

October 18, 1991

Docket No. 50-482

MEMORANDUM FOR: Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

FROM: Frank P. Gillespie, Director  
Program Management, Policy Development  
and Analysis Staff  
Office of Nuclear Reactor Regulation

SUBJECT: OPERATING LICENSE ANTITRUST ANALYSIS OF THE  
WOLF CREEK NUCLEAR GENERATING STATION

Enclosed for your signature is a finding of no significant changes pursuant to the operating license antitrust review associated with the proposed merger of Kansas Gas and Electric Company (Wolf Creek licensee) and the Kansas Power and Light Company. This finding is based upon an analysis by the antitrust staffs of PMAS and OGC (after consultation with the Department of Justice), which concludes that a "no significant change" finding is warranted. The staff analysis is enclosed as background information.

This is an initial finding which will be noticed in the Federal Register, thereby providing the public the opportunity to request a reevaluation of your finding. If there are no requests for reevaluation, the finding will become final, and the operating license antitrust review of the Wolf Creek Nuclear Generating Station will have been completed.

Original signed by  
Frank P. Gillespie

Frank P. Gillespie, Director  
Program Management, Policy Development  
and Analysis Staff  
Office of Nuclear Reactor Regulation

Enclosures:  
As stated

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upon in both the KCC and FERC proceedings. The staff further believes that the KCC and FERC proceedings addressed the issue of adequately protecting the interests of competing power systems and the competitive process in the area served by the Wolf Creek facility such that the changes will not have implications that warrant a Commission remedy. In reaching this conclusion, the staff considered the structure of the electric utility industry in Kansas and adjacent areas and the events relevant to the Wolf Creek construction permit and operating license reviews. For these reasons, and after consultation with the Department of Justice, the staff recommends that no affirmative "significant change" determination be made regarding the proposed change in ownership detailed in the licensee's amendment application dated March 28, 1991.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

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

October 18, 1991

Docket No. 50-482A

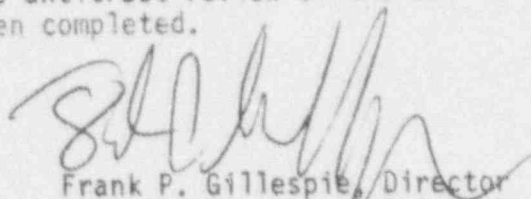
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This is an initial finding which will be noticed in the Federal Register, thereby providing the public the opportunity to request a reevaluation of your finding. If there are no requests for reevaluation, the finding will become final, and the operating license antitrust review of the Wolf Creek Nuclear Generating Station will have been completed.

  
Frank P. Gillespie, Director  
Program Management, Policy Development  
and Analysis Staff  
Office of Nuclear Reactor Regulation

Enclosures:  
As stated

WOLF CREEK NUCLEAR GENERATING STATION  
KANSAS GAS AND ELECTRIC COMPANY, ET AL.  
FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides that an application for a license to operate a utilization facility for which a construction permit was issued under section 103 shall not undergo an antitrust review unless the Commission determines that such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous antitrust review by the Attorney General and the Commission in connection with the construction permit for the facility. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. By application dated March 28, 1991, the Kansas Gas and Electric Company (KG&E or licensee), pursuant to 10 CFR 50.80, requested the transfer of its 47% ownership interest in the Wolf Creek Nuclear Generating Station, Unit 1 (Wolf Creek) to a newly formed wholly owned subsidiary of the Kansas Power and Light Company (KPL). Wolf Creek underwent antitrust review at the construction permit stage in 1976 and the operating license stage in 1985. The staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereinafter referred to as the "staff", have jointly concluded, after consultation with the Department of Justice, that the proposed change in ownership is not a significant



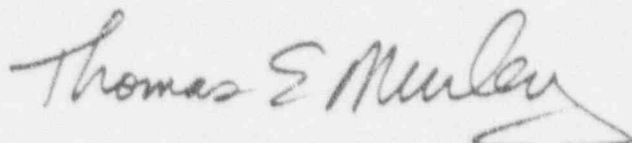
change under the criteria discussed by the Commission in its *Summer* decisions (CLI-80-28 and CLI-81-14).

On May 13, 1991, the staff published in the Federal Register (56 Fed. Reg. 22026) receipt of the licensee's request to transfer its 47 percent ownership interest in Wolf Creek to a successor company, also called Kansas Gas and Electric Company, resulting from the proposed merger of KG&E and KPL. The notice indicated the reason for the transfer, stated that there were no anticipated significant safety hazards as a result of the proposed transfer and provided an opportunity for public comment on any antitrust issues related to the proposed transfer. No comments were received.

The staff reviewed the proposed transfer of KG&E's ownership in the Wolf Creek facility to a wholly owned subsidiary of KPL for significant change since the last antitrust review of Wolf Creek, using the criteria discussed by the Commission in its *Summer* decisions (CLI-80-28 and CLI-81-14). The staff believes that the records developed to date in the proceedings at the Kansas Corporation Commission (KCC) and the Federal Energy Regulatory Commission (FERC) involving the proposed KG&E/KPL merger adequately portray the competitive situation(s) in the markets served by the Wolf Creek generating facility and that any anticompetitive aspects of the proposed changes have been adequately addressed in those proceedings. License conditions designed to mitigate possible anticompetitive effects of the proposed merger have been agreed

upon in both the KCC and FERC proceedings. The staff further believes that the KCC and FERC proceedings addressed the issue of adequately protecting the interests of competing power systems and the competitive process in the area served by the Wolf Creek facility such that the changes will not have implications that warrant a Commission remedy. In reaching this conclusion, the staff considered the structure of the electric utility industry in Kansas and adjacent areas and the events relevant to the Wolf Creek construction permit and operating license reviews. For these reasons, and after consultation with the Department of Justice, the staff recommends that no affirmative "significant change" determination be made regarding the proposed change in ownership detailed in the licensee's amendment application dated March 28, 1991.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.



Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation