UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

ANSWER OF INTERVENORS, CHRISTY AND SALAVA, TO MOTION TO COMPEL ANSWERS TO INTERROGATORIES

This is the answer of the intervenors Mary Ellen Salava and Wanda Christy (hereafter referred to as the "intervenors") to the applicants' Motion to Compel Answers to Applicants' Interrogatories, said motion being dated October 8, 1981.

The motion of the applicants to compel the intervenors to answer fully the applicant's interrogatories EP-4, EP-5, EP-7, EP-8, EP-9, EP-11, EP-12, EP-15, EP-16, and interrogatory EP/FQ should be denied (these interrogatories are hereafter collectively referred to as the "interrogatories"). In support of this contention the intervenors argue as follows:

(1) The intervenors have responded as fully as possible to each of the interrogatories. See each intervenor's responses da. ptember 24, 1981.

(2) The intervenors are willing to respond to the interrogatories when their contentions about the "plans" are fully formed and the emergency plans of the State of Kansas and Coffey County are adopted by those units of government.

(3) 10 CFR 50.33(g) requires the applicants to "submit radiological emergency response plans of state and local government entities in the United States that are wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ), as well as the plans of state governments wholly or partially within the ingestion pathway EPZ." The applicants have not done so. Consequently, in making their motion they are asking the intervenors to respond to interrogatories about the "plans" when the applicants have not even complied with the rules of the Nuclear Regulatory Commission. It seems unfair to require an answer when the applicants have not met their obligations.

(4) In their motion the applicants state that the intervenors have been provided with copies of the "current revisions of the state and county emergency plans." The only materials supplied to the intervenors by the applicants is an unsigned "draft" of the Coffey County plan and a stack of papers (unsigned) purporting to be the plan of the State of Kansas. There is no evidence that either of these purported plans has ever been adopted by the State or the Coffey County Commissioners, and the applicants' attorney has admitted this to the undersigned.

(5) The "plan" of the State of Kansas described in paragraph 4 above is not complete. The applicants recognize that it is incomplete because they state several times in their response to the intervenors' interrogatories and in reference to the state "plan" that "the state sections are incomplete and being developed." (See applicants' answer to intervenors'

interrogatories Nos. 3, 6-18, and 20-30.) Additionally, a review of the material submitted as the "state plan" indicates that it is primarily designed to cover emergencies at the Cooper Nuclear Plant in Nebraska and not the Wolf Creek Nuclear Generating Station.

(6) In ruling on matters relating to interrogatories between parties, the board is to interpret the discovery provisions of 10 CFR, part 2, in a manner consistent with the Federal Rules of Civil Procedure. (See 10 CFR, part 2, Appendix A, IV (c); In the Matter of Boston Edison Co. (Pilgrim Nuclear Generating Station, Unit 2), LBP-75-30, NRC1-75/6, 579, 581 (1975)). The intent and interpretations of Rule 33 (Interrogatories to Parties) of such rules supports the contention that the applicants' motion should be denied.

(7) Rule 33 has been interpreted to favor full and fair disclosure but at the same time the courts have stated that they have reasonable discretion to, and should through protective orders and other measures, prevent discovery from becoming unjustifiably burdensome or unreasonably complex or technical. See, Richlin v. Sigma Design West, Ltd., 88 F.R.D. 634 (E.D. Calif. 1980); Pilling v. General Mortors Corporation, 45 F.R.D. 366 (D. Utah 1968); and Spier v. Home Insurance Company, [illegible] F. 2d 896 (7th Cir. 1968). In ruling on this motion the board should consider (a) the burdens on each party, and (b) whether answering at this time will be wasteful preparation since no state or county plan has been formally adopted. See, In the Matter of Boston Edison Co., supra at 580.

(8) Rule 33(b) of the Federal Rules of Civil Procedure allows an interrogatory which involves an opinion or contention that relates to fact or the applica-

tion of fact to law, "but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time." (Emphasis added.) Each of the interrogatories involves opinion and contentions of the intervenors. Therefore, it is within the discretion of the board to allow the intervenors to answer at a later time, and as stated above the intervenors are willing to respond at a later time and when the plans are submitted as required by 10 CFR 50.33(g). Additionally, the intervenors recognize that the plans once adopted may be amended, and if requested to do so, and if within the scope of discovery, the intervenors are willing to answer interrogatories regarding such amendments.

(9) Moore's Federal Practice discusses Rule 33(b) as it relates to opinion and contention interrogatories and states as follows: the "but clause, which may seem unnecessary in view of the provision of Rule 26(c), permits the court to postpone answers to interrogatories seeking opinions or contentions until a later point in the proceedings so that the interrogated party will not be forced into fixing his contentions without adequate information." (Moore's Federal Practice, Vol. 4A, Para. 33.17 (2) (2d Ed.)). In this matter if the intervenors are required to respond at this time to the applicants' interrogatories they will be responding "without adequate information" and before further discovery will permit them to fully define their contentions. That is burdensome and wasteful preparation that will not narrow the issues in this matter. A response at this time would be of limited value because even the drafts of the

"plans" will in all likelihood change or be amended. Such limited value is outweighed by the wasted efforts a response now will require of the intervenors.

(10) The applicants' motion should be denied as premature because the plans of the State of Kansas and Coffey County have not been submitted. In the alternative, the board should rule that the interrogatories are contention and opinion interrogatories and that the intervenors need not respond until such later time as plans are approved by the State of Kansas and Coffey County, submitted by the applicants as part of their application for a license, and discovery has been completed.

Respectfully submitted,

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October 23, 1981.

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CERTIFICATE OF SERVICE

I hereby certify that copies of Answer of Intervenors, Christy and Salava, to Motion to Compel Answers to Interrogatories in the above captioned proceeding have been served on the following by deposit in the United States mail, first class, on October 23, 1981.

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