

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the Future Supply,)
Delivery and Pricing of the Elec-)
tric Service Provided by Kansas)
City Power & Light Company.)

EW-2004-0596

REPLY TO RESPONSE IN OPPOSITION TO
MOTION TO DECLASSIFY MATERIALS

COMES NOW PRAXAIR, INC. ("Praxair") and replies to the Response in Opposition to Praxair's Motion to Declassify Materials ("Response") as follows:

1. Kansas City Power & Light Company ("KCPL") misses the point with its Response. Praxair did not argue that the February 4, 2005 newspaper article **itself** disclosed information that KCPL asserted was either Highly Confidential or Proprietary. The article identified several persons who had chosen to voice support for "the plan" who had not signed non-disclosure agreements under the Protective Order.

2. KCPL now states that

These workshops, public forums, and strategic planning seminars **did not include the consideration of confidential information.**^{1/}

However KCPL's adroit statement avoids a disclaimer that the persons identified in the article and others who may have written have had KCPL-declared Highly Confidential or Proprietary Information selectively disclosed to them. Communication of infor-

^{1/} Response, p. 2.

mation is not limited to "workshops, public forums, and strategic planning seminars." KCPL's Response fails to assert that these persons have not been provided with information that KCPL asserts in these proceedings is Highly Confidential or Proprietary.

3. KCPL states that "none of this proprietary or high confidential information was contained in the February 4 article."^{2/} Again, this misses the point, for Praxair never asserted that the February 4 article **by itself** disclosed information that KCPL asserts is Highly Confidential or Proprietary. Rather, the article revealed that a disclosure -- perhaps several -- may have been made by KCPL.

4. KCPL does not attempt a response to Praxair's additional point that it is simply unfair to, on one hand, assert that the process is "public" and recruit members of the public to support a public relations effort to support "the plan" while subjecting others (who **have** access to the full details) to what is, in effect, a "gag order" about the untoward details of "the plan." If the process is public, so be it. If it is not, so be it. But all must play by the same rules and if one view is permitted to speak, the other side is also entitled to be heard. KCPL should not be allowed to have it both ways.

5. Nor does KCPL attempt a response to Praxair's request that, if the entire collection of materials is not to be

^{2/} Response, p. 3.

declassified, KCPL should be directed to review the status of these materials and only classify as Highly Confidential or Proprietary those materials that are truly needful of that designation and have not been elsewhere selectively disclosed and as to which any claim of confidentiality is waived.

6. Praxair agrees that there may be good reasons to protect certain data from public disclosure. Certainly there may be business planning information that is legitimately protected from public disclosure. The rationale for that protection, in the case of a public utility, however, reduces to whether public disclosure of the information would somehow harm the utility's ability to provide safe and adequate utility service at just and reasonable rates. Such information should be crisply distinguished from information that the utility finds is "inconvenient," that it would "rather not disclose" to the public, or that is sought to be withheld just because disclosure would be inconsistent with the utility's view of the facts of "the plan." Much of not all of the information that KCPL has designated as "Highly Confidential" or "Proprietary" falls into the latter category.

7. At base, the regulatory process is intended to be a public process and KCPL is a "public" utility, so the presumption should be in favor of the public and it is not sufficient to simply claim "confidential" on one hand while making selective disclosure of the information on the other. The public should be

entitled to all the facts, including facts that KCPL does not want the public to know about "the plan" even though they may be uncomfortable for KCPL to disclose or inconsistent with its view of the workability of "the plan."

8. Were this a contested case, it might be possible to identify a separate regulatory law judge to independently review the materials in conjunction with the other parties and determine whether they were properly designated as Highly Confidential or Proprietary. This is not a contested case, so the procedure is uncertain in a "workshop" that should not in the first place have confidential non-public information. However, KCPL has offered no meaningful solution to the conundrum it has created and Praxair's separate motion to bring an end to this proceeding still pends before the Commission.

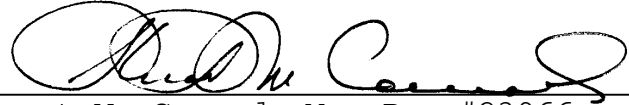
9. That being so, KCPL's unverified Response, though artfully worded, does not parry the thrust of Praxair's Motion. Praxair's Motion should be granted.

WHEREFORE materials previously marked as "Proprietary" or "Highly Confidential" in this proceeding should forthwith be declassified and made available to the public. Alternatively, KPCL should be required to redesignate, upon affidavit, those materials that it contends should not be provided to the public

and that have not been previously selectively disclosed to members of the public.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

A handwritten signature in black ink, appearing to read "Stuart W. Conrad", is written over a horizontal line.

Stuart W. Conrad Mo. Bar #23966
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122
Facsimile (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR PRAXAIR, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by electronic means or by U.S. mail, postage prepaid, addressed to the legal representatives of all parties and participants that have been identified as parties and participants on the Commission's EFIS System as of this date.


Stuart W. Conrad

Dated: February 17, 2005