

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

In the Matter of the tariff filing of The )  
Empire District Electric Company )  
to implement a general rate increase for ) **Case No. ER-2006-0315**  
retail electric service provided to customers )  
in its Missouri service area. )

**MOTION TO STAY EFFECTIVENESS OF RATES  
AND  
MOTION FOR EXPEDITED TREATMENT**

COME NOW, Praxair, Inc. (“Praxair”) and Explorer Pipeline, Inc. (“Explorer”), pursuant to Section 386.500 RSMo., and for its Motion to Stay Effectiveness of Rates respectfully states as follow:

1. On December 21, 2006, the Commission issued its Report and Order in the above captioned matter. As reflected in the accompanying Application for Rehearing, which is incorporated herein by reference as though fully set forth, that Report and Order, as well as the procedure utilized by this Commission in administering this proceeding, has been riddled with dozens of instances 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, fails to provide findings on contested issues, 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. On December 29, 2006, the Commission, in an apparent rush to reach a conclusion in this proceeding, issued its Order Granting Expedited Treatment and

Approving Tariffs. That Order approves the tariffs submitted by Empire, purportedly in multiple versions of “compliance” tariffs, well ahead of the proposed effective date of those tariffs, in the face of a motion filed by these parties to suspend these purported “compliance” tariffs, on an expedited *sua sponte* basis. This Order issued despite the fact that the Report and Order failed to address substantive issues, appears to be based upon Empire’s assumptions as to how the Commission ruled on certain issues, was not based upon any competent and substantial evidence, and ignored Commission rules which grant parties 10 days to respond to motions in the absence of any showing of good cause or direction (or even a request) to shorten the response time to Empire’s motion.

3. 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 noted by the Commission in its Report and Order, “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>

4. Praxair / Explorer anticipate that Empire will argue that any stay will harm its shareholders and deny it the rate increase that it deserves. However, these parties and the public will be forced to pay rates that they believe are unlawful 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.

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

5. 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, Praxair / Explorer states that it requests that the Commission act by January 2, 2006. Furthermore, this document was filed as soon as possible given that it was filed on the same day as the Commission approved Empire's compliance tariffs and is filed simultaneous with the statutory deadline for filing an Application for Rehearing.

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

WHEREFORE, Praxair / Explorer respectfully request that the Commission issue its Order staying the effectiveness of its Report and Order on an Expedited Basis.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is written over a horizontal line. A vertical red line is positioned to the right of the signature.

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ATTORNEYS FOR PRAXAIR, INC. and  
EXPLORER PIPELINE, INC.

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 "David L. Woodsmall". The signature is written in a cursive style with a large initial "D".

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David L. Woodsmall

Dated: December 29, 2006