

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

Before Commissioners: Mark Sievers, Chairman
 Ward Loyd
 Thomas E. Wright

In the Matter of the 2011 Wolf Creek)
Decommissioning Cost Study as Provided by)
Wolf Creek Nuclear Operating Corporation on) Docket No: 12-WCNE-136-GIE
August 31, 2011 in Accordance with the)
Commission's Order in Docket Number)
163,561-U on December 9, 1992.)

ORDER APPROVING STIPULATION AND AGREEMENT

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The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised in the premises, the Commission makes the following findings and conclusions:

I. Background Information

1. On August 31, 2011, Wolf Creek Nuclear Operating Corporation (WCNOC) filed its 2011 Decommissioning Cost Analysis (Decommissioning Report) with the Commission in accordance with the Commission's December 9, 1992 Order in Docket No. 163,561-U, which directed the filing of Wolf Creek decommissioning cost study updates every three years after September 1, 1993. WCNOC stated that the filing was made on behalf of Kansas Gas and Electric Company (Westar), Kansas City Power & Light Company (KCP&L), and Kansas

Electric Power Cooperative, Inc. (KEPCo). WCNOC noted that there are emerging issues concerning whether the federal government will be able to remove all spent fuel from the Wolf Creek site before the plant is decommissioned.¹ The estimated final shutdown date of the Wolf Creek facility, which is established by the expiration of Wolf Creek's license, is March 2045.²

2. The Commission granted intervention to the following parties: the Citizens' Utility Ratepayer Board (CURB), Westar, KCP&L, and KEPCo.

3. The Commission has jurisdiction over any licensee operating a nuclear power generating facility located in the state.³

II. Standard of Review

4. The Commission has evaluated the evidence in the record as a whole regarding the proposed Stipulation and Agreement (S&A) in light of the following standard of review. The Commission has previously recognized its authority to approve settlements containing final terms that have been agreed to by the parties, but that do not reveal how these terms were reached.⁴

5. The law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith that settles the dispute.⁵ When adopting a settlement, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates, and that the settlement is in the public interest.⁶ The

¹ Application, August 31, 2011 (Application).

² Application, Decommissioning Cost Analysis, August 31, 2011, Section 1, page 1.

³ K.S.A. 66-128/ et seq.

⁴ Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS, May 12, 2008, paragraphs 9-10 (08-280 Order, ¶¶ 9-10).

⁵ *Krantz v. University of Kansas*, 271 Kan. 234, 241-42, 21 P.3d 561, 567 (2001).

⁶ *Citizens' Utility Ratepayer Board v. State Corp. Comm'n*, 28 Kan.App.2d 313, 316, 16 P.3d 319, 323 (2000), *rev. denied* March 20, 2001.

Commission has historically reviewed stipulations and agreements under a previously-established five-factor test that parties routinely utilize when presenting a settlement for consideration. The five-factor test does not relieve the Commission of its duty to make a determination that rates are “just and reasonable” and that the results of a stipulation and agreement are in the public interest, which requires the Commission to carefully analyze the issues. The factors considered in deciding whether a stipulation and agreement should be approved are:

1. Was there an opportunity for the opposing party to be heard on the reasons for opposition to the stipulation and agreement?
2. Is the stipulation and agreement supported by substantial competent evidence in the record as a whole?
3. Does the stipulation and agreement conform with applicable law?
4. Does the stipulation and agreement result in just and reasonable rates?
5. Are the results of the stipulation and agreement in the public interest, including the interest of the customers represented by the parties not consenting to the agreement?⁷

III. Stipulation and Agreement

A. Background

6. The parties discussed settlement of this docket, and following negotiations, entered into a S&A for the purpose of determining a reasonable estimate of the Wolf Creek Generating Station decommissioning costs to be used in addressing accrual levels of the respective owner utilities’ decommissioning trust accounts and the appropriate escalation rate.⁸ WCNOC, Westar, KCP&L, KEPCo, and Commission Staff (Joint Movants) joined the S&A. Although CURB is not a signatory to the S&A, CURB advised the Joint Movants it did not

⁷ 08-280 Order, ¶ 11.

⁸ Stipulation and Agreement, April 2, 2012, paragraph 4 (S&A, ¶ 4).

oppose the S&A.⁹ CURB did not file an objection to the S&A, as set forth in K.A.R. 82-1-230a(c).

7. The Joint Movants requested the Commission waive the evidentiary hearing initially scheduled for April 18, 2012.¹⁰ The Prehearing Officer modified the procedural schedule to cancel the evidentiary hearing.¹¹

8. The Joint Movants requested the Commission admit into the record the 2011 Decommissioning Cost Analysis performed by TLG Services, Inc., and the prefiled testimony of: (1) Gregg N. Clizer (Clizer) for WCNO, Westar, KCP&L, and KEPCo, filed December 21, 2011; (2) Adam H. Gatewood (Gatewood) for Staff, filed February 21, 2012; (3) Michael J. Wegner (Wegner) for Staff, filed February 21, 2012; and (4) William A. Cloutier, Jr. (Cloutier) for WCNO, Westar, KCP&L, and KEPCo, filed March 21, 2012.¹² Based upon the parties' agreement, the Commission finds that all prefiled testimony, as listed above, and evidence, including the 2011 Decommissioning Cost Analysis, shall be admitted and incorporated into the record by this Order. The prefiled testimony will provide substantial competent evidence and a sufficient basis for the Commission to review the S&A.

B. Provisions of the S&A

9. The S&A stated that the parties in the docket have agreed that a reasonable estimate of the decommissioning costs for Wolf Creek is \$630,135,000 in 2011 dollars.¹³ The S&A further provided that the escalation rate shall be set at 2.85%.¹⁴ These figures will be used

⁹ S&A, ¶ 3.

¹⁰ Joint Motion to Approve Stipulation and Agreement and to Dismiss the Evidentiary Hearing in this Docket, April 2, 2012, paragraph 11 (Joint Motion, ¶ 11).

¹¹ Prehearing Officer Order Modifying Procedural Schedule, April 12, 2012.

¹² Joint Motion, ¶¶ 10-11.

¹³ S&A, ¶ 5.

¹⁴ S&A, ¶ 6.

in separate dockets to set an accrual level for each company's Decommissioning Trust Account.¹⁵

10. WCNOC, on behalf of Westar, KCP&L, and KEPCo, agreed in the S&A to file periodic reports with the Commission at least every six months, beginning six months from the date of the Commission's Order in this docket, to update the status of pending lawsuits as well as the status of the Nuclear Waste Fund resulting from the Nuclear Waste Policy Act of 1982 and administered by the U.S. Department of Energy.¹⁶ The Joint Parties agreed that the 2014 review of Wolf Creek decommissioning costs will include a discussion of the nuclear waste storage issues raised by the Applicants in Appendix E to the 2011 Wolf Creek Decommissioning Cost Analysis in this docket.¹⁷ The Joint Parties also agreed that development of costs for the ENTOMB alternative, as initially suggested by Staff in Direct Testimony, would not serve the public interest.¹⁸ The S&A in its entirety is attached to this Order as Attachment 1.

C. Evaluation of the S&A

11. The Commission evaluates the S&A by reviewing the five criteria previously identified in determining whether a specific settlement reached by the parties should be approved. Each criterion will be considered separately.

1. *Was there an opportunity for the opposing party to be heard on the reasons for opposition to the S&A?*

12. WCNOC, Westar, KCP&L, KEPCo, and Staff all support the S&A. While CURB did not sign the S&A, it does not oppose it.¹⁹ The record shows that no parties oppose

¹⁵ S&A, ¶ 5.

¹⁶ S&A, ¶ 7.

¹⁷ S&A, ¶ 8.

¹⁸ S&A, ¶ 9.

¹⁹ S&A, ¶ 3.

the S&A. The Commission finds that there was an opportunity for all parties to be heard on the S&A, and no parties object to the S&A.

2. *Is the S&A supported by substantial competent evidence in the record as a whole?*

13. Substantial competent evidence is that which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved.²⁰ The focus of the Commission's inquiry is on the S&A and evidence in support of the agreement.

14. This Order has listed names of witnesses submitting prefiled direct and rebuttal testimony that, as a whole, supported the parties' positions. Witness Clizer testified that the current decommissioning cost estimate of \$630,135,000 is based on a study performed by TLG dated August 2011.²¹ Clizer recommended the cost escalation rate of 2.85% per year, and provided a thorough description of the indices and formula he utilized as a basis for his recommendation.²² Staff witness Gatewood testified that the escalation rate is a reasonable forecast, because it includes cost drivers of decommissioning that are specific to Wolf Creek and are taken from the decommissioning cost analyses prepared by TLG Services, Inc., which has performed all studies for Wolf Creek.²³ The five cost drivers are labor, equipment and materials, energy, burial costs, and other materials.²⁴ Staff witness Wegner testified in support of the cost estimate provided in the Application.²⁵ Witness Cloutier testified to support the decision of the

²⁰ *Kansas Gas and Electric v. State Corp. Comm'n*, 14 Kan.App.2d 527, 531-32 (quoting *Southwestern Bell Tel. Co. v. State Corp. Comm'n*, 4 Kan.App.2d 44, 46, 602 P.2d 131 (1979), rev. denied January 29, 1980).

²¹ Direct Testimony of Gregg N. Clizer, December 21, 2011, page 3 (Clizer Direct, p. 3).

²² Clizer Direct, pp. 4-6, and Schedule GNC-3.

²³ Direct Testimony Prepared by Adam H. Gatewood, February 21, 2012, page 2 (Gatewood Direct, p. 2).

²⁴ Application, Section 3, p. 18, Table 3.1; Clizer Direct, p. 4; Gatewood Direct, p. 2.

²⁵ Direct Testimony of Michael J. Wegner, February 21, 2012, page 4.

Joint Parties not to include a cost estimate for the ENTOMB alternative in the next decommissioning study.²⁶

15. All prefiled testimony has been admitted as part of the record, and the Commission has reviewed and considered all such testimony, including materials referenced and incorporated in such testimony. The Commission finds that the S&A is supported by substantial competent evidence in the record as a whole.

3. *Does the S&A conform with applicable law?*

16. As set forth above, the law generally favors compromise and settlement of disputes between parties when they enter into an agreement knowingly and in good faith that settles the dispute.²⁷ The Commission has jurisdiction over any licensee operating a nuclear power generating facility located in the state, and clearly has authority to approve a S&A.²⁸

17. The Commission has reviewed the decommissioning statutes, as set forth in K.S.A. 66-128l through K.S.A. 66-128p, and finds no provision of the S&A that is in violation of these laws. The Commission has carefully examined its authority and the legal standards that apply in this proceeding and its rules and regulations. After a review of the S&A made between the parties, the Commission concludes the S&A conforms to applicable law.

4. *Does the S&A result in just and reasonable rates?*

18. The Joint Movants stated that approval of the S&A in this docket will not have an immediate effect on rates charged to Kansas customers, and that rate impact will not occur until each owner company files its individual rate case where the new decommissioning accrual will be included in their revenue requirement.²⁹ Staff witness Gatewood noted that each of the Wolf

²⁶ Rebuttal Testimony of William A. Cloutier, Jr., March 21, 2012.

²⁷ *Krantz*, 271 Kan. at 241-42.

²⁸ K.S.A. 66-128l et seq.

²⁹ Joint Motion, ¶ 8.

Creek owners would calculate their respective annual payment to their decommissioning trust fund using the \$630,135,000 estimate and the 2.85% annual cost escalation rate, and Staff will evaluate each of the proposed funding plans in Phase Two of the investigation.³⁰

19. The Commission finds this factor is not applicable in this docket, because rate settlement is not at issue at this time, and will be examined in Phase Two.

5. *Are the results of the S&A in the public interest, including the interest of customers represented by any party not consenting to the agreement?*

20. The Commission recognizes that this factor is a function of those factors preceding it, and therefore the findings and conclusions supporting those factors are relevant here. The S&A yields other results providing additional benefit to all parties' interests. For example, there is a benefit of stemming potentially protracted litigation thereby promoting administrative efficiency, a well-settled public policy goal.³¹

21. The Joint Movants stated that each party to the proceeding has a duty to protect the interests of the party it represents: the companies have a duty to their customers and shareholders; CURB represents the interests of residential and small commercial customers; and Staff weighs and balances the interests of the companies, utility customers, and the public interest generally. The Joint Movants represented to the Commission that the S&A represents an equitable balancing of the interests of all parties that is in the public interest.³²

22. The Commission has reviewed the S&A and finds that approval of the S&A is in the public interest.

³⁰ Gatewood Direct, pp. 4-5.

³¹ *Bright v. LSI Corp.*, 254 Kan. 853, 858 (1994).

³² Joint Motion, ¶ 9.

IV. Further Examination of Pending Issues

23. The Commission finds there are issues surrounding spent fuel, the building of a federal repository, and the status of the Nuclear Waste Fund that remain unanswered at this time, due to pending lawsuits challenging the U.S. Department of Energy's action of continuing to charge a federal nuclear waste disposal fee. The Commission intends to open a docket setting forth questions directed to WCNOG and its owners about these and related issues, which will include, at a minimum, questions concerning the pending lawsuits and appeals, the status of the Nuclear Waste Fund, and issues surrounding the removal of spent fuel. The Commission directs WCNOG to file its periodic reports to the Commission, as agreed to by the parties and set forth above in paragraph 10, in the new docket when it is opened. In this new docket, Commission may require that Staff act in an advisory role to the Commission, rather than as a party to the proceeding.

V. Findings and Conclusions

24. After a review and consideration of the evidence in the record, the Commission finds that the requirements of K.S.A. 66-1280 have been met for purposes of this review of the decommissioning financing plan. Specifically, the Commission finds that the estimated date to close the Wolf Creek facility is March 2045. The Commission finds that the \$630,135,000 in 2011 dollars is a reasonable estimate of the decommissioning costs. The Commission further finds that the escalation rate of 2.85% is reasonable. Commission Staff reviewed the decommissioning cost estimate and annual cost escalation rate and found the method selected for estimating the cost was reasonable, and the Commission adopts its Staff's finding. The Commission finds that the adequacy of plans for financing the decommissioning and any

shortfall resulting from a premature closing will be addressed in Phase Two of these proceedings.

25. The Commission directs the parties to file their separate dockets for Phase Two of these proceedings within 45 days of this Order and utilize the figures approved in this Order to set an accrual level for each company's Decommissioning Trust Account. The Commission acknowledges that KCP&L has a rate case pending before the Commission in Docket No. 12-KCPE-764-RTS (12-764 Docket). The Commission directs KCP&L to set its accrual level for its Decommissioning Trust Account in the pending 12-764 Docket, rather than in a separate docket as set forth above in this paragraph.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Commission approves of the Stipulation and Agreement. The Commission directs the parties to file their separate dockets within 45 days of this Order and utilize the figures approved in this Order to set an accrual level for each company's Decommissioning Trust Account. The Commission acknowledges that KCP&L has a rate case pending before the Commission in Docket No. 12-KCPE-764-RTS (12-764 Docket), and directs KCP&L to set its accrual level for its Decommissioning Trust Account in the pending 12-764 Docket, as set forth above.

B. The Commission intends to open a docket setting forth questions directed to WCNO and its owners which will include, at a minimum, questions concerning pending lawsuits and appeals, the status of the Nuclear Waste Fund, and issues surrounding the removal of spent fuel. The Commission directs WCNO to file its periodic reports to the Commission, as agreed to by the parties and set forth above in paragraph 10, in the new docket when it is opened.

C. The Commission orders service of this Order be made by electronic mail, with a note that no hard copy of this Order will follow. K.S.A. 77-607(b)(2). Parties have 15 days from the date of electronic service of this Order in which to petition the Commission for reconsideration. K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529(a)(1).

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

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chairman; Loyd, Commissioner; Wright, Commissioner

Dated: MAY 16 2012


ORDER MAILED MAY 16 2012

Patrice Petersen-Klein
Executive Director

mrd

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

In the Matter of the 2011 Wolf Creek)
Decommissioning Cost Study as Provided by Wolf)
Creek Nuclear Operating Corporation on August 31,) Docket No. 12-WCNE-136-GIE
2011 in Accordance with the Commission's Order in)
Docket Number 163,561-U on December 9, 1992)

STIPULATION AND AGREEMENT

This Stipulation and Agreement ("Stipulation") is entered into by and between the Staff of the State Corporation Commission of the State of Kansas ("Staff" and "Commission," respectively), Wolf Creek Nuclear Operating Corporation ("Wolf Creek"), Kansas Gas and Electric Company d/b/a Westar Energy ("Westar"), Kansas City Power & Light Company ("KCP&L"), and Kansas Electric Power Cooperative, Inc. ("KEPCo") (collectively referred to as the "Parties").

1. On August 31, 2011, Wolf Creek filed its 2011 Decommissioning Cost Analysis for the Wolf Creek Generating Station, in accordance with the Commission's December 9, 1992 Order in Docket No. 163,561-U. The December 9, 1992 Order directed the filing of a decommissioning cost study every three years after September 1, 1993.

2. Westar, KCP&L, KEPCo, and CURB each filed petitions to intervene in the above-captioned proceeding, which were granted by the Commission.

3. On March 27, 2012, the Parties and the Citizens' Utility Ratepayer Board ("CURB") held a conference call to discuss settlement of the issues in this docket. The terms of the resulting Stipulation are set forth below. CURB has advised the Parties that it does not oppose the Stipulation; however, CURB is not a signatory to the Stipulation.

I. TERMS OF THE STIPULATION

4. This Stipulation is entered into for the purpose of determining a reasonable estimate of the Wolf Creek Generating Station decommissioning costs to be used in addressing accrual levels of the respective owner utilities' Decommissioning Trust Accounts.

5. The cost for decommissioning funding is agreed to be \$630,135,000 in 2011 dollars as set forth in the Decommissioning Cost Analysis for the Wolf Creek Generating Station filed in this docket on August 31, 2011, which is hereby incorporated by reference. This amount will be used by Westar, KCP&L, and KEPCo in their respective proposals for setting an accrual level for each company's Decommissioning Trust Account. This will be done in individual dockets, separate from the instant docket.

6. Westar, KCP&L, and KEPCo agree to use an escalation rate of 2.85% per year to escalate the 2011 decommissioning cost estimate of \$630,135,000 from 2011 dollars to the appropriate dollar amount in the year that the decommissioning costs will occur.

7. Wolf Creek, on behalf of Westar, KCP&L, and KEPCo, agrees to file with the Commission periodic reports in this docket at least every six months, beginning six months from the date of the Commission's Order approving this Stipulation, updating the status of the pending lawsuits *National Association of Regulatory Utility Commissioners; Nuclear Energy Institute, et al. v. US. Department of Energy and United States of America, United States Court of Appeals for the District of Columbia Circuit, Case Nos. 11-1066 and 11-1068* as well as the status of the Nuclear Waste Fund resulting from the Nuclear Waste Policy Act of 1982 and administered by the Department of Energy.

8. The Parties agree that the next triennial report due in 2014 for review of Wolf Creek decommissioning costs will include a discussion of the status of the nuclear waste storage

issues raised by the applicants in Appendix E to the 2011 Wolf Creek Decommissioning Cost Analysis filed in this docket. Additionally, the Parties agree to include discussion of these storage issues in their semi-annual reporting noted in paragraph 7 above to the extent that decisions in the referenced lawsuits lead to more fully developed plans regarding such storage.

9. The Parties have further reviewed and discussed the development of costs for the ENTOMB alternative for the Wolf Creek nuclear generating plant. The Parties agree that development of the cost for this alternative would not serve the public interest. The next Wolf Creek Decommissioning Cost Analysis set to be filed by September 1, 2014 will only address cost development of the DECON and SAFSTOR alternatives.

10. The Parties have pre-filed the testimony and schedules of the following witnesses, which supports the terms of the Stipulation:

- Gregg Clizer for Wolf Creek, KCP&L, Westar, and KEPCo.
- Michael Wegner for Staff.
- Adam Gatewood for Staff.
- William A. Cloutier, Jr. for Wolf Creek, KCP&L, Westar, and KEPCo.

The Application also included the 2011 Decommissioning Cost Analysis performed by TLG Services, Inc., which cost study is the primary subject of this docket.

II. RESERVATIONS

11. Except as specified in this Stipulation, none of the Parties to the agreement shall be deemed to have approved or acquiesced in any question of the Commission authority, decommissioning methodology, rate making principle, valuation methodology, cost of service methodology or determination, rate design methodology, or cost allocation that may underlie this Stipulation.

12. This Stipulation fully resolves issues specifically addressed in this proceeding [or docket] between the Parties. The terms of this Stipulation constitute a fair and reasonable resolution of the issues addressed herein.

13. The terms and provisions of this Stipulation have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve and adopt the terms of the Stipulation in total, any party has the option to terminate this Stipulation and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the agreements or provisions hereof, unless otherwise provided herein.

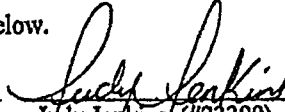
14. If the Commission accepts this Stipulation in its entirety and incorporates the same into its final order in this docket, the Parties intend to be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's order on those issues.

15. If the Commission accepts this Stipulation in its entirety and incorporates the same into its final order in this docket, Parties agree to waive their rights to cross-examination of witnesses, right to present oral argument and written briefs pursuant to Commission rules, and right to judicial review pursuant to Kansas law. This waiver applies only to those matters explicitly addressed by this Stipulation.

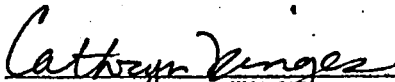
16. This Stipulation may be executed in counterparts and all so executed shall constitute one and the same instrument binding on all parties, each of which shall be fully effective as an original.

17. The Stipulation shall be binding on all Parties upon signing.

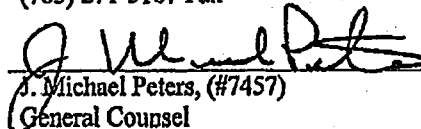
IN WITNESS HERETO, the Parties have executed and approved this Stipulation effective by subscribing their signatures below.



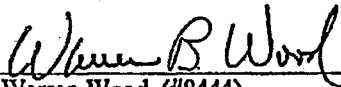
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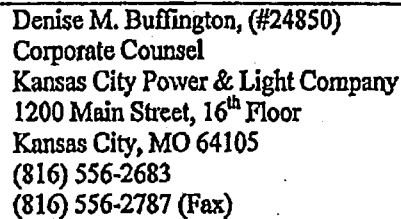
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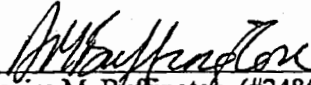
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Chairman Sievers:

I write this separate opinion to express my views about stipulations generally and, in this matter in particular, the use of a stipulation and agreement to effectively preclude the Commission from making an informed decision about the matters brought before it.

At a high level, the Commission is not a court charged with resolving disputes between the parties. It is an inquisitorial, fact-finding agency charged with gathering sufficient facts to satisfy its statutory obligations, which often boil down to determining what's just and reasonable and in the public interest. Agreements between litigants may be an appropriate means of settling traditional litigated disputes, but poorly suited to aid in fact-finding and a public interest determination.

The Commission is frequently presented with stipulations and agreements and encourages parties to reach consensus and resolve their disputes. Stipulations presented to the Commission are often "black box" agreements where the proposal is presented as a compromise and the parties represent it as something that mitigates their litigation risk if the matter had proceeded to hearing.

In this case, the stipulation is for the purpose of determining a reasonable estimate of Wolf Creek decommissioning costs to be used in addressing accrual levels of the respective owner utilities' decommissioning trust account and the appropriate escalation factor (inflation rate). It is between the owners of the Wolf Creek facility and the Commission's Staff, with CURB agreeing not to object to the stipulation. It is a "black box" stipulation with agreement on two numbers -- \$630,135,000 in decommissioning costs and an escalation rate of 2.85%. The parties also agreed that any development of costs associated with the ENTOMB alternative would not be in the public interest.

The Commission is in the awkward position of being presented with an agreement that its own staff entered into independent of input or direction from the Commission and where the Staff must now support the agreement before the Commission. The Commission then has no insight, analysis or input into the trade-offs its own staff made in reaching the settlement. Essentially, the Commission's staff becomes just another party litigant appearing before the Commission. If the Commission is uncomfortable with a "black box" agreement proposed by its Staff, it is forced to disapprove the stipulation and ask marginally-informed questions on the fly from the bench.

Historically, the Commission uses a five-factor test to examine stipulations, which it developed in a 2008 Atmos rate case and discussed above in this Order. It is precedent that is, in my opinion, ill suited to the public policy issues presented in this case and the statutory review the Commission must undertake. Said differently, it inhibits the proper statutory focus and an efficient inquisitorial, fact-finding role of the Commission.

For example, in this matter, the Commission's basic statutory duty under K.S.A. 66-128o, is explicitly defined, below:

- (a) [The Commission] shall, at least every five years until the facility's closing ... review the [decommissioning] financing plan to assess its adequacy... The review shall include, but not be limited to, the following considerations: (1) The estimated date of closing the nuclear power generating facility; (2) the estimated cost of decommissioning; (3) the reasonableness of the method selected for cost estimate purposes; and (4) the adequacy of plans for financing the decommissioning and any shortfall resulting from premature closing.
- (b) The commission, after conducting a review under subsection (a), may, after a hearing ... order such changes in the decommissioning plan as it deems necessary to make the plan comply with the provisions of subsection (b) of K.S.A. 66-128n and amendments thereto.

The five-factor Atmos test is disconnected with this statutory standard. Shouldn't the Commission be making the specific evidentiary findings specified in 66-128o(a) rather than the Atmos five-factor test? That's one of the problems with using the precedential Atmos standard – the parties focus on the five factors and lose sight of the applicable statutory standard. The statutory standard also seems to envision a hearing if the Commission finds any deficiencies in the plan. But, contrary to the statutory intent, “black box” stipulations envision the elimination of a hearing because all the parties agree not to question one another.

I wish to emphasize three additional points:

First, simply because the parties agree does not relieve the Commission of its independent obligation to make a determination, based on the facts in the record, of whether the proposal comports with the law, the rates are just and reasonable¹ and the proposed settlement is in the public interest. Nor does a stipulation bind the Commission to the agreement of the parties. The Commission's rules state that a stipulation is simply another piece of evidence to be weighed by the Commission in making its determination. K.A.R. 82-1-228(e)(3).

Second, the Commission must make its decisions, including decisions about whether to accept or reject a proposed stipulation, based on the record evidence, which requires factual showings to support the conclusions that the resulting rates are “just and reasonable” and the proposal is in the public interest. There must be factual record evidence that supports the Commission's conclusion beyond the assertions of the witnesses who offer testimony in support of a stipulation. But, when all the parties agree, the reality is that no evidence is presented other than the unchallenged prefiled testimony and broad conclusions from witnesses that the terms of a stipulation are “in the public interest” or “just and reasonable.” The party litigants simply repeat the rote of the Atmos test and when its Staff agrees with a stipulation, the Commission is left dangling with no one to consult with or advise it about the reasonableness of the stipulation or the trade-offs its own Staff made.


¹ In this case, the future decommissioning costs are used to establish rates by the owners in later proceedings, so while the number we pick does not immediately affect retail prices, it will eventually be reflected in rates.

Third, in this matter in particular, this is a stipulation and agreement that deals with a very important public policy matter. This is a \$630 million case that deals with the decommissioning costs of a nuclear power plant with a 60-year life span in an environment where the predictability of future institutions is volatile and the potential for public harm is great if the Commission gets it wrong. For example,

1. What are the foreseeable regulatory risks over 30+ years? The federal government has failed for 30 years to establish a nuclear waste repository and recently reversed its decision on the use of the Yucca Mountain facility as a waste repository. The federal government created a fund to create the repository and collected more than \$31 billion in fees, but, in spite of court orders, has refused to release the money. Given that political history, it seems reasonable to assume that one possibility is that the federal government will not approve a waste repository in the next 30 years and decommissioning will require building a structure in Kansas to contain spent fuel for centuries. How would such a project be funded? Yet, the parties to the stipulation – including the Commission’s Staff – concluded that inquiring into the ENTOMB alternative was not in the public interest and developed cost estimates using only the DECON and SAFSTOR cost alternatives.
2. What are the environmental regulatory risks? The EPA is aggressively pursuing standards and policies aimed at coal-fired plants and 67% of Kansas electric power is generated with coal-fired facilities. Could Wolf Creek be placed in a “must run” situation where it must operate to meet the needs of its owners who are forced to curtail coal-fired facilities and, thus, reduce ordinary maintenance now a routine part of Wolf Creek’s annual operations? Will that affect longevity of the plant? How do the EPA’s proposed 316(b) rules dealing with cooling waters used by power plants affect Wolf Creek? Do they affect the economics of the plant and its projected economic operating life?
3. What are the reasonably foreseeable financial risks? We live in a world of excessive and unsustainable government spending/debt. Historically, as a consequence of debt, governments with large debt levels have tended to devalue their currency (inflation), and the United States has experienced such episodes in my lifetime. The long term US inflation rate has been well above 3% (1911-2011). Looking back 30 years (1971-2011), the average inflation rate (as measured by CPI-U) was 4.4%, and in excess of 3.5% in 19 of those 30 years. Given that, why is the recommended 2.85% inflation rate a reasonable forecast for the next several decades? See K.S.A 66-128o(a)(2). In addition, if the federal government experiences financial distress in the decades to come and, in order to control spending, declines to adequately fund the Corps of Engineers and maintenance of Wolf Creek reservoir, does that have potential adverse implications for the economic life of the plant and what contingency plans have been developed to address such a possibility? See K.S.A. 66-128n(b)(4)
4. What are the operational risks over 30+ years? Wolf Creek was out of service during the first quarter of 2012 due to a loss of outside power. The incident was investigated and several items were noted by the investigators that could implicate the life and efficiency of the plant and, thus, the time horizon for decommissioning. Specifically,

- a. How does the water hammer event and a 5 gpm leak inside containment noted by the investigators potentially affect the life of the plant? Does it indicate premature wear on essential systems in the plant?
 - b. Likewise, the investigators noted pipe wall-thickness issues. Does that indicate premature deterioration that affects the life of the plant?
 - c. What is the age and condition of the outside plant serving Wolf Creek? Does the fact that a single breaker failure on outside plant imply that the operation of Wolf Creek depends critically on outside plant and that as those outside plant facilities age and fail, the economic life of the plant is affected? Could the shut down in 2012 been avoided by additional transmission facilities connected to the plant?
 - d. In 2010, the Nuclear Regulatory Commission published a report that concluded that the risk of a core damaging earthquake at Wolf Creek is 1 in 55,556. Is that number correct? Is it a significant risk over a 30-year time frame? What is the margin of error around that figure? Does it affect the plant's life? How is it factored into the projected decommissioning costs?
5. What are the obsolescence risks? Deployment of small modular reactors are being considered in Missouri and Iowa as cost effective substitutes for large nuclear power plants. How do the economics of small modular reactors, and reasonable forecasts of the costs of such alternatives, compare with Wolf Creek's expected economics over the next several decades? For example, if, over the next decade, small modular reactors proved to be 30% less costly than operating Wolf Creek, would that shorten the expected economic life of the plant with implications for decommissioning costs?

For these reasons, I support opening a separate proceeding to allow the Commission to ask questions rather than be bound by the agreement the parties reached and restricted from meaningfully consulting with its own Staff. The parties who participated in this matter, including the Commission's staff, may be comfortable with the agreement they reached, but I believe the Commission has an obligation to do more than simply vote on a "black box" settlement with no personal inquiry. Further, I have asked that, in the new proceeding, Staff serve in a strictly advisory role rather than in a party litigant role in order to advise the Commission rather than just reach a settlement with the other parties. Unfortunately, while I would have preferred to address these issues in this proceeding, opening a new, separate proceeding seems to be the only option available to the Commission.



Mark Sievers, Chairman

CERTIFICATE OF SERVICE

MAY 16 2012

12-WCNE-136-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Order Approving Stipulation and Agreement was served by electronic mail this 16th day of May, 2012, to the following parties who have waived receipt of follow-up hard copies:

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CERTIFICATE OF SERVICE

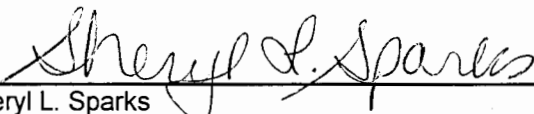
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