

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 31st day of
March, 2010.

In the Matter of the Staff Construction Audit and)
Prudence Review Investigation of the Iatan 1 AQCS,) **File No. EO-2010-0256**
Iatan Common Plant, and Iatan 2 Generating Plant)
Projects of Kansas City Power & Light Company)

In the Matter of the Construction Audit and)
Prudence Review of Environmental Upgrades) **File No. EO-2010-0259**
To Iatan 1 and Iatan Common Plant, Including)
All Additions Necessary for These Facilities to)
Operate)

ORDER REGARDING PENDING MOTIONS

Issue Date: March 31, 2010

Effective Date: March 31, 2010

At the Commission's March 10, 2010 public agenda meeting, the Commission decided to formally open an investigatory docket for the Iatan 1 construction audit and prudence review. The Commission also set a date for an On-the-Record Proceeding directing the participants to "be prepared to provide a complete explanation of every aspect of the ongoing construction and prudence audit that was ordered to be completed on December 31, 2009."

Staff's Motions

After that meeting, but before the Commission issued its order to open that docket and close file numbers ER-2009-0089 and ER-2009-0090, the Commission's Staff filed a motion to open that same docket and requested additional relief. That motion generated File Number EO-2010-0256.¹

¹ Staff filed its motion on March 12, 2010, when the Commission was in the process of drafting and issuing its

Because the Commission had already decided to, and has already opened the investigatory docket, Staff's motion requesting that same relief is moot. However, Staff's motion also contemplates adding the construction and prudence audit of Iatan 2 into this same docket.² The Commission will approve that request and will re-caption this docket accordingly.

Staff further requests the Commission to direct KCPL and GMO to follow Commission Rule 4 CSR 240-2.090 as it relates to data requests in the investigatory docket. On December 9, 2009, the Commission issued a lengthy order delineating the proper methods of discovery, and the proper methods of enforcement of discovery, in an investigatory docket as opposed to a contested case docket. That order did not in any way limit Staff's ability to engage in discovery and recognized that data requests could be employed in non-contested cases such as this.

Staff is currently seeking to have the Commission order discovery enforcement mechanisms contrary to the proper application of the Commission's Rule and Missouri's Administrative Procedures Act, and contrary to its December 9, 2009 order. The enforcement mechanisms Staff seeks apply in contested cases, not investigatory dockets. To grant Staff's relief would require the Commission to re-write its rule, and such a rulemaking is beyond the parameters of this docket.

KCPL and GMO's Motions

On March 22, 2010, Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company ("GMO") (collectively "the Companies") filed a motion requesting the Commission to reset the On-the-Record Proceeding and allow two

order.

² The extent of the authority that was delegated to the Regulatory Law Judge on March 10, 2010, only included establishing a file for the construction and prudence audit of Iatan I and all additions necessary for its operation, and for setting an On-the-Record Proceeding for April 6, 2010.

days for hearing testimony. The Companies believe that a number of specific issues should be addressed by the Commission, including: (1) delineating the proper scope of the construction and prudence audit; (2) addressing Staff's failure to meet the December 31, 2009 deadline for completing the audit; (3) identifying what Staff's goals are with regard to audit; (4) determining the current status of the audit; and (5) determining if the Companies are being fairly treated in the audit. The Companies request that at the end of the On-the-Record Proceeding the Commission make at least the following findings and conclusions:

(a) Staff's prudence review of Iatan 1 and Common Plant is complete and Staff may not present proposed prudence adjustments on prudence in the upcoming rate case concerning Iatan 1 and Common Plant other than what is contained in the audit report filed on December 31, 2009.

(b) The Companies have not engaged in any dilatory or unreasonable practices in responding to discovery during the prudence audit, thus leaving intact the prudence disallowance caps established in the April 24, 2009 and May 22, 2009 settlement agreements.

(c) The Companies' cost control system is not in violation of any Commission order and is sufficient to identify and track costs of the Iatan construction projects.

On March 25, 2010, the Companies clarified their request. The Companies state that they are not seeking a wholesale end to the Staff's review of expenditures related to Iatan 1 and the common plant necessary to operate it, but rather are looking for confirmation that the decisional prudence aspect of Staff's construction audit ended with its December 31, 2009 reports, as directed by the Commission in its June 10, 2009 Orders in Case Nos. ER-2009-0089 and ER-2009-0090. The Companies, in order to support their request for relief and if allowed by the Commission, intend to present witnesses whose testimony will provide evidence as to the following:

a) Continuing the uncertainty associated with the prudence review of the Companies' investments in Iatan 1 and common plant beyond the time frame ordered by the Commission in its June 10, 2009 Orders has the potential to

increase the Companies' cost of capital, to the detriment of the Companies and their customers.

b) Despite the Staff's repeated allegations, the Companies have not engaged in any dilatory or unreasonable practices in responding to discovery during the prudence audit. The Staff suggests that the Companies violated the Great Plains Energy Code of Ethical Business Conduct by not cooperating with, or frustrating the Staff's audit by withholding information. Staff's March 9 Reply, at pp. 10-11. The Companies take such allegations very seriously and believe they should be given an opportunity to provide responsive evidence.

c) The Companies' cost control system adequately tracks the costs of the projects, and is consistent with accepted industry standards.

d) The Companies long ago provided Staff with access to all relevant personnel and information necessary to reach conclusions on the prudence of decisions made about Iatan 1 and common plant necessary to operate Iatan 1.

e) Staff appears to be conducting a financial audit of the Companies rather than a prudence review of the construction decisions made related to Iatan 1 and common plant. For example, Staff's recent audit activities have largely focused on expense reports of officers of the Companies, and mileage charges reimbursements for employees working at the Iatan construction project. In fact, of the most recent 400 data requests issued by Staff in this "construction audit," more than 100 (or in excess of 25%) have dealt with expense reports of KCP&L employees. More than 50 data requests pertain to how KCP&L employees are reimbursed for mileage. Only a dozen or so of those 400 data requests (or only 3%) pertain to expenditures by Alstom, Kiewit or Burns & McDonnell, the principal vendors responsible for the construction of Iatan 1, Iatan 2 and the common plant necessary to operate those units.

At the conclusion of the hearing, the Companies request that the Commission issue an Order precluding Staff from proposing additional prudence disallowances in addition to those prudence disallowances that are already contained in its *Staff's Report Regarding Construction Audit And Prudence Review Of Environmental Upgrades To Iatan 1 and Iatan Common Plant* filed in Case Nos. ER-2009-0089 and ER-2009-0090 on December 31, 2009 in this or any future rate proceeding.

Staff's Response

On March 29, 2010, Staff responded to the Companies' motion. Staff essentially

states that it does not object to the Commission issuing an order directing: (1) posing questions for written response; (2) holding the scheduled April 6, 2010 On-the-Record Proceeding; (3) scheduling new hearing dates; or, (4) proceeding by a combination of these options. However, Staff does oppose the Commission imposing any restrictions on its ability to continue to seek data and information from the Companies in relation to the audit or curtailing the audit.

THE COMMISSION ORDERS THAT:

1. The Staff of the Missouri Public Service Commission's Motion to open a formal case for Staff's Construction Audit and Prudence Review Investigation of the Iatan 1 is denied as being moot.

2. The Staff of the Missouri Public Service Commission's Motion to add the construction and prudence audit of the Iatan 2 Generating Plant to this investigatory docket is granted.

3. The Staff of the Missouri Public Service Commission's Motion to authorize discovery enforcement by use of contested case procedures is denied.

4. File Number EO-2010-0256, that was generated when Staff filed its March 12, 2010 motion, is closed.

5. The caption for File Number EO-2010-0259 shall be changed to:

In the Matter of the Construction Audit and Prudence Review of Environmental Upgrades To Iatan 1 Generating Plant, and Iatan Common Plant, and the Iatan 2 Generating Plant, Including All Additions Necessary for These Facilities to Operate.

6. Kansas City Power & Light Company ("KCPL") and KCP&L Greater Missouri Operations Company motion to reset the On-the-Record Proceeding is granted. The Commission shall cancel the scheduled April 6, 2010 On-the-Record Proceeding and shall

re-schedule the proceeding allowing for two days of argument and testimony. The new schedule will be set by separate order.

7. This order shall become effective immediately upon issuance.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Stearley, Senior Regulatory Law Judge