

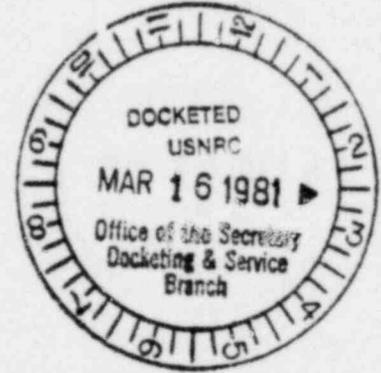
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James P. Gleason, Chairman
Dr. George C. Anderson
Dr. J. Venn Leeds

SERVED MAR 16 1981



In the Matter of:
KANSAS GAS AND ELECTRIC COMPANY, ET AL.
(Wolf Creek Generating Station, Unit 1)

Docket No. STN 50-482-0L

MEMORANDUM AND ORDER
(Ruling on Requests for Hearing, Petitions for Intervention
and Order of Special Prehearing Conference)

On December 18, 1980, the NRC published in the Federal Register (45 Fed. Reg. 83360) a notice of an opportunity for a hearing on the application of Kansas Gas and Electric Company, Et Al., for an operating license at Wolf Creek Generating Station, Unit 1, in Coffey County, Kansas. This Board, whose creation was published in the Federal Register on February 3, 1981 (46 Fed. Reg. 10577), was established to rule on petitions for intervention and requests for a hearing. Several requests and petitions have been received.

Under 10 CFR 2.714(a)(2), a petition for leave to intervene as a party

.....shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioners should be permitted to intervene with particular reference to the factors in paragraph (d) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

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Paragraph (d) of 2.714 states:

The Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

- (1) The nature of the petitioners right under the Act to be made a party to the proceeding.
- (2) The nature and extent of the petitioners property, financial and other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioners interest.

10 CFR 2.715(c) provides:

The presiding officer will afford representatives of an interested-State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate and introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to 2.754 and 2.762 and petitions for review by the Commission pursuant to 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

And finally, a person who is not a party may, under 10 CFR 2.715(a), in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but may not otherwise participate in the proceeding.

Requests and Petitions

1. Wanda Christy requested permission to intervene alleging her residence as being within five miles of the plant site. The petitioner expresses her concern over the lack of an adequate evacuation plan and a taxpayers interest in not having available a memorandum of understanding outlining the financial responsibilities of State, county and utility officials in contingency or emergency planning. The Applicant opposes her admission as an Intervenor although it interprets her letter as merely requesting an opportunity of making a limited appearance. We must disagree with the Applicant's argument that the petitioner has not set forth a basis for intervention with sufficient clarity and specificity. The relevant interest expressed here is of a resident living in proximity to the plant, who is concerned about the adequacy of emergency planning in the event of an nuclear accident at the site. This request, satisfies both the "interest" and "aspect" requirements of 10 CFR 2.714. If the petition were to be considered deficient in the degree of particularity called for by the regulations--to establish interest--which it is not, it has long been recognized that pro se intervenors are not held to the same standards as legally trained practitioners.^{1/} The Staff supports the petitioners intervention as a party and the Board will approve her request.

^{1/} Public Service Electric and Gas Co., (Salem Nuclear Generating Station, Unit 1 & 2), ALAB-136, 6 AEC 487, 489 (1973)

2. Mary Ellen Salava submitted a petition to intervene expressing opposition to the issuance of an operating license on the grounds of the lack of a viable emergency plan as well as the limited information published by the NRC of its intention to consider the Applicant's request for a license. Both the Applicant and the Staff objected to the admission of the petitioner as an intervenor and the Board agreed that she had not set forth with any particularity how her interest could be affected by the results of this proceeding. "Interest" in NRC proceedings has the same standard as "standing" in judicial proceedings and there must be some allegation that an injury might result from the activity contemplated to the individual asserting the injury.^{2/} The Board was aware that the petitioner here may have suffered from a lack of information she alleges about this proceeding and would have pointed out that under the regulations of the NRC, she could amend her petition to cure any defects up to fifteen (15) days prior to a special prehearing conference.

In a subsequent communication, however, the petitioner stated that her residence was within five miles of the plant site and that she was concerned about the lack of an adequate emergency plan and health and property damage in the event of an accidental release of radiation. This submittal is considered as an amendment of her petition and as showing a cognizable interest in the proceeding. The petitioner will be admitted as an intervenor.

^{2/} Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2) CLI-76-27, 4 NRC 610, 613 (1976).

3. The Public Service Commission of Missouri through the Office of its General Counsel filed a request for a hearing and petitioned--to intervene as an interested State agency. Asserting a regulatory authority over Kansas City Power and Light Company, one of the Applicants in this proceeding the Commission states it has a monitoring responsibility over the company's facilities related to its statutory authority to approve rates. Neither the Applicant nor the Staff objects to the Commission's appearance and it will be granted under 10 CFR 2.715(c).

4. An organization, Kansas for Sensible Energy (KASE), filed a petition for intervention which was signed by twelve of its members. The petition alleges a number of concerns and reasons for intervention including plant construction defects, inadequate storage of nuclear wastes, inadequate evacuation plans, environmental defects and the use of invalid estimating techniques for reactor accidents. The organization's petition includes an address in Wichita, Kansas, some ninety miles from the site and none of the individual signers submitted the location of their residences or alleged other activities near the site. Both the Applicant and the Staff object to intervention by the petitioner and the Board cannot find any basis for their admission at the present time. Although the petition addresses a number of specific aspects about which intervention is sought, neither the organization nor the individual members signing the petition have satisfied the standing requirement called for by NRC regulations. As previously noted, there must be some allegation

that the action being questioned could cause injury in fact to those seeking intervention and the petition here does not meet this requirement. The organization KASE has only a derivative right here to participate in these proceedings.^{3/} There is no statement in this petition that any of its signatories has a cognizable interest that might be affected adversely by this proceeding.^{4/}

The Board points out to this petitioner the same advice it supplied heretofore, that a request to intervene can be amended up to fifteen (15) days prior to a special prehearing conference.

5. The Missouri-Kansas Section of the American Nuclear Society filed a petition to intervene in support of the application for a license. Signed by it's Chairman, the petition indicated that most of its members reside in the Kansas City area, that it's members would be available to discuss the plants safety, radiation risks, costs, wastes and that the plant deserved a fair hearing on risks and benefits. The Applicant construed the petition as requesting a limited appearance which it supports and the Staff objected to intervention suggesting the possibility of discretionary intervention if the petition was amended to demonstrate an ability to contribute substantially to the development of a sound record. On the circumstances here, there was no showing of a potential injury in fact to petitioners interests and the petition did not purport to represent at least a single member who had a cognizable interest

^{3/} Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377 (1979)

^{4/} Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976)

that might be affected by the outcome of the proceeding. Accordingly, intervention would ordinarily be denied with the same advice given others, that the defects found may be capable of being cured through the amendment process.

However, in a subsequent communication, the petitioner indicated that it desired to make a limited appearance and that will be approved by the Board.

6. An untimely petition was received from Francis Blaufuss and a supplementary letter indicating that no information about the intervention procedure was published in his home county. The petitioner alleges his residence is within ten (10) miles of the plant and that he wished to intervene on the elements that could escape to the atmosphere from the operation of the facility. Both the Applicant and the Staff oppose the admission of the petitioner although they do not object to his participation in a limited appearance. It is difficult for the Board to make a determination on this petition absent a showing of good cause for failing to file on time. We are required to balance a number of factors in making a determination that a petition should be granted despite its late filing and it is impossible to make that judgment at this time. The Board will therefore delay its ruling on this petition until the special prehearing conference.

An additional letter was received from Theresa M. Wolken which stated opposition to the proposed licensing of the plant. The letter stated the residence of the writer as being eighty miles from the site and did not request either intervention or a limited appearance. Since no address was included and no request for participation was indicated, the Board only wishes to acknowledge receipt of the communication at this time. The Applicant indicated that it has no objection to a limited appearance for Ms. Wolken and the Staff has stated it does not intend to respond to the communication.

ORDER

For all the foregoing reasons and based upon a consideration of the entire record in this matter, it is this 13th day of March 1981

ORDERED

That the petitions to intervene of the following are granted under the provisions of 10 CFR 2.714:

Wanda Christy

Mary Ellen Salava

That the requests of the following to intervene are denied:

Missouri-Kansas Section: American
Nuclear Society

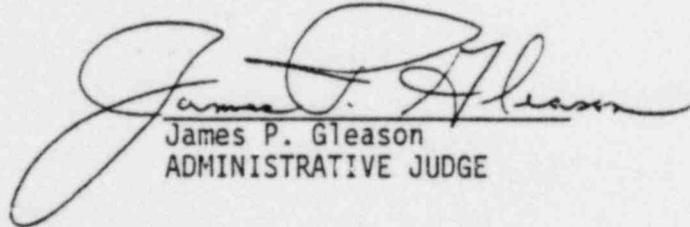
Kansas for a Sensible Energy

The request of the Missouri Public Service Commission to participate as a government representative is approved and the Kansas Section of the American Nuclear Society for a limited appearance is also granted. The

Board defers ruling until a subsequent showing is made by the petitioner, Francis Blaufuss, of a justification of his late filing.

That a date and place for a hearing will be announced at a later time and that a special prehearing conference will be held at 9 a.m. on April 15, 1981 at the Travelodge-Emporia on 3021 W. Highway 50, in Emporia, Kansas. And all parties, Applicant, Staff and Intervenors are directed to be present. The conference will be for the identification of issues, such further action on petitions as is necessary and establishment of a schedule for further actions in the proceeding.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



James P. Gleason
ADMINISTRATIVE JUDGE