



Otto L. Maynard
President and Chief Executive Officer

OCT 30 2001

WM 01-0039

U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D. C. 20555

References: 1. Letter WM 00-0026, dated June 27, 2000, from O. L. Maynard, WCNOC, to USNRC

2. Letter WM 01-0002, dated January 31, 2001, from O. L. Maynard, WCNOC, to USNRC

3. Letter WM 01-0019, dated May 2, 2001, from O. L. Maynard, WCNOC, to USNRC

Subject: Docket No. 50-482: Response to Request for Information Regarding the Application to Amend Appendix C to the Facility Operating License

Gentlemen:

Reference 1 submitted an application to amend Appendix C to Wolf Creek Generating Station, Unit No. 1, Facility Operating License No. NPF-42 in accordance with 10 CFR 50.90. References 2 and 3 provided additional information requested by Mr. Jack Donohew, NRC Project Manager. In an electronic mail message received May 16, 2001, and in a facsimile message received September 19, 2001, Mr. Donohew requested additional information concerning References 2 and 3. Specifically, it was requested that Wolf Creek Nuclear Operating Corporation (WCNOC) provide supplemental information concerning paragraph 7(a) of Appendix C, concerning statements made in Reference 2 regarding changes to paragraphs 1(g), 2(b) and 7(d) of Appendix C, and concerning the explanation contained in item E of Reference 2. It was also requested that WCNOC provide supplemental information regarding WCNOC's response to question 2 contained in Reference 3 and WCNOC's May 25, 2001 response to paragraph 1 of the electronic mail message. This letter provides the requested information.

The questions asked by Mr. Donohew and the WCNOC response to each question are shown in the attachment to this letter.

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There are no licensing commitments contained in this submittal. The supplemental information provided in this submittal does not impact the conclusions of the No Significant Hazards Consideration provided in Reference 1.

In accordance with 10 CFR 50.91, a copy of this correspondence is being provided to the appropriate Kansas State Official.

If you have any questions concerning this matter, please contact me at (620) 364-4000, or Mr. Tony Harris at (620) 364-4038.

Very truly yours,

A handwritten signature in black ink, appearing to read "Otto L. Maynard", with a stylized, flowing script.

Otto L. Maynard


OLM/rlr

Attachment

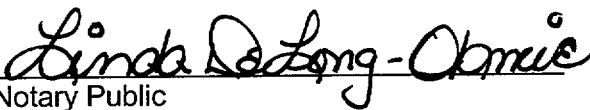
cc: V. L. Cooper (KDHE), w/a
J. N. Donohew (NRC), w/a
W. D. Johnson (NRC), w/a
E. W. Merschoff (NRC), w/a
Senior Resident Inspector (NRC), w/a

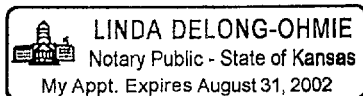
STATE OF KANSAS)
) SS
COUNTY OF COFFEY)

Otto L. Maynard, of lawful age, being first duly sworn upon oath says that he is President and Chief Executive Officer of Wolf Creek Nuclear Operating Corporation; that he has read the foregoing document and knows the contents thereof; that he has executed the same for and on behalf of said Corporation with full power and authority to do so; and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

By 
Otto L. Maynard
President and
Chief Executive Officer

SUBSCRIBED and sworn to before me this 30 day of October, 2001.


Notary Public



Expiration Date August 31, 2002

RESPONSE TO REQUEST FOR INFORMATION

Question 1:

In the email dated May 25, 2001, that discussed why KEPCo is the only "participating entity," the following was stated: (1) "the law requires a potential licensee to allow other potential 'participating entities' the opportunity to participate in ownership of, or output from, the licensed plant," and (2) "However, once the license is granted, that requirement no longer pertains." Provide the basis for the two statements. What "law" is being referred to? For item (2), it would seem that the existing license antitrust conditions (e.g., Condition 2(a)) would require such participation and, thus, these requirements would still pertain.

Response:

We wish to preface our answer by noting that, in our response on May 25, 2001, to the electronic mail received May 16, 2001, the above quoted statements were preceded with, "As I understand it, ..." The basis for those statements is as follows.

Section 105 of the Atomic Energy Act (15 USC §2135) directs the NRC to review applications for licenses to construct commercial nuclear power facilities to determine if the activities sought to be licensed would "create or maintain a situation inconsistent with the antitrust laws." Based upon the NRC's findings and the advice of the US Attorney General, the NRC has the authority under §105(c)(6) of the Act "to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate." In the case of *Alabama Power Company v. Nuclear Regulatory Commission*, 692 F.2d 1362 (11th Cir. 1982), *cert. den.*, 104 S. Ct. 72 (1983), the U.S. Court of Appeals upheld the Atomic Safety and Licensing Appeal Board's interpretation of §105(c)(6) of the Act that authorized it, among other things, to require Alabama Power to offer to a rural electric cooperative an ownership share of Alabama Power's Farley nuclear unit as a condition to the NRC's granting an operating license to Alabama Power. This decision of first impression also made it clear that under §105 of the Act, the NRC could deem a license applicant's prior commercial activities as potentially creating a situation inconsistent with the antitrust laws, thus justifying imposition of this type of license condition, even though the activities did not rise to a violation of the antitrust laws. The practical effect of §105 of the Act, as interpreted by the Alabama Power case, was to significantly increase the likelihood that a potential licensee would have to offer an ownership or output share of a proposed nuclear plant as a condition to its obtaining a permit to construct the plant.

The following is the basis for the statement that the requirement to offer an ownership or output share of a proposed plant no longer pertains after the license is granted. Section 105(c)(2) of the Act provides that §105(c)(1) (requiring the NRC to seek the Attorney General's advice on anticompetitive implications of granting a license to construct a facility) generally does not apply to an application to operate a facility. The only exception is when the NRC determines such a review to be advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the NRC in connection with the construction permit. The statement in question assumed that if the NRC imposed a condition that the licensee offer an ownership share in the proposed plant, the licensee made a bona fide offer which either was accepted or rejected, and therefore that the condition was satisfied. It seems clear that after a licensee obtains its operating license, it is not expected to continue offering to sell to other potential buyers an ownership

share in or output from the plant for the remaining life of the license. Wolf Creek Nuclear Operating Corporation (WCNOC) is not aware of any instance in which the NRC imposed such a requirement.

As to the antitrust conditions applicable to Kansas Gas and Electric (KGE), prior to issuance of the operating license the NRC imposed a condition that KGE offer an opportunity to participate in Wolf Creek to any entity in KGE's service territory. Kansas Electric Power Cooperative, Inc. (KEPCo) was the only qualifying entity to accept the offer, and the parties consummated a sale of a partial interest in Wolf Creek to KEPCo. This satisfied that license condition. The condition "no longer pertains" because KGE is not required to continue offering ownership interests in the plant to other entities. With respect to KEPCo, however, note that the proposed amended license conditions still require KGE to make available to KEPCo an undivided six percent ownership participation in the plant (see proposed revised paragraph 2 of the conditions).

Question 2:

What does the statement of "until the Wolf Creek Nuclear Unit 1 commences commercial operation or is finally abandoned" mean in Antitrust Paragraph 7(a)?

Response:

The quoted provision is akin to a "sunset provision." The original antitrust conditions were issued before Wolf Creek went into commercial operation. The parties anticipated that the plant either would be finished and go into commercial operation or it would not, in which case it would be abandoned. Paragraph 7(a) of the conditions required KGE to transmit certain preference power for KEC (now KEPCo) until the date of commercial operation or plant abandonment before commercial operation was achieved. The term "finally abandoned" did not mean abandonment after commercial operation.

Question 3:

In the letter of May 2, 2001, in the response to Question 2, it is stated the contractual buy-sell arrangements described in Paragraph 7(b) are no longer typical. Explain why this statement is true.

Response:

As stated in our May 2, 2001, letter in response to the Staff's Question 2, "When the parties agreed to the Antitrust Conditions in the 1970s, contractual buy-sell arrangements were a typical means for arranging for transmission of out-of-territory power from one utility to another. However, that type of arrangement no longer is typical." Buy-sell arrangements involving an intervening utility between the buyer and seller proved to be more cumbersome than having the intervening utility merely transmit or wheel the power from the selling utility to the buying utility. Because of convenience, the latter arrangement generally has replaced the former arrangement.

Question 4:

Explain the basis for (1) the last sentence in Paragraph 2(b), and (2) Paragraph 7(d), which are proposed to be deleted.

Response:

The basis for the above two deletions was the parties' desire to remove restrictions on KEPCo's use of Wolf Creek power and other power, and to allow KEPCo to use these power sources as it deems appropriate. Refer to the following excerpt from paragraph C of the Attachment to Reference 2. (Note: only a portion of original Paragraph 2(b) is proposed to be deleted.)

"Explanation: Paragraph 2(b) of the existing Condition limits KEPCo's use of power from Wolf Creek to first satisfying the power requirements of KEPCo's members in the Licensee's [KGE's] Service Area to the maximum extent consistent with KEPCo's other power supply obligations to KEPCo's members in Kansas. (The Conditions refer to "KEC"--Kansas Electric Cooperatives, Inc., which originally was a party in interest in these Conditions. As will be discussed below, KEPCo succeeded to KEC's interest in these Conditions.) The effect of this limitation was that KEPCo could not use or sell Wolf Creek power elsewhere until it first met all its members' power supply requirements in the Licensee's [KGE's] Service Area with Wolf Creek power. The Condition also required that no less than 42% of the total demand requirements of KEPCo members in Licensee's [KGE's] Service Area be satisfied by KEPCo's use of available Wolf Creek power. This condition was a further limitation on KEPCo's use of Wolf Creek power.

"Paragraph 7 of the Conditions addresses the Licensee's transmission of power (Wolf Creek power as well as power from other generating sources) for KEPCo. Current Paragraph 7(d) limits KEPCo's use of such transmitted power as follows. All transmitted preference power from the Southwest Power Administration, and no less than 40 megawatts of power transmitted from the Harry S. Truman Dam in Missouri, must be used to satisfy the power requirements of KEPCo's members in Licensee's Service Area (i.e., KEPCo cannot use or sell this power elsewhere).

"The parties now have agreed to remove from the Conditions these restrictions on KEPCo's use of Wolf Creek and other power."

Question 5:

[Regarding Item E of the attachment to the January 31, 2001, letter concerning Western Resources' and KGE's open access transmission tariffs on file with the Federal Energy Regulatory Commission]...provide us with a copy of the open access transmission filings or an explanation how to find the documents through the FERC home page. We are seeking confirmation that the four points listed at the end of Item E are in those filings.

Response:

Regarding Western Resources' and KGE's open access transmission tariff on file with the FERC, go to the following Internet address: <<http://www.wstnres.com/transco.html>>. Click on the link labeled "WR Transmission Tariff." Once that link opens, download either the Microsoft Word 95 version or the WordPerfect 6.0 version of the tariff.

To assist the Staff in its effort to find "confirmation that the four points listed at the end of Item E are in those filings" [i.e., the open access transmission tariff on file with FERC], WCNOG provides the following:

"1. Changing the definition of 'total demand requirements' and 'power requirements' in Paragraph 1(j)": See section 34.2 of the tariff. The change to paragraph 1(j) of the antitrust conditions changed the basis for determining KEPCo's power requirements from using integrated 15-minute non-coincidental demands to using integrated one-hour coincidental demands. The latter method is consistent with that used in the tariff.

"2. Allowing KGE either to transmit KEPCo power (as currently provided) or to *otherwise arrange for* the transmission of KEPCo power (as proposed) in Paragraphs 2(b) [proposed 2], 5, 6(b) and 7": See section 17 of the tariff which addresses procedures for *arranging* transmission service.

"3. Reflecting the change in measurement of units of transmitted electric energy from megawatthours ('mwhrs') to gigawatthours ('gWhrs') in Paragraph 5(c)": WCNOG cannot point to a specific provision in the tariff referencing energy units in terms of gigawatthours, and because of the long passage of time since this application was filed, WCNOG is now unable to find anyone who recalls why this change was made. The change is immaterial since the basic unit of measurement (i.e., watthours) is the same.

"4. Deleting the last part of Paragraph 7(c) [proposed 7(b)], which sets forth general terms for transmission sales to KEPCo." See the entire tariff. The parties intended that transmission service pricing under the old method of buy-sell contracts would be superseded by the use of other transmission service contracts or by the use of a standard open access tariff.