

April 23, 1982

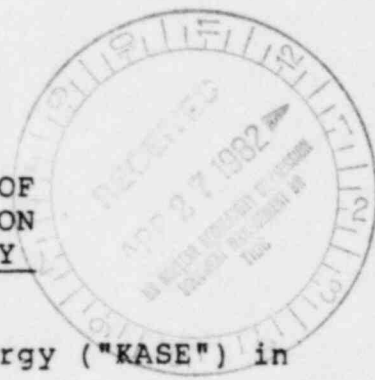
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF THE SECRETARY
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545

Before the Atomic Safety and Licensing Board

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

APPLICANTS' MOTION FOR DISMISSAL OF
FINANCIAL QUALIFICATIONS CONTENTION
AND FOR DISMISSAL OF KASE AS PARTY



The contention of Kansas For Sensible Energy ("KASE") in this proceeding asserts that:

Due to increased and underestimated costs, the Applicant does not have the financial ability to either operate or decommission the Wolf Creek facility.

Special Prehearing Conference Order (Ruling on Intervention Petitions, Requests For Hearing and Contentions) (June 3, 1981), at 8. Applicants move to dismiss this contention in view of the final rule on financial qualifications adopted by the Commission on March 24, 1982 (47 Fed. Reg. 13750). Further, since the financial qualifications contention is KASE's only contention, Applicants move to dismiss KASE as a party to this proceeding.

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The final rule published on March 31, 1982 eliminates all aspects of financial qualifications from NRC review at the operating license stage (as well as at the construction permit stage). As stated in revised 10 C.F.R. § 2.104(c)(4),

[T]he issue of financial qualifications shall not be considered by the presiding officer in an operating license hearing if the applicant is an electric utility seeking a license to operate a production or utilization facility of the type described in § 50.21(b) or § 50.22.

47 Fed. Reg. at 13753. See also 10 C.F.R. Part 2, App. A, § VIII(b)(4), 47 Fed. Reg. 13754; and 10 C.F.R. § 50.33(f)(1), at id. Since Applicants are "electric utilities",^{1/} and since

^{1/} The new regulations define "electric utility" as

***any entity that generates or distributes electricity and which recovers the costs of this electricity, either directly or indirectly through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and state and federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

10 C.F.R. § 2.4(s), 47 Fed. Reg. at 13753; see also § 50.4(x), 47 Fed. Reg. at 13754. Applicants Kansas Gas and Electric Company and Kansas City Power & Light Company are entities that generate and distribute electricity, and Applicant Kansas Electric Power Cooperative is an association of rural electric cooperatives. Applicants recover the cost of generated electricity through rates established by separate regulatory authorities (i.e., the State Corporation Commission of Kansas, the Public Service Commission of the State of Missouri, and the Federal Energy Regulatory Commission.) See Applicants' Application for Licenses, General Information Section.

they are seeking a license to operate a utilization facility^{2/} of the type described in 10 C.F.R. § 50.22, the new regulation excludes all financial qualifications issues from this proceeding.

The exclusion extends to the financial qualification issues associated with decommissioning, as well as other financial qualifications issues. See 47 Fed. Reg. at 13751. The Commission thus rejected the alternative considered in the proposed rule of retaining financial qualifications issues associated with decommissioning while eliminating all other financial qualifications issues. See 46 Fed. Reg. 41786 (August 18, 1981). For those utilities (such as Applicants) coming within the scope of the rule, the rule thus completely eliminates financial qualification issues from licensing proceedings.

The rule is also immediately effective and applies to those proceedings already in progress and to issues and contentions in those hearings.

[T]he rule will be applied to ongoing licensing proceedings now pending and to issues or contentions therein, Union of Concerned Scientists v. AEC, 499 F.2d 1069 (D.C. Cir. 1974). . . .

47 Fed. Reg. at 13753. Thus, the rule excludes KASE's financial qualifications contention from this proceeding, even

^{2/} 10 C.F.R. § 50.2(b) defines "utilization facility" as "any reactor other than one designed or used primarily for the formation of plutonium or U-233".

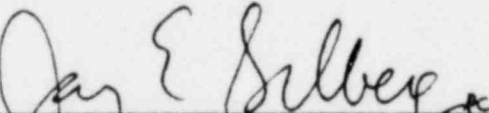
though it had previously been admitted as a litigable issue. Accordingly, the contention must be dismissed.

Further, the Commission's Rules of Practice require a petitioner for intervention to advance at least "one good contention" to be permitted to participate as a party to a proceeding. See 10 C.F.R. § 2.714(b), codifying, e.g., Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 A.E.C. 243, 245 (1973); Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 A.E.C. 371, 372 (1973); Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), 6 A.E.C. 423, 424 (1973). Thus, since the financial qualifications contention must be dismissed, and since it is KASE's only contention, KASE must be dismissed as a party to this proceeding.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: April 23, 1982

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CERTIFICATE OF SERVICE

This is to certify that copies of "Applicants' Motion For Dismissal Of Financial Qualifications Contention And For Dismissal Of KASE As Party" are being served to all those on the attached service list by deposit in the U.S. Mail, first class, postage prepaid, this 23rd day of April, 1982.



Delissa A. Ridgway

Dated: April 23, 1982

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