

Exhibit No.: \_\_\_\_\_  
Issues: Contribution, Assignment and  
Assumption Agreement  
Witness: William H. Koegel  
Type of Exhibit: Direct Testimony  
Sponsoring Party: KCPL  
Case No. : EM-2000-753  
Date Testimony Prepared: December 14, 2000

**FILED**

DEC 14 2000

Missouri Public  
Service Commission

Direct Testimony

of

William H. Koegel

On behalf of

Kansas City Power & Light Company

**DIRECT TESTIMONY  
OF  
WILLIAM H. KOEGEL  
Managing Attorney  
Kansas City Power & Light Company**

**Case No.: EM-2000-753**

1

2    **Q.     PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.**

3    A.     My name is William H. Koegel. I am a Managing Attorney at Kansas City Power &  
4           Light Company ("KCPL"). My business address is 1201 Walnut Street, Kansas City,  
5           Missouri 64106.

6    **Q.     ON WHOSE BEHALF ARE YOU TESTIFYING?**

7    A.     I am testifying on behalf of KCPL.

8    **Q.     PLEASE SUMMARIZE YOUR EDUCATION AND BUSINESS EXPERIENCE.**

9    A.     I graduated Cum Laude from Stetson University in DeLand, Florida in 1975 with a  
10           Bachelors degree in Political Science and earned a Juris Doctor degree from the  
11           University of Notre Dame du Lac in South Bend, Indiana in 1983. I joined KCPL in  
12           1986 as the Purchasing and Insurance Administrator and have held various business and  
13           legal positions since then.

14   **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15   A.     The purpose of my testimony is to explain the document entitled Contribution,  
16           Assignment and Assumption Agreement and the need for the Agreement between Kansas  
17           City Power & Light Company and the generating company called "Genco" in the  
18           document. The Agreement is attached to my testimony as Schedule WHK-1.

19

1 Q. **PLEASE SUMMARIZE THE MAIN POINTS OF YOUR TESTIMONY.**

2 A. As part of the restructuring of Kansas City Power & Light Company, Genco will be  
3 created. Genco will hold the generation assets currently owned by KCPL and the  
4 attendant liabilities. The Agreement is the legal mechanism by which the assets and  
5 liabilities of KCPL will be passed to Genco.

6 Q. **WHY IS IT NECESSARY THAT THE ASSETS AND LIABILITIES BE PASSED**  
7 **TO GENCO?**

8 A. In order for the Genco to fulfill its role as a power generation subsidiary, it is necessary  
9 that the power generation assets be placed in this subsidiary. Because the assets will be  
10 going to the Genco, that company should take on the liabilities associated with the  
11 generation assets.

12 Q. **HOW WILL THE ASSETS AND LIABILITIES BE PASSED FROM KANSAS**  
13 **CITY POWER & LIGHT COMPANY?**

14 A. The restructuring of KCPL will require a number of steps. One of those steps will be the  
15 contribution or assignment of KCPL's generation assets to Genco in exchange for Genco  
16 issuing all of its stock to KCPL. At the same time the assets are contributed or assigned,  
17 it will be necessary for Genco to assume the KCPL liabilities that are associated with the  
18 generation assets.

19 Q. **WHY IS THE CONTRIBUTION, ASSIGNMENT AND ASSUMPTION**  
20 **AGREEMENT NECESSARY?**

21 A. In order to implement the contribution of assets by KCPL and the assumption of  
22 liabilities by Genco the Contribution, Assignment and Assumption Agreement must be

1           executed between the two companies. This Agreement will generally describe the assets  
2           to be contributed or assigned, as well as the liabilities to be assumed.

3    **Q.    WHAT ASSETS WILL BE CONTRIBUTED OR ASSIGNED BY KCPL TO**  
4           **GENCO?**

5    **A.**    Among the assets relating to generation to be contributed or assigned are:

- 6           1.       Contracts for goods and services;
- 7           2.       Lease agreements for both real or personal property, including equipment and  
8                furniture;
- 9           3.       Real property;
- 10          4.       Inventories of fuel, raw materials, goods, supplies and parts;
- 11          5.       Machinery, equipment, vehicles, tools and other personal property;
- 12          6.       Office furniture and supplies;
- 13          7.       Plans, marketing information, operating and software manuals, and intellectual  
14                property rights;
- 15          8.       Customer files, supplier lists, parts lists, books, records, files, documents and all  
16                rights under customer or supplier contracts;
- 17          9.       Accounts receivables;
- 18          10.       Contracts for the sale of electric energy, transmission service agreements, and  
19                customer orders;
- 20          11.       Prepaid rent and other prepaid expenses and deposits; and  
21          12.       License, permits and similar contracts or permissions from governments and  
22                governmental agencies.
- 23                governmental agencies.
- 24                governmental agencies.
- 25                governmental agencies.
- 26                governmental agencies.
- 27                governmental agencies.
- 28                governmental agencies.
- 29                governmental agencies.
- 30                governmental agencies.

1 Q: **WHAT LIABILITIES WILL GENCO ASSUME FROM KCPL?**

2  
3 A. Among the generation-related liabilities that will be assumed are:

- 4  
5 1. Accounts payable and accrued expenses;  
6  
7 2. Performance obligations;  
8  
9 3. Sales obligations;  
10  
11 4. Purchase obligations including fuels, equipment and services;  
12  
13 5. Obligations to employees, including wages and benefits and claims; and  
14  
15 6. Claims or litigation.  
16

17 Q. **WILL KCPL BE PROVIDING A MORE SPECIFIC LISTING OF THE ASSET**  
18 **AND LIABILITIES TO BE PASSED FROM KCPL TO GENCO?**

19 A. All assets assigned or allocated to the GENCO are identified by FERC Account and are  
20 described in the Cost Allocation Manual that is included with the testimony of KCPL  
21 witness Ruth Ann Dane. A much more detailed listing of both assets and liabilities will  
22 be provided at the time of closing.

23 Q. **DOES THIS CONCLUDE YOUR TESTIMONY?**

24 A. Yes.

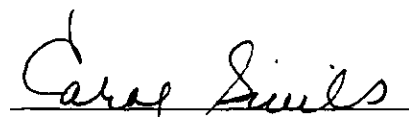
**AFFIDAVIT**

STATE OF MISSOURI       )  
  ) ss.  
COUNTY OF JACKSON     )

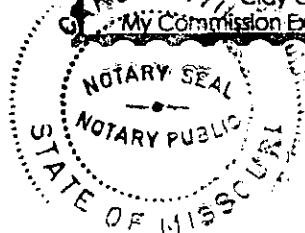
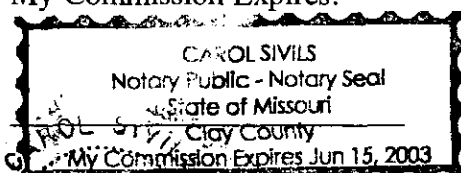
On the 6th day of December, 2000, before me appeared William H. Koegel, to me personally known, who, being by me first duly sworn, states that he is a Managing Attorney for Kansas City Power & Light Company, and that he has participated in the preparation of the foregoing written testimony, in question and answer form, and believes that the statements therein are true and correct to the best of his knowledge, information and belief.

  
WILLIAM H. KOEGEL

Subscribed and sworn to before me this 6th day of December, 2000.

  
Notary Public

My Commission Expires:



## CONTRIBUTION, ASSIGNMENT AND ASSUMPTION AGREEMENT

CONTRIBUTION, ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), dated as of [ ], by and between Kansas City Power & Light Company, a Missouri corporation ("Parent" or "KCPL"), and [Genco], a Missouri corporation ("Genco").

WHEREAS, Parent owns 100% of the outstanding common stock, no par value, of Genco; and

WHEREAS, Parent desires to contribute, assign, transfer, deliver and convey all of its right, title and interest in all of the Assets (as hereafter defined) and the Associated Assets (as hereafter defined) and Genco wishes to acquire all of Parent's right, title and interest in the Genco Assets and assume all of the Liabilities (as hereafter defined).

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties hereto, intending to be legally bound hereby, agree as follows:

### ARTICLE I

#### CONTRIBUTION; ASSUMPTION

Section 1.1 Contribution; Assumption of Liabilities. (a) Effective as of the date hereof, Parent hereby contributes, transfers, assigns, conveys and delivers, or shall cause its subsidiaries to contribute, transfer, assign, convey and deliver to Genco all of Parent's and its subsidiaries' right, title and interest in and to all of the rights, properties, assets, claims and contracts and business of every kind, character and description, whether tangible or intangible, whether real, personal or mixed, whether accrued, contingent or otherwise and wherever located which are [principally] used in or [principally] related to the Genco Business (as defined in Section 1.1(c) hereof) (collectively, the "Assets"), but excluding the Retained Assets (as defined in Section 1.1(b) hereof), including but not limited to:

(i) all contracts set forth on Schedule 1.1(a)(i) hereto (the "Contracts");

(ii) all lease agreements in respect of the facilities identified on Schedule 1.1(a)(ii) hereto, all improvements therein and all of the equipment, furniture and all other fixtures located therein;

(iii) all interests in real property owned by Parent or any of its subsidiaries, including land, land improvements, buildings, fixtures and options (collectively, the "Owned Property") set forth on Schedule 1.1(a) (iii) hereto;

(iv) all inventories (including fuel, raw materials, work in process, and finished products, goods, supplies and parts) set forth on Schedule 1.1(a)(iv) hereto;

(v) all machinery and equipment, vehicles, tools, spares and other personal property set forth on Schedule 1.1(a)(v) hereto;

(vi) all office furnishings, furniture and supplies set forth on Schedule 1.1(a)(vi) hereto;

(vii) all technical, manufacturing, engineering, design plans, blueprints, promotional and marketing information [principally] relating to Genco's operations, all operating manuals and guidelines, equipment maintenance and warranty information, software manuals and documentation [principally] relating to Genco's operations (whether kept in files, documents, papers, or in electronic, optical or magnetic form) including new developments, inventions or ideas, know-how and trade secrets, all patents, trademarks, trade names, service marks, copyrights and all applications and registrations therefor and other intellectual property and all rights thereto, in each case, as set forth on Schedule 1.1(a)(vii);

(viii) all customer files, supplier lists, parts lists, vendor lists, books, records, files, documents, and all rights or claims (including warranties) in or under customer, supplier manufacturer and other contracts [principally] related to the Genco Business, in each case, as set forth on Schedule 1.1(viii) above;

(ix) all accounts and notes receivable which arose in the course of the Genco Business set forth on Schedule 1.1(a)(ix);

(x) all rights under contracts including sales contracts, transmission service agreements, purchasing contracts, customer orders, purchase orders and service agreements set forth on Schedule 1.1(a)(x);

(xi) all prepaid rent, advances and other prepaid expenses and deposits;



(xii) all rights under personal property leases and licenses, consents, permits, orders, registrations, franchises, certificates, approvals or similar rights from any federal, state or local regulatory agencies, entities or authorities, or from any third parties, in each case, as set forth on Schedule 1.1(a)(xii);

(xiii) all interests of Parent in and to all computer hardware and software relating to and [principally] used in the Genco Business, set forth on Schedule 1.1(a)(xiii); and

(xiv) the other assets set forth on Schedule 1.1(a)(xiv).

(b) The Assets shall not include the Retained Assets. "Retained Assets" shall mean the following assets which, although they are [principally] used in or [principally] relate to the Genco Business, are to be retained by Parent and its subsidiaries (other than Genco) and shall not be transferred, assigned, conveyed or delivered to Genco:

(i) any right, title or interest in any trade names, trademarks, identifying logos or service marks employing the words "Kansas City Power & Light Company" or any part or variation of such words or anything confusingly similar thereto.

[(ii) software developed by and proprietary to Parent; [provided, however, that Parent shall license such software to Genco upon execution of a [royalty-free] licensing agreement effective as of the date thereof;]

(iii) the assets set forth on Schedule 1.1(b)(iii);

(c) Effective as of the date hereof, Parent hereby contributes, transfers, assigns, conveys and delivers, or shall cause its subsidiaries to contribute, transfer, assign, convey and deliver to Genco, the following assets, properties, interests and rights as in existence on the date hereof (collectively, the "Associated Assets"):

(i) [to come -- these are assets which are not principally/substantially related to, or used in, Genco's business, but, for whatever reason, KCPL wishes to contribute to Genco because it can split-off the Genco-related portion of a particular asset or because a licensing or other arrangement will not be a satisfactory alternative; it is possible that no asset will fit this description, in which case, this Section 1.1(c) can be deleted]

(d) The "Genco Business" shall mean: [to come].

(e) Genco hereby absolutely and irrevocably assumes and agrees to pay, perform and discharge, or cause to be paid, performed or discharged, in due course, all of the liabilities and obligations, whether absolute, accrued, contingent or otherwise, arising directly or indirectly from the use or ownership of the Assets and/or the Associated Assets or other activities in connection therewith whether arising before, on or after the date hereof, including, but not limited to, the liabilities included within the following categories (collectively, the "Liabilities"):

(i) all accounts payable and accrued expenses in respect of the Assets and/or the Associated Assets;

(ii) all liabilities and performance obligations arising out of the Contracts, and all contingent liabilities, whether known or unknown as of the date hereof, arising out of the Assets and/or the Associated Assets;

(iii) all liabilities and obligations in respect of the Assets and/or the Associated Assets arising from outstanding commitments to sell products, supplies or services;

(iv) all liabilities and obligations in respect of the Assets and/or the Associated Assets arising from outstanding commitments to purchase or acquire fuel, products, supplies or services;

(v) all liabilities and obligations arising from or in respect of (a) all salaries, wages, commissions, employee incentive or other compensation, severance, holiday, vacation, health, dental or retirement benefits accrued but unpaid as of the date hereof relating to the employees listed on Schedule 1.1(e)(v) hereof (the "Employees"), (b) any claims by Employees who are discharged by Genco after the date hereof, or by any governmental entity on behalf of, or concerning any such severed Employee, and (c) all notices or payments due to any severed Employee, and all notices, payments, fines or assessment due to any governmental entity pursuant to any applicable law relating to the employment, discharge or layoff of employees;

(vi) all liabilities and obligations arising from or in connection with any claim or litigation in respect of the Assets and/or the Associated Assets;

(vii) all liabilities related to, arising from or to be performed in connection with the operation of the Assets after the date hereof; and

(viii) all liabilities listed on Schedule 1.1(e)(viii) hereof.

[Notwithstanding anything to the contrary in this Agreement, to the extent liabilities or obligations would otherwise constitute Liabilities payable or dischargeable by Genco, they shall nevertheless be pro-rated between Genco and KCPL based on a [fair] allocation of such obligations and liabilities between such entities taking into account [to come]].\*

Section 1.2 Instruments of Transfer and Assumption. Parent agrees that it shall file with the relevant governmental or other entities, such assignment documents as may be necessary to reflect in the registries of such governmental or other entities the change in ownership of any of the Assets and the Associated Assets. Genco agrees to deliver to Parent, upon its request, good and sufficient instruments of assumption necessary to evidence the assumption of the Liabilities.

Section 1.3 Transfers Not Effected as of the Date Hereof. Nothing herein shall be deemed to require the transfer of any Asset or Associated Asset that by its terms or by operation of law cannot be freely transferred or assumed. To the extent that Parent and Genco have been unable to obtain any governmental or any third party consents or approvals required for the transfer of any Asset or Associated Asset and to the extent not otherwise prohibited by the terms of any Asset or Associated Asset, Parent or any of its subsidiaries (other than Genco), as the case may be, shall continue to be bound by the terms of any Asset or Associated Asset and Parent shall pay, perform and discharge fully all of the obligations of Parent or any of its subsidiaries (other than Genco) thereunder from and after the date hereof. Parent and any of its subsidiaries (other than Genco) shall, without consideration therefor, pay, assign and remit to Genco promptly all monies, rights and other consideration received in respect of such performance. Parent or its subsidiaries (other than Genco) shall exercise or exploit their rights in respect of such Assets or Associated Assets only as reasonably directed by Genco and at Genco's

---

NOTE: Alternatively, we could include a "Retained Liability" definition and describe with great specificity the categories of liabilities which KCPL/Disco would be obligated to pay post-closing — such as an allocated amount of rate paybacks mandated by state regulatory authorities. The real issue is: in this document do you want to articulate a generalized allocation formula (similar to the "notwithstanding" sentence above in text) or do you (and can you) articulate a precise allocation of liabilities between specified entities?

expense. Genco and Parent shall continue to use reasonable efforts to obtain all such unobtained consents or approvals at the earliest practicable date; provided, however, neither Parent nor Genco or any of Parent's subsidiaries (other than Genco) shall have any obligation to pay or incur any costs in order to obtain any such consents or approvals other than nominal fees or charges related thereto. If and when any such consents or approvals shall be obtained, then Parent or any of its subsidiaries (other than Genco), as the case may be, shall promptly assign all of its rights and obligations thereunder to Genco without payment of consideration and Genco shall, without the payment of any consideration therefor, assume such rights and obligations.

Section 1.4 Other Agreements. Effective as of the date hereof, Parent and Genco have entered into the agreements listed on Schedule 1.4 which relate to various licenses, easements, services and other arrangements between the parties which are necessary to facilitate the transactions contemplated by this Agreement.

Section 1.5 Further Actions. If at any time after the date hereof, Genco shall consider or be advised that any instruments, deed, bills of sale, assignments, certificates, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in Genco its right, title or interest in or to any of the Assets or Associated Assets or otherwise to carry out this Agreement, the officers of Parent shall execute and deliver or cause the officers of its subsidiaries (other than Genco) to execute or deliver, in the name and on behalf of Parent or its subsidiaries (other than Genco), as the case may be, all such deeds, transfers, bills of sale, assignments and assurances and take and do, in the name and on behalf of Parent or its subsidiaries (other than Genco) or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm in Genco any and all right, title and interest in and to the Assets and the Associated Assets or otherwise to carry out this Agreement; provided that Genco shall prepare such additional documents and instruments and shall handle any necessary submittals, applications, processing, recording and registrations.

## ARTICLE II

### MISCELLANEOUS

Section 2.1 Entire Agreement; Successors and Assigns. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior understandings between the parties both oral and written regarding such subject matter. This Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 2.2 Tax Consequences. The transfers contemplated by this Agreement are intended to qualify as a tax-free transfer pursuant to Section 351 of the Internal Revenue Code of 1986, as amended.

Section 2.3 Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way be impaired, it being intended that each party's rights and privileges shall be enforceable to the fullest extent permitted by law.

Section 2.4 Third Party Beneficiaries. This Agreement is not intended and shall not be construed to confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies hereunder.

Section 2.5 Governing Law; Jurisdiction. **THIS AGREEMENT SHALL BE GOVERNED BY, ENFORCED UNDER AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MISSOURI, WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE THEREOF.**

Section 2.6 Counterparts. This Agreement may be signed in counterparts and all signed copies of this Agreement will together constitute one original of this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the parties has caused this Contribution, Assignment and Assumption Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

KANSAS CITY POWER & LIGHT COMPANY

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

Name:

Title:

[GENCO]

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

Name:

Title: