

**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) **Case No. ER-2010-0130**
Rates for Electric Service Provided to Customers in the)
Missouri Service Area of the Company.)

NON-UNANIMOUS STIPULATION AND AGREEMENT

The Empire District Electric Company (“Empire” or “Company”), the Staff of the Missouri Public Service Commission (“Staff”), the Missouri Department of Natural Resources (“MDNR”), and the City of Joplin, Missouri (“City”) (collectively, the “Parties”) respectfully submit the following Non-Unanimous Stipulation and Agreement (“Stipulation”) to the Missouri Public Service Commission (“Commission”):

1. Issues Not Settled With This Stipulation. If this Stipulation is approved by the Commission, the issue regarding the date the Plum Point generating unit (“Plum Point”) is “fully operational and used for service,” as specified in Part I. of the non-unanimous *Stipulation and Agreement* filed February 25, 2010 in this case, will remain open, possibly to be tried by the parties to this case and decided by the Commission, or resolved by separate agreement subject to Commission approval. As specified in Part II. C of the non-unanimous *Stipulation and Agreement* filed February 25, 2010 in this case, the Parties agree Staff, and other entities, have the right to conduct construction audits and prudence reviews of expenditures related to Plum Point, and that Staff, and other entities, have the right to make recommendations to the Commission in future proceedings for the disallowance of such expenditures based on allegations they were imprudently incurred. This Stipulation is to be read and construed in concert with the non-unanimous *Stipulation and Agreement* filed February 25, 2010 in this case.

2. Issues Settled With This Stipulation. This Stipulation is intended to settle all issues among the Parties for purposes of this Case No. ER-2010-0130 except the issues expressly set out in paragraph 1 above. This Stipulation is not “unanimous” because certain parties have not joined as signatories to this Stipulation. The non-signatories, Kansas City Power & Light Company, the Office of the Public Counsel, and the Midwest Energy Users’ Association however, have affirmatively stated non-opposition and waived rights to a hearing on the issues resolved herein.

3. Present Rate Revenue. It is agreed that Empire’s Missouri jurisdictional present rate revenue is \$351,484,958.00, exclusive of any applicable license, occupation, franchise, gross receipts taxes, or similar fees or taxes, but including amortizations of \$4,463,535 (“regulatory plan amortizations”) pursuant to the *Empire Experimental Regulatory Plan Stipulation* entered into in Case No. EO-2005-0263.

4. Tariffs.

A. In the event it is later determined by the Commission in this case, after hearing or agreement among the parties, that the Plum Point generating unit is, on or before August 15, 2010, “fully operational and used for service”, then, under those circumstances, the Parties request that the Commission order Empire to file revised tariff sheets containing rate schedules designed to produce an increase in the Company’s Missouri jurisdictional gross annual electric revenues in the amount of \$36,800,000 (plus the level of regulatory plan amortizations specified herein), exclusive of any applicable license, occupation, franchise, gross receipts taxes, or similar fees or taxes. For purposes of determining Plum Point investment amounts subject to Construction Accounting, this “black box” settlement amount includes balance sheet figures as of February 28, 2010.

Revised specimen tariff sheets designed to implement the revenue increase provided for in this paragraph 4.A. as well as the other terms and conditions of this Stipulation are attached hereto as **Appendix A**.

B. In the event the Plum Point expenditures are not included in the revenue requirement in this case as a result of Plum Point being determined (or agreed) not to be “fully operational and used for service,” on or before August 15, 2010, the Parties request that the Commission order Empire to file revised tariff sheets containing rate schedules designed to produce an increase in the Company’s Missouri jurisdictional gross annual electric revenues in the amount of \$23,100,000 (plus the level of regulatory plan amortizations specified in Paragraph 4.C., herein), exclusive of any applicable license, occupation, franchise, gross receipts taxes, or similar fees or taxes. Revised specimen tariff sheets designed to implement the revenue increase provided for in this paragraph 4.B. as well as the other terms and conditions of this Stipulation are attached hereto as **Appendix B**.

C. In either event, the regulatory plan amortization increase (in addition to Empire’s current regulatory plan amortization in the amount of \$4,463,535 million) shall be capped at a maximum of \$10,000,000 and said cap is reflected in the revised specimen tariff sheets contained in Appendix A and Appendix B. The cap will necessarily be in effect only from the time that revised tariffs become effective in this case until the time that revised tariffs become effective in Empire’s next electric rate case. Empire acknowledges that the regulatory plan amortization increase would be greater than this cap if the regulatory plan amortization was calculated according to the *Empire Experimental Regulatory Plan Stipulation*. If, as a result of said regulatory amortization

cap, there is an adverse consequence such as (but not limited to) increased borrowing costs resulting from a credit rating downgrade, Empire will hold its customers harmless from that adverse consequence for the duration of the adverse consequence.

5. Meter Treater Program and Rate Case Rider. The revised tariffs to be filed by Empire pursuant to this Stipulation shall reflect the removal of the Meter Treater Program and the withdrawal by Empire of its proposed rate case rider.

6. Pensions/OPEB. The Parties support the treatment of FAS 87 and FAS 106 as shown on **Appendix C** attached hereto. For the twelve months ended December 31, 2009, the annual level of ongoing pension and OPEBs expense to be recovered in rates is \$5,093,719 and \$552,484 respectively. This includes the actuarially determined expense for 2009 of \$4,858,163 and \$1,203,641, for pension and OPEBs, respectively, and the five year amortization amounts of \$235,556 and (\$651,157) for pensions and OPEBs, respectively. The prepaid pension asset balance as of December 31, 2009 is \$50,417.

7. Demand Side Management. There shall be no changes in Empire's demand side management ("DSM") programs in conformity with the *Empire Experimental Regulatory Plan Stipulation*. In its next Chapter 22 Resource Planning Filing ("IRP") due September of 2010, Empire agrees to model and fully analyze two demand-side management program portfolios (moderate and aggressive), with a goal of achieving annual electric energy (sales) and demand savings (peak) equivalent to 1% by 2015 and 2% by 2020. "Fully analyze" means the alternative portfolio(s) will be treated as resources available for selection in the determination of critical uncertain factors and in the identification of alternative resource plans and at least one of the alternative portfolios will be included in an alternative resource plan included in the

integration analysis. The aggressive portfolio (2%) shall be based on maximum achievable potential and the moderate portfolio (1%) shall be based on realistic achievable potential.

8. Fuel Adjustment Clause (FAC). The Parties request that the Commission order Empire to file FAC tariff sheets in conformity with the specimen tariff sheets attached hereto as **Appendix D**. The tariff sheets attached hereto reflect the following:

- A. Empire shall utilize the two-tariff approach to implement changes to its FAC.
- B. Renewable Energy Credits (REC) shall be included in the FAC and properly reflected in the determination of the FAC base.
- C. Air Quality Control System (AQCS) Consumables shall be included in the FAC and properly reflected in the determination of the FAC base.
- D. FAC reporting requirements shall be as follows:
 - 1. Monthly Southwest Power Pool (“SPP”) market settlements and revenue neutrality uplift charges;
 - 2. Notify Staff within 30 days of entering a new long-term contract for transportation, coal, natural gas or other fuel; natural gas spot transactions are specifically excluded;
 - 3. Provide Staff with a monthly natural gas fuel report that includes all transactions, spot and longer term; the report will include term, volumes, price and analysis of number of bids;
 - 4. Notify Staff within 30 days of any material change in Empire’s fuel hedging policy, and provide the Staff with access to new written policy;
 - 5. Provide Staff its Missouri Fuel Adjustment Interest calculation workpapers in electronic format with all formulas intact when Empire files for a change in the cost adjustment factor;
 - 6. Notify Staff within 30 days of any change in Empire’s internal policies for participating in the SPP;
 - 7. Continue to provide Staff access to all contracts and policies upon Staff’s request, at Empire’s corporate office in Joplin, Missouri.
- E. REC revenues, emission allowance revenues, and AQCS consumables will be reflected in base rates and the FAC base calculation.

F. The impact of off-system sales revenues and costs not included in base rates will flow through the FAC.

G. The base calculation for the FAC is attached as **Appendix E**.

9. Rate Design. The rate increase shall be spread evenly both by class and component. The Company's billing determinants, as shown on the attached **Appendix F**, shall be used for computation of revenue. The Parties agree to use a weather data base that reflects the adjustments incorporated in the National Oceanic and Atmospheric Administration's (NOAA) normals for the Springfield weather station for changes in equipment and surroundings in the next rate case. This data set will contain adjusted daily data for the time period of January 1, 1971 to present. Staff and the Company will work together to develop this data set and will provide it to the parties prior to the filing of Empire's next rate case.

10. Vegetation/Infrastructure.

A. The vegetation tracker established in Empire's last electric rate case, Case No. ER-2008-0093, and trued-up through December of 2009 in the Staff Accounting Schedules in this case, will continue. The vegetation tracker will be rebased in Empire's Rate Filing called for in Section III.D.7. of the *Empire Experimental Regulatory Plan Stipulation* (the Iatan 2 case), and evaluated for termination in Empire's electric rate case following Empire's Rate Filing called for in Section III.D.7. of the *Empire Experimental Regulatory Plan Stipulation*. The base for the vegetation tracker in this case, Case No. ER-2010-0130, will be set at \$9 million, with a \$13 million cap and a \$7 million floor (all Missouri jurisdictional amounts).

B. Empire's current infrastructure tracker will terminate on the effective date of the revised tariff sheets approved in this case.

11. Additional Agreements.

A. The carrying cost to be applied to Plum Point, Iatan 1, and Iatan 2 investment construction accounting, pursuant to previous stipulations, shall reflect a 7.75% return on equity component which reflects the 250 basis point reduction defined in the *Empire Experimental Regulatory Plan Stipulation*.

B. In regard to the pre-1994 state income tax flow-through regulatory asset, Empire will continue to amortize the asset over an additional 18 years. Any party shall be free to argue the appropriateness of including the amortized amounts in rates in the case following the Iatan 2 rate case.

C. The Parties agree that they will use their best efforts to reach a resolution of the question of whether Plum Point is “fully operational and used for service” in time so that the revised tariff sheets agreed to herein will become effective for service rendered on and after September 10, 2010.

12. Contingent Waiver of Rights. This Stipulation is being entered into solely for the purpose of settling the issues in this case. Unless otherwise explicitly provided herein, none of the Parties to this Stipulation shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue-related methodology. Except as explicitly provided herein, none of the Parties shall be prejudiced or bound in any manner by the terms of this Stipulation in this or any other proceeding regardless of whether this Stipulation is approved.

This Stipulation has resulted from extensive negotiations among the Parties, and the terms hereof are interdependent. If the Commission does not approve this Stipulation

unconditionally and without modification, then this Stipulation shall be void and no Party shall be bound by any of the agreements or provisions hereof.

If the Commission does not approve this Stipulation without condition or modification, and notwithstanding the provision herein that it shall become void, (1) neither this Stipulation nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with RSMo. §536.080 or Article V, Section 18 of the Missouri Constitution, and (2) the Parties shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

In the event the Commission accepts the specific terms of this Stipulation without condition or modification, the Parties waive their respective rights to present oral argument and written briefs pursuant to RSMo. §536.080.1, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, their respective rights to seek rehearing pursuant to §536.500, and their respective rights to judicial review pursuant to §386.510. This waiver applies only to a Commission order approving this Stipulation without condition or modification issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Stipulation.

13. Right to Disclose. The Staff may file suggestions or a memorandum in support of this Stipulation. Each of the Parties shall be served with a copy of any such suggestions or

memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum, which shall also be served on all Parties. The contents of any suggestions or memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests; provided, that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to Commission Rule 4 CSR 240-2.135.

WHEREFORE, the undersigned Parties respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Stipulation.

Respectfully submitted,

THE EMPIRE DISTRICT ELECTRIC COMPANY

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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 12th day of May, 2010.

/s/ Sarah Kliethermes