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August 17, 1999

**FILED**

**AUG 17 1999**

**VIA HAND DELIVERY**

**Missouri Public  
Service Commission**

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

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 the original and fourteen (14) copies of GST Steel Company's Reply to KCPL's Notice of Modification to its Response to GST's Second and Third Sets of Interrogatories and Requests for Production of Documents.

Thank you in advance for your attention to this matter.

Sincerely,

LATHROP & GAGE L.C.

By:

  
Kurt U. Schaefer

KUS/jf  
Enclosures  
cc: To all parties of record

1499.1

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED

AUG 17 1999

Missouri Public  
Service Commission

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

**GST STEEL COMPANY'S REPLY TO KCPL'S NOTICE OF MODIFICATION  
TO ITS RESPONSE TO GST'S SECOND AND THIRD SETS  
OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Comes now GST Steel Company ("GST") and restates its request that this Commission compel Kansas City Power & Light Company ("KCPL") to respond to the Second and Third Sets of Interrogatories and Requests for Production of Documents Propounded by GST to KCPL. By Notice, dated August 9, KCPL indicated its intent to respond to GST's requests in a manner that is incomplete, inadequate and unjustifiably limited. GST requests that the Commission direct KCPL to, without further delay provide full and timely responses. In support thereof, GST states as follows:

**I. BACKGROUND**

1. GST served KCPL with its second and third sets of discovery requests on or about June 28, 1999, and July 6, 1999, respectively.

2. With the exception of two one-page letters (which are attached as exhibits to GST's Motion to Compel) KCPL has not responded to GST's second and third sets of

discovery requests. On or about July 23, 1999, GST filed a Motion to Compel KCPL to respond to GST's second and third sets of discovery requests. GST's Motion is pending before the Commission.

3. By Order, dated July 29, 1999, the Commission rejected KCPL's baseless objections to GST's first set of information requests, instructed the utility to comply with those requests promptly, cautioned the utility against "further abuse of the discovery process," and extended GST's time for filing testimony in light of KCPL's intransigence to date. Upon review of this Order, KCPL filed its August 9, Notice of Modification of KCPL's Response to GST's Second and Third Sets of Discovery Requests (hereinafter "Notice of Modification"). In its Notice, KCPL stated, among other things, that it "withdraws its objections to most of the requests contained in GST's second and third sets of discovery requests." KCPL Notice of Modification, August 9, 1999, at 1-2. KCPL also stated in its Notice that it is "in the process of gathering" the information requested by GST. *Id.* at 2.

## II. DISCUSSION

4. GST restates and incorporates herein each argument from its Motion to Compel KCPL's response to GST's second and third sets of discovery requests.

5. Through its filings, up to and including the Notice of Modification, KCPL has managed to delay actually responding to GST's discovery requests much longer than the time period permitted under the Commission's Rules of Practice and Procedure. Commission Rule 4 CSR 240-2.090(2) requires that a party receiving data requests must answer the

requests within twenty days after receipt. GST served KCPL its second set of discovery requests on June 28, 1999, and its third set on July 6, 1999. Thus, KCPL has avoided responding to GST's second set of requests for almost fifty days, and to GST's third set for over forty days. The Commission should not allow KCPL to delay providing the overdue responses to GST's discovery requests any longer.

6. KCPL's Notice of Modification preserves the company's generic objections to four categories of discovery requests:

- a) information that predates 1994,
- b) information protected by the attorney-client privilege and/or work product doctrine,
- c) information relating to the Hawthorn incident, and
- d) those instances where KCPL has a legal obligation not to disclose information to third parties.

KCPL Notice of Modification, filed August 9, 1999, at 2. KCPL has not established a basis for any of these exclusions. GST has indicated a willingness to work with KCPL on the production of older but relevant data.<sup>1</sup> Also, KCPL must demonstrate that specific materials are protected from disclosure by an applicable privilege or an expressly delineated obligation not to disclose. The Company needs to list responsive documents that it seeks to exclude and describe the privilege applicable to each. In asserting a generic claim of privilege, it is not clear whether, a month and a half after GST's Requests were submitted, KCPL has even begun to assess whether any specific documents may be covered by an applicable privilege against disclosure.

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<sup>1</sup> See attached letter.

7. KCPL continues to refuse to answer any request related to the Hawthorn 5 explosion. The central issues raised by GST's Petition, however, concern the adequacy of electric service being provided by KCPL to GST and the harm GST has suffered as a result of the inadequate service, including specifically the impacts related to the Hawthorn explosion and outage. The Commission stated in its Order Regarding GST's First Motion to Compel Discovery and Amending the Procedural Schedule (hereinafter "Commission's Order") that GST's pleadings "include an issue of service adequacy," and that the "Hawthorn incident is relevant to that issue." Commission's Order, Docket No. EC-99-553, July 29, 1999, at 7. The Commission pointedly observed that "KCPL can hardly argue that the Hawthorn incident is not also directly relevant to the issue of KCPL's charges to GST." *Id.* Despite the Commission's Order, KCPL persists in objecting to providing information relating to the explosion, shutdown, and investigation of Hawthorn 5 Generating Station.

8. Since the circumstances associated with the loss of Hawthorn's generation are directly and causally linked to KCPL's charges to GST, KCPL cannot be permitted to avoid answering reasonable and appropriately framed discovery related to Hawthorn submitted by GST. Unless KCPL is prepared to stipulate that it will not include replacement energy for Hawthorn in the estimated costs charged to GST, the information must be supplied.


9. A party failing to properly comply with discovery may be sanctioned by the Commission. 4 CSR 240.2.090(1) & (2); Supreme Court Rule 61.01.

**WHEREFORE**, GST restates its request that this Commission compel KCPL's immediate and complete responses to the Second and Third Set of Interrogatories and Requests for Production of Documents Propounded by GST to KCPL or face sanctions pursuant to 4 CSR 240.2-2.090 and Supreme Court Rule 61.01. GST specifically requests that this Commission direct KCPL to respond in this docket to GST's discovery pertaining to:

- (a) the Hawthorn explosion and outage,
- (b) inadequate or imprudent management of power generation, and
- (c) inadequate or imprudent management of power delivery.

The Commission may grant such further relief as deemed just and proper.

Respectfully submitted,



Paul S. DeFord Mo. #29509

Kurt U. Schaefer Mo. #45829

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Attorneys for GST Steel Company

Dated: August 17, 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 17th day of August, 1999.

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\_\_\_\_\_  
Attorney

B R I C K F I E L D  
B U R C H E T T E  
R I T T S . P C

WASHINGTON, D.C.  
AUGUST 10, 1999

August 10, 1999

Via Facsimile

Gerald A. Reynolds, Esq.  
Kansas City Power & Light Company  
1201 Walnut  
Kansas City, MO 64141

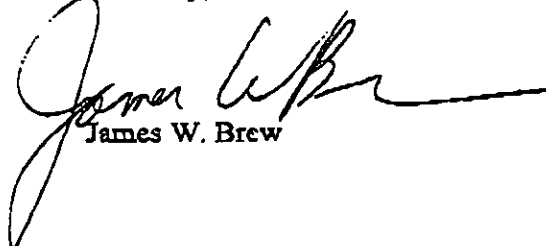
Re: Case No. EC-99-553

Dear Mr. Reynolds:

As we discussed today, GST is willing to work with KCPL on the production of discovery materials. In particular, if materials are available that are responsive to a given request, but your search for all relevant records responsive to the request has not been completed, please provide the materials that are available immediately.

Thank you.

Sincerely,



James W. Brew