

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

**In the Matter of Empire District Electric)
Company's 2010 Filing Pursuant to) File No. EO-2011-0066
4 CSR 240 -22 Electric Utility)
Resource Planning)**

SECOND NONUNANIMOUS STIPULATION AND AGREEMENT

Come now The Empire District Electric Company (“Empire” or “Company”), the Staff of the Missouri Public Service Commission (“Staff”), the Office of the Public Counsel, the Missouri Department of Natural Resources, and Dogwood Energy, LLC (collectively, the “Signatories”) and hereby submit to the Missouri Public Service Commission (“Commission”) this *Second Nonunanimous Stipulation and Agreement* (“Agreement”):

Background

1. On April 1, 2011, various parties to Empire’s 2010 Chapter 22 Filing, this docket, File No. EO-2011-0066, filed a *Nonunanimous Stipulation and Agreement* (“2011 Agreement”). On April 27, 2011, the Commission entered its *Order Approving Nonunanimous Stipulation and Agreement and Accepting Integrated Resource Plan* (“2011 Order”) which approved the 2011 Agreement.

2. The 2011 Agreement contained various provisions relating to a filing to be made by Empire pursuant to the Missouri Energy Efficiency Investment Act (MEEIA) statute and rules, as well as various provisions relating to Empire’s existing and potential portfolio of demand-side management (DSM) programs.

3. In pertinent part, the 2011 Agreement provided a time frame for Empire to request the Commission’s approval of identified DSM programs and a demand-side

programs investment mechanism (DSIM) pursuant to the Commission's MEEIA rules¹ and indicated a commitment by Empire to continue its existing DSM portfolio.²

¹ The Commission's MEEIA rules include 4 CSR 240-3.163, 4 CSR 240-3.164, 4 CSR 240-20.093 and 4 CSR 240-20.094, which all became effective on May 30, 2011.

² 7. The Signatories anticipate that the filing schedule in the Commission's revised Chapter 22 subsection 4 CSR 240-22.080(1) will require Empire to file its next Chapter 22 triennial compliance filing by April 1, 2013. The Signatories agree that there is not adequate time prior to the anticipated April 1, 2013 filing date to resolve all of Empire's September 2010 filing's alleged deficiencies through a revised filing in this case and to allow the Signatories adequate time to focus their attention and efforts on Empire's next Chapter 22 triennial compliance filing. The Signatories agree to focus their time and resources on Empire's next Chapter 22 triennial compliance filing, provided that Empire agrees to the following:

b. As specified in Paragraph 9, Empire agrees to work with the Stakeholder Advisory Group to request the Commission's approval to implement new demand-side programs, including the demand-side programs in Empire's preferred resource plan in the September 2010 filing, after the effective date of the Commission's MEEIA rules;

9. As referenced in 7.b., the Signatories agree to the following provisions with respect to planning and implementation of new demand-side programs during the period between the effective date of this Agreement and Empire's anticipated April 2013 filing. This period will be referred to as the "interim period":

a. New demand-side programs whose implementation was described during the interim period in the September 2010 filing include (1) an ENERGY STAR® washing machine rebate program, (2) a Residential High Efficiency Lighting program, and (3) a Home Energy Comparison Reports program.

b. As referenced in Paragraph 7.b., to augment the demand-side resource portfolio contained in the resource acquisition strategy in the September 2010 filing, three additional demand-side programs will be considered. These programs are a refrigerator recycling program, an ENERGY STAR® refrigerator rebate program and a pilot ENERGY STAR® dehumidifier rebate program.

c. Empire will, unless advised otherwise by at least two non-utility members of the Stakeholder Advisory Group, request the Commission's approval of: 1) the demand-side programs identified in Paragraphs 9.a. and 9.b., except as described in part 9.d., and 2) a demand-side programs investment mechanism ("DSIM") within nine months of the effective date of the Commission's MEEIA rules during the interim period.

d. If the revised ENERGY STAR® dehumidifier standard has not been published at the time specified in Paragraph 9.c., then the pilot ENERGY STAR® dehumidifier rebate program shall be considered at a later time than the other demand-side programs listed in Paragraphs 9.a. and 9.b. Empire, in consultation with the Stakeholder Advisory Group, shall consider this program for implementation during the interim period, within three months following the publication by the U.S. Environmental Protection Agency's revised standard for ENERGY STAR® dehumidifiers.

e. Alternative Demand-Side Programs Cost Recovery Mechanism: In the event the cost recovery provisions of the MEEIA rules are not in effect, the parties will support a reasonable request for an Accounting Authority Order authorizing the Company to accumulate the costs associated with new demand-side programs in regulatory asset accounts as the program(s) costs are incurred, unless a mechanism concerning these costs is established in File No. ER-2011-0004. The amortization of these deferred program costs and the recovery of these deferred program costs from the Company's customers, if not later addressed by a DSIM, shall be addressed in the Company's subsequent electric general rate proceeding.

11. The Signatories agree to the following provisions with respect to Empire's existing demand-side programs. Empire shall consult with the Stakeholder Advisory Group concerning the future of Empire's existing portfolio of energy efficiency programs under MEEIA or the Commission's MEEIA rules. If

4. On February 28, 2012, Empire submitted its application for Commission approval of its proposed demand-side programs and for authority to establish a DSIM tracker in File No. EO-2012-0206 (“MEEIA filing”).

Superseding Agreement

5. For various reasons, described below, the Signatories agree to supersede the time constraints identified in Paragraph 7.b., Paragraphs 9.c. – 9.e., and Paragraph 11. of the 2011 Agreement.

6. The effect of superseding the 2011 Agreement, as described below, will be to allow Empire to withdraw its pending MEEIA filing in File No. EO-2012-0206 and to file a new application under the Commission’s MEEIA rules after Empire makes its next Chapter 22 triennial compliance filing.³

7. The Signatories agree that the benefits afforded by incorporating the results of Empire’s upcoming Chapter 22 triennial compliance filing into its new MEEIA filing justify the relatively short delay. Empire is in the process of completing a DSM market potential study as required by paragraph 13.c. of the 2011 Agreement. Withdrawing its MEEIA filing will afford Empire the opportunity to complete its study and use the results of that study to provide for a comprehensive Chapter 22 triennial compliance filing due April 1, 2013, and then a comprehensive MEEIA filing.

Empire determines, in consultation with the Stakeholder Advisory Group, that a continuation or modification of any or all of the existing programs is warranted, Empire shall file for approval of the such programs and for approval of a DSIM under the MEEIA or the Commission’s MEEIA rules within nine (9) months of the effective date of the Commission’s MEEIA rules. Empire agrees to work with the Stakeholders Advisory Group and a demand-side consultant, if necessary, to analyze the levels of participation and the incentive levels for each of Empire’s existing demand-side programs and develop a plan that will maximize the savings attributable to each program while maintaining Total Resource Cost levels of 1.0 or greater.

³ Empire is required, under 4 CSR 240-22.080(3), to submit its next Chapter 22 triennial compliance filing by April 1, 2013.

8. Empire renews its commitment to continue its current DSM programs until such time as a new MEEIA filing is approved, rejected, or modified by the Commission with the agreement of Empire; and all Signatories agree not to propose any additional DSM programs or changes to Empire's existing DSM programs for implementation prior to such time as a new MEEIA filing is approved, rejected, or modified by the Commission with the agreement of Empire. Nothing in this paragraph is intended to limit the parties in the case docketed to address Empire's upcoming Chapter 22 triennial compliance filing in alleging deficiencies and proposing remedies in response to that filing.

9. Empire agrees to meet with the parties to File Nos. EO-2011-0066 and EO-2012-0206 within 30 days of its Chapter 22 triennial compliance filing due April 1, 2013, to discuss any cost effective Realistic Achievable Potential (RAP) DSM portfolio contained in Empire's 2013 Preferred Plan pursuant to Chapter 22. Empire agrees to make its new MEEIA filing within 90 days of that meeting, unless agreed otherwise by the parties to File Nos. EO-2011-0066 and EO-2012-0206.

10. For purposes of paragraph 9.c. – 9.e. of the 2011 Agreement, the Signatories agree that the definition of "interim period," provided in Paragraph 9 of the 2011 Agreement shall be superseded with the meaning: the period between the effective date of this Agreement and four (4) months following when Empire makes its next Chapter 22 triennial compliance filing, unless agreed otherwise by the parties to File Nos. EO-2011-0066 and EO-2012-0206.

11. For purposes of Paragraphs 9.c. – 9.e. and Paragraph 11 of the 2011 Agreement, the Signatories agree that the time constraint of "within nine (9) months of

the effective date of the Commission's MEEIA rules" shall be superseded by the time constraint of: four (4) months following when Empire makes its next Chapter 22 triennial compliance filing, unless agreed otherwise by the parties to File Nos. EO-2011-0066 and EO-2012-0206.

12. Counsel for Praxair, Inc., ("Praxair") and counsel for The Missouri Joint Municipal Electric Utility Commission (MJMEUC) have represented that Praxair and MJMEUC do not oppose this agreement.

Effect of this Agreement

13. None of the Signatories shall be deemed to have approved or acquiesced in any question of Commission authority, the interpretation of specific provisions of the Commission's Chapter 22 rule, the interpretation of compliance with specific provisions the Stipulation and Agreement reached in File No. ER-2010-0130, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking or procedural principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, jurisdictional allocation methodology, cost allocation, cost recovery, or question of prudence, that may underlie this Agreement, or for which provision is made in this Agreement.

14. This Agreement represents a negotiated settlement. Except as specified herein, the Signatories to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (i) in any future proceeding; (ii) in any proceeding currently pending under a separate docket; and/or (iii) in this proceeding

should the Commission decide not to approve this Agreement, or in any way condition its approval of same.

15. This Agreement does not constitute a waiver of any Signatory's rights regarding appeal of the Commission's MEEIA rules or any other provision of law or limit those rights in any way. This Agreement does not constitute a waiver of any Signatory's right to object to or oppose any filing or action made or taken by Empire, including filings or actions made or taken pursuant to this Agreement. In the event that the Commission does not approve and adopt the terms of this Agreement in total, or approves this Agreement with modifications or conditions that a Signatory objects to, it shall be void and no Signatory shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

16. When approved and adopted by the Commission, this Agreement shall constitute a binding agreement between the Signatories hereto. The Signatories shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms. Nothing in this Agreement is intended to impinge, restrict or limit in any way any party's discovery powers.

17. This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego, during the term of this Agreement, the use of any discovery, investigative or other power of the Commission. Thus, nothing in this Agreement is intended to impinge or restrict in any manner the exercise by the Commission, or of any Signatory, of any statutory right, including the right to access information, or any statutory obligation.

Commission Approval

18. If the Commission has questions for the Signatories, the Signatories will make available, at any on-the-record session, their experts/witnesses and attorneys so long as all Signatories have had adequate notice of that session. The Signatories agree to cooperate in presenting this Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Agreement.

19. The provisions of this Agreement have resulted from extensive negotiations among the Signatories and the provisions are interdependent. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has to a hearing on the issues presented by the Agreement, for cross-examination, or for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Agreement had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

20. In the event the Commission accepts the specific terms of this Agreement without modification, the Signatories waive their respective rights to call, examine and

cross-examine witnesses, pursuant to Section 536.070(2) RSMo 2000; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to Section 386.500 RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510 RSMo 2000. This waiver applies only to a Commission Report and Order respecting this Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

WHEREFORE, the Signatories respectfully request the Commission accept this Agreement and issue an order approving this Agreement.

Respectfully submitted,

THE EMPIRE DISTRICT ELECTRIC
COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 6th day of June, 2012.

/s/ Sarah Kliethermes