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June 1, 2004

VIA HAND DELIVERY

FILED²

JUN 01 2004

Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Judge
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102

Re: *GS Technologies Operating Co., Inc. d/b/a GST Steel Company v Kansas
City Power & Light Company*, Case No. EC-99-553

Dear Mr. Roberts:

Enclosed for filing in the above case is an original and eight copies of the **Reply Brief of GST Steel Company to KCPL's Initial Brief on Remand**.

Also enclosed is the original and eight copies of **Corrected Proposed Findings of Fact and Conclusions of Law of GST Steel Company**.

If you have any questions, please feel free to contact me.

Very truly yours,

LATHROP & GAGE L.C.

By:

Paul S. DeFord

PSD/jf

Enclosures

cc: All counsel of record
(w/enclosures)

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JUN 01 2004

Missouri Public
Service Commission

Case No. EC-99-553

Pursuant to the Commission's Order, GS Technology Operating Company, Inc., doing business as GST Steel Company ("GST"), files its Proposed Findings of Fact and Conclusions of Law in the above-referenced docket.

The Special Contract Between KCPL and GST

- CC 1299810v1

less production and energy consumption than could be expected under the special contract. (Exh. 21, p. 2).

- 5) GST's energy charge is based on KCPL's incremental costs. (Exh. 8, p. 4).
- 6) GST's energy charge includes a 6 mill/KWh to each KWh consumed. (Exh. 8, p. 3).
- 7) The 6 mill/KWh adder provided a substantial contribution to KCPL's fixed costs. (Exh. 8, p. 4; Exh. 21).
- 8) GST pays a contribution to KCPL's fixed costs in the demand charge applied to the firm service portion of GST's load. (Exh. 8, p. 10; Tr. Vol. 8, p. 368 (Proctor)).
- 9) GST pays a contribution to KCPL's fixed costs in the monthly facilities charge of \$2,500. (Tr. Vol. 8, pp. 368-369 (Proctor); Exh. 12, p.13).
- 10) Staff witness, Dr. Proctor, has been at the Missouri Public Service since 1977. (Exh. 8, p. 1).
- 11) In Dr. Proctor's experience, the Commission has never allowed KCPL, or any electric utility, to include imprudently incurred costs in rates charged to consumers. (Tr. Vol. 8, pp. 376-377 (Proctor)).
- 12) In Staff's view, GST did not assume the risk of KCPL imprudence under the Special Contract. (Tr. Vol. 8, p. 401 (Proctor)).
- 13) The Commission approved the formula rate in the GST - KCPL special contract in 1994, but it has not addressed the reasonableness of the cost inputs to that formula used by KCPL. (Order Approving Agreement and Tariff, Case No. EO-95-67, Mo. PSC Oct. 26, 1994).
- 14) GST does not challenge the reasonableness of KCPL's charges under the special contract prior to 1998. See GST's Position Statement.

KCPL Imprudence Caused the Hawthorn Boiler Explosion

Historic and Background Facts Concerning Hawthorn

- 15) Hawthorn Unit 5 ("Hawthorn") was a 479 MW coal-fired generating station. (Exh. 1, p.8).
- 16) Hawthorn was one of KCPL's more economic base load units. (Exh. 3, p. 4).

- 17) Hawthorn burned natural gas for start up. (Exh. 6, pp. 11-12).
- 18) Natural gas was burned to bring the Hawthorn main and auxiliary boilers to sufficient temperature and pressure for coal to be efficiently introduced as a boiler fuel. (Exh. 6, App. 3, 4).
- 19) Gas flow to the Hawthorn boiler was controlled by a series of valves that are within the direct control of KCPL employees. (Exh. 6, pp. 11-12).
- 20) The main gas valve from the Williams' pipeline was opened and closed manually. (Exh. 6, App. 17).
- 21) Other gas valves were controlled electronically, including the FG-51-1 and FG-52-2 valves. (Exh. 6, p.20, App. 17).
- 22) Hawthorn was under the control of KCPL employees at all times on February 16 and 17. (Exh. 5, p. 16).

Heat-up of the Hawthorn Turbine and Boiler Following Outage

- 23) On February 12, 1999, KCPL brought Hawthorn down for an unscheduled outage. (Exh. 5, p. 11).
- 24) KCPL employs a mandatory "hold" procedure in which valves are closed or equipment de-energizes while equipment is being repaired or in situations where such action is required for worker safety. (Exh. 6, p.10, App. 12).
- 25) Hold tags are required when a circuit or equipment can become "live" accidentally by fallen wires or induced voltages. (Exh. 5, p. 18; Exh. 6, App. 12).
- 26) On February 13, 1999, Melford H. McLin, KCPL Control Officer, authorized a red hold tag to close the main Williams gas valve to Hawthorn's boiler. (Exh. 6, p. 10, App. 13).
- 27) KCPL employees initiated plant heat-up during the early hours of February 16, 1999. (Exh. 6, p. 10).
- 28) KCPL procedures provide for a pre-start purging of combustible gases and a sequenced introduction of gas into various levels of the boiler. (Exh. 6, p. 9).
- 29) On February 16, 1999, at approximately 00:10 a.m., the red hold tag was released as the plant prepared for restart. (Exh. 6, p. 10, App. 13).

- 30) The Hawthorn boiler was sealed, a vacuum was established, KCPL operators opened gas valves to introduce gas to the igniters, and flames from the burners began to heat the boiler. (Exh. 6, App. 8).
- 31) At the time of the start-up activity, two contractor employees were attempting a weld repair of a feed water heater. (Exh. 5, p. 12; Exh. 6, App. 8).
- 32) In attempting to draw a vacuum on the main condenser, KCPL discovered that the weld repair was not complete and could not be completed while the line was under vacuum. (Exh. 5, p. 12, Exh. 6, App. 8).
- 33) Upon discovering that the repair would take at least another twelve hours beyond what had been expected, the shift supervisor stopped the heat-up. (Exh. 5, p. 12; Exh. 6, App. 8).
- 34) At approximately 1330 hours, on February 16, 1999, the shift supervisor instructed the control operator to purge all the fuel out of the boiler. (Exh. 5, pp. 12-13, App. 8).
- 35) "Purge required" status means the operators must open vents and start fans to the boiler to remove, or "purge," all combustible materials from the boiler. (Exh. 6, p. 9).
- 36) When the shift supervisor returned to the control room about 45 minutes later, he instructed the control operator to remove the fans from service, and it was accomplished by 1430 hour. (Exh. 5, pp. 12-13, App. 8).

KCPL Failed to Follow Its Own Procedures

"Hold" Procedures

- 37) KCPL had procedures for placing "holds" on safety related equipment, valves, and switches, but the company did not follow them. (Exh. 6, p. 2).
- 38) During cold shutdown, the main gas valve was to be manually closed, and a red tag hold placed on the valve. (Exh. 6, p. 10, App. 12 at 4.09).
- 39) KCPL did not have a written checklist to verify and ensure a step-by-step shutdown of plant equipment. (Exh. 5, p. 11).
- 40) There may have been a written procedure for shutting down the facility, but operators did not necessarily follow it. (Exh. 5, p. 11).

Waste Water Flood

- 41) Just prior to 1500 hours on February 16, the toilets in the control room began overflowing. (Exh. 5, p. 13).
- 42) They had been inoperative since the previous day. (Exh. 6, App. 8).
- 43) According to Mr. McLin, the KCPL Control Operator, this problem resulted from the wastewater sump pumps operating while the main sewer line was plugged. (Exh. 6, App. 5; *see* Exh. 5, p. 13; Exh. 6, pp. 10, 12-13, App. 6, 8, 9).
- 44) KCPL caused the flood by failing to place a hold on the operation of wastewater sump pumps while a clogged sewer line was being cleared. (Exh. 6, pp. 3, 10-11; Exh. 5, pp. 13, 17).
- 45) KCPL could have avoided the flood of wastewater to the control room and computer room by red-tagging closed the wastewater sump pumps while the main sewer line was plugged. (Exh. 6, pp. 3, 10-11; Exh. 5, pp. 13, 17).
- 46) The overflow from the toilets ran into the control room. (Exh. 6, App. 5, 7, 8).
- 47) The water was an inch to one and a half inches deep on the floor of the control room. (Exh. 5, p. 13, App. 9).
- 48) A KCPL document indicates a check valve installed to prevent backflow into the Hawthorn control room. (Exh. 19; Tr. Vol. 5, pp. 252-255 (Ward)).
- 49) Mr. Ward stated that experienced operators do not rely on checked valves (Tr. Vol. 5, p. 273 (Ward)).

The Burner Management System ("BMS")**Function of BMS**

- 50) Hawthorn used a computerized BMS to control every aspect of fuel introduced into and consumed in the unit's boiler. (Exh. 5, pp. 11-12).
- 51) When functioning properly, the BMS was designed to ensure plant safety by automatically closing valves to the Hawthorn boiler if any of a series of defined unsafe conditions developed. This action was known as a Master Fuel Trip ("MFT"). (Exh. 6, p.6, App. 3; Exh. 5, p. 14).

- 52) Unsafe conditions that would have prompted a MFT, if the BMS was functioning properly include:
- a. Burner lightoff timer complete (The 5-minute timer completes after purge sequence is completed and no burners have proven on.)
 - b. Loss of all fuel
 - c. Loss of all flame (A total loss of flame detection occurs while fuel had been burning.)
 - d. Purge interrupted (A loss of a purge permit occurs during the Purge in Progress period.)
 - e. MFT pushbutton
 - f. Both forced-draft fans off
 - g. Both induced-draft fans off
 - h. Turbine trip
 - i. Airflow is less than 25%
 - j. Drum level not within range
 - k. Furnace pressure is greater than 13-inch WC
 - l. Inadequate waterwall circulation
 - m. Loss of common dc power for more than 2 seconds
 - n. Low furnace pressure (less than 10-inch WC)

(Exh. 6, App. 3 at pp. 7 and 8).

- 53) If a MFT occurred, the trip could be reset by a control room operator by pushing a button. (Exh. 6, p. 9, App. 3).
- 54) If the BMS was functioning properly, a MFT could not be reset unless the condition that caused the MFT had been corrected. (Exh. 6, p. 9, App. 3).
- 55) In an unsafe condition develops, the Fuel Safety System, a component of the BMS, will detect and notify the operator of the fault through an audible and/or visual alarm. If the fault condition for an MFT develops, the system will cut off the gas and coal supplies to the boiler. (Exh. 6, pp. 6-7, App. 1, 2).
- 56) There are no emergency operating procedures for the Fuel Safety System. (Exh. 6, p. 9, App. 4).

Damage to BMS on February 16-17, 1999

- 57) Water from the flooded control room traveled down drains, electrical conduits and other openings in the control room floor to the computer room located three floors below. (Exh. 6, App. 5, 6, 8).

- 58) The water caused electrical shorts to occur in the BMS, including the Fuel Safety Subsystem. (Exh. 5, pp. 13-14, App. 10). Mr. McLin stated: "It is known that circuit boards had shorted out and had to be replaced. The fuel safety system was entrained in water." (Exh. 5, App. 5).
- 59) Water can, and often does, cause electronic equipment to malfunction and fail. (Tr. Vol. 7, p. 348 (Lissik)).
- 60) The precise nature or type of water induced malfunction cannot be reliably predicted. (Tr. Vol. 7, p. 348 (Lissik)).
- 61) A water damaged electric system could send spurious claim signals, fail to send required alarm signals, fail to cause a required MFT to occur, allow an MFT to be reset without verifying that the condition prompting the MFT had been cleared, or send authorized signals to gas valves to open or close. (Tr. Vol. 7, pp. 348-356 (Lissik)).
- 62) With BMS under repair for more than eight hours, Hawthorn's safety system was not functioning properly. (Exh. 5, p. 14).

Erroneous alarms

- 63) The BMS emitted an alarm on the evening of February 16, 1999. (Exh. 6, p. 17, App. 10).
- 64) The system was reset about two hours later. (Exh. 6, p. 17, App. 10).
- 65) Therefore, the BMS still was not operating normally in the evening of February 16, six hours after the water damage was first observed. (Exh. 6, p. 17, App. 10).
- 66) KCPL's records show that the FSS lost AC power at 1453 hours and that it lost DC power a few minutes later. The power was restored and the systems were reset immediately. (Exh. 6, p. 13, App. 10).
- 67) At 1522 hours, the operator reset an MFT trip. (Exh. 6, p. 13, App. 10).
- 68) At 1600 hours, the FSS was energized but had experienced substantial water damage due to the wastewater flood. (Exh. 6, p. 14).
- 69) The potential for further short circuits, erroneous readings and other difficulties with the BMS due to water damage existed. (Exh. 5, p. 14).

- 70) KCPL did not de-energize the BMS system while its components were being dried out, repaired and retested. Through direct observation of the water damage, work performed to dry or repair various components, and erratic alarms (Exh. 6, App. 10), KCPL employees knew that the BMS was not functioning properly from the time of the flooding until the explosion occurred. (Exh. 6, p. 3, App. 10).
- 71) At this time, several of the conditions that cause an MFT were still in the offending state: both forced-draft fans were off; both induced-draft fans were off; and airflow was less than 25 percent. (Exh. 6, pp. 13-14, App. 5, 8, 11).

KCPL Repair Efforts

- 72) A KCPL maintenance foreman, Daryl Helsley, and a crew of technicians (including Ed Long and Dave Tyrell) spent the afternoon and evening until 2200 hours on February 16, cleaning, drying, and repairing components to BMS in the computer room, which is three levels below the control room. (Exh. 5, p. 13, App. 9; Exh. 6, pp. 11-12, 16, App. 5, 6, 7, 14).
- 73) Mr. Boylan, a journeyman electrician, was called in for the 2300 hours to 0700 hours shift on February 16-17 to assist in replacing a relay that had failed in the BMS from the water intrusion. (Exh. 6, p. 17, App. 15).
- 74) Work was just beginning on the relay when the explosion occurred, just after midnight, early on February 17, 1999. (Exh. 6, p. 17, App. 15; Exh. 5, pp. 13-14, App. 10).

Main Gas Valve was Left Open

- 75) The main gas line to Hawthorn is 24 inches in diameter and carries gas to the main gas control valves under a nominal pressure of 380 psig. Sensors in the pipes record the volume of gas going into the boiler. (Exh. 5, p. 12).
- 76) KCPL used red holds to close and tag the main Williams gas valve to the site during the forced outage (Exh. 6, App. 13).
- 77) The hold was released early on the morning of February 16 (00:10 am) as the plant was prepared for restart. (Exh. 6, p. 10, App. 13).
- 78) There is no documentation that this valve was retagged and protectively held closed either after the restart was aborted on the afternoon of February 16, or after the wastewater damage to the BMS was discovered shortly thereafter. (Exh. 6, p. 10, App. 13).

Documented Gas Flow to Boiler

- 79) To prevent the admittance of gas to the boiler due to the inadvertent opening of the gas valve, the manual valve should have been red-tagged closed. (Exh. 5, p. 17).
- 80) KCPL did not close the manual gas supply valves or place hold tags on them to ensure they remained in the closed position. (Exh. 5, p. 14).
- 81) Plant staff took no action to stop the flow of gas into the boiler. (Exh. 5, p. 15).
- 82) KCPL failed to take the precaution to close the gas valves. (Exh. 6, p. 4).
- 83) Hourly readings of gas flow and pressure for the Hawthorn site on February 16 and 17 indicates gas was being used for the plant heat-up beginning early the morning of February 16 and returning to a low level in the early afternoon of that day. (Exh. 5, p. 14, App. 11).
- 84) Mr. Ward traced an open pathway of gas flow from the pipeline to the boiler. (Exh. 6, pp. 19-20, App. 17).
- 85) KCPL released holds placed on natural gas valves during the February forced outage early on the morning of February 16 in preparation for restart of the unit, but did not replace holds on those valves when the restart was aborted, when water damage to the BMS occurred, or when the BMS signaled a Master Fuel Trip alarm. (Exh. 6, p. 10).
- 86) Throughout the afternoon and evening of February 16, KCPL could not rely on signals from the BMS system, and had no way of determining if water or other damage could cause signals to open the gas valves to the Hawthorn boiler. (Exh. 6, pp. 3-4).
- 87) At some point on February 16, around 2100 hours, either a KCPL employee inadvertently opened the gas valves to the boiler or a short in the BMS had the same effect. (Exh. 5, p. 15, App. 12; Exh. 5, p. 16).
- 88) Gas readings indicate the flow increased in the evening of February 16: at 2100 hours the flow was 145 MCF; at 2200 hours it was 263 MCF; at 2300 hours it was 268 MCF; and the final reading available at 2400 shows a flow of 314 MCF—a flow higher than any hourly reading during the earlier heat-up of the boiler. (Exh. 5, p. 15, 16, App. 12).
- 89) Gas started flowing to the boiler at about the time the latest MFT was reset. (Exh. 6, pp. 18-19, App. 11, 16).

- 90) If the BMS had been functioning properly, another MFT would have occurred once gas started to flow and there was no flame. (Exh. 6, pp. 18-19, App. 11, 16).
- 91) Gas valves recovered from the wreckage (Exh. 6, App. 22) indicate an open flow path to the Hawthorn boiler. (Exh. 6, pp. 4, 19-20, App. 17, 22).
- 92) The William's Gas Valve was also open to allow gas to flow to the boiler. (Exh. 5, p. 16, App. 13; Exh. 6, App. 5, 18, 19, 20, 21).
- 93) After the explosion, a KCPL employee closed the Williams main gas valve to the boiler, extinguishing a fireball in the lower level of the boiler rubble. (Exh. 5, p. 16, App. 13; Exh. 6, App. 5, 18, 19, 20, 21).

Description of Explosion

- 94) Observation of a fireball following the boiler explosion revealed the continued flow of substantial amounts of gas to the boiler. (Exh. 6, p. 4).
- 95) The immediate cause of the explosion was an accumulation of gas in the firebox of the boiler. (Exh. 12, p. 19).
- 96) The gas flow ended only after KCPL employees manually closed main gas valves that should have been tagged closed during the afternoon of February 16. (Exh. 6, p. 4).

No KCPL Testimony on Hawthorn Explosion

- 97) KCPL's only response to the facts as related by GST was Witness Giles' assertion that Witness Ward's testimony is speculative and that Mr. Ward relies on eyewitness accounts and statements made by Plant Manager James Teaney. KCPL does not assert that any facts presented by GST are incorrect. (Exh. 12, pp. 17-18).
- 98) Staff does not dispute or disagree with GST finding that KCPL failed to close the main gas valve, that the Hawthorn BMS was damaged by the sewage overflow, that the type of damage water causes to electronic components can be unpredictable, that the damaged BMS sent alarms and spurious signals. (Tr. Vol. 7, pp. 341-360 (Lissik)).

KCPL Has OverCharged GST

- 99) KCPL does not dispute that GST has paid higher prices because of the Hawthorn outage. (Exh. 12, p. 17).

- a. Hawthorn was one of KCPL's lower cost sources of base load generation. Following the loss of Hawthorn 5, KCPL has been meeting its load requirement through short-term energy purchases and other more expensive resources. (Exh. 3, p. 4).
- b. The excessive charges KCPL has billed GST are primarily captured by the difference between the incremental energy costs actually charged to GST and the lower incremental costs that would have applied if Hawthorn had not exploded and had continued to operate at historic cost and production levels. (Exh. 3, p. 3).
- c. During each hour when short-term replacement energy purchases exceeded the cost that KCPL would have incurred to produce the same amount of power at Hawthorn 5, GST was overcharged. GST was also overcharged where KCPL utilized other generation resources that were more expensive than Hawthorn 5 would have been. (Exh. 3, p. 4).
- d. GST asked KCPL to rerun its production simulation model to include Hawthorn 5 in the model for the period following the boiler explosion. KCPL refused to perform any modified simulation runs for GST. (Exh. 3, p. 3).
- e. GST acquired hard copies of the hourly dispatch data, and Witness Smith reconstructed the hourly costs to GST. (Exh. 3, p. 3).
- f. KCPL provided dispatch data through August 1999. (Exh. 3, p. 5).
- g. For his calculations, witness Smith used information provided by KCPL that shows actual billing calculations for hours during which KCPL peaking resources were used. This information included printouts of hourly dispatch information for weeks when KCPL peaking resources were used. Smith recalculated the hourly incremental production costs chargeable to GST by inserting Hawthorn 5 into the KCPL production stack for each hour of the day modeled. (Exh. 3, p. 4).
- h. Smith used output from a system that KCPL uses to calculate GST's bills for hours when KCPL uses peaking resources on its system to meet total energy requirements. Smith did not use the exact same system that KCPL uses for its billing calculations, because, according to KCPL, the production model that KCPL uses in its calculations is part of a comprehensive energy management system that cannot be used on its own to replicate KCPL's billing calculations. (Exh. 3, p. 9).
- i. For the peak summer months of June, July and August, Smith recalculated the hourly incremental costs for each weekday, excluding days on which GST did not operate. (Exh. 3, pp. 5-7).

- j. For non-peak months where there is substantially less price volatility, i.e., February through May, Smith selected a representative weekday and weekend day for each month, and recalculated the hourly production costs for the representative day. (Exh. 3, pp. 5-7).
- k. Smith also used a representative weekend day for each of the summer months. (Exh. 3, pp. 5-7).
- l. Smith compared calculations of charges to GST without Hawthorn 5 included in the generation mix to calculations made with Hawthorn 5 inserted in the resource stack. (Exh. 3, p. 5).
- m. Mr. Smith reflected a scheduled May 1999 maintenance outage for Hawthorn in his calculations. (Exh. 3, pp. 8, 10).
- n. Mr. Smith assumed forced outages of one weekday and one weekend day for Hawthorn each month. (Exh. 3, p. 8).
- o. KCPL argued that GST's total savings under the Special Contract compared to the LPS with PLCC credit for the years 1994 through 1999 is \$24.5 million. With an increase in the curtailment credit and the higher incremental hourly prices paid by GST under the Special Contract, GST paid \$1.8 million less in 1999 under the Special Contract than the LPS tariff combined with the curtailment credit of \$35 per summer season. (Exh. 12, pp. 8-9 HIGHLY CONFIDENTIAL).

OTHER

- p. Staff witness Dr. Proctor believes that the Missouri Commission has never allowed any Missouri electric utility to recover in rates costs that the Commission has determined are unreasonable and imprudent. (Tr. Vol. 8, pp. 376-377 (Proctor) HIGHLY CONFIDENTIAL).
- q. Staff witness Dr. Proctor agreed in his hearing testimony with the Staff position that if the Commission were to find that KCPL had acted imprudently with respect to the Hawthorn 5 boiler explosion, the charges under GST's special contract have not been just and reasonable. (Tr. Vol. 8, p. 400 (Proctor) HIGHLY CONFIDENTIAL).
- r. Staff witness Dr. Proctor believes that imprudence was not a risk assumed by GST under the special contract. (Tr. Vol. 8, p. 400 (Proctor) HIGHLY CONFIDENTIAL).

II. CONCLUSIONS OF LAW

a. The Commission Has Jurisdiction Over GST's Claims in this Proceeding and the Relief GST Requests

The Commission has primary and exclusive jurisdiction over the parties and the subject matter of each of the issues raised by the Petition/Complaint¹ filed by GST on May 11, 1999.² As explained below, as well as in GST's pleadings in response to the Commission's Order to Show Cause, GST properly brought its petition/complaint, the complaint is, in all respects sufficient, and the Commission has jurisdiction to grant the relief that GST requests.

1. Section 386.390.1 Entitles Any Customer to Ask the Commission to Investigate Any Aspect of Utility Service

Missouri law gives the Commission plenary rate and supervisory authority over public utilities. See MO. REV. STAT. §§ 386, 250, 393.130. The bedrock purpose of public service commission law, and the overall scheme of public utility regulation, is to protect consumers from the excesses of the monopoly powers of public utilities. May Department Stores Co. v. Union Electric Light & Power Co., 107 S.W.2d 41, 48, 341 Mo. 299 (1937). The Commission must interpret its jurisdictional scope consistent with the express provisions of the law and to such further extent as the law may require, be it express or implied, to carry out the basic purpose of the law. See MO. REV. STAT. § 386.250.7.

¹ On May 11, 1999, GST filed a Petition asking the Commission to investigate the adequacy of service provided by KCPL to GST. Petition for an Investigation as to the Adequacy of Service Provided by Kansas City Power & Light Company and Request for Immediate Relief. In its Order Concerning Show Cause Hearing, dated February 17, 2000, the Commission determined that GST filed a "complaint" that was "sufficient under the Commission's practice rules." Order Concerning Show Cause Hearing at p. 4.

² As amended by GST's Motion to Amend by Interlineation, the First page of the Petition for an Investigation as to the Adequacy of Service Provided by Kansas City Power & Light Company and Request for Immediate Relief, filed February 20, 2000.

Consistent with that fundamental purpose, the Commission's process and procedure is, by design, liberally viewed to be consumer accessible. Every aspect of a public utility's character of service, operating practices, and treatment of its customers is subject to Commission scrutiny. Under Section 386.390.1 of the Missouri Revised Statutes, any person, even if they have no pecuniary interest involved, can bring a complaint to the Commission concerning anything a utility has done or failed to do in the course of providing utility service. State ex rel. Consumers Public Service Co. v. Public Service Commission, 180 S.W.2d 40, 352 Mo. 905 (1944).

GST, which is a KCPL customer that has been materially and adversely affected by KCPL's operational failures, is entitled to petition the Commission to investigate the utility's practices and to seek an order for appropriate relief. The Commission's jurisdiction in this regard is beyond dispute. *See* RSMo § 393.130.³

Further, GST's petition properly asked the Commission to examine the reasonableness of the company's actions and the effects of the destruction of Hawthorn on the prices charged to GST under its Special Contract.⁴ In the course of this proceeding, the Commission has determined at various times that KCPL's actions relative to the Hawthorn incident are:

1. relevant to GST's issues of service adequacy;⁵
2. directly relevant to the issue of KCPL's charges to GST;⁶

³ See KCPL Response to GST Steel Company's Motion to Compel Production of Documents, for Directed Findings Concerning Information Controlled by KCPL, and for Interim Relief, dated March 3, 2000, at p. 19.

⁴ See MO. REV. STAT. § 393.140(2). KCPL similarly has acknowledged that the Commission has the authority to investigate the Hawthorn boiler explosion. See KCPL Response to GST Steel Company's Motion to Compel Production of Documents, for Directed Findings Concerning Information Controlled by KCPL, and for Interim Relief, dated March 3, 2000, at p. 19.

⁵ Order Regarding GST Steel Company's First Motion to Compel Discovery and Amending the Procedural Schedule, dated July 29, 1999, p. 7.

⁶ *Id*

3. relevant to GST's theory of service unreliability due to poor maintenance practices;⁷
4. relevant to GST theory that the prices it pays for service under its special contract are not just and reasonable in view of KCPL's imprudent management practices;⁸
5. "necessarily within the scope of the present proceeding."⁹

The Commission approved the GST/KCPL Special Contract pursuant to the exercise of its plenary rate and supervisory authority over KCPL and the electric service it provides to GST. KCPL and GST each acknowledged the Commission's jurisdiction in the Contract. Pursuant to that same authority, the Commission has continuing jurisdiction over the prices, terms, and conditions of electric service provided by KCPL to GST pursuant to the Special Contract. Thus, the Commission possesses both subject matter jurisdiction and jurisdiction over the parties in this proceeding. The Commission cannot waive or delegate its jurisdiction. Further, all matters upon which a complaint may be raised may be joined in one hearing. RSMo § 386.390.2; *State ex rel Consumers Public Service Co. v. Public Service Commission*, 180 S.W.2d 40, 352 Mo. 905 (1944). Therefore, in this proceeding, the Commission has jurisdiction over all matters raised in GST's complaint, as well as any additional matters the Commission may deem pertinent.

2. The Commission Previously Has Confirmed the Sufficiency of GST's Complaint

The Commission has confirmed the sufficiency of GST's complaint and its jurisdiction over such matters in prior rulings in this docket. In its Order issued on August 19, 1999, the Commission stated the scope of this action as follows:

⁷ Order Regarding KCPL's Motion for Clarification, Reconsideration and Rehearing of the Commission's Order of July 29, 1999, and Regarding GST Steel Company's Second Motion to Compel Discovery, dated August 19, 1999, p. 8.

⁸ *Id.*

⁹ Order Regarding KCPL's Motion to Limit the Scope of Discovery and Issues, dated November 16, 1999, (denying

GST's complaint addresses both the adequacy and reliability of the electric service provided by KCPL and whether or not KCPL's charges to GST for that service are just and reasonable. The Commission is authorized, at Section 393.130.1, RSMo 1994, to consider such matters and GST is authorized to make complaint.¹⁰

The Commission also has previously determined that the issues in this docket include KCPL power generation and distribution matters and the Hawthorn explosion "insofar as they directly impact the two issues of the adequacy of KCPL's service to GST and the pricing of KCPL's service to GST."¹¹ As to each of these matters, GST's petition is sufficient in all respects and the Commission has jurisdiction to address those matters and order appropriate relief.

3. The Commission has Jurisdiction to Grant the Relief GST Requests

The Commission possesses the authority to grant the relief that GST has requested concerning KCPL's implementation of the Special Contract. Section 386.390.1 of the Missouri Revised Statutes allows complaints by individual customers alleging that they have been charged the wrong rate. Show Cause Order at 7 (citing State ex rel. Laundry, Inc. v. Public Service Comm'n, 327 Mo. 93, 103-104, 34 S.W.2d 37, 41 (1931)). In fact, it is settled that a single customer, or a small group of customers (but less than 25) may bring a complaint that a utility has charged them the wrong rate, and that the Commission has jurisdiction to hear the complaint, to order the customers to be placed on the correct rate, and to order rebilling to correct overcharges in historic bills. Inter-City Beverage Co. v. Kansas City Power & Light Co., 889 S.W.2d 875, 877 (Mo. App. W.D. 1994); State ex rel KCPL v. Buzard, 168, S.W.2d 1044, 350

KCPL's effort to exclude Hawthorn-related issues from the proceeding) (mimeo at 4).

¹⁰ Order dated August 19, 1999, at p. 8.

Mo. 763 (1993). An individual customer may not be able to challenge the reasonableness of tariffed rates, but may properly complain to the Commission that a utility's implementation of its rate schedules has been unjust and unreasonable as to that customer. In such instances, utility overcharges are customer specific, and RSMO Section 386.390.1 provides a forum for customers to seek relief with the Commission. No other interpretation of Section 386.390.1 would be consistent with the letter or intent of the statute.

Similar circumstances apply in this instance concerning the impact of KCPL imprudence on the prices charged to GST. GST's "rate" is the formula established by the Special Contract. GST is not challenging the contract or the pricing formula contained in that contract. From GST's perspective, the contract was just and reasonable when executed and remains just and reasonable today. Staff holds a similar view. GST PF ____.¹² GST's petition challenges KCPL's implementation of that contract insofar as the utility has included, and continues to include, imprudently incurred costs in its calculation of prices charged to GST under the contract.

While the Commission approved the rate formula in the Special Contract, it has not reviewed or approved the specific inputs into the prices KCPL charges GST. The Commission possesses continuing jurisdiction over the contract.¹³ KCPL owes GST, as it owes all customers, a duty of operating its facilities in a reasonable and prudent manner. KCPL agreed that the reasonableness of its actions with respect to its generation, transmission, and distribution

¹¹ Order dated August 19, 1999; quoted with approval in Order dated November 16, 1999.

¹² "GST PF ____" refers to GST's Proposed Findings of Fact, which are listed in Part II of this document.

¹³ See Order dated July 29, 1999.

facilities is an issue to be decided in this case.¹⁴ The Staff was more direct in its Position Statement, which states that “if KCPL acted imprudently with respect to the Hawthorn incident, the charges to GST are unjust and unreasonable.” Staff Position Statement at p. 2.

The Commission opined that perfection of a complaint as to GST’s pricing questions may be unnecessary when the issues in the complaint turn on prudence (*See Show Cause Order*, p. 7). In fact, the Commission has an overriding statutory duty to prevent an electric utility from collecting any unjust or unreasonable charge. MO. REV. STAT. § 393.130.1. This obligation is as applicable to an incremental cost-based customer-specific contract approved by the Commission as it is to generally applicable tariffed rates.

The Commission needs to interpret its jurisdiction under Section 386.390.1 to be consistent with its duty under Section 393.130. A basic canon of construction is that a statute should be interpreted so as not to render one part inoperative, and to avoid a result contrary to the apparent intent of the legislature. *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237 (1985); *Certified Color Mfrs. Ass’n v. Mathews*, 543 F.2d 284, 296 (D.C. Cir. 1976). Any ambiguities should be resolved in a manner designed to give effect to all parts of the statute. *Noble v. Marshall*, 650 F.2d 1058, 1061 (9th Cir. 1981). By all means, a statute should not be construed in a way that emasculates one of its provisions. *Bridgeport Hydraulic Co. v. Council on Water Co. Lands of State of Conn.*, 453 F.Supp. 942, 949 (D.C.Conn., 1977); affirmed 439 U.S. 999 (1977).

¹⁴ This standard of care is reflected in the “List of Issues and Order of Witness Examination” filed with the Commission on March 13, 2000, in this proceeding, which was drafted by KCPL and approved by the other parties.

It is unjust and unreasonable for a utility to assign a customer to an incorrect, higher cost, rate schedule because the Commission did not authorize the utility to charge the costs included in the more expensive rate to that customer. It similarly is unjust and unreasonable for KCPL to include imprudently incurred costs in its calculation of incremental costs charged to GST pursuant to a formula in the Special Contract because the Commission did not authorize KCPL to include unreasonable and excessive costs in its calculation of those prices. In both instances, the nature of the complaint, though customer specific, falls within the basic thrust of Section 386.390.1, which encourages customer complaints to be brought before the Commission. GST's Complaint is in all respects sufficient, and the Commission has authority to provide the relief GST requests.

b. The Commission Has a Statutory Obligation to Prevent Unjust and Unreasonable Charges

The Commission is authorized, and has the obligation, to insure that KCPL does not charge GST for imprudently incurred replacement power costs. *See Order Regarding KCPL's Motion for Clarification, Reconsideration and Rehearing of the Commission's Order of July 29, 1999, and Regarding GST Steel Company's Second Motion to Compel Discovery* dated August 19, 1999, at 5-6 (stating that Commission has statutory authority to consider the adequacy and reliability of KCPL's electric service and whether or not KCPL's charges to GST for that service are just and reasonable). Missouri law provides:

All charges made or demanded by any . . . electrical corporation . . . for electricity . . . or any service rendered or to be rendered shall be *just and reasonable* and not more than allowed by law or by order or decision of the commission. Every *unjust or unreasonable* charge made or demanded for . . . electricity . . . or any

such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is *prohibited*.

Mo. Ann. Stat. § 393.130(1) (1994) (emphasis added). The Commission's authority to enforce this requirement of the law is the cornerstone of its regulatory responsibilities. Moreover, where metering or billing errors occur, or bills are disputed for any reason, a customer is entitled to a billing recalculation and adjustment from the time such mistakes began. *See* 4 CSR 240-13.025. Consistent with its statutory duty, Staff believes that "[t]he Commission has never allowed KCPL, or any electric utility, to include imprudently incurred costs in rates charged to consumers." (GST PF ____).

1. GST Has Established Its Prima Facie Case that KCPL Acted Imprudently

The explosion and fireball that occurred at Hawthorn on February 17, 1999 suggests imprudence at the outset. Through its expert testimony, and, more importantly, the contemporaneous KCPL witness statements, plant manuals, operator control logs, and other documents GST has compiled, GST has established a *prima facie* case that the boiler explosion is the direct result of KCPL unreasonable and imprudent actions. Furthermore, as described in detail in GST's attached Initial Brief and the Proposed Findings of Fact, during the course of this proceeding GST produced evidence to demonstrate conclusively KCPL imprudence.

2. GST Has Demonstrated By Clear, Convincing, and Competent Evidence that KCPL Failed to Act in a Reasonable and Prudent Manner

GST has documented and produced undisputed facts that KCPL opened the main gas valve to Hawthorn in preparation of heat-up of the boiler, that KCPL halted the heat-up, and that

the main gas valve to Hawthorn was not again red tagged and closed. The record shows, using contemporaneous KCPL documents and plant records, that KCPL caused the waste water flood in the Hawthorn control room, which resulted in water draining down several floors to the computer room. GST has documented without challenge from KCPL, that waste water damaged the Burner Management System ("BMS") that monitors and controls fuel introduction into the Hawthorn boiler. With the BMS malfunctioning, KCPL was operating virtually blind, and was unaware of the gas entering into the boiler through the open main valve, which eventually led to the explosion that occurred on February 17, 1999. GST has established by clear, competent, and compelling evidence that KCPL's reliance on the damaged BMS system was unreasonable, and that KCPL carelessness and failure to follow its own safety procedure created and perpetuated the unsafe and dangerous conditions that precipitated the explosion. By any measure, GST has demonstrated that KCPL's actions were unreasonable and imprudent.