

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

In the Matter of the Application of )  
Midwest Power Company For )  
A Certificate of Public Convenience ) Docket No. 19- MPCE - 064 -COC  
And Necessity to Transact the )  
Business of a Public Utility In the )  
State of Kansas. )

**MIDWEST POWER COMPANY APPLICATION FOR  
CERTIFICATE OF CONVENIENCE AND NECESSITY**

COMES NOW, Midwest Power Company<sup>1</sup> (“MWP”), pursuant to K.S.A. 66-131, and hereby requests that the State Corporation Commission of the State of Kansas (“Commission” or “KCC”) issue an Order: (i) granting, on an expedited basis for the reasons discussed herein, MWP’s request for a limited and contingent certificate of public convenience and necessity (“Certificate”) to operate its 8% undivided interest in the Jeffrey Energy Center (“JEC”); (ii) making determinations regarding Exempt Wholesale Generator (“EWG”) status in accordance with Section 32(c) of the Public Utility Holding Company Act of 1935 (“PUHCA 1935”); and (iii) either confirming that specific statutes are inapplicable to MWP or granting a waiver of such statutes due to MWP’s unique circumstances.<sup>2</sup> In support of its Application for a Certificate of Public Convenience and Authority, MWP hereby states as follows:

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<sup>1</sup> A copy of the MWP Board’s Corporate Resolution authorizing the filing of this Application is attached hereto as Exhibit A.

<sup>2</sup> By unique circumstances, MWP refers to the fact that it is not requesting and will not have a specific retail service territory, and it will serve no retail customers and therefore will have no retail rates that the Commission must approve.

## **I. Limited Scope of Request**

1. MWP's request for a Certificate is limited to its 8% interest in the JEC, and is contingent upon MWP not selling or extending the lease to such interest prior to the January 3, 2019 expiration of the current Lease Agreement with Westar Energy, Inc. ("Westar"). Assuming the contingency occurs, MWP will be an independent power producer ("IPP") and an EWG that will make sales of energy and capacity exclusively at wholesale. MWP will not have a certificated retail territory and will not make any retail sales. Accordingly, the Federal Energy Regulatory Commission ("FERC") will have exclusive jurisdiction over MWP's rates.

2. The vast majority of IPPs in the State of Kansas qualify for an exemption from regulation as a public utility pursuant to K.S.A. 66-104(c). However, such exemption is limited to facilities that are newly constructed and placed in service on or after January 1, 2001. The JEC was constructed and placed into service in the late 1970s and early 1980s. Therefore, if MWP does not sell or extend the lease to its interest in the JEC prior to January 3, 2019, it will be in the unique position of being an IPP that is required to obtain a certificate from the KCC despite the KCC not otherwise regulating MWP. As a result, this application does not concern any rate or territory issues that are often found in other certificate applications.

## **II. Background of the Parties**

3. MWP is an Ohio corporation organized by and existing pursuant to the laws of the State of Ohio and is in good standing in all respects. MWP is authorized to conduct business in the State of Kansas as a properly registered foreign corporation in good standing.<sup>3</sup> MWP is a wholly-owned subsidiary of KeyCorp. KeyCorp is headquartered in Cleveland, Ohio and maintains business offices in 31 states where its approximately 19,000 employees are engaged in

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<sup>3</sup> See, Registration as a Foreign Corporation in Kansas and Kansas Certificate of Good Standing, attached hereto as Exhibit B.

providing a variety of business-to-business and consumer lending solutions. KeyCorp is a Bank Holding Company under the Bank Holding Company Act of 1956, as amended, and one of the nation's largest bank-based financial services companies, with consolidated total assets of approximately \$137.7 billion at December 31, 2017. KeyCorp is the parent holding company for KeyBank National Association ("KeyBank"), its principal subsidiary, through which most of our banking services are provided. KeyCorp has current market capitalization of approximately \$22.66 billion and is publicly traded on the New York Stock Exchange.

4. MWP was originally formed in 1985 as Centran Corporation ("Centran") and was previously a subsidiary of Society Corporation ("Society"). On March 11, 1987 the name was changed from Centran to MWP. When KeyCorp and Society merged in 1993, MWP became a non-bank subsidiary of KeyCorp. In order to fund leases under MWP, inter-company loans are required. MWP does not produce financial statements and the obligations it undertakes generally require a guaranty from KeyCorp as the parent. MWP previously held two leveraged leases as owner participant: (1) the CEI Toledo Edison Trust A at the Bruce Mansfield Plant, which commenced on September 30, 1987 and was sold in June 2007; and (2), participation as Perry One Beta Limited Partnership in a lease at Perry Nuclear Power Plant Unit 1, that commenced on March 16, 1987 and was sold in April 2014.

5. Currently, the sole asset of MWP is an 8% undivided interest in the JEC, which it holds as the sole participant and beneficiary in a Trust for which Wilmington Trust Company ("WTC") is the owner trustee. MWP acquired its interest in this Trust in 2007 *via* a Purchase, Assignment & Assumption Agreement with Financial Leasing Corporation. The history of the 8% interest and the formation of the Trust is described in detail in Section III hereof. The remaining 92% of the JEC is owned by Westar (84%) and Kansas City Power & Light Company

(8%), now combined under their common parent, Evergy, Inc. The 8% ownership interest in the JEC owned by the Trust is currently leased to Westar pursuant to a lease agreement dated August 15, 1991 (“Lease Agreement”).

6. The Lease Agreement is set to expire on January 3, 2019.

### **III. Historical Ownership of the 8% Interest in the JEC**

7. Centel Corporation (“Centel”) was an original partner in the JEC and was allocated an 8% undivided ownership interest pursuant to the Agreement for the Construction and Ownership of Jeffrey Energy Center dated January 13, 1975 (“JEC Ownership Agreement”). At the time, Centel provided retail electric service to approximately 65,000 customers in the central and western portions of Kansas.<sup>4</sup>

8. When Centel sold its electric utility operations in Kansas to UtiliCorp United Inc. (“UtiliCorp”) on August 15, 1991, UtiliCorp had the option to assign its right to purchase all or a portion of Centel’s 8% interest in the JEC to an unrelated financial institution in a sale and lease financing transaction.<sup>5</sup> UtiliCorp exercised that option by assigning its purchase rights to certain elements of the 8% interest to WTC.<sup>6</sup> To facilitate that assignment, Financial Leasing Corporation, a subsidiary of Citigroup, Inc., entered into a trust agreement as owner participant with WTC, as owner trustee, creating the Trust (the “Trust Agreement”). Centel sold some of the elements (sometimes called the “Undivided Interest”) to WTC, as owner trustee, and other elements (sometimes called the “Support Assets Interest” and the “Site Interest”) to UtiliCorp. UtiliCorp then leased the Support Assets Interest and Site Interest to WTC, as owner trustee,

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<sup>4</sup> See KCC Docket No. 175,456-U (91-UCUE-226-MER), Order and Certificate at ¶ 3 (Sept. 27, 1991) (hereinafter 1991 Order).

<sup>5</sup> See *id.* at ¶ 22.

<sup>6</sup> See *id.*



pursuant to the Site and Support Assets Lease, which remains in place until the earlier of (a) retirement of the JEC or (b) December 31, 2050. WTC then leased the Undivided Interest to UtiliCorp and subleased the Support Assets Interest and the Site Interest to UtiliCorp pursuant to the Lease Agreement. The Lease Agreement terminates on January 3, 2019, at which time the 8% interest in the JEC leased by the Trust to Westar will revert to the Trust.

9. As part of the August 15, 1991 transaction, Centel assigned to WTC, as owner trustee, all of its rights and interest in and to the June 1, 1978 Operation Agreement (which governs the day-to-day operation of the JEC), to the extent the same relates to the Undivided Interest. Additionally, UtiliCorp assigned to WTC, as owner trustee, all of its rights and interest in and to the Operation Agreement, to the extent the same relates to the Support Assets and the Site Interest. Then, pursuant to the Assignment of Operation Agreement, also executed on August 15, 1991, WTC assigned to UtiliCorp all of WTC's rights, interests, duties and obligations under the Operation Agreement to the extent the same relates to the Undivided Interest, the Support Interests, and the Site Interests. The assignment from WTC to UtiliCorp (and subsequently to Westar) terminates at the same time as the Lease Agreement (*i.e.* January 3, 2019). The assignment from UtiliCorp to WTC continues until the earlier of (a) retirement of the JEC or (b) December 31, 2050. Accordingly, as of January 3, 2019, WTC, solely in its capacity of owner trustee, will possess all rights, interests, duties and obligations under the Operation Agreement that were originally assigned to Centel.

10. The KCC approved the transactions in its Order and Certificate issued in Docket No. 175-465-U (91-UCUE-226-MER) on September 27, 1991 ("1991 Order"), which described the lease arrangement as follows:

In the lease agreement, UtiliCorp will assume sole operational responsibility for the leased interest and will discharge that responsibility by becoming the assignee

of Centel's obligations under the joint operating agreement among the owners of the JEC. The Kansas Power and Light Company will continue to be the operator of the JEC through agreements currently in place. During the lease term, UtiliCorp will have exclusive rights to the power and energy produced by the 8 percent undivided interest being sold by Centel.

UtiliCorp will finance its acquisition of the use of the JEC [Undivided Interest] by entering into a long-term lease with the owner trustee. The owner trustee will raise capital from the owner participant and the note purchasers on the basis of that lease. Utilicorp will enjoy operational control of the facility during the lease term and will have the sole benefit of the power produced from the 8 percent undivided ownership interest during the lease term. Additionally, through the lease, UtiliCorp will assume the operational risks normally attendant upon outright ownership of the interest.<sup>7</sup>

11. The fact that UtiliCorp retained operational control and risk associated with the 8% interest was critical with regard to the Commission's regulatory treatment of the owner trustee (WTC) and the owner participant (at the time, Financial Leasing Corporation). The Commission found that the owner trustee and the owner participant should not be considered regulated "public utilities" under Kansas Law, reasoning as follows:

Under the circumstances in this proceeding, it is clear the agreements are financing instruments and do not confer sufficient managerial or operational control over the JEC interest to constitute a public utility. The Commission finds the owner trustee, the owner participant (and any guarantor of the obligations of the owner participant), the indenture trustee and the note purchasers will not become public utilities pursuant to K.S.A. 66-104 or K.S.A. 66-1,158(c), or otherwise subject to the jurisdiction of the Commission solely by reason of their participation in the sale and lease financing arrangements.<sup>8</sup>

12. In 2002, UtiliCorp changed its name to Aquila, Inc. ("Aquila"). On February 23, 2007, the Commission approved Aquila's transfer of its leasehold and related interests in the JEC to Westar pursuant to the terms and conditions contained in the Transfer Agreement between Aquila and Westar. At that time, Mid-Kansas Electric Cooperative ("MKEC") was planning to acquire Aquila's electric utility operations in Kansas, including the 8% JEC leasehold interest.

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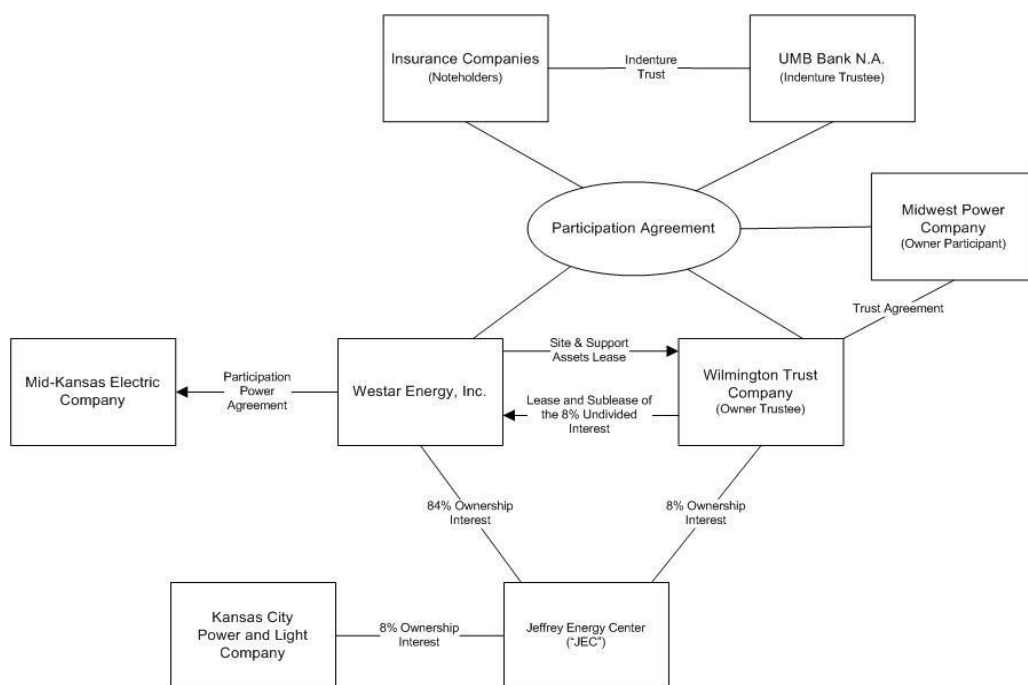
<sup>7</sup> *Id.* at ¶ 26.a.

<sup>8</sup> *Id.* at ¶ 39.

However, pursuant to the JEC Ownership Agreement, Westar had preferential purchase rights with respect to the 8% interest. After extensive negotiations, it was agreed that Aquila would transfer its leasehold interest to Westar and Westar and MKEC would execute a Power Purchase Agreement for the energy associated with the 8% interest.

13. On September 20, 2007, MWP acquired Financial Leasing Corporation's interest in the Trust pursuant to the Purchase, Assignment & Assumption Agreement.

14. The following graphical depiction provides a visual illustration of the current relationships between the parties and the interest they hold in the JEC:



#### IV. MWP's Request for a Certificate of Convenience and Necessity

15. K.S.A. 66-104 defines "public utility" as "all companies for the production, transmission, delivery or furnishing of heat, light, water or power." As discussed above, the Commission previously granted WTC and Financial Leasing Corporation (MWP's predecessor

in interest) an exception to the definition of “public utility” because their interests were financial only and they had no managerial or operational control over the JEC interest.<sup>9</sup>

16. If MWP does not sell or extend the lease of its 8% interest in the JEC prior to the expiration of the Lease Agreement on January 3, 2019, exclusive control over the energy and capacity associated with the 8% interest will revert back to the Trust. At such point, MWP will no longer qualify for the “financial interest only” exception to the definition of “public utility” under Kansas law. WTC, as owner trustee of the Trust, will act in respect to the 8% interest solely at the direction of MWP, as the sole participant and owner beneficiary of the Trust. Since it is unknown whether MWP will sell, or extend the lease of, its 8% interest in the JEC prior to January 3, 2019, and in order remain compliant with Kansas regulatory requirements, MWP believes it is required to apply for a certificate of public convenience and necessity from the KCC in advance of January 3, 2019.

**A. “Public Convenience and Necessity” under K.S.A. 66-131**

17. K.S.A. 66-131 states, in pertinent part, as follows:

(a) No person or entity seeking to construct electric transmission lines as defined in K.S.A. 66-1,177, and amendments thereto, or common carrier or public utility, including that portion of any municipally owned utility defined as a public utility by K.S.A. 66-104, and amendments thereto, governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience and necessity will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state. (emphasis added).

18. The Commission may grant a certificate to transact the business of a public utility in Kansas upon a determination that the public interest will be promoted by the grant of such certificate. The terms “public convenience” and “public necessity” are not defined in Kansas

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<sup>9</sup> See *id.* at ¶ 39.

statutes, but state law and prior Commission precedent provide guidance. For example, in *Central Kansas Power Co. v. State Corp. Comm’n*, 206 Kan. 670, 676, 482 P.2d 1, 6-7 (1971), the Kansas Supreme Court stated:

[P]ublic convenience and necessity will be promoted by authorization of the plan for electric facilities envisioned in the application. Public convenience means the convenience of the public, not the convenience of particular individuals. [Citations omitted.] Public necessity does not necessarily mean there must be a showing of absolute need. As used, the word “necessity” means a public need without which the public is inconvenienced to the extent of being handicapped.<sup>10</sup>

The Supreme Court also stated:

In determining whether such certificate of convenience should be granted, the public convenience ought to be the Commission’s primary concern, the interest of public utility companies already serving the territory secondary, and the desires and solicitations of the applicant a relatively minor consideration.<sup>11</sup>

19. The Kansas Supreme Court has also found that the “public convenience and necessity” is a relative term, established by proof of the conditions existing in the territory to be served.<sup>12</sup> Additionally, the Court has noted that “[t]he requirement that an entity receive a certificate prior to commencing public utility business is for the protection and welfare of the people.”<sup>13</sup>

20. Further, in Docket No. 08-ITCE-936-COC *et al.*, the Commission provided the following statement regarding the public interest standard:

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<sup>10</sup> See also, *General Communications Systems, Inc. v. State Corp. Comm’n*, 216 Kan. 410, 418, 532 P.2d 1341, 1348 (1975); *Atchison, Topeka & Santa Fe Railway Co. v. Public Service Comm’n*, 130 Kan. 777, 781, 288 P.2d 755 (1930).

<sup>11</sup> *Central Kansas Power Co.* at 677 (citing *Kansas Gas & Electric Co. v. Public Service Comm’n*, 122 Kan. 462, 251 P.2d 1097, 1099 (1927)).

<sup>12</sup> *Atchison, Topeka & Santa Fe Railway Co.* at 781.

<sup>13</sup> *Wycoff v. Quick Way Homes, Inc.*, 201 Kan. 442, 446-47 (1968).

No public utility may transact business in the state of Kansas until it has obtained a certificate from the Commission under K.S.A. 66-131 that ‘public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a ... public utility in this state.’ An applicant must show that ‘public convenience and necessity will be promoted by authorization of the plan for the electric facilities envisioned in the application.’<sup>14</sup>

21. Accordingly, MWP seeks an Order from the KCC authorizing it to transact the business of a public utility within the State of Kansas, limited to its 8% undivided interest in the JEC. MWP requests that the Certificate be contingent upon the absence of a lease extension and MWP’s continued ownership of the 8% interest after January 3, 2019.

22. As previously noted, MWP’s ownership of the 8% portion of the JEC arises from a financial arrangement entered into in 1991 by UtiliCorp, WTC, Financial Leasing Corporation (predecessor in interest to MWP), and several note purchasers. The Commission approved this financial arrangement in the 1991 Order, as discussed above. The financial arrangement facilitated UtiliCorp’s purchase of Centel Corporation’s public utility assets in Kansas in 1991, which the Commission found to be in the public interest at that time.<sup>15</sup> Thus, granting MWP’s application for a CCN will promote the public convenience and necessity by facilitating Kansas public utilities’ access to financial markets and encouraging investment in energy infrastructure in Kansas. If MWP’s application is denied, it may have a chilling effect on future sale-leaseback transactions and other financial arrangements in Kansas that allow public utilities to access capital on reasonable terms. Such a result would inconvenience the public “to the extent of being handicapped.”<sup>16</sup>

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<sup>14</sup> KCC Docket 08-ITCE-937-COC *et al.*, Order at ¶ 48, n.89 (Dec. 18, 2008) (citing *Central Kansas Power Co.* at 676).

<sup>15</sup> See 1991 Order at ¶ 31.

<sup>16</sup> See *Central Kansas Power Co. v. State Corp. Comm’n*, 206 Kan. 670, 676, 482 P.2d 1, 6-7 (1971)

23. Further, the KCC's grant of authority to MWP would continue to make the 8% undivided interest in JEC available to serve customers through the electric markets. No benefit to the public would be derived from a portion of the JEC being unable to participate in the electricity markets. Additionally, inefficient operation of the JEC at partial capacity would result in a higher cost/MWh at the JEC, which may harm the public interest by virtue of increased rates and costs for consumers.

**B. Merger Standards and the Technical, Managerial, and Financial Resources of the Applicant**

24. Historically, the Commission has required applicants seeking a CCN to demonstrate that they have the necessary technical, managerial and financial resources to conduct the business of a public utility.<sup>17</sup> Additionally, in applications for certificates for transmission lines only, the Commission has also examined the Merger Standards originally adopted in Docket Nos. 172,745-U and 174,155-U.<sup>18</sup> In more recent proceedings for certificates of convenience and necessity, the Commission revised the Merger Standards from the original twelve factors to eight factors.<sup>19</sup>

25. The Merger Standards have been articulated as encompassing evaluation of the factors listed below. Many of these factors may not be applicable to this Application, as the 8% portion of the JEC is already in existence and it is not included in any KCC-regulated rates. Additionally, if MWP continues to own the 8% portion of the JEC, it will sell the energy and

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<sup>17</sup> Docket No. 11-GBEE-624-COC, Order Approving Stipulation & Agreement and Granting Certificate at ¶ 55, (Dec. 7, 2011); *see also*, Docket Nos. 07-ITCE-380-COC, 08-KMOE-028-COC, and 08-ITCE-936-COC *et al.*

<sup>18</sup> Consolidated Docket Nos. 172,745-U and 174,155-U, Order at pp. 34-35 (Nov. 4, 1991).

<sup>19</sup> Docket No.08-ITCE-936-COC *et al.*, Order at ¶ 52 (Dec. 18, 2008).

capacity at wholesale and will not be rate-regulated by the KCC. Nevertheless, to the extent they are applicable, MWP addresses the Merger Standards as follows:

- *The effect of the transaction on customers*

As discussed above, granting a certificate to MWP will promote continued access to the financial markets on reasonable terms for Kansas public utilities. It will also promote the efficient use of the JEC and allow MWP to make sales in the wholesale market in order to create a revenue stream to offset its share of operations, maintenance and capital costs at the JEC. The efficient use of the JEC and allowing access to a revenue stream to cover costs at the JEC is beneficial to customers.

- *Whether the transaction maximizes the use of Kansas energy resources*

Granting MWP's application for a Certificate will enable the JEC to be operated at higher capacity factors, which maximizes the use of Kansas energy resources.

- *Whether the transaction will reduce the possibility of economic waste*

Granting MWP's application for a Certificate will enable the 8% portion of the JEC to participate in the energy markets rather than going idle, thereby reducing economic waste.

- *Whether the transaction will be beneficial to state and local economies and to communities served by the resulting public utility operations in the state*

This factor is not relevant to this application, as no jobs will be created or lost as a result of MWP's Certificate.

- *The effect of the transaction on affected public utility shareholders*

Granting MWP's application for a Certificate will benefit KeyCorp's shareholders, as MWP will be able to sell energy and capacity on the wholesale market.

- *The effect of the transaction on the environment*

This factor is not relevant to this application, as no new facilities will be constructed as a result of the Certificate.

- *What impact, if any, the transaction has on public safety*

This factor is not relevant to this application, as no new facilities will be constructed as a result of the Certificate and Westar will continue to operate the JEC.



- *Whether the transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility operations in the state*

Granting MWP's application for a Certificate will ensure that the jurisdiction of the KCC is preserved over the owner of the 8% interest in the JEC.

26. In addition to the foregoing factors, in Docket Nos. 07-ITCE-380-COC, 08-KMOE-028-COC, and 08-ITCE-936-COC *et al.*, the Commission modified and added on to the merger standards tests as follows:

- Financial ability
- Technical operations ability
- Managerial ability
- Impact on transmission in other states
- The historical presence of the Applicant

27. The financial, technical, and managerial resources of MWP are discussed below. The requested Certificate will have no impact on transmission in other states because no new facilities are being constructed. With regard to the historical presence of the Applicant, MWP has been invested in the JEC since 2007 and will rely on Westar to operate the plant and a consultant to market the energy and capacity from its 8% interest.

#### **i. Financial Resources**

28. MWP's direct parent company, KeyCorp, is a Bank Holding Company under the Bank Holding Company Act of 1956, as amended, and is one of the nation's largest bank-based financial services companies, with consolidated total assets of approximately \$137.7 billion at December 31, 2017.<sup>20</sup> Although the sole asset currently held by MWP is the 8% interest in the JEC, MWP is supported financially by its parent, KeyCorp, via a 2007 corporate Guaranty.<sup>21</sup>

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<sup>20</sup> KeyCorp's most recent Annual Report and Form 10-K are available at <http://investor.key.com/investor-overview>.

<sup>21</sup> Attached hereto as Exhibit C.

The September 28, 2007 Guaranty was required by the September 20, 2007 Owner Participant Assignment and Assumption Agreement between Financial Leasing Corporation (the former Owner Participant) and MWP, pursuant to which MWP acquired the 8% undivided interest in the JEC. The Guaranty was also required by Section 16 of the August 15, 1991 Participation Agreement between WTC, Financial Leasing Corporation, and Utilicorp. The Guaranty provided to MWP by KeyCorp ensures that any obligation undertaken by MWP shall be fully discharged. To the extent required, KeyCorp will modify the Guaranty to ensure that any operations, maintenance or capital expenses required to be paid by MWP pursuant to the Operation Agreement will be paid.

29. Additionally, as discussed further below, MWP plans to participate in the Southwest Power Pool (“SPP”) markets, which requires the assurance of adequate financial resources and, if necessary, the posting of collateral. Therefore, the financial integrity of MWP will also be ensured and governed by the SPP requirements.

## **ii. Technical Resources**

30. In an application for a certificate of convenience and authority, the applicant is required to demonstrate that it has the technical and engineering expertise to operate and maintain the relevant utility assets (*e.g.* generation, transmission, or distribution facilities). In this case, MWP does not believe it is required to possess technical or engineering expertise to operate or maintain its 8% portion of the JEC, because it will continue to be operated and maintained exclusively by Westar, pursuant to the 1978 Operation Agreement.<sup>22</sup>

31. The Operation Agreement was originally entered into on June 1, 1978 by the Kansas Power and Light Company (“KPL”) (predecessor to Westar), Kansas Gas and Electric

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<sup>22</sup> The Operation Agreement is attached hereto as Exhibit D.

Company (“KG&E”), Missouri Public Service Company (“MPS”), and Centel. KPL was named as the Operator and charged with operating and maintaining the JEC in a reasonable manner in accordance with generally accepted standards of operation in the industry for projects of a similar size and nature. The Operation Agreement continues in full force and effect until there has been an abandonment of the JEC for the generation of electric power and energy.

32. Pursuant to the Assignment of Operating Agreement, dated August 15, 1991, WTC assigned its rights, interests, duties and obligations under the Operation Agreement to UtiliCorp. Those rights, interests, duties and obligations were then transferred from UtiliCorp to Westar pursuant to the Jeffrey Energy Center Transfer Agreement dated August 11, 2006. The original Assignment of Operating Agreement is coterminous with the Lease Agreement, which means as of January 3, 2019, the rights, interests, duties and obligations under the Operation Agreement will revert to WTC, solely in its capacity as owner trustee. As the sole participant and beneficiary of the Trust, the interests in the Operation Agreement will inure to the benefit of MWP.

33. According to the Operation Agreement and MWP’s interest therein, MWP does not have any day-to-day operation or maintenance obligations with regard to the JEC. All such operation and maintenance is required to be performed by Westar throughout the life of the JEC. MWP does not plan to acquire any other public utility assets and is requesting that its Certificate be limited to MWP’s ownership interest in the JEC. Therefore, MWP is not required to possess any technical resources in order to fulfill its obligations as a certificated public utility in Kansas.

### **iii. Managerial Resources**

34. While MWP does not have any day-to-day operation or maintenance obligations, MWP recognizes that it will be required to manage its interest in the JEC by exercising its rights under the various agreements and selling the energy and capacity generated by its 8% portion.

35. Since the output of MWP's 8% interest in the JEC will be sold into the wholesale market, both FERC and the SPP will oversee much of its operation. The day-to-day management of MWP's interest in the JEC will be addressed through a contractual arrangement with a consultant who will act as Market Participant within SPP to schedule and manage MWP's energy and capacity sales from the JEC. MWP is currently engaged in discussions with various potential entities who would act as Market Participant on MWP's behalf, and hopes to negotiate the specific terms of that arrangement in the near future. In addition, MWP has engaged DAI Consultants to evaluate the value of the 8% interest in the JEC and assess the potential sale of this asset to another party. An extension of the current lease to Westar or a potential sale to Westar of the 8% interest is also a possibility.

### **V. Federal Energy Regulatory Commission ("FERC") and SPP Issues**

36. In order for MWP's 8% undivided interest in the JEC to participate in the wholesale electric markets, MWP will need to: (a) register with the SPP as a market participant and (b) obtain from FERC (i) a certification of Exempt Wholesale Generator ("EWG") status and (ii) market-based rate authority.

37. MWP intends to engage a consultant to act as Market Participant to assist with managing the sale of capacity and energy from the 8% interest. At the time of the filing of this Application, MWP is in the process of interviewing and vetting potential entities that will act as Market Participant within the SPP market on MWP's behalf. The entity that MWP engages to

serve as Market Participant will register the 8% interest at SPP. MWP plans to engage an established Market Participant and the JEC is an existing resource, so MWP does not expect any delays with the registration process.

38. MWP will also be filing a notice of self-certification with FERC as an EWG pursuant to Section 366.7 of FERC's regulations, 18 C.F.R. § 366.7. MWP's self-certification as an EWG must contain certain determinations from the KCC. Section 32(c) of PUHCA 1935 provided that any facility that had "a rate or charge for, or in connection with, the construction of a facility, or for the electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992" cannot be considered to be an eligible facility unless every state commission with jurisdiction over the retail rates in question makes a determination that *allowing the facility to be an eligible facility will benefit consumers, be in the public interest, and not violate state law*. When PUHCA 1935 was repealed and replaced by the Public Utility Holding Company Act of 2005 ("PUHCA 2005"), FERC retained the definition of EWG from PUHCA 1935, including the required state commission determinations in Section 32(c) of PUHCA 1935.<sup>23</sup> Accordingly, MWP requests that the Commission make a determination that allowing the 8% portion of the JEC to be an eligible facility will benefit customers, be in the public interest, and not violate state law. Such determinations are consistent with the justifications for granting a state certificate of convenience and necessity, as discussed above.

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<sup>23</sup> See 18 C.F.R. 366.1 (For purposes of establishing or determining whether an entity qualifies for exempt wholesale generator status, sections 32(a)(2) through (4), and section 32(b) through (d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a(a)(2)-(4), 79z-5a(b)-(d)) shall apply.").

39. MWP will also be applying for market-based rate authority from the FERC under Section 205 of the Federal Power Act, 16 U.S.C. § 824d. In order to grant market-based rate authority, FERC requires a seller to demonstrate that it does not possess horizontal or vertical market power, and cannot erect other barriers to entry into the wholesale electric markets. In order to prove that it lacks horizontal market power, FERC requires a seller to demonstrate that it passes two market power screens: (i) the pivotal supplier screen and (ii) the wholesale market share screen. In order to prove that it lacks vertical market power, the seller must demonstrate that it does not own or control transmission facilities (other than limited facilities necessary to interconnect its generating facilities to the electric grid) or it must have an open access transmission tariff on file with FERC to mitigate its vertical market power. In order to show that it cannot erect other barriers to market entry, FERC requires a seller to affirm that it does not own or control: (i) intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, and (ii) physical coal supply sources and ownership of or control over who may access transportation of coal supplies.

## **VI. Waiver from or Determination of Inapplicability of Certain Statutes**

40. The vast majority of IPPs in the State of Kansas qualify for an exemption from regulation as a public utility. This exemption is contained in K.S.A. 66-104(c), which states:

At the option of an otherwise jurisdictional entity, the term “public utility” shall not include any activity or facility of such entity as to the generation, marketing and sale of electricity generated by an electric generation facility or addition to an electric generation facility which:

- (1) is newly constructed and placed in service on or after January 1, 2001; and
- (2) is not in the rate base of:
  - (A) an electric public utility that is subject to rate regulation by the state corporation commission;
  - (B) any cooperative, as defined by K.S.A. 17-4603 and amendments thereto, or any nonstock member-owned cooperative corporation incorporated in this state; or
  - (C) a municipally owned or operated electric utility.

Exempt utilities are not subject to any of the myriad obligations under Chapter 66 of the Kansas Statutes. Such exemption is appropriate because IPPs only sell energy and capacity at wholesale and wholesale transactions fall under the exclusive jurisdiction of FERC.

41. Except for the cutoff date for placement in service, MWP would qualify for the exemption under K.S.A. 66-104(c). MWP will be an IPP that will only sell energy and capacity at wholesale, and its rates will be exclusively regulated by FERC. As such, K.S.A. 66-101b through 66-101f, K.S.A. 66-109, 66-117, 66-128, and K.S.A. 66-128a through 66-128g are inapplicable to MWP because they address requirements for filing, evaluating, and maintaining just and reasonable rates. Granting MWP a waiver from these statutes, or an explicit determination that these statutes are inapplicable to MWP, would be consistent with the Commission's order in Docket No. 07-ITCE-380-COC, in which it found that these statutes are inapplicable to ITC Great Plains, whose rates are also exclusively regulated by FERC.<sup>24</sup>

## **VII. Request for Expedited Treatment**

42. In light of the fact that the Lease Agreement expires on January 3, 2019, MWP respectfully requests that the Commission and its Staff complete its review and analysis as expeditiously as possible so that MWP may take all other necessary steps to operate as a public utility within the State of Kansas on January 4, 2019. Accordingly, MWP respectfully requests that the Commission issue its Order on this Application by December 14, 2018, in order to provide sufficient time to secure EWG certification from the FERC before January 4, 2019. MWP commits to working diligently with the Commission Staff to provide all requested or required documentation in order to assist with the Commission's review.

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<sup>24</sup> Docket No. 07-ITCE-380-COC, Order Approving Stipulation & Agreement and Addressing Application of Statutes at Ordering ¶ C (June 5, 2007).

Wherefore, MWP respectfully requests that the Commission issue an Order:

- a. granting MWP's request to operate as a public utility in the State of Kansas;
- b. limiting MWP's authority to act as a public utility to the 8% interest in the JEC;
- c. confirming that MWP's authority to act as a public utility is contingent upon MWP retaining ownership of the 8% interest in the JEC and the absence of a lease extension;
- d. making a determination that allowing the facility to be an eligible facility will benefit consumers, be in the public interest, and not violate state law, in accordance with the Section 32(c) of PUHCA 1935;
- e. confirming that such statutes are inapplicable to MWP or granting waivers from K.S.A. 66-101b through 66-101f, K.S.A. 66-109, 66-117, 66-128, and K.S.A. 66-128a through 66-128g;
- f. and for such further relief as the Commission may deem just and appropriate.

Respectfully submitted,

POLSINELLI PC

By: /s/ Anne E. Callenbach

FRANK A. CARO, JR. (#11678)  
ANNE E. CALLENBACH (#18488)  
900 West 48<sup>th</sup> Place, Suite 900  
Kansas City, Missouri 64112  
(816) 572-4760  
Fax No. (816) 751-1536  
[fcaro@polsinelli.com](mailto:fcaro@polsinelli.com)  
[acallenbach@polsinelli.com](mailto:acallenbach@polsinelli.com)

ANDREW B. YOUNG  
MAYER BROWN LLP  
1999 K Street, N.W.  
Washington, D.C. 20006  
(202) 263-3272  
[ayoung@mayerbrown.com](mailto:ayoung@mayerbrown.com)

ATTORNEYS FOR PETITIONERS



**VERIFICATION**

STATE OF Missouri )  
COUNTY OF Jackson )

I, Anne E. Callenbach, being duly sworn, on oath state that I am counsel to Petitioners, that I have read the foregoing pleading and know the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge and belief.

By: A Callenbach  
Anne E. Callenbach

The foregoing pleading was subscribed and sworn to before me this August 10, 2018.

Phyllis E. Edwards  
Notary Public

My Commission Expires:

1/30/21

PHYLLIS E. EDWARDS  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI  
CLAY COUNTY  
MY COMMISSION EXPIRES 1/30/2021  
COMMISSION # 13471396

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been X emailed, \_\_\_ faxed, \_\_\_ hand-delivered and/or mailed, First Class, postage prepaid, this August 10 2018, to:

AMBER SMITH, CHIEF LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[a.smith@kcc.ks.gov](mailto:a.smith@kcc.ks.gov)

DAVID W. NICKEL, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
[D.NICKEL@CURB.KANSAS.GOV](mailto:D.NICKEL@CURB.KANSAS.GOV)

MATTHEW B. McKEON, SVP & Senior Counsel II  
KEY EQUIPMENT FINANCE  
17 CORPORATE WOODS BLVD.  
ALBANY, NY 12211  
[matthew.b.mckeon@key.com](mailto:matthew.b.mckeon@key.com)

AMY G. PAINE, SVP Asset Mgmt.  
KEY EQUIPMENT FINANCE  
1000 SOUTH McCASLIN BLVD.  
SUPERIOR, CO 80027  
[amy.g.paine@key.com](mailto:amy.g.paine@key.com)

/s/ Andrew O. Schulte  
Andrew O. Schulte

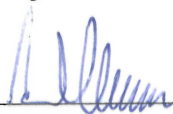
**ACTION BY UNANIMOUS WRITTEN CONSENT IN LIEU OF MEETING  
OF BOARD OF DIRECTORS OF  
MIDWEST POWER COMPANY**

The Board of Midwest Power Company, organized and existing under the laws of the State of Ohio, have determined it to be in the best interests of the corporation that the following actions be taken by the Board of Directors of this corporation pursuant to this Unanimous Written Consent:

The undersigned, constituting the Board of Directors of this Corporation, hereby consent to, approve, and adopt the following:

That a proceeding be commenced, consistent with applicable Kansas law and policy, whereby Midwest Power Company will seek authorization from the State Corporation Commission of the State of Kansas for authority to operate as a public utility within the State of Kansas, for the limited purpose of operating the Corporation's asset consisting of an 8% undivided interest in the Jeffrey Energy Center as a public utility, such authority being contingent upon the Corporation's continued ownership of such 8% undivided interest.

Dated: August 1, 2018

  
\_\_\_\_\_

Adam D. Warner

  
\_\_\_\_\_

William J. Blake

Exhibit B

**STATE OF KANSAS**  
**OFFICE OF**  
**SECRETARY OF STATE**  
**KRIS W. KOBACH**

I, KRIS W. KOBACH, Secretary of State of the state of Kansas, do hereby certify, that according to the records of this office.

Business Entity ID Number: 5218466

Entity Name: MIDWEST POWER COMPANY

Entity Type: FOREIGN FOR PROFIT

State of Organization: OH

Resident Agent: NATIONAL REGISTERED AGENTS, INC. OF KS

Registered Office: 112 SW 7TH STREET, SUITE 3C, TOPEKA, KS 66603

was filed in this office on August 01, 2018, and is in good standing, having fully complied with all requirements of this office.

No information is available from this office regarding the financial condition, business activity or practices of this entity.



In testimony whereof I execute this certificate and affix the seal of the Secretary of State of the state of Kansas on this day of August 09, 2018

**KRIS W. KOBACH**  
**SECRETARY OF STATE**

Certificate ID: 1077260 - To verify the validity of this certificate please visit <https://www.kansas.gov/bess/flow/validate> and enter the certificate ID number.

---

**GUARANTY**

Dated as of September 18, 2007

made by

**KEYCORP**

as Guarantor

---

## GUARANTY

This **GUARANTY**, dated as of September 18, 2007 (this "Guaranty"), is issued by KeyCorp, an Ohio corporation, as guarantor (the "Guarantor") in favor of each Beneficiary (as defined in Section 4 below).

### WITNESSETH:

WHEREAS, the Guarantor is the parent company of Midwest Power Company (the "Purchaser") and has a substantial interest in the Purchaser and its investments;

WHEREAS, the Purchaser entered into that certain Owner Participant Assignment and Assumption Agreement dated as of September \_\_, 2007 (the "Assignment Agreement") with Financial Leasing Corporation (the "Seller"), pursuant to which Seller will transfer (i) its ownership interest in and to the Operative Documents and any other contract, agreement, document or instrument relating to the Trust Estate to which the Owner Participant is a party or which the Owner Participant is bound and (ii) the balance of the Trust Estate, and the Purchaser will purchase all of such rights and assume all duties, liabilities and obligations related thereto;

WHEREAS, pursuant to Section 16 of the Participation Agreement, this Guaranty is required to be provided by the Guarantor in favor of each Beneficiary; and

WHEREAS, the Guarantor anticipates benefiting from the transactions contemplated by the Assignment Agreement and is executing and delivering this Guaranty to induce the Seller to enter into Assignment Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

### SECTION 1. DEFINITIONS

Unless the context hereof shall otherwise require, capitalized terms used in this Guaranty, including the recitals, and not otherwise defined herein shall have the respective meanings specified in Appendix A to the Participation Agreement.

### SECTION 2. COVENANTS

*Section 2.1.* Subject to the terms hereof, the Guarantor hereby unconditionally and irrevocably guarantees to each Beneficiary, as primary obligor and not merely as a surety, (a) the due and punctual performance, compliance and observance by the Purchaser of each term, provision and condition binding upon the Purchaser pursuant to the Assignment Agreement and each Operative Document to which it is to become a party pursuant to the Assignment Agreement (the "Guaranteed Agreements"),

and (b) the due, punctual and full payment (when and as the same may become due and payable) of each amount, if any, including indemnities, costs, fees and expenses that the Purchaser is or may become obligated to pay under or pursuant to each Guaranteed Agreement in accordance with the terms thereof, without offset or deduction.

*Section 2.2.* In the case of any failure by the Purchaser to make any such guaranteed payment, if any is required, or perform any such guaranteed obligation as and when the same shall become due and payable, the Guarantor hereby agrees to promptly make such payment or cause the performance of such obligation (and, in addition, such further amounts, if any, ~~as~~ shall be sufficient to cover the reasonable costs and expenses of collection incurred hereunder); ***provided, that*** no provision of this Guaranty shall expand the aforesaid obligations of the Guarantor beyond those obligations of the Purchaser under the Guaranteed Agreements guaranteed hereunder.

All such obligations and indebtedness set forth in Section 2.1 above and this Section 2.2 are referred to in this Guaranty as the “Obligations.”

*Section 2.3.* The obligations of the Guarantor contained herein are direct, independent, and primary obligations of the Guarantor and are: absolute, present, irrevocable, unconditional and continuing obligations and are not conditioned in any way upon the institution of suit or the taking of any other action or any attempt to enforce performance of or compliance with the obligations, covenants or undertakings (including any payment obligations) of the Purchaser and shall constitute a guaranty of payment and performance and not of collection, binding upon the Guarantor and its successors and assigns and irrevocable without regard to the genuineness, validity, legality or enforceability of the Guaranteed Agreements or the lack of power or authority of the Purchaser to enter into the Guaranteed Agreements or any substitution, release or exchange of any other guaranty or any other security for any of the Obligations or any other circumstance whatsoever (other than full payment or performance) that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor and shall not be subject to any right of set-off, recoupment or counterclaim and is in no way conditioned or contingent upon any attempt to collect from the Purchaser or any other entity or to perfect or enforce any security or upon any other condition or contingency or upon any other action, occurrence or circumstance whatsoever. Without limiting the generality of the foregoing, and subject to Section 6, the Guarantor shall have no right to terminate this Guaranty, or to be released, relieved or discharged from its obligations hereunder, and such obligations shall be neither affected nor diminished for any reason whatsoever, including (i) any amendment or supplement to or modification of the Guaranteed Agreements, any extension or renewal of the Purchaser's obligations under the Guaranteed Agreements, or any assignment or transfer of the Purchaser's or any Beneficiary's interest in the Guaranteed Agreements (ii) any bankruptcy, insolvency, readjustment, composition, liquidation or similar proceeding with respect to the Purchaser or any other Person, (iii) any furnishing or acceptance of additional security or any exchange, substitution, surrender or release of any security, (iv) any waiver, consent or other action or inaction or any exercise or nonexercise of any right, remedy or power with respect to the Obligations or the Guaranteed Agreements (v) (A) any merger or consolidation of the Purchaser or the Guarantor into or with any other Person, (B) any

**a** change in the structure of the Purchaser or in the ownership of the Purchaser or the Guarantor, or (C) any sale, lease, or transfer of any or all of the assets of the Purchaser or the Guarantor to any other Person, (vi) any default, misrepresentation, negligence, misconduct or other action or inaction of any kind by any Beneficiary under or in connection with the Guaranteed Agreements or any other agreement relating to this Guaranty, except to the extent that any such default, misrepresentation, negligence, misconduct or other action or inaction would limit the Obligations, provided, however, Guarantor would still be responsible for such Obligations **as** limited, (vii) the unenforceability, lack of genuineness or invalidity of the Guaranteed Agreements or (viii) any other circumstance whatsoever (except the complete payment and performance of the Obligations) that (with or without notice to or knowledge of the Purchaser or the Guarantor) constitutes, or might be conceived to constitute, an equitable or legal discharge of the Purchaser for the Obligations or of the Guarantor under this Guaranty. The Guarantor hereby unconditionally waives to the extent permitted by law presentation, demand for payment, promptness, diligence and notice **as** to the obligations guaranteed hereby and acceptance of this Guaranty, and waives any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Guarantor, including notice of default or any failure on the part of the Purchaser to perform and comply with any Obligation, any requirement that anyone protect, secure, perfect or insure any security interest or lien or any property subject thereto or exhaust any right or take any action against the Purchaser or any other person or entity or any collateral, and agrees that it shall not be required to consent to or receive any notice of any amendment or modification of, or waiver, consent or extension with respect to, the Guaranteed Agreements. The rights, powers and remedies herein provided are cumulative. No failure or delay on the part of any Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise of any other right, power or privilege. When making any demand hereunder against the Guarantor, a Beneficiary may, but shall be under no obligation to, make a similar demand on the Purchaser or any other guarantor; however, any failure by a Beneficiary to make any such demand or to collect any payments from the Purchaser or any such other guarantor or any release of the Purchaser or such other guarantor shall not relieve the Guarantor of its obligations or liabilities hereunder, and shall not impair or effect the rights and remedies, express or implied, or as a matter of law, of a Beneficiary against the Guarantor.

**Section 2.4.** The Guarantor hereby guarantees that payments hereunder, if any are required, shall be made in Dollars without set-off or counterclaim and free and clear of and without deduction or withholding for any Taxes; provided, that if the Guarantor shall be required under Applicable Law to deduct or withhold any Taxes from such payments, then (i) the sum payable by the Guarantor shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable pursuant to this sentence) the relevant Beneficiary receives an amount equal to the sum it would have received had no such deduction or withholding been required, (ii) the Guarantor shall make such deduction or withholding and (iii) the Guarantor shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with Applicable Law.



### SECTION 3. GUARANTOR'S REPRESENTATIONS, WARRANTIES AND AGREEMENTS

The Guarantor represents and warrants, as of the date hereof, as follows:

*Section 3.1.* The Guarantor is duly organized, validly existing and in good standing under the laws of the State of Ohio and has full power, authority and the legal right to execute, deliver and perform this Guaranty.

*Section 3.2.* The execution, delivery and performance by the Guarantor of this Guaranty has been duly authorized by all necessary corporate action. The Guarantor has duly executed and delivered this Guaranty and this Guaranty constitutes a legal, valid **and** binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as such enforcement may be affected by applicable bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally.

*Section 3.3.* No pending or, to the knowledge of the Guarantor, threatened action, suit, investigation or proceedings against the Guarantor before any Governmental Authority exists which, if determined adversely to the Guarantor, would adversely affect the Guarantor's ability to perform its obligations under this Guaranty.

*Section 3.4.* It has a substantial interest in the Purchaser, its investments and the performance of the transactions contemplated under the Guaranteed Agreements. It has a tangible net worth of at least \$75,000,000.

*Section 3.5.* The execution and delivery by the Guarantor of this Guaranty and the performance by the Guarantor of its obligations under this Guaranty will not (i) violate any indenture, instrument or agreement known to the Guarantor after due inquiry which is binding on Guarantor, (ii) result in, or require, the creation or imposition of any lien on any property of Guarantor pursuant to the provisions of any indenture, instrument or agreement known to Guarantor after due inquiry which is binding on Guarantor, (iii) conflict with or result in any violation of or default under any provision of the Articles of Incorporation of the Guarantor, or (iv) require any consent, approval or authorization of, or registration or filing with, any governmental authority.

### SECTION 4. BENEFICIARIES

The Beneficiaries of this Guaranty shall be the entities listed on Exhibit A attached hereto and made a part hereof, together with their successors and assigns (each, a "Beneficiary" and, together, the "Beneficiaries").

### SECTION 5. SURVIVAL OF GUARANTY

*Section 5.1.* Notwithstanding anything to the contrary herein, this Guaranty shall continue to be effective or be automatically reinstated, as the case may be, if at any time any of the amounts paid to any of the Beneficiaries, in whole or in part, is required to be repaid upon the insolvency, bankruptcy, dissolution, liquidation, or

reorganization of the Guarantor or the Purchaser or any other Person, or as a result of the appointment of a custodian, interviewer, receiver, trustee, or other officer with similar powers with respect to the Guarantor or the Purchaser or any other Person or any substantial part of the property of the Guarantor or the Purchaser or such other Person, all as if such payments had not been made and Guarantor agrees that it will indemnify the Beneficiaries on demand for all reasonable costs and expenses (including, without limitation, fees of court) incurred by the Beneficiaries in connection therewith. Until the Guaranty has been terminated in accordance with Section 6 hereof, the Guarantor shall not commence any insolvency, bankruptcy, liquidation, reorganization, moratorium, or examinership proceedings against the Purchaser.

## SECTION 6. TERMINATION

This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until the earliest of (x) the payment and satisfaction in full of the Obligations and the payment of all other amounts payable under this Guaranty, or (y) the date of the transfer of all of the Purchaser's interest in the Trust Estate and the Operative Documents to a new Owner Participant pursuant to Section 16 of the Participation Agreement upon satisfaction or waiver of all the conditions set forth in Section 16 of the Participation Agreement; provided, that the Guaranty shall remain in effect with respect to Obligations arising prior to any such transfer; (ii) be binding upon the Guarantor, its successors and assigns; provided, that, except as otherwise provided in clause (i) hereof, no assignment or delegation by the Guarantor without the consent of the Beneficiaries shall release the Guarantor from its liabilities hereunder; and (iii) inure to the benefit of, and be enforceable by, each Beneficiary and its permitted successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), a Beneficiary may assign or otherwise transfer all or any portion of its rights and obligations under the Operative Documents in accordance therewith to any other person or entity, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to any Beneficiary herein or otherwise.

## SECTION 7. REMEDIES; SUBROGATION, REINSTATEMENT

### *Section 7.1. Remedies.*

In the event the Guarantor shall fail to pay immediately any amounts due under this Guaranty, or to comply with any other term of this Guaranty, each Beneficiary shall be entitled to all rights and remedies to which it may be entitled hereunder or at law, in equity or by statute.

### *Section 7.2. Subrogation.*

The Guarantor will not exercise any rights that it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise, until all of the Obligations shall have been paid in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations

shall not have been paid in full. such amount shall be held in trust for the benefit of the Beneficiaries to whom such Obligation is payable and shall forthwith be paid to such Beneficiaries to be credited and applied to such Obligation, whether matured or unmatured, in accordance with the terms of the Guaranteed Agreements. If (i) the Guarantor shall make payment to a Beneficiary of all or any part of the Obligations and (ii) all the Obligations shall be paid in full, the Beneficiary or Beneficiaries, as the case may be, will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Obligations resulting from such payment by the Guarantor.

*Section 7.3. Survival of Remedies and Subrogation Rights.* The provisions of this Section 7 shall survive the termination of this Guaranty and the payment in full of the Obligations and the termination of the Guaranteed Agreements.

## SECTION 8. MISCELLANEOUS

*Section 8.1. Amendments and Waivers.* No term, covenant, agreement or condition of this Guaranty may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by the Guarantor and consented to by each Beneficiary affected thereby.

*Section 8.2. Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to the Guarantor or a Beneficiary at its address set forth below or at such other address as such party may from time to time designate by written notice.

If to the Guarantor:

**Key Equipment Finance Inc.  
66 South Pearl Street  
Albany, New York 12207  
Attn: Leveraged Leasing  
Telecopy: (216) 370-4061**

with a copy to:

**KeyCorp**  
**127 Public Square**  
**2<sup>nd</sup> Floor**  
**Cleveland, Ohio 44122**  
**Attn: Dan Stoker**  
**Telecopy: (216) 357-6515**

If to a Beneficiary:

To the address provided for such Beneficiary from time to time in the Participation Agreement.

*Section 8.3. Survival.* Except as expressly set forth herein, the warranties and covenants made by the Guarantor shall not survive the expiration or termination of this Guaranty.

*Section 8.4. Assignment and Assumption.* This Guaranty may not be assigned by the Guarantor to, or assumed by, any successor to or assign of the Guarantor without the prior written consent of each Beneficiary except (i) in connection with a sale of all or substantially all of the Guarantor's assets pursuant to an assignment and assumption agreement, in form and substance reasonably satisfactory to each Beneficiary, of the Guarantor's obligations hereunder (or a new guaranty Substantially in the form of this Guaranty); or (ii) as otherwise permitted by the terms of the Guaranteed Agreements. Upon any such assignment, the Guarantor shall (except as otherwise required pursuant to the Guaranteed Agreements) be released and discharged from that portion of the Obligations assigned that may arise on or after the date of such assignment.

*Section 8.5. Governing Law.* This Guaranty shall be in all respects governed by and construed in accordance with the laws of the State of New York, including all matters of construction, validity and performance (without giving effect to the conflicts of laws provisions, other than New York General Obligations Law Section 5-1401).

*Section 8.6. Waiver of Trial by Jury.* **TO THE EXTENT PERMITTED BY REQUIREMENTS OF LAW, THE GUARANTOR HEREBY IRREVOCABLY WAIVES THE RIGHT TO DEMAND A TRIAL BY JURY, IN ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS GUARANTY, OR THE SUBJECT MATTER HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BROUGHT BY ANY OF THE BENEFICIARIES OR THEIR SUCCESSORS OR ASSIGNS.**

*Section 8.7. Severability.* Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

*Section 8.8. Headings.* The headings of the section; of this Guaranty are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

*Section 8.9. Further Assurances.* The Guarantor will promptly and duly execute and deliver such further documents to make such further assurances for and take such further action reasonably requested by the Beneficiaries to whom the Guarantor is

obligated, all as may be reasonably necessary to carry out more effectively the intent and purpose of this Guaranty.

**Section 8.10. Successors and Assigns.** This Guaranty shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of, and shall be enforceable by, each Beneficiary and its successors and permitted assigns.

**Section 8.11. No Interest in the Trust Estate.** Any provision herein to the contrary notwithstanding, this Guaranty, without the prior express written consent of the Guarantor, shall not create any direct interest of the Guarantor in the interest being assigned and assumed pursuant to the Assignment Agreement and shall not require, or be construed as requiring, the Guarantor to assume the obligations of the Seller (unrelated to payment) under the Guaranteed Agreements.

**Section 8.12. Merger.** This Guaranty constitutes the entire agreement among the Guarantor and the Beneficiaries with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among such Persons and there are no promises or representations by any Beneficiary relative to the subject matter hereof not reflected herein.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its officer thereunto duly authorized.

**KEYCORP,**  
as Guarantor

By: \_\_\_\_\_

Name: Daniel R. Storer

Title: Vice President & Deputy  
General Counsel

**EXHIBIT A**

**BENEFICIARIES**

Wilmington Trust Company, in its individual capacity and as Owner Trustee (as such term is defined in the Participation Agreement)

Westar Energy, Inc., as Lessee (as such term is defined in the Participation Agreement)

UMB Bank, N.A. (formerly known as United Missouri Bank, N.A.), in its individual capacity and as Indenture Trustee (as such term is defined in the Participation Agreement)

Connecticut General Life Insurance Company, as Note Purchaser (as such term is defined in the Participation Agreement)

CIGNA Life Insurance Company of New York, as a Note Purchaser

The Prudential Insurance Company of America, as a Note Purchaser

Allstate Life Insurance Company, as a Note Purchaser

Allstate Life Insurance Company of New York, as a Note Purchaser

Canada Life Insurance Company of America, as a Note Purchaser

The Canada Life Assurance Company, as a Note Purchaser

First Great-West Life and Annuity Insurance Company, as a Note Purchaser



**CENTRAL FILE**

15 SHAWNEE VALLEY COLLEGE  
6/1/78  
Operation Agreement

GENUINE

# JEFFREY ENERGY CENTER

# OPERATION AGREEMENT

BETWEEN  
THE KANSAS POWER AND LIGHT COMPANY

AND

CENTRAL TELEPHONE AND UTILITIES CORPORATION  
(WESTERN POWER DIVISION)

# KANSAS GAS AND ELECTRIC COMPANY

MISSOURI PUBLIC SERVICE COMPANY

0104

Received on 11/10/16

AGREEMENT  
FOR THE OPERATION OF  
JEFFREY ENERGY CENTER  
POTTAWATOMIE COUNTY, KANSAS

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011133

AGREEMENT  
FOR THE OPERATION OF  
JEFFREY ENERGY CENTER  
POTTAWATOMIE COUNTY, KANSAS

THIS OPERATING AGREEMENT is made as of June 1, 1978, by and between THE KANSAS POWER AND LIGHT COMPANY, a Kansas corporation, hereinafter referred to as "KPL", KANSAS GAS AND ELECTRIC COMPANY, a Kansas corporation, hereinafter referred to as "KG&E", CENTRAL TELEPHONE & UTILITIES CORPORATION, a Kansas corporation, hereinafter referred to as "CTU", and MISSOURI PUBLIC SERVICE COMPANY, a Missouri corporation, hereinafter referred to as "MPS."

W I T N E S S E S :

WHEREAS, KPL, KG&E, CTU and MPS are parties to that certain Agreement of January 13, 1975, for the Construction and Ownership of Jeffrey Energy Center, [hereinafter referred to as the "Ownership Agreement"] which establishes the terms and conditions for their ownership, as tenants in common, and the planning, financing, acquisition, construction and maintenance of the Jeffrey Energy Center and related facilities;

WHEREAS, the Ownership Agreement contemplates subsequent execution of an Operating Agreement for the operation of the Jeffrey Energy Center by KPL in its capacity as manager of construction and operation; and

WHEREAS, KPL, KG&E, CTU and MPS desire herein to further establish the terms and conditions relating to the operation and maintenance of Jeffrey Energy Center by KPL.

NOW, THEREFORE, for and in consideration of the mutual covenants by them to be kept and performed, all as hereinafter set forth, KPL, KG&E, CTU and MPS mutually agree as follows:

1. Precedence of Ownership Agreement

(a) The respective obligations, duties and responsibilities of KPL, KG&E, CTU and MPS undertaken in or arising out of this Operating Agreement shall in all respects be subject to and controlled by the definitions, terms, conditions and substantive and procedural provisions of the Ownership Agreement, and the term "this Agreement" as used in the Ownership Agreement shall be deemed to include this Operating Agreement.

(b) Any conflict between any provision of the Ownership Agreement and any provision herein shall be resolved by

application of the provisions of the Ownership Agreement which shall take precedence and be controlling, any other understanding, agreement, covenant or provision to the contrary notwithstanding. Silence of the Ownership Agreement as to a subject which is addressed by this Operation Agreement shall not be considered a conflict.

2. Definitions

(a) "Account" followed by a number means the account designated by such identifying number in the Uniform System of Accounts for Public Utilities and Licensees promulgated by the Federal Energy Regulatory Commission. The specific references herein are to designations in effect as of the date hereof in Part 101 of Regulations under the Federal Power Act.

(b) "Load Factor" means the ratio of the annual net kilowatt-hours Generated from each unit to the maximum annual net full load rated kilowatt-hours at standard pressure (2400 psig), temperature 1000°F/1000°F and turbine back pressure (3" Hg.abs.).

(c) "Composite Load Factor" means the weighted average Load Factor of all Units in the Project.

3. Operation & Maintenance - General

(a) The Operator, in its capacity of manager of operation of the Project, shall operate and maintain the

Project in a reasonable manner in accordance with the Operator's practice for its other generating stations, which shall be consistent with generally accepted standards of operation in the industry for projects of a similar size and nature, and in compliance with its understanding of applicable laws and final orders or regulations of regulatory bodies or other agencies or governmental authorities having or asserting jurisdiction.

(b) Each Owner hereby authorizes the Operator to act as its agent to perform, as an operating agent, through Operator's own employees, agents, servants and contractors, all functions as may be required for the actual operation and maintenance of the Project. Each Owner from time to time shall identify in writing Project Representatives who shall have reasonable access to the Project, but shall not be an undue burden to the Operator. Other employees of the Owners shall be treated as visitors to the Project in accordance with the Operator's visitor policy. Each Owner shall bear and be liable for any and all loss, expense or damage to the Project or any part thereof resulting from any deliberate act of its Project Representatives or its visiting employees.

(c) The Operator has accepted the responsibility and duty to act as Operator of the Project and, accordingly, each other Owner agrees that it will not interfere with Operator's operation or maintenance of the Project, and that

the Operator may make all expenditures in the normal course of business or during emergencies as it deems necessary for the operation and maintenance of the Project.

(d) Each Owner shall bear and be liable for any and all loss, expense or damage incurred in connection with the operation, maintenance, shut down, repair, replacement or demolition of the Project or any portion thereof in proportion to its respective percentage, and if any Owner, by reason of joint liability to third parties, shall be called upon to make any payment or incur any obligation in excess of its respective percentage therein, the other Owners thereof shall indemnify and reimburse such Owner proportionately to the extent of any such excess.

#### 4. Operation - Employees

(a) All persons employed in the operation and maintenance of the Project, other than employees of independent contractors, shall be employees of the Operator and shall not be considered to be employees or agents of any of the other Owners. During periods of emergencies, the Operator may call upon any or all of the other Owners to furnish its employees for purposes of operation or maintenance of the Project during the duration of such emergency; each Owner shall furnish such number of employees as it desires, and, although any employees of such other Owners furnished hereunder shall not be deemed to be employees of

the operator for any purpose, they shall be subject to the direction, supervision and control of the Operator during such period. The Operator shall reimburse such other Owner for all costs, including appropriate overheads and *trxes*, incurred by such other Owner from the temporary assignment of ~~the~~ employees to the Project.

(b) The work force shall consist of personnel in the classifications the Operator deems necessary to operate and maintain the Project. The Operator shall have sole authority to hire and discharge personnel as it deems necessary and to engage in collective bargaining with duly authorized or recognized bargaining agents of its employees.

(c) In the event the Operator shall permit the use of the Project for training of other than Project personnel, the applicable cost of such training shall be charged to the employer of such personnel.

5. Operations - Fuel Supply, Annual Load Factors & Fuel costs

(a) ~~The Operator has contracted for a supply of coal for the Project on the terms, conditions and provisions set forth in that certain Coal Supply Agreement between American Metal Climax, Inc. ("AMAX") and the Operator dated July 1, 1973, which is incorporated herein and made part hereof by reference. Each of the other Owners hereby ratifies and confirms such Coal Supply Agreement, as the same may be amended from~~

New 5A



~~time to time by the Operator and American Metal Climax, Inc.~~  
The Operator has satisfied any obligation it may have to obtain or provide coal for operation of the Project by execution of such Coal Supply Agreement, provided, however, the Operator shall undertake on behalf of the Owners to locate (1) supplemental or additional fuel so as to permit operation of the Project at a higher Composite Load Factor and (2) replacement fuel in the event AMAX fails to deliver coal pursuant to the Coal Supply Agreement.

(b) The Operator shall not be required for any calendar year to operate the Project at a Composite Load Factor in excess of the Operator's judgment of the Composite Load Factor for such calendar year which is consistent with the amounts and deliveries of the expected fuel supply and the Operator's estimate of the useful life of the Project (hereinafter referred to as the "Expected Composite Load Factor"). Each year, with the budget for the following calendar year, the Operator shall inform each Owner of the Expected Composite Load Factor for the following five (5) calendar years.

(c) Subject to the prevailing operational constraints of the Project and the applicable scheduling parameters set forth in Section 7 hereof, each Owner may schedule for each calendar year, not more than such Owner's respective percent-

tage of the Expected Composite Load Factor for such year, unless the Operator shall at any time deem a change in such Expected Composite Load Factor appropriate for such year, in which event the Operator shall promptly notify each Owner of the nature of and reason for such change, which shall be applied to each Owner in proportion to its respective percentage. Such scheduling limitations related to the Expected Composite Load Factor shall be applied on an annual basis, and each Owner may and shall be responsible for scheduling its respective percentage of the Expected Composite Load Factor during each year from month to month as it deems appropriate for its own use.

(d) The Operator shall report monthly to each Owner the status of such Owner's scheduling to date as a function of such Owner's respective percentage of the Expected Composite Load Factor for such year, but shall not be obligated in any way to interpret or make any recommendation to such Owner concerning such report and the information set forth therein.

forward to the following or any other calendar year, nor act as a credit in any way against such Owner's future scheduling.

(f) The Expected Composite Load Factor for the year 1978 shall be 655, prorated in the same ratio of the number of full months Unit 1 is in commercial operation to 12.

(g) All fuel and ~~fuel handling~~ costs incurred by the Operator in the operation of the Project shall be billed to the Owners in proportion to their respective percentages. A monthly adjustment to such fuel and ~~handling~~ costs shall be made to take into account the actual amount of fuel consumed to generate each Owner's scheduled kilowatt-hours for the preceding month. For purposes of illustration, an example of such an adjustment is set forth on Exhibit 1, "Cost of Coal Inventory", attached hereto and made a part hereof.

(h) For purposes of the adjustment referred to in subsection (g) above, the cost of fuel shall be the average cost of **such** fuel for the month. The use of such average cost is based on the assumption that all fuels will flow through the stockpile thereof, and such average cost shall be calculated pursuant to the following procedure, which refers to coal as an example, but shall apply to all fuel, including coal, fuel oil or limestone:

1. The coal consumed during each calendar month, the cost of which is chargeable to Account 501,

Fuel, with contra credit to Account 151, Fuel Stock, and ~~Account 152, Fuel Handling Expense Undistributed,~~ shall be based on actual weights. D

2. The cost of the coal consumed shall be the product of the tons consumed multiplied by the average cost per ton of coal in inventory.

3. The average cost per ton of coal in inventory shall be the quotient of (a) the sum of the dollar balance in Account 151 and ~~152~~ at the beginning of the month, plus the charges to Account 151 and ~~152~~ for coal received during the month, plus or minus any dollar inventory adjustments during the month, divided by (5) the sum of the tons of coal in inventory at the beginning of the month plus the tons of coal received during the month plus or minus any inventory tonnage adjustments as provided in Section 6 hereof during the month. I

6. Operation - Fuel Inventory

(a) For the year 1978 and each year thereafter, the Operator shall conduct an annual physical inventory of the coal stockpile in accordance with its internal procedures. The coal tonnage in Account 151 shall be adjusted annually by an amount to correct for the differences between book tonnage and physical inventory tonnage (Hereinafter referred

New subsection 5(i)

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to as the "Indicated Adjustment"); provided, however, no adjustment shall be made in the event the Indicated Adjustment is less than 1% of the book tonnage. Whenever the Indicated Adjustment is in the same direction for two consecutive periodic inventories, the recorded adjustment shall be one-half of the most recent Indicated Adjustment. Any such Indicated Adjustment shall be made by the Operator to reflect the inventory results.

(b) During any month in which such an Indicated Adjustment is made, a corresponding dollar adjustment shall be made to Account 151. Such dollar adjustment shall be the product of (1) such Indicated Adjustment expressed in tons and (2) the average cost per ton of coal in the stockpile at the end of the month of such adjustment. The allocation of such Indicated Adjustment and dollar adjustment among the Owners shall be based on the tons of coal burned to meet the scheduling of each Owner since the preceding annual physical inventory.

(c) Inventories of other fuels, including oil or any other materials such as limestone, shall be accounted for in the same manner.

7. Operation - Outages, Entitlement and Scheduling

(a) The Operator shall make a good faith effort to coordinate the regular maintenance outages of the Units with

each of the Owners.

(b) Each Owner shall be entitled only to the actual hour to hour operating capacity (net of substation loss and other auxiliary power requirements) and associated energy of each Unit of the Project (hereinafter referred to as "Output") in proportion to its respective percentage.

(c) As soon as reasonably practicable after the commencement of operation, the Operator shall determine the operating capacity of each Unit of the Project, taking into consideration the operating characteristics of such Unit. The Operator may change such determination from time to time to reflect changes in conditions or circumstances which have affected such operating characteristics.

(d) Each Owner's scheduling hereunder shall not exceed its respective percentage of such operating capacity. The Operator shall promptly notify each Owner of any change in such operating capacity, the reason therefor and the expected duration thereof; each Owner's schedule shall be deemed to be adjusted to take into account, in accordance with its respective percentage, such changed operating capacity.

(e) As soon as reasonably practicable after the commencement of operation, the Operator shall initially determine, and thereafter shall determine on a daily basis,

(- the minimum operating capacity necessary for safe and stable  
e operation of each Unit, taking into consideration all  
prevailing operating conditions deemed relevant by the  
Operator.

o (f) The Owners shall collectively schedule for  
each hour such minimum operating capacity for each Unit. In  
the event the Owners collectively schedule for any hour more  
than such minimum operating capacity for any Unit, each  
Owner shall be entitled to reduce its schedule for such hour  
by its respective percentage of the amount of scheduled  
operating capacity in excess of such minimum operating  
capacity.

o (g) At least twelve hours before 12:01 a.m. of each  
day, the Operator shall advise the Owners of the Output it  
expects will be available during such day.

o (h) Each Owner shall be responsible for scheduling  
its Output in accordance herewith. At least eight hours  
before 12:01 a.m. of each day, each Owner shall submit to  
the Operator the hourly schedules of its desired Output for  
each of the twenty-four hours of such day, not to exceed  
such Owner's respective percentage of the Output expected by  
the Operator to be available. Each Owner may request  
changes in such scheduling on an hour to hour basis.

o (i) Subject to the Operator's determination of the  
actual Output, the Operator shall make a good faith effort

to operate the Project in accordance with such schedules.

(j) After Unit No. 1 becomes commercial, all auxiliary power for the Project will be furnished by the Project; provided, however, in the event no unit of the Project is operating, all such auxiliary power shall be furnished by each Owner in proportion to its respective percentage. Each Owner shall deliver such auxiliary power to the Operator at its point of interconnection, from which point the Operator shall transmit such auxiliary power to the Project pursuant to the terms and conditions of the Transmission agreement between the Operator and such Owner.

(k) Any Owner may sell all or a portion of its Output to any other electric utility having an interchange power ~~contract~~ directly between the parties thereto. The Owner shall schedule hereunder the Output being sold in the same manner as though the Owner were using such Output for its own system. . .

a. Operation - Records

The Operator shall keep records of Project operations, maintenance, and generation, and shall keep such other records as may be required by regulatory authorities. All such records shall be available for inspection upon request by the Owners during the Operator's regular office hours. Copies of all information or reports completed by the Operator for regulatory agencies or for publication shall be sent to the Owners, and copies of records on Project opera-



tions, maintenance and generation shall be sent to the Owners as such may be requested by the Owners.

9. Cautional Expenditures

For Units of the Project which have been dedicated to commercial service, the Operator shall determine and make, on behalf of the Owners, capital expenditures necessary for the operation of the Project. Each Owner's obligation to pay for and its right, title and interest in such capital expenditures shall correspond to such Owner's respective percentage. The Operator shall account for all such capital expenditures and shall submit monthly statements thereof to each Owner.

10. Retirement

The Owners, by amendment to this Operating Agreement, shall determine the time when a Unit is no longer used or useful and shall be retired. They shall also determine by such amendment, the method for such retirement and for the allocation among the Owners of any net salvage value or negative salvage value of the Unit, as the case may be.

11. Budget

(a) On or before October 15 of this year and of each year thereafter during the operation of the Project, the Operator shall submit to the Owners a budget of its estimate of fuel, operation and maintenance costs by months for the following calendar year. Such budget shall include the items of expenditure for operation and maintenance of the Project as

are deemed by the Operator normal for projects of a similar character and it shall include a similarly determined amount for contingencies for emergency maintenance costs. The Operator shall also submit revisions of such budget in the event and to the extent the Operator determines such revisions are necessary from time to time. Each annual budget submitted by the Operator to the Owners shall include as a separate part the Operator's forecast of annual operating and maintenance costs for the Project for the next four years.

(b) . On or before October 15 of this year and of each year thereafter during the operation of the Project, the Operator shall submit to the Owners a budget of capital expenditures by month for the following calendar year, and by years for each of the four following calendar years. Such requirements shall be applicable only to units having been previously dedicated to commercial service.

(c) The Operator shall receive, and upon request, discuss with any other Owner the comments of such Owner concerning the operation and maintenance budget or the capital expenditure budget or any revisions thereof, and the Operator shall incorporate the comments of any such Owner therein to the extent the Operator in its sole discretion deems appropriate.

12. Costs

All costs, expenses and capital expenditures incurred in or associated with the operation, maintenance, repair, replacement or demolition, and any other costs incurred hereunder (herein referred to as "Costs") shall be shared by the Owners in proportion to their respective percentages, except as adjusted for fuel expense as set forth above in Section 5.

13. Working Funds

(a) The Owners shall furnish working funds as required for Costs as set forth herein. The Operator shall establish in a bank suitable to Operator a separate bank account entitled "Jeffrey Energy Center Operating Account" to be used for the disbursement of Costs. On not less than ten days' prior written notice from the Operator, each Owner shall deposit in such account its respective percentage of the amount of imprest funds required for such account as determined from time to time by the Operator. The Operator is authorized to draw drafts and checks upon such account only for payment of Costs and shall deposit in such account all receipts relating to such costs.

(b) The Operator shall notify each Owner on a weekly basis (at least two working days preceding the scheduled

payment date) of the mount required for deposit to meet scheduled payments. Each Owner shall deposit such mount in the Operating Account prior to 2:00 p.m. on the scheduled payment date. The Operator expects to schedule payments on a weekly basis and to disburse as much of the Costs as it deems practicable through the Jeffrey Energy Center Operating Account. Costs (such as payroll) that are paid directly by the Operator will be reimbursed to the Operator by the Operator from the Jeffrey Energy Center Operating Account.

(c) In the event the balance of Equity in the Jeffrey Energy Center Operating Account shall at any time be drawn below such amount of imprest funds, the Operator shall thereupon promptly notify all Owners. Upon receipt of such notification, each Owner shall deposit promptly in the Jeffrey Energy Center Operating Account its respective percentage of the sum required to restore the balance therein to the mount of imprest funds.

#### 14. Accounting and Reporting

(a) As soon as reasonably practicable after the close of each calendar month, preferably by the 6th working day of the following month, the Operator shall advise each Owner of its share of estimated Costs for such preceding month by Account

(b) As soon as reasonably practicable after the close of each calendar month, preferably by the 25th day of the

following month, the Operator shall prepare a statement accounting for all Costs by Account.

(c) Costs shall include but shall not be limited to:

(1) All Project direct operation and maintenance expenses as recorded in Account 500 through Account 514 and associated payroll taxes recorded in Account 408 paid by the Operator, during the preceding calendar month,

(2) Administrative and general expense in an amount equal to a percentage of total operation and maintenance expense costs defined in subsection (c)(1) above, excluding Account 408. The applicable percentage shall be established annually on the basis of a ratio, the numerator of which is the Operator's Administrative and General expenses in Accounts 920, 921, 922, 926, and 932, less amounts allocated to construction, and the denominator of which is utility expenses to which such administration and general applies, specifically excluding fuel, purchased and interchanged power costs and research and development cost. The determination of sharable administrative and general expense may be amended from time to time by Owners Accounting Committee.

(d) Each Owner shall separately report, file, be responsible for and pay for all property, franchise, business or other taxes applicable to its respective percentage of the Project. To the extent, however, that such taxes may be levied on or assessed against the Project, its operation or the Owners in such manner as, in the opinion of the Operator, makes separate payment impracticable or inequitable, such taxes shall be deemed a part of the Costs and shall be accounted for and paid by the Owners as other Costs.

(e) The Operator shall annually have audits conducted with respect to the matters provided for in this Agreement by independent auditors according to such programs and procedures as agreed to by the majority interest of the Owners Accounting Committee and shall furnish copies of the reports of such audits to all Owners. The cost of making such audits, including any participation by any Owner's auditors as agreed to be desirable and necessary, shall be shared by the Owners in proportion to their respective percentages. The cost of any audit required by any Owner beyond the scope of the above audit will be borne by such Owner.

15. Termination of Operator Responsibility

In the event at any time the Operator's percentage is reduced to zero, its ownership interest in the Project has

been seized and is held by any governmental authority having jurisdiction, the Operator has been finally adjudged a bankrupt or a petition is filed by or against the Operator under the Bankruptcy Act or any amendment thereto, including, without limitation, a petition for reorganization, arrangement or extension, or under any other insolvency law or law for the relief of debtors, the Operator may, at its option, be relieved of all its duties and obligations as Operator hereunder upon ninety days' prior written notice to each other Owner. In such event, the other Owners shall select an alternate or successor Operator.

16. Amendments

(2) *Amendment*  
~~Any Owner may propose in writing any amendment,~~  
modification or supplement to this Operating Agreement at any regular or special meeting of the Owners Committee established in the Ownership Agreement, and such committee shall consider such proposed amendment, modification or supplement. No amendments, modifications or supplements shall be effective unless and until so proposed to and considered by the Owners Committee, reduced to writing and executed by the Owner or Owners of not less than 51% of the ~~Project~~

17. Severability

In the event any provision of this Operating Agreement or the application thereof to any person or circumstance

shall be held invalid in any final decision by a court having jurisdiction in the premises, the remainder of this Operating Agreement and its application to persons or circumstances, other than those to which it was held invalid, shall not be affected thereby.

18. Implementing and Confirmatory Instruments

Each Owner shall execute such instrument as may from time to time reasonably be requested by the Operator to implement the provisions of this Operating Agreement.

19. Entire Understanding

This Operating Agreement shall constitute the entire understanding among the Owners with respect to the matters herein contained, superseding any and all previous understandings pertaining to such subject matter.

20. Effective Date and Term

This Operating Agreement is effective as of the date of commencement of commercial operation of the Project, and shall continue in full force and effect until there has been an abandonment of the use of the Project for the generation of electric power and energy.

IN WITNESS WHEREOF, KPL, KG&E, CTU and MPS hereto have executed this Operating Agreement in several counterparts.



EXECUTED: 9/18, 1978

ATTEST:

[Signature]

Secretary

THE KANSAS POWER AND LIGHT COMPANY

By

[Signature]  
Executive Vice President

EXECUTED: 9/19, 1978

ATTEST:

[Signature]

Asst. Secretary

KANSAS GAS AND ELECTRIC COMPANY

By

[Signature]

VICE PRESIDENT - OPERATIONS

EXECUTED: 9/21, 1970

ATTEST:

[Signature]

Assistant Secretary

CENTRAL TELEPHONE & UTILITIES  
CORPORATION

By

[Signature]  
Vice President

EXECUTED: 9/18, 1978

ATTEST:

[Signature]  
Secretary

MISSOURI PUBLIC SERVICE COMPANY

By

[Signature]

President and  
General Manager

## EXHIBIT 1

COST OF COAL INVENTORYJune 1 Coal Inventory

1,000,000 tons

## \* Ownershi? in tons:

CTU	80,000 tons
MPS	60,000 tons
KGE	200,030 tons
KPL	640,000 tons

Scheduled KWH by Each Owner for Month of June

CTU	34,272,000 KWH
MPS	29,376,000 KWH
KGE	24,480,000 KWH
KPL	313,344,000 KWH

Total

Max. KWH Available

489,600,000 KWH

Max. Schedule Available

CTU	39,168,000 KWH
MPS	39,168,000 KWH
KGE	97,920,000 KWH
KPL	313,344,000 XWH

## EXHIBIT 1

COST OF COAL INVENTORY

Actual Average BTU/KWH Net for Month of June	10,850
Actual Average BTU/Ton Coal in Inventory, June 30	16,000,000
Actual Value Coal per Ton in Inventory, June 30	\$12.00
<u>Coal Received During June</u>	150,000 t
\$ Ownership in Tons:	
CTU	12,000 t
MPS	12,000 t
KGE	30,000 t
KPL	96,000 t
<u>Coal Equivalent of KWH Schedule for Month of June, by Ownership:</u>	
CTU	34,272,000 X 10,850/16,000,000 = 23,241 tons
MPS	29,376,000 X 10,850/16,000,000 = 19,921 tons
KGE	24,480,000 X 10,850/16,000,000 = 16,601 tons
KPL	313,344,000 X 10,850/16,000,000 = 212,486 tons
<u>Coal Ownershi? June 30 Prior to Adjustment</u>	
CIU	80,006 + 12,000 = 23,242 = 68.759 tons
MPS	80,000 + 12,000 = 19,921 = 72,079 tons
KGZ	200,000 + 30,000 = 16,601 = 213,399 tons
KPL	640,000 + 96,000 = 212,486 = 523,514 tons
	877,751 tons
<u>Unadjusted Ownership Tonnage per Ownership %, as of June 30</u>	
CTU	877,751 X .08 = 70,220 tons
MPS	877,751 X .08 = 70,220 tons
KGE	877,751 X .20 = 175,550 tons
KPL	877,751 X .64 = 561,761 tons
	877,751 tons
<u>Ton Adjustment Due June 30 to % Ownership in Coal Inventory as of June 30 to Adjustment for June Operation</u>	
CIU	70,220 - 68.759 = -1,461
MPS	70,220 - 72,079 = +1,859
KGE	175,550 - 213,399 = +37,849
KPL	561,761 - 523,514 = -38,247
<u>Dollar Adjustment for June</u>	
CTU	-1,461 X \$12.00 = -\$17,532
MPS	+1,859 X \$12.00 = +\$22,308
KGE	+37,849 X \$12.00 = +\$454,188
K? L	-38,247 X \$12.00 = -\$458,964

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July 23, 19  
KPL Co-  
Service***CENTRAL FILE****FIRST AMENDMENT TO OPERATING AGREEMENT  
OF  
JEFFREY ENERGY CENTER**

THIS FIRST AMENDMENT TO THE OPERATING AGREEMENT, made this 23rd day of July, 1986, and effective January 1, 1986, by and between THE KANSAS POWER AND LIGHT COMPANY, a Kansas corporation (KPL), KANSAS GAS AND ELECTRIC COMPANY, a Kansas corporation (KGE), CENTEL, formerly Central Telephone & Utilities Corporation, a Kansas corporation, and/MISSOURI PUBLIC SERVICE/ formerly Missouri Public Service Company, (MPS), a Missouri corporation. hereinafter referred to as the "Co-Owners."

**WITNESSETH:**

WHEREAS, the Co-Owners are parties to an Agreement for the operation of Jeffrey Energy Center, Pottawatomie County, Kansas, dated June 1, 1978, hereinafter referred to as the "Operating Agreement":

WHEREAS, the Co-Owners recognize that several changes should be made to the Operating Agreement to reflect the intent of that Agreement; and

WHEREAS; the individual operation requirements of the Co-Owners are changing:

NOW, THEREFORE, in accordance with the Operating Agreement, the Co-Owners hereby agree to the following:

1. In subsection 5(g), remove 'and fuel handling' from the first line of the subsection, and remove 'and handling' from the fourth line of the subsection.

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2. In subsection §(h), under step 1 **of** the calculation procedure, delete 'and Account 152, Fuel Handling Expense Undistributed,' from line 4; under step 3 of the procedure, in line 3, replace the words 'Accounts 151 and 152' with 'Account 151'; and in line 4 of the same step, delete 'and 152.'
3. Add a new subsection §(i) to read:
  - (i) Effective January 1, 1986, if any Owner during any year does not utilize sufficient coal to meet its percentage of the minimum annual deliveries required under the ~~AMAX~~ Coal Supply Agreement, such Owner shall be 'liable for payment of the resulting deficient ~~tonnage~~ costs. The deficiency shall be calculated as follows:
    1. The ~~minimum~~ annual delivery requirements under the ~~AMAX~~ coal contract (Net Commitment) will be determined for each Owner 'in accordance with its Ownership percentage.
    2. Tonnages claimed in accordance with **Force Majeure** procedures will be deducted in Ownership percentages from each Owner's Net Commitment to arrive at a Net Responsibility for each Owner.

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3. The total of each owner's consumption of AMAX coal for the year plus any adjustments to the pile inventory, plus any increase or minus any decrease in coal pile inventory, will credit against that: Owner's Net Responsibility under the AMAX contract.
4. Any remaining tons will be that Owner's deficiency; each Owner shall then be liable for payment for such deficiency, except and to the extent the total deficiency liability to AMAX has been reduced for that year by virtue of other Owners having consumed more than their Net Responsibility. Each Owner will be invoiced and pay in Ownership percentage for AMAX Deficient Tonnage invoices: concurrent monthly adjustments will be made to reflect each Owner's actual liability for its deficiency.

Exhibit 2 entitled 'Calculation of Deficient Tonnage,' is attached hereto for purposes of illustration and is incorporated herein by reference.

EXHIBIT 2  
CALCULATION OF DEFICIENT TONNAGE  
AMAX COAL CONTRACT

A. NO DEFICIENCY UNDER AMAX CONTRACT

	<u>TOTAL</u>	<u>KPL</u>	<u>KGE</u>	<u>MPS</u>	<u>CENTER</u>
Contract Amount	9,000,000	5,760,000	1,600,000	720,000	720,001
Net Commitment	8,550,000	5,472,000	1,710,000	684,000	684,001
Force Majeure Tons	<u>500,000</u>	<u>320,000</u>	<u>100,000</u>	<u>40,000</u>	<u>40,000</u>
Net Responsibility	8,050,000	5,152,000	1,610,000	644,000	644,001
Coal Consumed	7,800,000	4,948,000	1,450,000	675,000	727,001
Increase in Pile	200,000	128,000	40,000	16,000	16,001
Pile Adjustment	<u>100,000</u>	<u>64,000</u>	<u>20,000</u>	<u>8,000</u>	<u>8,000</u>
Total Credits	8,100,000	5,140,000	1,510,000	699,000	751,000
Shortfall		12,000	100,000	-55,000	-107,000
Deficiency Obligation	0	0	0	0	0

Note: There is no deficiency under the AMAX contract. Therefore, despite the fact KPL and KGE have not met their respective net responsibility and the other two owners exceeded theirs, no deficient tonnage liability has been incurred in this case.



EXHIBIT 2  
CALCULATION OF DEFICIENT TONNAGE  
AMAX COAL CONTRACT

B. AMAX DEFICIENCY -  
ONE OR MORE OWNERS EXCEEDED NET  
RESPONSIBILITY

	TOTAL	<u>KPL</u>	<u>KGE</u>	<u>MPS</u>	<u>CENTE</u>
Contract Amount	10,000,000	6,400,000	2,000,000	800,000	800,000
Net Commitment	9,500,000	6,080,000	1,900,000	760,000	760,000
Force Majeure Cons	<u>500,000</u>	<u>320,000</u>	<u>100,000</u>	<u>40,000</u>	<u>40,000</u>
Net Responsibility	9,000,000	5,760,000	1,800,000	720,000	720,000
Coal Consumed	7,906,000	5,000,000	1,520,000	668,000	718,000
Increase in Pile	200,000	128,000	40,000	16,000	16.1
Pile Adjustment	<u>100,000</u>	<u>64,000</u>	<u>20,000</u>	<u>8,000</u>	<u>8.1</u>
Total Credits	8,206,000	5,192,000	1,580,000	692,000	742.1
Shortfall		568,000	220,000	28,000	-22.1
Deficiency Obligation	794,000	552,686	214,069	21,245	0
AMAX \$ per Ton	<u>4.00</u>	<u>4.00</u>	<u>4.00</u>	<u>4.00</u>	
Liability	\$3,176,000	\$2,210,744	\$856,276	\$108,080	

Note: Centel has no deficiency liability because their credits exceeded their Net Responsibility by 22.000 tons. Since this 22,000 tons reduces the total deficiency obligation to AMAX to 794,000 tons, the other Owners' deficient tonnage liability is reduced proportionately as follows:

Deficiencies of all Owners having-deficiencies:

KPL 568,000 tons  
KGE 220,000 tons  
MPS 28,000 tons  
816,000 tons

Since KPL caused  $\frac{568,000}{816,000}$  of the total deficiencies that were created, KPL's liability for deficiencies will be  $\frac{568,000}{816,000} \times 794,000 = 552,686$  tons"

KGE =  $\frac{220,000}{816,000} \times 794,000 = 214,069$  tons

UPS =  $\frac{28,000}{816,000} \times 794,000 = 27,245$  tons

4. In subsection 6(a), line 9, replace "3%" with "5%."

IN WITNESS WHEREOF, XPL, KGE, CENTEL, and MPS hereto have executed this First Amendment in several counterparts.

THE K

*William E. Wall*

VI

PANY

EXECUTED:

ATTEST:

*[Signature]*  
John K. Rosenberg, Asst. Secretary

William E. Wall, Chairman & CEO

KANSAS GAS AND ELECTRIC COMPANY

EXECUTED :

ATTEST:

EXECUTED :

ATTEST:

*[Signature]*  
Asst. Secretary

CENTEL

*[Signature]*  
Vice President - Kansas

UTILICORP UNITED INC. d/b/a  
MISSOURI PUBLIC SERVICE

EXECUTED :

ATTEST:

*[Signature]*  
Assistant Secretary

*William I. Owen*  
William I. Owen  
Division President

*O*

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*Kansas Gas & Elec  
Centel Corp*SECOND AMENDMENT TO OPERATING AGREEMENT  
OF JEFFREY ENERGY CENTER

THIS SECOND AMENDMENT TO OPERATING AGREEMENT, made this 26<sup>th</sup> day of August, 1988, by and between the Kansas Power and Light Company, a Kansas Corporation, hereinafter referred to as "KPL", Kansas Gas and Electric Company, a Kansas Corporation, hereinafter referred to as "KGbE", Centel Corporation, a Kansas Corporation, hereinafter referred to as "Centel" and Utilicorp United, Inc., a Delaware Corporation, hereinafter referred to as "Utilicorp".

## WITNESSETH:

WHEREAS, the Owners entered into an Agreement for the operation of Jeffrey Energy Center, Pottawatomie County, Kansas, dated June 1, 1978, as amended ("Operating Agreement"); and,

WHEREAS, the Owners wish to amend the Operating Agreement respecting the rights and obligations of each Owner relating to the operation of the Project;

NOW, THEREFORE, for and in consideration of the mutual covenants by them to be kept and performed, all as hereinafter set forth, the Owners hereto mutually agree as follows:

1. Paragtaph 5(a) of the Operating Agreement shall be deleted in its entirety, and the following language shall be added in its place:

The Operator has contracted for a supply of coal for the Project on the terms, conditions and provisions set forth in that certain Coal supply Agreement between American Metal Climax, Inc. ('AMAX') and the Operator dated July 1, 1973, which is incorporated herein and made part hereof by reference. Each of the other Owners hereby ratifies and confirms such Coal Supply Agreement, as the same may be amended from time to time. The Operator has satisfied any obligation it may have to obtain or provide coal for operation of the Project by execution of such Coal Supply Agreement, provided, however, the Operator shall undertake on behalf of the Owners to locate (1) supplemental or additional fuel so as to permit operation of the Project at a higher Composite Load Factor and (2) replacement fuel in the event AMAX fails to deliver coal pursuant to the Coal Supply Agreement.

2. A new paragraph 5(k) shall be added to the Operating Agreement which shall provide as follows::

All Fuel Related Contracts shall be subject to the oversight and final authority of a Fuel Supply Committee. Fuel Related Contracts shall include but not be limited to currently existing and future contracts concerning the acquisition of coal and other boiler fuel, natural gas, rail transportation, rail car and train leasing or purchasing and all amendments thereto. The Fuel Supply Committee shall be made up of eight members. KPL shall have four members on the Fuel Supply Committee, KG&E shall have two members on the Fuel Supply Committee, Utilicorp shall have one member on the Fuel Supply Committee, Centel shall have one member on the Fuel Supply Committee. The Fuel Supply Committee shall have authority to set general policy guidelines regarding fuel acquisition for the Project and for the approval of Fuel Related Contracts and amendments thereto. All actions taken by the Fuel Supply Committee regarding fuel policy and approval of Fuel Related Contracts and amendments thereto shall require the vote of at least six members of the Fuel Supply Committee. Changes in price called for in accordance

hibit  
with the price change mechanisms of the Fuel Related Contracts shall be administered by the Operator with full information timely communicated to each Owner. Each Owner shall notify the others promptly of the designation of its representatives on the Fuel Supply Committee and of any subsequent changes in its designation. Any of the Owners may, by written notice to the others, designate an alternate or substitute to act as its representative, to act on the Fuel Supply Committee in the absence of the regular member of the Fuel Supply Committee, or to act on specified occasions or with respect to specified matters. Each representative to the Fuel Supply Committee may vote in person or by proxy.

3. Paragraph 16 of the Operating Agreement shall be deleted in its entirety and the following language shall be added in its place:

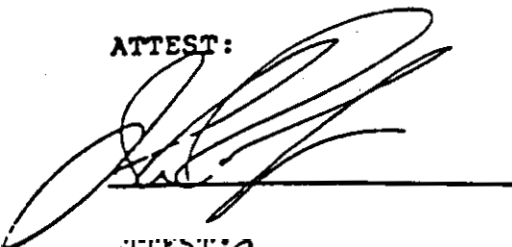
Any Owner may propose in writing any amendment, modification, or supplement to this Operating Agreement at any regular or special meeting of the Owners Committee established in the Ownership Agreement, and such committee shall consider such proposed amendment, modification or supplement. Amendments relating to allocation of costs among the Owners shall be proposed to and considered by the Owners Committee, shall be reduced to writing, and shall require the unanimous written approval of all Owners to be effective. If only one Owner objects to the proposed amendment and does not approve it, the other Owners may request an arbitrator to determine whether the Owners' objection to the proposed amendment is unreasonable. If the arbitrator determines that the objection is unreasonable, the proposed amendment shall be adopted as if approved by all Owners. If the arbitrator determines that the objection is not unreasonable, the proposed amendment shall not be adopted. All other amendments to the Operating Agreement shall be proposed to and

Exhibit

considered by the Owners Committee, reduced to writing and executed by the Owner or Owners of not less than 51% of the Project.

IN WITNESSETH WHEREOF, the Owners hereto have executed this Second Amendment to Operating Agreement to Jeffrey Energy Center as of the date and year first above written.

ATTEST:



KANSAS POWER AND LIGHT COMPANY

By

William E. Brown

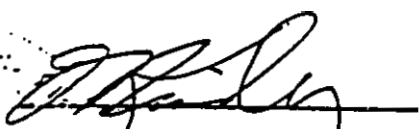
ATTEST:



KANSAS GAS AND ELECTRIC COMPANY

By

ATTEST:



CENTEL CORPORATION

By

J. M. Haskins

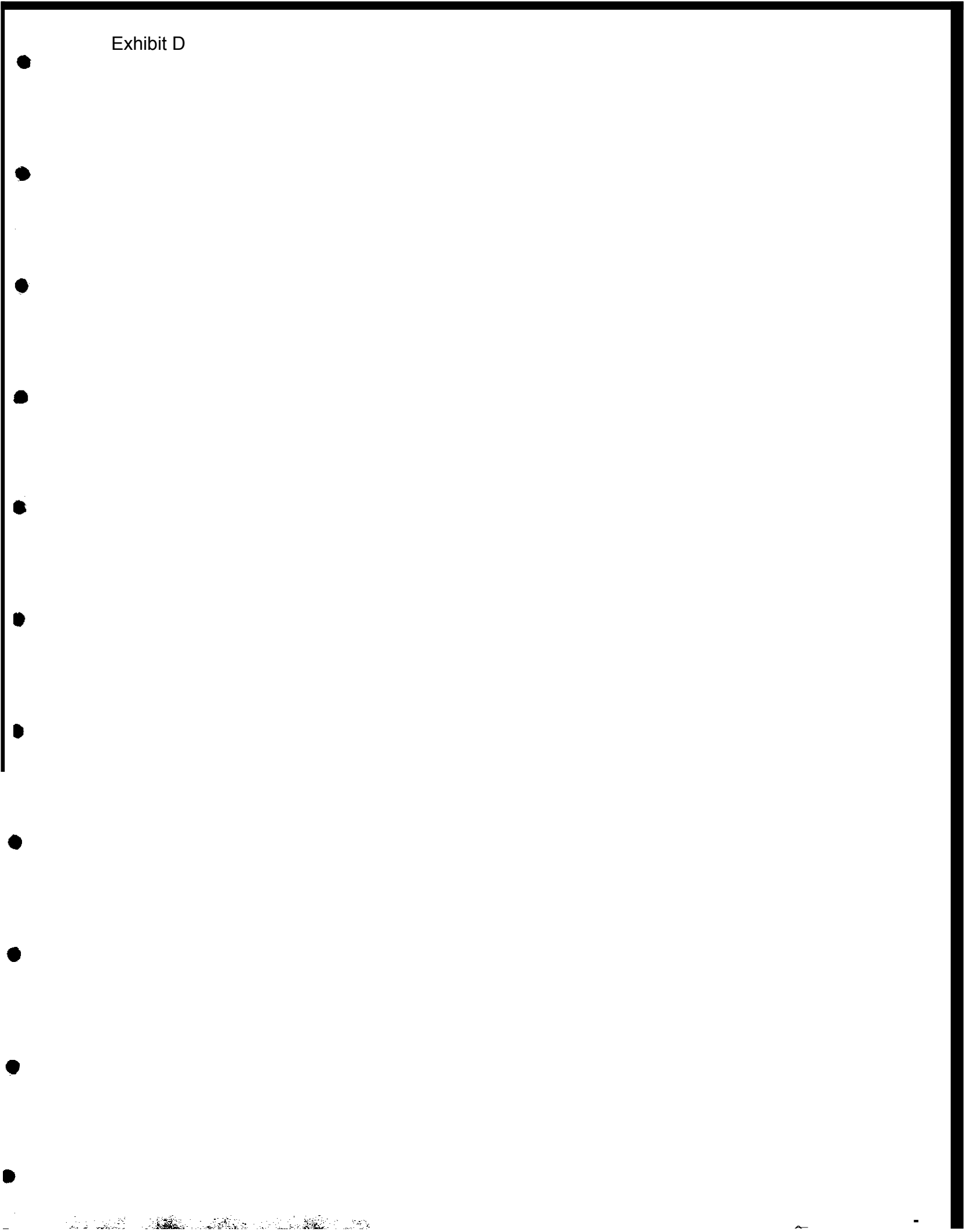
ATTEST:

Ernie Clements  
ASSISTANT SECRETARY

UTILICORP UNITED, INC.

By

James E. Frankl





DRAFT

SUMMARY OF JUNE 1, 1978 OPERATING AGREEMENT BETWEEN THE KANSAS POWER AND LIGHT COMPANY ("KPL"), KANSAS GAS AND ELECTRIC COMPANY ("KGE"), CENTRAL TELEPHONE & UTILITIES CORPORATION ("CTU"), MISSOURI PUBLIC SERVICE COMPANY ("MPS") AS AMENDED BY A FIRST AMENDMENT TO OPERATING AGREEMENT, DATED JULY 23, 1986 AND EFFECTIVE JWUARY 1, 1986 BETWEEN KPL, KGE, CENTEL (FORMERLY CENTRAL TELEPHONE AND UTILITIES CORPORATION) AND UTILICORP UNITED INC. D/B/A MISSOURI PUBLIC SERVICE (FORMERLY MISSOURI PUBLIC SERVICE COMPANY) AND **AS** FURTHER AMENDED BY A SECOND AMENDMENT TO OPERATING AGREEMENT, DATED AUGUST 26, 1988, BETWEEN KPL, KGE, CENTEL AND UTILICORP

The Operating Agreement sets out the duties of KPL in its capacity as manager of Project construction and operation.

Precedence of ownership Asreement (§1)

The Operating Agreement is subordinate to the Ownership Agreement and any conflict between the two documents shall be resolved by application of the Ownership Agreement.

Operation and Maintenance - General (53)

The Operator will maintain and operate the plant in accordance with its procedures for its other generating stations, in accordance with applicable industry standards and applicable law. Each Owner shall name a representative who may have reasonable access to the Project. Other Owner employees shall be treated in accordance with Operator's visitor policy. Each Owner is liable for the deliberate acts of its representative or visitor. No Owner shall interfere with Operators' maintenance and operation of the Project.

Operator is empowered to make necessary expenditures to operate and maintain the Project. Each Owner is proportionately liable for loss or damage incurred in connection with the maintenance and operation of the Project and if any Owner incurs third party liability as a result of such loss or damage, the Owners will indemnify such Owner to the extent such loss or damage exceeds such Owners' percentage.

Operation - Employees (§4)

All persons operating or maintaining the Project will be employees of the Operator (other than third party contractors). If requested by Operator during emergencies, Owners shall furnish their own employees to assist Operator, but such emergency help

will not be employees of Operator (although fully subject to Operator's control). Operator shall reimburse Owners for the use of such employees.

Operator may use such employees at the Project as it deems necessary and may hire and fire and engage in collective bargaining. If Operator uses the Project to train other Project personnel, training costs will be charged to the employer of such personnel.

Operations - Fuel Supply. Annual Load Factors & Full Costs (\$5)

Each Owner ratifies and confirms the Coal Supply Agreement between Operator and AMAX dated July 1, 1973. Owners acknowledge that the Operator has satisfied its obligation to provide coal although Operator will attempt to procure additional fuel to enable the Project to operate at a higher Composite Load Factor<sup>1/</sup> and to procure replacement fuel in the event AMAX breaches the Coal Supply Agreement.

The Operator will not be required to operate the Project in excess of the Expected Composite Load Factor.<sup>2/</sup> Each year, the Operator shall estimate the Expected Composite Load Factor for the next 5 calendar years.

Each Owner may "schedule" [NOTE: This word seems to mean "call for" or "rely upon"] (subject to operational constraints) up to its ownership percentage of the Expected Composite Load Factor for each such year. If Operator considers that a revised Expected Composite Load Factor is warranted, it shall promptly notify Owners. Each Owner's scheduling is predicated on an annual use basis and such Owner may schedule its monthly use of its percentage of the Expected Composite Load Factor as it deems appropriate for its use. Operator shall monthly report to each Owner such Owner's scheduling status, but Operator is not required to interpret such report. Operator need not accept scheduling in excess of any Owner's percentage. Any unscheduled

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<sup>1/</sup> "Composite Load Factor" is the weighted average load factor of all Units in the Project. "Load Factor" is the ratio of the annual net kilowatt-hours generated from each Unit to the maximum annual net full load rated kilowatt-hours of such Unit at standard pressure (2400 psig), temperature (100°F) and turbine back pressure (3" Hg.abs.)

<sup>2/</sup> "Expected Composite Load Factor" is the Composite Load Factor consistent with the availability of fuel and the estimated useful life of the Project.

(i.e.: **"unused"**) amounts of an Owners' percentage may neither be carried forward nor credited to the next year.

Fuel costs will be borne by Owners in respect to their percentages. Monthly adjustments of fuel costs shall be made to take into account the actual amount of fuel consumed to generate each Owner's scheduled kilowatt-hours.

For purposes of adjustment, the cost of fuel will be average cost of such fuel per month. "Average cost" assumes that fuel flows through the stockpile and is calculated as follows:

1. Fuel (chargeable to Account<sup>3/</sup> 501 ("Fuel") with contra credit to Account 151 ("Fuel.Stock") consumed each calendar month is based on actual weight.
2. Cost of fuel equals number of tons consumed times the average cost per ton of the fuel in inventory.
3. Average cost of fuel in inventory is the quotient of (a) the sum of the dollar balance in Account 151 at the beginning of the month plus charges to Account 151 for fuel received during the month plus or minus inventory adjustments during the month divided by the tons of fuel in inventory at the beginning of the month plus tons of coal received during the month plus or minus tonnage resulting from inventory adjustment during the month.

If any Owner fails to take its ownership percentage of coal such Owner will be liable for such shortfall. The shortfall is calculated by, first, deducting coal unused because of force majeure from such Owner's commitment tonnage to calculate such Owners' "Net Responsibility" and second, the annual consumption for such Owner plus or minus adjustments to the coal inventory will be credited against such inventory. Each Owner will be liable for such shortfall unless another Owner has consumed more than its Net Responsibility. Each Owner will be invoiced for its shortfall.

A Fuel Supply Committee will be established to oversee Fuel Related Contracts (fuel, transportation and leasing contracts regarding supply and delivery of fuel). This Committee will have 4 KPL members, 2 KGE members, 1 Utilicorp member and 1 Centel

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<sup>3/</sup> "Account" followed by a number means the account designated with such number in the Uniform System of Accounts for Public Utilities and Licenses promulgated by FERC.

member. The Fuel Supply Committee will set up guidelines for such Fuel Supply Contracts and such contracts shall be approved by a vote (in person or by Proxy) of at least 6 members of the Fuel Supply Committee. Operator will notify Owners of price changes effected by the relevant Fuel Supply Contracts. Any Owner may appoint an alternate or substitute.

Operation - Fuel Inventory (56)

Operator shall annually physically inventory its fuel stockpile and Account 151 shall be adjusted for any discrepancy between book and actual tonnage ("Indicated Adjustment") although if the Indicated Adjustment is less than 5% of book tonnage, no adjustment shall be made. If, for two years running, the Indicated Adjustment is in the same direction, the recorded adjustment will be  $\frac{1}{2}$  the Indicated Adjustment. If an Indicated Adjustment is made, a corresponding dollar adjustment will be made to Account 151 by multiplying the tonnage of the Indicated Adjustment by the average cost **per** ton of the stockpiled fuel.

Operation - Outages, Entitlement and Scheduling (\$7)

Operator shall attempt to coordinate maintenance outages of the Units with the Owners.

Each Owner is entitled only to its ownership percentage of the output of the Project.

Operator shall determine the operating capacity of each Unit. Operator may vary its determinations from time to time. An Owners' scheduling may not exceed its percentage of output. If Operator adjusts output, it shall notify each Owner and explain how such adjustment was warranted and for how long such adjustment will be effective.

Operator shall determine the minimum operating capacity of each Unit and the Owners shall collectively schedule such minimum capacity. If Owners shall schedule, for any hour, more than such minimum operating capacity for any Unit, each Owner may reduce its schedule for such hour by its ownership percentage of the amount of scheduled operating capacity in excess of such minimum operating capacity.

At least 12 hours prior to 12:01 a.m. on each day, Operator shall advise Owners of the output it expects will be available during such day. At least 8 hours prior to 12:01 a.m. each Owner shall give Operator its required output on an hour-by-hour basis, not to exceed such Owners' respective ownership percentage of such Output. Hourly requirements may be adjusted.

In the event the Project is not functioning, auxiliary power required by the Project will be supplied by each Owner according to its ownership percentage.

Any Owner may sell its Output to another utility under an interchange power contract.

Operations - Records (58)

Operator shall keep Project operations records and other records required by regulatory authorities and such records shall be available to Owners for inspection. Operator shall send Owners copies of all regulatory filings. Operator shall supply Owners copies of operations, maintenance and generation records upon request.

Capital Expenditures (\$9)

Owners shall pay for all capital expenditures necessary for the operation of the Project in proportion to their ownership interest. Operator shall supply Owners with monthly statements of such expenditures.

Retirement (\$10)

The Owners shall determine by amendment to the Operating Agreement when a Unit should be retired, how such retirement will occur and how division of proceeds or liabilities for such Unit shall be made.

Budget (\$11)

Each October 15, Operator shall submit a Project operating budget to Owners showing projected operation and maintenance and emergency maintenance costs. Each budget shall also contain a 4-year forecast of operating and maintenance costs. Operator shall also submit a capital expenditures budget (broken down by month from the following year and by year for each of the following four years). Operator shall discuss these budgets with any Owner and may revise such budgets if it deems it appropriate.

Costs (\$§12, 13)

Except for fuel costs, all costs incurred by Operator for the operation or otherwise of the Project shall be borne by Owners in accordance with their percentages. Each Owner shall provide Operator with working funds for such costs by depositing into an imprest account named "Jeffrey Energy Center Operating Account" on not less than 10 days notice amounts equal to its respective percentage of the amount determined by Operator. Operator shall also notify Owners at least two days prior to when such amount is

required, of amounts required to meet payments due. Owners shall deposit such amount prior to 2:00 p.m. on the scheduled payment date. Upon the amount of such funds falling below the imprest account, Operator shall so notify Owners and Owner's will make the appropriate deposits required to replenish the level of imprest funds.

Accountings and Revorting (§14)

Operator will advise each Owner of its share of estimated costs for the preceding month no later than 8 days after the commencement of the following month. Operator shall prepare an Account-by-Account statement for the preceding month no later than 25 days after the commencement of the following month. Costs will include (i) Project operation and maintenance costs and payroll taxes; (ii) administrative and general expenses.

Each Owner shall be responsible for the filing and payment in respect of its own tax returns except that if the Project is assessed and, in the Operator's opinion, separate payment is impractical, such taxes will be apportioned by Operator among Owners according to their Percentages.

The Operator shall have its Project accounts audited by independent auditors according to procedures agreed by a majority of the Owners Accounting Committee and copies of such audits will be supplied to all Owners. The cost of such audit will be apportioned among Owners according to their percentages.

Termination of Operator Responsibility (§15)

The Operator may elect to terminate its role as operator if its percentage is reduced to zero, its interest in the facility has been seized by a governmental authority having jurisdiction or it has been adjudged a bankrupt or had a petition filed against it.

Amendments (§16)

The Owners Committee may consider a proposed written amendment to the Operating Agreement. Amendments regarding allocation of costs will require unanimous vote for passage. If any one Owner objects to such a proposed amendment, the others may appoint an arbitrator to review the vote for reasonableness and may overturn the vote. If the arbitrator finds the vote reasonable, the vote will stand. All other amendments require a 51% majority to pass.

Severability (§17)

If one portion of the Operating Agreement is deemed by a court to be invalid, the remaining portions of the Operating Agreement will still be valid.

Exhibit D

Implementation and Confirmatory Instruments (§18)

Each Owner shall execute such other instruments as are required to implement the Operating Agreement.

Entire Understanding (§19)

The Operating Agreement supersedes all other agreements and is the entire agreement of Owners.

Effective Date and Term (§20)

The Operating Agreement is effective until the Project is abandoned as an electrical generating station.

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Exhibit D



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AGREEMENT  
FOR THE CONSTRUCTION AND OWNERSHIP OF  
JEFFREY ENERGY CENTER  
POTTAWATOMIE COUNTY, KANSAS

p. 1  
p 29

**AGREEMENT**  
**FOR THE CONSTRUCTION AND OWNERSHIP OF**  
**JEFFREY ENERGY CENTER**  
**POTTAKATOMIE COUNTY, KANSAS**

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AGREEMENT

FOR THE CONSTRUCTION AND OWNERSHIP OF

JEFFREY ENERGY CENTER

POTTAWATOMIE COUNTY, KANSAS

THIS AGREEMENT, made as of the 13<sup>th</sup> day of January, 1975, by and between THE KANSAS POWER AND LIGHT COMPANY, a Kansas corporation, hereinafter referred to as "KPL", KANSAS GAS AND ELECTRIC COMPANY, a Kansas corporation, hereinafter referred to as "KG&E", the CENTRAL TELEPHONE & UTILITIES CORPORATION, a Kansas corporation, hereinafter referred to as "CTU", and the MISSOURI PUBLIC SERVICE COMPANY, a Missouri corporation, hereinafter referred to as "MPS".

W I T N E S S E T H:

WHEREAS, KPL, KG&E, CTU and MPS are electric utility companies engaged in the business of generating, transmitting, distributing and selling electric power and energy in order to meet the requirements of their respective areas of responsibility within the States of Kansas and Missouri and are members of the Mokan Power Pool: and

WHEREAS, in order to realize savings in capital and operating costs, through economies of scale, by the installation of larger and more efficient electric generating units than would be undertaken by the parties in separately owned and operated plants, and thereby promote the economic development of their service areas and

conserve natural resources, to minimize the environmental effect, and to meet the future power needs of the areas served by the parties, they hereby state their desire to participate with each other in the undivided ownership of an electric generating plant of the capabilities described in this Agreement and to be known as the Jeffrey Energy Center; and

WHEREAS, the parties desire to establish the terms and conditions relating to their ownership, as tenants in common, and the planning, financing, acquisition, construction and maintenance of the Jeffrey Energy Center and related facilities, as hereinafter defined;

NOW, THEREFORE, for and in consideration of the mutual covenants by them to be kept and performed, all as hereinafter set forth, the parties hereto mutually agree as follows:

1. Definitions

(a) "Project." Project means the Jeffrey Energy Center coal-fired steam generating plant, to be located near Emmett, Kansas, consisting of Unit Nos. 1, 2, 3 and 4 ("Units") and related

facilities as described in Exhibit "A" attached hereto and made a part hereof.

(b) "Project Agreements" means this Agreement together with the agreement for the operation of the Jeffrey Energy Center, hereinafter referred to as the "Operating Agreement", and such other agreements as the parties deem necessary to the Project and its operation.

(c) "Owner" shall mean KPL, KG&D, CTU, MPS, and any party hereto which has acquired an undivided ownership interest pursuant to paragraph 3 hereof. "Owners" shall mean all Owners unless otherwise indicated by the context. The term "party", as used herein, is not synonymous with the term "Owner" and refers to a party to this Agreement whether or not it has acquired an undivided ownership interest.

(d) "Operator" shall mean KPL in its capacity as manager of construction and operation of the Project.

2. Ownership of Project

Subject to the terms and conditions hereinafter set forth, ownership of Project property and the available capacity shall be by the Owners as tenants in common, with each Owner's respective undivided interests being in the following percentages:

KPL	64%
KG&E	20%
CTJ	8%
MPS	0%

The above percentages of the Owners are hereafter referred to as the "percentages" or the "respective percentages".

3. Transfer of Interests

(a) Each of the parties other than KPL shall promptly take all necessary action to obtain all requisite authorizations necessary

to participation by such party in the ownership, construction, operation and maintenance of, and additions and betterments to, the Project and upon completion of such action, receipt of necessary authorization, or assurances that such action is being taken and such authorization is being obtained, payment by such party as provided in Section 3(b) hereof, and the furnishing of opinion of counsel as provided in Section 3(d) hereof, KPL will convey, or cause to be conveyed, to such party or its noninee its undivided interest as tenant in comon in the Project, ~~as accuired or constructed to such date.~~ KPL will take such action and execute such further instruments as may be necessary to vest in such Owner its percentage interest in any rights or choses in action pertaining to the Project. The right of each perty to a transfer of its undivided interest shall depend solely upon compliance by such party with the provisions of this section 3(a) and not upon compliance therewith by any other party hereto.

(b) As soon as possible, KPL shall submit to the other parties a schedule of gross costs to date incurred by it and determined as hereinafter set forth. Without regard to receipt of necessary authorizations referred to in this Section 3, each of the parties other than KPL shall, within 30 days of receipt of such schedule, pay its respective percentage of said gross cost to KPL until KPL



has been ~~reimbursed~~ for the gross cost paid or advanced by it representing 36% of the ownership in the Project, so that when all parties have paid their respective shares each shall have borne its respective percentage of such ~~gross~~ cost of the Project. Gross cost shall include the cost of site studies and engineering, the purchase price of the real property (including legal expense, title and abstract expenses, real estate commission and other acquisition expenses paid in acquiring and transferring said real property) allocated portion of KPL's administrative and general costs (as defined in Exhibit "D" hereinafter described), ad valorem taxes paid to date, costs and expense of litigation including attorney fees arising out of such land acquisition, authority to construct or construction of the Project, all payments made directly by KPL for Construction Cost (as hereinafter defined) and sums deposited by it for such purposes in any construction bank account to the date of payment, and carrying charges to the date of such payment applicable to the funds used by KPL to pay the foregoing costs and expenses. Carrying charges shall be calculated at the short term prime rates of Bankers Trust Company, New York, New York, from the date of each expenditure by KPL to the date of any such payment.

(c) The instruments of conveyance shall be substantially in the form marked Exhibit "B" attached hereto and shall contain restrictions on rights to partition as set forth therein and such additional provisions of this Agreement as any Owner shall deem should be made a matter of record. KPL shall provide or cause to be provided to each Owner, at such Owner's cost, if requested, abstracts of title and opinion of counsel in form satisfactory to such Owner that all necessary action has been taken and all requisite authorizations obtained to transfer title to Owner.

(d) Each party, other than KPL, agrees, promptly and expeditiously, to adopt such resolutions, make such authorizations, defend or prosecute such suits or actions, and in good faith, do all other things reasonably desirable and necessary to comply with the provisions of section 3(a) hereof. Prior to any conveyance under said Section 3(a), each party requesting such conveyance shall furnish KPL opinion of counsel in form satisfactory to KPL that such party has taken or will take all necessary action and obtained all requisite authorization necessary to participation by such party in the Project.

4. Design, Engineering and Construction Management

(a) Operator has entered into a "Contract for Engineering" with Black & Veatch, Consulting Engineers, dated November 22, 1972, relating to the Project, which action by Operator is hereby ratified by the Owners.

(b) Operator shall have full authority to act for the Owners with respect to the design, engineering, procurement, installation and all other aspects of the construction of the Project. In furtherance of its responsibility Operator may select and employ design engineering services and select and employ such other engineering, consulting and other firms as it deems desirable. Owners shall share all risks of construction in accordance with each Owner's ownership percentage.

(c) During design and construction or of any modifications or additions thereto Operator shall provide each Owner with such information relating thereto as such Owner reasonably may request, and in any event during such period of construction, Operator shall furnish reports at least quarterly to all Owners with respect to the progress of design and construction. Operator shall provide any Owner upon request with the opportunity to consult with it provided

however that such right of consultation shall not be allowed to delay work on the Project or to affect the discretion of Operator in making decisions.

5. Installation and Completion of Project

(a) The Project facilities shall be installed and completed by Operator as herein provided. Operator, for itself and as agent for each of the parties who have complied with the provisions of Section 3(a) and (b) hereof, shall undertake the responsibility and have authority for the supervision of the engineering, design, purchase of land, materials and apparatus, installation and construction of the Project work, as hereinafter set forth. To the extent practicable in the judgment of Operator, contracts related to construction shall be let based on bid invitations.

(b) On or before October 1 of each year Operator shall submit to the Owners a budget of its estimate of construction costs by calendar months for the calendar year commencing January 1 next following. Such budget for the year 1975 shall be submitted as soon as practicable following execution of this Agreement. Operator will submit budget revisions as may become necessary from time to time as soon as reasonably possible after such revisions have been determined to be

necessary. Operator shall periodically submit to each Owner a summary report of the Project Construction Costs accumulated to date and other pertinent data including, when requested, copies of construction contracts and purchase orders relating to the progress in construction.

(c) Contracts covering design, engineering, procurement, construction and installation services and major components of the units of the Project and all other contracts relating to procurement, operation and maintenance, including contracts for the acquisition of materials, inventories, supplies, spare parts, equipment, fuel or services therefor may be executed solely by Operator or at its request shall be executed by each Owner. Whether or not a contract is entered into in the name of all Owners, each Owner shall be severally and not jointly responsible for its percentage of all amounts which are payable under or with respect to such contracts. Operator is expressly authorized to execute all contracts as agent on behalf of each of the Owners. Each contract entered into in the name of all Owners shall provide for several but not joint liability in proportion to the Owners' respective percentages, or at Operator's determination may provide for separate invoicing to the Owners in accordance with their respective percentages.

6. Construction

(a) The Project shall be completed at the lowest reasonable

cost and in a prudent **and** skillful manner in accord both with standards prevailing in the utility industry for projects of a similar size and nature **and** with applicable laws and final orders or regulations of regulatory agencies having jurisdiction and substantially in accordance with the description set forth in the attached Exhibit "A". The Project shall substantially conform to designs, **plans**, specifications **and** Construction schedules which have or will be made available to the parties as such are available. It is intended that the contracts for purchase of equipment and construction of the Project shall be scheduled so as to provide for a date of initial test and operation of Unit No. 1 of the Project, presently scheduled for January 1, 1978 and for the commercial operation of said first unit of the Project not later than June 1, 1978. Subsequent Units are presently scheduled for initial testing and for commercial operation as follows:

	<u>Testing</u>	<u>Commercial Operation</u>
Unit 2	January 1, 1980	June 1, 1980
Unit 3	January 1, 1982	June 1, 1982
Unit 4	January 1, 1984	June 1, 1984

Such dates are approximate but Operator shall use best efforts to meet them. To achieve such commercial operation dates, it will be necessary to adopt a schedule under which substantially all contracts may be let and purchase orders placed for the Project without regard to the time or times at which the respective parties may comply with the Provisions of Section 3(a) and (b) hereof.

(b) KPL on its own behalf as to its own interest, and as Operator and agent for Owners, shall supervise, perform engineering and other services in connection with, may provide materials and supplies from its inventory for, shall pay taxes properly levied against, the Project, except any taxes or assessments levied against ownership and taxes assessed directly against an individual Owner. Operator shall disburse payments of the Construction Cost of the Project. Reimbursement of Operator's costs and expenses for such services performed by Operator under this subparagraph shall be included in the Construction Cost of the Project as provided in Section 7. next following.

7. Construction cost

(a) All costs incurred and associated with the acquisition and

construction of **the** Project, including direct, additive or loading and allocable costs, enumerated in Exhibit "C", 'Construction Project. Costs Including Overheads-Production Plant', attached to and made a part hereof, (herein referred to as 'Construction Costs'), shall be shared by the Owners in proportion to their respective ownership percentages. It is agreed that amounts properly chargeable to the account "Allowance for Funds Used During Construction" shall not be deemed a cost to be shared by the Owners, and, further, that any costs incurred at the instance of and for **the** benefit of the Owners individually shall be borne by the Owner on whose behalf they are incurred.

(b) With respect to Supervision and Engineering Expenditures for work performed by Operator's own personnel, Operator shall use individual job or work orders to accumulate these costs on a direct charge basis.

(c) The types of Administrative and General costs set forth in Exhibit "D", "Bases for Allocation of Capitalization Portion of Sharable Administrative and General Expenses," attached hereto and made a part hereof, incurred by Operator shall be allocated by it, utilizing the bases or allocation set forth in said Exhibit "D".



(d) Except as otherwise provided herein or in an accounting agreement which may be entered into as one of the Project Agreements the accounting methods and practices normally in use at the time by Operator in determining and assigning costs to capital projects generally, shall be used by Operator for the purposes of this project unless otherwise agreed, provided such methods and practices are reasonable and consistent with sound accounting practices.

(e) Costs associated with the construction of each Unit of the Project shall include all charges relating to operation and maintenance of such Unit or any part thereof during the period prior to commercial operation, including fuel handling costs. Each Owner shall pay to the bank account established pursuant to Section 8 hereof, for credit to cost of construction, the value of its share of the power and energy generated during such period. The basis for the determination of the value of such power and energy shall be established by the Operator in accordance with applicable regulatory requirements. During such period the Owners shall be obligated to take delivery of the power and energy generated by and available from the Unit in proportion to their respective ownership percentages, with proper adjustment for transmission losses.

8. Payment of Cost of Project

*Springfield Energy Center  
Construction Account  
for the project  
in the account*

(a) Owners will establish a bank account in The First National Bank of Topeka, Topeka, Kansas, entitled 'Jeffrey Energy Center Construction Account'. The imprest amount ~~in the~~ account shall be 5100,000. Upon request of Operator each Owner shall contribute to such ~~account~~ its proportionate part of the imprest amount, which shall ~~be in~~ proportion to its ownership percentage in the project. Such imprest ~~amount may~~ be changed from time to time at the request of Operator ~~and~~ upon agreement of the Owners to correspond to the expected activity. All Construction Costs to be shared pursuant to Section 7 of the Agreement shall be paid out of this ~~account~~. Each Owner hereby authorizes Operator to draw checks ~~and~~ drafts ~~upon~~ ~~said account~~, but only to pay Construction-Cost of the Project and ~~refunds~~ to Owners but for no other purposes.

(b) Operator shall designate the individuals authorized to sign checks on ~~the~~ account, each of whom shall be bonded for not less than \$100,000 in favor of the owners ~~as~~ their respective interests appear. The cost of such bonds shall be shared by the Owners in proportion to their respective ownership percentages in the Project.

(c) By 4:00 P.M. on Tuesday of each week, or the day preceding if Tuesday is a holiday, operator will notify each Owner of the sums

required for disbursement ~~for~~ Construction Cost during such week and each Owner will thereupon deposit its percentage share of such sums in said account not later than Friday of that week.

(d) Operator shall prepare and furnish to ether Owners monthly, a schedule of anticipated expenditures in accordance with Section 5(b) hereof.

(e) Operator will furnish other Owners the aggregate of outstanding Project commitments at year end or at the time of special audit. The components of such commitments shall be identified as Owners may require.

#### 9. Accounting and Reports

(a) Operator shall make such records and keep such accounts consistent with the provisions of Section 7 hereof and in accordance with sound accounting practices as will permit each of the Owners to record on its books its portion of the Construction Cost of the Project in conformity with the Uniform System of Accounts Prescribed for Public Utilities and Licensees by the Federal Power Commission and the

system of accounts prescribed by the state commission having jurisdiction, as such system of accounts is now in effect or is hereafter modified or amended. All Owners and their independent auditors and appropriate governmental authorities shall have access at all reasonable times to such records and accounts and Operator will furnish copies of all or any part thereof as requested. Operator shall preserve and maintain the originals of each of such records and accounts for at least such period of time as (Owners may request, having in mind the requirements of regulatory authorities having jurisdiction, and the policies and practices of the parties with respect to retention of records.

(b) Operator shall also prepare, and furnish copies to other Owners, of continuing property records with respect to the Project in such form as is agreed to be reasonably necessary to conform to the accounting requirements of each Owner. Additional material requested by any Owner shall be provided at such Owner's cost.

(c) Operator shall furnish to each Owner monthly construction cost and progress reports and such other reports as may from time to time reasonably be requested by any Owner.

(d) The cost of ~~making, preserving and~~ making copies of records and accounts provided for herein to be regularly supplied by Operator shall be shared by the Owners as Construction Costs. Any costs incurred by Operator for furnishing copies of other documents shall be borne by the Owner requesting the same.

(e) Within 90 days after each December 31 during the construction, Operator shall have an audit made of the construction accounts, the cost of which audits shall be included as a Construction Cost. such audits shall be made by an independent certified public accountant nationally recognized and licensed, registered or entitles to practice as such under the laws of Kansas. A copy of each such audit showing the Construction Cost in reasonable detail and the amount each party has theretofore paid shall be furnished promptly to each Owner. Any additional material respecting the audit will be furnished the Owner requesting the same, at such Owner's cost. If, after taking into account any unpaid or contingent claims, any Owner has paid more or less than its respective percentage of the total Construction Cost, contributions shall be made among the Owners so that each party shall have paid its respective percentage share. Subject to any arrangements then made for contingent claims, any funds, remaining

in the account referred to in Section 8(a) after completion of construction of the Project shall be returned to the respective Owners. Each Owner shall remain liable for any claims and shall be entitled to any refunds, repayments, or settlements, in its respective percentage share.

10. Project Agreements

Any party hereto who shall become an Owner pursuant to the provisions of Section 3 hereof shall prior thereto or concurrently therewith execute all other Project Agreements or as they become available and are approved by Owners.

11. Licenses and Permits

Owners agree to cooperate in the application for licenses and permits required for construction or operation by the Operator of the Project and to join in any such applications when appropriate or to authorize Operator to apply. Upon the expiration of any such licenses or permits or should any additional or further licenses or permits be required of the Operator, the Owners agree to file timely applications for a new or further license or permit, as the case

may be, to be held as tenants in common in the undivided interests set forth hereinabove.

12. Insurance

(a) The Operator is authorized to and shall procure at the earliest practicable time and thereafter maintain in effect at all times material herein to the extent available, at reasonable cost and in accord with standards prevailing in the utility industry for projects of similar size and nature adequate insurance coverage for the construction, operation and maintenance of **the Project** with responsible insurers, selected by Operator with each Owner as a named assured and with losses payable to the respective Owners for their benefit as their respective interests may appear, to protect and insure against: (a) Workmen's Compensation and Employer's Liability, (b) public liability for bodily injury and property damage, (c) all risks of physical damage to property or equipment, including transportation and installation perils, and (d) such other insurance as the Operator deems necessary, all with reasonable limits and subject to appropriate exclusions and deductibles. Any Owner may request additional coverage in amount or nature and, if agreed to by all Owners, the cost thereof shall be a Construction Cost of the Project.

(b) The ~~premium~~ costs ~~for~~ such insurance coverages ~~=ti-~~ the completion of construction shall be a Construction Cost of the Project, and shall thereafter be an operating cost and shall be borne by the Owners in accordance with their respective ownership percentage; provided, however, that on and after commercial operation of the Project each Owner shall have the right to provide its own insurance coverage at its own cost, in which event it shall not be liable for its percentage of such ~~premium~~ cost.

(c) Operator shall have authority on behalf of Owners to settle any loss covered by any policy of insurance. To the extent Operator determines sufficient time is available it, upon request, will provide any Owner with the opportunity to comment provided that such right shall not be allowed to delay any settlement or to affect the sole discretion of Operator in making any settlement. Any uninsured losses, damage or liability arising pursuant to this Agreement shall be borne by the Owners in accordance with their respective ownership percentages.

### 13. Committees

(a) As a means of securing effective cooperation and interchange



of information respecting the Project on a prompt and orderly basis in connection with various administrative and technical problems which may arise from time to time under the terms and conditions of this Agreement, the Owners hereby establish an Owners Committee. This Committee shall meet at the Project quarterly or at such other reasonable times requested by an Owner upon 10 days' notice in writing, and may inspect the Project facilities, receive reports on construction, operation and maintenance of the Project.

(b) Owners hereby establish an Owners Accounting Committee which shall consider accounting matters pertaining to the Project and, within the terms of this Agreement, shall suggest means by which accounting procedures called for by the Agreement may be fully implemented or improved. This Committee shall meet at the offices of Operator in Topeka quarterly or at such other reasonable times requested by an Owner upon 10 day's notice in writing.

(c) With respect to each of the above Committees -

(1) Each Owner shall appoint a representative to serve on the Committee.

(2) Each Owner shall notify the others promptly of the designation of its representative on the Committee and of any subsequent change in its designation. Any of the Owners may, by written notice to the others, designate an alternate or substitute to act as its representative, to act on the Committee in the absence of the regular member of the Committee, or to act on specified occasions or with respect to specified matters.

(3) The Committee shall have no authority to modify any of the provisions of this Agreement.

(4) Each Owner shall have the voting-power equal to its percentage of ownership in the Project.

14. Damage to or Destruction of Project  
Disposition upon Abandonment

(a) If all or substantially all of the Project be destroyed or damaged beyond repair or damaged to the extent that the cost of repair substantially exceeds the proceeds of insurance available for reconstruction or repair and all of the Owners do not agree to reconstruct or

repair the Project, or if for any reason all of the Owners determine to abandon the Project, the salvageable portion of the Project and the plant site shall be disposed of in accordance with a procedure agreed upon by the Owners whose percentage of ownership in the Project exceeds 50%. The proceeds from such disposition shall be distributed to the Owners in accordance with their respective percentages; any demolition, removal and cleanup costs shall be charged against and borne by the Owners in accordance with their respective percentages; provided, however, that if any of the Owners of the Project elect to reconstruct the Project, the value of the Project shall be appraised by independent qualified appraisers and an amount of money equal to Such value multiplied by the respective percentage of each Owner not so electing shall be paid by the Owners so electing. Each Owner so receiving payment shall convey its interest in the Project to the Owners so electing to reconstruct.

(b) In the event that less than substantially all of the Project shall be destroyed or damaged, and the cost of repair, restoration or reconstruction does not substantially exceed the proceeds of applicable insurance, unless otherwise agreed by all of the Owners the Project shall be repaired, restored, or reconstructed by the Owners in

such manner as to restore the Project to substantially the ~~sans~~ general character and use as the original Project and ~~each~~ Owner shall contribute to the cost thereof in a ~~sum~~ equal to its percentage of ownership.

15. Liabilities

(a) Any ~~loss~~, cost, liability, damage and expense to the Owners or any Owner resulting ~~from~~ the construction of ~~the~~ Project and based upon injury to persons or employees of the Owners or others, or other ~~parties~~, or damage to property including ~~the~~ property of Owners or other parties, to the extent not covered by collectible insurance, shall be chargeable to Project Construction Cost.

(b) No Owner shall be entitled to ~~recover from~~ Operator any ~~damages~~ resulting from error or delay in the ~~design~~, engineering, procurement, installation or construction of the Project or for any ~~damages~~ to the Project or any unit thereof, any curtailment of power, or any damages of any kind including consequential ~~damag~~ occurring during the course of design, engineering, procurement, installation, construction, operation, maintenance, shut-down, demolition or otherwise arising ~~out~~ of the performance of this Agreement, unless such ~~damages~~ shall have ~~resulted~~ from a deliberate

violation of this Agreement occurring pursuant to duly authorized action by corporate officers or employees of Operator.

16. Defaults

(a) Each Owner hereby agrees with all the other Owners that it will make all payments and perform all other obligations by it to be made or performed pursuant to all of the terms, covenants and conditions contained in the several Project Agreements and that a default by any Owner of any of the terms, covenants and conditions contained in any of the Project Agreements shall be an act of default under this Agreement.

(b) Any Owner may assert an act of default against any other Owner or Owners and shall do so by written notice thereof to such other Owner or Owners and all other Owners. In the event any Owner shall dispute an asserted default by it, then such Owner shall make payment of any sums in dispute or perform the obligation in dispute but may do so under protest. Such protest shall be in writing and shall specify the reasons upon which the protest is based by copies thereof mailed to all other Owners. Upon settlement of such dispute by the Owners, or by arbitration, or by a court of competent jurisdiction,

as the case may be, then the payments advanced or made between Owners, as in this Section provided, shall be adjusted appropriately including interest.

(c) In the event of default by any Owner in any obligation pursuant to this Agreement the remaining Owners, or any of them, shall be free to invoke such judicial and administrative remedies as may be deemed appropriate, subject to the arbitration provision set forth in Section 25.

(d) In the event that any Owner shall fail to make when due any payment required by this Agreement, in addition to any other rights Owners may have, Owners shall have the right in their sole discretion to make such payment. Upon making such payment Owners shall be entitled to recover from such defaulting Owner the amount of such payment including interest thereon at the short term prime rate then applicable of Bankers Trust Company, New York, New York, provided that such payment is adjusted for any applicable judicial or administrative remedies.

(e) If a default by any Owner in any obligation pursuant to this Agreement shall continue for more than one month other Owners acting through the Owners Committee may, in lieu of any rights or remedies the other Owners may have against the defaulting Owner,

give written notice to the defaulting Owner with copies to all Owners, to terminate all rights of the defaulting Owner under this Agreement on the date specified in such notice which date shall be not less than five months after the giving of such notice, unless such default be remedied prior to the date of termination. From and after the giving of such notice and until the default is remedied the defaulting Owner shall cease to have any rights in the capacity and output of the Jeffrey Energy Center. If the default is not so remedied, upon the effective date of such termination,

(1) The Defaulting Owner shall cease to have any rights in the capacity and output of the Jeffrey Energy Center or any other rights under this Agreement except as set forth in this Section 16;

(2) The remaining Owners shall succeed to all of defaulting Owner's rights and obligations under all contracts, leases and other instruments relating to the Project, including this Agreement in accordance with their respective percentages of ownership:

(3) The defaulting Owner shall pay to the Project Construction

Account all amounts then owed by the defaulting Owner under the terms of this Agreement with interest thereon at the then legal rate, and the amount of any legal or other expenses incurred by Owners in connection with such default or the termination of the defaulting Owner's rights under this Agreement, and, in addition, as liquidated damages, an amount equal to 25% of the defaulting Owner's net investment in the Project at the effectiveness of such termination. Such amount of liquidated damages is agreed by the Owners to be a fair and reasonable approximation of the additional damages which will result to the remaining Owners upon the breach of this Agreement by such Owner's default, which damages cannot more accurately be determined by any other method due to the duration of this Agreement and the uncertainty which necessarily exists at the date of this Agreement with respect to the costs associated with the Project:

(4) Subject to obtaining necessary regulatory approvals and mortgage indenture releases where applicable (which Owners agree to use their best efforts to obtain), the defaulting Owner shall convey, **transfer** and assign to the remaining Owners as tenants in common, free and clear of all liens and encum-



branches other than those which existed at the time of conveyance to the defaulting Owner, all its right, title and interest in the Project and all contracts, leases or other instruments relating to the Project. Upon the completion of such conveyance, transfer and assignment, the remaining Owners shall pay to the defaulting Owner an amount equal to the lesser of (i) its net investment at the effectiveness of such termination or (ii) the then fair market value of said defaulting Owner's percentage of ownership in the Project, less (iii) all amounts owed pursuant to the terms of clause (3) above. If the amount required to be deducted under clause (iii) of the preceding sentence is greater than the lesser of the amounts described in clauses (i) and (ii), the defaulting Owner shall remain liable for the deficiency. Such payment, if any, by the remaining Owners shall be in the proportion of their respective percentages of ownership in the Project.

Failure by an Owner to insist on any occasion upon strict performance of any provision of this Agreement or to take advantage of any rights hereunder shall not be construed as a waiver thereof.

17. Uncontrollable Forces

No Owner including KPL as Operator shall be considered to be in default in the performance of any of the obligations hereunder, other than obligations of any Owners to pay costs and expenses, if failure of performance shall be due to uncontrollable forces. The term "uncontrollable force;" shall mean any cause beyond the control of the Owner affected and which, by the exercise of reasonable diligence, the party is unable to overcome, and shall include but not be limited to an act of God, fire, flood, explosion, strike, sabotage, an act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies with proper jurisdiction prohibiting acts necessary to performance hereunder or permitting any such act only subject to unreasonable conditions, delay in compliance with the provisions of Section 3(d) of this Agreement not occasioned by the fault or lack of diligence of the Owner, insurrection or riot, an act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Nothing contained herein shall be construed so as to require an Owner

including KPL as Operator to settle any strike or labor dispute in which it may be involved. **Any** party rendered **unable** to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all **reasonable** dispatch.

18. Waiver of Right to Partition

(a) The Owners and each of them shall accept title to the Project, as tenants in common, and agree that their interests therein shall be held in such tenancy in common.

(b) So long as the Project or any part thereof as originally constructed, reconstructed or added to is used or useful for the generation of electric power and energy, or to the end of the period permitted by applicable law, whichever first occurs, the Owners waive the right to partition whether in kind or sale or division of the proceeds thereof and agree that they will not resort to any action at law or in equity to partition and further waive the benefit of all laws that may now or hereafter authorize such partition of the properties comprising the Project.

19. Transfer and Assignments: Secured Interests

The undivided interest of any Owner in the Project, the property,

real or personal, ~~related thereto~~, and under this Agreement may be transferred and assigned as follows but not otherwise:

(a) To any mortgagee, trustee, or secured party, as security for bonds or other indebtedness of such Owner, present or future: and such mortgagee, trustee or secured party may realize upon such security in foreclosure or other suitable proceedings, and succeed to all right, title and interests of such Owner.

(b) To any corporation or other entity acquiring all or substantially all the property of the Owner making the transfer.

(c) To any corporation or entity into which or with which the Owner making the transfer may be merged or consolidated.

(d) To any corporation or entity the stock or ownership of which is wholly owned by the Owner making the transfer.

(e) To any other person; provided that the Owner shall first offer to transfer its interest to the other Owners, at the amount of, and on terms not less advantageous to such other Owners than, those of a bona fide offer from a buyer able and willing to purchase such Owner's entire interest. The offer shall remain open for the period

specified by the Owner but not **less** than six months. The offer of the entire interest may be accepted by one or more Owners, provided that if the Owners electing to accept the offer do not agree among themselves on the portion of the offer each Owner shall accept, the interest shall be divided among the Owners who have accepted in the proportion that their respective percentages of ownership-bears to the total percentage of ownership of the Owners who have so accepted. if after the expiration of the offering period such offer has not been accepted as to the entire interest of the offering Owner as herein provides, then the offering Owner shall have the right to transfer such interest to any other person. In any event any such offer and acceptance must be of the entire interest of the disposing Owner.

(f) To any other person where all other Owners consent to such transfer in advance in writing.

(g) No transfer or assignment may be made unless simultaneously the Owner's interest in all other Project Agreements is similarly transferred or assigned to the same person or persons, and such

person or persons have assumed all the duties and obligations of the Owner transferring or assigning under this Agreement and under all other Project Agreements.

(h) Transfers or assignments shall not relieve an Owner of any obligation hereunder, except to the extent agreed in writing by all other Owners. ✓

20. Obligations Are Several

The duties, obligations and liabilities of the Owners hereunder are intended to be several and not joint or collective and none of the Owners shall be jointly or severally liable for the acts, omissions, or obligations of the others. Nothing herein contained shall be construed to create an association, joint venture, partnership, or impose a partnership duty, obligation or liability, on or with regard to any one or more of the Owners. No Owner shall have a right or power to bind any other Owner without its or their express written consent, except as expressly provided in this Agreement. This Agreement shall be construed pursuant to the laws of the State of Kansas.

21. Successors and Assigns

Subject to the restrictions on transfer and assignment herein provided, all of the respective covenants **and** obligations of each of the Owners shall be and become the respective obligations of the successors and assigns of each such Owner and shall be obligations running with the respective Owners' rights, titles and interests in the Project. It is the specific intention of this provision that all such covenants and obligations shall be binding upon any party which acquires any of the right, title and interest of any of the Owners in the Project.

22. Notices

Any notice, demand or request provided for in this Agreement served, given or made in connection therewith shall be deemed properly served, given or made if given in person or sent by registered or certified mail, postage prepaid, addressed to the Owner or Owners at its or their principal place or places of business to the attention of the president or chief executive officer. Any Owner may at

any time, and from time to time, change its designation of the person to whom notice shall be given by giving notice to all other parties as hereinabove provided.

23. Construction of Additional Generating Units.

(a) Discussion of construction of an additional unit or units may be initiated by any Owner and shall be conducted with reasonable promptness by and through the Owners Committee. In the event this Committee shall determine that an additional generating unit or units be added to the Project it shall thereupon notify all Other Owners accordingly. Such notice shall specify the capacity and Characteristics of the installation proposed, the estimated costs involved and the estimated construction schedules. For a period of 180 days after receipt of such notice, each such other Owner shall have the option to participate in the ownership, as tenant in common, of such additional unit in the same respective percentages as herein provided for the Project, by giving written notice to Operator of such Owner's intention so to participate.

(b) Promptly after the end of such 180 day period, Operator shall



notify all other Owners as to the Owner or Owners, if any, which have not exercised the option so to participate in the ownership of any such additional generating unit.

(c) Within one hundred twenty (120) days after receipt of such notice, any of Owners shall, if it desires to acquire any part of the percentage of any Owner not so exercising the option to participate, give notice to all other Owners, specifying the maximum percentage it desires to acquire; and if any percentage remains after the foregoing periods, such percentage shall be added to KPL's percentage.

(d) In the event participation in an additional unit or units differs from participation in the Project exclusive of the additional unit, all Participants in the Project waive any right they may have to object to the occupancy of Project lands by such additional unit, or units and by all additional facilities that are required or desirable for the operation and use of such additional unit or units. Participants in the additional unit or units shall also have the right to use, add to and modify the water supply system, the warehouse, garage, meteorological station, surge pond, effluent water storage pond, coal storage and handling facilities, conveyor system, railroad, pipelines, electric power lines and facilities, communication lines,

access roads, parking lots and all other facilities of the Project other than pre-existing units but only to the extent that the use, addition to and modification of such facilities does not materially interfere with the use of such facilities by a nonparticipant in the additional unit or units for the operation of the pre-existing units. An equitable charge shall be made to compensate nonparticipants for the use of land, facilities purchased or constructed by them or on their behalf based on their net investment (original cost less depreciation or amortization accrued on their books of account) in the facilities used by the additional unit or units and for related operation and maintenance costs. In the event the parties cannot agree on such compensation, the matter shall be submitted to arbitration as herein provided for decision.

(e) Owners exercising the option to participate in such additional unit or units will be responsible for payment of their respective percentage shares and any increase in percentage shares pursuant to the foregoing of the gross cost of such additional unit or units. A construction account shall be established, as appropriate,

and such Owners shall deposit funds in advance as necessary for construction and Operator shall perform, or cause to be performed, the additional unit construction under procedures similar to those herein provided for Project construction.

24. Code Exclusion

The Owners will elect to be excluded from the application of Subchapter "K" of Chapter 1 of Subtitle "A" of the Internal Revenue Code of 1954, or such portion or portions thereof as may be permitted or authorized by the Secretary of the Treasury or his delegate, insofar as such subchapter or **any** portion or portions thereof may be applicable to the Owners under this Agreement.

25. Arbitration

(a) **Any** controversy between or among any of the Owners of the Project, including KPL as Operator, arising out of or relating to this Agreement, or any breach hereof or default hereunder, shall be submitted to arbitration upon the request of any such Owner in the manner provide6 herein.

(b) The Owner submitting a request for arbitration shall serve a Notice to Arbitrate upon the other Owner or Owners directly involved setting forth in detail the matter or matters to be arbitrated, including a statement of the facts or circumstances giving rise to such controversy and such Owner's contention with respect to the correct determination thereof.

(c) If the Owners directly involved in such controversy are unable to agree upon and appoint, within 15 days of the date of service of the Notice to Arbitrate, one person to act as sole arbitrator, such Owners, or any one of them, shall within 10 days thereafter request the Chief Judge of the United States Court of Appeals for the Tenth Circuit (or such successor thereto as might have Federal appellate jurisdiction of matters arising in Pottawatomie County, Kansas) to appoint such arbitrator. If the Chief Judge does not appoint an arbitrator within 15 days of the date such request is made of him, such Owners, or any one of them, shall, within the next 10 days thereafter, request the most senior Federal Judge in Kansas who is willing to act and if none is willing to act, then the most senior Kansas Supreme Court Justice who is willing to act to

appoint the arbitrator.

(d) **Any** arbitrator serving hereunder shall give full force and effect to all provisions of this Ownership Agreement, shall hear evidence submitted by the respective Owners, and may call for additional information, which additional information shall be furnished by the Owner having such information.

(e) The findings and award of the arbitrator shall be binding and conclusive with respect to the matter or matters submitted to arbitration, except as the same may be set aside, modified or corrected by any court in accordance with Kansas law.

(f) The fees and expenses of the arbitrator shall be borne equally by the Owners directly involved in such arbitration, unless the decision of **the** arbitrator **shall** specify some other apportionment of **such** fees and expenses. All other expenses and costs of the arbitration **shall be** borne by the Owner incurring the same.

26. Entire Understanding

This Agreement **shall** constitute the entire understanding among

the Owners respecting the matters herein contained, superseding any and all previous understandings pertaining to such subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this.  
Agreement in several counterparts.

THE KANSAS POWER AND LIGHT COMPANY

EXECUTED: January 17, 1975

By

**ATTEST:**

*H. J. Zucker*  
Secretary

KANSAS GAS AND ELECTRIC COMPANY

EXECUTED: January 13, 1975

By

President

ATTEST:

E. O. Prothro  
Asst. Secretary

CENTRAL TELEPHONE & UTILITIES CORPORATION

EXECUTED: January 17, 1975

By

**ATTEST :**

ASSISTANT

MISSOURI PUBLIC SERVICE COMPANY

EXECUTED: January 14, 1975

By

President and  
General Manager

ATTEST:

ST: Kelly Williams

STATE OF KANSAS

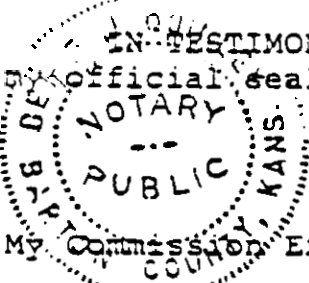
)  
) ss.  
)

COUNTY OF BARTON

BE IT REMEMBERED, That on this 17th day of January 1975, before me, the undersigned, a Notary Public in and for the county and State aforesaid came C. F. Edwards, Vice President

of CENTRAL TELEPHONE & UTILITIES CORPORATION, a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal the day and year last above mentioned.



Betty J. Quinley  
Notary Public

My Commission Expires:

October 6, 1977

STATE OF MISSOURI

)  
) ss.  
)

COUNTY OF JACKSON

BE IT REMEMBERED, That on this 14th day of January, 1975, before me, the undersigned, a Notary Public in and for the county and State aforesaid came Richard Green President & Gen Mgr. of MISSOURI PUBLIC SERVICE COMPANY, a corporation

duly organized, incorporated and existing under and by virtue of the laws of Missouri, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal the day and year last above mentioned.

E. Joyce Gillihan  
Notary Public

My Commission Expires:

November 5, 1976.

EXHIBIT A

JEFFREY ENERGY C M E R

DESCRIPTION OF PROJECT

The Jeffrey Energy Center Project shall include the following:

1. TURBINE GENERATOR

Four steam electric generating units (Unit 1, Unit 2, Unit 3, and Unit 4) manufactured by Allis Chalmers Power Systems Inc. which shall be tandem compound, four cylinder, four flow, condensing single reheat 3600 RPM, 30 inch last stage blade including start-up equipment.

Each unit will be capable of carrying a maximum gross load of approximately 750,000 kilowatts when operating at 2520 PSIG and 1000 degree Fahrenheit temperature at the turbine throttle reheating to 1000 Fahrenheit degrees and exhausting to the condenser at approximately 3 1/2 inches Hg. with regenerative feedwater heating and the extraction to the highest pressure feedwater heater off the high pressure steam turbine exhaust and extraction for steam supply to the boiler feed pump auxiliary turbine off the IP-LP crossover.

The generators will be hydrogen and water cooled rated at 800,000 KVA .9 PF at a hydrogen pressure of 75 PSIG 3600 RPM SCR .58 three phase 60 cycle 26,000 volts with excitation system and accessories.

The generator step-up transformer and main station power transformers will be furnished for each unit.

Accessory equipment includes automatic turning gear, control panel, governor, lube oil pumps, filter, reservoir and pipe, generator enclosure, bus duct, and other items required.

The turbine generators and their auxiliaries will be housed in fully enclosed buildings.

2. BOILER

The boilers (4) will be Combustion Engineering, Inc. controlled circulation, radiant re-heater, divided furnace, balanced draft, drum type. The boilers are specified to have a maximum continuous flow at the superheater outlet of 5,050,000 pounds per hour (approximate), at a temperature of 1005 degree Fahrenheit and a pressure of 2,990 PSIG, a maximum continuous re-heater outlet flow of 4,653,000 pounds (approximate) at a temperature of 1005 degrees Fahrenheit and re-heater outlet pressure of 519 PSIG.



Throttle steam pressure and temperature and re-heat temperature as well as other major plant variables will be automatically controlled. A data acquisition system is planned to monitor all significant variables and to alarm or trip when set point deviations exceed the allowable. A burner management system will be incorporated in the automatic control system. Each boiler will be equipped with four boiler circulating water pumps, No regenerative type air heaters; air pre heat coils, forced, primary and induced draft fans, seven coal pulverizers, ash hoppers, soot blowers, ducts, and other necessary systems.

Each condensate to feed water system will include: steam condensor, condensate pumps, booster pumps and boiler feed pumps, feed water heaters, deaerator, flash evaporator and other auxiliary equipment and pipe required to complete the cycle.

The boilers will be of semi-outdoor type and only partially enclosed.

### 3. COOLING TOWERS

Each unit will be equipped with two induced draft round cooling towers with fans operating from a plenum surrounded by the water cooling stations.

### 4. STACKS

Each unit will be equipped with a 600 foot high (approximate) concrete stack.

### 5. STACK GAS CLEAN-UP SYSTEM

Each unit will be equipped with a stack gas clean-up system that will remove 99.2 per cent of the particulate matter and 60 per cent of the  $SO_2$  from the flue gas effluent from the boiler. The fly ash and  $SO_2$  so collected will be transported and stored in the fly ash impoundment of 630 acres located on the site. Water will be recirculated from this impoundment back to the unit for re-use.

### 6. BOTTOM ASH

The bottom ash will be connected at the ash hopper installed at the boiler bottom exit and will be removed by use of a hydraulic sluicing system through a pipe system to the bottom ash storage pond of approximate 140 acres located on the site. Water will be recirculated from this point back to the unit for re-use.

## 7. WATER SUPPLY SYSTEM

Initially the water supply system will be from wells located on land now owned by others and the supply will be pumped to the units and/or a make-up reservoir of 260 acres located on the site to provide all the make-up water requirements for the first two units at the energy center.

A river intake will be constructed on land now owned by others from which river water will be pumped to a large make-up water reservoir of 3,000 acres located on the site. This water will then be pumped to all the units for use as cooling tower make-up.

A water treatment and management system will be constructed and operated at the energy center site to enable the project to operate with zero discharge.

Cooling tower blowdown will be used in various plant cycle systems such as the ash and stack gas clean-up system.

## 8. OTHER BUILDING FACILITIES

There will be office, maintenance, warehouse, garage and construction buildings located on the site. An entrance road, guardhouse and gate structure, roads, walks, various parking lots and fences will be constructed.

## 9. DAMS

Dams required for the ponds, reservoir, and impoundments will be constructed at the site.

## 10. FIRE PROTECTION SYSTEM

A fire protection system will be constructed at the site.

## 11. PIPE AND WIRING SYSTEM

Piping and wiring systems required of the various equipment and operating systems will be constructed.

## 12. MAJOR SPARE PARTS

Major spare parts will be purchased with the purchase of much of the project equipment.

13. COAL FACILITIES

Two rail car positioners and rollover rail car dump facilities will be constructed in the dumper building to house this equipment and a duplex belt system to transport this coal from the dumper hoppers to the storage pile or to one of ~~No~~ stacker reclaimers located at the rudy pile. A duplex belt system will be constructed to transport coal to the ready pile from the dumper building or from the ready pile or the emergency coal hopper to the bunker belt system and onto the bunkers. The coal storage pile will be sized for approximately 10,000,000 tons of coal.

Coal weighing, sampling, and dust suppression systems will be installed as an integral part of this coal facility.

14. RAILROAD

A rail spur from the main line Union Pacific Railroad at Atkins to the energy center site will be constructed and the necessary rail trackage for handling the unit train coal movements and unloading-- facilities and other rail track required at the site will be constructed.

15. SUBSTATION

Substations of 230,000 volts and 345,000 volts will be constructed to make the output of the four turbine generator units available to the Kansas Power and Light Company transmission system. This substation will include generator breakers, necessary 230,000 and 345,000 volt breakers, relays and controls, bus and switches up to but not to include the take off conductor for the transmission line leaving this substation. Also to be included as a part of this substation will be ~~No~~ start-up transformer systems to provide redundant power start-up capabilities of the four units in the project and two transformers required to electrically connect the 230,000 volt and 345,000 volt substations for transferring power between these two substations and a 34,500 volt electric system which will be required at the various ponds, impoundments, wells, river water make-up system and coal handling facilities. The above description will be subject to change as further engineering studies determine.

16. DRAINAGE SYSTEMS

The drainage systems required to adequately contain all drainage from the energy center will be constructed to collect and transport this drainage to ponds on the site.

17. MONITORMC

Monitoring stations will be installed to collect data on the quality of the ambient air as may be required. Some off-rite environmental studies will be made to provide background and operating data necessary for the project.

18. FUEL OIL

A fuel oil unloading, storage, pumping system for both boiler warm-up and boiler pilots will be constructed for the project.

19. COMMUNICATIONS SYSTEM

The necessary communication and supervisory control system will be installed for voice and data transmission from the energy center to the Kansas Power and Light Company system dispatch center for remote operation of the energy center substations and to insure reliable communication and data input at the project.

20. FACILITIES

Such other facilities as may be necessary to provide a reliable operating energy center will be constructed as part of the project.

21. UNIT TRAINS

The necessary 100 ton coal cars to support the movement of coal fuel for the project to include a coal car repair area and/or shop for rail car maintenance.

## JEFFREY ENERGY CENTER

## Land Ownership and Easement Data

All Land Located in Pottawatomie County, Kansas

(7,483.45 Acres) Land Purchased by Kansas Power and Light Company

East 435 feet of Section 24, Township 8 South, Range 11 East.

East 435 Feet of Section 25, Township 8 South, Range 11 East.

All of Section 1, Township 9 South, Range 11 East.

All of Section 2, Township 9 South, Range 11 East.

All of Section 3, Township 9 South, Range 11 East.

The South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$ , and the northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 4, Township 9 South, Range 11 East.The Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 4, Township 9 South, Range 11 East.The South  $\frac{1}{2}$  and the Northeast  $\frac{1}{4}$  of Section 9, Township 9 South, Range 11 East.The North  $\frac{1}{2}$  and the Southwest  $\frac{1}{4}$  of Section 10, Township 9 South, Range 11 East.The East  $\frac{1}{2}$ , the Southwest  $\frac{1}{4}$ , and the West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of Section 11, Township 9 South, Range 11 East.

All of Section 13, Township 9 South, Range 11 East.

The Northwest  $\frac{1}{4}$  of Section 14, Township 9 South, Range 11 East.The East  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  and the South  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 15, Township 9 South, Range 11 East.The Southeast  $\frac{1}{4}$ , the East  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$ , and the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 22, Township 9 South, Range 11 East.The Southwest  $\frac{1}{4}$ , the South  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$ , and the South  $\frac{1}{2}$  and Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 23, Township 9 South, Range 11 East.The Northwest  $\frac{1}{4}$  of Section 24, Township 9 South, Range 11 East.The East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  Less 5 Acres South of the road, the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$ , and the North 15 Acres of the East  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of Section 27, Township 9 South, Range 11 East.The West  $\frac{1}{2}$  of Section 5, Township 9 South, Range 12 East.The North  $\frac{1}{2}$  of Section 6, Township 9 South, Range 12 East.The South  $\frac{1}{2}$  and the Northeast  $\frac{1}{4}$  of Section 7, Township 9 South, Range 12 East.The West  $\frac{1}{2}$  of Section 8, Township 9 South, Range 12 East.The Northwest  $\frac{1}{4}$  of Section 17, Township 9 South, Range 12 East.The North  $\frac{1}{2}$  of Section 18, Township 9 South, Range 12 East.

Land Purchased by Kansas Power and Light Company subject to reversion  
to prior owner, heirs, or devisees ~~when no longer used for railroad~~  
pipeline or electric utility purposes. (52.73 Acres) ..

The East 435 Feet of the East 326 acres of Section 36, Township 8 South,  
Range 11 East.

Grant of Right-of-way Held **by** Kansas Power and Light Company to be  
used for railroad, pipeline and electric-utility purposes (102.46 acres) .

The East 435 feet of Section 13; the **East** 435 feet of Section 12  
excepting that land owned **by** the Union Pacific Railroad in the **NE**  
of the **NE** of said Section 12; and a triangular tract of land located  
in Section 1 beginning at a point 435 feet west of the southeast corner  
of Section 1 and in the south line of Section 1, then north parallel  
to the east line of Section 1 approximately 140 feet to its point of  
intersection with the west Union Pacific Railroad right-of-way, thence  
southeasterly along said Union **Pacific** right-of-way to its point of  
intersection with the south line of Section 1, thence **west** along the  
south line of Section 1 approximately 70 feet to the point of beginning;  
all in Township 8 South of Range 11 East of the 6th Principal Meridian,  
containing 102.46 acres.

Land Acquired by Condemnation Proceedings subject to reversion to prior owners, heirs, or devisees when no longer used for electric utility purposes. (453 Acres) \_\_\_\_\_

The South  $\frac{1}{2}$  of Section 6, Township 9 South, Range 12 East.  
The Northwest  $\frac{1}{2}$  of Section 7, Township 9 South, Range 12 East.



## JEFFREY ENERGY CENTER

Land to be Acquired by the Kansas Power and Light Company (4545 Acres)

- The Southeast  $\frac{1}{2}$  of Section 10, Township 9 South, Range 11 East.  
The East  $\frac{1}{2}$  of the Northwest  $\frac{1}{2}$  of Section 11, Township 9 South, Range 11 East.  
All of Section 12, Township 9 South, Range 11 East.  
The South  $\frac{1}{2}$  and the Northeast  $\frac{1}{2}$  of Section 14, Township 9 South, Range 11 East.  
The West  $\frac{1}{2}$ , the North  $\frac{1}{2}$  of the Southeast  $\frac{1}{2}$ , and the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{2}$  of Section 15, Township 9 South, Range 11 East.  
All of Section 16, Township 9 South, Range 11 East.  
The East  $\frac{1}{2}$  of Section 21, Township 9 South, Range 11 East.  
The Northwest  $\frac{1}{2}$ , the West  $\frac{1}{2}$  of the Southwest  $\frac{1}{2}$ , and the West  $\frac{1}{2}$  and Northeast  $\frac{1}{2}$  of the Northeast  $\frac{1}{2}$  of Section 22, Township 9 South, Range 11 East.  
The Southeast  $\frac{1}{2}$ , the North  $\frac{1}{2}$  of the Northwest  $\frac{1}{2}$  and the Northwest  $\frac{1}{2}$  of Northeast  $\frac{1}{2}$  of Section 23, Township 9 South, Range 11 East.  
The Southwest  $\frac{1}{2}$  and the West  $\frac{1}{2}$  of the East  $\frac{1}{2}$  of Section 24, Township 9 South, Range 11 East.  
The West  $\frac{1}{2}$ , and the Northwest  $\frac{1}{2}$  of Northeast  $\frac{1}{2}$  of Section 25, Township 9 South, Range 11 East.  
The East  $\frac{1}{2}$  and the North  $\frac{1}{2}$  of Northwest  $\frac{1}{2}$  of Section 26, Township 9 South, Range 11 East.  
The South 25 Acres of the Northeast  $\frac{1}{2}$  of the Northeast  $\frac{1}{2}$  of Section 27, Township 9 South, Range 11 East.

Exhibit D

**EXHIBIT A**

**Map**  
(omitted)

EXHIBIT B

(Section 3(c) - Jeffrey Energy Center Ownership Agreement)

DEED AND BILL OF SALE

The Grantor, THE KANSAS POWER AND LIGHT COMPANY, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations in hand paid, including acceptance of the covenants hereof, bargains, sells, conveys and quit claims to \_\_\_\_\_, Grantee, a \_\_\_\_\_ undivided interest, as a tenant in common with Grantor and others, in and to the following described real estate situated in the County of Pottawatomie, State of Kansas:

[Insert description of real estate]

and in and to the structures, equipment and facilities now or hereafter constructed and installed in or on said real estate;

[Subject to easements, rights of way, restrictions, reservations and other encumbrances of record - to be inserted]

all hereinafter referred to as the "Project".

As a condition of the making and acceptance of this conveyance and as part of the mutual consideration therefor:

(a) Grantor covenants with Grantee, and Grantee covenants with Grantor and with all other tenants in common thereof, that so long as the Project is used or useful for the generation of electric energy, said real estate shall be used only for the purposes of constructing and operating thereon the generating plant and associated facilities used or useful in connection with said Project, or for such other purposes of constructing and operating thereon the generating plant and associated facilities used or useful in connection with said Project, or for such other purpose as may be mutually agreed upon by all of said tenants in common; and .

(b) Grantee, for itself, its successors and assigns, hereby accepts title to said real estate and any improvements now or hereafter constructed thereon as a tenant in common with Grantor and others who may now hold or hereafter acquire interests as tenants in common in said real estate, and AGREES that, for the period commencing with the date hereof and continuing so long as the Project

is used or useful for the generation of electric energy: (1) the interest hereby conveyed shall be held in such tenancy in comon; (2) Grantee waives the right to partition the Project or the real estate hereby conveyed whether by partition in kind or by sale and division of **the** proceeds thereof: (3) Grantee will not resort to any action at law or in equity to partition the Project or said real estate: (4) Grantee waives the benefit of all such laws as may now or hereafter authorize such partition; (5) the covenants herein made and restrictions set forth in **this** conveyance shall be binding upon Grantee, its successors and assigns, shall be an attribute of the title herein conveyed to Grantee, and shall be and remain covenants running with the real estate hereby conveyed; (6) Grantee recognizes and represents to the Grantor and others who may now or hereafter acquire interests in said real estate as tenants in comon, that ~~the~~ common ownership created hereby and the reservations, conditions, restrictions, waivers and covenants herein set forth are for the mutual benefit of the Grantee and its successors and assigns, and that such benefit is best realized by insuring to each tenant in common the value of ownership, use and operation of the Project during such period: and (7) said reservations, conditions, ~~restrictions~~, waivers and covenants are reasonably related to a proper purpose to be accomplished, and that said period is therefore reasonable when so considered.

(c) This deed and bill of sale shall be subject to all of the terms and conditions of that certain Agreement for the Construction and Ownership of Jeffrey Energy Center, Pottawatomie County, Kansas, dated \_\_\_\_\_ by and between Grantor, Grantee and others.

(d) Grantor covenants with Grantee that Grantor shall likewise be bound by all of the terms, conditions, restrictions, waivers and covenants hereof with respect to any interest retained by Grantor in said real estate and improvements thereon: and Grantor further covenants that any further conveyances of any interest in said real estate shall include all of the same terms, conditions, restrictions, waivers and covenants as contained herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_.

THE KANSAS POWER AND LIGHT COMPANY

By \_\_\_\_\_

Attest:

STATE OF KANSAS                                 )  
  ) ss.  
COUNTY OF SHAWNEE                            )

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_  
197\_, before me, the undersigned, a Notary Public in and for the  
county and State aforesaid came

\_\_\_\_\_ Of THE KANSAS POWER AND LIGHT COMPANY, a  
corporation duly organized, incorporated and existing under and  
by virtue of the laws of Kansas, who is personally known to me to  
be such officer, and who is personally known to me to be the same  
person who executed, as such officer, the within instrument of  
writing on behalf of said corporation, and such person duly  
acknowledged the execution of the same to be the act and deed of  
said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed  
my official **seal** the day and year last above mentioned.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

EXHIBIT C

CONSTRUCTION PROJECT COSTS INCLUDING OVERHEADS - PRODUCTION PLANT

SUMMARY SCHEDULE

Components of Construction Cost and  
Related Overhead Construction Costs

- I. Land and Land Rights
  - A. Land Purchase
  - B. Taxes during Construction (prior to transfer of ownership)
  - C. Appraisals
  - D. Surveys
  - E. Legal Expense
    - 1. Internal
    - 2. External
  - F. Title Transfer Costs
  - G. Consultant Fees
  - H. Land Improvement and Clearing
  - I. Other related to purchased, as outlined in Electric Plant Instruction No. 7 of FPC Uniform System of Accounts
- II. Contract Work
  - A. Applicable preliminary studies and investigations
  - B. Design, Engineering and Supervision
  - C. Accounting Services
  - D. Cost of Equipment and Materials
  - E. Construction of Structures
  - F. Installation of Equipment
  - G. Procurement Services
  - H. Other, as outlined in Electric Plant Instructions No. 3(1) and 3(13) of FPC Uniform System of Accounts
- III. Equipment and Materials
  - A. Cost of Equipment and Materials including installation not covered elsewhere
  - B. Cash and Trade Discount Credits
  - C. Tools and Equipment consumed during construction
  - D. Capitalizable spare parts
  - E. Shipping and delivery costs
  - F. Special insurance expense
  - G. Material handling at construction site
  - H. First complement of small plant tools (Minor Items)
  - I. Unit trains for transporting fuel
  - J. Other, as outlined in Electric Plant Accounts of FPC Uniform System of Accounts and Electric Plant Instructions Nos. 8 and 9

IV. On Site - - Operator Employees' Labor and Expenses

- A. Productive
  - 1. Construction labor
  - 2. First-line supervision
  - 3. Other supervision
  - 4. Engineering
  - 5. Administrative and General
- B. Pay for Time Not Worked
  - 1. Vacation
  - 2. Holiday
  - 3. Sick
  - 4. Excused Time
  - 5. Jury Duty
  - 6. Inclement weather
  - 7. Standby time
  - 8. Paid training programs
  - 9. Other time off
- C. Other-Than-Labor Expense

V. Off Site - - Operator Employees Labor and Expense

- A. Supervision and Engineering Productive Payroll Charges
  - 1. Applicable preliminary studies and investigations
  - 2. Engineering, planning, designing
  - 3. Physical record work and mapping
  - 4. Estimating cost of construction
  - 5. Indirect job supervision
  - 6. Other
- B. Administrative and General Productive Payroll Charges
  - 1. Certain Officers and Division and Department Heads, including Staff where applicable
    - a. General planning of construction projects relating to site selection, engineering, selection of contractors and/or equipment, administration of construction program etc.

Chief Executives

- Chairman of Board
- President
- Other

Vice Residents:

- Executive
- General Manager
- Engr., Constr., Oper., Finance, Acctg., Power;
- Marketing, Area Relations, Adm., Personnel
- Other

General Counsel or Legal Staff

Operating Managers  
Division  
Manager Electric Production  
Manager Personnel  
Regional  
Division  
Local  
Division Superintendents  
Other

- b. General Supervision relating to consrruction accounting,  
budgeting, ecc.

Trtasurer  
Assistanc Treasurer  
Controller  
Assiscane Controller  
Secretary  
Assistant Secretary

2. Budget and Special Studies
3. General Accounting and Auditing
  - a. Accounts Payable
  - b. General
  - c. Payroll
  - d. Auditing
  - e. Scores Accountring
4. Plant Accountring
  - a. Construction Costs
  - b. Property Records
5. Treasury Department
  - a. Taxes
  - b. Disbursements
6. General Office Services
  - a. Copying Services
  - b. Stationery
  - c. General File
  - d. Mail Delivery
  - e. Stenographic Services
  - f. Telephone Services
  - g. Director and Staff Selaries
7. Purchasing
  - a. For Stores • Scores Items
  - b. Purchased Direcc • Stores Items
  - c. Purchased Direcc • Non-Stores Items
8. General Office Building Services
  - a. Operation
  - b. Maintenance



- 9. Personnel Department
- 10. Data Processing Operations
  - a. Plant Accounting
  - b. Stores Accounting
  - c. Payroll Accounting
  - d. General Accounting Activities
  - e. **Forms** and Methods
- 11. Legal Services
- 12. Real Estate Activities
- 13. Area Relations
- 14. Technical and **Economic** Staff
- C. Pay for Time Not Worked
  - 1. Vacation
  - 2. Holiday
  - 3. Sick
  - 4. Excused Time
  - 5. Jury Duty
  - 6. Standby Time
  - 7. Paid Training Programs
  - a. Other Time **Off**
- D. Other-Than-Labor Expenses  
Administrative and General
  - 1. Certain Officers, Division and Department Heads,  
including **staff** where applicable
  - 2. Budget and Special Studies
  - 3. General Accounting and Auditing
    - a. Accounts Payable
    - b. General
    - c. Payroll
    - d. Auditing
    - e. Stores Accounting
  - 4. Plant Accounting
    - a. Construction Costs
    - b. Property Records
  - 5. Treasury Department
    - a. Taxes
    - b. Disbursements

6. General Office Services
  - a. Copying Services
  - b. Stationery
  - c. General File
  - d. Mail Delivery
  - e. Stenographic Services
  - f. Telephone Service
  - g. Director and Staff Expenses
7. Purchasing
  - a. For Stores • Stores Items
  - b. Purchased Direct • Stores Items
  - c. Purchased Direct • Non-Stores Items
8. General Office Building Services
  - a. Operation
  - b. Maintenance
  - c. Rent
9. Personnel Department
10. Data Processing Operations
  - a. Plant Accounting.
  - b. Stores Accounting
  - c. Payroll Accounting
  - d. General Accounting Activities
  - e. Forms and Methods
11. Legal Services
12. Real Estate Activities
13. Area Relations
14. Technical and Economic Staff

VI. Cost of Supplying Trained Power Production Personnel for the Operation and Maintenance of the Units.

VII. Preliminary Operation and Testing Expense • Net

VIII. Payroll Taxes

- A. Federal Old-age Benefit
- B. Federal Unemployment Insurance
- C. State Unemployment Insurance

IX. Workmen's Compensation

X. Employee Benefits

- A. Pension
- B. Hospitalization, Major Medical and Surgical
- C. Group Life Insurance and Death Benefits
- D. Other

XI. Injuries and Damages

XII. Insurance and Uninsured Losses:

- A. Premium
- B. Other

XIII. Cost of Relocating Existing Facilities

XIV. Stores Handling

- A. Scores Handling at Stores Locations
  - 1. From Central Stores - Stores Items
  - 2. Purchased Direct - Stores Items
- B. Purchased Direct - Non-Stores Items

XV. Purchasing

- A. For Stores - Stores Items
- B. Purchased Direct - Stores Items
- C. Purchased Direct - Non-Scores Items

XVI. Miscellaneous

- A. Costs of obtaining licenses, permits and Bonding fees, except those incurred by individual owner for its own benefit
- B. Power consumed during construction
- C. Company Transportation, including gasoline taxes and depreciation
- D. Power-operated Equipment Use
- E. Sales Taxes, where applicable
- F. Use tax
- G. Costs of Temporary Facilities
- H. Outside Protection Services
- I. Shop Services
- J. Publicity Costs to Insure Public Acceptance of Project

EXHIBIT DELEMENTS OF SHARABLE ADMINISTRATIVE AND GENERAL EXPENSES  
AND USES FOR ALLOCATION OF CAPITALIZABLE PORTIONAllocation  
Bases  
(Note 1)A. Elements included as Administrative and General Expense  
Components of Construction Project Costs.V. B. Administrative and General Productive Payroll  
Charges1. Certain Officers and Division and Department  
Heads, including Staff where applicable

- a. General planning of construction projects  
relating to site selection, engineering,  
selection of contractors and/or equipment,  
administration of construction, program, etc.

Chief Executives

T

Chairman of Board

Resident

Other

Vice Residents

T

Executive

General

Engr., Constr., Oper., Finance, Power

Acctg., Adm., Marketing, Area Relation

Personnel, Other

General Counsel or Legal Staff

T

Operating Managers

T

Division

Other

- b. General Supervision relating to construc-  
tion accounting, budgeting, etc.

T

Treasurer

Assistant Treasurer

Controller

Assistant Controller

Secretary

Assistant Secretary

2.	Budget and Special Studies	T
3.	General Accounting and Auditing	T
a.	Accounts Payable	T
b.	General	T
c.	Payroll	L
d.	Auditing	T
e.	Stores Accounting	T
4.	Plant Accounting	T
a.	Construction Costs	
b.	Property Records	
5.	Treasury Department	T
a.	Taxes	
b.	Disbursements	
6.	General Office Services	
a.	Copying Services )	
b.	Stationery )	
c.	General File )	
d.	Mail Delivery )	L
e.	Stenographic Services )	
f.	Telephone Services )	
g.	Director and Staff Salaries )	
7.	General Office Building	D
a.	Operation	
b.	Maintenance	
8.	Personnel Department	L
9.	Data Processing Operations	
a.	Plant Accounting	T
b.	Stores Accounting	T
c.	Payroll Accounting	L
d.	General Accounting Activities	T
e.	Forms and Methods	T
10.	Legal Services	T
11.	Real Estate Activities	T
12.	Area Relations	L
13.	Technical and Economic Staff	T
V. C.	Pay for Time Not Worked	D
1.	Vacation	
2.	Holiday	
3.	Sick	
4.	Excused Time	
5.	Jury Duty	
6.	Standby Time	
7.	Paid Training Programs	
8.	Other Time Off	

V. D. Other-Than-Labor Expenses  
Administrative and General

D

1. Certain Officers, Division and  
~~Department~~ Heads
2. Budget and Special Studies
3. General Accounting and Auditing
  - a. Accounts Payable
  - b. General
  - c. Payroll
  - d. Auditing
  - e. Stores Accounting
4. Plant Accounting
  - a. Construction Costs
  - b. ~~Property~~ Records
5. Treasury ~~Department~~
  - a. Taxes
  - b. Disbursements
6. General Office Services
  - a. Copying Services
  - b. Stationery
  - c. General File
  - d. Mail Delivery
  - e. ~~Stenographic~~ Services
  - f. Telephone Service
  - g. Director and Staff Expenses
7. General Office ~~Building~~ Services
  - a. Operation
  - b. Maintenance
  - c. ~~Rent~~
8. Personnel ~~Department~~
9. ~~Data~~ Processing Operations
  - a. Plant Accounting
  - b. Stores Accounting
  - c. Payroll Accounting
  - d. General Accounting Activities
  - e. Forms and Methods
10. Legal Services
11. Real Estate Activities
12. Area Relations
13. Technical and ~~Economic~~ Staff

B. Other Components of Construction Project Costs to be included as Payroll Additives. D

VIII. Payroll Taxes

- A. Federal Old-Age Benefits
- B. Federal Unemployment Insurance
- C. State Unemployment Insurance

LX. Workmen's Compensation

X. Employee Benefits

- A. Pension
- B. Hospitalization, Major Medical and Surgical
- C. Group Life Insurance and Death Benefits
- D. Education and Recreation Expense
- E. Other

Note 1: Recommend bases for allocating capitalizable administrative and general costs to joint construction projects.

"T" means allocation on basis of total cost of the joint construction project (excluding costs billed by non-constructing company) in relation to total construction expenditures; in both cases exclusive of interest during construction and allocated administrative and general expenses.

"L" means allocation on basis of Operator labor cost of the joint construction project in relation to total KPL construction labor cost, in both cases exclusive of allocated administration and general labor.

"D" pay for time not worked (Item V.C.) and other payroll additives (Part B) to be distributed to Items VB.1 through 13 prior to the allocation indicated, i.e., distributed as an additive to the Operator's labor portion of Items 1 through 13. General Office Building costs (Item V.D.7) included in other-than-labor expenses to be distributed among Items 1 through 13 on the basis of use of space. All remaining other-than-labor expenses (all items in V.D., except Item 7) to be allocated on the appropriate allocation bases for corresponding Administrative and General Payroll Charge components as set forth in Items VB. 1 through 13.

The practicalities of administration suggest the use of a composite percentage for the operator to be applied to the total cost of the joint construction project; composite percentage to be derived from periodic special studies made in accordance with the recommended bases for allocating the respective cost elements.

STATE OF KANSAS            )  
                                  ) ss.  
COUNTY OF SEDGWICK        )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of May, 1977, before me, the undersigned, a Notary Public in and for the County and State afore-said, came Ralph P. Fiebach, Chairman of the Board and President of Kansas Gas and Electric Company and W. B. Walker, Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission expires: September 25, 1977



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# AGREEMENT

THIS AGREEMENT, made as of the            day of May, 1977, by and between THE KANSAS POWER AND LIGHT COMPANY, a Kansas corporation ("KPL"), KANSAS GAS AND ELECTRIC COMPANY, a Kansas corporation ("KG&E"), CENTRAL TELEPHONE & UTILITIES CORPORATION, a Kansas corporation ("CTU"), and MISSOURI PUBLIC SERVICE COMPANY, a Missouri corporation ("MPS").

## W I T N E S S E T H :

WHEREAS, KPL, KG&E, CTU AND MPS are the owners, as tenants in common, of the Jeffrey Energy Center ("Project") being constructed pursuant to the Agreement for the Construction and Ownership of Jeffrey Energy Center, Pottawatomie County, Kansas, dated as of January 11, 1975 ("Agreement"); and

WHEREAS, all of the costs of the acquisition and construction of the Project are being shared by the owners in proportion to their respective ownership percentages; and

WHEREAS, certain of the costs are for pollution control and other facilities; and

WHEREAS, the Kansas Industrial Revenue Bond Act, Sections 12-1740 et seq. of the Kansas Statutes Annotated, as amended ("Act"), has been enacted by the Legislature of Kansas; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, certain municipalities or other political Subdivisions of the State of Kansas may undertake to issue their revenue bonds to provide funds for the cost of the purchase, construction and equipping of certain pollution control and other facilities at the Project; and

WHEREAS, the owners may desire to individually finance their proportionate share of the cost of such facilities by arrangements with one or more of such political subdivisions hereby it may be necessary for WL, KG&E, CTU or MPS to sell, grant or convey certain interests in the Project and the Project site; and

WHEREAS, the parties desire to assist each other in such arrangements for the financing of such facilities pursuant to the *Act*;

NOW, THEREFORE, for and in consideration of the mutual covenants by them to be kept and performed, the parties hereto mutually agree that:

Insofar as it may be required for the financing of pollution control or other facilities pursuant to the Kansas Industrial Revenue Bond Act, Sections 12-1740 et seq. of the Kansas Statutes Annotated, as amended, each of the owners may individually sell, convey or grant leasehold estates in its undivided interest in such facilities and non-exclusive, appurtenant licenses, easements and rights-of-way over, across, through and under the Project site for the purposes

of locating and ~~maintaining~~ such facilities on the Project site and providing such rights of access to such facilities as may be necessary for their inspection during the term of any such leasehold estate; provided, however, that no such leasehold, license, easement or right-of-way shall grant or purport to grant any right to install, operate or remove any of the machinery, equipment, buildings, structures or facilities constituting a part of the Project..

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in several counterparts.

(SEAL)

THE KANSAS POWER AND LIGHT COMPANY

Attest:

By \_\_\_\_\_

\_\_\_\_\_  
Secretary

(SEAL)

KANSAS GAS AND ELECTRIC COMPANY

Attest:

\_\_\_\_\_

\_\_\_\_\_  
Secretary

(SEAL)

CENTRAL TELEPHONE & UTILITIES CORPORATION

Attest

By \_\_\_\_\_

\_\_\_\_\_  
Secretary

(SEAL)

MISSOURI PUBLIC SERVICE COMPANY

Attest:

By \_\_\_\_\_

\_\_\_\_\_  
Secretary

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*Ownership Agreement  
Amendment # 2*

*for Jeffrey \$2*

AMENDMENT TO AGREEMENT  
FOR THE CONSTRUCTION AND OWNERSHIP OF  
JEFFREY ENERGY CENTER  
— POTTAWATOMIE COUNTY, KANSAS —

THIS AMENDMENT TO AGREEMENT, made and entered into  
this 24th day of May, 1982,

BY AND BETWEEN: THE KANSAS POWER AND LIGHT COMPANY,  
A Kansas corporation, hereinafter  
referred to as

"KPL"

AND KANSAS GAS AND ELECTRIC COMPANY,  
A Kansas corporation, hereinafter  
referred to as

"KG&E"

AND CENTRAL TELEPHONE & UTILITIES  
CORPORATION, a Kansas corporation,  
hereinafter referred to as

"CTU"

AND MISSOURI PUBLIC SERVICE COMPANY,  
A Missouri corporation, herein-  
after referred to as

"MPS"

WITNESSETH:

WHEREAS, the parties on the 13th day of January, 1975,  
entered into an Agreement for the Construction and Ownership  
of Jeffrey Energy Center, Pottawatomie County, Kansas (Agreement);  
and

WHEREAS, the Agreement does not contemplate the sale  
by an Owner of less than all of such Owner's undivided interest  
in the Jeffrey Energy Center (the "Project");

WHEREAS, the parties desire to permit KQ&E to sell only (i) all or any of its fractional undivided ownership interest in Unit No. 3 of the Project ("Unit No. 3"), and (ii) certain real property and facilities used or useful in connection with the operation of Unit No. 3 ("Common Facilities") to such party or parties as it may choose; and.

WHEREAS, the parties have met and agreed that the Agreement should be amended as hereinafter set out.

NOW, THEREFORE, for and in consideration of the mutual covenants by them to be kept and performed, all as hereinafter set forth, the parties hereto mutually agree as follows:

1. Paragraph 26 of the Agreement shall be amended to read as follows:

"26. Entire Understanding.

"This Agreement, as amended from time to time in writing by all of the Owners, shall constitute the entire understanding among the owners respecting the matters herein contained, superseding any and all previous understandings pertaining to such subject matter.

2. Notwithstanding any other provisions of the Agreement to the contrary, KQ&E may sell any or all of its undivided interest in Unit No. 3 and the Common Facilities to any other party or parties for such purchase price as KQ&E and the purchaser or purchasers may agree.

3. The sale of all or any portion of KQ&E's interest in Unit No. 3 and Common Facilities pursuant to paragraph 2 hereof shall be on such terms and conditions as agreed to by all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Agreement for the Construction and Ownership of Jeffrey Energy Center. Pottawatomie County, Kansas, in multiple counterparts as of the day and year first above written.

THE KANSAS POWER AND LIGHT COMPANY

By

  
President

ATTEST:

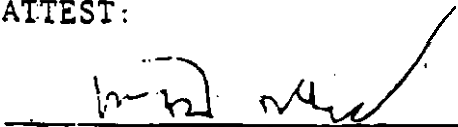
  
Secretary

KANSAS GAS AND ELECTRIC COMPANY

By

  
President

ATTEST:

  
Secretary

CENTRAL TELEPHONE & UTILITIES CORPORATION

By

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

MISSOURI PUBLIC SERVICE COMPANY

By

\_\_\_\_\_  
President

ATTEST:

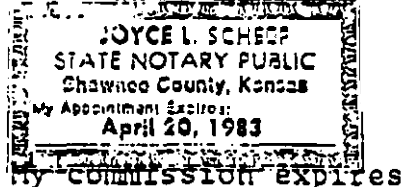
\_\_\_\_\_  
Secretary



STATE OF KANSAS                     )  
   ) SS  
 COUNTY OF SHAWNEE                )

BE IT REMEMBERED, That on this 24th day of May, 1982, before me, the undersigned, a Notary Public in and for the County and State aforesaid came William E. Wall President of THE KANSAS POWER AND LIGHT COMPANY, a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above mentioned.



Joyce L. Scheep  
 Notary Public

April 20, 1983

STATE OF KANSAS                     )  
   ) SS  
 COUNTY OF SEDGWICK                )

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_, 1982, before me, the undersigned, a Notary Public in and for the County and State aforesaid came \_\_\_\_\_ of KANSAS GAS AND ELECTRIC COMPANY, a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, who is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation,

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal the day and year last above mentioned.

My commission expires:

STATE OF KANSAS                    )  
  ) SS  
COUNTY OF BARTON                )

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_  
1982, before me, the undersigned, a Notary Public in and for the  
County and State aforesaid, came \_\_\_\_\_  
of CENTRAL TELEPHONE & UTILITIES CORPORATION,  
a corporation duly organized, incorporated and existing under and  
by virtue of the laws of Kansas; who is personally known to me to  
be such officer, and who is personally known to me to be the same  
person who executed, as such officer, the within instrument of  
writing on behalf of said corporation, and such person duly  
acknowledged the execution of the same to be the act and deed of  
said corporation.

IN TESTINONY WHEREOF, I have hereunto set my hand, and  
affixed my official seal the day and year last (above mentioned,

My commission expires:

STATE OF MISSOURI                )  
  ) SS  
COUNTY OF JACKSON             )

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_  
1982, before me, the undersigned, a Notary Public in and for the  
County and State aforesaid, came \_\_\_\_\_  
of MISSOURI PUBLIC SERVICE COMPANY, a corpora-  
tion duly organized, incorporated and existing under and by virtue  
of the laws of Missouri, who is personally known to me to be such  
officer, and who is personally known to me to be the same person  
who executed, as such officer, the within instrument of writing  
on behalf of said corporation. and such person duly acknowledged  
the execution of the same to be the act and deed of said corpora-  
tion.

IN TESTINONY WHEREOF, I have hereunto set my hand. and  
affixed my official seal the day and year last above mentioned.

\_\_\_\_\_  
Notary Public

My commission expires:



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*Ownership Agreement  
Amendment # 3*

AMENDMENT NO. 3 TO AGREEMENT  
FOR THE CONSTRUCTION AND OWNERSHIP OF  
JEFFREY ENERGY CENTER  
POTTAWATOMIE COUNTY, KANSAS

THIS AMENDMENT NO. 3 TO AGREEMENT made on this 14th day of October, 1982, by and between THE KANSAS POWER AND LIGHT COMPANY, a Kansas corporation, hereinafter referred to as "KPL", KANSAS GAS AND ELECTRIC COMPANY, a Kansas corporation, hereinafter referred to as "KGSE", CENTEL CORPORATION, formerly Central Telephone & Utilities Corporation, a Kansas corporation, hereinafter referred to as "CTU" and MISSOURI PUBLIC SERVICE COMPANY, a Missouri corporation, hereinafter referred to as "MPS".

WHEREAS, as of January 13, 1975, KPL, KG&E, CTU and MPS entered into an Agreement for the Construction and Ownership of Jeffrey Energy Center, Pottawatomie County, Kansas (the "Ownership Agreement"); and

WHEREAS, the Ownership Agreement has been amended by an Amendment to Agreement dated as of May 24, 1982 ("Amendment No. 2") to permit the sale by KG&E of any or **all** of its undivided interest in Unit No. 3 of Jeffrey Energy Center and certain real property and facilities used or useful in connection with the operation of Unit No. 3; and

WHEREAS, KG&E and MPS have entered into an Agreement to Purchase and Sell dated as of August 25, 1982 and an associated letter agreement of even date therewith (the "Agreement to Purchase and Sell") whereby KG&E will sell and MPS will purchase KG&E's twenty percent (20%) undivided ownership interest in Unit No. 3 and one-third of KG&E's undivided ownership interest in the facilities common to Unit Nos. 1,

2 and 3 (the "Interest Being Acquired"); and

WHEREAS, the parties have hereby agreed to the sale by KG&E to MPS of the Interest Being Acquired upon the terms and conditions provided for in the Agreement to Purchase and Sell, as required by paragraph 3 of Amendment No. 2 to the Ownership Agreement; and

WHEREAS, the Owners desire to amend the Ownership Agreement to reflect the sale by KG&E to MPS of the Interest Being Acquired;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereto mutually agree as follows:

1. Section 2 of the Ownership Agreement is hereby amended to read as follows:

Subject to the terms and conditions hereinafter set forth, ownership of Project property and the available capacity shall be by the Owners as tenants in common, with each Owner's respective undivided interest being in the following percentages:

<u>Unit Nos. 1, 2 and 4</u>		<u>Unit No. 3</u>
KPL	66	64
KGE	20	0
CTU	8	8
MPS	8	28

The above percentages of the Owners are hereafter referred to as the "percentages" or the "respective percentages".

2. By reason of the sale by KG&E to MPS of the Interest Being Acquired and the resulting change in percentage of ownership of

Unit No. 3, the Owner's respective undivided interest in the ownership of the facilities common to Unit Nos. 1, 2, and 3 shall be in the following percentages:

KPL	64
KGSE	13 1/3
CTU	8
MPS	14 2/3

The Ownership of the facilities common to Unit Nos. 1 and 2 shall continue to be in the percentages set forth in paragraph 1 above under the column "Unit Nos. 1, 2 and 4." In the event Unit No. 4 is constructed or the Owners determine not to proceed with the construction of Unit No. 4, MPS and KGSE shall by transfer and sale make an appropriate reallocation, as between themselves, of facilities common to Unit Nos. 1, 2, 3 and/or 4, such transfer and sale to be made pursuant to the terms of the Agreement to Purchase and Sell and to be evidenced by an appropriate amendment to the Ownership Agreement to reflect the new percentages of ownership of MPS and KG&E resulting from such reallocation.

3. MPS shall be entitled to all rights and benefits under the Ownership Agreement relating to the Interest Being Acquired and be responsible for all associated liabilities and obligations thereto, as if MPS had originally been the owner thereof, and KGSE is hereby relieved of any and all responsibility therefor.

Exhibit D

4. For purposes of Section 23 of the Ownership Agreement, the respective percentages of KG&E and MPS shall be deemed to be 20% and 8%, respectively.

5. The interest of MPS and KGbE in all other Project Agreements shall be deemed to be in same respective percentages as set forth herein and the execution of this Amendment shall constitute an assignment and transfer by KGSE to MPS of the other Project Agreements to the extent of the increased respective percentages provided for herein. By reason of such assignment, MPS shall be deemed to have succeeded to all rights of KGbE and to have assumed all the duties and obligations of KGbE with respect to such increased respective percentages under all other Project Agreements to the same extent and with the same effect as provided for herein with respect to the Project, and KG&E shall be relieved of any and all responsibility therefor.

6. The Operator shall make the initial allocation between KG&E and MPS of the respective shares of Construction Costs and all costs, expenses and capital expenditures incurred or associated with the operation, maintenance, repair, replacement or demolition of the Project (hereinafter "Operating Costs"), in accordance with its understanding of the effect of the terms of this Amendment No. 3. KGbE and MPS shall pay the Operator as required by the ownership agreement and the other project agreement, on the basis of such initial allocation. In the event KGbE or MPS shall disagree with such initial allocation, the Operator shall accept any reallocation agreed to by KGbE and MPS. In the absence of such agreement by KG&E and MPS, the Operator shall consider carefully the position of both parties and resolve such allocation finally in its sole discretion. KGbE and MPS shall be unconditionally responsible to the Operator for their respective shares of Construction Costs and Operating Costs in accordance with such final allocation, and hereby waive their respective rights to arbitration provided by Section 25 of the Ownership Agreement only with respect to such allocations.

Exhibit D

7. By execution hereof, the parties consent (i) to the sale by KGSE to MPS of the Interest Being Acquired and the resublease by KGSE to MPS of the Unit No. 3 pollution control facilities Pursuant to the terms and conditions of the Agreement to Purchase and Sell, which consent shall be deemed to constitute the agreement of all of the parties hereto provided for in paragraph 3 of Amendment No. 2, (ii) to the assignment of all other Project Agreements to the extent and with the effect provided in paragraph 5 hereof, and (iii) to the transmission and receipt of power between MPS and KGSE as provided for in the said associated letter agreement dated as of August 25, 1982.

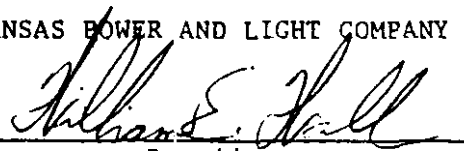
8. All terms and conditions of the Ownership Agreement not amended herein shall remain in full force and effect. Words and phrases contained herein shall have the same meaning as defined in the Ownership Agreement.

9. This amendment shall be effective concurrently with the Closing provided for in paragraph 10 of the Agreement to Purchase and Sell.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 3 to Agreement as of the day and year first above written.

THE KANSAS POWER AND LIGHT COMPANY

By


  
President

ATTEST :

  
Secretary

KANSAS GAS AND ELECTRIC COMPANY

By

  
President

ATTEST :

  
ASST-Secretary




Exhibit D

ATTEST:

  
Secretary

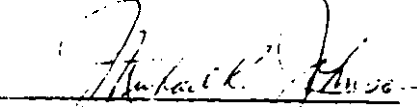
CENTEL CORPORATION

By   
President

MISSOURI PUBLIC SERVICE COMPANY

By   
President

ATTEST:

  
ASST Secretary

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AMENDMENT NO. 4 TO AGREEMENT  
FOR THE CONSTRUCTION AND OWNERSHIP  
OF JEFFREY ENERGY CENTER  
POTTAWATOMIE COUNTY, KANSAS

THIS AMENDMENT NO. 4 TO AGREEMENT made on this 26<sup>th</sup> day of August, 1988 by and between the Kansas Power and Light Company, a Kansas Corporation, hereinafter referred to as "XPL," and Kansas Gas and Electric Company, a Kansas Corporation, hereinafter referred to as "KG&E," Centel Corporation, a Kansas Corporation, hereinafter referred to as "Centel" and Utilicorp United, Inc., a Delaware Corporation, hereinafter referred to as "Utilicorp" (collectively the "Owners"),

WITNESSETH:

WHEREAS, the Owners entered into an agreement for the construction and ownership of Jeffrey Energy Center, Pottawatomie County, Kansas dated January 13, 1975 as amended ("Ownership Agreement"); and

WHEREAS the Owners wish to amend the Ownership Agreement respecting the rights and obligations of each Owner relating to Unit 4 and associated common facilities:

NOW, THEREFORE, for and in consideration of the mutual covenants by them to be kept and performed, all as hereinafter set forth, the Owners hereto mutually agree as follows:

1. An Owner may elect not to participate in the construction of Unit 4 or to participate in such construction

in any percentage up to and including its ownership interest. This provision shall not relieve the Owners from any obligations with respect to plant already in place related to Unit 4 and associated common facilities except to the extent that such obligations are assigned and accepted pursuant to the terms of this Amendment No. 4.

2. The election by an Owner not to participate in the construction of Unit 4 or to participate at a level less than its full ownership interest shall be made no later than 120 days prior to the date of filing of an application for a siting permit for Unit 4, pursuant to any Kansas generation siting laws. The Operator shall notify each Owner in writing at least 365 days in advance of the date on which it proposes to file an application for a siting permit for Unit 4. Within 60 days after notification by an Owner of its election not to participate fully in Unit 4, the Owners shall meet to review the planned construction.

3. At any time, an Owner may **sell** all or part of its ownership interest in Unit 4, together with a proportional undivided interest in associated common facilities, to any person, firm or corporation provided that the Owner shall first offer in writing to transfer its interest to the other Owners, at its prescribed price and terms. Ownership interest includes the right to elect to participate in Unit 4. The offer to the other Owners shall remain open for 60 days.. The offer of the interest being sold may **be** accepted by one or more Owners,

provided that if the Owners electing to accept the offer do not agree among themselves on the portion each Owner shall accept, the interest shall be divided among the Owners who have accepted in the proportion that their respective percentages of ownership bear to the total percentage of ownership of the Owners who have so accepted. If at the expiration of the 60 day period such offer has not been accepted upon the prescribed price and terms, such interest may then be sold to any person, firm or corporation at an identical or higher price and identical or less favorable terms to buyer. Notwithstanding the above, an Owner may sell, transfer or assign all or part of its ownership interest in Unit 4, plus associated common facilities, to any person, firm or corporation, the stock or ownership of which is wholly owned by the Owner making the transfer, and shall not be required to offer the interest being sold to the other Owners.

4. No sale of an interest in Unit 4 and associated common facilities may be made unless simultaneously the Owner's interest in all other Project Agreements is similarly transferred or assigned to the same person or persons in the same percentage being sold, and such person or persons have assumed all the duties and obligations of the transferring or assigning Owner under the Ownership Agreement and all other Project Agreements in the same percentage acquired.

5. Upon the sale of an interest in Unit 4 and associated common facilities, the purchaser shall be entitled to all

rights and benefits under the Ownership Agreement and all other Project Agreements relating to the interest being acquired, and shall be responsible for all associated liabilities and obligations thereto, as if the new Owner had originally been the Owner thereof, and the selling Owner shall be relieved of any and all responsibility as to the interest and related contractual obligations being transferred or assigned.

6. The Owners agree to enter into such further amendments to the Ownership Agreement and Project Agreements as may be necessary or appropriate to effect a transfer or assignment of an interest authorized by this Amendment No. 4.

7. The sale of an interest in Unit 4 and associated common facilities to any person, firm or corporation other than another Owner is subject to the receipt, on the date of the closing of the sale, of a written statement or opinion, from an investment banker selected by agreement of the Owners, which certifies that the buyer is capable of financing its share of the costs for construction, operation and maintenance of Unit 4 and associated common facilities. Notwithstanding the above, said written statement or opinion shall not be required if, pursuant to the sale, the selling Owner remains financially obligated to the full extent of the interest being transferred.

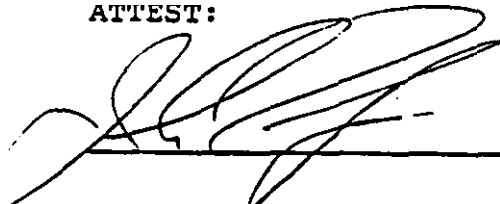
8. The sale of an interest in Unit 4 and associated common facilities is subject to the approval of any necessary regulatory agency,

9. If, by rule or order of any court or agency having

jurisdiction, conditions or limitations are imposed upon any Owner which causes a material detriment to any Owner with respect to the construction of Unit 4, the Owners shall, prior to proceeding with construction of Unit 4, make a good faith effort to alter the obligations with respect thereto in such a way as to eliminate the said detrimental impact. Among the remedies that shall be considered, when appropriate, shall be the reimbursement of costs associated with Unit 4 expended by any Owner whose right to participate therein is denied or conditioned in such a manner as to make its participation overly burdensome, the alteration of construction plans, the alteration of percentage participation of the Owners, and such other remedies as may be appropriate in the circumstances and mutually agreeable among the Owners.

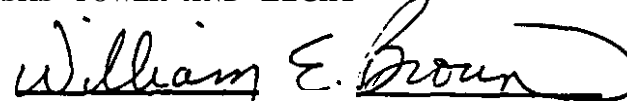
IN WITNESS WHEREOF, the Owners hereto have executed this Amendment No. 4 to the Ownership Agreement: as of the day and year first above written.

ATTEST:

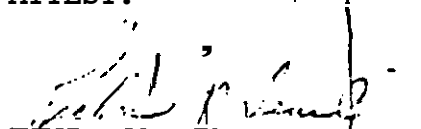


KANSAS POWER AND LIGHT COMPANY

By



ATTEST:



KANSAS GAS AND ELECTRIC COMPANY

By



ATTEST:

CENTEL' CORPORATION

*[Signature]*

By *[Signature]*

ATTEST:

UTILICORP UNITED, INC.

*Ernie Clemente*  
ASSISTANT SECRETARY

By *James F. [Signature]*  
*RP*



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EXHIBIT E

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AMENDMENT NO. 5 TO AGREEMENT  
FOR THE CONSTRUCTION AND OWNERSHIP  
OF JEFFREY ENERGY CENTER  
POTTAWATOMIE COUNTY, KANSAS

among

CENTEL CORPORATION

and

UTILICORP UNITED INC.

and

THE KANSAS POWER AND LIGHT COMPANY

and

KANSAS GAS AND ELECTRIC COMPANY

Dated \_\_\_\_\_, 1991

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**AMENDMENT NO. 5**

**THIS AMENDMENT NO. 5 to Agreement for the** construction and Ownership of **Jeffrey Energy Center** Pottawatomie County, Kansas is made as of the \_\_\_\_ day of \_\_\_\_\_, 199\_\_ by and between the Kansas Power and Light Company, a Kansas corporation, hereinafter referred to as "**KPL**", and **Kansas Gas and Electric Company**, a Kansas Corporation, hereinafter referred to as "**KG&E**", **Centel Corporation**, a Kansas corporation, hereinafter referred to as "**Centel**" and **UtiliCorp United Inc.**, a Delaware corporation, hereinafter referred to as "**UtiliCorp**" (collectively the "**Owners**").

**RECITALS :**

A. The Owners entered into an Agreement for the Construction and **Ownership** of Jeffrey Energy Center, Pottawatomie County, Kansas, dated January 13, 1975 (as amended prior to the date hereof, the "Original ownership Agreement"); and

B. The Owners wish to amend the Original Ownership Agreement including instituting a division of the Project into separate physical parts **and** to record this Amendment to evidence such division.

**AGREEMENT:**

**NOW, THEREFORE**, in consideration of the premises and mutual execution of this Agreement, the parties hereby agree **as follows:**

1. **Amendment.**

A. Section 1 of the original Ownership Agreement is hereby amended by deleting said section in its entirety and inserting in lieu thereof the following:

1. **Definitions.**

(a) "Project" means the entire facility including the Jeffrey Energy Center and the other Elements (including land, buildings and personal property) known as Jeffrey Energy Center coal-fired steam generating plant located near Emmett, Kansas, consisting of Unit Nos. 1, 2 and 3 and 4 (if and when built) ("**Units**") and related facilities.

(b) "Jeffrey Energy Center" consists of the turbine generators, the boilers, structures housing the same, cooling facilities, associated auxiliaries and equipment, pollution control facilities and other property located on the Site and used in connection with any of the foregoing, but specifically excluding the Site, the Transmission Assets, the Remaining Assets and Unit 4. The Jeffrey Energy Center' is hereby severed from the Site and declared to constitute personal property, and not real property.

(c) "Operator" shall mean KPL in its capacity as manager of construction and operation of the Project.

(d) "Owner" shall mean KPL, KG&E, Centel, UtiliCorp (and their permitted successors & assigns) and any party hereto which has acquired an undivided ownership interest in the Project. "Owners" shall mean all Owners unless otherwise indicated by the context. The term "party", as used herein, is not synonymous with the term "owner" and refers to a party to this Agreement whether or not it has acquired an undivided ownership interest.

(e) "Project Agreements" means this Agreement together with the agreement for the operation of the Project, hereinafter referred to as the "Operating Agreement", and such other agreements as the parties deem necessary to the Project and its operation.

(f) "Remaining Assets" consist of those assets described on Exhibit A hereto [Non-MACRS Assets].

(g) "Site" consists of (i) the land described on Exhibit B hereto, together with (ii) all foundations, pilings, footings, groutings, concrete pads or similar supports, concrete floors, trenches and sumps affixed to such land (all of the property described in this clause (ii) being hereinafter referred to as the "Foundations") and (iii) all easements, rights-of-way and other similar rights and licenses in real property.

(h) "Transmission Assets" consist of those assets described on Exhibit C hereto.

(1) "Unit 4" shall mean the personal property constituting Unit 4 of the Facility if and when constructed.

B. Section 2 of the Original Ownership Agreement is hereby amended by deleting said. Section in its entirety and inserting in lieu thereof the following:

2. Ownership of Project. The Project is hereby divided into 5 separate and distinct parts (each of which is referred to as an "Element"), as follows:

1. Site
2. Jeffrey Energy Center
3. Transmission Assets
4. Remaining Assets
5. Unit 4

The Owners are tenants in common in each Element and hold title to each such Element and each part thereof in undivided ownership interests in the following shares:

(a) Site:

<u>Owner</u>	<u>% Undivided Interest,</u>
Centel	8.0%
UtiliCorp	8.0%
KPL	64.0%
KGE	20.0%

(b) Jeffrey Energy Center:

<u>Owner</u>	<u>% Undivided Interest</u>
Centel	8.0%
UtiliCorp	8.0%
KPL	64.0%
KGE	211.0%

(c) Transmission Assets:

<u>Owner</u>	<u>% Undivided Interest</u>
Centel	8.0%
UtiliCorp	8.0%
XPL	64.0%
KGE	20.0%

(d) Remaining Assets:

<u>Owner</u>	<u>% Undivided Interest</u>
Centel	8.0%
Utilicorp	8.0%
KPL	64.0%
KGE	20.0%

(e) Unit 4:

<u>Owner</u>	<u>% Undivided Interest</u>
Centel	8.0%
Utilicorp	8.0%
KPL	64.0%
KGE	20.0%

C. Section 24 of the Original Ownership Agreement is hereby amended by deleting said Section in its entirety and inserting in lieu thereof the following:

24. Code Exclusion. Neither this Agreement (or any amendment thereto) nor any grant, lease or license related thereto shall create any new entity or be construed to create a new entity, such as a partnership, association or joint venture. The owners in each Element have elected under the provisions of Internal Revenue Code Section 761(a) and the regulations promulgated thereunder to be excluded from the application of all provisions of Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986. It is further agreed, (1) the Owners shall take such further action as may be necessary from time to time to maintain such election in effect and to make any similar election under any similar applicable income tax laws; (2) no Owner shall take any action which would result in a termination or revocation of such election; and (3) if the tax laws of the State of Kansas hereafter contain provisions similar to those contained in Subchapter X of chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, under which a similar election is permitted, then if requested by any Owner, the Owners in each Element shall file such evidence as may be necessary to give effect to the election provided in this paragraph.

D. The Original ownership Agreement is hereby amended by adding the following new Section 27:

27. Easement. The owners of the Site hereby grant an easement to the Owners of the other Elements of the Project (and their successors and assigns) to use the Site in connection with the construction, operation, maintenance, improvement or decommissioning of the Project.

2. Miscellaneous. Except as expressly amended and modified hereby, the Original Ownership Agreement shall continue to be, and shall remain in full force and effect in accordance with its terms, and this Amendment No. 5 shall not be deemed to be a waiver of or consent to any modification or amendment of, or any other term or condition of the Original Ownership Agreement. Any reference to "this Agreement" in the Original Ownership Agreement shall mean the Original Ownership Agreement as modified by this Amendment NO. 5 and any other written amendments hereafter. This Amendment No. 5 may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Owners have executed this Amendment No. 5 as of the day and year first hereinabove set forth.

CENTEL CORPORATION

ATTEST :

By \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL)

UTILICORP UNITED INC.

ATTEST :

By \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL)

**THE KANSAS POWER AND LIGHT COMPANY**

**ATTEST :**

By \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL)

**KANSAS GAS AND ELECTRIC COMPANY**

**ATTEST :**

By \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
(CORPORATE SEAL]



Add Notary Provisions

EXHIBIT A

Remaining Assets

[To be provided]

EXHIBIT B

Land Description

[To be provided]

EXHIBIT C

Transmission Assets

[To be provided]

Final

EXHIBIT F

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CONSENT AND ASSUMPTION

among

CENTEL CORPORATION

and

UTILICORP UNITED INC.

and

THE KANSAS POWER AND LIGHT COMPANY

and

KANSAS GAS AND ELECTRIC COMPANY

and

\_\_\_\_\_, as Trustee

\_\_\_\_\_  
Dated \_\_\_\_\_, 1991  
\_\_\_\_\_

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#7

**CONSENT AND ASSUMPTION**

**THIS CONSENT AND ASSUMPTION** is made as of the \_\_\_\_ day of \_\_\_\_\_, 1991 by CENTEL CORPORATION, a corporation organized and existing under the laws of the State of Kansas ("Centel"), UTILICORP UNITED INC., a corporation organized and existing under the laws of the State of Delaware ("UtiliCorp"), **THE KANSAS POWER AND LIGHT COMPANY**, a corporation organized and existing under the laws of the State of Kansas ("KPL"), **KANSAS GAS AND ELECTRIC COMPANY**, a corporation organized and existing under the laws of the State of Kansas ("KGE") and \_\_\_\_\_, a \_\_\_\_\_ corporation, **not** in its individual capacity **but** solely as trustee under the Trust Agreement hereinafter defined [along with its successors and assigns, "Owner Trustee"].

**RECITALS :**

A. Centel, Utilicorp, KPL and KGE are owners of all of the undivided interests in the Elements of the Project.

B. Centel, UtiliCorp, KPL and XGE are parties to that certain Agreement for the Construction and Ownership of Jeffrey Energy Center, dated as of January 13, 1975 (such Ownership Agreement, as supplemented, modified or amended, being referred to herein as the "Ownership Agreement"), which establishes rights and obligations of the parties thereto as owners of undivided interests (each, individually, an "Ownership Percentage" and, collectively, the "Ownership Percentages") in the Elements.

C. The owners of Ownership Percentages also are parties to that certain Agreement for the Operation of Jeffrey Energy Center dated as of June 1, 1978, (the same as supplemented, modified or amended, being referred to herein as the "Operating Agreement"), which establishes their respective rights and obligations with respect to operation of and entitlement to energy and capacity from the Project (the interests of the parties to the Operating Agreement being herein referred to as "Operating Interests").

D. Centel wishes (i) to convey its 8% undivided interest in the Site (the "Site Interest"), the Transmission Assets (the "Transmission Interest"), the Remaining Assets (the "Remaining Asset Interest") and Unit 4, if ever built, to UtiliCorp and (ii) to convey its 8% undivided interest (the "Undivided Interest") in the Jeffrey Energy Center to the Owner Trustee.

E. After the Centel transfers described in paragraph D above, (i) UtiliCorp **desires** to lease the Undivided Interest from the Owner Trustee and (ii) UtiliCorp desires to have the use of the Site Interest, the Transmission Interest and the Remaining Property Interest prior to the Lessor Possession Date (as defined below) **and** to make available (by lease or otherwise) to the Owner Trustee (or its successors or assigns) the Site Interest, the Transmission Interest and the Remaining Interest: from and after the Lessor Possession Date.

F. In connection with the transfers described in paragraphs D and E above, associated Wnership Percentages and Operating Interests will be assigned and assumed to the extent provided hereby.

**AGREEMENT:**

NOW, THEREFORE, each of the undersigned hereby consents and agrees as follows:

**SECTION 1. DEFINITIONS.**

1.1 Definitions. As used in this Consent, the terms defined in the preamble and recitals shall have the respective meanings ascribed thereto in said preamble and recitals, and the following terms shall have the following respective meanings (such definitions to be equally applicable to the singular and plural forms thereof):

"Consenting Owners" shall mean the collective reference to Centel, UtiliCorp, KPL and KGE.

"Lease" shall mean the lease by Owner Trustee, as lessor, to UtiliCorp, as lessee, of the Undivided Interest in form and substance to be agreed upon by Utilicorp and the Owner Trustee.

"Lessor Possession Date" shall mean the earlier of  
(a) the date of expiration or earlier termination of the Lease and  
(b) the date of loss of use or possession by the lessee under the Lease of the Undivided Interest by reason of exercise of remedies of the lessor under the Lease.

"Owner Participant" shall mean the owner or owners from time to time of the beneficial interest under the Trust Agreement.

"Participation Agreement" shall mean the Participation Agreement to be entered into among Owner Trustee, \_\_\_\_\_ as Owner Participant, \_\_\_\_\_, as Loan Participant, \_\_\_\_\_, as Indenture Trustee, and Utilicorp,

pursuant to which the documents to implement the transactions described in paragraphs D-H above (the "Transfer Documents") will be delivered.

"Trust Agreement" shall mean the Trust Agreement dated \_\_\_\_\_, 1991. whereunder Owner Trustee was appointed.

"Trust Estate" shall mean the assets of the trust created by the Trust Agreement.

1.2 Other Definitional Provisions.

1.2.1 The words "hereof," "herein" and "hereunder" and words of similar meaning used in this Consent shall refer to this consent as a whole and not to any particular provision of this consent. Section, subsection, Schedule and Exhibit references contained in this Consent are references to Sections, subsections, Schedules and Exhibits in or to this Consent unless otherwise specified.

1.2.2 Unless otherwise specified herein, terms used herein which are defined in the ownership Agreement and the Operating Agreement shall have the meanings given to them therein.

SECTION 2. CONSENTS.

2.1. Transfers from Centel. Each of the Consenting Owners hereby consents to the following transfers by Centel and waives any rights it may have (including without limitation any rights of first offer) under the Ownership Agreement or the Operating Agreement with respect thereto:

(a) The transfer to Owner Trustee of the Undivided Interest.

(b) The transfer to UtiliCorp of the Site Interest, the Transmission Interest and the Remaining Asset Interest. and the rights and obligations with respect to Unit 4 of the Project if ever built.

(c) The assignment to Owner Trustee of Centel's Ownership Percentage and rights under the Ownership Agreement to the extent, but only to the extent, the same relate to the Undivided Interest (except with respect to Unit 4).

(d) The assignment to owner Trustee of Centel's Operating Interest and further rights under the Operating Agreement, to the extent, but only to the extent, the same relate to the Undivided Interest, and the immediate assignment



of the same by Owner Trustee to UtiliCorp, such latter assignment to UtiliCorp for a term ending on the Lessor Possession Date, (and to UtiliCorp to the extent related to Unit 4).

**2.2 Transfers by UtiliCorp.** Each of the Consenting Owners hereby consents to the following transfers by UtiliCorp and waives any rights it may have (including without limitation any rights of first refusal) under the Ownership Agreement or the Operating Agreement with respect thereto:

(a) The lease from UtiliCorp to Owner Trustee of the site Interest, the Transmission Interest: and/or the Remaining Asset Interest for the entire economic useful life of the Project (or such other transaction or arrangement with respect to the Transmission Interest as may be necessary under the Federal Energy Regulatory Commission ("FERC") rules in order that the Owner Trustee will not be deemed a "public utility" by FERC) .

**2.3 Transfers by Owner Trustee.** Each of the Consenting Owners hereby consents to the following transfers by Owner Trustee and waives any rights it may have (including without limitation any rights of first refusal) under the Ownership Agreement or the Operating Agreement with respect thereto:

(a) The lease by Owner Trustee to UtiliCorp of the Undivided Interest.

(b) The sublease of Owner Trustee's leasehold estate in the Site Interest, the Transmission Interest and/or the Remaining Asset Interest to UtiliCorp at all times prior to the Lessor Possession Date (or such other transaction or arrangement with respect to the Transmission Interest as may be necessary under the FERC rules in order that the Owner Trustee will not be deemed a "public utility" by FERC).

(c) The assignment for collateral purposes of or grant of a security interest by the Owner Trustee in all or substantially all of its interest in the Elements, the Lease, the Ownership Agreement, the Operating Agreement: and all related documents and assets to a trustee (on behalf of one or more lenders) as security for indebtedness of the Owner Trustee, present or future.

**2.4 Documents.** All of the foregoing transfers, assignments, leases and subleases, will be pursuant to agreements the terms and conditions of which will be agreed upon by the parties thereto and no further consent or actions by any of the Consenting Owners is necessary for the execution, delivery or performance thereof,

2.5 Allocation of Rights and Obligations. Each of the undersigned acknowledges that the Transfer Documents effect an allocation between UtiliCorp and Owner Trustee of rights and obligations under the Ownership Agreement and the Operating Agreement. Each of the undersigned acknowledges and agrees that:

2.5.1 Upon delivery of the Transfer Documents, Owner Trustee, as owner of the Undivided Interest, will be a party to the Ownership Agreement as an Owner (as defined in the Ownership Agreement) having an 8% undivided interest in Jeffrey Energy Center and will be entitled to all of the rights and benefits associated therewith. However, prior to the Lessor Possession Date, in accordance with the Lease, UtiliCorp, as lessee under the Lease, will appoint the members of the Owner's Committee and give all consents or approvals and otherwise vote under the Ownership Agreement, in each case with respect to the Undivided Interest: provided further, however, that at all times after notice to the Operator of the occurrence of an Event of Default (as defined in the Lease), stating that such notice is a "Notice of Default" under the Lease, all rights to give consents or approvals or otherwise to vote under the Ownership Agreement arising from the Undivided Interest shall be exercisable only by the Owner Trustee or any permitted assignee.

2.5.2 Upon delivery of the Transfer Documents and continuing until the Lessor Possession Date, UtiliCorp will be a party to the Operating Agreement with respect to the Undivided Interest until the Lessor Possession Date. Accordingly, prior to the Lessor Possession Date, in accordance with the Lease, UtiliCorp will appoint the members of the Fuel Committee and give all consents or approvals and otherwise vote under the Operating Agreement, in each case with respect to the Undivided Interest, provided, however, that at all times after notice to the Operator of the occurrence of an Event of Default (as defined in the Lease), stating that such notice is a "Notice of Default" under the Lease, all rights to give consents or approvals or otherwise to vote under the Operating Agreement arising from the Undivided Interest shall be exercisable only by Owner Trustee or any permitted assignee: and provided further (except as provided in the preceding proviso) that any approval or consent to be given in connection with the Undivided Interest with respect to discharge or replacement of an Operator shall be given jointly by UtiliCorp and Owner Trustee.

2.5.3 UtiliCorp is a party to the Ownership Agreement and the operating Agreement as an Owner having an 8% undivided interest in the Project (in addition to the Undivided Interest). Each of the Consenting Owners will look solely to

UtiliCorp for payment and performance of all indebtedness, obligations and liabilities arising at any time with respect to UtiliCorp's other Ownership Percentage and Operating Interest in the Project and Owner Trustee shall have no responsibility or liability therefor.

2.5.4 Until the Lessor Possession Date, (a) subject to the provisions of subsection 2.5.2, under the Lease, Owner Trustee shall have no control over the operation of the Project and no right to share in any energy or capacity of the Project and (b) under the Transfer Documents or otherwise, Owner Trustee shall have no obligation to pay and no liability for amounts payable under the Operating Agreement. The Consenting Owners shall look solely to UtiliCorp and its successors for payment and performance of all indebtedness, obligations and liabilities arising prior to the Lessor Possession Date with respect to the Operating Interest with respect to the Undivided Interest, and Owner Trustee shall have no responsibility or liability therefor.

2.6 Benefits of Aareement. All representations, warranties, covenants and agreements of each of the undersigned contained in the Ownership Agreement or the Operating Agreement shall inure to the benefit of Owner Trustee to the same extent as if Owner Trustee were originally a party thereto, to the extent that rights and obligations thereunder have been assigned to and assumed by Owner Trustee under the Transfer Documents.

2.7 Clarifications. (a) Each of the Consenting Owners hereby waives any right of first refusal or first offer or other related right it may have under the Ownership Agreement or the Operating Agreement with respect to any transfer or transfers from the Owner Trustee to UtiliCorp or to the beneficiary under the Trust Agreement, of any interest (legal or beneficial) owned, leased, subleased or otherwise possessed by the Owner Trustee in or to all or any portion of the Elements at any time or From time to time after the date hereof.

(b) The parties acknowledge that the language in Section 19 (a) of the Ownership Agreement including "may realize upon such security in foreclosure or other suitable proceedings" shall include the rights of a lender or a lessor (or trustees on their behalf) under a leveraged lease arrangement after a default to take title to the Element or Elements and/or resell such Element or Elements in connection with such default.

(c) The Consenting Owners hereby waive any rights they may have under Section 19 of the Ownership Agreement (including rights of first refusal) in connection with a

transfer by the Owner Trustee of its interests in the Elements after the expiration or earlier termination of the **Lease**.

(d) The parties acknowledge that the restrictions on transfer (including rights of first refusal) under Section 19 of the Ownership Agreement **do not apply to** the transfer of a beneficial interest in a trust which is an Owner of any Element or interest therein.

### SECTION 3. ASSUMPTION OF OBLIGATIONS.

3.1 Ownership Agreement. Owner Trustee hereby assumes and agrees for the benefit of each of the Consenting Owners to pay and perform all liabilities and obligations arising under the Ownership Agreement from and after delivery of the Transfer Documents in connection with the Undivided Interest; provided, however, that the foregoing assumption shall not apply to Unit 4 if and when built (which obligations to the extent they relate to Unit 4 will be the sole responsibility of UtiliCorp).

3.2 Operating Agreement. Owner Trustee hereby assumes and agrees for the benefit of each of the Consenting Owners to pay and perform all liabilities and obligations arising under the operating Agreement in connection with the Undivided Interest, from and after the **Lessor** Possession Date.

3.3 UtiliCorp Liability. UtiliCorp hereby agrees, for the benefit of each of the Consenting Owners, to promptly pay and perform all liabilities and obligations arising out of the Transfer Documents with respect to the ownership Agreement and the Operating Agreement relating to the Undivided Interest. This agreement by UtiliCorp shall continue until all such liabilities and obligations are satisfied and whether or not UtiliCorp is then an Owner under the Ownership Agreement or the Operating Agreement or whether or not UtiliCorp then has any ownership or other interest in the Undivided Interest. The agreements of this subsection 3.3 by UtiliCorp shall survive the expiration or termination of the Lease and/or any or all of the other Transfer Documents between UtiliCorp and others.

### SECTION 4. LIABILITY OF OWNER TRUSTEE.

Each of the undersigned agrees that all payments to be made by owner Trustee under the Ownership Agreement or (**after** expiration or termination of the Lease) the Operating Agreement shall be made only from the Trust Estate. Each of the undersigned shall look solely to the Trust Estate for the payment of any amounts payable by Owner Trustee under the Ownership Agreement or (if any) the Operating Agreement and agrees and confirms that neither the Owner Trustee in its individual capacity nor Owner Participant is or shall be in any way personally liable for any

such amounts. Owner Participant shall have no liability, obligation, responsibility or duty to any of the undersigned whatsoever far or with respect to any of the transactions contemplated by the Ownership Agreement or (after termination of the Lease) the Operating Agreement, whether as a result of the negligence or willful misconduct of the Wner Trustee in its individual capacity or otherwise. If a successor trustee is appointed in accordance with the terms of the Trust Agreement, such successor or other trustee shall succeed to all the rights, duties and obligations of Owner Trustee under the Ownership Agreement or (after termination of the Lease) the Operating Agreement, without necessity of any further act.

#### SECTION 5. GENERAL PROVISIONS.

5.1 Successors and Assigns. This Consent and Assumption shall be binding upon the successors and assigns of each of the undersigned as to their respective Ownership Percentages and Operating Interests in each Element and shall be binding upon and inure to the benefit of Owner Trustee and its successors and assigns.

5.2 Counterparts. This Consent and Assumption may be executed by the parties in any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

5.3 Governing Law. This Consent and Assumption shall be governed by and construed in accordance with the law of the State of Kansas.

5.4 Effect of Consent. Except as provided herein, (i) nothing contained in this Consent and Assumption shall be construed as amending the Ownership Agreement or the operating Agreement or as modifying in any way the rights or obligations of the parties thereto, and (ii) nothing contained in the Transfer Documents shall be construed to modify in any way the rights or obligations of Centel, Utilicorp, KPL and KGE under the Ownership Agreement or the Operating Agreement as between or among the parties thereto.

5.5 Indemnity. As additional consideration for the consent of KPL and KGE given herein, UtiliCorp hereby agrees to indemnify KPL and KGE for any amounts due and owing by the Owner Trustee under the Ownership or Operating Agreement prior to the expiration or earlier termination of the Lease which are not paid on a timely basis by the Owner Trustee. All parties hereto recognize and agree that upon paying an indemnity payment hereunder, Utilicorp will be subrogated to the position held by KPL or KGE as the case may be prior to the payment of such indemnity payment.

SECTION 6. REPRESENTATIONS AND WARRANTIES.

Each of the undersigned represents and warrants to Owner Trustee that:

6.1 Pover and Authority. It has the corporate power and authority to execute this Consent and Assumption.

6.2 Execution, Delivery, Enforceability. This Consent and Assumption has been duly authorized, executed and delivered by it at on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms.

6.3 No Default. To the best of its knowledge, no default under the Ownership Agreement or the Operating Agreement has occurred and is continuing.

6.4 Ownership. It is the owner of the undivided interest in each Element of the Project specified below its name on the signature pages hereto and has not sold, leased or otherwise transferred such interest to any person or entity.

IN WITNESS WHEREOF, the undersigned have executed the within Consent, Amendment and Assumption as of the day and year first hereinabove written.

CENTEL CORPORATION

ATTEST:

By \_\_\_\_\_  
Title: \_\_\_\_\_

Undivided Interest: 8%

UTILICORP UNITED INC.

ATTEST:

By \_\_\_\_\_  
Title: \_\_\_\_\_

Undivided Interest: 8%

\_\_\_\_\_  
\_\_\_\_\_  
(CORPORATE SEAL)

**THE KANSAS POWER AND LIGHT  
COMPANY**

ATTEST :

By \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(CORPORATE SEAL)

Undivided Interest: 64%

**KANSAS GAS AND ELECTRIC COMPANY**

ATTEST:

By \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(CORPORATE SEAL)

Undivided Interest: 20%

\_\_\_\_\_, not in its  
individual capacity, but  
solely as trustee

By \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit D



Note: *Italicized language represents amendments to the Ownership Agreement proposed by the draft Amendment No. 5.*

DRAFT

SUMMARY OF JANUARY 13, 1975 AGREEMENT FOR THE CONSTRUCTION AND OWNERSHIP OF JEFFREY ENERGY CENTER, POTTAWATAMIE COUNTY, KANSAS, as amended by (I) AN AGREEMENT, DATED MAY, 1977 ("FIRST AMENDMENT"), (II) AN AMENDMENT TO AGREEMENT, DATED MAY 24, 1982, ("SECOND AMENDMENT"), (III) AN AMENDMENT NO. 3 TO AGREEMENT, DATED OCTOBER 14, 1982 ("THIRD AMENDMENT"), (IV) AN AMENDMENT NO. 4 TO AGREEMENT, DATED AUGUST 26, 1988 ("FOURTH AMENDMENT") AND (V) AN *AMENDMENT* NO. 5 TO AGREEMENT DATED \_\_\_\_\_, 1991

The Agreement for the Construction and Ownership of the Jeffrey Center, Pottawatomie County, Kansas (the "Ownership Agreement"), sets out the terms of the parties' ownership of the Jeffrey Energy Center (the "Project")<sup>1/</sup> as tenants-in-common. It also describes the duties of KPL (defined below) in constructing and maintaining the Project.

Ownership of Project (52) (Fourth Amendment)

Kansas Power and Light Company ("KPL"), Kansas Gas and Electric ("KGE"), Centel Corporation ("CTU") and Missouri Public Service Company ("MPS") (collectively, the "Owners") own the Project as tenants-in-common in the following percentages:

	<u>Units 1, 2 and 4</u>	<u>Unit 3</u>
KPL	64	64
KG&E	20	0
CTU	8	8
MPS	8	28

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<sup>1/</sup> "Project" means all land, buildings and personal property constituting the generating plant (including Units 1-4) near Emmet, Kansas.

[By Amendment No. 5, the Project is divided into 5 separate and distinct "**Elements**" - Site<sup>2/</sup> Jeffrey Energy Center<sup>3/</sup>, Transmission **Assets**<sup>4/</sup>, Remaining **Assets**<sup>5/</sup> and Unit 4<sup>6/</sup>, Owners (being KPL, KGE, Centel, Utilicorp and their permitted successors and assigns) are tenants-in-common of each Element in the following shares:

Centel	8%
Utilicorp	8%
KPL	64%
KGE	20%]

Transfer of Interests (\$3) Pollution Control Bonds  
(First Amendment)

KPL will submit a schedule of gross costs to KG&E, CTU and MPS and within 30 days of receipt, each party will pay its respective percentage (based on its undivided interest in the Project) of such costs. Upon receipt of such payments as well as evidence of such party's authorization to purchase and own the Project (including a satisfactory legal opinion) KPL will convey to such party its respective undivided interest in the Project. KPL will take such further steps necessary to vest the Owner with its undivided interest in any other rights pertaining to the Project. "**Gross costs**" include site studies, land acquisition costs, ad valorem taxes, construction costs paid by KPL and carrying charges. Each Owner may request that KPL provide sufficient evidences and opinions that such transfer has been made.

Under the First Amendment, the parties may grant rights in the Project site for the purpose of issuing PCRBS provided that such right gives no right to install, remove or operate any part of the Project.

<sup>2/</sup> "Site" means land, foundations etc., and real property easements.

<sup>3/</sup> "Jeffrey Energy Center" means the generator::, boilers, cooling facilities and pollution central facilities used in generating electricity.

<sup>4/</sup> "Transmission Assets" means [transmission lines, substations etc.?)

<sup>5/</sup> "Remaining Assets" means [non-MACRS property?]

<sup>6/</sup> "Unit 4" means [a unit 4 which may be built at separate future time]

Desisn, Ensineerins and Construction Manasement (§4)

KPL as operator of the Project ("Operator") is the Owners' authorized representative for all Project design and construction matters. Owners share all risks of construction in accordance with their ownership percentage. Operator will provide design and construction information to and consult with Owners, but not to the hindrance of work on the Project.

Installation and Completion of Proiect (§5)

Operator (on behalf of itself and Owners) has responsibility and authority for all aspects of Project design and construction. By each October 1, Operator shall submit its construction budget estimates to Owners (plus revisions from time to time) as well as periodic summaries of Project construction costs, supported, if required, by supporting documentation. Owners authorize Operator to execute all construction contracts and Owners are severally liable for the costs of such contracts according to their ownership percentage.

construction (§6)

Project will conform to specifications approved by Owners and will be built under Operator's supervision at reasonable cost. Construction contracts will provide that Unit 1 will be suitable for testing on January 1, 1978 and commercially operable 6 months later. Unit 2 will be suitable for testing on January 1, 1980 and commercially operable 6 months later. Likewise, Units 3 and 4 will be suitable for testing on January 1, 1982 and 1984 respectively, and commercially operable on June 1, 1982 and 1984, respectively, (all such dates being approximate). KPL (on behalf of itself as Owner, as Operator and as agent for Owners) shall supervise construction and attend to tax matters.

construction cost (§7)

All Project acquisition and construction costs will be paid by Owners according to their ownership percentages. Costs incurred for the benefit of individual Owners will be borne by such Owners. Supervision and engineering work performed by Operator's personnel will be evidenced by individual work orders for cost-allocation purposes. Certain administrative costs shall be allocable on a different basis.

Payment of Costs of Proiect (§8)

Owners will establish an imprest bank account in the amount of \$100,000 constituted in proportion to their ownership percentages. Acquisition and construction costs and Owner refunds will be paid from such imprest account. Operator shall

designate bonded signatories on such account, bonding costs to be shared by Owners according to percentage. Each Tuesday, Operator will notify Owners of anticipated construction costs payable during the following week and Owners shall deposit their respective percentages by Friday. Each month Operator will furnish Owners with a schedule of anticipated expenditures. Operator will furnish Owners a year-end summary of outstanding Project commitments.

Operator shall use its regular accounting treatment with respect to the Project unless otherwise agreed. Prior to entry of the Project into commercial use, Owners shall pay operation and maintenance charges in proportion to their ownership percentages and shall pay to the imprest account its percentage of the value of the power generated during this period.

#### **Accountings Reports (§9)**

Operator's accounting shall permit Owners to record their percentages of Project construction costs on their respective books in conformity with Federal Power Commission and state regulatory commission accounting requirements. Operator's books shall be open for inspection by Owners, auditors and governmental authorities. Operator shall furnish monthly construction cost and Project records as well as continuing progress reports as may be requested by Owners. Operator shall also furnish other material reasonably required by Owners. All Project accounting costs shall be shared proportionately by Owners. During construction, Operator shall have a nationally recognized CPA audit the construction accounts with audit results to be furnished to Owners. If any Owner has paid more than its proportionate cost, adjustments will be made. Upon conclusion of construction, any overages are to be refunded to Owners.

#### **Project Asreements (§10)**

If KPL, KG&E, CPU and MIPS becomes an Owner subsequently to the date of the Ownership Agreement, it shall execute all other Project Documents (i.e.: the Operating Agreement and any other such agreements as the parties deem necessary).

#### **Licenses and Permits (§11)**

Owners shall cooperate in procuring all Project licenses and permits. Upon expiration of a license or permit, Owners are to file timely reapplications. Licenses and permits are to be held in tenancy in common.

**Insurance (\$12)**

Operator is authorized to procure at reasonable cost adequate insurance for the construction, operation and maintenance of the Project. Each Owner is to be listed as named insured and loss payee. Coverage shall be for (i) workmen's compensation, (ii) public liability, (iii) all risk physical damage and (iv) other insurance as Operator deems necessary. Premiums shall be allocated according to ownership percentage. After the Project enters commercial operation, any owner may insure its own undivided interest in the Project and will not be liable for its ownership percentage of premium. Operator shall settle insurance claims but may consult with Owners.

**committees (\$13)**

The Owners Committee is established to coordinate and exchange information. The Owners Committee will meet quarterly or at other times upon 10 days written notice to inspect: Project and receive reports on construction operation and maintenance. The Owners Accounting Committee is established to consider accounting matters covered by the Ownership Agreement. It meets quarterly or at other times upon 10 days notice in Topeka. For both Committees, each Owner shall appoint a representative, and identify that representative (and any replacement) to other Owners. The Committee may not modify the Ownership Agreement.. Each Owner will have a vote commensurate with its ownership percentage.

**Damage or Destruction of Project (\$14)**

If the Project is so badly damaged that repair costs substantially exceed insurance proceeds and all Owners do not agree to repair, or if all the Owners agree to abandon the Project, then the Owners controlling more than 50% of the Project shall determine its disposition. Upon settlement of disposal costs, any remaining proceeds shall be proportionately distributed to the Owners. If any Owners elect to rebuild, however, they may buy out the abandoning owners at a price equal to the appraised value of the Project multiplied by the ownership percentage of the abandoning Owners.

If the Project is not so badly damaged and repair costs do not substantially exceed insurance proceeds, the Project shall be repaired (unless all Owners agree otherwise) to the same condition as the original Project, and each Owner shall proportionately contribute to the cost of such repair.

**Liabilities (515)**

Any personal or property loss or damage to any Owner resulting from Project construction not covered by insurance proceeds is a cost proportionately allocable to the Owners. Operator is not liable to any Owner for any design or construction error or delay or any damage to the Project or any other damage arising out of the performance of the ownership Agreement unless due to a deliberate violation of the Agreement by a duly authorized action by Operator's corporate officers or employees.

**Default (§16)**

Each Owner agrees with the others that a default under any Project Document by it will cross-default the Ownership Agreement. If notified in writing of a default by another Owner, the defaulting Owner must perform or pay but may do so under protest. Such protest may be settled by court or arbitration. Owners may exercise judicial and administrative remedies against a defaulting Owner. Owners may cure a money default by another Owner and may recover the amount of their payment plus interest at prime.

In lieu of other remedies, if a default exists for more than one month, the Owners Committee may notify a defaulting Owner that it has five months to remedy the default or have its rights under the Ownership Agreement terminated and forfeit its rights to the capacity and output of the Project. Such rights will be proportionately assumed by the other Owners. Such defaulting Owner shall be liable to the other Owners for all amounts due by it under the Ownership Agreement plus interest plus legal or other expenses incurred by the other Owners, plus liquidated damages in the amount of 25% of the defaulting Owners' net investment in the Project. The defaulting Owner shall transfer its ownership to the other Owners as tenants-in-common free and clear of liens and with appropriate regulatory approvals along with all contracts relating to the Project. Upon any such transfer, the other Owners shall pay to the defaulting Owner in proportion to their respective interests the lesser of (i) such defaulting Owner's net investment upon termination or (ii) the fair market value of the transferred interest minus all amounts owed by the defaulting Owner.

**Uncontrollable Forces (§17)**

Neither Operator nor any Owner shall be liable for a default (except payment defaults by Owners) if caused by uncontrollable forces such act of God or act of the public enemy. Any party so affected shall diligently attempt to remove such inability to perform.

waiver of Right to Partition (§18)

Each Owner jointly and severally agrees that its interest in the Project will be held in tenancy-in-common and while the Project is usable for power generation or until the end of the period permitted by applicable law, the Owners waive the right to partition and the benefit of all laws authorizing partition.

Transfers and Assignments: Secured Interests (§19)

Each Owner may transfer its undivided interest to:

- (i) a mortgagee or trustee as security for indebtedness;
- (ii) a corporation acquiring substantially all the property of the transferring Owner;
- (iii) a corporation merging or consolidating with the transferring Owner;
- (iv) wholly-owned subsidiary of the transferring Owner;
- (v) any third party but on a first refusal basis to the other Owners at a price and on terms no less advantageous than to the third party. Any offer of first refusal shall remain open for at least six months and may be accepted by one or more Owners. Such offer of first refusal must be for the entire undivided interest of the transferring owner;
- (vi) any other person with the written consent of all other Owners.

Any transfer shall be for such Owner's undivided interest in both the Project and the Project Agreements. Transferee must assume the obligations of the transferring Owner under all Project Agreements. Transfers shall not release the transferring Owner of its obligations under the Ownership Agreement unless so agreed by all other Owners.

Obliations several (§20)

The Owners are severally, not jointly, liable for their obligations under the Ownership Agreement. No partnership is created.

Governing Law (§20)

The Ownership Agreement is governed by Kansas law.

successors and Assisns (§21)

Subject to transfer restrictions, any transferee will assume the obligations of the transferring Owner and such obligations will run with the right, title and interest being transferred.

Notices (§22)

Notices shall be in writing and given in person or sent by registered or certified prepaid mail to the president or chief executive officer.

Construction of Additional Generatins units (§23)

An Owner may propose to the Owners' Committee conitruction of additional Units. If the Owners' Committee decides to build, it shall provide Owner with detailed information regarding such Unit. Owners have 180 days from receipt of notice to elect to participate in the new Unit in the same ownership percentage. After such 180 days period, Operator shall inform Owners as to which Owners have declined to participate.

If an Owner decides to acquire any part of the percentage of an Owner declining participation in the proposed Unit, it shall so notify the others within 120 days and specify the maximum percentage it requires. If any percentage remains, it shall be taken by KPL. If participation in an additional Unit differs from the Project, Project participants waive their right to object to the use of Project land by such Unit. Participants in the additional Unit have the right to use and to modify support facilities such as the water system, warehouse, railroad etc. to the extent that such use or modification does not materially interfere with pre-existing Units. An equitable charge shall be levied to compensate non-participants for the use of such facilities based on their net investment. Owners participating in additional Units shall pay their percentage of construction costs and any increase thereof for use of support facilities.

Code Exclusion (§24)

Owners will elect exceptions from Subchapter "K" of Chapter 1 of Subtitle A of the 1954 Code.

[By Amendment No. 5, Owners disavow partnership and elect out of partnership tax treatment under Chapter 1 of Subtitle A of the 1986 Code. Owners shall take steps under state and federal law to preserve *such* disavowal and election.]



**Arbitration (§25)**

Any Owner may request arbitration by notifying other Owners of such request and by describing in detail the matter to be arbitrated. If a sole arbitrator cannot be appointed, the Owners involved in the controversy may request the Chief Judge of the 10th circuit to appoint the arbitrator. If the Chief Judge does not appoint an arbitrator within 15 days, the Owner involved may request the most senior Federal Judge in Kansas to so appoint and if none is so willing, the most senior Kansas Supreme Court Justice who is willing.

The arbitration shall give full force to the Ownership Agreement. The findings and award of the arbitration are conclusive except as such may be modified or corrected by any court in accordance with Kansas law. Failing any apportionment by the arbitrator, his fees and expenses shall be borne equally by the Owners involved in the arbitration. All other costs and expenses shall be borne by the Owner incurring same.

**Entire Understanding (§26) sale by KGE (Second Amendment)**

The Ownership Agreement, as amended from time to time in writing by the Owners, constitutes the entire understanding of the Owners. The Second Amendment provides an exception to this rule by permitting KGE to sell all or any part of its undivided interest in Unit 3 and the real property and common facilities to Unit 3 to any other party on terms and conditions agreed by the Owners.

The Third Amendment provides that KGE will sell MPS the 20% KGE undivided interest in Unit 3 and one third of KGE's undivided interest in the common facilities to Units 1, 2 and 3. In the Fourth Amendment, KPL, KGE, Centel and MPS consent to the sale by KGE to MPS and the resale by KGE to MPS of Unit 3 pollution control facilities.

**Easement (§27)**

Site Owners grant an easement to Owners of the other Elements in connection with the operation and maintenance of the Project.]

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