

**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	)	

**MOTION FOR SCHEDULING OF A HEARING**

COMES NOW Praxair, Inc. and for its Motion for Scheduling of a Hearing respectfully states as follows:

1. On December 18, 2007, Staff filed its recommendation regarding the compliance tariffs filed by KCPL on December 13 and 18, 2007. Accompanying its recommendation, Staff presented the affidavit of James Watkins.

2. Section 536.070 provides strict procedures to be followed in “any contested case.” Indeed, Missouri Courts have found that the provisions of Chapter 536 are applicable to Commission proceedings.<sup>1</sup>

3. Section 536.070(12) provides guidance on the introduction of “an affidavit in evidence”. Among other things, that statute clearly contemplates a hearing at which the affidavit may be accepted into evidence.

Any party or the agency desiring to introduce an affidavit in evidence **at a hearing** in a contested case may serve on all other parties (including, in a proper case, the agency) copies of such affidavit in the manner hereinafter provided, **at any time before the hearing**, or at such later time as may be stipulated. Not later than seven days after such service, or at such later time as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the agency who served such affidavit an objection to the use of the affidavit or some designated portion or portions

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<sup>1</sup> See, *State ex rel. Noranda Aluminum v. Public Service Commission*, 24 S.W.3d 243 (Mo.App.W.D. 2000); *Utility Consumers Council v. Public Service Commission*, 562 S.W.2d 688 (Mo.App.E.D. 1978); *State ex rel. GS Technologies Operating Co. v. Public Service Commission*, 116 S.W.3d 680 (Mo.App.W.D. 2003); *Environmental Utilities, LLC. v. Public Service Commission*, 2007 Mo.App. Lexis 533 (Mo.App.W.D. 2007).

thereof on the ground that it is in the form of an affidavit; provided, however, that if such affidavit shall have been served less than eight days before the hearing such objection may be served at any time before the hearing or may be made orally at the hearing. If 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; provided, however, that such objection may be waived by the party or the agency making the same. Failure to serve an objection as aforesaid, based on the ground aforesaid, shall constitute a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect to which no such objection was so served, on the ground that it is in the form of an affidavit, or that it constitutes or contains hearsay evidence, or that it is not, or contains matters which are not, the best evidence, but any and all other objections may be made at the hearing. 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. . . .

4. Simultaneous with this Motion and pursuant to the rights guaranteed by Section 536.070(12), Praxair has filed its Objection to the Affidavit of James Watkins and informed the Commission of its desire to cross-examine Mr. Watkins. Consistent with its objection and request for cross-examination, Praxair hereby requests that the Commission schedule a hearing so that the Commission can provide for such cross-examination and the receipt of any evidence.

WHEREFORE, Praxair respectfully requests that the Commission schedule a hearing for the purpose of providing the parties an opportunity for cross-examination and for the receipt of any evidence regarding the appropriateness of KCPL's compliance tariffs.

Respectfully submitted,



Stuart W. Conrad, MBE #23966  
David L. Woodsmall, MBE #40747  
3100 Broadway, Suite 1209  
Kansas City, Missouri 64111  
(816) 753-1122 Ext. 211  
Facsimile: (816) 756-0373  
Internet: [stucon@fcplaw.com](mailto:stucon@fcplaw.com)

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.



David L. Woodsmall

Dated: December 19, 2007