EXHIBIT

Exhibit No.: __________
Issue(s): Fuel and Purchased Power Expense/ Experimental Low-Income Program (ELIP)
Witness/Type of Exhibit: Meisenheimer/Direct
Sponsoring Party: Public Counsel
Case No.: ER-2008-0093

DIRECT TESTIMONY

OF

BARBARA A. MEISENHEIMER

Submitted on Behalf of the Office of the Public Counsel

EMPIRE DISTRICT ELECTRIC COMPANY
(REVENUE REQUIREMENT)

CASE NO. ER-2008-0093

February 22, 2008

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 BARBARA A. MEISENHEIMER

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Barbara A. Meisenheimer, of lawful age and being first duly sworn, deposes and states:

1. My name is Barbara A. Meisenheimer. I am Chief Utility Economist for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my direct testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Barbara A. Meisenheimer

Barbara A. Meisenheimer

Subscribed and sworn to me this 22nd day of February 2008.

NOTARY PUBLIC
NOTARY SEAL
STATE OF MISSOURI

KENDELLE R. SEIDNER
My Commission Expires
February 4, 2011
Cole County
Commission #07004782

Kendelle R. Seidner

Kendelle R. Seidner
Notary Public

My Commission expires February 4, 2011.

DIRECT TESTIMONY

OF

BARBARA A. MEISENHEIMER

EMPIRE DISTRICT ELECTRIC COMPANY
(REVENUE REQUIREMENT)

CASE NO. ER-2008-0093

I. SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have been advised by Public Counsel's legal counsel that the tariff sheets that established base rates and the Interim Energy Charge (IEC) in Case No. ER-2004-0570 were the lawfully effective tariffs for the Empire District Electric Company (Empire or Company) at the time this case was filed and that the terms of the Stipulation and Agreement in Case No. ER-2004-0570 with respect to Fuel and Purchased Power expenses applied. Therefore, the primary purpose of my direct revenue requirement testimony is to review the conditions to which the Company and Public Counsel agreed to in the Stipulation in Case No. ER-2004-0570 related to the recovery of fuel and purchased power expenses through base rates and an IEC. As elements of the Stipulation in Case No. ER-2004-0570, the Commission approved specific levels of revenue that would be recovered through base rates and an IEC. During the period the IEC was in effect, the terms of the Stipulation and Agreement in Case No. ER-2004-0570 prohibited the Company from requesting alternative fuel recovery mechanisms, to rebase rates or to adjust the IEC rate in order to recover additional fuel and purchased power expenses. The Company's recovery of fuel and purchased power expense in this case should be limited to an annual recovery in base rates of $102,994,356 and an additional annual amount of up to $8,249,000 recovered through the IEC until the IEC expires on March 26, 2008. As set forth in the Stipulation and Agreement approved by the Commission in Case No. ER-2004-0570, IEC revenues should remain subject to true-up and refund under the conditions of the Stipulation and Agreement. Based on the Company's requested increase, I believe that through March 26, 2008, this issue could be worth over $17 million on an annualized basis.[1]

My testimony also addresses the experimental low-income rate discount program offered by the Company. Public Counsel is satisfied to continue with the current Experimental Low-Income Program (ELIP) program design for at least two years or until the next rate case with an evaluation and any potential design changes developed through the collaborative process and presented to the Commission for approval. However, Public Counsel does believe that interest should be paid on the fund balance as proposed by Public Counsel in ER-2006-0315.

II. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. Barbara A. Meisenheimer, Chief Utility Economist, Office of the Public Counsel, P. O. 2230, Jefferson City, Missouri 65102.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.

[1] $128,806,734 (Keith Direct, Schedule WSK-2) - $111,243,356 (Total MO Fuel & PP, Appendix A, Nonunanimous Stipulation and Agreement, filed February 22, 2005, Case No. ER-2004-0570)

A. I hold a Bachelor of Science degree in Mathematics from the University of Missouri-Columbia (UMC) and have completed the comprehensive exams for a Ph.D. in Economics from the same institution. My two fields of study are Quantitative Economics and Industrial Organization. My outside field of study is Statistics.

I have been with the Office of the Public Counsel (Public Counsel) since January 1996. I have testified on economic issues and policy issues in the areas of telecommunications, gas, electric, water and sewer.

Over the past 14 years I have also taught courses for the following institutions: University of Missouri-Columbia, William Woods University, and Lincoln University. I currently teach undergraduate and graduate level economics courses and undergraduate statistics for William Woods University.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION ON ELECTRIC ISSUES?

A. I testified in Empire's last rate case ER-2006-0315 on the issues of base rate and IEC recovery of Fuel and Purchase Power expenses, the ELIP program and rate design. I have also testified in KCPL and AmerenUE rate cases on class cost of service, rate design and low income program issues.

III. FUEL AND PURCHASED POWER EXPENSE

Q. PLEASE PROVIDE A TIMELINE OF EVENTS RELATED TO THE RECOVERY OF FUEL AND PURCHASED POWER EXPENSES.

A.

February 22, 2005	Stipulation and Agreement filed on a fixed level of recovery of Fuel and Purchased Power expenses through a base rate increase and an IEC. The IEC was to be in effect for 3 years beginning on the effective date of tariffs unless ordered by the Commission. Empire was prohibited from requesting additional Fuel and Purchased Power expense recovery for the term of the IEC.
March 27, 2005	Stipulation and Agreement approved with tariffs effective March 27, 2005.
February 1, 2006	Empire filed for a rate increase in ER-2006-0315. The Company requested elimination of the IEC and to increase Fuel and Purchased Power recovery through implementation of an Energy Cost Recovery rider or increases in base rates.
May 2, 2006	Commission determined that Empire's request for an Energy Cost Recovery rider while the IEC was in effect violated the terms of the Stipulation and Agreement in ER-2004-0570.
December 21, 2006	Commission issued its Report and Order in ER-2006-0315 authorizing Empire to file new tariffs including additional base rate recovery of Fuel and Purchased Power expenses and eliminating the IEC.
December 28, 2006	Empire filed revised tariffs and requested expedited treatment to make the tariffs effective January 1, 2007.
December 29, 2006	Commission issued its Order in ER-2006-0315 approving tariffs and granting expedited treatment.

December 29, 2006	Public Counsel, Praxair Inc. and Explorer Pipeline filed for rehearing challenging the December 21, 2006, Report and Order in part based on the elimination of the IEC.
January 1, 2007	Praxair Inc. and Explorer Pipeline filed for Rehearing of the Commission's December 29, 2006, Order approving tariffs.
November 15, 2007	Missouri Supreme Court ordered the Commission to vacate its December 29, 2006 Order based on failure to allow adequate time for parties to request rehearing.
December 4, 2007	Commission vacated its December 29, 2006, Order effective December 14, 2007.

The Commission's December 4, 2007, order sought to simultaneously re-approve the tariffs approved in the vacated Report and Order. The Commission has never ruled on Public Counsel's December 29, 2006, Application for Rehearing of the Commission's December 21, 2006, Report and Order or the Praxair Inc. and Explorer Pipeline applications for rehearing of the original Order and Order approving tariffs. Public Counsel continues to dispute the legality of the December 21, 2006, Report and Order and the Commission's subsequent actions attempting to maintain the provisions of that Order.

As stated in the summary of this testimony, I have been advised by Public Counsel's legal counsel that the tariff sheets that established base rates and the IEC in Case No. ER-2004-0570 were the lawfully effective tariffs for Empire at the time this case was filed and that the terms of the Stipulation and Agreement in Case No. ER-2004-0570 with respect to Fuel and Purchased Power expenses applied. With the IEC tariff still in effect, Empire was prohibited from requesting an increase in Fuel and Purchased Power expense above the fixed level approved in Case No. ER-2004-0570 and is prohibited from requesting a Fuel Adjustment Clause.

Q. **WHAT LEVEL OF FUEL AND PURCHASED POWER EXPENSE SHOULD BE ACCOUNTED FOR IN RATES?**

A. In Case ER-2004-0570, Empire, Praxair and Public Counsel agreed to the annual recovery of fixed and variable fuel and purchased power costs in Missouri base rates of $102,994,356, of which $85,064,873 represents variable costs. Further, the parties agreed the IEC would collect an additional amount of $8,249,000 in variable fuel and purchased power costs which would be subject to true-up and refund.

Q. **WHAT IS THE TERM OF THE FUEL AND PURCHASED POWER AGREEMENT?**

A. The term is for three-years, ending March 26, 2008, unless the IEC is terminated by the Commission.

Q. **DID THE COMMISSION APPROVE A THREE YEAR IEC?**

A. Yes. In its Report and Order, effective March 27, 2005, the Commission approved the Stipulation and Agreement including the provision for a three year IEC and specifically directed the parties to comply with the terms of the February 22, 2004, Stipulation and Agreement. Specifically, the Commission found "That the Nonunanimous Stipulation and

Agreement Regarding Fuel and Purchased Power Expense, filed on February 22, 2005, and deemed to be unanimous by operation of Commission Rule, is hereby approved. The parties shall comply with the terms of the Stipulation and Agreement."

Q. WOULD PUBLIC COUNSEL HAVE VOLUNTARILY AGREED TO AN IEC ABSENT SIGNIFICANT CONCESSIONS BY THE COMPANY?

A. No. Public Counsel argued in ER-2004-0570, that an IEC was unlawful absent the unanimous consent of the affected parties.

Q. WHAT CONCESSIONS DID EMPIRE AGREE TO IN EXCHANGE FOR THE IEC MECHANISM?

A. The Stipulation in ER-2004-0570 clearly prohibits Empire from requesting the recovery of additional variable fuel costs for the duration of the Commission approved IEC period.

Section 4 of the Stipulation states that:

> In consideration of the implementation of the IEC in this case and the agreement of the Parties to waive their respective rights to judicial review or to otherwise challenge a Commission order in this case authorizing and approving the subject IEC, for the duration of the IEC approved in this case Empire agrees to forego any right it may have to request the use of, or to use, any other procedure or remedy, available under current Missouri statute or subsequently enacted Missouri statute, in the form of a <u>fuel adjustment clause</u>, a natural gas cost recovery mechanism, or other energy related adjustment mechanism to which the Company would otherwise be entitled. <u>Empire also agrees not to request an</u> Accounting Authority Order or <u>other regulatory mechanism</u> to accumulate and or <u>recover any amount of variable fuel and purchased power cost that exceeds the IEC ceiling.</u> (Emphasis added)

Q. WHY SHOULD EMPIRE BE REQUIRED TO HONOR THE COMMITMENTS MADE IN THE STIPULATIONS IN CASE NOS. ER-2004-0570 AND EO-2005-0263?

A. Allowing Empire to deviate from the approved Stipulation in ER-2004-0570 by altering base rates to recover additional variable fuel and purchased power costs will likely cost consumers tens of millions of dollars.

Allowing Empire to deviate from the approved stipulations will also impact the level to which Public Counsel, and I would expect other parties, are willing to rely on negotiated agreements with Empire as an effective means to protect their interests in future cases. On a broader scale, if one Company is allowed to circumvent its commitments and strip away protections for which other parties already made concessions, it may erode the perceived value of stipulations as a fair and reliable means of settling contested issues in other cases before the Commission.

Q. IS IT CLEAR THAT IN CASE NO. ER-2004-0570 THE COMMISSION APPROVED SPECIFIC LEVELS OF FUEL AND PURCHASED POWER COST TO BE RECOVERED IN BASE RATES AND THE IEC AS OPPOSED TO ONLY APPROVING A LEVEL OF IEC REVENUE?

A. Yes. The Commission's Order approving the Stipulation also clearly delineates agreed to levels of revenue requirement for both base rates and the IEC:

> On February 22, 2005, Empire, the Public Counsel, Praxair, Inc., and Explorer Pipeline Company jointly filed a Nonunanimous Stipulation and Agreement Regarding Fuel and Purchased Power Expense. No party filed a timely objection or request for hearing with respect to this Nonunanimous Stipulation and Agreement.

> The Stipulation and Agreement provides that a certain specified amount of Revenue Requirement shall be collected in Empire's permanent rates with respect to its Missouri jurisdictional fixed and variable fuel and purchased power costs and that an additional specified amount of Revenue Requirement for such costs shall be collected on an interim basis, subject to true-up and refund, through a surcharge referred to as an Interim Energy Charge ("IEC"). The IEC shall be in effect for three years. The amount of Revenue Requirement to be included in Empire's permanent rates is $102,994,356; the additional amount to be collected through the IEC is $8,249,000. The actual cents-per-kilowatt-hour IEC to be collected from each customer class is set out in Appendix B to the Stipulation and Agreement. The amount collected by the IEC is intended to include only the on-system Missouri retail variable costs collected in FERC accounts 501, 547 and 555. Net revenues from capacity release and gas sales shall be a credit against expenses in the true up. The fixed costs in FERC accounts 501, 547 and 555 shall be collected in permanent rates. The Stipulation and Agreement sets out other details and provisions governing the operation of the IEC, the true up, and any refunds.

Q. BY REQUESTING AN INCREASE IN RATES TO RECOVER ADDITIONAL FUEL AND PURCHASED POWER COSTS, IS EMPIRE VIOLATING ITS COMMITMENT?

A. Yes, as shown above in the excerpt from the Commission approved Stipulation and Agreement in Case No. ER-2004-0570, Empire, for the three-year term of the IEC, agreed not to request a regulatory mechanism to recover any amount of variable fuel and purchased power cost that exceeds the IEC ceiling. However, Empire's requesting a rate increase to recover additional variable fuel cost in this case constitutes requesting a regulatory mechanism that would allow recovery in excess of the IEC ceiling.

Q. WHY DID PUBLIC COUNSEL JOIN IN THE STIPULATION AND AGREEMENT IN CASE NO. ER-2004-0570?

A. In large part, Public Counsel joined in the Stipulation in ER-2004-0570 because the terms of the Stipulation cap until at least 2008, at specific dollar levels, the exposure to upward price volatility that consumers face associated with fuel and purchased power costs. In addition, the provisions of the Stipulation allow for downward but not upward rate adjustments based on true-up and prohibit Empire from requesting an AAO or other regulatory mechanism to accumulate and or recover amounts in excess of the IEC ceiling. In joining as a signatory party, Public Counsel believed that these three elements of the Stipulation and Agreement would provide consumers with price protection and price certainty.

If the Commission allows Empire to increase base rates to recover additional fuel and purchased power expenses, consumers could be exposed to increases of at least $17 million on an annualized basis. Public Counsel urges the Commission to enforce the protections that it afforded consumers in approving the Stipulation and Agreement by rejecting any increase in fuel and purchased power costs.

Q. GIVEN THE CURRENT VOLATILITY IN FUEL PRICES, IS IT FAIR TO REQUIRE THE COMPANY AND ITS SHAREHOLDERS TO HONOR THE STIPULATION AND AGREEMENT?

A. Absolutely. Empire benefited from concessions gained from consumers through the Stipulation and Agreement. Those concessions can not easily, if ever, be retracted. In addition to the IEC going into effect and generating additional revenues sooner than it might have otherwise, Empire avoided the expense and uncertainty of litigation by securing Public Counsel's waiver of its right to judicial review or to otherwise challenge a Commission order approving the IEC.

At the time the Stipulation was inked, it was no secret that natural gas prices might be subject to substantial volatility. The Stipulation in ER-2004-0570 was submitted on February 22, 2005, following four years of volatile natural gas prices. Empire could have conditioned acceptance of the Stipulation and Agreement on numerous options for addressing the potential volatility of natural gas prices at the time the agreement was negotiated. This would have allowed Public Counsel and other parties to the case the option of accepting or rejecting the total agreement in light of the concessions Empire might later seek from customers and the potential detriment customers might face.

Ultimately, Public Counsel agreed to a Stipulation because it contained no "catastrophic" out clause to cover unexpected or anomalous changes in the natural gas commodity market, no upward rate adjustment based on true-up and no provision to rebase, at a later time, the level of fuel and purchased power recovered in base rates or through the IEC. It would be patently unfair to consumers to now allow Empire to unilaterally override the terms of the Stipulation and Agreement by allowing any such additional recovery during the 3 year period covered by the IEC.

Q. DOES PUBLIC COUNSEL AGREE THAT THE COMMISSION HAS THE AUTHORITY TO TERMINATE THE IEC?

A. Yes, but there is no reason to do so.

Q. IS IT SIGNIFICANT THAT THE STIPULATION AND AGREEMENT APPROVED BY THE COMMISSION STATES THAT THE IEC TARIFF WILL EXPIRE NO LATER THAN 12:01 A.M. ON THE DATE THAT IS THREE YEARS AFTER THE ORIGINAL EFFECTIVE DATE OF THE REVISED TARIFF SHEETS UNLESS EARLIER TERMINATED BY ORDER OF THE COMMISSION?

A. No. This provision of the Stipulation and Agreement simply recognizes that the Commission can not be bound by a previous decision. It is relevant to note that language in the approved Stipulation and Agreement also states that the IEC shall be in effect for three years.

Q. WOULD REVISITING THE FUEL AND PURCHASED POWER RECOVERY, AT THIS TIME, ON THE COMMISSION'S OWN MOTION LIKELY RESULT IN LITIGATION?

A. Yes, as is clear from the current litigation surrounding Case No. ER-2006-0315. Empire's Application and supporting testimony requesting a Fuel Adjustment Clause and recovery of additional fuel and purchased power costs have again tainted the process by which the Commission, on its own motion, might choose to review Empire's fuel and purchased power expense recovery. Empire has placed the Commission in a precarious situation and should not be rewarded for it.

Q. DOES THE STIPULATION AND AGREEMENT IN EO-2005-0263, ADDRESSING THE EXPERIMENTAL REGULATORY PLAN MOOT THE FUEL AND PURCHASED POWER PROVISIONS CONTAINED IN THE STIPULATION AND AGREEMENT IN ER-2004-0570?

A. No. The provisions of the Stipulation in Case No. EO-2005-0263 are fully consistent with continuation of the three year IEC and other fuel and purchased power recovery provisions agreed to in Case No. ER-2004-0570. The Stipulation and Agreement in Case No. EO-2005-0263 addresses in relevant part, the terms and conditions under which Empire will seek recovery of costs associated with Iatan 2 or other base load generation plant. The Agreement recognizes that Empire may file a rate case prior to the expiration of the Agreement but must file a rate case related to the Iatan 2 investment no sooner than 2009. Under the terms of the Stipulation in EO-2005-0263, if Empire chooses to initiate a rate case during the 5 year term of the agreement, then Empire must comply with four conditions addressing (a) the treatment of special contracts, (b) affordability, demand response, and efficiency programs, (c) intervention without application by signatory parties to the Stipulation and (d) mandatory data to be provided to certain parties. None of the four conditions address fuel or purchased power or in any way affect Empire's prior commitment to refrain from requesting additional fuel and purchased power expense.

Section D(6) of the Stipulation and Agreement in EO-2005-0263 does address fuel and purchase power with respect to rate cases but it is not inconsistent with the three year IEC. Section D(6) reflects Empire's intent to seek an ECR mechanism and the parties' agreement to not address the issue in the Stipulation. It does not reflect an agreement by the parties in ER-2004-0570 to release Empire from its obligation under the previous Stipulation. Agreeing to not address an issue should not be viewed as a Public Counsel concession to dismantle the previous Stipulation and Agreement in ER-2004-0570. Further, Section D(6) can not be interpreted as a Commission order terminating the IEC approved in ER-2004-0570. Empire continued to charge the IEC after the Stipulation and Agreement in EO-2005-0263 became effective.

Unless the Commission lawfully terminates the IEC, it will run until 2008, after which Public Counsel acknowledges that Empire is free for the remaining portion of the 5 year term of the EO-2005-0263 agreement to request mechanisms to increase Fuel and Purchased Power expense recovery provided that Empire does not sign away that right in the interim.

IV. EXPERIMENTAL LOW-INCOME PROGRAM (ELIP)

Q. PLEASE PROVIDE BACKGROUND ON THE EXPERIMENTAL LOW-INCOME RATE INITIATIVE DESIGNED TO ASSIST EMPIRE'S CUSTOMERS.

A. The Commission approved a Unanimous Stipulation & Agreement in Case No. ER-2002-424 that established a collaborative process to develop and implement an experimental low-income rate discount program targeted to low-income customers in Empire's Joplin service area. After a successful collaborative with the interested parties, a program was developed, and on April 24, 2003, the Commission approved tariff sheets establishing the program consistent with the collaborative's recommendations. Qualifying low-income program recipients with a household income of up to 50% of the Federal Poverty level (Group A) received bill discounts of $40. Program recipients with a household income of 51% to 100%

of the Federal Poverty level (Group B) received bill discounts of $20. The discounts were available for up to 24 months.

Q. IN CASE NO. ER-2006-0315 WHY DID PUBLIC COUNSEL PROPOSE THAT THE PROGRAM BE CONTINUED WITH MODIFICATIONS?

A. Prior to Case No. ER-2006-0315, Roger Colton, a nationally recognized expert on low-income issues, evaluated the ELIP program and prepared a favorable report citing certain modifications to the ELIP that might improve the bill payment habits of low-income participants. As Public Counsel's witness in ER-2006-0315, I proposed modification consistent with Mr. Colton's specific recommendations based on his evaluation of the ELIP as well as recommendations consistent with recommendations he had made in other reports on low-income program design.

Q. HOW WAS THE PROGRAM DESIGN MODIFIED AS A RESULT OF ER-2006-0315?

A. The Commission approved Public Counsel's recommendations with the exception of reducing the ELIP funding level. As a result, the ELIP was modified to extend participation beyond 24 months, to earmarking $2,000 annually for outreach, to increase the bill discounts to $50 per month for participants with household income of up to 50% of the Federal Poverty level (Group A), to raise the household income cap for Group B in order to extend $20 bill credits to participants with household incomes up to 125% of the Federal Poverty Level and to allocating up to $30,000 of existing program funds, annually to an experimental arrearage repayment incentive component of the program in order to provide a matching of two customer dollars to 1 incentive dollar with a maximum annual incentive payment of $60 per customer. The Commission also charged the collaborative group addressing conservation and efficiency issues with making recommendations regarding future changes to the ELIP program and the use of excess funding.

Q. HOW IS THE EXPERIMENTAL LOW-INCOME PROGRAM FUNDED?

A. The ELIP is funded through a matching contribution of $150,000 annually collected in rates and a $150,000 annual shareholder contribution.

Q. IS PUBLIC COUNSEL SATISFIED WITH ADDRESSING PROPOSED CHANGES TO THE ELIP THROUGH THE COLLABORATIVE PROCESS?

A. Public Counsel is satisfied to continue to address program changes through the collaborative process. However, we are concerned that no interest has been paid on the fund balance as proposed by Public Counsel and approved by the Commission in Case No. ER-2006-0315. Specifically, I proposed that interest at a rate of 5.59% be paid to ratepayers.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.