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July 6, 1999

VIA UPS

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Truman State Office Building, Room 530
301 W. High Street
Jefferson City, Missouri 65101

FILED
JUL 7 1999
Missouri Public
Service Commission

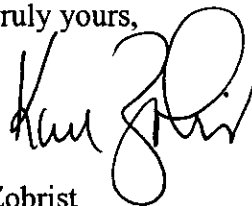
Re: GST Steel Co. v. Kansas City Power & Light Co.
Case No.: EC-99-553

Dear Mr. Roberts:

Enclosed for filing in this case are an original and fourteen copies of Respondent's Kansas City Power & Light Co.'s Reply to Staff's Response to Complainant GST Steel's Motion for Interim Relief.

This filing has been mailed and telecopied this date to all counsel of record. Thank you for your attention.

Very truly yours,



Karl Zobrist

KZ/sm
Enclosures

cc: Counsel of Record

KC-657657-1

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

JUL 7 1999

Missouri Public
Service Commission

GST STEEL CO.,

Complainant,

v.

KANSAS CITY POWER & LIGHT CO.,

Respondent.

Case No. EC-99-553

**RESPONDENT KCPL'S REPLY TO STAFF'S RESPONSE
TO COMPLAINANT GST STEEL'S MOTION FOR INTERIM RELIEF**

Respondent Kansas City Power & Light Co. ("KCPL") states the following in reply to Staff's Response to Complainant GST Steel Co.'s Motion for Interim Relief and Expedited Hearings:

Staff correctly observed that the Motion of GST Steel Co. ("GST") for Interim Relief provided no details on the unprecedented and radical procedures that it proposed. Staff charitably described GST's plan as "unrealistic." Although it would be more accurate to say that GST's one-sided, unjustified proposal is a prescription for denial of due process, KCPL agrees with Staff's appraisal.

However, KCPL opposes Staff's "three suggestions" at pages 3-4 of its Response. In an attempt to provide an alternative to GST's proposal, Staff posits three extra-contractual remedies that are unavailable as a matter of law. In Suggestion 1, Staff proposes a new pricing formula, with a floor and cap, to replace the price provisions of the Special Contract. Suggestion 2 articulates a hypothetical benchmark which assumes that Hawthorn 5 is in service and extends certain price protection to GST similarly not contained in the Special Contract, with a follow-on

accounting. Suggestion 3 offers GST prices for July-September 1999 that would match the prices it paid for July-September 1998, with certain accounting adjustments.

KCPL understands that these Suggestions were offered by Staff in the hope of providing a basis for discussion and compromise. Yet, the Commission must recognize that, in and of themselves, the Suggestions set forth proposals that are unavailable to the Commission as a matter of law and exceed this body's statutory authority under Missouri law.

Early cases established that the Public Service Commission possesses the power to ascertain and set reasonable rates for utility services. State ex rel. City of Sedalia v. Public Service Comm'n, 204 S.W. 497, 498 (Mo. 1918). The Commission's prerogative emanates from the State's police power, and the legislature is permitted to delegate the task of fixing reasonable rates to the Commission. Id.

While the Commission may regulate the rates of utilities, its power to alter contract rates through the exercise of its police power is limited to situations where changing the rates is necessary "to protect or promote the general or public welfare. . . ." Kansas City Power & Light Co. v. Midland Realty Co., 93 S.W.2d 954, 959 (Mo. 1936). In upholding the power of the Commission to set tariffs and rates that deviated from a contract rate, the Missouri Supreme Court held that a contract rate lower than the later-established tariff rate could not be maintained and was "against the public good." Id. at 958. The Court held that the Commission's power to fix rates was not affected by private contracts, noting that the Commission had "neither the power to construe contracts, nor to enforce them." Id. at 959, quoting State ex rel. Washington Univ. v. Public Service Comm'n, 272 S.W. 971, 972 (Mo. 1925). The Missouri Supreme Court in Midland Realty also relied upon the decision of the United States Supreme Court in Arkansas Natural Gas Co. v. Arkansas R.R. Comm'n, 261 U.S. 379, 382 (1923). Recognizing the power

of the state to regulate public utilities and fix rates, notwithstanding its effect on private contracts, the United States Supreme Court stated: "There is, quite clearly, no principle which imposes an obligation to [modify or abrogate a private contract] merely to relieve a contracting party from the burdens of an improvident undertaking." Id. Accord, Kansas City Power & Light Co. v. Midland Realty, 93 S.W.2d at 959.

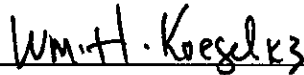
These principles have continued throughout this century. In Katz Drug Co. v. Kansas City Power & Light Co., 303 S.W.2d 672, 679 (Mo. App. 1957), the Missouri Court of Appeals declared that the Public Service Commission, as an administrative body and not a court, had no power to exercise or perform a judicial function, or to "promulgate an order requiring a pecuniary reparation or a refund." Similarly, it noted that the Commission "has no power to declare or enforce any principle of law or equity," "cannot determine damages or award pecuniary relief," and "has neither the power to construe contracts nor to enforce them." Accord, Gaines v. Gibbs, 709 S.W.2d 541, 543 (Mo. App. 1996) ("Public Service Commission ... has no power to construe or enforce contracts").

These principles apply especially in instances where a sophisticated business applies for relief from a contract that it now views as improvident. In Kansas City Power & Light Co. v. Midland Realty Co., 93 S.W.2d 954, 959 (Mo. 1936), the Missouri Supreme Court expressly upheld the Commission's decision because it had not intervened to assist a party complaining about the terms of its deal. The Court, once again relying upon the United States Supreme Court decision in the Arkansas Natural Gas case, declared that the power to fix rates "is not an independent legislative function to vary or set aside such contracts, however unwise and unprofitable they may be." Id.

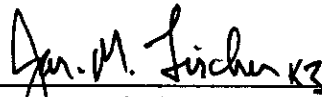
These concepts have been followed without deviation at both the federal level and by other states. See Federal Power Comm'n v. Sierra Pacific Power Co., 350 U.S. 348, 76 S. Ct. 368, 372 (1956); In re Shenango Valley Water Co., 1994 WL 843011 (Pa. P.U.C. 1994) at 14, 26 ("the [Pennsylvania Public Utility] Commission, therefore, cannot revise the agreement negotiated between [the parties] just because one of the parties no longer likes the bargain.")

Therefore, the Commission must reject the Suggestions contained in Staff's Response to GST's Motion for Interim Relief.

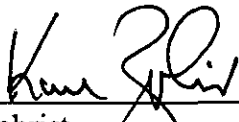
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed to the following counsel of record, this 6th of July, 1999:

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