

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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,)

CASE NO. EC-2006-0332

)

)

COMPLAINANTS)

)

v.)

)

KANSAS CITY POWER & LIGHT)

COMPANY)

)

RESPONDENT)

APPLICATION FOR REHEARING AND/OR RECONSIDERATION

COMES NOW Complainant, Boulevard Brewing Associates Limited Partnership, d/b/a Boulevard Brewing Company ("Boulevard") and, pursuant to Section 386.500, RSMo. and 4 CSR 240-2.160 of the Commission's Rules of Practice and Procedure, and through its attorney seeks reconsideration and/or rehearing of the Commission's Report and Order dated April 6, 2006 because it is unreasonable and unlawful in the following particulars:

1. The Commission's decision with respect to treating the relocation of the utility poles on 26th Street between the alleyway and Belleview differently than the relocation of the other utility poles on 26th Street is not supported by competent and substantial evidence on the record and is unlawful. The clear and convincing evidence presented in this case clearly discloses that

the relocation of all the poles on 26th Street was necessitated by the City declaring the area as blighted, approving the General Development Plan and requiring the Traffic Study and did not apply only to the utility poles at the intersection of 26th Street and Southwest Boulevard and the utility poles from 26th Street to the alleyway.

If the City so orders KCPL to relocate the utility poles between the alleyway and Belleview as well as the poles at the intersection of 26th Street and Southwest Boulevard and the poles on 26th Street between Southwest Boulevard and the alleyway at KCPL's expense KCPL has the duty under Missouri law to do so and not merely if KCPL, in its discretion, finds that safety, convenience or engineering require the relocation of all facilities on 26th Street. The Commission erred by not recognizing the above and consequently, its Report and Order in respect to the relocation of only some of the facilities on 26th Street at KCPL's expense and not the relocation of all of the facilities on 26th Street is unlawful and unreasonable and should be reconsidered and/or reheard.

2. The Commission's decision with respect to the removal of the utility lines on Belleview fails to grasp the difference between removal of the lines and relocation of the lines underground as set out in the clear and convincing evidence. As the Commission recognized in its Report and Order, the General Redevelopment Plan clearly calls for removal of overhead power lines as one of the blighted conditions to be remedied. Clearly, the only lines sought to be removed are the lines on Belleview.¹ The relocation underground of such lines was an alternative proposed in the event that the Commission did not find that the Plan required removal

¹ While the City could have required the removal of the overhead lines along 26th Street, it was content to merely require their relocation across the street. The only lines the City sought removed were the Belleview lines.

of such lines or that *Union Electric* did not apply. As was required in the *Union Electric* case, where the City vacated a street and requested the utility to remove its facilities, so too is that the situation here. Bellevue was vacated and the Plan called for removal of KCPL's overhead facilities. In such case, the Supreme Court held that Union Electric was not entitled to reimbursement for relocating its facilities. Such case is clearly applicable here. What KCPL does after removal of such lines is clearly within KCPL's discretion. It can relocate them anywhere else it deems necessary in its sole discretion provided it does so at its expense as *Union Electric* clearly holds. However, if KCPL proposes after removal of the overhead lines on Bellevue to relocate them on Bellevue once again, the only acceptable methodology would be to place them underground at KCPL's sole expense. The Commission erred by not recognizing the above and consequently, its Report and Order in respect to the removal of the Bellevue overhead lines is unlawful and unreasonable and should be reconsidered and/or reheard.

WHEREFORE, Complainant requests that the Commission find that its Report and Order is unreasonable and/or unlawful for the reasons set forth hereinabove and grant Complainant a rehearing and/or reconsideration with respect to the matters raised hereinabove.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

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**ATTORNEYS FOR BOULEVARD BREWING
ASSOCIATES LIMITED PARTNERSHIP d/b/a
BOULEVARD BREWING COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Complaint was mailed via first class mail, postage prepaid to Curtis Blanc, Counsel for Kansas City Power & Light Company, 20th Floor, 1201 Walnut, Kansas City, Mo., 64106 and e-mailed to him at Curtis.Blanc@kcpl.com and e-mailed same to Galen Beaufort, City Attorney, William D. Geary, Asst. City Attorney, and Heather Brown, Asst. City Attorney, at their respective e-mail addresses, to wit: Galen_Beaufort@kcmo.gov; Bill_Geary@kcmo.gov and Heather_Brown@kcmo.gov.

/s/ Jeremiah D. Finnegan
Jeremiah D. Finnegan