

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
February 17, 2000**

CASE NO: EC-99-553

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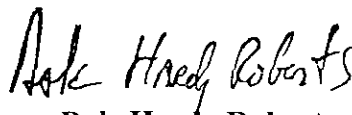
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 17th
day of February, 2000.

GS Technology Operating Company, Inc.,)
doing business as GST Steel Company,)

Complainant,)

v.)

Kansas City Power & Light Company,)

Respondent.)

Case No. EC-99-553

ORDER CONCERNING SHOW CAUSE HEARING

On January 6, 2000, this Commission ordered Complainant and its counsel to appear and "show cause, if any they have, why an appropriate sanction ought not be imposed on GS Technology Operating Company, Inc., doing business as GST Steel Company, or on its counsel of record, or both[.]" The Commission further ordered "Each counsel for every other party to this matter [to] appear at that date and time and [to] be prepared to advise the Commission on these matters."

The parties filed memoranda stating their positions on January 13, 2000. The show cause hearing was held on January 18, 2000, commencing at 1:30 p.m.

Discussion:

A. Possible Misconduct:

During the course of an ongoing discovery dispute between the parties, the Commission became aware that Complainant GST Steel Company (GST) is not, in fact, a distinct corporate entity, but is the trade name under which GS Technology Operating Company, Inc. (GSTOC), does business in Kansas City, Missouri. This was a matter of concern for two reasons: First, GST had, in the aforementioned discovery dispute, adopted and repeated the Commission's mistaken assumption that GST was a corporate entity distinct from GSTOC in an effort to avoid discovery directed to GSTOC. Second, GST had pleaded in its initial complaint that "GST is a corporation duly authorized to conduct business in the State of Missouri[.]" The Commission issued its Show Cause Order on January 6, 2000, in order to investigate what appeared to be improprieties on the part of GST, or of its attorneys, or both.

At the hearing on the Show Cause Order, and in written submissions filed with respect to that Order, GST's attorneys emphatically denied any intention to mislead the Commission. GST's attorneys explained that they did not ascertain the precise nature of GST's organization prior to filing the complaint and, in fact, did not realize the truth until after receiving the Show Cause Order. GST's attorneys further explained that they had inadvertently adopted and repeated the Commission's mistaken assumption that GST had a corporate identity distinct from GSTOC. The Commission

finds this explanation persuasive and concludes that GST's attorneys did not act intentionally to mislead the Commission.

Nonetheless, GST as a party must be considered to have always been aware of the true nature of its relation to GSTOC, even if its attorneys were not. Therefore, the Commission necessarily concludes that GST as a party committed misconduct in the context of the discovery dispute with Kansas City Power & Light Company (KCPL) in that, by adopting and repeating the Commission's mistaken assumption that GST was a corporation distinct from GSTOC, GST made assertions of fact that were not true.

The Commission, like a circuit court, is authorized to impose sanctions for discovery abuse under Rule 61.01. State ex rel. Arkansas Power & Light Co. v. Missouri Public Service Commission, 736 S.W.2d 457, 460 (Mo. App., W.D. 1987). However, the measure of sanctions for misconduct in discovery is the prejudice thereby caused to the adversarial party. "A trial court, without doubt, has the authority to impose sanctions against a party who fails to comply with discovery, but prior to imposing sanctions on the errant party, the trial court must first determine whether, in a particular situation, the opposing party has been prejudiced." State ex rel. Missouri Highway and Transportation Com'n v. Pully, 737 S.W.2d 241, 245 (Mo. App., W.D. 1987).

At the hearing on the Show Cause Order, KCPL expressly stated that any prejudice had been cured and further stated that it was not seeking sanctions against GST or its attorneys:

MR. ZOBRIST: The prejudice as far as discovery has occurred because we have been denied the documents that the Commission did grant us in the order to show cause, and KCP&L would certainly argue to the Commission that

that order was proper and that we should receive those documents. I think that is probably the extent of the prejudice that we have suffered. * * * I think if the Commission adheres to, I think it's Paragraph 2 of the Order to Show Cause, then that prejudice would be cured.

Transcript 3:75, lines 17-24; 76, lines 6-8.

MR. ZOBRIST: Let me make clear that Kansas City Power and Light is not supporting any sanctions against counsel or the Respondent - pardon me - the Petitioner in this case. We think the record is confusing but we don't seek and we don't encourage the Commission to assess any kind of penalty or sanction against the lawyers or against GST Steel Company in this case.

Transcript 3:91, lines 19-25.

KCPL denies that it has been significantly prejudiced. Therefore, the Commission concludes that no sanction is warranted. The Commission will, however, require GST to amend its Complaint to reveal the true nature of the relationship of GST and GSTOC. The Commission will also reform the style of this matter to "GS Technology Operating Company, Inc., doing business as GST Steel Company, Complainant, versus Kansas City Power & Light Company, Respondent."

B. KCPL's Request for Dismissal:

KCPL asserts that the Commission must dismiss GST's Complaint, not as a sanction, but because the Commission has no "proper entity" before it as complainant and, consequently, has lacked jurisdiction *ab initio*. KCPL is wrong.

As GST correctly asserts, it is well-settled in Missouri that a corporation may bring an action at law under its trade name. "Where the real party is designated by a name it has adopted and become known by, no reason can be perceived for setting aside a judgment for lack of a legal

plaintiff." Board of Regents of SMSU v. Harriman, 792 S.W.2d 388, 392 (Mo. App., S.D. 1990). GST Steel Company is the registered fictitious name of GS Technology Operating Company, Inc., a corporation properly authorized to do business in Missouri. KCPL's request to dismiss the Complaint must be denied.

At the hearing on the Show Cause Order, GST and the Staff of the Commission took the position that GST had filed a petition, not a complaint at all. Contrary to the assertions of GST and Staff, GST did file a complaint. Section 386.390.1, RSMo, provides:

Complaint may be made . . . by . . . any corporation . . . by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility

Under the statute, "petition" is a synonym of "complaint." However, the Commission's rules regarding complaints do not require either the use of the complainant's legal name or the attachment of a certificate from the Secretary of State. See Rule 4 CSR 240-2.070. Thus, GST's complaint was sufficient under the Commission's practice rules.

C. Other Possible Jurisdictional Defects:

The Commission's conclusion that the jurisdictional defect urged by KCPL is illusory is by no means a conclusion that there are no jurisdictional defects in this case. The tribunal may raise the issue of jurisdiction any time, *sua sponte*. J. DEVINE, MISSOURI CIVIL PLEADING & PRACTICE, sec. 9-3 (1986).

1. Sufficiency of the Complaint:

The first area of concern to the Commission is the requirement of Section 386.390.1, RSMo, that a complaint as to the reasonableness of rates or charges must be signed by the Public Counsel, by certain officers of the political subdivision within which the service was provided, or by 25 consumers of the service in question. Section 386.390.1, RSMo, provides:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

GST has not perfected its Complaint by any of these three alternative methods. If such perfection is, in fact, required, then the Commission lacks subject matter jurisdiction over the portion of GST's complaint directed to the reasonableness of KCPL's rates, and must dismiss

that issue. The question to be addressed by the parties, then, is whether GST's complaint requires perfection pursuant to Section 386.390.1, RSMo.

The answer to this question is by no means obvious. For example, the Supreme Court of Missouri, in 1931, held that perfection was not required in the case of a complaint by a commercial laundry that it had been improperly charged the general rate for water service rather than the manufacturers' rate. State ex rel. Laundry, Inc., v. Public Service Com'n, 327 Mo. 93, 103-104, 34 S.W.2d 37, 41 (Mo. 1931). The court determined that the complaint turned on discrimination and that perfection was unnecessary. *Id.* In the present case, GST's complaint turns on prudence. Perhaps perfection is unnecessary in this case, too.

2. Binding Arbitration Under Special Contract:

The second area of concern to the Commission concerns the parties' special contract. That agreement appears to require that the parties resolve any disputes that arise under the contract through arbitration. The Commission's question, then, is whether GST has waived its right to make a complaint to the Commission concerning service received and rates charged under the special contract with KCPL.

D. Procedural Schedule:

On January 6, 2000, the Commission by Order suspended the procedural schedule herein pending the outcome of the hearing on the Show Cause Order. Therefore, the Commission will establish a new procedural schedule, maintaining the same interval between events as was contained in

the schedule suspended on January 6, and bringing this case to hearing as rapidly as possible.

IT IS THEREFORE ORDERED:

1. That GS Technology Operating Company, Inc., doing business as GST Steel Company, shall amend its Complaint to reveal its legal name and to show that GST Steel Company is its registered fictitious name and trade name.

2. That the style of this matter shall henceforth be "GS Technology Operating Company, Inc., doing business as GST Steel Company, v. Kansas City Power and Light Company."

3. That the parties shall file memoranda, not exceeding 30 pages, on or before 3:00 p.m. on March 17, 2000, advising the Commission on the following questions of law:

A. Whether or not the Commission has jurisdiction over the Complaint filed herein by GS Technology Operating Company, Inc., doing business as GST Steel Company, insofar as it concerns the reasonableness of the rates and charges made to GS Technology Operating Company, Inc., doing business as GST Steel Company, by Kansas City Power and Light Company, inasmuch as it is not perfected pursuant to Section 386.390.1, RSMo?

B. Whether or not the Commission has jurisdiction over the Complaint filed herein by GS Technology Operating Company, Inc., doing business as GST Steel Company, inasmuch the contract of the parties requires that disputes between them be resolved through arbitration?

4. That the procedural schedule previously adopted herein is amended as set out below:

Rebuttal Testimony of All Parties	-	February 28, 2000 3:00 PM
Prehearing Conference	-	March 6, 2000 10:00 AM
Final list of issues, order of witnesses, order of cross-examination	-	March 13, 2000 3:00 PM
Memoranda of all parties	-	March 17, 2000 3:00 PM
Surrebuttal testimony or Cross-surrebuttal testimony, all parties	-	April 6, 2000 3:00 PM
Position Statements of each party on all issues	-	April 13, 2000 3:00 PM
Evidentiary Hearing	-	April 17-21, 2000 & April 27-28, 2000 9:00 AM

5. That this order shall become effective on February 27, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray, and Schemenauer, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge

At/Sec'y: Hampson / Pope

Date Circulated 2-14 CASE NO. EC-99-553

Lumpé, Chair

Crumpton, Commissioner

Murray, Commissioner

Schemenauer, Commissioner

Draimer, Vice-Chair

Agenda Date 2-17

OK

Action taken: 5-045

Must Vote Not Later Than _____

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.
WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 17th day of FEBRUARY 2000.

Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge