

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

August 2, 2001

CASE NO: EM-2001-464

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Enclosed find certified copy of a Dissenting Opinion in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

THE PUBLIC SERVICE COMMISSION
THE STATE OF MISSOURI

In the Matter of the Application of Kansas City Power)
& Light Company for an Order Authorizing Its Plan)
to Reorganize Itself Into a Holding Structure.)

Case No. EM-2001-464

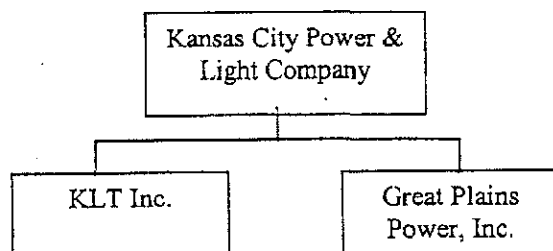
Dissenting Opinion of Commissioner Steve Gaw

Kansas City Power & Light Company requests the approval of this Commission to reorganize its corporate structure so that its wholly-owned subsidiary, Great Plains Power, would become a sister corporation of Kansas City Power & Light and Kansas City Power & Light would become a subsidiary of Great Plains Energy, presently Kansas City Power & Light's subsidiary. The purpose of Great Plains Power will be to engage in the unregulated sale of electricity in the wholesale market, with no duty or obligation to the customers of Kansas City Power & Light. Because there is significant risk to the interests of Missouri consumers and because approval of this reorganization is another step toward the deregulation of electricity in the State of Missouri, I must respectfully dissent.

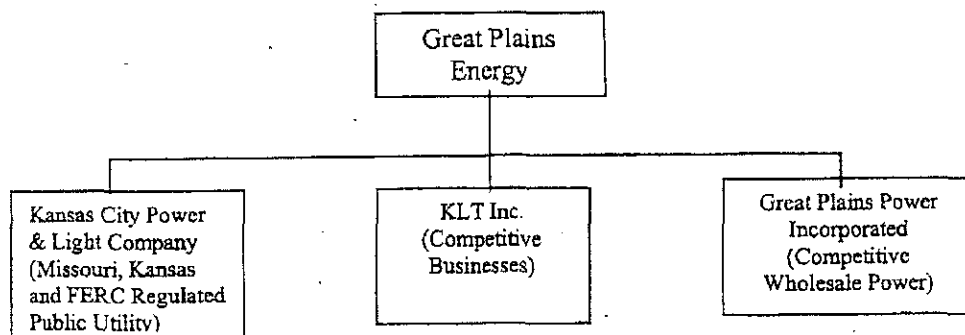
Discussion:

Kansas City Power & Light and subsidiaries request a reorganization of corporate structure, which will change the investors' interest in Kansas City Power & Light from stock ownership in a regulated utility to stock ownership in a non-regulated holding company, Great Plains Energy. The corporate structure changes as set forth in the parties' Stipulation and Agreement is illustrated below:

CURRENT CORPORATE STRUCTURE²



RESTRUCTURED COMPANY



The change in status presumably will create more interest from investors looking for riskier investment with the possibility of greater return from an unregulated entity. It will also allow unregulated profits for all affiliates except Kansas City Power & Light. Great Plains Power is to become an unregulated generator of electricity owned by unregulated Great Plains Energy. This is a part of the ongoing effort by this company to avoid regulation in the electricity market. This company's efforts, and those of others as well, have been to this point unsuccessful in the Missouri legislature. Nevertheless, changes in the Public Utility Holding Company Act in 1992 provided for the first time in more than a half-century that generation of electricity in this country could occur free of state regulation. This change in federal law has resulted in corporate restructuring among traditional investor-owned electric companies and the formation of new electrical generation companies. Even without changes in Missouri law, many new generation facilities are being built under new unregulated corporations, thus avoiding regulation by this Commission.

It is in this environment that the request before us arises. Missouri law requires that this request for reorganization of a regulated public utility be reviewed to determine whether it is detrimental to the interest of the public.¹ On this point there is a subtle but important distinction on the proper test. The majority cites *Fee Fee Trunk Sewer* for the proposition that this Commission “may not withhold its approval of the [reorganization] unless it can be shown that such [reorganization] is detrimental to the public interest.” But that formulation of the test does not emphasize the fact that it is the applicant’s burden to show that the reorganization poses no threat to the public interest. The Missouri Supreme Court has stated that it is the duty of this Commission “to see that no such change shall be made as would work to the public detriment.”² In other words, Kansas City Power & Light should be required to show that the reorganization is not against the public interest. However, I believe that under either form of the test, the request should fail. Kansas City Power & Light and affiliates state that the proposed mission of Great Plains Power will be the building of generation facilities and wholesale wheeling of the electricity produced by them. The building of new generation facilities should be seen as a positive development in Missouri particularly if Missourians will have access to the power thereby generated.

Staff and Public Counsel have worked hard to ensure that the protections of review, particularly those against self-dealing between Kansas City Power & Light and its affiliates, continue after restructuring. This does not improve the protection existing under the current corporate structure – but it does help minimize the potential damage to Kansas City Power & Light consumers in transactions that might occur between Kansas City Power & Light and Great Plains Power after reorganization. However, it appears to overlook access that Kansas

¹See *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980).

²See *State ex rel. City of St. Louis v. Public Service Commission*, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (banc 1934).

City Power & Light customers might otherwise have to electricity generated by Great Plains Power.

As a regulated utility, Kansas City Power & Light is required by Missouri law to have electricity available for its customers in a sufficient amount to meet their demand.³ The Stipulation and Agreement states that Kansas City Power & Light will need additional electricity to meet demand in the near future.

If the building of a coal-fired plant in Weston and additional gas-fired turbines under the ownership of Great Plains Power occurred under the current corporate structure, Kansas City Power & Light would have the ability as the sole shareholder of Great Plains Power to access as much of the electricity generated by Great Plains Power as it needed to meet customer needs. Those transactions would be subject to review by this Commission. Under the proposed structure, Kansas City Power & Light will have *no* control over the electricity generated by Great Plains Power. In fact, Great Plains Energy's responsibility to maximize profits to its shareholders will effectively prohibit the sale of electricity from Great Plains Power to Kansas City Power & Light unless the sale resulted in equal or greater profit to Great Plains Power than sale on the open market. Kansas City Power & Light's customers are losing access to Great Plains Power's generation assets as a result of this reorganization. They are also losing first chance at the power generated there. They may further be losing access to that electricity at the lower of cost of production or wholesale price.

Kansas City Power & Light and its affiliates stated that they would continue to pursue generation through Great Plains Power even if this reorganization were not approved. This scenario would allow the building of the planned generation facilities which would always be accessible to Kansas City Power & Light customers. This would provide the protection to Kansas City Power & Light customers that will no longer exist when Kansas City Power &

³Section 393.130.1, RSMo 2000.

Light gives up its stock ownership of Great Plains Power. When viewed in this way, it is clear that the transfer sought is not in the public interest.

There is another possible negative impact to consumers from the transfer of generation assets from Kansas City Power & Light to Great Plains Power. Under the existing corporate structure, Great Plains Power's profits would eventually go to Kansas City Power & Light, a regulated utility. An argument can be made that those profits should be considered by the Commission in reducing the rates that Kansas City Power & Light may charge consumers. While that argument may not succeed, it would be very difficult to make that argument at all under the proposed corporate structure, since Great Plains Energy and not Kansas City Power & Light will own 100 percent of Great Plains Power.

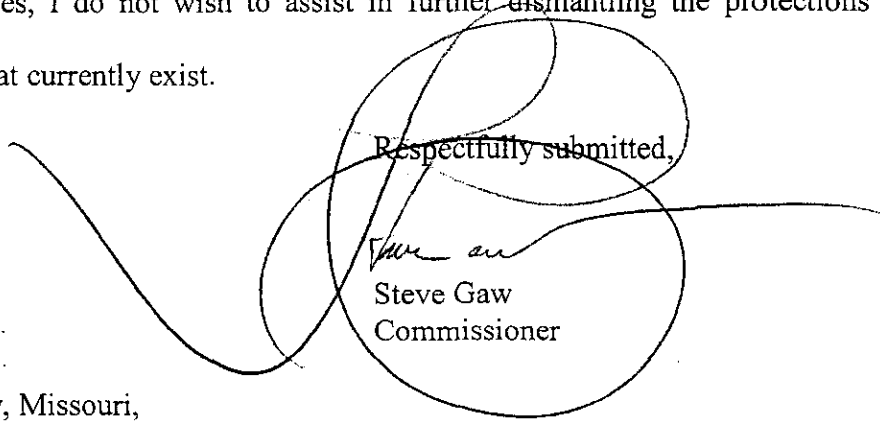
Another consideration is the financing that will be necessary to build the generation facilities planned by Great Plains Power. Kansas City Power & Light has told the Commission that Great Plains Power and Great Plains Energy presently have few, if any, assets. How, then, will they acquire the financing necessary to purchase or build generating facilities? The Weston plant, if built, will cost hundreds of millions of dollars. It would seem probable that the necessary financing will only be available on the basis of the going concern value of Kansas City Power & Light itself. Indeed, Kansas City Power & Light or its affiliates may be required to guarantee that financing. If so, it imposes a potential risk upon Kansas City Power & Light's customers. Furthermore, Kansas City Power & Light's assets have been built and acquired in part by rates paid by Missouri consumers. Yet the new generation assets, built or acquired on the strength of Kansas City Power & Light's assets, will not benefit those consumers.

Finally, there is another reason why this restructuring should not be allowed. While the federal government has seen fit to continue to relinquish oversight of utilities, the same has not been true in this state. For several years, despite heavy lobbying from investor-owned

utilities, the Missouri legislature has refused to change the state's policy on deregulation. The decision the Commission makes today takes one more step toward such a policy in spite of the clear message from the legislature opposing such a move. Removing a corporate entity that will become a new generator of electricity from the control of a regulated utility should be seen for what it is – a step furthering the purpose of deregulating the electric industry in Missouri.

It can persuasively be argued that the Commission is only being fair in its treatment of investor-owned utilities since it has previously approved a similar reorganization for at least one other utility. The people of this state should know however, that while no legislation has passed in Missouri changing regulation policy it is nonetheless occurring under the authority of changes in federal law. New generation built in the coming years will likely be in unregulated environments without the protections that consumers have taken for granted. Unless the people of this state through their elected officials change the policy of Missouri on the oversight of utilities, I do not wish to assist in further dismantling the protections of Missouri consumers that currently exist.

Respectfully submitted,


Steve Gaw
Commissioner


Dated at Jefferson City, Missouri,
on this 2nd day of August, 2001.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 2nd day of August 2001.**



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge