

**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

**STAFF’S PROPOSED PROCEDURAL SCHEDULE
AND OTHER PROPOSED PROCEDURES**

Comes now the Staff of the Missouri Public Service Commission (Staff), by and through the Staff Counsel’s Office of the Missouri Public Service Commission (Commission) and requests that the Commission accept (a) the proposed procedural schedule and (b) the additional procedural matters that are set out below. In support thereof, the Staff states as follows:

1. On October 29, 2009, The Empire District Electric Company (Empire) submitted to the Commission tariff sheets proposing to implement a general rate increase for electric service to customers in its Missouri service area.
2. In a November 20, 2009 pleading, Empire recommended that the Commission adopt a True-Up audit period and hearing to allow the rate recovery of the capital expenditures associated with the its participation in the construction and ownership of the Iatan 2 and Plum Point coal-fired baseload generating facilities and the Iatan 1 air quality control system (AQCS). Empire noted that discussions among the parties to the Empire Experimental Regulatory Plan, Case No. EO-2005-0263, were pending that may impact the procedural schedule desired in this case. Empire stated that those discussions may cause Empire to modify its True-Up Recommendation. Empire noted that the discussions involved the procedures to be used in this

case including the timing of the consideration and rate recovery of Empire's investments in the Iatan 2 and Plum Point coal-fired generating facilities and the Iatan 1 AQCS.

3. A procedural conference was held in this matter on December 11, 2009 pursuant to the Commission's November 4, 2009 Suspension Order And Notice. That Order also directed the parties to file a procedural schedule on or before 14 days after the procedural conference (December 25, 2009). In its December 23, 2010 Order Granting Request To Postpone Filing Of Procedural Schedule, the Commission extended that deadline to January 8, 2010, based upon a request by the Staff and Empire, and supported or not opposed by the other parties. The Commission further extended the filing date for a procedural schedule to January 15, 2010 at the request of the Staff and Empire, and based on the support or non-opposition of the other parties. The Staff, Empire, and the other parties to this proceeding have been engaged in detailed discussions regarding a procedural schedule and other matters relating to the instant case from prior to the December 11, 2009 procedural conference to the filing of this pleading. The Staff greatly appreciates that the Commission has accommodated the parties as they have attempted to reach an agreement. Nonetheless, the parties have not reached an agreement, and even though the Staff has hopes that an agreement may still be possible, the Staff is making the instant filing. The Staff expects discussions to continue among the parties, and if those discussions culminate in an agreement, the signatories will promptly inform the Commission.

4. In its November 30, 2009 filing, the Staff recommended a True-Up cut-off date of April 30, 2010, and reserved the right to address this matter further if the Staff reaches a different conclusion as to the appropriateness of the April 30, 2010 date. At this time with considerable concern about the manageability of a procedural schedule with an April 30, 2010 True-Up cutoff date given the uncertainty of the in-service date of Plum Point, as evidenced by the continuing

sliding of the in-service date of Iatan 2, the Staff has determined that it will continue to recommend to the Commission a True-Up cutoff date of April 30, 2010, except for (a) a cutoff date for Plum Point generating station invoices booked and paid up to December 31, 2009, (b) an August 1, 2010 cutoff date by which Plum Point must meet the Staff's in-service (i.e., Section 393.135 RSMo. "fully operational and used for service") criteria for inclusion in rates in this case, and (c) financial data for Empire through April 30, 2010 must be available for audit by the Staff by May 20, 2010 for the Staff to not use a March 31, 2010 cutoff date for True-Up. The Staff proposes that the Commission adopt the following:

- Plum Point invoices booked and paid after December 31, 2009 will be addressed by the Staff in Empire's next rate increase case filing.
- If Empire's April 2010 financial information is not provided to the Staff by May 20, 2010, the Staff will use March 31, 2010, rather than April 30, 2010, as the cutoff date for the Staff's True-Up audit of Empire.
- Plum Point must demonstrate by August 1, 2010 that it meets the Staff's in-service criteria for the prudent costs of that unit, i.e., invoices booked and paid up to the cut-off date of December 31, 2009, to be eligible for inclusion in rates in this case.

5. The Staff's direct case filing on February 26, 2010 will include the Staff's Iatan 1 AQCS and Iatan 1 common plant construction audit and prudence review filed by the Staff on December 31, 2009, in Case No. ER-2009-0089 and Case No. ER-2009-0090, which is based on invoices booked and paid by KCPL through May 31, 2009. The Staff will file its review of Iatan 1 AQCS and Iatan 1 common plant invoices booked and paid by KCPL after May 31, 2009, when the Staff files its Iatan 2 and Iatan 2 common plant construction audit and prudence review.

6. The Staff recommends a bifurcated procedural schedule below based on a non-Plum Point / non-Iatan 2 case filing by the non-utility parties commencing with the filing of a direct case / testimony by all parties other than Empire and KCPL on February 26, 2010 and the

filing of a Plum Point / non-Iatan 2 case by all parties other than Empire and KCPL commencing with the filing of a direct case / testimony on May 11, 2010. Empire filed its present rate increase case including its share of the costs of Iatan 2 on the basis that Iatan 2 would be in-service (i.e., Section 393.135 RSMo. “fully operational and used for service”) in the context of the present case. The Plum Point / non-Iatan 2 second phase of the schedule set out below is based on Plum Point meeting the applicable in-service criteria sufficiently in advance of the September 28, 2010 effective date of the presently pending tariff sheets, i.e., by August 1, 2010, such that the Staff can verify that Plum Point is fully operational and used for service to warrant inclusion in rates by the September 28, 2010 operation-of-law date, and provide the Staff sufficient opportunity to audit Plum Point invoices booked and paid through December 31, 2009.

7. The Staff wants to be clear that the May 11, 2010 Plum Point / non-Iatan 2 direct case / testimony filing and the separate hearings that the Staff is proposing for Plum Point would not be an entirely separate or new case from the Staff case filed on February 26, 2010. Basic issues not conceptually premised on the existence of the Plum Point baseload generating unit would be tried in the evidentiary hearings proposed by the Staff to occur between May 3-14, 2010. There is a possibility that the presently pending case is not the Plum Point case, as it is now indicated by Great Plains Energy Incorporated (GPE) / Kansas City Power & Light Company (KCPL) and admitted by Empire that the instant case is not the Iatan 2 case. In fact, on August 17, 1984 KCPL filed Case No. ER-85-43 as the Wolf Creek rate case, and soon thereafter the Staff asserted that KCPL had prematurely filed its purported Wolf Creek rate case and the Staff contended that Case No. ER-85-43 was not the Wolf Creek rate case. The proposed tariff sheets filed by KCPL on August 17, 1984 could have been suspended by the Commission a maximum period to July 15, 1985. On November 15, 1984, KCPL withdrew its purported Wolf Creek rate

case, Case No. ER-85-43. KCPL subsequently filed its actual Wolf Creek rate case on November 26, 1984. The Wolf Creek nuclear generating unit became fully operational and used for service on September 3, 1985. Just as the Staff had told the Commission, KCPL had prematurely filed Case No. ER-85-43 and had to withdraw the case.

8. The Staff has encountered problems with attempting to develop an appropriate non-bifurcated procedural schedule due to the fact that the Commission scheduled evidentiary hearing dates for the Empire case earlier than normally occurs in such situations, presumably, because of the scheduling of evidentiary hearings for the Missouri-American Water Company (MAWC) rate increase case, Case No. WR-2010-0131, immediately after the Empire evidentiary hearing; the scheduling of evidentiary hearings for other Commission cases, immediately after the MAWC rate increase case; the dates of the MARC Conference being hosted by the Commission in Kansas City; and Empire having timed its filing such that the projected in-service date for Plum Point is considerably after the May 2010 hearing dates that the Commission has set for the Empire rate increase case. The presently projected in-service date for Plum Point is July 2010.

9. The Staff believed that the contention of Empire and KCPL regarding the in-service date of Iatan 2 was doubtful and the Staff's concern has proven to be well founded, as evidenced by the announcement that occurred on Wednesday, January 13, 2010. On said date, GPE and KCPL filed an 8-K Report with the U.S. Securities And Exchange Commission (SEC) stating, in part, as follows:

. . . Due to construction delays and unusually cold weather, Great Plains Energy and KCP&L currently anticipate that the in-service date of Iatan No. 2 will shift approximately two months into the fall of 2010.

The shift in the expected in-service date will likely cause approximately the same movement in the effective dates of rates to be set in KCP&L's pending Kansas rate case and KCP&L's and GMO's anticipated Missouri rate cases, which had

been originally projected to be October 17, 2010 [in Kansas] and early first quarter 2011 [in Missouri], respectively.

Empire also filed an 8-K Report with the SEC on January 13, 2010, which in particular states as follows:

As we have previously disclosed, Empire has a 12% ownership interest in Iatan No 2, an 850 megawatt coal-fired electric generating unit currently under construction. Kansas City Power & Light (KCP&L), the operator and construction manager of the facility, had previously announced a late summer 2010 anticipated in-service date for Iatan No. 2. Today, however, KCP&L announced that, due to construction delays and unusually cold weather, it currently anticipates that the in-service date of Iatan No. 2 will shift approximately two months into the fall of 2010.

* * * *

Based on a late summer in-service date, we had expected base rates reflecting our investment to be in effect in late 2010, as we filed a request with the Missouri Public Service Commission on October 29, 2009 for an annual increase in base rates for our Missouri electric customers in the amount of \$68.2 million, or 19.6%. Consistent with our prior disclosure, as a result of this delay in the project, we expect that the timing of receipt of the increase in base rates associated with Iatan No. 2 will be delayed.

(Emphasis supplied). The in-service date for Iatan 2 had moved to late summer 2010 well before the October 29, 2009 rate increase filing of Empire. With the January 13, 2010 announcement of GPE / KCPL and Empire, there is no longer any question that Case No. ER-2010-0130 is not Empire's Iatan 2 rate case. Even prior to the SEC filing by GPE and KCPL on January 13, 2010, KCPL filed its Iatan 2 rate case before the Kansas Corporation Commission (KCC) on December 17, 2009, and on said date KCPL also filed a proposed procedural schedule in which it proposed evidentiary hearings before the KCC between July 12-23, 2010. Of course, KCPL and KCP&L Greater Missouri Operations Company (GMO) have not filed in Missouri their rate cases in which they seek to put Iatan 2 in rate base, nor have they filed new rate cases in which they seek to place Iatan 1 AQCS in rate base.

10. The Staff respectfully proposes that the Commission adopt the following procedural schedule in this case:

<u>EVENT</u>	<u>DATE</u>
Empire Direct Testimony Case Filing – includes Plum Point, Iatan 1 AQCS, Iatan common plant and Iatan 2	October 29, 2009
Direct Case - Revenue Requirement – all parties except Empire (includes Iatan 1 AQCS and Iatan 1 common plant and excludes Plum Point and Iatan 2)	February 26, 2010
Direct Case - Class Cost of Service and Rate Design - all parties except Empire (includes Iatan 1 AQCS and Iatan 1 common plant and excludes Plum Point and Iatan 2)	March 9, 2010
Local Public Hearings	
Case Reconciliation (<i>Not Filed</i>)	March 10, 2010
Prehearing Conference	March 10 - 12, 2010; March 15 & 16, 2010
List of Issues (<i>Preliminary – Not Filed</i>)	March 22, 2010
Rebuttal Testimony – Revenue Requirement and Class Cost of Service and Rate Design issues (includes Iatan 1 AQCS and Iatan 1 common plant and excludes Plum Point and Iatan 2) (all parties)	April 2, 2010
Surrebuttal Testimony - Revenue Requirement and Class Cost of Service and Rate Design issues (includes Iatan 1 AQCS and Iatan 1 common plant and excludes Plum Point and Iatan 2) (all parties)	April 23, 2010
Joint List and Order of Issues, List and Order of Witnesses, Order of Cross-Examination	April 26, 2010
Reconciliation of Issues to be Heard	April 28, 2010
Statements of Position	April 28, 2010
Evidentiary Hearing	May 3 – 7, 2010; May 10 – 14, 2010
Direct Case - Plum Point Revenue Requirement / Class Cost-of-Service (CCOS) / Rate Design - all parties except Empire	May 11, 2010

Rebuttal Testimony - Plum Point Revenue Requirement / CCOS / Rate Design and Non-Plum Point True-Up Direct Testimony	June 3, 2010
Initial Briefs Non-Plum Point Case and Iatan 1 AQCS and Iatan 1 common plant	June 8, 2010
Surrebuttal Testimony - Plum Point Revenue Requirement / CCOS / Rate Design and Non-Plum Point True-Up Rebuttal Testimony	June 17, 2010
Reply Briefs Non-Plum Point Case and Iatan 1 AQCS and Iatan 1 common plant	June 22, 2010
Plum Point Revenue Requirement / CCOS / Rate Design and Non-Plum Point True-Up Hearings	June 28 – July 2, 2010
Initial Briefs Plum Point Revenue Requirement / CCOS / Rate Design and Non-Plum Point True-Up	July 20, 2010
Reply Briefs Plum Point Revenue Requirement / CCOS / Rate Design and Non-Plum Point True-Up	July 30, 2010
Report And Order	August 27, 2010
Operation-of-Law Date	September 28, 2010

11. The Staff also proposes the following procedures and requests that these procedures be accepted by the Commission and reflected in the Commission’s Order setting the procedural schedule for this case:

- (a) All parties shall provide copies of testimony (including schedules), exhibits and pleadings to other counsel by electronic means and in electronic form essentially concurrently with the filing of such testimony, exhibits or pleadings where the information is available in electronic format. Parties shall not be required to put information that does not exist in electronic format into electronic format for purposes of exchanging it.
- (b) An effort should be made to not include in data request questions either highly confidential or proprietary information. If either highly confidential or proprietary information must be included in data request questions, the highly confidential or proprietary information should be appropriately designated as such pursuant to 4 CSR 240-2.135.
- (c) Counsel for each party shall receive electronically from each other party, an electronic copy of the text of all data request “descriptions” served by that party on another party in the case contemporaneously with service of the request. If the description contains

highly confidential or proprietary information, or is voluminous, a hyperlink to the EFIS record of that data request shall be considered a sufficient copy. If a party desires the response to a data request that has been served on another party, the party desiring a copy of the response must request a copy of the response from the party answering the data request – in this manner the party providing a response to a data request has the opportunity to object to providing the response to another party and is responsible for copying information purported to be highly confidential or proprietary – thus, if a party wants a copy of a data request response by Empire to a Staff data request, the party should ask Empire, not the Staff, for a copy of the data request response unless there are appropriate reasons to direct the discovery to the party originally requesting the material. Data requests, objections, or notifications respecting the need for additional time to respond shall be sent via e-mail to counsel for the other parties. Counsel may designate other personnel to be added to the service list but shall assume responsibility for compliance with any restrictions on confidentiality. Data request responses will be served on counsel for the requesting party and on the requesting party's employee or representative who submitted the data request and shall be served electronically, if feasible and not voluminous as defined by Commission rule.

- (d) Until the filing of direct testimony on rate design pertinent issues, the response time for all data requests shall be 20 calendar days, and 10 calendar days to object or notify that more than 20 calendar days will be needed to provide the requested information. After direct filing and until the filing of rebuttal testimony, the response time for data requests shall be 10 business days to provide the requested information, and 5 business days to object or notify that more than 10 business days will be needed to provide the requested information. After the filing of rebuttal testimony, the response time for data requests shall be 10 calendar days to provide the requested information, and 5 calendar days to object or notify that more than 10 calendar days will be needed to provide the requested information.
- (e) Workpapers that were prepared in the course of developing a witness' testimony should not be filed with the Commission but should be submitted to each party within 2 business days following the filing of the particular testimony without further request. Workpapers containing highly confidential or proprietary information should be appropriately marked. Since workpapers for certain parties may be voluminous and generally not all parties are interested in receiving workpapers or a complete set of workpapers, a party shall be relieved of providing workpapers to those parties indicating that they are not interested in receiving workpapers or a complete set of workpapers. Counsel shall undertake to advise other counsel if the sponsored witness has no workpapers related to the round of testimony.
- (f) Where workpapers or data request responses include models or spreadsheets or similar information originally in a commonly available format where inputs or parameters may be changed to observe changes in inputs, if available in that original format, the party providing the workpaper or response shall provide this type of information in that original format.

- (g) For purposes of this case, the Staff requests the Commission waive 4 CSR 240-2.045(2) and 2.080(11) with respect to prefiled testimony and other pleadings, and treat filings made through the Commission's Electronic Filing and Information System (EFIS) as timely filed if filed before midnight on the date the filing is due.
- (h) The Staff requests that documents filed in EFIS be considered properly served by serving the same on counsel of record for all other parties via e-mail essentially contemporaneously with the EFIS filing.

WHEREFORE, the Staff files this its proposed procedural schedule and proposed other procedures for Commission approval and acceptance in Case No. ER-2010-0130.

Respectfully submitted,

/s/ Sarah Kliethermes
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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 15th day of January, 2010.

/s/ Sarah Kliethermes