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FILED
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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: *GS Technology Operating Company, Inc., d/b/a 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 of Kansas City Power & Light Company's Reply Brief (NP version), and an original and eight (8) copies of its Reply Brief (HC version) for distribution to the Commissioners and Deputy Chief Regulatory Law Judge Kevin Thompson. A copy of the foregoing documents have been hand-delivered or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,

James M. Fischer

James M. Fischer

/jr
Enclosures

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

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MAY 24 2000
Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

GS Technology Operating Company, Inc. d/b/a GST Steel Company, Complainant,	)	
v.	)	Case No. EC-99-553
Kansas City Power & Light Company, Respondent.	)	

REPLY BRIEF
OF
KANSAS CITY POWER & LIGHT COMPANY

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I. INTRODUCTION

In its Initial Brief, Kansas City Power and Light Company (KCPL) discussed at length the issues raised by GS Technology Operating Company, Inc. d/b/a GST Steel Company (GST) in this proceeding. While most of GST's arguments were adequately anticipated and addressed in KCPL's Initial Brief, a few points need to be clarified and elaborated upon in this Reply Brief.

As a preliminary matter, it should be noted that GST Initial Brief exceeded the thirty (30) page limit established by the Commission in its May 10, 2000, Order Directing Filing. More importantly, it contained numerous arguments without any citation to the evidence in the record to support its positions. (GST Br. at 2-9, 12-17, 28-31). Curiously, GST has instead cited to its own Proposed Findings of Fact ("GST PF"). GST's "PFs" are apparently designed to cite to evidence in the record. However, KCPL has been unable to find the evidence supporting most of GST's arguments since some of the numbered "PFs" do not seem to exist or otherwise they do not correspond to the arguments being raised in GST's Initial Brief. For example, on page 28 of GST's Brief, GST cites to "GST PF 219" and "GST PF 225". Yet, as far as KCPL has been able to determine, GST Proposed Findings do not have any PFs numbered above "PF 148". Other PFs are not even remotely related to the arguments that GST makes in its Brief.[1]

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[1] The following are just a few examples:

Argument Topic	Cited PF Topic
Br. at 12—Explosion that demolished Hawthorn Unit	"PF 74"—Norwood on forced outage rates
Br. at 12—Witness observations at explosion site	"PF 93"—Norwood criticism of Eldridge
Br. at 12—Cause of the explosion	"PF 94"—Norwood's Surrebuttal on Eldridge's Benchmarking Study
Br. at 13—Fuel Safety System	"PF 55"—Gas valves recovered at Hawthorn
Br. at 14—KCPL operator's statement	"PF 43, 58"—Manual valves; observation of fire

II. AREAS OF AGREEMENT BETWEEN THE PARTIES

Before discussing the specific issues that are yet to be resolved by the Commission, it may be helpful to list areas upon which some or all of the parties are in substantial agreement:

1. GST, KCPL and the Commission Staff agree that the Commission has no statutory authority to award monetary damages. (GST Br. at 10; KCPL Br. 7-12; Staff Br. at 7);

2. GST, KCPL and Staff agree that the Commission has no authority to grant equitable relief. (GST Br. at 10; KCPL Br. at 7-12; Staff Br. at 6-7);

3. GST, KCPL and Staff agree that the Commission does not have authority to order KCPL to pay insurance proceeds directly to GST. (GST Br. at 30; KCPL Br. at 7-12; Staff Br. at 6);

4. KCPL and Staff agree that it is not reasonable or appropriate to award GST insurance proceeds that KCPL has received under its insurance policy. (KCPL Br. at 12; Staff Br. at 6);

5. KCPL and Staff agree that "[t]o the extent that charges have followed the pricing set out in the terms of the Special Contract, the charges that KCPL has made to GST have been just and reasonable." (Staff Br. at 4; KCPL Br. at 6-7);

6. KCPL and Staff agree that "KCPL's overall system is currently operating within acceptable limits." (Staff Br. at 10; KCPL Br. at 22-26);

7. KCPL and Staff agree that "KCPL is achieving an acceptable equivalent availability factor." (Staff Br. at 9; KCPL Br. at 22-26);

(fn 1 con'd):

Br. at 16—KCPL's actions in connection the explosion	"PF 244"—Non-existent PF
Br. at 26—KCPL's reliance on off-system Power purchases	"PF 186"—Non-existent PF
Br. at 26—KCPL's higher cost replacement Power	"PF 187"—Non-existent PF
Br. at 26—GST's calculation of hourly incremental production costs	"PF 206-209"—Non-existent PFs

8. KCPL and Staff agree that "KCPL has corrected most, if not all, of the problems" associated with GST's transmission and distribution system. (Staff Br. at 9; KCPL Br. at 27-28);

9. Staff and KCPL agree that the Commission should not establish a formal investigation into the operation and maintenance of KCPL's generation, transmission and distribution facilities. (Staff Br. at 10; KCPL Br. at 28);

10. GST and KCPL agree that the Commission should "decide all issues based on the record before it, and that there is no valid reason to defer a decision on the Hawthorn issues as they pertain to the claims GST has raised." (GST Br. at 32; KCPL Br. at 28-29).

III. ISSUES TO BE RESOLVED

A. Have the Charges Imposed under the GST/KCPL Special Contract Been "Just and Reasonable" Over the Period of the Contract?

In its Initial Brief, GST accuses KCPL of seeking to "evade the central issue actually before the Commission, which is whether KCPL's charges rendered under the contract have been unjust and unreasonable." (GST Br. at 6) Quite to the contrary, KCPL believes that this is the primary issue in the case, and has addressed it at length in this proceeding. (KCPL Br. at 2-7; (Tr. 142-53; Ex. No. 12HC, p. 3-12).

KCPL has demonstrated that the prices being paid by GST are substantially lower than the "just and reasonable" rates approved by the Commission. (Ex. No. 12, p. 3). In fact, Staff is not aware of any customer paying a lower overall average rate than GST. (Tr. 371) GST has paid **_____** less to KCPL in the years 1994-99 than it would have paid if it had taken its electric service under the "just and reasonable" rates approved by the Commission. Ex. No. 12HC, Schedule CBG-3, p. 1, shows that GST saved **_____** respectively, for the years 1994 through 1998. These average savings amount to a **__** percent discount below the tariff rate schedules. (Ex No.

12HC, p. 3) Even in 1999 when there was a significant increase in the curtailment credit paid under the tariffs[2] and higher purchased power costs due to the loss of Hawthorn, GST paid **_____** under the Special Contract than it would have paid under the LPS tariff combined with curtailment credit of $35 per kw summer season. (Ex. No. 12HC, pp. 8-9). Since GST's contract rates continue to be less than if GST paid for its electric service under the Commission-approved tariffs (Tr. 375), it is difficult to understand how GST can contend that the contract rates are in any way "unjust or unreasonable."

GST complains, however, that KCPL's analysis "ignores all of the reasons the special contract was negotiated in the first instance and approved by the Commission..." (GST Br. at 6) Apparently, GST is referring to the fact that KCPL took GST's competitive situation into account when it negotiated the Special Contract. (Tr. 371; Ex No. 8HC, pp. 4-5). While KCPL believed that GST's competitive situation was a factor to be considered when it negotiated the Special Contract, GST's competitive situation is not a legitimate reason to give GST a refund which was not contemplated by the Special Contract. To give GST a refund in this case would amount to "retroactive ratemaking" which clearly is prohibited under Missouri law. State ex rel. Utility Consumers Council of Missouri v. Pub. Serv. Comm'n, 585 S.W.2d 41 (Mo. banc 1979) More fundamentally, it would be unfair to KCPL and its other ratepayers to give GST another reduction in its bill when it is already paying substantially less than the full embedded costs borne by KCPL's other ratepayers.

According to GST's Initial Brief, "GST is not challenging the reasonableness of the pricing formula approved by the Commission. The formula is reasonable; it is the data KCPL

[2] KCPL increased the curtailment credit in 1999 from $16 per kw summer season to $35 per kw summer season. (Ex No. 12NP, p. 8).

has included in the pricing model that is unjust and unreasonable." (GST Br. at 6)(emphasis added) However, GST has not identified what specific data in the pricing model GST has deemed to be "unjust and unreasonable." Is GST suggesting that KCPL's purchase of power at the prices prevailing in the marketplace is somehow "unjust or unreasonable"? If this is the case, then GST is merely complaining that KCPL's incremental costs are higher than what it had hoped they would be. As explained by Staff witness Dr. Michael Proctor, there was always a risk to both GST and KCPL that the incremental costs of production would change. (Tr. 372)

Perhaps more importantly, Dr. Proctor has testified that "it does not appear that ** _____ _____**" (Ex No. 8HC, p. 5) In other words, even with the higher incremental costs that have occurred in 1999, GST is still receiving its electricity within the range of prices anticipated when GST and KCPL signed the Special Contract!

Apparently, GST believes the Commission should review inputs into the pricing formula on a retrospective basis to determine if each input is "just and reasonable." The Commission should not go down this slippery slope. It would be extremely burdensome and difficult for the Commission to review and evaluate all purchases of power, KCPL's ongoing performance at each of its generation units, and KCPL's other incremental operations and maintanence expenditures to determine if each input into the pricing formula is "just and reasonable." The Commission should decline GST's invitation, and instead look at the overall result of the pricing formula contained in the Special Contract to determine if the rates that GST is paying are just and reasonable.

GST wants the Commission to conclude that any purchased power costs above the embedded cost of generation of the Hawthorn plant are per se "unjust and unreasonable." This is

nonsense. KCPL has purchased power on the open market paying the prevailing market prices for that purchased power. There is nothing "unjust and unreasonable" about KCPL fulfilling its obligation to serve its customers by purchasing power at the prevailing market rates.

GST argues that KCPL was imprudent in its actions or inactions in connection with the Hawthorn accident. As a result, GST claims that it has been damaged because GST's rates are higher since its contract rates are based upon KCPL's incremental costs which have increased. As discussed in KCPL's Initial Brief, GST has failed to prove that KCPL was imprudent in connection with the Hawthorn Incident. However, assuming *arguendo* that GST had met its burden to prove its allegations (which it has not), the Commission lacks the requisite authority to grant GST the relief it has requested. All parties (including GST) have now agreed that the Commission does not have the statutory authority to award GST monetary damages.

GST has erroneously claimed that the "Commission has authority to require KCPL to calculate the overcharges to GST resulting from the imprudent costs that have been included in GST's bills." (GST Br. at 6) GST is confusing the Commission's authority to determine the "overcharges" resulting from the application of the wrong rate schedule by a public utility, with a court's authority to award damages to a customer that has been damaged by a public utility.

The Commission has the authority to determine if a public utility has applied the wrong rate schedule to a customer, and the "overcharges" that have resulted from applying the wrong rate. This was the situation in the cases cited by the Staff in its Initial Brief. See LaHoma Paige v. Kansas City Power & Light Co., 27 Mo.P.S.C.(N.S.) 363 (1985); Inter-City Beverage Co., Inc. v. Kansas City Power & Light Co., 889 S.W.2d 875 (Mo.App. 1994); DeMaranville v. Fee Fee Sewer Co., 573 S.W.2d 674, 676 (Mo.App. 1978) In DeMaranville, the Court described the Commission's authority in an "overcharge" case as follows:

> When a utility has two approved rates of service and renders service to a consumer charging the higher rate, the consumer may file a complaint before the Public Service Commission to determine the proper classification. State ex rel. Kansas City Power & Light Co. v. Buzard, 350 Mo. 763, 168 S.W.2d 1044 (banc 1943). A circuit court has no jurisdiction to consider the plaintiff's action for recovery until the Commission makes its decision regarding the rates and classification. Matters within the jurisdiction of the Public Service Commission must first be determined by it in every instance before the courts have jurisdiction to make judgments in the controversy. State ex rel. Hoffman v. Public Serv. Com'n, 530 S.W.2d 434 (Mo.App.1975; Katz Drug v. Kansas City Power and Light Co., 303 S.W.2d 672, 679 (Mo.App.1957). In the present case, plaintiffs filed the proper complaint to the Commission pursuant to the provisions of 386.390 RSMo. (Supp.1978), and the Commission concluded that Fee Fee's tariff classification of condominium service was unjust, unreasonable and unduly discriminatory. Yet, only the courts can enforce a Public Service Commission decision. The Commission has no jurisdiction to promulgate an order requiring a pecuniary reparation or refund. Wilshire Const. Co. v. Union Elec. Co., 463 S.W.2d 903 (Mo.1971); State v. Buzard, supra; State ex rel. Laundry, Inc. v. Public Service Commission, 327 Mo. 93, 34 S.W.2d 37 (1931). And in order to recover by appropriate action in the circuit court, the plaintiffs must plead and prove facts which demonstrate: (1) the lawfully established rate applicable to their classification of service; and (2) that more than the lawful rate has been collected. May Department Stores Co. v. Union Electric L. & P. Co., 341 Mo. 299, 107 S.W.2d 41 (1937).

Contrary to the allegations of GST, this case does not involve "overcharges." GST has not alleged that KCPL has applied the wrong rate schedule to its electric usage.

Based upon the competent and substantial evidence in the record, the Commission should reject GST's contention that the rates under the Special Contract are "unjust and unreasonable." Instead the Commission should find that the charges imposed in the GST Contract have been and continue to be "just and reasonable" over the term of the Special Contract.

B. Has KCPL Properly Accounted for the Insurance Proceeds That It Has Received As Result of the Hawthorn Incident?

This is no longer an issue to be resolved by the Commission. (Tr. 163).

C. Does the Commission Have the Authority to Order KCPL to Pay GST Insurance Proceeds Received By KCPL As A Result of the Explosion of the Hawthorn Plant? If so, Is It Reasonable and Appropriate to Do So?

GST conceded in its Initial Brief that "[t]he Commission may not have the authority to order KCPL to pay insurance proceeds directly to GST..." (GST Br. at 30) On this point, KCPL wholeheartedly agrees with GST. Such an order would be the same as awarding damages, which all parties agree is beyond the Commission's statutory authority. Notwithstanding its recognition that the Commission cannot order KCPL to pay insurance proceeds directly to GST, GST nevertheless has argued that the Commission "unquestionably has the authority" to order KCPL to calculate GST's bills to include a credit for such insurance proceeds. (GST Br. at 29-31) KCPL must disagree. The Commission does not have the statutory authority to require KCPL to pay directly to GST these insurance proceeds, or indirectly by requiring KCPL to credit GST's bill for the same amount. Either action would be the same as awarding GST monetary damages, which even GST concedes, is beyond the statutory authority of the Commission.

Even if the Commission had the authority to grant GST's request for a credit based upon the insurance proceeds, it would not be reasonable or appropriate for the Commission to make such a finding. As Dr. Proctor has testified, GST is simply not entitled to receive any of the insurance proceeds under traditional regulatory principles because the terms of the Special Contract governs GST's rights. (Ex No. 8NP, pp. 7-11).

D. Does the Commission Have the Authority to Order KCPL to Recalculate GST's Bills Under the Contract? If so, How Should Those Bills Be Recalculated (*i.e.*, by using KCPL's incremental costs as if Hawthorn continued to operate)? Is It Reasonable and Appropriate To Do So?

GST has argued that Section 393.390(1) gives the Commission authority to order KCPL to recalculate GST's bills under the Special Contract, using hypothetical costs of production, assuming that the Hawthorn explosion had not occurred. (GST Br. at 24-25) GST is in error on this point. Section 393.390(1) prohibits a public utility from charging "unjust or unreasonable" rates. As KCPL has already demonstrated, GST's Contract rates are well below the rates that the Commission has already determined to be "just and reasonable." In addition, the Special Contract itself has no provision for pricing adjustments to reflect unit outages. (Ex No. 12 NP, p. 19) In fact, GST rejected an offer by KCPL to amend the Special Contract to include provisions that permit pricing adjustments that reflect unit outages. (Ex No. 13HC, p. 4) GST's request for a "re-calculation of the bill" amounts to a request for the awarding of damages, or other equitable relief. Since the Commission has no authority to award monetary damages or other equitable relief, the Commission should dismiss GST's request that its bill be re-calculated.

In GST's Initial Brief, GST erroneously argues that its only burden in this proceeding is to "raise the 'red flag' of imprudence questions." (GST Br. at 7) Apparently, GST believes it merely must allege "imprudence" without providing any competent and substantial evidence to support its allegations to make a "prima facie" case. However, the Commission has always held that the Complainant, as the moving party, has the burden of proof to prove its allegations.[3]

[3] See Tel-Central of Jefferson City, Missouri v. United Tel. Co., 29 Mo.P.S.C. (N.S.) 584 (May 12, 1989)("Tel-Central has elected to proceed by complaint and by so doing assumes the burden of proof and the risk of nonpersuasion."). See also CyberTel Cellular Tel. Co. v. Southwestern Bell Tel. Co., 29 Mo.P.S.C. (N.S.) 347, 354 (January 12, 1988)("The Commission determines that CyberTel has not met its burden of proof to show that the rates in question are unjustly and unreasonably applied."); Summers v. Laclede Gas Co., 23 Mo.P.S.C. (N.S.) 533 (July 15, 1980)("Where Complainant does not sustain the burden of proof, the complaint will be dismissed."); Staff

Similarly, Section 386.430 places the burden of proof on the adverse party in any trials, actions, suits or proceeding arising under the provisions of Chapter 386:

> In all trials, actions, suits and proceedings arising under the provisions of this chapter or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful as the case may be.

GST also suggests in its Proposed Conclusions that KCPL has the burden of proof in this case. (GST Conclusions at 35-36) In support of this erroneous conclusion, GST cites the KCPL's Wolf Creek rate case for the proposition that the utility carries the burden of proof where questions of management prudence have been raised. (GST Conclusions at 35). GST is misinterpreting the Commission's decision in that case. As the Commission knows, the public utility has the burden of proof in all cases in which it seeks to increase its rates. Section 393.150(2) specifically states in part: "At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the ...electrical corporation..." In KCPL's Wolf Creek rate proceeding, KCPL sought to increase rates by including its Wolf Creek nuclear power plant in rate base. The Commission properly found that KCPL had the burden of proof to show that its expenditures for the Wolf Creek plant were prudent and reasonable. See Kansas City Power & Light Co., 28 Mo.P.S.C. (N.S.) 228, 280-81 (April 23, 1986). When opposing parties produced competent and substantial evidence that challenged the reasonableness of specific expenditures

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of the Missouri Pub. Serv. Comm'n v. Union Elec. Co., 29 Mo.P.S.C. (N.S.) 305 (The Commission held that Staff and Public Counsel, as Complainants, had the burden of proof).

relating to the construction of the power plant, then the public utility had the burden to demonstrate that the expenditures were reasonable and appropriate.

The Commission's comments in the Wolf Creek rate case do not affect in any way the burden of proof that is placed upon the Complainant in Complaint proceedings. As the Commission has found throughout its regulatory history, a party that files a Complaint "assumes the burden of proof and the risk of nonpersuasion." Tel-Central of Jefferson City, Missouri v. United Tel. Co., 29 Mo.P.S.C. (N.S.) 584 (May 12, 1989).

GST argues that through its "expert testimony," GST "has established a prima facie case that the boiler explosion is the direct result of KCPL unreasonable and imprudent actions." (GST Conclusions at 37) As explained at length in KCPL's Initial Brief at 13-22, GST has relied upon the testimony of Mr. Jerry Ward to support its allegations of imprudence in connection with the Hawthorn explosion. Contrary to arguments of GST's counsel, Mr. Ward does not consider himself to be an "expert" in the methods of investigating power plant explosions since he has never previously investigated a power plant explosion. (Tr. 237-38) Since Mr. Ward was GST's "expert" on the Hawthorn Incident, the Commission should not accept GST's claim that its "prima facie" case has been proven using Mr. Ward's "expert testimony."

In its Initial Brief, KCPL has already adequately addressed the substance of Mr. Ward's "investigation" and related testimony, and it is unnecessary to repeat those concerns herein. However, if the Commission has any doubt regarding the quality of the evidence produced by GST related to the Hawthorn Incident, it should review the independent assessment of GST's evidence made by the Commission Staff. Based upon this independent review, the Commission Staff witness Dr. Eve Lissik has testified that GST has not provided enough evidence to substantiate its claims regarding the Hawthorn explosion. (Tr. 328-29)

GST also again raises the doctrine of *res ipsa loquitur* to argue that GST has established a rebuttable presumption that KCPL acted imprudently. (GST Conclusions at 38-40) KCPL has previously addressed these contentions in its Suggestions in Opposition To GST's Motion to Compel filed on March 3, 2000. The Commission found that "GST's request to apply the doctrine at this time is without merit." Order Regarding Motion To Compel, For Directed Findings And For Interim Relief (March 23, 2000).

Determination of whether the *res ipsa loquitur* doctrine applies is a matter of law left to the exclusive province of the courts. Weaks v. Rupp, 966 S.W. 2d 387, 394 (Mo. App. W.D. 1998). Therefore, the Commission does not possess the authority to apply *res ipsa loquitur*, even if it were otherwise applicable.

GST nevertheless claims that *res ipsa loquitur* should apply in this case. However, GST's argument is plainly incorrect. First, the cases cited by GST are easily distinguishable in a significant way from the instant case. Each case cited involved a plaintiff in a civil lawsuit who suffered either personal injury or property damage, as a plaintiff must in order to apply the *res ipsa loquitur* doctrine. *Res ipsa loquitur* is a principle of tort law. J.D. Lee and Barry A. Lindahl, Modern Tort Law § 15.19 (Rev. Ed.). A tort is "an injury or wrong committed, with or without force, to the person or property of another." Id. at § 2.01. See also John W. Wade, Victor E. Schwartz, Kathryn Kelly and David F. Partlett, Prosser, Wade and Schwartz's Torts, p. 1 (9th ed. 1994). In the present situation, there is no civil lawsuit with a plaintiff alleging personal or property damage. Thus, according to well-established law, the *res ipsa loquitur* doctrine is inapplicable to the current dispute.

Moreover, GST's statement that the doctrine "is equally applicable to regulatory proceedings to determine management imprudence and the reasonableness of charges to

ratepayers" is also unfounded. GST relies on Rochester Gas and Elec. Corp. v. New York Pub. Serv. Comm'n, 117 A.D. 2d 156, 501 N.Y. S. 2d 951 (App. Div. 1986), as support for this assertion. However, the case never mentions the *res ipsa loquitur* doctrine, and neither the New York Commission nor the Court of Appeals applied it. The Court upheld a Commission order holding that a utility could not recover, through increased rates, the cost of repairing a tube rupture in one of its generators. The Court ruled that the New York Commission's determination that the utility was responsible for the rupture was "supported by substantial evidence." Id. at 954. For all of the foregoing reasons, the Commission should decline to apply this tort doctrine to this regulatory proceeding.

In its effort to deflect attention from its own failure to present competent and substantial evidence to support its allegations, GST has also argued that KCPL failed to "even attempt to carry its burden of proving the reasonableness of its actions." (GST Br. at 7). The Commission has previously 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). KCPL continues to believe that the Commission ruling on this point was appropriate. At the appropriate time, KCPL intends to present the results of its investigation to the Commission for its use. However, it is premature to speculate upon the final results and possibly jeopardize KCPL's and its insurers' legal claims related to this accident.

E. Has KCPL Operated and Maintained Its Generation Units in a Reasonable and Prudent Manner?

KCPL's Initial Brief has already adequately addressed this issue.

F. Has KCPL Operated and Maintained Its Distribution and Transmission Facilities in a Reasonable and Prudent Manner?

KCPL's Initial Brief has already adequately addressed this issue.

G. Should the Commission Order a Formal Staff Investigation Into the Operation and Maintenance of KCPL's Generation, Transmission, and Distribution Facilities?

KCPL's Initial Brief has already adequately addressed this issue.

H. Should the Commission Delay Any Decision in This Case Pending the Outcome of the Staff's Independent and Final Report of the Boiler Explosion at Hawthorn 5?

Both GST and KCPL agree that this case should be decided based upon the existing record in this proceeding. (Tr. 133) As both the Complainant and Respondent agree on this important point, the Commission should not delay the decision in this Complaint proceeding pending the outcome of a review of the Hawthorn Incident. As previously noted, KCPL and Staff will present the results of their investigations into the Hawthorn Incident in Case No. ES-99-581. Nothing in this proceeding will prevent the Commission from conducting a complete investigation of the Hawthorn Incident in Case No. ES-99-581. In addition, in a future rate case, the Commission will retain its ability to make all relevant findings, including any appropriate rate adjustments. At that time, GST will continue to have the option of taking its service under a Commission-approved tariff.

Conclusion

Having fully responded to GST's Complaint, KCPL respectfully renews its request that the Commission dismiss the Petition filed by GST and adopt the recommendations of KCPL contained herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Initial Brief has been hand-delivered or mailed, First Class mail, postage prepaid, this 24th day of May 2000, to:

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