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October 21, 1999

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

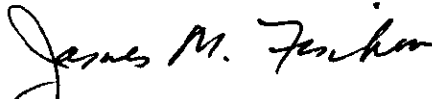
RE: *GST Steel Company v. Kansas City Power & Light Company*
Case No. EC-99-553

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 Steel Company's Request for Reconsideration and Reply to KCPL's Motion to Compel GST's Responses to the First Set of Interrogatories and Requests for Production of Documents. A copy of the foregoing Motion has been hand-delivered or mailed this date to each party of record.

Thank you for your attention to this matter.

Sincerely,


James M. Fischer

/jr
Enclosures

cc: Paul S. DeFord, via Certified Mail, Return Receipt Requested
James W. Brew and Christopher C. O'Hara, via Certified Mail, Return Receipt Requested
Dana K. Joyce, Hand Delivered
Steven Dottheim, Hand Delivered
Lera L. Shemwell, Hand Delivered
John B. Coffman, Hand Delivered

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

OCT 21 1999

Missouri Public
Service Commission

GST STEEL CO.,)
)
Complainant,)
)
v.)
)
KANSAS CITY POWER & LIGHT CO.,)
)
Respondent.)

Case No. EC-99-553

**KANSAS CITY POWER & LIGHT COMPANY'S RESPONSE TO
GST STEEL COMPANY'S REQUEST FOR RECONSIDERATION AND REPLY TO
KCPL'S MOTION TO COMPEL GST'S RESPONSES TO THE FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Respondent Kansas City Power & Light Co. ("KCPL") hereby submits this Response to GST Steel Company's ("GST") Request for Reconsideration and Reply to Kansas City Power & Light Company's Motion to Compel GST's Responses to the First Set of Interrogatories and Requests for Production of Documents and Suggestions in Support ("GST's Request for Reconsideration"). KCPL requests that the Missouri Public Service Commission ("Commission") grant its Motion to Compel GST's Responses to its First Set of Interrogatories and Requests for Production of Documents. In support of its response, KCPL states as follows:

INTRODUCTION

1. On May 11, 1999, GST filed a Petition with the Missouri Public Service Commission against KCPL. GST alleged in the Petition that its economic viability is "severely threatened" by its electric rates and that it has been exposed to unjust and unreasonable electric charges, and requested that the Commission investigate the overall adequacy and reliability of KCPL's services. See Petition at ¶¶ 3-4, 16-18, 26.

2. KCPL filed its Answer on or about June 8, 1999. KCPL articulated numerous defenses to GST's allegations in its Answer. For example, KCPL averred that GST negotiated for the terms of the Special Contract with KCPL and accepted both its benefits and risks. KCPL's Answer, ¶¶ 33-36. Also, KCPL responded to GST's complaints about its threatened economic viability, in part, by pointing out that GST's economic viability is threatened by factors other than its current electricity costs. Id. at ¶¶ 38-41; See also KCPL's First Motion to Compel, ¶ 2.

3. On or about August 5, 1999, GST received KCPL's First Set of Interrogatories and Requests for Production of Documents ("KCPL's First Requests").

4. On or about August 16, 1999, KCPL received GST's Objections to KCPL's First Requests. A copy of GST's Objections is attached to KCPL's First Motion to Compel.

5. On or about August 31, 1999, KCPL filed its First Motion to Compel KCPL's First Motion to Compel was mailed to opposing counsel, but opposing counsel did not receive it. See Joint Response to Commission's Order, ¶¶ 2.

6. The Commission sustained KCPL's First Motion to Compel by an Order to become effective on October 1, 1999. GST's attorneys first learned of KCPL's First Motion to Compel upon reading the September 21, 1999 Order. See GST's Request for Reconsideration, ¶ 5.

7. On or about October 4, 1999, GST filed its Request for Reconsideration. In its Request for Reconsideration, GST stated it had not received KCPL's First Motion to Compel, requested that the Commission amend its September 21, 1999 Order by permitting GST to respond to KCPL's Motion to Compel, and discussed its substantive opposition to KCPL's First Motion to Compel.

8. On October 6, 1999, the Commission considered GST's Request for Reconsideration and directed KCPL associate counsel, Tim Swensen, and all counsel listed on the Certificate of Service of the KCPL's First Motion to Compel to submit affidavits detailing their knowledge concerning the circumstances of the mailing and receipt of that Motion. Order Directing Filing, at 3-4 (October 6, 1999).

9. On October 14, 1999, counsel for GST and KCPL filed a Joint Response to the Commission's Order ("Joint Response") which directed the filing of affidavits. The Joint Response stated that counsel for GST and counsel for KCPL did not doubt the honesty or integrity of opposing counsel, requested that (in lieu of filing affidavits concerning service and receipt of KCPL's First Motion to Compel) GST be permitted to respond to KCPL's First Motion to Compel on the merits, and requested that KCPL be granted similar consideration from the Commission in replying to GST's response.

DISCUSSION

10. As the Commission noted in its July 29, 1999 Order, the scope of discovery is set by Missouri Rule 56.01(b)(1). In pertinent part, it states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party,.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

See Order regarding GST Steel Company's First Motion to Compel Discovery and Amending the Procedural Schedule, pp 5-6. "Relevance" is to be determined by reference to the pleadings. State ex rel. Anheuser v. Nolan, 692 S.W.2d 325, 327-28 (Mo.App. E.D. 1985).

11. GST argues that KCPL's First Motion to Compel should be denied because KCPL's Requests allegedly "fall well outside the scope of this docket." GST's Request for Reconsideration, ¶ 14. GST alleges that the Commission has limited the issues for this proceeding to address only (1) KCPL's delivery of adequate and reliable electric service to GST, and (2) whether GST's electric rates are just and reasonable. Id. at ¶¶ 7, 14. Thus, GST argues that KCPL's Requests which it objects to are irrelevant and "would inappropriately muddle an already complicated case." Id. at ¶ 10.

12. GST clearly mischaracterizes the Commission's July 29, 1999 and August 19, 1999 Orders. Indeed, in both Orders the Commission notes that parties may obtain discovery regarding any matter, not privileged, relevant to the subject matter in the dispute, as framed in the pleadings. See Commission's July 29, 1999 Order at p. 6; Commission's August 19, 1999 Order at pp. 4-5.

13. KCPL's Requests, therefore, are relevant and discoverable on multiple grounds. KCPL's Requests 5-19 and 46-49 seek a variety of information concerning GST's steel producing activities and profitability during 1994-1999. These Requests are directly relevant to GST's allegations that KCPL's unjust and unreasonable rates caused its production to decrease, caused a reduction in its workforce, and created a threat to its economic viability. Petition, ¶¶ 3-4; 24-26.

14. KCPL's Answer has asserted that a variety of other factors affected GST's economic viability and productivity. KCPL's Answer, ¶¶ 38-41. For example, in a recent financial report, GS Technologies stated that "the scrap and scrap substitute supply segment of the steel industry, which includes DRI,¹ have experienced significant downward economic

¹ "DRI" is an acronym for Direct Reduced Iron.

pressure largely due to market sales price declines that have resulted from high volumes of lower priced steel imported into the United States at prices which are substantially below the domestic industry's cost." See Form 10K, F-13, attached to KCPL's Answer as Exhibit A. In other words, domestic companies cannot compete with imported steel because their production costs exceed the market price offered by foreign steel companies. GS Technologies Operating Co. owns a 50% interest in AIR, a domestic company, and has entered into a purchase agreement with AIR that requires GS Technologies to purchase direct reduced iron from AIR. Requests 5-19 seek information that will inform KCPL whether GS Technologies is forcing GST to use high cost DRI obtained from AIR instead of cheaper foreign equivalents. This information has a direct bearing on GST's allegation concerning the source of threat to its economic viability. In addition, in a published news article GST officials state that a 1997 labor strike cost the company \$22 million. Id. at 18. GST and its affiliated entities' inability to forge amicable relationships with unions has a direct bearing on GST's "economic viability." Accordingly, KCPL's Requests are relevant to KCPL's defenses. Thus, the information KCPL seeks in Requests 5-19 and 46-49 are directly relevant to a portion of its defense that GST's alleged problems were caused in whole or in part by other factors. KCPL should be permitted to discover information necessary to develop and prove its defenses.

15. GST also objects to Requests 24-25 and 38-41 on the basis that they are irrelevant. GST's Request for Reconsideration, ¶ 13.² Specifically, GST argues that "GST's past discussions, projections, or other analyses regarding the Special Contract have no bearing on the actual incremental costs KCPL charged GST after the Hawthorn explosion and discovery in this proceeding should be limited to the issues that are properly before the Commission." Id. at ¶

² Requests 24-25 and 38-41 seek information and documentation relating to the Special Contract circulating among and between GST and its affiliated entities.

13. As stated above, the “issues properly before the Commission” are not as narrow as GST now claims. The issues before the Commission include matters relating to the claims or defenses of the parties seeking discovery or to the claims or defenses of any other party. See, e.g., Commission’s July 29, 1999 Order, p. 6.

16. GST also claims that documents relating to the Special Contract sent to Bain Capital, Inc. by Mr. Edgerley and/or sent to Mr. Edgerley by Bain Capital, Inc. are irrelevant. However, GST fails to state why these documents are irrelevant. Mr. Edgerley is a member of GS Technologies Operating Company’s board of directors. GST’s statement that Bain Capital is merely GST’s financial advisor mischaracterizes their relationship. See GST’s Motion for Reconsideration, ¶ 13. Bain Capital is a private equity and venture capital firm whose investors enjoy annual rates of return exceeding 50%. See Hoover’s Company Capsule, attached as Exhibit A. Upon information and belief, Bain Capital owns a controlling interest in GS Technologies, which in turn controls GST. The notion that Requests 24 and 25 seek documents that are irrelevant clearly is incorrect. These documents are relevant, as they relate to the Special Contract.

17. Requests 24-25 and 38-41 also are plainly relevant, as they relate directly to GST’s allegations and KCPL’s defenses. GST alleged in its Petition that it is not seeking to alter the terms of its Special Contract with KCPL, an agreement it reached during arm’s length negotiations with the assistance of legal counsel and which was approved by the Commission. Petition, ¶ 3; KCPL’s Answer, ¶¶ 33, 37. Moreover, KCPL responded that GST is attempting to alter the Special Contract’s terms. KCPL’s Answer, ¶ 37. KCPL asserted that GST was fully aware of, and accepted, the benefits and risks associated with the pricing structure of the Special Contract. Id. at ¶¶ 33-36. Thus, requests addressing GST’s discussions, projections, and

analyses pertinent to the Special Contract are relevant to GST's knowledge and understanding of the Special Contract, and are discoverable.

CONCLUSION

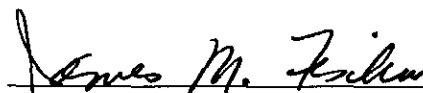
18. All of KCPL's Requests which GST objects to seek information relevant to the pleadings in this matter. The Requests are reasonably calculated to lead to the discovery of admissible evidence and narrowly tailored to the issues and underlying facts of this dispute.

WHEREFORE, Kansas City Power & Light Company respectfully requests that the Commission overrule GST's Objections to KCPL's First Set of Interrogatories and Request for Production of Documents and compel GST to respond to those Requests.

Respectfully submitted,



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Attorneys for Kansas City Power & Light Company

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed via certified mail, return receipt requested, to the following counsel of record, this 21st day of October, 1999:

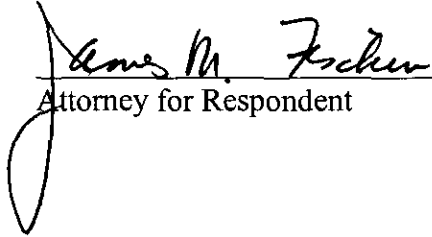
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Washington, DC 20007
Attorneys for Complainant GST Steel Company

I hereby certify that copies of the foregoing have been mailed to the following counsel of record, this 21st day of October, 1999.

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Attorney for Respondent



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KEY NUMBERS

Company Type: Private

Fiscal Year-End: December

1997 Employees: 100 (est.)

1-Yr. Employee Growth: -

KEY PEOPLE

CEO and Managing Director
W. Mitt Romney

CFO:
Michele D. May

Managing Director:
Joshua Bekenstein

Managing Director:
Edward Conard

Managing Director:
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More Officers

KEY RESOURCES

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