

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: PUBLIC MEETING

ORAL PRESENTATION ON CLINCH RIVER
BREEDER REACTOR PROJECT

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ORAL PRESENTATION ON CLINCH RIVER BREEDER REACTOR PROJECT

PUBLIC MEETING

Nuclear Regulatory Commission
Room 1130
1717 H Street, N. W.
Washington, D. C.

Thursday, July 29, 1982

The Commission convened, pursuant to notice,
at 10:00 a.m.

BEFORE:

- NUNZIO PALLADINO, Chairman of the Commission
- JOHN AHEARNE, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- L. BICKWIT
- S. TRUBATCH
- L. WALLACE
- G. EDGAR
- W. KENNETH DAVIS
- L. SILVERSTROM
- J. KEARNE
- W. BEHNKE
- P. BREWINGTON, JR.
- J. LONGENECKER
- M. TCDOROVICH
- A. BISSELL

1 T. VONCANNON
 E. GREENBERG
 2 E. WEISS
 T. COCHRAN
 3 B. FINAMORE
 M. FADEN
 4 L. BRECKENRIDGE
 T. TAYLOR

5
 6 AUDIENCE SPEAKERS:

7 G. CHIPMAN
 T. DILLON
 8 P. BREWINGTON

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DISCLAIMER

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P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Good morning, ladies and
3 gentlemen.

4 The Commission will hear oral presentations
5 today from the participants in the Exemption Proceeding
6 for the Clinch River Breeder Reactor.

7 The Department of Energy on behalf of the
8 applicants for the CRBR construction permit requested
9 that the Commission grant an exemption under 10 CFR
10 50.12 to permit site clearing and preparation activities.

11 Under the provisions of 10 CFR 50.12 the
12 factors to be considered by the Commission are:

13 1. Whether conduct of the proposed activities
14 will give rise to significant adverse impact on the
15 environment and the nature and extent of such impact, if
16 any;

17 2. Whether redress of the adverse environment
18 impact from conduct of the proposed activities can
19 reasonably be effective should such redress be necessary;

20 3. Whether conduct of the proposed activities
21 would foreclose subsequent adoption of alternatives; and

22 4. The effect of delay in conducting such
23 activities on the public interest, including the power
24 needs to be used by the proposed facility, the
25 availability of alternative sources, if any, to meet

1 those needs on a timely basis and delay costs to the
2 applicant and to consumers.

3 The Commission's order of July 9th, 1982,
4 requested comments from the parties and the public.
5 Additional written questions were proposed to DOE. The
6 Commission staff completed its report on the exemption
7 request and the report is available in the Commission's
8 Public Document Room.

9 The schedule for today's presentations has
10 been provided. I would encourage my fellow
11 Commissioners to restrict their questions as much as
12 possible during each presentation in order that we may
13 follow the schedule as closely as possible and still
14 leave sufficient time for questions.

15 The Department of Energy will go first and its
16 representatives should note to us whether or not any
17 time is to be reserved for rebuttal at the end.

18 I should point out that in view of the long
19 list of participants, we may have to continue this
20 afternoon and we are prepared to do so if necessary.

21 I also note that the Commission has pending
22 before it two motions from the NRDC and Sierra Club, one
23 seeking summary dismissal of the DOE request, and the
24 second requesting an investigation of their charges
25 concerning the withholding of information by DOE's

1 predecessor agency, the Energy Research and Development
2 Administration.

3 The Commission is considering these motions.
4 Today's meeting would not imply that the Commission has
5 decided to deny the motions or to take any actions on
6 the motions.

7 Now I should ask if any of my fellow
8 Commissioners wish to make opening remarks?

9 COMMISSIONER AHEARNE: No.

10 COMMISSIONER ROBERTS: No.

11 COMMISSIONER ASSELSTINE: No.

12 CHAIRMAN PALLADINO: All right. I will now
13 turn the meeting over to DOE representatives.

14 MR. SILVERSTROM: Thank you, Chairman
15 Palladino.

16 I am Leon Silverstrom, Assistant General
17 Counsel for the Department of Energy. On my left is
18 George Edgar whom you well know. With us as well is Lew
19 Wallace, Deputy General Counsel of TVA.

20 The applicant's presentation today will
21 consist of an overview by Mr. Ken Davis, Deputy
22 Secretary of Energy; remarks by Mr. Wallace Behnke, Vice
23 Chairman of Commonwealth Edison and Board Chairman of
24 Project Management Corporation, and PMC, as you know, is
25 the entity which directly represents the utility

1 interests in the project; remarks by John Kearney, Vice
2 President of Edison Electric Institute on behalf of the
3 investor-owned utilities who are financially supporting
4 the project; and remarks addressing a number of legal
5 points by Mr. Edgar, Counsel for PMC and myself on
6 behalf of applicants, DOE, PMC and TVA.

7 We have also brought with us additional
8 persons whom we may need to call upon to assist in
9 answering any questions that the Commission may have.

10 I would like to start first by asking Dr.
11 Davis to provide his remarks, followed by Mr. Behnke,
12 Mr. Kearney and then, if we can, return to Mr. Edgar and
13 myself for a discussion and summary of the legal points
14 and then a summation.

15 MR. DAVIS: Thank you.

16 Mr. Chairman and members of the Commission, I
17 would like to thank you for the opportunity to appear
18 before you today and offer testimony regarding the
19 justification for and support of the Clinch River
20 Project's request to begin site preparation under the
21 provisions of 10 CFR 50.12.

22 The Department of Energy and its predecessor
23 agencies, in cooperation with our utility partners were
24 contribution over one quarter billion dollars to the
25 project, have been working diligently over the past

1 decade in an effort to design construct and operate the
 2 Clinch River breeder reactor plant and to assure that
 3 the final product represents the most advance
 4 intermediate scale demonstration of LMFBR technology in
 5 the world.

6 Clinch River is an integral part of the U. S.
 7 LMFBR program. Its prompt completion will provide
 8 significant benefits to the overall LMFBR program, to
 9 our international nuclear efforts and will yield
 10 substantial cost savings to the U. S. taxpayer.

11 Secretary Edwards and I, speaking for the
 12 Department of Energy and the Administration, wish to
 13 state that we have concluded, and I believe strongly
 14 that initiation of site work for the Clinch River
 15 project in the fall of 1982 is clearly in the public
 16 interest and urge that our pending 50.12 request be
 17 granted by the Commission.

18 Based on the President's October 1981 Nuclear
 19 Policy Statement and the support of the project by
 20 Congress over the last decade, the Department is giving
 21 the highest priority to initiating activities leading to
 22 achieving the completion of Clinch River as promptly as
 23 possible. This priority includes doing everything
 24 within our power to complete the project within the
 25 constraints of meeting other project objectives while

1 protecting the public health and safety.

2 I would like to remind you, as I did when I
3 appeared before the Commission in February, that the
4 project has been ready to proceed with site preparation
5 since 1977, but it has been continually delayed by
6 political decisions and other non-safety related issues.

7 Our analyses and data continue to show that
8 there are no environmental or technical issues that
9 should preclude positive action by the Commission on the
10 granting of the 50.12 application, while, on the other
11 hand, there are substantial benefits to the public if
12 our request is granted.

13 These include:

14 First, at the present time the Clinch River
15 breeder reactor project is the focal point for the
16 entire LMFBR program. As such any further delay would
17 directly impact on the momentum of the LMFBR program.
18 Granting of this request will provide substantial
19 informational and other benefits, as well as advance
20 important national energy policies at an earlier date.

21 Secondly, restoring U. S. leadership in
22 international breeder programs at an earlier date.
23 Granting this request will allow the U. S. to become a
24 meaningful and active participant in the international
25 fast breeder nuclear programs once again.

1 Mr. Richard T. Kennedy, Under Secretary of
2 State has submitted a statement to me which amplifies on
3 this situation and which I would like to read since it
4 is rather brief and introduce into the record.

5 His letter is as follows:

6 "Dear Ken: You requested the State
7 Department's views on the Clinch River breeder project
8 and our breeder R&D in general. We are interested in
9 assuring that our domestic nuclear program is supportive
10 of U. S. foreign policy interests.

11 "Because the Department has not been directly
12 involved in the Clinch River project, however, I will
13 limit my response to this Administration's policy toward
14 cooperation with foreign countries on breeder R&D and
15 how our domestic policies and actions could impinge upon
16 that cooperation.

17 "If we are to maintain this nation's position
18 in the forefront of energy technology development in the
19 world, we must contribute to the collective efforts of
20 those advance countries whose energy needs require
21 funding of new sources of energy such as the breeder
22 reactor.

23 "It is equally important for U. S.
24 nonproliferation interests that we participate in
25 cooperative R&D efforts to ensure that rigorous

1 safeguards are developed for breeder reactors.

2 "Finally, if we are to be able to work
3 together with other countries to realize the potential
4 energy benefits of the breeder while controlling any
5 proliferation risk, we must participate actively in such
6 programs domestically, lest we risk having little or no
7 say when vital decisions in this area are made.

8 "Sincerely, Richard T. Kennedy, Under
9 Secretary of State."

10 I will furnish this for the record.

11 We also have and I believe that Mr. Todorovich
12 of SE when he testifies later may refer to a letter
13 from George Vendryes, who has been the leader of the
14 French breeder program, and which also supports the
15 proceeding with the Clinch River on an expeditious basis.

16 Thirdly, I would like to comment that granting
17 this request will result in cost savings that are
18 clearly in the national interest. If approval is
19 granted, 6 to 12 months will be shortened from the
20 scheduled completion date, a date which has been already
21 unnecessarily delayed. The estimated 6 to 12 months
22 reduction in schedule will result in substantial cost
23 savings to the program and to the public.

24 I submit that the public interest factor in
25 the balance of all Section 50.12 factors should not and

1 cannot be evaluated in a vacuum. Rather, they must be
2 considered in light of prevailing national energy
3 policies and a determination should be made which
4 advances those policies which the President, the
5 Executive Branch and the Congress are responsible for
6 formulating.

7 The Congressional, Presidential and Department
8 of Energy's clear determination to complete the project
9 as expeditiously as possible should guide the
10 Commission's evaluation of the public interest factor.
11 The Commission can and should recognize these policy
12 initiatives in its decision. In this context these
13 policies are far from neutral. They unequivocally
14 favor expeditious project completion and the Commission
15 should exercise its discretion to advance rather than
16 impede those policies.

17 In conclusion, the Congress, the utilities and
18 the nuclear power industry have actively supported the
19 completion of this project for many years because they
20 believe in its importance to the future of nuclear power
21 as an energy source to this country. That support
22 remains strong today and the granting of our request by
23 the Commission is crucial to both fulfilling the
24 President's mandate to avoiding further delay and damage
25 to the overall U. S. nuclear energy development effort

1 and its potential on the public interest.

2 I remind you also that the Department of
3 Energy is charged with the responsibility for overseeing
4 the availability and security of America's energy
5 supplies. We therefore strongly recommend that the
6 Commission approve this request so that the U. S. will
7 continue to have assurance of ample domestic energy
8 supplies as our traditional natural resources are
9 depleted.

10 Mr. Chairman and members of the Commission, I
11 urge you to consider this request on its technical
12 merits and in the national interest. To let other
13 factors enter into your consideration I believe is to
14 render a disservice to the public interests and welfare
15 of this country.

16 Thank you very much.

17 CHAIRMAN PALLADINO: Thank you.

18 Mr. Davis, how long will you be here?

19 MR. DAVIS: I will be here, Mr. Chairman, as
20 long as necessary.

21 CHAIRMAN PALLADINO: All right. I was just
22 wondering whether it was necessary to ask questions at
23 the present time.

24 MR. DAVIS: I intend to remain available as
25 long as you would like to have me here.

1 MR. SILVERSTROM: In answer to your earlier
2 question, Chairman Palladino, we propose to use our
3 total allocated 30 minutes for our presentation.

4 I would like to ask Mr. Behnke to join us at
5 the table and make his statement.

6 MR. BEHNKE: Mr. Chairman and members of the
7 Commission, my name is Wallace B. Behnke. I am Vice
8 Chairman of the Board of Commonwealth Edison and
9 Chairman of the Board of the Project Management
10 Corporation.

11 Commonwealth Edison is with the Tennessee
12 Valley Authority and the Project Management Corporation
13 a signator to the four-party agreement with the
14 Department of Energy which establishes the contractual
15 basis the arrangements for the Clinch River Breeder
16 Reactor Project. Project Management Corporation is the
17 vehicle for direct utility participation in that
18 project. Through PMC we provide personnel, financial
19 support and information services to the project.

20 I am pleased to appear here today to express
21 my strong support and that of my company for the Section
22 50.12 request which is now before the Commission. We
23 believe that grant of this request will maintain the
24 Commission's responsibility for environmental
25 protection, preserve the elements of the Commission's

1 licensing process for completion and advance the public
2 interest.

3 From a utility perspective we regard
4 development of the LMFBR concept as essential to
5 assuring a viable option for central station electric
6 generating capacity for the long term.

7 In addition, we regard CRBR as central and
8 essential to a well-directed, integrated and effective
9 national LMFBR program. We must move forward with this
10 demonstration plant to provide timely and effective
11 information to drive that overall program.

12 The primary mission of CRBR is the generation
13 of information to drive the national LMFBR program to a
14 successful completion.

15 As Secretary Davis has indicated, prompt
16 commencement of site preparation will advance the
17 schedule for project completion and in turn create
18 substantial benefits and avoid substantial negative
19 impacts of a programmatic nature.

20 I would urge the Commission to grant the
21 request, and in considering the matter consider the
22 following points.

23 First, grant of the request will not affect
24 future NRC licensing activities. The project must still
25 complete the technical review process and all licensing

1 hearings.

2 Second, the environmental impacts of site
3 preparation activities are predictable and manageable.
4 They are within those experienced for light-water
5 reactors and are redressable if necessary.

6 Third, we believe that the circumstances of
7 Clinch River are unique and will not recur. The
8 previous delays and the particular arrangements for the
9 project should be considered by the Commission in regard
10 to the request.

11 Fourth and finally, we believe that the
12 Department of Energy's responsibility and ability to
13 successfully carry out the LMFBR program will be greatly
14 enhanced by grant of the request. Obviously, this will
15 also advance the interests of our company and of our
16 industry.

17 It is also we believe in the public interest
18 to grant the request. We believe that the Commission
19 can and should strike a balance in favor of the request
20 that the Department has made. The Commission's
21 responsibilities for environmental protection will be
22 met, its licensing process preserved and the
23 Department's responsibility for LMFBR development will
24 be advanced.

25 That concludes my formal testimony, Mr.

1 Chairman.

2 CHAIRMAN PALLADINO: Thank you, Mr. Behnke.

3 MR. SILVERSTROM: With your permission we
4 would continue with Mr. Kearney.

5 MR. KEARNEY: Good morning Mr. Chairman and
6 members of the Commission.

7 My name is John J. Kearney. I am a Senior
8 Vice President of the Edison Electric Institute, the
9 national association of investor-owned electric utility
10 companies.

11 The Institute appreciates the opportunity to
12 appear before you today as I did on February 16th of
13 this year in support of the Department of Energy's
14 request to begin site preparation for the Clinch River
15 Breeder Reactor Project.

16 Today I wish to re-emphasize and reaffirm the
17 Institute's support of the DOE's request to conduct site
18 preparation activities pursuant to 10 CFR 50.12. We
19 think there are compelling reasons why the DOE request
20 should be granted.

21 As I testified in February, EEI has supported
22 the Clinch River breeder project since its inception.
23 The Institute has been instrumental in developing
24 utility company financial support for the project to the
25 extent that the vast majority of EEI member companies

1 are participating financially in the project. The
2 Institute has consistently and strongly voiced its
3 support for Clinch River in appropriate legislative
4 hearings and in national forums concerned with energy
5 options for the future.

6 Our support of Clinch River is grounded in our
7 strong belief that completion of this project is a
8 necessary element in any national program to develop a
9 commercial breeder reactor industry, in our opinion, the
10 most viable option for the production of central station
11 electricity for the end of this century and beyond. I
12 believe that DOE has made a credible case that it can
13 and will conform to the requirements of 10 CFR 50.12.

14 To accomplish this objective that the United
15 States will have the opportunity to consider the fast
16 breeder option, we respectfully ask that you grant the
17 Department of Energy's request for authority to begin
18 site preparation for the Clinch River Breeder reactor.
19 Such an action will allow the project to proceed on a
20 timely basis, will be consistent with the Commission's
21 responsibilities for environment protection and will
22 preserve all elements of the Commission's licensing
23 process for completion.

24 The Administration, the Congress and the
25 electric utility industry, which has primary

1 responsibility for electric power supply in this country
2 has supported the project. Your affirmative vote on
3 this request is thus certainly in the public interest.

4 Thank you.

5 CHAIRMAN PALLADINO: Thank you, Mr. Kearney.

6 MR. SILVERSTROM: For an overall summary
7 George Edgar will speak for the applicants.

8 MR. EDGAR: I would like to make several
9 points by way of introduction.

10 With reference to the record before the
11 Commission, we think there is no basic disagreement in
12 that record as to the first three 50.12 factors, that is
13 impacts, redressability and foreclosure of alternatives.

14 We further think that upon consideration of
15 these factors that grant of the request would be
16 consistent with the Commission's policy and practice and
17 responsibility for environmental protection. We think
18 going beyond this the Commission's attention must focus
19 upon the fourth factor, the public interest. And, in
20 addition, let me emphasize that the Commission's
21 attention should focus on the balance of those four
22 factors. The fourth factor itself must be weighed in a
23 balance with the other three.

24 Now we believe the grant of the request would
25 be in the public interest. In this regard we would like

1 to point to four additional considerations, much of
2 which is involved in recent developments which we think
3 should guide the Commission in considering this request.

4 The first of these considerations involves
5 recent developments which we believe have increased the
6 likelihood of project success. There are three of these.

7 The first is that on June 11th the NRC staff
8 issued its update, the February 1977 site suitability
9 report, and determined that the Clinch River site is
10 suitable for a reactor of the general size and type
11 described in the application.

12 On July 13th the ACRS issued a letter to the
13 Commission which likewise supports the staff finding
14 that the Clinch River site is suitable for a reactor of
15 the general size and type described in the application.

16 On July 19th the NRC staff issued its update
17 to the March 1977 environmental statement for the
18 project and determined therein that the action called
19 for is construction of the CRBR.

20 At this juncture a second set of
21 considerations comes into play. On July 19th the
22 staff's decision to issue the environmental update was
23 accompanied by a decision to issue that update as a
24 draft supplement and then to recirculate it for comment.

25 Now as NRDC notes in its brief to the

1 Commission on the 50.12 request, the limited work
2 authorization hearings are scheduled to commence
3 shortly. However, the Commission should be aware that
4 on the 28th of July, yesterday, NRDC filed a motion to
5 extend the hearing schedule and, indeed, took the
6 position that no hearings could be undertaken or
7 commenced until the supplement was issued in final form.

8 I should also point out to the Commission that
9 the applicants have filed a motion to enforce that
10 hearing schedule and that the Licensing Board has acted
11 immediately to establish a prehearing conference to
12 consider how and whether and, if so, in what way the
13 parties would proceed to hearings.

14 We believe, and we are not calling on the
15 Commission to decide it, but we believe that there is a
16 means of getting to hearings and that the hearings can
17 be bifurcated, if you will excuse the word ---

18 COMMISSIONER AHEARNE: We have heard it before.

19 (Laughter.)

20 MR. EDGAR: Understood, but sometimes you
21 wonder whether you ought to use a word like that in
22 public.

23 (Laughter.)

24 COMMISSIONER ROBERTS: Thank goodness for some
25 sense of humor around this place.

1 (Laughter.)

2 MR. EDGAR: I will try to keep that in mind.

3 In any event, we think that there are ways to
4 mitigate the effect of recirculation. However, I think
5 it is fair to state that the probable outcome will be
6 that the hearing schedule would be extended in total
7 compass, that is the total time to a decision, even if
8 bifurcation is undertaken.

9 Likewise, there is another effect, and that is
10 that the uncertainties that attach to the hearing
11 schedule will increase. Therefore, in our judgment, the
12 schedule savings that one can associate with the 50.12
13 request and have been described, for a range of
14 accuracy, in the neighborhood of 6 to 12 months, are
15 more like a nominal value of 9 months with some
16 increased uncertainty about that value.

17 The third factor or consideration for the
18 Commission is to recognize that DCE has completed its
19 update or supplement to the LMFBR program environmental
20 statement. As you well know, this project was proceeded
21 by an environmental statement on the overall LMFBR
22 program. The Department signed the record of decision
23 on that supplement on the 28th of July, thus ending the
24 process or completing the process.

25 There are four things of significance for this

1 purpose in the programmatic environmental statement.

2 The first is that the statement confirms the
3 need for the LMFBR program. The second is that it
4 confirms the need for the CRBR project. It reconfirms
5 the existing objectives of that project and, last, but
6 by no means least in the context of this request, it
7 conclusively establishes the timing of the project as
8 soon as possible.

9 The fourth consideration for the Commission
10 involves the implications of the program environmental
11 statement supplement in relation to the informational
12 benefits to be gained and the programmatic impacts to be
13 avoided in grant of the 50.12 request. At this juncture
14 we should recall the Commission's August 1976 decision
15 which establishes the parameters for NRC's review of the
16 CRBR application in relation to DOE's programmatic
17 statement.

18 Now in this regard the first thing to keep in
19 mind is that NRDC has argued to this Commission that
20 CRBR is not urgently needed and that for that reason the
21 Section 50.12 request should not be granted.

22 I would suggest that the August '76 decision
23 holds to the contrary and that the need and the timing
24 for Clinch River are to be taken as given conditions in
25 the NRC review. The Department's finding that the

1 timing of Clinch River should be as soon as possible is
2 likewise entitled to controlling deference. This timing
3 and the weight which this Commission should accord to
4 this time is further buttressed by similar Congressional
5 expressions of policy and Presidential expressions of
6 policy. Informational benefits and programmatic
7 impacts, here again as a matter of primary DOE planning
8 responsibility, are entitled to controlling deference.

9 All of these factors, programmatic timing,
10 Congressional and Presidential policy, informational
11 benefits and programmatic impacts, bear heavily on the
12 public interest factor and warrant controlling deference
13 by this Commission.

14 Finally, let us return to an introductory
15 point. That concerns the balance which should be struck
16 amongst the four factors. As I indicated by way of
17 introduction, there is an affirmative basis to make
18 findings on the first three factors.

19 The fourth factor, in our judgment, revolves
20 heavily around the factor that grant of this request
21 will advance the informational benefits and avoid
22 programmatic impacts which could be caused by further
23 delay of the project.

24 Let me emphasize one other point in this
25 respect. This project and its circumstances are truly

1 unique. Grant of the request here would not be
2 precedent setting in the broader scope of the
3 Commission's regulatory process.

4 In terms of uniqueness of the project itself,
5 let me recount several factors.

6 The first is that it is a government-owned
7 plant and site.

8 The second is that it is a demonstration
9 reactor. It has an R&D purpose rather than a commercial
10 purpose. There is broad industry support for this
11 project as reflected in the unique government/industry
12 partnership arrangement which has been established as
13 the underpinning of the project. This project is a
14 central part of DOE's long-term nuclear energy R&D
15 program.

16 Finally, the Congressional policy which has
17 been expressed in favor of expeditious completion of the
18 project truly renders it unique.

19 We think also the project surrounding
20 circumstances are unique.

21 First of all, in 1977 we had completed a final
22 environmental statement, we had completed a site
23 suitability report, hearings were scheduled for June of
24 1977 and then a five-year delay.

25 In the meantime a programmatic environmental

1 statement had been completed for the entire program.
2 That programmatic statement has been re-examined, a
3 supplement issued and the entire process completed.
4 Design and R&D are now 90 percent complete. We now have
5 an update to the site suitability report and an update
6 to the environmental statement, both of which make
7 favorable recommendations for the project.

8 This project is ready to commence site
9 preparation and approval of the request would advance
10 the overall completion schedule. These circumstances in
11 their combination are clearly unique and would not and
12 should not recur in the broader scope of the
13 Commission's regulatory process.

14 In closing we would like to emphasize two
15 things. We believe that grant of the request would
16 assure that environmental considerations are indeed
17 fully addressed, and, secondly, that the licensing
18 process of the Commission would be preserved for
19 completion. We believe that NRC's responsibilities would
20 be discharged, DOE's would be advanced and the public
21 interest would be served.

22 Thank you.

23 CHAIRMAN PALLADINO: Thank you, Mr. Edgar.

24 MR. SILVERSTROM: That completes our direct
25 presentation, and if the Commission has questions, we

1 are certainly ready to answer them.

2 CHAIRMAN PALLADINO: All right.

3 Would you like to start, John?

4 COMMISSIONER AHEARNE: I will defer to the
5 Chairman.

6 CHAIRMAN PALLADINO: You go ahead.

7 COMMISSIONER AHEARNE: All right. I have a
8 few questions, and I apologize for their being
9 relatively disorganized. The pace at which we have
10 received documents and in which we are trying to proceed
11 expeditiously has led to a little bit of extra probably
12 confusion in some of the questions. So if you will bear
13 with me.

14 First, I would like to ask a couple of
15 questions on the schedule that you have talked about.
16 Just to clarify one of the answers that the Department
17 has submitted in response to the questions I asked, do I
18 understand that with respect to the large development
19 plant that there is \$15 million in the Department's 1983
20 budget?

21 MR. DAVIS: That is correct.

22 COMMISSIONER AHEARNE: You mentioned an RFP
23 went out.

24 MR. DAVIS: That means clarification. There
25 is in the budget predicated upon our developing

1 satisfactory international arrangements for an LDP
2 program the provision that we may reprogram to the
3 extent of \$15 million to support that program.

4 COMMISSIONER AHEARNE: I see. So it is sort
5 of that you have the flexibility to get the \$15 million
6 within the budget as you have it?

7 MR. DAVIS: Yes, sir.

8 COMMISSIONER ASSELSTINE: If a precondition is
9 meant though.

10 MR. DAVIS: If the precondition is meant.

11 MR. SILVERSTROM: The precondition was in our
12 answer.

13 COMMISSIONER AHEARNE: Yes. I was trying to
14 find out whether there was explicitly the dollars in the
15 budget and I couldn't quite read the answer as a yes or
16 no, and I think, as the Secretary has just pointed out,
17 there is a reprogramming.

18 MR. DAVIS: Yes. There is a dollar limitation
19 for reprogramming providing, as Commissioner Asselstine
20 said, that conditions are meant.

21 COMMISSIONER AHEARNE: You put out an RFP you
22 mentioned in your response in June, is that correct, for
23 the large development plant?

24 MR. DAVIS: We would like to have John
25 Longenecker, who is the responsible program manager in

1 the Department, join us.

2 MR. LONGENECKER: Commissioner Aheane, that is
3 correct. We did issue in June of this year requests for
4 proposals to the industrial participants in the large
5 developmental plant, both the U. S. reactor
6 manufacturers, of which there are four, and three
7 architect/engineers.

8 COMMISSIONER AHEARNE: Could you just briefly
9 outline what kind of a schedule is embedded in that
10 request for proposal? What I am asking is in that RFP
11 was there a schedule for when the development plant is
12 predicted to be put under construction and to be built
13 and to begin operating?

14 MR. LONGENECKER: No, sir, there is not. The
15 work for which we are contracting is for fiscal '83.
16 This is the first year of a consolidate phase with the
17 utilities. As you recall, in our response we did
18 indicate that recently the utilities have formed an
19 entity called the Consolidated Management Organization
20 under the sponsorship of the Electric Power Research
21 Institute to work in cooperation with us on both the
22 conceptual design of the plant and in evaluating the
23 potential for cooperative arrangements with the private
24 sector for proceeding with the actual detailed design of
25 the plant sometime in the future. So the request for

1 proposal that we submitteed would cover that scope of
2 work in cooperation with the utilities for fiscal '83.

3 COMMISSIONER AHEARNE: I see. It isn't then at
4 the stage where you would be laying out a schedule, at
5 least in the RFP, and saying you are trying to get work
6 aiming at a particular start date of the construction of
7 the plant?

8 MR. LONGENECKER: No, sir, that is correct.
9 The phase in which we are currently engaged is a
10 two-year phase which the utilities. They are
11 contributing some \$8 million to that effort over the
12 next two years. At the end of that two-year period
13 there is a decision point provided that the necessary
14 institutional arrangements and financial arrangements
15 can be arrived at for proceeding with subsequent phases
16 of the project.

17 COMMISSIONER AHEARNE: A couple more questions
18 on schedule.

19 The final environmental impact statement which
20 the Department issued in May of 1982, which is a
21 supplement to the old statement, has on page 41 an LMFBR
22 development schedule. I wondered whether this is still
23 an adequate description of the current planning for the
24 schedule?

25 MR. LONGENECKER: We believe that is still

1 adequate if you are referring specifically to the LDP
2 schedule. I believe that was contained in your question.

3 COMMISSIONER AHEARNE: There are three aspects
4 of the schedule. One is the CRBRP, one is the LDP and
5 then the last is the commercial decision possibility,
6 and I was going to ask questions related to each three.

7 So I first want to know whether there was a
8 basic revision to the schedule, recognizing that there
9 are uncertainties?

10 MR. LONGENECKER: No, sir. We do believe that
11 that schedule is representative of the LMFBR program.

12 COMMISSIONER AHEARNE: The sentence
13 immediately following this schedule is: "Beginning CRBR
14 construction in 1982 or early 1983 will allow completion
15 around 1990." That time frame is still the
16 representative?

17 MR. LONGENECKER: Yes, sir. The current
18 project schedule is that the CRBR could be brought to
19 completion in 1989.

20 COMMISSIONER AHEARNE: When this was put out
21 in May, and I will admit that I have not read in detail
22 every page of this so I would appreciate if you correct
23 any misimpression I am getting. In going through this
24 the impression I get is that this document indicates
25 that beginning the construction in '82 or early '83

1 would be sufficient.

2 MR. LONGENECKER: Excuse me, would be
3 sufficient?

4 COMMISSIONER AHEARNE: To meet the program
5 that you have laid out here.

6 MR. LONGENECKER: That is correct. We are
7 anticipating that the schedule is predicated upon
8 beginning site work of Clinch River in 1982 or early
9 1983 time frame and construction in the late '83 or
10 early '84 time frame.

11 COMMISSIONER AHEARNE: I am not trying to trap
12 you in an answer. So let me make sure I understand what
13 you have just said and make sure that you understand
14 what I have just asked.

15 I would read this "beginning CRBR construction
16 in 1982 or early 1983." I said the impression I am
17 getting from the document is that that is adequate, and
18 you said yes. That would indicate that you would not
19 need the exemption request in August to meet this
20 document.

21 MR. LONGENECKER: What I was saying is that
22 the statement that the 1989 is predicated upon being
23 able to begin site work in that time frame is the
24 reference for the schedule. We have stated in the
25 programmatic statement and in the record of decision

1 recently issued that the timing of the LMFBR program and
2 the completion of the government's role is as
3 expeditiously as possible. That is for the total
4 program as well as the timing for Clinch River itself is
5 as expeditiously as possible.

6 In fulfilling our programmatic responsibility
7 to complete the program, the government's role and the
8 project as expeditiously as possible, we must do
9 everything which is in our power to achieve and that is
10 the reason for requesting the 50.12 start of site
11 preparation in August.

12 MR. DAVIS: Commissioner Ahearne, may I make a
13 comment on that, too, because I have been involved in
14 these efforts to arrive at arrangements with our
15 possible international partners with respect to a
16 follow-on project or projects.

17 We are currently in the situation of having
18 discussions. They have not been completed. We have of
19 course been talking with the British and bringing in the
20 Japanese and have had conversations with the French.
21 But the basic point is that we are trying to arrive at
22 arrangements which would allow us to be full partners in
23 this follow-on development work. It is a precondition,
24 as has been noted, for getting the money that we need
25 for the next year, and we are presuming on all of this

1 that we are able to go ahead expeditiously with our own
2 development programs, CRBR and the supporting work.

3 There is an important element here in trying
4 to arrive at the conclusion of these negotiations that
5 we really do have an aggressive program and we do have
6 one that is moving ahead with all reasonable dispatch
7 and that we do have a credible program. So that I have
8 a very strong feeling that our ability to move ahead
9 promptly and crisply with our program is an important
10 element in the way in which these negotiations are going
11 to turn out. This is a very important factor in my mind.

12 I would also add that I have a strong feeling
13 that when we are embarked on a project of this magnitude
14 and this size that our ability in a number of ways,
15 including our international relationships, to get those
16 results at an earlier date rather than at a later date
17 is a very significant factor in our successful
18 accomplishment of the project. That is really my
19 strongest feeling for feeling that we really do need to
20 get on with it and we do need to get on with it now.

21 COMMISSIONER ROBERTS: I agree with you
22 completely.

23 COMMISSIONER AHEARNE: Let me ask, if I could,
24 then, again with respect to questions on this
25 scheduling, the GAO on July 12th issued a report, "The

1 Liquid Metal Fast Breeder Reactor Options For Deciding
2 The Future Pace And Direction," and I note the strong
3 disagreement the Department has registered with respect
4 to many points in the report.

5 Perhaps for our purposes and perhaps for the
6 record you could comment on the particular aspect that
7 the GAO talked about with respect to the scheduling.
8 One of their options, and this is continuing the LMFBR
9 program on DOE's current schedule, and this is on page
10 27 of the particular report, they say: "It is also
11 important to recognize that under DOE's present program
12 timetable DOE could develop a commercial size plant
13 decades before it is economically competitive or as
14 needed on the basis of uranium availability."

15 Could you comment, or someone, on the accuracy
16 of that statement?

17 MR. DAVIS: Let me perhaps take a crack at
18 it. In my own assessment of the situation, I think we
19 have to look at what we might expect by way of an
20 evolution of a nuclear program, recognizing that we have
21 been absorbing the consequences of overordering up to
22 the 1973 time period. The best scenario that I can
23 construct mentally says that we probably, or at least
24 there is a good likelihood that we will need breeders by
25 about the time we are able to successfully develop them

1 based on our present thinking on the subject.

2 If I try to put it together, I come to the
3 conclusion that we have got to get on with Clinch River
4 as rapidly as we can. We have got to get on with the
5 LDP, or whatever that constitutes. If we are able to do
6 those in an orderly way, they will then have the basis
7 for the initiation of commercial reactors which would
8 then go into operation, at least on a small scale, at
9 about the time they may be needed in the United States.

10 COMMISSIONER AHEARNE: Could you quantify
11 that? You say about the time when they would likely be
12 needed.

13 MR. DAVIS: I will give my opinion, and maybe
14 Mr. Chipman will give you a somewhat different one. I
15 think that might be around the year 2010 for actual
16 operation of full-scale economic commercial breeder
17 reactors, plus or minus a few years. I think we have to
18 count on something as prudent planning which might be
19 that soon. If you back up from that into normal
20 designing construction schedules and the normal amount
21 of operation of both Clinch River and prototypes, you
22 get back to the fact that we may in fact already be a
23 bit late.

24 MR. LONGENECKER: Commissioner Ahearne, if I
25 could add to that. As you will note in our response,

1 the GAO report incorrectly implies, or appears to imply
2 that a decision and a date for commercialization of the
3 LMFBR is a government responsibility. Obviously we have
4 indicated that the decision will be based on economics
5 and the maturity of the technology by the private
6 sector. As such, the federal role is to develop those
7 areas and to assist the private sector in those areas of
8 technical uncertainty.

9 We believe that dispatching our role as
10 expeditiously as possible at the very reasonable lowest
11 possible cost is important and that is our objective.
12 The decision to proceed with the subsequent steps in
13 that time, as Mr. Davis said, will bring this to a
14 competitive technology which, as we know from other
15 energy technologies, is probably on the order of 20 to
16 35 years. Given the time frame that we are talking
17 about, the first decades in the next century, we believe
18 that this program is reasonably paced. Again, this
19 program represents our programmatic judgment as to the
20 best way to fulfill our role, the federal role in that
21 development.

22 COMMISSIONER AHEARNE: Did Mr. Chipman wish to
23 add anything?

24 MR. CHIPMAN: Well, it might be worth just
25 commenting that I think our letter and the GAO draft

1 report makes it clear that we consider the factors to be
2 looked at in trying to decide when breeder reactors are
3 really going to be commercial and when they are really
4 going to be to produce to be a very complex and broadly
5 based issue. It is not simply simple calculations which
6 no one really understands about when uranium is going to
7 run out.

8 We are often criticized for having in the
9 years past projected a thousand megawatts of nuclear in
10 the year 2000. Those projections were based on decades
11 of history. Today the projections, the very pessimistic
12 projections that some want to make on breeders are based
13 on a few years of a downturn in the economy, they are
14 based on a slump in the nuclear industry at this time,
15 and these are projected decades into the future. We
16 think that is a very fallacious and dangerous thing to
17 do and we should be look at a reasonable growth in
18 our economy with a resurgence of nuclear power as a
19 viable alternative to coal and the breeder reactor plays
20 an important role in its viability.

21 COMMISSIONER AHEARNE: Given what I think you
22 would view as a more pragmatic estimate, when you
23 foresee the likely need for the commercial breeder?

24 MR. CHIPMAN: I like to avoid the term
25 "need." We don't apply it to most other energy sources.

1 COMMISSIONER AHEARNE: But I think, as Mr.
2 Longenecker just pointed out, you are really basing this
3 upon the competitive demand in the marketplace. As he
4 pointed out, the DOE is taking exception to what they
5 interpret as the GAO's position that it is a federal
6 decision. He is pointing out that it is really not. It
7 is a marketplace decision. Based on that, I thought
8 your description was such that it might imply, or I
9 might infer that you have an estimate of when the
10 marketplace would conclude that it would be appropriate
11 to go into a breeder.

12 MR. CHIPMAN: It is very uncertain, but
13 clearly we have the real possibility of a resurgence in
14 growth in the electric industry in this decade, in fact
15 in the near term. The ordering of nuclear power is
16 later in this decade. Depending on the growth patterns,
17 the success we have in reducing the cost of breeder
18 reactors, which we believe, by the way, can be reduced
19 significantly below what is implicated in that report,
20 we think all these factors can make a great deal of
21 difference. It is possible that there will be some
22 commercial interest before the end of the century, but I
23 think it is impossible to give a precise prediction.

24 MR. DAVIS: Could I just add one point to it,
25 too, in terms of the real world, and that is you are not

1 going to switch instantly from a light-water reactor
2 economy to a breeder economy. You are going to do this
3 over a period of time.

4 Even if you were to say that the first
5 commercial breeders might, and as I have said I think is
6 sort of a prudent assumption, be going into operation as
7 early as 2010, it still would probably be at least
8 another 10 years before any substantial fraction of your
9 power is produced by breeders and they start to pick up
10 the load.

11 COMMISSIONER AHEARNE: Sure.

12 MR. DAVIS: So you have to look at the whole
13 actual industrial kind of transition and not just at
14 some magic date and sort of assume that everything is
15 going to flip-flop at that point.

16 COMMISSIONER ROBERTS: You are hampered in
17 your efforts when you refer to the real world. There is
18 very little understanding of the real world in this
19 agency.

20 (Laughter.)

21 MR. DAVIS: I won't comment.

22 (Laughter.)

23 MR. EDGAR: We are exposing all the
24 Commission's weaknesses now, having been accused of a
25 lack of humor and now we add the next one.

1 (Laughter.)

2 COMMISSIONER AHEARNE: Well, let me then
3 continue to display the Commission's ignorance by the
4 questions, but nevertheless I will struggle.

5 Mr. Edgar, you referred to a 28 July decision
6 finally concluding the EIF.

7 MR. EDGAR: That is correct. The proper term
8 of art is record of decision. Mr. Silverstrom has more
9 detail than I and he can fill it in, but it is my
10 understanding that it has been signed. It goes to the
11 Federal Register in the lag time, but that is the
12 conclusion of the process.

13 COMMISSIONER AHEARNE: Could you describe a
14 little bit about what the "it" is that has been signed?

15 MR. SILVERSTROM: Under our procedure once an
16 EIF is finalized, the agency must still determine what
17 its decision is based on that EIF. The agency had
18 completed the environmental statement and its
19 availability had been published, the one Lew was talking
20 about. The agency then took the opportunity to factor
21 that into the total decision. The record of decision is
22 the statement that now says what the Department has
23 concluded.

24 COMMISSIONER AHEARNE: I see.

25 I think, Mr. Edgar, you mentioned that one of

1 the items in that statement is conclusively establishing
2 that the time is as soon as possible.

3 MR. EDGAR: For the project, the project
4 timing.

5 COMMISSIONER AHEARNE: Yes. Is this something
6 that we now have, this statement?

7 MR. SILVERSTROM: The record of decision
8 itself?

9 COMMISSIONER AHEARNE: Well, whatever.

10 MR. SILVERSTROM: If you don't, we will submit
11 it for the record.

12 COMMISSIONER AHEARNE: Mr. Edgar had just
13 mentioned, and I asked a question and he reaffirmed,
14 that there is something there conclusively establishing
15 the timing for the project being as soon as possible.
16 Clearly that is of some substantial interest.

17 MR. EDGAR: Yes.

18 COMMISSIONER AHEARNE: I guess it would very
19 useful if we could have that.

20 MR. SILVERSTROM: Yes, sir.

21 COMMISSIONER AHEARNE: In answers to the
22 questions that I asked, the Department's response to one
23 of my questions says in answer to question No. 3, your
24 response says: "We are urging that the Commission grant
25 the request primarily because" and then you list two

1 reasons. The second is: "Important informational
2 benefits which will result from grant of the request."
3 I know in many places you have talked at length about it.

4 Could you just briefly summarize what are the
5 informational benefits which will result from grant of
6 the request. The implication I see or the inference I
7 draw is that there are some informational benefits which
8 will flow from grant of the request that would not be
9 there were the request not to be granted.

10 MR. SILVERSTROM: Let me ask Mr. Longenecker
11 to address that.

12 MR. LONGENECKER: Commissioner Ahearne, the
13 benefits mentioned there are those that would accrue
14 from being able on our part to begin site preparation,
15 construction and complete the project nominally 9 months
16 to 12 months earlier than the normal LWA-1 construction
17 permit process. Those benefits that we speak to are
18 those that would accrue from having that information
19 those months or nearly a year earlier to transfer to
20 other portions of the program.

21 As we described them in our site preparation
22 activities report, they are primarily those benefits
23 that would be transferred at an earlier date to the
24 large-scale prototype plant, the benefits that would be
25 transferred at an earlier date to a research and

1 development program, the information that would be
2 provided at an early date to our fuel cycle program and
3 the benefits vis-a-vis overall information with regard
4 to international cooperation.

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1 COMMISSIONER AHEARNE: Let me then pick up on
2 that last point.

3 MR. SILVERSTROM: Before that, could I ask Mr.
4 Chipman to elaborate just a bit?

5 COMMISSIONER AHEARNE: Sure.

6 MR. CHIPMAN: Mr. Ahearne, in the broadest
7 sense I think it is important to remember that the
8 breeder development program is an integrated program.
9 There are many elements to it. As you know, it is quite
10 a large program. It proceeds in a direction towards
11 achieving our goal of developing this technology to the
12 point where it is ready for industrialization and
13 commercialization.

14 To suggest that we can stop the program and
15 wait for the optimum piece of information at some future
16 date in every case, of course, is ludicrous in this
17 large and integrated a program, so what we do is, we
18 move ahead.

19 COMMISSIONER AHEARNE: I don't think anybody
20 suggested that.

21 MR. CHIPMAN: I understand. So what we do is,
22 we move ahead, and decisions have to be made every day,
23 every month, every year, about how we are going to spend
24 our money, what is important and what is not. As you
25 design, construct, and operate any facility, at every

1 point along the way you learn information that feeds
2 back, feeds back into something like the design of the
3 LDT, decisions about construction schedules, about how
4 to construct, about how to construct components, about
5 where we should focus our R&D money, and it is this
6 integrated effect which says that the earlier
7 information is of significant benefit, but it is
8 impossible to quantify.

9 COMMISSIONER AHEARNE: Let me pick up on the
10 international aspect that you mentioned, in that part of
11 the answer that I quoted, the informational benefits for
12 one of the two. The other was a substantial positive
13 impact which prompt initiation of site preparation
14 activities would have on important national policies of
15 international significance, and in the -- talking about
16 the international significance in the submission by the
17 DOE, PMC, TVA applicants' memorandum in support of
18 request to conduct site preparation activities, dated
19 July 1st, on Page 30, you have the grant of the request
20 will have a substantial positive impact on a number of
21 international policy issues, and I would like to ask you
22 to comment on a couple of those.

23 The first was the development and
24 implementation of an international safeguards system.
25 Could you expand on how this -- granting this request is

1 going to -- what type of impact it will have on the
2 development and implementation of an international
3 safeguards system?

4 MR. SILVERSTROM: Dr. Davis?

5 MR. DAVIS: I think the point perhaps is best
6 expressed in Under Secretary Kennedy's letter. In order
7 to have an impact, you have to be a participant, and in
8 order to be a participant, I think we have to have our
9 own program going ahead in a credible way and in a
10 substantial way, and be in a position to work with our
11 partners, to work through the international agencies to
12 try to develop the necessary safeguards and other
13 conditions that would surround the use of greater
14 reactors and the plutonium fuel for them.

15 So, in my view and, I think, in the view of
16 those in the Department as well as in the State
17 Department, it is absolutely fundamental that we retain
18 a posture as an active participant and a full
19 participant in the international development of the
20 breeder reactors, and I think against that backdrop you
21 have to recognize that we already have aggressive
22 programs which, in terms of at least larger plant
23 construction and operation, have gone forward, the
24 French, the British, the Russians. The Japanese are
25 making good progress as well.

1 A lot of this is based on our technology, but
2 as time goes on, I think that unless we are able to
3 pursue our own technology, our own programs, and
4 demonstrate our own accomplishments, that we will not be
5 able to maintain our position as a major participant,
6 hopefully the leader in the world thinking and in the
7 development not only of the breeder reactor itself but
8 its fuel cycle, and this is one point we have not
9 touched on much, but we do have to have a fuel cycle
10 with the breeder, and that is going to be a particularly
11 sensitive subject in terms of safeguards, and we feel it
12 is very essential that we participate in that fully and
13 carefully, and that we maintain our leadership there.

14 COMMISSIONER AHEARNE: I understand the
15 general position, Mr. Davis. What I was really
16 wondering, then, are there any specifics, though, that
17 this, at least I was reading this as though there was a
18 specific program regarding some type of international
19 safeguards system that was going to be benefitted by
20 going ahead with this granting of waiver request. Is
21 there any such specific program?

22 MR. DAVIS: Well, there are specific programs
23 in which we are participants, the International
24 Plutonium Regime being sponsored by the International
25 Atomic Energy Agency. There are a number of things of

1 that sort.

2 COMMISSIONER AHEARNE: I am somewhat familiar
3 with many of those.

4 MR. DAVIS: I am sure you are. I think again,
5 we can't say it is black or white. I think what we have
6 to say is that we wish to maintain the maximum
7 participation, the maximum leadership, and the maximum
8 credibility, that a delay of nine to twelve months in
9 completion of Clinch River won't necessarily exclude us
10 from this, and I don't want to try to paint that
11 picture. What I do want to paint is a picture that our
12 ability to remain credible, to be able to conclude our
13 negotiations successfully with our proposed partners and
14 so on, does depend to a significant extent on how
15 aggressively and how well we can demonstrate that we
16 really are going to be major participants in the
17 international breeder program, and that in my mind is
18 the fundamental issue.

19 COMMISSIONER AHEARNE: But there is no, then,
20 specific program at issue at this point? It is more
21 this general concept, with which I am not saying I
22 disagree, that in order to participate with others, that
23 that has been a basic issue in many of the international
24 negotiations. People have to have some proof that they
25 are themselves heavily involved. I understand that

1 argument.

2 MR. DAVIS: Well, in each plant, in each
3 operation, there are a number of safeguards,
4 mechanisms --

5 COMMISSIONER AHEARNE: Of course.

6 MR. DAVIS: -- pieces of equipment and
7 procedures that are tested out, and the sooner you do
8 these, the better. I could give you a list of the
9 specifics --

10 COMMISSIONER AHEARNE: Yes, I well understand
11 that.

12 MR. DAVIS: -- but I don't think that is the
13 real issue.

14 COMMISSIONER AHEARNE: Now, what I was -- I
15 was trying to find out whether this comment meant that
16 there was a specific international program or a
17 development of international safeguards, and that the
18 granting or not granting the waiver was going to have a
19 significant impact on it.

20 MR. DAVIS: I am not prepared to say anything
21 on that.

22 MR. CHIPMAN: I don't have a specific point,
23 but I think I might have a little bit of information.
24 We have already stated that and Secretary Davis has
25 pointed out that our ability to cooperate and get under

1 way formal agreements with other nations is dependent
2 upon moving this project ahead rapidly. I believe that
3 it is obvious that our ability to influence and work
4 with other nations in the safeguards area is going to
5 depend on how well we are tied with them in a formal
6 sense. If we have agreements with other countries and
7 we are talking to more than one, then the safeguards
8 issue is that we deal with them will in fact be
9 approved.

10 So, in that sense you can tie it directly back
11 to it, and in the other sense, which is not the primary
12 basis for this, but that is that to whatever extent the
13 benefits achieved by the 50.12 in cost reduction and
14 other factors actually improved the viability of the
15 program. That directly relates to the integrity of our
16 program and its perceptions overseas and our ability to
17 interact in the safeguards area.

18 COMMISSIONER AHEARNE: All right. Yes. I
19 guess I would just note that I would suspect that
20 increased funding into the budget that goes toward the
21 IEA safeguards additional funding -- I recognize the
22 U.S. puts a lot up already -- would also further that.

23 Related, in going down this international
24 aspect, the second issue that the grant request will
25 have a substantial positive impact is advancement of an

1 effective non-proliferation policy, and I noticed in the
2 letter of July 1st, Mr. Davis, which you sent us, which
3 was the basic request for the waiver, you pointed out
4 that the -- in your list of the -- you say, "Most
5 importantly, acceleration of the CRBRP schedule by six
6 to twelve months will," and there were two items, and
7 the second item was, "support the achievement of the
8 Administration's non-proliferation policy objectives."
9 And so I wondered if someone could speak to the
10 non-proliferation aspect that would be advanced by this
11 granting of waiver exemption.

12 MR. DAVIS: Well, I think, Mr. Ahearne, I have
13 to essentially restate what I have --

14 COMMISSIONER AHEARNE: The same argument?

15 MR. DAVIS: -- just said. I think it is a
16 question of credibility, participation, and doing it
17 now, and I have some concern, frankly, that if we aren't
18 able to deal with these issues which are current issues
19 in terms of international negotiations now,
20 international considerations of non-proliferation
21 regimes and things of that sort now, when they are
22 important, that the slippage of a year or two in our
23 credibility in this area may in fact be fairly
24 significant.

25 I can't quantify it. I can't say it is black

1 or white. I have a feeling, based on my own
2 participation in the IAEA, in the discussions on
3 non-proliferation, and so on, that we are in a critical
4 phase and will be during the next year, and that it is
5 extremely important for us to be credible in that arena,
6 and I think some of you are involved in this as well. I
7 would hope you would sense the same thing.

8 COMMISSIONER AHEARNE: I think many of us
9 sense that non-proliferation is a very difficult issue
10 to get the international groups to address, and time is
11 running out in that area. I certainly agree, and I
12 understand the larger scale issue that you are
13 addressing, but I was really focusing on whether there
14 were any sub-details embedded in it that were
15 represented by the points made in the letter. So, I
16 understand what you are saying.

17 MR. DAVIS: Well, I think the sub-detail in a
18 way which is not a detail in this discussion is the
19 breeder, because the breeder and its associated fuel
20 cycle clearly are the real -- are going to be real
21 difficult issues to deal with in trying to develop a
22 really effective non-proliferation regime, and we have
23 got to do it right, and we have got to do it before it
24 gets out of hand.

25 COMMISSIONER AHEARNE: In the letter that I

1 just quoted that you sent us, it mentioned an
2 acceleration item. You had two items listed. The first
3 item was that it would support the timely completion of
4 the base technology program, the large development
5 plant, and the fuel cycle program, and enhance the
6 prospects for success in those programs. I wonder if
7 you could speak specifically to the point of the
8 enhancement of the prospects for success in those
9 programs.

10 MR. CHIPMAN: I think John Longenecker and I
11 can probably address that. Let me say in the broadest
12 sense that I think it ties back to what we said earlier
13 about the R&D benefits. Clearly, if we build a
14 technological turkey, as some people like to use the
15 term, and it falls on its face, the program as not
16 succeeded, because the political and public outfall from
17 that would be devastating to the project. We need to
18 make sure that as we move forward our technology will
19 succeed.

20 Therefore, information that we do receive from
21 the design, construction, and operation of the critical
22 facilities, if fed back in time, would have a significant
23 impact on the next step can be very major.

24 I will give you a recent example that is only
25 to give you the flavor of it, because it doesn't apply

1 in this direct case. We recently started the FMTF up as
2 is currently our largest facility. We recently also had
3 some difficulties with the pumps on that facility,
4 because of the sodium interaction in the actual
5 mechanical operation of the pump.

6 That information we looked at in relation to
7 Clinch River, and if it has an impact, we will in fact
8 adjust the design. You can look at a similar situation
9 with Clinch River and the follow-up.

10 COMMISSIONER AHEARNE: Certainly, I well
11 understand the necessity for time phase. The issue I am
12 raising is, the statement in the letter says that the
13 granting of the -- the acceleration of the schedule will
14 enhance the possibility -- the prospect for success.
15 Now, in other areas or other places in these requests,
16 the point has been made that a slippage represented by
17 non-grant of the waiver will slip this whole program, so
18 it appears to me that the argument has been made that
19 the whole program is a piece, a consistent, integrated
20 piece, and if you slip the beginning, namely, this
21 waiver, you slip the whole thing.

22 And so, I am asking the question, if that is
23 true, how can the granting of the waiver enhance the
24 prospect of success? I can see it enhancing the
25 prospect for an earlier completion of those programs,

1 but it is the issue of enhancing the prospect for
2 success I don't understand.

3 MR. CHIPMAN: It is the same thing that I said
4 earlier about it being a very detailed and integrated
5 program. When the schedule for Clinch River has slipped
6 a year, we don't stop all work and idly pay all the
7 engineers that we can pick up a year later and make sure
8 that we have, you know, kept that timing precise. You
9 don't do that. You move ahead.

10 COMMISSIONER AHEARNE: Okay, so you are saying
11 that the other program schedule is not that tightly
12 pinned to the Clinch River schedule.

13 MR. CHIPMAN: No. That's correct. And the
14 feedback is very important. And in addition to that, to
15 the extent that this expediting the schedule actually
16 improves the viability of Clinch River itself, the
17 success of our program is improved. So you have those
18 two factors.

19 COMMISSIONER AHEARNE: But the -- let me make
20 sure I understand. You are saying that the schedule of
21 the other parts of the program is not that tightly
22 linked to the Clinch River schedule.

23 MR. CHIPMAN: That is a hard thing to answer
24 with a simple yes or no.

25 COMMISSIONER AHEARNE: But I think you just

1 did answer it.

2 MR. CHIPMAN: But in the way I think you are
3 asking it, I would say it is not that tightly linked.

4 COMMISSIONER AHEARNE: Okay. Thank you.

5 MR. LONGENECKER: Commissioner Ahearne, if I
6 could follow up on that question, though, and elaborate
7 on the interlocking of the Clinch River schedule, it is
8 overall a program, as Gordon said, that is one that we
9 have been about for 35 years in the United States. We
10 do translate that experience that we get from Clinch
11 River, the experience that we have had already in
12 designing testing into the base program, into the other
13 elements.

14 As such, they are heavily dependent for their
15 efficient conduct on the obtaining of firm information
16 from all stages, and to that degree they are heavily
17 dependent.

18 COMMISSIONER AHEARNE: I recognize that. The
19 impression I got, and I gather it is a misimpression,
20 from reading the Environmental Impact Statement was that
21 they were more tightly linked. The impression I got
22 from some of the submissions that have come in was that
23 if you slip the CRBR, you automatically slip the whole
24 program, and I think it has just been pointed out that
25 that is incorrect. So I will go back and reread that

1 section and see how I misunderstood it.

2 MR. LONGENECKER: If I could again point out
3 that our objective in this is obviously to solve through
4 the base program and the other development programs
5 those high risk and technical problems --

6 COMMISSIONER AHEARNE: Of course.

7 MR. LONGENECKER: -- and success in that term
8 is measured in terms of our success in having solved
9 those to support a decision by the private sector.

10 COMMISSIONER AHEARNE: I understand.

11 MR. DILLON: Commissioner Ahearne?

12 COMMISSIONER AHEARNE: Yes.

13 MR. DILLON: I am Tom Dillon. I am Principal
14 Deputy under the Assistant Secretary for Nuclear
15 Energy.

16 There is an important point I think that needs
17 to be noted here in general, and that is it addresses on
18 some of the issues that you have raised. The rest of
19 the program, almost every element of it, the fuel cycle
20 program and the base program, is far, far advanced from
21 where we are in this important aspect of the program.
22 Our weakest link in the breeder program is where we are
23 in plant projects. Our most crucial need is the Clinch
24 River, and by accelerating the Clinch River project, we
25 will strengthen the overall program.

1 COMMISSIONER AHEARNE: Good point.

2 MR. DILLON: The converse is not true, and I
3 think that emphasis is the important emphasis that needs
4 to be brought out.

5 COMMISSIONER AHEARNE: That is a good point.
6 Thank you.

7 MR. DAVIS: I was about to make the same point
8 he just made.

9 (General laughter.)

10 COMMISSIONER AHEARNE: Okay. Let me hopefully
11 briefly ask about an issue that took a great deal of
12 time the last time, and this is costs, and Forest, was
13 your paper distributed?

14 MR. REMICK: No, just the staff report.

15 COMMISSIONER AHEARNE: I see. Well, that just
16 simplifies by elimination a question. I was going to
17 ask whether they agreed with your paper.

18 MR. REMICK: I think perhaps, Commissioner
19 Ahearne, that they are aware of the paper, but I don't
20 think it has been made publicly available. There have
21 been some calls to the staff and so forth. I understood
22 that OPE was doing this, so I think there is --

23 COMMISSIONER AHEARNE: Well, is it a fair
24 question then, in your mind, to ask them, do they have
25 any comment upon your calculations?

1 MR. REMICK: I can't answer that, because I
2 don't know how much ---

3 CHAIRMAN PALLADINO: I don't know if they have
4 had it.

5 COMMISSIONER AHEARNE: You don't think so?

6 MR. SILVERSTROM: I always like to see a paper
7 that I am commenting on.

8 (Laughter.)

9 COMMISSIONER AHEARNE: Yes, I understand that.

10 (Laughter.)

11 COMMISSIONER AHEARNE: Then, instead of asking
12 about that, let me just mention that it is still very
13 difficult for me in starting to reread a lot of the
14 information to come to grips with what would the
15 department's position be on the following question, and
16 I recognize it is an oversimplistic question, and I
17 recognize that I probably can figure out what your
18 answer is going to be, but nevertheless I will ask it to
19 see what the answer is.

20 What is the real cost of delay?

21 (Laughter.)

22 MR. DAVIS: The real cost or the hypothetical
23 cost?

24 (Laughter.)

25 COMMISSIONER AHEARNE: This is the real dollar

1 cost. I recognize all the other issue costs.

2 MR. DAVIS: Well, let me give you again maybe
3 an overly simplistic answer, but one, let me say, that
4 is based on slightly more than 40 years of designing,
5 constructing, and managing various kinds of projects,
6 and that is simply that when we stretch out a project
7 for a whole variety of reasons, it ends up costing more
8 money. You have the direct things, more overhead. In
9 this case we have more QA. We have more things sitting
10 in storage. We have all kinds of things going on.

11 COMMISSIONER ROBERTS: There is a total lack
12 of understanding of what you are saying here. Sorry to
13 interrupt you.

14 MR. DAVIS: Yes. Well.

15 COMMISSIONER AHEARNE: Not total lack.

16 (General laughter.)

17 MR. DAVIS: I think I could just say very
18 flatly without being able to qualify the numbers, and I
19 know we went through all kinds of things before and had
20 all kinds of arguments about discount rates and things
21 of that sort, but indeed, just from the point of view of
22 design and construction, particularly one that is all
23 set to go into construction and has been for five years,
24 that the added costs, added direct costs of delaying
25 that still further are going to be substantial.

1 That is quite aside from the benefits that we
2 can't quantify, getting the information earlier, and so
3 on. It is simply the actual cost to any project of
4 holding it up always turns out to be relatively high.
5 There is a direct cost. There is the opportunity for
6 people to come along and suggest changes. You keep
7 spinning your wheels, doing the engineering over again.
8 You have all the overhead costs. I have been through
9 this dozens of times, and I will just say based on my
10 experience, I will guarantee you it is going to be a
11 substantial added cost.

12 COMMISSIONER AHEARNE: I wouldn't take the
13 bet.

14 CHAIRMAN PALLADINO: Well, the industry ought
15 to be making a lot of money now, because they are
16 delaying building a lot of cars.

17 (General laughter.)

18 CHAIRMAN PALLADINO: I have trouble with a lot
19 of the economics that are set forth in that.

20 COMMISSIONER AHEARNE: But Joe, are you
21 suggesting we use the analogy of the automobile industry?

22 CHAIRMAN PALLADINO: All I am saying is, if
23 delay makes money, I wonder why industry works so hard.

24 (General laughter.)

25 CHAIRMAN PALLADINO: The only people I see

1 making money are those that don't delay.

2 COMMISSIONER AHEARNE: I have only two
3 remaining questions. First, Mr. Davis, I don't really
4 have the exact quote written down, but towards the end
5 of your statement, you said something about that you
6 really hoped we would make the decision on the basis of
7 the technical merits and the national interests, and
8 then you went on to say, I thought, something about not
9 letting other interests interfere? Was that the --

10 MR. DAVIS: Well, I think what we are saying
11 is very simple, that we think that the consideration of
12 the request ought to be based on basically the four
13 criteria that were outlined, and that that is -- those
14 are the things that you ought to consider. I think we
15 are also saying, and trying to say fairly clearly, that
16 we think that judgment as to the desirability of the
17 program and its being in the national interest from the
18 programmatic point of view is something that we have
19 made, and we think you ought to take that conclusion on
20 our part into account.

21 COMMISSIONER AHEARNE: Yes, I was trying to
22 get at, I thought you -- do you have the phrase there
23 that you used?

24 MR. DAVIS: Yes, it is right here. Well,
25 there have been a number of other petitions and things

1 introduced. I don't think we think they are relevant to
2 this particular decision.

3 COMMISSIONER AHEARNE: Okay. I was just
4 trying to get a better understanding. At least my
5 impression is that we have been trying to make the
6 decision based on the national interest and the --

7 MR. DAVIS: Oh, we were not necessarily
8 implying that you weren't. We just hope you would
9 continue to.

10 COMMISSIONER AHEARNE: A technical question.
11 There has been an issue raised by -- you did distribute
12 the other staff reports?

13 MR. REMICK: Yes, that is correct.

14 COMMISSIONER AHEARNE: As you know, then, our
15 Office of Program Evaluation has raised the point that
16 there seems to be a safety related system involved in
17 your request, and I wanted to ask whether it would be --
18 and how to address that turns out not to be simple, and
19 I wanted to get an understanding if I could from DOE as
20 to the difficulty it would entail in their application
21 if that particular system were removed.

22 MR. EDGAR: Mr. Brewington, the project
23 director, is prepared to address that. Let me add just,
24 our legal memorandum is in error in saying, no safety
25 related work. That is not correct. Having reviewed the

1 staff report, it is clearly not correct, and Mr.
2 Brewington is prepared to explain the item of work and
3 the implication.

4 COMMISSIONER AHEARNE: Yes, I wasn't trying to
5 challenge the --

6 MR. EDGAR: No, I understand that, but I
7 wanted to make that clear for the record.

8 MR. BREWINGTON: I think this is a fairly
9 simple one to explain. We are talking about some piping
10 that runs -- this emergency plan service water piping
11 that we would like to put in under the 50.12 provisions,
12 and it runs from the emergency cooling tower basin to
13 the electrical equipment building at the main structure.

14 Now, we are founding both the cooling tower
15 and the main structure on competent rock, so we have to
16 excavate that rock. We also want to excavate at the
17 same time the rock that would hold the trench for this
18 piping to go in. There is some couple or 300 feet of
19 piping in there that we want to put in as we are
20 bringing the fill up. We then cap both ends and keep it
21 in a safe condition during the construction period.

22 Now, an alternative to that would be to go
23 ahead and bring the fill up and excavate later and put
24 the pipe in. We see the advantage of putting it in as
25 we bring the fill up at a cost avoidance of about

1 \$100,000. If it were necessary for any reason to remove
2 it and put it in later, we don't see any reason that
3 that would happen. It could be done. It could be left
4 out now and put in later. It is just a simple matter of
5 about \$100,000 in cost avoidance and maybe a month in
6 the schedule on that particular activity.

7 CHAIRMAN PALLADINO: What are the consequences
8 of putting it in even though it is safety related? If
9 it turns out that it isn't right, would there be
10 difficulty in repairing it?

11 MR. BREWINGTON: No, we could -- you know, it
12 could be removed. It is pretty straightforward design.
13 We know the parameters, and, you know, we are confident
14 that it can be put in, the quality maintained, or we
15 wouldn't be proposing it. It is strictly a cost
16 avoidance.

17 COMMISSIONER AHEARNE: I think the
18 complication is more the fact that since it is safety
19 related, it is a little more difficult issue to address,
20 and that was the reason I asked the question. All
21 right. Thank you.

22 COMMISSIONER ROBERTS: I have a question for
23 Mr. Edgar. I am referring to the draft supplement to
24 the final environmental statement. It is an NRC
25 document issued by the Office of Nuclear Reactor

1 Regulation. I will read from the preface, the last
2 sentence, and I would ask you to comment on this.

3 "Nevertheless, in view of the significance of
4 certain new information assessed in this document
5 relating to the CRERP, the staff has determined that
6 issuance of this supplement for public comment is
7 appropriate."

8 Would you comment on that statement?

9 MR. EDGAR: Yes. That is the staff's decision.

10 COMMISSIONER ROBERTS: I understand that.

11 MR. EDGAR: Well, and secondly, and --

12 COMMISSIONER ROBERTS: I understand that there
13 was some other sentiment within the agency that did not
14 agree with that.

15 MR. EDGAR: I understand that that is true.
16 We did not agree with it. Where we are positioned right
17 now is to attempt to recover and minimize the effect of
18 that decision on the hearing schedule. The licensing
19 board has moved immediately to bring the parties
20 together, and have a prehearing conference on Monday to
21 determine how we will proceed from here. The Board has
22 not decided yet what to do. This Board, believe me, is
23 decisive, and they will decide what to do.

24 What I indicated in my introductory remarks
25 was that it is our belief that even if action is taken

1 to try to minimize the effect, nevertheless, we will
2 have an increase in the total duration of time to a
3 final decision.

4 COMMISSIONER ROBERTS: I think that's
5 correct. My question is, do you and the people you
6 represent believe that this document brings forward
7 significant new information?

8 MR. EDGAR: No, we do not. We think in our
9 judgment the analyses performed and the conclusions and
10 the information presented to arrive at that conclusion
11 are significantly different from the information base
12 that existed in 1977.

13 COMMISSIONER ROBERTS: May I ask you a
14 hypothetical question? What do you think was the
15 motivation on the part of the staff to issue this for
16 public comment?

17 MR. EDGAR: I don't know.

18 COMMISSIONER ROBERTS: I don't either.

19 MR. EDGAR: I do know this, Commissioner
20 Roberts, that the staff did a thorough analysis. The
21 staff did meet with all the parties to the licensing
22 proceeding, to allow each of them to have their say
23 about the matter. Mr. Denton himself was there at these
24 meetings. Everybody was heard, and the decision was
25 made, for better or worse.

1 I will say that I think even though we
2 disagree with the decision that the staff did a
3 conscientious job of making that decision.

4 CHAIRMAN PALLADINO: Any other questions, Tom?

5 COMMISSIONER ROBERTS: No.

6 CHAIRMAN PALLADINO: I am going to suggest we
7 take a short break and we will reconvene. I guess five
8 minutes is too optimistic.

9 (Whereupon, a brief recess was taken.)

10 CHAIRMAN PALLADINO: I wonder if we might
11 reconvene, please.

12 Let me ask two questions. Then I will turn it
13 over to Commissioner Asselstine. In the staff
14 preparation activities report, the statement was made
15 that with regard to redressing of the site, if it is
16 necessary, that the applicants are committed to redress
17 if that should be necessary. Where would the funds for
18 such redressing come from, and what assurance will we
19 have that they would be there?

20 MR. SILVERSTROM: I think from the project
21 funds, and there is the absolute commitment of the
22 applicants for redress.

23 CHAIRMAN PALLADINO: When you say the project
24 funds, are those a combination of what the utilities
25 have put in and what the government would provide? Are

1 the funds there? Or how are they assured?

2 MR. SILVERSTROM: I suppose in the same sense
3 that the project funds are always assured. They are in
4 the treasury, or in the special account.

5 MR. EDGAR: I think the Chairman may be asking
6 a slightly different question. The funds are always
7 subject to appropriation. That is a fact. There is not
8 an escrow account. However, appropriated funds would
9 have to be made available if the existing funds were not
10 otherwise sufficient. Now, in any given year, it would
11 be very likely that sufficient funds would be available.

12 CHAIRMAN PALLADINO: So it would depend in
13 part on appropriations?

14 MR. EDGAR: Yes.

15 CHAIRMAN PALLADINO: Where would the funds
16 come from for site preparation activities? Are they
17 already appropriated?

18 MR. DAVIS: Our budget has contemplated the
19 fact that we would be proceeding with the site
20 preparation, and the funds that are in our budgets are
21 in fact predicated on that.

22 CHAIRMAN PALLADINO: And the funds are in hand
23 so that you could take advantage of an exemption request?

24 MR. DAVIS: We have the fiscal year 1982
25 funds. Of course, we do not have '83 yet.

1 COMMISSIONER AHEARNE: May I ask a question?

2 CHAIRMAN PALLADINO: Go ahead.

3 COMMISSIONER AHEARNE: On that funding for
4 site preparation, if it is begun once the year '83
5 begins, is the money that you have in '82 to be
6 available until expended, or is it fixed to the fiscal
7 year?

8 MR. BREWINGTON: It is available until
9 expended.

10 Mr. Davis, I might say that the site work
11 package, the funding for the site work package, we have
12 money enough to fund those activities that have to be
13 done this year, and then the contract would provide for
14 putting additional funding in to finish the work next
15 year. So we would be funding approximately \$20 million
16 worth of work this year and \$20 million next year,
17 depending on what the bids are. So the funds are
18 available for the '82 portion and the '83 appropriation
19 would finish the job.

20 COMMISSIONER AHEARNE: But you would require
21 the '83 appropriation.

22 MR. BREWINGTON: That's right.

23 COMMISSIONER AHEARNE: Do you have an '83
24 appropriation?

25 MR. BREWINGTON: No. Not yet.

1 (General laughter.)

2 CHAIRMAN PALLADINO: Okay. I think those were
3 the only two questions I had remaining.

4 Commissioner Asselstine?

5 COMMISSIONER ASSELSTINE: I have a few and
6 hopefully it won't take too long to plow through them.

7 First, I am a little unclear, particularly,
8 George, after your description of the potential impact
9 of the decision by the NRC staff to recirculate the
10 EIS. What is the present projection is for commencement
11 of operation of CRBR, assuming that the exemption
12 request is not granted? Can you give me at least a year
13 projection for when you think operation might begin?

14 MR. EDGAR: I can do it incrementally. If I
15 accept the base point as 1989 or late in 1989, that
16 presupposes the grant of the 50.12. Now, once I
17 establish that point of reference, then I can do two
18 comparisons that may illustrate the point. If there had
19 been no decision to recirculate, we would have gone to
20 hearing on August 23rd, run continuously in session
21 until completion, and then proceeded to a decision, and
22 we would expect to have a start in the spring of this
23 year, or six months after the 50.12 case that I gave you
24 as the first reference.

25 So, you would compute therefore a six-month

1 difference, which is in turn translated out into the
2 completion of the schedule. So, it is the base point
3 plus six months on the end of the schedule.

4 The second thing to consider would be, and
5 let's assume for the sake of argument, and we certainly
6 can't presuppose it, because the Board has not decided
7 it, but if the Board went to a bifurcated hearing
8 approach, so that you minimized the effect of the
9 recirculation, the likely effect is that that would
10 cause the decision or the grant of authorization to be
11 postponed another two to three months, in addition to
12 the six-month increment, so that the likely result would
13 be, as expressed on the end point of the schedule, a
14 nine-month delay.

15 The other point I made in regard to that was
16 that in regard to hearings, one cannot always speak in
17 terms of precise schedules, and there is normally a
18 great deal of uncertainty associated with the
19 adjudicatory process. I would think that it is a fair
20 conclusion that the fact of recirculation will increase
21 the complexity of the hearing process whatever the Board
22 decides. It will make the process a bit more
23 unmanageable, and therefore tend to increase the
24 uncertainty in the end point.

25 If we, for example, assigned a nominal two to

1 three month incremental increase in the time to
2 decision, I would then, in trying to set tolerances,
3 what is the error in that, assign a greater positive
4 tolerance to it because of the increase in uncertainty.

5 COMMISSIONER ASSELSTINE: If I understand what
6 you are saying, the original estimate, assuming that the
7 50.12 exemption was granted, was operational by late
8 1989, and that given the new uncertainties in the new
9 potential extensions in the hearing process, that
10 assuming the 50.12 exemption were not granted, you would
11 be talking about an extension of from nine months to a
12 more uncertain outer boundary as opposed to six to
13 twelve months.

14 MR. EDGAR: Right, and if you pressed me for a
15 number, I would tell you something like nine to twelve
16 additional.

17 COMMISSIONER ASSELSTINE: Okay.

18 CHAIRMAN PALLADINO: May I ask a supplementary
19 question, Jim?

20 COMMISSIONER ASSELSTINE: Yes.

21 CHAIRMAN PALLADINO: Was there not uncertainty
22 in the time table for hearings if the report had not
23 been circulated?

24 MR. EDGAR: There was already uncertainty, as
25 there always is, and I think --

1 CHAIRMAN PALLADINO: I was thinking
2 particularly on the procedural challenges that could
3 have been made that would perhaps be something you would
4 certainly have to consider.

5 MR. EDGAR: No question. I would prefer not
6 to get into that argument, but --

7 CHAIRMAN PALLADINO: No, I just wanted to
8 bring that up, that there were uncertainties in both
9 directions.

10 MR. EDGAR: Yes. It is fair.

11 COMMISSIONER ASSELSTINE: In fact, before you
12 had indicated, your papers had indicated a bound of
13 about six to twelve months.

14 MR. EDGAR: That's right, and that is really
15 derived from saying a nominal six and then a tolerance
16 of about that.

17 COMMISSIONER ASSELSTINE: As I read the DOE
18 programmatic environmental impact statement, the LMFBR
19 program now is no longer tied to a commercialization
20 decision by a specified date. Is that reading correct?

21 MR. DAVIS: No, I think, as was pointed out
22 earlier, we don't really feel that it is up to the U.S.
23 government to, you know, make a commercialization
24 decision. We think the commercial use of breeders will
25 be at such time as the industry feels that they are

1 desirable, economical, competitive with other forms of
2 generation, which may be coal as well as light water
3 reactors.

4 In trying to look at our program, though, we
5 have been trying to sort of have a concept as to when we
6 think that might occur, and when might be a prudent date
7 at which we ought to have at least accomplished the
8 development, including trying to simulate the industrial
9 development through the LDP program to meet at least
10 some kind of a perceived requirement of the future, but
11 we have no intention, as was previously indicated, of
12 making a formal finding of, you know,
13 commercialization. That is not part of the --

14 COMMISSIONER ASSELSTINE: But at least the
15 effort that you have made is reflected in the
16 projections in the programmatic statement, I think on
17 Page 40, where you talk about the 20-10 to 20-20 time
18 frame as an estimate of when commercial LMFBR's might be
19 needed.

20 I guess my other question was, there are two
21 bases for that judgment that are indicated on Page 40.
22 One of those is the past experience with the light water
23 reactor development program. The second is the
24 experience with the French program. Are those
25 essentially the only bases for that -- those

1 projections? Or are there others as well? Those were
2 the two that I found.

3 MR. DAVIS: Yes. I think the -- well, our
4 only basis really is to try to look at the time periods
5 involved, and look at past history, and those things
6 which seem to be relevant to it, so that I don't think
7 we've got any absolute determinants. We simply have to
8 try to examine the problem intelligently, and make some
9 reasonable assumptions about what we think will happen,
10 and then look back and see whether that is the kind of
11 thing that has happened in the past.

12 MR. LONGENECKER: I don't have anything to add
13 to that.

14 COMMISSIONER ASSELSTINE: In my own view, one
15 unfortunate aspect of the request is that I think many
16 people look to our decision to influence one way or the
17 other the perennial debate on Clinch River that goes on
18 in the Congress on whether or not to proceed with the
19 project. Would you agree that this is a totally
20 irrelevant consideration as far as the Commission's
21 decision is concerned, and if not, why not?

22 CHAIRMAN PALLADINO: Relevant or irrelevant?

23 COMMISSIONER ASSELSTINE: Irrelevant.

24 MR. DAVIS: Irrelevant? Well, I don't think
25 it is irrelevant in the sense, as I indicated in

1 February, it is my perspective that having a project
2 actually under way is more persuasive than having one
3 which is still on hold.

4 COMMISSIONER ASSELSTINE: I accept the
5 proposition that it may well be relevant from the
6 standpoint of the Congress's decision. I guess what I
7 am concerned about is, isn't this a factor that we
8 should ignore in reaching our judgment on whether or not
9 to grant the exemption.

10 MR. DAVIS: Well, I would hope you might be
11 aware of it.

12 (General laughter.)

13 MR. DAVIS: Whether or not you want to ignore
14 it is up to you.

15 COMMISSIONER ASSELSTINE: Okay.

16 COMMISSIONER AHEARNE: Could I ask a question?

17 COMMISSIONER ASSELSTINE: Sure.

18 COMMISSIONER AHEARNE: As an intermediate
19 option, could you give a reaction to, if we said, all
20 right, we will grant the waiver, but the waiver couldn't
21 go into effect until the Congress appropriated '83 funds?

22 MR. DAVIS: I would find that most
23 discouraging.

24 (General laughter.)

25 COMMISSIONER AHEARNE: Any other comments?

1 MR. DAVIS: I wish we had some better feeling
2 for when that might happen.

3 CHAIRMAN PALLADINO: Well, I think we should
4 be making it on the basis of the four factors that are
5 listed there, and insofar as possible, avoid extraneous
6 items.

7 MR. DAVIS: I think that was the thrust of the
8 last part of my statement.

9 COMMISSIONER AHEARNE: I am not sure. Joe, do
10 you mean then that we should disregard the previous
11 statements the DOE had made pointing out that the
12 Congress had supported it?

13 MR. DAVIS: Congress has supported it. It
14 does not depend -- the history does not depend on the
15 future.

16 MR. SILVERSTROM: Commissioner Asselstine, I
17 think, was talking about the relevance of -- the impact
18 of the Commission's decision on future actions of the
19 Congress.

20 COMMISSIONER AHEARNE: Yes, I know. Yes, he
21 was.

22 MR. SILVERSTROM: Whereas I think Chairman
23 Palladino is talking about the legislative history and
24 the Congressional -- in present statutes.

25 COMMISSIONER AHEARNE: Yes, but Commissioner

1 Asselstine had been asking what weight ought we to give
2 the influence that our decision might have upon
3 Congressional, and should that be a factor, and I was
4 suggesting a way that it would be removed from that
5 influence, yet it would not be a hold on the project in
6 the sense that the Commission would not have denied the
7 waiver exemption.

8 MR. DAVIS: Well, I think I would go back to
9 my initial position, which is, you ought to consider the
10 four criteria, give us a decision based on those.

11 COMMISSIONER ASSELSTINE: I have two related
12 questions that deal with the treatment of exemptions in
13 general and the treatment of exemption requests under
14 50.12. Do you believe as a general proposition that the
15 grant of an exemption constitutes extraordinary relief,
16 and therefore should only be made if the applicant meets
17 a high threshold showing on the merits of its case,
18 higher than might normally be expected of an applicant.

19 Second, in the 50.12 case specifically, do you
20 believe that the Commission should require of an
21 applicant for Section 50.12 exemption a high threshold
22 showing on the presence of emergency or exigent
23 circumstances or undue hardship that would justify the
24 grant of the exemption separate and apart from any
25 balancing of the four factors or before we reach the

1 four factors.

2 CHAIRMAN PALLADINO: Where are your statements
3 on exigent and extraordinary circumstances?

4 COMMISSIONER ASSELSTINE: In part from the
5 other briefs that were filed by other --

6 CHAIRMAN PALLADINO: But it is not a
7 requirement.

8 COMMISSIONER ASSELSTINE: -- and in part I
9 think from the past practice of the Commission in
10 dealing with 50.12 exemption requests.

11 CHAIRMAN PALLADINO: I would assume past
12 practice, but the four criteria don't speak to those
13 issues directly.

14 COMMISSIONER ASSELSTINE: That's the way I
15 understand it.

16 MR. EDGAR: I would suggest two things. The
17 first thing is that, yes, there should be a showing on
18 the four factors, and the four factors when considered
19 in total balance should justify the request. I do not
20 regard the language "extraordinary or exigent
21 circumstances", which I would call the policy underlying
22 50.12 that was expressed at the time of issuance, as
23 necessarily being coextensive with a standard of proof.

24 I think those are matters which the Commission
25 in its discretion should weigh and should consider, and

1 indeed we think in this case there are extraordinary
2 circumstances, there are exigent circumstances, and that
3 because this project is unique, and for the ten reasons
4 which I listed -- perhaps there were nine -- that this
5 would be consistent with the Commission's policy of
6 applying 50.12 sparingly.

7 I read into the term "sparingly" the notion
8 that the Commission would look at this as having
9 exceptional circumstances and not being
10 precedent-setting. You would look for fact patterns and
11 circumstances with a low frequency of recurrence, and we
12 surely think that that is true here.

13 COMMISSIONER ASSELSTINE: Assuming that you
14 begin site preparation activities, say, by September,
15 assuming that the 50.12 exemption is granted, when would
16 those activities, the activities and the site
17 preparation activities report be completed?

18 MR. LONGENECKER: It would take some 14 to 16
19 months, so it would be completed in late 1983.

20 COMMISSIONER ASSELSTINE: Again, taking into
21 account the adjustments that may have to be made on the
22 basis of the staff's decision to recirculate the EIS,
23 when would you expect the LWA2 proceeding to be
24 completed such that if the Commission acts favorably on
25 the LWA2, you could begin safety related construction

1 work?

2 MR. EDGAR: We have run that out. We have
3 presented our view of that in a filing to the Board, but
4 we would contemplate issuance of an LWA2 in the summer
5 of 1983. Given the recirculation decision, it would be
6 toward the fall. In effect, you would find yourself
7 with very little margin between completion of site prep
8 activities and projected grant of an LWA2. Essentially,
9 no margin.

10 COMMISSIONER ASSELSTINE: Does that create the
11 potential, at least, that under the grant of the
12 petition, you would have 12 to 14 months or 14 to 16
13 months worth of construction activities, and then you
14 might well have a halt in construction activities?

15 MR. EDGAR: There is a potential for a
16 discontinuity. That is true. I think if you project it
17 out, it is realistic, it is reasonable to expect that
18 the two ends meet.

19 COMMISSIONER ASSELSTINE: Assuming for a
20 moment that the argument you make in your supporting
21 memorandum is correct, that nothing in NEPA or the
22 Atomic Energy Act requires a hearing on site preparation
23 activities, do you believe that a hearing is required
24 under either of those statutes prior to conducting
25 safety related work?

1 MR. EDGAR: The Section 50.12 procedure, which
2 we believe does not require a hearing, would not
3 contemplate proceeding to pouring the base mat, the
4 installation of the permanent facility. Before that can
5 be done, we would need to have express approval and
6 completion of hearings.

7 COMMISSIONER ASSELSTINE: Okay. So if you
8 were to proceed beyond -- even if there is a
9 discontinuity, there is essentially no chance you would
10 come back in 14 to 16 months and say, the LWA2 hearing
11 has encountered unforeseen delays, and now we are here
12 with another 50.12 exemption request to do additional
13 work which at that point would be safety related work?

14 MR. EDGAR: I don't think that would happen.
15 That is unprecedented. Let me make another point just
16 by way of clarification. There has been a suggestion
17 that the LWA is an exemption. That is just not right.
18 That has no support in the law. The LWA2 would require
19 that we obtain resolution of all issues associated with
20 the scope of work contemplated under the LWA2. For
21 example, if you are going to pour the base mat and bring
22 the containment up below grade or something, then you
23 have got to get all of those issues resolved and
24 approval for that work.

25 COMMISSIONER ASSELSTINE: You make the strong

1 point in your supporting memorandum that the National
2 Environmental Policy Act will be fully satisfied if the
3 Commission goes forward with granting the 50.12
4 exemption. What is the impact upon your assessment of
5 that question, given the NRC staff's decision to
6 recirculate the environmental impact statement? And I
7 am thinking particularly of some of the segmentation
8 cases that are cited by NRDC and the Sierra Club.

9 MR. EDGAR: We don't see the relevance of
10 those cases, in that it is really independent of the
11 decision to recirculate. 50.12 contemplates
12 authorization to do work which prior to NEPA was
13 authorized under the Atomic Energy Act. That required
14 no approval. What 50.12 in fact does, though, is,
15 through the inherent authority of the agency to waive
16 its regulations should it choose to do so, establishes a
17 formal mechanism whereby all relevant environmental
18 considerations can be properly taken into account
19 pending completion of any remaining environmental review.

20 The key point in terms of 50.12 is that all
21 environmental considerations will be properly addressed
22 substantively, that the applicant then proceeds at his
23 own risk. If indeed the decision transpires that
24 authority won't be granted, then the applicant has got
25 to redress the site. In due course, all elements of the

1 environmental review will be completed, all elements of
2 the safety review will be completed, and all elements of
3 the NRC hearing process will be completed.

4 More importantly, the conduct of those
5 activities in that sequence will not affect any
6 subsequent steps. Alternatives will not be foreclosed,
7 in other words, that all options are open to the agency
8 to take whatever action it may deem appropriate upon
9 subsequent review.

10 COMMISSIONER ASSELSTINE: I understand your
11 argument certainly with respect to the hearing
12 requirements of the Atomic Energy Act requirements. I
13 guess the concern I have is how you differentiate this
14 situation from other situations in which, as I
15 understand it, the courts have held impermissible the
16 commitment to actions that will involve some
17 environmental impact prior to the completion of the
18 environmental impact statement.

19 MR. EDGAR: Well, it will involve some
20 environmental impact, but the key point is that the
21 environmental impacts as conditioned will not be
22 significant. Furthermore, they are redressable, and
23 furthermore still, that set of activities will not in
24 any way prejudice or affect any future alternative which
25 might be adopted, including that of abandonment of the

1 project.

2 The D.C. Circuit's case in the Davis-Besse
3 proceeding, and we have cited it in our brief, talks
4 exactly in those terms. While addressing a somewhat
5 different version of the current 50.12, it nevertheless
6 considered the four factors, and the implications of
7 those factors on future alternatives, including
8 abandonment, and the implementation of 50.12 in this
9 case includes or encompasses the teachings of that
10 Davis-Besse case.

11 MR. SILVERSTROM: And in terms of the
12 underlying records, it is the spar in this very
13 proceeding which enables the Commission to indeed make
14 the finding that the specific activities here are not
15 significant.

16 COMMISSIONER ASSELSTINE: One of the other
17 questions I had that you may just have answered is, how
18 you respond to the authorities that are cited by NRDC
19 and the Sierra Club in their earlier brief, that of
20 January 18th, in favor of the argument that the action
21 by the Commission would foreclose the alternative of
22 abandonment.

23 MR. EDGAR: And we submit on that one that
24 their position is not well founded. You can read those
25 cases, and come to that conclusion, but there is a

1 missing link in logic, which is, are the circumstances
2 of those cases the same as these, and they are not.

3 COMMISSIONER ASSELSTINE: Okay, and your
4 argument is that Davis-Besse was reviewed by the Court
5 and --

6 MR. EDGAR: Well, Davis-Besse, plus the fact
7 that the circumstances here are such that it is very
8 difficult to conceive of how grant of this request would
9 in fact or indeed cause a foreclosure of alternatives.
10 It just doesn't fit the factual circumstances.

11 COMMISSIONER ASSELSTINE: You do argue at one
12 point both in the spar and, I think, in your supporting
13 memorandum that one of the public interest factors in
14 favor of granting the exemption is maintaining the
15 momentum of the LMFBR program. Doesn't that cut against
16 the foreclosure of other options, including abandonment
17 of the project?

18 MR. EDGAR: No. I believe the context of that
19 statement is that earlier informational flow from CRBR
20 will enhance the broader LMFBR program. That does not
21 presuppose that Clinch River would be completed and does
22 not conclusively affect any alternative, including that
23 of abandonment.

24

25

1 COMMISSIONER ASSELSTINE: Again another of
2 your statements in the supporting memorandum is the
3 proposition that granting the 50.12 exemption in this
4 case is not a departure from present Commission practice.

5 You also point out that you intend to proceed
6 with the LWA-1. What activities would be covered by the
7 LWA-1 that aren't going to be covered by the grant of
8 the exemption?

9 MR. EDGAR: They would be essentially the
10 same. The actual work would be the same. But in order
11 to get to the next step, which would be pouring the
12 basemat, you have to go through two steps of findings.
13 One is that you have met all the LWA-1 findings, and the
14 second is that there are no unresolved issues associated
15 with the next increment of work or level of work. So
16 that notwithstanding the fact that the work is the same,
17 you have still got to get your LWA-1 findings as a
18 necessary predicate to LWA-2 findings.

19 COMMISSIONER ASSELSTINE: But your position, I
20 take it, is that granting the exemption request is not
21 an obviation ---

22 MR. EDGAR: Right, and here is the reason.
23 There are no contentions in the LWA-1 hearings that bear
24 on site problems. There are none. All of the LWA-1
25 contentions remain viable and unaffected by the grant of

1 the 50.12 request. The facts aren't the same.

2 COMMISSIONER ASSELSTINE: In response to an
3 earlier question you did discuss the one element of the
4 site preparation activities that involved the conduct of
5 safety related work, that is the emergency plant service
6 water piping system.

7 Given the fact that that is a safety related
8 construction activity, why isn't a hearing required
9 before NRC can authorize that activity as opposed to the
10 others that are covered by the site preparation in the
11 report?

12 MR. EDGAR: Well, I would have to defer to the
13 technical people on the exact description of the type of
14 work. The explanation for inclusion in the package is
15 that it is a matter which will facilitate the
16 construction schedule, that, indeed, if you excavate for
17 this facility, you are also going to excavate a trench
18 between the reactor building and the cooling tower basin
19 and that is rock on this site.

20 Once you do the excavation, the next thing you
21 would do, if you didn't put the pipe in, would be to
22 fill the hole in so all the equipment can move in that
23 area of the site. Then when approval was granted, you
24 would go back and dig up the hole again and put the pipe
25 back in. Under this proposal you would excavate the

1 rock, put the pipe in and perform the correct quality
2 assurance practices and then fill in the trench without
3 having to re-excavate it again.

4 Should there be a design change or should
5 there be any other action which would say that this
6 section of pipe should not be approved, then there are
7 any number of means of dealing with it and the
8 applicants would stand at risk.

9 COMMISSIONER ASSELSTINE: I understand from
10 the factual point that this may be very well related to
11 the other nonsafety related work that is going to take
12 place. I guess my concern was is there a legal
13 impediment, given the hearing requirement for safety
14 related construction activities, to our proceeding to
15 approve that element as opposed to the others?

16 MR. EDGAR: I don't know of an express legal
17 bar, but I really think that on this one the Commission
18 has the authority and the wherewithal to examine it for
19 what it is and accept or reject it. I do not see this
20 particular issue as having any controlling effect on the
21 decision. It can be deleted and we pay the consequences
22 and we pay the risks.

23 COMMISSIONER AHEARNE: Just a follow-up
24 question. At least when I heard your previous
25 description I did quite get the characterization you

1 did. So I would just like to ask Percy, that was the
2 accurate description?

3 MR. BREWINGTON: Yes.

4 MR. EDGAR: Wonders never cease.

5 (Laughter.)

6 MR. SILVERSTROM: That is the beauty of having
7 an engineering degree before you go to law school.

8 (Laughter.)

9 COMMISSIONER ASSELSTINE: You argue that there
10 is no precedential effect of an NRC decision to approve
11 the 50.12 exemption request in this case due to the
12 unique, first-of-a-kind unique circumstances of this
13 particular project and its purpose is the informational
14 benefits to be gained.

15 Why wouldn't this serve as a precedent or a
16 justification for such an exemption in other cases where
17 you might have a research reactor that is providing
18 informational benefits, or another area that I had some
19 concern about is a waste disposal facility such as, for
20 example, a test and evaluation facility where you might
21 also have informational benefits that arguably should be
22 tied to the programmatic objectives?

23 MR. EDGAR: I think the important point here
24 is the combination of circumstances and project
25 characteristics that accumulate to, in my judgment, a

1 very low likelihood that you would have recurrence. It
2 is not merely the fact that it is a demonstration
3 reactor or a government-owned facility, but the
4 circumstances of having completed virtually all of the
5 licensing activities and then incurring a five-year
6 delay, the proceeding with design and R&D work to 90
7 percent completion, the underlying programmatic FES, the
8 broad industry support and last but not least the
9 Congressional policy which is expressed in favor of
10 expeditious completion.

11 I rather doubt that you would see the same
12 circumstances compiling themselves again in the future.
13 I will certainly concede that there is a finite
14 probability of that happening, but I think it is low and
15 I think the Commission can examine each case on its
16 facts and circumstances as it should arise and sort out
17 those cases which fit this nonprecedent setting
18 character and deal with them. That, in my judgment, is
19 what Section 50.12 is for, the unusual case, and that is
20 what this agency's discretion is designed to determine.

21 COMMISSIONER ASSELSTINE: That is DOE's
22 position as well essentially?

23 MR. DAVIS: Absolutely.

24 COMMISSIONER ASSELSTINE: And on any present
25 project and not likely in the future for these kinds of

1 unique circumstances?

2 MR. DAVIS: Yes.

3 MR. SILVERSTROM: Yes.

4 MR. EDGAR: Right.

5 COMMISSIONER ASSELSTINE: To what extent, if
6 at all, is the ability of CRBR to demonstrate the
7 licensability of an intermediate skill demonstration
8 LMFBR plant an objective of this project? I noted when
9 I reviewed the programmatic EIS that that was not in
10 there. As I recall, that was an element in the past, an
11 element of the objectives of the project. I guess I am
12 wondering if that no longer is?

13 MR. EDGAR: The first question is do the
14 objectives include licensability. The answer is yes.
15 My recollection of the program statement is that it
16 cites the two objectives of the project in exactly the
17 same language which was used in the 1976 program
18 statement and that which is included in the project
19 arrangements.

20 COMMISSIONER ASSELSTINE: There is a reference
21 to demonstrating safety and environmental acceptability,
22 but I didn't see one on licensability.

23 MR. EDGAR: I will check that, but I am highly
24 confident that it includes licensability.

25 MR. LONGENECKER: Commissioner Asselstine, the

1 program statement does refer to the original project
2 objectives in our enabling legislation, of which one of
3 those is licensability.

4 MR. EDGAR: The real question going beyond
5 that is what effect, if any, would the grant of a 50.12
6 request have on that demonstration.

7 COMMISSIONER ASSELSTINE: You anticipated my
8 next question.

9 MR. EDGAR: In that regard, I think
10 representing the utility interests I can speak with some
11 authority that we think that grant of the Section 50.12
12 request would not eliminate any subsequent step of the
13 NRC licensing process and, in fact, no step of the NRC
14 licensing process.

15 Once this project goes through the full
16 technical review by the NRC staff, goes through the full
17 gamut of hearings and proceeds to construct and then
18 proceeds to the operating license and again the same
19 gamut of hearings, we think there will be a complete
20 demonstration of licensability. The only difference is
21 reflected in the sequence of events. Site preparation
22 activities would proceed prior to completion of all
23 steps, but that does not mean that any step would be
24 missed. The sequencing would be different, and at least
25 from the utility perspective, the lessons learned from

1 having gone through that process would be equally valid
2 to those from going with a sequence that does not start
3 with site prep.

4 MR. DAVIS: May I simply support that and
5 point out that we have backed away from any suggestions
6 that we try to avoid the licensing route for this
7 project simply because we do think that one of the major
8 contributions it will make is to go through the
9 licensing and I think it will be beneficial to both the
10 NRC in developing their approach and in our own work in
11 making sure that we have done the things that need to be
12 done. I would have to say in my opinion this is one of
13 the key objectives of the program and we still believe
14 it and don't think that the 50.12 has any real bearing
15 on that.

16 COMMISSIONER ASSELSTINE: The last area that I
17 have questions on is the enumeration of the public
18 interest factors.

19 Let me start off just by telling you what my
20 concern is and see what information you can provide to
21 help address that concern.

22 After having reviewed the SPAR and your
23 supporting memorandum and at least some elements of the
24 programmatic EIS, I get the sense that there is shown to
25 be a relationship between Clinch River, the other

1 elements of the base program and the other project
2 elements of the breeder program in a large demonstration
3 project in the fuel cycle facility.

4 What I don't see is a very clear demonstration
5 of what the benefits will be of granting the exemption,
6 that is, shortening this process for assuring the
7 likelihood of operation by 1989 as opposed to operation
8 of the project some 6, 9 or 12 months thereafter. I
9 guess that is something that I would like to see in one
10 or more of the elements that you have enumerated as to
11 benefits.

12 I get a sense that if the question is whether
13 or not there ought to be a CRBR that there is
14 programmatic justification for having that in there.
15 What I don't get the clear sense of is the specific
16 benefits that will accrue by achieving project operation
17 in that 6, 9 or 12 months period that would result from
18 granting the exemption.

19 MR. EDGAR: I think John can answer this
20 fully. I would like to just key on one word though, and
21 that is that the use of the term "operation," in our
22 judgment CRBR will be generating information throughout.

23 COMMISSIONER ASSELSTINE: I agree with you.

24 MR. EDGAR: There are some very specific
25 examples that can be given from the lessons and

1 information from construction. You are going to learn
2 an awful lot there.

3 COMMISSIONER ASSELSTINE: That argument, you
4 are right, I should not limit that just to operation.
5 There are arguments that are made in the programmatic
6 EIS that talk about design information and construction
7 information as well as operation.

8 MR. LONGENECKER: Commissioner Asselstine, if
9 I could treat those in the order that they are treated
10 in the SPAR taking the benefits to the base program,
11 first of all, and talk about the large development
12 plants.

13 COMMISSIONER ASSELSTINE: Let me interrupt you
14 just a second. When you get to the large developmental
15 plants, one of the things that raised a concern in my
16 mind was the earlier response to one of John's
17 questions, that you don't have a schedule yet for the
18 large LDP that would show how the two are going to
19 overlap and what the benefits are going to be of
20 increasing or decreasing that overlap.

21 MR. LONGENECKER: I will speak to that.

22 COMMISSIONER ASSELSTINE: Go ahead.

23 MR. LONGENECKER: First of all, as a program
24 manager in both of those areas I can say broad sense it
25 is always more efficient to conduct a program that is

1 focused clearly on defined problems and hardware
2 experience. As you see in the program statement, the
3 LMFBR program does consist of large development plants.
4 The base program exists to support the development,
5 construction and operation of those and the fuel cycle
6 supports the other two elements.

7 So given that in its broadest context, the
8 clearest example we have near-term is the operation of
9 the fast flux test facility, one that I have observed
10 during the last decade with AEC, ERDA and DOE. In that
11 case we saw that in the 70's as you began construction
12 of that plant, and I can give you some specific
13 examples, if you would like, where we obtained
14 information from the early construction and layout
15 activities that we plowed back into two areas, one into
16 Clinch River. A good example of that is in the head
17 access area in the layout which gave us a more efficient
18 means of organizing the equipment and planning our
19 maintenance and operation and all the rest.

20 Those are things that we learned in installing
21 equipment in FFTF, like piping and snubbers, we plowed
22 back into Clinch River and back into the LMFBR base
23 program. That is a continuous process.

24 As you heard earlier today from Gordon Chipman
25 and from George Edgar, we cannot put a specific dollar

1 number on that. I can tell you in those areas that
2 there are specific benefits in the amount of funds that
3 are saved from those, in the technology that is
4 transferred and in the ultimate operation of the plants
5 and in the government's ability to get our job done and
6 to turn the decision over to the private sector.

7 As far as the base program is concerned, we do
8 in those areas have both the reduced uncertainty,
9 technical risk and capital risk in proceeding with
10 development because that is, as you know, a major
11 ongoing program of certain system equipment and material
12 development.

13 Having that data one year earlier is a
14 substantial benefit to us there. It will allow us to
15 identify problems and start new programs where we have
16 identified problems, and where we are carrying
17 alternative designs and alternative development programs
18 to cut some of those out, to truncate them and end the
19 program there. So as such we can focus our program, get
20 our job done sooner and also get it done at a lower cost.

21 We do have a reduced cost by having the CRBR
22 inputs one year earlier because the base program as a
23 major developmental effort does have parallel problems
24 with the project.

25 COMMISSIONER ASSELSTINE: Which inputs are you

1 talking about there? They are not just operation?

2 MR. LONGENECKER: That is correct. I am
3 talking about inputs that we would receive beginning
4 with the construction of the plant. There are things
5 that we will learn as we begin constructing the plant
6 and laying it out, both from a plant design point of
7 view and from a component point of view.

8 COMMISSIONER ASSELSTINE: Are most of the
9 benefits already achieved from the design perspective?
10 In any event, those would go forward, would they not,
11 regardless of whether or not the exemption is granted?

12 MR. LONGENECKER: The design is over 80
13 percent complete. We have learned quite a bit from that
14 that has been transferred into the base program. What
15 is missing, and obviously if the design were sufficient
16 we wouldn't build the plant, but what is missing from
17 that is actually the construction and preoperational
18 check-out and operation of the plant in the utility
19 environment so that we can see how all of those things
20 interact as systems. As you know, this intermediate
21 scale demonstration, the reason for that is to conduct
22 such a demonstration.

23 So those pieces of physical data starting from
24 the time of construction will be fed back to the base
25 program to focus it, to tell us where problems are,

1 allow us to solve them and allow us to truncate portions
2 of the program where we find there are not problems. So
3 again from FFTF if you trace the experience that we have
4 transferred there over the past five years and are still
5 transferring you can see specific examples of where we
6 have taken that, reassessed the program on a continuing
7 basis and focused it and oriented it more clearly.

8 We do find that once we get the physical data
9 and we can validate our codes and calculations that a
10 lot of the things which we had thought were problems are
11 not. Other things which had not occurred to us do occur
12 as you begin the construction, installing the equipment,
13 piping it up and checking it out. So in that respect it
14 is quite important, and one year for a government
15 program with a finite life and a finite commitment which
16 we are obligated to conduct as efficiently and as
17 economically as possible is quite significant and is
18 quite important to us.

19 COMMISSIONER AHEARNE: Jim, could I piggyback
20 on your question on that.

21 Is it correct, John, that part of your point
22 is that FFTF's experience has proven very valuable to
23 the CRBR development?

24 MR. LONGENECKER: Commissioner Ahearne, what I
25 was trying to say was that the FFTF experience has

1 proven itself extremely valuable to the Clinch River
2 project, and there I will use the parallel later with
3 the large developmental plant. It has also, and here is
4 the parallel with the base program, proved extremely
5 valuable to us in focusing and orienting our work in the
6 base program.

7 COMMISSIONER AHEARNE: But has it proved
8 valuable to the CRBR?

9 MR. LONGENECKER: It has indeed.

10 COMMISSIONER AHEARNE: Significantly valuable?

11 MR. LONGENECKER: Significantly, yes, sir.

12 COMMISSIONER AHEARNE: So would you say that
13 it was probably a benefit that CRBR then got delayed in
14 order to pick up that advantage?

15 (Laughter.)

16 COMMISSIONER AHEARNE: You don't have to
17 answer that.

18 MR. LONGENECKER: I would prefer not to
19 comment on that.

20 (Laughter.)

21 COMMISSIONER ROBERTS: Mr. Chairman, can you
22 give me some sense of how you are going to plan the
23 day. This meeting was supposed to be over at 11:30.

24 CHAIRMAN PALLADINO: I think you had one more
25 question. I was going to adjourn at 12:30 which is just

1 about now and then reconvene at 2 o'clock. Did you have
2 one more question?

3 COMMISSIONER ASSELSTINE: This is basically my
4 question. I think there are a couple of other elements
5 that I would like to see addressed. One is the
6 relationship of CRBR to the LBP and then, second, to
7 pursue the same question with Ken on the international
8 activities, that is, going beyond this program that is
9 established and what is it specifically about the gain
10 of time that will help in the international site, and
11 that is basically it.

12 CHAIRMAN PALLADINO: You know, we could
13 explore every question. I would urge that we address
14 the questions the answers to which would be most
15 valuable to you in making the decision. But I do think
16 we have been here for quite a while and it might be well
17 if we recessed now and then came back at 2 o'clock,
18 unless the people in the audience think that there is no
19 hope of finishing today. I think most of the questions
20 that will be asked would relate to exploration of the
21 applicant's position and that the others should move a
22 little more rapidly.

23 MR. DAVIS: Would you like me to respond to
24 his question or do you want to recess now?

25 COMMISSIONER ASSELSTINE: It doesn't matter to

1 me. We can recess now and then come back. I do think
2 from my standpoint at least this is a fairly critical
3 area, in fact, about the most critical that I can think
4 of.

5 CHAIRMAN PALLADINO: Okay, go ahead.

6 MR. DAVIS: If I understand your question
7 correctly ---

8 COMMISSIONER ASSELSTINE: I have a sense from
9 your response to John's questions earlier that we are in
10 what you view as a critical period in terms of our
11 negotiations in the international negotiations about
12 further cooperative efforts in the future. We now have
13 a programmatic EIS that lays out the national LMFBR
14 program that includes a number of elements, CRBR, a
15 large development plant, a fuel cycle and a base program.

16 What I wanted to try and get a sense from you
17 on was what does it add to that to have an exemption
18 that might enable construction and operation of this
19 plant on a timetable that would bring CRBR into
20 operation some 6, 9 or 12 months sooner than this
21 program would otherwise call for?

22 MR. DAVIS: Well, let me try to elaborate on
23 that just a bit more. One of the things I think that we
24 have thought a good deal more about in the last year or
25 year and a half is the desirability of having an

1 international collaborative program in addition to our
2 own national program. So we have focused rather heavily
3 on that.

4 Secondly, we have focused rather strongly on
5 the program in the U. S. and the international program.
6 Being basically an industry program with the decisions
7 and the management basically done by industry, we have
8 been seeking to get the international program structured
9 in much the same way on an industry-to-industry basis
10 with the overall approval and interaction between the
11 governments.

12 We are in the process, both at the industrial
13 level and at the government level, in seeking to make
14 arrangements with other countries that will facilitate
15 this, in addition to carrying out our own program.
16 These kinds of negotiations, as always, depend on what
17 are you doing versus what are your proposed partners
18 doing and is your program real, is it hypothetical and
19 are you really going to be able to produce results in
20 the time scale that you would expect to. We get into a
21 great variety of these kinds of discussions and also
22 some related to how this might interact with the
23 nonproliferation regime and what it can contribute to
24 that.

25 So then in terms of the generation, which is

1 going on now, of a program which is the stage that we
2 are in, we are faced with these issues now and it is I
3 think quite compelling that we be able to say that we
4 are proceeding and we are proceeding as rapidly as we
5 can. I think in that context the 50.12 thing is
6 certainly extremely relevant and would be of great
7 benefit to us in establishing our position which we
think it is very important to establish.

9 COMMISSIONER ASSELSTINE: Is it the start of
10 construction that adds that extra benefit to it?

11 MR. DAVIS: I think it is the perception that
12 we are really going forward and that the program which
13 has been on hold in terms of construction for five years
14 is finally in fact moving in forward and is not
15 something off into the future another year or more away
16 and it is critical during this particular time period.

17 In terms of the results of actually going
18 ahead with it, I think that we are going to be evolving
19 information, as has been point out. I should add in my
20 own perspective on that that I have had great experience
21 in connection with designing plants and then trying to
22 build them. You learn a great deal when you try to
23 build something that somebody has designed about how you
24 should have designed it, and this is of course very
25 useful kinds of information and that I think we have

1 learned in FFTF. We will learn it in Clinch River and
2 it will be directly applicable to the follow-on power
3 producing plants whether they are done jointly or done
4 here.

5 I think all of this ties in again with trying
6 to come up at the earliest date that is feasible with
7 economic, safe and reliable concepts on breeder
8 reactors. The date at which they are used by industry
9 is not something that we can predetermine and it is not
10 something that we can prejudge, but to some extent it
11 will depend, and the advantages and the benefits
12 deriving from it will depend upon our success in
13 carrying out a reasonable development program.

14 So to the extent that we can at an earlier
15 date get the results of our work and get those results
16 transferred into the contemplation by industry in
17 actually developing and building commercial reactors,
18 presumably the greater the benefits. Now this
19 shortening of that time period, which is not some just
20 fixed date we are working against, but a date determined
21 by what we do as well, that it is extremely difficult
22 and really impossible to quantify in terms of dollars.

23 Yet, my own conviction is that we are embarked
24 on a project which is, both in our country and in other
25 countries, a multi-billion dollar project and that

1 certainly our ability to complete it successfully and to
2 get commercialization done by the industries involved at
3 an earlier date has to be worth something in terms of
4 the amount of money that is being invested in the first
5 place.

6 I think that doing it, not on a crash basis,
7 but on an early basis that really keeps everybody moving
8 along is going to be to our advantage in the long run.
9 I can't give you dollars for that and I can't give you
10 even a time for it, but I have to say that I think it is
11 awfully darned important.

12 COMMISSIONER ASSELSTINE: Does the same
13 advantage accrue with respect to the development of an
14 industry/government cooperative proposal on the large
15 developmental plant, and maybe Mr. Benke or Mr. Kearney
16 would want to address that quickly.

17 MR. DAVIS: Well, I do, too.

18 MR. BEHNKE: Commissioner, I don't think there
19 is any question but what the ability to move forward
20 expeditiously with Clinch River has an enormous bearing
21 on the private sector's view of the feasibility of
22 getting into this advanced technology. This was the
23 underlying purpose of Clinch river to begin with, was to
24 show that it was possible for move forward with these
25 things. The inability to move forward properly is going

1 to have a negative impact. When we get this show on the
2 road it is clearly going to have a positive impact on
3 the private sector's views, in my judgment.

4 CHAIRMAN PALLADINO: Did you have one more?

5 COMMISSIONER ASSELSTINE: The only other one
6 was to go back to the areas that John was addressing.
7 One is the relationship between CRBR and the large
8 developmental plant in terms of the direct benefits to
9 be gained from accelerating CRBR by a year or so or 6, 9
10 or 12 months, and, second, if you could also address of
11 maintaining the cadre of technical experts and what the
12 specific benefit there is of beginning construction now
13 as opposed to 6, 9 or 12 months from now.

14 MR. LONGENECKER: If I could address LDP and
15 in doing that, Commissioner Asselstine, I will try to
16 tie in some more examples of FFTF, which serves as my
17 analogue for how we would transfer to LDP.

18 First, from the institutional point of view,
19 as we have just heard, the Administration desires that
20 this next project be primarily private sector funded.
21 We have been discussing with the utility group recently
22 formed this consolidation phase. A memorandum of
23 agreement between us, which we are currently
24 negotiating, contains a specific fixed statement, as we
25 have noted in our submission to you, that the

1 expeditious completion of Clinch River is important to
2 them as both a show of good faith, since, as you have
3 heard, they are contribution over a quarter of a billion
4 dollars to Clinch River, to their confidence on the
5 Administration's commitment to the future of nuclear
6 power really and our willingness to rely on and allow it
7 to be relied upon as a long-term energy source.

8 This ability to proceed with the large
9 developmental plant on the schedule which has been laid
10 out between we and the utilities, those two decision
11 points which I mentioned earlier this morning, is to a
12 high degree predicated on our capability to show that if
13 they do enter into this project that we the
14 Administration will be a good partner and supportive of
15 that effort.

16 The current schedule for the large
17 developmental plant or that activity which leads up to a
18 large breeder plant is that we will begin in October of
19 1982, the first month of fiscal '83, a two-year
20 consolidation phase with our utility partners. The
21 activities during that time, as I mentioned earlier, to
22 which they will be providing somewhat over \$8 million in
23 supporting funds, will be the advancement of the
24 conceptual design of a large plant, the development of
25 R&D requirements and all the other options for

1 proceeding with the large plant in some later time frame.

2 The initial decision point for whether the
3 utilities are willing and can come up with a proposal
4 for proceeding is at the end of that period or in the
5 beginning of fiscal '85. That would be in September of
6 1984. By that time frame, based on the progress that we
7 have been able to make in various aspects, that will to
8 a large degree determine the decision on whether in 1985
9 we would begin a preliminary design of the plant.

10 So in the information which will be generated
11 over the next two years, during which again, as I stated
12 before, during which we would be, with the grant of the
13 50.12, able to begin both site work and actual
14 construction of the project, could be fed into that
15 conceptual design.

16 The significance of the act of proceeding in
17 the government's commitment of good faith to its partner
18 on Clinch River I personally believe would also be
19 significant to any decision to proceed. The
20 arrangement, if we can look at that far with the
21 utilities, now contemplates a decision based on some
22 future date in the late 1980's to proceed, based on all
23 other things proceeding satisfactorily, to proceed with
24 initiation of site work and construction. Those are the
25 two big points which are mentioned in here and are the

1 two principal points that, with both again the
2 institutional information and the technical information,
3 will be pivotal in a decision to proceed with the large
4 plant.

5 Now the types of information on the technical
6 said, and that is the last part that I said I would like
7 to talk about, there is more design team continuity
8 obviously. The design of the project is over 80 percent
9 done. Under ideal circumstances we would have some
10 flexibility, we would not be 80 percent done and we
11 would not have had a five-year delay. We would have
12 some flexibility to work around. We have just plain
13 used that up in the last five years. We really don't
14 have flexibility to assign people to other tasks or to
15 go do other activities. We have really used up our
16 margin.

17 We are now in the situation of having the
18 opportunity, if we can over the next two years develop
19 the conceptual design and in '85 move into preliminary
20 design, an opportunity where we can transfer our people
21 with the expertise who have designed and built in some
22 cases FFTF and now Clinch River, transfer that expertise
23 to the next plant. We think again, although you can't
24 put a number on it, that it is extremely important to
25 the overall technical success of that project to be able

1 to transfer. Obviously just the number of over 80
2 percent competition speaks to the importance of that.

3 There will be more technical data transferred
4 sooner. One of the types of things we got from FFTF we
5 learned in the construction phase, both from a cost and
6 workability viewpoint, was a better type of concrete mix
7 to use. We will work on that and that is something that
8 we have plowed into Clinch River. We expect we will
9 learn the same types of things from Clinch River to use
10 on LDP.

11 We have gotten a tremendous amount of
12 experience on fuel handling equipment from FFTF, the
13 pumps, as Gordon mentioned earlier, the layout of the
14 head access area, we learned quite a bit about the
15 reactor internals and installing them and designing
16 them, we learned quite a bit about the design of the
17 leak tight cells and the fabrication of those in which
18 the components are housed in that loop design.

19 All of those things being available one year
20 earlier will contribute to our confidence in the
21 integrity of the design, to the overall cost and
22 ultimately I believe to the overall benefit of the
23 program and the success on Clinch River as a
24 demonstration.

25 So again I would conclude by saying the one

1 year, the 9 months, that period is extremely important
2 to us from an overall point of program efficiency and
3 success of the projects in the program, that is, it is
4 tangible, and I could enumerate more examples, but it is
5 extremely important to the total program.

6 COMMISSIONER ASSELSTINE: If they do want to
7 submit any additional enumeration of specific examples
8 where they think there have been benefits in the past, I
9 believe that might serve as a basis for making a
10 judgment on the benefits to be gained in the future. If
11 that is acceptable, maybe they can submit that.

12 CHAIRMAN PALLADINO: If that can be submitted
13 within the next few days that would be particularly
14 helpful.

15 I am going to recess for now. We will
16 reconvene at 2 o'clock and continue with the three
17 speakers who will speak in favor of the project.

18 (Whereupon, at 12:45 p.m., the meeting
19 recessed, to reconvene at 2:00 p.m., the same day.)

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1 Response to Intervenor's 19th Set of Interrogatories and
2 Intervenor's Reply to Applicants' and Staff's Response
3 to Intervenor's Petition to the Commissioners to
4 Delineate the Scope of the LWA Proceedings.

5 What we learned from these documents on the
6 one side is, in plain English, the Clinch River builders
7 would like to finally obtain a permit for site
8 preparation for a project whose history dates back
9 twelve years to 1970. But some would like even more
10 thorough deliberations and deliberate slowness. SE²
11 observes that twelve years is about one-third of an
12 adult's productive life and thus, the germination of the
13 CRBR should be allowed to proceed, in our opinion, even
14 if exempted from the rules which effectively tolerate
15 these interminable delays.

16 We have summarized our reasons in our July 22
17 presentation to this Commission basically to the effect
18 that the fast breeder technology already exists
19 elsewhere in the world and probably is a feasible
20 enterprise and that now that the thing was held up for
21 so many, many years by often whimsical delays of our
22 political system, SI can find only technical and
23 economic merit in the instant exemption request before²
24 the Commission.

25 About a year and a half ago, our group also

1 responded to Miss Marilyn Bouquard in Congress request
2 for opinion on the Clinch River Breeder question. I
3 have here brought the exchange between Dr. Fred Seitz,
4 our Chairman, and Miss Bouquard, which was actually
5 signed by some 16 prominent members of our group and I
6 would appreciate if this could be annexed to the record.

7 So while on one side we learned something
8 about the project and the project's proponents wishes,
9 looking at these voluminous documents which we have
10 perused, we have learned also an almost incredible story
11 about the gradual yet quite thorough metamorphosis of
12 the original licensing process into a set of procedural
13 rules in which the technological and scientific
14 substance has been reduced, in our opinion, to a shell
15 filled with a content light-years removed from physical
16 and technical reality.

17 Thus, we encounter "interogative" and
18 "denials"; questions about consultants and employees and
19 answers supported by affidavits; accusations of
20 cover-ups and assertions about the public interest from
21 quarters whose credibility on this particular matter is
22 difficult to ascertain.

23 By reading the aforementioned materials,
24 members of the scientific and technical professions have
25 encountered difficulty avoiding the impression that the

1 regulatory system, as currently in operation, allows for
2 an unending hoisting of questions, for the
3 uncontrollable proliferation of issues, and for the
4 procedural defocusing of subject matters on the Docket
5 to the point where all physical work ceases, having been
6 overwhelmed by rhetoric.

7 And thus, while we talk here today about why
8 we should or should not drive the first shovel into the
9 Clinch River grounds, the French are already planning
10 and building a series of fully operational breeder
11 reactors, while our press prints repeated obituaries on
12 America's nuclear power industry, the French
13 governments -- conservative and socialist alike -- are
14 putting on line one nuclear power plant every two or so
15 months.

16 While we argue ad infinitum about the seismic
17 quality of some of the best designed
18 earthquake-resistant structures in the world, the
19 Japanese in that earthquake-prone country are rightfully
20 more concerned about the consequences of flash floods
21 and of an oil cut-off than they are of the very unlikely
22 prospect of a nuclear mishap.

23 Of course, this formal American litigatory and
24 regulatory paralysis is by no means limited to the
25 nuclear field, and we have listed some other examples in

1 our written notes here.

2 The proverbial American system of checks and
3 balances has clearly become unbalanced, and American
4 technological vitality is being replaced by stagnation.
5 SE believes that the time has come to take a hard
6 ² look at this syndrome of inactivity. We hope that the
7 Commissioners will approach the instant and other
8 current cases with a sense of urgency and make the
9 nuclear regulatory decisionmaking process once again an
10 effective and purposeful enterprise.

11 Mr. Chairman, today I thought to address
12 myself also to certain allegation of coverup contained
13 in a Petition for Investigation by the Intervenors.
14 Hearing your words in the beginning, it may not be
15 appropriate to divert this proceedings at this moment in
16 that direction, so I will dispense with that part of my
17 prepared remarks.

18 I hope, however, that in the spirit of what we
19 in the outside world call rain check, I can get one in
20 case today the other thing begins to be discussed. I
21 would appreciate for the opportunity in such a case to
22 present the thoughts on that other matter.

23 In summary, then, SE see merit in the
24 Applicants' instant request for exemption. SE
25 ² considers the charges made in the Intervenors' ² Petition

1 of little weight and consequently we respectfully submit
2 that the Commission should grant the exception request.

3 CHAIRMAN PALLADINO: Thank you, Mr.
4 Todorovich. Does anyone have questions?

5 (No response.)

6 CHAIRMAN PALLADINO: We appreciate your input
7 and appreciate your coming by today.

8 MR. TODOROVICH: Thank you.

9 CHAIRMAN PALLADINO: Next we have Mr. A. K.
10 Bissell, Mayor of Oak Ridge. Mr. Bissell, would you
11 join us, please, at the table?

12 MR. BISSELL: Mr. Chairman, Members of the
13 Commission, I appreciate the opportunity of appearing
14 before you again, as I did on February 16, and I will be
15 brief.

16 It is a pleasure to once again have the
17 opportunity to appear before the Commission. As Mayor
18 of Oak Ridge, I want to express the Oak Ridge City
19 Council's strong support for the requested exemption
20 which would permit the prompt commencement of site
21 preparations at the Clinch River site.

22 The site proposed for the location of the
23 Clinch River Breeder Reactor is within the corporate
24 limits of Oak Ridge. On numerous occasions the City
25 Council has expressed its strong, continuing support for

1 this project. We believe that the breeder reactor
2 project is essential to the future development of our
3 nation's energy technology.

4 We would be proud to have this site for this
5 important project within our city. Because of our firm
6 commitment to future energy independence, our belief
7 that the Clinch River Breeder Reactor is a vital element
8 in that request, and our community support of this
9 project, the Oak Ridge City Council has voted to support
10 the request for exemption which would permit limited
11 site preparation work to commence.

12 The City of Oak Ridge is very confident that
13 our contentions, primarily involving whether tax exempt
14 status would be granted to this facility, can be
15 addressed adequately during hearings and deliberations
16 prior to the issuance of eventual construction and
17 operation permits. We see no reason to delay the
18 commencement of site preparations and would sincerely
19 urge your favorable consideration of the requested
20 exemption.

21 At this time, at this place, Oak Ridge,
22 Tennessee, there is enthusiasm for the construction of
23 this facility which is essential to our long-term energy
24 independence. We recommend that you move ahead now.

25 Thank you, sir.

1 CHAIRMAN PALLADINO: Thank you, Mayor Bissell.

2 MR. BISSELL: Thank you.

3 CHAIRMAN PALLADINO: Next is Mr. Ted von
4 Cannon, Tennessee Department of Economic and Community
5 Development, on behalf of the Governor -- of Tennessee,
6 that is.

7 MR. VON CANNON: Mr. Chairman, Members of the
8 Commission, my name is Ted von Cannon and I am here to
9 represent Governor Alexander.

10 I suspect the significant point which I wish
11 to deliver on behalf of the Governor and the
12 Administration is that we are very clearly in favor of
13 this project, in favor of the DOE request.

14 On previous occasions, Governor Alexander has
15 submitted correspondence indicating the support for the
16 DOE request, and I am here today simply to reaffirm that
17 position. We believe by allowing immediate site
18 preparation activities to commence that the State, the
19 Nation and the local governments best interests will be
20 served.

21 In Tennessee we also very clearly believe that
22 the majority of the citizens of the State of Tennessee
23 in general, and specifically the Oak Ridge area, are
24 very, very, very clearly in favor of the exemption and
25 moving forward with site preparation activities

1 immediately. In fact, fourteen units of local
2 government in the Oak Ridge area -- the legislative
3 bodies of those governments -- have passed resolutions
4 to this effect.

5 I received a phone call last night late from
6 Representative McNally, who was scheduled to follow me
7 on the program. He unfortunately is unable to be here
8 and he asked me to remind or to inform the Commission
9 that the Tennessee General Assembly has in effect passed
10 a resolution supporting the exemption.

11 CHAIRMAN PALLADINO: Supporting the exemption?

12 MR. VON CANNON: Supporting --

13 CHAIRMAN PALLADINO: What was the resolution
14 the General Assembly --

15 MR. VON CANNON: The resolution was to request
16 the Commission to allow or to grant the DOE request to
17 begin immediate site preparation activities.

18 CHAIRMAN PALLADINO: I see.

19 MR. VON CANNON: By the way, that vote, that
20 resolution, was passed unanimously in the Tennessee
21 General Assembly this past year.

22 Our desire for this project to move forward
23 expeditiously is based on 40 years of experience in the
24 research and development of the nuclear industry in
25 Tennessee. We are proud of our record. We are proud of

1 our contributions to nuclear power and we look forward
2 to playing a continuing role in its future development.

3 Clearly, gentlemen, we think that this is in
4 the best interest and we urge your thoughtful
5 consideration.

6 CHAIRMAN PALLADINO: Thank you.

7 When was this resolution passed?

8 MR. VON CANNON: It was in the last session of
9 the General Assembly. It was either in March or April
10 of this year.

11 CHAIRMAN PALLADINO: This spring. Do you
12 have -- you indicated that the majority of the people in
13 Tennessee were in favor of the CRBR Project? Is that
14 what you said?

15 MR. VON CANNON: It is the opinion of the
16 Administration, the Executive branch of government.

17 CHAIRMAN PALLADINO: I was wondering if you
18 had any data indicating something on that.

19 (Laughter.)

20 COMMISSIONER ROBERTS: You have a brother
21 Commissioner who is a Tennessean. Do you want me to
22 give you a reading?

23 (Laughter.)

24 CHAIRMAN PALLADINO: I thought perhaps you had
25 some survey or --

1 MR. VON CANNON: Mr. Chairman, that would be
2 about a 4.5. million people poll, and we just do not
3 have the capacity to conduct that at this time.

4 CHAIRMAN PALLADINO: I did not suggest you
5 needed it. I just thought it would be handy.

6 MR. VON CANNON: That is very clearly our
7 opinion -- the opinion of the Administration.

8 (Laughter.)

9 CHAIRMAN PALLADINO: Okay. Any other
10 questions?

11 COMMISSIONER AHEARNE: Just one. I gather Mr.
12 McNally is not going to be here.

13 MR. VON CANNON: He will not be here.

14 COMMISSIONER AHEARNE: Do you feel equipped to
15 answer a question about some of the information he
16 submitted?

17 MR. VON CANNON: In deference to
18 Representative McNally, I would not -- I have not,
19 subject to having a chance to review what he submitted
20 to you, so I may be at a very strong disadvantage.
21 However, if you press me, I might try. I would rather
22 not.

23 COMMISSIONER AHEARNE: Well, I will not ask
24 you. I was just going to ask him for some expansion.
25 He sent us a very interesting letter on July 20 and I

1 will just quote one of the sentences. He says, "I would
2 hope that the Commission would make a positive decision
3 on this most vital energy project, rather than, as it
4 has on numerous occasions in the past, waver in the hot
5 air emitted by the mental midgets which direct the
6 anti-nuclear forces and certain less than distinguished
7 politicians who know little or nothing concerning
8 sciences."

9 I was just going to ask --

10 MR. VON CANNON: Believe me, Commissioner,
11 there is no way that I would want to comment.

12 CHAIRMAN PALLADINO: Okay. Any other
13 questions?

14 All right. Thank you, Mr. von Cannon.

15 Now we have a series of speakers in favor of
16 denying the exemption request and we have Eldon
17 Greenberg, Barbara Finamore, Jacob Sherr for NRDC and
18 Sierra Club. I wonder if you would join us at the
19 table, please, and we have allotted thirty minutes for
20 that presentation.

21 MS. WEISS: We were not mentioned.

22 CHAIRMAN PALLADINO: Oh, I am sorry.

23 MS. WEISS: It is not your fault. We were not
24 on the list.

25 CHAIRMAN PALLADINO: Well, maybe -- who is

1 going to be the spokesman? Maybe you can introduce all
2 your colleagues.

3 MR. GREENBERG: I would be happy to.

4 Good afternoon, Mr. Chairman and Members of
5 the Commission. I am Eldon Greenberg, an attorney with
6 the law firm of Tuttle and Taylor, representing the
7 Intervenor in this proceeding, the Natural Resources
8 Defense Council and the Sierra Club.

9 With me this afternoon to my left are Dr.
10 Thomas Cochran, a staff scientist with the Natural
11 Resources Defense Council, and Ms. Ellyn Weiss, an
12 attorney with the law firm of Harmon and Weiss. To my
13 right is Ms. Barbara Finamore, a staff attorney with the
14 Natural Resources Defense Council.

15 I am pleased to have the opportunity this
16 afternoon to present our views once again to this
17 Commission on the issues raised by the exemption request
18 of the Department of Energy and its co-applicants.

19 In their response of August -- July 22 to
20 Commissioner Ahearne's questions, they stated that they
21 rested their case primarily on national policy grounds
22 and claimed informational benefits at this time, and
23 relatedly they have stressed in their presentations
24 today programmatic hardships should the exemption
25 request be denied.

1 Given their approach, I would like to use my
2 time this afternoon to address the same issues and I
3 will pass over in my prepared presentation other issues
4 which have in the past been given great attention by the
5 Commission. I want to emphasize, however, that we
6 continue to rely on our prior presentations both respect
7 to legal issues raised by the exemption request and with
8 respect to the cost issues which are raised by that
9 request.

10 Now before turning to the merits, as a
11 threshold matter I want to deal with some of the factors
12 which Mr. Edgar mentioned as creating a new or changed
13 set of circumstances surrounding this Commission's
14 consideration of the exemption request. I do not intend
15 this afternoon to argue the points that we have made
16 about the appropriateness of any revisitation of the
17 Section 50.12 issues. I understand the Commission does
18 not want to hear that argument this afternoon, although
19 we do rest on the positions taken in our papers.

20 But Mr. Edgar suggested that there are several
21 new facts which should affect how the Commission views
22 the exemption request, and we think that they really cut
23 quite contrary to the position espoused by the
24 Applicants.

25 First of all, Mr. Edgar has noted that since

1 March of 1982 there are a series of new Commission
2 documents which have been released -- a site suitability
3 report which was released in June, a report of the ACRS
4 which came out in early July, and, finally, a revised
5 impact statement which I believe was released on July 19.

6 Now we believe, first of all, what the release
7 of these documents demonstrates is that this licensing
8 is proceeding apace. It is making good progress. We
9 are approaching the point of commencement of the LWA
10 hearings. In our judgment this means there is less need
11 for an exemption. It undercuts the argument that there
12 are emergency circumstances, that relief will not be
13 available from the licensing board.

14 A second point that needs to be made in
15 connection with the release of these documents, and
16 particularly in connection with the recirculation of the
17 environmental impact statement, is that the
18 environmental record in this proceeding is not
19 complete. A revised final environmental impact
20 statement is being circulated for comment.

21 That revised environmental impact statement
22 discusses site issues as well as the entire bundle of
23 issues relating to the CRBR project, and we do not
24 believe at this point that the Commission should act
25 without having a final environmental record before it so

1 as to allow it properly to balance all the Section 50.12
2 factors.

3 Now a second new circumstance which Mr. Edgar
4 mentioned was the release of the final environmental
5 impact statement on the LMFBR program and a decision
6 document -- which, by the way, we have not seen -- dated
7 July 28, 1982, which presumably supports a decision to
8 proceed with the program as a whole and the CRBR project
9 within that program.

10 COMMISSIONER AHEARNE: As you gathered from my
11 question, nor had I seen it.

12 MR. GREENBERG: Yes, I understand that.

13 But assuming for purposes of argument that
14 that is the conclusion reached by the Department of
15 Energy, I do not think this is really anything new.
16 This does not represent a change in position on the part
17 of the Department of Energy and if one goes back and
18 reads the draft environmental impact statement on the
19 program which was issued in December 1981, and which was
20 before the Commission at the time it considered the
21 original exemption request, one finds precisely the same
22 language in that draft with respect to proceeding as
23 soon as possible, expeditiously, moving forward with
24 this program. So I do not think there has been a change
25 in circumstances in terms of a change of position of the

1 Applicants.

2 Finally, there was a great deal of discussion
3 this morning about the schedule for hearing and how
4 recirculation of the environmental impact statement
5 prepared by the Commission Staff might affect that
6 schedule. I quite agree with Mr. Edgar that the
7 ultimate resolution of the schedule questions is still
8 up in the air. The Board has not acted finally on
9 issues with respect to the schedule.

10 Nonetheless, the Board has established, by an
11 order dated July 19, that the hearing will begin on the
12 23rd of August. We received yesterday from the
13 Licensing Board a telegram indicating that there was a
14 tentative decision to proceed with the hearings as
15 scheduled and as expeditiously as possible.

16 We understand that the Staff hopes to have a
17 final environmental statement out by November 1 and if
18 indeed Mr. Edgar and Applicants prevail in their views
19 that a bifurcated hearing is appropriate, an LWA could
20 well be granted before the end of this year.

21 So I do not think we are necessarily talking
22 about a nine-month delay. I think we are talking most
23 likely about a delay that is substantially shorter than
24 that -- more likely six months, if anything.

25 COMMISSIONER AHEARNE: Is it correct that your

1 position, though, is that the hearing ought not to start
2 until the final statement?

3 MR. GREENBERG: That is our position. I have
4 a feeling we will get back to some of these schedule
5 issues. We do not know how the Board will respond to
6 our motion, but the fact of the matter is the Board has
7 given a tentative indication that it intends to proceed
8 as scheduled on the 23rd of August.

9 Now, turning to the merits of the exemption
10 request, let me start by focusing on the standard which
11 the Commission must use in determining whether a request
12 should be granted. That standard is a narrow one. The
13 granting of exemption requests is essentially
14 unprecedented since 1974, since the LWA procedure was
15 adopted in April 1974. There has not been a single
16 exemption request granted in a contested proceeding
17 since 1974.

18 To my mind, that indicates the extremely
19 difficult and unusual burden which Applicants must carry
20 in order to obtain the relief they request.

21 Secondly, I think Commission precedent makes
22 it clear that there must be exigent and emergency
23 circumstances which warrant the grant of relief. The
24 exigent and emergency circumstances test, if you will,
25 is laid down by the Commission in the Washington Public

1 Power Supply case of 1976.

2 I will get into this a little bit later, but
3 this morning there was a great deal of discussion about
4 benefits that might be achieved by accelerating site
5 preparation activities by six months or nine months or
6 twelve months. I do not see that any case has been made
7 that there are emergency and exigent circumstances that
8 warrant this extraordinary variance from the
9 Commission's licensing procedure.

10 Third, when a hearing on an LWA is scheduled
11 to start in less than three weeks, it seems to me the
12 burden that Applicants bear is particularly difficult to
13 overcome. They need to show that timely relief from the
14 Board will not be available. In this situation a Board
15 is going to begin considering LWA issues in a very short
16 period of time and relief, as I mentioned earlier, is
17 not unlikely to be forthcoming before the end of the
18 year.

19 Now given those standards --

20 COMMISSIONER AHEARNE: Should I interpret what
21 you just said as that it is your judgment that the Board
22 is most likely to grant the LWA?

23 MR. GREENBERG: No. When I say -- I mean a
24 decision on the merits of the LWA request.

25 COMMISSIONER AHEARNE: But you said relief.

1 MR. GREENBERG: If relief is warranted on the
2 merits, if the case is made on the merits, that
3 construction should go forward. Then that decision will
4 be likely issued by the end of the year. I certainly
5 did not mean to imply that relief is warranted on the
6 merits. It is contrary to our position in the
7 proceeding.

8 Now the two prongs of Applicants' arguments
9 are, first of all, that there are national policy
10 factors which warrant granting of the request and,
11 secondly, that there will be lost informational benefits
12 and programmatic hardships.

13 With respect to national policy, last March
14 Applicants failed, essentially to persuade the
15 Commission that there was a mandate of sorts that
16 compelled the granting of the exemption request. They
17 are now arguing in effect that because the
18 Administration has a policy of proceeding expeditiously
19 the Commission should exercise its discretion so as to
20 defer -- defer to that policy and allow site preparation
21 activities to proceed on a time scale that is sought by
22 the Applicants.

23 It seems to us that their position is
24 erroneous for at least three reasons. First of all, we
25 do not believe that it can or should be the rule that if

1 the Department of the Energy says that a particular
2 action is in the public interest ipso facto that means
3 that their statement of the public interest constitutes
4 the public interest.

5 We think that kind of rule could be used over
6 and over again to compromise the Commission's regulatory
7 regime and it is precisely that kind of result that we
8 think the Energy Reorganization Act of 1974 was meant to
9 avoid. The Commission has got to exercise independent
10 judgment with respect to public interest factors as well
11 as other factors.

12 Secondly, we think it quite clear that a
13 general policy adopted by the Applicants with respect to
14 project expedition does not answer the question as to
15 whether a six to twelve month acceleration is needed on
16 an emergency basis in this case. We do not think the
17 LMFBR environmental impact statement answers that
18 question. And I think Mr. Longnecker this morning
19 conceded that consistent with the program as described
20 in the impact statement the Applicants would not need to
21 start site preparation activities until early in 1983.

22 I think, indeed, even if the environmental
23 impact statement -- this is the programmatic
24 environmental impact statement -- now said that the
25 program called for startup of the CRBR in 1991 instead

1 of 1990, the difference would not be so significant that
2 the Commission would be required to defer on that timing
3 question in connection with this exemption request.

4 Which leads me to my third point, and that
5 relates to the Commission's decision of 1976 about its
6 NEPA responsibilities and the allocation of
7 responsibilities between the Department of Energy and
8 the Nuclear Regulatory Commission. In 1976, the
9 Commission said that it would defer to the Department of
10 Energy on what it called broad programmatic issues. It
11 reserved to itself the power to make decisions with
12 respect to what it called issues of implementation.

13 In fact, the Clinch River Breeder Reactor
14 project itself is not a given in the licensing
15 proceeding. What is a given is a demonstration plant
16 and the Commission is well within its power to decide
17 that there should be a different demonstration plant
18 than the CRBR at a different site in order to meet the
19 program objectives. It seems to us a fortiori an
20 implementing decision with respect to the startup of
21 site preparation activities is within the power and
22 authority of the Commission.

23 Now there is a reference in the 1976 opinion
24 to questions of timing essentially being within the
25 province of the Department of Energy. What means to us

1 is that the Commission adopted the view that the CRBR,
2 or a demonstration plant of roughly the same size and
3 type, should be currently licensed and that the NRC
4 cannot decide to shelve the demonstration plant concept
5 altogether at this time. That is a programmatic
6 decision made by DOE that there can and should be a
7 demonstration plant.

8 But second order implementation issues of
9 timing, particularly those relating to what is a
10 relatively inconsequential matter of startup of site
11 preparation activities are clearly within the
12 Commission's authority.

13 So our bottom line with respect to national
14 policy is that national policy factors do not tell the
15 Commission whether there are circumstances that warrant
16 or do not warrant the exemption. In order to make that
17 decision, you have got to look to hardship. You have
18 got to look to the case that Applicants make on
19 hardship, and it is there, in our judgment, that the
20 case is the weakest.

21 Now we do not challenge the objectives of the
22 program as laid out in the LMFBR programmatic
23 statement -- and I should correct myself by saying we do
24 not challenge in this proceeding the objectives of the
25 program. We may challenge by a separate action the

1 objectives of that program.

2 (Laughter.)

3 CHAIRMAN PALLADINO: And this is which program?

4 MR. GREENBERG: This is the LMFBR program.

5 The Commission has made it clear that it is not going to
6 get into issues of the nature of the program in this
7 proceeding. The question is will those objectives be
8 met by the CRBR, and the Commission has to decide
9 questions relating to whether or not the objectives will
10 be met.

11 Now there were a lot of glittering
12 generalities about how important it is to proceed with
13 site preparation activities. But ultimately we think
14 the case is very, very thin with respect to the
15 short-term impacts. That is, what will it mean in
16 October of 1982, December of 1982, March of 1983 if site
17 preparation activities are authorized? The answer is,
18 at best, marginal, it seems, if anything at all.

19 No one made the case this morning as far as I
20 understand it that conducting site preparation
21 activities themselves is going to result in important
22 informational benefits to the program. We are not going
23 to learn a great deal from the grading of the land at
24 the CRBR site which is going to help us in building the
25 LDP or in working out international cooperative

1 arrangements.

2 The fact is it is terribly, terribly difficult
3 to get a handle on what the real benefits, if any, of
4 proceeding with early site preparation activities are
5 and we suggest, as Commissioner Gilinsky earlier stated
6 in his opinion in March, that those benefits are
7 essentially intangible and it is difficult to understand
8 how they could be substantial.

9 Going a little bit farther down the line than
10 October of 1982 or December of 1982 or March of 1983,
11 you deal with questions like the impact of early site
12 preparation activities on the large development plan.
13 Well, there is no firm schedule for the large
14 development plan. The Applicants are talking about a
15 decision point, oh, in roughly the beginning of 1985 or
16 fiscal year 1985 to proceed with design.

17 The Administration in fact has changed its
18 position rather radically on the LDP in the last year.
19 It has decided it is not going to be a government
20 project. That was not what the Department of Energy had
21 earlier wanted. Now how moving ahead rapidly now with
22 site preparation activities are going to affect the LDP
23 in the early stages, how it will affect, for example,
24 decisions by utilities to participate or not participate
25 in this project, are essentially speculative as far as I

1 can tell.

2 In point of fact, the Applicants have given
3 inconsistent answers on this point. In response to the
4 written questions presented by Commissioner Ahearne they
5 indicated rather positively that they expected agreement
6 with private parties and other participants this year in
7 order to get on with LDP activities in fiscal year 1983
8 without reference to the outcome of the Section 50.12
9 proceeding.

10 Elsewhere they seem to argue that whether or
11 not the Section 50.12 request is granted will have an
12 impact on that. I understand why they do not want to
13 argue that there will be an absolute negative impact,
14 because they want to get their money for fiscal year
15 1983 for the LDP program without regard to what happens
16 in this proceeding.

17 But the point is they just have not made a
18 clear, coherent case with respect to the impacts of this
19 exemption request on a project like the LDP in the near
20 term or mid term.

21 Now with respect to the long term, the 1988,
22 1989, 1990 and out to the year 2000 and beyond time
23 frame, the tendency in their argument is to leap from
24 discussions of delay in site preparation activities to
25 conclusions that the CRBR might never be built, to

1 conclusions that that will be the end of the LMFBR
2 program, to conclusions that we will not be able to meet
3 our energy needs in the 21st Century.

4 Those are wholly speculative and there is no
5 real basis that has been presented for reaching it, and
6 they are unrelated to acceleration of site preparation
7 activities as far as I can see. An example is the
8 impact on international cooperation. I am sure it is
9 important to the United States Government and the
10 Department of State to cooperate with the French and the
11 British and the West Germans and the Japanese and others
12 on non-proliferation and other matters related to
13 nuclear energy.

14 It is hard to see how the conduct of site
15 preparations -- site preparation activity in August 1982
16 or November 1982 is going to affect those cooperative
17 efforts. It is not as if site preparation activities
18 constitute the LMFBR program. The fact of the matter is
19 that we have the largest base breeder research program
20 in the world in the United States, that more money is
21 being spent on R&D for breeders than is proposed to be
22 spent on the CRBR. And we are going to be able to
23 cooperate with other countries in nuclear power research
24 and in non-proliferation quite apart from whether this
25 exemption request is going to be granted or not.

1 It seems to me that the international
2 considerations are essentially irrelevant. Ultimately
3 there is no persuasive reason to believe that delays
4 that are measured in months today are going to impact
5 severely on a program whose benefits are measured in
6 years and decades, and certainly there is not reason to
7 conclude that there are emergency circumstances which
8 are presented here which warrant the kind of
9 extraordinary relief contemplated by 10 CFR Section
10 50.12.

11 The LMFBR EIS itself says the future is so
12 uncertain the Department of Energy cannot do a
13 cost-benefit analysis of the entire program. The
14 General Accounting Office has indicated that
15 commercialization of LMFBRs, if it is going to take
16 place at all, is likely to take place in the 2025 to
17 2035 time frame. That is not inconsistent with the
18 Department of Energy's own projections. The Department
19 of Energy has indicated that it will take place in that
20 time frame.

21 It seems to us that it is highly unlikely that
22 whether there is a CRBR startup in June of 1990 or
23 December of 1990 is going to have a significant impact
24 on long-term decisions with respect to commercialization
25 of this technology.

1 Now, finally, the Applicants argue that the
2 uniqueness of the CRBR project is a basis for the grant
3 of this exemption. It seems to us that that is
4 precisely a wrongheaded approach. The Applicants have
5 argued throughout the history of the development of this
6 project in connection with the importance of
7 licensability that the CRBR should be treated exactly
8 like conventional lightwater reactors and the history of
9 this project is replete with statements to that effect.

10 If you proceed to grant a Section 50.12
11 request, you are conveying an entirely different
12 message. The message is the CRBR can and will be
13 treated differently than conventional lightwater
14 reactors and I noted that in his presentation this
15 morning, Mr. Edgar was very careful not to foreclose the
16 possibility that there might be other exemption requests
17 down the road for this project and not just for other
18 Department of Energy projects, and I personally have no
19 confidence that that will not be the case if an
20 exemption request is granted.

21 Finally, I would like to say a word about the
22 public interest in this proceeding. Much of what I have
23 already said relates to the public interest, although I
24 would categorize it under the general rubric of
25 emergency or exigent circumstances. Applicants have

1 suggested that there are no countervailing public
2 interest factors other than those that they have cited
3 to the Commission and we could not disagree more
4 strongly.

5 First, we believe that there is an overriding
6 interest in a full and complete review under the
7 National Environmental Policy Act before any action is
8 taken at the CRBR site. That interest has been found
9 again and again in decided cases to outweigh
10 considerations, programmatic and cost, such as those
11 which are cited by Applicants.

12 Second, there is an interest, an overriding
13 interest in the maintenance of the integrity of the
14 licensing process and the independence of this
15 Commission in making critical decisions under the Atomic
16 Energy Act. Secretary Davis this morning was careful to
17 hedge with respect to the relevance of political
18 considerations in this licensing process and in this
19 exemption proceeding.

20 We cannot emphasize strongly enough that the
21 best way to demonstrate the irrelevance of those
22 political considerations, the most neutral course for
23 the Commission to follow, is to stick to standard
24 licensing procedure, to avoid special exemptions,
25 shortcuts and variances. And it is only in that way

1 that we believe the integrity of the licensing process
2 will be maintained.

3 In sum, Mr. Chairman and Members of the
4 Commission, we urge the Commission to deny the exemption
5 request. Thank you.

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1 CHAIRMAN PALLADINO: Does that conclude your
2 presentation?

3 MR. GREENBERG: That concludes our
4 presentation.

5 CHAIRMAN PALLADINO: I wonder if I might begin
6 with a couple of questions. Do you mean to imply that
7 we are only independent if we make one kind of judgment
8 and we are not independent if we make a different kind
9 of judgment?

10 MR. GREENBERG: No, I don't.

11 CHAIRMAN PALLADINO: I must have misunderstood
12 you then because you did emphasize the importance of
13 being independent and I thought maybe there was some
14 implication there.

15 MR. GREENBERG: I was trying to suggest what
16 the most neutral decision would be in this context.

17 CHAIRMAN PALLADINO: Why must the decision be
18 neutral?

19 MR. GREENBERG: Neutral was with respect to
20 political considerations which I believe are irrelevant
21 and which I hope the Commission believes are irrelevant.

22 CHAIRMAN PALLADINO: Do you believe that we
23 should not pay attention to the guidance of either the
24 Congress or the Administration?

25 MR. GREENBERG: That is not what I was

1 referring to. I was referring to questions with respect
2 to appropriations in the next fiscal year which are not
3 yet decided, and it doesn't seem to me in the context of
4 this proceeding that those are relevant considerations.
5 Certainly past guidance of the Administration and
6 Congress is relevant in this proceeding.

7 CHAIRMAN PALLADINO: And has that guidance not
8 been in favor of proceeding with the CRBR?

9 MR. GREENBERG: It has recently.

10 CHAIRMAN PALLADINO: How about the Congress'
11 action before that?

12 MR. GREENBERG: Well, we have to distinguish
13 Congress and the Administration.

14 CHAIRMAN PALLADINO: Yes, let's do that.

15 MR. GREENBERG: I would agree that Congress
16 historically has maintained support for the CRBR project
17 through continued funding. Obviously there was a period
18 of five years or four years where the Administration did
19 not believe that it was appropriate to proceed with this
20 project and did not support it.

21 CHAIRMAN PALLADINO: But this Administration
22 has supported it.

23 You indicated that you believed that the
24 limited work authorization would be granted by the end
25 of the year. Are you familiar with the experience of

1 hearings in other cases within the Commission?

2 MR. GREENBERG: You are suggesting that
3 sometimes it takes longer than is planned?

4 CHAIRMAN PALLADINO: Well, I can cite one now
5 where it has taken almost that long and we have not yet
6 gotten the written decision.

7 MR. GREENBERG: Well, obviously Mr. Edgar is
8 not wrong in suggesting that there are uncertainties
9 associated with the hearing process. There clearly
10 are. I would tell the Commission though that this board
11 is a vigorous board and the board is interested in
12 moving ahead rapidly. I am sure that the board is going
13 to do what it can to expedite this proceeding. It has
14 in the past and I have every expectation that it will in
15 the future.

16 CHAIRMAN PALLADINO: Do you mean to say that
17 the hearing boards on other cases are not equally
18 interested in expeditious ---

19 (Laughter.)

20 MR. GREENBERG: I am taking no position with
21 respect to what other hearing boards have done.

22 CHAIRMAN PALLADINO: Well, I think the
23 experience of the Commission has some bearing on this
24 case, and I don't think the experience of the Commission
25 has shown that one has any reason to believe that this

1 could be done even under the most favorable
2 circumstances by the end of the year. Now that is my
3 assessment of the experience.

4 Well, I wonder if I could ask you questions in
5 other areas because I think they are pertinent to what
6 we are trying to do here.

7 We have four criteria we have to address and
8 one of them is whether the conduct of the proposed
9 activities will give rise to significant adverse impact
10 on the environment and the nature and extent of such
11 impact, if any.

12 Could you comment on what you believe is
13 pertinent with regard to that particular criterion.

14 MR. GREENBERG: We have addressed this
15 criterion extensively in our prior submissions to the
16 Commission. The brute fact that one deal with in this
17 case is that there is an awful lot of work associated
18 with site preparation activities at Clinch River. We
19 are talking about more than \$80 million of construction
20 activities.

21 We are unaware of any case under the National
22 Environmental Policy Act that has found that \$81 million
23 of site preparation activities or any other kind of
24 activities are going to have insignificant environmental
25 impacts or trivial environmental impacts.

1 We think we are talking about the kind of work
2 which by its very nature significantly affects the
3 environment. We are affecting some 290 acres of land.
4 There is a major quarry that is being built and there is
5 an immense amount of construction.

6 In addition, there are important open
7 environmental issues. We emphasized in our brief that
8 there are at least two significant unresolved site
9 issues. One relates to possible impacts of dredging and
10 other activities on endangered mussels which have been
11 found at the Clinch River site. A second relates to
12 possible impacts on spawning habitats of game fish in
13 the Clinch River.

14 Now it may turn out that those impacts are not
15 significant. But the fact of the matter is that there
16 are not final positions which have been developed in the
17 context of the NEPA analysis with respect to either of
18 those two matters.

19 CHAIRMAN PALLADINO: But on both of those
20 matters ---

21 COMMISSIONER AHEARNE: I wanted to follow up
22 on that question.

23 CHAIRMAN PALLADINO: All right, go ahead.

24 COMMISSIONER AHEARNE: I just wanted to ask
25 one clarification. You had just described the concerns

1 about the \$81 million and how large an effect it was.
2 But just a few minutes ago in discussing the impact that
3 going ahead would have, I think the quote was
4 "relatively inconsequential matters of site preparation
5 activities."

6 MR. GREENBERG: In terms of the overall
7 program I think these activities are not terribly
8 consequential.

9 CHAIRMAN PALLADINO: I had that same note down
10 here.

11 MR. GREENBERG: In terms of the benefits that
12 applicants say that will be derived to the program from
13 the conduct of those activities, I need to put that
14 statement in context. I am not saying these activities
15 are inconsequential in an absolute way. I am saying in
16 terms of this program, which is a massive program which
17 is going on for decades, you can't draw the conclusion
18 that there will be major impacts and major hardship to
19 the program from the failure to grant the request to
20 conduct site preparation activities.

21 Have I made myself clear on that point?

22 COMMISSIONER AHEARNE: But you do believe that
23 the site preparation activities themselves are
24 substantial?

25 MR. GREENBERG: We are looking at whether they

1 are going to have a significant impact on the
2 environment in and around Clinch River. It is a
3 relatively narrow question.

4 CHAIRMAN PALLADINO: The question is adverse
5 impact. It may actually improve the situation. As a
6 matter of fact, in terms of the industrialization target
7 for that area, is this not consistent?

8 MR. GREENBERG: The distinction between
9 significant adverse and significant beneficial is really
10 not consequential. The question is whether there are
11 significant impacts on the environment.

12 CHAIRMAN PALLADINO: Our criterion is
13 significant adverse impact.

14 MR. GREENBERG: I understand that and I am
15 interpolating somewhat from the criterion.

16 CHAIRMAN PALLADINO: Would redress of any
17 adverse impact from the conduct of the proposed
18 activities, could they reasonably be affected if such
19 redress is necessary?

20 MR. GREENBERG: Well, I think we are talking
21 about redress costs which are relatively high, certainly
22 higher than those which have been dealt with in the past
23 by the Commission. In the Sharon Harris case, which
24 applicants have cited repeatedly, the redress costs were
25 about \$1.5 million. Now here we are talking about

1 redress costs that range from \$7 to \$10 million. The
2 redress costs are higher than in the past and there is a
3 question raised this morning as to whether as a
4 practical matter the funds will be there to effect
5 redress.

6 The fact is that Congress will have to
7 appropriate the funds to redress the site, or it may
8 have to appropriate funds to redress the site if the
9 funds are not already otherwise present in the
10 Department of Energy's budget. So there is some
11 question as to whether redress will in fact be affected.

12 CHAIRMAN PALLADINO: But is there any physical
13 reason why we couldn't effect redress of the situation,
14 the environment in particular?

15 MR. GREENBERG: I believe that the staff in
16 its report indicates that perfect redress is not
17 possible. But generally speaking, I think that some
18 reasonable form of redress as far as we can see from the
19 record before us is a possibility.

20 CHAIRMAN PALLADINO: Would the conduct of the
21 proposed activities foreclose subsequent adoption of
22 alternatives in your mind and, if so, how?

23 MR. GREENBERG: Well, I am afraid here we may
24 end up in an argument about semantics. The word
25 "momentum" appears an awfully low in the applicants'

1 papers. They are looking for momentum, not just
2 momentum for the LMFBR program, but they are looking for
3 momentum in connection with this project. The case law
4 under NEPA cautions that momentum is precisely what
5 should be avoided.

6 CHAIRMAN PALLADINO: Is that explicitly stated?

7 MR. GREENBERG: Absolutely it is.

8 CHAIRMAN PALLADINO: I will have to read
9 that.

10 MR. GREENBERG: Our concern here is that you
11 are in a situation in which momentum is being created as
12 a practical matter. Regardless of how often cites the
13 Commission's regulations and regardless of how often one
14 says yes, there will be a time for a second look and a
15 third look and a fourth look down the line, you tend to
16 foreclose options.

17 I think that Commissioner Bradford was quite
18 correct in his separate views in March when he said that
19 when you chop up projects into inscrutable bits you end
20 up never being able to overcome the project momentum
21 that is created by allowing some construction to proceed
22 here and little more there and a little more there and
23 you build up some costs over time and create a situation
24 where it is very, very difficult to turn things around,
25 regardless of whether there is legal authority or not.

1 Certainly there is legal authority for the Commission to
2 deny an LWA-1 or 2 or deny a construction permit down
3 the road.

4 The question is practically is it going to be
5 likely if you allow these costs to be put into the site
6 and if you allow a hole to be dug, won't that create
7 pressures that will be very, very difficult to
8 overcome. I think the case law under NEPA recognizes
9 again and again that that is a real risk.

10 CHAIRMAN PALLADINO: How would the conduct of
11 the proposed activity foreclose subsequent adoption of
12 alternatives? You are saying the momentum would bring
13 pressure on us, but I don't see that that would
14 foreclose subsequent adoption of alternatives.

15 MR. GREENBERG: Well, I don't think is a legal
16 foreclosure. I don't think you are foreclosed ---

17 CHAIRMAN PALLADINO: How about a physical
18 foreclosure then?

19 MR. GREENBERG: I don't believe it is a
20 physical foreclosure, but I think it is a practical and
21 very real risk of foreclosure.

22 CHAIRMAN PALLADINO: Well, you are
23 speculating. You have accused others of speculating,
24 and aren't you speculating there? You said that the
25 conduct of the proposed activities would not physically

1 or legally foreclose subsequent adoption of alternatives.

2 MR. GREENBERG: That is right, but remember
3 that in the NEPA process the Commission is going to have
4 to look at alternative sites, including alternative
5 sites in the Tennessee Valley area. As you start
6 spending money at the Cinch River site and spending \$81
7 million at the Clinch River site, it seems to me to be
8 unlikely that that is not going to come into your cost
9 benefit analysis when you start determining whether in
10 fact there might not be a better site some place else.

11 Applicant argues that \$81 million is not very
12 significant and it is not going to tilt the balance, but
13 when you are dealing in these questions of alternatives
14 and you are looking at other sites, the Hartsville site,
15 for example, I think it is very difficult to say that
16 this kind of commitment will not run a very real risk of
17 foreclosing alternatives.

18 CHAIRMAN PALLADINO: But you did say that at
19 the moment you don't see any legal or physical items
20 that would foreclose subsequent adoption of
21 alternatives. There is a risk.

22 MR. GREENBERG: I think Ms. Weiss has one
23 word ---

24 MS. WEISS: I just wanted to mention your
25 Seabrook decision which holds that in comparing one site

1 where work has already begun against alternative sites,
2 the money that has been spent at the one site is counted
3 against all the alternatives. So as a practical matter
4 you are disadvantaging alternative sites and you are
5 erecting a barrier, in my view, that there is no
6 question but that you are tending to foreclose
7 alternatives under your present ---

8 CHAIRMAN PALLADINO: Well, it depends on what
9 you have built at the site.

10 MS. WEISS: No matter what you have built, the
11 money that you have spent at that site and the time that
12 it would take to duplicate that work at another site
13 counts against the alternative site. So you are
14 foreclosing those in favor of the one where you have
15 started work.

16 CHAIRMAN PALLADINO: You are not foreclosing
17 it, but you may be developing pressures.

18 MS. WEISS: Erecting barriers, I would say
19 that that is legal foreclosure.

20 CHAIRMAN PALLADINO: Can I ask you questions
21 with regard to the public interest. You say they are
22 all vague, and, let's see, maybe I should try to use
23 some of your words, that they are vague, that they are
24 intangible, no firm schedule and how will site
25 preparation affect something so far in the future.

1 Having worked on projects, one makes no
2 progress until you begin them. It has been four years
3 of delay. Do you think we are benefitted by another
4 year of delay in advancing our LMFBR purposes?

5 MR. GREENBERG: Mr. Chairman, the question is
6 not whether we are benefitted by another year of delay.
7 The question is whether has a case been made by the
8 applicants who have a burden of coming forward, that
9 there are exigent circumstances and that there are
10 emergency circumstances that warrant this kind of
11 special relief, and the kinds of benefits which they see
12 flowing from the grant of relief, in my judgment, are
13 essentially speculative. I don't think they have a
14 sound basis.

15 CHAIRMAN PALLADINO: Well, even though cost
16 was not developed in great length, at least they had
17 some cost figures. They also did point to the fact that
18 there is information need and you will certainly delay
19 the information need. There is another one that I was
20 going to question on, but I will put it under the
21 question of momentum. One does not assemble a large
22 technical force and keep them effectively together by
23 constant delay. Eventually these people will want to
24 leave, and if one doesn't have the vehicle for
25 maintaining that force you don't have the capability to

1 carrying forth in a further LMFBR, and I have seen
2 circumstances of that. I think these are real and not
3 speculative.

4 MR. GREENBERG: The question, Mr. Chairman, is
5 whether 6 months or 9 months or 12 months ---

6 CHAIRMAN PALLADINO: Or longer.

7 MR. GREENBERG: Even the applicants don't
8 suggest it is going to be more than 12 months, and they
9 indicated this morning that 9 months is the more likely
10 figure. So taking it on their terms, are those 12
11 months, 9 months or 6 months going to have those
12 critical differences that they say? To be sure, if they
13 could demonstrate that delaying 6 months would result in
14 the collapse of the CRBR team, that they wouldn't be
15 able to reassembly that team and that the project could
16 not go forward thereafter, they would have made a
17 serious case of hardship. That case isn't before the
18 Commission.

19 CHAIRMAN PALLADINO: Well, they did make a
20 case of hardship for not getting the data sooner. I was
21 making the second one.

22 MR. GREENBERG: In terms of not getting the
23 data sooner, then you are looking at a long-run problem.

24 CHAIRMAN PALLADINO: No, not getting the data
25 sooner can have a terrific impact.

1 MR. GREENBERG: Well, that is right, but we
2 are talking about getting data related to this plant and
3 not related to site preparation activities maybe
4 starting in 1984 or '85, and the real data, the
5 important data with respect to operation of this system
6 comes in the 1990's. The applicants have talked about
7 closing the fuel cycle. The data that is going to come
8 from demonstrating reprocessing at an LMFBR plant, that
9 is not going to come before 1996 under their estimates
10 as presented in the LMFBR EIS. That is 14 years from
11 now.

12 Now the question is is a delay of several
13 months now going to have a meaningful impact on
14 something that is supposed to happen four years before
15 the end of this century?

16 CHAIRMAN PALLADINO: Well, I maintain yes
17 because we have been delaying this project year after
18 year for a number of years, and we would be perhaps at
19 the point of getting some of that data now if we hadn't
20 continued the delay, and this is another step in
21 continuing the delay.

22 Well, let me ask it this way. How is the
23 public interest served in not going forward with this
24 project where the Congress has approved this
25 construction and operation on an expedited basis, where

1 the Administration supports it, where the applicant is
2 ready, willing and able and where the activities
3 proposed I believe pose no lasting threat to the
4 environment or the public health and safety? How is the
5 public interest served by that?

6 MR. GREENBERG: I feel that I have already
7 stated it once and I am happy to state it again. We
8 think there are other public interests here. We think
9 there is a public interest in having a complete
10 environmental review before any decisions are made with
11 respect to the conduct of activities at the Clinch River
12 site. We think there is a public interest in the
13 maintenance of standard licensing procedure in this
14 case. We think that public interest, by the way, is
15 consistent with the goal of licensability for the CRBR
16 plant.

17 CHAIRMAN PALLADINO: But we had an EIS in 1977
18 and it was the delays that caused it now to have to be
19 revised and recirculated, and further delays could cause
20 us again to have to have that revised. With regard to
21 the public being heard, I think the public has been
22 heard. I think that our process is being followed for
23 future actions and, as a matter of fact, we are
24 following our process so well that we are even getting
25 experience in using the exemption request. So we are

1 not excluding any part of our procedure.

2 (Laughter.)

3 CHAIRMAN PALLADINO: Well, maybe I will back
4 off and let some of my colleagues ask questions.

5 Tom, do you have any questions?

6 COMMISSIONER ROBERTS: I have no questions.

7 CHAIRMAN PALLADINO: Do you have any?

8 COMMISSIONER AHEARNE: I have just two.

9 CHAIRMAN PALLADINO: Well, perhaps we ought to
10 give Jim a chance to ask some.

11 COMMISSIONER ASSELSTINE: No, John can go
12 ahead first.

13 COMMISSIONER AHEARNE: Ms. Weiss, you have had
14 a lot of experience in our licensing procedures and so
15 you have looked at our rules and regulations at great
16 length. An issue we were briefly discussing this
17 morning, and I wondered whether you had any comments on
18 it, is that since DOE's application does apparently have
19 embedded within some safety related equipment, could you
20 speak to how that factor should or should not apply?

21 MS. WEISS: Well, I guess my immediate
22 reaction is if that is the case they would have to ask
23 you for an exemption from not only an LWA-1 but an
24 LWA-2, and that is certainly not contained in what you
25 have before you and it raises a whole host of different

1 questions beyond the environmental questions. Today it
2 raises questions of allowing you to go ahead with safety
3 work. It is just a different set of considerations than
4 what you have.

5 MR. GREENBERG: Well, I think our position is
6 that there would be no authorization in law to proceed
7 with safety related work under this exemption request
8 absent a full hearing. Indeed, as Ms. Weiss states,
9 there has been no application for an exemption from the
10 LWA-2 requirements.

11 COMMISSIONER AHEARNE: The other question is
12 for Dr. Cochran. I know, Tom, you spent a lot of time
13 thinking about nonproliferation aspects. One of the
14 items that the DOE has referenced as an advantage and a
15 benefit of going ahead with granting the exemption
16 request is the positive benefit to nonproliferation
17 activities and I wondered whether you had any comments
18 on that?

19 MR. COCHRAN: Well, I obviously think that
20 going ahead with the program is very detrimental to our
21 nonproliferation concerns. By a similar token by going
22 ahead with construction under this exemption request
23 would similarly send the wrong signals to other
24 countries that we are moving ahead with a plutonium
25 economy even though we do not know at this time how to

1 safeguard plutonium to prevent its diversion from use by
2 other nations or nonstate groups.

3 Nobody has shown how we can safeguard this
4 material adequately. The Commission even I think has
5 indicated that they are not in a position to state that
6 one has adequate international controls over plutonium
7 in bulk handling facilities in other countries. We have
8 heard a lot of discussion about the foreign breeder
9 programs.

10 They always forget to mention the Indian
11 breeder program, and, as you know, the Indian breeder
12 reprocessing plant at Trombay is where the Indians
13 recovered the plutonium from the Cyrus reactor which was
14 a peaceful nuclear reactor and used it for a nuclear
15 explosive device. Of course, we have no way of
16 safeguarding the plutonium in that or any other bulk
17 handling facilities adequately. That was the position
18 of the previous Administration that we shouldn't pursue
19 this program at all until we got a handle on that
20 problem and shouldn't send these types of signals.

21 This is precisely the type of signal you are
22 sending, that we are on top of the plutonium economy and
23 we should march ahead with commitments to it.

24 CHAIRMAN PALLADINO: How will we maintain our
25 state of knowledge and provisions for control if we stay

1 out of it?

2 MR. COCHRAN: Well, this may sound like a
3 silly example, but I don't advocate prostitution as a
4 means of controlling prostitution or drug addiction as a
5 means of controlling drug addiction.

6 CHAIRMAN PALLADINO: You are right, I don't
7 think it is an appropriate analogy.

8 (Laughter.)

9 MR. COCHRAN: I think we can spend money on
10 improving safeguards. We can contribute more to the
11 IAEA and we can do more in the way of developing the
12 extended burn-up fuels for light-water reactors, a
13 program that would cost, if we could complete that
14 program, less than \$20 million, about a fourth of the
15 cost we are going to invest in the site preparation
16 activities of digging the hole for this one plant. We
17 could develop an alternative that would extend our
18 uranium supplies decades or more and postpone the day
19 when we have to commit to reprocessing and recovery of
20 plutonium.

21 We could set an example for the rest of the
22 world by turning our backs on recovery of plutonium for
23 civil use until we have the technology better
24 controlled. In fact, that I think under the previous
25 Administration was working. We saw the position that

1 the U. S. took that I think had an influence on the
2 German decision not to proceed with the Golder project
3 and I think it has had an effect on other decisions
4 around the world. It wasn't totally effective, but I
5 think it was a movement in the right direction.

6 CHAIRMAN PALLADINO: Well, there is quite a
7 bit of activity in the world on proliferation matters,
8 unfortunately, and it has not just started. It has been
9 underway for quite a few years. If we are going to
10 influence it, we had better know what we are doing and I
11 don't think there is all that much time to influence it.

12 MR. COCHRAN: If we don't know what we are
13 doing, we shouldn't be in this.

14 CHAIRMAN PALLADINO: No, I am talking about
15 having enough experience so that we get to know as much
16 about it as the people who are ---

17 MR. COCHRAN: Mr. Chairman, how many
18 reprocessing plants do we have? I mean we have one at
19 Hanford, we have two at the Savannah River plant, we are
20 doing coal work at the Barnwell plant and we do
21 plutonium handling at Rocky Flats. We have the
22 technology available today to do R&D on improving the
23 physical security of plutonium use without making the
24 commercial commitments and the signals that we are going
25 to have with the commercial commitments to this

1 technology, and that I think is the wrong signal to send.

2 CHAIRMAN PALLADINO: But that is the one part
3 where we can gain some experience on the civilian
4 activity, and the civilian type of breeder reactors I
5 think are quite apart from all the other difficulties
6 you were speaking about and the characteristics could
7 very well be different enough for us to take different
8 actions.

9 MR. COCHRAN: I am not sure they are so quite
10 apart. You may be aware that there efforts to convert
11 the reprocessing plants at Savannah River or Hanford in
12 order to reprocess commercial fuel. Now some people
13 believe that the Administration's interest in that is
14 partly driven by the fact that they want to divert civil
15 plutonium from commercial reactors into U. S. nuclear
16 weapons.

17 CHAIRMAN PALLADINO: Well, actually I think
18 the best use for plutonium is to burn it up in the
19 reactor and that is what the breeder program is all
20 about.

21 MR. COCHRAN: Well, I don't think you feed
22 milk to cows if you have got a problem with milk either,
23 Mr. Chairman.

24 CHAIRMAN PALLADINO: We have two choices, one,
25 use plutonium for weapons or, two, use it for reactors.

1 I guess there is a third boat. If we didn't have it, I
2 guess then we wouldn't use it.

3 MR. COCHRAN: You know, unfortunately, this
4 Administration is proceeding down a line of using the
5 plutonium from the civilian reactors in the weapons
6 program.

7 CHAIRMAN PALLADINO: I am not aware of that.

8 MR. COCHRAN: Well, you are aware that they
9 opposed the Hart-Simpson measure.

10 CHAIRMAN PALLADINO: I am aware that somebody
11 posed it or proposed it.

12 MR. GREENBERG: Well, let's not attribute to
13 this program greater objectives than it has.

14 (Laughter.)

15 MR. GREENBERG: The LMFBR program is not a
16 nonproliferation program.

17 CHAIRMAN PALLADINO: I would have brought it
18 up except that it was brought up.

19 MR. GREENBERG: We are not talking about
20 building this reactor primarily to achieve
21 nonproliferation objectives. If they are going to
22 achieve nonproliferation objectives at all, it is
23 certainly incidental to the stated program objectives
24 that one finds in the EIS. The question is does it work
25 in the utility environment in terms of safety and

1 maintainability and so forth.

2 CHAIRMAN PALLADINO: I agree with that.

3 Jim.

4 COMMISSIONER ASSELSTINE: You all have done a
5 good job in anticipating most of my questions and a
6 number of them have already been covered. So I think I
7 can zip through these fairly quickly. Mostly it will be
8 just making sure that I think I have got your thoughts
9 in mind.

10 As I understand your assessment of the
11 potential impact of the staff's decision to recirculate
12 or to circulate the EIS as a draft, you think that that
13 might not result in any delay if the bifurcated hearing
14 approach is adopted, but that it could result in how
15 much delay, assuming, for example, if your position
16 prevails?

17 MR. GREENBERG: Do you have a schedule that we
18 can discuss?

19 MS. FINAMORE: Yes.

20 MR. GREENBERG: Let Ms. Finamore discuss the
21 schedule for a moment.

22 MS. FINAMORE: Where we stand at the moment
23 with the schedule is that the applicants have issued a
24 motion to enforce the schedule and we have issued a
25 motion to reschedule the hearings. Those I think are

1 the two cases that you should consider.

2 As Mr. Greenberg mentioned before, the Board
3 has sent us a telegram yesterday saying that its
4 tentative decision was to go ahead with the hearings and
5 decide on Monday which issues should go ahead on August
6 23rd and which issues should await the preparation of
7 the final impact statement, which the staff has
8 indicated would come out on November 1st.

9 The staff has also indicated previously that
10 they believe these hearings would take at most three
11 months.

12 COMMISSIONER ASSELSTINE: Is that your
13 assessment as well?

14 MS. FINAMORE: It is very hard to say right
15 now. I really couldn't come up with an assessment.

16 CHAIRMAN PALLADINO: Could the intervenors
17 make a special effort to help keep it to three months?

18 MS. FINAMORE: We have complied with every
19 deadline of the Board since February to this moment, and
20 we will continue to comply with the expedited schedule
21 of the Board.

22 But since the staff has come up with a
23 three-month estimate, I think that that is what we
24 should go with right now. I have come up with a
25 schedule given the three categories of possibilities.

1 One is if the 50.12 exemption is granted, one is if the
2 50.12 exemption is denied, but we go ahead with the
3 applicants' proposed schedule and one is if the 50.12
4 exemption is denied and we go ahead with our proposed
5 schedule.

6 Now I think the most important thing to notice
7 when you look at these three schedules and go through
8 them is that under applicants' case one of the reasons
9 for granting this exemption request would be that the
10 informational benefits would accrue sooner.

11 Now in our mind those would come not from the
12 site preparation work itself, as Mr. Greenberg had said,
13 but at the very least from the start of any safety
14 related work. That would mean construction under an
15 LWA-2 rather than an LWA-1. So in our mind the issue
16 here is what impact would grant of a 50.12 exemption
17 have upon grant of an LWA-2 and the commencement of
18 safety related work.

19 Now when the applicants applied for a 50.12
20 exemption on July 1st of this year, they very shortly
21 thereafter issued a proposed schedule as to what would
22 happen with the LWA-1 and LWA-2. Under that schedule
23 they would file for an LWA-2 request on the 9th of
24 August, four days after the Commission had come to a
25 decision on the 50.12. Then they would see the LWA-1

1 hearings going ahead as scheduled, and that is because,
2 as I have said before, no LWA-2 can be granted unless
3 LWA-1 findings have been made. For that reason, even
4 though site work may be granted, the LWA hearings would
5 have to continue on the very same schedule that they
6 were on before.

7 What the applicants proposed if a 50.12
8 exemption were granted, is that they would apply for an
9 LWA-2 on August 9th, commence the LWA-1 hearings on
10 August 23rd, commence the LWA-2 discovery as soon as the
11 LWA-1 hearings had finished, which we are saying right
12 now would be approximately three months. Then they
13 foresaw issuance of both an LWA-1 and LWA-2 on August
14 9th of 1983.

15 That means that even though site work had been
16 granted originally, the safety related site work could
17 begin as early as August of 1983. However, for
18 practical reasons it might not be even possible to start
19 the safety related site work until the LWA-1 site work
20 or 50.12 site work had already been completed.

21 So we might have a situation where they have
22 authority to go ahead with the safety related work, but
23 as a practical matter they have gotten the 50.12
24 exemption so quickly that they are not ready to act upon
25 it. That is the first situation.

1 The second situation is if this 50.12 request
2 is denied and the applicants are successful in their
3 arguments to the Board that this hearing should be
4 bifurcated and that certain issues should await the
5 preparation of the final impact statement, in my mind if
6 we had three months' worth of hearings, bifurcating
7 those hearings would likely result in shifting around
8 the orders of presentations of the parties. That is to
9 say, that issues that must await the final environmental
10 impact statement would come after November 1st. Issues
11 that the Board has found could be decided beforehand
12 would come beforehand.

13 It is very unclear to me that this reshuffling
14 would result in much, if any, delay in the actual total
15 length of the hearings. But even given additional delay
16 of say one month, you would see a decision on the LWA
17 being granted, and Mr. Greenberg said the end of this
18 year, but I would be willing to concede January or
19 February of next year under the Board's expedited
20 schedule.

21 Once that LWA-1 is granted, the site work can
22 begin. But one point I would like to make is that as
23 soon as the hearings have ended and maybe even before,
24 the applicants could have simultaneously applied for an
25 LWA-2 and discovery could have been proceeding on an

1 LWA-2 all along. That is because under the Commission's
2 regulations they could have applied for an LWA-2 back in
3 November of last year. The regulations provide that
4 applicants can combine their LWA-1 and LWA-2
5 applications. And even if they don't combine them, the
6 only limitation to granting an LWA-2 is that the
7 findings have been made on an LWA-1.

8 That means if an LWA-1 is granted during
9 January and February of next year under applicants'
10 schedule, there is nothing to prevent the Board from
11 granting an LWA-2 shortly thereafter, especially if
12 discovery has been going on in the period between the
13 ending of the hearings and issuance of the Board
14 decision on an LWA-1.

15 In any case, we see no reason whatsoever where
16 an LWA-2, even if a 50.12 is denied, could not be
17 granted in the same time period as if a 50.12 had been
18 granted, namely, August of next year, because that would
19 give them from January to February until August to
20 complete any hearing discovery and findings on an LWA-2.

21 COMMISSIONER ASSELSTINE: If all of that is
22 correct, then, as I understand it, what you are really
23 talking about is saving the period of time in which the
24 construction work could be underway. Under either case
25 the LWA-2 would issue, which would be September or

1 August. So it would mean a saving of six to eight
2 months or so in construction work and site preparation
3 work.

4 MS. FINAMORE: That is right, and that savings
5 would occur only if applicants were unable to combine
6 the safety related and nonsafety related site work. I
7 can't talk to that point, but I could envision a
8 situation whereby if they had been conducting nonsafety
9 related site work from January or February of next year,
10 that by August they would have made enough progress on
11 that work so that they wouldn't have to wait until the
12 nonsafety related site work was completely finished
13 before they could start on the safety related work,
14 meaning you can dig the foundation ---

15 COMMISSIONER ASSELSTINE: You are arguing that
16 there could be a substantial overlap of the safety
17 related construction activity with the site preparation.

18 MS. FINAMORE: That is something that hasn't
19 been discussed by applicants. It seems to me that they
20 are assuming that they would have to wait, and I don't
21 see that as necessarily the case.

22 CHAIRMAN PALLADINO: Could I ask just one
23 question for clarification. When you were talking about
24 the hearings being done in December or possibly in
25 January, how much time was in that schedule from the

1 time say the record is closed until a decision is made?

2 MS. FINAMORE: Which case are you talking
3 about?

4 CHAIRMAN PALLADINO: Well, the one that you
5 said the hearing would be done by the end of this year.
6 I guess the LWA-1. Is there a time in the schedule
7 shown for that?

8 MS. FINAMORE: We proposed two months between
9 the time the hearings were closed and the time a
10 decision was made. The reason for that is under the
11 regulations there are certain time periods for filing of
12 proposed findings with the Board, but they can also be
13 waived if the Board wishes it to. Even given those time
14 periods, we think two months is a very possible period
15 for the Board to make its finding.

16 I would also like to point out one more
17 thing. You said why is the Clinch River breeder reactor
18 different from other reactors. Well, in prehearing
19 conferences with the Licensing Board for the Clinch
20 River breeder reactor, that Board has made it explicitly
21 clear to all the parties that it feels that it has been
22 given specific instructions from the Commission that the
23 licensing of the Clinch River breeder reactor in
24 particular must be expedited, and that is in one of the
25 Commission's policy statements that came out earlier

1 this year. For that reason they feel they have a
2 stronger mandate even than other reactors to proceed as
3 quickly as possible and in fact they have done so.

4 CHAIRMAN PALLADINO: Well, I was just calling
5 attention to the history.

6 COMMISSIONER AHEARNE: I would comment that I
7 think where the time period comes, and I know we have a
8 memo from the Chairman of the Board, and he gives
9 December as the issuance of a decision.

10 CHAIRMAN PALLADINO: The written decision?

11 COMMISSIONER AHEARNE: Yes.

12 MR. COCHRAN: You mentioned on several
13 occasions that judging by other boards and so forth that
14 you could run into problems and that things could get
15 stretched out. I want to remind you of the comments
16 that one of the Commissioners made at one of the
17 previous 50.12 exemption hearings, and that was that you
18 should make your judgments based on the fact that
19 everything is going along properly, and if in fact you
20 do run into problems, then you have problems and you
21 shouldn't have granted the 50.12 to begin with. So I
22 just wanted you to consider that factor.

23 CHAIRMAN PALLADINO: I am not sure I followed
24 you, Tom.

25 COMMISSIONER AHEARNE: The point is ---

1 CHAIRMAN PALLADINO: If we are going to run
2 into problems, we are going to run into problems.

3 COMMISSIONER AHEAPNE: No, no. The point is
4 you should assume that the schedule is going to work as
5 it is laid out, because if it doesn't, that might be
6 because of significant problems that came up with
7 respect to the plant and with respect to the
8 application. If those kinds of problems came up with
9 respect to the applications, then perhaps the exemption
10 shouldn't have been granted in the first place.

11 CHAIRMAN PALLADINO: That is rather stretching
12 it because we are making the exemption on the basis of
13 factors that we assessing independent of that. Also, I
14 have got to say that there are delays even though there
15 are no problems in the end. There are a lot of causes
16 for delays, and I haven't made a study of them all. All
17 I know is they add up to much longer delays than I
18 sometimes think we need to have. But I don't know what
19 is going to happen on this. I just want to know how
20 much time there was there for the writing of the
21 decision and I got that answer.

22 COMMISSIONER ASSELSTINE: Barbara, given what
23 you said, and if you picked a number of bounds and DOE
24 just said their present view was 9 to 12 months, what
25 would be your bounds for the potential time saving of

1 granting the exemption.

2 MS. FINAMORE: I haven't finished with our
3 case, which I think in fairness we should present. If
4 the entire hearing was postponed until the final FES was
5 granted, I would assume that would add three months on
6 to the schedule. Therefore, my bound is not 9 to 12
7 months. It is zero to 9 months.

8 COMMISSIONER ASSELSTINE: But your best case
9 assumes that if construction were authorized or site
10 preparation work were authorized in January to February
11 of next year, that assumes that when you got to the
12 point where an LWA-2 could be issued at the earliest
13 possible time, in August or so, that you could then
14 double up.

15 MS. FINAMORE: Exactly, and that is something
16 that I don't think the applicants have even addressed.

17 COMMISSIONER ASSELSTINE: A question that I
18 asked the applicants this morning on what, if any,
19 attention we should give to the potential impact of our
20 decision, one way or the other, on the Congressional
21 debate, I think you all are pretty clear on that. Your
22 view is that that is totally irrelevant to what the
23 Commission has to decide.

24 MR. GREENBERG: Correct.

25 COMMISSIONER ASSELSTINE: Again on the

1 question I asked this morning on the threshold showing,
2 I take it that your view is that both as a general
3 proposition, and particularly for 50.12, you view a
4 strong evidentiary burden being on the applicant to
5 demonstrate emergency or exigent conditions; is that
6 right?

7 MR. GREENBERG: Absolutely.

8 COMMISSIONER ASSELSTINE: It is a proof
9 showing.

10 MR. GREENBERG: It is a proof showing and I
11 think it is clear under the Commission's precedent.

12 COMMISSIONER ASSELSTINE: The impression that
13 I had from reading our brief was that you believe there
14 is now a requirement under law before authorizing site
15 preparation activities to conduct a hearing. Is that
16 right, or do you differentiate between safety and
17 nonsafety related activities?

18 MR. GREENBERG: No, we don't.

19 COMMISSIONER ASSELSTINE: So your view is
20 basically that under either case that the Commission is
21 under an obligation, either from NEPA or the Atomic
22 Energy Act or a combination of the two.

23 MR. GREENBERG: Correct.

24 COMMISSIONER ASSELSTINE: So as far as you are
25 concerned then, there is no special distinction as far

1 as this emergency plan service water piping system. You
2 view that there now exists a requirement for the other
3 site preparation activities in addition to that.

4 MR. GREENBERG: Yes, that is correct.

5 However, if I lost with respect to the first point ---

6 COMMISSIONER ASSELSTINE: With respect to that
7 particularly point ---

8 (Laughter.)

9 MR. GREENBERG: I can imagine one making a
10 distinction between safety related activities and
11 activities which affect the environment. If we lost on
12 our contention that a hearing is required with respect
13 to activities that have environmental impacts, I think
14 we would still be arguing that there is a distinction at
15 that point between those kinds of activities and
16 activities which are safety related and a hearing is
17 required in connection with the safety related
18 activities.

19 COMMISSIONER ASSELSTINE: I think I understand
20 your argument on the segmentation issue, and
21 particularly as that is affected by the staff's decision
22 to recirculate the EIS.

23 The question I wanted to ask was would you
24 give any weight in this particular case to the fact
25 that, first of all, there has been an environmental

1 impact statement in the past and there have been reviews
2 of the potential impact of the site preparation
3 activities in particular, or do you believe that the
4 cases as you cited, and I think principally the highway
5 cases, are controlling, and that you really don't see a
6 distinction between those?

7 MR. GREENBERG: I don't see a distinction, and
8 particularly because the first impact statement that you
9 have in this case is one that was issued in 1977 and it
10 is five years old. Under the guidance provided by the
11 Council on Environmental Quality, that kind of dated
12 environmental analysis is inherently suspect. Then the
13 staff has made a decision that it is necessary to
14 recirculate and presumably that decision was made in
15 light of the requirements of NEPA.

16 Under those circumstances we think that the
17 Commission is compelled to await the completion of the
18 environmental record.

19 COMMISSIONER ASSELSTINE: Are there elements
20 that have been identified by the staff as significant
21 new information that touched directly on the site
22 preparation activities?

23 MR. GREENBERG: Well, I mentioned two relating
24 to the presence of endangered mussels and the "Sogor" I
25 believe, which is a game fish found in the Clinch

1 River. I have not yet had an opportunity unfortunately
2 to review that impact statement. I haven't received a
3 copy.

4 COMMISSIONER ASSELSTINE: We just got it
5 retyped.

6 (Laughter.)

7 MR. COCHRAN: Excuse me, could I add one
8 comment?

9 COMMISSIONER ASSELSTINE: Sure.

10 MR. COCHRAN: There is one issue site related
11 that concerns me that I tried to raise in the licensing
12 proceeding, but it was thrown out because I was told I
13 should have raised it in 1975 when I was much younger,
14 that is that there will be some dredging of the river in
15 order to construct a barge port and then subsequently
16 there will be barge traffic.

17 Earlier this year I was reading some of the
18 Oak Ridge literature and discovered that there had been
19 dredging in Clinch River previously and that the Clinch
20 River site is downstream from the White Oak Creek which
21 is where a lot of old radioactivity was buried and is
22 leaching out of the White Oak Creek and so forth and it
23 is deposited in the river stream.

24 This dredge material was thrown up on a couple
25 of islands just upstream, a couple of miles upstream

1 from the Clinch River site, and radiation measurements
2 were taken on top of the dredge spills and you were
3 getting very high readings in terms of rems per year on
4 top of those dredge spills.

5 Now my point is that I didn't think the
6 monitoring along the river basin and at the barge port
7 was sufficiently defined in terms of the number of
8 monitors that one knew accurately what kind of
9 activity was in the sediment there that was going to
10 be dredged. That is something that you ought to look at
11 in any case and I think it is something that one ought
12 to get comments on in the environmental impact statement
13 supplement. It is not addressed in the supplement.

14 COMMISSIONER ASSELSTINE: The applicants, both
15 in the materials they submitted and again this morning,
16 contended that the grant of a 50.12 exemption would not
17 obviate any steps in our normal licensing process. Is
18 that your view and, if not, what specific steps do you
19 think are obviated by grant of the exemption?

20 MR. GREENBERG: Well, I don't think it
21 obviates steps in the sense that it obviates findings
22 that are going to have to ultimately be made by the
23 Board or the Commission so they are correct as far as it
24 goes. It changes the rules. It says work first,
25 findings later. Usually we proceed the opposite way in

1 Commission practice. You make the findings first and
2 then you allow the work to go forward. That is the
3 fundamental reversal that they are seeking in terms of
4 the operation of this Commission, and I don't think that
5 reversal can be just simply dismissed as inconsequential.

6 CHAIRMAN PALLADINO: Aren't we making findings
7 now?

8 MR. GREENBERG: I am referring to the findings
9 required for issuance of an LWA-1 which are all the
10 findings required in connection with the National
11 Environmental Policy Act.

12 CHAIRMAN PALLADINO: You said work first and
13 then findings, and I think what we are in the process of
14 doing is finding and then we will decide whether there
15 is going to be work.

16 MR. GREENBERG: But in the ordinary course,
17 Mr. Chairman, you would make all the LWA-1 findings,
18 which are much broader than the findings made under
19 Section 50.12, before any work were permitted to go
20 forward at the Clinch River site.

21 CHAIRMAN PALLADINO: I just must point out we
22 are in the process of trying to make findings right
23 now. They are under a different part of the regulations.

24 COMMISSIONER ASSELSTINE: I think I understand
25 your argument that this decision, if it doesn't

1 foreclose the alternative of abandonment, that it would
2 at least prejudice the selection of alternatives down
3 the road, and I notice you cited a number of cases in
4 support of that proposition. I think it was one of your
5 earlier briefs that you filed the last time around.

6 What is your response to DOE's reliance on
7 Davis-Bessie in that regard?

8 MR. GREENBERG: I should have gone back and
9 gotten a copy of that case at lunch and I didn't have a
10 chance to do so, unfortunately. So I am going to be
11 speaking from memory and I am not sure that I am
12 entirely correct. But as I recollect that case, that
13 was one of the cases that came up early where
14 construction activities had been started prior to NEPA
15 and the question was whether they were going to be
16 allowed to proceed after the effective date of NEPA. It
17 was a follow-on to the Calvert Cliffs' decision.

18 I hope I am right in my recollection of that
19 case, but that is my recollection of the case and the
20 Court of Appeals was dealing with that very limited
21 situation of whether it was permissible to allow these
22 activities which had been previously commenced to
23 continue pending completion of the NEPA review. That is
24 a far different situation, it seems to me, from this
25 case where there has yet to be any commencement of site

1 activities and you aren't dealing with a particular
2 problem of grandfathering hardship cases that the
3 Commission had to deal with in those early years of
4 implementation of NEPA in 1970, '71 and '72. But I can
5 certainly check on that case for the record and confirm
6 my understanding.

7 COMMISSIONER ASSELSTINE: Your brief argues or
8 at least implies that grant of the exemption request
9 would result in significant environmental impacts and
10 you discussed that a little bit earlier in response I
11 think one of either the Chairman's or John's questions.
12 I take it from what you said earlier that you draw that
13 conclusion based upon the fact that some \$80 million are
14 going to be committed to the site preparation
15 activities. Do you point to any specific elements of
16 those site preparation activities that are particular
17 contributors to adverse environmental impacts?

18 MR. GREENBERG: Well, I think it is difficult
19 to point to individual contributors, although Dr.
20 Cochran has just mentioned that it may be that the
21 dredging activity, to take one example, in the Clinch
22 River in connection with construction of the barge
23 facility could prove to be a particular problem even
24 though the dollar associated with that one activity may
25 not be that large. But if you are turning up

1 radioactivity in your dredge spoils, you could have a
2 significant environmental effect.

3 Our basic point here is that these are a lot
4 of activities, there is a lot going on and it is best to
5 analyze fully just what the environmental impacts are
6 before decisions are made.

7 Ms. Weiss has a word to add here.

8 MS. WEISS: I just wanted to add one thing.
9 In my view, I don't think it really matters for purposes
10 of the question that you are asking, that is, do you
11 need to have a final impact statement before you go out
12 there and do that site work. Whether you are putting a
13 nuclear power plant or low-income housing project on
14 that site, the fact is that you have got to clear a
15 whole lot of acres and you are going to dredge. This is
16 a major federal action. The land clearing itself is \$8
17 million worth of worth and it will have a significant
18 impact on the environment whether or not there is ever a
19 nuclear plant there.

20 You know, if HUD was coming in with a project
21 to do that amount of land clearing and put a housing
22 project on top of it, I don't think we would have any
23 argument that you had to have an impact statement before
24 you could cut the trees down. I really don't see
25 analytically that there is a difference between the two

1 cases.

2 COMMISSIONER ASSELSTINE: I gather, too, that
3 you would not accord any weight to the argument that at
4 least most, if not all, of the adverse effects can be
5 redressed after the fact?

6 MS. WEISS: I think for purposes of that
7 argument that redressability is absolutely irrelevant.

8 CHAIRMAN PALLADINO: Say that again.

9 MS. WEISS: I think redressability is
10 irrelevant for purposes of that.

11 CHAIRMAN PALLADINO: Why do you say that? I
12 thought it was one of the four factors?

13 MS. WEISS: It may be one of your factors, but
14 your factors aren't dispositive with respect to what the
15 National Environmental Policy Act requires.

16 CHAIRMAN PALLADINO: That is not the legal
17 advice I have gotten.

18 MS. WEISS: I am giving you my legal advice.
19 It may be inconsistent with what you have heard, but I
20 am darn sure it is right.

21 (Laughter.)

22 CHAIRMAN PALLADINO: Well, someone could argue
23 that point, but with regard to the status of the EIS, I
24 understand in the Sharon Harris case we were at about
25 the same position and ---

1 MR. GREENBERG: Well, you know, curiously
2 enough, by the time the Commission had the Sharon Harris
3 case in front of it, which was in June of 1974, the
4 final environmental impact statement, and it was a
5 supplement by the way, had already been issued. It is
6 true at the time that the Licensing Board granted the
7 relief sought there was not a final supplement.

8 The Commission when it was making its decision
9 was looking back and it said, well, now we have a final
10 impact statement and everything looks okay. I think it
11 is distinguishable from this case.

12 CHAIRMAN PALLADINO: Well, okay, but I would
13 rather have legal people argue that me and you argue it,
14 but I don't think that is right.

15 (Laughter.)

16 COMMISSIONER ASSELSTINE: You note on page 9
17 of your brief that Congressional policy, if anything,
18 makes it plain that licensing exemptions are not
19 appropriate. What specific items did you have in mind
20 there?

21 MR. GREENBERG: Well, really two points.
22 First, that throughout the history of this project
23 licensability has been emphasized and the importance of
24 following through with the Commission licensing
25 procedures and treating the Clinch River breeder reactor

1 as you would treat a conventional light-water reactor.
2 We draw the conclusion from that history that Congress
3 did not intend or invite the Commission to invoke
4 exemptions to its licensing procedures which are out of
5 the ordinary and, indeed, would be extremely unusual in
6 the case of a conventional light-water reactor.

7 Secondly, in terms of the history of
8 Congressional appropriations for this project, although
9 there is reference in the recent history to proceeding
10 expeditiously, we don't find in that history any
11 indication that Congress intended that the Commission
12 would consider or in fact use special exemptions in
13 connection with this reactor.

14 COMMISSIONER ASSELSIENE: You talked a little
15 bit before in response to another question about the
16 precedential effect. Could you talk a little bit more
17 about that? To what extent, if at all, do you see the
18 grant of the exemption in this case to have a
19 precedential effect, either for this project or for
20 other projects?

21 MR. GREENBERG: Well, I mentioned that I am
22 worried about the precedential effect in this case because
23 it seems to me that we are undercutting the notion that
24 we are going to hew to standard licensing procedures in
25 connection with the Clinch River breeder reactor, and I

1 am not confident that if an exemption is granted here
2 that we won't be hearing arguments down the road that,
3 well, we treat this unique once and let's treat it as
4 unique again, or a third time or a fourth time.

5 I can't project just what those situations
6 would be, but as I noted earlier, Mr. Edgar was quite
7 careful not to exclude the possibility that at some
8 future point, although he didn't anticipate it now,
9 there might be a need for some exemption of some sort.

10 COMMISSIONER ASSELSTINE: I thought he was
11 pretty clear for this project as opposed to other
12 possible projects.

13 MR. GREENBERG: Well, I read Mr. Edgar pretty
14 carefully, and I know he preserves every last option for
15 his client.

16 (Laughter.)

17 CHAIRMAN PALLADINO: You wouldn't blame him
18 for doing that, would you?

19 MR. GREENBERG: Secondly, it seems to me that
20 you are creating a possible precedent with respect to
21 other government-sponsored projects, demonstration
22 plants or what-have-you that might have informational
23 benefits as their primary objective.

24 Third, it seems to me you are resurrecting a
25 procedure which has essentially been left to whither

1 away. That is, since 1974 Section 50.12 has not been
2 used to grant site authorization to proceed with site
3 preparation activities, except in one case where it was
4 uncontested and the LWA procedure was not available and
5 it was an amendment to the LWA. That is the River Bend
6 case.

7 So that by invoking Section 50.12 here in
8 connection with Clinch River, I would query whether or
9 not you are giving a signal to other folks who are
10 building conventional light-water reactors around the
11 country that if they are having some trouble getting
12 started that maybe they ought to try to come in and get
13 a 50.12 exemption as well.

14 MR. COCHRAN: Could I give some examples?

15 COMMISSIONER AHEARNE: Sure.

16 MR. COCHRAN: LDP is an example, the test and
17 evaluation facilities for waste disposal, the Whipp site
18 if it were licensed, but we will discard that, the
19 repositories that will be licensed for waste disposal by
20 DOE and future reprocessing plants built by DOE if they
21 are licensed, for example, the development reprocessing
22 plant that is scheduled for Oak Ridge if that were to
23 undergo a license.

24 I would anticipate that you will see in every
25 DOE environmental impact statement that it is Department

1 policy to expedite this particular project to meet the
2 programmatic objectives. I mean, you know, you just
3 write that in because that is going to buy you a couple
4 of months at the Nuclear Regulatory Commission.

5 COMMISSIONER ASSELSTINE: Your brief on page
6 33, footnote 19, emphasizes that power needs and the
7 availability of alternate sources to meet those needs on
8 a timely basis and delay costs was the reason for
9 granting an exemption at least in Sharon Harris. You
10 are not trying to imply by that footnote, are you, that
11 that would be that only power needs would be a
12 justification for need and public interest test?

13 MR. GREENBERG: What I think I said, quoting
14 my footnote, is that those were important factors in
15 influencing the outcome of the deliberation.

16 COMMISSIONER ASSELSTINE: But not exclusively.

17 MR. GREENBERG: Well, as we have looked at the
18 history of Section 50.12, and indeed at the history of
19 the LWA provision itself, what we find is that the
20 primary purpose and certainly the expressed purpose of
21 the Commission at the time 50.12 was adopted and again
22 at the time the LWA procedures were adopted in 1974 was
23 to help bring power on line. That is the express
24 purpose of these provisions. There was no reference to
25 using these provisions in connection with projects that

1 were unrelated to power needs, and I think it is a fair
2 inference from that history that the 50.12 exemption has
3 no application at all to this case.

4 COMMISSIONER ASSELSTINE: Assuming for a
5 moment that you are not right on that, you also seem to
6 take a narrow view on the hardship issue. I think you
7 frequently mentioned in your presentation that DOE must
8 demonstrate that the site preparation activities
9 themselves will provide some direct benefit.

10 I guess I would like to get your feeling about
11 the argument that the conduct of site preparation
12 activities now will result in subsequent developments in
13 subsequent development stages of the project to go
14 forward sooner and if there are particularized
15 benefits ---

16 MR. GREENBERG: Well, I think I tried to
17 distinguish really. I think there are two kinds of
18 benefits that one can talk about. One can talk about
19 whether there are benefits which are directly associated
20 with site preparation activities, qua site preparation
21 activities.

22 COMMISSIONER ASSELSTINE: Right.

23 MR. GREENBERG: I dont see any benefits there
24 at all. Then one can talk about a second order of
25 benefits that are associated with accelerating the

1 overall progress in the construction of this plant.
2 With respect to those benefits or asserted benefits, our
3 position is that the applicants simply haven't made the
4 case. They are talking largely in terms of speculation,
5 well this might happen, that could happen, if this
6 doesn't happen then some other system will fail down the
7 road, and there is nothing to get a handle on.

8 I mean if the applicants could come in here
9 and demonstrate that their design team or their
10 construction team is going to disband in six months and
11 they will never be able to build Clinch River if they
12 couldn't start site preparation activities in August,
13 that would be one thing, but they haven't said that.
14 They have talked about impacts on the LDP and impacts on
15 closing the fuel cycle and impacts on international
16 cooperation.

17 CHAIRMAN PALLADINO: Well, what is wrong with
18 that? So they talked about it. I mean they discuss it
19 and they view the story on it and they are keeping their
20 options open. What is wrong with that?

21 MR. GREENBERG: Nothing is wrong with it. I am
22 delighted to have it, but I don't think they have met
23 the burden that they have in demonstrating ---

24 CHAIRMAN PALLADINO: Why not?

25 MR. GREENBERG: Well, all I can tell you is

1 that I am not impressed by the evidence that the
2 Department of Energy has mounted.

3 COMMISSIONER ASSELSTINE: Putting aside for
4 the moment whether this record does it or not, I guess
5 the question I was interested in is if you had a
6 particularized showing of informational benefits or
7 programmatic benefits that were directly tied to the
8 period of time that would be saved, in your view would
9 that be a sufficient showing to warrant the issuance of
10 an exemption?

11 MR. GREENBERG: I don't think so in this case
12 because we have a program that is measured in terms of
13 years and decades and we are talking about an exemption
14 that is supposed to be granted where there are emergency
15 or exigent circumstances. So even if you got an
16 informational delay, and I would grant for purposes of
17 argument that there may be some informational delay,
18 that doesn't constitute the kind of exigent or emergency
19 circumstance which warrants the grant of relief.

20 MR. COCHRAN: Could I add two things.
21 Informational benefits cut both ways and you have only
22 heard one-half. The CRBR program benefits by knowledge
23 from FFTF and other activities if you delay it, and you
24 are looking at really a marginal net benefit between
25 those two that is, you know, speculative and really

1 nobody has come up with any good examples.

2 As Barbara indicated, we are really talking
3 about a delay in terms of the actual construction
4 activities, the CRBR, that may be zero months.

5 CHAIRMAN PALLADINO: Let me explore that now.
6 You know, we all learn from everything we do, and
7 because we learn something or because we do the delay in
8 one thing doesn't mean that that was the right way to do
9 it. Sure we learned from FFTF, but what did FFTF learn
10 from? Much of what they learned from FFTF is also
11 confirmatory that they were on the right track, but we
12 haven't been able to implement it.

13 I think the essence is that we have been
14 delaying and delaying and now this is another delay. If
15 we had done the space program that way, we would still
16 be waiting for a space shot is the way I look at it
17 because the time frame which we have been talking about
18 is about the length of time in which we made significant
19 progress in the space program.

20 MR. GREENBERG: Well, Mr. Chairman, we keep
21 talking about delay. I guess our point is this project
22 is at this point on track in terms of the licensing
23 before the Commission as instituted by DOE in January of
24 1981, and there is no indication that it is going off
25 track at this point.

1 CHAIRMAN PALLADINO: Well, it depends on what
2 happens as a result of this presentation.

3 COMMISSIONER ASSELSTINE: I have no more
4 questions.

5 CHAIRMAN PALLADINO: Any other questions?
6 (No response.)

7 CHAIRMAN PALLADINO: Well, we thank you very
8 much. I enjoyed the exchange as I always do and I hope
9 that we make the right decision no matter what it is.

10 MR. GREENBERG: We appreciate the opportunity
11 to present our views.

12 CHAIRMAN PALLADINO: I am going to suggest
13 that we take a five-minute break and then we will come
14 back and continue on.

15 (Whereupon, a brief recess was taken.)

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1 CHAIRMAN PALLADINO: I wonder if we could go
2 on. We have three more individuals speaking in favor of
3 denying the exemption request, and we will continue on
4 with Mr. Michael Faden from the Union of Concerned
5 Scientists.

6 MR. FADEN: Thank you, Mr. Chairman and
7 Commissioners. I appreciate the opportunity to be
8 before you. I know it is late in the day, and it has
9 been a long year on this issue, so I will try to make a
10 few points very briefly. All of what I say is in the
11 context of where the public interest does lie on this
12 issue.

13 Earlier on today, the applicants cited, and
14 also in their memoranda, a number of broad and general
15 energy policy considerations. We agree with intervenors
16 that those are by and large extraneous to this
17 proceeding, but having been -- since they have been
18 cited, we wish to offer a slightly different view.

19 Many experts look at the nuclear power picture
20 in this country and don't see the need for emphasis on
21 the development of breeder reactors. They see some
22 quite severe safety, operational, quality assurance, and
23 economic problems with the current generation of
24 light/water reactors.

25 Let me put on the record a brief quote from

1 Mason Willrich, who is now vice president for corporate
2 planning of the Pacific Gas and Electric Company. He
3 told a Uranium Institute symposium last year, and I
4 quote, "U.S. electric utilities may be understandably
5 reluctant to order additional nuclear power plants as
6 long as the cleanup of the Three Mile Island accident
7 remains stalled. It seems to me ironic that the federal
8 government is now pushing ahead with the Clinch River
9 demonstration breeder reactor at a time when a disabled
10 light/water reactor immediately threatens the future of
11 the light/water reactor industry. There will be no
12 market for breeder reactors unless there is a prolonged
13 period of expansion in the market for light/water
14 reactors. If the Reagan Administration intends to
15 revive and maintain a viable nuclear power option in the
16 United States, the Three Mile Island cleanup should have
17 in the near term a higher priority in the use of scarce
18 government funds than breeder reactor development."

19 We wholeheartedly agree with that quote. We
20 agree with the need to not only get Three Mile Island
21 Unit 2 cleaned up, but to solve the outstanding safety
22 problems that exist with light/water reactors, and we
23 believe that should be the priority here and at DOE. We
24 think the public interest lies much more strongly there.

25 You have heard a lot about expressions of

1 Congressional intent. We believe, along with the
2 intervenors, that none of them demonstrate any intention
3 whatsoever by Congress that any part of the licensing
4 process for this plant be truncated. Virtually all of
5 the quotes before you, laid before you in the memorandum
6 from OPE have to do with using the licensing process to
7 find out about breeders, and to determine what the
8 questions will be before they are commercialized.

9 In our view, that means huing very
10 consistently to the licensing process as it is on the
11 books. We believe if this exemption, and it is fairly
12 minimal compared with some that can be applied for down
13 the line, we believe if this one is granted, you will
14 see others. The political pressure increases, and that
15 puts everyone who is more interested in safety than
16 speed in an untenable position.

17 We believe, and I think on this point we agree
18 with the applicants, at least with Secretary Davis this
19 morning, that although it should not be relevant to this
20 proceeding, the question of future Congressional action
21 cannot help but be relevant. It is clear to us that
22 Congressional support for this project is declining.
23 Last year, as you are probably aware, in both Houses of
24 Congress this project succeeded in retaining its funding
25 by the narrowest margins in history, 20 votes in the

1 House of Representatives on a day when more than 40
2 members were absent, and only two votes in the Senate.

3 We believe that people on all sides of this
4 issue are looking to see what happens with the project
5 this year, and that Congressional response to it will be
6 markedly different if ground is broken. That is not the
7 way a rational decision-making process should work, but
8 I believe it is the way the Congress does work.

9 We see then, as Mr. Greenberg said earlier,
10 that the only neutral course, not just the most neutral
11 course, for this Commission is to stick as closely as
12 possible to its established procedures. In this case
13 that means denial of the exemption request.

14 I think I will stop there, and I will
15 entertain any questions you have.

16 CHAIRMAN PALLADINO: Any questions?

17 (No response.)

18 CHAIRMAN PALLADINO: Thank you.

19 MR. FADEN: Thank you.

20 CHAIRMAN PALLADINO: Next we have Ms. Lee
21 Breckenridge, from the Attorney General's Office of
22 Tennessee. Is that right?

23 MS. BRECKENRIDGE: That is right, Mr.
24 Chairman. I am Assistant Attorney General. I am here
25 today representing the Attorney General for the State of

1 Tennessee.

2 The Attorney General opposes the exemption,
3 and in saying that, though, I would like to make it very
4 clear that the Attorney General takes no position on the
5 merits of the project itself. We have taken no position
6 on that. However, we feel that the mechanisms of the
7 normal licensing regulations are good, fair procedures.
8 They are the best way to protect the public interest.
9 They ensure that all points of view are fully considered
10 before work on the site begins, and they are an aid to
11 impartial decision-making, especially where you have a
12 unique or controversial project. They provide the most
13 neutral, evenhanded course that the Commission can
14 follow.

15 This is the position that we have taken in the
16 past, and we feel that nothing has happened in the
17 interim to change our position or to undermine the
18 soundness of the Commission's previous decision on the
19 exemption request.

20 Rather than reiterate all of our arguments, we
21 would like to ask that the Commission consider our
22 previous memoranda, and ask that the exemption be denied.

23 CHAIRMAN PALLADINO: Okay. Thank you. Any
24 questions?

25 COMMISSIONER AHEARNE: Just one question.

1 MS. BRECKENRIDGE: Yes.

2 COMMISSIONER AHEARNE: Is the Attorney General
3 a participant party in the proceeding itself?

4 MS. BRECKENRIDGE: Yes, we have participated
5 in the proceeding since the beginning.

6 COMMISSIONER AHEARNE: And could you briefly
7 summarize the position you are taking in the proceeding?

8 MS. BRECKENRIDGE: In the past, we had
9 submitted a contention or a set of contentions regarding
10 socioeconomic impacts. Recently, after the Board
11 proceedings were resumed, we withdrew as an official
12 party and have chosen to participate as an interested
13 state.

14 CHAIRMAN PALLADINO: All right. Thank you
15 very much, Ms. Breckenridge.

16 MS. BRECKENRIDGE: Thank you.

17 CHAIRMAN PALLADINO: We have Theodore Taylor,
18 independent consultant.

19 MR. TAYLOR: Mr. Chairman, members of the
20 Commission, in spite of the lateness of the day, I am
21 still grateful to have this chance to express very
22 briefly my views about the issue that you have been
23 discussing during the day.

24 In my view, the most important issue has
25 gotten relatively little attention during the course of

1 the day, and that is, in the context of whether
2 accelerating by making this exemption, accelerating the
3 process of a commitment to the Clinch River breeder
4 reactor, the public interest is being served or not.

5 There has been a lot of discussion about
6 changes in the degree of service to the public interest
7 of the Clinch River breeder reactor and the LMFBR. I
8 would like to look at the other side of the coin, and
9 that is the change in the risks to members of this
10 country, people in this country, and to the rest of the
11 world in proceeding with an extraordinary act of
12 accelerating the construction of the Clinch River
13 breeder reactor, and the implied reasons for doing this
14 that we have heard a great deal about today, that is,
15 that this is not to be considered a project in
16 isolation, this is the start of a strong effort to press
17 for U.S. vigorous development of the LMFBR concept, and
18 in particular in consort with a worldwide effort to come
19 to make use of plutonium in fast breeder reactors
20 rapidly.

21 We have also heard that rapidly means, at
22 least for the United States, looking at where we are
23 now, on the scale of this technology becoming full-blown
24 possibly by 2010 or 2020. So, automatically, I think
25 these deliberations are forced into a situation of

1 having to consider the long-range impact on the public
2 interest of a successful program.

3 The arguments for the program are based on the
4 long-range impact. My deep concern about the impact of
5 the full-blown development of LMFBR technology in the
6 United States and abroad has to do with the risks of
7 nuclear violence. I am most concerned about the risks
8 of nuclear war.

9 There has been a great deal of discussion
10 about the matter of our having to participate in the
11 process, the developing of this technology if we are to
12 have any effect on non-proliferation policies related to
13 it and perhaps other technologies. I don't understand
14 that. It seems to me that if we are concerned about
15 something, we should address what we are concerned
16 about, and not come in sideways, and say, well, we don't
17 really like this, but we are going to participate so
18 that we can have some effect.

19 I think it is worth asking some rather
20 detailed questions about what it might be like if this
21 global program is in fact successful. What would it be
22 like? Using statements of what is credible for the
23 contribution of nuclear power, fission nuclear power to
24 the world economies about 40 or 40 to 50 years from now,
25 I think, not exaggerating those projections at all, but

1 taking sort of a consensus among people who believe this
2 is a good thing to do, just look at the numbers.

3 We are talking about somewhere in the vicinity
4 of 3,000, the equivalent of 3,000 1,000-megawatt nuclear
5 power plants by the year 2030, roughly 50 years from
6 now, flowing between those plants and something on the
7 scale of 50 to 100 reprocessing plants and fuel
8 fabrication plants, will be something on the scale of
9 five million kilograms of plutonium per year. This will
10 be flowing across dozens of national borders. It will
11 be accumulating in quantities of tons to tens of tons
12 per year in at least two dozen countries throughout the
13 world.

14 Question: Is there in mind clearly on the
15 part of not just the Department of Energy but those in
16 this country and worldwide who are promoting our moving
17 rapidly in this direction, is there a clear idea of how
18 it is to be achieved that really insignificant fractions
19 of these very large quantities of plutonium will one way
20 or another be used for destructive purposes?

21 I see no evidence of careful attempts to try
22 to construct on paper -- it has to be for the present --
23 a picture of what an international control mechanism
24 that would be capable of keeping these materials out of
25 the hands of not just governments but possibly

1 non-governmental groups, terrorists, and at the same
2 time allow us to achieve these benefits that we heard
3 about particularly this morning, without the attendant
4 risks of nuclear violence on a really large scale.

5 To me, the numbers matter. We are not talking
6 about the appearance of a few kilograms of plutonium in
7 Israel or in Pakistan or some other country. We are
8 talking about automatically there appearing tons of
9 weapons grade plutonium in many, many countries as being
10 something which by inference we want.

11 I reject that completely. I certainly reject
12 it beyond simply my own attempts to try to understand
13 what kind of a world it might be like to have this going
14 on, by saying that I see no evidence of serious efforts
15 on the part of any of the strong promoters of nuclear
16 power to understand this, and until that is done, I
17 would say the Clinch River breeder reactor should be put
18 on hold.

19 When the question comes up about whether or
20 not the decision to proceed should be accelerated by a
21 few months by invoking an exception to the regular
22 licensing rules, I feel a little bit like someone who is
23 being told, your head is going to get cut off next
24 Wednesday -- oh, no, I am sorry, it is going to be next
25 Tuesday.

1 I can't view this as simply a procedural
2 question. There is a much broader question. The rate,
3 I believe, of humanity lies in what we do with nuclear
4 power, and in particular with fast breeder reactors, in
5 which weapons usable plutonium is not an option, it is
6 automatic in the system. The system will not work
7 without separated plutonium being transported, becoming
8 an article of commerce on a vast scale.

9 I frankly don't believe that these numbers
10 have sunk in in Congress, in the Department of Energy.
11 I find very few people around who have really tried to
12 think through what this would be like. I have tried to
13 do so myself, and I come out saying no, certainly to the
14 applicants' request.

15 Thank you.

16 CHAIRMAN PALLADINO: Well, thank you, Mr.
17 Taylor. You bring out some thought-provoking points. I
18 would love to spend a little time discussing them with
19 you. I think there are some thoughts that are a bit
20 different from the worst one might consider.

21 COMMISSIONER AHEARNE: Ted, my comments are,
22 thank you, and perhaps in a different forum we can do
23 that, because the issues that you have talked about for
24 the past several years are ones that I think we ought to
25 be addressing.

1 MR. TAYLOR: I certainly will be assured that
2 you will.

3 CHAIRMAN PALLADINO: Thank you very much.

4 Before we break up, I am going to ask you if
5 you would bear with us for another four or five
6 minutes. We have an affirmation session that takes
7 about four or five minutes, but if we break up and wait
8 for the room to be cleared, it will be another ten or
9 fifteen minutes before we get to it.

10 I would like to say this with regard to this
11 afternoon's session. We very much appreciate all the
12 participants being here. I think it has been a very
13 worthwhile and fruitful exchange. We have scheduled a
14 meeting for August 5th as a possible date for a vote,
15 and any submittals that people have in mind would be
16 most helpful if they came in within the next few days.

17 Did you have a particular point, Mr. Edgar?

18 MR. EDGAR: I would like to request two
19 minutes, if I may. There was one item on the record
20 that I think is a matter of physical impossibility and a
21 source of confusion. I think it would be beneficial if
22 the Commission would hear this.

23 CHAIRMAN PALLADINO: All right.

24 COMMISSIONER AHEARNE: Yes.

25 MR. EDGAR: It basically involves the question

1 of schedule effect in the hearings. Now, I want to make
2 three very simple points here. The first is that NRDC
3 is asking for a delay in the start of hearings. If you
4 delay the start, you delay the end point, which is the
5 decision. Bifurcation can reduce the effect of that
6 delay, but not eliminate it.

7 Now, the thing that is of concern is that
8 there was a discussion of, can't you take the LWA1 and
9 the LWA2, shorten your non-safety related work, and
10 accelerate forward your safety related work, and make it
11 come out together? The problem with doing that is that
12 you do have a physical impossibility. This work is
13 constrained to certain periods of time.

14 The reason we put in the services, clear the
15 site, and dig the 60-foot hole is that once we get to
16 the bottom of the hole, we can pour an 18-foot
17 foundation slab. What has been suggested is that we dig
18 the hole halfway down, then we pour the slab, and then
19 how are you going to dig the hole? That is physically
20 impossible. You can't do it.

21 I really think that is important, because it
22 could be a source of confusion, and the record shouldn't
23 be left that way.

24 CHAIRMAN PALLADINO: Okay. Thank you.

25 Now, unless the Commissioners have other

1 comments, I am going to adjourn this meeting and ask you
2 to stay for not over five minutes, and I will reconvene
3 the other meeting. So, the meeting on the Clinch River
4 exemption request is adjourned.

5 (Whereupon, at 4:22 p.m., the meeting was
6 adjourned.)

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This is to certify that the attached proceedings before the

COMMISSION MEETING

is the matter of: Public Meeting - Oral Presentation on Clinch River
Breeder Reactor Project

Date of Proceeding: July 29, 1982

Docket Number: _____

Place of Proceeding: Washington, D. C.

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Meeting Title: Oral Presentation on Clark River Breeder Reactor Project

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3. <u>Order dated 7/9/82</u>	<u>1</u>	*		<u>1</u>	
4. <u>Brief of NRDC and Sierra Club in opposition to Applicant's application request</u>	<u>1</u>	*		<u>1</u>	
5. <u>Letter from DUE, w. Kenneth Davis to Commissioners dated 7/1/82</u>	<u>1</u>	*		<u>1</u>	
6. <u>Memorandum from J. Pearce dated 7/12/82 on CRBR Questions</u>	<u>1</u>	*		<u>1</u>	
7. <u>Memo from F. Rennie dated 7/28/82</u>		*			

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