



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 7, 2017

Mr. Adam C. Heflin
President, Chief Executive Officer,
and Chief Nuclear Officer
Wolf Creek Nuclear Operating Corporation
P.O. Box 411
Burlington, KS 66839

SUBJECT: WOLF CREEK GENERATING STATION, UNIT 1 - ORDER APPROVING
INDIRECT TRANSFER OF CONTROL OF RENEWED FACILITY OPERATING
LICENSE NO. NPF-42 (CAC NO. MF8168)

Dear Mr. Heflin:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of your application dated July 22, 2016 (Agencywide Documents Access and Management System Accession No. ML16208A250). The application requests approval of the indirect transfer of control of Renewed Facility Operating License No. NPF-42 for Wolf Creek Generating Station, Unit 1 which will result from the proposed merger of two of the indirect owners of Wolf Creek Nuclear Operating Corporation, Great Plains Energy Incorporated (Great Plains) and Westar Energy, Inc. (Westar) with Westar becoming a wholly-owned subsidiary of Great Plains.

Enclosure 1 is the Order that approves the proposed indirect ownership transfer pursuant to Section 50.80, "Transfer of licenses," of Title 10 of the *Code of Federal Regulations* (10 CFR), and subject to the conditions described therein.

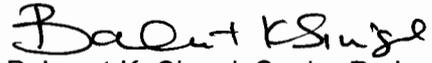
Enclosure 2 is the NRC staff's safety evaluation related to the proposed indirect ownership transfer.

A. Heflin

- 2 -

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,



Balwant K. Singal, Senior Project Manager
Plant Licensing Branch IV
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket No. 50-482

Enclosures

1. Order
2. Safety Evaluation

cc w/enclosures: Listserv

ENCLOSURE 1

ORDER APPROVING INDIRECT TRANSFER OF CONTROL

OF

WOLF CREEK GENERATING STATION, UNIT 1

RENEWED FACILITY OPERATING LICENSE NO. NPF-42

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
)	
WOLF CREEK NUCLEAR)	Docket No. 50-482
OPERATING CORPORATION)	
)	
)	
Wolf Creek Generating Station,)	Renewed License No. NPF-42
Unit 1)	

ORDER APPROVING INDIRECT TRANSFER OF LICENSE

I.

Wolf Creek Nuclear Operating Corporation (WCNOC) is the holder of the Renewed Facility Operating License (FOL) No. NPF-42 for the Wolf Creek Generating Station, Unit 1 (WCGS) authorized to possess, use, and operate WCGS. WCGS is located in Coffey County, Kansas.

II.

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, "Transfer of licenses," WCNOC requested consent from the U.S. Nuclear Regulatory Commission (NRC) to the indirect transfer of control of Renewed FOL No. NPF-42 for the WCGS by application dated July 22, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16208A250).

WCNOC is the licensed operator of WCGS and Kansas City Power & Light Company (KCP&L), Kansas Gas and Electric Company (KG&E), and Kansas Electric Power Cooperative, Inc. (KEPCO) are the three non-operating owner licensees. KCP&L and KG&E each hold a 47 percent undivided interest in WCGS and 47 percent of the stock of WCNOC and KEPCO holds the remaining 6 percent interest. KCP&L is a subsidiary of Great Plains Energy Incorporated (Great Plains) and KG&E is a subsidiary of Westar Energy, Inc. (Westar). The indirect transfer of control will result from the proposed merger of Great Plains and Westar with Westar becoming a wholly-owned subsidiary of Great Plains. KCP&L and KG&E will each continue to hold their respective 47 percent interests in WCNOC and WCGS. KCP&L and KG&E will continue to operate as separate electric utilities responsible for their pro rata shares of the costs of operating WCGS and entitled to their pro rata shares of the capacity, energy, and other energy products produced by WCGS. Great Plains will indirectly own a combined interest in WCGS of 94 percent. The remaining 6 percent ownership interest will continue to be held by KEPCO. WCNOC will continue to be the operator of WCGS with the same management team as in effect prior to the consummation of the proposed merger.

In response to the submission of the indirect license transfer application, the NRC published in the *Federal Register* a notice entitled, "Wolf Creek Generating Station; Consideration of Approval of Transfer of License," on November 17, 2016 (81 FR 81176). In a letter dated December 13, 2016 (ADAMS Accession No. ML17079A255), KEPCO submitted a public comment in response to this notice, which stated, in part, that:

The purpose of this letter is to clarify statements in the Request [by WCNOC for NRC consent to the indirect transfer] about KEPCO's ownership interest and to make clear that the Request was not filed on behalf of all the owners of [WCNOC and WCGS].

...While KEPCO would continue to own 6% of [WCGS] and WCNOC, WCNOC's assertion that KEPCO's ownership interests would be unaffected is inaccurate.

The nature of KEPCO's ownership interest is more than the simple percentage; it was negotiated as part of an overall structure where none of the three owners commanded the majority necessary to unilaterally make important decisions. KEPCO's 6% interest as it currently exists provides KEPCO with substantial influence over the financial and strategic planning for and the oversight of [WCGS] and WCNOG. By contrast, in the post-merger world one company would own 94% of [WCGS] and WCNOG through its affiliated subsidiaries, which would undoubtedly affect how the two previously independent owners would manage their interests in and control of [WCGS] (and WCNOG).

The NRC staff reviewed KEPCO's letter as part of its review of the WCNOG request for consent to the proposed indirect license transfer. The staff notes that, in its application, WCNOG stated that:

The remaining 6.0% ownership interest in WCGS held by [KEPCO] is unaffected by the Merger.

The proposed merger will result in one entity, Great Plains, indirectly owning a combined interest in WCGS of 94 percent, as opposed to two entities, Great Plains and Westar, each indirectly owning a 47 percent interest in WCGS. This does not affect the fact that, in either case, KEPCO indirectly owns a 6 percent interest in WCGS. Whether, as provided by KEPCO, the proposed merger will decrease KEPCO's influence over the financial and strategic planning for WCGS is not relevant to the NRC's review of the proposed indirect license transfer application under AEA Section 184 and 10 CFR 50.80. The NRC's authority with respect to license transfer applications is limited to evaluating financial qualification, decommissioning funding assurance, management and technical support organization, operating organization, foreign ownership, control, or domination, and nuclear insurance and indemnity issues as they relate to the public health and safety and the common defense and security. The relevant NRC regulatory requirements do not apply to strategic business or other corporate decisions and

considerations. Accordingly, the NRC staff concludes that the concerns identified by KEPCO do not impact its conclusion regarding the proposed indirect license transfer application.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, either directly or indirectly, through transfer of control of the license, unless the NRC gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that WCNOG is qualified to hold the license following the proposed merger of Great Plains and Westar with Westar becoming a wholly-owned subsidiary of Great Plains. The NRC staff has also determined that the proposed indirect license transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by an NRC safety evaluation dated April 7, 2017, and available under ADAMS Accession No. ML17037D120.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed indirect license transfer is approved.

IT IS FURTHER ORDERED that, after receipt of all required regulatory approvals of the proposed indirect license transfer, WCNOG shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of closing of the transfer, no later than 5 business days prior to the date of the closing of the indirect license transfer. Should the proposed indirect license transfer not be completed within 1 year of this Order's date of issuance, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 22, 2016 (ADAMS Accession No. ML16208A250), and the NRC Safety Evaluation dated April 7, 2017 (ADAMS Accession No. ML17037D120), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this 7th day of April 2017.

FOR THE NUCLEAR REGULATORY COMMISSION



Mary Jane Ross-Lee, Acting Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

ENCLOSURE 2

SAFETY EVALUATION FOR
INDIRECT TRANSFER OF CONTROL

OF

WOLF CREEK GENERATING STATION, UNIT 1
RENEWED FACILITY OPERATING LICENSE NO. NPF-42



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

FOR INDIRECT TRANSFER OF CONTROL OF

RENEWED FACILITY OPERATING LICENSE NO. NPF-42

WOLF CREEK GENERATING STATION, UNIT 1

DOCKET NO. 50-482

1.0 INTRODUCTION

By application dated July 22, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16208A250), Wolf Creek Nuclear Operating Corporation (WCNOC) requested U.S. Nuclear Regulatory Commission (NRC) consent to an indirect transfer of control of Renewed Facility Operating License (FOL) No. NPF-42 for the Wolf Creek Generating Station, Unit 1 (WCGS) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses." The indirect transfer of control will result from the proposed merger of two of the indirect owners of WCNOC and WCGS, Great Plains Energy Incorporated (Great Plains) and Westar Energy, Inc. (Westar). Each entity (Great Plains and Westar), through subsidiaries (Kansas City Power & Light Company (KCP&L) and Kansas Gas and Electric Company (KG&E), respectively), owns 47 percent of WCNOC and WCGS. Under the proposed merger, Westar will become a wholly-owned subsidiary of Great Plains. Therefore, as a result of the proposed merger, Great Plains will indirectly own a combined interest in WCNOC and WCGS of 94 percent. The remaining 6 percent ownership interest in WCNOC and WCGS will continue to be held by Kansas Electric Power Cooperative, Inc. (KEPCO).

The NRC staff received a letter dated December 13, 2016 (ADAMS Accession No. ML17079A255), from KEPCO in response to the opportunity to comment on the proposed indirect license transfer published in the *Federal Register* (FR) on November 17, 2016 (81 FR 81176). In this letter, KEPCO noted concerns with the proposed merger and stated, in part, that:

The purpose of this letter is to clarify statements in the Request [by WCNOC for NRC consent to the indirect transfer] about KEPCO's ownership interest and to make clear that the Request was not filed on behalf of all the owners of [WCNOC and WCGS].

2.0 BACKGROUND

On July 22, 2016, in accordance with Section 184 of the Atomic Energy Act of 1954, as amended (AEA), "Inalienability of Licenses," and 10 CFR 50.80, WCNOG requested consent from the NRC to the indirect transfer of control of Renewed FOL No. NPF-42 for the WCGS (hereafter referred to as the application). WCNOG is the licensed operator of WCGS and KCP&L, KG&E, and KEPCO are the three non-operating owner licensees. KCP&L and KG&E each hold a 47 percent undivided interest in WCGS and 47 percent of the stock of WCNOG and KEPCO holds the remaining 6 percent interest. KCP&L is a subsidiary of Great Plains and KG&E is a subsidiary of Westar. The indirect transfer of control will result from the proposed merger of Great Plains and Westar with Westar becoming a wholly-owned subsidiary of Great Plains. KCP&L and KG&E will each continue to hold their respective 47 percent interests in WCNOG and WCGS. KCP&L and KG&E will continue to operate as separate electric utilities responsible for their pro rata shares of the costs of operating WCGS and entitled to their pro rata shares of the capacity, energy, and other energy products produced by WCGS. Great Plains will indirectly own a combined interest in WCGS of 94 percent. The remaining 6 percent ownership interest will continue to be held by KEPCO. WCNOG will continue to be the operator of WCGS with the same management team as in effect prior to the consummation of the proposed merger.

3.0 REGULATORY EVALUATION

The WCNOG request for approval of the indirect transfer of control of the license for WCGS, as discussed in this safety evaluation (SE), is made pursuant to 10 CFR 50.80. The regulation at 10 CFR 50.80(a) states:

No license for a production or utilization facility (including, but not limited to, permits under this part and part 52 of this chapter, and licenses under parts 50 and 52 of this chapter), or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the regulations at 10 CFR 50.80(b) and (c) apply. Section 50.80(b) of 10 CFR Part 50 states that an application for a license transfer shall include as much of the information described in 10 CFR 50.33, "Contents of applications; general information," and 10 CFR 50.34, "Contents of applications; technical information," with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license.

The regulation at 10 CFR 50.80(c) states, in part:

...the Commission will approve an application for the transfer of a license, if the Commission determines:

- (1) That the proposed transferee is qualified to be the holder of the license; and
- (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The regulation at 10 CFR 50.33(f) states, in part:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22 [each application shall state], information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

Also, the regulation at 10 CFR 50.33(k)(1) requires that applicants provide information in the form of a report, as described in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," indicating that there is reasonable assurance that funds will be available to decommission the facility.

The regulation at 10 CFR 50.75(c) provides a table of minimum amounts (in 1986 dollars, the "base year") required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level.

The NRC staff applies the guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (ADAMS Accession No. ML013330264), to evaluate whether the financial qualifications of licensees would be affected by proposed transfers.

The NRC staff also applies the guidance in NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light-Water Reactor] Edition," Chapter 13, "Conduct of Operations," Revision 6 of Section 13.1.1, "Management and Technical Support Organization" (ADAMS Accession No. ML15005A449), for the review of the corporate-level management and technical support organization of applicants. Guidance in Revision 7 of Sections 13.1.2 and 13.1.3, "Operating Organization" (ADAMS Accession No. ML15007A296), is applied for the review of the operating organization of applicants, including the structure, functions, and responsibilities of the onsite organization established to safely operate and maintain the facility.

In addressing Foreign Ownership, Control, or Domination (FOCD) issues, Section 103d of the AEA provides, in relevant part that no license may be issued to:

[A]ny corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The regulation at 10 CFR 50.38, "Ineligibility of certain applicants," is the regulatory provision that implements the FOCD provision of the AEA. The NRC staff evaluates license transfer applications in a manner that is consistent with the guidance provided in the "Final Standard Review Plan [SRP] on Foreign Ownership, Control, or Domination," for reactor licenses (hereafter referred to as the "SRP on FOCD"), to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government (published in the *Federal Register* on September 28, 1999 (64 FR 52355)).

The NRC staff also reviews information that relates to the Price-Anderson insurance and indemnity requirements under Section 170 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," and reviews the nuclear property damage insurance requirements under 10 CFR 50.54(w).

4.0 FINANCIAL QUALIFICATIONS

The regulation at 10 CFR 50.33(f) states, in part:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22 [an application shall state], information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The regulation at 10 CFR 50.2, "Definitions," states, in part, that an electric utility means:

[A]ny entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

Both before and after the proposed merger, all costs for the operations, maintenance, repair, and decontamination and decommissioning of WCGS incurred or accrued are liabilities of the owners, KCP&L, KG&E, and KEPCO, when incurred or accrued and are borne by the owners in proportion to their ownership interests in WCGS. WCNOG will remain a jointly-owned subsidiary of the owners.

As stated in the application, "KCP&L and KG&E are and will remain investor-owned utilities." Following the proposed merger, both entities will be owned directly or indirectly by Great Plains. They will continue to generate electricity and recover the costs of this electricity indirectly through rates established by regulatory authorities. As such, they are each an "electric utility" as defined in 10 CFR 50.2.

Financial Qualifications Summary

As discussed above, the NRC staff finds that the owners will remain investor-owned utilities and, therefore, pursuant to 10 CFR 50.33(f)(2), the application for the proposed indirect license transfer was not required to state information sufficient to demonstrate their financial qualification. Additionally, the remaining 6 percent ownership interest will continue to be held by KEPCO. Therefore, the proposed indirect license transfer will not affect WCNOG's financial qualification to own and operate WCGS and satisfies 10 CFR 50.80 with respect to financial qualifications.

5.0 DECOMMISSIONING FUNDING

Pursuant to 10 CFR 50.75(b), a power reactor licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 CFR 50.75(e). The NRC has determined that the requirement to provide reasonable assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety.

The regulation at 10 CFR 50.75(b) also requires, in part, that:

Each power reactor applicant for or holder of an operating license... for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by § 50.33(k).

The regulation at 10 CFR 50.33(k) requires that an applicant for an operating license for a production or utilization facility provide information in the form of a report indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

Furthermore, the regulation at 10 CFR 50.75(c) provides the “Table of minimum amounts (January 1986 dollars) required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level, P (in MWt [megawatt thermal]); adjustment factor.”

Decommissioning Funding Assurance for WCGS

KCP&L and KG&E each maintain a nuclear decommissioning trust fund in accordance with 10 CFR 50.75(e)(1)(ii). KCP&L's and KG&E's nuclear decommissioning trust funds are held in external trust funds segregated from the companies' assets and outside of their administrative control. The funds are governed by UMB Corporate Trust Services. The terms of the funds comply with the requirements of 10 CFR 50.75(h)(2). KCP&L and KG&E are electric utilities as defined in 10 CFR 50.2. KCP&L and KG&E recover costs for decommissioning through cost-of-service rates established by state regulatory authorities. The proposed merger will not result in changes to these nuclear decommissioning trust funds or KCP&L's and KG&E's use of these funds to provide financial assurance for decommissioning. The remaining 6 percent ownership interest will continue to be held by KEPCO.

As required by 10 CFR 50.75(f)(1), by letter dated March 30, 2015 (ADAMS Accession No. ML15098A500), WCNO provided information to the NRC on the status of the decommissioning funding for WCGS as of December 31, 2014. Per this submittal, the total amount of decommissioning funds required for WCGS using the table of minimum amounts formula under 10 CFR 50.75(b) and (c) was \$521.22 million (2014 dollars). The amount of funds available in the WCGS decommissioning trust funds as of December 31, 2014, was \$403,360,000, which consisted of the 47 percent of funds required for each of KCP&L and KG&E, and also the 6 percent of funds required for KEPCO. Based on its review of the March 30, 2015 decommissioning funding status report provided by WCNO, the NRC staff determined that the owners of WCGS are providing adequate decommissioning funding assurance in accordance with the NRC's regulations.

The NRC staff finds that the indirect transfer of control resulting from the proposed merger, through which Westar (which wholly owns KG&E) will become a wholly-owned subsidiary of Great Plains (which wholly owns KCP&L), will not affect the decommissioning funding arrangements currently in place for WCGS. This information conforms to the guidance in NUREG-1577 for the staff's review of decommissioning funding assurance. Based on the discussion above, the NRC staff concludes that the proposed indirect license transfer satisfies 10 CFR 50.80 and 10 CFR 50.75(b) and (c) with respect to providing decommissioning funding assurance.

6.0 TECHNICAL QUALIFICATIONS

6.1 Management and Technical Support Organization

The NRC staff reviewed the application to determine whether the corporate management and technical support organization of WCGS will change due to the proposed merger. For this review, the NRC staff used, in part, the guidance provided in NUREG-0800, Revision 6, Section 13.1.1.

The indirect license transfer of control will result from the proposed merger of two of the indirect owners, Great Plains and Westar. KCP&L and KG&E, the subsidiaries of Great Plains and Westar, respectively, will remain non-operating owners and will continue to operate as separate electric utilities responsible for their pro rata shares of the costs of operating WCGS. WCNOG is the current operating licensee authorized to possess, use, and operate WCGS and will remain the operator after the proposed merger with the same management team as was in effect prior to the proposed merger. As a result, the technical qualifications will not be affected by the proposed merger and the proposed indirect license transfer. Explicitly stated, the consummation of the proposed merger will not involve any change to the management or staffing of the nuclear operating organization or any changes to plant operating procedures. WCNOG will continue to have clear and direct lines of responsibility and authority, up to and including the Chief Nuclear Officer (CNO).

Since there will be no changes to the management team and the ownership of the plant will remain the same, the NRC staff finds the proposed indirect license transfer to be acceptable because there will be no changes to the qualifications of these parties as a result of the proposed merger.

6.2 Operating Organization

The NRC staff reviewed the application to determine the acceptability of the operating organization and to evaluate changes to the operating organization that would result from the proposed indirect license transfer. For this review, the staff used the applicable acceptance criteria contained in NUREG-0800, Revision 7, Sections 13.1.2 and 13.1.3.

WCNOG is the current operating licensee and will remain the exclusive operator of WCGS after the proposed merger. The same management team as was in effect prior to the proposed merger will be in effect after the proposed merger and there will be no changes to management or staffing. Explicitly stated, after the proposed merger, the WCNOG organization will continue to have clear and direct lines of responsibility and authority, up to and including the CNO. Therefore, the NRC staff finds the proposed indirect license transfer to be acceptable.

7.0 ANTITRUST REVIEW

The AEA does not require or authorize antitrust reviews of post-operating license transfer applications.¹ The application postdates the issuance of the operating license for the unit under consideration in this SE and, therefore, no antitrust review is required or authorized.

¹ Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999).

8.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Section 103d of the AEA states, in relevant part, that no license may be issued to:

[A]ny corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The regulation at 10 CFR 50.38 is the regulatory provision that implements this provision of the AEA. The NRC staff evaluated the application pursuant to the guidance provided in the SRP on FOCD to determine whether, as a result of the proposed indirect license transfer, the license for WCGS will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. The SRP on FOCD states that “the foreign control limitation should be given an orientation toward safeguarding the national defense and security.” Furthermore, the SRP on FOCD outlines how the effects of foreign ownership may be mitigated through implementation of a “negation action plan” to ensure that any foreign interest is effectively denied control or domination over the licensee.

As provided in the application, the proposed indirect transfer of control of the license will not result in the license or the licensees being subject to FOCD. The proposed transfer is the result of the proposed merger of the parent companies Great Plains and Westar. Great Plains and Westar, including subsidiaries KCP&L and KG&E, will remain U.S. companies. The remaining 6 percent ownership interest will continue to be held by KEPCO. WCNOG is also a U.S. entity and will remain a U.S. entity after the proposed merger. None of these companies will be owned, controlled, or dominated by foreign interests. Both Great Plains and Westar are publicly traded companies with shares that are traded on the New York Stock Exchange and that are widely held. The indirect license transfer application also contains the names and addresses of the directors and officers of all parent companies and license holders involved, and indicates that all are U.S. citizens, with the exception of the WCNOG General Counsel/Corporate Secretary who is a Canadian citizen and permanent resident of the United States. However, the position of General Counsel/Corporate Secretary is not a key management personnel position with respect to nuclear safety or security and, therefore, the citizenship of the individual holding this position has no bearing on the staff’s FOCD analysis. According to the application, WCGS is not, and, after the proposed indirect license transfer, will not be owned, controlled, or dominated by any alien, foreign corporation, or foreign government. The NRC staff does not have reason to believe otherwise.

Additionally, the NRC staff conducted an independent analysis, including open-source research and verification of the information provided in the application related to ownership of all relevant parties in the proposed merger, and found no evidence of FOCD.

Based on its independent analysis of the information provided in the application, the NRC staff does not believe that any of the parties related to this proposed merger are or will be owned, controlled, or dominated by a foreign interest.

9.0 NUCLEAR INSURANCE AND INDEMNITY

Pursuant to the requirements of the Price-Anderson Act (Section 170 of the AEA) and the NRC’s implementing regulations at 10 CFR Part 140, the NRC staff finds that the current indemnity agreement does not need to be modified to reflect the proposed indirect license transfer because it will not result in a change to the named license holders. WCNOG will

continue to be required to provide, maintain, and report the appropriate amount of insurance in accordance with 10 CFR 140.11(a)(4), 10 CFR 50.54(w), and 10 CFR 140.21.

10.0 DISPOSITION OF KEPCO'S COMMENTS

The NRC staff received a letter dated December 13, 2016, from KEPCO in response to the opportunity to comment on the proposed indirect license transfer published in the *Federal Register* on November 17, 2016 (81 FR 81176). In this letter, KEPCO noted concerns with the proposed merger and stated, in part, that:

The purpose of its letter is to clarify statements in the Request [by WCNOG for NRC consent to the indirect transfer] about KEPCO's ownership interest and to make clear that the Request was not filed on behalf of all the owners of [WCNOG and WCGS].

...While KEPCO would continue to own 6% of [WCGS] and WCNOG, WCNOG's assertion that KEPCO's ownership interests would be unaffected is inaccurate. The nature of KEPCO's ownership interest is more than the simple percentage; it was negotiated as part of an overall structure where none of the three owners commanded the majority necessary to unilaterally make important decisions. KEPCO's 6% interest as it currently exists provides KEPCO with substantial influence over the financial and strategic planning for and the oversight of [WCGS] and WCNOG. By contrast, in the post-merger world one company would own 94% of [WCGS] and WCNOG through its affiliated subsidiaries, which would undoubtedly affect how the two previously independent owners would manage their interests in and control of [WCGS] (and WCNOG).

The NRC staff reviewed KEPCO's letter as part of its review of the WCNOG request for consent to the proposed indirect license transfer. The staff notes that, in its application, WCNOG stated that:

The remaining 6.0% ownership interest in WCGS held by [KEPCO] is unaffected by the Merger.

The proposed merger will result in one entity, Great Plains, indirectly owning a combined interest in WCGS of 94 percent, as opposed to two entities, Great Plains and Westar, each indirectly owning a 47 percent interest in WCGS. This does not affect the fact that, in either case, KEPCO indirectly owns a 6 percent interest in WCGS. Whether, as provided by KEPCO, the proposed merger will decrease KEPCO's influence over the financial and strategic planning for WCGS is not relevant to the NRC's review of the proposed indirect license transfer application under AEA Section 184 and 10 CFR 50.80.

As explained in this SE, the NRC's authority with respect to license transfer applications is limited to evaluating financial qualification, decommissioning funding assurance, management and technical support organization, operating organization, FOCD, and nuclear insurance and indemnity issues as they relate to the public health and safety and the common defense and security. The NRC regulatory requirements cited in Section 3.0, "Regulatory Evaluation," and throughout this SE, do not apply to strategic business or other corporate decisions and considerations. Accordingly, the NRC staff concludes that the concerns identified by KEPCO do not impact its conclusion regarding the proposed indirect license transfer application.

11.0 SUMMARY

As discussed above, the NRC staff concludes that the proposed indirect transfer of control of Renewed FOL No. NPF-42 for WCGS from the proposed merger of Great Plains and Westar with Westar becoming a wholly-owned subsidiary of Great Plains will not affect the qualifications of the licensees and that the license transfer is consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. No physical changes will be made to WCGS, there will be no changes in the conduct of operations of the plant, and there will be no changes to the management team as a result of the indirect license transfer. Additionally, the NRC staff concludes that the owners have satisfied the NRC's financial qualifications requirements and decommissioning funding assurance requirements, have met the applicable onsite and offsite insurance requirements, and are not owned, controlled, or dominated by a foreign entity. Therefore, the proposed transfer will not have any adverse impact on the public health and safety, nor will it be inimical to the common defense and security.

12.0 STATE CONSULTATION

In accordance with the Commission's regulations, the Kansas State official was notified of the proposed license transfer on March 24, 2017. The State official had no comments.

13.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the indirect transfer of Renewed FOL No. NPF-42 issued by the NRC. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

14.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that (1) the proposed transferee is qualified to be the holder of the license and (2) transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the order approving the transfer will not be inimical to the common defense and security or to the health and safety of the public.

Principal Contributors: Emil Tabakov, NRR/DIRS/IFIB
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Date: April 7, 2017

SUBJECT: WOLF CREEK GENERATING STATION, UNIT 1 - ORDER APPROVING
INDIRECT TRANSFER OF CONTROL OF RENEWED FACILITY OPERATING
LICENSE NO. NPF-42 (CAC NO. MF8168) DATED APRIL 7, 2017

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