

Testimony on HB 2703 before the  
Senate Utilities Committee by  
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and  
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Wolf Creek Nuclear Operating Corporation  
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Chairman Emler and members of the committee, I am Warren B. Wood, General Counsel and Secretary of Wolf Creek Nuclear Operating Corporation (“WCNOC”), and with me today is Loren S. Cox, Supervisor Security Training for WCNOC. WCNOC is a wholly-owned subsidiary of Westar Energy, Inc., Kansas City Power & Light Company and Kansas Electric Power Cooperative, Inc. Those three companies own Kansas’ only commercial nuclear fueled electric generating station, Wolf Creek Generating Station, located near Burlington in Coffey County, Kansas. WCNOC operates the plant as agent for its owner companies. We are testifying in support of HB 2703 which would enhance Kansas law with regard to the ability of the plant’s security officers to protect the plant and its work force from potential unlawful attacks and acts of terrorism.

United States nuclear power plants in general, and Wolf Creek in particular, have always maintained an extremely high level of physical security around the plant. Some of you may have visited Wolf Creek over the years and have seen and experienced first hand the priority that WCNOC places on plant security as a part of protecting the health and safety of the public. These plants are well-protected by physical barriers, highly trained armed guards, intrusion detection systems, area surveillance systems, access controls, and access authorization requirements for employees working inside the plants. Nuclear power plants likely are the best protected private sector facilities in the country.

Following the September 11, 2001, attacks on the country, our federal regulator, the Nuclear Regulatory Commission (“NRC”), took several actions to further enhance nuclear plant safety and security. Some of these actions included ordering plants to:

- increase physical security to defend against a more challenging adversarial threat,
- maintain strict site access controls for personnel,
- conduct vehicle checks at greater stand-off distances,
- improve their capability to respond to explosions and fires,
- strengthen their security force training and qualification programs, and
- enhance force-on-force exercises to provide a more realistic test of plant capabilities to defend against an adversary force.

Those of you who have visited Wolf Creek have seen the extensive and diverse levels of physical security there. There is only one highway access into the plant, and about a mile north of the plant is a hardened guardhouse at which every vehicle seeking entry must stop for a brief inspection of its passengers and contents. Just south of the guardhouse is a sturdy pop-up barrier

capable of stopping any vehicle that tries to circumvent the guardhouse. Reinforced concrete Jersey barriers surround much of the perimeter of the plant. Closer to the plant are several layers of barriers including anchored cables to stop vehicles, razor wire, tall chain link fences topped with barbed wire, and inside all of that, a separate barbed wire fence. To walk into the plant, you must be escorted by an authorized plant employee through a metal detector, an explosives detector and a locked door or a secure metal turnstile. Anything you carry into the plant must first be run through an X-ray machine.

The purpose for this verbal tour of Wolf Creek security is to impress upon you that anyone wanting to enter this highly fortified protected area of the plant for illegitimate reasons likely will be prepared to inflict serious, probably lethal, bodily harm on those who would try to stop them, and likely would intend to damage or destroy plant equipment that could result in endangering the public health and safety. It is for this reason that as early as 1989, the NRC issued Information Notice 89-05, "Use of Deadly Force by Guards Protecting Nuclear Power Reactors Against Radiological Sabotage."

Information Notice 89-05 was the NRC's effort to clarify its expectations regarding the use of deadly force by nuclear plant guards. The notice stated, "The [NRC] staff considers use of deadly force justifiable in protecting nuclear power reactors against sabotage if there is reasonable belief that an act of radiological sabotage will be perpetrated unless deadly force is used to prevent it." The notice concluded that guards defending the plant against armed assaults, armed attacks by stealth, attackers employing explosives or incendiaries, perceived armed attacks and the like "do not have to abandon cover and concealment or their defensive positions, or wait for the adversaries to fire the first shot."

Information Notice 89-05 does not supersede state law on the use of deadly force. However, it does potentially put plant security officers in a difficult position in trying to meet the NRC's expectations for defending the plant and at the same time complying with governing state law. We believe that HB 2703 will help resolve this dilemma.

More recently, in late 2004 the NRC sent a letter to Homeland Security Advisors in states having nuclear power plants encouraging those states to adopt legislation to enhance the effectiveness of nuclear plant security personnel.

We are aware of four states that have enhanced their statutes either on authorized weaponry or the use of force in the context of defending nuclear power plants against intrusion and attack-- Arizona, Texas, New York and New Jersey. Kansas HB 2703 is patterned after the Arizona law (Arizona Criminal Code §§ 13-4901 through 4904).

First, this bill creates a new felony called "Criminal Trespass on a Nuclear Generating Facility." (Ordinary trespass currently is just a misdemeanor in Kansas.) The bill requires that the plant's surrounding barriers be posted with signage indicating it is a felony to trespass there.

Second, the bill permits a nuclear plant guard to use physical force against another within posted nuclear plant property if the guard reasonably believes that such force is necessary to prevent or terminate the commission of certain specified crimes against property, including the newly

created Criminal Trespass on a Nuclear Generating Facility, or involving the criminal use of weapons.

Third, the bill permits the nuclear plant guard to threaten and to use up to deadly physical force against another within posted nuclear plant property if the guard reasonably believes that such force is necessary to prevent the commission of other specified crimes involving potential great bodily harm or death, or to protect himself or a third person from the use or imminent use of physical force or deadly physical force.

Fourth, the bill gives the nuclear plant guard the authority to detain for a reasonable time another who the guard reasonably believes committed or attempted to commit any of the crimes specified in the prior sections, so that a law enforcement officer may be summoned.

Finally, the bill provides the guard, his employer and the plant's owners with immunity from civil liability for the guard's engaging in conduct justified under the act, and it provides an affirmative defense in civil or criminal actions for false arrest, false or unlawful imprisonment or wrongful detention.

Under current Kansas statutes, private persons generally are limited in their defense of property other than a dwelling to using "only such degree of force or threat thereof as a reasonable man would deem necessary to prevent or terminate" unlawful interference with such property. (K.S.A. 21-3213.) In a 1981 Kansas case involving this statute, the Court of Appeals affirmed a jury conviction of a private person for aggravated assault after he shot his weapon near, but not at, two persons who were on his fenced property apparently stealing vehicle parts. (*State v. Johnson*, 6 Kan. App.2d 750, 634 P.2d 1137.) This teaches us that under current Kansas law, one may be convicted of a felony for threatening the use of deadly force in defense of one's property.

As to defense of a person, a private person is justified in the use of force against an aggressor when he reasonably believes that such conduct is necessary to defend himself or another against such aggressor's imminent use of unlawful force. (K.S.A. 21-3211.) The question for the defender then is, how "imminent" must the aggressor's use of force be to allow this statute to apply?

Because of the unique and highly sophisticated nature of nuclear power plants and the potential serious consequences to the public if an aggressor were to breach their multiple security barriers, we believe it is necessary and prudent to allow nuclear plant security forces more defined authority in the use of force and deadly force in protecting the plant and its workers. We believe that HB 2703 will enable a nuclear plant's security force to more effectively carry out its role of serving as the final barrier to an attack against the plant, all for the purpose of protecting the health and safety of other plant workers and of the public.

Thank you for the opportunity to address you this morning. We will be glad to stand for questions at the appropriate time.