BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of The Empire District Electric Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company.	))))))	**File No. ER-2012-0345**

EMPIRE'S STATEMENT OF POSITIONS

COMES NOW The Empire District Electric Company ("Empire" or the "Company"), and for its Statement of Positions in this matter, respectfully states the following concerning the issues contained in the Amended List of Issues, Order of Witnesses, and Hearing Schedule filed herein by the Staff of the Commission on February 13, 2013:

POLICY

Empire provides electric service to approximately 124,600 residential customers, 21,400 commercial customers, 283 industrial customers, 1,650 public authority and street and highway customers, and three wholesale customers in Missouri. Empire is requesting an overall increase in Missouri retail electric rates of $30.7 million, exclusive of applicable fees or taxes – approximately a 7.6 percent increase.

As explained in the Direct Testimonies of Empire witnesses Brad Beecher and Kelly Walters, the primary factors driving the need for a Missouri rate increase are increases in Empire's operating costs, including those associated with the May 22, 2011 Joplin tornado and several new accounting/operating systems. Additionally, Empire reviewed its existing Missouri depreciation rates and determined that changes are warranted, including the recovery of additional depreciation expense on Empire's Riverton units 7 and 8 due to their early retirement as a result of new environmental standards. Current and scheduled increases in the Southwest

Power Pool's transmission rates are also a significant factor driving Empire's request for rate relief, and Empire's vegetation management costs are also expected to increase.

Empire Witnesses: Brad Beecher (Beecher Direct), Kelly Walters (Walters Direct)
Staff Witnesses: R. Kliethermes, Lange, Kim Bolin
OPC Witnesses: Ted Robertson, Barb Meisenheimer
MECG Witness: Steve Rackers

RATE BASE

Iatan Plant

1. Should the disallowances ordered by the Commission in Case Nos. ER-2010-0355 and ER-2010-0356 with regard to Kansas City Power & Light and KCPL – Greater Missouri Operations also be ordered against Empire's Iatan plant balances?

No, the disallowances ordered by the Commission in Case Nos. ER-2010-0355 and ER-2010-0356 against Kansas City Power & Light ("KCPL") and KCPL – Greater Missouri Operations ("GMO"), based upon the facts presented in those cases and the applicable law, should not be ordered against Empire's Iatan plant balances. In other words, the imprudence found against KCPL should not be imputed to Empire, but, instead, Empire should be judged on its own actions.

Empire owns a 12 percent interest in Iatan Unit 1, Unit 2, and Common Facilities and owns three percent of the Iatan Site property which is not directly a portion of Unit 1, Unit 2, or Common Facilities. Great Plains Energy Incorporated, which includes KCPL and GMO, owns almost 90 percent of Unit 1, approximately 73 percent of Unit 2, and over 79 percent of Common Facilities. Since the voting provisions of the applicable contracts require only a simple majority of ownership interest to carry a vote, KCPL, in essence, has complete decision making authority for the facilities.

Empire, however, took extensive actions to prudently manage its interests and associated costs, including forming a project management team, implementing an internal cost control system, and performing internal and construction audits of project contracts, processes, and controls. Empire was able to obtain significant reimbursement for its ratepayers through these actions. Additionally, as a result of an arbitration proceeding, Empire was awarded approximately $17.7 million in advanced coal tax credits associated with Iatan 2 to the benefit of Empire's customers. Empire also filed a demand for arbitration regarding bills from Schiff Hardin, and the result of the settlement of that dispute also benefited Empire's customers. Empire took all steps possible to assure that the Company and its customers were paying only their proper share of Iatan costs.

Empire Witness: Blake Mertens (Mertens Rebuttal, pp. 2-19)
Staff Witness: Amanda McMellen

2. Should carrying costs be adjusted?

Any carrying cost adjustment will be tied to any disallowance of Empire's Iatan rate base investment.

Empire Witness: Blake Mertens
Staff Witness: Amanda McMellen

Depreciation Reserve – Iatan Adjustments

Should the disallowances ordered by the Commission in Case Nos. ER-2010-0355 and ER-2010-0356 be made against Empire's Iatan plant balances?

No, the disallowances ordered by the Commission in Case Nos. ER-2010-0355 and ER-2010-0356 against Kansas City Power & Light ("KCPL") and KCPL – Greater Missouri Operations ("GMO"), based upon the facts presented in those cases and the applicable law, should not be ordered against Empire's Iatan plant balances.

Empire Witness: Blake Mertens
Staff Witness: Amanda McMellen

Joplin Tornado O&M Asset

Should the Joplin tornado O&M asset be included in rate base?

Yes. Exclusion of these costs form Empire's rate base will deny Empire a return on the investment it has made in the system to restore electric service and would result in an immediate understatement of Empire's cost of service in Missouri.

Empire Witness: Scott Keith (Keith Reb., pp. 13 – 14; Keith Surr., pp. 17 – 19)
Staff Witness: Kim Bolin
OPC Witness: Ted Robertson

Maintenance Normalization Adjustments at Empire generation units

What is the appropriate normalization period or method of normalization for Empire's generation units?

The Commission should use actual 2012 Operation and Maintenance expenses for the Ozark Beach, Asbury, Riverton, Stateline, State Line Combined Cycle (adjusted for ownership shares) and Energy Center plants. Other approaches will ignore the escalation of costs in this area.

Empire Witness: Blake Mertens (Mertens Dir., pp. 3 – 7; Reb., pp. 21 – 23)
Staff Witness: Keith Foster

Cash Working Capital (CWC)

What Billing lag should be used to adjust the overall Revenue lag for purposes of CWC?

The billing lag is the number of days from the date the meter was read to the date when the customer is billed. By using data from Empire's customer database for Missouri customers, Empire has calculated a weighted average billing lag of 5.32 days. However, Empire believes that use of Staff's recommended 4.14 to 4.15 day billing lag would also be reasonable.

Empire Witness: Joan Land (Land Dir., pp. 1 – 9; Reb., pp. 1 – 5)
Staff Witness: Paul Harrison
MECG Witness: Steve Rackers

Should fuel purchased power and cash vouchers be treated as prepayments, or reflected in the CWC calculation, or both?

Prepayments should be included both in the calculation of rate base and in the cash working capital calculation. The investment or prepayment is made by the Company up front and the fact that there is an additional lag in recovery as reflected in the CWC calculation does not result in a double recovery.

Empire Witness: Joan Land (Land Reb., pp. 1 – 5)
MECG Witness: Steve Rackers

STATEMENT OF OPERATING INCOME

Fuel and Purchased Power

Net Base Fuel and Purchased Power Costs

(a) What amount of off-system sales revenue should be included in Empire's net base fuel and purchase power costs included in the revenue requirement used to set rates in this case?

Empire and Staff agree that off-system sales revenue should be eliminated (i.e. set at zero) for purposes of calculating net base fuel and purchased power costs included the revenue requirement used to set rates in this case. MEUA's proposal to include $2 million of off-system sales revenue in the net base fuel cost calculation uses a projection based on historic sales that is unreasonable because it no longer accurately reflect the current off-system sales market or Empire's opportunities to make off-system sales during the period rates set in this case are in effect.

Empire Witness: Scott Keith
Staff Witness: Jermaine Green
MECG Witness: Steve Rackers

(b) What amount of REC revenue and certain post process fuel run adjustments should be included in net base fuel and purchased power costs included in the revenue requirement used to set rates in this case?

Empire opposes Staff's proposal to include a "normalized" level of REC revenue in the calculation of net base fuel and purchased power costs used to set rates in this case. Staff's proposal ignores two critical developments affecting the Company's future REC revenue. First, a long-term REC sales contract that Empire had in place for several years expired on December 31, 2012. And second, the current spot market price for RECs is substantially below the price prescribed in that expired contract. Because of these developments, Empire expects its net REC revenue will to decline to approximately $552,000 in 2013, and therefore proposes that this reduced amount be used to calculate net base fuel costs in this case.

Empire Witnesses: Scott Keith, Todd Tarter
Staff Witness: Jermaine Green

(c) What amount of Plum Point demand charges should be included in purchased power costs included in the revenue requirement used to set rates in this case?

Empire proposes to update the amount of Plum Point demand charges included in net base fuel and purchased power costs to reflect the results of the annual unit capacity test, which increased the Company's share of capacity from 49.875 MW to 50.25 MW effective December 31, 2012. As a result of that change, Empire's demand charges will increase. The surrebuttal testimony of Staff's witness Keith Foster suggests Staff agrees that Plum Point demand charges should increase, but because Staff has not indicated the amount of that increase Empire cannot state with certainty that Plum Point demand charges no longer is an issue.

Empire Witness: Todd Tarter
Staff Witness: Matt Barnes, Keith Foster, Todd Tarter, Scott Keith

(d) What amount of SPP transmission expense should be included in net base fuel costs included in the revenue requirement used to set rates in this case?

Pending any true-up adjustments, Empire proposes that an annualized transmission cost of approximately $7.7 million be included in net base fuel and purchased power costs used to set rates in this case.

Economic Development Rider

Should non-participating customers be held harmless of the revenues foregone by Empire for service under an EDR?

Yes. The purpose of the Economic Development Rider ("EDR") is to encourage industrial and commercial business development in Empire's Missouri service area. The EDR will be applicable only to new customer facilities or the additional separately metered customer facilities meeting certain criteria. Empire is able to agree with the recommendations from Staff that discounts granted to customers under the EDR not be paid for by other non-participating customers and that Empire adjust its revenues for rate case purposes to eliminate the impact of any EDR discounts granted.

Empire Witness: Brent Baker (Baker Direct, pp. 4-7), Keith (Surrebuttal, pp. 10-11)
Staff Witness: Tom Imhoff

Pay Station Fees

> Should pay station fees be paid directly by the user at the time of the transaction or included in Empire's revenue requirement?

Historically, Empire has included the costs of the pay station fees in the Company's cost of service. Rather than socializing these fees in the cost of service, however, Empire proposed in this case that the customer responsible for the pay station fee pay the fee.

Empire Witness: Brent Baker (Baker Direct, p. 7)
Staff Witness: Amanda McMellen
OPC Witness: Barb Meisenheimer

FAC Tariff

> (a) Should Empire be permitted to flow any SPP transmission costs and revenues through its FAC?

In Case No. ER-2012-0166, the Commission authorized Ameren Missouri to flow through its FAC MISO-mandated transmission costs. Empire proposes that the Commission authorize the same treatment in this case for the Company's SPP-mandated transmission costs.

> (b) If so, which SPP transmission costs and revenues should flow through Empire's FAC?

Empire proposes flowing through its FAC all transmission charges recorded in FERC Account 565, Transmission of Electricity by Others.

Empire Witness: Scott Keith
Staff Witnesses: Matt Barnes, Mark Oligschlaeger, Dan Beck
MECG Witness: Steve Rackers

> (c) Should Empire be required to make changes to its FAC tariff sheets to make the provisions of Empire's FAC more consistent with the FACs currently in place for other Missouri investor-owned electric utilities? If so, what changes should be made to Empire's FAC tariff sheets?

Empire supports Staff's objective to standardize the terms of the FAC tariffs currently in place for Missouri's other investor-owned electric utilities. But Staff's failure to include the recovery of SPP transmission costs through Empire's FAC would make the Company's FAC inconsistent with the FAC recently approved for Ameren Missouri. Accordingly, Empire supports including SPP transmission costs in its FAC in the same manner that the Commission approved including MISO transmission costs in Ameren Missouri's FAC.

Empire Witness: Scott Keith
Staff Witness: Matt Barnes

SPP Transmission Tracker

> (a) If the Commission determines that Empire should not be permitted to flow SPP transmission costs and revenues through its FAC, should those transmission costs and revenues be deferred in a transmission cost and revenue tracker using the trued-up test year amounts of those charges and revenues as the base against which changes will be tracked, with amounts above the base booked to a regulatory asset and amounts below the base booked to a regulatory liability?

Although Empire prefers to deal with SPP transmission costs and revenues through its FAC, if the Commission rejects that option the Company should be allowed to establish a tracker so that changes above or below base levels of those costs and revenues can be recorded as regulatory assets or liabilities. The net amounts of those regulatory assets and liabilities would then be addressed in Empire's next general rate case. Absent such a tracker mechanism (or absent the ability to flow those costs and revenues through its FAC), Empire faces substantial financial risks that are potentially detrimental to earnings, because the Company forecasts that its SPP transmission costs will increase 300 percent over the next two years – the period during which rates set in this case will be in effect.

Empire Witness: Scott Keith
Staff Witnesses: Mark Oligschlaeger, Dan Beck
OPC Witness: Ted Robertson
MECG Witness: Steve Rackers

> (b) If the Commission determines that Empire should be permitted to defer changes in transmission costs and revenues through a tracker, should any conditions apply to that tracker? If so, what conditions should apply?

Staff has proposed six conditions that it believes should be part of any SPP transmission cost tracker that is authorized in this case. Empire accepts Staff's recommendations that (i) the Missouri-allocated portion of SPP point-to-point and regional revenues should be included in the tracker, (ii) Empire report its SPP transmission costs and revenues on a monthly basis, and (iii) an audit and review of all costs and revenues deferred through the tracker should be conducted in the Company's next general rate case. Empire may also be willing to accept others conditions proposed by Staff, if those proposals can be clarified to eliminate concerns outlined in the surrebuttal testimony of Empire's witness Scott Keith. Those additional Staff proposals are (x) that the tracker include revenues earned by any Empire affiliate (even though no such affiliate currently exists); (y) that any tracker not amend, modify, alter, or supersede any previous agreement or order concerning the Company's membership in SPP or the treatment of SPP revenue; and (z) that deferrals under the tracker cease during periods when Empire's reported earnings (on an 12-month rolling basis) exceed the rate of return authorized in this case.

Empire Witness: Scott Keith
Staff Witness: Mark Oligschlaeger
OPC Witness: Ted Robertson

SPP Transmission Expense

What is the appropriate level of SPP Transmission Expense to include in Empire's revenue requirement?

Empire Witness: Scott Keith
Staff Witness: Kim Bolin
OPC Witness: Ted Robertson
MECG Witness: Steve Rackers

SPP Integrated Market Costs

Should test year costs incurred by Empire to prepare for and participate in the SPP Integrated Marketplace be included in the revenue requirement used to set rates in this case, or should some or all of those costs be deferred for consideration in a future rate case?

Empire believes 100 percent of the costs the Company has incurred to prepare for and participate in the SPP Integrated Marketplace should be included in the revenue requirement used to set rates in this case because the software acquired for that purpose is currently used and useful. Although a portion of the software's functionality will be used for future participation in SPP's "next-day" markets, other functions are currently being used by the Company to provide service to its customers. Therefore, it would be both arbitrary and unnecessary for the Commission to attempt to allocate software costs between current and future uses and defer costs allocated to those future uses for consideration in a future rate case.

Empire Witness: Blake Mertens
Staff Witness: Amanda McMellen
MECG Witness: Steve Rackers

RATE CASE EXPENSE

Were prior rate case expenses amortized or normalized; if they were amortized, should Empire be allowed to recover the unamortized portion of prior rate case expenses?

Prior rate case costs should not be removed from Empire's cost of service and revenue requirement in this case. As a result of the settlement of Case No. ER-2011-0004, Empire's prior rate case costs were amortized over four years. As such, the unamortized balance of rate case costs associated with Case No. ER-2011-0004 should be included as a component of rate case expense in this case and amortized over two years.

Empire Witness: Scott Keith (Keith Rebuttal, pp. 24-25; Surrebuttal, pp. 11-13)
Staff Witness: Kim Bolin
OPC Witness: Keri Roth

ADVERTISING

Should the costs of certain radio and TV advertisements be categorized as "general?"

Yes. The Commission should reject the disallowance proposed by Staff with regard to certain television and radio advertisements focused on service reliability. The advertisements are used as an education tool, keeping Empire's customers informed about vegetation management, continuing investments in generation capacity to meet demand, and investments to update equipment to provide safe and reliable service.

Empire Witness: Joan Land (Land Rebuttal, pp. 5-6)
Staff Witness: Jermaine Green

OUTSIDE SERVICES

What is the appropriate level of outside services expense?

A three year average of outside service expenses should be used to establish a normalized level of costs because of the timing of Empire's integrated resources plan (IRP), a substantial and recurring cost.

Empire Witness: Scott Keith
Staff Witness: Jermaine Green
MECG Witness: Steve Rackers

PROPERTY INSURANCE EXPENSE

What insurance policy should be used to determine property insurance expense?

Property insurance expense levels should be trued-up using the most current information, including recent policy premiums.

Empire Witness: Scott Keith (Keith Rebuttal, p. 26)
Staff Witness: Kim Bolin

BANKING FEES

Should fees to secure short-term debt be expensed or capitalized?

Banking fees should be expensed, so that the timing of when the costs are incurred is consistent with when the costs are recovered. The proposal by MECG witness Rackers to capitalize banking fees should be rejected, as implementation of the MECG proposal would further delay the recovery of prudently incurred costs.

Empire Witness: Robert Sager (Sager Rebuttal, p. 9)
Staff Witness: Amanda McMellen
MECG Witness: Steve Rackers

PAYROLL AND BENEFITS - INCENTIVE COMPENSATION

1. What level of cash incentives based on performance goals should be included in the cost of service?

2. Should executive stock awards be included?

3. Should lightning bolts be included?

Empire's executive compensation is determined and administered by the Compensation Committee of Empire's Board of Directors. The program is designed to provide a competitive compensation package, to enable the Company to attract and retain highly talented individuals for key positions and promote the Company's performance objectives. Empire's compensation approach is similar to the Company's peers, but the philosophy behind the Company's approach is much more conservative. Staff's and MEUA's proposed adjustments to executive compensation should be rejected.

Staff's and MEUA's recommendation to remove the costs of the Lightning Bolt program from test year expense should also be rejected. The program is not an incentive program. Instead, it is a vehicle for the Company to show appreciation to salaried individuals who do not earn overtime for working beyond their normal hours during prolonged projects. For the test year being used in this case, most of the Lightning Bolt awards were related to the extraordinary efforts of Empire employees during the restoration of service following the Joplin tornado.

Empire Witness: Kelly Walters (Walters Rebuttal, pp. 2-12)
Staff Witness: Amanda McMellen
MECG Witness: Steve Rackers

DUES AND DONATIONS – INCLUDING EEI DUES

What amount of test year dues and donations, including EEI dues, should be included in the revenue requirement used to set rates in this case?

The only remaining issue regarding dues and donations expense pertains to the approximately $120,000 in dues paid during the test year for Empire's membership in the Edison Electric Institute ("EEI"). The Company's membership in EEI provides numerous benefits to Empire, its employees, and its customers that could not be cost-effectively duplicated outside

EEI. Staff's proposal that the Company be required to quantify the benefits it derives from each of EEI's various activities and programs and then allocate those benefits between customers and shareholders is unreasonable, because no similar standard has been applied to any of the other expenditures that Empire makes to meet its obligation to provide safe and adequate service to its customers.

Empire Witness: Scott Keith
Staff Witness: Jermaine Green
OPC Witness: William Addo

DEPRECIATION AND AMORTIZATION

What are the appropriate depreciation rates?

The appropriate remaining life rates for Empire's production plant are shown in Column [l] of Table 5-1 of Schedule TJS-2, with two exceptions: Asbury Plant and Riverton Plant. The appropriate remaining life rate for the Asbury Plant is shown on page 1 of Schedule TJS-6 to be 4.83 percent (including the cost of removal allowance of 0.49 percent). The appropriate remaining life rate for the Riverton Plant is shown on page 1 of Schedule TJS-7 to be 9.28 percent (including the cost of removal allowance of 1.78 percent).

Empire Witness: Tom Sullivan (Sullivan Direct, Rebuttal, and Surrebuttal)
Staff Witness: John Robinett

Riverton Amortization

Should the Commission order an amortization associated with the projected retirements of Riverton 7 and 8?

Yes. The Commission should order an amortization of the reserve deficiency associated with Riverton 7 and 8. The approach recommended by Empire is consistent with the principle that ratepayers who receive the benefit of a facility should pay the costs of that facility.

Empire Witness: Tom Sullivan (Sullivan Direct, Rebuttal, and Surrebuttal)
Staff Witness: John Robinett
OPC Witness: Ted Robertson

TAXES

1. Property tax

What amount of property tax expense should be included in the revenue requirement used to set rates in this case?

Property tax expense used to set rates in this case should be based on an estimate of the Company's 2013 property taxes, because that is the cost that most closely represents the actual tax expense that Empire will incur during the period rates set in this case will be in effect. Staff's estimate, which is based on a five-year average of the ratio of property tax expense to taxable plant, contains numerous errors and tends to underestimate property tax expense for the relevant period. MEUA's proposal to limit property tax expense to the amount actually paid in 2012 also will understate actual tax expense Empire will incur for the period during which rates set in this case will be in effect.

Empire Witness: Jay Williams
Staff Witness: Amanda McMellen
MECG Witness: Steve Rackers

2. Current & Deferred income taxes

(a) Should an adjustment be made related to state income tax flow through for prior years?

Yes. An adjustment to Empire's revenue requirement should be made to reflect state income taxes that have not been collected on deferred tax items under the normalization method.

Empire Witness: Robert Sager (Sager Reb., pp. 9 - 10; Surr., pp. 6 – 7)
Staff Witness: Mark Oligschlaeger

(b) Should an adjustment be made for cost of removal tax issues related to prior years?

Yes. The regulatory asset for tax cost of removal should be returned to the Company over an eighteen (18) year period. As an offset to the increase in rates that would result, the book accrual for cost of removal that is included in the overall depreciation rates could be lowered to that impact to customers is neutral.

Empire Witnesses: James Warren (Direct), Robert Sager (Surrebuttal, pp. 2-6)
Staff Witness: Mark Oligschlaeger

IATAN/PLUM POINT TRACKERS

1. What is the appropriate base cost to be built into rates?

The appropriate base cost for the Iatan/Plum Point Tracker is $5,337,123 – the amount established in Case No. ER-2011-0004. The Staff's proposed disallowances should be rejected.

Empire Witness: Scott Keith (Keith Rebuttal, pp. 17-18, Supplemental Rebuttal, pp. 1-3)
Staff Witness: Keith Foster

2. What FERC accounts should be included in the tracker?

The Iatan/Plum Point cost tracker should not be limited to a specific set of FERC accounts.

Empire Witness: Scott Keith
Staff Witness: Keith Foster

BAD DEBT EXPENSE

1. What level of bad debt expense should be included?

The effective uncollectible rate (bad debt) should be 0.5663%, as reflected in the Rebuttal Testimony of Staff witness Green.

Empire Witness: Scott Keith (Long Direct, p. 5; Keith Rebuttal, p. 4)
Staff Witness: Jermaine Green
OPC Witness: Ted Robertson
MECG Witness: Steve Rackers

2. Should the revenue requirement be factored up for bad debts?

If the Staff effective uncollectible rate is used, Empire will not pursue the need to "factor up" the revenue requirement to address any increase that may be granted in this case.

Empire Witness: Scott Keith (Long Direct, p. 5; Keith Rebuttal, p. 4)
Staff Witness: Jermaine Green
OPC Witness: Ted Robertson
MECG Witness: Steve Rackers

VEGETATION MANAGEMENT TRACKER

1.What is the proper level of expense?

If the vegetation tracker is eliminated, vegetation management cost should be $13.2 million on a Missouri jurisdictional basis. This level of cost includes both the amount expected to reoccur annually during the immediate future and an amortization of the amounts that have been previously deferred.

Empire Witness: Kelly Walters (Direct, pp. 14-16; Rebuttal, p. 12)
Staff Witness: Paul Harrison

2. What is the proper base level to be used in the tracker?

If the existing vegetation management tracker remains in place, Empire has no objection to using Staff's base of $12 million, as the base level as the tracker will correct any differences in actual expense on a going-forward basis.

Empire Witness: Kelly Walters (Direct, pp. 14-16; Rebuttal, p. 12)
Staff Witness: Paul Harrison

CORPORATE FRANCHISE TAX

Should the lower rate for 2013 corporate franchise taxes be included in Empire's revenue requirement?

Empire is not opposed to using the lower 2013 corporate franchise rates in the determination of Empire's overall revenue requirement in this case.

Empire Witness: Jay Williams
MECG Witness: Steve Rackers

RATE DESIGN ISSUE - LED STREET AND AREA LIGHTING

Within twelve months of the effective date of rates authorized by the Commission in this case, should Empire be required to complete its own evaluation of LED SAL systems and either (i) file proposed LED lighting tariff sheet(s), or (ii) update the Commission regarding when the Company intends to file such tariff sheet(s)?

Empire continues to monitor the evolving technology of LED systems and the potential benefits those systems can provide. But it would be unreasonable to require the Company to perform its own independent evaluation of LED SAL systems because to do so would require Empire to unnecessarily incur costs to duplicate evaluations already being underway elsewhere. Consequently, the Company proposes that it continue to monitor available information regarding the results of LED pilot programs underway at other utilities, report back to Staff at six month intervals, and provide a final report to Staff within fifteen months of the effective date of rates set in this case. If that report indicates Empire should implement an LED tariff, that tariff can be proposed in the Company's next general rate case.

Empire Witness: Martin Penning
Staff Witness: Hojong Kang

<u>RATE DESIGN</u>

Rate Design & Class Cost of Service

1. Does Staff's revenue proof contain Staff normalized billing units? If not, what adjustment should be made?

No. Empire can accept Staff's overall cost allocation methodology for Staff's cost of service allocations in this case, but the final revenue proof in this case will need to be based on Empire's overall revenue requirement after true-up and the normalized Empire billing determinants after true-up.

Empire Witness: Scott Keith (Keith Rebuttal, pp. 26-27)
Staff Witness: Mike Scheperle

2. What is the appropriate customer charge for the Residential class?

Empire accepts Staff's proposed change in customer charges in this case.

Staff Witness: Mike Scheperle
OPC Witness: Barb Meisenheimer

3. What is the appropriate per-class rate increase for this case?

Empire accepts Staff's position on per-class rate increase.

Staff Witness: Mike Scheperle
OPC Witness: Barb Meisenheimber
MEUA Witness: Maurice Brubaker

DSM Cost Recovery

1. Should pre-MEEIA DSM programs be set forth on a separate tariff?

Empire accepts the proposal to bill customers for pre-MEEIA DSM program costs as a separate charge.

Empire Witness: Scott Keith
Staff Witness: Mike Scheperle
OPC Witness: Barb Meisenheimber
MEUA Witness: Maurice Brubaker

2. Should pre-MEEIA DSM program costs be shown on a separate line item on customer bills?

Yes, pre-MEEIA DSM program costs should be shown on a separate line item on each customer's bill.

Empire Witness: Scott Keith
Staff Witness: Mike Scheperle
OPC Witness: Barb Meisenheimber
MEUA Witness: Maurice Brubaker

3. How should the pre-MEEIA DSM revenue requirement be grossed up?

The pre-MEEIA DSM revenue requirement should include a component for income taxes and rate of return.

Staff Witness: Mike Scheperle
OPC Witness: Barb Meisenheimber
MEUA Witness: Maurice Brubaker

4. How should the pre-MEEIA DSM revenue requirement be allocated among Empire's customer classes?

Empire can accept the allocation of pre-MEEIA DSM revenue requirement among Empire's rate classification based upon kWh sales, excluding the kWh sales made to customers opting out of the programs.

Staff Witness: Mike Scheperle
OPC Witness: Barb Meisenheimber
MEUA Witness: Maurice Brubaker

Other Rate Design Issues:

Low Income Weatherization

(a) Should the maximum and average per-unit amount be eliminated?

Yes. Empire agrees with Staff witness Warren's recommendation to eliminate the references to average and maximum expenditures per customer program.

Empire Witness: Scott Keith (Keith Rebuttal, pp. 27-28; Surrebuttal, pp. 13-15)
Staff Witness: Dr. Henry Warren
DNR Witness: Adam Bickford

(b) Should Staff's recommended tariff language revision be implemented?

No. Empire disagrees with some of the wording changes proposed by Dr. Warren. The proper language revisions for the Low Income Weatherization tariff are shown in Keith Surrebuttal Schedule WSK-1.

Empire Witness: Scott Keith (Keith Rebuttal, pp. 27-28; Surrebuttal, pp. 13-15)
Staff Witness: Dr. Henry Warren
DNR Witness: Adam Bickford

<u>RATE OF RETURN</u>

A. What value for the return on equity should the Commission use to determine Empire's rate of return in the revenue requirement used to set rates in this case?

The Commission should use a 10.6 percent ROE to determine Empire's rate of return in the revenue requirement used to set rates in this case.

Empire Witness: James Vander Weide (Direct, Rebuttal, Surrebuttal)
Staff Witness: Shana Atkinson
MEUA Witness: Michael Gorman

B. What capital structure should the Commission use to determine the rate of return included in the revenue requirement used to set rates in this case?

The Commission should use the Company's consolidated capital structure at March 31, 2012, with two adjustments, and then updated through December 31, 2012. The capital structure, as adjusted, is as follows:

Pro Forma Capital Structure:	Amount Outstanding	% of Total	Cost Rate	Weighted Return on tariffs Filed
Long-term Debt	$669,016,299	49.00%	5.94%	2.91%
Common Equity	696,418,294	51.00%	10.60%	5.41%
Short-term Debt	0	0.00%	0.87%	0.00%
Total	$1,365,434,593	100.00%		8.32%

Empire Witnesses: James Vander Weide (Rebuttal, pp. 26-33); Robert Sager (Direct, pp. 2-4; Rebuttal, pp. 4-9)
Staff Witness: Shana Atkinson
MEUA Witness: Michael Gorman

C. What is the appropriate cost of debt?

The appropriate cost of long-term debt is 5.94 percent.

Empire Witness: Robert Sager (Rebuttal, pp. 4-9)
Staff Witness: Shana Atkinson

ASBURY UNIT TRAIN

1. Was Empire's sale of the Asbury unit train properly booked by Empire?

Yes, Empire treated the unit train as an "operating units" and properly accounted for the sale of the unit train.

Empire Witness: Robert Sager (Rebuttal, pp. 1-4; Surrebuttal, pp. 7-8)
Staff Witness: John Robinett

2. Were the lease proceeds associated with the Asbury unit train properly booked?

Yes, Empire properly accounted for the sale of the unit train and properly accounted for the revenue Empire was able to earn by leasing this unit train by way of reducing the Company's fuel costs. Revenue was earned while the unit train was still owned by Empire, prior to its retirement and sale, and the lease revenue was properly used to reduce the fuel costs recorded on Empire's books. This method of accounting properly matched the revenue received during the lease with the costs of Empire's unit train ownership.

Empire Witness: Robert Sager (Rebuttal, pp. 1-4; Surrebuttal, pp. 7-8)
Staff Witness: John Robinett

3. Did Empire properly book depreciation expense in the eight months immediately prior to the retirement of the Asbury unit train?

Yes. Empire recorded depreciation expense such that the train would not be over depreciated based on its status as an operating unit.

Empire Witness: Robert Sager (Rebuttal, pp. 1-4)
Staff Witness: John Robinett

Respectfully submitted,

Brydon, Swearengen & England P.C.

By:
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Certificate of Service

I hereby certify that the foregoing has been sent by United States mail, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record on the 13th day of February, 2013.

___/s/ Diana C. Carter_____________