

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 2nd day of  
August, 2005.

In the Matter of 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

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**Case No. EO-2005-0263**

**ORDER APPROVING STIPULATION AND AGREEMENT**

Issue Date: August 2, 2005

Effective Date: August 12, 2005

**Syllabus:** This order approves the Stipulation and Agreement entered into among The Empire District Electric Company, the Staff of the Commission, the Office of the Public Counsel, Explorer Pipeline Company, Praxair, Inc., and the Missouri Department of Natural Resources with regard to Empire's participation in building the Iatan 2 generation plant, and making environmental upgrades to other plants.

**Background**

On February 4, 2005, Empire filed its Application with the Missouri Public Service Commission under Sections 386.250, 393.140, 393.170, 393.230 and 393.240, RSMo. Empire asked the Commission to approve its experimental regulatory plan concerning its possible participation in the Iatan 2 steam electric generation station, making environmental upgrades to other plants, and a certificate of convenience and necessity to participate in Iatan 2, if necessary.

Empire's Application asked the Commission to find that:

- Empire is allowed to maintain its debt at investment grade, and is able to adequately participate in the equity market;
- the Commission should not exclude Iatan Unit 1 and Asbury environmental upgrade investments from rate base on the ground that the projects were not necessary or timely or that Empire should have used alternative technologies;
- Empire's ownership of up to approximately 150 MW of new generation capacity at the Iatan site would have long-term benefits for maintaining competitively priced electricity for Missouri consumers and that the Commission should not exclude Empire's investment in Iatan Unit 2 and its V84 Combustion Turbine at Riverton from rate base on the ground that the projects were not necessary or timely, or that Empire should have used alternative technologies;
- the Signatory Parties<sup>1</sup> may agree to additional amortizations for Empire to help effectuate Empire's investment grade ratings during construction of Iatan 2;
- depreciation and amortization rates affect cash flow, and hence the ability to maintain investment grade status; thus, the Commission should review Empire's depreciation and amortization rates accordingly in Empire's future rate cases; and

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<sup>1</sup> The Signatory Parties are Empire, the Staff of the Commission, Public Counsel, Explorer, Praxair, and the Department of Natural Resources.

- Empire may use the fuel and purchase power cost recovery mechanism authorized in Senate Bill 179<sup>2</sup> to recover fuel costs.

On April 12, the Commission directed that notice of Empire's Application be given to the public. The Commission allowed Praxair, Explorer, DNR, Union Electric Company d/b/a AmerenUE, Kansas City Power & Light Company, and Aquila, Inc., to intervene.

On June 22, Empire filed prepared direct testimony in support of its Application. On June 28, Empire amended its application and explained its proposed experimental regulatory plan in greater detail.

On July 18, 2005, Empire, the Staff of the Commission, the Public Counsel, Explorer, Praxair and DNR filed a Stipulation and Agreement (Agreement), which is Attachment 1 to this order. The Agreement purports to resolve all issues among the signatory parties.

### **The Stipulation and Agreement**

The Agreement is among less than all parties to this case. But AmerenUE, KCPL and Aquila (all of the non-signatory parties) state that they do not oppose the Agreement and do not request a hearing.

The Agreement suggests that the Commission approve an experimental regulatory plan for Empire related to its participation in Iatan 2. Iatan 2 is a proposed new coal-fired generation unit with 800-900 MW of capacity to be located at the Iatan site near Weston, Missouri. KCPL is to construct Iatan 2.

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<sup>2</sup> Act of April 27, 2005, 93<sup>rd</sup> General Assembly, SS SCS SB 179 (to be codified at § 386.266 RSMo, effective January 1, 2006).

The Agreement contains conditions related to:

- Empire's infrastructure investments, including Iatan 2, environmental investments in Iatan 1, a 155 MW gas-fired peaking plant in Riverton, Kansas, and installing Selective Catalytic Reduction equipment at the Asbury coal-fired generating station;
- Treatment of various issues in Empire's rate cases between now and when the investments related to Iatan 2 are reflected in rates, including an agreement that the signatory parties will not claim that the decision to build Iatan 2 was not prudent, but that they reserve the right to claim in a rate case that some or all of the expenses Empire incurs to build Iatan 2 are not prudent;
- The signatory parties' agreement to support, if necessary, an amortization that will minimize the cost of the plan while seeking to provide adequate cash flow for Empire to maintain its debt at investment grade;
- Empire's agreement to rely solely on Senate Bill 179 to recover its fuel and purchased power costs;
- Provisions related to Empire treating its off-system sales and transmission-related revenues "above the line" for ratemaking purposes for as long as its related investments and expenses are considered in determining rates;
- Provisions related to sulfur dioxide (SO<sub>2</sub>) emission allowances;
- A detailed resource plan process for future needs; and

- A customer program collaborative process related to affordability, efficiency and demand response programs.

On July 21 and 22, 2005, the Commission held a hearing concerning the Agreement.

## **Discussion**

The Commission has the legal authority to accept a stipulation and agreement to resolve a case.<sup>3</sup> The Commission notes that “[e]very decision and order in a contested case shall be in writing and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement . . . shall include . . . findings of fact and conclusions of law.”<sup>4</sup> Consequently, the Commission need not make findings of fact or conclusions of law in this order.

If no party objects to a stipulation and agreement, the Commission may treat the Agreement as unanimous.<sup>5</sup> Because all parties have either signed the Agreement filed on July 18, 2005 or stated that they do not oppose the agreement, the Commission will treat the Agreement as unanimous.

KCPL has identified 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

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<sup>3</sup> See Section 536.060, RSMo 2000.

<sup>4</sup> Section 536.090, RSMo 2000.

<sup>5</sup> 4 CSR 240-20115(2)(C).

proposal(s) related to Iatan 2.”<sup>6</sup> On June 10, 2005, Empire entered into a Letter of Intent 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.<sup>7</sup>

The Agreement assists Empire in meeting its needs for generation so that it can achieve its energy and capacity requirements. This Agreement gives Empire an opportunity to own at least 100 MW of coal-fired generation to be built in Missouri.

The Agreement strikes a reasonable and appropriate balance between the interests of Empire’s customers and shareholders regarding Empire’s participation in Iatan 2. The Agreement is designed to positively impact Empire’s credit ratings. Thus Empire should have lower debt costs to pass on to consumers in the form of lower future rates.

Furthermore, the Agreement is designed to give Empire the opportunity to maintain its investment grade ratings during the term of the experimental regulatory plan, which is important to Empire’s shareholders and creditors. This Agreement also protects Empire’s customers from potential imprudent or unreasonable actions by recognizing that the Commission may disallow expenses, including, but not limited to, “generation investments . . . , related costs and off-system sales margins on the ground

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<sup>6</sup> Gipson Direct (Ex. 2, p. 5).

<sup>7</sup> *Id.* at 6.

that Empire failed to acquire more coal-fired resources at an earlier date,"<sup>8</sup> in rate cases Empire may file.

The Commission has reviewed the First Amended Application, the Agreement, and the evidence received at the hearing. Based upon its review, the Commission concludes that the Stipulation and Agreement filed on July 18, 2005 is in the public interest. The Commission will therefore approve the Agreement and direct that the parties to the Agreement comply with its terms.

**IT IS THEREFORE ORDERED:**

1. That the Stipulation and Agreement entered into among The Empire District Electric Company, the Staff of the Commission, the Office of the Public Counsel, Explorer Pipeline Company, Praxair, Inc., and the Missouri Department of Natural Resources, on July 18, 2005, is approved.
2. That the parties to the Stipulation and Agreement shall comply with its terms.
3. That this order shall become effective on August 12, 2005.
4. That this case may be closed on August 13, 2005.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton and Appling, CC., concur  
Gaw, C., concurs in part; dissents in part; dissent to follow

Pridgin, Regulatory Law Judge

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<sup>8</sup> Stipulation and Agreement, Section III.C.7, page 5.