

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

In the Matter of the Application of Kansas City	)	
Power & Light Company for Approval to Make	)	Case No. ER-2007-0291
Certain Changes in its Charges for Electric	)	
Service to Implement its Regulatory Plan	)	

**RESPONSE TO MOTION FOR EXPEDITED TREATMENT**

COMES NOW, Praxair, Inc., by and through undersigned counsel, and for their Response to KCPL's Motion for Expedited Treatment respectfully states as follows:

1. On December 6, 2007, the Commission issued its Report and Order in the above-captioned proceeding. In that Report and Order, the Commission authorized KCPL to file tariff sheets that comport with the Report and Order by December 13, 2007. Furthermore, other parties were ordered to file their objections to the tariffs by December 18, 2007.

2. While KCPL did file compliance tariffs with the Commission on December 13, it has since filed at least three (3) sets of revisions to those compliance tariffs. Indeed, KCPL's latest set of compliance tariffs were filed at 5:26 p.m. on December 18, 2007. With KCPL's continuous modifications to its compliance tariffs, it was impossible for other parties to comply with the Commission's Order requiring objections to be filed by December 18, 2007.

3. In this pleading, Praxair notes its objection to KCPL's Motion for Expedited Consideration. In its Motion, KCPL wrongly asserts that Section 393.150 dictates that the Commission must approve its compliance tariffs to be effect on January 1, 2008. KCPL's legal interpretation is erroneous.

4. Section 393.150 imposes a limit on the Commission's ability to suspend tariffs. Specifically, the Commission may suspend filed tariffs for 120 days as well as for an additional period not to exceed six months. By the end of that suspension period, the Commission must issue its Report and Order, with adequate findings of fact and conclusions of law, which either approve or reject the initial tariff filing. By its December 6, 2007 Report and Order, the Commission met its statutory obligation to rule on KCPL's initial tariffs within the suspension period. It has rejected KCPL's initial tariffs. No more is required.

Contrary to KCPL's misinformed suggestion, Section 393.150 does not impose a time limitation on the Commission's treatment of subsequent compliance tariffs. Consistent with statutory notice requirements, those tariffs carry the obligatory 30-day effective period. Absent action by the Commission, those tariffs will go into effect in 30 days. Again, however, the Commission is not bound by that 30-day effective period. In fact, the Commission can and should suspend those compliance tariffs for such time as is necessary to allow the Commission to accept the evidence necessary to determine whether the tariffs actually comply with the Report and Order.

5. Unlike the Report and Order which contained numerous complicated issues, the Commission's responsibility with regards to compliance tariffs is fairly simple – the Commission must determine if the tariffs actually comply with the Report and Order. As with all decisions, the Commission's determination must contain adequate findings of fact and conclusions of law that are based upon record evidence. The Commission, then, in making its current decision, must look at the record evidence to determine whether the tariffs are in compliance with the Report and Order. Recognizing

that the evidentiary hearing in this matter was closed in November, a full month before the compliance tariffs were filed, there is no evidence that address the tariffs or their compliance with a yet to be issued Report and Order.

6. Without such record evidence, how does the Commission know whether the current tariffs are in compliance? What amount of revenue requirement did the Commission's Report and Order actually authorize? Notice, it was never spelled out in the Report and Order! What amount of revenue requirement do the tariffs collect? What rate design was used to allocate the authorized revenue requirement to each of the rate schedules? What revenue requirement was used to allocate revenue requirement increases within a rate schedule to customer, demand and energy charges? There is no evidence in the record to indicate whether KCPL's tariffs actually comply with the Report and Order. The Commission should use the period provided under the statute and contained within the 30-day notice period to accept the evidence necessary to make this determination.

7. Some may suggest that Staff has provided the evidence necessary for the Commission to make the determination that the tariffs comply with the Report and Order. Late on December 18, Staff filed its recommendation with accompanying affidavit. In its recommendation, Staff concludes that the tariff sheets are in compliance with "Staff's understanding of the Commission's decisions regarding Class Cost of Service and Rate Design." What is Staff's understanding of the Commission's decision? Staff has previously indicated such uncertainty regarding the contents of the Report and Order that it filed a Request for Clarification on December 12, 2007. To date, the Commission has

not provided the clarification necessary for Staff to thoroughly understand the Report and Order.

8. For this reason, Praxair has filed its Objection to Staff's Affidavit, as provided by Section 536.070(12), and its Request for Hearing. Section 536.070(12) provides a limit on this Commission's ability to rely on an affidavit to which an objection has been lodged. Specifically, that section provides that "[i]f such objection is so served, the affidavit or the part thereof to which objection was made, may not be used except in ways that would have been permissible in the absence of this subdivision." Therefore, by its objection, the Commission can no longer rely on Staff's affidavit. There is therefore, no evidence to support a Commission determination that the tariffs are in compliance with the Report and Order.

9. Section 536.070(12) provides additional procedural guarantees. Specifically, that section guarantees parties the right to cross-examine the affiant on the contents of the affidavit. "Nothing herein contained shall prevent the cross-examination of the affiant if he is present in obedience to a subpoena or otherwise and if he is present, he may be called for cross-examination during the case of the party who introduced the affidavit in evidence." There is no reason to believe that Staff's witness is not available for cross-examination. Therefore, parties are guaranteed the right to cross-examine him on the contents of his affidavit. As regards this case, cross-examination as to: (1) the level of revenues that Staff understood were authorized by the Report and Order; (2) the level of revenues that Staff understood would be collected by the compliance tariffs; and (3) the rate design that Staff understood would be used to allocate these revenues to each rate schedule and each charge within a rate schedule?

10. Finally, Praxair would note its concern with the Commission attempting to act within the time frame dictated by KCPL's interpretation of Section 393.150. Recently, the Commission has been made aware of the consequences of blindly abiding by a utility's false interpretation of this section. Specifically, the Supreme Court has ordered the Commission to vacate an order which attempted to approve tariffs within these time dictates, but which failed to account for parties' rights to a reasonable period of time in which to file an application for rehearing. Now, as a result of this utility's desire to implement its rate increase on an expedited basis, it faces the real possibility that all of the increased charges that it has collected over the interim eleven months have been unlawful.

The Commission should be aware, in setting the effective date for any order approving KCPL's tariffs, that Saturday, December 22 through Tuesday, December 25 are not business days for the Commission. Therefore, if the Commission issues its order approving tariffs on Friday, December 21, it leaves the parties with only three (3) business days in which to review the order, consult with clients, and then prepare, file and serve an application for rehearing. While not as egregious as the Commission's previous allowance of an hour and 20 minutes, three business days does raise a question as to the reasonableness of the period for filing an application for rehearing.

WHEREFORE, Praxair respectfully files this response to KCPL's motion for expedited treatment and, consistent with its Objection to Affidavit and Request for Hearing, respectfully requests that the Commission schedule a hearing for the purpose of accepting evidence by which it may determine whether KCPL's tariffs are in compliance with the Commission's December 6, 2007, Report and Order.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is positioned above a horizontal line. A vertical red line is to the right of the signature.

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ATTORNEYS FOR PRAXAIR, 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", is positioned above a horizontal line. A vertical red line is to the right of the signature.

Dated: December 19, 2007