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October 18, 1999

FILED

OCT 18 1999

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 3660
Jefferson City, Missouri 65102

Missouri Public
Service Commission

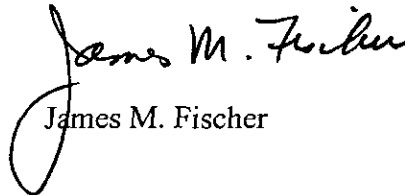
RE: *GST Steel Company v. Kansas City Power & Light Company*
Case No. EC-99-553

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and fourteen (14) copies of Kansas City Power & Light Company's Motion to Limit the Scope of Discovery and Issues. A copy of the foregoing Motion has been hand-delivered or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,


James M. Fischer

/jr
Enclosures

cc: Paul S. DeFord
James W. Brew
Christopher C. O'Hara
Dana K. Joyce
Steven Dottheim
Lera L. Shemwell
John B. Coffman

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

OCT 18 1999

Missouri Public
Service Commission

GST STEEL COMPANY,

Complainant,

v.

KANSAS CITY POWER & LIGHT
COMPANY,

Respondent.

Case No. EC-99-553

**KANSAS CITY POWER & LIGHT COMPANY'S MOTION TO LIMIT
THE SCOPE OF DISCOVERY AND ISSUES**

Respondent Kansas City Power & Light Company ("KCPL") hereby requests that the Public Service Commission of the State of Missouri ("Commission") grant its Motion to Limit the Scope of Discovery and Issues, as discussed herein, in order to avoid adverse effects upon the ongoing investigation of the explosion of the Hawthorn Generating Station being investigated in Case No. ES-99-581. In support of its Motion to Limit the Scope of Discovery and Issues, KCPL states as follows:

1. On September 17, 1999, GST Steel Company ("GST") propounded to KCPL its Seventh Set of Interrogatories and Requests for Production of Documents Propounded by GST Steel Company to the Kansas City Power & Light Company. In addition, on September 21, 1999, GST served its Notice of Deposition in which GST announced its intention to take the deposition of five (5) KCPL employees, including Jerry Larson, Frank L. Branca, James D. Teaney, Margaret L. Edgar, and David W. Durham.

2. On September 27, 1999, KCPL served its Objections to Interrogatories upon GST (Attachment No. 1), stating that it objected to answering two (2) interrogatories, Request Nos. 7.2 and 7.3 which request the following information:

- 7.2 Please identify and provide copies of all documents, reports, memoranda, analyses, evaluations, conclusions, and/or presentation slides or overheads prepared by Crawford Investigation Service in connection with the Hawthorn incident.
- 7.3 Please identify and provide copies of all documents, reports, memoranda, analysis, evaluations, recommendations, conclusions, and/or presentation slides or overheads prepared by the seven-member "KCPL Internal Cause & Loss Team" identified by KCPL in Exhibit #'s 28 & 29 in its Response to GST Request 2-5(f).

3. In an effort to expedite the resolution of this discovery dispute and eliminate similar disputes in the future, KCPL wishes to explain to the Commission the basis of its objection to these specific data requests, and also requests the Commission to issue an Order Limiting the Scope of Discovery and Issues in this proceeding. The documents requested by GST in Request Nos. 7.2 and 7.3 deal directly with the investigation of the cause of the explosion of the Hawthorn Generating Station ("Hawthorn Incident"), and, as explained herein, are not directly relevant to this proceeding.

4. In order to determine the cause of the Hawthorn Incident in an expeditious fashion, KCPL and its Internal Cause and Loss Team have been cooperating with Starr Technical Risks Agency, Inc. ("Starr Tech"). Starr Tech handles the claims for KCPL's lead insurer. Starr Tech has hired Crawford Investigation Services ("Crawford") to determine the cause of the Hawthorn Incident and identify possible third parties that may be legally responsible for the damage that KCPL has sustained.

5. The information being collected by KCPL and Crawford contains extensive, technical details regarding the facts of the Hawthorn Incident. As the investigation progresses, any observations or conclusions regarding the cause of the Hawthorn Incident will be subject to change as additional information becomes available.¹

6. More specifically, the insurers have subrogation rights that are worth hundreds of million of dollars. If KCPL is compelled to give GST documents and reports while the investigation is still in progress, it will jeopardize the insurers' subrogation rights. In addition, a significant portion of KCPL's damages resulting from the Hawthorn Incident may not be covered by KCPL's insurance policies. KCPL, however, may have claims against various parties that may eventually reduce KCPL's monetary loss. KCPL's legal claims will also be jeopardized if GST is permitted to obtain documents relating to the cause of the Hawthorn Incident in this proceeding.

7. As explained in the attached Affidavit of Scott Webb (Attachment No. 2), if investigatory documents are subject to discovery in this proceeding, the free flow of information between KCPL and Crawford will end since it would jeopardize the insurers' subrogation rights and KCPL's ability to recover damages from third parties. Such an occurrence would also have an adverse impact upon the overall investigation of the Hawthorn Incident, including the investigation of the Commission in Case No. ES-99-581 since it will probably delay completion of final reports by Crawford and KCPL. In addition, production of these documents may be protected by the insured/insurer privilege,² attorney-client privilege and/or work product

¹ To date, Crawford has provided KCPL very few documents regarding its investigation; however, KCPL expects to receive more extensive information regarding Crawford's analysis and conclusions as the investigation progresses toward a conclusion.

² Statements made by an insured to its insurer are privileged. *State ex rel. Cain v. Barker*, 540 S.W.2d 50, 53 (Mo. 1976). The court in *Cain* recognized that the insured-insurer privilege essentially is an extension of the attorney-client privilege. Moreover, communications to and from an insurer who possesses an "identity of interest"

doctrine. Therefore, KCPL believes it is inappropriate and unreasonable to give GST the requested documents in discovery in this proceeding, especially since these documents are of questionable relevance to the issues in this proceeding.

8. The Commission already has held that "the Commission will not conduct its investigation of the boiler explosion within the context of this case. The Commission will establish a separate docket for that investigation." Order Denying Interim Relief at 4, (June 1, 1999) ("June 1 Order"). The Commission has subsequently established a case to review the cause of the explosion. See Order Establishing Case, Case No. ES-99-581 (June 4, 1999). The documents requested by GST in Data Request Nos. 7.2 and 7.3 go directly to the heart of this investigation regarding the cause of the Hawthorn Incident. Since the Commission has stated that the investigation into the cause of the Hawthorn Incident will be conducted in Case No. ES-99-581, it is not appropriate for GST to delve into a multitude of documents related to the cause of the Hawthorn Incident in this docket. If GST is permitted to conduct such discovery in this proceeding, it will make it more difficult for the Commission, Commission Staff, and KCPL to conclude the investigation in the Hawthorn Incident in Case No. ES-99-581 in a timely manner.

9. In addition, in the Commission's Order Regarding KCPL's Motion for Clarification, Reconsideration and Rehearing of the Commission's Order of July 29, 1999, and Regarding GST Steel Company's Second Motion to Compel Discovery, at 8, (July 29, 1999) ("July 29 Order"), the Commission reviewed the extent to which the Hawthorn explosion and outage would be considered in this docket, and found that the Hawthorn explosion and outage is only relevant to the extent that it is involved in the adequacy and reliability of electric service provided by KCPL and whether or not KCPL's charges to GST are just and reasonable:

with its insured are absolutely privileged. State ex rel. Spear v. Davis, 596 S.W.2d 499, 500-01 (Mo.App. E.D. 1980). In this context, opinion work product of the insurer is absolutely protected. Id. Such work product includes

GST's complaint addresses both the adequacy and reliability of the electric service provided by KCPL and whether or not KCPL's charges to GST for that service are just and reasonable. The Commission is authorized, at Section 393.130.1, RSMo 1994, to consider such matters and GST is authorized to make complaint. Section 386.390.1, RSMo 1994. **Pursuant to the Commission's order of June 1, 1999, the Hawthorn explosion and outage is involved herein only to the extent that it is part of these two issues.** Likewise, this matter does not involve issues of power generation and distribution except insofar as they directly impact the two issues of the adequacy of KCPL's service to GST and the pricing of KCPL's service to GST. (emphasis added)

Taken together, the Commission's June 14 and July 29 Orders clearly indicate that the specific cause of the Hawthorn Incident (and therefore all information related to the ongoing technical investigation of the explosion and outage) should not be considered as part of this docket. The specific cause of the Hawthorn Incident would have no relevance in this proceeding since a determination of the cause of the Hawthorn Incident will not affect the adequacy or reliability of service, or the cost of electricity to GST, pursuant to the Special Contract. On the other hand, the fact that the Hawthorn Generating Station is unavailable (for whatever reason) may affect the cost of electricity to GST. This cost impact upon GST would be the relevant factor to be determined by the Commission in this case. Based upon this analysis, the Commission should limit the discovery and issues in this proceeding to matters directly related to the impact of those matters upon the adequacy and reliability of service, and the cost of electricity to GST, pursuant to the GST Special Contract. Judged by this criterion, the information requested in Data Request Nos. 7.2 and 7.3 would have no relevance to this proceeding. KCPL should not be required to answer these information requests, especially given the adverse consequence that will result to the investigation being conducted by KCPL and Crawford, and the Commission's investigation in Case No. ES-99-581.

"mental impressions, conclusions, opinion, and legal theories. . . ." Id.

10. Finally, GST has taken the depositions of five (5) KCPL employees, some of whom are directly or indirectly involved in the ongoing investigation into the cause of the explosion at Hawthorn. During several of the depositions, counsel for GST attempted to pose questions relating to the investigation of the Hawthorn Incident. GST's counsel ceased this line of questioning after KCPL's counsel objected to this inquiry. KCPL anticipates that there may be a disagreement in the future between counsel of GST and KCPL regarding the scope of permissible inquiry into the issues related to the ongoing investigation into the cause of the Hawthorn explosion and outage. Therefore, KCPL would request that the Commission rule upon this motion at its earliest convenience.

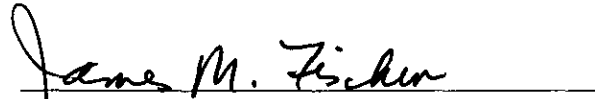
WHEREFORE, Kansas City Power & Light Company respectfully requests the Commission to issue its Order Limiting the Scope of Discovery and Issues in this proceeding, and direct and reaffirm that:

1. KCPL will not be required to answer Data Request Nos. 7.2 and 7.3 propounded by GST on September 17, 1999, related to the investigations of KCPL's Internal Cause and Loss Team and Crawford Investigation Service;

2. The specific cause of the Hawthorn explosion is not a proper subject of this proceeding; and

3. The scope of the any depositions of KCPL witnesses shall not include questioning related to KCPL's Internal Cause and Loss Team investigation, any preliminary findings and conclusions, or any matter related to the ongoing investigation being conducted in Case No. ES-99-581.

Respectfully submitted,



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Facsimile: (816) 983-8080

Attorneys for Kansas City Power & Light
Company

CERTIFICATE OF SERVICE

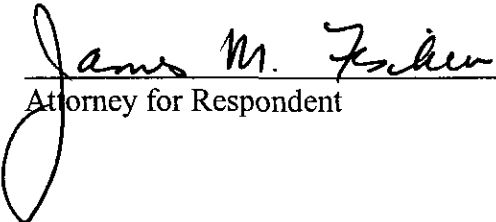
I hereby certify that a copy of the foregoing Motion to Limit the Scope of Discovery and Issues has been mailed to the following counsel of record, this 18th day of October, 1999:

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Attorney for Respondent



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September 27, 1999

VIA U.S. MAIL & FACSIMILE (202) 342-0807

Mr. James W. Brew
Brickfield, Burchette & Ritts, PC
1025 Thomas Jefferson Street, NW
8th Floor, West Tower
Washington, DC, 20007

Re: Case No. EC-99-553

Dear Mr. Brew:

We are in receipt of the Seventh Set of Interrogatories and Requests for Production of Documents served by GST Steel Company ("GST") on or about September 17, 1999. Please be advised that Kansas City Power & Light Company (the "Company" or "KCPL") objects to Request Nos. 7.2 and 7.3. KCPL will produce documents that are responsive to the remaining requests.

Request No. 7.2

Please identify and provide copies of all documents, reports, memoranda, analyses, evaluations, conclusions, and/or presentation slides or overheads prepared by Crawford Investigation Service in connection with the Hawthorn Incident.

Objection

Several of KCPL's insurance companies hired Crawford Investigation Service to determine the cause and origin of the Hawthorn Incident. The Company objects to Discovery Request No. 7.2 to the extent it seeks information and/or documents that are protected by the insured/insurer privilege, and/or work product doctrine.

The Company also objects to this request on the grounds that it places an undue burden on the Company and its insurers, a nonparty. In order to determine the cause of the Hawthorn Incident in an expeditious fashion, the Company and its insurers are conducting a joint investigation of the Hawthorn Incident. Rather than duplicate each other's efforts, the Company and insurers have assumed responsibility for certain aspects of the investigation and agreed to exchange information. The insurers have subrogation rights that are worth hundreds of millions of dollars. Forcing the insurers to provide GST with documents relating to their investigation of the Hawthorn Incident will jeopardize their subrogation rights. If the Company is forced to

KANSAS CITY POWER & LIGHT COMPANY

1201 WALNUT • P.O. BOX 418679 • KANSAS CITY, MO 64

ATTACHMENT NO. 1



Kansas City Power & Light

James W. Brew

Page Two

provide GST with documents relating to the investigation of the cause of the Hawthorn Incident, the pooling of investigatory assets will end. This will significantly extend the duration of the Company's investigation of the Hawthorn Incident.

Request No. 7.3

Please identify and provide copies of all documents, reports, memoranda, analyses, evaluations, recommendations, conclusions, and/or presentation slides or overheads prepared by the seven-member "KCPL" Internal Cause & Loss Team," identified by KCPL in Exhibit #s 28 & 29 in its Response to GST Request 2-5(f).

Objection

The Company objects to Discovery Request No. 7.3 to the extent it seeks information and/or documents that are protected by the attorney client privilege, and/or work product doctrine. In addition, the Company objects to this request on the grounds that it places an undue burden on the Company. A significant portion of the Company's damages resulting from the Hawthorn Incident is not covered by the Company's insurance policies. The Company may have claims against various parties that may eventually reduce the Company's monetary loss. The Company's legal claims will be jeopardized if GST is permitted to obtain documents relating to the cause of the Hawthorn Incident in this proceeding.

Please note that for each document that the Company asserts a legal privilege or protection, the Company will provide a privilege log.

Very truly yours,

Gerald A. Reynolds

cc: Paul S. DeFord
Lera Shemwell

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

GST STEEL COMPANY

COMPLAINANT

VS.

CASE NO. EC-99-553

KANSAS CITY POWER & LIGHT COMPANY

RESPONDENT

AFFIDAVIT OF SCOTT WEBB

Being first duly sworn, I, SCOTT WEBB, the affiant herein, state as follows:

1. I have personal knowledge of the matters set forth herein.
2. I am a Claim Manager of Starr Technical Risks Agency, Inc. ("Starr Tech"). My business address is 70 Pine Street, New York, NY 10270.
3. Starr Tech handles claims for one of the insurers providing coverage for losses resulting from an explosion that occurred on February 17, 1999 at the Hawthorn Generating Station owned and operated by Kansas City Power & Light Company ("KCPL") in Kansas City, Missouri ("Hawthorn incident").
4. As a result of the Hawthorn incident, KCPL's insurers have been required to pay substantial sums to reimburse KCPL for its losses and will likely be required to pay additional sums to KCPL. To the extent of these payments, the insurers are subrogated to the rights of KCPL against any third parties which may have caused or contributed to the Hawthorn incident. Starr Tech is working with KCPL to investigate the causes of the Hawthorn incident ("the investigation"). The investigation is ongoing and no final conclusions have been reached regarding the cause(s) of the Hawthorn incident.

5. It is my understanding that GST is requesting that KCPL provide it with certain information and documents related to the investigation of the cause(s) of the Hawthorn incident. All documents generated specifically created in the cause of the investigation are privileged and confidential and should not be subject to disclosure to any third parties.

6. Since no final conclusions regarding the cause(s) of the Hawthorn incident have been reached, any conclusions contained in those documents would be preliminary in nature and maybe subject to revision as the investigation progresses. The premature release of information regarding the investigation to third parties may result in erroneous conclusions regarding the facts or cause(s) of the Hawthorn incident.

7. An order from the Commission requiring the release of information regarding the investigation in this proceeding would have a chilling effect on the voluntary exchange of information between KCPL and Starr Tech, which is essential to the continuing efforts of KCPL and Starr Tech to determine the cause(s) of the Hawthorn incident.

8. The insurers of KCPL have subrogation rights that are potentially worth hundreds of millions of dollars. If KCPL is compelled to give GST documents generated as a result of the investigation, it may adversely impact upon the subrogation rights of its insurers, its own rights of recovery and the success of the investigation into the cause(s) of the Hawthorn incident.

Further affiant sayeth not.

Scott Webb

SCOTT WEBB

SWORN TO AND SUBSCRIBED BEFORE ME, this the 9th day of

October, 1999.

Stacy P. Puma
NOTARY PUBLIC

My Commission Expires:

STACY P. PUMA
Notary Public, State of New York
No. 01743246
Qualified in Nassau County
Commission Expires October 12, 2002

