

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000  
FAX: (202) 393-5760  
<http://www.skadden.com>

FIRM/AFFILIATE OFFICES

BOSTON  
CHICAGO  
HOUSTON  
LOS ANGELES  
NEWARK  
NEW YORK  
PALO ALTO  
RESTON  
SAN FRANCISCO  
WILMINGTON  
BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
PARIS  
SINGAPORE  
SYDNEY  
TOKYO  
TORONTO

August 23, 2001

10 CFR § 50.80

BY HAND DELIVERY

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

**Subject: Docket No. 50-482: Informational Filing with respect to February 20, 2001, KCPL Application for Consent to Indirect Transfer of Control of Operating License NPF-42 for the Wolf Creek Generating Station**

Dear Sir/Madam:

On June 1, 2001, the Commission issued an order approving KCPL's application dated February 20, 2001 (as supplemented by letters from counsel for KCPL dated February 27, March 5, March 8, March 28 and May 4, 2001) for the indirect transfer of Facility Operating License NPF-42 for the Wolf Creek Generating Station. In the Application, KCPL committed to provide Commission staff with certain supplemental information as it became available, including: (i) the name of the HoldingCo; (ii) the names of HoldingCo's directors; and (iii) informational copies of its related filings at the Missouri Public Service Commission ("MPSC") and the Kansas Corporation Commission ("KCC") for state approval of the same corporate restructuring. Copies of KCPL's filings with the MPSC and KCC were provided to Commission staff on March 5, 2001.

The name of HoldingCo and the identity of its Board of Directors have each recently been finalized. Further, each of the MPSC and KCC have recently approved KCPL's state requests for approval of the corporate restructuring on July 31, 2001, and August 7, 2001, respectively. On behalf of KCPL, please note that the name of HoldingCo shall be Great Plains Energy ("GPE"). In addition, please find attached (i) a list of the names of the directors of each of KCPL and GPE (Attachment 1) and (ii) for your further information, copies of the MPSC order (Attachment 2) and KCC order (Attachment 3) approving of KCPL's corporate restructuring.

Abol

If you have any questions regarding this submittal or require additional information, please contact me at (202) 371-7507 or William Hollaway at (202) 371-7819.

Sincerely,



Robert W. Warnement

Attachments:

1. List of KCPL and GPE Board of Directors
2. MPSC Order Approving Stipulation and Agreement and Closing Case in the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure (Docket No. 01-KCPE-708-MIS)
3. KCC Order Approving Unanimous Stipulation and Agreement and Authorizing Reorganization in the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure (Case No. EM-2001-464)

cc: E. W. Merschoff, Regional Administrator, NRC Region IV  
F. L. Brush, Sr. Resident Inspector, Wolf Creek Generating Station  
J. N. Donohew, NRR Project Manager, Wolf Creek Generating Station  
William J. Riggins, KCPL – General Counsel (w/o Attachments)

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000

FAX: (202) 393-5760

<http://www.skadden.com>

FIRM/AFFILIATE OFFICES

BOSTON  
CHICAGO  
HOUSTON  
LOS ANGELES  
NEWARK  
NEW YORK  
PALO ALTO  
RESTON  
SAN FRANCISCO  
WILMINGTON

BEIJING  
BRUSSELS  
FRANKFURT  
HONG KONG  
LONDON  
MOSCOW  
PARIS  
SINGAPORE  
SYDNEY  
TOKYO  
TORONTO

August 23, 2001

10 CFR § 50.80

BY HAND DELIVERY

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

**Subject: Docket No. 50-482: Informational Filing with respect to February 20, 2001, KCPL Application for Consent to Indirect Transfer of Control of Operating License NPF-42 for the Wolf Creek Generating Station**

Dear Sir/Madam:

On June 1, 2001, the Commission issued an order approving KCPL's application dated February 20, 2001 (as supplemented by letters from counsel for KCPL dated February 27, March 5, March 8, March 28 and May 4, 2001) for the indirect transfer of Facility Operating License NPF-42 for the Wolf Creek Generating Station. In the Application, KCPL committed to provide Commission staff with certain supplemental information as it became available, including: (i) the name of the HoldingCo; (ii) the names of HoldingCo's directors; and (iii) informational copies of its related filings at the Missouri Public Service Commission ("MPSC") and the Kansas Corporation Commission ("KCC") for state approval of the same corporate restructuring. Copies of KCPL's filings with the MPSC and KCC were provided to Commission staff on March 5, 2001.

The name of HoldingCo and the identity of its Board of Directors have each recently been finalized. Further, each of the MPSC and KCC have recently approved KCPL's state requests for approval of the corporate restructuring on July 31, 2001, and August 7, 2001, respectively. On behalf of KCPL, please note that the name of HoldingCo shall be Great Plains Energy ("GPE"). In addition, please find attached (i) a list of the names of the directors of each of KCPL and GPE (Attachment 1) and (ii) for your further information, copies of the MPSC order (Attachment 2) and KCC order (Attachment 3) approving of KCPL's corporate restructuring.

If you have any questions regarding this submittal or require additional information, please contact me at (202) 371-7507 or William Hollaway at (202) 371-7819.

Sincerely,



Robert W. Warnement

Attachments:

1. List of KCPL and GPE Board of Directors
2. MPSC Order Approving Stipulation and Agreement and Closing Case in the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure (Docket No. 01-KCPE-708-MIS)
3. KCC Order Approving Unanimous Stipulation and Agreement and Authorizing Reorganization in the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure (Case No. EM-2001-464)

cc: E. W. Merschoff, Regional Administrator, NRC Region IV  
F. L. Brush, Sr. Resident Inspector, Wolf Creek Generating Station  
J. N. Donohew, NRR Project Manager, Wolf Creek Generating Station  
William J. Riggins, KCPL – General Counsel (w/o Attachments)

bcc: Robert S. Wood, NRC – NRR/DRIP/RGEB (w/o Attachments)  
Susan L. Uttal, NRC – OGC (w/o Attachments)  
Steven R. Hom, NRC – OGC (w/o Attachments)  
Mike Neave (w/o Attachments)  
Len Rawicz (w/o Attachments)  
Bill Hollaway (w/o Attachments)  
Mason Emmett (w/o Attachments)  
Bill Weeden (w/o Attachments)  
Jerry Pfeffer (w/o Attachments)

# **ATTACHMENT 1**

## **LIST OF KCPL AND GPE BOARDS OF DIRECTORS**

**BOARD OF DIRECTORS**

FOR EACH OF

**GREAT PLAINS ENERGY**

AND

**KANSAS CITY POWER & LIGHT COMPANY**

**1201 Walnut  
Kansas City, MO 64106-2124**

(as of August 1, 2001)

*Mr. Bernard J. Beaudoin*  
Chairman of the Board, President  
and Chief Executive Officer  
Kansas City Power & Light Company  
1201 Walnut  
Kansas City, MO 64141

*Mr. Luis A. Jimenez*  
Vice President and Chief  
Strategy Officer  
Pitney Bowes  
World Headquarters  
MSC 65-04  
1 Elmcroft Road  
Stamford, CT 06926-0700

*Dr. David L. Bodde*  
Charles N. Kimball  
Professor of Technology & Innovation  
Henry W Bloch School of Business &  
Public Administration  
University of Missouri-Kansas City  
5110 Cherry Street, Room 321  
Kansas City, MO 64110-2499

*Mr. William C. Nelson*  
6521 Wenonga Terrace  
Mission Hills, KS 66208

*Mr. Mark A. Ernst*  
H&R Block  
4400 Main Street  
Kansas City, MO 64111

*Dr. Linda H. Talbott*  
President  
Talbott & Associates  
P.O. Box 22322  
Kansas City, MO 64113-0322

*Mr. W. Thomas Grant II*  
Chairman of the Board and Chief  
Executive Officer  
LabOne Inc.  
10101 Renner Blvd.  
Lenexa, KS 66219

*Mr. Robert H. West*  
Chairman of the Board  
Saint Lukes – Shawnee Mission  
Health System  
4401 Wornall Road  
Kansas City, MO 64

*Mr. William K. Hall*  
Chairman and Chief Executive Officer  
Procyon Technologies Inc.  
200 West Adams, Suite 2905  
Chicago, IL 60606

# **ATTACHMENT 2**

## **MPSC ORDER**



**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:            John Wine, Chair  
   Cynthia L. Claus  
   Brian J. Moline

In the Matter of the Application of Kansas    )  
City Power & Light Company for an        )     Docket No. 01-KCPE-708-MIS  
Order Authorizing Its Plan to Reorganize    )  
Itself Into a Holding Company Structure.    )

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT  
AND AUTHORIZING REORGANIZATION**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas ("Commission") upon Stipulation and Agreement ("Stipulation") filed by Commission Staff ("Staff"), Kansas City Power & Light Company ("KCPL") and the Citizens' Utility Ratepayer Board ("CURB"). For the reasons discussed below, the Commission approves KCPL's application subject to the terms of the Stipulation and additional conditions imposed herein.

**I. BACKGROUND**

1.     On February 26, 2001, KCPL filed its Application, in accordance with Kansas law and the Public Utility Holding Company Act of 1935 (15 U.S.C. §79 *et seq.*) ("PUHCA"), seeking Commission approval of its proposal for reorganization into a registered holding company structure. KCPL asserts this change is necessary because of increased competition in capital and energy markets, which has required traditional utilities to diversify their business operations and, in particular, to invest in businesses offering higher growth opportunities for its shareholders. KCPL states that the proposed reorganization will facilitate the efforts of its affiliated competitive businesses to access more markets and will allow them to pursue business opportunities for its shareholders with greater flexibility and speed. Application, at 6. KCPL did not identify any ratepayer benefits that would result from its proposed reorganization of its corporate structure.

2. KCPL states in its Application that the proposed reorganization will not involve the transfer of any of its assets, including generating assets, from KCPL to affiliates and that KCPL will remain a vertically integrated utility subject to the jurisdiction of the Commission. KCPL pledges that the Commission will continue to have the statutory authority to ensure that KCPL's retail electric customers receive electric service that is safe, reliable and reasonably priced. Application, p. 7.

3. The Application, at p. 11, contains the following representations:

KCPL is a Missouri corporation in good standing in all respects, with its principal office and place of business located at 1201 Walnut, Kansas City, Missouri 64106. KCPL is engaged in the generation, transmission, distribution, and sale of electric energy and power in areas of eastern Kansas certificated to it by the Commission. KCPL is an "electric public utility" and "public utility" as those terms are defined in K.S.A. 66-101a and K.S.A. 66-104, respectively, and, as such, is subject to the jurisdiction of the Commission as provided by law. KCPL provides electric service to approximately 183,400 residential customers and approximately 23,000 commercial and industrial customers in Kansas. . .

4. The Application, at p. 1, contains a summary of the restructuring plan, which describes the current KCPL as a vertically integrated electric utility company. The summary provides the following general description of the expected holding company structure after the proposed changes:

After the reorganization, a new holding company ("HoldCo") will be the sole owner of three subsidiary companies, all of which already exist - i.e. KCPL, KLT, Inc. ("KLT") and Great Plains Power ("GPP"). (Footnote 1 omitted.) KCPL will remain a vertically integrated electric utility subject to this Commission's jurisdiction and will not transfer any of its generating assets as a part of this proposed restructuring plan. KLT will continue to invest in competitive, high-growth businesses. GPP will pursue opportunities in the competitive wholesale generation market.

KCPL further describes the restructuring process to include several intermediary steps. These steps, which include the formation of a new subsidiary, "NewCo", with which KCPL will merge with KCPL being the surviving corporation, are generally described on page three of the Application.

5. In its Application, KCPL requests the Commission to issue its Order:
  - a. Granting KCPL the authority to restructure and reorganize itself as proposed;
  - b. Granting KCPL the authority to merge with NewCo with KCPL being the surviving corporation;
  - c. Granting KCPL the authority to convert its stock to HoldCo stock, as described in the Application; and
  - d. Granting such other relief as may be deemed necessary and appropriate to accomplish the purposes of the Application and to consummate the restructuring transaction, as described in the Application.

## II. DISCUSSION

6. On April 30, 2001, a unanimous Stipulation was filed with the Commission. This Stipulation was signed by representatives of KCPL as well as the two other parties to this docket, Staff and CURB. No other party has sought to intervene and there have been no objections to this Stipulation.

7. A duly-noticed hearing was held Monday, June 25, 2001. KCPL appeared by Bernie J. Beaudoin, Chairman, President and Chief Executive Officer; Chris Giles, Director of Regulatory Affairs; William G. Riggins, General Counsel; and Glenda L. Cafer, Attorney-At-Law. Staff appeared by Joseph White, Director of Utilities; Larry Holloway, Chief of Energy Operations; Adam Gatewood, Financial Analyst; and W. Thomas Stratton, Jr., Assistant General Counsel. CURB appeared by Walker Hendrix, Consumer Counsel.

8. At the June 25 hearing, counsel for Staff and KCPL informed the Commission of agreed corrections and changes to the Stipulation, which the parties requested the Commission to adopt as part of its order approving the Stipulation, as follows:

- a. Deletion of the following words from the end of paragraph II. F.12, at page 13 of the Stipulation: "...and the Commission has found that no detriment to the public would result from the transaction."
- b. At paragraph II.B.5 at page 8 of the Stipulation, last sentence, change the page number from 3 to 5 and the section number from 3.1.2 to 4.1.2. In the following paragraph, paragraph 6, at the end of the last sentence, add as part of that last sentence, after "Commission": "..., with the exception that on page 3, section 3.1.2 of the Stipulation, the reference to 'twenty (20) days after the contract is filed' shall be amended to 'thirty (30) days after the contract is filed.'"

These changes, as set forth in KCPL Exhibit No. 1, were intended to reform the Contingent Jurisdictional Stipulation that was incorporated into the Stipulation presented to the Commission at the hearing.

9. At the June 25 hearing, following the recitation of desired corrections or changes, KCPL witnesses Beaudoin and Giles testified in support of the Stipulation. Staff witness Holloway generally summarized the Stipulation and described Staff's reasons for supporting its approval, as more specifically described in his June 22, 2001 Memorandum to the Commissioners ("Memorandum", attached hereto as Exhibit 1), which was distributed to the Commission and parties

in advance of the hearing. The witnesses also answered questions regarding the Stipulation that were posed by the Commission and CURB.

10. Upon the suggestion of Commissioner Moline made during the course of the hearing, one additional change to the Contingent Jurisdictional Stipulation, Exhibit 5 to the Application, was agreed by the parties, as follows: Insert "Commission Staff ('Staff')" prior to "the Citizen's (sic) Utility..." at §1.2, page 1 of 6. It was acknowledged that the omission in the original was an oversight. A similar omission occurs in the Stipulation at paragraph II. B. 4, first line, which could be addressed by the inclusion of "Staff" after "Commission."

11. At the conclusion of the hearing, the matter of approval of the Stipulation was taken under advisement by the Commission. Subsequently, Staff was informed by KCPL regarding an amendment to a stipulation, similar to the Stipulation pending here, that is pending approval by the Missouri Public Service Commission. Among the amendments to that stipulation is the following additional language: "Any purchase supply agreement between KCPL and GPP and/or any GPE affiliate will be submitted by KCPL for review and approval by the Commission."

### **III. FINDINGS AND CONCLUSIONS**

12. The Commission has full power, authority and jurisdiction to supervise and control electric public utilities conducting operations within the state of Kansas, and is further empowered to do all things necessary and convenient for the exercise of such authority and jurisdiction. K.S.A. 66-101 *et seq.* In addition, as applied to the regulation of electric public utilities, the provisions of K.S.A. 66-101 *et seq.* and all grants of power, authority and jurisdiction therein made to the Commission shall be liberally construed, and all incidental powers necessary to carry the act into

effect are expressly granted to and conferred upon the Commission. K.S.A. 66-101g; *Grindsted Products, Inc. v. Kansas City Power & Light Co.*, 21 Kan.App.2d 435, 443, 901 P.2d 20 (1995).

13. An electric public utility is required under K.S.A. 66-101b to carry out the mandate of its certificate to provide efficient and sufficient service at just and reasonable rates. The Commission has the jurisdiction and authority to investigate, on its own initiative, any act or practice of an electric public utility that affects its ability to provide efficient and sufficient service at just and reasonable rates, and to substitute such act or practice after investigation and hearing under K.S.A. 2000 Supp. 66-101d. Further, the Commission has the clear authority under K.S.A. 66-101h to “examine and inspect the condition of each electric public utility” and the “manner of its conduct and its management with reference to the public safety and convenience.” Finally, the Commission has jurisdiction to investigate any transaction that constitutes a “contract or agreement with reference to or affecting” the certificate of convenience pursuant to K.S.A. 2000 Supp. 66-136.

14. KCPL is a certificated electric public utility subject to the jurisdiction of the Commission, which has jurisdiction to hear and make determinations regarding this Application pursuant to K.S.A. 66-101b, 66-101d and 66-136. The Commission finds that notice of the Commission's June 25, 2001 hearing regarding the proposed Stipulation was proper.

15. The Commission further finds that KCPL presented itself, at the time of filing of its Application, as a financially sound utility, with no history of failed unregulated investments. KCPL has been forthright with the Commission by filing its Application seeking the Commission's approval of its proposed reorganization and in its conduct since the filing of the Application. KCPL has offered many assurances of its intention to remain focused on its central mission of providing efficient and sufficient service to its ratepayers at just and reasonable rates. These assurances have

been provided in KCPL's Application, by its agreements incorporated in the Stipulation, and by its witnesses and counsel at the hearing, and this Order is based primarily on these assurances. Further, under KCPL's reorganization plan, the capital structure of the utility business will change; however, no currently-held assets, and in particular, no generation assets, will be transferred from the utility business to any affiliate and the financial integrity of the utility business does not appear to be compromised. Finally under KCPL's reorganization plan, the Commission has continuing jurisdiction over KCPL's retail rates, including review of KCPL's decisions to enter into purchased power agreements or build new generation and affiliate transactions covered by the Kansas Holding Company Act, K.S.A. 66-1401 *et seq.* Because of the Commission's continuing jurisdiction, the protections provided in the Stipulation and the conditions set forth herein are sufficient to ensure that the financial viability of the utility business will remain in place. The Commission recognizes that there is a risk of federal preemption related to the approval of KCPL's reorganization plan. The Commission believes that the risk is diminished for two reasons: (i) current prevailing law supports state jurisdiction over affiliate transactions and (ii) KCPL's commitment to not challenge the Commission's jurisdiction.

16. As stated in Larry W. Holloway's June 22, 2001 Memorandum to the Commission, the Stipulation:

- a. Contains provisions that assure the Staff and CURB will have, on an ongoing basis, access to information;
- b. Contains several provisions relating to reporting of important financial information;

- c. Contains numerous provisions intended to ensure the ongoing financial integrity of the electric utility;
- d. Requires the filing of a Cost Allocation Manual, containing negotiated modifications and enhancements, by a set time; and
- e. Contains the current KCPL management's promise to not challenge the Commission's jurisdiction to review affiliate contracts and provides a procedural framework for that review.

17. With the treatment of affiliate contracts required to be filed at the SEC, the Commission finds that another correction is necessary to the Contingent Jurisdictional Stipulation. The first sentence at paragraph 3.1.2 should be corrected by inserting the "or upon" after the word "during" and before the phrase "the expiration of the Review Period."

18. The Commission finds that KCPL should be allowed to restructure and reorganize in the manner proposed in the Stipulation, subject to conditions and limitations set forth in this Order. The Commission recognizes that KCPL's restructuring proposal is responsive to federal restructuring initiatives and that it is appropriate to allow KCPL to proceed with its reorganization in that context. The Commission notes that KCPL will need to meet the public interest standard, including an affirmative showing of ratepayer benefits, for any subsequent merger or reorganization. The Commission also remains concerned about affiliate transactions, (*See* Docket No. 01-WERE-949-GIE), and the Commission finds that additional conditions beyond the assurances provided in the Stipulation are necessary and appropriate to ensure that KCPL's ability to provide retail electric service under its certificate of convenience will not be adversely affected by the reorganization. These additional conditions are set forth below in the order paragraphs.



19. Accordingly, the Commission concludes that the Stipulation, which has been unanimously approved by the parties, and the Application should be approved, subject to the additional conditions set forth in this Order.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED:**

(A) The Application of KCPL, to the extent that it serves as the basis for the Stipulation and this Order approving the Stipulation, is hereby approved, subject to the conditions set forth in this Order.

(B) The Stipulation of the parties is approved, as modified as follows:

1. Deletion of the following words from the end of paragraph II.F.12 of the Stipulation: "...and the Commission has found that no detriment to the public would result from the transaction."
2. Change the page number from 3 to 5 in the Stipulation, paragraph II.B.5, last sentence, and the section number from 3.1.2 to 4.1.2. In the following paragraph, paragraph 6, at the end of the last sentence, add as part of that last sentence, after "Commission": "..., with the exception that on page 3, section 3.1.2 of the Stipulation, the reference to 'twenty (20) days after the contract is filed' shall be amended to 'thirty (30) days after the contract is filed.'"
3. Insert "Commission Staff ("Staff")" prior to "the Citizen's (sic) Utility..." at §1.2 of the Contingent Jurisdictional Stipulation, Exhibit 5 to the Application. Insert "Staff" after "Commission" at Stipulation, paragraph II. B. 4, first line.

4. Insert “or upon” in the first sentence of paragraph 3.1.2 of the Contingent Jurisdictional Stipulation, Exhibit 5 to the Application, after the word “during” and before the phrase “expiration of the Review Period.”
5. To the extent that the Stipulation or Contingent Jurisdictional Stipulation provides for information, documents or other data to be furnished to the Commission or Staff, such information, documents or data shall be filed with the Commission and a copy served upon the Commission’s Director of Utilities. Such information, documents or data shall be marked and identified with the docket number of the present proceeding.
6. The parties must file with the Commission reformed copies of the Stipulation and Contingent Jurisdictional Stipulation, reflecting the modifications and corrections noted herein, within 18 days from the date of this order.

(C) The following additional requirements are ordered for KCPL and any successor entity:

1. The ability of KCPL to provide efficient and sufficient service at just and reasonable rates shall not be diminished. In particular, KCPL and its affiliates shall not enter into transactions that negatively impact on the regulated electric company’s ability to provide efficient and sufficient service at just and reasonable rates, or that could impair the financial viability of the regulated electric company. KCPL shall maintain service quality and reliability at acceptable levels and continue to comply with the Commission’s quality of service regulations. KCPL shall maintain employee safety at acceptable levels.

2. All purchase supply agreements between KCPL and GPP and/or any GPE affiliate must be submitted in advance by KCPL for review and approval by the Commission before becoming effective. The Commission's authority to apply "prudence" and "used and useful" test to determine whether costs of particular wholesale purchase agreements should be included in retail rates shall remain unaffected.
3. While the Commission is not requiring in this Order that all affiliate contracts be filed with the Commission for its prior approval before the effective date of such contracts, the Commission retains the right to reconsider whether additional filing requirements are necessary to protect the public interest. The Commission previously announced in Docket No. 01-WERE-436-RTS that a generic investigation will be opened to consider affiliate transactions. KCPL shall comply with any rules or regulations that result from that investigation. All SEC filings shall be filed with the Commission.
4. After the consummation of the transactions contemplated in the Stipulation, KCPL, the surviving corporation of KCPL's merger with NewCo, shall remain a wholly-owned subsidiary of HoldCo. No capital stock of KCPL shall be offered or sold to any third party without prior Commission approval.
5. After the consummation of the transactions contemplated in the Stipulation, KCPL shall not transfer any assets to any third party outside the ordinary course of business without prior Commission approval.

(D) The following requests for authorization by KCPL are approved, subject to the foregoing conditions, to the extent such authorizations are necessitated by the Stipulation:

1. KCPL is granted the authority to restructure and reorganize itself;
2. KCPL is granted the authority to merge with NewCo, with KCPL being the surviving corporation;
3. KCPL is granted the authority to convert its stock to HoldCo stock, as described in the Application; and
4. KCPL is granted such other relief as may be deemed necessary and appropriate to consummate the restructuring transaction(s), as described in the Stipulation.

(E) Any party may file a Petition for Reconsideration of this Order within fifteen days of the date this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame.

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

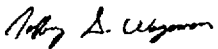
**BY THE COMMISSION IT IS SO ORDERED.**

Wine, Chr.; Claus, Com.; Moline, Com.

Dated: AUG 07 2001

ORDER MAILED

AUG 08 2001

 Executive Director

JEFFREY S. WAGAMAN  
EXECUTIVE DIRECTOR

**ATTACHMENT 3**

**KCC ORDER**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY**

July 31, 2001

**CASE NO: EM-2001-464**

**Office of the Public Counsel**  
P.O. Box 7800  
Jefferson City, MO 65102

**William G. Riggins/Gerald A. Reynolds**  
Kansas City Power & Light Company  
1201 Walnut Street  
Kansas City, MO 64106

**Duncan Kincheloe**  
Attorney at Law  
2407 W. Ash  
Columbia, MO 65203

**Paul A. Boudreau/Gary Duffy**  
Brydon, Swearingen & England PC  
PO Box 456  
Jefferson City, MO 65102-0456

**Lelia Y. Dietiker**  
Assistant County Counselor  
Jackson County Courthouse  
415 E. 12<sup>th</sup> Street, Suite 200  
Kansas City, MO 64106-2704

**General Counsel**  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**James M. Fischer**  
James M. Fischer P.C.  
101 Madison Street, Suite 400  
Jefferson City, MO 65101

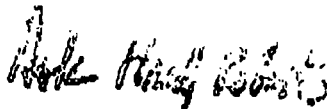
**Mark W. Comley**  
Newman Comley & Ruth PC  
601 Monroe Street, Suite 301  
Jefferson City, MO 65102

**William B. Moore**  
City Counselor  
111 E. Maple  
Independence, MO 64050

**Lisa C. Langeneckert**  
Missouri Energy Group  
720 Olive Street, Suite 2400  
St. Louis, MO 63101-2396

**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

Sincerely,



**Dale Hardy Roberts**  
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 31st day  
of July, 2001.

In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure. )  
 ) Case No. EM-2001-464  
 )

**ORDER APPROVING STIPULATION AND AGREEMENT  
AND CLOSING CASE**

The Missouri Public Service Commission is authorized to approve the corporate restructuring of public utilities where there is no detriment to the public interest. Kansas City Power & Light Company (KCPL) seeks permission to restructure itself and no party has objected. This order grants KCPL's application.

**Procedural History:**

On February 28, 2001, KCPL filed its application for approval of its plan to reorganize itself as a holding company. KCPL, which is an electric corporation and a regulated public utility, owns certain subsidiaries which are not regulated entities. KCPL proposes to reorganize so that a holding company will own KCPL and also each of its present subsidiaries.

On February 28, 2001, the Commission issued its Order Directing Notice, setting March 20 as the deadline for any interested person to file an application for leave to intervene. The Missouri Joint Municipal Electric Utility Commission and the City of Kansas City, Missouri, filed their applications to intervene on March 20. UtiliCorp United,

Inc., filed its application on March 21. The City of Independence, Missouri, filed its application on March 23. Jackson County, Missouri, filed its application on March 26. The Empire District Electric Company filed its application on March 28. KCPL filed its response on March 29, and the Missouri Energy Group filed its application on March 30.

KCPL, in its response filed on March 29, expressed no objection to the applications filed by the Missouri Joint Municipal Electric Utility Commission, Independence, Kansas City, Jackson County, Empire, and UtiliCorp. KCPL never responded to Missouri Energy Group's application. All of the applications to intervene met the requirements of Commission Rule 4 CSR 240-2.075 and were granted on April 23. Also on that date, the Commission set a prehearing conference for May 1 and directed the parties to submit a proposed procedural schedule by May 8.

The prehearing conference was held as scheduled. At the prehearing conference, the parties advised the presiding officer that they had that day filed a Stipulation and Agreement resolving all of the issues in the case. The Stipulation and Agreement was, however, not unanimous. It was executed only by KCPL, Staff and the Office of the Public Counsel. The parties requested that the requirement that a proposed procedural schedule be filed by May 8 be suspended pending resolution of the Stipulation and Agreement. The Staff of the Commission also promised to file suggestions in support of the Stipulation and Agreement. Also on May 1, the Commission issued its order directing Staff to file either suggestions in support of the Stipulation and Agreement or a proposed procedural schedule by May 11.

On May 7, intervenors the City of Kansas City and Jackson County advised the Commission that they neither supported nor opposed the Stipulation and Agreement and



did not request a hearing. Also on May 7, Intervenor UtiliCorp advised the Commission that it neither supported nor opposed the Stipulation and Agreement and waived its right to a hearing. UtiliCorp stated that this waiver was conditioned upon certain considerations, including: that the Stipulation and Agreement is a compromise settlement between the signatories thereof; that it does not bind any non-signatory; that UtiliCorp does not concur nor acquiesce in the Stipulation and Agreement; that no general regulatory policy or precedent is thereby established by the Commission for application to any other regulated entity; and that UtiliCorp reserves the right to take a different or adverse position in any other case. Intervenor Empire District filed an identical waiver on May 7. The remaining parties filed nothing.

On May 11, Staff filed its response to the Commission's Order Directing Filing of May 1. This response took the form of suggestions in support of the Stipulation and Agreement.

On June 21, 2001, the Commission discussed this case at its regularly-scheduled Agenda meeting and determined to convene an on-the-record presentation to permit clarification of certain concerns. The Commission issued its Order and Notice on June 25, set the on-the-record presentation for July 5, and advised the parties that

[a]mong the topics that will be addressed are (1) the purpose and effect of the conditional waivers of the right to a hearing filed by two intervenors, and (2) whether it is in the public interest to permit Kansas City Power & Light Company (KCPL) to meet a portion of its future generation requirements via a purchase power agreement with Great Plains Power (GPP), an unregulated, competitive affiliate.<sup>1</sup>

---

<sup>1</sup> GPP is presently a subsidiary and not an affiliate, but will become a affiliate if the restructuring proposed by KCPL is approved.

The Commission convened the on-the-record presentation as scheduled on July 5, 2001. All of the parties appeared except for the Missouri Joint Municipal Electric Utility Commission, which was excused. The Commissioners directed extensive questioning to KCPL.

On July 6, 2001, Great Plains Power, Inc. (GPP), entered its appearance in this case. On July 9, 2001, KCPL filed its First Amended Stipulation and Agreement. The First Amended Stipulation and Agreement differs from the original Stipulation and Agreement in only two respects: it adds GPP as a signatory and Section 9, relating to Combustion Turbines, has been largely rewritten. Like the original Stipulation and Agreement, the First Amended Stipulation and Agreement is not unanimous. It was executed only by KCPL, GPE, GPP, Staff, and the Office of the Public Counsel.

Also on July 9, Staff filed its Suggestions in Support of the First Amended Stipulation and Agreement. On July 10, 2001, KCPL filed its Motion for Expedited Treatment of the Approval of the First Amended Stipulation and Agreement. Therein, counsel for KCPL advises the Commission that he has been authorized by all parties except UtiliCorp and Empire District Electric Company to state on their behalf "that they will not request any hearings in this matter." KCPL prays that the Commission will act on its application no later than July 12, 2001, so that the proposed transaction may close on August 8, 2001, and public trading in the stocks of GPE may commence on August 9, 2001. Finally, on July 10, intervenors Empire District Electric Company and UtiliCorp United, Inc., filed their pleadings stating that they have no objection to either the Motion for Expedited Treatment of the Approval of the First Amended Stipulation and Agreement or

the First Amended Stipulation and Agreement. Both intervenors advised the Commission that they did not seek a hearing in this matter.<sup>2</sup>

On July 12, 2001, the Commission again considered this matter at its regularly scheduled Agenda session. The Commission again determined to set an on-the-record presentation, which it did by Order and Notice issued on July 17. KCPL also moved for a second on-the-record presentation on July 13.

The second on-the-record presentation took place as scheduled on July 27, 2001.

### **Findings of Fact:**

KCPL is a vertically integrated public utility which generates, transmits and sells electrical energy at retail in the state of Missouri to some 230,000 residential customers and some 30,100 commercial customers. KCPL is regulated by this Commission, as well as by agencies of the state of Kansas and of the United States.

KCPL seeks approval from the Commission to restructure itself as a holding company with a single tier of operating companies. At the conclusion of the proposed reorganization, KCPL will be one of those operating companies. KCPL will still be a vertically integrated public utility. The reorganization will have no effect on the tax revenues of any Missouri political subdivision.

KCPL owns two subsidiaries, KLT, Inc. (KLT), and GPP. KLT invests in competitive, high-growth businesses, including telecommunications, gas production and

---

<sup>2</sup>At the hearing on July 5, counsel for intervenors Empire and UtiliCorp repeatedly assured the Commission on behalf of his clients that they had no objection to the Stipulation and Agreement.

development and energy services. GPP is a competitive, wholesale generator. KLT and GPP are not regulated by this Commission. GPP is, however, subject to regulation by the Federal Energy Regulatory Commission (FERC).

Specifically, KCPL proposes to form a new subsidiary, Great Plains Energy (GPE), which will in turn form a subsidiary, NewCo. KCPL will then merge into NewCo, with KCPL surviving. Each share of KCPL's preferred and common stock will convert into a share of GPE's preferred or common stock. KCPL will then pass ownership of its two other subsidiaries to GPE by dividend. The result will be a publicly traded holding company, GPE, with three wholly owned subsidiaries: KCPL, KTL and GPP. KCPL will not transfer any of its generating assets in the course of the proposed reorganization and its services to its Missouri customers will be unaffected. In addition to approval by this Commission, KCPL seeks approval from the Kansas Corporations Commission, FERC, the Nuclear Regulatory Commission (NRC), and the Federal Communications Commission (FCC). Additionally, KCPL will file a registration with the Securities and Exchange Commission (SEC).

Upon completion of the proposed restructuring and registration with the SEC, GPE will become subject to the Public Utility Holding Company Act (PUHCA). The First Amended Stipulation and Agreement contains contractual provisions that reflect many of the protections contained in PUHCA. Thus, should PUHCA be repealed, these protections will still be imposed on GPE, GPP and KCPL by the First Amended Stipulation and Agreement. PUHCA favors the use of service companies by affiliated corporations and KCPL anticipates that a service company subsidiary will eventually be formed by GPE. The

allocation of costs between KCPL and its affiliates will be governed by a Cost Allocation Manual (CAM).

Both of the Stipulations and Agreements filed in this case contain the same conditions imposed in Cases Nos. EM-97-515 and EM-96-149, which involved Missouri utilities which became subsidiaries of registered holding companies. These conditions are intended to protect the Missouri customers of such utilities. The conditions relate to such matters as access to books and records, affiliate transactions, and the creation of a service company. The Stipulations and Agreements also contain provisions relating to surveillance reports, the CAM, transaction costs, and combustion turbines, among others.

In January of 2001, KCPL entered into a binding memorandum of understanding with General Electric Company under which KCPL may lease or purchase up to five combustion turbine generation units. Each of these units has a generating capacity of 77 MW. These turbines will not be completed until 2003. If the proposed reorganization is approved, KCPL anticipates seeking Commission approval to transfer its rights under the memorandum of understanding to GPP. KCPL anticipates that it will need an additional 231 MW of generation capacity in the next three years, that is, the generating capacity of three of the five combustion turbines. KCPL currently purchases less than five percent of its energy needs on the open market.

If the proposed reorganization is approved, KCPL may enter into a cost-based purchase supply agreement with GPP to acquire this additional capacity. Such a cost-based purchase supply agreement would provide power at a cost to ratepayers identical to costs under traditional cost-of-service based rates. The cost of power generated by a combustion turbine owned by GPP would be essentially identical to the cost

of power generated by a combustion turbine owned directly by KCPL. KCPL, GPE and GPP further stipulated, at the on-the-record presentation on July 5, 2001, that they will not form a marketing subsidiary. KCPL also stated that its principal purpose in seeking to reorganize is to position itself for an anticipated deregulated environment in the future.

At the second on-the-record presentation, GPP stated that it is also exploring the possibility of building a 500 MW to 900 MW coal-fired, base-load generating plant near Weston Bend on the Missouri River. If built, this plant would generate power for sale on the open market. KCPL does not presently anticipate any need to use the output of this plant to meet the needs of its customers. This project is presently in a very early stage and the proposed plant may never be built at all.

Staff supports the First Amended Stipulation and Agreement and recommends that the Commission approve it. Staff states, in particular, that it contains additional and more specific protections relating to financial matters than the Stipulations and Agreements approved in Cases Nos. EM-97-515 and EM-96-149. Staff states its position that the proposed restructuring is not detrimental to the public interest. The Office of the Public Counsel is a signatory of the Stipulation and Agreement and also supports it. At both hearings, the Office of the Public Counsel stated that the Stipulation and Agreement contains adequate safeguards for ratepayers.

### **Conclusions of Law:**

Based on the facts found herein, the Commission makes the following conclusions of law:

## **Jurisdiction**

KCPL is an "electrical corporation" and a "public utility" within the intendments of Section 386.020, (15) and (42), RSMo 2000, and is thus subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 2000.

No party has requested a hearing in this case. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.<sup>3</sup> Since no one has requested a hearing, the Commission may determine this case based on the pleadings.

## **The Non-unanimous Stipulation and Agreement**

Pursuant to Commission rule, a non-unanimous stipulation and agreement may be deemed unanimous if no party requests a hearing within seven days of its filing.<sup>4</sup> A failure to timely request a hearing constitutes full waiver of the right to a hearing.<sup>5</sup> With respect to the First Amended Stipulation and Agreement at issue here, all of the parties have either signed it or affirmatively acted to notify the Commission that they would not request a hearing. Therefore, the Commission will deem the First Amended Stipulation and Agreement filed in this matter to be unanimous.

## **Mergers, Transfers and Stock Ownership**

KCPL seeks authority to reorganize as described above under Section 393.190, RSMo 2000. That statute provides that a Missouri electric corporation may not transfer or

---

<sup>3</sup> State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

<sup>4</sup> Commission Rule 4 CSR 240-2.115, 1 and 3.

<sup>5</sup> Commission Rule 4 CSR 240-2.115.3.

encumber any part of its system without Commission approval.<sup>6</sup> Likewise, it may not merge with another corporation without permission from the Commission.<sup>7</sup> A regulated utility cannot lawfully acquire another regulated utility without Commission approval.<sup>8</sup> Commission approval is also necessary for any corporation other than a utility to own more than ten percent of the total capital stock of a public utility.<sup>9</sup>

The Missouri Supreme Court, in *State ex rel. City of St. Louis v. Public Service Commission*, stated that, in considering such cases, the Commission must be mindful that the right to transfer or encumber property is an important incident of the ownership thereof and that a property owner should be allowed to do such things unless it would be detrimental to the public.<sup>10</sup> The same standard is applied to proposed mergers and reorganizations. The Missouri Court of Appeals has stated that "[t]he obvious purpose of [Section 393.190] is to ensure the continuation of adequate service to the public served by the utility."<sup>11</sup> This is the standard by which public detriment is to be measured in such cases. The Commission notes that it is unwilling to deny private, investor-owned companies an important incident of the ownership of property unless there is compelling evidence on the record showing that a public detriment is likely to occur.<sup>12</sup>

---

<sup>6</sup> Section 393.190.1, RSMo 2000.

<sup>7</sup> *Id.*

<sup>8</sup> Section 393.190.2, RSMo 2000.

<sup>9</sup> *Id.*

<sup>10</sup> *State ex rel. City of St. Louis v. Public Service Commission*, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (Mo. banc 1934).

<sup>11</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

<sup>12</sup> *In the Matter of the Joint Application of Missouri Gas Company et al.*, 3 Mo.P.S.C.3d 216, 221 (1984).



The Commission reads *State ex rel. City of St. Louis v. Public Service Commission* to require a direct and present public detriment.<sup>13</sup> For example, where the sale of all or part of a utility's system was at issue, the Commission considered such factors as the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the asset safely and efficiently.<sup>14</sup> In the present case, there is no evidence of a direct and present public detriment in the record and the parties believe that none is posed by the proposed reorganization. If the reorganization is approved, KCPL will still be a vertically-integrated public utility subject to regulation by this Commission; it will still serve the same customers with the same system pursuant to its existing tariffs.

Based on its consideration of the record before it, the Commission concludes that the proposed reorganization is not detrimental to the public interest and should be approved. Specifically, this includes approval for KCPL to merge with NewCo, approval for GPE to own more than ten percent of KCPL, and approval, to the extent that approval is needed, for KCPL to transfer ownership of KTL and GPP to GPE.

### **Issuance of Stocks and Bonds**

KCPL also seeks authority under Section 393.200, RSMo 2000. That section provides that a public utility may not issue stocks, bonds, or other evidence of indebtedness without prior Commission approval.<sup>15</sup> Commission approval is conditioned on a finding that

---

<sup>13</sup> *Supra*, 335 Mo. at 459, 73 S.W.2d at 400.

<sup>14</sup> See *In the Matter of the Joint Application of Missouri Gas Energy et al.*, Case No. GM-94-252 (Report and Order, issued October 12, 1994) 3 Mo.P.S.C.3d 216, 220.

<sup>15</sup> Section 393.200.1, RSMo 2000.

the money thereby acquired is reasonably required for the purposes set out in the Commission's order.<sup>16</sup> Permissible purposes include property acquisition, construction and maintenance, improvements, and the retirement of obligations.<sup>17</sup>

Based on its consideration of the record before it, the Commission concludes that the stock transactions proposed by KCPL are reasonably necessary for the purpose of the proposed reorganization and should be approved.

### **Dividends**

KCPL also seeks authority under Section 392.210, RSMo 2000. That statute provides in pertinent part that an electrical corporation may not declare a dividend without Commission authority.<sup>18</sup> Based on the record before it, the Commission determines that KCPL's proposal to transfer KTL and GPP to GPE via a dividend is reasonable and that the same will not have a detrimental effect on the public. Therefore, the Commission should approve the proposed dividend.

### **Reorganization**

KCPL also seeks authority under Section 393.250, RSMo 2000. That statute provides that the reorganization of an electrical corporation is subject to Commission "supervision and control" and may not be had without authorization from the Commission.<sup>19</sup>

---

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 393.210, RSMo 2000.

<sup>19</sup> Section 393.250.1, RSMo 2000.

It also empowers the Commission to set the capitalization amount of the reorganized entity.<sup>20</sup>

Based on its consideration of the record before it, the Commission concludes that the proposed reorganization is reasonable and is not a detriment to the public interest. Therefore, it should be approved.

**IT IS THEREFORE ORDERED:**

1. That the Motion for Expedited Treatment of the Approval of the First Amended Stipulation and Agreement, filed by Kansas City Power & Light Company on July 10, 2001, is granted.

2. That the application filed by Kansas City Power & Light Company on February 26, 2001, is approved.

3. That the First Amended Stipulation and Agreement, filed on July 9, 2001, is deemed to be unanimous. Further, the Commission finds the First Amended Stipulation and Agreement to be reasonable and approves the same. Kansas City Power & Light Company, Great Plains Energy, Inc., and Great Plains Power, Inc., are directed to comply with its provisions.

4. That Kansas City Power & Light Company is authorized to reorganize as described in its application referred to in Ordered Paragraph 2, above, subject to the conditions contained in the First Amended Stipulation and Agreement referred to in Ordered Paragraph 3, above. Kansas City Power & Light Company is authorized to take all necessary and lawful actions to effect and consummate the reorganization herein approved.

---

<sup>20</sup> Section 393.250, 2 and 3, RSMo 2000.

5. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the properties, transactions and expenditures herein involved. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions and expenditures herein involved in a later proceeding.

6. That this order shall be effective on August 10, 2001.

7. That this case may be closed on August 11, 2001.

**BY THE COMMISSION**



**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

(SEAL)

Simmons, Ch., Murray, and Lumpe,  
CC., concur.

Gaw, C., dissents, with dissenting  
opinion to follow.

Thompson, Deputy Chief Regulatory Law Judge

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and  
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,**

**Missouri, this 31<sup>st</sup> day of July 2001.**

*Dale Hardy Roberts*

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

