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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE

March 6, 2000
Jefferson City, Missouri
Volume 4

GS Technology Operating Company,)	
Inc., doing business as GST)	
Steel Company,)	
)	
Complainant,)	
)	Case No. EC-99-553
v.)	
)	
Kansas City Power & Light)	
Company,)	
)	
Respondent.)	

BEFORE:

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

REPORTED BY:

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1 P R O C E E D I N G S
2 (Written Entries of Appearance filed.)
3 JUDGE THOMPSON: We're here in the matter of
4 a prehearing conference in the case of GS Technology
5 Operating Company, Inc., doing business as GST Steel
6 Company, Complainant, versus Kansas City Power & Light
7 Company, Respondent, Case No. EC-99-553.
8 Let's go ahead and find out who is here,
9 starting with the Public Counsel.
10 MR. COFFMAN: John B. Coffman, on behalf of
11 the Office of the Public Counsel, P.O. Box 7800,
12 Jefferson City, Missouri, 65201 -- 65102.
13 JUDGE THOMPSON: Thank you, Mr. Coffman.
14 MR. COFFMAN: Caught me off guard.
15 JUDGE THOMPSON: Mr. DeFord?
16 MR. DeFORD: Thank you.
17 Paul S. DeFord, with the law firm of Lathrop
18 and Gage, 2345 Grand Boulevard, Kansas City, Missouri,
19 64108, appearing on behalf of GST.
20 JUDGE THOMPSON: Thank you, sir.
21 Mr. Brew?
22 MR. BREW: Thank you.
23 James W. Brew, of the law firm of
24 Brickfield, Burchette, B-u-r-c-h-e-t-t-e and Ritts,
25 1025 Thomas Jefferson Street Northwest, Washington,

1 D.C., 20007, appearing on behalf of GST.

2 JUDGE THOMPSON: Thank you, sir.

3 Ms. Shemwell?

4 MS. SHEMWELL: Lera Shemwell, appearing for

5 the Staff of the Missouri Public Service Commission,

6 Post Office Box 360, Jefferson City, Missouri, 65102.

7 JUDGE THOMPSON: Thank you.

8 Mr. Fischer?

9 MR. FISCHER: James M. Fischer and Larry W.

10 Dority, of the law firm of Fischer and Dority, P.C.,

11 101 West McCarty Street, Suite 215, Jefferson City,

12 Missouri, 65101. And Jerry Reynolds.

13 JUDGE THOMPSON: Mr. Reynolds?

14 MR. REYNOLDS: Gerald A. Reynolds on behalf

15 of Kansas City Power & Light Company. The address is

16 1201 Walnut Street, Kansas City, Missouri, 64106.

17 MR. FISCHER: Your Honor, we've never asked

18 that Jerry be formally admitted, I think, in this

19 docket. I think it may have been an oversight. And I

20 think, if it would be appropriate, I would like to do

21 that. He is licensed to practice in the state of

22 Connecticut, and we would ask he be admitted pro hac

23 vice.

24 JUDGE THOMPSON: Any objections or

25 responses?

1 (No response.)

2 JUDGE THOMPSON: We will go ahead and admit

3 you for the purposes of this matter.

4 Mr. Dority, nice to see you this morning.

5 MR. DORITY: Thank you, sir.

6 JUDGE THOMPSON: Mr. Dottheim, nice to see

7 you this morning.

8 MR. DOTTHEIM: Thank you.

9 JUDGE THOMPSON: This is a prehearing

10 conference set on the procedural schedule, and I

11 assume that the planned business for today was to

12 determine the issues list so that that can be filed.

13 I think that's the next upcoming thing. However, I

14 sent out a notice last week which was faxed to

15 everyone on March 2nd. I assume everyone received it.

16 I believe we need to address the discovery

17 situation in this case, and I believe we need to,

18 number one, establish a date for a cutoff of

19 discovery, a typical practice in federal proceedings

20 and, I think, a useful practice to be adopted for this

21 case. Secondly, I would like to take up the pending

22 discovery dispute on GST's Motion to Compel for

23 directive findings and for interim relief, which KCP&L

24 has responded to, and anything else.

25 I'd like to hear from the parties on what

1 sort of discovery you plan to conduct from here on out
2 so that we can get this case wrapped up and into the
3 hearing room for an evidentiary hearing as scheduled
4 without any further delays.

5 First of all, then, on the matter of a
6 cutoff date for discovery, does anyone have any
7 suggestions? Let's hear from Complainant on that
8 first.

9 MR. BREW: Your Honor, I guess by way of
10 three things: First, is that we'd like to ask that
11 the response times normally applied here be halved for
12 the remainder of discovery; objections within five
13 days and responses within ten.

14 JUDGE THOMPSON: Okay.

15 MR. BREW: Secondly, we have no objection to
16 a cutoff for discovery as long as it can allow time
17 for us to get a discovery out with respect to at least
18 the following items. We, of course, received the
19 Company's rebuttal. We sent out initial additional
20 requests on March 1st or March 3rd. And there are
21 two -- two additional items.

22 One, is on February 22nd, I believe, we
23 received a packet of ten diskettes in response to
24 earlier GST requests. I believe they were response to
25 our Request 2.5 which was served on June 24th. Of the

1 ten diskettes, several of them we are unable to read.
2 And we've discussed it with Company counsel, and
3 they've acknowledged that the software that the
4 diskettes are down-loaded from is a specialized
5 software that one normally wouldn't keep.

6 My information is that the software costs
7 about \$5,000 to obtain, and we've asked the Company to
8 either make that available to us or to print out the
9 diskettes in hard copy so we can use them, and I'm
10 waiting for a response from the Company on that so we
11 can follow through.

12 JUDGE THOMPSON: Okay.

13 MR. BREW: The third item is that the
14 Company supplied us additional information following
15 on our Motion to Compel that addresses some of the
16 items in our Motion to Compel. Specifically, they
17 provided the April 15th, 1999 summary report that was
18 specifically mentioned in our Motion.

19 They also supplied some weekly progress
20 reports and meeting minutes for the KCP&L cause-and-
21 effect team. Those were also referenced generically
22 in our Motion, and we will have discovery flowing from
23 that. And along those lines, part of it, which is the
24 last date of those documents, is April 29th, 1999, so
25 I do not know if there are any documents of those kind

1 that exist subsequent to April 29, 1999, as well as
2 the -- the documents themselves refer to other
3 documents that were again referenced in our Motion to
4 Compel, specifically, a cause-and-effect diagram that
5 the cause team was working on that we've not seen
6 identified or produced in response to our discovery
7 request.

8 So there are basically -- the short answer
9 to your question is, we will have additional questions
10 with respect to the rebuttal. We'd like to follow up
11 on the information that we received on March 2nd, and
12 we need to find out what's on the diskettes that we
13 can't read.

14 JUDGE THOMPSON: Very well. Thank you.

15 Let's hear from KCP&L.

16 MR. FISCHER: First of all, your Honor, I
17 guess I'd say that we don't intend to do additional
18 discovery with the exception of getting discovery that
19 might flow from their surrebuttal that is yet to be
20 filed that we have not seen, so we'd want some time to
21 be able to pursue any questions that we might need as
22 a result of that.

23 JUDGE THOMPSON: Okay.

24 MR. FISCHER: With regard to the other
25 discovery matters, maybe I should have Jerry Reynolds

1 address those more specifically.

2 As counsel has indicated, we've narrowed the
3 issues considerably, I think, as a result of our
4 production of some documents, and we've also given the
5 Company -- or GST notice that they can come out to the
6 Hawthorn Room and go back through the documents that
7 are out there, so . . .

8 JUDGE THOMPSON: Okay. Mr. Reynolds?

9 MR. REYNOLDS: Okay. The software, KCP&L
10 does not own the software that's needed to access the
11 diskettes provided, nor do we have hard copies of the
12 information. And I believe that I left this -- I left
13 this information on a voice mail message to Attorney
14 Brew.

15 As far as the cause-and-effect diagram,
16 basically what the cause -- what the cause team did,
17 we had a bunch of guys that used a wall -- used
18 Post-Its on a wall. That's my understanding of the
19 cause-and- effect diagram, and those Post-Its were not
20 saved. They were just used to disprove theories.

21 Having the -- chopping down the time for
22 response, that may or may not cause a problem. I
23 don't know the extent of the follow-up discovery, so
24 we may have to revisit that issue in the future.

25 JUDGE THOMPSON: Okay. I'm just taking some

1 quick notes here.

2 All right. With respect to the disks, as I

3 understand it, you don't own the software?

4 MR. REYNOLDS: That's correct.

5 JUDGE THOMPSON: So you're reluctant or feel

6 legally precluded from supplying the software to GST?

7 MR. REYNOLDS: We don't have the software in

8 our possession.

9 JUDGE THOMPSON: You don't even have it in

10 your possession?

11 MR. REYNOLDS: That's correct.

12 JUDGE THOMPSON: Can I ask what's on the

13 disks?

14 MR. REYNOLDS: I believe it relates to our

15 boiler/turbine/gas control board, and it records

16 various types of information such as alarms, pressure,

17 temperature, that type of information.

18 JUDGE THOMPSON: And are those disks created

19 in the normal course of your operation of that

20 machinery?

21 MR. REYNOLDS: The information is recorded

22 in one of our machines, but we have never had reason

23 to down-load this information, and we did not have the

24 software to do so. We had to engage the services of

25 an outside company to do that.

1 JUDGE THOMPSON: I see. And, presumably --
2 or would it be fair to say that you believe that GST
3 could engage the services of a similar or the same
4 outside company in order to access the information?

5 MR. REYNOLDS: That's correct. There is no
6 reason why GST could not do that.

7 JUDGE THOMPSON: And the cause-and-effect
8 diagram, you're telling me it was an informal brain-
9 storming sort of session --

10 MR. REYNOLDS: Yes.

11 JUDGE THOMPSON: -- that it was Post-Its on
12 a wall that no longer exist. It was not memorialized?

13 MR. REYNOLDS: That's correct. And I am
14 meeting the team, I believe, this Wednesday to make
15 sure that I have everything that they have or that
16 either I have it or that it's in the Hawthorn Room so
17 that when GST inspects the documents contained in that
18 room they will have access.

19 JUDGE THOMPSON: Okay. And, finally, as to
20 the shortened response period, I'm not sure I
21 understand what you said. You said that you weren't
22 sure you had an objection?

23 MR. REYNOLDS: That's correct, depending on
24 what type of information we're required to gather.

25 JUDGE THOMPSON: I see. Okay. So in other

1 words you would be willing to say we'll agree with the
2 shortened response time but reserve the right to file
3 an appropriate objection if the amount of information
4 is such that you can't deal with it in that amount of
5 time?

6 MR. REYNOLDS: That's correct.

7 JUDGE THOMPSON: Is that fair?

8 MR. REYNOLDS: Yes.

9 JUDGE THOMPSON: Mr. Coffman?

10 MR. COFFMAN: Yeah. I was wondering if I
11 would have an opportunity to address the shortened
12 discovery?

13 JUDGE THOMPSON: You will have an
14 opportunity to address whatever you would like. And
15 why don't you take that opportunity now?

16 MR. COFFMAN: Thank you.

17 The idea of cutting off discovery on a
18 particular date is not a common practice before the
19 Commission. And I can understand it's usefulness as
20 you're approaching some hearing, but the Office of
21 Public Counsel has -- has some concern about the
22 practice primarily as it might relate to the special
23 statute that governs the auditing powers of the Public
24 Counsel and the Staff of the Commission.

25 JUDGE THOMPSON: Uh-huh.

1 MR. COFFMAN: And I think that you recently
2 addressed this in the Missouri American case in an
3 order concerning a Motion to Compel on February 2nd.
4 On Pages 8 and 9 you discussed some of the aspects of
5 that statute, but that statute involves the ongoing
6 auditing powers of our two perspective -- two
7 respective parties of Staff and Public Counsel, and I
8 wanted to make sure that the Commission did not
9 interfere with this statute and our -- our essential
10 power to be able to do ongoing investigations and
11 audits of regulated utilities.

12 JUDGE THOMPSON: That is a very good point.

13 First of all, I don't think the Commission
14 can interfere with what is granted to you by statute.

15 Secondly, as far as having a cutoff date for
16 discovery, it's simply my concern that this case get
17 into the hearing room. Maybe, partly, this is
18 something Complainant needs to weigh. There is always
19 some more information out there and discovery. After
20 all, it's -- it's ultimately a matter of honor. No
21 one can go into their files and into their offices and
22 into their heads and determine if they've revealed
23 everything that should be revealed or not. We trust
24 them as attorneys that they have done what they are
25 required to do, just as we trust that you have done

1 the same.

2 So at some point I think you need to decide,
3 you know, do we want to try this case, or do we want
4 to keep going back to the well and drawing more facts
5 from it, to rupture my metaphor, and that's your
6 choice.

7 We don't have to have a cutoff date for
8 discovery at all, but, on the other hand, I don't want
9 to be having a prehearing conference on discovery at
10 midnight the night before the first day of the
11 hearing, and the way this case has been going so far,
12 that does not look entirely impossible.

13 But, certainly, I am very cognizant of what
14 Mr. Coffman has raised. And I can only repeat: I
15 don't believe the Commission can disturb any authority
16 granted to you or to Staff by a statute, and I don't
17 think that having a cutoff date for discovery in this
18 case would affect that power.

19 Lera, do you have anything you would like to
20 add?

21 MS. SHEMWELL: Thank you, Judge.

22 I would say, in general, Staff hasn't
23 engaged in a lot of discovery in this case but would
24 be hesitant to suggest a cutoff date is a really good
25 idea, again, for the reasons Mr. Coffman suggested.

1 We very well may want discovery as a result
2 of any additional testimony that's filed and work
3 papers and so on, and our concern would be that if
4 discovery is limited, that it would occur during the
5 hearing, then, which would just lengthen the hearing
6 process, asking witnesses questions that could be
7 answered through discovery at hearing, which would
8 make that a much lengthier process. So we would think
9 that a good look should be taken at the issue of
10 cutting off discovery.

11 JUDGE THOMPSON: Well, that is a very good
12 point as well.

13 I am -- I am loath to impose a procedural
14 device on a bar that is not familiar with it, so we
15 will forgo a cutoff of discovery at this time. All
16 right? But your case -- you need to wrap it up with a
17 bow and get it in here to be heard. All right? So
18 you need to be thinking about that, all of you.

19 We've talked about what discovery you're
20 planning to do, and I hope you-all --

21 Yes, Mr. Brew.

22 MR. BREW: Your Honor, if I could ask for a
23 clarification?

24 JUDGE THOMPSON: Certainly.

25 MR. BREW: Mr. Reynolds indicated they don't

1 have the software with respect to the discussion we
2 talked about on the burner management system and they
3 did not have hard copies.

4 My question is whether they can print hard
5 copies -- if they can access hard copies in order to
6 print it?

7 JUDGE THOMPSON: I suggest you take that up
8 with them after I leave. Okay?

9 I hope that you will include in your
10 discussions today those outstanding matters of
11 discovery because I am sure that many of them can be
12 resolved short of filing motions and holding a
13 hearing.

14 I will be here all day in the event that you
15 need me to come back. Okay?

16 Based on what I've heard, it sounds to me
17 like they've supplied to you what they have. Okay? I
18 don't believe they have to buy software so that you
19 can read those disks. If they hired someone to
20 down-load the information, then I believe you can hire
21 someone to access the information.

22 But, as I say, you guys can discuss it, and
23 perhaps you will find some common ground where you
24 will get what you need.

25 Is that everything?

1 (No response.)

2 JUDGE THOMPSON: I understand the cause-and-

3 effect diagram does not exist as a formal document.

4 Mr. Brew?

5 MR. BREW: Well, I wanted to ask about that,

6 too.

7 There is an April 22nd, '99 cause team

8 weekly progress report that was supplied to me on

9 March 2nd.

10 JUDGE THOMPSON: Okay.

11 MR. BREW: One of the entries states,

12 "Completed visio diagram of cause-and-effect chart and

13 e-mailed same to Mark," I think, "Galileo."

14 JUDGE THOMPSON: Okay.

15 MR. BREW: If that's accurate, then

16 something was e-mailed to somebody along the lines of

17 a cause-and-effect diagram, and it seems to be

18 responsive to what we've been asking for.

19 JUDGE THOMPSON: Yes, it certainly does seem

20 to be.

21 I suggest you discuss that --

22 MR. BREW: I will.

23 JUDGE THOMPSON: -- today and see if you can

24 come to some resolution of that.

25 MR. BREW: Thank you.

1 JUDGE THOMPSON: You know, there is probably
2 so many documents and so many people involved that
3 it's difficult for counsel to know the whole extent of
4 everything at any given moment. I know they will work
5 with you in good faith to resolve the problems. And
6 if you come up with something that you need my
7 intervention for, let me know and we'll deal with it
8 here.

9 Anything else you need me for right now?

10 (No responses.)

11 JUDGE THOMPSON: I hope you will have
12 fruitful discussions today. If possible, settle the
13 entire case. But if we fall short of that, settle
14 what you can.

15 Thank you very much. We're done.

16 Can I have an expedited transcript?

17 WHEREUPON, the on-the-record portion of the
18 prehearing conference was concluded.

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