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Commission Rules
Tracker; Regulatory
Plan Amortizations
Witness: Mark L. Oligschlaeger
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MISSOURI PUBLIC SERVICE COMMISSION
UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY
OF
MARK L. OLIGSCHLAEGER

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

Jefferson City, Missouri
April, 2008

STAFF Exhibit No. 201
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REBUTTAL TESTIMONY
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MARK L. OLIGSCHLAEGER
THE EMPIRE DISTRICT ELECTRIC COMPANY.
CASE NO. ER-2008-0093

Q. Please state your name and business address.

A. Mark L. Oligschlaeger, P.O. Box 360, Suite 440, Jefferson City, MO 65102.

Q. Are you the same Mark L. Oligschlaeger who has previously filed direct testimony in this proceeding?

A. Yes, I am.

Q. What is the purpose of this testimony?

A. The purpose of this testimony is to address the portions of The Empire District Electric Company (Empire or Company) witnesses', W. Scott Keith's and Blake A. Mertens, direct testimony regarding the Company's inclusion of the Asbury Selective Catalytic Reduction (SCR) plant in service addition in its rate increase request. I will also discuss the portions of the direct testimony of Empire witnesses W. Scott Keith and Michael E. Palmer concerning the impact of proposed Commission vegetation management and infrastructure standards rules on the Company's expenses on a prospective basis. Finally, I will address the direct testimony of Empire witness Robert W. Sager and the direct testimony of Enbridge Energy, LP; Explorer Pipeline Company; General Mills; Praxair, Inc, and Wal-Mart Stores, Inc. (Industrial Interveners) witness Michael Gorman concerning Empire's regulatory plan amortization calculations.

1 **EXECUTIVE SUMMARY**

2 Q. Please summarize your rebuttal testimony.

3 A. 1) Because Empire's Asbury SCR rate base addition did not meet its in-service
4 criteria as of December 31, 2007, the test year update cut-off in this case, this item should not
5 be included in the calculation of Empire's revenue requirement in this case.

6 2) The Staff proposes that a "tracker mechanism" be used in this case to ensure
7 that all funds provided to Empire in rates to comply with new Commission rules regarding
8 vegetation management and infrastructure standards be expended for their intended purpose.

9 3) The Staff has reached a tentative agreement with Empire and The Office of
10 the Public Counsel (OPC) regarding most aspects of the regulatory plan amortization
11 calculation for Empire in this proceeding.

12 **ASBURY SCR**

13 Q. What is Empire's Asbury SCR project?

14 A. Empire has installed SCR equipment at its Asbury generating station in order
15 to reduce the amount of nitrogen-oxide emissions from the Asbury station. This project is one
16 of several rate base additions undertaken by Empire in the years 2005-2010 that are
17 specifically addressed as part of the Company's regulatory plan approved by the Commission
18 in Case No. EO-2005-0263. In regard to the Asbury SCR project, paragraph 8 of the
19 Stipulation and Agreement in Case No. EO-2005-0263 provides that "Empire, Staff, Praxair,
20 Explorer and Public Counsel agree that, before the equipment was installed, they will develop
21 and agree to in-service criteria for the emissions equipment that is to be installed on...
22 Asbury SCR and that that equipment will meet the in-service criteria before the costs for the
23 equipment will be included in Empire's rate base."

1 Q. Has in-service criteria for the Asbury SCR project been agreed to in this
2 proceeding?

3 A. Yes, such in-service criteria are included in the direct testimony of Empire
4 witness Mertens. The Staff agrees that the in-service criteria for the Asbury SCR project are
5 stated appropriately by Mr. Mertens.

6 Q. Was the Asbury SCR project in-service at the time Empire filed this
7 rate increase?

8 A. No. Empire filed this rate request on October 1, 2007, while the Asbury SCR
9 project was not scheduled at that time to be completed and on-line until the end of
10 November 2007. Empire included this project in its requested rate base, based upon its
11 budgeted cost of \$31 million, and also included depreciation expense associated with this
12 addition and an allowance for operations and maintenance (O&M) expense to be incurred
13 related to this item in its request.

14 Q. What test year did Empire recommend be ordered in this proceeding?

15 A. In Mr. Keith's direct testimony, the Company recommended that a test year for
16 the 12 months ending June 30, 2007 be ordered in this case, and that in addition a true-up
17 procedure be incorporated into the procedural schedule to allow known and measurable
18 events through December 31, 2007, including but limited to the Asbury SCR rate base
19 addition, to be reflected in rates resulting from this case.

20 Q. What was the Staff's response to this recommendation?

21 A. In its "Test Year and True-up Recommendation" filed October 31, 2007, the
22 Staff agreed with Empire's proposal for a test year of the 12 months ending June 30, 2007
23 as well as a cut-off date of December 31, 2007 for inclusion of known and measurable events

1 in the case, but disagreed that a true-up mechanism was an appropriate procedure to
2 accomplish updating of the parties' cases beyond the test year. The Staff recommended that
3 the Commission order a test year update period ending December 31, 2007 to allow known
4 and measurable events through year-end 2007 to be reflected in Empire's revenue
5 requirement in this case.

6 Q. What is the difference between a test year update period and a true-up period?

7 A. A test year update period is a period immediately following the end of a test
8 year in which updated financial information beyond the test year can be used by the Staff and
9 other parties to develop their direct case revenue requirement recommendations. In contrast, a
10 true-up period is a period following the end of a test year and test year update period by which
11 the Staff and other parties can use financial data to further update their revenue requirement
12 recommendations after their direct case recommendations are filed. When a true-up audit is
13 ordered, this means that additional testimony filings and hearings beyond those initially
14 ordered in a case will be necessary to allow consideration of the updated true-up financial
15 information. Reflecting information through year-end 2007 in this case in the Staff's and
16 other parties' direct testimony filings was possible given a direct testimony filing date of
17 February 22, 2007, so the Staff believed that use of a true-up period in this case was not
18 necessary for this purpose.

19 Q. Did Empire and the other parties accept the Staff's "Test Year and True-up
20 Recommendation?"

21 A. Yes. In a prehearing held Nov. 5, 2007, no party expressed opposition to the
22 Staff's proposal to implement a test year update period ending December 31, 2007 in lieu of
23 the Company's proposed true-up recommendations. The Commission subsequently adopted

1 the Staff's recommendations in its "Order Concerning Test Year and True-up and Adopting
2 Procedural Schedule" (Test Year Order) dated November 16, 2007, and cancelled the true-up
3 hearing dates it had earlier scheduled in this case.

4 Q. Was the Asbury SCR project complete and in-service as of
5 December 31, 2008?

6 A. No. Empire planned to install the SCR equipment at Asbury during an
7 extended major maintenance outage for the Asbury unit that started in late September 2007.
8 Mechanical problems with the Asbury unit extended the unit outage past its scheduled late
9 November 2007 termination date to well into 2008. As a result, the Asbury SCR equipment
10 was unable to meet the in-service criteria spelled out in Empire witness Mertens' direct
11 testimony as of the case cut-off at year-end 2007. Accordingly, the Staff has not included the
12 Asbury SCR project in its rate base in this case.

13 Q. Is the Asbury SCR project in-service as of the date of this testimony?

14 A. The Company has informed the Staff that it believes the Asbury SCR project
15 met the in-service criteria included in Mr. Mertens' direct testimony as of February 29, 2008.
16 The Staff has not verified whether this project has successfully met the in-service criteria as of
17 the date of this testimony, but expects to review this matter in the near future.

18 Q. Assuming that it is verified that the Asbury SCR project has currently met the
19 relevant in-service tests, does that change the Staff's position as to whether this project should
20 be included in rate base in this proceeding?

21 A. No. The Commission's Test Year Order provides for a cut-off of
22 December 31, 2007 for inclusion of known and measurable costs in this case, and no
23 subsequent directive from the Commission has altered this.

1 Q. Does the Staff recommend that the Commission amend its initial order
2 concerning test year and true-up to allow for inclusion of the Asbury SCR project in
3 traditional rates in this proceeding?

4 A. No. The establishment of a December 31, 2007 cut-off for inclusion of known
5 and measurable events in rates from this proceeding was agreed-upon by all parties to this
6 case, and should not be re-opened at this time. The Commission's Suspension Order and
7 Notice in this case, dated October 3, 2007, indicated a desire on the Commission's part to
8 resolve questions involving the test year and need for a true-up proposal early in the
9 proceeding, stating "So that the test year and true-up question can be quickly resolved, the
10 Commission will require the other parties to promptly state their positions regarding
11 Empire's true-up and test year proposals." Re-opening the Commission's previous test year
12 and true-up determinations at this point is not consistent with a policy of early resolution of
13 these questions in rate proceedings.

14 Q. If the Commission were for any reason inclined to allow Empire's
15 Asbury SCR project in rates in this case, how should this be accomplished?

16 A. Again, the Staff does not recommend that the Commission do this. However,
17 in the event the Commission is persuaded to include this project in Empire's rate base in this
18 case, the Staff believes that this inclusion is best accomplished through ordering of a true-up
19 procedure to ensure that all of Empire's revenue, expense, rate base and rate of return revenue
20 requirement components are matched and measured consistently in time with the Asbury SCR
21 addition. The Staff does not recommend that Empire's Asbury SCR addition be included in
22 its revenue requirement as an "isolated adjustment," if the Commission were to be inclined to
23 include this project in this case. Inclusion of the Asbury SCR project as an isolated

1 adjustment in Empire's rates would mean that Empire's rate base would not be properly
2 matched in time with its revenue, expense or cost of capital revenue requirement components.

3 Q. What will be the impact on Empire's revenue requirement if the Asbury SCR
4 project is not ultimately included in Empire's rates in this case?

5 A. As the Commission is aware, Empire's regulatory plan calls for quantification
6 of an alternative revenue requirement based upon a "regulatory plan amortization" (RPA)
7 calculation during the pendency of the Company's regulatory plan. In the event that the
8 Asbury SCR project is not granted recovery in Empire's traditional revenue requirement, the
9 impact on Empire's cash flow of failing to receive a current return on its investment in this
10 unit and of its failure to receive rate recovery of depreciation expense on this investment will
11 be measured and reflected in Empire's RPA calculations. For this reason, the Staff believes
12 that Empire will receive compensation in rates for the Asbury SCR project through the
13 alternative RPA rate mechanism. However, Empire would not be compensated for any
14 O&M expenses it incurs attributable to the Asbury SCR equipment until its next rate
15 proceeding.

16 **COMMISSION RULES TRACKER**

17 Q. Does Empire's direct testimony in this proceeding indicate an interest in
18 special rate mechanisms for compliance costs associated with Commission rulemakings?

19 A. Yes. Company witness Palmer indicates at page 6-8 of his direct testimony,
20 and Mr. Keith states at pages 36-37 of his direct testimony in this proceeding, that Empire
21 should have the ability to defer for recovery in future rate cases any incremental costs it incurs
22 as a result of expected Commission rulemakings pertaining to its vegetation management
23 (tree trimming) and infrastructure inspections and standards activities.

1 Q. Is the Commission currently considering rulemakings in the above areas?

2 A. Yes. The Commission has considered an electrical infrastructure standards
3 rule in Case No. EX-2008-0231, and a vegetation management standards rule in Case
4 No. EX-2008-0232.

5 Q. What is the current status of these proposed rulemakings?

6 A. The Commission has voted approval of these rules, and has sent them to the
7 Missouri Secretary of State's Office to be published. However, the Secretary of
8 State's Office has not published these rules as of the date of this testimony. The Staff expects
9 these rules will become effective for Missouri electric utilities prior to the date new rates go
10 into effect for Empire as a result of this case.

11 Q. In light of the timing of these new rules, how does the Staff recommend that
12 the incremental cost of these rules be handled for Empire in this case?

13 A. Due to the fact that these rules are likely to become effective for Empire in the
14 near future, and the public interest considerations of Empire becoming fully compliant with
15 the rules as soon as possible, the Staff recommends that an amount equal to the incremental
16 cost to Empire of compliance with these rules be included in its rate case. The Staff
17 recommends that this rate allowance be set up in the form of a "tracker" mechanism, to set up
18 safeguards to ensure that Empire actually expends all funds granted to it in rates to comply
19 with the new rules for the intended purpose.

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

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

1 Q. What is Empire's current estimate of additional costs it will incur if this rule is
2 implemented?

3 A. Empire's consultant on vegetation management matters, Environmental
4 Consultants, Inc. (ECI), has provided an estimate of an additional \$4.0 million in incremental
5 expenses associated with the Commission's vegetation management standards rule in the form
6 considered by the Commission in Case No. EX-2008-0232. For the Commission's
7 infrastructure standards rule in the form considered in Case No. EX-2008-0231, ECI
8 estimated that its adoption would require approximately \$1.5 million in incremental expense
9 to Empire. Both of these estimates are total Company amounts, and were provided to the
10 Commission in the rulemaking dockets. Both ECI estimates do not include the impact of any
11 capital expenditures that may be required of Empire under the rules.

12 Q. Does the Staff agree with these estimates?

13 A. The Staff believes these estimates are reasonable projections of the additional
14 costs Empire may be expected to incur if the vegetation management and infrastructure rules
15 are implemented.

16 Q. What is the total amount of vegetation standards and infrastructure standards
17 cost that should be included in rates in this case?

18 A. Based on the ECI estimates referenced above, Empire should receive a total of
19 \$12.3 million of rate recovery for these items in this case (\$6.8 million "status quo"
20 tree trimming amount; plus \$4 million in incremental vegetation management rule costs;
21 plus \$1.5 million in incremental infrastructure standards rule costs). Again, this amount is a
22 total Company number, stated prior to application of relevant Missouri jurisdictional
23 allocation factors.

1 Q. How will the proposed Rules tracker mechanism work?

2 A. As described above, the Staff proposes that Empire's rate allowance for
3 tree trimming and infrastructure inspection expenses in this case be set equal to \$12.3 million.
4 In return, Empire will commit to expending at least \$12.3 million annually on its tree
5 trimming and infrastructure standards activities. If Empire fails for any reason to expend the
6 required \$12.3 million received in rates in an annual period, then for the next year it must
7 expend the total of \$12.3 million, the difference between \$12.3 million and its actual outlay
8 from the previous year, and an additional amount equal to its short-term debt interest cost as
9 applied to the shortfall from the previous year.

10 Q. What if Empire expends more than \$12.3 million in an annual period?

11 A. Empire is expected to spend a minimum \$12.3 million annually on
12 tree trimming and infrastructure inspection activities each year under the Staff's proposal.
13 That expectation does not change even if Empire were to expend more than that amount in
14 any one year. In short, spending more than \$12.3 million in any annual period would not give
15 the Company the right to spend less than that amount in the next year. In this respect, the
16 Staff is advocating a "one-way tracker" mechanism for Empire.

17 Q. Should there be reporting requirements by Empire associated with its
18 vegetation management and infrastructure standard activities?

19 A. Yes. The reporting requirements laid out in the Commission's proposed
20 vegetation management and infrastructure rules should be followed by Empire.

21 Q. Has a tracker mechanism for tree trimming activities been placed in effect for
22 any other electric utilities in this state?

1 A. Yes. A very similar tracking mechanism was agreed to by the parties in
2 Ameren UE's recent rate proceeding, Case No. ER-2007-0002.

3 **REGULATORY PLAN AMORTIZATIONS**

4 Q. Have you read the direct testimony filed by the other parties to the proceeding
5 concerning Empire's regulatory plan amortizations (RPAs)?

6 A. Yes, I have.

7 Q. Has the Staff been involved subsequent to the direct testimony filings in this
8 case in discussions to resolve differences among the parties regarding calculation of the RPA?

9 A. Empire, the Staff and OPC have discussed their differences on the
10 RPA calculations, and have reached a tentative agreement on the appropriate calculation
11 format and approach. It is my understanding that Empire's rebuttal testimony filing in this
12 case will include a sample RPA calculation in accordance with this agreed upon format.

13 Q. What are the major differences between the Staff's RPA calculation included
14 as Appendix 6 to its Cost of Service Report filed on February 22, 2008, and the calculation
15 format subsequently agreed to among Empire, the Staff and OPC?

16 A. The agreed upon RPA calculation format includes a numerical agreement as to
17 the appropriate amount to include in the calculation for the line item "Additional Net Balance
18 Sheet Investment." The agreement also features modifications to the Funds from
19 Operations (FFO) metrics formulas to be more consistent with the formulas agreed to by the
20 parties and accepted by the Commission in the most recent Kansas City Power & Light
21 Company rate proceeding, Case No. ER-2007-0291.

22 Q. Does this agreement as to a calculation format resolve all issues regarding
23 RPAs in this proceeding?

1 A. Not necessarily. Industrial Intervener witness Gorman raised an additional
2 issue in his direct testimony in this proceeding concerning possible use of a purchased power
3 agreement amortization factor in the RPA calculation. The Staff and other parties are waiting
4 for Mr. Gorman to provide additional support for the concept of incorporating such an
5 adjustment in the RPA calculation and for a quantification of this adjustment if it is
6 appropriate for inclusion. Once further consideration of the Industrial Interveners proposal
7 can be made, it is the intent to proceed with filing of a stipulation and agreement with the
8 Commission to memorialize any and all agreements concerning the RPA calculations in this
9 proceeding that are reached.

10 Q. Does this conclude your rebuttal testimony?

11 A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

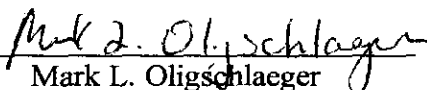
In the Matter of The Empire District Electric)
Company of Joplin, Missouri's Application for)
Authority to File Tariffs Increasing Rates for)
Electric Service Provided to Customers in the)
Missouri Service Area of the Company)

Case No. ER-2008-0093

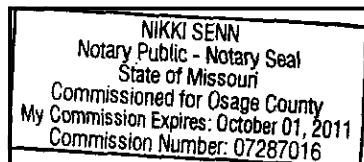
AFFIDAVIT OF MARK L. OLIGSCHLAEGER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Mark L. Oligschlaeger, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 12 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


Mark L. Oligschlaeger

Subscribed and sworn to before me this third day of April, 2008.




Notary Public