

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

In the Matter of The Empire District	)	
Electric Company of Joplin, Missouri	)	
For authority to file tariffs increasing	)	<b><u>Case No. ER-2008-0093</u></b>
Rates for electric service provided to	)	
Customers in the Missouri service area	)	
Of the Company.	)	

**MOTION TO STAY  
AND  
MOTION FOR EXPEDITED TREATMENT**

COMES NOW, Praxair, Inc., Explorer Pipeline, Inc., General Mills, Inc., Wal-Mart Stores, Inc., and Enbridge Energy, L.P., (collective referred to as the “Industrial Intervenors”), pursuant to Section 386.500 RSMo., and for their Motion to Stay Effectiveness of the Commission’s Report and Order respectfully state as follow:

1. On June 30, 2008, the Commission issued its Report and Order in the above-captioned matter. As reflected in the Application for Rehearing, filed simultaneous with this pleading and incorporated herein by reference, that Report and Order, as well as the procedure utilized by this Commission in administering this proceeding, has been riddled with numerous examples of reversible error. As more fully reflected in the incorporated Application for Rehearing, the Commission’s Order ignores significant pieces of evidence without justification, reflects a complete misunderstanding of issues and party positions, is littered with procedural missteps which denied parties’ due process rights and is otherwise unlawful, arbitrary, capricious, unreasonable and unsupported by competent and substantial evidence on the whole record of the proceeding.

2. Section 386.500.3 RSMo. provides the Commission with authority to stay its decision pending rehearing of the Report and Order. Given the numerous instances of reversible error in the Report and Order and the Commission's procedure, the Commission's duty to protect the public necessitates that the Commission stay its decision to allow it the opportunity to correct these errors. As Missouri Courts have pointed out, "the dominant thought and purpose of the policy is the protection of the public. . . [and] the protection given the utility is merely incidental."<sup>1</sup>

3. The Industrial Intervenors anticipate that Empire will argue that any stay will harm its shareholders and deny it the rate increase that it "deserves" and to which it is "entitled." However, these parties and the public will be forced to pay rates that are unlawful and may have no recourse in so doing save to engage in self-help. On balance, the equities in such circumstance are with the customers who turn to the Commission to protect them from a monopoly service provider.

4. 4 CSR 240-2.180(16) provides clear direction for a party to request Expedited Treatment. Pursuant to the direction contained in the Commission Rule, the Industrial Intervenors state that they request that the Commission act immediately. Furthermore, this document was filed as soon as possible given that it was filed within one week of the issuance of the Commission's 73 page Report and Order.

5. As explained in Paragraph 4, granting this Motion on an expedited basis will avoid harm to Empire's ratepayers by precluding Empire from collecting unreasonable rates until such time as the Commission has an opportunity to review the

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<sup>1</sup> *State ex rel. Crown Coach Co. v. Public Service Commission*, 179 S.W.2d 123, 126 (1944).

pending Applications for Rehearing and taking steps to correct the dozens of instances of reversible error detailed in that Application.

WHEREFORE, the Industrial Intervenors respectfully request that the Commission issue its Order staying the effectiveness of the Report and Order.

Respectfully submitted,



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ATTORNEYS FOR THE INDUSTRIAL  
INTERVENORS

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.



David L. Woodsmall

Dated: August 8, 2008