

FILED  
June 4, 2008  
Data Center  
Missouri Public  
Service Commission

EXHIBIT

Exhibit No.:

Issue(s):

Other Project Costs/

Vegetation Management and

Infrastructure Standards Rules Cost Tracker/

Pension and OPEB Plans Tracker Language/

December 2007 Ice Storm Costs

Witness/Type of Exhibit: Robertson/Surrebuttal

Sponsoring Party:

Public Counsel

Case No.:

ER-2008-0093

**SURREBUTTAL TESTIMONY**

**OF**

**TED ROBERTSON**

Submitted on Behalf of the Office of the Public Counsel

**EMPIRE DISTRICT ELECTRIC COMPANY**

CASE NO. ER-2008-0093

April 25, 2008

ORC Exhibit No. 309  
Case No(s) ER-2008-0093  
Date 5-12-08 Rptr 45

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**SURREBUTTAL TESTIMONY  
OF  
TED ROBERTSON**

**EMPIRE DISTRICT ELECTRIC COMPANY  
CASE NO. ER-2008-0093**

**I. INTRODUCTION**

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Ted Robertson, PO Box 2230, Jefferson City, Missouri 65102-2230.

Q. ARE YOU THE SAME TED ROBERTSON THAT HAS PREVIOUSLY FILED  
TESTIMONY IN THIS CASE?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of this testimony is to respond to the rebuttal testimony of Company witnesses, Mr. Blake A. Mertens - Other Project Costs, Mr. W. Scott Keith - Vegetation Management and Infrastructure Standards Rules Cost Tracker, and Mr. C. Kenneth Vogl - Changes To Pension and OPEB Plans Tracker Language. I will also respond to the rebuttal testimony of MPSC Staff witness, Mr. Mark L. Oligshlaeger, regarding his proposal for a Vegetation Management and Infrastructure Standards Rules Cost Tracker. Lastly, I will discuss OPC's recommended ratemaking treatment for the December 2007 Ice Storm costs.

1    **II.    Other Project Costs**

2    Q.    HAS COMPANY CHANGED ITS POSITION ON THE RATEMAKING TREATMENT  
3           FOR THE EXPENSED PROJECT COSTS DISCUSSED IN YOUR DIRECT  
4           TESTIMONY?

5    A.    Yes. Beginning on page 7, line 19, of his rebuttal testimony, Mr. Mertens states:

6  
7           Q.    WHAT IS EMPIRE'S RECOMMENDATION AS IT RELATES  
8           TO THESE PROJECT COSTS?

9  
10          A.    Empire requests that these charges be capitalized as part of its  
11                latan 2 and/or Plum Point base-load, coal-fired generation  
12                construction projects. These "other project costs" were part of  
13                Empire's overall resource planning decision process which  
14                ultimately led to the decision to participate in the latan 2 and  
15                Plum Point projects. In Case No. ER-2006-0314 Kansas City  
16                Power & Light was allowed to capitalize "Certain Costs" that  
17                were required in the due diligence process related to latan 2  
18                (see page 57 of Rate Order dated December 21, 2006  
19                pertaining to Case No. ER-2006-0314). Empire requests  
20                similar treatment of these charges instead of including them as  
21                normal ongoing operating expenses.  
22  
23

24    Q.    DOES PUBLIC COUNSEL AGREE WITH MR. MERTENS ASSERTION THAT  
25           THESE OTHER PROJECT COSTS ARE SIMILAR TO CERTAIN COSTS  
26           AUTHORIZED CAPITAL TREATMENT IN KANSAS CITY POWER & LIGHT CASE  
27           NO. ER-2006-0314?

28    A.    Not exactly. In its Report and Order for Kansas City Power & Light, Case No. ER-  
29           2008-0314, the Commission authorized implementation of agreements reached

1 in the Nonunanimous Stipulation and Agreement Regarding Capitalization of  
2 Certain Costs, Decommissioning Expense Accrual, and Corporate Projects and  
3 Strategic Initiatives. On page 57 of the Report and Order it states:  
4

5 As agreed to by KCPL and Staff, the Commission authorizes  
6 KCPL to capitalize all costs incurred after January 1, 2005 related  
7 to project MSC0140, KCPL Strategic Initiatives, and certain  
8 advertising costs all incurred by KCPL in the development of  
9 various components and informing customers of the features of  
10 KCPL's Regulatory Plan Capital Investments, which will be  
11 transferred and capitalized to the Iatan 2 construction project.  
12  
13

14 The language in the Report and Order clearly states the authorization is for  
15 capitalization of costs directly related to the Iatan 2 construction project; whereas  
16 the costs Mr. Mertens discusses beginning on page 6, line 21, of his rebuttal  
17 testimony, are, "related to investigation and due diligence costs for base-load,  
18 coal fired generation projects that Empire did not ultimately proceed with at this  
19 time because of our participation in the Iatan 2 and Plum Point coal-fired  
20 generation projects."  
21

22 Q. DOES THE PUBLIC COUNSEL AGREE WITH MR. MERTENS THAT THE  
23 PROJECT COSTS WERE INCURRED PURSUANT TO ITS INTEGRATED  
24 RESOURCE PLANNING?

1 A. Yes. On page 7, lines 11 - 18, of his rebuttal testimony, Mr. Mertens provides  
2 what I believe is an accurate representation of the other project costs. He states:

3  
4 A. Empire agrees that these are costs associated with the  
5 development of potential future investment. However, the  
6 Company does not agree that these costs should not be  
7 recovered from ratepayers. These project costs were  
8 necessary and required as part of the Company's prudent  
9 and thorough investigation into possible base-load  
10 generation resource alternatives. Empire has a duty to its  
11 customers to make sure it is serving them in the most  
12 economical and reliable manner. In order to meet this  
13 obligation from time to time Empire must expend money to  
14 develop or research projects that may ultimately not move  
15 forward to completion.  
16  
17

18 Q. DOES PUBLIC COUNSEL BELIEVE THAT COMPANY'S REQUEST TO  
19 CAPITALIZE THE COSTS AS PART OF ITS IATAN 2 AND/OR PLUM  
20 POINT PROJECTS IS REASONABLE?

21 A. In a normal situation, it is the Public Counsel's belief that costs incurred for  
22 capital projects which are cancelled should not receive rate base or expense  
23 treatment in the ratemaking process; however, in this instance, Public Counsel  
24 agrees with Company that the costs at issue were incurred to facilitate its overall  
25 integrated resource planning and ultimately its decision to participate in new coal-  
26 fired generation construction projects. These costs should not be included as

1 normal ongoing operating expenses, but Public Counsel would not oppose  
2 capitalization of the costs to Company's Iatan 2 project.

3  
4 **III. Vegetation Management and Infrastructure Standards Rules Cost Tracker**

5 Q. ARE THE COSTS AT ISSUE KNOWN AND MEASURABLE?

6 A. No. The proposed standards rules have not been finalized and the Company has  
7 not yet incurred any associated costs. Company support and testimony clearly  
8 state that it bases its position on estimates of possible future costs; costs that are  
9 not known and measurable. In fact, in his rebuttal testimony, page 11; lines 11 - 18,  
10 Mr. W. Scott Keith, states the following:

11  
12 As outlined in Empire witness Palmer's testimony, the  
13 implementation of a new Commission vegetation management  
14 could have a significant financial impact upon Empire, with  
15 vegetation management expenditures increasing by over six times  
16 depending upon the final draft of the rule. The proposed rule (sic)  
17 are closer to becoming official and Empire believes that will incur  
18 around an additional \$4 to \$6 million per year to comply with these  
19 new rules when it existing internal procedures are modified to  
20 comply with the Commission's rules in both of these areas.

21  
22 (Emphasis added by OPC)

23  
24  
25 The use of the testimony modifiers "could have" and "believes," by Mr.  
26 Keith confirms that the Company does not know what the actual level of

1 costs to comply with the standards rules will be; what he offers is  
2 Company's best guess as of today.  
3

4 Q. IS COMPANY SIMPLY REQUESTING A COST TRACKING MECHANISM  
5 RATHER THAN COMMISSION AUTHORIZATION FOR SPECIFIC  
6 RATEMAKING TREATMENT OF POSSIBLE FUTURE COSTS?

7 A. No. Beginning on page 11, line 19, of his rebuttal testimony, Mr. Keith  
8 describes the Company's willingness to discuss the use of a cost tracking  
9 mechanism similar to a procedure used by AmerenUE; however, in his  
10 direct testimony, page 37, lines 3 - 18, he requested the following specific  
11 ratemaking treatment:  
12

13 A regulatory asset or liability would be established on Empire's  
14 records to track any increases or decreases in vegetation  
15 management and infrastructure costs from the cost levels included  
16 in this rate case. This account would be maintained until the next  
17 rate case at which time it would be amortized and recovered in  
18 rates over a period not to exceed five years. For example, if annual  
19 vegetation management and infrastructure expenses increased  
20 from a current level of around \$6 million to \$26 million, Empire  
21 would record the annual increase of \$20 million as a regulatory  
22 asset until it can be reflected in rates in the next general rate case.  
23 If an increase of this same magnitude occurred for a number of  
24 years before the next general rate case, this account would capture  
25 more than one year of the cost increase associated  
26 with the new vegetation management and infrastructure rules.  
27 Once this regulatory asset is reflected in rates, the balance in the  
28 regulatory asset would be reduced to reflect that portion of costs  
29 being collected from the customers. For example, if the

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1 Commission decided to amortize the accumulated balance over  
2 more than one year then the balance in the regulatory asset would  
3 reflect the amortization levels allowed in rates.  
4  
5

6 Q. WOULD AN AMERENUE-LIKE COST TRACKING MECHANISM BE A  
7 REASONABLE SOLUTION TO THIS ISSUE?

8 A. No. The cost tracking mechanism authorized in AmerenUE, Case No. ER-2007-  
9 0002, resulted from negotiations of numerous matters which ultimately led to a  
10 Commission authorized stipulation and agreement. No such stipulation and  
11 agreement has occurred in the instant case.  
12

13 Q. HAS THE MPSC STAFF PROPOSED IMPLEMENTATION OF A COST  
14 TRACKING MECHANISM ALONG WITH SPECIFIC RATEMAKING FOR THE  
15 ESTIMATED FUTURE COSTS?

16 A. Yes. Beginning on page 8, line 20, of his rebuttal testimony, Mr. Mark L.  
17 Oligschlaeger, states:  
18

19 Q. What is the level of tree trimming expenses included in the  
20 Staff's direct case?

21  
22 A. The Staff has included in its direct case an adjusted level of  
23 tree trimming expenses in its case for Empire of  
24 approximately \$6.8 million (total Company).  
25  
26



1 And, continuing on page 9, lines 16 - 23, he adds:  
2

3 Q. What is the total amount of vegetation standards and  
4 infrastructure standards cost that should be included in rates  
5 in this case?  
6

7 A. Based on the ECI estimates referenced above, Empire  
8 should receive a total of \$12.3 million of rate recovery for  
9 these items in this case (\$6.8 million "status quo" tree  
10 trimming amount; plus \$4 million in incremental vegetation  
11 management rule costs; plus \$1.5 million in incremental  
12 infrastructure standards rule costs). Again, this amount is a  
13 total Company number, stated prior to application of relevant  
14 Missouri jurisdictional allocation factors.  
15

16 (Emphasis added by OPC)  
17  
18

19 In addition, Mr. Oligschlaeger, advocates the implementation of a "one-way " tracker  
20 mechanism whereby Company commits to spend \$12.3 million each year going  
21 forward with any yearly shortfalls, plus shareholder-provided interest, being  
22 expended in future years. If, in any given year, the Company spends more than  
23 \$12.3 million it may not spend less in any future year to recoup the excess amount  
24 spent.  
25

26 Q. IS THE MPSC STAFF'S PROPOSAL REASONABLE?

27 A. No. Staff's proposal is not reasonable for the exact same reasons that the  
28 Company's proposal is not reasonable. The costs which both Company and Staff

1 propose to include in the determination of rates in this case are not known and  
2 measurable. The costs identified by Company and Staff are nothing more than  
3 mere estimates of possible future costs. These estimates may, at a later date,  
4 prove to be reasonably accurate or they may not; however, until the events that  
5 drive the costs actually occur they remain unknown and non-measurable for  
6 purposes of regulatory ratemaking.

7  
8 Q. IS PUBLIC COUNSEL CONFUSED BY THE MPSC STAFF'S POSITION ON THIS  
9 ISSUE?

10 A. Yes. In an ironic twist of positions, Mr. Oligschlaeger takes an exact opposite  
11 position to a somewhat similar issue in his rebuttal testimony. Regarding the  
12 Asbury SCR project, Staff recommends that its costs not be included in rate base or  
13 expense since it was not determined to be "in-service" at the end of calendar year  
14 2007.

15  
16 Q. WHAT IS THE SIGNIFICANCE OF DECEMBER 31, 2007 DATE?

17 A. As pointed out in Mr. Oligschlaeger's rebuttal testimony, the Commission authorized  
18 a test year for this case of June 30, 2007, updated for known and measurable  
19 events through the end of December 2007. That is, December 31, 2007, was the  
20 cut-off date for inclusion in the determination of rates all known and measurable  
21 costs.

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Q. IS IT YOUR OPINION THAT STAFF IS INCONSISTENT IN ITS PROPOSED RATEMAKING TREATMENT OF COSTS ASSOCIATED WITH ITEMS THAT ARE NOT KNOWN AND MEASURABLE?

A. Yes. On one hand Staff proposes to include in rates estimated costs of vegetation and infrastructure activities expected to occur months or years subsequent to the December 31, 2007 cut-off date; while on the other hand, it recommends a disallowance of plant-related costs because, though the plant was constructed, Company had not yet been able to test and satisfy the in-service criteria as of the end of the known and measurable period authorized by the Commission.

Mr. Oligschlaeger exhausted approximately five pages of his rebuttal testimony explaining why the new Asbury SCR should not be included in the determination of rates, but it all pretty much boils down to his conclusion that as of December 31, 2007, the plant was determined to be not in-service. It is Public Counsel's belief that December 31, 2007 was the cut-off date for all costs identified in this case and that would include both the Asbury SCR and the estimated vegetation management and electric infrastructure standards rules compliance costs.

**IV. Pension and OPEB Plans Tracker Language**

Q. WHAT IS THE ISSUE?

1 A. The issue concerns modifications to the current pension and OPEB tracker  
2 mechanisms which Company witness, Mr. C. Kenneth Vogel, proposes. On page  
3 2, lines 18 - 22, of his rebuttal testimony, he states:

4  
5 I also will submit modifications to the current tracker mechanism  
6 that address how Special Events would be handled under Empire's  
7 tracking mechanism. This Special Event situation was initially  
8 referenced in Empire witness Laurie Delano's direct testimony at  
9 page 5.

10  
11 (Emphasis added by OPC)  
12  
13

14 Furthermore, on page 3, lines 1 - 13, he adds:  
15

16 Q. HAVE YOU PREPARED ANY SCHEDULES?  
17

18 A. Yes. Rebuttal Schedule CKV-1 contains the proposed  
19 modifications to the prior Stipulation and Agreement for  
20 pension benefits and OPEB. These provisions are intended  
21 to accomplish the following:  
22

23 A. To clarify, for ratemaking purposes, the accounting  
24 treatment of any special events under Statement of  
25 Financial Accounting Standards No. 88 ("FAS 88")  
26 and FAS 106 that would require the Company to  
27 recognize one time charges (expense) or credits  
28 (income) and to ensure that any of these one-time  
29 charges or credits be properly reflected in rates.  
30

31 B. To ensure that additional funding required to avoid  
32 benefit restrictions under certain provisions of the  
33 Pension Protection Act of 2006 are properly reflected  
34 in rates.

1  
2  
3 Public Counsel is opposed to the Company's request that the Commission provide  
4 authorization in the instant case for ratemaking of future costs that may or may not  
5 ever occur. If in the future a "Special Event" should happen to occur, or appear  
6 likely to occur, the Company could contact the Commission, its Staff and OPC so  
7 that we all can review the specific aspects of the special event and then provide our  
8 recommendations as to the appropriate ratemaking of any costs incurred. I see no  
9 legitimate regulatory or statutory reason that the Commission should allow itself to  
10 be "cornered" now into providing an authorized ratemaking of costs which are not,  
11 at this time, known and measurable.

12  
13 Q. HAS THE COMMISSION AUTHORIZED SIMILAR MODIFICATIONS IN OTHER  
14 RECENT CASES?

15 A. Yes, it has, but, to my knowledge, only in the context of the Commission providing  
16 approval of a filed stipulation and agreement reached by the parties in contested  
17 cases. In this case, a stipulation and agreement, on this issue, has not been  
18 achieved and Public Counsel does not believe that the tracker modifications and  
19 before-the-expense-is-incurred ratemaking requested by the Company is necessary  
20 or appropriate at this time.  
21

**V. December 2007 Ice Storm Costs**

**Q. WHAT IS THE ISSUE?**

**A.** The issue concerns whether or not the costs of the December 2007 ice storm should be allowed ratemaking treatment in the instant case or deferred for possible recovery in subsequent periods. In my direct testimony, I stated that OPC would prefer deferral of the costs due to the likelihood that the associated costs would not have been identified and booked prior to the end of the instant case test period.

**Q. HAS THE COMPANY SUBSEQUENTLY PROVIDED ADDITIONAL SUPPORT FOR THE COSTS IT INCURRED?**

**A.** Yes. Subsequent to end of the instant case test year and update period, Company provided to OPC and the MPSC Staff various documents supporting the costs it incurred due to the December 2007 ice storm. As of the end of calendar year 2007, Company booked approximately \$18,559,148; of which, \$9,156,183 was capital-related and \$9,402,965 was maintenance-related.

**Q. WERE THE COSTS COMPANY BOOKED IN 2007 THE ACTUAL AMOUNTS INCURRED?**

**A.** No. Company admitted to OPC and Staff, in a conference call, held on April 7, 2008, that the costs booked in 2007 were a combination of actual and estimated costs.

1  
2 Q. WAS THE COMPANY ABLE TO IDENTIFY AND SEPARATE, FOR OPC AND  
3 STAFF, THE ACTUAL AND ESTIMATED COSTS BOOKED IN 2007?

4 A. No. During the aforementioned conference call, I specifically asked the Company  
5 personnel if it knew what the amounts were and their response was that they did  
6 not.

7  
8 Q. DID COMPANY SUBSEQUENTLY PROVIDE ADDITIONAL UPDATED COST  
9 SUPPORT?

10 A. Yes. Company provided cost information updated to actual as of March 31, 2008.  
11 The additional updated support listed total actual costs incurred as \$18,782,008; of  
12 which, \$9,283,701 was capital-related and \$9,498,307 was maintenance-related.  
13

14 Q. HAS PUBLIC COUNSEL BEEN ABLE TO AUDIT THE COST SUPPORT  
15 COMPANY PROVIDED?

16 A. Public Counsel is still reviewing the cost information provided.  
17

18 Q. HAS PUBLIC COUNSEL CHANGED ITS POSITION REGARDING THE  
19 TREATMENT OF ACTUAL DECEMBER 2007 ICE STORM COSTS?

20 A. Yes. Though I am still in the process of reviewing the cost support provided, Public  
21 Counsel recommends that the Commission allow Company to amortize the actual

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1 maintenance-related costs incurred over 5 years beginning with the month January  
2 2008. Public Counsel takes this position based on the fact that I have not yet  
3 identified any costs in the support which appear abnormal or improper and with the  
4 caveat that, if, at a later date, such costs are identified, Public Counsel will be  
5 provided the opportunity to challenge the inclusion of the costs in a future  
6 proceeding.

7  
8 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

9 A. Yes, it does.