



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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April 8, 1985

ATTORNEY GENERAL OPINION NO. 85- 32

Dennis D. Roth
Burlington City Attorney
Buckles & Roth, Chartered
101 South 4th, P.O. Box 206
Burlington, Kansas 66839

Re: Cities and Municipalities--Public Utilities--
Power of City to Sell Service Generally; Dispo-
sition of Supplier Refunds

Synopsis: Where a municipal utility passes on to its customers a substantial refund received from a supplier, the refund must be distributed to customers on the basis of actual usage during the overcharge period. Additionally, in regard to any service area where the utility is under the jurisdiction of the Kansas Corporation Commission (K.C.C.), refund guidelines of the K.C.C. must be followed. Cited herein: K.S.A. 66-104.

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Dear Mr. Roth:

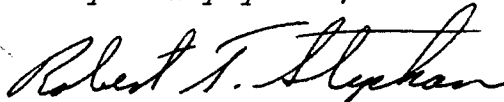
You request our opinion as to disposition of a refund received by the City of Burlington for electrical power purchased from 1981 to 1982. Specifically, you advise that the city owns a generating plant and also purchases power from Kansas Gas and Electric Company (K.G. and E.) for distribution to city customers. You state that the Federal Energy Regulatory Commission (F.E.R.C.) recently ordered K.G. & E. to refund over

\$500,000 to the City of Burlington for overcharges occurring during the above-referenced period. You advise that the governing body of the City of Burlington desires to pass the refund on to its electrical customers, and ask whether the city may reduce future electrical billings by 25% per month until the refund, including accumulated interest, is expended.

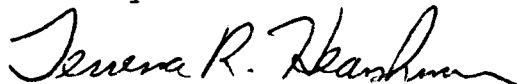
In response, we would first note that in regard to any portion of the municipal utility located more than three miles outside the corporate limits of the municipality, the city must follow the refund guidelines of the State Corporation Commission (copy attached hereto as Exhibit "A"). See K.S.A. 66-104. Although the State Corporation Commission (K.C.C.) has no jurisdiction over the other service areas of a municipal utility, such fact does not establish that cities are free from all constraints in disposing of refunds received from a supplier. In this regard, while there is some disagreement among authorities (see 18 A.L.R.2d 1343), it is our opinion that a municipal utility earning a fair rate of return which passes on a supplier rate increase to its customers is obligated to distribute to consumers any refund it receives upon disallowance of the increase. See Federal Power Comm. v. Interstate N. Gas Co., 336 U.S. 577, 93 L.Ed. 895 (1949); Public Service v. Federal Power Comm., 543 F.2d 757, 821 (D.C. Cir. 1974); Granite State Gas Transmission Co. v. State, 202 A.2d 236 (N.H. Sup. Ct. 1964).

Additionally, in regard to the method of distributing refunds, it is our opinion that a substantial refund, such as that received by the City of Burlington, must be distributed to customers on the basis of actual usage during the overcharge period. See City of Richmond v. Public Serv. Comm., 406 N.E.2d 1269, 1273 (Ind. App. 1980). Accordingly, in our opinion the city may not dispose of the refund by reducing future electric billings by 25% per month until the refund is expended.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

State of Kansas



EXHIBIT "A"

JOHN CARLIN
MICHAEL LENNEN
R. C. "PETE" LOUX
KEITH R. HENLEY
JUDITH A. McCONNELL
BRIAN J. MOLINE

Governor
Chairman
Commissioner
Commissioner
Executive Secretary
General Counsel

State Corporation Commission

Fourth Floor, State Office Bldg.

Ph. 913-296-3355

TOPEKA, KANSAS 66612-1571

Utilities Division

January 24, 1985

To: ALL KANSAS JURISDICTIONAL GAS AND ELECTRIC UTILITIES

Enclosed is a copy of the final refund guide lines adopted by the Commission on January 15, 1985. The Commission staff is looking forward to working with all jurisdictional utilities in an effort to implement these guidelines in the most reasonable and equitable manner possible. If you have any questions please contact Pat Renner (913) 296-4183, Chris Collister (913) 296-4195, or myself (913) 296-2073.

Sincerely,

Don L. Marker

Don L. Marker
Rate Design Administrator

DLM/PR/lc

JANUARY 15, 1985

THE FOLLOWING ARE GUIDELINES
OF THE COMMISSION WITH REGARD TO REFUNDS.

IT IS THE COMMISSION'S POSITION THAT REFUNDS RECEIVED BY UTILITIES FROM SUPPLIERS SHOULD, WHENEVER REASONABLY POSSIBLE, BE REFUNDED TO CUSTOMERS WITHIN 60 DAYS OF RECEIPT. TO ACCOMPLISH THIS OBJECTIVE WILL REQUIRE PROMPT ATTENTION BY BOTH THE EFFECTED UTILITY AND THE COMMISSION STAFF.

THE MAGNITUDE OF A REFUND IN DOLLARS PER CUSTOMER VARIES GREATLY, THEREFORE, THE METHOD OF REFUNDING SHOULD DEPEND ON THAT MAGNITUDE.

IF THE REFUND IS LESS THAN \$10.00 PER RESIDENTIAL CUSTOMER¹ THE REFUND AMOUNT CAN BE FLOWED THROUGH THE AUTOMATIC ADJUSTMENT CLAUSE IN A ONE MONTH PERIOD. FOR THOSE UTILITIES THAT DO NOT HAVE AN AUTOMATIC ADJUSTMENT CLAUSE, A ONE MONTH BILL CREDIT SHOULD BE ISSUED. THIS CREDIT SHOULD BE BASED ON THE CURRENT MONTH'S USAGE TIMES A REFUND FACTOR COMPUTED BY DIVIDING THE REFUND MONEY BY THE UTILITY'S BEST ESTIMATE OF SALES FOR THE REFUND MONTH.

¹ COMPUTED BY DIVIDING TOTAL REFUND DOLLARS BY TOTAL UNIT SALES DURING THE OVERCHARGE PERIOD AND THEN MULTIPLYING THIS FACTOR TIMES THE AVERAGE RESIDENTIAL CONSUMPTION DURING THE OVERCHARGE PERIOD.

FOR THOSE REFUNDS WHICH THE COMMISSION CONSIDERS RELATIVELY LARGE (MORE THAN \$10.00 PER RESIDENTIAL CUSTOMER) THE COMMISSION BELIEVES THAT REFUNDS SHOULD BE DISTRIBUTED TO ALL CLASSES OF CUSTOMERS (I.E., RESIDENTIAL, COMMERCIAL, INDUSTRIAL, ETC.) ON AN ACTUAL BASIS AS NEARLY AS POSSIBLE. THIS MEANS THAT THE REFUND SHOULD BE RETURNED TO INDIVIDUAL CUSTOMERS BASED ON ACTUAL USAGE DURING THE OVERCHARGE PERIOD. THESE REFUNDS SHOULD BE MADE IN THE FORM OF INDIVIDUAL CHECKS WHERE POSSIBLE. IF A UTILITY CAN DEMONSTRATE THAT THE ISSUANCE OF CHECKS IS NOT PRACTICAL, THEN INDIVIDUAL BILL CREDITS MAY BE USED.

FOR THOSE REFUNDS GREATER THAN \$10.00 PER RESIDENTIAL CUSTOMER, THE UTILITY SHOULD SUBMIT ITS REFUND PROPOSAL IN WRITING TO THE COMMISSION. STAFF WILL REVIEW THE PROPOSAL TO DETERMINE THAT REFUND MONEY IS BEING RETURNED TO CUSTOMERS ON AS CLOSE TO ACTUAL USAGE AS IS POSSIBLE, CONSIDERING EACH UTILITY'S BILLING CAPABILITIES AND RECORDS. FOR EXAMPLE, IF ACTUAL CUSTOMER USAGE FOR THE OVERCHARGE PERIOD IS NOT AVAILABLE IT MAY BE ACCEPTABLE TO USE THE CUSTOMER'S USAGE FOR ANOTHER TIME PERIOD WHICH IS MOST CLOSELY ASSOCIATED WITH THE REFUND TIME PERIOD. AFTER REVIEW OF THE PROPOSAL, STAFF WILL RESPOND IN WRITING TO THE UTILITY.

IN THE CASE OF A REFUND GREATER THAN \$10.00 PER RESIDENTIAL CUSTOMER, THE UTILITY SHOULD ADVISE ITS CUSTOMERS OF THE REASON FOR THE REFUND. THIS MAY BE DONE IN A NUMBER OF WAYS. FOR EXAMPLE, BILL INSERTS, OR PUBLICATION IN LOCAL NEWSPAPERS, MAGAZINES OR NEWSLETTERS WHICH ARE ROUTINELY MAILED TO ALL CUSTOMERS.

THE FOLLOWING IS A LIST OF ITEMS WHICH SHOULD BE ADDRESSED WHEN DISPENSING REFUNDS IN THE FORM OF A CHECK OR BILL CREDIT:

1. THE UTILITY MAY APPLY A CUSTOMER'S REFUND TO DELINQUENT ACCOUNTS OR UNPAID BALANCES AND INFORM THE CUSTOMER OF THIS ACTION.
2. THE UTILITY SHOULD STATE HOW REFUNDS WILL BE MADE TO THOSE CUSTOMERS WHO ARE DUE REFUNDS BUT ARE NOW OFF THE SYSTEM, AND THOSE CUSTOMERS WHO ARE STILL ON THE SYSTEM, BUT MAY BE DUE A REFUND FROM A PREVIOUS ADDRESS.
3. WHERE APPLICABLE, TAXES AND FRANCHISE FEES PAID ON OVERCHARGED AMOUNTS SHOULD ALSO BE REFUNDED.
4. IF REFUNDING IS DONE BY CHECK FOR AMOUNTS LESS THAN \$1.00, A CHECK NEED NOT BE WRITTEN, BUT THE AMOUNT MAY BE CREDITED TO THE CUSTOMER'S ACCOUNT. IF REFUNDING IS DONE BY BILL CREDIT, ALL REFUNDS SHOULD BE CREDITED TO THE CUSTOMER'S ACCOUNT.
5. THE UTILITY'S REASONABLE INCREMENTAL EXPENSE ASSOCIATED WITH ISSUING REFUND CHECKS MAY BE DEDUCTED FROM THE TOTAL REFUND AMOUNT.

GENERALLY, WHEN A REFUND IS MADE THERE IS SOME MONEY THAT CANNOT BE RETURNED TO CUSTOMERS. FOR EXAMPLE, SOME CUSTOMERS CANNOT BE LOCATED, CHECKS MAY NOT BE CLAIMED OR INDIVIDUAL MINIMAL AMOUNTS MAY NOT BE RETURNED. WITH RESPECT TO THESE RESIDUAL FUNDS, THERE ARE SEVERAL OPTIONS AVAILABLE:

1. GAS UTILITIES MAY UTILIZE THE REFUND ACCOUNT WHERE THE RESIDUE CAN BE ADDED INTO THE NEXT AMOUNT REFUNDED.
2. WHERE APPLICABLE, THE RESIDUE MAY BE PASSED THROUGH THE AUTOMATIC ADJUSTMENT CLAUSE ON THE NEXT BILLING.
3. FOR ELECTRIC COOPERATIVES, IT WOULD ALSO BE ACCEPTABLE TO ALLOCATE REFUNDS TO INDIVIDUAL CONSUMER/MEMBER'S CAPITAL CREDIT ACCOUNTS WHEN THE CONSUMER CANNOT BE LOCATED.

WHILE THESE GUIDELINES HAVE BEEN APPROVED BY THE COMMISSION THERE MAY BE INSTANCES WHERE THE PROCEDURES OUTLINED ARE NOT PRACTICAL OR POSSIBLE. IN SUCH INSTANCES, THE UTILITY SHOULD CONTACT COMMISSION STAFF WHO WILL HELP DEVELOP A REFUND PLAN WHICH IS MOST PRACTICAL IN CARRYING OUT THE COMMISSION'S REFUND POLICY.