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March 1, 1999

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

Re: Docket No. 50-482
Request for the Transfer and Amendment of the Wolf Creek Generating Station Facility Operating License NPF-42 to Reflect Transfer of Ownership

To Whom It May Concern:

On February 18, 1999, we filed a Petition To Intervene and Request for Hearing on Behalf of Kansas Electric Power Cooperative, Inc., in the above matter.

It has come to our attention that two pages (43 and 46) are missing from the Direct Testimony of Gordon T.C. Taylor, Ph.D., that was attached to the petition. Enclosed are the missing two pages.

For the convenience of the Commission, we are this day sending a copy of the petition and the complete Taylor Testimony by electronic mail to the Secretary of the Commission.

Sincerely,

Randolph Lee Elliott

Randolph Lee Elliott

Attachment

cc: General Counsel, Nuclear Regulatory Commission
Jay E. Silberg, Esq.

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Q. Have you included the Kansas City, Kansas, Board of Public Utilities ("BPU") in the Westar-area market?

A. No. The BPU is a municipally-owned electric utility owning generation, transmission, and distribution. The BPU's transmission system is directly interconnected to Western Resources and to KCPL. The proposed merger would make the BPU dependent entirely on Westar for transmission access to any buyer or seller of generation. In its transmission area, the BPU operates its own control area. Thus, the BPU would not be a part of the Westar control area (transmission area). The Joint Applicants calculate import capability from electric utilities outside Westar transmission area, such as the BPU. Thus, as I have defined the Westar-area market, this market does not include the BPU.

Q. What would be the Westar-area load?

A. In his exhibits, Dr. Spann estimates that the Westar-area load would be 7,955 MW.35/

Q. Would a hypothetical monopolist owning all of the generating capacity within the Westar area be able to raise price profitably?

A. Yes. For example, the *Merger Guidelines* state that a 35% market share probably would be sufficient for a firm to profitably restrict output and raise price.36/ In the Westar transmission area, a hypothetical monopolist would have a 91% market share even if all of the import capability into the Westar area were used to import requirements power.37/ Thus, there is insufficient import capability for generating units located outside

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[35] Spann KCC-2, Exhibit ___ (RMS-13), page 2.

[36] *Merger Guidelines*, § 2.22.

[37] Westar area load of 7,955, minus 704 MW served by imports, equals 7,251 MW served by the hypothetical monopolist.

("MW"). For the denominator, I use total generating capacity in the Westar area plus import capability into the Westar area. I measure both generating capacity and import capability in megawatts.

Q. What would be the market shares in the Westar-area market?

A. As shown in my Exhibit ___ (GT-2), Westar-area generating capacity equals 10,035 MW, and simultaneous import capability equals 704 MW, a total of 10,739 MW. Westar would own 8,752 MW of this generating capacity.41/ Thus, Westar would have an 81% share of the relevant market.

Q. How does this market share figure compare with the *Merger Guidelines*' merger-created market share evaluation criteria?

A. The critical market-share threshold is 35%, so the proposed merger would create a firm that would have a market share greatly exceeding the critical threshold. As I partially quoted above, the *Merger Guidelines* explain that:

> Where products are relatively undifferentiated and capacity primarily distinguishes firms and shapes the nature of their competition, the merged firm may find it profitable unilaterally to raise price and suppress output. The merger provides the merged firm a larger base of sales on which to enjoy the resulting price rise and also eliminates a competitor to which customers otherwise would have diverted their sales. Where merging firms have a combined market share of at least thirty-five percent, merged firms may find it profitable to raise price and reduce output below the sum of their pre-merger outputs because the lost markups on the foregone sales may be outweighed by the resulting price increase on the merged base of sales.[42/]

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41 Direct testimony of Leslie D. Morgan, page 3, lines 5-6; and Direct Testimony of Frank L. Branca, page 3, line 6..

42 *Merger Guidelines*, § 2.22.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following persons in accordance with the notice at 64 Fed. Reg. 4726 and 10 C.F.R. § 2.1313:

Jay Silberg, Esq.
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General Counsel
United States Nuclear Regulatory Commission
Washington, DC 20555

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff.

Dated at Washington, D.C. this 1st day of March, 1999.

Randolph Lee Elliott

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