

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

In the matter of The Empire Dis-)	
trict Electric Company of Joplin,)	
Missouri for authority to file)	
tariffs increasing rates for elec-)	ER-2006-0315
tric service provided to customers)	
in the Missouri service area of the)	
Company)	

**OBJECTION AND REQUEST TO SUSPEND
BY PRAXAIR, INC. and EXPLORER PIPELINE
TO PURPORTED COMPLIANCE TARIFF FILING**

COME NOW Praxair, Inc. and Explorer Pipeline (Applicants) and through their attorney object to the form and substance of the tariff filing on December 28, 2006 and move that the same be suspended by the Commission for the full period required by law to enable investigation of these tariff sheets and in support thereof state:

1. On December 28, 2006, and previously on December 27, 2006, Empire filed tariff sheets that it stated complied with the Report and Order issued on December 21, 2006. Obviously, if the initial filing complied with the Report and Order, there would have been no need for a second filing, thereby dramatizing that there is potential for dispute. Even as this filing is being finalized, Empire filed yet another tariff sheet, presumably also in "compliance" with the Report and Order but without apparent explanation how earlier tariffs that complied with the

Report and Order need to be changed so as to comply with the Report and Order.

2. In the December 21, 2006 Report and Order the Commission failed to make specific and adequate findings of fact and conclusions of law to establish what would be tariffs that complied with that order. Nevertheless, the Commission plainly rejected the original tariffs that Empire filed that had initiated this case and were suspended by Commission order.

3. As revealed by Empire's transmittal letter, there have been conferences with the Commission Staff, a party to the case under litigation, which have been without notice to these parties and have been engaged in without our agreement or knowledge. Although full parties to this litigation, we have only received proposed tariff sheets **after** such conferences have been held thereby denying our ability to expeditiously comment on and review the proposed sheets.

4. Without regard to that, the Commission December 21, 2006 Report and Order does not specify an amount of revenue that would be reasonable. Therefore there is no basis save opinion of different persons to conclude that any tariffs that have been filed "comply" with the Report and Order. Consistent with the notion that such tariffs represent nothing more than the "opinion" of a party, Empire states in its latest Motion for Expedited Consideration that the Report and Order granted an

increase of **"approximately \$29,369,397."**^{1/} Empire's inability to provide a quantification of an exact increase results from the same confusion that all parties are having in interpreting the Commission's Report and Order.^{2/} The Commission is obligated by law to set rates. Only after a hearing and investigation which takes into account all relevant factors can the Commission make a decision regarding these tariffs that would be supported by competent and substantial evidence on the whole record. Moreover, even if the Commission were to allow these tariffs to go into effect, they would be subject to challenge as not being in compliance with the Commission's earlier order, such order being a "relevant factor" that the Commission would have to consider in making its decision.

5. There is and can be no competent and substantial evidence to support any finding or conclusion that the tendered tariffs comply with the earlier Commission order. A series of discussions, followed by the "recommendation" of one of the party-litigants to the case, cannot and does not constitute

^{1/} This claim that the Report and Order provides for an increase of "approximately" \$29,369,397 is similar to a previous Motion for Expedited Consideration in which Empire claims that the Report and Order provides for an increase of "approximately" \$29,513,713.

^{2/} These parties objections to the profoundly deficient Report and Order will be thoroughly documented in their Application for Rehearing that will be timely filed on December 29, 2006 as required by law. By way of preview, however, we note that the Report and Order does not address the delineated issue of corporate allocations which failure completely deprives Empire of the ability to ascertain that any proposed tariffs "comply" with the Report and Order.

competent and substantial evidence. Indeed, Missouri Courts have found that the Commission *must* make findings of fact and conclusions of law based upon competent and substantial evidence even in non-contested cases (*i.e.*, matters that do not mandate a hearing).^{3/} Therefore prior to issuing an Order Approving tariffs, the Commission must accept evidence in order to determine whether the tariffs truly comply with the Report and Order. Consistent with this statutory directive, these parties have already commenced discovery in order to determine the methodology by which Empire quantified the Report and Order and calculated the appropriate tariff rates for each customer class in compliance with the Report and Order.

6. Were the Commission to purport to "approve" such tariffs, Missouri's Constitution would require that there be competent and substantial evidence to support that order. Given that the December 21, 2006 Order failed to specify or find as fact appropriate amounts necessary to make determinations of the revenue requirement for this utility, there would have to be competent and substantial evidence to support any such order. Article V, Section 18, Missouri Constitution.

7. Empire has also filed a motion to expedite consideration. Under Commission rules these parties have 10 days within which to respond to that motion.^{4/} The Commission has

^{3/} *State ex rel. Coffman v. Public Service Commission*, 121 S.W.3d 534 (Mo.App. 2003).

^{4/} 4 CSR 240-2.080(15).

not asked for expedited responses to that motion, therefore the motion cannot be ruled absent responses from adverse parties. We intend to explain more fully within that 10 day period why Empire's request for expedited consideration fails to comply with 4 CSR 240-2.080(16).

8. In other respects, we concur in the observations made by Office of the Public Counsel in their pleading filed this date regarding the same tariff filing.

9. The tariffs that are requested to be suspended are attached and separately filed on EFIS along with this pleading pursuant to Commission rule.

WHEREFORE these parties move that the tariffs filed by Empire District Electric Company on December 28, 2006, purportedly "in compliance" with the December 21, 2006 Report and Order be suspended for the full statutory period for the purpose of investigation and consideration of all relevant factors involved in establishing rates of a public utility in the State of Missouri.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



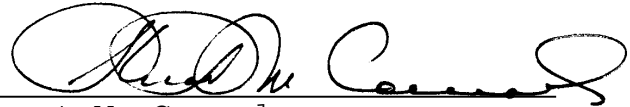
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ATTORNEYS FOR PRAXAIR, INC. and
EXPLORER PIPELINE

December 28, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", written over a horizontal line.

Stuart W. Conrad

Dated: December 28, 2006