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NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

DEPT OF SECRETARY
LISTING & SERVICE
BRANCH

Before Administrative Judges
Marshall E. Miller, Chairman
Gustave A. Linenberger, Jr.
Dr. Cadet H. Hand, Jr.

SERVED OCT 26 1982

In the Matter of

UNITED STATES DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CORPORATION
TENNESSEE VALLEY AUTHORITY

(Clinch River Breeder Reactor Plant)

Docket No. 50-537

October 26, 1982

ORDER REGARDING SUMMARY DISPOSITION

The Staff on September 29, 1982 filed a motion for summary disposition of Intervenor's Contentions 6 and 7a(1), pursuant to the provisions of 10 CFR §2.749. The motion was supported by affidavits and had annexed a statement of material facts as to which the movant contends that there is no genuine issue to be heard. The Applicants on October 12 filed an answer in support of the Staff's motion. The Intervenor on October 19 filed an answer to the Staff's motion, accompanied by a statement of material facts as to which it is contended that there are genuine issues to be heard and a supporting affidavit.

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Contentions 6(a) and (b) state:

6. The ER and FES do not include an adequate analysis of the environmental impact of the fuel cycle associated with the CRBR for the following reasons:

- a) The ER and FES estimate the environmental impacts of the fuel cycle based upon a scale-down of analyses presented in the LMFBR Program Environmental Statement and Supplement for a model LMFBR and fuel cycle. The analysis of the environmental impacts of the model LMFBR and fuel cycle in the LMFBR Program Statement and Supplement are based upon a series of faulty assumptions.
- b) The impacts of the actual fuel cycle associated with CRBR will differ from the model LMFBR and fuel cycle analyzed in the LMFBR Program Environmental Statement and Supplement. The analysis of fuel cycle impacts must be done for the particular circumstances applicable to the CRBR. The analyses of fuel cycle impacts in the ER and FES are inadequate since:
 - (1) The impact of reprocessing of spent fuel and plutonium separation required for the CRBR is not included or is inadequately assessed;
 - (2) The impact of transportation of plutonium required for the CRBR is not included, or is inadequately assessed;

- (3) The impact of disposal of wastes from the CRBR spent fuel is not included, or is inadequately assessed;
- (4) The impact of an act of sabotage, terrorism or theft directed against the plutonium in the CRBR fuel cycle, including the plant, is not included or is inadequately assessed, nor is the impact of various measures intended to be used to prevent sabotage, theft or diversion.

Contention 6(a)

With respect to Contention 6(a), the Staff asserts that it has revised its 1977 FES evaluation of the CRBR fuel cycle to be specific to the CRBR fuel cycle.^{1/} The Applicants have also included a CRBR-specific analysis of the fuel cycle in the ER (MFL, par. 3, 14). The Intervenor's concede that Contention 6(a) is mooted by the new analyses and do not oppose the motion in this regard

1/ The following abbreviations will be used herein:
Material Facts List = MFL
Final Environmental Statement = FES
FES Draft Supplement = DSFES
FES Final Supplement = FSFES
Environmental Report = ER
Environmental impact analysis = EIA
Clinch River Breeder Reactor = CRBR
Liquid Metal Fast Breeder Reactor = LMFBR
Plutonium = Pu

(Answer, p. 3). Consequently, summary disposition is granted as to Contention 6(a).

Contention 6(b)

Contention 6(b)(1) asserts that fuel cycle impacts in ER and FES are inadequate since the impacts of reprocessing spent fuel and Pu separation are not included or are inadequately assessed. The Staff's MFL speaks only of "reprocessing of spent fuel", not of Pu separation. Hence it is not obvious whether "Pu separation" is an activity subsumed within "reprocessing of spent fuel", as viewed by the Staff. Since Contention 6(b)(1) uses the singular noun "impact" and the singular verb "is", it is assumed that Intervenors consider these two activities to be one consolidated action. Intervenor's Answer does not controvert this assumption. Hence the balance of this discussion will treat the "Pu separation" activity as being subsumed within "reprocessing of spent fuel."

The Staff's MFL alleges at paragraph 14 that the ER "contains an analysis of the fuel cycle which is specific to CRBR," which is supported by the Homer Lowenberg (H.L.) affidavit at paragraph 7. We interpret this to mean that an environmental impact analysis (EIA) is included therein. The Staff's MFL alleges at paragraph 5 that the DSFES includes an EIA for the reprocessing of CRBR spent fuel, which is supported by H.L. affidavit at paragraph 5(1).

Intervenors' MFL and Cochran affidavit do not controvert the existence of an EIA (for reprocessing) in the ER and the DSFES. Regarding the Intervenors' allegation that the EIA is inadequately

assessed, neither the Staff's MFL nor the affidavit of H.L. explicitly addresses the adequacy of assessment. Rather, the most that we can reasonably conclude is that both the MFL and the H.L. affidavit anticipate that the yet-to-be-published FSFES will present an adequate analysis. The Staff's MFL and its H.L. affidavit are silent with respect to the adequacy of the ER treatment of an EIA (for reprocessing).

Intervenors' MFL and their Cochran affidavit identify several areas wherein the CRBR fuel reprocessing EIA is inadequately treated (see e.g., Cochran affidavit at paragraphs 5-10). The Staff's motion goes no further than to establish the existence of the EIA discussion, and to offer the conclusional statement that it has been fully addressed in the ER and the DSFES (H.L. affidavit at paragraph 8).

We conclude that the ER and the DSFES do include a CRBR fuel cycle EIA, but that the Staff's implied representation of the anticipated adequacy of this treatment in the yet-to-be published FSFES is premature. Accordingly, we grant summary disposition of Contention 6(b)(1) only to the extent that the first two sentences of 6(b) are deleted, and the phrase "is not included or" of 6(b)(1) is deleted. Otherwise, the Staff's motion for summary disposition of 6(b)(1) is denied.

Contention 6(b)(2) asserts that the impact of transportation of plutonium required for the CRBR is not included or is inadequately assessed. The Intervenors concede that this contention is also

mooted by new information in the DSFES and do not oppose the motion. Accordingly, summary disposition is granted as to Contention 6(b)(2).

Contention 6(b)(3) asserts that the impact of disposal of wastes from the CRBR spent fuel is not included, or is inadequately assessed. The Staff's MFL is silent with respect to a discussion of waste disposal in the ER. However, the Staff's H.L. affidavit at paragraph 7 states that the ER contains a CRBR-specific fuel cycle analysis, without specifically stating whether said analysis includes waste disposal impacts. This affidavit at paragraph 8 expresses affiant's belief that Intervenor's concern about fuel cycle analysis has been fully addressed by the ER and the DSFES. The Staff's MFL at paragraph 9 alleges that waste disposal EIA is contained in the DSFES. This is supported in Staff's H.L. affidavit at paragraph 5(2). This affidavit at paragraph 8 expresses the same belief of affiant as stated immediately above.

The Intervenor's MFL at paragraphs 8 and 9 alleges specific inadequacies of Staff's waste disposal EIA. We cannot determine whether the MFL at paragraph 10 goes to the same subject. Intervenor's Cochran affidavit at paragraphs 11 and 12 supports the MFL allegations but is unclear as to whether paragraph 13 goes to the same subject.

The Staff's supporting affidavit to its motion establishes the existence in the ER and DSFES of an EIA of waste disposal, but the deficiencies identified by Intervenor are not addressed. Hence we

are not persuaded that the waste disposal EIA is adequate for the purpose of summary disposition. Accordingly, the Staff's motion for summary disposition of Contention 6(b)(2) is granted only to the extent that the phrase "is not included or" is deleted. The motion is denied in all other respects.

Contention 6(b)(4) asserts that the environmental impacts of sabotage, terrorism or theft directed against Pu and the measures to prevent them are not included in the ER and the FES, or are inadequately assessed. The Staff's MFL is silent as to whether the ER includes an EIA addressing the concern of this contention, but alleges that the DSFES does include such a discussion (MFL at paragraph 11). Staff's H.L. affidavit at paragraph 5(2) states that the FSFES will specifically address the effects of sabotage, terrorism or theft. This affidavit at paragraphs 2, 4 and 7 states that CRBR-specific fuel cycle analyses are included in the ER and the DSFES, without explicitly stating that sabotage etc. are included. The affidavit at paragraph 8 asserts affiant's belief that Intervenor's concerns are met.

Intervenor's MFL at paragraph 11 alleges four specific inadequacies of the DSFES treatment of this subject, each of which is supported by their Cochran affidavit at paragraph 14. None of these inadequacies is addressed by Staff's motion.

The Staff's motion establishes the existence of an EIA discussion but is not persuasive as to its adequacy in the face of deficiencies identified by Intervenor's. Accordingly, we grant the

Staff's motion for summary disposition of Contention 6(b)(4) only to the extent that the phrase "is not included or" is deleted. Otherwise the motion is denied.

Contention 7(a)

Contention 7(a)(1) states:

7. Neither Applicants nor Staff have adequately analyzed the alternatives to the CRBR for the following reasons:

a) Neither Applicants nor Staff have adequately demonstrated that the CRBR as now planned will achieve the objectives established for it in the LMFB Program Impact Statement and Supplement.

(1) It has not been established how the CRBR will achieve the objectives there listed in a timely fashion.

Contention 7(a)(1) asserts that the Applicants' and Staff's analyses of CRBR alternatives do not adequately demonstrate that the CRBR as now planned will achieve the LMFB program objectives established for it in a timely fashion.^{2/} The Staff's MFL at paragraphs B2 and B7 alleges that the originally scheduled CRBR

^{2/} United States Energy Research and Development Administration, et al. (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67, 78 (1976).

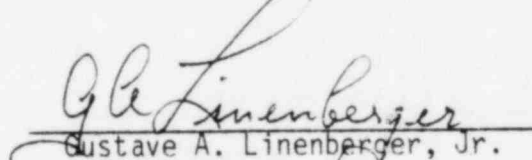
criticality date of 1983 has now been recast to require completion as expeditiously as possible. From this the Staff concludes that no alternative to the CRBR could achieve a more timely realization of the program objectives. The Staff's Paul Leech (P.L.) affidavit reiterates this timing change and concludes with the belief that the concern of the instant contention is "superseded" by such change.

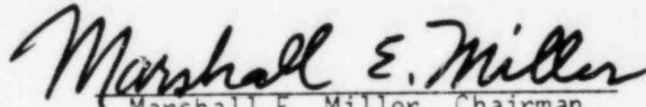
Intervenors' MFL at paragraphs B2 through B7 lists specific programmatic aspects of the CRBR that may interfere with the as-expeditiously-as-possible completion of the facility as presently planned. These are matters about which the Staff's motion is silent. Intervenors' Cochran affidavit at paragraphs 17 through 22 attest to these same programmatic aspects that, if altered, might expedite completion of the CRBR and improve its operability. We are not persuaded by Staff's motion that changing from a specific completion date to an objective of completing CRBR as expeditiously as possible obviates the possibility that alternatives to the CRBR might speed up the attainment of LMFBR program objectives, as discussed by Intervenors. We conclude that there remain litigable issues of material facts about which reasonable minds would wish to

inquire further. Accordingly, the Staff's motion for summary disposition of Contention 7(a)(1) is denied.

IT IS SO ORDERED.

ATOMIC SAFETY AND LICENSING BOARD


Gustave A. Linenberger, Jr.
ADMINISTRATIVE JUDGE


Marshall E. Miller, Chairman
ADMINISTRATIVE JUDGE

Judge Hand concurs in this decision but was unavailable to sign the foregoing Order.

October 26, 1982