

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

DOCKETED 3/2/99

Shirley Ann Jackson, Chairman
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

SERVED 3/2/99

Docket No. 50-482-LT

In the Matter of)
)
KANSAS GAS AND ELECTRIC COMPANY)
et al.)
)
(Wolf Creek Generating Station, Unit 1))
)
_____)

CLI-99-05

MEMORANDUM AND ORDER

Before the Commission is a petition to intervene and request for hearing filed by the Kansas Electric Power Cooperative (KEPCo). Pursuant to our recently-promulgated Subpart M, 10 C.F.R. ? 2.1300 et seq., KEPCo challenges a proposed license transfer affecting the Wolf Creek Generating Station, a nuclear power reactor in which KEPCo owns a 6% interest. The license transfer would transfer the 47% ownership interests of the Kansas Gas and Electric Company (KGE) and the Kansas City Power and Light Company (KCPL) to a new company, Westar Energy. KEPCo's petition claims that the license transfer would have "serious adverse and anticompetitive effects" (p. 5), would result in "significant changes" in the competitive market (pp.15-17), and therefore warrants an antitrust review under section 105c of the Atomic Energy Act, 42 U.S.C. § 2135(c).

The NRC staff historically has performed a "significant changes" review in considering the antitrust aspects of certain kinds of license transfers. However, the Commission intends to consider in this case whether to move away from the prior practice and to direct the NRC staff no longer to conduct significant changes reviews in license transfer cases, including the current case. The Commission expects to consider a number of factors, including its own resources and expertise, and its statutory mandate. The governing legislation, section 105c of the AEA, and its legislative history, do not appear to call for fresh Commission antitrust reviews after the initial construction permit and operating license stage. See American Public Power Ass'n v. NRC, 990 F.2d 1309, 1311-13 (D.C. Cir. 1993). See also 56 Fed. Reg. 64943, 64969-71 (Dec. 13, 1991). Moreover, with the passage of the Energy Policy Act of 1992, a sister federal agency, the Federal Energy Regulatory Commission (FERC), now has broad powers to order relief remedying anti-competitive situations. See 16 U.S.C. § 824j-k.

Accordingly, prior to further considering KEPCo's request for a hearing on antitrust issues, we direct KEPCo, and the license transfer applicants (KGE and KCPL), to file briefs within fourteen days of this order. The briefs shall address one question only: whether as a matter of law or policy the Commission may and should eliminate all antitrust reviews in connection with license transfers and therefore terminate this adjudicatory proceeding forthwith. The briefs shall be provided to all other parties (by facsimile, e-mail or hand-delivery) on the filing date, and shall not exceed thirty pages per side (i.e., a total of thirty pages for KEPCo and a total of thirty pages for KGE and KCPL, combined). Each party may file reply briefs, not to exceed ten pages per side, within twenty-one days of the date of this order. No other pleadings in response to this order, or as authorized by Subpart M, shall be filed pending further order of the Commission.⁽¹⁾ The NRC staff shall not be a party to this proceeding.

IT IS SO ORDERED.

For the Commission
[Original signed by
Annette L. Vietti-Cook]

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 2nd day of March, 1999.

1. The Commission will accept amicus curiae briefs by any interested person or entity, so long as the brief is filed by March 31, 1999. No amicus brief shall exceed twenty pages. We are posting this order on the NRC's web site, publishing it in the Federal Register, and also sending copies to the United States Department of Justice, the Federal Energy Regulatory Commission, the Nuclear Energy Institute, the American Public Power Association, and the National Rural Electric Cooperative Association.