**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Tariff Filing of The Empire District Electric Company to Implement a General Rate Increase for Retail Electric Service Provided to Customers in its Missouri Service Area.	)))))	Case No. ER-2006-0315

SUPPLEMENTAL PREHEARING BRIEF OF STAFF OF PUBLIC SERVICE COMMISSION

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STAFF'S SUPPLEMENTAL PREHEARING BRIEF ON EXPERIMENTAL LOW-INCOME PROGRAM AND DEMAND SIDE MANAGEMENT PROGRAMS

Low Income Assistance Program: Should Empire's Experimental Low-Income Program (ELIP) be continued with changes? If so, what should those changes be, should the Customer Program Collaborative (CPC) determine those changes and have oversight responsibility respecting the program, and how should the cost of the program be included in Empire's cost-of-service for collection from ratepayers? What should be done with unspent ELIP funds?

Unspent Funding of Current Energy Efficiency and Affordability Programs: What should be done with unspent funds from the current energy efficiency and low-income weatherization programs? What should be the amortization amount respecting the demand side management (DSM) regulatory asset account?

The Experimental Low-Income Program (ELIP) and Demand-Side Management (DSM) Programs issue involves three stipulation and agreements in three prior Empire cases, the contents of which need to be outlined as a preliminary matter to a discussion of the issue in this proceeding.

Empire has in effect an ELIP as a result of a Unanimous Stipulation And Agreement in Case No. ER-2002-424. The Unanimous Stipulation And Agreement in Case No. ER-2002-424 states, in part, at paragraph 9, page 4 that "[t]he Parties agree that the Company will implement an Experimental Low-Income Program ("ELIP"), generally consistent with the program proposed by the Company." The Commission in its Report And Order of November 14, 2002 stated, at page 9, that "[t]he Commission has considered the settlement agreement of the parties, together with Staff's suggestions and the comments made at the on-the-record presentation, and concludes that the settlement agreement is just and reasonable and should be approved" and, at page 9, stated that "IT IS THEREFORE ORDERED: 1. That the settlement reached by the parties, as contained in the Unanimous Stipulation and Agreement filed on October 28, 2002 (Attachment A), is hereby approved as a resolution of all issues in this case."

The ELIP tariff sheets currently in effect provide, among other things, as follows:

> APPLICATION:
> This Experimental Low-Income Program is applicable for service billed under Schedule RG, Residential Service, to qualified customers. The ELIP will, on a pilot basis, provide up to 1,000 participants with a fixed credit on their monthly bill (ELIP credit). Customers participating in the ELIP program shall receive credit for a period of up to 12 months from the billing cycle designated by the Company (EDE) as the participants first month until the billing cycle designated as the participants last for ELIP. At the end of the 12 month period, a customer may reapply to participate further in the program. This experimental program was approved by the Missouri PSC in Case No. ER-2002-424.
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> . . . .
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> DEFINITIONS:
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> . . . .
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> Program Funds – Annual ratepayer funding for the ELIP is $150,000.00 based upon the Unanimous Stipulation and Agreement in Case No. ER-2002-424. Ratepayer funding shall be matched dollar for dollar by EDE. The $300,000.00 annual sum of ratepayer funding and the EDE matching funds shall be the "program funds".
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> . . . .
>
> OTHER CONDITIONS:
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> . . . .
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> If any program funds in excess of actual program expenses remain at the end of the ELIP program and evaluation, EDE shall contribute the excess funds to Project Help.

Empire witness Sherrill L. McCormack notes in her Direct Testimony in this case filed on February 1, 2006, at page 2, lines 13-15, that customers may participate on the program for up to 24 months and that the evaluation of this program was underway with an anticipated completion date of February 2006.

In Empire's rate increase case, Case No. ER-2004-0570, subsequent to Case No. ER-2002-424, a Stipulation And Agreement As To Certain Issues was reached. The Commission in its Report And Order of March 10, 2005 stated, at page 56, that "[t]he Commission has reviewed the Stipulations and Agreements filed in this case and is of the opinion that they are just and reasonable and should be approved" and, at pages 56 and 57, stated "IT IS THEREFORE ORDERED: 4. That the Unanimous Stipulation and Agreement as to Certain Issues, filed on December 22, 2004 is hereby approved. The parties shall comply with the terms of the Stipulation and Agreement." The Stipulation And Agreement As To Certain Issues, filed on December 22, 2004, states in relevant part as follows:

> 6. **Low Income Weatherization Program.** The parties agree that Empire will expend no less than $155,000 annually to fund a low-income weatherization program that is consistent with federal weatherization assistance program guidelines. The program will be implemented through the Community Action Agencies operating within Empire's service territory for the benefit of Empire's low-income residential customers.
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> 7. **Lighting.** The parties agree that Empire will expend no less than $20,000 annually to fund the Change a Light, Change the World Program in Empire's service area through the entity that administers this program.
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> 8. **Appliance and HVAC Rebate Program.** The parties agree that Empire will expend no less than $100,000 annually to fund an appliance and HVAC Rebate Program for Empire's residential customers. Empire agrees to work with representatives of the Department of Natural Resources - Energy Center and all other interested signatories to this Stipulation and Agreement to design a rebate program that will induce eligible-residential customers to purchase and install high efficiency electric appliances and or heating and cooling equipment that have received the ENERGY STAR rating from the ENERGY STAR program sponsored by the United States Department of Energy and the United States Environmental Protection Agency.
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> 9. **Commercial Energy Efficiency Audits.** The parties agree that Empire will expend no less than $25,000 annually to fund 50% of the cost of technical energy efficiency audits for Empire's commercial customers, up to $1,000 for a particular commercial customer, and provide incentives for installation of energy efficiency measures identified in the technical audit. That portion not paid for by Empire will be funded by those individual commercial customers receiving such audits. Empire agrees to work with representatives of the Department of Natural

Resources – Energy Center and other interested signatories to the Stipulation and Agreement to design this program.

Ms. McCormack testifies in the instant case that the Change a Light Program has been fully funded at $20,000 and the Low Income Weatherization Program, which has been fully funded at $155,000, is being administered by the Ozark Area Community Action Corporation (approximately 47%), the Economic Security Corporation (approximately 51%) and the West Central Missouri Community Action Agency (approximately 2%). (McCormack Direct, p. 2, ln. 20 – p. 3, ln. 23).

Missouri Department of Natural Resources (MDNR) witness Brenda Wilbers testifies in the instant case that she is not aware that any funds have been expended for the Commercial Energy Efficiency Audit Program and the Appliance And HVAC Rebate Program has not been implemented. She notes that the Staff filed a Status Report on May 26, 2005 in Case No. EO-2005-0386 regarding the above four programs which states that Staff, OPC, Empire, and MDNR agreed to accumulate the funds for the Appliance And HVAC Rebate Program through the summer of 2005 because of concerns that there was insufficient time to design and implement an air conditioner rebate program that was being considered for the summer of 2005 and one year of funding might not be adequate to implement a refrigerator/freezer program that was under consideration. (Wilbers Direct, p. 6, ln. 88 – p. 7, ln. 100).

The third case that should be included in this discussion is Case No. EO-2005-0263 in which the Commission approved the Empire Regulatory Plan Stipulation And Agreement in an Order Approving Stipulation And Agreement issued on August 2, 2005. The Regulatory Plan Stipulation And Agreement established a Customer Programs Collaborative (CPC) to make decisions pertaining to the development, implementation, monitoring and evaluation of Empire's Affordability, Energy Efficiency and Demand Response Programs. The Stipulation And Agreement states at III.F.2., pages 25-26, that "[t]he CPC will coordinate its activities with

Empire's existing customer programs and Empire's IRP process in order to reduce any redundancy and to increase the effectiveness of all these related activities." The Stipulation And Agreement also states at III.F.2:

> To the extent possible, Empire will coordinate with Missouri Gas Energy (MGE) and other existing entities/organizations to administer its Affordability, Energy Efficiency and Demand Response programs. Page 28.
>
> . . . .
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> The Signatory Parties have not agreed upon any budgeted expenditures for Empire's Customer Programs.
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> Empire shall accumulate the Affordability, Energy Efficiency and Demand Response Program costs in regulatory asset accounts as the costs are incurred. Beginning with the earlier of the date rates become effective in Empire's first Rate Filing within the term of this Agreement or March 27, 2008, Empire shall begin amortizing the accumulated costs over a ten (10) year period. Empire will continue to place the Affordability, Energy Efficiency and Demand Response Program costs in the regulatory asset accounts, and costs for each vintage subsequent to the first Rate Filing shall be amortized over a ten (10) year period. Signatory Parties reserve the right to establish a fixed amortization amount in any Empire rate case filed prior to June 1, 2011. The amounts accumulated in these regulatory asset accounts that have not been included in rate base shall be allowed to earn a return not greater than Empire's reduced AFUDC rate as specified in this Agreement.
>
> The class allocation of the costs, except as specified below, shall be determined when the amortizations are approved.
>
> Customers on Rate Schedules LP, STS and STS-Praxair will not be charged any costs nor be allocated any expenses with respect to any new energy efficiency and demand response program unless such program has a pre-implementation evaluation RIM test ratio that is greater than 1.0, nor will such customers be eligible for participation in such programs. . . . Pages 29-30.

MDNR witness Ms. Wilbers relates in her Direct Testimony that the CPC at its first meeting, on November 10, 2005, which included all of the signatories from the 2004 Empire rate case and one additional member, agreed that the CPC would address implementation of the DSM programs agreed to in the 2004 rate case as part of the CPC's objective to develop a portfolio of DSM programs. She explains that the CPC recommended that the existing DSM programs (Change a Light, Low-Income Weatherization and Commercial Audits) would continue to be implemented and that the Appliance And HVAC Rebate Program, which has not yet been implemented, would be incorporated into the DSM portfolio with a target date for implementation of spring 2007. (Wilbers Direct, p. 7, ln. 111 – p. 8, ln. 124).

Ms. McCormack also relates in her Direct Testimony that the CPC has selected an implementation consultant, Applied Energy Group (AEG), to assist in the selection of additional DSM and affordability programs and that the CPC is also in the process of selecting an evaluation consultant to evaluate the DSM and affordability programs, excluding ELIP. Finally, she explains that costs of $53,000 associated with the CPC and Empire Regulatory Plan DSM and Affordability programs to be funded in 2006 have been included by Empire as a regulatory asset in rate base as described in the Regulatory Plan Stipulation And Agreement. This amount includes approximately $41,500 for AEG's consulting work, $10,000 for the Missouri Residential Market Assessment (RLW Analytics is performing this work for the electric utilities in Missouri, which Empire plans to use to select future DSM programs for residential customers), and approximately $1,500 for travel and related expenses. Pursuant to the Empire Regulatory Plan provision respecting a ten year amortization of the regulatory asset, Empire has an adjustment to its income statement to increase expenses $5,300. (McCormack Direct, p. 4., ln. 1 – p. 5, ln. 1).

Ms. Wilbers testifies that AEG with input from the CPC has developed a portfolio of eight DSM affordability and energy efficiency programs to be implemented over five years beginning in 2006. (Wilbers Direct, p. 5, lns. 53-54).

Office of the Public Counsel (OPC) witness Barbara A. Meisenheimer in her Direct Testimony includes a table shown below which illustrates the funding levels and actual expenditures reported by Empire for ELIP for the period ending April 2006. She testifies that "the program costs in each year have fallen far short of the total $300,000 annual allotment, never exceeding $150,000" and she recommends that "[t]he program funding level should be reduced and steps taken to increase customer participation." (Meisenheimer Direct, p. 15, lns. 17-21).

Year	Funding Level	Actual Expense[(a)]	Excess
2002	$ 25,000		$ 25,000
2003	$300,000[(b)]	$ 40,062	$259,938
2004	$300,000	$147,877	$152,123
2005	$300,000	$126,896	$173,104
2006	$100,000[(c)]	$ 14,740	$ 85,260
			$670,425
	Less Evaluation Expense		-$ 15,000
	Balance		$655,425

(a) Actual expenses include administrative costs paid to ESC and OACAC.
(b) Rates funding the ELIP program were effective December 1, 2002.
(c) Funding level reflects 4 months ending April 30, 2006.

(*Id.*, p. 15, lns. 1-12).

Ms. Meisenheimer proposes (1) removing the 24 month limit on a person's participation in ELIP, (2) committing $2,000 annually for outreach, and (3) the Commission directing the CPC to develop recommendations on extending the length of potential participation and outreach. She also states she would support increasing the bill credits by $10 per month for participants with household incomes at or below 50% of the federal poverty level, increasing the maximum qualifying household income to 125% of the federal poverty level, and allocating up to $30,000 of existing program funds annually to an experimental arrearage repayment incentive to the program (involving matching two customer dollars to one incentive dollar with a maximum annual incentive payment of $60 per customer). (Meisenheimer Direct, p. 16, ln. 1 – p. 18, ln. 4).

Considering the $655,425 in unspent funds, Ms. Meisenheimer also recommends that if ELIP is modified as she proposes, the annual contributions of the ratepayers and the shareholders should be reduced from the current level of $150,000 for ratepayers and $150,000 for shareholders to $50,000 for ratepayers and $50,000 for shareholders. Alternatively, if ELIP is retained as presently constituted, she recommends terminating ratepayer and shareholder funding in entirety because of the $655,425 in unspent funds. (Meisenheimer Direct, p. 18, lns. 5-16).

As previously noted, Empire's ELIP tariff sheets provide that any ELIP funds that remain in excess of actual program expenses at the end of the ELIP program and evaluation, shall be contributed by Empire to Project Help. Ms. Meisenheimer identifies Project Help in her Direct Testimony at page 14, lines 15-16, as assisting with emergency energy related expenses of elderly and disabled residents in Empire's service area. She recommends that the large excess of funds that presently exists or might exist in the future not go to Project Help:

> . . . Given the apparent level of excess funding, it would be appropriate to require that unused funds be returned to ratepayers when the program terminates. Finally, no interest is paid on the fund balance. Interest should be paid to ratepayers. A reasonable rate would be the 5.59% short term debt rate . . .

(Meisenheimer Direct, p. 18, ln. 19 – p. 19, ln. 2).

Staff witness Lena M. Mantle testifies that she does not agree with Ms. Meisenheimer regarding continuing and modifying ELIP. Ms. Mantle states the Staff's position that ELIP should be discontinued and the funds redirected to a program for helping low income customers reduce their electricity usage, and, as a consequence, their electric bill, which is consistent with the original goal of ELIP of producing affordable home energy bills. She relates that (1) since the inception of ELIP, Empire has told participants at the Empire resource planning meetings that ELIP is not very effective, and (2) data on the participation level corroborates this evaluation. She proposes (1) increasing the funding for the Low Income Weatherization Program from Case No. ER-2004-0570, which funds are being fully utilized at the funded amount of $155,000 annually, and (2) the CPC assisting Empire in determining other programs that would be the most effective for assisting low income customers to reduce their electricity usage. (Mantle Rebuttal, p. 3, lns. 1-17).

Ms. Mantle states that alternatively, if ELIP continues, rather than ELIP be changed as Ms. Meisenheimer proposes, the Staff recommends that the CPC should determine what modifications should be made to the program design. (Mantle Rebuttal, p. 3, lns. 20-22). Ms. Mantle does agree with Ms. Meisenheimer that something needs to be done regarding the funding of ELIP if the program continues. She proposes that 50% of the expenses of the program be recovered in a manner similar to how the costs of the Affordability, Energy Efficiency and Demand Response Program costs of the Empire Regulatory Plan are to be recovered; only 50% of the costs of the program would be recovered because she proposes that the program would continue to be funded 50% by shareholders and 50% by ratepayers. Thus, 50% of the costs for vintages of incurrence would be accumulated in regulatory asset accounts as the costs are incurred and the costs would be amortized over a 10 year period. The amounts accumulated in these regulatory asset accounts would not be included in rate base and would be allowed to earn a return not greater than Empire's reduced AFUDC rate as specified in the Empire Regulatory Plan Stipulation And Agreement. (Mantle Rebuttal, p. 4, lns. 2-10).

Ms. Mantle testifies that it was not envisioned that Project Help would be the recipient of the large level of unspent ELIP funds that presently exists so she proposes that the difference between the amount collected from ratepayers for ELIP and one-half of the amount actually spent be placed in the demand-side programs account as a negative amount thereby providing funds for ELIP, if it continues, or providing funds for other demand-side programs. (Mantle Rebuttal, p. 4, lns. 11-20).

Ms. Mantle also addresses the fact that ratepayer monies have been collected from ratepayers since Empire's last rate case, Case No. ER-2004-0570, that have not been spent for the Appliance And HVAC Rebate Program and Commercial Energy Efficiency Audits. She proposes that the unspent funds be placed as a negative amount in the demand-side program account for future demand-side program funding. (Mantle Rebuttal, p. 5, lns. 5-18).

In her Rebuttal Testimony, Ms. McCormack proposes that the ELIP be transferred to the CPC (McCormack Rebuttal, p. 2, lns. 4-9, 13-14; p. 4, ln. 2), the shareholder annual match of $150,000 be terminated (*Id.*, p. 4, lns. 9-11) and the accounting for the ELIP be made consistent with the DSM accounting under the Empire Regulatory Plan Stipulation And Agreement (*Id.*, p. 2, lns. 6-9, 13-16). Empire also recommends that the costs of the 2004 rate case DSM programs and the 2005 Regulatory Plan DSM programs and the 2002 rate case ELIP be deferred from consideration until Empire's next rate case in order for the CPC to address the matter and for Empire to consolidate the different accounting methods. (*Id.*, p. 3, lns. 13-22; p. 6, lns. 9-12, 15-17). Empire is requesting that no amount be included in rate base or amortization expense at this time. "The total impact of the Empire proposal would reduce expenses and the revenue requirement by $200,001." (*Id.*, p. 7, lns. 12-13, 7-8).

In her Surrebuttal Testimony, Ms. McCormack states that Empire agrees with Ms. Mantle's Rebuttal Testimony that the ELIP be eliminated and the unused funds be made available for the CPC to direct to programs assisting low-income customers to reduce their electric usage and the unused funds should be a negative entry to the regulatory asset established for Empire Regulatory Plan DSM programs. In the alternative, if the ELIP continues, Ms. McCormack testifies that Empire agrees with Ms. Mantle and Ms. Meisenheimer that modifications to the ELIP should be considered and the ELIP should be moved under the review of the CPC. Empire also concurs with Ms. Mantle's other recommendations regarding the ELIP, if the decision is that the ELIP continues. (McCormack Surrebuttal, p. 2, lns. 1-11, p. 2, ln.17 – p. 3, ln. 23).

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 6th day of September 2006.

/s/ Steven Dottheim