

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED

AUG 3 1999

GST STEEL COMPANY,

Complainant,

v.

KANSAS CITY POWER & LIGHT  
COMPANY,

Respondent.

Missouri Public  
Service Commission

Case No. EC-99-553

**RESPONDENT KANSAS CITY POWER & LIGHT COMPANY'S  
RESPONSE TO COMPLAINANT GST STEEL COMPANY'S  
APPLICATION FOR RECONSIDERATION AND CLARIFICATION  
OF ORDER DENYING INTERIM RELIEF AND EXPEDITED HEARING**

Respondent Kansas City Power & Light Company ("KCPL") states the following in response to complainant GST Steel Co.'s ("GST") Application for Reconsideration and Clarification of Order Denying Interim Relief and Expedited Hearing:

**I. Background**

GST produces steel products in Kansas City, Missouri and is a customer of KCPL. KCPL supplies electricity to GST pursuant to a Restated and Amended Power Supply Agreement, dated August 12, 1994, and approved by the Commission in Case No. EO-95-67. The Commission-approved contract permits GST to purchase electricity at either a fluctuating, marginal cost-driven rate or at a fixed, tariff rate.

On May 11, 1999, GST filed a Petition for an Investigation as to the Adequacy of Service Provided by Kansas City Power & Light Company and Request for Immediate Relief. The

Petition alleged negligent and imprudent management by KCPL and requested, in effect, a modification of the Commission-approved agreement between GST and KCPL.

On June 18, 1999, GST sought interim relief “. . . to prevent undue discrimination and irreparable economic harm.” See Motion for Interim Relief and Expedited Hearings, p. 5. On June 28, 1999, Staff responded to GST’s Motion for Interim Relief proposing three options. Staff wrote that any one of the options “might meet the needs of the Parties and preclude the need for an expedited hearing.” See Staff’s response to GST’s Motion for Interim Relief and Expedited Hearing, p. 2.

KCPL opposed GST’s Motion for Interim Relief. On July 9, 1999, the Commission denied GST’s Motion for Interim Relief and Expedited Hearing. The Commission noted Staff’s three proposed options, but denied the motion. In so doing, the Commission wrote that:

“This case presents complex issues of both fact and law on which turn large sums of money. The Commission believes the parties will need the full period to which they have agreed, as reflected in the joint proposed procedural schedule adopted by the Commission on June 22, 1999, in which to prepare and try this case. The Commission believes that it, too, will benefit from the thorough preparation of the parties. Additionally, GST’s plea for relief must be balanced against KCPL’s right to due process. The Commission is moving this case to hearing as quickly as reasonably possible; the procedural schedule was jointly proposed by the parties. Finally, as KCPL points out, some relief is available to GST under the terms of the special contract.”

On July 21, 1999, GST filed its Application for Reconsideration and Clarification of Order Denying Interim Relief and Expedited Hearing. For the reasons stated below, the Commission should deny GST’s application.

## **II. Argument**

GST’s Application for Reconsideration and Clarification should be summarily denied. The Commission’s Order Denying Interim Relief and Expedited Hearing was filed on July 9, 1999. The Order stated that it would take effect on July 20, 1999. GST filed its application on

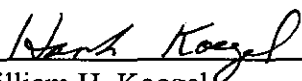
July 21, 1999. Therefore, it should be denied because it is untimely. Moreover, CSR 240-2.080 (12) governs the timing of filing responses in matters before the Commission. It states: "Parties shall be allowed ten (10) days from the date of filing in which to respond to any motion or other pleading unless otherwise ordered by the commission." GST's response was filed more than 10 days after the Order was filed. Thus, GST's Application for Reconsideration and Clarification is untimely and should be denied.

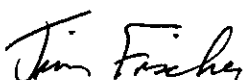
In addition, Staff's three proposals which GST requests the Commission reconsider set forth options unavailable to the Commission as a matter of law. Each suggestion represents a modification of the already approved agreement between GST and KCPL. In Suggestion 1, Staff proposed a new pricing formula with a floor and cap to replace the price provisions of the special contract. Suggestion 2 proposed a hypothetical benchmark which assumes that the Hawthorn 5 station is still in service and extends certain price protections to GST not contained in the special contract between GST and KCPL. Suggestion 3 offered GST prices for July-September, 1999, matching the prices it paid for July-September, 1998, with certain accounting adjustments. See Staff's Response to GST's Motion for Interim Relief and Expedited Hearing, pp. 2-5. For reasons already articulated, the Commission may not employ these proposed suggestions. See KCPL's Reply to Staff's Response to GST's Motion for Interim Relief, pp. 2-4. The Commission is simply not empowered to modify or abrogate the contract between GST and KCPL, as proposed by Staff. The Commission may not alter contract rates unless the public welfare is jeopardized, nor may the Commission construe or enforce contracts. Kansas City Power & Light Co. v. Midland Realty Co., 93 S.W. 2d 954, 959 (Mo. 1936). The interim relief from cost-based rates which GST requests is already available under the terms of the special


contract via adopting the Commission-approved tariff rates, as the Commission noted in its earlier Order. See Order Denying Interim Relief and Expedited Hearing, p. 4.

Therefore, the Commission must reject GST's Application for Reconsideration and Clarification of Order Denying Interim Relief and Expedited Hearing.

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed to the following counsel of record, this 29<sup>th</sup> day of July, 1999:

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