BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF SUGGESTIONS IN SUPPORT OF STIPULATION AND AGREEMENT

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") in support of the Stipulation And Agreement ("Agreement") filed with the Commission on July 18, 2005. The Agreement concerns the February 4, 2005 Application of The Empire District Electric Company ("Empire" or "Company") for Commission approval of an Experimental Regulatory Plan and, if necessary, for a Certificate of Convenience and Necessity. The Staff participated fully in the process that culminated in the filing of the Agreement and is a Signatory Party thereto. The Staff believes that approval of the Agreement and a faithful implementation of its terms is consistent with Empire's provision of safe and adequate electric service at just and reasonable rates.

BACKGROUND

On March 28, 2005, Kansas City Power & Light Company ("KCPL"), in conjunction with other parties, filed a Stipulation And Agreement which resulted in the establishment of Case No. EO-2005-0329. KCPL is in need of additional baseload capacity. Among other things, Commission approval of that Stipulation And Agreement would authorize KCPL to construct an 800-900 MW coal-fired baseload unit near Weston, Missouri, with a projected in-service date of June 1, 2010. KCPL's proposal calls for construction of the new generating facility, referred to as “Iatan 2,” at the site of the present Iatan coal-fired baseload generating unit, referred to as “Iatan 1.”

On February 4, 2005, The Empire District Electric Company (“Empire” or “Company”) filed with the Commission an Application the purpose of which was to initiate a process leading to Commission approval of an Experimental Regulatory Plan (hereinafter, the “Regulatory Plan”) related to generation plant. The Application included a request for a Certificate of Convenience and Necessity, in the event the Commission considers one to be necessary to enable Empire to participate in the new Iatan 2 facility as a part owner.

The Application states that Empire’s need for additional baseload coal-fired generating capacity was demonstrated by its capacity planning study presented to the Staff, the Office of the Public Counsel (“Public Counsel”) and the Missouri Department of Natural Resources (“MDNR”) in late 2003, as well as by its Integrated Resource Planning (“IRP”) activities. A significant factor contributing to Empire’s need is the expiration in June 2010 of the Company’s purchased power contract with Western Resources, Inc., for 162 MW of baseload capacity from the Jeffrey Energy Center. According to Empire’s Application, the Jeffrey purchase represents about 11% of the Company’s total capacity and about 20% of its normalized on-system energy.

Empire’s need to increase its baseload capacity as a way to mitigate the effects of high natural gas prices, and generally as a cost-effective means of providing electric service to its Missouri jurisdictional customers, has been a subject of discussion for some time and has not been challenged by any interested party. Nor has anyone shown that coal-fired generation is not the most economic alternative available to meet this need. On the contrary, Empire’s need to increase its coal-fired baseload capacity appears to be generally accepted by all concerned.

Along with KCPL, Empire and Aquila, Inc. ("Aquila") are joint owners of Iatan 1.[1] Aquila also has need of additional baseload generation capacity in the relatively near term, and both utilities have explored with KCPL the possibility of partnering with KCPL in its Iatan 2 project. The KCPL Stipulation And Agreement includes a provision that KCPL will consider Empire and Aquila, individually, as preferred potential partners in Iatan 2, for at least a 30% combined share of an 800-900 MW unit, and will consider the Missouri Joint Municipal Electric Utility Commission ("MJMEUC") as a preferred potential partner in Iatan 2, for at least 100 MWs of an 800-900 MW unit, if each of these entities can demonstrate that it has a commercially feasible financing plan for meeting its financial commitments to participate in the ownership of Iatan 2 by the later of August 1, 2005, or such date that KCPL shall issue its request(s) for proposal(s) related to Iatan 2. (See Paragraph III.C.2 of the Agreement.)

All of the Signatory Parties in the instant proceeding worked diligently in an effort to reach an agreement within KCPL's stated time frame. On July 18, 2005, the Signatory Parties filed the Agreement.

It is not the intent of the instant Staff Suggestions In Support to attempt to address every facet of the Agreement. The Staff has attempted to anticipate questions that the Commissioners may have and to provide this pleading in a timely manner. In support of the Agreement, the Staff states as follows:

I. INFRASTRUCTURE INVESTMENT PLAN

The heart of Empire's Regulatory Plan is its Infrastructure Investment Plan, which calls for capital expenditures over approximately the next five years for increased capacity and new environmental controls. The following specific capital projects are included in Empire's Infrastructure Investment Plan. (See Paragraph III.C. 1 and Appendix A of the Agreement.)

[1] KCPL, the managing partner, owns 70 % of Iatan 1, while Empire and Aquila own 12% and 18%, respectively.

a) Participation in Iatan 2 (Empire's portion of approximately 800-900 MW of new regulated generation capacity);

b) Empire's portion of environmental investments related to Iatan 1 for accelerated compliance with environmental regulations;

c) A 155 MW gas-fired peaking unit to be located at the Riverton generating station in Riverton, Kansas; and

d) Installation of Selective Catalytic Reduction ("SCR") equipment at the Asbury coal-fired generating station.

A. Preapproval Of Infrastructure Investment Plan

Given the *State ex rel Harline v. Public Serv. Comm'n,* 343 S.W.2d 177 (Mo.App. 1960) holding that a utility does not need further Commission authorization to construct plant in its certificated service territory, the Section 393.135 prohibition against CWIP in rate base and the case law that the Commission is not bound by *stare decisis,*[2] there has not been a need to obtain preapproval from the Commission. However, this approach has been tempered by the Missouri Supreme Court's decision in *State ex re. AG Processing, Inc. v. Public Serv. Comm'n*, 120 S.W.3d 732 (Mo. banc 2003). The Court held that although the acquisition premium recoupment issue could be addressed in a subsequent ratemaking case, the Commission nonetheless had to decide whether the acquisition premium was reasonable as part of its determination of whether the proposed merger would be detrimental to the public.

Thus, the question: As a Signatory Party to the Agreement, has the Staff engaged in any "preapproval" determinations? As noted in Paragraph III.C.7 of the Agreement, the Staff and the

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[2] *State ex rel. Chicago, Rock Island & Pacific R.R. Co. v. Public Serv. Comm'n*, 312 S.W.2d 791 (Mo. 1958); *State ex rel. General Tel. Co. v. Public Serv. Comm'*n, 537 S.W.2d 655, 661-62 (Mo.App. 1976); *State ex rel. Associated Nat. Gas Co. v. Public Serv. Comm'n*, 706 S.W.2d 870, 880 (Mo.App. 1985); *State ex rel Arkansas Power & Light Co. v. Public Serv. Comm'n*, 736 S.W. 2d 457, 462 (Mo. App. 1987); *State ex rel. GTE North, Inc. v. Public Serv.Comm'n,* 835 S.W.2d 356, 371-72 (Mo.App. 1992); *State ex rel. Capital City Water Co. v. Public Serv. Comm'n*, 850 S.W.2d 903, 911 (Mo.App. 1993); *State ex rel. St. Louis v. Public Serv. Comm'n*, 47 S.W.2d 102, 105 (Mo.banc 1931); *Marty v. Kansas City Light & Power Co.*, 259 S.W. 793, 796 (Mo. 1923)

other Signatory Parties have agreed that they will *not* assert that the investment projects constituting Empire's Infrastructure Investment Plan should be excluded from Empire's rate base on the basis that they were not necessary at the time of the Agreement, or that the Company should have used alternative technologies.

In making this very limited agreement, the Staff and the other Signatory Parties retain their respective rights to inquire into the prudence of Empire's actual expenditures associated with these projects, to individually propose that a different amount be included in Empire's rate base or cost of service, and even to challenge these investments and related costs and off-system sales margins on the basis that Empire failed to acquire more coal-fired resources at an earlier date. Furthermore, under the Agreement, Empire may not oppose a proposed disallowance on the basis that the expenditures in question were the responsibility of KCPL and therefore not within the control of Empire. (See Paragraph III.C.7 of the Agreement.)

B. Modification of Infrastructure Investment Plan

The Agreement also provides for modification of the proposed Infrastructure Investment Plan in the event of a significant change in factors or circumstances that influence the need for and economics of the various elements of the Infrastructure Investment Plan. Numerous examples of such changes are listed in Paragraph 3.C.9 of the Agreement. Empire has agreed to report semi-annually on the status of its infrastructure projects, and to actively monitor the major factors and circumstances affecting the need for and economics of the various elements of its Infrastructure Investment Plan.

The Agreement specifies a process to resolve concerns among the Signatory Parties, both in the case where Empire proposes a modification of the Infrastructure Investment Plan, and where another Signatory Party suggests that a modification may be in order. In essence, the

Signatory Parties have ninety days to resolve such disputes. If that effort fails, the matter will be brought to the Commission. Ultimately, any agreement among the Signatories to modify the Infrastructure Investment Plan must receive Commission approval.

The Signatory Parties, by signing the Agreement, do not waive any rights to assert, in any proceeding, that Empire did not properly monitor significant factors or circumstances and as a result, did not properly execute its Infrastructure Investment Plan.

Paragraph III.G.7 (pages 31-32 of the Agreement) recognizes that by approving the Agreement, the Commission does not forgo, during the effective period of the Regulatory Plan, its discovery or investigative power, or any other power of the Commission. For example, non-signatories to this Agreement may request an earnings/revenues investigation of Empire. In response, the Commission may direct the Staff to conduct such an investigation. In brief, nothing in the Agreement is intended to in any way restrict the Commission's exercise of its statutory rights and obligations.

II. AMORTIZATIONS

A. <u>Amortizations To Maintain Financial Ratios</u>

The Signatory Parties in the instant proceeding agree that it is desirable to maintain Empire's debt at investment grade during the period of the construction of Iatan 2, which is expected to end June 1, 2010. They commit to work to ensure that based on prudent and reasonable actions by Empire, the Company has a reasonable opportunity to maintain its debt at an investment grade during this construction period. The Signatory Parties' reference point is the Standard and Poor's BBB investment grade and the Standard and Poor's credit ratio ranges and definitions for three financial ratios as they relate to its BBB investment grade. The three financial ratios of importance are: (1) Adjusted Total Debt to Total Capitalization, (2) Adjusted

Funds from Operations Interest Coverage and (3) Adjusted Funds from Operations as a Percentage of Average Total Debt.

To this end, the Signatory Parties agree to support an amortization amount added to Empire's cost of service in a rate case when the projected cash flows resulting from Empire's Missouri jurisdictional electric operations, as determined by the Commission, fail to meet or exceed the Missouri jurisdictional portion of the middle of the bottom third of the Standard and Poor's BBB range shown in Appendix C, for (1) the Adjusted Funds from Operations Interest Coverage ratio and (2) the Adjusted Funds from Operations as a Percentage of Average Total Debt ratio. The additional amortization amount added to Empire's cost of service in a rate case will increase Empire's revenue requirement to be recovered from ratepayers. Current guidelines for the middle of the bottom third of the Standard and Poor's BBB category for a Standard and Poor's business profile 6 company (current equivalent business profile for Empire) are as follows:

49.5% Adjusted Total Debt to Total Capitalization

3.2x Adjusted Funds from Operations Interest Coverage (an operational guideline)

19.5% Adjusted Funds from Operations as a Percentage of Average Total Debt (an operational guideline)

Appendix D "Process Illustration," attached to the Agreement, illustrates the adjustment process that the Signatory Parties agree to use to determine the Missouri jurisdictional amortization levels discussed herein.

If Empire meets the Standard and Poor's BBB credit rating values but does not receive an investment grade credit rating, Empire agrees that the Signatory Parties are under no obligation to recommend any further cash flow or rate relief to satisfy the obligations under this section.

Empire also recognizes and agrees that its Missouri operations are only responsible for and will only provide cash flow for its Missouri operating share of the necessary cash flows. (page 14 of the Agreement).

For its part, Empire has agreed not to seek recovery in Missouri jurisdictional rates of any negative impact caused by: a) failure to be adequately insulated from the business misfortunes of its is non-regulated operations, b) any significant merger or acquisition, or corporate restructuring, or c) its decision to rely on Senate Bill 179 for purposes of recovering its fuel and purchased power costs. Moreover, Empire is obligated under the Agreement "to continue to prudently manage costs, continuously improve productivity, and maintain quality in a reasonable manner during the Regulatory Plan." A finding by the Commission that Empire has failed in this regard negates the obligations of the other Signatory Parties. (pages 11-12 of the Agreement).

The Agreement permits the Signatory Parties to suggest additional amortizations if they believe they are warranted. The Staff would note, however, that the Agreement also provides for an overriding ceiling amount for amortizations designed to maintain financial ratios. The Agreement states at page 14: "Notwithstanding all of the above provisions in Paragraph III.D.2., the Signatory Parties agree that the amortization amounts in the aggregate shall not exceed the expected cost savings from the amortization mechanism and the lower costs of capital resulting from investment grade ratings."

Historically, the ability of Missouri utility companies to remain investment grade has been a matter of concern to the Commission, particularly when the utilities are engaged in construction projects necessary to the continued provision of safe and reliable service to customers. It should be noted that no Missouri court has found the Commission's application of its standard for interim rate relief, or for normalization versus flow-through of tax timing differences, to be a violation of Section 393.135 RSMo for companies needing interim relief because of construction projects. The Commission has based its determination of whether to grant interim rate relief or normalization of tax timing differences based on certain financial ratios of the utility, *i.e.*, interest coverages in the matter of interim rate relief, and cash flow, interest coverage and internally generated funds in the matter of normalization of tax timing differences.

In Case No. ER-78-252, the KCPL rate increase case immediately preceding the Iatan 1 in commercial operation case (Case No. ER-80-48), KCPL was engaged in the final stages of the construction of Iatan 1, and at the same time was engaged in the funding of the construction of its 47% share of the Wolf Creek nuclear generating station. The Commission authorized normalization of certain tax timing differences due to the level of the relevant financial ratios of KCPL. In a subsequent KCPL interim rate relief case in 1979-1980 (Case No. ER-80-204), KCPL's interest coverages no longer permitted KCPL to raise funds other than by an increase in customer rates, which the Commission granted on an interim basis in Case No. ER-80-204, pending the processing of Case No. ER-80-48. (It should be noted, regarding the Commission's use of financial ratios to determine whether to authorize interim rate relief, that the Western District Court of Appeals held in *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n*, 535 S.W.2d 561 (Mo.App. 1976), that the Commission is not necessarily limited to the emergency standard for the granting of interim rate relief. The Court thereby indicated that the Commission could use financial ratios for the granting of rate relief in a manner different from that which the Commission previously employed to grant such relief.)

B. <u>Ten -Year Recognition Of Future Benefits</u>

The amortizations provided for by the Agreement include a rate base offset that accrues to the benefit of Empire's customers in future rate proceedings. Although there appears to be no potential legislation on the horizon that would end these customer benefits, Empire has agreed that notwithstanding any future changes to Chapters 386 and 393 RSMo, such benefits shall be reflected in rates for at least ten (10) years following the effective date of a Commission Order approving the Agreement. (See Paragraph III.D.3 of the Agreement.) The amortization events that are covered by this provision of the Agreement are the following:

AMORTIZATIONS	START	END
Up to $10.39 million, assuming the inclusion of income tax adjustment. (Based on financial data from 2004 rate case contained in Appendix D-3)	First rate case prior to Iatan 2 rate case	Iatan 2 Report & Order effective date
SO_2 emission allowance sales proceeds recorded as a regulatory liability	9/1/10 estimate - Iatan 2 Report & Order effective date	To be determined by Commission

The first amortization noted above includes an amount for income tax expense. The income tax portion of the amortization has not been agreed to by the Signatory Parties. The amortization estimate is influenced by Empire's capital structure; specifically, the amount of equity therein. The amount of equity can affect the need for, and as a consequence, the amount of additional amortization. The Staff will evaluate all of the factors that determine the amount of additional amortization in subsequent rate cases. The Staff will bring to the Commission's attention any factor that has contributed inappropriately to the need for or the amount of the amortization.

III. RATE CASE FILING

Unlike the KCPL Stipulation And Agreement, the instant Agreement *requires* Empire to file only one rate case during the effective period of its Regulatory Plan. Paragraph III.D.7 provides that the Company will file rate schedules on December 1, 2009, or six months prior to the expected commercial operation date of Iatan 2---whichever is later---with updates for known and measurable changes through March 31, 2010 and a true-up through June 30, 2010. Empire agrees to include with that rate case filing a class cost of service study containing, at a minimum, the information set out in Appendix E, along with all supporting work papers. The study will provide the basis for any necessary adjustments caused by the significant change in the Company's rate base as a result of the implementation of Empire's Infrastructure Investment Plan.

IV. RESOURCE PLAN AND CUSTOMER PROGRAMS DEVELOPMENT

A. Resource Plan

The Agreement substantially enhances the structure and comprehensiveness of the current Integrated Resource Planning ("IRP") process, as it applies to Empire. It provides for the continuation of the semi-annual meetings with the next meeting occurring within three months of the effective date of a Commission Order approving the Agreement, as well as the submission by Empire to the non-IOU Signatory Parties of a detailed Resource Plan in July 2006. The Agreement specifies (pages 21-24) in considerable detail the minimum requirements of the July 2006 Resource Plan. Signatory Parties are permitted to raise concerns about potential deficiencies in the plan, and the Commission may be asked to decide any dispute that cannot be resolved among the parties.

The results of Empire's 2006 Resource Plan will be incorporated into the Company's August 2007 Electric Resource Plan filing. The Signatory Parties also commit to working together and if necessary, to modify this part of the Agreement (Paragraph III.F.1) in an attempt to eliminate duplicative processes.

In connection with Empire's execution of its Resource Plan, the Staff, Public Counsel, and interested non-IOU Signatory Parties will be able to participate in the RFP process at an early stage and prior to the award of contracts to successful bidders.

B. Customer Programs Collaborative – Affordability, Energy Efficiency, and Demand Response Programs

This Agreement builds on the energy efficiency and affordability programs that were agreed to in Empire's recent general rate increase case, Case No. ER-2004-0570.[3] In that case, small scale energy efficiency programs and an affordability program were agreed to without an estimate of how they would impact Empire's resource planning process. Pursuant to the instant Agreement, Empire will examine the impact of its energy efficiency programs and other demand-side programs, and will use the information gathered from these programs and from programs of other utilities to estimate the potential impact of demand-side resources on Empire's future resource needs. In other words, with this Agreement, Empire will be moving toward true integrated resource planning.

A chief feature is the establishment of a Customer Programs Collaborative, or "CPC," which "will make decisions pertaining to the development, implementation, monitoring and evaluation of Empire's Affordability, Energy Efficiency and Demand Response Programs

[3] See Stipulation And Agreement As To Certain Issues, filed December 22, 2004 in Case No. ER-2004-0570. Therein, the parties reached agreement on Empire's funding of various programs as follows: (a) no less than $155,000 annually for a low income weatherization program, (b) no less than $20,000 annually for the Change a Light, Change the World Program, (c) no less than $100,000 annually for an appliance and HVAC Rebate Program for residential customers, and (d) no less than $25,000 annually to fund a portion of the cost of technical energy efficiency audits for commercial customers and provide incentives for installation of energy efficiency measures.

(Customer Programs)." (Agreement, page 25). The membership of the CPC will include Empire, the Staff, Public Counsel, MDNR, and any other interested non-IOU Signatory Party. With the affirmative vote of a super-majority, the CPC has decision-making authority in such areas as program objectives development, selection of program consultants, program design, selection of customer program portfolio, and the post-implementation evaluation process. Given the absence of any analysis, the Signatory Parties have not agreed at this time to any budgeted dollar amounts or any goals[4] for any new programs.

The Agreement provides for a ten-year amortization of expenditures on Customer Programs, commencing with the earlier of: a) March 27, 2008, and b) the effective date of new rates in Empire's first rate filing within the term of the Agreement. The Signatory Parties reserve the right to propose the establishment of a fixed amortization amount in any Empire rate case prior to June 1, 2011. Paragraph II.D.1.b of the Agreement provides that the Signatory Parties will not challenge the continuation of the amortization on any basis other than Empire's failure to prudently implement the programs. Any amounts that have not been included in rate base will be permitted to earn a return of no more than the reduced AFUDC rate, as specified in the Agreement.

With the exception of certain exemptions for Rate Schedules LP, STS and STS-Praxair specified in the Agreement, the class allocation of the costs will be determined by the Commission when the amortizations are approved.

V. OTHER ITEMS

A. Fuel and Purchased Power Cost Recovery---Senate Bill 179

The Agreement reflects Empire's decision to rely exclusively on the provisions of Senate Bill 179 ("SB 179"), and thus makes no provision for any other mechanism for Fuel and

[4] Appendix G identifies MDNR's suggested initial targets for energy efficiency programs.

Purchased Power Cost Recovery ("FPPCR").[5] Further, the Regulatory Plan provides that Empire will not seek to use the FPPCR provisions of SB 179 for the rate-making treatment of revenues and costs related to Empire's off-system sales. (Paragraph 3.D.6). Empire does, however, retain the right to advocate for provisions in Commission rules related to SB 179 that provide an *option* for the inclusion of revenues and related expenses from off-system sales either in an FPPCR mechanism or in base rates. Empire may not support, either directly or indirectly, rule language that *requires* such recovery in an FPPCR mechanism.

B. Allowance For Funds Used During Construction

The KCPL Stipulation And Agreement calls for only a 125 basis point reduction to the equity portion of the allowance for funds used during construction rate ("AFUDC"). The Staff indicated in its Suggestions In Support of the KCPL Stipulation And Agreement that it would seek to have that reduction increased to 250 basis points in order to match the provision in an analogous agreement that KCPL filed in Kansas. At the hearing in Case No. EO-2005-0329, KCPL agreed on the record to a 250 basis point reduction. In the instant Agreement, Empire also agrees to a 250 basis point reduction, which will commence on the effective date of a Commission Order approving the Agreement and will end on the in-service date.

C. Off-System Sales

In Paragraph III.E.2 of the Agreement, Empire agrees that off-system sales will continue to be included in the establishment of Missouri jurisdictional rates so long as related investments and expenses are also included in such rates. This provision is consistent with the Staff's and the Commission's long-held view that Missouri customers are entitled to benefit from such revenues since they bear the cost of the generating equipment. Empire's agreement applies, in essence, to

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[5] The Staff notes that SB 179 was signed into law on July 14, 2005. The enactment makes lawful single-issue ratemaking for certain matters/items, prudently incurred fuel and purchased power costs, including transportation, and prudently incurred costs to comply with any federal, state or local environmental law, regulation or rule.

any type of ratemaking process, and the Company is further bound not to seek to avail itself of any future legislation that would be inconsistent with the ratemaking treatment specified for off-system sales in Paragraph III.E.2 of the Agreement

D. <u>SO_2 Emission Allowances</u>

On March 1, 2005, the Commission issued an Order in Case No. EO-2005-0020,[6] approving a Unanimous Stipulation And Agreement and establishing an SO_2 emission allowance management program ("SAMP"). The instant Agreement also lays out the framework of an SO_2 emission allowance management program ("SEAMP"). (See Paragraph III.E.5 of the Agreement and attached Appendix F.) For the most part, the SEAMP, which supersedes the SAMP, is not significantly different from its predecessor, except that the SEAMP specifically requires that proceeds from SO_2 emission allowance transactions be booked for ratemaking purposes to Account 254, a regulatory liability account, and that those proceeds be used as an offset to rate base. A number of other less notable changes were made, resulting in a framework for an SO_2 emission allowance management program that essentially mirrors the one developed for KCPL in connection with that utility's regulatory plan. The details of Empire's SEAMP are presented in Appendix F to the Agreement.

E. <u>New Special Contracts</u>

The Agreement defines "New Special Contracts" as those contacts for service between Empire and a Signatory Party that were not in effect as of February 4, 2005, the filing date of Empire's Application initiating the instant proceeding. As a part of the Agreement, Empire has agreed that, "for ratemaking determinations, New Special Contracts will be treated as if customers taking service under New Special Contracts were paying the full generally applicable

[6] *In the Matter of the Application of The Empire District Electric Company for Authorization to Manage Sulfur Dioxide Emission Allowance Inventory.*

tariff rate for service from Empire. Other provisions in New Special Contracts will not affect rate base for regulatory purposes." (Paragraph III.D.1.a of the Agreement). Thus, the effects of any reduction in revenues that might result from the existence of New Special Contracts will be borne by Empire rather than its customers.

F. Term And Termination Of The Agreement

The term of the Agreement is approximately five years, beginning with the effective date of a Commission Order approving the Agreement and ending with the effective date of the initial rates that reflect inclusion of the Iatan 2 investment.[7] However, **the Agreement becomes null and void "[i]f Empire does not become a partner with KCPL for an ownership interest in the Iatan 2 plant corresponding to at least 100 MW or approximately 12 percent of capacity." (Paragraph III.C.3)**. The Agreement also terminates if the Commission finds: a) that Empire failed to provide the Signatory Parties with material or relevant information either in its possession or about which Empire should have had knowledge, or b) that Empire misrepresented facts relevant to the Agreement. (Paragraph III G.3 of the Agreement).

VI. CERTIFICATE OF CONVENIENCE AND NECESSITY

As noted above, Empire's February 4, 2005 Application includes a request for a Certificate of Convenience and Necessity ("CCN"), if the Commission deems a new CCN to be necessary to enable Empire to participate as owner of an interest in Iatan 2. In Paragraph III.C.4 of the Agreement, the Signatory Parties' agree that they will not assert that the Company needs further authorization. In a Report And Order issued on November 14, 1973 in Case No. 17,895,[8] the Commission authorized the construction of the Iatan Steam Electric Generating Station as a

[7] Certain provisions of the Agreement may have a different duration as specified in such provisions.
[8] *In the Matter of the Application of Kansas City Power & Light Co. and St. Joseph Light & Power Co. for Certificates of Public Convenience and Necessity to Construct, Own, Operate and Maintain an Electric Generating Station in Platte County, Missouri, and Certain Related 345 kv Transmission Facilities*, Case No. 17,895, Report And Order (1973) (unreported case).

multi-unit site designed for four generating units to be constructed and operated by KCPL. In the Staff's opinion, no further Commission authorization appears to be required regarding the siting of Iatan 2.

WHEREFORE, the Staff respectfully submits its Suggestions In Support of the Stipulation And Agreement filed in this proceeding on July 18, 2005.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 21st day of July 2005.

/s/ Dennis L. Frey