October 8, 1981

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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)	)	

APPLICANTS' MOTION TO COMPEL ANSWERS
OF INTERVENOR SALAVA TO APPLICANTS' INTERROGATORIES

On August 19, 1981, Applicants served upon intervenor Mary Ellen Salava ("Ms. Salava") a first set of interrogatories. Applicants' interrogatories were addressed to, and generally designed to elicit the specific bases for, the evacuation planning contention of intervenors Salava and Christy, and the financial qualifications contention of KASE. Such interrogatories are clearly proper under the applicable Commission rules governing discovery. In NRC proceedings, discovery rules as between parties are to be construed liberally. Commonwealth Edison Co. (Zion Station, Units 1 & 2), ALAB-185, 7 A.E.C. 240 (1974).

> In modern administrative and legal practice, pretrial discovery is liberally granted to enable the parties to ascertain the facts in complex litigation, refine the issues, and prepare adequately for a more expeditious hearing or trial.

Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-78-20, 7 N.R.C. 1038, 1040 (1978).

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On September 24, 1981, Ms. Salava filed the "Answer of Intervenor Salava To Applicants' First Set of Interrogatories," the "Production of Documents By Wanda Christy and Mary Ellen Salava," and "Objections To Interrogatories." In response to a number of the evacuation planning interrogatories, Ms. Salava declined to answer on the ground that the state and county plans had not yet been submitted. By letter dated September 24, 1981, counsel for Ms. Salava was provided with copies of the current revisions of the state and county emergency plans; intervenor's counsel had been previously provided with a copy of Applicants' plan. On October 7, 1981, counsel for Applicants contacted counsel for intervenor, in an attempt to establish a schedule for Ms. Salava's response to those interrogatories which she expressly declined to answer, pending receipt of the state and county plans. Intervenor's counsel declined to respond to the interrogatories until the Coffey County plan is signed by the county commissioners, expressing concern that it would be wasteful and inefficient for Intervenor Salava to comment on a county plan which is still subject to change.

The arguments of counsel for Intervenor are without merit. Ms. Salava has no legal right to refuse to respond to discovery requests based on drafts of changing documents. Discovery typically proceeds in NRC hearings despite the frequent amendments to the application in question. Similarly, discovery in NRC proceedings typically advances on emergency plans notwithstanding the continuing development of those plans. It is contemplated that emergency plans

will be constantly refined, further improved and developed; NUREG-0654, "Criteria For Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," provides for such continuing development. See, e.g., criterion P.4. Moreover, far from being wasteful, Intervenor's early comments on the emergency plans -- regardless of the formal status of those plans -- will further the goals of encouraging settlement of the issues in the proceeding and allowing Applicants to adequately prepare for Intervenors' cross-examination at the hearing, and will permit the developers of the various plans maximum opportunity to evaluate the concerns of Intervenor, and to resolve them within the plans and the planning process, outside the NRC adjudicatory process. Accordingly, Applicants move the Board for an order compelling Ms. Salava to respond fully to Applicants' Interrogatories EP-4, EP-5, EP-7, EP-8, EP-9, EP-11, EP-12, EP-15 and EP-16, and Interrogatory EP/FQ.

By her "Objections To Interrogatories," Ms. Salava objected to all interrogatories relating to financial qualifications, on the ground that her contention addresses only the Applicants' evacuation planning, not their financial qualifications. Ms. Salava's objection to the financial qualifications interrogatories is without merit. Generally, an intervenor may engage in cross-examination of witnesses dealing with issues not raised by that intervenor if the intervenor has a discernible interest in the resolution of those issues. Northern States Power Co. (Prairie Island Nuclear Generating

Plant, Units 1 & 2), CLI-75-1, 1 N.R.C. 1 (1975); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 A.E.C. 857, 867-68 (1974). Consistent with the Commission's Rules of Practice on discovery, Applicants' right to probe Ms. Salava's positions on financial qualifications is coextensive with any right she may have to cross-examine any witnesses presented on the subject. Applicants are entitled to responses to their financial qualifications interrogatories, to enable them "to ascertain the facts * * *, refine the issues, and prepare adequately for a more expeditious hearing" -- including any cross-examination by Ms. Salava on the subject of financial qualifications.[1/]

Accordingly, Applicants further move the Board for an order compelling Ms. Salava to respond fully to Applicants' Interrogatories FQ-1 through FQ-23.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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1/ Should Ms. Salava wish to waive any rights she may have pursuant to the "Prairie Island doctrine," Ms. Salava need only so state, in lieu of responding to the financial qualifications interrogatories.