

**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 ) Case No. ER-2010-0130  
 Rates for Electric Service Provided to )  
 Customers in the Missouri Service Area )  
 of the Company. )

**EMPIRE’S STATEMENTS OF POSITION**

**COMES NOW** The Empire District Electric Company (“Empire” or the “Company”), and for its Statements of Position in this matter, being submitted pursuant to the *Order Approving Stipulation and Agreement and Approving Proposed Procedural Schedule*, issued herein by the Missouri Public Service Commission (the “Commission”) on March 3, 2010, and the Commission’s *Order Granting Motions to File Statements of Positions Out of Time*, issued April 29, 2010, respectfully states the following concerning the issues contained in the Joint List of Issues filed herein by the Staff of the Commission on behalf of all parties on April 26, 2010:

**Table of Contents**

INTRODUCTION .....	2
ISSUES (EXCLUDING TRUE-UP ISSUES) .....	4
I. REVENUE REQUIREMENT .....	4
A. Cost of Capital .....	4
1. Capital Structure .....	4
2. Return on Common Equity .....	5
B. Rate Base Issues.....	6
1. Employee Compensation .....	6
2. Fuel Inventory .....	6
C. Income Statement – Revenue Issues.....	6
1. Weather Normalization and Unbilled Revenue .....	6
D. Income Statement – Expense Issues .....	7
1. Fuel/Purchased Power Expense .....	7
2. Bad Debt Expense.....	8
3. EEI Dues .....	9
4. Remediation Costs .....	10
5. Incentive Compensation .....	10
6. Dues and Donations .....	11

7.	State Tax Flow Through .....	12
8.	Rate Case Expense/Rate Case Expense Rider .....	12
II.	ENERGY EFFICIENCY AND LOW-INCOME PROGRAMS .....	13
A.	Demand Side Management Portfolio .....	13
B.	Empire’s ELIP .....	14
C.	Residential Conservation Service Rider .....	14
D.	DSM Modeling .....	14
III.	RATE DESIGN .....	15
A.	Low-Income Residential Customers .....	15
B.	Residential and Small Commercial Customer Charges .....	17
IV.	FUEL ADJUSTMENT CLAUSE.....	18
V.	TARIFF CHANGES .....	20
VI.	FAS 87 AND FAS 106 TRACKER LANGUAGE .....	21
VII.	VEGETATION MANAGEMENT AND INFRASTRUCTURE TRACKER .....	22
VIII.	REGULATORY PLAN ADDITIONAL AMORTIZATIONS .....	22

### **Introduction**

As explained in the direct testimony of William L. Gipson, President and Chief Executive Officer for the Company, Empire provides electric service in an area of approximately 10,000 square miles in southwest Missouri and the adjacent corners of the states of Kansas, Oklahoma, and Arkansas. The Company’s service area embraces 121 incorporated communities in 20 counties in the four-state area. The economy of Empire’s service area is diversified, featuring small to medium manufacturing operations, medical, agricultural, entertainment, tourism, and retail interests.

As of June 30, 2009, system-wide, Empire served 140,815 residential customers, 24,481 commercial customers, 354 industrial customers, 1,983 public authority customers, and 4 wholesale customers. In Missouri, Empire serves approximately 124,648 residential customers, 21,784 commercial customers, 284 industrial customers, 1,606 public authority customers, and 3 wholesale customers. In addition to electric service, Empire provides regulated water service in Missouri, and, through its wholly owned subsidiary, The Empire District Gas Company, provides natural gas service in northwest, north central, and west central, Missouri. Empire’s operations

are regulated by the utility regulatory commissions of Missouri, Kansas, Arkansas, and Oklahoma, as well as by the Federal Energy Regulatory Commission (“FERC”). (Gipson Direct, pp. 2-3)

The major factors driving Empire’s rate increase request are the capital additions made or being made to the Company’s electric system, specifically Iatan 1 Air Quality Control Systems (“AQCS”), the coal-fired Plum Point Generating Station, and Iatan 2, as well as the increase in annual operating costs that will accompany these units as they go into service. Empire is a 12 percent owner in Iatan 1 and 2, with Kansas City Power & Light Company (“KCPL”) being the majority owner, builder, and operator of both units. The AQCS at Iatan 1 went into service on April 19, 2009. Empire is a 7.5 percent owner in Plum Point, a generating station with a net generating capacity of 665 megawatts located near Oceola, Arkansas. (Gipson Direct, p. 4)

Significant investments in Plum Point, Iatan 1, and Iatan 2 began in February, June, and August of 2006, respectively. Throughout this long construction and investment cycle, Empire has worked diligently to finance the projects in such a way as to minimize the costs to the Company’s ratepayers, control the dilutive effect of new equity issues, and maintain the investment grade rating on the Company’s debt. In this regard, Empire issued long-term debt in March of 2007, May of 2008, and March of 2009 for \$80 million, \$90 million, and \$75 million, respectively. In addition, Empire issued new common equity in June of 2006 for \$66.8 million, and in December of 2007 for \$69 million. In February of 2009, Empire began a \$60 million Equity Distribution Program, which was subsequently expanded to allow the Company to sell up to \$120 million of common stock. To support and maintain the Company’s investment grade financial profile, and in order to provide a fair and reasonable return to the Company’s

shareholders, it is imperative that Empire begin to recover the ongoing costs of these investment from Empire's customers. (Gipson Direct, p. 5)

**Empire's Positions on Contested Issues**  
**(Excluding True-Up Issues)**

**I. REVENUE REQUIREMENT**

**A. Cost of Capital**

**1. Capital Structure: What capital structure should be used for determining Empire's cost of capital?**

*Empire's Witnesses: Sager (Direct Testimony) and Gipson (Rebuttal Testimony)*

Empire's filing is based upon a projected consolidated capital structure similar to the expected capital structure for Empire at the end of this case, with one adjustment, and containing 48.04 percent long-term debt, 3.68 percent trust preferred stock, and 48.29 percent common equity. Consistent with the Company's previous electric rate cases, and because the balance of short-term debt is less than construction work in progress, the Company excluded short-term debt from the capital structure.

The cost of debt component of Empire's capital structure should be calculated without the exclusion of the fees in the amount of approximately \$1.6 million paid by Empire to its electric mortgage bondholders. These costs were incurred in order to provide support to Empire's overall financing plan related to its current construction build (Asbury SCR, Riverton Unit 12, Iatan Unit 1 AQCS, Plum Point, and Iatan Unit 2). These costs were not incurred solely to benefit Empire's shareholders.

The equity markets are attracted to Empire as an income stock – not as a growth stock. If Empire had been unable to amend its Indenture and pay its dividends, the underlying value of the stock likely would have eroded, making it more difficult – if not impossible – for the Company

to raise the equity funds necessary to complete its construction cycle. If the Company had been unable to finance the construction projects with a balanced approach, keeping the debt to equity ratio at an acceptable level, a credit rating downgrade could have resulted.

**2. Return on Common Equity: What return on common equity should be used for determining Empire's rate of return?**

*Empire's Witness: Vander Weide (Direct, Rebuttal, and Surrebuttal Testimony)*

Empire should be allowed the opportunity to earn a return on equity of 11.0 percent, with that percentage being used for the purpose of determining Empire's authorized rate of return in this proceeding. Empire's expert witness, Dr. James Vander Weide, estimated Empire's cost of equity by applying five cost of equity methods, including the DCF, Ex Ante Risk Premium, Ex Post Risk Premium, historical CAPM, and DCF-based CAPM, to a large group of comparable risk electric utilities. Dr. Vander Weide then gave his DCF result a one-third weight, the average of his two CAPM results a one-third weight, and a one-third weight to the average of his two risk premium results.

Dr. Vander Weide's proxy group has similar investment risk, but, as compared with Staff's selected proxy group, includes a significantly larger sample of companies. One may obtain more accurate estimates of the cost of equity by utilizing a larger sample of comparable risk companies. Dr. Vander Weide's estimation of investors' growth expectations is also superior to Staff's. In his DCF analyses, Dr. Vander Weide uses the average analysts' estimates of future earnings per share ("EPS") growth reported by I/B/E/S Thompson Reuters, as the studies indicate that the analysts' growth forecasts are more highly correlated with stock prices than other indicators of future growth. If Staff had properly used the analysts' growth forecasts as reported by Thompson Reuters, Staff would have obtained a DCF estimate of the cost of equity equal to 11.1 percent.

**B. Rate Base Issues**

**1. Employee Compensation** (capitalized management incentive): Should Empire recover payroll costs for its management incentives by including the same in rate base?

*Empire's Witness: Harrington (Rebuttal Testimony)*

Yes. It is Empire's position that it should recover its payroll costs for the Company's management incentives by including the same in the Company's rate base, and that Staff's recommendation to exclude a significant portion of the Empire's ongoing compensation levels from the cost of service should be rejected. Empire witness Harrington explains in his Rebuttal Testimony the design of Empire's executive compensation program and how Empire's approach is similar to the approach utilized by companies that are comparable to Empire. Mr. Harrington also explains how Empire's program is reasonable and quite conservative when compared to the Company's peers within the industry and to the national marketplace as a whole.

**2. Fuel Inventory:** (a) Should the level of fuel inventory in rate base include the basemat inventory and, if so, what is the appropriate value to include?

*Empire's Witness: Berkstresser (Rebuttal Testimony)*

(a) Yes. The level of fuel inventory in rate base should include the basemat inventory. An amount of \$897,443 should be included for the Asbury and Blend base mat, and an amount of \$307,164 should be included for the Riverton PRB and Blend base mat.

**C. Income Statement – Revenue Issues**

**1. Weather Normalization and Unbilled Revenue:** What model assumptions are appropriate for calculating the normal weather and unbilled revenue adjustment for the test year rate revenue?

*Empire's Witness: Quan (Direct, Rebuttal, and Surrebuttal Testimony)*

Empire witness Mark Quan of Itron's Forecasting Solutions Group, developed weather-normalized sales estimates for Empire using a statistical-based modeling approach. The model

assumptions set forth in Mr. Quan's Direct Testimony are the appropriate assumptions to be used for calculating the normal weather and unbilled revenue adjustment for the test year rate revenue. In particular, normal weather conditions should be developed using a 30-year average of historical weather from 1979 to 2008, with average temperature based upon the sum of the 24 hours of temperatures divided by 24.

Staff's recommendation to base "normal" weather on average temperatures (defined as the average of the maximum and minimum temperature) for the period from 1971 to 2000 should be rejected.

Staff's method for calculating the average temperature accounts for higher maximum temperatures and lower minimum temperatures, because the maximum and minimum temperature may occur at any time during the day, but this method ignores how temperatures move throughout a day. Empire's method for calculating the average temperature, however, captures the temperature shape throughout the day. Weather normalization is about modeling energy consumption, and the method adopted must recognize that customers may respond differently to the same temperature depending on the time of day it occurs.

Staff's use of historic weather data from 1971 to 2000 is also improper. Empire's position is that historic weather data from 1978 to 2008 should be used instead, in order to better capture changes in temperature patterns.

#### **D. Income Statement – Expense Issues**

**1. Fuel/Purchased Power Expense:** What is the appropriate level of fuel and purchased power expense to be included in cost of service?

*Empire's Witness: Tarter (Direct, Rebuttal, Surrebuttal Testimony)*

The appropriate level of fuel and purchased power ("FPP") expense to be included in Empire's cost of service is \$29.53 per MWH of NSI excluding demand (the Missouri retail base

fuel rate approved by the Commission in Empire's last Missouri electric rate case in which the use of a FAC was approved – Case No. ER-2008-0093).

Contrary to Staff's suggestion, it is not a requirement that the FPP base costs be reestablished with the continuation of Empire's fuel adjustment clause ("FAC") in this proceeding. The need to rebase the FPP costs for the FAC is dependent upon the particular facts and circumstances of each rate case. In general, the rebasing of the FPP costs in the FCC may be warranted, but this is not a typical case. As explained in the Surrebuttal Testimony of Empire witness Todd Tarter, a primary reason for not rebasing the on-system FPP costs in this proceeding is the uncertainty of the generation mix that will be in place at the time the rates from this proceeding will be in effect. Further, the current level of on-system FPP costs in the FAC (which has been in place for less than two years) has been remarkably close to the actual costs, and Empire's Iatan 2 rate case will follow this case. It is Empire's position that the FAC base be adjusted in the Iatan 2 rate case, at not at this time, in order to avoid multiple resets in a short period of time leading to customer confusion.

In the event the FPP costs for the FAC are rebased in this proceeding, the amount proposed in Staff's direct filing should not be utilized. Instead, the FPP costs should be rebased as part of the true-up process.

**2. Bad Debt Expense:** Should an allowance for additional bad debt expense be made to recognize the additional revenue authorized as a result of this rate case?

*Empire Witness: Long (Rebuttal Testimony)*

Yes. An allowance for additional bad debt expense should be made to recognize the additional revenue which will be authorized as a result of this rate case. Staff and the Company are in agreement with regard to adjusting bad debt expense by incorporating a five-year history



of bad debt activity to arrive at an effective uncollectible rate and then applying that rate to the annualized revenue produced by the current rates. What is missing then, however, is the application of the effective uncollectible rate to the recommended increase in rates – just as it is done with additional income taxes. In Commission Case No. ER-2006-0314, the Commission was presented with this same question, and the Commission properly concluded that the bad debt percentage should be applied to total revenues, including any rate increase allowed in that case.

**3. EEI Dues:** Should the costs associated with EEI dues be included in cost of service?

*Empire's Witness: Long (Rebuttal Testimony)*

Yes. The costs associated with Edison Electric Institute (“EEI”) dues should be included in Empire’s cost of service. EEI charges its members for legislative lobbying costs, but these costs are accounted for below-the-line and are not included in the Company’s regulated cost of service. Approximately 14 percent of the EEI dues paid during 2008 were charged below the line. It is Empire’s position that the remaining 86 percent of the dues should be included in the cost of service.

Staff’s recommendation to exclude 100 percent of these costs should be rejected. Staff has not found the membership fees to be imprudent or ineffective. In Commission Case No. GR-1996-0285, Missouri Gas Energy was allowed recovery of dues paid to the American Gas Association, and it is Empire’s position that a similar decision should be reached in this case. EEI provides advocacy, authoritative analysis, and industry data to Empire and provides forums for member company representatives to discuss issues and strategies to advance the industry and the positions of its members. Empire and its customers enjoy substantial benefits as a result of the Company’s membership in EEI. Empire is unable to employ or contract with experts in all areas of business and relies heavily on EEI for training, guidance, and industry statistics. In

addition, EEI's mutual assistance program provides Empire access to other utilities during natural disasters. Absent EEI membership, Empire would incur significant additional costs to replace the services offered to the Company through its membership.

**4. Remediation Costs:** What is the appropriate level of maintenance and repair costs associated with infrastructure inspections to include in cost of service?

*Empire Witness: Walters (Rebuttal Testimony)*

The tracker mechanism is the best way to capture the cost of these activities. If the tracker mechanism is used, the test year level of maintenance and repair costs is the appropriate level for inclusion in cost of service. Inclusion of remediation costs in the tracker will not result in a double recovery of infrastructure remediation costs, as the tracker is designed to allow recovery of only the actual costs that Empire incurs while complying with the Commission's infrastructure rule. Additionally, the Commission's infrastructure rule requires documentation concerning not only Empire's inspection efforts, but also Empire's infrastructure remediation efforts.

If the tracker mechanism is not used, the amount of \$800,000 should be included in Empire's cost of service for maintenance and repair costs associated with infrastructure inspections. Staff's proposed adjustment overstates the level of costs that are associated with Empire's remediation efforts, as the actual remediation costs captured in the tracker were only \$172,827. Staff's proposed adjustment to remove \$611,234 of costs Empire recorded in the tracker mechanism should be rejected.

**5. Incentive Compensation:** (a) What level of Empire's payroll costs for its management incentives should be included in cost of service? (b) Should Empire's payroll costs for its long-term equity incentives be included in cost of service? (c) Should Empire's payroll costs for its "Lightning Bolts" payouts be included in cost of service?

*Empire Witness: Harrington (Rebuttal Testimony)*

(a) The test year level of Empire's payroll costs for management incentives should be included in cost of service.

(b) Yes. Empire's payroll costs for its long-term equity incentives should be included in cost of service. The Commission should reject Staff's recommendation to remove the full amounts of the equity compensation (performance-based restricted stock and stock options) associated with the long-term incentive awards. Staff's proposed disallowance is \$344,107. The elimination of the variable or at risk compensation incorrectly assumes that such awards are not part of the total compensation package. Further, there is no legitimate reason for allowing recovering of compensation paid in cash, while not allowing recovery of compensation paid in the form of Empire common stock.

(c) Yes. Empire's payroll costs for its "Lightning Bolt" payments should be included in cost of service, and Staff's recommended disallowance of \$69,972 should be rejected. The Lightning Bolt program is not an incentive program. Instead, through this program, the Company provides cash awards to non-executive salaried individuals who deliver results above and beyond those normally associated with their position – often involving protracted time beyond normal work hours for which no "regular" compensation is provided.

**6. Dues and Donations:** What level of dues and donations should be included in cost of service?

*Empire Witness: Long (Rebuttal Testimony)*

The amount of \$19,325.30 should be included in Empire's cost of service for dues and donations. Staff's recommendation to exclude certain dues and donations payments should be rejected. Staff contends that certain dues and donation do not provide a direct benefit to ratepayers and/or are not necessary for the provision of safe and adequate electric service. Staff,

however, has improperly allocated a portion of Missouri only costs to other jurisdictions, while disallowing the allocation of other jurisdiction's expenses in Missouri, and has failed to recognize the importance of Empire's participation in several organizations, such as the U.S. Chamber of Commerce (which apprises Empire on environmental, safety, work force, and tax issues) and the Home Builders Association and Tri-State Contractors. Organizations such as these allow the Company to remain in direct contact with the contractors installing Empire's equipment and extending services. These Organizations are also necessary as part of our Energy Efficiency Programs in Missouri.

**7. State Tax Flow Through:** Should Empire be authorized to include in cost of service an amortization of its State Tax Flow Through regulatory asset?

*Empire Witness: Williams (Rebuttal and Surrebuttal Testimony)*

Yes. Empire should be authorized to include in its cost of service an amortization of its State Tax Flow Through regulatory asset in the amount of \$130,431. In 1956, Empire was ordered by the Commission to use normalization accounting for federal tax benefits related to accelerated depreciation. Although federal tax benefits were normalized, from January 1, 1954, through August 15, 1994, state tax benefits continued to be flowed through to Empire's customers. Deferred income tax expense included in the Company's cost of service included only the deferred federal income tax computed at the statutory rates in effect during that period, with ratepayers gaining the complete benefit of the state deferred income tax expense.

**8. Rate Case Expense/Rate Case Expense Rider:** (a) Should Empire be allowed to recover in this proceeding costs associated with prior rate cases? (b) Should the Commission authorize Empire to recover rate case costs and rate case appeal costs through a rate case expense rider mechanism?

*Empire Witness: Long (Direct and Rebuttal Testimony)*

(a) Yes. In the event the Commission does not authorize a rate case expense rider, Empire should be allowed to recover in this proceeding costs associated with prior rate cases. If a rider is not authorized, as is being requested by Empire, the rate case costs in this proceeding should be increased by \$369,773 in order to make Empire whole with regard to appeals stemming from prior rate cases. The Commission authorized similar rate case expense adjustments in Commission Case Nos. GR-2006-0422 and GR-2004-0209.

(b) Yes. The Commission should authorize Empire to recover rate case costs and rate case appeal costs through a rate case expense rider. Public Counsel and certain industrial intervenors have appealed or filed other actions in connection with Commission orders in the last two Empire electric rate cases in Cole County Circuit Court, the Western District Court of Appeals, the Missouri Supreme Court, the Jasper County Circuit Court, and the Southern District Court of Appeals. Empire has been forced to spend a significant amount of money defending the orders of the Commission, and, in anticipation of similar actions with regard to the Commission's decisions in this case, it is Empire's position that a rate case rider be established to track these expenses and provide for future recovery by Empire.

## **II. ENERGY EFFICIENCY AND LOW-INCOME PROGRAMS**

### **A. Should Empire's Demand Side Management portfolio, consisting of both energy efficiency programs and a demand response program, remain the same in this rate case in accordance with Empire's Regulatory Plan?**

*Empire Witness: McCormack (Rebuttal Testimony)*

Yes. In accordance with Empire's Regulatory Plan executed and approved in Commission Case No. EO-2005-0263, Empire's Demand Side Management portfolio, consisting of both energy efficiency programs and a demand response program, should remain the same in this rate case.

**B. Should any changes be made to Empire’s Experimental Low Income Program (“ELIP”)?**

*Empire Witness: McCormack (Rebuttal Testimony)*

Empire received the final ELIP evaluation report on March 29, 2010, from TecMarket Works, the consultant used by Empire to evaluate the program. The report is attached to the Rebuttal Testimony of Empire witness McCormack as Schedule SLM-2. In Case No. ER-2008-0093, Empire agreed to the continuation of the ELIP, with bill credits, administration costs, and evaluation costs being paid from accumulated shareholder funds. There are no costs for the ELIP currently built into rates. The evaluation report indicates that the program is not cost effective, but, in accordance with the prior agreement, it is Empire’s position that the ELIP should be continued at this time.

**C. Should Empire’s Residential Conservation Service Rider be eliminated?**

*Empire Witness: McCormack (Direct Testimony)*

Yes. Empire’s Residential Conservation Rider should be eliminated. The original program became effective September 17, 1984, and was created to perform home energy audits for owners and occupants of residential buildings. Over the course of time, the demand for this program has declined to the point that there is no longer any demand for it. No funds have been collected from ratepayers to fund the program since July 1, 1989, and Empire has implemented several DSM programs that offset the need for the program and the Residential Conservation Rider.

**D. Should Empire be required to model two demand-side management program portfolios, with a goal of achieving annual electric energy (sales) and demand savings (peak) equivalent to 1% and 2% in its next integrated resource plan?**

*Empire Witness: McCormack (Rebuttal Testimony)*

Although Empire has previously agreed to model and fully analyze two demand-side management program portfolios (moderate and aggressive) in its next Chapter 22 Resource Planning Filing (“IRP”) due September of 2010, Empire should not be required, as a part of this rate case, to model programs with a goal of achieving annual electric energy (sales) and demand savings (peak) equivalent to 1% and 2% in the Company’s IRP to be filed in September of this year.

### **III. RATE DESIGN**

**A. Low-Income Residential Customers:** Should a “very low income” residential class be established?

*Empire Witness: McCormack (Supplemental Direct Testimony)*

No. It is Empire’s position that a “very low income” residential class should not be established as part of this proceeding. Empire’s ELIP is available to qualified low-income customers whose service is billed under Schedule RG, Residential Service, and provides participants with a fixed credit on their monthly bill for a period up to 12 months. At the end of the 12 month period, an Empire customer may re-apply to continue to participate in the program. Empire’s ELIP was approved in Commission Case Nos. ER-2002-0424, ER-2006-0315, and ER-2008-0093. A copy of the existing program is attached to the Supplemental Direct Testimony of Empire witness McCormack as Supplemental Schedule SLM-1.

In Case No. ER-2008-0093, Empire agreed to the continuation of its ELIP, with bill credits, administration costs, and evaluation costs being paid from accumulated shareholder funds. There are no costs for this program built into Empire’s rates. In the testimony filed on February 19, 2010, in AmerenUE’s Case No. ER-2010-0036, Public Counsel witness Barbara Meisenheimer states that programs such as Empire’s ELIP should be used as a model for any low-income program to be implemented as part of that case.

Additionally, Empire has a special program in place targeted to make utility service more affordable for vulnerable customers, such as the elderly and disabled. Empire's "Project Help" is an assistance program created to meet emergency, energy-related expenses of the elderly and/or disabled residents in Empire's electric service area. In addition, Empire's Action to Support the Elderly ("EASE") is designed to lift the burden of worry from the elderly (age 60 and older) and physically disabled. For Empire customers who register, late penalties are waived, due dates may be adjusted, deposits waived, and third party notification is available when an account becomes delinquent.

Empire proposes to address the needs of its low-income residential customers by continuing its ELIP, and, if the Commission desires, some modifications could be made to the program. On March 30, 2010, the evaluation of Empire's ELIP from TecMarket Works was distributed to the Empire collaborative. The final evaluation report, dated March 29, 2010, is attached to the rebuttal testimony of Ms. McCormack as Rebuttal Schedule SLM-2. The report contains six recommendations for the operation of Empire's ELIP:

1. Re-structure ELIP's participation guidelines so that customers with income of 135% of the Federal Poverty Level are eligible to participate. This would make ELIP guidelines the same as most other low-income programs offered by the area CAP agencies, and would lessen the need for checking incomes of applicants, expediting the application process.
2. Consider changing the Federal Poverty Level thresholds for Tier 1 and Tier 2 participants. Currently, participants whose sole source of income is from Social Security payments (elderly and disabled) are placed in Tier 1, receiving ELIP credits of \$20 per month instead of the \$50 per month. Making a slight adjustment in the threshold levels will allow those participants that are the target market for the ELIP to receive the full program benefit of \$50 per month in credit.
3. Include ELIP information on the Empire website, and encourage the CAP agencies to include links to the ELIP program on their web sites.
4. Consider adding an educational workshop component that focuses on energy efficient behaviors and measures to the program. Offer the participants higher ELIP credits for successful completion of the workshop to encourage additional savings.



5. Change the income verification from “last 30 days” to “last month’s income” to be more in line with other low-income programs and make the processing of applications easier for the partnering CAP agencies by making income verification the same across more low-income programs.
6. TecMarket Works recommends that the CAP agencies be notified of the option for participants to pay more than their Arrearage Payment amount and receive \$1 for every \$2 paid above the monthly deferred payment to an annual maximum of \$60. This information should also be included in program materials and described on the application form so that it can serve as a reminder to the CAP agency staff and participants.

It is Empire’s position that its ELIP could continue through the effective date of tariffs resulting from its next electric rate case (Empire’s Iatan 2 case), but with the recommendations listed above being adopted in this case. In the event costs of the ELIP with modifications exceed the shareholder funds currently set aside for the funding of the ELIP, it is Empire’s position that a regulatory asset should be established for all such additional costs.

**B. What rate levels should be established for the residential and small commercial customer charges?**

*Empire Witness: Keith (Rebuttal Testimony)*

It is Empire’s position that the rate increase resulting from this proceeding should be spread evenly both by class and component. Public Counsel witness Barbara Meisenheimer recommends that any revenue increase in residential and small commercial rates granted by the Commission in this case should exclude an increase in the monthly customer charges. In other words, Public Counsel is recommending that only the volumetric charges in these rate classes be increased in this rate case. It is Empire’s position that Public Counsel’s recommendations in this regard should be rejected.

Adoption of Empire’s position on this issue will avoid increasing any rate subsidies and will maintain the status quo until a class cost of service study is developed and filed as part of Empire’s Iatan 2 rate case. Public Counsel’s recommendation is not supported by any cost of

service evidence, and the adoption of Public Counsel’s recommendation will only serve to widen intra-class revenue disparity and make the adjustment toward true cost of service in the Iatan 2 rate case more difficult for the customers currently being subsidized.

#### **IV. FUEL ADJUSTMENT CLAUSE**

##### **A. Should the off-system sales margin, emission allowances, renewable energy credits, and AQCS consumables be flowed through the fuel adjustment clause?**

*Empire Witnesses: Keith (Direct, Rebuttal and Surrebuttal Testimony) and Mertens (Direct Testimony)*

Yes. The purpose of Empire’s fuel adjustment clause (“FAC”) is to allow the Company to track changes in various fuel and purchased power-related costs and then adjust FAC-related rates, both up and down, to reflect those changes relative to the amounts of those same costs that were included in the Company’s revenue requirement used to set base rates.

In this case Empire has proposed that cost fluctuations in several additional categories of fuel and purchased power-related expenses be tracked and flowed through the FAC. Those expense categories are: (i) emission allowances; (ii) Renewable Energy Credits; and (iii) the costs of ammonia, limestone, and powder activated carbon used in the Air Quality Control System at the Iatan I generating facility (“AQCS consumables”).

Staff concurs that these additional cost items should be included in Empire’s FAC. However, it is unclear how Staff proposes to ensure that the levels of these costs that are included in the revenue requirement used to set base rates will be reflected in the base calculation used to determine future changes in the Company’s FAC-related rates. Unless the levels of these costs that are included in the calculation of base rates are fully and accurately reflected in the base used for the FAC, some or all of these items could be double-counted, thereby resulting in an over or under-collection of Empire’s actual fuel and purchased power-related costs. Such a

result would be contrary to the purpose of the FAC and would be unfair both to the Company and its customers.

In addition, the Staff's FAC base calculation does not properly reflect the Staff's recommendation that all of the future REC revenue flow through the FAC in the form of lower energy costs.

**B. What are the appropriate reporting requirements for Empire's fuel adjustment clause?**

*Empire Witness: Keith (Rebuttal Testimony)*

4 CSR 240-3.161 currently requires each utility with an FAC to submit copious amounts of financial and operational data on a monthly and quarterly basis, and also specifies what additional information must accompany each periodic request for an adjustment in FAC-related rates. In addition, Staff and other interested parties are free to use the discovery process prescribed by the Commission's rules to request whatever additional information may be necessary to analyze proposed changes in FAC-related rates or to conduct periodic true-up and prudence reviews.

Despite all this, Staff recommends that Empire's future filings to adjust FAC-related rates "be accompanied by detailed workpapers supporting the filing in an electronic format with all formulas intact." Empire opposes this recommendation because the Company believes that the data and information it already is required to submit under the Commission's rules are more than adequate to enable Staff and any other interested party to fully evaluate Empire's FAC-related filings and submissions. In addition, some of the information that supports the Company's filings, such as fuel and purchased power contracts, is not readily available in electronic format. Moreover, Empire considers much of this type of information supporting the filing, are, in their entirety, highly confidential or contain data or information to be "highly confidential," which

requires that access to the information be restricted. Requiring Empire to routinely file such information will deprive the Company the ability to control to that information, which puts at risk information that Empire believes is “highly confidential” or competitively sensitive.

Empire does not oppose providing Staff or other interested parties whatever information it needs to evaluate the Company’s FAC-related filings. However, because the Commission’s rules already provide a means to obtain that information, there is no justification for imposing additional obligations on Empire that go beyond the rules that are applicable to all other utilities with an FAC.

**C. What formula should be used to calculate the fuel adjustment mechanism?**

*Empire Witnesses: Keith (Direct, Rebuttal and Surrebuttal Testimony) and Mertens (Direct Testimony)*

As noted in the discussion of Issue IV(A) above, the formula prescribed by the Commission in this case for calculating future FAC-related rate changes must ensure that there is no double-counting of fuel and purchased power-related costs and revenues. Consequently, the base cost used for future adjustment of FAC-related rates must fully and accurately reflect the base amounts of fuel and purchased power-related costs that are included in the revenue requirement used to set base rates. Otherwise, fluctuations in those items that are tracked and flowed-through Empire’s FAC could result in an under or over-recovery of the Company’s actual net fuel and purchased power costs.

**V. TARIFF CHANGES**

**Should the Meter Treater Tariff be eliminated?**

*Empire Witnesses: Emanuel (Direct Testimony) and Long (Rebuttal Testimony)*

Yes. The Meter Treater Tariff should be eliminated. The program has been in place since March 27, 2005, and has been utilized by less than one percent of Empire's customer base (0.1055%). Over the last five years, there have been no claims under the tariff. Continuation of the program would cause Empire to expend time and capital replacing the surge protectors required by the program. If the program is discontinued, the revenue associated with the program (\$10,000) should be removed.

## **VI. FAS 87 AND FAS 106 TRACKER LANGUAGE**

**What changes, if any, should be made to the existing FAS 87 and FAS 106 language?**

*Empire Witness: Delano (Direct Testimony)*

Empire is requesting an adjustment of \$1,903,641 Missouri jurisdictional for pension expense, resulting in total annual Missouri pension expenses of \$5,093,719. Empire is also requesting an adjustment of negative \$279,381 Missouri jurisdictional for Pension and Other Postretirement Welfare ("OPEB") expense, resulting in total OPEB expense of \$552,484. These are the final expenses for 2009 for both pension (FAS 87) and OPEB (FAS 106) costs.

With regard to language changes, Empire is requesting clarification with respect to the Second Stipulation and Agreement approved in Case No. ER-2008-0093. The stipulation addresses the situation where a contribution equal to the FAS 87 expense is insufficient to avoid the benefit restrictions specified in the Pension Protection Act of 2006 ("PPA"). There are two additional situations under the PPA when it would be advantageous to make additional contributions, both of which are set forth in the Direct Testimony of Empire witness Delano, and it is Empire's position that it be authorized to make these additional contributions when necessary. Additionally, Empire is requesting approval of an allocation method in order to allocate additional contributions between Empire and The Empire District Gas Company.

## VII. VEGETATION MANAGEMENT AND INFRASTRUCTURE TRACKER

**What changes, if any, should be made regarding the vegetation management / infrastructure tracker?**

*Empire Witnesses: McGarragh (Direct Testimony), Mackey (Direct Testimony), Walters (Rebuttal Testimony), and Long (Direct Testimony)*

Empire's vegetation management/infrastructure tracker should be continued, with no changes made at this time. The mechanism is fair and limits the cost recovery to the actual costs incurred in complying with the newly adopted Commission rule.

## VIII. REGULATORY PLAN ADDITIONAL AMORTIZATIONS

**(a) Should Empire's revenue requirement in this case reflect the addition of regulatory plan additional amortizations? (b) If yes, how should the regulatory plan additional amortizations be calculated, and what amount is appropriate?**

*Empire Witness: Sager (Rebuttal Testimony)*

(a) Empire's Regulatory Plan, entered into and approved in Case No. EO-2005-0263, contains certain provisions pertaining to the calculation of Regulatory Plan Amortizations ("RPA"). The purpose of the RPA provisions is to determine whether rate relief calculated for Empire under traditional methods must be supplemented in order to enable Empire to maintain its investment grade rating, although not guaranteeing that Empire's ratings will be assigned an investment grade. Consistent with the Regulatory Plan, it is Empire's position that its revenue requirement in this case should reflect the addition of a certain amount of regulatory plan additional amortizations.

(b) The appropriate amount of additional regulatory plan amortizations to be reflected in Empire's revenue requirement will need to be determined nearer to the conclusion of this case, but the methodology used should be generally consistent with the RPA calculations used in previous Empire electric rate cases, such as Case No. ER-2008-0093. It is Empire's position,

however, that certain modifications be made. In this regard, Empire proposes that the calculations be modified for purposes of imputing debt and depreciation related to Empire's Purchased Power Agreements ("PPA"). The reason for this is that the Elk River and Meridian Way wind farms provide energy charges only and do not contain a capacity charge. As a result, Empire's S&P analyst indicated to Empire that S&P would typically reduce the expected cash payments under each agreement by 50 percent in an attempt to estimate a capacity charge for purposes of the S&P ratio calculations.

Empire is also proposing, based on communications with the Company's S&P analyst, that the risk factor for purposes of imputing debt on all PPAs be changed from 30 percent to 50 percent.

Although Empire's Regulatory Plan does not require using S&P methods, it is Empire's position that the clear intent of the Regulatory Plan is to mirror the S&P ratios as closely as possible. As such, it would be inappropriate to omit known metrics used by S&P when determining the proper level of additional regulatory amortization to be reflected in Empire's revenue requirement.

**WHEREFORE**, The Empire District Electric Company respectfully requests that the Commission consider these statements of position.

Respectfully submitted,

Brydon, Swearingen & England P.C.

By:

/s/ Diana C. Carter

James C. Swearingen #21510

L. Russell Mitten #27881

Diana C. Carter #50527

312 East Capitol Avenue

P.O. Box 456

Jefferson City, MO 65102

Telephone: (573) 635-7166  
Facsimile: (573) 634-7431  
E-Mail: DCarter@brydonlaw.com  
LRackers@brydonlaw.com

Attorneys for The Empire District Electric Company

**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 29<sup>th</sup> day of April, 2010.

\_\_\_\_\_/s/ Diana C. Carter