



ADJUDICATORY ISSUE

(Commission Meeting)

December 7, 1982

SECY-82-479

For: The Commissioners

From: Leonard Bickwit, Jr., General Counsel

Subject: NRDC V. NRC, NO. 82-1962
(DECIDED DECEMBER 2, 1982)
(CLINCH RIVER)

Purpose: To inform the Commission of the D.C. Circuit's decision in the Clinch River case and

EX-5

Discussion:

On December 2, 1982, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") decided the challenge by the Natural Resources Defense Council ("NRDC") to the Commission's decision authorizing the Department of Energy ("DOE") to initiate site preparation activities for the Clinch River Breeder Reactor ("CRBR"). The D.C. Circuit permitted site preparation to continue, but remanded to the Commission to reconsider its decision after conducting an accelerated adjudicatory proceeding on the issues relevant to an exemption under 10 CFR 50.12. The Commission's decision and the record of the proceeding are to be filed with the D.C. Circuit no later than February 4, 1983.

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5

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The D.C. Circuit based its requirement for an adjudicatory hearing on Section 189a. of the Atomic Energy Act of 1954, as amended. Basically, the D.C. Circuit saw no difference of substance between the Commission's authorization of site preparation activities by an exemption or by either a construction permit (CP)

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or by a limited work authorization (LWA), both of which require prior adjudicatory hearings. In the D.C. Circuit's view, the similarity in substance required a similarity in hearing procedures. A preliminary assessment

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Recommendation: ^{Ex-}5 [

Ed Bickwit

Leonard Bickwit, Jr.
General Counsel

Attachment: Order

This paper is tentatively scheduled for discussion at a Closed Meeting Wednesday, December 8, 1982.

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