

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

January 6, 2000

CASE NO: EC-99-553

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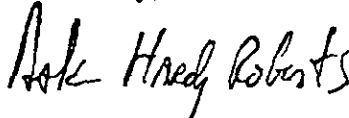
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

At a session of the Public Service Commission held at its office in Jefferson City on the 6th day of January, 2000.

Case No. EC-99-553

GST argues in its motion that the Commission should apply the same reasoning to KCPL's Second Motion to Compel that it applied to KCPL's First Motion to Compel, and that GST should not be required to make discovery under KCPL's Second Motion in areas found by the Commission to be

irrelevant with respect to KCPL's First Motion. The Commission finds GST's argument to be without merit. Having made no response to KCPL's Second Motion to Compel, GST waived all objections to the Data Requests (DRs) in question and must now answer those requests.

Much more troubling is KCPL's allegation, contained in its response of December 13, 1999, that GST is not itself a legal entity, but merely a fictitious name under which GS Technology Operating Company, Inc. (GSTOC), does business in Kansas City, Missouri, and that "[t]he real party in this proceeding has always been GSTOC." In its reply of December 22, 1999, in response to this allegation, GST stated:

As to the requests directed toward GSTOC, KCPL notes that GST Steel Company is a division of GSTOC, and that GST Steel Company is a registered name on file with the Missouri Secretary of State for the entity that does business in Kansas City, Missouri, and that is served by KCPL. This observation, however, fails to make a point. As the Commission stated in its November 2 Order, GST Steel Company is the KCPL customer and the party in this docket.

It is GST that has missed the point. In the first numbered paragraph of GST's Complaint, filed on May 11, 1999, GST asserts: "GST is a corporation duly authorized to conduct business in the State of Missouri[.]" Now, it is seen that this allegation is simply not true. In fact, GST is not a corporation at all, it is merely a fictitious name under which GSTOC does business. One of the grounds relied on by the Commission in its Order of November 2, 1999, sustaining many of GST's objections to KCPL's First Motion to Compel, was a belief that GST and GSTOC are distinct legal entities. That belief, founded squarely upon the

allegation at paragraph 1 of GST's Complaint referred to above, is now shown to be mistaken.

To the extent that the Commission's Order of November 2, 1999, sustained GST's objections to KCPL's First Motion to Compel on the basis of GST's false assertion of corporate identity distinct from GSTOC, that Order must be set aside. The Commission has reviewed the DRs contained in KCPL's First Set of Discovery propounded to GST and has identified six DRs directed to GSTOC to which objections were improperly sustained, based on the misleading information provided to this Commission by GST: DRs 21, 27, 35, 39, 43, and 49.

The circumstances described in this Order necessarily raise serious and perplexing questions. Did GST's Complaint of May 11, 1999, brought in the name of a nonexistent corporate entity, confer jurisdiction on the Commission? What sanctions, if any, ought the Commission to impose on GST and its counsel for falsely alleging that GST is a corporation and standing by silently when the Commission, relying on GST's false allegation, wrongly sustained GST's objections to KCPL's discovery against GSTOC? Missouri Supreme Court Rule 4-3.3 includes a duty of candor toward the tribunal which is implicated here.

To consider these questions, the Commission will convene a show cause hearing on January 18, 2000, at 1:30 p.m., a date already set aside for a prehearing conference in this matter. GST and its counsel shall appear and show cause why this matter ought not be dismissed, or why a complaint or report ought not be made to the Office of the Chief Disciplinary Counsel, or why some other appropriate sanction ought not be

imposed on GST, or on its counsel of record, or both. It is expected that every attorney who has entered an appearance for GST will appear personally. Counsel for every other party to this matter shall appear at the above-stated date and time and shall be prepared to advise the Commission on these matters.

The Commission is authorized to impose appropriate sanctions for discovery violations. The Missouri Court of Appeals, Western District, has stated, "This court holds the PSC may impose sanctions pursuant to Rule 61.01." State ex rel. Arkansas Power & Light Co. v. Missouri Public Service Commission, 736 S.W.2d 457, 460 (1987). Missouri courts have generally recognized this authority in administrative tribunals: "The [Administrative Hearing] Commissioner, like a trial judge, has discretion in deciding whether to impose sanctions for failure to comply with his orders for discovery." Mueller v. Ruddy, 617 S.W.2d 466, 478 (Mo. App., E.D. 1981).

The Western District found the Commission's authority to impose sanctions in the Commission's rules of procedure, adopted pursuant to Section 386.410.1, RSMo. The Commission's rules provide that discovery abuses will be subject to the same sanctions "provided for in the rules of civil procedure." Rule 4 CSR 240-2.090(1). Rule 61.01, Mo. R. Civ. Pro., provides for discovery sanctions. The sanctions available vary depending on the discovery device in question. For a failure to timely answer interrogatories, the Commission may issue "An order striking pleadings or parts thereof, or dismissing the action or proceeding or any part thereof, or render a judgment by default against the disobedient party."

Rule 61.01(b)(1), Mo. R. Civ. Pro. The Commission has great flexibility in designing a sanction for a failure to respond to a production request:

If a party fails to respond that inspection will be permitted as requested, fails to permit inspection, or fails to produce documents and tangible things as requested under Rule 58.01, or timely files objections thereto that are thereafter overruled and the documents and things are not timely produced or inspection thereafter is not timely permitted, the court may, upon motion and reasonable notice to other parties, make such orders in regard to the failure as are just and among others the following:

(1) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibit the disobedient party from introducing designated matters in evidence.

(2) An order striking pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the action or proceeding or any part thereof or, rendering a judgment by default against the disobedient party.

(3) An order treating as a contempt of court the failure to obey.

(4) An order requiring the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Rule 61.01(d), Mo. R. Civ. Pro.

The discovery device at issue here is the data request. Data requests are unknown in the rules of civil procedure and are created by the Commission's procedural rules at 4 CSR 240-2.090(2). That rule specifies that "[s]anctions for failure to answer data requests shall be the same as those provided for abuse of the discovery process in section (1) of this

rule." Section (1) of Rule 4 CSR 240-2.090, in turn, refers to the discovery sanctions "provided for in the rules of civil procedure."

Unlike the Arkansas Power & Light case, *supra*, the present matter does appear to involve "bad faith, willfulness or contumacious conduct[.]" Consequently, the Commission's "wide discretion in meting out sanctions under Rule 61.01," 736 S.W.2d at 460, extends to dismissal of the case or similar severe sanctions.

IT IS THEREFORE ORDERED:

1. That the motion for clarification and reconsideration filed by GS Technology Operating Company, Inc., doing business as GST Steel Company, on December 1 and 2, 1999, is denied. As previously ordered, GS Technology Operating Company, Inc., doing business as GST Steel Company, must provide information and documents as requested in the Data Requests contained in Kansas City Power & Light Company's Second Set of Discovery.

2. That the Commission's Order of November 2, 1999, relating to Kansas City Power & Light Company's First Set of Discovery Propounded to GST Steel Company, is set aside in that GS Technology Operating Company, Inc., doing business as GST Steel Company, must provide the information and documents requested in Data Requests 21, 27, 35, 39, 43, and 49, on or before January 13, 2000.

3. That the Commission shall convene a show cause hearing in this matter on Tuesday, January 18, 2000, commencing at 1:30 p.m.

4. That GS Technology Operating Company, Inc., doing business as GST Steel Company, and its counsel shall 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, on the date and time stated in Ordered Paragraph 3, above. Each counsel for every other party to this matter shall appear at that date and time and shall be prepared to advise the Commission on these matters.

5. That the hearing will be held on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Any person with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline - 1-800-392-4211, or TDD Hotline - 1-800-829-7541.

6. Any party desiring to tender written suggestions with respect to these matters shall file the same no later than 3:00 p.m. on Thursday, January 13, 2000.

7. That the prehearing conference previously scheduled for January 18, 2000, at 10:00 a.m., shall be held as scheduled.

8. That the procedural schedule previously adopted in this matter is suspended, except as otherwise specified herein, pending the outcome of the show cause hearing on January 18, 2000.

9. That this order shall become effective on January 12, 2000.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Thompson, Deputy Chief Regulatory Law Judge

Alt/Secy: Phyllis Pope

1-4
Date Circulated
CASE NO. EC-99-553

[Signature]
Lump, Chair

[Signature]
Crumpton, Commissioner

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

[Signature]
Draier, Vice-Chair

1-6
Agenda Date

1-31-00

Action taken:

4-04A

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 6TH day of January 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge