missouri. That is what everybody calls the MEEIA statute. That's where we get the authority to run these programs.

Slide 3, I include some definitions that are in the statute. The law itself includes certain definitions that should be used. And the Commission's proposed rule on the -- modifies these as does nearly every commenter.

I think Staff does not do so. But I will note and I'll mention it in a moment here that -- that some of the modifications to this language, in my view, are different than other modifications of other parties.

The fourth page really gets to the disagreement about what some of the parties who spoke this morning and others who filed comments view MEEIA to do versus how Public Counsel uses MEEIA. And that is 393.1075.3.

You know, it says the policy of the state to value demand side investments equal to traditional investment in supply and delivery infrastructure and allow recovery of all reasonable and prudent costs of delivery and cost effective demand side programs.

You know, so very clearly, in my mind, the point is to value demand side investments equal to traditional supply side investments. It's not meant to go forward with every conceivable energy efficiency measure that's out there. And I'll get into that a little bit later.

Slide 5 is the policy continued. And I listed the -- the statute where it lays out three components as to how the Commission can go about valuing supply side and demand side equally.

You know, in -- in support of those policies, the way that the parties to MEEIA filings and the way that the Commission has ultimately decided is to, you know, enact these three things with three revenue components.

And that's on Slide 6. Those components are program costs, through-put disincentive components and an earnings opportunity. And I think every stakeholder would agree that those things should be included in order to balance supply side and demand side equally.

Looking at Slide 7 -- well, I'll go back to discuss each of those revenue components. But first, we should talk about what the programs are themselves.

So the statute also gives us guidance on what programs should be. One of them on Slide 7 I have is the definition of demand side program.

Now, it talks about any program conducted by the utility to modify the net consumption of electricity on the retail customer side of the electric meter, including, but not limited to, energy efficiency measures, load management, demand response, interruptible or containable load.

The proposed rule adds language that would include combined heat and power and distributed generation. I don't believe that those terms logically fit within a program that modified the net consumption of electricity on the retail side of the electric meter.

And so those expand what this definition is provided by the statute. Now, I will note that Public Counsel has proposed additional language on there for the rules that include -- but not including deprivation of service or low income weatherization.

You know, these are -- there are kinds of programs that might reduce net energy consumption on the customer side of the meter. But there are policy reasons to include those as possible programs.

CHAIRMAN HALL: Question. So why do you believe that solar panels don't modify the net consumption of electricity on the retail customer's side of the electric meter?

MR. OPITZ: You know, perhaps -- well, let me try and answer first. So I view it as additional generation. It's not actually being more efficient. It's not necessarily --

CHAIRMAN HALL: But efficiency is just one of the descriptions. It's included, but not limited to energy efficiency measures, and then three or four other examples. So I don't think it necessarily has to be energy efficiency to comply with this definition.

MR. OPITZ: So all of those -- that list of -- of items come after the primary concern about modifying the net consumption of electricity.

So to the extent that those additional things that follow after the word including modify the net consumption of electricity, I think those fit within what the demand side program should be. I may be wrong, but my understanding is that the distributed generation such as solar wouldn't necessarily reduce the customer's net energy consumption. Perhaps -- perhaps I'm wrong on that, but --

CHAIRMAN HALL: So I guess it comes down to whether you focus on consumption or whether you focus on the electric meter because it -- it -- it would result in a reduction in the customer's purchase of electricity from the utility. But it might not -- I guess it would not modify the net consumption of the -- of the -- of the consumers. Is that essentially the distinction that needs to be --

MR. OPITZ: I think that's probably right. I think there's the distinction between -- you know, we've got the first clause of that demonstrates the over-arching goal of these programs about what it should be.

And then it says including, and it lists some examples of what might be included to the extent those definitions can't fit within that first clause.

CHAIRMAN HALL: From a policy perspective -- I understand the legal arguments here. And, again, I think it's probably a close call. But from a policy perspective, why do you think that it's inappropriate to include DG or CHP as a -- as a demand side program?

I mean, bottom line, is it -- is it your concern that it's going to result in increased costs to ratepayers? Or, I mean, what's the --

what's the policy concern?

MR. OPITZ: You know, certainly -- certainly, I think that is something that we look at is that increased cost to ratepayers. I think that there is a possibility that those sorts of programs, while they benefit the participant, it will be difficult to determine how it benefits the customers in that class regardless of whether they participated.

And -- and if it's a program where the company is able to collect money from all customers, except for opt-outs, then it should be spent on something that benefits those customers that are paying.

If the benefit only enures to the participant, then MEEIA starts to look less like a utility rate setting and seems a little bit more like levying a general tax.

CHAIRMAN HALL: Okay. I'm not sure I understand that. But, I mean, to me, if you're -- if you're reducing the electricity that the utility needs to provide, there can be a direct relationship between that and the reduction in supply side investment, which would enure to the benefit of all ratepayers. So what's the difference, really, between that and more efficient light bulbs?

MR. OPITZ: I do understand --

CHAIRMAN HALL: I don't want a legal argument. I do understand that. And I think that that is a close call. I'm trying to understand if there's some policy reason for -- for your position.

MR. OPITZ: I don't know that I can answer that. I know Dr. Marke is much more into policy than -- than I'm able to speak to, and I think he intends to speak later on.

JUDGE WOODRUFF: Okay.

MR. OPITZ: So --

CHAIRMAN HALL: All right. Thank you.

MR. OPITZ: So you can expect that question. The -- the eighth slide talks about energy efficiency measures. And, you know, as we discussed, you know, just a moment ago, you know, I think that the demand side programs and the kinds of programs that I believe the utility should be pursuing is consistent with the energy efficiency definition.

To Public Counsel, you know, I believe it's clear that there's no intention for the

Commission or for the Legislature -- they didn't intend utilities to pursue programs that would cause something like a deprivation of service or that would cause customers to receive something that's a -- a lesser quality of service than what they receive absent the energy efficiency program, which is why Public Counsel in its draft proposes to add the words the same or better before the word end use in the definition of energy efficiency as it fits in the draft rules.

I don't view this as extending or constricting what the statutory definition is, but I view it as an important clarification that is appropriate to make within the rules.

If you look at Slide 9, or page 9, there's a .4, 393.1075.4 adds more information for the Commission to consider about the programs. Not every program that reduces the customer's energy consumption should necessarily be pursued by the utility and paid for by all customers.

The programs, unless they are low income, must be cost effective and they must be Commission approved. You know, I think part of the Commission approval aspect is important, you know, when it comes to there may be deprivation of service programs that could be proposed.

And I would hope that the Commission would reject that kind of program if it were proposed. You know, notably, as -- as the other parties who filed comments have suggested that all of these programs should have a goal of achieving all cost effective demand side savings.

You know, that's what the statute says in .4. But it's not the primary goal as certain groups suggest. Even the state-wide technical reference manual gets it a little bit wrong.

At origin, the next step is page 6. of 10, which you can find on the Division of Energy's web page, it goes so far as to state that the goal of benefiting all Missourians through maximizing energy savings as reasonable costs.

So somehow, we have gone from the very clear policy statements in the statute at .3, which is value demand side investments the same or equal as supply side investments that must be cost effective all the way to a document produced by a State agency that essentially says, We're just trying to benefit all Missourians through reasonable costs.

Well, it -- that's not what the statute

says. It talks about cost effective, not additional reasonable costs. I'll talk a little bit more about the TRM in a moment.

But on the same topic of program design, you know, some of the same groups that -- that push for and highlight as what they view to be the primary goal of MEEIA of all cost effective savings is they voice support for including none energy benefits of MEEIA.

I view this as another way to try and push more programs that might not be cost effective otherwise without having figured out a way to somehow come up with a punitive benefit for things like improved tenant satisfaction, which is in the proposed rule.

To be clear, 393.1075 doesn't say that the policy of the State of Missouri is to improve tenant satisfaction or meet any of these other non-energy benefits listed through customers' electricity bills.

Those may well be worthy goals, but it's not one that is appropriately or lawfully addressed through a captive ratepayer's utility bill.

CHAIRMAN HALL: What about non-energy benefits that are quantifiable, like the example that was brought up on arrearages? If -- if -- if there was some quantifiable benefit to the utilities, do you still have that concern?

MR. OPITZ: I think it's less. I think we see that with our I'll call it pilot programs for -- for low income pilot programs where there is, you know, a credit for low income customers with the idea is that we're going to study this to see if there's an impact on arrearages, to see if it's a -- leads to less bad debt expense, if it will somehow lower all the rates.

So I think that to the extent you could actually determine whether these are going to benefit all customers, I think that's something that we probably would be open to.

Now, I -- I mentioned those other programs that we have ongoing. I think that there is, at this time anyway, no clear answer as to whether or not, you know, low income programs or perhaps energy efficiency programs could -- could create those benefits for all customers.

But -- but it is something that I think, you know, we might be open to considering because it does have a real impact on the customers's electric bill if -- if it does, in fact, reduce bad debt expense.

But -- but some of the more tenuous things, health benefits, you know, I view that as something that, frankly, a customer in, you know, Kansas City or in St. Louis, I can't conceive of a -- of a way that they're going to have to pay for, you know, improved health benefits through their utility bill.

I think that's a little bit of piling on. And I don't really -- I don't really think that it's an appropriate policy to pursue. And I have concerns about whether it's legal as well.

CHAIRMAN HALL: Thank you.

MR. OPITZ: Slide 10 -- or page 10, it's the second sentence of .4. And there's a lot in there. You know, it says, Recovery for such programs shall not be permitted unless the programs are approved by the Commission, result in energy or demand savings and are beneficial to all customers in the customer class in which the programs are proposed regardless of whether the programs are utilized by customers.

There is a lot of information in that sentence. So -- so to unpack it, first, the programs must be approved by the Commission. You know, as we learned in the last round of MEEIA legs, the Commission has an important role to play in oversight in determining a number of things such as the earnings opportunity, the recovery mechanism the kinds of programs, the savings goals that should be implemented and even, I believe, the kinds of -- the kinds of programs that should -- should go forward.

And the Commission exercised this oversight when it required utilities in Cycle 2 to include retrospective EM&V and the supply side investment component in the earnings opportunity.

Second, programs must result in energy or demand savings. This, combined with certain other provisions of the statute, are wide retrospective EM&V subject to true-up is important when you're compensating the utility.

Customers should only be required to pay the utility for the reduction in sales or the reduction in other investment caused by the utility's programs.

Third, the programs must be beneficial to all customers in the customer class whether or not they ever participate in the program offered.

So on this one, for a moment, let's talk about at a high level what MEEIA permits the utility to do. In practice, as we've seen, utility collects money from customers and gives it usually through rebates or a cash incentives to other customers.

Then the company gets to charge customers for the value of the energy that aren't -- that isn't sold. And then the company can also charge customers additional money for an earnings opportunity. That's a pretty good deal for the utility.

And that's not to say that those things are necessarily bad things. However, all -- you know, I think that all parties to MEEIA would agree that these additional cost components are necessary to ensure that the utility financial incentives are aligned with helping customers use energy more efficiently and to value demand side investment equal to supply side investment.

But in order to justify spending this money at all, it should have some way of benefiting all of the customers that are paying for it. And I believe that benefit has to be through their utility bill in the form of lower rates.

Now, I will note that the law creates and inter-generation of equity of a kind because customers are forced to pay more now in the hope that the future customers will pay less. That's not necessarily something that is, I guess, insurmountable when pursing a MEEIA program, but it's something that the Commission should be cognitive of, especially while looking at program budgets or the size and scope of these programs because some of these customers paying now may never benefit from the future reduction in supply side investments that is hoped to be achieved.

Turning to Slide 11, back to the cost recovery mechanism, the statute, in my view, sets out the policy to value demand and supply side the same.

Each of these slide points on Slide 12 -- Slide 12, we've got program costs, through-put disincentive and earnings opportunity.

Program costs. The program cost is very important. And once the budget is decided, the cost recovery of that is relatively non-controversial. The company will recover it.

However, Public Counsel believes that the Commission's rules should be modified to remove the discretion to spend up to 40 percent more than planned and approved by the Commission without seeking authorization.

The current rule permits them to spend up to 20 percent more. The proposal is 40 percent. I think this is problematic for Public Counsel because the budget is an important consideration that the parties look at when evaluating whether the program will be worth it for ratepayers.

The company should have to adhere to the budget, and the Commission should require them to do so. When we're looking at budget, there are a number of things that are inter-related such as the achievable energy and demand savings that are commensurate with that budget.

We look at the size and scope of the earnings opportunity can somewhat be tied into the budget. So even if they're permitted to look at spending more than the budget and they do come in and ask for Commission approval, the Commission should take a hard look at that because there are a lot of moving parts here when we design the MEEIA portfolio for three years that would be impacted by spending more money. Namely, the impact on the bills of customers.

Slide 13, I mentioned a little bit the

through-put disincentive. You know, this, as the Commission is aware, traditionally, the utility has an incentive to sell more power. And MEEIA tries to alleviate that incentive.

The component that parties agree is a kind of through-put disincentive, importantly, I believe that the company should only be compensated for the value of the energy it does not sell.

Slide 14 is a quote from a Commission order approving the Non-Unanimous Stipulation Agreement in EO-2015-0055 where the Commission talks about valuing -- MEEIA is about valuing supply side equal to demand side investments.

Slide 15 is an additional comment by the Commission on why -- on how the through-put disincentives should be measured and trued up for purposes of compensating the utility.

Slide 16, I talk a little bit about the earnings opportunity. As with the through-put disincentive, traditionally with supply side, the utility has an incentive to invest because that's how they earn their return. That's how they make a profit.

The earnings opportunity component should be a substitute for the value of the earnings opportunity the company would otherwise receive.

Slide 17, I have a quote from the Commission's Report and Order in the 0055 case where they're talking about the purpose of the performance incentive, which we now refer to as the earnings opportunity.

Having talked about a statutory base to all of these rules, I want to touch briefly on some of the particular comments, especially those that I raised in my pleading. I know Dr. Marke will comment again, and he has comments on the specific line item changes to Public Counsel's draft.

The first comment that I included in my pleading is the budget, and I touched on this. The Commission should require the utility to follow Commission-approved budgets.

Furthermore, as a part of that, we've included language in the rules to require these companies to notify customers and trade allies when the budget is exhausted. And we include trade allies because trade allies are a very important part, and they are a tremendous beneficiary of MEEIA programs.

I mean, this is millions of dollars that utility is able to spend which often directly benefits certain trade allies. So I think it's appropriate to require the utility to notify them, and it's especially important to require them to notify customers who may wish to partake in these programs.

We saw with KCP&L and GMO, they exceeded their budget. And we saw pleading from them in various cases where they asked for approval to exceed the budget, which the Commission granted.

But the way that they asked is they said, Look, we've already promised this to our customers. Commission, if you don't let us spend this extra -- I think it was several hundred percent above their budget for a particular program, then the customers are going to be mad at us. But they need to be communicating with their customers that, Look, this is our budget, this is what we have to adhere to. It may not be available to you because, look, when they exceed their budget by that much -- by that much, it is a huge cost to the customers who pay it.

And I am sure that -- I think that a lot of that overage went to commercial and industrial customers. I'm sure that they probably fell over when they saw that increase for that MEEIA charge for those months when that money went through.

The second comment that I included in my pleading is the energy and demand savings goals. Public Counsel believes these should be removed from the rule.

MEEIA is voluntary. Utilities don't have to do it. Furthermore, the energy and demand savings targets for each utility can be flexible. You know, they will change based on the market potential studies for each utility and based on the integrated resource plans for the utility. Those are the things that we should look at when setting the goals for energy and demand savings for a particular utility's program.

CHAIRMAN HALL: How do you respond to the argument that the -- that the voluntary goals provide a useful benchmark?

MR. OPITZ: I don't think that they do provide a useful benchmark. I think that we haven't -- the goals aren't necessarily -- there may be a waiver from all of those in the existing programs.

We've looked at the potential studies. We've looked at the integrated resource plans to sort of look at, you know, what energy savings are available out there.

And then the integrated resource plan sort of looks at the cost effectiveness side of it and says, you know, this is what -- whether it's cost effective or not.

This is an important way that we can evaluate how these programs are designed. So -- so the IRP, Integrated Resource Plan, goes to the cost effectiveness impact and planning impact whereas the market potential study sort of looks at, you know, what costs are available, what measures could be implemented, what that service territory might be able to accommodate or can be implemented in that area.

So with that, we see that there's limited value. The rule itself says, you know, there's not -- these aren't required. There's no punishment. There's -- they're very soft goals, and I don't know that there is really any purpose other than filling up space in the register. Non-energy benefits --

CHAIRMAN HALL: Is there any harm resulting from --

MR. OPITZ: You know, I don't think that there's necessarily any harm to including them in there. I think -- you mentioned, I guess, one harm that could happen earlier when you were discussing it for Counsel for -- I don't know if it's Counsel, it may have been Mr. Hyman, for another agency.

It does create confusion, and I think unnecessarily so. The non-energy benefits was another aspect that Public Counsel believes should be deleted. You know, we believe these aren't quantifiable.

They -- and trying to do so simply distracts from the stakeholders sending their time identifying programs that result in real cost effective energy and demand savings.

Rather than looking at things like tenant satisfaction or, you know, water savings on a -- on a utility's, on your electric utility bill, I think we need to focus on the available programs that are out there that are the best use of ratepayers' money and the best use of all of the stakeholders' time to maximize what we can accomplish through MEEIA.

CHAIRMAN HALL: Do you think that there is a statutory prohibition on using non-energy benefits to evaluate programs?

MR. OPITZ: I think that -- well, so to

parse out -- it out, I think that there is no the statutory prohibition on looking at that and people saying, Look, this is what we're going to look at.

I think where the problems in terms of legality come into is when you're paying the utility or you're developing these programs based on non-energy benefits.

CHAIRMAN HALL: Well, who is asking for that?

MR. OPITZ: I believe it's --

CHAIRMAN HALL: Because I thought this was --

MR. OPITZ: I believe a few parties, and I apologize, suggested that it be included as a component of the TRC.

CHAIRMAN HALL: Right. But that's the formula to determine whether the program can be included as a demand side program. It doesn't necessarily -- it's not used to -- to set compensation for the -- for the utility.

MR. OPITZ: So it -- whether or not it compensates the utility, it would cost ratepayers money because the utility recovers. And, often, it's just the pass-through of the program costs.

They are recovering that money from

ratepayers. So if a program is pursued that would not otherwise be cost effective, ratepayers are paying for something that isn't really impacting their utility bill.

So it -- so it -- I guess there's sort of a -- a gray area there about, you know, it's not necessarily compensating the utility. It's -- that's one of those things where the money is going to the trade allies in effect. But it's coming from the ratepayers. And I think Dr. Marke might have more to say on that, too.

The -- the last thing is in addition to distracting from what we should really be focusing on, non-energy benefits adds additional complications.

But let's say that several years down the line we do it as a part of the TRC, right? And we have a disagreement about, you know, the health effects of a certain program. Are we, as stakeholders, supposed to bring in medical experts to say, Look, this program has caused this reduction, that reduction is correlated or causes, you know, reduced asthma or some other effect on people?

I think that would increase costs,

lengthen the process, and there's no reason to do so. Many of these programs that are being pursued, if you -- they're going to be cost effective anyway.

I don't know why we need to spend the time trying to come up with non-energy benefits to, I guess, meet some metrics that other states might use because it makes them feel good. I think we are looking at pursuing programs that cause real energy and real demand savings.

The state-wide Technical Reference Manual, page 22, I included a snippet of the cover page of the state-wide Technical Resource Manual. It actually has a cartoon tree made out of money on there. I don't know why. I think it's probably ill-advised considering the money that's involved in MEEIA and the impact that it has on people's lives. But someone decided that it was a good idea to do that.

So -- but it does raise my concern about the TRC. We've seen that utilities want to use it or have argued they want to use it for using compensation for their earnings opportunity and their through-put disincentive basically using it as deemed values not subject to true-up. Right?

And I've heard from -- from Mr. Linhares earlier that they think true-up is appropriate. But if we look at comments of the utilities filed in this case and the -- I guess particularly page 13 of Ameren's comments, they would delete references to determine the through-put in earnings opportunity amounts as measured and verified through EM&V.

And I think that risk is heightened whether or not this particular Commission would do that because you just rejected it in the past year. But if we codify this in the rule, the risk that customers will pay for deemed savings is heightened because there are stakeholders who will say, We have a Commission-approved TRM.

It's Commission-approved. When the Commission approved it, they gave a sanction that we should be compensated for that. Now, that -- you know, that may be going a few steps down the line, but I don't want to do anything that possibly permits that.

A second aspect of why the TRM is -- well, that -- that plays into -- it's not clear, and I read through most of the TRM. There's a lot of pages of, you know, figures that -- that weren't really containing very important -- and I don't necessarily dispute those. But they don't talk about how the TRM will be used.

In fact, I don't know how it's going to be used. I know that when a utility uses a TRM, they look at value and they use that to aid in designing their -- their portfolio programs.

But then to then have a state-wide program that has this less specific version that's updated on a time lag, I don't really -- I am suspicious of the value of that. And I don't know what purpose it's going to be used for.

Another point, if you look at the Technical Resource Manual on the Division of Energy's web page, considerations and recommendations for the TRM update and maintenance process, page 6 of 20, you can see that the manual says, Look, we don't contain all of the measures that are currently in place in Missouri.

So the utilities are going to have to keep their own TRMs anyway because not all of the measures are in the state-wide TRM. And I don't think that it's fair for ratepayers to have to pay for two TRMs.

You know, it's -- the TRM is replete with general statements about how it will streamline the EM&V process and save customers costs. And I acknowledge I've looked at the Missouri Comprehensive Energy Plan, and it has the same language about, you know, we recommend a state-wide TRM to streamline EM&V and to save ratepayers' costs through economies of scale. But I have not seen any quantification.

My worry is -- as I articulated, it just pushes future Commissions towards the use of deemed values not subject to true-up.

I stood here in a MEEIA case and alleged, and I believe we proved it, that deemed values cause ratepayers to overpay by more than 20 million dollars for a single year, for a single utility.

You know, I appreciate the work that has been put into the state-wide TRM. Members of our office have participated extensively. I sat in on a number of those calls, and I -- I expressed my concerns on those calls. But still we marched forward with it.

The policy statements are high-minded. They would be nice to -- to do. But you've got to show me how that is going to benefit ratepayers if we're going to continue spending the time and resources of all of the stakeholders, of all of the ratepayers of additional parties pursuing this object because I just don't see how that cost works out for ratepayers. You know, so that's --

CHAIRMAN HALL: Let me -- let me stop you there for a second. Can the Division respond to that argument?

MS. MEISENHEIMER: I --

JUDGE WOODRUFF: Come on up.

MS MEISENHEIMER: I'd actually like to respond to a couple of arguments.

CHAIRMAN HALL: Well, let's do that one first.

MS MEISENHEIMER: So can you restate that argument?

MR. OPITZ: I have not seen any quantification of how these state-wide TRMs are going to benefit ratepayers.

MS MEISENHEIMER: Okay. Well, my experience in being involved in these proceedings within the State and working with the Division of Energy, it's my understanding that there is a long history under MEEIA of disagreement about the value of utility estimates of savings.

Bringing in a national expert to bring us knowledge to supplement the information that was gathered specifically by our -- by our utilities serving in the state has helped us to develop savings estimates based on a broader view of the savings generated from implementing different measures within the State.

Our TRM does not include all potential measures that are offered by all utilities because this is a huge undertaking. We did it in a thorough manner.

We brought in information from the utilities who participated significantly in the process. We invited Public Counsel and/or parties to bring evidence in as well if they felt that there was other relevant evidence in determining what the savings are.

I viewed the benefit to you of having a TRM that looks at this in that manner, that looks at other states and what savings they determined are associated with particular measures and looking -- you know, in addition at what our utilities generate that that creates for you something that gives you broader applicability.

CHAIRMAN HALL: Well, the -- the argument that I heard that I -- that I really want a response from is that the TRM moves us towards deemed savings away from EM&V.

MS MEISENHEIMER: Okay.

CHAIRMAN HALL: And that's what I'm trying to understand the Division's perspective on.

MS. MEISENHEIMER: Okay. The Division's perspective is that we certainly want to get it right. We want to look at these measures, determine the savings they generate.

But over time, it should be acentotic in a sense in that, eventually, you're going to better hone in on what is a reliable, ongoing, reasonable measure of the savings.

And at that point when we get there, you actually can streamline the process by moving more to a deemed process with updating as needed the savings that are estimated by T -- by the TRM.

CHAIRMAN HALL: Okay. Thank you.

MS MEISENHEIMER: May I respond to another section of the TRM? Actually, there were two. The money tree?

All right. Mr. Opitz points to the TRM and the inclusion of something that appears to be a money tree. From the Division of Energy's perspective, we view energy efficiency as generating savings for consumers, both residential and business consumers. So a money tree can symbolize the value to consumers of participating in energy efficiency.

The other point that I wanted to make is on page 6 -- I believe it was page 6 of the TRM, Mr. Opitz selectively read from a paragraph regarding the -- regarding the benefit of the TRM and what the Division envisions it to be at achieving savings at reasonable cost.

What I don't think that I shared with you is that that was a general paragraph that addressed not only investor-owned utilities, but also referenced programs that may ultimately be offered by electric, rural electric cooperatives, municipal providers, private and public partnerships that could arise.

So if it would be helpful, Division of Energy would be pleased to submit the TRM in this case so that the references that he's making to the document can be viewed in the full context of the document.

JUDGE WOODRUFF: I believe there -- there's already been a reference as to how to find that. So I really can't accept any additional documents after today just because of the rule -- the process for the rule-making.

MS MEISENHEIMER: Okay.

MR. HYMAN: Could we provide the URL?

JUDGE WOODRUFF: Do you have it?

MR. HYMAN: Yeah.

JUDGE WOODRUFF: If you want to just tell us, sure. But make sure you come up to the microphone so you can be heard.

MR. HYMAN: Of course. So the URL -- and my apologies. I'm using a phone, so this is a little awkward. So it's energy.mo.gov, our website, /energy/about/TRM.

JUDGE WOODRUFF: Okay.

MR. HYMAN: And there are all the volumes we've been discussing, along with some other stuff.

JUDGE WOODRUFF: Thank you.

MS. MEISENHEIMER: Thank you.

JUDGE WOODRUFF: Back to you, Mr. Opitz.

MR. OPITZ: I guess what I heard was troubling. It was that yes, we're going to use this for deemed measure in the future, and that's how we're going to compensate the utility.

But that is a problem, and that is why I think that section should be deleted. If the Commission does want to pursue it, I think that we need clear direction and send it back to -- you know, put it as a requirement for the state-wide collaborative to talk about. We need to have clear direction as to how it's going to be used.

And I think it if we're going to codify this process that will be extensive, annual and it will be on a lag, I think that we need to have some estimation and demonstration of the value in terms of dollars to ratepayers for having this program.

With that, I'm -- I'm happy to answer any questions. And, again, as -- as I indicated previously, Dr. Marke intends later on to address some of our comments and the changes to the language. So thank you.

JUDGE WOODRUFF: All right. I'm going to mark your hand-out here as Exhibit 1. That's what it will be attached to the transcript.

MR. OPITZ: And I may have a copy if you'd like me to submit it to the court reporter.

JUDGE WOODRUFF: Yes, I would. I've got extra copies here.

MR. OPITZ: Thank you, Judge.

DR. MARKE: Judge, do you want -- so I

know I'm keeping us probably from lunch here.

JUDGE WOODRUFF: Come on up. We'll -- we'll break for lunch later.

DR. MARKE: All right. I've got a Powerpoint. May it please the Commission. My name is Geoff Marke. I'm an Economist with the Missouri Office of Public Counsel.

I'd like to begin with just a -- a brief reminder, that probably one of the most basic, but, also, fundamental concepts in the economics is the concept of scarcity. Scarcity exists because we don't have the ability to satisfy all of our wants.

Each of us was given a certain set of resources, if you will, those resources are limited. We're limited in terms of our time. We're limited in terms of our finances. And with those limitations, we try to put those forward to satisfy all of our wants which are unlimited.

So how do we evaluate what the cost is for making a particular decision?

MR. WOODSMALL: I don't think you have the right input.

DR. MARKE: It is this remote?

MR. WOODSMALL: You have to use multiple ones. I don't remember which input it was. There we go.

DR. MARKE: And then it's this --

MR. WOODSMALL: Yeah. I thinks it's -- see if that works.

DR. MARKE: Okay. Thanks.

MR. WOODSMALL: You bet.

DR. MARKE: One of the things that we consider in economics is the idea of opportunity costs. The opportunity cost is simply the highest valued next best alternative to be sacrificed in order to satisfy our wants.

Now, this can be a subjective exercise. And in this setting today, the person who is going to place that value on the next best alternative on many issues is you, the Commission, through the rule-making process.

Quite often, we frame opportunity cost in terms of what are we going to have to give up? We also often value monetary terms or quantitative measures, concepts such as budgets, cost effective test, benefits or non-energy benefits.

And sometimes quite often overlooked is the value of time. That's the ability to give our time to something else, to place our efforts in, no pun intended, our energy in maximizing the most favorable outcomes.

OPC submits these comments that will facilitate the rule-making process of MEEIA and moving forward ask the Commission to consider the opportunity costs inherent in driving value for consumers.

We drafted these recommendations with the intent to maximize values for consumers given a limited amount of resources, namely time and money, to satisfy our needs within with the parameters of the MEEIA statute.

And on to the proposed rules. There's been a lot of talk about non-energy benefits. It is true -- I think we're in the minority here as far as stakeholder that have suggested to delete the references to non-energy benefits as a whole.

I'd offer that a lot of the dialogue that's happened today so far is misguided. Our rationale behind deleting non-energy benefits, as we stated, was that there is -- there is a greater degree of grieve uncertainty and risk not only for utilities but for participating ratepayers.

And I'd like to just emphasize that there's been a lot of talk about cost effective tests. And, essentially, that's the hope I think of a lot of Intervenors here is that if we have an adder, more items will be cost effective.

Unfortunately, this is likely only to increase free ridership. Even the heated discussion we just had for a second about the state-wide TRM is a little misguided.

From the utility's perspective and advocate's perspective, consumer advocate's perspective, the most contentious issue to date is not measurement and verification. It's been over evaluation. And that's -- that's attribution. Right?

It's not that this light bulb is worth X number of kilowatt hours. It's that that light bulb is purchased by somebody that would have bought that light bulb anyway, a free rider.

Most measures are cost effective. The measures that aren't cost effective include stuff like a really efficient TV, a dishwasher. The energy savings just aren't there.

If we added an adder and we said that, Well, you know what? There's a water savings that are involved with the dishwasher, what would be the end effect? We would sell more dishwashers.

We would probably also be selling those

dishwashers to people that would otherwise already buy those dishwashers. We would also be taking away that budget, that finite budget that we have for dishwashers that would otherwise be going to HVACs or light bulbs or any number of other measures that are cost effective and that bring more savings.

This is opportunity cost. I mean, at -- at its core -- and the states that have non-energy benefits are states that have mandated resource standards. That means they've got to get very creative because you hit a point in diminishing returns on savings that are gained over a number of years as to how we count savings.

Again, most items are cost effective. We have measures today that are not cost effective that we do offer in programs. And that's because when we do a cost effective test, it really happens at three levels.

We do a cost effective test for the measure, we do a coast effective test for the program, and we do a cost effective test for the portfolio as a whole.

You can bundle a measure today that's not cost effective in a program. The arguments for low income -- and I have been an advocate for this issue unabashedly, it's already cost effective. Or let me rephrase that.

The low income programs do not need to be cost effective. It's -- it's there. They do not need to meet the TRC threshold. If we go out there and we start quantifying health-related benefits that come from low income programs, whether that's customer arrearages, bad debt, which is something that our office has advocated for, not in the context of MEEIA, but in rate cases we absolutely have.

The largest rationale behind the support of weatherization is a reduction in customer bills and arrearages. There is a greater good that comes from it.

But in the context of MEEIA, it's -- it's ill-advised. And say it's ill-advised because it's going to miss the point of the exercise. And this is what I mean about unintended consequences.

Again, going back to the -- the anecdotal example I gave you about the dishwasher. In Cycle 1, we learned a lot about lighting. We learned a lot about CFLs, for example. Now, CFLs -- let me go back.

If we promoted a program or a measure that was not cost effective today, you're essentially locking in those consumers with an inferior product.

Today, we have millions of CFLs across our state. And Cycle 2, when we were having the application, we had a number of different parties that are present today pushing for CFLs to be continued.

What happened? Within months of Cycle 2 being approved, CFLs nationwide were discontinued. They stopped making them because the price of LEDs, a much more superior product, became more cost effective.

Now, here's another real world example. This came out last month. This is General Electric and Department of Energy, probably one of the last programs right now in terms of DOE's energy efficiency and renewable section.

But they've created a prototype right now for a clothes dryer. This clothes dryer is estimated to save five times more than the traditional appliance.

We've got a better measure. In moving forward, that's something that we would promote because that's going to save a lot of energy. If we had been pushing just dishwashers or -- that were less -- that didn't meet that TRC threshold, you'd be promoting an inferior product that would be diverting funds away from the stated purpose.

The second point I'd like to bring up is budget. And I can't stress enough if there's one -- I can live with a lot of things that are in here, and I -- I would like to pause for just a second and just add some context to what's going on with these MEEIA rules because, as Mr. Linhares brought up earlier, this has been a three-year process.

And when we started this process, the environment that we were operating on looked entirely different. The rules looked entirely different. Cycle 1 looks nothing like what was agreed to for Cycle 2.

When we started having discussions about a state-wide TRM, we were operating -- our office was operating with the Public Counsel that was three times removed what's currently in place today.

We thought the clean power plant was an eminent possibility to move down the pipeline. In Cycle 1, the budget was exceeded by some utilities in excess of 270 percent.

We took issue with this as an office. The one saving grace behind it was the -- was the mechnism itself. And the mechanism in Cycle 1 was net shared benefit mechanism.

So understand this. It's shared benefits. Now I use that term loosely. But what took place was utility had an incentive to keep their costs down, their budget.

The utility had an incentive to push the most efficient measures over the less efficient measures to maximize their return and ratepayers' return.

If they spent more, it decreased their net shared benefit cost, and they took a hit. Cycle 2 has no such mechanism in place. None. What was negotiated in Cycle 2 as a budget, our biggest fear we're having discussions with it right now with all the utilities is what happens as far as if we get close to exceeding the budget.

I've got to be honest with you. With the current mechanism, the idea of what's in the rules right now with the 40 percent variance, I -- I'm not sure how -- how we reconcile that future MEEIA negotiations if we know right off the bat that the budget is likely to be exceeded in 40 percent excess, that's really where we're negotiating from and that's where we're starting at.

This is why we propose that, like just about every other state that does this, when you have a budget, you follow it. When the budget stops, you stop. These programs are -- are good. Okay?

Clearly, we have been signatories in the last Cycle 1 and Cycle 2. Hopefully there is going to be a Cycle 3. And you would have either the -- the same opportunities that would be in place there.

And I basically went over a lot of these rationales already. Let me make up a point here because I think this is lost in a lot of context. We say all cost effective.

If a measure is cost effective, well, why wouldn't we promote it, right? More people wanted to use this program success. Great. The problem with that really centers on this idea of where the targets are set out.

If we make things more cost effective, that's not going to raise the targets. Let me repeat that. Just by making more measures more cost effective is not going to raise the overall energy and demand saving targets.

That is a product of the market potential study. That is a product of the take rates. And, again, I go back to this, this idea of attribution.

If customers in mass are going to be buying products that they otherwise would buy regardless of these rebates, the company, and they should, dis -- they should discontinue that program because it's just a free rider program. They're taking a hit on their earnings opportunity.

The thermostats are the best example of this. In Cycle 1, the thermostat was -- the programmable thermostat was cost effective. All right? That hasn't changed. But we discontinued the program and we discontinued the program because the net to gross ratio came out to less than point two.

That means 80 percent of the people that were buying these thermostats were free riders. The company was not getting the benefit for it. And ratepayers weren't getting the benefit because, again, absent these MEEIA programs, they would have still bought these thermostats.

The last point I'd just like to make on

the budget is that we believe it should mirror what happens on the supply side. If the company was building a nuclear plant and they went 270 percent over their budget, there would be an uproar. Otherwise, we're unfairly shifting risk to consumers.

We have a couple definition changes I'd like to highlight. I'm hoping these particular issues will not be too contentious. Mr. Opitz already alluded to our change in the demand side program.

We did delete combined heat and power and distributed some generation. And I know Chairman Hall raised the question of how did solar fit under this envelope. It is a great question.

Sitting there, you -- my initial thoughts were what's the intent of the statute. It's the Missouri Energy Efficiency Investment Act. I'm not aware of -- of rooftop solar in particular being under the blanket of energy efficiency.

It's not traditionally looked at in the those roles. We have net metering roles. We have RES compliance roles that I believe do their due diligence as far as solar is concerned.

I would be very concerned about the

unintended consequences of including something like that, which might mean nothing at the end of the day because it -- at the end of the day, it's probably not going to be cost effective because of the shear amount of money that would need to go into it.

How would you value that? Whether or not federal tax dollars still were in place or not? We did offer the following language for deprivation of service on -- and for low income weatherization, and we carried this analogy both for energy efficiency where we added the term the same or better given end use. And for measure, the same or better levels. These modifications are consistent with industry standards.

I want to stress this point this has been a bone of contention for me personally. Deprivation is not energy efficiency or conservation. And nobody in any of the comments or anything else has brought this issue or -- or suggested as much.

Our biggest concern centered on if we are changing the idea of that definition as just reductions, this could encompass people being shut off. And --

JUDGE WOODRUFF: Can you explain that more for me? Are people proposing such programs?

DR. MARKE: In some states, there has been a move to push forward prepaid programs as an energy efficiency measure. The idea is that consumers would go ahead and put a hundred dollars onto a credit card, a prepaid card.

After they've utilized a hundred dollars, their energy effectively gets shut off. Our concern is a measure like that has no business as far as being framed as an energy efficiency measure.

Again, there's a different between energy efficiency, conservation, which is I'm taking the active decision to turn offer my power or one where I'm being forced to take off my power.

I just pulled up the first example that I could come up with. But a quick Google search of people that have fallen fatal to this practice is well-documented.

In 2009 in Michigan, Marvin Schur froze to death. The utility bill was found on Mr. Schur's kitchen table with a large amount of money attached to it as a sign that he was trying to save up to pay his bill.

There may be a place in the dialogue for pre-pay and that sort of form. We just do not -- we categorically do not believe there's anyplace for that in the context of MEEIA.

Two additional definitions we added included load management and load control. And I'm not going to read them verbatim for you. But I will explain the rationale including that.

We're at an interesting time in terms of our energy efficiency with these MEEIA measurements. Cycle 1 looked very different than Cycle 2.

Cycle 2 is probably going to look very different than Cycle 3. There's a lot of sense making going on. As utilities pick up AMI meters, as they move forward with being able to employ real-time savings, one of the -- I've got a picture here of the power and peak time savings. Is from Com-Ed in Illinois.

So our concern here is that Com-Ed offers this program where, essentially, customers can go ahead and sign up to get the bill credit if they reduce their peak usage when they're called on, which is great.

It's something we are absolutely in favor of. But like Com-Ed, Com-Ed doesn't count these as savings in Illinois. This isn't flown through and counted as an energy efficiency measure. We would just like the distinction that that's included here moving forward in Missouri. And I've left the URL, so can you Google comment peak time savings for that clip.

Very quickly, the earnings opportunity cost component. We added it throughout in multiple locations within this rule. We just feel that at the end of the day, there needs to be a clear distinction that that's a cost for consumers.

There's a lot of discussion about all the benefits that we could be adding on. I -- it should not fall on deaf ears that when the utility makes $30 million off a performance incentive that those costs are being collected through that surcharge, and that is a cost born by consumers.

Every other state that I have done my cursory research on includes this as a cost component. This is also consistent with AC triple E sites and what the U.S. Department of Energy as well as the EPA state. And I've cited this in multiple different -- multiple different times in previous MEEIA filings.

The market potential study. And here's something that I -- there are a couple different components of this. First of all, this is the definition of market potential study.

We've added language to include rate design and to make a special distinction here that the market potential study is a primary document to inform the IRP and secondarily used to inform the MEEIA application.

The reason why we want to make this distinction right now is that KCP&L, Ameren flow these costs -- millions of dollars of these costs through MEEIA.

If they never received a MEEIA, they would still have do a market potential study. Empire does a market potential study to inform their IRP. Our -- our ask here is essentially we would like and to have that focus moving forward of market potential study costs being flown through in a rate case.

The key point here, opt-out cost customers benefit from this as well even though opt-out customers do not pay different in MEEIA.

The second point I'd like to make about the market potential study, within the definition of the rules themselves currently says the market potential study shall consider both primary and secondary data and analysis for the utility service territory.

We added more finite language that specifically asked for saturation study and market profile data at the residential level. In numerous rates cases, the issue of do low -- do low income customers or high income customers use more energy has come up.

To our knowledge, most utilities already bake this into their market potential study, but not all. By having it codified in the rules, we think it's an absolute asset and something that helps everybody, for not only MEEIA and program design, but also rate design.

The third point we'd like to make about the market potential studies, in the rules currently, it asks for a utility to do a market potential study every four years.

This provision never made sense to me because both our MEEIA cycles operate in a three-year cycles, and our IRPs operate in three-year cycles. The end result is that, in theory, you could end up with a study that's -- it makes no sense to potentially have a 4-year-old study inform programs three years into the future.

For example, a study conducted in 1999, finalized in 2000, but used to set targets for programs up to 2007. That's potentially eight years there between when that primary data was collected and when those targets are being set. A whole host of things can in between eight years.

So our final point on the market potential study is -- well, two more points. Sorry. We were asking to include language that says the utility shall provide oversight and guidance to the independent market potential contractor that shall not influence the independent market potential study contractor's reports.

This is a conflict of interest language. Right now, the rules have this conflict of interest language already in place for the Staff for the Staff's Auditors and that relationship. So Staff can't influence the Staff Auditor on the end results. We are asking for the same consideration for the independent evaluators that the utilities hire.

The final point we'd like to make on the market potential study, we're asking to include a sensitivity analysis that assumes variation and take rate assumptions based on changes in customer rate design that account for time varying rates, real-time pricing, higher customer fixed charges and flat and tiered volumetric rates.

Why is this important? We recently concluded a KCPL rate case where we had just finished up a MEEIA Cycle 1. And then the company came in with a categorically different rate design, particularly for small commercial and industrial customers.

The savings assumptions that were driven for Cycle 1 were lighting. Those commercial customers that went over-budget, the vast majority of those savings were all lighting measures.

Yet when we got to the rate case, what was ultimately proposed was a rate design that emphasized demand savings. Now why is that a consideration for us? Because demand savings are largely happening during peak time, not at night.

Lighting is not pushing or is not drawing those demand savings. So the cost assumptions that those commercial customers thought that they were going to get changed on them. We changed the goal post on them because of the rate case. And too often, we have case -- we have discussions about MEEIA without the context of what takes place in a rate case and vice versa.

The market potential study would consider this. What would happen if we raised the customer charge to $25 like some young companies have offered. That would have an impact on the market potential uptake. And, conversely, the other way.

We've also asked to include an analysis that accounts for variation in take rate assumptions based on both an increase and decrease in heating and cooling degree days.

Moving forward, it seems reasonable to ask that our million dollars plus market potential study also try to estimate what the impact would be into the future because we look 20 years in the future if things got hotter.

My gut tells me if things get hotter, people are going to be more likely to go ahead and take on more efficient HVACs. Or if things got colder. Right now, we don't do that. We assume a historic baseline.

We did delete the section about estimating achievable potential regardless of cost effectiveness of energy savings from low income demand side programs. Energy savings from multi-family building that house low income programs may count towards this target.

And, again, I'm not against the idea of carving out something for low income. I have a tough time how this process would work in implementation because low income programs don't need to be cost effective.

So we can go ahead and do all the studies -- I'll tell you the study. They need it. Okay? But how we pay for that, how we make sense of that moving forward is much more complex. So just having that number I'm not sure is going to drive meaningful conversation.

JUDGE WOODRUFF: Before you go on to the next area, Dr. Marke, do you have a lot more? I'm just talking about breaking for lunch.

DR. MARKE: I know. We'll break.

JUDGE WOODRUFF: All right.

DR. MARKE: Yeah.

JUDGE WOODRUFF: Let's go ahead and take a break for lunch, and we'll come back at 1:15.

(Lunch recess.)

JUDGE WOODRUFF: All right. We're back from lunch, let's come to order. Dr. Marke is at the podium, and we'll let him continue with his comments.

DR. MARKE: Thank you. The next section, we added language on to -- and this is similar language that we offered up earlier. This is over conflict of interest language.

That mirrors what's already in the rules right now for Staff. But there is a -- that Staff and the -- the relationship between Staff and the independent auditor remain neutral.

We're asking for the same language for utility and the EM&V contractors. So to be clear, we're asking for independence for the utility in the market potential study and independence from the EM&V. So front end and back end.

That is -- and I realize some of this -- there's a lot of dense material to cover. When we say front end, it's really setting those -- those targets. And the end verifying that those targets were actually achieved.

We also added additional language on EM&V spend. The current language is asking -- that says that utilities can spend no more than 5 percent of their overall budget on EM&V. We're saying we're offering up that 2 and a half percent if a participating utility has already deployed AMI technology and to leave a 5 percent if it has not deployed AMI technology.

And the rationalebehind that is, presumably, with AMI, you're going to have better and clearer indication of measurement and verification that a lot of the -- the work that would otherwise go into EM&V process without having automatic meters isn't there.

So regarding the total resource cost test -- and this was something that was brought up earlier this morning. This might -- essentially, our position right now is to utilize the definition in the statute.

There's been a lots of offers for the total resource cost that's been put out there. But, also, we'd like to get -- solidify one point in particular. And that's found in Section 7-D that the EM&V final reports from the utility's contractor of each approved demand side program shall, in short, use the TRC methodology.

Chairman Hall brought this up earlier this morning when he pointed out that, you know, from his vantage point that the TRC is the preferred test. Our office position is that it is the preferred test, too.

With, you know, due respect to Mr. Rogers' comment that it's a preferred test, we would just point out that it's the only test that is singled out in the statute.

Loosely interpreted, if it's a preferred test, then any number of tests could be applied, even beyond the California -- California cost effective test.

We're saying that the TRC needs to be utilized in the back end to verify savings because that's what's utilized in the front end. And that was a bone of contention for Cycle 1 from our office over an issue we ultimately settled with.

But if we're going to set targets utilizing the total resource cost test, we need to go ahead and verify the savings using total resource cost test as well.

JUDGE WOODRUFF: Just for clarification, when is UTC?

DR. MARKE: Utility Cost Test. And that's -- that's a test that's utilized in IRP modeling. Actually, both are. There's a requirement in Chapter 22. In short, that the utilities when they're making their -- they're choosing their preferred resource plan that they look at the overall impact of these MEEIA programs from the utility perspective, but also from all ratepayers as a whole.

And that includes the performance incentive. And so on that note, we had suggested that we delete what's in the rules right now under the TRC, which is a very, very convoluted definition from our opinion.

Also, within that TRC language and -- we said there was a very convoluted language, and it's probably worth just mentioning, I've got it crossed off on the power slide.

But on it, there are several conditions that say, you know, if -- if a utility withdraws from a program, they need to justify why they're withdrawing from the program. They need to go ahead and perform several different what I would say just academic gymnastic tests to justify why they're moving in a particular direction or not and -- as well as informing vendors of the overall impact.

Our -- our position is an office that is -- that's overly burdensome for the utility itself and that vendor impact should not be a consideration for ratepayers or the utility.

Again, MEEIA is not meant to subsidize or otherwise prop up a private business. And net to gross components, and this -- I think we may be the only group that opined on this topic.

This has been an issue in previous cycles and adding this language to avoid future contentious issues. We see that the EM&V contractor shall, and we added the language, Including net to growth components limited solely to free ridership and spillover.

In short, when we evaluate the savings that have taken place, we look to see the attribution of these. Again, it's the free riders, whether or not somebody would actually buy these measures absent these programs. If that was the case, they would be a free rider.

If the savings induced more savings, it's a spillover. In the past, we've had EM&V contractors get very creative and add additional components to the net to gross.

In short, we're asking for a very simplified one for one that considers both free ridership and spillover. We feel like it's an equitable conclusion for both consumers and for the utility.

A brief point on the soft targets because it got a lot of discussion early on. Our -- our position is to delete the soft targets. And the rationale largely centers -- was articulated by Mr. Opitz.

I don't think including the soft targets causes necessarily any harm. Chairman Hall's point earlier about, you know, his experience with MISO may suggest otherwise.

I -- I would just say, though, why the soft targets don't necessarily make a lot of sense -- and I'm going to illustrate Ameren as an example. If you read the soft targets as they're set up right now, it says Program Year 1, Program Year 2, Program Year 3, the savings get potentially bigger.

Use Ameren for an example. We're in Program Year 5, I believe right.

Q Now, what's happened between Program Year 1 and Program Year 5 that would change those targets?

Well, for one, we lost Noranda. That's energy the size of the city of Springfield. That's going to skew the overall loss that we're talking

about here.

At the end of the day, the issue that we have with the soft targets is that it doesn't make sense on how you calculate it because it's a moving target.

You're constantly adding, shifting load moving forward. So picking a set time is open to interpretation. Because these targets are not binding, because they're soft targets, keeping with our theme earlier, we'd just offer up the idea of opportunity cost doesn't make a whole lot of sense in keeping it in there.

I think some of the concern from the environmentalists that spoke to about keeping the soft target stems from other states that had eliminated the soft targets.

Their fear was that utilities would come in with lower energy and demand savings than otherwise. I can tell you from a benchmarking standpoint, we don't benchmark off the soft targets.

When we benchmark, I benchmark off of other utility's potential cost studies. That's absolutely what I do. I look to see what Arkansas is doing. If it's Ameren, I look to see what

Ameren Illinois is doing. To me, that's the sanity check that I get for whether or not it's an appropriate target for Missouri. It's not the soft targets. Soft targets are arbitrary.

And the state-wide TRM, our position has been to delete the reference to the state wide -- state-wide TRM. I've included one section here. I believe it's the definition to illustrate this.

A couple quick points as to why we're taking this position. On a whole, we don't believe that the state-wide TRM necessarily reflects the current regulatory policy or technological environment.

Full disclosure, I was one of the biggest proponents for the state-wide TRM and moving it forward three years ago. It absolutely made sense to me.

We had a -- an absolute great opportunity to have funded through Department of Energy. And moving forward, I could see a world operating in Missouri where we were bringing all the utilities -- and I mean by all the utilities, the co-ops, municipals, everybody together where a state-wide TRM made a ton of sense.

Because at that time, the discussion was on a mass base plan for the clean power plant. It's how the state of Missouri can go ahead and meet compliance purposes.

Three years ago, and it's still present today, we were operating and still are operating in a very patch-work system. The idea of bringing the municipals along, bringing the co-ops along, having a central conduit to record all of these savings -- because, essentially, at this point what you're talking about are -- are goals that we would need to meet to meet compliance purposes that changes the cost structure around.

That world made a lot of sense. Over that time, it became evident clean power plant wasn't going to go to its full fruition, that municipals and co-ops could do this on an as-needed basis.

But it raised all sorts of our issues. And the other points I'd just like to point out in terms of opportunity cost here besides the clean power plant is that the -- the trend right now in EM&V is to go what we say is EM&V 2.0.

And EM&V 2.0 is how do we make sense of energy efficiency and demand savings with AMI meters? On the west side of the state, we almost have full deployment of AMI meters, minus Empire.

On the east side of the state, we don't have AMI meters, but we do have utilities that have a utility-specific TRM. All things being equal, I would rather have a utility specific TRM than a state-wide TRM if I'm judging any of the savings.

And moreover, I'd rather have the AMI if we've already got it deployed to go ahead and verify those savings. The real beneficiary of a state-wide TRM might be a utility like an Empire Electric or, really, to -- to -- what I've sort of settled on is the gas utilities.

They're the one as that probably benefit the most from this. Unfortunately, these are electric roles. And I have a tough time trying to juggle or reconcile the two.

Again, I'll lead it with this point, and it's the idea of the opportunity costs. We participated in the state-wide TRM. I sat in on meetings. I wish I could have sat in on more and participated more.

There was a time where we were very path dependent on going down this route. And we achieved it. We produced a state-wide TRM. But moving forward, is this the worst thing in the world? No.

But I would caution that you're essentially going to be taking away time. It is a time-consuming endeavor. If this is housed under Staff, you're talking about one, maybe two Staff people devoted to this entirely.

We're talking about out-sourcing this to a third party to go ahead and manage. And at the end of the day, what value are we getting out of it if we don't have to meet compliance purposes, if we don't have to go ahead and Federal compliance purposes, if one utility has their individual TRM -- and mind you, the utilities, at least from what I've gathered and what they have opined so far is they're in favor of a state-wide TRM as long as they're able to use their own TRM.

This is redundant. It's a redundant cost. In the scheme of these things, it's small. But it adds up. Energy and time that our office devotes to MEEIA is almost unprecedented compared to just about any other endeavor.

This would be another thing that we would rather focus our energy on something that does matter. And this, again, speaks to the idea of -- of a lot of points that we're making.

My -- my final point -- and I'm getting up

and exiting stage left here in a second, is if I leave the Commission with just one thought, opportunity cost. And the one ask above all is that please, please consider our language on the budget.

That, to me, is a potential nuclear bomb moving forward. More so than a lot of these things, the budget language itself, it's inter-dependent with all of these other issues, but it can really jeopardize the validity and the continuity of MEEIA moving forward. Thank you. I'm sorry. Are there any other questions?

CHAIRMAN HALL: No questions. Thank you.

JUDGE WOODRUFF: I do have one matter I wanted to take care of. During the break, you handed out a paper copy of your --

DR. MARKE: Right. I guess we would offer that into evidence.

JUDGE WOODRUFF: That's what I was going to go ahead and do is offer it as Exhibit 2.

DR. MARKE: Thank you.

JUDGE WOODRUFF: And receive it into the record so it would be available. Did you give a copy to the court reporter?

DR. MARKE: I did not. But I've got one.

JUDGE WOODRUFF: Okay. Who wants to go next? Anybody else? Mr. Woodsmall, are you going to use the Powerpoint, also?

MR. WOODSMALL: Yes, I am.

JUDGE WOODRUFF: Let's go ahead and mark that as 3. Thank you.

MR. WOODSMALL: Good afternoon. David Woodsmall appearing on behalf of Wal-Mart Stores. I'm going to shift things up.

My comments, I hope, aren't as technical, aren't as difficult to understand. This is some convoluted stuff you're dealing with.

Wal-Mart's comments have been focused entirely on the opt-out provisions, and that's what I'm here to talk about today. Those revised provisions are contained at Section 94(7).

Prior to discussing this rule, however, I wanted to provide you some background on the opt-out provisions, what the statutes provide and the basis for the statutory opt-out provisions.

In 2009, the General Assembly passed SV 376, otherwise known as MEEIA. That bill has been codified at Section 393.1075.

MEEIA sought to eliminate any disincentive utilities had to invest in energy efficiency by valuing demand side investment equal to supply side resources.

In order to do this, MEEIA allowed for the recovery of three types of costs, program costs, lost revenues and forgone earning opportunities.

In addition to allowing utilities to recover these costs, the MEEIA legislation also allowed large commercial and industrial customers s to opt out of these costs.

This opt-out provision is premised on the notion that certain large customers have long had a financial incentive on their own to implement energy efficiency measures. This is done just simply because of their costs -- their size and the need to reduce costs.

Recognizing that it would be inequitable to charge these large customers for a utility's energy efficiency cost after they had already invested on their own, MEEIA allowed for opt-out.

MEEIA allows for three different types of opt-out customers. And I refer to these as Thresholds 1, 2 and 3. The first one -- and these are all contained at 393.1075.7.

The first one is if the customer has accounts -- one or more accounts, it says, with a demand of over 5,000 KW. The second, Threshold 2, is the customer operates an interstate pipeline pumping station, regardless of size. And the third one is for customers that don't meet the 5,000 KW but have demand in excess of 2,500, they can opt out so long as they show that they have a comprehensive demand side or energy efficiency program and can demonstrate an achievement of savings at least equal to those expected from utility provided programs.

In the proposed rule, the Commission makes certain changes to its opt-out provisions. Through its comments, Wal-Mart raised three concerns with the new Commission rules. I want to talk about those three specific concerns.

In addition, once I complete that, I want to address a couple of the proposals made by other parties in their written comments.

First, Wal-Mart believes that the Commission should clarify that the 5,000 KW demand requirement in Threshold 1 can be met through the non-coincident demand of multiple accounts.

When Wal-Mart first supplied the opt-out of a utility's energy efficiency cost, it attempted to opt out under this Threshold 1.

Given the phrase, quote, one or more accounts, unquote, Wal-Mart asserted that it could meet this threshold by adding the demand across all of its facilities in a certain service area.

Wal-Mart was later told, however, that the 5,000 KW threshold had to be met by a single account. As such --

JUDGE WOODRUFF: Question. Who told you that?

MR. WOODSMALL: Staff. Ultimately, Staff and the utilities. When we filed our first opt-outs, we were told that it couldn't be aggregated across one or more accounts. It had to be -- you had to have a single account that met the 5,000 KW on its own.

JUDGE WOODRUFF: Did that ever come to the Commission for there decision?

MR. WOODSMALL: No. We never filed a complaint. Given the time period -- you have a limited for the opt-out window. It was decided we'd just have to go to Threshold 3 and get it done.

So trying to get a complaint done in the two-month time opt-out window, it's just not workable. So we went ahead.

Wal-Mart was later told that the 5,000 KW threshold to be met by a single account. As such, Wal-Mart had to meet the much more difficult third threshold, which included an arduous demonstration of Wal-Mart's energy efficiency program.

I say this was arduous because imagine you're Wal-Mart. You have, let's say, 50, 75 facilities in Ameren's service area. You have to show these energy efficiency measures that you've taken for 50 to 75 accounts.

We did it. It was a pain in the butt. Because we -- we didn't have -- Wal-Mart didn't have a single account that individually met the 5,000 KW threshold.

Again, Wal-Mart believes that by using the phrase, quote, one or more accounts, unquote, the Generally Assembly intended for customers to be able to add their demand for multiple accounts.

If the General Assembly had intended for the 5,000 KW demand to be met by a single account, it would have simply indicated, quote, the following provision. Quote, Customer has an account that has a demand in excess of 5,000 KW or more.

By requiring a single account to have a

demand of 5,000 KW, the phrase or more accounts as used in the statute is rendered meaningless. Allowing the 5,000 KW demand threshold to be met by multiple accounts is not only consistent with the words in the statutes. It's also consistent with the logic underlying the statute. As mentioned, large customers had a financial --

CHAIRMAN HALL: Let me stop you there for a second. I would -- can Staff respond to that statutory argument?

MR. BERLIN: Sure. Staff has taken a -- has interpreted that in light of the entire thresholds that are listed there, if you look at -- let's look at Threshold 3.

The statute specifically talks to customer accounts in the aggregate. I believe that had the Legislature intended Threshold 1 to include an aggregate, it would have used that very same term in -- in Threshold 1.

But it does not. That language is not there. So it reads, The customer has one or more accounts within the service territory electrical corporation has a demand of 5,000 kilowatts or more.

And our belief is that Threshold 3 picks up the multiple accounts in aggregate as the term aggregate is specifically used in Threshold 3.

CHAIRMAN HALL: Well, then what does one or more mean in -- in the first paragraph?

MR. BERLIN: Well, one or more would mean at least one.

CHAIRMAN HALL: But your interpretation renders that language irrelevant, doesn't it?

MR. BERLIN: I -- I don't think so.

CHAIRMAN HALL: Okay.

MR. WOODSMALL: I would agree with Staff. The -- the statute is not artfully crafted. Either you have a conflict within that first provision or you have a conflict between Provision 1 and 3. It is a problem.

The interpretation provided by Wal-Mart is not only consistent with the language within that statutory section. It's also consistent with the logic underlying the entire statute.

As mentioned, large customers have had a financial incentive to implement energy efficiency measures long before MEEIA was ever enacted.

Under the historical interpretation, however, this 5,000 KW threshold had to be met by a single account. Such an interpretation is illogical in that it fails to recognize that customers with a specific peak demand over multiple accounts may have an even greater incentive to have several financed energy efficiency measures.

For instance, take Wal-Mart. Wal-Mart has multiple facilities in the Ameren service area. Total, those facilities have a demand of 39,000 KW. But Wal-Mart can't meet Threshold No. 1.

But you would allow a customer with a single account of 5,000 KW to meet that threshold. Now, I ask you, which has the greater incentive to have implemented those energy efficiency measures?

CHAIRMAN HALL: So each facility has a separate account?

MR. WOODSMALL: Yes. So the logic that allows for opt-out certainly would dictate that Wal-Mart with 39,000 KW of demand be allowed to opt -- opt out before a customer with only 5,000 in one account.

So that's the -- the first threshold. And I will tell you if you accept our interpretation, Wal-Mart's interpretation of that threshold, its concerns with the next two -- it's next two concerns are eliminated. Wal-Mart could then meet that account, that threshold, and our second and third concerns go away.

So what is our second concern? Our second concern is that the Commission --

CHAIRMAN HALL: I'm sorry.

MR. WOODSMALL: I'm sorry.

CHAIRMAN HALL: This is -- this is the lawyer in me. Okay. So isn't one interpretation of one or more accounts in Section 1, couldn't that be if you have one account over 5,000 and then -- then all of your accounts would be covered?

MR. WOODSMALL: And I think that's the interpretation Staff has used. If you have a hundred accounts, one of them has to be over 5,000 KW.

CHAIRMAN HALL: Okay.

MR. WOODSMALL: I don't want to speak for Staff, so --

CHAIRMAN HALL: Thank you.

MR. WOODSMALL: So the second concern is that Wal-Mart believes the Commission should add greater transparency to Threshold No. 3. Again, that threshold is a customer with a demand of 2,500 to 5,000 KW can opt out if it shows a comprehensive energy efficiency plan with, quote, savings at least equal to those expected from the utility provided programs, unquote.

The determination of whether the customer meets this criteria is made entirely by the Commission Staff. In making this determination, staff seeks a great deal of information from the customer related to the measures implemented.

And this is contained in the new rule. They historically sought information five years worth of energy usage, how old the building is, energy audits, the measures taken on an account by account basis.

It is -- and I'm not faulting Staff. They're doing their job. But you can imagine for a company like Wal-Mart, it is a huge undertaking. The problem, however, arises when the comparison is made between the savings realized by the customer and the savings expected from the utility provided programs.

What is the savings provided by the utility provided programs? What are we comparing to? Where is it spelled out? Customers in general get into this process, undertake a lot of work and effort and devote resources and they have no cue what the benchmark is that they're comparing to.

What we ask for in our comments is that

the Commission in the context of the various MEEIA cases provide some finding as to the amount of savings expected from the utility's C&I programs.

For instance, if there's a finding that under KCP&L's C&I programs that commercial and industrial customers could realize 6 percent savings in usage, then we have something to compare it to.

So we just believe that there should be more transparency underlying Threshold No. 3. And other parties have also commented on this lack of definition.

For instance, in its comments, the Midwest Energy Efficiency Alliance expresses confusion and asked, quote, what level of savings is required, unquote.

In addition, Renew Missouri states, quote, that it is unclear what is meant by at least equal to those expected by -- from utility provided demand side programs, unquote.

Clearly, there is a problem -- there is a problem understanding what level of savings are expected. Wal-Mart believes that its proposal that there is a spelling out of that savings in a MEEIA docket will eliminate that confusion and provide greater transparency.

The third concern that Wal-Mart has is that it opposes any revision that would provide a time limitation on the effectiveness of a customer's opt-out under Threshold 3.

In the current rules, the opt-out status of a customer remains in effect until that customer voluntarily revokes the opt-out. Given the arduous process involved under the third threshold, Wal-Mart believes that the Commission should maintain this current position.

That is, once you opt out, you keep your opt-out status until you voluntarily revoke it. This position is consistent with the logic underlying the opt-out provisions.

As mentioned, the General Assembly found that certain large customers have an inherent financial incentive to implement energy efficiency simply as a result of their size.

This incentive doesn't disappear. This is ongoing. So if the incentive doesn't disappear and if it's assumed that these customers continue to make these energy efficiency investments, why should the opt-out disappear?

For this reason, as the current rule

provides, once a customer demonstrates that it has met the Threshold 3 opt-out criteria, opt-out status should remain in effect until that customer voluntarily revokes the status.

To the extent that you do limit the time period for which opt-out is effective under Threshold 3, Wal-Mart believes that you should not tie the effectiveness of the various utilities, the effectiveness of the opt-out to various utility MEEIA cycles.

And this is a concern noted by more than just Wal-Mart. This concern was also stated by Ameren, Staff and KCP&L. They all recognize that you can't tie it to the MEEIA cycles.

And I say that in -- because the MEEIA cycles don't tie neatly to the time period of effectiveness. Let's say that you have a situation where it's important to remember that the opt-out window is September 1st to October 30th.

For some reason, it's not October 31st. It's October 30th. But the opt-out window is September 1st to October 30th. What happens if you have a MEEIA cycle that ends the end of November?

You have a lapse in opt-out status without the customer even being able to prove that they still meet that. So you can't tie the effectiveness of the opt-out under Threshold 3 to the length of the MEEIA cycles.

In the event that you do want to limit the time period for a customer's opt-out, Wal-Mart suggests that you turn to the statute and limit the effectiveness to that point in time at which the customer demonstrated savings no longer equal those expected by the utility.

And I've given an example here. Assume that Wal-Mart has made a showing that its energy efficiency programs have reduced the energy usage by 13 percent.

And, again, this is entirely a hypothetical. Let's say that in MEEIA Cycle 1, the expected C&I savings are 6 percent. Clearly, Wal-Mart still meets the threshold.

MEEIA Cycle 2, say it's gone up to 9 percent. We continue to meet the threshold. MEEIA Cycle 3, it's gone up to 12 percent. We continue to meet it. Now let's say in MEEIA Cycle 4 that expected C&I savings has risen to 14 percent.

Wal-Mart's previous say demonstration is no longer applicable. Wal-Mart maintains that only at this point in time when MEEIA Cycle 4 is implemented, Staff should reach out to Wal-Mart and say, Your previous opt-out demonstration is no longer sufficient. You need to come in and show something more.

So rather than tie opt-out effectiveness to MEEIA cycles or something arbitrary like X number of years, tie it to the statute. Tie it to the threshold that the statute provides, and that is how long -- whether the showing still exceeds the savings expected under utility programs.

CHAIRMAN HALL: Would -- would you require the -- the entity opting out to make some showing that -- that it's continuing its programs to enjoy the -- the opt-out status, to continue to enjoy the opt out status?

MR. WOODSMALL: When you say continuing its programs, that somehow implies that there's an expected -- there's a necessary level of continued investment.

Let's take Wal-Mart, for instance, where has put in ambient skylights. They're there. The investment's been made. There's nothing to continue.

So those savings continue whether Wal-Mart invests another dime. Thermostats, they're there.

Wal-Mart has a system where they've tied all their freezers to a central monitoring in Arkansas.

If you go into a Wal-Mart and you leave the ice cream freezer ajar, after a minute or so, they will call the management of the store, and they'll go back there and close that. That investment has already been made.

CHAIRMAN HALL: And that's the case for all of the Wal-Mart's efficiency measures? There's -- there's -- there's none that require additional effort or investment?

MR. WOODSMALL: I -- I can't make an absolute statement. Certainly -- let's take the example of the monitoring. You have to have someone on the other end, you know, monitoring that alarm system. So there is some ongoing investment.

But in general, much of solar panels on this -- on the roof, wind turbines at some of their facilities, ambient air, much of that is a fixed cost investment. So once that investment is made, they should continue to reap the -- the benefit of their opt-out until the utility's savings has exceeded that.

Under any circumstance, the opt-out status of a customer should not be allowed to terminate without giving the customer sufficient time to demonstrate its continued compliance.

As I mentioned, if you have the situation where Wal-Mart's -- where a MEEIA cycle ends in November, Wal-Mart should be allowed the opportunity in the next opt-out window to show its continued compliance.

So under this scenario, the opt-out status would not even terminate until the end of the next calendar year. It would be unfair to customers to have it lapse -- unless you open up the opt-out window too many times. So the customer could make that showing.

Finally, I want to address a couple of proposals raised by other parties. In its -- in its comments, KCP&L and GMO seek to mandate that the Commission that the customer show a 5 percent reduction in kilowatt hour usage in order to qualify for opt-out under Threshold 3.

They seek to address the problem that many other parties have mentioned that there is no transparency, that customers don't know what they're being compared to.

And KCP&L just pegs it at 5 percent. We have a problem with that for several reasons. One, it's not in the statue. It's completely contrary to the -- the statutory language.

We appreciate what KCP&L is trying to do by providing some transparency and some understanding for customers. But it goes both ways. Let's say KCP&L's C&I programs are only providing savings of 2 percent.

You know, it's unfair to customers to have to make a showing that they meet 5 percent if the utility programs are only at 2 percent.

Similarly, would other customers be happy if KCP&L's programs are rendering 7 percent savings and an opt-out customer only has to show 5 percent? You know, so 5 percent, while it provides greater transparency, is contrary to the statute.

In its comments, Renew Missouri appears to want to make all customer provided documentation public and available on the Commission's web site. This is contrary to Section 386.480, which requires the Commission to maintain confidentiality of certain information.

Now, certainly, Wal-Mart does not have a problem being listed in some fashion saying that Wal-Mart and these other customers have opted out under Threshold 3.

The problem is the documentation that is provided to Staff. Let's say Wal-Mart has some proprietary energy efficiency measures. We don't want that made public. We don't want Target and Kohl's and others being able to get online and see that.

So there is a problem making certain information confidential. And the current rule recognizes that. In fact, the current rule specifically states that customers that provide this documentation have to clearly designate any confidential information.

So Wal-Mart believes that that protection should be maintained and Renew Missouri's effort to make this information public should be rejected.

Finally, the Midwest Energy Efficiency Alliance proposes that customers that have opted out under Threshold 3 be required to prepare and file an EM&V report similar to that done by the utilities.

Wal-Mart believes that this is an unnecessary -- an unnecessary requirement and would impose cost on the customers. Effectively, the EM&V what Staff is already doing. Staff is looking at the measures undertaken by the utility. They're looking at the savings that have already been realized, and they're making the determination whether that meets or exceeds the utility's savings.

Given that Staff has already doing that, we believe it's just an unnecessary step to require the customer to undergo their own independent EM&V analysis. I have nothing further.

JUDGE WOODRUFF: Questions?

CHAIRMAN HALL: I have questions.

JUDGE WOODRUFF: Thank you.

MR. WOODSMALL: Thank you.

JUDGE WOODRUFF: Who want to go next?

MR. MILLS: Good afternoon. Lewis Mills on behalf of the Missouri Industrial Energy Consumers. I'm going to start out by talking about the opt-out as well.

And I want to begin by sort of giving, I think the appropriate lens to look at all of this discussion through. And I think this -- this sheds a little more light on what Mr. Woodsmall was talking about as well.

And that's the statutory frame work. The -- the -- the opt-out provision is an integral part of -- of the MEEIA statute. In fact, I submit that the MEEIA statute probably would not have passed had it not contained the opt-out provision. So -- but for the fact that large customers who have already spent a great deal of money trying to achieve energy efficiency on their own.

But for the fact that that investment is recognized and allowed to take advantage of the opt-out provision I don't think we would have MEEIA in Missouri as it is.

So with that in mind, I think we need to look at the opt-out statute itself. And I think it's clear from that that it is intended to be permissive and liberal rather than prescriptive and -- and constrained.

And I say that because if you look at the MEEIA statute, it does not talk about customers applying to opt out. It talks about customers being able to notify the utility that they have opted out.

And why that may sound subtle, I think that's a critical distinction. The distinction between having to apply and justifying something and simply being able to notify the utility that you have opted out because you qualify is critical.

So when you look at it from that

perspective, for example, the language that the propose rule has in -- in -- in Section 4 about applying to opt out in successive MEEIA cycles, I think is not only inappropriate, but I believe it's inconsistent with the statute.

Nothing in the statute requires a -- a customer to apply for -- for the ability to opt out. It simply requires the customer to notify the utility that it has opted out.

So I think that's -- that's a big issue with the -- the notion of having to -- to apply in successive cycles, and it's -- it's -- it's a problem, I think, with respect to those customers who qualify under -- under Criterion 3.

And it's an even greater problem if you take KCP&L's suggestion, which I believe is to make that sort of re-application requirement for even customers in -- in Criterion 1 and 2.

Criterion 1 and 2 are simply -- there is no demonstration required. There is a demonstration required under 3 that -- that the prospective opt-out customer must demonstrate savings under 3. Under Category 1 and Category 2, they do not. It's a simple notification.

There is no reason to -- to require a

customer to -- to annually go through the exercise of saying Yeah, my demand is still greater than 5 KW or yeah, I'm still running a compressor station.

That's simply make work. It invites unnecessary bureaucratic maneuvering, and -- and it could put a customer at a severe disadvantage if it -- for example, if it -- if it fails to reapply when under the statute there is absolutely no reason to require such a customer to reapply on an annual basis.

And so I -- I think when -- when you -- when you look at the -- the opt-out provisions through that lens of notification rather than application, I think also helps to clarify exactly -- well, it helps to clarify some of the issues that -- that arise from the Renew Missouri proposal that information that customers have -- have provided to demonstrate compliance should be made public.

But there's really no reason for that. I mean, the Commission's job, certainly, is -- is to provide transparency into how it regulates utilities. And -- and I'm always in favor the transparency there.

But the Commission does not regulate

utility customers. There is no reason for the Commission to be providing insight to the general public into the -- the workings and the -- the operations, the maintenance of utility customers in the same way that it has an obligation to provide insight into the -- into the workings and the operations of maintenance of utilities.

So because a lot of this information is proprietary, is confidential and is -- would be advantageous to competitors, it shouldn't be made public in any event.

And from my perspective, because the opt-out provision simply require for -- require notification of the application, I don't think it should even be made available in a redacted form with some of it considered proprietary, some of it considered highly confidential under the Commission's rules that there's simply no reason that any of it needs to be made public.

The only reason you would have it be made public is for some entity other than a utility or the Commission itself to be able to contest the notification. And there's nothing in the statute that even envisions the ability of some other entity to mount a challenge to a customer's notification of the utility that it has chosen to opt out.

It's just not an -- it's not an option. It's not aloud by statute. And so there's no reason to put that information out under the premise that maybe somebody could say, No, that's -- that's insufficient for you to be able to opt out, and we challenge you.

So if you're not going to be able to use it for that purpose, there's no reason to put it out there in public anyway. I think that's -- that's really all I have on opt-out.

With respect to a couple of the other comments from some of the parties, there is a -- a number of parties have suggested that in instances in which the rules as proposed refer to realistically achievable potential that they should instead substitute maximum.

I think it's clear that the reason that realistic is in there is because we don't want to have the utilities going to the -- to the theoretical maximum, and we support that the rule as drafted on that.

And -- and finally, with respect to comments from Division of Energy and I believe others have -- have echoed this with respect to the -- the interplay between integrated resource planning and -- and MEEIA portfolios, we believe that the rules as they are proposed is appropriate and recommend not any -- not making any changes in response to those comments. And that's all I have. I'd be happy to answer any questions.

CHAIRMAN HALL: No questions. Thank you.

JUDGE WOODRUFF: Thank you. Who is up next?

MR. FISCHER: Hi. Good afternoon. Jim Fischer on behalf of Kansas City Power & Light and KCP&L Greater Missouri Operations Company, which I'll call GMO.

I also have with me today a couple subject matter experts that are probably a lot better prepared to answer technical questions if you have any, Tim Nelson and T. Alexander. They're available if you do have particular questions about our comments.

First, I'd just like to acknowledge all the work of the Staff and many of the other parties in this case. It's been a long and tedious process, and we appreciate the efforts that are being made to -- to try to streamline and clarify the -- the MEEIA rules.

Rather than going through our comments in any length, I thought I'd just highlight a couple of things. On page 2 of our comments, KCP&L and GMO suggest changing the last line of the definition of avoided costs.

And we would suggest that it read, Utility shall use the preferred resource plan that was in effect at the time of its application to calculate its avoided costs. This change would clarify which measures are assessed with the most current resource plan.

And if you recall, there was some controversy related to which avoided cost inputs should be used in the MEEIA process, and we believe that clarification might be helpful.

Then the next one is just really a technical suggestion related to Section 4, Applications for approval of electric utility demand side programs or program plans.

There are criteria listed there B-1 through B-3, which we believe just should be moved to the market potential study requirements outlined in -- in the Section 3.

They're really integral parts of the --

the potential study process, and we think it would be better to -- to move it to the other section and then revise the B-4 language to read as part of its approval for -- or excuse me -- part of its application for approval of demand side programs the electric utility shall provide a current market potential study. And that's defined in the other -- in the other section.

Third, on page 8 of our comments, we discussed KCP&L and GMO's need for flexibility to change or modify the incentive levels without filing an application for approval from the Commission.

On page 8 of those comments, we suggest that Section 3 that -- that Section 3 should be deleted. These sections remove the flexibility of the utility's need to manage their programs and required an application be filed with the Commission to perform these management functions would -- does not appear to serve a real good purpose from our perspective.

Guidelines are already outlined in the -- in the total budget and cost effectiveness sections making these sections of the proposed rule unnecessary. And we don't think we should be required to file an application to change those incentive levels.

And then the last topic I was going to mention was one that we had some discussion with earlier this morning that relates to none energy benefits.

From our perspective, non-energy benefits are really societal and they shouldn't be included in the -- in the TRC. So we would suggest that the word societal should be inserted to clarify that non-energy benefits are a component of the societal tests by definition.

With that, I would suggest if you have technical questions, I'd be happy to -- to have Tim Nelson come up and try to address those.

CHAIRMAN HALL: Well, I have a statutory question.

MR. FISCHER: Okay.

CHAIRMAN HALL: Looking at the definition of total resource cost test, where it includes the sum of avoided utility costs, couldn't some of those avoided utility costs be unrelated energy?

For example, the example of -- of arrearages such -- such that -- that if it was a quantifiable avoided cost, it could be a -- a non-energy benefit and included the total resource cost test?

MR. FISCHER: I hadn't thought about that issue. That would probably make some sense. But I -- and I hadn't looked at that. No. Sorry.

CHAIRMAN HALL: Okay. Well, what is -- what is KCP&L's position on the -- on the -- on the opt-out arguments raised by MIEC and Wal-Mart?

MR. FISCHER: Well, I think we've -- we've suggested the 5 percent criteria. We think that would just be a way to clarify the situation.

We -- we believe that we do need to know when folks are wanting to opt out. We have to change the billing process for those folks that do meet the criteria.

And I believe the company's perspective would be that the circumstances do change from year to year, and there does need to be a -- not just an open-ended forever opt-out as a part of that. We need to have an application process.

CHAIRMAN HALL: And -- and how do you respond to the arguments raised that -- that -- that essentially constitutes an unnecessary burden on the -- on the -- on the industrial customers?

MR. FISCHER: Well --

CHAIRMAN HALL: The programs are -- the investment already been made, the savings have been shown once. The investment is not going away. The savings will continue.

MR. FISCHER: And -- and the company will continue to have to decide whether they meet the criteria that they can opt out or not.

And for that reason, I think it's -- it's not appropriate to have an open-ended parameter once I opt out, I'm forever gone.

CHAIRMAN HALL: So if -- is there some happy medium between a forever opt-out and requiring them to -- to reapply each -- each MEEIA application?

MR. FISCHER: I don't think we've had a problem in that regard. I think it's worked pretty well. I don't know that a happy medium is -- there may be one, but I don't know what it would be.

I mean, it's a -- it's a -- it's a continuing process that the companies need to look at. They aren't charging the -- the -- the surcharges, and they need to know which companies are meeting those criteria that are -- are legitimately eligible to opt out.

CHAIRMAN HALL: Do you -- do you think

there are any -- any -- any ben -- any value in
continuing the voluntary targets?
MR. FISCHER: I think that would be a
question I'd ask you to ask Tim Nelson. He's much
more familiar with that.
CHAIRMAN HALL: Okay.
MR. FISCHER: This is Tim Nelson with our
Energy Solutions.
MR. NELSON: Yeah. Thank you. Tim Nelson
with Kansas City Power & Light. So your question
was about the targets?
CHAIRMAN HALL: Yes.
MR. NELSON: I guess from our perspective,
I mean, really, we base, you know, the way that we
design our programs like Geoff Marke mark referred
to based on, you know, with the potential study.
And that's really the -- the -- the -- the
gauge that we go by as far as, you know, what --
what the appropriate targets are.
The -- the targets in the MEEIA rules seem
to just kind of add confusion and maybe a
distraction over and -- and a lot of efforts going
in -- in looking at those when -- when, really, the
potential study is -- is a specific study developed
for our specific service territory for our specific

customers and is a better gauge, probably, in my view, for, you know, what realistic targets might be.

CHAIRMAN HALL: So it would be your position that there is no value in having the voluntary targets in there?

MR. NELSON: Yeah. I don't -- I guess personally I don't know what the value is. I don't necessarily see that it's, you know, a big problem that they're there. But --

CHAIRMAN HALL: Okay.

MR. NELSON: You know, we spend time -- you know, on our potential study we spend a lot of money to do that potential study. Those are not, you know, cheap things.

We have to do them, but, you know, to -- to place more weight on something else that is seemingly somewhat arbitrary and not necessarily reflective of what's going on in the market as to what types of measures are available and what the cost effectiveness of those are, it would seem like it really doesn't add a lot of value.

CHAIRMAN HALL: What's -- what's the -- the company's position on -- on the state-wide TRM?

MR. NELSON: Well, we've been supportive

of the process. Now, I think in order for the state-wide TRM to have value that I think that our -- our comment regarding the state-wide TRM that it -- that the deemed values would need to be used in the calculation for the through-put disincentive, the earnings opportunity and the measurement of our -- of our performance against our targets.

That if it's used for those purposes, then -- then I would see a value to it. If it's not used for those purposes, then -- then I'm not for sure what it would actually accomplish.

CHAIRMAN HALL: Used for -- for setting the DSIM?

MR. NELSON: Yes.

CHAIRMAN HALL: And then what -- what role would EM&V have in the process?

MR. NELSON: So I think that the way that the rule had been stated is that the TRM, the state-wide TRM would be used by the EM&V Auditor for the EM&V process. And so they would be using that as their -- their standard.

CHAIRMAN HALL: What is OPC's response to that?

DR. MARKE: Well, I mean, first of all, we'd be against that. But to -- to Mr. Nelson's point, the role of the EM&V at that point would really center on like what it does today on evaluation.

So it would be the attribution. Whether or not there's free riders or spillover or market effects.The issue really isn't how much this light bulb is worth. It's whether or not that light bulb would have been put in place absent this program or not. That's really where the contentious issue centers on.

CHAIRMAN HALL: Anybody else out there want to respond to that?

MR. OPITZ: So I'll just add that on one of the slides in -- in my discussion in and talked about the Commission's order in the 0055 case where they describe and it's in the discussion section of how the EM&V will work for the through-put disincentive and the earnings opportunity.

And so right now -- and -- and, Geoff, correct me if I'm mistaken, when we perform the EM&V, that information is used to update the measure values within the, I guess, utility specific TRM.

And then that is the baseline for them collecting this deemed value on the front end.

Now, of course, then that is subject to retrospective true-up based on what the next year shows.

And so I think -- we think that's a reasonable way to do it. And so to the extent where -- what I'm under -- understanding from -- from the comments of KCP&L is they might continue to do the update. But then they're just not going to go back and do the retrospective true-up.

CHAIRMAN HALL: Is that true?

MR. NELSON: You know, I think that's the way that we would think that it would work because, otherwise, you'd be -- some -- this -- this state-wide TRM would be setting a standard then that we're required to plan to, but then, you know, we're measured by something different later on.

And we don't really have the control over what -- what's in the TRM like we do now. So -- so absent like the -- working like that where the deemed savings would be used for the through-put disincentive and the earnings opportunity and setting the targets, if it's not used in that way, then -- then the current process probably works -- works better.

DR. MARKE: I'll just add one quick note.

I mean, the deemed savings, they're engineering estimates. You know, that's -- that's what it is. That's -- it's an idealized world. It's an average.

And we are -- especially with KCP&L, I mean, we're -- we've invested a lot of money in AMI technology. We're going to be moving that much more forward to real-time verification.

MR. NELSON: And I also think, too, I mean, just to clarify, I think the EM&V would still be used as far as setting the levels for the next version of the TRM, which would be used in the next cycle.

And I think to DE's point, the Division Of energy's that, you know, while it may not be perfect today that I -- we would that over time it would always be, you know, improving and be more accurate over time as well.

But -- but, I mean, we've been operating currently without a state-wide TRM. And it's -- it's been working, I think. We've had effective programs.

So we don't necessarily think we have to have a state-wide TRM. But --

CHAIRMAN HALL: But if we're going have

it, we've got to use it --
MR. NELSON: Right.
CHAIRMAN HALL: -- is what we're saying.
MR. NELSON: I think so. Yeah.
CHAIRMAN HALL: Can Staff respond?
MR. ROGERS: John Rogers with the Staff. I think we got it right in MEEIA Cycle 2 in terms of a through-put disincentive and the components incentive, and that being that we want to use full retrospective EM&V, even though it's after the fact to understand as best we can what actually happened as a result of these programs during independent EM&V evaluators report and then true-up the through-put disincentive.
And then the -- well, the earnings opportunity wouldn't be trued up, but the through-put disincentive would based upon retrospective EM&V and not deemed values.
CHAIRMAN HALL: So is it -- is it safe to say that use of the TRM equals elimination of retrospective EM&V for earnings opportunity and through-put? Or could -- or --
MR. ROGERS: There should --
CHAIRMAN HALL: Or could you do both?
MR. ROGERS: Having a TRM -- the TRM is

going to be and should be informed by EM&V. And bringing in independent contractor brings in objectivity and transparency that we may not otherwise have in terms of in forming the TRM, in forming potential studies and, also, trying to get our arms around what the lost sales really were that the utilities are being compensated for through the through-put disincentive.

MR. HYMAN: If I may --

JUDGE WOODRUFF: Come up -- come up to the microphone.

MR. HYMAN: Martin Hyman, Division of Energy. There are a lot of ideas flying around here. And I think, Chairman, you've got to the heart of the issue, which is are all of these ideas incompatible?

I don't believe they are, not entirely. I think you can have a state-wide TRM that is used for planning to some extent for evaluation, but also have EM&V that can go back and make sure that we were right and, as Barb was saying, acentotically move towards the state where the TRM is pretty darn -- you know, even more accurate.

CHAIRMAN HALL: All right. So I just want to make sure it -- so what I understand is that's your position. What at least KCP&L is saying is that if you are going to -- going to use a state-wide TRM, you would not do retrospective EM&V. You would take the deemed savings that came from the -- from the TRM and march forward.

And -- and we don't have to fight that out. I want to make sure I understand the positions. Is that correct?

MR. NELSON: I think that's correct.

MR. HYMAN: And one other thing. There's been some talk of how AMI is going to make a TRM obsolete, I guess is the idea. But I don't necessarily agree with that.

I think that AMI will allow you to more easily evaluate savings overall from a meter. But I think there are a few other steps in there to figure out which particular measure leads to which particular level of savings.

So I don't think AMI is our silver bullet on this one. It's very helpful, but it's not a silver.

MR. DAVIS: Excuse me, Chairman Hall. This is Bill Davis from Ameren Missouri. I'd just like to say that Ameren shares the same position as Kansas City Power & Light on this in terms of the value of the state-wide TRM.

And I'd also point out that the way it's set up right now is that in terms of use of the state-wide TRM, we would still do the EM&V because right now the TRM is just the measured level stuff where there's not a lot of disagreement right now.

And we still do that work on an annual basis and update the TRM and use those data points from that point forward. I mean, even right now, we don't do EM&V on every single measure every single year.

It just doesn't happen even right now. So there's a certain amount of deeming going on right now inherent in the process that's -- that we're going through. So I just wanted to point that out and say, you know, that we agree with where KCP&L is going and how we believe we can extract the most value out of the state-wide TRM.

CHAIRMAN HALL: Okay.

MR. OPITZ: I would just add on that to be clear, I -- I think there are some comments that would get rid of the true-up of the through-put disincentive.

But I have articulated in briefs in -- in various MEEIA cases that I believe that the statute requires that the through-put disincentive be trued up based on the results of the EM&V.

And so I think to the extent that -- that we're going down the field of -- of trying to enact rules that would permit the use of deemed savings for -- that aren't subject to true-up for the through-put disincentive, I think that there is the, I guess, ongoing and current Public Counsel position that that would a run afoul of the statute.

JUDGE WOODRUFF: Any other questions?

CHAIRMAN HALL: No.

JUDGE WOODRUFF: Anything else from KCP&L?

MR. FISCHER: Thank you.

MR. NELSON: Thank you.

JUDGE WOODRUFF: Thank you all. Next?

MS. JOHNSON: Thank you. Paula Johnson, attorney for Ameren Missouri. And just to let you know now, Bill Davis and I are going to tag team because he can get into a lot more of the details and address some of the details and questions that have come up.

I just want to hit some general high level -- high level areas from everybody. Again, I'm an attorney for Ameren. Bill Davis is our Director of

Energy Efficiency and Renewables.

And the main thing I want to do is kind of address in two parts, one just kind of do a little bit of level setting from the outside and then just hit four areas that we consider priority areas.

We just -- Bill just provided some of the our input during one of the -- regarding one of those, which is TRM, so I'll able to keep those comments much shorter than I originally had drafted, so I promise I'll try to be painless.

But the first thing I want to say is I'm just grateful that we have this opportunity to give comments on those rules after having several years of results of a lot of these programs to see where we can make refinements.

With newer programs in particular, you know, use of lessens learned to help inform what we do in the future is pretty vital. This comes with a big however, though.

Just because a change is possible doesn't necessarily mean it should be required. For example, if your car is making squealing noises and the engine starts over-heating, you look at it and possibly change your serpentine belt. You don't just automatically start rebuilding the engine as soon as it's open.

So the point of that is just we want to make sure we're using lessons learned to go forward and we're not just scrapping everything on the off chance something else might work better.

We feel like we have had pretty good success over the last five years of programming and getting this up and going. So let's continue that trend and see if we can do that and take it up another notch.

Now, something else I just wanted to note from kind of a level steady perspective, when we're looking at the overall comments of the case -- and I just absolutely love the people I work with because we are even actually working on color coding where everything was sitting and made us so happy.

There might be areas where some parties adjust an area. Other parties didn't. But there really -- there weren't a lot of big red blocks. Not as many as you might expect while we were doing this comparison.

As a matter of fact, where Staff and Ameren may have both commented on a specific provision of the rules, the most we ever got was yellow stuff that wouldn't probably have been our choice, but quo live with it.

Much of what Staff has proposed, we could live with, and we feel pretty good about that. Now, that said, I -- I just want to make it clear that even though we're finding a lot of alignment, anything where we did not -- and we would acquiesce to much of what Staff has put forward.

Where we had suggested a comment and Staff hasn't, we still are fully supporting that comment. So I just wanted to make sure that was clear as we moved on.

Back on track. There were some pretty drastic -- drastically different views in a few specific areas. You've heard most of them today already contained in all the parties comments.

We feel like our comments are pretty extensive. We tried to be very clear in how we red-lined everything and how we explained why we were taking certain positions.

So I just want to bring the four areas -- our particular priority and concern are just to make sure they kind of stay at the top of mind and they're generally, you know, the voluntary nature of MEEIA, which, again, has come up earlier, how

we're addressing budgets, how are we approaching
the TRMs, which I can shorten up now, and how we're
approaching our savings goals.

Starting with voluntariness of MEEIA, you
know, we -- we know parties such as NRDC have
argued for a change to the particular regulation
that we feel would effectively undermine the
voluntary nature of the program overall.

Now, the NRDC acknowledges that MEEIA is,
in fact, voluntary in its comments. But by
revising 4 CSR 240.20.093 to what's been re-labeled
as C -- you have that off the top of your head,
don't you?

But by revising that, they're effectively
making it mandatory. They're revising it so the
Commission is the sole entity able to accept or
reject a DSIM or any DSIM modifications. And it
removes any utility's discretion.

And a program just essentially is no
longer voluntary if the Commission can order the
utility to do it regardless of whether -- of the
utility's wishes.

Now, we are much more amenable to Staff's
revision on this section. They proposed to modify
the sentence so in the -- in the regulation so that

it reads the Commission retains the authority to approve acceptable to the utility or reject any proposed establishment, continuation, so on and so forth.

That language still appropriately acknowledges the voluntary nature of MEEIA and allows us to find an acceptable DSIM that the Commission is also comfortable enough to approve and -- and work on implementation.

So, arguably, that's how you can already read the statute. But we do think that Staff's suggested edit just makes it a lot more clear and clarifies it well.

On the topic of budgets, I do want to mention that we accidentally omitted one comment from our pleading. I'm sure that you were just hoping it would be about six pages longer than it actually was. I'm sorry. We left that out and couldn't fulfill that dream that, you know, everyone wants to put themselves to sleep at night with.

But like Staff, we support the 20 percent budget variance allowed in the existing rule. And I just apologize for omitting that from our comments. We do, however, think that --

CHAIRMAN HALL: Okay. So I'm sorry.
MS. JOHNSON: -- that is appropriate.
CHAIRMAN HALL: So Ameren supports keeping current 20 percent?
MS. JOHNSON: That's correct.
CHAIRMAN HALL: So who -- who supported pushing to 40, moving it to 40? I know it's in the proposed rule. I assumed it was the utilities. But -- no?
MR. ROGERS: No.
CHAIRMAN HALL: So who --
DR. MARKE: Not us.
CHAIRMAN HALL: Well, then that's going to be easy. Okay. All right.
MS. JOHNSON: I don't know where it came from, but we're happy with 20. So --
CHAIRMAN HALL: Okay. Thanks.
MS. JOHNSON: No. That's it. We do think the ability to have that wiggle room is vital. I mean, especially since this is new programming and there is -- there are still a lot of factors we can't anticipate and we might need to move and shift to make sure everything keeps moving appropriately.
You know, a lot can happen between the

approval of and the implementation of a plan. So we want to be able to keep that flexibility. You might have a situation where, for whatever reason, one program begins to slip in popularity or the technology makes big-time advancements in another area which makes it appropriate to do some shifting and shoveling over to make full use of that.

And we want to make sure that we have that ability to do so. If you're holding utilities to a strict you must completely and utterly comply with no variance to this budget, what you're probably going to end up doing is actually encouraging utilities to either implement very conservative portfolios. You aren't going to have any risk takers trying to go out and implement these new technologies. Or you're going to find people billing into their budgets a contingency for not using a budget.

And that's going to defeat the whole purpose. And so I think the flexibility is vital. And I note that, you know, even very mature and established plans like the one in Iowa allow for this type of flexibility. They have -- if you know you're going to modify your budget in a manner that it will affect at least 5 percent of the total portfolio or it will affect one particular program by 10 percent or more, then you have up until that point -- up until those percentages before you have to actually go in and request some modification.

So it's an accepted practice. And I think it's appropriate, especially since we're in a very evolving time right now, not just with our programs, but with the technologies and resources available.

TRM, our third priority, I just want to, you know, back what Bill Davis has already said and just kind of bring it down to four potential benefits we see from a state-wide one.

Now, again, we aren't proposing a requirement that a state-wide TRM supplant a utility specific one because there are certain things that are appropriate to tailor.

And as Bill acknowledged, I mean, right now, the TRM doesn't even anticipate all the programs that the utilities are actually doing. But, you know, having it there, we're getting consistency in practices to the extent we can between programs and administrators.

We have a common reference document to plan off of. We're getting the established deemed values for the measures, and those can be updated annually and hopefully in the long-term where lowering costs and controversies around the EM&V process.

So -- but I'm going to scrap everything else I had on that and move on. I think the next big area we wanted to hit, the fourth priority, is related to our savings goals.

You look at 4 CSR 240.20.092 EOO and the general guidelines in 20.094.2. Basically, it's -- the first part deals with a map and wrap definitions.

You know, the NRDC and Renew Missouri think we should just revise the definition of map and then go directly and delete wrap altogether. But the problem is those revisions still leave some things in place that are basically the theoretical high level.

I mean, we're looking at -- it -- we're not just -- excuse me. Their recommendations would not just drive the maximum cost efficiency. Basically, it's going to adopt ideal factors such as high incentives, short customer payback periods and favorable market conditions. Even with the revised definition, that's still what we come up with.

The wrap, however, the realistic conditions, gives us moderate incentives, realistic market conditions and longer customer payback periods.

Now, you know, there are two other areas of potential we look at, also. There's a technical potential where you adopt everything feasible and the economic potential where you adopt everything cost effective.

But you kind of get a broader brush when you're doing that. If you just modify map and did delete wrap, whether intentional not, you're removing the most realistic scenarios from the potential study.

The technical economic and map even revised would still just present all extreme positions. So we need to -- I think it's best that we keep all four so that we have the better, broader spectrum and we're making sure we anticipate everything can possibly anticipate.

Let's see. Now, NRDC had a reference supporting its changes. But even that reference acknowledged that -- and I'm going to quote -- quote in there, Map potential generally refers to assuming the most aggressive fully funded programs possible.

And this changes, also, assuming that the map meets the statutory definition of all costs effective demand side savings. But this ends up disregarding too much, including a recent Ameren Missouri filing about whether all customers in a class full benefit and that all customers in a class benefit is a requirement of the law.

So presupposing that map meets this requirement ignores more information that is actually used to make that determination like the company's IRP analysis.

And Bill Davis can very effectively -- since he's worked for Ameren Missouri both as far as the IRP and the energy efficiency program, he'll be able to give you a good -- a good overview of how those interactions go. So I'll save more comment on that for him.

But -- let's see. Now, there's another suggested change that NRDC made that I just fear is going to create more issues than they're intending to correct. And that's the one to 20.0942. The recommendations they're making in this particular section can imply, and that's -- that's one that talks about penalties and adverse conditions.

What I fear is that it can either -- the revisions can imply or be construed to allow for both adverse consequences and penalties for a utility when it fails to make its savings goals.

Now, they state they're only intending to state that adverse consequences may naturally occur and might be considered penalties in certain circumstances.

I know the -- you know, the intention where it should be in making that revision. But the revisions made to the rule to reflect this intent could be interpreted by Complainants and future Commissions without this knowledge and this background to allow this as a punishment.

So we're no longer just supported the stick -- or excuse me -- the carrots, so, you know, certain benefits we're running an effective program, but suddenly we have a stick for punishment for failing to meet certain criteria. And we want to avoid that.

Instead, I believe we can rely on interpretation to solve the issue. I mean, unless it's clearly impossible, you try to read statutory language so that it meshes. So you look at everything -- very sorry. You look at statutory language and the regulation together, and you try to interpret them so that you don't create a conflict unless that's just thoroughly impossible.

And in this case, I don't think that's impossible. You're looking at a goal for certain benefits. So I don't think that necessitates -- I think that means we can interpret the statute as it -- the regulation as it exists to get to the actual intent of what NRDC is proposing to do.

So -- plus, like the car analogy before, you don't want to fix something that isn't really broken. So I don't know that it's worth reopening -- or worth opening that up at this time.

Which kind of actually reminds me of something that came up earlier regarding some of the statutory interpretation questions. Like I said, for what it's worth, when we're looking at the MEEIA statute and how the rule is interpreted, it feels like some of the parties are trying to read the MEEIA statute in isolation.

And I really do not believe you can do that. The MEEIA statute is just one of an array of laws available to the Commission to enable it to regulate the utilities.

So -- and as I said earlier, when you read statutes and regulations, you try to first read them assuming that the drafters knew what they were doing and did not intend to conflict unless you get into there and just find that there's no way to resolve it.

Then you take the next step. But we don't need to take this next step. But we have to read the statutes holistically. We can't piece-meal everything out and assume it has no impact on anything else.

For example, you can't -- you have to remember that the MEEIA statute says that the goal is to pursue all costs efficient, energy efficiency options.

But we still have to do that in a manner that does not interfere with our statutory obligations to provide safe and reliable energy and it's provided with just and reasonable rates.

So I just wanted to remind you that with all the laws and regulations at your disposal, I just want to remind you to look at them holistically when you're evaluating them.

That ends what I had prepared. And like I said, Bill Davis is here. We're both able -- happy to answer any questions. And that will be it. I will quit my rambling.

JUDGE WOODRUFF: Okay. Any questions, Mr. Chairman?

CHAIRMAN HALL: Yeah. In -- in Ameren's last MEEIA application, the Commission rejected -- rejected the application. Ameren ultimately filed another one, which was approved.

The one that was rejected, I believe that there was language in -- in the Commission's order connecting supply side -- a reduction in supply side investment to the earnings opportunity. Am I remembering that correctly?

MR. DAVIS: Chairman, there was a lot of discussion about that. And I think the idea was to make sure that there wasn't any opportunity for double recovery on those earnings s opportunity.

So I didn't -- the idea is to create some linkage there. Now, how precise that was, I think, -- I think is still -- I think there's still room for us to move around in. But, yes, absolutely.

CHAIRMAN HALL: Okay. So what is the status of the proposed franchise renewal, from your perspective on -- on that issue, on -- on connecting earnings opportunities with an actual reduction in supply side investment?

MR. DAVIS: In the way the rules are drafted now, I think it -- I think it leaves it open because the way it's worded my recollection is that the utility needs to -- needs to propose an earnings opportunity.

Now, the Office of Public Counsel had provided some comments where they wanted that linked specifically to supply side investments.

And I understand why they want to do that. I just think that from a practical standpoint over a long period of time that can be difficult to achieve because the resource plans are constantly changing.

CHAIRMAN HALL: Or, actually, it would be easier to show over the long-term. It would be more difficult to show over the short-term. Isn't that essentially what you're saying?

MR. DAVIS: I think the challenge is, though, as you're going through time, your base plan already includes some of those changes and you're never really going back to say, Well, what would my plan be now if I hadn't done something ten years ago?

And that's not that -- that particular

type of analysis is not part of the resource planning process.

CHAIRMAN HALL: Can OPC respond to that?

DR. MARKE: I mean, I'll try. You know, Mr. Davis makes a good point. This is -- this is a larger issue that I think we're -- we're wrestling with even looking at the preliminary IRP results of some of the utilities, I mean, trying to make sense of how does MEEIA work in a world where we're very long on capacity?

And we're adding on -- and limited growth and we're adding on renewables. Right? So how does it make sense within that context? I -- I defer to the statute where it says to value the demand side on an equal footing as the supply side investment.

We have more comfort when we can point to something and say, That's the investment we're talking about, that's a tangible product that we plan on putting into place absent doing these energy efficiency programs.

It's -- but to Mr. Davis' point, I mean, it is an evolving landscape. And we're getting better at this as we move forward.

MR. DAVIS: And I'd also point out that it is difficult for us, and we had a lot of discussion about this when we were going through our second MEEIA approval about how to attribute that future demand -- or I'm sorry -- that future deferred supply side resource to what we're doing today because from one standpoint, it all -- energy efficiency builds on itself, right?

If I need multiple energy efficiency cycles to ultimately defer a future supply side resource, how much do I attribute to what I'm doing today?

From one standpoint, I couldn't accomplish that deferral without doing something today. From another standpoint, it contributes just a certain portion of it, and that's where we've had trouble reconciling and that's why I said that, yes, we're trying to link it to supply side resource, but there -- we haven't seen a formula that you plug into some inputs and you get the output and the output earnings opportunity.

DR. MARKE: Just to piggy back one thing off of that, useful life of a measure is a lot shorter than the useful life of a power plant. So, I mean, if we're not building supply side for 20 years, right? That 20-year life of an HVAC, we might not get 20 years out of an HVAC. So are we actually deferring anything, you know, at that point?

That's -- those are the issues we are wrestling with. Even -- you know, even with Ameren's Cycle 2 approval, it was predicated on the fact that there would be a Cycle 3.

And, you know, I would just caution that we -- we agreed to that -- we agreed to Cycle 2, that there would have to be a Cycle 3. And not a couple weeks later, Noranda went down. So we lost an enormous amount of load.

That's the sort of, you know, moving targets that we're -- that we're wrestling with.

MR. DAVIS: And, frankly, Chairman, this is probably, you know, based on everyone's comments and the other stuff that we've talked about, the link to the IRP was really what I was going to limit the scope of my comments to. Right?

And as we think about those things and value that energy efficiency provides, one other value it provides is they -- how it impacts the risk profile to customers and those investments.

So when you look the our-long term

resource planning process, we may look at many different types of plans and many different types of future outcomes.

And what we see from energy efficiency is doing stuff now actually provides a -- you know, energy efficiency becomes mitigation against future friction in many ways with, you know, potential retirement shifting around in time.

And we constantly see those sorts of things shifting as we go through the resource planning process. So, really, as we think about the integrated resource planning process and its connection to MEEIA, the way I see it is that the integrated resource planning process provides the necessary context to help decide what we should be doing with MEEIA in the short-term. Right?

Because MEEIA is, you know, really what I would consider short/medium term what are we going to be doing over, let's say, the next three to five years whereas the integrated resource plan is what am I looking at, what sort of uncertainties am I looking at over the next 20 years.

You see that the integrated resource plan has a plethora of performance metrics that we look at, whether it's rates, whether it's revenue requirement, whether it's carbon emissions, whether it's S02 emissions. It also includes decision factors that the utility is looking at to make its decision on what its preferred plan is.

And all of that is what provides the context. Let me give you one example around that as well when we talk about realistic achievable potential versus maximum achievable potential. All right?

We analyze both of those plans in the integrated resource planning process. The interesting thing about that is if I look at our latest potential study, we showed I think it was over 18 years that for realistic achievable potential, we can get about 13 percent savings on energy.

But maximum achievable potential was about 16 percent. So we get about a 23 percent adder if we do maximum achievable potential. But from a cost side, we were going from about $180 million a year to up to three hundred million dollars a year. So both of those portfolios are cost effective. All right?

But the integrated resource planning process gives us the full context on which to evaluate those two different types of portfolios.

CHAIRMAN HALL: Okay. Thank you.

JUDGE WOODRUFF: Anything else from Ameren?

MS. JOHNSON: No. Thank you.

JUDGE WOODRUFF: Anyone else other than Staff wishing to make a comment? All right. We'll go with Staff next. But we'll take a break first. We'll come back at 3:05.

(Break in proceedings.)

JUDGE WOODRUFF: We're back from our break, and we're ready for Staff's comments.

MR. BERLIN: Good afternoon. May it please the Commission. I'm Bob Berlin, Staff Counsel. And I'm going to give a few over-arching highlights regarding Staff's concerns and its submitted comments.

I will be followed by John Rogers who will address certain key operational points that touch upon the comments submitted by the parties.

MEEIA is now in its fifth year having just completed the first program year of Cycle 2. There's absolutely no question from those involved MEEIA that it is challenging.

Why is that? MEEIA is not a long statute.

It would seem that it should not be that hard. Many states appear to more easily achieve more aggressive energy and demand savings.

So what's different in Missouri that makes MEEIA so challenging? First, most states have a legal mandate for utilities to achieve certain energy and demand savings targets. Missouri does not have a legal mandate. MEEIA is voluntary.

Second, because MEEIA is a voluntary undertaking by the utility, compliance with MEEIA requirements becomes a balancing act because MEEIA seems, on the surface, to promise everything to everyone.

Like it or not, MEEIA involves a unique balancing act. On one hand, utilities expect to receive all program costs, all lost sales due to energy efficiency, which is the through-put disincentive, and an earnings opportunity that is equivalent to that of the utility's lost opportunity to invest in supply side resources.

On the other hand, MEEIA must provide benefits to all customers, even those customers who pay for MEEIA's costs every month through bill payments but do not participate directly in any of the MEEIA programs.

So complicating the challenge of balancing so many diverse interests is the fact that customer benefits, specifically benefits for customer who's do not participate in programs, are primarily realized over the life of each energy efficiency measure. And that can be one year or up to 20 years or more than 20 years depending on the specific measure.

While MEEIA's costs are relatively certain and are covered upfront, the benefits for customers occur over many years and can never be measured with certainty.

Staff believes that its recommendations contained in its comments have achieved the goal of balancing these diverse interests in a way that serves the public interests and follows the MEEIA statute.

While not perfect and while not the only solution, Staff's recommendations represent a good reference point for the Commission to use when considering the comments of other parties during its deliberations in this rule-making.

Throughout the comment process, Staff's goal has been to provide clarity and consistency to proposed rule changes and to ensure that the published proposed rules and amendments follow the MEEIA statute.

To this end, I will point out some general concerns Staff has, concerns that are reflected in its submitted comments and recommended modifications.

First, definitions must follow the statute. They must follow what was published in the register. Staff is concerned about any changes to the rules that might bind the Commission to funding third party administrators or funding outside consultants.

Staff recognizes that MEEIA is ultimately a voluntary program for electric utilities, and Staff believes that the proposed changes are helpful in modernizing MEEIA implementation based on what we have learned in Cycle 1 and Cycle 2.

However, because these rules attempt to codify what we know at this point in time, we must recognize that variances from these rules for future MEEIA programs will likely still be necessary, but hopefully not as many as in the past.

Why would variances be needed? Well, the world of energy efficiency programs is a very fast changing one, and, ultimately, again, MEEIA is voluntary for the electric utilities.

And before I turn this over to John Rogers, I want to emphasize that Staff's written comments promote a rule and amendments that adheres strictly to the MEEIA statutes requirements, specifically, the MEEIA statutes requirements that a utility's ability to recover in rates for its MEEIA programs require three specific things.

The programs must be approved by the Commission. The programs must result in energy or demand savings. And the programs are beneficial to all customers in the customer class in which the programs are proposed regardless of whether the programs are used by all customers.

And we recognize that charges for MEEIA programs come at a significant cost. And whether they are shown in a charge on a customer's bill that is called a DSIM or DSIM or an EEIC, the customer is still obligated to pay that charge whether or not the customer participates in any of the MEEIA programs. And we know most customers do not participate.

Before I turn this over to John Rogers, I'd like to just make two final points. First, on closer review of the proposed rule .092, we agree with Ameren that it does require a variance provision at the very end.

Our review of it showed that it wasn't there, but it's there in the 093 and 094. And, secondly, Chairman Hall asked a question on budgets and we looked back through Staff's notes and found that it was KCP&L that had proposed the 40 percent overage limit to the rule, just as a matter of information.

So that concludes my opening comments. And I will be followed by John Rogers who will address some specific operating concerns.

MR. ROGERS: John Rogers, Commission Staff. Everybody having fun yet? You know, as I sat here, I was reflecting on I've been here eight years.

Seven years ago, my boss called me in to a conference room and handed me a copy of the MEEIA statute which I was barely aware of. And she said, John, you have 90 days to provide proposed rules to the Commission. I thought she was kidding. So this -- we've come a long way, like Bob said.

And I think everybody in this room will appreciate and I appreciate all of the -- the diverse interests that the parties have, the creativity and the ideas they have, you know, to move this in their direction a little bit this way and that way. That's just the way this works.

Staff has tried to come up with proposed recommended modifications that maintain a balance that we think is appropriate under the statute and given our situation after just four complete years of MEEIA. We're just in the fifth year.

I'll now address not our recommendations at all but just a number of things that I've seen in the recommendations of other parties and I've heard today.

The first thing I'd like to cover is Chapter 22. MEEIA is voluntary. Nobody has to do it -- none of the utilities have to do anything at all on MEEIA. Utilities do have to do Chapter 22 under the Commission rules. And every year, they have to do a train compliance filing. And -- or every three years. Excuse me.

And every year, they have to provide an update and confirm that a their adopted preferred resource plan has either changed or it's not changed. If it's changed, they have to, of course, follow any requirements that they have to meet.

I've worked as a Utility Manager for 34 years and have a long history with resource planning. We have, in Missouri, a best practice for resource planning.

The level of input that goes into the analysis, the analysis itself, the stakeholder process is top notch. And I have a lot of respect for that because it's not done that way in other states.

I disagree with removing Chapter 22 from MEEIA in any -- the linkage entirely. To do that would suggest that we come up with some method of deciding what all cost effective demand side savings means. And we take that and then we solve for whatever resources might we need.

We don't have a mandate for energy efficiency. Chapter 22 has to include -- has to comply with the mandate for the renewable energy standard because it is a legal mandate.

What Chapter 22 allows us to do very -- very precisely is to determine where that sweet spot is, the present value of revenue requirements, by testing a robust variety of alternative resource plans with accommodations of demand side resources and different alternative resource plans, supply side resources.

And through the integrated resource analysis, Chapter 22 determines what the utility cost is for every hour for every day for at least 20 years.

So it's not -- not a number this we pick out of the -- the thin air. And it takes utilities a year to a year and a half to perform the compliance filing update. We should not ignore that. That's my definition of cost effective.

You take your alternative resource plans through the integrated resource analysis, and there are a lot of performance metrics that come out of the process. It's not just revenue requirements. It's rates every year. It's a financial performance metrics like cash flow and so forth.

That's what the utility decision makers look at when they pick and adopt a preferred resource plan. You don't start with the potential and define what an inflated maximum achievable potential is and say, Well, we want to define that as goal of MEEIA.

It doesn't matter how you define wrap or map or anything else. It's how you define demand side resources, evaluate those equally to supply side resources. You can only do that in -- in the integrated resource analysis in Chapter 22.

Chapter 22, by the way, and Bill hit on this a little bit, allows us to evaluate the impact on costs for either accelerating retirement of supply side resources or postponing the investment in new supply side resources as a result of demand side resources.

You can run various alternatives and you can quantify that specifically. In this area, I think the Commission may want to consider an enhancement that Staff would like to propose at this time. And I'll ask Staff Counsel to distribute an exhibit.

JUDGE WOODRUFF: We'll mark this as Exhibit 4.

MR. ROGERS: Chairman Hall, you had some questions of Bill Davis and identified this as an opportunity to enhance the results of our experience in Cycle 2, came around to the fact that being to value in the earnings opportunity, you really have to understand the lost earnings opportunity as a result of the shift in traditional investments and supply side resources since that is how utilities earn today.

And so the language that we're proposing to be amended to the Amended Rule 094(3)(C) would be a new Item 4, and this is just input. This is just a filing requirement to further demonstrate what the value of the plan is.

And so the -- the new filing requirement would be to provide the annual impact on the utility's earnings opportunity due to postponement of new supply side resources and early retirement of existing supply side resources as a result of all demand side programs included in the application. So I'd ask that you give that some consideration during your rule-making.

CHAIRMAN HALL: What -- what does the annual impact on the utility's earning opportunity mean?

MR. ROGERS: There's enough information in the output of the integrated resource analysis, and I believe the utilities can use this to -- I -- it's not a direct output, but they can use that to quantify year by year by year what the impact and earnings would be under a demand side portfolio.

CHAIRMAN HALL: Would that be using all of the assumptions and data contained in the application?

MR. ROGERS: Yes. Because what's in the -- what's in the application for the demand side resources should be what's in the adopted preferred resource plan to demand side resources. And the utilities are always going to have a no DSM case and well as a wrap and map.

And what we've been pushing for is to add variations of wrap and map so that we can see more data points to determine where the sweet -- sweet spot is. Where is the lowest utility cost?

Let me make one more comment on this. In Cycle 2, we have a matrix for the earnings opportunity. And there's a pay-out for energy savings and demand savings.

For Cycle 2, the earnings opportunity is heavily weighted towards the savings of demand from the program from both energy efficiency and demand response programs.

So we -- the parties to Cycle 2 were actually working back towards something like that. This is really expressing what we actually did in -- in the Cycle 2 negotiations. And we came up with one number, basically, by looking at data and coming to a present value.

CHAIRMAN HALL: Couldn't we effectuate

this by mandating that -- that it's a reduction in peak demand that should be the main criteria for setting the earnings opportunity in the first place?

MR. ROGERS: You can do that in your rule-making, I guess. Right now, it's not prescriptive. You know, and I think -- but there's a -- you know, expressed their interest in not making it prescriptive.

And I'm fine with that. I think we should keep our opportunities open and not lock ourselves down. That was one of the problems that we had with the existing rules.

The existing rules pointed us back to sharing the net shared benefit for the performance incentive. In retro -- you know, in hindsight, that wasn't the best thing to do.

I think we're getting -- we have a much better business model as a result of the Cycle 2 orders than we had when we -- when we began Cycle 1.

Staff is interested in using avoided cost from the adopted preferred resource plan and not deeming it. There's some expression by some parties to say, Okay, well, that's fine, but we're going to keep the avoided cost from our application, and we think that EM&V is -- should be performed to its fullest by an independent evaluator using the best data -- best data available.

We have a lot of good data coming from the programs and the program costs. But to value the programs, we want the best data at that point as well. And that means the most current avoided costs should be from the adopted preferred resource plan and not deemed or assumed to be fixed at the level that was in the application.

On -- Mr. Marke brought up a recommendation to value benefits using the TRC. I have no problem with that. But I would say add that to the UCT and not take the UCT out entirely.

Every benefit cost analysis has benefits and it has costs and all you're doing is subtracting the cost from the benefits to get the net benefits. And so I'm not -- I'm fine with the change that he suggested. The TRC benefits. But I would be -- want to keep in the rule the UCT benefits at the same time. They're both good data points.

On opt-out, kind of doing this on the fly pause some of this is hard to really get your mind around. We're thinking about it as we heard comments here.

I have a concern from this Threshold 1 where we have five megawatts in saying that it can be the aggregate of all the customers accounts when five megawatts is an automatic out.

All you have to say is, I've got five megawatts, I'm Wal-Mart, could be anybody else, and I have a lot of accounts, and I can add up all my demand, and I get more than five megawatts, I'm out.

They may not have a program at all. Wal-Mart does. I know they do. But there's other large companies that wouldn't have any problem at all aggregating five megawatts and coming in and saying -- oops. Excuse me. Here I am and the utility has verified that all my accounts have five megawatts, I want to go out. They may not have a single program. Or a single measure installed. We'd just provide that for the record.

JUDGE WOODRUFF: Mr. Rogers, what other kind of companies other than Wal-Mart would be in that kind of situation?

MR. ROGERS: There's a lot of

commercial --
JUDGE WOODRUFF: Other retail stores?
MR. ROGERS: Industrial customers.
JUDGE WOODRUFF: Like a quarry that had five locations or something?
MR. ROGERS: Yeah. Yeah. Because just different locations, and it could be a large number of locations. I think you can --
JUDGE WOODRUFF: I can see that.
MR. ROGERS: -- appreciate that.
JUDGE WOODRUFF: All right.
MR. ROGERS: Okay. The idea that we use a -- the average savings from the non-residential customers as a benchmark or for opting out --
CHAIRMAN HALL: Okay. So -- oh, I'm sorry. Keep going.
MR. ROGERS: There's a suggestion -- and I didn't realize where the 5 percent came from, and I think it was KCP&L's comments. But the idea that we take the average savings for, say, the non-residential customers and say that's -- that's the benchmark. If you can save more than that, then you passed the threshold.
When -- if the 5 percent is the average for all non-residential customers, I think that the

benchmark's probably too low because, by definition, that's the average.

And we're looking for something more than that to qualify the opt-out, I think. We're -- we're still kind of struggling with -- with that one. But, you know, a lot of this is being done as I participate today.

CHAIRMAN HALL: Mr. Rogers, what's -- what's wrong with Wal-Mart's proposal from -- from your perspective that once -- once a -- an opt-out customer has been so declared that -- that it can maintain that?

MR. ROGERS: Right. That's a tough one. I -- I can appreciate the -- the administrative work that goes behind that because my staff has to review those requests to opt out. And it's a lot of work.

I think one way to look at it is those utilities have an opportunity to opt back in once they're out. They can revoke their -- their opt-out. They have that option after three years.

So if they have the opportunity to come back in, I think there should be some recognition that, as time goes by, programs change. There may be some new technologies, who knows, five years from now, that there's a lot more available through the utility programs for savings than we're -- we're used to seeing.

And those customers may decide they want to come back in to get some of that good stuff. So I -- I don't know. That -- that is -- it's not -- the requirement to reapply was not something that Staff initiated. But I can -- I can appreciate it from both perspectives.

CHAIRMAN HALL: Have you reviewed the -- the exhibit that Wal-Mart submitted? I don't have the number in front of me.

MR. WOODSMALL: Three.

CHAIRMAN HALL: Three. If you could look at the last page, the third concern at the bottom. I was wondering if you could just comment on -- and I know Mr. Woodsmall said that these numbers were -- were -- I can't remember --

Mr. WOODSMALL: Hypothetical.

CHAIRMAN HALL: Hypothetical. But can you -- can you give me some sense as to how -- how realistic these numbers are, if they -- so -- because at least to me, I don't know anything about the numbers. But the concept makes some sense to me that -- that -- that you let the customer stay out until savings that -- that it's achieving are no longer equal or greater than the -- than the savings expected from the utility provided programs. I just can't tell if these numbers make since.

MR. ROGERS: And as I stand here, I can't either.

CHAIRMAN HALL: Okay. Well, what about the concept?

MR. ROGERS: The concept, I think, can work once you have a baseline that you're starting from. But right now, we don't because we -- that's never been a part of the opt-out process was to actually develop that baseline and to quantify the savings that specifically.

JUDGE WOODRUFF: Okay.

MS. DIETRICH: If I may? Natelle Dietrich, Commission Staff Director. On the concept, I -- I agree with Mr. Rogers.

I think the concept would work. The only concern I had with Mr. Woodsmall's proposal was that it would be up to Staff to make the determination and -- and let Wal-Mart or whoever it might be know that they are over the threshold.

And I'm not sure how we would keep track of that, especially as Mr. Fortson indicated earlier that we're talking about potentially 30 customers and having to keep track of all the different utilities and that type of thing.

So that -- that would be my only concern about it is the process that Staff would be responsible for that determination and notifying the customers.

CHAIRMAN HALL: Okay. Can you respond to that?

MR. WOODSMALL: Basically, what we're talking about is whether there is an administrative headache behind it. It seems to me there is a much greater administrative headache behind Staff having to evaluate this every year, every MEEIA cycle rather than putting it off until there is some showing that the utility savings has exceeded the customer.

So there is much less of administrative headache under my proposal. As far as the contact, I think you require something -- if the customer doesn't provide or maintain an accurate contact information, that's on them.

You know, I don't expect Staff to continue to follow around ABC Grocery Store Company to make sure that they have a proper contact. You know, the same thing happens in rate cases. Or anything else.

If the company doesn't -- if the party doesn't maintain a proper contact, that's on them. So I -- I don't expect the -- the Staff to maintain up-to-date contact information.

You send it to the last known contact. If they don't follow up, that's on them.

MR. ROGERS: I think that's everything I wanted to say. Or as Forest would say, That's all I have to say about that.

JUDGE WOODRUFF: I do have a question that's occurred to me. And it's about the opt-out of large customers. What's the financial impact on the utility of those opt-outs?

MR. ROGERS: The utility is not affected, really. The ones that are affected are the customers that have not opted out.

So the cost from the MEEIA programs right now are allocated for residential programs. We try to put all the cost on residential customers. Non-residential all go on the non-residential customers.

To the extent that opt-outs occur, the

remaining non-residential customers have to make up the cost.

JUDGE WOODRUFF: So it's really neutral to the --

MR. ROGERS: It's neutral to the utility.

JUDGE WOODRUFF: Okay. I see nods of agreement in the audience there. All right. That's the only question I had on it. Anything else, Mr. Chairman?

CHAIRMAN HALL: I don't believe so.

MR. DAVIS: Judge, can I make one more sent comment real quick? Mr. Rogers up OPC's proposal to include the earnings opportunity in the total resource cost test.

I guess maybe this is a little bit of a question or maybe just a way to manage expectations on when that's done. Because upfront, when we submit the plan, I think that's an easy thing to do.

But as we're going through the process, I think it becomes a little bit more difficult just in terms of what people are expecting to see. So, for example, at the end of the Program Year 1, we provide an updated total resource cost test.

But at that time, we don't know what our performance is for that earnings opportunity. So when we calculate the total resource cost test at that point in time, I'm just kind of curious if folks are thinking we need to include the earnings opportunity or if that's something that waits till the end.

And I'll just have one more thing on this. I mean, this was an issue for us in the first cycle, more so just because of how -- what was going on with shared net benefits. That's behind us now. So I feel like this is just kind of a minor thing that we could definitely work through.

DR. MARKE: I would just offer that I would agree. It sort of a hold-over from Cycle 1. And it did make sense with the net shared benefits to answer Mr. Davis' question.

I think OPC kind of goes in with -- with the impression that the company's probably going to meet their earnings opportunity. So, you know, if they wanted to -- we'd be amenable to running the test with the earnings opportunity imbedded into the TRC.

But also with the knowledge that that's going to probably bring down the TRC. I don't know -- knowing where -- could there be a situation where you might have a measure or program that would not otherwise meet the TRC? I don't think so.

I mean, I don't know. I feel like we're at a good place right now. I don't -- you know, clearly, other people could have these positions in the future. But I'll -- I'll jump on it if --

MR. ROGERS: I think from my perspective, more important than that is the fact that the earnings opportunity is part of the utility cost in the integrated resource analysis.

DR. MARKE: Correct.

MR. ROGERS: As long as it's there and we also have that through-put disincentive in the integrated resource analysis because it's perfect rate-making of all utility costs, that's another reason why Chapter 22 gives us the very best view of what the cost of these programs are.

DR. MARKE: If -- if we wanted to eliminate a definition for net shared benefits altogether, that might alleviate a lot of our concerns. That -- that definition exists right there.

MR. ROGERS: Staff does recommend that definition be changed to just net benefits.

DR. MARKE: Okay.

MR. ROGERS: It only occurs three places in the proposed rule and amendments, and we've changed -- we recommended that -- that there be no more net shared benefits, only net benefits.

DR. MARKE: That alleviates a lot of concerns, too.

MR. DAVIS: Yeah. I mean, I just brought it up because when I read the comments, the proposal as a practitioner looking at it thinking, Well, we can do that, but what are other expecting? Because, frankly, we also don't, you know, like pro rate earnings opportunity down to the program level. We don't pro-rate it down to the annual level.

So I think at portfolio level over the horizon, no problem at all. We're doing it in the integration analysis, no problem at all.

JUDGE WOODRUFF: Mr. Hyman, you wanted to be recognized? Get to a microphone, though.

MR. HYMAN: Sorry. I don't want to keep you standing too much longer. I just wanted to add something to the question of opt-outs and what the effect is.

I agree with Mr. Rogers. Part of the

effect is that, you know, commercial industrial customers end up having to pay higher rates for the same set of programs.

The flip side of that, though, is that when utilities do their potential studies, they often -- they often make some adjustments for opt-out customers and their estimates of potential.

Now, while that might make some sense just immediately, if you think a little longer about it, that means that you're not looking at what kinds of potential there is for additional savings from those customers.

Now, if the customers have already achieved those savings, that's not necessarily a big deal. But I think it gets back to the crux of the issue of how do we make sure that, you know, subject to the statutes provision for opt-outs that we're not foregoing some savings that we might otherwise have that might otherwise even draw some customers back into MEEIA.

JUDGE WOODRUFF: Okay. All right. Well, thank you all for coming today. It's been a long hearing, and I think very productive. And with that, we are adjourned.

(The proceedings were concluded at 3:45 p.m. on

May 4, 2017.)

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EXHIBITS

(Original exhibits were retained by the Public Service Commission.)

REPORTER'S CERTIFICATE

STATE OF MISSOURI)
)ss.
COUNTY OF OSAGE)

I, Monnie S. Mealy, Certified Shorthand Reporter, Certified Court Reporter #0538, and Registered Professional Reporter, within and for the State of Missouri, do hereby certify that I was personally present at the proceedings as set forth in the caption sheet hereof; that I then and there took down in stenotype the proceedings had at said time and was thereafter transcribed by me, is fully and accurately set forth in the preceding pages.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on ________________________, 2017.

Monnie S. Mealy

Monnie S. Mealy, CSR, CCR #0538
Registered Professional Reporter

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