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

RESPONSE OF PRAXAIR / EXPLORER TO COMMISSION NOTICE REQUIRING FILING

COMES NOW, Praxair, Inc. ("Praxair") and Explorer Pipeline Company ("Explorer") and in response to the Commission's September 14, 2006 Notice Requiring Filing provides as follows:

1. Provide the Commission a legal analysis of the Commission's ability to make changes to the IEC, as well as an explanation of how the IEC resulting from the "2001 Rate Case" was altered prior to its suspension and termination.

Response: Senate Bill 179 (Section 386.266.12 RSMo) specifically provides that the "commission shall have previously promulgated rules to implement the application process for any rate adjustment mechanism under this section prior to the commission issuing an order for any rate adjustment." (emphasis added). As such, until such time as rules have been promulgated, the Commission does not have authority to order a new interim energy charge mechanism. Recognizing that any changes to the currently effective Interim Energy Charge would constitute a new interim energy charge, the Commission is without authority to order changes to the current IEC.

Moreover, as was discussed in Praxair / Explorer's opening argument and will be more thoroughly developed in posthearing briefs, the current IEC has been recognized by the Commission to be a binding contract. To date, Empire has not advanced a legally

recognized basis for the rescission or reformation of that contract. As such, the Commission is without authority to disturb that binding contract.

The IEC resulting from the "2001 Rate Case" was not suspended. That is to say, the IEC was not contained in Empire's 2001 Rate Case implementing tariffs. Therefore, the IEC was not suspended by the Commission. Rather, that IEC resulted from the negotiations of the parties and was approved by the Commission as part of a Stipulation and Agreement. No subsequent alterations were made to that "2001 IEC". The "2001 IEC" was subsequently terminated by agreement of all parties and approved by the Commission in Case No. ER-2002-1074.

2. Specifically, may the Commission change the fuel cost "collar" based on the projected fuel costs already in evidence?

Response: As indicated in response to question 1, the Commission is without authority, until such time as SB179 rules have been promulgated, to order a rate adjustment mechanism. As such, the Commission can not "change" the fuel cost collar currently in place with the current IEC. Such changes would take the agreement of all the parties to this proceeding. Moreover, the current IEC has been found to be a binding contract. To date, Empire has failed to advance a legally recognized basis for the rescission or reformation of that contract.

Finally, none of the parties have provided evidence regarding the establishment of an appropriate fuel cost "collar". Given the lack of such evidence, any Commission order changing the fuel cost "collar" would not be based upon competent and substantial evidence on the whole of the record.

3. As the IEC was established as part of a Stipulation and Agreement, if the fuel cost "collar' is changed, are other changes to the Stipulation and Agreement necessary to make the resulting IEC and Stipulation and Agreement not inequitable to signatory parties? What about non-signatory parties? If yes, please explain those other changes in detail, including specific suggestions for languages changes.

Response: As indicated in response to question 1, the Commission is without authority, until such time as SB179 rules have been promulgated, to order a rate adjustment mechanism. As such, the Commission can not "change" the fuel cost collar currently in place with the current IEC. Such changes would take the agreement of all the parties to this proceeding.

Nevertheless, to the extent that Empire is permitted to prematurely terminate the IEC, the Commission would be undertaking the judicial role of rescission of a contract. Consistent with contract law, courts undertaking such rescission would seek to return the parties to their positions prior to the contract. This would involve a return on all previously exchanged consideration. As such, other changes to the Stipulation and Agreement that would be necessary would be to return the entire amount of IEC revenues collected by Empire up to the point of rescission.

4. Regardless of the answers and legal analysis in response to questions 1-3 above, at what level should the fuel cost "collar" be set?

Response: Recognizing that the Commission is without authority to make changes to the currently effective IEC, the fuel cost "collar" should remain at currently effective levels. Furthermore, none of the parties have provided evidence regarding the appropriate levels for the establishment of a base level of fuel and ceiling under a "replacement" IEC. As

such, any Commission decision to modify the "collar" would not be supported by competent and substantial evidence on the record.

Respectfully submitted,

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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.

David L. Woodsmall

Dated: September 20, 2006