



LAW DEPARTMENT

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FILED

JUN 28 1999

June 25, 1999

**Missouri Public
Service Commission**

Dale Hardy Roberts
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

RE: Case No. EC-99-553

Dear Mr. Roberts:

Enclosed for filing with the Commission in the above-referenced case are the original and 14 copies of Kansas City Power & Light Company's Response to GST's Motion for Interim Relief and Expedited Hearings.

Please bring our filings to the attention of the Commission.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "W. H. Koegel", written over a horizontal line.

William H. Koegel

cc: Counsel for all parties of record

2. The allegation that the Hawthorn explosion somehow could lead to "unjust, unreasonable and unduly discriminatory" charges is merely GST's latest attempt to get an even lower rate for electric service than the beneficial rate it has enjoyed for a number of years. This is evident from GST's pleadings in Case No. ER-99-313.
3. In support of its request for interim relief and expedited hearings, GST states that it believes that it may be charged rates under the Special Contract which are not "just and reasonable and unduly discriminatory pending a final Commission determination in this matter." This argument is two-fold. First, that the rates to be charged will be unjust and unreasonable, and second, that the rates will be unduly discriminatory.
4. As to the argument that the rates would be unjust or unreasonable, under the Special Contract GST has the right to choose to take service under the appropriate tariffs. If GST truly fears that the rates under the Special Contract would be unjust or unreasonable, it can notify KCPL of its intent to take electric service under the appropriate tariff. Tariffed rates are presumed to be just and reasonable. In other words, GST can easily assure itself that its rates are just and reasonable by self-help without seeking Commission authority. Thus the Commission should deny the requested expedited hearing.
5. GST's second purported reason for interim relief and expedited hearing is that it may be charged rates that are "unduly discriminatory." KCPL denies that it has treated GST detrimentally in relation to any other customer. Like any other customer, GST is being and will continue to be charged the applicable tariff rate or the rate established in a

special contract. KPCL agrees that it "can not inflate the quoted prices by including unreasonable and excessive costs in its calculations" nor would KCPL consider inflating bills to any customer by including unreasonable or excessive costs. KCPL has and will follow the requirements of the mutually agreed upon and Commission-approved Special Contract in its charges to GST.

6. If GST were truly concerned about "discriminatory treatment" it could choose to take electric service under standard tariff rates. As previously stated, the right to take under the standard tariff rates is a right reserved by GST in the Special Contract. There is no need for the Commission to hold a hearing, expedited or otherwise, for GST to ensure that it does not receive "discriminatory treatment."
7. GST has sought two remedies for the alleged "unjust, unreasonable and unduly discriminatory" treatment. GST wants the Commission to rewrite the method of calculating the charges for electric service costs of KCPL under the fiction that Hawthorn No. 5 is still operating, and it wants \$5 million in insurance proceeds.
8. When GST and KCPL negotiated the Special Contract both parties had the benefit of legal and technical professionals. GST not only reserved for itself the right to take electric service under the appropriate tariff, to cover just such contingencies as it is seeking relief from in this matter, but also provided for a "most favored nation clause" which allows them to take electric service under the same conditions as the most beneficial special contract KCPL has with any customer. Despite these "insurance" provisions, GST now asks the

Commission to rewrite the Special Contract. GST cites no authority for the proposition that the Commission can rewrite a special contract. The power the Commission has relative to special contracts is to determine that they are valid or invalid. If a contract is invalid, the remedy is to place the contracting customer under the applicable tariffed rate. Kansas City Power & Light Co. V. Midland Realty, 93 SW2d 954, (Mo. 1936). That is the remedy here. GST may itself "expedite" this remedy under the Special Contract by a simple notification that it wishes to take electric service under the appropriate tariff. If the Special Contract is valid, then GST has no need for or right to a remedy. Therefore expedited action of the Commission is both unnecessary and unwarranted.

9. As to the second proposed remedy, while KCPL does have insurance for replacement costs of \$5 million, GST clearly misunderstands the impact of receipt of those proceeds. The incremental cost of replacement electric service to serve KCPL's ratepayers is expected to exceed the \$5 million recovery. Thus GST's statements that, 1) "KCP&L's (sic) shareholders would be indifferent to the increased replacement power costs," 2) "GST alone would bear those costs," and 3) "such a result would be unfair and openly discriminatory" are false and misleading. In fact, KCPL shareholders will not be "indifferent to the increased power costs" and GST will not be the only party to bear these costs.

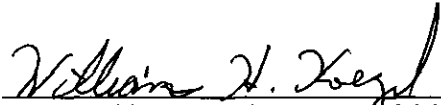
10. GST has proposed an expedited schedule for their expedited hearing. The proposed schedule is itself "unjust," "unreasonable" and "discriminatory." GST proposes that it serve discovery requests on KCPL no later than June 25, 1999. This date predates the

date by which KCPL is required to respond to this motion and clearly predates any decision by the Commission on this motion. Such a schedule is "unjust and unreasonable." GST further proposes that it be entitled to discovery but that KCPL has no right to discovery. Such a procedure itself would certainly be "unjust, unreasonable and unduly discriminatory" to KCPL. GST has raised its own financial condition as a basis for its need for an expedited hearing. In order to properly prepare for a hearing, KCPL would need to explore the financial position of GST and the causes of that condition. KCPL will need time to prepare for hearing and therefore opposes the proposed schedule.

11. It is clear from the filings by GST in this case and in its history of dealing with KCPL that it is not really interested in what is unjust, unreasonable or unduly discriminatory, rather it just wants to pay less for electricity due to its own dire financial condition brought on both by the competitive problems it faces and by self-inflicted problems. These problems cannot justify requiring KCPL's shareholders and customers to subsidize GST's steel products nor wasting the Commission's time in requesting expedited hearings on bases that are legally indefensible.

WHEREFORE, KCPL prays that the Commission deny GST's Motion for Interim Relief and Expedited Hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing response was served via first class mail, postage prepaid, on this 25th day of June, 1999, upon:

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