

issued March 1, 2005, that became effective March 11, 2005, the Commission approved that unanimous stipulation and agreement. Paragraph 3 of that unanimous stipulation and agreement provides:

In accordance with the terms of its SAMP, Schedule 1 hereto, Empire will submit annual reports to the Staff and Public Counsel. Also, the accounting for the transactions related to the SAMP will be handled as specified in Schedule 1. The parties further agree that the ratemaking treatment to be afforded any such transactions as well as the prudence of same shall be deferred to a future rate proceeding that establishes rates or establishes ratemaking principles to be used the next time rates are established.

With the Commission's approval of that unanimous stipulation and agreement, Empire implemented the SAMP, and Empire has continued to manage its SO₂ emissions allowance inventory according to that SAMP since then.

Modification

3. Due to Empire's subsequent implementation of a fuel adjustment clause ("FAC") in Missouri pursuant to §386.266, RSMo., that includes costs and revenues of Empire's management of its SO₂ emissions allowances inventory, and prudence reviews conducted by Staff as part of the FAC process, the Parties agree that the purposes of the reporting procedures in the SAMP incorporated into the 2005 unanimous stipulation and agreement are satisfied. Therefore, the Parties agree that Empire should not be required to follow the reporting procedures provided for in the SAMP, so long as Empire continues to have a FAC that includes the costs and revenues associated with the management of its SO₂ emissions allowances inventory.¹

¹ An emissions allowances annual report would have been due from Empire pursuant to the 2005 stipulation and agreement on February 1, 2013, but Empire did not possess the required information at that time, and Staff and Public Counsel agreed to extend the due date for the annual report to March 1, 2013. Staff and Public Counsel agreed to a further extension while this Agreement was being negotiated, and Empire did not submit an annual report to Staff and

4. Second, the Parties agree that the authority previously granted to Empire to manage its SO₂ emissions allowances should be extended to NO_x emissions allowances and that the Commission should grant Empire the authority, to the extent required by RSMo. §393.190, and the flexibility to manage its NO_x emissions allowances inventory by utilizing various disposal and trading techniques. The Parties further agree that the reporting requirements imposed on Empire with regard to SO₂ allowances, as set forth in the 2005 agreement and as modified above, shall also apply to NO_x allowances.

5. It is the Parties' intent for this Agreement to modify, but not replace, the unanimous stipulation and agreement they entered into in 2005. The Parties agree that any future emissions allowance that is not fungible, i.e., cannot be traded for a current emissions allowance, is not within the scope of this Agreement.

6. This Agreement is being entered into for the purpose of disposing of the issues that are specifically addressed herein. In presenting this Agreement, none of the Parties shall be deemed to have approved, accepted, agreed, consented or acquiesced to any ratemaking principle or procedural principle, including, without limitation, any method of cost or revenue determination or cost allocation or revenue related methodology, and none of the Parties shall be prejudiced or bound in any manner by the terms of this Agreement (whether it is approved or not) in this or any other proceeding, other than a proceeding limited to enforce the terms of this Agreement, except as otherwise expressly specified herein. .

7. This Agreement is the result of negotiations among the Parties, and the terms herein are interdependent. If the Commission does not approve this Agreement unconditionally

Public Counsel by March 1, 2013. In the event this Agreement is not approved by the Commission, Staff and Public Counsel would support a request by Empire that its annual report be due 30 days following the effective date of any Commission order rejecting this Agreement.

and without modification, then it shall be void, and no Party shall be bound by any of the agreements or provisions herein.

8. This Agreement embodies the entirety of the agreements between the Parties on the issues addressed herein, and may be modified by the Parties only by a written amendment executed by all of the Parties.

WHEREFORE, the Parties respectfully request an order of this Commission approving this Unanimous Stipulation and Agreement and granting Empire, subject to the reporting conditions and obligations specified herein, the authority to manage its SO₂ and NO_x emissions allowances inventories.

Respectfully submitted,

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