

**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	)	

**OBJECTION TO AFFIDAVIT**

COMES NOW Praxair, Inc. and for its Objection to Affidavit respectfully state 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.” The provisions of Chapter 536 apply to Commission proceedings.<sup>1</sup>

3. Section 536.070(12) governs the use of “an affidavit in evidence” and provides the parties with the ability to object to the receipt of any affidavit into evidence.

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 of some designated portion or portions thereof on the ground that it is in the form of an affidavit. . . . If such objection is so served, the affidavit of 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.

That statutory section also provides that “[n]othing herein contained shall prevent the cross-examination of the affiant.”

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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).

4. Consistent with the logic contained in its simultaneously filed Response to KCPL's Motion for Expedited Treatment, Praxair, pursuant to the rights guaranteed by Section 536.070(12) hereby objects to the receipt of the affidavit of James Watkins. Furthermore, Praxair hereby notifies the Commission of its desire to exercise its right to cross-examine James Watkins as provided by Section 536.070(12). Consistent with its request for cross-examination, Praxair has simultaneously filed its Motion for Scheduling of a Hearing in this proceeding so that the Commission can provide for such cross-examination and the receipt of any evidence.

WHEREFORE, Praxair respectfully informs the Commission of its objection to the affidavit of James Watkins and its intent to cross-examine James Watkins on the contents of his affidavit.

Respectfully submitted,

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

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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. The signature is written in a cursive, somewhat stylized font.

David L. Woodsmall

Dated: December 19, 2007.