

**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	)	

**EMPIRE’S RESPONSE TO PRAXAIR/EXPLORER PLEADINGS**

Comes now The Empire District Electric Company (“Empire”), and, in response to pleadings filed by Praxair, Inc. (Praxair) and the Explorer Pipeline Company (Explorer), respectfully states as follows to the Missouri Public Service Commission (“Commission”):

**SUMMARY**

Empire suggests in response to the Praxair/Explorer pleadings that the Commission set for hearing any issues resulting from the true-up testimony in this case and any other matters remaining related to the regulatory amortization gross-up issue. In connection therewith, the Commission should direct the parties to file a pleading containing a list of issues, order of witnesses and order of cross-examination at least two days prior to the date of hearing. Empire’s witnesses can be available for such a hearing any day between this date and November 3, 2006, except for October 25 and 26, 2006, and November 2, 2006.

**BACKGROUND**

1. On October 13, 2006, Empire, the Staff of the Commission (Staff) and the Office of the Public Counsel (Public Counsel) filed a Nonunanimous Stipulation and Agreement Regarding Corporate Allocations. On October 19, 2006, Praxair and

Explorer filed their Objection to the Nonunanimous Stipulation and Agreement Regarding Corporate Allocations.

2. On October 12, 2006, the Commission issued an Order Admitting All True-Up Testimony Into the Record (Order). On October 20, 2006, Praxair and Explorer filed their Application for Rehearing concerning the Order.

### **EMPIRE POSITION**

3. Empire believes that in light of the Objection and the Application for Rehearing, the Commission should grant the requested rehearing and schedule a hearing to address any and all issues arising from the true-up testimony. Additionally, Empire suggests that the Commission hear at the same time any cross-examination regarding the amortization gross-up issue that was reserved at the evidentiary hearing in this matter.

4. Commission Rule 4 CSR 240-2.115 clearly states that when a timely objection to a nonunanimous stipulation and agreement is filed, the nonunanimous stipulation and agreement becomes a position of the parties and all issues remain for determination after hearing.

5. Further, *State ex rel. Fischer v. Public Service Commission*, 645 S.W.2d 39 (Mo.App.W.D. 1982) makes it clear that the hearing to be conducted when a nonunanimous stipulation and agreement has been filed is not a hearing on the stipulation, but rather a full and contested hearing on the issue itself. In this case, that means that the Commission should hear any issue resulting from the true-up testimony.

6. Moreover, during the evidentiary hearing of this matter, certain parties purported to reserve cross-examination concerning the regulatory amortization income

tax gross-up issue because the parties were working toward a stipulation and agreement concerning this issue. Tr. p. 548, 616 and 621. As of this date, no such stipulation and agreement has been filed. Empire believes that it is still possible that a stipulation and agreement concerning this issue may be filed. However, it almost certainly will not be unanimous. Thus, any such stipulation and agreement will be no more than a joint recommendation and the underlying issue will need to be heard by the Commission.

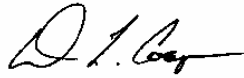
7. Accordingly, Empire suggests that the Commission schedule a hearing to consider and receive testimony concerning any and all issues resulting from the true-up testimony and any cross-examination that may be sought concerning the regulatory amortization income tax gross-up issue.

8. The efficiency of a hearing such as that discussed above will be furthered if the parties have been required to file a pleading containing a list of issues, order of witnesses and order of cross-examination at least two days before the hearing. Therefore, Empire asks that any hearing setting include such a requirement.

9. Empire's witnesses concerning the referenced matter can be available for hearing any day over the next two weeks, except for October 25 and 26, 2006, and November 2, 2006.

WHEREFORE, Empire respectfully requests that the Commission consider this response and hold a true-up hearing and a hearing concerning the amortization gross-up issue at its earliest convenience.

Respectfully submitted,



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James C. Swearengen #21510  
Dean L. Cooper #36592  
Brydon, Swearengen & England P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
Telephone: (573) 635-7166  
Facsimile: (573) 634-7431  
E-Mail: LRackers@brydonlaw.com

Attorneys for The Empire District Electric Company

**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was electronically transmitted, sent by U.S. Mail, postage prepaid, or hand-delivered, on this 23<sup>rd</sup> day of October, 2006, to:

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

Office of the Public Counsel  
P.O. Box 2230  
Jefferson City, MO 65102  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Stuart Conrad  
Finnegan, Conrad & Peterson  
1209 Penntower Office Center  
3100 Broadway  
Kansas City, MO 64111  
Attorney for Praxair & Explorer  
[stucon@fcplaw.com](mailto:stucon@fcplaw.com)

Jim Fischer  
Fischer & Dority  
101 Madison, Suite 400  
Jefferson City, MO 65101  
Attorney for KCPL  
[jfischerpc@aol.com](mailto:jfischerpc@aol.com)

Diana C. Carter  
Brydon, Swearengen & England  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102  
Attorney for Aquila, Inc.  
[dcarter@brydonlaw.com](mailto:dcarter@brydonlaw.com)

Shelley Woods  
Attorney General's Office  
P.O. Box 899  
Jefferson City, MO 65102  
Attorney for DNR  
[Shelley.Woods@ago.mo.gov](mailto:Shelley.Woods@ago.mo.gov)

