



KANSAS GAS AND ELECTRIC COMPANY

GLENN L. KOESTER
VICE PRESIDENT - NUCLEAR

October 23, 1984

Mr. Richard C. DeYoung, Director
Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

KMLNRC 84-189

Re: Docket No. STN 50-482

Ref: Letter of 9/27/84 from JTCollins, NRC, to
GLKoester, KG&E

Dear Mr. DeYoung:

The Reference transmitted a Notice of Violation and Proposed Imposition of Civil Penalty (EA 84-87) to Kansas Gas and Electric Company. The proposed enforcement action was based on alleged discrimination by Kansas Gas and Electric Company (KG&E) against James E. Wells for engaging in certain protected activities.

As set forth in the Notice, a Department of Labor Administrative Law Judge ruled on February 27, 1984, that an act of discrimination had occurred, a finding affirmed by the Secretary of Labor in a Decision and Final Order dated June 14, 1984. The Notice stated that the NRC's determination that a violation of its regulations had occurred was based on the Labor Department's investigation and hearing and the Secretary's Decision and Final Order.

The Secretary of Labor's Decision and Final Order is currently on appeal before the United States Court of Appeals for the 10th Circuit. Kansas Gas and Electric Company vs. Donovan, No. 84-2114. The appeal was filed on August 13, 1984, and is still pending. This appeal has been taken because KG&E is convinced that the Secretary of Labor's Decision is over-broad and misconstrues the statutory language of Paragraph 210 of the Energy Reorganization Act, 42 U.S.C. Paragraph 5851. Essentially, the Secretary's Decision holds that James Wells was discharged for his involvement in filing routine internal reports. By doing so, the Secretary has failed to take into account the pertinent legislative history on the subject and has also misapplied established principles of statutory construction. The affect of stretching the statutory language of Paragraph 210 to mean that any conduct is protected only if it carries out the purposes of the Atomic

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Energy Act renders the decisions by a Secretary legally incorrect and unenforceable.

The appeal has also been perfected due to the belief of KG&E that the facts as presented do not support the decision rendered by the Secretary in this case. The decision by the Secretary, relied upon by the NRC in issuing the Notice of Violation and Proposed Imposition of Civil Penalty, requires a reading of the evidence presented which completely ignores the consistent, uncontradicted and corroborated testimony of KG&E personnel and the accompanying documentation. The decision instead relies upon the credibility of an individual who has misrepresented his qualification several times during the course of his employment. The Order is also based upon an incorrect assumption that the documents provided by Wells after his release verified the information he had originally asserted. In fact, examination of the documents only verifies that the statements by Wells, at the time of his employment, incorrectly represented his qualifications and background. The findings of the Administrative Law Judge and the Secretary of Labor also completely ignore the legitimate business reasons for the employment decisions affecting the Complainant offered by KG&E during the testimony. The Secretary's Order is also deficient in that there is no substantial evidence to support the claim that employment decisions were based upon improper motives. In short, the findings as made are not supported by substantial evidence of record but are based upon surmise and speculation.

In addition to the appeal, this matter is also pending before the United States District Court for the District of Kansas. An action was initiated by Mr. Wells to seek the help of the Court in enforcing the Order of the Secretary of Labor in this matter. Wells vs. Kansas Gas and Electric Company, No. 84-2990. This case was filed on July 18, 1984, and is still pending. The main issue in that matter concerns the appropriateness of the Order for Reinstatement. KG&E feels reinstatement is inappropriate in this case based upon evidence discovered after Mr. Wells' termination and because of the change in conditions as the construction site as the construction phase nears completion.

In accordance with the statement in the Notice of Violation, the NRC will consider extending the response time for good cause shown. Until a final determination has been made by the Courts on the correctness of the Secretary of Labor's action, KG&E believes that it is premature to respond to the Notice of Violation or to otherwise set forth KG&E's position with regard to the civil penalty. To be required to do so may unjustly prejudice the Company in pursuing the avenues of legal review available to it. Should the matter be overturned on appeal, the appropriateness of the NRC in relying upon the Secretary of Labor's Order would seem to be in question. Therefore, KG&E would request that the time for responding to this Notice of Violation and for setting forth KG&E's position on the civil penalty be extended until 30 days after final judicial determinations have been reached by the Appeals Court concerning the Secretary of Labor's Decision and by the District Court

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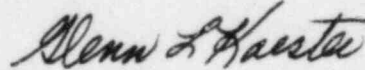
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on Mr. Wells' enforcement action. Similarly, we would anticipate that the imposition of the civil penalty would be suspended until such time. It is our understanding that the NRC has granted similar extensions of time in comparable cases, particularly in the case involving Texas Utilities Generating Company concerning their Comanche Peak Steam Electric Station in Glenn Rose, Texas.

KG&E fully recognizes that acts of discrimination against an employee engaged in protected activity cannot be tolerated. KG&E does not--and will not--tolerate such acts. We have made this perfectly clear to all our personnel, to all our contractors, and to all our contractors' personnel. The Quality First program which KG&E put into operation in March, 1984, provides a mechanism for any employee who believes that such acts have occurred to bring them to KG&E's attention, on a confidential basis if the employee desires. We investigate all charges of this kind of conduct and require appropriate remedial action where the charges are substantiated.

Awaiting the final judicial outcome on Mr. Wells' charges in no way weakens our dedication to protecting the rights of all employees at the Wolf Creek site.

Yours very truly,



Glenn L. Koester
Vice President - Nuclear

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