

**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)	<u>Case No. ER-2006-0315</u>
Rates for electric service provided to)	
Customers in the Missouri service area)	
Of the Company.)	

**MOTION TO REJECT SPECIFIED TARIFF SHEETS
AND STRIKE TESTIMONY**

COMES NOW, Praxair, Inc. ("Praxair") and Explorer Pipeline, Inc. ("Explorer"), and in support of their Motion To Reject Specified Tariff Sheets and Strike Testimony respectfully state as follows:

1. On May 2, 2006, in response to a Motion for Clarification filed by the Empire District Electric Company ("Empire"), the Commission issued its Order Clarifying Continued Applicability Of the Interim Energy Charge ("Order"). In its Order, the Commission addressed the continued applicability of the Interim Energy Charge ("IEC") voluntarily negotiated in Case No. ER-2004-0570 between Empire, Praxair, Explorer and OPC and subsequently memorialized in a Stipulation and Agreement.

2. In its Order the Commission found:

The Stipulation and Agreement was freely negotiated. Consideration was given and received. The Commission approved it and it is binding. *The Commission can and shall require that Empire remove from its pleadings and other filings in this case the request it consented not to make.*¹

¹ Order at page 3 (emphasis added).

3. By its Order, the Commission explicitly recognized that the Stipulation and Agreement was “freely negotiated” by Empire’s management. Moreover, by finding that the Stipulation is binding and still in effect, the Commission demonstrated its unwillingness to engage in micro-management of a utility. While it has a duty to ensure safe and adequate service at just and reasonable rates, the Commission demonstrated that such a duty is not inconsistent with allowing a utility’s management the freedom to manage, make decisions and be held responsible for such decisions.

4. Empire did not ask for rehearing of the Commission’s Order, but has yet to take any action “to remove from its pleadings and other filings in this case the request it consented not to make.” Empire’s failure to comply with the Commission’s Order necessitates the current filing in that the presence of such material in Empire’s Direct Testimony and tariff filings raises the inevitable concern as to whether other parties need to address such matters in its Direct Testimony. Recognizing that the parties’ Direct Testimony is due in 4 weeks, Praxair / Explorer are compelled to remove the question from this proceeding and ask that the Commission reject certain tariff sheets submitted by Empire and strike certain Direct Testimony filed by Empire.

5. Praxair / Explorer anticipate that Empire may attempt to argue that the Commission must consider such testimony as part of its obligation to consider “all relevant factors” in establishing rates. Such an argument fails to recognize, as the Commission found, that the IEC Stipulation was approved by the Commission “and it is binding.” As such, in regards to the issue of fuel and purchased power, the Stipulation and its terms and conditions *is the only relevant factor*. Any discussion of fuel in Empire’s tariffs, pleadings and testimony would necessarily be irrelevant to the current

proceeding. Recognition of the IEC does not compromise Empire's ability to continue to seek rate relief in this proceeding. Rather, the IEC merely establishes the level of fuel and purchased power to be recovered in any rates that result from this proceeding. Empire is free, consistent with the requirement to consider "all relevant factors", to seek rate relief associated with these other remaining relevant factors.

6. Moreover, the continued recognition of the IEC and its reflection in the rates resulting from this case will not threaten Empire's financial integrity. As the Commission is aware, Empire and several other parties recently negotiated a regulatory plan to allow Empire to participate in the construction of Iatan 2.² This regulatory plan sought to ensure the continued investment grade status of Empire's debt by establishing amortizations in such an amount sufficient to allow Empire to meet certain Standard & Poors' financial criteria for an investment grade company. If, as a result of the continued recognition of the IEC, Empire's earnings decline, the parties have agree to establish amortizations in an amount that allows Empire to maintain investment grade status. As such, the relief requested in this Motion will not, in and of itself, cause Empire to fail to meet any S&P financial criteria for an investment grade company.

7. Therefore, in compliance with the Commission's Order, Praxair / Explorer ask that the Commission immediately reject the following tariff sheets:

1. P.S.C. Mo. No. 5, Section 4 5th Revised Sheet No. 17;
2. P.S.C. Mo. No. 5, Section 4 2nd Revised Sheet No. 21;
3. P.S.C. Mo. No. 5, Section 4 Original Sheet No. 22; and
4. P.S.C. Mo. No. 5, Section 4 Revised Sheet No. 23.

² See Case No. EO-2005-0263.

8. In addition, Praxair / Explorer requests that the Commission strike the following testimony as reflected in its May 2 Order:

1. The entirety of the Direct Testimony of Todd W. Tarter which discusses energy cost recovery and fuel and purchased power expense.
2. Direct Testimony of William L. Gipson:
 - a) The summary section of the Executive Summary;
 - b) starting at page 5, line 6 through page 6, line 22;
 - c) starting at page 7, line 8 through page 9, line 4; and
 - d) starting at page 10, line 18 through page 11, line 11.
3. Direct Testimony of W. Scott Keith:
 - a) The purpose section of the Executive Summary that discusses Empire's request to implement an ECR;
 - b) The second, third and fourth sentences of the first paragraph of the summary section of the Executive Summary;
 - c) The discussion in the second paragraph of the summary section of the Executive Summary that discusses features and benefits of the proposed ECR;
 - d) The discussion in the conclusion section of the Executive Summary that refers to an "explanation of the ECR tariff";
 - e) The clause starting at page 3, line 4 through page 3, line 5;
 - f) At the bottom of page 3, the reference to the testimony of Todd Tarter;
 - g) Starting at page 6, line 10 through page 8, line 18;
 - h) Starting at page 13, line 12 through page 13, line 19;
 - i) The clause contained at page 22, line 5 that discusses the implementation of an ECR;
 - j) Starting at page 23, line 8 through page 31, line 6;

k) Page 32, line 13;

l) Schedule WSK-1, Section J, Schedule 2, page 1, line 20; and

m) Schedules WSK-2; WSK-3; and WSK-4.

4. Direct Testimony of James H. Vander Weide starting at page 53, line 5 through page 54, line 7.

9. Moreover, Empire should be ordered to substitute revised versions of certain accounting schedules that form the basis of Empire's compliance with the Commission's minimum filing requirements which are now incorrect as a result of Empire's attempted elimination of the IEC and implementation of the ECR. Included in these accounting schedules to be modified are WSK-1, Section C, Schedule 1; WSK-1, Section J, Schedule 1 and WSK-1, Section M, Schedule 2.

WHEREFORE, Praxair / Explorer respectfully request that the Commission: (1) reject the tariffs specified in this Motion; (2) strike the testimony previously referenced in this pleading; and (3) order Empire to revise certain schedules that are inconsistent with the Commission's previous order.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is fluid and cursive, with the first name "David" being more prominent.

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ATTORNEY FOR PRAXAIR, INC. and
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May 26, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the forgoing 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 "David L. Woodsmall". The signature is stylized with a large, circular initial "D" and a long, sweeping horizontal stroke at the end.

David L. Woodsmall

Dated: May 26, 2006