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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 8th  
day of August, 1997.

In the matter of the Joint Application                    )  
of Western Resources, Inc. and Kansas                    )  
City Power & Light Company for approval                )  
of the merger of Kansas City Power & Light                )  
Company with Western Resources, Inc. and                    )  
for other related relief.                                    )  
Case No. EM-97-515

**ORDER REGARDING INTERVENTIONS, ADOPTING PROTECTIVE**  
**ORDER AND SETTING PREHEARING CONFERENCE**

On May 30, 1997 Western Resources, Inc. (Western Resources) and  
Kansas City Power & Light Company (KCPL), collectively referred to as the  
Joint Applicants, filed an Application with the Commission requesting an  
order approving the merger of KCPL with Western Resources and for other  
related relief to fulfill the objectives of the parties to the merger.  
Together with the Joint Application, the Applicants filed various documents  
and testimony supporting the proposed merger.

After proper notice, 13 separate Applications for Intervention  
were filed with the Commission, followed by various objections to those  
applications for a variety of reasons and from various different parties.  
The Commission will deal with those applications one at a time.

On June 30 the United States Department of Energy (DOE), on  
behalf of its Kansas City facility and other federal executive agencies,  
filed an Application to Intervene, stating that as consumers of energy from  
KCPL, the DOE and other federal agencies will be materially affected by the  
outcome of the proposed merger. No objection to this application was  
tendered.

The Commission finds that the DOE has an interest in this  
matter different from that of the general public and will grant  
intervention to the DOE.

On July 7 the State of Missouri, by and through the Attorney General of the State of Missouri (AG), filed an Application to Intervene stating that the state and its constituent agencies are major customers of KCPL and therefore has a significant interest different from that of the general public in this matter. No objection to this application was tendered.

The Commission agrees that the State of Missouri, as a major consumer of electrical service, has a significant interest in the outcome of this proposed merger and will grant the Application to Intervene.

On July 7 GST Steel Company (GST Steel) filed an Application to Intervene stating that it is a major manufacturer and processor of steel and, as such, is a large scale purchaser of electrical power from KCPL. GST Steel states that the proposed merger has a potential effect on the terms and conditions by which it purchases its electric service and that, therefore, its interests are different from that of the general public. No objection to this application was filed.

The Commission agrees that GST Steel has an interest different from that of the general public and will grant this Application to Intervene.

On July 7 an Application to Intervene was filed by the Missouri Department of Natural Resources (DNR) stating that through its Division of Energy it is an agency of the State of Missouri responsible for environmental policy and planning, and therefore has an interest different from that of the general public. In addition, DNR states that in accordance with Section 640.150, RSMo 1994, it has a statutory responsibility for energy resource development, analyzing energy management issues and various other energy related matters. No objection was tendered to this application.

The Commission finds that DNR has an interest through operation

of the applicable statutes different from that of the general public. The application of DNR for intervention will be granted.

On June 30 Union Electric Company (UE) filed an Application to Intervene stating that as a regulated public utility in the State of Missouri engaged in the provision of electric service to the public, its transmission system is interconnected to that of KCPL and it has some contiguous service territory. As such, UE states that it has an interest different from that of the general public. No objection to this application was filed.

The Commission finds that UE has an interest in this matter different from that of the general public and will grant the requested intervention.

On June 16 the County of Jackson, Missouri (Jackson County) and the City of Kansas City, Missouri, filed Applications to Intervene, stating that both had interests different from that of the general public in that both are large service users. In addition, Jackson County is a political subdivision of the State of Missouri and the City of Kansas City is a municipality under 4 CSR 240-2.075(4). Both applicants also stated they wished intervention on behalf of their constituencies. On June 23 the Joint Applicants filed a response to these requests to intervene stating that both Jackson County and the City of Kansas City should not be allowed intervention on behalf of their respective citizens as the Office of the Public Counsel is charged by statute with the representation of the citizens of the state and, further, no interest thereby is stated which is substantially different from that of the general public.

While the Commission understands the position of the Joint Applicants, Jackson County and the City of Kansas City are each large consumers of electrical power and, as such, have an interest in the outcome of this case different from that of the general public.

Therefore, the Commission will grant intervention to both Jackson County and the City of Kansas City on the basis that both are large consumers and municipalities or political subdivisions of the state under the Commission's rules.

On July 1 Locals No. 53, 412, 1464 and 1613 of the International Brotherhood of Electrical Workers, AFL-CIO (the IBEW) filed a single Application to Intervene stating that the IBEW has an interest different from that of the general public in this matter for reason that the IBEW is a labor organization with a substantial number of its local members currently employed by KCPL and/or contractors of KCPL or Western Resources. The IBEW, as representative of its members, states that the proposed merger will have an impact on wages, benefits and terms and conditions of employment of its members. The IBEW requests intervention as representative of the interests of its membership in these proceedings.

On June 23 the Joint Applicants filed a response to the application of the IBEW stating that while the Joint Applicants do not object to the proposed intervention of the IBEW, that participation should be "appropriately limited." It is the position of the Joint Applicants that the IBEW may protect the position of its members by "assuming a monitoring role," and by having "the opportunity to demonstrate the need for an expanded role" should the need arise.

On July 1 the IBEW filed a response stating that mention of representation of Missouri Gas Energy (MGE) employees in its original application was inadvertent, and that the IBEW did not seek to represent MGE employees in this proceeding.

The Commission finds that the position of the Joint Applicants is not well taken in this instance. Once granted full intervention, the IBEW or any other party may raise or challenge any issue or matter that is proper and pertinent to the interests or position of its clients or

members. In addition, and as a practical matter, the Commission is not routinely in a position to ascertain what issue or issues may or may not be within the proper interest of a party or intervenor in a contested case.

Therefore, the Commission finds that the IBEW has an interest in this case different from that of the general public and will grant full intervention to the IBEW.

On July 7 Kansas Electric Power Cooperative (KEPCO) filed an Application to Intervene in this proceeding. In that application KEPCO states that it is a Kansas corporation engaged in the generation and transmission of electrical power to 22 rural electric cooperatives in the State of Kansas. KEPCO states that it is an electric public utility and, as such, is regulated by the Kansas Corporation Commission. KEPCO states that it has a substantial investment in the Wolf Creek Nuclear Operating Station, a generation facility in which both Western Resources and KCPL also have a large financial interest, and which supplies KEPCO with power to serve its customers. KEPCO states that because of this investment and reliance on the Wolf Creek facility, it has an interest in this matter different from that of the general public and that its interest will not be adequately represented by any other party.

The Joint Applicants object to the admission of KEPCO as an intervenor, stating that KEPCO is outside the jurisdiction of this Commission and is now adequately represented in concurrent Kansas and federal proceedings, also necessary for the approval of the proposed merger.

In accordance with the Commission rules, the Commission finds that KEPCO has sufficiently explained its interest in this proceeding as one involving its investment and reliance on supply from the Wolf Creek facility. KEPCO is correct in stating that it may not necessarily be able to protect its interests adequately in this proceeding through intervention

in other proceedings outside the jurisdiction of this Commission. In that regard KEPCO clearly has an interest different from that of the general public. The Commission will grant intervention to KEPCO.

Finally, Applications to Intervene were timely filed by Empire District Electric Company (EDE), UtiliCorp United, Inc. (UtiliCorp), St. Joseph Light and Power Company (SJLP), and Aquila Power Corporation (Aquila). EDE, SJLP and UtiliCorp are all public utilities regulated by this Commission, and engaged in the provision of energy service to the public in the State of Missouri. Aquila is a Delaware corporation, engaged in the marketing of electric power capacity, transmission and related services both in interstate commerce and in the State of Missouri.

The three regulated utilities state that their interests in this proceeding arise from: 1) joint ownership of generating facilities with one or the other of the Joint Applicants; 2) currently having transmission interconnection agreements with one or both of the Joint Applicants; 3) "having an interest in determining whether the proposed transaction will result in any restrictions on transmission access to the Missouri market;" and 4) other market power issues.

Aquila states that consideration of the proposed merger will involve significant policy issues and decisions, including: 1) the impact of the merger on market power on Missouri; 2) access to transmission services in Missouri; and 3) the development of an independent system operator (ISO) in Missouri. Aquila claims consideration of the three issues above will substantially affect the operations of Aquila in this state.

On July 14 the Joint Applicants filed objections to all four of the above applications. In regard to the three regulated utilities, the Joint Applicants stated they were not opposed to these 3 requests "provided their interventions are limited to issues properly before this Commission."

The Joint Applicants go on to explain that transmission access to the Missouri market and market power issues should properly, and will be, addressed in the concurrent proceedings at the Federal Energy Regulatory Commission (FERC).

Likewise, the Joint Applicants state that Aquila's stated reasons, as set out above, for intervention in this matter are properly the province of the FERC proceeding and not this Commission.

The Commission has considered the various positions of the parties regarding the limiting of issues to those considered local by the Joint Applicants, but finds the Staff response to these concerns, filed July 24, to be an accurate and succinct summary of the Commission's position in regard to these issues. As the Staff points out, the Commission has made it clear in the context of the Union Electric/CIPSCO merger proceeding, Case No. EM-96-149, that market power and related issues, and transmission access issues, are proper subject matter for consideration in the context of a case of this nature. In its Report and Order approving the merger, the Commission affirmatively instructed the parties to address market power issues as they related to the creation of an ISO and deregulated retail prices. See In re Union Elec. Co. Merger with Central Ill. Public Serv. Co., No. EM-96-149 (Mo. P.S.C., Feb. 21, 1997). The Commission has not altered its approach to the issues in question and finds the concerns set out in the four applications for intervention to be potentially appropriate for consideration in this case.

The requests for intervention of EDE, SJLP, UtiliCorp and Aquila are granted. The Commission will not limit the scope of the issues in this proceeding at this time.

In its reply the Staff has also requested the Commission define the scope of the issues it wishes to consider in this case. The Commission appreciates the position of the Staff but finds it premature to catalogue

the issues which should be included within the scope of a case of this size. The Commission would prefer this case proceed to the point where the parties can identify those areas in which no agreement or consensus can be reached. However, as the Commission has indicated above, the parties should address issues of horizontal and vertical market power. The Staff's request is denied at this time.

Finally, on June 6 the Joint Applicants requested the issuance of a protective order, notice, establishment of an intervention deadline and an early prehearing conference. The Commission has issued appropriate notice, established an intervention deadline, and by this order, allowed interventions. In order to facilitate discovery of matters which will likely be proprietary or highly confidential, the Commission will issue its standard protective order.

In light of the substantial number of parties to this case, the Commission will order the parties to offer a suggested date for a prehearing conference. The parties will file with the Commission suggested dates no later than the close of business August 29.

**IT IS THEREFORE ORDERED:**

1. That the following parties are granted intervention:

State of Missouri by the Attorney General

GST Steel Company

Aquila Power Corporation

Kansas Electric Power Cooperative, Inc.

Missouri Department of Natural Resources

St. Joseph light and Power Company

The Empire District Electric Company

UtiliCorp United, Inc.

City of Kansas City, Missouri

United States Department of Energy



Union Electric Company

Jackson County, Missouri

Locals 53, 412, 1464 and 1613 of the International Brotherhood of Electrical Workers, AFL-CIO.

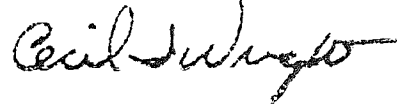
2. That the motions of the Joint Applicants to limit interventions and the scope of these proceedings are denied as set out above.

3. That a Protective Order is hereby adopted for use in this case as set out in Attachment A to this order.

4. That the parties are ordered to file suggested date or dates for an early prehearing conference to the Commission no later than the close of business, August 28, 1997.

5. That this order shall become effective on the date hereof.

BY THE COMMISSION



Cecil L. Wright  
Executive Secretary

(S E A L)

Crumpton, Drainer, Murray,  
and Lumpe, CC., Concur.  
Zobrist, Chm., Absent.

ALJ: Derque

## **PROTECTIVE ORDER**

- A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

- B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party designating the information confidential shall have five (5) days after the filing of the challenge to file a response. No other filings are authorized.

- C. Materials or information designated as HIGHLY CONFIDENTIAL may at the option of the furnishing party, be made available only on the furnishing party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off-premises and the designated

information is delivered to the custody of the requesting party's attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.

- D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On-premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see paragraph K). Any employees of the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgement so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of his/her employer. Such acknowledgement shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.
- E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.
- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other

party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.

- G. Any party may use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at hearing provided that the same level of confidentiality assigned by the furnishing party is maintained, unless otherwise classified by the Commission. In filing testimony all parties shall designate as HIGHLY CONFIDENTIAL or PROPRIETARY only those portions of their testimony which contain information so designated by the furnishing party. If any party plans to use information and testimony which has been obtained outside this proceeding, it must ascertain from the furnishing party if any of such information is claimed to be HIGHLY CONFIDENTIAL or PROPRIETARY prior to filing.
- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated testimony"). Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY should be filed under seal, and should be marked in a manner which clearly indicates which materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.
- I. Within five (5) days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains

either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.

- J. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- K. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.
- L. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.
- M. In the event a witness discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten (10) days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designa-

tion shall have five (5) days to respond to the challenge or may respond at the hearing, whichever occurs first.

- O. The Commission or hearing examiner may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. In the event no party challenges prefiled designated testimony, or in the event the Commission or its hearing examiner rules that testimony was properly designated, then such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal.
- Q. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its hearing examiners, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its hearing examiners, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.
- R. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing

court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.

- S. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.
- T. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.
- U. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- V. Within ninety (90) days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.
- W. The provisions of paragraph C, D, J and L of this Protective Order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, R.S.Mo. 1986. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as Staff and Public Counsel except the

outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.

- Y. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.
- Z. Prefiled testimony and exhibits, whether filed or offered at the hearing, shall be prepared in the manner described in Appendix "B".



STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, \_\_\_\_\_, have  
been presented a copy of this Protective Order issued in Case No. \_\_\_\_\_ on the  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

I have requested review of the confidential information produced in Case  
No. \_\_\_\_\_ on behalf of \_\_\_\_\_  
\_\_\_\_\_.

I hereby certify that I have read the above-mentioned Protective Order and  
agree to abide by its terms and conditions.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Signature and Title

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Party

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

1. If prefiled testimony contains parts which are classified as Proprietary or Highly Confidential, it shall be filed with the Commission's Executive Secretary's Office as follows:
  - A. An original plus eight (8) copies of prefiled testimony with the Proprietary or Highly Confidential portions obliterated or removed shall be filed.
  - B. One (1) copy of those pages which contain information which has been designated as Proprietary, with any Highly Confidential portions obliterated or removed, shall be filed in a separate envelope. The portions which are Proprietary shall be indicated as described in D, below.
  - C. One (1) copy of those pages which have been designated as Highly Confidential shall be filed in a separate envelope. The portions which are Highly Confidential shall be indicated as described in D, below.
  - D. Six (6) copies of the complete prefiled testimony to be filed under seal for the Hearing Examiner and Commissioners. The Proprietary pages shall be stamped "P" and the Proprietary information indicated by two asterisks before and after the information, **\*\*Proprietary\*\***. The Highly Confidential pages shall be stamped "HC" with the Highly Confidential information indicated by two asterisks and underlining before and after the Highly Confidential information, **\*\*Highly Confidential\*\***.

Any deviations from this format must be approved by the Hearing Examiner.

2. Three (3) copies of exhibits, whether testimony or other, shall be filed at the hearing with the information separated as described in 1.A, 1.B and 1.C above with each copy of the Proprietary and Highly Confidential portions placed into separate envelopes to be marked as Exhibit \_\_, Exhibit \_\_P and Exhibit \_\_HC.