

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED

JUL 14 1999

Missouri Public  
Service Commission

GST STEEL COMPANY,

Complainant,

v.

KANSAS CITY POWER & LIGHT  
COMPANY,

Respondent.

Case No. EC-99-553

**KANSAS CITY POWER & LIGHT COMPANY'S REPLY TO  
GST STEEL COMPANY'S MOTION TO COMPEL RESPONSES TO THE FIRST SET  
OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Respondent Kansas City Power & Light Company ("KCPL"), states the following in reply to complainant GST Steel Co.'s ("GST") Motion to Compel Responses to the First Set of Interrogatories and Requests for Production of Documents propounded by GST Steel Company to the Kansas City Power & Light Company:

**Background**

1. KCPL has provided GST and its predecessor Armco Steel electric service since 1987. Based on the 1987 special contract, KCPL charged GST discounted rates rather than regular tariff rates. The special contract was amended in 1993 and 1994. Under the current 1994 agreement, GST continues to enjoy special discount rates relative to regular tariff rates.

2. The 1987 special contract and the 1993 and 1994 amendments were approved by the Commission in proceedings or tariff filings initiated specifically for that purpose. The current special contract between KCPL and GST was approved by the Commission in Case No. EO-95-67 on October 26, 1994.

3. GST filed a "Petition For An Investigation As To The Adequacy Of Service Provided By The Kansas City Power & Light Company And Request For Immediate Relief" on or about May 11, 1999. In its petition, GST requested that the Commission "take immediate steps to protect GST from exposure to unjust and unreasonable charges for electric service." (GST's Petition, p. 14). GST fails to note, however, that its charges are specified and determined by the special contract approved by the Commission in Case No. EO-95-67. As a result of the Commission's approval, these charges are presumed to be lawful and reasonable. See Section 386.270, RSMo. 1994.<sup>1</sup>

4. Moreover, GST utilized its industry experience and business expertise in reserving its right to take service under a Commission approved tariff if the pricing structure of the special contract proved to be unsatisfactory. See Section 7.4 of the Agreement. GST needs only to exercise its contractual right to take service under a Commission approved tariff if it feels that the rates pursuant to the special contract are "unjust and unreasonable." It is unnecessary for the Commission to take "immediate steps" to permit GST to take service under tariffs previously found reasonable and approved by the Commission.

#### **GST's Motion to Compel**

5. Pursuant to this matter, GST served upon KCPL a First Set of Interrogatories and Requests for Production of Documents on or about June 18, 1999.

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<sup>1</sup> Section 386.270 states:

**All orders prima facie lawful and reasonable.-** All rates, tolls, charges, schedules and joint rates fixed by the Commission shall be in force and shall be prima facie lawful, and all regulations, practices and services prescribed by the Commission shall be in force and shall be prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter.

6. KCPL served upon GST objections to GST's first request by letter dated June 28, 1999. KCPL objected to each of the requests to the extent the information or documents GST requested are protected by the attorney-client privilege and/or the work product doctrine. KCPL also objected to each of the requests because the information requested is not relevant to the current dispute and is not reasonably calculated to lead to admissible evidence.

7. GST filed its Motion to Compel Responses to the First Set of Interrogatories and Requests for Production of Documents on or about July 2, 1999.

8. Missouri Supreme Court Rule 56.01(b)(1) states that "parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, . . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." (Emphasis added). Thus, the requested information must not be privileged and must be relevant to the subject matter involved in the action in order to be discoverable.

9. While Missouri courts have recognized that the rules of discovery were designed to eliminate concealment and surprise in litigation, the rules of discovery "are not talismans without limitations." State ex rel. Kawasaki Motors Corp., U.S.A.v. Ryan, 777 S.W.2d 247, 251 (Mo. App. 1989) (prohibiting the trial court's sustaining plaintiff's motion to compel production of documents). There are definite limits upon the scope of discovery. Id. The scope of discovery is subject to judicial discretion and is not a matter of right. State ex rel. Hoffman v. Campbell, 428 S.W. 2d 904, 906 (Mo. App. 1960) (permanently prohibiting motion to compel responses to interrogatories because they were irrelevant and posed undue burden on answering party).

10. All of complainant GST's requests are irrelevant and not reasonably calculated to lead to admissible evidence. Requests 1.1, 1.2, 1.4, and 1.5 relate to insurance policies, claims and benefits in connection with the boiler explosion on February 17, 1999 at the Hawthorn Generating Station's Unit No. 5. Request 1.3 asks KCPL to "identify and provide a copy of all work papers or other documents that were in any way utilized, used, reviewed, or relied upon in the preparation of KCPL's March 2, 1999 press release titled 'KCPL estimates financial impact of plant explosion; plans for the future.' " None of these requests are relevant to the core issue in this dispute: Whether GST has been exposed to unjust and unreasonable charges for electric service. (GST's Petition, pp. 3, 14, 15 16).

11. GST cites Sections 393.130, 393.140, 393, 150, and 393.270, Mo. Rev. Stat. (1994) as support for its contention that its requests are relevant to the current dispute. The cited statutes enumerate the Commission's powers to insure safe and adequate electric service, to supervise generally electrical corporations, to investigate periodically the services furnished by such corporations, and to fix rates after a hearing and a finding that rates are just and reasonable. GST's requests for insurance-related information regarding the Hawthorn incident in February, 1999 are neither related to the Commission's enumerated powers, nor to the circumstances surrounding the current dispute. The nature and existence of insurance relating to the Hawthorn incident is completely unrelated to the contents of the special contract between GST and KCPL, which is solely what the current dispute concerns.

12. GST's request No. 1.3 is similarly irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The existence or content of any work papers or other documents used in the preparation of KCPL's March 2, 1999 press release in response to

the Hawthorn incident does not relate in any way to GST's supported allegation that it has been exposed to "unjust and unreasonable" charges for electric service.

13. Denying GST's motion to compel will not in any way impede a thorough presentation of the issues to this Commission. On the contrary, the Commission will receive more appropriate and necessary information for its ultimate determination without the undue burden of sifting through completely irrelevant data. Denying GST's motion to compel KCPL's responses to the First Set of Interrogatories and Requests for Production of Documents will place the Commission in a better position to render an informed and accurate decision on the issues in this case.

WHEREFORE, KCPL requests that this Commission deny GST's Motion to Compel KCPL's Responses to the First Set of Interrogatories and Requests for Production of Documents, and requests that this Commission grant such further relief as deemed just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

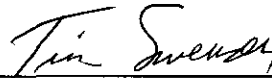
I hereby certify that copies of the foregoing have been mailed to the following counsel of record, this 12th of July, 1999:

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