



ADJUDICATORY ISSUE

December 28, 1983 (NEGATIVE CONSENT)

SECY-83-521

For: The Commissioners

From: James A. Fitzgerald
Assistant General Counsel

Subject: REVIEW OF ALAB-755 (IN THE MATTER OF UNITED STATES DEPARTMENT OF ENERGY, PROJECT MANAGEMENT CORPORATION, TENNESSEE VALLEY AUTHORITY)

Facility: Clinch River Breeder Reactor Plant

Petitions For Review: None expected

Review Time Expires: January 14, 1984

Purpose: To inform the Commission of a decision which in our opinion

Discussion: In ALAB-755, the Appeal Board terminated as moot its review of the Licensing Board decision which had authorized issuance of the Limited Work Authorization-1 (LWA-1) for the Clinch River Breeder Reactor (CRBR).¹ In accordance with Commission practice, the Appeal Board also vacated as moot the Licensing Board decision under review.² These actions were taken in response to

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¹LBP-83-18, 7 NRC 158 (1983).

²See, for example, Rochester Gas and Electric Co. (Sterling Power Project, Nuclear Unit No. 1), ALAB-596, 11 NRC 867 (1980).

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634-3224

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
FOIA 92-436

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a motion by the Intervenor³, who premised their request on Congress' effective termination of CRBR by declining to appropriate additional funds for the project. The Applicants⁴ and NRC staff did not oppose Intervenor³'s request for this relief.

However, Applicants and the staff did oppose Intervenor³'s request that the Appeal Board authorize revocation of the LWA-1. Applicants contended that there was no need for such action in view of the Director's authority under Commission regulations. The staff noted that the Licensing Board was still considering Applicants' request for a construction permit (CP), and argued that in order to ensure proper site redress, the Licensing Board should revoke the LWA-1 as part of its termination of the (CP) proceeding. The Appeal Board agreed with the staff and denied Intervenor³'s motion on this issue.

[In our opinion,]

that

However, we believe

³Natural Resources Defense Council, Inc. and Sierra Club.

⁴U.S. Department of Energy, Project Management Corporation and the Tennessee Valley Authority.

⁵Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), ALAB-656, 14 NRC 965 (1981).

believe that

we believe that

Accordingly, we

James A. Fitzgerald
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Assistant General Counsel

Attachment: ALAB-755

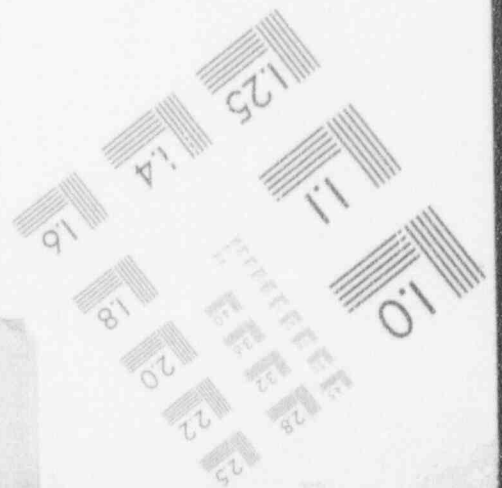
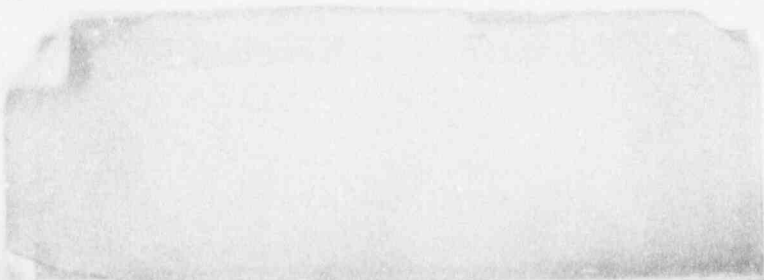
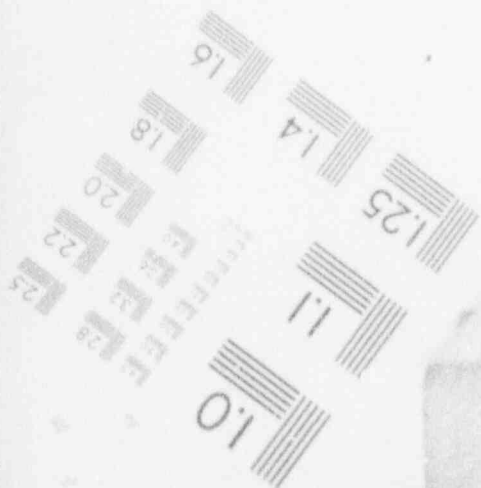
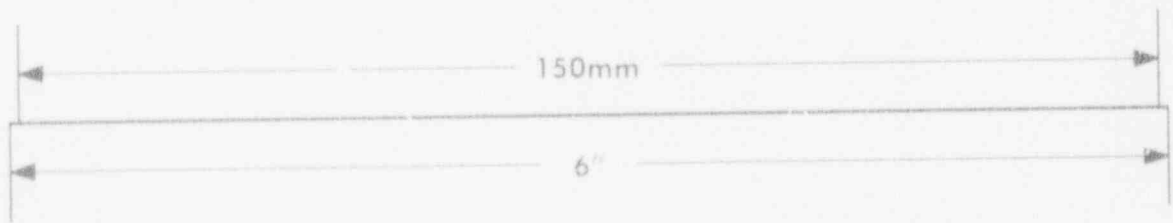
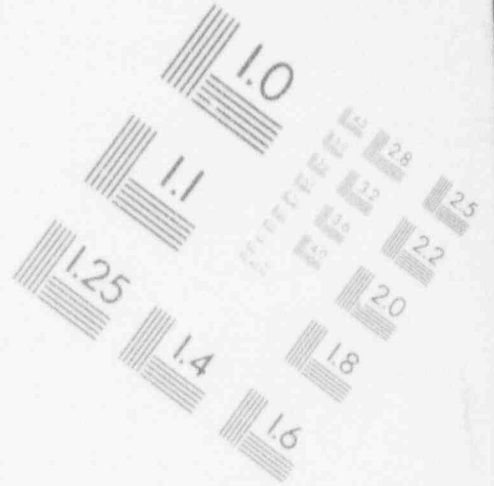
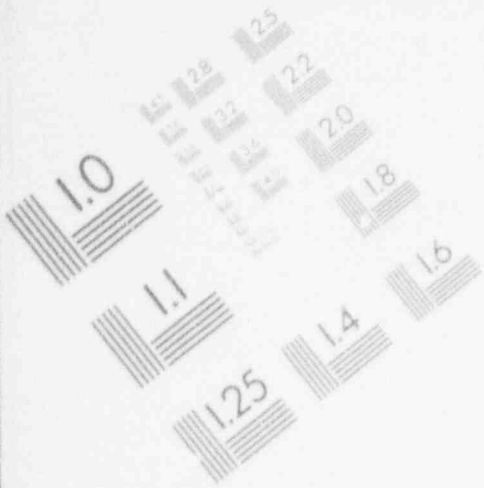
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SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on January 12, 1984 that the Commission, by negative consent, assents to the action proposed in this paper.

⁶The Toledo Edison Company, et al. (Davis Bessie Nuclear Power Station Station, Units 2 and 3), ALAB-622, 12 NRC 667, 669 (1980).

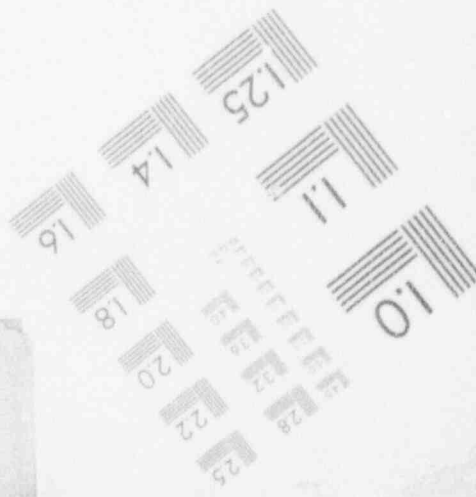
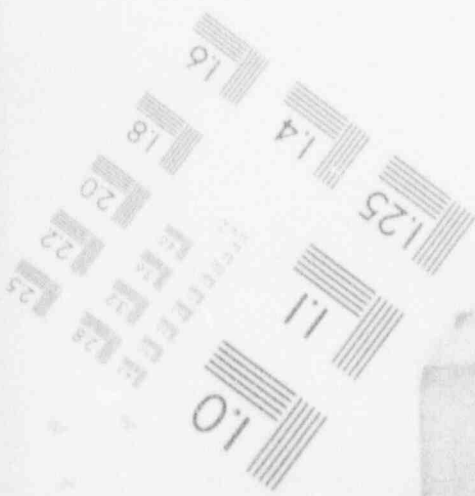
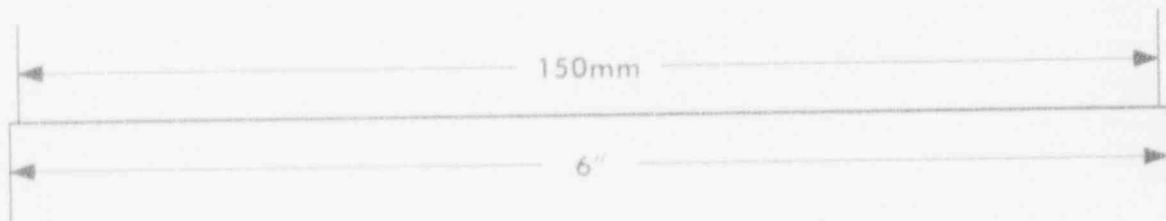
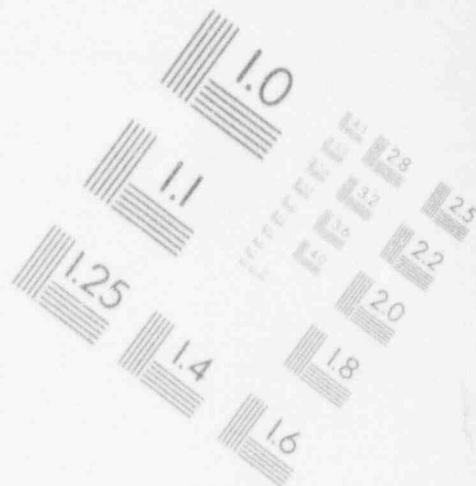
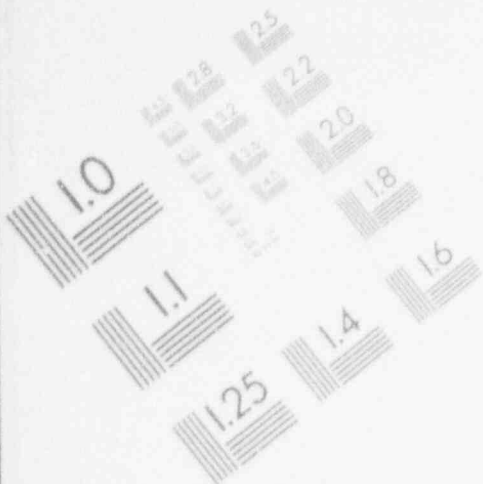
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IMAGE EVALUATION TEST TARGET (MT-3)



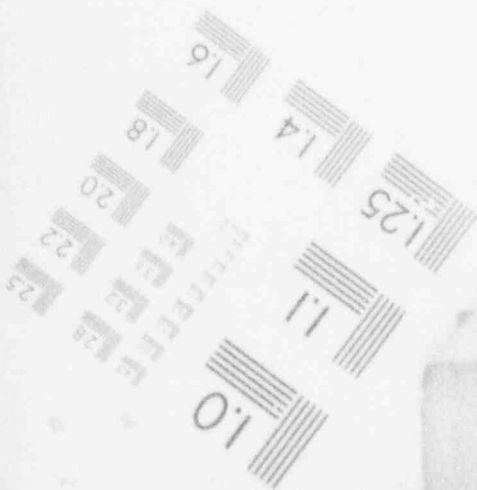
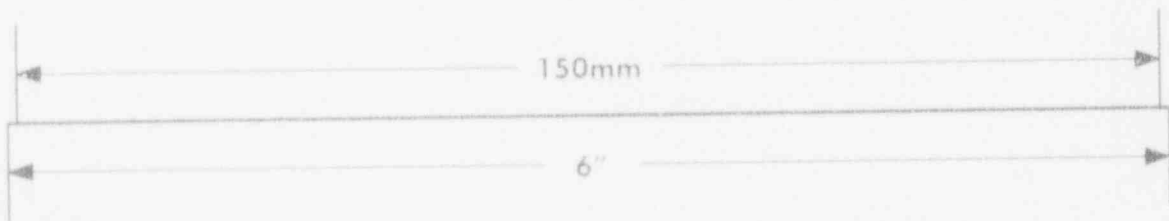
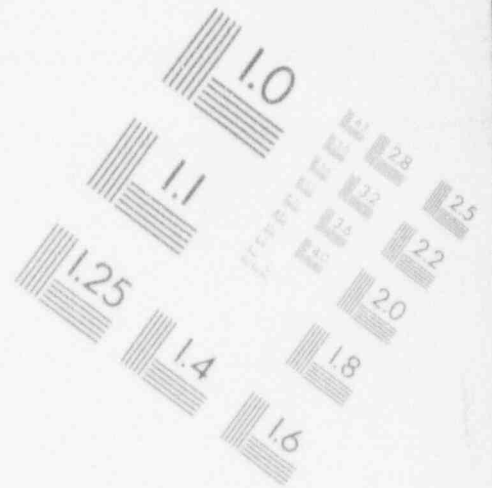
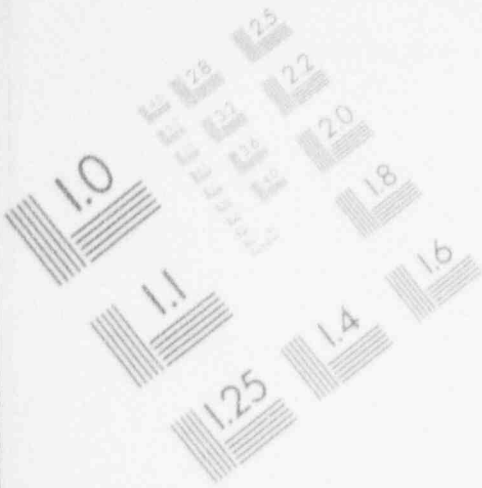
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IMAGE EVALUATION TEST TARGET (MT-3)



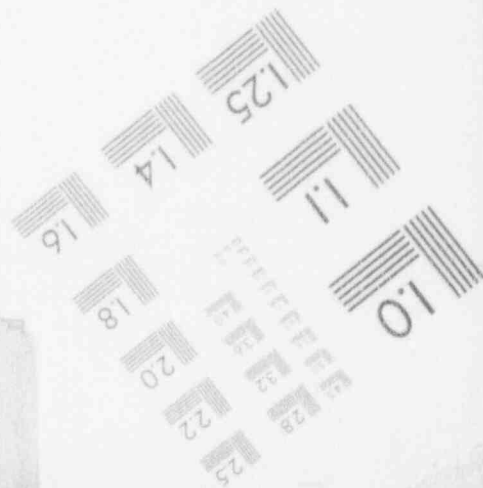
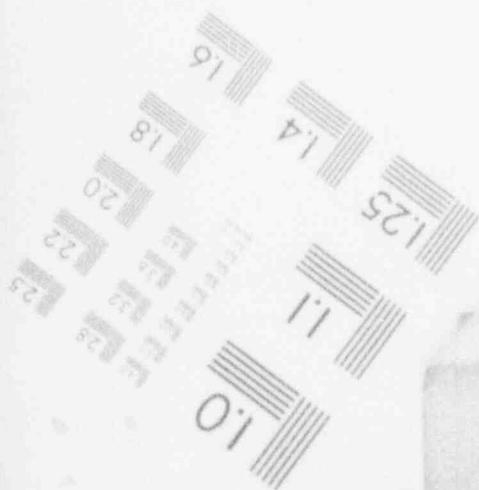
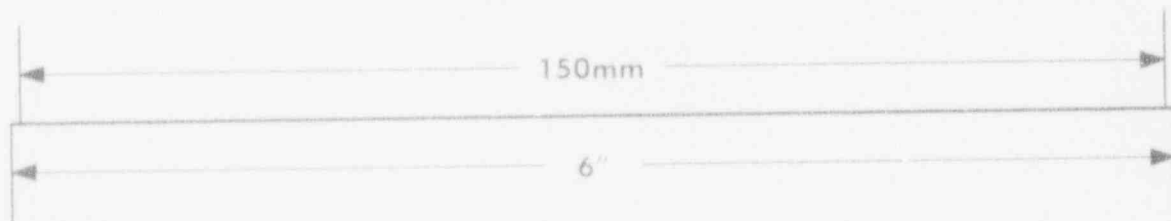
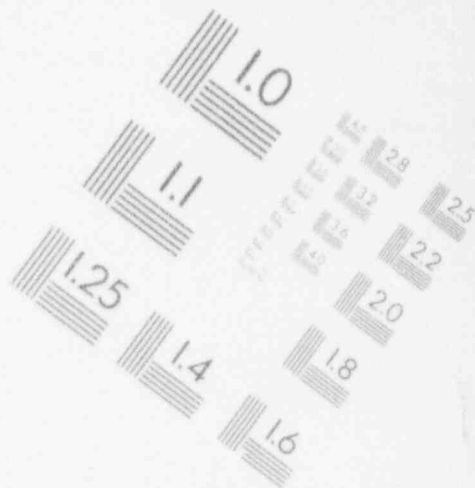
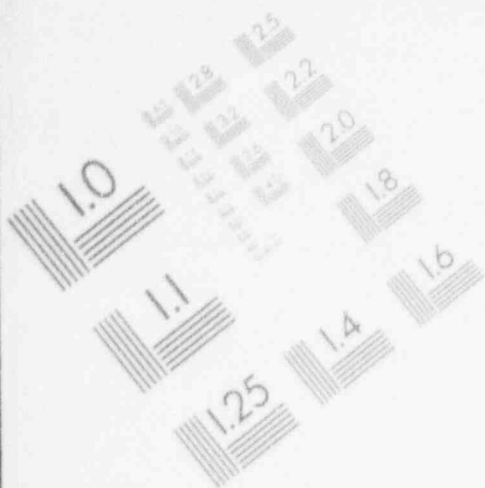
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IMAGE EVALUATION TEST TARGET (MT-3)



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IMAGE EVALUATION TEST TARGET (MT-3)



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Gary J. Edles, Chairman
Dr. W. Reed Johnson
Howard A. Wilber

December 15, 1983
(ALAB-755)

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

ORDEF

We have before us an appeal by the Natural Resources Defense Council and the Sierra Club (Intervenors) from the Licensing Board's February 28, 1983, partial initial decision paving the way for issuance of a limited work authorization (LWA) for the Clinch River Breeder Reactor Plant.¹ Briefs have been filed and oral argument was held on September 28, 1983.²

¹ See LBP-83-8, 17 NRC 108.

² In ALAB-721, 17 NRC 539 (1983), we denied a request for a stay of the Licensing Board's decision. The Commission made the Licensing Board's decision immediately effective in an unpublished order of May 5, 1983, and the Office of Nuclear Reactor Regulation issued the LWA on May 19, 1983. As a practical matter, most of the site

(Footnote Continued)

On November 23, 1983, the Intervenor's filed a motion to terminate the appellate proceedings, vacate the partial initial decision, and authorize revocation of the limited work authorization. They observe that Congress has declined to appropriate additional funds for Clinch River so that the project has been effectively terminated. They contend that all appellate proceedings are therefore moot. Neither the applicants nor the NRC staff objects to the grant of the Intervenor's motion to terminate the proceedings and vacate the initial decision. The applicants, however, believe that, in view of the NRR Director's authority under the Commission's regulations, "there is simply no need for the Appeal Board to authorize the Director to revoke the LWA."³ On the other hand, the NRC staff argues that, in order to ensure appropriate site redress, any directive to revoke the outstanding LWA should be issued by the Licensing Board as

(Footnote Continued)

preparation activities authorized by the LWA have already been completed under an exemption granted by the Commission in August 1982. See CLI-82-23, 16 NRC 412. The exemption was challenged in court and the Commission's decision was reversed and remanded. NRDC v. NRC, 695 F.2d 623 (D.C. Cir. 1982). Site preparation activities went forward, however, because the court declined to stay the Commission's exemption decision. The Commission reaffirmed the grant of the exemption in an opinion issued on January 6, 1983. See CLI-83-1, 17 NRC 1.

³ Applicants' Response to Motion of Intervenor's to Terminate the Appeal Proceedings, Vacate Partial Initial Decision, and Authorize Revocation of Limited Work Authorization (December 5, 1983) at 3.

part of its dismissal of the construction permit application.

We grant the motion insofar as it requests termination of appellate proceedings and vacation of the Licensing Board's partial initial decision. We traditionally terminate appellate proceedings on the grounds of mootness when a project is cancelled. Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 2), ALAB-656, 14 NRC 965 (1981); Rochester Gas and Electric Co. (Sterling Power Project, Nuclear Unit No. 1), ALAB-596, 11 NRC 867 (1980). Cf. Puget Sound Power and Light Co. (Skagit Nuclear Project, Units 1 and 2), CLI-80-34, 12 NRC 407 (1980). Termination of appellate proceedings for mootness is accompanied by vacation of the decision under review. Sterling, supra. In light of the termination of the Clinch River project, grant of the Intervenor's request to terminate the appellate proceeding and vacate the initial decision is warranted.

We agree with the staff, however, that the issue of revocation of the LWA is better left to the Licensing Board, which still retains jurisdiction over the application for a construction permit. We anticipate that the Board will

determine if any conditions to ameliorate the environmental impacts of the site preparation activities are needed.⁴

LBP-83-8, 17 NRC 158 (1983), is vacated on the ground of mootness; appellate proceedings are terminated. In all other respects, the Intervenor's motion is denied.

It is so ORDERED.

FOR THE APPEAL BOARD



C. Jean Shoemaker
Secretary to the
Appeal Board

⁴ See generally Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 2 and 3), ALAB-622, 12 NRC 667 (1980) and ALAB-652, 14 NRC 627 (1981). We have ordered the revocation of outstanding authorizations where, unlike the instant case, the Licensing Board no longer had jurisdiction over any portion of the proceeding. See, e.g., Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-628, 13 NRC 24, 25 (1981); Sterling, supra.