

**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**

**NON-UNANIMOUS STIPULATION AND AGREEMENT REGARDING TREATMENT  
OF EMPIRE’S INVESTMENT IN IATAN 1 ENVIRONMENTAL UPGRADES (AQCS),  
IATAN 2, IATAN COMMON PLANT, AND PLUM POINT FACILITIES; AND  
JOINT PROPOSAL REGARDING CERTAIN PROCEDURAL MATTERS**

COME NOW The Empire District Electric Company (“Empire”), the Staff of the Missouri Public Service Commission (“Staff”), the Missouri Energy Users’ Association (“MEUA”), City of Joplin, Missouri (“City of Joplin”), and the Office of the Public Counsel (“Public Counsel”), the signatory parties to the attached Non-Unanimous Stipulation And Agreement (Attachment 1), and jointly state as follows:

1. On October 29, 2009, Empire submitted to the Missouri Public Service Commission (“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 Company’s participation in the construction and ownership of the Iatan 2 and Plum Point coal-fired baseload generating facilities. Empire noted the following in its pleading:

1) That discussions among the parties to the Empire Experimental Regulatory Plan, Case No. EO-2005-0263, were pending that might impact the procedural schedule desired in this case. 2) That those discussions might cause Empire to modify its True-Up Recommendation and 3) 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 Iatan 1, Iatan 2, and the Plum Point coal-fired generating facilities and other expenditures.

3. The discussions noted by Empire in its November 20, 2009 pleading have concluded. They resulted in the attached Non-Unanimous Stipulation and Agreement, in which the signatory parties, among other things:

- a. Acknowledge that Empire does not seek to recover in the rates resulting from the instant case the costs associated with its investment in Iatan 2;
- b. Acknowledge that this case is not the "Rate Filing" called for in Section III.D.7. of the Empire Experimental Regulatory Plan Stipulation And Agreement, Case No. EO-2005-0263;
- c. Provide that the signatory parties will support "Construction Accounting" for certain of Empire's investment in Iatan 1 environmental upgrades / air quality control systems ("ACQS"), Iatan 2, Iatan common plant, and Plum Point for the periods and as specified in the attached Non-Unanimous Stipulation and Agreement;
- d. Provide that questions of prudence related to Iatan 1 Environmental Upgrades (ACQS), Iatan 2, Iatan common plant and Plum Point will be addressed in Empire's next general rate case proceeding.

4. All parties to this case are signatories to the Stipulation and Agreement, except the Missouri Department of Natural Resources and Kansas City Power & Light Company, which do not oppose the Non-Unanimous Stipulation and Agreement.

5. Given the resolution of the items contained in the Non-Unanimous Stipulation and Agreement, the signatory parties are now in a position to jointly propose the following procedural items:

- a. That the test year shall be the twelve months ending June 30, 2009, as updated through December 31, 2009.
- b. That the true-up period for this case shall end March 31, 2010;

- c. That the procedural schedule in this matter be as follows:

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
Empire Direct Testimony Case Filing	October 29, 2009
Direct Case - Revenue Requirement – all parties except Empire	February 26, 2010
Direct Case - Class Cost of Service and Rate Design - all parties except Empire	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 (Preliminary – <i>Not Filed</i> )	March 22, 2010
Rebuttal Testimony	April 2, 2010
Surrebuttal Testimony	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
True-up Direct Testimony	June 3, 2010
True-up Rebuttal Testimony	June 17, 2010
Initial Briefs	June 22, 2010
True-up Hearings	June 28 – July 2, 2010
Reply Briefs and True-up Briefs	July 20, 2010
Hearing Regarding Plum Point In-Service	August 20, 2010
Report And Order	August 27, 2010
Operation-of-Law Date	September 28, 2010

- d. The signatory parties propose the following procedures which the Staff has previously proposed in this proceeding, and request that these procedures be accepted by the Commission and reflected in the Commission’s Procedural Order setting filing dates among other things:

- 1) 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.
- 2) 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.

- 3) 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.
- 4) 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.
- 5) 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.

- 6) 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.
- 7) 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.
- 8) 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.

6. Counsel for the Missouri Department of Natural Resources and Kansas City Power & Light Company have indicated support of the procedural items contained here-in.

7. The signatory parties will answer any questions concerning this Non-Unanimous Stipulation and Agreement and the Staff will present suggestions in support of the Non-Unanimous Stipulation and Agreement as ordered by the Commission, if so ordered.

WHEREFORE, the signatory parties submit their *Non-Unanimous Stipulation and Agreement Regarding Treatment of Empire's Investment in Iatan 1 Environmental Upgrades (AQCS), Iatan 2, Iatan Common Plant, and Plum Point Facilities, and Joint Proposal Regarding Certain Procedural Matters*, and respectfully request that the Commission enter an Order approving the Non-Unanimous Stipulation and Agreement, and order the procedural matters as set forth here-in.

Respectfully submitted,

THE EMPIRE DISTRICT ELECTRIC COMPANY

/s/ James C. Swearngen by SK

James C. Swearngen MBE 21510  
L. Russell Mitten MBE 27881  
Diana C. Carter MBE 50527  
Attorneys for  
The Empire District Electric Company  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
Phone: (573) 635-7166  
Fax: (573) 635-7431  
E-mail: lrackers@brydonlaw.com

THE STAFF OF THE  
MISSOURI PUBLIC SERVICE COMMISSION

/s/ Kevin Thompson

Kevin Thompson MBE 36288  
Steven Dottheim MBE 29149  
Sarah Kliethermes MBE 60024  
Attorneys for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
Phone: (573) 751-2690  
Fax: (573) 751-9285  
E-mail: kevin.thompson@psc.mo.gov

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr. by SK

Lewis R. Mills, Jr. MBE 35275  
Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102  
Phone: (573) 751-1304  
Fax: (573) 751-5562  
E-mail: lewis.mills@ded.mo.gov

MIDWEST ENERGY USERS' ASSOCIATION

/s/ Stuart W. Conrad by SK

Stuart W. Conrad MBE 23966  
David L. Woodsmall MBE 40747  
Attorneys for the  
Midwest Energy Users' Association  
428 E. Capitol  
Suite 300  
Jefferson City, Missouri 64111  
Phone: (573) 635-2700  
Fax: (573) 635-6998  
E-mail: dwoodsmall@fcplaw.com

CITY OF JOPLIN

/s/ Marc H. Ellinger by SK  
Marc H. Ellinger MBE 40828  
Thomas R. Schwarz, Jr. MBE 29645  
Attorneys for the City of Joplin  
308 E. High Street  
Suite 301  
Jefferson City, Missouri 65101  
Phone: (573) 634-2500  
Fax: (573) 634-3358  
E-mail: mellinger@blitzbardgett.com  
E-mail: tschwarz@blitzbardgett.com

**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 February, 2010.

/s/ Sarah Kliethermes