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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Prehearing Conference  
  
February 11, 2004  
Jefferson City, Missouri  
Volume 9

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

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

REPORTED BY:  
  
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ASSOCIATED COURT REPORTERS

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31 Service Commission.

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

2 JUDGE THOMPSON: Good morning, ladies and  
3 gentlemen. We are here for GS Technology Operating Company,  
4 Inc., doing business as GST Steel Company, Complainant vs.  
5 Kansas City Power & Light Company, Respondent, Case  
6 No. EC-99-553.

7 My name is Kevin Thompson. I'm the Regulatory  
8 Law Judge assigned to preside over this matter. And we will  
9 begin with oral entries of appearance. Let's hear from  
10 Complainant first.

11 MR. DeFORD: Thank you, your Honor. Paul S.  
12 DeFord, Lathrop & Gage, 2345 Grand Boulevard, appearing on  
13 behalf of GS Technologies.

14 JUDGE THOMPSON: Respondent?

15 MR. FISCHER: Let the record reflect the  
16 appearance of James M. Fischer, Fischer & Dority, PC, 101  
17 Madison Street, Suite 400, Jefferson City, Missouri 65101,  
18 and Robert Gingrich, in-house counsel for Kansas City  
19 Power & Light, 1201 Walnut Street, Kansas City, Missouri.

20 JUDGE THOMPSON: Thank you. Staff?

21 MS. SHEMWELL: Lera Shemwell representing the  
22 Staff of the Missouri Public Service Commission, Post Office  
23 Box 360, Jefferson City, Missouri 65109 -- 102. I'm sorry.  
24 Pardon me.

25 JUDGE THOMPSON: Mr. Coffman?

1                   MR. COFFMAN: John B. Coffman representing the  
2   Office of the Public Counsel, P.O. Box 2230, Jefferson City,  
3   Missouri 65102.

4                   JUDGE THOMPSON: Thank you.

5                   This case is here on remand from the Cole  
6   County Circuit Court following a decision of the Missouri  
7   Court of Appeals for the Western District which affirmed the  
8   Commission in part and reversed and remanded the Commission  
9   in part.

10                  It is the Commission's practice generally to  
11   hold a prehearing conference, gather the parties after a  
12   case has been remanded and the order has issued from the  
13   circuit court actually vesting jurisdiction back into the  
14   Commission to inquire of the parties as to where do we go  
15   from here; in other words, exactly what procedure should the  
16   Commission follow.

17                  And before I open the floor to comments from  
18   the parties, I think what I'll do is tell you what I see and  
19   then you'll have something to start with and you can correct  
20   any erroneous ideas that I might have as soon as possible so  
21   we won't get off on the wrong track.

22                  There were two issues remanded. One of them  
23   is a not unfamiliar one. The court found that the  
24   Commission wholly failed to make any findings and  
25   conclusions with respect to one of the theories of

1    imprudence advanced by Complainants, and this was the one  
2    relating to -- I believe this was the one with the  
3    allegation of imprudence for failure to put a hold on the  
4    main gas valve, is that correct, or on the water valve?

5                    MR. DeFORD:  That's generally, correct.  
6    Failure to protect after the --

7                    JUDGE THOMPSON:  Okay.  On one of those two we  
8    didn't make any findings, and on the other one our findings  
9    were erroneous because we excluded evidence that should have  
10   been received, because the Commission understood the  
11   objection made during the hearing to be broader than, in  
12   fact, it actually was.

13                   So really the Commission has to address both  
14   of those theories in the light of the proper evidentiary  
15   ruling.  And there's a case that tells us that all remands  
16   to the Commission are general remands, but there's an  
17   exception to that.  It's not a general remand where the  
18   Commission has failed to receive evidence that it should  
19   have received, and I think that covers part of this case.

20                   The other, which is the failure to make  
21   Findings of Fact and Conclusions of Law, I think is also not  
22   a general remand.  That's my personal theory.  We're not  
23   unfamiliar with cases being returned for failure to make  
24   adequate Findings of Fact and Conclusions of Law, to our  
25   shame, and I think a failure to make any at all falls within

1     that same category.

2                     So my understanding is that the Commission  
3     will issue a Report and Order on Remand addressing the two  
4     areas remanded by the court and based on the existing  
5     record. That's what I anticipate. And if the parties  
6     anticipate something more or something different, please  
7     advise me.

8                     The question, then, from my point of view  
9     procedurally, obviously the makeup of the Commission has  
10    changed. There's only one member of the Commission that was  
11    here to hear this case originally, and you have two new  
12    members who have to be educated in this matter so as to even  
13    be able to make a decision.

14                    For that reason, I would propose that the  
15    parties may, I won't require it, but the parties may rebrief  
16    the case dealing with the two issues that were remanded and  
17    directing the Commissioners to the portions of the record  
18    that the parties believe the Commission needs to review in  
19    order to reach their decision.

20                    And so that's the procedural process that I  
21    would propose, but I'm more than happy to hear from the  
22    parties, and please correct me if any of my suggestions are  
23    inappropriate or my understanding of the case is erroneous.  
24    Why don't we begin with Complainants since you guys have the  
25    burden.

1                   MR. DeFORD: Your Honor, that's generally  
2 consistent with, I think, what I was going to propose. The  
3 case is in kind of a unique posture. I don't know if it's  
4 generally known, but my client GST is in bankruptcy  
5 proceeding, and there really is -- the client now is a  
6 trustee in bankruptcy.

7                   So my hands are somewhat tied in terms of what  
8 I can and can't do, and getting my client's approval is not  
9 picking up the phone and talking to somebody who has direct  
10 control.

11                  JUDGE THOMPSON: Do you have to go into the  
12 bankruptcy court and get approval to do things?

13                  MR. DeFORD: No. I think they've already  
14 taken care of that, and my instructions at this point from  
15 the trustee are to wrap this proceeding up as quickly and  
16 efficiently and profitably as possible.

17                  JUDGE THOMPSON: Under those circumstances,  
18 are you going to be able to rebrief it?

19                  MR. DeFORD: I believe we will probably be  
20 able to rebrief the case. I don't know that I would  
21 actually be able to, you know, put on a witness if I were to  
22 be in that position.

23                  JUDGE THOMPSON: Right. Okay. But you agree  
24 with me that putting on a witness is beyond the scope of  
25 what the remand generally requires?

1                   MR. DeFORD: Generally, I think that's  
2 correct. There may be things that the parties may want the  
3 Commission to take official notice of or something, but I  
4 don't believe there's necessarily a need for a hearing.

5                   JUDGE THOMPSON: Very well. Let's hear now  
6 from the company.

7                   MR. FISCHER: Your Honor, I think our -- from  
8 our perspective, we were thinking that it might even be more  
9 efficient just to submit additional supplemental Findings of  
10 Fact and Conclusions of Law on the two issues that were  
11 remanded, and that could serve as an additional technique or  
12 tool for the RLJ and the Commission to look at, but I don't  
13 think we're -- certainly wouldn't be opposed to rebriefing.

14                  JUDGE THOMPSON: When I said rebriefing, I  
15 included new Findings of Fact and Conclusions of Law within  
16 the ambit of that; I guess brief being written argument and  
17 the other one being, here, look at the record, this is what  
18 this shows. Okay. Let's hear from Staff.

19                  MS. SHEMWELL: I am thinking, Judge, that  
20 perhaps just Findings of Fact and Conclusions of Law.  
21 Perhaps we could look at our brief submitted the first time  
22 and see if we wanted to make revisions, but we may find that  
23 those are generally sufficient to inform the Commission of  
24 the issues, and that Findings of Fact and Conclusions of Law  
25 that we would propose in response to the Western District's



1 order which generally contain reference to the transcript  
2 and the testimony might be a sufficient addition to the  
3 Briefs if the original Briefs still, I think, are  
4 satisfactory.

5 JUDGE THOMPSON: In other words, you would cut  
6 and paste essentially the original Briefs to limit it to the  
7 new issues or the remaining issues; is that what you're  
8 suggesting?

9 MS. SHEMWELL: Actually, I hadn't thought  
10 about that, but I suppose certainly if we're going to  
11 rebrief, that's probably the most efficient way to do it is  
12 just to eliminate the two issues that have been settled  
13 and --

14 JUDGE THOMPSON: I mention that only because,  
15 Paul, I don't know how often you're in agenda, but I don't  
16 know that you want to bring information before the  
17 Commission that you don't need to, simply because it may  
18 delay the final outcome of the case and launch wild hairs  
19 into the underbrush. Is that on the record?

20 Mr. Coffman, let's hear from you.

21 MR. COFFMAN: Given that this issue involved  
22 only one customer and a special contract customer at that,  
23 and so it's really unclear what resolution of this actually  
24 means to the other customers, we chose not to participate in  
25 the appeal.

1                   I would suggest that Briefs and Findings of --  
2   Briefs on the issues that have been remanded and Findings of  
3   Fact would be the appropriate way to go.

4                   JUDGE THOMPSON:  So stick with the existing  
5   record?

6                   MR. COFFMAN:  Yes, that would be fine with me.

7                   JUDGE THOMPSON:  Okay.  Well, Mr. DeFord,  
8   would you see Supplemental Findings of Fact and Conclusions  
9   of Law as a sufficient --

10                  MR. DeFORD:  I think we may prefer a  
11   combination, because the briefing may change somewhat in  
12   light of the order from the Court of Appeals, and I'm really  
13   not in a position to say exactly how or --

14                  JUDGE THOMPSON:  Well, why don't we do this:  
15   Why don't we agree that -- and I would exclude Staff and  
16   Public Counsel from this because they really don't have a  
17   dog in the fight.  So why don't we say company and KCPL  
18   shall and Staff and Public Counsel may submit Supplemental  
19   Findings of Fact and Conclusions of Law.

20                  Okay.  And they can -- you know, I do not need  
21   a proposed procedural history or statement of the case.  
22   Really just short and succinct references to parts of the  
23   record that you believe establish the facts that are  
24   important to the outcome you seek would be sufficient, and  
25   then everybody may but no one need submit any written

1 arguments that they choose to. How's that? And you have a  
2 question, sir?

3 MR. COFFMAN: Yes. My question, would there  
4 be initial and reply opportunities? And my -- at this point  
5 I'm not sure that I would file any Findings of Fact and  
6 Conclusions of Law on my own, but I was hoping to leave open  
7 the possibility that if what was filed raised a concern,  
8 that I would have the opportunity to file something in  
9 response to that.

10 JUDGE THOMPSON: Yeah. We would certainly, I  
11 think, want to have two rounds, because we've already  
12 stumbled in this case once, and we say upstairs that Briefs  
13 are our friends. So any opportunity we have to be  
14 instructed in the right way to resolve things, we're happy  
15 for the help.

16 So, yeah, why don't we figure two rounds, and  
17 if you -- I would think the written arguments would be --  
18 initial written arguments would be filed simultaneously with  
19 the Proposed Findings of Fact and Conclusions of Law, if  
20 that's satisfactory to everyone. So all we need then is a  
21 date, a briefing schedule. I don't know how long you think  
22 is necessary. It's a big record. It was a big case.

23 MR. FISCHER: It was a long time ago, too.

24 JUDGE THOMPSON: It was a long time ago.  
25 60 days, is that too long?

1                   MR. DeFORD: 60 days is fine.

2                   JUDGE THOMPSON: Okay.

3                   MR. DeFORD: 30 for reply.

4                   JUDGE THOMPSON: So 60, 30, how's that sound?

5                   MR. DeFORD: Sounds fine to me.

6                   JUDGE THOMPSON: So I'll put out a notice,  
7 then, setting the precise dates for the filings and I'll  
8 pick a day. It'll be a business day that will be at least  
9 60, perhaps because of where the weekends fall perhaps  
10 slightly more than 60 days from today as the calendar runs,  
11 but it won't be any less. Okay. And the same thing with  
12 that opportunity for Reply Brief.

13                   Do you feel any need for oral arguments or  
14 you'll be happy to just make written submissions?

15                   MR. DeFORD: I think for the time being we're  
16 happy with written submissions, your Honor.

17                   JUDGE THOMPSON: Very well. Now, the  
18 Commission may ask for an oral presentation. They sometimes  
19 do that. This particular Commission is very interested in  
20 getting as much information as it can before it makes a  
21 decision. So if they find something perplexing, they may  
22 decide to call people in and ask questions. So that's their  
23 call, not mine.

24                   Anything else? I apologize for making you all  
25 travel down here today. If I'd thought about it, I would

1 have allowed out of town counsel to participate by  
2 telephone, which is something we started doing when the  
3 weather was so bad and maybe we'll, without really  
4 announcing the fact, keep doing that. I don't know.

5 This is unlike the first prehearing conference  
6 in a case where you hope to get the parties in the same room  
7 so they can talk settlement. I would think if there were a  
8 settlement possibility in this case, that's been explored  
9 long since.

10 Okay. Anything else? Okay. Hearing nothing,  
11 we are adjourned. Thank you all very much.

12 WHEREUPON, the recorded portion of the  
13 prehearing conference was concluded.

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