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January 13, 2000

FILED³

JAN 13 2000

Missouri Public
Service Commission

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

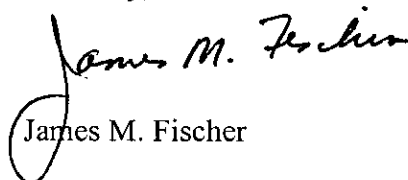
RE: *GST Steel Company v. Kansas City Power & Light Company*
Case No. EC-99-553

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are an original and fourteen (14) copies of Kansas City Power & Light Company's Suggestions in Response to the Commission's Order to Show cause. A copy of the foregoing document has been hand-delivered or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,


James M. Fischer

/jr
Enclosure(s)

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

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

JAN 13 2000

Missouri Public
Service Commission

GST STEEL COMPANY,

Complainant,

v.

KANSAS CITY POWER & LIGHT
COMPANY,

Respondent.

Case No. EC-99-553

**RESPONDENT KANSAS CITY POWER & LIGHT COMPANY'S
SUGGESTIONS IN RESPONSE TO THE COMMISSION'S ORDER TO SHOW CAUSE**

COMES NOW Kansas City Power & Light Company ("KCPL") and for its Suggestions in Response to the Commission's January 6 Order to Show Cause, and its January 7 Notice Regarding Procedure to be Followed at Show Cause Hearing, states as follows:

1. On January 6, 2000, the Commission issued its Show Cause Order in this matter in which it scheduled a hearing for Tuesday, January 18, 2000, to address the following issues identified by the Commission:

- a) Did GST's Complaint of May 11, 1999, brought in the name of a nonexistent corporate entity, confer jurisdiction on the Commission?
- b) What sanctions, if any, ought the Commission to impose on GST and its counsel for falsely alleging that GST is a corporation and standing by silently when the Commission, relying on GST's false allegation, wrongly sustained GST's objections to KCPL's discovery against GSTOC?

In the Show Cause Order and its subsequent Notice, the Commission ordered that any party desiring to tender written suggestions with respect to these matters file them no later than

3:00 p.m., Thursday, January 13, 2000. KCPL respectfully submits the following Suggestions in compliance with the Commission's request.

Jurisdiction of the Commission

2. Pursuant to 4 CSR 240-2.060(1), all applications filed with the Commission shall include the "[l]egal name of applicant as well as evidence of registration of fictitious name with the Missouri secretary of state, and street and mailing address of the principal office or place of business of applicant." The Petition for an Investigation as to the Adequacy of Service Provided by The Kansas City Power & Light Company and Request for Immediate Relief filed on May 11, 1999 ("Petition") fails to comply with 4 CSR 240-2.060(1) since the first sentence of Paragraph 1 states that "GST Steel Company" is "a corporation duly authorized to conduct business in the State of Missouri with its principal place of business located at 7000 Roberts Road, Kansas City, Missouri 64125." The Commission has correctly observed in its Show Cause Order: "Now it is seen that this allegation is simply not true. In fact, GST is not a corporation at all, it is merely a fictitious name under which GSTOC [GS Technology Operating Company, Inc.] does business." See Show Cause Order at 2. As a result, it appears that counsel for GST Steel Company has failed to bring its action on behalf of a corporation that is properly doing business in Missouri, failed to name its principal place of business, and failed to attach a copy of its Fictitious Name Registration. This is a glaring deficiency under 4 CSR 240-2.060(1).

3. KCPL respectfully submits that this violation of 4 CSR 240-2.060(1) is grounds for dismissal of the proceeding since the Petition was not brought by a legally cognizable entity and has therefore failed to confer jurisdiction upon the Commission.

4. Pursuant to 4 CSR 240-2.070(1), it is clear that only "the commission, the public counsel, or any person or public utility as defined in 4 CSR 240-2.010 who feels aggrieved by a

violation of any statute, rule, order or decision within the commission's jurisdiction may file a complaint [emphasis added]." "Person" is defined in 4 CSR 240-2.010(11) as "an individual, corporation, municipality, political subdivision and a partnership." As the Commission has observed, the pending matter has been brought by a "nonexistent corporate entity." See Show Cause Order at 3.

5. Missouri Rule of Civil Procedure 52.01 commands: "Every civil action shall be prosecuted in the name of the real party in interest...." GST Steel Co. is a fictitious entity under which another corporation not properly before the Commission does business. It is not the real party in interest in this proceeding and has no standing to bring this action. Standing requires that an artificial entity seeking relief have a "legally cognizable interest" in the subject matter and that it suffer a real or threatened injury. Ryan v. Carnahan, 960 S.W.2d 549, 550 (Mo. App. E.D. 1998). Since GST Steel Co. lacks a legally cognizable interest in this matter and cannot prosecute this case, the Commission, just like a Missouri court, "necessarily lacks jurisdiction of the question presented and cannot enter judgment on the matter." Id., quoting State ex. rel. Bird v. Weinstock, 864 S.W.2d 376, 380 (Mo. App. 1993). Lack of standing by a party cannot be waived, and may be considered sua sponte. Citizens Ins. Co. v. Leiendecker, 962 S.W.2d 446, 449 (Mo. App. E.D. 1998).

Sanctions

6. The Commission also posed the following question in the Show Cause Order: "What sanction, if any, ought the Commission to impose on GST and its counsel for falsely alleging that GST is a corporation and standing by silently when the Commission, relying on GST's false allegation, wrongly sustained GST's objections to KCPL's discovery against GSTOC?"

7. At this juncture of the proceeding, KCPL does not know the complete circumstances surrounding the improper allegation in the Petition. These circumstances will undoubtedly be inquired into by the Commission at the Show Cause Hearing. However, dismissal with prejudice of the action must certainly be considered.

8. KCPL is troubled by counsel's failure to acknowledge their error in GST Steel Company's Reply to the Response of Kansas City Power & Light to GST's Motion Seeking Clarification and Reconsideration of Order Regarding Kansas City Power & Light's Second Motion to Compel filed on December 22, 1999. The record reflects that KCPL clearly demonstrated that GST Steel Company is merely a fictitious name under which GS Technology Operating Company, Inc. does business in Missouri. In fact, KCPL included in its pleading a copy of the fictitious name registration that had been provided to KCPL by counsel for GSTOC in discovery. See Exhibit A, Kansas City Power & Light Company's Response to GST Steel Company's Corrected Motion to Seek Clarification and Reconsideration of Order Regarding Kansas City Power & Light Company's Second Motion to Compel filed December 13, 1999 ("December 13, 1999 Response"). However, rather than candidly acknowledging their error regarding the correct corporate entity involved in this matter, it appears that counsel may have instead attempted to perpetuate the ruse (assuming they read KCPL's Response including the Fictitious Name Registration) that GST Steel Company was somehow different from GS Technology Operating Company, Inc. in their efforts to shield their client from answering relevant requests for information. In their December 22, 1999 Reply, counsel continued to argue as follows:

As the Commission stated in its November 2 Order, GST Steel Company is the KCPL customer and the party in this docket. **Corporate parents and affiliates of GST, including GSTOC, are not parties to this matter and discovery requested of those**

entities is beyond the scope of this docket, and is therefore improper. See GST Reply at 3-4. (emphasis added)

GST's reliance on the November 2 Order is particularly brazen, considering that footnote five of the Order shows that the Commission continued to be misled by GST into believing that "GSTOC" is, evidently, GST's corporate parent" -- a fact we now know to be untrue. KCPL does not know the complete circumstances surrounding counsel's erroneous argument in its December 22, 1999 Reply. Certainly, the author of the Reply misstates the facts regarding GST and GSTOC, even after KCPL clearly demonstrated those facts in its December 13 Response.

WHEREFORE, Kansas City Power & Light Company respectfully requests that the Commission dismiss with prejudice GST Steel Company's Petition filed in this matter, and grant whatever additional relief the Commission finds to be appropriate, reasonable and lawful under the circumstances of this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, First Class mail, postage prepaid, this 13th day of January 2000, to:

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