

**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 December 29, 2006, the Commission issued its Order Granting Expedited Treatment and Approving Tariffs (“Order”).

2. The referenced Order claims to have been effective well less than 10 days after issuance in violation of Missouri law that any such order¹ be issued with a reasonable time within which to seek rehearing or reconsideration. Failure to provide such a reasonable period, which Missouri courts have construed as not less than 10 days, results in such a period being imposed by law, otherwise parties are denied the opportunity to seek rehearing of an order before they even see it. This Application, filed within 10 days of the December 29, 2006 issuance date, is, accordingly, timely. Indeed, Missouri’s circuit courts have previously chastened the Commission for attempting to make its orders impervious to review by declaring them effective on less than 10 days notice.

¹ It cannot seriously be argued that any order that approves purportedly “compliance” tariffs in a matter in which the original Report and Order wholly failed to identify appropriate rate levels and even failed to address issues that were submitted in the case is without “substantive” effect. Moreover, the December 29 Order even attempts, without substantial and competent evidence, to resolve disputed matters between the parties.

3. 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. Chapter 536 provides for certain procedures that must be followed in any contested case. These procedures are in place to preserve the parties' fundamental rights of due process. Moreover, Article V, Section 18 of the Missouri Constitution requires agency's decisions to be supported by competent and substantial evidence.

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 issued its Order without the benefit of any competent and substantial evidence upon which to determine whether the rates reflected in the tariffs actually comported to the Commission's December 21, 2006 Report and Order. Indeed, as mentioned in previous pleadings, there are fundamental evidentiary problems associated with the Commission relying solely on a party's recommendation / affidavit. Reliance on such pleadings, without providing for the scrutiny of cross-examination, as guaranteed by statute, makes the Commission's Order inherently unreasonable and any findings of fact unsupportable. Such scrutiny would provide "evidence" as to the level of revenues reflected in tariffs, the level of regulatory amortizations contained in those revenues, and the rate design methodology used to distribute those revenues between customer classes. To date, the Commission has yet to provide a procedure for the receipt of the "evidence" that would answer these questions. As such, the Commission itself does not and can not know the answers to the very questions it was created to answer.

5. 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's Report and Order neglected to find a particular level of revenue increase that was just and reasonable. In addition, as pointed out in previous pleadings, the Commission's Report and Order failed to make any findings of fact / conclusions of law related to the issues of off-balance sheet obligations and corporate allocations. Recognizing that the Commission is the sole party with authority to determine just and reasonable rates, and that the Commission has yet to exercise that authority with respect to certain issues that are a prerequisite to any determination of just and reasonable rates, any Order Approving Tariffs would necessarily be an illegal abdication of this Commission's authority to the entity that prepared the tariffs. Without the benefit of proper findings as to these particular unaddressed issues as well as the appropriate level of just and reasonable revenues, it is impossible for any party to determine the appropriate rates to build into tariffs.

6. 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 Order violated the Commission's Rules of Practice and Procedure by failing to allow parties the opportunity to respond to Empire's Motion for Expedited Treatment. 4 CSR 240-2.080(15) provides parties 10 days in which to respond to a pleading "unless otherwise ordered by the Commission." In the case at hand, the Commission never issued an Order otherwise limited the length of time in which parties would have to respond. In fact, the Commission's filing system indicates that the Commission did not even allow 24 hours, following the filing of Empire's Motion, before

it, in an apparent rush to judgment, hurriedly convened an agenda session to approve Empire's third attempt at "compliance" tariffs. Moreover, the Commission did so without even a request by Empire for a shortened response time and without a Commission order shortening response time. These violations of the Commission rules and procedures make the Commission's Order inherently unlawful and served to deprive parties of fundamental rights of due process.

7. 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 it purports to find "good cause" without any evidence therefore and in violation of Commission procedures and rules.

8. 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 Order provides for rates to go into effect in less than 30 days in violation of Section 393.140(11) RSMo. That section guarantees 30 days notice on all tariff changes unless shortened for good cause shown. In its Order, the Commission fails to make any such finding of good cause. As such, the Commission's Order is unlawful and not based upon adequate findings of fact. These parties had timely submitted a Request to Suspend, noting that the tendered tariffs did not comply with and could not be found to comply with the Report and Order. The Commission December 29 2006 Order here complained of does not even attempt to address, rather completely ignores, that motion. This places the Commission squarely out of compliance with its own procedures, governing Missouri law, and makes the purportedly approved rates unlawful.

9. 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 it relies unilaterally upon a party's interpretation of the prior Report and Order and even expressly states that it the earlier order will be modified or "clarified" so as to bring that order into "compliance" with the tariffs that have been filed. There is no evidentiary support whatever for such a modification and there is no statutory or lawful support whatever for such a procedure which effectively acknowledges the complaints that these and other parties have brought to the Commission and dismisses them as though the Commission is nothing more than the arm of the utility and has completely abandoned its statutory purpose of protecting the public interest.

10. 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 and this new December 29, 2006 Order, these parties incorporate by reference their December 29, 2006 Application for Rehearing as though each separate paragraph and portion thereof were fully set out herein.

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 "Stu Conrad", is positioned above a horizontal line. To the right of the signature, a vertical red line extends upwards from the horizontal line.

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. 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: December 31, 2006