

1                   BEFORE THE PUBLIC SERVICE COMMISSION

2                   STATE OF MISSOURI

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In the Matter of The Empire District       )  
Electric Company of Joplin, Missouri,       )  
for Authority to File Tariffs               )Case No.  
Increasing Rates for Electric Service       )ER-2006-0315  
Provided to Customers in the Missouri       )  
Service Area of the Company

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COLLEEN M. DALE, Presiding  
CHIEF REGULATORY LAW JUDGE.  
JEFF DAVIS, Chairman  
STEVE GAW  
LINWARD "LIN" APPLING,  
COMMISSIONERS.

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REPORTED BY:  
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1 P R O C E E D I N G S

2 JUDGE DALE: We are here for the third day of  
3 the Empire rate case, ER-2006-315. We are about to start  
4 low-income assistance, etc., and unspent funding of current  
5 efficiency and affordability programs.

6 Since we're starting a new section, we'll have  
7 opening statements on this topic. Empire.

8 MR. COOPER: Good morning.

9 JUDGE DALE: Morning.

10 MR. COOPER: At issue here are several  
11 programs that can be generally categorized as affordability,  
12 energy efficiency and demand response programs.

13 The Commission, in 2003, approved tariff  
14 sheets containing an experimental low-income program or ELIP  
15 for Empire. That program was conceived by Stipulation and  
16 Agreement filed in October of 2002 and approved by the  
17 Commission on November 14th of 2002 in Case No. ER-2002-424.

18 The details of the program are contained in  
19 tariff sheets that were later filed in March of 2003 and  
20 approved by a Commission order issued April 24, 2003.

21 Funding for the ELIP program has been provided  
22 by a combination of ratepayer dollars and matching shareholder  
23 funds. Additionally, Empire has had funding commitments for  
24 several other programs provided through rates as a result of  
25 the Commission's approval of the Stipulation and Agreement in

1 Case No. ER-2004-0570. These programs include a residential  
2 appliance and HVAC rebate program, commercial energy  
3 efficiency audit program, a lighting program known as Change  
4 the Light, Change the World, a low-income weatherization  
5 program.

6 More recently, as a result of the Commission's  
7 order approving the Stipulation and Agreement in Empire's  
8 regulatory plan case, Case No. EO-2005-0263, a customer  
9 programs collaborative, or as it's referred to, CPC, was  
10 created to assist with the development, implementation  
11 monitoring and evaluation of Empire's affordability, energy  
12 efficiency and demand response programs.

13 Part of the CPC's task, as it was stated in  
14 that stipulation, was to coordinate its activities with  
15 Empire's existing customer programs and Empire's IRP process  
16 in order to reduce any redundancy and increase the  
17 effectiveness of all those related activities.

18 Empire, Praxair, Explorer, the Missouri  
19 Department of Natural Resources, the Commission Staff and the  
20 Office of the Public Counsel have all participated as members  
21 of the CPC.

22 The costs of the programs addressed by the CPC  
23 were to be accumulated in a regulatory asset account. Empire  
24 will begin to amortize this amount over a 10-year period  
25 beginning with the date rates become effective in this case.

1                   Staff, Public Counsel and Empire have all made  
2 proposals in this case designed to bring these various  
3 affordability, energy efficiency, demand response elements  
4 together and, more particularly, to address the unspent funds  
5 related to the existing programs.

6                   ELIP program has not seen the participation  
7 that was originally forecast. ELIP, as of April 30th of 2006,  
8 had unspent funds available in the amount of \$655,425. With  
9 this type of surplus, there does not appear to be any reason  
10 to continue the ratepayer funding and matching shareholder  
11 funding at the current level. Unspent funds also exist in  
12 smaller amounts for the four programs created as a result of  
13 Case No. ER-2004-0570.

14                  Empire agrees with the proposal of Staff  
15 Witness Lena Mantle that the ELIP be terminated and the unused  
16 funds associated with the program be made available for the  
17 CPC to utilize in a program to assist low-income customers  
18 with their electric bills. This would be accomplished by the  
19 filing of tariff sheets to reflect the ELIP termination and  
20 the recording of the unused funds as a negative asset in the  
21 regulatory asset account associated with the CPC.

22                  If the ELIP is not terminated, Empire  
23 recommends that the CPC be asked to review and provide  
24 recommendations for the modification of this program and that  
25 accounting for future ELIP expenditures be recorded as a part

1 of the regulatory asset associated with the CPC. Empire  
2 believes that the unspent funds associated with the other  
3 programs should be similarly treated in order to combine the  
4 accounting for the current energy efficiency and affordability  
5 programs with the programs created by the CPC.

6 If the steps proposed by Empire are taken,  
7 Empire's revenue requirement in this case should be reduced by  
8 \$200,001 to reflect the removal of \$150,000 annual ratepayer  
9 funding related to the ELIP and another \$50,001 to remove the  
10 expenses associated with the 2004 rate case programs. Thank  
11 you.

12 MR. THOMPSON: May it please the Commission.

13 Staff's position on these issues is presented  
14 in the Rebuttal Testimony of Lena Mantle. Ms. Mantle, I  
15 should point out, does not agree with Ms. Meisenheimer's  
16 recommendation that the ELIP program continue with  
17 modifications.

18 Ms. Mantle instead recommends that the ELIP  
19 program be terminated. She suggests that funding for the  
20 low-income weatherization program that came out of the last  
21 rate case should be increased. The funds allocated to that  
22 program are being fully spent and fully utilized. It's a good  
23 program, it's helping people.

24 In the event that the Commission determines to  
25 continue the ELIP, Ms. Mantle recommends that the CPC, the

1 customer collaborative, should determine what modifications  
2 should be made to the program design.

3 She does agree with Ms. Meisenheimer that the  
4 funding should be modified. She proposes that 50 percent of  
5 the expenses be recovered in a manner similar to how costs of  
6 affordability, energy efficiency and demand response program  
7 costs are recovered. Only 50 percent would be recovered  
8 because, of course, the program should continue to be funded  
9 half by the ratepayers and half by the shareholders.

10 The part recovered from the ratepayers would  
11 be accumulated in a regulatory asset and amortized over a  
12 10-year period.

13 Ms. Mantle further is going to testify that it  
14 was not envisioned that Project Help would receive such a  
15 large amount of unspent funds. So she proposes that the  
16 difference between the amount collected from ratepayers for  
17 ELIP and one-half of the amount actually spent should be  
18 placed into the demand side program account as a negative  
19 amount making these funds available for future programs.

20 She proposes that the same thing be done with  
21 funds that have been collected but not spent for the appliance  
22 and HVAC rebate program. Thank you.

23 JUDGE DALE: Thank you.

24 Yes, Mr. Mills.

25 MR. MILLS: Is it me? Okay. Good morning.



1 May it please the Commission.

2 Some of this I think is going to be a little  
3 bit repetitious, because I think Mr. Cooper did a pretty good  
4 job of explaining where the ELIP program started and how we  
5 got here, but I'll run through it briefly.

6 As he noted, it was originally proposed by the  
7 company in 2002-424. And as is part of my cross-examination,  
8 I will be offering an exhibit that actually has the ELIP  
9 tariffs so that the Commission can see how the program  
10 actually works according to the tariffs.

11 The tariffs do not include an ending date.  
12 Customer -- according to the terms of the program though,  
13 customers could receive discounts for only 24 months so  
14 participation could be expected to diminish over time and, in  
15 fact, it did.

16 And I think that accounts for the large  
17 balance outstanding in the ELIP program is the fact that  
18 because of the limitation on the amount of time the customers  
19 could participate and the limited number of customers who are  
20 eligible and the fact that it has not been marketed vigorously  
21 since its inception, led to diminished participation over time  
22 allowing the balance to creep up to the amount where it's  
23 655,000 or so where it is now.

24 After Case 2002-424, Empire's next rate case  
25 was 2004-0570. That case was resolved, I believe entirely by

1 stipulation, although it was a series of stipulations rather  
2 than a single one. None of those addressed the ELIP program  
3 and it continued through the course of that case and to date,  
4 which brings us to the current case.

5                   In this case, Empire filed 31 tariff sheets,  
6 none of which are the ELIP tariff sheets. So if the  
7 Commission decides to make changes to the ELIP program in this  
8 case, it will have to grapple with the thorny question of  
9 whether a company, when it files a rate case, puts all of its  
10 tariff sheets at issue or simply the ones that it files. And  
11 I think different parties have different positions on that,  
12 and we may get to hear what Empire's position is on that or  
13 not today.

14                   If the Commission is to make changes to the  
15 ELIP program based on the testimony in this case, Public  
16 Counsel recommends that it make the changes recommended by  
17 Barbara Meisenheimer rather than those of the other -- of the  
18 other participants. And I intend to bring out some of the  
19 flaws of the other parties' approaches in my  
20 cross-examination. Thank you.

21                   JUDGE DALE: Thank you.

22                   Mr. Conrad?

23                   MR. CONRAD: Your Honor, while I will have  
24 questions -- or expect to have a few questions for a couple of  
25 the witnesses, we do not have an opening statement and I would

1 waive same.

2 JUDGE DALE: Thank you.

3 Ms. Woods?

4 MS. WOODS: I really don't have anything to  
5 add beyond what I indicated in my initial opening statement.  
6 Thank you.

7 JUDGE DALE: Thank you.

8 Then with that, I believe, Mr. Cooper, we're  
9 ready for your first witness.

10 MR. COOPER: Empire would call Ms. McCormack.

11 JUDGE DALE: Before we begin, if everybody  
12 could please double check and make sure that all wireless  
13 devices are turned off. I've already had to restart the  
14 recording and we also get a really nasty buzz, I'm given to  
15 understand, on the web cast.

16 (Witness sworn.)

17 JUDGE DALE: Thank you.

18 SHERRILL L. MCCORMACK testified as follows:

19 DIRECT EXAMINATION BY MR. COOPER:

20 Q. Please state your name.

21 A. Sherrill McCormack.

22 Q. By whom are you employed and in what capacity?

23 A. Empire District Electric Company as a planning  
24 analyst.

25 Q. Have you caused to be prepared for the

1 purposes of this proceeding certain Direct, Rebuttal and  
2 Surrebuttal Testimony in question and answer form?

3 A. I have.

4 Q. Is it your understanding that that testimony  
5 has been marked as Exhibits 8, 9 and 10 for identification?

6 A. I have.

7 Q. Do you have any changes that you would like to  
8 make to that testimony at this time?

9 A. Yes, I do.

10 Q. Okay. What would that change be?

11 A. Okay. In my Direct Testimony on page 3,  
12 beginning on line 7, the sentence currently reads, This  
13 program was fully funded at \$20,000.

14 I will change this sentence to the following,  
15 This program was partially funded at 14,167. The maximum  
16 level of funding agreed to by all parties involved in the last  
17 rate case was \$20,000.

18 Q. Okay. So could you read that sentence  
19 starting with "this program" on line 7 through your changes?

20 A. This program was partially funded at \$14,167.  
21 The maximum level of funding agreed to by all parties involved  
22 in the last rate case was \$20,000.

23 Q. Do you have any other changes?

24 A. I do not.

25 Q. If I were to ask you the questions which are

1 contained in Exhibits 8, 9 and 10 today, would your answers as  
2 amended be the same?

3 A. Yes, they would.

4 Q. Are those answers as amended true and correct  
5 to the best of your information, knowledge and belief?

6 A. Yes, they are.

7 Q. Okay.

8 MR. COOPER: Your Honor, I would offer  
9 Exhibits 8, 9 and 10 into evidence and tender Ms. McCormick  
10 for cross-examination.

11 JUDGE DALE: Are there any objections?

12 Then Exhibits 8, 9 and 10 are received into  
13 evidence.

14 (Exhibit Nos. 8, 9 and 10 were received into  
15 evidence.)

16 JUDGE DALE: Ms. Woods, I believe you are  
17 first for cross.

18 MS. WOODS: I have nothing. Thank you.

19 JUDGE DALE: Mr. Conrad?

20 CROSS-EXAMINATION BY MR. CONRAD:

21 Q. Good morning, Ms. McCormack.

22 A. Good morning.

23 Q. Pleasure to see you in this context.

24 Clarify for me, before we get started here --  
25 and I hope I won't be terribly long and detain you -- the

1 Direct that you referred to that was marked as Exhibit 8, was  
2 that what was filed in February?

3 A. Yes, it was.

4 Q. And 9 was July '06?

5 A. Correct.

6 Q. And 10 then was in August?

7 A. That is correct.

8 Q. Gotcha. Okay. Now, you have worked with  
9 Empire since when, please?

10 A. Since August of 2001.

11 Q. So what I'm going to refer to as the  
12 stipulation in the 424 case?

13 A. Okay. The 2002 case?

14 Q. Yes.

15 A. Yes.

16 Q. That occurred while you were a part of the  
17 Empire organization?

18 A. I was employed, but -- yes.

19 Q. Did you have any involvement with that  
20 stipulation?

21 A. No, I did not.

22 Q. Who did for Empire?

23 A. I beli-- I believe that was Dave Wal-- Dave  
24 Gibson.

25 Q. And with respect to the ELIP program, do I

1 correctly recall that Ms. Walters had submitted testimony on  
2 that?

3 A. I am not sure.

4 Q. Okay. Only if you know. We try not to guess.

5 MR. CONRAD: Your Honor, forgive me, I don't  
6 know what the next number would be.

7 JUDGE DALE: It is No. 106.

8 MR. COOPER: What was that number, your Honor?

9 MR. CONRAD: 106.

10 MR. THOMPSON: What was 105?

11 JUDGE DALE: 105 was the series of questions  
12 from Commissioner Appling that were given to Mr. Murray.

13 MR. THOMPSON: Thank you.

14 (Exhibit No. 106 was marked for  
15 identification.)

16 BY MR. CONRAD:

17 Q. Now that we've finished paper shuffling for a  
18 moment, Ms. McCormack, I've laid before you what's has been  
19 marked for identification as Exhibit 106. Are you able to  
20 identify that document?

21 A. Yes. It appears to be the tariff -- the ELIP  
22 tariff for Empire.

23 Q. And this appears to be a copy that shows the  
24 filed stamp on the lower right-hand corner of each page, does  
25 it not?

1           A.       Yes, it does.

2                   MR. CONRAD:  And, your Honor, I would  
3   represent to you that that's been obtained from the  
4   all-powerful EFIS system.  And with the witness's  
5   identification of the tariff, I would move its admission, if  
6   that's necessary.

7                   JUDGE DALE:  Are there any objections?

8                   MR. COOPER:  No.

9                   MR. THOMPSON:  No.

10                  JUDGE DALE:  Then it's admitted whether or not  
11   it's necessary.

12                   (Exhibit No. 106 was received into evidence.)

13                  MR. CONRAD:  It being the recurrent tariff, it  
14   might be something the Commission could just simply notice.

15                   (Exhibit No. 107 was marked for  
16   identification.)

17   BY MR. CONRAD:

18                  Q.       And, Ms. McCormack, I would show you what's  
19   been marked for identification as Exhibit 107.  Are you able  
20   to recognize that document?

21                  A.       Yes.  It's the Commission's order approving  
22   the ELIP tariff.

23                  Q.       And insofar as you're aware or satisfy  
24   yourself the tariff sheets that are referred to on page 4,  
25   those are the tariff sheets that have been previously marked



1 and admitted as 106.

2 A. Yes.

3 MR. CONRAD: Again, your Honor, I don't know  
4 if it is necessary for this to be marked as an exhibit and  
5 admitted, I could ask for notice be taken, but whatever your  
6 Honor prefers.

7 JUDGE DALE: I think it will just be easier  
8 for everybody to keep track of it if it's admitted, so I'll go  
9 ahead and admit it.

10 MR. CONRAD: I presume there are no  
11 objections.

12 JUDGE DALE: Yeah. I don't see how there  
13 could be, so -- he's just trying to get me as the custodian of  
14 this record.

15 MR. CONRAD: Well, this was during prior  
16 regime, Dale Hardly -- or Hardy Roberts.

17 (Exhibit No. 107 was received into evidence.)

18 BY MR. CONRAD:

19 Q. Moving right along. Look, if you would with  
20 me, Ms. McCormack, to page 3 of Exhibit No. 107, specifically  
21 the last paragraph of that. And would I be correct in  
22 concluding from looking at that -- not asking you for a legal  
23 opinion now, just you work with tariffs, particularly these, I  
24 take it -- that the Commission had looked at those tariff  
25 sheets and said that they comply with the Stipulation and

1 Agreement?

2 MR. COOPER: I'd object, your Honor. The  
3 order speaks for itself. It's in evidence, it can be argued  
4 in the brief. I guess I just see no need for asking  
5 Ms. McCormack for her interpretation of the Commission's  
6 order.

7 MR. CONRAD: I didn't ask her to interpret it.  
8 I just -- she works with tariffs, I think, all the time so I  
9 mean, she would, I take it, regard that as being approval of  
10 the tariff sheets. That's how she referred to the order as  
11 the order approving the tariff sheet, so --

12 MR. COOPER: Well, either it does or it  
13 doesn't so --

14 JUDGE DALE: In that case, it's asked and  
15 answered and we can move on.

16 BY MR. CONRAD:

17 Q. Now, let's look then at Exhibit 106 for a  
18 moment. And I want to ask you a couple of questions,  
19 Ms. McCormack, then about Ms. Meisenheimer's testimony, which  
20 I see I have forgotten to bring up here. Do you have a copy  
21 of her testimony available to you?

22 A. Depending on which testimony, I think I do.

23 Q. Sure. Particular packet that I'm interested  
24 in is that that was filed on June 23 and I believe has been  
25 marked for identification, ma'am, as Exhibit 75. It has a

1 blue --

2 A. Is that the one that deals with the  
3 experimental low-income program?

4 Q. I believe it to be.

5 A. Okay.

6 Q. Does your copy show June 23 at the bottom?

7 A. Yes, it does.

8 Q. Okay. We are talking about the same thing  
9 then. And if you would direct your attention to page 15 of  
10 that. And in response to a question and answer that appears  
11 on the preceding page there on 15, Ms. Meisenheimer provides a  
12 table of sorts. Are you with me so far?

13 A. Yes, I am.

14 Q. And that shows her calculation of a balance  
15 that I believe your counsel mentioned this figure of 655,425.  
16 Do you see that number there?

17 A. Yes, I do.

18 Q. To your knowledge, is that a correct number?

19 A. I have accepted it as -- as that.

20 Q. So you're not disputing, for Empire, that  
21 number?

22 A. Not at this point, no.

23 Q. Now, let's look a moment at that chart. Year  
24 2002, funding level was indicated there to be 25,000, is that  
25 correct, as you understand it?

1           A.       Yes.

2           Q.       And nothing was spent that year. So we have  
3 an excess of 25,000?

4           A.       Uh-huh.

5           Q.       So far so good?

6           A.       Yes.

7           Q.       2003, 300,000. Talk to me about where this  
8 300,000 came from.

9           A.       My knowledge of that, my interpretation of  
10 that, because I've not been directly involved in this program,  
11 is that 150,000 comes from the ratepayers and 150,000 is  
12 matched by the shareholders.

13          Q.       So when I see the number on 2003, I would see  
14 two components of that as you've described them, 150 from  
15 ratepayers and 150,000 from shareholders?

16          A.       Yes.

17          Q.       And of that, 40,000 and change was spent with  
18 a carryover of almost 260,000. So far so good?

19          A.       Yes.

20          Q.       And the same contribution or the same funding  
21 level amounts appear in '04 and '05. Would that also  
22 represent 150,000 of ratepayer money and 150,000 of  
23 shareholder money in each of those years?

24          A.       Yes.

25          Q.       So if you do the math with me on '03, '04 and

1 '05, then you would have, I believe, 450,000 of ratepayer  
2 money just in those three years. Right?

3 A. I agree with that.

4 Q. Is there a share of ratepayer money in the '06  
5 number?

6 A. I didn't put this together, but I would assume  
7 that there is.

8 Q. And would you -- I don't want you to assume,  
9 so if you don't know, let's not speculate. But you've  
10 indicated you didn't have a problem with the 655,425 figure.  
11 Now, that is what's been characterized as unspent funds --

12 A. Yes.

13 Q. -- from this program, essentially collected  
14 starting in '02?

15 A. Yes.

16 Q. Tell me where those funds are kept.

17 A. As far as specific accounts?

18 Q. Yes.

19 A. I may have something on that. I'm not in the  
20 accounting department so it's not on the top of my head. I'm  
21 not sure exactly how to answer that question because we have  
22 the various entries of expense accounts versus payable  
23 accounts.

24 Q. So would it be correct then to say that  
25 insofar as the books and records of the company, that it's

1     accounted for in several different accounts?

2             A.       That would be my answer to the question, yes.

3             Q.       Okay. But the \$655,000 and change, which as  
4     we previously discussed, includes at least 400,000 of  
5     ratepayer money, it's not in a lockbox somewhere, is it?

6             A.       No.

7             Q.       And it's not in a trust account?

8             A.       No.

9             Q.       It's just in -- it has been deposited as it  
10    was received in the ordinary course of business in the  
11    company's checking accounts and --

12            A.       To my understanding --

13            Q.       -- assets?

14            A.       -- that would be, yes.

15            Q.       And the company has used those accounts to  
16    draw from things like your paycheck?

17            A.       I have -- I cannot answer that.

18            Q.       Well, does your paycheck come from the  
19    company?

20            A.       Yes, it does.

21            Q.       Does it come from a bank account?

22            A.       Yes, it does.

23            Q.       And the bank account that we're talking about  
24    would be one of the several bank accounts that the company  
25    maintains, probably a special payroll account, but that's

1 funded from the general accounts of the company, isn't it?

2 You don't know?

3 A. I've -- I've not been involved in that so I  
4 don't want to make assumptions.

5 Q. All right. But you're able to tell me, I  
6 trust, there's not been any special segregation applied to  
7 that \$655,000 and change?

8 A. There's an accounts payable account, but that  
9 would be the -- it would be on the books, to my knowledge, not  
10 in a special account.

11 Q. So insofar as you're aware, then the company  
12 has just used that for day-to-day operations in and out?

13 A. Again, I can't answer that.

14 Q. Okay. Who would be able to answer that? Is  
15 there anyone here that could answer that?

16 A. I don't think so.

17 Q. Now, we talked about this 655,425 number and  
18 you indicated you didn't dispute that from Ms. Meisenheimer.  
19 Looking at your testimonies, Exhibits 8, 9 and 10, could you  
20 tell me where you have mentioned that 655,425?

21 A. I did not use that number.

22 Q. So if the process had stopped, Ms. McCormack,  
23 with the filing of your Exhibit 8 and perhaps 9, if I'm not  
24 out of sequence, that was the July testimony, Exhibit 9, and  
25 but for the June 23 filing by Ms. Meisenheimer of exhibit --

1 or what has been marked at this point as Exhibit 75 to which  
2 we previously referred, we might not have found out about that  
3 \$655,000 and change. We wouldn't know it from your testimony,  
4 would we?

5 A. No, you would not.

6 Q. And let's go back, if you would with me, to  
7 Exhibit 106. And I'd like for you, please, to give some  
8 attention to the very last page of that three-page packet. I  
9 believe it's marked as section 4, second revised sheet No. 11.  
10 Are you there?

11 A. Yes, I am.

12 Q. And in the lower right-hand corner there's an  
13 effective date of April 30, 2003. Correct?

14 A. Correct.

15 Q. And that's the same date that appears, by the  
16 way, on the other two sheets --

17 A. Yes.

18 Q. -- so they're a packet.

19 Now, the next-to-the-last paragraph of this  
20 tariff, which the Commission has approved, indicates that the  
21 experimental program may be evaluated in the next rate or  
22 complaint case. I believe your counsel made reference to what  
23 was the number of the next rate case. Do you recall that?

24 A. Yes, I do.

25 Q. Would I be correct if I remembered that as the



1 0570 case? I believe it's 200--

2 A. Is that the 2004?

3 Q. 2005 or 2004.

4 A. Is it ER or EO?

5 Q. I think this would probably be ER.

6 A. ER, yes.

7 Q. And I believe your counsel mentioned that no

8 change -- in fact, the series of stipulations in that case

9 didn't really refer to the ELIP. Is that correct, to your

10 understanding?

11 A. To my understanding.

12 Q. But then the sentence continues, But in any

13 event, an evaluation of the effectiveness of the first two

14 years of this experiment shall be initiated no later than

15 30 months from the date that these tariff sheets become

16 effective.

17 Did I read that part correctly?

18 A. Yes, you did.

19 Q. What is the date that is 30 months from

20 April 30, 2003?

21 A. May, June, July, August, September -- around

22 September 2005.

23 Q. When was the evaluation of the first two years

24 initiated?

25 A. I do not know.

1           Q.       And you're the company person that's  
2 responsible for these tariffs; is that correct?

3           A.       I was not at the time it became into effect.  
4 It has -- because of the collaborative discussions, it is  
5 moving under my responsibility, but it -- it's very, very new.

6           Q.       Well, let's ask it this way. Do you know  
7 whether an evaluation of the effectiveness of the first two  
8 years of this experiment was initiated -- and I believe your  
9 selected date was September of '05?

10          A.       I do not know when it was initiated. I do  
11 know that one occurred.

12          Q.       One occurred. Okay. When did it occur?

13          A.       It was completed in the late winter of 2006.  
14 The draft was submitted to the company in January.

15          Q.       Of 2006?

16          A.       Yes, sir.

17          Q.       And you indicated that the evaluation ended in  
18 the winter of 2005, is that -- I got a little confused on the  
19 dates there.

20          A.       Well, my understanding is it was over the  
21 first 24 months. And so that would have been through March or  
22 April of 2005.

23          Q.       Okay. And when, again, did the evaluation  
24 that you're referring to end?

25          A.       The evaluation draft was submitted to the

1 company in January.

2 Q. Of '06?

3 A. Of '06.

4 Q. Okay.

5 A. It took several months to be completed.

6 Q. Who supervised the evaluator?

7 A. Within the company?

8 Q. Yes.

9 A. Terry Oliver was working directly with the

10 consultant most of the time.

11 Q. And your relationship to that person within

12 the company is?

13 A. Because of the -- the collaborative and the

14 new programs, I have begun working with him since he was

15 working with them from prior cases.

16 Q. Now, let's make just one additional foray back

17 to Ms. Meisenheimer's filed testimony that's been marked as

18 Exhibit 75 and back again to page 15. With me?

19 A. I'm there.

20 Q. And I see there an item Less Evaluation

21 Expense in her table.

22 A. Yes.

23 Q. Is that 15,000 the expense of the evaluation

24 to which we've been directing some attention here momentarily?

25 A. I'm not positive. Nothing I have indicates

1 that specifically.

2 Q. Do you dispute Ms. Meisenheimer's --

3 A. No, I do not.

4 Q. -- 15,000?

5 And the way that she has that set up, it would  
6 appear that the cost of the evaluator, if we make that --

7 A. Yes.

8 Q. -- assumption, which you're not disputing,  
9 would be paid from the program funds?

10 A. Yes.

11 Q. And that appears to be how she's handled that?

12 A. And that appears to be correct.

13 Q. Okay. Now, is there anything in the ELIP  
14 tariff, that's Exhibit 106, that indicates what you do when  
15 the program is over and the evaluation has ended?

16 A. Yes.

17 Q. And what is it that you do when the program is  
18 over and the evaluation has ended?

19 A. The last paragraph states that any excess  
20 funds -- and I'm not reading it, I'm paraphrasing -- that any  
21 excess funds after the program ends and the evaluation occurs  
22 would be contributed to Project Help.

23 Q. And more specifically -- that's the very last  
24 phrase of that very last paragraph -- it says EDE. That's, of  
25 course, Empire. Right? Shall contribute the excess funds to

1 Project Help.

2 Looking at page 15 of Ms. Meisenheimer's  
3 exhibit -- or not exhibit but marked for identification as 75,  
4 tell me what the excess fund amount is.

5 A. Based on her calculations, it's \$655,425.

6 Q. Which you are not disputing. Correct?

7 A. That is correct.

8 Q. When did that money get paid?

9 A. To whom?

10 Q. In accordance with your tariff.

11 A. The program has not ended so it has not been  
12 paid.

13 Q. And your proposal here today is to do  
14 something other with those funds than your tariff provides; is  
15 that correct?

16 A. Yes. Based on discussions with the CPC.

17 Q. Have you talked to -- well, let me ask this  
18 first. Who is Project Help --

19 A. It's a component --

20 Q. -- or what it is?

21 A. It's a component of Red Cross that assists the  
22 elderly and the disabled in meeting their utility bills on an  
23 emergency basis.

24 Q. Now, they are a charitable organization; is  
25 that correct?

1           A.       That's my -- that would be my take on it.

2           Q.       Okay.  It's part of the Red Cross?

3           A.       Yes.

4           Q.       We're talking about the --

5           A.       Uh-huh.

6           Q.       -- American Red Cross.  Right?

7           A.       That is correct, yes.

8           Q.       Has anybody contacted them about your proposal

9       to redirect to some other purpose what the Commission and your

10       tariffs provide is to happen to the excess funds?

11          A.       Not to my knowledge.

12          Q.       Do you think as just a private person, not

13       asking you for a legal opinion, that somebody at Project Help

14       might be able to make use of \$655,000 and change?

15          A.       One would -- without offering a legal opinion,

16       one would think that they could.

17          Q.       Do you think they might have some interest in

18       having the 655,000 and change that the Commission had approved

19       pursuant to a unanimous stipulation be directed to them --

20                   MR. THOMPSON:  I'm going to object.

21       BY MR. CONRAD:

22          Q.       -- go somewhere else?

23                   MR. THOMPSON:  I'm going to object.  Calls for

24       speculation.

25                   JUDGE DALE:  Indeed it does.

1 BY MR. CONRAD:

2 Q. Have you filed a tariff sheet that has  
3 proposed to change the distribution of these funds from that  
4 that appears on sheet No. 11?

5 A. I have not.

6 Q. Are you aware of whether the company has?

7 A. Not to my knowledge.

8 MR. CONRAD: I believe that's all. Thank you.

9 JUDGE DALE: Thank you, Mr. Conrad.

10 Mr. Mills, you can do it from either place.

11 MR. MILLS: I'll go up there.

12 JUDGE DALE: Okay.

13 MR. MILLS: I'm old school.

14 CROSS-EXAMINATION BY MR. MILLS:

15 Q. Good morning, Ms. McCormack.

16 A. Good morning.

17 Q. Let me start by -- this may be somewhat --  
18 some of the same ground that Mr. Conrad covered.

19 As we stand here today, Project Help is  
20 still -- I'm sorry -- the ELIP program is still in operation,  
21 still an ongoing program?

22 A. Yes, it is.

23 Q. Are you familiar with the tariff sheets that  
24 Empire filed to begin this rate case?

25 A. No. I've not looked at those.

1           Q.       Are you familiar enough with the ELIP program  
2   to know that the ELIP tariffs were not included in the tariff  
3   sheets that were filed to initiate this case?

4           A.       I learned that today.

5           Q.       So it is your testimony that the ELIP tariffs  
6   are not contained in the tariff filing that began this case?

7                   MR. COOPER: We would stipulate to that.

8                   MR. MILLS: Okay. Thank you.

9   BY MR. MILLS:

10          Q.       Is it the proposal of Public Counsel Witness  
11   Meisenheimer that the ELIP program be terminated?

12          A.       No, it is not.

13          Q.       Is it your proposal in this case that the ELIP  
14   program be terminated?

15          A.       That is an option, yes, in -- I have two  
16   options in my testimony and that is one of them.

17          Q.       And is it your preferred option?

18          A.       I'd have to read it and see.

19          Q.       Okay.

20          A.       Yes.

21          Q.       Okay. What is your secondary option?

22          A.       That the program be put under the umbrella of  
23   the customer program collaborative for changes to be made by  
24   that group along with our other efficiency, affordability and  
25   demand response programs.



1           Q.       And under that option, the ELIP program would  
2 continue?

3           A.       As -- yes, unless the CPC stated otherwise.

4           Q.       So at least until some further action was  
5 taken, the ELIP program would continue?

6           A.       Yes.

7           Q.       What is the Staff's position with regard to  
8 continuation of the ELIP program?

9           A.       I believe they're made -- their primary is  
10 that it be eliminated.

11          Q.       Okay. And does Staff have a secondary  
12 position as well?

13          A.       I believe it's that it go to the CPC.

14          Q.       So your primary proposal and the Staff's  
15 primary proposal are essentially the same?

16          A.       Yes.

17          Q.       Now, the three sheets that comprise the  
18 ELIP -- three tariff sheets that comprise the ELIP program  
19 have been marked as Exhibit 106. Do you have a copy of that?

20          A.       Yes.

21          Q.       Is there anything on those tariff sheets that  
22 specify a date certain or even a triggering event that would  
23 cause the ELIP program to end?

24          A.       Not directly.

25          Q.       So unless and until something happens to those

1 tariff sheets, the ELIP program will continue?

2 A. Yes.

3 Q. Is it Empire's position that by filing a  
4 general rate increase case, that it's put all of its tariffs  
5 into play?

6 MR. COOPER: Objection, your Honor. Calls for  
7 a legal conclusion. Ms. McCormack's not qualified to offer an  
8 opinion as to that object.

9 MR. MILLS: Well, I don't believe it's a legal  
10 conclusion. It's a tariff filing question and a question of  
11 which tariffs are at issue. And this witness should have an  
12 opinion about whether the tariff sheets that she's filing  
13 testimony about are at play in this case or not.

14 JUDGE DALE: I think that you can ask her if  
15 she thinks that her testimony brings them into play.

16 MR. MILLS: Okay.

17 BY MR. MILLS:

18 Q. Do you think that your testimony brings these  
19 tariff sheets into play in this case?

20 A. Without being an attorney, I would think yes,  
21 it would.

22 Q. Okay. Now, you've had some questions about  
23 the 655,425 balance shown on page 15 of Public Counsel Witness  
24 Meisenheimer's direct revenue requirement testimony. Are you  
25 familiar with that figure?

1 A. Yes.

2 Q. That figure was through four months of 2006;  
3 is that correct?

4 A. Yes, it was.

5 Q. So would you have expected to have increased  
6 since then?

7 A. Yes.

8 Q. Okay. But there's no testimony in the case,  
9 to your knowledge, that quantifies that increase, is there?

10 A. No, it does not.

11 Q. So to be consistent with the tariff sheets  
12 that continue the ELIP program until some further action is  
13 taken with respect to those tariff sheets, would it be your  
14 opinion that the shareholder matching should continue until  
15 that program terminates or is modified by modifying the tariff  
16 sheets?

17 A. That would be my -- my thoughts on it, yes.

18 Q. Okay. Now, assume for me that through some  
19 action of the Commission in this case that both customer and  
20 company contribution are ended in this case, but that a  
21 balance remains for the ELIP program.

22 A. Uh-huh.

23 Q. Are you with me so far on that assumption?

24 A. Yes.

25 Q. Would it be your position the ELIP should

1 continue to use those funds until such time as either the  
2 Commission or the CPC determines that an alternate use should  
3 be made of them?

4 A. My recommendation was that the CPC be given  
5 the authority for that program to determine the use of the  
6 funds if the -- if the tariff -- so your assumption is that  
7 the tariff is still there --

8 Q. Yes.

9 A. -- but we're ending the funding through this  
10 case possibly?

11 Q. That's an assumption.

12 A. Okay. If -- if that's all we were doing, I  
13 could see ELIP continuing. I could also see it going under  
14 the CPC for potential modifications to improve the  
15 participation.

16 Q. And what would your recommendation be in the  
17 period of time between the ending of this case and the time at  
18 which the CPC acts to do something with the ELIP program?

19 A. Well, the CPC is ready to start moving on it  
20 based on prior conversations. But I think in the interim of  
21 the modifications being made, the C-- the ELIP program could  
22 continue as is.

23 Q. Okay. Well, let's explore your past answer.  
24 The CPC already has designs on that \$655,000?

25 A. No. No.

1           Q.       Okay. But the CPC is ready to immediately  
2   make a decision on what should be done with them?

3           A.       No.

4           Q.       Okay.

5           A.       I just said they were -- through discussion,  
6   had -- it had -- the topic had arisen of the CP-- of the ELIP  
7   being moved into the umbrella of programs that the CPC  
8   overviews.

9           Q.       So it may take some period of time for the CPC  
10   to decide what to do --

11          A.       Yes.

12          Q.       -- with that money?

13          A.       Yes.

14          Q.       What would you recommend be done with the ELIP  
15   program in the interim?

16          A.       As I stated, it could continue as is --

17          Q.       All right.

18          A.       -- if that was the -- the decision of the  
19   Commission.

20          Q.       So you wouldn't recommend that if -- if in  
21   that interim period a qualified applicant came and wanted to  
22   take advantage of the ELIP program, would you not recommend  
23   that that person be turned away?

24          A.       I would not be opposed to that, no.

25          Q.       Okay. Now, you recognize from

1 Ms. Meisenheimer's testimony that the participation in the  
2 ELIP program has fallen off fairly significantly this calendar  
3 year; is that correct?

4 A. Yes.

5 Q. Do you have an opinion as to why that's  
6 happened?

7 A. I did speak with -- and this -- tell me if you  
8 want me to go this route or not. I did speak with Terry  
9 Oliver regarding that because of the concern of the drop in  
10 participation. And part of that is because it's set up for  
11 24-month participation as a maximum. And we've had trouble  
12 getting people involved. And so we have had those involved  
13 and then their two years are up.

14 Q. So you think that at least part of what's  
15 happened is that the program is only offered to people for  
16 24 months --

17 A. Uh-huh.

18 Q. -- some of the eligible people have used up  
19 the 24 months and are no longer eligible --

20 A. Yes.

21 Q. -- is that correct?

22 A. Uh-huh.

23 Q. Would Empire be willing to extend that  
24 24-month period so that those eligible people can continue to  
25 take advantage of the ELIP program?

1           A.       I -- I can't, you know, speak for management,  
2 but I would think that that would be a possibility, yes, to  
3 extend the participation limit.

4           Q.       Okay. Let me see if I can clarify your role  
5 in the determination of what Empire would or would not do. It  
6 would not be your decision --

7           A.       No.

8           Q.       -- on any matters with regard to what happens  
9 with the ELIP program?

10          A.       No.

11          Q.       Would you have a say in that decision?

12          A.       Yes.

13          Q.       Would you recommend to management that the  
14 24-month period be extended to allow customers who have  
15 already filled up their 24-month allotment be allowed to  
16 continue?

17          A.       Depending on the whole picture of what we were  
18 doing to make changes, I think that the extension would be  
19 recommended, yes.

20          Q.       And, again -- well, let me ask first from  
21 Empire's point of view and if you can't give me that, then  
22 I'll ask you from yours.

23                   From Empire's point of view, would it be  
24 preferable that the remaining balance be used for other  
25 programs by the CPC rather than go into Project Help?

1           A.       Yes. I think we would like to see it in other  
2 programs.

3           Q.       Okay. Now, one of the things that I believe  
4 has been discussed with you is the idea that participants in  
5 the ELIP program be required to apply for weatherization  
6 assistance. Are you familiar with that proposal?

7           A.       No, I am not.

8           Q.       Okay. I won't go there. Let me ask you  
9 couple more questions about Project Help. What exactly does  
10 Project Help do?

11          A.       My understanding is that they provide  
12 emergency utility assistance to the elderly and the disabled  
13 in our service territory.

14          Q.       And where do they get their funds from?

15          A.       I know that we have the option for our  
16 customers to make contributions to that program. And then we,  
17 in turn, provide that to Project Help.

18          Q.       So they're essentially funded by  
19 contributions?

20          A.       That's the only funding I'm aware of.

21          Q.       They're at least partially funded by those  
22 contributions?

23          A.       I don't know for sure.

24          Q.       And when you say they provide assistance to  
25 people for their energy needs, do they write checks to



1 customers?

2 A. I don't know how it works.

3 Q. But in any event, the money that comes from  
4 Project Help eventually goes to the utility to help with those  
5 customers' utility bills; is that correct?

6 A. I would think that -- that's my understanding.

7 Q. Okay.

8 A. I'm not positive though.

9 Q. Now, are you familiar with the evaluation  
10 prepared of the ELIP program?

11 A. Yes, I am.

12 Q. And did not that evaluation generally give a  
13 positive recommendation to the program?

14 A. Yes, it did.

15 MR. MILLS: That's all the questions I have.

16 Thank you.

17 JUDGE DALE: Thank you.

18 MR. THOMPSON: Staff has no cross for this  
19 witness.

20 JUDGE DALE: Are there questions from the  
21 Bench?

22 QUESTIONS BY COMMISSIONER GAW:

23 Q. I don't want to spend much time on this  
24 because I think I can get it out of the transcript, but I am  
25 not sure that I am following this issue of the money that was

1     supposed to go to the Red Cross.

2                     Is the money that you were being asked  
3     questions about from Mr. Conrad that was intended to go to the  
4     Red Cross, is that as a result of the last Empire hearing or  
5     some other agreement?  Somebody clarify that for me.

6                     MR. MILLS:  I hate to do this, but I have to  
7     object to the form of that question.  I don't believe it has  
8     been demonstrated either that it is supposed to or intended to  
9     go to the Red Cross at this point.

10                    COMMISSIONER GAW:  Well, Judge, if you want to  
11     rule on his objection, I'm not used to having objections to  
12     questions.

13                    MR. MILLS:  I think it assumes facts that are  
14     not in evidence.

15                    COMMISSIONER GAW:  But I will be glad to  
16     rephrase it if you want me to do that.

17                    JUDGE DALE:  I would appreciate not having to  
18     rule on that objection.

19                    COMMISSIONER GAW:  That's what I figured.

20     BY COMMISSIONER GAW:

21                    Q.     Why don't you explain to me -- because I came  
22     in in the middle of that.  Explain to me what the issue is on  
23     the Red Cross questions.

24                    A.     The issue is that because of the large dollar  
25     amount of unused funds through the ELIP program, we would like

1 to use -- the issue is should the 655,000-plus go to Project  
2 Help or go some other direction, which the recommendation is  
3 to go to the customer programs collaborative for their use in  
4 other low-income affordability programs to improve energy  
5 efficiency.

6 Q. Tell me what this -- how this ties into the  
7 Red Cross, please.

8 A. Okay. Project Help is a component of the Red  
9 Cross -- of the American Red Cross.

10 Q. Okay. And has there ever been any agreement  
11 or any stipulation or anything else referring to that prior to  
12 this proceeding?

13 A. Other than the tariff, I'm not sure if it was  
14 in a stipulation.

15 Q. Okay. And is it contained in a tariff  
16 currently?

17 A. Yes, it is.

18 Q. All right. And is that a tariff that -- can  
19 you tell me what the tariff number is?

20 MR. COOPER: Commissioner, it's one of the  
21 tariff sheets that has been marked as Exhibit 106 here today.  
22 It's the third page of that.

23 COMMISSIONER GAW: I'm on that page. I'm just  
24 asking the question if she knows. If she doesn't know --

25 THE WITNESS: Tell you the tariff number?

1 BY COMMISSIONER GAW:

2 Q. Yes.

3 A. It's the Empire section 4, third revised  
4 sheet -- sheets No. 9, 10 and 11.

5 Q. Okay. And when was that tariff filed?

6 A. It was filed March 31st, 2003.

7 Q. Okay. And on the last -- on that page, can  
8 you point to me -- do you have it in front of you?

9 A. Yes, I do.

10 Q. Can you point to me where that language is  
11 that's being discussed?

12 A. Regarding Project Help?

13 Q. Yes.

14 A. It's on sheet No. 11, the final paragraph, If  
15 any program funds in excess of actual program expenses remain  
16 at the end of the ELIP program and evaluation, EDE shall  
17 contribute the excess funds to Project Help.

18 Q. Okay. And the ELIP program, you're saying,  
19 has not come to an end?

20 A. It has not, that's correct. It is still  
21 ongoing.

22 Q. And tell me why you believe it is -- it's my  
23 understanding that your suggestion is that it not go to  
24 Project Help.

25 A. Yes. We are -- are --

1 Q. Which is a Red Cross program?

2 A. That's correct. There are other funds that go  
3 to that -- to that -- to Project Help. And Empire is  
4 recommending that this -- these dollars be moved into the  
5 customer program collaborative overview so that we can use it  
6 toward other low-income affordability and energy efficiency  
7 programs because we believe it will do a greater good.

8 Q. So you think the Red Cross program isn't as  
9 good as the other one?

10 A. No. I think it would serve -- I think Project  
11 Help is very good, but I think that we can serve more people  
12 and accomplish more -- more benefit by going this other  
13 direction.

14 Q. Tell me what the difference is between Project  
15 Help program and the program that you want to fund.

16 A. Project Help makes emergency payments --  
17 utility payments to the elderly and the disabled. We are  
18 recommending that it go to a wider range of programs. One  
19 recommendation by Staff has been to go to the low-income  
20 weatherization program so that it's -- it's not just emergency  
21 help, but it helps reduce the ongoing bills of the low-income  
22 segment.

23 Q. Is the Project Help program oriented to the  
24 elderly and disabled who meet certain income qualifications or  
25 is income a factor?

1           A.       I do not know.

2           Q.       Who would know that?

3           A.       I can find that out for you. I don't know who  
4 here would know that.

5           Q.       Okay. That would be helpful.

6           A.       I can do that.

7           Q.       And I think you were asked this question in a  
8 way, but are you aware as to whether or not there's been  
9 communication with the Red Cross as to this tariff provision  
10 that's in the exhibit that we've been talking about?

11          A.       106?

12          Q.       Are they aware that that provision is in  
13 there, do you know?

14          A.       I have not contacted them, but I do not  
15 believe they are aware just based on conversations within the  
16 company. I don't believe normal procedure is to make them  
17 aware of possible funds. We make them aware when there are  
18 definite funds.

19          Q.       Okay. And, of course, we should never presume  
20 that anyone knows what's in a tariff filing that's filed with  
21 the Public Service Commission, should we? You don't have to  
22 answer that question.

23          A.       Thank you.

24          Q.       I'll ask some of my telecommunications frie--  
25 people about that sometime.

1                   Okay. So at this point we don't know whether  
2 they know that this funding is in here for certain. Would  
3 that be correct?

4           A.       That is correct.

5           Q.       They may or may not know?

6           A.       Uh-huh.

7           Q.       But you have not -- you have had no  
8 communication with them about the possibility of that funding  
9 going away?

10          A.       That's correct also.

11          Q.       Well, I apologize for belaboring this, but I  
12 just needed to understand a little bit better about what was  
13 going on.

14                   COMMISSIONER GAW: Thank you.

15                   JUDGE DALE: Redirect?

16                   MR. COOPER: Recross from the other parties.

17                   MR. MILLS: I --

18                   JUDGE DALE: Wishful thinking.

19                   MR. MILLS: I'm not sure which order we're  
20 going in. I think Mr. Conrad would be first.

21                   JUDGE DALE: Ms. Woods?

22                   MS. WOODS: I don't have anything. Thank you.

23                   MR. CONRAD: Judge, based on Commissioner  
24 Gaw's questions, it might be helpful for the Commission to  
25 supplement the record on this issue by taking administrative

1 notice of the Report and Order and the attached stipulation in  
2 ER-2002-424.

3 I do have that document on my computer and I  
4 will decline respectively to reproduce copies of that computer  
5 for the Bench. I would be happy to provide at a later time  
6 ample copies of that order and the attached stipulation,  
7 however, if your Honor would give me that leave.

8 JUDGE DALE: I'm fairly confident that we've  
9 all got it on our computers so we will take administrative  
10 notice of that and not bother with having it come in as an  
11 exhibit. It's referred to on the first page of 107, so I  
12 don't see any need to --

13 MR. CONRAD: I think that's the only thing  
14 that I would -- I would have no further questions beyond that.

15 JUDGE DALE: Thank you.

16 MR. MILLS: Thank you.

17 RECROSS-EXAMINATION BY MR. MILLS:

18 Q. Ms. McCormack, continuing on with Commissioner  
19 Gaw's questions about Project Help, is it your understanding  
20 of Public Counsel's position that if Public Counsel's position  
21 is adopted, that the ELIP program would continue; is that  
22 correct?

23 A. Yes.

24 Q. So that regardless of whether Project Help is  
25 a good project or not as good as some other projects, that



1 issue simply wouldn't come into play because the ELIP program  
2 would not end?

3 A. That's correct.

4 Q. That eventuality wouldn't trigger in that the  
5 ELIP program would continue. Correct?

6 A. That's my understanding.

7 Q. And I believe you told me earlier that  
8 according to the evaluator, it's a good program?

9 A. That was his evaluation, yes.

10 Q. Okay.

11 MR. MILLS: That's all the questions I have.

12 Thank you.

13 JUDGE DALE: Staff?

14 MR. THOMPSON: No questions.

15 JUDGE DALE: And now redirect?

16 MR. COOPER: Thank you, your Honor.

17 REDIRECT EXAMINATION BY MR. COOPER:

18 Q. Let's kind of start in backwards fashion here.

19 Mr. Mills just asked you about

20 Ms. Meisenheimer's recommendation as to the ELIP program.

21 Correct?

22 A. Yes.

23 Q. And he discussed, I think, her recommendation  
24 that the program possibly be continued and modified by the  
25 CPC, correct -- or continued anyway?

1           A.       Yes.

2           Q.       To your knowledge, does Ms. Meisenheimer also  
3   have an alternative in her testimony as to what should happen  
4   to the program funds if the ELIP program is terminated?

5           A.       I don't recall. I'm checking.

6                    Yes, she does have an alternative.

7           Q.       What is that alternative?

8           A.       That the funding be returned to the -- let's  
9   see. She first suggests that the unused funds be donated to  
10   Project Help, but because of the level of excess funding, she  
11   says it also would be appropriate or -- that the unused funds  
12   be returned to the ratepayers.

13          Q.       Okay. While you have Ms. Meisenheimer's  
14   testimony in front of you, you were asked some questions about  
15   that chart on page 15 that kind of calculates the 655,000  
16   that's been discussed here today. Correct?

17          A.       Yes.

18          Q.       Will you turn back to page 14, which I think  
19   is the start of the answer that leads into that chart? Now,  
20   that statement on lines 18 and 19 says that the table  
21   illustrates ELIP funding levels as reported by the company.  
22   Correct?

23          A.       Yes.

24          Q.       Are those numbers related to the ELIP program  
25   reported to Staff, OPC or anyone else regularly outside of the

1 rate case process?

2 A. I'm not involved in the reporting, if there is  
3 any, so I'm not aware of that.

4 Q. Okay. Do you ever participate in the IRP  
5 process?

6 A. Yes, I do.

7 Q. Do those numbers ever come up during the IRP  
8 presentations?

9 A. I don't believe the numbers have come up, no.

10 Q. Okay. Does your Direct Testimony in this case  
11 contain any recommendation to change the ELIP program?

12 A. No, I don't believe it does.

13 Q. Okay. At what point in the testimony process  
14 did you address the ELIP program?

15 A. In my Rebuttal.

16 Q. Okay. And at that point who were you  
17 responding to?

18 A. I was responding to Ms. Meisenheimer's  
19 comments referencing the changes to ELIP.

20 Q. You were asked whether Empire would be willing  
21 to extend the 24-month limitation on participation. Do you  
22 remember that?

23 A. Yes.

24 Q. Is that 24-month limitation currently  
25 contained in Empire's tariff sheets?

1           A.     Yes, it is.

2           Q.     Okay.

3           MR. COOPER: That's all the questions I have,  
4 your Honor.

5           JUDGE DALE: Thank you. You may step down.

6           THE WITNESS: Thank you.

7           JUDGE DALE: I suggest that we take a break  
8 for 10 minutes and reconvene at ten o'clock.

9           (A recess was taken.)

10          MR. CONRAD: Judge, just a preliminary thing  
11 now that we're back on. I think the next number -- the last  
12 number of exhibit I had I think was 107. Do you want to  
13 reserve a number for that administratively noticed stipulation  
14 or does that -- you handle that another way?

15          JUDGE DALE: No. We'll just assume that  
16 everybody can find a copy of it themselves.

17          MR. CONRAD: That's quite fine. I just wanted  
18 to try to keep my numbering scheme up.

19          JUDGE DALE: Yes. I'm still on -- next up  
20 will be 108.

21          And I believe it's time for Staff witness.

22          MR. THOMPSON: Thank you. Staff calls Lena  
23 Mantle.

24          (Witness sworn.)

25          JUDGE DALE: Thank you. Please be seated.

1 LENA MANTLE testified as follows:

2 DIRECT EXAMINATION BY MR. THOMPSON:

3 Q. State your name, please.

4 A. Lena M. Mantle.

5 Q. Could you spell your last name for the  
6 reporter, please?

7 A. M-a-n-t-l-e.

8 Q. How are you employed?

9 A. I'm employed by the Missouri Public Service  
10 Commission.

11 Q. And what's your position?

12 A. I'm manager of the energy department.

13 Q. Are you the same Lena Mantle that caused to be  
14 prepared and filed prepared testimony in this matter?

15 A. Yes, I am.

16 Q. And the testimony in question was Supplemental  
17 Direct Testimony that's been marked as Exhibit 66 and Rebuttal  
18 Testimony that's been marked as Exhibit 67; is that correct?

19 A. That is correct.

20 Q. Now, the matters that are at issue today are  
21 only treated in your Rebuttal Testimony; is that correct?

22 A. That is correct.

23 Q. If I were to ask you the same questions as are  
24 contained in Exhibit 67, your Rebuttal Testimony, would your  
25 answers here today be the same?

1           A.       Yes, they would.

2           Q.       And is that testimony true and correct, to the  
3 best of your knowledge and belief?

4           A.       Yes, it is.

5           Q.       And I guess I should have asked you earlier,  
6 do you have any corrections or changes to that testimony?

7           A.       No, I do not.

8           MR. THOMPSON: At this time I would offer  
9 Exhibit 67.

10           JUDGE DALE: Are there any objections?

11           MR. CONRAD: Your Honor, subject to  
12 cross-examination, we would have no objection, but I would  
13 maybe ask that you withhold ruling until we do that.

14           JUDGE DALE: All right.

15           MR. THOMPSON: Well, in that case, I will  
16 tender the witness for said cross-examination.

17           JUDGE DALE: Thank you.

18           Ms. Woods?

19           MS. WOODS: No questions, your Honor.

20           JUDGE DALE: Thank you.

21           Mr. Conrad?

22 CROSS-EXAMINATION BY MR. CONRAD:

23           Q.       Good morning, Ms. Mantle.

24           A.       Good morning.

25           Q.       Let me ask you to turn, please, to what's been

1 marked for identification as 67, that being your Rebuttal  
2 Testimony filed in July 2006 and specifically to page 4, and  
3 further, specifically to the question and the answer that  
4 begin on line 11 and continue through line 20.

5 A. I'm there.

6 Q. Okay. And do you not there discuss the  
7 Project Help issue in connection with the ELIP program?

8 A. That is part of my answer to the question  
9 about what I propose the unspent funds be -- be spent for.

10 MR. CONRAD: Permission to approach.

11 JUDGE DALE: Yes.

12 BY MR. CONRAD:

13 Q. I show you what has been marked and admitted  
14 as Exhibit 106 and identified and admitted as the suspect ELIP  
15 tariff. Would you look, please, at the third of the three  
16 pages?

17 A. I'm there.

18 Q. Is -- strike that.

19 The last paragraph of that tariff sheet  
20 provides, does it not, for the distribution of excess funds?

21 A. Yes, it does. At the end of the ELIP program.

22 Q. And would we be correct in saying that the  
23 excess funds at this point are approximately \$655,000?

24 A. That is my understanding.

25 Q. You've not done, yourself, an audit of that?

1           A.       No, I have not.

2           Q.       But you've read the testimony.  You don't have  
3 any dispute about that number?

4           A.       I have no dispute with that number.

5           Q.       If that language stands as it is on the tariff  
6 sheet 106, where would that 655,000 and change go at the end  
7 of the ELIP program?

8           A.       It would go to Project Help.

9           Q.       And that takes us then to your discussion on  
10 page 4 where we're talking about who Project Help is.  
11 Correct?

12          A.       I'm -- I'm not discussing who Project Help is,  
13 just that that's where the funds were supposed to go to.

14          Q.       Now, the second sentence I think that begins  
15 on line 14 talks about Project Help being a worthy recipient.  
16 Are you with me there so far?

17          A.       Yes, sir.

18          Q.       But then on line 15, there's the phrase, It  
19 was not envisioned, when the program was designed, that there  
20 would be the level of unspent funds that currently exists.

21                   Do you see that language?

22          A.       Yes.

23          Q.       What level of unspent funds was envisioned  
24 when the program was designed?

25          A.       As with all programs, they're -- they're



1 hopefully designed to be wildly successful. What was  
2 envisioned was there would be no dollars to go to Project  
3 Help, but in the event that there would be 10-, 20-, maybe  
4 even up to 50,000 dollars, that that would go to Project Help.

5 Q. Now, where is that envisioning documented?

6 A. It is not document-- documented, to my  
7 knowledge.

8 Q. Did you participate in the stipulation process  
9 and formulating the stipulation that settled the 424 case, the  
10 2002-424?

11 A. No, I did not.

12 Q. Okay. Have you looked at the stipulation in  
13 that case?

14 A. I may have in the past, but not recently.

15 Q. Are you able to tell me anything about any  
16 limits in that stipulation with respect to the amount of funds  
17 that would be contributed to Project Help?

18 A. To my knowledge, there was no limit on the  
19 funds to be given to Project Help.

20 Q. And at least on 106, Exhibit 106, that last  
21 paragraph that we looked at, there is no cap on those funds;  
22 is that correct?

23 A. That is correct.

24 Q. It doesn't say up to \$100,000 or some other  
25 number?

1 A. No, it does not.

2 Q. And it doesn't say the level that you  
3 indicated when I asked you about what level was envisioned?

4 A. No, it does not.

5 Q. Okay. It just says whatever's left over?

6 A. That's what it says.

7 Q. Okay. And that's the Commission approved  
8 tariff, as far as you know?

9 A. Yes.

10 MR. CONRAD: Thank you, your Honor. That's  
11 all.

12 Thank you, Ms. Mantle.

13 JUDGE DALE: While it's fresh in my mind,  
14 would you like to re-offer --

15 MR. THOMPSON: Yeah, I offer Exhibit 67.

16 JUDGE DALE: And is there any objection?

17 MR. CONRAD: No. We will withdraw -- or  
18 indicate we have no objection. Thank you.

19 JUDGE DALE: Okay. So Exhibit 67, Lena  
20 Mantle's Rebuttal Testimony, is admitted into evidence.

21 (Exhibit No. 67 was received into evidence.)

22 JUDGE DALE: It's you.

23 CROSS-EXAMINATION BY MR. MILLS:

24 Q. Good morning, Ms. Mantle.

25 A. Good morning.

1           Q.       Let me for the third time go over something  
2       that's already been gone over this morning. And I'm going to  
3       turn your attention to the Stipulation and Agreement in  
4       2002-424. The Commission has previously taken administrative  
5       notice of it. I will hand you what is an excerpt -- what is  
6       an excerpt of that that deals with the ELIP program.

7                   MR. THOMPSON: Okay.

8       BY MR. MILLS:

9           Q.       And once you've had a moment or two to  
10       familiarize yourself with that section of the Stipulation and  
11       Agreement, can you tell me what it says about Project Help in  
12       the Stipulation and Agreement?

13          A.       I do not see any reference to Project Help.

14          Q.       And what does it say about what should be done  
15       with the excess funds, if there are any remaining at the end  
16       of the ELIP program?

17          A.       I do not see any reference to that either.

18          Q.       What does it say about either a date or an  
19       event that would cause the end of the ELIP program?

20          A.       It says that program details will be developed  
21       by a collaborative committee. Other than that, it doesn't say  
22       anything about that.

23          Q.       Okay. Now, let me turn you to your Rebuttal  
24       Testimony at page 4, the question that begins on 11 and the  
25       answer that that follows. Am I correct in understanding that

1    what you're discussing there is funds that were collected for  
2    the ELIP program but have not been spent after the ELIP  
3    program has ended or are you talking about -- well, let me ask  
4    that question.

5           A.     I didn't specifically say in this paragraph or  
6    anywhere in my testimony, I don't believe.

7           Q.     Okay.  So could I read that question and  
8    answer to apply to funds that are in excess, that is, a  
9    balance being carried on the ELIP program, that is being  
10   carried at a time when the ELIP program is still ongoing?

11          A.     It could be read that way, yes.

12          Q.     Is that how you intended it to be read?

13          A.     I don't think I actually thought of that  
14   finding at the time when I was writing this.

15          Q.     Okay.  Well, let me ask you that question.  
16   What is your position on what should be done with an excess  
17   balance in the ELIP program while the ELIP program is still  
18   ongoing?

19          A.     I think those funds should remain in whatever  
20   account they're in to -- to be spent for ELIP while the ELIP  
21   program is still ongoing.

22          Q.     Okay.

23          A.     Unless it's placed in the CPC.

24          Q.     And while the ELIP program is ongoing, should  
25   shareholder matching of ratepayer funds continue?

1           A.       That's the way the program was designed, yes,  
2 I believe it should.

3           Q.       Now, do you know who performed the evaluation  
4 of the ELIP program?

5           A.       I believe the gentleman's name is Roger  
6 Colton.

7           Q.       And who is Roger Colton?

8           A.       He is a consultant that does evaluation of a  
9 lot of low-income programs across the nation, not just here in  
10 Missouri.

11          Q.       Have you reviewed the evaluation that Roger  
12 Colton did?

13          A.       I've reviewed the summary of that evaluation  
14 that has his conclusions in it.

15          Q.       And when did you review that summary?

16          A.       Yesterday.

17          Q.       Yesterday. And when did you file your  
18 testimony in which you recommended that the ELIP program be  
19 discontinued?

20          A.       July 28, 2006.

21          Q.       Some month and a half before you reviewed the  
22 evaluation of the program?

23          A.       Before I actually read the evaluation, yes.

24          Q.       And how was that evaluation paid for?

25          A.       It was paid for with funds collected from the

1 ratepayers and the shareholders.

2 Q. And from your recent review of the summary of  
3 that report, would you agree that Roger Colton gave a  
4 favorable evaluation of the program?

5 A. He said that of the participants, it's  
6 achieving the aims of the program, yes.

7 Q. He did recommend some changes?

8 A. Yes, he did.

9 Q. Okay. Now, if any changes were to be made to  
10 the program, would you agree that it would be a worthwhile  
11 change to require participants to apply for weatherization  
12 assistance as a prerequisite for receiving funds from the ELIP  
13 program?

14 A. Yes. I believe that would be worthwhile. It  
15 will reduce the bills in the long run rather than just helping  
16 to pay for the current bills.

17 Q. And for those participants who are renters  
18 rather than homeowners, would it be a good idea to require  
19 that their landlords at least be requested to apply for  
20 weatherization assistance?

21 A. Yes. That is a good idea.

22 MR. MILLS: I think that's all I have. Thank  
23 you.

24 JUDGE DALE: Thank you.

25 Mr. Cooper?

1 CROSS-EXAMINATION BY MR. COOPER:

2 Q. Ms. Mantle, there was a mention earlier today  
3 about the IRP process. Are you familiar with that process?

4 A. Yes, I am.

5 Q. What is that process?

6 A. Up to last December, it was the process --  
7 which Empire is still participating in -- utilities come in  
8 every six months and update us on their resource planning.

9 Q. Okay. And Empire has come in every six months  
10 for that purpose --

11 A. I wouldn't say --

12 Q. -- approximately?

13 A. -- exactly every six months, but yeah.

14 Q. And do you participate in those meetings?

15 A. Yes, I do.

16 Q. As a part of that process, is there an update  
17 concerning efficiency, affordability, demand-type programs  
18 that the company may have ongoing?

19 A. Yes, there is.

20 Q. Okay. Does that include updates as to the  
21 progress and status of the ELIP program in regard to Empire?

22 A. Typically there has been updates on the ELIP  
23 program. I don't remember if the most recent one had an  
24 update of the program.

25 Q. Okay.

1 MR. COOPER: That's all the questions I have.

2 JUDGE DALE: Thank you.

3 Let me just say that there are no questions  
4 from the Bench, no matter when they get here.

5 Redirect?

6 MR. THOMPSON: I have no redirect.

7 JUDGE DALE: Thank you. You may step down.

8 MR. THOMPSON: Staff calls Amanda McMellen.

9 Would you like to remind the witness she's  
10 still under oath or swear her?

11 JUDGE DALE: I'm sorry.

12 THE WITNESS: That's okay.

13 JUDGE DALE: Yes. I will remind you that you  
14 are still under oath

15 THE WITNESS: Okay.

16 MR. THOMPSON: Thank you, Judge.

17 AMANDA MCMELLEN testified as follows:

18 DIRECT EXAMINATION BY MR. THOMPSON:

19 Q. State your name, please.

20 A. Amanda C. McMellen.

21 Q. Could you spell your last name for the  
22 reporter, please?

23 A. M-c-M-e-l-l-e-n.

24 Q. Now, Ms. McMellen, you've already testified in  
25 this matter, haven't you?



1 A. Yes, I have.

2 Q. At that time did you state how you're  
3 employed?

4 A. Yes, I did.

5 Q. And if you would permit me to lead, are you,  
6 in fact, employed by the Commission?

7 A. Yes, I am.

8 Q. And your position?

9 A. Regulatory auditor three.

10 Q. And you caused to be prepared and filed three  
11 pieces of testimony in this matter; isn't that correct?

12 A. That's correct.

13 Q. Numbered 48, 49 and 50?

14 A. Yes.

15 Q. And those have, in fact, been offered and  
16 received; is that correct?

17 A. That's correct.

18 Q. And only your Rebuttal Testimony treats the  
19 issues that are being heard today; is that correct?

20 A. That's correct.

21 MR. THOMPSON: At this time I will tender the  
22 witness for cross-examination.

23 JUDGE DALE: Thank you.

24 Ms. Woods?

25 MS. WOODS: I have nothing. Thank you.

1 MR. CONRAD: No questions, your Honor.

2 MR. MILLS: I have no questions.

3 MR. COOPER: No questions.

4 MR. THOMPSON: And I have no questions.

5 JUDGE DALE: I don't either.

6 COMMISSIONER APPLING: We ain't going to let  
7 you get away.

8 Yes, I have no questions. Okay? Make a great  
9 Friday for you.

10 THE WITNESS: Well, thank you.

11 JUDGE DALE: Thank you. You may step down.

12 MR. THOMPSON: Staff has no further witnesses  
13 on this topic, your Honor.

14 JUDGE DALE: Thank you.

15 Mr. Mills.

16 MR. MILLS: I'll call Barbara Meisenheimer to  
17 the stand.

18 (Witness sworn.)

19 JUDGE DALE: Thank you. Please be seated.

20 MR. MILLS: Your Honor, Ms. Meisenheimer filed  
21 two sets of Direct Testimony pursuant to the procedural  
22 schedule, one dealing with this issue and one about a week  
23 later that dealt with revenue require-- I mean that dealt with  
24 rate design and class cost of service issues. She also filed  
25 Rebuttal Testimony that did not deal with this issue.

1                   So it is my intention this morning to simply  
2 walk her through the Direct Testimony that deals with this  
3 issue and offer only that testimony this morning.

4                   JUDGE DALE: That would be fine. Thank you.

5 BARBARA MEISENHEIMER testified as follows:

6 DIRECT EXAMINATION BY MR. MILLS:

7                   Q.       Could you please state your name and spell it  
8 for the record?

9                   A.       Barbara Meisenheimer, B-a-r-b-a-r-a  
10 M-e-i-s-e-n-h-e-i-m-e-r.

11                  Q.       And by whom are you employed and in what  
12 capacity?

13                  A.       I'm employed by the Office of the Public  
14 Counsel as a chief economist.

15                  Q.       And are you the same Barbara Meisenheimer who  
16 caused to be filed Direct Testimony on revenue requirements in  
17 this case that's been marked as Exhibit 75?

18                  A.       Yes, I am.

19                  Q.       Do you have any corrections to that testimony?

20                  A.       I have one correction to that testimony.

21                  Q.       Could you please walk us through that?

22                  A.       On page 2, line 10, I need to delete the text  
23 on that line.

24                  Q.       Is there anything further?

25                  A.       No.

1           Q.       Thank you. With that correction, if I were to  
2 ask you the same questions that are contained in Exhibit 75  
3 here today, would your answers be the same?

4           A.       Yes, they would.

5           Q.       And are those answers true and correct to the  
6 best of your knowledge, information and belief?

7           A.       Yes, they are.

8           Q.       Thank you.

9           MR. MILLS: With that, I will offer Exhibit 75  
10 and tender the witness for cross-examination.

11           JUDGE DALE: Are there any objections?

12           MR. CONRAD: Your Honor, we have no objection  
13 to the portion of the witness's testimony dealing with the  
14 issue presented this morning. I think that if I might help  
15 Mr. Mills, I think that begins on page 13, line 14 and  
16 continues through page 19, line 3. Am I correct, Mr. Mills?

17                    There may be an exhibit that pertains to that.  
18 There's other material in that that I will deal with later I  
19 think, but I had understood -- if your Honor please, I had  
20 understood Mr. Mills to be offering just -- I think his phrase  
21 was he was going to walk her through the portion of her  
22 testimony that dealt with the issue for this morning and offer  
23 that, but I thought --

24           MR. MILLS: It was my intention to offer the  
25 entire Exhibit 75 and not her other two pieces of testimony.

1 But if the Bench pleases, I can offer that portion of the  
2 testimony, assuming that the other parties are willing to  
3 stipulate to her qualifications and background that are  
4 contained at the beginning of her testimony

5 MR. CONRAD: We have no problem with that.

6 JUDGE DALE: For the sake of simplicity, I  
7 think it would be best to admit 75 in its entirety. And I  
8 will note that Praxair preserves a potential objection to the  
9 remainder of her testimony.

10 MR. CONRAD: If your Honor please, I'd just  
11 attract your attention there is a discussion about fuel and  
12 purchased power expense that we just haven't been through yet.  
13 In fact, I believe the witness's correction was to that  
14 portion of the testimony and we haven't been through that,  
15 so --

16 MR. MILLS: Just for clarification, the  
17 correction that the witness made was really just a  
18 carryover -- sort of a cut and paste error from an entirely  
19 different case, so it really had nothing to do with any of the  
20 issues in this case.

21 MR. THOMPSON: Well, in that case --

22 MR. MILLS: Which is why that entire line of  
23 text was stricken.

24 MR. THOMPSON: Staff has no objection to the  
25 receipt of this testimony, your Honor.

1 MR. COOPER: We have no objection.

2 MS. WOODS: We have no objection.

3 JUDGE DALE: Okay. So then I will admit  
4 Exhibit No. 75 in its entirety into evidence and understand  
5 that Praxair may later raise an objection if they have one.

6 MR. MILLS: So unless there is some later  
7 discussion and a later rule, it is now in evidence?

8 JUDGE DALE: Yes.

9 (Exhibit No. 75 was received into evidence.)

10 MR. MILLS: Okay. Thank you. And I believe I  
11 have tendered the witness for cross-examination.

12 JUDGE DALE: Staff?

13 MR. THOMPSON: Thank you, your Honor.

14 CROSS-EXAMINATION BY MR. THOMPSON:

15 Q. Good morning, Ms. Meisenheimer.

16 A. Good morning.

17 Q. I want to do this as quickly and painlessly as  
18 possible.

19 A. Darn.

20 Q. Your disagreement with Staff has to do with  
21 whether or not the ELIP program continues or is terminated, at  
22 least in part; is that correct?

23 A. That's correct.

24 Q. You would prefer to see the program continued  
25 with certain modifications; is that correct?

1           A.       Yes, I would.

2           Q.       And you believe those modifications would make  
3 perhaps this program more successful than it has been  
4 heretofore?

5           A.       Yes.

6           Q.       And you also disagree with Staff as to what  
7 should be done with the excess funds if the Commission chooses  
8 to terminate the program; is that correct?

9           A.       In -- in terms of a primary position, yes.

10          Q.       Your primary position is that the money  
11 collected from ratepayers should be returned to ratepayers;  
12 isn't that correct?

13          A.       But the primary position is the program  
14 continue and then we wouldn't really have an issue. The  
15 tariff indicates that it goes to Project Help. And I did  
16 recommend that money go back to ratepayers in the event that  
17 the program ends.

18          Q.       Okay. So I think we're on the same page with  
19 that.

20                   MR. THOMPSON: No further cross. Thank you.

21                   MR. CONRAD: Just for speed, your Honor.

22 CROSS-EXAMINATION BY MR. CONRAD:

23          Q.       Ms. Meisenheimer, please look at page 15 of  
24 your testimony, Exhibit 75.

25          A.       I'm there.

1           Q.       And perhaps on one side of the desk you could  
2 hold that and then also if you have a copy of Exhibit 106.

3           A.       I'm not sure what exhibit that is. I'm sorry.  
4 Is it the ELIP tariff?

5           Q.       Yes.

6           A.       I have a copy of the ELIP tariff. It was not  
7 the one marked as an exhibit.

8           Q.       Let's hope that they're all the same. I'll  
9 give you one of mine.

10          A.       Thank you.

11          Q.       And turning, if you would, please, to the last  
12 page of the three-page packet marked as Exhibit 106 and  
13 looking again at the last paragraph on that page, the phrase,  
14 Program funds in excess of actual program expenses appears.

15                   Do you see that?

16          A.       Yes.

17          Q.       Now, would you please, for my benefit, relate  
18 that phrase to any material that you have on page 15.

19          A.       In terms of discussing what those -- what  
20 those excess funds might be as of a certain date?

21          Q.       Yes, ma'am.

22          A.       Okay. As of April 30th, 2006, the excess  
23 funds, once you deduct the 15,000 that was paid for the  
24 evaluation performed by Roger Colton, was \$655,425. That  
25 amount -- since the program has not ended, that amount would



1 actually continue to grow based on my understanding of the  
2 current participation and expenses. And so until such time as  
3 the tariff changes or the program ends, that number will  
4 continue to grow.

5 Q. And if I understand your proposals, that would  
6 be a -- that would necessitate a change to the tariff sheet  
7 that we've identified as PSC MO No. 5, section 4, second  
8 revised sheet No. 11, would it not?

9 A. Either the program ending or some alternative  
10 than Project Help would necessitate a tariff change, I  
11 believe.

12 Q. To your knowledge, Project Help exists?

13 A. Yes.

14 Q. Do you have any difficulties with program --  
15 or with Project Help of which you're aware?

16 A. Based on my limited understanding of what  
17 Project Help does and through whom Project Help is -- the  
18 service is delivered, no, I don't have a problem with Project  
19 Help.

20 Q. To your knowledge, has anyone spoken to  
21 Project Help or anyone representing them with respect to the  
22 change that you're proposing?

23 A. I attempted to contact Project Help, but no,  
24 to my knowledge, as of today, no

25 MR. CONRAD: I believe that's all. Thank you,

1 your Honor.

2 Thank you, Ms. Meisenheimer.

3 JUDGE DALE: Empire?

4 MR. COOPER: No questions.

5 QUESTIONS BY COMMISSIONER APPLING:

6 Q. Hi, Barbara.

7 A. Hi.

8 Q. Been doing all right?

9 A. Yeah.

10 Q. The company seemed to make a different  
11 recommendation to the excess funds, maybe spread some of it  
12 around to some other worthy low-income weatherization. Other  
13 than the concern of changing the tariff that you just said  
14 that you thought it would be necessary for the tariff to be  
15 changed, do you have a concern with the money being  
16 distributed in any other means or do you have comments on  
17 that?

18 A. I can't comment on the legality of how you get  
19 the money --

20 Q. Right.

21 A. -- from one place to another, but there --  
22 there are programs under the CPC that provide valuable  
23 services that I think are successful. And, you know, to the  
24 extent the money was still targeted toward assisting  
25 low-income customers in perhaps addition to other worthy

1 programs, if the Commission decides to move the program, I  
2 think that we are willing to see the money --

3 Q. Talk about it?

4 A. Yeah, to talk about it. And we do participate  
5 on the CPC, so we do have representations in those discussions  
6 in the event that they ultimately occur.

7 Q. Okay. I was just concerned about whether --  
8 if the company was able to -- as long as it goes to a worthy  
9 low-income organization, specifically weatherization, there  
10 seems to be a lot of interest in that. But thanks for your  
11 comments anyway.

12 COMMISSIONER APPLING: That's the only  
13 question I have. And thank you.

14 THE WITNESS: Thank you, Commissioner.

15 JUDGE DALE: Recross based on questions from  
16 the Bench?

17 MR. THOMPSON: None.

18 MR. CONRAD: No, your Honor.

19 MS. WOODS: None.

20 MR. COOPER: No, your Honor.

21 JUDGE DALE: Redirect?

22 MR. MILLS: Just very briefly.

23 REDIRECT EXAMINATION BY MR. MILLS:

24 Q. Ms. Meisenheimer, Mr. Conrad pulled out a  
25 phrase from the last sentence of the ELIP tariff. The phrase

1 he lifted out was, Program funds in excess of actual program  
2 expenses." Can you read the two words before that phrase and  
3 the four words after it?

4 A. If any program -- or the words --

5 Q. Read the whole phrase, including the two words  
6 before and the four words after it.

7 A. If any program funds in excess of actual  
8 program expenses remain at the end of the ELIP program.

9 Q. Okay. Have we gotten to the end of the ELIP  
10 program?

11 A. No.

12 Q. Is there any way to know now if any program  
13 funds will remain?

14 A. No. And, in fact, to the extent that the  
15 program is modified in the way that I've suggested, I would  
16 certainly hope that the amount of excess funds would diminish  
17 over time.

18 Q. Okay. And even if the program is not  
19 modified, there's no way to know for certain if or how much  
20 excess funds there might be at the end of the program --

21 A. Not --

22 Q. -- if it --

23 A. Not at this time, no.

24 MR. MILLS: I have no further questions.

25 Thank you.

1 JUDGE DALE: Thank you. You may step down.

2 THE WITNESS: Thank you.

3 MS. WOODS: Good morning. Missouri Department  
4 of Natural Resources calls Brenda Wilbers.

5 (Witness sworn.)

6 JUDGE DALE: Thank you.

7 BRENDA WILBERS testified as follows:

8 DIRECT EXAMINATION BY MS. WOODS:

9 Q. Would you please state your name and spell  
10 your last name for the court reporter?

11 A. Brenda Wilbers, W-i-l-b-e-r-s.

12 Q. By whom and in what capacity are you employed?

13 A. I'm employed by the Missouri Department of  
14 Natural Resources Energy Center. And I'm the director of the  
15 energy policy and analysis program.

16 Q. Are you the Brenda Wilbers that caused to have  
17 filed the Direct Testimony, Exhibit 89 in this case?

18 A. Yes.

19 Q. Do you have any corrections to that testimony?

20 A. No, I do not.

21 Q. If I asked you the same questions that appear  
22 in Exhibit 89 today, would your answers be the same?

23 A. Yes, they would.

24 Q. And are those answers true and correct to the  
25 best of your knowledge?

1           A.       Yes, they are.

2                   MS. WOODS:  At this time I would offer  
3 Exhibit 89 into the evidence.

4                   JUDGE DALE:  Is there any objection?

5                   MR. CONRAD:  No objection.

6                   MR. THOMPSON:  No objection.

7                   MR. MILLS:  No objection.

8                   MS. WOODS:  And I would tender Ms. Wilbers for  
9 cross-examination.

10                  JUDGE DALE:  Thank you.  Exhibit 89 is  
11 admitted into evidence.

12                   (Exhibit No. 89 was received into evidence.)

13                  JUDGE DALE:  Mr. Conrad?

14                  MR. CONRAD:  If your Honor please, I had  
15 thought I would have extensive questions about the answer that  
16 appears on page 9, but in further review, I've decided to  
17 abandon those and indicate that we have no questions of the  
18 witness.

19                  JUDGE DALE:  Thank you.

20                   Public Counsel?

21                  MR. MILLS:  I have just a few questions.

22 Thank you.

23 CROSS-EXAMINATION BY MR. MILLS:

24           Q.       Ms. Wilbers, would you agree that it would be  
25 a worthwhile addition to any low-income discount program to

1     require the participants be required to apply for  
2     weatherization as a condition of participation?

3             A.       Well, the Department operates the low-income  
4     weatherization assistance program and it is an effective  
5     energy efficiency program. We have not participated in the  
6     ELIP program design or looked at the evaluation.

7             However, we do try to coordinate with the  
8     Department of Social Services, who operates the low-income  
9     energy assistance program, which is also a bill payment  
10    assistance program. And we do think that the two programs are  
11    coordinated well and one addresses short-term energy needs and  
12    the other addresses long-term energy needs.

13            Q.       And so for low-income programs, in general, do  
14    you believe that it would be a good fit to require  
15    participants to at least apply for weatherization in order to  
16    get the bill payment assistance in the low-income programs?

17            A.       I don't know what the Department's position on  
18    that would be.

19            Q.       Okay.

20            A.       I do think the programs work well together.

21            Q.       Okay. Now, with respect to the ELIP program  
22    in particular, if there is a decision in this case to somehow  
23    move any balance to the CPC, would it be your recommendation  
24    that in the interim before the CPC decides what to do with  
25    that, that the ELIP program continue?

1           A.       Well, as I said, the Department really has not  
2   looked at the ELIP program or taken a position on it.

3           Q.       Okay. So you really don't have a position one  
4   way or another with respect to any of the issues dealing with  
5   the ELIP program?

6           A.       Not with the ELIP program.

7           Q.       Okay.

8           A.       No.

9                   MR. MILLS: Thank you. That's all I have.

10                  MR. THOMPSON: I have no cross-examination for  
11   this witness. Thank you.

12                  MR. COOPER: Yes, your Honor.

13   CROSS-EXAMINATION BY MR. COOPER:

14           Q.       Ms. Wilbers, you have some discussion in your  
15   testimony concerning Empire's CPC or customer programs  
16   collaborative, don't you?

17           A.       Yes, I do.

18           Q.       And you participate in Empire's CPC, don't  
19   you?

20           A.       Yes, I do.

21           Q.       Have any tariff changes been recently made to  
22   Empire's affordability, energy efficiency or demand response  
23   programs as a result of the work of the CPC?

24           A.       I believe that some tariffs have been filed  
25   for the -- some of the programs. I'm not sure which ones.



1 I'm thinking the weatherization assistance program and also  
2 for the Change of Light probably.

3 Q. Okay. Are there other programs planned by the  
4 CPC?

5 A. Yes.

6 Q. What are those?

7 A. The programs currently in the DSM portfolio  
8 before the CPC are the weatherization assistance program, a  
9 low-income new homes program, Change of Light program, home  
10 performance with Energy Star, and Energy Star homes are the  
11 residential programs. And then there are commercial energy  
12 audit and rebate program and also a building operators  
13 certification program for commercial customers.

14 Q. If you know, do you know what the projected  
15 funding levels are for that portfolio?

16 A. Over the five-year period, right now the  
17 projections are 6.8 million.

18 MR. COOPER: That's all the questions I have,  
19 your Honor.

20 JUDGE DALE: Thank you.

21 Are there questions from the Bench?

22 QUESTIONS BY COMMISSIONER APPLING:

23 Q. Good morning.

24 A. Good morning.

25 Q. From DNR's perspective as far as Empire is

1 concerned, do you all have any concern with their  
2 low-income -- distribution of the low-income funds that they  
3 collect? Is there any concern about this company and how they  
4 do that?

5 A. Are you speaking of the program funds they  
6 collect for the ELIP program?

7 Q. Yes. And also the CPC.

8 A. We really have not taken a position on the  
9 ELIP program and we haven't been involved in that.

10 Q. Okay. That's fine.

11 A. It's my understanding that the company -- with  
12 the CPC programs, the company will expend the program costs  
13 for the weatherization and their low-income programs as well  
14 as the other programs in the portfolio and they would  
15 accumulate these expenses in a regulatory asset account as  
16 those costs are incurred.

17 Q. Do you have a problem with that?

18 A. No, we do not.

19 Q. Is that program working well from DNR's  
20 perspective?

21 A. Yes. We -- you know, we've just approved this  
22 set of programs in May, I believe. So implementation of some  
23 of the programs is beginning, but we are happy with the  
24 progress.

25 Q. Okay.

1 COMMISSIONER APPLING: Thank you very much.

2 JUDGE DALE: Is there any cross based on  
3 questions from the Bench?

4 MR. CONRAD: Nothing further, your Honor.

5 MR. MILLS: No.

6 MR. THOMPSON: None from Staff.

7 MR. COOPER: No, your Honor.

8 JUDGE DALE: Any redirect?

9 MS. WOODS: No, thank you.

10 JUDGE DALE: Thank you. You may step down.

11 THE WITNESS: Thank you.

12 JUDGE DALE: I believe that concludes the  
13 testimony for today.

14 While we're still on the record, let me ask  
15 you, Mr. Mills, if you have any updates yet on Mr. King?

16 MR. MILLS: During our last break half an hour  
17 ago or so, whenever it was, I got an e-mail from Ted Robertson  
18 who had spoken to Mr. King's wife and he is still in the  
19 hospital, still heavily sedated, but should be heading home  
20 late today and hopefully will be able to travel sometime next  
21 week, but I don't know and probably won't know until the end  
22 of the day today how early next week.

23 JUDGE DALE: Why don't we just postpone it all  
24 until Monday morning and then we can discuss whether or not we  
25 need to set up some sort of remote video arrangement or

1    whatever else we need to do to get his participation. I would  
2    hate to push him traveling too quickly when there are other  
3    options available. And then we can pick up with Mr. Murray  
4    where we left off on ROE.

5                   MR. MILLS: Thank you. And I appreciate the  
6    Court's indulgence.

7                   JUDGE DALE: Is there anything else that I  
8    should address before we adjourn?

9                   MR. CONRAD: Let me just clarify. We're still  
10   set to go Monday -- I'm looking at page 3, going over to page  
11   4 of the order of issues -- at 8:30 and we would be beginning  
12   with Mr. Fetter at that point. Am I correct?

13                  JUDGE DALE: Yes. That's what I have.

14                  MR. CONRAD: So we're just sliding the rest of  
15   the ROE -- is Mr. King the only ROE witness that we haven't  
16   reached? Forgive me. I wasn't involved in that, but I'm just  
17   trying to carry a little water here.

18                  MR. COOPER: No.

19                  JUDGE DALE: Mr. Murray was not complete and  
20   Mr. Oligschlaeger has not testified; is that correct?

21                  MR. THOMPSON: That is correct,

22                  MR. COOPER: That's correct, your Honor.

23                  MR. CONRAD: So we have really potentially  
24   three -- not meaning to refer to Mr. Murray in any derogatory  
25   way, but two and a half witnesses, two and some portion of a

1 witness.

2 JUDGE DALE: Yes. Because he's fairly far  
3 along. He only has to respond to some questions from the  
4 Bench and then I believe it's recross based on that one  
5 question and then redirect.

6 MR. CONRAD: That present plan would be 8:30  
7 Monday with Mr. Fetter and et al.?

8 JUDGE DALE: Unless anybody wants to propose a  
9 change to that start time.

10 MR. CONRAD: I'm not suggesting that. I'm  
11 just trying -- I just want to get clarified. If you want to  
12 start later, I sense some enthusiasm for that from the Bench.  
13 Am I correct in my sense?

14 JUDGE DALE: I don't know how long fuel  
15 recovery method is going to take. It's scheduled for a day.  
16 If we start later, will we be able to finish? I don't know  
17 what the sense is.

18 MR. MILLS: Actually, I'm not sure it really  
19 is -- it's sort of a strange -- I think the first witness is  
20 to talk about fuel recovery method and regulatory plan  
21 amortizations. The remainder of the witnesses on that are  
22 talking about regulatory planning authorization and then we're  
23 going to go back again to fuel recovery method on Tuesday. At  
24 least that's my understanding.

25 MR. COOPER: Yeah, that's our understanding as

1 well. That Mr. Fetter is being taken at the time because of  
2 availability issues.

3 JUDGE DALE: Oh, well, then it may be that we  
4 will have to start at 8:30 if he has limited availability.  
5 We'll just be grateful for the Friday afternoon off.

6 With that, I will see everyone bright and  
7 shiny at 8:30 Monday morning. And we are adjourned.

8 WHEREUPON, the hearing was adjourned until  
9 September 11, 2006 at 8:30 a.m.

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