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August 2, 1999

FILED

AUG 3 1999

Missouri Public
Service Commission

VIA FEDERAL EXPRESS

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Room 530
Jefferson City, MO 65101

Re: GST Steel Company v. Kansas City Power & Light Company
Case No. EC-99-553
Our File: 100-9

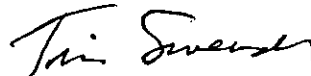
Dear Secretary Roberts:

On July 29, 1999, KCPL sent to the parties included on the Certificate of Service two documents in the above-referenced case: (1) a Reply to GST's Motion to Compel KCPL to respond to its Second and Third Sets of Interrogatories and Request for Production of Documents; and (2) a Reply to GST's Motion for Reconsideration and Clarification.

Enclosed please find an original and fourteen (14) copies of the public version of each of these filings, and eight (8) separate sealed envelopes containing the **Highly Confidential** version of each of these documents.

The above are being filed pursuant to and under the Protective Order previously granted by the Commission. I apologize for inadvertently neglecting to send these documents to you in my original mailing, and for the confusion it may have caused. Thank you in advance for your time and attention to this matter.

Very truly yours,



Timothy G. Swensen

TGS/csk
Enclosure

KC-666572-1

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

AUG 3 1999

GST STEEL COMPANY,

Complainant,

v.

KANSAS CITY POWER & LIGHT
COMPANY,

Respondent.

Missouri Public
Service Commission

Case No. EC-99-553

**KANSAS CITY POWER & LIGHT COMPANY'S REPLY TO
GST STEEL COMPANY'S MOTION TO COMPEL RESPONSES TO THE SECOND
AND THIRD SETS 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 Second and Third 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 under contract since 1987. Based on the 1987 special contract, KCPL charged GST rates other than regular tariff rates. The special contract was amended in 1992 and 1994. Under the current 1994 agreement, GST continues to enjoy special rates relative to regular tariff rates.

2. The 1987 special contract and the 1992 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. 1994.¹

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.

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.

GST's Motion to Compel Responses to GST's Second and Third Requests

5. Pursuant to this matter, GST served upon KCPL a Second and Third Sets of Interrogatories and Requests for Production of Documents on or about June 28, 1999, and July 6, 1999, respectively.²

6. KCPL served upon GST objections to GST's second request by letter dated July 8, 1999. KCPL objected to each request numbered 2.1 through 2.38 inclusive, on the basis that each was irrelevant, beyond the scope of the current proceedings, and not reasonably calculated to lead to the discovery of admissible evidence. KCPL objected to request 2.41 (inadvertently identified as 2.40 in the letter) 2.40 on the basis that providing the production costing model would violate KCPL's licensing agreement with the software owner. Finally, KCPL objected to requests 2.5(e) & (g), 2.8, 2.11, 2.18, 2.20(c), 2.27, and 2.28 to the extent GST sought information protected by work product and/or attorney-client privilege.

7. KCPL served upon GST objections to GST's third request by letter dated July 15, 1999. KCPL objected to each request, except request 3.36, on the grounds that each was irrelevant, overly broad, burdensome, beyond the scope of these proceedings, not reasonably calculated to lead to the discovery of admissible evidence, and KCPL objected to the extent GST sought information protected by work product and/or attorney-client privilege.

8. GST filed its Motion to Compel Responses to the Second and Third Sets of Interrogatories and Requests for Production of Documents on or about July 23, 1999.

² KCPL similarly contends that GST's First Set of discovery requests are irrelevant and not reasonably calculated to lead to admissible evidence. See KCPL's Reply to GST's Motion to Compel Responses to the First Set of Interrogatories and Requests for Production of Documents, ¶¶ 10, 12.

9. 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.

10. Moreover, Missouri Supreme Court Rule 56.01(c) states that upon motion by the party from whom discovery is sought, and for good cause shown, the court may protect that party from annoyance, oppression, or undue burden or expense by ordering, among other potential remedies, that discovery on certain issues be limited. See also, Wilson v. Davis, 979 S.W. 2d 253, 257 (Mo. App. S.D. 1998) (When items requested to be produced are overly broad the trial court should enter an order limiting the scope of discovery).

11. 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).

12. With the exception of requests 2.39, 2.40, 2.41, 2.42, and 3.36, each of complainant GST's requests is irrelevant and not reasonably calculated to lead to admissible evidence. In addition, several of the requests are overly broad and unduly burdensome, and seek information far beyond the scope of the current dispute. As noted above, KCPL objected to request 2.41 to the extent that providing the production costing model would violate KCPL's licensing agreement with the software owner. KCPL agrees, however, to permit GST access to the production costing model under conditions which safeguard KCPL's obligations to the owner of the software.

13. GST cites Sections 393.130.1, Mo. Rev. Stat. (1994), as support for its contention that its requests are relevant to the current dispute. The cited statute discusses the Commission's powers to insure safe and adequate electric service and to insure that rates are just and reasonable. The Commission has already decided to investigate safety issues regarding KCPL's Hawthorn station in a separate docket. See Order Denying Motion for Immediate Relief, Directing Expedited Response to Complaint, p. 4. ("...the Commission will not conduct its investigation of the boiler explosion at Hawthorn within the context of this case."). Requests 2.5-2.11, 2.19-2.20, 2.25-2.33, 2.35-2.36, 3.39-3.50, 3.57, and 3.59-3.61 all deal directly with performance and safety-related issues pertaining to the Hawthorn station. In addition, requests 2.12-2.13, 2.18, 2.21, 2.24, and 3.55-3.56 address safety or performance related issues at other KCPL generating units. These requests are completely irrelevant to the current inquiry and bear no relation to the harm GST alleges to have suffered, which the Commission accurately described as "purely economic." Order Denying Motion for Immediate Relief, Directing Expedited Response to Complaint, p. 4. GST is attempting to enlist, through an end run, the Commission's assistance in implementing more favorable terms in its agreement with KCPL by

construing its concerns as "safety-related." The Commission simply does not possess the power to alter contract rates between two parties, save for instances to protect or promote the public welfare. Kansas City Power & Light Co. v. Midland Realty Co., 93 S.W. 2d 954, 959 (Mo. 1936). The Commission also does not possess the power to enforce or construe contracts. Id.

14. Moreover, GST's contract with KCPL demonstrates further the irrelevancy of the above-cited requests. Section 3.6 of the Amended and Restated Power Supply Agreement between GST and KCPL expressly states:

KCPL shall have no liability to GST (including its agents, officers, directors and employees) or to or for any other person, firm or corporation for any loss, cost, damage, injury or expense (including but not limited to product loss and loss of profits) by reason of any interruption, reduction, curtailment or restoration of electric service to GST as contemplated in this Article, and GST shall defend, indemnify and hold harmless KCPL for any liability, loss, cost, damage, injury, fees or expenses on account thereof.

Section 3.6 of the Agreement also states that Section 3.17 of KCPL's General Rules and Regulations shall apply to the service rendered under the Agreement. Section 3.17 of the General Rules and Regulations holds that KCPL

... does not guarantee the supply of electric service against irregularities and interruptions. Except where due to the Company's willful misconduct or gross negligence, the Company shall not be considered in default of its service agreement and shall not be liable in negligence or otherwise for any claims for loss, expense or damage (including indirect, economic, special or consequential damage) on account of fluctuations, interruptions in, or curtailment of electric service, or for any delivery delay, breakdown, or failure of or damage to facilities. . . .

Thus, the above-enumerated requests for information regarding the Hawthorn boiler explosion, and other safety issues generally, are irrelevant in the instant case because (1) the Commission has already decided to investigate these matters in a separate docket, (2) the Commission may

not alter GST's previously approved special contract rates³, and (3) because express provisions in GST's Agreement with KCPL render the requests irrelevant to any dispute over alleged economic harm.

15. Requests 2.14-2.17, 2.22-2.23, 2.29-2.35, 2.37-2.38, 3.51-3.52 and 3.54 address information regarding energy purchased by KCPL, off-system sales of electricity, and generation output data. This information is similarly irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The core issue in this dispute is whether GST has been exposed to unjust and unreasonable charges for electric service. See GST's Petition, pp. 3, 14-16. The requested information is simply not germane to that inquiry. Regardless of the contents of the requested information, GST may not request that the Commission rewrite the terms of the contract now that it is displeased with the Commission-approved bargain it struck in 1994. Kansas City Power & Light Co. v. Midland Realty Co., 93 S.W. 2d 954, 959 (Mo. 1936). In the context of recognizing the power of the state to regulate public utilities and fix rates, the Supreme Court stated: "There is, quite clearly, no principle which imposes an obligation to [modify or abrogate a private contract] merely to relieve a contracting party from the burdens of an improvident undertaking." Arkansas Natural Gas Co. v. Arkansas R.R. Comm'n, 261 U.S. 379, 382 (1923). In addition, while GST's Agreement with KCPL permits GST access to information used to determine and verify Incremental Cost, "Incremental Cost" is defined as "... the hourly cost to serve GST's load computed by running KCPL's production costing model without taking into account, off-system non-firm whole sale transactions, replacement or economy energy sales, and retail sales of power under special contracts for new or incremental load entered into hereafter which represent 50,00 kilowatts or more of diversified load." See

³ To the extent GST is disappointed with the outcome or implementation of its special rates, it may elect to take service under the tariff rates which the Commission has likewise approved and which are prima facie reasonable.

Section 1.10, Amended and Restated Power Supply Agreement. Thus, GST's legitimate desire for data regarding the determination of Incremental Cost cannot include the information sought in the requests cited above.

16. Requests 3.1-3.34, 3.37-3.38, and 3.58-3.61 seek data regarding KCPL personnel, capital improvement expenditures and budgets, and performance goals. These requests are also irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Again, these requests relate directly to GST's attempt to transform its complaint about its contract with KCPL into something different. This attempt is transparent and should be denied for reasons already discussed in paragraphs 13 and 15.

17. Requests 2.1-2.4, 2.7, 2.9-2.12, 2.36 and 3.35 are overly broad and burdensome. For example, GST repeatedly requests information dating to 1989—5 years prior to the date of its current agreement with KCPL. Such requests are clearly too broad, unduly burdensome, and irrelevant, and simply designed to harass. The information requested should not be compelled.

18. Should the Commission decide to compel any discovery requests, KCPL will evaluate all requested information for the existence of work product or attorney-client privilege. In the event any information is privileged, KCPL agrees to provide an appropriate privilege log.


19. Denying GST's motion to compel will not in any way impede a thorough and accurate presentation of the issues which this Commission has the power to address. 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 and overly broad data. Denying GST's motion to compel KCPL's responses to the Second and Third 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 Second and Third Set of Interrogatories and Requests for Production of Documents, and requests that this Commission grant such further relief as deemed just and proper.

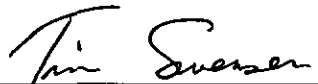
Respectfully submitted,



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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 29th day of July, 1999:

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