

## MEMORANDUM

TO: Missouri Public Service Commission Official Case File  
Case No. EO-2004-0590  
Kansas City Power & Light Company

FROM: Cary Featherstone, Project Coordinator

/s/ Cary Featherstone 08/12/04  
Project Coordinator/Date

/s/ Steven Dottheim 08/12/04  
General Counsel's Office/Date

SUBJECT: Staff Recommendation For **Approval** to Amend the Nuclear Decommissioning Trust Agreement

DATE: August 12, 2004

On May 20, 2004 Kansas City Power & Light ("KCPL") filed an application seeking Missouri Public Service Commission ("Commission") approval to Amend the Nuclear Decommissioning Trust Agreement for its ownership share of the Wolf Creek Nuclear Generating Facility ("Wolf Creek"). KCPL is wholly owned by Great Plains Energy Incorporated (GPE). KCPL owns 46% of Wolf Creek. This case was designated as Case No. EO-2004-0590.

KCPL identified in its application that it has no pending action or final unsatisfied judgments or decisions against it from any state or federal court involving "customer service or rates, which has occurred with three (3) years of the date of the application," except with the GST Appeal of Missouri Public Service Commission Decision in Case No. EC-99-553, writ of review to the Circuit Court of Cole County, appealed to the Court of Appeals of the Western District of Missouri and ultimately remanded to the Commission (Paragraph 5 and Exhibit 1 of the application). KCPL also indicated that all annual reports were submitted to the Commission and all required assessments were current.

Paragraph 7 of the application states that KCPL is requesting "approval to amend its nuclear decommissioning trust agreement to be consistent with a rule promulgated by the Nuclear Regulatory Commission (NRC). This rule (10 CFR 50.75(h)(1)(iv)) became effective December 24, 2003 and provides for ordinary administrative costs of operating the decommission fund to be disbursed without prior notification to the NRC."

In paragraph 6 of the application, KCPL states that the Commission entered an Order Granting Leave to Amend Nuclear Decommission Trust Agreement and Direct Filing in Case No. EF-2004-0113 on December 2, 2003. This Order authorized an amendment to the decommissioning trust agreement as requested by KCPL. KCPL states that "[t]he request to amend the decommissioning trust was promulgated by modification of the rules governing decommissioning trusts by the NRC, which required a modification to the trust that prohibited use of funds without prior notice to the

NRC []. Pursuant to this Order, KCPL amended its decommissioning trust and filed an executed amendment with the Commission.”

Paragraph 9 to the application relates that subsequent to filing the amendment to KCPL’s decommissioning trust in Case No. EF-2004-0113, the Company learned that the NRC had further revised 10 CFR 50.75(h)(1)(iv). "The rule was clarified to indicate that payments of ordinary administrative costs and incidental expenses did not require prior notice to the NRC.”

Paragraph 8 and Exhibit 2 of the application indicates that the change requested by KCPL to the nuclear decommissioning trust agreement would make it consistent with the NRC rules by adding the underlined language as follows below:

Except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust, no disbursement or payment may be made from the trust until written notice of the intention to make a disbursement or payment has been given the Director, Office of Nuclear Reactor Regulation, at least 30 working days before the date of the intended disbursement or payment.

KCPL states in its prayer that it is requesting an Order from the Commission that would approve the changes noted above for its decommissioning trust agreement to “conform with the NRC rules.”

Staff submitted data requests to this Company to identify the magnitude and types of expenditures KCPL has incurred in the recent past relating to its nuclear decommissioning trust. KCPL provided the following expenditures by year:

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Trustee Fees	\$24,127	\$24,106	\$24,073	\$24,865
Investment Management	66,469	72,645	90,072	95,740
Other Service Fees	--0--	--0--	--0--	264,890
Administrative Exp	1,724	(1,162)	1,788	26,332
Tax Expenses	320,428	644,083	314,427	682,780
Miscellaneous Disbursements	16,202	--0--	--0--	--0--
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Total	\$428,950	\$739,672	\$430,360	\$1,094,607

Staff also asked a follow-up question as to why the tax expenses fluctuated significantly between years. KCPL inquired of its trustee, Bank of America, and Bank of America responded that the reasons were: (1) market fluctuation from lower interest rates on fixed investments caused the selling of some of those fixed investments for gains as the trust fund managers sought higher returns elsewhere; (2) lower interest rates caused reduced income; and (3) effect of the general down turn in the stock market during the last three years.

Staff inquired if KCPL was proposing that a notification would have to be made above a certain dollar limit restriction for disbursements to operate the decommissioning trust. KCPL indicated that it was not proposing in its application to require approval to make these expenditures nor place a dollar limit on the administrative expenditures it may make without seeking regulatory approval (Staff Data Request No. 3). KCPL stated that (1) the NRC does not put dollar limits on expenditures that would require the Company to submit a report to the NRC or seek authorization from the NRC for the disbursements, (2) KCPL has not been required to submit a report or seek authorization in the past from this Commission and (3) KCPL does not "see it necessary or beneficial to do so in the future because KCPL currently submits a quarterly decommissioning trust fund report pursuant to 4 CSR 240-20.070(5) and Case No. E0-2000-210 that incorporates the actual expenditures. In addition, the expected expenditures and types would be difficult to accurately project because of the fluctuation of the amount of fees, expenses, and taxes on an annual basis" (Source: KCPL response to Staff Data Request No. 3).

It is Staff's understanding that Union Electric Company, d/b/a AmerenUE has not made a similar request as KCPL, to date, to amend its Callaway Nuclear Generating Facility's decommissioning trust agreement.

#### **Reommendation:**

Staff does not oppose KCPL's application to amend certain language of the Wolf Creek Decommissioning Trust Agreement. However, Staff believes that even though the NRC does not require such notice nor has KCPL been required by this Commission to seek authorization in the past, a dollar limit restriction should be placed on the Company's ability to make disbursements from the Decommissioning Trust Agreement without reporting to and seeking Commission authorization. KCPL's customers are providing the funds currently in rates necessary for the expected decommissioning of Wolf Creek at the end of its useful life. It is critical that sufficient funds be available to ensure the proper decommissioning of KCPL's nuclear generating facility. Because Wolf Creek is nuclear fueled, it will have unique aspects to the safe disposal of the contaminated equipment and parts of the generating unit. Because of the necessity of having adequate funding for the removal of Wolf Creek, Staff believes every effort must be made to maintain proper safeguards respecting the decommissioning trust funds. Therefore, Staff would place an upward limit of \$2.5 million annually that may be disbursed from the decommissioning trust fund without reporting to and seeking approval of this Commission. KCPL should notify and seek approval from the Commission for any year in which annual disbursements will be expected to exceed this \$2.5 million restriction. This dollar amount limitation could be modified in the future as the costs of the decommissioning trust fund operations increase. KCPL would be required to indicate the reason for such an increase in the limit and seek Commission authorization.

The Commission should also continue to require that KCPL report on a quarterly basis the activity of the Decommissioning Trust Agreement for Wolf Creek and continue to require that KCPL provide such reports to the Commission specifically identifying the administrative costs, including taxes, to operate the trust fund.