BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Kansas City Power & Light Company	)	
For Approval to Make Certain Changes	)	**Case No. ER-2006-0314**
In its Electric Service to Being the	)	
Implementation of Its Regulatory Plan	)	

APPLICATION FOR REHEARING
AND
MOTION FOR CLARIFICATION

COMES NOW, Praxair, Inc. ("Praxair"), pursuant to Section 386.500 RSMo., and applies for rehearing of the Commission's December 21, 2006 Report and Order (Order) herein on the following grounds:

1. The Order is unlawful, unjust and unreasonable in that the Commission has once again failed to provide adequate findings of fact related to the record as required by law thereby making it impossible for these intervenors to specify with particularity the factual errors that are contained in such Order. Labeling recitations of evidence and testimony as findings of fact when they are nothing more than descriptions of what one or the other parties contended do not substitute for findings of fact and has repeatedly been ruled as insufficient by Missouri courts. Accordingly, the Order violates these Intervenors' rights to due process as guaranteed by the United State and Missouri Constitutions by attempting to deny them access to the courts and should be set aside as unlawful and unconstitutional forthwith.

2. The Order is unlawful, unjust, unreasonable and unconstitutional in that it completely fails to specify conclusions of law that are drawn from findings of fact.

3. The Order is unlawful, unjust, unreasonable and unconstitutional in that it is not supported by competent and substantial evidence upon the whole record and is contrary to the substantial and competent evidence of record.

4. The Order is unlawful, unjust and unreasonable, is not based upon competent and substantial evidence, is not based upon adequate findings of fact and is an abuse of discretion in that the Commission failed to make any findings of the appropriate amounts of rate base, present revenue being received and additional revenue needed so that the parties and any reviewing court may evaluate the Commission's decision in view of the evidence on the whole record of this proceeding. Instead, the Commission appears to leave this matter to the utility to file compliance tariffs yet provides no mechanism that such compliance tariffs may be subject to review in a manner consistent with due process requirements and in a manner calculated to provide consideration of all relevant factors and a decision based on competent and substantial evidence on the whole record.

I. OFF-SYSTEM SALES

5. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is arbitrary and capricious and is an abuse of discretion in that the Commission provides for a mechanism by which KCPL is required to "flow back" any off-system revenues in excess of that level included in rates. This "flow back" of off-system revenues violates: (1) the doctrine against retroactive ratemaking; (2), the forward looking focus of Section 393.270 RSMo.; and (3) *State ex rel. Utility Consumers Council, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo. 1979).

6. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is arbitrary and capricious and is an abuse of discretion in that the Commission

finds that "in the short term, Missouri ratepayers are not harmed by the 25th percentile scenario presented by KCPL." Such a finding is not based on competent and substantial evidence on the whole of the record and fails to account for decreased incentives which will arise once KCPL reaches the level of off-system sales included in rates.

Recognizing that KCPL will have to return every dollar of off-system sales revenue in excess of that represented by the 25th percentile, it becomes patently obvious that KCPL will not have the same incentive to engage in any further off-system transactions. This results in, contrary to the Commission's finding, significant harm to KCPL ratepayers. Of course, the harm associated with this decreased incentive was not addressed by any party because this position was not properly raised by KCPL in its prefiled testimony. Had the Commission included off-system sales revenues at the 50th percentile, however, KCPL would have the opportunity to pocket all revenues in excess of the level included in rates. This would have provided KCPL with increased incentives to engage, to the maximum extent possible, in off-system transactions.

7. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is arbitrary and capricious and is an abuse of discretion in that the Commission violates its rules of practice and procedure by adopting a methodology for calculating off-system sales which was not presented by KCPL until cross-examination by a Commissioner. Specifically, 4 CSR 240-2.130(7) provides that "Direct testimony shall include all testimony and exhibits asserting and explaining that party's ***entire*** case-in-chief." Moreover, 4 CSR 240-2.130(8) provides that no party shall be permitted to supplement prefiled direct testimony.

8. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is arbitrary and capricious and is an abuse of discretion in that the Commission's decision regarding off-system sales arbitrarily deviates from a 25-year old policy of normalization without adequate explanation regarding the basis for such deviation. As detailed in the Posthearing brief of Praxair, and unrebutted by KCPL in its Reply Brief, the use of normalization adjustments has been routinely utilized by this Commission and has found repeated acceptance by Missouri Courts.[1] Any deviation from this policy without adequate explanation and findings of fact is inherently arbitrary and capricious.

9. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is arbitrary and capricious and is an abuse of discretion in that the Commission's Order unjustly discriminates against present customers for the benefit of future customers in contravention of Section 393.140(5). Specifically, the Commission Order provides for off-system sales to be set at a level much less than expected, to the detriment of current customers, and requires any excess to be flowed back to ratepayers in the future, to the benefit of future customers.

II. JURISDICTIONAL ALLOCATIONS - A&G EXPENSES

10. The Order is unlawful, unjust and unreasonable, is based on inadequate findings of fact, is arbitrary and capricious and is an abuse of discretion in that the Commission failed to address the issue denoted in the issue list as "How should A&G expenses be allocated to the Missouri retail, Kansas retail and FERC wholesale jurisdictions?" Although the Commission addressed the other jurisdictional allocation issue (4 CP vs. 12 CP), the Commission failed to address the A&G jurisdictional allocation issue.

[1] *In re: Missouri Public Service*, 1 MoPSC 3d 200, 205 (1991); *In re: Missouri Public Service*, 2 MoPSC 3d 230, (1994); *In re: Southwestern Bell Telephone Company*, 2 Mo. PSC 3d 479 (1993); *In re: Southwestern Bell Telephone Company*, 29 MoPSC (N.S.) 607 (1989).

III. MOTION FOR CLARIFICATION

11. In its Report and Order the Commission states that several parties, including Explorer Pipeline, filed a Stipulation and Agreement Regarding Class Cost of Service and Rate Design. That Stipulation and Agreement incorrectly noted undersigned as counsel for both Praxair and Explorer Pipeline. The Commission will note that Explorer Pipeline was never a party to the above-captioned proceeding. As such, Explorer Pipeline was, in actuality, not a party to the Stipulation and Agreement. Praxair requests that the Commission clarify its Report and Order to note that Explorer Pipeline was not a party to this matter or to the Stipulation and Agreement.

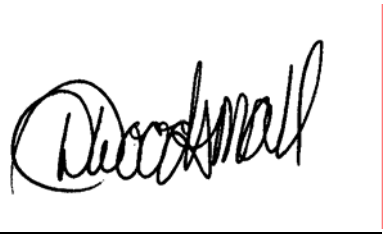
12. In the final days of its processing of this rate application the Commission appeared to request and then relied upon various "scenarios" which resulted in a backward approach to what should otherwise be a process of reasoned decision-making in the case, making decisions on specific issues driven by the results that would obtain under various "scenarios" rather than deciding the issues based upon findings of fact based upon substantial competent evidence on the whole record of the proceeding. These "scenarios" are not and were not offered as evidence, were never subjected to cross-examination by the parties, known or unknown, who prepared them, and are not properly part of the record in this proceeding upon which the Commission could base its decision. Moreover, the process employed creates the appearance, if not the fact of being result-driven rather than fact- and finding-driven in that the Commission appeared to be more concerned with the revenue results that decisions on particular issues would have than seeking to analyze the evidence produced and deciding the issue on the basis of the evidence adduced in the hearing. Such a practice inverted the decisional process in this

case and made the process at the hearing and the careful development of a record in this proceeding of minimal value. Not only this process itself, but the timing of it denies other parties the ability to respond essentially instantaneously to newly-formulated "scenarios," it also denies them the ability to even object to the consideration of such "scenarios" before they are considered by the Commission in the decisional process. This process offends the parties' due process rights and makes the resultant decision unlawful, unreasonable and unsupported by competent and substantial evidence on the whole record, but also makes the entire Commission processes questionable and suspect.

Further, injecting the Commission Staff, previously in the position of a litigant before the Commission, in a conflict-of-interest situation in which it cannot hold to its obligations of fiduciaries of the public, then suddenly switch without notice to other parties to some sort of agent of the Commission itself, particularly in circumstances in which no order has been reached and in other circumstances injecting a party-litigant directly into the decisional process of the Commission, thereby denying other parties due process of law and making a resulting decision unlawful and potentially *ultra vires.*

WHEREFORE Rehearing of the Order should be ordered and a new Order consistent with governing law, commission precedent and based exclusively upon the evidence herein should be issued.

Respectfully submitted,



Stuart W. Conrad, MBE #23966
David L. Woodsmall, MBE #40747
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 751-1122 Ext. 211
Facsimile: (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR PRAXAIR, 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.

David L. Woodsmall

Dated: December 29, 2006