

ATTORNEY AT LAW
REGULATORY CONSULTANT

JAMES M. FISCHER, P.C.

101 WEST McCARTY, SUITE 215
JEFFERSON CITY, MO 65101

TELEPHONE (573) 636-6758
FAX (573) 636-0383

May 18, 1999

FILED

MAY 18 1999

Mr. Dale Hardy Roberts
Executive Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Missouri Public
Service Commission

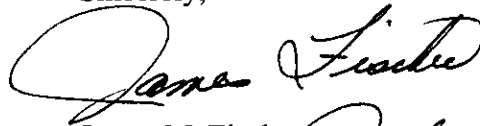

RE: *In the Matter of Hawthorn Generating Station Unit No. 5 and Adequacy of Service
Provided by the Kansas City Power & Light Company; Case No. ~~EO-99-~~
EC-99-553*

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are an original and six (6) copies, each with an attachment marked **HIGHLY CONFIDENTIAL**, and eight (8) copies with no Highly Confidential attachments, of the Reply of Kansas City Power & Light Company to GST Steel Company's Request for Immediate Relief. A copy of the foregoing document 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: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED
MAY 18 1999
Missouri Public
Service Commission

In the Matter of Hawthorn Generating)
Station Unit No. 5 and the Adequacy)
of Service Provided by the Kansas City)
Power & Light Company.)

Case No. ~~EC-99-~~

EC-99-553

**REPLY OF KANSAS CITY POWER & LIGHT COMPANY
TO GST STEEL COMPANY'S REQUEST FOR IMMEDIATE RELIEF**

COMES NOW Kansas City Power & Light Company ("KCPL") and for its Reply to GST Steel Company's ("GST") Request for Immediate Relief filed on May 11, 1999, respectfully states:

1. On May 11, 1999, GST filed its Petition for an Investigation as to the Adequacy of Service Provided by the Kansas City Power & Light Company and Request for Immediate Relief ("GST's Petition") in this matter. In GST's Petition, GST requested that the Commission take immediate action through this proceeding to ensure just and reasonable rates for GST. (GST Petition, p. 16-17). GST also requested that "the Commission shorten the time for response to this section IV.B of the Petition which addresses the need for immediate relief to five (5) days and establish a separate procedural schedule to consider the emergency relief requested in this Petition." *Id.* at 16.

2. Without waiving its right, pursuant to 4 CSR 240-2.070(7), to file its Answer within thirty (30) days of being served a certified copy of the petition by the Commission's Secretary, KCPL will respond to the limited portion of GST's Petition that requests "immediate relief" from the Commission. For the reasons stated herein, GST's Request for Immediate Relief should be denied.

3. Since 1987, GST and its predecessor, Armco Steel, have received electric service from KCPL pursuant to pricing contained in a special contract, as opposed to tariffed rates. That special contract was amended and restated in 1993 and 1994. The original and the two amendments and restatements were approved by the Commission in proceedings or tariff filings initiated specifically for that purpose. The current form of the contract between KCPL and GST was approved by the Commission in Case No. EO-95-67 on October 26, 1994. That contract, which is **Highly Confidential**, is attached hereto to GST's Petition as Appendix A and is being filed **under seal**.

4. GST's request for "immediate relief" is based upon GST's unsupported contention that the Commission needs to "take immediate steps to protect GST from exposure to unjust and unreasonable charges for electric service." (GST's Petition, p. 14). However, GST fails to note that GST's charges are specified and determined by the special contract approved by the Commission in Case No. EO-95-67. As a result, these charges are presumed to be lawful and reasonable. *See* Section 386.270, RSMo 1994.¹

5. GST's claims that it is not "seeking to 'improve' or alter" the Special Contract, and that it is merely seeking rates that are just and reasonable. In fact, GST, in utilizing its experience and expertise in the business as well as its attorney's experience and expertise, reserved the right to take service under a Commission approved tariff if the pricing structure of the special contract

¹ 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.

proved to be what it considered disadvantageous or "unjust" or "unreasonable." (See Section 7.4 of the Agreement). Since all approved tariffs are presumed to be just and reasonable, GST merely needs to exercise its contractual right to take service under an approved tariff. If GST truly feels that the rates pursuant to the special contract are "unjust and unreasonable" and it has a need for "immediate relief" from the pricing provisions of its special contract, GST should immediately give notice that it intends to exercise its option to be billed for capacity, facilities, and energy under any other applicable and generally available rate schedule of KCPL.² It is not necessary for the Commission to take any steps to permit GST to take service under the Commission-approved tariffs of KCPL. Therefore, there is no need for "this Commission [to] take immediate steps to protect GST from exposure to unjust and unreasonable charges for electric service." (GST Petition, p. 14). As a result, GST's request for immediate relief should be denied.

6. Under the terms of the contract, GST may take service under any available rate schedule. The most economical schedule for GST is the Large Power Service Schedule (LPS) together with the Curtailment Rider ("PLCC") for interruptible service. These schedules are applicable to GST. Service under the LPS schedule together with the Curtailment Rider (PLCC) for interruptible service is the schedule applicable to GST. GST is not unique compared to any other large industrial customer served under the LPS schedule. Under the terms of the contract, GST receives hourly incremental cost based pricing. This allows GST to make decisions regarding usage levels based upon hourly prices. No particular usage characteristic makes a customer on this type

² It should also be noted that GST is a highly sophisticated consumer of electricity who, with the assistance of special counsel and energy consultants, negotiated its existing special contract with the expectation of substantially reducing its electricity costs by employing "market-based pricing" formulas. GST should not be permitted to claim that its negotiated rates are "unjust and unreasonable" when market conditions failed to materialize as GST expected.

of pricing unique. In fact, other customers are billed under similar terms either on a tariff or contract. The willingness of the customer to accept the risk of such variable pricing for substantial benefits to its operation is the only so called "unique" characteristic they all share. To the extent customers, including GST, are not willing to accept variable pricing, then such customers are no different than any customer served under the LPS schedule where the prices are largely fixed as opposed to variable. If GST believes fixed prices are better than hourly variable prices, the contract provides the ability for GST to shift to the LPS schedule. This schedule is the same one available to and used by other large industrial customers that in fact have substantially the same usage characteristics as GST. GST is not unique in any regard to these customers except for their willingness to be priced based on hourly variable costs. If they are no longer willing to be billed based on hourly variable prices, then they are no longer different or "unique" from any other LPS customer.

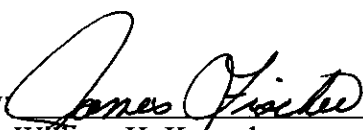
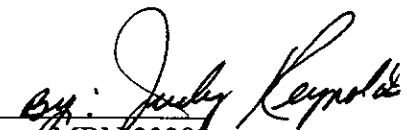
7. KCPL intends to file its Answer to the remaining allegations contained in GST's Petition at the appropriate time as specified by 4 CSR 240-2.070(7). However, it should be noted that the Commission Staff has already initiated an investigation into the February 17, 1999, explosion of the boiler at the Hawthorn Generating Station Unit #5. (See Staff Reply to Response of GST Steel Company and Request for Emergency Relief and Investigation, Case No. ER-99-313 (filed March 23, 1999)).³ It is therefore unnecessary for the Commission to take any action at this time with regard to the Hawthorn incident.

³ As noted by the Commission Staff, the final report from the investigation by the insurance carrier and KCPL may not be completed for 6 to 12 months. The Commission Staff's investigation is also expected by the Staff to take months to complete. (Staff Response, p. 3-4).

WHEREFORE, Kansas City Power & Light Company respectfully requests that the Commission deny GST's Request for Immediate Relief filed in this proceeding, and allow KCPL to more fully respond to the remainder of the allegations in GST's Petition as permitted by the Commission normal Rules of Practice and Procedure.

Respectfully submitted,

KANSAS CITY POWER & LIGHT COMPANY

By  
William H. Koegel MBN 33382
Gerald A. Reynolds CTBN 407871
Kansas City Power & Light Company
P.O. Box 418679
Kansas City, Missouri 64141-9679
Telephone: (816) 556-2785
Fax: (816) 556-2787

and

James M. Fischer MBN 27543
JAMES M. FISCHER, P.C.
101 West McCarty Street, Suite 215
Jefferson City, Missouri 65101
Telephone: (573) 636-6758
Fax: (573) 636-0383

ATTORNEYS FOR
KANSAS CITY POWER & LIGHT COMPANY

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, postage prepaid, this 18th day of May, 1999, to:

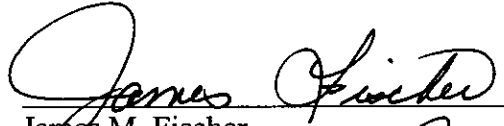
John B. Coffman
Deputy Public Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City MO 65102

Steven Dottheim
Chief Deputy General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City MO 65102

Paul S. DeFord
Lathrop & Gage, L.C.
2345 Grand Boulevard
Suite 280
Kansas City MO 64108

Office of the Public Counsel
P.O. Box 7800
Jefferson City MO 65102

William G. Riggins
William H. Koegel
Gerald A. Reynolds
Kansas City Power & Light Company
P.O. Box 418679
Kansas City MO 64141-9679


James M. Fischer
By: 