

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3 _____
4 TRANSCRIPT OF PROCEEDINGS

5 On-the-record Presentation

6 April 27, 2007

7 Jefferson City, Missouri

8 Volume 2
9 _____

10 In the Matter of the Consideration) Case No. EO-2006-0494
11 of Adoption of the PURPA Section)
12 111(d)(12) Fuel Sources Standard)
13 As Required by Section 1251 of the)
 Energy Policy Act of 2005)

14 In the Matter of the Consideration) Case No. EO-2006-0495
15 of Adoption of the PURPA Section)
16 111(d)(13) Fossil Fuel Generation)
 Efficiency Standard as Required by)
 Section 1251 of the Energy Policy)
 Act of 2005)

17
18 _____
19 HAROLD STEARLEY, presiding
20 REGULATORY LAW JUDGE.

21 CONNIE MURRAY,
22 STEVE GAW
23 ROBERT M. CLAYTON, III,
 LINWARD "LIN" APPLING,
 COMMISSIONERS.
24 _____
25 REPORTED BY:
 LISA M. BANKS, CCR
 MIDWEST LITIGATION SERVICES

1 A P P E A R A N C E S

2 JAMES M. FISCHER, Attorney at Law
3 Fischer & Dority
4 101 Madison Street, Suite 400
Jefferson City, Missouri 65101
573-636-6758

5 FOR: Kansas City Power & Light.

6 DIANA C. CARTER, Attorney at Law
7 Brydon, Swearngen & England
8 312 East Capitol Avenue
Jefferson City, Missouri 65102
573-635-7166

9 FOR: Aquila, Inc.
The Empire District Electric Company.

10 THOMAS M. BYRNE, Attorney at Law
11 1901 Chouteau Avenue
12 St. Louis, Missouri 63101
314-554-2976

13 FOR: Union Electric Company d/b/a AmerenUE.

14 SHELLEY A. WOODS, Assistant Attorney General
221 West High Street
15 Jefferson City, Missouri 65102
573-751-3321

16 FOR: State of Missouri, Department of Natural Resources

17 LEWIS R. MILLS, JR., Public Counsel
18 P.O. Box 2230
Jefferson City, Missouri 65102
19 573-751-4857

20 FOR: Office of the Public Counsel and the Public.

21 STEVEN DOTTHEIM, Chief Deputy General Counsel
22 P.O. Box 360
Jefferson City, Missouri 65102
573-751-3234

23 FOR: Staff of the Missouri Public Service Commission.

24

25

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

2 JUDGE STEARLEY: All right. Good
3 morning. Today is Friday, April 27, 2007, and we're
4 here for a combined on-the-record proceedings in Case
5 No. EO-2006-0494, in the matter of the consideration of
6 adoption of the PURPA Section, 111 (d) (12), fuel
7 sources standard has required by Section 1251 of the
8 Energy Policy Act of 2005, and Case No. EO-2006-0495,
9 in the matter of the consideration of adoption of the
10 PURPA Section 111 (c) (13), fossil fuel generation
11 efficiency standard, as required by Section 1251 of the
12 Energy Policy Act of 2005.

13 My name is Harold Stearley, and I am the
14 Regulatory Law Judge presiding over these matters
15 today. The court reporter this morning is Lisa Banks,
16 and we will begin by taking entries of appearance,
17 beginning with Staff.

18 MR. DOTTHEIM: My name is Steven
19 Dottheim and Dennis L. Frey, Post Office Box 360,
20 Jefferson City, Missouri 65102 on behalf of the Staff
21 of the Missouri Public Service Commission.

22 JUDGE STEARLEY: Thank you,
23 Mr. Dottheim. The Office of Public Counsel?

24 MR. MILLS: On behalf of the Office of
25 Public Counsel and the public, my name is Lewis Mills.

1 My address is Post Office Box 2230, Jefferson City,
2 Missouri 65102.

3 JUDGE STEARLEY: Thank you, Mr. Mills.
4 Department of Natural Resources?

5 MS. WOODS: Shelly Ann Woods, Assistant
6 Attorney General, Post Office Box 899, Jefferson City,
7 Missouri 65102, appearing on behalf of the Missouri
8 Department of Natural Resources.

9 JUDGE STEARLEY: Thank you, Ms. Woods.
10 Kansas City Power & Light?

11 MR. FISCHER: James M. Fischer, Fischer
12 and Dority PC, 101 Madison Street, Suite 400, Jefferson
13 City Missouri 65101, appearing on behalf of Kansas City
14 Power & Light Company.

15 JUDGE STEARLEY: All right. Ag
16 Processing, Sedalia Industrial Energy User's
17 Association and Praxair Incorporated?

18 Let the record reflect we have no
19 appearances for those entities.

20 Concerned Citizens of Pike County, Ozark
21 Energy Services, Mid-missouri Peace Works, Heartland
22 Renewable Energy Society and Audubon Missouri.

23 Let the record reflect we have no
24 appearances by those entities.

25 The Empire District Electric Company?

1 MS. CARTER: Diana Carter, Brydon,
2 Swearngen and England PC, 312 East Capitol Avenue,
3 P.O. Box 456, Jefferson City, Missouri 65102, appearing
4 on behalf of the Empire District Electric Company, and
5 also Aquila Inc.

6 JUDGE STEARLEY: And Union Electric
7 Company, doing business as AmerenUE?

8 MR. BYRNE: Your Honor, I'm Tom Byrne.
9 My address is 1901 Chouteau Avenue, St. Louis, Missouri
10 63103 appearing on behalf of Union Electric Company.

11 JUDGE STEARLEY: All right. Have I
12 missed anyone? I think we've got everyone. As our
13 typical warning here, I would ask that everyone please
14 have their Blackberry, cell phones and other electric
15 devices switched off at this time, as they do tend to
16 interfere with webcasting and recording.

17 And we're going to follow pretty much
18 the same procedure we followed on Wednesday with the
19 other PURPA cases. I'm going to identify the witnesses
20 that I have on my list by name. When I call your name,
21 please be sure that you're near access to a microphone.
22 I'd like you to spell your name for our court reporter,
23 and then I will swear you all in en masse and we will
24 begin our questioning.

25 MR. MILLS: Your Honor, before you go

1 on, we have not taken an active role in this case. We
2 support the position of DNR. I have a Brief due today
3 and I would ask leave to be excused from the remainder
4 of these proceedings.

5 JUDGE STEARLEY: That would be fine,
6 Mr. Mills.

7 MR. MILLS: Thank you.

8 JUDGE STEARLEY: We appreciate your
9 appearance, even though it was brief.

10 All right. Before I go through my
11 witness list here, do any of the parties plan on
12 introducing any documentary evidence today?

13 MR. DOTTHEIM: Mr. Stearley, yes. Judge
14 Stearley. DNR in the comments of its witness made
15 reference to a Section 111 (d) standard that was
16 adopted by Congress by the Energy Policy Act of 1992,
17 and pursuant to the Energy Policy Act of 1992, the
18 Commission considered that standard and the other
19 standards that were considered under Section 111 (d) in
20 Energy Policy Act subsequent to its adoption in 1992.

21 There were, actually, as best as I can
22 determine and recall, four cases that resulted at the
23 Missouri Public Service Commission from the Energy
24 Policy Act of 1992. Three of them are reported in the
25 Commission's bound volumes of Missouri PSC reports.

1 One of them is not reported. And that is the case in
2 which the standard was considered that the DNR witness
3 makes reference to.

4 I have copies of the Commission Order
5 approving a Stipulation & Agreement regarding that
6 standard and several other standards that are -- well,
7 which were created in the Energy Policy Act of 1992.
8 And in that, unless one either recalls that case or
9 really does some research, one is not going to
10 necessarily find it, even in the Missouri PSC reports
11 or LEXUS, NEXUS or Westlaw. I thought that it might be
12 advisable to provide copies and rather than ask that
13 administrative notice be taken of it, since it isn't
14 reported, that copies be made an exhibit for purposes
15 of this proceeding.

16 Also, too, it might afford the
17 Commission at least a historical perspective of what
18 was done in the aftermath of the 1992 Energy Policy
19 Act. Typically, as is the case, even in the
20 Commission's bound volumes, Stipulations & Agreements
21 are not published. So I have not only the Commission's
22 order approving the Stipulation & Agreement, but also
23 attached to it the Stipulation & Agreement that was
24 entered into respecting Section 111 (d) 7, 8 and 9,
25 which were enacted by Congress in the Energy Policy Act

1 of 1992, and which the Commission considered in 1993.

2 JUDGE STEARLEY: Mr. Dottheim, would you
3 happen to have case numbers for the other three cases
4 that were reported?

5 MR. DOTTHEIM: I don't have those with
6 me, but if we do take a break, I can get those cases.
7 One of the cases is an electric case, two of the cases
8 are gas cases, but I can provide those.

9 JUDGE STEARLEY: Okay. We can get those
10 over a break and we can take official notice on those.
11 And why don't we go ahead and mark the exhibit you have
12 as Exhibit 1, and you can distribute copies for us.

13 MR. DOTTHEIM: How many copies would the
14 Bench like? Would the Bench like copies also for --

15 JUDGE STEARLEY: Yes.

16 MR. DOTTHEIM: -- the personal advisors
17 or --

18 JUDGE STEARLEY: Yes. If we could get a
19 total of six copies, that would be great.

20 And since we're also going to be looking
21 at taking official notice of those prior cases, the
22 Commission will also take official notice of the
23 legislative history on EAct 2005 as well.

24 (EXHIBIT NO. 1 WAS MARKED FOR
25 IDENTIFICATION.)

1 JUDGE STEARLEY: I know the parties are
2 just now getting a chance to look at this. Are there
3 any objections to the admission of Exhibit 1?

4 MR. FISCHER: No objection, your Honor.
5 I do notice there are other cases referenced here which
6 are probably the case numbers that you may be looking
7 for.

8 JUDGE STEARLEY: On what page do you see
9 those referenced?

10 MR. FISCHER: Page No. 2, at the bottom,
11 EX-92-299 and OX-92-300 feet.

12 MR. DOTTHEIM: No, those aren't the
13 cases.

14 MR. FISCHER: Okay.

15 MR. DOTTHEIM: But I will identify those
16 cases EX-92-299 is -- and OX-92-300 are the two cases
17 in which the Commission considered the electric
18 resource planning rule, Chapter 22. And the reason
19 there are two cases, EX-92-299, to my recollection, is
20 the Chapter 22 provisions. The OX-92-300 is another
21 chapter of the Commission's rules that deals with
22 promotional practices, so that's the reason for
23 the two dockets. And, again, those are the cases that
24 Mr. Fischer has identified. There were other cases
25 which I was referring to earlier.

1 JUDGE STEARLEY: All right. And we will
2 get those case numbers from you at a later point here,
3 Mr. Dottheim?

4 MR. DOTTHEIM: Also, Mr. Stearley, too,
5 from a question you had directed to me -- and I don't
6 like making excuses. I'm subbing for Mr. Frey at these
7 hearings, both on Wednesday and today; otherwise, I
8 might have been able to provide this document earlier.
9 And actually I wasn't able to locate it and get it out
10 of microfilm earlier than actually this morning.

11 But the question you directed to me on
12 Wednesday as far as on the prior State action, trying
13 to find guidance for the word comparable, in thinking
14 about that further and doing some additional searching
15 in PURPA itself, I don't know that it is literally on
16 point, but the closest that I think I can get at this
17 point is Section 124, which is titled Prior and Pending
18 Proceedings. And it does directly apply to the
19 standards that were added by the Energy Policy Act of
20 2005, because Section 124 was originally adopted in
21 PURPA in 1978, but it was updated in the Energy Policy
22 Act of 2005.

23 And I just might read one sentence, the
24 first sentence out of it, for purposes of Subtitle A
25 and B -- and I might note, I think Subtitle A is the

1 general provisions and Subtitle B are the standards for
2 electric utilities, which includes Section 111. But it
3 states, for purposes of Subtitle A and B and this
4 subtitle, proceedings commenced by State regulatory
5 authorities with respect to electric utilities for
6 which it has rate-making authority and nonregulated
7 electric utilities before the date of the enactment of
8 this act and actions taken before such date in such
9 proceedings shall be treated as complying with the
10 requirements of Subtitles A and B and this subtitle.
11 If such proceedings and actions substantially conform
12 to such requirements.

13 And there are additional sentences in
14 Section 124, but again, in attempting to respond to
15 your question from the other day, that is, at this
16 time, as much additional guidance as I am able to
17 provide.

18 JUDGE STEARLEY: All right. Thank you,
19 Mr. Dottheim. I didn't hear any objections to the
20 admission of Exhibit 1, so I'm going to go ahead and
21 will receive that, and it is admitted into evidence.

22 (EXHIBIT NO. 1 WAS RECEIVED INTO
23 EVIDENCE.)

24 JUDGE STEARLEY: And at this time, then,
25 I will go through our witness list and, as I mentioned,

1 I'd like the witnesses to please state and spell your
2 name for our court reporter. Daniel Beck, Staff?

3 MR. BECK: Daniel Beck. D-a-n-i-e-l,
4 B-e-c-k.

5 JUDGE STEARLEY: John Noller for DNR?

6 MR. NOLLER: John Noller. J-o-h-n,
7 N-o-l-l-e-r for DNR Energy Center.

8 JUDGE STEARLEY: David Gibson for
9 Empire?

10 MR. GIBSON: David Gibson. D-a-v-i-d,
11 G-i-b-s-o-n for Empire District Electric Company.

12 JUDGE STEARLEY: Does Empire have any
13 additional experts today or is --

14 MR. GIBSON: No. No.

15 JUDGE STEARLEY: Okay. Matt Tracy for
16 Aquila?

17 MR. TRACY: Matt Tracy. M-a-t-t,
18 T-r-a-c-y.

19 JUDGE STEARLEY: Okay. Randy Hughes for
20 KCP&L?

21 MR. HUGHES: Randy Hughes. R-a-n-d-y,
22 H-u-g-h-e-s for Kansas City Power & Light.

23 JUDGE STEARLEY: All right. Are there
24 any other witnesses that I missed?

25 Yes?

1 MR. VOYTAS: Richard Voytas.

2 JUDGE STEARLEY: Okay.

3 MR. VOYTAS: R-i-c-h-a-r-d, v-o-y-t-a-s
4 for AmerenUE.

5 JUDGE STEARLEY: Thank you, Mr. Voytas.
6 If you all please raise your right hands.

7 (WITNESSES SWORN.)

8 JUDGE STEARLEY: All right. Very well.
9 We will proceed with questions from the Commissioners,
10 starting with Commissioner Murray.

11 COMMISSIONER MURRAY: Thank you. I
12 think I would ask Mr. Noller this question: Regarding
13 the requirement that the utility develop a plan that
14 the energy it sells is generated using a diverse range
15 of fuel and technologies, including renewable
16 technologies, you're not claiming, are you, that any
17 one of the Missouri utilities does not incorporate at
18 least some renewable technologies in its mix, are you?

19 MR. NOLLER: No, we are not claiming
20 that. Our comments focused on the question of
21 comparability of the IRP rule to the EPAct standard,
22 but we were not claiming that none of the utilities
23 include renewables in their mix.

24 COMMISSIONER MURRAY: And you were not
25 claiming that any one of them does not, were you? You

1 just said you aren't claiming that none of them did.
2 You're also not claiming that any particular one does
3 not include renewables, are you?

4 MR. NOLLER: I would -- the data that
5 was available to me was limited to plants owned and
6 operated by the four utilities. And in -- within that
7 data, there are -- there are utilities that do not
8 self-generate renewables according to what was reported
9 to the Energy and Information Administration for the
10 year 2006. However, those utilities may have power
11 purchase agreements that incorporate renewable energy
12 and that information was not available to me.

13 COMMISSIONER MURRAY: And, indeed,
14 they're not required to self-generate, are they?

15 MR. NOLLER: No, they're not required to
16 self-generate. I think that the EPC Act standard can be
17 interpreted as referring to -- well, it refers to the
18 sources of the generation of the power that they supply
19 to their customers. And clearly whether the power
20 comes from self-generation or from a power purchase
21 agreement, if it comes from a renewable source, I think
22 that meet the objectives of the EPC Act standard.

23 COMMISSIONER MURRAY: Okay. With our
24 integrated resource planning, each utility does have to
25 develop a plan. And isn't it true that that plan is,

1 in part at least, designed to minimize dependence on
2 any one particular fuel source?

3 MR. NOLLER: Well, the IRP rule
4 states a primary selection criterion in Section 010,
5 paragraph 1B, and that selection criterion is to use
6 minimization of the present worth of long-run utility
7 costs as the primary selection criterion in choosing
8 the preferred resource plan.

9 In analyzing various resources and
10 applying that selection criterion, it is certainly true
11 that a utility is required to analyze renewable sources
12 as well as other generating sources. But there is no
13 assurance that application of that primary selection
14 criterion will result in the inclusion of renewables in
15 the preferred resource plan and, in fact, the preferred
16 resource plans that have been presented so far have not
17 what included renewables, although future ones may
18 well.

19 The use of that selection criterion has
20 been somewhat unfriendly to renewables, I believe, in
21 that they often fall out in applying the cost
22 minimization criterion. It is possible for utilities
23 to include other secondary criteria, based on the
24 provisions of 010.1C, but that is really -- that's an
25 option the utility may or may not choose to do so, may

1 or not choose to include selection criteria that would
2 lead to the selection of renewables.

3 COMMISSIONER MURRAY: But if each one is
4 already incorporating some renewables in their mix, it
5 seems that that would make what's going on in Missouri
6 comparable to what is required under Section 111.12D.

7 MR. NOLLER: Well, our perspective is
8 that the issue before the commission today is whether
9 the IRP rule constitutes a standard that is comparable
10 to the EPAct fuel-diversity standard. Well, let me
11 just say, if the commission chooses to go into a
12 consideration -- determination of -- with respect to
13 the EPAct standard, I think it would be very relevant
14 as a matter of policy to look at what fuel sources are
15 actually being used in the State and determine whether
16 any action on the EPAct standard is a useful and
17 relevant policy for Missouri.

18 But with respect to the question of the
19 IRP rule being a relevant standard, our position is
20 that -- the important question is whether the IRP rule
21 has comparable objectives to the EPAct standard.

22 COMMISSIONER MURRAY: Isn't what we have
23 to determine whether there was prior State action that
24 was comparable, and wouldn't that include the IRP rule
25 as well as what has actually taken place in terms of

1 utilities using renewable resources for generation?

2 Aren't both of those prior State actions?

3 MR. NOLLER: If -- we would have to look
4 individually at the process through which utilities
5 chose to include renewables to determine whether that
6 was a prior State action.

7 I'm sorry. Would you repeat the first
8 part of your question? I think you had two different
9 points there, and I missed one.

10 COMMISSIONER MURRAY: I think you're
11 making the point that the IRP itself has to be
12 comparable as a prior State action. And I'm asking
13 you, couldn't we look at the IRP and also look at what
14 has actually gone on in terms of the fuel-generation
15 sources that have been used in the state to determine
16 what has been prior State action that would be
17 comparable.

18 MR. NOLLER: Well, as I interpreted the
19 meaning of comparable State action, and, as we've
20 discussed, you know the PURPA doesn't give -- PURPA
21 gives only -- you know, doesn't give a very direct
22 definition on what constitutes comparable. If what
23 you're trying to do is decide whether the IRP rule
24 is -- constitute a comparable standard. You would have
25 to say not only that the utilities have included

1 renewables, but that inclusion was determined as a
2 result of the application of the criteria of that IRP
3 rule.

4 There might be some other State
5 actions other than the -- other State standards other
6 than the IRP rule that led to the inclusion of those
7 renewables, but that is -- we were not able to identify
8 other, you know, State standards other than the IRP
9 rule, so we tended to focus on the IRP rule.

10 COMMISSIONER MURRAY: All right. Would
11 anybody else like to respond to that?

12 And I'm going to -- well, go ahead,
13 Mr. Byrne.

14 MR. BYRNE: I guess, your Honor, on
15 Wednesday we were talking about how tariff filings for
16 individual utilities could also be prior State action.
17 I do think the term prior State action is broader than
18 just looking at what the IRP rule says.

19 To the extent that there are filings
20 that individual utilities have made that implement IRP
21 rules and talk about their generation to the extent
22 they have tariffs, to the extent there are rate case
23 decisions, to my way of thinking, all of that
24 constitutes prior State action.

25 COMMISSIONER MURRAY: Yes?

1 MR. TRACY: Matt Tracy with Aquila. I
2 guess I have two points. One, as I mentioned
3 Wednesday, I think some parties are focusing on not
4 having the exact wording that the federal government
5 put out in their 2005 EPAct, and yet the federal
6 government could have said, this is the wording you all
7 must use, and they didn't. They, in fact, allowed the
8 states to make that decision, and that's what we're
9 doing now.

10 I guess the other point I think we
11 should keep in mind is, to the extent that these two
12 provisions are looking at how do you get to -- and I'm
13 from that area, so let me say, our goal is to get to
14 Kansas City, and the question is: Are we allowed to
15 get to Kansas City by driving up 50 Highway, or do we
16 have to go up 63 to Columbia and then across 70? And I
17 guess as long as we all get to Kansas City, I am not
18 sure that it makes a lot of difference.

19 And that's my perception of the
20 difference between the parties is, my perception and
21 certainly Aquila's perception is, we're already there.
22 We're doing what it says they want done in the
23 standards. And some of the other parties are saying,
24 no, we've got to go the specific route, and I just
25 don't think it matters. We're there.

1 COMMISSIONER MURRAY: Mr. Tracy, I think
2 probably the reason that there are those who say we're
3 not doing enough is that it appears to be kind of slow
4 moving in terms of the degree to which renewable
5 resources are being relied upon. Do you think that the
6 utilities have enough incentive to incorporate
7 renewable fuels in their generation, renewable
8 technologies?

9 MR. TRACY: I believe so. I mean,
10 certainly, I can speak for Aquila. We did not purchase
11 and build the wind farm out of Gray County in Kansas,
12 but we did contract to purchase the output. And given
13 the various sales, I'm not sure who all owns all what
14 percentage of the output now, but I know Aquila still
15 takes a significant chunk of that output. It was the
16 most effective, cost-efficient way to get that done.

17 And I guess that's the issue is, yeah,
18 if you want us to turn off all the coal plants, turn
19 off all the gas plants and do everything by whatever
20 way you tell us is green, we have the ability to do
21 that. I'm not sure our ratepayers are going to be
22 pleased with the cost of doing that.

23 And so that is the other piece that we
24 try to bring into it, and certainly I know you all are
25 aware of that, you know, it's not free. Even the wind

1 costs money.

2 COMMISSIONER MURRAY: Mr. Gibson?

3 MR. GIBSON: Thank you. I would just
4 like to sort of echo what Matt said. If you look at
5 the results for Empire from 2006, over 9 percent of the
6 energy that was generated or purchased for that year
7 for the customers was supplied by wind. I think that
8 if you look at the results, where companies are at this
9 point in time, I think that companies are aware that
10 they need a diverse portfolio of supply options, and I
11 think we've done a fairly good job of that.

12 COMMISSIONER MURRAY: Anybody else want
13 to --

14 MR. BECK: Yes, Commissioner. Dan Beck,
15 from Staff. I guess I'd just like to point out a few
16 things. One is that one of the statements includes the
17 phrase, must include renewable resources as a quote,
18 when in reality, the phrase is, including renewable
19 resources in the actual one-sentence standard that's
20 out there, so I just want to point that little
21 clarification out.

22 When you're talking about renewables,
23 sometimes people want to exclude hydro as a renewable
24 resource, but it gets into the debate of whether it is
25 a, quote, "green resource" or not, but it is, I feel,

1 by almost any definition, a renewable resource. And
2 when you start looking at utilities and their access to
3 hydro alone, you know, there's a lot of utilities
4 that have that, you know, much less the more recent
5 investments in wind, so there really is a fair amount.
6 Staff have been together a number of -- that 3.4
7 percent of the energy last year was supplied by wind,
8 and that number will go up this year, based on
9 everything we know because of new units coming on, and
10 wanted to point that out.

11 There's been a lot of discussion and
12 reference about the preferred resource plan that
13 results from the IRP process. I guess I feel like that
14 ignores the fact that what the IRP process first does
15 is requires a utility to come up with multiple
16 alternative resource plans. And those multiple
17 resource plans then are ultimately considered, and the
18 utility it to adopt a preferred resource plan.

19 But even then, once they've adopted this
20 preferred resource plan, they have the responsibility
21 to have an implementation plan, which includes looking
22 at the critical uncertain factors and how they might
23 change their resource mix in the future. So even if a
24 resource didn't make the preferred resource plan, it
25 still has the ability to be called on by that utility

1 as critical uncertain factors unfold.

2 For example, the most obvious would
3 be -- these days is the carbon tax. That would
4 obviously have an effect and change the way you look
5 at renewables and the value of them. And I think
6 that's -- so I think that's an ongoing process. It's
7 not just a single plan and then you're done and
8 renewables somehow lost out.

9 And I guess just the last thing I'd say
10 is, you know, I'm an engineer. I'm not a lawyer. In
11 my opinion, though, when we talk about the comparable
12 State action, part of that action would include just
13 the consideration that took place to adopt this IRP
14 rule and to look at the diverse resources that went
15 into that, not just the ultimate wording of that rule.

16 So that would be my comments.

17 COMMISSIONER MURRAY: Mr. Beck, do you
18 have any feeling as to why the phrase, including
19 renewable technologies, used technologies instead of
20 resources?

21 MR. BECK: I have kind of a little bit
22 of an opinion, I guess, more than --

23 COMMISSIONER MURRAY: For example, is
24 hydro a technology?

25 MR. BECK: Hydro is a technology. And I

1 would give the example that burning waste tires in an
2 existing coal plant, that would be really more what I
3 would consider to be a standard technology, but yet
4 you're using a renewable fuel in it. So that would be
5 an example that I would kind of give that would seem to
6 be different than a renewable technology. So my
7 interpretation of that would be that it is simply
8 referring to technologies like wind, like hydro, like
9 biomass that are using -- that are renewable
10 technologies, not just in the fuel source, but also in
11 the technology itself.

12 COMMISSIONER MURRAY: Thank you. Any
13 other comments?

14 MR. VOYTAS: Commissioner, Rick Voytas
15 with AmerenUE. I'd like to address the issue of
16 whether the existing integrated resource planning rules
17 sufficiently cover the issue of fuel diversity, and I
18 believe that they do. What I have done is I have taken
19 the Missouri rule and I have highlighted in bold those
20 pages that address fuel diversity. They may not say
21 the words fuel diversity, but they specifically require
22 Missouri electric utilities to address it. And of the
23 17 pages of the Missouri rule, eight of those pages
24 address fuel diversity. And I've also taken just one
25 of the sections, the supply-side section, and I've made

1 some silos. But it basically requires us to screen the
2 universe of options of all technologies.

3 And basically, we look at existing new
4 generation technologies, including all renewable fuels,
5 nuclear technologies, sales and purchased power, and
6 for our specific utility, we've got a wind RFP that
7 we're evaluating the results.

8 What we hope to do in the integrated
9 resource planning process, the process that we're
10 currently engaged in is, we're going to be meeting with
11 our stakeholders in a couple of weeks to go through
12 this whole process to try to build that common level of
13 understanding, but clearly to show how important fuel
14 diversity is and how it enters into our decisions and
15 how our decisions will be fully compliant with
16 Missouri's rule.

17 COMMISSIONER MURRAY: Thank you, Judge.

18 JUDGE STEARLEY: Thank you,

19 Commissioner. Commissioner Clayton?

20 COMMISSIONER CLAYTON: Thank you, Judge.

21 I want to start off just kind of making a statement,
22 since I wasn't able to be here on Wednesday for the
23 other PURPA hearing that was held and so I'm not aware
24 of how the dialogue proceeded, so if you all would
25 indulge me just a little bit on catching up on exactly

1 what we were talking about.

2 I think I'm going to start with
3 Mr. Dottheim and ask for his assessment in both narrow,
4 small picture what we're supposed to decide as part of
5 this proceeding. And then I want him to step back and
6 give me a big picture analysis of what the purpose is
7 behind this discussion.

8 And I kind of say that because, in the
9 small picture, we're just making the decision about
10 whether an existing rule meets a planning -- at least I
11 think, meets a planning part of a federal statute, and
12 then big picture, I mean, what's the purpose behind it
13 and are we satisfying the purpose behind that rule.

14 So having said that, tell me if that was
15 not helpful and if I need to restate it in a more
16 complex fashion.

17 MR. DOTTHEIM: Well, the prior State
18 action analysis -- and I think we addressed this, and
19 Commissioner Murray noted the difference from various
20 standards in particular. The prior State actions,
21 there are three that are listed. The State has
22 implemented, the State regulatory authority has
23 conducted a proceeding, the State Legislature has
24 voted, and for -- of the five standards, for four of
25 those, there are no time frames set.

1 But for one of those, and that is the --
2 I think the interconnection if my -- if my memory
3 serves me correctly. There's a -- there's a -- no,
4 it's not the interconnection, it's the smart metering.
5 For the smart metering, there is a three-year time
6 frame for the State regulatory authority having
7 conducted a proceeding or the State Legislature having
8 voted. There was no time frame for the State having
9 implemented.

10 So I think there is an intent upon
11 Congress' part to not make the states go through a
12 process that they had already gone through, and I think
13 there was an intent upon Congress three times, because
14 we're talking about PURPA first being enacted in 1978,
15 and then additional standards been enacted in 1992, and
16 then additional standards being enacted in 2005, and I
17 think Congress has proceeded similarly all three times.

18 I don't think Congress is imposing
19 literally the standards on the states, because Congress
20 is mandating that the states consider the standards and
21 make the determination of whether to adopt them or not.
22 It's not requiring that the states adopt the standards.

23 COMMISSIONER CLAYTON: Can I stop you
24 right there and ask for some -- I just want to make
25 sure that I've got my score card filled out properly.

1 There are five different prior state action issues as
2 part of this PURPA analysis; is that correct?

3 MR. DOTTHEIM: Well, I was referring to
4 the -- in particular to the five cases that exist to
5 address the five standards. The three that were
6 addressed on Wednesday, the net metering, the time base
7 metering and communication, which is also referred to
8 as smart metering, and interconnection, which the net
9 metering is the case number EO --

10 COMMISSIONER CLAYTON: That's okay.

11 MR. DOTTHEIM: All right. All right.

12 And then today, of course --

13 COMMISSIONER CLAYTON: We have fuel
14 sources, and what's the other one?

15 MR. DOTTHEIM: We've got fuel sources
16 and fossil fuel generation efficiency. And actually,
17 three of these items or areas are actually under one
18 PURPA or under one section of the Energy Policy Act,
19 and two are under a different section, but -- I'm
20 sorry. I'll stop.

21 COMMISSIONER CLAYTON: Okay. So we've
22 got five areas. You've mentioned the net metering,
23 interconnection, time base metering or smart metering,
24 fuel choice and then also fossil fuel generation
25 efficiency?

1 MR. DOTTHEIM: Yes.

2 COMMISSIONER CLAYTON: And that is up
3 for today as well. Correct?

4 MR. DOTTHEIM: Yes.

5 COMMISSIONER CLAYTON: Okay. Now, the
6 small picture -- and this is what I was trying to get
7 around to, and I don't think I did a very good job in
8 asking my question. But basically what the Congress
9 has done is that they have thrown out these five issues
10 and said, we think these need to be considered in some
11 way, shape or form by states. Would you agree with
12 that?

13 MR. DOTTHEIM: Yes.

14 COMMISSIONER CLAYTON: And in
15 considering these issues, they are giving an option for
16 states to opt out of further proceedings if we have
17 addressed the issue in some way; is that correct?

18 MR. DOTTHEIM: Yes.

19 COMMISSIONER CLAYTON: Okay. So the
20 small picture --

21 MR. DOTTHEIM: And I think -- I'm sorry.
22 You're correct. The states can opt out if they have
23 considered it in some way. The states can opt in even
24 if they have considered that.

25 COMMISSIONER CLAYTON: Okay. I'm going

1 to get to that. I'm going to get to that -- you messed
2 up my train of thought.

3 MR. DOTTHEIM: I'm sorry.

4 COMMISSIONER CLAYTON: That's okay.

5 So the small picture question that we
6 have before us, are the rules that are in place now, do
7 they satisfy this prior State action according to
8 EPAct. Correct?

9 MR. DOTTHEIM: Or has the Commission
10 previously considered these areas, even if the rules
11 don't necessarily cover these matters.

12 COMMISSIONER CLAYTON: In a proceeding,
13 by --

14 MR. DOTTHEIM: Yes.

15 COMMISSIONER CLAYTON: -- legislative
16 action, by an order, by a speech.

17 MR. DOTTHEIM: Well, in some manner.

18 COMMISSIONER CLAYTON: By something.

19 MR. DOTTHEIM: In fact -- and I think
20 there's even some question as to in what format,
21 whether there needs to have been even some opportunity
22 for a hearing previously.

23 COMMISSIONER CLAYTON: So is it Staff's
24 position that an opportunity for hearing is necessary
25 for prior State action to be effective?

1 MR. DOTTHEIM: I think if one takes a
2 look at PURPA, I think that argument could be made.

3 COMMISSIONER CLAYTON: Is that Staff's
4 position, was my question.

5 MR. DOTTHEIM: Well, I think I would
6 like to take a look at the statutes again to --
7 because, again, I don't like making excuses.

8 COMMISSIONER CLAYTON: I understand.

9 MR. DOTTHEIM: I'm subbing for someone
10 and I haven't necessarily --

11 COMMISSIONER CLAYTON: Who are you
12 subbing for today?

13 MR. DOTTHEIM: Mr. Frey.

14 COMMISSIONER CLAYTON: So I'm catching
15 you -- I apologize for catching you --

16 MR. DOTTHEIM: No. I've had some --
17 I've had some time to prepare, but not necessarily as
18 much as I would have liked to for questions such as
19 which you are acting, which I think are important
20 questions and significant questions for the Commission
21 to comply. But I think basically, in my recollection
22 of the prior State action that has been discussed, that
23 in the prior State action that has been referred to,
24 the Commission in every instance has had an opportunity
25 to conduct hearings.

1 COMMISSIONER CLAYTON: Mr. Dottheim, it
2 would be immoral for us to ask you to stay in this
3 building any longer and prepare for these hearings more
4 than you do. So take a break. I want to ask
5 Mr. Byrne, he's kind of had some nodding and I want to
6 make sure that I'm clear, at least from Ameren's
7 position.

8 On the small picture issue, we're trying
9 to establish whether some prior State action has
10 occurred that will allow us to opt out or not take any
11 additional actions on these five issues. Do you agree
12 with that statement?

13 MR. BYRNE: Yes.

14 COMMISSIONER CLAYTON: Okay. Now, on
15 the issue that Mr. Dottheim just threw out, the need
16 for some type of proceeding on hearing or an open type
17 of case or something. Do you agree with that or not?

18 MR. BYRNE: I -- my understanding of
19 it just -- it would be pretty broad. The prior State
20 action could be a statute or a tariff or a rate case
21 order or -- I believe the prior State action rule is --
22 I mean --

23 COMMISSIONER CLAYTON: But does the
24 tariff have to be filed as the result of a governmental
25 agency, or could a utility just -- I'll throw out a

1 worst-case scenario. If you want to make prior State
2 action, you just file your own tariff that says
3 something about renewable generation.

4 MR. BYRNE: Yeah. I do think the prior
5 State action encompasses the possibility that the State
6 at the State agency or the legislature considered it
7 and elected not to adopt it. So, in my mind, I agree
8 with Mr. Dottheim. It doesn't have to necessarily be
9 set out in a statute or a tariff or a rule as long as
10 the agency, but it's got to be -- I do think a state
11 legislature or Public Service Commission has to have
12 considered it.

13 COMMISSIONER CLAYTON: Okay.

14 MR. DOTTHEIM: Commissioner?

15 COMMISSIONER CLAYTON: Yes?

16 MR. DOTTHEIM: And with a tariff, too,
17 with a 30-day effective date -- I mean, arguably, a
18 party -- or excuse me, I shouldn't say a party -- an
19 entity could make a filing with the Commission to ask
20 that the tariff be suspended and ask for a hearing.

21 COMMISSIONER CLAYTON: Is that Staff's
22 position?

23 MR. DOTTHEIM: Well, yes, I think that's
24 the staff's position with any tariff filing that is
25 made with the Commission.

1 anything special need be done. Now, the Commissioners
2 or the Commission may view that differently.

3 COMMISSIONER CLAYTON: Okay.

4 Mr. Fischer, you -- well, you were kind of moving
5 around back there. Are you just kind of restless or --

6 MR. FISCHER: I was just going to bring
7 us to a more narrow question to -- at least today's
8 proceedings have focused on the integrated resource
9 planning rule, and the inception of that rule did have
10 extensive consideration by many parties, including most
11 of the parties in this room, and I would suggest that,
12 at least, with that narrow example, there was
13 opportunities for much input from the public.

14 COMMISSIONER CLAYTON: Okay. That is
15 helpful. And I apologize. Mr. Dottheim throws up
16 these ideas, and I have to ask more questions and it
17 throws me off. And that kind of brings us back to the
18 next question that I had. Aside from the type of State
19 action, the level of hearing, the amount of notice to a
20 party, which I shouldn't have gone down that road. I
21 think it's an interesting question.

22 But I want to ask, for purposes of
23 today, the actual issues that are up for today, the
24 diversity of fuel choices or renewable fuels, and the
25 fossil fuel generation efficiency, the two rules that

1 are up for today. And we're doing both of these at the
2 same time, Judge?

3 JUDGE STEARLEY: That's correct. One at
4 a time, though.

5 COMMISSIONER CLAYTON: Okay. The IRP
6 rule has been suggested as being that prior
7 suggestion -- or that prior State action, and I haven't
8 thoroughly reviewed everybody's filings. Are there any
9 other examples that have been cited by the parties,
10 aside from the IRP rule that would satisfy prior State
11 action on these two issues? Or, in this case, are we
12 purely looking at the IRP rule, basically that
13 satisfies it, period? We don't have to look at
14 anything else?

15 MR. BYRNE: I think that's all that's
16 been cited so far.

17 COMMISSIONER CLAYTON: Okay. Okay. So
18 that narrows it down. So then it's pure -- the IRP
19 rule is the question. Can somebody tell me when the
20 IRP rule was enacted?

21 MR. DOTTHEIM: My recollection,
22 Chapter 22, the IRP rule was enacted in late 1992 or it
23 was early 1993, in fact, we actually have a copy of
24 that. We should be able to tell you that definitively.

25 COMMISSIONER CLAYTON: That's okay. An

1 estimate is fine, '92, '93. Now, did -- is anyone
2 here -- did anyone here today, participate in that rule
3 making? Okay. We've got two, three. Dan, you were
4 here?

5 MR. DOTTHEIM: The original rule --

6 COMMISSIONER CLAYTON: Steve's not going
7 to raise his hand any more, is he?

8 MR. DOTTHEIM: Yes.

9 COMMISSIONER CLAYTON: Okay.

10 MR. DOTTHEIM: The original rule was
11 effective May 6th, 1993.

12 COMMISSIONER CLAYTON: '93. And what
13 was the purpose, either Dan or Steve, can you tell me
14 which -- the reason behind the IRP rule in '92 or '93,
15 when it was started.

16 MR. DOTTHEIM: I think we'll both give
17 you an answer.

18 COMMISSIONER CLAYTON: Are they
19 different?

20 MR. DOTTHEIM: They may be different
21 facets.

22 COMMISSIONER CLAYTON: Okay.

23 MR. DOTTHEIM: I don't know -- that's
24 how I would describe that as being different, different
25 facets. I don't know that they would conflict, though.

1 COMMISSIONER CLAYTON: Well, I don't
2 want to get more than three or four reasons from Staff
3 today, so...

4 MR. BECK: I think that it was an area
5 of interest and concern that Staff had, and I think
6 that, in my opinion at least, in my memory, there was
7 also discussions going on at the federal level that
8 actually dealt with the EPAct of '92 that was kind of
9 going on at the same time, and that was maybe part of
10 that emphasis.

11 COMMISSIONER CLAYTON: I mean, break it
12 down into a specific reason. Were there concerns about
13 diversity of fuel portfolio? Were there problems in
14 evaluating whether nuclear should be considered as an
15 addition to different company portfolios? Were gas
16 prices high, suggesting a need for diversity? Was
17 there a clamor for renewable fuels?

18 I mean, 1993 was 13 years ago and,
19 frankly, it was such a different time than today, I
20 want to know what was the reason behind doing this
21 integrated resource plan. What was the impetus for it?

22 MR. DOTTHEIM: There was -- to my
23 recollection, there was continuing interest for a
24 number of years in Missouri Legislature of legislation
25 being proposed and that was an impetus.

1 COMMISSIONER CLAYTON: That type of
2 legislation was be-- give me an example. Don't get too
3 technical.

4 MR. DOTTHEIM: Legislation of the
5 integrated resource planning nature, and I think it was
6 a matter of if the Commission would not act on its own,
7 possibly the Legislature would act for the Commission.

8 COMMISSIONER CLAYTON: What problem were
9 they solving?

10 MR. DOTTHEIM: Addressing electric
11 resource planning, the planning, the capacity planning
12 process of the utilities themselves. And I think that
13 was, at least from the Staff's perspective, what was an
14 attempt to be addressed. And the rules specifically
15 state that the process is what is being addressed. The
16 plan itself is not being approved. What is under
17 review and being approved, if anything, if approval is
18 the correct term, is the planning process.

19 COMMISSIONER CLAYTON: Okay.

20 MR. DOTTHEIM: That there's one in place
21 and it's deemed to be a robust planning process.

22 COMMISSIONER CLAYTON: I'm having
23 difficulty understanding why a legislator would be so
24 interested in this issue, purely because of good
25 government, we need to have a planning process, that

1 there has to be something more tangible, a problem that
2 they were trying to solve. Either a company was not
3 addressing its load or had capacity problems or there's
4 blackouts going on or they're trying to make an
5 environmental statement. I'm just not -- do you have
6 any comment, Mr. Fischer?

7 MR. FISCHER: Well, Judge, I was going
8 to refer you to the first section of the IRP rule,
9 which does lay out the policy objectives of the rule.
10 And it talks about some of the areas that Steve
11 Dottheim has already mentioned, but it indicates that
12 the policy goal in promulgating the chapter is to set
13 minimum standards to govern the scope and objectives of
14 the resource planning process that's required by the
15 electric utilities.

16 And then the second section goes on to
17 be very much more specific about looking at making sure
18 they considered the inside efficiency and energy
19 management measures, use of minimization of present net
20 worth -- or present worth of long-run utility costs as
21 the primary selective criteria in choosing the
22 preferred resource plan, and it goes on.

23 But my perspective, having been through
24 that, was that prior to -- during the '70s and '80s,
25 there were concerns that were raised about load

1 forecasting and whether we were having plans that were
2 renounced, canceled. We had concerns about whether
3 load forecasting was being -- we were projecting load
4 that wasn't going to develop, and these rules were
5 developed to make sure, from the agency's perspective,
6 that the utilities were using a planning process that
7 made sense. Not to mandate a particular outcome, but
8 to make sure they were looking at the low-cost
9 alternatives and all the options that were on the
10 table, both on the side and the supply side. So that
11 was the reason why we looked at adopting these rules, I
12 think.

13 And then we went through a period where
14 we were having the market, we thought, deal more with
15 some of these questions and we got away a little bit
16 from the specifics of the rule. I think now we're back
17 to this point where we're looking more at the specifics
18 of the rule.

19 COMMISSIONER CLAYTON: Mr. Fischer, were
20 you on the commission at the time of the IRP being
21 enacted?

22 MR. FISCHER: I left in 1990, so at the
23 time it was actually enacted, I was not. But we were
24 very much apart of that debate.

25 COMMISSIONER CLAYTON: Were there

1 concerns of utility costs going on at that time?

2 MR. FISCHER: There were cost overrun
3 issues back in the '80s, and that was I think not so
4 much that the IRP was addressing that, but just making
5 sure that the --

6 COMMISSIONER CLAYTON: Well, certainly a
7 low cost option. I mean, the language that you're
8 seeking, the low cost or the least cost option in terms
9 of fuel choices, that probably plays right into the
10 concerns about cost.

11 MR. FISCHER: Certainly, and then
12 minimizing the overall cost and making sure that you
13 were choosing the one that would result in reasonable
14 rates, that was certainly a measured part of that.

15 COMMISSIONER CLAYTON: Leading up to
16 1992, '93, were there problems in volatility in the
17 natural gas market?

18 MR. FISCHER: I don't recall that that
19 was much of an issue at the time.

20 COMMISSIONER CLAYTON: Does anyone
21 recall -- Mr. Fischer just mentioned that there were
22 some plants that were being planned and then canceled.
23 Does anyone recall how many plants were actually
24 planned and then canceled during that seven-year
25 timeframe from -- or maybe five years prior to enacting

1 the rule? Does anything come to mind, any anecdotal
2 information?

3 MR. DOTTHEIM: Well, there was Callaway
4 2. Rather than Callaway 2, I don't recall any units
5 offhand.

6 MR. FISCHER: That was the primary one.
7 At one point, Iatan 1 was declared excess capacity
8 early on. That was another issue that was -- that goes
9 to the load forecasting questions and the whole
10 planning process.

11 COMMISSIONER CLAYTON: Okay. For the
12 people that were participating or if someone here was
13 not participating but has fully reviewed the record in
14 how this rule was developed, what was the level of
15 discussion with regard to renewable technologies? Was
16 there any discussion about wind, I mean, serious
17 discussion? Was wind even a consideration in 1993,
18 does anyone know?

19 How about solar, anyone remember that?

20 Hydro development? I mean, was there
21 any feasible renewable technology in 1993 that was on
22 the table?

23 MR. BECK: The question ends up being
24 what are the assumptions of risk that you are facing,
25 primarily environmental risk.

1 COMMISSIONER CLAYTON: Let's talk
2 physical or technical feasibility. Could you even go
3 out -- I mean, was there a windmill that was available
4 for purchase, if you got the resource in 1993, does
5 anyone know?

6 Mr. Tracy, is it?

7 MR. TRACY: Yes.

8 COMMISSIONER CLAYTON: Mr. Tracy.

9 MR. TRACY: Well, I'm trying to remember
10 the Altamont Pass wind farm, for lack of a better term.
11 I don't think that's how they referred to it at the
12 time. Basically, the first large scale wind project in
13 the United States in California at Altamont Pass. It
14 seems to me that had been built prior to '92. I cannot
15 come up with the year when that was available, but at
16 this point that's a fairly long-bearded project.

17 COMMISSIONER CLAYTON: I understand.
18 Where -- yes, Mr. Voytas?

19 MR. VOYTAS: I was just going to respond
20 to your question also about the -- back in 1993 what
21 was available. AmerenUE was the first Missouri utility
22 required to file an integrated resource plan in 1993
23 and we contracted with Epre (ph. sp.), and we had a
24 menu technology guide, if you will, that was about that
25 thick. But it went through all the technologies,

1 including the renewable technologies, solar, wind,
2 et cetera, and they were all available at a cost.

3 At that time, in the AmerenUE service
4 territory, we had a handful of customers who had
5 installed relatively small wind generators, 5 KW, those
6 type of sizes. We were also doing research with Wash U
7 at a site they owned in Eureka, Missouri looking at
8 wind. So, yes, it was going on. There was activity,
9 but it was -- that level was relatively low level.

10 COMMISSIONER CLAYTON: Okay. Was there
11 any other renewable technology aside from wind. I
12 mean, was solar even technically able to generate any
13 level of generation? Was there any discussion of
14 additional hydro at that point?

15 MR. VOYTAS: Definitely. The solar
16 piece was quite a bit more expensive than it is today,
17 but it was available for a price. The hydro piece,
18 there was an Alton lock and dam project that's been
19 open, closed, open, closed, throughout the years, so
20 that was on the table at that time.

21 COMMISSIONER CLAYTON: Is that open now
22 or closed now?

23 MR. VOYTAS: It's open now. The
24 developer has got a permit and is looking at the site
25 and is in preliminary discussions.

1 COMMISSIONER CLAYTON: Is that the case
2 on each of the locks that are up and down the
3 Mississippi River, or is it just Alton?

4 MR. VOYTAS: I believe it's just the
5 Alton site.

6 COMMISSIONER CLAYTON: Just the Alton?
7 Do you know what the cost is for developing that site?

8 MR. VOYTAS: No. We're going to be
9 meeting with the developer in the near future and can
10 get that information. I don't know that.

11 COMMISSIONER CLAYTON: Would you all own
12 that or just purchase the power from them?

13 MR. VOYTAS: I don't know.

14 COMMISSIONER CLAYTON: You don't know.
15 Well, does anyone disagree with the statement that
16 times in the utility industry are significantly
17 different today than they were in 1993, with regard to
18 energy choices, fuel choices, fuel prices, potential
19 for congressional action that could modify fuel
20 choices. I mean, is there anyone who disagrees with
21 that?

22 And seeing no one disagreeing, when I
23 started off the questions, I asked Mr. Dottheim a small
24 picture, and we never got to the big picture, and the
25 big picture is that the Feds have asked us to look at

1 each of these issues, and they gave an opt out to
2 commissions, saying that if you've already looked at
3 this issue, you don't have to take any action.

4 And technically, that may be true. I
5 mean, if you mention renewable in the IRP rule, if you
6 mention distributive generation or you mention
7 interconnection or net metering or one of these things,
8 if you mention it in there, it probably technically
9 meets the statute. But the question in the big picture
10 is that, is this Commission taking -- in the spirit of
11 the law, truly taking a look at these issues and making
12 an assessment about whether we ought to be making
13 policy decisions on each one of these things.

14 So my big-picture question to the
15 parties is, if technically the IRP may count as the
16 prior State action, wouldn't some sort of rule making
17 be the best way of having an open discussion about
18 renewable energy choices, about fuel diversity, about
19 BTU taxes and carbon taxes and cap in trade and wind
20 and solar, what costs more, whether it's worth to pay
21 more, what the Commission is going to be interested in
22 pursuing?

23 What is the best way to have this
24 conversation, if not by moving forward with some sort
25 of rule making or docket that has been suggested by the

1 federal government? And I mean, really, please --

2 Mr. Byrne?

3 MR. BYRNE: My thought when you talked
4 about the big picture is, I think the big picture is
5 always in the hand -- regardless of this, you have the
6 authority and ability to that, and that may well be a
7 good thing to do. And, of course, the Legislature does
8 too. I mean, in a sense, the big picture is always in
9 your hands in my view, and so that's why, to my mind
10 the question for today is, do you have to. But that
11 doesn't limit what -- if you want to, even if you don't
12 have to, as you're pointing out, maybe it's a good idea
13 to consider some of these things.

14 COMMISSIONER CLAYTON: Yes, Mr. Tracy,
15 and then the gentleman behind you.

16 MR. TRACY: I am reminded of a tariff
17 filing I made a number of years ago because we focused
18 on the IRP rule being the only action we've taken on
19 this, and I haven't thought this through closely
20 enough, but I thought I'd toss it out to you to let you
21 decide. A number of years ago, Aquila filed a green
22 power tariff made available to our customers for an
23 additional price, some wind power we had available, at
24 that point it was at the Jeffrey Energy Center; they
25 built a couple of very small windmills there.

1 We had significant discussions. I don't
2 remember if all the utilities were involved in those or
3 not. I do know DNR was involved, Staff certainly was
4 involved, OPC. It was a lot of people. We had a lot
5 of good times. We made in that tariff the availability
6 of the wind power we had, and we also designed the
7 tariff so that if any other renewable energies became
8 available from customers, whether it was biomass or
9 whatever, that we could list that in that tariff and
10 that customers could purchase that power as well, if
11 that was their desire.

12 No other technology ever became
13 available to us during the life of that tariff, and
14 ultimately once the Gray County wind farm came online,
15 we didn't see the point of charging our customers extra
16 for this little piece of wind power when we're buying
17 this great big chunk of it over here.

18 So ultimately the tariff that was filed
19 as a blank sheet. But there was, just as far as prior
20 State action, on our part at least, and to the extent
21 that all the other parties were aware of what was
22 happening at Aquila, that happened, that, in fact, the
23 opportunity for other customers to become participants
24 in these renewables was available to them. So that's
25 another avenue through which customers -- or through

1 which the State has considered renewable energy.

2 COMMISSIONER CLAYTON: Thank you. Yes,
3 sir.

4 MR. HUGHES: Randy Hughes with Kansas
5 City Power & Light. I think your question was,
6 shouldn't we be looking -- kind of refreshing the way
7 we look at these rules and renewables. I'm fairly new
8 to the IRP process and I'm in charge of our next
9 filing, which would be 2008. A lot of the research I'm
10 doing is going back and looking at the one we filed in
11 1994, the first one after the IRP rules came out, and
12 that is still a solid model for what we're going to do
13 for 2008. It hits all the issues. I believe when we
14 file, there's plenty of opportunity for inputs and
15 intervenors and public comment on your plan.

16 So to your point, certainly if we want
17 to or the Commission wants to look in more detail at
18 new rule making, that's certainly their prerogative,
19 but I think the model that was developed in 1993 is
20 still up to the times as far as planning and being
21 all-inclusive of renewables and alternative fuel.

22 COMMISSIONER CLAYTON: I appreciate
23 that. I mean, I'm relatively new to this as well. I
24 mean, I'm not sure how long you've been on the job, but
25 the two -- I think we've just had two IRP proceedings

1 since I've been here, and my greatest frustration is
2 that I think everybody gets input except for us, and
3 it's us at the very end and then we ask questions about
4 an agreement that's already on the table.

5 And I think it's hard for a utility to
6 make big, difficult decisions when you don't know how
7 we're going to rule at the end of the case. And what
8 I'm trying to get to is, what is the appropriate way
9 for Commissioners to provide input, that, you know, if
10 we've got the stomach to approve more high-cost wind
11 power, that we're going to give that to you to put into
12 your portfolio or take a risky venture into developing
13 hydro power on the Mississippi River, or addressing
14 biomass or landfill, methane or whatever.

15 How do we communicate the interest to
16 move forward in directions that are perhaps not
17 traditional and allow for Commissioners to be part of
18 the process? Now, I'll throw that out there. Tell me
19 what you think.

20 MR. BYRNE: Commissioner, you know,
21 we've had a little different experience with IRP rule.
22 I mean, when we made our last filing, we were kind of
23 critical of some things that have become out of date
24 that we think aren't, you know, quite as good as they
25 could be if you looked at the rules again. And my

1 understanding was the Commission was going to -- when
2 time allowed, and I know the Commission's calendar has
3 been very busy lately, but was going to open a docket
4 to consider updating the IRP rule.

5 And I think, you know, the issues that
6 you raise would be perfectly appropriate to be
7 considered in that kind of a docket, you know, in
8 addition to the ones that we raised when we made our
9 IRP filing. I do think a lot of things have happened
10 since 1993, and the IRP rules ought to reflect those
11 things.

12 MR. FISCHER: I think Kansas City Power
13 and & Light struggled with those issues when it decided
14 to engage in a workshop process and ultimately, a
15 regulatory plan docket to look at all of those issues.
16 It was felt that that was a more productive, a more
17 informal way, if you want to say that, of dealing with
18 these very technical issues and getting input from all
19 the parties as well the Commissioners outside the
20 context of the formal IRP process itself.

21 I think while I would agree that
22 there's -- the model is there, I would agree with
23 Mr. Byrne that there are areas that are overly
24 prescriptive that we've struggled with, we've asked for
25 waivers on, and it probably needs to be updated in some

1 way. But I think in the end, maybe another process
2 like the regulatory plan docket may be a more efficient
3 way, effective way to actually look at the difficult
4 issues that the industry and the agency faces.

5 COMMISSIONER CLAYTON: Mr. Voytas, were
6 you moving towards the mic?

7 MR. VOYTAS: I was just going to add
8 further comment, if that's all right.

9 COMMISSIONER CLAYTON: You're sworn in.

10 MR. VOYTAS: Thank you. I think the IRP
11 rules, as they're written -- I don't think they're
12 intended to be this way, but they're confrontational.
13 Basically, a utility is required to submit its IRP, and
14 within 120 days, the other stakeholders respond. It's
15 a long, cumbersome process, we're filing 3 or 4,000
16 pages of documents, and who can look at that in 120
17 days?

18 That's why, in this particular
19 go-around, we've opted for a participative process
20 to get everybody involved, to build that common
21 understanding, to try to bridge that confrontational.
22 But that's just one aspect. I think it might speak to
23 a regulatory plan model or something, some up front
24 type of thing to get that common understanding across
25 all parties. I don't know exactly how we do it, but I

1 know it's a better way than what we have done in the
2 past.

3 COMMISSIONER CLAYTON: I understand. I
4 think you were -- were you on the agenda for the demand
5 response conference in Washington this week?

6 MR. VOYTAS: Yes, I was.

7 COMMISSIONER CLAYTON: And I got dragged
8 away and I think I missed your panel that was up. I
9 was there for the panel before. But there was
10 interesting discussion throughout the day about a
11 number of these issues. That was all related to demand
12 response and demand side management.

13 But there was one person that got up and
14 kind of yelled that out in the audience. I think we
15 were talking about this. It was Pat Woods' former
16 advisor or something like that. She kind of gave up
17 and gave her speech about how all these issues are
18 great to talk about at conferences, but no one ever
19 really comes in and provides the information to
20 commissioners to make certain decisions at the right
21 time, and there's no -- there aren't real choices that
22 are placed before commissions to make decision, because
23 of the way the process is.

24 And I don't know if you were in there
25 for that, but it was a compelling point, because in

1 many instances, we have either few choices or we
2 haven't given direction to Staff that we want you to
3 take a look at things. Staff is torn between different
4 views of people on the Commission. I understand that.

5 I guess what I will leave, I guess, if
6 anyone has additional comment is, if these issues are
7 worthy of consideration, net metering, interconnection
8 standards, distributed generation, smart meters, all of
9 these issues that the Congress has said are important,
10 if not in doing individual rule makings on which one,
11 what is the appropriate way to get this conversation
12 moving to allow for commissioner input, whether that be
13 in the IRP process, in a separate rule making, aside
14 from doing it case by case, which is very inefficient,
15 what is the best way of moving forward in addressing
16 these priorities that Congress has suggested are
17 priorities.

18 Does anyone have any suggestions or
19 comments? Yes, sir.

20 MR. GIBSON: Thank you, Commissioner.

21 It would be my opinion that the main
22 thing that you want to address is whether or not --
23 whether or not the State has already met or this
24 Commission has already met the proposed standards.
25 Once you've done that, which from my standpoint you do,

1 then I think that if you to further consider the IRP
2 rules and -- you know, I think that that would be
3 appropriate.

4 I think that the rules have been in
5 effect for a good number of years now, and periodically
6 rules need to be reviewed to see what is working and
7 what isn't working. A rule doesn't always do what it's
8 intended to do. That would be my opinion.

9 COMMISSIONER CLAYTON: If not a rule,
10 then what would be the best way to communicate interest
11 in particular issues, if not a rule making?

12 MR. GIBSON: Oh, I think you could have
13 a rule making, but I don't think that you need to tie
14 that to whether or not the State meets the standard as
15 it now stands. I think that it would be wise to take a
16 look through some kind of rule making, No. 1. Well,
17 you're under a time constraint right now. If you go
18 to a rule making, you can set your own times, so you
19 don't -- if you want to thoroughly investigate
20 something, that would be a better way to go, in my
21 opinion.

22 COMMISSIONER CLAYTON: There were some
23 other hands over here. Thank you.

24 Yes, sir? Go ahead. I can hear you. I
25 just can't see you.

1 MR. NOLLER: I would like to make a
2 general comment on the big picture comment on the issue
3 of fuel diversity. In this conversation, we have
4 tended to focus more on the issue of, you know, whether
5 renewable generation is being brought online. But on
6 the issue of fuel diversity -- well, first, of course,
7 DNR's position is that the IRP rule does not constitute
8 a prior action for the reasons we stated as a matter of
9 the objectives of the EPAct standard versus the
10 selection criteria of the rule.

11 But setting that aside, Empire has
12 presented some data on the diversity of fuels that they
13 draw upon to supply energy to their customers. The
14 other regulated utilities could easily do that, but so
15 far, and from the information I've seen presented in
16 this docket, there really hasn't been an effort to do a
17 consistent and comprehensive collection of data on fuel
18 diversity in the state.

19 And in whatever context, whether it be
20 in further consideration of the EPAct fuel diversity
21 standard, through consideration, determination, or
22 whether it be in some other context, I think it would
23 be useful for the Commission to take a look at the
24 questions of, you know, just how diverse are the
25 sources upon which utilities are drawing and what

1 should public policy be on fuel diversity?

2 There really is no mention of that as
3 an objective in the IRP rule, and from that I infer
4 that that may not have been one of the most prominent
5 issues when this rule was being developed. There
6 certainly are some -- I think that if we had a public
7 forum talking about that policy issue, certainly I
8 think that our agency would have some comments on that.
9 We haven't really discussed what those comments would
10 be at this time.

11 But clearly there is -- Congress had
12 some reason for putting a fuel diversity standard into
13 EPAAct, and I think that suggests that there's good
14 reason to discuss whether -- what the state of affairs
15 is in Missouri, and whether there are reasons to
16 consider policies specifically focusing on diversity.

17 MS. WOODS: I think the Department has
18 suggested in some of its comments --

19 COMMISSIONER CLAYTON: You need the mic.

20 MS. WOODS: I think the Department has
21 suggested in some of its comments and some of the
22 things it's submitted in this docket that perhaps a
23 work group where everybody could participate, including
24 members of the Commission might be a beneficial option
25 that you might want to consider. Thanks.

1 MS. CARTER: That was all I planned on
2 suggesting as well. At this point, based on the
3 comments, it sounds like very separate decisions. One,
4 I think the certain threshold issue we're all here on
5 today is whether or not there was the prior State
6 action. Most of us in the room agree that there has
7 been that prior State action that satisfies what's
8 required and that takes care of these five individual
9 proceedings and then we put that aside.

10 And then to address the other concerns,
11 a workshop that could revisit the IRP rules could
12 address all those of separate concerns that you have,
13 Commissioner Clayton, and it sounds like DNR has
14 concerns in that area as well. I imagine similar
15 concerns that Mr. Mills has that are all part and
16 parcel of the IRP rules and what the utilities do as
17 part of that process.

18 And I think we're letting that get
19 confused with what we're actually doing today, which is
20 just on the threshold question of whether or not we had
21 that prior State action.

22 COMMISSIONER CLAYTON: Let me just say,
23 I'm not confused on why we're here today, but what
24 happens in this agency all the time is that we lose
25 sight of the forest by one particular tree that's in

1 front of us. And the Congress has sent us a message
2 that they want us contemplating each of these issues.
3 And what they've said is, well, if you've already taken
4 some action on it, that you don't have to look at it
5 anymore. You satisfy our concern. When what's being
6 suggested that satisfies it was this rule that occurred
7 in 1992-1993 that never contemplated the issues that
8 we're facing here today.

9 So I think there has to be some analysis
10 of whether the spirit of what they're asking, rather
11 than just the technical application of whether the word
12 renewable is written in the rule. And I'm not confused
13 on that aspect. I was trying to ask in a tone that
14 would request consensus of dialogue on the subject
15 rather than adversarial proceedings in cases that
16 things are lined up with everybody against each other,
17 and rather, let's find a common goal and work towards
18 them, rather than just say, well, we've had prior State
19 actions, let's drop the issue and not move forward.

20 MS. CARTER: And in that case, the
21 workshop setting seems to promote that, based on my
22 limited experience, so much more than a formal, for
23 lack of a better word, rule making proceeding where
24 even though that's not the plan to already have the
25 ultimate goal in mind, but you do. You have that work

1 paper already there, you have the end rules in mind
2 when you go in, whereas if you start with the workshop,
3 it can be more give and take dialog and let everyone
4 get their concerns out there. Let the Commissioners
5 start the direction with the workshop, and then leave
6 everybody in the room to fight over how to get there on
7 what the Commissions provide direction.

8 COMMISSIONER CLAYTON: Thank you.
9 Anything else?

10 Thank you all very much.

11 JUDGE STEARLEY: Thank you, Commissioner
12 Clayton.

13 We had started out with questions
14 targeted at the fuel sources standard, but let me take
15 the inquiry broader at this point. Commissioner Gaw,
16 do you have any questions you'd like to --

17 COMMISSIONER GAW: When's the last time
18 we took a break?

19 JUDGE STEARLEY: We got started about
20 8:30. We usually shoot for every couple of hours, if
21 you'd like to take a break now, and come back.

22 COMMISSIONER GAW: I'd like to take a
23 break, so I don't waste time trying to catch up.

24 JUDGE STEARLEY: All right. Very well.
25 We'll take about a ten-minute intermission at this

1 time.

2 (A BREAK WAS TAKEN.)

3 JUDGE STEARLEY: We're back on the
4 record at this time.

5 We are back on the record, and before we
6 resume with questioning, real quick, Mr. Dottheim,
7 before I forget, I believe you've tracked down some
8 case numbers for me?

9 MR. DOTTHEIM: Yes, Judge. I have the
10 case numbers of the cases I previously mentioned
11 relating to the Energy Policy Act of 1992 and the
12 Section 111 (d) standard, other standard adopted and
13 also the relation to gas that the 1992 Energy Policy
14 Act had in the Commission case that was created.

15 The first case, I would note, is
16 Case No. EO-93-218, in the matter of the investigation
17 of the Section 712 standards of the Energy Policy
18 act of 1992, and that case deals with the
19 Section 111 (d) (10) standard that was created by the
20 Energy Policy Act of 1992. And that case -- that case
21 appears at 2 MoPSC 3rd 390, but unfortunately, there
22 was a Stipulation & Agreement in that case which is not
23 published in the MoPSC reports, so one would have to go
24 to microfilm if one were interested in taking a look at
25 the Stipulation & Agreement.

1 The next case that is directly related
2 to the Energy Policy Act of 1992, but it's a gas case.
3 It is Case No. GO-94-171, in the matter of the
4 investigation of the Section 115 standards of the
5 Energy Policy Act of 1992. And that case or the Report
6 and Order of the Commission, I should say, is found at
7 3 MoPSC 3rd 13, and there was a Stipulation & Agreement
8 in that case, and unfortunately, it is not published in
9 the MoPSC reports, so again, one would have to go to
10 the Commission's microfilm to find a copy of the
11 Stipulation & Agreement.

12 I actually, in order to track down the
13 the case that has now been marked a copy of as
14 Exhibit 1, I actually went to the microfilm and printed
15 a copy of GO-94-171, the Stipulation & Agreement. I
16 could file a copy of that with the Commission and I
17 could go to microfilm and copy the Stipulation &
18 Agreement of the other case and filed that also with
19 the Commission if that would be your desire or if that
20 would be helpful.

21 JUDGE STEARLEY: That would be helpful
22 Mr. Dottheim.

23 MR. DOTTHEIM: Okay. There is -- I'd
24 mentioned there was a fourth case, and its -- I'll
25 mention that case is -- I guess it's tangential. It's

1 GO-95-329, in the matter of the investigation of
2 integrated gas resource planning rules by the staff of
3 the Missouri Public Service commission.

4 Again, it's Case No. GO-95-329, and it
5 appears at 3 MO PSC 3rd 436. And so that would be the
6 cases that I referred to earlier this morning.

7 JUDGE STEARLEY: Thank you,
8 Mr. Dottheim.

9 MR. DOTTHEIM: One other matter before I
10 forget. On Wednesday, Commissioner Murray requested
11 that a report that was noted -- that was referred to in
12 the Energy Policy Act of 2005 be provided to the
13 commissioners. I've been able to locate that report.
14 It's an August 2006 report.

15 Copies are being made. There are
16 various graphs and charts that are in color, so its
17 taking a while for us to generate enough copies for the
18 Commissioners and their advisors, but we should have
19 that the first part of next week.

20 That we'll provide copies of -- we'll
21 file a color copy in EFIS, so all parties of the public
22 will be able to access that. It's a 218-page report,
23 so it's not insubstantial, at least from a page
24 perspective.

25 COMMISSIONER MURRAY: Thank you very

1 much.

2 MR. DOTTHEIM: Certainly.

3 JUDGE STEARLEY: We will mark that as
4 Exhibit 2 when you file it. And it's a late-filed
5 exhibit.

6 MR. DOTTHEIM: And it's titled.
7 Assessment of Demand Response and Advanced Metering
8 Staff Report, Docket No. AD-06-2-000, and it has a date
9 of August 2006.

10 JUDGE STEARLEY: And the Commission
11 will, at this time, take official notice of its own
12 prior cases, EO-93-218 and GO-94-171 and GO-95-329.

13 And with that, we'll resume with our
14 questioning with Commissioner Gaw.

15 COMMISSIONER GAW: Thank you. I want to
16 start a little discussion here that I hope is not too
17 repetitive in regard to the fuel sources question,
18 first. And I want to ask who can tell me about this --
19 where there is in the IRP rules a statement that there
20 will be a plan to minimize dependence on one fuel
21 source. Maybe someone could point that language out to
22 me.

23 MR. VOYTAS: Commissioner, this is Rick
24 Voytas with AmerenUE.

25 COMMISSIONER GAW: Yes, Mr. Voytas?

1 rule, Section .050, paragraph D. paragraph D states,
2 renewable energy sources and energy technologies that
3 substitute for electricity at the point of use. And
4 this is in the demand side management section and is
5 speaking specifically about end use technologies that
6 should be considered. But that's the only place that I
7 see the word renewable technologies.

8 COMMISSIONER GAW: Okay. And again,
9 that's not referring to supply side generation; is that
10 correct?

11 MR. VOYTAS: That's correct. That's on
12 the demand side section of the rules.

13 COMMISSIONER GAW: Does anyone disagree
14 with that?

15 And help me to understand, then, if
16 that's the case, how we are in compliance with the
17 Section 1251 basic 12.

18 MR. VOYTAS: Commissioner, it looks like
19 I'm on a roll. This is Rick Voytas with AmerenUE
20 again. I believe the supply side Section .040,
21 specifically subsection 1, requires utilities to
22 identify the universe of supply side options that are
23 out there, and that includes renewables. And speaking
24 solely for AmerenUE, when we look for a process, we
25 have a supply side silos, if you will, and we'll have

1 our wind RFP and our other renewable RFP silos.

2 And what we were working with our
3 stakeholders on is, how we, first of all, identify the
4 universe of options, go through a qualitative screen to
5 narrow that down, and then go through a quantitative
6 screening process to find those technologies that are
7 passed on to integration. So my opinion is that
8 Section .040 of the rules require us to consider the
9 universe of options, and these renewable technologies
10 as one of those options.

11 COMMISSIONER GAW: I understand that you
12 may have, as an individual utility, a consideration
13 being made to a range of different generation fuel
14 sources. But my question is where this Commission has
15 or the State Legislature has adopted standards that
16 require the plan to minimize dependence on one fuel
17 source and ensure that the electric energy it sells to
18 consumers is generated from a diverse range of fuels
19 and technologies, including renewable technologies,
20 where is the standard that ensures that that will take
21 place?

22 MR. BYRNE: There is no such standard,
23 your Honor.

24 COMMISSIONER GAW: That's the way it
25 appears to me, and I just want to make sure I'm

1 tracking with where you all are. Does anyone disagree
2 with that?

3 My next question is, what it is -- then,
4 I know there are other visions. We haven't implemented
5 one, it appears. And then the next question is, I
6 suppose in subsection -- in the second requirement is
7 that we have conducted a proceeding to consider
8 implementation of a standard, and what is it in regard
9 to this sub 12 fuel sources that you-all believe may
10 have constituted a fulfillment of that requirement?

11 I'm sorry. You-all seem to be the only
12 ones willing to take a shot.

13 MR. BYRNE: Well, I'll do it. I guess,
14 first of all, one of the differences is that maybe -- I
15 mean, I guess our reading of it is that it doesn't say
16 you have adopt the exact standard. It's that standard
17 or a comparable standard. So I guess our thought is
18 that even though the exact standard has not been
19 adopted in the IRP rules, the question is, is the
20 standard that has been adopted sufficiently comparable?

21 And I guess we're saying we believe it
22 is, but, you know, it's not an exact -- I mean, we've
23 already talked, I think, before you were here today,
24 that there is no clear definition of what is
25 sufficiently comparable.

1 COMMISSIONER GAW: Where is that
2 language, sufficiently comparable, that you're
3 referring to?

4 MR. BYRNE: I don't have that right at
5 my fingertips, so if anybody does, please speak up.
6 It's in the Energy Policy Act where they about what the
7 state commission has to do in this docket.

8 MR. FISCHER: Commissioner, I don't know
9 if this is the section that Mr. Byrne is referring to.
10 This morning I made reference to Section 124 as far as
11 prior and pending proceedings. I don't know if he --

12 MR. BYRNE: Yes. It's the prior State
13 action definition that I'm talking about.

14 MR. DOTTHEIM: And if you have a copy of
15 it there --

16 COMMISSIONER GAW: I have it, I think,
17 an excerpt from Mr. Beck's statement that includes, I
18 think --

19 MR. DOTTHEIM: Well, and what's there in
20 Mr. Beck's statement is the -- a quotation of the prior
21 State actions, too close for that. I'm referring to a
22 different section --

23 COMMISSIONER GAW: Okay.

24 MR. DOTTHEIM: -- which -- section 124,
25 prior and pending proceedings, and I'll read the first

1 sentence. To date, it's the only thing that I have
2 located that might give some guidance to the term
3 comparable, but it doesn't -- I don't think directly
4 address that, at least by its own terms.

5 But it says -- it makes references to
6 Subtitle A and Subtitle B. And Subtitle B includes
7 Section 111, the 111 (d) standards. So it says, for
8 purposes of Subtitle A and Subtitle B and this
9 subtitle, which is Subtitle C, proceedings commenced by
10 State regulatory authorities with respect to electric
11 utilities, for which it has rate-making authority, and
12 nonregulated electric utilities before the date of the
13 enactment of this act, and actions taken before such
14 date in such proceedings, shall be treated as complying
15 with the requirement of Subtitles A and B and this
16 subtitle, if such proceedings and actions substantially
17 conform to such requirements. So the term
18 substantially conform to such requirements.

19 COMMISSIONER GAW: I guess I need to ask
20 a quick question for clarification on the definition of
21 electric utility.

22 MR. DOTTHEIM: All right. In the
23 definitional section of PURPA, it says, the term
24 electric utility means any person State agency or
25 Federal agency which sells electric energy.

1 COMMISSIONER GAW: So does that
2 include -- does that include rural electric
3 cooperatives?

4 MR. DOTTHEIM: No. I think PURPA, as
5 far as State regulatory authorities, it refers to State
6 regulatory authorities with respect to electric
7 utilities for which the State has rate-making
8 authority. So --

9 COMMISSIONER GAW: Okay. So, in regard
10 to that question, I don't want to digress too much
11 here, but the review that we're conducting here, is it
12 only to include those utilities that we oversee for
13 rate-making purposes?

14 MR. DOTTHEIM: Yes.

15 COMMISSIONER GAW: Okay. That helps me.
16 Now the -- did you have something else?

17 MR. DOTTHEIM: Yes. Well. I'm sorry.
18 Go ahead, Commissioner.

19 COMMISSIONER GAW: I'm a little confused
20 as to who is supposed to conduct a review on the other
21 utilities.

22 MR. DOTTHEIM: The best I can answer is
23 they themselves.

24 COMMISSIONER GAW: Would do they report
25 that to?

1 MR. DOTTHEIM: I think DOE.

2 COMMISSIONER GAW: Do you think there is
3 a process for them to report it to the Department of
4 Energy?

5 MR. DOTTHEIM: I think so. The Missouri
6 Commission has never conducted any proceedings under
7 PURPA respecting rural electric cooperatives or
8 municipals. Now --

9 COMMISSIONER GAW: And I would
10 understand that, but it just seems like your definition
11 that you read is a much broader than those that we're
12 to review, so I'm assuming that there's some means for
13 the others to be reviewed.

14 MR. DOTTHEIM: Yeah. There are, at
15 various places throughout PURPA, where there -- where
16 the term State regulatory authorities is used. There
17 is parenthetically the words, with respect to electric
18 utilities for which it has rate-making authority.

19 COMMISSIONER GAW: Okay.

20 MR. DOTTHEIM: And then after that --

21 COMMISSIONER GAW: Yes?

22 MR. DOTTHEIM: And then nonregulated
23 electric utilities, so --

24 COMMISSIONER GAW: Okay. So what does
25 that mean?

1 MR. DOTTHEIM: -- which, I assume, are
2 the co-ops and the municipals. But what I think it's
3 indicating that the State regulatory authorities, their
4 responsibility is for electric utilities for which they
5 have rate-making authority.

6 COMMISSIONER GAW: Which you left
7 something out of this picture for me to understand that
8 sentence. But where is it -- what is it in that
9 sentence that says who the others are going to be
10 reviewed by?

11 MR. DOTTHEIM: I think -- I don't
12 think -- I think they're to review themselves.

13 COMMISSIONER GAW: Is that in a complete
14 sentence that you could read to me?

15 MR. DOTTHEIM: Yes. In fact, I'll read
16 it with the parentheses, I'll note the parentheses.

17 COMMISSIONER GAW: Thank you.

18 MR. DOTTHEIM: In fact, I'll do the
19 Section 124 which I just previously referred to.

20 COMMISSIONER GAW: Okay.

21 MR. DOTTHEIM: And then I'll give you
22 the sentence so you can read it yourself.

23 For purposes of Subtitle A and B of this
24 subtitle, proceedings commenced by state regulatory
25 authorities, paren, with respect to electric utilities

1 for which it has rate making authority, closed paren,
2 and non-regulated electric utilities before the date of
3 the enactment of this act and actions taken before such
4 date, such proceedings shall be treated as complying
5 with the requirements of Subtitles A and B, and this
6 subtitle, if such proceedings and actions substantially
7 conform to such requirements.

8 COMMISSIONER GAW: And who do we report
9 to with our findings?

10 MR. DOTTHEIM: DOE.

11 COMMISSIONER GAW: So you're saying we
12 are the reporting authority, if I'm following you, for
13 the utilities and those the we have rate-making
14 oversight of?

15 MR. DOTTHEIM: Yes.

16 COMMISSIONER GAW: And the other
17 entities report -- are reporting for themselves?

18 MR. DOTTHEIM: Yes.

19 COMMISSIONER GAW: I'm following you
20 now. That's helpful.

21 Now, back to this question in regard to
22 where there is a comparable requirement, how is it that
23 we can view an examination of all of these different
24 fuel types as is standard, ensuring diversity?

25 MR. BECK: I guess, Commissioner -- Dan

1 Beck for the staff. I guess my first kind of response
2 to that would be that, in practice, that is what I
3 believe has been happening with the integrated resource
4 planning process. But there's a subtlety here that I
5 think I ought to point out, and that is that the
6 one-sentence standard doesn't require that -- it only
7 requires that the utility develop a plan. It doesn't
8 require that they implement that plan.

9 And it's a subtlety, but where the
10 electric -- the integrated resource planning process,
11 it actually requires that they develop multiple plans,
12 we refer to those as alternative resource plans, and
13 then select -- the utilities select their preferred
14 resource plan and probably, I would say more
15 importantly, take that one step further and have an
16 implementation plan that deals with the realities that
17 things do change and especially in today's environment,
18 with environmental costs being out there, and you need
19 to have an implementation plan dealing with the
20 contingencies regarding that.

21 COMMISSIONER GAW: And I understand that
22 this rule has some very good aspects to it, in regard
23 to forcing an examination of certain options that were
24 contemplated back in -- at the time of its enactment,
25 when was it, 1993? Over 14 years ago?

1 MR. BECK: Yes.

2 COMMISSIONER GAW: I also understand
3 that a lot has been changed since then, as we noted
4 previously. My issue at this point is just having a
5 difficult time understanding how these rules include
6 what is required in regard to a standard to minimize
7 dependence on one fuel source and ensure that electric
8 energy is generated using a diverse range of fuels and
9 technologies, including renewable technologies.

10 If I get to the renewable issue, there's
11 certainly nothing that I've been able to see at this
12 point that ensures that renewables are a part of that
13 diverse range of fuels and technologies. And I'm
14 having a very difficult time understanding how we can
15 say that this rule does what is required on that piece.

16 Let me ask you in regard to the fossil
17 fuel generation efficiency standards, is there a
18 standard that we have in the IRP rules that requires a
19 10-year plan to increase the efficiency of fossil fuel
20 generation?

21 MR. BECK: What is -- the first thing
22 is, the IRP has a 20-year planning horizon and I would
23 note that there's been at least one pleading that
24 criticized the fact that it was a 20-year planning
25 horizon and not a 10. I personally don't see that as a

1 criticism. I see that as a positive that it looks
2 further out than just 10 years.

3 COMMISSIONER GAW: Mr. Beck, I
4 understand that. We're talking about two different
5 things to here. One, a 20-year standard on planning
6 horizon is certainly one that gives you a better
7 outlook over a longer period of time, particularly when
8 you're trying to anticipate certain things, and of
9 course, those things change and modify as you go along.

10 But this 10-year requirement here has to
11 do with trying to speed up the process over what would
12 be the case in the 20-year plan to improve the
13 efficiency. That's a different kind of a number and a
14 different kind of a call. So I don't see that as an
15 apples-to-apples comparison to compare a 10 and 20-year
16 plan and say that's some sort of -- there's some sort
17 comparability there in what is sought to be
18 accomplished.

19 The 10-year requirement, to me,
20 something comparable to that would have to be close to
21 10 years or less in regard to improving the efficiency
22 of fossil fuel plants. And we certainly know that
23 there have been efforts by some utilities to do that
24 very thing. What I need to understand is, those things
25 have come as a result of Iowa initiatives by particular

1 utilities as a result of those regulatory discussions
2 that have occurred or their own particular views as to
3 it being the appropriate thing to do.

4 But I'm looking for a standard in these
5 rules or in statute or something that would say that,
6 this is the requirement, this is what is expected.

7 MR. FISCHER: Commissioner, if you look
8 at CSR 240.22.040, which is the supply side resource
9 analysis.

10 COMMISSIONER GAW: I have that opened.

11 MR. FISCHER: I think that's the place
12 you're going to find something closest to what you're
13 talking about. There it indicates that the analysis of
14 supply side resources shall begin with the
15 identification of a variety of potential supply side
16 resource options which the utility can reasonably
17 expect to develop and implement, solely through its own
18 resources, or for which it will be a major participant.

19 Then the next sentence goes on to talk
20 about some of the items that you were raising. The
21 options will include new plants using existing
22 generation technologies, new plants using new
23 generation -- I'm sorry -- new plants using new
24 generation technologies, life extension and
25 refurbishment at existing generating plants,

1 enhancement of the emission controls that exist in our
2 new generating plants, et cetera. I think that's
3 probably where you're going to find something closest
4 to what you're talking about.

5 COMMISSIONER GAW: The portion that I
6 see that is closest to it is on down there, which says,
7 efficiency improvements which reduce the utilities own
8 use of energy.

9 MR. FISCHER: Right.

10 COMMISSIONER GAW: That's the part that
11 I see that is closest to it. But it's not a
12 requirement to file a plan to do that. It's just one
13 of the options that should be explored. And I guess
14 what I'm saying here is, it's not that the rules are
15 necessarily wrong in what they say. It's just that I'm
16 looking for something that actually could be deemed to
17 be in compliance with the requirement in EPA's new
18 provisions. And I don't really see that part.

19 I do see -- and I do think you're right,
20 I do see the fact as I do see in the other part that we
21 were just talking about, fuel diversity -- excuse me --
22 that there is an examination that is to be done in
23 regard to different fuel types, but not a plan to
24 ensure diversity or to ensure that -- and this -- a
25 10-year plan to increase efficiency of its fuel

1 generation, fossil fuel generation upon the passage of
2 EPAct would have to mean some sort of a plan going
3 forward from EPAct's enactment that would say that
4 utilities will file something that shows how they're
5 going to improve that efficiency. And I don't think
6 that these rules require that at this point, at least
7 from what I'm reading.

8 MR. DOTTHEIM: I guess the argument
9 could be made --

10 COMMISSIONER GAW: It will be made if it
11 can be.

12 MR. DOTTHEIM: -- that consistent with
13 the statute, what you're suggesting was considered and
14 rejected.

15 COMMISSIONER GAW: Ah, that's different.

16 MR. DOTTHEIM: And that's all that was
17 required.

18 COMMISSIONER GAW: That's different.

19 MR. DOTTHEIM: And as a consequence,
20 prior State action suffices.

21 COMMISSIONER GAW: I see. And where do
22 we have a record that that was considered? I mean,
23 we're talking about something that happened 16 years
24 before the implementation of this EPAct legislation.

25 MR. DOTTHEIM: I would think if one is

1 looking for a record, one would have to go back to the
2 record in the proceeding.

3 COMMISSIONER GAW: Probably so.

4 MR. DOTTHEIM: And the docket for the
5 Chapter 22 is Case Nos. EX-92-299 and OX-92-300, which
6 for the most part, those are reflected the Missouri
7 Register, but all of the pleadings and filings would be
8 reflected now on microfilm under those case numbers.

9 COMMISSIONER GAW: Okay.

10 MR. DOTTHEIM: The Commission's status
11 on them.

12 COMMISSIONER GAW: All right,
13 Mr. Dottheim.

14 The question on -- back on 12 for a
15 moment about consideration of the requirement to ensure
16 a diverse range of fuels and technologies, is there a
17 definition of technology somewhere in EPAct that
18 clarifies what they're referring to there.

19 I would assume that has to do with types
20 of generation technology. Do you all have a different
21 idea of what that means?

22 MR. HUGHES: Randy Hughes with Kansas
23 City Power & Light.

24 COMMISSIONER GAW: Yes, Mr. Hughes.

25 MR. HUGHES: IGCC, I think, has been

1 considered one of those new technologies.

2 COMMISSIONER GAW: That's what I was
3 thinking.

4 MR. HUGHES: Right.

5 COMMISSIONER GAW: Was that the
6 discussion here is about what other kinds of
7 technologies that there are out there, and IGCC was
8 something that has been discussed more in last couple
9 of years. I assume and also could mean varying types
10 of -- of particular kinds of the turbines, I suppose
11 that you could into, but I think it's really more broad
12 than that. I think it's really about fuel types and
13 generation from different fuel types.

14 All right. And then back to -- someone
15 brought up this issue earlier about distributed
16 generation or some supply side -- or excuse me --
17 demand side of the equation. And if anyone has an
18 objection to this, tell me. I wasn't here on
19 Wednesday. But I would like, if no one objects, for
20 someone to refresh my memory on net metering in regard
21 to how that works under Missouri's statute. If anyone
22 wants to object to that, because it's not teed up for
23 today, I'll just look at the record.

24 MR. BYRNE: I'm not an expert on net
25 metering, but I was here on Wednesday, and the

1 discussion was, you know, some people's view of true
2 net metering is a meter that runs in either direction.

3 COMMISSIONER GAW: Yes.

4 MR. BYRNE: And that's not what Missouri
5 requires. There's different pricing for generation
6 provided by the customer. You know, it's provided at
7 the avoided cost of the utility, whereas when the
8 customer takes electricity from the utility, it's
9 provided at the full retail rate, so there's a full
10 price differential.

11 COMMISSIONER GAW: That was my
12 recollection, but what I'm struggling to remember,
13 Mr. Byrne, is this portion of a scenario, and that is,
14 if we assume that in a billing period the customer
15 generates less energy than what they take, how do you
16 determine the bill in that instance? Is there an
17 offset of energy to energy, or is it from the beginning
18 a calculation of the total amount of energy used times
19 the retail rate on one side minus the total amount of
20 energy generated times the avoided cost rate and then
21 that net. I hope that makes sense. Does someone know
22 that?

23 MR. TRACY: Matt Tracy with Aquila. The
24 way Missouri's -- Missouri's net metering is set up so
25 that instant by instant, if a customer is taking power

1 from the utility --

2 COMMISSIONER GAW: Yes.

3 MR. TRACY: -- even if they are
4 generating their own but are still needing more than
5 they can generate, then they are buying just that piece
6 that they are getting from the utility at the retail
7 rate. All the rest that they are generating is, in
8 fact, offsetting at the retail rate. Now, if they
9 generate more than they need in a given instant, that
10 gets sold back to us at the avoided costs.

11 COMMISSIONER GAW: Okay. That's what I
12 recall. That's consistent with what I recall. Does
13 anyone have any different view of that?

14 MR. BYRNE: No. That's our view, too.

15 COMMISSIONER GAW: Okay. Here's my
16 problem. You all probably have an easy answer and I'm
17 sure you discussed this fully the other day, so I won't
18 spend a lot of time with it.

19 I'm reading out of this and it says, for
20 purposes of this paragraph, the term net metering
21 service means service to an electric consumer under
22 which electric energy generated by that consumer from
23 an eligible onsite generating facility and delivered to
24 the local distribution facilities may be used to offset
25 electric energy provided by the electric utility to the

1 electric consumer during the applicable billing period.

2 Now, that doesn't sound the same to me
3 as what we have in our statutes, because it's an offset
4 of energy to energy in a billing period. And I know
5 that someone can argue that it's comparable and we
6 ought to say it's close enough, but I'm asking a
7 different question at this point, and that is, is it
8 not different in the sense that it's not exactly the
9 same as what our statute currently provides?

10 MR. BYRNE: Well, I guess to the extent
11 that you don't exceed what you're using, it does offset
12 kilowatt hour by kilowatt hour.

13 COMMISSIONER GAW: So this is why I'm
14 confused, because I'm not hearing that. And maybe I
15 misunderstood a while ago. But when you all start
16 talking about instance in time, and you say, well,
17 they're using more in this certain period of time and,
18 therefore, we're going to pay them in that period at
19 avoided cost, that's different than offsetting energy
20 to energy in that billing period, to me. And I'm
21 trying to understand whether or not I've got my arms
22 around this distinction, or if it is not really a
23 distinction.

24 MR. TRACY: I will ask that you refer to
25 the record from Wednesday. I believe we covered this.

1 COMMISSIONER GAW: In detail?

2 MR. TRACY: Well, I don't know if in
3 detail but we covered it a lot. But the exact analogy
4 he offered, the example he offered is that, as long
5 as the customer is not generating more than they are
6 using --

7 COMMISSIONER GAW: But define the time
8 for me, because that's what I'm hung up on.

9 MR. TRACY: Okay. At that point, at any
10 point, it is instantaneous, the way Missouri is set up,
11 but as long as they always use more than they are
12 generating themselves, then it is, in fact, an energy
13 to energy offset and they are, in fact, getting that at
14 what will effectively be the retail rate.

15 COMMISSIONER GAW: Yes. I get that part
16 of it.

17 MR. TRACY: So the example he gave,
18 that's the part.

19 COMMISSIONER GAW: Yes.

20 MR. TRACY: That part is, in fact,
21 retail.

22 COMMISSIONER GAW: Yes, okay.

23 MR. TRACY: The kicker here is that we
24 do this instantaneously, that we, in fact, keep track
25 of -- by having effectively, we -- pragmatically, we

1 just use one meter, but we can record what's going in
2 and what's going out.

3 COMMISSIONER GAW: Uh-huh.

4 MR. TRACY: So we do watch for -- the
5 meter records moment by moment, is it more or less.

6 COMMISSIONER GAW: Yes.

7 MR. TRACY: Which was is the power
8 going, and we will charge you for what you use at our
9 rate and we'll pay you for the excess you generate at
10 the avoided cost. Now, the difference that the net
11 metering talks about, at least to the extent that
12 others have defined it, whether fairly or not, it is
13 commonly defined, and I will acknowledge that, that you
14 make that summation, instead of moment by moment, at
15 the end of each billing period, which would typically
16 be each month.

17 COMMISSIONER GAW: Yes.

18 MR. TRACY: So if they generated more
19 than they needed all night long, then they used more
20 than they needed -- more than they generated all day
21 long, all through the daylight hours, at the end of the
22 month, they may well have zero net usage, even though
23 all of their generation occurred through the night and
24 all of their use occurred through the day. That's not
25 how Missouri has chosen to do that.

1 COMMISSIONER GAW: Yes.

2 MR. BYRNE: And I do think, your Honor,
3 one of the things we talked about at some length on
4 Wednesday was, you know, this is a little different
5 than the ones we're talking about today because there
6 is a statute in Missouri --

7 COMMISSIONER GAW: Right.

8 MR. BYRNE: -- and a statute of at least
9 somewhat more recent vintage than the 1993 IRP rule.

10 And I think part of the issue is,
11 you know, A, was -- were there different options
12 considered when the statute was -- and you may have
13 been in the discussion.

14 COMMISSIONER GAW: No, I wasn't.

15 MR. BYRNE: That's one issue is, has the
16 Legislature sort of preempted this area by -- and
17 considered all the different options of ways you can do
18 net metering.

19 COMMISSIONER GAW: Yes.

20 MR. BYRNE: So that's one thing that's a
21 little bit different on this one. And what can the
22 Commission do, even if the Commission did decide that
23 they wanted --

24 COMMISSIONER GAW: What is that, that if
25 a statute has been voted on. I'm not saying the

1 Commission would do it, but is the Commission supposed
2 to examine or not whether the State Legislature has met
3 the requirements of EAct? Is that part of our review
4 here not?

5 MR. TRACY: I think, in deciding whether
6 you have to -- whether EAct requires you to undertake
7 this docket --

8 COMMISSIONER GAW: Yes.

9 MR. BYRNE: -- I do think that you would
10 look at that, and if the Legislature had met that prior
11 State action requirement, then you could use that as a
12 reason -- you know, as an exemption that would not
13 require you to have that docket.

14 COMMISSIONER GAW: Yes.

15 MR. BYRNE: And, of course, well, the
16 question is, even if the standard isn't exactly the
17 same that the Legislature adopted --

18 COMMISSIONER GAW: Right.

19 MR. BYRNE: -- what's the Commission's
20 power in the face of a net metering statute that does
21 exist --

22 COMMISSIONER GAW: That's what I'm
23 asking. Are we just supposed to report this to DOE
24 and they -- what do they do with that under EAct?

25 MR. DOTTHEIM: Well, I think it's

1 addressed through prior State action.

2 COMMISSIONER GAW: Well, that's your
3 position. That's not my question. My question is,
4 assuming your position is incorrect in regard to
5 whether or not we assume that the Legislature has voted
6 on implementation of such a standard or a comparable
7 standard. Now, I'm not suggesting to you that I
8 believe they have not.

9 I'm just asking, what would we do in
10 that hypothetical instance, if we said, we don't think
11 they have implemented such a standard or a comparable
12 standard, what are we supposed to do with that? Do we
13 have any power other than to say to the DOE, this is
14 what we find? Does somebody know that? I haven't
15 looked at that very closely.

16 MR. DOTTHEIM: If we find that we
17 believe -- that the State Legislature has not had
18 addressed that, is that what you're saying?

19 COMMISSIONER GAW: Well, I have got
20 something in front of me that I don't know if it's an
21 exact quote. So when I read it, I'm interpreting what
22 I have in front of me. What I have is, the State
23 Legislature has voted on the implementation of such
24 standard, parentheses, or comparable standard, closed
25 parentheses, for such utility.

1 MR. DOTTHEIM: Yes.

2 COMMISSIONER GAW: And what I'm saying
3 is, if the Commission were to find that they have not
4 voted on the implementation of such a standard or a
5 comparable standard, what are we -- what is our
6 responsibility under EAct at that point?

7 MR. FISCHER: Judge, I think you could
8 probably hold a proceeding and come to the conclusion
9 you didn't have the authority to change the state
10 statute.

11 COMMISSIONER GAW: Well, who in the
12 world of public utility commissions in the United
13 States could? I'm trying to understand what was
14 intended by Congress on this portion. Is it just a
15 reporting to DOE?

16 MR. DOTTHEIM: Yes.

17 COMMISSIONER GAW: I mean, could someone
18 decide to do something if they wished to on a
19 preemption at a federal level.

20 MR. DOTTHEIM: And I don't know that DOE
21 or anyone at the federal level has ever done anything
22 regarding the PURPA standards, that the mandate was
23 that the states consider and make a determination.
24 Also, too, what I was going to say earlier and stopped
25 myself, and didn't say which is kind of an interesting

1 additional twist, is that 386.887 doesn't only apply to
2 the utilities that the Commission regulates for a
3 rate-making purposes --

4 COMMISSIONER GAW: Yes.

5 MR. DOTTHEIM: -- it also applies to the
6 co-ops, and that's one area --

7 COMMISSIONER GAW: Well, that's because
8 the co-ops got together with the regulated utilities
9 and wanted to hurry up and pass something before
10 Congress might have done something so they could be
11 grandfathered, isn't it?

12 Silence.

13 MR. DOTTHEIM: So that's an area where
14 the Commission has jurisdiction by statute over the
15 co-ops, and the Commission's rule applies to the co-ops
16 too.

17 COMMISSIONER GAW: That's interesting,
18 isn't it?

19 MR. DOTTHEIM: And the municipals, in
20 addition to the co-ops.

21 COMMISSIONER GAW: Yes. Well, that's
22 helpful to me on this, because I can't -- I really
23 don't understand what it is we are supposed to do with
24 this portion of the matter, other than report it. And
25 I've got to come to the conclusion that Congress

1 intended this portion of it to be informational to them
2 in deciding whether or not some preemptive language
3 ought to be passed in some future statute, unless
4 there's something in EPAct that indicates that if
5 there's something found by the Commission that some
6 other standard will be applied federally that overrides
7 some lesser standard that has been passed by a state.

8 No one sees any information like that in
9 EPAct, do they?

10 MR. DOTTHEIM: No.

11 COMMISSIONER GAW: What was the position
12 from DNR on this particular issue, on the net metering
13 issue the other day? And I won't belabor this any
14 longer. I apologize for doing this today.

15 MS. WOODS: Well, unfortunately, I
16 wasn't here Wednesday, and our witness is not here, but
17 Brenda Wilbers is here. She was here Wednesday.

18 COMMISSIONER GAW: Are you able to
19 answer that question?

20 MS. WOODS: She'll need to be sworn in.

21 JUDGE STEARLEY: Will you approach the
22 podium?

23 Please state and spell your name for the
24 court reporter.

25 MS. WILBERS: Brenda Wilbers,

1 B-r-e-n-d-a, W-i-l-b-e-r-s. DNR Energy Center.

2 (WITNESS SWORN.)

3 COMMISSIONER GAW: Ms. Wilbers, can you
4 tell me what DNR's position was in regard to the net
5 metering provisions?

6 MS. WILBERS: Yes. Our position, which
7 it was on the record on Wednesday, is that the statute
8 and the rule that was promulgated to be consistent with
9 the statute is not a comparable standard to the EPAct
10 standard.

11 COMMISSIONER GAW: Okay.

12 MS. WILBERS: Even though it is defined
13 net metering, as net metering as it is in our statute,
14 it's not the definition in federal law or as it is
15 generally accepted by the rest of the nation who has
16 adopted this, of the states that have adopted it. That
17 is our position.

18 COMMISSIONER GAW: That's what I
19 assumed, but I wanted to make sure my assumption was
20 right. That's all I have. That's all the questions I
21 have. Thank you all very much.

22 JUDGE STEARLEY: Commissioner Murray, I
23 know you had an opportunity to ask some questions
24 earlier about the fuel sources standard. Do you have
25 any with regard to the fossil fuel and generation

1 standard?

2 COMMISSIONER MURRAY: I do. I'm going
3 to try to keep this pretty brief.

4 And what I'm struggling with on this
5 particular standard is the fact that it is specifically
6 to increase the efficiency of its fossil fuel
7 generation. I'm trying to understand if Missouri only
8 requires utilities to think of fuel efficiency as a way
9 to accomplish the larger goal of fiscal effectiveness,
10 or if our Missouri rule contemplates a utility adopting
11 a plan to increase the efficiency of its fossil fuel
12 generation for that purpose, that being the primary
13 purpose and not as a means to accomplish a larger
14 purpose.

15 And I don't know who to direct that to.
16 If anybody has a response, I'd appreciate it. And also
17 in line with that, whether that is the case or not
18 doesn't matter, in terms of having met the comparable
19 standard or having met the prior State action, which
20 achieved a comparable standard.

21 MR. TRACY: Commissioner, Matt Tracy
22 with Aquila. I will be glad to defer to others who
23 play with this section of the rules more often than I.
24 I have read it and am moderately familiar with it. It
25 seems it has a number of goals that are to be

1 considered. I don't know that it has any one as the
2 primary goal.

3 But certainly, fiscal efficiency, is I
4 believe the term you used, is one of those things we
5 certainly are very aware of, that I think I mentioned
6 earlier, if the Commission tells us, no more fossil
7 fuels, only renewables. We have the technology, we can
8 do that. But I'm not sure there's the political will
9 on the part of the ratepayers to pay for that.

10 COMMISSIONER MURRAY: Let me interrupt
11 you, though, because I think what I'm reading here in
12 the EAct, Section 111 (d) (13) is the requirement to
13 increase the efficiency of its fossil fuel generation.
14 Not to substitute some other kind of generation, but to
15 increase the efficiency of the fossil fuel portion of a
16 generation. And one way to reduce dependence on
17 foreign oil, for example, would be to increase the
18 efficiency of your fossil fuel production.

19 And I guess what I'm trying to
20 distinguish is, is this -- has Missouri contemplated
21 looking specifically at increasing the efficiency of
22 the production of that fossil fuel or the use of that
23 fossil fuel?

24 Mr. Gibson?

25 MR. GIBSON: Let me just give a shot at

1 this. I think you're seeing the results in the state
2 of Missouri of the planning process that works in a
3 manner which I think you're looking for. If you look
4 at, for example, we had some combustion turbines that
5 predominantly ran on fuel. We took a look at those and
6 they really weren't getting that much usage and so we
7 converted them to gas. That from an economic
8 standpoint made a lot of sense.

9 When you look at -- in taking a look at
10 what your requirements are for the future, one of the
11 ways that you can meet anticipated load is by
12 increasing efficiency of the power plants, and I know
13 that we did that on a continuous basis. So I think
14 you're seeing that as part of a normal planning
15 process, and I think that that is addressed in these
16 rules, generically.

17 COMMISSIONER MURRAY: And there are some
18 ways in which to increase the efficiency, then, of
19 those fossil fuel generators? Are they -- well, let's
20 see. I guess -- and I'm thinking of a way of doing it
21 without substituting another fuel source, but by -- I
22 don't know if reducing emissions has anything to do
23 with increasing efficiency. Technologically, I don't
24 know. What would be ways to actually increase the
25 efficiency?

1 MR. GIBSON: There may be some changes
2 that you would make to the plant itself that would
3 increase efficiency to where you get a better heat rate
4 and so, therefore, you wouldn't need as much fuel to
5 generate the electricity that you need.

6 COMMISSIONER MURRAY: And would taking
7 care of losses on the transmission and distribution
8 lines also be considered as increasing the efficiency?

9 MR. GIBSON: I would view it that way,
10 because that makes -- if you decrease losses,
11 necessarily you're going to have more energy for
12 consumption that's available for consumption, because
13 it's not going out as a loss, which therefore, since
14 you do that, you wouldn't have to generate as much to
15 meet that load.

16 COMMISSIONER MURRAY: And you think that
17 the Missouri rule contemplates addressing the
18 efficiency of fuel generation specifically?

19 MR. GIBSON: I know that we do as a
20 matter of course, take a look at those items. I think
21 the rule is broad enough, and to me it really addresses
22 all items. You know, it's not a restrictive on what
23 you were to consider, so it does encompass everything.

24 COMMISSIONER MURRAY: And there is a
25 great advantage to allowing flexibility, too, I'm

1 assuming?

2 MR. GIBSON: That's exactly right.

3 COMMISSIONER MURRAY: Mr. Byrne?

4 MR. VOYTAS: Commissioner, this is Rick
5 Voytas with AmerenUE. In regards to the integrated
6 resources planning rules on the supply side rules in
7 subparagraph 7, I think we just had a discussion on the
8 distribution system, and the rules are relatively
9 specific. And if I could just quote one sentence: The
10 utility shall assess the age, condition and efficiency
11 level of existing transmission and distribution
12 facilities.

13 So I think there is relatively clear
14 language in regards to the -- for instance, reducing
15 line losses and doing whatever is cost-effective to do
16 that, and that's clearly stated in the rules. I think
17 similarly on paragraph 4 in regards to the generation
18 side of the business, I think the rules clearly require
19 us to identify the universe of options and go through
20 some type of screening process to focus on those
21 options that are cost-effective. And then, the rules
22 require us, in our implementation plans, to state how
23 we're going to effectuate those cost-effective energy
24 efficiency improvements. So I believe the rules have
25 the framework within which we can do those things.

1 MR. HUGHES: Randy Hughes, Kansas City
2 Power & Light. I think Commissioner Gaw read one of
3 the key sentences out of the IRP rule for the supply
4 side where we're required to consider efficiency
5 improvements which reduce the utility's own use of
6 energy, and that truly does cover the whole gamut, D&D,
7 even our office usage of energy, I would think.

8 COMMISSIONER MURRAY: Okay. 220.040,
9 subsection 1.

10 MR. HUGHES: Yes.

11 MR. BECK: Commissioner, I guess there's
12 one thing that I'd like to point out is that, when I
13 read this, the wording is, of its fuel -- fossil fuel
14 generation. It doesn't say a point in time. I look at
15 that as being your fossil fuel generation is what it is
16 at any given moment. And so the idea of, for example,
17 that you are adding more efficient fossil fuel
18 generation unit into your mix would probably be the
19 largest change in the overall fossil fuel generation
20 that a utility system might incur in one instance.

21 Because what happens is that you not
22 only bring in a more efficient unit, you also have the
23 less efficient units have more idle time. And so it's
24 kind of a -- there's a big impact there.

25 You mentioned using other fuel sources

1 other than fossil fuel generation. That also could
2 have an impact generally, you know, because the way
3 utilities dispatch their units is based on economics,
4 and generally the less efficient units are also the
5 least economic.

6 COMMISSIONER MURRAY: Thank you. That
7 was helpful.

8 Anyone else?

9 Okay. Judge, I think that's all I have.

10 JUDGE STEARLEY: Commissioner Gaw, any
11 additional questions?

12 COMMISSIONER GAW: Judge, I just have a
13 comment when we get finished.

14 JUDGE STEARLEY: I just have one final
15 question regarding the language in the standard
16 requiring implementation, and I was wondering if under
17 our rule, 22.070 sub 9, if that significantly covers
18 the standard regarding implementation of the plan or if
19 there's other language in our rules that would cover
20 that portion of that language.

21 MR. BECK: I guess I would direct your
22 attention to the risk analysis strategy selection
23 section.

24 JUDGE STEARLEY: I think that's the
25 section I referenced, 070.

1 MR. BECK: The whole section?

2 JUDGE STEARLEY: But I was looking at
3 sub 9 on that.

4 MR. BECK: I guess I would refer also to
5 sub 10, which talks about the resource acquisition
6 strategy, because I think that carries not just the
7 plan and an implementation plan, but moving that
8 process forward with a resource acquisition strategy
9 that monitors the uncertain factors, sets up
10 contingency options, and then reports as changes are
11 made to the plan, based on how critical uncertain
12 factors change over time.

13 JUDGE STEARLEY: Yes, Mr. Noller?

14 MR. NOLLER: With regard to this
15 question of implementation, Dan Beck of Staff earlier
16 stated that the IRP plan -- I mean, the IRP rule does
17 not require implementation of the plan. And I think
18 that would also apply to implementation of the resource
19 acquisition strategy. If you look at Section 80 of the
20 IRP, it provides for the Commission to receive the
21 final filing, which would include the resource
22 acquisition strategy and to find whether or not it
23 conforms to the process requirements of the rule.

24 But there really is no provision stating
25 that the -- there really are no provisions applying to

1 the utility's subsequent implementation of its resource
2 acquisition strategy. A question arises if -- I'm not
3 saying this would happen, but just sort of speculative.
4 If a utility went through the process of filing, had
5 their filing received, and then let the plan sit on the
6 shelf, what would happen then? There's really nothing
7 in the rule that speaks to that question.

8 So if one considers that implementation
9 is a critical part of the EPCRA standard, that raises
10 the question whether the IRP rule has a comparable
11 requirement for implementation.

12 JUDGE STEARLEY: Would you like to
13 address that as well? Anyone else like to address that
14 question?

15 MS. CARTER: Just very briefly. I think
16 the relevant consideration is if there was
17 consideration requiring implementation, and I think
18 that most certainly was done when the IRP rules were
19 put into place. I was not involved at that point in
20 time, but I assume that the record will be clear on
21 that point that the Commission did consider whether or
22 not to require utilities to have that plan and get that
23 plan approved or whether or not to review the process
24 and review the plan. I think that was taken up and
25 considered by the Commission, as would be required at

1 this stage.

2 JUDGE STEARLEY: All right. Go ahead.

3 MR. BECK: When I made reference to the
4 plan isn't required to be implemented, I was talking
5 about the fact that there are multiple alternative
6 resource plans that are developed as part of the
7 process. Then they select a single preferred plan, but
8 that single preferred plan realizes that there are
9 uncertain factors and things can change, and that is
10 why there is also an implementation plan, there is also
11 a resource acquisition strategy. And finally, there is
12 a requirement for reporting the implementation of
13 contingency options when those decisions -- when those
14 changes were made.

15 Ultimately, I guess, if a rule is out
16 there and someone wants to thumb their nose at it and
17 not do what it does, that -- I think at that point, you
18 know, there's penalty provisions in the statute to deal
19 with that topic.

20 JUDGE STEARLEY: Anyone else wish to
21 address that question?

22 All right. Any additional questions
23 from the Commissioners?

24 COMMISSIONER GAW: I just have a
25 comment, Judge. I want to say I just spent the last

1 few days in D.C. in part in dealing with this overall
2 issue of moving our electric system over into a new
3 era. And I know, Mr. Voytas, you were there at the
4 demand response day, and I missed the first two-thirds
5 of that day because I was dealing with issues with SPP.

6 But I want to say that as I listened
7 to the comments that have been made in regard to where
8 the country is going and in using things that we have
9 seen going on in the last several months and year in
10 the aftermath of a EPAct, I'm very concerned about
11 where we are as a state. We are not -- and I saw a few
12 maps up on screens where I look around the country and
13 Missouri is not anywhere near to where some of the
14 other states are in regard to trying to deal with
15 issues that now are perceived to be becoming a reality.

16 And I'm talking about the fact that it
17 is, I think, pretty much perceived to be the case that
18 we are going to get carbon restrictions in the near
19 future. If that occurs, that's going to have a
20 significant impact in a number of ways, and in part, it
21 will be reflective -- it will reflect in what it costs
22 our consumers, as a bottom line, if we are not prepared
23 ahead of time with a diverse fuel supply.

24 And I'm not suggesting to you that all
25 of you don't have one. What I am concerned about is

1 that we are still dealing with ways of answering
2 solutions to supply and demand that could have been
3 going on 30 or 40 years ago in most of the same way and
4 kind of discussion. There are large opportunities for
5 all of us to be looking at what we can do to try and
6 deal with our demand side in managing what it is on
7 that side to help us with the purchase of new peaking
8 units and in regard to building new generation and
9 deferring the building of new generation that we simply
10 are not taking advantage of the today to the extent
11 that we should be.

12 And I also recognize the fact that there
13 are a lot of issues that we can't control with regard
14 to accessing some of the renewables out there. Some of
15 that will have to do with whether or not we can see
16 some transmission built that allows some of the
17 importation of that wind that's out there in the plain
18 state.

19 But in addition to that, we have
20 opportunities to do things, to make the grid more
21 responsive and allow us to do a better job of making it
22 possible for residential consumers to have their load
23 managed or manage their own load in a way that would
24 help all of us in shaving these peaks down, and in
25 particular with some efficiency measures that -- and

1 some distributed generation that utilities could
2 actually see as a benefit.

3 We constantly talk about distributed
4 generation, but we don't do much about it. And I think
5 to some extent the traditional mindset has been for
6 utilities to view that as a disadvantage, because if
7 you don't own it, you don't earn a return on it. And
8 in return for not being -- if you're not earning money
9 on it, why is it in your interest to do it.

10 We've got to look beyond that, and there
11 are ways and models to do that. We're not exploring
12 them right now to the extent that we should be doing.
13 In particular, there are plans out there for -- where
14 utilities could actually own some of that distributed
15 generation and have some possibilities of residential
16 battery backups to help move the peaks around.

17 And Public Counsel ought to be looking
18 at that and the utilities ought to see some interest in
19 that. If they own it, you can earn a return on it. So
20 as I examined what we're doing out here, I think we're
21 stuck in this rut that we've been in for years and
22 years.

23 Things are going to change rapidly here
24 in the next few years. We're going to have a
25 significant amount of new generation come online around

1 this country and it's going to come into rates, and if
2 all of the -- if the only thing we're looking at here
3 in examining this is about building new coal plants and
4 new gas generation, and we get a carbon cap in trade or
5 a carbon tax, it is going to only add to the amounts of
6 rates ratepayers are going to have to pay.

7 We need to anticipate that. We should
8 have being doing it before this, but by God, we've got
9 to do it now. I'm hoping that those of you who are the
10 principal players in this can step away from these
11 basic discussions about whether or not they're meeting
12 certain standards or something comparable and think
13 about the big picture here for a moment.

14 We need an energy policy in this state
15 that contemplates what is going to be important in our
16 future, both economically and from an energy dependence
17 standpoint and environmentally, and all of those things
18 don't have to be in opposition to another. Our ability
19 to be more energy independent is a security issue, not
20 just for Missouri but for the country itself, and it is
21 also possible that by being more energy independent, we
22 are more environmentally friendly at the same time.

23 So I just want you all to think about
24 the fact that each of us, I know, has our individual
25 responsibility to the constituency that we serve, but

1 we also are all living in the same state in the same
2 country, and we need to think about how we can find
3 ways to bridge over these ruts that we get into and
4 find some bigger picture solutions that are going to
5 work for all of us.

6 I am never going to suggest to you that
7 that is easy. It's absolutely not. But we are not
8 discussing it. And we've got to start doing that.
9 It's not just utility by utility. It's much bigger
10 than that. So in the scope of this particular thing
11 that we've got in front of us, whatever is decided
12 here, one way or the other, is going to be important,
13 but it is only a very small piece of what ought to be
14 being done by all of us in trying to do something more
15 than we have been.

16 And in particular, I would sure like to
17 see the map change and see the Midwest, and Missouri in
18 particular, looking more like a leader than someone who
19 doesn't even want to start getting out of bed in the
20 morning dealing with trying to do something about our
21 energy efficiency needs, our energy needs in the
22 future.

23 And if there's anything I would leave
24 you with, it's just that. Unless you all have plans to
25 move out of the state or out of the country, we all

1 better start thinking about what tomorrow holds for us.

2 Sorry about that. I just felt the need
3 to say more than just ask questions today. Thank you.

4 JUDGE STEARLEY: All right. Are there
5 any other matters we need to address before we adjourn
6 today?

7 Hearing none, the hearing the
8 on-the-record proceedings in Case No. EO-2006-0494 and
9 EO-2006-0495 are hereby adjourned.

10 (WHEREUPON, the hearing was adjourned.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

CERTIFICATE OF REPORTER

3

4

5

6

7

8

9

10

11

12

13

14

15

16

Lisa M. Banks, CCR

17

18

19

20

21

22

23

24

25

1 E X H I B I T I N D E X

2 MARKED RCV'D

3 EXHIBIT 1

4 Order, Case No. EO-93-222 8 11

5 EXHIBIT 2

6 Assessment Demand Response and Advanced
7 Metering Staff Report LF

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25