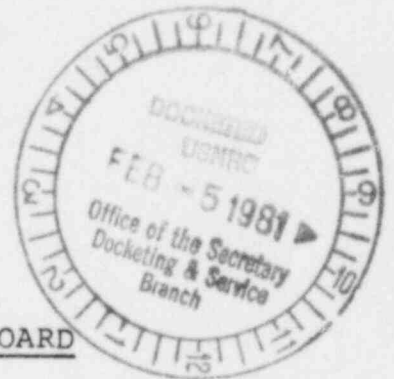


February 3, 1981



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
KANSAS GAS & ELECTRIC COMPANY)	Docket No. STN 50-482
<u>et al.</u>)	
)	
(Wolf Creek Generating)	
Station, Unit No. 1))	

APPLICANTS' ANSWER TO PETITION FOR LEAVE TO INTERVENE
BY KANSANS FOR SENSIBLE ENERGY

In an undated document, docketed by the NRC on January 19, 1981, ^{*}/Kansans For Sensible Energy ("KASE") petitions for leave "to intervene in the matter of an operating license for the Wolf Creek plant." Applicants oppose the KASE petition.

The factors to be considered in ruling on a petition for intervention are set forth in Section 2.714(d) of the Commission's Rules of Practice, and were listed in the Federal Register notice of opportunity for hearing. See 45 Fed. Reg. 83360-61. They are:

*/ KASE did not serve a copy of its petition on counsel for Applicants, despite the explicit instructions of the Federal Register notice.

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

Contemporary concepts of judicial standing are applied to determine whether a petitioner has made an adequate showing of interest to support intervention. To satisfy applicable standards, a petitioner must demonstrate (1) "injury in fact" and (2) that the interest is "arguably within the zone of interest[s]" protected by the relevant statutes - in this case, the Atomic Energy Act and the National Environmental Policy Act. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 612-13 (1976). Accord, Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

In its petition, KASE asserts that it "has been actively engaged in the promotion of conservation and alternative energy sources, as well as actively opposed to nuclear power for several years." However, such assertions are insufficient to clothe an organization such as KASE with independent standing to intervene in an NRC licensing proceeding.

Similar allegations were rejected as a basis for intervention in Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 421-23 (1976) and Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-95 (1979), both of which rest on the holdings of Sierra Club v. Morton, 405 U.S. 727 (1972).

In Sierra Club, the Supreme Court held that the Sierra Club could not predicate its standing to seek to enjoin Federal agency approval of the commercial development of a portion of a national game refuge upon its asserted "special interest in the conservation and the sound maintenance of the national parks, game refuges, and forests of the country." As the Court noted:

[A] mere "interest in a problem," no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" * * * [I]f a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide "special interest" organization, however small or short-lived. And if any group with a bona fide "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.

The requirement that a party seeking review must allege facts showing that he is himself adversely affected * * * serve[s] as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal would be undermined were we * * * to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process.

405 U.S. at 739-40. Thus, KASE cannot predicate a claim to standing in the Wolf Creek operating license proceeding on its interests in conservation and alternative energy sources and its general philosophical opposition to nuclear power.

Nor has KASE attempted to assert any injury to itself, as an organization, as a basis for standing. Certainly no such basis can be implied from its "residence" in Wichita, Kansas, approximately 90 miles from the Wolf Creek site near Burlington, Kansas. While the Commission and the Appeal Board have declined to "lay down any inflexible standard" with respect to residence as a basis for standing, Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973), the Commission and the Appeal Board have required that a petitioner's allegations of personal injury increase in specificity and substantiality the farther from the site a petitioner resides. See, e.g., Dairyland Power Cooperative (LaCrosse Boiling Water Reactor),

ALAB-497, 8 NRC 312 (1978) (residence more than 75 miles from facility insufficient basis for standing); Duquesne Light Company (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243 (1973) (concern about effects of facility operation on food, milk, water supply and air insufficient to confer standing on individual residing more than 100 miles from site). KASE's "residence" in Wichita is thus too geographically remote from Wolf Creek to constitute a basis for independent standing to intervene in this proceeding, particularly considering its failure to allege any injury to itself, as an organization, which might result from the issuance of an operating license for Wolf Creek.

In this context, any standing which KASE might possess would be wholly derivative in character. "It must appear that at least one of the persons it purports to represent does in fact have an interest which might be affected by the licensing action being sought." Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979). KASE's petition describes KASE as "a citizens group of people who will be directly affected by the operation" of Wolf Creek, and is signed by twelve individuals. The petition does not indicate where the named individuals reside, whether any one of them has a personal interest which might be adversely affected

by the outcome of the Wolf Creek licensing proceeding, whether the named individuals are members of KASE, and whether the named individuals have authorized KASE to represent their interests in the proceeding. Both the Licensing Board and the other parties are entitled to be provided with such information "to enable them to determine for themselves, by independent inquiry if thought warranted, whether a basis [exists] for a formal challenge to the truthfulness of the assertions in the * * * petition." See ALAB-535, 9 NRC at 393. KASE's simple, conclusionary description of itself is thus insufficient, even when coupled with the twelve unidentified signatures, to support standing for intervention in this proceeding as a representative of KASE members. ^{*}/

In an operating license proceeding such as this -- unlike a construction permit proceeding -- a hearing is not mandatory. There is, accordingly, especially strong reason in an operating license proceeding for the exercise of "utmost care" to ensure that petitions for intervention clearly demonstrate a "real stake" in the proceeding. Cincinnati Gas & Electric Company (Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976). Accord, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-547, 9 NRC 644, 649 (1979).

^{*}/ The conclusionary nature of KASE's petition precludes Applicants' evaluation of the factors to be balanced in considering discretionary intervention under Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976).

For all the foregoing reasons, Applicants oppose KASE's petition for intervention in this proceeding. Further, in order to determine whether the hearing requested by KASE is to be held, and - if held - the scope and scheduling for such a hearing, Applicants respectfully request that the special prehearing conference called for by 10 C.F.R. § 2.751a be scheduled at an early date.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: February 3, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer To
Petition For Leave To Intervene By Kansans For Sensible Energy"
were served upon those persons on the attached Service List by
deposit in the United States mail, postage prepaid, this 3rd day
of February, 1981.



Delissa A. Ridgway

Dated: February 3, 1981

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