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July 28, 1999

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

FILED

JUL 28 1999

Missouri Public
Service Commission

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

Dear Secretary Roberts:

Enclosed for filing in the above-referenced case, please find:

- 1) An original and fourteen (14) copies of the **public version** of GST Steel Company's Response to KCPL's Reply to GST's Motion to Compel KCPL to Respond to the First Set of Interrogatories and Requests for Production of Documents; and
- 2) Eight (8) separate sealed envelopes containing the **Highly Confidential version** of GST Steel Company's Response to KCPL's Reply to GST's Motion to Compel KCPL to Respond to the First Set of Interrogatories and Requests for Production of Documents.

The above are being filed pursuant to and under the Protective Order previously granted by the Commission.

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 28 1999

Missouri Public
Service Commission

GST Steel Company,)	
)	
Complainant)	
v.)	<u>Case No. EC-99-553</u>
)	
Kansas City Power & Light Company,)	
)	
Respondent.)	

**GST STEEL COMPANY'S RESPONSE
TO KCPL's REPLY TO GST'S MOTION TO COMPEL KCPL
TO RESPOND TO THE FIRST SET
OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

GST Steel Company ("GST") hereby submits this response to Kansas City Power & Light Company's ("KCPL") Reply to GST's Motion to Compel full and complete answers to the First Set of Interrogatories and Requests for Production of Documents Propounded by GST to KCPL:

I. BACKGROUND

1. GST served its First Set of Interrogatories and Requests for Production of Documents on KCPL on June 18, 1999. KCPL has refused to respond to any data requests therein. GST filed its Motion to Compel on July 2, 1999. KCPL filed its Reply on July 12, 1999. GST's Motion to Compel is still pending.

2. In its Reply, KCPL stated:

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).

GST does not disagree with KCPL's summary of the discovery or with KCPL's statement of a core issue in this proceeding, though the issue is only one of several before the Commission. Furthermore, the issue is not simply whether GST has been exposed to unjust and unreasonable charges, but also whether such charges have in fact been imposed and whether there is a likelihood that they will be imposed in the future. GST disagrees, however, with KCPL's assessment of the relevance of the requests. The requests for information contained in the First Set are reasonably calculated to lead to relevant evidence admissible in this proceeding.

II. DISCUSSION

3. GST purchases power in accordance with a special contract. **

.** Section 5.04 of the power supply agreement between GST and KCPL states, in the relevant part:

**

... **¹

¹ *Amended and Restated Power Supply Agreement, 5.04 (emphasis added).* GST respectfully directs the Commission's attention to the confidential Amended and Restated Power Supply Agreement attached to GST's Petition as Appendix A.

**

**

4. KCPL utilizes a production model to determine the incremental cost to GST. Inputs to the model are comprised of, in part, the cost of production at KCPL's available operating generating units for every hour. If KCPL removes a plant from service, or if one goes off line due to problems (or blows up), GST can be negatively impacted because power from that unit generally is replaced with higher cost power from either a higher cost unit or from off-system purchases. Thus, the central issue of GST's complaint against KCPL is not the contract itself, but rather the implementation of the contract and the inputs utilized by KCPL in the production cost model.

5. Information regarding KCPL's insurance is clearly relevant to this proceeding. As the examination of the production model is conducted, GST is entitled to review the methodology and calculations employed, including whether the any adjustment was made for insurance proceeds.

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** To permit KCPL to keep the insurance proceeds (for example, the \$5.0 million in insurance proceeds for replacement power) while charging GST the higher unadjusted cost at the same time, could result in a double recovery for KCPL. KCPL could be paid for the higher cost replacement power by both the insurance company and GST. Such a situation would be to the direct benefit of KCPL's shareholders, and

not its customers, and would constitute an improper charge resulting in recovery in excess of KCPL's actual incremental costs.

6. In a recent press release, KCPL indicated its anticipation that the higher costs would be offset by savings (including insurance) and provided estimates of the projected costs and savings. In the press release, a copy of which is attached as *Appendix A*, KCPL stated in the relevant portion:

Kansas City Power & Light (NYSE: KLT) estimates a net increase in costs of between \$6.5 million and \$11.5 million (before tax) for the year 1999, as a result of the February 17th boiler explosion at the company's 479-megawatt Hawthorn Generating Station's Unit #5. The company's total accredited generating capacity is 3,701 mw.

This estimate is based on increases of approximately \$25 million to \$30 million in fuel and purchased power costs and reduced sales of bulk power, assuming normal weather and operating conditions. KCPL anticipates that the impact of these higher costs will be offset by the following estimated savings:

- \$11.5 million in reduced O&M costs, including normally scheduled maintenance at Hawthorn and rescheduled maintenance outages at other plants
- \$ 5.0 million in insurance coverage for replacement power
- \$ 1.0 million in reduced Hawthorn depreciation
- \$ 1.0 million in rail management savings

These impact estimates are for 1999 only.

The subject matter of the press release therefore is KCPL's anticipated higher costs and offsetting savings, including insurance proceeds, resulting from the Hawthorn 5 explosion. These issues are

clearly relevant to the issues that KCPL contends are raised in GST's Petition, including the justness and reasonableness of the actual costs and charges.

7. According to KCPL's press release, apparently GST should not be experiencing higher power prices as a result of the Hawthorn explosion due to the offsetting savings. GST is entitled to investigate whether KCPL is properly passing through the savings to GST, or whether KCPL is only passing through the higher costs without adjustment for the savings. **

**

What methodology did KCPL use to calculate the claimed costs and offsetting savings? How is that methodology different from the production model used to calculate the costs to GST? Why is GST not seeing the claimed savings reflected in its charges? GST's request for workpapers and other documents used in the preparation of the press release are clearly calculated to lead to the discovery of admissible evidence relevant to the issue of the justness and reasonableness of the charges to GST. The subject data request is as follows:

- 1.3 Please identify and provide a copy of all workpapers 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."

KCPL should be required to produce all requested documents as they are clearly calculated to lead to the discovery of evidence relevant to the issues in this proceeding.

8. All information sought by GST in the First Set is directly relevant, within the scope of these proceedings, and reasonably calculated to lead to admissible evidence. In its objection, KCPL maintained that “the sole issue in this matter is whether the pricing mechanism contained in the special contract between KCPL and GST is just and reasonable.”² However, in its Reply, KCPL stated that, “the core issue in this dispute [is]: Whether GST has been exposed to unjust and unreasonable charges for electric service.” Furthermore, in its Answer, KCPL expressly admitted that it owes GST the duties prescribed in by Section 393.130.1, RSMo: “KCPL admits so much of paragraph four that states that the Agreement does not modify any obligation imposed on KCPL by Section 393.130.1, RSMo.”³ That statute states in the pertinent part:

[E]very electrical corporation . . . shall furnish and provide such service instrumentalities and facilities as *shall be safe and adequate and in all respects just and reasonable*. All charges made or demanded by any such . . . electrical corporation . . . for . . . electricity . . . or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable *charge* made or demanded for . . . electricity . . . or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.⁴

KCPL’s failure to fulfill its obligation to provide safe and adequate service, in all respects just and reasonable, is exactly what is being contested by GST. The statute does not limit the obligation to tariffs, rates or contracts, but expressly provides for an examination of the *charges*

² GST’s Motion to Compel First Set, Exhibit B, Letter of William H. Kogel (July 8, 1999); see also KCPL’s Reply, ¶ 11.

³ KCPL’s Answer, ¶ 4, (June 8, 1999).

⁴ Section 393.130.1, RSMo (*emphasis added*).

thereunder. GST has requested, and the Commission has authorized, an examination of whether the charges by KCPL are just and reasonable.

9. This summer, demand has surpassed even KCPL's projections. On July 26, 1999, KCPL reported a then record one-hour peak of 3,227 megawatts (KCPL had projected a peak of 3192 MW).⁵ The heat wave continues; on the morning that this pleading was being prepared the temperature was forecasted to reach 101 degrees. The prices to GST have been increasing significantly. According to KCPL, GST would have no right to examine the power purchases by KCPL that are the basis of the charges, even if those purchases were imprudently made or were the result of unfounded speculation by KCPL in the markets. Not only does GST possess a statutory right that all *charges* under the contract be just and reasonable, but GST's power contract provides an express right to examine the records of KCPL. Section 5.10 of its power supply agreement states:

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⁵ Based on recent press information, a new record peak was set on July 28, 1999.


⁶ *Amended and Restated Power Supply Agreement*, 5.10. GST respectfully directs the Commission's attention to the confidential Amended and Restated Power Supply Agreement attached to GST's Petition as Appendix A.

10. In its Motion to Compel, GST asserted that KCPL's claim of privilege was unduly broad. In its Reply, KCPL failed to provide any support for its claim of privilege and, in fact, KCPL does not address further its objection of privilege. Clearly, KCPL's blanket objection of privilege was not credible and should not be honored. KCPL has not attempted to establish that documents responsive to these data requests are covered by either attorney-client or work product privileges. Given KCPL's absolute lack of support for its blanket claim of privilege, the Commission should reject all such claims.

11. Without the discovery propounded to KCPL, GST will not be able to effectively present its case to this Commission, and the Commission will not have sufficient information to reach an informed decision on the issues. KCPL seems intent on depriving GST of any remedy. Without a remedy before this Commission, the viability of GST is threatened.

WHEREFORE, GST requests that this Commission compel KCPL's immediate and complete responses to the First Set of Interrogatories and Requests for Production of Documents Propounded by GST to KCPL and that this Commission should shorten the time for KCPL's response to discovery accordingly.

Respectfully submitted,



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Attorneys for GST Steel Company

Dated: July 28, 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 28th day of July, 1999.

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KCPL estimates financial impact of plant explosion; plans for future

Kansas City, Mo. (March 2, 1999) — Kansas City Power & Light (NYSE: KLT) estimates a net increase in costs of between \$6.5 million and \$11.5 million (before tax) for the year 1999, as a result of the February 17th boiler explosion at the company's 479-megawatt Hawthorn Generating Station's Unit #5. The company's total accredited generating capacity is 3,701 mw.

This estimate is based on increases of approximately \$25 million to \$30 million in fuel and purchased power costs and reduced sales of bulk power, assuming normal weather and operating conditions. KCPL anticipates that the impact of these higher costs will be offset by the following estimated savings:

- \$11.5 million in reduced O&M costs, including normally scheduled maintenance at Hawthorn and rescheduled maintenance outages at other plants
- \$ 5.0 million in insurance coverage for replacement power
- \$ 1.0 million in reduced Hawthorn depreciation
- \$ 1.0 million in rail management savings

These impact estimates are for 1999 only. The company will continue to evaluate any impact on future years.

Though investigation of the cause of the explosion is still under way, preliminary indications are that the damage was caused by an explosion of accumulated gas in the boiler's firebox. The company has insurance coverage for this type of event, with limits of \$300 million. What caused the ignition of the gas is not yet known. The boiler was not operating at the time of the explosion, and there were no injuries.

The company is evaluating several alternatives regarding the replacement of the power generated by Unit #5 and is confident that it can secure sufficient power to meet its customers' energy needs during this summer and beyond. On average, Hawthorn Unit #5 generated approximately 2 million megawatt hours each year. The company plans to make up this lost generation by:

- redirecting approximately 1.1 million mwh of annual bulk power sales for use by KCPL's retail customers
- rescheduling planned maintenance outages at other plants to maximize available generation
- placing Hawthorn #6, a 142 mw gas-fired combustion turbine, into commercial operation this spring

Utilizing this strategy, the company estimates a remaining energy requirement of approximately 350,000 mwh, which will be obtained through a combination of firm and spot market purchases.

Even prior to the explosion, the company was finalizing contracts to bring on line an additional 294 mw of capacity by the summer of 2000, in addition to Hawthorn 6. The capacity projects involve repowering an existing unit and adding two new combustion turbines. Plans call for these projects to be located at the Hawthorn site. The company also plans to permanently replace the lost capacity at Hawthorn and is exploring size, fuel source and technology alternatives.

The company does not anticipate rate increases as a result of the Hawthorn explosion.

Work began yesterday to dismantle the damaged boiler. The work will occur in two phases, with the initial work focusing on stabilization of the explosion site and removing structures with the greatest potential of shifting or falling. This is expected to take several days. The remaining demolition of the boiler is expected to take several additional weeks.

Media Contact: Pam Levetzow
816-556-2926

Financial Contact: David Myers
816-556-2312

Kansas City Power & Light Company is a leading provider of energy and related products and services to a growing and diversified service territory encompassing metropolitan Kansas City and parts of eastern Kansas and western Missouri. KLT Inc. and Home Service Solutions Inc., wholly owned subsidiaries of KCPL, pursue unregulated business ventures nationally, capturing growth opportunities in markets outside the regulated utility business.

CERTAIN FORWARD-LOOKING INFORMATION

Statements made in this release which are not based on historical facts are forward-looking and, accordingly, involve risks and uncertainties that could cause actual results to differ materially from those discussed. Any forward-looking statements are intended to be as of the date on which such statement is made. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, we are providing a number of important factors that could cause actual results to differ materially from provided forward-looking information. These important factors include:

- weather conditions
- future economic conditions in the regional, national and international markets
- state, federal and foreign regulation and possible additional reductions in regulated electric rates
- financial market conditions, including, but not limited to changes in interest rates
- inflation rates
- increased competition, including, but not limited to, the deregulation of the United States electric utility industry, and the entry of new competitors
- ability to carry out marketing and sales plans
- ability to achieve generation planning goals and the occurrence of unplanned generation outages
- nuclear operations
- ability to enter new markets successfully and capitalize on growth opportunities in nonregulated businesses
- unforeseen events that would prevent correcting internal or external information systems for Year 2000 problems
- adverse changes in applicable laws, regulations or rules governing environmental (including air quality regulations), tax or accounting matters
- the proposed Western Resources Inc. (Western Resources) merger

This list of factors may not be all-inclusive since it is not possible for us to predict all possible factors.

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