

Interlocutory Orders, Etc.

IN THE MATTER OF

**THOMAS JEFFERSON UNIVERSITY,
AND
ALBERT EINSTEIN HEALTHCARE NETWORK**

Docket No. 9392. Order, November 6, 2020

Order granting a continuance until March 8, 2021 and extension of prehearing deadlines.

ORDER GRANTING CONTINUANCE

On October 29, 2020, Complaint Counsel and Respondents Thomas Jefferson University (“Jefferson”) and Albert Einstein Healthcare Network (“Einstein”) moved to postpone by sixty days commencement of the administrative hearing in this proceeding, currently scheduled to begin on January 5, 2021, and to stay all pre-hearing deadlines by corresponding 60-day periods. Joint Expedited Motion for a Continuance of Administrative Proceedings (“Joint Motion”) at 1, 5.

This follows the Commission’s issuance on February 27, 2020, of an administrative complaint challenging a proposed transaction whereby Jefferson would become the sole member and ultimate parent entity of Einstein (“the Proposed Transaction”). The Commission at that time also filed a complaint in the U.S. District Court for the Eastern District of Pennsylvania seeking a preliminary injunction barring the Proposed Transaction until completion of the administrative proceeding. The preliminary injunction hearing and post-hearing filings have concluded in the federal district court action. The parties presented their closing arguments on October 26, 2020. The parties anticipate a decision in the federal district court action before the end of the year. *Id.* at 2.

Respondents affirm that “if they are enjoined from consummating the transaction after all appeals in the federal proceeding are exhausted, they will abandon the proposed transaction.” *id.*; *see also id.* At 5. Moreover, the parties state that “[i]f the motion for preliminary injunction is denied, Respondents will file a motion pursuant to Rule 3.26 to withdraw the case from adjudication or dismiss the Complaint,” resulting in an automatic withdrawal or stay. Joint Motion at 5.

The parties argue that granting the requested continuance and extending pre-hearing deadlines would protect the parties and third parties from unnecessary burdens and expense, without prejudicing the Commission. *Id.* at 3-5. They explain that third parties will soon have to review voluminous documents, submit line-by-line proposed redactions of confidential information, and prepare legal memoranda requesting *in camera* treatment of those materials. *Id.* at 3-4. Furthermore, all parties will have to bear the expense of preparing for a full trial, including document and data review, depositions and motion practice. *Id.* at 3. And party and third-party witnesses face the burden and disruption of preparing to testify and making travel arrangements. *Id.* at 4. According to the parties, these witnesses include operators of skilled

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nursing facilities and hospitals and clinicians, whose burdens are of particular concern during a time of global pandemic. *Id.* at 3-4.

Commission Rule 3.4l(f) provides, in relevant part, that a pending “collateral federal court action that relates to the administrative adjudication shall not stay the proceeding [u]nless a court of competent jurisdiction, or the Commission for good cause, so directs.” 16 C.F.R. § 3.4l(f). This reflects the Commission’s commitment to move forward as expeditiously as possible with its administrative hearings. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.1l(b)(4), 3.41(b), 3.46, 3.51-3.52.

Yet, as we have explained in the past, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. *See, e.g., In re Sanford Health*, Docket No. 9376, 2017 WL 5845596, at *1 (F.T.C. Nov. 21, 2017). Commission Rule 3.41(b) authorizes the Commission to delay a hearing date, upon a showing of good cause. 16 C.F.R. § 3.41(b). Under the circumstances presented, we find that the requested continuance and the extension of pre-hearing deadlines are justified. Deferring the start of trial and extending pre-hearing deadlines by 60 days, will provide additional time for resolution of the district court action, which could obviate the need for an administrative hearing without unduly delaying the Commission proceeding. We have granted continuances under comparable circumstances in the past. *See, e.g., In re RAG-Stiftung*, Docket No. 9384, 2020 WL 91294 (F.T.C. Jan. 2, 2020); *In re Sanford Health*, Docket No. 9376, 2017 WL 6604532 (F.T.C. Dec. 21, 2017); *Sanford Health*, 2017 WL 5845596; *in re The Penn State Hershey Med. Ctr.*, Docket No. 9368, 2016 WL 3345405 (F.T.C. June 10, 2016); *In re Advocate Health Care Network*, Docket No. 9369, 2016 WL 3182774 (F.T.C. June 2, 2016). Accordingly,

IT IS HEREBY ORDERED that the Joint Expedited Motion for a Continuance of Administrative Proceedings is **GRANTED**; and

IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding shall commence at 10:00 a.m. March 8, 2021, and that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by 60 days.

By the Commission.

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IN THE MATTER OF

**LINDE AG,
PRAXAIR, INC.,
AND
LINDE PLC***Docket No. C-4660. Order, November 10, 2020*

Letter approving the applications of the Respondents proposed modifications to agreements subject to the Commission's Order in this matter.

LETTER APPROVING APPLICATIONS

VIA EMAIL

Thomas A. McGrath, Esq.
Linklaters LLP

Re: In the Matter of Linde AG, Praxair, Inc., and Linde PLC, Docket No. C-4660

Dear Mr. McGrath:

This is in reference to the Applications for Approval of Proposed Modifications filed by Linde AG, Praxair, Inc. and Linde PLC ("Linde") and received on June 16, 2020, and September 4, 2020 ("Applications"). Pursuant to the Decision and Order in Docket No. C-4660, Linde requests Commission approval of its proposal to modify a reverse supply agreement, and the Operations and Maintenance Agreement that are part of the asset purchase agreement between Linde and Messer Industries, GmbH. Pursuant to Rule 2.41(f) of the Commission's Rules of Practice, the Commission has determined to approve the Applications and waive the 30-day public comment period. In according its approval to Linde, the Commission has relied upon the information submitted by Linde, and the Commission has assumed that information to be accurate and complete.

By direction of the Commission, Commissioner Chopra dissenting.