

**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.	)	

**STIPULATION AND AGREEMENT**

COME NOW The Empire District Electric Company (Empire), the Missouri Department of Natural Resources (MDNR), the Staff of the Missouri Public Service Commission (Staff), Praxair, Inc. (Praxair), Explorer Pipeline Company (Explorer) and the Office of the Public Counsel (Public Counsel) (collectively "the Signatory Parties"), and submit this Stipulation and Agreement (the Agreement) to the Missouri Public Service Commission (Commission) for its consideration and approval:

**I. BACKGROUND**

On February 4, 2005, Empire filed an application with the Commission seeking Commission approval of an experimental regulatory plan concerning its possible participation in a steam electric generation station (Iatan 2), or other baseload generation options, and seeking a certificate of convenience and necessity to participate in Iatan 2, if necessary. By its Order Establishing Intervention Period issued April 12, 2005, the Commission directed that notice of Empire's Application be given to the public.

**II. KCPL ACTIVITIES**

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.”

### **III. AGREEMENT**

The Signatory Parties agree as follows:

#### **A. DEFINITIONS**

As used in this Agreement, the following terms shall have these meanings:

**Customer Programs Collaborative (CPC)** – a collaborative of Empire and interested non-IOU Signatory Parties that will make decisions pertaining to the development, implementation, monitoring and evaluation of Empire’s Affordability, Energy Efficiency and Demand Response Programs (Customer Programs).

**Experimental Regulatory Plan** – all the terms and conditions contained in this Agreement.

**FPPCR** – a fuel and purchased power cost recovery mechanism provided for by SB 179.

**Iatan 1** – the existing coal-fired electric generation unit located at the Iatan site near Weston, Missouri owned jointly by KCPL, Aquila and Empire.

**Iatan 2** – Approximately 800-900 MW of new electric generation capacity to be located at the Iatan site near Weston, Missouri, to be regulated capacity except for any portion owned by a municipality or joint municipal utility commission, approximately 500 MWs of which will be owned by Kansas City Power & Light Company as further defined and described in the Stipulation and Agreement filed with the Commission that initiated the case styled “In the Matter of a Proposed Experimental Regulatory Plan of Kansas City Power & Light Company,” Case No. EO-2005-0329.

**Regulatory Plan Term/Duration** – the approximately five (5) year period beginning with the effective date of a Commission Order that approves this Stipulation and Agreement and ending with the effective date of the initial rates that reflect inclusion of the Iatan 2 investment. Provisions of this Stipulation and Agreement may have a different duration as specified in such provisions.

**Resource Plan** – A particular combination of demand-side and supply-side resources to be acquired according to a specified schedule over a planning horizon of not less than 20 years.

**Resource Acquisition Strategy** – A preferred resource plan, an implementation plan and a set of contingency options for responding to events or circumstances that would alter the reasonableness and adequacy of the preferred resource plan.

**SCR Equipment at Asbury** – an SCR (selective catalytic reduction) environmental retrofit at the Asbury coal-fired base load generating station near Asbury, Missouri.

**Significant Change** – a change in facts or circumstances that would call into question whether a current course of action is still appropriate.

**V84 Combustion Turbine** – a Siemens Westinghouse V84.3A2 Econopac gas-fired peaking generating unit to be located at the Riverton generating station in Riverton, Kansas.

## **B. LIST OF APPENDICES**

**Appendix A.** – Projected Infrastructure Investments and Financing Plan

**Appendix B.** – In-Service Criteria

**Appendix C.** – Financial Ratios

**Appendix D.** – Process Illustration (Amortization)

**Appendix E.** – Class Cost of Service Data Requirements

**Appendix F.** – SO<sub>2</sub> Emission Allowance Management Policy

**Appendix G.** - MDNR Targets For Energy Efficiency Programs

## **C. INFRASTRUCTURE INVESTMENTS AND MONITORING**

### **1. INFRASTRUCTURE INVESTMENT PLAN**

Empire agrees to undertake commercially reasonable efforts to make the energy infrastructure investments specified in **Appendix A** and generally described as follows:

- Approximately 800-900 MW of new regulated generation capacity located at the Iatan site near Weston, Missouri, of which Empire anticipates it will own 100-150 MWs (Iatan 2);
- Environmental investments related to Iatan 1 for accelerated compliance with environmental regulations; the Iatan 1 environmental equipment will provide significant reductions in site emissions of SO<sub>2</sub>, NO<sub>x</sub>, Particulate and Mercury and will position the unit to meet compliance requirements proposed in the EPA's Clean Air Interstate Rule. With the anticipated addition of Iatan 2 at this site, compliance on Unit 1 will ensure that total site emissions after completion of Iatan 2 will be less than the current site emissions from a single unit and will help address the environmental concerns of citizens living in the area around the Iatan site. With respect to any of the expenditures anticipated for environmental compliance, Empire will continue to assess the environmental laws to ensure that its expenditures will comply with existing or expected environmental regulations.
- A 155 MW gas fired peaking generating unit to be located at the Riverton generating station in Riverton, Kansas (V84 CT).
- An installation of SCR equipment at the Asbury coal fired base load generating station near Asbury, Missouri (SCR Equipment at Asbury). SCR (selective catalytic reduction) equipment reduces nitrogen-oxide emissions.

**2. CAPITAL INVESTMENTS IN IATAN 2**

Empire agrees to use its best efforts to demonstrate to KCPL that 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) for Iatan 2.

**3. AGREEMENT CONDITIONED UPON EMPIRE'S PARTICIPATION IN IATAN 2**

If 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, then this Agreement is null and void and of no force or effect for any purpose whatsoever.

**4. CERTIFICATE**

The Commission granted Empire, in a Report and Order issued on July 28, 1978, in Case No. EM-78-277, 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. *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). The Signatory Parties agree not to assert that further Commission authorization is required regarding Empire's participation in the siting of Iatan 2.

**5. CAPITAL INVESTMENTS IN IATAN 1**

Empire agrees to fund its ownership percentage of environmental investments related to Iatan 1 for accelerated compliance with environmental regulations. Should Empire sell, assign, transfer, or otherwise dispose of its ownership interest in Iatan 1, the purchaser shall assume all obligations and liabilities associated with Empire's ownership interest in Iatan 1 including, but not limited to, these environmental investments.

**6. ENVIRONMENTAL INVESTMENT RECOVERY TO BE COVERED BY THIS AGREEMENT.**

Empire agrees not to propose any environmental rate recovery otherwise allowed to Empire under SB 179 related to the Iatan 1, Iatan 2 and Asbury SCR environmental expenditures covered by this Agreement.

**7. COST RECOVERY OF CAPITAL INVESTMENTS IN IATAN 1, IATAN 2, ASBURY SCR AND V84 CT**

Conditioned on Empire's continued compliance with the terms of this Agreement, and so long as Empire continues to implement its infrastructure investment commitments described herein (or modifications to its infrastructure investment commitments where such modification(s) have been approved by the Commission), the Signatory Parties agree that they will not take the position that the investments identified in Paragraph III.C.1 should be excluded from Empire's rate base on the ground that the projects were not necessary at the time of this agreement, or that Empire should have used alternative technologies. Notwithstanding the preceding sentence, Empire expressly acknowledges that:

1) nothing in this Agreement limits any Signatory Party's right to inquire into the prudence of Empire's expenditures or to assert that an amount different than that proposed by Empire be included in Empire's rate base or its cost of service;

2) nothing in this Agreement limits any Signatory Party's right to propose including in rates an amount that differs from an amount proposed by another Signatory Party; and

3) nothing in this Agreement limits the right of any Signatory Party to challenge Empire's generation investments contained in this Agreement, related costs and off-system sales margins on the ground that Empire failed to acquire more coal-fired resources at an earlier date.

If any party proposes the disallowance of Iatan 1 or Iatan 2 costs, Empire agrees not to seek to avoid such disallowance on the ground that such expenditures were the responsibility of

KCPL and were not within Empire's control. Empire maintains the ability to litigate prudence issues related to these expenditures on any other basis.

#### **8. IN-SERVICE CRITERIA**

Empire, Staff, Praxair, Explorer and Public Counsel agree that compliance with the in-service criteria for V84 CT and Iatan 2 set out in **Appendix B** satisfies the requirements specified under the Revised Missouri Statutes, of Section 393.135 RSMo. Empire agrees that all units will meet these in-service criteria before being included in rate base. Empire, Staff, Praxair, Explorer and Public Counsel agree that, before the equipment is installed, they will develop and agree to in-service criteria for the emissions equipment that is to be installed on Iatan 1 and Asbury SCR and that that equipment will meet the in-service criteria before the costs for the equipment will be included in Empire's rate base. If Empire, Staff, Praxair, Explorer and Public Counsel are unable to agree, they will present the disagreement to the Commission for resolution.

#### **9. INFRASTRUCTURE INVESTMENT MONITORING**

Empire shall provide status reports on the Infrastructure Investments identified in Paragraph III.C.1. to the Staff, Public Counsel and other interested non-IOU Signatory Parties on a semiannual basis in conjunction with the IRP meetings described in Paragraph III.F.1. Such reports will explain why these investment decisions are in the public interest. In addition, Empire will continue to work with the Staff, Public Counsel, and other interested non-IOU Signatory Parties in its long-term resource planning efforts to ensure that its current plans and commitments are consistent with the future needs of its customers and the energy needs of the State of Missouri.

Empire agrees to actively monitor the major factors and circumstances that influence the need for and economics of all elements of its Infrastructure Investment Plan identified in

Paragraph III.C.1 until Unit 2 is placed into service. On its own or upon request of any non-IOU Signatory Party, Empire will reassess the need for and economics of the Infrastructure Investment Plan if changed factors and circumstances arise that may impact the need for and economics of the Infrastructure Investment Plan during the initial and ongoing implementation of the Infrastructure Investment Plan identified in Paragraph III.C.1. Such factors and circumstances would include, but not be limited to:

- (i) an act of God;
- (ii) terrorist activity;
- (iii) a Significant Change in federal or state tax laws;
- (iv) a Significant Change in federal utility laws or regulations or a Significant Change in GAAP;
- (v) an unexpected, extended outage or shutdown of a major generating unit(s), other than any major generating unit(s) shut down due to an extended outage at the time of the filing of this Agreement;
- (vi) a Significant Change in the cost and/or reliability of power generation technologies;
- (vii) a Significant Change in fuel prices and wholesale electric market conditions;
- (viii) a Significant Change in the cost and/or effectiveness of emission control technologies;
- (ix) a Significant Change in the price of emission allowances;
- (x) a Significant Change in Empire's load forecast;
- (xi) a Significant Change in capital market conditions;
- (xii) a Significant Change in the construction costs of elements of the resource plan;

- (xiii) a Significant Change in the scope or effective dates of environmental regulations;
- (xiv) a Significant Change in federal or state environmental laws;
- (xv) a Significant Change in Empire's projected rates and projected costs to ratepayers resulting from Empire's Infrastructure Investment Plan identified in Paragraph III.C.1;
- (xvi) a sale of a significant portion of Empire's electric facilities; and,
- (xvii) a Significant Change in the assets owned by Empire as the result of an acquisition.

If Empire determines that its Infrastructure Investment Plan should be modified because changed factors or circumstances have impacted the need for and economics of the Infrastructure Investment Plan, then it shall notify all Signatory Parties in writing within ten (10) days of any such determination. In its notification, Empire shall:

- 1) identify the changed factors and circumstances and explain why they led Empire to propose modification to the Infrastructure Investment Plan;
- 2) specify the new proposed Infrastructure Investment Plan;
- 3) provide a description of the alternatives that it evaluated and the process that it went through in choosing the new proposed Infrastructure Investment Plan; and
- 4) provide detailed workpapers that support the evaluation and the process whereby a new proposed Infrastructure Investment Plan was chosen.

If any Signatory Party has concerns regarding Empire's new proposed Infrastructure Investment Plan, it shall notify Empire and all Signatory Parties in writing within thirty (30) days of Empire's written notification to the Signatory Parties. Upon receipt of any such written notification from a Signatory Party, Empire shall promptly schedule a meeting on reasonable advance notice to all Signatory Parties where the Signatory Parties will make good faith efforts



to reach consensus regarding how the Infrastructure Investment Plan should be modified in order to create a modified plan that is reasonable and adequate in light of any changed factors or circumstances. If the Signatory Parties cannot resolve the dispute within ninety (90) days of Empire's written notification, the matter will be brought to the Commission for its determination. Any agreement among the Signatory Parties to modify the Infrastructure Investment Plan shall be filed with the Commission for approval.

If any Signatory Party believes that there have been significant changes in factors or circumstances impacting the need for and economics of the Infrastructure Investment Plan that have not been acknowledged by Empire, any Signatory Party may notify Empire and all other Signatory Parties and request a meeting of all Signatory Parties to discuss the specific changes in factors or circumstances that give rise to the concern of the Signatory Party giving such notice. If the interested Signatory Parties cannot resolve the dispute within ninety (90) days of a Signatory Party's written notification, the matter will be brought to the Commission for its determination. The burden of proof to demonstrate the reasonableness and prudence of any Infrastructure Investment Plan shall remain with Empire in any dispute regarding changed factors or circumstances.

Signatory Parties retain the right 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.

Nothing in this section shall be construed to interfere with Empire's ability to meet its obligations to provide safe and adequate service by obtaining the resources necessary to meet the short-term reserve margin requirements of Empire's regional reliability organization, currently the Southwest Power Pool, Inc.

## **D. RATE CASES AND RATE RECOVERY**

### **1. EXPECTED RATE CASES DURING REGULATORY PLAN**

Empire is not required to file any rate case prior to the rate case which will include the investments related to the completion of Iatan 2 as described in Paragraph III.D.7 herein.

Any rate case Empire initiates during the term of this agreement shall be subject to the following:

#### **a. NEW SPECIAL CONTRACTS**

Empire agrees 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 tariff rate for service from Empire. Other provisions in New Special Contracts will not affect rate base for regulatory purposes. For purposes of this Agreement, New Special Contracts are those contracts for service between Empire and a Signatory Party that were not effective at the time of the filing of the Application that began this case.

#### **b. AFFORDABILITY, DEMAND RESPONSE, AND EFFICIENCY PROGRAMS**

Any rate case will also include the amortization related to the Affordability, Demand Response, and Efficiency Programs, as more fully described in Paragraph III.F.2 below. The Signatory Parties agree not to contest the continuation of this amortization on any basis other than Empire's failure to prudently implement the Affordability, Demand Response, and Efficiency Programs described in Paragraph III.F.2 below.

#### **c. INTERVENTION IN RATE CASES**

Each of the Signatory Parties shall be considered as having sought intervenor status in any rate case or rate filings without the necessity of filing an application to intervene and Empire consents in advance to such interventions. The Signatory Parties expect that the Commission's

standard procedures and rules will be applicable to any rate case or rate filing including public notice, local public hearings and evidentiary hearings at appropriate times and places, and an opportunity for interested parties other than the Signatory Parties to seek to intervene.

**d. REVENUE COMPUTATION INPUTS**

Empire will provide monthly billed kWh sales, rate revenues, customer numbers and billing units aggregated by jurisdiction, by rate class, and by voltage level to Staff and the non-IOU Signatory Parties. This data will be provided by usage period (read cycle) for the weather-sensitive rate classes. Actual data will be provided to the extent available for the test year and additional actual data for the balance of the test year will be submitted as it becomes available.

Empire will provide hourly class load data to Staff and the non-IOU Signatory Parties that covers a minimum of fifteen consecutive calendar months.

**2. AMORTIZATIONS TO MAINTAIN FINANCIAL RATIOS**

This Agreement contains provisions that provide Empire the opportunity to maintain its debt at investment grade rating during the period of the construction expenditures contained in this Agreement. Empire understands that it is responsible to take prudent and reasonable actions to maintain Empire's debt at investment grade levels and avoid actions that result in a downgrade. Empire further agrees that it will not seek to recover in Missouri jurisdictional rates any negative impact caused by:

- 1) its failure to be adequately insulated from the business risks of Empire's non-regulated operations;
- 2) any significant merger, sale or acquisition, or corporate restructuring activities; or
- 3) its decision to create an additional risk by relying upon the as yet unknown implementation of SB 179 for recovery of fuel and purchased power costs in lieu of addressing recovery of those costs through this regulatory plan.

Empire recognizes its obligation to continue to prudently manage costs, continuously improve productivity, and maintain service quality in a reasonable manner during the Regulatory Plan. Empire further recognizes that any finding by the Commission that Empire has failed to prudently manage its costs, continuously improve productivity, and maintain service quality in a reasonable manner during the Regulatory Plan will negate the obligation of the Signatory Parties contained in this section.

The “Additional Amortizations to Maintain Financial Ratios”, is designed to satisfy two of three financial ratio targets shown in **Appendix D** “Process Illustration – Adjustment of Amortization Amount.” The three selected financial ratios are: Adjusted Total Debt to Total Capitalization, Adjusted Funds from Operations Interest Coverage and Adjusted Funds from Operations as a Percentage of Average Total Debt. The Adjusted Total Debt to Total Capitalization ratio will be addressed in future Empire financing applications. The current ranges for these financial ratios are shown in **Appendix C** “Financial Ratios.” If these ratio guidelines or ranges are changed or modified before June 1, 2010, the Signatory Parties will work together to determine the appropriate values for these ratios, including consideration of the use of the last published ranges for these ratios. In the event that Standard and Poor’s changes its ratio guidelines or ranges for these three ratios for a business profile of 6 or Standard and Poor’s changes Empire’s business profile to a 5 or less, before June 1, 2010, the Signatory Parties will work together to determine if financial ratio targets remain appropriate or whether a change is appropriate. Such determination may include consideration of the last published ranges for these ratios.

The Signatory Parties agree to support an additional amortization amount added to Empire’s electric cost of service in any general rate case filed prior to the rate case that includes

the Iatan 2 investment 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 electric jurisdictional portion of the financial ratio targets shown in **Appendix D** , for the Adjusted Funds from Operations Interest Coverage ratio and the Adjusted Funds from Operations as a Percentage of Average Total Debt ratio. The Signatory Parties agree to support an amortization level necessary to meet the Missouri jurisdictional portion of these financial ratio targets identified in **Appendix D** and calculated in a manner consistent with **Appendix D**.

**Appendix D** "Process Illustration: Adjustment of Amortization Amounts" illustrates the adjustment process that the Signatory Parties agree to use to determine the Missouri jurisdictional amortization levels discussed herein. The additional amortization shown in **Appendix D** will exclude any consideration of amounts related to imprudent actions as determined by the Commission. The Missouri electric jurisdictional portion and amounts of the additional amortization will be determined by the Commission in each relevant rate case. The prudence of the "Capitalized Lease Obligations" and "Off-Balance Sheet Obligations" will be determined in the first general rate case or rate filing that affords the Commission the opportunity to review the matter. Additional taxes will be added to the amortization to the extent that the Commission finds such taxes to be appropriate. The additional amortization will not reflect any negative cash flow impacts related to New Special Contracts. For purposes of calculating additional amortization pursuant to this section, these New Special Contract customers will be treated as if they were paying the full generally applicable tariff rate. In addition, any other provisions in New Special Contracts will not affect rate base for regulatory purposes.

The Signatory Parties recognize that credit rating agencies review other financial

indicators and other factors and that these three ratios referenced are not definitive in and of themselves. If Empire meets the targets shown in **Appendix D** but does not receive an investment grade credit rating, Empire agrees that the Signatory Parties are under no obligation to recommend or agree to any further cash flow or rate relief. Empire also recognizes and agrees that its Missouri electric operations are only responsible for and will only provide cash flow for its Missouri operating share of the necessary cash flows as set out in this Paragraph III.D.2. Empire will not argue for or receive increased cash flows from its Missouri regulated electric operations needed to meet the financial ratio targets shown in **Appendix D** to the extent caused by:

- (1) inadequate cash flows from its non-Missouri retail regulated operations,
- (2) inadequate cash flows from any wholesale operations,
- (3) inadequate cash flows from the non-regulated subsidiaries,
- (4) any risk that is unrelated to Empire's Missouri regulated electric operations,
- (5) any Empire imprudent costs, or
- (6) any costs not included in Empire's Missouri jurisdictional electric revenue requirement by the Commission.

The Signatory Parties will not be precluded from suggesting other amortizations or other relief to address cash flow concerns resulting from a significant event such as those identified in Paragraph III.C.9.i-iv. No Signatory Party is precluded from supporting an amortization amount that exceeds the requirements of this Paragraph III.D.2. 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.

This paragraph does not preclude a party from requesting that this amortization be directed toward specific plant accounts or from requesting additional changes in depreciation rates that may result from depreciation studies.

**3. AMORTIZATION: TEN-YEAR RECOGNITION OF FUTURE BENEFITS**

In order to ensure that the benefits of offsetting the rate base related to the amortizations contained in this Agreement accrue to Empire's customers in future rate proceedings, Empire agrees that any such benefits shall be reflected in its rates, notwithstanding any future changes in the statutory provisions contained in Chapters 386 and 393 RSMo, for at least ten (10) years following the effective date of the Order Approving Stipulation and Agreement in this proceeding.

**4. ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION ("AFUDC")**

Empire agrees to a 2.50% or 250 basis point reduction in the equity portion of the AFUDC rate applicable to Iatan 2. Empire shall use this 250 basis point reduction in the AFUDC rate from the effective date of an Order in this proceeding that approves this Stipulation and Agreement, and in all subsequent calculations of AFUDC on Iatan 2 until the in-service date of Iatan 2.

**5. CONSTRUCTION ACCOUNTING**

The non-Empire Signatory Parties agree to support accounting for the Iatan 2 project, and environmental investments related to Iatan 1, using "Construction Accounting." "Construction Accounting" is defined as use of the same treatment for expenditures and credits consistent with the accounting treatment prior to the time that these investments are placed into service through the effective date of the next succeeding rate case. Construction Accounting will include treatment, if applicable, for test power and its valuation consistent with the treatment of such

power prior to Iatan 2's commercial in service operation date. The AFUDC rate that will be used during this period will be consistent with the AFUDC rate calculation prior to the commercial in-service operational date of Iatan 2. The non-IOU Signatory Parties reserve the right to challenge amounts deferred under this paragraph in the event that they contend that the Iatan 2 commercial in-service date was delayed due to imprudence relating to its construction. The amortization of the amounts deferred under construction accounting will be treated consistent with the treatment afforded AFUDC.

## **6. FUEL AND PURCHASED POWER COST RECOVERY**

Empire has expressly stated that it intends exclusively to rely upon the FPPCR mechanism of SB 179 for its recovery of fuel and purchased power costs. Accordingly, the Signatory Parties intentionally make no provision for any other fuel and purchased power cost recovery mechanism in this Agreement. However, should SB 179 fail to become law or the FPPCR mechanism be determined by the courts to be unlawful, this provision will not prohibit Empire from proposing an Interim Energy Charge (IEC) for the purposes of fuel recovery in a rate case. The Signatory Parties maintain the right to oppose any IEC proposal.

Empire agrees that, to the extent permitted by law, it will not seek to use the FPPCR provisions of SB 179 for the ratemaking treatment of revenues and costs related to Empire's off-system sales. Empire may propose and support provisions in Commission rules related to SB 179 that provide an option for the inclusion of revenues and costs related to off-system sales in either a Fuel and Purchased Power Cost Recovery mechanism or in base rates (i.e. margin rates). However, Empire will not support, directly or by proxy, a rule provision that only allows the inclusion of revenues and costs related to off-system sales in a Fuel and Purchased Power Cost Recovery mechanism and does not allow their inclusion in base rates.



**7. RATE FILING (2009 RATE CASE)**

(a) Schedule. Rate schedules will be filed with the Commission on December 1, 2009, or six (6) months prior to the commercial operation date of Iatan 2, whichever is later. With a December 1, 2009 filing, the test year will be based upon a test year ending December 31, 2009, (initially filed with nine months actual and three months budget data), with updates for known and measurable changes, as of March 31, 2010, and with a true-up through June 30, 2010. The specific list of items to be included in true-up proceeding shall be mutually agreed upon between Empire, Staff and Public Counsel, or ordered by the Commission during the course of the rate case.

(b) Empire will provide to Staff and the non-IOU Signatory Parties data as described in Paragraph III.D.1.d. (Revenue Computation Inputs)

(c) Class Cost of Service Study. Empire agrees that its 2009 Rate Case initial filing will include a Missouri jurisdictional customer class cost of service study, covering at least the requirements shown in **Appendix E**, with all underlying workpapers.

**E. ADDITIONAL EMPIRE COMMITMENTS**

**1. SALE OR PURCHASE**

In the case of any significant change in the assets owned by Empire as the result of either a proposed sale or acquisition, Empire will file along with its application to the Commission for approval of such sale or acquisition: (a) two resource plans, one with and one without the proposed sale or acquisition; and (b) information designed to affirmatively show that part or all of any amortization resulting from this Agreement would still be necessary after the closing of the proposed sale or acquisition. These filing requirements terminate with the earlier of the date rates become effective as a result of Empire's 2009 rate case (Paragraph III.D.7.) or the end of

any amortization contemplated by this Agreement.

If Empire sells, assigns, transfers or otherwise disposes of its ownership interest in Iatan 1, then the purchaser shall assume all obligations and liabilities associated with Empire's ownership interest in Iatan 1 including, but not limited to, the Iatan 1 environmental investments included in Empire's Infrastructure Investment Plan.

## **2. OFF-SYSTEM SALES**

Empire agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. Empire agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. Nothing in this Agreement prohibits the Signatory Parties from proposing adjustments to normalize or annualize off-system sales or revenues and related expenses in future Empire ratemaking proceedings. Empire agrees that all of its off-system energy and capacity sales revenue will continue to be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates. The phrase "off-system energy and capacity sales revenue will continue to be used to establish Missouri jurisdictional rates" shall mean that such revenues will not be excluded from the ratemaking process so long as "the related investments and expenses are considered in the determination of Missouri jurisdictional rates," regardless of whether that ratemaking process is: (1) a traditional rate case where fuel costs and off system sales revenues are reflected in rates for bundled retail service; or (2) a FPPCR mechanism (such as that enabled by SB 179); (3) an Interim Energy Charge; or (4) some other cost recovery mechanism in which the investments and expenses related to off-system energy and capacity sales revenue are considered in the determination of Missouri jurisdictional rates. Empire agrees that it will not seek to avail itself

of any legislation that may be enacted in the future that would be inconsistent with the ratemaking treatment for off-system sales revenues and associated expenses set forth in this paragraph.

### **3. TRANSMISSION RELATED REVENUES**

Empire agrees that transmission related revenues and related expenses will continue to be treated above the line for ratemaking purposes. Empire specifically agrees not to propose any adjustment that would remove any portion of its transmission-related revenues from its revenue requirement determination in any rate case, and Empire agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. Nothing in this Agreement prohibits the Signatory Parties from proposing adjustments to normalize or annualize transmission-related revenues and related expenses in future Empire ratemaking proceedings. Empire agrees that all of its transmission-related revenues will continue to be used to establish Missouri jurisdictional rates as long as the related investments and expenses are considered in the determination of Missouri jurisdictional rates. The phrase “transmission-related revenues will continue to be used to establish Missouri jurisdictional rates” shall mean that such revenues will not be excluded from the ratemaking process, so long as “the related investments and expenses are considered in the determination of Missouri jurisdictional rates,” regardless of whether that ratemaking process is: (1) a traditional rate case where transmission-related revenues are reflected in rates for bundled retail service; or (2) a FPPCR mechanism (such as that enabled by SB 179), (3) an Interim Energy Charge; or (4) some other cost recovery mechanism in which the investments and expenses related to transmission-related revenues are considered in the determination of Missouri jurisdictional rates.

### **4. PENSION EXPENSE**

The Company’s FAS 87 cost will be treated in a like manner to that approved by the

Commission in Case No. ER-2004-0570, for all purposes.

**5. SO<sub>2</sub> EMISSION ALLOWANCES**

The Signatory Parties agree upon the SO<sub>2</sub> Emission Allowance Management Policy (SEAMP) contained in **Appendix F**. Empire will record the proceeds, in the event that revenues exceed original cost or the allowance is loaned to a third party, from emission allowance transactions in Account 254, the balance in this account will be Regulatory Liabilities, to be used as an offset to rate base in any future rate case until a final decision is made on the amortization treatment in future rate cases.

**6. NON-MISSOURI REGULATORY PLANS CONDITION**

If Empire agrees to a regulatory plan related to the construction of Iatan 2 in any of its non-Missouri regulatory jurisdictions and the terms of any such regulatory plan are more favorable to consumers than this Agreement, Empire agrees that it will offer the other Signatory Parties in Missouri comparable terms to those terms agreed upon in such non-Missouri regulatory jurisdiction.

**F. RESOURCE PLAN AND CUSTOMER PROGRAMS DEVELOPMENT**

**1. RESOURCE PLAN DEVELOPMENT**

Empire will hold Integrated Resource Planning (“IRP”) presentations semiannually and, in addition to making its presentation to the Staff, Public Counsel and the Missouri Department of Natural Resources, will invite to the presentation all interested non-IOU Signatory Parties. To the extent any such party is not required by statute to maintain the confidentiality of the substance of such presentations, the presentations will be subject to a standard confidentiality agreement.

In an effort to reduce Empire’s natural gas exposure, the resource plan development process will evaluate purchased power proposals as well as other supply and demand-side

resource options and will involve the non-IOU Signatory Parties in an effort to reach agreement on the decisional prudence of at least some of Empire's ultimate resource acquisition decisions.

As an initial step in this process, Empire issued an RFP for up to 200 MW baseload firm capacity and energy on July 1, 2005. Interested non-IOU Signatory Parties will have the opportunity to review the responses at the time they are submitted to Empire. The proposals will be evaluated with the MIDAS CEM (capacity expansion module), the MIDAS Gold integrated resource planning tool and spreadsheet analysis. Global Energy Decisions will assist Empire with the study. Empire will make available to the interested non-IOU Signatory Parties all inputs and outputs from the analytical tools that Empire or its agents use to analyze the proposals as well as all other advice/assistance provided to Empire by Global Energy Decisions.

Empire will submit a detailed resource plan to the non-IOU Signatory Parties in July 2006. The detailed resource planning process shall cover at least a twenty-year planning horizon and the documentation and outcomes of the planning process, at a minimum, shall include:

- a) an updated load forecast of seasonal energies and peaks by customer class;
- b) identification of changes in the load forecast from its last filing with an explanation of the reasons for the changes;
- c) a measurement of the impact on the seasonal demands and energies of all existing energy efficiency and demand response programs, including interruptible and demand curtailment type programs implemented as a result of Commission Case No. EO-2005-0386;
- d) identification of projected retirement of existing supply-side resources;
- e) identification of candidate demand-side options for purposes of developing alternative resource plans, based upon analysis and recommendations from the

Empire Customer Programs Collaborative (CPC);

- f) identification of supply-side resource options including renewable and distributed generation technologies. Empire will issue requests for proposals (RFPs) for supply-side resources that seek to discover potential purchased power agreements (PPAs) and opportunities for participating in new or existing baseload generation as part of its efforts to identify supply-side resource options;
- g) ranking of supply-side options based on their relative annualized capital and operating costs with and without probable environmental costs as this term was defined in 4 CSR 240-22.020 (46) at the time of this Agreement;
- h) identification of candidate supply-side resource options for purposes of developing alternative resource plans;
- i) explanations of eliminations from further consideration of those supply-side options eliminated in a screening analysis;
- j) identification of opportunities for life extension and refurbishment of existing generation plants;
- k) opportunities for long-term power purchases and sales both firm and nonfirm, that are likely to be available over the planning horizon;
- l) transmission upgrade and expansion plans including cost estimates for transmission upgrades associated with each candidate supply-side resource option;
- m) sensitivity analysis to identify uncertain factors that are critical to the performance of the resource plan including, but not limited to, load forecast risk, changing fuel prices, and the cost of complying with potential new environmental

- laws/regulations (including a carbon tax) and other state and federal legislation;
- n) combined assumptions for different values of identified critical uncertain factors into internally consistent base case and alternate scenarios (e.g., a carbon tax scenario would likely include higher values for natural gas prices and lower values for coal prices and SO<sub>2</sub> allowance prices as coal-fired generation is displaced by gas-fired generation under a carbon tax scenario);
  - o) development of a set of alternative resource plans which include different combinations of candidate supply and demand-side options. At least one of the alternative resource plans should be designed to minimize long-run costs and/or the risks associated with each of the scenarios. At least one alternative resource plan should be designed to achieve reasonable outcomes for all of the identified scenarios;
  - p) decision tree analysis (or some alternative analysis agreed upon by the Signatory Parties) of each resource plan that appropriately represents the key resource decisions and critical uncertain factors that affect the performance of the resource plan;
  - q) a preferred resource plan that, in the judgment of the utility, strikes a balance among all resource planning objectives (including minimization of the present value of revenue requirements over the planning period and the mitigation of risks associated with critical uncertain factors);
  - r) an evaluation of the risks of the important variables of the preferred plan and the identification of reasonable contingencies to the preferred plan should changes in the expected value(s) of variable(s) cause an alternative plan to become the new

preferred plan; and

- s) a resource acquisition strategy that includes a three-year implementation plan that specifies the major tasks and schedules necessary to implement the preferred resource plan.

Empire's submittal shall include a capacity balance table that shows the peak load forecast, taking into account all demand side resources, the generation capacity by unit, contract capacity purchases and sales amounts, planning reserve margin and capacity excess or need, for at least the twenty-year planning horizon.

Within four weeks of its resource plan filing, Empire will meet with the Staff, Public Counsel, MDNR and other interested non-IOU Signatory Parties to present its resource plan and to answer questions regarding the filed plan. If any of the signatory parties identify substantial deficiencies in Empire's attempts to comply with the provisions of this section, the signatory party must provide written notification to Empire within 60 days of the meeting where Empire presented its filed plan. If the parties are unable to resolve a dispute regarding the identified deficiencies within 60 days of the written notification, then the matter may be brought to the Commission for its determination.

Empire will meet semi-annually with the interested non-IOU Signatory Parties beginning within three months of the effective date of this Agreement to update the interested non-IOU Signatory Parties on the progress of its resource planning process. If Empire significantly changes its resource plan or implementation plan between the semiannual meetings, Empire will submit a modified plan within ten (10) days of its decision to change the plan.

Empire will continue to provide to Staff and Public Counsel and other interested non-IOU Signatory Parties copies of competitive bidding RFPs at least 45 days prior to sending out



each RFP. Staff, Public Counsel and interested non-IOU Signatory Parties shall have the opportunity to provide comments to Empire within 30 days of their receipt of the RFP.

Thirty days before awarding contracts to successful bidders, Empire will provide to Staff, Public Counsel and interested non-IOU Signatory Parties its evaluation of the proposals received in response to its RFP for its forecasted capacity needs. This evaluation will include the elements of risk analysis and plan selection as described in 4 CSR 240-22.070.

Empire acknowledges Staff and Public Counsel have the right to discovery consistent with Commission rule 4 CSR 240-2.090 regarding any information about Empire's resource planning, and Empire agrees to extend similar rights to non-IOU Signatory Parties with regard to resource planning issues.

The results of Empire's July 2006 Resource Plan will be incorporated into its August 2007 Electric Resource Plan filing. If the Commission's Electric Utility Resource Planning rule (Chapter 22) is revised, the non-IOU Signatory Parties agree to review and revise this section of the Agreement in order to avoid duplicative processes.

If there are issues regarding the resource planning process or plans that the Staff, Public Counsel, interested non-IOU Signatory Parties and Empire cannot resolve, any such party may take the issue(s) to the Commission for resolution.

**2. CUSTOMER PROGRAMS COLLABORATIVE -- AFFORDABILITY, ENERGY EFFICIENCY, AND DEMAND RESPONSE PROGRAMS**

The Staff, Public Counsel, MDNR, Empire and any other interested non-IOU Signatory Party will serve as a collaborative ("Customer Programs Collaborative" or "CPC") that will make decisions pertaining to the development, implementation, monitoring and evaluation of Empire's Affordability, Energy Efficiency and Demand Response Programs (Customer Programs). The CPC will coordinate its activities with Empire's existing customer programs and

Empire's IRP process in order to reduce any redundancy and to increase the effectiveness of all these related activities. Potential members will state their interest in becoming a member of the CPC by August 1, 2005.

Each CPC member receives one vote. Affirmative votes by a super-majority of the CPC are required in order for the CPC to make decisions in areas 1, 2, 4, 5, and 6 described below. A super-majority is the total number of votes less one. If only one voting CPC member votes against a CPC decision item, that CPC member shall have the opportunity to request that the Commission nullify the CPC's decision on the basis that it is not in the public interest, so long as: (a) the CPC is notified of this pending request within 10 days of the vote; and (b) a pleading is filed with the Commission within 30 days of the vote, requesting that the Commission annul the CPC's decision. No further expense related to the contested decision item will be incurred until the Commission has ruled on this request. If the only CPC member who voted not to affirm a CPC decision item is unsuccessful in its request for the Commission to annul the CPC's decision, that CPC member retains the ability to litigate cost recovery issues, including decisional prudence, pertaining to the unsuccessfully contested CPC decision item.

Empire agrees to meet with and provide updates to the CPC at least once every six months regarding:

- 1) the status of program implementation including the amount of expenditures for each program and level of customer participation;
- 2) the status of program evaluations including evaluation consultants chosen, evaluation budgets, evaluation expenditures and copies of completed evaluations; and
- 3) the status of new program selection and design efforts, including copies of program screening results.

The CPC's oversight of Empire's Customer Programs will include the following areas/activities:

- 1) Customer Programs Objectives Development. Separate objectives may be developed for Affordability Programs, Energy Efficiency Programs, and Demand Response Programs. Consistent with Empire's current obligations in Case No. ER-2004-0570, the CPC will use its best efforts to identify and implement cost-effective programs that are consistent with the objective of providing the public with energy services that are safe, reliable and efficient, at just and reasonable rates, in a manner that serves the public interest. **Appendix G** identifies the initial targets suggested by DNR. The other Signatory Parties have no reason to believe these targets are or are not valid.
- 2) Consultant Selection. A consultant(s) will be selected to assist in the design, pre-implementation evaluation, and post-implementation evaluation of Customer Programs.
- 3) Capacity Balance and Supply-Side Resource Cost Review. A review of Empire's future capacity and energy needs and the supply-side resources that will be required to meet those future needs will take place within three months of the effective date of an Order approving this Agreement. Empire agrees to provide information needed by the CPC for its review of Empire's future capacity and energy needs and the supply-side resources that may/will be utilized to meet those future needs. Information from this review will be used in the pre-implementation cost-effectiveness screening of Customer Programs.

- 4) Design, Screening, and Pre-implementation Evaluation of Potential Customer Programs. This process will be consistent with the Commission's Chapter 22 Electric Utility Resource Planning Rules. This step will include: (a) the consideration of customer programs that have been shown to be successful and cost-effective by other utilities and (b) DSM screening that includes energy efficiency and demand response programs, including a comprehensive study of interruptible and curtailable opportunities throughout Empire's Missouri service territory.
- 5) Customer Program Portfolio Choice. A portfolio of Customer Programs to be implemented will be chosen and an implementation plan will be developed. The implementation plan will include a plan for post-implementation process and impact evaluations, where feasible, for each program in the chosen portfolio of Customer Programs. The CPC will seek to develop a full portfolio of Customer Programs, but may decide to move forward with individual programs as they are developed and approved through the CPC decision-making process.
- 6) Post-implementation Evaluation of Customer Programs. A detailed post-implementation review of the initial two (2) years of each program shall be completed within six (6) months of the end of each program's second year. This review will include both process evaluations and cost effectiveness evaluations. These evaluations will then be used in the selection and design of future programs.

To the extent possible, Empire will coordinate with Missouri Gas Energy (MGE) and other existing entities/organizations to administer its Affordability, Energy Efficiency and

Demand Response programs.

For both the pre-implementation and post-implementation analysis described above, Empire shall use its best efforts to compute, at a minimum, the Total Resource Cost Test, the Utility Cost Test, the Participant Test, the Rate Impact Measure (RIM) Test and MIDAS present value of revenue requirements. The Signatory Parties do not agree that any of these tests are necessarily determinative. Except as stated herein, the CPC's decision-making process will be consistent with the Commission's Chapter 22 Electric Utility Resource Planning Rules. The CPC's documentation of its decision-making process for selecting Energy Efficiency and Demand Response Programs shall identify and explain considerations, if any, other than the minimization of the present value of revenue requirements (e.g., rate impact or risk mitigation considerations) that were used in its decision-making process.

Program evaluation results will be used prospectively for program design and implementation plan adjustments.

The Signatory Parties have not agreed upon any budgeted expenditures for Empire's Customer Programs.

Empire shall accumulate the Affordability, Energy Efficiency and Demand Response Program costs in regulatory asset accounts as the costs are incurred. Beginning with the earlier of the date rates become effective in Empire's first Rate Filing within the term of this Agreement or March 27, 2008, Empire shall begin amortizing the accumulated costs over a ten (10) year period. Empire will continue to place the Affordability, Energy Efficiency and Demand Response Program costs in the regulatory asset accounts, and costs for each vintage subsequent to the first Rate Filing shall be amortized over a ten (10) year period. Signatory Parties reserve the right to establish a fixed amortization amount in any Empire rate case filed prior to June 1,

2011. The amounts accumulated in these regulatory asset accounts that have not been included in rate base shall be allowed to earn a return not greater than Empire's reduced AFUDC rate as specified in this Agreement.

The class allocation of the costs, except as specified below, shall be determined when the amortizations are approved.

Customers on Rate Schedules LP, STS and STS-Praxair will not be charged any costs nor be allocated any expenses with respect to any new energy efficiency and demand response program unless such program has a pre-implementation evaluation RIM test ratio that is greater than 1.0, nor will such customers be eligible for participation in such programs. These customers may be allocated a portion of the costs of screening customer programs when all or part of the amortized costs of such screenings are proposed to be reflected in rates. Praxair and Explorer agree that they will not vote on programs that do not have a pre-implementation evaluation RIM test ratio that is greater than 1.0.

#### **G. EFFECT OF THIS NEGOTIATED SETTLEMENT**

1. None of the Signatory Parties shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, decommissioning methodology, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Agreement, or for which provision is made in this Agreement. This Agreement shall not be construed as fulfilling any requirements for environmental permits necessary for construction or operation of the infrastructure investments delineated in this Agreement.

2. This Agreement is based on the unique circumstances presented by Empire to the Signatory Parties. This Agreement shall not be construed to have precedential impact in any

other Commission proceeding.

3. The Signatory Parties enter into this Agreement in reliance upon information provided to them by Empire. In the event that the Commission finds that Empire failed to provide the Signatory Parties with material and relevant information in its possession, or which should have been available to Empire through reasonable investigation, or in the event that the Commission finds that Empire misrepresented facts relevant to this Agreement, this Agreement shall be terminated.

4. This Agreement represents a negotiated settlement. Except as specified herein, the Signatory Parties to this Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to unconditionally approve this Agreement.

5. The provisions of this Agreement have resulted from negotiations among the Signatory Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Agreement in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

6. When approved and adopted by the Commission, this Agreement shall constitute a binding agreement among the Signatory Parties hereto. The Signatory Parties shall cooperate in defending the validity and enforceability of this Agreement and the operation of this Agreement according to its terms.

7. This Agreement does not constitute a contract with the Commission. Acceptance of this Agreement by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego, during the Regulatory Plan, the use of any discovery,

investigative or other power which the Commission presently has. For example, non-signatories to this Agreement may request or file for an earnings/revenues investigation of Empire, and in response the Commission may direct the Staff to conduct an earnings/revenues investigation of Empire. Nothing in this Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation. Nothing in this Agreement is intended to impinge, restrict or limit in any way Public Counsel's discovery powers, including the right to access information and investigate matters related to Empire.

8. This Agreement contains the entire generally applicable agreements or arrangements of the Signatory Parties. There are no other generally applicable agreements or arrangements that pertain to these matters. Silence in this Agreement on a particular topic or issue indicates that the Signatory Parties reached no agreement on the handling of that topic or issue.

9. All of the obligations and conditions Empire agrees to and assumes in this Agreement shall be binding upon any division, affiliate, successor or assignee of Empire in the same manner and to the same extent as Empire.

#### **H. COMMISSION APPROVAL OF THE STIPULATION AND AGREEMENT**

1. Empire has filed direct testimony that may be used in support of this Agreement.

2. Public Counsel reserves the right to request local hearings in the Empire service area. Notwithstanding any other provision of this Agreement, Public Counsel also specifically reserves the right to assert a position on any new issue raised at local hearings which has not been addressed in this Agreement.

3. The Staff shall file suggestions or a memorandum in support of this Agreement and the other Signatory Parties shall have the right to file responsive suggestions or prepared



testimony.

4. If requested by the Commission, the Staff shall have the right to submit to the Commission an additional memorandum addressing the matter requested by the Commission. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the Staff's memorandum, a responsive memorandum, which shall also be served on all parties. The contents of any memorandum provided by any Signatory Party are its own and are not acquiesced in or otherwise adopted by the other Signatory Parties to this Agreement, whether or not the Commission approves and adopts this Agreement.

5. The Staff shall also have the right to provide, at any agenda meeting at which this Agreement 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 any protective order issued in this case.

6. If the Commission does not unconditionally approve this Agreement without modification, and notwithstanding its provision that it shall become void thereon, neither this Agreement, 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 to a hearing on the issues presented by the Agreement, for cross-examination, or for a decision in accordance with Section 536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the parties shall retain all procedural and due process rights as fully as though this Agreement had not been

presented for approval, and any testimony or exhibits that have been offered or received in support of this Agreement shall thereupon 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 further purpose whatsoever.

7. In the event the Commission accepts the specific terms of the Agreement, the Signatory Parties waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 2000; and their respective rights to judicial review pursuant to Section 386.510 RSMo 2000. This waiver applies only to a Commission Order Approving Stipulation and Agreement or other Report And Order approving this Agreement issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Agreement.

**I. THE TERM OF THIS AGREEMENT.**

This Agreement (once approved by the Commission) will be deemed to have become effective as of the date the Order of the Commission approving this Agreement becomes effective, and will expire on the effective date of the initial rates that reflect inclusion of the Iatan 2 investment, except where otherwise specified in this Agreement.

**J. DISPUTE RESOLUTION.**

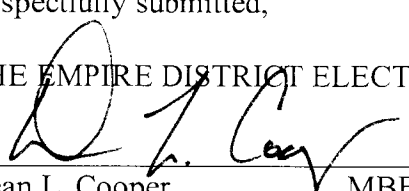
The Signatory Parties agree that disputes related to the implementation and operation of this Agreement can be taken to the Commission for resolution.

**WHEREFORE**, the Signatory Parties respectfully request that the Commission approve


this Stipulation and Agreement to be effective by August 1, 2005, if possible.

Respectfully submitted,

THE EMPIRE DISTRICT ELECTRIC COMPANY

  
\_\_\_\_\_  
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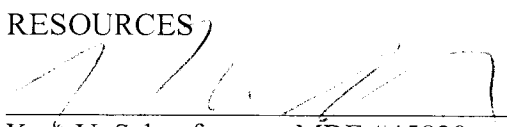
PRAXAIR, INC. AND EXPLORER PIPELINE  
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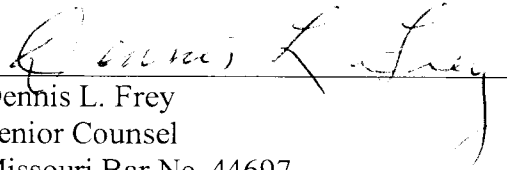
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7/18/05

MISSOURI DEPARTMENT OF NATURAL  
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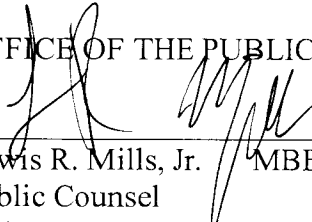
  
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## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, or sent by electronic mail, on July ~~16~~<sup>20</sup>, 2005, to the following:

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Jefferson City, MO 65101

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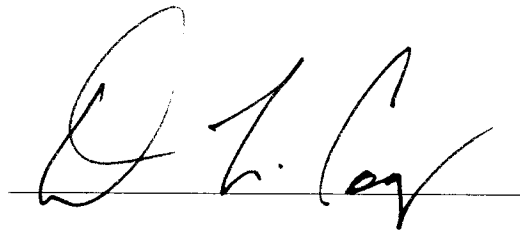
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A handwritten signature in black ink, appearing to read "J. B. Lowery", is written over a horizontal line.