

Exhibit No. _____
Issue: Iatan Prudence
Witness: Ricardo A. Kolster
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: The Empire District Electric Company
Case No. ER-2011-0004
Date Testimony Prepared: April, 2011

**Before the Public Service Commission
of the State of Missouri**

**Rebuttal Testimony
of
Ricardo A. Kolster**

1 REBUTTAL TESTIMONY
2 OF
3 RICARDO A. KOLSTER, ESQ., P.E.
4 THE EMPIRE DISTRICT ELECTRIC COMPANY
5 BEFORE THE
6 MISSOURI PUBLIC SERVICE COMMISSION
7 CASE NO. ER-2011-0004
8

9 Q: **Please state your name and address.**

10 A: My name is Ricardo A. Kolster. My business address is 2345 Grand Blvd., Suite
11 2000, Kansas City, Missouri.

12 Q: **By whom are you employed?**

13 A: Presently, I am a partner with the law firm of Armstrong Teasdale, where I am a
14 lead in the construction and energy group.

15 Q. **What is the purpose of your rebuttal testimony?**

16 A. I have been retained by The Empire District Electric Company (“Empire”) to
17 review the Construction Audit and Prudence Review – Iatan Construction Project
18 Costs Report as of October 31, 2010, filed herein on February 25, 2011 (“Staff
19 Report”), by the Staff of the Missouri Public Service Commission (“Staff”) and
20 provide rebuttal testimony to the Staff’s assessment of fault on the part of Empire
21 due to the alleged failures on the part of Kansas City Power & Light Company
22 (“KCP&L”) regarding the Iatan 1 Air Quality Control System (“AQCS”), the
23 newly constructed Iatan Unit 2, and the Iatan Common Plant (collectively, the
24 “Iatan Project”).

25 Q. **What is your understanding as to the purpose of the Staff Report?**

26 A. In the Report, the Staff asserts at page 4 that its audit objective is “to determine
27 whether the Iatan Project contains costs that are unreasonable, imprudent,

1 inappropriate, not of the benefit to ratepayers or associated with unnecessary
2 facilities.” The Report goes on to say if such charges of facilities are found, the
3 costs will be removed from the Iatan Project and not included in rates.

4 **Q. Please describe your experience in the construction and power generation**
5 **industry.**

6 A. I have been involved in the construction and power generation industry for
7 twenty-four years, first as an engineer, and in the last eleven years as a
8 construction attorney for large international law firms. As an engineer my
9 experience spans over thirteen years working for electrical utility companies and
10 global Architect/Engineer firms performing international power generation
11 projects similar in size and scope to the Iatan projects. As an attorney, I have
12 provided counsel to clients in all aspects of construction, including dispute
13 resolution, claims prosecution/avoidance, risk management, project management,
14 Project development, and all other aspects of construction. I have a degree from
15 Clarkson University in Mechanical and Aeronautical Engineering and I am a
16 registered professional engineer. I obtained my law degree from the University of
17 Kansas, School of Law.

18 This experience provides the foundation for my review and assessment as
19 provided in this rebuttal testimony pertaining to the relationship between Empire
20 and KCP&L.

21 **Q. Please provide a summary of your rebuttal testimony.**

22 A. My testimony is intended to assist the Missouri Public Service Commission
23 (“Commission”) in its assessment of issues related to disallowances suggested by

1 Staff to the extent these are based on actions by KCP&L, and provide rebuttal
2 testimony regarding claims related to KCP&L's alleged actions, as well as claims
3 related to Empire.

4 In this regard, Staff's recommendations regarding disallowances against Empire
5 for its share of the Iatan Project costs based on expenditures attributable to
6 KCP&L appear to stem from Empire's Regulatory Plan in Case No. EO-2005-
7 6263 and the Stipulation and Agreement filed therein on July 18, 2005, stating in
8 part that "If any party proposes the disallowance of Iatan 1 or Iatan 2 costs,
9 Empire agrees not to seek to avoid such disallowance on the ground that such
10 expenditures were the responsibility of KCP&L, and were not within Empire's
11 control." In reliance of this provision, Staff recommends that the Commission not
12 authorize Empire to charge its Missouri retail customers its share of certain Iatan
13 Project unidentified and unexplained costs.

14 **Q. How do you respond to this recommendation?**

15 **A.** While Empire may have agreed not to seek avoidance of disallowances on the
16 ground that the expenditures are the responsibility of KCP&L, and not within
17 Empire's control, Staff overreaches and inappropriately modifies the standard of
18 review on whether Empire acted prudently related to such costs.

19 **Q. Please explain.**

20 **A.** Simply, Staff just imputes to Empire responsibility of unexplained and
21 unidentified costs, managed by KCPL as Operator, without assessing whether
22 Empire acted prudently within the context of the relationship between KCP&L
23 and the rest of the ownership group.

1 **Q. What costs does the Staff seek to disallow in this case?**

2 A. The unidentified and unexplained costs Staff recommends be disallowed with
3 regard to Empire are expenditures for the same items Staff described in its claims
4 in KCP&L's rate case, Case No. ER-2010-0355/ER-2010-0356. In that case,
5 Staff claimed KCP&L's "Cost Control System" did not adequately indentify or
6 explain the variances from the Control Budget Estimates for the Iatan Unit 1 and
7 Iatan Unit 2 construction projects.

8 **Q. How do you respond?**

9 A. It is entirely appropriate for Empire to rely on the rebuttal testimony of Daniel F.
10 Meyer in the KCP&L cases rebutting that claim, where in his capacity as an
11 expert, Mr. Meyer testified the Cost Control System provided all necessary
12 information for Staff's construction audit. My testimony explains the review and
13 assessment of Mr. Meyer's testimony and Empire's reliance on such testimony in
14 defense of Staff's recommendation to disallow unidentified and unexplained
15 costs.

16 **Q. Are you familiar with Staff's claims regarding Empire's imprudence in
17 failing to engage in activity such that there was not a cost and control system
18 developed and in place that identifies and explains any cost overrun above
19 the definitive estimate during the construction period of Iatan 2 and the
20 environmental enhancements at Iatan 1?**

21 A. Yes. As part of my engagement, I have reviewed and assessed Staff's Report to
22 the Missouri Public Service Commission on its Construction Audit and Prudence
23 Review Iatan Construction Project for Costs Reported as Of October 31, 2010. In

1 particular, I assessed Staff's claims of imprudence contained in Section IX, pages
2 110 through 115, of that Report.

3 **Q. Do you have an opinion with regard to Staff's claims?**

4 A. Yes. Section IX of the Staff's Report cites claims of unidentified and unexplained
5 cost overruns arising in all instances from alleged failures attributable to KCP&L
6 as Operator. Only at the end does Staff correlate the July 18, 2005 Stipulation
7 and Agreement to impute responsibility upon Empire.

8 As I stated in my summary, Staff's analysis improperly dismisses the context of
9 the relationship among the ownership group. In asserting Empire was imprudent
10 by "failing to engage in activity such that there was not a cost and control system
11 developed and in place that identifies and explains any cost overrun above the
12 definitive estimate during the construction period of Iatan 2 and the
13 environmental enhancements at Iatan 1", Staff completely ignores the fact
14 Empire, and the rest of the Ownership group, delegated and assigned
15 responsibility over all construction activities for the Iatan Project to its agent,
16 KCP&L, under the terms of the Ownership Agreement. The proper analysis
17 should not be whether Empire engaged in activities that were delegated to
18 KCP&L, but rather whether Empire acted prudently in its capacity as set forth in
19 the Ownership Agreement. Staff avoids this question and simply places
20 responsibility on Empire for a duty properly delegated to KCP&L.

21 **Q. Do you have an opinion as to whether it is prudent to assign and delegate**
22 **responsibility of construction of the Iatan project to a single owner?**

1 A. In a project such as the Iatan Projects, where ownership of the finished facilities
2 are ultimately shared among several parties, it is completely rational and prudent
3 for the owner with the largest ownership share to take responsibility of the
4 construction and ultimate operation of the facilities. The Ownership Agreement
5 was an arms-length contract negotiated by sophisticated parties with a long
6 history in the power generation industry. The distribution of responsibilities and
7 obligations contained in that Agreement are customary and normal within the
8 industry.

9 **Q. Do you have an opinion as to whether Empire acted prudently with respect**
10 **to exercising its rights and obligations under the Ownership Agreement with**
11 **respect to monitoring the costs and controls of the Iatan Project?**

12 A. Yes. As I stated previously, it is completely prudent for an ownership group to
13 assign responsibility and control of construction of the project to a lead entity.
14 The responsibility and delegation of duties and obligations are governed by the
15 Ownership Agreement. That Agreement sets forth the governance aspects of how
16 the ownership group would interact with KCP&L, as the operating agent in
17 charge of construction and ultimate operation of the facilities. The Agreement
18 includes provisions governing the flow of information between the ownership and
19 reporting by KCP&L on all aspect of construction of the Iatan Project, including
20 cost and control information. In the scope of my involvement with Empire, I have
21 reviewed Empire's exercise of its rights and communications, reports, and
22 requests between Empire and KCP&L regarding the costs of the Project. I find

1 Empire acted at all times prudently under the auspices of the Ownership
2 Agreement.

3 **Q. Assuming actions and obligations of KCP&L can be imputed to Empire, do**
4 **you have an opinion with regard to the adequacy of the cost and control**
5 **system developed and implemented by KCP&L for the Iatan Project?**

6 A. Yes. While pursuant to the Ownership Agreement Empire did not have control,
7 nor could have exercised control, over the cost and control systems developed and
8 utilized by KCP&L, we can rely on testimony provided by Mr. Meyer, as a
9 retained expert by KCP&L in rebutting the same claims asserted by Staff in
10 KCP&L's rate case, to form an opinion here.

11 **Q. Please explain.**

12 A. In his rebuttal testimony in the KCP&L case, Mr. Meyer opines that the Cost and
13 Control System established for the Project provides all of the information
14 necessary for Staff to consider as part of its audit. Mr. Meyer describes at length
15 his involvement and knowledge of the Cost and Control System and its
16 implementation by KCP&L. Mr. Meyer also fully describes the Cost and Control
17 system and explains the application and use of the system on the Iatan Project.
18 While Empire has not been afforded access to information sufficient to analyze
19 facts pertaining to the Cost and Control system and formulate an independent
20 basis to support all the opinions provided by Mr. Meyer, one may nonetheless rely
21 on the analysis and facts presented by Mr. Meyer to formulate an opinion. In this
22 respect, there is in place a cost and control system that identifies and explains cost

1 overruns above the definitive estimate during the construction period of Iatan 2
2 and the environmental enhancements at Iatan 1.

3 In further support of this opinion, one may consider the testimony of Dr. Kris R.
4 Nielsen, President and Chairman of Pegasus Global Holdings, Inc., a management
5 consulting firm retained by KCP&L to provide rebuttal testimony on, among
6 other things, the control systems employed by KCP&L relative to the Iatan
7 Project. Again, relying on the research and analysis performed by Dr. Nielsen
8 allows sufficient basis to conclude, as Dr. Nielsen did, that “KCP&L’s project
9 control system used to manage the Iatan Project were consistent with industry
10 standards and practice.”

11 Where reasonable and highly trained industry experts conclude, in sworn
12 testimony, that 1) a cost and control system exists that identifies and explains cost
13 overruns on the Iatan Project; and 2) that project control system used in the Iatan
14 Project is consistent with industry standards, it is unreasonable for Staff to assert a
15 claim against Empire for failing to intercede against KCP&L and the provisions
16 of the Ownership Agreement and assume any type of control over the cost and
17 control system developed and in place for the Iatan Project. Even if Empire had
18 such rights to intercede in the management of the Project, it would have not had
19 any reasonable basis to intercede and reasonable minds could find that an
20 acceptable cost and control system was in developed and used in accordance with
21 industry standards.

22 Accordingly, not only did Empire at all times act prudently and in accordance
23 with the agreements in place governing the relationship between the ownership

1 group, but significant testimony exists to contradict Staff's claims regarding the
2 lack of a Cost and Control system that identifies and explains cost overruns.

3 Q. **Does this conclude your rebuttal testimony?**

4 A. Yes.

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

12 In the Matter of The Empire District Electric)
13 Company of Joplin, Missouri for Authority)
14 to File Tariffs Increasing Rates for Electric) Case No. ER-2011-0004
15 Service Provided to Customers in the)
16 Missouri Service Area of the Company.)

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AFFIDAVIT OF RICARDO KOLSTER

28 STATE OF MISSOURI)
29) SS
30 COUNTY OF JACKSON)

31 Ricardo A. Kolster, being first duly sworn on his oath, states:

32 1. My name is Ricardo A. Kolster. I am employed by the law firm of Armstrong
33 Teasdale. My services have been retained by The Empire District Electric Company.

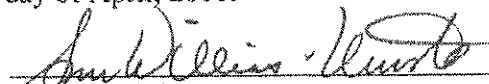
34 2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony
35 being filed in this matter on behalf of The Empire District Electric Company consisting of ____
pages, plus attachments, having been prepared in written form for introduction into evidence in
the above-captioned docket.

3. I have knowledge of the matters set forth herein. I hereby swear and affirm that my
answers contained in the attached testimony to the questions therein propounded, including any
attachments thereto, are true and accurate to the best of my knowledge, information, and belief.



Ricardo A. Kolster

Subscribed and sworn before me this 18th day of April, 2011.


Notary Public

My commission expires: May 9, 2013

