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Before the
UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

SECRETARY
REG & SERVICE
BRANCH

In the Matter of)	
)	
UNITED STATES DEPARTMENT OF ENERGY)	
PROJECT MANAGEMENT CORPORATION)	Docket No. 50-537
TENNESSEE VALLEY AUTHORITY)	(Exemption Request
)	Under 10 CFR
(Clinch River Breeder Reactor Plant))	Section 50.12)
)	

SUGGESTIONS OF INTERVENORS,
NATURAL RESOURCES DEFENSE COUNCIL, INC.
AND THE SIERRA CLUB,
FOR PROCEDURES AND SCHEDULING ON REMAND

On December 2, 1982, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission the record on Applicants' exemption request under 10 CFR Section 50.12 for the Clinch River Breeder Reactor. The Court of Appeals directed the Commission "to hold a prompt adjudicatory hearing" on the exemption request and to "reconsider its decision" of August 17, 1982 (CLI-82-23) "on the basis of the record developed in...[such] adjudicatory hearing." Natural Resources Defense Council, Inc., et al. v. the United States Nuclear Regulatory Commission, et al., No. 82-1962 (D.C. Cir., filed Dec. 2, 1982). It further ordered that the supplemental record and decision be filed with the Court on or before February 4, 1983. Id.

Intervenors, Natural Resources Defense Council, Inc. and the Sierra Club ("Intervenors"), believe that the

adjudicatory hearing ordered by the Court of Appeals must be conducted in accordance with the Commission's "Rules of General Applicability", 10 CFR Part 2, Subpart G, with, to be sure, appropriately foreshortened time periods. ^{1/} However, because the Commission has some flexibility in approach, it may be useful for Intervenors to present their views on several matters relating to the procedures, as well as with respect to the schedule to be established on remand:

(1) Discovery - A limited period for discovery is necessary before the actual hearing is held. One of the major deficiencies in prior Section 50.12 proceedings was that neither Intervenors nor the Commission had an opportunity to obtain and examine documents underlying Applicants' case, i.e., documents calculating overall and delay costs, documents related to asserted "loss of technical experts" through delay, documents relating to the schedule and funding of the Large Development Plant, documents relating to United States and potential foreign cooperation in breeder development programs, etc. It is critical that the information base for Applicants' assertions be available for full exploration. Intervenors should thus be able to utilize, prior to hearing, the full range of discovery methods under the Commission's rules (10 CFR Sections 2.740 -

^{1/} Among other matters, we presume that in such a proceeding the Commission Staff will be treated as a party and ex parte rules (10 CFR Section 2.780) will apply.

2.742). 2/

(2) Presentation of Testimony - Even though the adjudicatory process must be completed in nine weeks from the date of the Court of Appeals order, the requirements for submission of pre-filed, written testimony under 10 CFR Section 2.743(b) should continue to obtain. Having pre-filed, written testimony will both reduce overall hearing time and greatly facilitate cross-examination. Indeed, it would appear essential for the hearing to proceed expeditiously.

(3) Conduct of the Hearing - While licensing boards might generally be said to be better suited to sift the facts on a Section 50.12 request in an adjudicatory hearing, in this case the Commission itself should conduct such hearing. Not only does the Commission have the power to conduct an adjudicatory hearing, see Public Service Co. of New Hampshire (Seabrook Station Units 1 and 2), CLI-76-17, 4 NRC 451 (1976), but it has a thorough familiarity with the Section 50.12 issues -- familiarity which no licensing board has. Further, the licensing board which is conducting the underlying LWA-1 hearing is intensively involved in that process at this time. 3/ Finally, as the Commission itself indicated in December 1981, the issues, particularly as they

2/ If there were to be any limitation on discovery methods - and we believe none is warranted -- at the very least documentary discovery under 10 CFR Section 2.741 should be permitted.

3/ The third phase of the LWA-1 hearing is scheduled to begin next week, and proposed findings of fact and conclusions of law are due to be submitted approximately January 26.

relate to the fourth Section 50.12 factor (the "public interest"), are appropriate for resolution by the Commission itself. See Commission Order of December 24, 1981 (CLI-81-35). 4/

(4) Proposed Findings and Conclusions - Even though time is short, the Commission should have the benefits of proposed findings and conclusions prepared by the parties prior to decision, in accordance with 10 CFR Section 2.754. Proposed findings of fact and conclusions of law should help focus the decision-making process on the key, contested issues. Moreover, they may be especially important if hearing and decisional functions are bifurcated.

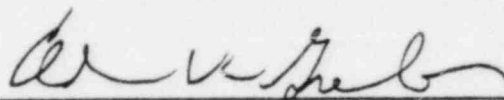
(5) Scheduling - In order to meet the Court of Appeals deadline of February 4, 1983, we suggest that the following schedule be established:

- | | |
|--------------------------|---------------------|
| a) Discovery Open - | As soon as possible |
| b) Discovery Closed - | December 23 |
| c) Testimony Filed - | January 5 |
| d) Hearing to Commence - | January 12 |

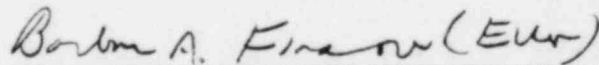
4/ Alternatively, if the Commission determines that a licensing board should conduct the adjudicatory hearing, intervenors submit that, in order to expedite the process, the Commission should proceed under 10 CFR Section 2.760(b) and direct that the presiding officer certify the record to it without initial decision and then that the Commission itself make that decision.

- e) Hearing to Close - January 14
- f) Proposed Findings of Fact
and Conclusions of Law Filed -
January 24
- g) Decision by the Commission -
February 2

Respectfully submitted,



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Sierra Club

Dated: December 7, 1982
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Suggestions of Intervenor, Natural Resources Defense Council, Inc. and the Sierra Club, for Procedures and Scheduling on Remand was served on the 7th day of December, 1982, by hand-delivering a copy of the same to:

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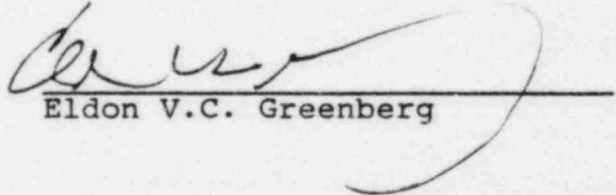
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Dated: December 7, 1982
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