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May 12, 2000

HAND DELIVERED

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Room 530
Truman State Office Building
Jefferson City Missouri 65101

FILED²
MAY 15 2000 mh 3:55 p.m.
Missouri Public
Service Commission

Re: **GST Steel Company v. Kansas City Power & Light Company,**
Case No. EC-99-553

Dear Secretary Roberts:

Enclosed for filing in the above-referenced case please find an original and eight (8) copies of the following:

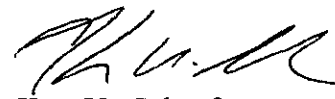
Initial Brief of GST Steel Company

**Proposed Conclusions of Law and Findings of Fact
of GST Steel Company**

Sincerely,

LATHROP & GAGE L.C.

By:


Kurt U. Schaefer

encs

PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

5/12/00
3:55pm

MAY 15 2000 mh

Missouri Public
Service Commission

Case No. EC-99-553

GS Technologies Operating Co. Inc.)
d/b/a GST Steel Company,)
)
Complainant)
)
v.)
)
Kansas City Power & Light Company,)
)
Respondent)

INITIAL BRIEF
OF
GST STEEL COMPANY

INTRODUCTION

By petition dated May 11, 1999, GS Technologies Operating Co. Inc., doing business in Missouri as GST Steel Company ("GST"), petitioned the Commission to investigate the adequacy of electric service provided by Kansas City Power and Light Company ("KCPL") and the reasonableness of KCPL's charges to GST pursuant to a special contract approved by the Commission in October 1994. GST's petition referenced chronic service disruptions experienced in 1998 and 1999, declining overall performance of KCPL's fossil-fueled generating units, and the catastrophic February 17, 1999 boiler explosion at Hawthorn 5 unit which demolished that facility, as matters that should be

investigated.

The Commission determined that it had jurisdiction over the issues raised in the petition, restyled the proceeding as a complaint case, and set the matter for hearing.

GST submitted direct testimony in this matter. KCPL and Staff filed rebuttal testimony. GST and Staff (responding to KCPL) submitted surrebuttal testimony. The parties jointly submitted a list of issues for Commission resolution in this case. Evidentiary hearings were held on April 17 and 18, 2000.

OVERVIEW

In 1994, the Commission approved the special contract between GST and KCPL. The Commission recognized that the Special Contract was necessary because GST required competitively priced electricity in order to compete in its steel markets. Under the contract, the Commission found, GST would continue to provide a substantial contribution to KCPL's fixed costs and would cover KCPL's incremental cost of production on each kWh it used. Based on that approval, GST invested substantial amounts of capital in its Kansas City facilities.

Under the Special Contract, GST willingly assumed the risks that changes in various factors could affect KCPL's incremental costs, causing either momentary or longer term increases or decreases in those incremental costs

and the prices charged to GST. GST, however, did not assume the risk of cost increases due to KCPL imprudence. Under the Contract, KCPL owes GST the same standard of care and performance, i.e., to manage and operate its facilities in a reasonable and prudent manner, that it owes to all other ratepayers. This is a reasonable and enforceable expectation according to Missouri law and consistently applied Commission practice.

There is no waiver by GST of KCPL's prudence obligation, express or implied, anywhere in the Special Contract. As Staff quite correctly stated in its Position Statement, "...if the Commission were to find that KCPL acted imprudently with respect to the Hawthorn 5 boiler explosion, the charges [to GST] have not been just and reasonable." Staff Position Statement at p.2. Moreover, the contract did not need to state directly that KCPL would operate in a reasonable and prudent manner any more than it needed to recite any other obligation applicable to the utility under Missouri law.

The Commission has continuing, primary and exclusive jurisdiction over the reasonableness of the charges imposed by KCPL under the Special Contract. The record in this proceeding persuasively demonstrates that KCPL actions and failures to act unreasonably and imprudently caused the catastrophic Hawthorn boiler explosion on February 17, 1999. This conclusion is not based on hindsight, but is readily apparent from KCPL's own contemporaneous records, including: statements of control operators and other employees that were at Hawthorn on February 15, 16, and 17; plant drawings,

plant procedures and manuals, alarm records, records of equipment "holds," KCPL correspondence with other parties, reports of equipment found in the debris after the boiler explosion, etc. This record documents a persuasive and compelling chain of imprudent actions and failures to act, all exclusively within the control of KCPL management, that precipitated the boiler explosion.

There was no single event or sudden equipment failure or operational glitch at fault. At any point over a nearly 10 hour period, KCPL's operators could have taken basic steps, required by the utility's own safety procedures, to place the plant in a safe condition. Instead, through carelessness and a consistent failure to follow its own procedures, KCPL created and perpetuated the unsafe conditions that led to the explosion.

The record with respect to the Hawthorn boiler explosion is remarkably uncluttered by denials from KCPL. This in and of itself is significant because KCPL has had more than a year to study the boiler explosion, and it has assigned a team of employees to that task. The company has had more than ample opportunity to prepare and submit testimony, documents or findings designed to show that it acted in a reasonable and prudent manner or that some circumstances beyond KCPL's control were involved. KCPL, however, has offered nothing in its defense. There is no KCPL testimony that attempts to explain or justify the utility's actions with respect to the Hawthorn explosion, and KCPL made no serious effort to challenge the facts GST has presented.

Moreover, GST has shown that the boiler explosion was not an isolated

incident of imprudence. GST has established a clear trend of declining KCPL power plant performance that tracks across-the-board KCPL cuts in capital invested in its plants, operation and maintenance expenditures, employee levels and employee training. KCPL's rebuttal witness claimed that all power plant operators are streamlining costs to prepare for a competitive power environment, but in this case that observation is an indictment of KCPL management rather than an excuse. To become more competitive, generating plants need to be more productive, not less, and plant availability, especially during peak load periods, is essential. Simply cutting expenditures and allowing performance to deteriorate, as has occurred at KCPL, is a clear signal of failed management. While KCPL has articulated unit availability as its top priority, the declining performance of the fossil-fired units it owns and controls demonstrates poor management performance.

KCPL attempted to bury its declining unit performance in a morass of historic data assembled in the form of a peer group benchmarking study. GST demonstrated conclusively that the KCPL study was thinly documented and fatally flawed. Further, after correcting for only the most obvious errors, GST witness Norwood showed that the data contained in the KCPL study actually supported GST's claims that the utility's plant performance has deteriorated significantly in recent years.

The record also shows that GST experienced an excessive number of service disruptions throughout 1998 due to KCPL equipment failures. KCPL's

managers admitted that, in their own words, "this level of reliability is poor."¹ The service problems GST experienced are consistent with the apparent unwillingness of KCPL to properly maintain its system and facilities that are reflected in the broader performance trends.

KCPL argues that the reasonableness of its actions is not relevant to GST's claims because GST can make a one-time, one-way only decision to "opt out" of the special contract and return to a tariffed rate. This misdirected claim seeks to evade the central issue actually before the Commission, which is whether KCPL's charges rendered under the contract have been unjust and unreasonable. It also ignores all of the reasons the special contract was negotiated in the first instance and approved by the Commission, and disregards without reason or explanation at least three Commission rulings during discovery in this docket that the utility's actions concerning the Hawthorn "Incident" were directly relevant to GST's claims.

GST is not challenging the reasonableness of the pricing formula approved by the Commission. The formula is reasonable; it is the data KCPL has included in the pricing model that is unjust and unreasonable. KCPL admits that it has replaced Hawthorn's output with higher cost resources and purchased power, and that this has resulted in substantially higher charges to GST.

The Commission has authority to require KCPL to calculate the overcharges to GST resulting from the imprudent costs that have been included in GST's bills. GST has submitted testimony calculating the extent of the

overcharges since the boiler explosion occurred in February 1999. This testimony used KCPL historic dispatch data and Hawthorn historic cost and performance levels to calculate the prices KCPL would have charged GST if Hawthorn had not been destroyed. GST conservatively estimated at the time it filed its Direct Testimony filing that Hawthorn related overcharges amounted to \$3 million. Those overcharges continue to build each day. At the time of the hearings on this matter in mid-April, GST estimated the total Hawthorn related overcharges to be \$4.5 million. KCPL did not challenge this testimony.

Several conclusions can be drawn from KCPL's failure to join issue on the question of its management of Hawthorn related matters. First, once circumstances emerge that raise the "red flag" of imprudence questions, the Commission has determined, and correctly so, that the burden of proving reasonable prudent operation and management lies with the utility. In this case, the prudence "red flag" was an enormous explosion and fireball that nearly killed a dozen people and leveled a base-load generating unit. This event alone was sufficient to place the burden on KCPL to show that it had acted in a reasonable and prudent manner. In this case, KCPL has failed to even to attempt to carry its burden of proving the reasonableness of its actions.

Moreover, even if GST, as a complainant, carries the burden of proof, the circumstances surrounding the Hawthorn explosion, a matter exclusively within KCPL's control and that would not otherwise have occurred if the utility had exercised reasonable care, creates a rebuttable presumption of KCPL

imprudence that the utility has not addressed. Finally, GST in any event has provided clear, persuasive, extensively documented evidence that KCPL acted in an unsafe, unreasonable and imprudent manner that led directly to the boiler explosion.

GST has emphasized repeatedly that it does not want to opt out of the special contract, and that it is not seeking any change or alteration in that contract. GST considers all aspect of the contract and the formula pricing it contains to be just and reasonable. Staff shares the same view since Dr. Proctor stated that the Staff stands by its 1994 memorandum recommending approval of the Special Contract (GST PF 3). KCPL similarly has maintained that the contract's pricing formula is, in all respect, just and reasonable (See KCPL Position Statement).

GST is requesting the benefit of the bargain struck in 1994, i.e., that it would pay an energy charge based on the incremental production costs of a reasonably and prudently managed utility. What GST might have paid if the contract have never been executed by KCPL in the first place and if GST instead received service under a tariffed rate; or what GST would pay if it exercised its option to move to a tariffed rate, the comparison offered by KCPL in its rebuttal testimony, are not germane to the reasonableness of the costs KCPL has reflected in its charges imposed on GST under the contract.

Finally, as noted above, Staff agrees with GST that KCPL may not include imprudently incurred costs in the charges to GST. Staff offered no opinion on

the Hawthorn related issues because Staff has not completed its evaluation of those matters in Case No. Es-99-581, the separate docket the Commission established concerning the boiler explosion. While Staff may feel somewhat "boxed in" by the parallel docket, Staff did not disagree with, or consider inaccurate, any of the essential facts provided in GST's testimony. A prompt and complete disposition of all issues related to GST's claims, and particularly those relating to Hawthorn, is essential because GST continues to be overbilled with each passing day. GST and KCPL each agree that the Commission needs to decide all issues based on the record before it, and that there is no valid reason to defer a decision on the Hawthorn issues as they pertain to the claims GST has raised.

ARGUMENT

- I. The Charges Imposed Under the GST/KCPL Special Contract Have Not Been "Just And Reasonable" Over the Period of the Contract**
 - A. KCPL May Not Include Imprudently Incurred Costs in its Calculation of Prices to GST**

Unjust and unreasonable charges are prohibited by Missouri law. RSMo 393.130 (1). (See GST Conclusions of Law). This is an express statutory mandate, and the central premise of cost-based^e rate regulation itself. It is not surprising that Staff witness Proctor could not think of a single instance in his

twenty-three years at the Commission in which the Commission had allowed an electric utility to include costs the Commission had determined were imprudent in rates charged to consumers (GST PF 11). Indeed, it would have been remarkable if Dr. Proctor had been able to point to such an instance, and more remarkable still if such a decision had been able to withstand judicial review. The basic purpose of Commission regulation is to prevent such events from occurring.

The GST Special Contract with KCPL provides for an hourly energy component based on KCPL's incremental costs, but there is nothing in this feature of the Special Contract that alters or waives the prohibition against unjust and unreasonable charges. None of the regulatory "rules" have changed. In granting its approval of the contract, the Commission did not authorize or otherwise give KCPL the prerogative to include unjust and unreasonable charges in the GST pricing formula.

Thus, the issue is whether KCPL has included costs in the calculation of incremental cost that are unjust and unreasonable. The Commission's examination of this matter in this docket does not involve questions of equitable relief or the imposition of money damages which are beyond the Commission's jurisdictional purview. It concerns a straightforward application of the Commission's express statutory powers. As Staff correctly observed in its Position Statement, if KCPL imprudently caused the Hawthorn explosion, the utility has included imprudently incurred costs in its charges to GST, and those

charges are unjust and unreasonable (Staff Position Statement at 2). As explained below, the record establishes that KCPL was imprudent in several respects in 1998 and 1999 that directly resulted in excessive charges to GST.

B. KCPL Has Not Operated and Maintained its Generation Units in a Reasonable and Prudent Manner

1. KCPL Imprudence Caused the Hawthorn Boiler

Explosion

GST has demonstrated that KCPL imprudent actions and failures to act caused the Hawthorn boiler explosion. This is not conjecture; it is a cold, hard fact that KCPL has made no serious effort to rebut.

Shortly after midnight on February 17, 1999, an enormous explosion completely demolished the 11-story Hawthorn boiler structure (GST PF 74). Witnesses at the site observed a fireball of burning gas streaming from the rubble of the boiler building (GST PF 93). KCPL employees raced to the main gas valve between the Williams pipeline and the boiler, discovered it in the open position, and closed the valve to extinguish the fire (GST PF 95). KCPL publicly announced that the cause of the explosion was an unnoticed accumulation of natural gas in the boiler (GST PF 94).

Accumulating natural gas, which was used at Hawthorn as a start up fuel for the coal-fired generating plant, is an obvious safety hazard. As described below, KCPL's safety rules, its equipment "hold" procedures, and the basic design of its computerized Burner Management System are all aimed to achieve "safety first" by preventing any unplanned gas flow to the boiler. Thus, the basic question concerns what KCPL did, or failed to do, to allow that hazardous condition to develop and go undetected. The answer is straightforward. KCPL,

through its own carelessness and failure to follow its own procedures, created an unusual condition at Hawthorn--a flood of raw sewage into the control room and computer room that distracted control room employees and damaged the Burner Management System that is supposed to continuously monitor fuel flow and guard against unsafe conditions. KCPL failed to take basic steps, required by its procedures as well as common sense, to ensure plant safety under those conditions.

Using the statements of KCPL employees, plant drawings, operating manuals, control logs, and other contemporaneous documents, GST witness Ward traced at least one open pathway from the gas pipeline to the Hawthorn boiler, thus confirming the basic cause of the explosion (GST PF 90). KCPL does not dispute those findings. Mr. Ward also documented the procedures that KCPL was supposed to have followed, its failure to follow them, and the sequence of events, all entirely within the control of KCPL and thoroughly preventable, the led to the boiler explosion.

Mr. Ward explained that Hawthorn utilized a computerized Burner Management System (BMS) to control every aspect of fuel introduced into and consumed in the unit's boiler. The Fuel Safety System (FSS) component of the BMS serves to prevent unsafe conditions from developing, to detect unsafe conditions that may develop, to immediately alert KCPL's control operators of such conditions, and to initiate immediate corrective action. (GST PF 55). In short, when functioning properly, the BMS is designed to continually monitor for

any aspect of equipment or operating practice error that could cause an abnormal condition to develop, and instantly communicate that information to the control operator. If the condition represents an immediate safety hazard, the BMS does not wait for the operator to react; it automatically closes valves to cut off gas flow to the boiler (i.e., a master fuel trip) (GST PF 51-52).

KCPL also employs a "hold" procedure to ensure plant and worker safety. KCPL previously used "red" holds to close and tag the main Williams gas valve to the site. (GST PF 37-40). Such a red tag was placed on the Williams valve during the February forced outage. The hold was released early on the morning of February 16 (00:10 a.m.) as the plant was prepared for restart (GST PF 29, 77).

The restart was aborted at mid-day due to poor coordination between Hawthorn's operators and the contractors performing repairs on a reheater at the plant (GST PF 32-34). Shortly before three o'clock that afternoon, overflowing water and raw sewage from the control room men's room flooded the control room and traveled down three levels to the computer room. Control room alarms and eyewitness observations of water entrained in computer cabinets informed KCPL that the sewage had damaged the plant's computerized Burner Management System (BMS) and its Fuel Safety System components. This state of affairs was accurately summarized in the statement of KCPL control operator McLin:

The wastewater sump operated. The pumps pumped water into the control room. The water was an inch to one and a half inches

on the floor. It is known that circuit boards shorted out and had to be replaced. The fuel safety system was entrained in water. Daryl Helsley [sic] the maintenance foreman was supervising a crew of technicians on the sixteenth on replacing and drying out the equipment on the fuel safety cabinet in the computer room which is three levels below the control room. They had completed their work by 22:00.

(GST PF 43, 58).

Thus, by 3:30 PM on February 16, KCPL's managers knew that repairs on the reheater would take another 8-10 hours to complete; the control room was an unsanitary mess; and various components of the BMS system and its fuel safety subsystem were malfunctioning, not functioning, disconnected for repair, or wet and possibly ready to malfunction. Although acutely aware of the damage to the system which under normal condition continuously monitors boiler and fuel condition and it designed to prevent any unsafe fuel condition from developing, KCPL never moved to tag close the main gas valve. There is no documentation that this valve was re-tagged and protectively held closed either after the restart was aborted on the afternoon of February 16, or after the wastewater damage to the BMS was discovered shortly thereafter. This is a clear violation of the KCPL Safety Manual and unreasonably jeopardized the lives of everyone on the site.

As described in its safety manual, KCPL should have established either "blue" or "red" holds to prevent spurious signals from the damaged BMS system from causing any gas valves to open unintentionally or to cause any other safe condition to develop (GST PF 37-38). Further, while KCPL employees spent the day and evening cleaning, drying, and repairing BMS components and resetting

alarms from the BMS, KCPL kept the BMS system energized while it was under repair without securing the main gas valve to the boiler. KCPL imprudently continued to rely on this damaged system to keep the plant in a safe condition.

Despite spending over a year investigating the boiler explosion, KCPL did not to offer any testimony intended to show that it acted in a reasonable and prudent manner with respect to the Hawthorn Incident. It did not respond to any of the essential facts outlined above or GST's testimony that KCPL's failure to follow its own procedures caused that unsafe condition to occur. Curiously, at the hearing, KCPL's sole point of contention with Mr. Ward concerned his reliance on Mr. McLin's report that a cycling wastewater sump pump initiated the control room flood.² Since Mr. McLin's assessment identified the most plausible source, KCPL did not offer to identify another source of the waste water, all such sources were under KCPL's control in any event, and there is no disputing the flood itself or the damage it caused, the essential facts of KCPL's imprudence as described in GST's testimony, is not challenged.

2. KCPL's Position That its Imprudence With Respect to Hawthorn Does Not Matter is Baseless.

KCPL witness Giles asserted in rebuttal testimony that the Hawthorn explosion and the reasonableness of the utility's actions in connection with the explosion are not relevant to GST's claims in this case (GST PF 244). In his view, the solution to any and all problems GST may have with the formula pricing of the Special Contract is to opt out and move to a tariffed rate (GST PF 244).

Mr. Giles compared GST's actual bills under the Special Contract to bills that he calculated KCPL would have charged GST for the same consumption under its current tariffed rates (with the peak load curtailable credit rider) (GST PF 244). His apparent intent was to show that, overall, the contract prices remain more economic for GST than the tariff rate even with the inclusion of Hawthorn's replacement energy costs (GST PF 244). In effect, KCPL argues that any prices it charges GST that are less than the tariff rates are de facto just and reasonable.

The fallacy of the company's position is clear enough. The issue presented is whether KCPL's charges to GST pursuant to the Special Contract have been just and reasonable, not whether some other potential service arrangement would be better or worse. KCPL's charges to GST may not include imprudently incurred costs, and KCPL does not have the prerogative of including such costs in the pricing formula. For GST to receive the benefit of the terms approved by the Commission in 1994, costs determined to be unreasonably and imprudently incurred must be excluded from the pricing formula. Thus, KCPL's comparison of GST's bills to putative bills under KCPL's present tariff is a classic "apples and oranges" comparison that does not begin to show whether KCPL's prices to GST, relative to what is required under the Special Contract, have been just and reasonable.

3. KCPL Has Unreasonably Allowed the Performance of Its Generating System To Deteriorate

GST had good reason in asking the Commission to investigate KCPL's management of the power plants that it controls and operates. Between 1994 and 1998, KCPL's total system unavailable capacity due to unplanned outages and derates had more than doubled, from 2,064 MWs to 4,608 MWs at the time of monthly peak demand. This shows a decline in performance, since outages and derates occur when equipment operators make mistakes (GST PF 120). Poor unit availability has required KCPL to rely more than it should on energy purchases and more expensive load resources to meet its load requirements. Also, Hawthorn's equivalent forced outage rate (EFOR) has risen from 7.1% in 1994 and 5.36% in 1995 to 11.8% in 1996; 13.59% in 1997; and 33.52% in 1998 (GST PF 107).

GST has documented that since 1994, KCPL has made substantial cuts in the number of employees working at its power plants, employee training, and operating and maintenance costs (GST PF 98-105). The utility also has substantially reduced capital spending on its power plants as well (GST PF 101). The clear convergence of the KCPL trends of reduced spending and declining performance would be cause enough for concern under normal circumstances. Considering KCPL's stated objective of achieving high unit availability as management's top production goal, the need to improve unit availability and production efficiency in an increasingly competitive environment, and KCPL's increasing exposure to the volatility of short-term energy markets, the company's deteriorating performance is an unmistakable sign of failed management.

Declining availability at KCPL's plants has been contrary to the trend of increasing unit availability and reduced costs by other utilities (GST PF 121). Staff agreed with GST witness Ward that other utilities have been increasing unit availability, while KCPL's plants have been doing the opposite (GST PF 127).

KCPL rebuttal witness Eldridge testified that KCPL's availability performance trends compared favorably to a peer group when viewed using three year rolling average for the period 1985 to 1997 (GST PF 122). KCPL claimed that, in looking at equivalent availability factors, the KCPL units performed above the industry average in the early 1990's and trended toward the industry average in recent years. Ms. Eldridge attempted to show that the KCPL system availability was within industry standards for the period 1995 - 1998, but was less than a percentage point below the expected average (GST PF 124).

Mr. Norwood demonstrated that the KCPL's peer group study was fatally flawed and inadequately documented. In polite terms, rather than acknowledge the deteriorating performance of its units, KCPL sought to bury that decline in reams of stale, bundled historic figures that were not pertinent to the periods in dispute. Mr. Norwood explained that GST's complaint concerned recent KCPL performance. Consequently, evaluating average performance of KCPL and peer group units back to 1989 was inappropriate because data applicable to years prior to the period of recent declining KCPL performance identified in GST's complaint was not pertinent to the issues in the complaint (GST PF 128).

He also explained that KCPL's study masks the recent decline by using rolling three-year average evaluation periods. The techniques used by KCPL's consultant emphasize performance over a decade ago and de-emphasizes recent performance decline by averaging it with earlier years (GST PF 130). Staff agreed that KCPL's use of three year rolling averages could bias a trend, and mask sharp increases or decreases in performance (GST PF 131). KCPL claimed that the three-year rolling average used in a ten-year study would provide the Commission with historical as well as recent performance data, (GST PF 132); and that using a three-year average smoothes out variations, such as those due to refueling and major maintenance. Ms. Eldridge admitted, however, coal-fuel plants, such as the ones at issue here, do not shut down for refueling (GST PF 133). Hence, the distinction she attempted to draw makes no sense.

The KCPL peer group study also improperly included performance data for the Wolf Creek Nuclear plant, a facility that is not operated or managed by KCPL (GST PF 150). Wolf Creek is only 47% owned by KCPL and is operated by Wolf Creek Operating Company (GST PF 151). KCPL's use of Wolf Creek's performance significantly skewed the company's comparison. The Staff agreed that with regard to determining the imprudence of KCPL's management, the Commission should be assessing the performance plants that KCPL actually controls (GST PF 152).

Mr. Norwood further explained in considerable detail a host of additional reasons why the KCPL benchmarking study was hopelessly and fatally flawed.

For example, the peer group selection criteria did not include numerous factors that affect performance and costs of coal-fired power plants (GST PF 134).

Factors that should have been considered and were not include:

- Differences in the type or quality of coal burned at the different plants. (GST PF 137). For example, KCPL's peer group included lignite burning plants. Lignite is a dirty, low energy content fuel with materially different efficiency and operating characteristics from the high quality coal burned in KCPL's plants (GST PF 138). KCPL initially claimed that issues of fuel quality cannot be addressed without a detailed analysis of every plant (GST PF 139), but Ms. Eldridge acknowledged that fuel quality and heat content data is readily available on the Company's Form 1 (GST PF 139).
- Interregional Labor cost differences that impact non-fuel O&M costs (GST PF 140).
- Differences in plant reliability performance that result from differences in the level of non-fuel O&M spending among different plants (GST PF 141).
- Differences in non-fuel costs resulting from the economies that generally occur at plants with multiple units in comparison to single unit sites (GST PF 142).
- Differences in steam turbine generator design that can impact reliability and O&M costs of generation (GST PF 143).
- Differences in generating unit reliability and O&M costs that occur due to the fact that a number of peer groups have scrubbers, while only one of KCPL's coal-fired generating units has a scrubber (GST PF 144).
- Differences in inter-utility replacement power costs that may impact reliability performance and O&M spending of generating units (GST PF 146).

Mr. Norwood explained that proper consideration of these additional factors would have improved the industry standard and further highlighted KCPL's substandard performance (GST PF 147).

Further, KCPL did not prepare summary statistical analyses for any of the five peer groups used in the study, nor did it remove "outlier" data that might unduly bias a peer group average toward a poorer performance (GST PF 148). This is a rudimentary task performed in any competent study of this nature. Mr. Norwood pointed to patently aberrational data points that should have been excluded from the study (GST PF 148).

Finally, Mr. Norwood noted that the KCPL study failed to address further declining power plant performance in 1999 (GST PF 153). KCPL initially claimed that the 1999 data was not available to analyze, but agreed that the data was available by March 31st of 2000 upon request to NERC (GST PF 154), and that she could have obtained it in less than a week (GST PF 154).

Correcting for the most obvious flaws in the KCPL benchmarking study shows a decline in KCPL performance that supports the allegations in GST's complaint (GST PF 159). The corrected study actually shows that there has been a significant recent negative trend in the reliability performance of KCPL's generating units that has coincided with a sharp reduction in KCPL's maintenance spending for these facilities. For example, when the KCPL study is adjusted to remove the bias of Wolf Creek, the declining performance trend in the form of increased forced outages is pronounced in recent years and at nearly

double the rate of the industry average (GST PF 159). Staff also found the doubling of KCPL's unavailable capacity to be significant (GST PF 164). The Staff agreed that the KCPL report shows increasing system forced outage rates for KCPL above those of its peers from 1994 to 1998 (GST PF 168). This trend is not reasonable and expected as asserted by KCPL. The Staff agreed that the KCPL report actually supports GST's testimony that other utilities have been increasing unit availability, while KCPL's plants have been doing the opposite³ (GST PF 165).

In sum, as Mr. Norwood noted, statistical trends do not demonstrate management imprudence, but the visible trends here indicate significantly deteriorating performance coincident with declining attention and spending on KCPL's units. It is unusual to see such a long period of escalating equivalent forced outage rates and poor performance. This indicates that management is not placing proper emphasis on plant operation, because good utility management practices would have noted and reacted to the declining availability more rapidly.

C. KCPL has not operated and maintained its distribution and transmission facilities in a reasonable and prudent manner

GST experienced repeated power outages in 1998 due to recurring KCPL equipment failures (GST PF 170). KCPL witness Bier attempted to distinguish the causes

of some of the service disruptions, and claims that KCPL eventually invested \$1 million in overdue distribution system and substation improvements. The most accurate assessment of KCPL's performance in this regard is not Mr. Bier's revisionist overview, but a candid contemporaneous evaluation provided in a KCPL manager's December 1998 communication with KCPL vice-president Frank Branca:

GST has experienced thirteen outages this year resulting from a combination of substation equipment failures at Blue Valley [Substation] and distribution equipment on circuits feed from Blue Valley Sub. This level of reliability is poor....

(December 15, 1998 memo from G.W. Burrows to Frank Branca; GST PF 175).

II. The Commission has the authority to order KCPL to recalculate GST's bills under the Special Contract

KCPL attempts to paint GST's petition as a request for equitable relief and money damages, both being beyond the authority of the Commission to grant. This characterization is false. The prohibition against unjust and unreasonable charges is an explicit statutory mandate. RSMo sec. 393. 390 (1). The Commission's authority and responsibility to enforce this requirement of the law is equally direct and explicit. If, as Staff observed in its Position Statement, the Commission determines that KCPL acted imprudently with respect to the Hawthorn boiler explosion, KCPL has overcharged GST from the day the explosion occurred.

The Commission needs to determine the extent of such overcharges.

Further, the Commission must prohibit KCPL from including the higher cost of replacement energy resources and purchases from future prices charges to GST, just as it would prohibit KCPL from collecting those imprudent costs from any other ratepayers should KCPL seek such cost recovery through some form of rate relief. None of these measures arise as matters of equity; they involve direct applications of the Commission's most basic rate and regulatory powers (Conclusions of Law). The Commission has primary and exclusive jurisdiction over these matters that may not be waived or delegated to another body or forum.

Staff witness Dr. Michael Proctor noted that in his twenty-three years at the Missouri Public Service Commission, he could not recall a single instance in which the Commission had allowed a utility to include costs that the Commission had determined to be imprudent in the rates charged to consumers (GST PF 227). This is hardly surprising since the essential purpose of Commission regulation of utilities is to prevent that from occurring. Indeed, if KCPL's view is adopted, and based on the record in this case, this would be the first time such recovery was allowed.

A. KCPL has Overcharged GST at Least \$4.5 Million Since February 1999 Due to Imprudently Incurred Replacement Energy Costs it has Included in the Calculation of GST's Prices

Based on the evidence described above of KCPL imprudence with

respect to the Hawthorn incident, the Commission needs to require KCPL to exclude all imprudently incurred replacement energy costs from the hourly energy prices it charges GST. Further, the Commission needs to ascertain the magnitude of the overcharges KCPL has billed to GST since the explosion occurred. GST has provided testimony that is unchallenged which provides a reasonable and conservative estimate of the effect of KCPL's destruction of Hawthorn on GST's bills.

Since the February 17, 1999 Hawthorn boiler explosion, KCPL has relied upon more expensive resources on its system and off-system power purchases to replace the generation that would have been provided by Hawthorn, had it been available (GST PF 186). These higher cost replacement energy resources translate directly into higher energy costs that have been, and continue to be, passed directly to GST through the incremental energy cost component of the Special Contract (GST PF 187).

KCPL provided GST with actual hourly dispatch data for 1998 and for 1999 through the month of August, historic Hawthorn production, availability and cost information, and Hawthorn's planned maintenance schedule for 1999 (GST PF 188). Using KCPL's actual billing calculations for hours when KCPL used peaking resources, GST witness Smith recalculated the hourly incremental production cost chargeable to GST by inserting Hawthorn 5 values into the production stack for each hour of each day modeled (GST PF 206-209). For non-peak periods when costs typically are less volatile, Mr. Smith recalculated

GST's costs, with and without Hawthorn, for a representative weekday and weekend day each month (GST PF 211-212). Mr. Smith reflected a planned May 1999 maintenance outage for Hawthorn in his calculations as well as one weekday and weekend forced outage day each month (GST PF 214-215).

Based on 1998 historic data, Mr. Smith used an operating cost rate of 10.77 mills/KWh for Hawthorn, which placed Hawthorn at the top (i.e., most expensive) of KCPL's steam-electric generating plants (GST PF 191-192). This is a conservative (high) cost rate in light of KCPL vice-president Frank Branca's deposition statement that Hawthorn generally fell between the LaCygne and Montrose units in the dispatch order (GST PF 193).

Using this information, Mr. Smith compared the difference in cost between the base case (without Hawthorn) and the prudent case (with Hawthorn) and multiplied this difference by GST's actual usage in that hour to determine the amounts overcharged (GST PF 213). For the period for which actual data was available (i.e., through August 1999), Mr. Smith calculated the Hawthorn related overcharges were approximately \$2.8 million (GST PF 194). Using a conservative approach, i.e., applying the overcharges in an off-peak month, Mr. Smith estimated that the overcharges amounted to \$3.0 million by the end of October and \$4.5 million by the time of the hearing on this matter in mid- April (GST PF 196-197).

KCPL submitted rebuttal testimony by five witnesses. None attempts to rebut Mr. Smith's estimates, challenges his assumptions or calculation method,

or offers an alternative method for calculating the overcharges to GST. During cross-examination, KCPL appeared to accept without question Mr. Smith's updated estimate of the overcharges (GST PF 201). In short, Mr. Smith's approach is reasonable and very conservative and has not been challenged. The Commission should adopt GST's estimate of the Hawthorn related overcharges that GST has experienced since the date of the explosion.

B. KCPL Has Overcharged GST by Failing to Reflect Insurance-Derived Reimbursement of its Replacement Energy Costs

As noted above, KCPL has reflected all of its higher cost resources and power purchases it has relied upon to replace Hawthorn's historic production in the prices charged to GST. KCPL, however, has received \$5 million in insurance proceeds as reimbursement of Hawthorn explosion related replacement energy costs (GST PF 219). The cost of KCPL's property insurance premiums, including the policy covering explosion-related replacement energy charges, has been recovered from ratepayers in the cost of utility service (GST PF 225). GST witness Carver, who previously was the Commission's Chief Accountant, explained that the Commission has not disallowed or required a sharing of any of KCPL's cost of property insurance between ratepayers and shareholders (GST PF 225). As a result, KCPL customers have shouldered the entire cost of such insurance. Shareholders have not been required to bear any of those costs. Ratepayers are, therefore, entitled to the benefit of any insurance proceeds.

KCPL's tariffed customers are not affected by Hawthorn's higher

replacement energy costs because KCPL will not seek rate relief to recover those costs (GST PF 226). GST, however, is directly affected because those replacement energy costs routinely serve as the KCPL incremental cost of production charged to GST in the energy component of GST's rates (GST PF 5, 203). Further, GST makes a substantial contribution to KCPL's fixed costs under the Special Contract in the form of the demand charge on the firm service component, the monthly fixed charge, and the adder to the energy component (GST PF 6-9).

Irrespective of KCPL management imprudence discussed above, KCPL has overcharged GST under the Special Contract to the extent that the utility failed to net offsetting insurance proceeds against the replacement energy costs included in the formula prices charged to GST. As a matter of regulatory policy, KCPL should not be allowed to charge GST, and other ratepayers, for the cost of insurance premiums, including those for protection against replacement energy costs; charge GST for those replacement energy costs, and pocket the proceeds for the benefit of company shareholders. If KCPL shareholders want protection against earnings erosion in the event the company's operators blow up a power plant, the Board of Directors should authorize the payment of premiums for that protection below the line, i.e., out of earnings. Until that happens, and that is not the case today, all such insurance proceeds should offset replacement energy costs that have been passed on to any affected ratepayers which, in this instance, includes GST.

prices properly. That is the relief GST requests.

C. The Commission Should Order a Formal Staff Investigation into the Operation and Maintenance of KCPL's Generation, Transmission and Distribution Facilities

Based on the circumstances described in Section II.B. above, GST believes there are serious questions concerning KCPL's management operations and maintenance of its facilities that warrant a formal Commission inquiry. This need is made more pressing by the tightness of generation supplies in the Southwest Power Pool generally and KCPL's current over-reliance on power purchases. Certainly, such a review should be conducted before the Commission considers any restructuring of KCPL or spin-off of its facilities into separated holding company affiliates.

III. The Commission Should Not Delay its Decision in this Case Pending the Outcome of the Staff's Independent and Final Report of the Boiler Explosion at Hawthorn 5

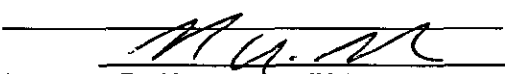
As noted earlier, the Commission has repeatedly, and correctly, determined that the reasonableness of KCPL's actions is directly relevant to GST's claims concerning adequacy of service and the reasonableness of charges rendered under the Special Contract (See GST Conclusions of Law). Staff offered no opinion on the Hawthorn related issues because Staff has not completed its evaluation of those matters in Case No. Es-99-581, the separate docket the Commission established concerning the boiler explosion. While Staff may feel somewhat "boxed in" by the parallel docket, Staff did not disagree with,

or consider inaccurate, any of the essential facts provided in GST's testimony. A prompt and complete disposition of all issues related to GST's claims, and particularly those relating to Hawthorn, is essential because GST continues to be overbilled with each passing day. GST and KCPL each agree that the Commission needs to decide all issues based on the record before it, and that there is no valid reason to defer a decision on the Hawthorn issues as they pertain to the claims GST has raised.

CONCLUSION

For the reasons stated herein, GST requests that the Commission determine that Kansas City Power & Light Company has not acted in a reasonable and prudent manner concerning the matters addressed in this case, that KCPL's imprudent actions have resulted unjust and unreasonable charges to GST, and that KCPL's overcharges of GST have amounted to at least \$4.5 million since the Hawthorn boiler explosion occurred in February 1999. GST further asks that the Commission direct KCPL to excluded all such imprudently incurred costs from all future charges rendered to GST and to grant such other relief as it deems appropriate.

Respectfully submitted,


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¹ GST PF 175 ("GST PF ____" refers to GST's Proposed Findings of Fact).

² KCPL introduced a description of the Hawthorn sanitary sewer system which indicated that there should have been a "check valve" between the sump pump and the control room toilet (Exh.19). Mr. Ward explained that he relied on Mr. McLin's assessment, and, that, in his experience, it is not reasonable to rely on such check valves to actually prevent backflows like that experienced at Hawthorn (GST PF 49). In short, KCPL quibbles about a detail that was singularly unimportant to the plant staff that spent several hours up to their ankles in raw sewage. It is similarly unimportant to how KCPL's operators and management should have responded to the water damage to the BMS system.

³ The Staff stated that a decrease of over \$20 million in steam operating and maintenance costs in conjunction with Hawthorn explosion merits further study (**Rebuttal of Eve A. Lissik**, pg. 8). The Staff stated that these might indicate changes in management focus and may be large enough to warrant concern with regard to KCPL operation of coal-fired plants, especially with respect to coal-fired plant performance (**Rebuttal of Eve A. Lissik**, pg. 10).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, postage prepaid, to all counsel of record as shown on the following service list this 12th day of May, 2000.

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