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DONALD P. IRWIN

File No. 36769.000005
Direct Dial No. (804) 788-8357

April 16, 1991

Joseph Rutberg, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

50-482

Kansas Gas and Electric Company
(Wolf Creek Generating Station):
NRC Operating License NPF-42

Dear Joe:

In connection with the Staff's continuing review of KG&E's request for permission to transfer its interest in the Wolf Creek POL in connection with its merger with KPL, I enclose the following documents relevant to settlement of issues relating to competition:

1. Kansas Corporation Commission, Order Accepting Stipulation and Agreement on Limited Issues (April 3, 1991) (accepting stipulation and agreement dated March 25, 1991);^{1/}
2. Settlement Agreement dated April 9, 1991, among The Kansas Power and Light Company, Kansas Gas and Electric Company, and Kansas Electric Power Cooperative, Inc.; and
3. Letter Agreement dated April 9, 1991 between Kansas City Power & Light Company and Kansas Gas and Electric Company.

^{1/} This Stipulation and Agreement was already forwarded to the Staff as part of the March 28, 1991 Request for Transfer of the Wolf Creek License.

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Joseph Rutberg, Esq.
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I hope that these will be of aid to the Staff in resolving competition-related issues associated with the transfer application and related license amendment. Please call me with any questions. KG&E is interested in resolving all outstanding issues successfully with the Staff at the earliest possible time.

Sincerely yours,

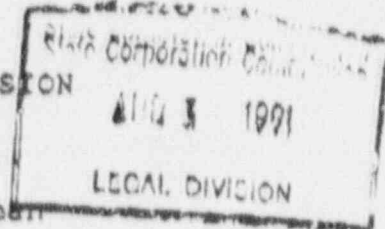


Donald P. Irwin
Counsel for Kansas Gas and
Electric Company

Enclosure

cc w/enclosure: Edwin J. Reis, Esq. (OGC)
Darrel A. Nash (NRR)
William M. Lambe (NRR)
Robert D. Martin (Region IV)
Douglas V. Pickett (NRR) ✓
Secretary of the Commission
Richard D. Terrill, Esq. (KG&E)
Martin J. Bregman, Esq. (KPL)
Samuel Cowley, Esq. (KCPL)
Harold L. Haun, Esq. (KEPCo)
Warren B. Wood, Esq. (WCNOC)

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS



Before Commissioners: Jim Robinson, Chairman
Keith R. Henley
Rachel C. Lipman

In the Matter of the Application of Kansas City
Power & Light Company for approval of its
acquisition of all classes of the capital stock
of Kansas Gas and Electric, to merge with Kansas
Gas and Electric, to incur debt obligations, and
to transfer Kansas Gas and Electric's retail
electric service authority and municipal
franchises.) Consolidated
Docket Nos.
172,745-U

In the Matter of the Joint Application of the
Kansas Power and Light Company, KCA Corporation,
and Kansas Gas and Electric Company for approval
of the acquisition of all classes of the capital
stock of Kansas Gas and Electric Company to
merge Kansas Gas and Electric into KCA
Corporation, to incur debt obligations, and to
transfer Kansas Gas and Electric Company's
retail electric service authority and municipal
franchises.) 174,155-U

ORDER ACCEPTING STIPULATION AND AGREEMENT ON LIMITED ISSUES

NOW, the above-captioned matter comes on for consideration and determination by the State Corporation Commission of the State of Kansas (Commission). Having considered its files and records and being duly advised of the premises, the Commission finds and concludes as follows:

1. On November 20, 1990, Kansas Power and Light Company (KPL) and Kansas Gas and Electric Company (KGE), (together referred to as Applicants) filed an application to obtain approval of their proposed merger. The Commission consolidated the application with the application filed by Kansas City Power and Light Company (KCPL), which previously requested approval of their proposed

merger with KGE, established a schedule for filing testimony and set the matter for hearing.

2. In its Order dated September 7, 1990, the Commission identified a wide range of potential issues presented by the applications. These issues included the issue of the merger's effect on competition: specifically the effect of the merger on competition in the Kansas power supply market and the effect on regional power supply and pooling arrangements, including transmission access and pricing. On December 13, 1990, KCPL withdrew its unsolicited tender offer to KGE shareholders and withdrew its application to merge with KGE. Subsequently, the KPL/KGE application was set for hearing on Monday, March 25, 1991.

3. On December 11, 1990, Applicants filed for approval of their proposed merger before the Federal Energy Regulatory Commission (FERC). On January 4, 1991, the Commission filed its petition to intervene and became a party in the FERC proceeding. On January 30, 1991, FERC set the matter for hearing and established a procedural schedule, under which intervenors will file testimony on May 1, 1991, in Docket No. EC91-2-000.

On February 27, 1991, FERC Administrative Law Judge (ALJ) Jon Lotis issued a Notice Concerning the Establishment of Conditions Committee, wherein ALJ Lotis directed the parties to establish a conditions committee for the purpose of discussing conditions that, "to the maximum extent possible, would come to grips with the operational concerns or reservations that parties may have" with the merged company. In effect, the purpose of the committee is to

give the parties the opportunity to develop conditions rather than have the ALJ or FERC impose conditions from among those proposed by the various parties. The conditions committee has held meetings on March 12, 20 and 28, 1991. Commission representatives have been present at each of these meetings.

4. In order to enable the Commission to make a determination regarding the effect of the merger on the bulk power market in which Kansas utilities participate, which would then provide an affirmative position for the Commission in the FERC proceeding, Applicants, staff, and the parties entered into a stipulation, accepted by the Commission, to phase the hearings in these proceedings. The Commission set the issues of (1) the effect of the merger on competition in the bulk power market in Kansas, and (2) the appropriate transmission policy for the merged company, for hearing on March 25, 1991. The hearing for all remaining issues in the case was scheduled to begin on April 11, 1991.

5. On March 25, 1991, the hearing in the above-captioned matter commenced before the Commission. At that time, staff and Applicants presented the Commission with a Stipulation and Agreement regarding general principles for the provision of transmission service by the merged company. Staff moved that the Stipulation and Agreement be made part of the record in the proceeding. The Commission accepted the Stipulation and Agreement for consideration and made it part of the record.

6. Staff indicated it met with KPL and KG&E, on numerous occasions, after the filing of testimony, to discuss and, where

possible, resolve their differences on competition and transmission-related issues, including (1) the effect of the merger on competition in the bulk power market in Kansas and (2) the terms and conditions that should be adopted to govern the use of the Joint Applicants' transmission facilities should the merger be approved.

As a result of these extensive discussions, the parties ultimately finalized and entered into a Stipulation and Agreement, attached to this order as Appendix A, on Monday, March 25, 1991. The Stipulation and Agreement established general principles for the provision of transmission service.

There were no objections to the Stipulation and Agreement, however, counsel for Kansas City Power and Light Company (KCPL) did reserve its right to file a response to the Stipulation and Agreement. Several other parties reserved their rights to express their views regarding the transmission issues in the FERC proceeding. On March 28, 1991, KCPL filed written comments on the Stipulation and Agreement. KCPL indicated it would raise its concerns regarding transmission conditions in the FERC proceeding and that, due to KGE's commitment in testimony to enter into a new lease of the Wolf Creek-LaCygne transmission line on similar terms and conditions as the initial lease, the line lease issue need not be addressed with regard to the Stipulation between Applicants and staff.

in actual support of KPL and KGE
7. The ~~successful implementation~~ of the principles set forth in the Stipulation and Agreement will serve as a condition to this

before the FERC
4

Commission's final approval of the proposed merger should the Commission, after review of all remaining issues, determine that the merger as proposed otherwise satisfies Kansas law.

8. After due consideration and review of the issues to which the parties have reached agreement, the Commission will accept and adopt the Stipulation and Agreement.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

1. The Stipulation and Agreement, attached as Appendix A, is hereby approved and incorporated by reference into this order.

2. ^{mutual support by KPL and KGBE of the} ~~The successful implementation of the principles set forth~~ ^{by FERC} in the Stipulation and Agreement, will serve as a condition to this Commission's final approval of the proposed merger should the Commission, after review of all remaining issues, determine that the merger as proposed otherwise satisfies Kansas law.

3. Any party may file a petition for reconsideration of this order within 15 days of service of the order. If this order is mailed, service is complete upon mailing, and three days may be added to the above time frame.

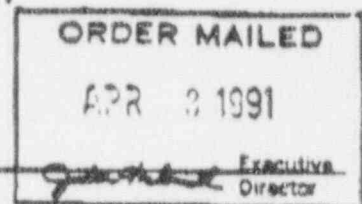
The Commission retains jurisdiction of the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Robinson, Chm.; Henley, Com.; Lipman, Com.

Dated: APR. 3 1991

Judith McConnell
Executive Director



SETTLEMENT AGREEMENT

With respect to the proposed merger of The Kansas Power and Light Company (KPL) and Kansas Gas and Electric Company (KG&E), KPL, KG&E, and the Kansas Electric Power Cooperative, Inc. (KEPCo) agree to the following:

1. KEPCo shall, in Federal Energy Regulatory Commission (FERC) Docket No. EC91-2-000, Kansas Corporation Commission (KCC) Consolidated Docket Nos. 172,745-U and 174,155-U and in any proceeding directly relating to the approval of the merger of KPL and KG&E (the Companies): (a) not oppose the merger; (b) not seek to have conditions imposed upon the merger or upon the merged company other than those agreed upon herein; (c) rescind all data requests propounded to KPL and KG&E in FERC Docket No. EC91-2-000 and excuse the parties from responding to such requests; (d) not be required to respond to data requests propounded to KEPCo by KPL and KG&E, and (e) waive its right to cross-examination of all witnesses of KPL and KG&E. However, KEPCo may file cross-answering or rebuttal testimony, briefs and engage in cross examination where the failure to do so may prejudice its rights vis-a-vis other parties, provided that, KEPCo will notify KPL and KG&E in advance of undertaking any such activities.
2. If benefits are extended to other similarly situated utilities either through settlement in this proceeding or as a condition of approval of the merger, such benefits shall also be offered to KEPCo.
3. This agreement is not intended to limit in any way KEPCo's rights in any other proceeding filed by KPL or KG&E except as provided in Paragraph 1 above.
4. KPL and KG&E will honor all the terms and conditions of their respective agreements with KEPCo except as herein modified or as those agreements in the future may be modified under their own terms or upon mutual agreement of the parties. KPL and KG&E will be bound by and honor all Wolf Creek Generating Station License Conditions.
5. KEPCo's currently contracted level of firm transmission service from KPL and KG&E for service across both systems will be provided by the Companies before additional firm transmission service shall be provided by the Companies.
6. Transmission service for the sale and delivery of power to the KEPCo delivery points within the areas served by KPL and KG&E will be provided on the same basis as the KPL and KG&E native load in the area. In planning and operations, including curtailment and restoration of service, KPL and KG&E will not differentiate between

KEPCo and native loads and KEPCo will participate in the planning of transmission and distribution facilities. Nothing in this Paragraph shall modify the provisions of Paragraph 8 herein as it is effective between KPL, KG&E, and KEPCo.

7. Transmission tariffs to be filed at FERC shall be consistent with Paragraphs 2 and 7 of the principles set out in the Stipulation and Agreement between KPL, KG&E, and the Staff of the KCC in Docket Nos. 172,745-U and 174,155-U, filed with the KCC on March 25, 1991, attached hereto, and will be based on embedded costs and include the option for customers to provide or purchase their own line losses, and will maintain recognition of cost differential for services utilizing different voltage levels.
8. Sections 4.1, Coordination, 4.4, Capability Limit, 4.5, New Points of Delivery, and 4.6, Unusual Circumstances, of Article IV, Delivery Points and Delivery Transmission Service, and Article VI, Coordinating Committee, in its entirety, of that certain Electric Sales, Transmission and Service Contract between KPL and KEPCo, dated November 23, 1987, will be adopted by KG&E.
9. The term of Article IX, Term and Effective Date, of that certain Electric Sales, Transmission and Service Contract between KPL and KEPCo, dated November 23, 1987, shall be modified to provide the same primary term as the term provided in Section 2.3 of the December 28, 1981, Transmission Agreement between Kansas Gas and Electric Company and Kansas Electric Power Cooperatives, Inc.
10. Subject to FERC approval, billing units for sales service from KG&E to KEPCo will be converted to reflect KEPCo's coincident peak responsibility with KG&E's net system load, provided that appropriate pricing adjustments will be made to maintain revenue neutrality for the service rendered.
11. The billing period for service from KPL to KEPCo will be adjusted to reflect the calendar month beginning at 12:01 a.m. on the first day of the month.
12. KPL, KG&E and KEPCo will coordinate load management planning and operations to achieve benefits of load management to the parties.
13. KPL and KG&E provide transmission service across the Companies' transmission facilities and transmission and sales service to some 156 KEPCo delivery points. Total services provided involve approximately 84 percent of KEPCo's power requirements. Therefore, the parties hereto agree to undertake a joint long range power supply and transmission study commencing as soon as is practical after the merger. The parties further agree to negotiate in good faith to achieve the optimum mutual benefits identified by the study. Such study will include but not be limited to: a) ownership of existing and future generating capacity, b) sale of power and energy between KPL, KG&E and KEPCo, c) necessary reserve capacity requirements commensurate with types of services rendered, d) non-firm and firm transmission requirements, e) necessary dispatch and coordination services to be provided by companies for KEPCo resources in areas served by the Companies or such other services as may be appropriate in the future, f) joint uses of power control communication systems, and

g) From other areas of common interest that may be appropriate to achieve the benefits to all parties and their respective customers. The costs of such study will be shared one-half by the Companies and one-half by KEPCo.

14. Amendments to the respective current agreements between KPL, KG&E and KEPCo will be completed as soon as is practical after the merger to implement the agreements stated herein.

All the above paragraphs, except Paragraphs 1 and 3, are subject to the closing of the merger and are not binding on the parties until the merger has closed.

DATED: APRIL 9, 1991

THE KANSAS POWER AND LIGHT
COMPANY

By William E. Brown
William E. Brown
President and Chief Executive
Officer - KPL Division

KANSAS ELECTRIC COOPERATIVES, INC.

By Charles W. Terrill
Charles W. Terrill
Executive Vice President and
Chief Executive Officer

KANSAS GAS AND ELECTRIC COMPANY

By Kent R. Brown
Kent R. Brown
Group Vice President,
Technical Services

KANSAS CITY POWER & LIGHT COMPANY

1320 BALTIMORE AVENUE

P. O. BOX #18878

KANSAS CITY, MISSOURI 64141-9679

J. MICHAEL EVANS
SENIOR VICE PRESIDENT
AND
CHIEF OPERATING OFFICER

April 9, 1991

Mr. Kent R. Brown
Group Vice President
Kansas Gas and Electric Company
120 E. First
P. O. Box 208
Wichita, Kansas 67201

Dear Mr. Brown:

As we have discussed in our recent phone conversation, KCPL is willing, in response to your recent proposals, to agree to the following terms to resolve the remaining issues regarding extension by Kansas Gas and Electric Company ("KGE") and Kansas City Power & Light Company ("KCPL") of the October 1, 1984 Lease Agreement ("Lease") of the Wolf Creek/LaCygne transmission line. We will agree to the following:

1. Both parties will treat the notice of intent not to renew the Lease upon the expiration of its five-year term in 1990, sent by KCPL on July 8, 1988, and the notice sent by KGE on May 2, 1990, setting a termination date of the Lease on August 2, 1990, as void, *ab initio*.
2. The parties agree, all other notices, attempted notices and regulatory filings to date notwithstanding, that the Lease is in full force and effect pursuant to its own terms of automatic renewal for successive one-year terms unless either party, at least two years prior to the expiration of the original term or, if renewed, at least two years prior to the expiration of the renewal term, gives written notice to the other party that the Lease term will not be renewed.
3. The parties agree that throughout the operating life of the Wolf Creek Generating Station neither party will give such a notice that the Lease will be canceled or otherwise not renewed, except for material breach by the other party or, for KCPL, except in the additional circumstance identified in the fifth paragraph of this letter agreement contained below.

Mr. Kent R. Brown
April 9, 1991
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4. The parties agree that while the Lease is in effect, KGE will be entitled to no other compensation for delivery to KCPL of KCPL's Wolf Creek entitlements. The parties further agree that during that same period KGE will not exercise its right contained in Paragraph 6 of the Lease to unilaterally make application to the Federal Energy Regulatory Commission for a change in the rental payment specified in Paragraph 5 of the Lease, unless that change in rental payment is based on KGE's actual costs in the Wolf Creek/LaCygne transmission line, including any costs incurred by KGE in the circumstances identified in Paragraph 13 of the Lease.

5. The parties agree that in the event KGE does exercise its right for a change in the rental payment under the terms of the preceding paragraph of this letter agreement, KCPL will be entitled, if it chooses, to exercise its right contained in Paragraph 4 of the Lease to cancel the Lease upon ninety (90) days written notice if it is able to secure an alternative transmission path to Wolf Creek, which could include construction of its own transmission line. KCPL agrees that in consideration of the extension of the Lease pursuant to the terms hereunder it will not exercise its right in that regard, except in the circumstance described in this paragraph, throughout the operating life of the Wolf Creek Generating Station.

6. The parties agree that the Lease and this letter agreement will be binding upon their respective successors and assigns. KGE represents that KGE has the authority under its existing merger agreement with the Kansas Power and Light Company ("KPL") to so bind KPL upon its merger with KGE (and the corporation which will emerge from that proposed merger), or if it does not have such authority, that the concurrence of KPL in the terms of the Lease, and this letter agreement, will be obtained in writing within 5 days of the execution of the letter agreement by the parties.

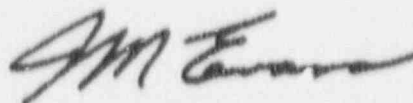
7. KCPL agrees that upon the execution of this letter agreement (including any written concurrence by KPL required pursuant to the preceding paragraph), and upon the filing of this letter agreement by KGE for the necessary approvals from the regulatory agency having jurisdiction (which application would include KCPL's certificate of concurrence), KCPL will promptly withdraw its intervention in FERC Docket No. EC91-2-000 and will no longer participate in addressing any issue regarding the transmission services to be provided by KGE and/or KPL upon the consummation of their proposed merger which may arise in KCC Docket No. 174,155-U or in MPSC Docket No. EM-91-213. By remaining as intervenor in KCC Docket No. 174,155-U and in MPSC Docket No. EM-91-213 it is not KCPL's desire or intent to oppose KGE and KPL's merger application, but to protect its interests on any (non-transmission) issue affecting it as a utility which would be interconnected with the merged company which may arise during the hearings in those proceedings.

Mr. Kent R. Brown
April 9, 1991
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8. This letter agreement will be effective and binding between KCPL and KGE even in the circumstance that the proposed merger between KGE and KPL is not consummated for whatever reason.


If you concur that the foregoing represents our agreement as to the continued effectiveness of the Lease, please sign where indicated below and return a signed copy to me.

Very truly yours,



JME:cb

The above and foregoing letter agreement approved by
Kansas Gas and Electric Company
this 9th day of April, 1991.

By 
Kent R. Brown
Group Vice President



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

4-18-91

Jim McKnight -

Please place this in the
PDR under the Wolf Creek
docket (50-482)

Thanks

Doug Pickett