

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

In the Matter of the Tariff Filing of The Empire )  
District Electric Company of Joplin, Missouri )  
to Implement a General Rate Increase for Retail ) Case No. ER-2006-0315  
Electric Service Provided to Customers in the )  
Missouri Service Area of the Company. )

**STAFF RESPONSE TO EMPIRE'S OBJECTION AND MOTION TO QUASH  
SUBPOENAS OR, IN THE ALTERNATIVE MOTION TO CONTINUE HEARING**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the Commission's General Counsel, and files this Staff Response To Empire's Objection And Motion To Quash Subpoenas Or, In The Alternative Motion To Continue Hearing. The Staff suggests below that the hearing presently scheduled for Monday, November 20, 2006 be continued to November 21, 2006, at least in part, if for no other reason than for the subpoenaed appearance of Mr. William L. Gipson and the subpoenaed appearance of Mr. Todd W. Tarter. In support thereof, the Staff states as follows:

1. The Staff principally notes, in addition to the need for the scheduled hearing to address the filed true-up testimony, the scheduled hearing needs to address the fact that (i) on November 3, 2007 Praxair, Inc. (Praxair) and Explorer Pipeline, Inc. (Explorer) filed an Objection To Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations And Request For Hearing and (ii) on October 19, 2006 Praxair and Explorer filed Opposition To Nonunanimous Stipulation And Agreement On Corporate Allocations. The subpoenaing of Mr. Gipson and Mr. Tarter may not go to the true-up testimony filed on September 27, 2006, but may address the nonunanimous stipulations and agreements to which Praxair and Explorer are objecting. Also, if Praxair and Explorer are planning to offer testimony,

such testimony may go to their objections to the two noted nonunanimous stipulations and agreements filed by other parties.

2. Continuing the hearing presently scheduled for Monday, November 20, 2006 to November 21, 2006, at least in part, if for no other reason than for the subpoenaed appearance of Mr. William L. Gipson and the subpoenaed appearance of Mr. Todd W. Tarter, would apparently address the matter raised in Empire's November 7, 2006 Objection And Motion To Quash Subpoenas that Commission rule 4 CSR 240-2.100(2) requires that "[e]xcept for a showing of good cause, a subpoena or subpoena *duces tecum* shall not be issued fewer than twenty (20) days before a hearing." Continuing the hearing at this stage also would still appear to meet the requirements of Section 536.067(4) RSMo. 2000.

3. Regarding the Commission scheduling a hearing on November 20, 2006 concerning corporate allocations and regulatory plan amortizations, as the Commission is aware, 4 CSR 240-2.115 respecting Stipulations and Agreements states, in pertinent part, as follows:

(2) Nonunanimous Stipulations and Agreements:

. . . . .  
(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position, except that no party shall be bound by it. All issues shall remain for determination after hearing.

The Staff also notes the applicability of *State ex rel. Fischer v. Public Serv. Comm'n*, 645 S.W.2d 39 (Mo.App. W.D. 1982).

4. Finally, the Staff cites Paragraph 12 of the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations filed on October 27, 2006 and Paragraph 8 of the Stipulation And Agreement Regarding Corporate Allocations filed on October 13, 2006:

12. Should the Commission have questions about this Agreement, the Signatories will make available their witnesses and attorneys on the issues resolved by this Agreement. If the Commission has questions for the Signatories' witnesses or Signatories, the Signatories will make available, at any on-the-record session, their witnesses and attorneys on the issues resolved by this Agreement, so long as all parties have had adequate notice of that session. *The Signatories agree to cooperate in presenting this Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Agreement.* [Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations; Emphasis added].

8. Should the Commission have questions about this Agreement, the Signatories will make available their witnesses and attorneys on the issue resolved by this Agreement. If the Commission has questions for the Signatories' witnesses or Signatories, the Signatories will make available, at any on-the-record session, their witnesses and attorneys on the issue resolved by this Agreement, so long as all parties have had adequate notice of that session. *The Signatories agree to cooperate in presenting this Agreement to the Commission for approval, and will take no action, direct or indirect, in opposition to the request for approval of this Agreement.* [Stipulation And Agreement Regarding Corporate Allocations; Emphasis added].

The Staff believes that its recommendations to the Commission on procedure regarding the two nonunanimous stipulations and agreements in question are consistent with its obligations under the above two paragraphs. The Staff retains the freedom to recommend to the Commission the procedure it believes is required or prudent independent of whatever procedure any other signatory to the nonunanimous stipulation and agreements may recommend to the Commission.

WHEREFORE, the Staff files the instant Staff Response To Empire's Objection And Motion To Quash Subpoenas Or, In The Alternative Motion To Continue Hearing and suggests that the hearing presently scheduled for Monday, November 20, 2006 be continued to November 21, 2006, at least in part, if for no other reason than for the subpoenaed appearance of Mr. William L. Gipson and the subpoenaed appearance of Mr. Todd W. Tarter.

Respectfully submitted,

/s/ Steven Dottheim

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record on this 9th day of November, 2006.

/s/ Steven Dottheim