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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
Hearing  
June 8, 2016  
Jefferson City, Missouri  
Volume 6

In the Matter of The )  
Empire District Electric )  
Company for Authority to )  
File Tariffs Increasing ) Case No. ER-2016-0023  
Rates for Electric Service )  
Provided to Customers in )  
The Company's Missouri )  
Service Area )

KIM S. BURTON, Presiding,  
REGULATORY LAW JUDGE.

DANIEL Y HALL, Chairman  
STEPHEN M. STOLL,  
WILLIAM P. KENNEY,  
SCOTT T. RUPP,  
MAIDA J. COLEMAN,  
COMMISSIONERS.

REPORTED BY:  
KELLENE K. FEDDERSEN, CSR, RPR, CCR NO. 838  
MIDWEST LITIGATION SERVICES

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

2 (WHEREUPON, the hearing began at  
3 9:37 a.m.)

4 JUDGE BURTON: The time is now  
5 9:37 a.m. on June 8, 2016. Let's go ahead and go  
6 on the record in the matter of the Empire District  
7 Electric Company's request for authority to  
8 implement a general rate increase for electric  
9 service, File No. ER-2016-0023.

10 This is the continuation of the  
11 evidentiary hearing that began last week, and the  
12 Commission has set this date specifically just to  
13 hear some statements from the parties as well as  
14 perhaps from any witnesses that might be needed for  
15 some clarification.

16 At this point I understand that all  
17 parties have provided their addresses and entered  
18 their appearance on the record, but for  
19 clarification of who's actually present and  
20 participating in person or telephonically, I would  
21 ask that we redo that now. So on behalf of the  
22 Empire District Electric Company?

23 MS. CARTER: Diana Carter for the  
24 Empire District Electric Company, and Scott Keith  
25 is on the telephone as a witness for Empire.

1 JUDGE BURTON: Thank you. On behalf  
2 of the Staff of the Missouri Public Service  
3 Commission?

4 MR. THOMPSON: Thank you, Judge.  
5 Kevin Thompson, Jacob Westen, Nicole Mers, Jamie  
6 Myers for the Staff of the Missouri Public Service  
7 Commission. There are various Staff technical  
8 experts in the room as well.

9 JUDGE BURTON: Thank you. On behalf  
10 of the Office of the Public Counsel?

11 MS. MAYFIELD: Your Honor, good  
12 morning. Cydney Mayfield for Office of the Public  
13 Counsel. And our witness Geoff Marke, as  
14 previously noted, is out on bereavement leave. So  
15 if the Commissioners would like to address any  
16 questions to Dr. Marke, I will be able to at least  
17 e-mail those to him and hopefully we can get a  
18 response, but he is not able to be here in person  
19 today.

20 JUDGE BURTON: On behalf of the City  
21 of Joplin?

22 MR. COMLEY: Marc Ellinger and  
23 Stephanie Bell on behalf of the City of Joplin.  
24 Our witness Leslie Haase is not available today due  
25 to prior events in Joplin. However, I'm not sure

1 that there would be any questions presented to her  
2 regarding this particular discussion.

3 JUDGE BURTON: Midwest Energy Users  
4 Association?

5 MR. CONRAD: Stuart W. Conrad, and I  
6 have previously provided my address and phone to  
7 the reporter in an earlier process. If you might,  
8 when the appropriate time comes, I do have a  
9 statement.

10 JUDGE BURTON: All right. Thank you.  
11 Midwest Energy Consumers Group?

12 MR. WOODSMALL: David Woodsmall on  
13 behalf of MECG. I would note MECG filed testimony  
14 of three witnesses that were out of town. Based  
15 upon some communications yesterday, it was my  
16 understanding, maybe inappropriately, that the  
17 Commissioners had questions for the attorneys, so I  
18 told them not to come. But I think I can probably  
19 answer all the questions about what's in our  
20 testimony, and if we want to take it off line, I  
21 can get answers, too.

22 JUDGE BURTON: Thank you. And on  
23 behalf of the Missouri Division of Energy?

24 MR. ANTAL: On behalf of the Division  
25 of Energy, Alex Antal. We also have with us today

1 Mr. Martin Hyman who filed testimony in this case.

2 JUDGE BURTON: Thank you. I would  
3 ask everyone present to please remember to turn  
4 your electric devices on silent, including your  
5 phones or iPads.

6 Also, I understand that we've had a  
7 little bit of -- some concerns, let's say, because  
8 we are at unknown territories right now. This is  
9 part of a hearing for a rate case request where the  
10 parties have stated that they've reached an  
11 agreement of all the issues and it's a unanimous  
12 agreement.

13 However, nothing is drafted, written  
14 and actually presented to the Commission for its  
15 approval. There has been discussion about having a  
16 hearing or at least a presentation by the parties  
17 on the final Stipulation & Agreement once it is  
18 submitted to the Commission. That would be on June  
19 29th.

20 At this point, I think we just wanted  
21 to get some clarification on behalf of the  
22 Commission about some policy perspectives and  
23 clarification on some certain issues that might be  
24 in the settlement agreement and might impact the  
25 Commission's decisions.

1                   So I realize that some parties have  
2   expressed and I believe all the parties have  
3   expressed concerns that this is all part of the  
4   highly confidential agreement that is being  
5   discussed, and if we need to go in camera to  
6   address any of those issues that are dealing with  
7   particulars, I'm more than welcome to do that.

8                   But I also ask the parties to be  
9   considerate of those that are watching and  
10   observing, and we want to make this an open  
11   procedure. So if it is just a question of tell us  
12   what your perspective is on this general issue from  
13   a policy perspective, please let me know if we can  
14   have that open to the public and available.

15                  Now, at this point I believe,  
16   Mr. Conrad, you wanted to add a statement?

17                  MR. CONRAD: Yes, probably prefaced  
18   by a question. A document was submitted yesterday.  
19   That submission was without our permission. Has  
20   that document been provided to the Commissioners?

21                  JUDGE BURTON: Yes, it has.

22                  MR. CONRAD: That deepens my concern  
23   because, frankly, you are correct that this is  
24   uncharted territory. A settlement takes some  
25   period of time to draft. That document contains



1 none of the protected -- protective language that  
2 we would insist be there. It was, as I mentioned,  
3 submitted without our permission, and that's -- I  
4 think that's all -- I'm concerned -- I'll go one  
5 further.

6 I am concerned that a document that  
7 you have acknowledged has been submitted to the  
8 Commissioners says A in a final settlement  
9 document, when it is prepared and signed and  
10 properly submitted says B and somebody on the panel  
11 says, why doesn't it say A? That's my concern.

12 And that, unfortunately, has  
13 happened. Already there have been -- has been at  
14 least one unilateral change to the document prior  
15 to its submission to you. I'll at an appropriate  
16 time, if it's more than necessary, speak up.

17 I apologize for not being there. I  
18 got word of this continuation of the hearing  
19 yesterday afternoon late, and too late to turn  
20 around and come back to Jefferson City.

21 So one question that I will have, I  
22 guess, when we get through with whatever activity  
23 we have for today, what about tomorrow? What about  
24 Friday?

25 JUDGE BURTON: And I think we were

1 going to be addressing that at the conclusion of  
2 today, and we'll see how that goes. I do note we  
3 understand your concerns, and the Commission is  
4 aware that anything that was provided or reviewed  
5 is highly confidential and not a formal settlement.  
6 And I think if we just proceed through this  
7 process --

8 MR. CONRAD: It is on the record, and  
9 you have indicated that we are on the record now,  
10 and as far as I'm aware, no -- no repealer has been  
11 provided to the Constitutional provision that  
12 requires a final administrative order to be  
13 supported by competent and substantial evidence on  
14 the whole record. And I'm not aware of any change  
15 that's been made to that provision.

16 JUDGE BURTON: And I don't believe  
17 that we are actually at that stage yet. The  
18 Commission set these dates, last week and this  
19 week, to review testimony and the positions of the  
20 parties on the application for a general rate  
21 increase. The parties are aware that the  
22 Commission can review any potential agreement once  
23 it's submitted.

24 MR. CONRAD: That's right, when it's  
25 submitted properly.

1 JUDGE BURTON: That's correct. At  
2 that point the Commission will consider that. That  
3 does not, however, prevent the Commission from  
4 asking the questions they might have about the  
5 issues, and if it is something that goes into  
6 highly confidential issues or positions, we can  
7 address it at that time by going in camera, and you  
8 can state any objections you might have,  
9 Mr. Conrad.

10 Now, at this point I would ask,  
11 because we do have people who are participating  
12 through the phone for this hearing, that everyone  
13 who is participating identify for the record their  
14 name just so that we can identify who might not  
15 have access to highly confidential information if  
16 it comes up.

17 Mr. Conrad, we already know that  
18 you're on the line and Mr. Keith, I believe, from  
19 Empire.

20 MR. KEITH: That's correct. Scott  
21 Keith, Empire.

22 JUDGE BURTON: Is there anyone else  
23 on the phone line?

24 MR. SWEAT: Hi. This is Charlie  
25 Sweat, a representative of Magnatar Capital. We're

1 not here today speaking, but we are just  
2 participants in the call.

3 MR. POLSON: Jim Polson, Bloomberg  
4 News.

5 JUDGE BURTON: Okay. Mr. Sweat and  
6 Mr. Polson, I hope you would understand that we  
7 would ask that you not actually participate on this  
8 phone conversation because I believe that I will  
9 hear a motion very shortly objecting to your  
10 participation with highly confidential information.

11 MR. WOODSMALL: Well, to be clear  
12 what participation means, not only not speaking but  
13 not hearing, just being off the line completely.

14 MR. SWEAT: To be clear, this is  
15 Charlie Sweat with Magnetar. We're not wanting to  
16 receive any non-public information. So if that's  
17 going to be revealed on this call, we need to log  
18 off.

19 MR. POLSON: With all due respect,  
20 I'd rather do it after I get told to by an order.

21 JUDGE BURTON: Mr. Polson, this is  
22 the judge.

23 MR. POLSON: Yes, Judge.

24 JUDGE BURTON: And this line is going  
25 to be designated for parties, their witnesses or

1 their attorneys. So at this time I'd ask that you  
2 disconnect from the phone line.

3 MR. POLSON: Thank you, Judge. I  
4 will do so.

5 JUDGE BURTON: To clarify, would all  
6 parties who are participating in this hearing  
7 through the phone line please identify themselves.

8 MR. CONRAD: Stu Conrad.

9 MR. KEITH: Scott Keith.

10 JUDGE BURTON: Okay. Thank you.  
11 Now, we are still open and available for access to  
12 the viewing public. At this point I would remind  
13 the Commission that any information that you're  
14 going to be hearing today is not part of the final  
15 settlement or stipulation that is being submitted  
16 for approval by the Commission, and that we are  
17 looking at a potential date of the June 29th  
18 true-up date for any questions the Commission might  
19 have about that potential settlement if it is  
20 submitted.

21 MR. WOODSMALL: And taking it just  
22 one step further, I've never seen it happen, but it  
23 can happen that going from this to an executed  
24 settlement may fall apart. In that case we have to  
25 have a hearing. So anything that's said today is

1 not competent and substantial evidence, so you  
2 can't rely upon it. That said, I want to give you  
3 all the information we can, but you just can't rely  
4 upon it if things fall apart.

5 JUDGE BURTON: That's noted. And  
6 just to state this, I will ask the parties while  
7 we're on the record, what kind of time frame are we  
8 looking at for the parties to have something formal  
9 submitted to the Commission for review?

10 MS. CARTER: The goal is for the end  
11 of next week to have the stipulation drafted,  
12 circulated, and hopefully executed.

13 JUDGE BURTON: So by Friday, June  
14 17th?

15 MS. CARTER: Yes.

16 JUDGE BURTON: So that if we need to  
17 revise the schedule if something does fall apart  
18 and we need to actually hear testimony on the  
19 record of any still-disputed issues, we would be  
20 available the 27th through the July 1st dates,  
21 June 27th through the 1st of July?

22 MR. WOODSMALL: I think that's  
23 correct. And to give you some comfort in all this,  
24 if one thing falls apart, it doesn't mean  
25 everything's going to fall apart. I don't think

1 there's any way we're going back to a situation  
2 where we're trying every issue. So if things did  
3 fall apart, we will get it done within that time  
4 period.

5 JUDGE BURTON: That being said, all  
6 parties agree that they would be available for the  
7 dates that I just stated if we needed to have an  
8 evidentiary hearing?

9 MR. THOMPSON: Yes.

10 MS. MAYFIELD: Yes.

11 MR. ANTAL: Yes.

12 JUDGE BURTON: Now, at this point we  
13 are still on camera, and I know that there's been  
14 some questions that might come up about just policy  
15 issues. So I'm going to allow the Commission to  
16 ask any questions, and remind the Commission and  
17 remind the parties to let me know if we need to go  
18 in camera. We'll start with you, Chairman.

19 CHAIRMAN HALL: All right. Good  
20 morning. I do not intend to ask any questions  
21 about the pending settlement, about a submission of  
22 a term sheet or the ultimate settlement that the  
23 parties intend, currently intend to submit. I have  
24 some very specific questions about volumetric rate  
25 design, and those are the questions that I

1 intend -- those are the questions I have for  
2 attorneys and possibly for witnesses. I don't know  
3 what other Commissioners may have planned, but  
4 that's my intent.

5                   So what I'd like to start with, I  
6 guess, and Mr. Thompson, I'll look to you, and I --  
7 I think that you may want to put a witness on,  
8 because what I want to ask about is what are the  
9 policy reasons that have led us to having declining  
10 block rates currently part of tariffs? And it's my  
11 understanding that we also have similar declining  
12 block rates with our other electric utilities.

13                   MR. THOMPSON: I understand, sir.  
14 I'll find the appropriate witness and we'll put  
15 that witness on if the Judge will gave me --

16                   JUDGE BURTON: I would ask if there  
17 are any other parties that --

18                   MR. WOODSMALL: I don't have a  
19 witness. Just a clarification. When you talk  
20 about volumetric rate design, do you mean for all  
21 classes or just residential class or --

22                   CHAIRMAN HALL: All classes.

23                   MR. THOMPSON: Staff calls Sarah  
24 Kliethermes.

25                   MR. WOODSMALL: And, your Honor, is



1 it your intent that this is testimony, evidence on  
2 the record?

3 JUDGE BURTON: This is. So there  
4 will be an opportunity for any cross-examination  
5 based on questions from the Bench.

6 (Witness sworn.)

7 SARAH KLIETHERMES testified as follows:

8 JUDGE BURTON: Would you please state  
9 and spell your name for the record.

10 THE WITNESS: Sarah Kliethermes,  
11 S-a-r-a-h, K-l-i-e-t-h-e-r-m-e-s.

12 JUDGE BURTON: And would you please  
13 state your job position and employer.

14 THE WITNESS: Regulatory Economist 3,  
15 Missouri Public Service Commission Staff.

16 JUDGE BURTON: Thank you.

17 QUESTIONS BY CHAIRMAN HALL:

18 Q. Good morning.

19 A. Good morning.

20 Q. So my concern is the existence of  
21 declining block rates that are currently in place  
22 in Empire's tariffs, and I -- my understanding is  
23 that we've got level rates in the summer and  
24 declining rates in the winter for, I believe, all  
25 classes.

1 A. On an energy-alone basis --

2 Q. Correct.

3 A. -- I would agree with that for  
4 Empire, yes.

5 Q. What is the policy rationale for  
6 declining block rates?

7 A. And this would be where there's --

8 Q. With Empire. Not in general, but  
9 with Empire.

10 A. Sure. This is --

11 Q. And they may be the same. I don't  
12 know.

13 A. This would be where there's a need to  
14 step apart from residential and the other classes.  
15 The other classes, with the exception of  
16 commercial, do have demand charges. So there's a  
17 whole other slew of implications with how that cost  
18 causation plays out.

19 But simply addressing our  
20 residential, on page 33 of the CCOS report, we  
21 actually had a bit of this discussion, but I can  
22 attempt to summarize by saying that if your intent  
23 is to recover what are generally considered demand-  
24 related costs from the initial block during the  
25 winter and year round and -- sorry. If I can start

1 over. I completely botched that.

2           The intent is to not recover  
3 demand-related costs through the non-summer rates  
4 in the second block, is the general cost causation  
5 intent. I also include some discussion, and I do  
6 not recall the page of the testimony, that for  
7 Empire in particular in that they're moving towards  
8 a dual-peaking or winter-peaking setup, that it may  
9 make some sense to looking to seasonal rates. And  
10 in that case what we would be looking at is using  
11 flat blocks for the summer months and the winter  
12 months, and it would be the fall and spring seasons  
13 where you may still have declining block.

14           **Q.     Okay.**

15           A.     Does that very roundabout explanation  
16 help at all?

17           **Q.     I think you've explained mechanically**  
18 **why they are in place, but I still don't understand**  
19 **what is the -- what policy are you trying to**  
20 **further with those declining rates?**

21           A.     Well, we're --

22           **Q.     I mean, obviously inclining rates,**  
23 **inclining block rates, one purpose of that is to**  
24 **promote conservation. I understand that, based on**  
25 **written testimony provided by the Division of**

1 Energy, that at least one basis for having  
2 declining block rates was to address fairness  
3 issues related to customers, perhaps low-income  
4 customers that in the winter use a lot of  
5 electricity to heat their houses. And the concern  
6 that the Division set forth was that if we went to  
7 level, it would adversely impact those individuals.

8 I mean, what is the policy reasons  
9 from Staff's position that support having a  
10 declining block rate for residential customers?

11 A. Frankly, we think that needs to be  
12 examined, and that's why we recommended that Empire  
13 look at moving to seasonal rates where you would  
14 not have a declining block in the winter peak  
15 season.

16 Q. Well, we already have seasonal rates.

17 A. Well, we have summer and non-summer  
18 rates.

19 Q. Right.

20 A. What we recommend be examined is  
21 using peak summer month and peak winter month would  
22 have one set of rates, and then spring and fall  
23 would have a different set of rates. And that is  
24 an approach used in some jurisdictions.

25 Q. But that's a separate issue from

1    **whether to have level, inclining or declining**  
2    **within those seasons.**

3           A.    We would recommend going level or  
4    inclining with those seasons.

5           **Q.    Well, why not -- why not go to level**  
6    **in this rate case?**

7           A.    Frankly, we don't have enough  
8    information.

9           **Q.    What information do you need?  I**  
10   **understand why you would need information to put**  
11   **together inclining block rates.  That's clear.  I**  
12   **get that, which is exactly why in our last rate**  
13   **case with Missouri American the Commission ordered**  
14   **the parties to put together information on**  
15   **inclining block rates for the next rate case.**

16          A.    Sure.

17          **Q.    But we also ordered level block rates**  
18   **in that case.**

19          A.    The additional information I would  
20    want would be some of what you mentioned earlier  
21    with the customer impact associated with that.

22                    JUDGE BURTON:  Would you please hold  
23    on one moment?  Who just entered the phone line?

24                    (Inaudible.)

25                    THE REPORTER:  I didn't hear what he

1 said.

2 JUDGE BURTON: Could you please  
3 restate your name and who you represent?

4 MR. BANK: Yeah. This is Will Bank.  
5 I'm a utility analyst based in New York.

6 JUDGE BURTON: Okay. The Commission  
7 is not allowing parties to participate on the phone  
8 line who are not actually witnesses, attorneys or  
9 parties to this case, but you are allowed to  
10 observe it through the video stream that is on the  
11 Commission's website.

12 MR. BANK: Okay. Great.

13 JUDGE BURTON: And have you  
14 disconnected?

15 MR. CONRAD: Your Honor, I didn't  
16 hear two beeps? There we go.

17 THE WITNESS: I'm afraid I've lost my  
18 train of thought.

19 BY CHAIRMAN HALL:

20 Q. What additional information does  
21 Staff need before it could recommend implementing  
22 level block rates? And I believe you started off  
23 by saying customer impact.

24 A. Yes. We would be concerned with  
25 customer impact, and frankly, we would prefer

1 noticing up customer impact ahead of the rate case.  
2 That's not necessarily information we need. It's  
3 just as a practice something that we would like to  
4 give customers a heads up that it could be coming  
5 down the pike.

6                   And specifically information that I  
7 would want is a little bit more operating history  
8 in the SPP to see what these market prices are  
9 doing, if -- you know, how Empire's load,  
10 particularly residential load is relating to market  
11 prices. Just some more information on what that  
12 general market price is, because you can come to  
13 inclining block through two different ways. One of  
14 them is entirely cost based. One of them is  
15 entirely policy based.

16                   To be blunt, I think we prefer that  
17 the policy information comes from your side of the  
18 DS and the cost information come from our side. So  
19 certainly given guidance on the policy side, we can  
20 do more narrow research on that.

21                   Sorry. One other issue. And this is  
22 something that I -- I do not have any information  
23 on but is something we've been trying to look into.  
24 Other states that do have more inclining block, we  
25 do have inclining block for GMO/MPS in the summer.

1 But one of the things that I'm concerned about is  
2 the way that this would interact with the FAC and  
3 MEEIA and pre-MEEIA. I don't know that those are  
4 problems, but I do know those are things that we do  
5 differently in this state than other states may do  
6 them. And I would really want to make sure we're  
7 not causing some unintended consequences there.

8 **Q. I guess I understand that the last**  
9 **issue as it would relate to inclining block rates.**  
10 **I'm not quite sure I understand how those -- that**  
11 **last issue would relate to implementing level block**  
12 **rates.**

13 A. Well, it's a question of degrees. I  
14 mean, for Empire, their rates are further apart.  
15 It's .11 -- sorry, .12254 to .0996. So you've  
16 got -- you know, you've got a 3 cent or 2 cent  
17 wiggle room there, 2 and a half cent wiggle room.  
18 So the same implications that come up, you know,  
19 whether you're moving from flat to inclining or  
20 from declining to flat, we are talking about an  
21 almost 3 cent change there. So that's something we  
22 wouldn't want to -- we want to be -- have a good  
23 idea of what the impact would be before we do it.

24 **Q. So my understanding of your testimony**  
25 **is that Staff believes that there is a public**



1 policy rationale for moving towards level block  
2 rates, possibly inclining block rates, but the  
3 information is lacking for Staff to make that  
4 recommendation in this rate case?

5 A. Yes. And I mean, I -- that comment  
6 about what Staff would do, to be very clear, was me  
7 speaking for me. We do not have a Staff position  
8 on what we'll do in the next case because we don't  
9 have the next case yet. And I think time of use  
10 and varying seasons are also things that are worth  
11 looking at in that context.

12 Q. Do you have any comments on the  
13 concept raised by the Division of Energy that one  
14 way to minimize rate shock going towards level  
15 block rates would be to do -- I don't remember the  
16 exact percentages, but it would be a movement  
17 towards level block rates but not complete level  
18 block rates. Does that concept resonate with you?

19 A. Yes, and that's something that we've  
20 done in other cases is we are -- we are moving some  
21 of these declining blocks closer with other  
22 utilities as -- what we have looked at in exploring  
23 that relationship is the summer energy charge --  
24 I'm sorry, the summer cost of energy versus the  
25 non-summer cost of energy through the integrated

1 markets. That's something that would -- from a  
2 cost basis, that would be one of the main things I  
3 would look at in reducing or increasing that  
4 differential. Signs point towards reducing rather  
5 than increasing that differential, to be clear.

6 **Q. This is probably a question that**  
7 **you're going to say I don't know, but I'll ask it**  
8 **anyway. Are you aware of parties that would be**  
9 **opposed to that movement?**

10 A. I don't know. Do you mean in the --  
11 I'm sorry. Let me -- do you mean from -- to go to  
12 completely flat in this case or in general over the  
13 next case or over some period of time?

14 **Q. A movement in this case towards**  
15 **minimizing the differential, reducing.**

16 A. I suspect there would be parties that  
17 have a position on that. Depending on the severity  
18 of that move would be whether or not Staff has a  
19 position on that. I don't know that we would  
20 outright oppose it if it's something the Commission  
21 wants from a Staff perspective, but there are  
22 parties who may.

23 **Q. So I'll -- I'm going to ask the other**  
24 **parties present what their position on that**  
25 **might -- what their position is on that and I guess**

1 give the parties the opportunity to put witnesses  
2 on to explain that or just simply provide it to us  
3 as counsel for that party.

4 All right. So you mentioned right at  
5 the beginning that -- of your testimony that it was  
6 important to distinguish residential from  
7 nonresidential in this discussion.

8 A. Yes.

9 Q. Could you explain why that is?

10 A. Well, with the exception of  
11 commercial, the other -- and small heating, which  
12 is essentially a subset of commercial, the other  
13 classes have a billing demand comp-- I'm sorry, a  
14 demand component, both billing and facilities for  
15 the most part, and they generally also have an  
16 hours use rate design. There's a few of the larger  
17 classes that do not have the hours use. They still  
18 have the block design.

19 And then there is a class that has on  
20 peak and off peak and shoulder and non-shoulder  
21 rates. So if you're -- if you're using -- in my  
22 view, from a cost causation standpoint only,  
23 inclining and flat block rates are an imprecise  
24 tool to achieve ends that are better reached  
25 through time of use or demand billing. You're

1 trying to accomplish the same thing. You're trying  
2 to reduce excessive energy use.

3 That's not to say that there's a --  
4 you know, that inclining block are inherently bad  
5 in that respect. It's just that if what you're  
6 trying to do is to reduce inefficient energy use,  
7 there are more precise ways of getting there. And  
8 for commercial and industrial customers, that has  
9 typically been through demand billing.

10 CHAIRMAN HALL: I think -- I think  
11 that's all I have. I'll give other Commissioners  
12 an opportunity to ask any other questions. Then  
13 I'll -- then we'll go from there.

14 COMMISSIONER STOLL: I have no  
15 questions, your Honor. Thank you.

16 CHAIRMAN KENNEY: I have no  
17 questions. Thank you.

18 QUESTIONS BY COMMISSIONER RUPP:

19 Q. Good morning.

20 A. Good morning.

21 Q. Your comment just to the Chairman,  
22 you said there are other ways that are more  
23 efficient to achieve that goal. In your opinion,  
24 what are they?

25 A. Assuming that the metering technology

1 is there, in my opinion time of use is kind of the  
2 gold standard, if the metering technology is there  
3 and if the customers understand it.

4 COMMISSIONER RUPP: Thank you.

5 JUDGE BURTON: Any cross based on the  
6 questions from OPC?

7 CROSS-EXAMINATION BY MS. MAYFIELD:

8 Q. I'm going to try to articulate this.  
9 I don't have my expert with me, and I will not  
10 claim to be an expert on this. You made some  
11 statement about, on the flat block rates, a  
12 question directed by the Chairman, that this might  
13 impact low-income residential ratepayers, I  
14 believe. Do you have an opinion on whether or not  
15 moving to a flat block rate design in this case  
16 would impact low-income residential ratepayers?

17 A. I don't believe I spoke to class  
18 specifically -- or I'm sorry, economic class  
19 specifically, but yes, this would have an unequal  
20 impact on customers using over 600 kWh, which for  
21 Empire is -- the average customer usage is, I  
22 believe, 1,086 kWh.

23 Q. Is there a particular season, whether  
24 it would be fall, winter, summer or spring, that  
25 that differential would be most prominent?

1           A.     Moving to flat or inclining block  
2 would have a disproportionate impact on customers  
3 who either use space heat or who have fairly  
4 inefficient heating that requires a lot of HVAC to  
5 circulate the alternate heating source.

6           **Q.     Are there a number or significant**  
7 **number of space heating customers in Empire's**  
8 **service territory?**

9           A.     Based on their load shape year round,  
10 it is my understanding that Empire has for the  
11 state of Missouri an above average percentage of  
12 customers or an above average volume of electric  
13 use that is related to either electric space  
14 heating or HVAC circulation of other heating  
15 sources.

16                   MS. MAYFIELD: Thank you. No further  
17 questions, your Honor.

18                   JUDGE BURTON: Division of Energy.

19                   MR. ANTAL: No questions. Thanks.

20                   JUDGE BURTON: Commissioner Rupp has  
21 a question.

22                   QUESTIONS BY COMMISSIONER RUPP:

23           **Q.     This is an education question for**  
24 **myself. Explain the difference between demand**  
25 **based pricing and dynamic pricing, if there is one.**

1           A.     Okay.  There's demand base -- people  
2 will call lots of things both of those terms.  
3 Those are terms you tend to hear at conventions and  
4 not in cases.  Demand-based pricing can refer to  
5 just the multi-part rate where you do have a demand  
6 charge.  Dynamic pricing tends to refer to what is  
7 called real-time pricing as opposed to time of use  
8 pricing, although dynamic pricing can refer to  
9 either time of use or real-time pricing.

10                   The short version on that is time of  
11 use is where you have one or two or three sets of  
12 rates, and depending on the time of day and the day  
13 of the week you get charged one or the other, and  
14 you know what they are in advance.  Dynamic pricing  
15 or real-time pricing tends to be where those prices  
16 are based on market and they are whatever they are,  
17 kind of like surge pricing on Uber or something.

18           **Q.     Thank you.  I was trying to figure**  
19 **out the difference between the two.**

20                   JUDGE BURTON:  MEUA?

21                   MR. CONRAD:  I don't have any  
22 questions for this witness on this issue on her --  
23 on her testimony before the Commission.

24                   JUDGE BURTON:  Thank you.  City of  
25 Joplin?

1 MR. ELLINGER: No questions, Judge.

2 JUDGE BURTON: MECG?

3 MR. WOODSMALL: No questions.

4 JUDGE BURTON: Empire?

5 MS. CARTER: I do not have any  
6 questions but would very much appreciate the  
7 opportunity to make just a brief statement when the  
8 time is right for that and offer Scott Keith as a  
9 witness.

10 JUDGE BURTON: Staff?

11 MR. THOMPSON: I have no questions.

12 JUDGE BURTON: Thank you. You're  
13 excused. Now Empire's counsel has indicated that  
14 she would like to offer some statements and offer  
15 Mr. Keith for testimony. Are there any other  
16 parties that would like to offer a witness or  
17 provide statements to the Commission?

18 MR. WOODSMALL: Not a witness, your  
19 Honor, but maybe just a couple really brief  
20 statements.

21 JUDGE BURTON: Anyone else?

22 MR. ANTAL: The Division of Energy  
23 will make Mr. Hyman available if the Commissioners  
24 have questions on -- on any questions about  
25 volumetric rates, but he doesn't need to appear if



1 there's no questions.

2 JUDGE BURTON: Ms. Carter, would you  
3 like to go next?

4 MS. CARTER: Thank you. We're in a  
5 different situation here than with water usage, and  
6 we need to be careful to balance the interests of  
7 energy efficiency with affordability for the  
8 heating customers in Empire's territory.

9 In terms of the block rates, we're  
10 just talking about one step of around 2 to 3 cents.  
11 As Ms. Kliethermes said, it's at the 600 kilowatt  
12 mark, and the average usage is around 1,000. It's  
13 just a 2 to 3 cent discount at that one break,  
14 which puts the effective rate per kilowatt hour  
15 between 9 and 11 cents, which is still in excess of  
16 avoided costs and should in no way encourage  
17 inefficient consumption at that level.

18 From Empire's standpoint, this helps  
19 their heating customers and is necessary for  
20 affordability purposes particularly for those  
21 heating customers, many of which are low income,  
22 when there is extreme weather. This helps with  
23 affordability when there's a spike in the weather.  
24 No matter how much you want to conserve energy,  
25 when it's very cold, you need your heat. And no

1 matter what your desires are on energy efficiency,  
2 we want people to be able to be afford heat in the  
3 winter, especially when there's unexpected cold  
4 weather, and that's what this is designed to do.

5 Empire's blocks have changed over  
6 time, is my understanding. It's just that one step  
7 at 600 kilowatt hours at this time. And Mr. Keith  
8 is very familiar with this and fairly passionate, I  
9 think, about the customer protection standpoint on  
10 why that's there at this time.

11 COMMISSIONER KENNEY: Good morning.  
12 In cities like Joplin where they have -- do a  
13 majority of Empire's customers in those areas use  
14 natural gas for heat source and more the electrical  
15 use for heat source is usually in the rural areas  
16 or out source cities?

17 MS. CARTER: I do not know how that  
18 divides up within the city of Joplin versus the  
19 rest of Empire's territory. Mr. Keith might have  
20 information for you.

21 COMMISSIONER KENNEY: I just know the  
22 more the rural areas have to rely more on propane  
23 or electric for heat sources.

24 MS. CARTER: Yes.

25 COMMISSIONER KENNEY: But cities

1 usually have natural gas. It's more of -- I was  
2 just curious if you had the numbers. Thank you.

3 COMMISSIONER RUPP: So what I'm  
4 hearing you saying is that you like the way that  
5 your tariff is designed because you believe it  
6 helps the low-income people in the winter?

7 MS. CARTER: It helps heating  
8 customers.

9 COMMISSIONER RUPP: Helps heating  
10 customers. And then explain to me your position on  
11 the low-income rate tariff and providing low-income  
12 rate for -- are you in support of --

13 MS. CARTER: You have changed the  
14 topic from what the Judge had given us a heads up  
15 on. In terms of this case, much like there had not  
16 been study on changing the residential block rates,  
17 there also had not been discussion until here at  
18 the very end when we were in settlement discussions  
19 about a low-income rate. And so there has been no  
20 study on how that would be designed here.

21 The parties have certainly discussed  
22 it since we were last before you, and if that's  
23 something that the Commission orders, Empire will  
24 work with the parties to try to find the best way  
25 to do that. It's Empire's position we could come

1 up with a much better program if we had more time  
2 to design it, perhaps looking into another case.

3 Also, assuming the settlement is  
4 finalized as we plan now, you'll see part of the  
5 DSM component is a low-income program that was  
6 discussed on the stand by Dr. Marke, I believe,  
7 that would perhaps combine some of the low-income  
8 and energy efficiency issues in line with what you  
9 had questioned about, Commissioner Rupp.

10 COMMISSIONER RUPP: So if you were  
11 going to -- if you were going to institute a  
12 low-income program, wouldn't it be beneficial to do  
13 it at a time where you were changing your  
14 volumetric rates in the winter to help offset that  
15 increased cost?

16 MS. CARTER: Off the top of my head,  
17 I would think that would make sense for those to go  
18 hand in hand, and in both cases we'd want further  
19 study to make sure we design that correctly and  
20 didn't have an accidental negative outcome.

21 COMMISSIONER RUPP: In the absence of  
22 doing that, if you left your winter rates the same,  
23 where is the incentive for the individual to do any  
24 type of improvement to their home, any type of  
25 conservation, any type of energy efficiency if no

1 matter how much I consume I'm going to be paying  
2 the same and at the same time I'm going to be given  
3 a discount because I'm low income? Is there an  
4 incentive there for them to change any type of  
5 their usage behavior?

6 MS. CARTER: I'm not sure I  
7 understand the question. I will answer that the  
8 best I can. We do have low-income weatherization  
9 right now, and that will continue and possibly ramp  
10 up the amount of funding for that to go hand in  
11 hand again, that we want people to weatherize in  
12 order to reduce their costs that way.

13 Many low-income individuals don't  
14 have the ability to do what is necessary to make  
15 their dwelling more energy efficient. It's  
16 expenses that aren't affordable for the low income.  
17 It's things that need to be done by landlords more  
18 so than renters, which is the common situation for  
19 people in the low-income category.

20 And again, all of those issues are  
21 being looked at as part of the DSM discussion that  
22 should come out of this case.

23 COMMISSIONER RUPP: Among the  
24 testimony that was filed I think was something like  
25 77 percent of the people that were potentially low

1 income owned their own home and there's only like  
2 23 percent that were renters. So that being said,  
3 if you have a low-income program and you don't  
4 change your volumetric rates, is it not just a  
5 subsidy from all the other ratepayers in perpetuity  
6 for people unless they change some type of behavior  
7 or they change something in their own home?

8 MS. CARTER: I would agree, and  
9 depending on your definition of subsidy that we  
10 discussed last time we were before you, I think any  
11 low-income rate is a subsidy under my definition of  
12 subsidy.

13 COMMISSIONER RUPP: And I believe  
14 that Dr. Marke brought up the success of some  
15 programs that exist in this country and some  
16 jurisdictions that would remove people from the  
17 perpetual need for accessing some type of subsidy  
18 through enhanced weatherization, enhanced financing  
19 of things that would not just continue the pattern  
20 of perpetual usage in one certain class.

21 MS. CARTER: Yes. And I think when  
22 we present the final settlement agreement to you  
23 and you're able to question us on that later in the  
24 month, you'll see more specifics of what we are  
25 looking at in that regard to come out of this case.

1 COMMISSIONER RUPP: Thank you.

2 JUDGE BURTON: All right. At this  
3 time I believe, Mr. Woodsmall, you wanted to  
4 provide some statements as well?

5 MR. WOODSMALL: Yeah. Just real  
6 briefly, your Honor. Ms. Kliethermes discussed the  
7 distinction between residential and nonresidential,  
8 and maybe it's more appropriately to say industrial  
9 classes, those classes that have a demand charge.  
10 Like I say, the difference between -- the  
11 distinction is raised because of the existence of a  
12 demand charge, and in general the demand charge is  
13 designed to collect fixed costs; that is, those  
14 costs that don't vary with usage.

15 You've seen this issue both in this  
16 case and in the last case where some discussion  
17 about how much of the fixed cost is collected in  
18 energy charges, that is that the demand charges  
19 aren't collecting the full amount of fixed costs,  
20 that fixed costs are being collected in the energy  
21 charge.

22 And we had some information about  
23 that not only in our direct testimony but in our  
24 surrebuttal testimony. So there is an issue about  
25 using energy charges properly in the demand classes

1 to collect, what are you collecting there.

2 The other thing I would note for the  
3 industrial classes is there's a declining block,  
4 and there is, I think, a policy reason behind that.  
5 For Empire, the declining block occurs at 360 hours  
6 of use per every kilowatt of demand. And that's  
7 designed to reflect an energy break for those  
8 industrial customers that have usage off peak.

9 If you think about it, 360 hours is  
10 more or less the first shift that would occur for  
11 any industrial customer. If you are operating just  
12 at 40 hours a week or something a little more, over  
13 the course of a month you're going to get 360 hours  
14 of usage. Well, if you work -- if you have your  
15 factory running on weekends or on midnight shift,  
16 energy prices are cheaper. So there is a declining  
17 block at 360 hours of usage.

18 I hope that came across somewhat more  
19 coherently than I thought it did. But that's the  
20 reason for the declining usage for the industrial  
21 classes. It's called an hours use rate structure.

22 JUDGE BURTON: Any questions from the  
23 Commission?

24 CHAIRMAN HALL: Well, I believe -- I  
25 believe Ms. Carter wanted to put Mr. Keith on, and



1 so I think we should do that. I may have a couple  
2 questions for Mr. Keith.

3 MS. CARTER: Yes. If there are  
4 Commissioner questions for Mr. Keith, we would  
5 offer him as a witness.

6 JUDGE BURTON: Mr. Keith, are you  
7 available?

8 MR. KEITH: Yes, I am.

9 (Witness sworn.)

10 SCOTT KEITH testified as follows:

11 JUDGE BURTON: Would you please state  
12 and spell your name for the record.

13 THE WITNESS: My name is Scott Keith,  
14 S-c-o-t-t, K-e-i-t-h, and I work for Empire as  
15 Director of Planning and Regulatory.

16 JUDGE BURTON: Thank you.

17 QUESTIONS BY CHAIRMAN HALL:

18 Q. Good morning, Mr. Keith. This is  
19 Daniel Hall, Missouri Commission.

20 I'll start off with -- well,  
21 actually, Ms. Carter, do you have some preliminary  
22 questions for Mr. Keith?

23 MS. CARTER: I do not. Thank you.

24 BY CHAIRMAN HALL:

25 Q. It was represented to us by your

1 **attorney that you may be able to explain the policy**  
2 **rationale for the existing declining block rates on**  
3 **the residential class. Is that correct?**

4 A. I can try for you, Mr. Chairman. The  
5 declining block rates have been around for a long  
6 time. I'm sure Empire going back in time had more  
7 step, deeper decline than we currently have, and it  
8 was really trying to recover costs that were fixed  
9 in the up-front blocks and more of the variable  
10 costs towards the end of the blocks.

11 Over the years the rates have  
12 essentially turned into a customer charge with a  
13 flat energy charge. The only remnant of a decline  
14 we have is the 2 or 3 cent break in the non-summer  
15 months for basically heating purposes. They're  
16 essentially flat right now.

17 Q. Okay. So the only policy rationale  
18 that I heard in that is affordability for those  
19 customers that use electricity to heat their homes,  
20 or was there another policy rationale in there as  
21 well?

22 A. Well, in the early days it was more  
23 of a fixed cost recovery up front, and things have  
24 kind of moved away from that over the years so that  
25 we just have this minimal step in the rate that

1 only occurs in basically the winter months.

2 Q. Well, the winter months -- the winter  
3 months is eight months a year. So it's two-thirds  
4 of the year.

5 A. I understand, but it was there for --  
6 we didn't want to have a discount in the summer.  
7 So they were flat in the summer, and then the  
8 discount took place in these non-summer months.

9 Q. Would Empire be opposed to some  
10 version of the Division of Energy's proposal to  
11 continue that trend that you alluded to and  
12 reducing by 10 percent or some amount the  
13 differential between those two blocks in the winter  
14 season?

15 A. Well, without -- I don't recall his  
16 specific proposal, but let me answer that this way:  
17 If the rates become even, say, flatter or even  
18 inverted, what happens is the rate stability  
19 suffers from both the company's perspective and the  
20 customers'.

21 So from a customer standpoint, in  
22 extreme weather the bill's even higher than it  
23 would have been. And from the company's  
24 standpoint, in mild weather when we normalize these  
25 rates and base them on normalized usage, normal

1 weather -- as you know, weather's never normal. So  
2 you end up with weather extremes, and depending on  
3 which way they go, they either hurt the company or  
4 the customer. So the more -- the more margin or  
5 fixed cost recovery that's pushed off to the tail  
6 block, the less stable the rates become.

7 **Q. Well, then, why has Empire been party**  
8 **to this movement towards levelizing the blocks?**

9 A. Well, it occurs in rate cases, and  
10 they can't control a lot of the movement and have  
11 agreed to it.

12 **Q. So if you had your way, you'd go back**  
13 **to the way it was with much more significant**  
14 **differential between the blocks in the winter**  
15 **season?**

16 A. Well, I can't say that --

17 **Q. Why not?**

18 A. -- that I'm proposing anything like  
19 that. All I'm saying is --

20 **Q. Well, you're providing a policy**  
21 **rationale for going back to that, though.**

22 A. Well, yes. I mean, heating's  
23 important. Heating covers the big load void that  
24 we would have. If we didn't have those heating  
25 customers, we'd have a capacity available that

1 wouldn't be used.

2           **Q.     Now you're getting into a different**  
3 **policy rationale.  Actually, that's one that I**  
4 **personally can't support.**

5                   **Are you aware of -- okay.  So you've**  
6 **discussed a trend in Empire's block rates over the**  
7 **years towards -- towards levelizing the block**  
8 **rates.  Is that a trend that exists nationally, if**  
9 **you're aware?**

10           **A.     Oh, yes, I think it does.  We've had**  
11 **that experience in at least three of the states we**  
12 **sell electricity in right now, Kansas, Missouri and**  
13 **Arkansas, the trend has been away from declining**  
14 **block rates.**

15           **Q.     So from your perspective, what is the**  
16 **policy rationale supporting that trend?**

17           **A.     Well, there's -- depends on the**  
18 **state.  I've heard it promotes conservation,**  
19 **promotes energy efficiency, you know, among other**  
20 **things, is one of the rationales used.**

21           **Q.     So bottom line is that Empire would**  
22 **not support a continuation of that trend in this**  
23 **rate case?**

24           **A.     Would not support the trend to**  
25 **eliminate the step?**

1           **Q.**     Well, what I'm alluding to is the  
2     **Division of Energy's proposal, and it was a**  
3     **concept, it wasn't a proposal, a concept of**  
4     **reducing that differential by some percentage, and**  
5     **I believe it was 10 percent. Is that a proposal,**  
6     **if you have the authority to say so, that the**  
7     **company might find acceptable?**

8           A.     Well, possibly. It would depend on  
9     what it was coupled with. For example, if it was  
10    coupled with a customer charge change, say an  
11    increase in the customer charge, possibility.

12                   One thing I might add is our tail  
13    block right now is well above avoided cost. So to  
14    the extent this pricing leads people to use less or  
15    maybe install devices that use less, like energy  
16    efficiency type devices, we're not really avoiding  
17    the 9 or 10 cents that they're seeing off their  
18    bill. We're only avoiding maybe 4 and a half,  
19    5 cents.

20                   So that differential in pricing  
21    actually is a subsidy for that use -- or for that  
22    discontinuance of use.

23           **Q.**     Moving on to the nonresidential  
24    **classes, Mr. Woodsmall presented some arguments in**  
25    **support of the declining block rates with regards**

1 to those classes. Does the company have a  
2 perspective on that as well?

3 A. I think Mr. Woodsmall, I think his  
4 explanation was correct, that the demand charges  
5 are there to cover capacity or fixed cost type  
6 recovery, and the energy charges historically have  
7 been blocked on hours worth of use. And the  
8 companies that have higher load factors or more  
9 usage per month in hours used get a break on the  
10 energy pricing.

11 CHAIRMAN HALL: I don't believe I  
12 have any further questions of this witness. Thank  
13 you.

14 COMMISSIONER STOLL: I have no  
15 questions.

16 COMMISSIONER KENNEY: I have no  
17 questions. Thank you.

18 COMMISSIONER COLEMAN: No questions.

19 JUDGE BURTON: I'll see if the  
20 parties have any cross-examination based on the  
21 questions from the Commission. Division of Energy?

22 MR. ANTAL: Judge, I don't have any  
23 questions for Mr. Keith. There has been some  
24 discussion of statements Division of Energy made in  
25 their testimony, and if it's appropriate, I'd like

1 to clarify our position.

2 JUDGE BURTON: That's fine.

3 MR. ANTAL: Mr. Hyman in his direct  
4 testimony provided an example of what the bill  
5 impact would be under a 10 percent shift towards a  
6 uniform block rates and a 50 percent shift towards  
7 uniform block rates. He stated that the Division  
8 of Energy could support a shift up to 10 percent if  
9 the Commission wanted to make a shift towards  
10 uniform block rates.

11 It was our recommendation that the  
12 Commission open up a working case to more generally  
13 investigate moving toward uniform block rates. And  
14 I think that could be both beneficial for Empire,  
15 you know, perhaps because they have a lot of  
16 heating customers on electricity, but generally  
17 could apply to all electric utilities in the state.  
18 It's my understanding that there are other electric  
19 utilities that have declining block rates.

20 So just for clarification, our  
21 recommendation is to open up a working docket to  
22 discuss this further, to get that additional  
23 analysis that Ms. Kliethermes was suggesting along  
24 with other data that would be valuable in designing  
25 more nuanced rates. But I'll just leave it at



1 that. Thank you.

2 JUDGE BURTON: Thank you.

3 Mr. Conrad, did you have any questions?

4 MR. CONRAD: I did not with respect  
5 to the Commissioner's questions.

6 MR. WOODSMALL: No questions. Thank  
7 you.

8 JUDGE BURTON: Joplin?

9 MR. ELLINGER: No questions. Thank  
10 you.

11 JUDGE BURTON: Office of Public  
12 Counsel?

13 MS. MAYFIELD: No questions, your  
14 Honor.

15 JUDGE BURTON: Staff?

16 MR. WESTEN: No questions. Thank  
17 you.

18 JUDGE BURTON: I believe that the  
19 Commission does have some questions for  
20 Mr. Woodsmall, but there's also been offered the  
21 testimony of Mr. Hyman from the Division of Energy.

22 MR. ANTAL: He's available if any of  
23 the Commissioners have questions for him.

24 JUDGE BURTON: Does the Commission  
25 care to hear from Mr. Hyman on any additional?

1 CHAIRMAN HALL: I don't believe.

2 JUDGE BURTON: Okay. Chairman, did  
3 you have any questions for Mr. Woodsmall?

4 CHAIRMAN HALL: Actually, no, I  
5 don't. Thank you.

6 JUDGE BURTON: Are there any other  
7 attorneys who would like to make statements to the  
8 Commission?

9 MS. MAYFIELD: Your Honor, if I may  
10 briefly. Dr. Marke is not available, and this  
11 question is an issue on rate design that he brought  
12 up in his rebuttal and surrebuttal testimony, as  
13 you heard from Ms. Kliethermes. The move to a  
14 level block rate in this case without further  
15 analysis may provide or have negative impacts  
16 particularly to some of the low-income ratepayers  
17 which, according to Dr. Marke's testimony, there  
18 are a substantial number of within Empire's service  
19 territory.

20 I would encourage this Commission to  
21 take under consideration DE's proposal to open up a  
22 working docket, to examine this not just for Empire  
23 but, as Dr. Marke's testimony points out, to a  
24 number of over electric utilities here within the  
25 state.

1                   So without him being available maybe  
2 to answer some more questions for some of our  
3 low-income ratepayers, I would just put that  
4 statement out there.

5                   I do understand the struggle that  
6 this Commission has with looking at energy  
7 efficiency and ways to balance the need to  
8 encourage energy efficiency and conservation with  
9 the impacts to low-income ratepayers. Oftentimes  
10 the move to energy efficiency does not always  
11 coincide with an equal balance in that respect. So  
12 I would just put that out there.

13                   JUDGE BURTON: Thank you,  
14 Ms. Mayfield. Any questions from the Commission  
15 for Ms. Mayfield?

16                   COMMISSIONER RUPP: Dr. Marke talked  
17 about the PACE program. What are the initials for  
18 that program?

19                   MS. MAYFIELD: I believe it is just  
20 P-A-C-E, and I do believe that he has some  
21 information within his, I think it's his  
22 surrebuttal testimony, regarding that. And as part  
23 of the DSM discussion moving forward, I believe  
24 that is a topic that will be a part of that group.

25                   COMMISSIONER RUPP: So it is P-A-C-E,

1 not P-A-Y-S?

2 MS. MAYFIELD: I'm looking at DE  
3 because I think DE might have better answer for  
4 this.

5 MR. ANTAL: Commissioner, I believe  
6 there are two separate programs. There's one  
7 called PACE, and there's one called PAYS.  
8 Honestly, I was confused about which one you guys  
9 were talking about the other day when Mr. Hyman was  
10 on the stand.

11 COMMISSIONER RUPP: I can't find  
12 anything about P-A-Y-S. I was curious on --

13 MR. ANTAL: I do not have any  
14 specific information about PAYS. I can certainly  
15 try to make that available. I think maybe there  
16 might be -- I'm getting an indication that  
17 Mr. Hyman may have some information about PAYS and  
18 the difference between PAYS and PACE, if you'd like  
19 to have him come up to the stand.

20 COMMISSIONER RUPP: Unfortunately to  
21 my fellow Commissioners, I would like an answer to  
22 that question.

23 JUDGE BURTON: All right.

24 MR. ANTAL: Then Division of Energy  
25 would call Mr. Martin Hyman.

1 (Witness sworn.)

2 MARTIN HYMAN testified as follows:

3 JUDGE BURTON: Would you please have  
4 a seat and state and spell your name.

5 THE WITNESS: Martin Hyman,  
6 H-y-m-a-n.

7 JUDGE BURTON: Any preliminary  
8 questions from the Division of Energy?

9 MR. ANTAL: No preliminary questions.

10 QUESTIONS BY COMMISSIONER RUPP:

11 **Q. Can you please explain the**  
12 **differences between the PAYS and the PACE program?**

13 A. Okay. So the best of my knowledge,  
14 and this is not an area where I am as familiar with  
15 the material, but P-A-Y-S, PAYS refers to on-bill  
16 financing. It's a specific type of on-bill  
17 financing. Basically, there's -- the customer gets  
18 some sort of improvement, and then they pay off  
19 that improvement as part of their electric bill.

20 Under the PAYS program, I believe  
21 there are various provisions that protect the  
22 utility, and basically any sort of bill repayment  
23 would be transferred to the next owner of the  
24 property if there was a transfer.

25 PACE, P-A-C-E, is what you see in

1 this state to some extent on the CNI side, and that  
2 is literally property assessing energy financing.  
3 So the improvement ends up having an impact on your  
4 property tax. I think -- I'm not sure, but I think  
5 you can recover PACE in a similar way to PAYS.

6 But that's the primary difference.  
7 One refers to property taxes. The other refers to  
8 a specific type of on-bill financing, which you do  
9 see in Kentucky coops, I believe have it.

10 Q. So with the PAYS, P-A-Y-S program,  
11 it's the financing through the utility bill, and  
12 PACE, P-A-C-E, it's financing that is attached to  
13 the deed and it is repaid through the property tax  
14 and then that transfers to whatever homeowner that  
15 they sell the home?

16 A. Yeah.

17 Q. How is the PAYS program, how is the  
18 burden -- not burden -- the opportunity to continue  
19 the repayment for the investment that was made in  
20 the home, how is that transferred to a new  
21 homeowner? Is it just through the utility bill?

22 A. Yeah. It just stays with the  
23 property through the utility bill, is my  
24 understanding.

25 Q. It's tied to the meter?

1 A. Yeah. Yeah.

2 Q. **Interesting. Thank you.**

3 JUDGE BURTON: Any other questions  
4 from the Commission? Any questions from the  
5 parties? All right. Thank you, Mr. Hyman. You're  
6 excused.

7 THE WITNESS: Thank you.

8 JUDGE BURTON: Why don't we take a  
9 quick five-minute recess and we'll come back on  
10 at -- let's make it ten minutes. We'll come back  
11 at 10:55.

12 (A BREAK WAS TAKEN.)

13 JUDGE BURTON: Let's go ahead and go  
14 back on the record. I believe that the Commission  
15 has some additional questions it might have for  
16 parties and, if need be, any witness they might  
17 have available if they aren't able to clarify.

18 CHAIRMAN HALL: Thank you. I guess  
19 I'll address this question to Mr. Thompson, and  
20 then perhaps other attorneys for other clients can  
21 chime in. It's my understanding that PURPA has  
22 asked state public commissions to consider adopting  
23 certain ratemaking standards, one of which is  
24 elimination of declining block rates. Are you  
25 familiar with that guideline?

1 MR. THOMPSON: I am not personally  
2 familiar with it.

3 CHAIRMAN HALL: Well, it was  
4 contained in actually Dr. Marke's testimony,  
5 page 44 of his rebuttal. Are there any attorneys  
6 in the room that can speak to that?

7 MR. WOODSMALL: Your Honor, I can't  
8 provide you any conclusions or positions, but I'll  
9 tell you that when those suggestions were made, the  
10 Commission opened up a number of dockets. This is  
11 about 2007, and I could probably find those PURPA  
12 dockets. So there were dockets specific to each  
13 point, and comments were provided, and I don't know  
14 what came of those, but we could find those dockets  
15 and those comments that were made back then.

16 MR. THOMPSON: I'm told,  
17 Mr. Chairman, that Staff considered that.

18 CHAIRMAN HALL: Pardon?

19 MR. THOMPSON: I'm told that Staff  
20 did consider that guidance.

21 CHAIRMAN HALL: Does that guidance,  
22 in fact, exist in PURPA? That's question one.

23 JUDGE BURTON: Is this something  
24 perhaps the parties would like to provide, if there  
25 are issues with witnesses not being available to



1 talk about this or lawyers need to provide  
2 research --

3 CHAIRMAN HALL: This shouldn't be  
4 witnesses. This should be counsel.

5 MS. MAYFIELD: Chairman, are you  
6 asking if the Public Utility Regulatory Policies  
7 Act of 1978, PURPA, directs state commissions to  
8 look at inclining block rates? Is that the  
9 question?

10 CHAIRMAN HALL: That's question one.  
11 I thought that was the softball.

12 MS. MAYFIELD: Specifically, I mean,  
13 I've had to Google this, son I apologize, but it  
14 does state that, it says ending promotional rate  
15 structures. I don't know if it specifically states  
16 the use of inclining block rates, but the law  
17 states ending promotional rate structures.

18 CHAIRMAN HALL: Well, I'm looking at  
19 the testimony from your witness.

20 MS. MAYFIELD: Yes. On page 44 of  
21 his, one of the ways to end these promotional rate  
22 structures, if you dig down into the actual, the  
23 guidance into the law, is the use of an inclining  
24 block rate as one of the tools that a state  
25 commission can look at.

1 CHAIRMAN HALL: Can or should?

2 MS. MAYFIELD: I don't have that in  
3 front of me it's can or should. It just says  
4 encouraged. It doesn't say shall or should.

5 JUDGE BURTON: Would any other party  
6 like to respond?

7 MR. THOMPSON: I'm advised that the  
8 federal guidance is not mandatory. It is more  
9 encouragement, and that Staff, duly encouraged,  
10 did, in fact, consider those items that it was  
11 urged to consider.

12 If you want details on how Staff did  
13 that or how Staff weighed various factors in  
14 reaching its position, we would have to put a  
15 witness on.

16 CHAIRMAN HALL: So PURPA does direct  
17 all state commissions to consider eliminating  
18 declining block rates. Is that a true statement of  
19 the law?

20 MR. THOMPSON: I believe that it is.

21 CHAIRMAN HALL: And my second  
22 question is, is there, in fact, a national trend  
23 towards elimination of declining block rates?

24 MR. WOODSMALL: I can't say there's a  
25 national trend. I've done cases -- again,

1 obviously my focus when I get into cases in other  
2 jurisdictions is entirely on industrial rate  
3 design, but I've done cases in five or six  
4 jurisdictions, and on the industrial side, it's my  
5 understanding that they all had declining blocks.  
6 I don't know about residential.

7 CHAIRMAN HALL: How about on the  
8 residential side? And that may be a witness as  
9 opposed to a counsel, or maybe counsel.

10 MR. WESTEN: Commissioner,  
11 essentially what I've been handed is Geoff Marke's  
12 rebuttal testimony, and it is just a restatement of  
13 the considerations that PURPA has required, and  
14 those six ratemaking standards are basing rates  
15 on -- again, I just want to be clear that I am  
16 reading from the rebuttal testimony of Geoff Marke.  
17 You can see this at page 44, lines 1 through 8 of  
18 his testimony. And those are basing rates on costs  
19 of service by class, along with eliminating  
20 declining block rates, introducing time of day  
21 rates, introducing seasonal rates, introducing  
22 interruptible rates, offering customers cost  
23 effective load management techniques, these are  
24 standards that can be considered by public service  
25 commissions in the 50 states.

1 CHAIRMAN HALL: All right. Let me  
2 cut to the chase from my perspective. I believe  
3 that there is a national trend towards elimination  
4 of declining block rates at least in the  
5 residential. I'm not sure about in the  
6 nonresidential.

7 I believe the testimony earlier this  
8 morning was even within Empire's specific  
9 experience, there has been a trend towards  
10 narrowing the differential between the blocks,  
11 eliminating blocks, i.e. a movement towards level  
12 block rates.

13 That is a trend that I think makes --  
14 and I'm speaking for myself. I think that is a  
15 trend that makes good public policy sense from the  
16 perspective of conservation and energy efficiency.

17 I am very sympathetic to the position  
18 of the Division of Energy that that is something  
19 that should be the subject of a working docket  
20 going forward. I guess my personal position at  
21 this point would be, instead of ordering a working  
22 docket, would be some type of direction to the  
23 parties to put together -- to put together  
24 analysis, numbers and potentially tariffs in the  
25 next rate case that continues this trend towards

1 elimination of declining block rates.

2 I would also say that, from my  
3 perspective, I would be very open to any agreement  
4 amongst the parties towards a reduction in the  
5 differential in the block rates for residential  
6 customers during the winter months. I am, of  
7 course, not directing any such agreement. I'm  
8 simply saying I would be open to some reduction,  
9 and I'm also open to facilitating discussion and  
10 potential agreement at the next rate case as to a  
11 further elimination of the differential between  
12 blocks.

13 Thank you.

14 JUDGE BURTON: Thank you.

15 COMMISSIONER STOLL: Since we're kind  
16 of stating positions at this point, I agree with  
17 the Chairman on the first part. I think this needs  
18 to be looked at in the next rate case, and if the  
19 parties could analyze what kind of -- what are the  
20 options and what is the most appropriate way to do  
21 this, that would be good.

22 As far as the reducing the  
23 differential in the declining block rate at this  
24 time, if the parties want to do that, you know,  
25 that's the agreement, that's fine with me. I'm not

1 necessarily a proponent of that. Just saying, you  
2 know, it's up to you to come to an agreement in the  
3 stip. So I guess I can state that, and I think  
4 that's it.

5 COMMISSIONER KENNEY: Thank you. I  
6 do concur with the Chairman that this is something  
7 that should be looked at in the future, and I agree  
8 it would be nice if the parties want to get  
9 together and do that.

10 I think the testimony that's been  
11 brought forth in this case by Division of Energy,  
12 Office of Public Counsel, Empire is that it's not a  
13 good idea at this point to change that differential  
14 because I think that it would have a negative  
15 effect on those customers who need that lower price  
16 energy for all the testimony that's been put forth  
17 at this time.

18 However, I do agree that it's  
19 something we should look at, and I think that all  
20 of our companies and parties should get together  
21 and look at it for a future situation if that's the  
22 direction we should go.

23 COMMISSIONER RUPP: I'm going to  
24 disagree with pretty much everybody but for  
25 different reasons. Having an eight-month winter

1 rate is eight months. I mean, that's predominantly  
2 the entire year. We could have a working docket,  
3 but let's be honest, that's just kicking the can  
4 down the road. I'm only going to be here for four  
5 more years. I would strongly advocate that the  
6 Staff get together and push for inclining block  
7 rates in this rate case.

8 COMMISSIONER COLEMAN: I tell you,  
9 five opinions on this is pretty interesting because  
10 I'm kind of in the middle on the topics both. I  
11 like the idea of the Department of Energy's  
12 suggestion of a working docket, but at the same  
13 time like the idea of it coming forth in the next  
14 rate case. I just think the issue needs to be  
15 dealt with. This is the time to do that.

16 I haven't really decided on the  
17 differential. I'm still mulling over that. So  
18 that's where I am right now.

19 COMMISSIONER STOLL: Judge, I would  
20 like to add that any decision I make in the future  
21 will be based on the competent and substantial  
22 evidence in the record at that time. I just wanted  
23 to make that clear.

24 COMMISSIONER RUPP: You can make that  
25 clear for all of us.

1                   COMMISSIONER STOLL: I think  
2 everybody feels the same way.

3                   MR. WOODSMALL: Your Honor, can I  
4 throw in a comment? I've heard, and I'm sure we've  
5 all heard, the suggestions that were made, and it's  
6 been my experience that parties are always willing  
7 to consider what the Commissioners want, desire  
8 policy-wise. The sooner that comes in a case, the  
9 easier it is to implement.

10                   I think Ms. Kliethermes raised some  
11 concerns about whether we have data available  
12 currently to even make these things happen. So we  
13 have a data problem. But even more concerning is  
14 the lack of time. So I'm sure we will sit down and  
15 talk about what we heard from the Commission, but I  
16 hope if it doesn't happen, the Commission won't  
17 take that as we ignored them.

18                   I just don't know if it's possible  
19 given the information and the time, if it can get  
20 done in this case. So I don't know if other  
21 parties want to echo that or have other thoughts.

22                   CHAIRMAN HALL: Duly noted.

23                   JUDGE BURTON: Would any other party  
24 like to make a statement?

25                   I would again reiterate that any



1 materials that were provided yesterday through the  
2 counsel --

3 MR. CONRAD: Do you have mute on?

4 JUDGE BURTON: No.

5 MR. CONRAD: I keep hearing a double  
6 beep.

7 JUDGE BURTON: We are not hearing a  
8 double beep. Did you want to offer any statement?

9 MR. CONRAD: Do you want me to  
10 reproduce it? Beep beep.

11 JUDGE BURTON: Mr. Conrad, while  
12 you're on, did you want to provide a statement to  
13 the Commission?

14 MR. CONRAD: Well, yeah. I think  
15 it's inappropriate for the Commissioners or part of  
16 them to inject themselves into the negotiations of  
17 this stipulation. That's what I had expressed  
18 concern about before. And I would frankly, if you  
19 need to, object to that.

20 JUDGE BURTON: Okay. Thank you,  
21 Mr. Conrad. As I was stating, any materials that  
22 were provided are being treated as highly  
23 confidential. They are not part of the record and  
24 will not be considered.

25 MR. CONRAD: No, ma'am. You said you

1 were on the record earlier.

2 JUDGE BURTON: Any of the documents  
3 that were provided yesterday by the counsel --

4 MR. CONRAD: You provided them to the  
5 Commission. You already said that.

6 JUDGE BURTON: That is correct, sir.

7 MR. CONRAD: Was that a document  
8 filed in EFIS?

9 JUDGE BURTON: No, it was not.

10 MR. CONRAD: So it was provided to  
11 you privately and you unilaterally made the  
12 decision to submit it to the Commission?

13 JUDGE BURTON: As I was stating, that  
14 document is not part of the record and will be  
15 destroyed at the request of the parties.

16 All right. Are there any additional  
17 matters we need to address? All right. So it's my  
18 understanding that we are looking at June 17th for  
19 having a formal Stipulation & Agreement by the  
20 parties that will address all issues and the  
21 admission of testimony that was prefiled.

22 MR. THOMPSON: Thank you, Judge.

23 MS. CARTER: That is our goal.

24 JUDGE BURTON: Okay.

25 MR. CONRAD: What about tomorrow?

1 JUDGE BURTON: Thank you, Mr. Conrad.  
2 I was just about to get there. That being said,  
3 although the Commission has hearing dates scheduled  
4 for tomorrow, June 9th, and Friday, June 10th, we  
5 are going to go ahead and cancel those dates  
6 because right now it does not appear that we need  
7 those dates.

8 We still have the 29th, which was  
9 previously scheduled as the true-up date, but  
10 hearing no objections, I believe we had the motion,  
11 we will consider that date currently as still being  
12 on if we need to have that for presentation on any  
13 final Stipulation & Agreement that's provided by  
14 the parties.

15 And again, I am reiterating, if we do  
16 not have a Stipulation & Agreement on all issues  
17 that are contested, that the parties keep their  
18 schedules for June 27 through July 1st available  
19 for an evidentiary hearing.

20 All right. That being said, we are  
21 off the record.

22 (WHEREUPON, the hearing concluded at  
23 11:16 a.m.)

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C E R T I F I C A T E

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF COLE )

I, Kellene K. Feddersen, Certified Shorthand Reporter with the firm of Midwest Litigation Services, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Given at my office in the City of Jefferson, County of Cole, State of Missouri.

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Kellene K. Feddersen, RPR, CSR, CCR

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