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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Public Meeting

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Jefferson City, Missouri  
Volume 1

In the Matter of a Repository File )  
Regarding The Chapter 22 Electric )  
Utility Resource Planning ) Case No. EW-2009-0412  
Revisions Workshops )

MORRIS WOODRUFF, Presiding,  
CHIEF REGULATORY LAW JUDGE.

ROBERT M. CLAYTON III, Chairman,  
JEFF DAVIS,  
TERRY JARRETT,  
KEVIN GUNN,  
ROBERT KENNEY,  
COMMISSIONERS.

REPORTED BY:

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

2 JUDGE WOODRUFF: We're on the record. Good  
3 morning, everyone. Looks like we're going to have a full  
4 house tonight, or this afternoon, I mean this morning.  
5 We're off to a great start already. We're here for  
6 presentations to the Commission regarding Chapter 22, and  
7 we had a prehearing phone call last week where we  
8 established some time frames for people to -- various  
9 parties to give their presentations, and we're going to  
10 begin with Staff.

11 As indicated in the Notice that created  
12 this proceeding today, this is still a working case. It's  
13 informal. We're not going to be swearing anyone in. We  
14 are -- we are webcasting this, and we are transcribing it  
15 for -- to preserve the record for future reference.

16 Mr. Dottheim, would you like to begin?

17 MR. DOTTHEIM: Yes. The Staff's  
18 presentation this morning will be made by Lena Mantle.  
19 The Staff also has present Jerry Mendl, who is an outside  
20 consultant who's been assisting the Staff and acting as a  
21 facilitator in the process in revising the Chapter 22.  
22 There are other Staff members who are available this  
23 morning if that is advisable or need be for purposes of  
24 the proceedings, but Ms. Mantle will be making the Staff's  
25 presentation.

1                   The Staff at this moment would like to  
2   thank the Commission for convening this death panel.  
3   Well, I thought I'd make an attempt at humor, which I  
4   guess it's a little too early in the morning maybe.

5                   COMMISSIONER JARRETT:  It's not a death  
6   panel.  It's an end of life decision.

7                   MR. DOTTHEIM:  I see.  Yes.  Thank you,  
8   Commissioner Jarrett.

9                   JUDGE WOODRUFF:  Ms. Mantle, if you would  
10  like to proceed.

11                  MS. MANTLE:  Is this on?  It doesn't sound  
12  like it from here.

13                  While Steve is passing out copies of our  
14  presentation, I did want to thank the Commission also.  
15  We've been talking about revising Chapter 22 for quite a  
16  few years now, and we've sort of come to a point where the  
17  Staff values some input from the Commission and realizing  
18  that you need to hear from all parties to do a good job of  
19  providing that.

20                  So I'll just go ahead and get started.  
21  Okay.  Just so you don't think that we haven't agreed on  
22  anything, there are -- there are a few areas of consensus  
23  that all stakeholders have come to regarding this process.  
24  Just about everybody believes that stakeholder input is  
25  good and realizes that the ideas that come from

1 stakeholders can be very valuable to the process.

2 I think we also all agree that the  
3 utilities need to keep the stakeholders informed regarding  
4 their planning process, and how this is done, right now  
5 we're -- I think everybody agrees annual updates is a good  
6 idea and filings when the plan changes. Now, that doesn't  
7 mean we agree on what the annual updates should include,  
8 but we'll talk about that a little bit later.

9 It seems that all stakeholders also agree  
10 that there should be a filing, a full filing every three  
11 years by each of the utilities. Since we're down to three  
12 investor-owned -- four investor-owned but two of them  
13 owned by the same parent company, that would mean one  
14 utility filing a year, where currently we have a filing  
15 every seven months.

16 Basically, there's a couple areas Staff  
17 would like some direction from the Commission on. There's  
18 been a lot of discussion in the workshops on the  
19 prescriptiveness of the rules, how prescriptive should  
20 they be, and also direction regarding the type of approval  
21 that the Commission would like to grant in the chapter --  
22 through the Chapter 22 compliance filings.

23 We're not looking for specifics in these  
24 areas. We just need some general direction and guidelines  
25 as to where the Commission wants to go.

1                   Prescriptiveness can be good and  
2   prescriptiveness can be bad. A lot of times it's which  
3   side you're on. Staff does realize that prescriptiveness  
4   may reduce the flexibility of the utility's ability to  
5   plan, but it doesn't have to. It also can result in the  
6   filing becoming merely a checklist, did we do this, did we  
7   do this, did we do this, and I don't believe that's what  
8   we're looking for.

9                   The filings could consist of volumes of  
10  paper. I asked Mr. Fischer if he brought in that filing  
11  for a reason, but that is KCPL's filing. We have stacks  
12  of paper around our offices from each of the utilities.

13                  But one of the things if we don't do  
14  prescript gets to the third bullet point. Often in this  
15  process the utilities objected to requests for information  
16  if the information has not been specifically identified as  
17  necessary to being provided in the rule.

18                  A lot of times the technical people seem  
19  willing and wanting to answer, but the utility's attorneys  
20  will tell the requesting party that it's outside the  
21  bounds of the rules and that the utility does not have to  
22  provide the answers. So what we often end up with is, if  
23  it isn't in the rule, we can't get it, which causes a  
24  problem, too.

25                  Some alternatives. Prescriptive guiding

1 principles and objectives, saying what you expect out of  
2 each area of resource planning, putting down some  
3 principles and objectives.

4                   And then prescriptive process, and some  
5 would say that's what we have today, where the Commission  
6 goes through and says, you will use this methodology. And  
7 it's -- a lot of areas we do do that in the current rule.

8                   And a third level would be prescriptive  
9 deliverables, here's what we want the utility to give us,  
10 and then the stakeholders will have to ask for work papers  
11 and work backwards from the deliverables. And that's sort  
12 of based on the proposition that if the deliverable is  
13 good, then the resource plan is good and it has been done  
14 correctly.

15                   And then the fourth alternative I have  
16 there is prescriptive processes in some areas, forecast by  
17 rate class, minimum requirements for number and type of  
18 futures to create plans for, say, a carbon tax future, a  
19 high load growth, extended recession type of future. So  
20 setting out some of the things that the utilities must  
21 look at, but then not prescriptive in -- not prescriptive  
22 in other areas, such as the calculation of avoided cost or  
23 reducing the filing requirements.

24                   There's a few things I wanted you to  
25 consider when giving direction on prescriptiveness. We

1 now have fuel adjustment charges for three of the four  
2 utilities. In the past in resource planning the utilities  
3 balance the cost of building supply side resources with  
4 the fuel costs to run that resource, and that's what the  
5 ratepayers paid. So it was a balancing process.

6 Now with the fuel adjustment clause, with  
7 the fuel and the variable costs being flowed through, that  
8 sort of changes that center balance, or it could. I'm not  
9 going to necessarily say our utilities are going to slip  
10 to the point of where they just have PTAs or just put in  
11 gas turbines, but that's an extreme. So the fuel  
12 adjustment charge has sort of changed that, could change  
13 that balance.

14 Also, there's been changes to PURPA  
15 standards in federal EPAct 2005 and EISA 2007. EPAct 2005  
16 things to consider is fuel diversity and rate signals to  
17 customers. I know the Commission has ruled that they have  
18 considered these standards already, but as part of the  
19 Staff's comments to you regarding those standards, we said  
20 we would make those more clear in the upcoming revisions  
21 to the rule.

22 EISA 2007, there's -- one of the big things  
23 is Smart Grid technology, and in that it talks about doing  
24 a cost effectiveness test for Smart Grid distribution.  
25 There's also talk about getting proper information on

1 price to the customers. And so those are things that we  
2 need to consider. Can we do -- meet these standards with  
3 the rules that we have?

4                   Also, the ability to obtain information  
5 necessary to compliance with Proposition C, and we're  
6 wrestling with that right now with the RES rules. Those  
7 rules go hand in hand with these resource planning rules.  
8 So we need to be able to have the information necessary to  
9 determine compliance with those standards.

10                   And I put Senate Bill 376 down there also.  
11 While I do not -- I believe there's additional rules that  
12 will be needed for 376, Senate Bill 376 says the  
13 Commission has to approve demand side programs before they  
14 can re-- the utilities can recover the cost in these  
15 alternative way -- before they can recover the cost of the  
16 program in these alternative manners that they'll be  
17 proposing.

18                   The other thing we need to consider how  
19 much prescriptiveness you think needs to be in the rule,  
20 you need to think of the type of Commission approval,  
21 which leads then to the second area. So basically two  
22 levels of approval. One is approval of the process, and  
23 we believe that's what's in the current rules under the  
24 objective statement there. Could be approval of plans,  
25 very similar to what we have in our current KCPL



1 regulatory plan and the Empire regulatory plan where the  
2 parties take the position that the investments -- they  
3 agree to not take the position that these investments were  
4 not necessary or timely, but the parties still have the  
5 ability to -- regarding prudence of expenditures. So  
6 that's another level. And there may be something in  
7 between.

8 DNR has proposed in the last staff workshop  
9 acknowledgement of a plan, and we're not for sure what  
10 that is. We hope to hear more from them about that and to  
11 give you some guidance in that area.

12 Just real quick, this is sort of a Star  
13 Trek, I don't know, but I wanted to show that the range of  
14 Commission actions really does vary, and Missouri's not on  
15 the outside with planning or approving the process.  
16 There's other states out there that approve process and  
17 there's some that approve the plan. In total, I think  
18 there's about 37 states that have a resource planning  
19 process in their rules or their statutes. Of course, that  
20 means 13 don't.

21 But we wanted to show you this. It more or  
22 less shows that typically if the plan's approved, you  
23 pre-approved those resources.

24 I wanted to real quick give the Staff  
25 recommendations. This is the first time some of the -- or

1 the stakeholders have seen some of this information. The  
2 first two workshops we proposed drafts of revisions to  
3 rules and we heard some response. We've come back and  
4 we've thought about what was said. So I want to apologize  
5 to the other stakeholders that we haven't been able to get  
6 this out to them yet, another draft, but we thought it was  
7 important to hear what you had to say before we spent a  
8 lot of time redrafting the rules.

9               Staff would suggest that prescriptiveness  
10 be reduced in some areas, and typically these are the  
11 areas that the utilities asked for waivers in their past  
12 few IRPs. However, we would ask that if you reduce  
13 prescriptiveness, that it be reciprocated from the  
14 utilities with more availability of information.

15               I talked earlier about increasing  
16 stakeholder input. KCPL sent some comments in last week  
17 that suggested that there actually be two filings, one  
18 filing be made after the demand side -- demand and supply  
19 resources have been screened, and then another after  
20 integration and risk analysis. This would allow for input  
21 from the stakeholders.

22               And I apologize to KCPL if I misrepresented  
23 what you've proposed, but Staff believes that it's an  
24 excellent idea. It would give us, the stakeholders, an  
25 opportunity to provide comment before the risk and

1 integration takes place, which is a lot of work. If you  
2 went to the end, it's much more difficult for the  
3 utilities to revise their analysis.

4 We've also come up with an opportunity for  
5 stakeholders to provide contemporary issues for the  
6 utilities to include in their analysis.

7 And we hope to have less of an emphasis on  
8 the checklist. What I mean by that is, currently the  
9 stakeholders can mention deficiencies. Staff has a lot of  
10 times in its analysis had deficiencies and concerns, and  
11 what we would propose is that that be put into the rules,  
12 that some things we look at it and we see it's not  
13 quite -- it doesn't seem quite right, but they've met the  
14 requirements of the rule, but it lends -- Staff believes  
15 that it might cause some of the analysis to be wrong.

16 In the past, we have not called that a  
17 deficiency, but we've pointed it out to the utility.  
18 Sometimes they go back and redo their analysis, and  
19 sometimes they say, it's fine, and they go forward. But  
20 what that does is give us an opportunity to mention it to  
21 them, and then in the future if something occurs, we do  
22 have something to hang our hat on that we did tell the  
23 utilities back when we reviewed the resource plan.

24 There's a few things we want to do to  
25 reduce confusion in the rules. People do them kind of

1 chronologically. We do load forecasting analysis, then  
2 demand side, supply side, integration, risk analysis and  
3 strategy selection. But the rules weren't necessarily  
4 written that way, so we would move some sections to reduce  
5 some of that confusion.

6                   We want to update the chapter, and by that  
7 I want -- Staff has proposed a transmission and  
8 distribution rule. What we've seen in the past filings is  
9 very little on transmission. The utilities say, well,  
10 that's done by the RTO. There's no reason for us to even  
11 get into that.

12                   We believe the utilities still have  
13 responsibility for planning transmission and then  
14 proposing that, some of that to the RTO. So we don't  
15 believe that transmission is completely done outside the  
16 utility, although we do realize a lot of it is done in the  
17 RTO and would even go on to the RTO for its approval after  
18 the company had done that transmission planning.

19                   We also put distribution planning in this  
20 rule, and this is important for the Smart Grid standards  
21 to be met. The EISA standard has a requirement that,  
22 should the Commission choose to adopt it, that all of the  
23 transmission and distribution technology that's  
24 implemented be compared, the new to the old technology to  
25 find out if the new technology is cost effective and have

1 it installed.

2                   We also -- one of the things that we saw in  
3 just last winter was some difficulties with the plan,  
4 preferred plan that one of our utilities filed and the  
5 financial viability of that plan. Then later we were told  
6 that it wasn't viable as the current statute was. That  
7 would be AmerenUE, the Callaway 2 information that got  
8 crossed between the resource planning and what was given  
9 to the Legislature. So we would hope that this financial  
10 viability screening would reduce some of that.

11                   Want to increase the transparency to both  
12 the public and to the stakeholder. We propose a public  
13 version with an executive summary that gives some real  
14 details, that not just talks about how wonderful the  
15 utility is and what a great job they're doing planning.

16                   The annual update. Staff believes it must  
17 include written documentation. Workshops that we had in  
18 the past where the utilities would just present  
19 information to us, we did not get very good documentation  
20 in that, but we believe on a going forward we need  
21 documentation as a part of the annual update.

22                   And I'll just let you read those other two.  
23 I think I'm probably getting to the end of the time I was  
24 given.

25                   And last, provide information necessary to

1 determine compliance with the two statutory requirements  
2 that I talked about earlier, the RES statute and part of  
3 Senate Bill 376.

4                   With that, we are asking the Commission for  
5 general direction on level of prescription and approval.  
6 We aren't looking for you to give specific details of what  
7 the forecasting methodology should be or what the risk  
8 analysis should look like, but some general direction.

9                   And the second bullet really doesn't need  
10 to be said, but I put it down anyway. The direction that  
11 you guys give us is what we will follow, and we will come  
12 up with the best rule that we can, try to get as much  
13 consensus with the stakeholders as we possibly can.

14                   Thank you for your attention. I'm glad to  
15 answer any questions about this or, as the other  
16 stakeholders go through their presentations, any questions  
17 you may have of Staff.

18                   JUDGE WOODRUFF: Thank you. Chairman  
19 Clayton, do you have any questions?

20                   CHAIRMAN CLAYTON: I do have questions, but  
21 I'm going to wait until later on in the proceedings, after  
22 more parties have participated.

23                   JUDGE WOODRUFF: Commissioner Davis?

24                   COMMISSIONER DAVIS: All right. So to  
25 summarize your recommendations, Ms. Mantle, more

1 transparency, more up-front discussions between the  
2 utilities and the parties, less prescriptiveness in terms  
3 of, you know, the how and the why in most instances.

4 MS. MANTLE: I would say there's still  
5 prescriptiveness, and we would still have some  
6 prescriptiveness, but I did note several areas where we  
7 believe that prescriptiveness really isn't necessary.

8 COMMISSIONER DAVIS: Right. Annual  
9 updates?

10 MS. MANTLE: Yes.

11 COMMISSIONER DAVIS: And then making sure  
12 that they comply with the renewable energy standard and  
13 portions of Senate Bill 376, and also --

14 MS. MANTLE: Make sure the information's  
15 available so that we can do that, yes.

16 COMMISSIONER DAVIS: Right. And then also  
17 there would be a transmission planning component?

18 MS. MANTLE: Transmission and distribution.  
19 When we get into distribution, we also get into the areas  
20 of distributed generation that really haven't been  
21 reviewed well in these resource plan filings up to now, I  
22 believe, which too then gets to getting information to the  
23 customer on any kind of rate design.

24 COMMISSIONER DAVIS: I'll pass right now,  
25 Judge.

1 JUDGE WOODRUFF: Commissioner Jarrett?

2 COMMISSIONER JARRETT: Lena, I just had a  
3 quick question. Thank you for your presentation. Sort of  
4 the model that you are recommending, are there other  
5 states that are also following kind of the same model?  
6 Can you tell me?

7 MS. MANTLE: Most likely, but it's probably  
8 some pieces of different -- different states. The one  
9 thing that I have heard from Jerry Mendl, our consultant,  
10 and consultants hired by the utilities to help them with  
11 their resource plan, is that our risk analysis that's in  
12 our current rules is very progressive. It was written in  
13 1993. So it is -- they just are amazed at how that -- the  
14 analysis that we require, and they believe that's a good  
15 analysis.

16 COMMISSIONER JARRETT: So basically  
17 everything you're asking for, I mean, as far as  
18 recommending is nothing really new, it's -- other states  
19 are using some combination of some of these things?

20 MS. MANTLE: Yes.

21 COMMISSIONER JARRETT: And you're not  
22 asking for anything like new goals that nobody's ever seen  
23 before?

24 MS. MANTLE: Not that I'm aware of, no.

25 COMMISSIONER JARRETT: Thank you, Lena.



1 JUDGE WOODRUFF: Commissioner Kenney?

2 COMMISSIONER KENNEY: Thank you for your  
3 presentation. I don't have any questions right now.

4 JUDGE WOODRUFF: Thank you, Ms. Mantle.

5 Next, then, we're going to have a presentation for the  
6 electric utilities. Mr. Wood.

7 MS. TATRO: Good morning. First I want to  
8 thank the Commission for the opportunity to have this  
9 discussion with you about the direction of the IRP  
10 rulemaking process and to say good morning to Commissioner  
11 Kenney, who I have not had the opportunity to meet. My  
12 name is Wendy Tatro, and I am an attorney for UE.

13 I wanted to start with kind of taking us  
14 back and reminding us all of the underlying legal  
15 principles that the Commission -- sets the Commission  
16 authority for rulemaking and actually for all of the  
17 decisions that it makes as a commission.

18 I've attended the workshops that Staff has  
19 held on this rule and seen the various proposals that have  
20 been made, and there's a divergent view of where this rule  
21 should go. So I think today's not on the record but  
22 transcribed proceeding is really important because it will  
23 shape, help shape going forward how the utilities and  
24 Staff and all the other parties hopefully can come  
25 together to come up with a better rule.

1                   So I wanted to start by going back through  
2 the history of the rulemaking shortly, of the current IRP  
3 rule and talk about the legal principles that enter. I  
4 had these rules were initially adopted in December of  
5 1992. I wasn't here. Lena was. Maybe it was '93, but  
6 around the same time frame.

7                   UE made its first filing, I believe, in  
8 December of '93. The next filing would have required them  
9 to file in '96, but that was extended for various reasons  
10 until 1999. Then there was a docket opened at the request  
11 of the Missouri utilities, which was EO-99-365, where the  
12 Missouri utilities filed to rescind the rules, and as a  
13 result of that, the rules were essentially suspended until  
14 December of 2005, which was when UE had to make, again  
15 being first, its next IRP filing.

16                  During all of that time, no changes were  
17 made to the IRP rules. So the rules we have today are the  
18 same as the rules that were adopted in 1993.

19                  So what was the Commission attempting to  
20 accomplish in that original rulemaking? I think that's an  
21 important question, and it goes right to the legal  
22 principles that underlie that. The Commission stated, the  
23 commission is of the belief that the IRP rules should be  
24 put in place to promote proper, accurate and increasingly  
25 necessary long-range planning.

1                   I don't think the utilities think that goal  
2     has changed. Long-range planning is important. We think  
3     it's important that the utilities have a robust process  
4     that thoroughly examines the options out there and allows  
5     us to make the best decisions necessary.

6                   However, the Commission importantly found  
7     one distinction, one aspect it was not attempting to  
8     intrude on when it in the same sentence continued, but not  
9     to dictate either the strategic decision itself or the  
10    decision-making process. And that's the distinction that  
11    the utilities, at least I can speak for UE, believe this  
12    Commission should uphold.

13                  Of course, the Commission's authority is  
14    very broad, and that's set by standard -- or by statute.  
15    You have broad authority to regulate utilities, but it is  
16    not unlimited, and we know these standards. You're a  
17    creature of statute, and the powers are limited to those  
18    conferred by the statute, either expressly or by clear  
19    implication as necessary to carry out the powers granted  
20    to you.

21                  The courts have held that neither  
22    convenience, expediency or necessity are proper matters  
23    for consideration in determining whether or not an act of  
24    the Commission is authorized by statute.

25                  The courts have also specifically held that

1 the Commission does not manage the utility, and I think  
2 that's an important distinction that plays into what Lena  
3 calls prescriptiveness of the IRP rules.

4                   There's a long line of cases. I don't know  
5 if this is the first one, but certainly this is a very  
6 early one from 1930, where the Missouri Supreme Court held  
7 that it must be kept in mind that the Commission's  
8 authority to regulate does not include the right to  
9 dictate the manner in which the company shall conduct its  
10 business. The company has a lawful right to manage its  
11 affairs and conduct its business in any way it may choose,  
12 provided that in doing so it does not injuriously affect  
13 the public. The customers of a public utility have a  
14 right to demand efficient service at a reasonable rate,  
15 but they have no right to dictate the methods which the  
16 utility must employ in the rendition of that service.

17                   And as I said, that's been upheld over  
18 time. In 1960 the courts held that the utility retains  
19 the lawful right to manage its own affairs and conduct its  
20 business as it may choose, as long as it performs its  
21 legal duty, complies with lawful regulation and does no  
22 harm to public welfare.

23                   In 1995, the Missouri courts again upheld  
24 the same principle. The powers of regulation delegated to  
25 the Commission are comprehensive and extend to every

1 conceivable source of corporate malfeasance. These powers  
2 do not, however, clothe the Commission with the general  
3 power of management incident to ownership.

4                   And this Commission has agreed with that  
5 principle time after time. In the late 1980s when the  
6 Federal Energy Regulatory Commission unbundled natural gas  
7 sales from transportation, this Commission opened a docket  
8 to look into that because the utility then had an  
9 obligation to procure gas separate from transportation,  
10 and the Commission opened a docket to examine if it should  
11 assert control over what process should be used by the  
12 utility.

13                   Ultimately the Commission recognized that  
14 the utility is the one who has the right to control  
15 management decisions, and it declined to set those  
16 standards. The Commission said, a company's choice of the  
17 appropriate mix of gas to procure is a management decision  
18 and is properly left to the company. They decided the mix  
19 of resources for a natural gas utility are properly left  
20 to the utility.

21                   And again, going back to the 1993 decision  
22 that implemented the rulemaking, the Commission upheld  
23 that standard and endorsed that distinction. The  
24 Commission said, this Commission is wary of assuming,  
25 either directly or in a de facto fashion, the management

1 prerogatives and responsibilities associated with  
2 strategic decision-making, preferring to allow utility  
3 management the flexibility to make both overall strategic  
4 planning decisions and more routine management decisions  
5 in a relatively unencumbered framework.

6                   And that's what the utilities, I think, are  
7 asking the Commission to endorse again. But there's a  
8 distinction there, and that's the prescriptiveness to  
9 which we object. What does that mean? Lena talked about  
10 different levels of prescriptiveness. I'll give you the  
11 interpretation of prescriptiveness when I use the word  
12 prescriptive, and I think as many of the utilities use the  
13 word prescriptive.

14                   Prescriptiveness is when the rule says to  
15 us, in order -- in order to -- it doesn't just say do load  
16 analysis. It says, in order to do load analysis, please  
17 do these 17 steps or 5 steps or 27 steps or whatever it  
18 is.

19                   And a rule that says you have to deliver to  
20 the Commission what your load analysis is, how you got  
21 there, is not a prescriptive one. It's not making the  
22 management decision. It's not saying how the management  
23 must analyze that load analysis. And that's the  
24 distinction which the utilities seek to uphold, and I  
25 think the decision, the path that the law leads you down.

1                   So in summary, the law is clear the  
2   Commission can't dictate the resource decisions of the  
3   utility or the resource decision-making process of the  
4   utility. Of course, you can ensure that the utility is  
5   engaging in a proper planning process. As this Commission  
6   said in the 19-- in the original rulemaking, the  
7   Commission reemphasizes that strategic decision-making  
8   itself has been left to the utilities.

9                   I won't read the whole thing.  
10   Specifically, the primary purpose of this proposed rule is  
11   to require the utility to quantify its judgments about the  
12   uncertainties in planning based on unknown future events.

13                  And that's the direction this rulemaking  
14   should take. If it's not as prescriptive, if it sets  
15   forth objectives and deliverables, then there's less need  
16   to amend it going forward as the world changes. The world  
17   isn't the same today as it was in 1992. There are changes  
18   that need to be made to the rules, and the utilities fully  
19   support that process.

20                  JUDGE WOODRUFF: Questions for Ms. Tatro.  
21   Commissioner Davis?

22                  COMMISSIONER DAVIS: I didn't have any  
23   questions, Ms. Tatro. I just did want to say that I  
24   thought the information that Ameren provided the -- the  
25   presentation by Rich Sedano to the New Mexico Commission

1 as well as copies of California's study I thought were  
2 very helpful.

3 MS. TATRO: Thank you.

4 JUDGE WOODRUFF: Commissioner Jarrett?

5 COMMISSIONER JARRETT: Thank you,  
6 Ms. Tatro. I don't have any questions, but I appreciate  
7 the presentation.

8 JUDGE WOODRUFF: Commissioner Kenney?

9 COMMISSIONER KENNEY: Thank you. It's very  
10 nice to meet you, but I don't have any questions.

11 MS. TATRO: Thank you.

12 MR. MICHELS: Good morning. I'd like to  
13 also thank the Commissioners for the time and an  
14 opportunity to speak this morning. My name is Matt  
15 Michels. I am the Managing Supervisor of Resource  
16 Planning for Ameren, working on resource planning  
17 specifically for AmerenUE.

18 Ms. Tatro has talked about the legal  
19 history and perspectives about where that guides us in  
20 this instance on revised rulemaking, and I'd like to talk  
21 a little bit more about the process, reasons, process and  
22 strategic and energy policy reasons for why we should go  
23 in that direction even if we didn't have that legal  
24 history and guidance to follow.

25 To do that, I'd like to talk about the



1 planning environment that we find ourselves in today,  
2 planning philosophy, and what we think are critical  
3 features of an IRP process, and I'd like to talk a little  
4 bit about Missouri's rules, what's going on in other  
5 states with respect to IRP, and some recommended actions  
6 that we believe we should move forward with in this  
7 process.

8                   The planning environment that we find  
9 ourselves in is much different than it was when the  
10 current rules were established in 1992-'93. We have  
11 renewable portfolio standards. We have efforts to reduce  
12 the emission of greenhouse gases, carbon dioxide. We have  
13 an aging coal fleet in Missouri providing 85 percent of  
14 our power. We have new technologies to consider. We also  
15 have a collection of technologies that we refer to as  
16 Smart Grid, and we have ever more stringent environmental  
17 requirements, and the pace of change continues to  
18 accelerate.

19                   So the importance and scope of resource  
20 planning has expanded and we expect will continue to  
21 expand. This greater complexity we think demands greater  
22 flexibility and transparency. Ms. Mantle in her  
23 presentation discussed, I think, this very concept that  
24 if -- we have to have this transparency, and we believe  
25 that in order to get that, along with it, you have to have

1 flexibility.

2                   Planning is conducted in stages, starting  
3 with a high level look, what do we think the market is  
4 going to look like, what do we expect our needs are going  
5 to be, moving into long-range planning, how might we meet  
6 those needs, and then getting business planning and  
7 finally project plans to execute those long-range plans or  
8 adjust them as needed.

9                   IRP really is the beginning of resource  
10 planning in that it is aligned with the goals of the  
11 utility and the state in terms of energy policy. It  
12 provides us insight on a wide range of potential options  
13 to meet future needs, and it sets the parameters for more  
14 refined decision-making as we move along the path to  
15 business plans and project plans in order to execute those  
16 decisions.

17                  Planning must become more rigorous as the  
18 decision approaches. I think everybody would agree with  
19 that. No matter what you're planning for, that's the  
20 case. So really we believe that the nature and timing of  
21 the decision drives the analysis.

22                  Critical features of an IRP process.  
23 No. 1, first and foremost, it has to be aligned with  
24 energy policy objectives. We've got examples of that.  
25 The renewable standard through Prop C, greenhouse gas

1 emissions with potential federal legislation, energy  
2 efficiency through SB 376 and others.

3                   Secondly, stakeholder interaction. We feel  
4 that with the ever increasing complex environment, that we  
5 need and depend on an exchange of views with the  
6 stakeholders to make sure that we get it right. We're  
7 talking about in some cases competing priorities when it  
8 comes to energy policy, and we need to make sure that we  
9 have an appropriate balance of those, and so those views  
10 are important to us.

11                   Also consider a broad range of demand-side  
12 and supply-side options. I think that's a given. That's  
13 not changed.

14                   Robust assessment of appropriate resource  
15 mix under uncertainty. That also has not changed. What  
16 has changed is, I believe, the options that we have  
17 available to us and the different requirements under which  
18 we're operating.

19                   The integration of environmental compliance  
20 strategies is increasing more important, especially when  
21 we're looking at our existing coal fleet. And linked to  
22 business planning process and the ability to incorporate  
23 changes as market conditions change.

24                   So resource planning must be focused on  
25 important questions. I talked about a link to the

1 business planning process. What does that look like? For  
2 AmerenUE, this is the way we look at it. That's  
3 integrated resource planning process in the center and the  
4 business planning process in the cycle around it.

5                   Looking at the business planning process,  
6 you start with developing strategies in the upper right  
7 quadrant, moving on to planning for performance, doing the  
8 budgeting and forecasting to implement those strategies,  
9 and then monitor performance to make sure you're getting  
10 the results that you expect and reevaluating the  
11 strategies to see if an adjustment needs to be made.

12                   That's a continuous cycle, and IRP sits at  
13 the center of that in that it feeds to and draws from the  
14 business planning process in order to make sure that we're  
15 moving forward in the proper way. So planning is a  
16 continuous process, driven by changes in market  
17 conditions.

18                   So we talked about the planning  
19 environment, the increasing complexity, the need for  
20 flexibility, how it needs to be integrated with business  
21 planning to take into account market changes, and so let's  
22 look at Missouri's IRP rules.

23                   Now, as was mentioned previously, these  
24 rules were adopted in late '92 or early '93, and they've  
25 worked fairly well for the state of Missouri. Some things

1   that they've done very well are to ensure consideration of  
2   a broad range of potential resource options, and embodied  
3   best practices at the time they were adopted.  Lena  
4   pointed out the risk analysis using formal decision  
5   analysis.  That was fairly new at the time it was brought  
6   into the process in the early 1990s.

7                   It also provided for the establishment of  
8   good utility resource planning, which maybe didn't exist  
9   before, at least not in this kind of an integrated  
10  fashion.

11                  And then we also benefited from input from  
12  various stakeholders.  This is something actually that has  
13  increased in recent years, and I believe in part in  
14  response to the increasing complexity of the planning  
15  environment.

16                  So we've done well under the rules as they  
17  existed, but we have this opportunity to improve on the  
18  rules, and we believe that in doing so we need to focus on  
19  a few things.  One is to focus more on outcomes rather  
20  than the process itself.  Another is to streamline the  
21  language and eliminate redundancy.  Ms. Mantle did talk a  
22  little about that and looking for ways to reduce the  
23  amount of confusion that's brought by the complexity of  
24  the language in the rules.

25                  Third is to minimize the prescriptiveness

1 of reporting requirements, and lastly, eliminate the  
2 prescriptiveness of analytical methods.

3                   Let me just talk for another moment about  
4 prescriptiveness. We see that there are essentially three  
5 classes of prescriptiveness. One is what you need to  
6 consider as part of IRP, the what. The second is how do  
7 you look at that, how do you analyze it. That's the how.  
8 And then finally is what were the results, tell us how  
9 you -- tell us what you got and how you got there. Those  
10 are the reporting requirements.

11                   And we believe that overly prescriptive  
12 rules can hinder effective resource planning. We have a  
13 couple of examples. One is the requirement to do end use  
14 load forecasting. We believe that this is something that  
15 is really left to the utility to determine whether or not  
16 that kind of forecasting methodology is appropriate or  
17 adds any value. I think we'll hear a little bit about  
18 that from the other utilities as well.

19                   Specifically in the last AmerenUE IRP,  
20 there was an example of an alleged deficiency around the  
21 provision of data on cumulative probability distribution  
22 for the performance measures used to assess the  
23 alternative plans in that AmerenUE provided only one set  
24 around one performance measure and not the rest, and the  
25 reasoning for that, that it was clear from the data that

1 we had as we did the analysis that it was not necessary.  
2 The Commission found in its Order that it was not  
3 necessary and that it was not the Commission's intent to  
4 require unnecessary analysis just to satisfy the letter of  
5 the rules.

6                   So we look at Missouri's IRP rules, and I  
7 think it's important to look at the context of Missouri's  
8 IRP rules process in terms of what's going on in other  
9 states. Commissioner Davis, you mentioned the studies  
10 that were provided, the presentation from Richard Sedano,  
11 which was actually presented as part of New Mexico's  
12 integrated resource plan rule review, and then also  
13 surveys that were used as part of California's review that  
14 is ongoing now.

15                   Those surveys and studies found that there  
16 were a wide range of approaches to integrated resource  
17 planning. Now, in looking at that, it seemed like the  
18 different approaches fell into roughly three categories.  
19 Now, these are my terms. I made them up. But in  
20 reviewing the results of those surveys, it appeared that  
21 you had a process compliance approach, which is used by  
22 Montana and Washington, and which is also where the  
23 current Missouri rule would fit. You also have what I  
24 categorized as a strategic collaborative approach in which  
25 the plans and the approval process are focused on the

1 plans themselves.

2                   And then you also have procurement  
3 approval, which is what Georgia and California do where  
4 they have specific rules around the RFP requirements and  
5 such, and appears to also be the way that California is  
6 headed with a two-stage approach where they do high level  
7 resource planning and then get into the procurement  
8 approval separately.

9                   So these are sort of the three approaches  
10 that we found. Different objectives for that approach  
11 means a different focus for the process. If you look at  
12 the process compliance approach and compare that to  
13 strategic collaborative, it's more to me a difference in  
14 the focus than it is a difference in what the ultimate  
15 finding is at the end. You can focus on the process, how  
16 you did it. You can also focus on the results. I'm going  
17 to talk about that a little more in a second here.

18                   States that have recently revised their IRP  
19 rules have started with KEY objectives, primarily energy  
20 policy objectives of the state and then guiding principles  
21 in order to inform their rulemaking process. In short,  
22 function must lead form when developing the rules.

23                   We did look at a few states in particular  
24 in a little more detail as far as how their rules work,  
25 what the different -- what the different features are of



1    their rules.  There is an appendix in the back of this  
2    presentation that has a little more information about each  
3    of these states.  All created their -- all six of these  
4    states, Oregon, New Mexico, Oklahoma, North Carolina and  
5    Minnesota, have revised their rules in the last five  
6    years.

7                   Oregon is the only of these six states that  
8    has retail choice, which is limited to business customers.  
9    And none include procurement approval as part of their IRP  
10   as Georgia and Colorado do and as California appears to be  
11   headed toward.

12                   Key findings in looking at the rules from  
13   these other states.  Most do specify a short-term action  
14   plan of two to five years.  Some do allow for Commission  
15   acknowledgement of a utility's plan.  This was also  
16   mentioned earlier, and the definition of acknowledgement  
17   in these cases is the Commission found the plans to be  
18   reasonable given the circumstances at the time they were  
19   prepared.

20                   Now, that may say sound to some a lot like  
21   preapproval if that's the finding that is included in the  
22   Commission's order, but the rules in these states go on to  
23   say that acknowledgement of a plan in the IRP process does  
24   not mean preapproval or a finding of prudence at that  
25   stage and that that finding is left for the ratemaking

1 process or for another process after the IRP.

2 All of them require annual updates and/or  
3 notifications of changes of those six states. Oregon is  
4 the only one that requires both. Arkansas' is actually  
5 not an annual update. It's a midpoint in the three-year  
6 cycle, so every 18 months.

7 And the reporting requirements are largely  
8 generalized in that they won't say you need to have this  
9 table or this plot. It will just say the utility will  
10 provide information that supports its finding about load  
11 forecasting, what demand side resources are appropriate  
12 and such.

13 Finally, none of them include requirements  
14 to use specific analysis methods. So the conclusion that  
15 we draw from this is that other states prescribe what to  
16 consider but not how.

17 So this has led us to choose the following  
18 criteria that we believe should be used in determining  
19 what the appropriate approach to IRP is. No. 1, it needs  
20 be a meaningful process and result. This means focus on  
21 outcomes, and also leveraging stakeholder involvement for  
22 dialog on critical issues, again, something that's very  
23 important as the environment becomes more complex in the  
24 energy industry.

25 Secondly, flexibility. Allow the utility

1 to continuously adapt to changes in market conditions, and  
2 that might mean something like looking at short-term  
3 decisions, long-term options, rather than necessarily  
4 looking at the long-term plan as the final word.

5 Third, encourage innovation in methods.  
6 Specify detailed requirements only where they add value,  
7 and recognizing the increasingly complex planning  
8 environment in which we find ourselves.

9 Third, there needs to be an equitable  
10 balance of accountability between utilities, regulators  
11 and stakeholders as part of the process. The process  
12 again must be meaningful for all involved. Stakeholders  
13 provide input and feedback on plans and decisions. The  
14 utility board of directors has the final decision on the  
15 preferred resource plan, and the Public Service Commission  
16 approves ratemaking treatment.

17 And then finally availability of options  
18 for cost recovery determinations outside of IRP. This is  
19 something that may appear at first a little bit out of  
20 left field in the context of my remarks, but we will hear  
21 from other utilities that would like to have this as an  
22 option. We just want to ensure that it is an option and  
23 is not part of the standard IRP approach.

24 So to summarize, we find ourselves in an  
25 increasingly complex energy environment. This demands

1 greater flexibility as well as transparency. Planning  
2 must focus on important questions. The nature of the  
3 decision drives the analysis, and the rule should promote  
4 effective planning, flexibility, meaningful process and  
5 result, equitable accountability, and leave ratemaking  
6 treatment to other processes.

7 Recommended actions from our perspective  
8 are these: Thorough discussion and resolution of the  
9 approach to IRP. Second, we believe it is important to  
10 look in more depth at what other states are doing to find  
11 out if there might be things that we need to incorporate  
12 into our rules to promote effective planning, so to  
13 conduct an in-depth survey -- in-depth survey of selected  
14 state IRP processes.

15 Third, establish a set of guiding  
16 principles, consistent with the selected approach, to  
17 inform the development of the rules. And then finally  
18 adjust the approach accordingly.

19 That's the appendix with the additional  
20 information. I have copies that I can hand out.

21 JUDGE WOODRUFF: Thank you, Mr. Michels.  
22 Questions for Mr. Michels. Commissioner Davis?

23 COMMISSIONER DAVIS: All right.  
24 Mr. Michels, you heard Ms. Mantle's presentation. Where  
25 do you think you agree with Ms. Mantle? Where do you

1 disagree with Ms. Mantle?

2 MR. MICHELS: Let's start with what she  
3 said about what direction she believes that we need from  
4 the Public Service Commission on this. I think we have a  
5 lot of agreement, if not total agreement in that regard.  
6 The level of prescriptiveness, the type of approval, that  
7 we don't want to just follow a checklist approach. We  
8 believe it needs to be flexible as well as transparent,  
9 and that it needs to ensure that it is able to factor in  
10 the need to look at renewable portfolio standard,  
11 compliance with SB 376, and other energy policies of the  
12 state of Missouri. So I think we have total agreement on  
13 those.

14 Regarding the problems with the current  
15 process, I think she mentioned a couple of things. One  
16 was restrictions on the information that is to be  
17 provided. That's something that we would have to  
18 certainly work out as part of the rulemaking process to  
19 ensure that the stakeholders get the information they need  
20 throughout the process.

21 We've heard a couple of suggestions about  
22 how that might occur, including a staged approach to the  
23 IRP filing where there is early review of the filing prior  
24 to making it so that we can get input and make adjustments  
25 accordingly. I don't think we have a problem with that,

1 and the annual update process, although there are some  
2 varying opinions as to how that should look.

3 She also mentioned that the fuel adjustment  
4 clause may skew the analysis. I don't -- I don't see how  
5 that could really skew the analysis. The way we do the  
6 analysis requires that we model rate cases every year. So  
7 the FAC is just a change in timing. I don't see that that  
8 would really affect the way the results would look.

9 When she talked about alternatives, she  
10 talked about setting principles and objectives, and that  
11 was specific to each portion of the rule. I think we need  
12 to go higher than that and understand what the principles  
13 and objectives are for the entire IRP process. I think  
14 that's it.

15 COMMISSIONER DAVIS: Now, can I skip over  
16 and see if Ms. Mantle has anything that she would like to  
17 add there? Did you agree with that synopsis? Did you  
18 disagree? Is there anything else that you would add?

19 MS. MANTLE: I agree with a lot of it, but  
20 I don't agree with -- we have had problems with the  
21 ability to get information, and I don't know how you  
22 come -- how you come to an agreement about that. That is  
23 one area of great contention among the parties.

24 I don't agree that the process isn't  
25 important, all that's important is the outcome, which is

1 the statement that I believe was made, because a lot of  
2 information's learned in the planning process itself.  
3 That provides valuable information, not to stakeholders,  
4 but to the utilities themselves.

5 I'm concerned that he wants to start all  
6 over from scratch because they've been pushing this for  
7 the past three or four years to get something done, and I  
8 guess that would be some guidance from you guys, too. If  
9 you tell us let's start over from scratch, we'll do it.  
10 I don't believe that our rules are that far off base that  
11 we need to start over from scratch, start with guiding  
12 principles. The Commission gave them to us when the rules  
13 were adopted, and I believe those still stand.

14 We will work with the stakeholders, utility  
15 and non-utility stakeholders to implement what we're asked  
16 to implement.

17 COMMISSIONER DAVIS: Well, Ms. Mantle, I  
18 don't mean to be facetious here, but I mean, we only know  
19 what you and the other parties are presenting to us, so --  
20 and I'm -- I'm just trying to figure out, you know, how we  
21 give you the guidance that you need without, you know,  
22 thoroughly going through.

23 And I think -- honestly, I think the  
24 information that at least Mr. Michels has put in from the  
25 California report and from New Mexico I think are very

1 helpful.

2                   And I guess when we hired a consultant, I  
3 assumed that the consultant would do that, you know, we  
4 would kind of have a little bit different process than  
5 what has evolved. I mean, you had the stakeholder  
6 meetings, which I think are good, but I'm concerned that  
7 there hasn't been much analysis as to what the rest of the  
8 United States is doing. I'll leave it at that. I'll go  
9 back to Mr. Michels.

10                   Is there one state -- I mean, you seem to  
11 have reviewed all these rules. Is there one state whose  
12 rules that you would point to us to look at?

13                   MR. MICHELS: If I just had to pick a  
14 couple, I think I would start with probably Oregon and  
15 maybe North Carolina. And the reason I say that is -- and  
16 North Carolina may be problematic in that they do have a  
17 separate procurement approval process, so they do have a  
18 feature that we don't have to deal with.

19                   But I think that the level of detail that  
20 is in those two rules and the way they approach it I think  
21 represent an appropriate level of detail. They talk about  
22 what you need to look at and what you need to tell the  
23 Commission and not involve how you need to do the  
24 analysis. That's true for all of those.

25                   Some of those states maybe don't have



1 enough detail. Oklahoma's rule is three pages long, the  
2 entire rule, and I don't know that we'd get enough  
3 guidance from a rule like that in order to know what, you  
4 know, how far you need to look and what to report.

5                   So I think I'd start with those two states,  
6 but there are features in all of them that I think might  
7 be beneficial if we made a full review and had a full  
8 discussion among all stakeholders.

9                   COMMISSIONER DAVIS: Mr. Michels, do you  
10 think we ought to approve the process or approve the plan,  
11 or do you think there ought to be some hybrid where for,  
12 you know, anything less than a billion dollars or three  
13 times operating -- gross operating revenues or whatever,  
14 we approve the process, but if you decide to go out and  
15 take on a really big project, again, should we be  
16 approving that early?

17                   MR. MICHELS: I haven't thought much about  
18 the idea of a threshold. When it comes to looking at the  
19 process or looking at the plan as far as what gets  
20 approved, I think approving the plan definitely changes  
21 the focus on the outcome, but I think you can also  
22 essentially get to focus on the outcome without  
23 necessarily saying that the plan is approved.

24                   I think some of the problems that we've run  
25 into with some of the information requests that Ms. Mantle

1 was talking about is that the rule is so prescriptive, I  
2 think it may become easier to interpret that as an  
3 exhaustive list, and if it's not on there, then it's not  
4 required. I think if we move to something that is less  
5 prescriptive, then I think that focuses more on the  
6 outcomes necessarily, but I think it also helps to advance  
7 the need for transparency.

8 COMMISSIONER DAVIS: You agree that  
9 transparency is important?

10 MR. MICHELS: Yes.

11 COMMISSIONER DAVIS: My impression from  
12 having listened to some of the other parties is they -- we  
13 just want to know how you get to that recommendation. Not  
14 saying that you do this, but, you know, there is a concern  
15 that when utility people sit in a room, engineers who  
16 build coal plants tend to favor coal. Engineers who work  
17 with nuclear plants tend to like nuclear. I mean,  
18 there's, you know, not many people who are fond of  
19 renewables who have worked their way up through the food  
20 chain in many public utilities.

21 If we're not going to have a prescriptive  
22 process, how do we know what you're thinking and your  
23 thought processes into how you made your decisions?

24 MR. MICHELS: I think the thought process  
25 is necessarily an important part of the IRP process and

1 the IRP filing itself. I think you can get to that with a  
2 general requirement that says the utility shall conduct  
3 analyses at sufficient rigor to ensure that the decisions  
4 being made are appropriate and shall provide information  
5 to the level of detail in order to explain how the  
6 decision was reached. I don't think you necessarily need  
7 to have all those steps of that process laid out in the  
8 rules to accomplish it.

9                   With respect to the general need for  
10 transparency and more information sharing, I think we've  
11 been moving in that direction, but the stakeholder  
12 process, I think the ideas around providing more during  
13 the process are -- are something that we would be  
14 interested in discussing. I think the annual update,  
15 although maybe in a different form than is being  
16 contemplated, is an important process as well.

17                   So that's -- that's generally the way I  
18 think about it in terms of how to satisfy the need for the  
19 information without necessarily stating every single  
20 requirement in the rule.

21                   COMMISSIONER DAVIS: You would agree that  
22 any key assumptions need to be disclosed?

23                   MR. MICHELS: I would agree with that.

24                   COMMISSIONER DAVIS: And how would you feel  
25 about a prefiling? I know you talked about bringing the

1 other potentially interested parties in early.

2 MR. MICHELS: Uh-huh.

3 COMMISSIONER DAVIS: And I guess where did  
4 you envision them coming in at?

5 MR. MICHELS: I think you might be talking  
6 about the proposal that NRDC included in its filed  
7 comments. If not, it sounds similar to what they're  
8 talking about in which the utility would file a, quote,  
9 plan for the plan.

10 I think it would be a good idea actually to  
11 come to the Commission early in the process, and by early  
12 in the process I mean perhaps a year prior to the filing,  
13 and talk about what important issues do we need to be  
14 talking at this point. You know, we have guidance through  
15 various legislation with respect to energy policy, but,  
16 you know, given that, what are the key issues that we need  
17 to be confronting at that time?

18 I think that would be a good process to  
19 involve everyone in, all the stakeholders.

20 COMMISSIONER DAVIS: And do you think if we  
21 had that sort of prefiling meeting approximately a year  
22 out, then if Staff had any concerns about modeling or -- I  
23 mean, do you think those issues could be cleared up there  
24 or --

25 MR. MICHELS: I don't think necessarily

1   that early in the process, because really in a lot of ways  
2   the decisions you find yourself making as you go through  
3   the analysis will drive you in different directions about  
4   how you look at it.

5                   What I think it would do, having that  
6   discussion early in the process, is really frame what are  
7   the important issues that we need to be looking at, and it  
8   goes again to focusing on the outcome rather than the  
9   process.

10                  COMMISSIONER DAVIS:  Okay.  And can you  
11   understand as -- can you understand my concern here just a  
12   little bit that there probably needs to be some agreement  
13   on methodology up front?  Because I don't want my  
14   employees to run around here pulling out their hair trying  
15   to figure out what assumptions you've made or how  
16   different things are going to be calculated and then  
17   having an absolute battle over, you know, how the -- how  
18   different forecasts are modeled, et cetera.

19                  MR. MICHELS:  Certainly.  And I think a lot  
20   of that could be addressed up front.  The things that I'm  
21   talking about are more the nature of changes that you  
22   would have to make in midstream because you are finding  
23   some outcomes that you didn't necessarily expect up front,  
24   and potentially getting bogged down in the process of  
25   saying, well, instead of doing what's in the rules, we

1 believe that we need to do this. That's the piece that  
2 concerns me.

3 But I believe that for the most part, I  
4 think we get agreement established up front about  
5 generally certain methods that we're going to use.  
6 Certainly in the pieces that are prior to the integration  
7 analysis where you're looking at the load forecasting,  
8 you're looking at supply side alternatives, you're looking  
9 at demand side alternatives, I think those you can do up  
10 front.

11 What I'd be more concerned with is, okay,  
12 now we're getting into the analysis where we say which  
13 ones are the best options and what are the risks involved  
14 that we might want to diverge from what the rules  
15 currently say.

16 COMMISSIONER DAVIS: You're of the opinion  
17 that -- I think the current rule says basically you  
18 analyze all options and that could just be -- there's just  
19 no way. We have a lot more available to us than when the  
20 original rule was drafted 15, 16 years ago?

21 MR. MICHELS: We do, but I think we can  
22 analyze everything that's reasonable. If we're focused on  
23 outcomes as part of the process, I think you get away from  
24 maybe some of the onerous requests to look at every  
25 possible option, because, you know, then those things are

1     marginalized.  If you have this discussion up front about  
2     what are the really important decisions that we have to  
3     make, I think that also kind of bounds the problem with  
4     that.

5                     COMMISSIONER DAVIS:  Thank you,  
6     Mr. Michels.

7                     JUDGE WOODRUFF:  Commissioner Gunn?

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

10                    JUDGE WOODRUFF:  Commissioner Kenney?

11                    COMMISSIONER KENNEY:  No, thank you.

12                    JUDGE WOODRUFF:  Thank you, Mr. Michels.

13                    MR. DOTTHEIM:  Judge?

14                    JUDGE WOODRUFF:  Yes.

15                    MR. DOTTHEIM:  I was wondering if I might  
16     have a minute or two to address some items that  
17     Commissioner Davis raised --

18                    JUDGE WOODRUFF:  Go right ahead.

19                    MR. DOTTHEIM:  -- or inquired about.

20                    COMMISSIONER DAVIS:  Certainly.  I'd love  
21     to hear from you, Mr. Dottheim.

22                    MR. DOTTHEIM:  Thank you.  A number of  
23     matters.  The consultant that the Staff retained is the  
24     same consultant that the Staff utilized for the original  
25     rulemaking in 1992-1993.  We had a very good experience

1 back then. We think -- we think we're having a very good  
2 experience working with that individual and his firm this  
3 time. Dr. Proctor was very much involved, if the  
4 Commissioners are not aware, if it would make any  
5 difference or if it means anything, was very much  
6 involved, was one of the principals in the fashioning of  
7 the original Chapter 22.

8                   In the revisions that the Staff submitted  
9 to all of the participants, the Staff was only able to  
10 utilize Dr. Proctor in particular regarding the  
11 transmission and distribution rule. That is the one item  
12 which is truly almost in whole cloth new as far as this  
13 revision is concerned.

14                   The Staff from its perspective believes  
15 that the Staff consultant has appropriate knowledge of  
16 resource planning rules in other jurisdictions. The  
17 Staff's goal has not been and was not originally in  
18 '92-'93 to do a survey and settle upon some median based  
19 upon all the rules in the country or what was being  
20 discussed in the country as the most appropriate rule for  
21 Missouri.

22                   The Staff has attempted through this  
23 revision process to draw out the utilities in particular  
24 into the process, into proposing alternative language.  
25 The Staff has not been terribly successful in that until



1 recently. In fact, at the last workshop, if my memory is  
2 correct, and I'm quite sure I'll be corrected if I  
3 misstate this, we were told by Union Electric Company that  
4 we had not received a great amount of input from them  
5 previously because they were busy putting together the  
6 rate increase case that they had shortly before the last  
7 workshop filed.

8                   So those are some other facets that the  
9 Commission at least from the Staff's perspective should be  
10 aware of.

11                   The Commissioners were just told a couple  
12 of minutes ago that, for example, the Oklahoma Commission  
13 has an electric resource planning rule that is three pages  
14 long. Well, I think it's maybe a little longer than that.  
15 Not much. Maybe four pages.

16                   But there is an additional rule, at least  
17 one additional rule. I am not an expert on the Oklahoma  
18 rules, but maybe I am considering what the definition of  
19 an expert is. I guess maybe I am an expert on the  
20 Oklahoma rules.

21                   COMMISSIONER DAVIS: It's a low threshold,  
22 Mr. Dottheim. You can qualify.

23                   MR. DOTTHEIM: Yes. Thank you. Thank you.  
24 In fact, Mr. Lumley, who is here today, is an expert on  
25 the Oklahoma rules because he has suggested to the

1 participants who are working on the revisions of  
2 Chapter 22 that the Missouri Commission adopt one of the  
3 rules in Oklahoma which is not part of the Oklahoma  
4 electric resource planning rules but could be. It's a  
5 rule on competitive procurement, and part of the rule, a  
6 couple of sentences, all utilities shall employ a  
7 competitive bidding process when purchasing long-term  
8 electric generation or long-term fuel supply for self  
9 generation of electricity. The competitive bidding  
10 process shall be open to Commission scrutiny as are other  
11 regulated utility practices.

12 Well, in Missouri the process used by  
13 Missouri jurisdictional electric utilities for purchasing  
14 long-term electric generation, long-term fuel supply is  
15 open to scrutiny, but not the type of scrutiny that they  
16 have in Oklahoma where on the panel for competitive bids,  
17 the Oklahoma Corporation Commission is part of the panel  
18 that sits in evaluating the competitive bids.

19 The Missouri Staff does not function in  
20 that manner regarding Missouri electric jurisdictional  
21 utilities, and the Missouri Staff is not interested in  
22 functioning in that manner.

23 So when the Commissioners are given a  
24 survey in these presentations and references are made to  
25 Oklahoma or New Mexico or North Carolina, there is a great

1 deal of detail and specificity in those rules that, by the  
2 mere fact that we have such a short period of time, they  
3 have to be glossed over.

4                   And I would say that in the presentation  
5 just completed it was said that there's no procurement  
6 approval in Oklahoma. Well, when I look at this  
7 competitive procurement rule in Oklahoma where the  
8 Oklahoma Corporation Commission participates in the  
9 competitive review process, I'm not too sure that I'd say  
10 that in Oklahoma there's no procurement approval by the  
11 Oklahoma Corporation Commission.

12                   So that's all I'd like to add at this  
13 point. Thank you for your indulgence.

14                   JUDGE WOODRUFF: Thank you. Further  
15 presentation from the utilities?

16                   MR. KIDWELL: Chairman Clayton, members of  
17 the Commission, good morning. My name is Steve Kidwell.  
18 I'm Vice President of Regulatory Affairs and Energy  
19 Efficiency for AmerenUE. I want to thank you for this  
20 opportunity to speak to you.

21                   In the interest of keeping this away from a  
22 death panel, I have no PowerPoints. I just have a half  
23 page of notes, and I've actually crossed one of those out.  
24 I'll try to make this as quick as I can.

25                   I've been at this a long time, as have

1 many people who are here today. 1986 I sent an  
2 application in to the -- to Union Electric Company at that  
3 point, and my boss told me that the reason I got a job as  
4 an assistant engineer is because I put integrated resource  
5 planning in the first two lines of my -- of my resume. So  
6 I go back about as far as Jerry Mendl does with the  
7 Wisconsin process and advanced plans and things like that.

8                   And I'd also like to give you just a little  
9 bit of a background on me before I give you a couple of  
10 bullets here. I am first and foremost a physicist.  
11 That's where my bachelor's degree is. I also have a  
12 master's in nuclear engineering from University of  
13 Wisconsin at Madison. I also have a master's in  
14 environmental studies from the University of Wisconsin at  
15 Madison. So I'm pretty sure I'm one of the few people,  
16 maybe the only one, certainly the only one I know of,  
17 that's both a nuclear engineer and an environmental  
18 scientist. I've also got an MBA from Washington  
19 University.

20                   So I try to look at this in a, what I hope  
21 is a pretty balanced way in terms of trying to apply  
22 energy policy to the decisions of an electric utility.

23                   And one of the main reasons I'm here myself  
24 today is I want to reenforce just with my presence that  
25 AmerenUE takes this process very seriously, that we want

1 to do the best job we can of expressing our business  
2 planning process in the integrated resource plans that we  
3 provide to this Commission.

4 I am the senior officer at UE responsible  
5 for this process on Warner Baxter's behalf, and so I want  
6 to make sure I hear from the participants in today's  
7 proceeding and understand, you know, what their concerns  
8 are and hopefully move this toward -- and certainly hear  
9 what your direction's going to be out of this proceeding  
10 and take it in a direction that's going to get us to a  
11 good rule for Missouri.

12 I also want to say that I really  
13 appreciated Lena Mantle's presentation this morning.  
14 There were some new concepts there. Lena admitted that  
15 there were some concepts that we hadn't had time to work  
16 through in the stakeholder process. I think that's fine,  
17 because what it indicated to me is that Lena and the Staff  
18 are listening to the concerns that the utilities have  
19 raised.

20 We -- I'll just speak for AmerenUE -- went  
21 through a couple of these workshops, and we felt that the  
22 process was going toward an even more prescriptive rule  
23 than we already have, which we thought was the wrong way  
24 to go. And that's where -- when we kind of called at  
25 least on our part a little halt to the process, a little

1 bit of a let's check and see where we're going, and sent a  
2 letter to Staff, which I'm sure wasn't an easy letter to  
3 get. But the result has been a better workshop the last  
4 time and the proceeding that we're having today.

5                   So I think the process is on track. Staff  
6 is listening, and we will definitely do everything we can  
7 to listen to the parties as we go forward here.

8                   So it's an important process. It works  
9 best when our business planning process, as I said, is  
10 aligned with State policy. And you have a major role in  
11 terms of implementing, interpreting and implementing State  
12 energy policy in the decisions you make. So we want to  
13 hear from you.

14                   And I guess the -- in terms of -- Wendy  
15 gave you, I think, the legal background. I think the key  
16 point from Wendy's presentation is it's our feeling that  
17 at the end of the day this is our decision. Okay. We  
18 have the accountability for the decision. We have  
19 accountability for the ratemaking, for the rate cases that  
20 come after this process. That being said, we want it to  
21 be a consultive process.

22                   We've talked about transparency. I want to  
23 enter into the framework a little bit the word consultive.  
24 What I mean by that is getting stakeholder input, getting  
25 input from the Commission at points in the process where

1 it really has the opportunity to influence the results. I  
2 think that's what you should take away from what Matt said  
3 in particular.

4 The idea of perhaps having an actual  
5 filing, Commissioner Davis and Matt talked about this, the  
6 idea of having a filing early in the process where we go  
7 through and we get Commission input on what the key issues  
8 are that we should frame up in the integrated resource  
9 plan, I think that's a great idea.

10 I've heard a little bit this morning  
11 about -- KCPL may talk about this a little bit more -- the  
12 idea of having a filing that happens before we do the  
13 integration analysis, after we've done the supply and  
14 demand side resource analysis but before risk analysis and  
15 integration. I think that's a good idea that warrants  
16 some consideration.

17 The main thing that we are asking for is,  
18 in return for that consultive process, we look out at what  
19 other states are doing, and we see a much more outcomes  
20 results-based approach, and we think that the rules in  
21 Missouri should take a look at those approaches and  
22 seriously consider adopting them. We think that some form  
23 of that is something that we should adopt.

24 And the final thing is that flexibility is  
25 important. You have three different utilities. They're

1 in three different places in terms of their resource  
2 acquisition strategy. And so we do need to work up front  
3 with stakeholders, but we need to recognize that whatever  
4 rules get adopted need to have flexibility for different  
5 analytical approaches based on the specific situations of  
6 the utility.

7                   Process is important. That's why I think a  
8 consultive approach is so critical here. We had 30  
9 stakeholder meetings with our last IRP. I want to make  
10 sure that those are more effective than they were the last  
11 time, quite honestly. So the process is important.  
12 Prescriptiveness in the rules is most likely in most cases  
13 not important, especially if you have a good consultive  
14 process.

15                   The idea of acknowledgement that has been  
16 already brought up and I think will be brought up again  
17 today, that's something to seriously consider. That could  
18 be a good balancing point between making sure that the  
19 Commission has input into the decision-making process, it  
20 gives its opinion, but really leaves the ultimate  
21 management decisions to the utility as Wendy identified is  
22 really the tradition in Missouri.

23                   And that's really it. It's an important  
24 process. We want to have a good one. We already have a  
25 pretty good one. I want to make sure you guys realize



1     that.  We do.  And Lena said that the risk analysis piece  
2     of what we put in place in 1992 largely with Mike  
3     Proctor's direction, that was good stuff.  You know, it's  
4     still good stuff.  It can use updating, but it was  
5     visionary.  And it is a good rule.  It can be better.

6                     With that, I'll stop and take your  
7     questions.

8                     JUDGE WOODRUFF:  Mr. Chairman?

9                     CHAIRMAN CLAYTON:  I'd rather wait, unless  
10    somebody's leaving.

11                    MR. KIDWELL:  No.  I'll be here.

12                    JUDGE WOODRUFF:  Commissioner Davis?

13                    COMMISSIONER DAVIS:  I don't think I have  
14    any questions.  Thank you.

15                    JUDGE WOODRUFF:  Commissioner Gunn?

16                    COMMISSIONER GUNN:  I don't have any  
17    questions.  I agree with you to a certain extent.  I don't  
18    think we are in the business of making business decisions  
19    for the utilities.  What my main concern is, is not --  
20    it's not a prescriptive versus outcome process to me.  
21    It's more is the process meaningful, which means both  
22    process and the outcome.

23                    And so you can have a very prescriptive  
24    rule that doesn't give a meaningful outcome because all  
25    people do is check the boxes and file it, and then it

1 encourages two sets of planning, the real one and then the  
2 one that they have to follow.

3 MR. KIDWELL: Exactly.

4 COMMISSIONER GUNN: In the same manner, you  
5 can have not a very prescriptive process and you get  
6 exactly the same result. So I think our goal here is to  
7 make sure that -- and I do think it's a mistake to  
8 concentrate on how prescriptive the process is as opposed  
9 to making the process kind of not meaningful.

10 I think what we really need to focus on is  
11 how do we make the entire thing, because as Ms. Mantle  
12 stated very clearly, the process in and itself gets very  
13 important information and is very, very important. And so  
14 all we have to do to make sure is that the prescriptions  
15 in the rule mean something.

16 And I think that -- I think that that part  
17 of this process, it is our job to go through and  
18 determine, okay, is this a -- is this a check the box kind  
19 of prescription where nobody really cares or it doesn't  
20 really end up with something, or is it meaningful? Does  
21 it have meaning? I think that's what we're going to  
22 struggle with right now.

23 I appreciate your comments, and I thank you  
24 for participating, and I thank everybody for participating  
25 in the process. Hopefully we'll continue the

1 collaborative process that we've started.

2 MR. KIDWELL: Commissioner, could I make  
3 one response?

4 COMMISSIONER GUNN: Sure.

5 MR. KIDWELL: I think what I'm trying to  
6 say is that if we make the process more consultive, if we  
7 have maybe some earlier consultations with the Commission,  
8 if we make some earlier filings, if we -- if we have a  
9 clear idea of what the deliverables are, then I think the  
10 stakeholder process itself, which is already pretty  
11 robust, could focus in on specific methodology needs, the  
12 specific analytical needs of a plan at the right time  
13 earlier in the process maybe than we do right now and have  
14 it be more influential on actually what happens. So  
15 that's where I'm coming from.

16 COMMISSIONER GUNN: That's all I have.

17 JUDGE WOODRUFF: Commissioner Kenney?

18 COMMISSIONER KENNEY: No, thank you.

19 JUDGE WOODRUFF: Thank you. Further  
20 presentation for the utilities.

21 MR. TARTER: My name is Todd Tarter. I'm  
22 Manager of Strategic Planning for the Empire District  
23 Electric Company, and I have been participating in the  
24 workshop for Empire, and I've worked on our last IRP that  
25 we filed in '07, and I'm working on the one that we're

1 going to file in 2010. So I kind of go through a lot of  
2 the different areas. I'm kind of more coming at it from  
3 an analyst perspective perhaps.

4                   On my first slide I've got kind of an  
5 overview or review of the current IRP rule in Missouri.  
6 There's -- I list the different sections of the rule and  
7 also the proposed addition in transmission and  
8 distribution analysis that's new. It's a very long  
9 process. It's very time consuming, very costly process,  
10 and takes -- I think in the workshop we found that it  
11 takes about a year to do the analysis for this IRP.

12                   As far as the workshop process to date,  
13 whenever we found out that the rule revision workshop was  
14 going to take place, we were very happy to participate  
15 because we think that the rules do need revised. In some  
16 areas I think some of the things that are in the rule have  
17 kind of fallen out of date. It's also, as has been  
18 mentioned, very prescriptive.

19                   So when we began reviewing the rules, the  
20 first couple workshops we looked at what I call the new  
21 rule or a current draft of it, and I realize at this point  
22 that it is just a draft and it's not done yet, but it  
23 looked like we kind of started from the old rule, which  
24 was what we were trying to get away from, and we were --  
25 just became a reworking of the old rule with in some cases

1 more prescriptive additions were added.

2                   Parties have had the opportunity to respond  
3 to a couple sets of Staff questions. So those are out on  
4 EFIS, or at least I think the last set is on EFIS if  
5 anybody would like to look at those.

6                   At the last workshop we began working a  
7 little different approach, I think, and it was based on  
8 more of objectives and goals, and on EFIS that would be  
9 referenced as the straw man objectives. And I was pleased  
10 to see the direction that we went on that. I thought that  
11 that was a move in the right direction. So I applaud  
12 Staff for making that move.

13                   Then brings us to the presentations that we  
14 have today, and our next scheduled workshop will be in  
15 September.

16                   As far as Empire's suggestions, we think  
17 that a fresh approach is needed. I mean, while we're in  
18 the process of revising the rules, I think it's good to  
19 take a new look at it. We think that it should be more  
20 than just revising the current old rules and adding more  
21 things. We think that that's not necessarily the best  
22 approach.

23                   We think that the new rule should be less  
24 prescriptive and more objective or goal oriented. And  
25 what we mean by that I think we've talked a lot about this

1 morning, that it should be -- concentrate more on what the  
2 goals and the objectives are and not necessarily be a  
3 detailed, step-by-step process of how to get there. We  
4 think there can be some benefits from this, such as  
5 reducing the waiver process, which does take a lot of time  
6 and is costly, and it can reduce or eliminate possibility  
7 of the rule becoming outdated.

8                   In addition to that, we think that  
9 flexibility is important. Not necessarily just in  
10 addition to that, but probably as a result of that. We  
11 think that a rule that incorporates best practices is  
12 important so that as things evolve you can make changes  
13 without having to go back and revise the rule.

14                   And we think it's important to recognize  
15 the differences in the utilities. I kind of think today  
16 with the current rule we have kind of a one size fits all  
17 rule, and the utilities are different. For example, a  
18 larger utility may do a different type of load forecasting  
19 than a smaller utility would do. So there are  
20 differences, and different types of analysis makes sense  
21 for different utilities.

22                   We also think it's important to streamline  
23 and make the rule more efficient. I think it's important,  
24 since you're revising the rule, instead of just starting  
25 with an old rule, I think it's important to take a look at

1 everything that's in the rule and say, is this really  
2 important to the core objectives of the planning process?  
3 In other words, focus on what's important. As I  
4 mentioned, it takes about a year to do this analysis. We  
5 don't really have a very agile rule at this point, and  
6 it's hard to make updates.

7                   Eliminate the redundancy. I think Ameren  
8 mentioned that. Something that hasn't been mentioned that  
9 I'll mention is, I think it's important to eliminate what  
10 I call the side analysis, the things that aren't really  
11 critical, and some of these are -- I think I've got an  
12 example of a few of them. Sometimes we're asked to do,  
13 like, quantify the value of better information.

14                   I kind of think that sometimes the IRP rule  
15 has sort of become kind of a catchall in some instances  
16 where they're -- something like, well, that would be kind  
17 of nice to have, so let's include it in the IRP rule. And  
18 because of that, when you add a little bit here, a little  
19 bit there, then you end up with a very cumbersome process.

20                   And I think the complexity issue's been  
21 talked about this morning. We think it's important to be  
22 less complex and easier to understand. It's very  
23 difficult right now to give this rule to somebody, have  
24 them read it and really understand what they're supposed  
25 to be doing. I think Staff mentioned the complexity issue

1 this morning as far as structuring it better and putting  
2 it more in this is what you do first and so forth.

3                   Okay. On my next slide I've got the slide  
4 I started with in the beginning, and I thought that I  
5 would try to go through an example. I've got the load  
6 analysis and forecasting, which is kind of the place where  
7 you start, and that's where Empire's working right now on  
8 their next IRP. So I've got an example on the next side,  
9 what I mean by a goals and objectives oriented approach.

10                   In the box there I've got a very simple  
11 load forecasting objective, and it's simply to generate a  
12 20-year class level forecast by month with a base high and  
13 low scenario. Essentially that's what we're trying to do  
14 with the rule, but I think that we've in the process of --  
15 we've come together and made this very complex.

16                   In an objective or goal oriented approach,  
17 I think that you state the objective but not necessarily  
18 all the step-by-step processes that it takes to get it  
19 there, as was mentioned this morning.

20                   In the current rule, it does prescribe a  
21 very specific forecasting method called in-use  
22 forecasting, and that's something that has fallen out of  
23 favor in the industry. It's really not done today, and  
24 that's one of the reasons why we're probably revising the  
25 rules because things tend to get outdated. It also has a



1 lot of -- several specific requirements on filing  
2 requirements and things of that nature.

3                   The current draft of the new rule, which is  
4 just a draft, of course, it started with the current rule,  
5 made some revisions, and a load analysis and forecasting  
6 area actually added some things.

7                   The next side, I'm doing a comparison of  
8 some of the rules. We talked about other states this  
9 morning. And I've got the Arkansas and Oklahoma rule just  
10 in the load analysis and forecasting area. Now, granted,  
11 those two states don't talk a lot about the load analysis.  
12 It's more driven toward the load forecasting.

13                   I'm not saying that we have to do exactly  
14 like the other states are doing, but I do think it's  
15 important to take a look at what some other states have  
16 done. The reason I chose these two states is because  
17 Empire is somewhat familiar with these because we file  
18 plans in those two states.

19                   Also, we did look at the Oklahoma IRP rule  
20 in one of the workshops, and we've mentioned the Arkansas  
21 rule in the workshops.

22                   So just in the load analysis and  
23 forecasting section, in that chart I showed that the  
24 Missouri, the current IRP rule that we have, it's about 70  
25 paragraphs are dedicated to load analysis and forecasting,

1 or over 2,600 words. In the current draft of the new  
2 rule, there's still around 70 paragraphs and around 3,640  
3 words. And I didn't count every word. I just took an  
4 average per line and counted the lines.

5 In the Arkansas IRP rule, it's about three  
6 sentences or 42 words. In the Oklahoma IRP rule, it's one  
7 sentence, or about six words. So the point here is,  
8 there's differences.

9 Another point I think that speaks to the  
10 level of complexity that we've got in our rule, and I  
11 think part of that complexity comes from the level of  
12 prescription in there, in the process and how the  
13 deliverables are. In fact, as I mentioned there, the load  
14 analysis and forecasting section of the current Missouri  
15 IRP rule is more than twice as long as the entire Arkansas  
16 IRP rule and nearly two and a half times longer than the  
17 entire Oklahoma IRP rule.

18 Some key issues. This is kind of where I  
19 think that we're at in the workshop process. Of course,  
20 some new ideas are coming out all the time, but I think  
21 we're at kind of a crossroads where we need to decide on  
22 which way we're going to go, and it may be some type of a  
23 hybrid. I'm not sure. For example, the existing rule,  
24 which is more of a highly prescriptive rule versus the new  
25 approach, it's more flexible and goal oriented.

1                   Defining the objectives I think's another  
2    thing we have to do regardless of the approach. The  
3    filing requirements have been mentioned today. I think  
4    we're pretty much in agreement that full compliance filing  
5    every three years is appropriate, and that's what we have  
6    now.

7                   The new rule does introduce annual updates,  
8    which is not in the current rule. What I would say there  
9    is, I think it would be very difficult or impossible to do  
10   under, say, the current way we do things and very  
11   difficult to do under the new rules the way it's written  
12   right now. However, I do think that there -- there may be  
13   some -- like I said, the rules are complicated and  
14   sometimes hard to understand.

15                  I think that there's -- what Staff is  
16    suggesting and what maybe the utilities are reading is  
17    maybe a little different, it appears to be. We have  
18    talked about other approaches that does seem to be doable  
19    for an annual update, but I would focus on the important  
20    thing there to remember, I think, is it should be  
21    something that goes along with our planning process that  
22    we already have in place and doesn't add additional cost.

23                  And then there's the new transmission and  
24    distribution analysis rule. I don't -- I've never worked  
25    with the transmission and distribution analysis. Other

1 people at Empire do. But it's Empire's philosophy that  
2 given the role of the RTOs, it should be eliminated or  
3 minimized from the current IRP.

4 And then the other area is transparency,  
5 the communication issue we talked about. Empire believes  
6 that it should be a transparent process, and we would work  
7 hard to get the information the stakeholders need.

8 And the conclusion, a lot of it I've  
9 already said, but objective/goal oriented, less  
10 prescription, more flexible, less complex, more  
11 streamlined.

12 And we think that there would be some  
13 benefits from this approach. Provide a better, more  
14 efficient, more agile process. Deliver timely, useful  
15 information to everybody. Enable the use of best  
16 practices to achieve the goals and objectives and create a  
17 more cost-effective process. That's probably something we  
18 haven't talked a lot about is trying to cut down on the  
19 cost, too, of this process.

20 Thank you.

21 JUDGE WOODRUFF: Questions for Mr. Tarter.  
22 Commissioner Davis?

23 COMMISSIONER DAVIS: Mr. Tarter, not to  
24 disparage people from Arkansas or Oklahoma because I might  
25 be related to some of them, but you're not suggesting that

1 we look to Arkansas or Oklahoma's models, maybe here and  
2 there, but not in the sum total of their rules, are you?

3 MR. TARTER: No. We mentioned those  
4 because they've been mentioned in the workshop and we're  
5 familiar with those rules. The point there was not  
6 necessarily that we adopt theirs in total, but I think  
7 it's important to look at those and the way that they've  
8 approached it, where it's more objective based and they  
9 really don't prescribe the exact method.

10 It's probably going to be somewhere between  
11 where the current rule is and where they're at. I think  
12 we're going to be somewhere in between there.

13 COMMISSIONER DAVIS: Okay. Thank you,  
14 Mr. Tarter.

15 JUDGE WOODRUFF: Commissioner Gunn?

16 COMMISSIONER GUNN: Just a quick question.  
17 If we don't agree on the methodology, then how do you  
18 propose evaluation or verification of the outcomes? Is  
19 that information provided at some point or is it just in  
20 the planning process we think it kind of --

21 MR. TARTER: I think -- I think that there  
22 is an evaluation as far as have you met the goal of what  
23 the planning process that you've got. And I think there's  
24 been some mention today about stakeholder involvement,  
25 different levels of the process. So, for example, if we

1    were planning on doing a, I'll use the load forecasting  
2    example, a certain methodology, we would have shared that  
3    information with the stakeholders prior to filing it so  
4    they've had an opportunity to comment on that, which is  
5    what we do now, in fact.

6                   COMMISSIONER GUNN: All right. The concern  
7    is that -- is that you don't go to first -- you know, you  
8    score a run, but you didn't go from first to third, you  
9    know, you didn't touch second base in order to get the  
10   actual results or the objective.

11                   And I don't disagree with that, that  
12   ultimately that's what you're trying to focus on, but we  
13   just need to make sure that the steps taken in order to  
14   get to that objective has an evaluation -- has the ability  
15   to be evaluated to make sure that the methodology work is  
16   correct. Maybe that's done before the process where  
17   everybody kind of generally agrees on something that's  
18   happened or earlier in the process and then we build in  
19   the flexibility. I don't know the answer to that. I  
20   appreciate the preparation. Thank you.

21                   JUDGE WOODRUFF: Commissioner Kenney?

22                   COMMISSIONER KENNEY: No, thank you.

23                   JUDGE WOODRUFF: Thank you, sir.

24                   MR. TARTER: Thank you.

25                   JUDGE WOODRUFF: Further from the

1     utilities.

2                     MR. OPENFUSS:   Hello.   My is Jim Openfuss.  
3     I'm the Manager of Fundamental Analysis at Kansas City  
4     Power & Light, and I'd like to present the suggestions for  
5     Chapter 22 revisions for both Kansas City Power & Light  
6     and for KCP&L Greater Missouri Operations, formerly known  
7     as Aquila.

8                     We were happy to be part of the workshop  
9     process, too, and we're really glad that we're getting an  
10    opportunity to explain our positions and to be heard and  
11    to hear also what the intervenors have said, and we think  
12    we're coming together with a better process internally,  
13    and that's -- that's always been kind of the goal that  
14    we've had in our group, the group that actually produces  
15    this stack of paper that might fall over and crush Lena in  
16    just a minute there.

17                    We have one overarching goal.   We want what  
18    we produce to be valuable.   I have a lot of people that  
19    work for me.   We put a lot of time in.   We want to know  
20    what we're doing has value.   That's for personal -- from a  
21    personal point of view, that's what I'm most concerned  
22    about.

23                    Going into how the companies feel about  
24    what's going on, for a little bit of background, and this  
25    is going to sound repetitive, but the integrated resource

1 plan, as you know, is defined in the current Chapter 22.  
2 Our company, currently we file two separate IRPs. We file  
3 one for Kansas City Power & Light and one for the Greater  
4 Missouri Operations. So I'm probably the only person in  
5 the room who has, I guess, filed two IRPs and I've done it  
6 in the last 13 months.

7                   So we were pretty busy in the last  
8 workshop. We actually couldn't attend because we were  
9 busy producing the other half of that stack over there.  
10 But we really felt bad that we couldn't be there as part  
11 of it. But we were happy to answer the questions, the  
12 August 4th questions that came up, and we have some  
13 detailed responses to that that we can find on EFIS.

14                   But I'd like the time that I have here to  
15 talk with you to kind of discuss at high level what some  
16 of our concerns are on this -- on the following slides.

17                   The current Commission policy goal, as we  
18 understand it in our company, established by the rules is  
19 that the Commission is trying to set some minimum  
20 standards for the scope and the objectiveness of the  
21 resource planning process, and all that is done to ensure  
22 that the public interest is adequately served, and we  
23 have -- we're fully behind that.

24                   However, there's a little codicil within  
25 the first objective, and that is that the compliance with



1 the rule does not result in Commission approval of any  
2 plan, strategy or investment decision. That's absolutely  
3 clear. We understand it. But it provides for us  
4 sometimes a little bit of thought that maybe the value of  
5 what we're actually working on is being taken away.

6                   The stated objective is to provide the  
7 public with energy services that are safe, reliable and  
8 efficient at just and reasonable rates. Once again, we're  
9 fully behind that. As a company, we understand that one  
10 of the best things we can do to stay in business in the  
11 long run is to be good to our customers and we should put  
12 our customers first, and we see no objective differences  
13 in the objectives long-term of the operation of the  
14 company or the Commission's goals.

15                   Under the current fundamental requirements,  
16 we're specifically asked to minimize the present worth of  
17 long-run utility costs as the primary selection criteria  
18 whenever we come up with our preferred plan. We are also  
19 asked to consider and analyze demand side management as if  
20 they were -- or on equal footing to all of our other  
21 supply options or requirement options.

22                   We are also asked to identify and analyze  
23 factors that are critical to meeting the fundamental  
24 objective of the resource plan. So we also have to look  
25 at those things that may negatively impact the

1 minimization of long-run utility costs. So we look at  
2 those things associated with alternative resource plans.  
3 We look at new, more stringent environmental rules, and we  
4 are always looking at what were the rate increases  
5 associated with those different alternative plans.

6                   So what's changed since 1963 (sic)? The  
7 first answer is absolutely nothing. Utilities still need  
8 to conduct planning to ensure that the public interest is  
9 adequately served. We still need to provide the public  
10 with energy services that are safe, reliable, efficient.  
11 We still need to minimize long-run utility costs. It's  
12 absolutely a must. We still need to look at demand side  
13 efficiency and energy management systems, and we also need  
14 to identify all the risks that we see to our plans and to  
15 be able to modify those plans as conditions change. This  
16 is within the current rule. This still is extremely  
17 valid.

18                   But what's changed since 1993 is absolutely  
19 everything. Technology has changed. For planning  
20 analysis, there are different analytical tools that are  
21 available. On energy delivery, we have transmission and  
22 distribution concerns, the Smart Grid being one of the  
23 main issues there. For demand side efficiency and  
24 management, we have new rules and laws asking us to  
25 consider energy efficiency in different ways. We have new

1 markets for electric power and emission products, the new  
2 emission products being like the new renewable energy  
3 market that will be formed under Prop C. The RTOs also  
4 provide a new level of organization that didn't exist in  
5 1993.

6                   For environmental concerns, we have new  
7 federal mandates. We have renewable energy standards laws  
8 that are coming into play. We have potential cap and  
9 trade legislation. That all would impact how we operate  
10 as a company greatly and would affect our plans to a high  
11 degree.

12                   We also have different risks that are out  
13 there. We have a different financial world than we had  
14 back in 1993. Under generation we have a whole new list  
15 of technologies that exist and some that are being  
16 obligated that we look into, such as solar and other  
17 renewable energy. We also have environmental requirements  
18 that we're going to need to look at in our operations, say  
19 like zebra muscle control and other concerns. So a lot  
20 has changed since 1993.

21                   So what needs to change in the rule?  
22 Absolutely nothing. The current rule, planning process  
23 that ensure the public interest is adequately served is as  
24 valid today as it was in 1993.

25                   The current objective to provide the public

1 with energy services that are safe, reliable and efficient  
2 at just and reasonable rates is just as valid today as it  
3 was in 1993.

4                   What needs to change in the rule is  
5 everything. We need to take a look at the focus from what  
6 we didn't do when we were drafting up our pile of paper to  
7 the plan. We feel that we need more of a focus on the  
8 objectives that are set out in the rule rather than on  
9 worrying about how our reports are going to be received  
10 and what deficiencies we might try to avoid.

11                   We feel that the IRP needs to help us  
12 mitigate risks associated with large projects. So we need  
13 a mechanism to use our IRP to be able to seek approval and  
14 to proceed with specific projects. This could be within  
15 the IRP. It could be a separate process but still relying  
16 on the IRP.

17                   And what would be the results of these  
18 changes? This process could become, would absolutely  
19 become our strategic planning process. There wouldn't be  
20 this risk of a dual process. The final report would be an  
21 opportunity for the Staff and the stakeholders to be able  
22 to review and actually share in some of the development of  
23 our plan. The final product would be our resource  
24 strategy.

25                   Now, currently in the rule one of the main

1 outcomes of this is a resource acquisition strategy that  
2 we feel is probably one of the most value added components  
3 of the whole IRP. It's a three-year detailed look at how  
4 are we looking ahead. We can use this adequately analyze  
5 the risk associated with conducting this strategy, and we  
6 can provide all the stakeholders with the information that  
7 they need to assist us in achieving safe, reliable  
8 electricity in accordance with the law.

9                   Currently in the IRP, and I can speak from  
10 my own personal experience here, the process is a long  
11 checklist of items to complete. Many of the requests for  
12 data provide little or no value of the primary objective  
13 of the process. Differing interpretations of the rules by  
14 various parties can lead to generating deficiencies.

15                   If I might, maybe an example. Though this  
16 was resolved, we had the initial concern that our  
17 interpretation of the rule stating that we could provide  
18 risk by range or risk by combinations of outcomes caused  
19 some concern. That or we used in the next IRP that we  
20 did, we in our minds changed it to an and. So we provided  
21 both types of information just to make certain that we  
22 wouldn't be -- there wouldn't be a potential conflict or  
23 potential deficiency.

24                   So under the -- under the current rule,  
25 because of its prescriptive nature in certain areas, it

1 can lead to some deficiencies which either causes more of  
2 a request to -- or more requests for waivers up front or  
3 in the post-filing process, having more deficiencies to  
4 work through.

5 But as the utilities are beginning to go  
6 through the current rule, these known issues can be  
7 handled in a waiver process, and the waiver process is  
8 becoming a little more streamlined, a little more routine.

9 The proposed IRP rule has addressed several  
10 of these issues, and a lot of the -- a lot of the points  
11 that we have brought up in our waivers were removed, and  
12 we saw a good effort at taking those issues out. However,  
13 the proposed IRP process lengthens the checklist of tasks  
14 to complete overall. Once again, these differing  
15 interpretations of these rules can lead to generating  
16 deficiencies.

17 Many of the new issues being addressed  
18 which are being included in the IRP rule, the proposed  
19 rule, have little in common with the primary objective.  
20 And I have some examples here. Like, for example, using  
21 the IRP process to conduct analysis in support of other  
22 objectives.

23 Now, we've heard a lot that our rules are  
24 being integrated with the renewable energy standard rules,  
25 the Chapter 20 rules. I think I'm alone in this room

1 thinking that we aren't doing it right. We are  
2 prescribing in the IRP rule a methodology that may or may  
3 not, depending on your interpretation of the law, make --  
4 meet with the requirements of Chapter 20. Maybe it might  
5 be better that if there is a requirement for analysis in  
6 Chapter 20, that the Chapter 20 rule define what that  
7 analysis is and not just assume that the IRP will take  
8 care of it.

9                   So we have to kind of worry about a little  
10 bit of that sort of cross rule issue maybe coming to task.  
11 And we defined a few of these conflicts a little bit more  
12 in our EFIS filing if you want to, or I can -- I'm  
13 available for any questions later, too.

14                   But I'd like to summarize up by having  
15 three proposals from the -- from the companies. First is  
16 a high level. We would like the Commission to basically  
17 write out the rule as a set of goals and high level  
18 objectives for each section, so what are the rules of  
19 the -- of the load forecasting? What is the rule, what is  
20 the objective of doing the DSM analysis? What is the  
21 objective of doing a supply analysis? And require the  
22 companies to develop at that time the best methods by  
23 which we can achieve these goals.

24                   Now, the companies would still be required  
25 to submit their findings to all the stakeholders who will

1 be able to comment on how well the companies are meeting  
2 those rules. We're not -- we want transparency. That  
3 makes this work.

4                   It allows the Commission and the companies  
5 to focus still, though, on high-value information for its  
6 stakeholders, and the Commission will define what's -- so  
7 basically the Commission defines what information is  
8 needed, not how the company is to calculate or plot it.

9                   Proposal 2, and two other people, Lena  
10 included, tried to steal our thunder here by telling us  
11 about this. That's okay. We forgive you. The utilities  
12 would maybe go ahead and submit subject matter to the  
13 stakeholders in staggered time frames.

14                   There are three particular rules, the load  
15 analysis, the supply side and demand side volumes, that  
16 are quite lengthy, and they provide a lot of the input  
17 into the integrated and risk analysis, and how the  
18 integrated and risk analysis is going to develop its  
19 outcome depends greatly on the assumptions done in the  
20 preceding analysis.

21                   That's a good point at which we might be  
22 able to develop some sort of quality check, if you will,  
23 or a frame where we can see if we can get stakeholder  
24 input or buy-in or agreement that they understand why we  
25 have gone where we've gone. The lion's share of our



1 deficiencies in our KCP&L filings that we had from all  
2 stakeholders across the spectrum were on these particular  
3 three rules.

4                   Now, if we think about this logically as  
5 these being inputs into the final integrated and risk  
6 analysis, we have the old programming problem of garbage  
7 in garbage out. Well, if we make certain that garbage  
8 doesn't go in, we're less likely to have garbage come out.

9                   So we think that this would be a good way  
10 to maybe add transparency to the system, add quality to  
11 the system, and to allow that the output that comes out to  
12 have a higher value.

13                   And from my own personal point of view, it  
14 puts the spotlight on the integrated analysis and the risk  
15 analysis associated with it, which does produce our  
16 preferred plan and our resource acquisition strategy.

17                   Our third proposal is concerning the point  
18 of the annual updates. We think that periodic stakeholder  
19 IRP advisory meetings at least on an annual basis would be  
20 the way to go. We agree there should be some sort of an  
21 annual update, some sort of annual process, but once  
22 again, like everyone else has said, we kind of disagree on  
23 what form that update should take.

24                   But we think that the advisory meeting  
25 method would be a way that we can present and renew our

1 resource planning status, our methodologies and  
2 assumptions and other issues. We also think that the  
3 continuation of the three-year formal filing would be  
4 acceptable.

5 And that's the end of our presentation.

6 JUDGE WOODRUFF: Thank you. Questions for  
7 Mr. Openfuss. Commissioner Davis?

8 COMMISSIONER DAVIS: No questions. Thank  
9 you, Mr. Openfuss.

10 JUDGE WOODRUFF: Commissioner Gunn?

11 COMMISSIONER GUNN: Just two quick ones.

12 And it goes back to -- the first question's about the  
13 Chapter 20, the difference between the IRP and the  
14 Chapter 20.

15 MR. OPENFUSS: Yes.

16 COMMISSIONER GUNN: So in your opinion, we  
17 should make sure that there might be something similar  
18 filed when you have a Chapter 20 issue, but we shouldn't  
19 rely on the fact that the IRP is going to completely  
20 comply or take care of all the requirements in that rule?

21 MR. OPENFUSS: If I may elaborate?

22 COMMISSIONER GUNN: Sure.

23 MR. OPENFUSS: In the Prop C language, it  
24 specifies that a -- the compliance planning for the  
25 renewable energy standard should be benchmarked a plan,

1 quote, entirely without renewable energy. Now, that exact  
2 quote isn't exactly used in the IRP language of the  
3 definition of their alternative that is in Chapter 22  
4 that's supposed to support Chapter 20. So the definition  
5 of the benchmark plan in Chapter 22 may or may not,  
6 because it's been heavily prescribed, meet the needs of  
7 what's in Chapter 20.

8                   What I would suggest is, if a plan is  
9 needed of this nature, that in Chapter 22 it's defined and  
10 all Chapter -- I'm sorry. In Chapter 20 it's defined, but  
11 in Chapter 22 it merely says produce a plan in support of  
12 Chapter 20.

13                   COMMISSIONER GUNN: So the issue is with  
14 the Chapter 20 rule, not --

15                   MR. OPENFUSS: It's in the language.

16                   COMMISSIONER GUNN: And then the second is,  
17 you were -- and I don't remember exactly what part you  
18 were talking about, but when you were talking about  
19 projects, project approval from the Commission and that  
20 one of the benefits of this IRP is dealing with that,  
21 would you -- are you saying that if a project was approved  
22 as -- or in the IRP there were certain projects that were  
23 listed, large projects that were listed, that it would  
24 sort of be -- almost have a presumption that it would be  
25 approved by the Commission as you went forward or --

1                   MR. OPENFUSS: No. Basically, the rule as  
2 written only speaks of the fact that the process is not an  
3 absolute approval.

4                   COMMISSIONER GUNN: Right.

5                   MR. OPENFUSS: But what I think would be  
6 helpful would be language to the effect that would say --  
7 or will be helpful is that there would be an option for  
8 the utility to request some level approval for some part  
9 of its plan, and it's incumbent on the utility to make its  
10 case, but that it's not -- but the Commission is not  
11 provided from opening up that discussion. Now, that may  
12 be needed within the IRP rule or it may be needed without.

13                  COMMISSIONER GUNN: So within the rule, if  
14 you were going to focus -- a new technology came around  
15 that was going to take care of all your load generation  
16 and that was what everything was focused around, then we  
17 could in the IRP process say, look, if you want to build  
18 this, we think it's -- we think it's appropriate, and we  
19 could within the rule set out our level of preapproval, if  
20 you will?

21                  MR. OPENFUSS: Or basically how it would  
22 work is the utility would request some level that it feels  
23 that it would need in order to be able to secure  
24 financing, to do what it would need, and then it would be  
25 incumbent upon the utility to make its case, but the

1 Commission wouldn't be required or obligated to approve  
2 that.

3 COMMISSIONER GUNN: All right. Thanks.  
4 Appreciate the clarification. I don't have anything else.

5 JUDGE WOODRUFF: Commissioner Kenney?

6 COMMISSIONER KENNEY: No. Thank you.

7 JUDGE WOODRUFF: Thank you, sir. Was that  
8 the last presentation, then, for the utilities?

9 All right. We're due for a break. We'll  
10 take a break now. We'll come back at -- I'll give you 20  
11 minutes. Come back at 11:30.

12 (A BREAK WAS TAKEN.)

13 JUDGE WOODRUFF: Let's come to order,  
14 please. Welcome back. Just procedurally what I plan to  
15 do next is, I believe the electric utilities are finished,  
16 so we'll be moving on down the list to Public Counsel. I  
17 anticipate running 'til about 12:30 and then break for  
18 lunch, then come back and finish up this afternoon.

19 I might also mention that we're going to  
20 add Dogwood Energy at the end behind Noranda to get them  
21 in here also. So let's go ahead and get started then with  
22 Public Counsel.

23 MR. KIND: Good morning. My name is Ryan  
24 Kind. I'm the Chief Energy Economist at the Office of the  
25 Public Counsel, and I'm glad to be included in this

1 proceeding today, or whatever it is it's called, and have  
2 an opportunity to get engaged in this dialog.

3 I thought I would start out by just  
4 providing a brief overview of Public Counsel's involvement  
5 and my own personal involvement in the IRP rule and the  
6 review of utility filings pursuant to the IRP rule.

7 The involvement of the Public Counsel and  
8 my own personal involvement began with the rulemaking for  
9 the IRP rule in the early 1990s that other people have  
10 referred to today, which has resulted in the current rule  
11 that's been unchanged since that time. Since that time in  
12 the early 1990s, the Office of Public Counsel has reviewed  
13 and provided comments on, I believe, every full IRP filing  
14 that's been made pursuant to the rules beginning with the  
15 initial filing of the Union Electric Company in 1993.

16 We have also been participating in the rule  
17 revision process that's been ongoing with the stakeholder  
18 meetings that have taken place and reviewing documents  
19 that have been sent out. And I guess to some extent,  
20 we've been involved even prior to this recent stakeholder  
21 process. There was a Commission roundtable on IRP rules  
22 several years ago. I made a presentation at that as well  
23 as many of the other stakeholders who have an interest in  
24 this area.

25 I guess I'll start off moving from our

1 background to just talking about our sort of a general  
2 view of the current informal IRP revision workshops that  
3 have been taking place. I have to say that after a recent  
4 experience of our office and myself personally in seeing  
5 the utilities extensively involved in generally  
6 constructive engagement in other recent rulemakings like  
7 the FAC rulemaking, the ECRM rulemaking process we've been  
8 generally disappointed to see much more of a sort of a  
9 distant engagement taking place by -- by the utilities in  
10 these workshops.

11                   It seems that utilities have generally been  
12 reluctant to really engage in a constructive dialog about  
13 the specific language of the current rules and to really  
14 engage in specific back and forth of suggestions about how  
15 we might improve the language to better serve the purposes  
16 of the IRP rule based on the experiences that we've had  
17 over the last 15 years or so, and also, of course, a  
18 dialog about how to best update the rules based on that  
19 experience and other developments that have taken place.

20                   The general approach that we've seen so far  
21 from the utilities in the workshops, at least in the first  
22 couple of them, was just sort of as we go through each  
23 section of the Staff's proposed revisions to the rule and  
24 look at them section by section, we see representatives of  
25 the utility companies sort of get up to speak and there

1 was sort of just a lot of very similar comments, we don't  
2 understand this requirement or why is this being added to  
3 the rule.

4                   And by describing what occurred, I'm not  
5 trying to say that those aren't legitimate questions for  
6 stakeholders and particularly utilities to be asking, but  
7 when those kinds of comments aren't coupled with some  
8 specific suggestions on how we can move forward on some  
9 specific language that we could all have, you know,  
10 consensus about, it's made it difficult to move towards  
11 really consensus, I believe, in terms of what will come  
12 out of this informal process.

13                   And I've been sort of surprised that even  
14 at some of these workshops some of our, you know, the  
15 largest utilities, which certainly have a lot more  
16 resources than the office that I work for, have not even  
17 had any of their technical or management staff present to  
18 engage in the dialog, and, of course, it's difficult to  
19 engage in a dialog about the specific substance of the  
20 rules when there's no one sitting on the other side of the  
21 table.

22                   And again, this approach that I've seen in  
23 this rulemaking has really differed pretty drastically  
24 than the type of involvement that I saw from utilities in  
25 other recent rulemakings. And, of course, when I say that



1     utilities have not really provided any feedback, well,  
2     within the last week or two we have seen some more rather  
3     concrete feedback from utilities, but the -- I think the  
4     Staff had to make some rather extraordinary efforts I'd  
5     have to say in order to solicit that feedback, and I don't  
6     really understand why that was necessary.

7                     So -- but now that we've received this  
8     feedback, I think we are beginning to see the kind of  
9     details in terms of differences in specific sections of  
10    the rule for whether it's requiring certain methods of  
11    analyses or certain reporting requirements, and hopefully  
12    that will help us be able to move forward in future  
13    workshops.

14                    You know, from the perspective of our  
15    office, we -- we don't have really an unlimited amount of  
16    resources to work on whether it's rulemaking workshops or  
17    important rate cases that are -- are going on and others  
18    that we expect to be filed pretty soon. So we're hoping  
19    that while it may have taken us four years to get to that  
20    point, it won't be that long before we actually get  
21    something concrete come out of this process.

22                    So where are we today? We're at a  
23    situation where I believe this -- this meeting or  
24    proceeding we're having here today was requested by the  
25    Staff. They were interested in getting some feedback from

1 Commissioners on the views that they've been hearing from  
2 different stakeholders about, really not -- I don't think  
3 it's feedback so much on the specific provisions of the  
4 rule, although some of those have been raised today maybe  
5 as examples, but more feedback on the general direction it  
6 seems that the Staff is seeking.

7                   And it seems that part of this need for  
8 this meeting has been really due to the fact that the  
9 Staff's had a hard -- such a hard time sort of, I heard  
10 the term this morning drawing out the utilities and what  
11 do they think about certain proposals. And I think that's  
12 part of what's precipitated the need for us to have this  
13 session here today.

14                   And the other factor is, to be fair,  
15 there's apparently a totally different perspective on the  
16 part of the utilities, and they assert that the current  
17 Missouri rule, it really needs to have a fundamental  
18 change in approach rather than just revising and updating  
19 the rule.

20                   And, of course, we've heard about, I know,  
21 from -- Mr. Michael's mentioned some other states  
22 specifically where he said they'd been revising their  
23 rules in the last few years. I'm actually not sure that  
24 was entirely correct. I think some of those rules were  
25 brand new in the last two years. So those states would

1 really be at a different point in the process of having  
2 resource planning in their state than Missouri is.

3                   For instance, if you have a state like  
4 Oklahoma that really never had an IRP rule 'til the last  
5 few years, and I don't think it's fair to say that here's  
6 what came out of their revised rule, and they're also in a  
7 much different situation. It's not like that's a state  
8 that had an experience of having a rule that they've been  
9 implementing and living with for, say, 10 or 15 years and  
10 then could gain from that experience of how well that  
11 worked.

12                   They pretty much, you know, have to look to  
13 outside sources as a starting point for how might we do  
14 this, and they have a really good reason to start from  
15 scratch, where I don't believe we have that same need in  
16 Missouri, and I think it really would be sort of a step  
17 backward. We could be really kind of discarding the  
18 experience that we've had with the old rule, which I've  
19 even heard utilities characterize as being generally  
20 beneficial today, and I would agree with that. It has  
21 been, I think, very positive for Missouri to have a rule  
22 in place.

23                   So it seems that in the stakeholder  
24 process, in the meetings that utilities are sort --  
25 mostly united, I would say, in their -- in their approach

1 to the workshops. I'm tempted to say coordinated, but of  
2 course I don't -- I don't attend their meetings to see the  
3 extent to which it is truly coordinated.

4 But the -- the main focus of this different  
5 approach that the utilities are talking about it seems  
6 like could be summed up in a couple of words, less  
7 prescriptive, and I guess we have sort of, you know, a  
8 courtroom prop here in front of Mr. Fischer that's maybe  
9 supposed to represent the prescriptiveness of our rules.

10 And I guess I'm wondering when I look at  
11 that stack, I'm thinking if that was the Great Plains GMO  
12 most recent filing, I don't think I got but maybe half of  
13 it because that's -- that's not what showed up in my  
14 office. So maybe that's two filings there. I didn't hear  
15 that particular detail today.

16 And I also heard, though, from the GMO  
17 person, Mr. Openfuss, who was speaking today about all  
18 that material that was generated by his group. Well, a  
19 lot of what's in those filings, it's not stuff that's  
20 really generated contemporaneous with creating the filing,  
21 as there are requirements, for instance, that you submit  
22 all your reports on market research and the DSM area that  
23 you've done since your last filing. So it's not all just  
24 created brand-new for this filing, and most of that --  
25 those market research reports aren't actually generated

1 within the utility there. They're generally things that  
2 come from consultants that they've worked on.

3 I guess I wanted to point out that the --  
4 what we've seen in this particular workshop proceeding of  
5 the utilities encouraging what they refer to as a less  
6 prescriptive approach is not something that's new, at  
7 least not to me. Since I went through the 1993 IRP  
8 process, I'm pretty familiar with hearing those two words  
9 as part of this process -- that process, and you will find  
10 those words, in fact, listed repeatedly in the  
11 Commission's Order of Rulemaking from the first IRP rule  
12 in terms of utility positions on what was in the rule.

13 of course, we had something kind of similar  
14 going on at that time where we had encouragement of less  
15 prescriptive rules at the same time we had at least some  
16 utilities suggesting that there ought to be some degree of  
17 preapproval in the process, which we have heard again  
18 today from at least KCPL and GMO.

19 And I guess in this -- within this  
20 workshop, when utilities say things should be less  
21 prescriptive, I know, I think one example I noted in  
22 Empire's -- one of their recent filings in response to  
23 Staff request, they suggested that we don't really even  
24 need to have apparently reporting requirements as part of  
25 a rule, that each utility could just determine what its

1 own IRP reporting requirements would be.

2 I guess as a stakeholder that is, you know,  
3 by statute supposed to represent the interests of the  
4 utility consumers, it just does not seem like a very  
5 workable process when the -- when the regulated monopolies  
6 themselves choose what information they're going to  
7 provide for you.

8 So the statements that rules are -- are too  
9 prescriptive, we heard that a lot, and -- and at least in  
10 the workshops, I think here today as well, we've heard  
11 that somehow that's going to lead to more innovation. I'm  
12 not sure what really valuable innovation I can imagine in  
13 resource planning filings. At least not the kind of  
14 innovation that would be helpful for having a public  
15 dialog about these important issues.

16 But I guess I'm thinking, well, there --  
17 there was a time when the prescriptiveness pretty much  
18 went away in Missouri while our rules were rescinded for  
19 about a five-year period, and I was at the Office of  
20 Public Counsel during that period, and I guess here's some  
21 of the things I noticed that maybe were chara -- could be  
22 characterized as innovation, innovations.

23 Well, we had an increased reliance on  
24 purchased power, failure to build new generation during  
25 that time period, and we had a strong focus of utilities

19 But I also thought, well, I do have some  
20 sense of what some Commissioners would like to see in this  
21 area because I've heard comments from Commissioners over  
22 the last few years about some things that they've --  
23 observations they've made about the current IRP process in  
24 Missouri.

25 And I'll start out with a comment that I

1 heard Commissioner Gunn make at the May 27, 2009 agenda  
2 session, where he noted the weakness in the Missouri IRP  
3 process due to apparently there being two separate  
4 processes going on, the IRP with what he characterized as  
5 minimal rule requirements and the actual planning process  
6 that occurs at the utility, and I think we heard a little  
7 additional discussion of that today.

8                   And -- and then also at the same meeting  
9 he, I think, expressed some frustration at not knowing  
10 what's going on at the utilities in between the once every  
11 three year filings, and I can certainly understand that  
12 frustration from Public Counsel's perspective as well.  
13 It's not just being in the Commissioner position where  
14 that can occur.

15                   I noted that Commissioner Clayton at the  
16 February 25th, 2009 Senate committee hearing on SB 228  
17 noted that he -- he -- he observed the current rule was  
18 flawed and thought it would be rewritten so it can have  
19 what he characterized as more teeth.

20                   And just one other comment of our current  
21 Commissioners I noted was a comment of Commissioner Davis  
22 at the June 6th, 2006 agenda meeting, during the  
23 discussion of the Order of Rulemaking for the new FAC  
24 rule, where he said that, you know, as we were talking  
25 about moving forward with the FAC rule and talked about,



10 I thought I would talk a little bit about  
11 what seems to be working well with the existing IRP rule  
12 process, because I think there's a lot to be said for it.  
13 I think the existing process, it contains a fair amount of  
14 flexibility already in that there are flexibilities to use  
15 variances, say, in response to different methods of  
16 calculating avoided cost for demand side management or in  
17 response to new risk analysis techniques that have become  
18 more common in the electric utility industry.

25 For instance, just the -- the exchanges

1   that we've had with some of our utilities about new risk  
2   analysis techniques in the process of those variances,  
3   what we've heard about as being sort of the lengthy costly  
4   variance process has I think informed everybody. It's  
5   helped everyone learn about these new techniques, become  
6   more comfortable with them. And, in fact, you will  
7   generally see now these new techniques are part of the  
8   Staff's suggested revisions that you've heard sort of  
9   repeatedly the rules become more prescriptive, more  
10  prescriptive.

11                   Well, that new language in it sometime,  
12  like in the case of this risk analysis stuff, it's  
13  replaced old language, and I think it's going to make it  
14  so that while it's, I would say, not quite as prescriptive  
15  as more, it's more of a general methodology on the risk  
16  analysis and not quite as specific and will, I think,  
17  permit us to move forward in a, what I guess you could  
18  call a more streamlined fashion on future filings that we  
19  shouldn't -- there shouldn't be the need for some of the  
20  waivers that have been requested in the past.

21                   There's other flexibility in the current  
22  process as we have seen through some initiatives on the  
23  part of KCPL and Empire. There's the ability to sort of  
24  expand what takes place in the IRP process through the  
25  filing of regulatory plans that can address preapproval,

1 can address cost recovery for some major investments, and  
2 I think it's been a generally positive experience for OPC  
3 to be involved in the way that flexibility has been  
4 exercised and to be able to move forward on some -- some  
5 cooperative efforts that I think have been beneficial to  
6 both ratepayers and the utility.

7 I don't -- Public Counsel's not opposed to  
8 considering some type of specific preapproval language  
9 within an IRP rule particularly in the case for some very  
10 large capital investments, but on the other hand, we're  
11 not really convinced there's a need because we seem to  
12 have a process that's already worked pretty well. And I  
13 guess that's at least one area where we can say we're not  
14 sure we see the need for this additional complexity that  
15 some others have advocated for.

16 Other things that have been working well  
17 about the existing IRP rule, I think it really has helped  
18 to encourage the analysis and implementation of more DSM  
19 programs by at least some of our Missouri utilities.  
20 Unfortunately, DSM is one of those areas where I have a  
21 sense that it really is driven by more of the internal  
22 business planning of the utility. When they see the  
23 prospect of cap and trade, for example, and the risk of  
24 mitigation benefits that they can get from DSM, they tend  
25 to be -- that tends to be included in internal business

1 plans.

2                   And then just lastly about what's working  
3 well, I have to say I think it has provided a greater  
4 level of transparency in the utility planning that allows  
5 stakeholders to provide suggestions and feedback on  
6 alternative resource plans.

7                   At the same time, there's a lot of  
8 limitations on the amount of transparency that we see, and  
9 it tends to vary a lot by utility. I will acknowledge  
10 that as well. We saw Mr. Tarter from Empire stood up here  
11 today and said, you know, whatever these people need,  
12 we're willing to provide it for them, and that's actually  
13 my experience with Empire, that, I'm sure there's some  
14 exceptions, but things do tend to happen that way with  
15 Empire.

16                   But that's unfortunately not our most  
17 common experience in this area, and we've still  
18 experienced with some utilities that after we started the  
19 IRP process in 2005, some utilities pretty much just  
20 seemingly routinely object to a Data Request, mainly just  
21 because it has Public Counsel on it or my name on it. I'm  
22 not sure, but tends to happen.

23                   And we still see situations where the  
24 utility has claimed that, no, we can't provide you with  
25 those work papers. We had that work done by consultants,

1 and we don't have our consultant's work papers. So I --  
2 as I talk about, you know, as I hear others talk about  
3 how, well, we understand if we would move to a different  
4 approach there needs to be more transparency to make this  
5 work, I'm thinking I want it to be proven that our  
6 utilities are really capable of that. I'd like to see  
7 that. From my prior experience, I have not seen anything  
8 close to that by some of our utilities.

9                   And I -- I think this is a good time to  
10 digress a little bit and to some of the comments made by  
11 Mr. Michels about UE's last filing where he said that UE  
12 didn't provide all the values for their performance  
13 measures because it was obvious that only one was needed  
14 and the Commission agreed. Well, I -- I just can't agree  
15 with that.

16                   Obviously we're not all under oath here  
17 today, and, you know, maybe people would be more careful  
18 if they're under oath, but I saw all those calculations of  
19 performance measures in UE's last filing. They were --  
20 they were all provided. I reviewed them. So I'm not sure  
21 what he's talking about.

22                   But on the other hand, there was one very  
23 crucial performance measure. It's not a required  
24 performance measure. I saw those values as well, and that  
25 performance measure is the financial ratios that go along

1 with different alternative resource plans. In other  
2 words, what do the financial ratios say about the credit  
3 rating the utility would have if they were to implement a  
4 certain plan? are the revenue requirements sufficient to  
5 maintain credit ratings, keep them out of junk bond  
6 status?

7 Well, unfortunately, in the last filing  
8 this very crucial performance measure was ignored by Union  
9 Electric and we received a plan from them that they did  
10 not have the capability to implement. It was not  
11 feasible. Their -- they would, you know, look at their --  
12 they would perhaps ask for bankers to review a plan. The  
13 bankers look at the same plan, the same revenue  
14 requirement predictions, the financial ratios, and they  
15 wouldn't want to look at it for very long. I'm not really  
16 sure why we were asked to look at it for very long or give  
17 it a very serious look.

18 And I guess this is related to another  
19 statement that Mr. Michels made in response to a question  
20 from -- Commissioner Davis asked him, do you think it's  
21 appropriate that all the key assumptions should be  
22 disclosed to stakeholders, should be disclosed as part of  
23 your filing? Well, Mr. Michels agreed with that, but at  
24 the same time we didn't get disclosure from them in their  
25 last filing that, in fact, this plan that they filed was

1 not viable unless they changed Missouri statute to permit  
2 CWIP and unless they got preapproval. That assumption was  
3 not disclosed in the filing even though Ameren's CEO  
4 stated prior to them making that filing on February 5th,  
5 2008, that CWIP was a necessary prerequisite for them  
6 moving forward to Callaway 2.

7 All right. Enough discretion. Let's talk  
8 about what's not working well with the existing process.  
9 Well, I've probably been talking about that a little bit.  
10 May not have a whole lot more to say, actually. So I --  
11 but I, just to get back to my notes, it's hard to have a  
12 meaningful involvement in -- in a stakeholder process with  
13 some of our utilities, I believe, due to a lack of  
14 transparency.

15 And I think that there really is an attempt  
16 by some utilities to maintain a barrier between their  
17 utility planning process and the IRP process. It occurs  
18 in a variety of ways. One way it occurs is that utilities  
19 might be reluctant to even say, to even specify exactly  
20 what is your preferred plan? What are the elements of  
21 that preferred plan? We've seen that happening. We've  
22 seen utilities' senior management be reluctant as part of  
23 their filings to comply with the reporting requirement, to  
24 clearly state that senior management has approved the  
25 plan. That's happened.

1                   And I guess that problem I was talking  
2   about recently with the -- with the Union Electric filing  
3   and -- and not -- them not really revealing all the  
4   assumptions behind their filing, them not showing to us  
5   that maintaining adequate credit quality was one of  
6   management's considerations in choosing a plan and  
7   figuring out a plan for actually implementing their  
8   resource plan, and so this is the point at which I admit,  
9   Public Counsel actually wants our rule to be a little more  
10   prescriptive in certain areas, and particularly in the  
11   areas that are related to having credit metrics be  
12   revealed as -- as part of this process.

13                   And we have addressed this problem by  
14   proposing new language that would be added to Sections 060  
15   and 070 -- I'm sorry. That's Rules 060 and 070. I keep  
16   forgetting it's a chapter of rules, and the new language  
17   in Rule 060 would require that key financial ratios and  
18   credit metrics be added to the list of required  
19   performance measures. They're not an option. They're  
20   something that needs to be considered as you assess  
21   different alternative resource plans in terms -- and  
22   figuring out what you can do, and that doesn't mean  
23   necessarily even that you're going to say, okay, the  
24   credit metrics are bad, we can't do this. It just means,  
25   okay, credit metrics don't look good. We realize there's



1 some -- going to be some extraordinary cost recovery that  
2 would be necessary for us to do this.

3                   And then the 070 language that Public  
4 Counsel has proposed is intended to make sure the utility  
5 has really a complete and credible plan for acquiring the  
6 resources in its preferred plan and that it identifies any  
7 of the financial, regulatory or legal risks of the plan,  
8 and it's just, you know, a risk assessment. Nobody's  
9 tried to argue that that's not an important part of this  
10 process. I think everyone acknowledges it is. But risk  
11 assessment doesn't mean very much if you ignore the  
12 largest risk associated with your preferred resource plan.

13                   So in general, in terms of what's, you  
14 know, what -- correcting what's not working well, there  
15 are -- we think there are some needs to update the plan.  
16 As I've mentioned before, the updating that's taken place  
17 in -- the proposed updating that's taken place in the  
18 Staff's proposals in the risk analysis area, there's also  
19 some updating that's taking place in the area of  
20 calculating avoided cost for demand side resources.

21 I                   have to say I was a little bit troubled to  
22 hear this morning from Ms. Mantle talking about maybe that  
23 we don't even need to specify a methodology for those  
24 avoided costs because just in the last six months we've  
25 run into some problems with one of our utilities and

1 entered in a Stipulation and Agreement that was intended  
2 to help us address issues with having more of a common  
3 view among stakeholders of avoided costs particularly for  
4 demand response resources, which is something that we  
5 haven't done a lot of work on yet in Missouri because  
6 those resources are still fairly new to be part of  
7 resource plans in Missouri.

8                   Other ways that it needs to be updated. It  
9 needs to be updated to take into account new energy policy  
10 guidance from the new Missouri laws we have that have been  
11 referenced before in the areas of DSM and renewables. And  
12 there was a little bit of a conversation earlier I know  
13 about Chapter 20, coordinating that with this chapter and  
14 issues with doing that.

15                   From the perspective of my office, we  
16 really think that it's the more streamlined approach to  
17 have Chapter 20 work done as a part of the IRP rule. We  
18 think it would be redundant to have some provisions for  
19 doing this kind of analysis outside of the rule because  
20 you essentially have to -- would have to redo your IRP to  
21 look at what are the level of cost increases that you get  
22 with and without renewables and whether or not they hit  
23 the cap that's specified in the statute. We think that  
24 type of work's already taken place in the IRP analysis,  
25 and it makes sense to do it there.

1                   And just the other -- other part of the  
2 rule that needs to be updated is just taking account of  
3 the Smart Grid policy initiatives. I think that would be  
4 important. If we're having utilities talking about  
5 potential investments of hundreds of millions of dollars,  
6 we've really got to have a solid framework for evaluating  
7 the cost effectiveness of those investments, see if they  
8 make sense for consumers.

9                   And so I guess in terms of those three  
10 areas, just generalize and say Public Counsel believes  
11 Staff has proposed some useful language in all of those  
12 areas that are at least a good starting point for  
13 discussions, and we've been engaged in those discussions  
14 in the first few workshops and provided some suggestions  
15 of how Public Counsel believes that that -- the Staff's  
16 proposed language could be further improved upon.

17                   On the subject of annual updates and  
18 whether that's needed, I think we -- we would think that  
19 that's -- that would be a good addition to the rule. We  
20 would also, though, agree with the utilities that it needs  
21 to be done in a way that's not -- not really creating some  
22 onerous new process where we're redoing the IRP every year  
23 instead of every three years. It shouldn't be anything  
24 close to that.

25                   On the other hand, there should be a way to

1 just isolate big things that have changed since your most  
2 recent filing and say, does that mean we would want to  
3 move to a different plan or was our existing plan robust  
4 enough to take that into account and we could still stick  
5 with that plan, still make sense?

6                   So -- and then, you know, how do you  
7 identify changes? What's significant enough to identify?  
8 Well, it's -- I think we'll probably have to discuss some  
9 sort of a threshold, but I would note that, you know, we  
10 had an experience recently of a utility filed a plan for a  
11 1600 megawatt nuclear plant that they were going to use  
12 entirely for themselves, to serve their loads.

13                   And then just a little over a year later we  
14 discover that they're telling the Missouri Legislature, in  
15 fact, they just need a little over half of that 1600  
16 megawatt plant for their own loads, and so they're going  
17 to -- and they're going to have partners that are going to  
18 actually use the rest of the plant.

19                   Well, I think there's no doubt that that --  
20 that's the kind of thing that, you know, would meet this  
21 threshold, and I would think that hopefully if that -- if  
22 that requirement were already in place, we wouldn't have  
23 had a situation where we have Ameren filing a plan on  
24 February 5th, 2008, saying they want the full 1600 plant  
25 for their own load, and then just maybe 13 months later

1    seeing them telling the Missouri Legislature that, well,  
2    no, it's really just 900 megawatts.  And hopefully if they  
3    were required to file an annual update on February 5th,  
4    2009, they would have informed this Commission of the  
5    change, it wouldn't have been a surprise that  
6    Commissioners heard about and I heard about indirectly  
7    because it was something that they were discussing with  
8    the Missouri Legislature.

9                    So, not a lot more I wanted to talk about.  
10   Really just one other main topic, the stakeholder input  
11   process.  There's been a lot of discussion of that.  
12   There's been discussions of the value that's had,  
13   discussions of how from the perspective I think of  
14   utilities, that that could to some extent maybe replace  
15   some of the requirements in the rule, some of what they  
16   see as prescriptiveness of the rule.

17                   And I think that we've got a lot of  
18   concerns about that, and those concerns for a variety of  
19   reasons, not the least of which is that we barely get  
20   together enough resources usually to review each of these  
21   plans that are filed every three years and try and -- try  
22   and focus on the important parts of those plans, but our  
23   office doesn't have the staff we had ten years ago, and  
24   we're to -- for us to try and get extensively involved in  
25   stakeholder meetings at all the utilities, obviously

1 resource planning is important, but a lot of these rate  
2 cases are very important for our office to be engaged in  
3 as well. We have to prioritize, and I think that's a  
4 concern that really would be -- there would be a lot of  
5 stakeholders that would have -- their resources are pretty  
6 thin for being involved in extensive stakeholder processes  
7 with all the utilities. And especially if at different  
8 stages you're -- you're actually sort of signing off to  
9 the extent you will -- ever will on a certain piece of the  
10 plan, boy, you sure better make that meeting, I'd say.

11                   And I guess also when I think about this, I  
12 think, well, some of the same utilities that are telling  
13 us that this is the way we can work and they are telling  
14 us we recognize we need to be more transparent than we've  
15 been in the past in order to make this work, they're also  
16 saying they think they have been maybe.

17                   And I -- I guess it reminds me, a  
18 stakeholder meeting I was involved in last week with one  
19 of our utilities where we really weren't provided  
20 information that was essential to being able to provide  
21 meaningful feedback even though the utility already had  
22 that information in their possession. We didn't have it,  
23 but we're being asked to give feedback.

24                   And I guess I'd say also that in that very  
25 same meeting, I had to remind the company that we still

1 had not received a very important report that had been  
2 promised to us months ago in a previous stakeholder  
3 meeting. I checked my e-mail this morning, and Steve, I  
4 hope we'll be getting that report soon on the Meramec life  
5 extension study because it's obviously a very important  
6 piece of Ameren's future resource plans.

7                   And I guess just lastly, on the issue of  
8 stakeholder input value, Public Counsel gets mixed  
9 messages sometimes. We hear how great it is, stakeholder  
10 input is really helpful to them and especially with the  
11 way the world's changed, and other times our input seems  
12 to be characterized as, well, you're trying to micromanage  
13 the utilities.

14                   That's really not within the range of the  
15 Commission's authority for that to be done, and claiming  
16 we're really trying to usurp management authority, it  
17 just -- you know, it seems stakeholder input is valuable,  
18 especially when you can say, well, this is the reason why  
19 we really don't need the rules to be as prescriptive as  
20 they are.

21                   And just so -- sort of to conclude, I guess  
22 the Commission and their Staff are, it seems, trying to  
23 use the consensus based approach in this rulemaking to the  
24 extent possible, and Public Counsel would commend the  
25 Staff for the attempts they've made so far at doing that,

1 and we think they've made some pretty heroic attempts to  
2 do that despite pretty general lack of timely and specific  
3 feedback from most of the utilities, and -- but Public  
4 Counsel supports still trying to use this approach to the  
5 extent we can. But we think it's also necessary to be  
6 realistic and recognize that this approach to developing  
7 rules for regulated monopolies has the potential to get  
8 sidetracked in a manner that can harm consumers and other  
9 members of the public who are relying on the Commission to  
10 protect their interests. And that's all I have to say.  
11 I'd be glad to take any questions, or listen to comments  
12 of course.

13 JUDGE WOODRUFF: Commissioner Davis?

14 COMMISSIONER DAVIS: I think, Mr. Kind, you  
15 had -- I think you said you had three proposed additions,  
16 and they were 060, 070, and were there -- were you  
17 counting two of those as 070 or did you have another set  
18 of recommendations that I --

19 MR. KIND: Additions that we specifically  
20 propose, I think I was just referencing the two, 060 and  
21 007, and the 060 addition was just some specific language  
22 that we provided during a workshop. 070 we've provided  
23 several paragraphs of additional language, and it's filed  
24 in EFIS.

25 COMMISSIONER DAVIS: Okay. Because -- I



1 appreciate that. I have not seen the 060 language. I  
2 have seen -- I've got a copy of the 070 language here in  
3 front of me.

4 MR. KIND: Well, it's -- the 060 language  
5 is essentially just adding the credit metrics to the  
6 required list of performance measures. In 060 there's a  
7 list -- there's a list of required performance measures,  
8 and then the rule permits utilities to add additional  
9 performance measures that they think are valuable as well.  
10 And we are suggesting just that an addition to the list,  
11 and you would -- the way you'd see that I think would be,  
12 I guess, in a new draft of the Staff rule, although the  
13 Staff may not have distributed another draft since we made  
14 that suggestion. I'm not sure.

15 MS. MANTLE: We haven't distributed another  
16 draft, and it should have been put in as a result of the  
17 last workshop. If not, we will put it in. We'll go back  
18 and check and see if it's in EFIS. Our intention was to  
19 keep this open for everybody to know what was going on.

20 COMMISSIONER DAVIS: Right. And did  
21 anybody have any objection to the credit metrics?

22 MS. MANTLE: I don't -- I don't know if  
23 silence meant no objection. Okay. I don't remember  
24 anybody coming out and saying, no, this is bad. But I  
25 don't recall anyone -- any of the utilities jumping up and

1 down saying, yes, this is the kind of stuff we want to  
2 report. But I did hear that from people, from  
3 stakeholders other than Ryan or the Office of Public  
4 Counsel.

5 COMMISSIONER DAVIS: Okay. Mr. Kind, can  
6 we take a pit stop here and just see if any of our utility  
7 representatives have a comment on it now?

8 MR. KIDWELL: We have no problem with  
9 credit metrics. We have a lot of problems with other  
10 things Mr. Kind said, but I think we will just leave it at  
11 that.

12 COMMISSIONER DAVIS: You can take that up  
13 with Mr. Kind out back later. All right.

14 Mr. Kind, moving on to the 070 language.

15 MR. KIND: I guess I should get a copy of  
16 that language to talk with you about it.

17 COMMISSIONER DAVIS: I've only got one  
18 question, Mr. Kind, on this one, so I will go ahead here  
19 while you're searching.

20 MR. KIND: Okay.

21 COMMISSIONER DAVIS: Looking at the, I  
22 guess it's the new Sections 9 and 10, I don't -- I don't  
23 think I had -- I don't think I found much -- I don't think  
24 I found anything that was objectionable there or -- but  
25 then getting to the second page, I guess it would be 14G,

1 subparagraph 2, a complete descriptions of the revisions  
2 of current laws, rules or regulations that are likely to  
3 be required to implement the major resource acquisition in  
4 its preferred plan. Two, the steps the utility intends to  
5 take to achieve these revisions to laws, rules or  
6 regulations, and three, utility decision-makers'  
7 assessment of the risk that these revisions might not  
8 occur.

9                   And focus -- focusing in on one -- one and  
10 two there, and how specific do you think the utilities  
11 ought to be there?

12                   MR. KIND: Okay. Well, I guess this is not  
13 suggesting that we need to have language of the prefiled  
14 bill, nothing like that, but it's just suggesting that we  
15 know enough about this, what I'll call potential barrier  
16 to implementing their plan that we can make an assessment  
17 of, is it realistic this is going to happen, and that help  
18 us in a couple of ways. It helps us figure out and other  
19 stakeholders say, you know, well, they really have a high  
20 need for a strong contingency plan because this looks like  
21 almost an insurmountable mountain to achieve. And -- so  
22 let's not -- let's focus on a couple of plans here that  
23 makes sense for this utility. The one they're proposing  
24 and the one that they may be, left with if they don't get  
25 the desired results they're looking for.

1                   COMMISSIONER DAVIS: Okay. So if Ameren  
2 had included two, three sentences in their last IRP filing  
3 that said Ameren wants to repeal the anti-CWIP law and  
4 insert language that -- that specifically guarantees that  
5 electric utilities have the right to do CWIP and maybe,  
6 you know, would that sufficiently put you on notice?

7                   MR. KIND: Yeah. Essentially that would be  
8 just giving us the same information that Ameren gave to  
9 the investment community prior to filing their plan.

10                  COMMISSIONER DAVIS: Okay. And so,  
11 obviously if they said we're going to seek these changes  
12 in the General Assembly, does that -- would that qualify  
13 under your step 2?

14                  MR. KIND: Certainly.

15                  COMMISSIONER DAVIS: Okay. So -- but do  
16 you have any intention at any time in the future to  
17 require more than that?

18                  MR. KIND: No. What I'm looking for here  
19 is the type of just a full comprehensive plan, same kind  
20 of information that Ameren provided to federal agencies  
21 about their -- what they were wanting to do with their  
22 resource plan, nothing more.

23                  COMMISSIONER DAVIS: Okay. And then I  
24 guess, Mr. Kind, I guess this is my last question, more of  
25 a comment, I guess. But in the future, I mean, if you're

1 going to come in here, just say something about Ameren,  
2 then just say it, please. Would you do that? I mean, if  
3 you're going to, you know, talk about utilities in  
4 general, if you've got a specific instance, if you don't  
5 feel that Ameren has provided the information, and -- I  
6 would appreciate it if you would not beat around the bush  
7 and just say, you know, they didn't -- and then I think  
8 also, you know, if you're in the context of an IRP filing  
9 or whatever and they're not providing it, then I think,  
10 you know, it's incumbent upon you to notify us at the time  
11 and not wait six months or, you know, until the last one's  
12 over. If they're not being forthcoming, then I think time  
13 is of the essence to let us know then, not, you know, six  
14 months from when. So --

15 MR. KIND: We certainly let you know about  
16 this when we filed our report in that case.

17 COMMISSIONER DAVIS: All right. Thank you,  
18 Mr. Kind.

19 JUDGE WOODRUFF: Commissioner Gunn?

20 COMMISSIONER GUNN: Just a couple. I  
21 appreciate you pointing out some of my frustrations with  
22 the process, but I want to be clear where I'm frustrated  
23 and ask you a question regarding it.

24 We have very little enforcement power with  
25 this IRP. So theoretically a utility could -- and they

1 haven't done this. I think they've actually done a --  
2 you know, had good faith in terms of filing the IRPs, but  
3 they could essentially file a three-page paper saying this  
4 is our IRP filing. We could find all these -- all these  
5 deficiencies and we could say, okay, correct them in your  
6 next IRP filing.

7                   There's no -- the current process I don't  
8 -- gives us a really -- a great way to say, okay, now you  
9 have to -- you filed it, now fill in the holes that --  
10 that -- that are here. And that's where -- where a lot of  
11 the frustration comes in is, you know, three years can  
12 change a lot, and when we have holes in an IRP plan, we  
13 really have no other way to correct them except to say,  
14 you know, correct them in the next IRP filing, and then if  
15 they don't really correct them in the next IRP filing and  
16 we still have complaints that it's really the only value,  
17 the only thing we can do is come back and say, you know,  
18 correct it in the next one.

19                   But does it make any sense to -- to -- if  
20 you took a kind of, we'll call it an outcome or, you know,  
21 an objective process in the beginning where you do allow  
22 great flexibility for the utilities to come up with --  
23 with things where they don't necessarily talk a lot about  
24 methodologies or they leave some of -- leave some of that  
25 out for either expedience sake or efficiency sake. Then

1 does it make sense that -- that we -- we have enforcement  
2 power to go back and, instead of making a full IRP filing  
3 or saying don't correct these deficiencies until your next  
4 IRP filing, to say here's some things that we want you to  
5 come back with. And we have the power to order them to do  
6 that.

7                   So people would have the opportunity to  
8 come talk to us, and say, you know what, this -- this  
9 methodology is is we -- you haven't really provided us  
10 with the assumptions that you've done here. While the  
11 outcome looks okay, we want -- can you come back and fill  
12 us in on it? Or we say, you know, that -- we want some  
13 more information about this one particular thing.

14                   And really when we talk about putting teeth  
15 in the process give us the ability to order some of those  
16 things and give everyone a fair ability to say the reasons  
17 why they -- that may not have been included, and let  
18 people chime in to see whether any of that stuff is --  
19 is -- is necessary.

20                   I mean, does that type of process make any  
21 sense at all?

22                   MR. KIND: I'm -- I have several things I'm  
23 thinking. First, one thing I'm thinking is to the extent  
24 you have authority right now with the existing process, do  
25 you have any authority to order utilities to do things?

1 Do you have any authority to punish utilities if they  
2 don't do what you say through fines? I'd have to say my  
3 attorney would have to have that discussion with you. I'm  
4 not sure you don't already have that authority. I'm not  
5 sure that would be the view of our office.

6 But with respect to this -- and another  
7 issue about just where you sort of see a lack of  
8 authority, it reminds me of -- of the situation with  
9 Ameren's most recent filing or -- well, no. I'm going  
10 back to their prior filing. I'm sorry. Their 2005  
11 filing, which was before you were on the Commission, and  
12 the Commission was faced with a decision of there were a  
13 lot of deficiencies cited by many of the parties. Some  
14 were resolved.

15 In fact, there was a situation where the  
16 Staff had entered into a stip with the company that was  
17 not a unanimous Stipulation & Agreement. Public Counsel  
18 wasn't able to resolve our differences with the company,  
19 and Ameren was looking for the utility to -- we had  
20 requested a hearing. Ameren was asking that you delay the  
21 hearing for a rather long time because they were in the  
22 midst of a rate case. They said it would distract from  
23 that, and  
24 so the Commission had to make a decision. Some of the  
25 Commissioners who were up here today were part of that



1 decision. They had to decide, well, are we going to have  
2 a hearing on this right away as Public Counsel wants and  
3 address these issues or are we going to take the approach  
4 that UE is advocating? And it was a pretty close vote.  
5 It was a close decision. It turned out to be a three/two  
6 decision, let's have a hearing right away.

7 Well, what happened? After you made that  
8 decision, our phone rang right away and Ameren was wanting  
9 to work things out with us. So we did work things out.  
10 And so I would just say the Commission has a lot of  
11 authority that you don't really even recognize, I believe,  
12 in terms of how the authority that you have for utilities  
13 to comply with these rules, to go back and fill in the  
14 kind of holes that you're talking about, which is a lot of  
15 what OPC was saying at that time, that there was just big  
16 holes and we don't want to wait three years.

17 And I -- you've got -- the Commission has  
18 the authority, of course, that ultimately at some point  
19 you may be asked to decide on the prudence of these  
20 investments. That really gives you a lot of leverage. If  
21 they actually proceed to implement the preferred resource  
22 plan, they're really not wanting some decisions from you  
23 that are contrary and saying this was not a good plan.

24 The Commission's really only decided one  
25 time back in the mid '90s with KCPL that you didn't do

1 this right, the main objective of minimizing PBRR the  
2 company -- you ignored that as your main objective in  
3 selecting a plan. Well, at that time KCPL had no major  
4 investments, big infrastructure investments, so that  
5 didn't cause things to change a lot. It didn't make a big  
6 difference. But if they had, if it was a really important  
7 time for resource planning for that company, then what you  
8 say about things really makes a difference.

9                   And I -- but I think I haven't really  
10 responded so much to what you're talking about in terms of  
11 an alternative approach of having more flexibility up  
12 front. I think you were describing having more  
13 flexibility up front, and then if people thought that that  
14 flexibility led to some sort of bad outcomes, there could  
15 be a quick way to address that.

16                   I guess that's -- I think that's, you know,  
17 it could be workable. I have no experience with that  
18 approach, and it's really when you determine an approach  
19 you sort of set up a dynamic amongst all the parties that  
20 are involved in this process, and a lot of that dynamic  
21 you don't really recognize what are the consequences of it  
22 until it actually goes into practice.

23                   And I guess my initial concern with hearing  
24 that is that with lots of flexibility, I'm not getting  
25 information that I need right off the bat to just look at

1 and say this makes sense, it doesn't make sense. I'm not  
2 -- I may not get that information, and, in fact, I may not  
3 even know really whether I've got that information or not  
4 because I'm not going to get a filing that's arranged in a  
5 way where I know or we even need to look for important  
6 information. So I have a hard time saying that -- that  
7 that seems like it would really be workable.

8 On the other hand, I think we need to  
9 continue a dialog about how best to do this, and sometimes  
10 suggestions like that even if maybe it's a piece of  
11 something that leads you to a different way of doing  
12 things, it might make sense.

13 COMMISSIONER GUNN: I don't have anything  
14 else.

15 JUDGE WOODRUFF: Commissioner Kenney?

16 COMMISSIONER KENNEY: No questions.

17 CHAIRMAN CLAYTON: I'm sorry. Mr. Kind, I  
18 can't resist. I need to follow up on a statement that you  
19 just made relating to the planning process and the  
20 question of prudence that would come up eventually in a  
21 rate case.

22 What I want to ask you from the perspective  
23 of the Office of the Public Counsel is, should there be a  
24 correlation between the IRP process and eventual rate case  
25 or rate base determinations of prudence? And when I say

5                   Is there a correlation, meaning more  
6 scrutiny at the front end meaning less at the end, versus  
7 say less at the planning stage at the very beginning and  
8 just your intensive review is going to be during the rate  
9 case? Is there any correlation between one or the other  
10 in your opinion?

25 CHAIRMAN CLAYTON: Right. Well, without

1 getting into extremes, I mean, we've heard language used  
2 like preapproval of large projects or micromanaging the  
3 day-to-day operations of a utility. I mean, there are  
4 some extremes I think in this dialog, but is it  
5 appropriate that if a utility steps up, supplies  
6 information, supplies a transparent planning process  
7 should it -- is it appropriate that the consumer advocate,  
8 the Staff, the other intervenors should be in a position  
9 where they can work towards some faster resolution of the  
10 ratemaking principles later on, and how do you do that  
11 while providing fair process giving certain degree of  
12 certainty to all the parties? I mean, is that something  
13 that's being contemplated in all these discussions, or are  
14 we just looking at extremes?

15 MR. KIND: We believe that can happen, and  
16 you know, I mentioned the example of the KCPL and Empire  
17 regulatory plans where I think we accomplished that.  
18 I don't think we want to do it for every small investment  
19 and every small decision. But, of course, those aren't  
20 the big issues in rate cases. But for the things that can  
21 turn out to be big issues, I think the utilities, they  
22 have seen this path that really KCPL developed for a  
23 regulatory plan, and they know that it's a workable path  
24 if they want to try it.

25 There's a track record there, but I don't

1 -- I'm just not certain that we want to really expand the  
2 IRP process and make it more complicated to where it's  
3 always doing that kind of thing. I think -- and you know,  
4 some people have said, well, maybe there could be  
5 different IRP processes depending on the particular  
6 resource needs of the utility at a certain point in time,  
7 and that's something we're open to discussing further.

8 CHAIRMAN CLAYTON: Well, from Public  
9 Counsel's perspective, I mean, you would agree that today  
10 the times are -- notwithstanding the earlier presentation  
11 about things are the same, things are quite a bit  
12 different, but frankly they're quite a bit different than  
13 they were in 1992 with the changes in potential  
14 legislation in Washington, changes in technology, changes  
15 in how you generate electricity. Is it inappropriate for  
16 setting up some sort of process that allows for joint  
17 planning or a constructive process that leads to some sort  
18 of program or some sort of decision that -- that, you  
19 know, leaves open the possibility of some degree of error  
20 that maybe a mistake is made in the process? How do  
21 you -- how do you construct such a process that is fair to  
22 your clients and that is also fair to the utilities?

23 MR. KIND: Okay. Well, we -- again, I'm  
24 sounding like a broken record, but we had to address that  
25 in the KCPL and Empire case, and the way we did it, was,

1   there really were a couple of key things. We made sure  
2   that the preapproval that we were talking about in there  
3   was strictly limited to decisional prudence, not  
4   implementation prudence; that there could still be  
5   objections that everyone could make about that, you know  
6   we agree that, you know, that decision was a good one, but  
7   you guys did not do a good job of implementing on that.  
8   You cost ratepayers a couple hundred more. This is not  
9   what I really think about the KCPL regulatory plan, but,  
10   you know, to leave that open.

11                   And the other thing we did as part of the  
12   KCPL regulatory plan was we set up a process where for  
13   these large infrastructure investments we're going to get  
14   ongoing updates, quarterly updates from the utility about  
15   the progress and them making those investments, and we've  
16   had quarterly update meetings, and they've been pretty  
17   detailed, sometimes a little bit contentious, but it's --  
18   that was part of us being comfortable with moving forward  
19   on sort of giving the preapproval at the decisional level  
20   that we're going to -- we're going to have a mechanism  
21   here for watching as this gets implemented and a mechanism  
22   for making sure that it doesn't make more sense at some  
23   point for you to stop what you're doing and move in  
24   another direction due to changes in circumstances.

25                   CHAIRMAN CLAYTON: I have other questions,

1 but I think I'm going to wait. Thank you, Judge.

2 JUDGE WOODRUFF: All right. Thank you,  
3 Mr. Kind.

4 CHAIRMAN CLAYTON: If Mr. Dottheim and  
5 Staff want to jump in, I have no objection.

6 JUDGE WOODRUFF: Mr. Dottheim?

7 MR. DOTTHEIM: Yes, if I just might make a  
8 comment or two?

9 JUDGE WOODRUFF: Go ahead.

10 MR. DOTTHEIM: Commissioner Davis, you were  
11 going to say something?

12 COMMISSIONER DAVIS: No. I was going to  
13 say, I wanted to hear from Mr. Dottheim.

14 MR. DOTTHEIM: Well, I didn't want to leave  
15 the impression that Chairman Clayton has just invented  
16 sliced bread with this thought of approaching these cases  
17 differently as far as the building of base load units or  
18 what have you.

19 Unfortunately, having been around for 30  
20 years, when I first arrived at the Commission in 1979, it  
21 was during an era of base load construction, both with  
22 coal powered plants and -- and nuclear, and there's always  
23 been the problem of do you look at the prudence of the  
24 decision as far as the commitment on the generating  
25 facility when it is being made or when the unit is being



1 placed into service, which of course doesn't address all  
2 the issues with the -- the actual cost involved and  
3 whether the -- the construction -- the construction  
4 related costs that were incurred as construction went on  
5 and how it was managed and what have you, was prudent.

6 And, of course, when I arrived at the  
7 Commission, that was at the time of the 1978 Energy Policy  
8 Act, so you had PURPA and a great many other national  
9 energy policy acts going on as we're dealing with right  
10 now. So the situation is different, but the situation is  
11 the same. And the Commission has limited resources, and  
12 even though the Commission may want to assign everything  
13 as the first priority, the Staff can't make everything  
14 first priority.

15 And I think that's in part why Commissioner  
16 Gunn, and you, Chairman Clayton, have expressed  
17 frustration with in particular maybe the Staff taking the  
18 approach that there are deficiencies but the deficiencies  
19 will be addressed through this Stipulation & Agreement in  
20 the next electric resource plan. It's how to deal with  
21 the deficiencies in that electric resource plan filing and  
22 also deal with the electric resource plan filing that has  
23 just been made or is about to be made by another company  
24 and the rate cases that have been filed or are about to  
25 the filed. Not everything can have the same priority.

1                   I think the Commission now has the  
2     statutory authority to compel an electric company to  
3     correct or refile an electric resource plan and address,  
4     attempt to address deficiencies, and I think the  
5     Commission has the authority to go to circuit court and  
6     seek statutory penalties against an electric utility  
7     that's in violation of a Commission rule or a Commission  
8     order, but you commit resources when you make that  
9     decision to seek the statutory penalties. You commit  
10    resources that can't be utilized doing other things.

11                  So I think you -- you -- you have a full  
12    range of -- of choices, but it's a question of what are  
13    your priorities, and a recognition, which sometimes some  
14    of us might say the recognition isn't made, that not  
15    everything can be done at the same time or not everything  
16    can be done at the same level of quality if you're going  
17    to try to do everything at the same time.

18                  The Staff wishes it had -- or I wish I had  
19    a better answer for you than that, and of course your  
20    priorities may well be different than what the Staff's is  
21    -- Staff's priorities are, and you are the Commissioners,  
22    so you will set those priorities. But if you set every  
23    item as No. 1 priority, no matter how much you may demand  
24    that everything is the No. 1 priority, it's not going to  
25    happen.

1                   CHAIRMAN CLAYTON: What was the sliced  
2 bread thing? What did I say that --

3                   MR. DOTTHEIM: Well, I think the matter  
4 possibly with -- with the Waxman-Markey bill, Smart Grid,  
5 what have you, the fact that now we may be at some cutting  
6 edge of technology that is a major factor which previously  
7 was not a major factor when there was the National Energy  
8 Policy Act in 1978, and then again the Energy Policy Act  
9 in '92, around the time of the -- when the Commission  
10 adopted the Chapter 22 electric resource planning rules,  
11 or in 2005 when there was -- there were more energy policy  
12 act legislation.

13                   So I mean, that may be the twist that may  
14 be assigned to the present situation that didn't  
15 previously exist, that now we have technology that, if  
16 done appropriately, may offer us solutions that were not  
17 previously available, if only we approached the  
18 opportunities carefully.

19                   While at one time electric restructuring  
20 was the technology that was going to unleash the genie  
21 that was going to solve all of the energy problems, and it  
22 didn't exactly work that way, there have been -- well,  
23 other thoughts that we were at the cutting edge that made  
24 that point in time different than other times and, yes,  
25 that's true, but it -- in other respects, history is

1 repeating itself. So I'm sorry.

2 CHAIRMAN CLAYTON: I wish that I would have  
3 been here in 1979. I really do. I was not, and I can't  
4 assess whether they're the same or whether they are not,  
5 so I will have to rely on your opinion.

6 But the matter that's before us on these --  
7 the changes in Chapter 22, integrated resource planning  
8 rules, regardless of whether the times are the same or the  
9 times are different, I mean, is Staff advocating for  
10 changes in the rule? And it seems to me that the question  
11 placed before us is whether they're going to be more  
12 prescriptive or less prescriptive, or how we're going to  
13 set these up.

14 My comments, which were I think a small  
15 part of the point that I was trying to make with Mr. Kind,  
16 just should -- is there a planning process at the very  
17 beginning that leads to less review in the end or perhaps  
18 less involvement of the Staff in the beginning leading to  
19 a greater audit in the end, is there -- I think my  
20 question is, is there a correlation?

21 Now, I'm not sure if that makes a  
22 difference whether 1979 is the new 2009 or whatever. I  
23 mean, I just turned -- I'm not going to tell you how old.  
24 Everyone says, well, being 40's the new 30. I don't know  
25 what that means. Doesn't make me feel any better.

1                   The question that I'm trying to ask is, if  
2   we're -- if the Commission is being asked to pick a  
3   direction, whether we're more prescriptive or less  
4   prescriptive, does that suggest that there is less work  
5   down the path on a particular project or a particular  
6   utility or not? That's what I was -- that's what I'm  
7   trying to ask. Whether I was trying to invent sliced  
8   bread, I'll leave that to you, but I am interested in  
9   Staff's opinion on that.

10                  MR. DOTTHEIM: Yeah. I took your question  
11   as -- as something considerably more than more  
12   prescriptive, less prescriptive, that if we were to move  
13   more into the nature of -- of trying to accomplish  
14   solutions like the KCPL and Empire regulatory plans on a  
15   going forward basis, as opposed to -- to looking at all  
16   items from a prudence perspective at the time a generating  
17   facility, a rate base generating facility in particular  
18   goes into commercial operation.

19                  And also tying that in to a great many  
20   other things which I think confront the Commission and the  
21   Commission is attempting to -- to deal with such as the --  
22   the programs that the Commission has been -- has been  
23   sponsoring relating to the -- the Smart Grid and the  
24   federal -- federal energy legislation and what have you.

25                  CHAIRMAN CLAYTON: Well, I guess you can

1 read into my comments whatever you want. Let me ask the  
2 question again. Is there a correlation between the  
3 prescriptive nature of an IRP rule and subsequent rate  
4 case determinations associated with that planning process?  
5 That was my question, and I haven't -- I mean --

6 MR. DOTTHEIM: Not necessarily, because it  
7 depends on what the prescriptiveness addresses. The --  
8 what the -- what the Staff fashioned and the utilities  
9 indicated great unhappiness with without providing the  
10 Staff with language to address their great unhappiness was  
11 language that addressed what the Staff saw as problems  
12 with the existing rule but did not address preapproval,  
13 did not change the focus of the rule as it presently is,  
14 which focuses on the electric resource process and  
15 evaluating and making judgments regarding the process and  
16 not the preferred plan itself, and the Staff is not  
17 advocating approval of the preferred plan.

18 CHAIRMAN CLAYTON: So Staff wants to remain  
19 at purely a process?

20 MR. DOTTHEIM: Yes.

21 CHAIRMAN CLAYTON: But wouldn't you agree  
22 that the IRP process is about information, information and  
23 exchange of that information, allowing for parties to  
24 prepare whatever analogies they can take from it, isn't  
25 it?

1                   MR. DOTTHEIM: Yes, because -- because  
2 being less prescriptive could from the Staff's  
3 perspective, and I think you will hear from other  
4 stakeholders and have heard from the Office of Public  
5 Counsel, can prolong the process, make the process less  
6 productive because the stakeholders don't get the  
7 information which they believe are necessary in order to  
8 perform the evaluation, the analysis they believe is  
9 necessary. And then you are likely to see what I don't  
10 believe you -- you've seen except in the rarest of  
11 instances, and that is discovery disputes brought to the  
12 Commission in Chapter 22 filings.

13                   You know, in certain respects, again, it's  
14 a matter of -- of setting priorities. Do you fight your  
15 discovery disputes in Chapter 22 if you're able to work  
16 something out relatively that you can live with when you  
17 have discovery disputes in rate cases involving immediate  
18 rates that are before the Commission, and you -- and you  
19 don't have unlimited resources where you can take one  
20 discovery dispute after another before -- before the  
21 Commission. You have to -- it's triage. You may make a  
22 mistake from the perspective of, you've chosen to save the  
23 -- the wrong project from the Commission's perspective.  
24 You've chosen to save the wrong patient from the  
25 Commission's perspective, but that's the chance those on

1 the Staff take on a daily basis.

2 CHAIRMAN CLAYTON: Well, I sympathize  
3 with -- with Staff's priorities and Staff's obligations  
4 and the workload that's been placed on them. I don't  
5 dispute that at all.

6 I guess what I'm trying to get at is, is  
7 there a more efficient or a better process while we are  
8 considering a review of these? It sounds to me that, no,  
9 this is it, let's add a few things to the checklist  
10 that -- I mean, we're never going to be able to unwind  
11 Staff's workload, and I understand the whole nature of  
12 priorities. I'm trying to get at whether there are  
13 efficiencies that can come from the reviews that are  
14 occurring. And I guess if the answer is no, just say no.

15 MR. DOTTHEIM: The answer is there are  
16 efficiencies that can come from the process, that's why  
17 we're here today. I mean, and we're here today to put  
18 this before the Commission to give the stakeholders from  
19 the Staff's perspective another opportunity to put their  
20 views, their ideas forward for us, but also for the  
21 Commissioners. So we, the Staff, we didn't have to do  
22 this. We could have -- nobody else came before the  
23 Commission and suggested this public hearing even though  
24 the Staff offered this suggestion at the last workshop.  
25 Nobody took up on it. We did. We think there are



1 efficiencies. We're looking for suggestions from the  
2 Commissioners as to what efficiencies either they see or  
3 that they want, and as the Commissioners, they are telling  
4 us you're going to do it this way and that's that.

5 CHAIRMAN CLAYTON: I'll wait for the rest  
6 of my questions.

7 JUDGE WOODRUFF: Commissioner Gunn?

8 COMMISSIONER GUNN: I just wanted to  
9 respond a little bit. My frustration has never been with  
10 the Staff setting the priorities. I disagree with you. I  
11 think the rule is pretty weak on enforcement. I think  
12 that Chapter 22 kind of ends at that subsection 13 and  
13 says we issue an order finding deficiencies or not and  
14 then you kind of go on.

15 I mean, could we go use other statutory  
16 authority to do it? Maybe. But I think that the rule  
17 itself, the IRP rule in terms of enforcement in terms of  
18 what authority the rule gives us is -- is -- is pretty  
19 weak. And so what I'm saying is, I think that the  
20 process, the process, the IRP process, in order to avoid  
21 having to go to court to do -- to do an enforcement action  
22 under the other statutory provisions, that the rule itself  
23 should provide a way that in a collaborative process that  
24 we can fill in the holes that everybody kind of agrees or  
25 that the Commission agrees are there.

1                   I mean, I think in the last -- in the last  
2 process we found deficiencies and we kind of said, okay,  
3 we've got one coming up anyway. This is taking a long  
4 process. So I think, you know, you're probably right in  
5 terms of what statutory authority we have, but that's --  
6 you turn a collaborative process into an adversarial  
7 process.

8                   Whereas, we may be able to do something  
9 quicker and work as Mr. Kind suggested, that if there is  
10 something to say, okay, once you determine that there are  
11 deficiencies, then here is the process that you go back  
12 into to fill in the holes of the deficiencies and really  
13 truly make the IRP process meaningful. If that doesn't  
14 work out, then okay, we can go and do the stuff that we  
15 need to do from an enforcement standpoint.

16                   But we -- 13's the end of Chapter 22 and  
17 it's, boom, you know, you've got the deficiencies and we  
18 go out there and say, okay, thank you very much, and for  
19 exactly the reason you're talking about, we may not decide  
20 that we want to create an adversarial proceeding out of it  
21 and move forward.

22                   So that's where my frustration comes in.  
23 It's not in terms of -- of, you know, somebody not doing  
24 their job, because I think actually the deficiencies in  
25 the last IRP, I mean, even I think in some instances, and

1 I don't even remember it that well, but everybody kind of  
2 agreed that it was a deficiency, or there wasn't a whole  
3 lot of argument that something was a deficiency.

4 That's the part I'm trying to fix. It's  
5 not -- it's not anything else. I mean, I think that in  
6 order for this to really work well, it has to be a  
7 collaborative. It has to be collaborative process. It's  
8 not us running to court every time to say you guys did  
9 bad, fix it.

10 MR. DOTTHEIM: And I think in part the  
11 Staff makes the evaluation that this is a very demanding  
12 process, and ultimately everything considered, resources,  
13 what have you, we'd rather have the company concentrating,  
14 addressing this on a going forward basis than forcing them  
15 to redo it and come back in. That factors in to our  
16 thinking also. It's not a situation that we're going to  
17 slap their hand and as punishment for not having gotten it  
18 right, you're going to get it right, and resubmit it to  
19 us. No. You understand now what we're seeking. Get it  
20 right next time. We're not going to force you to take the  
21 time and effort to redo it and resubmit it now. Get it  
22 right next time.

23 COMMISSIONER GUNN: Right. But I don't  
24 necessarily want to wait three years in order for them to  
25 get it right. That's -- that's where that comes in.

1 That's where some of it says, look, if we can figure out  
2 how to do that relatively quickly, because either  
3 deficiencies aren't that big of a deal or, you know,  
4 it's -- if they're important enough to bring them up, the  
5 three-year gap is what -- is what the problem is.

6 And we need to figure out a way in a  
7 collaborative process in cooperation to fill in those  
8 holes quicker without being too much of a burden on the  
9 utilities so that -- and too prescriptive, but we get  
10 those holes filled so the IRP becomes meaningful. That's  
11 what I think that we need to work on. So I think we're  
12 probably on the same page.

13 JUDGE WOODRUFF: All right. Well, we're  
14 past due where I said we'd go for lunch.

15 COMMISSIONER DAVIS: Mr. Woodruff, can we  
16 go and see if Ameren or anyone would like to respond to  
17 anything Mr. Kind said? I mean, he made some statements,  
18 and I think they should at least be allowed the  
19 opportunity to respond if they choose to do so.

20 MR. KIDWELL: Commissioner, would it be  
21 okay, it is after lunch, could we have the opportunity  
22 after lunch just briefly so speak?

23 COMMISSIONER DAVIS: Sure.

24 MR. KIDWELL: Thank you.

25 JUDGE WOODRUFF: Let's go ahead and break

1 for lunch. We'll come back at 2:15.

2 (A BREAK WAS TAKEN.)

3 JUDGE WOODRUFF: Welcome back from lunch.

4 Before we broke, we were going to give AmerenUE an  
5 opportunity to respond to Public Counsel's comments.  
6 Mr. Kidwell.

7 MR. KIDWELL: Thank you, Judge, members of  
8 the Commission. I'll be brief. I think in the interest  
9 of moving the process forward, we talked about it a little  
10 bit over lunch, and we decided that it wouldn't be very  
11 constructive to go through point by point. Just suffice  
12 it to say there are many things that Mr. Kind said this  
13 morning that we disagree with.

14 One thing I do want to try to provide a  
15 little perspective on, and that is that by offering the --  
16 by basically asking the workshop process to step back and  
17 look at objectives and where we're trying to go with this  
18 rule, we're actually trying to be constructive, and by  
19 that I don't mean just AmerenUE. I mean the utilities.

20 We're trying to -- you know, it's been a  
21 while since we really looked at these rules and revamped  
22 them. What we're trying to say is looking at guiding  
23 principles, looking at those objectives and trying to  
24 figure out what we are trying to get out of these rules is  
25 a good step toward making good policy.

1                   So we're not trying to do that to be  
2 obstructionist at all. We're really trying to -- it may  
3 be frustrating to have that happen during the workshop  
4 process, but that's really where we're trying to come  
5 from.

6                   On the question of prescriptiveness,  
7 Chairman Clayton asked about prescriptiveness and does  
8 that help out in rate case proceedings later on. I think  
9 it's our perspective that it probably doesn't. However,  
10 looking at an optional process here for decisional  
11 prudence, you know, that would be the utility being able  
12 to, you know, opt for, especially if they have a major --  
13 a major unit or a major investment that's happening in the  
14 next, say, three years of the process, that might be  
15 something that would be, you know, worth exploring as we  
16 develop the rules.

17                  And then finally, Commissioner Gunn, and  
18 thinking about teeth in the process and how do we make  
19 that happen, I'm optimistic from what I heard this morning  
20 that we might be able to come out with something, I think  
21 we can come out with something that preserves the  
22 utility's right and the management prerogative for  
23 decision-making but really gives the Commission some  
24 opportunity, I hope, both before the process, before the  
25 plan is filed and then after it to make -- to make a

6                   So I'm -- aside from a couple of detours  
7   this morning, I think -- and I speak for the utilities, I  
8   think we're pretty optimistic that we can continue to  
9   collaborate on this. That will close unless there are any  
10  questions.

12 COMMISSIONER GUNN: I just have --

14 COMMISSIONER GUNN: No. That's all right.

25 MR. KIDWELL: I would hope that that was

1 one of the -- that that could be something we could work  
2 on. What I was really trying to say is that especially if  
3 you have a major base load decision or a major  
4 environmental investment, that you want to have -- and I  
5 think this should probably be an exception to resource  
6 planning in general. Okay. But when you have something  
7 like that that is eminent, and eminent I'll say three  
8 years, you could maybe adjust that up and down, having a  
9 process by which a utility could seek decisional prudence  
10 through the support of the integrated resource plan that  
11 they're putting out there I think is a process we should  
12 be considering.

13 And just in general, regardless of that  
14 process, having more up-front consultation, again the idea  
15 that KCPL had on a filing when we had -- when we were  
16 finished with demand side and supply side options, I think  
17 that's an interesting idea that deserves consideration.

18 I think we're also going to talk about a  
19 little bit more this afternoon the idea of the Commission  
20 actually having the opportunity to look at the plan for  
21 the plan, look at how we are structuring, intending to  
22 structure the IRP and providing feedback ahead of the  
23 entire process there.

24 COMMISSIONER GUNN: I appreciate that. And  
25 kind of on a related point, when I talk about teeth, I



1 agree with you, I don't think we should be making these  
2 business decisions. I mean, look, nobody wants me running  
3 a utility. I think that's fine. I don't think that's our  
4 role. But we need to make sure that the information is  
5 provided so we can evaluate the plan as the plan. I think  
6 that's where -- what I'm talking about in terms of, if  
7 there are gaps in that that are missing, that make it  
8 difficult for us to evaluate to make sure you didn't go  
9 from first to third, to make sure that all the assumptions  
10 that are going in are appropriate, and to make sure that  
11 there's not one -- one message being sent to the investor  
12 community or to the legislative community, one message  
13 sent to the PSC.

14 I think that's -- that's kind of the goal  
15 here, and -- but I -- I thank you for your response. I  
16 just want to make sure.

17 MR. KIDWELL: I want to also make sure,  
18 just regarding the one thing I'll say about that whole  
19 issue is I think UE has recognized, I think, publicly that  
20 there was a deficiency in that plan and that we need to do  
21 a better job on financial analysis the next time, and we  
22 intend to correct that with stakeholder input this time  
23 around.

24 COMMISSIONER GUNN: Thanks. I don't have  
25 anything else.

1 JUDGE WOODRUFF: Any other questions from  
2 the Bench?

3 MR. KIDWELL: Great. Thank you.

4 JUDGE WOODRUFF: Thank you. All right.  
5 Then moving on to the next presenter, which I believe is  
6 the NRDC.

7 MS. LESH: Good afternoon, Commissioners.  
8 Thanks for hanging in so long. I'm really glad I was not  
9 right before lunch when I was trying to figure out how I  
10 could be compelling enough to get through all those  
11 growling stomachs. Now I just have to keep you awake  
12 after you have eaten.

13 We're delighted to be here today, and I  
14 wanted to give you just a little bit of background about  
15 myself so that you know where my remarks are coming from.  
16 I've been in this industry about 25 years. Most of that I  
17 was with Portland General Electric, which is in Portland,  
18 Oregon, where I was most recently the Vice President of  
19 Regulatory Affairs and Strategic Planning.

20 JUDGE WOODRUFF: I'm sorry to interrupt  
21 your presentation. You need to give us your name for the  
22 court reporter.

23 MS. LESH: Pamela Lesh. Sorry. I guess  
24 I'm already out of practice.

25 In any event, I left PGE in April. I'm now

1 on my own working on the issues I care most about, and  
2 some of that brings me directly into alignment with the  
3 Natural Resource Defense Council. So I do consulting for  
4 them from time to time, and that is how I come to be here  
5 before you today to talk about integrated resource  
6 planning, something I have given quite a bit of thought to  
7 over the years.

8 But first just a totally unrelated comment.  
9 I recently had to spend a lot of time on commission  
10 websites, and I wanted to say that yours is one of the  
11 best I have been on. It was extremely easy to navigate,  
12 and I could find everything I needed. So you never get  
13 feedback like that usually, and I wanted to let you know.

14 All right. So what are NRDC's interests in  
15 these roles? And we are very interested. We really have  
16 two things that we're trying to accomplish by our  
17 participation.

18 First, we want to make sure that utilities  
19 plan for and then provide services by which Missouri's  
20 residents and businesses can achieve their goals with less  
21 energy, and I really mean with less converted and  
22 delivered energy, over time with those efficiency gains  
23 coming at a pace that makes sense in light of economic  
24 considerations and social considerations and environmental  
25 considerations. So the pace can adjust itself. But at

1 the end of the day, we know we need to use less of this  
2 converted and delivered energy because it's simply very  
3 expensive and will get more so over time.

4                   And then we want to make sure that  
5 participation in these planning processes by which these  
6 services then ultimately get designed and delivered is  
7 useful and rewarding for entities like NRDC and everyone  
8 else who participates in them. And so just a position  
9 where we're going to be talking about today given all the  
10 comments that have gone on, we are advocating a step  
11 backwards from the existing rules at this point.

12                   We don't want to focus so much on fixing  
13 problems with those rules, which is where some of what  
14 I've heard this morning went to, but how do you create a  
15 framework by which you can support an evolution of energy  
16 services into what we're going to need in the 21st century  
17 rather than to some extent dealing with what we thought  
18 were the issues back in 1979 and into the 1980s. Things  
19 have changed.

20                   So what I want to do today was cover three  
21 things. First I wanted to spend a little while on our  
22 view of the criteria that define a meaningful planning  
23 process. Staff asked this question before the last  
24 workshop, and it was such a great question and we gave it  
25 a lot of thought, that I thought that was as good a place

1 to start as any.

2                   Then I wanted to put forward for your  
3 consideration a fundamental planning objective that might  
4 guide this process and help shape that framework that lets  
5 us move well and ably into this century, and then finally  
6 describe a process approach that could guide the next  
7 round or two or three of utility plans pretty flexibly but  
8 robustly, making sure that people do have a chance for  
9 meaningful participation, but that you can adapt to  
10 whatever is coming our way, that I'm not sure quite sure  
11 we can fully foresee at this point.

12                   And I will -- I know Oregon came up already  
13 this morning. I'm happy to answer questions about Oregon.  
14 I will tell you that Oregon actually operated without any,  
15 at this point we call them least cost planning rules for  
16 about 15 years. We had an order. The order set forth  
17 some guidelines. The utilities followed the guidelines,  
18 and that all worked pretty well until finally about four  
19 years ago the commission decided to adopt rules.

20                   But I think as long as the Commission is  
21 clear what your expectations are, the form that you state  
22 that clarity in, whether they are rules or an order is  
23 less important.

24                   So let's talk about a meaningful planning  
25 process. It's really two things that come to the top of

1 my mind. The first thing, a planning process isn't  
2 meaningful unless it makes clear the decision-makers'  
3 assumptions and thinking process, clear to the  
4 decision-makers themselves I would add, and then to  
5 others, and this is largely qualitative.

6                   It is not quantitative. Numbers in my  
7 experience almost never -- I'd like to say never, but I'm  
8 not quite sure I can get away with it -- speak for  
9 themselves. It is how you think about those numbers and  
10 how you -- what you thought about as you put those numbers  
11 together because you probably had to choose almost all of  
12 them in constructing whatever quantitative analysis it is  
13 that you've got in front of you.

14                   So making clear how you think about  
15 whatever numbers you have, how you even decided to go look  
16 for those numbers is what makes the planning process  
17 meaningful.

18                   And then the counterpart to that is, since  
19 that's what has to be clear, that's where people  
20 participating want to have a chance to influence the  
21 decision. They want to have a chance to influence those  
22 assumptions and to influence the thinking process. That's  
23 really it. That's pretty simple.

24                   To go down a level from there, a good  
25 planning process, meaningful planning process we really

1 think needs to make sure all of the perspectives are in  
2 the room, so to speak. This is the old get the system in  
3 the room before you try to deal with the system. So you  
4 need the people who either directly or indirectly  
5 experience utility services, not just customers or even  
6 ratepayers if you will. There are other -- there are  
7 builders experience utility services. Municipalities  
8 experience those services as they deal with working in and  
9 around the infrastructure.

10                   There are many people who are affected by  
11 them that really ought to be part of the process and  
12 considered. The people who comprise and invest in the  
13 utility organization itself, that's a perspective that  
14 needs to be present.

15                   And then the policy and strategic choices  
16 of the community, and I put that in quotes, that the  
17 utility serves, and that's because community's a little  
18 bit flexible and has different aspects to it. There's the  
19 local community. There's more of a state community.  
20 There may even be a relevant regional community, and, of  
21 course, what's the federal community that needs to be  
22 considered?

23                   And with those perspectives in mind, this  
24 is a key thing I think almost no utilities do right now.  
25 I'll just be up front about that. I think planning,

1 meaningful planning process starts with where you are  
2 right now. We lose track of that. We are all busy  
3 looking forward and projecting out what natural gas prices  
4 are going to be in 2030 and what happened, you know,  
5 what's happening with nuclear construction costs, and it's  
6 all future this, future that, and that's important. Our  
7 guesses are as good as our guesses can be.

8 But sometimes we don't pause and say  
9 exactly, okay, where are we right now? What has happened  
10 and what is this position that we are in? How efficiently  
11 are we using energy right now in our homes and businesses?  
12 What are the characteristics, not the costs, the  
13 characteristics of the resources that we currently have?  
14 How efficient and what are the capabilities of this  
15 transmission and distribution system that we have?

16 Those are just some of the questions you  
17 might ask yourself as you're trying to figure out where  
18 you are and where you're starting from as you're doing  
19 this plan.

20 And when I first picked up this matter,  
21 NRDC asked me for some help on this, I said, okay, I don't  
22 know anything about Missouri. Where's Missouri right now?  
23 So I just got on the State Energy Database System, SEDS,  
24 love these acronyms, to see what I could find out about  
25 Missouri, and what I saw said to me opportunity in a good



1 way.

2                   So Missouri uses more energy per dollar of  
3 gross state product than the U.S. average and spends more  
4 of that energy -- spends more on that energy than the  
5 gross state average, and that's the same for the gross  
6 commercial product. Missouri homes use more gas and  
7 electricity per heating degree day than the average.

8                   Over the last 25 years, the growth in per  
9 capita energy consumption in Missouri has exceeded the  
10 U.S. average, and the growth in electricity consumption  
11 has been greater than average even though population  
12 growth was smaller than average. So there's some things  
13 going on. Oh, and then there was the about 20,000  
14 megawatts of generating capacity added within the last ten  
15 years or so, almost all of which was gas fired.

16                   Just some things you might want to sit and  
17 ask yourself as you're starting your plan. Oh, is this  
18 going on? Why is it going on? Where does -- what does  
19 that say about where we are now so that we can figure out  
20 the next most important piece of information, which is  
21 where are we trying to go? What are the known challenges  
22 and opportunities?

23                   We're reasonably good at challenges. I  
24 think we're usually really horrible at opportunities. We  
25 would much rather find problems to fix than create

1 something and see a place to do better. But what are they  
2 and what do we want to then create over the long-term  
3 given by this?

4                   And this is something that I think again  
5 most planning processes at this point don't -- they skip  
6 this step. Either they kind of stop with, well, we'll  
7 just try and minimize costs over time, that that's where  
8 we're trying to go is we're trying to minimize costs over  
9 time.

10                   Of course, the trouble is you'll never know  
11 if you actually did that. It's a way to decide if the  
12 decision was prudent at the moment it was made, but things  
13 will move on, events will happen, and you will not be  
14 anywhere purposeful with respect to those events because  
15 that's not what you set out to do.

16                   So asking ourselves a question about what  
17 do we want over the long-term? Transcending this is not,  
18 you know, well, we want this much of this kind of resource  
19 and this much of another kind of resource, transcending  
20 what they think about what's economic or economically  
21 feasible and looking for that point at which we're beyond  
22 our current tension between ratepayers and utilities or  
23 environmental groups and business customers.

24                   And beyond all that is probably a place  
25 where you can say, you know, if we headed there, in about

1 100 years people would be really glad we headed there.  
2 We're about 100 years from Sam Insol and some of his early  
3 decisions which set up a lot of what we just take for  
4 granted now about how all this should work, and by and  
5 large I think most people would say, yeah, I'm really glad  
6 Sam Insol figured out how we could have commissions and  
7 regulation and get all this in place so that actually the  
8 nation could get electrified, which it did in about 50  
9 years.

10 But what is that next place that we can go  
11 where a similar conclusion can be drawn, that people say,  
12 I'm really glad they decided that 100 years ago?

13 Once you have current reality, know where  
14 you are, and you know, have some idea that you've been  
15 able to articulate in such a way that more than one person  
16 could actually see somewhat the same thing, so this can't  
17 be -- needs to have some expression and things that you  
18 can actually go look for, then -- and by the way, once you  
19 have that, then you start looking for those things in your  
20 current reality.

21 So this works inductively and it helps  
22 create a dynamic where you can have some really positive  
23 interactions. Planning then becomes simply how do I make  
24 progress from where I am towards where I want to go? And  
25 if you look at your options for doing that, you consider

1 economics and technology and cultural conditions, and you  
2 choose the pace accordingly, but that's a really different  
3 decision from letting those things tell you where you're  
4 trying to go in the first place.

5                   And you set up as you begin to resolve  
6 that, through the actions you decide to take, how you're  
7 going to know whether you've taken them, whether you're  
8 making progress.

9                   So with all that as background and support  
10 about what a meaningful planning process would be, we  
11 wanted to suggest this as a straw, that they call it these  
12 days, a straw dog, I guess, just to be gender neutral,  
13 planning objective for integrated resource planning here.  
14 And that is that electric utilities provide energy  
15 services designed to enable the recipients of those  
16 services to safely and efficiently obtain and apply energy  
17 in their homes and businesses at a total cost to  
18 themselves and each other that is reasonable over the  
19 long-term.

20                   And in some ways you probably say, well,  
21 that doesn't look that different. What's different about  
22 that? It doesn't say anything about rates for one thing.  
23 It's deliberately phrased to be what we call outside in  
24 rather than inside out. It's not talking about the energy  
25 services or, frankly, just the electricity commodity being

1 offered. It's talking about what the recipient  
2 experiences. And it's written to make relevant at least  
3 to the planning process this notion of really what does it  
4 cost to space condition a structure? Really what does it  
5 cost to light a structure? What does it cost to have  
6 motive power for this kind of purpose? Because if we just  
7 screen out everything except the input of the electricity  
8 cost, we could easily find ourselves making decisions that  
9 just shift a bunch of costs over into the other places in  
10 the system and on to the customers who are experiencing  
11 those costs. We've decided it's not relevant to the  
12 decisions we're making.

13                   And shifting costs, again, that was a  
14 deliberate choice as we did these words. We want to make  
15 it clear that shifting costs to the future, shifting costs  
16 to each other, these are really not good planning  
17 objectives, particularly shifting costs to each other,  
18 because you can be pretty sure if you're deciding not to  
19 consider a cost, to say, well, it doesn't directly fall on  
20 my customers, somebody else is making that same decision  
21 except for the customers that it's not falling on there,  
22 those actually then, the ones that it's falling on are  
23 your customers.

24                   That's not going to get us very far down  
25 the road. And I've been working on this. I'm not sure if

1 I'm there yet, trying to get -- a picture is worth a  
2 thousand words. Is there a picture to show these shifting  
3 perspectives? And it really seems to me to a certain  
4 extent rates sits way out there. Rates is the utility  
5 centric view. That's what they charge. That's the cost.

6 The very smallest level that customers  
7 really experience is their bills, and we've known this for  
8 decades, and we still have trouble talking about bills,  
9 and it's still hard to find information about bills. You  
10 can find average rate information all over the place, but  
11 it's hard to find bills.

12 Then you realize, well, yeah, but the  
13 customer really has spent something for that structure and  
14 the equipment in their bills. So that's a little bit  
15 bigger perspective. But then really that sits within the  
16 value of the output or outcome that the customer gets from  
17 all that successive expenditure. So that's a little bit  
18 bigger perspective.

19 And then that in turn sits within the  
20 effects, positive or negative, on people and nature of  
21 those outputs and outcomes, and that's finally then the  
22 societal and environmental view.

23 At a minimum our planning needs to work  
24 with utility bills, but we wrote the objective to suggest  
25 that you really actually need to move yourself all the way

1 up to the biggest circle. These are not mutually  
2 exclusive. They are nested.

3                   Sub-objectives, the rule currently had  
4 them, and it seemed like a fine concept, so we borrowed  
5 that a little bit and said, okay, you've got this nice  
6 sentence, but what does it really mean? Is everybody  
7 going to understand? And particularly when you're kind of  
8 shifting your focus as we are suggesting for this process,  
9 you might want to make it a little bit clearer with some  
10 sub-objectives.

11                   And in our written comments that we put in  
12 a couple weeks ago, we had detailed words. I thought I  
13 would just paraphrase them here, and among those sub-  
14 objectives are words designed to make it clear that energy  
15 services, which Missouri's rules and statutes talk about,  
16 encompasses not just kilowatt hours and not just  
17 traditional energy efficiency programs where the utility  
18 gives money to somebody to do something, but could  
19 encompass fee for services that allow somebody to increase  
20 the efficiency with which they use energy, but maybe  
21 accomplish other objectives as well, that that is actually  
22 permissible as time goes forward.

23                   Sub-objectives would also be clear that one  
24 of -- at least one of the things you would be looking for  
25 in the feedback on how all of this is working is, are you

1 increasing the efficiency with which customers use  
2 electricity? And that can be measured a couple ways. You  
3 can look at the cost. You could also look at the thermal  
4 efficiency. You have to choose some metrics. So how much  
5 energy to space condition per square foot? You might have  
6 to go find that out. It's not readily available. But you  
7 would start to look for those ways you could tell, are you  
8 having an impact? Are you actually helping people get  
9 more out of what they have and be able to go forward with  
10 less of this fairly expensive converted and delivered  
11 energy?

12                   You'd make clear -- and I think this is  
13 definitely a coming issue and a reason if there were no  
14 other to revisit these rules now -- that planning is just  
15 not about meeting load growth. It really is about  
16 periodically assessing the entire portfolio.

17                   There are obvious things coming down the  
18 road with carbon regulation and so forth, but there are  
19 also going to be other things potentially out there that  
20 challenge our view of, oh, what's done is done and now  
21 we're just moving forward. It may be that we're going to  
22 face early retirements of resources, other arrangements  
23 resources that just haven't been relevant when the only  
24 question was, well, how much did load grow and what do we  
25 need to add?



1                   And then finally we proposed a sub-  
2     objective to firmly establish energy efficiency as the  
3     preferred way of dealing with load growth and realignment  
4     of existing resources simply because there's so much to be  
5     gained there for customers.

6                   So with that, let me move on to process. I  
7     thought I was going to be able to get up here and say  
8     these words for the first time today, but people have been  
9     talking about the plan for the plan, the plan, and then my  
10    word, close. So this is an idea I wish we'd come up with  
11    in Oregon. I like it so well that, you know, it would  
12    have been nice to do it earlier, but we didn't.

13                  The thought here is simply this: That  
14    given where we are now, the questions that are going to be  
15    most relevant to choosing a course of action that's  
16    probably, what, a three to five year course of action, so  
17    probably not going to be planning much further out than  
18    three to five years of things the utility's actually going  
19    to do with respect to resources. Beyond that, you  
20    probably would need to update everything again before they  
21    could take the action.

22                  So given that time frame, what are the  
23    questions that most need to be answered to make sure that  
24    that set of action makes sense over the long-term and  
25    makes sense now. And what those questions are I think is

1 going to be very difficult to write down and capture in a  
2 rule, you know, developed once and then not revisited for  
3 however long.

4                   It would be much better in a way to think  
5 about the utility getting together with its stakeholders  
6 with a start of an assessment of here's where we are now.  
7 Everybody looks at it, maybe has some curiosity about why  
8 we are where we are now. That's one of the questions that  
9 goes on the list. People talk about, okay, what -- given  
10 what we see and what we see looking forward, we're  
11 probably going to need to make these kind of decisions.  
12 What information will be most important? How are we going  
13 to want to manipulate that information? What assumptions  
14 will we need to make over this time frame?

15                   All that gets put together and then brought  
16 to the Commission for review at that point before the  
17 heavy duty modeling work of, you know, endless computer  
18 runs and Monte Carlos and stochastic analyses, that you  
19 actually take time to say, all right, this is -- is this  
20 what we need to answer, and if we answer it, will we be  
21 able to make a decision?

22                   Then if it is, and even people haven't been  
23 able to agree, there's a chance for that to come to you as  
24 well, for someone to say, now, I really tried to convince  
25 everybody that we need to do this kind of analysis.

1 Nobody else agreed with me, but here's why I think it  
2 needs to happen. The Commission would have a chance to  
3 say, yeah, that sounds like that really should happen, or,  
4 no, it sounds like it shouldn't.

5                   And then finally, I think, at this step the  
6 Commission again setting the expectation that, all right,  
7 here's the plan for the plan. We expect you-all to  
8 participate fully in this, providing your comments to the  
9 utility as soon as possible and your suggestions and not  
10 holding anything back because this is -- we agreed on this  
11 plan. Then hopefully planning would go a little bit  
12 faster and more smoothly.

13                   And this is just drawing on my experience,  
14 what we went through in Oregon. I'm sure it's relatively  
15 similar here. You have workshops to deal with what  
16 information you have, what assumptions you need to create,  
17 the results of applying your tools. You try various means  
18 of gathering perspectives.

19                   Here's a loop. I'm not sure, I didn't hear  
20 it mentioned today. In Oregon the utility would prepare a  
21 draft plan. People would comment on that draft, and the  
22 utility was responsible for showing either that it had  
23 made a change based on the comment or writing up why it  
24 didn't do anything with that comment. That allows a  
25 little bit of a written record then back and forth before

1 the plan ever comes to the Commission.

2                   And then finally, closure. So you have to  
3 close off this -- all off. You have a plan for the plan.  
4 You've had the plan. It comes back to the Commission.  
5 Pretty short form process of written comments, oral  
6 comments, focused on did everybody follow the plan for the  
7 plan? Will the proposed actions further the fundamental  
8 objective and any sub-objectives of planning, and how are  
9 you going to know whether that's the case? So what  
10 feedback are you going to be looking for? And is it a  
11 good expression of what the utility and all the  
12 stakeholders believe is known or knowable right now that  
13 ought to inform the resource decisions at hand?

14                   If that's the case and the Commission  
15 issued an order saying it's the case, I guess to me it  
16 doesn't much matter whether you call it approval,  
17 acknowledgement or whatever. What you've done is say you  
18 held everybody accountable for coughing up everything they  
19 could think of that was relevant to be known at this time  
20 when the decision has to get made.

21                   Then whether -- certainly implementation  
22 prudence, that remains an issue. And frankly, we went  
23 round and round on this in Oregon, and the Commission  
24 finally said, all right, we'll leave open. Somebody  
25 desperately wants to have a litigated case to raise

1 prudence that, given what is known and knowable, they  
2 still think the decision was imprudent, okay, they can  
3 have that litigated case. That is not foreclosed.

4 But they're not going to support that case  
5 by showing that, oh, well, here's this thing that you  
6 didn't consider that was really relevant at the time.  
7 They can support it by arguing a different qualitative way  
8 of looking at what's available, but not by coming up with  
9 something new.

10 And with that, I will close myself and see  
11 if you have any questions. Thank you.

12 JUDGE WOODRUFF: Chairman Clayton?

13 CHAIRMAN CLAYTON: No questions.

14 JUDGE WOODRUFF: Commissioner Davis?

15 COMMISSIONER DAVIS: Thank you, ma'am.

16 First of all, I really like the, kind of the planning for  
17 the plan suggestion. I think it would be really good to  
18 get everyone in a room and talk over what they're -- what  
19 they're thinking about filing six, nine months, a year  
20 before they file it. I think that's probably -- if  
21 nothing else, I think that's been one of the most  
22 constructive filings we've -- I've seen here.

23 And I also agree with your point about  
24 making it clear that the decision -- the decision-makers'  
25 thinking process and assumptions. Are you satisfied with

1 the level of specificity behind the NRDC's claim that  
2 Waxman-Markey will actually lower bills in Missouri \$6.32  
3 in the year -- by the year 2020? I mean, do you think  
4 that should be the model that we should use to require  
5 utilities to state their assumptions with specificity?

6 MS. LESH: I'm not familiar with that  
7 analysis. Was it that it would lower bills?

8 COMMISSIONER DAVIS: Uh-huh.

9 MS. LESH: It's probably based on an  
10 analysis of achievable level efficiency gains in the  
11 state, and the state acting on trying to help the  
12 residents and businesses achieve those measures, and what  
13 would be the total then, as I was talking about, remember,  
14 total cost to the customer, so the cost of the equipment  
15 and the structures that you have and the energy input put  
16 together. So it's probably based on projections of that,  
17 and I do not know the source.

18 COMMISSIONER DAVIS: Well, and that's okay.  
19 Actually, they provided me some more information this  
20 morning, and I went back and I've read through it, and I  
21 still haven't been able to really get, you know, at the  
22 EIA assumptions.

23 I guess what I -- what I did apparently  
24 find was that the model incorporates the Energy  
25 Information Administration's, quote, high technology case

1   rather than base case, which is a -- more of a measure of  
2   sensitivity and illustrates the impact of, quote, more  
3   aggressive assumptions about technological improvements  
4   and their role in reducing greenhouse gas emissions.

5                   Also, there was apparently no inclusion of  
6   changes in expenditures on energy-using devices. So, I  
7   mean, I just -- you know, I'm not asking for your response  
8   here today, but, you know, in the future, I'd like to hear  
9   from NRDC, if that's the level of specificity they're  
10   expecting from utilities or they're expecting something  
11   more. Thank you.

12                   JUDGE WOODRUFF: Commissioner Gunn?

13                   COMMISSIONER GUNN: You weren't involved in  
14   that. That's an earlier thing.

15                   MS. LESH: That's quite all right.

16                   COMMISSIONER GUNN: Kind of a different  
17   thing.

18                   We've been talking a lot about prescriptive  
19   versus flexibility, and you've kind of talked about this  
20   stuff at a 30,000 foot level, which I think is  
21   appropriate. I think that that -- I don't know that you'd  
22   get a whole lot of disagreement with people about the  
23   framework that you laid out because it -- it does talk  
24   about getting input, the decisions ultimately being made  
25   by the utility, but they explain them and respond to them.

1                   Do you have -- to just kind of bring it  
2 down into a little bit more focus, do you have either in  
3 your experience or how it fits into the framework, whether  
4 it is possible to give the utility the type of flexibility  
5 that you've sat through here today that I'm asking for,  
6 kind of an objective outcome or objective based plan in  
7 the beginning while still giving us the ability to fill in  
8 the holes and make sure that we have the information and  
9 the input that we need in order to make the plan  
10 meaningful? So I just -- see if you had thoughts on that.

11                   MS. LESH: Thank you for that question  
12 because I thought of something when you were asking those  
13 questions earlier and then forgot to mention it.

14                   The way the Oregon process worked, the  
15 utility finally then put in a final plan showing how it  
16 responded to the comments. There was give and take on  
17 that. And the Commission's choices at that point were to  
18 approve the plan, approve the plan with modifications, or  
19 send the plan back for more work as not supportive yet of  
20 the set of actions proposed to be taken.

21                   And I've actually -- I saw all three happen  
22 over the years I was dealing with it. So sometimes it was  
23 simply there wouldn't be a question. It was more somebody  
24 wanted a higher energy efficiency goal, and the planning  
25 supported that. It was just a question of what number you



1   picked.  So the Commission would just make that  
2   modification.

3                   Other times, and this happened most  
4   recently, the plan was sent back for more work because it  
5   was -- the Commission didn't find it had enough of that  
6   long-term context to support the near-term plan.  And at  
7   that point, then, the utility needs to do that and  
8   resubmit it for another round before it can have the  
9   comfort that actions taken based on that plan have this  
10  grounding in that people agreed, oh, yeah, everything was  
11  known and knowable and looked at before.

12                   So it's not that the utility couldn't go  
13  ahead and start some stuff, but there's some risk out  
14  there until the process is closed, and the Commission then  
15  gets satisfied what it wanted to have satisfied.

16                   COMMISSIONER GUNN:  Thank you.  I don't  
17  have anything further.  Thanks for your presentation.

18                   JUDGE WOODRUFF:  Thank you.  Next on the  
19  list is MIEC.

20                   MR. BRUBAKER:  Thank you, Judge, members of  
21  the Commission.  My name is Maurice Brubaker, and I'm here  
22  today to talk on behalf of the Missouri Industrial Energy  
23  Consumers, which consists of a number of fairly large  
24  industrial purchasers in the state.

25                   I want you to know that our perspective on

1    IRP is that we think it's a very important aspect of what  
2    you're doing. Since we don't have competitive choices,  
3    and maybe we don't want them based on what we've seen in  
4    some other states, it's very important that the regulators  
5    have the tools they need to make the right decisions, and  
6    it's important that stakeholders have the ability to make  
7    meaningful inputs into the process.

8                   I want to emphasize, we think while the  
9    outcome is certainly important, the process, the means by  
10   which you get there also is extremely important.

11                  For the most part, rather than repeat a lot  
12   of things that have been said earlier, I would say I  
13   generally agree with the comments made by Staff and by  
14   OPC. We might differ in little particulars or examples,  
15   but I think the general thrust is pretty much the same.

16                  Our view about the IRP rules is this: They  
17   should be comprehensive as to what's included. They  
18   should be explicit as to their required outputs or  
19   deliverables. They should be balanced and flexible as to  
20   the specific mechanics used and the format of the  
21   reporting. They should be direct as to the ability of  
22   parties to get resolution of disputes as they arise in the  
23   process. In other words, parties should be free to, there  
24   should be a way to get to the judge or to the Commission  
25   as issues arise that cannot be resolved by the parties

1     rather than waiting until it's too late.

2                     In that regard, I think I would look  
3     favorably at this point at least on the heads-up approach  
4     where you have a convening of the interested parties prior  
5     to the filing by the utility. Say, hey, here's some of  
6     the issues. Here's some of the possible resources. Get  
7     some inputs. Everybody kind of knows what's coming and  
8     come have some preliminary thoughts to share.

9                     And then perhaps once we do the demand  
10    side, supply side and load forecast as someone has  
11    suggested, we stop there, pause, have some other inputs  
12    before the utility goes into the integration and risk  
13    analysis process. I think that might be helpful.

14                    In terms of what's the meaning of the plan,  
15    I think the way I view it, the integrated resource plan  
16    that comes out of this process should really be  
17    essentially the utility's business plan at a high level.  
18    It should identify the kinds of resources that the utility  
19    thinks is appropriate for going forward into the future  
20    with.

21                    It wouldn't make any sense to have two  
22    separate plans. I mean, I hear people say it's a check  
23    off the box thing. That's not what it should be. If  
24    that's what it's become, I think we should fix it so the  
25    two are generally aligned. Otherwise, it really doesn't

1 have a lot of meaning.

2                   When I say it should be aligned, let's say  
3 that in the IRP the utility identifies and everybody is  
4 fairly comfortable at least with the plan as 50 megawatts  
5 of energy efficiency in a 500 megawatt combined cycle gas  
6 unit. We don't want to see the utility showing up next  
7 year with 200 megawatts of energy efficiency and a whole  
8 bunch of 50 megawatt combustion turbine peaking units.

9                   There ought to be some linkage as we go  
10 forward so that we say, stay in tune. If they show up  
11 with a 300 megawatt combined cycle instead of 500, I don't  
12 consider that to be a big deviation. At least it includes  
13 resources in the general magnitude that's been considered.

14                   If the plans change, there needs to be an  
15 alert to all the key stakeholders that the utility thinks  
16 the plans have changed or should change. In that regard,  
17 I think the annual updates probably make a good deal of  
18 sense. I think it was Ryan that pointed out that there  
19 didn't need to be a complete redo of the plan, but just  
20 highlighting the major elements and what has changed.

21                   So at the same time, though, I think the  
22 utilities have a responsibility, as did the other parties,  
23 to call an alert if they view that the circumstances have  
24 changed. If the world turns, we need to turn with it. We  
25 shouldn't just dogmatically keep marching forward on a

1 particular plan just because it's in a document.

2                   In that regard, I think there is some very  
3 robust and useful language in both the KCPL and Empire  
4 regulatory plans which lay this out over the course of  
5 several pages. I think that was a very helpful process,  
6 and I think the collaboration worked quite well there.

7                   The third point I would make is the plan  
8 should be realistic and capable of implementation. I'm  
9 not going to get into the nuclear wars. Everybody's  
10 familiar with what happened and what the issues are there.  
11 But you shouldn't have a preferred plan that you can't do.  
12 In that regard, I support OPC's language changes in  
13 Section 60 and 70 of the plan. I think they're designed  
14 to get at that issue.

15                   As to the next steps, I guess one of the  
16 things the parties are asking is some direction on whether  
17 we should continue revising the current rules to address  
18 the key issues and concerns that the parties have or  
19 whether we should back up and look at this at a higher  
20 level in terms of objectives, principles, policies and so  
21 forth.

22                   We'll do what you say. My recommendation  
23 is to continue with the process of revising the current  
24 plans. I think we're well into that. I think everybody  
25 that's participating understands that. If there's a need

1 to make things more detailed in some areas or less in  
2 others, I think we can handle that. My experience is when  
3 we back away from the nuts and bolts, start talking about  
4 things in high level terms of principles, objectives,  
5 policies and so forth, that we get bogged down in a lot of  
6 semantics and really take up a lot of time that maybe we  
7 could more productively use toward actually coming up with  
8 a new rule that works better.

9                   One other important area I want to talk  
10 about is this. You've heard words like acknowledge,  
11 endorse, approve, preapprove. Those are all really high  
12 level general kinds of words, and I would just ask that if  
13 you are inclined to think about coming up with a rule  
14 that's more -- that has aspects of what you might believe  
15 are acknowledge, endorse, approve, that rather than just  
16 put that out as a stark concept, give us some direction  
17 and let us go back, let the parties go back and work  
18 through the details, because the devils are in the  
19 details.

20                   The greater extent that you have a process  
21 that comes up with an approval of a decision, the more  
22 important it is that you understand what all the  
23 interplays are as you went through, went forward getting  
24 to that decision and consider the regulatory opportunities  
25 you'll have later and the legal opportunities that you'll

1 have later.

2                   So I think there's a lot that could be  
3 productively worked out in a collaborative session if  
4 indeed that's the direction you want to go.

5                   Other than asking Judge Woodruff if I could  
6 make a couple of brief comments about the NRDC  
7 presentation, that was going to conclude what I had to  
8 say.

9                   JUDGE WOODRUFF: Go right ahead.

10                  MR. BRUBAKER: Okay. Thank you. I enjoyed  
11 the presentation. I think what I wanted to highlight is  
12 that while I agree bills are important, rates are  
13 important as well, particularly from the perspective of  
14 folks that represent manufacturing industries. Rate  
15 levels are important when they look at what their cost of  
16 doing business is in Missouri versus other states or other  
17 countries, and the time pattern of the rates are also  
18 important.

19                  You might conceive that on a net present  
20 value basis, the best plan was one that had the lowest  
21 NPV, but the rates in the front end were high, the rates  
22 on the back end were very low. You've got to consider  
23 what's it take to get there. What kind of a cliff do we  
24 have to climb on the front end? Are those rates going to  
25 have an adverse impact?

1                   I would be the last to say that electric  
2 rates are the only factor that go into business decisions,  
3 but from my experience with industrials, it's a very  
4 important matter. Certainly, for example, if Boeing is  
5 considering whether to put a process in Washington state  
6 or in Missouri and it's the same process, it's the same  
7 kilowatt hours regardless of where it goes, the rates are  
8 going to be the decisive factor. It could calculate its  
9 bill, but it has to have a reasonable rate in order to  
10 make a favorable decision for us.

11                   So I think, again, rate levels are very  
12 important. And the final comment I would make about that  
13 is, while I think energy efficiency is important, it  
14 depends on how and who pays for it, how confident we are  
15 about the efficacy of individual measures as we go forward  
16 over time, and I would come back to say I think it's still  
17 integrated resource planning which gives equal  
18 consideration to energy efficiency and to supply side type  
19 of options for meeting our energy requirements.

20                   Thank you for your time and attention. If  
21 there are any questions, I'd be glad to try to field them.

22                   JUDGE WOODRUFF: Chairman Clayton?

23                   CHAIRMAN CLAYTON: No questions.

24                   JUDGE WOODRUFF: Commissioner Davis?

25                   COMMISSIONER DAVIS: No. Thank you,



1 Mr. Brubaker. I think your remarks were very succinct.  
2 Any points of disagreement with the electric utility  
3 presentations that you heard earlier? I'm just trying  
4 to -- because you mostly agreed with Staff and OPC, and  
5 I'm -- you didn't really comment much on the -- what  
6 Mr. Kidwell or any of the other people had to say, so I  
7 just wanted to make --

8 MR. BRUBAKER: I appreciate that  
9 opportunity. I guess, you know, I think that I just tried  
10 to stay a little bit out of those leaves by saying more  
11 what I agreed with than what I didn't. I think that the  
12 parties are now beginning to draw closer together. I  
13 think we've got a better focus on things just by what  
14 we've done.

15 Mr. Kidwell said he was optimistic about  
16 being able to work out a process here that would serve  
17 everybody's needs. I think I am, too. I think all  
18 parties are beginning to focus on why are we really here.  
19 I just don't want to comment on any --

20 COMMISSIONER DAVIS: Right. To me, I mean,  
21 hearing everyone so far, it doesn't seem like everyone's  
22 that far apart. I mean, it doesn't seem unreconcilable  
23 anyway.

24 MR. BRUBAKER: It doesn't to me either.  
25 We'll find out. I hope we have a chance to find out, to

1 work through the process and see what we can do.

2 COMMISSIONER DAVIS: All right. Thank you,  
3 Mr. Brubaker.

4 JUDGE WOODRUFF: Thank you, sir. Next name  
5 on the list is DNR.

6 MS. WILBERS: I'm Brenda Wilbers with the  
7 Department of Natural Resources Energy Center. While Lena  
8 is helping me find that, I'll start by saying that  
9 Director Templeton sends his regrets. He would have been  
10 here today but for a previous commitment, and what I'm  
11 going to present today is what the Department has been  
12 saying consistently in the IRP workshops and includes the  
13 key points related to IRP that Director Templeton made in  
14 his presentation Monday at the PSC state of the  
15 electricity industry forum.

16 Okay. Briefly, just two big topics I guess  
17 that I'll cover: Timing and rule revision process, and  
18 key policy issues important to DNR in the IRP rule.

19 On the process, I think the purpose of this  
20 public meeting is to present and try to receive guidance  
21 from the Commission on the direction of the process as  
22 well as timing. DNR recommends that the current schedule  
23 for rule revision should be continued without delay.  
24 We don't feel that the status quo is as meaningful a  
25 process as it could be, and we think we need to move the

1 process forward.

2 Key policy issues. A meaningful IRP  
3 process. We've heard several parties talk about that  
4 today. Energy efficiency as a priority resource, DSN  
5 incentives and Smart Grid investments and information.  
6 I'll talk more about each one of those here in a moment.

7 I bring up the EISA standards a placeholder  
8 because these items were directed to be considered in this  
9 docket and I wanted to put them back up here, unless I  
10 think the Order said Staff may recommend another  
11 appropriate forum.

12 So for the meaningful IRP process, it  
13 should guide the utility to use IRP as its core ongoing  
14 process, not just a once in three years exercise. I think  
15 we've heard this, and I think we kind of all agree with  
16 this. Robust analysis on diversity of candidate resource  
17 options and harmonizing planning objectives with state  
18 policies.

19 The rule should establish comprehensive  
20 filing and reporting requirements. We believe it should  
21 enable Commission review of the plan quality as well as  
22 whether the process rules were followed. And it should  
23 establish consequences or linkages to subsequent  
24 ratemaking. So does the plan tie to a utility's decisions  
25 or actions, is kind of what we're trying to get at there.

180

11 We just -- these are reasons why we support  
12 the annual update filing requirement. I think we've  
13 covered those. And the stakeholder technical review.

14                   The Commission review. We believe the IRP  
15 process would be more meaningful if the Commission had  
16 more authority beyond the determination of compliance with  
17 the rule process. So the concept we've proposed is that  
18 the Commission may acknowledge substantial findings,  
19 determinations, analyses and resource acquisition  
20 strategies in whole or in part that those are reasonable  
21 at the time of the filing.

22                               And again, the Commission could acknowledge  
23   in whole or in part just the acquisition strategy or the  
24   whole plan or various parts of that.

25 Consistency in subsequent ratemaking. An

1 acknowledged plan -- a resource investment consistent with  
2 an acknowledged plan could be used as evidence in support  
3 of that favorable ratemaking treatment. However, it would  
4 not be a guarantee. And again, on the flip side,  
5 inconsistency with the plan would not necessarily lead to  
6 unfavorable ratemaking treatment but require some utility  
7 explanation or justification why it took an action not  
8 consistent with the plan.

9                   So an acknowledged plan would become a  
10 working document for use by the utility and the Commission  
11 and other parties. So it is an attempt to try to link it  
12 with ratemaking.

13                   What it is not, I think we've also heard  
14 some of this today. It's not approval. It's not a  
15 finding of prudence, and prudence determinations are based  
16 on what's -- prudence determinations are based on what was  
17 known and knowable to the utility at the time the utility  
18 made the resource decision, not when it requested or  
19 received acknowledgement of its plan.

20                   The objectives of the IRP. The fundamental  
21 objective is in 240-22.010, and we recommend including the  
22 focus on long-term costs and benefits to the public.  
23 Energy efficiency is the least expensive resource and  
24 decreases electricity bills and costs over the long-term,  
25 and DNR recommends that energy efficiency should be

1 established as a priority resource in the rules policy  
2 section of 010.

3                   Given the tremendous potential of energy  
4 efficiency, its costs compared to supply side alternatives  
5 and its zero carbon footprint, we should do all we can to  
6 accelerate its acquisition.

7                   Energy efficiency as a priority resource is  
8 one of the EISA standards which should be considered in  
9 this docket. It was also the first recommendation in the  
10 National Action Plan for Energy Efficiency, that it be a  
11 high priority energy resource.

12                   And going along with that is a supportive  
13 ratemaking environment to provide utility incentives for  
14 successful management of the programs and to adopt rate  
15 designs that encourage energy efficiency. I think we all  
16 recognize we have this in Senate Bill 376 now. We can  
17 move forward with that.

18                   We believe that recent Missouri legislation  
19 provides a basis for policies that establish cost  
20 effective energy efficiency as a priority resource.  
21 Senate Bill 376 directs the Commission to permit electric  
22 corporations to implement approved demand side programs  
23 with the goal of achieving all cost-effective demand side  
24 savings, which is a very broad, aggressive goal.

25                   And also 393.1040 in the statute says it's

1 the policy of the state to encourage corporations to  
2 develop and administer energy efficiency initiatives that  
3 reduce annual growth in energy consumption and the need to  
4 build additional generation capacity.

5                   So because all cost-effective DSM is such a  
6 broad goal, we think it should be interpreted in terms of  
7 achievable objectives. We don't think it's very fruitful  
8 to take the goal literally and translate it into a  
9 rigorously defined standard because by definition  
10 achieving all cost-effective demand side savings is  
11 equivalent to achieving 100 percent of DSM economic  
12 potential, and that's never possible to achieve  
13 100 percent of DSM economic potential because of barriers  
14 that are out there in the marketplace.

15                   That's why some states have set -- set out  
16 additional achievable goals to support their official goal  
17 of all cost-effective DSM savings. Some states that have  
18 done this, that have both of the goals are Connecticut,  
19 Massachusetts, California, Washington and Vermont. And  
20 those states either have set targets or routinely set  
21 targets to meet the goal every two years or so and work  
22 towards achieving the broader goal of all cost-effective  
23 DSM.

24                   So to reflect this policy that efficiency  
25 is a priority resource, we recommend adding provisions to

1 establish higher DSM targets in alternative resource  
2 plans, and assuring that the preferred plan achieves a  
3 minimum standard for DSM resources. That can be specified  
4 in an annual or cumulative percentage reduction in energy  
5 use and peak demand compared to a baseline period.

6 DSM incentives I spoke to already. And the  
7 last two points are EISA standards that deal with Smart  
8 Grid cost recovery and information. The current draft  
9 rule does include a lot of provisions related to Smart  
10 Grid. We didn't see anything that addresses the cost  
11 recovery of Smart Grid yet.

12 That may still be part of the process that  
13 we'll talk about. If it's not addressed in this docket,  
14 it may be that another forum is appropriate. It could be  
15 that recovery of costs for Smart Grid investment would  
16 simply be addressed in individual rate cases, but I wanted  
17 to put it here as a placeholder.

18 And the last slide, Smart Grid information,  
19 an EISA standard that deals with primarily two areas. One  
20 requires price and usage data to customers on at least a  
21 daily basis, and we think that's important to enable  
22 customers to make informed decisions about their energy  
23 use and facilitate energy efficiency savings.

24 And the standard also sets out that  
25 utilities provide their generating source information



1 annually to their customers, and we also think that's very  
2 important. A couple dozen states, including Illinois and  
3 Iowa, require fuel mix and emissions reporting by  
4 utilities. And even though the EISA standard sets out  
5 greenhouse gas emissions, a lot of the other states  
6 include other criteria pollutants as well.

7                   So we think those two points also either  
8 should be addressed here or in some other forum. And the  
9 last one, the annual generating source information, it  
10 could possibly be dealt with in the RES rulemaking since  
11 that I believe has a provision for annual reporting in  
12 there.

13                   Thank you.

14                   JUDGE WOODRUFF: Thank you. Chairman, do  
15 you have any questions?

16                   CHAIRMAN CLAYTON: I do, but I'm going to  
17 wait.

18                   JUDGE WOODRUFF: All right. We've got two  
19 more names on the list, Noranda and Dogwood Energy.  
20 Before we move on, we'll take a short break. We'll come  
21 back at 3:30.

22                   (A BREAK WAS TAKEN.)

23                   JUDGE WOODRUFF: Let's come to order.  
24 We're back from our break and Noranda's up and  
25 Mr. Johnstone's at the podium.

1                   MR. JOHNSTONE: My name is Donald  
2 Johnstone. I am a consultant for Noranda Aluminum.

3                   We've had some people today talking about  
4 history. Maybe I will start with a brief anecdote. In  
5 1975 the corporate planning department of the Union  
6 Electric Company was reorganized and given the assignment  
7 of doing resource planning. I was a charter member of  
8 that group, as were a number of other young engineers, and  
9 it seems that we had a very challenging time. Our  
10 assignment was to make corporate planning what it ought to  
11 be based on the state of the art at the time.

12                  We had a pretty good run at it, and then in  
13 1981 I got a phone call from Mr. Brubaker from the firm of  
14 Drazen Brubaker & Associates, and they made me an offer I  
15 could not refuse. Turns out that Mr. Brubaker made that  
16 offer to several people at Union Electric, and four of the  
17 people that had been working on resource planning, about  
18 half of the group, left, which prompted a call from the  
19 general counsel of Union Electric to Mr. Brubaker asking  
20 him to lay off.

21                  I don't know exactly what transpired on  
22 that phone call, but I am told that it was suggested that  
23 the company ought to take better care of their people.  
24 Obviously they've done so since then because they've got a  
25 very talented staff. But I think I'd like to make a

1 couple of points from that.

2 First, there is a lot of talent around the  
3 room on the subject of resource planning, with the  
4 Brubaker firm, at Public Counsel, at Staff, the other  
5 participants, DNR, and those voices need to be heard.

6 The second point I think is kind of a  
7 little more fun, and I think maybe Mr. Kidwell owes his  
8 job to the fact that Mr. Brubaker recruited away half the  
9 department before he got there. Steve, that's just  
10 something to think about. Is he back there?

11 With that having been said, I'd like to  
12 launch into a discussion of where we are today. We've  
13 heard a lot. Some of what I say I hope will bring a  
14 little different perspective to what you've been hearing.

15 Planning that supports reasonable and  
16 competitive rates is of critical importance. That has to  
17 be my number one point. Being from Noranda, you know that  
18 we care about rates.

19 The second bullet is a statement of the  
20 obvious. There's unprecedented public and political focus  
21 on issues that relate to but are not bounded by electric  
22 utility services. NRDC just had something to say about  
23 that. Energy, electricity, efficiency, climate change,  
24 jobs, economic impact, these are all things that relate to  
25 the energy services that we're talking about, but they're

1 not all in the sphere of things that can be controlled in  
2 the resource planning process. We have to somehow  
3 accommodate that world.

4                   At the simpler level, I think there's  
5 widespread agreement that we need to make some changes to  
6 bring the rules up to date, relax and modify where  
7 appropriate, perhaps enhance or add to them where  
8 appropriate.

9                   A point that I'd like to make has to do  
10 with the nuclear plant. Risk and responsibility needs to  
11 be examined in the context of facilities that cost  
12 billions.

13                   I should pause briefly and say that my  
14 experience in resource planning in the state of Missouri  
15 in recent years has been entirely with Union Electric  
16 Company, AmerenUE. So there are issues that have been  
17 raised by Empire and by Kansas City Power & Light today,  
18 and I know that there are others in the room that have  
19 been a direct part of those planning processes and I'll  
20 leave the comments on those to them.

21                   So by and large what you'll see are my  
22 comments as viewed through the eyes of one who buys a lot  
23 of power from UE.

24                   The utility has requested a relaxed  
25 approach. Another important point that we've had some

1 discussion about, the current rules by design do not  
2 result in the PSC approval of the utility plans. The  
3 concept is utility management remains responsible for good  
4 planning, good plans, efficient implementation.

5                   Prudence reviews and determinations are  
6 contemplated for rate cases after the facilities become  
7 operational. Indeed, last -- about a year ago we were  
8 talking about the UE IRP, and you were advised by Ameren's  
9 counsel that we're not here to make any decisions about  
10 this plan, that they would take full responsibility and  
11 deal with that in the context of a rate case down the  
12 road.

13                   However, the fundamental objective is  
14 results oriented, and you've heard these words once before  
15 today, to provide energy services that are safe, reliable  
16 and efficient at just and reasonable rates in a manner  
17 that serves the public interest.

18                   I think there are some reasons for change.  
19 Utility responsibility for prudence during planning and  
20 construction continues to be an effective approach in many  
21 circumstances, but not in every circumstance. Some  
22 investments are so large that any failure to review plans  
23 will have ratepayers vulnerable for billions where  
24 utilities either will not or cannot accept the risk.

25                   It seems that some projects, in my opinion,

1 fall in the category of too big to fail. What that means  
2 is somebody's going to pay. If the utility can't, it will  
3 be the customers, it will be the investors perhaps, the  
4 bondholders perhaps, but it will be the customers. So  
5 there's a vital interest of the customers and the public  
6 interest when the -- when the projects get to be such a  
7 huge size.

8                   The current rule defines a minimum process.  
9 We've talked about relaxing the rules, but I haven't heard  
10 anybody suggest that we need a less robust process.  
11 Perhaps flexibility in the implementation, perhaps a  
12 review of the particular rules, the hoops that are jumped  
13 through, but I haven't found anybody today that stood up  
14 here and said, you know, we need to do less. It's all  
15 about how we're going to get there. That's what this is  
16 about.

17                   Certainly there is a case to be made for  
18 some flexibility. No one, no thinking person would oppose  
19 reasonable flexibility, but there is another side to that.  
20 The rule as it stands today simply defines a minimum. It  
21 does not preclude anything. It does not preclude an  
22 analysis which shows the full revenue requirements impact  
23 of a nuclear plant.

24                   There is the question of trust and  
25 stakeholder involvement. We hear something that sounds to

1 us something like, trust me, a flexible approach will  
2 include stakeholder involvement. We have some heartburn  
3 with that. As recently as last summer when we were  
4 wrestling with the very difficult issue of the revenue  
5 model that was part of the plan, the attorneys came to the  
6 workshop and explained to me very clearly that the sole  
7 purpose was to get the boxes checked, and the questions  
8 that I was asking about the viability of the plan were  
9 beyond the scope of the requirements.

10 I heard Mr. Kidwell acknowledge today, I do  
11 believe, that there is room for improvement in that part  
12 of the rule. It is just astonishing to me that we need a  
13 rule such as was drafted by OPC. Ryan was kind enough to  
14 circulate that, a draft of that. I looked at it. I had  
15 some comments on the words, and I support it. I think  
16 it's a good thing. I think it's a shame, however, that  
17 it's necessary.

18 What could be more fundamental than getting  
19 the revenue requirements right on the analysis of a  
20 nuclear plant that's going to cost \$9 billion to the state  
21 of Missouri?

22 New work was not and generally is not  
23 provided in response to a Data Request. So when they say  
24 that we're going to collaborate, what does that mean? If  
25 there is not a rule requirement and we ask a question,

1 they have the right to say, we're not going to answer  
2 because it requires new work.

3 I've been doing this for a number of years.  
4 I understand those are the rules of the game. And so what  
5 I would caution you with is this: If you relax the  
6 requirements, the ability of stakeholders, the Staff, the  
7 OPC, Noranda, other customers, to get answers will be  
8 severely limited if it's not within the four corners of  
9 the rule that you approve.

10 The message changes for the audience. Say  
11 one thing at the PSC, another at the Legislature. At the  
12 PSC, what we heard last year, this is merely a  
13 placeholder. We'll address the deficiencies next time.  
14 Nine times out of ten that's probably a really good idea.  
15 It's not worth stopping, it's not worth a redo.

16 Unfortunately, Noranda, OPC, others were  
17 not able to convince the Commission that they needed a  
18 redo. We were not able to convince Ameren that they  
19 needed a redo. So it didn't get done with respect to the  
20 revenue model.

21 OPC did a lot of work to put together a  
22 model to illustrate the impact of the problem. That's  
23 been filed. It was given a docket number, but nothing  
24 proceeded. I am really glad to hear today that there is  
25 no opposition to the language that Ryan has proposed



1 because certainly that's needed if we're going to be able  
2 to address this and know that we're going to be able to  
3 address it next time around.

4                   So our experience is this: After having  
5 been to the Commission and having had it explained to us  
6 in front of the Commissioners last October, I believe it  
7 was, that management would take full responsibility, that  
8 same management went to the Legislature, which is  
9 certainly their right, to say we need a new law.

10                   But they also said, we can't build this  
11 thing under the present law. Even though we've got an IRP  
12 that says it's the best choice, there's just a complete  
13 disconnect between the reality of what they could do, what  
14 it would actually cost the customers if they did it, and  
15 the present law and the new law. It simply wasn't  
16 properly analyzed.

17                   Maybe in retrospect by keeping the option  
18 open it was the correct decision. Frankly, we don't know.  
19 We've got 300 million in AFUDC accruing that we'll have to  
20 deal with if the plan ultimately goes forward. It would  
21 have been nice to have had a serious look at the models  
22 last year when those decisions were being made.

23                   The bottom line, in my opinion, is there's  
24 a question of trust. You have to understand that we are  
25 skeptical when they say give us just the goals and we will

1 do a good job. Trust us. We'll help you. We'll answer  
2 your questions.

3                   My conclusion is this: A process oriented  
4 rule remains an appropriate part of the planning  
5 oversight. It ensures a robust process. No one has  
6 argued against a robust process. It ensures a minimum  
7 level of analysis and data for review. It ensures  
8 flexibility to pursue more or different analyses as  
9 appropriate. There's nothing written anywhere that  
10 prevents the utilities from taking any particular  
11 approach. It is simply a minimum, and it's so stated.

12                   I think there is a change. We certainly  
13 should make it better where we can, there's no question.  
14 And Lena's presentation this morning I thought was  
15 excellent. We've had several workshops, and I think for  
16 the first time it's been put together, coalesced into a  
17 direction. Certainly we'd like to have more time to look  
18 at what she proposed this morning, but I think that it's  
19 going a long way toward striking a correct balance for  
20 going forward.

21                   In the context of big plants, we need the  
22 ability to look at the plan, the plant. We need -- we  
23 need that second step. There was a, I think, a sense of  
24 the Commissioners that, gee, we're limited to looking at  
25 the process. How can we -- why would we do more now? I

1 would argue to you that you're not limited by this rule.  
2 Just as the utility is not limited by the rule, the  
3 Commission is not limited by the rule.

4 My counsel's prepared to talk at more  
5 length about your authorities, but we certainly could have  
6 done more last year, we might have, and I suspect we will  
7 in the near future.

8 But in any event, whether it's part of the  
9 IRP or a separate process, it's certainly our opinion that  
10 when you get to decisions of that import and magnitude for  
11 the state of Missouri, there needs to be a more  
12 substantial review than was had last time around. You  
13 need to look at the result, not just the process. No rule  
14 can replace the element of trust. We need that. I'm  
15 hopeful that we'll get it rebuilt as we go forward.

16 Way back when I took my MBA and we talked  
17 about the iron law of social responsibility. It says, any  
18 power that is abused will be taken away. I'm not here to  
19 say power was abused, but I will say that there was  
20 perhaps a perception that there was a major problem when  
21 Callaway 1 came online, when Wolf Creek came online and  
22 the huge rate increases associated with that. It was not  
23 long after that where we had a nuclear plant that started  
24 with a budget of 800 million and came in at 2.9 billion  
25 that we decided in the state of Missouri that there should

1 be some resource planning rules.

2 I think that it's perhaps a tad ironic that  
3 we have a suggestion from the utilities that we back away  
4 from the planning process and give them more flexibility  
5 at this point. The process really is coming to a head.  
6 It's -- we're back to the huge decisions that people had  
7 in mind when they created it the first time around.

8 We need the process. We should make it  
9 more efficient. We should streamline it. We should  
10 perhaps supplement it in many areas. But it's a good  
11 process. It's a process that's needed in order to protect  
12 the public interest for the state of Missouri. The stakes  
13 today are huge for ratepayers.

14 One of my favorite ways to say it is this:  
15 Certainly the utilities have their private interests, they  
16 manage their business, but they are private keepers of the  
17 public interest. They do not have the unilateral right to  
18 make decisions without review. They certainly have the  
19 authority to manage the business, but the public interest  
20 is something that comes before this Commission, and it's  
21 your responsibility and your ability to look after that.  
22 A lot of people are here to participate with you in that  
23 process.

24 Conclusions. A radical change to eliminate  
25 the process requirements in my opinion is not a good idea.

1 We find it a disturbing possibility in the context of the  
2 trust issues that we've experienced in the last year.

3                   Where the stakes are large, there ought to  
4 be a review of the plan in addition to the process. We  
5 think that the IRP rule's focus on process continues to be  
6 valuable. It can and will accommodate the evolving  
7 federal and state energy policies. It will accommodate  
8 and enhance focus on rates and bills.

9                   What is next? What I've heard today, I'll  
10 come back to the presentation by Lena this morning. I  
11 believe it was a good one. I don't know if the parties  
12 can get there without some direction, but I think some  
13 direction from this Commission would be helpful, advice  
14 that Staff is on the right track, advice that we want to  
15 have reasonable process oriented rules that will ensure  
16 that we get the Is dotted and the Ts crossed and will  
17 ensure the ability of parties to get the data and the  
18 analysis that they need in order to ensure that the public  
19 interest is served.

20                   I think perhaps absent some degree of  
21 policy direction from the Commission, it's going to be  
22 very difficult for the parties to come together. There  
23 are those that want the very relaxed approach. There is  
24 the process oriented approach.

25                   While I heard the words today, and some of

1    them sound like they're reconcilable, experience shows  
2    that when it comes down to writing it, there's still a  
3    very huge tension between those two camps here today.  
4    Certainly Noranda will endeavorer to contribute  
5    constructively to this process. The results of the  
6    process, the cost of electricity is of vital importance to  
7    my client. We'll be here to do what we can to make sure  
8    the process does everything it can to serve the public.

9                   Thank you.

10                  JUDGE WOODRUFF: Mr. Chairman?  
11    Commissioner Davis?

12                  COMMISSIONER DAVIS: So Mr. Johnstone, I  
13    mean, a recurring theme in your remarks is, AmerenUE is  
14    not trustworthy; is that a fair statement? I mean, that's  
15    in essence what you're saying?

16                  MR. JOHNSTONE: I'm saying two things. We  
17    had a bad experience, and I'm not going to be shy and  
18    pretend it didn't happen.

19                  The second thing I'm saying is that, under  
20    the rules, the rules of engagement if you will before this  
21    Commission and before other commissions, there's a limit  
22    to what you can accomplish with Data Requests. We need  
23    the rule so that we can get answers to the Data Requests.

24                  Without the requirements of the rule,  
25    simply asking them a question about resource planning

1 requires new work. It doesn't get an answer. I don't  
2 blame them for that. That's not their fault. They're not  
3 being bad actors. But if they're trying to suggest that  
4 they're going to take an entirely different approach, we  
5 need something more than a lick and a promise on that one.

6 COMMISSIONER DAVIS: Well spoken. Going  
7 back to, I think it was page 10 of your presentation, your  
8 second conclusion, where the stakes are large, there ought  
9 to be a review of the plan in addition to the process. Do  
10 you -- do you have a suggestion about what that threshold  
11 ought to be?

12 I mean, would it -- keep in mind we've got  
13 three different utilities. We've got Ameren. We've got  
14 KCP&L and Empire. I mean, should that threshold be, you  
15 know, a multiple of gross operating revenues? Should it  
16 be a billion dollars? Should it be -- do you have any  
17 thoughts about what -- what that threshold should be?

18 MR. JOHNSTONE: Certainly a new nuclear  
19 plant meets the threshold.

20 COMMISSIONER DAVIS: Right. You know it  
21 when you see it.

22 MR. JOHNSTONE: That much is not difficult.  
23 I think that KCPL and the parties on the west side of the  
24 state knew it when they saw it. It was called Iatan.

25 And so if you begin with those two, those

1 are two examples when we would absolutely in my opinion  
2 want this. Beyond that, I'm not sure where the line would  
3 be drawn with any specificity. We can get to it in due  
4 course, I'm sure.

5 COMMISSIONER DAVIS: So a new nuke plant  
6 gets it. A new coal plant gets it.

7 MR. JOHNSTONE: That's all we know about  
8 today. Gas plants are not difficult. They don't have  
9 long lead times.

10 COMMISSIONER DAVIS: So potentially  
11 anything that would have a long lead time and be  
12 expensive?

13 MR. JOHNSTONE: Capital intensive, long  
14 lead time, those are keys when you're making decisions  
15 today that are going to affect us for years to come.

16 COMMISSIONER DAVIS: And Mr. Johnstone,  
17 it's fair to say that a few mills on electric rate makes  
18 an enormous difference to your clients as well as many  
19 other industrial consumers in the state, does it not?

20 MR. JOHNSTONE: Certainly. Yes, sir.

21 COMMISSIONER DAVIS: No further questions,  
22 Judge.

23 JUDGE WOODRUFF: Thank you, Mr. Johnstone.

24 MR. JOHNSTONE: You're welcome.

25 JUDGE WOODRUFF: Last name on the list, then, is



1 Dogwood Energy.

2 MR. LUMLEY: Good afternoon. Carl Lumley  
3 representing Dogwood Energy. I know the two Commissioners  
4 that are present know a little bit about Dogwood, but just  
5 for the record in case the new Commissioner looks back or  
6 perhaps is watching, Dogwood is the owner of a 625  
7 megawatt combined cycle generation plant in Pleasant Hill,  
8 Missouri, which is near Kansas City in the GMO service  
9 area.

10 Hopefully -- and I think some of the  
11 commenters have touched on this. Hopefully we're not just  
12 talking about planning for the sake of planning, not  
13 looking to generate the end product of a stack of binders  
14 that just goes on some shelf somewhere, but an action plan  
15 that largely gets implemented. Things change. Plans are  
16 never fully implemented. But hopefully an effective  
17 planning process leads to, in large part, action.

18 During the workshops Dogwood has provided  
19 specific comments on the rule language, but we've also  
20 provided information about adding to the rules a  
21 requirement on competitive bidding. And it should be no  
22 secret that this comes from real concerns that have  
23 resulted in very large quantities of testimony in recent  
24 cases, and these concerns impact Dogwood and others in the  
25 electric community.

1                   The Commission's current rules touch on the  
2     issue in the affiliated transaction area by requiring  
3     utilities to either use competitive bidding procedures or  
4     at least explain why it wasn't necessary, and that's in  
5     20.0153(a), but that's not strong enough protection.  
6     Bidding procedures should not just be a preference, but  
7     they really should be required. There needs to be a  
8     certain degree of detail so that we're all talking about  
9     the same thing, it's not just lip service to the idea of  
10    competitive bidding, but true competitive bidding.

11                  Improper influence, whether it comes from  
12    an affiliated relationship or looser connections, is a  
13    very insidious thing. It's hard to identify, it's hard to  
14    prove, and it's hard to undo. And the risks to the public  
15    are great given the size of the dollars involved.

16                  When taxpayer dollars are at risk or are  
17    being spent, the State employs competitive bidding  
18    procedures to assure that sound fiscal management rules  
19    the day and not favoritism. Many cities and other taxing  
20    entities employ similar procedures.

21                  Utility rates are almost as hard to avoid  
22    as taxes. In some circumstances you may have some  
23    flexibility, but you're basically paying for public  
24    services or you're paying for utility services, and  
25    there's only one game in town in most instances.

1                   Like the utilities themselves, the  
2 Commission's funded by ratepayer dollars ultimately, and  
3 it has to deal with competitive bidding in its own business  
4 operations to make sure that those dollars are spent  
5 correctly.

6                   It's been mentioned that during the  
7 workshops we've supplied an amplification of the current  
8 competitive bidding rules based on the Oklahoma model, and  
9 the source of that was that representatives of the Kelson  
10 family of companies were involved in the development of  
11 those Oklahoma rules.

12                  But our preliminary research shows that  
13 similar rules are in place in many other states, Arkansas,  
14 Connecticut, Iowa, Maryland, New Jersey, Pennsylvania and  
15 Texas, and actually some other folks have mentioned  
16 California today is developing such rules. So there's a  
17 variety of models that we can look at in the process.

18                  But what these examples show is that the  
19 need for these rules is well established, and they need to  
20 play an integral part of the IRP process. As you go  
21 through this process, preliminary assessments are made and  
22 alternatives are ruled out fairly early in the process.  
23 If that's just based on ideas instead of reaching out to  
24 the competitive community, choices are being eliminated  
25 based on misinformation.

1                   And then as we move into implementation of  
2     the plan, then obviously full competitive bidding is  
3     absolutely critical to make sure that the best choices are  
4     made. And we're not talking about a process that dictates  
5     the decision. We're talking about having a set of  
6     procedures so that there's confidence in the decision that  
7     management ultimately makes on their own.

8                   Dogwood continues to invest substantially  
9     in this state and seeks to ensure that it will have an  
10    opportunity to compete fairly to sell its generation  
11    capacity, and the public deserves to have access to that  
12    capacity if it's the best solution for a particular  
13    problem.

14                  The Commission can give general direction  
15    in this process that these procedures should be  
16    incorporated or at least considered seriously and thereby  
17    ensure that the integrated resource plan and  
18    implementation process is handled in a more open and fair  
19    manner to protect the public and ensure its confidence.

20                  Thank you.

21                  JUDGE WOODRUFF: Chairman, questions for  
22    Mr. Lumley?

23                  CHAIRMAN CLAYTON: No questions.

24                  JUDGE WOODRUFF: Commissioner Davis?

25                  COMMISSIONER DAVIS: Mr. Lumley, I

1 certainly understand your point of view on this. I guess  
2 my question is, the conventional wisdom here with the  
3 Commission Staff has always been over the long term, more  
4 than 20, 30, 40 years, it's better to -- for the utility  
5 to build its own generation as opposed to long-term  
6 purchased power or whatever because the utility can extend  
7 the useful life of the plant and, you know, thereby reduce  
8 its costs long term.

9                   And I guess my question to you, just having  
10 looked at your comments briefly is, I would be concerned  
11 that your draft doesn't necessarily capture that, and I'm  
12 not sure necessarily how to put it in words, but do you  
13 think that ought to be a consideration? And I'd like to  
14 hear both your thoughts as well as maybe Mr. Dottheim's  
15 and Ms. Mantle's thoughts on that.

16                   MR. LUMLEY: Well, I think there's two  
17 parts to that. First, on the philosophical approach that  
18 you're touching on, once a competitive entity builds the  
19 plant and it's sitting there, there's a risk shifting that  
20 can occur where the monopoly utility doesn't have to  
21 undertake the risk of construction. Somebody else has  
22 taken that risk, and they can just buy something they need  
23 to fill a short-term gap.

24                   But I understand your point, but the  
25 competitive bidding process is not meant to be an

1 adjudicator between the choice of building it or buying  
2 it. That's all just part of the planning process. What  
3 we're talking about is, when the planning process says we  
4 need to buy this for this part of our needs, then we want  
5 the choice to be made on an appropriate set of criteria  
6 and not based on favoritism because there's an affiliate  
7 that happens to have a plant far away that's not busy.

8                   So it's really not meant to filter out --  
9 when you look at the integrated resource plans, the last  
10 one, if I'm remembering right, that I just looked at has  
11 22 different kinds of solutions out there, and some are  
12 build and some are buy type of solutions. Competitive  
13 building isn't going to sort that out. If the right  
14 choice is to own your plant to solve a 10-year or 50-year  
15 problem, whatever it is, that's what you're going to do.

16                   But if part of it is we're not going to get  
17 that plant online for five years, what are we going to do  
18 before that, you know, we want those choices to be fairly  
19 made.

20                   COMMISSIONER DAVIS: Okay.

21                   MR. LUMLEY: Does that address your  
22 question?

23                   COMMISSIONER DAVIS: Yes. I think so. I  
24 didn't know if Mr. Dottheim or Ms. Mantle had anything to  
25 add.

1                   MS. MANTLE: I think you've represented our  
2 position pretty well. We prefer that the utility have  
3 steel in the ground basically because we've seen  
4 ratepayers get burned a few times. They pay for a  
5 long-term lease on power plants, and then when the lease  
6 is up, they have to buy them at market price. While that  
7 may still be cheaper than building brand new, more or less  
8 the ratepayers pay for that twice.

9                   At the same time, we've got some utilities,  
10 St. Joe Light & Power entered into a great long-term  
11 contract with MPPD, and it worked great for them. It's  
12 going to be running out. But when you can get the right  
13 numbers, long-term purchased power should not necessarily  
14 be discounted out. But it is -- we have said steel in the  
15 ground is better than a purchased power agreement  
16 long-term.

17                  MR. DOTTHEIM: Nonetheless, the Staff is  
18 concerned with various issues that Dogwood Energy has  
19 raised in other proceedings and is raising in this  
20 rulemaking.

21                  This morning when I was addressing the  
22 Oklahoma Commission competitive procurement rule which  
23 Dogwood Energy has patterned a proposed rule on that it  
24 has suggested, I was only addressing that proposal which  
25 the Staff is not in favor of.

1                   At the same time, the Staff would say that  
2     the Commission's affiliate transactions rule is not  
3     perfect. We have encountered our own difficulties in  
4     applying it. It is a value taking a look at it in context  
5     of the concerns that Dogwood Energy has raised, and we are  
6     certainly very willing to attempt to address Dogwood  
7     Energy's concerns as best as possible given our own  
8     perspective.

9                   And I think we may be able to be of some  
10    mutual assistance given the parameters of what even we  
11    think are possible under Missouri statute, which I don't  
12    think would accommodate what Dogwood has -- Dogwood Energy  
13    has suggested as far as the Oklahoma Corporation  
14    Commission rule is presently on competitive procurement,  
15    which I might note I think is seven pages long even though  
16    the Oklahoma Corporation Commission rule on IRP is only  
17    four pages long.

18                  Hopefully, Commissioner, that addresses  
19    your question to some extent. And I was just -- that last  
20    item, I was just commenting on we heard this morning how  
21    short the Oklahoma Corporation Commission rule on  
22    integrated resource planning was, three or four pages.  
23    The rule on competitive procurement alone is longer,  
24    almost twice the length of the Oklahoma Corporation  
25    Commission rule on integrated resource planning.



1                   MR. LUMLEY: And they also have a separate  
2 rule on prudence review. I think if you look at these  
3 other states I mentioned as well, they have packages of  
4 rules that are meant to address these issues, and some  
5 place greater reliance on extremely detailed planning, and  
6 some are a little more flexible on planning but they get a  
7 lot of detail on the implementation side of the plan.

8                   So those kind of things are worth looking  
9 at, I believe. And that kind of seems to me to be the  
10 philosophical debate that's been presented to you today,  
11 but that's our main theme at the end of the day is, you  
12 know, however they demonstrate to the Commission that  
13 they've done effective planning, it doesn't really mean a  
14 whole lot unless it's translated into the real world.  
15 Otherwise, it's just been a waste of time.

16                  COMMISSIONER DAVIS: Okay. I don't have  
17 any other questions for Mr. Lumley. I think I've got one  
18 more question for all of the parties.

19                  JUDGE WOODRUFF: Thank you, Mr. Lumley.  
20 That's all the names of parties that wanted to present,  
21 make presentations. Mr. Chairman, I know you had some  
22 questions.

23                  CHAIRMAN CLAYTON: Go ahead.

24                  COMMISSIONER DAVIS: I guess my question  
25 is, I mean, obviously there has been a couple of

1 statements in praise of certain aspects of the Kansas City  
2 Power & Light experimental regulatory plan or whatever  
3 that thing is called, and I guess my question is, are  
4 there -- I mean, are there some -- do you feel that there  
5 are serious statutory questions at least with -- with the  
6 credit metrics portion of that agreement going forward?

7 MR. MILLS: Since everyone else seems to be  
8 leaping into this, I'll go ahead. With respect to the  
9 KCPL plan, I mean, looking at it pragmatically, I don't  
10 think that those questions are likely to come up at this  
11 point in the plan.

12 Whether or not starting over again with  
13 some other utility and some other circumstance, I think it  
14 would probably be a good idea to look at that question a  
15 lot more closely from the outset.

16 MR. DOTTHEIM: Commissioner Davis --  
17 Mr. Mills, had you completed?

18 MR. MILLS: I'm sorry?

19 MR. DOTTHEIM: Were you completed? I  
20 didn't mean to interrupt.

21 MR. MILLS: I was completed, yes.

22 MR. DOTTHEIM: If I might jump in. The  
23 KCPL and the Empire regulatory plans were fashioned to  
24 address particular situations. Of course, neither one  
25 exists as a rule. I don't know really what success, if

1 any, we might achieve in attempting to fashion a rule  
2 based on those plans as opposed to facets of those -- of  
3 those plans.

4 To directly respond to your question about  
5 the law, what have you, I don't know if possibly you were  
6 directing your question to the additional amortization  
7 item in that -- in that plan. If not, if you were to ask  
8 me, that's the one item that I would make note of.

9 And you will probably recall that item  
10 surfaced as an issue in the GPE/KCPL acquisition of Aquila  
11 case when GPE/KCPL raised the prospects of seeking an  
12 additional amortization facet in a subsequent case  
13 respecting Aquila, once acquired, what now is KCP&L GMO.

14 So I don't know if that addresses your  
15 question.

16 COMMISSIONER DAVIS: That will suffice,  
17 Mr. Dottheim. Thank you.

18 MR. FISCHER: Judge, would you like my  
19 perspective on that particular question?

20 COMMISSIONER DAVIS: Sure. I see  
21 Ms. Tatro, she wants to get in on this action, too. Let's  
22 go quickly.

23 MR. FISCHER: As part of that regulatory  
24 plan, of course, we did enter -- Kansas City Power & Light  
25 did enter into the various provisions, including the

1 additional amortization that Mr. Dottheim was referring  
2 to. We have filed numerous pleadings before the  
3 Commission and I believe in the courts supporting that,  
4 and we believe it was appropriate and worked well.  
5 Continued to work well through the last case.

6 I would make the point, though, that the  
7 regulatory plan process was an ad hoc process. It wasn't  
8 fashion -- it wasn't necessarily set up by any rule or  
9 sanctioned by any rule. I think one of the ideas that has  
10 been brought forward in this docket, which we believe is a  
11 good one, is that there would be an optional process  
12 sanctioned by an IRP or some other rule of the Commission  
13 that would allow us to enter into that kind of a process  
14 following the IRP filing itself.

15 COMMISSIONER DAVIS: Would that be like a  
16 generation adequacy docket like they had way back in the  
17 day, like before it was like '70s or early '80s, that only  
18 Mr. Dottheim and a few others around here would recall?

19 MR. FISCHER: I would think it would be  
20 more in the context of something like a regulatory plan  
21 docket rather than that kind of plan, that kind of  
22 generation. As I recall that, it was more just to look at  
23 the overall process, and it wasn't specifically to get  
24 stakeholder input on the specific plans of the utility.  
25 But maybe Steve remembers it better than I do.

1                   MR. DOTTHEIM: No. I think Mr. Fischer is  
2 remembering correctly. And Commissioner Davis, I think  
3 what you're referring to is really the precursor to  
4 Chapter 22, which was initiated after in particular  
5 Iatan 1 started up, and of course, it was in the wake of  
6 Callaway 1 and Wolf Creek.

7                   COMMISSIONER DAVIS: Uh-huh. Thank you.  
8 Ms. Tatro.

9                   MS. TATRO: Thank you. I know this is  
10 quite shocking, but I think I would echo what Mr. Mills  
11 said about whether this process, the regulatory process,  
12 CMR as it's sometimes called, is used going forward in  
13 another base load plan or another financing plan. It  
14 appears to be working thus far for KCPL and Empire, but I  
15 think UE's not quite comfortable yet.

16                  COMMISSIONER DAVIS: That's all I have.

17                  CHAIRMAN CLAYTON: Thank you. I want to  
18 thank all the parties for several things; first of all,  
19 for being here today and sharing so much information;  
20 secondly, for putting up with my beautiful singing voice  
21 and my not sounding very good over the speaker.

22                  I wanted -- I had a bunch of questions. A  
23 lot of them have been answered, and the hour's getting  
24 late in the day. I want to go directly to Staff,  
25 particularly Ms. Mantle. I'm not brave enough to go to

1 Mr. Dottheim yet, but I may have to get to you.

2 I want to ask Ms. Mantle, in term of the  
3 discussion that the Commission will have on Wednesday at  
4 our agenda meeting, looking at the slides that you  
5 prepared for us, specifically slides 2, 3 and 4, you set  
6 out a handful of issues that the Commission will need to  
7 look at each of those positions and try to provide some  
8 direction.

9 I wanted to get a handle on the type of  
10 direction, considering that this is the very beginning of  
11 a process, frankly, for the Commission to even be  
12 involved. We haven't even -- we don't even have a  
13 starting point in the formal rulemaking process. You have  
14 that entire Chapter 536 process that is ahead.

15 So we've talked about a lot of particular  
16 provisions, different things that have been thrown out by  
17 the parties, but I wanted to get a handle on, for  
18 Wednesday's purposes, in guiding the discussion, what  
19 direction is the Staff expecting in moving forward with  
20 these workshops?

21 MS. MANTLE: Staff would like some  
22 direction on whether the Commission believes that we  
23 should do as the utilities or as AmerenUE specifically  
24 proposed in stopping, slowing down, going through  
25 objectives, all -- and then starting the process, or even

1 as Empire suggested, almost a whole entire new rule.

2                   If so, that's -- we've got to take a  
3 completely different path here, if you want us to work  
4 some objectives into what we're doing. If you think we're  
5 on the right path, that would be great. If you agree that  
6 we're being too prescriptive, if you could come up with  
7 some ways maybe we can get the same information without  
8 being prescriptive.

9                   I -- we wanted this to give you-all -- to  
10 give you an idea of what we're facing when we're trying to  
11 write this rule. And it's not one rule, and that's part  
12 of the problem. We've got nine rules here, and it's a lot  
13 to do at once, and we've been wanting to get it done.  
14 Everybody here in this room has been wanting to get it  
15 completed like two years ago.

16                   And so we're -- we do have -- the parties  
17 or the stakeholders have seen the first draft of a rewrite  
18 of all the rules, and we did spend four days going through  
19 those, and all heard was a lot of, well, what does Staff  
20 mean by this and what does Staff mean by this and what  
21 does Staff mean by this, and then there was the rare  
22 occasions when it was, well, that's awful vague, can you  
23 be more specific, Staff? So we would waiver somewhere  
24 between being too prescriptive and not prescriptive  
25 enough.

1                   The stakeholders have not seen the second  
2 draft. We've got sort of a second draft started, a good  
3 start on it. Mr. Mendl has spent some time on that, and  
4 we can move forward with that fairly quickly. But we did  
5 not want to put more time and effort into that without  
6 some direction from the Commission on where we needed to  
7 go right now.

8                   CHAIRMAN CLAYTON: Is Mr. Mendl acting as a  
9 facilitator for the discussion or is he acting as a  
10 consultant who is offering recommendations for how to move  
11 forward?

12                  MS. MANTLE: Both.

13                  CHAIRMAN CLAYTON: Both. And what is  
14 Mr. -- I want to be clear. What is Mr. Mendl's  
15 recommendation for moving forward with the rulemaking,  
16 aside from saying we need direction from the Commission?

17                  MS. MANTLE: Well, Mr. Mendl is here. Can  
18 he speak for himself?

19                  CHAIRMAN CLAYTON: Sure. I'm surprised he  
20 hasn't made an appearance yet anyway. He's been on the  
21 payroll now for, what, three years.

22                  MR. MENDL: At this point it seems longer  
23 than that. Your question was in terms of how to proceed.  
24 I think I'd like to open first with a comment to say that  
25 the rule revisions up to this point, we feel that -- I've



1    been discussing this extensively with Staff as we're going  
2    along, and really I don't want to give the impression that  
3    there's anything in the rule, in the draft that was there  
4    that somehow did not find a need for, somehow basically on  
5    Staff or one of the parties, and I think you've heard that  
6    here today.

7                   What I really need to have some input on  
8    is, if we're proceeding from this point, whether we  
9    proceed along the course that remains a prescriptive  
10   process oriented rule or one that provides less  
11   prescription but provides some safeguards so that  
12   information could be generated if it's necessary, and I  
13   think we've heard a fair amount this afternoon about the  
14   difficulty of doing that. And I'm not sure there is a  
15   solution to that, but that's the kind of direction I'd be  
16   looking for.

17                   And then, of course, you know, the other --  
18   other question is whether you move to more of an input  
19   collaboration, input the plan -- plan before the plan,  
20   plan for the plan kind of approach that we were discussing  
21   this afternoon. Those are three different courses, and  
22   there are probably many subparts to that, but those are at  
23   least three different courses that would define how the  
24   rules would proceed at this point.

25                   And I frankly don't want to be in a

1 position of attempting to draft three complete sets of  
2 rules for you to choose from at the end if you have some  
3 opinions, direction that you could offer me now.

4 CHAIRMAN CLAYTON: When does your contract  
5 run out?

6 MR. MENDL February. February of --

7 MS. MANTLE: 2010.

8 MR. MENDL: -- 2010.

9 CHAIRMAN CLAYTON: So we've got to finish  
10 this by February?

11 MR. MENDL: I would hope so personally.

12 MS. MANTLE: I would hope so, too.

13 MR. DOTTHEIM: There's also the other  
14 practical aspect of that where as one utility or several  
15 utilities or one in particular was not available or as  
16 available because it was preparing a rate case for filing  
17 and is now available, and maybe two or three other  
18 utilities may be preparing rate cases for filing.  
19 Whereas, we've just now finished a number of months where  
20 the Staff was available, the Staff now is moving into a  
21 situation where it has less availability.

22 So although the last several months when we  
23 were having the workshops it was a better time for the  
24 Staff, we are now moving into a less good time for the  
25 Staff. So we don't want to leave you with the impression

1 that, even if you give us the direction on Wednesday, we  
2 can and Mr. Mendl can just crank out another iteration of  
3 the rules, we can have innumerable workshops or  
4 innumerable meetings and present you with a finished  
5 product on December 1 or January 1. It's not that easy.

6 Right now, we're -- and I'm sorry to drag  
7 this on, but whereas we had originally planned to have a  
8 workshop on September 14th and 15th, that's no longer  
9 doable. I mean, we had originally hoped to have the  
10 workshop where we would have another iteration of the  
11 rule.

12 If the Commission told us on Wednesday of  
13 this week to stay the course that the Staff had previously  
14 been on, proceed forward with another iteration of the  
15 rule in its generally prescriptive manner except for the  
16 items that Ms. Mantle raised this morning where she  
17 indicated that Staff thought that the rule could be less  
18 prescriptive and, of course, we'd work with all the  
19 stakeholders on that, September 14th/15th is no longer  
20 doable for another iteration of the rule. We're now  
21 looking at a workshop in October for that.

22 So we wanted to also give you just a  
23 perspective, even if you gave us direction in two days,  
24 what the schedule looked like.

25 CHAIRMAN CLAYTON: I don't think that's

1 unreasonable, and I don't think -- I don't think the  
2 Commissioners thought that we were going to pontificate at  
3 agenda on what we think the direction ought to be and then  
4 suddenly a rule was going to be produced reflecting that.  
5 I mean, there's a workshop that's -- the reason why the  
6 2nd was so important is because you do have another  
7 workshop that's scheduled, and that would enable you to  
8 have that conversation at that time, as I understood it.

9 MR. DOTTHEIM: Right now, our intent would  
10 not -- to not have the --

11 CHAIRMAN CLAYTON: So you're going to  
12 cancel that now?

13 MR. DOTTHEIM: Yes, but to go forward with  
14 a workshop in October based upon what direction we get  
15 from you, and, of course, depending if you can't give us  
16 direction on Wednesday --

17 CHAIRMAN CLAYTON: Well, you're  
18 suggesting -- by moving that workshop, you're suggesting  
19 that a decision on the 2nd isn't absolutely necessary by  
20 the Commissioners, which could delay things again.

21 MS. MANTLE: I would say it's not  
22 absolutely necessary, but like I said, we don't just,  
23 poof, it happens. All of these take time, and Jerry's not  
24 available, is it through September now?

25 MR. MENDL: Through the -- through the 14th

1 of September I basically have other commitments, and after  
2 that, you know, if I get direction at that point, I can  
3 hop right into it.

4 CHAIRMAN CLAYTON: Let me ask --  
5 Ms. Mantle, let me ask you this question. I mean, hearing  
6 Mr. Dottheim refer to the parties not being as focused or  
7 there's just -- there are many distractions. There are  
8 distractions for the Commissioners. There are  
9 distractions for each of the parties. Everybody tends to  
10 prioritize and you do what you have to do.

11 My question is, if we're at a point where  
12 perhaps the stakeholders are able to provide some focus,  
13 is there any merit to allowing for further discussions in  
14 trying to reach some sort of collaborative result before  
15 the Commission makes a leap in a direction? Because, I  
16 mean, somebody's going to walk away unhappy with whatever  
17 that direction is, and then the fighting will continue  
18 through the formal process.

19 I'm just wondering if there is an  
20 opportunity for that, then we would want to afford that  
21 opportunity.

22 MS. MANTLE: I heard Mr. Kidwell say things  
23 look a lot better today, but I also believe what  
24 Mr. Johnstone said in that the devil's in the details.  
25 And while my broad points up on the PowerPoint looked

1 doable, I really think we're going to get into trouble  
2 when we start trying to implement those, and guidance that  
3 you guys -- that you Commissioners could give us --

4 CHAIRMAN CLAYTON: Did you say you guys  
5 again?

6 MS. MANTLE: Yeah.

7 CHAIRMAN CLAYTON: We're going to have a  
8 problem with that. There's like four or five people who  
9 have said you guys up here. I mean, we're --

10 MS. MANTLE: Commissioner Murray's gone, so  
11 we can do that now.

12 CHAIRMAN CLAYTON: I understand. I  
13 understand.

14 MS. MANTLE: But the direction, if you can  
15 provide direction, it would be very valuable to us right  
16 now in setting the course for where we go from here.

17 MR. DOTTHEIM: I wish we were as close as  
18 appearances may have been to this point. I suspect once  
19 we get together, the reality will be, once we try to sort  
20 things out, that we're going to be right back where we  
21 were before. If we could get some direction from the  
22 Commissioners, as painful as that may be for the  
23 Commissioners, that would be -- that would be helpful for  
24 the rest of us.

25 CHAIRMAN CLAYTON: We can handle it. We

1 can handle it. I think I can speak for all of us. We can  
2 handle it.

3 Let me ask a last question. I want to be  
4 clear. Is Staff endorsing these three paths that you're  
5 talking, is Staff particularly endorsing one over the  
6 other or are you just saying -- I mean, is the  
7 prescriptive path what Staff is requesting or are you-all  
8 not suggesting?

9 MS. MANTLE: I believe the utilities would  
10 call it a prescriptive path. I think it's going down  
11 taking the rule that we've got now, which I was talking  
12 with Dr. Proctor about these rules a week and a half ago  
13 and telling him how the utilities were saying they were  
14 too prescriptive. He laughed and he said, well, that's  
15 what they said when we wrote them, too. So -- and the  
16 Commission at that time believed they were necessary, and  
17 as different people pulled out --

18 CHAIRMAN CLAYTON: Hey, that's helpful.  
19 Some of us weren't there when the original rules were  
20 drafted. I heard that today. Some of us weren't.

21 MS. MANTLE: Unfortunately, some of us  
22 were, and we're still here.

23 CHAIRMAN CLAYTON: Yeah. I understand.

24 MS. MANTLE: Yeah. I think what I tried to  
25 lay out in my presentation was sort of a middle path,

1     trying to listen to what we've heard that the utilities  
2     say is a burden and then reviewing whether or not we think  
3     it's necessary. Just because a utility may not use, say,  
4     expected value perfect information does not mean that it's  
5     a bad thing. It just means they don't use it. Maybe they  
6     should look at it and use it. So it doesn't mean that  
7     it's not a good planning tool. So that needs to go -- we  
8     need to go back and look at that.

9                     And we didn't get a lot of input from the  
10    utilities until last week. Their filing, what they sent  
11    us last week was the first really meaningful input that  
12    we've received. The last workshop we did get -- we got --  
13    in the last ten days we got language, we got -- we got  
14    things laid out to us they thought was too prescriptive  
15    and what was burdensome. That was the first time we'd  
16    really seen a lot of that.

17                    We did hear in the workshops, again, we  
18    heard a lot of what, does Staff mean by, what does Staff  
19    mean by. Then it was, oh, can Staff make that more  
20    specific? So I -- we've got some meaningful input in the  
21    last workshop and then through what was provided to us by  
22    the utilities. Some of the other stakeholders have  
23    provided us input all along. We appreciate that.

24                    CHAIRMAN CLAYTON: I don't have any  
25    other -- do you have anything else? Last bite at the



1 apple. Actually, I want to give -- any parties want to  
2 chime in to what Staff -- the conversation I've had with  
3 Staff thus far? Hearing -- Mr. Kidwell.

4 MR. KIDWELL: Briefly, Mr. Chairman. First  
5 of all, my optimism has been dimmed a little by this  
6 afternoon, so I probably need to retract a little bit of  
7 the optimism I showed earlier.

8 It has been characterized that the  
9 utilities are after some relaxation, you know, in the  
10 rules here. As I count, we I think have discussed, I  
11 won't say offered, but we've discussed two new filings in  
12 this process that would happen ahead of the actual filed  
13 plan. We've talked about filing a plan for the plan.  
14 We've talked about filing when we would be finished with  
15 supply and demand side characterization. So I hardly  
16 think that we are backing off from wanting detailed rules.

17 The only thing we've really said in  
18 anything we've said is that, you know, we want to at least  
19 evaluate the idea of it not being as prescriptive, that it  
20 should be more results oriented.

21 And I was around when we did things the  
22 last time, and maybe we did ask for the same thing. But I  
23 really think that the Commission needs to take a look at  
24 where resource planning has gone in other states before it  
25 decides whether we're really on the right track in

1 Missouri. That's all I have to say.

2 CHAIRMAN CLAYTON: Thank you. Yes, sir.

3 MR. TARTER: Todd Tarter, Empire District.

4 I also wanted to point out, we did file comments and  
5 written comments during the -- after the last workshop,  
6 but we also had another set of comments that we prepared  
7 responses for that we gave in an oral presentation.

8 That pointed out, I think also earlier in  
9 the day it was mentioned that Empire as far as reporting  
10 requirements wanted complete flexibility, didn't want  
11 any -- no prescriptiveness at all. I think the accurate  
12 thing to say there is that what Empire supports on  
13 reporting requirements is to be more flexible than it is  
14 right now. We do think that there should be a list of  
15 deliverables.

16 And in my last set of filed comments that's  
17 in EFIS, we answered a question on that and gave about a  
18 page and a half answer where we listed what we think the  
19 deliverables should be, including something for every --  
20 every section of the rule, and we did some bullet points  
21 on what we think the deliverables should be.

22 Thanks.

23 MS. MANTLE: Mr. Chairman, if I could? One  
24 thought. You heard a lot about transparency and  
25 transparency for the stakeholders. The one thing that

1 seems kind of ironic is if we are just going to see the  
2 results, there's very little transparency. All we see is  
3 results. We don't have transparency in the process.

4                   So I'm just -- that was just as the rest of  
5 them were wrapping up, that was one thought that came to  
6 me as transparency was being discussed at the same time as  
7 being said, you know, let us show the results and we'll be  
8 transparent. There's -- that's pretty far apart.

9                   JUDGE WOODRUFF: Any other final comments?  
10 Mr. Kind?

11                   MR. KIND. Just a couple of comments. In  
12 response to what Todd Tarter said about them not  
13 specifying any reporting requirements, I think I would  
14 acknowledge maybe I was a little too sweeping in that  
15 comment, but I was, I guess, sort of responding to being  
16 disturbed by the statement that -- in their filing that  
17 the reports should contain charts, graphs and tables that  
18 the utility deems appropriate for presenting the findings,  
19 explaining the processes employed, and how the utility  
20 complied.

21                   And so I was -- you know, I just think that  
22 there needs to be something, quite a bit retained in the  
23 rule that actually specifies exactly what sort of  
24 reporting requirements there are and the formats that they  
25 should be in.

1                   And other than that, just a general  
2   response to the line of questions that the Chairman had.  
3   OPC observes that we are at a very critical juncture in  
4   the development of rules at this point, and we really  
5   believe that some direction from the Commissioner is --  
6   I'm sorry, from all the Commissioners, not just you guys,  
7   but all the Commissioners, would be very helpful. It  
8   would, I think, help us avoid really getting distracted  
9   and getting mired in sort of redeveloping all the  
10  objectives that were developed as a part of the last  
11  rulemaking.

12                   I think there could be some improvement  
13  possibly upon the objectives that are in the rules, and  
14  there's a need to reassess the objectives in light of some  
15  state mandates for an energy policy that we need -- the  
16  Commission needs to be responding to that.

17                   But the main point I really want to leave  
18  you with is that there's a lot of people working on this  
19  project, and just like the Commissioners, their time is  
20  pretty valuable. They've got a lot of important things  
21  they need to be working on simultaneously, and I think  
22  that it would greatly assist the efficiency of us moving  
23  towards a new rule if we get some direction at this time  
24  from the Commissioners.

25                   JUDGE WOODRUFF: Thank you. Well, thank

1   you all for coming today, and with that we are adjourned.

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## 1 C E R T I F I C A T E

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

4 I, Kellene K. Feddersen, Certified  
5 Shorthand Reporter with the firm of Midwest Litigation  
6 Services, do hereby certify that I was personally present  
7 at the proceedings had in the above-entitled cause at the  
8 time and place set forth in the caption sheet thereof;  
9 that I then and there took down in Stenotype the  
10 proceedings had; and that the foregoing is a full, true  
11 and correct transcript of such Stenotype notes so made at  
12 such time and place.

13 Given at my office in the City of  
14 Jefferson, County of Cole, State of Missouri.

15

16 Kellene K. Feddersen, RPR, CSR, CCR

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