

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

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

**STAFF'S RESPONSE TO PRAXAIR  
AND PUBLIC COUNSEL**

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Commission's General Counsel, and for its Response to certain the Applications for Rehearing filed by Praxair and by the Public Counsel, states as follows:

***Motion for Leave to Late-file Staff's Response***

1. Staff respectfully moves the Commission to accept this Response out-of-time and explains that both the press of other business and the complexity and ingenuity of the arguments raised by Public Counsel and Praxair have prevented it from filing this Response sooner.

***The Sequence of Events***

2. On December 6, 2007, the Commission issued its Report & Order herein, rejecting the tariffs originally filed by Kansas City Power & Light Company ("KCPL") and directing the filing of tariffs in compliance with the Report & Order by December 13, 2007.

3. On December 13, 2007, KCPL filed 56 sheets in compliance with the Commission's Report & Order, which the Commission designated as Tariff File

No. YE-2008-0369. Those sheets were designated to take effect on the thirtieth day thereafter, January 12, 2008. Simultaneously, KCPL filed a motion requesting that the sheets be approved on less than 30-days' notice in order to accomplish the purpose of the authorized rate increase.

4. On December 18, 2007, KCPL filed certain substitute sheets at Staff's request.

5. Also on December 18, 2007, Staff filed its Memorandum and Recommendation, advising the Commission to approve the tariff sheets as substituted because Staff's analysis showed that they complied with the Report & Order of December 6, 2007. Staff advised the Commission to approve the sheets for service on and after January 1, 2008, on the grounds that the rate increase approved in the Report & Order of December 6, 2007, constituted a determination that KCPL's existing rates produced insufficient revenue and thus good cause such that new and sufficient rates should be approved on less than 30-days' notice.

6. On December 21, 2007, the Commission approved Tariff No. YE-2008-0369 ("the Compliance Tariffs"), effective as of January 1, 2008, and cancelled KCPL's existing tariff sheets.

7. On December 31, 2007, Praxair, Inc., and the Office of The Public Counsel filed motions for rehearing of that order.

8. Also on December 31, 2007, Praxair filed a motion to stay the effectiveness of the tariffs and a motion for expedited treatment, requesting that the Commission act by January 1, 2008. However, Praxair did not file those

motions until after 3:00 p.m. on December 31, 2007, leaving little time for the Commission to act and no time for Staff or KCPL to respond. Consequently, the Commission did not act on those motions by January 1, 2008, and has not acted on them since. Staff will not further address Praxair's motion for stay and associated motion for expedited treatment.

### ***The Objections to the Compliance Tariffs***

9. On December 18, 2007, Trigen-Kansas City Energy Corporation filed objections to the Compliance Tariffs. On the same day, Trigen filed revised objections and, on December 19, its "Continued Objection."<sup>1</sup>

10. On December 19, 2007, Public Counsel responded in opposition to KCPL's request that the tariff sheets be approved on less than 30-days' notice. In its filing, Public Counsel stated that it did not agree with KCPL's "analysis and legal conclusions" and suggested that KCPL's request for expedited treatment failed to meet the requirements of Commission Rule 4 CSR 240-2.080(16).<sup>2</sup>

11. On December 19, 2007, Praxair responded in opposition to KCPL's request that the tariff sheets be approved on less than 30-days' notice. In its filing, Praxair stated its disagreement with KCPL's interpretation of § 393.150, RSMo 2000, and discussed the Commission's role in processing a compliance tariff:

[T]he 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

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<sup>1</sup> The substance of Trigen's objections are not relevant here and so will not be discussed.

<sup>2</sup> The legal point that Public Counsel expressed disagreement with was KCPL's contention that § 393.150, RSMo 2000, required the Commission to approve the Compliance Tariffs for service on or after January 1, 2008. Staff also disagrees with that interpretation of that statute.

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.

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.

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.

*Praxair's Response to Motion for Expedited Treatment*, ¶¶ 6-8 (emphasis in the original; paragraph numbers deleted).

12. On the same day, Praxair objected to Staff analyst James Watkins' affidavit attached to Staff's Memorandum and Recommendation and requested a

hearing. In its objection, Praxair asserted that the affidavit failed to comply with § 536.070(12), RSMo 2000, which governs the use of affidavits in contested case proceedings. Further, Praxair asserted that that statute guaranteed it an opportunity to cross-examine the affiant; its request for hearing, filed the same day, was intended as a vehicle by which to enforce its “right” to cross-examine Mr. Watkins.

13. On December 20, 2007, Public Counsel filed a congratulatory reply to Praxair’s opposition to KCPL’s request for expedited approval of the tariffs. Therein, Public Counsel stated:

Public Counsel agrees with Praxair’s response [to KCPL’s request for approval of the Compliance Tariffs on less than 30-days’ notice].

In response to a similar set of circumstances in the most recent rate case of Aquila, Inc., the Commission took the position that a rate case is not a contested case, or perhaps that it morphs into an uncontested case after a Report and Order is issued. Even at that the time, the Commission’s reasoning appeared unsound, but since that time, the Supreme Court has removed any question that the post-Report and Order portion of a rate case is uncontested.

In its decision vacating the Commission’s “Order Granting Expedited Treatment and Approving Tariffs” issued in Case No. ER-2006-0315 on December 29, 2006, the Missouri Supreme Court found that procedural due process requirements apply throughout the post-Report and Order phase of a rate case. In that case, the Supreme Court’s decision was based on the premise that an order approving tariffs in compliance with a Report and Order is an order subject to appeal. More importantly, in a footnote, the Supreme Court clearly indicated that an order approving compliance tariffs would be subject to review for both reasonableness and lawfulness. A review of reasonableness necessarily contemplates a review of findings of fact in an order approving compliance tariffs.

*Public Counsel’s Reply*, ¶¶ 1-3 (paragraph numbers deleted).

### ***The Applications for Rehearing***

14. Praxair's December 31, 2007, application for rehearing, directed at the Commission's approval of the Compliance Tariffs on December 21, 2007, raises these points:

A. The Commission appears to believe that this docket is no longer a "contested case." Specifically, the Commission claims that "[n]o hearing is required for the Commission to approve the tariffs." Therefore, the Commission appears to believe that the due process protections guaranteed in Section 536.070 are not applicable.

B. The Order ***fails to provide a single finding of fact*** on which a court may review how the Commission conclude[d] that the proposed tariff sheets with the Commission's Report and Order. Rather, the Commission simply concludes that such tariffs are in compliance with its earlier order and should be approved (emphasis as in Praxair's Application).

C. ***The record is devoid of any evidence*** upon which the Commission could base a finding that the tariffs are in compliance with the December 6, 2007 Report and Order (emphasis as in Praxair's Application).

D. The Commission unlawfully denied Praxair the ability to cross-examine James Watkins on the contents of his affidavit in contravention of Section 536.070(12).

E. The Order references the Commission's decision in the Report and Order which it claims shows that "KCPL needs to earn an additional

\$35,308,914 per year to serve its customers and to pay a reasonable rate of return.” Contrary to the Commission’s reference, there is not a single reference in the Commission’s Report and Order to support the Commission’s suggestion that KCPL needs to earn an additional \$35,308,914. In fact, the Report and Order is silent on the overall amount of the necessary increase. Moreover, the record is completely devoid of any evidence to support a finding that the Report and Order authorizes a particular level of rate increase. Not only that, the record is completely devoid of any evidence to support a finding that the proposed tariffs actually deliver the increase that would be suggested by the Report and Order. There is no evidence by which the Commission can know whether it authorized a \$35 million rate increase or whether it authorized a \$100 million rate increase. It is this very reason that Praxair suggested that the Commission should utilize the thirty days provided by statute to properly review the compliance tariffs.

F. The Order suggests a standard in the context of a contested case rather than through a rulemaking. To the extent that the Commission is creating a standard by which it would judge tariff filings, such a standard should be developed using the procedures for promulgating a rule.

15. Public Counsel’s December 31, 2007, application for rehearing, also directed at the Commission’s approval of the Compliance Tariffs on December 21, 2007, raised these points:

A. The Order fails to separately and adequately identify

conclusions of law and findings of fact.

B. The Order is not based upon competent and substantial evidence of record.

C. The Commission erred in accepting KCPL's argument that Section 393.150, RSMo 2000, requires approval of the compliance tariffs within the 11-month window that opened with the filing of the original, now rejected, tariffs.

D. The Commission erred in determining that the "compliance tariff phase" of this case, which had heretofore clearly been a contested case, is not a contested case and thus no evidentiary record and no separately-stated conclusions of law and findings of fact are required. Even though the cases about the file and suspend method of ratemaking do opine that the Commission can allow tariffs to go into effect without a hearing, nothing in those cases suggests that the Commission can suddenly treat a contested case in which a hearing has been held as an uncontested case.

E. The Commission erred in relying on Jackson County for the proposition that: "Indeed, there is no property interest in a utility rate that requires procedural due process protections." (Tariff Order, page 3). The context of the Jackson County case was very different from the instant case. While Jackson County can be read for the proposition that customers do not have a protected property interest **in a particular rate**, it cannot be read for the proposition that customers have no procedural due process rights in the rate case process.



F. The Commission erred in determining, as part of its justification for finding “good cause” to approve the tariffs on less than thirty days notice, that “KCPL does not have adequate revenue to meet its cost of service.” (Tariff Order, page 2). There was no such finding in the Commission’s Report and Order and the record does not support such a finding. Until such time as the additional revenues authorized by the Commission in its Report and Order are collected, KCPL is simply in the position of earning a profit somewhat less than the Commission believes is justified. KCPL – even before the increase takes effect – has ample revenue to meet all of its cost of service.

### ***The Applicability of Contested Case Procedures***

16. Both Praxair and Public Counsel contend that the Commission erred by not applying contested case procedures to its approval of the Compliance Tariffs. Public Counsel asserts, “nothing . . . suggests that the Commission can suddenly treat a contested case in which a hearing has been held as an uncontested case.” *Public Counsel’s Application for Rehearing*, ¶ 3. Similarly, Praxair states,

While not initiated by the filing of the December 13 and 18 tariff sheets, a contested case was initiated by the suspension of the original tariff sheets. Although those tariff sheets were subsequently rejected by the December 6 Report and Order, this case nonetheless remains contested. While KCPL could arguably have initiated a new rate case by the filing of new tariffs in a new proceeding, it chose to submit those tariff sheets in the **current** proceeding asserting that they were tendered as in “compliance” with an earlier order in that proceeding. Were that not enough, by submitting “compliance” tariffs in the ongoing **contested** rate proceeding, KCPL inextricably linked this filing with its “compliance” to the December 6 Report and Order. Given there is no legal basis

by which a contested case can be magically transformed from a contested to a non-contested proceeding, such tariff sheets **must** be treated pursuant to the due process requirements of Chapter 536.

*Praxair's Application for Rehearing*, ¶ 1. It is noteworthy that neither Praxair nor the Public Counsel cites any authorities in support of their positions.

17. The phrase “contested case” is a term of art in Missouri administrative law. The Missouri Administrative Procedure Act (“MAPA”), codified at Chapter 536, RSMo, provides that a “contested case” is “a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing[.]” The hearing requirement may be statutory or a hearing may be required by the nature of the private interests at stake. *State ex rel. Yarber v. McHenry*, 915 S.W.2d 325, 328 (Mo. banc 1995).

18. Leaving aside until the next section the question of whether the state or federal constitution requires a hearing in this case, it is well-established that state statute does not. The Commission need not hold a hearing in a file-and-suspend rate case unless it exercises its authority to suspend the proposed tariff. *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979), “Even under the file and suspend method, by which a utility's rates may be increased without requirement of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return, in determining that no hearing is required and that the filed rate should not be suspended.”

19. Praxair contends, correctly in Staff's view, that the Commission was required to hold a hearing in this case because it exercised its authority to

suspend the proposed tariff sheets under § 393.150. *Praxair's Application for Rehearing*, ¶ 1. Indeed, the Missouri Supreme Court has stated, "If [the proposed tariff is] suspended, the commission must within a specified period hold a hearing concerning the propriety of the new rate, charge, rule or regulation." *Utility Consumers' Council, supra*, 585 S.W.2d at 48. The statute authorizing suspension provides:

1. Whenever there shall be filed with the commission by any gas corporation, electrical corporation, water corporation or sewer corporation any schedule stating a new rate or charge, or any new form of contract or agreement, or any new rule, regulation or practice relating to any rate, charge or service or to any general privilege or facility, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested gas corporation, electrical corporation, water corporation or sewer corporation, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, form of contract or agreement, rule, regulation or practice, and pending such hearing and the decision thereon, the commission upon filing with such schedule, and delivering to the gas corporation, electrical corporation, water corporation or sewer corporation affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, form of contract or agreement, rule, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, form of contract or agreement, rule, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, form of contract or agreement, rule, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, form of contract or agreement, rule, regulation or practice as would be proper in a proceeding initiated after the rate, charge, form of contract or agreement, rule, regulation or practice had become effective.

2. If any such hearing cannot be concluded within the period of suspension, as above stated, the commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate sought to be

increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation, electrical corporation, water corporation or sewer corporation, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

20. However, the fact is that the Commission *did* hold a hearing on the propriety of the suspended tariff sheets and that hearing resulted in the Report & Order issued by the Commission on December 6, 2007. The Commission did not suspend the Compliance Tariffs and, therefore, no hearing was required.<sup>3</sup> Praxair admits as much: “While **not** initiated by the filing of the December 13 and 18 tariff sheets . . . .” *Praxair’s Application for Rehearing*, ¶ 1.

21. Because a hearing was not required, the proceeding on the Compliance Tariffs was not a contested case. The assertion of Public Counsel and Praxair that an administrative proceeding cannot change from a contested case to an uncontested case is nonsensical on its face. After all, as necessarily follows from Praxair’s position that it was the Suspension Order & Notice, issued on February 6, 2007, that initiated a contested case, this matter had already changed character once from an uncontested case to a contested case. Why can it not change back? Public Counsel and Praxair have cited no authority in support of their position because there is none. The fact is that every file-and-suspend case is an uncontested case until the Commission acts to suspend the proposed tariffs. That act by the Commission necessarily converts the case to a contested case because, as the Missouri Supreme Court has pointed out,

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<sup>3</sup> Staff believes that the Commission *could* have suspended the Compliance Tariffs. Since it did not do so, this point requires no further elaboration.

§ 393.150, RSMo 2000, requires a hearing. *Utility Consumers' Council, supra*, 585 S.W.2d at 48.

***Did Due Process Require a Hearing on the Compliance Tariffs?***

22. As the Commission noted in its Order of December 21, 2007, the Missouri Supreme Court has held that “utility customers have no vested rights in any fixed utility rates[.]” *State ex rel. Jackson County v. Public Service Commission*, 532 S.W.2d 20, 31 (Mo. banc 1975).<sup>4</sup> Consequently, neither the Missouri Due Process Clause nor the federal Due Process Clause required a hearing on the Compliance Tariffs. Mo. Const., art. I, § 10; U.S. Const., Amd. XIV, § 1.

23. With respect to the various contentions of Public Counsel and Praxair concerning “due process protections” and “procedural due process,” they have evidently forgotten that the determination of just what process is due in any proceeding depends entirely on the nature of the interest at stake. See *Jackson County, supra*, 532 S.W.2d at 31. No authority has ever held that the use of noncontested case administrative procedures in rate setting is not constitutional. In the proceeding on the Compliance Tariffs, the interests represented by Public Counsel and Praxair were entitled only to such protection as the applicable statutes provide and, of course, to the additional protection of judicial review.

24. It is worth addressing Public Counsel’s fatuous suggestion, in its

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<sup>4</sup> The utility company, in distinction to the utility customers, does have a fundamental property interest at stake such that the company must be accorded due process protections. *State ex rel. Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882, 886 (Mo. App., W.D. 1981) (“There can be no argument but that the Company and its stockholders have a constitutional right to a fair and reasonable return upon their investment.”). However, Public Counsel and Praxair are not seeking to enforce any rights of the utility company here.

Reply filed on December 20, 2007, that a recent decision of the Missouri Supreme Court in a mandamus action requires a different result here.<sup>5</sup> The case is *State ex rel. Office of the Public Counsel v. The Public Service Commission of the State of Missouri*, 236 S.W.3d 632 (Mo. banc 2007). Public Counsel characterizes that decision as holding “that procedural due process requirements apply throughout the post-Report and Order phase of a rate case.” Actually, the Court did no such thing. The Court’s decision did not turn on either procedural due process or contested case procedures, but on its conclusion that the Commission had violated § 386.490.3, RSMo 2000, by directing that an order become effective unreasonably soon after its issue. The Court stated, “The law specifies 30 days for applying for rehearing but allows the PSC the discretion to set a shorter time as long as the time is reasonable. By issuing the December 29 order with an effective date of January 1, 2007, the PSC abused its discretion to provide public counsel with a reasonable period of time in which to appeal the order.” *Id.*, at 637. The phrases “due process” and “contested case” do not even appear in the Court’s decision.

### ***What are Uncontested Case Procedures?***

25. As established above, the proceeding on the Compliance Tariffs was not a contested case because the Commission was not required to hold a hearing. The fact that the proceeding on the Compliance Tariffs was not a contested case, but was a noncontested case, has significant procedural ramifications. The Commission is not required to make findings of fact in a

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<sup>5</sup> The relevant language from Public Counsel’s pleading is set out above at ¶ 12.

noncontested case, *State ex rel. Public Counsel v. Public Service Commission*, 210 S.W.3d 344, 355 (Mo. App., W.D. 2006), and so was not required to make findings of fact with respect to the Compliance Tariffs.<sup>6</sup> The procedures set out in § 536.070, RSMo 2000, apply by that section's express terms only to "any contested case."<sup>7</sup> In a noncontested case, the Commission "acts on discretion or on evidence not formally adduced and preserved." *Public Counsel, supra*, 210 S.W.3d at 353, *quoting Phipps v. School District of Kansas City*, 645 S.W.2d 91, 94-95 (Mo. App., W.D. 1982). Thus, there is no evidentiary record for judicial review. *Public Counsel, supra*.

26. In the noncontested proceeding on the Compliance Tariffs, the Commission was required to consider "all relevant factors," *Utility Consumers' Council, supra*, 585 S.W.2d at 49. The Commission did so. Only Staff had filed anything relevant, namely, its Memorandum and Recommendation of December 18, 2007, which advised the Commission to approve the Compliance Tariffs. Public Counsel and Praxair had filed only objections to KCPL's request for expedited treatment and assertions of non-existent statutory or constitutional rights.

27. Section 386.420.2, RSMo 2000, required the commission "to make a

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<sup>6</sup> The lack of findings of fact does not hamper judicial review because such review is limited to the question of whether the Commission's decision was lawful. *State ex rel. Public Counsel v. Public Service Commission*, 210 S.W.3d 344, 354 (Mo. App., W.D. 2006). "A review of a commission order issued in a contested case, of course, would require a probing of both, but review in a noncontested typically probes only the lawfulness of an agency's order without consideration of its reasonableness and without need for review of competent and substantial evidence." The courts also review whether the Commission abused its discretion by not holding a hearing. *Id.*, at 355.

<sup>7</sup> The same is true of the pleading provisions at § 536.063; the notice provisions at § 536.067; the discovery provisions at § 536.073, 1-3; the subpoena provisions at § 536.077; the briefing and record-reading provisions at § 536.080; and the written order provisions at § 536.090.

report in writing ..., which shall state the conclusions of the commission, together with its decision, order or requirement in the premises.” The Commission did so in the form of its Order of December 21, 2007.

***Did the Commission Abuse its Discretion by Not Holding a Hearing?***

28. The courts will also review whether the Commission abused its discretion by not holding a hearing on the Compliance Tariffs. *Public Counsel, supra*, 210 S.W.3d at 355. Staff suggests that no abuse of discretion occurred in this case given that neither Public Counsel nor Praxair had raised any relevant issue. Public Counsel complained only about KCPL’s request for expedited treatment and raised no substantive issue concerning the Compliance Tariffs. *See Public Counsel’s Response*, December 19, 2007. Nor did Public Counsel raise any substantive objection in its Reply filed on December 20, 2007. Praxair also opposed KCPL’s request for expedited treatment and, in discussing the Commission’s responsibility with respect to the Compliance Tariffs, mistakenly asserted that contested case procedures applied. *See Praxair’s Response*, December 19, 2007. Praxair also raised no substantive issue relating to the Compliance tariffs. Where no substantive objection had been raised, the Commission was entitled to rely on Staff’s Memorandum and Recommendation and act without a hearing.

***Conclusion***

29. In conclusion, Staff points out that none of the points raised in the Applications for Rehearing filed by Public Counsel and Praxair are meritorious. The proceeding on the Compliance Tariffs was a noncontested case, even



though the earlier proceeding under that docket number on the suspended tariffs was indeed a contested case. The docket did, indeed, “magically morph” back and forth. Because the proceeding on the Compliance Tariffs was a noncontested case, contested case procedures did not apply. Neither Public Counsel nor Praxair had an interest at stake such that Due Process required trial-type proceedings. Thus, Praxair had no right to a hearing and no right to cross-examine Mr. Watkins; likewise, the Commission was not required to make findings of fact and was not required to act on the basis of a record containing competent and substantial evidence. The record was not “devoid of any evidence” but included Staff’s Memorandum and Recommendation, which is entirely sufficient in a noncontested case. Contrary to Praxair’s assertions, the Commission was well-aware that it had authorized a \$35 million revenue increase in its Report & Order because Staff so informed the Commission in its Memorandum and Recommendation. Contrary to Public Counsel’s assertions, the Commission certainly was entitled to rely on the Supreme Court’s *Jackson County* decision. In Staff’s view, the Commission was entirely justified in concluding that KCPL’s previously established entitlement to a revenue increase constituted good cause such that it was proper to allow the Compliance Tariffs to become effective on less than 30-days’ notice.

30. No ground has been raised that would justify suspension of the Compliance Tariffs and Staff urges the Commission to deny the Motion to Suspend filed by Praxair.

**WHEREFORE,** Staff prays that the Commission will deny the Applications

for Rehearing filed herein by Public Counsel and Praxair, grant it leave to late-file this Response, and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

**/s/ Kevin A. Thompson**  
KEVIN A. THOMPSON  
Mo. Bar No. 36288

General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102  
573-751-6514 (voice)  
573-526-6969 (FAX)  
kevin.thompson@psc.mo.gov

Attorney for the Staff of the Missouri  
Public Service Commission

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served on all of the parties of record or their representatives as set out on the service list maintained by the Commission's Data Center on this **17<sup>th</sup> day of January, 2008**, either by hand delivery, electronic mail, facsimile transmission, or First Class United States Mail, postage prepaid.

**/s/ Kevin A. Thompson**