

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 20th day of  
November, 2006.

In the Matter of the Tariff Filing of The Empire )  
District Electric Company of Joplin, Missouri )  
to Implement a General Rate Increase for )  
Retail Electric Service Provided to Customers )  
in the Missouri Service Area of the Company )

**Case No. ER-2006-0315**

**ORDER DENYING MOTION TO DISQUALIFY**

Issue Date: November 20, 2006

Effective Date: November 20, 2006

**Background**

On February 1, 2006, The Empire District Electric Company applied to the Commission for authority to file tariffs increasing rates for electric service provided to customers in the Missouri Service Area of the Company. On October 12, 2006, a joint pleading requesting an extension of time noted that true-up testimony had not been admitted into the record. In response, an Order Admitting All True-Up Testimony into the Record was issued that day.

On October 20, 2006, Praxair, Inc. and Explorer Pipeline, Inc. (collectively referred to as "Praxair") sought rehearing of that Order, as its Counsel had not had the opportunity to cross-examine those witnesses and might object to the testimony. However, rehearing is not appropriate relief at such a point in a Commission proceeding.<sup>1</sup> Instead, the Order was reconsidered, in light of the particular facts

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<sup>1</sup> See *City of Park Hills v. Public Service Commission*, 26 SW 3d 401, 406 (Mo.App. W.D. 2000), and *State ex rel. Riverside Pipeline Company v. Public Service Commission*, 26 SW3d 396, 399-400 (Mo.App. W.D. 2000)

surrounding the true-up hearing and testimony, the need to properly safeguard the Parties' rights to due process and to ensure a complete record. On October 24, 2006, an Order Setting Hearing was issued so that the perceived procedural defects could be remedied. Such a hearing was attempted on October 31, 2006, but was rescheduled for Monday, November 20, 2006.

On November 14, 2006, Praxair filed a Motion to Disqualify the Regulatory Law Judge assigned to this matter because the October 31 hearing was set:

...for purposes of "allowing parties to cross-examine witnesses on the subjects of corporate allocations, regulatory plan amortizations and any true-up testimony." Recognizing that the Order Setting Hearing, despite its caption, grants the relief sought in the Application for Rehearing, it is necessarily a *de jure* and *de facto* Order Granting Rehearing."

Praxair then extrapolated its argument to assert that §536.083 RSMo 2000 statutorily barred the RLJ from presiding over the remainder of the hearing.

A cursory review of *State ex rel. AG Processing, Inc., Friskies Petcare, et al. v. Thompson*, 100 SW3d 915 (MoApp 2003) reveals that disqualification under §536.083 is not appropriate in this instance. First, no "rehearing" was granted in this matter; "reconsideration" was given *sua sponte* by the RLJ. Second,

"[w]hen a rehearing is granted by the PSC, the case stands as if it had not been previously heard. ...[T]he PSC appeals process...involves a rehearing before the commission. The circuit court, upon application for writ of review, reviews the decision and final review may occur by an appellate court." (at 921)

No final order has been issued in this case, which is nearing the last month of an eleven-month process. The Commission has yet to issue its final order, much less review or rehear it.

The Commission finds that there has been no grant of rehearing, and that the statutory requirements surrounding true rehearing do not apply. As no other grounds are asserted to disqualify the RLJ, the Motion will be denied.

**IT IS ORDERED THAT:**

1. The Motion to Disqualify filed by Praxair on November 14, 2006, is denied.
2. This order shall become effective on November 20, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale  
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton  
and Appling, CC., concur.

Dale, Chief Regulatory Law Judge