

JAMES M. FISCHER, P.C.

ATTORNEY AT LAW  
REGULATORY CONSULTANT

101 WEST McCARTY, SUITE 215  
JEFFERSON CITY, MO 65101

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

November 8, 1999

FILED<sup>2</sup>

NOV 08 1999

Missouri Public  
Service Commission

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 3660  
Jefferson City, Missouri 65102



RE: *GST Steel Company v. Kansas City Power & Light Company*  
Case No. EC-99-553

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and fourteen (14) copies of Kansas City Power & Light Company's Response to GST's Reply to Its Motion to Limit the Scope of Discovery and Issues. A copy of the foregoing Response has been hand-delivered or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,

  
James M. Fischer  
  
By: Judy Reynolds

/jr  
Enclosures

cc: Paul S. DeFord  
James W. Brew  
Christopher C. O'Hara  
Dana K. Joyce  
Steven Dottheim  
Lera L. Shemwell  
John B. Coffman

FILED<sup>2</sup>

Missouri Public  
Service Commission

**Case No. EC-99-553**

- a) KCPL will not be required to answer Data Request Nos. 7.2 and 7.3 propounded by GST on September 17, 1999, related to the investigations of KCPL's Internal Cause and Loss Team and Crawford Investigation Service;
- b) The specific cause of the Hawthorn explosion is not a proper subject of this proceeding; and

$$u^3$$

- c) The scope of the any depositions of KCPL witnesses shall not include questioning related to KCPL's Internal Cause and Loss Team investigation, any preliminary findings and conclusions, or any matter related to the ongoing investigation being conducted in Case No. ES-99-581.

2. On October 28, 1999, GST filed its Reply to KCPL's Motion in which it raised several arguments that require a brief response. First, GST alleges without any apparent foundation that KCPL failed to object to Data Requests 7.2 and 7.3 within 10 days. KCPL is at a complete loss to understand this allegation since KCPL's in house counsel Gerald Reynolds personally faxed KCPL's objections to these data requests to James W. Brew, Paul S. DeFord (counsel for GST) and Lera L. Shemwell (counsel for the Commission Staff) on September 27, 1999, as well as mailed them to counsel on September 27, 1999. (See attached facsimile Message Confirmation slips). Since the data requests were not served upon KCPL by GST until September 17, 1999, KCPL's written objections faxed on September 27, 1999 would indeed be timely, pursuant to 4 CSR 240-2.090(2).

3. Secondly, GST claims that Data Request Nos. 7.2 and 7.3 "could not be more directly relevant to GST's Complaint." (GST Reply at 6). This argument is the heart of the current discovery dispute. As KCPL explained in its Motion, the documents requested by GST in Request Nos. 7.2 and 7.3 deal directly with the investigation of the cause of the explosion of the Hawthorn Generating Station ("Hawthorn Incident"), and the Commission already has held that "the Commission will not conduct its investigation of the boiler explosion within the context of this case. The Commission will establish a separate docket for that investigation." Order Denying Interim Relief at 4, (June 1, 1999). The Commission has subsequently established a

case to review the cause of the explosion. See Order Establishing Case, Case No. ES-99-581 (June 4, 1999). Since the Commission has stated that the investigation into the cause of the Hawthorn Incident will be conducted in Case No. ES-99-581, it is not appropriate for GST to seek discovery of documents related to the cause of the Hawthorn Incident in this docket. The specific cause of the incident does not impact the cost GST pays for electricity, pursuant to its Special Contract, and it is not relevant to the issues in this proceeding. KCPL has already discussed in its Motion that the cause of the Hawthorn Incident is not relevant to GST's Complaint. In addition, KCPL has explained the harm that will result to the ongoing investigation of the Hawthorn Incident, if production of these documents is required at this time. It is unnecessary to further re-iterate these arguments herein. However, KCPL would renew its request that the Commission find that the requested documents are not relevant to GST's Complaint, and therefore KCPL need not produce them.

4. GST also raises the specter that if the Commission denies GST's request for information related to the cause of the Hawthorn Incident in this docket, KCPL will refuse to give the Commission and its Staff access to investigatory documents in Case No. ES-99-581. (GST Reply at 6). This assertion is incorrect. KCPL has been fully cooperating with the Commission Staff in Case No. ES-99-581 and intends to continue this cooperation in the future. KCPL will provide to the Commission and its Staff in Case No. ES-99-581 the final reports of KCPL and the Crawford Investigation Service when they are available, pursuant to Section 386.480, RSMo 1994. Once these reports are completed, the current dispute regarding the documents related to the "investigation in progress" of KCPL and Crawford will be moot issues. The primary harm that may occur from the premature release of this information is that KCPL and its insurer may not be able to freely communicate during the course of the investigation. If

the Commission requires that KCPL provide such sensitive information to third parties, like GST, there may be a waiver of any privileges that would otherwise apply. This could damage KCPL's and its insurers' attempts to exercise their rights of subrogation. Since GST does not need this sensitive information in this docket, the Commission should not jeopardize future subrogation actions or potentially delay the completion of the investigation in Case No. ES-99-581, merely because a customer of KCPL seeks to promote its own pecuniary interests, and leverage this matter into rate or contract concessions from KCPL.

5. KCPL's activities leading up to the Hawthorn Incident may be pertinent to the allegations contained in GST's complaint case. Information such as KCPL's operations and maintenance expenses, capital budgets, system lambda, outage rates, annual budgets maintenance practices, and current and planned training programs may support GST's allegations or refute them. *KCPL has provided GST all of this information and more.*

6. As stated earlier, the specific cause of the Hawthorn Incident is not relevant to the issues in this proceeding. However, if the Commission disagrees, KCPL requests that GST's complaint proceeding be held in abeyance until the investigation of the Hawthorn Incident is concluded. There are a number of reasons why the Commission should hold this case in abeyance if it decides that information relating to the Hawthorn investigation is relevant to this docket.

- GST should not be permitted to use preliminary findings regarding the cause of the Hawthorn Incident to support its complaint case. Such findings would be subject to change. The Commission should not base its decision on findings that are preliminary and speculative.
- The disclosure of preliminary findings and speculation relating to the Hawthorn investigation may affect the subrogation rights of KCPL's insurers.
- Upon information and belief, KCPL's insurers may seek a Writ of Prohibition if the Commission Orders KCPL to provide GST information concerning the investigation

of the Hawthorn Incident. This would needlessly add another layer of complexity to this proceeding.

7. GST also alleges that KCPL has failed to provide a privilege log concerning all documents assembled as a result of GST's requests for production. (GST Reply at 4-5). While KCPL has provided a partial listing of these documents, KCPL intends to provide GST with a complete privilege log by November 9, 1999. This process has been delayed by the time required to review the documents that may be subject to the far-reaching discovery requests propounded by GST in this matter. However, KCPL intends to fully comply with the Commission's Order to produce a privilege log for GST's discovery requests.

**WHEREFORE**, Kansas City Power & Light Company respectfully renews its request that the Commission issue its Order Limiting the Scope of Discovery and Issues in this proceeding, and direct and reaffirm that:

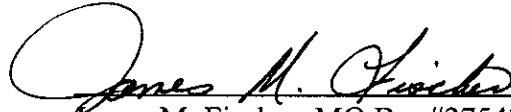
1. KCPL will not be required to answer Data Request Nos. 7.2 and 7.3 propounded by GST on September 17, 1999, related to the investigations of KCPL's Internal Cause and Loss Team and Crawford Investigation Service;

2. The specific cause of the Hawthorn explosion is not a proper subject of this proceeding;

3. The scope of the any depositions of KCPL witnesses shall not include questioning related to KCPL's Internal Cause and Loss Team investigation, any preliminary findings and conclusions, or any matter related to the ongoing investigation being conducted in Case No. ES-99-581;

4. In the alternative, the instant complaint case will be held in abeyance until the investigation being conducted in Case No. ES-99-581 is concluded.

Respectfully submitted,

 *James M. Fischer* *by:*

James M. Fischer MO Bar #27543  
James M. Fischer, P. C.  
101 West McCarty St.  
Suite 215  
Jefferson City, Missouri 65101  
Telephone: (573) 636-6758  
Facsimile: (573) 636-0383

 *Judy Reynolds*

Gerald A. Reynolds CT Bar #407871  
Law Department  
Kansas City Power & Light Company  
P. O. Box 418679  
Kansas City, Missouri 64141-9679  
Telephone: (816) 556-2785  
Facsimile: (816) 556-2787

Karl Zobrist MO Bar # 28325  
Timothy G. Swensen MO Bar #48594  
Blackwell Sanders Peper Martin LLP  
Two Pershing Square  
2300 Main Street, Suite 1000  
Kansas City, Missouri 64108  
Telephone: (816) 983-8000  
Facsimile: (816) 983-8080

Attorneys for Kansas City Power & Light  
Company

# CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing Response has been hand-delivered or mailed, First Class, postage prepaid, to the following counsel of record, this 8<sup>th</sup> day of November, 1999:

Paul S. DeFord  
Lathrop & Gage, L.C.  
2345 Grand Avenue, Suite 2500  
Kansas City, MO 64108

James W. Brew  
Christopher C. O'Hara  
Brickfield, Burchette & Ritts, P. C.  
8th Floor, West Tower  
1025 Thomas Jefferson Street, N.W.  
Washington, DC 20007  
Attorneys for Complainant GST Steel Company

Dana K. Joyce  
Steven Dottheim  
Lera L. Shemwell  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
Attorneys for Staff of the Missouri Public Service Commission

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

  
Attorney for Respondent

By: 





Gerald A. Reynolds

(816) 556-2785

(816) 556-2787 (Facsimile)

September 27, 1999

**VIA U.S. MAIL & FACSIMILE (202) 342-0807**

Mr. James W. Brew  
Brickfield, Burchette & Ritts, PC  
1025 Thomas Jefferson Street, NW  
8<sup>th</sup> Floor, West Tower  
Washington, DC, 20007

Re: Case No. EC-99-553

Dear Mr. Brew:

We are in receipt of the Seventh Set of Interrogatories and Requests for Production of Documents served by GST Steel Company ("GST") on or about September 17, 1999. Please be advised that Kansas City Power & Light Company (the "Company" or "KCPL") objects to Request Nos. 7.2 and 7.3. KCPL will produce documents that are responsive to the remaining requests.

**Request No. 7.2**

Please identify and provide copies of all documents, reports, memoranda, analyses, evaluations, conclusions, and/or presentation slides or overheads prepared by Crawford Investigation Service in connection with the Hawthorn Incident.

**Objection**

Several of KCPL's insurance companies hired Crawford Investigation Service to determine the cause and origin of the Hawthorn Incident. The Company objects to Discovery Request No. 7.2 to the extent it seeks information and/or documents that are protected by the insured/insurer privilege, and/or work product doctrine.

The Company also objects to this request on the grounds that it places an undue burden on the Company and its insurers, a nonparty. In order to determine the cause of the Hawthorn Incident in an expeditious fashion, the Company and its insurers are conducting a joint investigation of the Hawthorn Incident. Rather than duplicate each other's efforts, the Company and insurers have assumed responsibility for certain aspects of the investigation and agreed to exchange information. The insurers have subrogation rights that are worth hundreds of millions of dollars. Forcing the Insurers to provide GST with documents relating to their investigation of the Hawthorn Incident will jeopardize their subrogation rights. If the Company is forced to

KANSAS CITY POWER & LIGHT COMPANY

**Kansas City  
Power & Light**

James W. Brew

Page Two

provide GST with documents relating to the investigation of the cause of the Hawthorn Incident, the pooling of investigatory assets will end. This will significantly extend the duration of the Company's investigation of the Hawthorn Incident.

**Request No. 7.3**

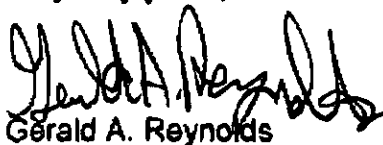
Please identify and provide copies of all documents, reports, memoranda, analyses, evaluations, recommendations, conclusions, and/or presentation slides or overheads prepared by the seven-member "KCPL" Internal Cause & Loss Team," identified by KCPL in Exhibit #s 28 & 29 in its Response to GST Request 2-5(f).

**Objection**

The Company objects to Discovery Request No. 7.3 to the extent it seeks information and/or documents that are protected by the attorney client privilege, and/or work product doctrine. In addition, the Company objects to this request on the grounds that it places an undue burden on the Company. A significant portion of the Company's damages resulting from the Hawthorn Incident is not covered by the Company's insurance policies. The Company may have claims against various parties that may eventually reduce the Company's monetary loss. The Company's legal claims will be jeopardized if GST is permitted to obtain documents relating to the cause of the Hawthorn Incident in this proceeding.

Please note that for each document that the Company asserts a legal privilege or protection, the Company will provide a privilege log.

Very truly yours,

  
Gerald A. Reynolds

cc: Paul S. DeFord  
Lera Shemwell

**KANSAS CITY POWER & LIGHT COMPANY  
LAW DEPARTMENT  
TELEPHONE NUMBER (816) 556-2785  
FACSIMILE NUMBER (816) 556-2787**

**FACSIMILE TRANSMITTAL SHEET**

Please deliver the following pages to:

Name: James W. Brew	Date: September 27, 1999
Brickfield, Burchette & Ritts, PC	4:05 PM CST
Firm: Washington, DC	Time:
City:	
Facsimile Number: (202) 342-0807	Telephone Number: (202) 342-0800
From:	
Gerald A. Reynolds	Floor/Room 20

Direct Dial Number: (816) 556-2138

Total number of pages including this cover letter: 3

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**KANSAS CITY POWER & LIGHT COMPANY  
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KANSAS CITY, MISSOURI 64106-2124**

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09/27/1999 16:03

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
09/27	01'02"	912023420807	CALLING	03	OK 0000

09/27/1999 16:02

NO. 267 001

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**LAW DEPARTMENT**  
**TELEPHONE NUMBER (816) 556-2785**  
**FACSIMILE NUMBER (816) 556-2787**

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Brickfield, Burchette &amp; Ritts, PC

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City:

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Facsimile Number:

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(202) 342-0800

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Gerald A. Reynolds

Floor/Room 20

Direct Dial Number: (816) 556-2138

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**Please deliver the following pages to:**

Name: Paul DeFord Date: September 27, 1999  
Firm: Lathrop & Gage Time: 4:10 PM CST  
City: Kansas City, MO 64108  
Facsimile Number: (816) 292-2001 Telephone Number: (816) 460-5827

**From:**

Gerald A. Reynolds Floor/Room 20

Direct Dial Number: (816) 556-2138

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KANSAS CITY, MISSOURI 64106-2124**

## MESSAGE CONFIRMATION

09/27/1999 16:10

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09/27/1999 16:09

NO.268 001

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**LAW DEPARTMENT**  
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**FACSIMILE NUMBER (816) 556-2787**

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Please deliver the following pages to:

Name:	<u>Paul DeFord</u>	Date:	<u>September 27, 1999</u>
Firm:	<u>Lathrop &amp; Gage</u>	Time:	<u>4:10 PM CST</u>
City:	<u>Kansas City, MO 64108</u>		

Facsimile Number: (816) 292-2001Telephone Number:  
(816) 460-5827

From:

Gerald A. ReynoldsFloor/Room 20Direct Dial Number: (816) 556-2138Total number of pages including this cover letter: 3

**KANSAS CITY POWER & LIGHT COMPANY  
LAW DEPARTMENT  
TELEPHONE NUMBER (816) 556-2785  
FACSIMILE NUMBER (816) 556-2787**

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Please deliver the following pages to:

Name: Lera L. Shemwell Date: September 27, 1999  
Firm: Missouri Public Service Commission Time: 4: 20 PM CST  
City: Jefferson City, MO 65102  
Facsimile Number: (573) 751-9285 Telephone Number: (573) 751-7431

From:

Gerald A. Reynolds Floor/Room 20

Direct Dial Number: (816) 556-2138

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KANSAS CITY, MISSOURI 64106-2124**

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09/27/1999 16:11

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TELEPHONE NUMBER (816) 556-2785  
FACSIMILE NUMBER (816) 556-2787

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Please deliver the following pages to:

Name:	<u>Lera L. Shemwell</u>	Date:	<u>September 27, 1999</u>
Firm:	<u>Missouri Public Service Commission</u>	Time:	<u>4: 20 PM CST</u>
City:	<u>Jefferson City, MO 65102</u>		

Facsimile Number: (573) 751-9285Telephone Number:  
(573) 751-7431

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