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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
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UNITED STATES DEPARTMENT OF ENERGY	)	
	)	
PROJECT MANAGEMENT CORPORATION	)	Docket No. 50-537
	)	
TENNESSEE VALLEY AUTHORITY	)	
	)	
(Clinch River Breeder Reactor Plant)	)	
	)	

APPLICANTS' MEMORANDUM IN SUPPORT OF REQUEST TO CONDUCT SITE PREPARATION ACTIVITIES

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The United States Department of Energy (DOE) and Project Management Corporation, acting for themselves and on behalf of the Tennessee Valley Authority (the Applicants), hereby submit this memorandum in support of request for authorization to conduct site preparation activities pursuant to 10 C.F.R. § 50.12.

BACKGROUND

The Clinch River Breeder Reactor Plant (CRBRP) project was originally authorized by the Congress in 1970, and is the subject of an application to the Nuclear Regulatory Commission (NRC) for a Construction Permit under Section 104(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq. After the application was docketed in April of 1975, the NRC review progressed to the point that by

March 28, 1977, the NRC had: (1) issued a Final Environmental Statement (FES) which recommended the grant of a Construction Permit; (2) issued a Site Suitability Report which found that the site is suitable from the standpoint of radiological health and safety; and (3) ordered hearings to commence on June 14, 1977 and run in continuous session until completion. On this basis, it was anticipated that the project would obtain NRC authorization to commence site preparation activities no later than March, 1978.

On April 20, 1977, President Carter announced the previous Administration's decision to cancel the CRBRP project, and in response, the Energy Research and Development Administration (ERDA) requested and obtained suspension of the hearings from the Licensing Board. Subsequently, the NRC Staff discontinued its review of the application, and disbanded the organization it had assembled for that review.

During each of the ensuing four years, the previous Administration sought to cancel the project, while the Congress acted to preserve it by providing substantial funding. In the meantime, the project continued design and engineering R&D to near completion. By April, 1982, more than $600 million of hardware had been placed on order. The project, however, was unable to make any progress in the NRC licensing process which would lead to commencement of site preparation. As a result, the project schedule was extended

by more than four years and its costs increased by more than $800 million.

On October 8, 1981, President Reagan in a major policy statement, stated that he was "directing that government agencies proceed with the demonstration of breeder reactor technology, including completion of the Clinch River Breeder Reactor."

In response to the Congressional and Executive directives, on November 30, 1981, the Secretary of Energy requested NRC authorization to begin site preparation activities pursuant to 10 CFR § 50.12. Although the Commission found that the first three factors under Section 50.12 had been met,[1/] a majority of the Commission voted against the request on the ground that the Department had not demonstrated that grant of the request was in the public interest.[2/]

In May, 1982, the DOE issued a Final Supplement to the LMFBR Program Environmental Statement. The DOE program called for in the LMFBR Program Environmental Statement is construction of CRBRP as expreditiously as possible.

1/ United States Department of Energy (Clinch River Breeder Reactor Plant) CLI-82-4 (March 16, 1982) (Separate views of Chairman Palladino at 1, Commissioners Ahearne at 13-15, Roberts at 2, Bradford at 2).

2/ Id. Separate views of Commissioners Ahearne at 39, Bradford at 2, Gilinsky at 9.

On June 11, 1982, the NRC staff issued a revised Site Suitability Report (SSR) for the CRBRP. The SSR again found that the site is suitable from the standpoint of radiological health and safety.

SUMMARY

In granting Applicants' request to begin site preparation activities pursuant to 10 C.F.R. § 50.12, the Commission would not waive any requirements of the National Environmental Policy Act, (NEPA) or the Atomic Energy Act (AEA). In light of the conclusions of the 1977 FES, the analysis in the SPAR, the NRC Staff's favorable of review of Applicants site preparation activities, and the Commission's finding that the activities will not cause signficant environmental impacts, all requirements of NEPA have been satisfied. In addition, the AEA does not contain any provisions or requirements which prohibit the conduct of site preparation activities at this time. Finally, grant of this request would not obviate any step of the Commission's established licensing process -- all environmental and safety findings required by NRC regulations will be made prior to the issuance of a Construction Permit.

Under these circumstances and for the reasons stated below, the Commission should exercise its authority under Section 50.12 and grant Applicants' request. In light of the exhaustive environmental analysis of the proposed

site preparation activities, the Commission is assured that the impacts of the proposed activities will not be significant. In addition, the Applicants have clearly demonstrated that the activities are redressable and that no alternatives will be foreclosed. In light of established national policies and the programmatic, informational and monetary benefits resulting from grant of the request, and the absence of any countervailing factors, grant of the request is clearly in the public interest. Finally, the Executive Branch considers the prompt initiation of site preparation activities to be a very high priority element of national energy policy, which now requires only NRC approval. On balancing of all the factors under Section 50.12, this is a compelling case for the Commission's exercise of its Section 50.12 authority.

ARGUMENT

I. IN LIGHT OF THE EXISTING ENVIRONMENTAL AND SAFETY REVIEWS FOR THE PROJECT, THE COMMISSION HAS THE DISCRETION TO AUTHORIZE SITE PREPARATION ACTIVITIES

In seeking relief under 10 C.F.R. § 50.12, the Applicants are not requesting that the Commission waive any statutory requirements arising from the two relevant statutes -- the National Environmental Policy Act of 1969 (NEPA) and the AEA. As will be shown, the requirements arising from those statutes have been satisfied in this case

insofar as site preparation activities are concerned. In the following, it will be shown that: (a) the Commission's environmental reviews for the project have satisfied all requirements arising out of NEPA; (b) no hearings are required by NEPA or the AEA prior to commencement of site preparation activities; and (c) grant of the request will not obviate any step of the Commission's established licensing process.

A. NRC Reviews of the Project Have Satisfied All Requirements Arising Out of NEPA

NEPA requires the preparation of an environmental impact statement prior to undertaking a major federal action significantly affecting the quality of the human environment. See 42 U.S.C. § 4332. After docketing of the CRBRP application in April of 1975, the project sought authorization to commence site preparation activities under 10 C.F.R. § 50.10(e) of the Commission's regulations. Section 50.10(e) requires: (1) completion of a Final Environmental Statement (FES); (2) NRC Staff review and findings as to site suitability;[3/] and (3) completion of hearings, Licensing Board findings required by 10 C.F.R. § 51.52(b) and a finding that the proposed site is a suitable location for a reactor of the general size and type proposed from the

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3/ See 10 C.F.R. Section 50.10(e)(2).

standpoint of radiological health and safety.[4/] The first requirement arises out of NEPA.[5/] The second and third requirements arise not from NEPA, but from the Commission's regulations.[6/] Although the first two requirements were completed by March of 1977, the previous Administration's decision to cancel the project led to suspension of the hearing process. Consequently, although the requisite FES and SSR had been completed for the project, the Applicants were unable to complete the hearings and progress toward commencement of site preparation.

The FES itself was based upon the Applicants' five volume Environmental Report which presents detailed information concerning site characteristics, environmental impacts of construction and operation, and the cost/benefit analysis for the project. After docketing of the application in April of 1975, the Draft Environmental Statement was issued in February 1976. After consideration of comments by interested federal, state, and local agencies, and the public, the Final Environmental Statement was issued in February of 1977.

4/ 10 C.F.R. Section 50.10(e)(2).

5/ See 102(2)(c) of NEPA.

6/ See discussion in Section IB at 10-12, infra.

NRC's 1977 FES concluded that the environmental effects of site preparation activities would not be significant (FES at 9-23). Moreover, the Project has within the last year, undertaken an extensive reevaluation of the proposed site preparation activities, which is contained in the Site Preparation Activities Report (SPAR). The SPAR demonstrates that both the environmental conditions of the site and the proposed site preparation activities have not changed significantly from those described in the FES, and the conclusion in the FES that the effects of the proposed site preparation activities would not be significant (SPAR at 4-1) remains valid today.

On February 8, 1982, the NRC Staff fully reviewed Applicants' proposed site preparation activities and agreed with Applicants' conclusion that the proposed activities would not give rise to any significant adverse environmental consequences.[7/] On March 16, 1982, a majority of the Commission similarly concluded that the site preparation activities would not result in significant environmental impacts.[8/]

7/ See NRC Staff Report, CRBRP: Request for Authorization Under 10 C.F.R. Section 50.12 to Conduct Certain Site Preparation Activities, 11-26, February 8, 1982.

8/ United States Department of Energy (Clinch River Breeder Reactor Plant), CLI-82-4 (March 16, 1982) (separate views of Chairman Palladino at 1, Commissioners Roberts at 2, Ahearne at 15, Bradford at 2.

In this case, where the FES for the project has been completed and where the NRC Staff and a majority of the Commission have determined that the site preparation activities will not cause significant adverse environmental impacts, the Commission is assured that all relevant requirements arising out of NEPA have been satisfied.[9/]

B. Hearings Are Not Required By NEPA or the AEA Prior to Commencement of Site Preparation Activities

The Commission's requirement for a hearing prior to commencement of site preparation activities is not based on the National Environmental Policy Act or the Atomic Energy Act. Rather, the hearing requirement is based solely on the Commission's regulations. See 10 C.F.R. Sections 50.10(c), (e).

The National Environmental Policy Act only requires "full environmental disclosure and review", Bucks County Bd. of Commissioners v. Interstate Energy Co., 403 F. Supp. 805 (E.D. Pa. 1975), and does not require a federal agency to convene hearings. As the court stated in Upper West Fork River Watershead Assoc. v. Corps of Engineers, 414

9/ Letter to James B. Edwards, Secretary of Energy from A. Alan Hill, Chairman, Council on Environmental Quality (Jan. 27, 1982) in which Chairman Hill stated that if the Commission finds that the proposed activities will not result in significant environmental impacts, "granting the requested exemption would be consistent with the requirments of NEPA".

F. Supp. 908 (N.D. W. Va. 1976), aff'd, 556 F.2d 576 (4th Cir. 1977), cert. denied, 434 U.S. 1010 (1978):

> ... neither NEPA nor the CEQ Guidelines make public hearings a mandatory procedural requirement in the preparation of an environmental impact statement.

See also Jicarilla Apache Tribe of Indians v. Morton, 471 F.2d 1275 (9th Cir. 1973).

As with NEPA, the AEA does not require hearings or any other form of approval prior to the commencement of site preparation activities.[10/] Indeed, prior to the enactment of NEPA, applicants routinely initiated site preparation activities without any AEC action whatsoever.[11/] As the Commission stated in Kansas Gas and Electric Co. (Wolf Creek Nuclear Generating Station, Unit No. 1), CLI-77-1, 5 NRC 1 (1977):

> Prior to enactment of NEPA, implementing regulations reflected the principal thrust of the Atomic Energy Act and barred safety-related construction activities on a proposed facility site until a construction permit was issued. The bar on construction extended to "pouring the foundation for, or the installation of any portion of

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10/ Intervenors, at the previous hearing, candidly admitted that no hearing was required. (Transcript of Commission hearing December 16, 1982, at 48.)

11/ There was no requirement for site suitability findings prior to commencement of site preparation activities. Those findings were made in connection with the issuance of a construction permit. See 10 C.F.R. Section 50.34(a)(1); 10 C.F.R. Section 50.35(a).

> the permanent facility." 10 C.F.R. 50.10(b). However, there was no bar to site activities that might have a substantial environmental impact but which had no safety significance. Construction permit applicants willing to assume the risk that their applications might be denied were specifically allowed to proceed with "site excavation, preparation of the site for construction of the facility, including the ... construction of roadways, railroad spurs, and transmission lines." Section 50.10(b)(1). (Emphasis in original).

Id. at 6.

Thus, in requesting authorization to allow site preparation activities to run in parallel with the hearing process, the Applicants are asking that the Commission exercise its lawful discretion -- where the requirements of NEPA have been met -- to permit site preparation activities prior to completion of the hearing process required solely by Commission regulations.

C. Applicants Will Complete All NRC Licensing Procedures

Applicants request to begin site preparation activities, if granted, will not obviate a single step in the NRC licensing procedures. Should the Commission grant this request, the CRBRP will still undergo and satisfy all elements of NRC's licensing procedure. Specifically, the CRBRP will:

(a) Seek and obtain all findings including environmental findings, necessary for a Limited Work Authorization-1 (LWA-1) pursuant to 10 C.F.R. Section 50.10(e)(1)-(2) as a prerequisite condition to an LWA-2. See 10 C.F.R. Section 50.10(e)(1)-(3).

(b) Seek and obtain all findings necessary for a Limited Work Authorization-2 (LWA-2) pursuant to 10 C.F.R. Section 50.10(e)(3) (i)-(ii).

(c) Seek and obtain all necessary findings for a Construction Permit (CP). See 10 C.F.R. Section 50.35.

(d) Seek and obtain all necessary findings for an Operating License (OL). See 10 C.F.R. Section 50.57.

In short, should the Commission grant this request, the CRBRP will still undergo all NRC Staff reviews and hearings related to all applicable environmental and radiological health and safety matters under NEPA and the AEA.

II. IN VIEW OF THE EXIGENT AND EXCEPTIONAL CIRCUMSTANCES OF THIS REQUEST, THE COMMISSION SHOULD EXERCISE ITS SECTION 50.12 AUTHORITY TO GRANT THE REQUEST

In promulgating Section 50.12, the Commission recognized its obligation to ensure that its regulatory requirements do not cause undue hardship. See National Broadcasting Co. v. United States, 319 U.S. 190, 225 (1943). Indeed, Section 50.12 reflects a conscious Commission policy decision to preserve its discretion to authorize

site preparation in exceptional cases involving undue hardship.[12/] In this regard, Section 50.12 establishes an explicit set of conditions which assure that any Commission decision authorizing site preparation will comport with sound discretion and full consideration of environmental values.

In reviewing its Section 50.12 authority to grant requests for authorization to conduct site preparation activities, the Commission in Shearon-Harris, supra at 944, stated:

> The question presented here is whether NEPA bars altogether any preliminary work on a proposed project when an administrative agency -- which carefully weighs and balances specific environmental criteria before allowing the work -- has not yet completed its full environmental review of the entire project. We find that NEPA contains no such prohibition, and that the site-preparation work was properly authorized in the circumstances of this case.

The Commission recognized that the Section 50.12 framework assures that all relevant environmental matters are fully and fairly considered:

12/ 37 Fed. Reg. 5746 (March 21. 1972); 39 Fed. Reg. 4583 (Feb. 5, 1974). See also Applicants' Response to Natural Resources Defense Council, Inc., 13-16 (January 28, 1982). There is no serious doubt that the Section 50.12 procedure can be applied to the CRBRP. United States Department of Energy, supra (separate views of Commissioners Palladino, Roberts and Ahearne).

> The regulations enable this Commission to determine what the environmental impact of site-preparation work will be; whether redress can be achieved if necessary; whether the work will leave open the subsequent adoption of alternatives if necessary; and whether that preliminary work will serve the public interest. In short, the regulations help us assess relevant environmental factors at the site-preparation stage.

Id. at 945.

In regard to the instant request, Section 50.12 provides a framework which assures that all relevant environmental factors are carefully assessed, while at the same time enabling the Commission to minimize the effect of the four-year delay, avoiding unnecessary cost increases, preserving the informational and programmatic benefits from acceleration of the project, and furthering the Congress' and President's mandate that the project be completed in an expeditious and timely manner.

The Commission has stated that the exercise of its Section 50.12 authority would be limited to truly exigent and exceptional cases. This case is both exigent and exceptional in at least three respects: (1) there are national policies in favor of expeditious completion of the project; (2) the project is in an advanced stage of development, and unless relief is granted, undue hardship will

inevitably result;[13] and (3) in light of the project's unique nature, the grant of relief in this case would not be precedent-setting and would be entirely consistent with the Commission's sparing use of its Section 50.12 authority.[14]

A. Grant of the Request Would Advance Established National Policies

Applicants submit that the Section 50.12 public interest factor and the balance of all four Section 50.12 factors should not and cannot be evaluated in a vacuum. Rather, they must be considered in light of prevailing national policies, and a determination should be made which advances those policies. In particular, the Commission's determination should advance the policies expressed by the Congress, the President, and NRC's own case law.

The intent of Congress, as reflected in the Omnibus Budget Reconciliation Act of 1981, can be summarized as follows:

a. The plant must be constructed in a timely and expeditious manner; construction must be undertaken as expeditiously as possible; the cooperation of all agencies is required;

13/ 37 Fed. Reg. 5746 (March 21, 1972).

14/ Id.; 39 Fed. Reg. 4583 (Feb. 5, 1974).

b. Unrecoverable delays resulting from the 1977 decision to stop the project must be minimized; construction must be undertaken with as little delay as discretion will allow; and

c. The CRBRP is a kep step in the development of the Liquid Metal Fast Breeder Reactor (LMFBR).[15/]

The President's October 8, 1981, policy statement reflects a similar policy on the part of the Executive:

> I am directing that government agencies proceed with the demonstration of breeder reactor technology, including completion of the Clinch River Breeder Reactor. This is essential to ensure our preparedness for longer-term nuclear power needs. 17 Weekly Compilation of Presidential Documents, 1101-02 (1981).

The Department of Energy has implemented Congressional and Presidential policy and its own independent statutory responsibility for energy research and development, by determining that CRBRP should be completed as expeditiously as possible. The program called for in the Environmental Impact Statement for the Liquid Metal Fast Breeder Reactor Program (Supplement to ERDA-1535, DOE/EIS-0085-FS, May 1982) is construction of CRBRP as expeditiously as possible.

15/ Applicants' Memorandum in Support of Request to Conduct Site Preparation Activities, November 30, 1981, at 7-1 - 7-3; Appendix A. Most recently, the House rejected an amendment to the First Budget Resolution which would have eliminated funding for CRBRP by a vote of 265 to 159. Cong. Rec. H 3067 (May 27, 1982).

The Commission's determination here should advance these policies and should adhere to prior Commission case law in two fundamental respects. First, the Commission should not rely upon a judgment that economic factors have diminished the urgency of the CRBRP and LMFBR program.[16/] The need for CRBRP is a matter which has been conclusively established by Congress. Second, the timing of Clinch River, as expressed by Congressional, Presidential, and Department of Energy policy, is similarly a matter outside the scope of review by the NRC,[17/] which by statute does not have programmatic nor developmental responsibility.[18/] In short, the timing of Clinch River -- as expeditiously as possible -- is a matter on which the Commission should give complete deference.[19/]

Applicants do not maintain that either the CRBRP legislative history or established national policy mandates the Commission's use of Section 50.12 per se. Rather, we

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16/ Gilinsky at 5; Bradford at 1.

17/ U.S. Energy Research and Development Administration (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).

18/ Energy Reorganization Act of 1974, 42 U.S.C. § 5801 et seq.

19/ U.S. Energy Research and Development Administration (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976.

have consistently maintained that the Congressional, Presidential, and Department of Energy's clear determination to complete the project as expeditiously as possible should guide the Commission's evaluation of the public interest factor. Applicants have maintained that: (1) the Commission should defer to the Congress, President, and the Department of Energy in regard to the need for and timing of CRBRP;[20/] (2) the Commission should exercise its discretion to advance the established national policies favoring expeditious completion; and (3) Section 50.12 is an established mechanism for advancing these policies.

The Commission can and should factor Congressional, Presidential, and Department of Energy policy into its evaluation of the Section 50.12 public interest factor. In this context, those policies are far from neutral. They unequivocally favor expeditious project completion, and the Commission should exercise its discretion to advance, rather than impede those policies. In short, national policies

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20/ Id. at 83.

> If nothing else, the Energy Reorganization Act makes clear that we must not decide the present issue so as to put the Nuclear Regulatory Commission in the position of scrutinizing afresh the judgments on long-range energy research and development issues made by the agency to which such judgments were primarily confided.

favoring expeditious project completion are entitled to great, if not controlling, weight in connection with the Section 50.12 public interest factor.

B. The Project is in an Advanced Stage of Development and Unless Relief is Granted, Undue Hardship Will Inevitably Result

As previously indicated, as of April of 1977, the NRC had issued an FES which recommended the grant of a Construction Permit and there was every reason to expect Commission authorization to commence site preparation by no later than March of 1978. As a result of the previous Administration's April 1977 decision to cancel the project, the project has been unable to make any substantial progress toward commencement of site preparation, while design and R&D activities have proceeded to their present status of near completion.

Project design and hardware fabrication are now in an extremely advanced stage of development. As of April, 1982, design work, and engineering research and development work were approximately 90% complete and more than $600 million worth of hardware was delivered or on order with suppliers and fabricators. Because of the advanced stage of the design work, the project has lost its ability to work around delays in the licensing process. Accordingly, the licensing activities and in particular authorization to begin site preparation, are now on the critical path. The

project will be ready to proceed with site preparation as soon as approval of this request can be obtained from the Commission. If the Commission does not grant the request, the project must mark time while awaiting authorization to proceed with site preparation. This will force the project to maintain its design team throughout the period of delay, and to spread that manpower over the remaining limited design and engineering R&D requirements, thus precluding the most productive use of project funding, and inevitably increasing project costs.

This Administration is strongly committed to project completion. The Congress has directed that "unrecoverable delays resulting from the 1977 decision to stop the project should be minimized. ... " 123 Cong. Rec. H5818 (1981). The four-year suspension of licensing has added more than four years to the project schedule. Approval of this request to allow the start of site preparation activities as soon as possible would avoid additional delays in the project schedule, and avoid substantial additional costs.[21/]

The consequences of further delay extend beyond the substantial immediate effects on the project. Unlike a

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21/ See SPAR 1-6.

commercial reactor, where the impacts of delay extend only to immediate costs to ratepayers, additional delays in this project will extend further to adversely affect: (1) the national policy in favor of rapid completion; (2) the nation's preparedness for longer-term nuclear power needs and (3) vital international policies and programs.[22/] As discussed in Section 7 of the SPAR, the CRBR is a critical milestone in the LMFBR program. The information derived from the design, construction and operation of CRBR is vital to the LMFBR Base Research and Development Program, the Large Development Plant and the LMFBR Fuel Cycle Program. Further delays not only jeopardize CRBR but also jeopardize the Administration's entire LMFBR Program.

Unless timely relief is granted, the project and the nation's taxpayers will continue to suffer additional project delays and cost increases. In the longer term, the delays will be reflected in the Nation's lack of preparedness for future nuclear power needs. Further, the national policies in favor of expeditious project completion will be frustrated. In short, the circumstances attending the present request clearly are exceptional and demand relief under Section 50.12.

22/ See SPAR at 7-1 - 7-3.

C. In Light of the Project's Unique Nature, the Grant of Relief Would Not be Precedent Setting and Would be Entirely Consistent With the Commission's Sparing Use of its Section 50.12 Authority

In light of the exceptional circumstances discussed in the preceding section of this memorandum, the grant of relief here would not be precedent-setting, and would be entirely consistent with the Commission's policy of using its Section 50.12 authority sparingly. In addition, the project has a combination of characteristics which is unique and which offers additional assurance against precedent-setting action. The plant will be licensed as a research and development reactor. Its primary mission is development of information, and not production of power. It is a key step in the development of the LMFBR, and thus must be constructed in a timely and expeditious manner to support the nation's preparedness for longer-term nuclear power needs. Moreover, it will be owned by the United States Government, managed by DOE, located on government-owned land, and operated by another federal agency (the Tennessee Valley Authority) under contract to DOE. It is relatively small (375 MWe), compared to modern commerical reactors. (1200 MWe). It is the only demonstration plant now authorized by the Congress in the government's long-range LMFBR research and development program and is essential to preserve the LMFBR program. This unique set of project characteristics, coupled with the exceptional circumstances

previously discussed, assures that approval of this request would not be precedent-setting, but entirely consistent with the Commission's longstanding policy of granting such requests sparingly and only in exceptional circumstances.

III. THIS IS A COMPELLING CASE FOR A FAVORABLE DETERMINATION UNDER THE SECTION 50.12 FACTORS

In cases of requests under Section 50.12 to perform site preparation work prior to completion of the entire review process, the four factors in Section 50.12 must be balanced and a favorable determination made. Section 50.12(b) provides that the Commission may permit the conduct of site preparation activities upon consideration and balancing of the following factors:

(1) Whether conduct of the proposed activities will give rise to a significant adverse impact on the environment and the nature and extent of such impact, if any;

(2) Whether redress of any adverse environment impact from conduct of the proposed activities can reasonably be effected should such redress be necessary;

(3) Whether conduct of the proposed activities would foreclose subsequent adoption of alternatives; and

(4) The effect of delay in conducting such activities on the public interest, including the power needs to be used by the proposed facility, the availability of alternative sources, if any, to meet those needs on a timely basis and delay costs to the applicant and to consumers.

10 C.F.R. Section 50.12(b).

As will be shown below, there is a compelling case for relief under each of the Section 50.12 factors.

A. The Proposed Activities Would Not Give Rise to Significant Adverse Environmental Impacts

In reviewing the site preparation activities proposed by Applicants, the NRC Final Environmental Statement of February 1977, concluded that the environmental effects of site preparation activities would not be significant.

> In the event the applicant is permitted to proceed with site preparation under a Limited Work Authorization, it is the Staff's opinion that the environmental impacts of such work would not be significant.

FES at 9-23. As noted earlier, this conclusion has been reaffirmed by both the NRC Staff in its environmental review of the proposed activities and by a majority of the Commissioners.[23/]

The existence of a valid environmental review for this project presents a strong parallel to the circumstances of Carolina Power & Light Co. (Shearon-Harris Nuclear Power Plant, Units 1, 2, 3, and 4), CLI-74-22, 9 AEC 939 (1974) (Shearon-Harris). In that case, the Commission identified

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23/ See footnotes 7 and 8, supra and accompanying text.

the advanced stage of the environmental review as a circumstance which weighed heavily in favor of a decision to permit site preparation to commence pursuant to Section 50.12. In this regard, the Commission stated:

> In the circumstances of this case, it was particularly appropriate to authorize Carolina Power to perform such work. As explained above, even though the staff had issued a final environmental statement recommending a grant of construction permits for the Shearon-Harris reactor, the original licensing schedule had been substantially delayed because of design revisions which Carolina Power had to make to satisfy new requirements of the EPA. Moreover, a draft environmental statement based on these revisions (recommending a grant of construction permits) had been issued. And shortly after approval of the site-preparation work, a final environmental statement of the revised plant was issued also recommending granting the permits. In essence, this agency's environmental consideration of the proposed reactor was far from incomplete at the time the site-preparation work was authorized.

Id. at 945.

This case in on all fours with Shearon-Harris. In light of the exhaustive reviews of the proposed activities the requirements of NEPA have been fully met, and the record amply demonstrates that the environmental affects of site preparation activities will be insignificant. These recent reviews reaffirm the 1977 FES finding that site preparation activities would not have significant environmental impacts

and therefore granting of the request would be entirely consistent with the requirements of NEPA.[24/]

B. The Impacts of the Proposed Activities Would be Easily Redressable

The impacts of the proposed site preparation activities could, if necessary, be easily redressed. As the SPAR (Section 5) details, the site can be substantially returned to its original condition at modest cost. The significance of the environmental impacts and the degree of redress necessary must also be viewed in the context of the intended future alternate uses for the site. The site of the proposed activities is within an area of governed-owned land which is managed by the TVA. As noted at page 5-2 of the SPAR, the area is dedicated to industrial use; all alternative uses for the area proposed by the Oak Ridge City Planning Department in its land use plan involve clearing, road construction, railroad service, and water and sewer lines. In addition, most of the harvestable timber in the area has been removed due to considerations not related to CRBRP. Thus, not only are the environmental impacts of the proposed activities insignificant, but they are redressable

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24/ Letter to James B. Edwards, Secretary of Energy from A. Alan Hill, Chairman, Council on Environmental Quality (Jan. 27, 1982).

both to the site's original condition or to a condition appropriate for alternate use.[25/]

In this regard, it should be advantageous to future alternative industrial uses of the site to leave intact the basic service facilities. DOE is fully committed to complete redress of the site, if necessary, at a cost of approximately $9.6 million. If the basic service facilities are left intact, however, the cost of redress would be reduced to about $7 million, resulting in a savings of $2.6 million for redress of the site and substantially benefiting future alternative industrial users of the site. These service facilities would have a replacement cost to any future industrial user of about $30 million.

C. No Reasonable Alternatives Will Be Foreclosed By Conduct of the Proposed Activities

Because no safety-related or permanent construction activities are proposed, an appropriate range of design alternatives will not be foreclosed by conduct of the proposed activities. See SPAR, Section 6.1. Likewise, a reasonable range of alternative site uses can be completely

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25/ Both the NRC Staff as well as a majority of the Commissioners agree that the impacts of the proposed activities are redressable. See NRC Staff Report, supra at 28-29; United States Department of Energy, supra (separate views of Commissioners Palladino, Roberts, Ahearne and Bradford).

preserved by substantially restoring the site to its original condition. See SPAR, Section 6.2.

The alternative of abandonment of the project also would not be affected by the proposed activities.[26] The expenditures for the proposed site preparation activities are less than 8% of the project cost accrued to date, and less than 3% of the estimated total project cost. The relatively small investment for site preparation activities will not cause an irretrievable tilt of the cost-benefit balance toward project completion and thereby keeps the alternative of complete abandonment of the project economically viable.[27] See Carolina Power & Light Co. (Shearon-Harris Nuclear Power Plant, Units 1, 2, 3, and 4) LBP-74-18, 7 AEC 538 (1974); Commonwealth Edison Co. (Byron Station, Units 1 and 2), AEC Directorate of Licensing letter of January 14, 1974.[28]

26/ In Coalition for Safe Nuclear Power v. AEC, 463 F.2d 954 (D.C. Cir. 1972) (Davis-Besse), the Court of Appeals, while approving the four factor test of Section 50.12, added an additional refinement. The Court required that the Commission consider whether adoption of the alternative of abandonment would be precluded by additional investment in the project.

27/ See NRC Staff Report, supra at 32-33; United States Department of Energy, supra (separate views of Commissioners Palladino, Roberts, Ahearne and Bradford).

28/ See also United States Department of Energy, supra.

D. The Public Interest Would Be Best Served By Grant of the Request

As discussed in detail in Section 7 of the SPAR, grant of this request will promote or support a number of important national policies. First, as noted above, the President, the Congress and the Department of Energy have made the national policy determination that the public interest is best served by expeditious completion of CRBRP. This determination should not be scrutinized afresh by the NRC but should be given conclusive weight in its consideration of the public interest. This policy can be best promoted and the public interest best served through the Commission's grant of this request.

Second, the grant of this request will further the Department of Energy's LMFBR Program, and accelerate the informational and programmatic benefits from that program. The CRBRP is an integral part of the program and the technical information which will be obtained from construction and operation of CRBRP are necessary to the continued development of the LMFBR Program. In particular, grant of the Section 50.12 request will permit CRBRP to provide information in a timely fashion necessary to support the LFMBR Base Research and Development Program, and Large Developmental Plant, and the LFMBR Fuel Cycle Program, and will substantially enhance the prospects for success in those programs.

Third, the grant of the request will have a substantial positive impact on a number of international policy issues. Those issues include: (1) the development and implemention of an international safeguards system, (2) advancement of an effective non-proliferation policy, and (3) revitilization of the U.S. leadership role and influence in nuclear technology.

Fourth, the grant of the request will result in substantial cost savings to the nation's taxpayers. Those savings, when viewed from the appropriations, financial or economic perspective are substantial, and are entitled to considerable weight under the public interest factor.

Finally, it is important to emphasize that there are no countervailing public interest factors. The proposed site preparation activities involve no safety related construction, and because of the limited scope of the activities, no design or other alternatives will be foreclosed. In addition, the CRBRP will undergo a full and complete licensing review. Finally, this request has the support of the city of Oak Ridge and other local jurisdiction as well as the State of Tennessee.[29/]

29/ See, e.g., Testimony of Mayor Bissell, City of Oak Ridge, Transcript of NRC Hearing 105-106 (February 16, 1982); State of Tennessee Senate Resolution No. 205 (April 22, 1982)

Under these circumstances, Applicants submit that the public interest clearly favors grant of this request.

IV. ON BALANCE OF ALL RELEVANT FACTORS, THE COMMISSION SHOULD GRANT THE SECTION 50.12 REQUEST

Although the Commission must assess all four factors under Section 50.12, no one factor is controlling. Rather the decision to grant a Section 50.12 request can be "made only after a careful balancing of the factors enumerated in Section 50.12(b). ... " Washington Public Power Supply System (WPSSS Nuclear Porject Nos. 3 and 5) CLI-77-11, 5 NRC 719 (1977).

As demonstrated in the SPAR and the Staff evaluation of the SPAR, (1) the proposed site preparation activities will not result in any significant adverse environmental impacts, (2) the site can be restored to a condition similar to the surrounding environment, and (3) conduct of the site preparation activities will not foreclose alternatives. Moreover, the Applicants have agreed to undertake the activities at their own risk and have committed themselves to redress should a construction permit be denied. Thus, Applicants have made a strong case under the first three Section 50.12 factors.

In considering the public interest criterion of Section 50.12, the Commission must weigh that factor in the balance along with the considerable weight attributable under the first three factors. Applicants submit that the following factors conclusively demonstrate that grant of this request will serve the public interest:

1. Grant of the Section 50.12 request will result in the avoidance of a 6-12 month delay;[30/]
2. Substantial informational and other benefits will result from avoidance of a 6-12 month delay;[31/]
3. Established national policies require expeditious completion of the CRBRP;
4. The unique nature of CRBRP assures that the granting of Applicants request will not be precedent setting; and
5. All elements of licensing process will be preserved and a full NRC licensing review will be conducted.

These factors, when properly balanced, clearly favor the grant of this request. Because the impacts are not significant, the environmental effects are redressable and grant of the request will not foreclose any reasonable

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30/ SPAR at 7-2.

31/ SPAR at 7-2 - 7-13.

alternative, grant of the request will be entirely consistent with NRC's primary responsibility to protect the public health and safety and the environment. At the same time, grant of the request will yield substantial programmatic benefits and advance the Department's ability to carry out its primary responsibility for energy research and development and policy. In this regard, the Commission, which by statute does not have programmatic nor developmental responsibility, should afford the Department substantial if not controlling deference under the Section 50.12 public interest factor and on balance grant the request.

V. CONCLUSION

On balance of all four factors under Section 50.12, Applicants respectfully request that the Commission exercise its Section 50.12 authority and authorize Applicants to begin site preparation activities as soon as possible.

Respectfully submitted,

Leon Silverstrom
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of Energy

George L. Edgar
Attorney for Project
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DATED: July 1, 1982

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSIONERS

In the Matter of	)	
UNITED STATES DEPARTMENT OF ENERGY	)	
PROJECT MANAGEMENT CORPORATION	)	Docket No. 50-537
TENNESSEE VALLEY AUTHORITY	)	(Section 50.12 Request)
(Clinch River Breeder Reactor Plant)	)	

CERTIFICATE OF SERVICE

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