

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 13th  
day of April, 1999.

In the Matter of the Stipulation and	)	
Agreement Reducing the Annual Missouri	)	<u>Case No. ER-99-313</u>
Retail Electric Revenues of Kansas City	)	
Power & Light Company	)	

**ORDER DENYING INTERVENTION AND APPROVING STIPULATION AND AGREEMENT**

On January 26, 1999, the Staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel (Public Counsel), and Kansas City Power & Light Company (KCPL) filed their nonunanimous Stipulation and Agreement with the Commission in Case No. ER-99-313 and Case No. EM-97-515, requesting an order approving the Stipulation and Agreement. The parties requested this matter be given expedited treatment, with the Commission's order approving the proposed reduction effective March 1, 1999.

A Notice of Filing Stipulation and Agreement was also filed on January 26. Staff, Public Counsel and KCPL stated in their notice that all of the parties to Case No. EM-97-515, as well as Trigen-Kansas City and the Missouri Retailers Association, were given notice of the filing of the nonunanimous Stipulation and Agreement pursuant to the requirements of 4 CSR 240-2.115. The Stipulation and Agreement stated that Trigen-Kansas City and Missouri Retailers Association were not parties to Case No. EM-97-515 but are usually parties to KCPL's rate cases. Staff, Public Counsel and KCPL requested that all of the

parties of record in Case No. EM-97-515, Trigen-Kansas City and the Missouri Retailers Association, be made parties to this case without the necessity of their filing for intervention.

The Stipulation and Agreement provides for a 3.2 percent reduction of KCPL's annual Missouri electric revenues applied equally to every rate and charge on each electric rate schedule, excluding a variety of special contract provisions. This 3.2 percent decrease will approximately amount to a \$15 million decrease in revenues exclusive of license, occupation, franchise, gross receipts or other similar fees and taxes. The signatories agreed that they will not file any case requesting (1) a general increase or decrease in KCPL's Missouri retail electric rates, or (2) rate credits or rate refunds prior to the earlier of September 1, 2001, or the closing of Western Resources-KCPL merger, unless an exceptional event occurs as defined by the Stipulation and Agreement. The signatories agreed that they would not request (1) a general increase or decrease in KCPL's Missouri retail electric rates, or (2) rate credits or rate refunds that would be effective for service rendered prior to March 1, 2002, or prior to one year after the closing of the Western Resources-KCPL merger, whichever occurs first. The Stipulation and Agreement clarifies various instances where this agreement applies and where exceptions exist.

On February 2, 1999, GST Steel Company (GST) filed its application to intervene as a party in this case. In its application, GST stated that it is a corporation duly authorized to conduct

business in the state of Missouri with its principal place of business located at 7000 Roberts Road, Kansas City, Missouri 64125. It is a manufacturer and processor of steel within the area serviced by KCPL. GST stated that it is one of the largest consumers of KCPL's utility services. GST stated that it received notice of the agreement on January 26, 1999. Because GST is a special contract service customer of electrical services provided by KCPL, GST believes that its interests are markedly different from the general public. Parties to the special contract services are excluded from receiving a reduction. GST Steel also filed a request for hearing pursuant to 4 CSR 240-2.115(3) which requires the Commission to hold a hearing regarding a nonunanimous Stipulation and Agreement if requested by a party.

On February 4, the City of Kansas City, Missouri (Kansas City) filed its application to intervene with the Commission. Kansas City stated in its application that it had no objection to the Stipulation and Agreement and had notified the Commission by letter filed on January 28. Kansas City further stated in its application that it only sought intervention after GST Steel Company sought to intervene. The applicant stated that it wished to participate in the discussions and making recommendations to the Commission on the nature and scope of the proceedings. The applicant stated that as a municipality it is entitled to intervene.

On February 5, KCPL filed a motion for the issuance of a protective order stating that its response to GST's application to intervene and request for hearing contained highly confidential

information which was filed under seal with the Commission. KCPL requested that a protective order be issued to protect its interest and the confidentiality of such materials and to facilitate the exchange of information between proper parties to the case. On March 16, the Commission issued an order granting protective order as requested by KCPL.

KCPL also filed its response to application to intervene and request for hearing on February 5. In its response, KCPL stated that GST's only apparent reason for objecting to the Stipulation and Agreement and requesting a hearing is that it will not share in the 3.2 percent reduction. KCPL further stated that GST, by virtue of its contract, could receive a share of the rate reduction if it chose to exercise the provision of a contract which would permit GST to elect at any time to be billed under the provisions of any applicable and generally available rate schedule. KCPL stated that GST has chosen not to receive a share of the rate reduction because its contract rates under the special contract services are significantly lower than the tariffed rates even after the 3.2 percent reduction. KCPL stated in its response that GST will not be affected negatively by approval of the Stipulation and Agreement and that GST has always had the option of bringing a separate action before the Commission to address issues related to its contract with KCPL.

On February 10, Public Counsel filed its motion regarding GST Steel Company's request for a hearing. Public Counsel stated that GST does not have a direct and current interest in KCPL's general rates

because GST currently enjoys a special rate that is significantly lower than the tariffed rate, even after taking the proposed rate reduction into account. Further, Public Counsel's office stated that GST should not be permitted to unduly delay a reduction in rates that will apply to the vast majority of those customers that do not have the ability to enter into a special contract with their electric company.

On February 10, Staff filed a memorandum in support of the Stipulation and Agreement filed on January 26. Staff stated that it is appropriate to periodically change rates based on incremental costs to reflect changes in the incremental cost, such as daily for real time prices, at least every two years for avoided cost payments to qualifying facilities, but inappropriate to change rates based on incremental costs solely to reflect changes in embedded costs. The 3.2 percent decrease is not applied to special contracts and certain other items for this reason. The 3.2 percent decrease will not be applied to those rates and charges found on KCPL's rate schedules that are based on incremental costs, nor will the 3.2 percent decrease be applied to hourly real time prices, which are also based on incremental costs but do not appear on the rate schedules. The proposed equal percentage decrease to all tariffed rates and charges, except those specifically indicated, will maintain the rate design effectuated in Case No. EO-94-199, set in place just 30 months ago.

In addition, Staff stated that, even though Section 393.292, RSNo. (1994), permits single issue ratemaking respecting nuclear

decommissioning, the signatory parties agreed not to request, or encourage or assist any request for an increase or decrease in KCPL's rates to reflect a change in the projected level or annual accrual of funding for decommissioning as a result of the decommissioning study required to be filed on September 1, 1999. 4 CSR 240-20.020(9).

As an attachment to its memorandum, Staff submitted to the Commission a letter from KCPL Assistant Chief Legal Officer William G. Riggins indicating that KCPL will begin an accrual on March 1 equaling a 3.2 percent reduction in KCPL's Missouri electric revenues, which will continue until the effective date of the Commission order ruling upon the Stipulation and Agreement as agreed by the signatory parties. If the Commission's order approves the Stipulation and Agreement, KCPL's customers will receive an equal percentage of the credit. If the Commission's order does not approve the Stipulation and Agreement as filed, the accrual will be reversed.

On February 10, Staff also filed its Motion For A Commission Order Directing GST Steel Company To File A More Definite Statement Of Its Issues And For A Commission Order Setting A Procedural Schedule. Staff stated that GST has not conformed to the requirements of 4 CSR 240-2.115(1) in that neither of the pleadings filed by GST on February 2 identified what issues GST is requesting to be heard by the Commission. Because time is of the essence respecting the Stipulation and Agreement, Staff requested that the Commission set a procedural schedule.

Correspondence indicating no objection to the Stipulation and Agreement was received from the following parties to Case No. EN-97-515 between January 28 and February 18: Kansas Electric Power Cooperative, UtiliCorp United Inc., St. Joseph Light & Power Company, The Empire District Electric Company, City of Kansas City, Missouri, State of Missouri, ex rel. Attorney General Jay Nixon, United States Department of Energy.

On February 22, GST filed its response to Public Counsel's and Staff's motions. In its pleading, GST stated that it is not necessarily challenging the amount or the distribution of the rate reduction agreed upon in the Stipulation and Agreement. GST stated that, as a special contract customer of KCPL, it does not share in the general rate reduction for tariffed customers agreed upon by the parties to the Stipulation and Agreement. GST stated in its pleading that simply because it does not receive a reduction through the Stipulation and Agreement should not mean that

- A) GST consequently loses rights it would otherwise have to participate before this Commission;
- B) the Staff and Public Counsel cease to be available to assist in protecting the interest of GST (or any other customer excluded from the application of a stipulation); nor
- C) GST's potential relief through any adjustment of the charges which have become unjust and unreasonable under its amended and restated power supply agreement with KCPL be placed at risk.

Further, GST stated that it is only seeking to assure that its available due process, statutory, and contractual rights are not bargained away by the parties to the Stipulation and Agreement. GST

stated that the restrictions included in the Stipulation and Agreement limit the ability of Staff and the Public Counsel to participate in matters involving the rates not only of those retail customers that receive rate reductions as a result of the Stipulation and Agreement but also in matters relating to retail customers excluded from receiving the benefit of the Stipulation and Agreement, such as GST. It is this limitation that GST stated is unfair, unreasonably discriminatory and contrary to law. GST stated that the Stipulation and Agreement will preclude Staff and Public Counsel from taking any steps on their own to ensure the customers not covered by the Stipulation and Agreement continue to pay just and reasonable rates for electric service and that Staff and Public Counsel will not be able to offer assistance to these excluded customers. GST stated that it appears from its reading of the Stipulation and Agreement that Staff and Public Counsel will be prohibited from participating in any audit of KCPL that GST might undertake pursuant to its rights under its contract with KCPL. Therefore, GST requests that the Commission order Staff, Public Counsel and KCPL to revise their Stipulation and Agreement to clarify that retail electric customers of KCPL that are specifically excluded from the Stipulation and Agreement shall not have their rights to participate before the Commission impinged in any way and that the Staff and Public Counsel shall be free to join with and/or assist those customers which are excluded as they see fit, in accordance with the law.



On March 1, KCPL filed its reply to GST's response which was filed on February 22. KCPL stated in its reply that since GST is not a party to the Stipulation and Agreement, this Stipulation and Agreement between KCPL, Commission Staff and Public Counsel cannot bind GST in any way or take away any rights that GST would otherwise have to raise issues before the Commission. KCPL stated that it does not believe that the Stipulation and Agreement would prohibit the Commission Staff or the Public Counsel from providing GST any assistance that customers would be entitled to expect from these State agencies. KCPL stated further that the Stipulation and Agreement does not restrict the Commission from reviewing GST's arguments concerning potential rate reductions or refunds. In order to resolve GST's concerns, KCPL specifically waived any objection that could be raised by it regarding the Commission Staff or Public Counsel providing assistance to GST in resolving issues related to GST's special contract with KCPL. KCPL also waived any objection it may have to the Commission exercising its jurisdiction to review GST's arguments and evidence related to GST's special contract with KCPL. Given these assurances and waivers, KCPL stated that there is no need to grant GST an evidentiary hearing at this time or otherwise delay the Commission's evaluation of the Stipulation and Agreement.

On March 15, GST filed a Request For Emergency Relief And Investigation. GST requested that the Commission take immediate steps to protect GST from exposure to unjust and unreasonable charges for electric service. GST further requested that the Commission

investigate the prudence and reliability of KCPL's operation of its generating units and transmission and distribution system, including the recent explosion at KCPL's Hawthorn Generating Unit No. 3 (Hawthorn). Alleging KCPL's excessive and mounting reliability problems, and KCPL's lack of focus on the issue of reliability, GST requested that the Commission investigate the causes of the Hawthorn incident and take action to ensure that the causes of the Hawthorn explosion are not repeated. GST also requested that the Commission prohibit KCPL from passing through to its customers, either directly or indirectly, replacement power costs rising from KCPL's imprudence pertaining to the Hawthorn explosion. GST asked that the Commission investigate the reliability problems plaguing the operation of the remainder of KCPL's system to determine whether KCPL has likewise been imprudent and negligent in the operation of other components of the system. GST also asked the Commission to require KCPL to remove Hawthorn from its rate base during its period of reconstruction because it is not "used" and "useful," and that the Commission deny recovery to KCPL for all cost associated with Hawthorn's reconstruction attributable to KCPL's failure to utilize prudent utility practice.

On March 18, KCPL filed Its Response To Request For Emergency Relief And Investigation. On March 23, Staff filed its Reply To The Response Of GST Steel Company And GST's Request For Emergency Relief And Investigation. On March 24, Public Counsel filed its Response To GST's Request For Emergency Relief And Investigation. KCPL

recommended that GST's request be denied by the Commission. Staff recommended that the Commission schedule an expedited conference to discuss GST's concerns and possibly resolve the matter without further contested proceedings, and Public Counsel requested that the Commission dismiss GST's request and approve the proposed Stipulation and Agreement. On April 12, 1999, GST filed its reply to the responses of KCPL, Staff, and Public Counsel to its Request for Emergency Relief and Investigation. GST also filed a Motion to Compel Kansas City Power & Light's Responses to the First and Second Set of Interrogatories and Request for Production of Documents Propounded by GST Steel Company to the Kansas City Power & Light Company.

The Commission finds that the Request For Emergency Relief And Investigation filed by GST is not related to the Stipulation and Agreement which is the subject matter of Case No. ER-99-313. GST's Request For Emergency Relief And Investigation filed on March 15, 1999 shall be stricken on the Commission's own motion. If GST wishes to pursue this request further, its request must be refiled with the Commission appropriately.

Under 4 CSR 240-2.075, the Commission may permit intervention on a showing that

- A) the applicant has an interest in the proceeding which is different from that of the general public;
- B) the applicant is a municipality or other political subdivision;
- C) granting the proposed intervention would serve the public interest; or

- D) applications being filed after the intervention date set by the Commission may be granted upon a showing of good cause.

An application to intervene must also state the applicant's interest in the proceeding and reasons for seeking intervention as well as whether the applicant supports or opposes the relief sought. 4 CSR 240-2.075.

The applicants for intervention, one of which has already indicated its support of the Stipulation and Agreement, do not have an interest in this proceeding and therefore the applications to intervene filed by GST Steel Company and the City of Kansas City, Missouri, shall be denied. Further, the Commission finds that it is not in the public interest to join any of the parties to Case No. EN-97-515, Trigen Energy Corporation or the Missouri Retailers Association, to this case. Because it is not a party in this case, GST's Motion to Compel Kansas City Power & Light's Responses to the First and Second Set of Interrogatories and Request for Production of Documents Propounded by GST Steel Company to the Kansas City Power & Light Company will be denied.

The Commission finds that the Stipulation and Agreement filed by the signatory parties is reasonable. The Commission finds that the Stipulation and Agreement should be applied to the signatory parties but in no way restricts any non-signatory parties. Further, Staff and Public Counsel are not restricted from assisting or participating in actions which are raised by nonsignatory parties except for those that are strictly and narrowly specified in the Stipulation and Agreement.

**IT IS THEREFORE ORDERED:**

1. That the applications for intervention filed by GST Steel Company on February 2, 1999 and by the City of Kansas City, Missouri on February 4, 1999 are denied.

2. That the request for hearing filed by GST Steel Company on February 2, 1999 is denied.

3. That Staff's motion for a Commission order directing GST Steel Company to file a more definite statement of its issues and for a Commission order setting a procedural schedule filed on February 10, 1999 is denied.

4. That GST Steel Company's Request For Emergency Relief And Investigation filed on March 15, 1999 is stricken from this case.

5. That GST Steel Company's Motion to Compel Kansas City Power & Light's Responses to the First and Second Set of Interrogatories and Request for Production of Documents Propounded by GST Steel Company to the Kansas City Power & Light Company filed on April 12, 1999, is denied.

6. That the Stipulation and Agreement filed with the Commission on January 26, 1999 by the Staff of the Missouri Public Service Commission, the Office of the Public Counsel, and Kansas City Power & Light Company is approved, except that the signatory parties' request that permit the parties in Case No. EM-97-515, Trigen Energy Corporation, and the Missouri Retailers Association to be made parties to this case is denied.

7. That this order shall become effective on April 23, 1999.

8. That this case may be closed after April 26, 1999.

BY THE COMMISSION

*Dale Hardy Roberts*

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Register, Regulatory Law Judge

ALL/Secy: Register/Bayce  
4-9 ER-99-313  
Date Circulated CASE NO.

LL  
Lumpkin, Clerk  
Crump, Commissioner  
Law  
Murray, Commissioner  
RS  
Schmiedt, Commissioner  
Drake, Vice-Chair

4-13  
Agenda Date

Action taken: 5-0 AA  
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 13TH day of APRIL, 1999.

Dale Hardy Roberts  
Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge