

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

City of Kansas City, Missouri,	)	
	)	
The Planned Industrial Expansion Authority	)	
of Kansas City, Missouri,	)	
	)	
Boulevard Brewing Associates Limited	)	
Partnership, a Missouri limited partnership,	)	
d/b/a/ Boulevard Brewing Company,	)	
	)	
Complainants,	)	
	)	
v.	)	Case No. EC-2006-0332
	)	
Kansas City Power & Light Company,	)	
	)	
Respondent.	)	

**SUPPLEMENT TO ANSWER OF KANSAS CITY POWER & LIGHT COMPANY**

Pursuant to 4 CSR 240-2.070(8), Respondent Kansas City Power & Light Company ("KCPL"), by and through its legal counsel, hereby submits a supplement to its March 2, 2006 answer in response to the above-captioned complaint (the "Complaint") submitted by the City of Kansas City, Missouri ("Kansas City"), The Planned Industrial Expansion Authority of Kansas City, Missouri ("PIEA"), and Boulevard Brewing Company ("Boulevard") (Kansas City, PIEA and Boulevard, collectively, the "Complainants").<sup>1</sup>

**SUPPLEMENT TO KCPL'S ANSWER**

1. KCPL supplements its answer to address PIEA's eleventh hour attempt to deprive KCPL of its due process rights under the Planned Industrial Expansion Law (the "PIEA Law").<sup>2</sup> This supplement is timely, because as discussed in Paragraph 12 of KCPL's answer, KCPL's

---

<sup>1</sup> To the extent not defined herein, KCPL incorporates by reference the defined terms established in its March 2, 2006 answer.

response to the Complaint is not due until March 3, 2006. Moreover, in footnote 5 of its answer, KCPL expressly reserved the right to supplement its answer. Finally, and in KCPL's opinion, most importantly, equity demands that KCPL be permitted to supplement its answer.<sup>3</sup>

2. As KCPL discusses in Paragraphs 15-19 of its answer, the Complainants' case fails (for among other reasons set forth in KCPL's answer) because the Development Plan on which the Complainants so heavily rely expressly provides on page 34 thereof that any changes to public utilities required by a project under the Development Plan must be "provided at the developer's expense." Under this provision, it is clear that KCPL is not obligated to bear the cost of the relocation projects.

3. It appears that Complainants must have come to the same conclusion. Shortly before 5:00 p.m. on March 2, 2006, KCPL received from counsel for Kansas City and PIEA the hearing exhibits they intend to use at the March 6, 2006 evidentiary hearing.<sup>4</sup> Buried deep among the stack of their exhibits was PIEA Resolution No. 1083. A copy of Resolution No. 1083 is attached hereto as Attachment 6 to KCPL's answer.

4. In the resolution, which was approved **March 1, 2006**, and was attested to by Heather Brown, counsel for Kansas City and PIEA on the Complaint, PIEA purports to amend the damaging language provided on page 34 of the Development Plan, which according to the third "whereas" clause of the resolution, was approved by the City Council on September 30, 2004, and pursuant to which substantial work has already been done on the site.

5. Specifically, PIEA purports to amend the provision that reads, "Any changes will be coordinated with the City of Kansas City, Missouri and provided at the Developers expense."

---

<sup>2</sup> Mo. Rev. Stat. §§ 100.300-100.620.

<sup>3</sup> To the extent KCPL's supplement requires Commission authorization, KCPL respectfully requests such authorization for the reasons provided herein.

to read instead, “Any change will be coordinated with the City of Kansas City, Missouri and expenses relating to the same will be incurred and financed by the affected utilities or other parties other than the City and PIEA.” (emphasis added).

6. KCPL does not need to speculate about PIEA’s intent concerning the purported amendment. The final “whereas” clause of Resolution No. 1083 provides that “the matter of responsibility for relocation costs is now before the Public Service Commission of Missouri and [PIEA] does not desire that the language in the [Development] Plan have any bearing on the matter not intended by [PIEA].” PIEA is not a disinterested third party. It is a complainant in this proceeding. If only modifying documents that hurt one’s case were so easily accomplished. Fortunately, it is not, particularly with respect to modifying City Council-approved development plans under the PIEA Law.

7. The PIEA Law contains an express provision concerning the modifications of PIEA development plans.<sup>5</sup> Incidentally, PIEA does not have the authority to approve development plans, but rather only to prepare them, recommend them to the City Council for approval, and help carry out the plans after they have been so approved.<sup>6</sup>

8. Section 400.1(10) of the PIEA Law provides that

A plan may be modified at any time by [PIEA], or by the governing body [*i.e.*, the City Council]; provided that, if modified after the lease or sale of real property in the project area, the modification must be consented to by the industrial developer [*i.e.*, Boulevard] of the real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the plan as previously approved by the governing body, the modification must similarly be approved by the governing body. (emphasis added).

---

<sup>4</sup> The Commission’s February 22, 2006 order directed the parties to either serve their hearing exhibits on the other parties or submit them on EFIS.

<sup>5</sup> Mo. Rev. Stat. 100.400.1(10).

<sup>6</sup> Mo. Rev. Stat. § 100.390.

9. Although PIEA describes Resolution No. 1083 as a “minor modification” of the Development Plan, it is not. If valid, Resolution No. 1083 directly and adversely affects each of the utilities, and the rate payers thereof, whose facilities are impacted by the Development Plan without any of the procedural due process protections otherwise required under the PIEA Law.<sup>7</sup>

10. Resolution No. 1083 attempts to affect a modification that will substantially change the Development Plan. To hold otherwise under the present facts would grant PIEA and Boulevard virtually unlimited authority under the first sentence of Subsection (10) to agree to change the Development Plan to the detriment of every other party involved in the plan, *e.g.*, utilities, construction workers, material suppliers. If Subsection (10) can be used as PIEA and Boulevard seek to use it here, then what would prevent PIEA and Boulevard, for example, from agreeing to modify the Development Plan to “mandate” that Boulevard is not required to pay for the cement or steel used in the expansion project? Fortunately, the PIEA Law includes express safeguards to prevent such abuse.

11. Because Resolution No. 1083 attempts to substantially change the Development Plan, Subsection (10) requires City Council approval. The need for City Council approval, in turn, triggers due process protections for the public. Specifically, Section 400.1(8) of the PIEA Law provides that

The governing body of the community may hold a public hearing on any plan or substantial modification thereof recommended by [PIEA], after public notice thereof by publication in a newspaper of general circulation in the community once each week for two consecutive weeks, the last publication to be at least ten days prior to the date set for hearing.<sup>8</sup>

12. If given the opportunity to comment on the changes PIEA purports to make to the Development Plan, KCPL would strenuously object on its own behalf and on behalf of its rate

---

<sup>7</sup> KCPL queries who would have to pay under PIEA’s purported amendment if the utility facilities of the Kansas City Water Services Department needed to be relocated to accommodate Boulevard’s expansion project.

payers, who for the numerous reasons set forth in KCPL's answer, should not be required to subsidize Boulevard's expansion project. As the court in *Home Builders* reasoned, if Boulevard cannot afford or does not wish to bear the full cost of its expansion project, which it is in the best position to know, it should not have chosen to undertake it.<sup>9</sup>

13. In sum, the PIEA Law does not authorize PIEA to modify a development plan as Resolution No. 1083 purports to modify the Boulevard expansion Development Plan. KCPL is evaluating how best to challenge PIEA's adoption of Resolution No. 1083. In addition to PIEA's lack of statutory authority to approve such a modification to the Business Plan, as discussed above, numerous other grounds appear to exist, *e.g.*, conflict of interest (whose interest is PIEA serving at this point?); the retroactive effects of the resolution; the unconstitutionality of the resolution as a Bill of Attainder, *i.e.*, a legislative act that singles out an individual or group for punishment without due process.

14. In the event that the Commission either refuses to determine whether Resolution No. 1083 is valid or concludes that the resolution is, in fact, valid, KCPL's answer still contains ample cause to dismiss the Complaint or to deny Complainants the relief they request therein. Even if the Development Plan reads as Resolution No. 1083 intends for it to read, *Union Electric* does not require KCPL's ratepayers to pay for the relocation projects.<sup>10</sup> Similarly, PIEA's actions in a proprietary (as opposed to a governmental) capacity,<sup>11</sup> as further evidenced by its last-minute attempt to slant the playing field in Boulevard's favor, further confirms that KCPL's rate payers should not be required to subsidize Boulevard's expansion project.

---

<sup>8</sup> Mo. Rev. Stat. 100.400.1(8).

<sup>9</sup> *Home Builders*, at pp. 292-93. See also, KCPL's answer at ¶¶ 27-28 and 39-40.

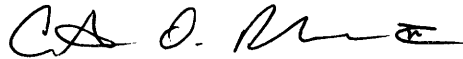
<sup>10</sup> See KCPL's answer, at ¶¶ 20-29.

<sup>11</sup> See KCPL's answer, at ¶¶ 30-33.

## **CONCLUSION**

Although what PIEA hoped to accomplish by approving Resolution No. 1083 is clear, it does not change the fact that Complainants have failed to demonstrate by a preponderance of the credible evidence that KCPL should bear the cost of the relocation projects. In KCPL's opinion, Resolution No. 1083 does nothing more than convey Complainants' opinion that their case needs such extraordinary assistance.

Respectfully submitted.



Curtis D. Blanc (Mo. Bar No. 58052)  
1201 Walnut, 20<sup>th</sup> Floor  
Kansas City, MO 64106-2124  
Telephone: (816) 556-2483  
Facsimile: (816) 556-2787  
E-Mail: Curtis.Blanc@kcpl.com

**Counsel for Kansas City Power & Light Company**

**Attachment 6:**

**PIEA Resolution No. 1083  
(Approved March 1, 2006)**

**THE PLANNED INDUSTRIAL EXPANSION AUTHORITY  
OF KANSAS CITY, MISSOURI**

**RESOLUTION NO. 1083**

**APPROVING A MINOR MODIFICATION TO THE 25<sup>th</sup> AND SOUTHWEST  
BOULEVARD GENERAL DEVELOPMENT PLAN.**

**WHEREAS**, the Planned Industrial Expansion Authority of Kansas City, Missouri, is a public body created pursuant to Ordinance No. 34677 ("PIEA") adopted by the City Council of Kansas City, Missouri, ("City Council") on February 9, 1968, in accordance with Sections 100.300-100.620, RSMo (the "PIEA Law"); and

**WHEREAS**, pursuant to the PIEA Law, the PIEA is transacting business and exercising the powers granted to it by applicable law; and

**WHEREAS**, On September 30, 2004, upon recommendation of the PIEA, the City Council found the 25<sup>TH</sup> and Southwest Boulevard Area ("Project Area") blighted and approved the 25<sup>th</sup> and Southwest Boulevard General Development Plan by Committee Substitute for Ordinance No. 041081 (the "Plan"); and

**WHEREAS**, Boulevard Brewing Associates, L.P. d/b/a Boulevard Brewing Company (the "Developer") has been selected by the PIEA for developing the Boulevard Brewing Project, (the 'Project') within the Plan; and

**WHEREAS**, the Project provides for the renovation and construction of a brewery as well as public improvements within the Project Area, including the relocation of certain utilities as required by the City of Kansas City, Missouri; and

**WHEREAS**, the Plan states that the cost of relocation of the utilities will be borne by the Developer; and

**WHEREAS**, the Authority wishes to clarify that the reason that any language regarding the responsibility for utility relocation costs was included in the Plan was to indicate that the Authority would not be obligated to pay such costs, not to make a determination of responsibility as between the Developer and any utility company; and

**WHEREAS**, the matter of responsibility for relocation costs is now before the Public Service Commission of Missouri and the Authority does not desire that the language in the Plan have any bearing on the matter not intended by the Authority.

**NOW, THEREFORE, BE IT RESOLVED BY THE PLANNED INDUSTRIAL  
EXPANSION AUTHORITY OF KANSAS CITY, MISSOURI:**

Section 1. That the Authority hereby approves the modification of the 25<sup>th</sup> and Southwest Boulevard General Development by striking the following paragraph on page 34 on the Plan:



"Proposed Changes in Public Utilities

It may be required that as part of a specific project plan, and to remedy blighting conditions, certain utilities will be relocated or buried. Any changes will be coordinated with the City of Kansas City, Missouri and provided at the Developers expense.";

and adding a new Paragraph in its place, to read as follows:

"Proposed Changes in Public Utilities

It may be required that as part of a specific project plan, and to remedy blighting conditions, certain utilities will be relocated or buried. Any changes will be coordinated with the City of Kansas City, Missouri and expenses relating to the same will be incurred and financed by the affected utilities or other parties other than the City or the PIEA."


Section 3. The Authority finds that these modifications are minor modifications which do not substantially change the Plan as previously approved by the City Council.

Section 4. That this Resolution takes effect from and after its adoption.

Approved March 1, 2006.

PLANNED INDUSTRIAL EXPANSION AUTHORITY OF  
KANSAS CITY, MISSOURI

[SEAL]

  
Joyce Vidovich, Vice Chairman

ATTEST:

  
Assistant Secretary

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplement to Answer was served via e-mail or first class mail, postage pre-paid, on this 3<sup>rd</sup> day of March 2006, upon:

Dana K. Joyce  
Missouri Public Service Commission  
P.O. Box 360  
200 Madison St., Suite 800  
Jefferson City, Missouri 65102

Lewis Mills  
Office of Public Counsel  
P.O. Box 7800  
200 Madison St., Suite 640  
Jefferson City, Missouri 65102


Jeremiah D. Finnegan  
1209 Penntower Office Center  
3100 Broadway  
Kansas City, Missouri 64111

Galen Beaufort  
City Hall, 28<sup>th</sup> Floor  
414 East 12<sup>th</sup> Street  
Kansas City, Missouri 64106

William Geary  
2700 City Hall  
414 East 12<sup>th</sup> Street  
Kansas City, Missouri 64106

Heather Brown  
City Hall, 28<sup>th</sup> Floor  
414 East 12<sup>th</sup> Street  
Kansas City, Missouri 64106

Colleen M. Dale  
Secretary and Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102

  
Curtis D. Blanc