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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

UNITED STATES DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CORPORATION
TENNESSEE VALLEY AUTHORITY

Docket No. 50-537 CP

(Clinch River Breeder Reactor Plant)

Conference With Counsel

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P R O C E E D I N G S

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2 JUDGE MILLER: We will call the meeting to order,
3 please.

4 This is a conference with counsel and parties
5 pursuant to oral notification, to take up pending motions and
6 other matters that have arisen since last we met.

7 The record will show that we are commencing with
8 page number 7298 inasmuch as in this proceeding we are having
9 continuously and consecutively numbered pages for all hearings,
10 motions, conferences and the like rather than having segmented
11 portions thereof.

12 Will counsel identify themselves and their associates,
13 please.

14 MR. EDGAR: I am George Edgar, counsel for
15 Project Management Corporation. Seated to my left is Mr.
16 Edward Viglucci, attorney for the Tennessee Valley Authority.
17 To my immediate right is Mr. Peter Gross, Assistant Director,
18 Public Safety, Clinch River Breeder Reactor Project Office.
19 On my far right is Mr. William Luck, attorney for the Depart-
20 ment of Energy.

21 I will be speaking as lead counsel for the Appli-
22 cants today.

23 MS. FINAMORE: My name is Barbara Finamore, an
24 attorney with Natural Resources Defense Council, and with me
25 is Dr. Thomas Cochran, Senior Staff Scientist at Natural

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1 Resources Defense Council.

2 JUDGE MILLER: Staff?

3 MR. TURK: I am Sherwin Turk, attorney with the
4 Office of the Executive Legal Director and the Nuclear Regula-
5 tory Commission. I am representing the Staff today. At my
6 left is the project manager for the Clinch River Breeder
7 Reactor, Mr. Richard Stark. At my right is another attorney
8 with the NRC, Geary, G-e-a-r-y, Mizuno.

9 JUDGE MILLER: Thank you.

10 Anyone else who is here either in a representative
11 or other fashion that should be identified for the record?

12 (No response)

13 JUDGE MILLER: All right.

14 We will take up first of all the motions for summary
15 disposition which have been filed by the Applicants. The first
16 motion that I have is that filed, or at least dated May 19,
17 1983, denominated "Applicant's Motion for Summary Disposition
18 on Intervenor's Contention 9(g)." That motion was accompanied
19 by a statement of material fact as to which there is no
20 genuine issue to be heard.

21 In accordance with the requirements of 10 CFR Section
22 2.749, sub-paragraph (e), on June 8, 1983 it was filed by
23 the Staff, the NRC Staff's answer in support of Applicant's
24 motion for summary disposition on Intervenor's Contention
25 9(g).

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1 On May 23, 1983 was filed Applicant's Motion for
2 Partial Summary Disposition on Intervenor's Contentions 9(c)
3 and 9(f), accompanied by Applicant's Statement of Material
4 Facts as to which there is no genuine issue to be heard, and
5 on June 13, 1983 there was filed NRC Staff's Answer in Support
6 of Applicant's Motion for Partial Summary Disposition on
7 Intervenor's Contentions 9(c) and (f).

8 No filings within the 20-day period in response to
9 these summary disposition motions were filed by Intervenor
10 or anyone else.

11 Taking up first now these two motions for summary
12 disposition, we have read the recently filed materials by
13 both Applicants and Intervenor in connection with a motion
14 to withdraw which we will take up following the disposition
15 of the summary disposition motions. However, we want to give
16 counsel and parties an opportunity to be heard if there is
17 anything further that they wish to say at this time in regard
18 to the summary disposition motions that we have just described.

19 Does anybody have anything to say? Mr. Edgar?

20 MR. EDGAR: I won't recount the substance of both
21 motions. I believe they speak for themselves. There are
22 several points of emphasis which we would like to call to the
23 Board's attention.

24 Both motions, the May 19 and the May 23rd motions,
25 were accompanied by statements of material facts as to which

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1 there is no dispute pursuant to 10 CFR 2.749. The Intervenor
2 have filed no response to those motions within the time limit
3 specified by 10 CFR 2.749. Further, they have filed no
4 answer and they have filed no statement in response to the
5 statement of material facts as to which there is no dispute.

6 Consequently, under 10 CFR 2.749(e), the Board
7 should grant summary disposition under the express terms of
8 that regulation.

9 JUDGE MILLER: Intervenor.

10 MS. FINAMORE: Your Honor, the Applicants did file
11 a response to Applicant's Motion for Summary Disposition on
12 Intervenor's Contention 9(g) and for Partial Summary Disposi-
13 tion on Intervenor's Contentions 9(c) and 9(f) on June 21,
14 1983. In the Board's Construction Permit Scheduling Order
15 of March 29, 1983, June 21, 1983 was set as the date for
16 responses to summary disposition motions.

17 We submit that our response was within the time
18 period set out in the Board's Construction Permit Scheduling
19 Order. In that response, Intervenor referred to another
20 motion filed on that date in which they moved to withdraw
21 entire Contention 9 as well as Contentions 1 and 3, and
22 therefore submitted that the Board should deny as moot
23 Applicant's Motion for Summary Disposition on Intervenor's
24 Contention 9(g), a motion for partial summary disposition
25 on Intervenor's Contentions 9(c) and 9(f).

1 JUDGE MILLER: Staff?

2 MR. TURK: We will rest on our pleading. I would
3 like to respond briefly to one comment made by Ms. Finamore
4 for NRDC.

5 I read the March scheduling order quite differently
6 than she does. I read the June 21st date as being the last
7 day for filing responses to motions for summary disposition,
8 and I saw that date as being clearly tied to the June 1st
9 date, which was set for the last day to file summary disposition
10 motions. That is the normal 20-day period permitted in the
11 rule for filing responses to summary disposition motions.

12 My interpretation of the scheduling order was that
13 if a motion was filed before June 1st for summary disposition,
14 then responses would still be due within the normal 20-day
15 period required by the rules. I did not see the scheduling
16 order as granting in any way, explicitly or implicitly, an
17 extension of time beyond that permitted in the rules.

18 MR. EDGAR: We would emphasize the fact that, whatever
19 one might attach as a characterization to Intervenor's response
20 to the summary disposition motion, that response did not
21 address and did not respond to the statement of material
22 facts as to which there is no dispute. On the basis of the
23 pleadings, Intervenor's have clearly accepted and have de-
24 faulted on the motion for summary judgment. Their response
25 in arguing mootness is nothing more than a last-minute attempt

1 to avoid the clear legal effect of the grant of summary
2 disposition.

3 JUDGE MILLER: Anything further?

4 MS. FINAMORE: Yes, Your Honor.

5 Intervenors submit that if the Board does grant
6 our motion to withdraw Contentions 1, 3 and 9, it did not even
7 reach the issue of summary disposition and that the correct
8 response would be to simply deny those motions as moot.

9 JUDGE MILLER: Anything further?

10 MR. TURK: Nothing for the Staff.

11 (Board conferring)

12 JUDGE MILLER: The Board will rule.

13 First of all, as far as the timeliness is concerned,
14 the response of the Intervenors is not timely. The order
15 scheduling the time for filing various matters was intended
16 by the Board to establish the last date for the filing of
17 motion for summary disposition and the last date for responses
18 to such motions that were filed on the last date. It was
19 not any attempt to extend the time in which to respond if they
20 were filed earlier. In fact, I believe there was some
21 discussion at the time that the Board met with counsel in
22 which we indicated if there were earlier motions, then we
23 encourage early filing of all motions; that the rules would
24 provide the time period.

25 So we would hold that the motions for summary

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1 disposition described were not responded to in a timely
2 fashion by the Intervenors or anyone else; and there being
3 no sufficient response within 20 days, that under Section
4 2.749, that material facts that were not controverted were
5 thereby admitted.

6 The Board further holds that the Applicants
7 are entitled to a disposition on the merits of the summary
8 disposition motions. The Board has examined both the motions
9 and the accompanying statement of material facts as to which
10 there was allegedly no genuine issue to be heard,
11 and it believes, in accordance with Section 2.749, that the
12 motions for summary disposition should be and hereby are
13 granted. In accordance therewith, the motion for summary
14 disposition of Contention 9(g) is granted, and the Applicant's
15 motion for partial summary disposition of Contentions 9(c)
16 and (f) are granted.

17 Now, the next matter, then, which was partly alluded
18 to by counsel, is the Intervenor's motion to withdraw
19 Contentions 1, 3 and 9(c), (f) and (g) for consideration at
20 the July 1983 CRBR Construction Permit evidentiary hearing
21 and request for permission to submit a written statement filed
22 June 21, 1983, and the same date that was filed Intervenor's
23 response to Applicant's Motion for Summary Disposition on
24 Contention 9(g) and partially as to 9(c) and (f), on which
25 we have already ruled, and on June 22, 1983, the Applicant's

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1 response to Intervenor's Motion to Withdraw Contentions 1,
2 3 and 9(c), (f) and (g) from consideration at the July hearing,
3 et cetera. This would be the Intervenor's motion, so Intervenor
4 may go first, if you like.

5 MS. FINAMORE: As was stated in our motion, accord-
6 ing to the Board's May 17, 1983 order following May 13th
7 conference with parties, Intervenor's Contentions 1, 3 and
8 9(c), (f) and (g) are the only contentions raised by
9 Intervenor's that remain to be resolved at the July 1983
10 Construction Permit evidentiary hearing. That hearing will
11 also cover evidence on Board Questions 1 through 17 and other
12 matters mandated by the NRC regulations.

13 Intervenor's have requested withdrawal of Contentions
14 1, 3 and 9(c), (f) and (g) because their limited resources
15 prohibit their continued full participation in the construction
16 permit proceedings.

17 We do not, however, request withdrawal as parties
18 from the CRBR proceedings since we intend to continue to
19 press our appeal of the February 28, 1983 partial initial
20 decision of the Board. That not only authorized the issuance
21 of a limited work authorization but also made all of the
22 environmental findings required by 10 CFR 51.52(b) and (c)
23 to be made prior to the issuance of the CRBR construction
24 permit.

25 Consequently, our appeal involves two related issues:

1 first, whether the Board made all of the findings and suffi-
2 ciently resolved all of the issues necessary for granting of
3 an LWA, particularly in respect to Contentions 1, 2 and 3;
4 and second, whether the Board's environmental findings are
5 supported in the record.

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1 The first issue, the adequacy of the Board's resolution at the
2 LWA stage of Contentions 1, 2, and 3 is unaffected by the
3 extent of Intervenor participation at the July 1983 CP
4 hearing.

5 The second issue, the adequacy of the partial
6 initial decision environmental findings could affect the
7 validity of both the LWA and the CP.

8 If the Appeal Board orders further proceedings on
9 either of these issues, Intervenor intend to participate
10 fully.

11 Intervenor also request permission to submit a
12 written statement concerning the issues raised in the
13 proceeding for consideration by the Board to the extent deemed
14 proper.

15 JUDGE MILLER: Applicant.

16 MR. EDGAR: We filed our response on June 22nd. I
17 will not reiterate that response at this time. We think it
18 is fairly straightforward.

19 We think that the Board should dismiss the con-
20 tentions and grant the motion to the extent of dismissing the
21 contentions.

22 Secondly, we think the Board should dismiss
23 Intervenor as a party to all future proceedings. Intervenor
24 have no contentions. They have no basis to participate.

25 Furthermore, Intervenor rights, whatever they may

1 be, as to prior proceedings would be unaffected by dismissal
2 as to future proceedings.

3 Next, we would express a concern that there be a
4 clear understanding as to the status of Intervenors' state-
5 ment. If Intervenors have no contentions, if Intervenors,
6 therefore, are not entitled to party status, then that state-
7 ment cannot have evidentiary status.

8 Rather, the Board has the right and the discretion,
9 under the Rules of Practice, to allow Intervenors to file a
10 written statement by way of limited appearance.

11 We have no objection to the Board's exercise of
12 discretion to allow the filing of a written limited appearance
13 statement. However, we think that discretion should be
14 guided by the recognition that we have been at these
15 proceedings for a long time, that we have been working
16 through a set of milestones in a schedule established by the
17 Board, all parties have geared themselves to that schedule,
18 and that Intervenors' written statement, therefore, should be
19 filed on July 5th, the date which was established for filing
20 testimony.

21 We think that is reasonable under the circumstances.
22 It grant Intervenors the relief requested. And furthermore,
23 it gives the Board an opportunity to review the statement to
24 determine whether there are any matters therein that the
25 Board wishes to raise, and it would give the Applicants and

1 Staff the opportunity to prepare to meet any Board items and,
2 in addition, to respond to the statement.

3 Therefore, we request and reiterate our request
4 that the Board grant those requests which we made in our
5 June 22nd response.

6 (Board conferring.)

7 MR. TURK: The Staff has not filed a written
8 response to the Intervenors' motion of June 21st. The
9 Applicants did file a written response on June 22nd, and
10 therein they noted that discussions had been held between
11 Applicants and Staff concerning the content of Applicants'
12 response.

13 And at page 6 of the Applicants' response, they
14 note that all matters and positions which had been expressed
15 by the Applicants are supported by the Staff.

16 We don't intend to add anything at this time to
17 the statements made by Applicants' counsel. We think that
18 the positions are sound ones and should be adopted by the
19 Board.

20 (Board conferring.)

21 JUDGE MILLER: Judge Linenberger has a question.

22 JUDGE LINENBERGER: Ms. Finamore, referring to the
23 last paragraph on page 3 of Intervenors' June 21, 1983
24 submittal, with respect to Intervenors' request for permission
25 to submit a written statement, that request is modified or

1 characterized by the phrase "concerning the issues raised in
2 that proceeding." And the "that" would seem to, in the
3 context of that one-sentence paragraph, refer to the July 1983
4 proceeding -- all this by way of long-winded prologue to my
5 question.

6 Is it Intervenors' desire to comment upon the
7 posture of that proceeding as it perceives it before the
8 proceeding begins? Or is it Intervenors' posture that this
9 written statement might come sometime later, after the --
10 after some progress has been made in the proceeding?

11 It is not clear from what I read here what
12 Intervenors' desire is.

13 MS. FINAMORE: When I mentioned the issues raised
14 in that proceeding, I was referring primarily to the issues
15 raised by the Board in its May 17th order, which was the
16 17 Board questions, as well as the several issues that the
17 Board raised in its partial initial decision as matters that
18 would be gone into in the construction permit hearings.

19 We realize that the May 17th order also listed
20 three of our contentions which we are now withdrawing.
21 However, in light of the fact that the Board, in its February
22 partial initial decision indicated that some of the matters
23 raised in those contentions would be gone into at the CP
24 stage. We would like to submit our statement on those issues, primarily
25 the issue of whether a core disruptive accident should be a design basis
accident. We intended to file such a statement before the July proceedings
so that they would be given full consideration by the Board and the parties.

jl 2:5

1 We have no objection to filing, the same day, the
2 other testimony, namely July 5th. And the Board and the
3 parties can give the matters raised in that statement full
4 consideration.

5 JUDGE LINENBERGER: Thank you.

6 JUDGE MILLER: Do you care to say anything further
7 in response to anything that was said by opposing counsel?

8 MS. FINAMORE: Yes, I would.

9 JUDGE MILLER: Go ahead.

10 MS. FINAMORE: Given the peculiar nature of the
11 limited work authorization, it is not a completely separate
12 proceeding from the ones that are presently on-going.

13 As you noted, it was labeled a partial initial
14 decision, meaning that the issues raised there, particularly
15 the environmental contentions, were also full findings that
16 had to be made before a construction permit was decided upon.

17 And for that reason, the environmental contentions
18 raised by Intervenors also go to the issue of whether a
19 construction permit should be granted.

20 And I don't think it is completely correct to
21 totally separate the two proceedings and dismiss us as
22 parties from the construction permit proceeding when several
23 of the contentions that we have already raised directly
24 concern the validity of a construction permit proceeding.

25 For that reason, we submit, as we mentioned in our

1 motion, that we not be dismissed as parties from the
2 construction permit proceeding. That is the reason why I did
3 not characterize the written statement as a limited appearance
4 statement, because that only applies to persons not parties.

5 JUDGE MILLER: Mr. Edgar, anything further?

6 MR. EDGAR: Yes.

7 We, Your Honor, accept Intervenors' representation
8 that they would file a statement on July 5th. We think that
9 is reasonable and appropriate.

10 However, there are two items that are raised in
11 Ms. Finamore's response which we think the Board should
12 consider very seriously.

13 The first is that whatever rights Intervenors may have
14 vis-a-vis the LWA proceeding and the Board's decision exists
15 and they are not affected by what the Board may do at this
16 time, the Intervenors have, the Intervenors have no issues to
17 raise.

18 And absent any issues to raise, one cannot satisfy
19 the requirements of 10 CFR 2.714 for gaining party status.
20 Intervenors are simply not entitled to party status.

21 The second point is that Intervenors want to have
22 it both ways. They want to remain parties as to future
23 proceedings in which they have no issues to raise. They do
24 not want to have their statement regarded as a limited
25 appearance statement.

1 If they are parties and their statement goes in,
2 what, then, is the evidentiary status of that statement?

3 If they are not parties and it goes in as a limited
4 appearance statement, then there is no real problem inasmuch
5 as the Board, in its discretion, can raise issues from that
6 statement.

7 That is well-settled case law. And Applicants and
8 Staff can respond.

9 If, on the other hand, the statement has some
10 evidentiary status and Applicants and Staff have no opportunity
11 to respond or confront that evidence by way of cross-examina-
12 tion, one then develops a quandry.

13 It seems to us that the logical and straightforward
14 thing to do is to take Intervenors rights as they appear,
15 which are:

16 A, they are not entitled to party status in future
17 proceedings; and

18 B, the Board may exercise its discretion to allow
19 a written statement, grant Intervenors' written statement
20 request by way of limited appearance.

21 JUDGE MILLER: Staff?

22 MR. TURK: I think it is obvious that there is a
23 little bit of a procedural quandary here.

24 JUDGE MILLER: Procedural what?

25 MR. TURK: Quandary.

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1 The Intervenors do appear, to me, to want to have
2 it both ways. They want to be able to continue with part of
3 the CP proceeding, but not another part. And the position
4 they take raises a few practical considerations.

5 Mr. Edgar alluded to the problem of how you treat
6 the written statement they would be filing. That is the first
7 problem. Is it evidence, or is it limited appearance
8 statement?

9 A second problem that will occur or which may arise
10 after the next hearing is held is will the Intervenors seek
11 to file findings of fact and, after that, will they seek to
12 appeal from whatever may be the next partial initial decision
13 of the Board?

14 And the last problem that I see is in the event that
15 the Appeal Board reverses the first partial initial decision,
16 will the Intervenors then seek to litigate whether or not a
17 CP may be issued?

18 It seems to me that is really what they want to do.
19 They want to block the CP in the event that the Appeal Board
20 reverses the first partial initial decision.

21 The Staff's position is that we certainly do not
22 want them to be prejudiced from prosecuting the appeal which
23 they have already filed in the first PID.

24 And in the event that the first PID is reversed and
25 further evidence must be taken as to whether environmental

1 matters have been adequately considered, then we would not
2 oppose their participation as to those matters. But we would
3 oppose their participation with respect to the hearing coming
4 up in July and with respect to filing any findings or appeal
5 from whatever may be the next phase of the CP proceeding.

6 JUDGE MILLER: Anything further?

7 MS. FINAMORE: Yes.

8 Your Honor, we are not requesting that our written
9 statement be treated as evidentiary. That is why we said it
10 can be given whatever effect the Board deems proper. We are
11 not seeking to file findings of fact on our written statement
12 or on any of the matters raised at the July construction
13 permit hearing or to appeal.

14 For that reason, we don't think it is a quandary to
15 allow us to file a written statement that would aid the Board
16 and the parties in discussing and resolving those particular
17 issues.

18 However, all I was pointing out is that to term it
19 a limited appearance statement, it is not the correct term if
20 we are still considered parties.

21 JUDGE MILLER: That's the whole question. In what
22 way would such a statement, if filed -- and we would certainly
23 be disposed to grant leave to file, under terms we will discuss
24 in a moment -- in what way could that be anything possibly
25 other than a limited appearance statement of a non-party?

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1 MS. FINAMORE: As I stated before, I believe that
2 since we have raised environmental issues that are, in fact,
3 matters that must be resolved before a construction permit can
4 be granted and that we have appealed those environmental
5 issues, we are still parties as to those issues that we have
6 raised.

7 JUDGE MILLER: You are a party as to whatever you
8 may have raised or done upon appeal. I think there is no
9 controversy as to that.

10 But above and beyond that which is pending now
11 before the Appeal Board and which it has jurisdiction, this
12 Board does not have any jurisdiction of matters that pass to
13 the Appeal Board.

14 What is there before this Licensing Board now and
15 henceforth that would:

16 A, give you a status other than a limited appearance
17 participant and a non-party?

18 (Counsel conferring.)

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1 JUDGE MILLER: This colloquy reminds me of some-
2 thing else, not that the Board does not pay any attention to
3 what is said or done on appeal. However, in this matter, I
4 seem to recall that the Intervenors -- I think NRDC gratui-
5 tously pointed out that certain rulings were made in the
6 Comanche Peak proceeding and pointed out that the Chairman
7 there was the same person as the Chairman in this proceeding,
8 namely myself.

9 I think the record should clearly establish what
10 happened. And in the Comanche Peak matter, the Board did rule
11 and did mention the rule being followed in the Clinch River
12 proceeding. As a result of several unusual factors, I do not
13 wish to characterize it. And therefore, at this time, I am
14 asking the reporter to incorporate as part of this record,
15 and to number continuously, with transcript numbers, the
16 following transcript pages from the Comanche Peak proceeding,
17 which I am handing to the reporter, which will be pages
18 number 3599 through page 3607 of the Comanche Peak proceeding.

19 And I am handing copies and making copies available
20 to the parties. We will stop for a moment so this may be
21 done.

22 (Pause.)
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1 everybody else is down here.

2 MS. ELLIS: True.

3 JUDGE MILLER: Yes. We do wish to move along,
4 as we told you, expeditiously, consistent with the develop-
5 ment of a sound record, Ms. Ellis.

6 MS. ELLIS: All right. There is one other
7 motion which has to do with -- directly with this matter,
8 which has to do with our motion to strike the prefiled
9 testimony of Mr. Schepple. That was filed September 8th.

10 JUDGE MILLER: We've seen it.

11 Let me explain that situation, Ms. Ellis. You
12 referred to the Clinch River -- where I am Chairman of that
13 Board, and I know the matter you're referring to.

14 MS. ELLIS: Yes, sir.

15 JUDGE MILLER: That Board ruled -- and other
16 Boards have similarly ruled -- that an expert witness,
17 apart from certain minor exceptions, is not going to be
18 permitted to act both as a lawyer cross-examining and then
19 as a witness pursuing further -- having two shots at the
20 issues.

21 We just don't deem it to be fair. It's con-
22 sistent with case law and with some cases, at least, in
23 the NRC practice. That was the basis upon which we ruled
24 in Clinch River, that an expert witness who was significantly
25 involved in the presentation of the Intervenor's case, both

1 in the prehearing conferences, arguments, motions, as well
2 as the rest of it -- was required to make an election
3 whether he wanted to go forward with extensive prefiled
4 testimony, both individually and as a member of a board,
5 or to examine. We let him have the choice. He chose to
6 testify; and, therefore, the examination -- the interroga-
7 tion, the cross-examination was conducted by -- they had
8 a lawyer -- by counsel.

9 So we indicated the rule which we generally
10 follow, that it can't be done both ways.

11 Now -- is it Mr. Schepple --

12 MR. SCHEPPLE: Yes.

13 JUDGE MILLER: -- testified before. Now we
14 were aware when leave was asked -- and leave has to be
15 asked on these things -- for him to cross-examine. It was
16 the Board's belief -- we discussed it -- that his
17 participation had, up to that point, been as a member of a
18 panel; that he didn't present the preponderance, at any
19 rate, of the testimony given by that panel. He was one of
20 four or five -- whatever it was -- and he hadn't loomed
21 that significantly.

22 And, secondly -- equally important -- was the
23 fact that the testimony of the witness, which had been
24 put on rather -- I won't say suddenly necessarily -- but
25 without much notice, for reasons that we all understand --

1 occurred at a time when counsel for Applicants and the
Staff did not know in advance and hadn't had an opportunity
3 to prepare examination. It was technical testimony.

4 We, therefore, granted leave to Mr. Schepple
5 to conduct the technical cross-examination. We asked
6 him, and he conducted, in our judgment fairly -- and not
7 any imposition -- but he was the examiner they had avail-
8 able. It wasn't prefiled. They had no ability to get
9 someone else.

10 Okay. That was the reason that he was permitted
11 to examine. And that was consistent, as we understood it,
12 with our general practice.

13 However, subsequent to that, apparently Mr.
14 Schepple examined and cross-examination on the deposition,
15 with no leave being sought or granted by the Board, and he
16 has now prefiled testimony as a member of a four- or five-
17 man panel of substantial, significant, technical and
18 other issues here.

19 It is the Board's belief, therefore, that Mr.
20 Schepple probably should not now be permitted to testify
21 further; that the election of which way to go was made --
22 without the Board being a part of it -- at the time that
23 extensive, even overnight, cross-examination was arranged,
24 or participated in on the deposition.

25 Therefore, it is our belief that Mr. Schepple

1 now, having been the examiner, should remain in that
2 role.

3 However, we want to be fair both ways. It
4 is the belief of the technical members of the Board that
5 the information available from the balance of the panel,
6 without Mr. Schepple's testimony, probably would be deemed
7 to adequately cover the point.

8 But, (a), we're not certain, we're not trying to
9 rule. And, secondly, there should be an opportunity for
10 Mr. Reynolds to review the matter and either -- if he con-
11 curs in their belief, we would delete that testimony, or if
12 he wishes to either add another panel member or have someone
13 else to cover points not otherwise covered, we think he
14 should have that choice, just as we gave the Clinch River
15 parties the same opportunity.

16 That's the way we intend to handle it.

17 - - -

1 MS. ELLIS: One thing that had concerned us
2 and the primary reason for us filing the motion was that
3 we had hoped that Mr. Walsh would be able to cross-examine
4 the panel regarding his rebuttal, and we feel really in
5 both instances that probably the record would be better
6 served by having both Mr. Scheppele testify and Mr. Walsh
7 cross-examine.

8 JUDGE MILLER: Now wait a minute. Aren't you
9 changing something on me a little bit?

10 MS. ELLIS: Let me explain a little further.

11 JUDGE MILLER: Let me see if I understand you
12 before you explain to me.

13 MS. ELLIS: All right.

14 JUDGE MILLER: First of all, you move to
15 strike the testimony of Mr. Scheppele on the grounds that
16 I have just gone over.

17 Now you are talking that you had rather have
18 Mr. Walsh cross-examine Mr. Scheppele?

19 MS. ELLIS: Cross-examine the entire panel.

20 JUDGE MILLER: With Mr. Scheppele on the panel?

21 MS. ELLIS: Yes, sir.

22 JUDGE MILLER: Doesn't that seem a little
23 inconsistent to you? How is he going to cross-examine if
24 you succeed in your motion?

25 He is now a testifying witness, first of all.

1 That's an obvious difficulty right there.

2 MS. ELLIS: What we wanted to be sure was
3 that there was consistency in the policy, if this indeed is
4 the policy.

5 JUDGE MILLER: Well, which policy do you want?
6 I've given you the Clinch River policy that you alluded
7 to, and I've told you where that leads you.

8 Then you spun me around.

9 MR. REYNOLDS: Your Honor, may I be heard?

10 JUDGE MILLER: You may be heard.

11 MR. REYNOLDS: Obviously, the Intervenor was
12 looking for a ruling contrary to what the Board gave it
13 on this motion.

14 JUDGE MILLER: Either that or it didn't trust
15 the competence of the Board.

16 MR. REYNOLDS: Well, I doubt that, but I think
17 it was a mousetrap that was laid and it sprung, and
18 unfortunately, Ms. Ellis got her finger caught in it.

19 JUDGE MILLER: Let's not go into personalities
20 now.

21 MR. REYNOLDS: We would abide by the ruling
22 of the Board either way, just so long as it's consistent
23 and applied equally to Mr. Scheppele and Mr. Walsh.

24 JUDGE MILLER: I think that has to be, yes.

25 MS. ELLIS: This is our concern, too.

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JUDGE MILLER: We can't either have cross-examination by one or the other under circumstances where they are both witness and counsel, which we don't really care much for. We did permit it because of the circumstances, the nature, before.

Now let me confer with my Board members and see which way they want to go.

(Bench conference.)

JUDGE MILLER: Does Staff have any position on this?

MS. ROTHSCHILD: No, we don't.

JUDGE MILLER: In any event, the thing has now gone to the point where our essential practice has been -- the exception has been enveloped by the major principle.

We've had now experts both cross-examining and testifying, so in that state of the record rather than put a nice point upon it, we'll deny your motion to strike Mr. Scheppele's testimony, which we otherwise would have done, but he then will be permitted to continue to testify.

I don't say anything about him continuing to examine. At least, he's going to have to get leave, and there he's had a pretty good shot at it, but that's in the future.

At any rate, he may continue to testify, prefiled testimony, and Mr. Walsh, if you want -- you are

1 asking leave for Mr. Walsh to cross-examine the panel?

2 MS. ELLIS: Yes, sir.

3 JUDGE MILLER: It will probably be granted.
4 We would rather wait until they testify, but that will
5 probably be granted.

6 So if everybody is going to be a witness and a
7 lawyer for this limited purpose, we are just going to bend
8 the rules a little bit in order to be consistent with
9 everybody.

10 MR. REYNOLDS: Would the Board so rule even if
11 the Applicant supported CASE's motion?

12 JUDGE MILLER: Now wait a minute. Which
13 CASE motion are you going to support?

14 MR. REYNOLDS: You just denied their motion.

15 JUDGE MILLER: Yes.

16 MR. REYNOLDS: Would you deny it, even if we
17 supported it?

18 JUDGE MILLER: The motion to strike, probably.
19 We think we're at a point now, had you asked leave of the
20 Board on that position, that would have been denied.

21 We would have said, "Get some other examiner."
22 Then we would have had the straight normal rule.

23 Since that didn't happen and the deposition is
24 in substantially, then the best we can do is just to be
25 fair to all and reasonably consistent, is go ahead and

1 finish off with these testifying lawyers or lawyering
2 witnesses, whichever way you want to look at it, and let's
3 get on with it.

4 MS. ELLIS: One further --

5 JUDGE MILLER: We will let everybody understand
6 now. We want these questions to be reasonable, focused,
7 and in accordance with the rules of evidence and practice.
8 We will hold all of you to that.

9 MS. ELLIS: Yes, sir. One further thing for
10 the record, I'd like to clarify --

11 MS. ROTHSCHILD: Mr. Chairman, before Ms. Ellis
12 continues, we need a set of those pictures that were
13 handed out with --

14 JUDGE MILLER: You can borrow --

15 MR. REYNOLDS: Your set is not complete, sir.

16 MS. ELLIS: The court reporter has a complete
17 set of all of them.

18 MR. REYNOLDS: We can't take the court
19 reporter's set.

20 MS. ELLIS: We have copies of the pictures
21 that are attached to the testimony. I'm sure they are
22 not as good as the pictures, but they are the best copies
23 we could get.

24 JUDGE MILLER: Well, Counsel has a right to
25 see the originals if they request, and they seem to be

1 JUDGE MILLER: What I was pointing out -- what you
2 were discussing, Ms. Finamore -- was the matters other than
3 those appealed matters which are pertaining and within the
4 exclusive jurisdiction at the moment of the Appeal Board,
5 certainly not anything within the jurisdiction of this Board.

6 The question now is if the contentions, remaining
7 contentions, of the Intervenors are withdrawn, there would
8 appear, then, to be no further contentions in this and future
9 aspects of the construction permit proceeding to which there
10 are contentions and as to which the Intervenors would remain
11 as parties. They would seem to have the status of non-parties
12 before this Board.

13 I am not sure if you had an opportunity fully to
14 answer that. If you have, fine. If you have anything further
15 that you wish to say, you may do so.

16 MS. FINAMORE: I do not wish to repeat myself.
17 The only point I wanted to make is the one I have made
18 already.

19 JUDGE MILLER: All right.

20 (Board conferring.)

21 JUDGE MILLER: The Board will rule, first of all,
22 that it will grant leave to the Intervenors in accordance
23 with their motion of June 21, 1983, to withdraw Contentions 1,
24 3, and 9(c), 9(f), and 9(g) from consideration at the July
25 1983 construction permit evidentiary hearing or any future

1 in this construction permit proceeding.

2 That motion having been granted and the described
3 contentions having been dismissed, it would appear to the
4 Board, then, that the Intervenors no longer are parties to
5 this proceeding, to this construction permit proceeding, and
6 that the Intervenors will be dismissed as parties to the
7 construction permit proceeding.

8 The Intervenors' request to file a written statement,
9 in view of the fact that they have participated and have spent
10 considerable time and energy, is a matter that the Board both
11 appreciates and thinks should be both reflected in the record
12 and that a written statement would be helpful to the Board.

13 And leave is therefor granted to the Intervenors
14 to file such a written statement.

15 It does appear reasonable, and it has, I think,
16 been agreed to by counsel that it should be filed by July 5,
17 1983, which is the date for the filing of prefiled written
18 testimony, in order that there be no surprise or disadvantage
19 by any of the remaining parties.

20 So, leave is granted to file the written statement.
21 As to the nature of the statement, it will be construed as a
22 limited appearance statement, because we believe there is no
23 other method whereby such statements could be received and
24 accepted from a non-party and that the rules regarding parties
25 and limited appearance statements, whether oral or written,

1 are quite clear. But they can be filed by non-parties, or one
2 can become a party by filing only viable and admitted
3 contentions. But there is no intermediate status.

4 However, as to the effect to be given -- again,
5 from our own regulations -- written limited appearance
6 statements or oral written limited appearance statements are
7 not evidence and are not to be treated as evidence. Neverthe-
8 less, they may well raise matters, questions, issues, if you
9 will, in that sense which the Board could request Applicants
10 and the Staff to consider, and also such matters could be
11 considered and addressed by the remaining parties of their
12 own volition.

13 Considering the nature of the matters that are
14 brought to our attention because we are conducting a full
15 evidentiary hearing on a construction permit proceeding,
16 whereby it is not necessary to have the contention issue
17 method in lieu of pleadings filed in order for questions and
18 material matters of fact and even of law to be considered by
19 the Board -- in fact, it is in that light that the Board has
20 indicated 17 areas of interest to it, and there could well
21 be more in the future. The occasion seems appropriate.

22 There are also, I think, two -- whatever the
23 number -- several question which the Board alluded to in its
24 partial initial decision as being appropriate for further
25 delineation and consideration in the construction permit

jl 3:5

1 phase of the proceeding, which is now what we are addressing.

2 Those matters, likewise, may be addressed if the
3 Intervenors wish or any other matters that they wish to
4 present in the limited appearance statement.

5 The effect will be a matter that the Board will
6 give initial consideration to and would solicit the views of
7 both Applicants and Staff as to the addressing of whatever
8 matters may be raised by the Intervenors in the written
9 statements, given leave to file the written statement, which
10 will be treated as a limited appearance statement, but will be
11 permitted fully to raise whatever material and relevant
12 matters it deems to be of concern.

13 And the date of July 5 for the filing will be
14 imposed.

15 If there be any substantial and significant good
16 cause for extension, the Board would consider it.

17 We would, however, trust that the Intervenors,
18 having participated so fully, would be able to meet that date
19 so that we would not have any disadvantage to either the
20 parties or the Board in the upcoming July evidentiary
21 hearings.

22 There is one other matter that has been alluded to.
23 That is whether our order dismissing Intervenors as parties
24 to this or future construction permit proceedings should be
25 without prejudice.

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1 Let me say simply that the Board does not intend
2 to rule upon that matter. We don't wish to speculate as to
3 what might or might not happen on the matters upon appeal.

4 Therefore, this ruling at this time is neither
5 with prejudice or without prejudice. We will abide by what-
6 ever is done by the Appeal Board in whatever decisions it
7 might make or this Board might make in the future.

8 So, the dismissal as a party of the Intervenors is
9 neither with prejudice nor without prejudice.

10 Now, before we get into the matters of the issues
11 and procedure to be followed at the July hearings, is there
12 anything further?

13 These hearings start July the 18th; is that
14 correct?

15 MR. EDGAR: Yes.

16 JUDGE MILLER: At Oak Ridge.

17 Before we get into the matters that we will be
18 taking up at that time, is there anything further with regard
19 to pending motions or matters that any of the parties wish to
20 bring the Board's attention?

21 We are about to go into the things that are set
22 forth in pages 4, et cetera, of the Applicants' response,
23 which goes into issues and Board questions, presentation of
24 witnesses.

25 Before we get into that, I take it it will be

1 probably the final matter to be considered.

2 Is there anything else that anyone wishes to bring
3 up?

4 MR. EDGAR: We have nothing.

5 MS. FINAMORE: No, Your Honor.

6 MR. TURK: Nothing.

7 JUDGE MILLER: Is there any reason why we should
8 not proceed directly?

9 Do you need a recess for that, Mr. Edgar?

10 MR. EDGAR: Not I, Your Honor.

11 JUDGE MILLER: Anyone?

12 (No response.)

13 JUDGE MILLER: You may proceed.

14 MR. EDGAR: I have two classes of things to
15 discuss.

16 I have some points concerning the subject matter.
17 And then, I have some rather mundane logistics questions
18 where I need some direction, or I would like to get direction
19 from the Board. I will hold those until the last, if
20 possible.

21 As we have defined it, on page 4 and 5 of the
22 June 22nd response, our intention was to move forward, file
23 testimony which addresses the 17 Board questions and, in
24 addition, two major issues that were noted in the partial
25 initial decision and in which the Board has expressed interest

1 in prior prehearing meetings.

2 Those two issues are the question of whether
3 hypothetical core disruptive accidents should be design basis
4 accidents. And the second one is whether the HCDA analyses
5 for Clinch River are adequate.

6 We have integrated the responses to Board questions
7 into the logic of those two larger issues. In other words,
8 the Board questions are specific subsets of the larger issues.

9 We think it is clearly discernible and identifiable,
10 but those questions are part of a bigger picture.

11 We would intend to give the Board the full story,
12 if you will, on both of those major issues and explicitly
13 address the -- explicitly address and identify the responses
14 to the Board questions.

15 That is our proposal. We would propose to present
16 witness panels sponsoring those pieces of testimony.

17 And our proposal on sequence, we have not discussed
18 with the Board. But our thought was that the question of
19 whether an HCDA should be a DBA would be the first topic,
20 and then HCDA second, and then Board areas of interest relating
21 to emergency planning, if you will, which are basically Board
22 Questions 7, 9, and then, finally, quality assurance, which is
23 Board Questions 5 and 6.

24 Now, the first piece or element of testimony
25 concerning whether the HCDA should be a DBA would also include

1 responses to Board Questions 2, 3, 4, 8, 13, 14, and 15.

2 The testimony on HCDA would cover, as well, Board
3 Questions 8, 11, 16, and 17.

4 Now, before Judge Linenberger does a count and
5 calls me for a missing number, you will see that that is not
6 the complete set of 17, but some of these are explicitly
7 addressed to the Staff.

8 In addition, however, some of these that I have
9 identified are addressed only to the Staff. But we think we
10 have something worthy of presentation on the subject, If you
11 will excuse the gratuitous addition of our position on the
12 subject, we think we have got something worth saying.

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1 JUDGE MILLER: Intervenors? I realize your position
2 may be a little tenuous, but courtesy indicates that I should
3 call upon you.

4 (Laughter)

5 MS. FINAMORE: We have nothing to add to the
6 statement of Applicant's counsel.

7 JUDGE MILLER: Staff?

8 MR. TURK: I think the Staff is in agreement with
9 the Applicant as to the issues that need to be addressed.

10 JUDGE MILLER: The ones to be taken up by the Staff,
11 with the presentation or point of view by the Applicants as
12 indicated by Mr. Edgar. Do you have those numbers at hand?
13 Board questions, that is?

14 MR. TURK: Yes. Just one moment.

15 (Pause)

16 MR. TURK: We don't really have a position yet as
17 to which Board questions should be addressed first. I think
18 the Applicants are at a slight advantage here because they have
19 already integrated their Board questions into their pieces
20 of testimony. The Staff will be presenting some Board
21 questions as part of the CDA and the DBA testimony. Other
22 Board questions will be responded to in separate pieces of
23 testimony. So I really cannot comment yet on the Applicant's
24 proposed grouping of Board questions and testimony.

25 JUDGE MILLER: When do you propose to do that?

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1 MR. TURK: By the time we file our testimony, the
2 picture will be clear to us as to which issue should be
3 addressed at which time.

4 JUDGE MILLER: July 5, in other words.

5 MR. TURK: That's right.

6 JUDGE MILLER: Anything further?

7 MR. TURK: It is possible that the Applicants and
8 Staff may be able to discuss the matter about the time the
9 testimony is being filed, and perhaps then we can come to
10 the Board with a joint proposal as to the order of procedure.

11 JUDGE MILLER: You do not have a lot of time from
12 the time that the proposed written testimony is filed and
13 the Board starts reviewing it. We will not have a lot of
14 time to be meeting with you unless there would be something
15 unusual or highly significant. Now, do I understand that you
16 are indicating that that is necessary?

17 MR. TURK: If the Board does wish an agreement as
18 to order of procedure, perhaps a brief ten-minute recess would
19 help the parties to discuss it and come to a joint position.

20 JUDGE MILLER: We do not require it at this time.
21 It could be presented to the Board and the parties in written
22 form at some convenient time. We are simply looking now at
23 the practicalities.

24 MR. EDGAR: The only thing -- I think if Mr. Turk
25 and I got together, we could come up with a sequence that

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1 made some logical sense to us, and the only thing that we would
2 want to be sure of when we present that to the Board, and it
3 is certainly not pressing us now, but if we know the sequence,
4 then we can schedule our witnesses' travel, you know, within
5 a day, and it is really not paining us at this point, so I
6 think we can come up with something fairly soon.

7 JUDGE MILLER: All right. We suggest, then, you
8 do that in writing because now we are simply trying to con-
9 serve resources, time, money and travel and the like.

10 (Board conferring)

11 JUDGE MILLER: Judge Linenberger has several
12 questions which might have some impact upon your written
13 suggestions, so I will ask him now to make any suggestions
14 that would be helpful.

15 JUDGE LINENBERGER: First off, Part 2 of the
16 Commission's regulations mandates certain topical areas which
17 respect to which a Board must make findings at the CP stage,
18 and it is not clear to me from what I have heard Mr. Turk say
19 or what I have read in Applicant's submittal of June 22 that
20 the umbrella of their proposed prefiled material covers all
21 of those matters.

22 If either of you have comments on that at this time,
23 I would appreciate hearing them. Let me go on and touch on
24 a couple of other points, though, before you speak to this.

25 Relevant to that point, Mr. Turk, there is your

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1 letter of 3 June of this year to the Board transmitting a copy
2 of Applicant's analysis of seismic qualification of small
3 piping, and your letter indicates that the Staff review of
4 Applicant's analysis will be provided to the Board upon its
5 completion.

6 Now, that raises a question in the Board's mind.
7 Is that a topic that the Staff intends to address in its
8 prefiled material or to address without benefit of prefilng
9 during the hearing? How do you propose to handle that one?

10 And then let me mention a third one here. I will
11 get them all on the table and then stop talking.

12 There is a concern that the Board has, and perhaps
13 it should have been or perhaps it should be included in the
14 list of Board concerns, but let me tell you what it is because
15 I personally intend to probe this matter a bit at the hearing.

16 It has been represented by the Staff -- and if I
17 mischaracterize this, Mr. Turk, correct me -- that Applicant's
18 complete probabilistic risk assessment analyses will in essence
19 not be ready for full Staff review and assessment probably
20 until sometime after the CP hearing has, as currently
21 envisioned, has concluded. That leaves the Board with the
22 uneasy concern that it is just possible that the results of
23 the probabilistic risk assessment might somehow place a cloud
24 over whatever conclusions Applicant and Staff might reach at
25 this forthcoming hearing with respect to core disruptive

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1 accidents. I say it might be possible. I just don't know.

2 So we could find ourselves in the position of
3 looking at incomplete information that in effect blesses
4 the prospect of excluding CDAs from consideration within the
5 DBA envelope, and lo and behold, sometime later the probabil-
6 istic risk assessment cloud might wash some things out.

7 I lay this on the table as a concern of the Board
8 lest bringing it up at the hearing would in any way surprise
9 you. There is no reason for surprise. I want you to be as
10 well-prepared as possible. So I will stop there and label it
11 as a concern and leave it to Applicant and Staff as to how they
12 wish to handle it. You can anticipate that if you do not
13 voluntarily get into it at the hearing, I will -- I may.

14 MR. EDGAR: Judge Linenberger, I can respond to
15 several of the points you raised. One one of them, my response,
16 really the Staff has to take the lead on that. But taking
17 them in inverse order, the question of the timing of the PRA
18 and the possible effect of that on conclusions, we are
19 addressing that explicitly, that very question, in our testi-
20 mony, and our people will be prepared to render their
21 opinions and judgments on that subject. So I will advise
22 them that they are going to be probed and that that is a matter
23 of interest and concern to the Board.

24 As for the seismic analysis of small piping, we
25 the Applicants had not included that in our prefiled testimony.

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1 That has not been part of what we had perceived as matters of
2 interest. Certainly we have the people that can address it,
3 but we cannot speak for the Staff on that question or the
4 status of the Staff review.

5 The final point, the consideration of topical areas
6 as defined by the regulations. Perhaps one thing that may
7 help here in ascribing the complete picture of what we intend
8 to identify for prefiling, we intend to have testimony
9 addressing the subject matter described at pages 4 and 5.
10 In addition, however, we intend to furnish with that an
11 exhibit list which provides our basis for the application and
12 the supporting information.

13 We will be ready to provide any witnesses that the
14 Board may feel would be necessary to answer questions. If
15 the Board should have something very specific in mind,
16 perhaps I could give them more specific responses. I want to
17 make sure I am responsive to the point. But if there is some
18 particular thing in mind, we can be prepared to mobilize and
19 to address it.

20 MR. TURK: Judge Linenberger, if I may, I would
21 like to respond also. As the Applicants have done, let me
22 take your questions in reverse order. The first issue, then,
23 is whether the PRA will be completed before the CP hearing
24 such that it could affect a decision as to whether or not a
25 CP should be issued.

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1 Judge Linenberger is correct in restating my belief
2 that the PRA is not going to be finished on that kind of a time
3 frame. It is not due for completion for some time, probably
4 a year or two, possibly after the CP is issued, if one is
5 issued. That would be consistent with the regulations, which
6 require a PRA within two years of issuance of a CP.

7 We are prepared to address it in testimony, the
8 impact that the PRA might be expected to have upon our
9 determinations with respect to CDA analyses and the DBA
10 spectrum. So we will address it in testimony. And again, it
11 is our position as a matter of law that the PRA need not be
12 completed at this time.

13 The second issue is the seismic analysis of small
14 bore piping. We have forwarded to the Board already the
15 Applicant's analysis. The Staff has had a consultant looking
16 at it, at the question, and we have now received a consult-
17 ant's report as of a day or two ago and we are capable of
18 preparing testimony on the subject if the Board wishes to
19 have testimony to address the issue; otherwise, we would
20 simply submit our study or our conclusions in writing, and if
21 the Board wishes, we can then have it admitted as an exhibit
22 to the proceeding. Either way, we are prepared to have the
23 answers for the Board by the time the hearing commences.

24 The third question, then, is the findings required
25 by Commission regulation as a precondition to issuance of the

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1 construction permit. We do not intend to submit testimony
2 on each and every matter which might conceivably be raised
3 by regulation. We will introduce the SER into evidence, and
4 the SER as an exhibit in the record could provide the eviden-
5 tiary basis for whatever findings the Board needs to make on
6 the construction permit issuance.

7 The testimony that we would be prepared to file,
8 then, will only address the two big questions concerning
9 DBAs and CDAs, and the other Board questions which have been
10 specifically enumerated by the Board.

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1 JUDGE LINENBERGER: If I understood you correctly,
2 then, the Staff's analysis of the -- on seismic qualifications
3 will be available by the time the hearing commences. Did I
4 understand you correctly on that?

5 MR. TURK: That is my expectation, yes.

6 JUDGE LINENBERGER: If it is agreeable with the
7 Chairman, I should like to request that the Staff offer that
8 as an exhibit in the hearing.

9 JUDGE MILLER: The Staff would be prepared to do
10 that, I take it?

11 MR. TURK: Yes, we will.

12 JUDGE MILLER: Thank you.

13 JUDGE LINENBERGER: Mr. Edgar, with respect to
14 your comments about exhibits that the Applicant might offer
15 that would cover the gamut of items relevant to the CP
16 decision, I think this is fine. I should like, however, to
17 express the more than just a fond hope that these exhibits
18 will not say well, for our QA program, see the PSAR. Or,
19 for meteorology, read the PSAR, ~~or~~ for whatever, read the PSAR.

20 I would hope that the exhibits or the listing of
21 exhibits would somehow key specific areas of the exhibit to
22 specific issues.

23 Now, true, the Board can go to the PSAR and the
24 Table of Contents and try to find what it is looking for. I
25 would like to see things a little more explicitly organized and cross
referenced.

1 MR. EDGAR: I think I have been on that train of thought for
2 awhile. I haven't pursued it quite to that length, but that is a legitimate
3 thing that we ought to do anyway, whether or not the Board requests it. So
4 I think we can develop a cross referencing scheme. We have already under-
5 taken that in regard to the specific Board questions. I'm not apologizing
6 for it. I am stating that the testimony we are going to file is quite com-
7 prehensive. To find the Board questions in there requires a sort. We are
8 going to provide you with a cover sheet transmitting it that says, Board
9 question X corresponds to Q & A, X through Z. We also intend to give defin-
10 ition of our exhibits list and final group of witnesses so that if
11 there were any items that would fall out of that, we would
12 be apprised.

13 The other thing that I would like to raise, and
14 it's getting down in the grass on logistics, but we do have
15 in the prior record of the LWA proceedings, there are a number
16 of exhibits in that prior record that are basic documents
17 that have a relationship to the testimony, and the best
18 example that comes to my mind now is the Ward 0085 document,
19 which is the pipe break report, which was an exhibit.

20 We intend to offer that report, and I guess I
21 would like to get the Board's advice. My proposed approach
22 was going to be to incorporate selected exhibits into this
23 record by reference, and if that can be a matter of inconven-
24 ience, we can bring the new document into this record
25 separately if the Board wishes, but I would like to have some

1 advice as to whether you want separate introductions and
2 authentication in admission of documents which would be
3 common to the prior record and relevant to this testimony.

4 (Board conferring.)

5 JUDGE MILLER: Let me suggest this. There would
6 not be any problem, as the Board sees it, with foundation
7 proof, sponsored witnesses and the like for exhibits which
8 had been previously admitted in the LWA-1 or 2 phase of the
9 proceedings.

10 However, this Board -- and I am sure, the appeal
11 board -- do not like to have to chase around when you incor-
12 porate by reference. So we would request that it would be
13 similar to taking official notice or judicial notice. We
14 will take it appropriately and then you have to show the
15 exhibit. But you have to show us what we are taking notice
16 of for the record.

17 MR. EDGAR: We will do that.

18 JUDGE MILLER: All right. If we get into something
19 extremely bulky, then we could make some kind of a simplified
20 ruling.

21 MR. TURK: May I comment on the last question of
22 Mr. Edgar's? We don't intend to refile as exhibits certain
23 documents which are already in the record such as the Final
24 Environmental Statement and the Final Environmental Statement
25 Supplement. They are in the record, as the Board is aware.

1 The LWA-1 proceeding was part of the overall CP proceeding,
2 and it's our position that there is no need to refile documents
3 which have already been admitted before the Board.

4 JUDGE MILLER: I'm not sure we agree with you on
5 that. We're willing to take such measures as will keep us
6 from having to spend unnecessary time and resources, but
7 nevertheless, this is a construction permit hearing. You will
8 recall that the LWA portion is on appeal, so we are not going
9 to have incorporation by reference. I think you had better be
10 prepared to hand out -- we might restrict the number of
11 copies or something like that, simply as a matter of exercising
12 discretion, but we do not anticipate counsel's offering
13 Exhibits X, Y, Z that were in the LWA and somebody says gee,
14 what is that, and nobody knows.

15 The rule of reason will apply, but it may be that
16 you can appropriately make one copy. Everybody recognizes
17 it, and something like that. We can give you ad hoc oppor-
18 tunity, but generally speaking, this is an independent
19 proceeding and we expect to have the documents and exhibits
20 appropriately in hand.

21 MR. EDGAR: I have one other point where I need
22 guidance. As the Board well knows, the PSAR in this proceeding
23 is extremely voluminous. My sympathies lie with people who
24 are on travel and are given 30 volumes of material. We intend
25 to produce and offer, in accordance with the Rules of Practice,

1 four sets. If the Board were to take four sets back, the
2 plane would not get off the ground. There may be other
3 problems.

4 JUDGE MILLER: What do you suggest?

5 MR. EDGAR: My suggestion is what we will do is
6 bring four sets, get them marked and authenticated. We would
7 propose that we leave one set in the hearing room with the
8 Board at all times for use in reference. And then when the
9 hearing sessions are closed, we, the Applicants, would take
10 possession and accomplish the shipment for the Board back
11 to Bethesda of the four sets.

12 JUDGE MILLER: We would appreciate that.

13 MR. EDGAR: I don't think we need four sets in
14 the hearing room on a daily basis.

15 JUDGE MILLER: Your suggestion is fine and
16 appropriate.

17 JUDGE LINENBERGER: One little bit of hopefully
18 unnecessary fine-tuning on that, however, is that the Board
19 has run into situations similar to this where at the CP
20 hearing, the PSAR consisted of 20-odd volumes in looseleaf
21 binders and an almost equivalent thickness of loose pages in
22 rubber bands. That posed a problem.

23 MR. EDGAR: I can assure you that there will be no
24 rubber bands. We understand that.

25 One thing you should be aware of that I think is

1 going to be an aid to everybody is that before we introduce
2 it, what the Applicants are going to do is to pre-assign
3 Exhibit Number X and provide an exhibit list in advance with
4 good identification because I am very fearful of PSARs getting
5 out of order, so that at least we will know what the standard
6 form of reference is.

7 We will undertake that and try to get that to the
8 Board.

9 JUDGE MILLER: We have noticed in the past, Mr.
10 Edgar, you have been very good about providing supplements,
11 which reduces considerably the size and bulk of lengthy
12 exhibits, so we commend that practice.

13 Before I forget, it might be a good idea also in
14 advance to get together a glossary of terms. We did find
15 that quite helpful before, and you may draw upon the glossary
16 that is pre-existing and supplement it, if you like. But it
17 would be helpful if all the parties could get together on
18 that and update perhaps.

19 MR. EDCAR: We have that action underway. We will
20 not have a glossary by the 5th of July, but we will have it
21 there for the hearing.

22 JUDGE MILLER: That's what I meant.

23 MR. TURK: Mr. Edgar's comments about documents
24 raise a few extra questions in my mind, due to the fact that I
25 have personally not been involved in the prior phases of the

1 proceeding. My first question is how many copies of exhibits
2 does the Board wish to have brought down to Oak Ridge, and how
3 many copies of testimony does the reporter like in this
4 proceeding?

5 JUDGE MILLER: Mr. Edgar can give us a short
6 answer.

7 MR. EDGAR: On exhibits, the reporter will need
8 four; on testimony, the reporter has accepted 10. And then,
9 generally speaking, we bring a copy for everybody and each
10 of the Board members, although if it is something like the
11 PSAR, we do not bring 14 sets.

12 JUDGE MILLER: That's right.

13 MR. TURK: One other question I have is whether
14 it might be possible for Applicants and Staff to stipulate to
15 admissibility of exhibits so there is no need to have authen-
16 tication and sponsoring witnesses for them.

17 JUDGE MILLER: As far as authentication is
18 concerned, sponsoring witnesses is probable, but the Board
19 must reserve the right to rule upon stipulations because
20 we do not want to stipulate away too much. We will certainly
21 take into consideration the fact that there are stipulations,
22 and to the extent that they can conserve time and energy,
23 fine, we encourage them. But we reserve the right to rule.

24 Anything further?

25 (No response.)

1 Since we are on an expedited schedule and
2 approaching hearing, let me inquire first of all, is there
3 any objection from any party or counsel to the Board causing
4 to be requested to be served by all parties entitled to
5 receive copies of orders, a copy of the transcript of this
6 hearing in lieu of and to be considered as an order of the
7 Board, rather than to go through the matter of getting the
8 transcripts, writing orders and distributing it.

9 Is there any objection, first of all, from anyone?

10 MR. EDGAR: No objection.

11 MS. FINAMORE: No objection.

12 JUDGE MILLER: We would then request Applicants
13 and the Staff to confer and obtain the procedures necessary
14 to see that all parties or persons entitled to receive copies
15 of orders are served with copies of the transcript of today's
16 proceeding, which will stand as the Board's order in regard
17 to the pending motions and other matters covered by it.

18 We will request the reporter and the reporting
19 service to provide as many copies of the transcripts as may
20 be indicated by the Applicants and Staff counsel as being
21 requisite for this purpose of service.

22 MR. TURK: Excuse me, Judge Miller, there's one
23 other point I'd like to raise while we are here today.

24 JUDGE MILLER: Go ahead.

25 MR. TURK: As the Board might expect, the testimony

1 we have prepared to date still addresses the contentions of
2 the Intervenors. Those contentions have now been dismissed.
3 We will need to refocus the testimony to some degree to
4 eliminate references to contentions, to rephrase questions and
5 the like, and given the fact that testimony is now due to be
6 filed on Tuesday of next week, the Staff would appreciate
7 having an extra perhaps two days to permit it to restructure
8 the testimony a little bit.

9 JUDGE MILLER: Any objection?

10 MS. FINAMORE: We would request the same additional
11 time.

12 MR. TURK: We would be more than willing to agree
13 to that.

14 JUDGE MILLER: We will extend -- we have an
15 intervening holiday. When is the Fourth, Monday?

16 MR. TURK: Monday.

17 JUDGE MILLER: Let's say, then, by Friday, which
18 will be the 8th of July, that all parties are requested --
19 given leave to extend the time in which to file their prefiled
20 testimony to otherwise update the matter, in view of the
21 developments considering the withdrawal of contentions, and
22 that the same time period is extended to the Intervenors to
23 make their written presentation.

24 Anything further?

25 (No response.)

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JUDGE MILLER: And I take it the Applicants and the Staff would be caused to be served the transcript upon the parties entitled to receive copies of Board orders.

MR. TURK: Yes.

JUDGE MILLER: Anything further?

Go ahead, Judge Linenberger.

JUDGE LINENBERGER: My apologies, Mr. Chairman. I had not anticipated this to you, but I personally feel it is appropriate to comment that the Board considers this to be a very complex subject we are dealing with here with respect to Clinch River. The Board further considers that the Intervenors to date have been served -- have served a very valuable role certainly in stimulating the Board's thinking about many of the complexities of this proceeding. And I just wanted to make at least the personal observation that this stimulation by Intervenors has been very much appreciated.

JUDGE MILLER: We all concur in that. We know the Intervenors, over a period of years, have made very valuable contributions to this proceeding, and it is at some cost not only in money but in energy and interest, and we thank you.

We will stand adjourned.

(Whereupon, at 10:49 a.m., the prehearing conference in the above-entitled matter was adjourned.)

CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

In the matter of: Conference with Counsel
Clinch River Breeder Reactor Plant

Date of Proceeding: Wednesday, 29 June 1983

Place of Proceeding: Washington, D.C.

were held as herein appears, and that this is the original
transcript for the file of the Commission.

Barbara Whitlock

Official Reporter - Typed

Barbara Whitlock

Official Reporter - Signature