

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

**EMPIRE'S MOTION FOR RECONSIDERATION
AND RESPONSE TO PUBLIC COUNSEL'S REQUEST FOR EXTENSION OF TIME
AND THE MOTION FOR EXPEDITED DISCOVERY OF PRAXAIR AND EXPLORER**

Comes now The Empire District Electric Company ("Empire" or the "Company"), by counsel, and for its Motion for Reconsideration and its Response to the Office of the Public Counsel's Request for Extension of Time and the Motion for Expedited Discovery of Praxair, Inc. ("Praxair") and Explorer Pipeline, Inc. ("Explorer"), respectfully states as follows to the Missouri Public Service Commission (the "Commission"):

1. On March 24, 2006, Empire filed its Motion for Clarification with regard to the Nonunanimous Stipulation and Agreement Regarding Fuel and Purchased Power Expense (the "Agreement") entered into in Case No. ER-2004-0570. On March 30, 2006, the Office of the Public Counsel ("Public Counsel") filed its Request for Extension of Time asking for an additional two weeks to respond to Empire's Motion for Clarification.

2. Public Counsel asserts that it needs two extra weeks to conduct discovery and investigate any statements made by Empire's representatives regarding the meaning of the Agreement. Pursuant to Commission rules, parties would normally have ten days to respond to Public Counsel's request. By delegation order of March 31, 2006, and without allowing Empire to file a response to the same, the Commission granted Public Counsel's request for additional time.

3. On Friday, March 31, 2006, Praxair and Explorer filed their Motion for Expedited Discovery in which they concurred in Public Counsel's request for an extension of time. Praxair and Explorer also sought an order requiring Empire to respond to 24 data requests which were directed to Empire on March 29 and 30, 2006, within ten days of service. Pursuant to Commission rules, Empire would normally have 10 days to object and 20 days to otherwise respond to the data requests.

4. In their Motion, Praxair and Explorer assert that Empire needs to respond to the 24 data requests within ten days in order to allow sufficient time to complete written discovery and conduct depositions before the parties are required to respond to Empire's Motion for Clarification. By delegation order issued on Monday, April 3, 2006, at approximately 9:25 a.m., and without allowing Empire to file a response to the same, the Commission granted the Motion for Expedited Discovery.

5. Empire urges the Commission to reconsider the two-week extension of time granted to Public Counsel and the expedited discovery granted to Praxair and Explorer. The Agreement is clear and unambiguous on its face, and there is no need for any "discovery" to investigate statements made about the Agreement or any other extraneous matters involving the same.

6. The Agreement, to which Empire, Public Counsel, Praxair, and Explorer Pipeline were parties, resolved the fuel and purchased power expense issues of Case No. ER-2004-0570. At page two of the Agreement, it is stated that the Interim Energy Charge ("IEC") shall be in effect for three years as described in the Agreement. The Agreement then reads as follows:

The IEC tariff or rate schedule will expire no later than 12:01 a.m. on the date that is three years after the original effective date . . . unless earlier terminated by order of the Commission.

This language is clear and unambiguous. Unlike most tariffs, Empire's IEC tariff would not be able to continue in effect indefinitely until superseded by another tariff or order of the Commission. Instead, Empire's IEC tariff could not remain in effect for more than three years and may be terminated prior to that time by order of the Commission.

7. While the clear and unambiguous language and intent of the Agreement limits the life of the IEC tariff, it does not require that the IEC tariff remain in effect for three years or that Empire's base rates or the fuel component of those base rates remain in effect for three years. The Agreement does not "lock" Empire into a limited amount of Missouri jurisdictional fuel recovery (\$102,994,356 in base rates and \$8,249,000 through the IEC) for three years. This is because the Agreement does not prohibit Empire from filing a rate case to seek recovery of all of its costs, including fuel and purchased power costs, through base rates. Nor does the Agreement prohibit Empire from seeking recovery of its fuel costs through a combination of base rate treatment coupled with an IEC or energy cost recovery rider ("ECR"). Likewise, the Agreement does not prohibit a proper party from filing a complaint with the Commission against Empire concerning the Company's rates and charges, including those rates and charges concerning the recovery of fuel costs.

8. When a document, such as the Agreement, is clear and unambiguous on its face, the parties thereto are bound by that clear and unambiguous language and may not look outside the four corners of the document. In this regard, an agreement is ambiguous only if its terms are susceptible of more than one meaning so that reasonable persons may fairly and honestly differ in their construction of the terms. If there is no ambiguity, the court need not resort to construction of the agreement, but

rather the intent of the parties must be determined from the four corners of the agreement. *Eisenberg v. Redd*, 38 S.W.3d 409, 411 (Mo. banc 2001); see also *Jake C. Byers, Inc. v. J.B.C. Investments*, 834 S.W.2d 806 (Mo.App. 1992) and *J.E. Hathman, Inc. v. Sigma Alpha Epsilon Club*, 491 S.W.2d 261 (Mo. banc 1973).

9. If the parties wanted the Agreement to require that the IEC remain in effect until 12:01 a.m. on the date that is three years after the original effective date, the parties could have stated as such instead of stating that the IEC “will expire no later than 12:01 a.m. on the date that is three years after the original effective date.” If one looks only at the prefatory phrase, “shall be in effect for three years,” and ignores the remainder of that sentence and the other provisions of the Agreement, one could accept the argument that the IEC must remain in effect for three years. When one looks at the Agreement as a whole, however, the terms simply are not susceptible of more than one meaning so that reasonable persons may fairly and honestly differ in their construction of the terms.

10. Public Counsel asserts that it needs two extra weeks to conduct discovery and investigate statements made by Empire’s representatives regarding the meaning of the Agreement. Any such statements are irrelevant to the issue at hand. The Agreement is clear and unambiguous, and the Commission needs to look no further than the document itself to interpret its provisions. Accordingly, a two-week extension to reply to Empire’s Motion for Clarification is not needed. For these same reasons, there is no reason for Empire to respond, on an expedited basis or otherwise, to the 24 data requests submitted by Praxair and Explorer to Empire on March 29 and 30, 2006.

11. Notwithstanding the foregoing, and subject to the objections to certain of the data requests which Empire will raise independent of this pleading, Empire will be

able to provide responses to Praxair and Explorer's DRs 1-13 and 20-24 within ten days of service, and Empire will be able to provide responses to DRs 14-19 on Monday, April 10. It should be noted, however, that many of the data requests are objectionable on the basis of being overbroad and seeking irrelevant information – not just because of the "four corners doctrine" discussed above, but also as to the rate case as a whole.

12. Statements or documents outside of the Agreement are irrelevant to the issue at hand, and certainly Praxair and Explorer do not need to review a list of all individuals in attendance at all board of director meetings (DR2) or review all matters related to each presentation given by Empire since March 1, 2005 (DRs 14-19) before responding to Empire's Motion for Clarification.

Wherefore, The Empire District Electric Company respectfully moves the Commission to reconsider its orders granting the Public Counsel additional time to respond and granting the Motion for Expedited Discovery filed by Praxair, Inc. and Explorer Pipeline, Inc., and, upon reconsideration, deny the same, and Empire requests such further relief as the Commission deems just and proper under the circumstances.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was electronically transmitted, sent by U.S. Mail, postage prepaid, or hand-delivered, on this 4th day of April, 2006, to:

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