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October 28, 1999

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P. O. Box 360
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FILED²
OCT 28 1999
Missouri Public
Service Commission

RE: Case No.EC-99-553 - Kansas City Power & Light Company

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of the **STAFF'S RESPONSE TO KANSAS CITY POWER & LIGHT'S MOTION TO LIMIT THE SCOPE OF DISCOVERY AND ISSUES.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Lera L. Shemwell
Assistant General Counsel
(573) 751-7431
(573) 751-9285 (Fax)

LLS:sw
Enclosure
cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED²

OCT 28 1999

Missouri Public
Service Commission

GST STEEL COMPANY,

Complainant,

v.

KANSAS CITY POEWR & LIGHT
COMPANY,

Respondent.

Case No. EC-99-553

**STAFF'S RESPONSE TO KANSAS CITY POWER & LIGHT COMPANY'S
MOTION TO LIMIT THE SCOPE OF DISCOVERY AND ISSUES**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and in response to Kansas City Power & Light Company's (KCPL) Motion To Limit The Scope Of Discovery And Issues states:

1. The Commission has already determined that "the Hawthorn incident is relevant to GST's theory of service unreliability due to poor maintenance practices." Order Regarding KCPL's Motion For Clarification, Reconsideration And Rehearing Of The Commission's Order Of July 29, 1999, And Regarding GST Steel Company's Second Motion To Compel Discovery, p. 7, August 19, 1999. Staff finds nothing in KCPL's pleading that should cause the Commission to change that determination.

2. The Commission has further determined that "the Hawthorn incident is also relevant to GST's theory that the prices it pays for service under its special contract are not just and reasonable in view of KCPL's imprudent management practices." Order Regarding KCPL's Motion For Clarification, Reconsideration And Rehearing Of The Commission's Order Of July 29, 1999, And Regarding GST Steel Company's Second Motion To Compel Discovery, p. 7,

August 19, 1999. Again, Staff finds nothing in KCPL's pleading that should cause the Commission to change that determination.

3. When this complaint was originally filed, the Staff suggested that the cause of the Hawthorn 5 natural gas explosion be handled in a separate case. At the time of the filing of GST's complaint, GST was requesting immediate action and an expedited schedule, and Staff was concerned that an expedited schedule might distract from the need for a careful, methodical and thorough approach to the incident investigation. Since that time, the procedural schedule for this case has been modified more than once, resulting in a much more protracted schedule for the GST complaint.

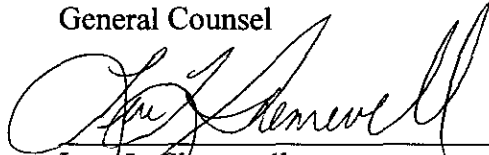
4. The Commission, in its Order in response to KCPL's Motion To Limit Discovery And Issues, may wish to further clarify whether it has determined that the cause of the explosion is relevant to the questions presented in this case. The Staff does not take lightly the assertions of KCPL and the affidavit of Scott Webb that the release of the information in question to GST would have a chilling effect on the free flow of information between KCPL and Starr Tech/Crawford, the subrogation rights of KCPL's insurers may be adversely affected, KCPL's rights of recovery may be jeopardized and the success of the investigation into the cause(s) of the Hawthorn incident may be adversely impacted. However, Staff notes the obvious: there is a Protective Order in this case. The Staff also does not take lightly KCPL's assertion at page 4 of its pleading that "[i]f GST is permitted to conduct such discovery in this proceeding, it will make it more difficult for the Commission, Commission Staff, and KCPL to conclude the investigation in the Hawthorn Incident in Case No. ES-99-581 in a timely manner."

5. KCPL implies at page 4 in its pleading that the discovery, which it is challenging in the instant case, would not be challenged by KCPL in the context of Case No. ES-99-581, but KCPL's pleading is not sufficiently clear for this to be taken as a correct reading of its pleading.

6. In paragraph 7 of KCPL's pleading, pages 3-4, KCPL asserts that "production of these documents may be protected by the insured/insurer privilege, attorney-client privilege and/or work product doctrine" and cites, in footnote 2, case law purportedly in support of its contention. The Staff would recommend to the Commission certain case law concerning the insured/insurer privilege that KCPL chose not to cite in its pleading: *Brantley v. Sears, Roebuck & Co.*, 959 S.W.2d 927, 928 (Mo. App. 1998); *Truck Ins. Exch. v. Hunt*, 590 S.W.2d 425, 432 (Mo. App. 1979)) 650 S.W.2d 707; *State ex rel. J.E. Dunn Const. Co., Inc. v. Sprinkle*, 654 S.W.2d 707 (Mo. App. 1983). Staff would also note certain language in a footnote in one of the two cases cited by KCPL: footnote 2 in *Cain v. Barker*, 540 S.W. 2d 50 (Mo. banc 1976) notes that numerous cases, mostly federal, reach a contrary result. Those cases hold that communications between an insured and his insurer are not privileged.

WHEREFORE Staff provides the above information for the Commission's consideration.

Respectfully submitted,
DANA K. JOYCE
General Counsel

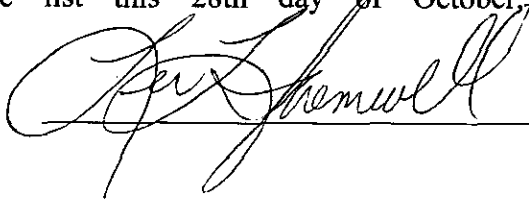


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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 28th day of October, 1999



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Case No. EC-99-553
Revised: October 28, 1999

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