

**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.)

**REPLY OF PRAXAIR / EXPLORER TO EMPIRE’S RESPONSE TO PRAXAIR /
EXPLORER’S MOTION FOR REHEARING**

COMES NOW, Praxair, Inc. (“Praxair”) and Explorer Pipeline, Inc. (“Explorer”), and in reply to the response of the Empire District Electric Company (“Empire”) to Praxair / Explorer’s Motion for Rehearing respectfully states as follows:

1. On June 23, 2006, Praxair / Explorer filed its Motion for Rehearing of the Commission’s June 15 Order Rejecting Tariffs and Striking Testimony. In its Order, the Commission refused: (1) to reject Empire’s tariff sheet purporting to terminate the currently effective IEC and (2) to strike Empire’s testimony seeking the recovery of all fuel costs through the establishment of higher base rates. The substance of Praxair / Explorer’s Motion was to detail the fact that the Commission’s Order allowing Empire to seek termination of the IEC and to recover fuel and purchased power in base rates was unlawful, arbitrary and capricious, not supported by competent and substantial evidence and denied Praxair / Explorer its procedural due process rights.

2. Praxair / Explorer does not intend to reargue each of those points in this Reply. Praxair / Explorer merely files this current pleading in an effort to bring to the Commission’s attention a number of glaring deficiencies in Empire’s Response.

3. In its Response, Empire continually mischaracterizes the nature of the debate regarding the parties’ intent for the current IEC to have a definitive three-year

term. In its Response, Empire repeatedly notes that the Stipulation implementing the IEC did not contain a rate moratorium.¹ Praxair / Explorer agrees that the Stipulation did not contain a rate moratorium. As demonstrated by Empire's own tariffs implementing the Stipulation and Agreement, however, Empire **did** have a moratorium in regards to the recovery of any changes in fuel and purchased power expense. That tariff, drafted by Empire, recommended by the Staff, and approved by the Commission clearly states, "[t]his interim rider shall be in effect from March 27, 2005 through March 26, 2008."² Given this clear statement of intent memorialized in its own tariffs, it is surprising that Empire complains that "when parties desired a rate case moratorium, they have included language in the appropriate agreements that described their intent clearly and unambiguously."³ It is clear and unambiguous that Empire and the other parties to the Stipulation had an express three year moratorium as regards the recovery of fuel and purchased power expense.

4. Relying upon its argument that a rate moratorium does not exist, Empire then insists that the Commission is obligated to consider all relevant factors.⁴ Again, Praxair / Explorer agrees with Empire's claim. In the current case, however, the **only** relevant factor for the Commission to consider in regards to fuel and purchased power expense is that amount stipulated by the parties and contained in the current three year IEC. Any other pleadings or testimony that seeks the recovery of a different level of fuel and purchased power expense would necessarily be irrelevant and should be stricken.

5. As predicted and addressed in Praxair / Explorer's Motion for Rehearing, Empire did indeed assert that the provisions of Section 386.266.8 are not applicable to the

¹ Empire's Response to Motion and Application for Rehearing, at ¶7.

² P.S.C. Mo. No. 5, Sec. 4, 4th Revised Sheet No. 17. (emphasis added).

³ Empire's Response to Motion and Application for Rehearing, at ¶7.

⁴ Empire's Response to Motion and Application for Rehearing, at page 1.

current IEC because Empire's IEC was in effect prior to the promulgation of SB179. Noticeably Empire fails to provide any rationale for its belief that the SB179 should not apply to its IEC. This failure is not surprising when one recognizes that SB179 clearly distinguishes between incentive plans "approved by the commission under this section" (Section 386.266.5) and those existing pursuant to some other exercise of Commission authority (Section 386.266.8). SB179 clearly recognized that IECs were already in existence at the time of promulgation. In fact, SB179 goes to great lengths to ensure that currently existing IECs could not be early terminated under Section 386.266.5, but instead, as provided in Section 386.266.8, provides for absolute protection of these IECs for the full term of the IEC. As such, given the bar contained in Section 386.266.8 the Commission is strictly prohibited from interfering with Empire's currently effective IEC.

6. Despite its insistence that Section 386.266.8 is not applicable to its currently effective IEC, Empire seeks to invoke the protections of another provision of SB179. Specifically, Empire refers the Commission to Section 386.266.10. That section provides, "[n]othing contained in this section shall be construed as affecting any existing adjustment mechanism, rate schedule, tariff, incentive plan, or other ratemaking mechanism currently approved and in effect." Noticeably, given its position in regards to the current IEC, Empire is unable to reconcile the provisions of Section 386.266.8 and Section 386.266.10. Instead, Empire summarily dismisses Section 386.266.8, while extolling the protections of Section 386.266.10.

The provisions of these two provisions of SB179 are easily reconcilable and are consistent with the argument advanced by Praxair / Explorer. Section 386.266.8 does not affect any provision or term of an existing adjustment mechanism. Rather, this section merely provides for an absolute protection of the term of any existing incentive plan.

This protection is provided through an absolute bar against the Commission considering any party's allegation against the lawfulness or reasonableness of an existing incentive plan.

Consistent with Section 386.266.8's recognition of the stated term of any existing IECs, Section 386.266.10 provides that SB179 shall not modify the terms of an existing adjustment mechanism. As such, to the extent that SB179 provides for certain consumer protection provisions (i.e., true-up, prudence reviews, refunds, interest calculations) that are not contained in the existing adjustment mechanism, those consumer protection provisions are not imposed on the existing mechanism. Read in concert as suggested by Praxair / Explorer, these provisions are easily reconcilable. The ultimate outcome, however, is that the term of Empire's existing IEC is absolute.

WHEREFORE, Praxair / Explorer respectfully renews its request that the Commission issue its Order granting rehearing of the issues addressed in the Commission's June 15, 2006 Order Rejecting Tariffs and Striking Testimony.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is positioned above a horizontal line. The signature is written in a cursive, somewhat stylized font.

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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 style with a large initial "D".

David L. Woodsmall

Dated: July 5, 2006