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March 23, 2000

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FILED²

MAR 23 2000

Missouri Public
Service Commission

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 3660
Jefferson City, Missouri 65102

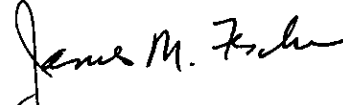
RE: *GS Technology Operating Company, Inc. d/b/a GST Steel Company v. Kansas City
Power & Light Company, Case No. EC-99-553*

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are an original and fourteen (14) copies of Kansas City Power & Light Company's Reply to the Memoranda of Law Filed by GST Steel Company and the Staff of the Missouri Public Service Commission. A copy of the foregoing Reply has been hand-delivered or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,


James M. Fischer

/jr
Enclosures

cc: Paul S. DeFord
James W. Brew
Christopher C. O'Hara
John B. Coffman
Dana K. Joyce
Steven T. Dottheim
Lera L. Shemwell

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAR 23 2000

Missouri Public
Service Commission

GS TECHNOLOGY OPERATING,
COMPANY, INC. d/b/a,
GST STEEL COMPANY,

Complainant,

v.

KANSAS CITY POWER & LIGHT,
COMPANY,

Respondent.

Case No. EC-99-553

**KANSAS CITY POWER & LIGHT COMPANY'S REPLY TO THE
MEMORANDA OF LAW FILED BY GST STEEL COMPANY AND THE
STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**

COMES NOW Kansas City Power & Light Company ("KCPL") and states the following in response to the memoranda filed in connection with the Order Concerning Show Cause Hearing by GS Technology Operating Company, Inc. d/b/a GST Steel Company ("GST") and the Staff of the Missouri Public Service Commission ("Staff"):

**A Party's Waiver Of Its Rights Does Not Strip The Commission
Of Its Power To Raise A Jurisdictional Issue *Sua Sponte* Or
Empower The Commission To Disregard A Clear Mandate
Imposed By The Missouri General Assembly**

1. In order to bring its most recent earnings case to closure, on March 1, 1999, KCPL waived any objections relating to jurisdictional issues that might arise in a future complaint case.¹ KCPL has honored its commitment. KCPL has not filed a motion to dismiss GST's Complaint on jurisdictional grounds associated with Section

¹ Reply of Kansas City Power & Light Company to Response of GST (filed in Case No. ER-99-313.)

386.390.1 or 393.260.1.² However, KCPL's decision to forego its right to object to the instant complaint case on jurisdictional grounds cannot strip the Commission of its power to raise the issue of jurisdiction *sua sponte*. See J. DEVINE, MISSOURI CIVIL PLEADING & PRACTICE, sec. 9-3 (1986).

2. It is beyond dispute that the Commission is empowered to initiate proceedings *sua sponte* regarding the reasonableness of KCPL's rates or charges. Section 386.390.1. It is also beyond dispute that the Missouri General Assembly has barred the Commission from hearing the instant complaint case due to the fact that GST has failed to perfect its Complaint.³ The General Assembly's language and intent are clear:

[N]o complaint shall be entertained by the commission ... as to the reasonableness of any rates or charges of any ... electrical ... 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,

² KCPL notes that Staff, at page 2 of its Memorandum, suggests: "For KCPL to raise objections now would seem disingenuous." KCPL respectfully points out that it was Staff Counsel that brought these issues to the Commission's attention:

I would like to take this opportunity to raise a couple of issues that we feel the Commission may need to address, and that is, should this proceed as a complaint case? I refer the Commission to Sections 386.390.1 RSMo. – these are all RSMo. – 392.260.1, and the Commission Rules 4 CSR 240-2.070.

(Tr. 87).

* * *

And specifically I would like to refer you to the statement that not less than 25 consumers or purchasers must file a complaint if there is an issue as to, I believe, price in general.

(Tr. 90).

As ordered by the Commission, KCPL has discussed in its Suggestions filed on March 17, 2000, the legal issues raised initially by Staff Counsel.

³ The "Commission is an administrative agency..., and as such is vested with only such powers as are conferred upon it by the Public Service Commission Law" State ex rel. Laundry, Inc. v. Public Serv. Comm'n, 34 S.W. 37, 43 (Mo. 1931).

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 electricity (Emphasis supplied.)

The sole purpose for this section is to prevent a single customer from initiating a complaint case that challenges the reasonableness of Commission-approved rates and charges by prohibiting the Commission from entertaining such a case until the customer files a perfected complaint. The perfection requirement protects the Commission from being inundated by complaints filed by single individuals who disagree with the reasonableness of a Commission-approved rate or charge.

3. The General Assembly has seen fit to withhold subject matter jurisdiction from the Commission unless a complainant files a perfected complaint. The Commission should not disregard this statutory requirement.

The Commission Lacked The Authority To Consider GST's Challenge To KCPL's Rates And Charges In KCPL's Earnings Case

4. GST suggests that the Commission somehow deceived it when the Commission "deferred consideration of GST's claims to another docket...." See Memorandum of Law, p. 9. This is untrue. GST's Application to Intervene was a challenge to KCPL's rates and charges. GST sought an "adjustment of ... charges [that] have become unjust and unreasonable under its Amended and Restated Power Supply Agreement with KCPL." See Response of GST Steel, p. 2. (filed on February 22, 1999 in case No. ER-99-313). Accordingly, the statutory prerequisites of Section 386.390.1 (and 393.260.1) would have applied in KCPL's earnings case just as it applies in the instant proceeding. In other words, Section 386.390.1 prohibits the

Commission from "entertaining" GST's challenge to KCPL's rates and charges in any proceeding until GST complies with the perfection requirement.

**Missouri Case Law Holds That The Commission's
Jurisdiction Is Contingent Upon A Perfected Complaint**

5. None of the cases cited in GST's Memorandum of Law stand for the proposition that the Commission has the statutory authority to consider an unperfected complaint brought by a single customer that challenges the reasonableness of a rate or charge. Missouri case law and Commission rulings⁴ support KCPL's position. A single customer cannot challenge the reasonableness of KCPL's rates unless its complaint has been perfected. See State ex rel. Jackson County v. Public Serv. Comm'n, 532 S.W.2d 20, 26 (Mo. 1975); Dyer v. Public Serv. Comm'n, 341 S.W.2d 795, 797 (Mo. 1960); State ex rel. Laundry, Inc. v. Public Serv. Comm'n, 34 S.W.2d 37, 41 (Mo. 1931).

6. Instead of discussing case law that relates to the perfection issue, GST discusses Missouri cases that stands for the legal proposition that whenever a utility has two approved electric rates and charges the higher rate, a single customer may file a complaint with the Commission to determine the proper classification. See Memorandum of Law, pp. 8, 13. Thus far, GST's Complaint does not involve a dispute over its classification. GST has not identified another Commission-approved rate which is lower and claimed that it is entitled to the lower rate. Accordingly, GST's reliance on Laundry is misplaced.

⁴ See Order Granting Motion To Dismiss, Case Nos. TC-93-58, TC-93-59, TC-93-60, TC-93-61, TC-93-62, TC-93-63, TC-93-64, TC-93-65, TC-93-66, TC-93-67, TC-93-68, TC-93-69, TC-93-70, TC-93-71, TC-93-72, TC-93-73, TC-93-74, TC-93-75, TC-93-76, TC-93-77, TC-93-78, TC-93-79, TC-93-80, TC-93-81, TC-93-82, TC-93-83, TC-93-84, TC-93-85, TC-93-86, TC-93-87, TC-93-88, TC-93-89, TC-93-90, TC-93-91, TC-93-92, TC-93-93, TC-93-94, TC-93-95, TC-93-96, TC-93-97, TC-93-98, TC-93-99, TC-93-100, TC-93-101; See Report & Order, MCI v. Southwestern Bell Tel. Co., Case No. TC-97-303.

7. The Court in Laundry begins its analysis by stating that "the written complaint ... filed with the Public Service Commission ... is not a complaint ... as to the reasonableness of any rates or charges." Laundry, 34 S.W.2d at 41. Since the complaint did not challenge the reasonableness of an approved rate or charge, the Court concluded that:

[T]he written complaint ... is not such as must be signed by "not less than twenty-five consumers or purchasers, or prospective consumers ... in order to be entertained by the Public Service Commission, and in order to confer jurisdiction of the complaint in the commission, within the requirements of the ... Public Service Commission Law.

Id.

8. The Laundry Court's discussion of the perfection requirement strongly indicates that had the complainants challenged the reasonableness of the rates instead of the propriety of its classification, the Court would have ruled that their complaint failed to confer jurisdiction upon the Commission. As stated earlier, GST's reliance on the Laundry case is misplaced.

9. GST has also suggested that the Commission would deny it its "due process rights" if the Commission dismissed that portion of GST's Complaint that relates to KCPL's adequacy of service. See Memorandum of Law, p. 16. Once again, GST misinterprets Missouri law. No single customer has a legal right to have the Commission entertain a complaint regarding the adequacy of electric service. Section 393.260.1. In fact, Section 393.260.1 explicitly prohibits the Commission from entertaining such a complaint unless it is perfected.

The Commission Lacks The Authority To Provide Equitable Relief

10. GST has conceded that an individual customer may not challenge the reasonableness of KCPL's rates and charges.⁵ See Memorandum of Law, p. 13. Instead, GST argues that "it is simply seeking the equitable implementation of its contract. ..." See GST's Original and Amended Complaint, p. 3. (Emphasis supplied.) GST has explicitly requested that the "equitable implementation of its contract" take the form of an order from the Commission that requires KCPL to calculate GST's charges "as if the Hawthorn 5 plant was still available and efficiently operating." See GST's Original and Amended Complaint, p. 15-16.

11. GST asserts that "[t]here is no legal or rational basis for finding that the Commission's authority is toothless in that regard, and there is persuasive precedent⁶ for determining that the Commission possesses the authority to grant the relief regarding pricing under the contract the GST has requested." See Memorandum of Law, pp. 12-13. GST is mistaken. Missouri law is clear on the Commission's ability to provide equitable relief. As KCPL has stated on several occasions, the Commission simply lacks the authority to enforce any principle of law or equity. Wilshire Constr. Co. v. Union Elec. Co., 463 S.W.2d 903, 905 (Mo. 1971); Kansas City Power & Light Co. v. Buzard, 168 S.W.2d 1044, 1046 (Mo. 1943); May Dep't Stores Co. v. Union Elec. Light & Power Co., 107 S.W.2d 41, 48 (Mo. 1937); Laundry, 34 S.W.2d at 45; see DeMaranville v. Fee Fee Trunk Sewer, Inc., 573 S.W.2d 674, 676 (Mo.App. 1978); Hoffman v. Public Serv. Comm'n, 530 S.W.2d 434, 438 (Mo.App. 1975); Katz Drug Co.

⁵ GST alleges that its complaint is perfected. See Memorandum of Law, p. 9. This statement is verifiably untrue. GST is the sole signatory to the Amended Complaint in this proceeding.

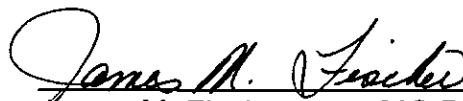

⁶ KCPL assumes that if GST was aware of any "persuasive precedent[s]," GST would have cited and discussed these cases in its Memorandum of Law. It did not.

v. Kansas City Power & Light Co., 303 S.W.2d 672, 679 (Mo.App. 1957). If it wants the "equitable implementation of its contract," GST will have to file suit in Circuit Court.

12. Like its failed intervention in KCPL's most recent earnings case, GST is "attempting to use this proceeding... as a leverage to renegotiate its [S]pecial [C]ontract." See Public Counsel's Motion Regarding GST Steel Company's Request for Hearing (filed on February 10, 1999 in Case No. ER-99-313.) The Commission should not permit GST to subvert the regulatory process in an attempt to further reduce its just and reasonable electric rates.

WHEREFORE, having fully responded to the Memoranda filed by GST and Staff, Kansas City Power & Light Company respectfully requests that the Commission adopt the recommendations contained in its Suggestions in Response to the Commission's Order Regarding Show Cause Hearing.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, First Class mail, postage prepaid, this 23rd day of March, 2000, to:

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