

45 FR 15184  
3/10/80

# SHAW, PITTMAN, POTTS & TROWBRIDGE

1800 M STREET, N. W.  
WASHINGTON, D. C. 20036

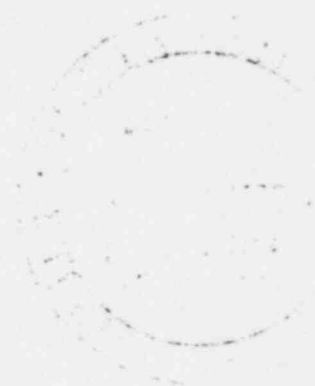
RAMSAY D. POTTS  
 STEUART L. PITTMAN  
 GEORGE F. TROWBRIDGE  
 STEPHEN D. POTTS  
 GERALD CHARNOFF  
 PHILLIP D. BOSTWICK  
 R. TIMOTHY HANLON  
 GEORGE M. ROGERS, JR.  
 JOHN B. RHINELANDER  
 BRUCE W. CHURCHILL  
 LESLIE A. NICHOLSON, JR.  
 MARTIN D. KRALL  
 RICHARD J. KENDALL  
 JAY E. SILBERG  
 BARBARA M. ROSSOTTI  
 GEORGE V. ALLEN, JR.  
 WM. BRADFORD REYNOLDS  
 FRED A. LITTLE  
 FRED DRASNER  
 NATHANIEL P. BREED, JR.  
 MARK AUGENBLICK  
 ERNEST L. BLAKE, JR.  
 CARLETON S. JONES  
 THOMAS A. BAXTER  
 JAMES M. BURGER  
 SHELDON J. WEISEL  
 JOHN A. McCULLOUGH  
 J. PATRICK HICKEY  
 JAMES THOMAS LENHART  
 STEVEN L. MELTZER  
 DEAN D. AULICK  
 JOHN ENGEL

STEPHEN B. HUTTNER  
 WINTHROP N. BROWN  
 JAMES B. HAMLIN  
 ROBERT E. ZAHLER  
 RICHARD E. GALEN  
 ROBERT B. ROBBINS  
 STEVEN M. LUCAS  
 MATIAS F. TRAVIESO-DIAZ  
 VICTORIA J. PERKINS  
 JOHN H. O'NEILL, JR.  
 JAY A. EPSTEIN  
 RAND L. ALLEN  
 TIMOTHY B. McBRIDE  
 ELISABETH M. PENOLETON  
 LUCY G. ELIASOF  
 PAUL A. KAPLAN  
 HARRY H. GLASSPIEGEL  
 THOMAS H. MCCORMICK  
 SUSAN D. FALKSON  
 WILLIAM R. BARR  
 JOHN L. CARR, JR.  
 PHILIP J. HARVEY  
 ROBERT M. GORDON  
 JEANNE A. CALDERON  
 BARBARA J. MORGAN  
 BONNIE S. GOTTLIEB  
 ALFRED M. POSTELL  
 SETH H. HOOGLASIAN  
 SHEILA E. McCAFFERTY  
 DELISSA A. RIDGWAY  
 KENNETH J. HAUTMAN  
 DAVID LAWRENCE MILLER

(202) 331-4100  
 TELECOPIER  
 (202) 296-0694 & 296-1760  
 TELEX  
 89-2693 (SHAWLAW WSH)  
 CABLE "SHAWLAW"  
 EDWARD B. CROSLAND  
 COUNSEL

PROPOSED RULE PR-19 et al (14)  
 (45 FR 15184)

May 5, 1980



\*NOT ADMITTED IN D.C.

Secretary of the Commission  
 U. S. Nuclear Regulatory Commission  
 Washington, D. C. 20555

Attention: Docketing and Service Branch

Re: Proposed Amendments to 10 CFR Parts  
 19, 30, 40, 50, 70, 71 and 150  
 (Protection of Employees Who Provide  
 Information)

Gentlemen:

On March 10, 1980, the Nuclear Regulatory Commission published in the Federal Register proposed amendments to Parts 19, 30, 40, 50, 70, 71 and 150 concerning protection of employees who provide information to the Commission. 45 Fed. Reg. 15184. We are pleased to submit the following comments on the proposed rule on behalf of Kansas Gas and Electric Company and Kansas City Power & Light Company, holders of the construction permit for the Wolf Creek Generating Station.

As set forth in the Supplementary Information accompanying the proposed regulation, the proposed regulations are intended to implement Section 210, "Employee Protection", of the Energy Reorganization Act of 1974 as amended by Public Law 95-601. 42 U.S.C. 5851. That section identifies certain acts by employees of NRC licensees and applicants (and their contractors and subcontractors) as protected, and prohibits the employer from discriminating against employees who engage in those activities. The statute also provides a procedure through the Department of Labor for employees who believe

8006040 012

Acknowledged by card 5/9/80 mdv

L-4-19

Secretary of the Commission  
Page 2  
May 5, 1980

that they have been the target of such discrimination. The Commission's proposed regulation would set forth the prohibition against such discrimination, describe the protected activities, specify the availability of the remedy through the Department of Labor, and state that such discrimination may be grounds to revoke, suspend or deny a license or impose civil penalties.

Most of our comments deal with the failure of the proposed regulation to follow the statutory language and the Department of Labor regulations which implement Section 210. The differences, though perhaps inadvertent, are likely to cause unnecessary confusion. Several of these differences are specifically addressed.

1. Protected Activities. Section 210 defines the types of employee activities which are protected against discrimination as activities where the employee has:

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(2) testified or is about to testify in any such proceeding or;

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

This same list appears in the Department of Labor's recent regulations implementing Section 210 (29 C.F.R. Part 24, 45 Fed. Reg. 1836, January 8, 1980), and governs what is actionable under those regulations. 29 C.F.R. §24.2(b). The NRC's proposed rule provides a different, and apparently broader, list. Thus, proposed Section 50.7(a), and its corresponding provisions in other Parts, define the protected activities as:

(1) providing to the Commission (i) information about possible violations of requirements imposed under the Atomic Energy

Secretary of the Commission  
Page 3  
May 5, 1980

Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended; or (ii) information furthering the purposes of such Acts; or (2) requesting the Commission to institute action against his or her employer for the administration or enforcement of such requirements; or (3) testifying in any Commission proceeding.

Proceedings initiated under the NRC's proposed rule will take place before the Department of Labor in an administrative proceeding governed by DOL's own regulations and applicable statutes. Because of this, we believe that the NRC should not expand the list of protected acts beyond those described in the statute and DOL regulations, but rather should more closely follow the statutory language.

Particularly in need of clarification is the phrase "providing to the Commission . . . information furthering the purposes of [the Atomic Energy and Energy Reorganization] Acts . . . ." This language is extremely unclear, has no parallel in Section 210, and should be deleted.

2. Discrimination. This term is not defined in the proposed rule except to say that it includes the employee's discharge. The statutory language is more specific, specifically covering not only discharge but also discrimination with respect to the employee's "compensation, terms, conditions, or privilege of employment." The statutory language should be adopted.

3. Deliberate Violations. Section 210(g) provides that the protections against discrimination do not apply to an employee

Who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of [the Energy Reorganization] Act or of the Atomic Energy Act of 1954, as amended.

No analogous provision appears in the proposed regulations. Section 210(g) incorporates an important concept which should be included from the regulations and in Form NRC-3.

Finally, we note that the Supplementary Information accompanying the proposed regulation states that the "protected activities" include the providing of information to the Commission relating to "anti-trust matters". We doubt whether Congress intended the

SHAW, PITTMAN, POTTS & TROWBRIDGE

Secretary of the Commission  
Page 4  
May 5, 1980

protections of Section 210 to extend beyond matters affecting the public health and safety and the common defense and security. There certainly appears to be little need for the protections of either Section 210 or the proposed regulations with regard to antitrust matters.

We appreciate the opportunity to submit these comments.

Very truly yours,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By

Jay E. Silberg

Jay E. Silberg  
Counsel for Kansas Gas and  
Electric Company and  
Kansas City Power &  
Light Company