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February 22, 2000

FILED³

FEB 22 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

Missouri Public
Service Commission

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

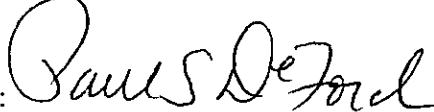
Dear Secretary Roberts:

Enclosed for filing in the above-referenced case please find an original and fourteen (14) copies of **GST Steel Company's Motion to Compel Production of Documents, for Directed Findings, Concerning Information Controlled by KCPL, and for Interim Relief.**

Thank you in advance for your attention to this matter.

Sincerely,

LATHROP & GAGE L.C.

By: 
Paul S. DeFord

PSD/jf
Enclosures
cc: All Parties of Record

1108.1

FILED³

FEB 22 2000

Missouri Public
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

GS Technologies Operating Co., Inc.)

d/b/a/ GST Steel Company,)

Petitioner,)

v.)

Kansas City Power & Light Company,)

Respondent.)

Case No. EC-99-553

**GST STEEL COMPANY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS,
FOR DIRECTED FINDINGS CONCERNING INFORMATION CONTROLLED BY
KCPL, AND FOR INTERIM RELIEF**

A full year has passed since Kansas City Power and Light Company ("KCPL") allowed a natural gas accumulation in the boiler of its Hawthorn unit No.5 to cause an explosion and fireball seen for miles, which reduced the 11-story boiler building to rubble. KCPL's destruction of Hawthorn eliminated one of the utility's lowest cost base-loaded generating resources, which the utility replaced with more expensive generation and power purchases from other resources. GS Technologies Operating Co., Inc., d/b/a GST Steel Company ("GST") has experienced significant increases in its cost of electricity from KCPL directly as a result of that explosion and KCPL's replacement energy decisions. These increased costs are particularly pronounced during summer peak hours due to the dramatic variations seen in the spot wholesale energy markets that KCPL has relied upon to replace Hawthorn's output. The high forced outage rates of KCPL's other generating units also have contributed substantially to this problem. The prudence of KCPL's management of its generating and other resources, including the operating practices and errors that caused the Hawthorn boiler explosion, is a fundamental issue in this proceeding.

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The Commission initially attempted to move this proceeding to hearing and a final decision quickly.¹ An expeditious resolution of GST's claims has not occurred, but, in its Order Concerning Show Cause Hearing, dated February 17, 2000, the Commission established a new procedural schedule that attempts to put this proceeding on track. There is, however, a greater problem than the slow progress of this proceeding, and that is KCPL's adamant refusal to disclose information and documentation concerning the boiler explosion.

The Commission has determined on a number of occasions, and correctly so, that the circumstances surrounding the Hawthorn explosion are directly relevant to GST's claims in this docket that KCPL has imprudently managed its generating assets. KCPL nevertheless has held on to that information with a white-knuckled grip. It has thrown up vague, non-specific, and even merely potential objections to data requests concerning Hawthorn. It has claimed privileges against discovery that do not exist, and asserted claims of privilege without providing even the basics required to establish that such a privilege is applicable. In fact, the only criterion consistently applied by KCPL seems to be that documents relating to the boiler explosion and the ensuing investigation will not be supplied to GST.

KCPL asserts that it has supplied all responsive documents to GST or listed them in its various logs listing privileged documents. In fact, the utility has listed some documents on its privilege logs but it has not, intentionally at least, provided Hawthorn explosion, or explosion investigation related documents to GST. GST has little confidence that those listed documents cover all responsive document because there simply are too many holes. Types of documents concerning the investigation of the explosion that are referenced in other sources appear, according to the privilege logs, not to exist. Memos and reports to senior management

¹ See Order dated June 2, 1999.

concerning the explosion, with one notable exception discussed below (because KCPL withheld it from GST while supplying it to other third parties), also appear not to exist. KCPL has listed on its logs no more than a sampling of notes of what are supposed to be regularly scheduled Cause and Loss Team meetings.

Further, as explained herein, many of the documents listed on those logs, including the above noted KCPL meeting minute notes, do not qualify for any recognized privilege against disclosure. Similarly, according to KCPL's listings, the investigators for KCPL's insurers apparently do not correspond with KCPL at all, a most unlikely circumstance given abundant evidence that KCPL and the insurance investigators are coordinating their efforts. In sum, there are powerful indications that KCPL has not produced or identified all relevant documents.

In addition, on a number of occasions last August and September, KCPL answered GST data requests by stating that the responsive documents were too voluminous to copy. KCPL instructed GST to view the materials at the plant sites or its corporate offices, and GST's consultants traveled to Kansas City to examine documents at some of these locations, including a visit to examine documents at the Hawthorn station in October. KCPL now refuses to allow GST access to those same voluminous files. The utility has no basis for withdrawing access to those materials six months after the copies should have been produced.

There is an obligation for KCPL to supplement responses to data requests as new documents are created or found. GST requires access to the on-site documents to determine if responsive materials have been added to the on-site files and to reexamine materials that, as KCPL noted in the first place, were simply too voluminous to copy. KCPL's refusal to cooperate with even this mundane request for access to these files is inexcusable.

KCPL once indicated that a full report would be released within 6-9 months of the explosion. Over a year has passed, and KCPL's actions undeniably are geared toward avoiding any disclosure as long as this proceeding is pending. KCPL's reticence in this matter is understandable in some respects because there no easy way to disclose how it simply blew up one of its most economic generating resources. The utility, however, cannot be allowed to continue to withhold pertinent, and in all likelihood, highly probative material that concerns the issues in dispute in this docket.

In this Motion, GST requests that the Commission derail KCPL's delaying tactics with respect to the boiler explosion and its ensuing investigation of that incident. GST requests that the Commission take the following steps:

- Direct KCPL to produce a master listing of all documents prepared by or for KCPL, its insurance investigators, or any other party acting on KCPL's behalf that addresses or references the Hawthorn boiler explosion, its causes, the extent of damage, and KCPL's efforts to acquire replacement energy.
- Issue directed findings of fact that:
 - a. KCPL exercised exclusive control over Hawthorn unit No. 5 before, during and after the February 17, 1999, boiler explosion;
 - b. The boiler explosion due to accumulated natural gas would not have occurred if KCPL had exercised reasonable care; and
 - c. The boiler explosion and destruction of the Hawthorn boiler structure, therefore, is presumed to be the direct result of unreasonable, imprudent and unsafe practices by KCPL.
- Adopt relief for GST, effective immediately, on a subject to true-up basis, following the suggestions previously made by Staff.

BACKGROUND

A. Overview of This Proceeding

1. On February 17, 1999, as KCPL prepared to return Hawthorn 5 to service after a forced outage, natural gas that KCPL allowed to accumulate in the Hawthorn 5 boiler for several hours caused an explosion that reduced the entire eleven-story building that housed the boiler to rubble. Water and sewage had flooded the Hawthorn control room during the afternoon of February 16 because KCPL failed to secure a waste-water sump pump that began operating while a clogged sewer pipe was under repair.² This initiated a chain of events, completely within the control of KCPL, that ended with the boiler explosion. Specifically:

- Water and sewage seeped from the flooded control room into the Hawthorn computer room several floors below, causing electrical shorts and failures which disabled the Burner Management System (BMS) which controls flame and the flow of fuel to the Hawthorn boiler.
- At about this time, KCPL employees aborted efforts to restart the unit when it was discovered necessary repairs to other equipment had not been completed.
- While attempting repairs to the BMS relays and circuit boards caused by the sewage, KCPL failed to secure properly the main gas valves to the boiler, which had been opened during the aborted startup the previous afternoon.
- The gas valves re-opened while the BMS was under repair, allowing large quantities of natural gas, over 1,100 million cubic feet (MCF), to accumulate in the boiler for nearly a three hour period when the sensors and alarms of the BMS were not functioning.
- The resulting explosion completely destroyed the eleven-story boiler structure. The fact that no fatalities were experienced can only be attributed to the fortuitous combination of a low number of on-site personnel, the time of day of the explosion (12:30 AM), and dumb luck.
- After the explosion, KCPL employees witnessed a fireball that burned until employees closed the main gas valve to the plant.

² See Direct Testimony in this docket of GST witness Jerry N. Ward.

In sum, the explosion occurred because KCPL failed to employ either accepted safe operating practices or basic common sense.

2. Information concerning the accumulation of gas in the boiler was known within days of the explosion, and was referenced in early KCPL press releases concerning the explosion. Allowing large quantities of gas to accumulate in the boiler when there is no flame to burn it is unsafe and dangerous. To permit it to occur while the BMS was disabled was patently imprudent.

3. KCPL has replaced the generation normally produced by Hawthorn unit 5 with generation from more expensive units and with energy purchases. It has relied primarily upon short-term energy purchases during its peak load periods to replace Hawthorn. This energy is costly compared to Hawthorn, and at times has been hundreds of times more expensive than Hawthorn's historic production costs. These replacement purchases form the basis for the incremental energy costs KCPL charges GST. GST has experienced significant cost increases as a result of the boiler explosion and KCPL's loss of Hawthorn's 479 MW of low cost generation. These increases have been dramatic during summer peak demand periods, but occur in almost every hour of every day. For example, on January 31 and February 1, 2000, GST experienced an unexplained price run-up from KCPL that added almost \$80,000 to GST's production costs, and that likely would not have occurred if Hawthorn were in operation.

4. KCPL carries property insurance, paid by electricity ratepayers, including GST, as a cost of utility service, against such a boiler explosion event. Of that amount, \$5 million has been paid to KCPL to offset the increased costs associated with replacing Hawthorn 5 generation with more expensive generation resources. None of the \$5 million insurance

proceeds has gone to consumers, such as GST, whose rates have increased as a result of the boiler explosion.

5. By Petition dated May 11, 1999, GST asked the Commission to investigate the reasonableness of KCPL's charges to GST under the Special Contract approved by the Commission as well as the adequacy and reliability of service supplied by the utility. The petition detailed chronic KCPL service disruption problems as well as the severe economic impact of the energy purchased by KCPL to replace expected output from the now defunct Hawthorn unit No. 5. GST requested interim relief and an expeditious resolution of the matters raised in its Petition, and it has maintained from the outset that the effect of KCPL's mismanagement and unsafe practices that precipitated the Hawthorn explosion was a central issue to be addressed. The Commission has recognized that GST's claims question the prudence of KCPL's management and operating practices. *See, Order Concerning Show Cause hearing*, dated February 17, 2000, *mimeo* at 7. The Commission also has determined that the Hawthorn incident is "directly relevant to the issue of KCPL's charges to GST."³

6. On June 28, 1999, the Commission staff recommended that the Commission adopt one of three suggested forms of alternative interim relief for GST, subject to true-up, pending ultimate Commission disposition of the issues in this docket. The staff alternatives included a recommendation that replacement energy insurance proceeds, up to \$5,000,000, be used to offset GST's increased incremental cost of power associated with the loss of Hawthorn. (*See, Staff Response to GST's Motion for Interim Relief and Expedited Hearings*, dated June 28, 1999, suggestion #2 at pp. 3-4.) The Commission acknowledged the "gravity of the harm faced by GST," but it did not authorize the interim relief sought by GST or

³ Order Regarding GST Steel Company's First Motion to Compel Discovery and Amending the Procedural

recommended by the Commission Staff.⁴ The Commission, however, established an expedited hearing schedule for this matter.

B. KCPL Resistance to Hawthorn-Related Discovery

7. KCPL established a "Cause and Loss Team" to ascertain the cause of the boiler explosion and the extent of the damage caused by it. Crawford Investigative Services ("Crawford") is independently performing the same function for KCPL's insurers, but the two groups are reportedly coordinating data retrieval and related tasks. Without good cause, KCPL has resisted discovery of any documents produced or created by either group.

1. In July 1999, the Commission Rejected KCPL's General Objections to GST Discovery

8. KCPL initially objected to *all* of GST's initial discovery requests, arguing that, by virtue of Commission approval of the Special Contract, all KCPL incremental cost charges were presumed to be lawful and reasonable.⁵ The Commission rejected the KCPL gambit and held that:

Contrary to KCPL's position, the Commission reads the pleadings to include an issue of service adequacy. The Hawthorn incident is relevant to that issue. Moreover, GST has specifically pleaded that "KCPL has informed GST that as a result of the Hawthorn outage, GST should expect a multi-million dollar price increase for 1999. *GST's Complaint* at 11, paragraph 22. KCPL admitted as much. *KCPL's Answer*, at 4, paragraph 22. KCPL can hardly argue that the Hawthorn incident is not also directly relevant to the same issue of KCPL's charges to GST. GST has prayed that the Commission require KCPL to use the proceeds of any insurance received with respect to the Hawthorn incident to protect it and other ratepayers "from harm as a result of the outage [.]" *GST's Complaint* at 13-14, paragraph 27(ii). Thus, the nature and extent

Schedule, dated July 29, 1999.

⁴ See Order Denying Interim Relief and Expedited Hearings, dated July 9, 1999.

⁵ See KCPL Reply to GST Steel Company's Motion to Compel Responses to the First Set of Interrogatories and Requests for Production of Documents, dated July 12, 1999.

of KCPL's insurance coverage is also necessarily relevant to this matter. KCPL must answer GST's interrogatories and provide the requested documents.⁶

2. In August 1999, the Commission Rejected KCPL's Continued Objections to Hawthorn-Related Discovery

9. KCPL continued its opposition to discovery in response to GST's Second Set of Interrogatories, including all questions directed to the Hawthorn explosion. The Commission again rejected KCPL's claims and held that the following issues are in this proceeding:

- a. the Hawthorn explosion and outage,
- b. KCPL inadequate/imprudent power generation, and
- c. KCPL inadequate/imprudent power delivery⁷

With respect to the Hawthorn explosion, that Order stated:

GST has focused on the boiler explosion at KCPL's Hawthorn generating plant on February 17, 1999, as an example of the imprudent conduct it attributes to KCPL. Thus, the Hawthorn incident is relevant to GST's theory of service unreliability due to poor maintenance practices. Additionally, GST contends that as long as the Hawthorn plant remains off-line, KCPL's purchases of replacement power will be greater than ever, resulting in higher costs for KCPL and higher prices for GST. Thus, the Hawthorn incident is also relevant to GST's theory that the prices it pays for service under its special contracts are not just and reasonable in view of KCPL's imprudent management practices.⁸

⁶ July 29 Order, p. 7.

⁷ 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, dated August 19, 1999.

⁸ Id., Order at p. 7.

3. In November 1999, the Commission Rejected KCPL's Third Attempt to Avoid Producing Documents

10. Notwithstanding the plain language of the Commission's July 29 and August 19 Orders, KCPL again resisted GST's inquiries concerning the Hawthorn explosion. On September 17, 1999, GST served its Seventh Set of Interrogatories and Requests for Production of Documents on KCPL. The following requests were included in this set:

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, 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).

KCPL objected to these requests and, on October 18, 1999, filed a motion seeking to limit discovery and the scope of issues in this docket specifically to avoid answering requests concerning its "ongoing investigation" of the explosion.⁹ In its motion, KCPL claimed that "information being collected by KCPL and Crawford contains extensive, technical details regarding the Hawthorn Incident."¹⁰ KCPL asked that all of its "investigatory documents" be shielded from discovery, and asserted that such discovery would end the "free flow of information between KCPL and Crawford."¹¹

⁹ KCPL Motion to Limit the Scope of Discovery and Issues, dated October 12, 1999.

¹⁰ KCPL Motion, p. 3.

¹¹ KCPL Motion, p. 3.

11. By Order dated November 16, 1999, the Commission rejected KCPL's motion to limit discovery and the issues in their proceeding. The Commission explained, for the third time, that

GST's theory is that imprudent management, manifested as poor maintenance practices, has resulted in KCPL outages. Whether or not the Hawthorn explosion resulted from poor maintenance is therefore necessarily within the scope of the present proceeding.

The Commission's Order required KCPL to produce, or claim as privileged, all of the existing documents regarding the Hawthorn incident.

4. KCPL Continued to Withhold Responsive Documents

12. KCPL did not immediately produce the documents GST requested. Instead, on December 17, KCPL blamed, among other reasons, "vacation schedules, and an outbreak of influenza in KCPL's Law Department" for delays in responding to Requests 7.2 and 7.3. Finally, on December 27, 1999, KCPL stated, "With the possible exception of [one] 'missing' document, KCPL has provided GST with copies with [sic] all other documents responsive to GST Request 7.2, or listed these documents in one of KCPL's privilege logs."¹² In fact, GST has not received any actual documents that KCPL says are responsive to DR 7.2 or 7.3; it has received only privilege lists referencing such documents.

13. Upon information and belief, the KCPL Cause and Loss investigation team is scheduled to meet weekly, has set up sub-groups to examine Fuel Instruments and Controls and Sanitary System, interacts with other KCPL teams, and is supposed to be "methodically building a Cause and Effect Diagram" of the incident (see Attachment B).¹³

¹² See Attachment A. KCPL has never identified or described the "missing" document.

¹³ These materials appear to be 2 pages of the Cause Team Summary Report. KCPL claims the complete report

KCPL's privilege logs (discussed below) list minutes from some, but apparently not all, Cause Team meetings. KCPL has not identified or produced any "Cause and Effect Diagrams" (draft or otherwise), or analytical documents of any kind prepared by or for the Cause Team.

14. On January 18, 2000,¹⁴ GST asked KCPL counsel regarding the status of the "missing" document and to confirm that KCPL's response in fact was complete. KCPL counsel disclosed that it actually was aware of additional responsive documents, but did not intend to either identify or disclose the documents until the jurisdictional issues before the Commissioner were resolved. Judge Thompson directed KCPL to provide those materials.

15. KCPL subsequently supplied a privilege log identifying 70 additional documents that were responsive to GST's June 1999 data requests (see Attachment C).¹⁵ As described below, many of these documents are not privileged from disclosure.

ARGUMENT

GST has little confidence that KCPL has identified all responsive documents at this point, and we believe direct Commission intervention is needed to ascertain whether KCPL has withheld other relevant information. The Commission correctly determined that KCPL's actions relative to the Hawthorn explosion are relevant to the issues raised in GST's petition, and it has repeatedly instructed KCPL to supply these materials. As discussed below, KCPL's most recent effort to avoid disclosing explosion related documents it has identified by declaring all of them to be privileged, has no legal support in many cases. The company's refusal even to allow GST to re-examine the documents it is keeping on site raises obvious questions concerning the

privileged.

¹⁴ At the pre-hearing conference held in this proceeding.

¹⁵ By letter dated February 2, 2000.

contents of those files today compared to the files made available to GST in October. Direct action of the Commission is required to ensure that all relevant materials are in fact produced by KCPL. KCPL cannot be permitted to avoid producing documents on matters that go to the heart of the issues raised in this proceeding.

For its part, GST has objected to Commission decisions requiring GST to produce irrelevant and highly sensitive commercial documents, but GST has complied with those orders and is making those materials available for KCPL's review.

I. The Commission Should Compel KCPL to Produce Immediately All Withheld Documents That Are Not Privileged Against Disclosure and Preclude KCPL From Using in Any Manner Information and Materials That Have Not Been Produced

KCPL's blanket and, as discussed below, often unsubstantiated claims of privilege in "response" to GST Requests 7.2 and 7.3 confirms what has been obvious for sometime: the utility does not intend actually to supply information concerning the Hawthorn explosion to GST, while this matter is pending before the Commission. KCPL controls all data relating to the Incident, including physical evidence as well as control room and computer data bases, and it seems content to delay completion of any final reports, and withhold relevant and requested documents until the Commission renders a determination in this docket.

The rules concerning privilege against disclosure are well established. The burden of establishing that a document is privileged lies with the party asserting the privilege. *Hutchinson v. Steinke*, 353 S.W.2d 137, 144 (Mo. App. 1962).¹⁶ Also, the party claiming privilege is required "to establish specifically for each document for which it is claiming

¹⁶ See Order Regarding GST Steel Company's First Motion to Compel Discovery and Amending the Procedural

attorney-client privilege the elements necessary to have benefit of the privilege.” *KCPL I*¹⁷ at *mimeo 6*. The party claiming attorney-client or attorney work product may also be required to provide organizational charts to help the Commission and opposing parties understand the relationship between attorneys, personnel, various committees, or other groups that may have pertinent documents. *See KCPL I*, at *mimeo 7*.

Work Product is not technically a privilege; rather, it is a qualified immunity.

“Although many courts and some experts use the term ‘privilege’ in discussing the work-product immunity, the Commission believes the work-product immunity is not a privilege on the same footing as the attorney-client privilege and so is not covered by [Rule 2.130(5)].” *KCPL I*, 27 Mo. P.S.C. 520, at *mimeo 6*. The Commission instead has identified its Rule 2.090 and Supreme Court Rule 57.01(b)(3) as appropriate authority for a work-product immunity. In this context, documents without a “date or identity of preparer . . . are not given work product immunity because of the absence of this information.” *KCPL IV*, 27 Mo. P.S.C. 533, at *mimeo 8*.

Although not explicitly stated, the same rationale holds true for attorney-client claims. In each of the instances described below, KCPL has not come close to satisfying its burden of justifying its claimed immunity from disclosure. GST specifically asks that the following documents listed on KCPL’s privilege logs be produced immediately.

Schedule, dated July 29, 1999.

¹⁷ There are four key Missouri Commission Orders regarding the attorney client and work product immunities. All four involve KCPL and are successive Commission Orders in the joint dockets regarding in-service criteria and rate base-related issued for Wolf Creek. *See In the Matter of Kansas City Power & Light Co. of Kansas City, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company; In the Matter of the determination of in-service criteria for Kansas City Power & Light Company's Wolf Creek Generation Station and Wolf Creek rate base and related issues* (1985) (Case Nos. ER-85-128 & EO-85-185). When cited in this motion, the individual Commission Orders are referred to as *KCPL I*, *II*, *III*, or *IV*, depending upon the date of the Order: *KCPL I* is dated May 17, 1985; *KCPL II*, dated May 23, 1985; *KCPL III*, dated June 11, 1985; and *KCPL IV*, dated July 2, 1985.

Finally, although it should be obvious, documents are not privileged simply because they are connected to the "Hawthorn Investigation" (see KCPL privilege logs in Attachments). Such documents certainly are relevant, but they are not immune or privileged from discovery.

1. The April 15, 1999 Summary Report.

GST's Request 2.5, which was served on KCPL on June 24, 1999, requested all analyses, correspondence and similar documents concerning the Hawthorn incident that have been prepared by or for KCPL (see Attachment B). This is a continuing request (see discovery instructions in GST's First Set of Interrogatories). Included in the company's response is a April 16, 1999 letter from KCPL to James Woods, an Occupational Safety and Health Administration (OSHA) compliance officer which contains attachments described as 1) the Hawthorn 5 recovery organization structure and 2) an April 15 "Cause Team Summary Report" (see Attachment B).¹⁸ By disclosing this report to a third party, KCPL has waived its claim of privilege and cannot refuse to provide it to GST.

2. Vaguely Described Documents Are Not Immune From Disclosure

On KCPL's November 9, 1999, privilege log (see Attachment D), documents numbered 12, 17, 18, 19, 21 and 22 do not identify author, recipients, or distribution. As discussed above, no work product immunity is available for these documents and they must be provided.

3. KCPL Documents Supplied to Crawford are not Privileged Against Disclosure

In its February 2 privilege log, KCPL claims that 42 documents it supplied to Crawford Investigative Services are immune from disclosure by the Insured/Insurer privilege.

As has been noted in prior filings, and is not repeated here, no such privilege exists in Missouri.¹⁹

The documents supplied to Crawford are not privileged and must be produced. KCPL also claims attorney-client and work product privileges for each of these documents. Such claims, if applicable at all, were waived when KCPL supplied the documents to a third party (Crawford).

Further, production of these materials is required even if they were prepared in contemplation of litigation. Rule 56.01(b)(3) provides that documents "prepared in anticipation of litigation or for trial by ... [the] other party's ... insurer...are discoverable upon a certain showing of needs and hardship."²⁰ In this instance, the need for disclosure has been established since all parties agree the investigative documents go to a core question in this docket and such information is not available from any other sources. GST also has been harmed by the higher replacement energy costs due to the Hawthorn outage, and KCPL's delays in producing materials. KCPL has not established a legitimate basis for withholding these materials. GST asks that the Commission schedule an immediate hearing, without postponing the schedule for the filing of testimony, to address the status and completeness of KCPL's discovery responses.

II. The Circumstances Surrounding the Hawthorn Explosion and KCPL's Refusal to Disclose Relevant Information Requires a Finding that KCPL is Presumed to Have Acted Imprudently

Civil courts of law in Missouri and elsewhere do not permit a party that has exclusive control over facilities that explode, and all information and databases concerning the incident, to use that information control to its advantage. Under well established law, if an

¹⁸ The copies provided to GST contained only two pages of the summary report.

¹⁹ See Staff and GST responses to KCPL's Motion to Limit the Scope of Discovery and Issues, each dated October 28, 1999; Staff at p. 3; GST at pp. 7-8.

²⁰ See dissent of Seiler, C.J. in *State ex rel., Cain v. Barker*, 540 S.W. 2d 50 (Mo. banc 1976).

explosion would not have occurred if a party had exercised reasonable care, and the party has exclusive control over those facilities, it is presumed to have been negligent in permitting the explosion to occur. That party bears the burden of overcoming that presumption of imprudence and proving that it acted reasonably. Under the long established doctrine of *Res Ipsa Loquitur*, the negligence of a party is inferred when:

- a. the incident resulting in injury would not ordinarily occur if those in charge exercise due care;
- b. the facilities involved were under a party's management and control; and
- c. that party possesses superior knowledge or means of information as to the cause of the incident.

Weeks v. Rupp, 966 S.W. 2d 387 (1998 Mo. Appeal); *Zurich Insurance Company v. Missouri Edison Company*, 384 S.W. 2d, 623 (1984) (doctrine applied to sewer gas explosion); *Stevens v. Missouri Pacific Railroad Company*, 355 S.W. 2d 122, 130 (1962) (explosion occurring on railroad property); *Burr v. Kansas City Public Service Company*, 365 Mo. 115, 276 S.W. 2d 120 (1955); *Stephens v. Kansas City Gas Company*, 354 Mo. 385, 191 S.W. 2d 601 (1946) (doctrine applied in natural gas explosion case); *Hanson v. City Light and Traction Company*, 238 Mo. App. 182, 178 S.W. 2d 804 (1944) (doctrine applied in natural gas leak case); *McCloskey v. Koplar*, 329 Mo. 527, 46 S.W. 2d 557 (1932); see 5 Wigmore on Evidence, sec. 2509. This doctrine is equally applicable to regulatory proceedings to determine management imprudence and the reasonableness of charges to ratepayers. *See Rochester Gas and Electric Corporation v. New York Public Service Commission*, 117 A.D. 2d 156, 501 N.Y.S. 2d 951 (1986 N.Y. App.

Div., Third Dept.) (upholding NYPSC Order holding utility accountable for the repair costs associated with a steam tube rupture at the Ginna nuclear plant).²¹

In this instance, all of the elements for application of the *Res Ipsa Loquitur* doctrine are present, and the Commission needs to apply the established rule in this docket. KCPL exercised exclusive and complete control over Hawthorn before, during and after the explosion, and should bear the burden of showing that it acted reasonably and could not have prevented the boiler explosion. Power plant safe operating practices are designed to prevent such boiler explosions and explosions such as that experienced at Hawthorn are exceedingly rare.

Finally, KCPL's repeated refusal to disclose explosion-related documents simply magnifies the need for directed Commission findings. KCPL not only possesses "superior knowledge" of the boiler explosion, it is zealously hoarding that data. Under these circumstances, the Commission should determine that KCPL is presumed to have acted imprudently in causing the boiler explosion, and place the burden on KCPL to overcome that presumption.

III. The Commission Has Jurisdiction And Should Provide Relief to GST, Based on Staff's Suggested Alternatives

The Commission has the jurisdiction, and the obligation, to insure that KCPL does not charge GST for imprudently incurred replacement power costs. Missouri law prohibits any unjust or unreasonable charge made in connection with electricity service. RSMo § 393.130(1). The Commission's authority to enforce this requirement of the law is the cornerstone

²¹ During a scheduled plant outage, RG&E employees left a piece of a steel plate in one of the unit's steam generators. During subsequent plant operations, the steel bar rubbed against the steam generator, gradually causing cracks in and disabling several tubes before one actually ruptured.

of its regulatory responsibilities. Moreover, where metering or billing errors occur, or bills are disputed for any reason, a customer is entitled to a billing recalculation and adjustment from the time such mistakes began. See Rule 10(B).

GST's Special Contract with KCPL reflects the utility's incremental cost of production. Although this arrangement is unusual compared to typical, average cost-based tariff rates, it is nonetheless a cost-based rate. Because the loss of Hawthorn's relatively low cost output has a dramatic effect on KCPL's incremental costs, GST's original petition requested interim relief pending a final Commission determination of all issues in this proceeding. At the time (June 1999), the Commission Staff recommended that the Commission adopt one of three suggested forms of relief, each subject to an accounting true up based on the Commission's final decision on the results.²² The Staff suggestions had the balanced appeal of providing some protection to GST against excessive prices while respecting KCPL's interest in a full hearing on the issues by virtue of the prepared accounting and true-up mechanism.

The Commission denied GST's request for interim relief, including Staff's suggested alternatives, and opted for an expedited hearing schedule. In denying GST's request for reconsideration, the Commission concluded that it lacked the statutory authority to authorize such interim relief.²³ GST respectfully suggests that the Commission viewed its powers too narrowly. The Commission possesses ample authority to provide the relief that Staff suggested and has fashioned "subject to true-up" mechanisms on many occasions where the circumstances

²² Staff's Response to GST's Motion for Interim Relief and Expedited Hearings, dated June 28, 1999. Of the three Staff-suggested alternatives, GST considered "Suggestion 2" (*i.e.*, calculating incremental costs as if Hawthorn continue to operate for the summer months of July through September) to be a reasonable compromise approach.

²³ Order Denying Reconsideration, dated August 19, 1999.

warranted. Moreover, given the time that has already passed, and KCPL's discovery lapses, this matter should be revisited.

The Commission possesses broad authority to grant the interim relief requested by GST. On a number of occasions, the Commission has recognized and directly stated that it "...has broad discretion to authorize interim relief and no standards are specified to control the exercise of that jurisdiction." *In Re: Investigation of Rates Charged by Common Carriers Transporting Commodities in Bulk in Dump Trucks*, Case No. T-58-695, 27 Mo. P.S.C. (N.S.) 558, 562 (August 5, 1985); *In Re: Arkansas Power & Light Co.*, Case No. ER-86-4, 27 Mo. P.S.C. (N.S.) 542, 545 (July 12, 1985); *In Re: Martigney Creek Sewer Co.*, Case No. SR-83-166, 25 Mo. P.S.C. (N.S.) (March 4, 1983); *In Re: Empire Dist. Electric Co.*, Case No. ER-81-229, 24 Mo. P.S.C. (N.S.) 376, 379 (June 17, 1981); see also, *State ex rel. Laclede Gas Co. v. Public Service Comm'n*, 535 S.W.2d 561, 567 (Mo. App. 1976). In fact, the Commission has used its broad authority to grant interim relief in a case involving a special contract between KCPL and an unnamed customer. In that case, the Commission noted that the situation warranted a different standard for approval of interim relief. "There is no emergency situation for KCPL, nor will the denial of the request affect KCPL's ability to provide adequate service. The Commission, though, believes that this situation may warrant a different standard for approval of interim relief. KCPL has, in effect, guaranteed that no effect on other rate payers will occur if the permanent tariff sheet is not ultimately approved. If the interim approval is not granted, the customer will pay current rates and would not benefit from the special contract rate for several more months. What effect this will have on the customer is speculative, but with KCPL's guarantee, the Commission finds that it is not reasonable to place the burden of regulatory lag, in

this instance, on the customer.” *In Re: Kansas City Power & Light Co.*, Case No. EO-95-181, 3 Mo. P.S.C. 3rd 396, 397 (April 18, 1995) emphasis added.

In the case now before the Commission, the effect of the failure to grant interim relief from the customer’s perspective is not speculative. GST has and will continue to experience severe financial hardship until the Commission acts. No other customer will be subjected to any risk if the Commission grants GST’s request.

Further, GST is not challenging the Special Contract or asking the Commission to modify that agreement; neither is this a complaint case challenging the utility’s rates or revenue requirement levels in general. Thus, the “regulatory lag” precedent cited in the Commission’s August 19, 1999, Order is not applicable to the dispute presented in this proceeding. Specifically, *State Ex. Rel. Utility Consumers Council of the State of Missouri v. Public Service Commission*, 585 S.W.2d 41 (1979) (*Utility Consumers*) should not dictate Commission action in this proceeding. In *Utility Consumers*, the Missouri Supreme Court determined that the Commission did not have statutory authority to authorize electric utilities to include a fuel adjustment clause in the rates of residential customers. Such clauses affect primarily the timing of recovery of fuel cost variations, which are driven principally by changing fuel prices, by providing for automatic rate pass throughs. In its decision, the Court observed that the purpose of the Public Service Commission law is “to protect the consumer against the natural monopoly of a public utility, as a provider of public necessity.”²⁴ The court held the statute prescribed specific mechanisms for changing rates. Essentially, the Court observed, a utility may file a new rate pursuant to § 393.150, or the Commission may adjust rate levels, upon complaint or its own motion, pursuant

²⁴ *Utilities Consumers, supra*, at 47.

to § 393.390 and § 393.260.²⁵ While inefficient, the Court noted that this system of regulation was designed to protect consumers against exploitation where competition is inherently unavailable or inadequate.²⁶ The Court held that the Commission, however, lacked the authority to approve rate changes through the pass-throughs accomplished by an FAC without the requisite rate hearings required by statute.²⁷ Those circumstances are not applicable here, and the precedent established in *Utility Consumers* is inapposite in this case.

Finally, granting interim relief is not uncommon. *See In Re: Raytown Water Co.*, Case No. WR-94-300, 3 Mo. P.S.C. 3rd 18 (April 29, 1994) (granting an interim tariff increase); *In Re: Middlewest Motorfreight Bureau*, Case No. T-56-443, 27 Mo. P.S.C. (N.S.) 22 (July 24, 1984) (permitting the filing of interim tariffs). The Commission, therefore, has the power and flexibility to grant the relief requested by GST.

²⁵ Utilities Consumer, at 48.

²⁶ *Id.*

²⁷ *Id.* at 50-51.

CONCLUSION

GST urges the Commission to issue the directed findings requested herein, to establish interim relief for GST, to direct KCPL to provide immediately the documents listed on its privilege logs for which a valid claim of privilege has not been established, to direct KCPL to produce a complete listing of all documents within its possession or control concerning the Hawthorn explosion, and such other relief as it deems appropriate.

Respectfully submitted,



Paul S. DeFord Mo. #29509
Kurt U. Schaefer Mo. #45829
LATHROP & GAGE, L.C.
2345 Grand Boulevard
Suite 2800
Kansas City, Missouri 64108
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Attorneys for GST Steel Company

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Attorneys for GST Steel Company

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 22nd day of February, 2000.

Gerald A. Reynolds
KCP&L
1201 Walnut Street
Kansas City, MO 64106

Steven Dottheim
Chief Deputy General Counsel
MO Public Service Commission Staff
P.O. Box 360
Jefferson City, MO 65102

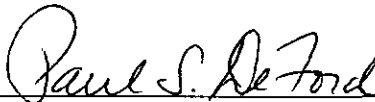
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Attorney

ATTACHMENT A



Gerald A. Reynolds

(816) 556-2138
(816) 556-2787 (Facsimile)

December 27, 1999

VIA OVERNIGHT MAIL AND FACSIMILE (202) 342-0807

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

RE: Case No. EC-99-553

Dear Mr. Brew:

As previously discussed, KCPL is having difficulty locating one document that may be responsive to GST Request No. 7.2. KCPL will continue to search its files for this document. With the possible exception of the "missing" document, KCPL has provided GST with copies with all other documents responsive to GST Request 7.2, or listed these documents in one of KCPL's privilege logs.

Contact me if you have any questions or concerns.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Gerald A. Reynolds", written over a horizontal line.

Gerald A. Reynolds

cc: Karl Zobrist
James M. Fischer

K A N S A S C I T Y P O W E R & L I G H T C O M P A N Y

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ATTACHMENT B

**MISSOURI COMPLAINT
CASE
EC-99-553
REQUEST NO. GST 2.5**

REQUEST DATE: June 24, 1999

QUESTION:

Regarding the Hawthorn Incident, please provide:

- (a) a detailed description of the causes of the Hawthorn Incident;
- (b) a detailed description of why the Hawthorn Plant was not on-line at the time of the incident;
- (c) a maintenance history of the item(s) causing the Hawthorn Incident;
- (d) the maintenance history, log, and any and all work orders relating to the Hawthorn Plant boiler for the period from January 1, 1994 to the present.
- (e) all reports, analyses, reviews or studies of the cause of the Hawthorn Incident including any root cause analysis made by or for the Company;
- (f) all correspondence to and from any federal or state regulatory or safety agency related to the Hawthorn Incident; and
- (g) please identify all documents and communications to or from the Company related to the Hawthorn Incident and please provide copies of the identified documents and communications.

RESPONSE:

(f) Please find the following documents and exhibits attached to this request:

- Letter from Donna Quillin and exhibits to Jim Wood, Sr. Compliance Officer, OSHA, February 26, 1999.
- Letter from Donna Quillin and exhibits to Jim Wood, Sr. Compliance Officer, OSHA, March 11, 1999.
- Letter from Donna Quillin and exhibits to Jim Wood, Sr. Compliance Officer, OSHA, April 16, 1999.
- Letter from Donna Quillin to Jim Wood, OSHA, March 2, 1999, notice of entry by insurance investigators.
- Memo from Doug Weatherman and initial monitoring results, March 2, 1999
- Contractor's complaint to OSHA, 3-1-99
- Memo from Doug Weatherman to Adam Gerson, OSHA, March 19, 1999 monitoring results related to complaint from contractors 3-1-99



April 16, 1999

Mr. James Wood
Compliance Officer
Occupational Safety & Health Administration
6200 Connecticut Ave.
Kansas City, Missouri, 64120

Re: Kansas City Power & Light Company
Hawthorn Generating Station Explosion
February 17, 1999

Dear Sir:

Attached for your information are the following documents:

- Hawthorn Unit 5 Recovery Organization Structure, Rev. 4-4-99 (Exhibit #28)
- Cause Team Summary Report-April 15, 1999 (Exhibit #29)

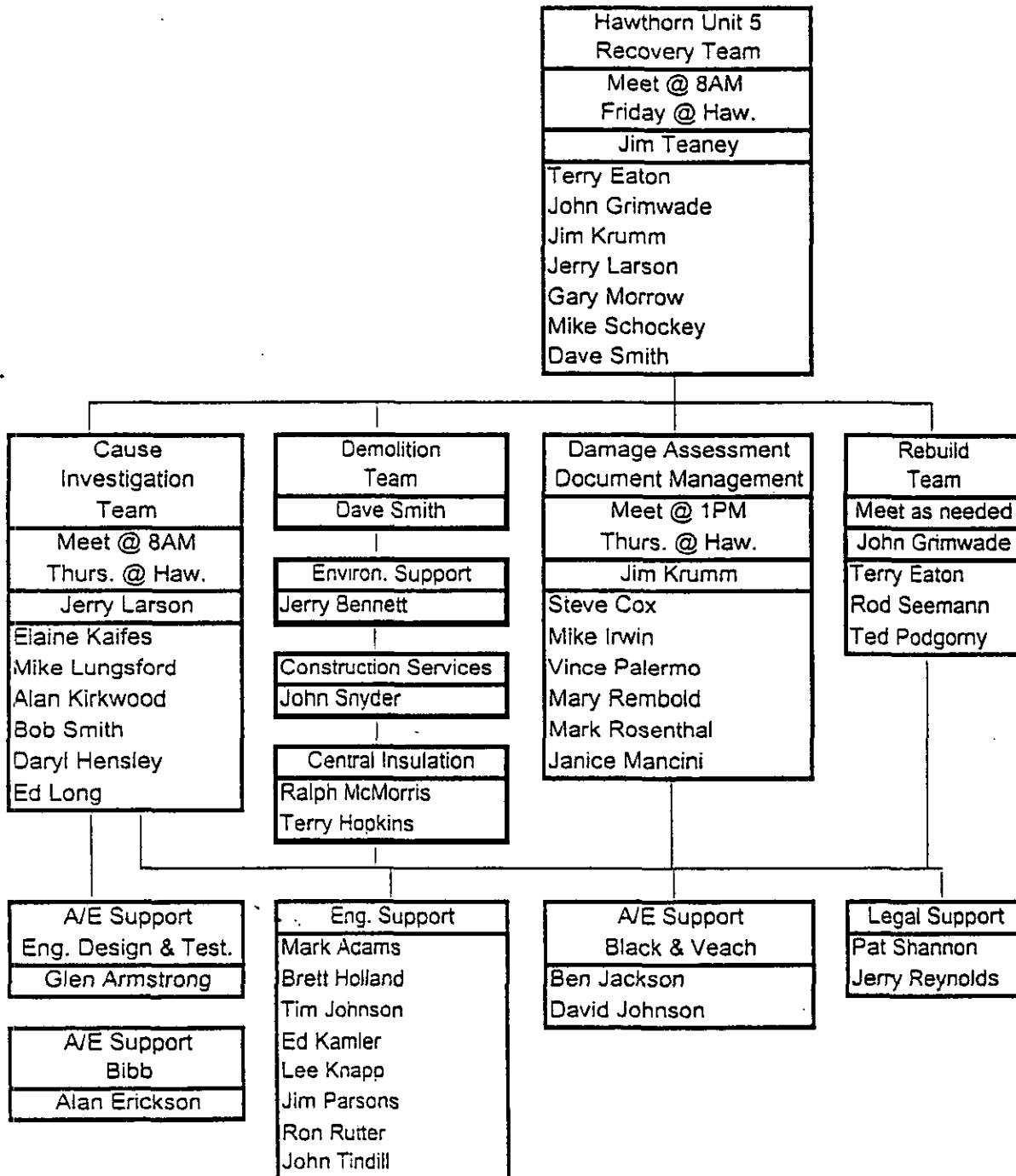
You will note the team is establishing an organized investigation process and gathering evidence.

While no preliminary reports are available, I wanted you to be aware of the process we are following and the time line for completion. Your request for a copy of the final report is still in my open file.

Sincerely,


Donna Quillin

Hawthorn Unit 5 Recovery Organization Structure



April 15, 1999

Cause Team Summary Report

Our goal is to complete a final report on the causes of Hawthorn Unit #5 Boiler Explosion and provide recommendations for consideration that will prevent this or a similar type of incident from occurring in the future.

This summary report will address three areas relating to our team's progress.

- Data-evidence gathering and review
- Team organization and external support
- Activity and milestone schedule

Data-Evidence Gathering & Review:

This area can be categorized into three types: administrative documentation, electronics to include stored information and hardware, and material evidence such as piping, valves, etc. Activities associated with this area are done in cooperation with both Crawford Investigative Services and Taylor Engineering to ensure all critical information is shared equally.

We are still in the data/evidence-gathering phase of this project. The process of gathering administrative documentation has been progressing relatively well. We are still addressing issues relating to access to personnel interviews. Some of these are critical to understanding sequence of events and actions taken prior to the incident. However, there are issues of confidentiality regarding personnel interviews with our legal department that we need to understand and comply with prior to obtaining those documents.

The process of gathering material evidence from the explosion site is dependent on the demolition schedule and subsequent access to material. Both KCPL and Crawford have personnel working jointly to review material as it is accessible and determine its' relevance to the cause origin investigation. As of this writing we are just beginning to gain access to the gas supply valves to the boiler.

Gathering electronically stored information and testing of the hardware will involve a more complicated and lengthy process. A joint meeting of KCPL, Crawford Investigation Services, Taylor Engineering, Bibb & Associates, and Engineering Design and Testing Corporation was held March 18. The purpose of the meeting was to develop a protocol for data backup/retrieval and testing of critical and power sensitive electronic hardware. One reason for having a defined protocol is to ensure the integrity and security of the data. We also believe that once we begin notification to the OEM's involved of our intent to test there will be an increased interest by those parties and possible third parties in the procedures employed. The interest may well be from both a legal liability and technical perspective. The protocol will be periodically reviewed and changed by joint agreement as we proceed if necessary. There are currently seven

OEM's that will be either notified of intent to test or asked to be directly involved in some part of the process.

The following protocol was developed.

Step #1: KCPL with assistance from Bibb & Assoc. will request quotes from Allen-Bradley (Controls), Ronan (Alarms), CSI (Data Acq. Sys) and Compaq (DAS Hardware) for performing data backup/retrieval procedures and monitoring or supervision of those procedures. Quotes were requested by April 12.

Step #2: Bibb & Assoc. will provide KCPL with a testing and backup-retrieval procedure for the Burner Management system.

Step #3 Additionally, Forney and Combustion Engineering (Controls) will be notified prior to testing and data retrieval regarding the Burner Management System because it utilizes their software.

Step #4 Joint reviews and agreement by KCPL, Crawford, and Taylor will be conducted on each of the procedures provided before P.O.'s will be issued to proceed.

It is anticipated that these steps will take at least several months to complete before the information received can be made available for completing the cause and loss investigation. Bibb & Assoc. role in this phase is as a consultant to KCPL. They have been acceptable to both Crawford and Taylor to date. We anticipate various changes being requested to the procedures and other party roles during this process.

KCPL Internal Cause & Loss Team Organization and Support:

The seven-member team was formed and met for the first time on February 24. We organized ourselves into sub-teams to address the key elements needing investigation. Those areas are; Fuel Instruments and Controls, and Sanitary System. We meet as a team formally once each week for four hours to review progress, Cause & Effect Diagramming, and future plans. We are initially working independently as sub-teams through the remainder of the week. An Engineering Design & Testing Corp. Representative (Glen Armstrong/Phil Wright) attends our weekly meeting as support in the investigation. They have been and will continue to be jointly involved with our team in various other aspects of our investigation.

Because this type of investigation is new and different to what we are accustomed to we researched what root cause analysis training was available. Based on Human Resource recommendations we utilized Apollo Associates for a two day training course on the detailed "Cause and Effect" Diagramming necessary in determining the causes involved and the preventative/corrective measures we will recommend. As evidence-data become available we are methodically building a Cause & Effect Diagram of the

ATTACHMENT C

PRIVILEGE LOG
(February 2, 2000)

	Date	Author(s)	Recipient(s)	Cc:	Re:	# Pages	Privilege Claim	GST Request
1.	02/16/99	David Tyrell	Pat Shannon		Initial interview of plant personnel	2	AC/WP	2.5(g)
2.	02/16/99	Pat Shannon			Notes of interviews of plant personnel	6	AC/WP	2.5(g)
3.	02/16/99	Ronald Fischbach	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
4.	02/17/99	Michael Vogel	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
5.	02/17/99	Zachary Noland	Pat Shannon		Incident Report of plant personnel	4	AC/WP	2.5(g)
6.	02/17/99	Tony Russaw	Pat Shannon		Statement of plant personnel	2	AC/WP	2.5(g)
7.	02/17/99	Doug Weatherman	Gerald Reynolds Pat Shannon		Letter regarding PCM analysis	3	AC/WP	2.5(g)
8.	02/18/99	Alan Kirkwood	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
9.	02/18/99	Ray Boylan	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
10.	02/18/99	Johnny Pender	Pat Shannon		Incident Report of plant personnel	1	AC/WP	2.5(g)
11.	02/18/99	Pat Shannon			Notes of interviews of plant personnel	12	AC	2.5(g)
12.	03/11/99	Jim Martin	Pat Shannon		Statement of plant personnel	2	AC/WP	2.5(g)
13.	02/18/99	David Hensley	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
14.	02/18/99	Richard Hickman	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
15.	02/18/99	John Jost	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
16.	02/18/99	John Hernandez	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
17.	02/18/99	Peter Kelley	Pat Shannon	T. Pfister J. Prothe	Statement of Fischbach Power Services personnel	4	AC/WP	2.5(g)

	Date	Author(s)	Recipient(s)	Cc:	Re:	# Pages	Privilege Claim	GST Request
18.	02/18/99	R. Mitchell	Pat Shannon		Statement of plant personnel	2	AC/WP	2.5(g)
19.	02/18/99	Melford McLin	Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
20.	02/18/99	Tony Warden	Pat Shannon		E-mail and Control Center log sheets	10	AC/WP	2.5(g)
21.	02/19/99	Edward Long	Pat Shannon		Statement of plant personnel	2	AC/WP	2.5(g)
22.	02/19/99	Robert Watts	Pat Shannon		Statement of plant personnel	2	AC/WP	2.5(g)
23.	02/21/99	Steve Cox	Bob Smith Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
24.	02/22/99	Don Stack	Bob Smith		Statement of plant personnel	1	AC/WP	2.5(g)
25.	02/22/99	Mike Lunsford	Bob Smith Pat Shannon		Statement of plant personnel	1	AC/WP	2.5(g)
26.	02/23/99	Mike Irwin	Robert Smith		Statement of plant personnel	1	AC/WP	2.5(g)
27.	02/24/99	Bill Hamm	Pat Shannon Crawford		Statement of plant personnel	19	AC/WP-Insured/Insurer	2.5(g), 7.2
28.	02/23/99	Rich Utterback	Pat Shannon Crawford		Statement of plant personnel	14	AC/WP-Insured/Insurer	2.5(g), 7.2
29.	02/23/99	Don Stack	Pat Shannon Crawford		Statement of plant personnel	13	AC/WP-Insured/Insurer	2.5(g), 7.2
30.	02/23/99	Jim Martin	Pat Shannon Crawford		Statement of plant personnel	23	AC/WP-Insured/Insurer	2.5(g), 7.2
31.	02/24/99	Zach Noland	Pat Shannon Crawford		Statement of plant personnel	34	AC/WP-Insured/Insurer	2.5(g), 7.2
32.	02/25/99	Dave Tyrrell	Pat Shannon Crawford		Statement of plant personnel	16	AC/WP-Insured/Insurer	2.5(g), 7.2
33.	02/25/99	Anthony Russaw	Pat Shannon Crawford		Statement of plant personnel	9	AC/WP-Insured/Insurer	2.5(g), 7.2

7 I/E

	Date	Author(s)	Recipient(s)	Cc:	Re:	# Pages	Privilege Claim	GST Request
34.	02/25/99	Ed Long	Pat Shannon Crawford		Statement of plant personnel	28	AC/WP-Insured/Insurer	2.5(g), 7.2
35.	02/25/99	Roland Mitchell	Pat Shannon Crawford		Statement of plant personnel	13	AC/WP-Insured/Insurer	2.5(g), 7.2
36.	03/02/99	Michael Lunsford	Pat Shannon Crawford		Statement of plant personnel	17	AC/WP-Insured/Insurer	2.5(g), 7.2
37.	03/02/99	Mike Vogel	Pat Shannon Crawford		Statement of plant personnel	4	AC/WP-Insured/Insurer	2.5(g), 7.2
38.	03/02/99	Mike Irwin	Pat Shannon Crawford		Statement of plant personnel	10	AC/WP-Insured/Insurer	2.5(g), 7.2
39.	03/02/99	Richard Hickman	Pat Shannon Crawford		Statement of plant personnel	3	AC/WP-Insured/Insurer	2.5(g), 7.2
40.	03/02/99	Lance Gockel	Pat Shannon Crawford		Statement of plant personnel	11	AC/WP-Insured/Insurer	2.5(g), 7.2
41.	03/02/99	John Foster	Pat Shannon Crawford		Statement of plant personnel	8	AC/WP-Insured/Insurer	2.5(g), 7.2
42.	03/02/99	Steve Cox	Pat Shannon Crawford		Statement of plant personnel	18	AC/WP-Insured/Insurer	2.5(g), 7.2
43.	03/03/99	Mark Preston	Pat Shannon Crawford		Statement of plant personnel	10	AC/WP-Insured/Insurer	2.5(g), 7.2
44.	03/03/99	Ken Mynatt	Pat Shannon Crawford		Statement of plant personnel	10	AC/WP-Insured/Insurer	2.5(g), 7.2
45.	03/03/99	Donald DeBacker	Pat Shannon Crawford		Statement of plant personnel	12	AC/WP-Insured/Insurer	2.5(g), 7.2
46.	03/03/99	Jim Bailey	Pat Shannon Crawford		Statement of plant personnel	18	AC/WP-Insured/Insurer	2.5(g), 7.2
47.	03/05/99	Clint Harris	Pat Shannon		Statement of plant	1	AC/WP	2.5(g)

	Date	Author(s)	Recipient(s)	Cc:	Re:	# Pages	Privilege Claim	GST Request
					personnel			
48.	03/05/99	Dave Woodfine	Pat Shannon Crawford		Statement of plant personnel	7	AC/WP-Insured/Insurer	2.5(g), 7.2
49.	03/05/99	Roger Parrett	Pat Shannon Crawford		Statement of plant personnel	14	AC/WP-Insured/Insurer	2.5(g), 7.2
50.	03/05/99	Johnny Pender	Pat Shannon Crawford		Statement of plant personnel	22	AC/WP-Insured/Insurer	2.5(g), 7.2
51.	03/05/99	Bob Watts	Pat Shannon Crawford		Statement of plant personnel	11	AC/WP-Insured/Insurer	2.5(g), 7.2
52.	03/05/99	Floyd Harris	Pat Shannon Crawford		Statement of plant personnel	8	AC/WP-Insured/Insurer	2.5(g), 7.2
53.	03/08/99	John Smith	Pat Shannon Crawford		Statement of plant personnel	13	AC/WP-Insured/Insurer	2.5(g), 7.2
54.	03/08/99	Gene Pokaluk	Pat Shannon Crawford		Statement of plant personnel	10	AC/WP-Insured/Insurer	2.5(g), 7.2
55.	03/08/99	Elaine Kaifes	Pat Shannon Crawford		Statement of plant personnel	23	AC/WP-Insured/Insurer	2.5(g), 7.2
56.	03/08/99	Ron Fischbach	Pat Shannon Crawford		Statement of plant personnel	10	AC/WP-Insured/Insurer	2.5(g), 7.2
57.	03/15/99	Linda Riley	Pat Shannon Crawford		Statement of plant personnel	7	AC/WP-Insured/Insurer	2.5(g), 7.2
58.	03/15/99	Clint Harris	Pat Shannon Crawford		Statement of plant personnel	16	AC/WP-Insured/Insurer	2.5(g), 7.2
59.	03/15/99	Dave Sousley	Pat Shannon Crawford		Statement of plant personnel	6	AC/WP-Insured/Insurer	2.5(g), 7.2
60.	03/15/99	Carmen Brooks	Pat Shannon Crawford		Statement of plant personnel	6	AC/WP-Insured/Insurer	2.5(g), 7.2

	Date	Author(s)	Recipient(s)	Cc:	Re:	# Pages	Privilege Claim	GST Request
61.	03/16/99	Lee Knapp	Pat Shannon Crawford		Statement of plant personnel	5	AC/WP-Insured/Insurer	2.5(g), 7.2
62.	03/19/99	Danny Gravatt	Pat Shannon Crawford		Statement of Reddi-Root'r personnel	7	AC/WP-Insured/Insurer	2.5(g), 7.2
63.	03/19/99	David Cowart	Pat Shannon Crawford		Statement of Reddi-Root'r personnel	12	AC/WP-Insured/Insurer	2.5(g), 7.2
64.	04/08/99	John Phillips	Pat Shannon Crawford		Statement of plant personnel	6	AC/WP-Insured/Insurer	2.5(g), 7.2
65.	04/08/99	Pat Shannon			Handwritten note with attachments	9	AC/WP	2.5(g)
66.	04/08/99	Darrell Hensley	Pat Shannon Crawford		Statement of plant personnel with attachments	67	AC/WP-Insured/Insurer	2.5(g), 7.2
67.		Melford McLin	Pat Shannon Crawford		Statement of plant personnel	32	AC/WP-Insured/Insurer	2.5(g), 7.2
68.		Alan Kirkwood	Pat Shannon Crawford		Statement of plant personnel	15	AC/WP-Insured/Insurer	2.5(g), 7.2
69.		John Hernandez	Pat Shannon Crawford		Statement of plant personnel	3	AC/WP-Insured/Insurer	2.5(g), 7.2
70.		Ray Boylan	Pat Shannon Crawford		Statement of plant personnel	20	AC/WP-Insured/Insurer	2.5(g), 7.2

ATTACHMENT D



WRITER'S DIRECT DIAL:

☎ (816) 556-2263

FAX: (816) 556-2787

November 9, 1999

Sent Via Fax and U.S. Mail

Mr. James W. Brew
Brickfield, Burchette & Ritts, P.C.
1025 Thomas Jefferson Street, N.W.
Eighth Floor, West Tower
Washington, D.C. 20007

Re: *GST Steel v. KCPL*

Dear Mr. Brew:

Attached is KCPL's Privilege Log dated November 9, 1999, relating to the above-referenced case. Please contact Gerald Reynolds if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Carol Sivils".

Carol Sivils
Legal Assistant

Attachment

K A N S A S C I T Y P O W E R & L I G H T C O M P A N Y

1201 WALNUT • P.O. BOX 418679 • KANSAS CITY, MO 64141-9679 • 816-556-2200 • WWW.KCPL.COM

PRIVILEGE LOG

(November 9, 1999)

	Date	Author(s)	Recipient(s)	cc:	Re:	# Pages	Privilege Claim	GST Request
1.	02/17/99	B. Ranson	Pat Shannon		Initial interview of plant personnel	5	AC/WP/ Hawthorn Invest.	2.5
2.	02/22/99	Peter Taylor	E. Taylor Jim Teaney		Letter regarding scope of damage	3	WP/ Hawthorn Invest.	2.5, 2.7
3.	02/22/99	Ben Wilkerson	Gary Morrow		Letter regarding investigation of loss	1	WP/ Insured/ Insurer/ Hawthorn Invest.	2.5, 2.7, 7.2
4.	02/22/99	Pat Shannon			Notes of interviews of plant personnel	11	WP/ Hawthorn Invest.	2.5
5.	02/24/99	Pat Shannon			Notes of interviews of plant personnel	6	WP	2.5
6.	02/24/99	Bob Smith		F. Branca J. Teaney G. Morrow A. Bielsker P. Wright	Minutes of Internal Cause Investigation Team meeting	4	WP/ Hawthorn Invest.	2.5, 7.3
7.	03/02/99	Ben Wilkerson	Donna Quillan	Dave Smith Gary Morrow	Letter regarding initial investigative efforts	2	Insured/ Insurer Hawthorn Invest.	2.5, 2.7, 7.2
8.	03/02/99	Pat Shannon			Notes of interviews of plant personnel	13	WP/ Hawthorn Invest.	2.5
9.	03/03/99	Pat Shannon			Notes of interviews of plant personnel	8	WP/ Hawthorn Invest.	2.5
10.	03/05/99	Bob Smith		J. Teaney G. Morrow T. Johnson P. Wright	Minutes of Internal Cause Investigation Team meeting	7	WP/ Hawthorn Invest.	7.3

	Date	Author(s)	Recipient(s)	cc:	Re:	# Pages	Privilege Claim	GST Request
				L. Knapp				
11.	03/08/99	Pat Shannon			Notes of interviews of plant personnel	12	WP	2.5
12.	03/11/99				Minutes of Internal Cause Investigation Team meeting	2	WP/ Hawthorn Invest.	2.5, 7.3
13.	03/15/99	Pat Shannon			Notes of meeting re sewer system	1	WP/ Hawthorn Invest.	2.5
14.	03/15/99	Pat Shannon			Notes of interviews of plant personnel	13	WP/ Hawthorn Invest.	2.5
15.	03/16/99	Pat Shannon			Notes of interview of Lee Knapp and attachment	3	WP/ Hawthorn Invest.	2.5
16.	03/18/99	M. Lunsford			Minutes of Internal Cause Investigation Team meeting	7	WP/ Hawthorn Invest.	2.5, 7.3
17.	03/25/99				Minutes of Internal Cause Investigation Team meeting	4	WP/ Hawthorn Invest.	2.5, 7.3
18.	04/01/99				Minutes of Internal Cause Investigation Team meeting	4	WP/ Hawthorn Invest.	2.5, 7.3
19.	04/08/99				Minutes of Internal Cause Investigation Team meeting	3	WP/ Hawthorn Invest.	2.5, 7.3
20.	04/15/99	J. A. Larson			Cause Team Summary Report	3	WP/ Hawthorn Invest.	2.5, 7.3
21.	04/22/99				Minutes of Internal Cause Investigation Team meeting	4	WP/ Hawthorn Invest.	2.5, 7.3
22.	04/29/99				Minutes of Internal Cause Investigation Team meeting	3	WP/ Hawthorn Invest.	2.5, 7.3
23.	05/04/99	Kevin Guge	Pat Shannon		Letter regarding background information on employees	1	Insured/ Insurer Hawthorn invest.	2.5, 2.7, 7.2

	Date	Author(s)	Recipient(s)	cc:	Re:	# Pages	Privilege Claim	GST Request
24.	05/17/99	James Carroll	Ben Wilkerson	Bryan Maphet	Letter regarding status of documents needed for investigation	2	Insured/ Insurer	2.5, 2.7, 7.2
25.	05/22/99	Germane Engineering			Proposed protocol for extracting computer data with Pat Shannon's notes attached	4	WP/ Hawthorn Invest.	2.5, 2.7
26.	06/02/99	Geoff Germane	Myles Parker		Fax cover sheet regarding modified proposal for data extraction with attached letter and proposed protocol	6	WP/ Hawthorn Invest.	2.5
27.	06/17/99	Mike Schockey	Pat Shannon		E-mail regarding A/E firm for investigation	1	AC/WP Hawthorn Invest. Insured/ Insurer	2.5
28.	06/23/99	Pat Shannon	Larry Dolci		Fax cover sheet with handwritten note regarding burner units with attached bid letter	3	AC/WP	2.5
29.	06/25/99	Larry Dolci	Jeanie Latz		Memorandum regarding security	3	AC/WP Hawthorn Invest.	2.5
30.	07/16/99	Ben Wilkerson	Pat Shannon	James Carroll Bryan Maphet	Letter regarding burner units with attachments	4	Insured/ Insurer WP Hawthorn Invest.	2.5, 2.7, 7.2
31.	07/21/99	Pat Shannon			Handwritten notes	4	WP Hawthorn Invest.	2.5
32.	07/23/99	Lee Knapp	Pat Shannon		E-mail regarding A-B system	1	AC/WP	2.5
33.	07/23/99	Jerry Larson	Pat Shannon		Fax cover sheet with attachment regarding investigation	2	AC/WP Hawthorn Invest.	2.5

	Date	Author(s)	Recipient(s)	cc:	Re:	# Pages	Privilege Claim	GST Request
34.	07/28/99	Pat Shannon			Notes of interviews of plant personnel	3	WP Hawthorn Invest.	2.5
35.	08/15/99	Pat Shannon			Notes and attachment regarding computer system	3	WP/ Hawthorn Invest.	2.5
36.	08/12/99	Jerry Larson	Pat Shannon		Outline for subrogation meeting	1	AC/WP Hawthorn Invest.	2.5
37.	08/12/99	Jim Warren	Pat Shannon		Meeting agenda	1	Insured/ Insurer Hawthorn Invest.	2.5
38.	08/20/99	Donna Quillan	Pat Shannon	Bob Smith Jerry Larson Bruce Ransom	E-mail regarding OSHA findings and handwritten notes from Shannon to Gerald Reynolds	1	AC/WP	2.5
39.	08/20/99	Pat Shannon	Neil Roadman		E-mail regarding records retention	1	AC/WP Hawthorn Invest.	2.5
40.	08/24/99	Germane Engineering			Proposed protocol for extracting RONAN computer data	3	WP Hawthorn Invest.	2.5, 2.7
41.	08/24/99	Germane Engineering			Proposed protocol for extracting data from Allen Bradley Control System	4	WP Hawthorn Invest.	2.5, 2.7
42.	08/24/99	Gary Morrow	Jeanie Latz Andrea Bielsker Pat Shannon	Jerry Larson	Letter regarding subrogation	2	Hawthorn Invest.	2.5