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FILED

July 21, 1999

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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

Missouri Public
Service Commission

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. EG-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 Application for Reconsideration and Clarification of Order Denying Interim Relief and Expedited Hearing.

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

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

FILED

JUL 21 1999

GST Steel Company,

Complainant,

v.

Kansas City Power & Light Company,

Respondent.

Missouri Public
Service Commission

Case No. EC-99-553

**APPLICATION FOR RECONSIDERATION AND
CLARIFICATION OF ORDER DENYING
INTERIM RELIEF AND EXPEDITED HEARING**

COMES NOW GST Steel Company ("GST") and hereby requests pursuant to RSMo § 386.500 that the Missouri Public Service Commission (the "Commission") clarify or reconsider its Order, dated July 9, 1999, denying GST's request for Interim Relief and Expedited Hearings in the above captioned matter. Absent the clarification GST requests, the July 9, 1999 Order will result in irreparable harm to GST. In support of this Motion, GST states as follows:

I. Background

1. GST produces various steel products in Kansas City, Missouri, by melting and recycling scrap steel using electric arc furnaces. GST is one of the largest customers of Kansas City Power & Light Company ("KCPL"). The cost and reliability of electric power supplied by KCPL are significant factors affecting production and profitability of GST's steelmaking operations.

2. GST receives all of its electric requirements from KCPL pursuant to a Restated and Amended Power Supply Agreement, dated August 12, 1994, and approved by the Commission in Case No. EO-95-67. Pursuant to this contract, KCPL is to charge

prices to GST based on the utility's calculated hourly incremental cost of production. This is a special cost-based rate subject in all respects to the Commission's oversight of the utility's costs of providing service. As explained herein, GST is not requesting the Commission to modify this Agreement.

3. As part of streamlining its operations, or for other business reasons, KCPL for at least 5 years, has systematically reduced its operating and maintenance expenses and its construction expenditures. The utility has fewer people doing maintenance¹, less maintenance work being done, and fewer capital dollars being spent² to keep existing plants running efficiently. Not surprisingly, the quality of service supplied by KCPL has deteriorated in recent years in ways that have directly and adversely affected the availability and cost of power to GST.

4. 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 KCPL generation and service delivery equipment failures, a boiler explosion virtually destroyed Hawthorn unit 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 KCPL's largest and fourth lowest cost base-load generating unit that typically produced approximately 2 million megawatt hours of electricity each year.

5. Since the explosion and shutdown, KCPL has replaced Hawthorn 5's low cost production with power generated or purchased from more expensive resources. In

¹ KCPL's FERC Form 1, p. 423, "Electric Department Employees." KCPL's full time employees have decreased from 3,092 in 1993 to 2,493 in 1998.

² *GST's Petition*, dated May 11, 1999, ¶ 16.

fact, without Hawthorn 5's capacity, KCPL is currently capacity deficient.³ To replace Hawthorn 5's production, KCPL 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.⁴ Since Hawthorn 6 was a planned unit addition well before the boiler explosion, KCPL actually has taken no steps to replace Hawthorn 5 other than to rely on short-term market purchases.

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 KCPL'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 KCPL's management practices.

7. GST explained that KCPL'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 KCPL 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

³ 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 KCPL/Western Resources merger, FERC Docket No. EC97-56, filed June 17, 1999.

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 KCPL 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. The parties jointly proposed a procedural schedule for this docket, which the Commission approved in an Order dated June 22, 1999. In pertinent part, the schedule calls for GST to file direct testimony on August 12, 1999, and for hearings to begin on December 6, 1999. This provides for a Commission determination sometime in early 2000.

10. While the Commission proceeding is pending, GST is paying, and will continue to pay, hourly prices for electricity that are inflated unnecessarily by the loss of low-cost generation from Hawthorn 5. Consequently, by Motion dated June 18, 1999, GST requested interim relief from the Commission that would minimize the damage to GST caused by the time required to develop a litigated record. GST suggested that the Commission conduct a limited scope proceeding on a highly expedited basis to consider (a) KCPL's insurance coverage relating to replacement power costs that might be applied to offset the effect on prices to GST, and (b) requiring KCPL to adjust its models

⁴ Testimony of Mr. Branca in FERC Docket No. EC97-56, Exhibit No. WRI-92, p. 3, filed June 17, 1999.

calculating hourly incremental production costs to treat Hawthorn 5 as though it remained in service. Staff recognized the fundamental inequity of this situation and proposed three alternative forms of interim relief to protect both GST's and KCPL's interests. As Staff noted:

All three suggestions include the provision for an accounting, or true-up, after the Commission decision in the case is chief, to determine the exact amount that GST owes for electric service for the months July through September 1999.⁵

The Commission's Order acknowledged the filing of Staff's Response and the three alternatives, but failed to discuss either the alternatives or the underlying need for equitable relief. In its Order dated July 9, 1999, the Commission denied GST's requests for relief and rejected without comment the Staff suggested alternatives.

II. Argument

A. The Costs Included in a Cost-Based Rate are Always Subject to Commission Scrutiny

11. According to KCPL, under the special contract GST assumes all risks of volatility in KCPL's quoted hourly incremental cost of production, including price increases and volatility caused by the utility's mismanagement of its generating plant. Under KCPL's mistaken theory, once the Commission approved the pricing mechanism in the special contract, *any* price charged by KCPL through application of that mechanism is presumptively just and reasonable.⁶ KCPL presumptively could charge rates to GST that reflect modeling errors, erroneous inputs, misquoted spot energy prices,

⁵ *Staff's Response to GST's Motion for Interim Relief and Expedited Hearings*, dated June 28, 1999, pp. 2-3.

⁶ *KCPL's Response*, dated June 28, 1999, p. 2; *see also KCPL's 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, p. 2.

intentional alterations to inputs or prices, billing mistakes and the like; and GST, according to KCPL, would have no recourse to the Commission. Moreover, in its July 6, 1999 Reply to Staff's Response to GST's Motion for Interim Relief, KCPL states that, as a "matter of law," the Commission is powerless to grant either the relief GST requested or the three alternative forms of interim relief Staff suggested in its response.⁷

12. As a matter of law, KCPL's argument is simply wrong and its error is readily apparent. The utility assumes a request for relief that GST did not seek, and argues for a limitation on the Commission's regulatory oversight power that is not applicable. KCPL asserts, incorrectly, that GST seeks to modify the contract approved by the Commission and that the Commission cannot impose such contract changes on the utility.

13. GST has not sought modification of the 1997 approved contracts in any pleading in this or any other docket. Rather, GST has requested that the Commission exercise its continuing jurisdiction over the contract to ensure that KCPL does not impose unjust or unreasonable charges that are prohibited by Missouri law. RSMo § 393.130(1). Rather than being limited by statute, the Commission is fully empowered to take actions reasonably calculated to prevent and correct excessive charges by KCPL. KCPL's position would, erroneously, deprive the Commission of that authority. The Commission is fully empowered by statute to examine the rates of KCPL to prevent and correct excessive charges by the utility. The Commission has broad authority to review the prudence of decisions made by KCPL to insure that the costs that are passed through to

⁷ Respondent KCPL's Reply to Staff's Response to Complainant GST Steel's Motion for Interim Relief, dated July 6, 1999, p. 2.

its customers are just and reasonable.⁸ If the Commission determines that costs resulted from imprudent decisions made by KCPL, the Commission may exclude those costs from the rates charged to GST.⁹

14. The special contract produces a cost-based rate intended to reflect KCPL's hourly incremental production costs. Because it is a cost-based rate, the Commission has continuing jurisdiction to oversee KCPL implementation of the contract to ensure that does not include imprudently incurred production or purchase power costs.

B. The July 9, 1999 Order will Result in Irreparable Harm to GST

15. Citing the "complex issues of both fact and law, on which turn large sums of money,"¹⁰ that are present in this docket, the Commission's July 9, 1999, Order found that the parties will need the full period described in the joint proposed procedural schedule, and that it would benefit from thorough preparation of the parties.¹¹ The Commission noted that the case would move to hearing as quickly as possible, and that GST could gain "some relief" under the terms of the special contract, *i.e.*, move to the tariffed rate. Therein lies the error of the Order.

⁸ See *Re Great River Gas Co.*, 1989 Mo. PSC LEXIS 16, *7 ("The Commission determines that it has the authority to review the prudence of decisions made by Company which affect the gas costs to be recovered through the Company's PGA and reconciled through Company's ACA."); *Re Union Electric Company*, 1985 Mo. PSC LEXIS 54, *179 (1985) ("Ratemaking bodies, within the ambit of their statutory authority, are vested with considerable discretion to make such pragmatic adjustments in the ratemaking process as may be indicated by the particular circumstances in order to arrive at a just and reasonable rate.").

⁹ See *Re Great River Gas Co.*, 1989 Mo. PSC LEXIS 16 at *7 ("[T]he Commission may exclude costs in establishing the just and reasonable rates to be charged.").

¹⁰ Order, p. 4.

¹¹ To date, KCPL has objected to, and refused to answer, almost every interrogatory and data request GST has propounded. In GST's view, the utility's blanket, baseless objections are designed to frustrate development of a full record in this case. GST has filed, and will continue to file, timely Motions to Compel production from KCPL, but it is unlikely testimony can be filed on August 12, 1999 if KCPL continues its pattern of intransigence.

16. Under the terms of the contract, GST has a one-time option to move to a tariffed rate for the remaining term of the agreement. For the very reasons that the Commission approved the special contract rate, KCPL's tariffed rates are not an economically viable option for GST. GST similarly could lower its electric bill by curtailing its steel production, but it would not be viable for long.

17. The Commission accurately states that large sums of money turn on the outcome of this proceeding. More specifically, those large sums represent the increase in hourly KCPL production costs being charged to GST while this matter is pending and beyond that are caused by the Hawthorn explosion and other management actions or inactions that have caused KCPL to incur excess replacement power and related costs. Based on the July 9, 1999 Order, while this proceeding is pending, GST will continue to pay these large sums to KCPL with no assurance that it can recoup any overpayments if it prevails on the merits. In attempting to be mindful of KCPL's due process rights, the Commission unfairly has imposed a significant economic burden on GST.

18. GST did not create the circumstances that have led to the creation of this docket and the Commission's Hawthorn 5 prudence inquiry. While the Commission understandably did not want to presume KCPL imprudent before rendering findings of fact on a litigated record, its July 9, 1999 Order allows KCPL to continue to charge GST for costs that may be found imprudent and excessive, and, therefore, prohibited. The Commission needs to protect GST from such excessive charges while the litigation proceeds. Further, given the circumstances at hand – decreasing maintenance efforts that have led to a series of equipment failures and explosions of a plant exclusively under KCPL's control, there is *prima facie* evidence of management imprudence. Some relief

is required to compensate or reimburse GST if any KCPL production costs are found to be imprudent.

WHEREFORE, GST respectfully requests that the Commission reconsider its Order, dated July 9, 1999, in this docket, and that it issues a further ruling or make such other determinations it deems appropriate to clarify that Order and to grant all or a portion of the interim relief GST requested in its Motion filed June 18, 1999.

Respectfully submitted,



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Dated: July 21, 1999

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 21st day of July, 1999.

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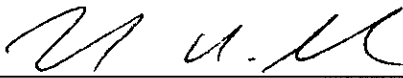
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