

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Empire District Electric	)	
Company of Joplin, Missouri for Authority	)	
to File Tariffs Increasing Rates for Electric	)	<b><u>Case No. ER-2006-0315</u></b>
Service Provided to Customers in the	)	
Missouri Service Area of the Company	)	

**MOTION FOR RECONSIDERATION**

COMES NOW the Office of the Public Counsel and for its Motion for Reconsideration states as follows:

1. On November 16, 2006 the Commission issued an Order Quashing Subpoenas. In that order the Commission states “On October 4, 2006, The Public Counsel verbally requested that the true-up hearing scheduled for October 5 and 6 be cancelled, as there was ‘nothing to do at it’ and all parties had acquiesced to its cancellation.” This statement is simply not true. On October 4, Public Counsel was at a local public hearing in Case No. EO-2007-0037 in St. Louis County. Before that hearing formally began, the Commission’s chief administrative law judge (the presiding officer in this case and the presiding officer at that hearing) informed Public Counsel that the true-up hearing was cancelled. Public Counsel **did not** request cancellation, and **did not** inform the regulatory law judge that all parties agreed to cancellation.<sup>1</sup>

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<sup>1</sup> Public Counsel does not disagree that a true-up hearing on October 5 would probably not have been very productive. Without having any specific memory of the attributed quote, it is true that – **after** being informed that the hearing was cancelled – Public Counsel did opine that there likely would have been little or no cross-examination had the hearing gone forward as scheduled.

2. Public Counsel has no first-hand knowledge of why the October 5-6 true-up hearing was cancelled.<sup>2</sup> Public Counsel does not clearly understand why the Commission's rationale for canceling the October 4-5 true-up hearing is important. However, if it is important for the Commission to establish why it was cancelled,<sup>3</sup> then it is important that the real reason be established. Furthermore, the procedural history of this case has become so convoluted that it is difficult to predict what procedural steps (and missteps) may be important in the inevitable appeals. For that reason, Public Counsel believes it is critical to draw attention to the Commission's incorrect statement in the Order Quashing Subpoenas of the reason that the originally-scheduled true-up hearing was cancelled, and to request a correction of that statement.

WHEREFORE, Public Counsel respectfully requests that the Commission reconsider its Order Quashing Subpoenas, and upon reconsideration correct its stated rationale for cancelling the October 5-6, 2006 True-up Hearing.

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<sup>2</sup> At the local public hearing in St. Louis County, the chief administrative law judge told Public Counsel that David Woodsmall, counsel for Praxair and Explorer, had requested that the hearing be cancelled, and had informed her that all parties agreed to its cancellation. Public Counsel subsequently spoke by phone with Steve Dottheim, counsel for Staff, and Mr. Woodsmall. Mr. Woodsmall stated clearly that he had neither requested cancellation nor told the chief regulatory law judge that all parties had acquiesced.

<sup>3</sup> Public Counsel presumes that the reason for cancelling the hearing must be important to the Commission, because the Commission included discussion of it in the Order Quashing Subpoenas.

Respectfully submitted,  
OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr.

By:\_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties this 20<sup>th</sup> day of November 2006.

/s/ Lewis R. Mills, Jr.

By:\_\_\_\_\_