



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: APRIL 19, 2023

FROM: CARGO & INDUSTRIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - APPROVE THE CONSENT TO MERGER OF PERMIT NO. 931 AND APPROVE THE ORDER CONSENTING TO THE MERGER OF PRAXAIR, INC, THE TENANT UNDER PERMIT NO. 931

SUMMARY:

Staff requests approval of the Consent to Merger of Permit No. 931 (Permit) between Praxair, Inc., now known as Linde Inc., and the City of Los Angeles Harbor Department (Harbor Department). In February 2018, at the time of presenting the successor Praxair Permit for approval, staff informed the Board of the pending merger between Praxair and Linde awaiting approval by regulatory agencies. The merger has been completed as further described below; Praxair, now known as Linde Inc. (Linde) has affirmed and given assurances that it is and shall continue to be bound by and assume and perform all the obligations, terms conditions and covenants of Tenant under Permit No. 931 from the effective date of the Permit.

Staff has reviewed financial information pertaining to Linde (formerly known as Praxair) and has observed, among other things, that key liquidity, leverage, and profitability metrics have all improved, and it appears that Linde continues to possess a sufficient amount of financial wherewithal to fulfill its obligations under Permit No. 931.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively and categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) and Article III Class 1(14) of the Los Angeles City CEQA Guidelines;
2. Approve the Consent to Merger - Permit No. 931 (a copy of which is attached as Transmittal 2);
3. Approve the Order accompanying the Consent to Merger - Permit No. 931 (a copy of which is attached as Transmittal 4);
4. Authorize the Executive Director to execute and the Board Secretary to attest to the Consent to Merger – Permit No. 931;
5. Authorize the Board Secretary to attest to the Order ; and
6. Adopt Resolution No. _____ and Order No. _____.

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Background – Under the Permit and as presented within the Site Map (Transmittal 1), Praxair uses and occupies premises comprised of 9.55 acres of Harbor Department property located in East Wilmington west of the intersection of Pacific Coast Highway and the Terminal Island Freeway, for purposes of operating a gas separation plant and pipelines. The plant separates various gases from the outside air by applying various pressures and temperatures to confine certain gases and make them pure, such as oxygen, nitrogen, and argon, which is then either transported by rail, truck, or pipeline to customers. The Permit took effect in 2018 for a term of ten years with two ten-year extension options for a total potential term of thirty years. Praxair paid an upfront lease renewal fee in exchange for the two extension options in the amount of \$294,279. Current rent is \$321,211.33 per quarter, or \$1,284,845.31.

Merger Notification – In February 2018, at the time of presenting the new Permit for approval, staff informed the Board of the pending merger between Praxair and Linde in that prior action's Board Report. Praxair requested that the pending merger be pre-approved at that time; however, staff notified Praxair the approval of the merger would have to occur following the Permit's effective date and once all regulatory approvals were secured.

In October 2020, Praxair provided a summary of the merger to the Harbor Department by mail. Praxair did not request approval of their merger prior to that as required under the Permit because it was Praxair's understanding that the Board was already notified in February 2018 in connection with its request for pre-approval of the transaction. Staff subsequently informed Praxair's management that the Permit requires Praxair to request consent from the Board and have the merger/name change approved and documented.

Praxair had a different interpretation of Permit requirements which contributed to the gap of time between when the merger occurred and the timing of this action. Also, a considerable amount of time was required for staff to complete due diligence and to finalize the consent instruments due to protracted negotiations on language.

Current Action – Staff requests approval of the following concerning Permit No. 931:

Approve the Consent to Merger-Permit No. 931. (Transmittal No. 2). Under the merger, Praxair and Linde Aktiengesellschaft, a stock corporation incorporated under the laws of Germany (Linde AG), combined under Linde plc, a public limited company incorporated under the laws of Ireland (Linde plc). Subsequently, (i) Praxair's publicly traded stock was voluntarily delisted from the New York Stock Exchange and one Praxair share was exchanged for one Linde plc share; (ii) Praxair became an indirect wholly owned subsidiary of Linde plc; and (iii) thereafter, on or September 1, 2020, Praxair changed its name to Linde Inc.

Linde Inc. affirmed and gave assurances that it is and will continue to be bound by and perform all of the obligations, terms, conditions, and covenants of Tenant in and under Permit No. 931 entered into under its former name of Praxair, Inc. from the effective date of the Permit and will continue to do so under any extension of the Permit, which was a condition to.

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Evaluation of Merger: In evaluating any notice regarding a change in control of a permittee, the Harbor Department bases its consent on specific factors germane to the change in control which identifies the factors and staff's findings for each item (Transmittal 3). Linde has provided documentation that supports that the newly merged company is stronger than when the Permit was executed in 2018. The Finance Division reviewed the audited financial statements of Linde PLC, the ultimate parent of Linde Inc., as well as the unaudited management financials of Linde Inc for the year ended December 31, 2021. Specifically, Total Revenues, Operating Income, Net Income, Total Assets and Total Equity of Linde Inc. were reviewed. In addition, staff also reviewed the stock price of Linde PLC as of March 31, 2023 relative to the stock price of Linde PLC as of December 29, 2017.

With respect to Linde PLC, staff noted that Linde PLC's stock price has increased by 151 percent from December 29, 2017 (pre-merger) to March 31, 2023. With respect to Linde Inc., from December 31, 2017 to December 31, 2021, staff noted that cash and cash equivalents have increased by 3,017 percent, debt has decreased by 44 percent, and operating income has increased by 66 percent. Based upon the above results, staff noted that the liquidity, leverage and profitability of Linde Inc. have improved following the merger and determined it is stronger now than it was prior to the merger. Further, Linde/Praxair has a security deposit on file in an amount of three times the Monthly Rent (\$329,250.74) as required under the permit.

Linde/Praxair, apart from the corporate merger consent issue discussed herein, is a tenant in good standing. There has been no change to the Praxair facility in East Wilmington except that the plant now has signage indicating the plant is run by Linde. Rent is paid and up to date and there are no known Permit infractions or violations of law. They provide a critical service by supplying important industrial gases to hospitals, refineries and industrial users throughout Los Angeles and the South Bay. The company is a member of the Hydrogen Council, a group of companies investing in hydrogen vehicles. The company expects hydrogen vehicles to compete with electric vehicles and has invested in wind powered plants that convert water to hydrogen.

Under the Permit, the Assignments, Transfers and Subleases provision it requires the tenant pay a transfer fee when there is a change in control. It is calculated based on the remaining years left on the term as a percentage of the economic value attributable to the assignor's leasehold interest derived from, or as a result of the use of the Premises. Staff determined a fee does not exist due to the following reasons. First, because of the nature of the transaction there is no specific economic value attributable to the Permit in the context of the greater merger transaction that involves a global consolidation of companies and major assets. Second, as noted above, the Harbor Department secured upfront lease renewal fees which already captured the economic value of that additional term at the time the Permit was executed. Last, the Permit is akin to a ground lease; other than the land, the tenant owns all improvements at the site.

Requested Action – Staff recommends the Board should consider and approve the Consent to Merger and Order (Transmittal 4) between Praxair and Linde based upon the review of the transaction involved.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the Merger and Order Authorizing Transfer of Permit No. 931 from Praxair, Inc. to Linde, Inc., which is an administrative activity to amend a permit to use an existing facility involving no expansion of use. Therefore, the Director of Environmental Management has determined that the proposed action is administratively and categorically exempt from the requirements of CEQA in accordance with Article II Section 2(f) and Article III Class 1(14) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed action will entitle the tenant to continue operations under Permit No. 931 until April 23, 2028, after which Linde Inc will be able to extend the Permit at their sole option using two (2) ten-year options to extend until 2038 and 2048, respectively. Staff has reviewed financial information pertaining to Praxair, Inc. as of December 31, 2017 (last full year prior to the merger) as well as financial information pertaining to Linde Inc. as of December 31, 2021. Over that four-year period, staff observed that key liquidity, leverage and profitability metrics have all improved, and it appears that Linde Inc. continues to possess a reasonable amount of financial wherewithal to fulfill its obligations under Permit No. 931.

CITY ATTORNEY:

The Consent to Merger – Permit No. 931 and Order consenting to the merger of Praxair, Inc, the tenant under Permit No. 931., has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Site Map
2. Consent to Merger - Permit No. 931
3. Factors Germane to City Consent
4. Order No. _____

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CA Approval: SO
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