

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Director, Office of Nuclear Reactor Regulation

In the Matter of
KANSAS GAS AND ELECTRIC COMPANY
(Wolf Creek Generating Station)

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) Docket No. STN 50-482
) License No. NPF-42
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APPLICATION UNDER EXIGENT CIRCUMSTANCES TO EXTEND
EFFECTIVE PERIOD OF NRC APPROVAL OF TRANSFER OF
AND AMENDMENT TO OPERATING LICENSE NO. NPF-42
IN CONNECTION WITH MERGER OF KANSAS GAS AND ELECTRIC COMPANY
WITH KANSAS POWER AND LIGHT COMPANY

This is an application under exigent circumstances for Commission approval, before March 31, 1992, of a two-month extension of the Commission's previous approval of the transfer, with conforming Amendment No. 53 to NPF-42, of Kansas Gas and Electric Company's (KG&E) 47% possession-only interest in the Wolf Creek Generating Station. This transfer is being made to a wholly-owned subsidiary (KPL Sub) of The Kansas Power and Light Company (KPL) in connection with the imminent merger of KG&E into KPL Sub. The Commission's approval, given November 19, 1991, was to become effective upon completion of the merger, provided the merger was completed on or before March 31, 1992.

For reasons beyond the control of the parties and explained below, it now appears that the merger may not be completed before

March 31, 1992. Failure to extend the approval "sunset" will imperil the entire merger. No substantive modification is being made to the previous request, which was already approved by the Commission in Amendment No. 53 to Operating License NPF-42. Because of the unavoidable time pressure -- less than two calendar weeks remain before March 31 -- Commission action must take place in accordance with its "exigent circumstances" procedures, set out in 10 CFR § 50.91(a)(6).

The parties believe that an extension of two calendar months -- through May 31, 1992 -- will be sufficient.

I. BACKGROUND

On November 19, 1991, the Commission issued Amendment No. 53 to Facility Operating License NPF-42. That Amendment contained the NRC's consent to the transfer of Kansas Gas and Electric Company's 47% possession-only interest in the Wolf Creek Generating Station to a wholly-owned subsidiary of The Kansas Power and Light Company^{1/} in connection with the pending merger of KG&E with KPL, and approved certain conforming revisions to NPF-42 and its technical specifications. The Commission's

^{1/} As noted and approved in Amendment 53, KG&E (including its interest in Wolf Creek) will be merged with and into a wholly owned subsidiary of KPL, which will immediately be renamed Kansas Gas and Electric Company.

approval was made effective upon the merger, provided that the merger be completed on or before March 31, 1992.^{2/}

All necessary approvals for the merger have been obtained and the parties desire to complete it as soon as possible. However, as the NRC has been informed, an anomalous sound occurred on February 28 during restart of Wolf Creek after a forced outage that began on February 19, 1992. Prudent evaluation of that sound and implementation of corrective measures, if any are needed, may necessitate a brief delay in completion of the merger beyond March 31.

Because of this possibility, KG&E, with the concurrence of its prospective merger partner KPL, requests that the Commission act before March 31, 1992, to extend the "sunset date" for its approval of the merger for two months, to May 31, 1992. No revision to the text of either Amendment No. 53 nor of the accompanying technical specification changes is needed. However, given the relationship between the approval window and the substance of Amendment 53, expedited Commission action is being requested pursuant to the "exigent circumstances" provisions of 10 C.F.R. § 50.91(a)(6).

^{2/} The "sunset provision" in the Commission's approval is set out in the cover letter to the amendment, and in the Federal Register notice publishing it, 56 Fed. Reg. 59964 (November 26, 1991). Neither the text of the amendment nor that of the conforming tech spec changes contains this limitation, however.

II. EXIGENT CIRCUMSTANCES DEMONSTRATION

The Commission's regulations, at 10 C.F.R. § 50.91(a)(6), permit the Commission to shorten its usual licensing notice procedures where it finds

that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit a Federal Register notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations

1. Exigent Circumstances Exist

A noise that has not yet been fully assessed occurred on February 28 during Wolf Creek plant restart. It was immediately reported to the NRC, and site, regional and NRR personnel have been working with plant operators and management to evaluate it ever since. All indications are that it is not of major safety significance to future plant operation, that it is susceptible to ready remediation, and that consensus on its cause and remedy will be available within the very near future. However, as of today, March 20, that process has not yet been completed.

The merger of KG&E into KPL Sub cannot prudently be consummated until both parties are satisfied with the status of Wolf Creek.

The NRC's approval for the merger, issued November 19, 1991, is effective through March 31, 1992. Until the occurrence of the noise on February 28, there was no factor known which would have prevented the scheduled completion of the merger on March 16. As

the NRC has been advised,^{2/} the closing date has been postponed beyond March 16 pending completion of the analysis. The parties to the merger desire to complete it as soon as possible following resolution of the cause of the noise. However, the managements of KG&E and KPL will not allow the pendency of the merger to pressure the Wolf Creek technical staff to reach an artificial or premature end to their work. Thus, it cannot be stated with certainty that the process will be completed before March 31.

Thus NRC action before March 31 to extend the effective period of its approval of the KG&E-KPL merger is essential to avoid imperiling the entire merger. Usual NRC notice procedures relating to licensing actions contemplate several steps, including Federal Register publication with at least a 30-day prior notice period, which would make timely action impossible. See 10 C.F.R. § 50.91(a)(2)(ii).

KG&E and KPL believe that the problem leading to this request can be assessed, and the merger completed, with a two-month extension, i.e., to and including May 31, 1992.

The NRC has been continuously informed of developments relating to the sound ever since its occurrence. NRC legal and management personnel were informed officially, by telephone and letter, on March 12, as soon as KG&E and KPL had jointly concluded that the sound had the potential to prevent closing

^{2/} Letter, Donald P. Irwin (Hunton & Williams/KG&E) to Lawrence J. Chandler, Esq. (NRC), March 12, 1992.

from occurring before March 31. This application is being made following further interim consultations with NRC staff.

Thus, as required by § 50.91(a)(6), exigent circumstances exist, in that the licensee and the Commission must act quickly with respect to a legitimate licensing action, and time does not permit following the Commission's normal prior notice procedures.

2. The Licensee Could not have Avoided the Exigency

Section 50.91(a)(6)(vi) requires that the Commission "require the licensee to explain the exigency and why the licensee cannot avoid it," and states that the Commission will rely on its normal notice procedures "if it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and take advantage of this procedure."

As described above, the sound which has postponed completion of the KG&E-KPL merger occurred without either warning or negligence on the part of Wolf Creek Nuclear Operating Corporation, at an extremely sensitive time in relation to completion of the merger. The licensee has worked around the clock to assess the situation and remedy it as soon as possible consistent with safe and prudent operation. They have also kept the Commission diligently informed of the situation from the start. It would have been premature to request the Commission to extend the March 31 "sunset provision" on its earlier approval any earlier than has been done, since the need to do so could not have been foreseen with sufficient certainty before now. There

is no basis to conclude anything other than that the licensee has used its concerted efforts to avoid the very exigency which now requires quick action on its part and that of the Commission.^{4/}

3. There is No Significant Hazards Consideration
Associated with the Requested Extension

This request is for an extension of two calendar months -- to and including May 31, 1992 -- of the NRC's approval of the transfer of KG&E's 47% possession-only interest in the Wolf Creek plant to a wholly owned subsidiary of KPL upon consummation of the pending merger between KG&E and KPL, and of the associated license Amendment, No. 53. KG&E is not seeking any change whatever in the substance of the Commission's approvals of (a) the license transfer, (b) Amendment 53, or (c) the technical specifications promulgated with it. KG&E still requests that the amendment take place upon the consummation of its merger with KPL Sub.

The NRC found in its initial consideration of this request that there was no significant hazards consideration associated

^{4/} The request for Commission approval of transfer of KG&E's interest in the Wolf Creek license and the accompanying license amendment submitted by KG&E did not propose any "sunset provision." The March 31, 1992 date was included at the instance of the Staff, in order to provide an administrative checkpoint on the proposed merger. There has never been any suggestion that the March 31 date could not be extended for good cause.

with it. 56 Fed. Reg. 59964.^{2/} There is none associated with this request for an extension of its self-imposed "sunset date."

The sound which occurred on February 28 does not inject any "significant hazards consideration" into this request. The operation of Wolf Creek is governed by the effective version of NPF-43 and associated technical specifications, and the plant will continue to operate in accordance with them. Remedy of the problem associated with the sound will be in accordance with that license. The approval reflected in Amendment 53 relates solely to ownership of an undivided property interest in the plant, and not to its operation at all.

4. Notice to the Public

Section 50.91(a)(6)(i) and subsequent provisions set in place a series of procedures for the Commission to use under exigent circumstances, in order to provide the general public with the best possible notice. This section comments briefly on them.

The remaining time frame for action does not permit the two-week public notice contemplated by § 50.91(6)(i)(A); a shorter notice period expiring before March 31, combined with expedited publication of the notice, would be possible.

Section 50.91(a)(6)(i)(B) contemplates use of local media to circulate information on the request. Local print media outlets

^{2/} The Commission had also published a proposed NSH finding in the Federal Register, 56 FR 22026 (May 13, 1991), and received neither comment nor request for a hearing.

in KG&E's and KPL's service territories are set out in the original request to the Commission for the license transfer and license amendment. Those listings remain valid, to the best of KG&E's and KPL's knowledge. KG&E and KPL personnel will cooperate with the Commission in distributing any necessary notice to local media outlets.

KG&E and KPL would be interested in being informed, consistent with § 50.91(a)(6)(iii), of any public comments on the notice of this request circulated by the NRC.

III. REQUEST FOR RELIEF

For the reasons stated above, KG&E, for itself and for its prospective merger partner KPL, requests that the Commission act under its exigent circumstances procedures and approve, before March 31, 1992, a two-month extension, through May 31, 1992, of the effectiveness of its previous approval of the transfer of KG&E's interest in the Wolf Creek operating license to KPL Sub upon the occurrence of the merger between KG&E and KPL Sub.

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

KENT R. BROWN, being first duly sworn, on his oath, states that he is Group Vice President of Kansas Gas and Electric Company, that he is authorized on the part of said Corporation to sign and file with the Nuclear Regulatory Commission this application; that he has read all of the statements contained in such application; and that all such statements made and matters set forth herein are true and correct to the best of his knowledge, information and belief.

Kent R. Brown
Kent R. Brown

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for the State and County above named, this 20th day of March, 1992.

Hazel E. Sutherland
Notary Public

My Appointment Expires:

May 21, 1995

