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ATTORNEY AT LAW
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(816) 753-1122

January 9, 1989

Mr. Harvey G. Hubbs
Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Re: Case No. HO-86-139
Kansas City Power & Light Company
Steam Service

Dear Mr. Hubbs:

Enclosed herewith find an original and 15 copies of an Application To Intervene to which is attached a Response To Report of Kansas City Power & Light Regarding Its Good Faith Efforts To Sell Its Kansas City, Missouri, Steam Distribution System. Please file and call to the immediate attention of the Commission as time is of the essence.

I have mailed a copy to all parties of record.

Very truly yours,


Jeremiah D. Finnegan

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Enclosures

cc: All parties of record

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PUBLIC SERVICE COMMISSION

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

APPLICATION TO INTERVENE

COMES NOW Kinetic Energy Development Corporation (Kinetic) and requests leave to intervene in the above entitled proceedings pursuant to 4 CSR 240-2.110. In support of its Application, Kinetic states as follows:

1. Kinetic is a Missouri corporation with offices at 712 N. 2nd Street, Suite 210, St. Louis, Missouri 63102.

2. All correspondence, communications, orders and decisions in this matter should be addressed as follows:

W.T. Schmidt, President
Kinetic Energy Development Corporation
712 N. 2nd Street, Suite 210
St. Louis, Missouri 63102

and

Jeremiah D. Finnegan
Attorney at Law
4049 Pennsylvania, Suite 300
Kansas City, Missouri 64111

3. Kinetic was the successful bidder and selected by Kansas City Power & Light (KCPL) on May 24, 1988 to purchase its steam distribution system.

4. That since the date of its selection, Kinetic has been negotiating in good faith with KCPL to purchase said system.

5. That on December 30, 1988, KCPL filed a Report with the Commission in this proceeding in which KCPL concluded that its efforts to sell such system to Kinetic have failed and that it should be allowed to discontinue its steam utility operations

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by the end of 1990.

6. That Kinetic disputes KCPL's conclusions that its effort to sell such system to Kinetic have failed as the attached Response to KCPL's Report discloses. See Attachment "A" hereto.

7. That Kinetic stands ready, willing and able to purchase the steam distribution system and operate as a steam utility in the Kansas City area.

8. That Kinetic as a prospective purchaser of the steam distribution system has an interest different than that of the general public.

9. That permitting Kinetic to respond to KCP&L's Report and participate in this proceeding would serve the public interest.


10. That since no hearing dates have been set such intervention request is timely, however, if it is considered late-filed it should be granted for good cause shown, i.e., the filing of a Response to KCPL's Report disputing that negotiations to sell the distribution system have failed and to allow the Commission to determine whether Kinetic is a ready, willing and able purchaser.

WHEREFORE, for the foregoing reasons, Kinetic requests that the Commission issue its Order authorizing Kinetic to intervene and participate in the proceedings in this cause.

Respectfully submitted,

KINETIC ENERGY DEVELOPMENT
CORPORATION


By


JEREMIAH D. FINNEGAN #18416
4049 Pennsylvania, Suite 300
Kansas City, Missouri 64111
(816) 753-1122

ATTORNEY FOR KINETIC ENERGY
DEVELOPMENT CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to
all parties of record this 9th day of January, 1989.


Jeremiah D. Finnegan

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

RESPONSE TO REPORT OF KANSAS CITY POWER & LIGHT
REGARDING ITS GOOD FAITH EFFORTS TO SELL ITS
KANSAS CITY, MISSOURI STEAM DISTRIBUTION SYSTEM

On December 30, 1988, Kansas City Power & Light (KCP&L) filed a Report in this cause in which it concluded that its efforts to sell its Kansas City, Missouri steam distribution system to Kinetic Energy Development Corporation (Kinetic) had failed and declared that it would terminate public utility steam service on December 31, 1990. Kinetic disputes KCP&L's conclusion that such negotiations have failed and stands ready, willing and able to enter into an agreement with KCP&L to purchase such system.

There has been an enormous amount of dollar investment, manpower, and other resources directed toward the acquisition of the steam distribution system and the program for its revitalization. Kinetic, in this Response, is submitting for Commission review, its documentation of the various commitments and representations and a projected schedule that have been the result of its development efforts which began early in 1988.

1. Attachment 1 is the Acceptance letter, dated May 24, 1988, provided by KCP&L which indicates the basis on which our proposal was accepted. Conditions "a", "b" and "d" in paragraph 2 of such letter were completed on or before December 30, 1988. Condition "c" is beyond the control of KCP&L or Kinetic and is not expected to be complete until after the sale/purchase

agreement has been executed. This acceptance letter does not indicate any deadline dates for completion or execution of the agreement.

2. Attachment 2 is a proposed schedule dated May 26, 1988 which outlines suggested milestones for sale/purchase. Kinetic is in full agreement with the time allotted for each of the tasks presented in the proposed schedule.

3. On August 24, 1988, during contract negotiations, KCP&L demanded a specific requirement as to contingencies in the sale/purchase agreement that caused a major change in the tasks and timing described in Attachment 2, i.e., KCP&L required no contingencies for the due diligence process necessary for documenting the transaction for financing. Due diligence for a project of this nature and magnitude would typically take 90 to 120 days. If KCP&L would have accepted the financing due diligence contingency, this activity could have occurred concurrently with other activities in the schedule of May 26th. However, without such contingency, the due diligence activity needed to be completed before Kinetic could execute the contract. The due diligence process is a review process of various operational, engineering, physical conditions, accounting and legal aspects of a project by equity investors and lending institutions to verify and document the representations in the sale/purchase agreement. This process usually occurs after the sale/purchase agreement is first executed. The due diligence process may result in certain clarifications or modifications to the sale/purchase agreement. This is why a standard provision or

In earlier drafts of the contract, this provision was regarded, by legal counsel to the financing institutions, to be too broad and would allow the rescinding of the sale by events outside of the control of Kinetic.

6. The only indication of a self-imposed deadline by KCP&L was received by Kinetic on December 5, 1988. Attachment 3 is a copy of such notice dated December 2, 1988 which required Kinetic to be able to sign a sale/purchase agreement by December 30, 1988.

7. Kinetic notified KCP&L of its review, approval and acceptance of the final draft contract within 48 hours of receipt from KCP&L on the afternoon of December 30, 1988. Kinetic indicated to KCP&L that it was prepared to execute the agreement and provide earnest money as agreed in our meeting on December 15, 1988. KCP&L indicated its position, which had already been submitted to the Commission earlier that day in the Report. Kinetic was formally notified in writing of KCP&L's decision on January 3, 1989.

8. Technically, but under extreme pressure and complications created by the requirement of no contingencies for the due diligence process imposed by KCP&L, Kinetic has met the applicable conditions in the original acceptance letter (Attachment 1) and has also met the deadline imposed on Kinetic on December 5, 1988 (Attachment 3). KCP&L, without consultation or conference with Kinetic, prematurely submitted their findings to the Commission and made certain assumptions which were incorrect.

contingency for due diligence is found in agreements of this nature.

4. If KCP&L would have accepted the original request for a contingency for financing due diligence, the original schedule would have been adhered to (assuming PSC approval within the estimated time allotted in the schedule) and the closing could have occurred within the time frames as set in the May 26th proposed schedule. Kinetic's financing for the acquisition of the KCP&L system is consolidated with a financing package for the acquisition of two other systems by Kinetic in Tulsa and Oklahoma City. The contracts for those other systems allowed provisions for due diligence clarifications and modifications and Kinetic is preparing to close on those transactions in approximately 30 days.

5. Kinetic substantially completed the due diligence activity in approximately 90 days from receipt of the final working draft of the agreement dated September 9, 1988. In a negotiating meeting with KCP&L on December 15, 1988, Kinetic presented a request for clarification of two provisions in the working draft of the sale/purchase agreement. Suggested language was received from KCP&L on December 20th. The final draft of the sale/purchase agreement which incorporated these clarifications was received by Kinetic on December 28th. Although only two clarifications were needed for the due diligence review, these clarifications were necessary to the financing of the project. The nature of these clarifications regarded a provision required by KCP&L which would allow KCP&L to rescind the sale to Kinetic.

9. Completion of the appropriate due diligence on this project has removed the necessary hurdles for completion of the contract for the sale of the downtown district steam system. Kinetic has materially completed the arrangements for financing and is prepared to execute the agreement without any contingencies for financing.

10. However, because of the actions taken prematurely by KCP&L, a substantial delay will occur in the acquisition and revitalization of the downtown district steam system. These contractual delays have certain ramifications to considerations of seasonal economics, construction schedules, training schedules and customer optimism. Therefore, in the event KCP&L either voluntarily or through appropriate action by the Commission, resumes the program for the sale/purchase of the downtown steam system, a new schedule needs to be adopted.

A reasonable schedule for approval, training, construction, acquisition, and transition is proposed as follows:

February 1	Sale program resumed by order from the commission or earlier if voluntarily done by KCP&L;
February 15	Application to Commission for the Sale/Purchase of the Steam System, Certificate of Convenience and Necessity and Modification to Rate Tariff;
May 15	Commission Approval (Estimated) Kinetic begins construction of new state of the art Steam Production Station

Kinetic begins training
employees for transition

November 15 Kinetic assumes Steam
System Operations from
KCP&L

CONCLUSION

WHEREFORE, for the foregoing reasons, Kinetic requests that, if KCP&L does not voluntarily resume the program for the sale/purchase of the downtown Kansas City steam system, the Commission take appropriate action to order KCP&L to continue such program and to adopt a reasonable schedule, similar to that proposed hereinabove by Kinetic.

Respectfully submitted,

KINETIC ENERGY DEVELOPMENT
CORPORATION

BY

Tab Schmidt
W.T. Schmidt, President

68207

KANSAS CITY POWER & LIGHT COMPANY

1330 BALTIMORE AVENUE

P.O. BOX 418579

KANSAS CITY, MISSOURI 64141-9679

LAW DEPARTMENT
(816) 556-2785

May 24, 1988

Mr. W. T. Schmidt
President
Kinetic Energy Development Corporation
712 North Second Street
Suite 210
St. Louis, MO 63102

RE: Acceptance of Proposal

Dear Mr. Schmidt:

Kansas City Power & Light Company (KCPL) hereby accepts the proposal of Kinetic Energy Development Corporation (Kinetic), dated March 24, 1988, to purchase KCPL's steam distribution system in downtown Kansas City, Missouri, for the price of four million dollars (\$4,000,000.00) (Option 2).

Pursuant to the terms of KCPL's Request for Proposals, this acceptance is conditioned upon (a) negotiation, on a definitive basis, of all remaining terms and conditions of the agreement, (b) reaching acceptable sale documents, including documents respecting the provision of steam by KCPL to Kinetic, (c) KCPL and Kinetic acquiring all necessary regulatory and other approvals and franchises, and (d) the satisfaction of all other terms and conditions of the Request for Proposals.

Kinetic to date has not provided certain information to KCPL regarding its financial and operations arrangements on the basis that such information is proprietary, but has committed to providing such information after the execution of the sales documents. Consistent with these concerns, and those of KCPL as well, no public disclosure should be made of sale terms and conditions until such time as definitive agreements are in place.


ATTACHMENT 1

Mr. W. T. Schmidt
May 24, 1988
Page 2

KCPL would like to immediately commence negotiations on all matters necessary for this transaction.

We look forward to working with you to come to an agreeable resolution of all remaining aspects of this transaction.

Very truly yours,



Mark G. English
Deputy General Counsel

MGE:cb

PROPOSED TIME FRAME
SALE OF KCPL STEAM DISTRIBUTION SYSTEM TO KINETIC

1988

June 16	Agenda meeting
June 28	Meeting with MPSC Staff regarding timing of filings
July 5	First draft of sales documents
September 1	Sales documents in final form
September 13	KCPL Board review of documents
September 15	MPSC filings
December 15	MPSC Approval
December 30	Closing

1989

December 31	Cessation of steam supply by KCPL
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KANSAS CITY POWER & LIGHT COMPANY

1330 BALTIMORE AVENUE

P. O. BOX 679

KANSAS CITY, MISSOURI 64111

L. C. RASMUSSEN
EXECUTIVE VICE PRESIDENT
CHIEF FINANCIAL OFFICER

December 2, 1988

Mr. Tab Schmidt
Kinetic Energy Development Corporation
712 N. Second Street
Suite 210
St. Louis, MO 64102

Dear Tab:

At the conclusion of our November 9 meeting, the lawyer for Harbert Corporation stated that she had some remaining questions, and it was decided that she and Mark English would talk regarding those questions and certain revisions to the sales documentation. She and Mark talked briefly on November 11, when Mark was in Washington, and she told him that, due to scheduled surgery, she would call him on November 16. When she didn't call, Mark called her, and found that she had not returned to the office from her surgery. In her absence, Mark talked several times with one of her associates, and telecopied the proposed revisions to him. It's Mark's understanding that she has returned at least part-time to the office, but she hasn't called him or returned his phone calls. Mark called Jerry Finnegan yesterday, but Jerry was unaware of the status of those matters.

I am very concerned about the lack of progress we are making on this proposed sale. The schedule that you and I agreed to in June has not been met; we set September 15 as the date for filing our applications for sale approval with the Commission, but as of the moment we don't even have a signed sales agreement. KCPL has been willing and able to meet the initial time frame, but we have postponed these dates because of Kinetic's professed inability to arrange financing. You will recall that I have repeatedly asked you if there was anything that KCPL was doing that was impeding progress towards a signed agreement, and you have always answered in the negative. Up to now, KCPL has not objected to the numerous delays you have requested, because KCPL in all good faith wishes to sell the steam distribution system to you based upon your proposal. However, we now are quickly approaching a point when we must have a signed agreement, or terminate our discussions.

ATTACHMENT 1

Mr. Tab Schmidt
December 2, 1988
Page 2

As you know, KCPL filed with the Commission in 1986 its application to phase-out central station steam service as of December 31, 1990. KCPL filed this application more than three years in advance of the requested service termination date in order to provide sufficient time for its steam customers to make a transition from central station steam service to other heating alternatives. KCPL's paramount concern was, and continues to be, the welfare of its steam customers and their ability to implement an informed decision regarding their heating sources before December 31, 1990. We estimate, based on recent discussions with contractors, that it would take up to two years for some of KCPL's steam customers to design, finance and install alternative heating systems. Yesterday, Mark received a call from a person in the building services function of the State of Missouri; the person was very concerned about the status of our proposed sale, because if the sale was not consummated, funds for conversion of the State buildings in Kansas City to alternative heating sources must be budgeted now. Mark referred the person to either you or Jerry for information. Thus, our concern is valid, and we must have a signed sales agreement by December 30, 1988 or else our steam customers will not have sufficient time to make alternative heating arrangements should KCPL and Kinetic subsequently fail to come to terms or the Commission refuse to approve the transaction.

As always, we stand ready to meet with you at any time to work towards having a signed sales agreement by December 30, 1988. If we do not have a signed agreement by that time, the conditions upon which KCPL accepted Kinetic's proposal will not have been met, and KCPL will so report to the Commission.

Sincerely,



L. C. Rasmussen

LCR:cb