

April 15, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' RESPONSE TO INTERVENORS' OBJECTIONS
TO PREHEARING CONFERENCE ORDER

I. INTRODUCTION

A prehearing conference in the above-captioned proceeding was held in Burlington, Kansas on March 10, 1983. On March 18, 1983, the Board issued its "Prehearing Conference Order," reflecting the agreements of the parties on certain procedural matters and ruling on those procedural matters in dispute.

On March 30, 1983, intervenors Wanda Christy and Mary Ellen Salava filed an "Objection To Prehearing Conference Order," requesting that the Board's March 18 Order be modified in two respects. In accordance with the Board's "Order Permitting Parties To Reply To Intervenors' Objection To Prehearing Conference Order" (April 8, 1983), Applicants respond herein to Intervenors' objections.

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II. ARGUMENT

A. The Amendment of Contentions

Intervenors first request that the "Prehearing Conference Order" be amended to reflect a claimed "agreement among the parties regarding amendments to the stipulation of contentions," which Intervenors state is reflected in the record of the prehearing conference. However, Intervenors provide no citation to the record in support of their assertion. The only discussion of future amendments to contentions on the record of the prehearing conference was an assertion by counsel for Intervenors that if there were to be "a significant change in the plans or the NRC rules or the FEMA findings or any other significant change * * * that [Intervenors] didn't have knowledge of at the time that [they] set forth * * * those stipulations, [they] would want to be able to add that contention." Tr. 139 (Simpson). Neither the Staff nor Applicants agreed with that assertion.

As Tr. 139 indicates, counsel for Intervenors did discuss with counsel for other parties the possibility of an agreement that Intervenors' contentions could be amended under such circumstances. But other counsel -- including counsel for Applicants -- declined to endorse counsel for Intervenors' formulation of the standard to be applied in

determining the admissibility of any future proposed amendments to contentions, explaining that Commission regulations and case law already provide for the amendment of contentions upon a showing of "good cause." The Commission itself has observed, in a similar context:

Insofar as petitioners [are concerned that they] may be precluded from adding to their original contentions should an unforeseen issue present itself further on in the proceedings, we can only answer that a petition for intervention, like any other pleading in modern practice, is not etched in stone. Leave to amend petitions for intervention will be granted where a petitioner shows that good cause exists for the belated assertion and where such amendment will assist the Board in resolving the issues before it without undue delay.

Wisconsin Electric Power Co. (Koshkonong Nuclear Plant, Units 1 and 2), CLI-74-45, 8 A.E.C. 928 (1974). Counsel for Applicants were understandably unwilling to stipulate in advance, in the absence of a specific concrete factual context, that as yet unspecified information would constitute "good cause" to amend contentions. Nor can the Board reasonably rule on "good cause" absent a concrete factual context.

Under Commission law, Intervenors are entitled to amend their contentions upon a showing of "good cause" -- and counsel for Applicants agreed to no more. It is not necessary to amend the "Prehearing Conference Order" to reflect the Commission's established "good cause" standard. Accordingly, Intervenors' first objection to the "Prehearing Conference Order" should be rejected.

B. Additional Witnesses

Intervenors further request that the list of witnesses to be called by them (see Tr. 98-101) be amended to add employees of the Kansas Department of Transportation ("KDOT") and employees of the Kansas Highway Patrol ("KHP"). In support of their request, Intervenors assert that they did not realize that KDOT and KHP had "significant responsibilities under the State Plan" until after the prehearing conference, when they examined the draft of the State Plan that they had received the day before the conference.

Intervenors' explanation for their failure to identify these further proposed witnesses at the conference is unsupportable. Applicants provided Intervenors with an earlier draft of the State Plan on September 24, 1981 and April 20, 1982. See "Applicant's Motion To Compel Answers of Intervenor Christy To Applicants' Interrogatories" (October 8, 1981), at 2; Letter, D. Ridgway to J. Simpson, dated April 20, 1982. The description of the responsibilities of KDOT and KHP in the most recent draft of the State Plan is a verbatim copy of the descriptions of those agencies' responsibilities in the earlier drafts provided to Intervenors approximately one year ago.^{*/}

^{*/} Compare pages B-15 and B-26 of the 1981 revision of the "State of Kansas Annex A, Nuclear Facilities Incidents Response Plan, To Assistance R, Nuclear Emergencies, of the State Disaster Emergency Plan" with pages B-17 and B-37 of the February, 1983 revision. For the convenience of the Board and the other parties, copies of the referenced pages are attached hereto.

Intervenors have thus failed to demonstrate good cause to amend their list of witnesses. Intervenor's second objection to the "Prehearing Conference Order" should therefore be rejected.

III. CONCLUSION

Accordingly, for all the reasons stated above, Intervenors' objections to the Board's "Prehearing Conference Order" should be rejected.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By *Delissa A. Ridgway*
Jay E. Silberg
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Dated: April 15, 1983

STATE OF KANSAS

ANNEX A

NUCLEAR FACILITIES INCIDENTS RESPONSE PLAN

TO

ASSISTANCE R, NUCLEAR EMERGENCIES

OF THE

STATE DISASTER EMERGENCY PLAN

THE OFFICE OF PRIMARY RESPONSIBILITY

DIVISION OF EMERGENCY PREPAREDNESS
THE ADJUTANT GENERAL'S DEPARTMENT

MAJ. GEN. RALPH T. TICE, DIRECTOR

COL. (RET) MAHLON G. WEED, DEPUTY DIRECTOR

BY

LEON H. MANNELL, P.E.
RADIOLOGICAL SYSTEMS ADMINISTRATOR

1981

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This Plan supersedes Annex A, Fixed Nuclear Facilities
Incidents Response Plan, 1978, and Revision No. 1, 1979

5. Provides information and guidance to the public through the Division of Emergency Preparedness.
6. Assesses contamination of the environment.
7. Provides technical guidance and coordination in recovery activities according to _____.
8. Supports the development and conduct of radiological response training.

II. SUPPORT RESOURCE RESPONSIBILITY (Agency and Assigned Responsibilities)

A. Kansas Highway Patrol

Assists affected local government(s) by providing:

1. Contact point for notification of contiguous state nuclear facility incident.
2. Emergency traffic control coordination.
3. Augmentation of local law enforcement.
4. Communications support.
5. Mobile radiological monitoring.
6. Evacuation of communities.
7. Maintain 24-hour emergency communication.

B. Department of Transportation

Assists affected local government(s) by providing:

1. Emergency traffic barriers and signs.
2. Augmentation of emergency traffic control.
3. Construction equipment.
4. Communication support.
5. Radiological monitoring.

EMERGENCY FUNCTION AND STATE AGENCY ASSIGNMENT

	Office of the Governor	Division of Emergency Preparedness	Dept. of Health and Environment	Kansas Highway Patrol	Board of Agriculture	Kansas National Guard	Dept. of Social and Rehabilitation Services	Dept. of Administration	Fish and Game Commission	Dept. of Transportation	State Fire Marshall	Insurance Dept.	Attorney General's Office	Kansas Geological Survey	Sheriffs	Local Law Enforcement Depts.	City/County Emergency Preparedness Agencies	City/County Health Depts.	County Engineers	City/Rural Fire Depts.	County Boards of Commissioners	Local Government (Mayors)	County Welfare Depts.
1. Alert Notification		S		P											P	S	S						
2. Coordinating Release of Emergency Public Information		S	S	S	S	S									S		S	S	S	S	P	S	
3. Radiological Monitoring (Offsite)		S	P	S		S				S					S		P			S			
4. Emergency Communications		S		P		S				S					P	S	S						
5. Emergency Health and Sanitation Advisories			P		S													S					
6. Emergency Environmental Advisories			P		S													S					
7. Evacuation Decision		P	P												P		S				S		
8. Disaster Area Personnel Evacuation		S				S				S					P	S	S	S	S	S	S		
9. Control of Evacuation Routes				P		S				S					S	S	S		S				
10. Military Assistance	P					P																	
11. Emergency Group Transportation				S		S		S		S					S	S	P		S				
12. Keeping Evacuation Routes Open				P						S					S	S							
13. Security, Evacuated Area				S		S									P	S				S			
14. Fire Protection and Rescue, Evacuated Area																S	S			P			
15. Emergency Sanitation Services, Assembly Areas			S			S											S	P					
16. Control of Public Water Supplies, Contaminated Areas			P		S													S					
17. Control of Private Water Supplies, Contaminated Areas			P		S													S					
18. Control of All Food Supplies, Farm Animals, Crops, and Pets, Contaminated Areas			S		P													S					
19. Control of Game Animals, Birds and Fish, Contaminated Areas			S						P									S					
20. Emergency Lodging						S	P																
21. Emergency Feeding						S	P																
22. Emergency Potable Water			S			S	P										S	P					
23. Emergency Clothing Supplies							P																
24. Maintenance of Personnel Radiation Dosage Records			P															S	S				
25. Emergency Registration and Inquiry							P											S					S
26. Emergency Medical Services			P															S					
27. Coordinating Services of Red Cross and Private Welfare Groups							P																
28. Religious Services in Assembly Areas							P																
29. Decontamination Operations (If Required)		S	P		S	S				S					S	S	S	S	S	S	S	S	S
30. All Clear (Re-entry)		P	P																				
31. Resolve Any State Legal Liabilities													P										
32. Resolve Any Insurance Problems												P											
33. Enforce Fire Safety Codes											P												

P = PRIMARY RESPONSIBILITY

S = SUPPORT RESPONSIBILITY

STATE OF KANSAS

ANNEX A

NUCLEAR FACILITIES INCIDENTS RESPONSE PLAN

TO

ASSISTANCE R, NUCLEAR EMERGENCIES

OF THE

STATE DISASTER EMERGENCY PLAN

THE OFFICE OF PRIMARY RESPONSIBILITY

DIVISION OF EMERGENCY PREPAREDNESS
THE ADJUTANT GENERAL'S DEPARTMENT

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LEON H. MANNELL, P.E.
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FEBRUARY, 1983

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This Plan supersedes all previous versions of Annex A, Fixed
Nuclear Facilities Incidents Response Plan, which should be
discarded.

2.1.2 SUPPORT RESPONSIBILITY

2.1.2.1 Kansas Highway Patrol

Assists affected local government(s) by providing:

- Contact point for notification of contiguous state nuclear facility incident.
- Emergency traffic control coordination.
- Augmentation of local law enforcement.
- Communications support.
- Mobile radiological monitoring.
- Evacuation of communities.
- Maintain 24-hour emergency communication.

2.1.2.2 Department of Transportation

Assists affected local government(s) by providing:

- Emergency traffic barriers and signs.
- Augmentation of emergency traffic control.
- Construction equipment.
- Communication support.
- Radiological monitoring.

2.1.2.3 Board of Agriculture

- Inspects food for radioactive contamination, in cooperation with the Department of Health and Environment, Bureau of Radiation Control.
- Controls agricultural production from health hazard standpoint.

2.1.2.4 Kansas National Guard

Provides assistance to local government(s) as directed by the Governor as follows:

FIGURE B-2
EMERGENCY FUNCTION AND STATE AGENCY ASSIGNMENT
PRIMARY - SUPPORT RESPONSIBILITY CHART

	Office of the Governor	Division of Emergency Preparedness	Dept. of Health and Environment	Kansas Highway Patrol	Board of Agriculture	Kansas National Guard	Dept. of Social and Rehabilitation Services	Dept. of Administration	Fish and Game Commission	Dept. of Transportation	State Fire Marshall	Insurance Dept.	Attorney General's Office	Kansas Geological Survey
1. Alert Notification		S		P										
2. Coordinating Release of Emergency Public Information	P	S	S	S	S	S								
3. Radiological Monitoring (Offsite)		S	P	S		S				S				
4. Emergency Communications		S		P		S				S				
5. Emergency Health and Sanitation Advisories			P		S									
6. Emergency Environmental Advisories			P		S									
7. Evacuation Decision		P	P											
8. Disaster Area Personnel Evacuation		S				S				S				
9. Control of Evacuation Routes				P		S				S				
10. Military Assistance	P					P								
11. Emergency Ground Transportation				S		S		S		S				
12. Keeping Evacuation Routes Open				P						S				
13. Security, Evacuated Area				S		S								
14. Request/Coordinate Federal Assistance		P	S											
15. Emergency Sanitation Services, Assembly Areas						S								
16. Control of Public Water Supplies in Contaminated Areas			P		S									S
17. Control of Private Water Supplies in Contaminated Areas			P		S									S
18. Control of All Food Supplies, Farm Animals, Crops, and Pets in Contaminated Areas			S		P									
19. Control of Game Animals, Birds and Fish in Contaminated Areas			S						P					
20. Emergency Lodging						S	P							
21. Emergency Feeding						S	P							
22. Emergency Potable Water			S			S	P							
23. Emergency Clothing Supplies							P							
24. Maintenance of Personnel Radiation Dosage Records			P											
25. Emergency Registration and Inquiry							P							
26. Emergency Medical Services			P											
27. Coordinating Services of Red Cross and Private Welfare Groups							P							
28. Religious Services in Assembly Areas							P							
29. Decontamination Operations (If Required)		S	P		S	S				S				
30. All Clear (Re-entry)		P	P											
31. Resolve Any State Legal Liabilities													P	
32. Resolve Any Insurance Problems												P		
33. Enforce Fire Safety Codes											P			

April 15, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SERVICE
DOCKETING & SERVICE
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Before the Atomic Safety and Licensing Board

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KANSAS GAS AND ELECTRIC COMPANY)	Docket No. 50-482
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CERTIFICATE OF SERVICE

This is to certify that copies of "Applicants' Response To Intervenor's Objections To Prehearing Conference Order" were served, by deposit in the U.S. Mail, first class, postage prepaid, to all those on the attached Service List, this 15th day of April, 1983.


Delissa A. Ridgway

Dated: April 15, 1983

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NUCLEAR REGULATORY COMMISSION

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