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May 15, 1987

FEDERAL EXPRESS

Harvey G. Hubbs, Secretary
Missouri Public Service Commission
301 West High
Jefferson City, MO 65101

Re: KCPL Steam Case
Case No. HO-86-139

Dear Mr. Hubbs:

Enclosed for filing is the original and 14 copies of Brief
of The Kansas Power and Light Company in the above case.

Sincerely,



Martin J. Bregman

MJB:kp
Encls.

cc: All parties

FILED
MAY 18 1987
PUBLIC SERVICE COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the investigation)
of steam service rendered by)
Kansas City Power & Light Company.) Case No. HO-86-139

BRIEF OF THE KANSAS POWER AND LIGHT COMPANY

I. Introduction

On July 7, 1986, Kansas City Power and Light Company ("KCPL") filed its application in this docket for new rates for steam service and to terminate its steam service in downtown Kansas City, Missouri. As part of its filing, KCPL also requested authority to provide electric steam boilers to its customers at no charge and for authority to apply steam rates rather than electric rates to those customers. The Kansas Power and Light Company ("KPL Gas Service"), a competitor with KCPL for heating and air conditioning customers in downtown Kansas City, intervened due to the direct effect a ruling in this proceeding may have upon it.

KPL Gas Service's interests in this case are limited to the promotional practices issues. It takes no position concerning the revenue requirement agreed to by KCPL and the Staff nor on the "termination" issues litigated by them in this docket.

II. Argument

A. KCPL's Proposal to provide electric-fired gas boilers to its steam customers is a violation of the Promotional Practices Rule.

1. Relevant sections of the rule.

The rules relating to promotional practices of gas and electric utilities within the jurisdiction of the Commission are contained in Chapter 14 of its rules. "Promotional Practices" are defined by 4 C.S.R. §240-14.010(5)(G) as

any consideration offered or granted by a public utility or its affiliate to any person for the purpose, express or implied, of inducing such person to select or use the service or additional service of such utility

Certain limited exceptions are provided, none of which are relevant to this proceeding.

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36.

4 C.S.R. §240-14.020 sets forth "Prohibited Promotional Practices." Subsection (5) of that provision applies directly to KCPL's proposal. It provides that "[t]he provision of free, or less than cost or value, wiring, piping, appliances or equipment to any other person is prohibited"¹ The Rule provides only one basis for the grant of an exemption. It provides that

[o]n written application of a utility and proper showing by it that it is faced with and must meet unregulated competition the commission may grant a departure from the rules contained in Chapter 14 to the extent requested.

4 C.S.R. §240-14.010(2).

2. KCPL's proposal would violate the provision of the Promotional Practices Rule.

KCPL maintains that its proposal to install electric steam boilers on customers' premises at no charge is a "compensation" plan intended to ease the burdens on its steam customers occasioned by the Company's abandonment of the steam business, Beaudoin, Exhibit 13, at 6, and that, consequently, "[i]n this unique case, the traditional prohibitions against furnishing free electric boilers or equipment should not apply." *Id.* The Company further states that the proposal is "the most comprehensive compensation package because it is precisely tailored to each customer's individual energy needs." *Id.* In fact, the Company's statements and positions are merely smokescreens for its attempt to buy long-term electric heating business by providing inducements in violation of the Promotional Practice Rule.

KCPL's "compensation" rationale is not highly persuasive. In a very real sense, the steam customers have already received significant compensation by being charged rates well below KCPL's costs of doing business. KCPL has failed to earn any return on its investment since 1984 having sustained operating losses in 1983, 1986 and 1987. Beaudoin, Tr. Vol. Three, at

¹"Appliance or equipment" is defined as "any device which consumes electric or gas energy and any ancillary device required for its operation." 4 C.S.R. §240-14.020(3)(B).

108. Even under its rate phase-in plan, it would be several years before the Company begins to earn any return on its investment. See Beaudoin, Exhibit 12, at 15-16. The continued provision of service to its customers under such circumstances provides substantial compensation to them prior to any abandonment which may occur precisely because the customers are not paying a rate anywhere near the cost of service.²

Moreover, KCPL's proposal to give free boilers to its customers is inherently suspect. Compensation can be matched to the needs of individual customers without violating the Promotional Practices Rule. If KCPL's sole intent was to the provide compensation, each customer could be completely and lawfully compensated with a cash payment based on its cost to convert to an alternate heating source. The energy audits performed by the Company make each compensation possible since they identify the kind and size of plant required for each customer and the cost he will incur to install it. Beaudoin, Tr. Vol. Three, at 108-09. If dollars rather than equipment were offered, no violation of the Promotional Practices Rule would occur. "Consideration" would pass from the company to its customers, but there would be no "inducement" since the payment from the Company could be used for any purpose including the purchase of gas burning equipment. KCPL is not, however, interested in giving customers a free choice. It is only interested in converting steam customers to electric service.³

²The has resulted at least in part from KCPL seeking inadequate rate relief for its steam operations. Cox, Exhibit 44, at 6. Staff's allegation that KCPL's applications were inadequate is clearly supported by the fact, adduced through cross-examination of Staff witness Haskamp by Company counsel Latz, that in five of the last 6 rate cases Staff's recommended revenue deficiency was higher than the Company's request. Haskamp, Tr. Vol. Six, at 370.

³This interpretation of the Company's motives is supported by the testimony of KCPL witness Beaudoin when asked by Staff Counsel why the Company did not examine the alternate of serving a group of five customers with an oil-gas combination boiler rather than an electrode boiler. His answer was simple and straightforward: "The company doesn't offer gas service." Beaudoin, Tr. Vol. Three, at 91.

Company witness Graham also testified that the purpose of the steam conversion program is to retain as many steam customers as electric customers as possible. Graham, Tr. Vol. Six, at 407. See also Haskamp, Tr. Vol. Seven, at 526 (Q. (by Mr. English): "... the existing steam customer base has a value to KCPL to the extent that they convert the steam customers to electric customers?" A. (by Mr. Haskamp): "Very definitely, yes.").

KCPL is not, of course, an eleemosynary institution. As Mr. Beaudoin stated during his cross-examination, the Company's officers have an obligation to its shareholders. Beaudoin, Tr. Vol. Three, at 109. While the Company claims a "moral obligation" to its steam customers, *id.*, in reality, it can justify buying their electric business as a "good business decision . . . over the long run." *Id.* It is precisely this type of practice -- that of buying a customer's business -- that the Promotional Practices Rule is intended to prohibit.⁴

KCPL's motivation to buy its customers' business is clear. KCPL is losing the downtown heating load to KPL Gas Service. As was indicated by Mr. Haskamp during cross-examination by KCPL's counsel, KPL Gas Service has indicated to the Staff that it has been very successful in converting steam customers to gas, Haskamp, Tr. Vol. Six, at 375. Its marketing method has simply been to show the customers their options and let them decide which form of heat to use. Haskamp, Tr. Vol. Six, at 376. KCPL's own studies have shown that its electric service cannot compete with gas service if the customer must bear "any of the conversion costs and could overcome the stack problem." Graham, Tr. Vol. Six, at 410; Exhibit 46. KCPL's solution to this problem is very simple -- have KCPL bear all of the conversion costs.

On principle, KCPL's proposal is objectionable on numerous grounds. First, it distorts the competition between electric and gas service to heating customers. The majority of customers would "take the gas option if [KCPL and KPL Gas Service] were on an equal basis." Lennen, Tr. Vol. Seven, at 531. The

⁴Prior to adoption of the Rule utilities were allowed to and did, in fact, buy their customers' business. Examples of these practices are set forth in *State ex rel. Hoffman v. Public Service Commission*, 330 S.W.2d 873, ____ (Mo. App. 1977) (gas utility agreed to pay apartment developer \$30,000, assume 75% percent of certain advertising costs, and install 50 gas lights in consideration of builder installing gas meters, gas water and space heating equipment, and gas ranges), and *McBride & Sons Builders, Inc. v. Union Electric Company*, 323 S.W.2d 310, ____ (Mo. 1975) (UE agreed to make certain "promotional payments" in connection with the construction of 250 homes).

provision of free equipment by one supplier clearly would result in the competition being conducted on a basis other than comparative costs of electricity and natural gas. Second, the provision of free boilers hides costs of providing the service from the customers. Ketter, Tr. Vol. Seven, at 489. Third, the provision of free boilers distorts the competition between steam and other forms of heating service by eliminating steam's major advantage -- the saving of capital costs for boiler plant. See Haskamp, Tr. Vol. Six, at 381. The proposal should be rejected.

3. KCPL has not met the requirements for an exception to the Promotional Practices Rule.

At the hearing, for the first time, KCPL stated that in the event the Promotional Practices Rule applies to its proposal, it was requesting an "exemption." English, Tr. Vol. Three, at 61. However, it presented no evidence which would qualify the proposal for a variance under the provisions of the Rule.

The sole basis for an exception from the Promotional Practices Rule is set forth in 4 C.S.R. §240-14.010(2), see p. 1. *supra*. KCPL made no allegation that "it is faced with and must meet unregulated competition."⁵ It is abundantly clear that

⁵KCPL also failed to meet the requirement that it make a written application for a variance. The sole basis for any request for waiver was in Mr. English's opening statement at the commencement of the hearing. Mr. Mandacina admitted that KCPL never requested a variance from the rule because the Company "did not have the understanding that anything [it was] doing was or would be in conflict with that rule and still do[es]n't." Mandacina, Tr. Vol. Four, at 166-67. It is extremely difficult to square Mr. Mandacina's statement with those contained in Mr. Beaudoin's rebuttal testimony in which he implicitly admitted that the normal interpretation of the rule would prohibit the proposed practice. Mr. Beaudoin stated:

. . . KCPL believes that the Staff's traditional interpretation of promotional practices ought to be rejected

. . . . In this unique case, the traditional prohibitions against furnishing free electric boilers or equipment should not apply.

Beaudoin, Exh. 13, at 2, 6. Note that Mr. Beaudoin did not state that the rule did not apply. He stated that it should not apply.

KCPL's major, if not only, practical competition for heating business in downtown Kansas City is from natural gas service provided by KPL Gas Service under the regulatory oversight of this Commission.

If KCPL believes that the Rule ought not to apply to its proposal to terminate service it has the option of requesting an amendment to the Rule to provide for such a waiver. This procedure has been used before in connection with the Promotional Practices Rule. The Rule was amended to provide for an exception for cases in which the applicant would, if the payment were not allowed

suffer a substantial legal detriment, and on further finding by the Commission that said detriment occurred pursuant to a legally binding and enforceable contract entered into prior to July 8, 1971.

4 C.S.R. 240-14.050(1). This provision was added by an amendment to the initial order. See *McBride & Sons, Inc. v. Union Electric*, 526 S.W.2d 310, ____ (Mo. 1975).

B. In the event that KCPL is authorized to provide steam boilers at no charge, KPL Gas Service should be authorized to provide gas-fired steam boilers and chillers and to charge a rate equivalent on a Btu basis to the steam rates.

While KPL Gas Service firmly maintains that KCPL's proposal to offer electric boilers at no charge would violate the Promotional Practices Rule, it did present testimony directed at the possibility that the Commission might take a different view. The testimony of Randy Lennan on behalf of KPL Gas Service sets forth the Company's position in the event that the Commission grants KCPL the authority it seeks. In that event, KPL Gas Service requests that it be allowed to install on the premises of the downtown steam customers, at no charge, gas-fired steam boilers and chillers to provide for the energy needs of those customers. The service provided under such a proposal would be charged to customers at a rate equivalent on a Btu basis to the steam rate as it changes from time to time. KPL Gas Service rejects KCPL's suggestion that it provide gas boilers and charge the gas rate. Such a proposal would not re-

cover any portion of KPL Gas Service's investment since its rates do not include any investment associated with such installations. Ketter, Tr. Vol. Seven, at 483.

KPL Gas Service's proposal would merely put it and KCPL on an equal footing to serve steam customers as existing steam service is phased out. It would not, however, put KPL Gas Service in the inappropriate position of subsidizing KCPL's customers or "compensatory" them for KCPL's withdrawal from the steam business.

III. Conclusion

KCPL's proposal to install electric-fired steam boilers on its customers premises violates the Commission's Promotional Practices Rule and ought not be allowed. In the event it is approved, however, KPL Gas Service should be permitted to install gas-fired boilers and chillers and charge a rate equivalent on a Btu basis to the steam rate.

Respectfully submitted,

THE KANSAS POWER AND LIGHT COMPANY

By 

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 1987 I served a true and correct copy of the above and foregoing Brief of The Kansas Power and Light Company on each of the parties listed on the official service list of the secretary in this docket.


Martin J. Bregman