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June 18, 1999

FILED

JUN 18 1999

Missouri Public
Service Commission

VIA HAND DELIVERY

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Room 530
Jefferson City Missouri 65101

Re: In the Matter of Hawthorn Generating Station Union No. 5 and the
Adequacy of Service Provided by the Kansas City Power & Light
Company; Case No. ~~DO~~-99-553
EC

Dear Secretary Roberts:

Enclosed for filing in the above-referenced case, please find:

- 1) An original and fourteen (14) copies of the **public version** GST Steel Company's Motion for Interim Relief and Expedited Hearing; and
- 2) Eight (8) separate sealed envelopes containing the **Highly Confidential version** of GST Steel Company's Motion for Interim Relief and Expedited Hearing.

The above are being filed pursuant to and under the Protective Order previously granted by the Commission.

Thank you in advance for your attention to this matter.

Sincerely,

LATHROP & GAGE L.C.

By:

Kurt U. Schaefer

Enclosures
cc: To all parties of record

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Missouri Public
Service Commission

Case No. EC-99-553

In support of this Motion, GST states as follows:

I. Background

1. In February 1999, following on the heels a series of electric service disruptions to GST's steelmaking facilities in Kansas City in 1998 caused by various KCP&L generation and service delivery equipment failures, a boiler explosion virtually destroyed Hawthorn 5. The company immediately shut the unit down and it is expected to remain out of service for the foreseeable future. Rated at 476 megawatts of net capability, Hawthorn 5 was KCP&L's largest and fourth lowest cost base-load generating unit that typically produced approximately 2 million megawatt hours of electricity each year.

2. Since the explosion and shutdown, KCP&L has replaced Hawthorn 5's low cost production with power generated or purchased from more expensive resources. In fact, without Hawthorn 5's capacity, KCP&L is currently capacity deficient.¹ To replace Hawthorne 5's production, KCP&L has stated that it will employ a new 142 MW gas-fired combustion turbine (Hawthorn 6) that has not entered commercial service yet, and significant purchases in the short-term interchange markets.² Since Hawthorn 6 was a planned unit addition well before the boiler explosion, KCP&L actually has taken no steps to replace Hawthorn 5 other than to rely on short-term market purchases.

¹ See Five Year Projection of Load and Capability Data, Exhibit WRI-94, to testimony of Frank L. Branca, on behalf of the Applicants in the KCP&L/Western Resources merger, FERC Docket No. EC97-56, filed June 17, 1999.

² Testimony of Mr. Branca in FERC Docket No. EC97-56, Exhibit No. WRI-92, page 3, filed June 17, 1999.

3. Recent developments in wholesale electric markets have led to levels of price volatility and uncertainty in spot energy markets not experienced in modern times. Extreme price spikes, at times exceeding \$5,000/MWh in the Midwest during the summer of 1998, caused utilities and marketers forced to purchase power under such conditions to incur substantial losses. Manufacturing customers of utilities able to pass such costs through to consumers experienced wide spread service interruptions and price induced curtailments. Thus, the cost of replacing Hawthorn 5's production to KCP&L is significant during normal system load conditions, and that cost is dramatically higher as loads approach the annual system peaks in the summer.

II. Procedural History

4. GST receives all of its electric requirements from KCP&L pursuant to a Restated and Amended Power Supply Agreement, dated August 12, 1994, and approved by the Commission **

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5. KCP&L has maintained publicly that it will not seek rate relief from its customers concerning replacement power costs it incurs that are incidental to the Hawthorn 5 explosion and shutdown with the singular exception of its charges for service to GST. With respect to GST, KCP&L maintained that under the approved contract GST assumed the risk that boiler explosions, or other events either within or beyond the control of the utility's management and employees, might occur and **

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6. On May 11, 1999, GST filed a Petition for an Investigation as to the Adequacy of Service Provided by Kansas City Power & Light Company and Request for Immediate Relief (the "Petition"). The Petition and its attachments explained, *inter alia*, the deleterious effect on GST's manufacturing process caused by KCP&L's poor service quality and the severe threat to the mill's economic viability created by the increase in its electricity rates caused by the Hawthorn 5 shutdown. GST requested a full Commission inquiry into the Hawthorn 5 explosion and KCP&L's management practices.

7. GST explained that KCP&L's recovery of the additional replacement power costs through its special contract was causing irreparable harm to GST at a time when GST, and the U.S. domestic steel industry in general, were facing severe competitive pressure. GST requested immediate relief in the form of a Commission order prohibiting KCP&L from collecting from GST or similarly situated customers any replacement power and related costs that are incidental to the Hawthorn 5 shutdown.

8. By order dated and effective June 8, 1999, the Commission acknowledged "the gravity of the harm faced by GST" and its roughly 800 employees, but concluded that the circumstances presented did not meet the statutory requirements for granting emergency relief to GST without prior notice and a hearing. *Order Denying Motion For Immediate Relief, Directing Expedited Response to Complaint*, at page 2, referencing RSMo §386.310.1. The Commission determined (1) that a separate docket would be established to investigate the Hawthorn 5 explosion, and (2) that claims specific to GST in this docket should be heard on an expedited basis. The Commission directed KCP&L to file an expedited response to GST's Petition, scheduled an immediate prehearing

conference, and directed the parties to prepare a joint proposed procedural schedule by June 18, 1999.

9. Pursuant to that Order, the parties have filed a joint proposed procedural schedule and non-binding statement of issues for this docket.

III. GST Requires Immediate Commission Action to Prevent Undue Discrimination and Irreparable Economic Harm

10. The gravity of this situation for GST has not abated in any sense since the filing of its Petition on May 11, 1999. GST faces the immediate prospect of financially ruinous electricity prices this summer if KCP&L replaces Hawthorn 5's production with short term or spot energy power purchases as its incremental source of supply. The joint proposed schedule referenced above will provide the opportunity for a full and complete airing of KCP&L's practices and management, but the economic operating penalties to GST in the interim, meaning the balance of 1999, in the form of prices inflated by excessive replacement power costs, likely will be devastating.

11. KCP&L has stated that it will not ask its tariff-service customers to bear any of the replacement power costs associated with the Hawthorn 5 shutdown. This is not a magnanimous gesture. Like most utilities preparing for a more competitive environment, KCP&L has been streamlining operations and reducing costs for some time.³ With merger concerns a priority and a recent rate settlement in 1998, a new rate case or across the board tariff charges just are not in the cards, particularly with the company reporting an earned return on common equity of 13.5% for 1998.

³ The utility's failure to invest in new generating capacity and steady cut backs in construction and maintenance expenditures, referenced in GST's Petition, illustrate starkly the risks to utility rate payers of utility management that is more preoccupied with balance sheet and merger concerns than its public service obligations.

12. KCP&L has adopted a completely different position with respect to GST. It has maintained that GST must pay KCP&L's **

,** regardless of how the utility manages its resources. The Commission's approval of the ** ** contained in the GST/KCP&L contract does not give KCP&L license to charge GST prices that are not just and reasonable or that are unduly discriminatory or preferential. **

.** In docketing the GST Petition, the Commission has determined correctly that KCP&L's **

** is subject to its scrutiny.

13. While the Commission is evaluating the Hawthorn 5 explosion and its ramifications, GST should be kept in a position comparable to other rate payers. KCP&L owes all rate payers, regardless of their rate classification or terms of service, the same duty to operate its power plants and electric system in a safe, reliable and economically efficient manner. The requirements of safe and adequate service at just and reasonable prices specified in RSMo §393.130.1 does not distinguish between tariffed and special contract customers.

14. KCP&L has acknowledged that it possesses insurance coverage that is applicable to the Hawthorn 5 explosion,⁴ which includes \$5.0 million for replacement power costs. Such insurance proceeds should be credited to GST's bills to the extent that increased replacement power costs have been, and will continue to be, reflected in KCP&L's calculation of its hourly incremental costs. If they are not, other rate payers and KCP&L shareholders would be indifferent to the increased replacement power costs,

⁴ See, KCP&L news release, dated March 2, 1999, KCP&L Estimates Financial Impact of Plant Explosion; Plans for Future.

while GST alone would bear those costs. Such a result would be unfair and openly discriminatory, particularly since rate payers, including GST, have paid the premiums for such coverage.

15. GST thus requests an expedited hearing to address the following issues:

- the nature of the pertinent insurance coverage maintained by KCP&L;
- applying the insurance proceeds to protect GST and any similarly situated KCP&L customers against the effect of Hawthorn 5-related increased purchased power and related expenses; and
- requiring KCP&L to **

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16. Immediate Commission action is required on these questions to protect GST from substantial and irreparable economic harm.

IV. These Questions Should Be Addressed by the Commission Rather Than Any Other Forum

17. The GST/KCP&L contract provides for resolution of disputes arising from the Agreement through arbitration. That vehicle is not appropriate for the basic rate making matters raised in this docket and in this Motion. GST does not propose to ask a commercial arbitration panel to consider rate making concerns that should be addressed, first and last, by the Commission. GST, however, is amenable to participating in dispute resolution mechanisms that may be proposed by the Commission and its staff as an alternative to traditionally litigated proceedings before the Commission.

V. Proposed Expedited Schedule for the Limited Issues Described in This Motion

GST believes that the limited issues described in this Motion can be addressed in a straight forward fashion following discovery concerning a relatively few factual points. Thus, GST proposes the following expedited schedule for hearing on these limited matters.

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|----|---|------------------------------|
| 1. | Discovery Requests served on KCP&L | no later than 6/25/99 |
| | Time To Object | 5 days |
| 2. | KCP&L Responses delivered to Parties | 10 days
following receipt |
| 3. | All Parties file outlines of Testimony
To Be Given | 7/9/99 |
| 4. | Oral Testimony and Cross Examination | 7/12/99 |
| 5. | Parties file Statements of Position | 7/15/99 |

WHEREFORE, for the reasons set forth above, GST urges the Commission to conduct an expedited hearing, grant GST's request for interim relief, and to grant such other relief as may be appropriate to ensure that GST is charged rates that are just and reasonable and not unduly discriminatory.

Respectfully submitted,



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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 18 day of June, 1999.

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