

**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)	<u>Case No. ER-2007-0291</u>
Certain Changes in its Charges for Electric)	
Service to Implement its Regulatory Plan)	

**REPLY TO PRAXAIR’S RESPONSE TO
MOTION FOR EXPEDITED CONSIDERATION**

COMES NOW the Office of the Public Counsel and for its Reply to Praxair’s Response to Motion for Expedited Consideration states as follows:

1. On December 19, 2007¹ Praxair, Inc. filed a response to a pleading filed by the Kansas City Power and Light Company entitled “Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less than Thirty Days` Notice” filed on December 13. Public Counsel agrees with Praxair’s response.

2. 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.² 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.

¹ Unless otherwise noted, all dates refer to calendar year 2007.

² Case No. ER-2007-0004, Order Granting Expedited Treatment, Approving Certain Tariff Sheets and Rejecting Certain Tariff Sheets, issued May 25, 2007.

3. In its decision³ 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.

WHEREFORE, Public Counsel respectfully requests that the Commission deny KCPL's Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less than Thirty Days' Notice.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr.

By: _____

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³ State ex rel. Office of the Public Counsel, Relator, v. The Public Service Commission of the State of Missouri, et al., Respondents, No. SC88390, 2007 Mo. LEXIS 157, October 30, 2007.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 20th day of December 2007.

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