

rulings." Id. at 3. On the contrary, by continuing to reargue issues upon which the Board has clearly ruled, Intervenor's are not living within the Board's rulings but are stubbornly persisting in their efforts to make those rulings unworkable.

I. INTERVENORS' MOTION TO STRIKE

Intervenor's motion to strike is based "on the grounds that they [Applicants] present conclusions about the adequacy of CRBR safety systems that are based on detailed, design-specific data and analyses of CRBR." Intervenor's Motion at 3. This argument stems from Intervenor's continued misreading of or refusal to accept the Board's rulings of April 22 and August 23, 1982, and from Intervenor's incorrect characterization of Applicants' Exhibit 1.

As the Board clearly noted in its April 22 Order, the findings which the Board must make in an LWA-1 proceeding are limited to the NEPA findings required by 10 C.F.R. § 51.52(b) and (c) and "a preliminary safety determination 'that based on the available information and review to date there is reasonable assurance that the site is suitable for a reactor of the general size and type proposed from the standpoint of radiological health and safety considerations.'" Board Order at 4. The Board went on to explain that for an LWA-1 hearing:

On its face, it is evident that 10 CFR § 50.10(e)(2)(ii) does not require a complete safety review based on the completed, detailed design of the specific reactor proposed. Instead, a preliminary safety finding is contemplated "based on the available information and review to date" and based on "a reactor of the general size and type proposed." With respect to Contention 1(a) specifically, there must be a showing of reasonable assurance that the implementation of a design which would reduce the likelihood of CDAs so that they can be excluded or that the finding is to include CDAs.

In contrast to 10 CFR § 50.10(e)2, 10 CFR § 50.35(a) contemplates a specific analysis of the facility at the CP stage. Thus, although a full NEPA review is mandated for the LWA-1 hearing phase, the finality of this review must of necessity await the completion of the CP evidentiary hearing where full design details and supportive analyses of the facility will be critiqued.

Id.

In conformance with the Board's Order, Applicants' Testimony Concerning NRDC Contentions 1, 2 and 3 (Exhibit 1), addressed the feasibility of designing a reactor of the general size and type as the CRBRP in regard to the subject matter of those contentions. The testimony was not proffered to demonstrate the adequacy of specific CRBR safety systems for the purposes of "a complete safety review." CRBRP Evidentiary Hearing of August 23-27, 1982, Tr. 2096.

Intervenors complain that Applicants' expert witnesses relied upon analyses regarding CRBRP systems in

concluding that it is feasible to design such systems for a LMFBR of the general size and type of the CRBRP.

Intervenors' Motion at 3. Yet this is exactly the type of "available information and review to date" which can be presented to the Board to address the feasibility of such systems. As Chairman Miller noted at the August 23, 1982 pre-hearing conference, certain specific aspects must be presented in order to show feasibility, or the subject matter to be considered would remain in a hypothetical vacuum. Tr. 1349.

Curiously, Intervenors have conceded that the data and analyses contained in the Exhibit 1 testimony have been admitted for the "limited purpose of 'illustrating' design feasibility for a reactor of the general size and type and the state of technology" and that they "have not been admitted as evidence of the adequacy of specific CRBR features, "(emphasis in the original). Intervenors' Motion at 4. Indeed, the Board has stated that "the evidence and documents and exhibits proffered will be admitted, but will be admitted for the limited purpose of being illustrative of the 'reactor of the general size and type'." Prehearing Conference, Tr. 1349. Intervenors, however, seem unable to differentiate between conclusions drawn by Applicants' expert witnesses regarding feasibility for a reactor of the general size and type, which are appropriate for these

proceedings, and conclusions by the Board concerning adequacy of specific systems to satisfy detailed safety criteria, which are not appropriate until the LWA-2 or Construction Permit proceedings. As the Board stated in its April 22 Order, "full design detail and supportive analyses of the facility will be critiqued" at the CP stage. Board Order at 4.

Evidently, Intervenors fear that the Board will improperly use the evidence presented to go beyond the limited purpose for which it was offered and admitted and make final findings as to the adequacy of specific safety-related systems at the LWA-1 stage of the proceeding. Not only is that fear unfounded, but also is not a legitimate basis for striking Applicants' testimony.

Intervenors identify thirteen specific portions of Applicants' Exhibit 1 which they move to strike, along with their rationale supporting the deletion of each portion. Intervenors' Motion at 4-5. For the reasons set forth below, Intervenors' Motion to Strike must be denied in its entirety.

A. Proposed Deletions 1-10 (Intervenors' Motion at 4-5).

(Rationale for striking: Conclusions based on detailed, design-specific analyses in CRBRP-3).

CRBRP-3 was proffered and admitted for the limited purpose of "showing analyses which are illustrative of the

state of technology, and to show that it is feasible to design and analyze the features and system so described." CRBRP Evidentiary Hearing, Tr. 2096, 2116. The testimony in question likewise was presented for the same limited purpose. For the reasons presented above, such testimony is within the scope of this LWA-1 proceeding, and Intervenors' proposed deletions 1-10 must be rejected.

3. Proposed Deletion 11 (Intervenors' Motion at 5).

(Rationale: Results based on CRBRP-3 and two columns in Table 5-2 are taken from WASH-1400, which was ruled beyond the scope of this proceeding).

Intervenors' reliance on the inadmissibility of CRBRP-3 is incorrect for the reasons presented above under Proposed Deletions 1-10. Furthermore, Intervenors' contention that WASH-1400 was ruled beyond the scope of this proceeding is absolutely wrong. In its April 22, 1982 Order, the Board deferred NRDC Contention 1b, "which questions Applicants' design, reliability program, methodology, and data base," and Contention 3a, "which broadly questions the need for and adequacy of a probabilistic risk assessment of the CRBRP comparable to the Reactor Safety Study ('Rasmussen Report')." (Emphasis added). Board Order of April 22, 1982 at 5 and 6. The ruling dealt with CRBRP programs and assessments and did not address whether WASH-1400 itself would be in issue.

Information contained in WASH-1400 simply was not ruled beyond the scope of this proceeding.^{*/} Therefore, Intervenor's' proposed deletion 11 should be rejected.

C. Proposed Deletion 12 (Intervenors' Motion at 5).

(Rationale: Testimony based on detailed, design-specific evaluations, analyses, and testing in Applicants' Exhibit 24, WARD-D-0185.)

WARD-D-0185 was proffered and admitted for the limited purpose of "showing analyses which are illustrative of the state of technology, and to show that it is feasible to design and analyze the features and system so described." CRBRP Evidentiary Hearing, Tr. 2096, 2116. The testimony in question likewise was presented for the same limited purpose. Therefore, for the reasons presented above, such testimony is within the scope of this proceeding and Intervenor's' proposed deletion 12 should be rejected.

D. Proposed Deletion 13 (Intervenors' Motion at 5).

(Rationale: Testimony based on PSAR Appendix C, which is beyond the scope of this proceeding.)

^{*/} It should be noted that the values from WASH-1400 used in Table 5-2 did not involve probabilistic risk assessments for the particular LWR accident scenarios described. Rather, the data gave projected radio-nuclide releases for certain types of accidents without any consideration of the probability of their occurrence.

Intervenors incorrectly state that the expert testimony regarding test results on the control rod drive mechanism at Tr. 2011 was based on Appendix C of the PSAR. On the contrary, as Applicants' Witness Strawbridge stated "[the test results] are documented in reports that the vendor prepared and submitted to Westinghouse Advanced Reactor Division," Tr. 1663. These are performance tests and are "not failure mode and effects tests," Tr. 1663-65. The fact that the test program may have been described in Appendix C does not infer that Appendix C was a necessary basis for the experts' testimony. In fact, Appendix C was not offered as an exhibit in this proceeding nor was it relied upon in the preparation of Applicants' testimony. CRBRP Evidentiary Hearing, Tr. 1341. Therefore, the rationale for the Intervenors' proposed deletion 13 is incorrect and the motion to strike should be rejected.

II. INTERVENORS' MOTION TO AMEND

Intervenors present fourteen proposed amendments to Applicants' Exhibit 1 testimony. Their "rationale," however, is the same for each amendment. This rationale may be summarized as follows:

- 1) Applicants' testimony cites sections of the PSAR (Proposed Amendments 1-9) or CRBRP-3 (Proposed Amendments 10-14) which contain detailed design features of

systems intended for use in CRBRP in order to support conclusions regarding the adequacy of those systems to accomplish their intended purpose.

2) System adequacy cannot be considered without also considering system reliability.

3) Reliability has been ruled outside the scope of the LWA-1 proceeding.

4) Therefore, if design-specific data concerning the Reliability Program is beyond the scope of LWA-1, then no design-specific data may be used in the proceeding.

Intervenors' Motion at 6-7.

The Intervenors' "rationale" for amending Applicants' testimony is palpably erroneous. Its first point is simply false. As discussed under Intervenors' Motion to Strike, supra, Applicants' testimony is not proffered to prove the adequacy of particular systems to accomplish their intended purpose in the CRBRP. Proof of this sort has not been offered and is not needed until the CP or even the OL stage of this proceeding.

Intervenors' second point - "system adequacy cannot be considered without considering system reliability" - is advanced without any supporting citation. The only known source of "authority" is Dr. Cochran's testimony^{*/} and

*/ CRBRP Evidentiary Hearing, Tr. 2851-2852.

his previous arguments before the Board.^{*/} The Board has previously ruled that consideration of the CRBRP reliability program (Contention 1b) can be deferred until the CP proceedings. Little purpose can be served by NRDC's attempt to rehash this point again.

Accordingly, since their underlying rationale has been previously considered and denied by this Board, Intervenor's Motion to Amend must be denied as to each of its fourteen specifications.

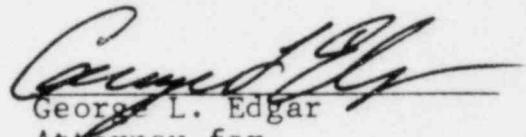
III. CONCLUSION

At no time has the Board restricted the introduction of testimony at the LWA-1 stage of this proceeding simply because it may be based on analyses conducted as part of the CRBRP project. Rather, the Board has limited the purpose for which such testimony may be proffered at the LWA-1 stage and Applicants have limited their proffer of evidence to the scope which the Board has allowed. Intervenor's are simply ignoring these limitations and rearguing issues which the Board has already decided.

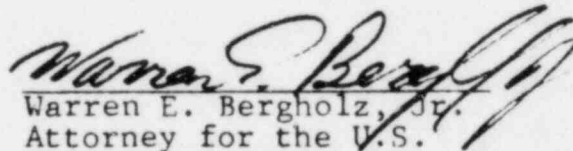
^{*/} April 20, 1982 Prehearing Conference, Tr. 529-534.

Accordingly, for the reasons stated above, Applicants respectfully suggest that the Board deny Intervenors' Motion to Strike and Motion to Amend Applicants' Exhibit 1.

Respectfully submitted,



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Dated: September 20, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE
ATOMIC SAFETY AND LICENSING BOARD

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

)

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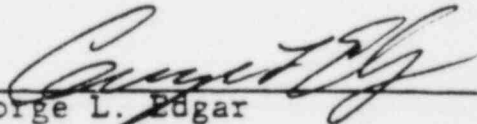
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