

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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6 TRANSCRIPT OF PROCEEDINGS  
7 Evidentiary Hearing  
8 January 8, 2010  
9 Jefferson City, Missouri  
Volume 7  
10  
11  
12 In the Matter of The Empire )  
District Gas Company of Joplin, )  
13 Missouri For Authority to File )  
Tariffs Increasing Rates For Gas ) Case No. GR-2009-0434  
14 Service Provided To Customers In )  
the Missouri Service Area of The )  
15 Company )  
16  
NANCY M. DIPPELL, Presiding,  
17 DEPUTY CHIEF REGULATORY LAW JUDGE.  
DANIEL R.E. JORDAN, Presiding,  
18 REGULATORY LAW JUDGE.  
19  
20 ROBERT M. CLAYTON III, Chairman,  
TERRY JARRETT,  
21 KEVIN GUNN,  
COMMISSIONERS.  
22  
23 REPORTED BY:  
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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 33 WERE MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE DIPPELL: This is Case No.  
5 GR-2009-0434, in the matter of the Empire District Gas  
6 Company of Joplin, Missouri for authority to file tariffs  
7 increasing rates for gas service provided to customers in  
8 the Missouri service area of the company.

9 My name is Nancy Dippell. I'm the  
10 Regulatory Law Judge assigned to this. And also beside me  
11 is Judge Dan Jordan, who is second chairing this.

12 I'm going to begin with entries of  
13 appearance. We've come here today for basically a hearing  
14 on the contested issue as well as presentation of  
15 stipulations that have been filed in this case. I'm going  
16 to go ahead and begin with entries of appearance, and can  
17 we start with Staff?

18 MS. KLIETHERMES: Thank you, Judge. Good  
19 morning. Sarah Kliethermes, Governor's Office Building,  
20 Suite 800, 200 Madison Street, Jefferson City, Missouri  
21 65102, on behalf of the Staff of the Missouri Public  
22 Service Commission. Thank you.

23 CHAIRMAN CLAYTON: Judge, she will need to  
24 speak up, if we can ask that.

25 JUDGE DIPPELL: All right. Get everybody

1 to speak into the microphone, which you were doing, but to  
2 try to speak loudly. We do have some people on the phone,  
3 including Commissioner Clayton and Commissioner Gunn, and  
4 we're going to have some of the other participants in the  
5 hearing on the phone, and so I will ask everybody to try  
6 to speak up, and I'll do the same, and be certain to speak  
7 into a microphone.

8 Can we go ahead then with Office of the  
9 Public Counsel?

10 MR. POSTON: Thank you. Marc Poston  
11 appearing for the Office of the Public Counsel and the  
12 public.

13 JUDGE DIPPELL: Department of Natural  
14 Resources?

15 MS. MANGELSDORF: Thank you. Sarah  
16 Mangelsdorf appearing for the Missouri Department of  
17 Natural Resources.

18 JUDGE DIPPELL: Constellation?

19 MR. STEINMEIER: Thank you, your Honor.  
20 Please let the record reflect the appearance of William D.  
21 Steinmeier, William D. Steinmeier, P.C. of Jefferson City,  
22 Missouri, appearing on behalf of Constellation New  
23 Energy - Gas Division, LLC.

24 JUDGE DIPPELL: Pittsburgh Corning?

25 MR. WOODSMALL: Good morning, your Honor.

1     Appearing on behalf of Pittsburgh Corning, David Woodsmall  
2     and Stuart W. Conrad.

3                     JUDGE DIPPELL:   And Empire District  
4     Electric?

5                     MS. CARTER:   Diana Carter and Dean  
6     Cooper --

7                     JUDGE DIPPELL:   Or Gas.

8                     MS. CARTER:   -- with Brydon, Swearengen &  
9     England, P.C., for the Empire District Gas Company.

10                    JUDGE DIPPELL:   Do we have any information  
11    on the telephone number for the Empire witnesses?

12                    MS. CARTER:   I have texted someone and now  
13    I'm trying to call.   Haven't heard anything.

14                    JUDGE DIPPELL:   What we're going to do is  
15    begin with the stipulations that have been filed and any  
16    questions from Commissioners.   The Commissioners are at a  
17    disadvantage because we just got the final stipulation  
18    filed this morning.   So I don't know how much review of  
19    that, so we'll need you to go over that specifically.

20                    And let me ask, starting with that  
21    transportation tariff, how many parties signed that  
22    agreement?   Looks like that is an agreement between Empire  
23    and Constellation.   Is that correct, Mr. Cooper?

24                    MR. COOPER:   That's correct, your Honor.  
25    And we have affirmative statements from all the other

1 parties that they, while not signing the stip, they do not  
2 object nor do they ask for a hearing on that stipulation.

3 JUDGE DIPPELL: All right. And can I just  
4 confirm that with the other parties at this time? Is  
5 there going to be any objection or any request for more  
6 time to make an objection to this agreement?

7 MR. WOODSMALL: That's correct, we're not  
8 requesting a hearing, but we're not signing the  
9 stipulation. Thank you.

10 JUDGE DIPPELL: Thank you. Anyone else?

11 MR. POSTON: We have no objections. Thank  
12 you.

13 MS. KLIETHERMES: Staff does not object.  
14 Thank you.

15 MS. MANGELSDORF: No objection from DNR.

16 JUDGE DIPPELL: Thank you. All right,  
17 then. Can we -- maybe we should -- Commissioners, would  
18 you like to begin with the transportation or would you  
19 like to save that until you've had a chance to look at it  
20 a little more? Mr. Chairman?

21 CHAIRMAN CLAYTON: I don't think I'm going  
22 to have any questions on the transportation stip. I've  
23 got it opened here and I've been looking through it, but I  
24 don't think I'm going to have any questions. I'm  
25 comfortable with moving forward either with the other

1 stipulation or taking evidence on the remaining issue in  
2 the case, and then maybe we can come back if I find  
3 something that jumps out. But at this time I don't have  
4 any questions on this stip.

5 JUDGE DIPPELL: All right. Commissioner  
6 Gunn?

7 COMMISSIONER GUNN: I'm the same way. I  
8 think you can proceed as it is. I don't have any  
9 questions as we are right now.

10 JUDGE DIPPELL: All right. Commissioner  
11 Jarrett?

12 COMMISSIONER JARRETT: Yes. Mr. Cooper, I  
13 just have one just general question and maybe a follow-up.  
14 Do you believe that this partial Stipulation & Agreement  
15 on transportation tariff issues leads to just and  
16 reasonable rates for the ratepayers?

17 MR. COOPER: Certainly we do. And the  
18 reason I hesitate just for a second, the rates that we --  
19 that are identified in that transportation stipulation are  
20 rates for a balancing, balancing services, one that will  
21 be offered to the small volume transportation customer,  
22 and then two optional services that will be offered to  
23 large volume transportation customer.

24 All those balancing service charges that  
25 are referred to there are charges that in the end will go

1 to reduce the PGA rates to be paid by the firm  
2 transportation customers. We think that it is a just --  
3 does create just and reasonable rates. The small volume  
4 balancing service will actually represent an increase of  
5 that -- of that fee over what's been the charge since I  
6 think -- gosh, I can't remember the year that we talked  
7 about, but it's been many years since that number has been  
8 adjusted.

9 MR. STEINMEIER: 2001, I believe. Excuse  
10 me.

11 MR. COOPER: Thank you. And then the two  
12 optional balancing services for the large volume  
13 transportation customers are actually new services, new  
14 charges, and consequently new revenues that will go to  
15 offset other costs that are currently being paid by the  
16 firm trans-- by the firm customers.

17 COMMISSIONER JARRETT: All right. Thank  
18 you, Mr. Cooper. I have no further questions, Judge.

19 JUDGE DIPPELL: All right. Thank you.  
20 Mr. Steinmeier, would you like to make any remarks about  
21 the agreement?

22 MR. STEINMEIER: I would simply concur in  
23 Mr. Cooper's assertion. Constellation New Energy  
24 certainly agrees and believes that this stipulation does  
25 indeed lead to just and reasonable rates to customers of

1 the company.

2 JUDGE DIPPELL: All right, then. I have a  
3 phone number for the parties who we're trying to get on  
4 the conference call. So I'm going to go off the record  
5 for just a moment while I transfer this number upstairs  
6 and we'll try to get them on the conference call and we'll  
7 continue with the next stipulation.

8 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

9 JUDGE DIPPELL: Okay. We're back on the  
10 record. Hopefully we've got our phone conference figured  
11 out and soon we will have the final Empire people joining  
12 us.

13 So let's go ahead, then, if there aren't --  
14 right now if there are not any more questions on the  
15 transportation issue, then let's move on to the next  
16 stipulation. Ms. Kliethermes?

17 MS. KLIETHERMES: Judge, just quickly,  
18 regarding the transportation issue, Staff is interested,  
19 as Mr. Cooper noted, in protecting the PGA customers from  
20 costs that are caused by the transportation customers, and  
21 the reason for Staff's not signing but not objecting is  
22 that Staff doesn't believe that the nonunanimous  
23 transportation settlement went as far as it could have  
24 gone toward that end, but we do recognize that that  
25 settlement is not unreasonable and that it is a measured

1 move that results in better protection of the PGA  
2 customers without sudden drastic changes to the  
3 transportation customers. For that reason, we're not  
4 opposing that agreement.

5 JUDGE DIPPELL: Thank you. Was there  
6 anyone else that wanted to make a statement about the  
7 transportation agreement?

8 (No response.)

9 JUDGE DIPPELL: All right, then. Let's  
10 move on, then, to the main Stipulation & Agreement, which  
11 resolves everything except for the DSM issue and the  
12 transportation issue. Who would like to begin by just  
13 giving me a summary of that stipulation quickly?

14 MS. CARTER: I can do that, Judge.

15 JUDGE DIPPELL: Ms. Carter. Thank you.

16 MS. CARTER: The primary parts of the  
17 stipulation are with regard to the revenue requirement,  
18 and we attached specimen tariff sheets to the stipulation,  
19 and the agreement is for Empire Gas to file revised tariff  
20 sheets to produce annual non-gas revenues of approximately  
21 22.2 million, which would be an increase of 2.6 million.

22 And another significant change is the  
23 residential customer charges, and as part of the  
24 stipulation the residential customer charge will be 16.50  
25 for all Empire Gas residential customers, not divided

1 between the districts. Currently for the northwest system  
2 the customer charge is \$7, and for the north and south  
3 system it's 9 --

4 OPERATOR: I'm going to add Kelly Walters.

5 JUDGE DIPPELL: Thank you.

6 JUDGE DIPPELL: Do we have Empire on the  
7 phone now?

8 MS. WALTERS: Yes.

9 JUDGE DIPPELL: Thank you. Can you tell me  
10 who all is with you?

11 MS. WALTERS: Kelly Walters and Scott  
12 Keith.

13 JUDGE DIPPELL: Very good. Thank you. All  
14 right. Go ahead, Ms. Carter.

15 MS. CARTER: Those are the primary  
16 elements, but it does settle everything other than  
17 transportation, which is now settled separately, and then  
18 the funding of DSM programs. So as part of the main  
19 stipulation, it settles what DSM programs there will be  
20 and how Empire will recover the money that goes into those  
21 DSM programs, which provides for a regulatory asset. The  
22 only thing left out is the funding level for the DSM  
23 programs.

24 JUDGE DIPPELL: All right. Mr. Chairman,  
25 did you have any questions about the general stipulation?

1                   CHAIRMAN CLAYTON: I do have a couple of  
2 questions. I guess I'll direct these to Staff. Start  
3 with Sarah and see where we go.

4                   First of all, Ms. Kliethermes, this is an  
5 increase of \$2.6 million in revenue requirement; is that  
6 correct?

7                   MS. KLIETHERMES: That's correct.

8                   CHAIRMAN CLAYTON: And that's, what, a  
9 little more than 10 percent?

10                  MS. KLIETHERMES: I'm looking anxiously at  
11 Kim Bolin.

12                  MS. BOLIN: I believe it's roughly close to  
13 10 percent. I don't have the exact number with me.

14                  MS. KLIETHERMES: She thinks you're close.  
15 I suspect it's a little less than 10.

16                  JUDGE DIPPELL: Is your microphone working?

17                  MS. KLIETHERMES: I'm sorry. I didn't have  
18 my microphone on.

19                  CHAIRMAN CLAYTON: For some reason  
20 Ms. Kliethermes' voice doesn't travel as well over the  
21 speaker, so I apologize for harping. If you could speak  
22 up when possible, that would be great.

23                  MS. KLIETHERMES: I'm sorry, sir. It's a  
24 little less than 10 percent, we think.

25                  CHAIRMAN CLAYTON: Little less than

1 10 percent. From Staff's perspective, can you give me an  
2 idea of the principal drivers behind this increase?

3 MS. KLIETHERMES: I believe depreciation  
4 was significant, payroll.

5 JUDGE DIPPELL: Would you like Ms. Bolin to  
6 come up and answer? I believe she knows the answer.

7 CHAIRMAN CLAYTON: I didn't want to go too  
8 in depth. Basically, I wanted a general just kind of  
9 statement, is this basically investment in infrastructure?  
10 I'm not sure if I understand depreciation, an increase in  
11 depreciation, so I may need to ask additional questions on  
12 that.

13 MS. KLIETHERMES: No, it's not so much new  
14 infrastructure. It's some modifications to the way  
15 depreciation was calculated to bring it into conformance  
16 with the Commission's ruling in, I believe, two Empire  
17 electric cases ago about how depreciation studies should  
18 be performed.

19 CHAIRMAN CLAYTON: Is that the net -- is  
20 that a net salvage issue?

21 MS. KLIETHERMES: Yes.

22 CHAIRMAN CLAYTON: So the change that the  
23 Commission made that -- actually, you could go back to the  
24 Laclede decision which made the change in policy for net  
25 salvage cost of removal, how much of this increase is that

1 change in depreciation cost?

2 MS. KLIETHERMES: Right around 1 million.

3 CHAIRMAN CLAYTON: And is the rest -- how  
4 would you characterize the -- that's a little more than a  
5 third. How would you characterize the rest of the  
6 increase?

7 MS. KLIETHERMES: Well, I hesitate to go  
8 into too much detail because this is a block box  
9 settlement, and I should indicate that our -- that number  
10 I just gave you is only from Staff's perspective. I can  
11 give you some additional numbers from Staff's perspective.

12 CHAIRMAN CLAYTON: Yeah, and I'm -- I don't  
13 want to get too specific. I just -- in terms of are there  
14 general categories. In a gas case we don't have the issue  
15 of fuel that we would have in an electric case. You don't  
16 have -- one of the principal drivers of increased costs in  
17 other utilities' circumstances.

18 I'm just trying to get a sense of, from a  
19 gas utility, if we're not seeing significant increases in  
20 investment and infrastructure, just general categories,  
21 where are we seeing this -- the greatest cost driver  
22 occurring?

23 MS. KLIETHERMES: I believe from Staff's  
24 perspective of the non-revenue -- or of the  
25 non-depreciation dollars, quite a bit of that is

1 associated with, looks like property taxes, bad debt  
2 expense, retail revenues as adjusted for customer growth  
3 and weather, and the payroll and benefit costs.

4 CHAIRMAN CLAYTON: So it sounds like it's a  
5 hodgepodge, not necessarily just a handful of large  
6 categories; is that a fair characterization?

7 MS. KLIETHERMES: Probably, but Kim Bolin  
8 is -- customer loss would be another area.

9 CHAIRMAN CLAYTON: That's helpful. Let me  
10 talk about rate design. What does the stipulation do with  
11 rate design for the residential class?

12 MS. KLIETHERMES: It results in a 16.50  
13 customer charge for both districts.

14 CHAIRMAN CLAYTON: And what percentage of  
15 the -- of the non-gas costs will be included within that  
16 16.50 charge?

17 MS. KLIETHERMES: I think you'll get some  
18 disagreement -- or wait.

19 CHAIRMAN CLAYTON: Let me ask it this way.  
20 We're not going to a straight fixed variable in this case,  
21 are we?

22 MS. KLIETHERMES: No, sir.

23 CHAIRMAN CLAYTON: So I think there were  
24 suggestions in other cases that the norm was generally  
25 55 percent of the fixed cost being placed in the fixed

1 charge. Are we at the 55 percent level, or what is the  
2 range if there's a dispute.

3 MS. KLIETHERMES: I believe Barb  
4 Meisenheimer is nodding. I don't actually know the answer  
5 to that question.

6 CHAIRMAN CLAYTON: Okay. Well, then, maybe  
7 I'll ask Marc Poston, if that's okay.

8 MR. POSTON: Yes, that's our understanding,  
9 that's roughly 55 percent.

10 CHAIRMAN CLAYTON: So basically the rate  
11 design will be in line with what Public Counsel has  
12 advocated for, 55 percent of those fixed costs being  
13 placed in that monthly fixed -- fixed monthly charge,  
14 correct?

15 MR. POSTON: That is correct.

16 CHAIRMAN CLAYTON: And so then we'll still  
17 have a volumetric rate that will recover some costs  
18 associated with the non-gas side, correct?

19 MR. POSTON: That's right.

20 CHAIRMAN CLAYTON: Okay. Is the increase,  
21 is this an equal increase across classes of customers,  
22 either to Ms. Kliethermes or anyone? Empire can answer as  
23 well.

24 MS. KLIETHERMES: Yes, sir, that's my  
25 recollection.

1                   CHAIRMAN CLAYTON: Does Empire Gas have an  
2   ISRS right now?

3                   MS. KLIETHERMES: No.

4                   CHAIRMAN CLAYTON: They do not. So there's  
5   no resetting of an ISRS in this case?

6                   MS. KLIETHERMES: No, sir.

7                   CHAIRMAN CLAYTON: All right. I don't have  
8   any other questions on this piece. I will have questions  
9   on the DSM, but I think we have to take that testimony,  
10  correct, Judge?

11                  JUDGE DIPPELL: That's correct.

12                  CHAIRMAN CLAYTON: Okay. Then I will clam  
13  up here and let somebody else go.

14                  JUDGE DIPPELL: Thank you. Commissioner  
15  Jarrett, did you have --

16                  COMMISSIONER JARRETT: I don't have any  
17  questions. Thank you.

18                  JUDGE DIPPELL: Commissioner Gunn, did you  
19  have any questions?

20                  COMMISSIONER GUNN: No additional  
21  questions. Thank you.

22                  JUDGE DIPPELL: Thank you. All right.  
23  Would any of the other parties like to make a statement  
24  about the stipulation?

25                  (No response.)

1 JUDGE DIPPELL: All right. Seeing none,  
2 then I guess that concludes that part.

3 Mr. Chairman, do you think that you will  
4 have transportation issue questions or should I let  
5 Mr. Haubensak drop off the phone call?

6 CHAIRMAN CLAYTON: I would guess that most  
7 of -- I mean, my inquiry from now on is going to be the  
8 live issue, the DSM, and I do have a number of questions  
9 depending on how the testimony goes. In the spirit of  
10 moving this thing along, I'll just say I have no questions  
11 on transportation.

12 JUDGE DIPPELL: All right, then. Your  
13 witnesses, then, Mr. Steinmeier may be excused on the  
14 transportation issue.

15 MR. STEINMEIER: Thank you, your Honor.

16 MR. HAUBENSAK: Thank you.

17 JUDGE DIPPELL: Thank you. All right.  
18 Then let's go ahead and begin with the contested -- the  
19 issue that remains contested, and that is the DSM issue,  
20 or the DSM funding I guess I should say. And I guess in  
21 the order of witnesses and so forth, we'll take up the  
22 same as they were proposed, and we will begin then with  
23 opening statements on this issue. So can we begin -- I  
24 lost my order -- with Empire?

25 MS. CARTER: Thank you, Judge. This is the

1 first rate case for The Empire District Gas Company, so  
2 maybe just to give a little brief information  
3 background-wise as well before moving on to DSM. The  
4 system hasn't been in a rate case for approximately five  
5 years, and this is the first for Empire Gas.

6 Empire Gas is a wholly-owned subsidiary of  
7 The Empire District Electric Company, who you're probably  
8 more familiar with, and Empire acquired the assets of the  
9 gas business from Aquila in June of 2006 and has been  
10 operating the property since then.

11 Empire Gas has 53 employees devoted solely  
12 to the gas service, and when Empire bought the assets from  
13 Aquila, they made a job offer to all the Aquila employees  
14 that were devoted exclusively to gas to come with, and all  
15 but four Aquila employees accepted that job offer. So  
16 that helped with the transition quite a bit.

17 Empire provides natural gas service to  
18 approximately 45,000 gas customers in 44 different  
19 communities. There's approximately 40,000 residential  
20 customers, 5,300 commercial and industrial customers, and  
21 290 large and small transportation customers. We're  
22 served by three different interstate pipelines, which is  
23 why there were three different districts previously. As  
24 part of this main stipulation, we're moving everything  
25 into one, except for PGA purposes. That will have to

1 remain different because of the different pipelines  
2 serving the system.

3                   The rate case began in June of 2009, and  
4 Empire had asked for a \$2.9 million increase and had  
5 proposed to go to the straight fixed variable rate design.  
6 The need for the case from Empire's standpoint was  
7 primarily a reduction in customers and a reduction in use  
8 but without a corresponding reduction in cost of service.

9                   As I mentioned earlier, the main  
10 stipulation addresses the demand side management or DSM  
11 programs to be implemented and the process by which those  
12 programs will be funded, a regulatory asset for all  
13 expenses, including a reasonable assessment of lost margin  
14 revenues that Empire experiences as a direct result of  
15 those DSM programs.

16                   The Missouri Department of Natural  
17 Resources does not agree with Empire, Staff and Public  
18 Counsel on the funding level for those programs. So  
19 that's why we're hearing this one issue separately. The  
20 company, Staff and Public Counsel did have a separate  
21 stipulation, so you'll have a nonunanimous stipulation on  
22 the funding level of DSM programs that the Commission can  
23 take as the position of those parties. But then DSM (sic)  
24 filed a notice objecting and asked for a hearing on that  
25 funding issue.

1                   The question is, at what level should  
2   Empire Gas make funding available for the DSM and energy  
3   efficiency programs? Empire, Staff and Public Counsel  
4   submit that that funding level needs to be realistic,  
5   that we shouldn't just be putting money out there as a  
6   target or goal so we can say we're striving for energy  
7   efficiency if we don't really think that's the level we  
8   can meet.

9                   Empire and its customers are striving for  
10   energy efficiency. Anyone who listened in on a public  
11   hearing, most of the people who testified told you how  
12   they already engaged in many energy efficiency steps.

13                  Sherry McCormack is Empire's witness on  
14   this topic, and her testimony contains the recommended  
15   funding levels from Empire's standpoint and then pursuant  
16   to the nonunanimous stip also with Public Counsel and  
17   Staff. For year one, Empire, Staff and Public Counsel  
18   recommend total funding of over 230,000, with it being a  
19   little over 240,000 in year three.

20                  This year one funding recommendation  
21   amounts to a little over 1 percent of non-gas revenues,  
22   but the funding recommendation is based on actual  
23   projections of the cost of the various programs and the  
24   expected participation levels, not just a percentage.

25                  DNR on the other hand is urging the

1 Commission to set required funding levels based on a  
2 percentage of total revenues, including gas costs, without  
3 any showing that these funding levels are needed or that  
4 the money would even be put to good use.

5                   The main stipulation provides for the  
6 creation of a DSM collaborative. We're all in agreement  
7 on that. And that collaborative will be following the DSM  
8 programs. We're talking about all ratepayer funded  
9 programs. Every bit of money goes back through into that  
10 regulatory asset and is ultimately picked up by all the  
11 ratepayers.

12                   So the Commission needs to set the funding  
13 at a realistic level. Let the company and the DSM  
14 collaborative see if increased funding levels are  
15 necessary in the future, if they'd be appropriate for  
16 years to come, but for now we need to set the funding  
17 level realistically and not set a possibly imprudent or  
18 unrealistic goal. Thank you.

19                   JUDGE DIPPELL: Thank you. Is there an  
20 opening statement by Staff?

21                   MS. KLIETHERMES: Yes, Judge. In brief,  
22 Staff believes that the DSM funding stipulation is fair.  
23 Past experience with this utility is that additional  
24 funding will not be utilized beyond that that is provided  
25 for in the stip.

1 JUDGE DIPPELL: Ms. Kliethermes, I'm going  
2 to have you get just a little closer to the microphone.

3 MS. KLIETHERMES: My apologies. The study  
4 that DNR relies on for the additional funding is outdated,  
5 and the funding levels DNR recommends do not account for  
6 the DSM and energy efficiency that has occurred since 2002  
7 when that study data was compiled, nor the higher levels  
8 of funding coming from the non-utility sources, such as  
9 the Federal Government through the stimulus monies.

10 Pushing for inefficient or imprudent  
11 spending is not beneficial even if it is on a good cause,  
12 so to speak, and the funding levels identified in the stip  
13 are reasonable and advisable. Thank you.

14 JUDGE DIPPELL: Thank you. Is there an  
15 opening statement by Public Counsel?

16 MR. POSTON: I don't have anything  
17 prepared. We, of course, support the funding stipulation  
18 and the comments made by Staff. Thank you.

19 JUDGE DIPPELL: Thank you. Is there  
20 anything from Pittsburgh Corning? I believe he may have  
21 left the room. Is there anything from Constellation?

22 MR. STEINMEIER: No, thank you, your Honor.

23 JUDGE DIPPELL: And DNR? Actually, I  
24 should say that Mr. Woodsmall had asked to be excused  
25 after the transportation issue as they were not interested

1 or did not have a position to argue I should say in the  
2 DSM funding issue. Go ahead, Ms. Mangelsdorf.

3 MS. MANGELSDORF: Thank you, Judge. My  
4 name is Sarah Mangelsdorf. I am an Assistant Attorney  
5 General representing the Missouri Department of Natural  
6 Resources, specifically its Energy Center in this rate  
7 case.

8 Energy efficiency programs represent good  
9 energy efficiency policy, especially since low costs are  
10 becoming increasingly significant and important in today's  
11 economy. However, according to the most recent American  
12 Council for Energy Efficiency Economy Score Card, Missouri  
13 currently ranks 41st in spending by both gas and electric  
14 utilities on energy efficiency.

15 Today you will be hearing testimony on  
16 demand side management and energy efficiency, specifically  
17 at what level should Empire District Gas make funding  
18 available for demand side management and energy efficiency  
19 programs.

20 While the Department does not oppose the  
21 energy efficiency programs proposed by the company, OPC  
22 and Staff in the Partial Stipulation & Agreement, it  
23 differs with these parties on how much funding should be  
24 made available for these programs. The Department has  
25 proposed a formula which is a percentage of the company's

1 total annual operating revenues, including gas revenues,  
2 that ramps up from .332 percent beginning in the calendar  
3 year 2010, to .5 percent in calendar year 2011, and then  
4 to 1 percent in calendar year 2012. This translates into  
5 approximately \$217,000 for calendar year 2010, \$327,000  
6 for calendar year 2011, and \$655,000 for calendar year  
7 2012.

8                   However, OPC, Staff and the company propose  
9 to spend \$217,000 for calendar years 2010 and 2011 per  
10 year and \$231,200 for calendar year 2012 on energy  
11 efficiency.

12                   Now, in addition, Staff, OPC and the  
13 company have proposed a number of programs, and as I  
14 stated before, the Department does not oppose how these  
15 parties have proposed these programs be implemented in the  
16 Partial Stipulation & Agreement, with the exception of the  
17 high efficiency water heating program.

18                   The parties have proposed a \$50 rebate  
19 amount for tank storage water heaters until this amount  
20 was adjusted to reflect the higher incremental cost of the  
21 tank storage water heater with an energy factor of .67.  
22 However, it is the Department's position that the rate  
23 amount -- rebate amount should be determined by the  
24 company after consultation with the DSM advisory group.

25                   Using the advisory group in this capacity

1 not only allows it to analyze what is currently happening  
2 in the market, but it also gives the company the  
3 flexibility to adjust the rebate amount accordingly so  
4 that its customers are truly incentivized to participate  
5 in this program.

6 In conclusion, it is not only by ramping up  
7 the funding levels for energy efficiency so that a  
8 significant and meaningful amount is spent on energy  
9 efficiency can we ever hope to see real energy savings.  
10 Therefore, implementing an energy efficiency program  
11 correctly can and will result in an expenditure of funds  
12 at the levels recommended by the Department. Thank you.

13 JUDGE DIPPELL: Thank you. All right,  
14 then. Having concluded the opening statements, we'll go  
15 ahead and begin with the witnesses, and --

16 CHAIRMAN CLAYTON: Judge, could I ask the  
17 DNR attorney, and I'm -- I don't want to mangle her  
18 name -- if she could repeat the actual dollars that DNR is  
19 requesting. I had the percentages of gross revenue in  
20 front of me, but I don't have the actual numbers. Could  
21 she repeat those for 2010, 2011 and 2012 for me?

22 JUDGE DIPPELL: Certainly.

23 MS. MANGELSDORF: The amounts proposed by  
24 the Department?

25 CHAIRMAN CLAYTON: Yes.

1 MS. MANGELSDORF: Okay. For year 2010, it  
2 is \$217,000. For calendar year 2011, it's 327,000. And  
3 for calendar year 2012, it's 655,000.

4 CHAIRMAN CLAYTON: Thank you.

5 JUDGE DIPPELL: Were there any other  
6 questions before we begin with the witnesses?

7 (No response.)

8 JUDGE DIPPELL: All right, then. I'll let  
9 Empire begin with their first witness.

10 MS. CARTER: Sherrill McCormack is Empire's  
11 witness on DSM funding.

12 JUDGE DIPPELL: Ms. McCormack, since we're  
13 using the microphone over here at the witness chair, would  
14 you mind standing at the podium? Would that be  
15 uncomfortable? All right. Thank you. I'll ask you to  
16 raise your right hand.

17 (Witness sworn.)

18 JUDGE DIPPELL: And this may be a little  
19 awkward with your attorney sitting there, sort of -- thank  
20 you very much. I was about to say, if you could just turn  
21 the microphone, that would be perfect.

22 SHERRILL MCCORMACK testified as follows:

23 DIRECT EXAMINATION BY MS. CARTER:

24 Q. Ms. McCormack, if you'll please state your  
25 full name, your employer and your business address.

1           A.       Sherrill L. McCormack with Empire District  
2     Electric Company, 602 South Joplin Avenue, Joplin,  
3     Missouri 64850.

4           Q.       Did you file direct testimony and rebuttal  
5     testimony in this case that's been marked as Exhibits 15  
6     and 16?

7           A.       I did.

8           Q.       Do you have any changes to be made to that  
9     testimony?

10          A.       I do not.

11          Q.       Would your answers today be the same as  
12     when you prepared those two pieces of testimony?

13          A.       Yes, they would.

14                   MS. CARTER: We'd move for the admission of  
15     Ms. McCormack's direct testimony and rebuttal testimony.

16                   JUDGE DIPPELL: Would there be any  
17     objection to what's been marked as Exhibits 15 and 16, the  
18     direct and rebuttal testimony of Sherrill McCormack?

19                   (No response.)

20                   JUDGE DIPPELL: Seeing no objection, then I  
21     will admit that into the record.

22                   (EXHIBIT NOS. 15 AND 16 WERE RECEIVED INTO  
23     EVIDENCE.)

24                   MS. CARTER: And Ms. McCormack is available  
25     for cross-examination and questions from the

1 Commissioners.

2 JUDGE DIPPELL: Thank you. Am I correct in  
3 assuming that DNR will be going last on the  
4 cross-examination on this witness? All right. Let's  
5 begin then with Staff.

6 MS. KLIETHERMES: No questions for this  
7 witness. Thank you.

8 JUDGE DIPPELL: Public Counsel?

9 MR. POSTON: No questions. Thank you.

10 JUDGE DIPPELL: Constellation?

11 MR. STEINMEIER: No questions.

12 JUDGE DIPPELL: And DNR?

13 MS. MANGELSDORF: I have just a few  
14 questions.

15 CROSS-EXAMINATION BY MS. MANGELSDORF:

16 Q. Okay. According to your rebuttal testimony  
17 on page 3, lines 3 and 4, could you please clarify what  
18 the company's overall annual energy efficiency budget is  
19 for years two and three?

20 A. In my rebuttal testimony?

21 Q. Yes. Page 3, line 3 and 4.

22 A. Okay. Repeat your question, please.

23 Q. Can you just clarify the overall annual  
24 energy budget for years two and three?

25 A. For year three?

1 Q. Two and three.

2 A. Two and three? For year two -- and I'm not  
3 finding it in my rebuttal on the pages you referenced, but  
4 if I may, year two, the funding level would be 231,228,  
5 and for year three, 242,430.

6 Q. Okay. Thank you. Are you familiar with  
7 the funding levels for energy efficiency programs in other  
8 states, specifically funding levels for gas utilities?

9 A. Not specifically, no.

10 Q. Would you agree with me that states that  
11 show significant savings in energy use also use a  
12 percentage funding mechanism or percentage reduction in  
13 use to set energy efficiency funding levels?

14 A. I have not studied that.

15 Q. Would you agree with me that funds spent by  
16 gas utilities in other states are higher than the levels  
17 proposed by the company?

18 A. That's part of the same, I've not studied  
19 that.

20 Q. Would you agree with me that energy  
21 efficiency is a low cost energy resource?

22 A. Yes.

23 Q. Would you agree with me that the Applied  
24 Energy Group study recommended a \$75 rebate amount for the  
25 tank storage water heaters?

1           A.       Yes, they did.

2           Q.       Would you agree with me that decreasing the  
3   rebate amount for tank storage water heaters from \$75 to  
4   \$50 affects how funds in the budget are spent?

5           A.       I think it would provide the opportunity  
6   for additional customers, so I'm not sure if that's what  
7   you mean by how funds are spent.

8           Q.       And would you agree with me that decreasing  
9   the rebate amount for tank storage water heaters has the  
10  potential to alter the program's effectiveness?

11          A.       I don't know because, again, you've got the  
12  tradeoff.

13                   MS. MANGELSDORF:   Okay.   Thank you.

14                   JUDGE DIPPELL:   Thank you.   Are there any  
15  questions for Ms. McCormack from the Chairman?

16                   CHAIRMAN CLAYTON:   Yes, I do have some  
17  questions.

18  QUESTIONS BY CHAIRMAN CLAYTON:

19          Q.       Thank you for being available,  
20  Ms. McCormack.   I just want to ask you just quickly if I  
21  could go through the programs that Empire Gas has in place  
22  today in terms of energy efficiency, weatherization,  
23  affordability issues.   Could you just run through that  
24  laundry list for me real quick?

25          A.       Sure.   The programs that came over with the

1 purchase of the gas company consisted of a low income  
2 weatherization program, and it also --

3 Q. Do you know -- do you know the funding  
4 level of that today?

5 A. I believe there's two parts to the program  
6 currently. It's, I believe, 78,000, which is a general  
7 low income weatherization for across the company, and then  
8 there is an additional 24,000 weatherization dollars that  
9 is associated with the ELIP, the Experimental Low Income  
10 Program. So that 24,000 is specifically for customers who  
11 participate in the ELIP.

12 And I'm going to correct myself. The  
13 general program is 78,500.

14 Q. Okay. Is that the only -- is that the only  
15 program you-all have going?

16 A. There is also a commercial audit program  
17 that is available but has not been utilized, and that is  
18 at the level of 7,500 annually.

19 Q. And you say it hasn't really been used by  
20 anyone?

21 A. That's correct. My understanding is when  
22 it was part of the Aquila program, they were able to get  
23 some synergies from combining electric and gas because  
24 they had overlapping customers, so they could combine the  
25 two programs, and Empire has not had that opportunity.

1           Q.       Okay. Any other programs today that are in  
2 place?

3           A.       No. That's all.

4           Q.       That's it. Okay. Now, coming out of this  
5 stipulation, can you give me an idea of what Empire for  
6 certain plans to be doing in terms of energy efficiency  
7 after this case is concluded, if we adopt all the steps  
8 and the Empire/Staff/Public Counsel position?

9           A.       If that's the case, then we would be  
10 expanding the program to include not only a low income  
11 weatherization program at a different funding level, but  
12 also the natural gas water heating program, natural gas  
13 space heating program, and the Home Performance with  
14 Energy Star program for residential customers.

15          Q.       Okay.

16          A.       And then we also would have the large  
17 commercial natural gas audit and rebate program for those  
18 customers. The small commercial customers would be able  
19 to participate in the water heating and space heating  
20 program.

21          Q.       Under -- I guess the annual funding level  
22 for 2010-2011 is around 217,000. Do you -- do you set out  
23 a budget for each of those programs in the partial stip?

24          A.       I do, and I omitted two programs that were  
25 added during discussions of this case, and that's the

1 building operator certification program as well as the  
2 Apogee calculators. So those two programs are what  
3 increase the original funding level of 217,000 to 231,200.

4 Q. Okay. So low income weatherization, on the  
5 first part of low income weatherization, what would that  
6 funding level be for 2010-2011?

7 A. Okay. The proposal is that we combine  
8 those two programs and just have a program that is  
9 available to all customers, to all low income customers,  
10 and that funding level is 71,500. The high efficiency  
11 water heating program would be 28,500. The space heating  
12 program would be 51,750.

13 Q. I'm sorry. Say that again for me.

14 A. 51,750.

15 Q. 51,750?

16 A. Yes. Home performance, 25,250; the large  
17 commercial audit rebate, 40,000; building operator  
18 certification, 4,775; and the Apogee calculator, 9,425.

19 Q. What was that last one, Ms. McCormack? I  
20 kind of cut out.

21 A. Apogee calculators. It's an online  
22 calculator and library that's available for residential  
23 and commercial customers.

24 Q. And how much was that right there?

25 A. 9,425.

1           Q.       Okay. From Empire's perspective, is it  
2     your-all's position that spending more money on each of  
3     these programs would be a waste, or is it that you don't  
4     have enough customers interested or that it takes too much  
5     time to ramp up the program, or is Empire concerned that  
6     it's taking on more issues than it's really prepared  
7     considering it's relatively young in the gas business?

8                     Can you elaborate on the problem that  
9     Empire has with the higher funding levels that DNR has  
10    proposed?

11          A.       We feel that when we put together the  
12    projections in conjunction with our working with Applied  
13    Energy Group, that we looked at a feasible number of  
14    customers to participate. We have seen that, at least on  
15    the electric side and in talking with some other  
16    companies, that if you just put a lot of money out there,  
17    it doesn't mean they're going to take advantage of it.

18                    And so customers are building their  
19    interest in energy efficiency. I think that the programs  
20    as designed will meet the needs of the customers. And  
21    Empire' more than willing to move forward with additional  
22    funding if it is seen to be needed and prudent. But at  
23    this time we think that we are on the right level to meet  
24    the customers' needs and the number of customers.

25          Q.       Okay. Can you tell me, and I'm not sure if

1     you're the right witness to ask this, but the 217,000  
2     figure, are these dollars included in the rate structure  
3     or are these dollars to be accounted for in a regulatory  
4     asset moving forward?

5             A.       They are in the regulatory asset program.  
6     They are not included in rates at this time.

7             Q.       So there's no going forward amount in  
8     energy efficiency built into the cost of service?

9             A.       That's correct. It will be taken into the  
10    regulatory asset as it's amortized over ten years at the  
11    end of each annual funding level. So then as we come in  
12    for future rates, then -- future rate cases, then they  
13    will be absorbed into the rate structure at that time.

14            Q.       What would Empire's position be if the  
15    Commission were to authorize but not mandate higher  
16    spending levels in accordance with the programs you've  
17    identified, but rather than limit the dollars or the --  
18    limit the dollars going into a regulatory asset  
19    potentially, if we authorize but do not mandate higher  
20    figures, why would Empire oppose that, or does Empire  
21    oppose that?

22            A.       Well, our concern is that if there's a very  
23    high number that's probably unattainable set, then when we  
24    come in for future reporting for future cases it's going  
25    to be, well, why couldn't you spend this money? And even

1 with our best efforts we can't force the customers to take  
2 advantage of this. We can make it available to them,  
3 promote it, show them why it's beneficial. But I think  
4 that it's -- it really would lend itself to maybe some  
5 negative perception in the future.

6 Q. Well, there's going to be an ongoing  
7 collaborative that comes out of this of interested  
8 stakeholders and parties, correct?

9 A. Yes.

10 Q. So let's say 12 months down the road, let's  
11 say we authorize the funding levels that Empire has  
12 proposed and the collaborative comes to a consensus that,  
13 you know what, we've really learned a lot and we really  
14 think that we can -- we can really expand some of these  
15 programs, maybe the high efficiency space heating, or  
16 maybe we're getting more energy audits or commercial  
17 customers are really grabbing ahold of these programs and  
18 we want to spend more.

19 Doesn't that limit the collaborative by not  
20 allowing for an increase in expenditures before Empire  
21 files its next rate case?

22 A. I think if we set these as -- if it comes  
23 out of this case as these are the budgets that are  
24 proposed and accepted but that the collaborative can move  
25 forward with greater funding levels if the opportunity

1 presents itself, Empire is open to looking at that and  
2 moving to meet the customers' needs. And I've talked with  
3 some management on this also, and they are in agreement.  
4 We're already looking at the possibility of some  
5 additional programs to go into this portfolio.

6 And so I think that it's -- you know, we're  
7 not saying that if this budget is approved, then that's  
8 all we're going to spend. We're looking at how can we  
9 most beneficially meet the needs of our customers. And so  
10 I don't think that a year down the road Empire would be  
11 balking and saying, no, we're not -- if the collaborative  
12 says this is a good thing to do, we would again be looking  
13 at -- look for realistic numbers to put into that new  
14 budget.

15 Q. So I guess the heart of Empire's objection  
16 to the higher funding levels is basically you don't want  
17 to be mandated to spend a certain amount of dollars,  
18 especially if you think just the programs aren't going to  
19 work. Is that really the concern that Empire has?

20 A. I think that states it well, yes.

21 Q. All right. So maybe Empire wouldn't be  
22 opposed with a higher level of authorization simply --  
23 let's say we were to mandate the 217 but we were to  
24 authorize the 327, but allow for the collaborative to work  
25 through and make recommendations, and then maybe the

1 Commission can address these issues in the future, say 12  
2 months down the road. Is that an offensive concept to  
3 Empire?

4 A. I don't think so. My hesitation is the  
5 term mandating 217, because we can make that available,  
6 but as I said, we can't force the customers to take  
7 advantage of these. But yes, I think that having  
8 additional funding available in case it is needed is a  
9 very good opportunity and a good fit for the customers and  
10 the company.

11 Q. Other than the actual dollars to be spent  
12 in future years, does Empire and the Energy Center have  
13 any other significant disagreement with regard to energy  
14 efficiency policy?

15 A. No, not to my knowledge.

16 Q. I guess the way I ask that, is there common  
17 ground on the type of proposals, the type of programs that  
18 would work within the service footprint? Basically it's  
19 just, you know, a dispute over how many dollars and how  
20 big the programs can get?

21 A. That's correct.

22 CHAIRMAN CLAYTON: Okay. I don't think I  
23 have any other questions. Thank you, Ms. McCormack.

24 JUDGE DIPPELL: Thank you. Commissioner  
25 Jarrett, did you have questions?

1 COMMISSIONER JARRETT: Yes.

2 QUESTIONS BY COMMISSIONER JARRETT:

3 Q. Good morning. Thank you for being here on  
4 this cold, cold day.

5 You have had some demand side management  
6 programs in effect --

7 A. Correct.

8 Q. -- I think you indicated?

9 Were those the same types of programs  
10 where, like you said, you can make the money available but  
11 it's voluntary on the part of customers to use them?

12 A. Yes, that's correct. The weatherization  
13 program is handled through the community action agencies,  
14 and so they are the ones actively out. They combine it  
15 with their federal monies. So that one has a third party  
16 administrator that's a little bit different than these  
17 other programs. But overall, yes, that's correct.

18 Q. And what has been the response to the low  
19 income weatherization program? Have you expended all the  
20 funds that you've made available?

21 A. No, we've not.

22 Q. So how would you characterize the  
23 participation by the -- by the customers?

24 A. It's been -- it's been -- you know, it's  
25 been a strong participation. This is, you know, of

1 course, where the customers and the utility are dealing  
2 directly through the CAP agencies, and so it's up to their  
3 manpower, their availability to go out and weatherize  
4 these homes. It's been a very positive experience, but  
5 like I said, it's been unused funding, especially the  
6 money that was made available for the ELIP participants.  
7 That was a very low used funding bank.

8 Q. And as far as the low income  
9 weatherization,, why do you think all the money hasn't  
10 been utilized? Is it because there was too much money  
11 made available for it or there just wasn't the  
12 participation there?

13 A. I think it's probably more than one issue.  
14 The CAP agencies have to -- you know, they're under  
15 contract with the federal program, and then they also get  
16 utility dollars, and they have to manage all of those  
17 funding pots. And so the federal dollars have to get  
18 spent, and so sometimes it's the utility dollars that are  
19 not met if we don't have enough demand, but also if  
20 they've got so much demand that the waiting list is there  
21 but the manpower is low, they don't have enough crews to  
22 go out and do everything.

23 We're now in a situation with the stimulus  
24 funds that have massively grown the amount of dollars that  
25 the agencies have at their disposal, and so I'm not sure

1    how in the next year to year and a half that the utility  
2    dollars will be spent. I think that's definitely  
3    something that we have to watch.

4           Q.       Now, are you familiar with what other  
5    utilities in Missouri have been doing regarding these  
6    programs?

7           A.       Efficiency programs overall?

8           Q.       Yes.

9           A.       Yes, basically.

10          Q.       How would you characterize the customer  
11    response generally with other utilities in Missouri?

12          A.       I've not seen reports on that, so I don't  
13    know firsthand or even, you know, I don't have primary  
14    data to go from. I know in some cases, with MGE they've  
15    had strong participation in some parts of their programs  
16    and a little bit lower in others. I'm not sure about  
17    Laclede's participation levels.

18          Q.       Are you aware that -- are there any -- are  
19    you aware that any of the companies have expended all  
20    their funds available for these programs or is it  
21    generally that there's money left over?

22          A.       The ones I'm familiar with sometimes have  
23    money left over.

24          Q.       Sometimes or --

25          A.       It's not unusual.

1 Q. Not unusual.

2 COMMISSIONER JARRETT: Okay. Thank you.

3 No further questions.

4 JUDGE DIPPELL: Thank you. Commissioner

5 Gunn, did you have questions?

6 COMMISSIONER GUNN: Yeah.

7 QUESTIONS BY COMMISSIONER GUNN:

8 Q. I just want to get some clarification on  
9 some of the stuff that was brought up in  
10 cross-examination. So you have a tank rebate program,  
11 correct?

12 A. We're proposing one, yes.

13 Q. And the rebate amount is \$50?

14 A. That's what's currently being proposed,  
15 yes, sir.

16 Q. And how did you come up with that figure?

17 A. It was through discussion during  
18 settlement. We had originally proposed \$75, and then  
19 during discussion it was suggested and Empire agreed that  
20 we reduce it to \$50 to have a, I guess a -- it fit better  
21 with what the other utilities in the state are offering.

22 Q. Okay. So the reason that it was reduced  
23 was just because other utilities weren't doing as much, or  
24 was there some other rationale for reducing that?

25 A. It was -- it was the recommendation of OPC,

1 and so Empire agreed during settlement to reduce it from  
2 75 to 50.

3 Q. You made a comment that I may have  
4 misunderstood. You talked about the number of  
5 participants, that the reduction allows you to get to more  
6 participants. Did I hear that wrong?

7 A. No. That is correct, that, you know, we  
8 had recommended the \$75, but if it is reduced to \$50  
9 rebate, then that just provides the opportunity, if we  
10 keep the budget the same, for more customers to  
11 participate.

12 Q. But that's my question. That's assuming  
13 that the budget stays the same?

14 A. That's correct.

15 Q. Under the budget proposed by DNR, would you  
16 be able to go back to that \$75 amount?

17 A. At this case -- at this point, that would  
18 impact the second stipulation. So I'm not sure how to  
19 answer that.

20 Q. Well, let's just deal with the math issue.  
21 Let's not deal with the legal issue.

22 A. Okay.

23 Q. From a math issue, would the budget  
24 proposed by DNR allow you to cover the same amount of  
25 people at the \$75 rebate amount?

1           A.       At this point, the budget is a portfolio  
2 level, and year one they're proposing the same budget that  
3 Empire is. So I guess my response is it wouldn't have an  
4 impact, and their -- in the years two and three, their  
5 proposal is not split into how it would be spent. It's  
6 just a funding level that the collaborative would then be  
7 able to move forward with and determine how to expand it.

8           COMMISSIONER GUNN: All right. Thank you.  
9 I don't think I have anything further.

10           JUDGE DIPPELL: Thank you.

11   QUESTIONS BY JUDGE DIPPELL:

12           Q.       Ms. McCormack, I just had a couple of  
13 things. Commissioner Kenney had asked me to ask you  
14 about -- and you talked a little bit about this with  
15 Commissioner Jarrett, about the low income weatherization  
16 program. You mentioned the CAP agencies handle that.  
17 First I wanted to ask you if you could just define what a  
18 CAP agency is for us?

19           A.       That's the community action program  
20 agencies, and we contract with each of the agencies in our  
21 district.

22           Q.       Okay. Thank you. Do you know what they  
23 are doing to make customers aware of the availability of  
24 your programs and specifically the low income  
25 weatherization programs?

1           A.       I don't know that they do any marketing per  
2 se. I'm not familiar with it if they do. But as  
3 customers sign up for LIHEAP or for Empire's experimental  
4 low income program, they are made aware of weatherization  
5 and they are requested to sign up for it. So that's one  
6 way.

7                   I know Empire pushes it on our website and  
8 with communication with customers, but I'm not sure  
9 specifically what marketing the agencies do themselves.

10          Q.       And do you know if Empire does any  
11 additional marketing of that besides the website? Do you  
12 do any mailings, fliers?

13          A.       We have done some bill statements. We have  
14 also done some low income -- I'm sorry, some  
15 weatherization kits that were distributed to LIHEAP  
16 participants who were Empire Gas customers to raise their  
17 awareness of weatherization.

18                   At the public hearings, we had some  
19 brochures, handouts that were available with  
20 weatherization tips and also the contact information for  
21 each of the agencies.

22                   JUDGE DIPPELL: Thank you. I believe  
23 that's all of the questions from the Bench, and I will  
24 then ask if there are any further cross-examination  
25 questions based on those questions from the Bench from

1 Staff?

2 MS. KLIETHERMES: No, thank you, Judge.

3 JUDGE DIPPELL: Public Counsel?

4 MR. POSTON: No, thank you.

5 JUDGE DIPPELL: Constellation?

6 MR. STEINMEIER: No, thank you, your Honor.

7 JUDGE DIPPELL: Department of Natural

8 Resources?

9 MS. MANGELSDORF: Just one follow-up  
10 question.

11 RECROSS-EXAMINATION BY MS. MANGELSDORF:

12 Q. You said that by lowering the rebate  
13 amounts from \$75 to \$50 it would allow more customers to  
14 utilize and take advantage of the rebate. But rather than  
15 lowering the rebate amount to include more customers,  
16 couldn't you just set a higher target in budget?

17 A. If we could get the participation, yes, and  
18 you know, my response was a theoretical one, and we don't  
19 know what's going to happen 'til we get the programs out  
20 there.

21 MS. MANGELSDORF: Okay. Thank you.

22 JUDGE DIPPELL: Is there any redirect from  
23 Empire?

24 MS. CARTER: No, thank you.

25 JUDGE DIPPELL: All right. Then,

1 Ms. McCormack, I believe that concludes questions for you  
2 and you may be excused.

3 THE WITNESS: Thank you.

4 JUDGE DIPPELL: Does Empire have any  
5 additional witnesses?

6 MS. CARTER: No. Thank you, Judge.

7 JUDGE DIPPELL: All right. Then we'll move  
8 on to Staff's witness. Would you please raise your right  
9 hand.

10 (Witness sworn.)

11 JUDGE DIPPELL: Thank you. Go ahead,  
12 Ms. Kliethermes.

13 HENRY WARREN testified as follows:

14 DIRECT EXAMINATION BY MS. KLIETHERMES:

15 Q. Good morning, Mr. Warren. Could you please  
16 state and spell your name for the record.

17 A. Yes. Henry Warren, W-a-r-r-e-n.

18 Q. Are you the same Henry Warren who submitted  
19 rebuttal testimony in this matter?

20 A. I am.

21 Q. Are you the same Henry Warren who authored  
22 a section of the Staff's Cost of Service Report regarding  
23 demand side management and energy efficiency funding  
24 levels?

25 A. I am.

1 Q. Did you have any other items of testimony?

2 A. No.

3 Q. Do you have any corrections to make to your  
4 testimony?

5 A. Yes. I have a correction to make to my  
6 rebuttal testimony.

7 Q. And what is that?

8 A. It's on page 3, line 5. The year stated  
9 for the American Council for Energy Efficiency Economy  
10 Study as 2006. The study was published in 2005. So that  
11 should be changed from 2006 to 2005.

12 Q. Is that the only other -- is that the only  
13 item of correction?

14 A. Yes, it is.

15 Q. And would your testimony be the same if  
16 given today?

17 A. Yes, it would.

18 MS. KLIETHERMES: I'd offer Mr. Warren's  
19 rebuttal testimony and section of the Staff's Cost of  
20 Service Report regarding DSM and energy efficiency funding  
21 levels, and I tender the witness for cross. Thank you.

22 JUDGE DIPPELL: Okay. Mr. Warren's  
23 rebuttal testimony has been marked as Exhibit No. 32, and  
24 the Staff's Cost of Service Report has been premarked as  
25 Exhibit No. 29. Are we -- should we just take up the

1 entire Cost of Service Report? You're offering just this  
2 section, but --

3 MS. KLIETHERMES: I'd be happy to offer the  
4 entire report.

5 JUDGE DIPPELL: Would there be any  
6 objection to Exhibit No. 32 and 29 coming into the record?

7 (No response.)

8 JUDGE DIPPELL: Seeing none, then I will  
9 receive those exhibits into the record.

10 (EXHIBIT NOS. 29 AND 32 WERE RECEIVED INTO  
11 EVIDENCE.)

12 JUDGE DIPPELL: All right, then. Go ahead,  
13 Ms. Kliethermes. I'm sorry. We were up to  
14 cross-examination, and so we can begin. Is there any  
15 cross-examination by Empire?

16 MS. CARTER: No.

17 JUDGE DIPPELL: Public Counsel?

18 MR. POSTON: No, thank you.

19 JUDGE DIPPELL: Constellation?

20 MR. STEINMEIER: No questions, your Honor.

21 JUDGE DIPPELL: Department of Natural  
22 Resources?

23 MS. MANGELSDORF: Yes.

24 CROSS-EXAMINATION BY MS. MANGELSDORF:

25 Q. Good morning, Mr. Warren.

1           A.       Good morning.

2           Q.       Is it true that you have to have  
3   significant expenditure of funds on energy efficiency  
4   programs before you see real energy savings?

5           A.       I'd say those are correlated.

6           Q.       Would you agree with me that the success of  
7   the proposed energy efficiency program depends in part on  
8   the amount of funding spent on these programs?

9           A.       In part.

10          Q.       Would you agree with me that currently  
11   Missouri doesn't rank very high in funding for energy  
12   efficiency programs compared to other states?

13          A.       I haven't seen a recent study of that. I  
14   believe that with the expenditure taking place connected  
15   with the electric utility resource plans, that it's  
16   increased significantly in the last few years.

17          Q.       Okay. So you agree that in order to  
18   improve upon this ranking, that more funding is required  
19   for energy efficiency programs?

20          A.       Oh, yes, our ranking would increase as that  
21   funding increases.

22                   MS. MANGELSDORF: Thank you.

23                   JUDGE DIPPELL: All right. Are there any  
24   questions from the Chairman for Mr. Warren?

25                   CHAIRMAN CLAYTON: Thank you. I do have

1 some questions.

2 QUESTIONS BY CHAIRMAN CLAYTON:

3 Q. Mr. Warren, I want to ask you first of all,  
4 would you agree with the characterization from  
5 Ms. McCormack that the dispute on demand side management  
6 and energy efficiency issues is entirely an amount of  
7 funding and not the -- not the type of programs and the  
8 type of customers that should be affected by energy  
9 efficiency programs?

10 A. Yes, I would agree.

11 Q. Okay. From Staff's perspective, would  
12 Staff have a problem with the Commission authorizing but  
13 not mandating higher energy -- or higher energy efficiency  
14 investment subject to recommendations from the demand side  
15 collaborative?

16 A. I'm not aware of a problem with that. That  
17 may be more of a question for maybe the accounting staff.  
18 I'm just not exactly sure how these -- the regulatory  
19 asset accounts are, you know, impact the, you know, the  
20 rate case, the, you know, the accounting that goes on in  
21 the rates case. But I -- so I don't feel I'm quite an  
22 expert on that.

23 Q. Did you -- but you're the Staff witness  
24 endorsing the funding level of around 217,000; is that  
25 correct?

1           A.       Yes.

2           Q.       All right.  So I'm assuming that means you  
3   picked that number over the figure that's been suggested  
4   by DNR, which is at least for the outlying years higher  
5   than that.  So when you selected that figure, you had some  
6   knowledge of how a regulatory asset account works, didn't  
7   you?

8           A.       Yes.

9           Q.       Okay.  So I'll ask again, what's the harm  
10  with granting authorization to spend more if the  
11  collaborative comes up with ideas to spend it effectively  
12  and wisely without Empire having to come back and file a  
13  new rate case?  What's the problem with that from Staff's  
14  perspective?

15          A.       I'm not aware of a problem with that.

16          Q.       Okay.  Is the problem more aligned with  
17  mandating a specific figure when there aren't programs in  
18  place to actually spend a mandated account?

19          A.       I believe -- yes, I believe that was our  
20  rationale.  Empire had a study done by the Applied Energy  
21  Group, AEG, to determine programs and funding levels that  
22  would be feasible, and that's the -- the basis for their  
23  recommendation, the recommended amount.

24          Q.       Okay.  Have you been involved in the demand  
25  side collaboratives for Atmos Energy as well as MGE?

1           A.       Yes, I have.

2           Q.       You have? What is the -- what percentage  
3 of funding levels have those companies had available for  
4 demand side programs as a percentage of their revenues?

5           A.       For Atmos, it was 1 percent of the non-gas  
6 revenues, and for -- for MGE I'm -- I don't have -- I  
7 just -- I don't recall specifically, but I believe it's a  
8 little bit less than 1 percent.

9           Q.       Do you agree or disagree with the concept  
10 of requiring energy efficiency programs to be funded in  
11 general based on a company's gross revenues?

12          A.       Well, I think there's a difficulty with  
13 doing it on gross revenues because that includes gas  
14 costs, and those, of course, can fluctuate from year to  
15 year depending on the wholesale price of gas.

16          Q.       Would you agree or disagree that energy  
17 efficiency, I'm going to use the term leaders, I'm not  
18 sure how accurate a term that is, but the national  
19 approach to energy efficiency programs is assigning a  
20 percentage to gross revenues of a gas utility when  
21 identifying a funding level for energy efficiency  
22 programs?

23                   Is there a dispute among energy efficiency  
24 groups about whether the percentage should be based on  
25 gross revenues versus non-gas revenues?

1           A.       Yeah. Well, I haven't studied that in  
2 great detail. I think in -- I believe I did look a few  
3 years ago at Minnesota, and I believe they base theirs on,  
4 I think it was -- I think theirs was on net revenues.  
5 Other states have systems benefit charges based on the  
6 unit -- on the per unit of energy sold.

7                       So I think there's some -- I think it's  
8 done in various ways. I don't know of a state  
9 specifically that uses -- that bases it on gross revenues.

10          Q.       Would you agree or disagree that national  
11 energy efficiency organizations, though, advocate for  
12 percentages based on gross revenues? Would you agree with  
13 that statement?

14          A.       Yes, I would agree with that statement.  
15 I've seen that.

16          Q.       You would agree or disagree that those  
17 organizations have information that is nationwide in  
18 developing energy efficiency programs and that they have a  
19 lot more experience and knowledge with energy efficiency  
20 programs and identifying that funding level?

21          A.       Yes, they -- the ones I've seen do have  
22 nationwide experience and information.

23          Q.       In general, do you -- in general, do you  
24 specifically disagree with the concept of gross revenues  
25 or are you basing your decision in this case just on the

1 specific facts of the case?

2 A. Well, I think the concept of -- my problem  
3 with the concept of gross revenues, it does have to do  
4 with the fact that the gas costs, you know, can fluctuate,  
5 although in some ways the fact that the wholesale cost of  
6 gas is higher indicates that there is, you know, a greater  
7 need to -- you know, that it's impacting the customer more  
8 and there's a greater need to conserve based on wholesale  
9 cost of gas.

10 Q. Well, as someone working on energy  
11 efficiency issues for the Staff, I would assume with all  
12 of our LDCs, in your opinion, in your approach in working  
13 with each of those companies, are you telling me that  
14 gross revenues should never be used or --

15 A. No, no, no. I'm saying that it -- that it  
16 may be -- that it would be at some -- well, it's -- it  
17 would be one thing -- it would certainly be one thing to  
18 consider, not that it would -- I'm not saying it should  
19 never be used.

20 Q. Okay. So there may be some circumstances  
21 when connecting a percentage to gross revenues may be  
22 appropriate for a utility?

23 A. Yes, I believe it would be.

24 Q. Okay. And in this case, you just -- you're  
25 specifically stating that it shouldn't be the case?



1 goal of a percent of gross revenues on a forward-going  
2 basis just seems problematic in terms of determining what  
3 the future price of -- future wholesale price of gas will  
4 be.

5 Q. Well, can you give me an example of a  
6 fluctuation in gross revenues for a utility of this size  
7 between a year of, say, \$4 gas and a year of \$7 gas? I  
8 mean, what would be the difference in revenues for the  
9 company?

10 A. Well, in talking with the accountant,  
11 Mrs. Bolin on this case, that the -- as was stated, the  
12 non-gas revenues for the past year were about  
13 \$19.6 million, and the -- I think the gas revenues were  
14 somewhere in the \$40 million range.

15 So I would say if the -- I think in this  
16 past year the, I think the -- you know, if the average  
17 cost of gas was -- is about what it is now, if that  
18 doubled, the gas revenue -- the gas revenue portion could  
19 go from, you know, possibly, you know, 40 million to  
20 maybe, you know, maybe 50 or 60 million, something like  
21 that.

22 So consequently the -- the overall -- the  
23 overall percentage then would -- would increase, and the  
24 requirement for DSM expenditure could increase from year  
25 to year as the non-gas cost increased.

1           Q.       Are there any other specific reasons of why  
2 Empire Gas -- that suggest to you that a percentage of  
3 gross revenues should not be applied in this instance  
4 other than fluctuations in the price of gas? Which I'm  
5 not sure if that's that specific of an item for Empire  
6 Gas. That could happen to anyone.

7                   Are there any other specific examples of  
8 Empire that perhaps I'm not aware of that would suggest to  
9 you that absolutely it should not be tied to gross  
10 revenues?

11          A.       Well, I think if we, you know, look at, as  
12 Ms. McCormack pointed out, the -- the weatherization, low  
13 income program that was in the Sedalia area under the --  
14 under Aquila ownership was, you know, was really not very  
15 highly subscribed, and it was -- had a very low  
16 subscription, and the funds available weren't really  
17 utilized.

18                   And so the -- I think the -- you know,  
19 setting a -- setting a too high a goal for, you know, for  
20 any given program, you know, needs to be kind of tempered  
21 on the experience of, you know, what programs are going to  
22 be -- going to work and how they're going to work with the  
23 customer base of Empire.

24          Q.       How would you describe Empire's efforts at  
25 recruiting customers into energy efficiency or demand side

1 programs? Would you characterize Empire as very  
2 aggressive, aggressive, indifferent, discouraging or  
3 absolutely tell their people don't do this, it costs you  
4 money? How would you characterize Empire's efforts?

5 A. My experience has been that I've had some  
6 experience both with -- with Empire on the gas side and  
7 the electric side, and I think they have done, you know,  
8 what -- you know, made a very good faith effort to get  
9 people to participate in their -- in their energy  
10 efficiency programs.

11 Q. Okay. Let me give you the choices again.

12 A. I'm sorry.

13 Q. Very aggressive, aggressive, indifferent,  
14 discouraging, absolutely very discouraging. How would you  
15 characterize? You've got five choices.

16 A. Aggressive.

17 Q. Aggressive? Is that what you said,  
18 aggressive?

19 A. Yes, sir, aggressive.

20 Q. Okay. Who is the Staff witness that I can  
21 ask questions about how a regulatory asset account works?

22 A. Ms. Bolin is here.

23 Q. All right. Then I'll defer all my  
24 questions to her. Thank you very much for your time.

25 JUDGE DIPPELL: With regard to the DSM

1 issue, Ms. Bolin was not scheduled to be a witness, but I  
2 can see if the parties would have any objection to her  
3 answering those questions from you. Would there be any  
4 objection to Ms. Bolin answering questions about the  
5 regulatory asset accounting?

6 MS. CARTER: No objection from the company.

7 JUDGE DIPPELL: All right. I see no  
8 objection to that. So let's finish with Mr. Warren, and  
9 then we can ask Ms. Bolin to come up for those questions.  
10 Commissioner Jarrett, do you have questions for  
11 Mr. Warren?

12 COMMISSIONER JARRETT: Yes.

13 QUESTIONS BY COMMISSIONER JARRETT:

14 Q. Mr. Warren, and again, this may be for  
15 Ms. Bolin, so feel free to tell me that. Maybe I need an  
16 accounting 101 on how this works. For example, in 2010  
17 both DNR and the parties in the stipulation put out the  
18 number \$217,000 for demand side management programs. How  
19 does that work? Does the company take \$217,000 and put it  
20 in a special account where it sits there and then the  
21 money comes out as people use it?

22 A. No. I believe it's -- and I will -- I  
23 will -- my answer I'll say is -- will be a partial answer  
24 and I'll allow Ms. Bolin to fill in any gaps that need be.  
25 But it's -- there's no -- it's a -- you know, it's a

1 budgeted amount, and as money is -- as money is spent,  
2 then that is, you know, is recorded as money that's  
3 actually -- that's actually spent in that account. So at  
4 the -- so at the end of the year, if -- you know, if less  
5 is spent than the budgeted amount, then -- then that's,  
6 you know, that will be the, you know, the debit shown in  
7 that account.

8                   And then the -- at some point, probably in  
9 the next rate case, the company will come in and say,  
10 we've had -- you know, we've had over how many years it's  
11 been since the last rate case this much expense, and so  
12 the -- you know, depending on energy efficiency and demand  
13 side management projects.

14                   So that as was stated, that money is not  
15 collected in rates, and so there's no -- you know, there's  
16 no account or pot of money sitting there with that amount  
17 of money in it. It's a -- it's a -- it's a budget item.

18           Q.       Right. I guess my question is, for  
19 example, in 2012, it looks like the stipulation calls for  
20 231,200 to be made available, and then DNR's proposing  
21 655,000. I guess my question is, if the company has to  
22 make available 655,000, they have to have that somewhere,  
23 and does that mean, then, that if they need a pipeline  
24 replaced, they have to look and see, well, we still have  
25 to have 655,000 available for these demand response

1 programs, so we're going to have to go out and borrow the  
2 money to replace the pipeline?

3 A. I will defer that to Ms. Bolin.

4 COMMISSIONER JARRETT: Okay. Thank you. I  
5 don't have any further questions.

6 JUDGE DIPPELL: Thank you. I don't believe  
7 there are any further questions for you from the  
8 Commissioners or myself, Mr. Warren.

9 Is there any further cross-examination  
10 based on questions from the Commissioners from Empire?

11 MS. CARTER: Yes.

12 RECROSS-EXAMINATION BY MS. CARTER:

13 Q. Mr. Warren, I believe you said Atmos had  
14 1 percent of non-gas revenues for energy efficiency; is  
15 that correct?

16 A. That's correct.

17 Q. And for MGE you said less than 1 percent.  
18 I just wanted to clarify, that's of non-gas revenues,  
19 correct?

20 A. Yes.

21 Q. And as part of both of those cases, for  
22 Atmos and MGE, the companies received a straight fixed  
23 variable rate design, correct?

24 A. Yes.

25 MS. CARTER: That's all I have. Thank you.

1 JUDGE DIPPELL: Thank you. Is there  
2 anything from Public Counsel?

3 MR. POSTON: No, thank you.

4 JUDGE DIPPELL: From Constellation?

5 MR. STEINMEIER: No, thank you, your Honor.

6 JUDGE DIPPELL: From Department of Natural  
7 Resources?

8 MS. MANGELSDORF: Yes, one follow-up.

9 RE-CROSS-EXAMINATION BY MS. MANGELSDORF:

10 Q. You characterized the company's level of  
11 effort for customers to participate in energy efficiency  
12 programs as aggressive, but isn't it true that a \$75  
13 rebate would be more of an aggressive incentive than a \$50  
14 rebate?

15 A. Yes, and that's what they proposed, and as  
16 Ms. McCormack testified, the 50 was part of a negotiated  
17 settle-- negotiated settlement.

18 MS. MANGELSDORF: Thank you.

19 JUDGE DIPPELL: Is there any redirect?

20 MS. KLIETHERMES: Just briefly.

21 REDIRECT EXAMINATION BY MS. KLIETHERMES:

22 Q. You were asked by DNR about Missouri's  
23 rankings relative to other states. Do you recall that?

24 A. Yes.

25 Q. Are you aware whether allotting more money

1 regardless of whether or not that money is actually spent  
2 would change Missouri's rankings overall?

3 A. I guess it would depend on how the -- the  
4 organization doing the ranking, you know, if they do it on  
5 actual, you know, expenditures on what's in place or if  
6 they do it on budgeted -- budgeted expend-- you know,  
7 what's budgeted.

8 Q. Okay. And you were asked by the Chairman  
9 about the -- whether it's appropriate to tie to gross  
10 revenues versus net revenues. Do you recall that?

11 A. Yes.

12 Q. Would you like to explain your position a  
13 little more thoroughly on that or did you sufficiently do  
14 so with the Chairman?

15 A. Well, I think I characterized it as  
16 being -- making a budget on the basis of a gross revenue  
17 that included gas costs would be difficult due to the  
18 fluctuating -- given the past experience of how widely the  
19 wholesale price of gas can fluctuate from year to year.

20 Q. And is that regardless of the percentage of  
21 gross revenues designed to be spent or would reducing that  
22 percentage make tying to gross revenues more acceptable to  
23 Staff?

24 A. Well, I think any time you create a budget  
25 based on gross revenues that included gas costs, it would

1 be a -- kind of a difficult -- well, has the potential of  
2 being a difficult figure to meet on a year to year basis.

3 MS. KLIETHERMES: That's all. Thank you,  
4 Dr. Warren.

5 JUDGE DIPPELL: Thank you. I believe  
6 that's all the questions, then, and you may be excused.

7 THE WITNESS: Thank you.

8 JUDGE DIPPELL: Let's go ahead, then, and  
9 ask Staff to present Ms. Bolin, and I'll just have you,  
10 Ms. Kliethermes, run through the preliminaries like she  
11 have been testifying as she normally would. Can you  
12 please raise your right hand.

13 (Witness sworn.)

14 JUDGE DIPPELL: Thank you.

15 KIM BOLIN testified as follows:

16 DIRECT EXAMINATION BY MS. KLIETHERMES:

17 Q. Good morning, Ms. Bolin. Could you please  
18 state and spell your name for the record.

19 A. My name is Kimberly Bolin, B-o-l-i-n.

20 Q. And did you cause to have -- did you  
21 prepare direct testimony in this matter?

22 A. Yes, I did.

23 Q. And did you have attached to your testimony  
24 the Staff's report on cost of service?

25 A. Yes, I did.

1           Q.       And if you were to give that testimony  
2 today, would it be the same?

3           A.       It would.

4                   MS. KLIETHERMES: I tender the witness for  
5 cross.

6                   JUDGE DIPPELL: Thank you. Let me ask  
7 briefly, do you believe, Ms. Bolin, that you'll need to  
8 refer to any of your testimony that was prefiled in this?

9                   THE WITNESS: I have it with me.

10                  JUDGE DIPPELL: Well, I just was wondering  
11 if we should go ahead and offer that.

12                  MS. KLIETHERMES: I offer Ms. Bolin's  
13 direct testimony.

14                  JUDGE DIPPELL: Would there be any  
15 objection to Ms. Bolin's direct testimony, which was  
16 marked as Exhibit No. 28, coming into the record?

17                           (No response.)

18                  JUDGE DIPPELL: All right, then. I will  
19 receive that.

20                           (EXHIBIT NO. 28 WAS RECEIVED INTO  
21 EVIDENCE.)

22                  JUDGE DIPPELL: All right. Since we're  
23 doing this a little different and Ms. Bolin was not  
24 scheduled to testify on this, I'm going to skip over  
25 cross-examination and go straight to questions from the

1 Bench, and then you-all can ask questions relating to  
2 those questions. Mr. Chairman, your questions for  
3 Ms. Bolin.

4 CHAIRMAN CLAYTON: Yes. Thank you, Judge,  
5 and thanks to Ms. Bolin for being available. I appreciate  
6 the parties indulging me on this.

7 QUESTIONS BY CHAIRMAN CLAYTON:

8 Q. Ms. Bolin, I want to talk to you about the  
9 nature of what a regulatory asset account means, what it  
10 is, what it means, and the implications for the demand  
11 side management programs we're discussing.

12 Basically, as proposed by Staff is an  
13 authorization to spend up to a certain amount of money by  
14 Empire that would not be included in rates but the  
15 expenditures would be included within a regulatory asset  
16 account; is that correct?

17 A. That is correct.

18 Q. And when --

19 A. The amount the company spends. I'm sorry.  
20 The amount --

21 Q. I'm sorry.

22 A. The amount the company spends. Not  
23 necessarily the amount that is stated in the stipulation.  
24 If the company spends less, that's the amount that will be  
25 put into the regulatory asset.

1           Q.       So in the order that's proposed by Staff,  
2 we would authorize Empire to spend up to, for 2010, let's  
3 say \$217,000. For each dollar that they spend on energy  
4 efficiency programs, up to that figure, they get to chalk  
5 that up on basically this asset account, correct?

6           A.       That is correct.

7           Q.       So if they actually spend \$150,000, then  
8 the asset account would include 150,000? It wouldn't  
9 include the 217?

10          A.       That is correct.

11          Q.       And by doing this, we're not building into  
12 rates today any investment in energy efficiency, correct?

13          A.       That is true. That is true.

14          Q.       Now, when a dollar in energy efficiency  
15 investment goes into that asset account, does that account  
16 accrue any type of interest or carrying charges for the  
17 company?

18          A.       That account in the next case would be  
19 looked at, and it is eligible for rate base treatment,  
20 that amount. In the Stipulation & Agreement we have  
21 agreed to that if the amounts are not included in rate  
22 base, they should earn a rate of -- earn a return  
23 equivalent to their AFUDC, which is accumulated funds used  
24 during construction rate.

25          Q.       Yes.

1           A.       So it would earn -- it would earn a return  
2 per se.

3           Q.       Okay. Let's talk about the two different  
4 scenarios. Let's say that we're not talking about rate  
5 basing the investment, just for argument's sake right now.  
6 So basically the dollars spent on energy efficiency would  
7 go into this regulatory asset account, and in the next  
8 rate case, how would that dollar or those dollars be  
9 addressed in the next rate case?

10          A.       They would be examined and then they would  
11 be amortized. Currently we have a ten-year period listed  
12 in the Stipulation & Agreement, but that period can also  
13 be changed in the next case. So it would be amortized or  
14 expensed in the next case over a ten-year period, and then  
15 we would determine if it would earn rate base treatment or  
16 the AFUDC rate.

17          Q.       Okay. So assuming that the investment is  
18 prudent, let's just remove that discussion just for the  
19 time being. So the first option is that in the next rate  
20 case they spend 150,000 or 217 per year. Dollar per  
21 dollar, whatever they spent, in the next rate case that  
22 total figure in that account would be analyzed, assessed  
23 whether it was prudent or not, and if it was not rate  
24 based, if there was a decision not to rate base it, they  
25 would get that figure plus their AFUDC rate then amortized

1 over, say, a ten-year period; is that accurate?

2 A. Yes. I need to clarify something. The  
3 stipulation says shall be. I don't know if that would  
4 necessarily in the next case be contested by other  
5 parties.

6 Q. So it shall be what?

7 A. Shall be allowed to earn a return  
8 equivalent to Empire's AFUDC rate.

9 Q. Okay. So basically if you get 200,000 a  
10 year for three years, the next rate case is three years  
11 out, that would be a total of 600,000, plus they would  
12 also be entitled to the AFUDC rate or kind of a carrying  
13 charge rate, which would then be -- for simplistic sake,  
14 it would be divided by ten, and they'd collect that amount  
15 in rates over time?

16 A. That is correct.

17 Q. Okay. Now, under the second scenario where  
18 you rate base the investment, let's say you have 200,000 a  
19 year, prudent investment over a three-year period. You  
20 have a total expenditure of \$600,000. You take that  
21 \$600,000 in that account, and what happens with that in  
22 terms of rate base?

23 A. It would be included in rate base, and then  
24 that would be -- would get the rate of return applied to  
25 it. So that amount, that 600,000 times whatever the rate

1 of return deemed appropriate in the next case would be  
2 included in rates.

3 Q. And what would be the -- what would be the  
4 de-- how would you depreciate such an investment? Because  
5 normally your rate base includes hard assets. It includes  
6 pipes and plant and all that other stuff. How do you  
7 figure the amortization rate for an energy efficiency  
8 investment?

9 A. There is no depreciation rate. What would  
10 happen is every year, every month that that account would  
11 decrease by the amortization rate, and eventually it  
12 should be zero. Say at the ten-year period, you would  
13 have nothing in that account if you put nothing else in it  
14 in the future.

15 Q. Okay. So it would be a ten-year  
16 amortization rate for an energy efficiency or a demand  
17 side management program?

18 A. That's correct.

19 Q. Okay. So the difference is that after  
20 three years' worth of expenditures, either they're going  
21 to get -- they're going to get the dollar back that they  
22 spent or the 600,000 that they spent over a ten-year  
23 period plus the AFUDC rate during that time, or it's going  
24 to be put into rate base, they're going to get their  
25 dollars back over a ten-year amortization with their

1 actual rate of return?

2 A. That's correct.

3 Q. Okay. So the dollars that go into this  
4 program are going to be recovered by Empire, if they're  
5 prudent, correct?

6 A. They will be recovered in the future.  
7 There is one item I need to mention, that they did not  
8 spend all their money previously, and those amounts are  
9 going to be included as a negative balance --

10 Q. Okay.

11 A. -- in this asset right now. So that money  
12 will have to be made up, and then any more money spent  
13 will be a positive which will be an asset that will be  
14 recovered.

15 Q. But those dollars were actually included in  
16 rates, correct?

17 A. That is -- I believe that is correct.

18 Q. So they were included in rates. So Empire  
19 collected those dollars but just didn't spend them, either  
20 the program wasn't working or for whatever reason they  
21 didn't spend the dollars. So the ratepayers get made  
22 whole. By paying up front and the money not being spent,  
23 they get an offset in that regulatory asset?

24 A. That is true.

25 Q. Okay. Now, let me ask you from the

1 perspective of setting up such a regulatory asset, if the  
2 Commission were to authorize a higher level of spending  
3 but not mandate it to be included in this regulatory  
4 asset, the company would still only put into that account  
5 dollars that they actually spent, correct?

6 A. That would be my impression on it, yes, the  
7 amount they only spent, the prudent amounts they only  
8 spent.

9 Q. In setting up this regulatory asset, what  
10 is important coming out of the Commission's Report and  
11 Order? Does it really matter if we set a dollar amount?  
12 Are we allowed to set a cap? Are we allowed to set a  
13 floor? Are we allowed to do ongoing reviews, perhaps  
14 getting updates from the demand side management  
15 collaborative?

16 Can you give me a sense of, from the  
17 Staff's perspective, what power the Commission has in its  
18 Report and Order in setting up this regulatory asset?

19 A. That's a difficult question. I'm not real  
20 familiar with all the demand side management information,  
21 but the -- you know, regulatory assets are done all the  
22 time. We do them in different trackers. We create  
23 assets. I don't --

24 Q. You don't need a report and order from the  
25 Commission for the Staff to recognize a regulatory asset,

1 you-all can do that on your own?

2 A. No. We do them in stipulation and  
3 agreements and report and orders.

4 Q. Okay.

5 A. They're done quite frequently. In fact, we  
6 have an asset right now for pensions and OPEBs that's  
7 amortized over a certain period of time. I don't know  
8 that I've ever seen a cap. I mean, I've seen caps, but I  
9 don't know if I've ever seen a floor and a cap done  
10 together. Just I don't know what to think on that.

11 Q. So if the report and order, let's say the  
12 Commission adopts the Staff/Empire/OPC position in this  
13 case, sets the funding level at 217/231, I think was the  
14 amount. Aren't we in essence setting a cap on that  
15 regulatory asset?

16 A. I believe we probably would be setting a  
17 cap, yes.

18 Q. Now, I don't believe Staff's position is to  
19 actually mandate that level of expenditure. Do you know  
20 the answer to that question?

21 A. I don't know the answer to that one.

22 Q. Okay. You guys are killing me.

23 A. Sorry.

24 Q. So have you ever seen a situation where  
25 perhaps the Commission would set out a floor and a

1 ceiling? You haven't seen it very often. Have you ever  
2 seen it happen?

3 A. I don't know that I've ever seen a floor  
4 and a ceiling.

5 Q. Is it appropriate to do that? Even though  
6 it hasn't been done, is it appropriate from Staff's  
7 perspective to do that?

8 A. I've not really given this a whole lot of  
9 thought and studied it a lot. I'm not really sure. I  
10 would have to -- I mean, I guess as long as you set  
11 amounts in there, it would be appropriate.

12 CHAIRMAN CLAYTON: I don't know if I have  
13 any other questions for you. I may have some legal  
14 questions for Ms. Kliethermes in exploring this issue, but  
15 I don't know if I have any more questions for you, and I  
16 appreciate you being available.

17 THE WITNESS: Thank you, sir.

18 JUDGE DIPPELL: Thank you. Commissioner  
19 Jarrett, do you have questions?

20 COMMISSIONER JARRETT: Yeah.

21 QUESTIONS BY COMMISSIONER JARRETT:

22 Q. Good morning, Ms. Bolin.

23 A. Good morning.

24 Q. You were here when I was talking with  
25 Mr. Warren, weren't you?

1           A.       Yes, I was.

2           Q.       And did you understand the gist of my  
3 questions to him?

4           A.       Yes. I remember a couple of them.

5           Q.       I guess I'm trying to understand the  
6 practical effect of the differences in the numbers.  
7 Obviously there's some significance or the folks wouldn't  
8 be fighting over them. So, for example, if in the  
9 stipulation for 2012 the stipulation is authorizing  
10 \$231,200, and DNR is requesting \$655,000. How does that  
11 affect -- you know, does the company have to set aside  
12 that amount of money, like I said, or do they have to  
13 somehow hold that in abeyance somewhere and have that  
14 money available, and then if they have to do something  
15 else, they can't touch that money because it's set aside?

16                   What does it matter -- you know, and it  
17 goes kind of, I guess, to some of Chairman Clayton's  
18 questions. What if we set it at 1 trillion, does it  
19 matter, if it's just what they spend?

20           A.       Right now, the agreement was what they  
21 spend up to the capped amount, and we have no amounts  
22 built into rates right now, so there's no recovery of  
23 these DSM costs right now. So they have to spend the  
24 money up front and then get recovery later.

25           Q.       Right. But I mean, for example, when we

1 say 231,200, do they have to set that money aside and say  
2 we can't spend this money, the 231,200, we can't spend it  
3 on anything but energy efficiency?

4 A. I don't know that they have to do that. I  
5 mean, they may need to do that because they may have  
6 demand on the program where they're going to have to spend  
7 that money. They may have enough customers that need that  
8 program that they're going to have to find that money  
9 somewhere.

10 Q. Right. And if we set it too high and they  
11 need to spend money on something else, then they will have  
12 to go elsewhere to try to find those funds?

13 A. Possibly could.

14 Q. Borrow money, something like that?

15 A. It depends on other factors. There are  
16 other expenses and the revenue they collect at the time.

17 Q. So would you say it's important for the  
18 Commission to find an accurate number that we believe will  
19 actually be utilized by the customers and try to keep that  
20 as accurate as possible so that the company won't be  
21 disadvantaged and the rate -- thus the ratepayers  
22 disadvantaged if the company, say, has to go out and  
23 borrow money for other things because they've had to set  
24 aside certain money for efficiency that's not going to be  
25 used?

1           A.       I don't know that they have to set it aside  
2 right now, but I guess for all practical purposes they  
3 would have to set it aside if you say you have to spend  
4 this amount of money.

5           Q.       Because it's important that we get the  
6 numbers accurate?

7           A.       We try, yes.

8                   COMMISSIONER JARRETT:   Okay.   Thank you.  
9 No further questions.

10                   JUDGE DIPPELL:   Thank you.

11                   CHAIRMAN CLAYTON:   Judge, I want to be  
12 clear that I never asked for \$1 trillion.

13                   COMMISSIONER JARRETT:   And neither did I.  
14 I just was -- that was a hypothetical.

15                   CHAIRMAN CLAYTON:   That was an interesting  
16 number to select.   Judge, can I just ask one follow-up on  
17 this thing with Ms. Bolin?

18                   JUDGE DIPPELL:   Yes.   Go ahead.

19 FURTHER QUESTIONS BY CHAIRMAN CLAYTON:

20           Q.       Ms. Bolin, if you assume that expenditures  
21 on demand side projects are going to be rate based, which  
22 already happens for a number of our utilities where we  
23 rate base them and the company collects a return on it,  
24 then basically this is the exact same thing as investing  
25 in mains.   The company is returning -- they're going to

1 get recovery of the money and they're going to get a  
2 return on the money. If you rate base it, it's the same  
3 way, whether it be an expenditure on demand side  
4 management or whether it's on mains or plant or anything  
5 else. Would you agree with that assertion?

6 A. Yes, I would.

7 Q. And if a company is going to spend a  
8 significant amount of money, whether it be on plant,  
9 pipes, mains, you know, a capital program or even a  
10 program on demand side management, it's not unusual for  
11 them to maybe put out a debt issuance or perhaps issue  
12 bonds or access a credit facility to finance those things.  
13 That happens every day, doesn't it?

14 A. I'm not quite familiar with reasons why  
15 they would have to issue debt, but, you know, when they  
16 have to go replace mains, I'm sure they have to go and  
17 issue debt.

18 Q. So basically the way it works in terms of  
19 rate basing an asset, regardless of whether it's demand  
20 side management or whether it's supply side or actual  
21 infrastructure, I mean, basically they're spending the  
22 money up front with the expectation that they're going to  
23 get a return on it in the next rate case. That's how they  
24 make money. That's how we do business. Would you agree  
25 with that?

1           A.       I would agree it would be included and earn  
2 a return on it.

3                   CHAIRMAN CLAYTON: Yeah. Okay. Thanks.

4                   JUDGE DIPPELL: Thank you. Commissioner  
5 Jarrett, did you have anything further?

6                   COMMISSIONER JARRETT: No, nothing further.  
7 Thanks.

8                   JUDGE DIPPELL: Thank you. All right,  
9 then. Are there any questions, cross-examination  
10 questions related to this issue from Empire?

11                  MS. CARTER: No, thank you.

12                  JUDGE DIPPELL: Public Counsel?

13                  MR. POSTON: Yes, just a few. Thank you.

14 CROSS-EXAMINATION BY MR. POSTON:

15           Q.       Good morning, Ms. Bolin.

16           A.       Good morning.

17           Q.       You stated that the 217,000 was a cap;  
18 isn't that correct?

19           A.       That's what I believe it is.

20           Q.       Okay. Do you have a copy of  
21 Ms. McCormack's testimony with you?

22           A.       No, I do not.

23           Q.       If it stated in there that the 217,000 was  
24 just a proposed budget to target, would that change your  
25 testimony on whether that was a cap or not?

1           A.       Yes, it would.

2           Q.       And the regulatory asset account, would  
3       that also include lost margin revenues that are directly  
4       associated with the programs?

5           A.       Lost margin revenues?

6           Q.       Do you have a copy of the stipulation with  
7       you?

8           A.       Yes, I do.

9           Q.       If you could please turn to page 6.

10          A.       I'm there.

11          Q.       At the top of paragraph C --

12          A.       Okay.

13          Q.       -- just read that first paragraph or first  
14       sentence to yourself.

15          A.       It would include lost margin revenues.

16                   MR. POSTON: Thank you. That's all I have.

17                   JUDGE DIPPELL: All right. Is there  
18       anything from Constellation?

19                   MR. STEINMEIER: No questions, your Honor.

20                   JUDGE DIPPELL: DNR?

21                   MS. MANGELSDORF: No questions. Thank you.

22                   JUDGE DIPPELL: I did have one other  
23       Commission question Commissioner Kenney wanted me to ask.  
24       And he asks, Ms. Bolin, hypothetically would it be prudent  
25       to allocate a certain amount of money for low income

1 weatherization and then turn that money over to a third  
2 party administrator without maintaining some minimum level  
3 of control and oversight?

4 THE WITNESS: I'm not the witness on that  
5 issue there.

6 JUDGE DIPPELL: All right. Thank you.  
7 Would there be any additional cross-examination based on  
8 that question from Empire?

9 MS. CARTER: Not of this witness, no.

10 JUDGE DIPPELL: Public Counsel?

11 MR. POSTON: No, thank you.

12 JUDGE DIPPELL: Constellation?

13 MR. STEINMEIER: No, thank you, your Honor.

14 JUDGE DIPPELL: Department of Natural  
15 Resources?

16 MS. MANGELSDORF: No, thank you.

17 JUDGE DIPPELL: Is there any redirect?

18 REDIRECT EXAMINATION MS. KLIETHERMES:

19 Q. Just as a point of clarification, when you  
20 were discussing with Chairman Clayton and possibly  
21 Commissioner Jarrett the treatment in future rate cases,  
22 was your position that the treatment that you were  
23 recommending would be only a recommendation of the  
24 signatory parties to that stipulation as opposed to an  
25 attempt to bind a future Commission's decision?

1           A.       Yes.

2                   MS. KLIETHERMES:   Thank you.

3                   JUDGE DIPPELL:   Thank you.   I don't believe  
4   there are any further questions, then, for now, Ms. Bolin,  
5   and I will allow you to be excused.

6                   All right.   We've been going for more than  
7   two hours and we still have two witnesses left.  
8   Ms. Carter, you had something?

9                   MS. CARTER:   Judge, I know it would be  
10   slightly out of the ordinary, but I didn't know if you  
11   want to get Commissioner Kenney's question answered by  
12   someone else, perhaps Ms. McCormack or someone else who  
13   could speak to the oversight.

14                  JUDGE DIPPELL:   Certainly if Ms. McCormack  
15   would like to come back to the stand and answer that  
16   question, and then if there is another counter witness to  
17   that question, I'll take that up then.   Ms. McCormack.

18                  MR. POSTON:   Judge, if I could ask you to  
19   please repeat the question for me.

20                  JUDGE DIPPELL:   Certainly.   I will just do  
21   that.   Ms. McCormack, you were previously sworn in, and so  
22   we'll assume that you are still under oath.

23   SHERRILL MCCORMACK testified as follows:

24   QUESTIONS BY JUDGE DIPPELL:

25           Q.       His question was, do you think that it

1 would be prudent to allocate money for low income  
2 weatherization and then turn that money over to a third  
3 party administrator without maintaining some minimum level  
4 of control and oversight? And I'm assuming you would like  
5 to speak to the amount of control and oversight that you  
6 have?

7 MS. McCORMACK: You are correct. The money  
8 is not just turned over to them. We have a contract with  
9 each agency, as I mentioned in my previous testimony, and  
10 that allows for disbursements over time. We do provide an  
11 initial funding of approximately one-quarter of the funds  
12 for each agency. If it's a very small amount, I might do  
13 a half of it, do 50 percent.

14 But then monthly reports are received from  
15 each agency stating the number of customers, who the  
16 customers are, what is done to each home and the amount of  
17 money spent on the home for both weatherization and  
18 administrative fees.

19 We then monitor the amount of money they  
20 have remaining, and when that amount gets low, then a  
21 second check is cut and sent to the agency, and this  
22 continues throughout the 12-month contract.

23 JUDGE DIPPELL: All right. Let me ask if  
24 the Commissioners have any additional questions since  
25 Ms. McCormack subjected herself to more questions.

1 Mr. Chairman, would you have any additional questions for  
2 Ms. McCormack about this issue?

3 CHAIRMAN CLAYTON: No questions. Thank  
4 you.

5 JUDGE DIPPELL: Commissioner Jarrett?

6 COMMISSIONER JARRETT: No questions.  
7 Thanks.

8 JUDGE DIPPELL: Thank you. Would there be  
9 any cross-examination for Ms. McCormack based on those  
10 questions from Staff?

11 MS. KLIETHERMES: Actually, just briefly.

12 CROSS EXAMINATION BY MS. KLIETHERMES:

13 Q. When you state that the check is cut, if  
14 that amount is, a quarter of it is sent to the agency and  
15 that agency does not even expend that quarter, would  
16 that -- what happens to that remaining funding?

17 A. They have to -- if they don't expend the  
18 money, then the funding is not -- it's just held, and  
19 that's providing some of the unused funds that will then,  
20 assuming everything goes as projected, that it will go in  
21 as a negative to the regulatory asset in the future. The  
22 money would just not be spent, and then the collaborative  
23 would determine in the future what we want to do with  
24 those unspent funds.

25 MS. KLIETHERMES: Thank you.

1 JUDGE DIPPELL: Public Counsel?

2 MR. POSTON: No, thank you.

3 JUDGE DIPPELL: Constellation?

4 MR. STEINMEIER: No questions, your Honor.

5 JUDGE DIPPELL: Department of Natural  
6 Resources?

7 MS. MANGELSDORF: No questions. Thank you.

8 JUDGE DIPPELL: Thank you. Any redirect?

9 MS. CARTER: No, thank you.

10 JUDGE DIPPELL: All right. Ms. McCormack,  
11 you may again be excused. Thank you.

12 All right, then. As I was about to say, we  
13 still have two witnesses left, and I'm not certain how  
14 much longer that will go, so I'd like to take just a  
15 five-minute break so that people can and our court  
16 reporter especially can have a few moments of a break and  
17 then we will return on the record. My clock in the back  
18 of the room says that it's about 11:38, so if you could  
19 return in five minutes. Thank you. Go off the record.

20 MR. STEINMEIER: Your Honor?

21 JUDGE DIPPELL: I'm sorry. We'll stay on  
22 the record for just one moment.

23 MR. STEINMEIER: I tried raising my hand.  
24 It used to work. That was a long time ago. I would like  
25 to ask leave to be excused from the remainder of the

1 hearing, but before I do so, if it's appropriate, would  
2 also offer Exhibits 20 to 24, Constellation's exhibits.

3 JUDGE DIPPELL: All right. Would there be  
4 any objections to Exhibits 20 through 24, which is the  
5 testimony provided by Constellation's witness?

6 (No response.)

7 JUDGE DIPPELL: Seeing none, I will receive  
8 those into the record.

9 (EXHIBIT NOS. 20 THROUGH 24 WERE RECEIVED  
10 INTO EVIDENCE.)

11 MR. STEINMEIER: Thank you, your Honor.

12 JUDGE DIPPELL: Anything further before we  
13 take a five-minute break?

14 (No response.)

15 JUDGE DIPPELL: All right. Then return --  
16 Ms. Carter.

17 MS. CARTER: Judge, I'm sorry. We have  
18 people on the phone right now from Empire, Scott Keith who  
19 I know can drop off because he was a transportation  
20 witness, but Kelly Walters is also on there as a policy  
21 witness for Empire. And I just got a beep on my phone to  
22 see if she still needed to remain on the line for any  
23 potential policy questions or general questions that might  
24 be put to her on the stipulations.

25 JUDGE DIPPELL: Let me ask the

1 Commissioners. Ms. Walters is the policy witness for  
2 Empire, and will there be any additional policy questions?  
3 She wasn't scheduled to testify on the DSM issue.  
4 Mr. Chairman?

5 CHAIRMAN CLAYTON: No, thank you.

6 COMMISSIONER JARRETT: Yeah. If she's not  
7 going to testify on the DSM issue, I have no questions.

8 JUDGE DIPPELL: All right. Thank you. I  
9 don't believe there will be any questions then for  
10 Ms. Walters.

11 All right. One more time. I'm going to  
12 try to take a five-minute break. So return at a quarter  
13 'til by the clock in the back of the room. Thank you. Go  
14 off the record.

15 (A BREAK WAS TAKEN.)

16 JUDGE DIPPELL: Let's go ahead and go back  
17 on the record. We have returned from a break, and  
18 Mr. Kind, would you raise your right hand.

19 (Witness sworn.)

20 JUDGE DIPPELL: Thank you. I'll let you go  
21 ahead, Mr. Poston.

22 MR. POSTON: Thank you.

23 RYAN KIND testified as follows:

24 DIRECT EXAMINATION BY MR. POSTON:

25 Q. Please state and spell your name for the

1 court reporter.

2 A. My name is Ryan Kind, R-y-a-n, K-i-n-d.

3 Q. And what is your -- what is your position?

4 A. I'm the chief energy economist at the  
5 Office of Public Counsel.

6 Q. Are you the same Ryan Kind that caused to  
7 be prepared and filed rebuttal testimony that's been  
8 marked as Exhibit No. 27?

9 A. Yes, I am.

10 Q. Do you have any corrections or changes to  
11 your testimony?

12 A. No, I do not.

13 Q. If I were to ask you the same questions  
14 that appear in your testimony today, would your answers be  
15 substantially the same?

16 A. Yes, they would.

17 MR. POSTON: Your Honor, I offer Exhibit 27  
18 into the record.

19 JUDGE DIPPELL: All right, then. Would  
20 there be any objection to Exhibit No. 27 coming into the  
21 record?

22 (No response.)

23 JUDGE DIPPELL: I see no objection, and  
24 therefore I will receive it.

25 (EXHIBIT NO. 27 WAS RECEIVED INTO

1 EVIDENCE.)

2 MR. POSTON: And tender Mr. Kind for  
3 cross-examination.

4 JUDGE DIPPELL: I jumped the gun here a  
5 little bit and Staff's attorney has not returned from our  
6 short break, so I'm hesitating, but I will just continue  
7 and get to her when she gets back in here. Is there any  
8 cross-examination from Empire?

9 MS. CARTER: No, thank you.

10 JUDGE DIPPELL: And I did tell  
11 Mr. Steinmeier that he may leave. Is there any  
12 cross-examination from Staff?

13 MS. KLIETHERMES: No questions for this  
14 witness, your Honor. Thank you.

15 JUDGE DIPPELL: Thank you. Is there any  
16 cross-examination from DNR?

17 MS. MANGELSDORF: No questions. Thank you.

18 JUDGE DIPPELL: All right. Is there any  
19 questions from the Chairman?

20 CHAIRMAN CLAYTON: Thank you, Judge.

21 QUESTIONS BY CHAIRMAN CLAYTON:

22 Q. Mr. Kind, can you hear me okay?

23 A. Yes, I can.

24 Q. Sorry to hear about your foot, if that's  
25 the issue. Public Counsel has signed on to the concept in

1 the partial stipulation on the funding level for demand  
2 side management, correct?

3 A. Correct.

4 Q. Okay. Do you see the figure outlined in  
5 that partial stip as a ceiling to the amount that can go  
6 in the regulatory asset on an annual basis?

7 A. No, not a strict ceiling. The stipulation  
8 refers to implementing the programs as outlined in  
9 Ms. McCormack's testimony, and in her testimony she speaks  
10 about budgeted levels. She doesn't talk about caps on  
11 expenditures.

12 Q. From Public Counsel's perspective on energy  
13 efficiency, in general, do you-all believe that we should  
14 be mandating specific funding levels for energy efficiency  
15 programs, in general?

16 A. No. In general, we think we should be  
17 considering whether or not we would mandate specific  
18 levels of load reductions that our gas and electric  
19 utilities should be expected to achieve.

20 Q. Did you-all advocate for that in this case?

21 A. No, but if there's a generic DSM docket, we  
22 would be glad to get engaged in that issue. We --

23 Q. Has Public Counsel ever recommended a  
24 target for load reduction for any utility in relation to  
25 energy efficiency?

1           A.       No, we have not. I was just speaking of  
2 what I thought was a more sensible type of target if one  
3 is to advocate a target.

4           Q.       Okay. Does Public Counsel agree with the  
5 programs that have been outlined by Ms. McCormack? Are  
6 there any omissions that ought to be included or is it a  
7 solid comprehensive list?

8           A.       We believe it's a good, solid,  
9 comprehensive list to start with.

10          Q.       How would you characterize DNR's position?  
11 Would you characterize them as setting out a mandate for  
12 funding levels or setting higher targets?

13          A.       I guess I'm uncertain of that. Sometimes  
14 their language is not particularly clear in their  
15 testimony.

16          Q.       From Public Counsel's perspective, is there  
17 a difference to you-all in terms of either targets versus  
18 mandates if -- does it make a difference to you whether  
19 the Commission mandates versus setting more of a soft  
20 target for expenditures?

21          A.       Oh, yes, it does. It's a pretty  
22 complicated question, but part of why I would hesitate to  
23 agree to mandates is that just as important as mandating  
24 that utilities either spend money or achieve load  
25 reductions is to ensure that they do it in a cost

1 effective manner, and we still have a lot of work in order  
2 to make sure that happens in Missouri.

3 Q. What work needs to be done?

4 A. Well, it just is an ongoing process of sort  
5 of monitoring all the DSM programs that our gas and energy  
6 utilities -- gas and electric utilities are implementing  
7 in Missouri. And I frankly think that none of the parties  
8 in this case, the non-utility parties, whether it's Public  
9 Counsel, Staff or DNR, have enough resources to be  
10 effectively engaged in monitoring those programs.

11 Q. Okay. So Public Counsel will not be  
12 supportive of mandates. Tell me why Public Counsel is in  
13 support of a higher target amount or perhaps a goal than  
14 what has been suggested in the stipulation.

15 A. Are you speaking about a load reduction or  
16 a spending goal?

17 Q. This case, the spending goal.

18 A. The spending goal. Well, Public Counsel  
19 often finds themselves in the situation, especially with  
20 gas utilities, of sort of going in and cleaning up the  
21 mess from prior initiatives in the area of DSM. And when  
22 I talk to cleaning up the mess, I mean going in and  
23 figuring out what money did the companies already collect  
24 in rates but not spend and making sure that ratepayers get  
25 credit for that money. That's something else that needed

1 to be done in this case.

2                   Basically, all of our gas utilities that  
3 get money in rates have not been spending the money that  
4 they've been receiving in rates. And so when we see  
5 somebody coming in and saying let's spend more, my  
6 immediate reaction is, well, they didn't spend what we  
7 gave them before. Why don't we get more engaged in  
8 effectively monitoring these programs and in making sure  
9 that money gets spent and gets spent well?

10           Q.       Why do the funds that are allocated in  
11 rates, why are they not being spent? Is it due to -- and  
12 this is a general question, but is it due to a poorly  
13 designed program or is it because the utilities aren't  
14 aggressive enough? Is it because they don't have certain  
15 incentives or incentives to do certain things? Why would  
16 you say that monies aren't being spent?

17           A.       Well, it's -- for the most part it's a  
18 utility by utility situation that you have to look at, but  
19 there are some what I would call generic issues that are  
20 involved. There's the issue of ramping up to a higher  
21 level of expenditures, essentially, you know, just going  
22 from doing almost nothing to having substantial programs,  
23 and we've almost always been too optimistic about how that  
24 can happen when we set funding levels, and especially too  
25 optimistic in light -- again, I'd go back to the resources

1 that non-utility stakeholders have for getting engaged in  
2 advisory groups and collaboratives.

3 But there's another generic reason that's  
4 ongoing at the present time, which is the -- for low  
5 income weatherization programs, for that piece of energy  
6 efficiency expenditure, it's very hard to get our budgeted  
7 amounts spent given the level of stimulus funding that's  
8 been directed towards that issue.

9 And it's not just a matter of us sort of,  
10 you know, saying that they have a whole lot to spend and  
11 so they're spending a smaller portion of utility provided  
12 funds. It's often a matter of that there's mandates as  
13 part of the stimulus program that you have to spend  
14 stimulus funds first.

15 And the way that we have addressed that  
16 with the weatherization programs in Missouri is we've got  
17 involved in having some variances for weatherization  
18 programs that have allowed the weatherization providers to  
19 receive some funding that's more related to startup and  
20 infrastructure buildout for being able to spend that  
21 higher leveling of stimulus funding.

22 But even with that happening, it's -- it's  
23 still an area that's common to most utilities that will be  
24 difficult to spend all of the budgeted funds in that area.

25 Q. Does it give you a greater comfort level on

1 demand side funding issues as in this case where you have  
2 expenditures being made by the company and them being  
3 placed in a regulatory asset versus the concept of  
4 building into rates \$150,000 expense items?

5 A. It certainly does. I mean, initially that  
6 was the company's proposal in this case was that we would  
7 be putting additional money in rates for energy efficiency  
8 programs, and that's -- that's not something that we could  
9 have agreed to given all the unspent funds that were  
10 already there.

11 A regulatory asset account is a good way to  
12 balance out giving ratepayers credit for unspent funds and  
13 using those funds first for energy efficiency programs  
14 before you start getting a positive balance in a  
15 regulatory asset account.

16 Q. Would you characterize Empire Gas as very  
17 aggressive at encouraging energy efficiency, aggressive,  
18 indifferent or discouraging in energy efficiency  
19 advancement?

20 A. Relative to my experience with this company  
21 5, 10, 15 years ago, I would say that they are -- their  
22 performance has been encouraging and aggressive.

23 Q. Aggressive. Do you believe they can do  
24 more as they ramp up these programs?

25 A. I'm not sure what you mean. More in what

1 sense?

2 Q. Well, I'm assuming by saying aggressive and  
3 not very aggressive that there's more that can be done to  
4 push for greater energy efficiency program participation  
5 by their customers.

6 A. Well, I'm reluctant to advocate the more  
7 aggressive approach given the problem that I've cited  
8 earlier of lack of resources for non-utility stakeholders  
9 to be monitoring and getting engaged in the design and  
10 implementation of energy efficiency programs just because  
11 some of these programs are really only marginally cost  
12 effective. If they're not done right, they won't be cost  
13 effective.

14 Q. How do you determine cost effective?

15 A. Cost effectiveness is usually determined  
16 for gas utilities on a program by program basis by looking  
17 at the total resource cost test, and Ms. McCormack gave  
18 results of the cost effectiveness test in her -- in the  
19 appendix to her testimony.

20 Sometimes you look at more a societal test,  
21 which is really just adding a little bit to the total  
22 resource cost test, and it's sort of similar to what we do  
23 on the electric side by adding probable environmental  
24 costs to determine, to do cost effectiveness analysis of  
25 DSM programs.

1           Q.       So you do not look at the impact on  
2 individual customers that may be benefiting from the  
3 program?

4           A.       That's what the TRC test is all about is  
5 looking at the benefits from the program relative to the  
6 costs of the program and --

7           Q.       Excuse me. It sounded like -- and I may  
8 have misheard, but it sounded like that you were looking  
9 at more of a macro look rather than a micro look. You  
10 don't go down to the actual customer level and measure  
11 whether the investment is cost effective on that  
12 individual customer. You look on a system-wide effort, is  
13 that accurate, or did I not get that correct?

14          A.       You generally do it both ways, and usually  
15 unless there's extraordinary circumstances, you'll get the  
16 same results whether you do it at the individual customer  
17 level or at the aggregated utility-wide level.

18          Q.       Okay. You like the programs that have been  
19 identified by Empire, correct?

20          A.       Yes, I do.

21          Q.       And there are funding levels that have been  
22 suggested for each of those programs --

23          A.       Yes.

24          Q.       -- correct?

25          A.       Correct.

1           Q.       Do you agree or disagree that in general  
2   those types of programs establish a -- or have had a cost  
3   effective approach at addressing load reduction for  
4   customers?

5           A.       Most of them do.

6           Q.       So why not increase the funding for them to  
7   make them be more effective?

8           A.       Well, it's -- often if you try and do  
9   things in a big rush, the cost effectiveness goes down.  
10   In other words, increase the funding, what does it mean?  
11   You're going to spend more money to promote the programs?  
12   Are you going to spend more money for rebates? Those  
13   things can effect the cost effectiveness of the program.

14                    If you try and -- you know, the programs  
15   don't just happen. They're all dependent on customer  
16   participation levels. I mean, the counterpart to funding  
17   is what's the level of customer participation. And if  
18   you're going to spend more money, you've got to have a  
19   higher level of customer participation.

20                    We would be opposed to the idea of really  
21   just trying to direct huge amounts of expenditures to  
22   encourage customer participation without being sure  
23   there's a process in place to actually make sure that  
24   things get done right.

25           Q.       So what if we were to -- what if the

1 Commission were to say, we want to see X number of water  
2 heaters replaced within the service footprint, we want to  
3 see X number of furnaces, we want to see this number of  
4 commercial audits occur, what would be -- and then  
5 assign -- and then authorizing expenditures that would  
6 match those targets, what would be wrong with that  
7 approach?

8 A. Well, if you're looking at having certain  
9 numbers of measures implemented, you're really saying we  
10 want to achieve a certain level of load reduction, and so  
11 we would think that you ought to just more directly look  
12 at that goal of what should the overall level of load  
13 reduction be.

14 Q. On a system basis or on a customer basis?

15 A. Oh, system basis for that.

16 Q. So your focus isn't on the individual  
17 customer that would have an old water heater, an old  
18 furnace, and not have -- not have a house that is very  
19 energy efficiency or weatherized. It sounds like the  
20 benefits are measured not from what they would benefit  
21 from the program but entirely upon how much gas is saved  
22 from the system. Am I getting --

23 A. No, that's not correct. You really do look  
24 at electric and gas programs differently. I think what  
25 you are talking about describes a little better how you

1 look at electric programs because there's a lot of shared  
2 benefits, a lot of joint and common costs in the -- on the  
3 generation side that can be avoided. But for gas  
4 utilities, it's the individual customer who installs the  
5 energy efficiency measure that's part of a utility program  
6 that achieves the main amount of the benefits. They just  
7 get a reduction in their gas usage, means their bill goes  
8 down.

9                   But except for some very minor and at times  
10 I would say speculative benefits that other customers  
11 might receive, like putting downward pressure on natural  
12 gas rates, possibly avoiding some gas storage costs that  
13 might be going through the PGA and paid for by all  
14 customers where those storage costs are related to  
15 lowering the gas peak day demand. Except for that, for  
16 gas customers you're really focused just on the  
17 cost/benefit analysis of your -- there's not much  
18 difference between the benefits at the individual customer  
19 level.

20                   I mean, that is the focus. That's --  
21 because there's not much spreading of those benefits to  
22 the other natural gas customers who don't participate in  
23 the program.

24           Q.       If we -- what is your understanding, that  
25 if we adopt what DNR has suggested with the .5 percent of

1 total gas costs and the 1 percent of total gas costs for  
2 2012, do you -- how do you see that actually being  
3 implemented by Empire and the collaborative in those  
4 years? Do see those as hard and fast mandates, or do you  
5 see those basically as goals or -- and really what's the  
6 difference among them?

7 I guess if it's a mandate, then they have  
8 to spend it. If it is not a mandate, do you see those  
9 goals just as unworkable? I'm trying to get a sense of  
10 what we are doing by adopting one position versus another.

11 A. Yeah, I do basically see the goals as  
12 unworkable based on recent experience that I've had with  
13 the collaboratives for Laclede, MGE and Atmos. We're not  
14 getting anywhere close to that level of funds being spent.  
15 And I also see it as sort of -- it's kind of -- it's hard  
16 to do a lot more and still ensure that it's cost effective  
17 and still ensure that there is accountability for all the  
18 expenditures that are made.

19 I apologize if I didn't answer your  
20 question. I think you had a first question.

21 Q. How do we get to the level of ensuring  
22 accountability since you suggested that no one has the  
23 resources to do that? It suggests that basically that we  
24 don't have any alternative, that nothing's ever going to  
25 change on energy efficiency.

1           A.       I would really like to see the Commission  
2   set up their staff so that they have a group of energy  
3   efficiency specialists that work consistently across all  
4   utilities, all gas and all electric utilities. I find it  
5   somewhat ironic and disappointing that Public Counsel  
6   which has less resources than the other parties who are  
7   involved in these issues, usually the Staff and DNR, that  
8   we are the only party that has one point person that is  
9   involved in overseeing all of the gas and electric  
10  programs, and that's me.

11                   And frankly, it's -- it just is not a good  
12  situation. If you want to get things done and get things  
13  done right, and I think the Commission recognizes rightly  
14  so that energy efficiency is a very important area for us  
15  to be getting more aggressive in, you've got to have the  
16  resources applied to make sure it gets done right.

17                   CHAIRMAN CLAYTON: Okay. Thank you.

18                   THE WITNESS: You're welcome.

19                   JUDGE DIPPELL: Thank you, Mr. Kind. I  
20  don't believe there are any other questions for you from  
21  the Bench. Is there cross-examination based on the  
22  Chairman's questions from Staff?

23                   MS. KLIETHERMES: Just briefly.

24  CROSS-EXAMINATION BY MS. KLIETHERMES:

25           Q.       If I understood one of your responses, it

1     seemed to indicate to the Chairman that whether there  
2     would be any harm in a higher level of funding than you  
3     think is achievable. Do you have a concern that a high --  
4     an unduly high level of funding could result in imprudent  
5     spending?

6             A.     Given the current circumstances for  
7     overseeing these programs, yes.

8             JUDGE DIPPELL: Thank you. Is there  
9     anything from Empire?

10            MS. CARTER: No, thank you.

11            JUDGE DIPPELL: Anything from DNR?

12            MS. MANGELSDORF: No, thank you.

13            JUDGE DIPPELL: Is there redirect?

14            MR. POSTON: Yes, briefly.

15     REDIRECT EXAMINATION BY MR. POSTON:

16            Q.     You had a lot of questions and discussion  
17     about cost effectiveness and ensuring these programs are  
18     done in a cost effective manner. I'd ask that you just  
19     please provide an example of how your concerns were  
20     addressed in the stipulation regarding the water heater  
21     rebates.

22            A.     Okay. I'd be glad to. And I guess with  
23     respect to the water heater rebates, it's generally a good  
24     rule of thumb to be having incentives that represent about  
25     50 percent of the incremental cost of energy efficiency

1 measures that you're trying to promote. And data that  
2 I've looked at has indicated that a \$50 rebate level is  
3 more representative of that -- applying that rule of thumb  
4 of the 50 percent of incremental costs.

5                   And then the other -- the other concern is  
6 promoting -- you know, for cost effectiveness to promote  
7 programs with higher incentives, you want to make sure  
8 that the programs that you are promoting are cost  
9 effective based on cost/benefit analysis and TRCs that are  
10 at a level of one or higher, and you won't find that with  
11 the portfolio of water heater programs that this company  
12 is implementing, that overall it's -- it's just not -- the  
13 water heater program is not anything anywhere close to  
14 being one of the more cost effective energy efficiency  
15 programs that Empire has reviewed in their cost/benefit  
16 analysis.

17                   For example, compared to replacing gas  
18 furnaces with more efficient gas furnaces, the cost  
19 effectiveness of replacing gas water heaters with more  
20 efficient gas water heaters is not very cost effective.  
21 And a lot of that just has to do with what's the  
22 efficiency level, what's the baseline of the type of  
23 appliance that would be going in absent incentive, what's  
24 the efficiency level with an incentive. And in the case  
25 of furnaces, you'd be going from, say, .80 to .90, but

1 with water heaters, you're going from about a .58  
2 efficiency factor to .62, and there's just not much there.

3 Q. You gave an acronym TRC?

4 A. That's correct. That's the total resource  
5 cost test.

6 MR. POSTON: That's all I have.

7 JUDGE DIPPELL: Thank you. I believe that  
8 concludes the questions for Mr. Kind, so you may be  
9 excused.

10 THE WITNESS: Thank you.

11 JUDGE DIPPELL: Ms. Carter?

12 MS. CARTER: We would ask for a break, if  
13 we could, for the parties to discuss some matters, if that  
14 would work with your schedule and the Commissioners'  
15 schedules.

16 JUDGE DIPPELL: How long a break? Like a  
17 lunch break or --

18 MS. CARTER: 15 minutes perhaps.

19 JUDGE DIPPELL: Mr. Chairman, would you  
20 have a problem? You're our remaining person on the phone.  
21 Would you have a problem?

22 CHAIRMAN CLAYTON: Yeah. I don't have a  
23 problem with that. And I'm sorry to drag this out. I  
24 really don't anticipate that I'm going to have that many  
25 questions for Ms. Wolfe, but that's fine. I guess if I'm

1 the only person, I can hang up and call back.

2 JUDGE DIPPELL: Yeah. Would you like me  
3 to -- when we go off the record, I'll give you the number  
4 and you can call us back.

5 CHAIRMAN CLAYTON: Why don't you e-mail it  
6 to me.

7 JUDGE DIPPELL: Okay. I'll do that.

8 CHAIRMAN CLAYTON: E-mail it to just my  
9 e-mail address on the phone number, and I'll dial back  
10 here at, what, 12:30.

11 JUDGE DIPPELL: That will be fine.

12 CHAIRMAN CLAYTON: Okay. Sounds good.  
13 Thank you.

14 JUDGE DIPPELL: All right, then.

15 Ms. Carter, you had one more thing?

16 MS. CARTER: Sorry. Before we go off the  
17 record, would you mind if we address the remaining  
18 testimony? I think some of us have a fear that we'll  
19 forget that if we don't do it now.

20 JUDGE DIPPELL: I have a note here, but  
21 we'll go ahead and do that now while we're thinking about  
22 it. There had been a request when we were off the record  
23 or in the pleadings earlier to make a presentation to  
24 offer all of the testimony into the record. So I'll take  
25 that as your offer. The remaining exhibits are Office of

1 the Public Counsel's exhibits are Exhibits 26 and 25 not  
2 proprietary and HC. Would there be any objection to the  
3 remaining of Public Counsel's exhibits coming into the  
4 record?

5 (No response.)

6 JUDGE DIPPELL: Seeing none, then I will  
7 receive those.

8 (EXHIBIT NOS. 25 AND 26 WERE RECEIVED INTO  
9 EVIDENCE.)

10 JUDGE DIPPELL: I also have for Staff  
11 remaining Exhibits No. 33 -- well, let me start -- 30, 31,  
12 32 and 33. That is surrebuttal testimony of Ensrud, which  
13 is 33, direct of Solt, which is 30. I guess we already  
14 admitted 32. I'm sorry. And the Class Cost of Service  
15 and Rate Design Report of Staff, which is 31. Would there  
16 be any objection to those exhibits?

17 (No response.)

18 JUDGE DIPPELL: Seeing none, then I will  
19 receive those.

20 (EXHIBIT NOS. 30, 31 AND 33 WERE RECEIVED  
21 INTO EVIDENCE.)

22 JUDGE DIPPELL: For the Empire District Gas  
23 Company, I have the direct of Delano, which is No. 5; the  
24 direct of Doll, which is No. 8; the direct of Emanuel,  
25 which is No. 4; direct of Gibson, which is No. 1; the

1 rebuttal of Keith, which is 13, both NP and HC; the  
2 surrebuttal of Keith, which is 14; the direct and  
3 schedules attached thereto of Long, which is No. 3; the  
4 direct and schedules of Overcast, which is No. 11; the  
5 rebuttal of Overcast, which is No. 12; the direct of  
6 Sager, which is No. 10, both NP and HC; the direct of  
7 Sullivan, which is 7; the direct of 6, which is Teter, if  
8 I'm pronouncing these correctly; and the direct of  
9 Vander Weide, which is 9; and the direct of Walters, which  
10 is 2.

11                   And if I missed anything or messed up the  
12 numbers, the court reporter's numbers will reflect it  
13 correctly. Would there be any objection to the remaining  
14 testimony of Empire District Gas Company coming into the  
15 record?

16                   (No response.)

17                   JUDGE DIPPELL: Seeing none, then I will  
18 receive those exhibits.

19                   (EXHIBIT NOS. 1 THROUGH 14 WERE RECEIVED  
20 INTO EVIDENCE.)

21                   JUDGE DIPPELL: And we haven't gotten there  
22 yet, but with Department of Natural Resources, we will  
23 have Laura Wolfe, which is 19, direct on rate design,  
24 Laura Wolfe direct revenue requirement 17, and Laura  
25 Wolfe, which is the surrebuttal of 18. I'll go ahead ask

1 now if there would be any objection to those coming into  
2 the record?

3 (No response.)

4 JUDGE DIPPELL: Seeing none, then we will  
5 receive that testimony into the record.

6 (EXHIBIT NOS. 17, 18 AND 19 WERE RECEIVED  
7 INTO EVIDENCE.)

8 JUDGE DIPPELL: Did I get everything? All  
9 right, then. Let's go ahead and take a 15-minute break.  
10 Now the Chairman's going to be calling in five minutes too  
11 soon. And will you be -- will ten minutes be enough? All  
12 right. We'll take a ten-minute break. Come back at 12:30  
13 by that clock, which isn't accurate.

14 (A BREAK WAS TAKEN.)

15 JUDGE DIPPELL: All right. Let's go back  
16 on the record. So we took a break, and now we're back on  
17 the record, and did the parties have anything they wanted  
18 to update with me or are we just going forward? Okay. I  
19 guess we're just continuing on.

20 So then we're up to DNR's witness.

21 Ms. Wolfe, you can have your choice, sit or stand.

22 (Witness sworn.)

23 JUDGE DIPPELL: Go ahead.

24 LAURA WOLFE testified as follows:

25 DIRECT EXAMINATION BY MS. MANGELSDORF:

1           Q.       Would you please state your full name and  
2 spell your last name for the court reporter.

3           A        Laura Wolfe, W-o-l-f-e.

4           Q.       And by whom are you employed and in what  
5 capacity?

6           A.       The Missouri Department of Natural  
7 Resources in the Energy Center as an energy specialist.

8           Q.       And for whom are you testifying for in this  
9 rate case?

10          A.       The Department of Natural Resources.

11          Q.       Are you the same Laura Wolfe who prepared  
12 or caused to be prepared direct testimony that's been  
13 entered as Exhibit No. 17 and rebuttal testimony entered  
14 as Exhibit 18 in this case?

15          A.       Yes, I am.

16          Q.       And was that testimony prepared by you or  
17 under your direct supervision?

18          A.       Yes, it was.

19          Q.       Do you have any changes or revisions in any  
20 of the testimony filed?

21          A.       I do have a correction on page 11 of my  
22 direct testimony. The very bottom of the page, I have  
23 "however he financial". It should be "however the  
24 financial".

25          Q.       Do you have any other changes?

1 A. No.

2 Q. If I asked you the same questions as they  
3 appear in your testimony, would your answers as revised be  
4 the same?

5 A. Yes, they would, with the exception of the  
6 Footnote No. 20 on page 11. I would have noted page 6-11,  
7 and I did address this in my surrebuttal testimony.

8 Q. Are your answers true and correct to the  
9 questions asked?

10 A. Yes.

11 MS. MANGELSDORF: Thank you. I'll now  
12 tender Ms. Wolfe for cross-examination.

13 JUDGE DIPPELL: Thank you. Is there any  
14 cross-examination -- we had previously admitted that  
15 exhibit, by the way. Is there any cross-examination from  
16 Staff?

17 MS. KLIETHERMES: Yes, Judge. Thank you.

18 CROSS-EXAMINATION BY MS. KLIETHERMES:

19 Q. Good afternoon, Ms. Wolfe.

20 A. Good afternoon.

21 Q. Is the study primarily relied on in your  
22 recommendation produced by a group ACEEE?

23 A. Yes.

24 Q. And can you just state what that ACEEE  
25 stands for?

1           A.       ACEEE stands for -- and I always get it  
2 backwards, so give me a moment to look that up -- the  
3 American Council for an Energy Efficient Economy. I also  
4 used the NAPEE study.

5           Q.       What is the date of that ACEEE study?

6           A.       Report No. U051 issued in January 2005.

7           Q.       And do you know if that relies on 2002 year  
8 data?

9           A.       I believe that is correct.

10          Q.       Has any weatherization occurred in Missouri  
11 since 2002?

12          A.       Yes, it has.

13          Q.       Has any weatherization occurred in Empire  
14 District Gas Company's service area since 2002?

15          A.       Yes, it has.

16          Q.       Have additional funding sources not  
17 available in 2002 become available by which I mean -- I  
18 see you look confused. For example, does the Federal  
19 Government offer more energy efficiency funding than they  
20 did in 2002?

21          A.       Yes, they do.

22          Q.       And are there various state groups that  
23 offer more energy efficiency funding than they did in  
24 2002?

25          A.       I'm not totally aware of that, but it's

1 possible.

2 Q. Are there community or faith-based groups  
3 that offer energy efficiency funding that did not in 2002?

4 A. Yes, I'm sure there are.

5 Q. Thank you. Are you aware of the  
6 Weatherization Assistance Program Program Expansion  
7 Planning Document distributed by the Robert C. Adams  
8 Weatherization Services National Association for State  
9 Community Service Programs document?

10 A. Not personally, no. I don't work directly  
11 on the weatherization program. I work with those who do.

12 Q. Okay. Are you aware whether Missouri in  
13 2009 has received in excess of \$81.5 million of federal  
14 weatherization funding?

15 A. I know that the State of Missouri did  
16 receive substantial funding through the stimulus package  
17 or the ARRA for low income weatherization.

18 Q. And would that be in greater amounts than  
19 was available through those same sources in 2002?

20 A. Yes, much greater.

21 Q. Did those sources exist at all in 2002?

22 A. I do not know.

23 Q. In that ACEEE survey that you used in your  
24 testimony or relied on for your testimony, is that  
25 comprised only of -- was that a Missouri specific study?

1           A.       No, it was not. It was a multi-state.

2           Q.       How many states were in that multi-state  
3 group, if you're aware?

4           A.       According to the study, it includes  
5 Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri,  
6 Ohio and Wisconsin.

7           Q.       And a quick geography quiz. To your  
8 knowledge, is Missouri one of the southernmost states in  
9 that group?

10          A.       Geography's not my strongest suit, but yes,  
11 I would agree that it's probably a little more southern  
12 than, say, Wisconsin. Yes, it is more southern than the  
13 other states.

14          Q.       In your experience, are severe winters more  
15 associated with northern states or southern states?

16          A.       Can I base it on today?

17          Q.       Certainly.

18          A.       Just kidding. I would agree that in  
19 general the winters are much harsher in the northern  
20 states than in this state.

21          Q.       And in general, are heat-related efficiency  
22 programs more cost effective in colder climates or in  
23 warmer climates?

24          A.       They certainly have more opportunity in  
25 colder climates than warmer climates.

1           Q.       Would the Energy Center agree that spending  
2 money inefficiently doesn't improve efficiency?

3           A.       Absolutely.

4           Q.       And would the Energy Center support  
5 imprudent spending on energy efficient programs?

6           A.       They would not.

7           Q.       Is it your experience that over the last  
8 five years the price of natural gas has been somewhat  
9 volatile?

10          A.       Indeed.

11          Q.       Is it your experience that over the last  
12 five years the price of natural gas has been very  
13 volatile?

14          A.       There are times that it has been very  
15 volatile, yes, in the past five years.

16                   MS. KLIETHERMES: That's all I have. Thank  
17 you.

18                   THE WITNESS: Thank you.

19                   JUDGE DIPPELL: Is there any  
20 cross-examination from Public Counsel?

21                   MR. POSTON: No, thank you.

22                   JUDGE DIPPELL: From Empire?

23                   MS. CARTER: Yes. Thank you, Judge.

24 CROSS-EXAMINATION BY MS. CARTER:

25           Q.       Ms. Wolfe, there was a reference to where

1 Missouri ranks in terms of spending on energy efficiency.

2 Is that from your testimony?

3 A. No. The 41 ranking that I think I heard  
4 earlier, recently the 2009 ACEEE Score Card came out, and  
5 Missouri is ranked 41st on that score card. That score  
6 card is comprised of several different areas, one of those  
7 being energy efficiency and public benefits.

8 Q. Is it DNR's position that more energy  
9 efficiency should result in lower rates?

10 A. On a long-term basis, yes.

11 Q. Would you agree with me that Missouri  
12 utility customers experience some of the lowest rates  
13 right now in the country?

14 A. That is my understanding, that our rates  
15 are currently moderately low.

16 Q. Other than the programs of specific  
17 Missouri utilities, what sources of funds are available  
18 for utility-related energy efficiency in Missouri? Other  
19 than programs that Empire might put forward or former  
20 Aquila, MGE, Atmos, what other sources of funding are  
21 available for energy efficiency?

22 A. The low income weatherization gets funding  
23 through a regular federal grant as well as the short-term  
24 ARRA funding. So that is available. There are some other  
25 programs that will be implemented by the -- by the Energy

1 Center having to do with additional ARRA funding. Those  
2 have not yet rolled out, but those will be there as well.

3 Q. How much federal money goes to energy  
4 efficiency in Missouri currently?

5 A. With the ARRA funding? I don't have the  
6 numbers engrained into my brain, but the rule of thumb at  
7 the Energy Center, the amount that the Energy Center has  
8 been handling is somewhere near \$200 million.

9 Q. Is that annually?

10 A. That's total from ARRA to be used over the  
11 next two to three years.

12 Q. Do you know what amount will be going to  
13 Empire Gas customers?

14 A. Not off the top of my head, no.

15 Q. What, if anything, did you do to assess  
16 current participation in Empire Gas' DSM programs?

17 A. Well, the current DSM programs are pretty  
18 small compared to what's being proposed here with really  
19 simply the low income weatherization in its two forms and  
20 the commercial rebate program. I agree or am willingly  
21 accepting Ms. McCormack's characterizations that those  
22 were -- that the low income weatherization program was  
23 used as best as the CAP agencies were able to use, and  
24 that the commercial rebate program was just not successful  
25 at all with I believe no participation in the last year to

1 two years.

2 Q. There's a list of DSM programs that the  
3 company has agreed to initiate out of this case. Have you  
4 taken any steps to see what the participation levels are  
5 expected to be?

6 A. I've looked only at that study.

7 Q. Do you dispute that study and the dollar  
8 amounts stated?

9 A. I don't know how that study was developed,  
10 whether those participation amounts were driven more by  
11 how much the company wished to invest or thought they  
12 could invest or were those participation levels considered  
13 to be moderate, aggressive. So I don't -- I don't have  
14 any information to really assess those levels.

15 Q. And DNR didn't do any study on its own,  
16 correct?

17 A. That's correct.

18 Q. We're talking about all ratepayer funded  
19 programs, correct?

20 A. Correct.

21 Q. Would you agree that it doesn't help anyone  
22 to just try to spend money to hit a goal on DSM programs  
23 that expenses could be imprudent at that point?

24 A. DNR does not encourage imprudent spending.  
25 What we're encouraging here is to seek out, implement and

1 aggressively pursue all cost effective energy efficiency  
2 with a goal of spending at the levels that I have in my  
3 testimony.

4 Q. DNR's not asking for a mandate or a floor,  
5 correct?

6 A. That's correct.

7 Q. And does DNR understand that the proposal  
8 of the company, Staff and Public Counsel was not for a  
9 ceiling but simply for budgeted amounts?

10 A. I interpreted the testimony differently  
11 when it said that the -- or the Stipulation & Agreement,  
12 pardon me, when it states that the programs, that EDG  
13 would fund the programs at the levels from Ms. McCormack's  
14 testimony. I didn't see the wiggle room in there. But  
15 after listening to some of the testimony here today, I  
16 understand it was not an intention to be a cap.

17 Q. If you base the target or goal or budget on  
18 1 percent of revenues including gas, would you agree with  
19 me that your target moves from week to week and month to  
20 month and year to year?

21 A. It is a moving target. I understand that.  
22 And what I did in developing the funds that I suggested,  
23 the funding levels that I suggested was to pick the most  
24 recent year for which we had data and use that as our  
25 benchmark.

1           Q.       If the benchmark or budget for DSM programs  
2 is tied to total revenues including gas, am I correct then  
3 that you'd actually have the goal of spending less on  
4 energy efficiency and conservation if gas costs are low,  
5 that it's tied to how much gas costs?

6           A.       That's correct.

7           Q.       So it's not about usage of gas or the  
8 volume of gas, it's about how much the gas costs?

9           A.       I think it's hard to separate those two.  
10 The investment level that we're looking for is indeed  
11 based on dollar amounts and not usage. There are other  
12 programs that set as a target usage reductions. It just  
13 wasn't a direction we went in this case, but it is  
14 certainly an option as well.

15          Q.       DNR's recommendation in this case isn't  
16 tied to the specific programs, correct?

17          A.       No. I did not develop a specific budget  
18 for programs.

19          Q.       And it's not tied to Empire's customers or  
20 Empire's service area, correct? You would be recommending  
21 the same approximately 1 percent of total revenues no  
22 matter the customer makeup or the utility company, the  
23 area it serves?

24          A.       That's correct.

25          Q.       And you didn't look into Empire's customers

1 or their particular needs, correct?

2 A. Not in great detail, but given the lack of  
3 strong portfolio of programs, I think there's ample  
4 opportunity there for a lot of these programs to be  
5 implemented and be successful.

6 Q. And would you agree that there could be a  
7 negative view taken of Empire if the Commission were to  
8 set a goal or target of a certain amount and then Empire  
9 couldn't achieve prudently that dollar amount?

10 A. I think as long as Empire can demonstrate  
11 that they have implemented all cost effective energy  
12 efficiency programs and pursued them aggressively, I don't  
13 think that's a negative perception. I think, if anything,  
14 it provides us additional information to be more state  
15 specific in the future. We don't have the data now.

16 Q. You would agree, then, that it shouldn't be  
17 a negative perception?

18 A. That's correct.

19 Q. And is DNR in agreement on how the  
20 collaborative has been arranged for Empire Gas or is to be  
21 arranged?

22 A. Meaning an advisory collaborative?

23 Q. Yes.

24 A. Yes, we are in agreement with that.

25 MS. CARTER: That's all the questions I

1 have.

2 JUDGE DIPPELL: Thank you. Are there  
3 Commission questions for Ms. Wolfe, Mr. Chairman?

4 CHAIRMAN CLAYTON: Thank you, Judge.

5 QUESTIONS BY CHAIRMAN CLAYTON:

6 Q. Ms. Wolfe, help me understand the position  
7 of DNR with regard to this dollar amount. If you-all  
8 aren't requesting a mandated figure, exactly what are you  
9 asking for us to call this? What do you want us to order  
10 Empire to do as it relates to this .5 percent and  
11 1 percent on gas revenues? Is it a goal? Is it a target?  
12 What do you call it?

13 A. I see it is a goal or a target. I kind of  
14 use those terms interchangeable. As I've said earlier,  
15 DNR does not encourage in any way an imprudent spending of  
16 ratepayer dollars or what will eventually be ratepayer  
17 dollars as we go through the depreciation of the  
18 regulatory asset account or the implementation of energy  
19 efficiency programs that are not cost effective.

20 The reason to set the goal or the target so  
21 high as DNR has as opposed to what the other parties are  
22 looking at is to encourage the company to seek out all  
23 possible cost effective measures, which I know are limited  
24 with natural gas companies, but then to be aggressive in  
25 their pursuit of those programs and their -- be aggressive

1 in their pursuit of assisting their customers with energy  
2 efficiency. Does that answer your question?

3 Q. I think -- I think -- I think it does. You  
4 have assigned percentages of total revenues for the  
5 companies for 2011 and 2012. If we were to select or  
6 authorize that amount, isn't that just an arbitrary number  
7 pulled out of the air in terms of making them spend a  
8 certain amount of money?

9 A. In a sense it is, since it's based on 2008  
10 total revenues, and as revenues change it does become a  
11 moving target when you set it as a percentage.

12 Q. So just setting a percentage, isn't just  
13 doing that, just picking an arbitrary percentage, and how  
14 is that tied to anything, any relevant standard in terms  
15 of picking an amount of expenditures for demand side  
16 management programs?

17 A. The --

18 Q. What is so magical about .5 percent and  
19 1 percent?

20 A. Those percentages are based on our  
21 analysis, our review of the study from the National -- the  
22 National Action Plan for Energy Efficiency. In their  
23 review and in preparing that report, they state that the  
24 successful programs that they saw in the process of  
25 preparing the report, that was the level of investment

1 they were seeing from natural gas companies, from .5 to  
2 1.5 percent.

3 Q. How did they measure success in that  
4 report?

5 A. I'd have -- I'm sorry. I don't have it off  
6 the top of my head.

7 Q. When they say you have to spend --  
8 successful programs spend 1 percent of total gas revenues,  
9 what criteria did they use in saying something is  
10 successful or not?

11 A. The programs that they were citing --  
12 sorry. I found the section from the report that I was  
13 referring to. It's actually on page 6-11 -- that those  
14 programs were reducing annual energy usage by .15 to  
15 1 percent at spending levels between .5 and 1.5 percent of  
16 gas revenues.

17 Q. So there is a connection between the amount  
18 of expenditure and reduced usage --

19 A. Yes.

20 Q. -- in that report?

21 A. Yes.

22 Q. Do they measure success of whether a  
23 program is cost effective or not?

24 A. I'm trying to picture in my mind where it  
25 is in the report. Give me a moment. I'm sorry. It's not

1 coming to me where in the report it discussed that.

2 Q. So you don't know whether it discusses cost  
3 effective, or you know it's in there, you just can't find  
4 it?

5 A. I'll say I don't know that it's in there.

6 Q. All right. Sounds like an honest answer.  
7 Okay. Is this the first case or the most advanced case,  
8 meaning working its way through the process, is this the  
9 most aggressive that DNR has ever been or the Energy  
10 Center has been on advocating for energy efficiency?

11 A. These levels that I have advocated are very  
12 similar to the levels of investment that Mr. Buchanan from  
13 our office advocated in the recent Missouri Gas Energy  
14 rate case.

15 Q. Are those the -- but are these two cases  
16 the first two that DNR has actually advocated for a  
17 percentage connection to total gas revenues ever?

18 A. Ever?

19 Q. Well, I mean in recent memory.

20 A. I believe so. I don't recall if DNR was  
21 the actual advocate in the Atmos case that then set a  
22 percentage of non-gas revenues as the investment level for  
23 energy efficiency.

24 Q. Yeah. I don't recall anyone actually  
25 advocating for a certain percentage in the Atmos case.

1           A.       Right.

2           Q.       I remember that coming out because of  
3 Commissioner involvement. But were you involved in that  
4 case?

5           A.       No, sir. I was not yet with the Energy  
6 Center.

7           Q.       So is this a fundamental change in policy  
8 from the Energy Center, would you say?

9           A.       I would say it is.

10          Q.       So it is -- is this going to be a  
11 consistent approach that DNR will be advocating for these  
12 percentage expenditures on energy efficiency programs  
13 across the board on all utilities?

14          A.       I don't set all of the policy for the  
15 Energy Center, but I do see that that is the direction we  
16 are going.

17          Q.       What programs or what states would you see  
18 in your research that effectively perform an accounting  
19 function to ensure that expenditures are done  
20 appropriately in a cost effective manner and avoiding  
21 duplication and waste, that sort of thing? Do you have  
22 any programs or states in mind that do an effective job of  
23 that?

24          A.       Not off the top of my head, no. It's not  
25 something I've looked at recently. We have some others in

1     our office that are looking at that issue, but I have not.

2             Q.       You were asked a question on  
3     cross-examination about Empire Gas' share of the American  
4     Recovery and Reinvestment Act funds coming to Missouri.  
5     Do you recall that question?

6             A.       Yes, I do.

7             Q.       As I recall, you answered that you didn't  
8     know what Empire's share would be?

9             A.       Well, there wouldn't really be a share  
10    going to Empire. It would be a share going to the  
11    community action agencies that serve the territory that  
12    Empire also serves.

13            Q.       Okay. So those funds do not go to  
14    utilities; they go around the utilities through community  
15    actions agencies?

16            A.       That's correct.

17            Q.       All right. Do you do any assessment of the  
18    amount of money that will go to those community action  
19    agencies within Empire's footprint?

20            A.       I personally don't do those calculations.  
21    There are others in the Energy Center who do. I have  
22    assisted on occasion with that allocation across the  
23    different CAP agencies, and it is based on poverty level  
24    by agency's territory.

25            Q.       Well --

1           A.       Is that what you're asking?

2           Q.       If we had -- if we knew that there were,  
3   say, 5 or \$10 million going into the Empire Gas service  
4   territory to weatherize low income houses, wouldn't that  
5   be a relevant fact to know in determining how much we want  
6   the company to spend on weatherization?

7           A.       Yes and no. Yes, I think it would be good  
8   to know how much is coming in there and what the  
9   anticipated number of homes could be weatherized through  
10   those federal funds and how best to position those CAP  
11   agencies to use those funds to the best of their ability,  
12   which the utilities have been very good about that. I  
13   believe Mr. Kind mentioned some of the changes to how the  
14   utility funds could be used, some variances that were  
15   filed.

16                    Another issue that must be kept in mind  
17   when dealing with funds from ARRA is that repeatedly in  
18   the ARRA it is stated that these funds are not to supplant  
19   programs that are already there.

20          Q.       Do you have any ballpark figure of how much  
21   money is going to go into the Empire District footprint  
22   for gas, the Empire Gas footprint? Do you have any idea  
23   how much money is going to go in for weatherization from  
24   the ARRA?

25          A.       I really don't. I don't do those

1 calculations, those allocations by CAP agencies. It would  
2 be possible for me to get that for you, but I don't have  
3 it on the top of my head.

4 Q. I mean, if we're talking about millions of  
5 dollars going into different counties for weatherization,  
6 a measly \$70,000 is a drop in the bucket compared to that,  
7 and does it really matter and is it worth fighting over a  
8 few extra dollars if there's going to be a huge sum of  
9 money dropped into this area? Isn't that a relevant  
10 question to ask?

11 A. I agree, it is a very relevant question to  
12 ask.

13 Q. Did DNR take that into consideration in its  
14 recommendation?

15 A. We did in the terms -- we still see there's  
16 a use for those funds, albeit there are literally millions  
17 in Missouri now for weatherization through ARRA. Those  
18 funds will not be here forever. They're on a very short,  
19 very short timeline, and the amounts that the utilities  
20 are providing can still be a help.

21 Q. Does DNR have a role in distributing those  
22 funds and working with the utilities in those areas to  
23 make sure that there is coordination of expenditure of  
24 energy efficiency weatherization funds?

25 A. I'm sorry. Ask that again.

1           Q.       Does DNR when it distributes these funds to  
2     the community action agencies, does it connect or require  
3     interaction with the utilities operating in those areas to  
4     assure efficient coordination of programs?

5           A.       I wouldn't say that we require that. I  
6     would say that that does happen, but --

7           Q.       Do you have the ability to require it?

8           A.       I don't know.

9           Q.       What -- let's pick a community that's  
10    served by Empire Gas. Can you think of one off the top of  
11    your head? Somebody give me a community.

12          A.       Sedalia.

13          Q.       Sedalia. Okay. So Sedalia is served by  
14    Empire Gas. DNR, the Energy Center distributes ARRA  
15    funding to the community action agency that serves  
16    Sedalia. Does that agency have a requirement or is it  
17    mandated to interact with Empire in how it spends its  
18    funds?

19          A.       No. Not its ARRA funds, no.

20          Q.       Should they be required to do that?

21          A.       I don't know.

22          Q.       Okay. Does the Energy Center believe that  
23    the 2012 figure that you are advocating for, how do you --  
24    how do you realistically see Empire close to tripling its  
25    budget on energy efficiency investment within a three-year

1 period? Do you believe that's realistic?

2 A. I believe it's a challenging goal, and I  
3 also believe that we need to start setting some  
4 challenging goals when it comes to energy efficiency.

5 Q. Would there be any -- other than mandating  
6 a certain level of expenditures or setting goals of  
7 expenditures, does the Energy Center believe there are any  
8 other ways of setting goals, like by number of water  
9 heaters we want upgraded or number of furnaces, or should  
10 we identify a certain number of load reduction? Are there  
11 any other goals that we can set aside from dollars to  
12 achieve energy efficiency savings?

13 A. We have been looking at some other methods,  
14 not so much in the natural gas area as of yet, but in the  
15 electric area we discuss internally how to set certain  
16 goals for reduced energy usage.

17 Q. Should those goals be -- would they be  
18 applicable in utility rate cases in designing these  
19 programs?

20 A. Yes, I think so.

21 Q. Is there any way to guess when DNR will be  
22 in a position to share those goals?

23 A. We're working on a couple of cases now  
24 where I think that's going to be an issue. The big thing  
25 I think to point out at this point, when we start talking

1 about setting goals for usage reductions, we have a bit of  
2 an advantage, I think, not an advantage, but a difference  
3 on the electric side in that we have the IRP process, the  
4 integrated resource planning process, where the utility in  
5 a somewhat public forum in terms of filing these with the  
6 Commission can do analysis to try to find ways to achieve  
7 these reductions, and we don't have a comparable process  
8 on the natural gas side.

9 CHAIRMAN CLAYTON: Ms. Wolfe, I don't think  
10 I have any other questions. Thank you very much for your  
11 time.

12 THE WITNESS: Thank you, Chairman.

13 JUDGE DIPPELL: Thank you. Commissioner  
14 Jarrett?

15 COMMISSIONER JARRETT: Good afternoon,  
16 Ms. Wolfe.

17 THE WITNESS: Good afternoon.

18 COMMISSIONER JARRETT: Thank you for your  
19 testimony. Actually, some of your answers to Chairman  
20 Clayton's questions answered my questions I had. I don't  
21 have any further questions. Thank you.

22 THE WITNESS: Thank you.

23 JUDGE DIPPELL: Is there any additional  
24 cross-examination from Staff?

25 MS. KLIETHERMES: Just a little bit.

1       RE CROSS-EXAMINATION BY MS. KLIETHERMES:

2               Q.       Ms. Wolfe, in your discussion with the  
3       Chairman, you referred to the ARRA funds not being here  
4       forever. In your experience, once old housing stock has  
5       been weatherized, would you expect that the most cost  
6       effective efficiency measures would be made for the near  
7       future? Does that make any sense at all? I'm sorry. Let  
8       me rephrase that.

9                       Essentially, can you reweatherize a house  
10       twice within five to ten years?

11              A.       Not within five to ten years. It's usually  
12       not necessary. I don't recall the actual year that I  
13       believe it was the ARRA established a time when a house  
14       can be weatherized if its weatherization was done prior to  
15       a certain year, but I don't think that -- it's not five to  
16       ten years.

17                       MS. KLIETHERMES: Thank you.

18                       JUDGE DIPPELL: Is there any further  
19       cross-examination from Public Counsel?

20                       MR. POSTON: Yes, thank you.

21       RE CROSS-EXAMINATION BY MR. POSTON:

22              Q.       Will Empire's customers be eligible for the  
23       new energy efficiency appliance rebate programs overseen  
24       by DNR and funded by ARRA?

25              A.       Yes, they will.

1           Q.       And does this appliance rebate program  
2 include rebates for gas water heaters and gas furnaces?

3           A.       I have not seen the final plan for that  
4 program, but I do believe they are included in the list of  
5 possible appliances, yes.

6           Q.       And do you know what the statewide funding  
7 level is for these appliance rebates?

8           A.       I don't recall off the top of my head.

9           Q.       Do you know if it's in the tens of millions  
10 of dollars that are coming to the State?

11          A.       That's -- yeah, I believe it is in that  
12 level.

13                   MR. POSTON: Thank you. That's all.

14                   JUDGE DIPPELL: Is there anything further  
15 from Empire?

16                   MS. CARTER: No, thank you.

17                   JUDGE DIPPELL: Any redirect?

18                   MS. MANGELSDORF: Just a few questions.

19 REDIRECT EXAMINATION BY MS. MANGELSDORF:

20          Q.       Would you say that the federal stimulus is  
21 a guaranteed source of funding in the future?

22          A.       No, it is not.

23          Q.       And you said that it's -- the federal  
24 stimulus is meant to supplement, not supplant?

25          A.       That's correct.

1           Q.       So when this federal stimulus money is  
2   gone, it's up to the utilities to pick up where these  
3   monies left off?

4           A.       We will be back to the same situation we  
5   were in prior to the stimulus package.

6                   MS. MANGELSDORF:   Okay.   Thank you.

7                   JUDGE DIPPELL:   Thank you.   Mr. Chairman,  
8   let me ask you, Ms. Wolfe said something about being able  
9   to provide you an answer to your question on the amount of  
10   funding going to Empire's gas area.   Is that information  
11   that you were wanting to seek to be provided?

12                  CHAIRMAN CLAYTON:   I don't know if I want  
13   to ask for any additional information that will cloud the  
14   record or not give parties an opportunity to respond.   So  
15   I'll just withdraw any vague request that I made.   I think  
16   it's an important piece of information and I'm surprised  
17   that that's not part of this discussion, but I don't want  
18   to request any additional information that would require  
19   responses and things like that.   I don't think that would  
20   be helpful.

21                  JUDGE DIPPELL:   Ms. Kliethermes, you wanted  
22   to make a statement?

23                  MS. KLIETHERMES:   I think Staff would be  
24   willing to allow that information in as a late-filed  
25   exhibit without any objection.

1 JUDGE DIPPELL: But what about the agency  
2 itself, DNR?

3 MS. WOLFE: I can think of no reason why it  
4 would be a problem to provide it. I believe it is  
5 available because those grants have been issued. My only  
6 concern -- sorry. I'm blathering. I think it's public  
7 record. I'm not sure. I will need to check with that as  
8 far as what manner to file it.

9 JUDGE DIPPELL: I hate to leave the record  
10 open for a late-filed exhibit that the Chairman himself  
11 has not specifically requested. So I guess if the  
12 Chairman doesn't want that information filed on a late-  
13 filed basis, then I won't request it at this time.

14 Is there anything further for Ms. Wolfe?

15 CHAIRMAN CLAYTON: Not from me.

16 JUDGE DIPPELL: All right. Thank you,  
17 then. Hearing nothing further, I guess that concludes  
18 your testimony. You may be excused.

19 Mr. Chairman, did you have something else?

20 CHAIRMAN CLAYTON: Judge, yeah. Before  
21 you -- before you close the whole session, I think  
22 Ms. Wolfe was the last witness for today, correct?

23 JUDGE DIPPELL: Yes, that's correct.

24 CHAIRMAN CLAYTON: I did have a request of  
25 Staff, and I think this -- I'm hoping this is more along

1 the level of a legal question or a procedural question,  
2 and certainly parties can chime in with what I'm asking  
3 for, whether it's appropriate or not. And I don't know if  
4 now's the right time to ask for that or if you had other  
5 things that you wanted to do.

6 JUDGE DIPPELL: No. This is fine. Go  
7 ahead.

8 CHAIRMAN CLAYTON: Basically, I need Staff  
9 to help me understand the implications of how we decide  
10 this case. Let's say we set a goal at whatever the figure  
11 is. How does this regulatory asset account work? Do we  
12 need to set a cap? Do we set a goal? What happens if  
13 Empire wanted to exceed the amount that we discuss in the  
14 case? Does that mean they're barred from seeking recovery  
15 or rate basing the excess above that amount in future  
16 cases?

17 So I guess what I'm asking is, I'd like  
18 Staff to explain how the Commission may design its order  
19 to address this funding level with an eye towards  
20 flexibility and coordinated with the advisory  
21 collaborative that's being set up, and addressing the  
22 issue of if the collaborative wishes to increase a funding  
23 level, set a goal, maybe set a goal that is not connected  
24 with a dollar amount and to coordinate with ARRA funds  
25 that we fully have the ability to address an additional

1 funding level in this case but once we have already issued  
2 the report and order.

3 Do we have the flexibility to come back and  
4 address this outside of a rate case in working with this  
5 collaborative is what I'm asking? If the collaborative  
6 were to come back and say we want to increase spending by  
7 \$100,000 to improve a certain program or connect these  
8 funds on with the ARRA funds, does the Commission have the  
9 power to do that after the Report and Order is already  
10 issued, say 12 months from now?

11 JUDGE DIPPELL: Ms. Kliethermes, you wanted  
12 to address something?

13 MS. KLIETHERMES: I thought he was asking  
14 me a question.

15 JUDGE DIPPELL: Well, he is. Go ahead.

16 MS. KLIETHERMES: My --

17 CHAIRMAN CLAYTON: I mean, I'm not asking  
18 necessarily right now to answer that. I was thinking more  
19 in line of getting a filing where the Staff files and  
20 says, you know, as you set a policy in the Report and  
21 Order, how would we -- is there an appropriate way to  
22 build in some flexibility to increase funding levels,  
23 decrease funding levels? How does that occur outside of a  
24 rate case? Once the Report and Order is done, final,  
25 everything else, but say six months from now we want to

1 make a change. Do we have the ability to do that or not?  
2 Can we put language in the Report and Order that grants us  
3 that ability to have flexibility?

4 MS. KLIETHERMES: Well, I think I can  
5 address that orally if that will suffice with the caveat  
6 that you'll let me correct it later in a writing if I  
7 screw it up too badly.

8 CHAIRMAN CLAYTON: Well, that's what I'm  
9 saying. I mean, I think there's an accounting side to  
10 this and I think there's a legal side to it. That's why I  
11 was thinking it may be easier to have it in writing and  
12 then parties can respond. Go ahead. Take a shot.

13 MS. KLIETHERMES: I think essentially what  
14 the stipulation does that we're asking you to approve is  
15 it states what the parties' position will be in the next  
16 rate case, and those signatory parties have taken the  
17 position that an AAO to recover the amount specified would  
18 be something that they would support. It would be up to  
19 the Commission at the time of the next rate case to  
20 determine whether or not that will happen. the signatory  
21 parties don't have the power to decide what's going to  
22 happen in a future rate case.

23 That said, if before another rate case  
24 comes along a decision is made to spend greater amounts of  
25 money, I believe that the company would be free at that

1 time to -- and I shouldn't say greater amounts of money,  
2 but I should say amounts of money not at all contemplated  
3 in the stipulation, if there is such a thing, which it's  
4 kind of awkward because the amount in the stipulation is  
5 not a cap, but --

6 CHAIRMAN CLAYTON: It's not a what?

7 MS. KLIETHERMES: It's not a cap.

8 CHAIRMAN CLAYTON: It's not a cap?

9 MS. KLIETHERMES: No. That's the budgeted  
10 amount. It's not saying that the company can't spend more  
11 than that. It's saying that's the amount that we  
12 anticipate the company will not spend in excess of, but I  
13 don't think the signatories view it as a cap.

14 CHAIRMAN CLAYTON: Well, what is it, then,  
15 if it's not a cap? You're saying that, well, Staff isn't  
16 going to be in favor of spending any more than that, but  
17 it's not a cap.

18 MS. KLIETHERMES: Staff doesn't think that  
19 it's likely, it's possible that the company will be able  
20 to prudently spend more than that. Staff anticipates that  
21 if the company spends significantly in excess of that,  
22 that a portion of that would likely be imprudent.

23 CHAIRMAN CLAYTON: Without knowing how it's  
24 spending, you're making that arbitrary assertion?

25 MS. KLIETHERMES: The reason I'm so

1   hesitant in answering this is that we did not view that  
2   the company would be prohibited from spending more than  
3   that so much as I think we viewed that we would certainly  
4   support at the time of this stipulation the company  
5   spending up to that amount so long as it is prudent. In  
6   our DSM expert's opinion, it is very much not within the  
7   realm of possibility that they would be spending more than  
8   that that it would be prudent expenditures. Is that at  
9   all helpful?

10                   CHAIRMAN CLAYTON: Well, yeah. I  
11   understand that. I'm asking for -- maybe this is  
12   inappropriate. I'm trying to find a way -- is there a  
13   mechanism if in the collaborative -- does Staff have the  
14   ability to change its mind? Let's say we set this thing  
15   at 217,000. Six months from now the collaborative says,  
16   you know, we found another really good program. It's  
17   successful. We want to spend an extra 50. Does Staff  
18   have the ability on its own to increase that amount?

19                   MS. KLIETHERMES: My view at this time  
20   would be that as long as the amount would be prudent, it  
21   would be included in that AAO that we would support in the  
22   next case. If out of caution the company wished to get a  
23   separate AAO specifically for the amounts in excess of the  
24   budgeted amount, I don't know that we would -- could say  
25   right now whether we would or would not support that.

1                   CHAIRMAN CLAYTON:   Okay.   And then I need  
2   some -- and this is kind of an internal thing, but  
3   Mr. Kind suggested that we need to have, it seems, a  
4   better coordinated effort at tracking expenditures of  
5   energy efficiency funds, and I wanted to hear Staff's  
6   perspective on how today it addresses the audit function  
7   or the monitoring function of expenditures in these  
8   programs and whether or not we need to take a  
9   reorganization or a new look at how expenditures in these  
10   areas are audited, you know, after the fact for demand  
11   side management programs.

12                  MS. KLIETHERMES:   Well, let me tell you  
13   what I think.   No.   I believe the people who you would  
14   need to answer that question I don't think are probably in  
15   the room right now.

16                  CHAIRMAN CLAYTON:   That's why I suggested  
17   that you-all do a written response.   I don't mean to dump  
18   all this on you.

19                  JUDGE DIPPELL:   Mr. Chairman, let me just  
20   interrupt there for a minute.   Would that be the kind of  
21   thing that you would really want filed in this particular  
22   case or is that the kind of, you know, report that you  
23   might want Staff to bring back to the Commission as a  
24   whole in agenda or --

25                  CHAIRMAN CLAYTON:   I think I'd need

1 something for this case, because there's been an  
2 allegation that any dollars spent over 217,000 is  
3 imprudent. There's no way to track the expenditures. So  
4 I want to hear from Staff how we can improve our  
5 monitoring and tracking if that is the case.

6 MS. KLIETHERMES: Chairman, if you're  
7 basing that allegation on something I've said, then I  
8 misspoke. I don't believe we would necessarily view  
9 anything over that amount as imprudent.

10 CHAIRMAN CLAYTON: Okay. Well, I'd like --  
11 I mean, I'd like Staff to respond to that assertion --

12 MS. KLIETHERMES: Certainly.

13 CHAIRMAN CLAYTON: -- that Staff is not  
14 monitoring these, whatever the allegation was.

15 JUDGE DIPPELL: All right, then. Is there  
16 anything else, any other information that you needed?

17 CHAIRMAN CLAYTON: That's everything.

18 JUDGE DIPPELL: Yeah. I believe that those  
19 questions that the Chairman had can easily be addressed in  
20 your briefs. I was wondering what you guys were going to  
21 brief and now I know.

22 Are there any -- are there any other items  
23 that need to be brought up on the record? Ms. Carter?

24 MS. CARTER: I don't know if it's  
25 necessarily needed on the record. We've asked for an

1 effective date of April 1, and I believe that's slightly  
2 different than the normal 11-month schedule. Just  
3 something to plan for.

4 JUDGE DIPPELL: We will definitely keep  
5 that in mind.

6 MS. CARTER: And that is part of the  
7 parties' stipulation that can be treated as unanimous.

8 JUDGE DIPPELL: The only thing that would  
9 interfere with that is the length of time that you will  
10 need for your briefs, so --

11 CHAIRMAN CLAYTON: Judge, can I ask another  
12 question?

13 JUDGE DIPPELL: Yes.

14 CHAIRMAN CLAYTON: First of all, is this  
15 stipulation severable, or is the condition in here if we  
16 don't accept everything that's within it, that the whole  
17 thing comes undone?

18 MS. CARTER: We've included the standard  
19 language that's in every stipulation that I've been a part  
20 of here that has that it needs to be accepted in total  
21 primarily because it's a black box type of settlement with  
22 the revenue requirement stated in it.

23 CHAIRMAN CLAYTON: Yeah. The only issue to  
24 be briefed is this demand side management issue, but it  
25 seems to me that either we have to agree with Staff,

1 Empire, Public Counsel or, if we don't, then it unwinds  
2 the stipulation.

3 MS. CARTER: Commissioner, the funding  
4 issue is not in what I'm going to call the main  
5 stipulation. It's in a separate stipulation that's just  
6 taken as our position. What's in the main stipulation is  
7 how the money will be handled, how Empire will be  
8 compensated for what it spends on DSM programs, and that's  
9 for the regulatory asset, and that makes it revenue  
10 neutral in terms of what the target or goal or funding  
11 level --

12 CHAIRMAN CLAYTON: Yeah. It would be  
13 revenue neutral because you're not -- you're not building  
14 anything in for rates anyway. So -- and I mean, I don't  
15 want to prejudge or anything like this, but if we set a  
16 different dollar amount, it doesn't cause us to have to go  
17 to hearing on all the other issues, correct?

18 JUDGE DIPPELL: That's correct.

19 CHAIRMAN CLAYTON: Okay. Good. Good.

20 JUDGE DIPPELL: In fact, I believe you can  
21 take up the stipulations at any time and resolve the DSM  
22 funding issue that is contested pretty much at any time  
23 before April 1st.

24 MS. CARTER: In fact, that would be helpful  
25 for the parties if you took up the two stipulations that

1 can be treated as unanimous in advance so we'd be assured  
2 that we don't need to come back here again.

3 JUDGE DIPPELL: Did you have any other  
4 questions, Mr. Chairman?

5 CHAIRMAN CLAYTON: Well, I was going to  
6 say, Judge, why don't you notice up for the next agenda  
7 the stipulations and we can have that conversation and  
8 give the parties guidance on that.

9 And then I would suggest a relatively short  
10 turnaround. I mean, I don't know how -- I don't know how  
11 much briefing is necessary. You-all have already filed  
12 position statements on these. I'm not sure how much  
13 additional material is out there, but I would guess that a  
14 short turnaround would be helpful so the Commission can  
15 get to the merits of the whole deal and move on.

16 JUDGE DIPPELL: Yes, I agree, and that's --  
17 I think the last thing we have to take up, then, is  
18 timetable for briefing. At this point I have not  
19 expedited this particular transcript. Would you-all like  
20 me to check with the court reporter on getting that in a  
21 shorter turnaround? I'm getting one head nodding no and  
22 one nodding yes.

23 MS. KLIETHERMES: To be honest, Judge, my  
24 concern is that I did not adequately take notes on the  
25 Chairman's questions. I don't need the expedited if I can

1 get those restated for my own clarity.

2 JUDGE DIPPELL: I believe we can perhaps  
3 persuade the court reporter to give us a page or two on an  
4 expedited basis. We'll have her reread those for us when  
5 we go off the record.

6 CHAIRMAN CLAYTON: I'll tell you what,  
7 Judge, I think my questions are answered on the three  
8 things that I brought up. I think I'm satisfied with what  
9 answers that were given. So I don't think I need anything  
10 additionally.

11 JUDGE DIPPELL: Okay. All right, then.  
12 Well, let's talk briefing schedule then. There is one  
13 holiday coming up this month, and how much time do you  
14 need? Twenty days? I'm seeing someone say they don't  
15 need that much time.

16 MR. POSTON: That would be more than  
17 sufficient.

18 CHAIRMAN CLAYTON: I was thinking, we've  
19 got one issue here. Most of the stuff's already written.  
20 I was thinking -- I mean, it's up to you-all on how you do  
21 this. I was just -- you know, with the partial  
22 stipulations out there, you know, there's not a great  
23 amount of complexity here. So let's not delay things  
24 unnecessarily.

25 MR. POSTON: I'd say like a week to ten

1 days after the transcript comes out.

2 JUDGE DIPPELL: Well, if the transcript  
3 isn't expedited, though, it isn't going to come out for  
4 two weeks.

5 MS. CARTER: I think 20 days is wonderful,  
6 then.

7 JUDGE DIPPELL: How about -- I'm looking at  
8 the calendar. Can we say January 29th, which is the last  
9 Friday of the month, for briefs? Or actually maybe even  
10 shorten it a day, make it the 28th. All right. I will  
11 send out a notice setting that date.

12 MS. CARTER: Judge, do you want just one  
13 round?

14 JUDGE DIPPELL: Yes, just one round of  
15 briefs. And the Commission will probably be taking up the  
16 stipulations before that.

17 Is there anything else that needs to go on  
18 the record?

19 (No response.)

20 JUDGE DIPPELL: All right. Then I believe  
21 that concludes this hearing and we can adjourn. Off the  
22 record.

23 WHEREUPON, the hearing of this case was  
24 concluded.

25

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Ensrud	24	130

## 1 C E R T I F I C A T E

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

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, do hereby certify that I was personally present  
8 at the proceedings had in the above-entitled cause at the  
9 time and place set forth in the caption sheet thereof;  
10 that I then and there took down in Stenotype the  
11 proceedings had; and that the foregoing is a full, true  
12 and correct transcript of such Stenotype notes so made at  
13 such time and place.

14 Given at my office in the City of  
15 Jefferson, County of Cole, State of Missouri.

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17 Kellene K. Feddersen, RPR, CSR, CCR  
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