

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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4
5 TRANSCRIPT OF PROCEEDINGS
6 On-the-Record Presentation
7 April 25, 2007
8 Jefferson City, Missouri
9 Volume 2

9 In the Matter of the)
Consideration of Adoption)
10 of the PURPA Section 111(d) (11)) Case No. EO-2006-0493
Net Metering Standard as)
11 Required by Section 1251 of the)
Energy Policy Act of 2005)
12
In the Matter of the)
13 Consideration of Adoption)
of the PURPA Section 111(d) (14)) Case No. EO-2006-0496
14 Time-Based Metering and)
Communication Standard as)
15 Required by Section 1252 of the)
Energy Policy Act of 2005)
16
In the Matter of the)
17 Consideration of Adoption)
of the PURPA Section 111(d) (15)) Case No. EO-2006-0497
18 Interconnection Standard as)
Required by Section 1254 of the)
19 Energy Policy Act of 2005)

20 HAROLD STEARLEY, Presiding,
REGULATORY LAW JUDGE
21 JEFF DAVIS, Chairman,
CONNIE MURRAY,
22 LINWARD "LIN" APPLING,
COMMISSIONERS.

23
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1 P R O C E E D I N G S

2 JUDGE STEARLEY: All right. Well, let's
3 bring this proceeding to order. Good morning. Today
4 is Wednesday, April 25th, 2007. We are here for
5 combined on-the-record proceedings in Case No.
6 EO-2006-0493, In the Matter of Consideration of the
7 Adoption of the PURPA Section 111(d)(11), Net
8 Metering Standard as Required by Section 1251 of the
9 Energy Policy Act of 2005; Case No. EO-2006-0496, In
10 the Matter of Consideration of Adoption of the PURPA
11 Section 111(d)(14), Time-Based Metering and
12 Communication Standard as Required By Section 1252 of
13 the Energy Policy Act of 2005; and Case No.
14 EO-2006-0497, In the Matter of the Consideration of
15 Adoption of the PURPA Section 111(d)(15),
16 Interconnection Standard as Required By Section 1254
17 of the Energy Policy Act of 2005. My name is Harold
18 Stearley and I'm the presiding officer over this
19 matter today.

20 While these -- while we've combined
21 these proceedings today, these cases are not formally
22 consolidated. Our court reporter this morning is Pam
23 Fick. And we'll begin with oral entries of
24 appearance, but I do want to remind the parties to
25 please complete the paper entry of appearance form

1 and get a copy of that to our court reporter prior to
2 leaving today. So beginning with oral entries, we'll
3 start with Staff.

4 MR. DOTTHEIM: Steven Dottheim and
5 Dennis L. Frey, Post Office Box 360, Jefferson City,
6 Missouri 65101, appearing on behalf of the Staff of
7 the Missouri Public Service Commission.

8 JUDGE STEARLEY: Okay. Thank you,
9 Mr. Dottheim. Office of Public Counsel.

10 MR. MILLS: On behalf of the Office of
11 the Public Counsel and the public, my name is Lewis
12 Mills. My address is Post Office Box 2230, Jefferson
13 City, Missouri 65102. Thank you.

14 JUDGE STEARLEY: Department -- thank
15 you, Mr. Mills. Department of Natural Resources.

16 MR. WILLOH: Don Willoh, W-i-l-l-o-h,
17 Office of the Attorney General appearing for the
18 Department.

19 JUDGE STEARLEY: Thank you, Mr. Willoh.
20 Kansas City Power & Light.

21 MR. FISCHER: James M. Fischer,
22 Fischer & Dority, P.C., 101 Madison Street, Suite
23 400, Jefferson City, Missouri 65101 appearing on
24 behalf of Kansas City Power & Light Company.

25 JUDGE STEARLEY: Thank you, Mr. Fischer.

1 Ag Processing, SIEUA or Praxair.

2 (NO RESPONSE.)

3 JUDGE STEARLEY: Let the record reflect
4 we have no entry of appearance for those groups.
5 Empire District Electric Company.

6 MR. MITTEN: Let the record reflect Russ
7 Mitten, Brydon, Swearngen, England, 312 East Capitol
8 Avenue, Jefferson City, Missouri 65102 appearing on
9 behalf of the Empire District Electric Company.

10 JUDGE STEARLEY: Okay. Thank you,
11 Mr. Mitten. And I believe you're also here for
12 Aquila, Incorporated; is that correct?

13 MR. MITTEN: Yes. If you'd like me to
14 enter an appearance on behalf of Aquila at the same
15 time, we'll do that, your Honor.

16 JUDGE STEARLEY: Yes. Yes, please go
17 ahead.

18 MR. MITTEN: Same name and address
19 entering an appearance on behalf of Aquila, Inc.

20 JUDGE STEARLEY: All right. Union
21 Electric Company, doing business as AmerenUE.

22 MR. BYRNE: Yes, your Honor. I'm Tom
23 Byrne. My address is 1901 Chouteau Avenue, St.
24 Louis, Missouri 63103 appearing on behalf of
25 AmerenUE.

1 JUDGE STEARLEY: All right. Thank you,
2 Mr. Byrne. AARP.

3 MR. COFFMAN: John B. Coffman, 871
4 Tuxedo Boulevard, St. Louis, Missouri 63112 -- or I'm
5 sorry, 63119 appearing on behalf of AARP in the
6 EO-2007-0496 case.

7 JUDGE STEARLEY: Thank you, Mr. Coffman.
8 Audubon, Missouri.

9 MR. ROBERTSON: Henry Robertson, Great
10 Rivers Environmental Law Center, 705 Olive Street,
11 Suite 614, St. Louis 63101. Also appearing on behalf
12 of the Sierra Club, Ozark Energy Services, Heartland
13 Renewable Energy Services, Concerned Citizens of
14 Platte County and Mid-Missouri Peace Works.

15 JUDGE STEARLEY: Thank you,
16 Mr. Robertson. Are there any parties that I missed?

17 (NO RESPONSE.)

18 JUDGE STEARLEY: I believe we've gotten
19 everyone. Okay. Initially I want to run through a
20 couple of quick preliminary matters. I just want to
21 please instruct everyone to please have their
22 BlackBerry, cell phones, et cetera turned off. We've
23 had multiple problems with our recordings in the past
24 produced by these devices, so please have those shut
25 off for us.

1 I also wanted to advise everyone that
2 I've been informed that the Ozark Fire -- Fire -- the
3 Ozark Fire Protection people are here today flushing
4 our sprinkler lines and testing our alarms, that the
5 sound has been silenced to the alarm but you may
6 notice flashing lights in the back of the room of our
7 fire alarm at some point this morning while they're
8 testing. And we might have some odor similar to
9 methane. So I just wanted to advise everyone of
10 that. But supposedly this is routine testing and
11 there should be no reason for us to panic and vacate
12 the hearing room. But I didn't want any surprises
13 for anyone here this morning.

14 These on-the-record proceedings are set
15 up -- there'll be no opening or closing statements.
16 The parties have had their opportunities on multiple
17 occasions to file their positions on these issues
18 with the Commission. What I will do is I will go
19 through our witness list, ask our witnesses to state
20 and spell their name for the record and I'm going to
21 swear all of our witnesses en masse.

22 And at that point we will turn the floor
23 over to our Commissioners to ask questions of the
24 experts and also the attorneys. Are there any
25 preliminary matters we need to resolve?

1 (NO RESPONSE.)

2 JUDGE STEARLEY: Did any of the experts
3 bring documents that they wish to offer into evidence
4 this morning?

5 (NO RESPONSE.)

6 JUDGE STEARLEY: Okay. I see no need,
7 then, for premarking exhibits. So with that I'm
8 gonna go through our witness list, and all our
9 experts will try to get to a table where they can use
10 a microphone. That will be very beneficial for our
11 ability to hear you all and get you on our recording.

12 All right. If we're ready to begin, I
13 will go down calling your names. Please state and
14 spell your name for our court reporter. Warren Wood.

15 MR. WOOD: Warren Wood, W-a-r-r-e-n,
16 W-o-o-d.

17 JUDGE STEARLEY: And Mr. Wood, if you
18 can also state who you're appearing for and what your
19 title is as well.

20 MR. WOOD: I'm utility operations
21 division director on behalf of the Missouri Public
22 Service Commission Staff. Do you want the address as
23 well?

24 JUDGE STEARLEY: No, that's -- that's
25 fine.

1 MR. WOOD: Thank you.

2 JUDGE STEARLEY: James Watkins.

3 MR. WATKINS: My name is James Watkins,
4 J-a-m-e-s, W-a-t-k-i-n-s. I'm the manager of
5 economic analysis, Commission Staff.

6 JUDGE STEARLEY: Thank you, Mr. Watkins.
7 Richard Anderson.

8 MR. ANDERSON: Richard Anderson,
9 R-i-c-h-a-r-d, A-n-d-e-r-s-o-n. I'm appearing on
10 behalf of the Missouri Department of Natural
11 Resources Energy Center and I'm an energy policy
12 analyst.

13 JUDGE STEARLEY: All right. Frank
14 Cunningham.

15 MR. CUNNINGHAM: Yes, my name is Frank
16 Cunningham, that's F-r-a-n-k, C-u-n-n-i-n-g-h-a-m,
17 and I am appearing on behalf of Missouri DNR Energy
18 Center and I am an engineer.

19 JUDGE STEARLEY: All right. Patrick
20 Wilson.

21 MR. WILSON: Hello, I'm Patrick Wilson.
22 I'm the vice president of the Heartland Renewable
23 Energy Society.

24 JUDGE STEARLEY: And if you can please
25 spell your name for our court reporter.

1 MR. WILSON: P-a-t-r-i-c-k, W-i-l-s-o-n.

2 JUDGE STEARLEY: All right. David
3 Gibson.

4 MR. GIBSON: Yes, I'm David Gibson.
5 That's D-a-v-i-d, G-i-b-s-o-n, and I retired from
6 Empire last year. I'm now working on a consulting
7 basis.

8 JUDGE STEARLEY: All right. Wilbon
9 Cooper.

10 MR. COOPER: Good morning. My name is
11 Wilbon Cooper. That's W-i-l-b- as in boy, -o-n, last
12 name C-o-o-p-e-r, appearing on behalf of Union
13 Electric, doing business as AmerenUE, and I'm manager
14 of rate engineering and analyses.

15 JUDGE STEARLEY: All right. Richard
16 Voytas.

17 MR. BYRNE: Mr. Voytas is related to the
18 other docket so he's not here today.

19 JUDGE STEARLEY: All right. Thank you.
20 Matt Tracy.

21 MR. TRACY: I'm Matt Tracy. That's
22 M-a-t-t, T-r-a-c-y. I'm a regulatory manager with
23 Aquila, Incorporated.

24 JUDGE STEARLEY: All right. Thank you.
25 Chris Giles.

1 MR. GILES: Chris Giles, C-h-r-i-s,
2 G-i-l-e-s, appearing on behalf of Kansas City Power &
3 Light. I am vice president of regulatory affairs.

4 JUDGE STEARLEY: Okay. Randy Hughes.
5 Is he for our other --

6 MR. BYRNE: Randy is also with the other
7 dockets.

8 JUDGE STEARLEY: All right. Is
9 Mr. Wyble also?

10 MR. BYRNE: No, he is here today.

11 JUDGE STEARLEY: Okay. Mr. Wyble.

12 MR. WYBLE: Harold Wyble, H-a-r-o-l-d,
13 W-y-b-l-e. I'm with Kansas City Power & Light. I'm
14 supervisor of transmission planning.

15 JUDGE STEARLEY: All right. Thank you
16 all. If you'll all please raise your right hand.

17 (THE WITNESSES WERE SWORN.)

18 JUDGE STEARLEY: All right. Thank you
19 very much, and we will proceed with questioning.
20 Commissioner Appling, looks like we're going to begin
21 with you.

22 COMMISSIONER APPLING: I don't have no
23 questions right now. I think the other two people
24 run out on me. Go ahead. I don't have any.

25 JUDGE STEARLEY: Okay. Well, I'll go

1 ahead and start, then. And we'll start with you,
2 Mr. Wilson. There's been a characterization of
3 Missouri's net metering system -- or rules and
4 regulations as related referring to dual metering.
5 Is our -- is Missouri's, if we adopted or accept that
6 characterization, is the dual metering system that we
7 have in Missouri, is that the functional equivalent
8 of what EPACT requires in net metering and if not,
9 could you explain why?

10 MR. WILSON: Yeah, certainly. Yeah.
11 Missouri's policy is widely viewed and referred to as
12 dual metering, and this is a question that we've
13 posed through -- to experts around the nation, is
14 there a way you could consider dual metering to be
15 equivalent to net metering.

16 And the answer that we've been given and
17 my answer is that, yes, it could be considered the
18 same if, and only if, the treatment of the
19 electricity that goes back onto the grid from a dual
20 energy system is at a one-to-one offset.

21 So true net metering is when you have
22 one meter that spins forward or backwards, but the
23 equivalent of net metering if you had two meters
24 would be to measure the electricity separately, but
25 do a one-to-one offset of the energy generated by

1 renewable energy systems.

2 JUDGE STEARLEY: Okay. Is there --
3 there was some -- some noted -- some indication in
4 the pleadings that -- regarding the retail versus
5 wholesale prices. Does that also factor into that
6 definition of what would be net metering versus dual
7 metering?

8 MR. WILSON: That's a good question and
9 that -- that would factor into the treatment of
10 what's referred to as net excess generation, and that
11 can be considered at the end of a month or at the end
12 of a year. But true net metering always considers on
13 a momentary basis, on an hourly and daily basis, the
14 equivalent of a true retail compensation for -- for
15 energy contributed to the bid -- to the grid.

16 The question that the EPACT hands down
17 is do we have a net metering policy which -- which
18 allows homeowners, business owners, to offset their
19 electricity usage. So I interpret the word "offset"
20 to mean offset in measuring that in kilowatt hours.

21 If -- if -- if a consumer uses 1,000
22 kilowatt hours and contributes 200 kilowatt hours,
23 then that's 200 kilowatt hours that should be offset,
24 whether you use true net metering which would be one
25 meter spinning forwards or backwards or measured

1 separately.

2 The question I think that needs to be
3 looked at is at the end of the month or at the end of
4 the year, have -- has the electricity generated from
5 a renewal -- renewable energy system been allowed to
6 offset the actual consumption on a kilowatt hour --
7 on a one-to-one kilowatt-hour-per-kilowatt-hour
8 basis.

9 JUDGE STEARLEY: Thank you, Mr. Wilson.
10 Mr. Cooper, you've heard Mr. Wilson's response to
11 that question. Would you like to give us the
12 counterpoint on that?

13 MR. COOPER: Yes, thank you. We believe
14 that the general language under PURPA that requires
15 an offsetting of the energy does not require a
16 one-to-one offset. The statute that was in place or
17 that's in place for Missouri along with the rule
18 that's in place by the Commission addresses the value
19 of the energy that's provided to the utility along
20 with the value of the energy that's provided to the
21 customer. And there's a financial offset as opposed
22 to a direct offset one-to-one of the energy delivered
23 versus the energy delivered to the utility versus the
24 energy delivered to the customer.

25 And it's up to the Commission to decide

1 whether there would be an offset as interpreted by
2 the individual -- I'm sorry, the gentleman that spoke
3 earlier versus the existing rules that are in place
4 today.

5 JUDGE STEARLEY: All right, same
6 question to you, Mr. Wood.

7 MR. WOOD: Yes. In looking at net
8 metering, Staff would certainly agree. If you -- if
9 you look at other states where there's a one-to-one
10 exchange for power generated by the customer in
11 excess of their demand or the energy that they use
12 from the utility, if it's priced the same under our
13 current statute and rule, it would be -- you know,
14 effectively it would be net metering.

15 We do not believe that the PURPA or the
16 Energy Policy Act provision here requires that you
17 adopt a one-to-one exchange in pricing. That -- and
18 currently, our Consumer Clean Energy Act very
19 specifically addresses how pricing is to be
20 established for the flow of energy from the utility
21 to the customer and from the customer to the utility.

22 JUDGE STEARLEY: All right. Thank you.
23 We have a couple of the other Commissioners back.
24 Commissioner Murray, would you have some questions
25 for our witnesses at this time?

1 COMMISSIONER MURRAY: Yes, Judge. Are
2 we just dealing with net metering at this point?

3 JUDGE STEARLEY: At this point we've
4 started with net metering, yes.

5 COMMISSIONER MURRAY: Okay. All right.
6 I guess I will ask Office of Public Counsel, if we
7 interpreted the requirement the way that OPC has
8 indicated that it should be interpreted, that is, a
9 one-to-one offset, would we not be causing all of the
10 ratepayers to subsidize those who have their own
11 generation sources because we would not be
12 included in the -- including -- or we would not be
13 deducting from the credits that we would give that
14 customer any of the other costs involved; we'd --
15 we'd be giving them credit for even transportation
16 costs and -- other than just the straight fuel cost?

17 MR. MILLS: I'm sorry. As I understand
18 the one-to-one offset, you would -- you would offset
19 the customer's generation at the same rate as the
20 utility's generation at that time. So there wouldn't
21 be any costs that are not included in the offset.

22 COMMISSIONER MURRAY: That -- okay. So
23 you're not saying the rate that is actually charged
24 to the customer, you're saying purely the fuel
25 component of the rate?

1 MR. MILLS: Oh, no, no. It would be --
2 it would be the rate charged to the customer.

3 COMMISSIONER MURRAY: But that -- that
4 contains more than just the energy that's going
5 across the wires, does it not?

6 MR. MILLS: I'm sorry. I'm not sure I
7 understand the question. Are you talking about is
8 there some sort of a capacity value built into the
9 retail rates for residential customers?

10 COMMISSIONER MURRAY: Why don't we see
11 if I can -- the argument, I believe, I thought was
12 best made by Empire's position statement. And the --
13 on that -- in that position statement it says,
14 "Issues related to using the same tariff both for
15 usage and generation or other pricing mechanisms have
16 not been addressed, and they're beyond the scope of
17 the EPACT standards.

18 "Using the single tariff for both usage
19 and generation, the customers who do not generate
20 part of their usage are subsidizing the customer-
21 generators due to the -- due to the compensating of
22 costs that the customer-generator does not offset
23 such as transmission costs, meter reading,
24 et cetera."

25 MR. MILLS: Well, that's only a valid

1 argument if Empire's tariffs are incorrectly
2 calculated to begin with and customers are not paying
3 those in their retail rates, and I think they are.

4 COMMISSIONER MURRAY: But I think the
5 point is, customers are paying them in the retail
6 rates, but if you are reimbursing a customer-generator
7 for those costs, you're reimbursing the
8 customer-generator more than you should be.

9 MR. MILLS: I'm sorry. I just don't --
10 I don't see that argument at all. If the customer is
11 using -- are you talking about a situation in which
12 the customer is actually a net generator rather than
13 simply offsetting so that they're actually
14 contributing more than their usage?

15 COMMISSIONER MURRAY: No, I'm talking
16 about giving them an equivalent credit for the amount
17 that they put back onto the system.

18 MR. MILLS: Okay. There may be -- and
19 I'd have to think about this some more. There may be
20 some validity to that argument if you're talking
21 about a customer who's actually generating more than
22 they use -- use so that they're actually a net
23 contributor to the system. But up to the point where
24 they are simply offsetting their other usage, they're
25 simply acting as though they're a customer that has

1 reduced their usage.

2 COMMISSIONER MURRAY: But because --
3 there are still costs there, are there not, to
4 provide the ability of that customer to receive
5 energy off of the grid?

6 MR. MILLS: Well, I mean, that's --
7 that's true, but if you look at, for example, a
8 residential customer that has really high usage and a
9 residential customer that has really low usage, you
10 have the same sort of minor inequities, and it's
11 based just basically on the fact that some customers
12 use more than others.

13 It's never -- you're never gonna be able
14 to design a tariff that covers each customer
15 individually, and if you've got a customer that has
16 on-site generation that's being net metered, it's
17 essentially as though they're a customer with very
18 low usage. And so I don't think that that's unduly
19 discriminatory because they, in effect, put less of a
20 load onto the system.

21 COMMISSIONER MURRAY: I'd like to ask
22 Mr. Wood if he'd respond to that. Thank you.

23 MR. WOOD: Thank you. And you've hit on
24 one of the -- the key issues that was debated at
25 length when this legislation, the Consumer Clean

1 Energy Act was written.

2 If you look at -- and let's say, for
3 example, a customer is paying eight cents a kilowatt
4 hour for electricity they received from their
5 supplier and let's say that the avoided rate is two
6 cents per kilowatt hour. If you -- you know, if you
7 have net metering literally each month, a trade-off
8 of the energy consumed by the customer versus what
9 they generate and it's just on a monthly or an annual
10 basis, then the discussion only really comes up if
11 the customer generates more than they used in the
12 year.

13 In the net metering, as some people
14 discuss and that's the excess end-of-year or
15 end-of-billing-cycle item that was mentioned by
16 Patrick, I believe, a little earlier, in the State of
17 Missouri where the discussions in the last
18 legislative session went is, it went toward real
19 time. You know, is a customer generating more than
20 they are using?

21 And to the degree they are generating
22 less than they are using, it was viewed as the same
23 as a customer doing something like buying a more
24 efficient HVAC unit or insulating their home or
25 something like that. Obviously, any customer can do

1 that and shouldn't receive any sort of a penalty for
2 doing so.

3 So to the degree they use a
4 customer-owned generation system to reduce their
5 demand on the system, it's virtually equivalent to,
6 you know, increasing the efficiency of your home or
7 changing out an appliance to reduce your load. And
8 so there's no question that should be subject to full
9 retail compensation or full retail offset to their
10 demand to what they're charged for their energy they
11 use.

12 The question, was that energy that they
13 deliver back to the utility grid in excess of their
14 demand, and that's the current -- in our current
15 statutes and rule, that would be at the avoided rate,
16 let's say two cents per kilowatt hour.

17 If you compensated that back at eight
18 cents per kilowatt hour instead of two cents per
19 kilowatt hour, the difference in those rates would
20 be, you know, meter readers, transmission
21 distribution, fixed systems, you know, overhead
22 buildings, depreciation, all those other things that
23 go into the rates.

24 If that helps answer your question,
25 okay?

1 COMMISSIONER MURRAY: It does, thank
2 you. That helps to clarify that. And our current
3 rule does provide, as you say, avoided -- the avoided
4 cost rate?

5 MR. WOOD: Yes, it does, and there's
6 the -- there's the option to pursue time-of-use
7 avoided rates. Actually, the City of Columbia's
8 adopting a solar photovoltaic time-of-use rate for
9 net metering systems that are photovoltaic, and they
10 have found that that time-of-use avoided rate closely
11 matches their average retail rate. So for a select
12 group of customers, it appears they may be adopting
13 what would be true net metering as it's described by
14 their parties.

15 COMMISSIONER MURRAY: Would our rule --
16 our current rule allow that?

17 MR. WOOD: Yes.

18 JUDGE STEARLEY: Does anyone else wish
19 to respond to that question? I'm sorry. I don't
20 know your name.

21 MR. WILSON: Yeah, Patrick Wilson. I go
22 by P. J., so -- P. J. Wilson. The question -- it is
23 important to be clear about this question, what is --
24 is there cross-subsidy going on here or not. It's
25 clear to understand that there -- there is a part of

1 the rate structure that -- so for your retail rate,
2 seven or eight cents a kilowatt hour, there is a
3 portion that's considered to go towards paying for
4 the lines and whatnot, and that's how it's structured
5 in Missouri.

6 So if you -- if -- focusing on -- on
7 that and that alone, you could make some
8 determinations. What I would encourage the PSC to do
9 is to look, however, at the broader picture and not
10 to get stuck on that argument because that argument
11 is true.

12 What's also true is that there are a lot
13 of other benefits that are -- that are harder to
14 quantify as far as what kind of value comes onto
15 the -- onto the grid in general because of these
16 small renewable energy systems being on-line.

17 There's a recent report released in a
18 publication called Solar Today, and it estimated that
19 if we had just a few hundred megawatts of renewable
20 energy installed in the northeast of the country, we
21 would have avoided the power outage in New York City
22 and in the whole region of a few years ago. What's
23 the value of that?

24 So my point there is that there's some
25 grid reliability issues that are worth considering

1 there when we have only single-point generation where
2 our grid's a lot more vulnerable than if we have more
3 distributed generation coming on-line.

4 As Warren Wood pointed out, in Columbia
5 they're adopting a standard of true net metering for
6 solar, and the reason they're able to justify that is
7 because the power that comes onto the grid from solar
8 systems almost always closely matches the peaking
9 power on a daily basis. When you need the energy
10 most is normally in the afternoon and that's when
11 solar systems put -- put energy onto the grid. So
12 those -- the construction of those systems should be
13 encouraged.

14 And when we look at the effect, it's
15 really a time question. Are we looking at the effect
16 of these system on a momentary basis, on a monthly
17 basis or an annual basis? And from a renewable
18 energy standpoint, what makes the most sense is to
19 look at it on an annual basis because there's times
20 in the year when there's more sunshine, there's times
21 in the year when there's more winds. So an annual
22 basis is really the best way to look at that.

23 If not annual, though, monthly is a --
24 is a good way to look at it because that's where
25 customers are already used to receiving their bill at

1 the end of the month, so how much energy did I use
2 this month?

3 And it's important to note that the
4 effect of small renewable energy systems coming
5 on-line is exactly the same as conservation measures.
6 Average impact of a -- of a small system installed
7 like this will be the reduction of -- the average
8 home in Missouri uses 1,000 kilowatt hours of
9 electricity on an average basis.

10 So the average effect of these systems
11 is gonna be a reduction of that, and it would be the
12 same as if we have insulation installed in everyone's
13 attics or the windows are all upgraded to a really
14 high efficiency.

15 COMMISSIONER MURRAY: Okay. Let me ask
16 you a question because it seems to me that you're
17 trying to say that these small generators would not
18 be used unless we were to give it a one-to-one
19 offset. But there would be the incentive, it seems
20 to me, to reduce their own utility -- I forgot to
21 turn on my mic. I'm sorry. Could you hear what I
22 was saying?

23 MR. WILSON: Yeah.

24 COMMISSIONER MURRAY: Anyway, it seems
25 that you are indicating that there would be no

1 incentive unless we have the one-on-one offset and --
2 or one-to-one offset, and yet, if the customer
3 completely avoided their energy costs, would that not
4 be a significant incentive? Do they have to earn
5 what -- do they have to earn back if they provide
6 more than that to the grid? Do they have to earn
7 back an equivalent of what the company charges in
8 order to be able to have the incentive?

9 MR. WILSON: Yeah, and that is -- that
10 is a very good question. I think that's what should
11 be looked at. And I think that the intent of the
12 2005 EPACT is to -- is to suggest that all states
13 take this seriously, that renewable energy is
14 important and we need to adopt policies that
15 encourage homeowners to -- and business owners to put
16 up these systems.

17 So what works and what doesn't? What
18 works nationwide is -- is true net metering policies
19 which have been adopted in 41 states. Missouri does
20 not have a true net metering policy; it has the
21 Consumer Clean Energy Act adopted in 2002 which does
22 not work.

23 COMMISSIONER MURRAY: And when you say
24 that has been adopted in 41 states, is that a
25 one-to-one offset?

1 MR. WILSON: Yeah. True -- there's an
2 organization called the Interstate Renewable Energy
3 Council which -- which publishes maps of what states
4 do have true net metering and which states don't. If
5 you take a look at that map, you'll notice that
6 Missouri is a big blank state in the middle. It's
7 because we don't have true net metering, whereas 41
8 states do have some sort of true net metering whether
9 it's mandated by the state's PSC or a statewide law.

10 COMMISSIONER MURRAY: But does everyone
11 define true net metering as requiring a one-to-one
12 offset?

13 MR. WILSON: Yeah, that is the
14 definition of true net metering. And in fact, it's
15 the definition of net metering in the renewable
16 energy world. But if you had to put the word "true"
17 on there, then definitely, the definition of true net
18 metering is a one-to-one kilowatt hour per kilowatt
19 hour offset.

20 COMMISSIONER MURRAY: And when the
21 customer produces more than the customer uses, the
22 customer -- the offset is equivalent to the retail
23 rate?

24 MR. WILSON: Yeah, it either takes a
25 single meter and just spins it forwards and backwards

1 or it uses more than one meter and compensates in the
2 exact same way.

3 COMMISSIONER MURRAY: Interesting.
4 Okay. Thank you. We've got a couple more people who
5 want to respond. I apologize, I didn't hear the
6 introductions. Go ahead.

7 MR. ANDERSON: You're -- you're pointing
8 to me. My name is Rick Anderson. I'm with the
9 Department of Natural Resources. A couple of the
10 questions you asked, if I could speak to subsidy and
11 incentive, the concept of subsidy would -- would
12 suggest that it's a financial transaction and that
13 net metering results in a financial payment to the
14 owner of the renewable energy system.

15 In most states where there's net
16 metering, as -- as P. J. indicated, net metering
17 being a definition of one-to-one outside the state
18 which has chosen to use that term to relate to a
19 different definition of that term. The subsidy would
20 take place if there was financial transaction.

21 Those other states don't make a
22 financial transaction. In most cases, what they do
23 is, during the period, the billing period, whether
24 it's a monthly or annually, they offset. And then at
25 the end of the period, the net excess generation is

1 resolved often, and I think I could say correctly in
2 most situations by forfeiture of any excess credit.

3 So what it does is it keeps it from
4 becoming a financial purchase and it keeps it in the
5 range of swapping of power which is not uncommon in
6 the electric industry. It's just that it's a much
7 smaller scale of swap than is typically done between
8 utility companies. Regard --

9 COMMISSIONER MURRAY: I'm sorry. I may
10 have to ask you to clarify that, if you would. An
11 example being a customer who generates more than the
12 customer uses.

13 MR. ANDERSON: Okay.

14 COMMISSIONER MURRAY: At the end of the
15 month what happens?

16 MR. ANDERSON: In most of the states the
17 amount that's in excess of their consumption is
18 forfeited to the power company unless --

19 COMMISSIONER MURRAY: So there is not
20 generally a financial transaction?

21 MR. ANDERSON: That is correct.

22 COMMISSIONER MURRAY: Meaning the
23 customer is not given credit for the retail rate of
24 the amount that the customer put back onto the
25 system?

1 MR. ANDERSON: The net metering provides
2 them one-to-one value during the billing period. At
3 the end of the billing period, any excess is
4 forfeited.

5 COMMISSIONER MURRAY: And how does that
6 differ from our current offset that we have in place
7 here in Missouri?

8 MR. ANDERSON: Whereas -- whereas, the
9 other program -- the common definition of net
10 metering is a -- is a swap during the period. The
11 Missouri law takes the approach of you buy from the
12 utility at the whole -- the retail rate and if you
13 have surplus, you sell it financially for -- for a
14 credit, and that is calculated at the wholesale rate.

15 So there are two different values
16 assigned: One is for the amount coming in and a
17 different value is assigned to that going out, and
18 only in the event that there is more value leaving is
19 there a financial payment.

20 COMMISSIONER MURRAY: Well, I'm sorry.
21 Then it appears that the way we do it in Missouri is
22 more beneficial to the customer-generators.

23 MR. ANDERSON: Let me offer an example.
24 If somebody was using 1,000 kilowatt hours per month
25 and 80 percent of that was coming from the utility

1 company, they would buy 800 kilowatt hours at the
2 retail rate. They would -- if they generated 200
3 kilowatt hours from their own use, they wouldn't need
4 to be buying that from the utility company. If they
5 generated that power at a time when there was nobody
6 in the house to use it, those 200 kilowatt hours
7 would leave the house. They would get paid two cents
8 for those. It would be worth four dollars.

9 When the people were in the house and
10 they were using their power, they would still need
11 their full 1,000 hours because the surplus -- their
12 own generation took place when they were away, so
13 they would still be buying their full 1,000. And so
14 they would still pay their full bill if the
15 generation took place at a time that they were not
16 using it themselves.

17 So they would get a four-dollar credit
18 and still pay the full price of all the 1,000
19 kilowatt hours because it wasn't netted out. Under
20 net metering they would have been billed for the 800.

21 And regarding subsidy, I wanted to
22 respond to your question, is that the reason that net
23 metering has been adopted and -- in many other
24 locations is, it's been found that net metering
25 actually increases the cost of the utility if it

1 results in two meters, and it does not increase the
2 cost of utility if it's a single meter, the reason
3 being that it doubles the administrative costs to the
4 utility to transact a debit and a credit and
5 especially if those debits and credits are not of
6 equal value.

7 So it becomes an account reconciliation
8 question rather than simply reading the meter for
9 whatever net purchase the customer made. So by --
10 ironically, by seeking to, quote, protect the utility
11 from the evils of the perceived or alleged subsidy,
12 the utilities actually end up having greater overhead
13 costs, and --

14 COMMISSIONER MURRAY: Okay. Let me just
15 clarify you there. When I'm asking this about
16 subsidies, I'm not talking about protecting the
17 utility, I'm talking about protecting the other
18 ratepayers.

19 MR. ANDERSON: Well, what -- what
20 it's -- the concept of subsidy is there is only a
21 subsidy if money is -- is being transferred from one
22 party to the other. Under net metering there is not
23 a financial transaction. Under Missouri law the term
24 "net metering" is used in association with a
25 buy-retail/sell-wholesale concept which in other

1 localities is not called net metering so subsidy
2 doesn't become an issue.

3 COMMISSIONER MURRAY: Is that all?

4 MR. ANDERSON: I just wanted to see if I
5 connected there. And in regards to an incentive,
6 what incentive does, a customer-generator have, I
7 think it's important to take in account the costs of
8 renewable energy generation. Most renewable energy
9 generation, the only ones I've heard of, unless
10 someone is a particularly good do-it-yourselfer in
11 using used materials, inevitably results in the
12 renewable energy costing the homeowner more than
13 buying that power from the utility company.

14 So providing that individual retail
15 offset value does not result in an incentive.
16 They're already paying more for each kilowatt hour.
17 The only question is, are they given a wholesale
18 value or are they allowed to experience a retail
19 value? It's still costing them 20 or 30 cents a
20 kilowatt hour and they might get an eight-cent value
21 under a net metering. The incentive -- net metering
22 simply reduces the price barrier, but by no means
23 does the customer-generator receive an incentive.

24 COMMISSIONER MURRAY: Does that cost to
25 the customer-generator go down over time or are you

1 talking about first, one-time --

2 MR. ANDERSON: We're talking about
3 life -- life cycle cost. A solar system on the -- on
4 the roof of an individual's home for a two-kilowatt
5 system in the range of 25 to \$30,000, the amount of
6 energy they're gonna generate during the 20- or
7 25-year life of that system is going to be a couple
8 or three times the cost of buying that same power
9 from the utility.

10 COMMISSIONER MURRAY: Taking into
11 consideration the one-time upfront cost?

12 MR. ANDERSON: Of course, because once
13 it's purchased, unless it malfunctions, it should be
14 running at a low cost since you're paying all your
15 costs upfront except for maintenance, so averaging
16 those costs over -- total generation over the life of
17 the project.

18 COMMISSIONER MURRAY: Except that will
19 last longer than 20, 25 years probably, won't it?

20 MR. ANDERSON: That's pretty much the
21 standard life cycle expectation. I suppose there
22 might be locations that have gone longer, but I think
23 others may be more eligible on a life cycle, but
24 they -- 20 to 25 years, certainly true for a wind
25 system. Solar may have fewer moving parts, but you

1 still have devices like inverters that aren't going
2 to go on forever.

3 COMMISSIONER MURRAY: Thank you. I
4 think there was someone behind you that wanted to
5 respond.

6 MR. TRACY: Matt Tracy with Aquila.
7 Couple of things. A comment was made that customers
8 use about 1,000 kilowatt hours. I wanted to confirm
9 that's per month, not annually.

10 A comment was made about -- I think
11 P. J., Mr. Wilson, I'll remember his name --

12 MR. WILSON: Patrick.

13 MR. TRACY: -- there you go, Patrick
14 over here made a comment about a couple hundred
15 megawatts of whatever generation had been available
16 in the northeast that would have prevented the
17 New York blackout. But one has to assume that it
18 wouldn't have had to have been renewable generation
19 if there had been a couple hundred megawatts of any
20 generation. I mean generation is generation.

21 I guess a couple points I wanted to make
22 in particular. One is, I don't see where the actual
23 language -- I mean, whether we have net metering
24 or -- net metering the way the 41 define it versus
25 the net metering the way we've already defined it

1 here in Missouri, I don't think we have to have the
2 same language because I don't think the EPACT '05
3 requires that.

4 I mean, if the feds had wanted us all to
5 have the same language, they could have done that,
6 right? They could have just said here's the
7 language, everybody gets it. So that's not an issue.

8 I did also want to bring a little more
9 information regarding the costs we're talking about,
10 and I'm familiar with Aquila's costs and so I'll use
11 those. In the current Aquila case -- and I won't go
12 into any particular detail there because that's still
13 before the Commission, but the baseline energy cost
14 that's being bandied about for the MPS division is
15 about 2.6 cents per kilowatt hour. That's our
16 average cost of energy.

17 I will look at our tariff here, our
18 current tariff, and for residential we are paying
19 8.23 cents per kilowatt hour and that's for the first
20 600 kilowatt hour block, but that's a representative
21 price. And so you've got 8.23 cents versus
22 2.6 cents. That's the difference in the cost of
23 energy versus all the other stuff that gets piled
24 into the energy rate in order to keep costs down to
25 small users.

1 For Aquila, our current avoided cost
2 rate, the cogeneration purchase schedule, sheet 102
3 in our tariff, just changed this past February.
4 It's -- at least biannually we have to update it. It
5 is now, I believe, 5.24 cents per kilowatt hour which
6 puts us, I think, up near the top of the
7 investor-owned utilities in Missouri. Most of them
8 are closer to two or three cents, as I recall.

9 But those are the different rates you're
10 looking at. Our retail rate is about a little over
11 eight cents, our actual cost of energy is about two
12 and half, 2.6 cents, and our avoided cost -- now,
13 avoided costs, so we understand, means our marginal
14 costs. What's the average cost of our most expensive
15 unit running at any given hour.

16 And so our current method pays these
17 customers based on this marginal cost; whereas, we
18 collect from customers based on our average cost.
19 That's the amount embedded in the rate is that 2.6.
20 And so in my opinion, we are already significantly
21 subsidizing these customers. To go to the retail
22 rate is to do so even more.

23 Now, from a policy perspective you can
24 choose to do that, but you need to understand that is
25 what you are doing. You are transferring money from

1 customers to customers, and at this point you're
2 talking about transferring it to customers who can --
3 who can afford a multi-thousand-dollar investment.
4 So I'm not sure they need the subsidy in the first
5 place.

6 And as far -- the question that was
7 inquired about meters pretty much, I believe -- I
8 know in our utility, I believe all utilities in
9 Missouri, the meters we have in place only run one
10 direction. We actually physically constrain them
11 from running backwards in order to help minimize
12 costs involved with energy diversion which is the
13 nice way of saying people who steal from us. And so
14 any change to a customer needing this kind of a
15 system would require a meter change, at least,
16 anyway.

17 As far as having to actually read, get
18 two readings rather than one, in the grand scheme of
19 things, that doesn't cost much, and so that's really
20 not that great of an administrative burden. Some of
21 the -- from an administrative billing burden, some of
22 the discussion about having to carry over a
23 customer's usage if he happened to generate more in
24 one month, you carry that over to the next month or
25 not carry it over, that's administratively much more

1 difficult than just settling it up each month.

2 COMMISSIONER MURRAY: Can you tell me
3 when a customer does want to put something on the
4 grid, is -- is the cost of the metering, whether it
5 be a second meter or changing out to one meter that
6 flows both directions, who bears that cost?

7 MR. TRACY: And the current tariff makes
8 that the responsibility of the customer. So we
9 basically change out a \$25-watt-hour meter for about
10 \$100 -- I think it's in that range, 80 to \$100 meter
11 that can -- is electronic and will measure both
12 directions. It's still a single meter, but it's
13 actually doing the effect of two meters and will
14 measure both directions for us.

15 COMMISSIONER MURRAY: All right. Thank
16 you. Was that -- I interrupted you. Was that all
17 you had?

18 MR. TRACY: That will do for now.

19 COMMISSIONER MURRAY: All right. Go
20 ahead.

21 MR. GIBSON: Yes, David Gibson. First
22 of all, I would just like to point out that -- that
23 the EPA act really has defined net metering and I
24 think has been mentioned. It -- what other sources
25 define net metering as is really irrelevant, it

1 doesn't make any difference.

2 The EPA act talks about kilowatt hours,
3 it talks about energy. It does not talk about
4 dollars. That is a policy issue for the Commission,
5 but it doesn't have anything to do with -- with the
6 EPA act. I'd like to kind of address the -- give you
7 a quick example on what I'm talking about with
8 subsidies.

9 If I have -- as a -- as a real simple
10 example, if I have two customers on the same line and
11 those two customers each use 1,000 kilowatt hours a
12 month, one now is a cogenerator and they stop using
13 energy, they now have zero usage, the cost of that
14 distribution line is going to be borne in total by
15 the remaining one customer. So absolutely there is a
16 cost shift.

17 You know, it -- it -- it -- for us,
18 anyway, for Empire, it's not a big item right now
19 because of the number of customers, but there is that
20 shift and it's -- from a policy standpoint, that is
21 something that you need to be aware of.

22 COMMISSIONER MURRAY: Thank you.

23 Mr. Wood, I think you had something else too?

24 MR. WOOD: Yeah, from the discussions
25 earlier, I just wanted to make it very clear when

1 we're talking about how our, quote, unquote, net
2 metering operates and how net metering would operate in
3 some of the other states that P. J. was mentioning --
4 and this is a very simple example.

5 Let's say we have a customer that uses
6 1,000 kilowatt hours a month, okay? And then we put
7 them on to dual metering as has been described at
8 basically one meter reading the energy flow from the
9 utility grid to the customer, and then a second meter
10 that only reads energy flow from the customer to the
11 utility. So we have two meters. One is spinning
12 power into the house, one is spinning power out of
13 the house, okay?

14 Now, let's say in a given month this
15 customer, you know, they consume 1,000 kilowatt hours
16 of energy, they generate 300 kilowatts of hours of
17 energy. 200 of that 300 never -- didn't exceed their
18 demand at any particular point in time, so all's it
19 did is slow down the rate that the meter reading
20 power from the utility grid to the customer was
21 spinning at, okay?

22 But 100 of that 300 kilowatt hours that
23 was generated by the customer-generator exceeded
24 their demand at those particular points in time. So
25 the outflow meter measured 100 kilowatt hours from

1 the customer's house to the utility grid, okay? Are
2 there any -- is that clear? Because then from there
3 it's pretty straightforward.

4 So at the end of the month under our
5 current net metering rule and statute, the customer
6 would be billed for 800 kilowatt hours of consumption
7 because they used 1,000 but they offset 200 of that
8 with their own customer-generator. And then they
9 would receive a credit for the 100 kilowatt hours at
10 the avoided rate which, for this example, might be
11 two cents versus eight cents. So in the end they're
12 billed for 800 kilowatt hours and they receive a
13 credit for 100.

14 Now, if you had net metering of a
15 one-to-one trade-off, effectively the end of the
16 month the meter would have read 700 kilowatt hours
17 instead of 800, and they would have been billed for
18 that 700 at eight cents instead of 800. Effectively,
19 in the final bill the difference is that 100 kilowatt
20 hours at eight cents versus two cents in my example.

21 MR. ANDERSON: So that's a six-dollar
22 difference.

23 MR. WOOD: Yes, a six-dollar difference.

24 COMMISSIONER MURRAY: So the -- that --
25 the subsidy increases?

1 MR. WOOD: Well, the -- under -- yes, if
2 you went to the net metering -- the true net metering
3 and the one-to-one trade-off, the difference is six
4 dollars from one customer versus the other. Depends
5 on how it's set up. I've heard a lot of running
6 around that example, but I didn't know that a good
7 solid example and how the calculations work had been
8 put out there. But that's the difference.

9 COMMISSIONER MURRAY: Yes, thank you.
10 Thanks. That helps. Any other response to that
11 question? Go ahead.

12 MR. WILSON: I had just a couple of
13 quick points that came up. I think that's a good
14 example from Warren. It seems like, Commissioner
15 Murray, that you're really trying to figure out, if
16 you have true net metering, does it cost your
17 neighbors anything, does it cost other people on the
18 system anything when you have it.

19 And it's hard to answer that question
20 because there's never been a study done. Everyone's
21 trying to answer that question but there is not a
22 good study to refer to in this country, which means
23 there's no study that shows one way and no study that
24 shows the other way.

25 COMMISSIONER MURRAY: But can't we just

1 apply common sense to how rates are -- you know, how
2 we set rates?

3 MR. WILSON: Right. Right. And so I
4 encourage you to think of it as applying common sense
5 to -- let's say your neighbor applies all kinds of
6 conservation measures. Typically, although we use
7 about 1,000 kilowatt hours a month, we could all be
8 using about 500 kilowatt hours a month. We could cut
9 in half our electric bills if we were to use all the
10 conservation measures that are available.

11 So let's say your neighbor installs
12 conservation measures, insulation -- new appliances
13 are Energy Star-rated, so their -- their energy
14 consumption goes down, does that make your bills go
15 up, is that a cross-subsidy? And I think that the
16 answer to that is no.

17 I think that we have pretty universal
18 support for conservation measures, and that's the way
19 I encourage that we -- we look at this is on a
20 monthly basis. If we have true net metering, that's
21 the same effect, it's the same as conservation
22 measures.

23 The question has -- second point, the
24 question has come up is what does it cost, this dual
25 metering that we have now versus true net metering.

1 The only study that I have seen was done by AWEA,
2 A-W-E-A, the American Wind Energy Association, and
3 they value those administrative costs that we've been
4 referring to of having that second meter at around
5 \$25 per month per customer. If there's other studies
6 out there, then we can refer to them, but that's the
7 only one that I know of that quantifies what is that
8 cost.

9 So the current law that we have now that
10 requires this two-metering system, we don't have very
11 many systems on-line so it's kind of hard to see, but
12 that's -- that's a national average that's out there
13 that would go away if we had true net metering.

14 And the other thing I wanted to touch on
15 is the training that Rick Anderson suggested about at
16 the end of the month, what do we do with the net
17 excess generation. There's actually only two states
18 that I know of, Arkansas and one other state, that
19 have a -- yeah, do you have the chart there? That
20 have a -- that have a giveaway at the end of the
21 month of net excess generation.

22 Most states have some sort of
23 compensation at the end of the month, although it
24 will either be a full retail rollover or it will be
25 some kind of variation of whatever that state's come

1 up with, a fuel cost or -- or wholesale cost. This
2 is -- this would be a great document to enter as an
3 exhibit if it's not already --

4 MR. ANDERSON: It's available for you.

5 MR. WILSON: -- in there, but this is
6 from the Interstate Renewable Energy Council. I
7 don't know if you guys already have a copy of this,
8 but it quantifies what -- what has been happening in
9 other states.

10 And while I agree with -- it doesn't
11 matter what -- we need to do what's best for
12 Missouri. It doesn't matter what's happening in
13 other states. It is important to know that what's
14 working in other states is your net metering, and
15 what's not working here is our current law of dual
16 metering.

17 COMMISSIONER MURRAY: I see another
18 response.

19 MR. GIBSON: Yes, just -- just to expand
20 a little bit on that. Although this Commission
21 doesn't have to take into account what other states
22 have done, the Kansas Commission just has recently
23 passed, or I should say not passed but they elected
24 to not implement the PURPA standard in this -- in
25 this case. Their rationale is that they had already

1 met the standard in the state.

2 They also are one of -- you know, the
3 definition of net metering, they also are thought of
4 as not having -- having true net metering. But they
5 concluded themselves that they already met the
6 standard. They also do not price at full retail for
7 inflow and outflow, they don't net those two. So
8 that's something else to keep in mind.

9 COMMISSIONER MURRAY: Yes.

10 MR. COOPER: Wilbon Cooper from Ameren.
11 I have one comment with regard to the statement that
12 Mr. Wilson made based on the study of the American
13 Wind Association of the \$25 per month associated with
14 the additional metering.

15 I'd only like to point out that Ameren's
16 first revised sheet No. 3 lists the customer charge
17 required for customers who generate into the Ameren
18 system, and for nine time different -- differentiate
19 the entity, the rate is four dollars per month, so
20 that's \$48 per year.

21 COMMISSIONER MURRAY: And I'm sorry.
22 That is what you are indicating is the additional
23 cost for the additional metering?

24 MR. COOPER: Additional metering, that
25 is correct.

1 COMMISSIONER MURRAY: Four dollars per
2 month?

3 MR. COOPER: That is right.

4 COMMISSIONER MURRAY: Thank you. And
5 that's in your -- that's in your tariff?

6 MR. COOPER: That is correct.

7 COMMISSIONER MURRAY: All right. If
8 there aren't any other responses to that, I'm gonna
9 pass and let someone else ask questions.

10 JUDGE STEARLEY: All right.
11 Commissioner Appling, do you have any questions
12 regarding net metering?

13 COMMISSIONER APPLING: No questions.

14 JUDGE STEARLEY: Mr. Chairman?

15 CHAIRMAN DAVIS: Mr. Willoh, we've got a
16 statute that defines -- that has a definition for net
17 metering, do we not?

18 MR. WILLOH: Yes, sir.

19 CHAIRMAN DAVIS: Okay. So we've got a
20 statute that defines net metering, then we've got a
21 federal statute that says, hey, you guys need to go
22 do something on net metering, you know, by August of
23 2007. And I'm -- I'm just trying to reconcile how do
24 we get -- you know, how do we get around our state's
25 definition of net metering?

1 And to me it looks like the
2 legislature's already preempted us saying I've --
3 I've read -- read the arguments, but I'm still, you
4 know -- it doesn't matter whether I like our net
5 metering law or not. Many people affectionately
6 refer to it as the not-metering law. But you know,
7 how do you respond to that?

8 MR. WILLOH: I think the definitions are
9 very different. If -- if it would be all right with
10 the group, I think Rick Anderson is more than capable
11 of talking about the differences probably a lot
12 better than I am. I'd like to defer to him if I
13 could.

14 CHAIRMAN DAVIS: Okay. So do we adopt
15 one definition for -- we've got our statutory
16 definition of net metering for the Missouri Consumer
17 Clean Energy Act, and then are we going to adopt
18 another -- another regulation defining net metering
19 in some other ways for purposes of PURPA; is that
20 what we're seeking to do here today?

21 MR. WILLOH: With your indulgence, I
22 really think Mr. Anderson would be better qualified
23 to answer that question.

24 CHAIRMAN DAVIS: Okay. Hold on. I want
25 to yield to Mr. Dottheim who has his finger raised.

1 MR. DOTTHEIM: The Commission is not
2 required to adopt PURPA.

3 CHAIRMAN DAVIS: Okay.

4 MR. DOTTHEIM: The Commission is not
5 required to adopt the PURPA standard; the Commission
6 is required to consider the PURPA standards --

7 CHAIRMAN DAVIS: Okay.

8 MR. DOTTHEIM: -- and to do nothing more
9 than to consider the PURPA standard. The 386.867 --
10 excuse me, 386.887 is not preempted by PURPA.

11 CHAIRMAN DAVIS: No, no. But the
12 question is, does 386.887 preempt any Commission
13 actions in this area?

14 MR. DOTTHEIM: Yes, I -- I think
15 that's -- that's a -- that's a real question. And
16 there are other issues too that -- that go beyond
17 prior state action that I don't know that they've --
18 that they've been raised as yet. And I don't -- I
19 don't want to -- to cloud the issues today, but
20 386.887 I think had been deemed to apply to co-ops
21 and municipals.

22 CHAIRMAN DAVIS: Yes.

23 MR. DOTTHEIM: And the Commission's rule
24 that on net metering --

25 CHAIRMAN DAVIS: Uh-huh.

1 MR. DOTTHEIM: -- I believe, when people
2 discuss -- and myself included, when I'm asked
3 questions as to what is the -- the Commission's
4 jurisdiction regarding co-ops and municipals, I all
5 too frequently forget 386.887.

6 CHAIRMAN DAVIS: Uh-huh.

7 MR. DOTTHEIM: And I believe when the
8 Commission went through its rulemaking on net
9 metering, the -- what occurred is that the
10 Commission's net metering rule applies to the co-ops
11 and municipals. I believe that the co-ops and the
12 municipals participated in --

13 CHAIRMAN DAVIS: Uh-huh.

14 MR. DOTTHEIM: -- in that -- in that
15 rulemaking.

16 CHAIRMAN DAVIS: Right. I'm concurring
17 with that analysis.

18 MR. DOTTHEIM: Yes. And --

19 CHAIRMAN DAVIS: Hold on, Mr. Byrne,
20 we'll get to you in a minute.

21 MR. DOTTHEIM: -- and PURPA -- PURPA
22 does not give the Commission jurisdiction over co-ops
23 and municipals for purposes of the PURPA standards.

24 CHAIRMAN DAVIS: Right. Okay. So we --
25 so let's just say we're back to our plenary

1 rulemaking authority. Do we have the authority to
2 promulgate rules that would be more aggressive than
3 the state statute?

4 MR. DOTTHEIM: No, I don't believe -- I
5 don't believe the Commission does. I think the state
6 statute has to be changed. And I don't -- and I
7 don't believe that -- frankly, that creates a -- a
8 constitutional conflict because, again, PURPA
9 requires only that the Commission consider the
10 Section 111(d) standards, one of which is --

11 CHAIRMAN DAVIS: Okay. Now,
12 Mr. Dottheim, before we -- before we get back to the
13 circle here, if you can in 30 seconds or less tell
14 me -- respond to the argument, okay, here we have the
15 net metering law, the Consumer Clean Energy Act,
16 386.887 -- 887, I believe.

17 MR. DOTTHEIM: Yes.

18 CHAIRMAN DAVIS: Okay. You've got --
19 you've got this act but the act doesn't cover
20 everything.

21 MR. DOTTHEIM: Correct.

22 CHAIRMAN DAVIS: So there are these
23 other issues that are, you know, not covered under
24 the act. So does that preempt us from rulemaking on
25 those other tangentially related issues?

1 MR. DOTTHEIM: No, I don't believe it
2 does.

3 CHAIRMAN DAVIS: Okay. So we do have --
4 because we do have broad rulemaking authority here.

5 MR. DOTTHEIM: Yes.

6 CHAIRMAN DAVIS: So what areas do you
7 think we are not preempted in?

8 MR. DOTTHEIM: Chairman, are you
9 referring in particular to the other standards, the
10 other --

11 CHAIRMAN DAVIS: Well, I know, but I'm
12 just kind of in the general topic of net metering
13 because we're trying to ...

14 MR. DOTTHEIM: Well, I think, you know,
15 arguably the -- the cost -- the cost area --

16 CHAIRMAN DAVIS: Uh-huh.

17 MR. DOTTHEIM: -- you know, there may be
18 other counsel that have differing views --

19 CHAIRMAN DAVIS: Okay.

20 MR. DOTTHEIM: -- on -- on that, but --
21 but that -- but that -- in -- in particular, I think
22 is a -- is a -- is a real issue.

23 CHAIRMAN DAVIS: Okay.

24 MR. DOTTHEIM: I mean, there's --

25 CHAIRMAN DAVIS: 30 seconds is about to

1 expire, Mr. Dottheim.

2 MR. DOTTHEIM: Okay. Commissioner, then
3 I'd also refer you to -- in response to your
4 question, I'm sorry, I am over the 30 seconds, to
5 386.887, paragraph 5.

6 CHAIRMAN DAVIS: Paragraph 5, "Qualified
7 Net Meter" -- no, that's subsection 5.

8 MR. DOTTHEIM: Subsection 5 --

9 CHAIRMAN DAVIS: Okay. Paragraph 5, "A
10 retail electric supplier shall not be required to
11 provide net metering service with respect to
12 additional customer-generator after the date during
13 any calendar year on which the total generating
14 capacity of all customer-generator with qualified net
15 metering is served by the retail electric supplier is
16 equal to or in excess of the lesser of 10,000
17 kilowatts or one-tenth of 1 percent of the capacity
18 necessary to meet the company's aggregate customer
19 peak load demand for the preceding calendar year."

20 MR. DOTTHEIM: Yeah, and I don't know
21 whether there are enough customers --

22 CHAIRMAN DAVIS: I think we're a long
23 way from there, aren't we, Mr. Dottheim?

24 MR. DOTTHEIM: Yes, I think we probably
25 are, but Chairman, I just thought I'd -- I'd -- I'd

1 mention that one other section. I'm done.

2 CHAIRMAN DAVIS: All right. Thank you,
3 Mr. Dottheim. Mr. Byrne?

4 MR. BYRNE: Yes, I --

5 CHAIRMAN DAVIS: You had your hand up.

6 MR. BYRNE: Just briefly, your Honor. I
7 think you're exactly right, this 386.887 is a
8 significant problem. It's a recent statute, it's --
9 it establishes the pricing for net metering.

10 CHAIRMAN DAVIS: Uh-huh.

11 MR. BYRNE: And to say, you know, now in
12 spite of the statute that establishes the pricing for
13 net metering, we're gonna go and --

14 CHAIRMAN DAVIS: I don't know that you
15 can calculate it any other way.

16 MR. BYRNE: Well, I mean, you could --
17 you could have the meter running backwards. You
18 could compensate the generators at the full retail
19 rate, but I don't see how you can do that when
20 there's a statute that tells you you -- and I'm --
21 I'm pretty sure when they passed the statute, they
22 considered the cross-subsidization issue that people
23 brought up today.

24 So I think, you know, not to say
25 anything about the merits of the other people's

1 arguments, but I think those arguments have to be
2 made at the legislature. I think it's pretty simple,
3 but ...

4 CHAIRMAN DAVIS: All right. The
5 gentleman in the -- in the beautiful blue jacket
6 there, I can't think of your name.

7 MR. ANDERSON: Rick Anderson --

8 CHAIRMAN DAVIS: Mr. Anderson.

9 MR. ANDERSON: -- Natural Resources. I
10 think you were asking for a clarification of whether
11 the State of Missouri can proceed or how it differs
12 from the federal law?

13 CHAIRMAN DAVIS: Well, I mean, I'm --
14 I'm not so much as concerned as how it differs from
15 the federal law. I just want you to explain to me
16 how your theory of how you can get around a state
17 statute that says this is what net metering is and
18 this is how you -- how you calculate the charges.

19 MR. ANDERSON: It's my understanding
20 that today's session is not about what net metering
21 rules or provisions should be in Missouri --

22 CHAIRMAN DAVIS: Uh-huh.

23 MR. ANDERSON: -- but whether Missouri
24 has taken a prior state action. And in order to get
25 to that question, we need to be sure we understand

1 what these different documents say about net
2 metering.

3 A subsequent and separate issue is, if
4 there was not a prior state action, what would
5 Missouri do as opposed to resolving what should the
6 rules or provisions in Missouri be? I don't believe
7 that the Commission has asked for comments on that,
8 has asked for comments on was there a prior state
9 action taken --

10 CHAIRMAN DAVIS: And you're -- and
11 you're positing that this -- that the Missouri
12 Consumer Clean Energy Act is not a prior state action
13 in this area?

14 MR. ANDERSON: I would say that it
15 passed prior to EPACT. However, I would also say --

16 CHAIRMAN DAVIS: So the Declaration of
17 Independence.

18 MR. ANDERSON: That's true. And so
19 whether it's prior to state action is what you asked.
20 Whether it's a comparable prior state action as
21 defined by EPACT is something I'd like to address,
22 though.

23 CHAIRMAN DAVIS: Okay. Address it.

24 MR. ANDERSON: Okay. The Commission
25 asked for position statements from each of the

1 parties --

2 CHAIRMAN DAVIS: Uh-huh.

3 MR. ANDERSON: -- and in the position
4 statement that the Department submitted, page 3, we
5 have a passage that basically quotes from EPACT.
6 Give you a chance to catch that or I'll just read out
7 loud. "The EPACT, on the other hand, defines, quote,
8 net metering, end quote, for the purpose of the act
9 as" -- and then from the act --

10 CHAIRMAN DAVIS: Yes. "Service to an
11 electric consumer under which electricity -- electric
12 energy generated by that electric consumer from an
13 eligible on-site generating facility and delivered to
14 the local distribution facilities may be used to
15 offset electric energy provided by the electric
16 utility to the electric consumer during the
17 applicable billing period."

18 MR. ANDERSON: Okay.

19 CHAIRMAN DAVIS: Which is a much
20 different definition than our -- than our state
21 statute.

22 MR. ANDERSON: Which is --

23 CHAIRMAN DAVIS: But nonethe --
24 nonetheless, doesn't matter how you define it, we
25 have, you know, two competing definitions here.

1 MR. ANDERSON: Do you have two competing
2 definitions or do you have two documents that use the
3 same term? Let me offer you an example.

4 CHAIRMAN DAVIS: Okay.

5 MR. ANDERSON: I think most folks here
6 would recognize this fruit. I hold this up as an
7 observable -- this is a very small tomato. This
8 small tomato is generally referred to as a grape
9 tomato.

10 CHAIRMAN DAVIS: Uh-huh.

11 MR. ANDERSON: In case it would be of
12 use, I have four. We could provide each one of you
13 with an example to study, but those are generally
14 called grape tomatoes. And then we have these other
15 items which are somewhat similar in shape, they are
16 grapes.

17 CHAIRMAN DAVIS: Uh-huh.

18 MR. ANDERSON: Now, notice that they
19 share some common terminology.

20 CHAIRMAN DAVIS: Uh-huh.

21 MR. ANDERSON: If -- if we say that this
22 is a grape and it's generally agreed to being a grape
23 and that's the federal law as our analogy goes, and
24 in Missouri there's another fruit and they define
25 this to be a grape --

1 CHAIRMAN DAVIS: Uh-huh.

2 MR. ANDERSON: -- does that make this a
3 grape? The question --

4 CHAIRMAN DAVIS: If you have a state
5 statute saying that it --

6 MR. ANDERSON: No, I don't.

7 CHAIRMAN DAVIS: -- that little round
8 red thing is a grape, then I would think that
9 probably makes it a grape.

10 MR. ANDERSON: So said the emperor's
11 following group. I think the question before the
12 Commission, and it's not one for me to decide, it's
13 only for me to offer perspectives on --

14 CHAIRMAN DAVIS: Uh-huh.

15 MR. ANDERSON: -- is, does the use of
16 the term "net metering" and assign a definition
17 different from EPACT, relieve it from being compared
18 to EPACT? And EPACT states what net metering shall
19 be defined as, and it states that it shall be used to
20 offset electric energy.

21 Missouri has a different definition.
22 The question is not whether Missouri has a different
23 use of the word. I think the question is whether, A,
24 what is passed in Missouri is a prior state action as
25 defined by EPACT, not as defined by the Missouri

1 legislature.

2 CHAIRMAN DAVIS: Okay. So assuming it's
3 not a prior state action defined by EPACT, okay,
4 we're over that -- we're over that hurdle. Okay.
5 Then we're on to the next one that says, well, if you
6 haven't done anything, then you ought to consider
7 something.

8 MR. ANDERSON: Exactly.

9 CHAIRMAN DAVIS: Okay. Now, can we
10 consider something when we have a state statute out
11 there that says, you know, this is how -- this is how
12 you're gonna calculate this?

13 MR. ANDERSON: I believe that's a
14 separate issue and it's not on the docket for today,
15 and therefore, we don't have a resolution or a
16 suggested course of action because we were asked to
17 speak separately to was there a prior state action.
18 And the Commission will then have to, if it chooses
19 as you said, to find there was not a prior state
20 action as to what to do about it.

21 But I don't think the persons in
22 attendance today were asked to prep on the question
23 of is there -- what should we do if it's found not to
24 be a prior state action. Therefore, I can't speak
25 for the Department as to what its recommendation

1 would be, what procedures you have at your disposal,
2 what -- what the current sentiment of the legislature
3 is. Those are all questions outside my purview.

4 CHAIRMAN DAVIS: All right. Thank you,
5 Mr. Anderson. Mr. Mills. Mr. Wood, you'll be next.

6 MR. MILLS: I think Mr. Anderson largely
7 covered what I was gonna say which is, I mean, the
8 Commission's -- the Commission's wrestling with a lot
9 of different questions but there's a certain order in
10 which you need to decide them.

11 CHAIRMAN DAVIS: Right.

12 MR. MILLS: And the prior state action
13 is really the threshold question. You can -- if you
14 make the decision that prior state action has already
15 occurred, then you can basically pack it up and go
16 home. You're done.

17 If, on the other hand, you find that --
18 and really, I don't think EPACT uses the phrase
19 specifically "prior state action." I think they talk
20 about consideration of the standard or a comparable
21 standard. And I think that's where you have to
22 really sort of figure out whether prior state action
23 occurred --

24 CHAIRMAN DAVIS: Right. And --

25 MR. MILLS: -- whether -- whether we

1 defined a grape as a tomato or something to that
2 effect.

3 CHAIRMAN DAVIS: Right. And if we pass
4 the tomato pricing act, then that would apply --
5 apply to --

6 MR. MILLS: If you -- if you consider --
7 and, you know, if the feds had said, you know, you've
8 got to consider whether or not to tax grapes and we
9 say we've considered it because we passed this law
10 that taxes these grape tomatoes, I think is a more
11 analogous situation. In that situation you have to
12 figure out whether or not that prior state action
13 really is what the feds were talking about you have
14 to consider.

15 If you determine that it's not, then you
16 get into the thorny kinds of questions about, well,
17 what do we do. If we make a finding that there
18 hasn't been prior state action on the standard or a
19 comparable standard, then you find yourself in the
20 situation, well, we've made that finding but we're --
21 we as a Commission are constrained because we can't
22 really do much to move it forward.

23 But I don't -- as Mr. Anderson said, I
24 don't know that that -- that that should determine
25 your answer to the first question. Whether or not

1 you can do something about the lack of prior state
2 action is a separate question from whether or not
3 that prior state action took place.

4 CHAIRMAN DAVIS: All right.

5 MR. MILLS: And that's what I wanted to
6 say.

7 CHAIRMAN DAVIS: Okay. Mr. Mills, what
8 is your definition of "comparable"? Is it same or
9 similar like with some possible variations in -- I
10 guess you're -- you're arguing that this is not
11 comparable.

12 MR. MILLS: I think it's not comparable.
13 I think -- you know, and I'm -- I think when you
14 have -- have 41 states, and everybody who's talked
15 about this understands what the term means, whether
16 or not Missouri uses that term to apply to a whole
17 different process doesn't make it comparable.

18 CHAIRMAN DAVIS: Well, I know, but
19 Mr. Mills, that came up four or five years ago when
20 this bill was being passed and people said, we don't
21 have -- we're the only one of ten states that don't
22 have a net metering law. And then people were like,
23 oh, we've got a net metering law now.

24 MR. MILLS: Well, some people may have
25 said that.

1 CHAIRMAN DAVIS: Albeit not much of one,
2 but we have one.

3 MR. MILLS: We have a law that has to do
4 with metering that's called net metering.

5 CHAIRMAN DAVIS: Uh-huh.

6 MR. MILLS: I think many people would --
7 would -- would quibble with the fact that it's a net
8 metering law, so ...

9 CHAIRMAN DAVIS: Right. Many people
10 would say the bill got highjacked.

11 MR. MILLS: I've heard that story. But
12 be that as it may, that's --

13 CHAIRMAN DAVIS: And for the record, I
14 did not participate in the highjacking.

15 MR. MILLS: But, I mean, regardless of
16 what happened back then, you really have to look at
17 the result of what happened and whether or not you
18 consider that to be the same rule or comparable
19 standard. I think it's not. The utilities think it
20 is.

21 CHAIRMAN DAVIS: Okay. Mr. Wood.

22 MR. WOOD: Thank you, Chairman. The
23 path you were going down was one we had discussed
24 earlier and we refer to it as the end-game question,
25 and that is, you know, you've asked the first

1 question, what statute do we have in place. And you
2 know, if you want to define it as a grape tomato or a
3 grape, you know, the statute says what it says.

4 And then you -- if you reach the
5 conclusion that it's not comparable, then the next
6 question which you would ask is, okay, what do we do?
7 Can we go down the path of writing a rule that
8 redefines our grape tomato to be a federal grape?

9 And in looking at that, Staff found that
10 an illustrative, logic (sic) path to take because as
11 soon as you try to write the rule to do that, you're
12 going to find it very difficult to not conflict with
13 our prior state legislative activity, 386.887.

14 And if you follow that logic path, it's
15 hard to get away from the idea that we do have prior
16 state action if we are -- if we are in a very
17 difficult position to write a rule that doesn't
18 conflict with an existing statute. So I do think
19 it's illustrative to go back and discuss as part of a
20 prior state action discussion. That's all I have.

21 CHAIRMAN DAVIS: Thank you, Mr. Wood.
22 Mr. Coffman, do you have any grapes?

23 MR. COFFMAN: Thank you. AARP has not
24 intervened in this case, but I do have a personal
25 opinion, and that is it would be fairly consistent

1 with Mr. Mills' opinion. And I certainly understand
2 your dilemma when you say if we even get past the
3 threshold question, you know, what's the point of
4 considering something if the statute bars you, and I
5 think that is a problem. But I certainly agree that
6 calling something one thing does not make it that
7 thing, and I --

8 CHAIRMAN DAVIS: Now, the FCC does have
9 different definitions for competition depending on
10 whether you're cable or telecom or whoever. I've --
11 I've only skimmed those briefly, but I do know that,
12 you know, the definitions can change.

13 MR. COFFMAN: Effective competition and
14 real competition.

15 CHAIRMAN DAVIS: Right. All right.

16 MR. COFFMAN: But, yeah, the legislature
17 also called this law that we're talking about the
18 Clean Energy Act, and it doesn't necessarily require
19 that the customer be -- you know, they could have
20 some -- a dirty generator that also was hooked up to
21 the grid as well. So I mean, just -- I wouldn't get
22 hung up on the language.

23 I think the concept of net metering as
24 is generally understood around the country is not
25 what we have in Missouri, and, you know, I don't know

1 if it's really worth spending a whole day talking
2 about this -- this issue.

3 You know, as far as the threshold
4 question, I think that's fairly simple. And then,
5 you know, maybe there isn't much to even -- that the
6 Commission has the authority to do once you get to
7 it, but I agree with the sentiments of the Public
8 Counsel that this is -- that I think you can get past
9 the threshold and the Commission can consider a net
10 metering policy decision.

11 COMMISSIONER MURRAY: Mr. Chairman, can
12 I ask him one?

13 CHAIRMAN DAVIS: Absolutely,
14 Commissioner Murray. I'll yield the floor.

15 COMMISSIONER MURRAY: Mr. Coffman, you
16 stated that under Missouri state it could be dirty
17 generation?

18 MR. COFFMAN: Well --

19 COMMISSIONER MURRAY: Well -- but the
20 386.887 says, "To be a qualified net metering unit,
21 an electric generation unit which" -- and it says,
22 "is a hydrogen fuel cell or is powered by sun, wind
23 or biometh." Now, are any of those not clean air
24 sources of generation?

25 MR. COFFMAN: Bio -- biometh covers a

1 great variety of burning devices and they may or may
2 not generate emissions. So on that -- there could be
3 a difference of opinion about whether that was
4 actually clean, but ...

5 COMMISSIONER MURRAY: Okay. But it
6 doesn't allow all kinds of generation?

7 MR. COFFMAN: Not any -- any type.

8 COMMISSIONER MURRAY: Thank you.

9 MR. COFFMAN: Thank you for the
10 correction.

11 JUDGE STEARLEY: Any further questions,
12 Mr. Chairman?

13 CHAIRMAN DAVIS: I believe I've
14 exhausted my supply of questions, Mr. Stearley.
15 Thank you.

16 JUDGE STEARLEY: Mr. Dottheim, just one.
17 Is there any language of any kind of guidance at all
18 in EPACT as far as what constitutes a comparable
19 standard?

20 MR. DOTTHEIM: Offhand, I'm not aware of
21 anything that I could refer you to.

22 JUDGE STEARLEY: All right. Thank you.
23 Any other questions from the Commissioners regarding
24 net metering?

25 COMMISSIONER MURRAY: I have a little

1 bit more.

2 JUDGE STEARLEY: All right.

3 COMMISSIONER MURRAY: I've been sitting
4 here poring over the definition of net metering in
5 the EPACT as well as -- sorry.

6 I have been sitting here poring over the
7 definition of net metering in the EPACT as well as in
8 the Missouri statute, and I do not -- I mean, I am
9 really having trouble understanding how you can
10 unequivocally say that those are not comparable.

11 You can take the definition of a net
12 metering under EPACT, and basically it's service to
13 an electric consumer under which electric energy
14 generated by that consumer from an eligible on-site
15 generation -- generating facility and delivered to
16 the local distribution facilities may be used to
17 offset energy provided by the electric utility to the
18 consumer.

19 And I -- and I think our -- our statute
20 on net metering does exactly that if you're -- unless
21 you are taking the, what I consider a very narrow
22 interpretation of the word "offset" as some of the
23 parties here are suggesting we have to do.

24 Mr. Anderson?

25 MR. ANDERSON: Clearly, the

1 determination of that is exactly what the Commission
2 is responsible to do, but as a contribution toward
3 that, what -- EPACT uses the terms "offset electric
4 energy." The Missouri statute talks about the value
5 of the electric energy. A difference, but a major
6 one. Value versus the electricity itself.

7 COMMISSIONER MURRAY: But it really is
8 clearly up to interpretation, right?

9 MR. ANDERSON: That's the charge that
10 the EPACT gave the Commission.

11 COMMISSIONER MURRAY: Okay. Thank you.
12 Anybody else want to respond to that? I think that
13 is all I have on net metering. Thank you, Judge.

14 JUDGE STEARLEY: All right. Any other
15 questions on net metering, Mr. Chairman?

16 CHAIRMAN DAVIS: No.

17 JUDGE STEARLEY: All right. We've been
18 going now for about an hour and a half. Why don't we
19 take a short, about a five-minute break, and we'll
20 pick up with time-based metering.

21 (A RECESS WAS TAKEN.)

22 JUDGE STEARLEY: All right. I think
23 we're gonna go ahead and go back on the record. All
24 right. We are back on the record and we're going to
25 be picking up with questions on time-based metering.

1 Commissioner Murray, do you wish to start us off
2 here?

3 COMMISSIONER MURRAY: Judge, if you have
4 some questions, go ahead.

5 JUDGE STEARLEY: I will direct one to
6 Staff initially here. I believe Staff's position is,
7 is that there has already been some comparable action
8 based upon our resource planning regs. It seems like
9 time-based metering's kind of wide open. Would you
10 like to clarify that and address that for us, please?

11 MR. WATKINS: That's the case as well as
12 the existing tariffs that provide for time use or
13 time-of-day rates, real-time pricing and the
14 associated metering of those that have all been in
15 effect for quite some time.

16 JUDGE STEARLEY: Is -- are individual
17 companies having tariffs on these matters, is that
18 going to satisfy the EPACT standard? Do we need
19 state laws or regulations in order to satisfy that?

20 MR. WATKINS: My attorney usually slaps
21 me up the side of the head when you ask legal
22 questions and I try to answer them, but I believe
23 that the intent of the federal policy is to try to
24 account for the fact that energy -- that producing
25 energy, consuming energy doesn't cost the same amount

1 no matter when you use it, that it's more expensive
2 in the summertime when it's hot and people are
3 running air conditioners, it's more expensive in the
4 daytime when office buildings have all the lights on
5 than it is at nighttime. And I think that the
6 purpose is to account for that.

7 And I think that in Missouri we
8 certainly offer those kind of rates at least as an
9 option to consumers in all classes. So, yes, I think
10 we've got this one under control.

11 JUDGE STEARLEY: Thank you, Mr. Watkins.
12 And before we continue here, since I know we do have
13 a large number of witnesses and we're asking you-all
14 to speak, if you would please state your name before
15 you start speaking, it would probably help our court
16 reporter with keeping a more accurate record.

17 Mr. Dottheim, I know you're just waiting
18 to address that issue so please jump in.

19 MR. DOTTHEIM: Yes, Judge -- Judge, and
20 I think attempting to address your question, I
21 don't -- I don't think there's a necessity for a --
22 for a state statute or Commission rules. I think at
23 least in addressing this area and certain other areas
24 with Section -- certain other Section 111(d)
25 standards, the Commission can proceed under PURPA

1 without state statute or Commission rules. I think
2 to a certain extent net metering is possibly an
3 anomaly.

4 JUDGE STEARLEY: Mr. Wilson, would you
5 like to comment on that question?

6 MR. WILSON: Yeah, I'm -- I'm not clear
7 on the PSC's role in this. My understanding is that
8 it's not -- time-of-use metering is not mentioned in
9 the Consumer Clean Energy Act. I'm not sure what to
10 recommend what to do, but I should clarify that
11 time-of-use metering is something that is -- is good
12 for renewable energy systems, but for solar systems,
13 because in the afternoon is when energy is most
14 expensive and is advantageous for solar to be able to
15 be compensated at a higher rate for -- for that
16 energy that's provided at that time.

17 I would probably agree that it's
18 different from net metering. I think -- I think the
19 Commission, as I understand it, has the power to
20 say -- to recommend time-of-use metering. In
21 Missouri it's not -- the only circumstances under
22 which it's offered that I know is for -- right now is
23 for large industrial users, that there's not a trend
24 of residential users having this.

25 But clearly, for renewable energy it's

1 best to have time-of-use metering offered as an
2 option, not to -- for it not to be offered is not
3 advantageous to renewable energy. And for it to be
4 offered as the only way is not advantageous to
5 renewable energy because it depends on the size and
6 scale of systems as to if it -- if it actually makes
7 sense for a renewable energy. So if there is a rule
8 made, I would strongly encourage it to be phrased as
9 an option that can be offered to ratepayers.

10 JUDGE STEARLEY: Thank you.

11 Mr. Robertson, do you have a legal opinion as to
12 whether or not individual company tariffs would be
13 comparable to the new EPACT standard on this?

14 MR. ROBERTSON: I don't think individual
15 company tariffs would constitute a standard, and I
16 have not searched out all the various tariffs that
17 have been referred to in the utilities' filings in
18 this case.

19 But I just want to point out that
20 there's more to this standard than time-based
21 metering. It says, "The time-based rate schedule
22 shall enable the electric consumer to manage energy
23 costs and use and cost through advanced metering and
24 communications technology."

25 That, I think, is the important

1 difference between simply tariffs that offer
2 time-of-use metering. And if -- if, in fact, these
3 tariffs do provide for that kind of advanced
4 metering, if communications technology has not been
5 established by the utilities, perhaps they can
6 enlighten me.

7 JUDGE STEARLEY: Yes.

8 MR. TRACY: Matt Tracy with Aquila. I
9 believe all of the utilities, but I will certainly
10 speak for Aquila, have time-of-use rates available.
11 I know Aquila in particular has, for at least our MPS
12 division, real-time prices available which is, in
13 fact, a fairly advanced metering system where you get
14 day-ahead hourly prices and are able then to respond
15 to that.

16 Pragmatically, that's really only
17 available to large customers. As a matter of tariff
18 administration it's available to all, but there's
19 a -- I forget, 200, \$250 customer charge per month
20 that pretty much excludes any but the largest
21 customers, but it's there.

22 I guess the piece I would toss in is the
23 value in the market in which Missouri finds itself of
24 time-based metering. On the East Coast where you're
25 looking at 20-cents-per-kilowatt-hour residential

1 energy rates, yeah, time-of-use could make a lot of
2 sense. Sorry, I'm focusing on the pun there, cents,
3 sense. I'll stop. I'm easily distracted that way.

4 Our market -- and I've just this past
5 February filed Aquila's avoided cost, and so I looked
6 very closely at all of the costs that Aquila is
7 facing, and Aquila has some of the highest marginal
8 costs, I believe, of any of the utilities in the
9 state because of our lower-than-average load factor
10 as a system.

11 We're looking at from high to low and
12 this is not average. I mean, just the actual spikes
13 that we're seeing are maybe 12 cents a kilowatt hour
14 in the summer, and during the winter, actually the
15 worst -- the lowest periods tend to occur, say, in
16 May, October, off -- maybe one and a half cents. So
17 that's the spread. Maybe ten cents.

18 And I'm not sure -- I mean, there are
19 studies but certainly I've seen other utilities such
20 as Arizona where to really get an effective response
21 on time-of-use, they're looking at closer to 15 to 17
22 cents per kilowatt hour differential between on-peak
23 and off-peak.

24 I mean, frankly, the Missouri market,
25 the Midwest market doesn't have enough variability

1 and enough predictable variability. I mean, it may
2 be varied from time to time, but it's not predictable
3 enough to make time-of-use really advantageous
4 considering the cost of the metering required in
5 order to facilitate that sort of apparatus. I think
6 we've got what works in Missouri, and I think we've
7 already determined that it's effective.

8 JUDGE STEARLEY: Yes, Mr. Byrne.

9 MR. BYRNE: Yes, Judge. Just briefly on
10 the legal standard, I -- you know, I notice in the --
11 in the Energy Policy Act when it talks about prior
12 state actions, subsection 1 says, "The State has
13 implemented for such utility the standard concerned."

14 So my reading of that language would
15 suggest that one way they could do it for -- for such
16 a utility would be through a tariff as -- as is the
17 case in Missouri for -- for smart metering. And I
18 guess I also want to mention that because early on in
19 the case we filed a pleading that said we did not
20 think there was prior state action on this particular
21 standard.

22 Based on reviewing the comments of the
23 Staff and the other utilities, we've -- we've
24 rethought that and we -- we do believe that the --
25 that the tariff language can constitute prior

1 state -- prior state action. And I guess I'd ask
2 Mr. Cooper if he could explain what our specific
3 tariffs are on this issue.

4 JUDGE STEARLEY: Certainly.

5 MR. COOPER: Thanks, Tom. Wilbon Cooper
6 from Union Electric. Our nonlighting rates do
7 contain an option for time-of-use billing for all
8 customers.

9 JUDGE STEARLEY: If I might ask a
10 question, Mr. Cooper, regarding your tariff with
11 that. For your peak-hour usage, are the rates higher
12 for those hours in an attempt to encourage
13 conservation?

14 MR. COOPER: That is correct. The rates
15 are seasonally differentiated and then they're
16 differentiated by time, our rating period also. The
17 on-peak hours for the Union Electric Company are
18 10:00 a.m. to 10:00 p.m. Monday through Friday. All
19 other hours, the weekends and the holidays, are
20 considered off-peak.

21 JUDGE STEARLEY: All right. Thank you.
22 Yes.

23 MR. GILES: Chris Giles, Kansas City
24 Power & Light. I'd like to point out that KCPL also
25 has time-of-use rates available for all customer

1 classes including residential. And all of these
2 tariffs are voluntary. So to the extent that
3 customers have choices, they can choose to be served
4 under a standard tariff or a time-of-use tariff.

5 JUDGE STEARLEY: All right. Thank you,
6 Mr. Giles. Mr. Coffman, I know this was the case
7 you're here for today. Why don't you come and
8 address the Commission.

9 MR. COFFMAN: I appreciate that. I'll
10 just be upfront with my client's main concern with
11 regard to time-of-use or smart metering. They have a
12 series of policy suggestions and ideas about how we
13 think it should go, foremost being our concern about
14 mandatory time-of-use programs.

15 AARP believes that these programs should
16 be voluntary as they are for the most part here in
17 Missouri with the utilities that you've heard from,
18 and if the Commission is to get engaged in it, we
19 would like to be a part of the discussion about how
20 any time-of-use programs or particularly new ones
21 involving communications equipment or smart metering
22 should be designed, and preferably those would be
23 voluntary programs. And I think that would be
24 imposed on a consumer, and then ideas about how those
25 should be communicated to the consumer.

1 The only threshold question that we're
2 here to discuss, I guess, is the prior state action
3 one. My client doesn't have a strong opinion. I
4 think that is a decision that really rests with the
5 Commission's discretion.

6 I think that it probably comes down to
7 whether the newer technology makes this -- what we
8 now have as comparable or not, whether the idea of
9 smart metering and new devices to measure it in
10 different ways that you might do a time-of-use
11 program, whether what the Commission has now is
12 comparable to what the EPACT law is or not.

13 So I think I -- AARP is neutral as to
14 whether there's prior state action, but would simply
15 like to be involved in what other -- what -- what
16 other proceeding the Commission may want to engage if
17 it does.

18 JUDGE STEARLEY: All right. Thank you,
19 Mr. Coffman. Anyone else wish to comment regarding
20 questions I asked about time-based metering?

21 (NO RESPONSE.)

22 JUDGE STEARLEY: Commissioner Murray, do
23 you have any additional questions?

24 COMMISSIONER MURRAY: I do, thank you,
25 Judge. I'm trying to think. I think it was the

1 Ameren witness that may have -- who addressed -- I
2 know Mr. Byrne addressed Ameren's change in believing
3 that the tariff language is sufficient to constitute
4 prior state action.

5 But if I can get the right site here in
6 the Energy Policy Act, Section 1251 -- no, I'm sorry.
7 1252 -- no, I'm sorry. I have to change that again.
8 It looks like it is -- I'm not sure I can clearly
9 identify which clause I'm in here. I believe it's in
10 Section 1252. And there is a provision for -- it's
11 under the "Reporting Requirements," and then there's
12 a subsection E that says "Prior state actions."

13 And I'm just gonna read part of that.
14 "Subsections B and C of this section shall not apply
15 to the standard established by paragraph 14 of
16 Section 111(d) in the case of any electric utility in
17 a state if before the enactment of this subsection 1,
18 the state has implemented for such utility the
19 standard concern or a comparable standard."

20 And I believe that's where someone
21 indicated that the tariff would have been state
22 implementation for such a utility; is that correct?

23 But then it also has No. 2, and it
24 doesn't say "or" or "and" between 1 and 2. It says,
25 "The state regulatory authority for such state or

1 relevant nonregulated -- relevant nonregulated
2 electric utility has conducted a proceeding to
3 consider implementation of the standard concerning --
4 concerned or a comparable -- comparable standard for
5 such utility within the previous three years."

6 And I'm going to divide that into a
7 couple of parts. If -- if both 1 and 2 are required,
8 has this Commission, within the previous three years,
9 conducted a proceeding to consider implementation of
10 the standard concern for such utility? Would that
11 mean that we would have to have approved those
12 tariffs within the last three years or have
13 considered that in a rate case for each utility
14 within the last three years? Mr. Dottheim?

15 MR. DOTTHEIM: Commissioner, that is a
16 twist with 1252. That's not in 1251 and it's not in
17 1254 which is the interconnection section which we'll
18 address next, is that that three-year limitation.
19 And it's -- as you've identified, it's in both 2 and
20 3 but it's not in 1. And I'm not sure it's clear how
21 the distinction is made between 1 and 2, the state
22 versus the state regulatory authority.

23 I think the reference in 2 to "relevant
24 nonregulated electric utility," I think that's
25 referenced to like cooperatives or even possibly

7 And -- and we're talking about, I
8 believe, the previous three years to the enactment of
9 the section with the enactment of the section, I
10 think, August 8th, 2005. So that would take us back
11 to August 8th, 2002, which one might look at
12 individual rate cases of various companies or just
13 individual tariff filings of -- of the various
14 companies as to did they occur within -- within that
15 three-year time frame, or if there was just a general
16 increase case where those tariffs were part of that
17 tariff filing and the tariffs were in effect and
18 reapproved by the Commission, was that adequate to
19 meet that -- that section --

21 MR. DOTTHEIM: -- or is item -- is the
22 first item really effective where it just says the
23 state has implemented for such utility the standard
24 concerned and there's no three-year prescription.

1 my primary question is, is there a way to construe
2 that as being -- 1 and 2 being "or," "either/or"?

3 MR. DOTTHEIM: Yeah, I think it --

4 COMMISSIONER MURRAY: Because then in
5 between 2 and 3 there is an "or" --

6 MR. DOTTHEIM: Yes.

7 COMMISSIONER MURRAY: -- because the
8 other "or" is the state legislature.

9 MR. DOTTHEIM: Yes, I think it -- I
10 think it is "or" or at least --

11 MR. BYRNE: Is there an "or" between the
12 second and the third one on that --

13 MR. DOTTHEIM: Yes.

14 COMMISSIONER MURRAY: There is an "or"
15 between 2 and 3.

16 MR. BYRNE: Then I would think it's "or"
17 for all three of them, you know, just like if you had
18 an "or" in a sentence between three items.

19 MR. DOTTHEIM: And in the -- and in the
20 definitional sections under PURPA, the term "state"
21 is defined -- the term "state" means a state, the
22 District of Columbia and Puerto Rico.

23 The term "state regulatory authority" is
24 defined as -- "The term 'state regulatory authority'
25 means any state agency which has ratemaking authority

1 with respect to the sale of electric energy by any
2 electric utility other than such state agency," and
3 then it goes on. So I think state regulatory
4 authority would cover the Missouri Public Service
5 Commission.

6 So, yes, I think I was, frankly, going
7 to make note of the item which -- which you have,
8 that that's the -- I think the only question that may
9 be open regarding prior state action when one looks
10 at Section 1252, smart metering or time-based
11 metering and communications.

12 COMMISSIONER MURRAY: All right.

13 MR. DOTTHEIM: And frankly, I'm not
14 aware of anything offhand to look to for anything in
15 the way of a definitive answer.

16 JUDGE STEARLEY: Does anyone else have a
17 comment on that?

18 (NO RESPONSE.)

19 COMMISSIONER MURRAY: I'm gonna move on.
20 Going back to the beginning of Section 1252 which
21 requires, "Not later than 18 months after the date of
22 enactment, each electric utility shall offer each of
23 its customer classes and provide individual customers
24 upon request a time-based rate schedule under which
25 the rate charged by the electric utility varies," and

1 I won't go on and read the rest of it, but is there
2 any regulated utility in the state that does not
3 offer through its tariffs or in some other fashion
4 each class -- each of its customer classes and
5 provide individual customers when they request it, a
6 time-based rate schedule as required here -- as set
7 out here? And I guess, Mr. Dottheim, you look ready
8 to respond to that question.

9 MR. DOTTHEIM: Commissioner, you misread
10 the look upon my face. I was going to defer to the
11 individual utilities.

12 COMMISSIONER MURRAY: We've heard from
13 KCP&L and we've heard from Ameren. Empire?

14 MR. GIBSON: Empire also offers optional
15 time-of-use rates to all customer -- all customer
16 classes.

17 COMMISSIONER MURRAY: And that is upon
18 request to an individual customer?

19 MR. GIBSON: Yes. Yes, it is.

20 JUDGE STEARLEY: And Aquila?

21 MR. MITTEN: Aquila also offers
22 time-of-use based rates to all customer classes. The
23 only differential would be for the light and power,
24 the L&P large power service customers, it's
25 nonoptional. They only have a time-of-use rate

1 available.

2 COMMISSIONER MURRAY: Okay.

3 MR. MITTEN: And whether or not anybody
4 wants to talk about bidding rates and whether that by
5 definition is a time-of-use rate already, but it's
6 not time-differentiated.

7 COMMISSIONER MURRAY: All right. Thank
8 you. And then if you look at F, looks like it's
9 FB-1 -- no, no, FB-3, little i, "Time-Based Metering
10 and Communications" is the heading there. And it
11 says in the middle of that paragraph, "Each state
12 regulatory authority shall conduct an investigation
13 and issue a decision whether or not it is appropriate
14 for electric utilities to provide and install
15 time-based meters and communications devices for each
16 of their customers which enables such customers to
17 participate in time-based pricing rate schedules and
18 other demand response programs."

19 Mr. Dottheim, do you think that -- that
20 we have to decide whether or not it's appropriate for
21 each utility to provide and install meters for all of
22 its customers? Is that required? And if that is
23 required, wouldn't that involve some kind of a cost
24 benefit analysis? While Mr. Dottheim is thinking, if
25 anyone else wants to respond, feel free. Yes, go

1 ahead.

2 MR. TRACY: As for Aquila, we are
3 certainly very aware of all of the different metering
4 options, of all the different sorts of rate options
5 available with the different metering options, and
6 if, frankly, we continuously look at those, look at
7 the cost of those programs of the hardware versus the
8 potential benefit to customers, to the extent that we
9 have been in rate cases since the three years prior
10 to August whatever of 2005, and particularly to the
11 extent that we were involved in a general class cost
12 of service case where we, in fact, looked at every
13 single rate and how that structure was put together,
14 I have to believe that whether or not we specifically
15 used these words, that from our perspective, we've
16 looked at these, we've evaluated these, and to the
17 extent that we didn't bring them forward to the
18 Commission for you to approve, then we've certainly
19 evaluated them.

20 To the extent that other parties did not
21 bring them forward in saying you should, suggests
22 that no one else found that to be of significance
23 either. So to the extent that we've participated in
24 rate cases, I believe that we have, in fact,
25 evaluated these options.

1 COMMISSIONER MURRAY: And I -- I'm not
2 aware. Is there any party here who is taking the
3 position that it would make economic sense to install
4 those meters for every customer at this time even
5 though the usage would be -- you know, we don't -- we
6 don't even have a way to predict how many people
7 would even attempt to use it? Is there anybody
8 taking that position?

9 (NO RESPONSE.)

10 COMMISSIONER MURRAY: Okay, good. Then
11 I think we can probably find that without a
12 significant study being put into that. Mr. Dottheim.

13 MR. DOTTHEIM: Yes, Commissioner. That
14 section is in addition to Section 115 of PURPA which
15 is denominated "Special Rules For Standards," and it
16 appears that is a requirement making the
17 determination with respect to the standard
18 established by the time-based metering and
19 communications standard.

20 COMMISSIONER MURRAY: And with the --
21 there have -- in the statements that were provided,
22 the position statements, the experts have taken the
23 position basically that it doesn't make economic
24 sense to install meters before they're needed. And
25 if meters are available to be installed upon customer

1 request, could we not make -- would we not issue a
2 decision based on a finding that they are reasonably
3 available when a customer desires them and that that
4 is much more economically feasible than requiring
5 something to be done all at once?

6 MR. WATKINS: Commissioner Murray, it
7 appears to me that there is a link between the kind
8 of metering and the kind of rates that you have.
9 What we have opted for and the Commission has decided
10 in the past for Missouri consumers is that the
11 time-of-day rates will be optional. If they choose
12 to be on that rate, then they'll have adequate
13 metering to be able to bill that rate.

14 I think when you look at considering
15 mandatory metering for all customers, then you also
16 have to be looking at considering mandate --
17 mandatory time-of-day rates for all customers. And
18 that's -- I know that's something that they're at
19 least talking about in Columbia. But so far, the
20 Commission has already decided that the time-of-day
21 rates, time-of-use rates should be optional.

22 If you were to decide at some point that
23 those rates should be mandatory for all customers,
24 then it would make sense to at least consider, you
25 know, installing those meters for all customers as

1 long as the benefits outweighed the costs. But I see
2 those as linked. If everyone has a meter, everyone
3 should be on the rate; otherwise, it should be
4 optional.

5 COMMISSIONER MURRAY: All right. Thank
6 you. There's also a section on federal guidance, and
7 under "Demand Response" -- I -- I'm not sure what I'm
8 reading here. I had my advisor print out this
9 Section 1252 for me, but there appear to be a lot of
10 deletions and perhaps just -- just the new -- the new
11 language is what I've got in front of me. I'm not
12 real sure, but Mr. Dottheim, you seem to be able to
13 find what I'm referencing.

14 MR. DOTTHEIM: Commissioner, are you
15 referring to -- it's parenthetical C, "Federal
16 Assistance on Demand Response"?

17 COMMISSIONER MURRAY: No, it's
18 parenthetical D, "Federal Guidance."

19 MR. DOTTHEIM: Yes, I see. I think I
20 see. Section 132 --

21 COMMISSIONER MURRAY: Yes.

22 MR. DOTTHEIM: -- of the "Public Utility
23 Regulatory Policies Act"?

24 COMMISSIONER MURRAY: Yes. And under
25 subsection 2 there, it says, "Working with states" --

1 this is --

2 MR. DOTTHEIM: That -- yeah, that is in
3 a section, Section 132, "Responsibilities of
4 Secretary of Energy."

5 COMMISSIONER MURRAY: Okay. And it's
6 requiring the Secretary of Energy to work with
7 states, utilities, other energy providers and
8 advanced metering and communications experts to
9 identify barriers -- or identify and address barriers
10 to the adoption of demand response programs; is that
11 right?

12 MR. DOTTHEIM: Yes.

13 COMMISSIONER MURRAY: And it also goes
14 on -- there's a sub -- I guess it's under E-1.

15 MR. DOTTHEIM: Yes.

16 COMMISSIONER MURRAY: And it's, "In
17 general, it is the policy of the United States to
18 encourage states to coordinate on a regional basis
19 state energy policies to provide reliable and
20 affordable demand response services to the public."
21 Is Missouri participating in any way on a regional
22 coordination, do you know?

23 MR. DOTTHEIM: Commissioner, not -- not
24 that I'm aware of. But I don't know if I would be
25 aware of that at this point, having --

1 COMMISSIONER MURRAY: Okay.

2 MR. DOTTHEIM: -- concentrated for a
3 considerable number of months on strictly
4 state-related matters. So there may be something of
5 that nature actually occurring that I'm not aware of.

6 COMMISSIONER MURRAY: Well, subsection 3
7 under Section E says that, "Not later than one year
8 after the date of enactment of the Energy Policy Act
9 of 2005, the Commission," meaning FERC, I'm sure,
10 "shall prepare and publish an annual report by
11 appropriate region that assesses demand response
12 resources, including those available from all
13 customer classes and which identifies and reviews,"
14 and then it goes on and lists all of the things that
15 will be identified and reviewed. And that's been --
16 I mean, that date has passed, has it not?

17 MR. DOTTHEIM: Yes.

18 COMMISSIONER MURRAY: So is anybody
19 aware of that report?

20 MR. DOTTHEIM: Commissioner, I am not or
21 if I -- if I was, I have forgotten it.

22 COMMISSIONER MURRAY: Okay. Well, it
23 appears that we could look at that --

24 MR. DOTTHEIM: Yes.

25 COMMISSIONER MURRAY: -- and determine

1 by region a lot of things. So I guess I would ask if
2 Staff would attempt to get ahold of that report or
3 determine whether it is indeed available.

4 MR. DOTTHEIM: Yes. And would you
5 desire that we file that report in -- in this
6 particular case?

7 JUDGE STEARLEY: Yes.

8 MR. DOTTHEIM: Okay. And provide
9 copies -- well, I -- once it's in EFIS, I would
10 assume, then, that all the parties and, of course,
11 then the public could -- could access that document.

12 COMMISSIONER MURRAY: Nobody would have
13 an objection to that, would -- would they?

14 MR. BYRNE: No.

15 JUDGE STEARLEY: Mr. Dottheim, do you
16 think you can have that filed within the next ten
17 days?

18 MR. DOTTHEIM: I would -- I would
19 certainly think so.

20 JUDGE STEARLEY: All right.

21 COMMISSIONER MURRAY: I think that's all
22 of my questions on this one. Thank you.

23 JUDGE STEARLEY: Thank you, Commissioner
24 Murray. Commissioner Appling, any questions on
25 time-based metering?

1 COMMISSIONER APPLING: No questions,
2 Judge. Everything here is clear as mud.

3 JUDGE STEARLEY: Mr. Chairman?

4 CHAIRMAN DAVIS: No questions.

5 JUDGE STEARLEY: All right. Do any of
6 the parties, then, have any additional comments they
7 would like to make with regard to this standard?

8 (NO RESPONSE.)

9 JUDGE STEARLEY: Seeing none, we will
10 move on to the interconnection standard.
11 Commissioner Murray, would you like to start us off
12 or do you need a couple moments?

13 COMMISSIONER MURRAY: Judge, if you're
14 prepared -- if you're prepared, it would probably
15 save us time if you started.

16 JUDGE STEARLEY: All right. I'll go to
17 Staff, Mr. Wood. It appears that Staff's position is
18 that we do need to address the new IEE standard --
19 IEEE. I didn't get enough E's in there.

20 MR. WOOD: Usually refer to it as
21 "I triple E." Yes, it's our opinion that the
22 I triple E 1547 needs to be adopted.

23 JUDGE STEARLEY: All right. Do any
24 other parties disagree with Staff's position on that?

25 COMMISSIONER APPLING: Mr. Wood, what

1 did you say again? Did you say we adopt it?

2 MR. WOOD: Yes, I recommend we adopt the
3 new I triple E standard 1547.

4 COMMISSIONER APPLING: Okay. Thank you.

5 MR. BYRNE: Your Honor, I guess we --
6 AmerenUE doesn't disagree. There might be different
7 ways you could -- for example, we've -- we've got it
8 in our tariff already and maybe some of the other
9 utilities do. That might be a way to do it, or -- or
10 you could use a rulemaking or order of the
11 Commission, I guess.

12 JUDGE STEARLEY: Thank you, Mr. Byrne.
13 Mr. Wood.

14 MR. WOOD: I should note that one of the
15 options Staff noted in its affidavit was identifying
16 them in the tariffs as well. It's not -- it's not
17 necessary absolutely that it be done in the rules,
18 although we have recommended the rules as one way to
19 address it. It could also be done through the
20 tariffs as long as we had consistent language within
21 all the electric utilities to do so.

22 JUDGE STEARLEY: Okay. And if the
23 Commission were to engage in rulemaking on this,
24 are -- is the Commission limited in any way by our
25 current Statute 386.887?

1 MR. WOOD: No.

2 JUDGE STEARLEY: Any other party have
3 any differing opinion on that?

4 MR. BYRNE: Well, it's not limited on
5 the I triple E standard but -- but, of course, there
6 are provisions in the statute about interconnection
7 and I wouldn't think the Commission could do anything
8 that ran afoul of those provisions. I -- I assume
9 that's what you meant, Warren?

10 MR. WOOD: Yes, it probably would be
11 helpful to clarify. 386.887 provides for the
12 references that the interconnection of net metering
13 equipment would be in compliance with National
14 Electric Safety Code, National Electric Code or
15 references a couple of requirements, one of them
16 that -- it states that it complies with I triple E
17 standards. It does not specify which; it leaves that
18 to the Commission. And so the Consumer Clean Energy
19 Act does not, you know, in any way limit our ability
20 to reference a specific I triple E standard.

21 And I should note that in terms of
22 interconnection of electric resources, there are two
23 rules that would come to mind immediately. One would
24 be our cogeneration rule, and the other would be in
25 our net metering rule 20.065.

1 JUDGE STEARLEY: And Mr. Wood, do you
2 believe our current regulations are comparable to the
3 new PURPA standard?

4 MR. WOOD: We do not currently have any
5 reference to I triple E 1547 as it was adopted in
6 2003 after our current rules were put into place.

7 JUDGE STEARLEY: Is that the only
8 exception? Are there any other differences that
9 would make our regs noncomparable?

10 MR. WOOD: Could you repeat your
11 question, please?

12 JUDGE STEARLEY: I was just wondering if
13 our current regs are comparable with the new PURPA
14 standard with the exception of that new IEEE
15 standard -- I triple E.

16 MR. WOOD: Outside of that one
17 I triple E standard, yes, I would say so. Although I
18 would note that there is currently a reference in our
19 net metering rule to I 29 -- I triple E 929-2000 and
20 the UL 1741 standard that goes along with it. Those
21 are -- those were the interconnection standards for
22 that type of equipment at the time we were
23 implementing the net metering rule. But since then I
24 would say I triple E 1547 is the more recent standard
25 for interconnection.

1 JUDGE STEARLEY: Thank you, Mr. Wood.
2 Any other party disagree with Mr. Wood's analysis
3 there?

4 MR. ANDERSON: (Raised hand.)

5 JUDGE STEARLEY: Yes.

6 MR. ANDERSON: Rick Anderson with the
7 Department of Natural Resources. The Missouri
8 statute, the Clean Energy Act -- the Consumer Clean
9 Energy Act identifies a list of, I think, six
10 different standards. And in contrast, 1547
11 establishes a different intent stating that it seeks
12 to provide a uniform standard for interconnection.

13 The Missouri statute, in contrast, has a
14 large number and provides for utility-specific
15 interconnection provisions complicating the
16 transferability of knowledge about how to go about
17 meeting a utility's requirements. Based on what part
18 of the state they're in, they may be working with
19 different utilities.

20 It further increases doubt in a
21 consumer's mind as to what they have to do. Often in
22 a case of their installer they may not know which
23 provisions they have to meet. And the uniformity
24 aspects of 1547 are in conflict with Missouri --
25 Missouri statute.

1 JUDGE STEARLEY: Yes, Mr. Wood.

2 MR. WOOD: If I may, I triple E 1547
3 makes no references whatsoever to customers not still
4 needing to comply with National Electric Safety Code,
5 National Electric Code or any other codes that would
6 comport with or would govern the other aspects of any
7 sort of an interconnection.

8 So the references to National Electric
9 Safety Code would remain appropriate regardless. I
10 don't believe the I triple E gives an exhaustive
11 requirement for clearances from buildings and other
12 lines, from lines that, you know, go to
13 interconnection equipment.

14 And there are a lot of other things
15 National Electric Safety Code covers that I triple E
16 never was -- 1547 was never intended to cover.
17 I triple E 1547 is specific as a standard for
18 interconnecting distributed resources of electric
19 power systems.

20 National Electric -- National Electric
21 Code and National Electric Safety Code would still
22 continue to apply to any interconnected facility even
23 though I triple E 1547 does not specify those issues.
24 I would agree with Mr. Anderson, however, that
25 I triple E 1547 is largely recognized as a good

1 single-source standard for interconnection of
2 distributed resources in the United States right now.

3 JUDGE STEARLEY: All right. Thank you,
4 Mr. Wood. Commissioner Murray, go back to you.

5 COMMISSIONER MURRAY: Thank you, Judge.
6 You got most of my questions answered, but I still do
7 have one and that is, doesn't EPACT envision units
8 larger than 100 kilowatts? Is there -- yes.

9 MR. CUNNINGHAM: Yes. Yes. My name is
10 Frank Cunningham also with DNR Energy Center. The
11 adoption of EPACT in the -- the new paragraph for the
12 PURPA rule which specifies the use of I triple E
13 1547. 1547 addresses systems up to -- these are the
14 minimum requirements for systems up to 10 megavolt
15 amps which would be equivalent to, say, a
16 10,000-kilowatt system.

17 So, yeah, it does address systems larger
18 than the 100 kW systems that the net metering rule
19 addresses. And so -- and it is my opinion that any
20 changes should go to the cogeneration rule because
21 the cogeneration rule is an adoption -- the original
22 adoption of the PURPA rule. And so hopefully I
23 answered your question.

24 COMMISSIONER MURRAY: But it would have
25 to be a statutory change, would it not?

1 MR. CUNNINGHAM: No.

2 COMMISSIONER MURRAY: No?

3 MR. CUNNINGHAM: I would think it would
4 be just an amendment to the cogeneration rule because
5 that rule -- the cogeneration, rule which was the
6 adoption of PURPA, was adopted in 1981, and EPACT
7 2005 amends the PURPA Act with this additional
8 paragraph to PURPA. So I would think that it would
9 just be an adoption on the PSC's part of that
10 additional paragraph.

11 COMMISSIONER MURRAY: Okay. Mr. Wood,
12 you wanted to respond?

13 MR. WOOD: Yes. The Consumer Clean
14 Energy Act does have the 100 kW limit, and if we
15 adopt -- adopt I triple E 1547 for interconnection of
16 net metering equipment, it would still apply to
17 facilities under 100 kW in size. Larger than 100 kW
18 in size, it would be going over to the cogeneration
19 rule, and there's nothing in our statutes that puts
20 any limitations on that that I'm aware of.

21 So there would be the subset of net
22 metering interconnection so that where you would
23 still have to fall under the Consumer Clean Energy
24 Act. Other provisions would fall under our
25 regulatory authority and I'm not aware of any

1 encumbrance on that.

2 COMMISSIONER MURRAY: All right. Thank
3 you. Anyone else?

4 (NO RESPONSE.)

5 COMMISSIONER MURRAY: Judge, that's all.
6 Thank you.

7 JUDGE STEARLEY: All right. Thank you,
8 Commissioner Murray. Commissioner Appling, any
9 questions?

10 COMMISSIONER APPLING: No questions,
11 Judge.

12 JUDGE STEARLEY: Mr. Chairman, any
13 questions regarding interconnection standard?

14 CHAIRMAN DAVIS: Pass.

15 JUDGE STEARLEY: All right. I don't
16 think I have any further questions on this one as
17 well. Did any of the parties have any additional
18 comments they would like to make with regard to this
19 standard or any others that we've discussed today?
20 Mr. Mitten.

21 MR. MITTEN: Your Honor, Russ Mitten on
22 behalf of Aquila and Empire. In comments that we had
23 previously filed in this case, we had indicated that
24 if the Commission was of a mind to adopt I triple E
25 Standard 1547, that it should convene a rulemaking

1 proceeding to do so. In his expert statement that
2 was filed a couple weeks ago, Mr. Wood suggested as
3 an alternative that each individual utility could
4 simply make a change in its tariff to incorporate the
5 I triple E standard. We believe that would be
6 preferable to a rulemaking.

7 So if the Commission is of the mind to
8 adopt that standard for Missouri, we could either
9 file tariff changes on our own, or in compliance with
10 a Commission order file compliance tariffs that would
11 affect that, and that would obviate a rulemaking
12 which would, I think, go well beyond what's necessary
13 to accomplish the objective of this particular aspect
14 of the EA-2005.

15 JUDGE STEARLEY: All right. Thank you,
16 Mr. Mitten.

17 MR. FISCHER: Judge, after that
18 statement, KCPL would also support that approach too.

19 MR. BYRNE: Ameren too, your Honor.
20 We've already got it in our tariff, though.

21 JUDGE STEARLEY: Thank you very much.
22 Any other comments anyone would like to add to our
23 discussion this morning?

24 (NO RESPONSE.)

25 JUDGE STEARLEY: Any other procedural

1 matters we need to take up at this time?

2 (NO RESPONSE.)

3 JUDGE STEARLEY: Hearing none, our
4 on-the-record proceeding in Case Numbers
5 EO-2006-0493, 0494 -- or 0496, excuse me, and 0497
6 are hereby adjourned. Thank you all very much for
7 your time and attendance this morning.

8 (WHEREUPON, the recorded portion of the
9 On-the-Record Presentation was concluded.)

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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)
5

6 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,
7 within and for the State of Missouri, do hereby
8 certify that the foregoing proceedings were taken by
9 me to the best of my ability and thereafter reduced
10 to typewriting under my direction; that I am neither
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14 employee of any attorney or counsel employed by the
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