



GREAT PLAINS ENERGY

WRITER'S DIRECT DIAL:

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May 29, 2003

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
Jefferson City, Missouri 65102

FILED⁴

MAY 30 2003

**Missouri Public
Service Commission**

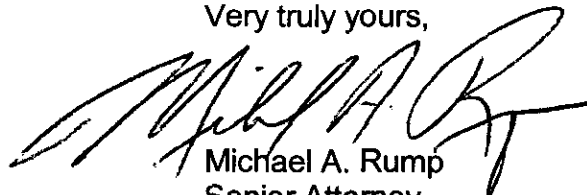
Re: In the Matter of the Application of
Kansas City Power & Light Company
For Approval of the Accrual and Funding
Of Wolf Creek Generating Station
Decommissioning Costs at Current Levels
Case No. EO-2000-210

Dear Mr. Roberts:

I have enclosed for filing the original and eight copies of Kansas City Power & Light Company's Notice of Filing of the quarterly report for the Wolf Creek Nuclear Decommissioning Trust for the quarter ending March 31, 2003. The information submitted with this filing is intended to comply with the reporting requirements of 4 CSR 240-20.070(5).

Please bring this matter to the Commission's attention.

Very truly yours,



Michael A. Rump
Senior Attorney

Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED⁴
MAY 30 2003

In the matter of the Application of)
Kansas City Power & Light Company)
For Approval of the Accrual and Funding)
Of Wolf Creek Generating Station)
Decommissioning Costs at Current Levels)

Case No. EO-2002-210

Missouri Public
Service Commission

NOTICE OF FILING

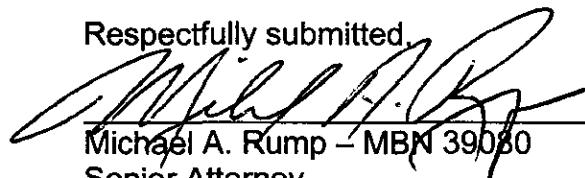
COMES NOW Kansas City Power & Light Company ("KCPL"), and pursuant to 4 CSR 240-20.070(5), respectfully submits its quarterly decommissioning trust fund report for the period ending March 31, 2003. In support of its Notice of Filing, KCPL states the following:

1. On January 27, 2000, the Public Service Commission of the State of Missouri ("Commission") entered its Order Approving Stipulation and Agreement. The Order required, among other things, KCPL to file on a prospective basis a copy of the reports required by 4 CSR 240-20.070(5)

2. Attached hereto as Schedule A, KCPL has included a copy of the quarterly decommissioning trust fund report for the period ending March 31, 2003, required by Commission Rule 4 CSR 240-20.070(5).

Dated this 29th day of May, 2003.

Respectfully submitted,



Michael A. Rump – MBN 39080
Senior Attorney
Great Plains Energy Services
1201 Walnut Street, 20th Floor
P. O. Box 418679
Kansas City, Missouri 64141-9679

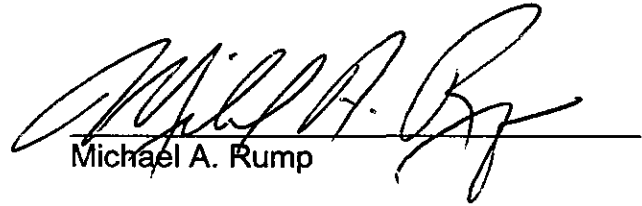
ATTORNEY FOR
KANSAS CITY POWER & LIGHT COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice was mailed by U.S. mail, postage prepaid, this 29th day of May, 2003, to the following parties of record:

General Counsel
Missouri Public Service Commission
200 Madison Street
P. O. Box 360
Jefferson City, Missouri 65102

Office of Public Counsel
200 Madison Street
P. O. Box 7800
Jefferson City, Missouri 65102


Michael A. Rump

**KANSAS CITY POWER AND LIGHT CO
NUCLEAR DECOMMISSIONING TRUST (WOLF CREEK)
QUARTER ENDING MARCH 31, 2003
(4 CFR 240-20.070)**

NET INCOME RECEIVED	\$ 660,375.00
REALIZED GAIN/LOSS	\$ 100,035.00
UNREALIZED GAIN/LOSS	\$ <u>(1,342,593.00)</u>
TOTAL RETURN	\$ (582,183.00)

EFFECTIVE TAX RATE ON REALIZED INCOME	9.6455%
EFFECTIVE TAX RATE ON TOTAL RETURN	38.3108%

REALIZED INCOME	\$ 760,410.00
LESS: EFFECTIVE TAX RATE	<u>\$ (73,345.00)</u>
AFTER - TAX INCOME	\$ 687,065.00

"WEIGHTED AVERAGE AFTER-TAX RETURN" *	1.0857%
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TOTAL RETURN	\$ (582,183.00)
LESS: EFFECTIVE TAX RATE	<u>\$ -</u>
AFTER - TAX INCOME	\$ (582,183.00)

"WEIGHTED AVERAGE AFTER-TAX RETURN" *	-.9200%
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"WEIGHTED AVERAGE AFTER - TAX RETURN" * (ANNUALIZED BASIS)	-3.6799%
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* COMPUTED AS AFTER-TAX INCOME FOR CURRENT QUARTER DIVIDED BY MARKET VALUE OF FUND AS OF:	January 1, 2003 \$ 63,283,152.00
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**EFFECTIVE TAX RATE ANALYSIS: KANSAS CITY POWER & LIGHT CO
NUCLEAR DECOMMISSIONING TRUST (WOLF CREEK)**

FEDERAL 2002

NET INCOME RECEIVED	\$	2,665,903.00
REALIZED GAIN/LOSS	\$	-
UNREALIZED GAIN/LOSS	\$	<u>(1,994,710.00)</u>
TOTAL RETURN	\$	671,193.00

TAXABLE INCOME	\$	1,285,704.00
TAX LIABILITY	\$	257,140.00

EFFECTIVE TAX RATE ON TAXABLE INC	20.0000%
EFFECTIVE TAX RATE ON REALIZED INC	9.6455%
EFFECTIVE TAX RATE ON TOTAL RETURN	38.3108%

MISSOURI 2002

STATEMENT ATTACHED

FEDERAL EFFECTIVE TAX RATES

EFFECTIVE TAX RATE ON TAXABLE INC	20.0000%
EFFECTIVE TAX RATE ON REALIZED INC	9.6455%
EFFECTIVE TAX RATE ON TOTAL RETURN	38.3108%

**Kansas City Power & Light Company Wolf Creek Decommissioning Trust
Request for Refund of Corporate Income Taxes
Calendar Years 1999 through 2001**

A. Introduction

The Kansas City Power & Light Company Wolf Creek Decommissioning Trust ("Taxpayer") is a trust organized pursuant to an Amended and Restated Trust Agreement that was established to satisfy a Nuclear Regulatory Commission requirement imposed on nuclear power plant operators. The trust was formed for the specific, limited purpose of holding and investing assets earmarked to pay future nuclear decommissioning expenses for a nuclear power reactor owned by the trust's sole beneficiary, Kansas City Power & Light ("KCPL"). The trust qualifies for special federal tax treatment under IRC Sec. 468A (as described more fully below). The trust arrangement created by the Amended and Restated Trust Agreement is commonly referred to as a Nuclear Decommissioning Trust ("NDT").

KCPL through its parent, Great Plains Energy, is a publicly held electric utility operating in Kansas and Missouri and is subject to regulation by federal agencies and by the public utility regulators in the states where it operates. KCPL operates one nuclear power plant in Kansas. Under the rate regulations applicable to KCPL, it is entitled to include in the current rates charged its customers a charge for the future costs of decommissioning its nuclear power plant. The costs associated with the decommissioning of a nuclear power plant typically run into the hundreds of millions of dollars. The funds set aside for these costs are required to be segregated and maintained in a special purpose trust from which distributions can be made only to pay or reimburse KCPL for payments of nuclear decommissioning expenses.

A NDT provides utility companies that own nuclear generating plants with an effective vehicle to plan and provide for the tremendous costs involved in closing these facilities. A NDT also affords a means to properly match present revenues with true present costs and to prevent the significant skewing of a utility company's earnings that would result if it were not permitted to provide currently for the significant future costs of decommissioning nuclear plants. Once the decommissioning process is finished, the trust must be terminated and any remaining funds are distributed to the beneficiary. To assist public utilities with this process, Section 468A of the IRC provides special tax treatment for a portion of the rate charges collected for nuclear decommissioning expenses. Because of limitations to the amount of the charges that qualify for special tax treatment under IRC Sec. 468A, there are typically two trusts for each nuclear reactor. One trust holds decommissioning funds that qualify for special tax treatment under the IRC (a "Qualifying NDT" or "QNDT"), while another trust holds decommissioning funds that do not qualify for special tax treatment (a "Nonqualifying NDT" or "NNDT"). Other than the special federal tax treatment afforded to a QNDT, there is no legal difference between the organization and the operation of a QNDT and its corresponding

Nonqualifying NDT. The Missouri tax returns in question were filed on behalf of the QNDT's for KCPL's interest in the Wolf Creek Nuclear Generating Station.

Pursuant to IRC Sec. 468A the beneficiary of a QNDT is permitted to claim a deduction for the amount of the contributions it makes to the QNDT. The QNDT holds the funds as investments and makes distributions to the beneficiary as decommissioning costs are actually incurred. The QNDT pays a special federal tax at the rate of 20% on earnings from the trust corpus during the year after deducting administrative costs. The trust beneficiary includes the full amount of distributions from the trust, including distributions from earnings, in gross income.

During the years 1999 through 2001, the trustee under the Amended and Restated Trust Agreement erroneously filed Missouri Corporation Income Tax Returns for the QNDT and paid Missouri income tax on its earnings. As a trust, the QNDT was not subject to Missouri corporate income tax and is entitled to a refund of the taxes improperly paid during those years.

B. The Taxpayer is not a corporation as defined in RSMo 143.441.1

1. RSMo. §143.071 imposes a tax upon "Missouri taxable income of corporations". A "corporation" is defined as "every corporation, association, joint stock company and joint stock association organized, authorized or existing under the laws of this state". RSMo §143.441.1.
2. The term "corporation" also includes "every corporation, association, joint stock company, and joint stock association, licensed to do business in this state, or doing business in this state, and not organized, authorized, or existing under the laws of this state, or by any receiver in charge of the property of any such corporation, association, joint stock company or joint stock association". RSMo §143.441.1(1). It is clear that the taxpayer is legally a trust, not a corporation, as outlined in the Amended and Restated Trust Agreement.
3. Therefore, in order for the taxpayer to be treated as a corporation under §143.441.1, it must fall within the definition of a joint stock company, joint stock association, or association. A joint stock company is an unincorporated business enterprise in which ownership interests are represented by shares of stock. Black's Law Dictionary 889 (6th ed. 1990). The taxpayer is not a joint stock company because its ownership interests are not represented by shares of stock or any comparable instrument. An association is generally defined as the act of a number of persons coming together for a business purpose. *Id.* at 121. The taxpayer has a single beneficiary and, therefore, does not represent multiple "persons" coming together for a business purposes. It is the effort of just one entity, KCPL, the sole beneficiary. Accordingly, since the NDT is not a "joint stock company", "joint stock association", or an "association" it does not meet the definition of a corporation under RSMo. §143.441.1 and is therefore not subject to the Missouri Corporation Income Tax.

C. The Taxpayer is not a corporation under applicable IRC statutes and regulations

1. Missouri statutes on corporate taxation parallel federal statutes in many respects and the federal treatment of the taxpayer here is instructive. The conclusion that the taxpayer is not a joint stock company, joint stock association, or an association taxable as a corporation under Missouri law is consistent with the determination of whether a business entity is a corporation under the IRC. IRC §7701(a)(3) provides that “[t]he term corporation includes associations, joint-stock companies, and insurance companies.” The inclusions in this definition are similar to the types of noncorporate entities included in the Missouri definition of corporation.
 - a. With respect to the term “joint-stock company”, Treas. Reg. §301.7701-2(b)(3) treats as a corporation a “business entity organized under a State statute, if the statute describes or refers to the entity as a joint-stock company or joint-stock association.” The taxpayer would not be a corporation under this definition.
 - b. With respect to associations, the IRS originally took the position that a business entity with a single member could not qualify as an association taxable as a corporation. The IRS has since changed its position in response to a contrary court decision. *Hynes v. Commissioner*, 74 T.C. 1266 (1980); Gen. Couns. Mem. 38,707 (May 1, 1981). Consequently, a trust with a single beneficiary is not precluded from being an association taxable as a corporation under the federal rules.
 - c. However, Treas. Reg. §301.7701-4 provides that, although trusts that carry on a business can be treated as associations taxable as corporations, a trust created by the beneficiaries whereby the trustee takes title to the property “for the purpose of protecting or conserving the trust property,” will be treated as a trust and not as an association taxable as a corporation. Since the taxpayer, as a NDT, was established for a limited, specific purpose, that is, the investment and accumulation of funds to pay future decommissioning costs, its activities do not constitute the conduct of a business under Treas. Reg. §301.7701-4.
2. Consistent with the above definitions under the federal tax rules, the taxpayer is not a corporation for federal tax purposes. In fact, the taxpayer enjoys a unique status under the IRC. Absent IRC Sect. 468A, the taxpayer would be treated as a grantor trust under the IRC and its entire income would be included currently in the taxable income of its sole beneficiary. This treatment does in fact apply to the income generated by Nonqualifying NDT’s that do not qualify for special treatment under the IRC § 468A. PLR 20037020 (June 9, 2000); PLR 200034007 (May 18, 2000).

D. The Taxpayer receives special treatment as a "Nuclear Decommissioning Reserve Fund" under IRC 468A.

1. The QNDT qualifies as a "nuclear decommissioning reserve fund" under IRC §468A. Under that section, an owner/beneficiary of a NDT can deduct the actual and deemed cash contributions to the NDT during the taxable year that do not exceed the lesser of the "cost of service amount" or the "ruling amount" applicable to the NDT for such taxable year determined under Treas. Reg. §1.468A-3 (the "Deductible Amount"). The "cost of service amount" is the amount of decommissioning costs included in the owner/beneficiary's cost of service for ratemaking purposes for such taxable year. Treas. Reg. §1.468A-2(a)(2). The "ruling amount" applicable to the NDT for a taxable year is based upon a schedule of ruling amounts that is submitted for approval to the Internal Revenue Service ("IRS"). That schedule, consistent with the principles of Treas. Reg. §1.468A-3(a), provides annual payments over a specified funding period that result in a projected balance in the NDT equal to a portion of decommissioning costs for the nuclear generating plant associated with the NDT. In summary, once the owner/beneficiary has received approval from the IRS for its ruling amount, it is entitled to a deduction for contributions into the QNDT, limited to the IRS approved Deductible Amount, from gross income on its federal income tax return. The portion of a NDT's assets constituting the Deductible Amount become the contributions into the "nuclear decommissioning reserve fund", or QNDT.
2. When the owner/beneficiary of the nuclear power plant receives distributions from a QNDT to pay for decommissioning costs, it includes these amounts in gross income. Code §468A(c)(1). These distributions will include earnings of the QNDT. Consequently, the earnings of the QNDT are taxable to the corporate beneficiary when they are distributed.
3. A special 20% federal tax is imposed annually on the gross income of the QNDT. IRC §468A(e)(2)(A) and (B). The tax is imposed on the "modified gross income" of the fund, which is gross income less certain enumerated administrative costs. The tax base is referred to as "modified gross income" on the form 1120-ND required to be filed with respect to a nuclear decommissioning reserve fund. The 20% federal tax on the modified gross income of the NDT is "in lieu of any other taxation under this subtitle of the income from assets in the Fund." Code §468A(e)(2)(D)

E. Decisions in Other States

1. The conclusion that the taxpayer trust is not taxable as a corporation under state law is consistent with the only other state decision addressing taxation of NDT's.¹ In *Kansas Gas and Electric Company*, TSB-A-87 (31) C (Dec. 8,

¹ Three states have addressed the taxation of Qualified Funds within NDT's by statute. Illinois specifically exempts the income of NDT's from taxation. 220 ILCS 5/8-508.1(f). California and

1987), the taxpayer, Kansas Gas and Electric ("KG&E"), sought advice regarding a QNDT that had a New York City mailing address. KG&E's QNDT was found to be exempt from the New York corporate franchise tax. The State Tax Commission (the "Commission") analyzed the status of the QNDT in light of the statutory and regulatory definitions of "corporation". The term corporation, for New York State franchise tax purposes, included a joint-stock company or association and any business conducted by a trustee wherein ownership was evidenced by a certificate or other written instrument.

2. The New York Commission ruled that because the QNDT did not issue stock or other written instruments evidencing ownership and its activities were limited to investing and accumulating funds, it was not within the definition of a corporation for purposes of Article 9-A of the New York State tax law. The definition of a corporation under New York law is substantially the same as the federal and Missouri definitions. As was concluded by New York, Missouri should also recognize that the taxpayer, as a QNDT, is not a corporation subject to tax under RSMo §§143.071 and 143.441.1.

F. Conclusion

Given the facts and authorities cited above, it is clear that the taxpayer is not a corporation subject to the Missouri Corporation Income Tax. The taxpayer is legally organized as a trust under Missouri law. It has a single beneficiary and it conducts no activities other than the accumulation and eventual distribution of funds to cover nuclear plant decommissioning costs. The taxpayer would be treated as a conventional grantor trust under the IRC but for the special treatment afforded under IRC §468A. Missouri tax laws do not contain provisions that impose tax on QNDT's. Because the taxpayer is not a corporation, it is entitled to a refund of the Missouri corporate income taxes erroneously paid for 1999 through 2001.

Wisconsin explicitly tax NDT's. California modified IRC §468A "to provide that a tax shall be imposed upon the gross income" of QNDT's at the rate applicable to corporations other than banks. CA Rev. and Tax Code §24690(c). Wisconsin imposes a franchise tax on every "nuclear decommissioning trust or reserve fund," measured by its "entire Wisconsin net income." WI Stat. §71.22(2).