

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

In the Matter of Kansas City Power & Light Company for Authority to File Tariff Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company.	)	)	)	)	)
				<b><u>File No. ER-2010-0355</u></b>	
				Tariff No. JE-2010-0692	

**STIPULATION AND AGREEMENT / PROPOSED PROCEDURAL SCHEDULE**

Kansas City Power & Light Company (“KCP&L” or “Company”), the Staff of the Missouri Public Service Commission (“Staff”), Praxair, Inc., and the Missouri Energy Users’ Association (collectively “the Signatory Parties”), hereby stipulate and agree as follows:

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings indicated:

**Fully Operational and Used for Service** – full compliance with criteria which must be met respecting any facility or property in order for any electrical corporation to make or demand any charge for service, or in connection therewith, which is based on (a) the costs of construction in progress upon any existing or new facility of the electrical corporation, or (b) any other cost associated with owning, operating, maintaining, or financing any property; Section 393.135 RSMo. 2000. *See, e.g.*, KCP&L’s Experimental Regulatory Plan, Appendix H In-Service Test Criteria, Case No. EO-2005-0329.

**GMO** – KCP&L Greater Missouri Operations Company

**Iatan 1** – the existing, coal-fired electric generation unit located at the Iatan site near Weston, Missouri, which is jointly owned by KCPL, GMO, and Empire.

**Iatan 2** – a new generating unit, with a projected capacity of approximately 800-900 MW of electric power, located at the Iatan site near Weston, Missouri, which is jointly owned by KCPL, GMO, Empire, and others. Iatan 2 is not currently in commercial operation, but it is expected to begin operation in December 2010.

**Iatan 2 Ownership Agreement** - that agreement originally entered between KCPL, Aquila (now GMO), Empire, Missouri Joint Municipal Electric Utility

Commission, and Kansas Electric Power Cooperative that governs the ownership, construction, and operation of Iatan Unit 2.

**KCP&L** – Kansas City Power & Light Company.

## **II. THE ACTION PLAN**

### **A. 2010-11 KCP&L Rate Case Procedures**

#### **1. Test Period, Update Period, and True-up Period**

The Signatory Parties agree that it is reasonable and appropriate to agree upon certain items related to the 2010-11 KCP&L rate case related to the test period, update period and true-up period to be utilized in Case No. ER-2010-0355 as follows:

a. The Signatory Parties agree to utilize a test period of the 12 months ending December 31, 2009 to be updated through June 30, 2010 with a true-up of the 12 months ending December 31, 2010. Based on the Commission's Order of July 7, 2010,<sup>1</sup> the Signatory Parties agree to an Iatan 1 Air Quality Control System ("AQCS") cut-off period in the current case for ratemaking purposes based on properly processed and paid invoices and journal entries through April 30, 2010. The Signatory Parties will agree for ratemaking purposes to a cut-off period for properly processed and paid invoices and journal entries beyond April 30, 2010 if the Commission clarifies or modifies its July 7, 2010 Order, as a result of Motions For Clarification and this Stipulation And Agreement, that the Staff may audit Iatan 1 AQCS costs for an appropriate period beyond August 6, 2010. The Staff will accept for ratemaking purposes a cut-off period for invoices and journal entries beyond April 30, 2010 if the Commission clarifies or modifies its July 7, 2010 Order, as a result of Motions For Clarification and this Stipulation And Agreement, that the Staff is to accept unaudited invoices and journal entries beyond April 30, 2010.<sup>2</sup>

b. The Signatory Parties agree that there is some uncertainty related to the actual in-service date of Iatan 2. Therefore, it may be necessary to adjust the true-up period and Iatan 2 and Iatan Common Plant cut-off period if the in-service date of Iatan 2 is delayed beyond its current projected in-service date

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<sup>1</sup> Ordered item 8 of the Commission's July 7, 2010 Order states: "All audit activity, of any type, associated with the environmental upgrades to Iatan I, if not already filed, shall be completed and filed no later than August 6, 2010."

<sup>2</sup> The Non-Staff, Non-Utility Signatory Parties want it understood that they would object to a Commission decision that unaudited invoices and journal entries should be accepted for ratemaking purposes, and nothing in this Agreement shifts the burden of proof or limits their rights or opportunity to contest the inclusion in rates of costs related to unaudited invoices and journal entries.

of mid-December 2010. Based on the Commission's Order of July 7, 2010,<sup>3</sup> the Signatory Parties agree to utilize a true-up period of the 12 months ending December 31, 2010, and Iatan 2 and Iatan Common Plant cut-off period of October 31, 2010, assuming that the actual in-service date of Iatan 2 is projected to occur no later than December 31, 2010. However, in the event that the in-service date of Iatan 2 is projected to be delayed beyond December 31, 2010, the Signatory Parties agree that the true-up period would be moved to the last day of the same calendar month as the actual in-service date of Iatan 2 and the Iatan 2 and Iatan Common Plant cut-off period would be moved to two months prior the revised true-up date, if the Commission clarifies or modifies its July 7, 2010 Order, as a result of Motions For Clarification and this Stipulation And Agreement, that the Staff may audit Iatan 2 and Iatan Common Plant costs for an appropriate period beyond January 30, 2011. The Staff will accept for ratemaking purposes a cut-off period for invoices and journal entries beyond October 31, 2010 if the Commission clarifies or modifies its July 7, 2010 Order, as a result of Motions For Clarification and this Stipulation And Agreement, that the Staff is to accept unaudited invoices and journal entries beyond October 31, 2010. For example, if the in-service date of Iatan 2 is projected to be January 15, 2011, then the true-up period would be January 31, 2011 and the Iatan 2 and Iatan Common Plant cut-off period would move to November 30, 2010 from October 31, 2010, but as indicated above, the Commission would need to indicate whether the Staff should audit invoices and journal entries for the October 31, 2010 to November 30, 2010 period or should accept unaudited invoices and journal entries for that period.

c. If the true-up period is adjusted, then KCP&L agrees that the effective date of the tariffs will be extended to four (4) months past the end of the true-up period.

d. The flexibility addressed above will not extend beyond an in-service date of March 31, 2011.

e. KCP&L shall indicate by a filing no later than October 6, 2010 if it seeks to adjust the true-up period, which would affect the invoice and journal entry period audited or not audited by the Staff, as directed by the Commission.<sup>4</sup>

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<sup>3</sup> Ordered item 9 in the Commission's July 7, 2010 Order states: "The deadline for final completion for all audit activity, of any type, involved with the Iatan II generating facility, including any common plant shared between Iatan I and II is January 30, 2011."

<sup>4</sup> See footnote 2 above.

## **2. Rate Case Schedule**

a. The Signatory Parties have agreed that the Case Schedule included in Attachment No. 1 is reasonable for ER-2010-0355, and agree to recommend this schedule to the Commission for its consideration.

b. The Signatory Parties would note several significant items in the proposed schedule:

i. The Commission has set the KCPL hearings for January 3-14, 2011 and the GMO hearings for January 18-29, 2011. Furthermore, the Commission has set the Union Electric Company d/b/a AmerenUE natural gas hearings for February 1-12, 2011, GR-2010-0363. The Signatory Parties are proposing that the hearings in ER-2010-0355, ER-2010-0356, and GR-2010-0363 be rescheduled to as follows. The prehearing conference in GR-2010-0363 is set for this Friday, July 30, 2010:

January 18-February 4, 2011: Hearings in ER-2010-355 and ER-2010-0356 of Iatan 1, Iatan 2, Iatan Common Plant issues, KCPL only issues and KCPL-GMO common issues.

February 7-February 11, 2011: Hearings in GR-2010-0363.

February 14- February 18, 2011: Hearings in ER-2010-356 GMO only issues.

ii. The Commission has not yet established the monthly status hearings that it stated in Ordered item 5 in its July 7, 2010 Order in File Nos. ER-2010-0355 and ER-2010-0356 that it would set by separate order. The Commission stated that the Commission's Staff shall update the Commission on the status of all audit activity of any type involved and that any discovery disputes should be taken up immediately at these status hearings.

c. Signatory Parties other than KCP&L and GMO will file their direct cases respecting Iatan 2 and Iatan Common Plant on November 3, 2010.

## **3. Hearings**

a. The hearings are scheduled for a 3 week period in January that would occur after the currently projected in-service date of Iatan 2, as contained in Attachment No. 1. The hearings would cover traditional rate case issues and any prudence issues related to Iatan 1, Iatan 2, and Common Plant.

b. The true-up hearings would be a 2 day hearing and cover the reconciliation of the numbers for Iatan projects and all traditional rate case true-up costs for the true-up period and compliance with in-service criteria for Iatan 2.

c. The Iatan prudence and construction issues for Iatan 1 AQCS, Iatan 2 and Iatan Common Plant for both KCP&L and GMO will be tried during the KCP&L hearing dates. As a result of this Agreement, the Signatory Parties further agree that any party that has currently only intervened in the GMO case may file a late application to intervene in the KCPL case within 10 days of the approval of this Agreement, and the other Signatory Parties agree to not oppose any such late application to intervene.

#### **4. Procedures**

The Signatory Parties agree to abide by the following procedures and request that these procedures be accepted by the Commission and reflected in the Commission's Order. The parties have had an opportunity to review these proposed procedures, which have been electronically distributed to the parties for their review and comment. These procedures generally follow procedures adopted by the Commission in other electric rate cases:

a. 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.

b. 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.

c. 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. Regarding Staff-issued data requests, 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 KCP&L to a Staff data request, the party should ask KCP&L, 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, unless waived by counsel, 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.

d. 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 rate design direct filing and until the filing of rate design 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 rate design 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. If data requests are issued contemporaneously or nearly contemporaneously in voluminous number, mindful of filing dates, the parties shall work in good faith to resolve questions relating to timeliness of responses.

e. 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.

f. 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 and outputs, if available in that original format, the party providing the workpaper

or response shall provide this type of information in that original format, in a form that is fully operable.

g. 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.

h. 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.

i. Data requests and data request responses in any one of the three following cases may be used in any other of the three following cases - ER-2010-0355, ER-2010-0356, and EO-2010-0353 (In the Matter of the Application of Kansas City Power & Light Company Regarding the Sale of Assets and Property Rights Located Near Spearville, Kansas).

## **B. RELATIONSHIP OF AGREEMENT TO KCP&L'S EXPERIMENTAL REGULATORY PLAN**

The Signatory Parties do not believe that this Agreement is inconsistent with or should require the modification of the Stipulation and Agreement and the Experimental Regulatory Plan ("Regulatory Plan") approved by the Commission by its order dated August 23, 2005, in said Case No. EO-2005-0329. This Agreement does not constitute a modification to the Regulatory Plan or any other agreement, unless specifically stated.

## **III. EFFECT OF THIS AGREEMENT**

1. None of the Signatory Parties shall be deemed to have approved or acquiesced in any questions of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Agreement or for which provision is made in this Agreement.

2. This Agreement is based on the unique circumstances that are presented and represented by KCP&L to the non-utility Signatory Parties. This Agreement shall not be construed to have precedential impact in any other Commission proceeding.

3. The non-utility Signatory Parties enter into this Agreement in reliance upon information provided to them by KCP&L and this Agreement is explicitly

predicated upon the truth of representations made by KCP&L. In the event that the Commission finds that KCP&L failed to provide the non-utility Signatory Parties with material and relevant information in the Company's possession, or that should have been available to KCP&L through reasonable investigation or the exercise of due diligence in seeking to obtain such information, or in the event that the Commission finds that KCP&L misrepresented facts relevant to this Agreement, this Agreement shall be rendered null and void and of no force or effect even if it has been approved by the Commission.

4. This Agreement represents a negotiated settlement of all issues contained herein. Except as specified herein, the Signatory Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket number; and/or (c) in this proceeding should the Commission decide not to unconditionally approve this Agreement.

5. The provisions of this Agreement have resulted from negotiations among the Signatory Parties and are interdependent. In the event the Commission does not approve and adopt the terms of this Agreement as a whole and without conditions, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions contained herein.

6. When approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatory Parties hereto. The Signatory Parties shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

7. This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed to constitute an agreement on the part of the Commission to forego any investigative or other power that the Commission has. Nothing in this Agreement is intended to impinge on or restrict, in any manner, the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation. Nothing in this Agreement is intended to impinge on, restrict, or limit, in any way, the investigative powers of the Office of the Public Counsel, including its rights to access information and investigate matters related to KCP&L. The Signatory Parties to this Agreement can only bind themselves, except as provided in part III 9. The Signatory Parties to this Agreement cannot bind non-signatories or the Commission itself.

8. This Agreement contains the entire agreement of the Signatory Parties. Silence in this Agreement on a particular topic or issue indicates that the Signatory Parties reached no agreement regarding that topic or issue.

9. All of the obligations and conditions KCP&L agrees to and assumes in this Agreement shall be binding upon any division, affiliate, successor, or assignee of KCP&L in the same manner and to the same extent as KCP&L.



10. This Agreement, if approved by the Commission, will be deemed to have become effective as of the date the order of the Commission approving this Agreement becomes effective.

11. The Signatory Parties agree that disputes related to the implementation, operation, and interpretation of this Agreement can be taken to the Commission for resolution.

12. The Signatory Parties agree that the timing of events as set out in this Agreement is material to the Agreement, *i.e.*, time is of the essence in this Agreement.

**WHEREFORE**, the Signatory Parties respectfully request that the Commission approve this Agreement to become effective as provided herein.

Kansas City Power & Light Company

/s/ James M. Fischer

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## **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 29th day of July, 2010.

**/s/ Steven Dottheim**