

**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)	<u>Case No. ER-2006-0315</u>
retail electric service provided to customers)	
in its Missouri service area.)	

APPLICATION FOR REHEARING

COMES NOW, Praxair, Inc. (“Praxair”) and Explorer Pipeline, Inc. (“Explorer”), and in support of their Application for Rehearing respectfully states as follows:

1. On January 9, 2007, the Commission issued its Order Supplementing and Clarifying Report and Order (“Order”).

2. Praxair / Explorer seek rehearing of the Commission’s Order on the basis that it is unlawful, unjust and unreasonable, and denies the parties certain constitutional rights. Specifically, although the Order claims to be effective on January 19, 2007, since the Commission has already approved tariffs in this matter on December 29, 2006, this Order is effectively retroactive; that is, it was effective with the approval of the tariffs on December 29, 2006.

3. The situation is virtually identical to the situation deemed unlawful in *State ex rel. County of St. Louis v. Public Service Commission*.¹ In that case, the Supreme Court found that the Commission’s Order was unlawful “because the Report and Order was supplemented so near the effective date, as to deprive those interested of the reasonable opportunity to prepare and file motions for rehearing.” In the case at hand, the Commission supplemented its Report and Order eleven days after approving

¹ *State ex rel. County of St. Louis v. Public Service Commission*, 228 S.W.2d 1 (Mo. 1950).

tariffs filed in compliance with the Report and Order. By approving those tariffs prior to the issuance of the immediate Order and without providing for the effective period contemplated by this Order, the Commission denied parties their constitutional and statutory rights to timely rehearing and appeal.

4. The Commission's Order is unlawful, unjust and unreasonable, denies the parties certain constitutional rights, and relies upon inadequate findings of fact and conclusions of law in that it fails to provide any mechanism to ensure that the tariffs approved 11 days previously are in compliance with this Order. To the extent that the Commission approved tariffs on December 29, 2007 with the intent or belief that those tariffs comply with a then non-existent Order Supplementing and Clarifying Report and Order, the Commission's December 29, 2007 Order Granting Expedited Treatment and Approving Tariffs is not based upon competent and substantial evidence and fails to make adequate findings of fact and conclusions of law. Alternatively, to the extent that the Commission blindly adopted those tariffs without having made any findings on the issue of the appropriate discounted present value of the two purchased power contracts, the Order represents an unlawful abdication of the Commission's authority and responsibility to the party preparing the compliance tariffs.

5. As further support for this Application, and to the extent necessary to preserve their rights under Section 386.500-520 with respect to both the December 21, 2006 Report and Order, the December 29, 2006 Order Granting Expedited Treatment and Approving Tariffs, and this new January 9, 2007 Order, these parties incorporate by reference both their December 29, 2006 and December 31, 2006 Applications for Rehearing as though each separate paragraph and portion thereof were fully set out

herein. Furthermore, Praxair / Explorer incorporate by reference the Application for Rehearing filed by Office of Public Counsel on January 18, 2007.

WHEREFORE Rehearing of the Order should be ordered and a new Order issued which provides for proper procedure and notice, allows for the receipt of evidence, and is consistent with governing law, commission precedent and the evidence received.

Respectfully submitted,

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

Stuart W. Conrad, MBE #23966
David L. Woodsmall, MBE #40747
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122 Ext. 300
Facsimile: (816) 756-0373
Internet: stucon@fcplaw.com

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, flowing style with a large initial "D".

David L. Woodsmall

Dated: January 18, 2007