

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Rulemaking Hearing
6
7 May 4, 2017
8 Jefferson City, Missouri
9 Volume 1
10 In the Matter of Proposed)
11 Amendments to the Missouri)Case No.
12 Public Service Commission's)EX-2016-0334
13 Rules Relative to the Missouri)
14 Energy Efficiency Investment Act.)

15 JUDGE MORRIS L. WOODRUFF, Presiding
16 CHIEF REGULATORY LAW JUDGE

17 COMMISSIONERS PRESENT:
18 Mr. Hall, Chairman

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

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

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

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

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

23 People who made comments are certainly --
24 or written -- gave us written comments are
25 certainly welcome to speak again today. Don't feel

1 like you need to repeat your comments, except as
2 you wish to emphasize them.

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

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

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

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

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

25 So what I want to ask you is does it -- do

1 you want to delay the effective date of these
2 Chapter 20 rules to match the rescission of the
3 Chapter 3 rules?

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

8 The effective date of these rule changes
9 would probably be October 30th. So we'd have about
10 30 days where we would have inconsistent rules out
11 there. But it is possible also to delay the
12 effective date of these rules to match the
13 effective date of the rescissions.

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

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

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

24 JUDGE WOODRUFF: I don't see anybody else
25 coming forward, so go ahead. And first off, if you

1 will tell us who you are and who you represent.

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

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

14 And this progress is exemplified by our
15 most improved status in the American Council for an
16 Energy Efficient Economy's yearly score card
17 rating.

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

23 Part of achieving all cost effective
24 savings will be the use of a state-wide technical
25 reference manual, or TRM, for as many investor

1 owned utilities as possible along with a
2 collaborative update process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 We also strongly support great language

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

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

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

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

22 We also agree with stakeholders, such as
23 Wal-Mart, that there should be greater transparency
24 and certainty in the opt-out process. As it
25 stands, there is not really any sort of clear

1 expectation of what customers must do to opt-out.

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

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

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

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

20 The IRP process in the MEEIA statute are
21 fundamentally incompatible. The MEEIA statute
22 focuses on the achievement of all cost effective
23 demand side savings where the TRC is a preferred
24 test while the IRP process focuses on, typically,
25 least cost resource planning. And that's not

1 appropriate when you need to be talking about best
2 cost resource planning.

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

6 JUDGE WOODRUFF: Chairman have any
7 questions?

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

10 MR. HYMAN: Good morning, sir.

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

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

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

24 CHAIRMAN HALL: Okay. Slow down. So my
25 understanding of the IRP process is that it's -- it

1 is designed to develop a preferred resource plan.
2 And -- and, yes, that may be the least cost. I
3 understand that.

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

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

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

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

24 The most cost effective program may have
25 higher costs than net present value MEEIA

1 requirement, but it also may have higher benefits
2 than you would get otherwise.

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

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

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

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

25 MR. HYMAN: So I think that what should

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

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

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

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

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

1 design ultimately.

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

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

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

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

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

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

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

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

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

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

17 CHAIRMAN HALL: It's the preferred?

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

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

21 MR. ROGERS: Not specified in MEEIA.

22 CHAIRMAN HALL: Okay.

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

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

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

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

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

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

24 CHAIRMAN HALL: Okay. Well, let me -- let
25 me switch gears for a moment and go into the

1 voluntary targets in the -- in the rule. What do
2 you think the purpose of those are?

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

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

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

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

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

23 And they came back taking our voluntary
24 targets as -- as more than voluntary. And just as
25 one example for me where -- where these voluntary

1 targets do, in fact, cause some -- some confusion,
2 explain to me how using them as benchmarks is
3 valuable.

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

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

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

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

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

1 them.

2 CHAIRMAN HALL: Okay.

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

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

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

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

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

1 CHAIRMAN HALL: Uh-huh.

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

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

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

9 CHAIRMAN HALL: You didn't miss much.

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

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

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

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

23 And it is a very good product with a lot
24 of measures. Even includes some gas savings for
25 some measures. And we think that kind of tool,

1 which we have proven can be done through a
2 collaborative effort, is very helpful for providing
3 certainty.

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

9 MR. HYMAN: PDF?

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

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

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

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

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

4 CHAIRMAN HALL: Okay. Thank you.

5 MR. HYMAN: Thank you.

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

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

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

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

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

24 So I want to strongly encourage the
25 Commission to maintain these additions where they

1 make sense and not succumb to some pressure of
2 reverting back to current language, or perhaps even
3 worse, weakening MEEIA even further than the status
4 quo as some parties have recommended in some cases.

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

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

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

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

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

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

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

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

23 And Staff and other parties may object on
24 -- on the practical grounds of these -- using these
25 programs and measures. So I'd urge the Commission

1 to maintain that definition.

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

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

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

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

23 MR. LINHARES: Yeah. Well, there's -- so
24 someone like Lisa Schumotz, I believe there's
25 papers filed in -- in this docket. And if there's

1 not, we can provide those.

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

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

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

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

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

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

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

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

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

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

25 CHAIRMAN HALL: Okay.

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

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

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

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

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

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

25 We can argue about these. Perhaps the

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

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

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

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

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

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

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

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

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

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

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

24 So I would really encourage those goals to
25 stay in there and keep that link between approval

1 of a portfolio and whether or not it's achieving
2 all cost effective savings.

3 Quickly, I want to note the -- the issue
4 of program budgets and exceeding them by 20
5 percent. I believe the -- the proposed rule says
6 40 percent.

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

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

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

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

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

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

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

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

23 They also raise a concern about not using
24 -- not relying on deemed savings. I have a couple
25 reactions here. One is that the TRM -- the

1 state-wide TRM, there's been a lot of effort that's
2 gone into that. We've talked about it forever. We
3 finally have a product. Twenty-six states, so a
4 majority of states are using these documents. A
5 majority of states are using a state-wide approach
6 to technical reference manuals.

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

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

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

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

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

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

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

22 It -- it very well may be the best place
23 to deal with resource planning for demand side
24 portfolios. The -- the issue here is we probably
25 shouldn't have an overly legalistic link between

1 the two given that MEEIA's goal is not to have a
2 level of savings chosen by a preferred resource
3 plan but, rather, to accomplish all cost effective
4 energy savings. So those -- those are different
5 things.

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

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

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

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

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

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

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

8 MR. LINHARES: Sure.

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

12 MR. WOODSMALL: 30 to 40.

13 CHAIRMAN HALL: 30 to 40 state-wide.

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

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

18 MR. ROGERS: All three.

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

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

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

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

1 fault.

2 JUDGE WOODRUFF: I just need to clarify
3 who was speaking. The first speaker was David
4 Woodsmall.

5 MR. WOODSMALL: Correct.

6 JUDGE WOODRUFF: And in the back?

7 MR. FORTSON: Brad Fortson.

8 JUDGE WOODRUFF: Okay. Thank you.

9 MR. FORTSON: Do you want me to come up?

10 CHAIRMAN HALL: Sure.

11 MR. FORTSON: So, again, I'm Brad Fortson
12 with Staff. And quickly this morning in case this
13 has come up, I wanted to bring one of the
14 spreadsheets that we have. And so under
15 094(6)(A)(1), I just quickly added up the ones that
16 we had under Threshold 1. And I come up with 63.

17 Now, granted, that's going to be -- we
18 have everyone that's ever attempted to opt out. So
19 I would have to --

20 CHAIRMAN HALL: I'm sorry. You said
21 Threshold 1. What's --

22 MR. FORTSON: I'm just referring to it as
23 Mr. Woodsmall did. Under 094(6)(A), there's three
24 criteria, so 1, 2 and 3. Threshold 1 has to do
25 with the 5,000 KW.

1 CHAIRMAN HALL: Okay.

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

7 CHAIRMAN HALL: Okay.

8 MR. FORTSON: So we have -- so we have
9 three different criteria. Under 1, I -- I show 63.
10 But that's not taking into account the ones that
11 have potentially been denied in the multiple. So I
12 would say within 1, we probably have 40 -- 30 to
13 40.

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

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

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

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

3 CHAIRMAN HALL: Okay. All right. Thank
4 you.

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

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

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

23 There's a lot of interest in these
24 reports, and it seems to me it would be easy to
25 publicly file them if it's not too burdensome. The

1 other issues is that, oftentimes, these reports are
2 highly confidential, meaning that even the parties
3 advertise to the MEEIA cases can't view these
4 filings. So at the very least there, should be
5 publicly filed versions of these in the most recent
6 docket or preferably on the Commission's web site.
7 That's a suggestion that we threw out there for the
8 Commission.

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

12 CHAIRMAN HALL: Thank you.

13 JUDGE WOODRUFF: Thank you.

14 MR. LINHARES: Thank you.

15 JUDGE WOODRUFF: Who wants to go next?

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

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

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

1 Council.

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

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

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

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

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

25 We talked about this a little bit earlier,

1 but one part and thing I would like to note here is
 2 there is a lot of societal benefits and possible
 3 health outcomes that can come from this, and part
 4 of that being asthma, living in a home and the
 5 ability to then go to school, getting out of ER
 6 visits, which can then have societal and community
 7 impacts through economic development because
 8 they're able to expand their community. And,
 9 otherwise, they would not able to.

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

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

20 And, additionally, we support the Division
 21 of Energy's proposed language in regards to the
 22 Technical Reference Manual. And this comes from
 23 the belief that universal adoption by utilities of
 24 a state-wide TRM supported by a robust and open
 25 stakeholder process will create economies of scale,

1 promote efficiencies, lead to greater
2 accountability and result in a group of beneficial
3 and energy efficient programs across the state, not
4 only for the utilities, but, also, rural electric
5 cooperatives

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

8 CHAIRMAN HALL: No questions. Thank you.

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

16 MR. FRACICA: Yes.

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

19 MR. FRACICA: Thank you.

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

1 JUDGE WOODRUFF: Okay. Which other one
2 did it that way?

3 MR. LINHARES: MEEIA? Is that right,
4 Phil?

5 MR. FRACICA: Midwest Energy.

6 MR. LINHARES: Midwest Energy Efficiency
7 Alliance.

8 JUDGE WOODRUFF: I will check into that
9 and make sure it's properly put in the record then,
10 also. I just don't want to have any questions
11 about --

12 MR. LINHARES: If it's necessary for me to
13 offer their comments as an exhibits, I can do so.

14 JUDGE WOODRUFF: If you would. Yes. I'll
15 accept it that way also.

16 MR. LINHARES: And I would do so.

17 MR. FRACICA: Thank you.

18 JUDGE WOODRUFF: Thank you.

19 JUDGE WOODRUFF: Okay. Who wants to go
20 next? Mr. Opitz?

21 MR. OPITZ: May it please the Commission.
22 Judge, I have some handouts.

23 JUDGE WOODRUFF: All right.

24 MR. OPITZ: There's five there.

25 CHAIRMAN HALL: Thank you.

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

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

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

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

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

22 So on page 2, you know, what is MEEIA?
23 393.1075 Revised Statutes of Missouri. That is
24 what everybody calls the MEEIA statute. That's
25 where we get the authority to run these programs.

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

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

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

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

22 You know, so very clearly, in my mind, the
23 point is to value demand side investments equal to
24 traditional supply side investments. It's not
25 meant to go forward with every conceivable energy

1 efficiency measure that's out there. And I'll get
2 into that a little bit later.

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

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

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

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

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

25 Now, it talks about any program conducted

1 by the utility to modify the net consumption of
2 electricity on the retail customer side of the
3 electric meter, including, but not limited to,
4 energy efficiency measures, load management, demand
5 response, interruptible or containable load.

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

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

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

23 CHAIRMAN HALL: Question. So why do you
24 believe that solar panels don't modify the net
25 consumption of electricity on the retail customer's

1 side of the electric meter?

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

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

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

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

24 CHAIRMAN HALL: So I guess it comes down
25 to whether you focus on consumption or whether you

1 focus on the electric meter because it -- it -- it
2 would result in a reduction in the customer's
3 purchase of electricity from the utility. But it
4 might not -- I guess it would not modify the net
5 consumption of the -- of the -- of the consumers.
6 Is that essentially the distinction that needs to
7 be --

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

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

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

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

1 what's the policy concern?

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

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

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

19 CHAIRMAN HALL: Okay. I'm not sure I
20 understand that. But, I mean, to me, if you're --
21 if you're reducing the electricity that the utility
22 needs to provide, there can be a direct
23 relationship between that and the reduction in
24 supply side investment, which would enure to the
25 benefit of all ratepayers. So what's the

1 difference, really, between that and more efficient
2 light bulbs?

3 MR. OPITZ: I do understand --

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

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

13 JUDGE WOODRUFF: Okay.

14 MR. OPITZ: So --

15 CHAIRMAN HALL: All right. Thank you.

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

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

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

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

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

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

1 programs that could be proposed.

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

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

12 At origin, the next step is page 6. of
13 10, which you can find on the Division of Energy's
14 web page, it goes so far as to state that the goal
15 of benefiting all Missourians through maximizing
16 energy savings as reasonable costs.

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

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

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

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

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

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

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

24 CHAIRMAN HALL: What about non-energy
25 benefits that are quantifiable, like the example

1 that was brought up on arrearages? If -- if -- if
2 there was some quantifiable benefit to the
3 utilities, do you still have that concern?

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

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

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

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

1 debt expense.

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

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

13 CHAIRMAN HALL: Thank you.

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

23 There is a lot of information in that
24 sentence. So -- so to unpack it, first, the
25 programs must be approved by the Commission. You

1 know, as we learned in the last round of MEEIA
 2 legs, the Commission has an important role to play
 3 in oversight in determining a number of things such
 4 as the earnings opportunity, the recovery mechanism
 5 the kinds of programs, the savings goals that
 6 should be implemented and even, I believe, the
 7 kinds of -- the kinds of programs that should --
 8 should go forward.

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

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

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

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

25 So on this one, for a moment, let's talk

1 about at a high level what MEEIA permits the
2 utility to do. In practice, as we've seen, utility
3 collects money from customers and gives it usually
4 through rebates or a cash incentives to other
5 customers.

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

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

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

25 Now, I will note that the law creates and

1 inter-generation of equity of a kind because
 2 customers are forced to pay more now in the hope
 3 that the future customers will pay less. That's
 4 not necessarily something that is, I guess,
 5 insurmountable when pursuing a MEEIA program, but
 6 it's something that the Commission should be
 7 cognitive of, especially while looking at program
 8 budgets or the size and scope of these programs
 9 because some of these customers paying now may
 10 never benefit from the future reduction in supply
 11 side investments that is hoped to be achieved.

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

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

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

23 However, Public Counsel believes that the
 24 Commission's rules should be modified to remove the
 25 discretion to spend up to 40 percent more than

1 planned and approved by the Commission without
2 seeking authorization.

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

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

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

25 Slide 13, I mentioned a little bit the

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

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

9 Slide 14 is a quote from a Commission
10 order approving the Non-Unanimous Stipulation
11 Agreement in E0-2015-0055 where the Commission
12 talks about valuing -- MEEIA is about valuing
13 supply side equal to demand side investments.

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

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

24 The earnings opportunity component should
25 be a substitute for the value of the earnings

1 opportunity the company would otherwise receive.

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

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

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

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

24 I mean, this is millions of dollars that
25 utility is able to spend which often directly

1 benefits certain trade allies. So I think it's
2 appropriate to require the utility to notify them,
3 and it's especially important to require them to
4 notify customers who may wish to partake in these
5 programs.

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

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

22 And I am sure that -- I think that a lot
23 of that overage went to commercial and industrial
24 customers. I'm sure that they probably fell over
25 when they saw that increase for that MEEIA charge

1 for those months when that money went through.

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

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

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

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

23 We've looked at the potential studies.
24 We've looked at the integrated resource plans to
25 sort of look at, you know, what energy savings are

1 available out there.

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

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

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

22 CHAIRMAN HALL: Is there any harm
23 resulting from --

24 MR. OPITZ: You know, I don't think that
25 there's necessarily any harm to including them in

1 there. I think -- you mentioned, I guess, one harm
2 that could happen earlier when you were discussing
3 it for Counsel for -- I don't know if it's Counsel,
4 it may have been Mr. Hyman, for another agency.

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

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

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

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

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

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

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

8 CHAIRMAN HALL: Well, who is asking for
9 that?

10 MR. OPITZ: I believe it's --

11 CHAIRMAN HALL: Because I thought this
12 was --

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

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

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

25 They are recovering that money from

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

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

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

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

25 I think that would increase costs,

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

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

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

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

1 And I've heard from -- from Mr. Linhares
2 earlier that they think true-up is appropriate.
3 But if we look at comments of the utilities filed
4 in this case and the -- I guess particularly page
5 13 of Ameren's comments, they would delete
6 references to determine the through-put in earnings
7 opportunity amounts as measured and verified
8 through EM&V.

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

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

22 A second aspect of why the TRM is -- well,
23 that -- that plays into -- it's not clear, and I
24 read through most of the TRM. There's a lot of
25 pages of, you know, figures that -- that weren't

1 really containing very important -- and I don't
2 necessarily dispute those. But they don't talk
3 about how the TRM will be used.

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

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

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

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

25 You know, it's -- the TRM is replete with

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

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

12 I stood here in a MEEIA case and alleged,
13 and I believe we proved it, that deemed values
14 cause ratepayers to overpay by more than
15 20 million dollars for a single year, for a single
16 utility.

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

23 The policy statements are high-minded.
24 They would be nice to -- to do. But you've got to
25 show me how that is going to benefit ratepayers if

1 we're going to continue spending the time and
2 resources of all of the stakeholders, of all of the
3 ratepayers of additional parties pursuing this
4 object because I just don't see how that cost works
5 out for ratepayers. You know, so that's --

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

9 MS. MEISENHEIMER: I --

10 JUDGE WOODRUFF: Come on up.

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

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

15 MS MEISENHEIMER: So can you restate that
16 argument?

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

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

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

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

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

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

25 CHAIRMAN HALL: Well, the -- the argument that I

1 heard that I -- that I really want a response from
2 is that the TRM moves us towards deemed savings
3 away from EM&V.

4 MS MEISENHEIMER: Okay.

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

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

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

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

19 CHAIRMAN HALL: Okay. Thank you.

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

23 All right. Mr. Opitz points to the TRM
24 and the inclusion of something that appears to be a
25 money tree. From the Division of Energy's

1 perspective, we view energy efficiency as
2 generating savings for consumers, both residential
3 and business consumers. So a money tree can
4 symbolize the value to consumers of participating
5 in energy efficiency.

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

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

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

24 JUDGE WOODRUFF: I believe there --
25 there's already been a reference as to how to find

1 that. So I really can't accept any additional
2 documents after today just because of the rule --
3 the process for the rule-making.

4 MS MEISENHEIMER: Okay.

5 MR. HYMAN: Could we provide the URL?

6 JUDGE WOODRUFF: Do you have it?

7 MR. HYMAN: Yeah.

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

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

15 JUDGE WOODRUFF: Okay.

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

18 JUDGE WOODRUFF: Thank you.

19 MS. MEISENHEIMER: Thank you.

20 JUDGE WOODRUFF: Back to you, Mr. Opitz.

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

25 But that is a problem, and that is why I

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

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

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

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

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

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

24 MR. OPITZ: Thank you, Judge.

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

1 know I'm keeping us probably from lunch here.

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

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

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

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

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

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

23 DR. MARKE: It is this remote?

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

1 we go.

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

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

5 DR. MARKE: Okay. Thanks.

6 MR. WOODSMALL: You bet.

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

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

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

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

1 favorable outcomes.

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

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

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

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

23 And I'd like to just emphasize that
24 there's been a lot of talk about cost effective
25 tests. And, essentially, that's the hope I think

1 of a lot of Intervenors here is that if we have an
2 adder, more items will be cost effective.

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

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

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

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

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

25 We would probably also be selling those

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

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

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

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

24 You can bundle a measure today that's not
25 cost effective in a program. The arguments for low

1 income -- and I have been an advocate for this
2 issue unabashedly, it's already cost effective. Or
3 let me rephrase that.

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

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

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

21 Again, going back to the -- the anecdotal
22 example I gave you about the dishwasher. In Cycle
23 1, we learned a lot about lighting. We learned a
24 lot about CFLs, for example. Now, CFLs -- let me
25 go back.

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

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

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

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

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

24 We've got a better measure. In moving
25 forward, that's something that we would promote

1 because that's going to save a lot of energy. If
2 we had been pushing just dishwashers or -- that
3 were less -- that didn't meet that TRC threshold,
4 you'd be promoting an inferior product that would
5 be diverting funds away from the stated purpose.

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

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

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

23 We thought the clean power plant was an
24 eminent possibility to move down the pipeline. In
25 Cycle 1, the budget was exceeded by some utilities

1 in excess of 270 percent.

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

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

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

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

21 I've got to be honest with you. With the
22 current mechanism, the idea of what's in the rules
23 right now with the 40 percent variance, I -- I'm
24 not sure how -- how we reconcile that future MEEIA
25 negotiations if we know right off the bat that the

1 budget is likely to be exceeded in 40 percent
2 excess, that's really where we're negotiating from
3 and that's where we're starting at.

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

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

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

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

23 If we make things more cost effective,
24 that's not going to raise the targets. Let me
25 repeat that. Just by making more measures more

1 cost effective is not going to raise the overall
2 energy and demand saving targets.

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

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

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

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

25 The last point I'd just like to make on

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

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

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

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

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

25 I would be very concerned about the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 It's something we are absolutely in favor

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

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

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

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

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

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

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

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

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

24 The second point I'd like to make about
25 the market potential study, within the definition

1 of the rules themselves currently says the market
2 potential study shall consider both primary and
3 secondary data and analysis for the utility service
4 territory.

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

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

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

21 This provision never made sense to me
22 because both our MEEIA cycles operate in a
23 three-year cycles, and our IRPs operate in
24 three-year cycles. The end result is that, in
25 theory, you could end up with a study that's -- it

1 makes no sense to potentially have a 4-year-old
2 study inform programs three years into the future.

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

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

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

24 The final point we'd like to make on the
25 market potential study, we're asking to include a

1 sensitivity analysis that assumes variation and
2 take rate assumptions based on changes in customer
3 rate design that account for time varying rates,
4 real-time pricing, higher customer fixed charges
5 and flat and tiered volumetric rates.

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

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

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

21 Lighting is not pushing or is not drawing
22 those demand savings. So the cost assumptions that
23 those commercial customers thought that they were
24 going to get changed on them. We changed the goal
25 post on them because of the rate case. And too

1 often, we have case -- we have discussions about
2 MEEIA without the context of what takes place in a
3 rate case and vice versa.

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

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

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

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

23 We did delete the section about estimating
24 achievable potential regardless of cost
25 effectiveness of energy savings from low income

1 demand side programs. Energy savings from
2 multi-family building that house low income
3 programs may count towards this target.

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

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

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

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

19 JUDGE WOODRUFF: All right.

20 DR. MARKE: Yeah.

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

23 (Lunch recess.)

24 JUDGE WOODRUFF: All right. We're back
25 from lunch, let's come to order. Dr. Marke is at

1 the podium, and we'll let him continue with his
2 comments.

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

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

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

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

21 We also added additional language on EM&V
22 spend. The current language is asking -- that says
23 that utilities can spend no more than 5 percent of
24 their overall budget on EM&V. We're saying we're
25 offering up that 2 and a half percent if a

1 participating utility has already deployed AMI
2 technology and to leave a 5 percent if it has not
3 deployed AMI technology.

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

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

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

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

1 preferred test, too.

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

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

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

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

19 JUDGE WOODRUFF: Just for clarification,
20 when is UTC?

21 DR. MARKE: Utility Cost Test. And that's
22 -- that's a test that's utilized in IRP modeling.
23 Actually, both are. There's a requirement in
24 Chapter 22. In short, that the utilities when
25 they're making their -- they're choosing their

1 preferred resource plan that they look at the
2 overall impact of these MEEIA programs from the
3 utility perspective, but also from all ratepayers
4 as a whole.

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

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

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

23 Our -- our position is an office that is
24 -- that's overly burdensome for the utility itself
25 and that vendor impact should not be a

1 consideration for ratepayers or the utility.

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

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

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

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

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

1 utility.

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

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

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

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

20 **Q Now, what's happened between Program Year**
21 **1 and Program Year 5 that would change those**
22 **targets?**

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

1 about here.

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

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

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

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

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

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

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

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

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

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

25 Because at that time, the discussion was

1 on a mass base plan for the clean power plant.
2 It's how the state of Missouri can go ahead and
3 meet compliance purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 CHAIRMAN HALL: No questions. Thank you.

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

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

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

21 DR. MARKE: Thank you.

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

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

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

4 MR. WOODSMALL: Yes, I am.

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

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

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

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

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

21 In 2009, the General Assembly passed SV
22 376, otherwise known as MEEIA. That bill has been
23 codified at Section 393.1075.

24 MEEIA sought to eliminate any disincentive
25 utilities had to invest in energy efficiency by

1 valuing demand side investment equal to supply side
2 resources.

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

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

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

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

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

24 The first one is if the customer has
25 accounts -- one or more accounts, it says, with a

1 demand of over 5,000 KW. The second, Threshold 2,
2 is the customer operates an interstate pipeline
3 pumping station, regardless of size. And the third
4 one is for customers that don't meet the 5,000 KW
5 but have demand in excess of 2,500, they can opt
6 out so long as they show that they have a
7 comprehensive demand side or energy efficiency
8 program and can demonstrate an achievement of
9 savings at least equal to those expected from
10 utility provided programs.

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

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

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

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

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

5 Wal-Mart was later told, however, that the
6 5,000 KW threshold had to be met by a single
7 account. As such --

8 JUDGE WOODRUFF: Question. Who told you
9 that?

10 MR. WOODSMALL: Staff. Ultimately, Staff
11 and the utilities. When we filed our first
12 opt-outs, we were told that it couldn't be
13 aggregated across one or more accounts. It had to
14 be -- you had to have a single account that met the
15 5,000 KW on its own.

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

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

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

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

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

11 We did it. It was a pain in the butt.
12 Because we -- we didn't have -- Wal-Mart didn't
13 have a single account that individually met the
14 5,000 KW threshold.

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

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

25 By requiring a single account to have a

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

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

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

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

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

25 And our belief is that Threshold 3 picks

1 up the multiple accounts in aggregate as the term
2 aggregate is specifically used in Threshold 3.

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

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

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

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

10 CHAIRMAN HALL: Okay.

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

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

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

23 Under the historical interpretation,
24 however, this 5,000 KW threshold had to be met by a
25 single account. Such an interpretation is

1 illogical in that it fails to recognize that
2 customers with a specific peak demand over multiple
3 accounts may have an even greater incentive to have
4 several financed energy efficiency measures.

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

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

13 CHAIRMAN HALL: So each facility has a
14 separate account?

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

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

1 third concerns go away.

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

4 CHAIRMAN HALL: I'm sorry.

5 MR. WOODSMALL: I'm sorry.

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

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

15 CHAIRMAN HALL: Okay.

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

18 CHAIRMAN HALL: Thank you.

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

1 provided programs, unquote.

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

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

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

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

25 What we ask for in our comments is that

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

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

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

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

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

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

1 greater transparency.

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

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

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

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

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

25 For this reason, as the current rule

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

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

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

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

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

24 You have a lapse in opt-out status without
25 the customer even being able to prove that they

1 still meet that. So you can't tie the
2 effectiveness of the opt-out under Threshold 3 to
3 the length of the MEEIA cycles.

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

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

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

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

23 Wal-Mart's previous say demonstration is
24 no longer applicable. Wal-Mart maintains that only
25 at this point in time when MEEIA Cycle 4 is

1 implemented, Staff should reach out to Wal-Mart and
2 say, Your previous opt-out demonstration is no
3 longer sufficient. You need to come in and show
4 something more.

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

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

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

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

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

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

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

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

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

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

24 Under any circumstance, the opt-out status
25 of a customer should not be allowed to terminate

1 without giving the customer sufficient time to
2 demonstrate its continued compliance.

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

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

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

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

24 And KCP&L just pegs it at 5 percent. We
25 have a problem with that for several reasons. One,

1 it's not in the statute. It's completely contrary
2 to the -- the statutory language.

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

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

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

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

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

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

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

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

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

21 Wal-Mart believes that this is an
22 unnecessary -- an unnecessary requirement and would
23 impose cost on the customers. Effectively, the
24 EM&V what Staff is already doing. Staff is looking
25 at the measures undertaken by the utility. They're

1 looking at the savings that have already been
2 realized, and they're making the determination
3 whether that meets or exceeds the utility's
4 savings.

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

9 JUDGE WOODRUFF: Questions?

10 CHAIRMAN HALL: I have questions.

11 JUDGE WOODRUFF: Thank you.

12 MR. WOODSMALL: Thank you.

13 JUDGE WOODRUFF: Who want to go next?

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

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

23 And that's the statutory frame work. The
24 -- the -- the opt-out provision is an integral part
25 of -- of the MEEIA statute. In fact, I submit that

1 the MEEIA statute probably would not have passed
2 had it not contained the opt-out provision. So --
3 but for the fact that large customers who have
4 already spent a great deal of money trying to
5 achieve energy efficiency on their own.

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

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

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

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

25 So when you look at it from that

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

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

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

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

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

25 There is no reason to -- to require a

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

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

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

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

25 But the Commission does not regulate

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

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

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

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

1 notification of the utility that it has chosen to
2 opt out.

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

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

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

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

24 And -- and finally, with respect to
25 comments from Division of Energy and I believe

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

8 CHAIRMAN HALL: No questions. Thank you.

9 JUDGE WOODRUFF: Thank you. Who is up
10 next?

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

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

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

1 the -- the MEEIA rules.

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

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

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

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

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

25 They're really integral parts of the --

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

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

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

22 Guidelines are already outlined in the --
23 in the total budget and cost effectiveness sections
24 making these sections of the proposed rule
25 unnecessary. And we don't think we should be

1 required to file an application to change those
2 incentive levels.

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

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

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

16 CHAIRMAN HALL: Well, I have a statutory
17 question.

18 MR. FISCHER: Okay.

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

23 For example, the example of -- of
24 arrearages such -- such that -- that if it was a
25 quantifiable avoided cost, it could be a -- a

1 non-energy benefit and included the total resource
2 cost test?

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

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

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

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

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

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

25 MR. FISCHER: Well --

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

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

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

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

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

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

25 CHAIRMAN HALL: Do you -- do you think

1 there are any -- any -- any ben -- any value in
2 continuing the voluntary targets?

3 MR. FISCHER: I think that would be a
4 question I'd ask you to ask Tim Nelson. He's much
5 more familiar with that.

6 CHAIRMAN HALL: Okay.

7 MR. FISCHER: This is Tim Nelson with our
8 Energy Solutions.

9 MR. NELSON: Yeah. Thank you. Tim Nelson
10 with Kansas City Power & Light. So your question
11 was about the targets?

12 CHAIRMAN HALL: Yes.

13 MR. NELSON: I guess from our perspective,
14 I mean, really, we base, you know, the way that we
15 design our programs like Geoff Marke mark referred
16 to based on, you know, with the potential study.

17 And that's really the -- the -- the -- the
18 gauge that we go by as far as, you know, what --
19 what the appropriate targets are.

20 The -- the targets in the MEEIA rules seem
21 to just kind of add confusion and maybe a
22 distraction over and -- and a lot of efforts going
23 in -- in looking at those when -- when, really, the
24 potential study is -- is a specific study developed
25 for our specific service territory for our specific

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

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

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

11 CHAIRMAN HALL: Okay.

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

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

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

25 MR. NELSON: Well, we've been supportive

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

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

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

14 MR. NELSON: Yes.

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

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

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

24 DR. MARKE: Well, I mean, first of all,
25 we'd be against that. But to -- to Mr. Nelson's

1 point, the role of the EM&V at that point would
2 really center on like what it does today on
3 evaluation.

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

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

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

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

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

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

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

10 CHAIRMAN HALL: Is that true?

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

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

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

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

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

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

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

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

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

25 CHAIRMAN HALL: But if we're going have

1 it, we've got to use it --

2 MR. NELSON: Right.

3 CHAIRMAN HALL: -- is what we're saying.

4 MR. NELSON: I think so. Yeah.

5 CHAIRMAN HALL: Can Staff respond?

6 MR. ROGERS: John Rogers with the Staff.

7 I think we got it right in MEEIA Cycle 2 in terms

8 of a through-put disincentive and the components

9 incentive, and that being that we want to use full

10 retrospective EM&V, even though it's after the fact

11 to understand as best we can what actually happened

12 as a result of these programs during independent

13 EM&V evaluators report and then true-up the

14 through-put disincentive.

15 And then the -- well, the earnings

16 opportunity wouldn't be trued up, but the

17 through-put disincentive would based upon

18 retrospective EM&V and not deemed values.

19 CHAIRMAN HALL: So is it -- is it safe to

20 say that use of the TRM equals elimination of

21 retrospective EM&V for earnings opportunity and

22 through-put? Or could -- or --

23 MR. ROGERS: There should --

24 CHAIRMAN HALL: Or could you do both?

25 MR. ROGERS: Having a TRM -- the TRM is

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

9 MR. HYMAN: If I may --

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

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

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

24 CHAIRMAN HALL: All right. So I just want
 25 to make sure it -- so what I understand is that's

1 your position. What at least KCP&L is saying is
2 that if you are going to -- going to use a
3 state-wide TRM, you would not do retrospective
4 EM&V. You would take the deemed savings that came
5 from the -- from the TRM and march forward.

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

9 MR. NELSON: I think that's correct.

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

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

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

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

1 value of the state-wide TRM.

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

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

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

19 CHAIRMAN HALL: Okay.

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

24 But I have articulated in briefs in -- in
25 various MEEIA cases that I believe that the statute

1 requires that the through-put disincentive be trued
2 up based on the results of the EM&V.

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

11 JUDGE WOODRUFF: Any other questions?

12 CHAIRMAN HALL: No.

13 JUDGE WOODRUFF: Anything else from KCP&L?

14 MR. FISCHER: Thank you.

15 MR. NELSON: Thank you.

16 JUDGE WOODRUFF: Thank you all. Next?

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

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

1 Energy Efficiency and Renewables.

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

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

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

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

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

1 soon as it's open.

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

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

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

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

23 As a matter of fact, where Staff and
24 Ameren may have both commented on a specific
25 provision of the rules, the most we ever got was

1 yellow stuff that wouldn't probably have been our
2 choice, but quo live with it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 CHAIRMAN HALL: Okay. So I'm sorry.

2 MS. JOHNSON: -- that is appropriate.

3 CHAIRMAN HALL: So Ameren supports keeping

4 current 20 percent?

5 MS. JOHNSON: That's correct.

6 CHAIRMAN HALL: So who -- who supported

7 pushing to 40, moving it to 40? I know it's in the

8 proposed rule. I assumed it was the utilities.

9 But -- no?

10 MR. ROGERS: No.

11 CHAIRMAN HALL: So who --

12 DR. MARKE: Not us.

13 CHAIRMAN HALL: Well, then that's going to

14 be easy. Okay. All right.

15 MS. JOHNSON: I don't know where it came

16 from, but we're happy with 20. So --

17 CHAIRMAN HALL: Okay. Thanks.

18 MS. JOHNSON: No. That's it. We do think

19 the ability to have that wiggle room is vital. I

20 mean, especially since this is new programming and

21 there is -- there are still a lot of factors we

22 can't anticipate and we might need to move and

23 shift to make sure everything keeps moving

24 appropriately.

25 You know, a lot can happen between the

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

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

19 And that's going to defeat the whole
20 purpose. And so I think the flexibility is vital.
21 And I note that, you know, even very mature and
22 established plans like the one in Iowa allow for
23 this type of flexibility. They have -- if you know
24 you're going to modify your budget in a manner that
25 it will affect at least 5 percent of the total

1 portfolio or it will affect one particular program
2 by 10 percent or more, then you have up until that
3 point -- up until those percentages before you have
4 to actually go in and request some modification.

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

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

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

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

24 We have a common reference document to
25 plan off of. We're getting the established deemed

1 values for the measures, and those can be updated
2 annually and hopefully in the long-term where
3 lowering costs and controversies around the EM&V
4 process.

5 So -- but I'm going to scrap everything
6 else I had on that and move on. I think the next
7 big area we wanted to hit, the fourth priority, is
8 related to our savings goals.

9 You look at 4 CSR 240.20.092 E00 and the
10 general guidelines in 20.094.2. Basically, it's --
11 the first part deals with a map and wrap
12 definitions.

13 You know, the NRDC and Renew Missouri
14 think we should just revise the definition of map
15 and then go directly and delete wrap altogether.
16 But the problem is those revisions still leave some
17 things in place that are basically the theoretical
18 high level.

19 I mean, we're looking at -- it -- we're
20 not just -- excuse me. Their recommendations would
21 not just drive the maximum cost efficiency.
22 Basically, it's going to adopt ideal factors such
23 as high incentives, short customer payback periods
24 and favorable market conditions. Even with the
25 revised definition, that's still what we come up

1 with.

2 The wrap, however, the realistic
3 conditions, gives us moderate incentives, realistic
4 market conditions and longer customer payback
5 periods.

6 Now, you know, there are two other areas
7 of potential we look at, also. There's a technical
8 potential where you adopt everything feasible and
9 the economic potential where you adopt everything
10 cost effective.

11 But you kind of get a broader brush when
12 you're doing that. If you just modify map and did
13 delete wrap, whether intentional not, you're
14 removing the most realistic scenarios from the
15 potential study.

16 The technical economic and map even
17 revised would still just present all extreme
18 positions. So we need to -- I think it's best that
19 we keep all four so that we have the better,
20 broader spectrum and we're making sure we
21 anticipate everything can possibly anticipate.

22 Let's see. Now, NRDC had a reference
23 supporting its changes. But even that reference
24 acknowledged that -- and I'm going to quote --
25 quote in there, Map potential generally refers to

1 assuming the most aggressive fully funded programs
2 possible.

3 And this changes, also, assuming that the
4 map meets the statutory definition of all costs
5 effective demand side savings. But this ends up
6 disregarding too much, including a recent Ameren
7 Missouri filing about whether all customers in a
8 class full benefit and that all customers in a
9 class benefit is a requirement of the law.

10 So presupposing that map meets this
11 requirement ignores more information that is
12 actually used to make that determination like the
13 company's IRP analysis.

14 And Bill Davis can very effectively --
15 since he's worked for Ameren Missouri both as far
16 as the IRP and the energy efficiency program, he'll
17 be able to give you a good -- a good overview of
18 how those interactions go. So I'll save more
19 comment on that for him.

20 But -- let's see. Now, there's another
21 suggested change that NRDC made that I just fear is
22 going to create more issues than they're intending
23 to correct. And that's the one to 20.0942. The
24 recommendations they're making in this particular
25 section can imply, and that's -- that's one that

1 talks about penalties and adverse conditions.

2 What I fear is that it can either -- the
3 revisions can imply or be construed to allow for
4 both adverse consequences and penalties for a
5 utility when it fails to make its savings goals.

6 Now, they state they're only intending to
7 state that adverse consequences may naturally occur
8 and might be considered penalties in certain
9 circumstances.

10 I know the -- you know, the intention
11 where it should be in making that revision. But
12 the revisions made to the rule to reflect this
13 intent could be interpreted by Complainants and
14 future Commissions without this knowledge and this
15 background to allow this as a punishment.

16 So we're no longer just supported the
17 stick -- or excuse me -- the carrots, so, you know,
18 certain benefits we're running an effective
19 program, but suddenly we have a stick for
20 punishment for failing to meet certain criteria.
21 And we want to avoid that.

22 Instead, I believe we can rely on
23 interpretation to solve the issue. I mean, unless
24 it's clearly impossible, you try to read statutory
25 language so that it meshes. So you look at

1 everything -- very sorry. You look at statutory
2 language and the regulation together, and you try
3 to interpret them so that you don't create a
4 conflict unless that's just thoroughly impossible.

5 And in this case, I don't think that's
6 impossible. You're looking at a goal for certain
7 benefits. So I don't think that necessitates -- I
8 think that means we can interpret the statute as it
9 -- the regulation as it exists to get to the actual
10 intent of what NRDC is proposing to do.

11 So -- plus, like the car analogy before,
12 you don't want to fix something that isn't really
13 broken. So I don't know that it's worth reopening
14 -- or worth opening that up at this time.

15 Which kind of actually reminds me of
16 something that came up earlier regarding some of
17 the statutory interpretation questions. Like I
18 said, for what it's worth, when we're looking at
19 the MEEIA statute and how the rule is interpreted,
20 it feels like some of the parties are trying to
21 read the MEEIA statute in isolation.

22 And I really do not believe you can do
23 that. The MEEIA statute is just one of an array of
24 laws available to the Commission to enable it to
25 regulate the utilities.

1 So -- and as I said earlier, when you read
2 statutes and regulations, you try to first read
3 them assuming that the drafters knew what they were
4 doing and did not intend to conflict unless you get
5 into there and just find that there's no way to
6 resolve it.

7 Then you take the next step. But we don't
8 need to take this next step. But we have to read
9 the statutes holistically. We can't piece-meal
10 everything out and assume it has no impact on
11 anything else.

12 For example, you can't -- you have to
13 remember that the MEEIA statute says that the goal
14 is to pursue all costs efficient, energy efficiency
15 options.

16 But we still have to do that in a manner
17 that does not interfere with our statutory
18 obligations to provide safe and reliable energy and
19 it's provided with just and reasonable rates.

20 So I just wanted to remind you that with
21 all the laws and regulations at your disposal, I
22 just want to remind you to look at them
23 holistically when you're evaluating them.

24 That ends what I had prepared. And like I
25 said, Bill Davis is here. We're both able -- happy

1 to answer any questions. And that will be it. I
2 will quit my rambling.

3 JUDGE WOODRUFF: Okay. Any questions, Mr.
4 Chairman?

5 CHAIRMAN HALL: Yeah. In -- in Ameren's
6 last MEEIA application, the Commission rejected --
7 rejected the application. Ameren ultimately filed
8 another one, which was approved.

9 The one that was rejected, I believe that
10 there was language in -- in the Commission's order
11 connecting supply side -- a reduction in supply
12 side investment to the earnings opportunity. Am I
13 remembering that correctly?

14 MR. DAVIS: Chairman, there was a lot of
15 discussion about that. And I think the idea was to
16 make sure that there wasn't any opportunity for
17 double recovery on those earnings s opportunity.

18 So I didn't -- the idea is to create some
19 linkage there. Now, how precise that was, I think,
20 -- I think is still -- I think there's still room
21 for us to move around in. But, yes, absolutely.

22 CHAIRMAN HALL: Okay. So what is the
23 status of the proposed franchise renewal, from your
24 perspective on -- on that issue, on -- on
25 connecting earnings opportunities with an actual

1 reduction in supply side investment?

2 MR. DAVIS: In the way the rules are
3 drafted now, I think it -- I think it leaves it
4 open because the way it's worded my recollection is
5 that the utility needs to -- needs to propose an
6 earnings opportunity.

7 Now, the Office of Public Counsel had
8 provided some comments where they wanted that
9 linked specifically to supply side investments.

10 And I understand why they want to do that.
11 I just think that from a practical standpoint over
12 a long period of time that can be difficult to
13 achieve because the resource plans are constantly
14 changing.

15 CHAIRMAN HALL: Or, actually, it would be
16 easier to show over the long-term. It would be
17 more difficult to show over the short-term. Isn't
18 that essentially what you're saying?

19 MR. DAVIS: I think the challenge is,
20 though, as you're going through time, your base
21 plan already includes some of those changes and
22 you're never really going back to say, Well, what
23 would my plan be now if I hadn't done something ten
24 years ago?

25 And that's not that -- that particular

1 type of analysis is not part of the resource
2 planning process.

3 CHAIRMAN HALL: Can OPC respond to that?

4 DR. MARKE: I mean, I'll try. You know,
5 Mr. Davis makes a good point. This is -- this is a
6 larger issue that I think we're -- we're wrestling
7 with even looking at the preliminary IRP results of
8 some of the utilities, I mean, trying to make sense
9 of how does MEEIA work in a world where we're very
10 long on capacity?

11 And we're adding on -- and limited growth
12 and we're adding on renewables. Right? So how
13 does it make sense within that context? I -- I
14 defer to the statute where it says to value the
15 demand side on an equal footing as the supply side
16 investment.

17 We have more comfort when we can point to
18 something and say, That's the investment we're
19 talking about, that's a tangible product that we
20 plan on putting into place absent doing these
21 energy efficiency programs.

22 It's -- but to Mr. Davis' point, I mean,
23 it is an evolving landscape. And we're getting
24 better at this as we move forward.

25 MR. DAVIS: And I'd also point out that it

1 is difficult for us, and we had a lot of discussion
2 about this when we were going through our second
3 MEEIA approval about how to attribute that future
4 demand -- or I'm sorry -- that future deferred
5 supply side resource to what we're doing today
6 because from one standpoint, it all -- energy
7 efficiency builds on itself, right?

8 If I need multiple energy efficiency
9 cycles to ultimately defer a future supply side
10 resource, how much do I attribute to what I'm doing
11 today?

12 From one standpoint, I couldn't accomplish
13 that deferral without doing something today. From
14 another standpoint, it contributes just a certain
15 portion of it, and that's where we've had trouble
16 reconciling and that's why I said that, yes, we're
17 trying to link it to supply side resource, but
18 there -- we haven't seen a formula that you plug
19 into some inputs and you get the output and the
20 output earnings opportunity.

21 DR. MARKE: Just to piggy back one thing
22 off of that, useful life of a measure is a lot
23 shorter than the useful life of a power plant.
24 So, I mean, if we're not building supply side for
25 20 years, right? That 20-year life of an HVAC, we

1 might not get 20 years out of an HVAC. So are we
2 actually deferring anything, you know, at that
3 point?

4 That's -- those are the issues we are
5 wrestling with. Even -- you know, even with
6 Ameren's Cycle 2 approval, it was predicated on the
7 fact that there would be a Cycle 3.

8 And, you know, I would just caution that
9 we -- we agreed to that -- we agreed to Cycle 2,
10 that there would have to be a Cycle 3. And not a
11 couple weeks later, Noranda went down. So we lost
12 an enormous amount of load.

13 That's the sort of, you know, moving
14 targets that we're -- that we're wrestling
15 with.

16 MR. DAVIS: And, frankly, Chairman, this
17 is probably, you know, based on everyone's comments
18 and the other stuff that we've talked about, the
19 link to the IRP was really what I was going to
20 limit the scope of my comments to. Right?

21 And as we think about those things and
22 value that energy efficiency provides, one other
23 value it provides is they -- how it impacts the
24 risk profile to customers and those investments.

25 So when you look the our-long term

1 resource planning process, we may look at many
2 different types of plans and many different types
3 of future outcomes.

4 And what we see from energy efficiency is
5 doing stuff now actually provides a -- you know,
6 energy efficiency becomes mitigation against future
7 friction in many ways with, you know, potential
8 retirement shifting around in time.

9 And we constantly see those sorts of
10 things shifting as we go through the resource
11 planning process. So, really, as we think about
12 the integrated resource planning process and its
13 connection to MEEIA, the way I see it is that the
14 integrated resource planning process provides the
15 necessary context to help decide what we should be
16 doing with MEEIA in the short-term. Right?

17 Because MEEIA is, you know, really what I
18 would consider short/medium term what are we going
19 to be doing over, let's say, the next three to five
20 years whereas the integrated resource plan is what
21 am I looking at, what sort of uncertainties am I
22 looking at over the next 20 years.

23 You see that the integrated resource plan
24 has a plethora of performance metrics that we look
25 at, whether it's rates, whether it's revenue

1 requirement, whether it's carbon emissions, whether
2 it's SO₂ emissions. It also includes decision
3 factors that the utility is looking at to make its
4 decision on what its preferred plan is.

5 And all of that is what provides the
6 context. Let me give you one example around that
7 as well when we talk about realistic achievable
8 potential versus maximum achievable potential. All
9 right?

10 We analyze both of those plans in the
11 integrated resource planning process. The
12 interesting thing about that is if I look at our
13 latest potential study, we showed I think it was
14 over 18 years that for realistic achievable
15 potential, we can get about 13 percent savings on
16 energy.

17 But maximum achievable potential was about
18 16 percent. So we get about a 23 percent adder if
19 we do maximum achievable potential. But from a
20 cost side, we were going from about \$180 million a
21 year to up to three hundred million dollars a year.
22 So both of those portfolios are cost effective.
23 All right?

24 But the integrated resource planning
25 process gives us the full context on which to

1 evaluate those two different types of portfolios.

2 CHAIRMAN HALL: Okay. Thank you.

3 JUDGE WOODRUFF: Anything else from
4 Ameren?

5 MS. JOHNSON: No. Thank you.

6 JUDGE WOODRUFF: Anyone else other than
7 Staff wishing to make a comment? All right. We'll
8 go with Staff next. But we'll take a break first.
9 We'll come back at 3:05.

10 (Break in proceedings.)

11 JUDGE WOODRUFF: We're back from our
12 break, and we're ready for Staff's comments.

13 MR. BERLIN: Good afternoon. May it
14 please the Commission. I'm Bob Berlin, Staff
15 Counsel. And I'm going to give a few over-arching
16 highlights regarding Staff's concerns and its
17 submitted comments.

18 I will be followed by John Rogers who will
19 address certain key operational points that touch
20 upon the comments submitted by the parties.

21 MEEIA is now in its fifth year having just
22 completed the first program year of Cycle 2.
23 There's absolutely no question from those involved
24 MEEIA that it is challenging.

25 Why is that? MEEIA is not a long statute.

1 It would seem that it should not be that hard.
2 Many states appear to more easily achieve more
3 aggressive energy and demand savings.

4 So what's different in Missouri that makes
5 MEEIA so challenging? First, most states have a
6 legal mandate for utilities to achieve certain
7 energy and demand savings targets. Missouri does
8 not have a legal mandate. MEEIA is voluntary.

9 Second, because MEEIA is a voluntary
10 undertaking by the utility, compliance with MEEIA
11 requirements becomes a balancing act because MEEIA
12 seems, on the surface, to promise everything to
13 everyone.

14 Like it or not, MEEIA involves a unique
15 balancing act. On one hand, utilities expect to
16 receive all program costs, all lost sales due to
17 energy efficiency, which is the through-put
18 disincentive, and an earnings opportunity that is
19 equivalent to that of the utility's lost
20 opportunity to invest in supply side resources.

21 On the other hand, MEEIA must provide
22 benefits to all customers, even those customers who
23 pay for MEEIA's costs every month through bill
24 payments but do not participate directly in any of
25 the MEEIA programs.

1 So complicating the challenge of balancing
2 so many diverse interests is the fact that customer
3 benefits, specifically benefits for customer who's
4 do not participate in programs, are primarily
5 realized over the life of each energy efficiency
6 measure. And that can be one year or up to 20
7 years or more than 20 years depending on the
8 specific measure.

9 While MEEIA's costs are relatively certain
10 and are covered upfront, the benefits for customers
11 occur over many years and can never be measured
12 with certainty.

13 Staff believes that its recommendations
14 contained in its comments have achieved the goal of
15 balancing these diverse interests in a way that
16 serves the public interests and follows the MEEIA
17 statute.

18 While not perfect and while not the only
19 solution, Staff's recommendations represent a good
20 reference point for the Commission to use when
21 considering the comments of other parties during
22 its deliberations in this rule-making.

23 Throughout the comment process, Staff's
24 goal has been to provide clarity and consistency to
25 proposed rule changes and to ensure that the

1 published proposed rules and amendments follow the
2 MEEIA statute.

3 To this end, I will point out some general
4 concerns Staff has, concerns that are reflected in
5 its submitted comments and recommended
6 modifications.

7 First, definitions must follow the
8 statute. They must follow what was published in
9 the register. Staff is concerned about any changes
10 to the rules that might bind the Commission to
11 funding third party administrators or funding
12 outside consultants.

13 Staff recognizes that MEEIA is ultimately
14 a voluntary program for electric utilities, and
15 Staff believes that the proposed changes are
16 helpful in modernizing MEEIA implementation based
17 on what we have learned in Cycle 1 and Cycle 2.

18 However, because these rules attempt to
19 codify what we know at this point in time, we must
20 recognize that variances from these rules for
21 future MEEIA programs will likely still be
22 necessary, but hopefully not as many as in the
23 past.

24 Why would variances be needed? Well, the
25 world of energy efficiency programs is a very fast

1 changing one, and, ultimately, again, MEEIA is
2 voluntary for the electric utilities.

3 And before I turn this over to John
4 Rogers, I want to emphasize that Staff's written
5 comments promote a rule and amendments that adheres
6 strictly to the MEEIA statutes requirements,
7 specifically, the MEEIA statutes requirements that
8 a utility's ability to recover in rates for its
9 MEEIA programs require three specific things.

10 The programs must be approved by the
11 Commission. The programs must result in energy or
12 demand savings. And the programs are beneficial to
13 all customers in the customer class in which the
14 programs are proposed regardless of whether the
15 programs are used by all customers.

16 And we recognize that charges for MEEIA
17 programs come at a significant cost. And whether
18 they are shown in a charge on a customer's bill
19 that is called a DSIM or DSIM or an EEIC, the
20 customer is still obligated to pay that charge
21 whether or not the customer participates in any of
22 the MEEIA programs. And we know most customers do
23 not participate.

24 Before I turn this over to John Rogers,
25 I'd like to just make two final points. First, on

1 closer review of the proposed rule .092, we agree
2 with Ameren that it does require a variance
3 provision at the very end.

4 Our review of it showed that it wasn't
5 there, but it's there in the 093 and 094. And,
6 secondly, Chairman Hall asked a question on budgets
7 and we looked back through Staff's notes and found
8 that it was KCP&L that had proposed the 40 percent
9 overage limit to the rule, just as a matter of
10 information.

11 So that concludes my opening comments.
12 And I will be followed by John Rogers who will
13 address some specific operating concerns.

14 MR. ROGERS: John Rogers, Commission
15 Staff. Everybody having fun yet? You know, as I
16 sat here, I was reflecting on I've been here eight
17 years.

18 Seven years ago, my boss called me in to a
19 conference room and handed me a copy of the MEEIA
20 statute which I was barely aware of. And she said,
21 John, you have 90 days to provide proposed rules to
22 the Commission. I thought she was kidding. So
23 this -- we've come a long way, like Bob said.

24 And I think everybody in this room will
25 appreciate and I appreciate all of the -- the

1 diverse interests that the parties have, the
2 creativity and the ideas they have, you know, to
3 move this in their direction a little bit this way
4 and that way. That's just the way this works.

5 Staff has tried to come up with proposed
6 recommended modifications that maintain a balance
7 that we think is appropriate under the statute and
8 given our situation after just four complete years
9 of MEEIA. We're just in the fifth year.

10 I'll now address not our recommendations
11 at all but just a number of things that I've seen
12 in the recommendations of other parties and I've
13 heard today.

14 The first thing I'd like to cover is
15 Chapter 22. MEEIA is voluntary. Nobody has to do
16 it -- none of the utilities have to do anything at
17 all on MEEIA. Utilities do have to do Chapter 22
18 under the Commission rules. And every year, they
19 have to do a train compliance filing. And -- or
20 every three years. Excuse me.

21 And every year, they have to provide an
22 update and confirm that a their adopted preferred
23 resource plan has either changed or it's not
24 changed. If it's changed, they have to, of course,
25 follow any requirements that they have to meet.

1 I've worked as a Utility Manager for 34
2 years and have a long history with resource
3 planning. We have, in Missouri, a best practice
4 for resource planning.

5 The level of input that goes into the
6 analysis, the analysis itself, the stakeholder
7 process is top notch. And I have a lot of respect
8 for that because it's not done that way in other
9 states.

10 I disagree with removing Chapter 22 from
11 MEEIA in any -- the linkage entirely. To do that
12 would suggest that we come up with some method of
13 deciding what all cost effective demand side
14 savings means. And we take that and then we solve
15 for whatever resources might we need.

16 We don't have a mandate for energy
17 efficiency. Chapter 22 has to include -- has to
18 comply with the mandate for the renewable energy
19 standard because it is a legal mandate.

20 What Chapter 22 allows us to do very --
21 very precisely is to determine where that sweet
22 spot is, the present value of revenue requirements,
23 by testing a robust variety of alternative resource
24 plans with accommodations of demand side resources
25 and different alternative resource plans, supply

1 side resources.

2 And through the integrated resource
3 analysis, Chapter 22 determines what the utility
4 cost is for every hour for every day for at least
5 20 years.

6 So it's not -- not a number this we pick
7 out of the -- the thin air. And it takes utilities
8 a year to a year and a half to perform the
9 compliance filing update. We should not ignore
10 that. That's my definition of cost effective.

11 You take your alternative resource plans
12 through the integrated resource analysis, and there
13 are a lot of performance metrics that come out of
14 the process. It's not just revenue requirements.
15 It's rates every year. It's a financial
16 performance metrics like cash flow and so forth.

17 That's what the utility decision makers
18 look at when they pick and adopt a preferred
19 resource plan. You don't start with the potential
20 and define what an inflated maximum achievable
21 potential is and say, Well, we want to define that
22 as goal of MEEIA.

23 It doesn't matter how you define wrap or
24 map or anything else. It's how you define demand
25 side resources, evaluate those equally to supply

1 side resources. You can only do that in -- in the
2 integrated resource analysis in Chapter 22.

3 Chapter 22, by the way, and Bill hit on
4 this a little bit, allows us to evaluate the impact
5 on costs for either accelerating retirement of
6 supply side resources or postponing the investment
7 in new supply side resources as a result of demand
8 side resources.

9 You can run various alternatives and you
10 can quantify that specifically. In this area, I
11 think the Commission may want to consider an
12 enhancement that Staff would like to propose at
13 this time. And I'll ask Staff Counsel to
14 distribute an exhibit.

15 JUDGE WOODRUFF: We'll mark this as
16 Exhibit 4.

17 MR. ROGERS: Chairman Hall, you had some
18 questions of Bill Davis and identified this as an
19 opportunity to enhance the results of our
20 experience in Cycle 2, came around to the fact that
21 being to value in the earnings opportunity, you
22 really have to understand the lost earnings
23 opportunity as a result of the shift in traditional
24 investments and supply side resources since that is
25 how utilities earn today.

1 And so the language that we're proposing
2 to be amended to the Amended Rule 094(3)(C) would
3 be a new Item 4, and this is just input. This is
4 just a filing requirement to further demonstrate
5 what the value of the plan is.

6 And so the -- the new filing requirement
7 would be to provide the annual impact on the
8 utility's earnings opportunity due to postponement
9 of new supply side resources and early retirement
10 of existing supply side resources as a result of
11 all demand side programs included in the
12 application. So I'd ask that you give that some
13 consideration during your rule-making.

14 CHAIRMAN HALL: What -- what does the
15 annual impact on the utility's earning opportunity
16 mean?

17 MR. ROGERS: There's enough information in
18 the output of the integrated resource analysis, and
19 I believe the utilities can use this to -- I --
20 it's not a direct output, but they can use that to
21 quantify year by year by year what the impact and
22 earnings would be under a demand side portfolio.

23 CHAIRMAN HALL: Would that be using all of
24 the assumptions and data contained in the
25 application?

1 MR. ROGERS: Yes. Because what's in the
2 -- what's in the application for the demand side
3 resources should be what's in the adopted preferred
4 resource plan to demand side resources. And the
5 utilities are always going to have a no DSM case
6 and well as a wrap and map.

7 And what we've been pushing for is to add
8 variations of wrap and map so that we can see more
9 data points to determine where the sweet -- sweet
10 spot is. Where is the lowest utility cost?

11 Let me make one more comment on this. In
12 Cycle 2, we have a matrix for the earnings
13 opportunity. And there's a pay-out for energy
14 savings and demand savings.

15 For Cycle 2, the earnings opportunity is
16 heavily weighted towards the savings of demand from
17 the program from both energy efficiency and demand
18 response programs.

19 So we -- the parties to Cycle 2 were
20 actually working back towards something like that.
21 This is really expressing what we actually did in
22 -- in the Cycle 2 negotiations. And we came up
23 with one number, basically, by looking at data and
24 coming to a present value.

25 CHAIRMAN HALL: Couldn't we effectuate

1 this by mandating that -- that it's a reduction in
2 peak demand that should be the main criteria for
3 setting the earnings opportunity in the first
4 place?

5 MR. ROGERS: You can do that in your
6 rule-making, I guess. Right now, it's not
7 prescriptive. You know, and I think -- but there's
8 a -- you know, expressed their interest in not
9 making it prescriptive.

10 And I'm fine with that. I think we should
11 keep our opportunities open and not lock ourselves
12 down. That was one of the problems that we had
13 with the existing rules.

14 The existing rules pointed us back to
15 sharing the net shared benefit for the performance
16 incentive. In retro -- you know, in hindsight,
17 that wasn't the best thing to do.

18 I think we're getting -- we have a much
19 better business model as a result of the Cycle 2
20 orders than we had when we -- when we began Cycle
21 1.

22 Staff is interested in using avoided cost
23 from the adopted preferred resource plan and not
24 deeming it. There's some expression by some
25 parties to say, Okay, well, that's fine, but we're

1 going to keep the avoided cost from our
2 application, and we think that EM&V is -- should be
3 performed to its fullest by an independent
4 evaluator using the best data -- best data
5 available.

6 We have a lot of good data coming from the
7 programs and the program costs. But to value the
8 programs, we want the best data at that point as
9 well. And that means the most current avoided
10 costs should be from the adopted preferred resource
11 plan and not deemed or assumed to be fixed at the
12 level that was in the application.

13 On -- Mr. Marke brought up a
14 recommendation to value benefits using the TRC. I
15 have no problem with that. But I would say add
16 that to the UCT and not take the UCT out entirely.

17 Every benefit cost analysis has benefits
18 and it has costs and all you're doing is
19 subtracting the cost from the benefits to get the
20 net benefits. And so I'm not -- I'm fine with the
21 change that he suggested. The TRC benefits. But I
22 would be -- want to keep in the rule the UCT
23 benefits at the same time. They're both good data
24 points.

25 On opt-out, kind of doing this on the fly

1 pause some of this is hard to really get your mind
2 around. We're thinking about it as we heard
3 comments here.

4 I have a concern from this Threshold 1
5 where we have five megawatts in saying that it can
6 be the aggregate of all the customers accounts when
7 five megawatts is an automatic out.

8 All you have to say is, I've got five
9 megawatts, I'm Wal-Mart, could be anybody else, and
10 I have a lot of accounts, and I can add up all my
11 demand, and I get more than five megawatts, I'm
12 out.

13 They may not have a program at all.
14 Wal-Mart does. I know they do. But there's other
15 large companies that wouldn't have any problem at
16 all aggregating five megawatts and coming in and
17 saying -- oops. Excuse me. Here I am and the
18 utility has verified that all my accounts have five
19 megawatts, I want to go out. They may not have a
20 single program. Or a single measure installed.
21 We'd just provide that for the record.

22 JUDGE WOODRUFF: Mr. Rogers, what other
23 kind of companies other than Wal-Mart would be in
24 that kind of situation?

25 MR. ROGERS: There's a lot of

1 commercial --

2 JUDGE WOODRUFF: Other retail stores?

3 MR. ROGERS: Industrial customers.

4 JUDGE WOODRUFF: Like a quarry that had
5 five locations or something?

6 MR. ROGERS: Yeah. Yeah. Because just
7 different locations, and it could be a large number
8 of locations. I think you can --

9 JUDGE WOODRUFF: I can see that.

10 MR. ROGERS: -- appreciate that.

11 JUDGE WOODRUFF: All right.

12 MR. ROGERS: Okay. The idea that we use a
13 -- the average savings from the non-residential
14 customers as a benchmark or for opting out --

15 CHAIRMAN HALL: Okay. So -- oh, I'm
16 sorry. Keep going.

17 MR. ROGERS: There's a suggestion -- and I
18 didn't realize where the 5 percent came from, and I
19 think it was KCP&L's comments. But the idea that
20 we take the average savings for, say, the
21 non-residential customers and say that's -- that's
22 the benchmark. If you can save more than that,
23 then you passed the threshold.

24 When -- if the 5 percent is the average
25 for all non-residential customers, I think that the

1 benchmark's probably too low because, by
2 definition, that's the average.

3 And we're looking for something more than
4 that to qualify the opt-out, I think. We're --
5 we're still kind of struggling with -- with that
6 one. But, you know, a lot of this is being done as
7 I participate today.

8 CHAIRMAN HALL: Mr. Rogers, what's --
9 what's wrong with Wal-Mart's proposal from -- from
10 your perspective that once -- once a -- an opt-out
11 customer has been so declared that -- that it can
12 maintain that?

13 MR. ROGERS: Right. That's a tough one.
14 I -- I can appreciate the -- the administrative
15 work that goes behind that because my staff has to
16 review those requests to opt out. And it's a lot
17 of work.

18 I think one way to look at it is those
19 utilities have an opportunity to opt back in once
20 they're out. They can revoke their -- their
21 opt-out. They have that option after three years.

22 So if they have the opportunity to come
23 back in, I think there should be some recognition
24 that, as time goes by, programs change. There may
25 be some new technologies, who knows, five years

1 from now, that there's a lot more available through
2 the utility programs for savings than we're --
3 we're used to seeing.

4 And those customers may decide they want
5 to come back in to get some of that good stuff. So
6 I -- I don't know. That -- that is -- it's not --
7 the requirement to reapply was not something that
8 Staff initiated. But I can -- I can appreciate it
9 from both perspectives.

10 CHAIRMAN HALL: Have you reviewed the --
11 the exhibit that Wal-Mart submitted? I don't have
12 the number in front of me.

13 MR. WOODSMALL: Three.

14 CHAIRMAN HALL: Three. If you could look
15 at the last page, the third concern at the bottom.
16 I was wondering if you could just comment on -- and
17 I know Mr. Woodsmall said that these numbers were
18 -- were -- I can't remember --

19 Mr. WOODSMALL: Hypothetical.

20 CHAIRMAN HALL: Hypothetical. But can you
21 -- can you give me some sense as to how -- how
22 realistic these numbers are, if they -- so --
23 because at least to me, I don't know anything about
24 the numbers. But the concept makes some sense to
25 me that -- that -- that you let the customer stay

1 out until savings that -- that it's achieving are
2 no longer equal or greater than the -- than the
3 savings expected from the utility provided
4 programs. I just can't tell if these numbers make
5 since.

6 MR. ROGERS: And as I stand here, I can't
7 either.

8 CHAIRMAN HALL: Okay. Well, what about
9 the concept?

10 MR. ROGERS: The concept, I think, can
11 work once you have a baseline that you're starting
12 from. But right now, we don't because we -- that's
13 never been a part of the opt-out process was to
14 actually develop that baseline and to quantify the
15 savings that specifically.

16 JUDGE WOODRUFF: Okay.

17 MS. DIETRICH: If I may? Natelle
18 Dietrich, Commission Staff Director. On the
19 concept, I -- I agree with Mr. Rogers.

20 I think the concept would work. The only
21 concern I had with Mr. Woodsmall's proposal was
22 that it would be up to Staff to make the
23 determination and -- and let Wal-Mart or whoever it
24 might be know that they are over the threshold.

25 And I'm not sure how we would keep track

1 of that, especially as Mr. Fortson indicated
2 earlier that we're talking about potentially 30
3 customers and having to keep track of all the
4 different utilities and that type of thing.

5 So that -- that would be my only concern
6 about it is the process that Staff would be
7 responsible for that determination and notifying
8 the customers.

9 CHAIRMAN HALL: Okay. Can you respond to
10 that?

11 MR. WOODSMALL: Basically, what we're
12 talking about is whether there is an administrative
13 headache behind it. It seems to me there is a much
14 greater administrative headache behind Staff having
15 to evaluate this every year, every MEEIA cycle
16 rather than putting it off until there is some
17 showing that the utility savings has exceeded the
18 customer.

19 So there is much less of administrative
20 headache under my proposal. As far as the contact,
21 I think you require something -- if the customer
22 doesn't provide or maintain an accurate contact
23 information, that's on them.

24 You know, I don't expect Staff to continue
25 to follow around ABC Grocery Store Company to make

1 sure that they have a proper contact. You know,
2 the same thing happens in rate cases. Or anything
3 else.

4 If the company doesn't -- if the party
5 doesn't maintain a proper contact, that's on them.
6 So I -- I don't expect the -- the Staff to maintain
7 up-to-date contact information.

8 You send it to the last known contact. If
9 they don't follow up, that's on them.

10 MR. ROGERS: I think that's everything I
11 wanted to say. Or as Forest would say, That's all
12 I have to say about that.

13 JUDGE WOODRUFF: I do have a question
14 that's occurred to me. And it's about the opt-out
15 of large customers. What's the financial impact on
16 the utility of those opt-outs?

17 MR. ROGERS: The utility is not affected,
18 really. The ones that are affected are the
19 customers that have not opted out.

20 So the cost from the MEEIA programs right
21 now are allocated for residential programs. We try
22 to put all the cost on residential customers.
23 Non-residential all go on the non-residential
24 customers.

25 To the extent that opt-outs occur, the

1 remaining non-residential customers have to make up
2 the cost.

3 JUDGE WOODRUFF: So it's really neutral to
4 the --

5 MR. ROGERS: It's neutral to the utility.

6 JUDGE WOODRUFF: Okay. I see nods of
7 agreement in the audience there. All right.
8 That's the only question I had on it. Anything
9 else, Mr. Chairman?

10 CHAIRMAN HALL: I don't believe so.

11 MR. DAVIS: Judge, can I make one more
12 sent comment real quick? Mr. Rogers up OPC's
13 proposal to include the earnings opportunity in the
14 total resource cost test.

15 I guess maybe this is a little bit of a
16 question or maybe just a way to manage expectations
17 on when that's done. Because upfront, when we
18 submit the plan, I think that's an easy thing to
19 do.

20 But as we're going through the process, I
21 think it becomes a little bit more difficult just
22 in terms of what people are expecting to see. So,
23 for example, at the end of the Program Year 1, we
24 provide an updated total resource cost test.

25 But at that time, we don't know what our

1 performance is for that earnings opportunity. So
2 when we calculate the total resource cost test at
3 that point in time, I'm just kind of curious if
4 folks are thinking we need to include the earnings
5 opportunity or if that's something that waits till
6 the end.

7 And I'll just have one more thing on this.
8 I mean, this was an issue for us in the first
9 cycle, more so just because of how -- what was
10 going on with shared net benefits. That's behind
11 us now. So I feel like this is just kind of a
12 minor thing that we could definitely work through.

13 DR. MARKE: I would just offer that I
14 would agree. It sort of a hold-over from Cycle 1.
15 And it did make sense with the net shared benefits
16 to answer Mr. Davis' question.

17 I think OPC kind of goes in with -- with
18 the impression that the company's probably going to
19 meet their earnings opportunity. So, you know, if
20 they wanted to -- we'd be amenable to running the
21 test with the earnings opportunity imbedded into
22 the TRC.

23 But also with the knowledge that that's
24 going to probably bring down the TRC. I don't know
25 -- knowing where -- could there be a situation

1 where you might have a measure or program that
2 would not otherwise meet the TRC? I don't think
3 so.

4 I mean, I don't know. I feel like we're
5 at a good place right now. I don't -- you know,
6 clearly, other people could have these positions in
7 the future. But I'll -- I'll jump on it if --

8 MR. ROGERS: I think from my perspective,
9 more important than that is the fact that the
10 earnings opportunity is part of the utility cost in
11 the integrated resource analysis.

12 DR. MARKE: Correct.

13 MR. ROGERS: As long as it's there and we
14 also have that through-put disincentive in the
15 integrated resource analysis because it's perfect
16 rate-making of all utility costs, that's another
17 reason why Chapter 22 gives us the very best view
18 of what the cost of these programs are.

19 DR. MARKE: If -- if we wanted to
20 eliminate a definition for net shared benefits
21 altogether, that might alleviate a lot of our
22 concerns. That -- that definition exists right
23 there.

24 MR. ROGERS: Staff does recommend that
25 definition be changed to just net benefits.

1 DR. MARKE: Okay.

2 MR. ROGERS: It only occurs three places
3 in the proposed rule and amendments, and we've
4 changed -- we recommended that -- that there be no
5 more net shared benefits, only net benefits.

6 DR. MARKE: That alleviates a lot of
7 concerns, too.

8 MR. DAVIS: Yeah. I mean, I just brought
9 it up because when I read the comments, the
10 proposal as a practitioner looking at it thinking,
11 Well, we can do that, but what are other expecting?
12 Because, frankly, we also don't, you know, like pro
13 rate earnings opportunity down to the program
14 level. We don't pro-rate it down to the annual
15 level.

16 So I think at portfolio level over the
17 horizon, no problem at all. We're doing it in the
18 integration analysis, no problem at all.

19 JUDGE WOODRUFF: Mr. Hyman, you wanted to
20 be recognized? Get to a microphone, though.

21 MR. HYMAN: Sorry. I don't want to keep
22 you standing too much longer. I just wanted to add
23 something to the question of opt-outs and what the
24 effect is.

25 I agree with Mr. Rogers. Part of the

1 effect is that, you know, commercial industrial
2 customers end up having to pay higher rates for the
3 same set of programs.

4 The flip side of that, though, is that
5 when utilities do their potential studies, they
6 often -- they often make some adjustments for
7 opt-out customers and their estimates of potential.

8 Now, while that might make some sense just
9 immediately, if you think a little longer about it,
10 that means that you're not looking at what kinds of
11 potential there is for additional savings from
12 those customers.

13 Now, if the customers have already
14 achieved those savings, that's not necessarily a
15 big deal. But I think it gets back to the crux of
16 the issue of how do we make sure that, you know,
17 subject to the statutes provision for opt-outs that
18 we're not foregoing some savings that we might
19 otherwise have that might otherwise even draw some
20 customers back into MEEIA.

21 JUDGE WOODRUFF: Okay. All right. Well,
22 thank you all for coming today. It's been a long
23 hearing, and I think very productive. And with
24 that, we are adjourned.

25 (The proceedings were concluded at 3:45 p.m. on

1 May 4, 2017.)

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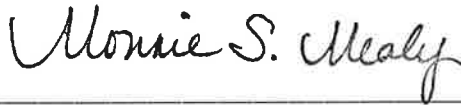
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