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 Certain Changes	)	**Case No. ER-2006-0314**
In its Electric Service to Being the	)	
Implementation of Its Regulatory Plan	)	

PREHEARING BRIEF / STATEMENT OF POSITION

OF

PRAXAIR, INC.

Stuart W. Conrad (MBE #23966)
David L. Woodsmall (MBE #40747)
3100 Broadway, Suite 1209
Kansas City, MO 64111
(816) 753-1122 voice
(816) 756-0373 facsimile
E-mail: stucon@fcplaw.com

ATTORNEYS FOR PRAXAIR, INC.

October 12, 2006

COMES NOW Praxair, Inc. ("Praxair"), by and through the undersigned counsel, and submits this Prehearing Brief on the issues set forth below pursuant to the procedural schedule established herein. Although this Prehearing Brief addresses a limited number of the issues set forth in the issues list filed herein by Staff, Praxair reserves the right to cross-examine witnesses, present argument and submit post-hearing briefs as to any issues it deems necessary if the need arises at a later date.

INTRODUCTION

At the outset, Praxair wishes to express its concern with the apparent purpose of the ordered prehearing briefs as distinguished from previously-used statements of position. Because prehearing briefs are due prior to the evidentiary hearing and the acceptance of "evidence" into the record, confusion necessarily arises as to the purpose of the prehearing briefs, the questionable legality of such "briefs" in light of the Commission's statutory obligations under Section 536.080 RSMo, and the nature of the "evidence" upon which such "briefs" are to be based.

Section 536.080.2 RSMo places a statutory obligation on each commissioner to "either hear *all* the evidence, read the *full* record including *all* the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs." Though use of post-hearing briefs are a statutory alternative to each of the Commissioners hearing *all* or reading *all* the evidence, Section 536.080.1 anticipates that oral arguments will be held or briefs will be filed *after* the Commission has established and closed the record at the hearing. This requirement has been codified by the Commission at 4 CSR 240-2.140(1). To use a phrase currently in vogue in other

contexts, the post-hearing briefs allow the parties to "connect the dots" in their respective cases. Obviously, there must be "dots" to "connect."

Thus, this pleading and other similar pleadings submitted today by other parties cannot substitute for the statutory post-hearing brief of Section 536.080.1. Specifically, the reference by any party to "evidence" could of necessity be *only* that party's prognostication of what the evidentiary record will be. Things happen in a hearing. Parties may not offer certain pre-filed testimony. Offered testimony may be stricken or not accepted. A party's position may change as a result of settlement or discovered errors. Thus it is not possible for any party to accurately predict what the evidentiary record will be and what material will become part of the record and be available for inclusion in the briefs. Ultimately, Commission reliance upon such prehearing "briefs," given the fact that "evidence" has not yet been adduced, would be in direct violation of Section 536.080 and potentially Article V, Section 22 of the Missouri Constitution. Praxair's concern is that the Commission's Order implies equivalence between the *pre*-hearing documents that are filed today and that follows this introduction and the *post*-hearing brief that is the statutory alternative provided in Section 536.080 RSMo. These two documents are, simply, not fungible. Were they fungible, the hearing, including the admission of evidence, and all the associated processes including cross-examination, which, by the way, create the substantial *competent* evidence which the Constitution requires as support for any decision it makes, would be rendered meaningless.

Given that today's pleadings cannot constitute Section 536.080 "briefs," they must necessarily be nothing more than a statement of position, which would make them consistent with previous Commission procedure (See Case No. ER-2004-0570).

Because we cannot accurately predict what the record evidence will be in this case, and given the Commission's obligation to base its decision only on competent and substantial evidence *in the record* and the Commission's previously accepted use of position statements, we are submitting this pleading as a position statement tied to the currently-identified issues in the case. We have sought to provide a succinct but accurate statement of our positions in this proceeding. We trust that this statement will be useful to the Commission for the purposes intended.

ISSUES

JURISDICTIONAL ALLOCATIONS

Issue: What is the appropriate method (4 CP vs. 12 CP) to use for allocating generation and transmission costs among jurisdictions?

Response: As between the 4CP method and the 12CP method, the 4CP method proposed by Commission's accounting and resource planning staffs should be utilized. The 4CP method recognizes the extreme summer peaking nature of the KCPL system and fairly and appropriately allocates fixed investment in generation and transmission costs among jurisdictions.

Issue: How should A&G expenses be allocated to the Missouri retail, Kansas retail and FERC wholesale jurisdictions?

Response: Account Numbers 920, 922, 923, 930.2 and 931 should be allocated on salaries and wages.

OFF-SYSTEM SALES

Issue: What level of off-system sales margin should be included in determining KCPL's cost of service?

Response: KCPL has historically realized significant margins from its sales of energy in the wholesale market. These levels of off-system margins have increased year over year for approximately the past decade. In fact, KCPL's budgeted level of off-system margins for 2006 and 2007 reflects anticipated increases over the level realized in 2005.

Moreover, KCPL's own statistical analyses indicate that its 2006 and 2007 budgeted amounts have a 50 / 50 likelihood of being realized. Nevertheless, KCPL proposes to include only a level which provides the Company with a 75% likelihood of realization.

There are two key provisions included in the approved Regulatory Plan (Case No. EO-2005-0329) which affect any decision regarding the appropriate level of off-system sales margins to include in KCPL's revenue requirement. First, the Regulatory Plan Stipulation and Agreement provided that:

> KCPL agrees that off-system energy and capacity sales revenues and related costs will continue to be treated above the line for ratemaking purposes. KCPL specifically agrees not to propose any adjustment that would remove any portion of its off-system sales from its revenue requirement determination in any rate case, and KCPL agrees that it will not argue that these revenues and associated expenses should be excluded from the ratemaking process. (emphasis added).

Second, the Regulatory Plan Stipulation contemplates that KCPL will file another rate case on February 1, 2007. As such, the rates ordered by the Commission in this case will be in effect for a maximum of 12 months.

Recognizing that: (1) KCPL has agreed that ratepayers should receive the entire benefit of all off-system sales margins and (2) the rates from this proceeding will only be in effect for 12 months, it is imperative that the Commission take a position that returns as much of the benefits of off-systems sales to the ratepayers as possible. As such, Praxair recommends the level of off-system sales margin should be the best estimate of those margins. The specific value should either be the 50%/50% probability estimate provided by KCPL, or the actual/trued-up test year value. These numbers bound the range that is reasonable. KCPL's proposal to set off-system sales margins at a level where it captures for itself a 75% chance that they will actually in fact be higher is ludicrous and should be rejected. If the Commission gives consideration to anything other than the best estimate, then by the same logic that KCPL applies, it should use the 25th percentile on the probability distribution in order to assure consumers that they get the benefit of off-system sales margins at a 75% probability. As initially filed by KCPL, the value of off-system sales margins at this level would be $143 million.

Issue: How should the off-system sales margin be allocated to the Missouri retail, Kansas retail and FERC wholesale jurisdictions?

Response: Off-system sales margins should be allocated using jurisdictional energy sales. KCPL's overly simplistic approach, which ignores many operating and planning factors, should be rejected.

Issue: What parameters does the Commission-approved Stipulation & Agreement in Case No. EO-2005-0329 impose on the treatment of off-system sales revenue in this case?

Response: In the Experimental Regulatory Plan Stipulation and Agreement, KCPL explicitly agreed not to attempt to retain for itself any of the margin on off-system sales. The probabilistic analysis put forward by KCPL circumvents this pledge.

Issue: Should KCPL's customers receive the benefit of all margins of off-system sales or should it be shared between customers and shareholders? Should a mechanism be adopted to ensure that the benefit is received by the appropriate party or parties? If so, what mechanism?

Response: KCPL's customers should receive the entire benefit of margins on off-system sales. No party has come forward with a mechanism to ensure that the benefit is received by the parties if the actual values deviate from the amounts used to establish rates. Therefore, the best estimate should be used to establish rates.

CLASS COST-OF-SERVICE AND RATE DESIGN

Class Cost-of-Service:

Issue: On what basis should distribution costs be allocated to classes? Should the allocation of primary distribution costs include any customer-related component? What type of demand should be used to allocate the cost of distribution substations and distribution lines?

Response: The primary portion of the distribution system clearly includes both customer-related and demand-related components. The methodology used by KCPL to classify these costs between demand-related and energy-related is appropriate. Distribution substation costs and the demand-related portion of the primary network should be allocated using class peak demands, and the demand-related portion of the secondary network should be allocated using individual customer peak demands.

Issue: On what basis should production capacity and transmission costs be allocated to classes?

Response: The fixed costs associated with production and transmission should be allocated to classes using a method which recognizes the summer peaking nature of the KCPL system. This would be either the average and excess - three non-coincident peak method or a summer coincident peak method using one to four summer system peak demands. The methods applied by

KCPL, MPSC Staff and OPC give far too much weighting to energy consumption and to demands in off-peak months, and should be rejected.

Issue: What is the appropriate method to use for allocating margins on off-system sales among Missouri retail customer classes? (MIEC)

Response: Margins on off-system sales should be allocated among retail customer classes using retail customer class energy consumption. KCPL's unique self-invented "unused energy" methodology has no precedent, is theoretically unsound, and should be rejected.

Issue: Do KCP&L's computation of coincident peak demands and class peak demands properly recognize line losses?

Response: KCPL's demands do appropriately include recognition of line losses.

Issue: To what extent, if any, are current rates for each customer class generating revenues that are greater or less than the cost of service for that customer class?

Response: The residential class is producing returns significantly below costs, while other classes are producing returns significantly above costs. See Schedule 4 attached to the Direct Testimony of Maurice Brubaker for the specific cost of service results.

Issue: What is the appropriate basis for allocating Administrative and General Expense Account Numbers 920, 922, 923, 930.2, and 931 among Missouri retail customer classes?

Response: These A&G expense categories should be allocated among customer classes using salaries and wages. Allocation on an energy basis, as used by KCPL, is not related to cost-causation and should be rejected.

Issue: Should revenue adjustments among classes be implemented in order to better align class revenues to class cost-of-service? If so, what percentage increase or decrease should be assigned to each customer class?

Response: This is the case in which to begin alignment of revenues with costs. The two primary factors to consider are differences from cost and impact on customer classes. See Schedule 9 attached to the Direct Testimony of Maurice Brubaker for the recommended spread of the revenue increase found appropriate by the Commission.

Issue: Should class revenue adjustments be implemented even if no increase or decrease in revenue requirement is granted?

Response: Yes, regardless of whether rates are increased or decreased, or how much increased, now is the time to begin moving rates closer to costs.

Issue: Should revenue adjustments be phased-in over multiple years?

Response: The Commission should deal, in this case, with just this case and not attempt to establish guidelines for future cases.

Issue: Should revenue adjustments among the non-residential classes be applied uniformly or non-uniformly?

Response: There is logic to maintaining the same percentage increase to the Small, Medium and Large General Service customer classes. However, the increase to the Large Power class can be smaller than the increase to the General Service classes.

Issue: How should any increase in the revenue requirement be implemented?

Response: See responses to preceding issues.

Rate Design:

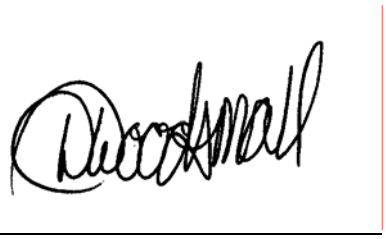
Issue: Should a comprehensive analysis of KCPL's class cost-of-service issues and rate design be conducted after the conclusion of the regulatory plan and the in-service date of Iatan 2? Should the cost-basis of general service all-electric rates be included in this analysis?

Response: A comprehensive review and analysis of class cost of service issues has taken place in this proceeding and the results should be utilized to develop interclass revenue allocations in this proceeding.

Issue: Should KCPL's proposed changes to the General Service customer charge be implemented?

Response: We take no position on this issue.

Respectfully submitted,



Stuart W. Conrad, MBE #23966
David L. Woodsmall, MBE #40747
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 751-1122 Ext. 211
Facsimile: (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR PRAXAIR, INC. and EXPLORER PIPELINE, 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.

David L. Woodsmall

Dated: October 12, 2006