

June 1, 2001

Mr. William C. Riggins
General Counsel
Kansas City Power & Light Company
1201 Walnut Street
P. O. Box 418679
Kansas City, Missouri 64141-9679

SUBJECT: WOLF CREEK GENERATING STATION - ORDER APPROVING APPLICATION
REGARDING KANSAS CITY POWER & LIGHT COMPANY (KCPL)
RESTRUCTURING (TAC NO. MB1213)

Dear Mr. Riggins:

The enclosed Order responds to the application dated February 20, 2001, from KCPL, as supplemented by letters dated February 27, March 5, March 8, March 28, and May 4, 2001, from counsel for KCPL, requesting approval (pursuant to Title 10, *Code of Federal Regulations* (CFR), Section 50.80) of the indirect transfer of the license for the Wolf Creek Generating Station (WCGS) to the extent such would result from the proposed restructuring of KCPL. As stated in the application, the proposed restructuring encompasses the formation by KCPL of a new holding company as yet unnamed ("HoldingCo"). Upon the proposed restructuring, KCPL will cease to be publicly-traded and become a wholly-owned subsidiary of HoldingCo, but it will retain ownership of its regulated electric power generation, transmission, and distribution assets, including its interests in WCGS and Wolf Creek Nuclear Operating Corporation.

The Order approves the indirect transfer of the WCGS license to the extent effected by the proposed restructuring of KCPL subject to the two conditions in the Order. The Safety Evaluation in support of the Order is also enclosed. The Order has been forwarded to the Office of the Federal Register for publication. Should the proposed restructuring of KCPL not be completed by June 1, 2002, this Order shall become null and void, provided, however, upon application and good cause shown, such date may be extended.

If you have any questions regarding this matter, please contact me at 301-415-1307, or through the internet at jnd@nrc.gov.

Sincerely,

/RA/

Jack N. Donohew, Senior Project Manager, Section 2
Project Directorate IV & Decommissioning
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-482

Enclosures: 1. Order
2. Safety Evaluation

cc w/encls: See next page

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Docket No. 50-482

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2. Safety Evaluation

cc w/encls: See next page

* See previous memos
dated 03/14/01 and 04/17/01

ACCESSION NO. ML011550334

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Wolf Creek Generating Station

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
KANSAS CITY POWER & LIGHT COMPANY)	Docket No. 50-482
)	
(Wolf Creek Generating Station))	
)	

ORDER APPROVING APPLICATION REGARDING PROPOSED CORPORATE
RESTRUCTURING

I.

Kansas City Power & Light Company (KCPL) holds a 47 percent ownership interest in Wolf Creek Generating Station (WCGS) and in connection therewith is a holder of Facility Operating License No. NPF-42. The facility is located in Coffey County, Kansas. The other co-owner licensees for WCGS are Kansas Gas & Electric Company (KGE) (with a 47 percent share of WCGS), and Kansas Electric Power Cooperative, Inc. (KEPCo) (with a 6 percent share). Wolf Creek Nuclear Operating Corporation (WCNOC) is the licensed operator of WCGS, and KCPL also owns a 47 percent interest in WCNOC, with KGE and KEPCo owning 47 percent and 6 percent interests in WCNOC, respectively. KCPL, as well as KGE and KEPCo, hold possession-only licenses.

II.

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, KCPL filed an application dated February 20, 2001, which was supplemented by submittals dated February 27, March 5, March 8, March 28, and May 4, 2001, from counsel for KCPL, requesting approval of the indirect transfer of the WCGS license, to the extent such

would result from the proposed restructuring of KCPL. As stated in the application, the proposed restructuring encompasses the formation by KCPL of a new holding company as yet unnamed ("HoldingCo"). Upon the proposed restructuring, KCPL will cease to be publicly-traded and become a wholly-owned subsidiary of HoldingCo, but will retain ownership of its regulated electric power generation, transmission, and distribution assets, including its interests in WCGS and WCNOG. No direct transfer of the license to HoldingCo or otherwise is being proposed. WCNOG would remain as the managing agent for the joint owner licensees (KCPL, KGE, and KEPCo) of the facility and would continue to have exclusive responsibility for the management, operation, and maintenance of WCGS as the non-owner operator licensee. The application does not propose a change in the rights, obligations, or interests of the licensees of WCGS. In addition, no physical changes to WCGS or operational changes are being proposed.

KCPL stated that it and HoldingCo will be able to respond more effectively to increased competition in the energy industry and pursue pending unregulated electric generation ventures as a result of the new corporate structure.

Notice of the application and an opportunity for hearing was published in the *Federal Register* on May 2, 2001 (66 FR 22019). No written comments or hearing requests were received.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information provided by KCPL in its application, the supplements thereto, and other information before the Commission, the NRC staff has determined that the proposed restructuring will not affect the qualifications of KCPL or WCNOG as holders of the license referenced above and that the indirect transfer of the license, to the extent effected by the

proposed restructuring of KCPL, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated June 1, 2001.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed restructuring of KCPL and indirect license transfer is approved, subject to the following conditions:

- (1) KCPL shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from KCPL to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of KCPL's consolidated net utility plant as recorded on KCPL's books of account.
- (2) Should the proposed restructuring of KCPL not be completed by June 1, 2002, this Order shall become null and void, provided, however, upon application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

For further details with respect to this action, see the license transfer application filed by KCPL dated February 20, 2001, and the supplemental submittals dated February 27, March 5, March 8, March 28, and May 4, 2001, from counsel for KCPL, and the safety evaluation dated June 1, 2001, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor),

Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this first day of June 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA /

Jon R. Johnson, Acting Director
Office of Nuclear Reactor Regulation

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO PROPOSED RESTRUCTURING OF
KANSAS CITY POWER & LIGHT COMPANY
WOLF CREEK GENERATING STATION
DOCKET NO. 50-482

1.0 INTRODUCTION

By application dated February 20, 2001, as supplemented by submittals dated February 27, March 6, March 8, March 28, and May 4, 2001, Kansas City Power & Light Company (KCPL) informed the NRC that KCPL is planning a corporate restructuring under which it will create a newly formed holding company as yet unnamed ("HoldingCo") above KCPL. Submitted pursuant to 10 CFR 50.80, the application requests NRC's consent to the indirect transfer to HoldingCo of the Wolf Creek Generating Station (WCGS) Operating License No. NPF-42 to the extent held by KCPL and of its interests in the Wolf Creek Nuclear Operating Company (WCNOC), the licensed operator of WCGS.

KCPL is a co-owner of both WCGS and WCNOC, with a 47% undivided interest in both. The other co-owners, Kansas Gas and Electric Company (47% undivided interest in both) and Kansas Electric Power Cooperative, Inc. (6% undivided interest in both), are not involved in the proposed restructuring. The license authorizes the co-owners of the facility to possess WCGS and WCNOC exclusively to operate WCGS.

As stated above, the applicant's request for NRC consent was filed pursuant to 10 CFR 50.80, which governs indirect, as well as direct, license transfers. The staff's analysis here addresses the indirect transfer of the WCGS license as held by KCPL that would occur in connection with the establishment of HoldingCo, and further, the indirect transfer of the license as held by WCNOC, to the extent that an indirect transfer of KCPL's interests in WCNOC to HoldingCo would constitute or result in an indirect transfer of the license as held by WCNOC to HoldingCo.

The application states that under the proposed restructuring, KCPL's stock will cease to be publicly traded and KCPL will become a wholly owned subsidiary of HoldingCo. There will be no change to KCPL's ownership interests in WCGS or WCNOC, and WCNOC will neither be changed nor be affected. KCPL will retain ownership of its regulated electric power generation, transmission, and distribution assets, including its interests in WCGS and WCNOC. No direct transfer of the license as now held by KCPL and WCNOC to HoldingCo is being proposed. WCNOC would remain as the managing agent for the joint owner licensees (KCPL, Kansas Gas and Electric Company, and Kansas Electric Power Cooperative, Inc.) of the facility and would continue to have exclusive responsibility for the management, operation, and maintenance of WCGS as the non-owner operator licensee. The application does not propose

a change in the rights, obligations, or interests of the licensees of WCGS. In addition, no physical changes to WCGS or operational changes are being proposed.

KCPL stated that it and HoldingCo will be able to respond more effectively to increased competition in the energy industry and pursue pending unregulated electric generation ventures as a result of the new corporate structure.

Information submitted to supplement the initial application, in the submittals dated February 27, March 6, March 8, March 28, and May 4, 2001, did not expand the scope of the application as noticed in the *Federal Register*.

2.0 FINANCIAL QUALIFICATIONS ANALYSIS

Pursuant to 10 CFR 50.33(f), an electric utility is exempt from demonstrating its financial qualifications, being presumed to be financially qualified to own or operate nuclear power plants. The application states that "Following the restructuring, KCPL will continue to generate, transmit and distribute electricity and to recover the costs of such activities through rates authorized by separate state regulatory authorities, the MPSC [Missouri Public Service Commission] and the KCC [Kansas Corporation Commission]. Therefore, KCPL will continue to meet the NRC's definition of 'electric utility' set forth in 10 CFR 50.2." Based on the foregoing, the staff concludes that pursuant to 10 CFR 50.33(f), KCPL is exempt from further financial qualifications review as an electric utility, and the proposed restructuring will not affect the financial qualifications of KCPL.

The application further states that the funding of WCNOC will be unaffected by reason of the proposed restructuring of KCPL. Under an operating agreement between the owners of WCGS and WCNOC, the operator of WCGS, costs associated with operating, maintaining, and decommissioning the facility are liabilities of the owners. The owners have established and maintain a working fund from which WCNOC makes payments for all costs to operate WCGS. Accordingly, in light of KCPL remaining an electric utility notwithstanding its proposed restructuring, the staff finds, to the extent relevant, that the proposed restructuring of KCPL will not affect the financial qualifications of WCNOC to properly operate and maintain WCGS.

However, in view of the NRC's concern that the restructuring of a licensee can lead to a diminution of assets necessary for the safe operation and decommissioning of the licensee's nuclear facility, the NRC's practice has been to condition related license transfer approvals upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that the licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facilities. The application contained a commitment by KCPL to provide such notification to the NRC. Thus, the following statement should be made a condition of the Order approving the application regarding the proposed restructuring:

KCPL shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from KCPL to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of

electric energy having a depreciated book value exceeding 10 percent (10%) of KCPL's consolidated net utility plant as recorded on KCPL's books of account.

3.0 DECOMMISSIONING FUNDING ASSURANCE

The application states that "KCPL currently provides financial assurance for the decommissioning of its pro rata ownership interest in Wolf Creek through the periodic funding of external sinking trust funds in which deposits are made at least annually. After the restructuring, KCPL will (i) remain an 'electric utility' within the meaning of 10 CFR 50.2, (ii) remain responsible for the decommissioning liabilities associated with its ownership interest in Wolf Creek and (iii) continue to fund its decommissioning trusts in accordance with its historical practices, NRC regulations and the requirements of the" Missouri Public Service Commission (MPSC) and the State Corporation Commission of the State of Kansas (KCC). In view of the foregoing, the staff concludes that the proposed restructuring will not affect KCPL's arrangements for decommissioning funding assurance for WCGS.

4.0 TECHNICAL QUALIFICATIONS

The application states that the proposed indirect transfer "will not result in any change in the operation of Wolf Creek, nor will it result in any changes in NPF-42's technical specifications and requirements. Further, there will be no change to either the management, organization or personnel of WCNOC, or the qualifications of its technical personnel responsible for operating and maintaining Wolf Creek as a result of the proposed indirect transfer of control." The proposed restructuring of KCPL will not change the status of WCNOC as the exclusive operating licensee of WCGS. Based on the foregoing, the staff concludes that the proposed restructuring will not affect the technical qualifications of WCNOC.

5.0 ANTITRUST REVIEW

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station Unit 1), CLI-99-19, 49 NRC 441(1999). Therefore, since the transfer application post-dates the issuance of the Wolf Creek operating license, no antitrust review is required or authorized.

6.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

KCPL and HoldingCo are or will be Missouri corporations. The application provides the names and addresses of the directors of both KCPL and HoldingCo, and of the principal officers of KCPL, and states that the principal officers and directors of KCPL and HoldingCo are citizens of the United States, or will be with respect to the principal officers of HoldingCo when named. HoldingCo's principal officers are to be selected from the ranks of current KCPL principal officers. The application asserts that following the proposed restructuring, neither HoldingCo nor KCPL will be owned, controlled or dominated by an alien, a foreign corporation or a foreign government. The staff has no reason to believe otherwise.

7.0 ENVIRONMENTAL CONSIDERATION

The application is for approval of an indirect transfer of an operating license issued by the NRC. Accordingly, the action involved meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

8.0 CONCLUSIONS

Based on the above, the NRC staff concludes that the proposed restructuring of KCPL by creation of a holding company will not affect the qualifications of KCPL or WCNOG as holders of the license for Wolf Creek, and that the indirect transfer of the license as held by KCPL or WCNOG, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition discussed above concerning significant asset transfers.

Principal Contributor: M. J. Davis

Date: June 1, 2001