

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

|   |   |                       |
|---|---|-----------------------|
| In the Matter of The Empire District Electric   | ) |                       |
| Company's Application for Certificate of Public | ) |                       |
| Convenience and Necessity and Approval of       | ) | Case No. EO-2005-0263 |
| an Experimental Regulatory Plan Related to      | ) |                       |
| Generation Plant.                               | ) |                       |

**FIRST AMENDED APPLICATION**

COMES NOW The Empire District Electric Company (Empire or Company), in accordance with §386.250, 393.140, 393.170, 393.230 and/or 393.240, RSMo (2000), 4 CSR 240-3.105, 4 CSR 240-3.120 and 4 CSR 240-2.060, and, states to the Missouri Public Service Commission (Commission) as follows:

**SUMMARY**

The purpose of this application is to seek approval from the Commission of Empire's proposed Experimental Regulatory Plan that will provide adequate assurance to potential investors to make financial options available to the Company concerning Iatan Unit 2. Empire also seeks a certificate of convenience and necessity to participate in a steam electric generating station in Platte County, Missouri (Iatan Unit 2) or, alternatively, an order confirming that Empire has the requisite authority to undertake said activities with respect to said generating station under its existing certificate(s).

Empire's proposed Regulatory Plan found herein addresses the following items:

- A. Provisions to allow Empire to maintain its debt at investment grade and also be able to adequately participate in the equity market;
- B. A finding that the Iatan Unit 1 and Asbury environmental upgrade investments

should not be excluded from Empire's rate base on the ground that the projects were not necessary or timely, or that alternative technologies should have been used at Iatan or Asbury;

- C. A finding that Empire's ownership of up to approximately 150 MW of a 800-900 MW of new generation capacity at the Iatan site would have long term benefits for maintaining competitively priced electricity for Missouri consumers. Also, a finding that Empire's investment in Iatan Unit 2 and its V84 Combustion Turbine at Riverton should not be excluded from Empire's rate base on the ground that the projects were not necessary or timely, or that alternative technologies should have been used;
- D. Provisions to help effectuate investment grade ratings during the period of construction of Iatan Unit 2, or other baseload generation options;
- E. Use of a mechanism for the recovery of fuel costs; and,
- F. A finding that depreciation and amortization rates affect cash flow and hence the ability to maintain investment grade status and, thus, should be reviewed accordingly in future rate requests of Empire.

#### **APPLICANT**

1. Empire is a Kansas corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64802. Empire is qualified to conduct business and is conducting business in Kansas as well as in the states of Missouri, Arkansas and Oklahoma. Empire is engaged, generally, in the business of generating, purchasing, transmitting, distributing and selling electric energy in portions of said states. Empire also provides water service in

Missouri. Empire's Missouri operations are subject to the jurisdiction of the Commission as provided by law.

2. A certified copy of Empire's Restated Articles of Incorporation, as amended, was filed in Case No. EF-94-39 and is incorporated herein by reference in accordance with Commission rule 4 CSR 240-2.060(1)(G). A Certificate from the Missouri Secretary of State that Empire, a foreign corporation, is authorized to do business in Missouri was filed with the Commission in Case No. EM-2000-369 and is incorporated by reference in accordance with Commission rule 4 CSR 240-2.060(1)(G). This information is current and correct. Empire has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or rates. A general rate case, identified by the Commission as Case No. ER-2004-0570, was recently concluded. Empire's annual report and assessment fees are not overdue.

3. Pleadings, notices, orders and other correspondence and communications concerning this application should be addressed to the undersigned counsel and:

Mr. Todd Tarter  
The Empire District Electric Company  
602 Joplin Street  
P.O. Box 127  
Joplin, Missouri 64802  
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E-mail: ttarter@empiredistrict.com

### **BACKGROUND**

4. On April 30, 2004, Empire filed tariffs sheets that initiated a general rate proceeding for Empire. This general rate case was identified as Case No. ER-2004-0570.

During the course of that proceeding, Empire has answered extensive data requests and undergone a complete audit of its rates. The Commission issued a decision in Case No. ER-2004-0570 on March 10, 2005. Resulting tariffs setting Empire's rates on a going forward basis were approved and became effective for service provided on and after March 27, 2005.

5. Simultaneously with its rate case, Empire has participated in Integrated Resource Planning (IRP) meetings with the Commission Staff (Staff), the Office of the Public Counsel (Public Counsel), and the Missouri Department of Natural Resources (DNR). In October, 2003, a capacity planning study was presented to Staff, Public Counsel, and DNR, which verified Empire's need for coal-fired generation. Particularly significant is the fact that in June 2010, Empire's purchased power contract with Western Resources, Inc. for 162 MW of baseload capacity from the Jeffrey Energy Center will expire.

6. Today, the Western Resources-Jeffrey purchase represents about 11% of Empire's total capacity and provides roughly 20% of Empire's on-system energy (normalized). Since this purchase expires in 2010, Empire has a need for coal-fired generation in the 2010 time frame even in low or no load growth scenarios. Empire has explored, and continues to explore various generation options. Empire has participated in KCPL's Regulatory Workshop EW-2004-0596. This Workshop has discussed a potential new coal plant, Iatan Unit 2, which could be in service in the 2010 time frame. Empire believes that participation in Iatan Unit 2 at a preferred level of 150 MW would be beneficial as a long-term cost-effective option for customers. Participation in a jointly-owned coal plant can offer significant savings for Empire provided transmission upgrade costs implicit in a jointly-owned option do not offset the economy of scale savings. Empire is a joint owner of the existing Iatan coal unit, and has initiated a study from the

Southwest Power Pool for the transmission costs of participating in a second unit at Iatan.

However, transmission costs are still unknown.

7. Empire has also sought to add other alternatives to its generation mix. At the recent IRP meetings, information was presented concerning about 150 MW of wind generation which is scheduled to be operational by the end of 2005. On December 13, 2004, Empire announced that it signed a 20-year contract with PPM Energy to purchase energy generated at the proposed 150 MW Elk River Windfarm that will be located in Butler County, Kansas.

8. The study that was presented at the IRP meetings in October 2003 also indicated that the Company should begin siting and permitting for a new combustion turbine to be online in 2006 or 2007. At a recent IRP meeting, information was presented about plans for a new combustion turbine that is nominally 155 MW that will be online in 2007. Original plans called for multiple smaller combustion turbines as needed, but during Empire's search for new units the 155 MW combustion turbine was available and offered a lower cost per KW than smaller units. The inclusion of wind and the larger combustion turbine since Empire presented its most recent generation expansion plan does not change the need for coal-fired generation to replace the Western Resources-Jeffrey purchase and to achieve an adequate generation mix.

9. Lastly, in conjunction with Empire's most recent rate case (Case No. ER-2004-0570), a stipulation and agreement was approved by the Commission, wherein Empire agreed to participate in energy efficiency programs and a wind energy assessment study. The energy efficiency programs include the low-income weatherization program, the "change a light – change a world" program, the appliance and HVAC rebate program, and the commercial energy efficiency audit.

## KCPL ACTIVITIES

10. On May 6, 2004, Kansas City Power & Light Company (KCPL) filed its Application To Establish Investigatory Docket And Workshop Process Regarding Kansas City Power & Light Company. In its Application, KCPL requested that the Commission issue an order (a) opening an investigatory docket regarding the future supply and pricing of the electric service provided by KCPL; and (b) authorizing the use of the Commission's workshop process to address certain issues related to the future supply and pricing of electricity for KCPL and its customers, and any other issues impacting KCPL that may arise from discussion among the interested parties.

11. The Commission later issued an Order Establishing Case which granted KCPL's Application to Establish Investigatory Docket and Workshop Process Regarding Kansas City Power & Light Company, filed by KCPL on May 6, 2004, and established an informal, investigatory case designated as Case No. EW-2004-0596.

12. These discussions included issues related to KCPL's capacity needs for the future, capital investments related to compliance with environmental regulations, infrastructure investments, and customer programs, as well as the likely impact of these investments and programs upon KCPL's future revenue requirements. In particular, the discussions have included the potential development of approximately 800-900 MW of new coal-fired, regulated generation capacity located at the Iatan site near Weston (Iatan Unit 2).

13. On March 28, 2005, KCPL filed a Stipulation and Agreement with the Commission thereby creating a case for the purpose of examining the future supply, delivery and pricing of electric service provided by KCPL (Case No. EO-2005-0329). The Agreement

provides for certain accounting treatments and financing activities, as well as construction timetables and rate case filings. A hearing concerning the KCPL Stipulation and Agreement has been conducted by the Commission.

14. The Stipulation and Agreement in the KCPL regulatory plan case (Case No. EO-2005-0329) identifies Empire as a “preferred potential partner in the Iatan 2 generating plant project” if Empire has a “commercially feasible financing plan for meeting [its] financial commitments to participate in the ownership of the Iatan 2 plant by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to Iatan 2.” Empire seeks the Commission’s order in this case on a schedule that will provide the opportunity for Empire to meet this requirement of the KCPL Stipulation and Agreement.

15. On June 10, 2005 Empire entered into a Letter of Intent (LOI) with KCPL for a preferred capacity of 150 MW and a minimum allocation of 100 MW ownership in Iatan 2. The LOI is contingent upon providing an acceptable financing and regulatory plan and the execution of acceptable ownership, operating and common facility agreements.

### **GENERATION PLANT INVESTMENTS**

16. As a result of the facts described above and its discussions with the Staff, Public Counsel, KCPL and others, Empire is considering extremely significant investments in the following construction projects:

- A. Approximately \$46 million, excluding transmission, toward proposed ownership of a 155 MW Siemens Westinghouse V84.3A2 Econopac gas fired peaking generating unit to be located at the Riverton generating station in Riverton, Kansas.

- B. Approximately \$150-300 million toward proposed ownership of 100-200 MW (with a preferred level of 150 MW) of 800-900 MW of new regulated generation capacity located at the Iatan site near Weston, Missouri, as discussed and presented in Case No. EW-2004-0596 and EO-2005-0329 (Iatan Unit 2); and,
- C. A potential investment of \$30 million for environmental upgrades related to Iatan Unit 1 for accelerated compliance with environmental regulations. This would represent Empire's 12% ownership interest in these upgrades. The upgrades for Iatan Unit 1 include a Flue Gas Desulphurization (FGD) unit and a Baghouse. Iatan Unit 1 is co-owned by three Missouri regulated investor owned utilities – KCPL, Empire and Aquila, Inc.; and,
- D. A potential investment of approximately \$30 million for an environmental retrofit at the Asbury coal fired base load generating station near Asbury, Missouri for compliance with environmental regulations. The upgrades for Asbury include a selective catalytic reduction (SCR) facility to reduce nitrogen-oxide emissions.

17. The identified investments are expected to involve substantial expenditures. In order to negotiate and to potentially participate in the Iatan projects, Empire needs regulatory guidance and certainty from the Commission to assist in obtaining the optimal financing options.

18. As stated previously, Empire will have generation needs for 2010, whether or not it participates in Iatan Unit 2. In case Empire is prohibited from participating in Iatan Unit 2, for whatever reason, Empire anticipates that it will also present alternative resource options concerning generation options, other than Iatan Unit 2.



## **CERTIFICATE OF CONVENIENCE AND NECESSITY**

19. Empire originally received a certificate to participate in the existing Iatan generating unit in Case No. EM-78-277. The Commission in that Order granted Empire “a Certificate of Public Convenience and Necessity to participate in the construction, ownership, operation, maintenance, removal, replacement, control and management of Iatan Station as a tenant in common with undivided ownership interests in all or a portion thereof.” *In the matter of the application of Kansas City Power & Light Company, St. Joseph Light & Power Company and The Empire District Electric Company*, 22 Mo.P.S.C. (N.S.) 249 (1978).

20. The original certificate case for Kansas City Power & Light Company referred to Iatan Station as being a “multi-unit site designed for four generating units to be constructed and operated by KCPL.” Case No. 17,895 (November 14, 1973). Empire asserts that no further authorization is required regarding Empire’s participation in Iatan Unit 2.

21. However, to the extent the Commission deems it necessary, Empire requests a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a steam electric generating station in Platte County, Missouri (Iatan Unit 2). If the items identified in Commission Rule 4 CSR 240-3.105 are deemed necessary, Empire will provide those items at such time as they become available. See 4 CSR 240-3.105(2).

## **EXPERIMENTAL REGULATORY PLAN**

22. The assurance to investors of adequate cash flow in order to maintain investment grade metrics for Empire and to provide a reasonable return to shareholders during the construction period of the new base load generation will be important in the financial options available to the Company. Absent such assurance, Empire may not be able to move forward with

the investments described above in a timely manner. Therefore, Empire seeks an experimental regulatory plan (the Regulatory Plan).

23. The Regulatory Plan addresses the comprehensive undertakings being considered by Empire as well as the timeliness of the recovery of the costs and the financial considerations of these extremely significant investments.

24. Empire's present power supply circumstances coupled with its recent IRP meetings for its Missouri electric operations indicate a need for additional coal-fired baseload capacity in the 2010 time frame. This need may be partially satisfied by Empire's participation in Iatan Unit 2.

25. In this regard, there is generally a five to seven year lead time between a decision to proceed with a coal fired generating project and the completion of development, permitting, construction, performance testing and ultimate placement in service of the unit. Financing such large capital expenditures presents a challenge to the credit metrics of a utility such as Empire under any circumstance because of the long permitting and construction cycle and the regulatory uncertainty surrounding the "return on and return of" costs associated with the investment in rates over the life of the plant. The impact of national environmental policy also creates uncertainties regarding the ultimate cost of such a project. These uncertainties, however, may be addressed adequately by the establishment of certain regulatory principles to be applied to the undertakings prior to commencement of the project, and this is the situation in which Empire now finds itself.

26. In particular, pre-establishing certain regulatory principles for Empire's proposed undertakings will:

- A. Facilitate cost effective construction financing so that competitive baseload generation will be built in Missouri. . . for all customers, including Missouri customers. Lower interest rates benefit customers by reducing the carrying costs during the design, development, and construction of the plant and ultimately reducing the cost of service for the plant once it is in operation and permanently financed;
  - B. Move the new energy facilities from engineering studies to financed projects, thereby creating construction jobs as well as permanent jobs in Missouri;
  - C. Enhance economic development within the State; and
  - D. Generate additional property tax dollars for state and local agencies.
27. In connection with its Regulatory Plan, Empire agrees to make the capital investments as more fully described in Paragraph 16 above.
28. To finance Empire's participation in Iatan Unit 2, investors (debt and equity) will require the Company to maintain adequate cash flows to service the debt and provide a reasonable return to the shareholder. The Company must also maintain investment grade metrics as defined by Standard & Poor's (S&P) during the construction period. In order to meet these financing requirements the Company seeks:
- A. A finding by the Commission that Empire's construction of the V84 Combustion Turbine at the Riverton generating station is necessary, timely and prudent to serve the Missouri electric customers.
  - B. A finding by the Commission that Empire's participation in a coal generation baseload facility, Iatan Unit 2, in the 2010-11 timeframe is necessary, timely and prudent to serve the Missouri electric customers.

- C. A finding by the Commission that Empire's 12% participation in air pollution control upgrades for Iatan Unit 1 are necessary, timely and prudent to serve the Company's customers.
- D. A finding by the Commission that Empire's air pollution control upgrades for the Asbury coal fired base load generating station are necessary, timely and prudent to serve the Company's customers.
- E. A finding by the Commission that the capital expenditures, including capitalized carrying costs, incurred for the construction of Empire's interest in the new coal generating facility (Iatan Unit 2) will be recovered in rates over 40 years.
- F. A finding by the Commission that Empire's depreciation expense and carrying cost associated with its ownership interest in Iatan Unit 2 will be deferred as a regulatory asset from such time as Iatan Unit 2 is placed into service until such costs can be recovered in the next rate case.
- G. The opportunity to file for electric rate increases as needed during the period of the Regulatory Plan period to support investment grade metrics (BBB) as defined by S&P during the construction period. Should these ratios change or be modified during the period of the Regulatory Plan, appropriate ratios and targets as utilized by rating agencies at the time of the next rate case should be utilized. The credit metrics are as follows (also see **Appendix A** to this Application for more detailed definitions):
- i) Adjusted Total Debt to Total Capitalization ratio;
  - ii) Adjusted Funds from Operations to Interest Coverage ratio; and
  - iii) Adjusted Funds from Operations to Average Total Debt ratio.

H. Empire seeks recognition that additional amortization may also be required to maintain the cash flow to the utility necessary to support investment grade metrics during the construction period.

29. In addition, as a part of the Regulatory Plan, Empire should be authorized by the Commission to utilize a fuel adjustment charge (FAC) mechanism or, in the absence of such mechanism, an interim energy charge (IEC) to mitigate the volatility of changes in fuel and fuel related costs during the period covered by the Regulatory Plan. The FAC or IEC would assure timely recovery of fuel and purchased power energy costs as defined in the Federal Energy Regulatory Commission chart of accounts during the period of the Regulatory Plan. Failure to recover these costs on a timely basis could otherwise affect the Company's investment grade metrics.

30. The financial model, contained in Highly Confidential **Appendix B** to this First Amended Application, provides a pro forma analysis of the annual rate increase required, using the regulatory recovery principles discussed above, to include the proposed amortizations, to maintain the investment grade metrics during the five to seven year construction period ending as early as 2010. Modification to the model may be required as a result of:

- A. A change in the timing or amount of capital expenditures;
- B. Changes in the IRP due to execution of new purchased power contracts or the decision to add owned generating facilities to complement the capital investment included in the Regulatory Plan;
- C. A significant change in interest rates, federal or state tax laws, other governmental mandate or legislation or environmental regulations affecting utility operations;

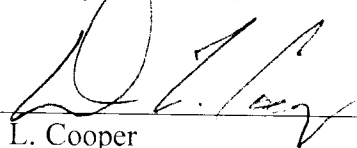
- D. A change in generally accepted accounting principles;
- E. An act of God; or,
- F. An act of terrorism.

31. The ratemaking principles provided are intended to effectuate a timely decision regarding Empire's possible participation in Iatan Unit 2, or other baseload generation options, projects that will likely have long term benefits for the state of Missouri.

WHEREFORE, Empire respectfully requests that the Commission issue its orders:

- (A) On a schedule that will provide the opportunity for Empire to meet the requirement of the KCPL Stipulation and Agreement in Case No. EO-2005-0329 identifying Empire as a "preferred potential partner in the Iatan 2 generating plant project" if Empire has a "commercially feasible financing plan for meeting [its] financial commitments to participate in the ownership of the Iatan 2 plant by the later of August 1, 2005;"
- (B) Recognizing that Empire has the requisite authority to undertake ownership activities with respect to Iatan Unit 2 under its existing certificates or, in the alternative, granting Empire a certificate of convenience and necessity to construct, install, own, operate, control, manage, and maintain a steam electric generating station in Platte County, Missouri (Iatan Unit 2);
- (C) Approving a regulatory plan related to Empire's possible investments in the described generation plant in a time frame that allows Empire to participate in all construction projects that will serve the best interests of its Missouri customers; and,
- (D) Granting such other relief as may be deemed necessary and appropriate which is not inconsistent with this pleading.

Respectfully submitted,



Dean L. Cooper MBE #36592  
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ATTORNEYS FOR THE EMPIRE DISTRICT  
ELECTRIC COMPANY

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, or sent by electronic mail, on June 22, 2005, to the following:

Steve Dottheim  
Office of the General Counsel  
Governor Office Building, 8<sup>th</sup> Floor  
Jefferson City, MO 65101

Lewis Mills  
Office of the Public Counsel  
Governor Office Building, 6<sup>th</sup> Floor  
Jefferson City, MO 65101

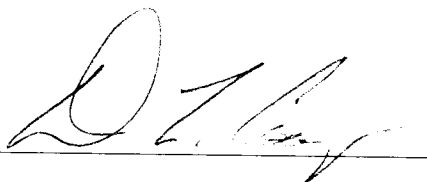
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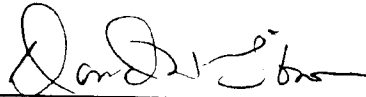
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AFFIDAVIT


STATE OF MISSOURI )  
 ) ss  
COUNTY OF JASPER )

On the 24th day of June, 2005, before me appeared David W. Gibson, to me personally known, who, being by me first duly sworn, states that he is the Vice President – Regulatory and General Services of The Empire District Electric Company and acknowledged that he has read the above and foregoing document and believes that the statements therein are true and correct to the best of his information, knowledge and belief.



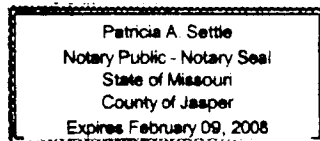
David W. Gibson

Subscribed and sworn to before me this 24th day of June, 2005



Pat Settle, Notary Public

My commission expires:





## Appendix A

### Financial Ratios

#### Credit Ratio Ranges & Definitions – Standard & Poor’s – Business Risk Level 6

**Adjusted Total Debt to Total Capitalization <sup>(1)</sup>**

**Adjusted Funds From Operations Interest Coverage <sup>(2)</sup>**

**Adjusted Funds From Operations as % of Average Total Debt <sup>(3)</sup>**

| BBB  |             |      |
|------|-------------|------|
| Min  | Middle 1/3  | Max  |
| 48%  | 51% - 55%   | 58%  |
| 3.0x | 3.4x - 3.8x | 4.2x |
| 18%  | 21% - 25%   | 28%  |

#### Ratio Definitions:

(1) “Adjusted Total Debt to Total Capitalization” is calculated as Adjusted Total Debt ÷ Total Capitalization where Adjusted Total Debt and Total Capitalization are defined as below:

- Adjusted Total Debt is the sum of
  - Total Year End Long Term Debt (including Trust Preferred)
  - Total Year End Short Term Debt
  - Total OBS debt
- Total Capitalization is equal to:
  - Total Debt Adjusted
  - + Common Stock Equity

(2) “Adjusted Funds From Operations Interest Coverage” is calculated as (Funds From Operations + Cash Interest Paid + AFUDC Debt + Interest on OBS Debt) ÷ Interest Expense where Funds From Operations and Interest Expense are defined as below:

- Funds From Operations is calculated as:
  - Net Income + Depreciation and Amortization + Pension Expense – AFUDC + Deferred taxes
- Interest Expense is calculated as:
  - + Long Term Debt Interest Expense is calculated by summing the product of each issue of LTD times its interest rate + Amortization of Debt Issue Expenses
  - + Short Term Debt Interest Expense is the average of STD outstanding at year end times the annual interest rate
  - + Interest on OBS Debt

(3) “Adjusted Funds From Operations as a % of Average Total Debt” is calculated as (Funds From Operations + Depreciation Adjustment for Operating Leases) ÷ Adjusted Average Total Debt where Funds From Operations and Adjusted Total Debt are defined as above.

- Adjusted Total debt is the average of two years