

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:                    John Wine, Chair  
    Cynthia L. Claus  
    Brian J. Moline

In the Matter of the Application of Kansas    )  
City Power & Light Company for an            )        Docket No. 01-KCPE-708-MIS  
Order Authorizing Its Plan to Reorganize    )  
Itself Into a Holding Company Structure.    )

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT  
AND AUTHORIZING REORGANIZATION**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”) upon Stipulation and Agreement (“Stipulation”) filed by Commission Staff (“Staff”), Kansas City Power & Light Company (“KCPL”) and the Citizens’ Utility Ratepayer Board (“CURB”). For the reasons discussed below, the Commission approves KCPL’s application subject to the terms of the Stipulation and additional conditions imposed herein.

**I. BACKGROUND**

1.        On February 26, 2001, KCPL filed its Application, in accordance with Kansas law and the Public Utility Holding Company Act of 1935 (15 U.S.C. §79 *et seq.*) (“PUHCA”), seeking Commission approval of its proposal for reorganization into a registered holding company structure. KCPL asserts this change is necessary because of increased competition in capital and energy markets, which has required traditional utilities to diversify their business operations and, in particular, to invest in businesses offering higher growth opportunities for its shareholders. KCPL states that the proposed reorganization will facilitate the efforts of its affiliated competitive businesses to access more markets and will allow them to pursue business opportunities for its shareholders with greater flexibility and speed. Application, at 6. KCPL did not identify any ratepayer benefits that would result from its proposed reorganization of its corporate structure.

2. KCPL states in its Application that the proposed reorganization will not involve the transfer of any of its assets, including generating assets, from KCPL to affiliates and that KCPL will remain a vertically integrated utility subject to the jurisdiction of the Commission. KCPL pledges that the Commission will continue to have the statutory authority to ensure that KCPL's retail electric customers receive electric service that is safe, reliable and reasonably priced. Application, p. 7.

3. The Application, at p. 11, contains the following representations:

KCPL is a Missouri corporation in good standing in all respects, with its principal office and place of business located at 1201 Walnut, Kansas City, Missouri 64106. KCPL is engaged in the generation, transmission, distribution, and sale of electric energy and power in areas of eastern Kansas certificated to it by the Commission. KCPL is an "electric public utility" and "public utility" as those terms are defined in K.S.A. 66-101a and K.S.A. 66-104, respectively, and, as such, is subject to the jurisdiction of the Commission as provided by law. KCPL provides electric service to approximately 183,400 residential customers and approximately 23,000 commercial and industrial customers in Kansas. . .

4. The Application, at p. 1, contains a summary of the restructuring plan, which describes the current KCPL as a vertically integrated electric utility company. The summary provides the following general description of the expected holding company structure after the proposed changes:

After the reorganization, a new holding company ("HoldCo") will be the sole owner of three subsidiary companies, all of which already exist - i.e. KCPL, KLT, Inc. ("KLT") and Great Plains Power ("GPP"). (Footnote 1 omitted.) KCPL will remain a vertically integrated electric utility subject to this Commission's jurisdiction and will not transfer any of its generating assets as a part of this proposed restructuring plan. KLT will continue to invest in competitive, high-growth businesses. GPP will pursue opportunities in the competitive wholesale generation market.

KCPL further describes the restructuring process to include several intermediary steps. These steps, which include the formation of a new subsidiary, "NewCo", with which KCPL will merge with KCPL being the surviving corporation, are generally described on page three of the Application.

5. In its Application, KCPL requests the Commission to issue its Order:
  - a. Granting KCPL the authority to restructure and reorganize itself as proposed;
  - b. Granting KCPL the authority to merge with NewCo with KCPL being the surviving corporation;
  - c. Granting KCPL the authority to convert its stock to HoldCo stock, as described in the Application; and
  - d. Granting such other relief as may be deemed necessary and appropriate to accomplish the purposes of the Application and to consummate the restructuring transaction, as described in the Application.

## II. DISCUSSION

6. On April 30, 2001, a unanimous Stipulation was filed with the Commission. This Stipulation was signed by representatives of KCPL as well as the two other parties to this docket, Staff and CURB. No other party has sought to intervene and there have been no objections to this Stipulation.

7. A duly-noticed hearing was held Monday, June 25, 2001. KCPL appeared by Bernie J. Beaudoin, Chairman, President and Chief Executive Officer; Chris Giles, Director of Regulatory Affairs; William G. Riggins, General Counsel; and Glenda L. Cafer, Attorney-At-Law. Staff appeared by Joseph White, Director of Utilities; Larry Holloway, Chief of Energy Operations; Adam Gatewood, Financial Analyst; and W. Thomas Stratton, Jr., Assistant General Counsel. CURB appeared by Walker Hendrix, Consumer Counsel.

8. At the June 25 hearing, counsel for Staff and KCPL informed the Commission of agreed corrections and changes to the Stipulation, which the parties requested the Commission to adopt as part of its order approving the Stipulation, as follows:

- a. Deletion of the following words from the end of paragraph II. F.12, at page 13 of the Stipulation: "...and the Commission has found that no detriment to the public would result from the transaction."
- b. At paragraph II.B.5 at page 8 of the Stipulation, last sentence, change the page number from 3 to 5 and the section number from 3.1.2 to 4.1.2. In the following paragraph, paragraph 6, at the end of the last sentence, add as part of that last sentence, after "Commission": "..., with the exception that on page 3, section 3.1.2 of the Stipulation, the reference to 'twenty (20) days after the contract is filed' shall be amended to 'thirty (30) days after the contract is filed.'"

These changes, as set forth in KCPL Exhibit No. 1, were intended to reform the Contingent Jurisdictional Stipulation that was incorporated into the Stipulation presented to the Commission at the hearing.

9. At the June 25 hearing, following the recitation of desired corrections or changes, KCPL witnesses Beaudoin and Giles testified in support of the Stipulation. Staff witness Holloway generally summarized the Stipulation and described Staff's reasons for supporting its approval, as more specifically described in his June 22, 2001 Memorandum to the Commissioners ("Memorandum", attached hereto as Exhibit 1), which was distributed to the Commission and parties

in advance of the hearing. The witnesses also answered questions regarding the Stipulation that were posed by the Commission and CURB.

10. Upon the suggestion of Commissioner Moline made during the course of the hearing, one additional change to the Contingent Jurisdictional Stipulation, Exhibit 5 to the Application, was agreed by the parties, as follows: Insert “Commission Staff (“Staff”)” prior to “the Citizen's (sic) Utility...” at §1.2, page 1 of 6. It was acknowledged that the omission in the original was an oversight. A similar omission occurs in the Stipulation at paragraph II. B. 4, first line, which could be addressed by the inclusion of “Staff” after “Commission.”

11. At the conclusion of the hearing, the matter of approval of the Stipulation was taken under advisement by the Commission. Subsequently, Staff was informed by KCPL regarding an amendment to a stipulation, similar to the Stipulation pending here, that is pending approval by the Missouri Public Service Commission. Among the amendments to that stipulation is the following additional language: “Any purchase supply agreement between KCPL and GPP and/or any GPE affiliate will be submitted by KCPL for review and approval by the Commission.”

### **III. FINDINGS AND CONCLUSIONS**

12. The Commission has full power, authority and jurisdiction to supervise and control electric public utilities conducting operations within the state of Kansas, and is further empowered to do all things necessary and convenient for the exercise of such authority and jurisdiction. K.S.A. 66-101 *et seq.* In addition, as applied to the regulation of electric public utilities, the provisions of K.S.A. 66-101 *et seq.* and all grants of power, authority and jurisdiction therein made to the Commission shall be liberally construed, and all incidental powers necessary to carry the act into

effect are expressly granted to and conferred upon the Commission. K.S.A. 66-101g; *Grindsted Products, Inc. v. Kansas City Power & Light Co.*, 21 Kan.App.2d 435, 443, 901 P.2d 20 (1995).

13. An electric public utility is required under K.S.A. 66-101b to carry out the mandate of its certificate to provide efficient and sufficient service at just and reasonable rates. The Commission has the jurisdiction and authority to investigate, on its own initiative, any act or practice of an electric public utility that affects its ability to provide efficient and sufficient service at just and reasonable rates, and to substitute such act or practice after investigation and hearing under K.S.A. 2000 Supp. 66-101d. Further, the Commission has the clear authority under K.S.A. 66-101h to “examine and inspect the condition of each electric public utility” and the “manner of its conduct and its management with reference to the public safety and convenience.” Finally, the Commission has jurisdiction to investigate any transaction that constitutes a “contract or agreement with reference to or affecting” the certificate of convenience pursuant to K.S.A. 2000 Supp. 66-136.

14. KCPL is a certificated electric public utility subject to the jurisdiction of the Commission, which has jurisdiction to hear and make determinations regarding this Application pursuant to K.S.A. 66-101b, 66-101d and 66-136. The Commission finds that notice of the Commission's June 25, 2001 hearing regarding the proposed Stipulation was proper.

15. The Commission further finds that KCPL presented itself, at the time of filing of its Application, as a financially sound utility, with no history of failed unregulated investments. KCPL has been forthright with the Commission by filing its Application seeking the Commission's approval of its proposed reorganization and in its conduct since the filing of the Application. KCPL has offered many assurances of its intention to remain focused on its central mission of providing efficient and sufficient service to its ratepayers at just and reasonable rates. These assurances have

been provided in KCPL's Application, by its agreements incorporated in the Stipulation, and by its witnesses and counsel at the hearing, and this Order is based primarily on these assurances. Further, under KCPL's reorganization plan, the capital structure of the utility business will change; however, no currently-held assets, and in particular, no generation assets, will be transferred from the utility business to any affiliate and the financial integrity of the utility business does not appear to be compromised. Finally under KCPL's reorganization plan, the Commission has continuing jurisdiction over KCPL's retail rates, including review of KCPL's decisions to enter into purchased power agreements or build new generation and affiliate transactions covered by the Kansas Holding Company Act, K.S.A. 66-1401 *et seq.* Because of the Commission's continuing jurisdiction, the protections provided in the Stipulation and the conditions set forth herein are sufficient to ensure that the financial viability of the utility business will remain in place. The Commission recognizes that there is a risk of federal preemption related to the approval of KCPL's reorganization plan. The Commission believes that the risk is diminished for two reasons: (i) current prevailing law supports state jurisdiction over affiliate transactions and (ii) KCPL's commitment to not challenge the Commission's jurisdiction.

16. As stated in Larry W. Holloway's June 22, 2001 Memorandum to the Commission, the Stipulation:

- a. Contains provisions that assure the Staff and CURB will have, on an ongoing basis, access to information;
- b. Contains several provisions relating to reporting of important financial information;

- c. Contains numerous provisions intended to ensure the ongoing financial integrity of the electric utility;
- d. Requires the filing of a Cost Allocation Manual, containing negotiated modifications and enhancements, by a set time; and
- e. Contains the current KCPL management's promise to not challenge the Commission's jurisdiction to review affiliate contracts and provides a procedural framework for that review.

17. With the treatment of affiliate contracts required to be filed at the SEC, the Commission finds that another correction is necessary to the Contingent Jurisdictional Stipulation. The first sentence at paragraph 3.1.2 should be corrected by inserting the "or upon" after the word "during" and before the phrase "the expiration of the Review Period."

18. The Commission finds that KCPL should be allowed to restructure and reorganize in the manner proposed in the Stipulation, subject to conditions and limitations set forth in this Order. The Commission recognizes that KCPL's restructuring proposal is responsive to federal restructuring initiatives and that it is appropriate to allow KCPL to proceed with its reorganization in that context. The Commission notes that KCPL will need to meet the public interest standard, including an affirmative showing of ratepayer benefits, for any subsequent merger or reorganization. The Commission also remains concerned about affiliate transactions, (*See* Docket No. 01-WERE-949-GIE), and the Commission finds that additional conditions beyond the assurances provided in the Stipulation are necessary and appropriate to ensure that KCPL's ability to provide retail electric service under its certificate of convenience will not be adversely affected by the reorganization. These additional conditions are set forth below in the order paragraphs.

19. Accordingly, the Commission concludes that the Stipulation, which has been unanimously approved by the parties, and the Application should be approved, subject to the additional conditions set forth in this Order.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED:**

(A) The Application of KCPL, to the extent that it serves as the basis for the Stipulation and this Order approving the Stipulation, is hereby approved, subject to the conditions set forth in this Order.

(B) The Stipulation of the parties is approved, as modified as follows:

1. Deletion of the following words from the end of paragraph II.F.12 of the Stipulation: "...and the Commission has found that no detriment to the public would result from the transaction."
2. Change the page number from 3 to 5 in the Stipulation, paragraph II.B.5, last sentence, and the section number from 3.1.2 to 4.1.2. In the following paragraph, paragraph 6, at the end of the last sentence, add as part of that last sentence, after "Commission": "..., with the exception that on page 3, section 3.1.2 of the Stipulation, the reference to 'twenty (20) days after the contract is filed' shall be amended to 'thirty (30) days after the contract is filed.'"
3. Insert "Commission Staff ('Staff')" prior to "the Citizen's (sic) Utility..." at §1.2 of the Contingent Jurisdictional Stipulation, Exhibit 5 to the Application. Insert "Staff" after "Commission" at Stipulation, paragraph II. B. 4, first line.

4. Insert “or upon” in the first sentence of paragraph 3.1.2 of the Contingent Jurisdictional Stipulation, Exhibit 5 to the Application, after the word “during” and before the phrase “expiration of the Review Period.”
5. To the extent that the Stipulation or Contingent Jurisdictional Stipulation provides for information, documents or other data to be furnished to the Commission or Staff, such information, documents or data shall be filed with the Commission and a copy served upon the Commission’s Director of Utilities. Such information, documents or data shall be marked and identified with the docket number of the present proceeding.
6. The parties must file with the Commission reformed copies of the Stipulation and Contingent Jurisdictional Stipulation, reflecting the modifications and corrections noted herein, within 18 days from the date of this order.

(C) The following additional requirements are ordered for KCPL and any successor entity:

1. The ability of KCPL to provide efficient and sufficient service at just and reasonable rates shall not be diminished. In particular, KCPL and its affiliates shall not enter into transactions that negatively impact on the regulated electric company's ability to provide efficient and sufficient service at just and reasonable rates, or that could impair the financial viability of the regulated electric company. KCPL shall maintain service quality and reliability at acceptable levels and continue to comply with the Commission’s quality of service regulations. KCPL shall maintain employee safety at acceptable levels.

2. All purchase supply agreements between KCPL and GPP and/or any GPE affiliate must be submitted in advance by KCPL for review and approval by the Commission before becoming effective. The Commission's authority to apply "prudence" and "used and useful" test to determine whether costs of particular wholesale purchase agreements should be included in retail rates shall remain unaffected.
3. While the Commission is not requiring in this Order that all affiliate contracts be filed with the Commission for its prior approval before the effective date of such contracts, the Commission retains the right to reconsider whether additional filing requirements are necessary to protect the public interest. The Commission previously announced in Docket No. 01-WERE-436-RTS that a generic investigation will be opened to consider affiliate transactions. KCPL shall comply with any rules or regulations that result from that investigation. All SEC filings shall be filed with the Commission.
4. After the consummation of the transactions contemplated in the Stipulation, KCPL, the surviving corporation of KCPL's merger with NewCo, shall remain a wholly-owned subsidiary of HoldCo. No capital stock of KCPL shall be offered or sold to any third party without prior Commission approval.
5. After the consummation of the transactions contemplated in the Stipulation, KCPL shall not transfer any assets to any third party outside the ordinary course of business without prior Commission approval.

(D) The following requests for authorization by KCPL are approved, subject to the foregoing conditions, to the extent such authorizations are necessitated by the Stipulation:

1. KCPL is granted the authority to restructure and reorganize itself;
2. KCPL is granted the authority to merge with NewCo, with KCPL being the surviving corporation;
3. KCPL is granted the authority to convert its stock to HoldCo stock, as described in the Application; and
4. KCPL is granted such other relief as may be deemed necessary and appropriate to consummate the restructuring transaction(s), as described in the Stipulation.

(E) Any party may file a Petition for Reconsideration of this Order within fifteen days of the date this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame.

(F) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

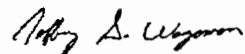
**BY THE COMMISSION IT IS SO ORDERED.**

Wine, Chr.; Claus, Com.; Moline, Com.

Dated: AUG 07 2001

ORDER MAILED

AUG 08 2001

 Executive Director

JEFFREY S. WAGAMAN  
EXECUTIVE DIRECTOR