

September 6, 2002

Mr. Otto L. Maynard
President and Chief Executive Officer
Wolf Creek Nuclear Operating Corporation
Post Office Box 411
Burlington, KA 66839

SUBJECT: WOLF CREEK GENERATING STATION - ISSUANCE OF AMENDMENT
REGARDING ANTITRUST LICENSE CONDITIONS (TAC NO. MA9379)

Dear Mr. Maynard:

The Commission has issued the enclosed Amendment No. 147 to Facility Operating License No. NPF-42 for the Wolf Creek Generating Station (WCGS). The amendment consists of changes to Appendix C, "Antitrust Conditions," of Facility Operating License No. NPF-42 in response to your application dated June 27, 2000 (WM 00-0026), as supplemented by letters dated January 31 (WM 01-0002), May 2 (WM 01-0019), and October 30 (WM 01-0039), 2001, and May 10, 2002 (WM 02-0021).

The amendment revises the antitrust conditions for Kansas Gas and Electric Company in Appendix C. The revisions would (1) add a statement that the antitrust conditions do not restrict the rights of Kansas Electric Power Cooperative, Inc. (KEPCo) or the duties of Kansas Gas and Electric Company (KGE), that may exist beyond, and are not inconsistent with, the antitrust conditions, (2) define "KGE members in licensee's service area" in the appendix to include all KEPCo members with facilities in Western Resources' and KGE's combined service area, (3) delete license conditions restricting KEPCo's use of the power from WCGS, (4) remove out-of-date conditions, and (5) update conditions to be consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission open access transmission tariff. Western Resources is the parent company of KGE.

Although the amendment as described above is being approved and a revised Appendix C to the operating license is being issued, the NRC staff has also concluded, as discussed in conference calls with your staff, and after careful review of your application and the four supplemental letters, that your request to delete the entirety of Antitrust Condition 2(a) cannot be approved. A copy of the Notice of Partial Denial of Amendment is enclosed and will be forwarded to the Office of the Federal Register for publication.

A copy of the safety evaluation for the amendment is enclosed. The basis for denying part of your application and a description of what part of Antitrust Condition 2(a) cannot be approved are documented in the safety evaluation.

Otto L. Maynard

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If you have any questions about this amendment, please contact me at 301-415-1307, or through the internet at jnd@nrc.gov.

Sincerely,

/RA/

Jack Donohew, Senior Project Manager, Section 2
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-482

Enclosures: 1. Amendment No. 147 to NPF-42
2. Safety Evaluation
3. Notice of Partial Denial

cc w/encls: See next page

Otto L. Maynard

- 2 -

If you have any questions about this amendment, please contact me at 301-415-1307, or through the internet at jnd@nrc.gov.

Sincerely,

/RA/

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Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket No. 50-482

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- Enclosures: 1. Amendment No. 147 to NPF-42
- 2. Safety Evaluation
- 3. Notice of Partial Denial

PDIV-2 Reading
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RidsNrrPMJDonohew
RidsNrrLAEPeyton
RidsOgcRp
RidsAcrsAcnwMailCenter
RidsRgn4MailCenter(KBrockman/DBujol/
LHurley/DGraves)

cc w/encls: See next page

BThomas
SHom (OGC)

* See previous concurrence

ADAMS Accession No. ML022520270

NRR-058

OFFICE	PDIV-2/PM	PDIV-2/LA	RPRP/D	OGC	PDIV-2/SC	PDIV/D
NAME	JDonohew:am	EPeyton	BThomas*	SHom*	SDembek	WRuland
DATE	8/12/2002	8/12/02	6/24/02	07/26/2002	8/13/02	9/05/02

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Wolf Creek Generating Station

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WOLF CREEK NUCLEAR OPERATING CORPORATION

WOLF CREEK GENERATING STATION

DOCKET NO. 50-482

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.147
License No. NPF-42

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment to the Wolf Creek Generating Station (the facility) Facility Operating License No. NPF-42 filed by the Wolf Creek Nuclear Operating Corporation (the Corporation), dated June 27, 2000, as supplemented by letters dated January 31, May 2, and October 30, 2001, and May 10, 2002, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this license amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, Facility Operating License No. NPF-42 is amended by changes to Appendix C as indicated in the attachment to this license amendment.

3. The license amendment is effective as of its date of issuance and shall be implemented within 90 days of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Stephen Dembek, Chief, Section 2
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Attachment: Changes to Appendix C of
Facility Operating License No. NPF-42

Date of Issuance: September 6, 2002

ATTACHMENT TO LICENSE AMENDMENT NO. 147

FACILITY OPERATING LICENSE NO. NPF-42

DOCKET NO. 50-482

Replace pages of Appendix C, "Antitrust Conditions for Kansas Gas and Electric Company," to Facility Operating License No. NPF-42 with the attached pages. The revised pages are identified by the amendment number and contain marginal lines indicating the areas of change.

REMOVE

Pages 1 through 9

INSERT

Pages 1 through 5

APPENDIX C

WOLF CREEK, UNIT 1

ANTITRUST CONDITIONS FOR

KANSAS GAS AND ELECTRIC COMPANY

1. As used herein:

(a) "Licensee" means Kansas Gas and Electric Company.

(b) "Licensee's Service Area" means those counties located in whole or in part within the area certificated to Licensee and Western Resources' KPL division by the appropriate state regulatory commission.

(c) "Bulk Power" means the electric power, and any attendant energy, supplied or made available at transmission or subtransmission voltage by one entity to another.

(d) "Emergency support" is capacity and energy as available from one system, and as needed by another system to replace capacity and energy made unavailable due to forced outages of generating equipment or transmission facilities.

(e) "Maintenance support" is capacity and energy planned by one system to be made available to another system to replace capacity and energy made unavailable due to forced maintenance of generating equipment or transmission facilities.

(f) "Entity" means a financially responsible private or public corporation, governmental agency or authority, municipality, cooperative, or lawful association of any of the foregoing, owning, contractually controlling, or operating, or in good faith proposing to own, contractually control, or operate, facilities for the generation and transmission of electricity for bulk power supply which meets each of the following criteria: (1) its existing or proposed facilities are technically feasible of interconnection with those of Licensee; (2) with the exception of municipalities, cooperatives, government agencies or authorities it is, or upon commencement of operations will be, a public utility subject to regulation with respect to rates and services under the laws of Kansas.

(g) "KEC" refers to Kansas Electric Cooperatives, Inc. or Kansas Electric Power Cooperative, Inc. insofar as it shall become a successor in interest.

(h) "KEPCo" refers to Kansas Electric Power Cooperative, Inc. as the successor in interest to KEC.

(i) "KEPCo Members in Licensee's Service Area" refers to all KEPCo Member rural electric cooperatives with facilities in the combined service area of Western Resources' KPL division and Kansas Gas and Electric Company.

(j) "Power Requirements" of the KEPCo Members in Licensee's Service Area refers to the sum for all such KEPCo Members of the delivery point contributions to Western Resources' KPL division's greatest one hour net load for the month.

2. (a) Licensee shall offer an opportunity to participate in any other nuclear generating unit(s) which it may construct, own, and operate severally or jointly, during the term of the instant license or an extension or renewal thereof, to any entity(ies) in Licensee's Service Area. Such participation shall be in reasonable amounts, by an ownership interest, or at the option of the entity, by a contractual right to purchase a portion of the output of such units, or on any other mutually agreeable basis. The transmission provisions herein relate to participation in Wolf Creek Nuclear No. 1 and not to any transmission which may be associated with participation in other nuclear generating unit(s) which Licensee may construct, own and operate severally or jointly.

(b) Licensee shall make available to KEPCo an undivided 6 percent ownership participation in the Wolf Creek Nuclear Unit Number 1 upon mutually agreeable terms and conditions, which ownership participation KEPCo shall acquire as of the date of issuance of the Nuclear Regulatory Commission's construction permit for the Wolf Creek Nuclear Unit Number 1 or as soon thereafter as KEPCo can secure the necessary regulatory and financing approvals pursuant to the terms of the May 20, 1976 settlement agreement between Licensee and KEPCo. KEPCo's power from Wolf Creek Nuclear Unit Number 1 shall be transmitted or otherwise arranged to be transmitted by Licensee for KEPCo to such delivery and interconnection points on Licensee's system and in such amounts as specified by KEPCo, pursuant to paragraph 5(a) below.

3. Licensee shall interconnect with KEPCo in Licensee's Service Area when requested by KEPCo and provide for the following:

(a) maintaining and coordinating of reserves, including, where applicable, the purchase and sale of reserve capacity and energy,

(b) emergency support,

(c) maintenance support,

(d) delivery of "unit power" or other participation power out of Wolf Creek Unit 1 from the Licensee, and

(e) transmission services for the above and as described subsequently.

4. (a) Licensee and KEPCo, having a reserve coordination arrangement provided for in Paragraph 3 above, shall from time to time jointly establish the minimum reserve requirements to be installed and/or provided under contractual arrangements as necessary to maintain in total a reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems of the parties. To have reserve coordination rights, other than reserves for Wolf Creek, with the Licensee, KEPCo must own or have contractual rights to generating capacity other than of Wolf Creek Nuclear Unit Number 1. Unless otherwise agreed upon, the minimum reserve requirement shall be calculated as a percentage of the projected annual peak load, adjusted for purchases and sales of firm power, including partial requirements firm power. The parties to such a reserve coordinating arrangement shall provide such amounts of operating (ready and spinning) reserve capacity as may be adequate to avoid the imposition of unreasonable demands on the others in meeting the normal contingencies of operating their

systems. However, in no circumstances shall any party's spinning or operating reserve requirement exceed the minimum reserve requirement as provided above. (Moreover, if the parties to a reserve coordination arrangement cannot agree upon a minimum reserve requirement, KEPCo's minimum reserve requirement shall be neither less than nor greater than Licensee's minimum system reserve requirement.)

(b) Emergency and/or scheduled maintenance bulk power service shall be provided by each party to the extent required by the system in need, and be furnished to the fullest extent available from the supplying system. Licensee and KEPCo shall provide to the other, within Licensee's Service Area, emergency and/or scheduled maintenance bulk power service if and when available from its own generation (and from generation of others with whom Licensee is interconnected to the extent it can do so without impairing service to its customers including other electric systems to whom it has firm commitments).

5. (a) Licensee shall transmit or otherwise arrange for the transmission of the power from KEPCo's share of Wolf Creek Nuclear Unit Number 1 to KEPCo, or for the account of KEPCo, to delivery or interconnection points on Licensee's system and in amounts as specified by KEPCo. Such deliveries shall be reasonable as to the number of points, system adequacy and frequency of schedule changes.

(b) Licensee shall transmit or otherwise arrange for the transmission of power from an entity(ies) outside Licensee's Service Area to KEPCo within Licensee's Service Area in an amount at least equal to the share of Wolf Creek Nuclear Unit Number 1 that KEPCo uses within Licensee's Service Area, when the output of this unit is reduced or unavailable because of maintenance or for other reasons.

(c) If capacity and energy from KEPCo's portion of Wolf Creek Nuclear Unit Number 1 are delivered to other entities, Licensee shall also provide for or otherwise arrange for transmission for a later scheduled return of such energy within the same calendar year, in an equal amount of gWhrs, from these other entities to the delivery point of KEPCo within Licensee's Service Area, provided that such transmission arrangements can be reasonably accommodated from a functional and technical standpoint. For example, any Wolf Creek power transmitted (permissible within the terms of these conditions) out of Licensee's system shall create in KEPCo the right to call upon Licensee, and the corresponding obligation of Licensee, to transmit or otherwise arrange for the transmission of equal power back into Licensee's system for account of KEPCo, all within the same calendar year. At any point in time the transfer of power back in (for the account of KEPCo) could occur simultaneously with full delivery of KEPCo's power from Wolf Creek Nuclear Unit Number 1.

6. (a) Licensee shall sell power at its filed and effective rates (for total or partial requirements) to any Entity in Licensee's Service Area now engaging or proposing to engage in the wholesale or retail sale of electric power.

(b) Insofar as the Power Requirements of the KEPCo Members in Licensee's Service Area are satisfied by power which is not Licensee's power and which has been transmitted by or on behalf of the Licensee for KEPCo pursuant to Paragraphs 2(b) and 7 of these license conditions, Licensee's sale of full or partial requirements to KEPCo or to its Members in Licensee's Service Area pursuant to Paragraph 6(a) above shall be correspondingly reduced.

7. In addition to the transmission offered by or otherwise arranged for by Licensee in Paragraphs 2(b), 3, 5, and 6 above, Licensee shall, consistent with Paragraph 8 below and with the terms of the May 20, 1976, settlement agreement between Licensee and KEPCo, transmit or otherwise arrange for the transmission for KEPCo the following power:

(a) When Wolf Creek Nuclear Unit Number 1 commences commercial operation, and thereafter in each succeeding calendar year until the Project ceases operation or until calendar year 2021, whichever is later, a total of 106 megawatts of preference customer power that KEPCo obtains from the Southwestern Power Administration or from a source or sources which as a matter of law are administratively foreclosed to Licensee by virtue of a statutory or regulatory preference.

(b) When Wolf Creek Nuclear Unit Number 1 commences commercial operation and thereafter so long as this Unit continues operation, or until calendar year 2021, whichever is later, (i) any additional quantities of power which KEPCo generates from a source other than Wolf Creek Nuclear Unit Number 1, or which KEPCo obtains from any power source or sources which as a matter of law are not administratively foreclosed to Licensee by virtue of a statutory or regulatory preference, provided that such power is transmitted by or on behalf of the Licensee to KEPCo Members in Licensee's Service Area for the use of said Members; and (ii) any other quantities of power which KEPCo generates from a source other than Wolf Creek Unit Number 1, or which KEPCo obtains from any source or sources which as a matter of law are not administratively foreclosed to Licensee by virtue of a statutory or regulatory preference, to the same extent that Licensee could reasonably agree to transmit such power for any other electric utility; and

(c) Insofar as the power of KEPCo from Wolf Creek Nuclear Unit Number 1 and the power transmitted by or on the behalf of the Licensee for KEPCo in the manner provided in Paragraphs 2(b) and 7(a) through (b) is not utilized in Licensee's Service Area, as reasonably and fairly determined by KEPCo in accordance with the foregoing provisions, Licensee shall, upon reasonable and timely request for such service, transmit or otherwise arrange for the transmission of such excess power for KEPCo from and to such interconnection points on Licensee's system and in such amounts as specified by KEPCo on terms and conditions as provided in Paragraphs 2(b) and 7(a) through (b) above.

8. The transmission described in these license conditions shall be made available only upon terms which fully compensate Licensee for its costs, including any transmission power losses and a reasonable return on investment allocable solely to such transmission and reflected in Licensee's schedules or tariffs filed with the Kansas Corporation Commission or the Federal Energy Regulatory Commission. The transmission described in Paragraphs 2(b) and 7 above shall be available to KEPCo for the transmission of requested amounts of power in the manner specified in Paragraphs 2(b) and 7(a) through (c) above, provided that KEPCo gives Licensee reasonable advance notice of the transmission required and, provided further, that such transmission arrangements can be reasonably accommodated from a functional and technical standpoint and to the extent that Licensee can do so without impairing service to its customers including other electric systems to which it has firm commitments. Nothing herein imposes a requirement on Licensee to become a common carrier.

(Next page number is 10)

9. Licensee shall include in its planning and construction of additional transmission facilities sufficient transmission capacity to accommodate the transmission described in Paragraphs 2(b), 7(a), and 7(b)(i) above, provided that KEPCo gives Licensee sufficient advance notice as may be necessary to accommodate such requirements from a functional and technical standpoint. Licensee and KEPCo shall consult with respect to the planning and construction of additional transmission facilities.

10. The foregoing conditions shall be implemented in a manner not inconsistent with the provisions of, and as provided under, the Federal Power Act and all other applicable Federal and State laws and all rates, charges and practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them.

11. The conditions set forth in Paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 herein do not restrict KEPCo's rights or the Licensee's duties that may otherwise exist beyond, and are not inconsistent with, these antitrust conditions.

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO AMENDMENT NO. 147 TO FACILITY OPERATING LICENSE NO. NPF-42
WOLF CREEK NUCLEAR OPERATING CORPORATION
WOLF CREEK GENERATING STATION
DOCKET NO. 50-482

1.0 INTRODUCTION

By application dated June 27, 2000, as supplemented by four letters dated January 31, May 2, and October 30, 2001, and May 10, 2002, Wolf Creek Nuclear Operating Corporation (the licensee) requested changes to Appendix C, "Antitrust Conditions for Kansas Gas and Electric Company," of Facility Operating License No. NPF-42 for the Wolf Creek Generating Station (WCGS).

The proposed changes would (1) add a statement that the antitrust conditions do not restrict the rights of Kansas Electric Power Cooperative, Inc. (KEPCo) or the duties of Kansas Gas and Electric Company (KGE), that may exist beyond, and are not inconsistent with, the antitrust conditions, (2) define "KGE members in licensee's service area" in the appendix to include all KEPCo members with facilities in Western Resources' (Western Resources is the parent company of KGE) and KGE's combined service area, (3) delete license conditions restricting KEPCo's use of the power from WCGS, (4) remove out-of-date conditions, and (5) update conditions to be consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission (FERC) open access transmission tariff.

The proposed changes only affect the antitrust conditions for KGE, which are pages 1 through 9 of Appendix C. Pages 10 through 14 of Appendix C are the antitrust conditions for Kansas City Power & Light Company (KCPL). KGE, KEPCo, and KCPL own and are licensees of WCGS. The antitrust conditions for KCPL are not affected by the proposed amendment.

In the supplemental letter of January 31, 2001, the licensee provided the justification for each of the changes to Appendix C proposed in its application of June 27, 2000. In that supplemental letter, the licensee cross-referenced the proposed changes with the justifications for the changes. In the supplemental letters of May 2 and October 30, 2001, the licensee provided additional information that clarified some of the information provided in the letter of January 31, 2001. In the supplemental letter of May 10, 2002, the licensee revised the proposed Condition 11, which was the addition of a new antitrust condition.

The additional information contained in the four supplemental letters of January 31, May 2, and October 30, 2001, and May 10, 2002, and the discussion with the licensee (ADAMS Accession

No. ML011580491) did not expand the application beyond the scope of the notice of the application, clarified the changes proposed in the application, and did not change the staff's original proposed no significant hazards consideration determination published in the *Federal Register* on July 26, 2000 (65 FR 46019). The rewording of the proposed new antitrust condition 11 in the letter of May 10, 2002, clarified the proposed condition submitted in the licensee's application, and did not change the intent of the original proposed condition.

In the antitrust conditions of Appendix C, Kansas Gas and Electric Company is referred to as the "Licensee." In the following safety evaluation, Wolf Creek Nuclear Operating Corporation, which submitted the application and supplemental letters, is referred to as the "licensee" and Kansas Gas and Electric Company is referred as "KGE," unless a statement is quoted from Appendix C and it is then referred to as the "Licensee."

2.0 EVALUATION

Appendix C contains the antitrust conditions of the operating license for Wolf Creek and has the following two parts: (1) antitrust conditions for KGE, pages 1 through 9 of Appendix C, and (2) antitrust conditions for KCPL, pages 10 through 14 of Appendix C. The proposed amendment affects only pages 1 through 9 of the appendix. The licensee proposed changes to pages 1 through 9 in its letters of June 27, 2000, and May 10, 2002.

The NRC staff had a contractor review the proposed changes to KGE's antitrust conditions. Attached to this safety evaluation is the Evaluation Report (Report) issued by the contractor on the proposed changes.

The staff reviewed the contractor's Report. In its Report, the contractor recommended the following:

1. The NRC not approve removal of the portion of Condition 2(a) that states the "Licensee shall offer an opportunity to participate in ... any other nuclear generating unit(s) which it may construct, own, and operate severally or jointly, during the term of the instant license or an extension or renewal thereof, to any entity(ies) in Licensee's Service Area."
2. The NRC allow the licensee to revise the proposed new Condition 11 to state "The obligations and requirements set forth in Conditions 2, 3, 4, 5, 6, 7, 8 and 9 do not restrict KEPCO's rights or the Licensee's duties that may otherwise exist beyond these Antitrust License Conditions."
3. The NRC approve the remaining changes proposed by the licensee to the antitrust conditions.

The contractor's first recommendation is that the staff should not approve the proposed deletion of the part of Condition 2(a) that states the KGE shall offer the opportunity for other entities to participate in any other nuclear generating unit(s) (i.e., other than WCGS) which KGE may construct, own, and operate. This is addressed in Section 3.7 of the contractor's Report. In the Report, the contractor states the following:

The Condition has two components. The first component is the requirement to offer an opportunity to participate in WCGS and the second component is the requirement to offer an opportunity to participate in any other nuclear units Licensee may construct, own and operate during the term of the WCGS and any extension or renewal of the license. The requirement to offer an opportunity to participate in WCGS has been met in that the Licensee offered an opportunity to participate in WCGS and KEPCO requested and obtained an ownership interest. The Licensee, according to the terms of the Condition is no longer required to offer participation in WCGS. To the extent that the request to delete this Condition is limited to the deletion of that part dealing with participation in WCGS, I would propose that there be no objection to this change. The second component, however, contains a requirement that will continue until WCGS no longer has a license. While the Licensee suggests that the opportunity to participate in future nuclear units ended when WCGS began commercial operation, there is nothing in the record of this license that would indicate anything other than the plain meaning of the words.

After its review of the contractor's Report and the licensee submittals, the staff concludes that the contractor's recommendation is correct and that there is not sufficient justification in the licensee's letters for the proposed deletion of the second component (the contractor's words in the above paragraph) of Condition 2(a). The staff has conducted calls with the licensee to determine if the licensee would have further justification that it has not submitted to the staff as a basis for the deletion of the second component of Condition 2(a). After discussions with the licensee on this proposed change, the licensee had no further justification beyond what it had stated in its letter of January 30, 2001, that the paragraph applied only during the pre-construction days of WCGS and no longer applies now that the plant is in commercial operation. The staff agrees that this justification applies to the component of Condition 2(a) that states the "Licensee shall offer an opportunity to participate in Wolf Creek Nuclear Unit 1," As stated in the contractor's report, the requirement to offer an opportunity to participate in WCGS has been met by KGE in that it offered an opportunity to participate in WCGS and KEPCo requested and obtained an ownership interest, and KGE should no longer be required to offer participation in WCGS, for which, based on this, the staff concludes that the proposed deletion of the first component of Condition 2(a) is acceptable.

The licensee did not withdraw its request to delete the second component of Condition 2(a) for KGE to offer an opportunity for other entities to participate in any other nuclear units it may construct, own and operate during the term of the current WCGS operating license, and any extension or renewal of that license. Based on the above discussion of the second component of Condition 2(a), the staff concludes that the proposed deletion of the antitrust condition which requires that KGE shall offer an opportunity for other entities to participate in any other nuclear generating unit(s) (i.e., other than WCGS) which it may construct, own, and operate is not acceptable.

Therefore, based on the above conclusion by the staff, the part of Condition 2(a) that will not be deleted from Appendix C reads as follows:

"Licensee shall offer an opportunity to participate in any other nuclear generating unit(s) which it may construct, own, and operate severally or jointly, during the term of the instant license or an extension or renewal thereof, to any entity(ies) in Licensee's

Service Area. Such participation shall be in reasonable amounts, by an ownership interest, or at the option of the entity, by a mutually agreeable basis. The transmission provisions herein relate to participation in Wolf Creek Nuclear Unit 1 and not to any transmission which may be associated with participation in other nuclear generating unit(s) which Licensee may construct, own and operate severally or jointly."

The second and third sentences in the above paragraph remain in Appendix C because the two sentences are applicable to and restrict the statement that KGE shall offer an opportunity to participate in any other nuclear generating unit(s) which it may construct, own, and operate.

Also, because a part of Condition 2(a) will remain in Appendix C, the contractor concluded that the proposed change to replace references to "Condition 2(b)" by a reference "Condition 2" in Conditions 6(b), 7, 7(e), 8, and 9 would be inappropriate because Condition 2(a) will remain in Appendix C and, therefore, Condition 2(b) must remain as Condition 2(b). This is discussed in Sections 3.15, 3.16, 3.21, 3.22, and 3.23 of the contractor's Report. After its review of this recommendation, the staff agrees with the contractor and concludes that the proposed change is not appropriate.

In its second recommendation, the contractor stated in Section 3.24 of its Report that the licensee should consider revising its proposed new Condition 11. For the proposed new Condition 11, the licensee has proposed to add the following new antitrust condition as Condition 11 in Appendix C: "The conditions set forth in Paragraphs 2, 3, 4, 5, 6(b), 7, 8, and 9 herein do not restrict KEPCo's rights or the Licensee's duties under other license conditions." (The licensee's use of the term "Paragraphs" in proposed Condition 11 is the same as the staff's use of the term "Conditions" in the safety evaluation.)

The contractor has suggested that the licensee modify its proposed wording to the following: "The obligations and requirements set forth in Conditions 2, 3, 4, 5, 6, 7, 8 and 9 do not restrict KEPCO's rights or the Licensee's duties that may otherwise exist beyond these Antitrust License Conditions." The contractor stated that the licensee, in a docketed discussion between the staff and the licensee (ADAMS Accession No. ML011580491), explained that the intent of the new Condition 11 was to make clear that the antitrust conditions in Appendix C did not contain all the rights and duties that may exist between KGE and KEPCO. The contractor believes that its recommended revised Condition 11 better reflects the intent of the KGE, and also reflects that Condition 6(a) still contains some rights and duties of the licensee. The staff conducted calls with the licensee to explain the contractor's recommendation.

The licensee submitted a supplemental letter dated May 10, 2002, that proposed a new Condition 11 that followed the contractor's recommendation and a minor clarification recommended by the staff ("... and are not inconsistent with, ...) except that it kept the reference to Condition 6(b) that it submitted in its application of June 27, 2000.

After its review of the May 10, 2002, submittal, the staff, in phone discussions with the licensee, questioned the reference to only Condition 6(b) in that Condition 6(a), as discussed above, did contain rights and duties of the licensee. In the email dated July 24, 2002 (ADAMS Accession No. ML022460229), the licensee agreed to have Condition 6(a) added to the proposed Condition 11 and, therefore, state "Paragraph 6" in Condition 11. Based on this, the staff concludes that the proposed new Condition 11 is acceptable.

The NRC staff has reviewed the remaining sections of the contractor's Report and concludes that the contractor's Report is correct in its recommendations about the other proposed changes to the KGE antitrust conditions. Based on this, the staff concludes that the remaining proposed changes to Appendix C are acceptable. This includes the renumbering of the antitrust conditions to account for deleted conditions.

As part of its review of the licensee's application for changes to Appendix C, the staff requested by its letter of June 12, 2001, that the Antitrust Division of the Department of Justice (DOJ) provide its comments on the proposed changes. In its letter of July 11, 2001, to the NRC, the DOJ Antitrust Division stated that it had no objections to the proposed amendment to the WCGS antitrust license conditions. This letter was based on the DOJ's review of the licensee's application, and the supplemental letters dated January 31 and May 2, 2001, which provided the licensee's justifications for the proposed amendment in its application dated June 27, 2000.

Based on the above, the staff concludes that the proposed changes to Appendix C in the licensee's application dated June 27, 2000, as supplemented by four letters dated January 31, May 2, and October 30, 2001, and May 10, 2002, are acceptable except for the following and as otherwise noted above:

- Condition 2(a) will remain in Appendix C, and state the following: "Licensee shall offer an opportunity to participate in any other nuclear generating unit(s) which it may construct, own, and operate severally or jointly, during the term of the instant license or an extension or renewal thereof, to any entity(ies) in Licensee's Service Area. Such participation shall be in reasonable amounts, by an ownership interest, or at the option of the entity, by a mutually agreeable basis. The transmission provisions herein relate to participation in Wolf Creek Nuclear Unit 1 and not to any transmission which may be associated with participation in other nuclear generating unit(s) which Licensee may construct, own and operate severally or jointly."
- The references to Conditions 2(a) and 2(b) will remain in Appendix C.

3.0 STATE CONSULTATION

In accordance with the Commission's regulations, the Kansas State Official was notified of the proposed issuance of the amendment. The State official had no comments.

4.0 ENVIRONMENTAL CONSIDERATION

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact was published in the *Federal Register* on August 12, 2002 (67 FR 52499).

Accordingly, based on the environmental assessment, the Commission has determined that issuance of this amendment will not have a significant effect on the quality of the human environment.

5.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Attachment: Contractor's Evaluation Report Concerning Changes
to Appendix C, Antitrust Conditions

Principal Contributor: Jack Donohew

Date: September 6, 2002

EVALUATION REPORT CONCERNING CHANGES TO APPENDIX C, ANTITRUST CONDITIONS

WOLF CREEK NUCLEAR OPERATING CORPORATION

WOLF CREEK GENERATING STATION

DOCKET NO. 50-482

PREPARED BY JOSEPH RUTBERG, Esq.

March 2002

1.0 INTRODUCTION

Kansas Gas and Electric Company (KGE), Kansas City Power & Light Company (KCPL), and Kansas Electric Power Cooperative, Inc. (KEPCO) are the holders of the facility operating licenses for the Wolf Creek Generating Station (WCGS). By application dated June 27, 2000, as supplemented by letters dated January 31¹, May 2 and October 30, 2001, Wolf Creek Nuclear Operating Corporation (Licensee) requested changes to Appendix C, "Antitrust Conditions for Kansas Gas & Electric Company," of Facility Operating License No. NPF-42 for the WCGS.

The requested changes to the Antitrust License Conditions were submitted pursuant to an agreement between KEPCO, and KGE, Kansas City Power & Light (KCP&L), and KGE's parent company, Western Resources, Inc. to settle a proceeding before the Federal Energy Regulatory Commission (FERC). According to the application and supporting documents, the modifications

¹ Certain information in the January 31, 2001-supplement was clarified by an E-mail dated May 25, 2001 from the applicant to the NRC, also on the docket is an attachment to a memorandum dated May 25, 2001.

to the Antitrust License Conditions are intended to, among other things: (1) state that the specific conditions applicable to KEPCO (Conditions 2 (b), 3-5, 6 (b), and 7-9) do not restrict KEPCO's right or KGE's duties under other license conditions²; (2) define "KEC members in Licensees's service area" in KGE Condition 1 (i) to include all KEPCO members with facilities in Western Resources' and KGE's combined service area; (3) delete the provisions of KGE Conditions 2 (b) and 7 (d) restricting KEPCO's use of the power from WCGS, and (4) other revisions that KGE, Wolf Creek Nuclear Operating Corporation, and KEPCO have all agreed are necessary to update the Antitrust License Conditions and to make the Conditions consistent with an open access transmission tariff on file with the Federal Energy Regulatory Commission (FERC).

The proposed changes affect only the antitrust conditions applicable to KGE and do not address the Antitrust License Conditions applicable to KCPL

The additional information in the supplemental letters of January 31, May 2, and October 30, 2001, and the E-mail referred to above did not expand the application beyond the scope of the *Federal Register* notice, clarified the proposed changes given in the application, and did not change the staff's initial proposed no significant hazards consideration determination published in the *Federal Register* on July 26, 2000 (65 FR 46019).

² Subsequent clarification by the Licensee stated that the parties intended to make it clear by this proposed change that the Antitrust License Conditions do not contain all rights and duties that may exist between KGE and KEPCO.

2.0 BACKGROUND

The Antitrust License Conditions that Wolf Creek Operating Corporation is requesting to either be removed from the WCGS Facility Operating License or modified, were included in the Construction Permit issued in 1977 and the Facility Operating License issued in 1985. The Antitrust License Conditions combine commitments made by KGE to the Department of Justice during the antitrust review pursuant to Section 105(c) of the Atomic Energy Act of 1954, as amended, conducted in connection with the application to construct and operate WCGS and additions that were negotiated as part of the resolution of an antitrust hearing requested in during the Construction Permit review for this facility.

The commitments to the Department of Justice deal with the policy commitment to assure access to WCGS, and provided a basis for the Department to recommend that no antitrust hearing was warranted in connection with the application to construct the WCGS. The additional conditions dealt primarily with coordination and transmission services that the Licensee would make available to certain entities. The conditions were included in the Construction Permit and Operating License in order to assure that the activities under the license would not create or maintain a situation inconsistent with the antitrust laws.

The Antitrust License Conditions require that KGE will provide, among other things: (1) an opportunity to participate in WCGS or any other nuclear generating unit(s) KGE may construct during the term of the WCGS license or an extension or renewal, by ownership, or by a contractual right to purchase a portion of the output (Condition 2(a)); (2) an interconnection with any participating entity for the purpose of maintaining and coordinating reserves, emergency support, maintenance support, delivery of “unit power,” and transmission services (Conditions 2(b) 3, 4, 5, 6 & 7; (3) coordinate with any participating entity (Condition 4); (4) sell power for full or partial requirements to any entity in its service area now engaging or proposing to engage in the wholesale or retail sale of electric power (Condition 6); and (5) include in its planning and construction of additional transmission the needs of any entity choosing to utilize the transmission offered in Conditions 2(b), 7(b), 7(c)(1), and 9. All of these requirements were to be implemented in a manner consistent with the provisions of the Federal Power Act and all other applicable Federal and State laws and rates, charges and practices in connection therewith are to be subject to the approval of regulatory agencies having jurisdiction over them (Condition 10).

In 1984, prior to the issuance of the Operating License for WCGS, the Director of Nuclear Reactor Regulation made a finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees’ activities or proposed activities have occurred subsequently to the previous construction permit review. The Director found, among other things, that: (1) the activities of KGE have focused on implementing the

WCGS Antitrust License Conditions; (2) KEPCO acquired a 3% ownership interest in WCGS; and, (3) with the formation of KEPCO and the Kansas Municipal Energy Agency the ability of municipal and cooperative electric utilities in Kansas to economically plan and secure alternative bulk power resources has improved. Having made these findings with supporting conclusions, the Director determined that a formal operating license antitrust review of the WCGS was not required.

3.0 EVALUATION

The Commission determined that it has the authority to amend a license at the request of a licensee to modify, suspend or revoke antitrust conditions. *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), CLI-92-11, 36 NRC 47, 59 (1992). Specifically, the Commission, in *Perry*, cited with approval *dicta* in a decision by the Appeal Board dealing with requests to modify antitrust license conditions. In its *Perry* decision at p. 58, the Commission stated that:

The Appeal Board suggested that if antitrust license conditions, which seemed fair at the time they were imposed, prove to be inequitable in the future, the Director of Nuclear Reactor Regulation has the authority to modify the license conditions. [Citing, *Toledo Edison Co.* (Davis-Besse Nuclear Power Station, Units 1, 2 and 3), ALAB-560, 10 NRC 265 (1979).

The Commission further concluded in *Perry at p. 59* that, “[w]e do not accept the proposition that antitrust license conditions are immutable, irrespective of whether the conditions have become unjust over time.”

In general, antitrust license conditions are imposed by the NRC under Section 105 of the AEA, as amended, if the NRC finds, based on an antitrust review prescribed by section 105, that the granting of a license would create or maintain a situation inconsistent with the antitrust laws. In making this determination, the Commission takes into account, among other things, any prior anticompetitive activity of the applicant and whether the additional generating capacity under the license, in light of such activity, would create or maintain a situation inconsistent with the antitrust laws. Antitrust license conditions are generally specific to a particular entity and its conduct in the marketplace and are distinguishable from other types of license conditions that govern the safe operation of the plant. While Section 105 of the AEA, as amended, establishes a standard for determining when antitrust license conditions may be appropriate, the Act does not establish criteria for determining when it may be appropriate to remove or modify antitrust license conditions. However, as noted above, the Commission has provided some limited guidance in determining whether antitrust license conditions should be modified when requested by a licensee.

In reviewing the request to modify the WCGS antitrust license conditions, I reviewed each requested change in order to determine whether circumstances have so changed that it would be either inequitable to continue an existing license condition or the facts no longer warrant continued inclusion of the specific requirement in the license.

Appendix C containing the antitrust conditions of the operating licence for WCGS has two parts. The first part deals with KGE and the second part deals with KCPL. The proposed amendment deals only with the Antitrust License Conditions for KGE.

In the supplemental letter of January 31, May 2 and October 30, 2001, and an E-mail dated May 25, 2001 the Licensee provided additional information concerning the basis for the changes to Appendix C.

The changes will be addressed in the order that the antitrust conditions appear in Appendix C. However, in some cases, the same change is requested for several conditions. In such cases, I will refer to the position taken the first time an issue is addressed in determining whether a specific change is acceptable.

3.1 Condition 1 (b)

In current Condition 1 (b), the Licensee has proposed to add the phrase "and Western Resources' KPL division" to the definition of the "Licensee's Service Area." With the change, the service area will be expanded to include those counties located in whole or in part within the area certificated to the Licensee and the Western Resources' KPL division by the appropriate state regulatory commission.

The Licensee states that in 1992 KGE was acquired by the Kansas Power and Light Company (KPL), which was then renamed “Western Resources, Inc.” The proposed change expands the number of counties that would include KEPCO members that would be able to benefit from the Antitrust License Conditions. Furthermore, according to the Licensee, the changes reflect the current reality of the dispatch of power from the KGE and KPL facilities and that while KGE no longer sells firm power to KEPCO, Western Resources’ KPL division does.

The Antitrust License Conditions should reflect the current reality of how power is marketed by the Licensee. In this case, since the Licensee is asking to make the Antitrust License Conditions reflect the current market situation and, as proposed, the language will not reduce the Licensee’s responsibilities, I believe that this modification is acceptable.

3.2 Deleting Current Condition 1 (g)

Current Condition 1 (g), deals with the definition of "participating entity," a term used throughout out the Antitrust License Conditions to indicate to whom certain benefits are due. Since KEPCO was the only entity to exercise an option to purchase a share of WCGS under the Antitrust License Conditions, I believes that it would be appropriate to insert KEPCO where there is reference to “participating party.” Throughout the Antitrust License Conditions KEPCO will be inserted where “participating entity” is used.

3.3 Renumbered Current Condition 1 (h)

The Licensee has proposed to renumber the current Condition 1 (h) to Condition 1 (g). Because the current Condition 1 (g) is being deleted, the current Condition 1 (h) would become the new Condition 1 (g).

There are no other changes for this condition and I believe that this change is appropriate.

3.4 New Condition 1 (h)

The Licensee proposes to add a new Antitrust Condition, which would indicate that Kansas Electric Power Cooperative, Inc. (KEPCO) is the successor in interest to KEC. The new Condition reflects the fact that by December 1981, KEPCO had succeeded to the interests of KEC. In fact, the staff, the Department of Justice, and the other parties have, for some time, treated KEPCO as the successor of KEC. In the significant change antitrust review conducted in connection with the Full Term Operating License for WCGS, the staff referred to KEPCO as the entity formed as a joint action agency for electric cooperatives in Kansas to plan and secure an economic and reliable supply of electricity for its members. In addition, the Department of Justice in a letter dated March 28, 1980, indicated, “[t]he purchase of an ownership interest in the Wolf Creek Generating Station, Unit 1, by KEPCO is pursuant to the license conditions agreed to in 1974.” Because there is no dispute that KEPCO has, in fact, succeeded to the interests of KEC, I believe that the proposed condition is acceptable.

3.5 Condition 1(i)

The Licensee has proposed to replace "KEC" with "KEPCO" in this Condition. As indicated in reviewing the new proposed Condition 1 (h), I would propose that this change is appropriate.

The Licensee also proposes to include within the terms of the Antitrust License Conditions KEPCO members located in the combined service areas of Western Resources' KPL and KGE. This change is consistent with proposed change to Condition 1 (b) and reflects the current reality of the market. I propose that this change be accepted.

3.6 Condition 1 (j)

The Licensee proposes to replace the reference to KEC to KEPCO and to change the definition in the license condition of the term "total demand requirement." As proposed, the Licensee would now define "Power Requirements" of the KEPCO members to refer to the sum for all KEPCO delivery point contributions to the Western Resource' KPL division's greatest one hour net load for the month.

As indicated above, I believe that it is appropriate to replace KEC with KEPCO.

I also propose that it is acceptable to replace "total demand requirements" with "Power Requirements." The change reflects the current reality in the market. According to the Licensee, KGE no longer sells firm power to KEPCO, but Western Resources' KPL division does.

Therefore, while KEPCO members do not contribute to KGE's net load they do contribute to Western Resources' KPL division net load. The Licensee also states that the change to this reflects an open transmission tariff that KGE and Western Resources' KPL division have on file with the FERC. The Antitrust License Conditions specifically provide that the conditions will be implemented in a manner not inconsistent with provisions of, and as provided under, the Federal Power Act [Condition 10]. Accordingly, I propose that there be no objection to this change.

3.7 Condition 2(a)

The Licensee proposes to delete this Condition, which requires it to offer to any entities in its service area an opportunity to participate in the WCGS and any other nuclear units which it may construct, own or operate during the term of the instant license or any extension or renewal thereof. The Licensee submits that this particular provision is no longer applicable because it is limited in time to the WCGS preconstruction period.

The question presented by this requested change is whether the requirement to offer an opportunity to participate in WCGS and any other nuclear units it may, own or operate during the term of the WCGS license or an extension or renewal was meant to terminate upon commercial operation of WCGS or continue as long as the plant operates under the license.

The Condition was the result of agreements by the Licensee with the Department of Justice, and the parties to the requested hearing in connection with the application to construct WCGS. The Atomic Safety & Licensing Board appointed to consider the request for an antitrust hearing approved the inclusion of the Antitrust License Conditions in the License for WCGS. The Condition has two components. The first component is the requirement to offer an opportunity to participate in WCGS and the second component is the requirement to offer an opportunity to participate in any other nuclear units Licensee may construct, own and operate during the term of the WCGS and any extension or renewal of the license. The requirement to offer an opportunity to participate in WCGS has been met in that the Licensee offered an opportunity to participate in WCGS and KEPCO requested and obtained an ownership interest. The Licensee, according to the terms of the Condition is no longer required to offer participation in WCGS. To the extent that the request to delete this Condition is limited to the deletion of that part dealing with participation in WCGS, I would propose that there be no objection to this change. The second component, however, contains a requirement that will continue until WCGS no longer has a license.³ While

³This understanding of the condition, i.e., that the opportunity to participate in WCGS was for a more limited period of time, is consistent with the parallel requirement in the WCGS antitrust license conditions for KCP&L. KCP&L is required to offer an opportunity to participate in WCGS until October 31, 1974 and to offer an opportunity to participate in any future nuclear generating units that may be constructed during the term of the WCGS license or any extension or renewal of the license. Also, no license issued by the Commission that is subject to antitrust license conditions could be found that would extend the responsibility to offer participation in the licensed facility beyond the issuance of the operating license. Finally, there was a general sentiment expressed during the hearings that led to the amendment of the Atomic Energy Act establishing the current precicensing antitrust review procedures to resolve antitrust concerns early in the licencing process in order to allow antitrust problems to be resolved before large sums of money are invested and to allow applicants to meet their power needs with some degree of certainty.

the Licensee suggests that the opportunity to participate in future nuclear units ended when WCGS began commercial operation, there is nothing in the record of this license that would indicate anything other than the plain meaning of the words. Accordingly, I propose that it would be appropriate to delete the portion of the License Condition limited to participation in WCGS, but not that part of the Condition dealing with future nuclear units.

3.8 Condition 2 (b)

The Licensee proposes that several changes be made to this Condition.

The Licensee requests to change the reference to KEC to KEPCO throughout this condition. As indicated in connection to modify Condition 1 (h), I believe that it would be appropriate to accept this change.

The Licensee also wishes to change the reference to an undivided 17% of the WCGS being made available to KEPCO. Since KEPCO decided to purchase an undivided 6% interest in WCGS, I believe that the proposed change reflects the current ownership relationship and would not object to the change.

The next change to this Condition involves the removal of the limitation on the use of WCGS power by KEPCO. These Conditions were negotiated in 1977, the parties now believe that this restriction is no longer appropriate. In view of the change in position of the parties to the

agreement that led to these Conditions, I believe that it is appropriate to remove this restriction on KEPCO's use of WCGS power.

The last change to this Condition is the request to add, "or otherwise arranged to be transmitted" to the Condition. The Licensee states that the purpose of the addition is to make the Contention consistent with the tariff on file with the FERC. For the reasons set forth above in connection with the request to modify Condition 1(j), I believe that this change is appropriate.

3.9 Condition 3

The Licensee has proposed to revise Condition 3 by replacing (1) the phrase "any participating entity" with "KEPCO," and (2) the phrase "which requests such interconnection" by "when requested by KEPCO."

For the reasons set forth in connection to the request to modify Condition 1 (h), I believe that this change is appropriate.

3.10 Condition 4 (a)

In this Condition, the Licensee proposes to change all references to KEC to KEPCO. As indicated in connection with the change to modify Condition 1 (h), I believe that this change is appropriate.

3.11 Condition 4(b)

The Licensee has proposed to revise Condition 4(b) by (1) replacing the phrase "each party(ies)" with "KEPCO," and (2) relocating the phrase "shall provide to the other" within the sentence.

While the term "party" is not defined in Condition 1, the context with which it is used in this Condition and the fact that Condition 4 (a) refers to "any participating entity," which has been replaced with KEPCO, suggests that the reference in this Condition to party does, in fact, refer to KEPCO. Accordingly, as indicated in its response to change Condition 1 (h), I believe that this change is appropriate.

3.12 Conditions 5 (a) and 5 (b).

The Licensee proposes to (1) add the phrase "or otherwise arrange for the transmission of" to the first sentence, and (2) replace references to the "participating entity" with a reference to "KEPCO."

The Licensee stated that the first change reflects the open transmission tariff that Western Resources and KGE have on file with FERC. For the reasons set forth in the response to modify Condition 1 (j), I believe that the proposed change of adding the reference to power being otherwise arranged for transmission to Conditions 5(a) and 5(b) is appropriate.

For the reasons set forth in connection with the request to modify Condition 1 (g), I believe that this change is appropriate to replace the reference to “participating party” with KEPCO.

3.13 Condition 5 (c)

The Licensee proposes to make three changes to condition 5 (c): (1) replace references to the "participating entity(ies)" with a reference to "KEPCO," (2) add the phrase "for or otherwise arrange for" before the word transmission in the second sentence, and (3) reflect the change in the units of transmitted electric energy from megawatt-hours (mwhrs) to gigawatt-hours (gWhrs).

As indicated above, in connection with the request to modify Condition 1 (g), I believe that this change is appropriate to replace “participating entity(ies)” with KEPCO.

The Licensee stated that the second and third changes reflect the open transmission tariff that Western resources and KGE have on file with FERC. As indicated above, in connection with changes to Conditions 1 (j), I believe that it is appropriate. to add the phrase "for or otherwise arrange for" concerning transmission of power and the change from mwhrs to gWhrs, is appropriate

3.14 Condition 6(a)

The Licensee has proposed to capitalize the word "entity" in Condition 6(a). The Licensee stated that terms should be capitalized because it is defined in Condition 1 (f), which is not being changed by the proposed amendments. Because the term "entity" is defined in the antitrust conditions and the change has no impact on any obligation of the Licensee, I believe that this change is appropriate.

3.15 Condition 6(b)

The Licensee has proposed to make the following changes to this Condition: (1) capitalize the words "power requirements" and "members," (2) replace references to "KEC" with a reference to "KEPCO," (3) adding the phrase "or on behalf of the" after the phrase "transmitted by" in the first sentence, and (4) delete the "(b)" from "2(b)" in referring to another Antitrust License Condition.

The Licensee proposes to capitalize the two terms "power requirements" and "members" because they are defined in Condition 1. I believe that this change is appropriate. Neither change is substantive and is consistent with the position I took in connection with a similar change requested for Condition 6 (a).

The request to replace "KEC" with "KEPCO" is, as indicated in connection with Condition 1 (h), appropriate.

The Licensee stated that the third change makes this Condition consistent with an open transmission tariff that Western Resources and KGE have on file with the FERC. For the reasons set forth in connection with the requested change for Condition 1(j), I propose to accept this change.

The last proposed change to this condition is the request to eliminate the "(b)" in the reference to the condition dealing with an opportunity to obtain ownership in WCGS. The Licensee states that since it proposes to delete Condition 2 (a) from the Antitrust License Conditions, the reference to "2(b)" would be inaccurate. However, since I believed that it was inappropriate to remove Condition 2 (a) in its entirety, it would not be appropriate to delete the reference to "(b)" in this condition. Therefore, this change is not appropriate

3.16 Condition 7

The Licensee proposes to change the first paragraph to this Condition by: (1) adding the phrase "or otherwise arranged for by" and "or otherwise arranged for the transmission," (2) replace "KEC" with "KEPCO," and (3) delete the "(b)" from "2(b)" in referring to Condition 2 (b).

With respect to the first change, the Licensee asserts that these changes will make the antitrust conditions consistent with the open transmission tariff on file with the FERC by Western

Resources and KGE. As indicated in connection with the requested change to Condition 1 (j), I believe that it is appropriate to make this change.

The second change is to replace "KEC" with "KEPCO" in the condition. As indicated in connection with the request to change Condition 1 (h), I believe that this change is appropriate.

The last proposed change is deleting the "(b)" from "2(b)." Because I did not believe that it that it would be appropriate to eliminate Condition 2 (a), it would not be appropriate to make this change.

3.17 Condition 7(a)

The Licensee has proposed deleting current Condition 7(a). The Condition requires the Licensee to provide transmission to KEPCO for power from the Southwestern Power Administration until the WCGS commences commercial operation or is “finally abandoned.”

The question raised by the request is whether, as used, “finally abandoned” refers to the determination to not proceed to commercial operation or to the decision to decommission the plant at the end of its useful life. However, in the context of the Condition, i.e., the reference to a specific amount of power from a particular source and the fact that there are other Antitrust

License Conditions that provide transmission service during the life of WCGS (Conditions 2 (b), 3, 4, 5 & 6), I believe that it is appropriate to accept the Licensee's interpretation of this Condition and make the requested change.

For the reasons stated, I believe that the removal of Condition 7 (a) is appropriate.

3.18 Condition 7 (b)

The Licensee proposes to revise Condition 7 (b) by: (1) renumbering the Condition as 7 (a), (2) replacing 90 megawatts with 106 megawatts, (3) replacing "KEC" with "KEPCO," and (4) deleting the last sentence that refers to "buy-sell" arrangements.

Since Condition 7 (a) has been removed, I believe that it is appropriate that all the paragraphs in Condition 7 should reflect the deletion of Condition 7 (a).

I believe that it is appropriate to replace the reference to "96 megawatts" of power from Southwestern Power Administration with "106 megawatts." The change, according to the Licensee, reflects the current preference power available to KEPCO and removes a number that is no longer accurate.

For the reasons set forth in connection with the change to modify Condition 1 (h), I believe that this change to replace “KEC” with “KEPCO” is appropriate.

In the last change to this Condition, the Licensee proposes to remove the reference to “buy-sell” arrangements. As indicated in the response to the request to modify Condition 1 (j), I believe that this change is appropriate.

3.19 Condition 7(c)

The Licensee has proposed to revise Condition 7(c) by: (1) renumbering the condition as 7(b), (2) replacing "KEC" with "KEPCO," (3) adding the phrase "or on behalf of the" to the word Licensee, (4) capitalize the word "member" in Licensee's Service Area, and (4) deleting the last part of the condition which set forth general terms for transmission sales to KEPCO.

For the reasons set forth above, I believe that it is appropriate to renumber this Condition.

I believe that this change is appropriate for the reasons indicated in connection with the request to modify Connection 1 (h) to replace KEC with KEPCO.

I believe that it is appropriate to capitalize “member” as it is used in this condition.

With regard to the request to remove language relating to the arrangement for the transmission of power described in this Condition, which now discusses “buy-sell” arrangements and other terms concerning the delivery of power, I believe that it is appropriate to make this change for the reasons set forth in connection with the request to modify Condition 1 (j).

In the last change to this Condition, the Licensee proposes to delete the last part of the condition which set forth general terms for transmission sales to KEPCO. The Licensee states that the change reflects the open transmission tariff that Western Resources and KGE have on file with FERC. For the reasons set forth in response to the request to modify Condition 1 (j), I believe that it is appropriate to accept the Licensee’s assertion that certain of the changes being proposed reflect the current practices of the parties or the reality of the marketplace. In this situation, the language is being changed in order that the requirements in the Antitrust License Conditions are consistent with an open transmission tariff on file with the FERC. I believe that this is a valid reason to modify the conditions, and accordingly, do not object to the proposed change.

3.20 Condition 7(d)

The Licensee has proposed to delete the Condition 7(d).

The Condition limits KEPCO’s use of transmitted power from WCGS. The parties have agreed to remove these restrictions, and I believe that this change is appropriate.

3.21 Condition 7(e)

The Licensee has proposed to revise the current Condition by: (1) renumbering the condition as 7(c), (2) replacing "KEC" with "KEPCO," (3) adding the phrase "or on behalf of the" to the word Licensee and the phrase "or otherwise arrange for the transmission of" after the word transmit, and (4) revising the phrase "provided in subparagraphs 2(b) and 7(a) through 7(d)" in two places.

I believe that it is appropriate to renumber Condition 7 to reflect the removal of Conditions 7 (a) and 7 (d).

As I indicated in connection with the request to modify Contention 1 (h) I believe that it is appropriate to replace "KEC" with "KEPCO."

As indicated in my response to the request to modify Contention 1 (j), I believe that it is appropriate to add "or on behalf of the" to the word Licensee and the phrase "or otherwise arrange for the transmission of" after the word transmit.

The last change to this Condition revises references to other antitrust conditions. The condition now refers to power transmitted in a manner "provided in subparagraphs 2(b) and 7(a) through 7(d)." The Licensee proposes changing "two(b)" to "2" and "seven(e)" to "seven(c)." Since I did

not believe that it was appropriate to remove Condition 2 (a), I do not accept the change as proposed by the Licensee with regard to the reference to Condition 2. I do not object to changing the reference to Condition 7, as proposed, since the change is consistent with the changes I believed appropriate in Condition 7.

3.22 Condition 8

The Licensee has proposed to change Condition 8 by (1) changing "Federal Power Commission" to "Federal Energy Regulatory Commission," (2) replacing "KEC" with "KEPCO," and (3) revising the phrases "in Paragraphs 2(b) and 7" and "in Paragraphs 2(b) and 7(a) through 7(e)."

I believe that it is appropriate to change the reference from Federal Power Commission to Federal Energy Regulatory Commission, since the later is now the relevant agency.

I indicated in connection with the requested change to Condition 1 (h) that it is appropriate to replace "KEC" with "KEPCO."

I previously indicated that it was not appropriate to remove Condition 2 (a) and therefore to the extent that Licensee wants to revise the references to reflect the removal of Condition 2 (a), it would not be appropriate.

3.23 Condition 9

The Licensee has proposed to change Condition 9 by (1) revising the phrases "described in Paragraphs 2(b), seven(b), and seven(c)(i)," and (2) replacing "KEC" with "KEPCO."

As indicated above, I did not believe that it would be appropriate to remove Condition 2 (a), and therefore, except for the change in reference to Condition 2, it would be appropriate to make the other reference changes in the Condition.

As indicated in connection with the request to modify Condition 1 (h), I believe that it is appropriate to replace "KEC with KEPCO."

3.24 Condition 11

The Licensee has proposed to add a new Antitrust License Condition. Condition 11 would state that Conditions 2, 3, 4, 5, 6(b), 7, 8, and 9 do not restrict KEPCO's rights or the Licensee's duties under other license conditions.

As submitted, the new Condition stated that Antitrust License Conditions did not restrict the rights and duties under "other license conditions." The Licensee, by E-mail dated May 25, 2001, clarified the intent of this new Condition. The Licensee stated that the Condition is intended to make clear that these Antitrust Conditions did not contain all the rights and duties that may exist

between KGE and KEPCO. There are contracts between them that provide for other obligations and responsibilities that are unrelated to the Antitrust Conditions.

In view of the clarification, I believe that it is appropriate to make clear that the Antitrust License Conditions do not address all the relationships between KGE and KEPCO. I propose modifying the language requested by the Licensee because it appears to address only other responsibilities that may be required by the Antitrust License Conditions. I suggest the following language that appears to represent the purpose of the proposed Condition: The obligations and requirements set forth in Conditions 2, 3, 4, 5, 6, 7, 8 and 9 do not restrict KEPCO's rights or the Licensee's duties that may otherwise exist beyond these Antitrust License Conditions.

3.25 Conclusion

Based upon the above evaluation, I conclude that with the exception of the removal of Antitrust License Condition 2 (a) and the references to this Condition in other Conditions and the replacement language in Condition 11, the proposed amendment to the Antitrust License Conditions for KGE in Appendix C of the Operating License for WCGS in the application dated June 27, 2001, is acceptable.

UNITED STATES NUCLEAR REGULATORY COMMISSION

WOLF CREEK NUCLEAR OPERATING CORPORATION

DOCKET NO. 50-482

NOTICE OF PARTIAL DENIAL OF AMENDMENT TO FACILITY OPERATING LICENSE

AND OPPORTUNITY FOR HEARING

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has denied part of a request by Wolf Creek Nuclear Operating Corporation (the licensee) for an amendment to Facility Operating License No. NPF-42 issued to the licensee for operation of the Wolf Creek Generating Station (WCGS), located in Coffey County, Kansas.

Notice of Consideration of Issuance of this amendment was published in the FEDERAL REGISTER on July 26, 2000 (65 FR 46010).

The purpose of the licensee's amendment request was to revise Appendix C, "Antitrust Conditions for Kansas Gas and Electric Company [KGE]," for the WCGS operating license. The revisions (1) add a statement that the antitrust conditions do not restrict the rights of Kansas Electric Power Cooperative, Inc. (KEPCo) or the duties of Kansas Gas and Electric Company (KGE), that may exist beyond, and are not inconsistent with the antitrust conditions, (2) define "KGE members in licensee's service area" in the appendix to include all KEPCo members with facilities in Western Resources' and KGE's combined service area, (3) delete license conditions restricting KEPCo's use of the power from WCGS, (4) remove out-of-date conditions, and (5) update conditions to be consistent with the terms and conditions of Western Resources' Federal Energy Regulatory Commission (FERC) open access transmission tariff. Western Resources is the parent company of KGE.

The NRC staff has concluded that the licensee's proposed deletion of part of Antitrust Condition 2(a) that KGE shall offer an opportunity to participate in other nuclear generating unit(s) (other than WCGS) which KGE may construct, own, and operate, and the proposed deletion of references to Condition 2(a) in Appendix C cannot be granted. The basis for the NRC staff's denial and a more complete description of what part of Condition 2(a) cannot be granted, are documented in the safety evaluation dated September 6, 2002, that supported Amendment No. 147 that approved the remaining parts of the licensee's proposed amendment. The licensee was notified of the Commission's partial denial of the proposed change by letter dated September 6, 2002.

By 30 days from the date of publication of this notice in the FEDERAL REGISTER, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.¹

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery to

¹ "The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: "In all other circumstances, such ruling body or officer shall, in ruling on-

- (1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:
 - (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
 - (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
 - (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest .
- (2) The admissibility of a contention, refuse to admit a contention if:
 - (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section;
or
 - (ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief."

mail to U.S. Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to U.S. Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of any petitions should also be sent to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated June 27, 2000, and its supplements dated January 31, 2001, May 2, 2001, October 30, 2001, and May 10, 2002, and (2) the Commission's letter to the licensee dated September 6, 2002.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System's Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing

documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 6th day of September 2002.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

William H. Ruland, Director
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation