

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3 Show Cause Hearing
4 January 18, 2000
5 Jefferson City, Missouri
6 Volume 3

6 GST Steel Company,)
7)
8 Complainant,)
9) Case No. EC-99-553
10 v.)
11)
12 Kansas City Power & Light)
13 Company,)
14)
15 Respondent.)

16 BEFORE:

17 KEVIN A. THOMPSON, Presiding,
18 DEPUTY CHIEF REGULATORY LAW JUDGE.
19 SHEILA LUMPE, Chair,
20 CONNIE MURRAY,
21 ROBERT G. SCHEMENAUER,
22 M. DIANNE DRAINER, Vice-Chair
23 COMMISSIONERS.

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1 P R O C E E D I N G S

2 JUDGE THOMPSON: Good afternoon. We're here
3 in the matter of GST Steel Company, Complainant,
4 versus Kansas City Power and Light Company,
5 Respondent, Case No. EC-99-553. This afternoon we are
6 here particularly on an order to show cause issued by
7 the Commission on January 6, 2000, followed by a
8 procedural notice issued on January 7, 2000.

9 At this time in order to determine
10 compliance with the Commissioner's order that counsel
11 appear, I'm going to ask you each to make an oral
12 entry of appearance. I do not need your mailing
13 address. If you would just state your name and the
14 party that you represent. And we can begin on this
15 side.

16 MR. DANDINO: Michael Dandino appearing on
17 behalf of John Coffman, the Office of Public Counsel,
18 representing the public and the Office of Public
19 Counsel.

20 JUDGE THOMPSON: Thank you, sir.

21 MR. DeFORD: Paul S. DeFord and Kurt U.
22 Schaefer with the law firm of Lathrop and Gage
23 appearing on behalf of GST Steel Company. Also
24 appearing is James W. Brew with the law firm of
25 Brickfield, Burchette and Ritts.

1 JUDGE THOMPSON: Thank you.

2 MS. SHEMWELL: Lera Shemwell representing
3 the Staff of the Missouri Public Service Commission.

4 JUDGE THOMPSON: Thank you.

5 MR. ZOBRIST: Karl Zobrist and Timothy G.
6 Swensen, Blackwell, Sanders, Peper and Martin;
7 James M. Fischer, Larry Dority, Fischer and Dority;
8 Gerald A. Reynolds, William H. Cagle, in-house counsel
9 for Kansas City Power and Light Company. We represent
10 Power and Light Company. Chris Childs is also here as
11 a representative of the company.

12 JUDGE THOMPSON: Thank you, sir. And I will
13 note that Mr. Riggins has been excused from attending,
14 as has Mr. Coffman because of illness in his family.

15 MR. FISCHER: Your Honor, for the record,
16 I would also note that Mr. Cagle, although he was
17 counsel initially in this case, has formally withdrawn
18 as counsel of record.

19 JUDGE THOMPSON: I do understand. Thank
20 you, Mr. Fischer.

21 At this time I'll advise you if you want an
22 ASCII or A-S-C-I-I disk of the transcript, you may
23 obtain that, but you'll have to speak to the reporter
24 today about that.

25 Do any of the parties have anything to bring
25

1 to the Commission preliminarily?

2 MR. SCHAEFER: No, your Honor.

3 JUDGE THOMPSON: Thank you. In that case we
4 will proceed to opening statements.

5 I would urge you to make them quite brief.

6 Mr. DeFord?

7 MR. DeFORD: Thank you, your Honor.

8 I should advise you-all that if I'm not my
9 usual cheery self today, it has nothing to do with
10 this proceeding in particular. I've been lucky enough
11 to have a touch of the flu, so if I bolt from the
12 hearing room, it's nothing that has transpired in the
13 case.

14 Turning to the matter at hand, I have to
15 tell you that my first reaction to the show cause
16 order was essentially outrage that we would be accused
17 of even attempting to mislead this Commission. Then
18 we stepped back and looked at the pleadings and the
19 orders from the Commission's point of view, and I
20 could see where you may have thought that something
21 may be amiss. I can assure you there is not.

22 We filed our response to the show cause
23 order last week and we don't intend to simply rehash
24 everything that we said in that pleading. What we
25 intend to do here today is to highlight the important

1 parts and to answer any of your questions.

2 Now, the Commission has noted in its order
3 that it has, in part, based some of its rulings on the
4 statement in GST's petition for investigation that,
5 quote, GST Steel Company is a corporation authorized
6 to do business in Missouri. As it turns out, GST
7 Steel Company is a fictitious name for GST Operating
8 Company. We certainly did not intend to mislead
9 anyone when we made that statement. And I think I can
10 shed some light on where that statement came from and
11 why it was made.

12 Attached to the petition as Appendix A
13 you'll find a copy of the contract between the parties
14 of this case. If you take a look at that document,
15 you will see that it states -- and again, I quote --
16 that the contract is made between Kansas Power and
17 Light Company and GST Steel Company, a subsidiary of
18 GST Technologies Incorporated. The language in the
19 petition that we filed here was drawn from and was
20 made directly in reliance upon the contract language.

21 For better or worse we didn't revisit that
22 language until we reviewed the show cause order. Even
23 then it took Fred Thompson, the general counsel of
24 GSI, the parent holding company, to walk us through
25 the corporate maze.

1 We're fortunate enough, we have Mr. Thompson
2 here today to answer any questions that you may have
3 about the overall corporate structure of the parent
4 holding company or any of the corporate entities under
5 that umbrella. Mr. Thompson has, in fact, prepared a
6 series of diagrams which you may review at your
7 leisure if you'd like to look at those relationships.

8 In any event, the bottom line here is that
9 the law is clear. A corporation may conduct business
10 under a fictitious name and may sue or be sued under
11 that fictitious name. GST Steel Company is a customer
12 of Kansas Power and Light. By filing the actions we
13 did and by responding to the discovery disputes as we
14 did, we may have caused some confusion which we, of
15 course, regret. We most certainly did not intend to
16 mislead the Commission, nor any party to this
17 proceeding.

18 Mr. Brew will make our affirmative
19 presentation concerning the specifics of the discovery
20 and we'll be happy to answer any questions that the
21 Commission may have.

22 JUDGE THOMPSON: Thank you, Mr. DeFord.

23 Mr. Dandino?

24 MR. DANDINO: Public Counsel has no opening
25 statement, your Honor.

1 JUDGE THOMPSON: Thank you, sir.

2 Ms. Shemwell?

3 MS. SHEMWELL: Thank you.

4 COMMISSIONER DRAINER: I'm real sorry for
5 interrupting, but since Commissioner Schemenauer and I
6 were both confused by something Mr. DeFord said, I'd
7 like to clarify it now if I could.

8 JUDGE THOMPSON: Certainly.

9 COMMISSIONER DRAINER: Mr. DeFord, you
10 mentioned that there was an Attachment A?

11 MR. DeFORD: Yes. It was Appendix A to the
12 petition for investigation that initiated this case.

13 COMMISSIONER DRAINER: All right. So it
14 wasn't in the response that you gave us, it was in the
15 original petition?

16 MR. DeFORD: No. It's the contract and it
17 was filed under seal as highly confidential.

18 COMMISSIONER DRAINER: All right. Thank
19 you.

20 I'm sorry.

21 MS. SHEMWELL: May it please the
22 Commission --

23 JUDGE THOMPSON: Any other questions from
24 the Bench?

25 Proceed, please.

1 MS. SHEMWELL: Thank you. Good afternoon.
2 My name is Lera Shemwell. I'm here representing the
3 Staff.

4 The Commission that is noticed regarding the
5 procedure to be followed in this show cause hearing
6 directed Staff to make a presentation as to the nature
7 of sanctions, if any, to be imposed on the complainant
8 or its attorneys or both.

9 Speaking for the General Counsel's Office,
10 we take very seriously the duty of candor or honesty
11 to this Commission by any and all who appear before
12 it. Especially serious is the responsibility of
13 counsel to be truthful and accurate in representations
14 made to this Commission and to make a good faith
15 inquiry before making any filing to guard against any
16 pleadings that may be false, misleading or merely
17 confusing, and intentional misrepresentation or an
18 unintentional misrepresentation that was maintained
19 after that error was discovered would be very serious
20 matters.

21 However, having said that, it is certainly
22 possible for many reasons, including the legal issues
23 and the technical matters with which we deal and the
24 fact that in many instances we depend on other people
25 for necessary information, that any of us could make

1 an error in a pleading or a statement to the
2 Commission with absolutely no intention of misleading
3 the Commission.

4 We see no reason to question that GST made
5 an unintentional misstatement in their pleading and
6 while a clearer statement concerning corporate
7 identity could have been made in GST's original
8 pleading, we see no reason to conclude that there was
9 intent to mislead the Commission and would not suggest
10 that GST or its counsel be sanctioned.

11 Thank you.

12 JUDGE THOMPSON: Thank you, Ms. Shemwell.

13 Mr. Zobrist?

14 MR. ZOBRIST: May it please the Commission.

15 The state of the pleadings before the
16 Commission make it abundantly clear that the entity
17 that is before you does not have jurisdictional
18 standing. It is a fictitious business. It has not
19 been properly described as a Missouri corporation
20 doing business as the entity under which it truly does
21 have legal capacity. And so Kansas Power and Light
22 Company believes that the jurisdictional issues, the
23 foremost in front of this Commission, there is no
24 proper entity that is the applicant or the petitioner
25 in this case.

1 That fact has been confused from Day 1,
2 I might say, because it was not made clear. And
3 as certain discovery issues were explored in the
4 course of this litigation, it became even more
5 confusing. And there are, frankly, curious
6 statements, the credibility of which I cannot judge,
7 but the confusing nature of those statements of which
8 now is obvious.

9 But the case in its present posture, in our
10 opinion, cannot proceed. There is no proper
11 petitioner before you and Kansas Power and Light
12 Company believes that the case must be dismissed.

13 Thank you.

14 JUDGE THOMPSON: Thank you, Mr. Zobrist.

15 GST Steel? Mr. Brew please.

16 MR. BREW: May it please the Commission, my
17 name is James Brew. I'd like to quickly review the
18 nature of the discovery in the case, if I may, to see
19 if we can get very quickly to the root of the issue.

20 In the first instance with respect to the
21 order to show cause, the Commission correctly decided
22 its November 2nd order with respect to discovery on
23 the merits.

24 From the pleadings and objections filed by
25 GST throughout the process, from when KCP&L first

1 submitted their interrogatories, we maintained that
2 discovery of entities of business activities beyond
3 the Kansas City operation were not relevant. That was
4 how we phrased them, that was how we put them, that
5 was how the argument was made, that there was no
6 dividing line drawn in the pleadings that were filed
7 between GSTOC, an operating company, and GST Steel.

8 We had argued at the same time that we had
9 raised objections to discovery of GSI and GSTOC. But
10 in the context of the reply -- of responding to KCP&L
11 with respect to the first set of interrogatory
12 requests, we not only answered the questions that were
13 directed specifically to GST regarding Kansas City
14 operations, but to questions that were also directed
15 to GSI and GSTOC regarding the Kansas City operations,
16 because we were in all respects trying to cooperate,
17 move on with the substance of the case and respond to
18 KCP&L.

19 There was nothing up to the Commission's
20 first order with respect to the Kansas City Power
21 and Light motion to compel that where GST had drawn a
22 distinction, nor did we have any inkling that the
23 Commission's determination in that docket hearkened
24 back to the original petition. That hasn't occurred
25 to us in any sense, and that didn't even -- was not

1 even a thought that had occurred to us until we saw
2 the order to show cause.

3 Throughout the process of our pleadings, we
4 had responded that KCP&L was asking for information
5 that simply was not relevant. The focus in the order,
6 the November 2nd order that would particularly apply
7 here referred to KCP&L's Request No. 49, which had
8 asked for information regarding electric rates to
9 other domestic GSTOC steel-making facilities.

10 We had argued that that information
11 wasn't relevant. There are affiliates within
12 the GSI corporate family -- and as Paul mentioned,
13 Mr. Thompson is available to answer any questions
14 about that arrangement -- that are in the steel-making
15 business.

16 Whether they take service under a
17 fixed-price contract or under a contract that is like
18 the one that GST Steel takes from Kansas City is
19 totally irrelevant to whether or not -- to the issues
20 before the Commission which concern the adequacy and
21 the cost of service supplied by Kansas City Power and
22 Light.

23 That was the objection that we made. That
24 is what is in our pleadings.

25 We did not argue that GSTOC shouldn't

1 have to answer the questions to the first set of
2 interrogatories. In fact, of the data requests in the
3 first set of interrogatories that were specifically
4 mentioned in the order to show cause, we had
5 previously answered four of them. And the fifth
6 referred to a discovery request in which KCP&L had
7 asked the same question to GSI, GSTOC and GST, that
8 asked for all documents, and the Commission's
9 determination had been that that type of request is
10 totally overbroad.

11 So we had responded in good faith,
12 legitimately, and the Commission had ruled properly
13 on the merits as to the relevance of those requests.
14 This was perfectly normal discovery. These were
15 perfectly straightforward, legitimate objections to
16 discovery. It was not premised upon any dividing
17 line, real or imagined, between GST Operating Company
18 and GST Steel Company.

19 It wasn't a part of the pleading, it wasn't
20 implied, it wasn't there. It didn't occur to us that
21 the inaccurate statement in the petition, which we've
22 explained in our response, influenced in any sense the
23 Commission's determination.

24 That leads us to the order to show cause
25 itself -- or excuse me -- the November 2nd order,

1 which in specifically addressing the objections of GST
2 had noted that, yes, questions of these kinds are not
3 relevant, and had also stated that affiliates of GST
4 are not parties. That too was a true statement. That
5 is absolutely correct. And GST absolutely agrees with
6 it.

7 With respect to the specific data request
8 that asked for electric rate information concerning
9 other GSTOC domestic steel-making activities
10 elsewhere, the Commission in a paged discussion
11 determined, and properly so, that that's not relevant.
12 It also mentioned that GST was not a party, and
13 that's, I think, what we really need to talk about.

14 Following the November 2nd order we had
15 filed two additional pleadings. One was the motion
16 for reconsideration where we asked the Commission to
17 exercise its discretion, to revisit the second order
18 to show cause, because Kansas City Power and Light's
19 request in the second set, which had been issued long
20 before the November 2nd ruling and where we had filed
21 objections long before the November 2nd ruling, had
22 similarly asked for electric rate information
23 regarding other GSTOC domestic steel-making
24 facilities, and we had similarly posed the objection
25 that it wasn't relevant.

1 In filing the motion for reconsideration,
2 we reiterated our relevance objections, and we also
3 referred to the order that affiliates weren't parties.
4 Should we have at that time drawn the distinction that
5 when we're referencing GST, it was in the context of
6 the question, which was other domestic steel-making
7 activities, or were we making some distinction between
8 GST Steel Company and GST Operating Company, and we
9 should have.

10 Not because -- we certainly were never
11 intending to mislead the Commission. We should have
12 done it because it is to GST's benefit for you to
13 clearly understand that distinction, because that's
14 the heart of our relevance objections. GST has not
15 had any problem responding to relevant questions in a
16 timely fashion regarding the Kansas City operation.

17 We provided those answers to the extent that
18 the company had asked exactly the same question to GST
19 Steel Company, to GSI and to GSTOC, and we responded
20 for GST Steel Company, which we did in every case,
21 unless we posed another relevant objection, which I'd
22 like to address separately at the end, the questions
23 posed to GSTOC are exactly the same. So, in effect,
24 the long -- the short answer to your question
25 regarding proper conduct and sanctions is that in

1 every case, GST has provided at least one answer to
2 KCP&L's questions, and oftentimes answered the
3 question twice.

4 There are no documents that have not been
5 provided because the question was directed to GST
6 Steel as opposed to GSTOC. If the documents that were
7 responsive to the questions of GST Steel were in the
8 Charlotte office, we provided them.

9 In response to the first set of
10 interrogatories, the first questions on the box from
11 KCP&L are, how are you organized in Missouri. We
12 answered them. We provided the documents. We
13 provided this information to KCP&L back in August.
14 There was never any attempt of any kind not to fully
15 disclose how GST did business in Missouri. That was
16 the first question they asked. It was the first
17 answer they got. So there was -- there was never any
18 attempt to mislead the Commission or KCP&L or deny
19 KCP&L relevant information.

20 Second, and the basis behind which I think
21 the Commission's confusion came into play was our
22 reply to KCP&L at the end of December, just before
23 Christmas, in which in a paragraph we say in one
24 sentence that GST Steel is doing business as -- or
25 GSTOC is doing business as GST Steel Company in

1 Missouri, and then the next sentence referred to
2 discovery of affiliates not being proper, including
3 GSTOC.

4 There was never any attempt to mislead
5 anybody there. The paragraph is simply confusing, and
6 not to our benefit either, because nothing had been
7 withheld. The questions directed to GST Steel Company
8 had been answered. All of them.

9 In our response we've explained what the
10 questions should have stated, which was -- what the
11 statement should have been, which would have been to
12 preserve and maintain the objection we have had all
13 along to the relevance of discovery to other than
14 Kansas City operations. And that, in essence, was
15 what we were -- had argued for in both the motion to
16 reconsider and the reply.

17 We did not draw the distinction drawn
18 earlier in response to the pleadings related to the
19 first set of interrogatories that specifically talked
20 of GSTOC in terms of other domestic steel-making
21 operations. And it would have been helpful for us and
22 certainly would have avoided all of this confusion had
23 we made that explicit throughout, because that's the
24 essence of our objection.

25 The bottom line in all of this is that the
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1 objections that were made as to the second set, there
2 were a couple that referred to GSTOC that referenced a
3 special contract from Kansas City, where our sweeping
4 objections were overbroad. But those objections were
5 inconsequential because we had also at the same time
6 answered the exact same question posed to GST Steel.

7 So we hadn't answered the question twice but
8 we had answered it. So in that sense there has been
9 no harm to KCP&L in this discovery process. There is
10 a confusing sentence in one pleading and a confusing
11 paragraph in another, but none of that was intended to
12 be misleading in any sense.

13 It is really no -- it's of no coincidence
14 at all that our response to the order to show cause
15 and Kansas City Power and Light's response to the
16 order to show cause quote the same sentence from our
17 December 22nd reply. It's the sentence that is
18 confusing. And in that sense while that was what was
19 confusing, again, there was never any intent to
20 mislead. There was no harm to KCP&L.

21 The distinction that we've been trying
22 to raise with respect to relevance has been valid
23 and raised in good faith throughout. And what GST
24 would ask is that the Commission reinstate its
25 November 2nd order with respect to the relevance of

1 those questions, and that to the extent that the
2 order to show cause directs GST to provide
3 information, again, to other -- regarding other
4 domestic steel-making operations, that it apply that
5 relevance ruling here.

6 The point has been to maintain -- has been
7 to try to get this proceeding on track and not get
8 bound down in areas that is never going to lead to
9 admissible evidence, because no matter what kind of
10 character of service in Georgetown Steel or some other
11 entity you take for electric service, it has no
12 bearing on the issues in front of this Commission.

13 I think finally that there were as part of
14 the KCP&L second set of interrogatories, there is a
15 series of questions at the end that are identified in
16 our response that ask for business plan and steel
17 pricing information, liquidated damages clauses to
18 steel contracts that are totally irrelevant to the
19 issues here.

20 The Commission -- we would ask the
21 Commission to exercise its discretion in the motion
22 for reconsideration to determine that those are not
23 relevant as well, precisely because they're not
24 going to get to us any of the issues that have been
25 identified in the case.

1 If I could sum up, the responses that we
2 have made have all been in good faith. The objections
3 that we have made have been to try to preserve
4 objections to questions that are not relevant, that
5 the Commission in addressing the relevance issue in
6 the November 2nd order decided it correctly, that the
7 confusion created in the two December pleadings, while
8 certainly regrettable, didn't deny KCP&L anything,
9 because the questions had otherwise been posed in the
10 same set and answered.

11 And beyond that, if you have any questions
12 with respect to the pleadings, the corporate
13 structure, we'd be happy to entertain them.

14 Thank you.

15 JUDGE THOMPSON: Thank you. We will take
16 questions from the Bench at this time, and before we
17 start that, those questions may be directed to any of
18 the counsel that are here on behalf of GST Steel.

19 Mr. Thompson?

20 MR. THOMPSON: Yes.

21 JUDGE THOMPSON: You are an attorney, I
22 believe?

23 MR. THOMPSON: I am.

24 JUDGE THOMPSON: Could I get your oral entry
25 of appearance at this time.

1 MR. THOMPSON: My name is Fred Thompson.

2 I'm with the law firm of Parker, Poe, Adams and
3 Bernstein, Charlotte, North Carolina.

4 JUDGE THOMPSON: Thank you, sir.

5 MR. DeFORD: Your Honor, given that
6 Mr. Thompson has made an oral entry of appearance, I
7 don't believe Mr. Thompson has been admitted in the
8 Missouri Bar, so we would ask that he be allowed to
9 participate pro hac vice.

10 JUDGE THOMPSON: That is granted. Thank
11 you.

12 Chair Lumpe?

13 CHAIR LUMPE: Mr. DeFord, I'm trying to
14 understand your comment that a corporation may
15 sue or be sued under its fictitious name. Were you
16 considering the petition similar to a suit?

17 MR. DeFORD: Certainly. I think to bring
18 any type of action before the Commission, you need to
19 be a proper entity of some sort, person. In this case
20 GST Steel Company is conducting business in the State
21 of Missouri as a properly registered fictitious name
22 and we have cited cause law that certainly indicates
23 that a suit of any kind can be brought and maintained
24 under the fictitious name and, in fact, I believe
25 there is even a Missouri law that indicates that a

1 suit can be brought and maintained even if the
2 fictitious name is not properly registered.

3 CHAIR LUMPE: And this complaint then to you
4 is equal to a suit? It's the same thing?

5 MR. DeFORD: Certainly. I think any type of
6 action before the Commission needs to be brought and
7 maintained as you would in a civil action before
8 circuit court.

9 I guess I would clarify.

10 What we actually filed was a petition to
11 investigate, and the case that flows from it is to
12 investigate the safety, adequacy and justice and
13 reasonableness of the rates that we've been charged
14 under the contract.

15 CHAIR LUMPE: And is it your -- are you
16 saying that you never really perceived that we were
17 unclear about the corporate structure based on our
18 comments or responses that we made?

19 MR. DeFORD: Frankly, your Honor, as I
20 think I indicated, I was not clear on the corporate
21 structure until Mr. Thompson explained exactly what it
22 was to me after we saw the show cause order.

23 We were responding to all of the discovery
24 we were conducting in the case as properly we should
25 have. The Kansas City entity or the operation there

1 is the customer of Kansas City Power and Light, and
2 that's how we were proceeding in it.

3 CHAIR LUMPE: And the comments talking about
4 affiliates, you didn't think we might misinterpret
5 that here is GST and here is a set of affiliates
6 without that being clarified?

7 MR. DeFORD: No. I guess in my mind, you
8 know, the other steel operations are all separate
9 subsidiaries of what I then thought to be GS
10 Technologies. I, quite frankly, wasn't aware of the
11 existence of GSTOC.

12 CHAIR LUMPE: You were as unclear as we
13 were?

14 MR. DeFORD: Probably not as unclear or --
15 but certainly I wasn't aware of all of the corporate
16 structure of GSI, which is the parent holding company.

17 CHAIR LUMPE: Thank you.

18 JUDGE THOMPSON: Vice-Chair Drainer?

19 COMMISSIONER DRAINER: Good afternoon.

20 Mr. DeFord, on the first page of the
21 response of GST Steel Company to order to show cause,
22 the second sentence from the bottom states that GST
23 Steel's filings and pleadings in this docket generally
24 were proper and well-founded. I would like you to
25 explain to me what you mean by "generally."

1 MR. DeFORD: Well, I think as Mr. Brew
2 indicated, we could have been more clear. Had we
3 known when we filed the application, we simply would
4 have put GSTOC d/b/a GST Steel Company. We would
5 have probably made the clarification I think that also
6 Mr. Brew indicated, that GSTOC is an affiliate rather
7 than --

8 COMMISSIONER DRAINER: I don't want to
9 minimize this. So when you say generally were proper
10 and well-founded, are you telling me today that your
11 filings were properly filed or were they not properly
12 filed?

13 MR. DeFORD: Certainly, they were proper.
14 They weren't exact, and I guess if we could go back, I
15 would have changed probably a grand total of maybe
16 four words, none of which were, I suppose, in any way
17 intended to be misleading, and certainly since we
18 weren't aware of the corporate structure as it exists.

19 COMMISSIONER DRAINER: You are aware of our
20 Rule 240-2.0601, Section 1, that states that all
21 applications filed with the Commission shall include
22 the legal name of the applicant, as well as the
23 fictitious name?

24 MR. DeFORD: Certainly, but this is not an
25 application. An application can be filed for a number

1 of things, most of which -- I think actually all of
2 which is seeking authority from the Commission to
3 operate as a regulated entity.

4 This is not an application and we did not
5 endeavor to file the documentation that would be
6 necessary to maintain an application before the
7 Commission.

8 COMMISSIONER DRAINER: So you're saying that
9 what you filed was simply a request for investigation?

10 MR. DeFORD: A petition for investigation.

11 COMMISSIONER DRAINER: And as a petition it
12 did not need to have the legal name on the
13 application?

14 MR. DeFORD: That's correct.

15 COMMISSIONER DRAINER: I would like to ask
16 counsel for KCP&L to respond to that, please.

17 MR. ZOBRIST: Commissioner Drainer, I would
18 simply go to the rule and read it. I read it. I
19 believe that the word "application" is not meant in
20 the narrow sense that Mr. DeFord relates to. I don't
21 have a copy in front of me, so I can't respond
22 directly. But when I read that I had the distinct
23 impression it meant any application to this
24 Commission, either a petition or an application, a
25 request or whatever.

1 Otherwise there would frankly be too many
2 loopholes for an applicant to come in the guise of a
3 petitioner and say, well, we don't need to follow this
4 jurisdictional rule and we don't need to file this.
5 Mr. Fischer has handed me a copy of the CSR, and it
6 simply states all applications shall comply with the
7 requirements. And it's a generic reference in my view
8 to the word "application," which means any applicant
9 coming before the Commission seeking relief.

10 COMMISSIONER DRAINER: Any filing?

11 MR. ZOBRIST: Any filing. Any little A
12 application, be it a rate case, be it a request for
13 whatever type of relief, that would be Kansas City
14 Power and Light Company's view on that matter.

15 COMMISSIONER DRAINER: All right.

16 MR. SCHAEFER: Commissioner Drainer, if I
17 may respond?

18 COMMISSIONER DRAINER: No, you may not. I
19 will get back you to.

20 I have a question for Mr. DeFord.

21 MR. SCHAEFER: Thank you.

22 COMMISSIONER DRAINER: And, Mr. DeFord, you
23 were shaking your head no, so I was going to ask you
24 what your thoughts were.

25 MR. DeFORD: Yeah, that's all right.

1 Actually it was something I asked Mr. Schaefer to pull
2 out of the file.

3 I think Mr. Zobrist is absolutely wrong.
4 There are at least three different types of ways you
5 can bring a matter before the Commission. The first
6 would be in this type of circumstance, a complaint.
7 We did not file a complaint here. There are a set of
8 rules that you follow to file a complaint.

9 The second would be to have filed an
10 application. And if you look at .060, I think what
11 you'll find is it lists several, maybe eight or nine,
12 separate types of things that you file applications
13 for: an application to become an interexchange
14 carrier, an application to become a local exchange
15 carrier, application for water and sewer, et cetera.

16 The third type of action that can be
17 maintained before the Commission is a petition to
18 create an investigation, a petition to look into
19 whatever. That is what we have filed here. What we
20 did, what we endeavored to do here is to file a
21 petition which would set forth the basics of who the
22 entities are, who the parties are, the same type of
23 thing that you would do to maintain a civil action in
24 the circuit court.

25 We have done that. We have complied with

1 all of the requirements on the rules to maintain that
2 type of action.

3 COMMISSIONER DRAINER: And you believe that
4 that third type under which your petition falls would
5 be handled in a different section of our rules?

6 MR. DeFORD: Certainly.

7 COMMISSIONER DRAINER: And that section
8 would be, Mr. Schaefer?

9 MR. SCHAEFER: Well, I was prepared to
10 address the fact that it's not an application. I
11 think it simply falls under the general pleadings
12 requirements, which I believe would be .080.

13 COMMISSIONER DRAINER: Okay. Thank you very
14 much.

15 MS. SHEMWELL: May it please the Commission,
16 I could speak for Staff.

17 COMMISSIONER DRAINER: Yes, please.

18 MS. SHEMWELL: Thank you. We looked at
19 this and believe that, in fact, GST filed a petition
20 for an investigation.

21 I would refer the Commission to its own
22 rules regarding the filing of a petition, which
23 fall within the rules of filing a pleading in
24 4 CSR 240-2.080, and I would refer you back then to
25 your own definitions, where it says pleading means any

1 application, complaint or petition -- this was
2 denominated petition -- answer, motion or other
3 similar written document which is not a tariff or
4 correspondence and which is filed with the Commission
5 in a docketed case.

6 Under that section the same requirements for
7 filing evidence of fictitious name or corporate entity
8 are not in the Commission's rules as they are in the
9 filing of an application or a complaint.

10 COMMISSIONER DRAINER: Okay. Thank you very
11 much for that clarification.

12 MS. SHEMWELL: Thank you.

13 MR. ZOBRIST: Vice-Chair Drainer, if I might
14 add one brief word. If Mr. DeFord's interpretation
15 is correct, and I don't believe that to be the case,
16 because there is no specific category here for
17 petition, if you go back to Rule 5201 of the Missouri
18 Rules of Civil Procedure, there is an overarching
19 requirement that every civil action be prosecuted in
20 the name of the real party in interest.

21 And there is no real party in interest here.
22 What we have is a fictitious name. We don't have the
23 corporation which is GS Technologies Operating
24 Company, Inc. So even if there is an explanation or a
25 loophole or something in the CSRs that addresses this

1 situation, if you go back to the Rules of Civil
2 Procedure, I think Rule 5201 still says you have to
3 bring this action in the name of a legally
4 recognizable entity, and we don't have that here.

5 Thank you.

6 COMMISSIONER DRAINER: All right. Thank
7 you.

8 One more bite.

9 MR. DeFORD: I just happen to have that same
10 rule before me, and it also provides that it can be
11 brought in the name under who -- in the name under the
12 contract who has been made. So if you would just take
13 a look at that rule, it indicates that you can
14 maintain the action in the name of the entity under
15 which the contract has been made.

16 COMMISSIONER DRAINER: And your position
17 would be that the contract was made under GST Steel?

18 MR. DeFORD: Yes. It's an attachment,
19 Appendix A to our petition.

20 COMMISSIONER DRAINER: Well, Mr. DeFord, I
21 also wanted to tell you that I am sorry you have the
22 flu and I hope you don't share it today.

23 MR. DeFORD: Thank you.

24 COMMISSIONER DRAINER: I'm still sorry that
25 you have it. And I guess that's one of the problems

1 when we ask all of the attorneys to be here, we didn't
2 have a loophole, did we, for the flu?

3 MR. DeFORD: Well, it's no fun. But thank
4 you.

5 COMMISSIONER DRAINER: Let me ask, though --

6 MS. SHEMWELL: Commissioner Drainer, would
7 you care for any further comment?

8 COMMISSIONER DRAINER: About the flu?

9 MS. SHEMWELL: I too fall under the flu.

10 COMMISSIONER DRAINER: If there is something
11 else you wish to state, please.

12 MS. SHEMWELL: Thank you.

13 A fictitious name in Missouri is a very
14 common thing. This GST Steel is operating under a
15 fictitious name. The term "fictitious" seems to imply
16 something that it does not. It's a very common
17 practice. We do believe that under a fictitious name
18 a company can act and can be a legally recognizable
19 entity.

20 COMMISSIONER DRAINER: Thank you.

21 I want to be clear on something, Mr. DeFord.
22 Is GST Steel -- I mean, that's like the nickname.
23 Okay? Is that the nickname for GSTOC?

24 MR. DeFORD: I think GST Steel Company is --
25 it's operated as what amounts to a division of GSTOC,

1 which has multiple other holdings and owns the stock
2 of all of these affiliates.

3 COMMISSIONER DRAINER: Okay. But if it's a
4 fictitious name, who is it a fictitious name for?

5 MR. DeFORD: It is the fictitious name in
6 Missouri for GSTOC.

7 COMMISSIONER DRAINER: Okay. So it is
8 GSTOC?

9 MR. DeFORD: Correct.

10 COMMISSIONER DRAINER: Now, that is who it
11 is?

12 MR. DeFORD: (Nods head.)

13 COMMISSIONER DRAINER: All right. Then
14 on page 12 of your response to the order to show
15 cause you -- and I guess, is this just at the very
16 bottom where you discuss the December 22nd reply and
17 you say corporate parents and affiliates of GST Steel,
18 including GSTOC, are not parties in this matter. And
19 if, in fact, GST Steel is the fictitious name for
20 GSTOC, then this is the sentence that was at best
21 misleading, at worst meant to confuse.

22 MR. DeFORD: That certainly wasn't meant to
23 confuse.

24 COMMISSIONER DRAINER: I said at worst that
25 would be.

1 MR. DeFORD: Sure.

2 COMMISSIONER DRAINER: But it's not a true
3 statement? It just isn't a true statement, is it?

4 MR. DeFORD: It's not accurate, you're
5 right.

6 COMMISSIONER DRAINER: If it's not accurate,
7 then it's not true. Can we --

8 MR. DeFORD: What we were attempting to
9 convey is that GSTOC owns other entities which are
10 not -- not party to this proceeding. Georgetown Steel
11 Corporation is owned by --

12 COMMISSIONER DRAINER: All right. But
13 that doesn't say anything like that in this statement,
14 Mr. DeFord. What this statement says is that
15 corporate parents and affiliates of GST Steel,
16 including GSTOC, are not parties to this matter. And
17 if GST Steel is a fictitious name for GSTOC, GSTOC has
18 to at some level be a party to this case, doesn't it?

19 MR. DeFORD: Certainly.

20 COMMISSIONER DRAINER: So GST, including
21 GSTOC is not a party to this matter, it has to be a
22 party in this case at some level. Correct?

23 MR. DeFORD: At some level, yes.

24 COMMISSIONER DRAINER: I mean, it is.

25 MR. DeFORD: Sure.

1 COMMISSIONER DRAINER: This gets a little
2 schizophrenic when you read through all of those
3 statements and your responses to the data request.

4 MR. DeFORD: Sure.

5 COMMISSIONER DRAINER: Okay. Now, moving
6 on then, when I look at your Attachment C, there were
7 a number of responses that the Petitioner, which would
8 be GST too, had to that request by KCP&L. And when I
9 looked at on page 6, KCP&L's Data Request No. 49, it
10 says -- at the second paragraph said the Petitioner
11 objects to this request as being irrelevant because
12 the electric rates paid by GSTOC, domestic
13 steel-making facilities, is in no way related to the
14 electricity service provided by KCP&L and other issues
15 in this proceeding.

16 And, again, I guess what I'm asking is, the
17 electric rates paid by GSTOC are really the electric
18 rates that are being paid by GST Steel. Correct?
19 Because if you even call GST Steel, which is a
20 fictitious name, the operating division in Missouri
21 for GSTOC, it still is GSTOC's -- I mean, it's --

22 MR. DeFORD: Sure. As Mr. Brew indicated,
23 we did answer all of that with respect to the Missouri
24 operations. What we were doing here was trying to
25 convey that Georgetown Steel and the other entities

1 owned by GSTOC were not relevant.

2 COMMISSIONER DRAINER: But you didn't say
3 that.

4 MR. DeFORD: No, we did not.

5 COMMISSIONER DRAINER: You did not say that
6 at all. You said GSTOC, that that wasn't related, and
7 it is GST Steel. So it is related. I mean, I want to
8 get clear.

9 MR. DeFORD: Certainly. But, again, we did
10 provide all of that information to KCP&L.

11 COMMISSIONER DRAINER: All right. But
12 that's -- throughout this whole document there is
13 statements like that and I'm trying to find out now
14 the facts --

15 MR. DeFORD: Sure.

16 COMMISSIONER DRAINER: -- and interpret
17 them.

18 All right. Then let me also ask, on D,
19 where you talk about KCP&L -- oh, page 2. In the
20 middle it says -- well, in a couple of different
21 places, GST objects to this request as being
22 irrelevant because whether GSI or GSTOC or GST
23 considered using.

24 And, again, my question is, really,
25 throughout this second set of data requests and as you

1 can see on this page, it talks about GST and then it
2 talks about GSTOC. And, um, there is no clarification
3 here that there is Georgetown or anyone else. Again,
4 it seems schizophrenic, because we're talking about
5 the same company under two different names in a
6 response.

7 MR. DeFORD: I think we were more clear
8 here. We did indicate other than GSI and GSTOC
9 domestic steel operations, where what we were trying
10 to convey, once again, is it's these other entities
11 out there that we objected to providing discovery
12 responses to. And the basis of that were relevance.

13 It had nothing to do with us making some
14 fictitious, if you will, line between the entity that
15 we were talking about in Kansas City and these other
16 affiliates. It was a very real distinction towards --

17 COMMISSIONER DRAINER: Where is the dividing
18 line between GST Steel and GSTOC?

19 MR. DeFORD: It's simple. I think it's
20 Kansas City. The d/b/a is operated as a subdivision
21 of GSTOC.

22 COMMISSIONER DRAINER: And so what you would
23 contend throughout your response is, is once we're
24 clear on who is on first, so to speak, that it is only
25 the operations in Kansas City that GST should have to

1 respond to data requests on?

2 MR. DeFORD: We've gone beyond that.

3 We've -- any document that is in the possession or
4 control of GSTOC we think is properly discoverable, as
5 long as it's relevant and is available to Kansas City
6 Power and Light. What we maintain the objections to
7 are the affiliates, the entities that have a separate
8 corporate existence. Georgetown Steel. I'm drawing a
9 blank.

10 COMMISSIONER DRAINER: That those are the
11 affiliates. That you ought not to have to provide
12 information on those affiliates?

13 MR. DeFORD: Certainly. As Mr. Brew
14 indicated, I think we've actually provided documents
15 that were in Charlotte at the GSTOC offices. We have
16 no problem with that.

17 COMMISSIONER DRAINER: Okay. Then I have a
18 question, Mr. Fischer. The pleading that you filed in
19 response, I believe proposal was that this case should
20 be dismissed for prejudice. Did I dream that or did
21 you say that?

22 MR. FISCHER: I think we may have suggested
23 that as --

24 COMMISSIONER DRAINER: Okay. Based on that
25 suggestion, can you tell me on what authority you

1 believe that the Commission can dismiss this case with
2 prejudice?

3 MR. FISCHER: Your Honor, our foremost
4 argument is that it ought to be dismissed because
5 there is not a proper party in front of the
6 Commission.

7 The Commission also raised the question of
8 what sanctions should be imposed upon the company in
9 the event that you found after this hearing that there
10 was misleading statements. One of the things that
11 would be within the Commission's authority is to grant
12 a dismissal with prejudice. That is the basis for
13 that.

14 We didn't know what the situation would be
15 until we came to the hearing today, what you might
16 find regarding the intention of the -- of the -- we
17 believe that it should be dismissed with prejudice,
18 certainly with GST Steel. They are not a proper party
19 to this case and it should be dismissed with prejudice
20 regarding that entity. It's not a proper entity in
21 front of the Commission, and it's our position that
22 that is within the Commission's authority.

23 COMMISSIONER DRAINER: Would you bear with
24 me so I can be clear on this? You're basically saying
25 that it would be your belief that with respect to GST

1 Steel, that this case be dismissed with prejudice but
2 that would allow GSTOC to file?

3 MR. FISCHER: Your Honor, I don't think
4 they're in front of you today. I'm not sure that you
5 can dismiss anything with prejudice against them as an
6 operating company. They have filed as GST Steel, the
7 fictitious name.

8 COMMISSIONER DRAINER: That's what I'm
9 saying though, that nothing in this case would then
10 exclude that company from filing for that. You just
11 don't believe that it would be proper for GST Steel to
12 come back before us and file.

13 MR. FISCHER: I think that's a fair
14 statement.

15 JUDGE THOMPSON: All right. So it is still
16 your position or your suggestion that the Commission
17 dismiss this particular case before us with prejudice?

18 MR. FISCHER: Yes, your Honor.

19 COMMISSIONER DRAINER: And, you know, it's
20 really hard when you look over here at Mr. DeFord and
21 see how pitiful he looks, but --

22 MR. DeFORD: I'll try not to look pitiful.

23 COMMISSIONER DRAINER: Okay.

24 Could you please respond to that for me,
25 Mr. DeFord?

1 MR. DeFORD: Sure. That is a black-lettered
2 case law. All you have to do is look at Fletcher on
3 corporations. It's a horn book. Judge Thompson and
4 Commissioner Murray, having been drug through law
5 school, I'm sure have been forced to read those types
6 of things. It is elementary that a lawsuit can be
7 brought and maintained in a fictitious name. The
8 actual remedy, if there is some remedy to be had, is
9 to amend the pleading if it would make Mr. Fischer --

10 COMMISSIONER DRAINER: I'm sorry. I didn't
11 hear what you said.

12 MR. DeFORD: The actual remedy would be to
13 simply amend the pleading. It's referred to commonly
14 to courts by misnomer. If it would make Kansas City
15 Power and Light happy, we would be more than pleased
16 to insert the words GSTOC d/b/a GST Steel Company.

17 Absolutely meaningless action but we would
18 be happy to take it.

19 There is absolutely no grounds whatsoever
20 to dismiss the case because it's brought in the name
21 of -- a fictitious name of a corporation. I don't
22 know how much more -- we've cited case law and I would
23 challenge Kansas City Power and Light to find case law
24 that would contradict what we've cited.

25 COMMISSIONER DRAINER: All right. Thank you

1 very much. I appreciate all of your responses.

2 I have no other questions.

3 JUDGE THOMPSON: Thank you. Commissioner
4 Murray?

5 COMMISSIONER MURRAY: Thank you.

6 Mr. DeFord, the contract that you referred
7 to in Appendix A to the petition -- I just want to
8 make sure I get that right, because I don't have the
9 entire file before me -- that was between GST Steel
10 Company and Kansas Power and Light; is that correct?

11 MR. DeFORD: Yes. It actually even
12 referred, I believe, to GST Steel Company as a
13 subsidiary of GS Technologies Incorporated. GS
14 Technologies Incorporated is the parent of GSTOC.

15 COMMISSIONER MURRAY: And what was the date
16 of that contract?

17 MR. DeFORD: The date of that contract was
18 August 12, 1994.

19 COMMISSIONER MURRAY: And am I correct that
20 the petition that was filed here is based upon that
21 contract?

22 MR. DeFORD: It is fundamental to that
23 contract. What we filed I think we styled as a
24 petition for investigation as to the adequacy of
25 service provided by Kansas City Power and Light

1 Company and a request for interim relief or immediate
2 relief.

3 And the caption that we initially put on the
4 case was in the matter of Hawthorne Generating Station
5 Unit No. 5 and the adequacy of services provided by
6 Kansas City Power and Light Company.

7 COMMISSIONER MURRAY: And the service
8 provided is in accordance with the contract for
9 provision of service.

10 MR. DeFORD: Certainly. Correct.

11 COMMISSIONER MURRAY: Thank you.

12 Mr. Zobrist, this contract between KCP&L and
13 GST, would that not have informed KCP&L adequately of
14 the relationship of GST and GS Technology Incorporated
15 and GSTOC?

16 MR. ZOBRIST: Your Honor, I think that
17 KCP&L from the beginning believed that there were
18 jurisdictional problems in this case. When KCP&L
19 filed its answer, it denied the allegation with regard
20 to GST's corporate status as alleged in the petition
21 or application. And then as discovery went on, we
22 understood it was not a proper party.

23 I'm not certain if the contract itself
24 would have put us on notice, because as I look at a
25 copy before me, it does say that GST Steel Company is

1 a subsidiary of GS Technologies Inc. My understanding
2 is that it's actually a subsidiary of GS Technologies
3 Operating Company Inc. Now, maybe GSTOC that we're
4 talking about is a successor to the entity in the
5 contract. I'm not sure of that.

6 But KCP&L was aware from the beginning that
7 there were -- there was, at best, confusion over the
8 corporate standing of GST Steel.

9 Right. I'm sorry. I may have misspoken. I
10 think the contract says it's a subsidiary of GS
11 Technologies Inc. perhaps that is correct because it's
12 a d/b/a of GSTOC. So, you know, perhaps it is
13 correct.

14 But to answer your question, I think that
15 KCP&L knew from the beginning that there was a problem
16 with the allegation.

17 COMMISSIONER MURRAY: And is it correct that
18 KCP&L raised that in their first response?

19 MR. ZOBRIST: Yes, Commissioner.

20 COMMISSIONER MURRAY: Then at that time were
21 you raising the jurisdictional standing issue?

22 MR. ZOBRIST: We were preserving it, yes,
23 ma'am.

24 COMMISSIONER MURRAY: And in relation to
25 that jurisdictional standing issue, even if we took

1 your interpretation that this is an application and
2 falls under the rules concerning what has to be
3 present in an application before this Commission,
4 wouldn't the pleading or pleadings that have been
5 filed be curable by amending the petitions or by
6 amending the pleadings at this point?

7 MR. ZOBRIST: Well, in the view of the
8 Respondent, not at this late date, no. I think that
9 this Commission should reject the purported oral
10 motion to amend. I think we've gone far too late.
11 Now, whether the Commission should exercise its
12 jurisdiction and consider such a matter, I think
13 that's probably legally possible. We believe it
14 would be inappropriate at this stage in considering
15 representations that have been made to the Commission
16 to do that.

17 COMMISSIONER MURRAY: And what prejudice has
18 KCP&L suffered by -- if we were to go ahead?

19 MR. ZOBRIST: Commissioner, I don't
20 believe it's a question for testing for prejudice.
21 Our position is that this proceeding has been
22 defective from the beginning and that the only remedy
23 is dismissal. I don't believe at this point the issue
24 should be tested for prejudice.

25 COMMISSIONER MURRAY: Mr. DeFord, would you

1 like to respond to that? How do you feel in terms of
2 whether we should consider whether anyone has been
3 prejudiced at this point?

4 MR. DeFORD: Again, your Honor, as I talked
5 with Commissioner Drainer, the suit could be brought,
6 the action could be brought and maintained in the
7 fictitious name. The offer to amend was simply to
8 appease Kansas City Power and Light's apparent
9 discomfort with the action going forward under the
10 fictitious name GST Steel Company.

11 It's jurisdictionally meaningless. We
12 would be pleased to make that if it will, you know,
13 make the record more clear or make the parties happy.
14 There has been absolutely no harm to KCP&L. We have
15 responded in discovery appropriately at every turn. I
16 guess I just am at a loss to say anything other than I
17 can't imagine why the case should be dismissed for the
18 reasons that are being set forth by Kansas City Power
19 and Light.

20 COMMISSIONER MURRAY: Mr. Brew?

21 MR. BREW: Thank you, Commissioner Murray.

22 If I might add, the agreement itself states
23 in the first paragraph by both Kansas City Power and
24 Light and GST Steel Company, a subsidiary of GS
25 Technologies, and subject to the jurisdictional

1 authority of the Missouri Commission. In filing the
2 contract, KCP&L agreed as we did that the contract and
3 the proper parties were stated in the contract -- you
4 know, were set forth in the first paragraph.

5 COMMISSIONER MURRAY: Ms. Shemwell, does
6 this at this point if we determine that there was no
7 intentional misleading of the Commission, does it not
8 seem like a rather di minimis mistake at this point
9 that could be cured?

10 MS. SHEMWELL: Commissioner, I would agree
11 with you and I would just respectfully suggest that
12 the Commission not rely especially heavily on KCP&L's
13 filing in this case, because I believe that they
14 misstated the jurisdictional question, they posed the
15 issue as to whether the complaint -- and I think we've
16 established that it was not brought as a complaint --
17 was brought in the name of a nonexistent corporate
18 entity.

19 GST Steel is, in fact, the name of GSTOC.
20 It's a fictitious -- it's a registered fictitious name
21 of GSTOC. So that the complaint or the petition, in
22 fact, was not brought in the name of a nonexistent
23 corporate entity. GSTOC is a corporation and GST
24 Steel is its name.

25 COMMISSIONER MURRAY: Could I ask you as
68

1 a follow-up to that, in the suggestions and response
2 to the Commission's order to show cause filed by
3 Kansas City Power and Light, on page 2, they state
4 that Council for GST Steel Company failed to name its
5 principal place of business. What is the appropriate
6 principal place of business that should have been
7 named?

8 MS. SHEMWELL: GST in its registration
9 with the Secretary of State shows its -- GST Steel
10 Company shows its corporate address as the Kansas City
11 address. I wouldn't mind to research that a little
12 more, but GSTOC -- GST Steel is the fictitious name.
13 Its operating at that address and I think that that
14 address is fine.

15 COMMISSIONER MURRAY: So if we assume that
16 GST Steel as doing business under that fictitious name
17 is a proper party, then that would be the appropriate
18 principal place of business?

19 MS. SHEMWELL: I believe so.

20 COMMISSIONER MURRAY: And, Mr. Dandino, you
21 didn't make an opening statement. Did Public Counsel
22 take any position on this?

23 MR. DANDINO: No. We have no position at
24 all in this case or in this proceeding and offer no
25 comments.

1 COMMISSIONER MURRAY: All right. Thank you.

2 Mr. Zobrist or Mr. Fischer, whoever would
3 like to answer this, how would information about any
4 of the operations, whether they be GSTOC's or any of
5 the affiliates beyond Kansas City -- or in other
6 words, the operations that did not come under the
7 contractual arrangement between GST Steel and KCP&L,
8 how would anything related to those operations be
9 relevant to this proceeding?

10 MR. ZOBRIST: We believe that there is
11 likely information beyond just the Kansas City
12 information that would relate to not just the Kansas
13 City steel operation but other steel operations that
14 would shed light on the motives, the business motives
15 of the Petitioners in this case, that would show that
16 they perhaps have a plan of dealing with these special
17 contracts, when they find a special contract not to be
18 in their interest to the extent that they thought it
19 was when they entered into it, that they should
20 attempt to modify those contracts, that their costs
21 under these contracts which they agreed to that they
22 now find unacceptable, and that it would raise issues
23 that are extraneous to the specific issues raised by
24 the Petitioner in this case.

25 So we believe that there are other -- that

1 there that might likely be other information related
2 to these other steel entities that are identical to
3 some of the issues that we think may apply to this
4 case that are beyond the limited scope of relevancy
5 that GST Steel Company argues in this case, because
6 they may be authored by people from either other
7 corporations or other entities.

8 COMMISSIONER MURRAY: So are you saying that
9 there may be a pattern to demonstrate that is present
10 within the larger corporate structure?

11 MR. ZOBRIST: Well, as related to the steel
12 operations only. Georgetown Steel and some of their
13 other steel interests, yes, Commissioner.

14 COMMISSIONER MURRAY: I believe that is all
15 of my questions. Thank you.

16 JUDGE THOMPSON: Thank you, Commissioner.

17 Commissioner Shemenauer?

18 COMMISSIONER SHEMENAUER: Thank you.

19 I guess the advantage of being last is most
20 of the questions have already been asked, so I have
21 just a few questions.

22 Mr. DeFord, let me tell you how I perceive
23 this and then you tell me if I'm wrong.

24 I mean, it looks to me like the attorneys
25 for GS Steel either intentionally or unintentionally

1 allowed the Commission to believe that GST Steel
2 Company was a separate entity from GSTOC and allowed
3 us to believe that in the data requests that were
4 submitted by KCP&L to GST Steel, as we denied some of
5 those data requests.

6 When did you as an attorney for GST Steel
7 realize either the corporate structure was something
8 different than what you believed or that the
9 Commission was laboring under a misconception of the
10 corporate structure of GST Steel and GSTOC?

11 MR. DeFORD: I think we all learned that the
12 Commission was laboring under the misconception after
13 we reviewed the show cause order. And when we filed
14 the action, we frankly -- we relied on the language in
15 the contract.

16 COMMISSIONER SHEMENAUER: But were you
17 always aware that GST Steel was the same company as
18 GSTOC?

19 MR. DeFORD: No. I did not know that GSTOC
20 existed until after we saw the corporate -- the show
21 cause order.

22 COMMISSIONER SHEMENAUER: So you were
23 laboring under the impression that GST Steel was a
24 separate corporate facility of GSTOC?

25 MR. DeFORD: Certainly. Frankly, I had

1 seen -- I had seen bills from Kansas City Power and
2 Light to GST Steel Company. I thought that it was a
3 separate operation. And, in fact, I thought that when
4 Armco, my firm has represented that plant, that
5 entity, whoever operates it, since, I believe, 1940s.
6 And my impression was that GST Steel Company bought
7 the assets from Armco. That's, I guess, neither here
8 nor this. I guess I didn't know it was a fictitious
9 name.

10 COMMISSIONER SHEMENAUER: But in any other
11 case would ignorance of the facts involved be an
12 excuse for --

13 MR. DeFORD: If it were meaningful. I
14 guess in this particular circumstance, you know,
15 there was -- certainly there was no intent to mislead
16 and there has been no harm to the other party to the
17 case by the fact that there is this corporate entity
18 out there that is doing business under the fictitious
19 name. It, in fact, provided response and discovery
20 from the corporate entity, not just the Kansas City
21 operation.

22 COMMISSIONER SHEMENAUER: Okay. Thank you.

23 Mr. Zobrist, you heard my questions to
24 Mr. DeFord. Was KCP&L aware of a mischaracterization
25 of the corporate structure of GST Steel and GSTOC as

1 presented to the Commission all throughout these
2 proceedings up until, I think, December 13th in
3 KCP&L's second motion to compel you spelled out
4 exactly what there was?

5 Were you aware of it all of the while up
6 until then?

7 MR. ZOBRIST: Commissioner, we believe that
8 there was an irregularity in the allegation from the
9 beginning. As discovery proceeded and we figured out
10 the corporate structure through the public filings,
11 the 10Ks, the annual reports and other things, that
12 form -- that crystallized the mischaracterizations in
13 our minds and that is why we brought the motions to
14 compel.

15 Frankly, we could have been more articulate
16 in the first motion to compel. I don't think we were
17 as clear as we should have been. We were in the
18 second one when we attached the various pleadings to
19 demonstrate that GST Steel was a fictitious entity.

20 COMMISSIONER SHEMENAUER: Okay. Thank you.
21 That's all of the questions I have.

22 JUDGE THOMPSON: Thank you.

23 Are there any further questions from the
24 Bench? Chair Lumpe?

25 CHAIR LUMPE: No.

1 JUDGE THOMPSON: Vice-Chair Drainer?

2 COMMISSIONER DRAINER: Yes. I would like to
3 follow up on GST Steel's response. They make a
4 statement that finally KCP&L has not been
5 substantially disadvantaged to the extent it has
6 received responses to relevant questions posed to GST
7 Steel. Twice in this hearing I have heard Mr. DeFord
8 say that there has been no real harm.

9 I guess I would like to know from KCP&L, I
10 hear you say to one of the fellow commissioners you've
11 gone too far down the road, that it needs to be
12 dismissed, but I don't know where the harm is. And I
13 would like you to respond to where this case has been
14 too disadvantaged by these unintentional as KC-- or as
15 GST still says they were unintentional or maybe not as
16 clear as they should have been.

17 MR. ZOBRIST: The prejudice as far as
18 discovery has occurred because we have been denied the
19 documents that the Commission did grant us in the
20 order to show cause, and KCP&L would certainly argue
21 to the Commission that that order was proper and that
22 we should receive those documents.

23 I think that is probably the extent of the
24 prejudice that we have suffered.

25 My response to Commissioner Murray was that

1 when you have a legally insufficient entity before the
2 Commission, that issue does not have to be tested for
3 prejudice. But I think we have been prejudiced
4 because of the confusion in the discovery pleadings
5 and the failure of the Commission to understand the
6 true facts, and I think if the Commission adheres to,
7 I think it's Paragraph 2 of the order to show cause,
8 then that prejudice would be cured.

9 COMMISSIONER DRAINER: Which would be a --

10 MR. ZOBRIST: That was the ordering GST --
11 it was -- the Commission reconsidered its order of
12 November 2 and set aside its ruling in regard to
13 certain data requests in Paragraph No. 2 of the order.

14 COMMISSIONER DRAINER: So if the Commission
15 were to stand by its reconsideration on the data
16 requests and possibly even change the procedural
17 schedule to give KCP&L appropriate time to review
18 those, then where is the harm to move forward?

19 MR. ZOBRIST: Let me be clear, Vice-Chair
20 Drainer. I believe that cures the prejudice that
21 resulted from the confusion in the discovery process.
22 We emphatically believes it does not clear the legal
23 defects in the case.

24 We argue that you have no choice but to
25 dismiss this matter because it is brought by an

1 improper party and, you know, I would -- well, that's
2 our position. And we think that because, whether you
3 call this a pleading, a petition or an application,
4 the application requirements of the CSR apply.

5 When you look at the pleading section, it
6 anticipates pleadings filed in an already docketed
7 case. That is not what we have here.

8 COMMISSIONER DRAINER: All right. So
9 basically you believe the pivotal and fundamental
10 question is in the jurisdiction and that they were not
11 appropriately filed in the first place?

12 MR. ZOBRIST: That's correct.

13 COMMISSIONER DRAINER: All right. Thank
14 you.

15 No other questions.

16 JUDGE THOMPSON: Thank you.

17 Commissioner Murray, do you have any further
18 questions?

19 COMMISSIONER MURRAY: No questions.

20 JUDGE THOMPSON: Commissioner Shemenauer?

21 COMMISSIONER SHEMENAUER: No.

22 JUDGE THOMPSON: Mr. DeFord, you indicated
23 that you were not aware that GSTOC existed until after
24 reviewing the show cause order and rehearsing the
25 corporate structure with Mr. Thompson; isn't that

1 correct?

2 MR. DeFORD: That's correct. Actually
3 what was I wasn't aware of was the existence of GS
4 Technologies Incorporated.

5 JUDGE THOMPSON: Okay. Now, Mr. Brew
6 told us at the very first data request in this case
7 which GST responded to was having to do with GST's
8 organization in Missouri, isn't that correct,
9 Mr. Brew?

10 MR. BREW: That is right. We provided that
11 response on August 24th.

12 JUDGE THOMPSON: Did anyone on your team
13 read the material that you provided to KCP&L at that
14 time?

15 MR. BREW: Yes, sir.

16 JUDGE THOMPSON: You read it, but you did
17 not?

18 MR. DeFORD: No, I didn't look at any of
19 those data request responses that we provided.

20 JUDGE THOMPSON: Okay.

21 Looking at Appendix D to GST's response to
22 the show cause order, for example, on page 3, below
23 the middle of the page, there is a response to KCPL
24 Data Request 2.44, 2.45, 2.46, and in the second
25 paragraph there, for example, I quote, GST objects to

1 this request as being irrelevant because whether GSI,
2 GSTOC or GST used pricing models to evaluate
3 electricity. In other words, even here in this letter
4 that was written, signed by Mr. Brew and written as
5 late as September 27th, wouldn't you agree with me,
6 sir, that that response treats GST and GSTOC as
7 distinct entities?

8 MR. BREW: No. Your Honor, if I may
9 respond?

10 JUDGE THOMPSON: Yes, you may.

11 MR. BREW: Requests 2.44, 2.45 and 2.46
12 are directed to GSI, GSTOC and GST. The response
13 responded to the three of them as it was a single
14 response in the fashion the question was framed. The
15 response was that we didn't think the question as
16 posed to any of them was relevant however they posed
17 it.

18 JUDGE THOMPSON: Okay.

19 MR. BREW: I mean, we were responding to the
20 question as it was presented to us. The objection
21 was, this question isn't relevant.

22 JUDGE THOMPSON: Well, now, Mr. DeFord,
23 when I went to law school I learned that if I was
24 going to bring a lawsuit on behalf of a fictitious
25 entity, corporation, that one of the things I had to

1 plead and prove was capacity. Did you learn that in
2 law school?

3 MR. DeFORD: For your Honor, I think I've
4 previously indicated that at the time we filed the
5 petition, we filed it in reliance upon the language in
6 the contract.

7 JUDGE THOMPSON: Yes, sir, you did say that.

8 MR. DeFORD: I also know from law school
9 that you can bring and maintain an action under a
10 fictitious name.

11 Now, as I've indicated, we would be more
12 than happy to, if it would make the case file more
13 clear and if it would --

14 JUDGE THOMPSON: But at the time you
15 filed it you didn't know you were filing it under a
16 fictitious name; isn't that right?

17 MR. DeFORD: That's exactly right.

18 JUDGE THOMPSON: You believed that GST Steel
19 was a corporation; isn't that correct?

20 MR. DeFORD: That's correct.

21 JUDGE THOMPSON: Okay. And you didn't check
22 to see if it was in good standing?

23 MR. DeFORD: No. Absolutely not.

24 JUDGE THOMPSON: Okay. And if a corporation
25 is not in good standing, can it bring a lawsuit?

1 MR. DeFORD: I don't know the answer to that
2 question.

3 JUDGE THOMPSON: Okay. When the Commission
4 issued its order with respect to Kansas City Power
5 and Light's first motion to compel, that was at the
6 beginning of November, November 2nd, I believe, the
7 Commission made it clear that the Commission was
8 relying in part on its belief that GST Steel was a
9 distinct entity from GSTOC; isn't that correct?

10 MR. DeFORD: No, I don't believe that was
11 clear at all in that order. We certainly -- what
12 we took that order to mean was that essentially the
13 Commission agreed with us that the relevance
14 objections that we had maintained were sustained. We
15 certainly -- if you look at our pleadings, you will
16 not see any argument that there is a distinction or a
17 line to be drawn in making our objection between GSTOC
18 and GST Steel Company.

19 I believe that that line of argument, if you
20 will, was created by or was first seen by us in the
21 Commission's order itself.

22 JUDGE THOMPSON: Okay. Well, on
23 December 2nd GST filed a motion to seek clarification
24 and reconsideration. At page 3 of that motion, GST
25 stated that it had objected to various KCP&L discovery

1 requests inter alia on the grounds that requests for
2 materials from corporate affiliates and those that
3 concerned GST business matters unrelated to the cost
4 and unreli-- and reliability of electric service were
5 overbroad, irrelevant and impermissible.

6 At page 6 of that same motion, GST goes on
7 to say, the second set of interrogatories, for
8 example, make numerous requests of GST Steel Company
9 affiliates. And then in the footnote, there is a
10 list of quite a few DRs, and of those that are listed,
11 Nos. 2, 4, 6, 8, 11, 14, 17, 20, 23, 25, 28, 31, 34,
12 37, 40, 45, 48, 51 and 64 were specifically addressed
13 to GSTOC.

14 Now, doesn't that motion seem to say that
15 discovery directed to GSTOC is impermissible because
16 it's an affiliate?

17 MR. DeFORD: It certainly wasn't what we
18 intended for that to convey. What we were concerned
19 about, as I think we've explained several times, is
20 the effort by Kansas City Power and Light to conduct
21 discovery concerning corporate affiliates that have
22 nothing to do with the action before the Commission;
23 namely, Georgetown Steel Corporation, American Iron
24 Reduction, and for that matter there are, as I think
25 if you would take a look at some of the diagrams

1 Mr. Thompson has prepared, there are a dozen or more
2 other corporate entities that that could have
3 affected.

4 JUDGE THOMPSON: Thank you.

5 Any further questions from the Bench at this
6 time?

7 Thank you, Mr. DeFord.

8 Mr. Dandino?

9 MR. DANDINO: Yes, sir.

10 JUDGE THOMPSON: It's your opportunity to
11 make a presentation if you would like.

12 MR. DANDINO: No. No, thank you, your
13 Honor.

14 JUDGE THOMPSON: Thank you, Mr. Dandino.

15 Ms. Shemwell?

16 MS. SHEMWELL: Thank you, Judge Thompson.

17 The Commission specifically asked Staff
18 to address the issue of whether or not sanctions
19 should be imposed on GST and its counsel. Again,
20 Staff has no reason to believe that GST or its counsel
21 intentionally made false or misleading statements with
22 its filing with this Commission.

23 I might point out in its response to KCP&L's
24 first set of data requests, GST did not raise or
25 maintain an issue of separate corporate identity as

1 the basis for objecting to interrogatories or data
2 requests but raised issues of relevancy and privilege.

3 It does appear that after the November 2nd
4 order in which the Commission raised the issue about
5 separate legal identities, GST in a sense may have
6 seemed to have adopted the separate legal identities
7 defense and may have done so in reliance on the
8 Commission's order.

9 I think counsel for GST has explained their
10 understanding of the Commission's order, their reasons
11 for relying on it and, quite frankly, we have no
12 reason to doubt them.

13 You asked for advice from the parties
14 concerning sanctions. You had referenced Rule 6101.
15 Rule 6101 itself does not contain language addressing
16 the filing of false or misleading information. It
17 specifically addresses discovery abuses and the
18 failure to produce or allow inspection. So really
19 it's only if there have been any discovery abuses that
20 we read 6101 to apply, to be applicable if there is
21 failure to produce documents or to allow inspection.

22 Based upon an objection after that, it's
23 been overruled.

24 In terms of sanctions against attorneys,
25 that really is in the hands of the Office of Chief

1 Disciplinary Counsel. Staff would suggest that that
2 is not warranted in this case.

3 I would like to talk about KCP&L's filing
4 for just a moment.

5 There has been a lot of talk about the
6 fictitious name. I believe GST Steel is a properly
7 registered fictitious name, and as such they can sue
8 and be sued in the State of Missouri. They can
9 contract under the fictitious name. It's a common
10 practice in the State of Missouri. And I believe
11 that it's possible under Missouri law that KCP&L is
12 estopped from denying the corporate existence.

13 GST Steel itself I would direct the
14 Commission to the case of Berkel and Company
15 Contractors versus JEM Development Corporation, 740
16 Southwest Second 683.

17 I have copies if you would like them.

18 JUDGE THOMPSON: Please. You may approach.

19 MS. SHEMWELL: Thank you.

20 KCP&L did, in fact, sign a special contract.
21 You can find the attachment on the original petition
22 with GST Steel Company which actually identified it
23 as a subsidiary of GS Technologies. It's my
24 understanding that the term "subsidiary" indicates
25 a separate corporate entity.

1 To my understanding GST Steel Company
2 would be more correctly called a division, which
3 interestingly enough is exactly the definition KCP&L
4 used in its first set of interrogatories and request
5 for production. They denoted that GST Steel Company
6 is a division of GSTOC.

7 KCP&L indicated that they knew something was
8 wrong with the pleading, but I would suggest that they
9 were not misled. At least their definition was
10 correct.

11 We believe that the petition was brought by
12 a legally recognizable entity and that the Commission
13 has jurisdiction.

14 I would like to rehash just for a moment,
15 KCP&L in Point No. 4 reviews the entities who may
16 bring a complaint, but, in fact, this was not brought
17 as a complaint but was brought as a petition. It was
18 originally designated an EO case, and I believe the
19 Commission is the one that denominated it as a
20 complaint.

21 I have referred you to the rules regarding
22 our pleading in which evidence of the existence of a
23 fictitious name is not required.

24 Please understand that I am not suggesting
25 that pleadings do not need to be correct and

1 well-founded, nor am I suggesting that the attorneys
2 making those pleadings are not under an obligation to
3 try to make sure that everything that they file with
4 this Commission is absolutely correct.

5 What I am suggesting is that we see no
6 reason to believe that this was an intentional error
7 with an intent to deceive the Commission or KCP&L. I
8 would suggest that GST is not an unknown entity to
9 KCP&L or actually to this Commission. On that basis,
10 Staff would not recommend that further sanctions be
11 imposed.

12 I would respectfully suggest that suspension
13 of the procedural schedule could itself be considered
14 a sanction that might be considered sufficient, given
15 that we do not believe that there was any intent to
16 mislead.

17 I would like to take this opportunity to
18 raise a couple of issues that we feel that the
19 Commission may need to address, and that is, should
20 this proceed as a complaint case?

21 I refer the Commission to Sections 386.390.1
22 RSMo. -- these are all RSMo. -- 393.260.1, and the
23 Commission Rules 4 CSR 240-2.070.

24 JUDGE THOMPSON: What was the first section
25 you referred to?

1 MS. SHEMWELL: 386.390, Sub 1.

2 JUDGE THOMPSON: Thank you.

3 MS. SHEMWELL: Thank you.

4 I would like to make a statement about the
5 contract. The contract has been filed as highly
6 confidential. Perhaps we can go in camera for that
7 comment if that suits you.

8 JUDGE THOMPSON: We have had a request that
9 the Commission go in camera. Do I have a response
10 from any of the parties?

11 (No response.)

12 JUDGE THOMPSON: I guess they have no idea
13 what you're going to say about the contract, so they
14 don't know.

15 MR. ZOBRIST: Judge Thompson, the only point
16 I would make is that we're here for the Commission's
17 order to show cause, and we're not really here to
18 discuss the substance of the contract. And I don't
19 really want to oppose Staff's request, but I just
20 raise the proprietary considering the issues that the
21 Commission itself raised in the order to show cause.

22 I'm not sure that counsel are prepared to
23 engage in a discussion of the subjects of the
24 contract, although we might be.

25 JUDGE THOMPSON: I appreciate your

1 comments, Mr. Zobrist. Here's what we will do. We
2 are 90 minutes into this hearing and we will take a
3 10-minute recess.

4 During that recess I will have you,
5 Ms. Shemwell, confer with Kansas City Power and Light
6 and with GST and advise them as to the exact nature of
7 the comments you propose to make so that they can tell
8 us when we've reconvened whether we need to go in
9 camera or not.

10 Thank you so much. We'll be in recess for
11 10 minutes.

12 (A recess was taken.)

13 JUDGE THOMPSON: Ms. Shemwell, did you
14 confer with GST and KCP&L?

15 MS. SHEMWELL: Yes, your Honor.

16 JUDGE THOMPSON: And what did you determine?

17 MS. SHEMWELL: They have no objection to my
18 making this comment without going in camera.

19 JUDGE THOMPSON: In open court, open
20 hearing?

21 MS. SHEMWELL: In hearing, yes. That we do
22 agree that this is not a matter that is necessarily
23 before the Commission but were some things that we
24 felt were important to raise at this time.

25 JUDGE THOMPSON: Very well. Please proceed.

1 MS. SHEMWELL: May I clarify just one item?

2 I had referred you to, for example, 386.390, Sub 1,
3 filing of a complaint. And specifically I would like
4 to refer you to the statement that not less than
5 25 consumers or purchasers must file a complaint if
6 there is an issue as to, I believe, pricing in
7 general.

8 The contract has been filed as highly
9 confidential. There is a dispute resolution section
10 of the special contract. I won't quote it here since
11 it has been filed as highly confidential. But I think
12 it might be helpful if the parties were to explain why
13 the method provided for in the contract should not be
14 the method of resolution in this matter.

15 Another issue that Staff feels it is
16 important for the Commission to look at is if the
17 Commission were to dismiss the case, what becomes
18 of the allegations made by GST regarding KCP&L's
19 maintenance of its generating units?

20 I would refer to the Commission to the Wolf
21 Creek case at 29 MoPSC(N.S.)228 at -- is that right --
22 355-361. That may be 328. I may have typed it wrong.

23 And one final item: Given the nature of
24 these issues and recent history in the Circuit Court,
25 we would respectfully suggest that the Commission

1 consider not making any order issued after this
2 hearing effective the date of issuance.

3 Thank you.

4 JUDGE THOMPSON: Thank you very much,
5 Ms. Shemwell.

6 Are there any -- before you sit down --
7 questions from the Bench?

8 Vice-Chair Drainer?

9 COMMISSIONER DRAINER: No.

10 JUDGE THOMPSON: Commissioner Murray?

11 COMMISSIONER MURRAY: No. Thank you.

12 JUDGE THOMPSON: Commissioner Shemenauer?

13 COMMISSIONER SHEMENAUER: No questions.

14 JUDGE THOMPSON: Thank you. You may be
15 seated.

16 MS. SHEMWELL: Thank you.

17 JUDGE THOMPSON: KCP&L?

18 MR. ZOBRIST: May it please the Commission.

19 Let me make clear that Kansas City Power and
20 Light is not supporting any sanctions against counsel
21 or the Respondent -- pardon me -- the Petitioner in
22 this case. We think the record is confusing but we
23 don't seek and we don't encourage the Commission to
24 assess any kind of penalty or sanction against the
25 lawyers or against GST Steel Company in this case.

1 That having been said, we reiterate our view
2 that there is no proper entity before the Commission.
3 If you take a look at the Code of State Regulations,
4 we believe it's very clear when you look at the
5 pleading section here that it is meant to refer to the
6 physical filing of pleadings and what form shall they
7 take and how shall they be presented to the
8 Commission.

9 And indeed, if you look at the definition
10 of a pleading, it presumes that a matter has already
11 been filed with the Commission because it talks about
12 filing the matter with the Commission in a docketed
13 case. Past tense, docketed. Here we are dealing
14 with the initial petition which, I believe, must be
15 considered an application under the law.

16 The cases that we cited in our suggestions
17 and response to the show cause order, we believe
18 mandate the dismissal of this case brought by a
19 fictitious entity.

20 I've looked briefly at the Berkel case that
21 Ms. Shemwell presented to the Commission and counsel.
22 It appears to deal with a matter that was fully
23 adjudicated during an evidentiary hearing, a trial
24 before the circuit bench where evidence as to
25 corporate status was presented. I don't believe it's

1 apropos to the situation at hand.

2 We believe that the matter as having been
3 presented to the Commission mandates a dismissal,
4 particularly in light of the confusion in the record
5 that occurred as a result of the discovery disputes,
6 and that should GSTOC be prepared to come back to the
7 Commission or come to the Commission for the first
8 time in a proper form, that would be a legally
9 recognizable entity, but GST Steel Company is not and
10 the proceeding must be dismissed.

11 JUDGE THOMPSON: Thank you, Mr. Zobrist.

12 Questions from the Bench?

13 Vice-Chair Drainer?

14 COMMISSIONER DRAINER: No. Thank you.

15 JUDGE THOMPSON: Commissioner Murray?

16 COMMISSIONER MURRAY: No. Thank you.

17 JUDGE THOMPSON: Commissioner Shemenauer?

18 COMMISSIONER SHEMENAUER: No questions, your
19 Honor.

20 JUDGE THOMPSON: Mr. Zobrist, have you read
21 the cases relied upon by Mr. DeFord, the proposition
22 that GST can bring this matter under its fictitious
23 name?

24 MR. ZOBRIST: I have not, but one of my
25 co-counsel has, Mr. Reynolds or Mr. Swensen.

1 JUDGE THOMPSON: Whichever co-counsel it is,
2 could you please raise your hand.

3 MR. SWENSEN: Well, I've glanced at them
4 and, frankly, found them inapposite.

5 JUDGE THOMPSON: State versus Kelly?

6 MR. SWENSEN: Yes. And I don't have them
7 before me, your Honor. I'm sorry. I can't speak
8 specifically. I just didn't find them relevant to the
9 statement that they could petition the Commission for
10 leave.

11 JUDGE THOMPSON: All right.

12 And, Mr. DeFord, your suggestions list two
13 cases, State versus Kelly and Sims versus Missouri
14 State Life Insurance.

15 MR. DeFORD: Correct.

16 JUDGE THOMPSON: Are there any other
17 authorities on which you relied? You mentioned a
18 treatise of corporations.

19 MR. DeFORD: Yes, indeed. We did review --
20 I believe its Fletcher's Encyclopedia on Corporations.
21 It's a multi-volume treatise.

22 JUDGE THOMPSON: Do you happen to recall
23 which of those many volumes you might have looked at?

24 Tell you what, when you get back to the
25 office, why don't you put together a letter directing

1 us to the particular page and section in Fletcher's
2 Encyclopedia on Corporations which we could review.

3 MR. DeFORD: Sure.

4 JUDGE THOMPSON: Mr. Zobrist?

5 MR. ZOBRIST: If it please you, we'll be
6 glad to fax you with a letter within 24 hours with our
7 case analysis. I apologize to the Commission for our
8 not being able to explain that more thoroughly.

9 JUDGE THOMPSON: That would be great.

10 I guess we're now getting into post-hearing
11 briefs. But first we have -- Mr. DeFord, you have an
12 opportunity to make a rebuttal. You get the last word
13 today, or GST does.

14 MR. DeFORD: Mr. Brew will make it.

15 MR. BREW: Just to be very brief, based on
16 what we've heard, we think it abundantly clear that as
17 a matter of black-letter law, the petition is properly
18 brought, it is the jurisdiction of the Commission and
19 the case should move forward on that basis.

20 As Mr. DeFord mentioned a number of times,
21 to the extent that it would be helpful we would be
22 happy to submit an amended petition that would clarify
23 any distinctions as to the business nature of GST
24 Steel Company of Kansas City, but we don't think that
25 it's in any way a substantive impediment to moving

1 forward, and we think that the clear weight of the law
2 supports this in that regard.

3 Secondly, I think it's also clear from what
4 we've heard that there has been no harm to KCP&L. The
5 information that they have asked for in the second
6 clause of the order to show cause, as I mentioned,
7 was, in fact, provided back in August, except for two
8 of the DRs, one of which dealt with information
9 pertaining to nonKansas City steel-making operations,
10 which we think the Commission correctly disposed of on
11 relevance issues back in the November 2nd order, so
12 there is no -- there has been no lapse in discovery in
13 terms of information that should have been provided to
14 KCP&L.

15 They've gotten their answers, they've gotten
16 their documents, so from our perspective there is no
17 basis for sanctions in any respect to, and as Ms.
18 Shemwell mentioned, there has been an effect on the
19 case that is substantial, and that is that by any
20 measure, the procedural schedule on the case is going
21 to slip two, three or maybe even four weeks.

22 GST has maintained from the very beginning
23 that we need to have a substantive resolution of
24 this case as quickly as possible. So to the extent
25 that the order to show cause has produced a delay in

1 rebuttal that's one week as of today, but most
2 certainly would be at least three weeks, that has a
3 substantial material effect on GST.

4 And what we would hopefully suggest is that
5 the Commission direct the parties to reestablish a
6 procedural schedule that would get us on track.

7 Thank you.

8 JUDGE THOMPSON: Thank you, Mr. Brew.

9 Any final questions from the Bench?

10 (No response.)

11 JUDGE THOMPSON: Since I have you-all here,
12 I'm going to inquire about an issue that is of some
13 interest to me which is the status of the privilege
14 logs that the parties have supposedly been preparing
15 and providing to one another with respect to all of
16 those documents that are subject to attorney/client or
17 other privileges.

18 Have any privilege logs been supplied by one
19 side to another yet?

20 MR. BREW: Yes, your Honor. In responding
21 to discovery from KCP&L, GST provided a privilege log
22 with its responses to the -- I believe it was the
23 first set of interrogatories. That would have been
24 have been back in August.

25 JUDGE THOMPSON: Very good. And how about

1 KCP&L? Have they provided a privilege log to you?

2 MR. BREW: They have provided to date three
3 privilege logs. The first one came on, I think,
4 November 9th and listed one document. The second one
5 followed, I think, in early December and lists maybe
6 30 or so documents, some of whom are addressed to
7 third parties or don't indicate the author, the
8 recipient or the distribution list.

9 JUDGE THOMPSON: But you filed no motion to
10 change it?

11 MR. BREW: We have not filed a motion
12 challenging that yet.

13 JUDGE THOMPSON: Okay.

14 MR. BREW: And then I received -- I don't
15 have the document in front of me, but it would have
16 been mid-to-late December, a third privilege log
17 listing three documents that was accompanied by a
18 letter indicating that this was in the context of our
19 seventh set of interrogatories which had asked for
20 information related to Hawthorne, that the discovery
21 in that respect was complete, that all of the
22 documents had either been provided or listed.

23 JUDGE THOMPSON: Okay. So are there any
24 outstanding privilege logs on either side?

25 MR. ZOBRIST: Yes, as I indicated earlier,
98

1 last week I discovered that we're in the possession of
2 some documents that are probably responsive to some of
3 GST's data requests. And the issue that presented
4 itself was whether we should turn over these documents
5 in light of the issue of the Commission's
6 jurisdiction. And I informed GST's counsel this
7 morning that once that issue was decided, that we
8 would provide him with the privilege log.

9 Subsequent to that you informed me that we
10 had an obligation to hand over the privilege log prior
11 to the resolution of that issue and we will comply.

12 JUDGE THOMPSON: Very well.

13 As I stated this morning, the parties are to
14 obey all Commission orders that have already been
15 issued in this matter. The only thing suspended is
16 the procedural schedule.

17 You indicated you could give me a memorandum
18 of law in 24 hours?

19 MR. ZOBRIST: It will be distinguishing
20 those two cases, your Honor.

21 JUDGE THOMPSON: Do you want to file
22 something?

23 MR. DeFORD: We'll provide -- I think you
24 indicated a letter, and I think we can probably even
25 provide you copies of the sections of Fletcher's that

1 would be most pertinent.

2 JUDGE THOMPSON: Okay.

3 MR. DeFORD: I don't know how accessible
4 that is here.

5 JUDGE THOMPSON: Okay. I will request those
6 questions by three p.m. on Thursday, and for the
7 purposes of compliance, I will allow you to file them
8 by telefacsimile, which is not our normal procedure,
9 but I want to make it as easy for you to comply and
10 get this material to the Commission in a timely
11 fashion as possible.

12 Is there anything further at this time?

13 MR. ZOBRIST: With subsequent 14 copies and
14 originals the next day?

15 JUDGE THOMPSON: Just one copy and, of
16 course, served copies on every other party.

17 Anything further at this time?

18 (No response.)

19 JUDGE THOMPSON: Thank you very much. Thank
20 you for attending.

21 We are adjourned.

22 WHEREUPON, the show cause hearing was
23 concluded.

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