

Exhibit No.: \_\_\_\_\_  
Issue: Contract Pricing  
Witness: Koegel  
Type of Exhibit: Rebuttal  
Sponsoring Party: KCPL  
Case No.: EC-99-553

**FILED<sup>3</sup>**

FEB 28 2000

Missouri Public  
Service Commission

**REBUTTAL TESTIMONY**

**OF**

**WILLIAM H. KOEGEL**

**ON BEHALF OF**

**KANSAS CITY POWER & LIGHT COMPANY**

**NP**

1 Q. **PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.**

2 A. My name is William H. Koegel. I am a Managing Attorney at Kansas City Power  
3 & Light Company ("KCPL"). My business address is 1201 Walnut Street, Kansas  
4 City, Missouri 64106.

5 Q. **ON WHOSE BEHALF ARE YOU TESTIFYING?**

6 A. I am testifying on behalf of KCPL.

7 Q. **PLEASE SUMMARIZE YOUR EDUCATION AND BUSINESS EXPERIENCE.**

8 A. I graduated Cum Laude from Stetson University in DeLand, Florida in 1975 with  
9 a Bachelors degree in Political Science and earned a Juris Doctor degree from  
10 the University of Notre Dame du Lac in South Bend, Indiana in 1983. I joined  
11 KCPL in 1986 as the Purchasing and Insurance Administrator and have held  
12 various business and legal positions since then.

13 Q. **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. The purpose of my testimony is to respond to the apparent misunderstanding of  
15 GST's witness Mr. Steven C. Carver regarding GST's own understanding of the  
16 pricing mechanism under the special contract, and to Mr. Carver's proposed  
17 finding of the Commission and his proposed remedy for what he considers  
18 "overcharges" by KCPL.

19 Q. **PLEASE SUMMARIZE THE MAIN POINTS OF YOUR TESTIMONY.**

20 A. Mr. Carver's testimony is based on the mistaken assumption that the parties'  
21 relationship is governed by a generally applicable tariff and not a special  
22 contract. Mr. Carver apparently believes this despite the fact that GST fully  
23 understood the pricing under the 1994 Amended and Restated Power Supply

1 Agreement ("Special Contract") when it was signed. Despite Mr. Carver's  
2 testimony, GST officials understood that the pricing would not be based on any  
3 generally applicable tariff. GST has admitted as much in discovery in this case  
4 and its actions since fall of 1998 evidence that fact. As to Mr. Carver's assertion  
5 that the Commission should find that KCPL has overcharged GST and that the  
6 Commission should force KCPL to refund money to KCPL, the Commission, in  
7 this case, has itself already found that it does not have the power to award  
8 money.

9 **Q. PLEASE EXPLAIN WHERE IN DISCOVERY GST ADMITTED THEY**  
10 **UNDERSTOOD THE PRICING UNDER THE POWER SUPPLY AGREEMENT.**

11 **A.** In response to KCPL's Second Set of Interrogatories and Requests for  
12 Production, GST admitted that prior to the execution of the Special Contract, it  
13 was aware that off system purchases of power could result in increases in cost of  
14 power billed to and paid by GST. A copy of KCPL's Data Request No. 2.07, and  
15 GST's response are attached hereto as Schedule WHK-1.

16 **Q. PLEASE EXPLAIN WHAT ACTIONS EVIDENCE GST'S UNDERSTANDING**  
17 **OF THE PRICING UNDER THE SPECIAL CONTRACT.**

18 **A.** In September 1998, GST contacted KCPL due to GST's fear that KCPL's  
19 planned merger with Western Resources would negatively affect the price of  
20 electricity GST would pay under the Special Contract. KCPL and GST discussed  
21 the possible effects of the proposed merger of KCPL and Western Resources on  
22 the pricing mechanism in the Special Contract. As the culmination of those  
23 discussions--GST asserted, through its attorneys, that the Special Contract

1 required KCPL to supply energy to GST at an annual average cost of  
2 \_\_\_\_\_  
3 \_\_\_\_\_. KCPL pointed out that  
4 sections 1.10, 5.2, 5.3, and 5.4 of the Special Contract set out a pricing  
5 mechanism based on certain fixed and variable costs, and that it did not contain  
6 a requirement to apply energy at an annual average cost. GST, through its  
7 attorneys, reluctantly agreed that \_\_\_\_\_ was not the pricing required by the  
8 Special Contract.

9 Despite the fact that GST understood the pricing mechanism of the  
10 Special Contract, GST then began to demand that KCPL provide GST with  
11 energy at a maximum annual average cost of \_\_\_\_\_. These requests or  
12 demands were made in meetings with KCPL from December of 1998 until at  
13 least a meeting in late February 1999. From September 1998 until the explosion  
14 of Hawthorn 5 in February of 1999, GST has continually changed its rationale for  
15 desiring to alter the Special Contract. In September 1998, GST asserted the  
16 reason for modifying the Special Contract was to avoid the possible  
17 consequences of the proposed merger. Later GST's reason for seeking a  
18 change to the Special Contract became KCPL's alleged lack of reliability and  
19 finally now is the Hawthorn 5 explosion.

20 **Q. DID KCPL ATTEMPT TO ACCOMMODATE GST UNDER THE SPECIAL**  
21 **CONTRACT?**

22 **A.** Yes. KCPL met with GST numerous times to attempt to accommodate GST's  
23 concerns. In Mr. Mike Bier's testimony, he has outlined the prompt manner in

1 which KCPL responded to GST's concerns and the significant amount of  
2 expenditures made by KCPL to alleviate GST's concerns. Further, KCPL did  
3 offer to change the Special Contract to allow GST and KCPL to share the risk  
4 relating to the availability of KCPL's power plants. This proposal could have  
5 resulted in GST receiving up to \_\_\_\_\_ if KCPL's plant availability  
6 was poor. The proposal was conveyed to GST on January 26, 1999 and was  
7 rejected out of hand.

8 **Q: PLEASE EXPLAIN WHY MR. CARVER IS MISTAKEN IN PROPOSING THAT**  
9 **THE COMMISSION SHOULD FIND THAT KCPL HAS OVERCHARGED KCPL**  
10 **UNDER THE SPECIAL CONTRACT AND THAT THE COMMISSION SHOULD**  
11 **ORDER KCPL TO REFUND MONEYS TO GST.**

12 **A:** As I previously stated, Mr. Carver appears to have confused GST's Special  
13 Contract before the Commission with a generally applicable tariff. While a  
14 finding of an overcharge and a refund may be within the power of the  
15 Commission under a generally applicable tariff, in the Order Regarding Kansas  
16 City Power & Light Company's First Motion to Compel Discovery in this very  
17 case, the Commission itself stated correctly that "The Commission is without  
18 authority to award money to either GST or KCPL...." Further, Mr. Carver's  
19 implicit assertion that the Special Contract should be altered by the Commission  
20 has also been addressed by the Commission in the same order. The  
21 Commission again stated accurately therein that it does not have the power to  
22 alter the Special Contract. ("The Commission is without authority...to alter their  
23 special contract.")

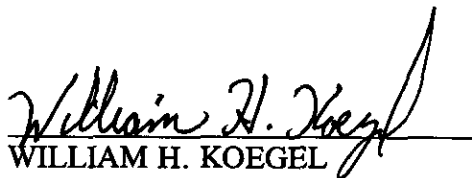
1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

2 A. Yes.

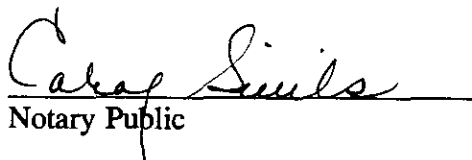
**AFFIDAVIT**

STATE OF MISSOURI     )  
                                  ) ss.  
COUNTY OF JACKSON    )

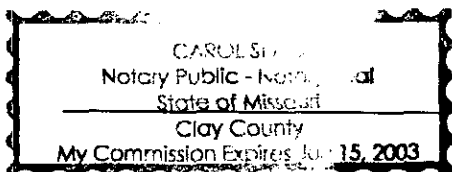
On the 22nd day of February, 2000, before me appeared William H. Koegel, to me personally known, who, being by me first duly sworn, states that he is the Managing Attorney for Kansas City Power & Light Company, and that he has participated in the preparation of the foregoing written testimony, in question and answer form, and believes that the statements therein are true and correct to the best of his knowledge, information and belief.

  
WILLIAM H. KOEGEL

Subscribed and sworn to before me this 22nd day of February, 2000.

  
Notary Public

My Commission Expires:



CASE NO. EC-99-553

REQUEST DATE: September 27, 1999

**KCPL-2.07** Prior to the execution of the Special Contract, was GSI aware that off system purchases of power could result in an increase in KCPL's incremental cost of production?

**Response:**

GSI, GSTOC, and GST understand the nature of an incremental cost-based contract, and are aware that such incremental costs may vary from period to period due to factors such as including off system power purchases.

**Response Provided By:**

Ronald S. Mulhauser

**Date:**

October 7, 1999