

**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            )            Case No. ER-2011-0004  
Service Provided to Customers in the            )  
Missouri Service Area of the Company.            )

**EMPIRE’S MOTION TO ESTABLISH ADMISSIBILITY OF TESTIMONY AND  
EXHIBITS AND MOTION FOR EXPEDITED TREATMENT,  
OR, IN THE ALTERNATIVE, MOTION TO EXTEND FILING DEADLINE**

COMES NOW The Empire District Electric Company (“Empire” or “Company”), by and through the undersigned counsel, and requests an order of the Missouri Public Service Commission (“Commission”) admitting into the evidentiary record in this case the testimony and exhibits described in paragraph 7 below, which concerns the allegations of imprudence on the part of Kansas City Power & Light Company (“KCPL”) with regard to the Iatan plants and was adduced in the recently completed KCPL rate case, Case No. ER-2010-0355.

Pursuant to Rule 4 CSR 240-2.080(16), Empire also requests that the Commission rule upon its Motion to Establish Admissibility of Testimony and Exhibits in an expedited fashion. Alternatively, Empire requests that the Commission extend the deadline for filing rebuttal testimony pertaining to the allegations of imprudence on the part of KCPL with regard to the Iatan plants. In support of these requests, Empire respectfully states as follows:

1. On June 4, 2010, KCPL submitted to the Commission proposed tariff sheets designed to implement a general rate increase for electrical service provided by KCPL in its Missouri service area. The KCPL rate case is denominated as Commission Case No. ER-2010-0355.

2. Evidentiary hearings were held in KCPL's case, Case No. ER-2010-0355, January 18-February 4 and March 3-4, 2011. Among the issues tried before the Commission and now being briefed by the parties to that case are the following:

- a. Should the Iatan 1, Iatan 2, and Iatan Common Plant Rate Base Additions be included in rate base?
- b. Should KCPL's conduct be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that KCPL had to solve its problem prospectively rather than in reliance on hindsight?
- c. Has KCPL demonstrated that it prudently managed this complex project and prudently managed matters within its control?
- d. In order for the Commission to disallow a utility's recovery of costs from Iatan 1, Iatan 2, or Iatan Common Plant, does the Commission need to find that a party has proven both that (1) the utility acted imprudently and (2) such imprudence resulted in an avoidable cost to the KCPL's customers.
- e. Is the December 2006 Control Budget Estimate the "Definitive Estimate?"
- f. Should KCP&L's prudent management of the Iatan 1 and Iatan 2 Projects be measured against the Control Budget Estimate?
- g. Do the disallowances proposed by Staff in its construction audit and prudence review establish any imprudent expenditures by KCPL?
- h. Should the Commission disallow any cost overruns above the Control Budget Estimate for Iatan 1 and Iatan 2?

3. On September 28, 2010, Empire submitted its tariff sheets designed to implement a general rate increase for electric service to customers in its Missouri service area. The Empire case is denominated as Commission Case No. ER-2011-0004. Empire's expenditures related to its ownership interest in the Iatan plants make up a portion of this rate increase request.

4. On November 16, 2010, the Commission issued its Order Setting Procedural Schedule, Establishing Test Year, Establishing Other Procedural Requirements, and Adopting Proposed Customer Notice with Modifications in this case. Pursuant to said order, the parties are

to file rebuttal testimony on all revenue requirement issues by April 1, 2011. Revenue requirement surrebuttal is due April 28, 2011. Evidentiary hearings are to begin on May 23, 2011.

5. The Staff Report – Construction Audit and Prudence Review, Iatan Construction Project for Costs Reported as of October 31, 2010, which was filed by Staff as a part of its direct testimony in this case, proposes disallowances: (a) “relating to Empire’s imprudence in failing to take action against KCPL’s inclusion in the Iatan Project of costs that are unreasonable, imprudent, inappropriate, or not of benefit to ratepayers,” and, (b) pertaining to Empire’s alleged “imprudence in failing to engage in activity such that there was not a cost control system developed and in place that identifies and explains any cost overruns above the definitive estimate during the construction period of Iatan 2 and the environmental enhancements of Iatan 1.”

6. The referenced Staff Report, however, also provides testimony on the issues of KCPL’s actions pertaining, for example, to Schiff Hardin, Cushman & Associates, the May 23, 2008 crane accident, the campus relocation of a turbine building, the claims of Alstom and the Alstom settlements, Iatan 2 executive bonuses, unidentified and unexplained cost overruns, and the findings of Ernst and Young related to KCPL’s cost control system, and these matters were fully litigated in the recently completed KCPL rate case.

7. In an effort to avoid the re-litigation of KCPL’s prudence at this time in the context of Empire’s case, while the same or similar issues are pending before this Commission in Case No. ER-2010-0355, Empire asks this Commission to admit into the record in this proceeding, Case No. ER-2011-004, the following:

All of the evidence admitted into the record in Case No. ER-2010-0355, including all live testimony (including cross examination and Commissioner questions and

responses thereto), the parts of all pre-filed testimony and schedules which were admitted into the record, and all other exhibits, concerning the Iatan 1 and 2 and common issues.

Empire is not seeking any order of the Commission at this time with regard to evidence concerning Staff's alleged imprudence on the part of Empire.

8. Pursuant to 4 CSR 240-2.080(16)(A), Empire requests that the Commission act on this Motion to Establish Admissibility of Testimony and Exhibits by Friday, March 25, 2011.

9. Pursuant to 4 CSR 240-2.080(16)(B), Empire states that the granting of both its Motion to Establish Admissibility of Testimony and Exhibits and its request for expedited treatment will allow the parties to avoid incurring additional and unnecessary costs and will conserve the time and resources of the Commission. More specifically, the granting of this request will avoid the costs which would be incurred by KCPL and Empire by again presenting KCPL's testimony in response to Staff's allegations of imprudence on the part of KCPL and the costs incurred by the other parties in litigating these issues. The Commission's resolution of Empire's Motion to Establish Admissibility of Testimony and Exhibits by the requested date of March 25, 2011, will not have a negative effect on Empire's customers or the public in general.

10. Pursuant to 4 CSR 240-2.080(16)(C), Empire states that this motion is being filed as soon as practical, given the conclusion of the revenue requirement aspect of the settlement conference on March 18, 2011, and the progression of this case thus far.

11. In the event the Commission is unable to rule on Empire's Motion to Establish Admissibility of Testimony and Exhibits by March 25, 2011, Empire requests that the Commission postpone the deadline for the filing of rebuttal testimony on the issues of KCPL's prudence or alleged imprudence pertaining to the Iatan plants until the Commission is able to rule upon Empire's Motion to Establish Admissibility. In the event the Commission denies



**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 on this 21<sup>st</sup> day of March, 2011.

/s/ Diana C. Carter