

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

\*82 MAY 18 P3:37

Nunzio J. Palladino, Chairman  
Victor Gilinsky  
John F. Ahearne  
Thomas M. Roberts  
James K. Asselstine

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BRANCH

SERVED MAY 18 1982

In the Matter of

UNITED STATES DEPARTMENT OF ENERGY  
PROJECT MANAGEMENT CORPORATION  
TENNESSEE VALLEY AUTHORITY

(Clinch River Breeder Reactor  
Plant)

Docket No. 50-537  
(Exemption request  
under 10 CFR 50.12)

ORDER  
(CLI-82-8)

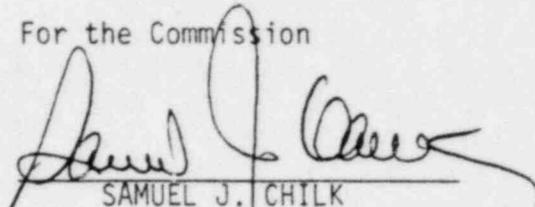
By letter dated May 14, 1982, the Department of Energy requested the Commission to reconsider its earlier Order, dated March 16, 1982 (CLI-82-4), denying the Department of Energy's request for an exemption for site preparation activities under 10 CFR 50.12. On May 17, 1982, the Commission divided equally on whether to exercise its inherent power to reconsider that Order. 1/ Because a majority of the Commission would be necessary to take the affirmative action of reconsideration, the Commission has effectively decided not to reconsider its earlier Order. 2/

1/ Commissioner Gilinsky did not participate because he was on official travel.

2/ Commissioner Asselstine's separate statement is attached.

It is so ORDERED.

For the Commission



SAMUEL J. CHILK  
Secretary of the Commission



Dated at Washington, D.C.

this *18th* day of *May*, 1982.

STATEMENT BY COMMISSIONER ASSELSTINE

ON THE

DOE request for reconsideration of the Commission's denial of the request to conduct site preparation activities pursuant to 10 CFR Section 50.12.

There are three factors that govern my decision on the Department's request for reconsideration of the Commission's March 16 order denying the Department's request for permission to conduct site preparation activities pursuant to 10 CFR Section 50.12.

The first, and most significant in my view, is the appearance that affirmative action on my part on the Department's request for reconsideration would have for me and for this agency. It is impossible to ignore the fact that the Department's request for reconsideration comes on the heels of my confirmation by the Senate last Thursday, or that today's meeting to consider the Department's request comes literally hours after I have become a Member of the Commission. Moreover, it is impossible to ignore the last minute nature of the Department's request for reconsideration. That request was delivered to the Commission last Friday -- just one working day before the expiration of the 60-day judicial review period. If this eleventh-hour request is to be acted upon by the Commission, it must be done on the most accelerated of schedules without an opportunity for comment by the other parties to the proceeding. Taken together, I believe that these factors would raise serious questions about the objectivity and independence of a Commission decision today to grant the Department's request.

I believe this is a particular problem for me -- and one not shared by my colleagues who were all participants in the Commission's original decision on the merits of the Department's Section 50.12 exemption request.

I am sensitive to the fact that an affirmative decision today on the Department's request for reconsideration would not constitute a decision on the merits of the Department's original exemption request. Indeed under the proposed order, a final decision on the merits would not come for some weeks. Nevertheless, I am convinced that the manner in which this request for reconsideration has been presented to the Commission, the timing of the request, and the importance of my position to the outcome of the request for reconsideration, would all raise serious concerns regarding my own independence and objectivity, and that of the Commission, should I vote today in favor of the Department's motion to reconsider.

The second factor for me is the significance of the issue that we are being asked to reconsider -- the Department's exemption request. The Department's exemption request calls for extraordinary relief from the Commission's licensing requirements -- relief that has been granted only infrequently in the past. The nature of this issue deserves the most careful and thoughtful consideration by the Commission. Even though a decision in favor of the Department's request for reconsideration today would only serve to keep the issue open for further Commission review, the very abbreviated consideration that can be given the request for reconsideration by me again presents at least the appearance of a hasty and ill-considered judgement.

The third factor for me is the extent to which a negative decision by the Commission today on the Department's request for reconsideration precludes the Department or other parties from seeking further Commission consideration

of this matter. In that regard, it appears to me that the Department retains the option to submit a new request for permission to conduct site preparation activities under 10 CFR Section 50.12. I also believe that the Commission has the authority to consider a new request at that time, should it choose to do so. Commission decisions on how to proceed with consideration of a new petition could be reached in a much more careful and deliberative manner than can today's decision on the Department's request for reconsideration -- at least for me.

For the foregoing reasons, I have decided to vote to deny the Department's request for reconsideration.