

BEFORE THE PUBLIC SERVICE COMMISSION
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

**STAFF'S RESPONSE TO PRAXAIR/EXPLORER PIPELINE'S
APPLICATION FOR REHEARING**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the Commission's General Counsel, and for its Response to the Application for Rehearing filed by Praxair, Inc. (Praxair) and Explorer Pipeline, Inc. (Explorer Pipeline), on September 8, 2006, states as follows:

Although Staff believes that the contentions made by Praxair and Explorer Pipeline in their Application for Rehearing are without merit, Staff believes that prudence suggests that the Commission grant rehearing, set aside its August 31, 2006 Order Approving Stipulation and Agreement as to Certain Issues, and direct that said Stipulation and Agreement as to Certain Issues be taken by the Commission as a joint recommendation, and the underlying issues comprehended by the Stipulation and Agreement as to Certain Issues be tried to the Commission, with the relevant witnesses standing cross-examination. The hearing granted by the Commission should not be limited. The hearing should take up the issues themselves covered by the Stipulation and Agreement as to Certain Issues and the Stipulation and Agreement as to Certain Issues itself as a joint recommendation – as if Praxair and/or Explorer Pipeline had made timely objection to the Stipulation and Agreement to Certain issues and requested a hearing.

Staff makes this recommendation that the hearing should not be limited for this reason: In 1982, the Missouri Court of Appeals for the Western District overturned a Commission order where the Commission had conducted only a limited hearing on certain issues resolved by a non-unanimous stipulation and agreement to which a timely objection had been raised. *State ex rel. Fischer v. Public Service Commission*, 645 S.W.2d 39, 42 (Mo. App. W.D. 1982). The Court stated:

. . . it is clear that Section 386.410 did not authorize the limited hearing procedure utilized in this case. It does not, as the Commission claims, give it unlimited discretion to conduct its hearings in any possible manner. Rather, it gives the Commission flexibility in its proceedings, as long as its proceedings satisfy all other statutory requirements.

WHEREFORE Staff believes that prudence suggests this course and requests that the Commission proceed in the manner related above, even though Staff believes that the contentions made by Praxair, Inc. and Explorer Pipeline, Inc. in their Application for Rehearing are without merit.

Respectfully submitted,

/s/ Kevin A. Thompson

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 18th day of September, 2006.

/s/ Kevin A. Thompson