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

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| **In the matter of the Application of The Empire District Electric Company for authority to file tariffs reflecting increased charges for electric service within its Missouri service area** | **)<br>)<br>)<br>)<br>)<br>)** | **ER-2004-0570** |

**INITIAL BRIEF**
**OF PRAXAIR, INC. AND EXPLORER PIPELINE COMPANY**

COME NOW Intervenors Praxair, Inc. (Praxair) and Explorer Pipeline Company (Explorer) and submit their Initial Brief in this matter concerning Empire District Electric Company (Empire).

## I. INTRODUCTION.

Praxair/Explorer believe that the Commission is familiar with the procedural background of this case and that other parties will detail that background. Seeking to avoid needless duplication, but will instead briefly note the nature of these two intervenors' business activity.

Praxair, Inc. is the successor to the Linde' division of Union Carbide Corporation. A world leader in the production of compressed gases, Praxair operates a plant near Neosho, Missouri in Empire's service territory. This plant has a load of roughly 7 megawatts (mW) and operates at a high load factor that approaches if not exceeds 90%.[1] Praxair's business is highly competitive. Differences of pennies per unit often determine whether business is won or lost. Praxair's Neosho plant ships its product by truck to customer locations through the area, an area that is determined by Praxair's delivered cost at those locations. Electricity is the largest operating cost for Praxair.[2]

Praxair's Neosho plant is also interruptible. It load can be shed from Empire's system when capacity is needed for higher priority customers. As a result, Praxair is served under interruptible rates that recognize both the lower quality of service provided to Praxair and that Praxair can interrupt its operations (and thus make capacity available to Empire) on very short notice.

Explorer Pipeline, Inc. operates a refined petroleum products pipeline stretching from the gulf coast to the Chicago, Illinois/Gary, Indiana area with various truck terminals along that route. Explorer uses electric compressors and has three compressor stations in the Empire service territory. Its com-

[1] Load factor measures the relationship of a customer's (or a customer classes') average use to peak use. For example, if a customer has a peak 1 megawatt load and runs continuously at 1 mW, that customer would have a 100% load factor and would use 8,760 megawatthours (mWh) in a year (or 720 mWh in a month). Correspondingly, if that same customer with a 1 mW peak used only 4,380 mWh in the year, that customer would have a 50% load factor.

[2] Ex. 111, Emil Mosora.

bined load is only slightly less than Praxair's and its load factor is similarly high. Explorer's shipping rates and conditions are established by the Federal Energy Regulatory Commission. Absent a rate case at the FERC level, Explorer cannot increase its charges and thus must absorb any cost increases from its bottom line.[3/]

## II. ARGUMENT.

### A. There is No Legal Authority for Empire to Have an Interim Energy Charge.

Empire seeks an interim energy charge or "IEC" similar to that recommended in a prior Empire rate case and in the more recent Aquila rate case, ER-2004-0034. The Missouri Supreme Court ruled that the Commission lacked statutory authority to implement a fuel adjustment clause for an electric utility.[4/] Although several of the judges invited legislation to provide authority, since the *UCCM* case the legislature has not grated that authority.

[3/] Mr. Steve Tollette, Explorer's Energy manager, testified at the November 22, 2004 public hearing in Joplin, Missouri at pages 6-22 of that transcript. At that time Mr. Tollette provided a map of Explorer's system which was marked as Exhibit 1 at the public hearing and later remarked as Exhibit 112 in the technical hearing.

[4/] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. *en banc* 1079) ("*UCCM*").

Further, during the period following *UCCM*, and since the electric utilities were put fully at risk for their fuel charges (absent the level of fuel and purchased power costs that were already embedded in base rates), those costs have significantly dropped as a direct result of the realization that the utilities could take to their respective bottom lines any savings that could be wrung from fuel and purchase power costs. Indeed, many utilities significantly reduced their rates, some multiple times. Despite the alarmed cries of the utilities that greeted the *UCCM* decision, in no instance has any Missouri utility become insolvent because of the invalidation of a fuel clause.[5/]

In short, the most recent decision of the Missouri Supreme Court prohibits the electric fuel adjustment proposed by Empire.

**B. Absent Authority to Impose An Electric Fuel Adjustment Clause, The Commission Needs to Determine A Level of Fuel and Purchased Power Expense to Include in Base Rates.**

Absent a fuel adjustment clause (or a substitute interim energy charge mechanism), the Commission must determine the appropriate level of fuel and purchased power expense to include in base rates. We recognize that this is a challenging conundrum for the Commission.

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[5/] We take note of Aquila, Inc. This utility, though rated as junk security by the rating agencies, caused its own problem by improvident unregulated investments.

Though having some base load coal generation, Empire's current generation mix depends on natural gas. The prices of natural gas have proven to be difficult of prediction and have been unstable over the past two or three years. If the amount of expense allowed is too high, Empire is protected, but the captive ratepayers suffer by overpaying for the energy they use. If the expense allowed is too low, Empire is potentially imperiled because of its size and dependence on natural gas as a generation fuel.

Natural gas costs have been declining currently reducing the pressure on Empire. Whether this is a permanent trend is not possible to predict. Clearly the interests of the shareholders and ratepayers are sharply in opposition on this issue.

Witness Maurice Brubaker proposed that no more than $120 million be included as a high end rate proposal, but did so within the context of a subject to refund proposal.[6/] However, he did note that, at the time he filed his testimony, and at the time he later testified on December 9, 2004,[7/] forward prices for natural gas had moved up from those applicable when Empire had filed its direct testimony and thus suggested a low end of

[6/] Ex. 115, Maurice Brubaker, p. 7.

[7/] Tr. 898ff.

$110 million.[8/] But more current information suggests that these "strip" prices or forward prices are trending down.

**C. The Joint Recommendation of Office of Public Counsel and Praxair/Explorer Should be Considered Because Costs of Fuel Use Are Not Equal For All Classes and Types of Customers.**

Recognizing this conundrum and in response to suggestions from then-Commissioner Davis, these Intervenors and the Office of the Public Counsel suggested a mechanism to establish a band of "subject to refund" recovery for Empire. This proposal, when submitted, appeared to cause great consternation among the other parties, since it was not structured according to the traditional "non-unanimous stipulation" format. Regardless, both Public Counsel and Praxair/Explorer were seeking to suggest a solution to the Commission that, if followed, might forestall any judicial challenge to the Commission order.

It is significant that the methodology suggested in this recommendation had been acceptable to Staff Witness Watkins in the recent Aquila proceeding and, as demonstrated by his testimony, which he confirmed from the stand,[9/] he had supported in the recent Aquila case. Mr. Watkins even acknowledged that he was the "architect" of that proposal.[10/]

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[8/] *Id.*, at 8.

[9/] Tr. 806-808.

[10/] Tr. 805.

This mechanism recognizes three things: *First* it recognizes that high load factor customers' use of energy is more consistent across all hours of the year, month or day. The average costs of kWh produced in the summer are higher than the average costs of kWh produced in the winter. High load factor customers receive a higher proportion of their energy requirements during off-peak times when the cost of produce a kWh is less than the average cost. This consideration results in a lower cost of production for high load factor customers on a kWh basis. Therefore using the same kWh charge for all customers without consideration of load factor differences is unreasonable.[11/]

*Second*, losses differ for large customers because of the voltage levels at which they take service. Losses range from 2.3% for transmission level customers such as Praxair and Explorer, to 7.5% for secondary distribution customers, or more than three times the loss percentage. To collect costs on a uniform amount per kWh ***sold*** is not accurate and would significantly overcharge higher voltage level customers. Reflecting this cost difference at the generation level results in lower per/kWh costs for higher voltage level customers.[12/]

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[11/] Ex. 106, Maurice Brubaker, p. 16.

[12/] Ex. 106, Maurice Brubaker, p. 15.

*Third*, Empire's existing rates resulted from a settlement in ER-2002-424 in which there was no explicit identification of fuel or purchased power costs that were included. Thus an increment of fuel and purchased power costs over the amount included in base rates cannot be identified. To assume that the increment in question is the amount in excess of what is already being recovered in rates is wrong.[13/]

An appropriate approach is that employed in the OPC/Praxair/Explorer Joint Recommendation, namely to allocate any surcharge across all customer classes as essentially an equal percentage applied to existing current revenues and then derive an individualized per kWh factor for each rate schedule, adjusted to conform with the methodology used in the recent Aquila case.[14/] This method recognizes the three factors noted above and is consistent with Empire's class cost of service study filed herein.

**D. The Pending Stipulations Are Reasonable and Should Be Approved As In the Public Interest.**

Through the course of this case, two Stipulations were unanimously (or without opposition) accepted by the parties. These pertain to Miscellaneous Issues, and to Class Cost of Service and Rate Design. No compromise involving as divergent

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[13/] Ex. 106, Maurice Brubaker, pp. 14-15.

[14/] Ex. 106, Maurice Brubaker, p. 16.

interests are present in this case can completely satisfy the desires of any individual party, these Stipulations present reasonable resolutions of disputed issues. Accordingly, they are reasonable resolutions of these issues, are in the public interest and should be approved by the Commission.

**III. CONCLUSION.**

For the foregoing reasons, Empire should not receive an IEC absent agreement of the parties, although the joint recommendation should be considered, and the lower range of possible fuel and purchased power expenses should be included in base rates.

Respectfully submitted,

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ATTORNEYS FOR PRAXAIR, INC. and
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application for Leave to Intervene either by hand delivery, by electronic means, or by U. S. mail, postage prepaid addressed to all parties by their attorneys of record as provided by the Secretary of the Commission as shown below.

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