

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

In the matter of the Application of)	
The Empire District Electric Compa-)	
ny for authority to file tariffs)	
reflecting increased charges for)	ER-2004-0570
electric service within its Mis-)	
souri service area)	

**STATEMENT OF ISSUES AND POSITIONS
OF PRAXAIR, INC. AND EXPLORER PIPELINE COMPANY**

COME NOW Intervenor Praxair, Inc. and Explorer Pipeline Company and address and respond to the indicated issues as follows:

A. These parties have attempted to follow the general statement and sequence of issues proposed by Staff. However, that list of issues has continued to change right up to the time that this statement of position had to be filed and we do not agree with all the issues as stated. Accordingly, while we have tried to follow the general outline of Staff's listing of issues, this should not be interpreted as agreement with those issues. In some instances below, we have attempted to identify the areas of disagreement. It is difficult to provide a comprehensive statement of position when some of the issues and their wording remains unstable.

B. Praxair and Explorer state their positions on the following list of issues at the present time. Given that issue definition and wording are presently not stable, they reserve the

right to adjust positions on these or other issues depending on evidence that may be developed or presented at the hearing.

C. Rate of Return

1. What capital structure is appropriate for Empire?
2. What return on common equity recommendation is appropriate in estimating Empire's cost of common equity?
3. What embedded cost of debt is appropriate for Empire?

Position: Praxair and Explorer have not taken specific positions on these issues. We reserve our position on these issues at this time.

D. Rate Base.

1. Energy Center Units 3 & 4 Construction Cost: What is the appropriate level of construction costs to be included in rate base for Empire's Energy Center Units 3 & 4?

Position: Praxair and Explorer have not taken positions on this issues. Generally only prudently-incurred actual costs should become the responsibility of ratepayers to support through inclusion in rate base. In other respects we reserve our position on this issue.

2. Deferred tax balances

- a. Post-Retirement Benefits Other than Pensions ("PBOP"): Should cost of service be increased too compensate for Empire's inability to obtain full deductibility of its contributions to its Voluntary Employment Beneficiary Association ("VEBA") plan for management?
- b. Alternative Minimum Tax ("AMT"): Should cost of service be increased to reflect inclusion in rate base of Empire's deferred tax liability associated with AMT?

Position: Praxair and Explorer have not taken positions on these issues. We reserve our position on these issues.

E. Expense Issues.

- 1. Depreciation: How shall the depreciation for plant accounts be calculated?
 - a. Should life span be applied to production accounts?
 - b. Should the Commission use the whole-life or the remaining life technique?
 - c. How should the cost of removal net of salvage component be treated?

Position: Praxair and Explorer have not taken positions on these issues. Generally only prudently-in-

current actual costs should become the responsibility of ratepayers to support through inclusion in rate base.

2. Fuel and Purchased Power: What is the appropriate level of total Company on-system fuel and purchased power expense.

Position: Praxair and Explorer believe that some parties have sought to join this issue with the question of a mechanism for recovery. This is inappropriate absent agreement of the parties. The proper question is the appropriate level of fuel and purchased power to include in the permanent level of rates found just and reasonable by the Commission. Our witness, Maurice Brubaker, has suggested proper levels of fuel cost and purchased power to include in permanent rates.

- a. What natural gas price should be used in determining base rates?

Position: This issue is worded improperly. The properly worded question is what amount of fuel and purchased power expenses should be included in permanent rates for the utility given the test year billing determinants and generation. The use of the term "base" presumes the presence of an interim mechanism that these parties believe is not permitted under Missouri law absent agreement of the parties that choose not to challenge its legality. Maurice Brubaker has testified

to a proper level of fuel and purchased power costs that should be included in permanent rates.

- b. May the Commission lawfully order an IEC absent a unanimous stipulation and agreement?

Position: This is a legal question and is not a proper issue for a hearing before the Commission. The Commission does not have authority under long-standing Missouri Supreme Court decisions to have a fuel adjustment clause such as the Interim Energy Charge that some parties have suggested. Such mechanisms have been presented to the Commission in settlements in only two prior cases where the parties to that settlement agreed that they would not challenge the legality of the mechanism.

- c. If yes to a. above, should an IEC for Empire be implemented in this proceeding? If so, at what floor and ceiling levels? How should the IEC be structured? How should the charge be designed?

Position: Absent overall case settlement including waiver of rights of judicial review, implementation of a fuel adjustment is prohibited by Missouri law.

3. Payroll O&M Factor: Should the payroll O&M factor be calculated using a three-year average or a five-year average?

Position: These intervenors reserve their position on this issue.

4. Energy Center 3 & 4 Twenty-Year Inspections:
Should cost of service include an annual funding for an inspection expected to occur some twenty years into the future?

Position: These intervenors reserve their position on this issue.

5. Annual generator inspections (including Energy Center 3 & 4): Is it appropriate to include in cost of service an amount for annual inspections of Empire's generators? If so, what amount should be included?

Position: These intervenors reserve their position on this issue.

6. Tree Trimming: What amount should be included in cost of service to reflect ongoing tree trimming costs?

Position: These intervenors reserve their position on this issue.

7. Rate Case Expense: Should the costs of retaining Empire consultants Mr. Pfeifenberger and Dr. Vander Weide be included the rate case expense reflected in cost of service?

Position: These intervenors reserve their position on this issue.

8. Enron Legal Fees: Should the legal fees associated with the settlement of a dispute with Enron be included in cost of service?

Position: These intervenors reserve their position on this issue.

9. Incentive Compensation: Should all costs associated with incentive compensation be included in cost of service? If not, what costs/amounts should be excluded?

Position: These intervenors reserve their position on this issue.

10. Stock Options

- a. Should the cost of stock options be expensed before they are exercised?
- b. Should the cost of stock options be included in cost of service?

Position: These intervenors reserve their position on this issue.

11. Low-Income Customer Weatherization Assistance Programs: Should an amount to supplement the federal low-income customer weatherization fund be included in cost of service? If so, what amount should be included?

Position: These intervenors reserve their position on this issue.

12. Energy Efficiency Programs: Should an amount for energy efficiency programs, specifically a lighting program, a residential appliance and HVAC rebate program, and a commercial customer energy audit program, be included in cost of service? If so, what amount should be included?

Position: These intervenors reserve their position on this issue.

13. Wind Energy Research: Should an amount for wind energy assessment be included in cost of service? If so, what amount should be included?

Position: These intervenors reserve their position on this issue.

14. Pensions: What is the appropriate method of determining pension expense for inclusion in the cost of service?

Position: These intervenors reserve their position on this issue.

15. Late payment charge: Should Empire's late payment charge be calculated based on a single percentage? If so, at what level?

Position: These intervenors reserve their position on this issue.

F. CLASS COST OF SERVICE/RATE DESIGN

1. What is the appropriate allocation of any increase in revenues to customer classes?

Position: *Any change to class revenues should be in accordance with the recommendations of Mr. Brubaker.*

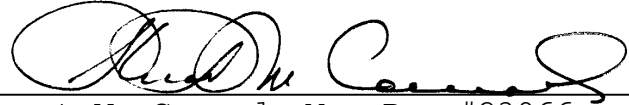
2. What are the appropriate adjustments to the rate components for each of the various rate schedules?

Position: *We take no position on internal adjustments to rate components for other rate classes save that they should track cost incurrence patterns as much as possible. There should be a credit of at least \$1.50/Kw Month in the large power rate (LP) for customers like Explorer Pipeline (and one other) who take service directly from the transmission system and therefore do not use the general distribution network.*

WHEREFORE these intervenors request that their statement of issues and positions be received by the Commission.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

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

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ATTORNEYS FOR PRAXAIR, INC. and
EXPLORER PIPELINE COMPANY

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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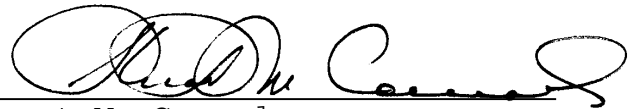
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Dated: December 1, 2004