BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Kansas City Power & Light Company's Request for Authority to Implement a General Rate Increase for Electric Service	))))	**File No. ER-2016-0285**

JOINT REPLY BRIEF OF SIERRA CLUB,
NATURAL RESOURCES DEFENSE COUNCIL AND RENEW MISSOURI

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Sierra Club, Natural Resources Defense Council, and Renew Missouri Advocates ("Renew Missouri") (collectively "SC-NRDC-RM"), by and through undersigned counsel, submit this Joint Reply Brief in accord with the Missouri Public Service Commission's ("Commission") Order Adopting Procedural Schedule and Delegating Authority issued August 10, 2017.

ARGUMENT

I. The Clean Charge Network & Related Electric Vehicle Issues

a. Issue XXII.A – Commission Regulation of the Clean Charge Network

The question of the Commission's jurisdiction over electric vehicle charging stations is a critical, threshold issue for the development of Missouri's EV market. In our Initial Brief, we urged the Commission to limit its denial of jurisdiction only to *non-utility* providers of vehicle charging services and to maintain jurisdiction over utility owned and operated vehicle charging infrastructure.[1] This approach, we argued, is in accord with Missouri law and maintains the Commission's ability to meet its core statutory obligations. An exemption of any and all vehicle charging stations, including the Clean Charge Network ("CCN"), from regulation by the Commission—as has been proposed in ET-2016-0246[2]—raises serious legal and policy concerns.[3] Arguments raised by the Office of Public Counsel ("OPC") and Midwest Energy Consumer's Group ("MECG") in support of such an approach highlight those concerns.

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[1] SC-NRDC-RM Initial Brief at 7-15.
[2] Agenda Meeting of the Missouri Public Service Commission (March 8, 2017).
[3] In our Initial Brief, we explained that the Commission has a statutory duty to ensure that regulated entities provide "safe and adequate" service, and to protect consumers from exploitation where competition is unavailable or inadequate. *See State ex rel. Laundry, Inc. v. Public Service Commission, 34*

First, OPC makes the bare assertion that the CCN cannot be a regulated service because vehicle charging stations are not "electric plant."[4] This is an exceedingly narrow view of the Commission's jurisdiction, which is not narrowly limited to utilities' "electric plant," but extends broadly to persons or corporations controlling *any* electric plant[5], and to persons controlling the manufacture, sale or distribution of electricity.[6] Moreover, these laws are "to be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities."[7]

Second, OPC and MECG argue that it is inappropriate for vehicle charging technology to be provided by a regulated entity. OPC argues that vehicle charging does not exhibit the "high fixed cost and capital investment requirements" of a natural monopoly, and that utility investment will punish existing competition. In making this assertion, OPC does not offer any analyses regarding the costs of charging equipment or of the EV service providers' market.

The truth, which is discussed at length in the testimony of Sierra Club witness Jester and NRDC witness Garcia, is that utility investments in EV charging can overcome the market

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S.W.2d 37, 42 (1931). SC-NRDC-RM are aware of, and appreciate, the Commission's rules governing affiliate transactions, 4 CSR 240-20.015 (1)-(11), but submit that these rules will not cure our concerns regarding provision of safe and adequate service, nor will they fully cure our concerns regarding competition. This is because, among other things, the rules will place the procurement of EV charging equipment and services into the hands of non-utility affiliates, who may wield significant power choose "winners and losers," in the market and because the rules depend on "compensa[tion]" or "transfer" of value, which does not map neatly onto the vision for utility/utility-affiliate relationship suggested for the CCN or future programs by Chairman Hall, under which regulated utilities would retain underlying distribution infrastructure beyond the meter. The Commission should heed the lessons of other regulators, which have adopted case-specific standards of review to assess any impacts on the EVSP market.

[4] OPC Initial Brief at 40-41.

[5] Section 386.020(15) provides that an "electrical corporation" includes persons or corporations "owning, operating, controlling, or managing *any* electric plant." (emphasis added).

[6] Section 385.250(1) provides that "the Commission has jurisdiction over "the manufacture, sale or distribution of … electricity for light, heat and power, within the state, *and to persons or corporations owning, leasing, operating or controlling the same."* (emphasis added).

[7] *State ex rel. Laundry, Inc. v. Public Service Commission*, 327 Mo. 93, 106, 34 S.W.2d 37, 42 (1931).

coordination problem that results from high upfront costs of charging infrastructure, and advance the market for EVs and EV service providers alike.[8] It is critical to understand that any utility investment in EV charging is entirely reliant on EV service providers for hardware and software, just as those providers are entirely reliant on the utility's distribution system.[9] As Sierra Club witness Jester explained at hearing, "ownership" of vehicle charging equipment is far from the most important consideration in ensuring that utility engagement in the EV market fosters growth among providers – instead, the focus of the Commission and stakeholders to accelerate the EV market should be on clarification of the regulatory landscape (e.g., Commission jurisdiction, tariff sheet revisions to allow per kWh pricing), and close review of utilities' method of procurement of charging equipment and interconnection of non-utility EV charging equipment.[10]

MECG argues that the Commission would be acting on "solid economic principles" in refusing to regulate the CCN, and cites to the Federal Communication Commission's ("FCC") landmark decision in *Carterfone* as proof.[11] In that case, the Commission held unreasonable an AT&T tariff provision prohibiting the attachment or connection of any equipment, circuit or device not furnished by the telephone company to any facilities furnished by the telephone

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[8] *See* Exhibit 550, *Direct Testimony of Douglas Jester—Revenue Requirement*, p. 18-20; Exhibit 551, *Direct Testimony of Douglas Jester-Rate Design*, p.12-15; Exhibit 600, *Direct Testimony of Noah Garcia*, p. 10-12.
[9] *See, e.g.*, Tr. Vol. 12, p. 1329-30.
[10] Tr. Vol 12, p. 1444-45.
[11] *In the Matter of the Use of the Carterfone Device in Message Toll Telephone Service*, 13 F.C.C.2d 420 (1968).

company.[12] The "Carterfone" was an acoustic coupling device, designed to "interconnect" a mobile telephone base station to the public switched network.[13]

This case, unlike *Carterfone*, does not involve the refusal of a utility to permit interconnection of non-utility equipment solely because that equipment is not furnished by the telephone company. Instead, KCP&L has procured hardware and software from a non-utility for use in its distribution system and to provide service to its end-users. Moreover, there is record evidence that non-utility providers of EV charging exist in the KCP&L service territory and have interconnected with the KCP&L system, and, at hearing and in testimony, KCP&L has stated its interest in removing regulatory hurdles for non-utility owner and operators of EV charging stations.[14]

Both OPC and MECG's arguments rely on an oversimplified view of the EV service providers' market, as well as the false notion that EV charging must be provided either by regulated or unregulated entities, but not both. These arguments should be rejected.

b. **Issue XXII.B – Recovery of Costs Associated with the Clean Charge Network**

In our Initial Brief, SC-NRDC-RM strongly supported Commission regulation of, and cost recovery for, KCP&L's Clean Charge Network. We offered several reasons: first, the CCN has been reasonably well-designed[15]; second, the CCN has been carried out at a reasonable cost[16]; and third, the CCN has played a critical role in expanding the market for electric vehicles

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[12] *Id.* at 423.
[13] *Id.* at n.3. In short, the "Carterfone" connected a two-way radio system to the telephone system.
[14] *See, e.g.*, Tr. Vol. 12, p. 1324-28.
[15] Exhibit 550, *Direct Testimony of Douglas Jester on Behalf of Sierra Club—Revenue Requirement* at 24-28.
[16] *Id.*

in Missouri, a technology which is in the public interest and which can be leveraged to the benefit of all KCP&L customers.[17]

MECG argues that cost recovery is not appropriate because "there is no assurance that customers using the CCN are from Missouri," and therefore the CCN "will not even benefit other Missourians."[18] In arguing that the user base of the CCN is too broad, MECG fails to appreciate the essential role of public utilities and their services: service to the public and devotion to public use.[19]

MECG also fails to consider the case record, which is replete with evidence that EVs can provide benefits to KCP&L's ratepayers regardless of what car they drive, or whether the stations are in use by a KCP&L ratepayer or not.[20] The following public health, economic and electricity system benefits—detailed in testimony by witnesses Jester and Garcia at length—would accrue to Missourians as a result of smart vehicle electrification regardless of the driver's home state:

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[17] *Id.* at 7-17.
[18] MECG Initial Brief at 87-88.
[19] *State ex rel. M.O. Danciger & Co. v. Public Service Commission,* 275 Mo. 483, 205 S.W. 36, 38 (1918) (citing *ICE CO State v. Spokane & I. E. R. Co.*, 89 Wash. 599, 154 P. 1110 (1916)).
[20] This is not MECG's only off-the-cuff assertion which has ignored the basic record. In opening statements at hearing, MECG suggested that it was "awful easy" for environmental organizations to support the CCN because they don't represent members that would contribute to its cost recovery and instead "know that any unrecovered costs are recovered from captive customers like [MECG's] clients." *See* Tr. Vol. 12 1307-08. In reality, Sierra Club and NRDC are member-driven organizations, with 8,600 members and 4,800 members in Missouri respectively. Many of these members are KCP&L ratepayers. See *Application to Intervene of Sierra Club*, Case No. ER-2016-0285 (filed July 25, 2016); *Application to Intervene of Natural Resources Defense Council*, Case No. ER-2016-0285 (filed July 25, 2016). Moreover, statements made at public hearings by residential customers evidence strong support for the CCN. *See, e.g.*, Tr. Vol. 5 page 9:12-25; 22:14-25; 24:9-17.

Ratepayer benefits. EV load can increase utility sales without incurring significant infrastructure costs, thereby spreading fixed costs across greater sales.[21] In addition, the flexible and manageable load provided by EVs can smooth out fluctuations from variable renewable generation.[22] By increasing usage of standing assets, smoothing and shifting loads, and improving reliability, EV-charging can lower the marginal cost of electricity for all ratepayers—whether or not they own an EV.[23] In a rough calculation, witness Jester estimates that fully electrified travel in Missouri could reduce average rates by about 10 percent.[24]

Economic and energy security benefits. The oil-based transportation system makes us vulnerable to supply disruptions from overseas and price volatility.[25] Charging an EV with "eGallons" costs half as much as filling a gasoline tank, savings which have been found to translate into real local and regional economic benefits.[26]

Environmental benefits. Even with Missouri's coal-heavy generation mix, in 2014 EVs emitted 27% less CO2 than gasoline vehicles.[27] This will improve with more renewable energy, and EVs help integrate renewables into the grid by adding regulation services and operating reserves.[28] Home charging can absorb nighttime wind generation peaks.[29] Even with increased electricity

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[21] Exhibit 550, *Direct Testimony of Douglas Jester on Behalf of Sierra Club—Revenue Requirement*, p. 13-17.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 17.
[25] Exhibit 550, Jester rebuttal, *Direct Testimony of Douglas Jester on Behalf of Sierra Club—Revenue Requirement,* pp. 9-11; Exhibit 500, *Direct Testimony of Noah Garcia*, pp. 15-17.
[26] Exhibit 500, *Direct Testimony of Noah Garcia*, p. 17.
[27] Exhibit 550, Jester rebuttal, *Direct Testimony of Douglas Jester on Behalf of Sierra Club—Revenue Requirement,* pp. 8-9
[28] Exhibit 550, *Direct Testimony of Douglas Jester on Behalf of Sierra Club—Revenue Requirement,* pp. 15-16.
[29] *Id.*

generation, EVs have the added health benefit of completely removing the ground-level tailpipe air pollution that plagues our cities.[30]

c. **Issue XXII.C– Development and Implementation of a PEV-TOU Rate**

In addition to SC-NRDC-RM, several parties support the development of time-variant rates which can accommodate residential EV charging to be proposed in KCP&L's next general rate case.[31] In its Initial Brief, the Company resists any formal direction from the Commission on the development of PEV-TOU rate, arguing that it would be "premature to develop" such a rate while it is completing TOU rate studies.[32] At the same time, the Company notes that the rate study for the KCP&L service area will be completed in September 2017, and that it is presently preparing to move ahead with time-variant rate offerings in its GMO territory.[33] No reason is given to explain—nor is it apparent—why proposing time-variant rates in the next rate case is incompatible with the Company's TOU study timeline, or why implementation in one service area would preclude implementation in another.

SC-NRDC-RM urge the Commission to send KCP&L a clear signal that TOU rates must be developed and proposed for implementation in the near future, in part to drive and maximize the very benefits of EVs that justify utility investment in vehicle charging and which the Company touts: "[m]ore efficient use of the electrical grid through increased electrical sales during off-peak times."[34]

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[30] *Id.*
[31] See Staff Initial Brief at 72-73; DE Initial Brief at 2.
[32] KCP&L Initial Brief at 52.
[33] *Id.* at 62.
[34] *Id.* at 51.

d. **Issue XXII.D – Removal of the Clean Charge Network Session Charge**

This issue appears to be moot. In its Brief, the Company affirms the position taken by its witness at hearing that the Company is no longer seeking that a session charge be included in the tariff.[35] SC-NRDC-RM strongly support this decision for the reasons outlined in our Initial Brief, which included concerns that the session charge was not rooted in cost causation, threatened to gouge or unfairly discriminate among EV drivers, lacked support in record evidence, and may violate Missouri law.[36]

II. **KCP&L Reply Brief Outline – Rate Design Issues**

a. **Issue XXII.C– Customer Charge**

In its Initial Brief, Kansas City Power & Light ("KCP&L" or "the Company") does not assert that increasing the customer charge would serve public policy interests. Indeed, the Company makes no effort to describe how increasing the customer charge to over $13 would promote energy efficiency or conservation, help customers control their bills, or preserve access to service for low-income customers. Instead, the Company urges the Commission to "rely heavily" on the principles of cost causation. While the parties to this brief concur that cost causation is an important factor, even the Company's own witness acknowledged that it is only one "data point" in rate design.[37]

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[35] KCP&L Initial Brief at 52; see also Tr. Vol. 12 1352-53.
[36] SC-NRDC-RM Initial Brief at 15-17.
[37] Tr. 890:9-13 (Marisol Miller testimony that the cost of service study is one "data point" the Company considers in allocating costs across classes and designing rates, but that "[the Company] considered more than one data point" in deciding by how much to increase the customer charge); Tr. 893:11-16 (Miller testimony that it is appropriate to deviate from class cost of service study results); Tr. 902:10-15 (Miller testimony that the Commission does consider factors other than cost of service when designing rates).

As described in our Initial Brief,[38] this Commission has considered many factors alongside cost causation in deciding questions of rate design, especially in setting the customer charge. The record contains ample support to show that increasing the customer charge (especially on the heels of the nearly $3 increase two years ago) will be detrimental to customers' incentives to engage in energy efficiency and will disproportionately affect low-income customers. Even a smaller increase to $12.62—which reflects Staff's cost of service study, and which the Company concedes is the highest charge support by the cost of service study and consistent with commission precedent[39]—would still have the detrimental effect of disincentivizing load shifting and energy efficiency.

Because KCP&L has failed to make the needed public policy arguments to support a higher customer charge—either in its case at hearing or in its Initial Brief—Sierra Club, Renew Missouri, and NRDC request that the Commission deny the Company's requested increase.

b. **Issue XXII.D – Division of Energy's Block Rate Proposal**

In crafting its Order in this matter, the Commission should bear in mind that the Division of Energy's proposal to move towards flatter winter rates and inclining block rates in the summer is exceedingly gradual.[40] Several statements in the Company's brief (described below) misrepresent or confuse the gradual nature of DE's proposal. But the evidence on the record

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[38] See Initial Post-Hearing Brief of SC-Renew-NRDC at 18-19.
[39] Tr. 941:14 to 942:12 (Miller testimony).
[40] Exhibit 800, Direct Testimony of Martin Hyman at 30:12-15 (In addition to meeting equity and efficiency criteria, this rate design also supports a gradual movement towards flat and/or inclining block rates which would not cause significant rate shock."); Tr. 1113:5-7 (Jester testimony that the ratio of price increase from the base block in DE's proposed IBR is "more modest . . . than is typical").

makes clear that the proposal on the table is not a dramatic change, but rather a gradual one. As such, the impacts on customer bills and the Company's revenue stability will be minimal.

i. *The gradual nature of DE's proposed block rates mitigates concerns about impacts on customer understanding and bills.*

The Commission should keep in mind the gradual nature of DE's proposal when reviewing concerns raised by Staff and the Company about this rate design. The gradual nature of the changes proposed by DE mitigate the concerns raised by Staff about implementing these changes without prior notice to customers, and without providing time for customers to respond.[41] In support of this argument, Staff paraphrases the testimony of Department of Energy witness Schmidt that "any radical change to rate structure is going to affect a large portion of KCPL customers, especially on the residential side." However, Mr. Schmidt made this comment in discussing what types of rate design changes should be preceded by a workshop, and specifically identified time of use rates as the type of "radical change" that warranted a workshop.[42] Mr. Schmidt's testimony should not be read out of context to suggest that DE's block rate proposal is in any way "radical."[43]

DE's block rates were designed to ensure that 95% of customers will see less than a 5% change in their bills. Neither the Company nor Staff provided any alternative bill impact

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[41] Staff's Post-Hearing Br. at 70-71.
[42] Tr. 1104:16-18 (Schmidt testimony: "If you make my [sic] radical changes, i.e., going to time of use rates, you're going do [sic] affect a lot of customers.").
[43] Staff also expresses concerns about the time available for customers to respond to the new rate design without significant advance notice, referring to Mr. Jester's testimony that demand is more elastic over time. Staff Br. at 70-71. In responding to Chairman Hall's questions regarding this issue, Mr. Jester described the data showing that customers respond *more* to block rates the more time they are given to adapt; his testimony should not be taken to mean that customers lack the ability to respond in the short term. Tr. 1141:2-5.

analysis. In addition, the Commission should view the Company's concerns with DE's proposal in their proper context. KCP&L has cast the proposal as "dramatic" and unnecessary. For example, the Company asserts that "*a dramatic change,* e.g., moving from declining to inclining, even with existing block structures will likely be difficult to understand from a customer's perspective."[44] (emphasis added.) However, DE and the parties to this brief do not propose moving to a full inclining block rate, but rather a slightly inclining rate in the summer months only.[45] Similarly, the Company states that an inclining block rate could have "unintended consequences" if it "was applied in the future to high usage electric space heating customers in the winter."[46] As just noted, DE has not proposed an inclining block rate in the winter. Furthermore, any concerns about IBR being extended to space heating customers are a red herring—no party has advocated applying IBR to space heating customers and the Commission will have ample opportunity to consider whether that is appropriate if it is proposed in a future case.[47]

Thus, although the evidence shows that the impacts to customers will be extremely small, consistent with the gradual nature of DE's proposal, the parties to this brief believe it is essential for the Company to notify customers of their new rate structures and how it will affect their bills. In addition, the bill design should clearly convey to customers the customer charge and different

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[44] *See* Initial Post-Hearing Brief of Kansas City Power & Light Company (hereinafter KCP&L Br.), ¶169 (emphasis added).
[45] Exhibit 800, Direct Testimony of Martin Hyman at p. 20 Table 2.
[46] KCP&L Br. at ¶172.
[47] Arguably, the Company also misrepresents the position of Staff on inclining block rates by asserting that Staff opposes taking steps toward IBR at this time. KCP&L Br. ¶167 (citing Robin Kliethermes Rebuttal, pp. 3-5). In fact, Ms. Robin Kliethermes' rebuttal testimony states that "Staff is not opposed to moving towards flat or inclining block rates," though she notes concerns about revenue volatility and possible overrecovery of fuel-related costs. Exhibit 210, Rebuttal Testimony of Robin L. Kliethermes, at 7:9-10.

rates charged for specific blocks of usage.[48] We recommend that the Commission include this requirement in its Order to ensure that affected residential customers are aware of how they can better reduce their bills through conservation and energy efficiency.

In its Initial Brief, the Company notes that "[a]t the request of Chairman Hall, KCP&L witness Tim Rush also relayed to the Commission the negative experiences of other public utilities in Illinois and Colorado with the initial introduction of IBR structures."[49] The Commission should give very little weight to Mr. Rush's statements on this topic, however, as they were based on admittedly indirect and extremely limited knowledge.[50] Mr. Rush could relate few to none of the details of the inclining block rate designs in these two other states, preventing any assessment of the likelihood that DE's gradual proposed changes would have similar effects. With respect to the Ameren experience in Illinois, Mr. Rush knew nothing at all about the actual rate design that was implemented.[51] With respect to the Colorado rate design, he stated, "I don't have the specifics of it, but I do understand that it was semi-radical," and further suggested, though without much certainty, that it "could have had a 5 cent differential between the lower point part and the higher part of the rate." By comparison, of course, DE's proposed summer rate has less than a 2-cent differential.[52] The only specific consequence of the Colorado rate to which Mr. Rush referred were problems among the small segment of residential

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[48] *See, e.g.*, Tr. 1161:6-9.
[49] KCP&L Br. ¶172. As noted by Mr. Hyman, these allegedly negative experiences in Illinois and Colorado were not discussed in the pre-filed testimony of any Company witness. Tr. 1251:21-25.
[50] Tr. 1386:12-14 (Rush: "I have been in contact with people that have described the activities that have occurred there."); *see also* Tr. 1182:3-5 (statement by KCP&L's counsel that he had a witness familiar with what had happened in those statements, but not based on "firsthand knowledge").
[51] Tr. 1389:5-9.
[52] Exhibit 800, Direct Testimony of Martin Hyman, at p. 20, Table 2.

customers that have medical devices.[53] Although this is an important group of customers to consider in designing rates, their unique situation should not drive rate design for the entire class, but be addressed through an opt out, or other programs. Mr. Rush explained that Colorado still has an inclining block rate and that there are other rates, including a time of use rate, that customers can opt into.[54] In considering Mr. Rush's testimony on this issue, the Commission should also recall the testimony by Department of Energy witness Michael Schmidt – who has extensive experience in rate design across a wide array of jurisdictions – who stated that he was not aware of any case in which there had been "push-back by consumers" to an inclining block rate structure.[55]

ii. *DE's proposed block rates will have minimal impacts on revenue volatility.*

KCP&L also contends that "the adoption of an IBR rate structure may introduce volatility into the recovery of the Company's revenue requirement."[56] The Company does not specify whether it has concerns that DE's specific proposal would introduce a significant level of volatility, or whether its concerns are about the concept of inclining block rates and the possibility of aggressive inclining block rates in the future. As noted in our Initial Brief, the Company made no effort to quantify the change in volatility associated with DE's gradual shift in the block rates.[57] The only quantitative evidence in the record on the point was presented by Sierra Club and Renew Missouri witness Douglas Jester, who calculated that DE's rate design would likely increase volatility by only 0.1% of the Company's Missouri revenue.[58] That degree

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[53] Tr. 1387:16-23.
[54] Tr. 1388:1-14.
[55] Tr. 1105:1-5.
[56] KCP&L Br. ¶173.
[57] Tr. 917:5-9 (Miller).
[58] *See* Exhibit 401, Surrebuttal Testimony of Douglas Jester, at 7:3-19.

of increased volatility is incredibly small compared to the standard error in electricity sales in Missouri, which is about 3%.[59]

The Company also cites to the concerns expressed by Staff witness Robin Kliethermes about revenue volatility. Ms. Kliethermes' written testimony about revenue volatility was very general, and does not outweigh the quantitative evidence offered in Mr. Jester's testimony that DE's proposed rates would result in only 1.76% of the revenue currently recovered in the first block being shifted to the second and third blocks.[60] Moreover, as noted in our Initial Brief, Ms. Kliethermes' discussion presumed that the rate design change would apply to both general use and space heating residential customers, whereas DE's proposal does not extend to space heating customers. As such, concerns about revenue volatility are unfounded based on the record in this matter.

iii. *Evidence regarding elasticity and its role in determining whether rates are reasonable.*

Both Staff and the Company raised various concerns regarding the evidence on elasticity of demand and how elasticity should be considered in determining whether rates are reasonable. For example, the Company contends that "absent an elasticity study to assist in determining targeted pricing that is specific to the KCP&L service territory, there is a very good chance that no change in customer usage may result. No elasticity study was performed by any party in this case."[61]

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[59] Tr. 1117:1-5 (Jester); *see also* Tr. 1186:14-18 (Marke testimony regarding relative volatility associated with residential tail block and other sources of volatility such as weather).
[60] *See* Exhibit 401, Surrebuttal Testimony of Douglas Jester, at 7:3-19.
[61] KCPL Br. ¶170.

A KCP&L-specific elasticity study is not needed to support DE's block rate proposal. First, as discussed by Mr. Jester and Mr. Hyman and described below, existing studies show a consensus range of estimates for customer response to price changes, providing this Commission with a sufficient degree of certainty about the likely degree of customer response among KCP&L's Missouri residential customers. Mr. Jester and Mr. Hyman both presented evidence on elasticity of demand in their direct testimony on rate design to explain how changes to the block rate structure would affect customer usage.[62] Mr. Jester referred to a study that he considered to be the best among the literature on the topic, which "found a short-term elasticity of -0.111." In his direct testimony, Mr. Hyman noted that "in 2013, the Brattle Group used elasticities of -0.130 and -0.260 . . . when evaluating an inclining block rate for Ameren Missouri."[63] Mr. Hyman explained at the hearing that the Brattle Group previously found this estimate of elasticity appropriate for a Missouri-specific study on rate design.[64] Finally, in response to questioning from Chairman Hall, Mr. Jester further described the literature on elasticity of demand in response to block rates, describing a 2014 paper in Applied Energy which surveyed empirical studies on elasticity of demand in response to block rates and found a range of elasticities from -0.1 to -0.3.[65] Thus, the record contains ample evidence that the elasticity estimates used by Mr. Jester to estimate the impact of DE's proposed rates on customer usage are supported by a robust literature.[66] As such, the record supports a finding that implementing DE's proposed rate

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[62] Exhibit 400, Direct Testimony of Douglas Jester at 17:2-15; Exhibit 800, Direct Testimony of Martin Hyman at 22:6-16.
[63] Exhibit 800, Direct Testimony of Martin Hyman at 22:10-13.
[64] Tr. 1244:17-20.
[65] Tr. 1141:7-20 (referring to, and that the numbers he used were within that range).
[66] *See* Exhibit 401, Surrebuttal Testimony of Douglas Jester at 3:6-22 to 4:1-2.

structure will support public policies of reducing customer energy usage, especially during the peak month.

Second, the Company makes the somewhat contradictory argument that that customer response to DE's block rates will result in underrecovery of revenues unless the rates are adjusted to reflect elasticity of demand.[67] However, the record shows that the commission does not customarily consider elasticity when setting rates. For example, Mr. Jester noted that "it is the Commission's practice to ignore elasticities when it makes changes in rates in order to meet revenue requirements."[68] Therefore, although an adjustment to the rates could be made to reflect likely customer response, in order to provide further assurance that the Company will recover the revenue allocated to the residential class, it is not necessary to do so in order to arrive at a just and reasonable rate.

iv. *The Commission should not wait for future cases, but instead should order KCP&L to implement DE's proposed rate structure immediately.*

In its Initial Brief, KCP&L argues that instituting an inclining block rate in this case would be premature.[69] KCP&L claims that its various studies currently underway should be

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[67] KCP&L Br. ¶183.

[68] Tr. 1142:21-24; *see also* Tr. 1154:9-24 (Jester testimony that he has not seen a commission adjust sales forecasts to account for anticipated downward pressure on usage as a result of major rate increases). With respect to this point, we note that Staff takes out of context Mr. Jester's testimony that the Commission tends to ignore elasticities. Staff Br. at 71. It is clear from the context that Mr. Jester was not suggesting that elasticity is unimportant; in fact, the elasticity of demand was a key component of Mr. Jester's case for IBR and time-varying rates. In the hearing testimony to which Staff cites, Mr. Jester was noting that—historically—commissions have not considered elasticity when setting rates (as in, adjusting the rates to reflect anticipated changes in usage so as to provide greater assurance that the utility will recover its revenue requirement). Clearly, elasticity of demand is an important issue in this case as it bears on the energy efficiency impacts of both the customer charge increase and the move towards inclining block rates. The importance of elasticity for understanding the public policy implications of rate design is why Sierra Club and Renew Missouri presented detailed testimony on the issue, including citations to relevant academic literature.

[69] KCP&L Initial Post-Hearing Brief, pg. 57, ¶154.

completed before such "significant changes in rate design policy" are made.[70] In testimony, KCP&L witness Marisol Miller proposes that the Commission should wait until the conclusion of ongoing studies to act.[71]

The Commission should act now and not wait for the results of KCPL's ongoing studies before taking this first, measured step toward rates that better reflect cost causation and promote efficiency. No purpose will be served by waiting until a future rate case. Moreover, the evidence presented in this docket proves that DE's proposed rate structure is superior to KCP&L's current structure. KCP&L has not presented any evidence to prove their rate structure is superior to the specific structure proposed by DE. Therefore, perpetuating this objectively inferior rate structure, even temporarily, calls to mind the following quote from Rear Admiral Grace Hooper, "The most dangerous phrase in the English language is 'We've always done it that way.'" The more reasonable approach is to adopt DE's proposed rate structure now, and then use KCPL's ongoing studies to make adjustments in subsequent rate cases.

Staff's witness Robin Kliethermes stated in testimony that, while she is not opposed to DE's proposed rate structure, she believes TOU to be superior.[72] Both rate structures have their merits, and both may be superior to KCPL's current rate structure. But the Commission should not allow the perfect to be the enemy of the good. Traditionally, TOU rate structures allow customers to opt in. Therefore, even if the Commission orders KCP&L to institute a TOU rate option in the future, the Company would still require an alternative for customers who are unwilling or unable to participate in TOU pricing. This alternative would almost certainly be a

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[70] Id.
[71] Exhibit 137 Marisol Miller Rebuttal Testimony at 16:20-23.
[72] Exhibit 210, Kliethermes Rebuttal Testimony at 7:14-16.

block rate of some kind, and as stated above, KCP&L is unable to prove that their current rate design is superior to DE's proposed rate structure.

c. Issue XXII.E – Time of Use Rates

In its brief, KCP&L continues to assert that the Commission should make no determination regarding the general need for time of use rates until the Company has completed the various studies currently underway.[73] As described in the earlier section of this brief on time-varying rates for electric vehicles, we urge the Commission to send a clear signal that time of use rates should be developed and proposed for implementation in the next rate case. This Commission has previously recognized that time of use rates are essential to achieving the objectives of the Missouri Energy Efficiency Investment Act. Based on experience, we are concerned that without express direction from the Commission KCP&L will likely continue to postpone implementation of such rates, as more studies are always theoretically helpful. We agree with Staff, which "supports working towards a well-designed pilot program for TOU rates and is supportive of Commission guidance directing KCPL to work towards general use time-varying rate options for KCPL's residential customers."[74]

CONCLUSION

Sierra Club, NRDC and Renew Missouri appreciate the opportunity to participate in this matter and to submit this Joint Reply Brief. For the aforementioned reasons, our organizations request that the Commission adopt our positions on Issues XXI(C) (residential customer charge),

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[73] KCP&L Br. ¶184.
[74] Staff Br. at 73.

XXI(D) (block rate proposal), XXI(E) (time-varying rate offerings), and XXII(A-D) (Clean Charge Network & Related Electric Vehicle Issues).

Respectfully Submitted,

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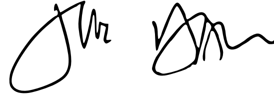
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed, faxed, or emailed to all counsel of record on this 4th day of April, 2017.



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