

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
TENNESSEE VALLEY AUTHORITY

(Clinch River Breeder Reactor
Plant)

Docket No. 50-537

NRC STAFF RESPONSE TO INTERVENORS'
MOTION TO STRIKE AND MOTION TO AMEND APPLICANTS' EXHIBIT 1

INTRODUCTION

Intervenors Natural Resources Defense Council, Inc. and Sierra Club (Intervenors) move to strike certain portions of Applicants' Exhibit 1 on the basis that the referenced portions violate the Board's April 22, 1982 Order.^{1/} Intervenors also move that portions of Applicants' Exhibit 1 be amended in conformance with Intervenors' suggested language "to bring them into compliance with Board's April 22 Order." Motion at 6. The NRC Staff's (Staff) position is that the purpose for which the referenced portions of the Applicants' Exhibit 1, as well as all testimony submitted by Applicants, are considered at the LWA-1 stage have been limited by the Board's ruling on August 23, 1982 and that as so limited, Exhibit 1 does not violate the Board's April 22, 1982 Order. For this reason, the Staff opposes Intervenors' Motion.

^{1/} Intervenors' Motion to Strike and Motion to Amend Applicants' Exhibit 1 to conform with the Licensing Board's April 22, 1982, Order (Motion).

DESIGNATED ORIGINAL

8209280049 820924
PDR ADDCK 05000537
G PDR

Certified By

AS
2507

BACKGROUND

The Board issued an Order in this proceeding on April 22, 1982 in which the Board outlined the scope of the issues to be considered in the LWA-1 hearing. In its Order, the Board concluded that 10 C.F.R. § 50.10(e)(2)(ii) does not require a complete safety review based on the completed detailed design of the specific reactor proposed at the LWA-1 stage, but rather a preliminary safety finding based on available information and review to date of a reactor of the general size and type proposed. The Board indicated that safety information may be presented to demonstrate the feasibility of general systems in the proposed general size and type facility at the site suitability hearings.

During the August 23, 1982 session of the hearing, Intervenors moved to strike certain portions of the Applicants' testimony on the basis that they included a discussion of CRBR design details which violated the Board's April 22, 1982 Order. Tr. 1299. Intervenors claimed that this detailed information was being used by Applicants to demonstrate adequacy of design and performance reliability. Id. In response to the motion, the Board ruled that the testimony, documents, and exhibits offered by the Applicants, including the testimony in question, would be admitted, despite the fact that they contained detailed design information, for the limited purpose of being illustrative of the reactor of the general and type proposed. Tr. 1349. The Board explained that for the purpose of the site suitability phase of the hearings, such illustrative material is reasonable since it is necessary to have certain specific aspects of the facility described in order to explain the feasibility of designing and constructing general systems of this general size and type facility. Id.

The Board instructed Applicants to modify those portions of the testimony which were more than illustrative. Id.

Pursuant to the limitations put on their testimony by the Board, Applicants sought to modify portions of their testimony to conform with the Board's ruling, and to indicate that data and analysis contained in their exhibits would be offered for the limited purpose of addressing the feasibility of the general systems of the general size and type facility. Applicants made certain specific changes to their Exhibit 1 (see Tr. 1986, 1979-2071), and indicated a general limitation on the use of Exhibit 1 which was to provide general design characteristics of the CRBR, relevant criteria, and the state of technology. Tr. 1987. Applicants specified that the purpose of the testimony was to demonstrate feasibility of design as opposed to a detailed examination of the CRBR design. Id. The testimony, as so limited, was received into evidence. Id. Intervenors have now filed a motion to strike portions of Applicants' testimony.

DISCUSSION

Intervenors move to strike additional portions of Applicants' Exhibit 1 for the same reasons advanced in support of the motion made orally at the hearing; i.e., that several portions of the testimony contain conclusions concerning the performance and adequacy of the detailed CRBR design features which are inappropriate in light of the Board's April 22, 1982 Order. Intervenors further seek to amend certain parts of Applicants' Exhibit 1 so as to more clearly show compliance

with the April 22, 1982 Order and the August 23, 1982 ruling. Applicants opposed the Motion in its entirety, claiming that Intervenors are merely rearguing issues which have already been ruled on by the Board.^{2/}

The Staff submits that, contrary to the assertions of Intervenors (Motion at 3), Applicants' testimony may not be used to demonstrate the adequacy of CRBR safety systems based on detailed, design-specific data and analyses of CRBR. Rather, the Board limitation protects Intervenors from having to address the issue of the adequacy of proposed CRBR safety systems. Since the Board's limitation on the use of testimony for the purpose of showing feasibility of the implementation of certain design features applies to all of the Applicants' testimony (Tr. 1350), there is no need to further limit Applicants' Exhibit 1 by striking portions of it as proposed by Intervenors.

Similarly, Intervenors' Motion to amend Applicants' Exhibit 1 is premised on the faulty assumption that Applicants' proposed language modifications to Exhibit 1, which were made to conform with the Board's August 23, 1982 ruling, do not avoid the problem of indicating adequacy of the detailed systems to accomplish their intent and purpose. As indicated above, the Board's ruling on August 23, 1982 clearly precludes the Applicants, or any party, from relying on detailed design analysis for the purpose for demonstrating adequacy of systems at this point in the hearing. Accordingly, any uncertainty that may exist in Intervenors' minds regarding the language in the testimony is resolved by the explicit

^{2/} "Applicants' Response to Intervenors' Motion to Strike and Motion to Amend Applicants' Exhibit 1" dated September 20, 1982 (Applicants' Response).

limitations on the use of testimony as explained by the Board in its April 22 and August 23, 1982 rulings. The Staff perceives that these rulings are sufficiently specific to avoid any of the problems raised by Intervenors and, accordingly, does not see a need to go through a detailed examination of the various sentences in Applicants' testimony to change it so as to conform with that language preferred by Intervenors.

CONCLUSION

For the above-stated reasons, the Staff concludes that no parties are harmed by the existing language in Applicants' testimony, given the limitations on its use by the Board in its April 22, 1982 Order, and its August 23, 1982 ruling at the prehearing conference. Accordingly, the Staff does not support the Intervenors' Motion to Strike portions of Applicants' Exhibit 1 or to amend specific language in other parts of that same exhibit.

Respectfully submitted,

Daniel T. Swanson

Daniel T. Swanson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 24th day of September, 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
TENNESSEE VALLEY AUTHORITY

(Clinch River Breeder Reactor
Plant)

)
)
)
)
)
)

Docket No. 50-537

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENORS' MOTION TO STRIKE AND MOTION TO AMEND APPLICANTS' EXHIBIT 1" 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, this 24th day of September, 1982:

Marshall Miller, Esq., Chairman
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Mr. Gustave A. Linenberger
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

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

Alan Rosenthal, Esq., Chairman
Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Dr. John H. Buck
Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

William M. Leech, Jr., Attorney General
William B. Hubbard, Chief Deputy
Attorney General
Michael D. Pearigen, Assistant
Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219

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

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

R. Tenney Johnson
Leon Silverstrom
Warren E. Bergholz, Jr.
William D. Luck
U.S. Department of Energy
1000 Independence Ave., S.W.
Room 6-B-256
Washington, D.C. 20585

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

Project Management Corporation
P.O. Box U
Oak Ridge, Tennessee 37830

Barbara A. Finamore
Ellyn R. Weiss
Dr. Thomas B. Cochran
S. Jacob Scherr
Natural Resources Defense Council, Inc.
1725 Eye Street, N.W., Suite 600
Washington, D.C. 20006 **

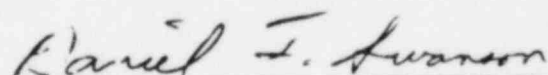
Manager of Power
Tennessee Valley Authority
819 Power Building
Chattanooga, Tennessee 37401

Director
Clinch River Breeder Reactor Plant
Project
U.S. Department of Energy
Washington, D.C. 20585

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

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

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *



Daniel T. Swanson
Counsel for NRC Staff