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October 20, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
OF ENERGY & SERVICE

Before Administrative Judges:
Marshall E. Miller, Chairman
Gustave A. Linenberger, Jr.
Dr. Cadet H. Hand, Jr.

In the Matter of

UNITED STATES DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CORPORATION
TENNESSEE VALLEY AUTHORITY

(Clinch River Breeder Reactor Plant)

Docket No. 50-537

INTERVENORS' MOTION CONCERNING
ORDER OF CROSS-EXAMINATION

Intervenors, Natural Resources Defense Council, Inc. and the Sierra Club, hereby move that the Licensing Board in the above-captioned proceeding exercise its authority under 10 CFR §2.718(e) to order a fairer and more efficient sequence of cross-examination by the parties at the continuation of LWA-1 evidentiary hearings on November 16-19 and December 13-17, 1982.

During the site suitability phase of the Limited Work Authorization-1 evidentiary hearings in Oak Ridge on August 23-27, 1982, direct testimony by Applicants' witnesses was followed first by cross-examination by Intervenors, then cross-examination by Staff. Similarly, Intervenors were the first to cross-examine the Staff's witnesses, followed by cross-examination by Applicants.

Examination of the hearing transcript makes it clear that cross-examination by Applicants and Staff of each other's witnesses was used almost entirely for purposes of rehabilitation. See Transcript at 1825-35, 2394-2404. The "cross-examinations" responded not to the direct testimony of the witnesses, but rather to Intervenors' cross-examination. That, it should be self-evident, is the proper function of redirect -- not cross-examination.

Both Applicants and Staff have more than adequate legal and technical resources to do their own rehabilitation on redirect. There is absolutely no reason why Intervenors should have to face this double-redirect in response to our cross-examinations. In fact, the only "asset" of requiring Intervenors to cross-examine the other parties first is that it permits this double-teaming to

occur.

In contrast, eliminating this situation by requiring Applicants and Staff to cross-examine each other's witnesses first would result in benefits to both the fairness and the efficiency of the proceeding. The fairness would be enhanced because all the parties would have the same burden of taking care of their own redirect/rehabilitation, and no party would have two shots at rehabilitation as has clearly been the case for Applicants and Staff.

The efficiency of the proceeding would be enhanced in several respects by the grant of the instant motion. Disputes concerning the scope of recross-examination by Intervenors, the manner of Applicants' and Staff's cross-examinations of each other's witnesses (i.e., whether leading questions are asked), or the propriety of inter-party cooperation would be largely obviated. Finally, since Applicants and Staff address each other's testimony only for purposes of rehabilitation, they might forego cross-examination of each other altogether if that purpose is denied fulfillment by grant of the instant motion.

In conclusion, Intervenors urge the Board, in fairness to the parties and in furtherance of the efficiency of the hearings,

to exercise its authority under 10 CFR §2.718(e) to regulate the course of the hearing and the conduct of the parties and order that when the hearings resume, Applicants and Staff should cross-examine each other's witnesses first, with cross-examination by Intervenors last.

Respectfully submitted,

Dean R. Tousley

Dean R. Tousley
Ellyn R. Weiss

HARMON & WEISS
1725 I Street, NW, Suite 506
Washington, D.C.

Barbara A. Finamore DRS

Barbara A. Finamore
S. Jacob Scherr

Natural Resources Defense
Council, Inc.
1725 I Street, NW, Suite 600
Washington, D.C.

Date: October 20, 1982

Attorneys For Intervenors
Natural Resources Defense
Council, Inc. and the
Sierra Club

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CERTIFICATE OF SERVICE

OFFICE OF SECRETARY
OF LICENSING & SERVICE
NATURAL
BRANCH

I hereby certify that copies of INTERVENORS, NATURAL RESOURCES DEFENSE COUNCIL, INC. AND THE SIERRA CLUB, MOTION FOR QUALIFICATION OF AN EXPERT INTERROGATOR UNDER 10 CFR § 2.733, AFFIDAVIT OF ELLYN R. WEISS, AFFIDAVIT OF THOMAS B. COCHRAN, INTERVENORS REQUEST FOR SCHEDULING OF EXPERT WITNESS TESTIMONY DURING WEEK OF DECEMBER 13-17, 1982, INTERVENORS' MOTION CONCERNING ORDER OF CROSS-EXAMINATION, and AFFIDAVIT OF THOMAS B. COCHRAN were served this 20th day of October 1982 to:

- * Marshall E. Miller, Esquire
Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
4350 East West Highway, 4th Floor
Bethesda, MD 20814
- * Mr. Gustave A. Linenberger
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
4350 East West Highway, 4th Floor
Bethesda, MD 20814
- * Daniel Swanson, Esquire
Stuart Treby, Esquire
Bradley W. Jones, Esquire
Office Of Executive Legal Director
U.S. Nuclear Regulatory Commission
Maryland National Bank Bldg.
7735 Old Georgetown Road
Bethesda, MD 20814
- * Atomic Safety & Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

- * Atomic Safety & Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

- * Docketing & Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(3 copies)

- * R. Tenney Johnson, Esquire
Leon Silverstrom, Esquire
Warren E. Bergholz, Jr., Esquire
Michael D. Oldak, Esquire
L. Dow Davis, Esquire
Office of General Counsel
U.S. Department of Energy
1000 Independence Ave., S.W., Rm. 6A245
Washington, D.C. 20585

- * George L. Edgar, Esquire
Irvin N. Shapell, Esquire
Thomas A. Schmutz, Esquire
Gregg A. Day, Esquire
Frank K. Peterson, Esquire
Morgan, Lewis & Bockius
1800 M Street, N.W., 7th Floor
Washington, D.C. 20036

- Dr. Cadet H. Hand, Jr.
Director
Bodega Marine Laboratory
University of California
P.O. Box 247
Bodega Bay, California 94923

- Herbert S. Sanger, Jr., Esquire
Lewis E. Wallace, Esquire
James F. Burger, Esquire
W. Walker LaRoche, Esquire
Edward J. Vigluicci
Office of the General Counsel
Tennessee Valley Authority
400 Commerce Avenue
Knoxville, Tennessee 37902

William M. Leech, Jr., Esquire
Attorney General
William B. Hubbard, Esquire
Chief Deputy Attorney General
Lee Breckenridge, Esquire
Assistant Attorney General
State of Tennessee
Office of the Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219

Lawson McGhee Public Library
500 West Church Street
Knoxville, Tennessee 37902

William E. Lantrip, Esquire
City Attorney
Municipal Building
P.O. Box 1
Oak Ridge, Tennessee 37830

Oak Ridge Public Library
Civic Center
Oak Ridge, Tennessee 37820

Mr. Joe H. Walker
401 Roane Street
Harriman, Tennessee 37748

Commissioner James Cotham
Tennessee Department of Economic
and Community Development
Andrew Jackson Building, Suite 1007
Nashville, Tennessee 32219


Barbara A. Finamore

* Denotes hand delivery.