

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
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COMMISSIONERS:

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

SECRETARY  
GENERAL SERVICE  
BRANCH

SERVED DEC 10 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 50.12)

ORDER

On July 1, 1982, the Department of Energy, for itself and on behalf of its co-applicants the Tennessee Valley Authority and Project Management Corporation ("Applicants") applied to the Nuclear Regulatory Commission ("NRC" or "Commission") for an exemption pursuant to 10 CFR 50.12 to begin site preparation activities for the Clinch River Breeder Reactor ("CRBR"). This application was opposed by the Natural Resources Defense Council and the Sierra Club ("intervenors"). After conducting an informal proceeding, the Commission issued the authorization on August 17, 1982. Subsequently, on December 7, 1982, the United States Court of Appeals for the District of Columbia Circuit ("Court"), in a per curiam Order, remanded the record to the Commission to either proceed with its adjudicatory hearing under 10 CFR 50.10 to determine if site preparation activities may continue or to explain why it was appropriate in this case to invoke 10 CFR 50.12 by identifying the

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exigent circumstances that warranted such relief. The Court also instructed the Commission to file the record as supplemented no later than January 7, 1983. Finally, the Court permitted the Applicants to continue site preparation activities during the pendency of this proceeding. Under these circumstances, the Commission sees no reason to stay construction pending the completion of the proceeding initiated by this Order.

An Atomic Safety and Licensing Board ("Licensing Board") is currently conducting a proceeding under 10 CFR 50.10(e) on whether to issue a limited work authorization (LWA). The Commission has been informed that the Licensing Board expects to issue a decision on the LWA request by the mid to late February, 1983. Under these circumstances, the Commission believes that it is appropriate to initiate a proceeding to reconsider its previous finding of exigent circumstances while recognizing that the Licensing Board is expected soon thereafter to decide the LWA issue.

By this Order, the Commission hereby establishes the procedures for reconsidering whether there are exigent circumstances warranting the grant of Applicants' request for an exemption pursuant to 10 CFR 50.12 to initiate site preparation activities for CRBR. The proceeding shall be an informal proceeding conducted by the Commission. The parties will be given the opportunity to present views and argument for consideration by the

Commission itself. Moreover, we believe that the Court's opinion does not require or even contemplate an adjudicatory hearing on this issue.

The parties shall be the applicants and the intervenors. Applicants shall have any supplemental statements on exigent circumstances they may wish to file in the Commission's hands no later than December 15, 1982. Intervenors shall have any reply in the Commission's hands no later than December 21, 1982. Applicants may submit a rebuttal to be in the Commission's hands no later than December 28, 1982.

The sole issue shall be whether the Applicants have demonstrated "exigent circumstances" as the Commission has interpreted that term for purposes of an exemption pursuant to 10 CFR 50.12. In discussing exigent circumstances, the parties shall also refer to those portions of the Commission's decision of August 17, 1982, which they believe relevant.

Notwithstanding any Commission action on the exemption issue, the Licensing Board shall continue its proceeding on the Applicant's request for an LWA.

Commissioner Roberts' separate views and Commissioner Gilinsky's dissenting views are attached.

It is so ORDERED.



For the Commission

A handwritten signature in cursive script, which appears to read "Samuel J. Chilk".

SAMUEL J. CHILK  
Secretary of the Commission

Dated at Washington, D.C.,  
this 10<sup>th</sup> day of December, 1982.

SEPARATE VIEW OF COMMISSIONER ROBERTS *TR*

Commissioner Gilinsky's comments that indicate that the Commission is once again "helping Clinch River around the regulations," and that "this will be another unnecessary distraction from our more important health and safety responsibilities," are misrepresentations and extremely misleading to those unfamiliar with the tedious procedures of this Agency.

COMMISSIONER GILINSKY'S DISSENTING VIEWS

The Court gave the Commission a choice between conducting a special hearing to determine if there were "exigent circumstances" justifying the issuance of an exemption for site preparation under 10 CFR 50.12 and resolving this matter in the context of the Limited Work Authorization hearing which is presently pending before the Licensing Board. In my view, it would have been preferable to refer this matter to the Licensing Board for an initial decision rather than to once again involve the Commission in helping Clinch River around the regulations. This will be another unnecessary distraction from our more important health and safety responsibilities.