



2006 and the issuance of a final as expeditiously as possible thereafter, respectfully show as follows:

### SUMMARY OF COMPLAINT

Complainants have filed this complaint after the failure of lengthy negotiations with KCPL over who is to pay for the relocation and removal of certain of KCPL's lines, required by the redevelopment or renewal of a blighted area of Kansas City. KCPL has refused to relocate or remove the lines without full payment of the charges in advance by Boulevard. Due to the length of the negotiations and the inordinate delay caused by such negotiations, the time for such relocation and removal is now well behind schedule and each passing day exacerbates the problem. Expedited treatment of this complaint is required in order to keep from further delaying the project.

In Count I, Complainants seek an order from the Commission ordering KCPL to immediately commence the relocation and removal of the lines and a finding that KCPL is required to pay the costs therefor because such has been necessitated by an urban renewal project of the City of Kansas City and its Planned Industrial Expansion Authority, the primary purpose of which, was to redevelop or renew a blighted area of the city. Since this is a legislatively declared public purpose and governmental function, it is governed by *Union Electric Company v. Land Clearance for Redevelopment Authority of the City of St. Louis*, 555 S.W. 2d (Mo. 1997), which held, under virtually similar circumstances, that Missouri law requires that the utility pay for the cost of such relocations and removals.

In the event that the Commission does not rule favorably on Count I, and Boulevard is required to pay for the project, Boulevard seeks in Count II: an investigation by the Commission as to the reasonableness and lawfulness and nondiscriminatory nature of the charges demanded of Boulevard; an order directing KCPL to provide details as to all of its accounting for overhead and G&A expenses included in its estimates, much of which appear already to be collected in its cost of service; and an order directing KCPL: 1) not to collect CIAC tax on any of the relocation work described in this complaint; 2) to provide access to the records of all of KCPL line relocations in the past 5 years; 3) to authorize Boulevard to use its own contractors to perform the line removal and relocation using KCPL design standards; 4) to prohibit KCPL from installing or requesting payment from Boulevard for any equipment or facilities included in the estimates that are not required for the service to Boulevard but are for the benefit KCPL and its other rate payers; 5) directing KCPL to submit to the Commission for approval, a tariff outlining the costs, including all incidentals, and procedure to relocate an overhead line; and 6) directing KCPL to submit to the Commission for its approval an objective formula for calculating line extension and relocation costs and revenue credits therefor.

## THE PARTIES

1. Complainant City of Kansas City, Missouri ("City") is a municipal corporation of the State of Missouri. City has granted Kansas City Power & Light Company a franchise to use its streets for the distribution of electricity subject to certain agreed to conditions and requirements. Its address is 414 E. 12th Street, Kansas City, MO 64106. Its telephone number and fax are: (816) 513-3142 and (816) 513-3133.
2. Complainant The Planned Industrial Expansion Authority of Kansas City, Missouri ("PIEA"), is a public body corporate and politic exercising the powers, rights and duties of a Planned Industrial and Expansion Authority as provided pursuant to Sections 100.300 to 100.620, RSMo. Its governing body is appointed by the Mayor of the City of Kansas City, Missouri. It is a body corporate and political pursuant to statutes charged with planned industrial expansion in the City. It is the owner of the property that is being redeveloped for lease to Boulevard Brewing Company. Its address is Suite 200, 20 E. Fifth Street, Kansas City, MO 64106. Its telephone number and fax are: (816) 474-2227 and (816) 421-5500.
3. Complainant Boulevard Brewing Associates Limited Partnership, is a Missouri limited partnership, d/b/a Boulevard Brewing Company ("Boulevard") located at 2501 Southwest Blvd., Kansas City, Missouri. Boulevard, founded in 1989, is the 2nd largest brewer in the state, 22nd largest brewer in U.S., largest craft brewer in Midwest, with 67 full-time employees and 2005 sales of over 103,000 barrels. It sells beer in 11 midwestern states, has grown 15-20% per year each of last 10 years, with a current capacity of approximately 110,000 bbls/year. It is presently expanding its plant on premises leased from PIEA, which will allow for ultimate capacity of

roughly 700,000 bbls/year. Its telephone number and fax are: (816) 474-7095 and (816) 474-1722.

4. Respondent Kansas City Power & Light Company ("KCPL") is an electrical corporation and public utility as defined in §386.020, RSMo. engaged in the business of manufacture, transmission and distribution of electricity subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo. KCPL has a franchise from the City of Kansas City, Missouri, to operate in the city under the terms and conditions of such franchise. Attached as Appendix 1, is a copy of Ordinance No 21706 dated December 3, 1881, the franchise agreement with City. KCPL has a certificate of authority from the Commission to exercise such franchise.

#### **COUNT I**

(Complainants City, PIEA and Boulevard)

5. In September, 2004, upon recommendation of the Planned Industrial Expansion Authority of Kansas City, Missouri ("PIEA"), the City Council of Kansas City, Missouri passed and approved Committee Substitute for Ordinance No. 041081 finding that a blighted, unsanitary and undeveloped industrial area exists on tracts of land generally bounded by Southwest Boulevard and 25th Street on the North, Belleview Avenue on the East, 26th Street on the South, and a city alleyway just East of Southwest Boulevard and Southwest Boulevard on the West. The Ordinance also approved the Redevelopment Plan for this area (the 25th and Southwest Boulevard PIEA Area hereafter "PIEA Area"). A copy of the ordinance is attached as Appendix 2. A copy of an aerial view map of the PIEA Area is attached as Appendix 3.

6. Subsequent to the adoption of this Ordinance, on December 16, 2004, the PIEA adopted Resolution No. 936 approving the redevelopment proposal submitted by Boulevard Brewery

Associates Limited Partnership for redevelopment of this PIEA Area. A copy of the resolution is attached as Appendix 4.

7. The PIEA, a public body corporate and politic, in accordance with the Redevelopment Plan approved by the City, holds fee interest in the property and improvements and leases the same to Boulevard Brewery Associates Limited Partnership, whose lease payments retire the Taxable Industrial Revenue Bonds issued by PIEA to provide the necessary financing to redevelop the PIEA Area.

8. As a result of the legislative declaration of blight and approval of the redevelopment of PIEA's property, certain utility facilities, owned by KCPL in or adjacent to the blighted PIEA Area property, require removal, relocation and burial in order to implement the Redevelopment Plan, which states at p. 20 under Blight Analysis Findings, (a copy of which is attached as Appendix 5):

'The intent of this Plan is to remediate various blighting factors within the Planning Area, including, but may not be limited to: the remediation of certain environmental liabilities, the modernization and/or construction of new facilities and the replacement of curbs, gutters, and sidewalks, **as well as the removal of overhead utility lines.**' [Emphasis added].

At issue is whether KCPL or Boulevard, PIEA's agent, is to pay for the utility work.

9. As PIEA's agent, Boulevard has applied to KCPL to relocate the utility facilities under provisions of KCPL's franchise agreement with the City of Kansas City and provisions of law that state a utility company has to bear the cost of relocation as a result of the declaration of and redevelopment of blighted areas. See *Union Electric Company v. Land Clearance for Redevelopment Authority of the City of St. Louis*, 555 S.W. 2d (Mo. banc 1997).

10. A review of the facts in *Union Electric* on which the Supreme Court of Missouri in an *en banc* decision ruled that the utility must bear the cost of relocation discloses that they are virtually identical to the facts here. In that case, a block of a public thoroughfare in St. Louis was vacated by city ordinance to permit its use as part of an urban renewal project on which a privately owned and operated hotel was to be developed. The electric utility which had facilities in the vacated street was requested to remove its facilities. Unlike here, however, where KCPL has refused to remove and relocate its facilities without up front payment, Union Electric agreed to do so, however, it reserved its rights for reimbursement of costs and subsequently demanded reimbursement by the Authority and the City of St. Louis. It then filed suit alleging, *inter alia*, that the ordinance vacating the street to enable the authority to utilize it as part of the urban renewal project was accomplished for the benefit of the Authority "for a proprietary, rather than governmental, purpose or function, namely the use of such property for a privately owned and operated hotel." The Court ruled against Union Electric stating at 555 S.W. 2d 33:

The primary purpose of the project, the redevelopment or renewal of what is implicitly a blighted area of the city, has been declared legislatively to be a public purpose. The vacation of this block of the city thoroughfare and the requirement that Union Electric remove its facilities therefrom to make the thoroughfare available for use as a part of this project were acts of the City and the Authority in the exercise of a governmental rather than a proprietary function.

11. Despite the clearly obvious virtual similarity of *Union Electric* to the facts here, KCPL has refused to perform the necessary work without pre-payment of 100% of its estimated cost for the utility relocations by Boulevard asserting that *Union Electric* does not apply "because the primary purpose for the line relocations is to benefit one private entity, Boulevard. For this reason, we believe the cost of this relocation should be borne by Boulevard". See Letter dated

February 2, 2006 from Joseph A. Rosa, KCPL's Managing Attorney, Corporate to James C. Bowers, Esq., a copy of which is attached as Appendix 6.

12. In such letter, and after additional failed negotiations between the parties, KCPL has remained steadfast and continues to make the following demands on Boulevard to pay in advance for the following removals and relocations in the PIEA Area:

- A. Remove the overhead lines on **Bellevue** and bury them in customer provided conduits installed by the customer to meet KCPL construction standards for the sum of \$134,315.28. KCPL states it would take it 4 weeks after the time Boulevard pre-pays KCPL's costs and turns over the customer-provided conduits to KCPL.<sup>1</sup>
- B. Relocate poles and lines on **26th Street** at a cost of \$60,435.15 within 4 to 5 weeks from date of customer approval and pre-payment of KCPL costs.

13. Under the facts of this case, it is clear that KCPL is failing to follow the applicable law by refusing to perform the removal and relocation at its expense as required by *Union Electric*. PIEA, like Land Clearance for Redevelopment, is a public body exercising essential governmental functions. As in *Union Electric*, the primary purpose of the project here is the redevelopment of a blighted area, which has been so declared legislatively by the City Council to be a public purpose. The requirement that KCPL remove and relocate its facilities were the acts of the City and its Authority in the exercise of a governmental rather than a proprietary purpose.

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<sup>1</sup> As an alternative to undergrounding the lines on Bellevue, KCPL would clean up the poles and conductors for \$24,045.98, which would take it 4 to 5 weeks to do after it receives pre-payment of KCPL costs. It is Boulevard's position based on the study performed by its consultant, American Energy Solutions ("AES") that the line between 25th and 26th Street on Bellevue is not needed by KCPL or Boulevard and if KCPL insists on keeping the line it should be placed underground as a part of PIEA's effort to rid the area of its blighted status pursuant to the Development Plan.

14. Complainants bring this Complaint pursuant to Section 393.390 and 4 CSR 240-2.070 of the Commission's Rules of Practice and Procedure, which empower the Commission to hear complaints against a utility claiming that such utility is in violation of any provision of law. In this case, the law being violated by KCPL is law of Missouri set forth by the Supreme Court in *Union Electric*, supra. Complainants seek the exercise of the Commission's powers requiring a public utility under its regulation to immediately cease such violation of law and immediately commence work on the projects necessitated by the actions of the City and the PIEA to remove the blight and redevelop the area.

**WHEREFORE**, Complainants pray for an order from this Commission:

1. Finding that the relocation of the electric distribution facilities on 26th Street, in an area legislatively declared blighted and its redevelopment necessary by City ordinance, has been necessitated by the acts of the City and the PIEA in the exercise of a governmental function.
2. Ordering KCPL to relocate the distribution facilities on 26th street at KCPL's expense, and for such other and further relief authorized by law and found just and proper.
3. Finding that the relocation underground and removal of the electric distribution facilities on Belleview, in an area legislatively declared blighted and its redevelopment necessary by City ordinance, has been necessitated by the acts of the City and the PIEA in the exercise of a governmental function.
4. Ordering KCPL to remove existing overhead facilities and relocate underground the distribution facilities on Belleview at KCPL's expense, and

5. For such other and further relief authorized by law and found just and proper.

**COUNT II**  
(Complainant Boulevard)

**COMES NOW**, Complainant Boulevard, and in the event that the Commission rules unfavorably on Count I hereinabove and Boulevard is required to prepay the amounts demanded by KCPL to perform the relocations, Boulevard brings this alternative Count II and states as follows:

15. Complainant Boulevard hereby incorporates by reference paragraphs 1 through 14 above as if they were fully set forth herein.

16. In a letter dated February 2, 2006, (Appendix 6), KCPL set forth its most recent demand of Boulevard to make certain prepayments before KCPL will take any action on the removals and relocations. They are as follows:

- A. Remove the overhead lines on **Belleview** and bury them in customer provided conduits installed to meet KCPL construction standards for \$134,315.28. KCPL estimates it would take it 4 weeks to complete the project after the time Boulevard pre-pays KCPL's costs and transfers the customer-provided conduits to KCPL.
- B. Relocate poles and lines on **26th Street** at a cost of \$60,435.15 within 4 to 5 weeks from date of customer approval and pre-payment of KCPL costs.

17. In a letter dated December 16, 2005, from Lori Locker of KCPL to Greg Elam of American Energy Solutions, Inc. ("AES"), Boulevard's energy consultant on this project, the costs for one of the above projects, had been further broken down into labor cost, material cost, vehicle cost and indirect cost, minus expired life and salvage, if any<sup>2</sup>. A copy of such letter is attached as Appendix 7. KCPL has failed or refused to respond to repeated attempts by Boulevard and

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<sup>2</sup> See Footnote 1, supra regarding KCPL's proposal to remove the lines on Belleview and not going underground.

its representatives to subsequently obtain the breakdown of costs on the undergrounding on Belleview.

18. Boulevard submits that the demand for prepayment for the foregoing options is unjust, unreasonable, and unduly discriminatory in several respects: (a) KCPL has no tariff, rule, regulation, or schedule authorizing the recovery of costs associated with relocation or removal of facilities; (b) KCPL has no schedule or tariff identifying with reasonable certainty the charges to be paid by a customer for relocations, removals or extensions of facilities; (c) the proposed prices are unreasonable and unjust, arbitrary and capricious and without basis in fact; and (d) KCPL's requirement that its equipment and personnel be utilized to the exclusion of other contractors discriminates against customers and results in unreasonable prices.

**(a) KCPL has no tariff, rule, regulation, or schedule authorizing the recovery of costs associated with relocation or removal of facilities.**

19. Section 393.140(11) requires all electrical corporations to file with the Commission:

"...schedules showing all rates and charges made, established, or enforced or to be charged or enforced,...and all rules and regulations relating to rates, charges or service used or to be used...by such electrical corporation."

Section 393.140(11) also provides that absent such schedules of rates and charges and rules and regulations, the electrical corporation is prohibited from charging, demanding, collecting or receiving any amount for such services.

20. A review of KCPL's Schedule of Rates and its Rules and Regulations do not disclose any schedule of rates and charges nor any rules and regulations for the *relocation or removal* of facilities as required by Section 393.140(11), RSMo. Absent such schedules of rates and charges

and schedule of rules and regulations, KCPL is prohibited by such statute from charging, demanding, collecting or receiving any amount for such services.

21. KCPL does have a rule relating to extensions, Rule 9 **Extension Policy**, which KCPL may claim is applicable to relocations and removals. However, nowhere in such rule are relocations or removals mentioned. Furthermore, such rule clearly states that it applies to the "supply of electric service at premises not adjacent to its existing distribution facilities", which definitely is not the case here. These relocations are not extensions to premises not adjacent to KCPL's existing distribution facilities, these relocations are at premises adjacent to KCPL's existing distribution facilities and which are already served by KCPL.

**(b) KCPL has no schedule or tariff identifying with reasonable certainty the charges to be paid by a customer for relocations, removals or extensions of facilities .**

22. Even if the regulations regarding extensions of facilities were construed to apply to the current situation, there is no schedule of rates and charges for extensions found in KCPL's Schedule of Rates. Instead, extensions are governed by a very subjective methodology vesting KCPL with virtually absolute discretion, without regulatory oversight, to charge its captive customers seeking extensions whatever KCPL desires. In Rule 9, after stating that the extension applies to supplying "electric service at premises not adjacent to its existing distribution facilities", the company's extension policy is stated in pertinent part as follows:

All costs of the Company referenced in the following extension policy shall include applicable material and labor costs including allocation of indirect costs. Indirect costs are comprised of supervision, engineering, transportation, material handling and administrative cost functions that support actual construction. The amount of the allocation of indirect costs is derived by application of unit costs or allocation percentages determined from historical experience.

Clearly this is a very subjective methodology vesting KCPL with virtually absolute discretion, without regulatory oversight, to charge its captive customers seeking extensions whatever KCPL desires.

23. Should KCPL claim that its Rule 9.02 applicable to "Other Extensions", i.e., "other than an overhead single-phase extension for residential or rural residential electric service" applies, it is no less subjective or arbitrary. Such rule reads as follows in pertinent part:

9.02 Other Extensions: Each application to the Company for electric service (other than overhead single phase extension for residential or rural residential electric service) to premises requiring extension of the Company's existing distribution facilities will be studied by the Company, as received in order that the Company may determine the amount of investment warranted by the Company in making such extension giving full consideration to the Customer's load requirements and characteristics and the Company's estimated revenue from the term of the service agreement as may be required by the Company. In absence of special arrangements between the Customer and the Company, any cost of such extension in excess of the investment warranted by the Company shall be deposited by the Customer with the Company.

Consequently, the provisions of Rule 9 and Rule 9.02 are vague and ambiguous, have no apparent application to the present situation, and should be disregarded because they provide no objective, known or determinable charges to be applied to the work performed as required by Section 393.140(11).

**(c) The proposed charges are unreasonable and unjust, arbitrary and capricious and without basis in fact.**

24. As can be seen from Appendix 7, included in all of the overheads are charges for items such as vehicles and labor, which are already being collected in KCPL's cost of service. Boulevard has yet to be supplied with proof that these overhead charges are fair, just, reasonable

and nondiscriminatory as required by Section 393.130, RSMo. or being demanded pursuant to a rate schedule as required by Section 393.140(11), RSMo.

25. In drawings submitted by KCPL to Boulevard's consultant, KCPL included a new switch and configuration, thus trying to restore what they had previously removed for another customer's data center (DST). Now KCPL has included the cost of reconfiguring that connection with the cost to relocate the feeders on 26th Street. If KCPL will relocate the lines in the blighted area at KCPL's expense, Boulevard has no issue. However, KCPL is requesting Boulevard to pay for the reconfiguration and for additional equipment which will benefit KCPL and its other ratepayers.

26. An additional unjust and unreasonable expense being proposed by KCPL relates to taxes on contributions-in-aid-of-construction (CIAC). KCPL has requested that Boulevard pay for the relocation of the feeder on Belleview and that such amount be considered CIAC, and therefore taxable. If KCPL is allowed to collect such contributions based on inflated rates using the exorbitant overhead adders, the charges will also inflate the tax amount due thereon. Boulevard contends that this does not meet the requirement of being fair, just, and reasonable, and it is possible, and in this case probable, that KCPL will not only over collect on CIAC but over collect on the CIAC tax thereon.

**(d) KCPL's requirement that its equipment and personnel be utilized to the exclusion of other contractors discriminates against customers and results in unreasonable prices.**

27. KCPL has insisted to date that work to be performed on this project must be performed using KCPL equipment, supplies, and personnel. KCPL's position deprives customers of the benefits competitive bidding would lend to the process as is available with other utilities regulated

by the Commission. Instead, KCPL is placed in the monopoly position of determining who will perform the work and what price will be paid for the work without any accountability to the Commission or to the customer. Customers and society in general are precluded from realizing the results of the efficient allocation of resources that a competitive market provides. Once again, KCPL practices produce charges that are unreasonable because they cannot be shown to be within market levels.

28. The KCPL practice of using only its own equipment and labor results in the overcollection of revenues from customers. Since KCPL would utilize only its own equipment, supplies and labor it is charging customers for costs that are already included in retail rates. This is especially true in the instance of removals or relocations of facilities because those changes are not addressed by a tariff that specifically authorizes the collection of separate or additional charges. Thus by collecting the unsubstantiated charges for work to be performed in removals or relocations by KCPL personnel with KCPL equipment, KCPL further discriminates against its captive customers by requiring them to pay for specific work when KCPL's customers have already paid for such equipment, supplies and personnel through the established retail rates. Such a practice is clearly discriminatory and unlawful.

29. After careful examination of KCPL's drawing and a site visit, it is easily determined that KCPL is not only proposing to relocate the overhead power lines to underground, but is in fact changing the feed to the site under the name of "relocation" and that the change should have been included in earlier work at the site, which would have been included in and paid for under any revenue justification. Instead, KCPL has tried to disguise this change and consider it part of the relocation cost and then asking the Boulevard to pay for the change.

30. In addition to being very subjective and providing no guidance for either KCPL or the customer, the absence of specific rates and charges from KCPL tariffs and regulations leaves the captive customer of the monopoly with no ability to refute KCPL's estimates or interpretation of this portion of its tariff. In other words, KCPL can state that the revenue does not warrant an investment for a line extension, and the tariff as written, provides no basis for the customer to review or argue this point. Under this subjective measure, the utility is given far too much latitude, and unreasonable positions of KCPL are encouraged, with no reasonable check and balance that the actions are fair, just, and reasonable. Boulevard submits that it is appropriate for KCPL to have accountability to its customers, and the Commission.

**WHEREFORE**, Boulevard respectfully requests that this Commission hold a hearing without delay with regard to this Complaint, and thereafter issue an Order:

1. Ordering an investigation by the Commission as to the reasonableness and lawfulness and nondiscriminatory nature of the charges demanded of Boulevard.
2. Ordering KCPL to provide details as to all of its accounting for overhead and G&A expenses included in its estimates, many of which are already being collected in its cost of service.
3. Ordering KCPL not to collect CIAC tax on any of the relocation work described in this complaint.
4. Ordering KCPL to provide access to the records pertaining to all of KCPL line relocations in the past 5 years.
5. Ordering KCPL to allow Boulevard the right to use its own contractors to install the line relocation using KCPL design standards.

6. An order prohibiting KCPL from installing or requesting payment from Boulevard for any equipment or facilities included in the estimates that will benefit KCPL and its other rate payers.
7. An order directing KCPL to submit to the Commission for approval, a tariff outlining the costs, including all incidentals, and procedure to relocate an overhead line.
8. An order directing KCPL to submit to the Commission for its approval an objective formula for calculating line extension and relocation costs and revenue credits therefor, and
9. For such other and further relief authorized by law and found just and proper.

#### **MOTION FOR EXPEDITED TREATMENT**

31. Pursuant to Section 386.390.5 and Rule 4 CSR 240-2.080(16), Complainants request that the Commission set a hearing date in this matter as soon as possible but no later than the week of March 6-10, 2006 with a decision thereon as expeditiously as possible thereafter.

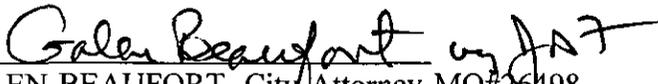
32. The deadline for the removal and relocation is rapidly approaching due to the extensive time that was required in fruitless negotiations with KCPL in an attempt to resolve this issue without Commission intervention. This Complaint was filed as soon as it could have been. KCPL estimates that the time to remove and relocate the facilities is 4 to 5 weeks. The project is presently ready for the electrical removal and relocation now. Thus, each day that passes means an additional 4 to 5 weeks beyond such date and that much further into the future. Time is, thus, of the essence.

33. Expedited proceedings will avoid the harm that such delay could cause the project and there is no negative effect on KCPL. The project needs to be completed. KCPL's risk of having to perform the project at its expense earlier rather than later is not a negative factor since such would merely be compliance with the applicable law. Furthermore, such expedited proceedings would not work a hardship on KCPL because it is obviously aware of the issue and the facts, and the sole issue here is a question of law based on such facts.

**WHEREFORE**, Complainants request that the Commission finds that the public necessity requires that such hearing be held no later than the week of March 6-10, 2006 and the issuance of a final order after hearing as expeditiously as possible.

Respectfully submitted,

LAW DEPARTMENT OF CITY OF KANSAS CITY, MISSOURI,

by   
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**ATTORNEYS FOR THE CITY OF KANSAS  
CITY, MISSOURI AND THE PLANNED  
INDUSTRIAL EXPANSION AUTHORITY OF  
CITY OF KANSAS CITY, MISSOURI**

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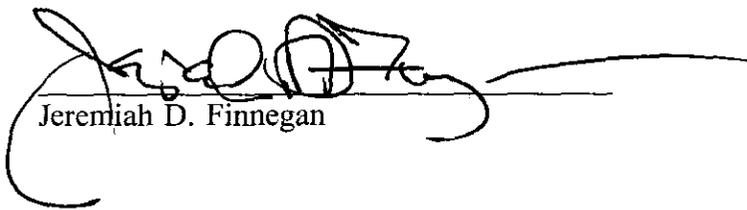
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**ATTORNEYS FOR BOULEVARD BREWING  
ASSOCIATES LIMITED PARTNERSHIP d/b/a  
BOULEVARD BREWING COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above Complaint was mailed via first class mail, postage prepaid to William G. Riggins, Vice President & General Counsel, Kansas City Power & Light Company, 20th Floor, 1201 Walnut, Kansas City, Mo., 64106 and faxed to 556-2787 and to the Office of Public Counsel, Governor Office Building, 200 Madison, Suite 650, PO Box 7800, Jefferson City, MO 65101 and faxed to 573/751-5562.

  
Jeremiah D. Finnegan

No. 21706.(Book N, Page 228.)

An Ordinance establishing an electric works in the City of Kansas.

Be it Ordained by the Common Council of the City of Kansas:

That L. R. Moore, Wm. Holmes, M. W. St. Clair, J. W. L. Slavens, S. F. Scott, M. H. Smith, John W. Beebe, and R. B. Hamlin and their assigns be, and they are hereby authorized subject to the limitations hereinafter provided, to establish, construct and maintain Electric Works in the City of Kansas, Jackson County, Missouri, for illuminating and heating purposes and for furnishing motive power; to construct lines above ground or lay down pipes and-conductors through the streets, avenues, lanes, alleys and public grounds of the said City of Kansas, to erect and maintain all necessary lamp posts and poles on any and all of said streets, avenues, lanes, alleys, or public-grounds. To erect and maintain all necessary buildings, machinery and attachments of any description, necessary and proper for said Electric Works; and for the purpose of erecting said lamp posts and poles, laying down said pipes and constructing said conductors, and repairing the same, during the continuance of this franchise, may enter, upon any street, avenue, lane or alley Linder the control of said city, to take up the pavement or sidewalks upon such streets, avenues, lanes or alleys and make such excavations therein as may be necessary: Provided that such pavements or sidewalks shall be taken up and said excavations made under the direction of the City Engineer of said city; and in such a manner as to give the least inconvenience to the inhabitants of said city, and that said pavements, sidewalks and excavations shall be replaced and repaired in as good condition as before with all convenient speed by and at the expense of said parties or their assigns.

Sec. 2. Nothing in this ordinance shall be so construed as to absolve said parties or their assigns from any legal liability or proceeding to restrain or abate any nuisance arising from their operations nor from liability from any injury to persons or property resulting from the negligence or fault of such parties, their assigns or any of their servants while working under the direction of said parties or their assigns; nor to render the City of Kansas-liable to any person or persons or corporation, for damage caused by the construction or operation of said Electric Works by parties or their assigns growing out of the franchise hereby created.

Sec. 3. That before any work shall be commenced by said parties or their assigns, under this ordinance, the said parties or their assigns, shall execute to the said City of Kansas, a bond in the sum of Ten Thousand dollars conditioned that the said parties, their successors or assigns shall fully indemnify and save the said City of Kansas harmless from all actions for personal damages by any person against said city by reason of any injury received from or on account of the negligence or carelessness of said parties or their assigns arising either from the construction, repair or operation of such Electric Works; and from all carelessness and neglect of duty to the city, persons, property and corporations on the part of said parties, their agents, servants and employees; said bond to be signed by two or more good and sufficient sureties, azM to be subject to the approval of the City Comptroller. Should the Common Council of the City of Kansas at any time during the continuance of this franchise deem the sureties upon said bond insufficient, and if they so declare by resolution, the said parties, their successors or assigns shall with in thirty days after the service of said resolution upon the party in charge of said Electric Works in the City of Kansas, file a new bond with good and sufficient surety Jor the amount and conditioned as aforesaid.

Sec. 4. That the said parties, their successors or assigns, shall within 12 months after the approval of this ordinance, in good faith commence the construction of said Electric Works in said City of Kansas, and complete the laying down of two miles of street mains or conductors or lines above ground and have the same ready to supply electric light to consumers within two years thereafter, unless restrained or enjoined by some proceeding at law or in equity. The time they are so restrained or enjoined shall not be taken or considered as a part of said two years aforesaid.

Sec. 5. Whenever the Council shall, by General Ordinance, determine that all lines, pipes or conductors for illuminating and heating purposes and for furnishing motive power by Electric Works, shall be laid under ground, then and in such case all lines, pipes and conductors erected above ground under this ordinance shall be taken down and transferred under the ground as may be provided in such general ordinance and with as little delay as possible.

Sec. 6. That when any lines or conductors shall run along or through any public park of the city, one light shall be placed in such park, free of cost to the city; and maintained without expense to said city.

This ordinance having remained with the Mayor five days (Sundays excepted) has become a law on the 3rd day of December, A. D. 1881.

V. D. CALLAHANT,  
(Seal) City Clerk.

**COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 041081**

**Approving the 25th and Southwest Boulevard (PIEA) General Development Plan for an area of approximately 3.1 acres generally bounded by Southwest Boulevard and 25th Street on the north, Belleview Avenue on the east, 26th Street on the south and a City alleyway just east of Southwest Boulevard and Southwest Boulevard on the west; declaring the area included in such plan to be a blighted, unsanitary or undeveloped industrial area and its redevelopment necessary.**

WHEREAS, the Planned Industrial Expansion Authority of Kansas City, Missouri did prepare or cause to be prepared the 25th and Southwest Boulevard (PIEA) General Development Plan and recommended that the Council approve the finding of blight and approve the General Development Plan for the area; and

WHEREAS, the City Plan Commission has reviewed and recommended approval of the finding of blight and of the 25th and Southwest Boulevard (PIEA) General Development Plan on September 7, 2004, as evidenced by its resolution and has found said plan to be conformance with the general plan for the development of the community as a whole, a copy of which resolution is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, Section 100.400, RSMo, authorizes the Council to approve a general development plan and a designation of blight if the Council finds that the plan is feasible and in conformity with the general plan for the development of the community as a whole; NOW, THEREFORE,

**BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:**

Section 1. That the Council declares the area of approximately 3.1 acres generally bounded by Southwest Boulevard and 25th Street on the north, Belleview Avenue on the east, 26th Street on the south and a City alleyway just east of Southwest Boulevard and Southwest Boulevard on the west, and more specifically described by tax parcel as follows:

All of Lots 1 through 47 inclusive, together with the alleys and part of vacated Southwest Boulevard adjacent thereto, and also including part of Belleview Avenue adjacent thereto, all lying in Block 4, Gates Addition, a subdivision in the Southeast Quarter of Section 7, Township 49 North, Range 33 West, in Kansas City, Jackson County, Missouri, described as follows: Beginning at the Northwest corner of Lot 33, Block 4, Gates Addition; thence South 54 degrees 09 minutes 17 seconds East along the North line of said Lot 33 a distance of 53.89 feet to the Northeast corner of said Lot 33; thence South 87 degrees 46 minutes 51 seconds East a distance of 27.50 feet to a point on the centerline of Belleview Avenue; thence South 2 degrees 13 minutes 09 seconds West along the centerline of Belleview Avenue a distance of 258.51 feet to a point on the

## COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 041081

Westerly prolongation of a line that lies 8.50 feet South of and parallel with the South line of Block 5 of said Gates Addition; thence South 87 degrees 46 minutes 51 seconds East along said prolongation a distance of 27.50 feet to a point on the East right of way line of Belleview Avenue; thence South 2 degrees 13 minutes 09 seconds West along the East right of way line of Belleview Avenue a distance of 374.29 feet to a point on the North right of way line of 26<sup>th</sup> Street; thence North 87 degrees 20 minutes 34 seconds West along the North right of way line of 26<sup>th</sup> Street and the South line of Lots 20 through 26 of said Block 4 a distance of 346.79 feet to a point; thence North 55 degrees 06 minutes 39 seconds West along the North right of way line of 26<sup>th</sup> Street and the South line of said Lot 26 a distance of 45.30 feet to a point on the East line of an existing alley; thence North 34 degrees 57 minutes 43 seconds East along the East line of said alley a distance of 299.99 feet to a point on the Easterly prolongation on the South line of Lot 47 of said Block 4; thence North 55 degrees 06 minutes 25 seconds West along the South line of said Lot 47 and its prolongation a distance of 136.49 feet to a point on the East right of way of Southwest Boulevard as established by the partial vacation as filed in Book 175 at Page 627; thence North 34 degrees 44 minutes 36 seconds East along the East right of way of said Southwest Boulevard a distance of 389.43 feet to a point on the Westerly prolongation of the North line of said Lot 33; thence South 54 degrees 09 minutes 17 seconds East along said prolongation a distance of 33.98 feet to the POINT OF BEGINNING and containing 171,588 Square Feet or 3.939 Acres, more or less.

to be a blighted, unsanitary or undeveloped industrial area in need of industrial development as defined in Section 100.310, RSMo, which constitutes an economic or social liability or a serious and growing menace, which is injurious to the public health, safety, morals, economy and welfare of the residents of Kansas City, and finds that the elimination or prevention of the detrimental conditions in such area by the commercial development of such area is necessary and in the interest of the public health, safety, morals, economy and welfare of such residents.

Section 2. That the 25th and Southwest Boulevard (PIEA) General Development Plan being that area of approximately 3.1 acres generally bounded by Southwest Boulevard and 25th Street on the north, Belleview Avenue on the east, 26th Street on the south and a City alleyway just east of Southwest Boulevard and Southwest Boulevard on the west, is hereby approved. A copy of said plan is attached hereto and incorporated herein by reference as Document No. 041081.

Section 3. That the Council has duly made the findings necessary for compliance with Section 100.300-100.620, RSMo.

Section 4. That said General Development Plan is hereby found to be feasible and in conformance with the general plan for the development of the community as a whole.

**COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 041081**

Section 5. That the ad valorem tax exemption benefits as authorized in Section 100.570, RSMo, or, in the alternative, through the ownership of the property by the Planned Industrial Expansion Authority, are hereby extended to the plan area to the extent and in the manner as provided for in said General Development Plan, and subject to the execution of a development agreement between the Planned Industrial Expansion Authority and the developer.

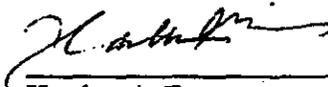
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I hereby certify that as required by Chapter 100, RSMo, as amended, all public notices have been given and public hearings held, as required by law.

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Secretary, City Plan Commission

Approved as to form and legality:



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Heather A. Brown  
Assistant City Attorney



Authenticated as Passed

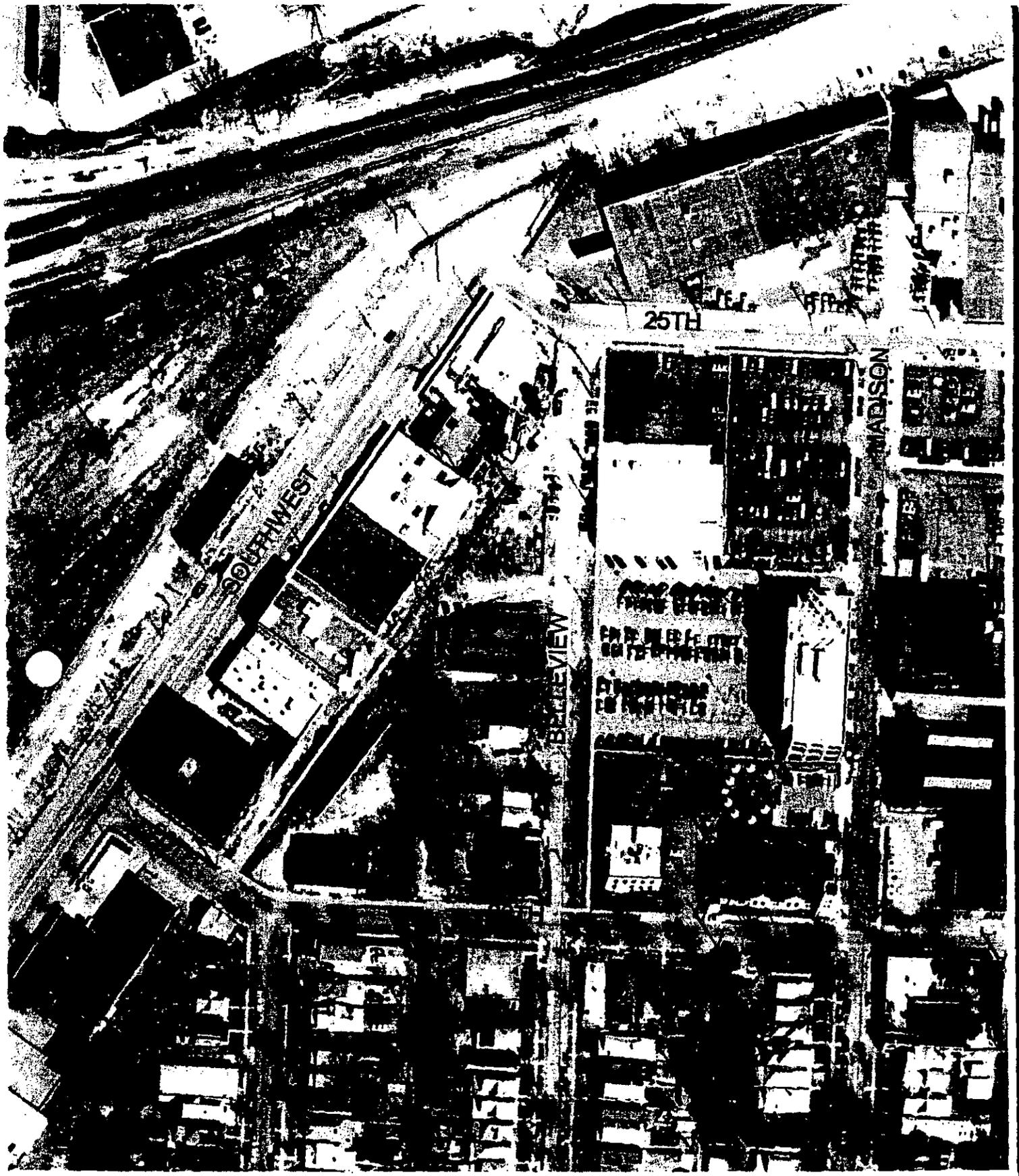
*Kay Barnes*

KAY BARNES, Mayor

*[Signature]*

City Clerk

DATE PASSED OCT 28 2004



# 25th & Southwest Boulevard PIEA Planning Area



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

**RESOLUTION NO. 936**

**EXPRESSING THE INTENT OF THE PLANNED INDUSTRIAL EXPANSION AUTHORITY OF KANSAS CITY, MISSOURI TO ACCEPT THE INDUSTRIAL DEVELOPMENT CONTRACT PROPOSAL SUBMITTED BY BOULEVARD BREWING ASSOCIATES LIMITED PARTNERSHIP FOR DEVELOPMENT OF CERTAIN PROPERTIES IN THE 25<sup>TH</sup> AND SOUTHWEST BOULEVARD PIEA AREA.**

**WHEREAS**, the City Council of Kansas City, Missouri has heretofore passed Committee Substitute for Ordinance No. 041081 finding that a blighted, unsanitary and undeveloped industrial area exists in an area generally bound by Southwest Boulevard and 25<sup>th</sup> Street on the north, Belleview Avenue on the east, 26<sup>th</sup> Street on the south and a city alleyway just east of Southwest Boulevard and Southwest Boulevard on the west (the "25<sup>th</sup> and Southwest Boulevard PIEA Redevelopment Area") and approving the 25<sup>th</sup> and Southwest Boulevard (PIEA) General development Plan (the "General Development Plan"); and

**WHEREAS**, pursuant to said General Development Plan, the Authority requested proposals for development of a project in the 25<sup>th</sup> and Southwest Boulevard PIEA Redevelopment Area; and

**WHEREAS**, after public notice as required in Section 100.410 RSMo, the Authority duly considered all proposals and the financial and legal ability of prospective developers to carry out proposals to develop projects in the 25<sup>th</sup> and Southwest Boulevard PIEA Redevelopment Area.

**NOW, THEREFORE, BE IT RESOLVED** by the Planned Industrial Expansion Authority of Kansas City, Missouri as follows:

**Section 1.** That the Planned Industrial Expansion Authority of Kansas City, Missouri does hereby declare its intent as required in Section 100.400 RSMo to accept the industrial development proposal of Boulevard Brewing Associates Limited Partnership, a Missouri limited partnership for redevelopment of certain properties in the 25<sup>th</sup> and Southwest Boulevard PIEA Redevelopment Area as described in Exhibit A attached hereto and, in accordance with Section 100.400 1(10), RSMo, declares that inconsistencies, if any, between said proposal and the General Development Plan are minor.

**Section 2.** The Authority finds that development in accordance with the proposal submitted by the Redeveloper will be in the public interest and in furtherance of the purposes of the Planned Industrial Expansion Law, Section 100.300-100,620 RSMo.

Section 3. With the adoption of this Resolution, the Authority does hereby notify the City Council of Kansas City, Missouri of the Authority's intent to accept said industrial development contract proposal after thirty (30) days written notice to said City Council, and herein directs the Executive Director of the Authority to provide said City Council with such written notice as required by law.

ADOPTED: December 16, 2004.

PLANNED INDUSTRIAL EXPANSION  
AUTHORITY OF KANSAS CITY, MISSOURI

By: Ed Drake  
Ed Drake, Chairman

[SEAL]

ATTEST:

  
\_\_\_\_\_  
Alfred J. Figuly, Asst. Secretary

## EXHIBIT A

All of Lots 1 through 47 inclusive, together with the alleys and part of vacated Southwest Boulevard adjacent thereto, and also including part of Belleview Avenue adjacent thereto, all lying in Block 4, Gates Addition, a subdivision in the Southeast Quarter of Section 7, Township 49 North, Range 33 West, in Kansas City, Jackson County, Missouri, described as follows: Beginning at the Northwest corner of Lot 33, Block 4, Gates Addition; thence South 54 degrees 09 minutes 17 seconds East along the North line of said Lot 33 a distance of 53.89 feet to the Northeast corner of said Lot 33; thence South 87 degrees 46 minutes 51 seconds East a distance of 27.50 feet to a point on the centerline of Belleview Avenue; thence South 2 degrees 13 minutes 09 seconds West along the centerline of Belleview Avenue a distance of 258.51 feet to a point on the Westerly prolongation of a line that lies 8.50 feet South of and parallel with the South line of Block 5 of said Gates Addition; thence South 87 degrees 46 minutes 51 seconds East along said prolongation a distance of 27.50 feet to a point on the East right of way line of Belleview Avenue; thence South 2 degrees 13 minutes 09 seconds West along the East right of way line of Belleview Avenue a distance of 374.29 feet to a point on the North right of way line of 26<sup>th</sup> Street; thence North 87 degrees 20 minutes 34 seconds West along the North right of way line of 26<sup>th</sup> Street and the South line of Lots 20 through 26 of said Block 4 a distance of 346.79 feet to a point; thence North 55 degrees 06 minutes 39 seconds West along the North right of way line of 26<sup>th</sup> Street and the South line of said Lot 26 a distance of 45.30 feet to a point on the East line of an existing alley; thence North 34 degrees 57 minutes 43 seconds East along the East line of said alley a distance of 299.99 feet to a point on the Easterly prolongation on the South line of Lot 47 of said Block 4; thence North 55 degrees 06 minutes 25 seconds West along the South line of said Lot 47 and its prolongation a distance of 136.49 feet to a point on the East right of way of Southwest Boulevard as established by the partial vacation as filed in Book 175 at Page 627; thence North 34 degrees 44 minutes 36 seconds East along the East right of way of said Southwest Boulevard a distance of 389.43 feet to a point on the Westerly prolongation of the North line of said Lot 33; thence South 54 degrees 09 minutes 17 seconds East along said prolongation a distance of 33.98 feet to the POINT OF BEGINNING and containing 171,588 Square Feet or 3.939 Acres, more or less.

Zoning-Existing

The existing zoning in the Planning Area falls within two zoning classes.

Zoning Classification	Purpose
M2A	The M2 zoning classification is primarily designed for certain permitted heavy industrial uses. Identified uses are outlined in Sec. 80-190 of the Kansas City Zoning Ordinance.
R4	The intent of the R4 classification is to preserve and promote more dense residential usage. This section applies to apartment houses, row houses and converted dwellings.

\*City of Kansas City, Missouri Zoning Ordinance.

Blight Analysis Findings

Blight analysis indicates that the redevelopment area suffers from numerous unfavorable blighting factors, as delineated in 100-310 RSMo, all described in detail in the Blight Analysis for the Planning Area. These factors include:

- Insanitary or Unsafe Conditions. The Planning Area exhibits insanitary and unsafe conditions, as well as potential environmental liabilities.
- Deteriorating Site Improvements. Due to the age and vacancy of improvements within the Planning Area, significant site improvement deterioration has occurred.
- Economic Liability/Economic Underutilization. Due to the age and physical layout of the facilities, vacancy of improvements, and potential environmental liabilities, the Planning Area represents an economic liability or an economic underutilization to itself and the surrounding areas.

The intent of this Plan is to remediate various blighting factors within the Planning Area, including, but may not be limited to: the remediation of certain environmental liabilities, the modernization and/or construction of new facilities and the replacement of curbs, gutters, and sidewalks, as well as the removal of overhead utility lines.

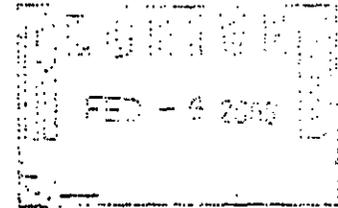
cc: MTW  
GEB



# Kansas City Power & Light®

February 2, 2006

James C. Bowers, Esq.  
White Goss Bowers March Schulte & Weisenfels  
4510 Belleview, Suite 300  
Kansas City, MO 64111



## VIA EMAIL AND FIRST CLASS MAIL

RE: Line Relocation Request

Dear Jim:

After our meeting last week, I conveyed your client's position regarding line relocations in and around their brewery site on Southwest Boulevard to our internal distribution group and to senior KCP&L management. I understand Boulevard Brewing Company ("Boulevard") has been in discussions with KCP&L for nearly two years on this project, but since my involvement only goes back to last November, I didn't have the benefit of knowing all of the facts and circumstances prior to our meeting, and for that I apologize.

As we discussed last week, we have prepared two proposals and an alternative proposal for Boulevard in order to meet Boulevard's objective of improving the appearance of Belleview and performing a street widening on 26<sup>th</sup> Street in order to accommodate commercial truck traffic coming from the brewery site. To recap, the proposals are generally as follows:

- a. KCP&L Work. Remove the overhead lines on Belleview and bury them in customer-provided conduits installed to meet KCPL construction standards.

Cost. \$134,315.28 (Note: this estimate previously provided to Boulevard already assumed Boulevard would provide/install necessary conduits)

Time Frame. 4 weeks from pre-payment of KCPL costs and turnover of customer-provided conduits to KCPL for installation and removal work.

- b. KCP&L Work. Relocate poles and lines on 26<sup>th</sup> Street.

Cost. \$60,435.15.

Appendix 6

Time Frame. 4 to 5 weeks from date of customer approval and pre-payment of KCPL costs.

- c. KCP&L Work (alternative proposal to a. above). Clean up of poles and conductors.

Cost. \$24,045.98.

Time Frame. 4 to 5 weeks from date of customer approval and pre payment of KCPL costs.

In each proposal, we have tried to take into consideration Boulevard's needs along with our obligation to maintain reliable electric utility service in that portion of our service territory. We do not want to take any steps that will unnecessarily degrade system reliability for any of our current or future customers in the brewery neighborhood. You are also probably aware that as a regulated public utility, we have an obligation to treat like situated customers in a nondiscriminatory manner. We believe the Belleview line is necessary for KCP&L system reliability, and for this reason, we cannot abandon it. As we discussed in our meeting last week, our construction standard in Boulevard's neighborhood is an overhead construction standard which means the additional cost needed to go underground is not included and cannot be included in our regulated electric service rates. Our policy regarding line burial or relocation is that our customers must pre-pay KCP&L's costs to perform this work, and as a consequence, we would want Boulevard to pre-pay for any of the work outlined above.

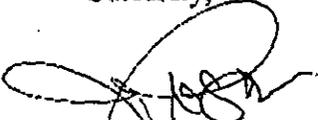
We are also well aware of the Union Electric case and its impact on public utilities having facilities located in the path of public construction projects. We have relocated many KCP&L facilities in the downtown loop in recent years due to the City's Bartle Hall expansion, the construction of the entertainment district, and most recently the beginning of construction work on the downtown arena. We do not believe the Union Electric applies to this situation because the primary purpose for the line relocations is to benefit one private entity, Boulevard. For this reason, we believe the cost of this relocation work should be borne by Boulevard.

There is one other issue that we did not discuss at our meeting last week that I would like to mention. Boulevard has previously requested that we relocate, bury and/or reconfigure the service drop to its neighbor, Clarkson Construction. We currently serve Clarkson with 240 D service that involves three poles and some pole mounted equipment. Our understanding is that Boulevard would approach Clarkson in advance about any service changes, but to date, we have not heard whether this has happened, and as a consequence we cannot at this time project the cost and timeframe of potential alterations to service to Clarkson. Our policy is not to initiate or push for changes to a customer's electric service in order to meet the needs of a neighboring customer, and I think you can understand why we need to approach it that way. This is a sensitive matter that should first be worked out between the two customers before KCP&L steps in with specific construction proposals. I'm raising this point because Boulevard has previously indicated to our team that this work is also integral to their goal of improving the appearance of Belleview.

We value Boulevard as a customer and as an active participant in the redevelopment of an important part of Kansas City. As a public utility, however, we have an obligation to provide and maintain reliable electric service to all of our customers in Boulevard's neighborhood, and we have an obligation to treat all of our customers fairly and in a similar manner. It is for these reasons that KCP&L cannot take on the cost to perform the work outlined above and that we cannot abandon the Belleview line.

Please let us know if you need additional information.

Sincerely,



Joseph A. Rosa  
Managing Attorney - Corporate

December 16, 2005

Boulevard Brewing Co.  
Greg Elam  
513-226-5505

Re: Cost for Boulevard Brewing Company

Greg,

Our review of the PIEA resolution and the associated General Development Plan and Blight Analysis, prepared on July 16, 2004 and revised on September 1, 2004 (and incorporated by reference into the PIEA resolution) indicates that any relocation or burial of utilities will be coordinated with the City and provided at the Developer's expense (see General Development Plan and Blight Analysis, Proposed Changes Section, page34.)

Based on this information, our position is that the cost to have your requested utility work done will be the responsibility of the Boulevard Brewing Company. In consideration of your request, we have reviewed the charges that you are responsible for and have identified an area that we have the ability to apply credit against a portion of those charges. Below is the new breakdown of your final cost.

**Belleview Clean-up**

**Installation**

Labor cost = \$5,975.46  
Material cost = \$9,013.50  
Vehicle cost = \$2,770.67  
Indirect cost = \$15,074.68

**Removal**

Labor cost = \$3,341.90  
Material cost = \$0.00  
Vehicle cost = \$1,967.12  
Indirect cost = \$3,361.78

Total = \$41,505.11  
Minus Expired Life (50%) = \$17,469.13

Total = \$24,045.98

**26 Street Relocation**

**Installation**

Labor cost = \$12,608.83  
Material cost = \$14,157.24  
Vehicle cost = \$6,747.97  
Indirect cost = \$21,703.05

**Removal**

Labor cost = \$4,595.84  
Material cost = \$0.00  
Vehicle cost = \$2,607.00  
Indirect cost = \$4,682.94

Total = \$67,102.87  
Minus Expired Life (10%) = \$6,268.24  
Minus Salvage = \$399.48

Total = \$60,435.15

Grand total = \$84,481.13

The scope of work along Belleview includes the installation of 4 poles, removal of 6 poles and the clean up of the secondary conductors. The scope of work for the relocation from the north side of 26th Street to the south side includes the installation of 6 poles, removal of 5 poles,

installation of primary & secondary conductors, removal of primary & secondary conductors and the re-bore across Southwest Blvd. KCPL anticipates using 2-3-man crews for 4-5 weeks. If you have any questions please give me a call.

Lori Locker  
Kansas City Power & Light  
816-245-3922