

**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 OBJECTION AND MOTION TO QUASH SUBPOENAS OR,
IN THE ALTERNATIVE, MOTION TO CONTINUE HEARING**

Comes now The Empire District Electric Company (“Empire”), and, as its Motion to Quash Subpoenas or, in the alternative, Motion to Continue Hearing, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

SUMMARY

Empire objects to, and moves the Commission to quash, subpoenas that have been served on Mr. Bill Gipson and Mr. Todd Tarter that purport to direct Mr. Gipson and Mr. Tarter to appear before the Commission on November 20, 2006, at the hearing in this case. The appearance of Mr. Gipson and Mr. Tarter at such hearing would be contrary to the Commission’s orders and rules. Further, Mr. Gipson and Mr. Tarter have previously stood cross-examination in this matter and been excused. Moreover, the subject subpoenas have been issued in conflict with the Commission’s rules.

In the alternative, should the Commission not quash the subpoenas, Empire asks that this matter be continued until November 21, 2006.

BACKGROUND

1. On October 24, 2006, the Commission issued its Order Setting Hearing wherein it set this matter for hearing on October 31, 2006, for the limited purpose of allowing parties to cross-examine witnesses who had pre-filed testimony on the subjects

of corporate allocations, regulatory plan amortizations and true-up testimony. In fact, the Order specifically stated that the hearing would “be limited to cross-examination of witnesses who offered pre-filed testimony on the subjects of corporate allocations, regulatory plan amortizations and true-up testimony.” Order Setting Hearing, p. 2.

2. At the hearing on October 31, 2006, and in response to a limited objection by Praxair/Explorer regarding the adequacy of notice, the Commission adjourned this matter until November 20, 2006. Tr. p. 1205-06.

3. On November 3, 2006, Praxair, Inc. (Praxair) and Explorer Pipeline Company (Explorer) served subpoenas purporting to compel the presence and testimony of Bill Gipson and Todd Tarter at the November 20, 2006 hearing in this matter.

4. On November 7, 2006, the Commission issued its Order Confirming Hearing wherein it confirmed that the hearing would be continued on November 20, 2006, and stated that “[p]arties will be limited to cross-examination of witnesses who offered pre-filed testimony on the subjects of corporate allocations, regulatory plan amortizations and true-up testimony.

OBJECTION AND MOTION TO QUASH

5. The hearing currently scheduled for November 20, 2006 is to “be limited to cross-examination of witnesses who offered pre-filed testimony on the subjects of corporate allocations, regulatory plan amortizations and true-up testimony.”

6. Mr. Tarter has not offered or prepared testimony on any of the three subjects identified for the hearing.

7. Mr. Gipson has not offered or prepared testimony on either the issue of

corporate allocations or true-up. Mr. Gipson did pre-file Supplemental Direct and Rebuttal testimonies in regard to regulatory plan amortizations. However, Mr. Gipson has stood cross-examination without reservation in regard to that testimony, including regulatory plan amortization (Tr. p. 577-614) and has been excused by the Commission as to all issues (Tr. p. 990). The remainder of Mr. Gipson's testimony concerned the issue identified by the parties as "Fuel Recovery Method (IEC Continuation)" or was stricken as a result of a Praxair/Explorer motion.

8. In fact, the only issue remaining for hearing from the non-true-up portion of this case in regard to regulatory plan amortizations is the issue identified in the List of Issues as follows – ". . . should the amortized amount be subject to an income tax gross-up?"

9. Even if the Commission were not to have limited the hearing as to cross-examination related to the pre-filed testimony, neither Mr. Gipson nor Mr. Tarter appear to have knowledge relevant to the issues to be heard by the Commission. Under these circumstances, directing Mr. Gipson and Mr. Tarter to travel to Jefferson City from Joplin would constitute annoyance and undue burden. Accordingly, the Commission should quash the subject subpoenas.

8. Additionally, allowing Praxair/Explorer to call these witnesses at this time violates the Commission's scheduling order in this case. The Commission's Order Concerning Test Year and True-Up and Adopting Procedural Schedule (issued April 11, 2006) stated, in part, as follows:

The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule by filing electronically

through the Electronic Filing and Information System (EFIS), including the requirement that testimony be filed on line-numbered pages. The practice of pre-filing testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

Order Concerning Test Year, p. 3-4. Commission Rule 4 CSR 240-2.130 describes the process for the pre-filing of testimony.

9. No party is allowed to supplement its pre-filed testimony, except for “matters not previously disclosed which arise at the hearing.” Commission Rule 4 CSR 240-130(8). Praxair/Explorer provided the pre-filed testimony of Mr. Brubaker in regard to true-up issues. Any additional evidence that would be offered by Praxair/Explorer, other than through cross-examination, would constitute an improper supplementation of Praxair/Explorer’s testimony.

10. Further, Commission Rule 4 CSR 240-2.100(1) states, in part, that a “request for a subpoena . . . requiring a person to appear and testify . . . at a hearing . . . shall be filed on the form provided by the commission and shall be directed to the secretary of the commission.” No such request for subpoena has been filed with the Commission in this case, nor has Empire seen any request for the subject subpoenas. This failure to follow the Commission’s process for the request of a subpoena renders the subject subpoenas should be quashed.

11. Commission Rule 4 CSR 240-2.100(2) states, in part, that “except for a showing of good cause . . . a subpoena . . . shall not be issued fewer than twenty (20) days before a hearing.” The subject subpoenas purport to have been issued on

November 1, 2006, nineteen (19) days before the subject hearing. There has been no allegation or showing of good cause, nor a finding by the Commission of such good cause for issuance of the subpoenas less than twenty (20) days prior to the hearing. For this reason, the subpoenas should be quashed.

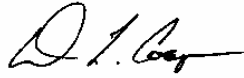
IN THE ALTERNATIVE, MOTION FOR CONTINUANCE

12. If the Commission does not quash the subject subpoenas, Empire hereby requests that the hearing be continued until at least November 21, 2006, due to a conflict in the schedule of Mr. Bill Gipson who has a previous engagement scheduled for November 20, 2006. The Commission's docket appears to be open on November 21, 2006, and available for such hearing. Further, Empire's counsel and witnesses were present in Jefferson City and prepared to conduct this hearing on October 31, 2006, as ordered by the Commission. Missouri Rule of Civil Procedure 57.09 states that "a party or attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden and expense on a non-party subject to the subpoena." A one day further continuance under the circumstances to allow for the attendance of Mr. Gipson would be such a reasonable step.

WHEREFORE, Empire respectfully requests that the Commission quash the subject subpoenas or, in the alternative, continue the subject hearing until at least

November 21, 2006.

Respectfully submitted,



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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 7th day of November, 2006, to:

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