EXHIBIT

Exhibit No.:	
Issue(s):	Off System Sales Margin/ Fuel Adjustment Clause
Witness/Type of Exhibit:	Kind/Rebuttal
Sponsoring Party:	Public Counsel
Case No.:	ER-2008-0093

REBUTTAL TESTIMONY

OF

Ryan Kind

Submitted on Behalf of the Office of the Public Counsel

EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2008-0093

April 4, 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 RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ryan Kind, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am a Chief Utility Economist for the Office of the Public Counsel.

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

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

Ryan Kind

Ryan Kind

Subscribed and sworn to me this 4th day of April 2008.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 10, 2009
Cole County
Commission #05754036

Jerene A. Buckman

Jerene A. Buckman
Notary Public

My commission expires August 10, 2009.

REBUTTAL TESTIMONY

OF

RYAN KIND

EMPIRE DISTRICT ELECTRIC COMPANY

CASE NO. ER-2008-0093

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

A. Ryan Kind, Chief Public Utility Economist, Office of the Public Counsel, P.O. Box 2230, Jefferson City, Missouri 65102.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.

A. I have a B.S.B.A. in Economics and a M.A. in Economics from the University of Missouri-Columbia (UMC). While I was a graduate student at UMC, I was employed as a Teaching Assistant with the Department of Economics, and taught classes in Introductory Economics, and Money and Banking, in which I served as a Lab Instructor for Discussion Sections.

My previous work experience includes three and one-half years of employment with the Missouri Division of Transportation as a Financial Analyst. My responsibilities at the Division of Transportation included preparing transportation rate proposals and testimony for rate cases involving various segments of the trucking industry. I have been employed as an economist at the Office of the Public Counsel (Public Counsel or OPC) since April 1991.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?

A. Yes, prior to this case I submitted written testimony in numerous electric, gas, and water rate cases as well as other miscellaneous gas, electric, and telephone cases.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of this testimony is to respond to the direct testimony of various witnesses regarding the Fuel Adjustment Clause issue and the off-system sales issue.

I. Off-System Sales Margin Issue

Q. WHAT ARE YOUR COMMENTS REGARDING THE PORTION OF THE COMMISSION STAFF'S (STAFF'S) FEBRUARY 22, 2008 COST OF SERVICE REPORT THAT PERTAINS TO THE AMOUNT OF MARGINS ON OFF-SYTEM SALES THAT SHOULD BE REFLECTED IN EMPIRE'S REVENUE REQUIREMENT?

A. Staff witness Dana Eaves is the Staff expert that sponsored the portion of the Staff's February 22, 2008 Cost of Service Report (Staff Report) on pages 32 and 33 that pertains to the amount of margins on off-system sales that should be reflected in Empire's revenue requirement. On page 32, Mr. Eaves states that:

> The Staff has annualized Empire's OSS by totaling the Company's margin (revenues less expenses) from its OSS transactions from January 1 to June 30, 2007, and multiplying this amount by two. This results in an adjusted level of OSS margin of $4,415,779, compared to a test year level of $3,920,819, and a level for the twelve months ended December 31, 2007, of $5,955,336. The Staff believes that its approach giving greater weight to Empire's more recent OSS experience is appropriate for annualizing OSS margins due to recent changes in Empire's OSS environment.

Q. DO YOU AGREE WITH THE STAFF POSITION THAT ANNUALIZING THE LEVEL OF OFF-SYSTEM SALES MARGINS THAT EMPIRE RECEIVED DURING THE FIRST SIX MONTHS OF 2007 RESULTS IN AN APPROPRIATE AMOUNT OF MARGIN TO INCLUDE IN EMPIRE'S REVENUE REQUIREMENT IN THIS CASE?

A. No. I believe that the level of off-system sales margins that Empire received during all of 2007, $5,955,336, better reflects the amount of margins that the Company will be making on its off-system sales in the near future. On page 37 of its 2007 Annual Report (SEC Form 10-K) Empire shows that its off-system sales margins have risen from about $4 million in 2006 to $6.7 million in 2007. On this same page Empire discusses the factors that have contributed to the rise in off-system sales margins the following paragraph:

> Revenues less expenses increased during 2007 as compared to 2006 primarily due to sales facilitated by the SPP Energy Imbalance Services (EIS) market that began on February 1, 2007. Sales from this market contributed $8.8 million to our off-system electric revenues during 2007 with $6.2 million of related expense. In addition, sales from the BPU contract contributed approximately $1.8 million to revenues. Total purchase power related expenses are included in our discussion of purchased power costs below.

As Empire notes in the above quote, the Company's participation in the SPP Energy Imbalance Services (EIS) market has "facilitated" an increase in the level of off-system sales margins that it received in calendar year 2007 relative to the amount generated in calendar year 2006. Also noted in the above quote is the impact of a bilateral sale contract with the Kansas City Board of Public Utilities (BPU) that has increased off-system sales revenues by approximately $1.8 million.

Q. DID MR. EAVES ADDRESS THE OFF-SYSTEM SALES MARGINS THAT EMPIRE IS RECEIVING FROM ITS BILATERAL SALE OF CAPACITY AND ENERGY TO BPU?

A. Yes. On page 33 of the Staff Report, Mr. Eaves states that:

> Empire has also derived substantial margins from a sale of capacity and energy to the Kansas City, Kansas - Board of Public Utilities (BPU) in summer 2007. The BPU transaction is ongoing in nature, as it will be in effect for the summer of 2008 as well.

Q. DID THE STAFF'S ADJUSTED LEVEL OF OFF-SYSTEM SALES MARGIN OF $4,415,779 REFLECT SOME OR ALL OF THE OFF-SYSTEM SALES MARGINS FROM BPU?

A. Only a small portion of the BPU off-system sales margins from 2007 are included in the Staff's annualized margin amount of $4,415,779. Most of the margins that Empire has realized thus far from its sale to BPU comes from BPU's commitment to pay Empire $325,000 per month for capacity during the summer months of June, July, August and September in 2007 (see Empire's response to Staff DR No. 266) and 2008. Since Staff annualized the off-system sales margins that Empire has received during the first six months of 2007 (January through June), that adjustment by Staff did not reflect the $975,000 ($325,000 x 3) in margins for capacity sales to BPU that Empire received during July through September of 2007. Empire's response to Staff DR No. 262 refers to the "capacity and energy sale to KC-BPU for this summer (June thru September) of 2007 which will also be in effect for 2008..." so BPU has a commitment to make capacity payments to Empire of $1.3 million again in 2008. This $1.3 million in off-system sales revenues results in $1.3 million margins from off-system sales because Empire does not need to provide any energy to BPU in order to receive these capacity payments.

Q. PLEASE DESCRIBE EMPIRE'S POSITION REGARDING THE AMOUNT OF OFF-SYSTEM SALES THAT SHOULD BE INCLUDED IN THE COMPANY'S REVENUE REQUIREMENT.

A. Empire witness Scott Keith sponsors Empire's annualization of the off-system sales margin amount that the Company proposes to include in its revenue requirement. He states at line 17 on page 10 of his direct testimony that "in addition, off-system sales revenue has been adjusted to reflect a five-year average." The workpapers for Mr. Keith's testimony show that he has calculated a five year average of off-system sales margins by summing the margins for the years ending in June 30, 2003, June 30, 2004, June 30, 2005, June 30, 2006 and June 30, 2007 and then dividing this sum by 5. This calculation results in an annualized off-system sales margin figure of $3,458,384.

Q. WHAT IS OPC'S RESPONSE TO THE ANNUALIZED OFF-SYSTEM SALES MARGIN FIGURE OF $3,458,384 PROPOSED BY EMPIRE?

A. Public Counsel believes that this figure understates the ongoing level of off-system sales margins even more than the Staff's annualized margin amount of $4,415,779. Both of these figures are well below $5,955,336, the level of margins actually realized in 2007.

Q. DOES OPC BELIEVE IT IS APPROPRIATE IN THIS CASE TO USE A FIVE YEAR AVERAGE TO DETERMINE AN ANNUALIZED AMOUNT OF OFF-SYSTEM SALES MARGINS FOR EMPIRE?

A. No. Earlier is this testimony I cited a couple of factors that have contributed to the increased level of off-system sales margins that occurred in 2007. These two factors are the start of the SSP EIS market in February of 2007 and the new bilateral contract for sales of capacity and energy to BPU for years 2007 and 2008. Neither of these factors was present in the first four years of the five-year time period that was used by Empire. In addition, as Empire notes on page 37 of its 2007 Annual Report (SEC Form 10-K) , "the availability of Riverton 12 in the spring of 2007 added additional gas-fired capability that allowed us to sell power into the SPP energy imbalance services market." The addition of the Riverton 12 150 MW Siemens V84.3A2 combustion turbine to Empire's portfolio of supply side resources has also permitted the Company to make additional capacity sales that would not be possible without it. Empire is seeking to recover the costs of this new generating unit in rates and it is appropriate to include the higher level of off-system sales margins enabled in part by the new Riverton 12 generating unit at the same time that the costs of the new unit are included.

II. Fuel Adjustment Clause Issues

Q. DOES PUBLIC COUNSEL BELIEVE EMPIRE'S REQUEST FOR A FAC IN THIS CASE IS PROPER?

A. No. Please refer to the direct testimony of OPC witness Barbara Meisenheimer for an explanation of the procedural reasons why Empire should not be seeking approval of a fuel adjustment clause in this case.

Q. DOES PUBLIC COUNSEL ALSO BELIEVE THERE ARE POLICY REASONS FOR THE COMMISSION TO DENY EMPIRE'S REQUEST FOR AN FAC IN THIS CASE?

A. Yes. Because of the unique circumstances present at the time of the case, OPC believes that Empire's request should be denied at this time. Those unique circumstances are:

1) According to Empire's own testimony, the Company expects that the new rates resulting from this case will only be in effect for a very limited period of time (21 months). At line 1 on page 15 of his direct testimony, Mr. Keith states that "the rates coming out of this rate case will go into effect around September 1, 2008 and are expected to remain in place until June of 2010."

2) Empire has used the expected level of fuel costs for the year 2008 in order to run its production cost model and estimate the base line level of production costs to include in its base rates. The operation of law date in this case is September 1 so the level of costs included in Empires new base rates will reflect the level of costs built into rates

for at least the first four months after new rates go into effect (assuming rates are set based on 2008 fuel cost inputs in the production cost model).

3) Empire has protected itself against extreme price volatility in the price of its coal and natural gas fuel supplies by entering into long-term contracts or hedging arrangements for much of the fuel that it expects to burn over the twenty-one month period when new rates would be in effect.

4) Starting in January 2009, Empire will begin receiving wind energy from a new wind purchased power agreement with Horizon Wind Energy. Empire witness Scott Keith states on page 31 of his direct testimony that "Empire anticipates purchasing approximately 350,000 megawatt-hours of energy under this contract annually." Mr. Keith identifies this new wind purchase as one of the "sources of energy that can be used to offset natural gas price volatility. At line 3 on page 31 of his direct testimony, Mr. Keith notes that "the wind energy is purchased at a fixed annual cost and is typically used to offset the energy from higher cost resources, such as those using natural gas."

Q. PLEASE EXPLAIN WHY THE FOUR FACTORS LISTED ABOVE CONSTITUTE UNIQUE CIRCUMSTANCES UNDER WHICH THE COMMISSION SHOULD DENY EMPIRE'S REQUEST FOR A FAC IN THIS CASE.

A. For the first four months of the twenty-one months that the rates resulting from this case and a FAC would be in effect, Empire's production costs will already be set at a the level of costs that are expected based on fuel prices that are largely locked in at this time. For the remaining seventeen months of the twenty-one month period, Empire has protected itself from volatile prices for much of its coal and natural gas fuel supplies and will have access to additional wind energy from the Horizon Wind Energy contract that will be "used to offset the energy from higher cost resources, such as those using natural gas."

If Empire does burn more natural gas than it expects during the twenty-one month period and needs to rely on spot market purchases for this gas, it will often be done in association with off-system sales where the sales won't be made unless the revenues from the sale exceed to cost of fuel and other variable operating expenses.

Q. PLEASE SUMMARIZE THE EFFORTS THAT EMPIRE HAS TAKEN TO REDUCE VOLATILITY IN ITS NATURAL GAS FUEL PRICES.

A. Empire witness Scott Tarter states in line 9 on page 10 of his direct testimony that "the weighted average of the natural gas consumed was about 6.91 $/MMBtu." This is well above the price at which Empire has locked in natural gas fuel prices for 2009 – 2011. According to the table on page 30 of Mr. Keith's testimony, 45% of Empire's 2009 natural gas fuel needs are hedged at an average price of $6.060/MMBtu, 39% of Empire's 2010 natural gas fuel needs are hedged at an average price of $5.422/MMBtu and 40% of Empire's 2011 natural gas fuel needs are hedged at an average price of $5.422/MMBtu.

Q. CAN YOU PROVIDE AN EXAMPLE OF HOW ANY INCREASES IN NATURAL GAS FUEL PRICES DURING 2008 COULD IMPACT EMPIRE'S EARNINGS IN 2008?

A. Yes. According to information that Empire provided on page 60 of its 2007 Annual Report (SEC Form 10-K):

> Based on our expected natural gas purchases for our electric operations for 2008, if average natural gas prices should increase 10% more in 2008 than the price at December 31, 2007, our natural gas expense would increase, and income before taxes would decrease by approximately $0.9 million based on our December 31, 2007 total hedged positions for the next twelve months.

Q. PLEASE SUMMARIZE THE EFFORTS THAT EMPIRE HAS TAKEN TO REDUCE VOLATILITY IN ITS DELIVERED COAL PRICES.

A. On page 10 of its 2007 Annual Report (SEC Form 10-K) Empire states that:

> We have secured 93% of our anticipated coal requirements for 2008, 61% for 2009 and 48% for 2010 through a combination of contracts with Peabody Coal Sales, Peabody Coal Trade, Arch Coal Sales, Rio Tinto, Oxbow Carbon and Minerals (petroleum coke) and coal stored in inventory. We plan to fulfill the remaining 7% of our 2008 coal requirements through spot purchases. All of the Western coal is shipped to the Asbury Plant by rail, a distance of approximately 800 miles, under a five-year contract with the Burlington Northern and Santa Fe Railway Company (BNSF) and the Kansas City Southern Railway Company which expires on June 29, 2010.

Q. NOW LET'S TURN TO A DISCUSSION OF THE PARAMETERS OF AN FAC THAT OPC WOULD RECOMMEND IF THE COMMISSION DECIDES TO APPROVE AN FAC FOR EMPIRE DESPITE THE PROCEDURAL AND POLICY REASONS CITED BY OPC FOR DENYING EMPIRE'S FAC REQUEST. ON PAGE 26 OF HIS DIRECT TESTIMONY, EMPIRE WITNESS SCOTT KEITH STATES THAT EMPIRE IS "NOT OPPOSED" TO INCLUDING "ITS ACTUAL JURISDICTIONAL SALES MARGINS AS A COMPONENT OF THE FAC." WHAT IS YOUR RESPONSE TO THIS STATEMENT?

A. Public Counsel believes that the periodic adjustments made pursuant to the FAC should reflect variations from a reasonable base line level of off-system sales margins that will be included in Empire's new base rates that result from this case. This appears to be the same treatment that Mr. Keith states "Empire is not opposed to."

Q. WHY DOES OPC BELIEVE THAT IT IS APPRRPRIATE TO INCLUDE VARIATIONS FROM THE BASELINE LEVEL OF OFF-SYSTEM SALES MARGINS IN THE FAC RATHER THAN SOLELY ACCOUNTING FOR THESE MARGINS IN BASE RATES?

A. Mr. Brubaker summarized the reasons why this is the preferred treatment at line 14 on page 4 of his direct revenue requirement testimony where he cites the "complexity of identifying and auditing the costs associated with off-system sales, and the difficulty of predicting the level of sales and margin." In other words, it would be virtually impossible to audit Empire's books to verify that, in each hour of the year, all of the production costs associated with the energy produced by its generating units to serve native load do not include the fuel and other variable costs associated with making off-system sales.

Q. BOTH EMPIRE AND STAFF HAVE RECOMMENDED THAT THE COST AND REVENUES RELATED TO SO2 EMISSION ALLOWANCES SHOULD BE FLOWED THROUGH AN FAC. IS THIS TREATMENT ALLOWED BY THE EMPIRE REGULATORY PLAN APPROVED BY THE COMMISSION IN CASE NO. EO-2005-0263?

A. This is not permitted by the Empire regulatory plan. At page 20 of the regulatory plan Stipulation and Agreement, the paragraph pertaining to SO2 Emission Allowances states in part that:

> Empire will record the proceeds, in the event that revenues exceed original cost or the allowance is loaned to a third party, from emission allowance transactions in Account 254, the balance in this account will be Regulatory Liabilities, to be used as an offset to rate base in any future rate case until a final decision is made on the amortization treatment in future rate cases.

Q. WHAT IS PUBLIC COUNSEL'S RESPONSE TO THE "SKIN IN THE GAME" FAC INCENTIVE FRAMEWORKS THAT HAVE BEEN PROPOSED BY STAFF AND MIEC IN DIRECT TESTIMONY?

A. OPC believes that both of these proposals have merit and would create an FAC that better aligns the interests of ratepayers and shareholders than the Aquila FAC 95% pass-through approach supported by Empire in this case.

Q. THE STAFF REPORT STATES AT THE BOTTOM OF PAGE 62 THAT "THE FAC SHOULD PERMIT EMPIRE TO RECOVER AND RETAIN BETWEEN 60% AND 80% OF THE CHANGE IN FUEL AND PURCHASED POWER COSTS." IF THE COMMISSION ADOPTS THIS TYPE OF SHARING MECHANISM FOR VARIATIONS IN FUEL COSTS FROM THE BASE LEVEL INCLUDED IN BASE RATES, WHAT IS OPC'S RECOMMENDATION OF THE PROPER RETENTION PERCENTAGE FOR EMPIRE?

A. Public Counsel believes that Empire should not be permitted to use periodic adjustments under the FAC to recover any more than 60% of any increase in fuel cost. If fuel costs decline, Empire should not be forced to pass through more than 60% of the decreased fuel costs to customers through FAC periodic adjustments. OPC arrived at this 60% level recommendation by taking into account the unique circumstances cited earlier that we believe make it inappropriate for the Commission to grant Empire's request for an FAC at this time. These same unique circumstances mean that Empire would get more than adequate protection against fuel price and earnings volatility with a mechanism that allows the Company to recover 60% of any variation in fuel cost over the twenty-one month period that Empire expects the FAC to be in effect.

III. Summary

Q. PLEASE SUMMARIZE PUBLIC COUNSEL'S POSITIONS ON THE ISSUES THAT YOU HAVE ADDRESSED IN THIS TESTIMONY.

A. There are three main issues that I have addressed in this testimony and OPC's positions on those issues are:

1) The amount of off-system sales margins that should be reflected in the new rates that result from this case are the amount of off-system sales margins that were actually

generated by Empire in calendar year 2007. This amount is $5,955,336 and includes margins resulting from an ongoing bilateral sales contract with BPU.

2) Empire's request for a FAC should be denied in this case because of the procedural and policy reasons referenced and cited in this testimony; and

3) If despite OPC's recommendation to the contrary, the Commission decides to approve Empire's request for a FAC, then the approved FAC: (a) should reflect variations in off-system sales margins from a reasonable baseline amount ($5,955,336) included in base rates; (b) should not include emission allowance costs and revenues; and (c) should only permit the Company to recover 60% of any positive variation in fuel cost and only require the Company to refund 60% of any negative variation in fuel cost relative to the base level of fuel costs.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.