

**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.)

Case No. ER-2010-0130

RESPONSE TO EMPIRE’S PROPOSED PROCEDURAL SCHEDULE AND NOTICE

COMES NOW the Staff (“Staff”) of the Missouri Public Service Commission (“Commission”), by and through the Staff Counsel’s Office and for its response to Empire’s Proposed Procedural Schedule filed on January 15, 2010, states as follows:

1. On October 29, 2009, The Empire District Electric Company (“Empire”), submitted to the Missouri Public Service Commission tariff sheets, proposing to implement a general rate increase for electric service to customers in its Missouri service area.

2. On January 15, Staff and Empire each filed a proposed procedural schedule. While many of the dates proposed for events are identical or similar in the two suggested schedules, the Staff’s schedule is better structured and defined, given the specific items that, based on an in-service date of July 2010, should be addressed in this case. The anticipated in-service date of July 2010 for Plum Point is based on Dynegy Inc.’s projection that Plum Point will begin commercial operation in July 2010.¹

¹ Empire witness Kelly S. Walters states in her direct testimony that it was initially thought that Plum Point and Iatan 2 would attain in-service status in June 2010. It is now known that this will not be the case for either Plum Point or Iatan 2.

Plum Point Unit 1 is jointly owned by Plum Point Energy Associates, LLC, (PPEA)(which is a partnership of Dynegy Inc., John Hancock, and Energy Investment Fund), East Texas Electric Cooperative, Inc. (ETEC), Missouri Joint Municipal Electric Utility Commission (MJMEUC), Municipal Energy Association of Mississippi (MEAM), and Empire. Empire’s ownership share is 7.52% or 50 MW of the 650 MW coal-fired generating facility which is being built near Osceola, Arkansas. Empire also has a 30 year purchased power agreement with Plum Point Energy

3. Under Empire's and the Staff's schedules the non-Empire parties are to file their direct testimony respecting the Plum Point construction project on February 26, 2010, and May 11, 2010, respectively. Thus, the Staff's proposed filing date provides 75 additional days for the Staff, and other parties, to review the invoices and journal entries related to the Plum Point construction project and complete a construction audit / prudence review of the project. Based on how long it took the Staff to get invoices, for the utility to close its books and for the Staff to audit them in the Staff's most recent construction and financial audit, Empire's proposed February 26, 2010 date for the non-Empire parties to file direct testimony regarding the construction cost of Plum Point allows insufficient time to include invoices and journal entries through December 31, 2009, in the scope of a meaningful construction audit / prudence review of Plum Point costs.

4. Empire's proposed procedural schedule, does not allow adequate time for the parties to adequately audit Plum Point construction costs. In particular, Empire's proposed late cut-off date of April 30, 2010 for construction invoices and journal entries coupled with its proposed June 3, 2010 date for filing true-up direct testimony would make it very difficult, if not impossible, to perform a construction audit / prudence review of Plum Point costs at an adequate level of detail.

5. The Staff's proposal for December 31, 2009 as the cut-off date after which invoices and journal entries would not be reviewed in a construction audit / prudence review of Plum Point costs in the instant case would allow adequate time for the Staff to review the invoices and journal entries and related relevant materials and permit the Staff to file direct

Associates for an additional 50 megawatts of capacity and associated energy and has the option to purchase an undivided ownership interest in the 50 megawatts covered by the purchased power agreement in 2015.

testimony regarding its construction audit / prudence review of Plum Point costs on May 11, 2010, as Staff proposes.

6. The Staff anticipates that the addition of Plum Point to Empire's generation fleet will have a significant impact on Empire's class cost of service, however it is not certain from the Staff's view whether Plum Point will be fully operational and used for service within the operation-of-law date or within a timeframe that will permit the cost of Plum Point to be included in Empire's rate base in this case. Therefore, the Staff has taken the approach that the customer class cost of service studies and related testimony that is prepared and presented in this case should address two situations. The first situation is where the costs of Plum Point are included in rate base and the second situation where they are not. Studies based on including Plum Point costs in Empire's rate base would benefit from better Plum Point cost data. As indicated above, such data will not be available for the Staff and other non-Empire parties to audit by Empire's March 9, 2010 proposed customer class cost of service direct filing date. Further, it may become apparent by the Staff's proposed May 11, 2010 filing date for the Plum Point-related customer class cost of service direct filing that Plum Point will not be fully operational and used for service in sufficient time to be included in this rate case.

7. Additionally, the Staff notes that in its January 15, 2010 filing Empire indicated that it does not consider this case to be its "Iatan II case," referenced in Section III.D.7. "Rate Filing (2009 Rate Case)" of the Empire Experimental Regulatory Plan Stipulation And Agreement. As of this date, the Staff has not entered into any agreements with Empire or any other party to modify the Empire Experimental Regulatory Plan Stipulation And Agreement. The Staff continues to monitor Empire's compliance with the Empire Experimental Regulatory Plan Stipulation And Agreement, in particular the provisions described in Section III.D.7.,

including part (a) regarding the proscribed timing of the filing, and part (c) regarding the filing of a customer class cost of service study.

8. The Staff's January 20, 2010 *Request to Defer Order Regarding Procedural Schedule* inadvertently and erroneously included a provision that the Staff had spoken with the other parties and none objected to the Staff's Request that the Commission defer entering an order regarding the procedural schedule until at least January 25, 2010. In fact, the Staff had not yet conferred with the other parties prior to its filing, and undersigned counsel apologize for this misstatement in the Staff's filing. The Staff communicated its error to all of the parties.

WHEREFORE, the Staff submits this response to Empire's Proposed Procedural Schedule.

Respectfully submitted,

/s/ Sarah Kliethermes

Sarah L. Kliethermes
Legal Counsel
Missouri Bar No. 60024

Steven Dottheim
Chief Deputy Staff Counsel
Missouri Bar No. 29149

Attorneys for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-6726 (Kliethermes - Telephone)
(573) 751-7489 (Dottheim - Telephone)
(573) 751-9285 (Fax)
sarah.kliethermes@psc.mo.gov
steve.dottheim@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 25th day of January 2010.

/s/ Sarah Kliethermes