

Exhibit No.:  
Issues: Payroll  
Witness: Janis E. Fischer  
Sponsoring Party: MoPSC Staff  
Type of Exhibit: Rebuttal Testimony  
Case No.: ER-2001-299  
Date Testimony Prepared: May 3, 2001

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY SERVICES DIVISION**

**REBUTTAL TESTIMONY**

**OF**

**JANIS E. FISCHER**

**THE EMPIRE DISTRICT ELECTRIC COMPANY**

**CASE NO. ER-2001-299**

Jefferson City, Missouri  
May 2001

**\*\*Denotes Highly Confidential Information\*\***

**NP**

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Missouri Public  
Service Commission

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**PAYROLL EXPENSE**

Q. What does the Company's direct filing state about payroll expense?

A. The direct testimony of Company witness David W. Gibson, page 14, line 23 and through page 15, line 2, states, "Payroll expense reflects the wage rates as of December 31, 2000 and reflects positions that are currently authorized but unfilled and have been adjusted for a wage increase for union employees in November of 2000." While Mr. Gibson's direct testimony does not mention the terminated UtiliCorp United, Inc. (UtiliCorp)/Empire merger's effect on position vacancies, Empire witness Robert B. Fancher notes in his direct testimony at page 4: "Empire is filing the rate case as a stand alone company without merger effects ... the personnel vacancies that have been created due to the merger will be included in cost of service as if jobs are filled."

UtiliCorp's rejection of the merger with Empire occurred on January 4, 2001, which was essentially at the end of the test year. At this time it is uncertain what currently vacant positions will be filled prior to the true-up date, June 30, 2001.

Q. How many unfilled positions are included in Empire's payroll annualization?

A. Empire's response to Data Request No. 248 lists 59 positions that are currently authorized but unfilled.

Q. Are the 59 positions currently authorized but unfilled all related to the UtiliCorp/Empire merger?

A. No. The 59 positions currently unfilled are not all specifically a result of the merger. Empire, like all large utilities, will always have a certain number of positions unfilled at any point in time due to normal employee turnover. The salaries corresponding to these unfilled positions, were included in the \$2.6 million annualized

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1 payroll adjustment included in Empire's rate increase request. This amount is further  
2 identified in response to Data Request No. 1.

3 The Staff believes only expenses associated with known and measurable  
4 costs should be included in the determination of cost of service. Authorized but unfilled  
5 employee positions do not constitute known and measurable costs.

6 Q. Has the Commission previously allowed budgeted but unfilled positions in  
7 the determination of annualized payroll expenses in setting rates?

8 A. Not to my knowledge. As previously stated in my direct testimony, the  
9 Commission, in Kansas City Power & Light Company (KCPL) Case No. ER-80-48,  
10 rejected as speculative the inclusion in rates of costs associated with KCPL's budgeted  
11 level of employees. The Commission found that payroll expenses for the actual  
12 employee level at the time of the true-up hearing would be allowed for KCPL.

13 Q. Has it been Empire's position to request inclusion of unfilled positions in  
14 the cost of service in prior cases?

15 A. Yes. On May 22, 1997, Empire filed the true-up rebuttal testimony of  
16 Mr. Fancher regarding true-up issues in Empire's last rate case, ER-97-81. In  
17 Mr. Fancher's true-up rebuttal testimony, he proposed an adjustment to expense for 16  
18 employee positions that were vacant at the "isolated adjustment" cutoff date of March 31,  
19 1997, but had subsequently been filled, or were in the process of being filled. (Fancher  
20 Rebuttal, Ex. TU-3, p.2). Mr. Fancher admitted on cross-examination that not all of the  
21 16 positions at issue had been filled as of the time of the hearing and, furthermore, that  
22 not all of them had a certain date by which that they would be filled. (Tr. 87-88 in Case  
23 No. ER-97-81). Mr. Fancher also testified that the Company has constant turnover, and

1 that the number of vacancies stays about the same from month-to-month. (Tr. 90). He  
2 testified that the Company had an approximate 3% vacancy rate in employees at any  
3 time. (Tr. 97).

4 Q. What was the Staff's position in Empire's last rate case, ER-97-81, with  
5 regard to the issue of including unfilled positions in cost of service?

6 A. The Staff's position was that to allow recovery of the expenses associated  
7 with the unfilled positions, without taking into account increases in revenue and changes  
8 in rate base at the time the positions would be filled, would not maintain the proper  
9 relationship between revenues, expenses and rate base as called for in the Commission's  
10 December 13, 1996 Order Establishing Test-Year and Directing True-up, and should not  
11 be allowed.

12 Q. Has the Staff's position changed on this matter since Empire's last rate  
13 case, ER-97-81?

14 A. No. The Staff still maintains this same position, regarding inclusion of  
15 employee compensation in expense related to unfilled positions.

16 Q. Was the issue of Empire employee vacancies discussed during the  
17 hearings in the UtiliCorp/Empire merger application, Case No. EM-2000-369?

18 A. Yes, there was considerable discussion concerning estimated merger  
19 savings related to position vacancies at Empire. Several statements made by Empire  
20 witnesses related to employee vacancies during the hearing indicated that Empire might  
21 not choose to fill all vacancies in the event the proposed UtiliCorp merger was  
22 terminated.

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1 Q. Was Empire witness Fancher in the UtiliCorp/Empire merger case,  
2 EM-2000-369, asked about replacing merger related vacancies in the event the merger  
3 did not go through?

4 A. Yes. During cross-examination in the UtiliCorp/Empire merger hearings,  
5 Mr. Fancher was asked in relation to union position vacancies as follows (Tr. 509):

6 Question: Okay. But those vacancies won't be filled if the  
7 merger goes through, but if the merger doesn't go through,  
8 you would hire replacements in those positions?  
9

10 Answer: I can't guarantee that in every position that we  
11 would in either case.  
12

13 Q. Was there other discussion of alleged merger savings examples that could  
14 also result in position reductions absent the merger?

15 A. Yes. One source of alleged merger savings involving Empire employee  
16 reductions concerned UtiliCorp's plan to use two man crews instead of three man crews  
17 for certain aspects of transmission and distribution (T&D) operations. Empire witness  
18 Myron W. McKinney testified as follows during the UtiliCorp/Empire merger case,  
19 EM-2000-369, hearing (Tr. 156):

20 Question: If this merger failed to happen, would you also  
21 reduce your standard to two-man crews instead of three-  
22 man crews?  
23

24 Answer: What we've been doing is evaluating crew size  
25 and work to be done in the areas as we move along. We  
26 certainly would continue anywhere we could make an  
27 opportunity to create a two-man crew to do that.  
28

29 Question: So then the change from three-man crews to  
30 two-man crews wouldn't necessarily be a synergy of this  
31 merger; is that right?  
32

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1           Answer: Well, the synergy of creating two-man crews is  
2           just a matter of trying to properly manage your business,  
3           and any where you can you should try to do that, yes.  
4

5           Q.     Is there any guarantee that Empire will fill all of its budgeted unfilled  
6           positions?

7           A.     No, as illustrated by the above testimony from Empire witnesses in the  
8           UtiliCorp/Empire merger hearings. Empire's possible adoption of the use of two man  
9           crews for T&D purposes is an illustration of this point. The planned closing of Empire  
10          customer service offices by UtiliCorp after the merger was also intended to generate  
11          merger savings. Empire could and is facilitating the closing of customer service offices  
12          to achieve cost reductions on a stand-alone basis.

13          Q.     What is the Staff's rationale for not including in payroll expense unfilled  
14          positions?

15          A.     The Staff does not support the inclusion in revenue requirement of payroll  
16          expenses for positions that are not currently filled. Expenses associated with unfilled  
17          positions are not known or measurable. To include expenses for positions yet to be filled  
18          does not maintain the proper relationship between revenues, expenses and rate base. To  
19          extend beyond the test year or true-up date to include additional projected payroll  
20          expenses would require the inclusion of revenues associated with projected customer  
21          growth also past the test year or true-up date. While the true-up will allow Empire the  
22          opportunity to recover expenses associated with positions filled through June 30, 2001,  
23          the Staff will not include payroll expense for any positions still unfilled at that time.

24                 Empire will be asked to provide to the Staff its employee levels at the end  
25          of the true-up period, June 30, 2001, at which time the Staff will update the payroll



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1 annualization to include any additional positions that have been filled since December 31,  
2 2000.

3 Q. From an earnings perspective, has Empire benefited from its current level  
4 of employee vacancies?

5 A. Yes, because Empire's current level of employees is less than the amount  
6 built into rates in Case No. ER-97-81, this has allowed Empire to collect revenues for  
7 payroll expenses that Empire is not currently incurring. Regardless of the reason for the  
8 vacancies (conscious management decisions; effect of then pending merger; normal  
9 vacancy levels), when employee levels included in the prior cost of service are no longer  
10 on the payroll, the Company benefits through increased earnings.

11 **BONUSES AND INCENTIVE PAY**

12 Q. Has Empire addressed the issue of bonuses and incentive pay in direct  
13 testimony?

14 A. No. Empire did not address in its direct testimony its support for inclusion  
15 in cost of service of bonuses and incentive pay, although the annualized payroll  
16 adjustments included in Company witness Gibson's Section J, Schedule 2 reflect the  
17 inclusion of bonuses and incentive pay. The work papers of the Company supporting  
18 Section J, Schedule 2, of Mr. Gibson's direct testimony, which were provided in response  
19 to Data Request No. 1, indicate that an amount for bonuses and incentive pay was  
20 included in the payroll annualization summary.

21 Q. Were payroll expenses addressed in Empire's recently filed interim rate  
22 case, ER-2001-452?

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1           A.     Yes. Empire witness W. L. Gipson stated on page 6 of his direct  
2 testimony filed in that case as follows:

3           The Company has decided to forego any structural increase in non-  
4 union employee job values for 2001. The Company did, however,  
5 examine base pay for all non-union employees and created a pool  
6 of some \$300,000 or .1% of 2001 projected operating costs. This  
7 pool was allocated to each manager in the organization to apply –  
8 based on performance – to the employees in their work group. The  
9 Company awarded incentive payments based on 2000  
10 performance. Incentive pay was accrued and expensed in 2000  
11 and totaled approximately \$323,000.  
12

13           The \$300,000 pool referenced above was allocated to employees for  
14 which there were adjustments to annual salary rates effective February 12, 2001. The  
15 Staff is awaiting Empire's response to Data Request No. 318 to determine when the  
16 separate \$323,000 incentive pay awards referenced above were actually paid to  
17 employees after the test year.

18           Q.     What is the distinction between the \$300,000 pool and the \$323,000  
19 incentive pay awards referenced above?

20           A.     The salary increases associated with the \$300,000 pool will continue to be  
21 paid each year to the particular employees. The \$323,000 incentive pay awards that may  
22 be paid out in 2001 are discretionary and may or may not be awarded in following years.

23           Q.     Did the Staff include either the \$300,000 pool or the \$323,000 incentive  
24 pay referenced in Mr. Gipson's direct testimony in Case No. ER-2001-452 in the Staff's  
25 calculation of annualized payroll in the pending case?

26           A.     Yes. Empire's response to Data Request No. 271 provided a list of non-  
27 union employees receiving the base salary increases from the \$300,000 pool. These

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1 salary increases were included in the calculation of annualized payroll. However, the  
2 Staff did not include the \$323,000 incentive pay in the annualized payroll calculation.

3 Q. What percentage increase in non-union employees' wages/salaries does  
4 the \$300,000 pool allocation described by Mr. Gipson represent?

5 A. The \$300,000 pool allocation computes to a 2.39% increase in the overall  
6 2000 wages/salaries of non-union employees. This increase is exclusive of the additional  
7 \$323,000 in incentive pay.

8 Q. What is the Staff's position on the inclusion in cost of service of the  
9 approximate \$323,000 in incentive pay awarded in 2001?

10 A. The Staff issued Data Request No. 318 to gather information related to the  
11 \$323,000 amount referenced above. This Data Request was issued after the prehearing  
12 conference in this case, which was held April 16-19, 2001, and was based upon  
13 discussions about incentive awards that Empire made after the end of the test year. When  
14 the Staff receives the Company's response to this data request, the Staff will evaluate  
15 whether the discretionary awards amounting to approximately \$323,000 should be  
16 included in the payroll annualization and cost of service. The Staff will also evaluate  
17 whether it is necessary to file supplemental testimony or true-up testimony further  
18 addressing the inclusion or exclusion of the \$323,000 in the Staff's payroll annualization.  
19 Prior responses to data requests did not identify the \$323,000 as incentive pay. In fact, a  
20 supplemental response to Data Request No. 139 made no reference to the incentive pay  
21 noted in Mr. Gipson's interim case testimony. (See attached highly confidential  
22 Schedule 1).

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1           Q.     Please explain the Staff's treatment of the Company's discretionary  
2 compensation awards in general.

3           A.     In the Company's initial response, and supplementary response to Data  
4 Request No. 139, the Company provided a list of each employee who received a  
5 discretionary compensation incentive award during the test year and a description of the  
6 criteria under which the awards were granted.

7                     The criteria under which the discretionary awards were granted were  
8 within the scope of these employees' normal job duties. The Staff maintains that an  
9 employee should not be awarded incentive pay for the performance of normal job duties.  
10 Incentive compensation recovered from ratepayers should only reward employees for  
11 performance that is both exceptional and beneficial to ratepayers; in other words,  
12 compensation for performance that is beyond the employee's normal job expectation and  
13 that is beneficial to ratepayers. To reward employees for activities that they are required  
14 or expected as part of their normal job duties would be duplicative compensation and  
15 should not be borne by the ratepayers.

16                    The Staff would also not include any incentive compensation awarded for  
17 performance of job duties that directly enhance shareholder value rather than benefit  
18 ratepayers through improved safe and reliable service.

19           Q.     Does this conclude your rebuttal testimony?

20           A.     Yes, it does.

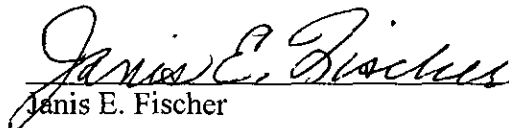
**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Application of The Empire       )  
District Electric Company for a General                )  
Rate Increase.    )       Case No. ER-2001-299

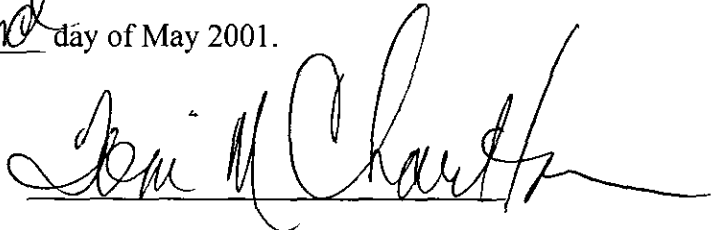
AFFIDAVIT OF JANIS E. FISCHER

STATE OF MISSOURI       )  
                                      )  
COUNTY OF COLE        )       ss.

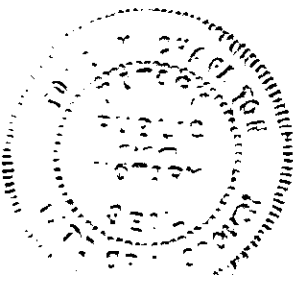
Janis E. Fischer, being of lawful age, on her oath states: that she has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 10 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.

  
Janis E. Fischer

Subscribed and sworn to before me this 2nd day of May 2001.



TONI M. CHARLTON  
NOTARY PUBLIC STATE OF MISSOURI  
COUNTY OF COLE  
My Commission Expires December 28, 2004



SCHEDULE 1

IS

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