

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

**In the Matter of a Proposed Experi-)
mental Regulatory Plan of Kansas)
City Power & Light Company.)**

EO-2005-0329

PRAXAIR, INC. STATEMENT OF POSITIONS

Intervenor Praxair, Inc., ("Praxair"), pursuant to earlier Commission Orders, submits its Statement of Positions on the issues as previously filed by Staff on behalf of the parties on May 31, 2005.

General Introductory Statement.

Praxair is a large interruptible customer of KCPL. Praxair operates an air liquefaction facility in the Northeast industrial area of Kansas City, Missouri from which it provides industrial gasses to customers in Kansas City and in the surrounding area. Praxair maintains a high load factor meaning that its seeks to consistently utilize all the capacity that is needed to meet the demand it imposes. Additionally, Praxair has agreed with KCPL that subject to certain time and duration limitations, it will curtail or interrupt its operations should KCPL determine that capacity is more urgently needed to maintain service to other customers.

Praxair is a signatory party to the Stipulation and Agreement that was submitted by KCPL on March 28, 2005 and was actively involved in the prior "workshop" proceedings. We offer this

Statement of Positions consistent with the commitments embodied in the Stipulation and Agreement.

Issue No. 1:

What relief is KCPL and/or the other Signatory Parties to the Stipulation and Agreement in Case No. EO-2005-0329, filed on March 28, 2005, seeking by the filing of the Stipulation and Agreement?

The Stipulation and Agreement is a contract between the signatory parties a condition of which is the approval of the Commission. Conditioned upon the approval of the Commission, the parties' respective commitments are specified in the Stipulation and Agreement. If the Commission does not approve the Stipulation and Agreement, or conditions that approval, the contract between the parties does not ripen and is void. The signatories, collectively, are thus seeking Commission approval of the Stipulation and Agreement. At this time 4 CSR 240-2.115(2)(A-D) is applicable to guide Commission processing of this case.

Issue No. 2:

1. Has the jurisdiction of the Commission been invoked by KCPL and/or the other Signatory Parties, when no application has been filed by any of the Signatory Parties, no authority, statutory or other, has been cited in the Stipulation And Agreement seeking to invoke the Commission's jurisdiction, and no statement has been made of the legal significance of an approval of the Stipulation and Agreement by the Commission?

Given the present status of this case, yes.

2. Could KCPL, or any of the other Signatory Parties, cure any flaw in the filing of the Stipulation and Agreement by now filing an application which meets the requirements of Commission rules?

Yes.

3. Should the Commission approve the Stipulation and Agreement without KCPL and/or the other Signatory Parties curing any flaw in the filing of the Stipulation and Agreement?

Not applicable in our view.

Issue No. 3

Is Case No. EO-2005-0329 a "contested case," and if it is not, has KCPL or any of the other the Signatory Parties to the Stipulation And Agreement invoked the jurisdiction of the Commission by not proceeding in a contested case proceeding?

At the present time, this case is a "contested case" under Missouri law.

Issue No. 4

What would be the legal and precedential effect on the Commission of the Commission approving the Stipulation and Agreement in this case? Would the Commission's approval constitute a determination by the Commission that:

(i) the Stipulation and Agreement is just and reasonable;

Yes.

(ii) the Stipulation and Agreement is among the Signatory Parties and the Commission does not approve any of the contents of the Stipulation and Agreement;

Yes, but the Commission cannot lawfully bind itself to future conclusions of law based upon future (and presently unknown) changed facts and circumstances.

(iii) the Commission acknowledges the Agreement is among Signatory Parties and the Commission does not approve any of the contents of the Stipulation and Agreement; or

Previously addressed in above responses.

(iv) the Stipulation and Agreement is in the public interest?

Yes.

Issue No. 5

1. Is the Stipulation and Agreement a contract among the Signatory Parties and what is its legal effect before and on the Commission; e.g., does the Commission have the authority to approve a contract among the Signatory Parties which binds the parties to specific regulatory action to which the Commission cannot be bound?

At base, the Stipulation and Agreement is an agreement between the signatory parties to deal with certain anticipated issues and circumstances in a particular way, or not to assert certain rights or claims that one or more of those parties might otherwise have. The Commission's approval of the Stipulation and Agreement would reflect only that it judges the Stipulation and Agreement to be in the public interest or, at a minimum, not detrimental to the public interest. As noted above, however, the Commission is not a signatory party to the Stipulation and Agreement and is not bound thereby.

2. Is it within the Commission's statutory authority to approve this Stipulation and Agreement for an "Experimental Regulatory Plan" for the construction of electric plant, such as Iatan 2?

Yes. The Commission has only those powers that are explicitly given to it by the legislature and those powers necessarily incident to the exercise of the granted powers. Although there is no explicit statutory authority that we have found that references an "Experimental Regulatory Plan." However, the Commission is by statute explicitly charged with the regulation of public utilities generally consistent with the public interest. Given that explicit authority, it should be within the sound discretion of the Commission, reasonably and lawfully exercised, as to the means by which such regulation is exercised. The authority of the Commission to approve "experimental" rates or other regulatory arrangements has been confirmed.

Issue No. 6

1. Can facts and information that the Signatory Parties have agreed were presented to them in Case No. EW-2004-0596, a non-contested case outside of the record in this case, and not presented to the Commission, be considered by the Commission in Case No. EO-2005-0329 as competent and substantial evidence as to whether the Commission should approve the Stipulation and Agreement?

No. Facts and information presented informally to the parties through the workshop process in Case No. EW-2004-0596 are not a part of the record in this case unless and until they are properly admitted into this record.

2. Are conclusions of the Signatory Parties in the Stipulation and Agreement regarding matters these parties considered in Case No. EW-2004-0596, a non-contested case outside of the record in the present case, competent and substantial evidence which the Commission may consider in support of the Stipulation and Agreement filed in this case?

No. See above response.

3. Must the evidence that the Commission consider in support of the Stipulation and Agreement be limited to competent and substantial evidence presented at the hearing, or otherwise, in the record in this case, Case No. EO-2005-0329?

Yes.

4. Are the various components of the Stipulation And Agreement, such as the provision for additional amortizations, supported by competent and substantial evidence in Case No. EO-2005-0329?

It would be our sense that providing such support would be the purpose of the hearing scheduled in this case.

5. KCPL has filed direct testimony and schedules in Case No. EO-2005-0329 and an evidentiary hearing has been scheduled for June 6-8, 2005. May this testimony and the evidentiary hearing scheduled for June 6-8, 2005 provide competent and substantial evidence for the Commission to approve the Stipulation and Agreement filed on March 28, 2005?

Yes, assuming that it is proper evidentiary foundation and due admission into the record of this proceeding.

Issue No. 7

Do the various provisions of the Stipulation and Agreement, such as those relating to the prudence of various KCPL decisions concerning the construction of Iatan 2, place on ratepayers some of the risk that KCPL has the obligation to assume due to its assumption of the obligation to provide electric service as a public utility; if the Stipulation and Agreement does shift such risk, what would be the effect of the Commission approving such Stipulation And Agreement; and does the Commission have the authority to approve such a Stipulation and Agreement?

As noted earlier, the Stipulation and Agreement is an agreement between the signatory parties to raise, or not to raise, certain issues or claims in particular circumstances. While it limits KCPL's risk to the extent of those agreements, it does not in our view shift risk to the other signatories. Moreover, it only addresses, and in only a limited manner, the decisional risk associated with KCPL's decision to announce its construction plans.

Issue No. 8

1. Are additional amortizations to maintain financial ratios provided for in Section III B.1. I, page 18 of the Stipulation and Agreement, supported in the record before the Commission and whether it is lawful for the Commission to allow an amortization expense that is unsupported by any cost to be amortized in the case?

The Stipulation and Agreement address certain cash flow criteria. Amortization is used to provide flexibility in the Stipulation and Agreement for circumstances that are presently unknown to any of the signatories. It does not identify any specific amortization amount that would be included in rates now or in the future. As presented, the amortization expense addresses recovery of existing plant-in-service costs.

2. Does Section 393.135 RSMo prohibit the additional amortizations to maintain financial ratios provided for in Section III B.1. I, page 18 of the Stipulation and Agreement, which permits additional amortizations in the event of revenue

short falls that would cause KCPL's bond rating to fall below investment grade?

No. See above discussion.

3. Do the additional amortizations provided for in the Stipulation and Agreement cause present ratepayers to pay higher rates and future ratepayers to pay lower rates, causing an intergenerational subsidy which may result in undue discrimination?

Setting aside the argumentative nature of the statement of this issue and the use of the loaded terms "subsidy" and "lower rates," the quick answer is no. Under the Stipulation and Agreement, changes in rates continue to be reserved for the determination of the Commission through the traditional rate case process which would (presumably) appropriately consider *all relevant factors* going to establishing just and reasonable rates based on an appropriately adjusted test year cost of service and would be subject to judicial review if appropriate.

Rates change over time. KCPL's rates today (without regard to the Stipulation and Agreement) are higher in terms of absolute dollars than they were 40 years ago. It does not, however, follow that today's rates represent an "intergenerational subsidy" flowing one way or the other between today's customers and customers of 40 years ago. Nor does it follow that the Commissioners

**who set KCPL's rates 40 years ago introduced an
"intergenerational subsidy" into those rates.**

4. Is it proper or sound regulatory policy for the Commission to approve such additional amortizations, and on what basis?

**Adjustment of the recovery of what otherwise could be
considered "lumpy" costs through depreciation, amorti-
zation or some combination of the two, is an estab-
lished regulatory tool.**

Issue No. 9

Does Section IIIB.1.o of the Stipulation and Agreement, respecting the Resource Plan modification process, place the Commission, the Commission Staff or the other KCPL nonsignatory parties in the position of managing or being requested to manage KCPL; and if it does so, does it do so contrary to statute or case law?

No.

Issue No. 10

Is it proper and lawful for the Commission to approve the Stipulation and Agreement which itself involves terms and conditions regarding the construction of utility generation and environmental enhancements in the future?

Yes.

Issue No. 11

1. What effect would Commission approval of the Stipulation and Agreement have on any of the future rate cases scheduled to be filed by KCPL beginning in 2006 as contained in the Stipulation and Agreement?

**The Stipulation and Agreement sets out a scheduling
framework for a series of rate cases, but does not
presuppose the results of those rate cases. In-service**

criteria for new plant additions are established, and a requirement for rate design studies is introduced along with a mechanism for handling this occasionally difficult issue in the series of cases leading up to the "Iatan Case," expected to be filed in 2009. Importantly, the ultimate rate base cost of Iatan 2 will be reduced over that which would otherwise be the case given current regulatory practice.

2. Can the Commission in this case make any findings which would bind it, customers of KCPL, the Staff, the Public Counsel or any other affected entity in ratemaking treatment of any issues necessary to arrive at the determination of just and reasonable rates in future rate cases?

No.

Issue No.12

In asking the Commission to approve the Stipulation and Agreement, are the Signatory Parties asking that:

(i) the Commission agree that the construction of Iatan 2 and the environmental enhancements, i.e., these proposed additions to infrastructure, are prudent and in the public interest?

No. The signatories are agreeing that they will not raise certain issues relating to KCPL's initial decisions regarding construction of the Iatan 2 plant.

(ii) the Commission find that the entire Stipulation and Agreement is just and reasonable?

Yes. See responses above.

(iii) the Commission approve the Stipulation and Agreement among the Signatory Parties without approving any of the specific contents of the Stipulation and Agreement?

We do not understand this issue as stated, but our sense of the context of the issue is that it is not applicable given earlier responses.

Issue No. 13

The suspension period agreed to in Case No. EO-99-365 for the Commission's Chapter 22 resource planning rules (4 CSR 240-22.010 to 4 CSR 240.080) for each electrical corporation is scheduled to end. As a result, each electrical corporation will again be required by Chapter 22 to file consistent with the requirements of Chapter 22. KCPL is scheduled to file by July 5, 2006. KCPL may request that the Commission again suspend Chapter 22 as it applies to it or may request variances from specific provisions of Chapter 22. Should the Commission suspend hearings in this case and its consideration of the Stipulation and Agreement until after KCPL has complied with the required Commission Rule Chapter 22 filing to be made by KCPL on July 5, 2006?

No.

Issue No. 14

If Senate Bill 179 (S.B. 179) becomes law, what is the effect, if any, of S.B. 179 on Case No. EO-2005-0329?

None, given the mutual agreements of the signatories to the Stipulation and Agreement.

Issue No. 15

Does KCPL need additional generation capacity by 2010 to serve native system load or is KCPL seeking to build Iatan 2 in order to make off system sales?

The statement of the issue presents what is known in logic as a "false dichotomy." As posed, the correct answer is: Yes, it is needed to serve native load.

We do not believe that it would be economic for an electric utility to try to add generating capacity in precise increments that exactly tracked its load growth (even assuming that such could be anticipated precisely because the capacity would have to be available in advance). Thus, economic capacity additions are of necessity and practicality "lumpy" and provide both capacity for the reasonably projected need for native load growth and some additional capacity that, on a current basis, would be prudently marketed for the benefit of the ratepayers as their needs grow into that capacity. The rate case process, properly employed, balances this shift in need so that economies of scale to be captured for the benefit of ratepayers.

Issue No. 16

What is the applicable definition of the standard "in the public interest" respecting Commission consideration of whether to grant approval of the Stipulation and Agreement; e.g., who is the "public" that is to be considered and what is the scope of the "public interest" to be considered by the Commission?

The standard addresses the Commission's overall responsibility to establish rates that are just and reasonable at a particular point in time supported by competent and substantial evidence on the whole record. The "public" is not limited to the ratepayers of a particular utility (although obviously their immediate and

direct interest should be paramount) and includes the overall public interest of the state and its citizens. Philosophically, this test addresses the "common sense judgment" that the Commissioners bring to the decisional process as they seek properly to balance and harmonize these various interests.

Issue No. 17

If KCPL needs additional generation capacity by 2010, does KCPL have an appropriate alternative to its generation needs for 2010, and a reasonable period of time thereafter, which does not require the construction of additional generation capacity? If KCPL needs additional generation capacity by 2010, and a reasonable period of time thereafter, is there an alternative to the technology that will be used for Iatan 2, such as integrated gasification combined cycle (IGCC), that would be prudent and in the public interest for KCPL to use?

No.

Issue No. 18

If KCPL needs additional generation capacity by 2010, does KCPL have an appropriate alternative to its generation needs for 2010, and a reasonable period of time thereafter, that is less costly in direct costs than Iatan 2, and is KCPL required by statute or case law to choose the alternative that is the least costly in direct costs, e.g., is any alternative chosen by KCPL, other than the alternative that has the least cost in direct costs, imprudent and/or not in the public interest?

No. The statement of the issue presupposes that the "least cost" alternative (as variously defined) is the most appropriate or reasonable approach to addressing the need for capacity. We do not believe that this is true.

Should KCPL's analysis consider potential new environmental regulations, such as a CO2 tax, and has KCPL appropriately considered in its analysis potential new environmental regulations?

Yes, we believe that it did.

Issue No. 19

If KCPL needs additional generation capacity by 2010, does KCPL have an appropriate alternative to its generation needs for 2010, and a reasonable period of time thereafter, that has less of an environmental effect than Iatan 2, and is KCPL required by statute or case law to choose the alternative that has the least environmental effect, e.g., is any alternative chosen by KCPL, other than the alternative that has the least environmental effect, imprudent and/or not in the public interest?

As a signatory, Praxair has agreed that it will not challenge KCPL's choice to meet its capacity need with Iatan 2 as proposed. The statement of this issue presupposes that environmental effects are the only appropriate consideration. Doubtless for some, decisions are that simplistic. An appropriate decisionmaking process gives appropriate balance and consideration to all relevant factors.

Issue No. 20

If KCPL needs additional generation capacity by 2010, does KCPL have an appropriate alternative to its generation needs for 2010, and a reasonable period of time thereafter, that has less of a human health effect than Iatan 2, and is KCPL required by statute or case law to choose the alternative that has the least human health effect, e.g., is any alternative chosen by KCPL, other than the alternative that has the least human health effect, imprudent and/or not in the public interest?

No, no appropriate alternative is available. Nor should a utility be required to focus on "human health

effects." "Human health effects" could also be broadly defined to include the effects on overall health costs as they reflect electric rates to nursing homes, hospitals and other primary care facilities as well as assessment of the importance of a utility providing sufficiently adequate service such that primary health care providers can reasonably rely upon the reliability of electrical supplies for their operating rooms and critical care facilities.

Issue No. 21

If an electrical corporation has a certificate of convenience and necessity to construct electric plant or the electric plant is to be constructed in the certificated service area of the electric utility and the electrical corporation has received all necessary environmental and health related permits to construct and operate the electric plant, does the Commission have jurisdiction to consider the environmental and health related issues raised by any party opposed to the construction of the electric plant?

Yes, among other factors, but we also believe that the Commission should give the same deference to the expertise of these licensing agencies as it expects those licensing agencies to give deference to Commission decisions. As charged by the General Assembly, the Commission's primary function is to serve as a substitute for competition by establishing rates for utility services that are just and reasonable. It should not permit its processes to provide a "second bite of the

**apple" for single-issue interests to relitigate issues
more properly raised elsewhere.**

Issue No. 22

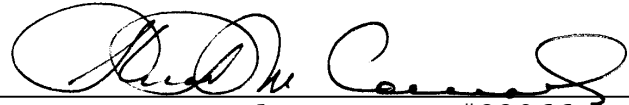
Is KCPL's proposed experimental regulatory plan reasonable and consistent with KCPL's current marketing practices?

The question is compound. As a signatory, Praxair's position is that the Stipulation and Agreement presents a reasonable regulatory plan that the Commission, in exercise of its sound discretion, should approve. In the context of this case Praxair has not made any investigation of "KCPL's current marketing practices," nor do we understand what is intended to be comprehended by this stated issue.

WHEREFORE, Praxair, Inc. prays that its Statement of Positions be received.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

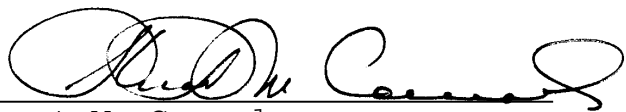


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ATTORNEYS FOR PRAXAIR, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading either by electronic means or by U.S. mail, postage prepaid, addressed to the legal representatives of all parties that have been identified as parties and petitioning intervenors through the Commission's Electronic Filing and Information System as of this date.



Stuart W. Conrad

Dated: June 2, 2005