

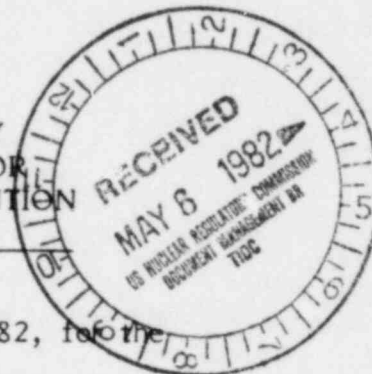
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
KANSAS GAS & ELECTRIC COMPANY,)
et. al.)
(Wolf Creek Generating Station,)
Unit No. 1))

Docket No. 50-482

KANSAS FOR SENSIBLE ENERGY (KASE) REPLY
TO MOTIONS OF APPLICANTS AND NRC STAFF FOR
DISMISSAL OF FINANCIAL QUALIFICATIONS CONTENTION
AND FOR DISMISSAL OF KASE AS PARTY



The applicants' and the NRC Staff motions, dated April 23, 1982, for the dismissal of the financial qualifications contention of KASE and for the dismissal of KASE as a party should be denied for the reasons hereafter specified.

The Nuclear Regulatory Commission does not have the statutory authority to adopt the financial qualifications rule published on March 31, 1982, in the Federal Register (47 FR 13750). Therefore, the rule is invalid, and KASE should be permitted to continue with its intervention regarding the financial qualifications of the applicants.

In support of the rule, the Commission stated that the financial qualifications review function is within the Commission's discretionary authority and is not mandated (47 FR 13751). This is the Commission's interpretation of 42 U.S.C 2232(a). KASE does not agree with that interpretation and believes that the financial qualifications review is mandated under the terms of 42 U.S.C 2232(a).

The pertinent part of 42 U.S.C 2232(a) is as follows:

"Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license." (Emphasis added.)

The section can only be interpreted to mean that at least some consideration of the financial qualifications is necessary. If financial qualifications are not to be a factor, Congress in enacting the section would have omitted the words "and financial" from the sentence. The discretion of the Commission relates to what financial qualifications will be considered and not whether any financial qualifications will be considered.

No cases have come to the attention of KASE which rule precisely on the issue raised in the preceeding paragraph. The Commission in support of its interpretation cites New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87 (1st Cir. 1978). (See 47 FR 13751). That case does not decide if financial qualifications considerations are mandatory. Rather, it only decides that the financial qualifications matters considered in that case were adequate.

In New England Coalition on Nuclear Pollution v. NRC the court discusses the evidence about financial qualifications that were before the NRC in that case. In supporting the NRC it decided that it would not disturb the NRC decision because there was a reasonable amount of substantial evidence to support the NRC's conclusions. At page 93 the opinion states:

"the act gives the NRC complete discretion to decide what financial qualifications are appropriate. The regulations require only a 'reasonable assurance.' We will not second guess the NRC as to its interpretation of the level of proof that standard requires."

The quoted language clearly implies that some consideration of financial qualifications is appropriate.

KASE participated in the rule making proceedings for the adoption of the financial qualifications rule by filing comments in opposition to the proposed rule as permitted by the Notification of Rule Making published by the Nuclear Regulatory Commission at 46 FR 41786, August 18, 1981.

Respectfully submitted,

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Dated May 3, 1982.

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CERTIFICATE OF SERVICE

This is to certify that copies of "Kansans for Sensible Energy (KASE) Reply to Motions of Applicants and NRC Staff for Dismissal of Financial Qualifications Contention and for Dismissal of KASE as Party" in the above captioned proceeding have been served on the following by deposit in the U.S. Mail, first class, on

May 3, 1982.

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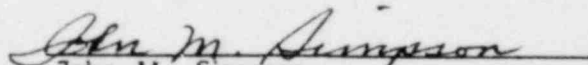
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