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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
KANSAS GAS & ELECTRIC CO., ET. AL.) ASLBP Docket No. 81-453-03 OL
(Wolf Creek Generating Station,) (NRC Docket No. 50-482)
Unit No. 1)

PETITIONER'S RESPONSE TO APPLICANT AND NRC STAFF

INTRODUCTION

On January 19, 1984, Nuclear Awareness Network (Petitioner) filed its petition to intervene and request for hearing in the captioned matter. Subsequently on February 3, 1984, Applicant filed its response with certain attachments and on February 8, 1984, NRC Staff responded. The following is submitted in response thereto. Though Applicant and NRC Staff have both objected to Petitioner's request for intervention and hearings, their stated reasons for opposition vary substantially. Accordingly, Petitioner shall respond separately.

RESPONSE TO APPLICANT

Applicant filed its objection to Petitioner's request for intervenor status by its pleading which both attempts to refute the verified petition of Mary M. Stephens and to argue against Petitioner's recitation of factors justifying its late-filed intervention. Petitioner's response to Applicant is bifurcated owing to the disparate nature of Applicant's pleading.

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A) Applicant's response claims Petitioner's "contentions" are based on ". . . inaccurate, incomplete, and misrepresented statements." (App.'s Response at p. 3) Speculating "It may be noteworthy that Petitioner's counsel did not sign the petition" (Id at p.11), Applicant ultimately whips itself into near hysteria complaining of Petitioner's lack of "credibility and candor," finds "gross misrepresentations," and charges Applicant with abuse of process. Disregarding Applicant's unprofessional and unseemly excesses in pleading and contumely, Petitioner submits that a substantial evidentiary issue exists as to the allegations set forth in Petitioner's original verified petitioner herein. And, it cannot be gainsaid that resolution of these issues must be made at hearing not simply by filing competing affidavits.

Applicant's methods for discrediting Petitioner are clever albeit disingenuous. First, great concern is expressed and significance attached to the "fact" that the D.I.C. workers were contacted by Petitioner's director Mary M. Stephens and not the other way around. (App.'s Response at p. 14). This chronology of communication which Applicant believes significant, is iterated by Applicant's affiants (Affidavit of William J. Randolph II and Owen L. Thero at p. 4) and was apparently subject to conversation between Applicant and NRC Staff. (NRC Staff's response indicates that it opposes the instant petition to intervene partially because they ". . . received information from the Applicant which indicates that the workers * * * were contacted by Ms. Stephens and did not, as stated by Petitioner, initiate communication with

NAN." NRC Staff response at p. 10) Applicant spawned its "red herring" and NRC Staff has, at this juncture, been successfully misled.

Petitioner's verified original petition herein states: "Petitioner was unaware of the existence of the serious allegations made by the referenced construction workers till mid-December of 1983, when she was contacted by a representative of the workers." (Petitioner at p. 7, emphasis supplied). This straight forward statement explains how and when Petitioner's Director Stephens became first aware of the subject allegations concerning QA/QC breakdowns at Wolf Creek. Nowhere does Petitioner state or imply that the workers contacted her. But Applicant would twist the plain statement to its purposes and communicate its "discovery" to NRC Staff who partially base their opposition to intervention on this disinformation.

Additionally, Petitioner respectfully submits that Applicant's counsel has in his enthusiastic efforts to refute the allegations in Petitioner's verified petition, simply overstated the conclusions reached by Applicant's team of investigators who "interviewed" the six former D.I.C. Wolf Creek employees. Applicant's response asserts Petitioner's contentions are "inaccurate, incomplete, and misrepresented statements." (App.'s Response at p. 3) Later Applicant persuades itself that the statements are "gross misrepresentations". (Id at pp. 18-19). Applicant's affiants, however, conclude only that ". . . the NAN

Petition in many instances exaggerates or misrepresents what the workers told NAN." (Affidavit of Rudolph and Thero at p. 16) That conclusion, by the individuals whose QA/QC program is directly challenged by Petitioner, hardly supports Applicant's overly-broad characterization of its evidence. Construing the respective evidence in light favorable to Petitioner, substantial questions of fact remain which can only be resolved by evidentiary hearing.

B) Applicant further opposes the instant petition arguing, inter alia, against Petitioner's justification for late-filing. Again relying on its "red herring" Applicant states that "Ppetitioner does not explain why it did not seek out workers or other sources of QA/QC information years ago on the basis of available information." (App.'s response at p. 15) Applicant, having at this point abandoned common sense, would have this Board craft an impossible standard. Applicant's argument would, if adopted, require prospective intervenors to not only scour newspaper accounts and voluminous NRC-required filings, but to conduct daily exit-interviews at the construction site. Only in that way could Petitioner have learned of the complained-of work on safety-related plant. Such a policy would of course be unworkable. Applicant's interest in ignoring late appearing information regarding construction practices/violations at Wolf Creek is simply outweighed by the public's interest in resolving

issues of safety. Contacted by a representative of the workers in mid-December, 1983, Petitioner acted with due diligence in bringing these matters to the attention of Chairman Wolfe by letter and by filing its Petition within 30 days. Applicant's argument would, if adopted, impose a standard too strict effectively preclude any interventions based on worker-reported problems arising or reported beyond applicable deadlines published in the Code of Federal Regulations.

RESPONSE TO NRC STAFF

NRC Staff opposes Petitioner's untimely intervention for two reasons: first, that it has not established standing to intervene and, second, that a balancing of the five factors set forth at 10 C.R.F. §2.714(a)(1) "tip the scale against late intervention". Petitioner disagrees.

A) Standing To Intervene

NRC Staff's argument is to the effect that Petitioner has not adequately demonstrated its standing. Petitioner submits its Petition, verified by Director Mary M. Stephens, constitutes un rebutted evidence that at least two of its members live within twenty miles of Wolf Creek. The judicial requirements of standing are not so strict as to disregard this evidence. Additionally, Mary M. Stephens, a member of Nuclear Awareness Network, Inc., often travels for purposes of leisure and work-related activities within a twenty-five mile radius of Wolf Creek

(see attached affidavit). Finally, Nuclear Awareness Network, Inc. was incorporated in 1983 for previously stated purposes all relating to nuclear power. Applicant's construction site at Burlington, Kansas is the first and only nuclear facility in Kansas. Petitioner's interest, it may be fairly inferred, concern nuclear issues immediate at Wolf Creek. Petitioner submits that it has established standing and that Staff objects are at most cosmetic in nature.

B) Lateness Factors

NRC Staff agrees that Petitioner has satisfied the requirements of 10 C.F.R. §2.714(a)(2) by placing the parties on notice with respect to contentions it may file. NRC Staff also agrees with Petition regarding the lateness factors nos. 2 and 4 set forth at §2.714(a) (Availability of Other Means and Representation by Existing Parties). NRC Staff, however, disagrees with Petitioner regarding the three remaining factors.

First Staff rejects Petitioner's "primary support for contending good cause exists" due to "information from Applicant" as to who initiated the communication between Petitioner's Director Stephens and the former D.I.C. Wolf Creek workers. (See NRC Staff response at p. 10) As demonstrated supra, Applicant has distorted Petitioner's clear statement regarding her initial contact by a "representative" of the workers, seen an "innuendo" where none exists, and apparently persuaded NRC Staff that a "significant discrepancy" exists.

Petitioner's Director Mary M. Stephens was contacted by an official representative of the six workers. That allegation, which is not susceptible to more than one understanding or meaning, has not been challenged, refuted, or denied by Applicant anywhere in their rather lengthy response. Instead Applicant distorts Petitioner's accurate rendition and persuades NRC Staff to conclude the existence of a "significant discrepancy".

Petitioner submits that Staff's objection to lateness based on Applicant-provided disinformation should not be accepted by this Board. It is certainly true that NAN Director Stephens contacted the referenced six workers but only after and in response to her being contacted by their official representative.

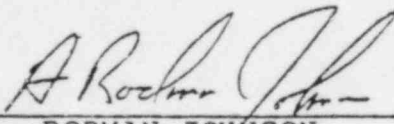
Second, Petitioner disagrees regarding its demonstrated ability to contribute to the development of this record. Petitioner's Director Stephens testified at the public hearing in this docket held at Burlington, Kansas on January 21, 1984, that Petitioner was well organized with a budget in excess of \$50,000.00 for 1984. If permitted to intervene, expert witnesses will be retained by counsel who is experienced in administrative/utility matters and assisted by four co-counsel whose experience includes inter alia, active participation in the Wolf Creek construction license hearings held in Kansas City in 1976 and 1977. Should the Board grant intervenor status, Petitioner will timely file its contentions and identify its

prospective witnesses at least one of whom shall request anonymity for hearing purposes.

CONCLUSION

Petitioner requests leave for intervenor status and for hearings on its allegations. Recognizing its request would delay the proceeding, Petitioner finds the public interest in resolving potential safety problems greatly outweighs Applicant's interest in expedience. Petitioner's original filing herein carefully sets forth its concerns regarding evidence of a systematic disregard of QA/QC procedures at Wolf Creek. This Board's adjudicatory processes can resolve these issues. Affidavits by Applicant's QA/QC employees cannot.

Petitioner requests for late-filed intervenor status and hearing should be granted.



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CERTIFICATE OF SERVICE

'84 MAR 12 P1:37

I hereby certify that copies of Petitioner's Response to Applicant and NRC Staff was served this 6th day of March, 1984, by deposit in the U.S. mail, first class, postage prepaid, to the following parties:

The United States Nuclear Regulatory
Commission
Washington, D.C., 20555

The Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Sheldon J. Wolfe, Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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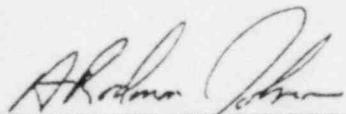
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AFFIDAVIT

State of Kansas

ss:

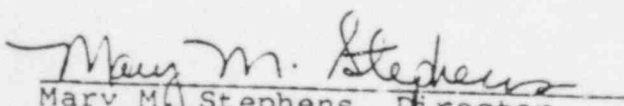
County of Shawnee

I, Mary M. Stephens, being first duly sworn, do depose and say as follows:

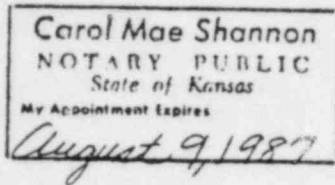
That Tom and Joyce Young, Gridley, Kansas are members of Nuclear Awareness Network and live within twenty miles of the Wolf Creek Generating Station Construction Site. Tom and Joyce Young are aware of Nuclear Awareness Network's previously filed Petition for Leave to Intervene and Request for Hearing filed in NRC docket no. 50-482 and expressly authorized the filing of said Petition on their behalf as individual members of Nuclear Awareness Network.

That I personally travel in the course of my employment on a regular basis within twenty miles of the Wolf Creek Generating Station construction site and frequently enjoy leisure activities within twenty-five miles of said construction site. Inasmuch as I travel for work and leisure related work purposes within twenty-five miles of said construction site I am vitally interested in the safe operation of the facility.

Signed,


Mary M. Stephens, Director
Nuclear Awareness Network

Subscribed and sworn to before me this sixth day of March,
1984.



Carol Mae Shannon
Notary Public

My commission expires: August 9, 1987

AFFIDAVIT

State of Kansas

ss:

County of Coffey

I, Joyce Young, being first duly sworn, do depose and say as follows:

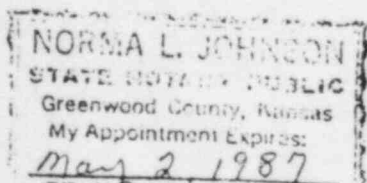
That I am a member of Nuclear Awareness Network and live within twenty miles of the Wolf Creek Generating Station construction site.

That I am familiar with and expressly authorized Nuclear Awareness Network, through its Director Mary M. Stephens, to file said Petition to intervene in NRC docket no. 50-482 on my behalf.

Signed,

Joyce Young
Joyce Young

Subscribed and sworn to before me this sixth day of March, 1984.



My commission expires:

May 2, 1987

Norma L. Johnson
Notary Public

AFFIDAVIT

State of Kansas

ss:

County of Coffey

I, Tom Young, being first duly sworn, do depose and say as follows:

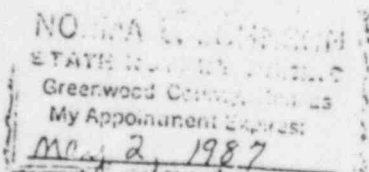
That I am a member of Nuclear Awareness Network and live within twenty miles of the Wolf Creek Generating Station construction site.

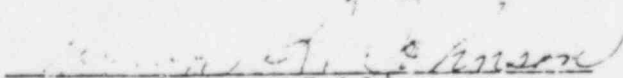
That I am familiar with and expressly authorized Nuclear Awareness Network, through its Director Mary M. Stephens, to file said Petition to intervene in NRC docket no. 50-482 on my behalf.

Signed,


Tom Young

Subscribed and sworn to before me this sixth day of March, 1984.




Notary Public

My commission expires

May 2, 1987