

10/29/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter

UNITED STATES DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CORPORATION
TENNESSEE VALLEY AUTHORITY

(Clinch River Breeder Reactor Plant)

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Docket No. 50-537

NRC STAFF RESPONSE TO INTERVENORS' MOTION
CONCERNING ORDER OF CROSS-EXAMINATION
AND REQUEST FOR SCHEDULING WITNESS

I. INTRODUCTION

On October 20, 1982, Intervenors' Natural Resources Defense Council, Inc. and the Sierra Club (Intervenors) filed two documents in this proceeding regarding the order of procedure to be followed in the continuation of the LWA-1 hearings to be held in November and December, 1982. In "Intervenors' Motion Concerning Order of Cross-Examination" (Motion), Intervenors seek to have the Board regulate the order of procedure so that Applicants and Staff cross-examine each other's witnesses first, with cross-examination by Intervenors last. In "Intervenors' Request For Scheduling of Expert Witness Testimony During Week of December 13-17, 1982" (Request), Intervenors seek leave of the Board to schedule their recently-announced witness, Dr. Johnson, during the December 13-17, 1982 portion of the hearing.

As is discussed below, the Staff does not oppose the Motion or the Request.

II. DISCUSSION

A. Motion Concerning Order of Cross-Examination

In their Motion, Intervenors note that during the August 1982 hearings, Staff and Applicants' witnesses were first cross-examined by Intervenors, and then by each other, followed by redirect by the sponsoring party. Intervenors claim that this procedure allows Applicants and Staff to have a double opportunity to rehabilitate each other's witnesses following cross-examination by Intervenors, which is unfair to them. Motion at 2. Intervenors assert that this "double-teaming" is unfair and that procedural steps should be taken to enhance the fairness to Intervenors. Motion at 3. Intervenors contend that having Applicants and the Staff cross-examine each other's witnesses first, followed by Intervenors, would provide only one opportunity for rehabilitation, that being provided in the form of redirect by the sponsoring party. Id.

The Staff perceives that what Intervenors are really concerned about is the fact that the Staff, after completing its site-suitability review, has taken a position that the proposed Clinch River site was indeed suitable for a facility of the general size and type as the proposed CRBR, and that this position was the same as that taken by the Applicants. The Staff does not agree that special procedural steps need be taken simply because the Staff, based on its review, happens to take a position in support of Applicants in a hearing, and which is opposed by Intervenors. By having Applicants and Staff follow each other in the order of sponsoring witnesses and cross-examining each other's witnesses, Intervenors apparently are attempting to create an image of having one combined party to oppose in the hearings, as contrasted with the two parties which took positions contrary to Intervenors in the site suitability hearings.

There is no basis in the Commission's regulations for adjusting procedural rules simply to "even-up" the sides in an evidentiary hearing. However, this Board, in an attempt to expedite the conduct of this phase of the case, which is proceeding on a firm schedule, suggested (Tr. 866-869) and later directed the order of presentation of witnesses to be Applicants first, followed by the Staff, and then the Intervenors, except when the Staff takes a position which is significantly different from that of Applicants. Order Following Conference With Parties dated August 5, 1982. In the circumstances of this case where the Board has directed a specific order of presentation of witnesses, the Staff perceives a logical basis for the parties conducting cross-examination of witnesses in the same order in which they present their case. That appears to be the extent of what Intervenors seek in their motion. Accordingly, the Staff does not oppose the order of cross-examination proposed by Intervenors.

B. Request for Scheduling Witness

In their Request, Intervenors seek leave of the Board to bring Dr. Johnson as their witness during the December, rather than the November, phase of the LWA-1 hearings, due to a schedule conflict during the first phase of hearings. The Staff is willing to accommodate the preference of Intervenors in this regard, and has no objection to the Request. The Staff does not perceive that it was necessary, however, for the Board to become involved in this kind of detail when the parties can work out an agreement as to the schedule to be followed. Had the Staff been consulted by Intervenors regarding their schedule conflict, the Staff would of course have agreed to accommodate the Intervenors in this regard.

Since the Request was filed, the parties have informally consulted among themselves and have reached an agreement as to a schedule for consideration of issues during the November and December hearing sessions. That schedule is set forth below. Because of a schedule conflict on the part of both Intervenors, as noted in their Request, and Applicants, regarding availability of health effects witnesses, there will have to be a separation as to the taking of evidence on Intervenor Contentions 6 and 11 regarding health effects. Applicants can only make their complete health effects panel available on November 17, 1982 and will thus present their witnesses on that date, as will the Staff. Intervenors will present their witness, Dr. Johnson, on health effects aspects of Contentions 6 and 11, on December 17, 1982. Intervenors wish to keep the timing aspect of the schedule somewhat flexible at this time, until the parties' testimony has been received and planning for cross-examination has been done. For example, Intervenors may wish to take more than their allotted time to cross-examine on one day, and take a commensurate decrease in their allotted cross-examination time a following day.

The schedule is as follows:

November:	16th - Contention 4;
	17th - Staff and Applicants on 11b, c;
	18th - 6; and
	19th - 5a and 7c.
December:	13th and 14th - 1, 2, 3, and 5b;
	15th - 7a, b
	16th - 8; and
	17th - Intervenors on 6 and 11

CONCLUSION

For the reasons set forth above, the Staff does not oppose Intervenor's Motion regarding the order of cross-examination or their Request regarding the scheduling of their witness. In addition, the Staff, on behalf of itself and the other parties to this proceeding, would request the Board to notify the parties if it has any problem with the schedule for consideration of issues during the November and December hearing sessions as proposed by the parties.

Respectfully submitted,

Daniel T. Swanson

Daniel T. Swanson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 29th day of October, 1982

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UNITED STATES DEPARTMENT OF ENERGY
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(Clinch River Breeder Reactor
Plant)

Docket No. 50-537

CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF RESPONSE TO INTERVENORS' MOTION FOR QUALIFICATION OF AN EXPERT INTERROGATOR" and "NRC STAFF RESPONSE TO INTERVENORS' MOTION CONCERNING ORDER OF CROSS-EXAMINATION AND REQUEST FOR SCHEDULING WITNESS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by double asterisk, hand delivery, or, as indicated by triple asterisk, Express Mail, this 29th day of October, 1982:

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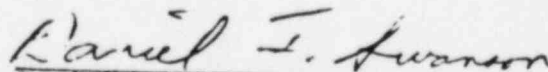
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