BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Timothy E. McKee, Chair
Susan M. Seltsam
John Wine

In the Matter of the Joint Application of Kansas Pipeline Partnership and Kansas Natural Partnership for an Order Authorizing their Combination and the Transfer of their Certificates of Convenience and Necessity to Kansas Pipeline Partnership, Authorizing the Continuation of the Existing Liens Upon Public Utility Property, Authorizing an Increase in Rates and Authorizing Changes in Terms and Conditions of Service.	)	Docket No. 190,362-U

Exhibit No. 21
Date 9/18/01 Case No. GP 96-450
Reporter klm

ORDER ON REMAND

Now, the above-captioned proceeding comes before the State Corporation Commission of the State of Kansas ("KCC" or "Commission") upon remand from the Kansas Court of Appeals. Being duly advised in the premises, and having reviewed the pleadings and mandate filed herein, the Commission finds and concludes:

I. PROCEDURAL SUMMARY

1. In March 1994, Kansas Pipeline Partnership ("KPP") and Kansas Natural Partnership ("KNP"), (collectively referred to as "Joint Applicants"), filed an application before the Commission for authorization to merge and for a rate increase. As a result of the hearings that followed, the Commission authorized KPP and KNP to merge. KPP and KNP no longer have separate identities; KPP is the

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surviving entity. Furthermore, the Commission granted relief to the Joint Applicants in the form of a multi-faceted rate increase. *See Williams Natural Gas Co. v. Kansas Corporation Comm'n*, 22 Kan. App. 2d 326, 327, 916 P.2d 52, *reh. denied*. 22 Kan. App. 2d 326 (June 19, 1996), *rev. denied*, 260 Kan. ____ (July 25, 1996).

2. Williams Natural Gas Company ("WNG") appealed to the Kansas Court of Appeals arguing that the Commission erred in allowing the Joint Applicants to recover certain "market entry costs" and certain "carrying costs." On May 14, 1996, the Kansas Court of Appeals reversed the Commission's action and remanded the proceeding to the Commission for additional findings in accordance with specified directions:

> (1) The KCC must determine if, when, and how the Joint Applicants acquired market entry costs incurred by two unrelated entities prior to the formation of the Joint Applicants. If necessary, the KCC may hold additional hearings and may receive additional evidence on the issues in question.
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> (2) If the market entry costs were neither incurred nor acquired by the Joint Applicants, the KCC shall not permit such costs to be added to the Joint Applicants' rate base or recovered by Joint Applicants in any fashion.
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> (3) In the event the KCC finds that the market entry costs and carrying costs were acquired by the Joint Applicants, the KCC should restore its earlier orders authorizing recovery of those costs. *Williams Natural Gas Co.*, 22 Kan. App. 2d at 339.

3. The central issue on appeal was limited to whether the Commission "had the authority to permit [Joint Applicants] to recover certain 'market entry costs.'" *Williams Natural Gas Co.*, 22 Kan. App. 2d at 335. The Kansas Court of

Appeals noted that "determining what property is to be included in the rate base is a question of fact" and ruled that "market entry costs" may be included as part of the rate base when such costs are either incurred by or acquired by the entity to whom the award is made. *Id.* at 337. The Commission does not have the authority to allow the recovery of costs which were neither incurred nor acquired by the entity requesting recovery. *Id.* at 335.

4. The Commission must determine on remand whether the Joint Applicants acquired the market entry costs in question. *Williams Natural Gas Co.*, 22 Kan. App. 2d at 337. If the Commission finds that these costs were acquired by the Joint Applicants, the allowance must be restored. *Id.* at 337-338. In making this finding, the Commission must specifically "determine when and how such an acquisition was and could have been made." *Id.* at 337. If the Commission cannot determine that the market entry costs were lawfully acquired by the Joint Applicants, "they may not be recovered, as part of the rate base or otherwise, by the Joint Applicants." *Id.* at 337-338.

II. HISTORICAL BACKGROUND

5. This section attempts to summarize the complicated history of the multiple transfers and business formations involving the Joint Applicants from 1984 to 1995. To begin, Kansas Pipeline Company ("KPC"), as nominee for Kansas Pipeline Company, L.P. ("KPCLP") purchased the pipeline assets of Phillips Petroleum Company ("Phillips") and ARLo, Inc. ("ARLo") on March 30, 1984. KPC owned the KPCLP's assets as the managing general partner with Oklahoma Gas

Pipeline Company ("OGP"). OGP was the sole limited partner. [R. Vol. 47, pp. 12917-12919; R. Vol. 38, p. 10214].

6. With the former liquids pipeline assets of Phillips and ARLo converted to gas, KPCLP filed an application seeking a certificate of convenience and authority on January 11, 1985. Pursuant to the application, the Commission issued a certificate of convenience and authority to KPCLP. The KPCLP pipeline system runs through the following Kansas counties: Miami, Coffey, Franklin, Johnson and Wyandotte. [R. Vol. 66, pp. 17095-17141].

7. On May 29, 1985, the Commission issued a certificate of convenience to Phenix Transmission Company ("Phenix"). The Phenix pipeline system consisted of two separate lines covering more than 900 miles in the following Kansas counties: Anderson, Barber, Butler, Chase, Coffey, Comanche, Cowley, Elk, Franklin, Greenwood, Harper, Harvey, Kingman, Lyon, Marion, McPherson, Miami, Rice and Sedgwick. [R. Vol. 66, pp. 17142-17194].

8. On August 15, 1988, Kansas Pipeline Joint Venture ("KPJV") purchased the pipeline assets of KPCLP. [R. Vol. 19, p. 4376; R. Vol. 38, pp. 10214-15]. KPJV was owned by Kansas Gas Transmission ("KGT") and Omega Corporation ("Omega"). [R. Vol. 38, p. 10214; R. Vol. 26, p. 6158].

9. On October 10, 1989, in Docket No. 168,338-U, the Commission allowed Phenix to transfer its certificate of authority to Kansas Natural, Inc. ("KNI"). KNI stated in the application that it would be purchasing the assets of Phenix. [R. Vol. 66, pp. 17281-17291].

10. On October 11, 1989, the Bishop Pipeline Company ("Bishop"), a Kansas corporation, purchased the assets of Phenix. [R. Vol. 26, pp. 6155, 6158, and 6244].

11. On June 22, 1990, Bishop sold one-half of its interest in the former Phenix to OKM Gas Pipeline Company, L.P. ("OKM"). [R. Vol. 47, pp. 12917-12919].

12. On June 18, 1990, the Commission issued an Order and Certificate allowing KPCLP to transfer its certificate of authority to KPP. KPP stated in the application seeking the transfer that it had entered into an agreement to purchase the assets of KPCLP. [R. Vol. 66, pp. 17309-17313].

13. On June 22, 1990, Bishop assigned its other one-half interest in the former Phenix to KNI. [R. Vol. 47, pp. 12917-12919].

14. On June 22, 1990, OKM and KNI formed Kansas Natural Partnership ("KNP"), a Kansas general partnership. [R. Vol. 47, pp. 12917-12919].

15. On June 22, 1990, KGT purchased all of Omega's joint venture interest in KPJV. [R. Vol. 47, pp. 12917-12919].

16. On June 22, 1990, OKM purchased KGT's one-half interest in KPJV. [R. Vol. 47, pp. 12917-12919].

17. On June 22, 1990, Kansas Pipeline Company and OKM formed Kansas Pipeline Partnership ("KPP"), a general partnership. [R. Vol. 47, pp. 12917-12919].

18. On October 28, 1991, Bishop purchased OKM's interest in KNP. [R. Vol. 47, pp. 12917-12919].

19. On October 28, 1991, Bishop merged with KNI. Bishop is the surviving corporation holding all interests in KNP. [R. Vol. 47, pp. 12917-12919].

20. On October 30, 1991, Bishop transferred KNP to Synergy Pipeline Company, L.P. ("Synergy"). [R. Vol. 47, pp. 12917-12919; R. Vol. 38, pp. 10213-10214].

21. On October 30, 1991, in Docket No. 178,513-U, the Commission issued an accounting order to KNP wherein KNP is allowed to include in the Uniform System Account No. 186, "all of those authorized amounts permitted by the Commission to be earned by KNP, but not recovered, in the period May, 1985, through October 31, 1990, due to litigation initiated against the Commission and the KPP by others, as well as other causes." [R. Vol. 66, pp. 17330a-17330j].

22. On October 30, 1991, in Docket No. 178,514-U, the Commission issued an accounting order to KPP wherein KPP was authorized to "include in the Uniform System of Account No. 186, commencing with the filing of the 1991 Annual Report of KPP to the Commission and to amortize thereafter, in equal annual amounts over the immediately succeeding thirty (30) years, all of the authorized amounts permitted by the Commission to be earned by KPP, but not recovered, in the period January, 1985, through October 31, 1988, due to litigation initiated against the Commission and the KPP by others, as well as other causes." [R. Vol. 66, pp. 17330k-17330t].

23. On March 25, 1994, KNP and KPP, as Joint Applicants, filed an application seeking authorization to merger and to implement a rate increase. On March 17, 1995, KPP and KNP were authorized to combine and form a general partnership known as Kansas Pipeline Partnership. The Commission also authorized a rate increase which was the subject to an appeal filed with the Kansas

Court of Appeals. [R. Vol. 43, pp. 12025-26; Docket No. 190,362-U, Order, dated March 17, 1995].

III. MARKET ENTRY COSTS

24. Originally, the Joint Applicants requested recovery of their market entry costs in the aggregate sum, less depreciation as of December 31, 1993, in the amount of $53,272,922. [R. Vol. 32, p. 7935]. The Joint Applicants presented a witness, Mr. Lubow, who defined the market entry costs as "the portion of the pipeline costs of service that was unrecovered during the start-up period of 1985-90 for Kansas Natural Partnership and 1985-88 for Kansas Pipeline Partnership." [R. Vol. 32, p. 7934]. The record does not support any finding which expands the period in question beyond what is stated above.

25. Market entry costs are start-up or development costs of a new business. In this particular case, the start-up or development costs were estimated by calculating the losses or shortfalls in revenue which were experienced by KPCLP from 1985 through 1988 and by Phenix from 1985 through 1990. *Williams Natural Gas Co.*, 22 Kan. App. 2d at 330.

A. The Joint Applicants Did Not Incur Market Entry Costs.

(i) KNP (Phenix) System

26. The Commission originally found that the amount of market entry costs attributable to the Phenix system was $10.5 million for the period from May 1985 to November 30, 1990. [R. Vol. 43, p. 11990]. This amount was based upon Mr. David Dittemore's testimony. Mr. Dittemore recommended that the Commission

make no allowance for market entry costs but did suggest, in the alternative, the $11.36 million revenue short fall experienced by Phenix from May 1985 to November 30, 1990 less amortization of $860,000 be used as the alternative measure of market entry costs. [R. Vol. 43, pp. 11990-91].

27. KNP assumed control of Phenix's assets on June 22, 1990. KNP was formed on that date as a general partnership between OKM, a Delaware limited partnership, and KNI, a Kansas corporation, for the stated purpose of acquiring and operating the pipeline assets of KNI. [R. Vol. 1, p. 181; R. Vol. 47, p. 12917; Docket No. 171,954-U, Order and Certificate dated June 13, 1990]. The pipeline assets of KNI originally belonged to Phenix. [R. Vol. 57, p. 15505; R. Vol. 43, p. 11964]. In October 1989, Bishop, an affiliate of KNI, purchased the Phenix pipeline facilities through an asset purchase agreement. Bishop later transferred those pipeline assets to KNI. [R. Vol. 43, pp. 11966 and 11969; Docket No. 171,954-U, Order and Certificate dated June 13, 1990]. KNP may have existed as of June 22, 1990; however, there is lack of credible evidence showing KNP incurred $10.5 million market entry costs from date of possession on June 22, 1990, to the end of the stated market entry period on November 30, 1990. Furthermore, during the autumn of 1988, Phenix implemented a new business plan with new management. The new business plan started to produce positive cash flow from Phenix's assets and operations. [R. Vol. 43, p. 11989; R. Vol. 49, p. 13273]. Phenix's assets were transferred to KNP in October 1989 at the time the assets were producing positive cash flows. [R. Vol. 43, pp. 11966 and 11969; Docket No. 171,954-U, Order and Certificate dated June 13, 1990].

28. The record also contained the testimony of Mr. Greg I. Geisler. Mr. Geisler was the President of Phenix in October 1989 the Phenix assets were sold to Bishop. [R. Vol. 33, p. 82207]. Mr. Geisler, testified repeatedly that Phenix, rather than KPP, was the party that expended the capital which gives rise to the market entry costs. [R. Vol. 33, pp. 8251, 8252, 8255, 8261]. Furthermore, Phenix's start-up expenditures had been included in its rates. [R. Vol. 66, pp. 17191 and 17194]. Phenix's rates were never reduced or modified to remove the allowance for such start-up costs.

29. Additionally, Phenix's failure to generate higher earnings was attributed, in part, to its poor business plan, poor management and inability to attract capital. (R. Vol. 43, p. 11990; R. Vol. 61, p. 16296). Phenix was given the opportunity to earn its established rate of return. Simply because a public service commission has an established rate of return does not mean that the company is guaranteed its rate of return. See e.g. *FPC v. Natural Gas Pipeline Company*, 315 U.S. 575, 590 (1942). The "proper response for a utility faced with net losses is to apply to the Commission for a rate increase." *Sunflower Pipeline Co. v. Kansas Corporation Comm'n*, 5 Kan. App. 2d 725, 719 (1981),*rev. denied*, 229 Kan. 671 (1981). Phenix never sought a rate increase to allow the recovery of additional market entry or start-up costs.

30. On October 30, 1991, in Docket No. 178,513-U, the Commission issued an accounting order allowing KNP to record a regulatory asset equal to the revenues authorized to be earned by KNP, but not recovered, in the period May 1985, through

November 30, 1990. [R. Vol. 66, pp. 17330a-17330j]. The October 30, 1991 accounting order does not reflect that the short fall of revenue was experienced by an entity other than KNP nor does the accounting order establish that KNP assumed any of the liabilities associated with the short fall of revenue which were experienced by Phenix. The October 30, 1991 accounting order does not establish that KNP incurred any market entry costs during the period in question. It is also clear that KNP's acquisition of the Phenix assets was just that, an asset purchase, not a stock or equity purchase, which would have brought with the stock all of the interest, both positive and negative, of Phenix.

31. Under these facts and circumstances, the Commission cannot conclude that KNP incurred the $10.5 million market entry costs associated with the Phenix system during the period from May 1985 to November 30, 1990.

(ii) KPP (KPCLP) System

32. The Commission originally found that the amount of market entry costs attributable to the KPCLP system was $2.95 million for the period from January 1985, to October 31, 1988, along with carrying costs of $1,077,460 on such market entry costs. [R. Vol. 43, pp. 11993-94].

33. KPP acquired the KPCLP assets on or about June 22, 1990. [See R. Vol. 66, pp. 17309-17313]. KPP was formed on June 22, 1990, as a general partnership between OKM, a Delaware limited partnership and Kansas Pipeline Company ("KPC"), a Kansas corporation. The stated purpose of the general partnership was to acquire and operate the natural gas pipeline assets of KPCLP. [R. Vol. 43, pp. 11966-

67; R. Vol. 1, p. 88; R. Vol. 66, pp. 17309-17312; Docket No. 171,956-U, Order and Certificate dated June 15, 1990]. KPP did not exist during the period from January 1985, through October 31, 1988, and therefore, could not have incurred such costs.

34. On October 30, 1991, in Docket No. 178,514-U, the Commission issued an accounting order allowing KPP to record a regulatory asset equal to the authorized amounts (revenues) permitted by the Commission to be earned by KPP, but not recovered in the period January 1985 through October 31, 1988. [R. Vol. 66, pp. 17330k-17330t]. The October 30, 1991 accounting order does not reflect that the short fall of revenue was experienced by an entity other than KPP nor does the accounting order establish that KPP assumed any of the liabilities associated with the short fall of revenue, as experienced by KPCLP from January 1985 through October 31, 1988. The October 30, 1991 accounting order does not establish that KPP incurred any market entry costs during the period in question.

35. Under these facts and circumstances, the Commission cannot conclude that KPP incurred the $2.5 million market entry costs and related carrying costs associated with the KPCLP system during the period from January 1985 to October 30, 1991.

B. The Joint Applicants Did Not Acquire Market Entry Costs.

36. Generally, KPP acquired specific assets of KPCLP. KPP did not acquire KPCLP partnership interest. Similarly, KNP acquired specific assets of Phenix. KNP did not acquire Phenix stock. In both transactions, there were no assumptions of

any debts and liabilities as may occur when the stock of a corporation is purchased instead of its assets. *Williams Natural Gas Co.*, 22 Kan. App. 2d at 328-329.

(i) KNP (Phenix) System

37. As described above, KNP acquired control of the Phenix assets on June 22, 1990. KNP had been formed as a Kansas general partnership between KNI and OKM for the purpose of acquiring and operating the pipeline assets of KNI. [R. Vol. 66, pp. 17298-17301; Docket No. 171,954-U, Order and Certificate dated June 13, 1990]. KNI's natural gas pipeline assets were the pipeline facilities originally owned by Phenix. [R. Vol. 66, pp. 17281-17285; Docket No. 168,338-U, Order and Certificate dated October 10, 1989].

38. During October 1989, Bishop, an affiliate of KNI, purchased from Phenix its pipeline facilities pursuant to an asset purchase agreement. The asset purchase agreement did not specifically identify the prior "market entry costs" as an asset of Phenix. [R. Vol. 61, pp. 16302-03]. Market entry costs were simply not mentioned or discussed in the either contract or during the negotiations between Bishop and Phenix. [R. Vol. 33, pp. 8438, 8446-8447; R. Vol. 38, p. 10259].

39. The pipeline assets comprising the Phenix system were purchased by Bishop and subsequently transferred to KNI, a Bishop affiliate. [R. Vol. 66, pp. 17281-17285; Docket No. 168,338-U, Order and Certificate dated October 10, 1989; R. Vol. 38, pp. 10257-10259]. KNI then transferred the Phenix assets to KNP. [R. Vol. 66, pp. 17298-17301; Docket No. 171,954-U, Order and Certificate dated June 13, 1990]. The record does not demonstrate that the transfer from KNI to KNP was completed by

transferring any sort of equity interest in Phenix and transferring any debt, mortgage, or other obligations of Phenix to KNP. [R. Vol. 12, p. 2852]. *See also Williams Natural Gas Co.*, 22 Kan. App. 2d at 328-329. Nowhere in any order approving these various asset purchases and transfers (Phenix to Bishop; Bishop to KNI; and KNI to KNP) did the Commission approve the transfer of an "asset" consisting of any portion of the "market entry costs". [R. Vol. 66, pp. 17281-17284, 17286-17291, 17276-17279, and 17299-17300].

40. The acquisition of the Phenix pipeline facilities by Bishop was treated and considered by the parties as an asset purchase. A sale of assets by one corporation to another must be distinguished from a merger or consolidation. *See* Fletcher, *Cyclopedia of Law of Private Corporations*, § 7044 (rev'd ed 1990). A transaction which involves a transfer of one corporation's assets to another corporation, without consolidation or merger, does not include a transfer of all powers of the seller corporation. *Id.* at 7085. Furthermore, it is a settled rule that a corporation which acquires the assets of another corporation does not take the liability of the predecessor corporation from which the assets are acquired unless: (1) the successor expressly or by implication agrees to assume the liabilities; (2) the transaction may be considered a de facto merger; (3) the successor may be considered a "mere continuation" of the predecessor; or (4) the transaction is fraudulent. *See* Fletcher, *Cyclopedia of Law of Private Corporations*, § 7122 (rev'd ed 1990); *Monzingo v. Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985).

41. The acquisition of the Phenix system was documented in an agreement dated September 19, 1989, entitled Revised Phenix Asset Purchase Agreement. The Revised Phenix Asset Purchase Agreement stated, in relevant part:

> [Phenix] shall sell, convey, transfer, assign, and deliver to [Bishop] at the closing, and [Bishop] agrees to purchase from [Phenix] at closing all of the assets owned by [Phenix] in any way related to or useful for the purchase, sale, transportation, gathering, compression or marketing of natural gas (the "Assets") including without limitation . . .
>
> (i) Other Property. All of the other real, personal, and mixed property of Phenix at closing, tangible or intangible, which was either acquired by Phenix from Phillips (either directly or through BAM), reflected on the balance sheet (as defined below) (the "Other Property"), or otherwise inuring to the ownership of Phenix in any manner. [R. Vol. 38, p. 10259].

42. The Revised Phenix Asset Purchase Agreement failed to make any specific reference to an acquisition of any prior period operating losses or unrecovered projected revenues by Bishop, KNP's predecessor. [R. Vol. 38, pp. 10226-28; R. Vol. 19, p. 4377]. Also, the Revised Phenix Asset Purchase Agreement does not provide for the transfer of any prior operating losses or unrecovered projected revenues of Phenix to Bishop. [R. Vol. 38, pp. 10226-27 and 10257-59]. In fact, the existence of the market entry costs were never discussed or identified prior to the sale. [R. Vol. 33, p. 8438]. Furthermore, Phenix's balance sheet before its sale of assets to Bishop or on KNI's balance sheet after its acquisition of Phenix's assets did not record any market costs. [R. Vol. 38, p. 10226].

43. An accounting order from the Commission is necessary to transform unrecovered projected revenues or expenses into a regulatory assets. This type of asset or more fundamentally, the right to collect the market entry costs did not exist

on October 11, 1989 when Phenix's assets were purchased by Bishop. [*See* R. Vol. 66, pp. 17330a-17330j]. Nor did the right to collect market entry costs exist on June 22, 1990 when KPCLP's assets were transferred to KPP. [*See* R. Vol. 66, pp. 17330k-17330j]. In fact, no accounting orders were issued until October 30, 1991, a time well after KNP had even obtained any of Phenix's assets from Bishop. [R. Vol. 38, pp. 10227-28].

44. Furthermore, Phenix had been compensated for start-up costs. [R. Vol. 66, pp. 17156-17167]. If additional start-up costs had been incurred, Phenix could have sought an accounting order to preserve the future recovery of such costs or filed for an immediate rate increase. However, the record does not disclose that Phenix took the proper steps at the appropriate time to preserve any such costs for future recovery or to request a rate increase allowing for the immediate recovery of such costs from its ratepayers. In fact, Phenix discounted its rates. [R. Vol. 26, p. 9329]. The decision to offer discounted rates was a business risk assumed by Phenix.

45. Under these facts and circumstances, the Commission cannot conclude that unrecovered projected revenues were assets owned by Phenix at the time the Revised Phenix Purchase Agreement was executed and therefore, KNP could not have acquired any market entry costs related to the Phenix system during the period from May 1985 through November 30, 1990 pursuant to such agreement.

(ii) KPP (KPCLP) System

46. On June 22, 1990, KPP acquired the pipeline facilities of KPCLP through an asset purchase agreement rather than an acquisition of stock or equity. [R. Vol. 38,

p. 10214; R. Vol. 66, pp. 17309-17313; Docket No. 171,956-U, Order and Certificate dated June 15, 1990]. Because the transaction was structured as an asset acquisition, KPP was not required to pay or assume any of KPCLP's debt, mortgage, or other obligations. [R. Vol. 38, p. 10215]. *See also Williams Natural Gas Co.*, 22 Kan. App. 2d at 328-329.

47. At the hearing, the Joint Applicants offered select portions of the KPCLP Asset Purchase Agreement. [R. Vol. 19, p. 4376]. Mr. Langley testified that, in its purchase of the KPCLP assets pursuant to the KPCLP Asset Purchase Agreement, KPP purchased the following:

> Any and all of the right, title, and interest of any and all assets, of any type whatsoever owned by [KPCLP].

[R. Vol. 19, p. 4376; R. Vol. 38, pp. 10214-15]. This language indicates that KPP only acquired certain assets owned by KPCLP at the time of the transaction. It does not encompass the transfer of assets which did not exist prior to the transaction, including unrecovered projected revenues.

48. The record is without evidence which supports a finding that KPP acquired prior losses or unrecovered projected revenues incurred by KPCLP. The Kansas Court of Appeals recognized this fact when it stated that "[w]e have examined this record and see no evidence which shows that the Joint Applicants either acquired or 'inherited' the operating losses of KPCLP or Phenix." *Williams Natural Gas Co.*, 22 Kan. App. 2d at 336.

49. After KPP executed the KPCLP Asset Purchase Agreement, KPP did not recognize any unrecovered projected revenues as assets on its partnership books. [R.

Vol. 38, p. 10231]. It was not until after the Commission issued the accounting order in Docket No. 178,514-U on October 30, 1991, that KPP subsequently included substantial unrecovered prior period earnings incurred by KPCLP on its books. [R. Vol. 38, pp. 10218-19].

50. The Commission previously discussed accounting orders wherein the Commission stated that:

> . . . accounting orders are designed to provide jurisdictional utilities with requisite Commission approval to record costs as assets on its books. Absent an accounting order, the reference costs would be recorded to expense accounts. If such costs were not incurred within the test year, they would not be eligible to be considered for inclusion in rates. [R. Vol. 43, p. 11982; Docket No. 190,362-U, Order dated March 17, 1995].

KPP purchased the KPCLP pipeline assets in June 1990. However, no accounting order allowing the recovery of prior period revenue short falls existed until October 31, 1991. Simply stated, KPCLP did not own any regulatory assets for KPP to purchase in June 1990. [*See* R. Vol. 66, pp. 17330k-17330t; Docket No. 178,514-U, Order dated October 30, 1991].

51. Under these facts and circumstances, the Commission cannot conclude that unrecovered projected revenues were assets owned by KPCLP at the time the purchase agreement was executed and therefore, KPP could not have acquired any market entry costs related to the KPCLP system during the period from January 1985 through October 1988 pursuant to such agreement.

(iii) Chose-in-action

52. The Joint Applicants suggest that a chose-in-action existed at the time KPP and KNP acquired their pipeline assets. However, there was no transfer of the right to recover market entry costs. While Phenix and KPCLP transferred all of their assets, the right of recovery was not an asset because it had not been preserved through a proper accounting order, as of the dates of acquisition.

53. With respect to the Phenix system, Phenix received initial rates which specifically included an allowance for start-up costs. Phenix's initial rates were never subsequently reduced or eliminated. Therefore, the right to collect market entry costs was not a chose-in-action at the time of the later transfer.

54. Phenix/KPCLP received acquisition premiums at the time of the purchase of their assets. [*See*, R. Vol. 41, p. 33]. These acquisition premiums were satisfactory to compensate the original owners for the value of the pipeline assets including any "going concern" value. [R. Vol. 33, p. 33]. Furthermore, the Commission authorized the Joint Applicants to recover the undepreciated acquisition premium in its rate base. [R. Vol. 43, pp. 11972-76]. Thus, full costs of acquiring the assets of Phenix and KPCLP are already included in the rate base. [R. Vol. 43, pp. 11972-76]. *See generally, Williams Natural Gas Co.*, 22 Kan. App. 2d at 328-29. No additional compensation is necessary, and no chose-in-action, if any, survived after the acquisition dates.

(iv) Motion for Summary Holding

55. The Joint Applicants filed a motion entitled "Motion for Summary Order holding that Kansas Pipeline Partnership incurred Market Entry Costs in

Excess of $13.5 Million, or in the alternative, to reopen the Record to Receive Material, Substantial and Relevant Evidence on the Incurrence of Market Entry Costs in the period November 1, 1988 through March 17, 1995." The Joint Applicants previously requested the Commission to reopen the record in this proceeding. The record made in this proceeding is extensive (the official record contained 17,364 pages reflecting the testimony of 29 witnesses during 17 days of hearings and containing 64 motions, 39 separate orders, 12 post hearing motions, and 11 separate post hearing orders), and the initial briefs and reply briefs have provided substantial assistance in reviewing the record and understanding the arguments for and against the acquisition or incurrence of market entry cost. No new reason or justification has been offered to persuade the Commission to reopen the record. Furthermore, having found that the Joint Applicants neither incurred or acquired the market entry costs at issue, the Commission cannot conclude summarily that the Joint Applicants incurred market entry costs in excess of $13.5 million. The Joint Applicants had ample opportunity to submit all its claims for recovery. The Joint Applicants should not be permitted to reopen the record merely in an attempt to justify additional or alternative costs. The above motion for summary holding is denied.

IV. REFUND

56. The Commission previously authorized the Joint Applicants to recover certain market entry and carrying costs. [R. Vol. 43, pp. 11976-11994; Docket No. 190,362-U, Order dated March 17, 1995; R. Vol. 61, pp. 16295-16301; Docket No.

190,362-U, Order dated November 6, 1995]. Pursuant to these orders, the Joint Applicants filed rates at the KCC effective November 9, 1995. WNG then appealed to the Kansas Court of Appeals challenging the legality of the filed rate. *Williams Natural Gas Co.*, 22 Kan. App. 2d at 326. The Kansas Court of Appeals in its remand of this case, in effect, set aside the tariff filed by the Joint Applicants pending further disposition by the Commission.

57. On remand as set forth above, the Commission has determined that the Joint Applicants did not incur or acquire any market entry costs. At issue now is whether the Commission can order refunds where the company billed for its services based upon rates that have been nullified. There is no statute expressly granting the Commission the power to order refunds in this situation.

58. In reviewing the mandate, it would appear that the Kansas Court of Appeals contemplated the problem facing the Commission regarding refunds. The Kansas Court of Appeals provided specific directions:

> If the market entry costs were neither incurred nor acquired by the Joint Applicants, the KCC shall not permit such costs to be added to the Joint Applicants' rate base or recovered by Joint Applicants in any fashion. (Emphasis added).

59. Historically, the Commission's authority to issue refunds emanated from K.S.A. 66-101 and 66-141 (currently K.S.A. 66-101g). The Kansas Court of Appeals relied upon these Kansas statutes in recognizing the Commission's inherent authority to require refunds, stating:

> The power of the KCC to order refunds for overcharges in violation of the act [requiring just and reasonable rates] is implied from

> K.S.A. 66-101, which grants the Commission "full power, authority and jurisdiction to supervise and control public utilities . . . doing business in the state" and "to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.
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> K.S.A. 66-141 states "The provisions of this act and all grants of power, authority and jurisdiction herein made to the commissioners, shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon the commissioners."
>
> We conclude the KCC has power to order refunds for charges in excess of published rates. *Sunflower Pipeline Co. v. Kansas Corporation Commission*, 5 Kan. App. 2d 715, 719, 624 P.2d 466 (1981).

60. Similarly, the Kansas Court of Appeals has held that the Commission has the inherent authority to impose interest. In *Kansas Gas & Electric Co. v. Kansas Corp. Comm'n*, 14 Kan. App. 2d 527, 794 P.2d 1165 (1990), the Kansas Court of Appeals stated, "We conclude that the KCC has the inherent power under K.S.A. 66-101 to impose interest on refunds when, as here, the refund is ordered for imprudent or unreasonable actions." *Id.* at 540.

61. The Kansas Court of Appeals set a clear course when finding that market entry costs which are neither incurred nor acquired may be recovered in a utility's rate base. As the day follows night, the Commission must order a refund of the prior award of market entry costs and accompanying carrying charges. The rates filed November 9, 1995, do not reflect a just and reasonable rate. Furthermore, the appeal placed the award of market entry costs at risk and prevented the Joint Applicants from obtaining a vested right in any market entry costs. Under such facts and circumstances, the Commission has the authority to restore the parties to their position prior to the error and if necessary, order refunds. See *Mid Louisiana Gas Co. v. FERC*, 780 F.2d 1238, 1247 (5th Cir. 1986)(quoting *Tennessee Valley*

Municipal Gas Ass'n v. FPC, 470 F.2d 446, 452 (D.C. Cir. 1972)("Petitioner must be put in the same position that it would have occupied had the [FERC Commission] error not been made.")

62. Moreover, a complete refund of the entire market entry costs thus far collected by the Joint Applicants is a just and reasonable remedy for this situation. The Kansas Court of Appeals has reached the similar conclusion where the charges in question were illegal from their inception. *Sunflower Pipeline Co. v. Kansas Corporation Commission*, 5 Kan. App. 2d 715, 624 P.2d 466 (1981). The Kansas Court of Appeals stated "We conclude that a full refund should be ordered when charges are not made pursuant to a rate legal at the time of the charge, regardless of whether the rate is unreasonably low." *Sunflower*, 5 Kan. App. 2d at 721.

63. The Commission notes that there are two distinct refunds: (i) KNP's market entry costs which are currently recovered through rates and (ii) KPP's market entry costs which the Commission previously authorized recovery through a direct bill mechanism to Western. The Commission directs the Joint Applicants to issue refunds based upon the exclusion of the revenue requirement impact associated with the level of market entry costs embedded in existing rates. The prior Commission order(s) cannot be used to justify the recovery of the market entry costs in question from the date KPP filed its tariff with the Commission. The Joint Applicants shall also refund all direct bill amount received from Western to date.

V. OPERATION OF LAW CLAIM

64. The Joint Applicants filed a motion entitled "Motion to Vacate Certain Orders and for an Order Finding that the schedules attached to the application filed March 25, 1994, are deemed approved by Operation of law." In the motion, the Joint Applicants specifically requested the Commission to vacate its October 12, 1994 Order restarting the 240-day time period. The Joint Applicants also requested that the Commission vacate its Orders dated March 17, 1995, June 16, 1995 and November 6, 1995, because these orders were not entered within the 240-day time period subsequent to March 25, 1994, the date on which the applicants filed their original applications. Similarly, the Joint Applicants requested the Commission to disregard its October 12, 1994 Order and declare the schedules attached to the March 25, 1994 application approved by operation of law. The schedules attached to the application included recovery of the originally requested market entry costs which were substantially in excess of the amount originally authorized by the Commission in its Orders dated March 17, 1995 and November 6, 1995.

65. On March 25, 1994, KPP and KNP filed a joint application seeking an order authorizing the following items: a merger of both entities; the transfer of certificates of public convenience and necessity to the surviving entity; the continuation of liens on public utility property; an increase in rates; and changes in the terms and conditions of service. [R. Vol. 1 and 2; Docket No. 190,362-U, Application dated March 25, 1994].

66. On September 23, 1994, and again on September 27, 1994, KPP filed extensive testimony of numerous witnesses that was intended to rebut the

responsive testimony filed by Staff and various intervenors. [R. Vol. 21, pp. 4888-4890; Docket No. 190,362-U, Order dated October 12, 1994]. This "rebuttal testimony" contradicted KPP's previously filed testimony and materially altered the factual and legal bases underlying the March 25, 1994 Application. [R. Vol. 21, pp. 4888-4890; Docket No. 190,362-U, Order dated October 12, 1994; R. Vol. 20, pp. 7427-7438, Docket No. 190,362-U, Order dated November 2, 1994].

67. On September 26, 1994, Western Resources, Inc. ("Western") filed a motion entitled "Motion to Deem New Cost of Service and Other Testimony a New Application and to Begin Again the 240-day Time Period for Commission Action." On September 27, 1994, Staff filed a Motion to Restart the 240-Day Period Pursuant to K.S.A. 66-117(b)(1). On October 6, 1994, Missouri Gas Energy ("MGE") filed a petition in support of Western's September 26, 1994 motion and Staff's September 27, 1994 motion.

68. On October 12, 1994, the Commission considered Western's and Staff's motions and recognized that the Joint Applicants had effectively amended their original joint application by filing rebuttal testimony that "substantially alter[ed] the facts used as a basis for the applicant's original application". [R. Vol. 21, p. 4891; Docket No. 190,362-U, Order dated October 12, 1994].

69. KPP failed to timely request reconsideration of the October 12, 1994 Order. K.S.A. 77-529 provides that "any party, within 15 days after service of a final order, may file a petition for reconsideration." Similarly, K.A.R 82-1-235 also allows any party aggrieved by any order to petition for reconsideration. The failure of KPP

to timely request reconsideration under K.S.A. 77-529 and K.A.R. 82-1-235 precludes reconsideration.

70. Furthermore, KPP failed to raise the issue before the Kansas Court of Appeals. See *Williams Natural Gas Company v. Kansas Corporation Commission*, 22 Kan. App. 2d 326, 916 P.2d 52 (Kan. App. 1996). Judicial review of the October 12, 1994 Order was available to KPP, but that time has now expired. Under K.S.A. 66-1181, prior determinations are conclusive as to the matters involved in any suit to enforce such order or in any collateral suit or proceeding. Having not preserved this issue by seeking reconsideration or raising such issue on appeal before the Kansas Court of Appeals, KPP lost its opportunity to pursue that argument.

71. More importantly, the Commission properly restarted the 240-day statutory period. K.S.A. 66-117(b)(1) specifically provides that:

> [A]ny amendment to an application for a proposed change in any rate, which . . . substantially alters the facts used as a basis for such requested change of rate shall, at the option of the commission, be deemed a new application and the 240-day period shall begin again from the date of the filing of the amendments. K.S.A. 1995 Supp. 66-117(b)(1).

72. The "rebuttal testimony" filed by the Joint Applicants substantially altered the facts used as the basis of the original application and therefore constituted an "amendment" to the original joint application. The Kansas Court of Appeals has broadly defined the term "amendment" as used in K.S.A. 66-117(b):

> [a]n amendment makes a change or modification. Black's Law Dictionary 81 (6th ed. 1990). It suggests an action by one of the parties to change, correct or revise. No action was taken by KPP, WRI, or the KCC to change or modify the application which would trigger the provisions of

K.S.A. 66-117(b). *Kansas Pipeline Partnership v. Kansas Corporation Comm'n*, 22 Kan.App. 2d 410, 422 (1996).

73. The fact that the applicants did not file a formal amendment to their application pursuant to K.A.R. 82-2-231(b) does not change the fact that they amended underlying factual bases to support their requested relief. The motion to vacate certain orders is denied.

VI. FINANCIAL INTEGRITY CLAIM

74. KPP filed a motion entitled "Motion for Summary Order Holding that the Financial Integrity Standard Applicable to Annual Revenue Requirements and Rates of Kansas Public Utilities requires that the Annual Revenues and Rates of Kansas Pipeline Partnership cannot be reduced, or in the alternative, to Reopen the Record to Consider Further Evidence of Financial Integrity." In the Motion, KPP argued that its rates should not be reduced because such action would establish rates and revenues below the minimum levels needed to maintain the financial integrity of KPP. KPP urged the Commission to uphold its prior orders awarding market entry costs notwithstanding the Kansas Court of Appeals remand directing the Commission to determine whether the market entry costs were incurred or acquired by KPP.

75. In reviewing the constitutional limits on regulation, the United States Supreme Court stated:

> Regulation does not ensure that the business shall produce net revenues, nor does the Constitution require that the losses of the business in one year be restored from future earnings by the device of capitalizing the losses and adding them to the rate base on which a fair return and

> depreciation is to be earned. The deficiency may not be thus added to the rate base, for the obvious reason that the hazards that the property will not earn a profit remains on the company in the case of a regulated, as well as an unregulated business. *FPC v. Natural Gas Pipeline Company*, 315 U.S. 575, 590, 62 S.Ct. 736, 745, 86 L.Ed. 1037 (1942).

Moreover, a utility is not entitled to a guaranty of profitability at consumers' expense. *Jersey Central Power & Light Co. v. FERC*, 768 F.2d 1500, 1503 (D.C. Cir. 1985). In *Jersey Central Power & Light*, the court also commented: "Obviously, in cases where no rate, exploitative or otherwise, could restore profitability, the Hope Natural Gas criteria cannot be used to undo the operation of the marketplace." *Id.* at f.n. 3.

76. The Commission can consider the financial impact a refund might have on a utility in determining how to structure the refund, especially if the refund is ordered to be paid within a short time frame. *Sunflower*, 5 Kan. App. 2d at 723. However, such financial predicaments do not affect the initial decision of the Commission whether to order a refund.

77. The Commission has determined that the market entry costs at issue were neither incurred nor acquired by the Joint Applicants. It would not be reasonable to allow the Joint Applicants to recover costs that were neither incurred nor acquired. Under such facts and circumstances, the customer interest in not having to pay the alleged market entry costs outweighs the interest of the Joint Applicants' investors. When balancing the investor and customers interest, the record does not demonstrate that the Joint Applicants are entitled to recover costs

that were neither incurred nor acquired. The financial integrity of the Joint Applicants should be based upon costs either incurred or acquired. Otherwise, the customers would be burdened beyond rates based upon a reasonable cost of service including a reasonable return on the rate base. The above motion for summary order is denied.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(1) KPP shall not be permitted to recover any costs identified in this proceeding as market entry costs including carrying costs nor shall KPP be permitted to add such costs to its rate base.

(2) KPP shall refile its tariffs consistent with this Order by no later than thirty (30) days after service of this order.

(3) KPP shall make the appropriate refund to be calculated by applying the revised rates to the historic billing units compared with tariff rates charged from November 9, 1995. The revised rates shall reflect a revenue requirement reduction as reflected in the schedules attached hereto. Additionally, with respect to the direct bill refund, KPP shall refund to Western all amounts paid by Western.

(4) KPP's Motion for Summary Order holding that Kansas Pipeline Partnership incurred Market Entry Costs in Excess of $13.5 Million, or in the alternative, to reopen the Record to Receive Material, Substantial and Relevant Evidence on the Incurrence of Market Entry Costs in the period November 1, 1988 through March 17, 1995 is denied.

(5) KPP's Motion to Vacate Certain Orders and for an Order Finding that the schedules attached to the application filed March 25, 1994 are deemed approved by Operation of law is denied.

(6) KPP's Motion for Summary Order Holding that the Financial Integrity Standard applicable to annual revenue requirements and rates of Kansas Public Utilities Requires that the Annual Revenues and Rates of Kansas Pipeline Partnership cannot be reduced, or in the alternative, to reopen the record to Consider Further Evidence of Financial Integrity is denied.

(7) The parties have fifteen days, plus three days if service of this Order is by mail, from the date of this Order in which to petition the Commission for reconsideration of any matter decided herein.

BY THE COMMISSION IT IS SO ORDERED.

McKee, Chr.; Seltsam, Com. (concurring in part and dissenting in part); Wine, Com.

Dated: DEC 30 1996

ORDER MAILED
DEC 30 1996
Executive Director

JUDITH McCONNELL
EXECUTIVE DIRECTOR

I CERTIFY THE ORIGINAL COPY IS ON FILE WITH The State Corporation Commission
SEP 14 2001
EXECUTIVE DIRECTOR

Commissioner Susan M. Seltsam - Concurring and Dissenting Opinion

I concur with the majority on the disposition of the motions filed by the Joint Applicants. However, I must respectfully dissent from the majority's decision on the market entry costs and refund issues:

I. Market Entry Costs

I respect the reasoning and views of the majority with regard to market entry costs. However, I am the only remaining member of the Commission which presided at the lengthy technical hearings and therefore had the opportunity to hear and weigh the evidence as it was painstakingly presented and extensively challenged.

My dissent is due to my firmly held belief that this record contains sufficient evidence to support the partial award of market entry costs. I also understand how reasonable and fair individuals can make different assessments of the record of this proceeding and reach different conclusions.

The acquisition of the Phenix and KPCLP systems included the transfer of the certificates of convenience and authority. The terms and conditions of the preexisting tariffs were not changed by the transfer, and the benefits and obligations continuing from the operation of both systems flowed to the Joint Applicants. The Joint Applicants were the successors of KPCLP and Phenix vis-a-vis the transfer of their respective certificates of convenience and authority. Thus, the Joint Applicants assumed all aspects of the operation of the respective pipelines including seeking recovery of market entry costs.

No party opposed the application regarding the creation of regulatory assets designed to capture market entry costs, and no party challenged the Commission's subsequent order authorizing the regulatory asset. *See* Docket No. 178,513-U, Order and Certificate dated October 30, 1991 and Docket No. 178,514-U, Order and Certificate dated October 30, 1991. The clear implication from the accounting orders was that the market entry costs were preserved as future regulatory assets. While the level of the market entry cost was not specifically stated, it was subject to an extensive challenge at the technical hearings held in this proceeding. This docket was the proper forum to determine the appropriate level of market entry costs. By virtue of the accounting orders described above, market entry costs had been established as regulatory assets leaving the Commission with the more difficult task of determining the appropriate level of market entry costs.

More importantly, Mr. Greg Geisler testified that all assets, tangible and intangible, had been sold by Phenix. [R. Vol. 33, pp. 8220-8313]. Furthermore, Mr. Dennis Langley testified that all assets, tangible and intangible, had been purchased for both the KPCLP and Phenix system. [R. Vol. 36, pp. 9076-9088, 9159-9189]. Therefore, the record contains evidence that these costs were acquired by the Joint Applicants.

The Joint Applicants noted throughout their pleadings that the Commission viewed the Joint Applicants' pipeline as a means to promote competition in the Kansas City area. Effective and efficient competition offers great opportunities for customer benefit. This Commission must aggressively monitor the effects of their

efforts to determine if competition has been promoted. While the Joint Applicants have requested several times that the record be reopened, they have failed to proffer any evidence concerning whether the Commission's competition policy had been successful.

II. Refund Obligation

I further disagree with the majority's decision to require the Joint Applicants to make refunds. The Joint Applicants were authorized to collect rates specified in their tariff filed with the Commission. The Joint Applicants' tariff reflected the Commission's findings and conclusions as set forth in Orders dated March 17, 1995 and November 6, 1995. By filing their tariffs in compliance with Commission orders, they became lawful and effective pursuant to K.S.A. 66-115.

Furthermore, under the filed rate doctrine, a public utility cannot collect rates other than KCC-approved rates. *See* K.S.A. 66-1,203 (schedules of rates must be published and filed); K.S.A. 66-109 (utility rates may not deviate from printed schedules). Filed rates set forth the terms and conditions governing the relationship between the utility and customers. Such KCC-approved tariffs bind both the utility and the customer. *Southwestern Bell Tel. Co. v. Kansas Corporation Comm'n*, 233 Kan. 375, 377, 664 P.2d 798 (1983). The tariff filed by the Joint Applicants did not contain any provision for refunds. Thus, the Joint Applicants are entitled to rely upon its properly filed, Commission-approved rates and to collect revenues therefrom.

SCHEDULE I
DOCKET NO. 190,362-U

KPP / KNP
MARKET ENTRY
PROSPECTIVE RATE REDUCTION ASSOCIATED WITH MARKET ENTRY COSTS
EFFECTIVE SUBSEQUENT TO DECEMBER 31, 1996

CO.	DESCRIPTION		AMOUNT
KNP	MARKET ENTRY INCLUDED IN RATE BASE (EXCLUDES CARRYING CHARGES)	$10,538,778	
	RETURN ON & TAXES ON MARKET ENTRY	17.6984%	
	ANNUAL RETURN ON & TAXES ON MARKET ENTRY	1,865,195	
	ANNUAL AMORTIZATION EXPENSE ON MARKET ENTRY	378,598	
	ANNUALIZED RETURN ON, AMORTIZATION EXPENSE, & TAXES ON MARKET ENTRY		$2,243,793

SOURCES: KPP/KNP ORDERS IN DOCKET NO. 190,362-U, AND FILED TARIFFS
3RD ORDER - EFFECTIVE DATE ON TARIFFS FILED IS NOVEMBER 9, 1995

SCHEDULE II

DOCKET NO. 190,362-U

KPP / KNP
MARKET ENTRY
AMOUNTS RECOVERED THROUGH RATES (EXCLUDING DIRECT BILL)
FOR THE TIME PERIOD MARCH 21, 1995 THROUGH DECEMBER 31, 1996

CO.	DESCRIPTION		AMOUNT
KNP	MARKET ENTRY INCLUDED IN RATE BASE & MARKET ENTRY AMORTIZATION EXPENSE		
	1ST ORDER - EFFECTIVE DATE ON TARIFFS FILED WITH KCC - MARCH 21, 1995		
	MARKET ENTRY W/O CARRYING CHARGES- RATE BASE INCLUSION	$10,538,778	
	RETURN ON & TAXES ON MARKET ENTRY	17.6984%	
	ANNUAL RETURN ON & TAXES ON MARKET ENTRY	1,865,195	
	ANNUAL AMORTIZATION EXPENSE ON MARKET ENTRY	378,598	
	ANNUALIZED RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY	2,243,793	
	DAYS PER YEAR	365	
	DAILY RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY	6,147	
	NUMBER OF DAYS BETWEEN MARCH 21,1995 THRU JUNE 18, 1995	90	
	RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY THRU JUNE 18, 1995		$553,264
	2ND ORDER - EFFECTIVE DATE ON TARIFFS FILED WITH KCC - JUNE 19, 1995		
	MARKET ENTRY W/ CARRYING CHARGES- RATE BASE INCLUSION	$14,462,521	
	RETURN ON & TAXES ON MARKET ENTRY	17.6984%	
	ANNUAL RETURN ON & TAXES ON MARKET ENTRY	2,559,635	
	ANNUAL AMORTIZATION EXPENSE ON MARKET ENTRY	519,556	
	ANNUALIZED RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY	3,079,191	
	DAYS PER YEAR	365	
	DAILY RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY	8,436	
	NUMBER OF DAYS BETWEEN JUNE 19, 1995 THRU NOV. 8, 1995	143	
	RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY THRU NOV. 8, 1995		$1,206,368
	3RD ORDER - EFFECTIVE DATE ON TARIFFS FILED WITH KCC - NOV. 9, 1995		
	MARKET ENTRY W/O CARRYING CHARGES- RATE BASE INCLUSION	$10,538,778	
	RETURN ON & TAXES ON MARKET ENTRY	17.6984%	
	ANNUAL RETURN ON & TAXES ON MARKET ENTRY	1,865,195	
	ANNUAL AMORTIZATION EXPENSE ON MARKET ENTRY	378,598	
	ANNUALIZED RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY	2,243,793	
	DAYS PER YEAR	365	
	DAILY RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY	6,147	
	NUMBER OF DAYS BETWEEN NOV. 9, 1995 THRU DECEMBER 31, 1996	419	
	RETURN ON, AMORT EXP, & TAXES ON MARKET ENTRY THRU DECEMBER 31, 1996		$2,575,752
	MARKET ENTRY - RETURN ON, AMORTIZATION EXP., TAXES ON, & DIRECT BILL INCLUDED IN RATES AND/OR RECEIVED THRU DECEMBER 31, 1996		$4,335,383

SOURCES: KPP/KNP ORDERS IN DOCKET NO. 190,362-U, AND FILED TARIFFS
1ST ORDER - EFFECTIVE DATE ON TARIFFS FILED IS MARCH 21, 1995
2ND ORDER - EFFECTIVE DATE ON TARIFFS FILED IS JUNE 19, 1995
3RD ORDER - EFFECTIVE DATE ON TARIFFS FILED IS NOVEMBER 9, 1995