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May 30, 2001

VIA HAND DELIVERY

Mr. Dale H. Roberts
Secretary
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, MO 63101

Re: **Empire District Electric Company**
Case No. ER-2001-299

Dear Mr. Roberts:

Yesterday we filed Intervenor Praxair's Response in Opposition to Staff Motion in the above matter. During presentation of the motion to Judge Ruth, we discovered the copier had skipped two pages when copying the original document. I believe this affected the additional copies that were provided to the Commission yesterday at the time of filing.

Per Judge Ruth, I enclose nine copies of the omitted pages (pages 14 and 15). The parties have a complete version, as does Judge Ruth. Regardless, this letter and the omitted pages will be copied to them.

Please add these additional pages to the packets filed yesterday. I apologize for the error and the obvious inconvenience caused.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 
Stuart W. Conrad

SWC:s
Enclosures
cc: All Parties (w/encl)

FILED²
MAY 31 2001
Missouri Public
Service Commission

Disclosure serves no public policy purpose whatever, and diserves proper public purposes. It does not encourage future candid and open settlement discussions to allow a limited coalition of selected parties to negotiate a deal that is acceptable to them, then present the other parties with a "take it or leave it" offer and submit their nonunanimous stipulation if the parties chose not to accept the proffered deal.

Praxair believes that the Commission has recognized this in its May 24, 2001 Order Directing Filing. Permitting the introduction into evidence of privileged settlement material and positions would disserve the public purpose.

H. The Agreement Is Unlawful Under the UCCM Decision.

In *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 56 (Mo. En Banc 1979) ("UCCM"), the Missouri Supreme Court rejected a fuel adjustment clause as single issue ratemaking. Not only did the Court rule that there was no authority for the Commission to consider such a clause, it ruled that a rate case that did not consider "all relevant factors" was insufficient to result in a lawful and reasonable decision.

Although the proponents have sought to distinguish their stipulation from the prohibited fuel adjustment clause, it would, if approved on its terms increase rates without regard to any other determinations in the case. For example, the facts

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when shown might well indicated that Empire would otherwise be entitled to a decrease, particularly if the new proposed plant should fail to come on line as scheduled or fail to meet the requirements of on-line testing.

The proponents may be expected to assert that the approach employed by the stipulation was used following the UCCM decision. If true, the decision was never judicially tested and survived only for a short time, and was not used again. Further, the mechanism employed in those cases did not cover all fuel costs but only certain selected fuel costs.

Further discussion would only take us into the terms of the nonunanimous stipulation. Accordingly, Praxair believes it is sufficient to state that the Staff proposal would lead the Commission toward legal error.

I. Rejection of Staff's Motion Does Not Deny Supporting Parties the Ability to Change Their Position, Nor to Advocate a Similar Position in Their Post-Hearing Briefs.

We expect that supporting parties will plead that they are free to change their position and advocate their new position. Praxair has no difficulty with that argument, but it proves too much. By denying Staff's Motion, the Commission will not deny these parties any ability to change their positions, nor to change them back again. They are free to pursue that position in their evidence and in their briefs. What we believe they should not be free to do is to continue to advocate their failed