BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of The Empire District Electric Company of Joplin, Missouri for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company	)))))	**Case No. ER-2006-0315**

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel and for its Application for Rehearing states as follows:

1. On December 4, 2007 the Commission issued its "Order Vacating December 29, 2006 Order Granting Expedited Treatment and Approving Tariffs, and Order Approving Tariffs" (the December 4 Order) in this case. That order is unjust, unreasonable, arbitrary and capricious, and unlawful for all the reasons stated herein. The December 4 Order is unlawful, unjust, unreasonable and unconstitutional in that it completely fails to separately and adequately identify conclusions of law and findings of fact. The December 4 Order is unlawful, unjust, and unreasonable in that it is not based upon competent and substantial evidence of record. The December 4 Order is unlawful in its interpretation of the result of the Supreme Court's mandate in Case No. SC88390.

2. The Commission erred in the December 4 Order by relying on its January 9, 2007 Order Supplementing and Clarifying Report and Order. That order, and the Commission's reliance on it, is unlawful, unjust, and unreasonable for all the reasons stated in Public Counsel's January 18, 2007 Application for Rehearing of the Order Supplementing and Clarifying Report and Order which is still pending. The arguments raised in Public Counsel's January 18, 2007

Application for Rehearing of the Order Supplementing and Clarifying Report and Order are incorporated as though fully set out herein.

3. Although the Ordered Paragraphs in the December 4 Order appear to comply with the Supreme Court's mandate in Case No. SC88390, the discussion in the body of the December 4 Order erroneously interprets the effect of vacating the Order Granting Expedited Treatment and Approving Tariffs issued on December 29, 2006 (the December 29, 2006 Order). When an order is vacated, it is not "effective" during the period of time between its issuance and its vacation. The Commission cites Section 386.490.3, RSMo, for the proposition that "[e]very order or decision of the commission . . . shall continue in force . . . until changed or abrogated by the commission, **unless such order be unauthorized by this law or any other law** . . ." (emphasis added). Because the Supreme Court found the Commission's January 29, 2006 Order unlawful,[1] it did not continue in force and effect from the time it was issued until the time it was vacated. Once it is vacated, it is as though it was never in effect at all. The Supreme Court in effect found the December 29, 2006 Order to be unauthorized (*i.e.*, an abuse of discretion by the Commission) so it does not continue in force and effect until changed by the Commission. The Commission's attempts to invoke the filed rate doctrine are erroneous; the filed rate doctrine only applies to rates that were validly approved in the first instance.

[1] The Commission and Empire make too much of the Court's footnote discussing State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41, 47. The Court did not literally mean that it was not addressing the "lawfulness" of the January 29, 2006 Order, but rather that it was not conducting the full two-part "lawfulness and reasonableness" test in UCCM. It cannot be argued that the Supreme Court issued an extraordinary writ vacating a lawful order.

4. The Commission erred in finding that the December 28, 2006 tariffs comply with the December 21 Report and Order concerning the Experimental Low Income Program (ELIP). The Commission's Report and Order stated: "The Commission concludes the OPC's suggested changes shall be made, except that the level of funding will not be altered at this time." (Report and Order, page 52). In her prefiled testimony, Public Counsel witness Meisenheimer proposed nine changes:

1) The ELIP be modified to extend participation beyond 24 months;
2) Two thousand dollars annually be earmarked for outreach in an effort to increase ELIP participation;
3) The Customer Program Collaborative (CPC) be charged with developing recommendations on extending the length of participation and potential outreach;
4) The bill credit increase $10 per month for households at or below 50% of the Federal Poverty Level;
5) The maximum qualifying household income increase to 125% of the Federal Poverty Level;
6) On an experimental basis, Empire allocate thirty thousand dollars annually to provide customers with a flexible arrearage repayment incentive that would match two customer dollars to one incentive dollar with a maximum annual incentive payment of $60 per customer;
7) The customer contribution be reduced to $100,000 annually if Public Counsel's recommendations are approved or cease collection of the entire $150,000 annual customer funding if the program is not modified to use more of the funds currently available;
8) Unused funds be returned to ratepayers when the program terminates; and
9) Interest at a rate of 5.59% be paid to ratepayers on the unused fund balance.

The December 28, 2006 tariffs do not comply with a number of these proposed changes, even though the Commission explicitly ordered that they "shall be made" (with the exception of number 7, reducing the level of funding).

The tariffs do not comply with number 3, because the tariffs state that the CPC's only role is in developing outreach, not extending the length of participation.

The tariffs do not comply with number 6. The tariffs impose a requirement that the matching incentive will only apply to arrears payments "above the monthly deferred payment."

(P.S.C. Mo. No. Sec. 4 3rd Revised Sheet 11). Public Counsel witness Meisenheimer did not propose this limitation. The limitation is contrary to the reason witness Meisenheimer describes for proposing a flexible arrearage repayment incentive. In Exhibit 75, Ms. Meisenheimer testified:

> Q. WHAT LEVEL OF FUNDING AND INCENTIVE STRUCTURE DO YOU RECOMMEND?
>
> A. I would propose allocating up to $30,000 of existing program funds, annually to an experimental arrearage repayment incentive component of the program in order to provide a matching of two customer dollars to 1 incentive dollar with a maximum annual incentive payment of $60 per customer. As opposed to a mandatory regular monthly repayment scheme, this would allow participants the flexibility to catch up on arrears as their budgets allow.

The tariffs do not comply with number 8, in that the tariffs state that the Company "shall redirect the excess funds to tariffed demand-side management programs based on the Report and Order from Case No. ER-2006-0315." It is clear from the Report and Order that the CPC is to consider other low-income programs, not demand-side management programs.

Finally, the tariffs do not comply with number 9. The tariff is silent on the issue of interest to be paid on the fund balance despite witness Meisenheimer's proposal to do so. Witness Meisenheimer addressed interest on the fund balance as a distinct issue early in the Case. In Direct Revenue Requirement Testimony witness Meisenheimer testified:

> Q. DO YOU HAVE ADDITIONAL RECOMMENDATIONS RELATED TO THE ELIP PROGRAM?
>
> A. Yes. I have two additional recommendations. Currently, if the program is terminated, any unused funds will be donated to ProjectHELP. Given the apparent level of excess funding, it would be appropriate to require that unused funds be returned to ratepayers when the program terminates. Finally, no interest is paid on the fund balance. Interest should be paid to ratepayers. A reasonable rate would be the 5.59% short term debt rate used in the ROE analysis prepared by Charles W. King on behalf of Public Counsel.
> (Exhibit 75)

It should be noted that Staff, the only party upon whom the Commission relied for guidance about whether the "compliance" tariffs did in fact comply with the Report and Order, disagreed with Public Counsel on many of these points. The Commission erred in relying on one party to the case to advise the Commission on compliance.

5. The Commission, in its attempt to craft an order that ensures that the unlawfully-approved December 29, 2006 tariffs somehow remain in effect, has re-approved a number of tariff sheets that had already been superseded. For example, the Commission's December 4 Order approved P.S.C. Mo. No. 5, Section 4, 1st Revised Sheet No. 8a to be effective for service on and after December 14. But in an order effective on May 7 the Commission approved a new version of sheet 8a (Second Revised Sheet No. 8a) which was intended to – and did – replace and supersede the one which the Commission just approved for service on and after December 14. The Commission, in its order issued December 4, has undone all the tariff changes approved between January 1, 2007 and December 4, 2007. Net metering is another example. By re-approving Empire's old interconnection standard effective December 14, the Commission has created a headache-inducing mess with regard to compliance with the Interconnection Standard established in Section 1254 of EPAct (PURPA Section 111(d)(15)). And the Commission has effectively undone at least one territorial agreement by rolling back Empire's service territory to the January 1, 2007 description. The December 4 Order is unjust, unlawful and unreasonable in that it approved all those superseded tariffs with no findings of fact as to it why found them more appropriate than the ones it had more recently approved.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its Order Vacating December 29, 2006 Order Granting Expedited Treatment and Approving Tariffs, and Order Approving Tariffs.

Respectfully submitted,

OFFICE OF THE Public Counsel

/s/ Lewis R. Mills, Jr.

By:_____

Lewis R. Mills, Jr. (#35275)
Public Counsel
P O Box 2230
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
lewis.mills@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 13th day of December 2007:

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Mills Lewis
Office Of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov

Frey Dennis
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Denny.Frey@psc.mo.gov

Carter C Diana
Aquila Networks
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
DCarter@brydonlaw.com

Cooper L Dean
Empire District Electric Company, The
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102
dcooper@brydonlaw.com

Carter C Diana
Empire District Electric Company, The
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
DCarter@brydonlaw.com

Swearengen C James
Empire District Electric Company, The
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
LRackers@brydonlaw.com

Wheeler Janet
Empire District Electric Company, The
312 East Capitol
P. O. Box 456
Jefferson City, MO 65102
janetwheeler@brydonlaw.com

Mitten L Russell
Empire District Electric Company, The
312 E. Capitol Ave
P.O. Box 456
Jefferson City, MO 65102
rmitten@brydonlaw.com

Woodsmall David
Explorer Pipeline
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65102
dwoodsmall@fcplaw.com

Conrad Stuart
Explorer Pipeline
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Fischer M James
Kansas City Power & Light Company
101 Madison--Suite 400
Jefferson City, MO 65101
jfischerpc@aol.com

Blanc D Curtis
Kansas City Power & Light Company
1201 Walnut, 20th Floor
Kansas City, MO 64106
Curtis.Blanc@kcpl.com

Riggins G William
Kansas City Power & Light Company
1201 Walnut
Kansas City, MO 64141
bill.riggins@kcpl.com

Woods Shelley
Missouri Department of Natural Resources
P.O. Box 899
Jefferson City, MO 65102-0899
shelley.woods@ago.mo.gov

Woodsmall David
Praxair, Inc.
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65102
dwoodsmall@fcplaw.com

Conrad W Stuart
Praxair, Inc.
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Lewis R. Mills, Jr.

By:_____