



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV
811 RYAN PLAZA DRIVE, SUITE 1000
ARLINGTON, TEXAS 76011

MAY 10 1991

Docket No. STN 50-482
License No. NPF-42
EA 91-041

Wolf Creek Nuclear Operating Corporation
ATTN: Bart D. Withers
President and Chief Executive Officer
P.O. Box 411
Burlington, Kansas 66839

Gentlemen:

SUBJECT: APPARENT VIOLATION OF 10 CFR 50.7

This letter is in reference to a Final Decision and Order issued by the Secretary of Labor on March 21, 1991, in the case of James E. Wells, Jr., v. Kansas Gas & Electric Company (85-ERA-0022).

This case arose as a result of a complaint filed by Mr. Wells with the Department of Labor in January 1985 alleging that on January 11, 1985, he had been unlawfully suspended without pay from his job at the Wolf Creek Generating Station (Wolf Creek). Mr. Wells alleged that this action amounted to "continued harassment" associated with his having reported quality discrepancies and safety problems to the Quality Assurance Manager during his previous employment at Wolf Creek as a quality assurance inspector. That previous employment had been terminated by the licensee in what the Department of Labor later determined was a discriminatory act.

The Secretary of Labor concluded in 85-ERA-0022 that Kansas Gas & Electric Company (KG&E), which in January 1985 held an NRC permit authorizing the construction of Wolf Creek and was the applicant for an NRC operating license, discriminated against Wells when it suspended him without pay in January 1985 in violation of Section 210 of the Energy Reorganization Act (ERA). Section 210 of the ERA prohibits discrimination against employees who engage in certain protected activities.

Section 50.7(a) of 10 CFR Part 50 prohibits discrimination by a Commission licensee, permittee, or applicant for a license against an employee for engaging in protected activity as established in Section 210. Section 50.7(c) provides that a violation of this regulation by a Commission licensee, permittee or an applicant for a license may be grounds for NRC enforcement action.

The NRC is particularly concerned about the Secretary of Labor's finding in this case because:

- 1) The act of discrimination occurred in January 1985, less than four months after NRC issued a Notice of Violation to KG&E and proposed a \$64,000 civil penalty based on the previous Secretary of Labor finding that KG&E had discriminated against Wells when it fired him in 1983 (83-ERA-12);

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- 2) The Secretary's Final Decision and Order in 85-ERA-0022 indicates that KG&E acted willfully, i.e., "either knew or showed reckless disregard for the matter of whether its conduct was prohibited," when it failed to ensure that accurate background information on Wells was provided to a psychologist involved in evaluating wells for unescorted access to the plant (This information was crucial in that the psychologist relied upon it in recommending that Mr. Wells be denied unescorted access, and KG&E's stated reason for terminating Mr. Wells was the fact that he was not approved for unescorted access.);
- 3) KG&E's actions against Wells may have had a potential chilling effect on the willingness of others employed at Wolf Creek to raise concerns about quality and compliance; and
- 4) The conduct of the psychological evaluation and the use of the results by KG&E in making access determinations raise questions about the validity of the decisions and the reliability of the process.

Therefore, the NRC requests that the Wolf Creek Nuclear Operating Corporation (WCNOC) provide this office within 30 days a response which addresses the primary concerns outlined above, and addresses the adequacy and reliability of the methods employed by WCNOC today to evaluate employees for unescorted access. After reviewing your response, the NRC will determine whether enforcement action is necessary to ensure compliance with regulatory requirements.

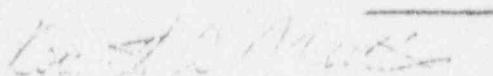
NRC recognizes that this apparent violation occurred prior to WCNOC's creation as the operating company for the Wolf Creek facility. However, as the current licensee, you are responsible for this matter and are expected to obtain information appropriate for your response from KG&E as co-owner of Wolf Creek Generating Station.

Should you have any questions about this matter, please address them to William L. Brown, Regional Counsel, who can be reached by telephone at (817) 860-8271.

The responses requested by this letter are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96.511.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room.

Sincerely,


Robert D. Martin
Regional Administrator

cc: (see next page)

Wolf Creek Nuclear Operating Corporation -3-

cc:
Wolf Creek Nuclear Operating Corp.
ATTN: Gary Boyer, Director
Plant Operations
P.O. Box 411
Burlington, Kansas 66839

Shaw, Pittman, Potts & Trowbridge
ATTN: Jay Silberg, Esq.
1800 M Street, NW
Washington, D.C. 20036

Public Service Commission
ATTN: Chris R. Rogers, P.E.
Manager, Electric Department
P.O. Box 360
Jefferson City, Missouri 65102

U.S. Nuclear Regulatory Commission
ATTN: Regional Administrator, Region III
799 Roosevelt Road
Glen Ellyn, Illinois 60137

Wolf Creek Nuclear Operating Corp.
ATTN: Otto Maynard, Manager
Regulatory Services
P.O. Box 411
Burlington, Kansas 66839

Kansas Corporation Commission
ATTN: Robert Elliot, Chief Engineer
Utilities Division
4th Floor - State Office Building
Topeka, Kansas 66612-1571

Office of the Governor
State of Kansas
Topeka, Kansas 66612

Attorney General
1st Floor - The Statehouse
Topeka, Kansas 66612

Chairman, Coffey County Commission
Coffey County Courthouse
Burlington, Kansas 66839

Wolf Creek Nuclear Operating Corporation -4-

Kansas Department of Health
and Environment
Bureau of Air Quality & Radiation
Control
ATTN: Gerald Allen, Public
Health Physicist
Division of Environment
Forbes Field Building 321
Topeka, Kansas 66620

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Wolf Creek Nuclear Operating Corporation -5-

bcc:
R. D. Martin
G F. Sanborn
W. L. Brown
J. Lieberman, OE
Resident Inspector
Section Chief (DRP/D)
DRP
DRSS-RPEPS
Section Chief (RIII, DRP/3C)
RIV File
SRI, Callaway, RIII
MIS System
RSTS Operator
Project Engineer (DRP/D)
Lisa Shea, RM/ALF
DRS
DMB - IE01

IE-01

RIV:ED
GFSanborn
5/10/91

D:OE Rosano
for JLieberman
5/10/91
by telephone

RA
RDMartin
5/10/91

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