UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSIONERS

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

BRIEF OF APPLICANTS
IN RESPONSE TO
COMMISSION ORDER OF
DECEMBER 10, 1982

The Department of Energy and Project Management Corporation, on behalf of themselves and the Tennessee Valley Authority, (Applicants) herewith file their Brief in Response to the Commission's Order of December 10, 1982.

INTRODUCTION

On December 7, 1982, the United States Court of Appeals for the District of Columbia Circuit remanded this proceeding to the Commission to identify "the exigent circumstances that warranted such extraordinary relief." Natural Resources Defense Council, Inc. v. Nuclear Regulatory Commission, No. 82-1962, Slip op. at 4 (December 7, 1982).

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The Commission decision of August 17, 1982, (CLI-82-23) fully and carefully delineated the exigent or extraordinary circumstances warranting relief under Section 50.12. As in its past considerations of Section 50.12 requests, [1] the Commission addressed the extraordinary circumstances criterion under the four factors of 10 C.F.R. subsection 50.12(b). In particular, the Commission addressed the exigent or extraordinary circumstances criterion under the public interest factor. As the Commission stated in its decision:

> To determine whether the public interest warrants the initiation of site preparation activities under an exemption from 10 C.F.R. 50.10, the Commission considers the factors in 10 C.F.R. 50.12(b). Past Commission practice also suggests that exemptions of this sort are granted sparingly and only in extraordinary circumstances. E.g., Washington Public Power Supply System (WPPSS Nuclear Power Project Nos. 3 and 5), CLI-77-11, 5 NRC 719 (1977). The public interest criterion is therefore a stringent one. For the reasons discussed below, the Commission finds that the public interest favors an exemption in this extraordinary case.

CLI-82-23 at 17.
The Commission decision properly concluded that the public interest factors present in this case demonstrated extraordinary or exigent circumstances. Applicants submit that such a finding

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1 See for example, Carolina Power & Light Co. (Shearon-Harris Nuclear Power Plant, Units 1, 2, 3 and 4) CLI-74-22, 7 AEC 939 (1974) where the Commission noted that Section 50.12 relief is available in cases of "compelling circumstances to serve the public interest." Id. at 940.

was fully in accord with past Commission precedent. Accordingly, for the reasons set forth in this Brief, Applicants respectfully request that the Commission reaffirm its previous decision of August 17, 1982.[2]

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2 In reconsidering its previous decision, Applicants believe that the Commission should review its previous decision based on the factual circumstances existing as of August 17, 1982. Applicants submit, however, that even if considered as of the present date, a finding of extraordinary or exigent circumstances is fully warranted.

I. THE SECTION 50.12 PROCEDURES ARE APPROPRIATELY INVOKED WHERE COMPELLING OR EXTRAORDINARY CIRCUMSTANCES ARE PRESENT

In promulgating Section 50.12, the Commission recognized its obligation to insure that its regulatory requirements do not cause undue hardship.[3]

Indeed, Section 50.12 reflects a conscious Commission policy decision to preserve its discretion to authorize site preparation in exceptional cases involving undue hardship. As the Commission noted at the time it promulgated Section 50.12(b), 10 C.F.R. subsection 50.12(b),

> ... the Commission realizes that in individual cases, particularly those instances where plants are in an advanced stage of development, but where no site preparation work has yet been started, undue hardship may be incurred. In those situations, relief may be sought by requesting a specific exemption under Sec. 50.12. Although it is expected that specific exemptions will be used only sparingly for this purpose, appropriate relief may be granted in particular cases where the facts so warrant and a favorable determination can be

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3 It is inherent in an administrative agency's authority and function to apply its regulations so as to avoid undue hardship. In National Broadcasting Co. v. United States, 319 U.S. 190, 225 (1943), the Supreme Court held that an administrative agency has an obligation to ensure that the purpose of the regulations is served by their application in a particular case:

> [t]he Commission therefore did not bind itself inflexibly to the licensing policies expressed in the Regulations. In each case that comes before it the Commission must still exercise an ultimate judgment whether the grant of a license would serve the 'public interest, convenience, or necessity.' If time and changing circumstances reveal that the 'public interest' is not served by application of the Regulations, it must be assumed that the Commission will act in accordance with its statutory obligations.

See also WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969)

> made with respect to the specified environmental considerations listed in the new Sec. 50.12(b).

37 Fed. Reg. 5746 (March 21, 1972). In addition, at the time of the promulgation of 50.10(e), the Commission reiterated its position that relief under 50.12 would be available "in cases of undue hardship." 39 Fed. Reg. 14506, 14507 (April 24, 1974).

In its consideration of specific Section 50.12 requests, the Commission has similarly recognized the need, in appropriate cases, for relief under Section 50.12. In Carolina Power & Light Company (Shearon-Harris Nuclear Power Plant, Units 1, 2, 3 and 4) CLI-74-22, 7 AEC 939 (1974), the Commission, although noting that authorization to commence site preparation work "is the exception rather than the general rule," also recognized that

> It is manifestly in the public interest to have such an exception or exemption. See United States v. Allegheny-Ludlum Steel Corp., 406 U.S. 742, 755 (1972); Permian Basin Area Rate Cases, 390 U.S. 747, 784-87 (1968); WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). This is true especially where, as here, benefits to the public will result from the site preparation work....

Id. at 944.

In light of the Commission's practice of granting relief under Section 50.12 "sparingly," the Commission has allowed such relief only in "extraordinary circumstances."[4] In Shearon-Harris, supra, the Commission enunciated the standard in the following terms:

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4 Washington Public Power Supply System (WPSSS Nuclear Project Nos. 3 and 5) CLI-77-11, 5 NRC 719 (1977).

> such work would be allowed -- by grant of an exemption only in the most compelling circumstances to serve the public interest; and even then such authorizations would be granted sparingly.

Shearon-Harris, supra at 940.

The Commission's case law on Section 50.12 provides a more explicit set of definitions for the sort of extraordinary or compelling circumstances which are sufficient for the grant of relief. In Shearon-Harris, for example, the Commission listed a number of circumstances which lead the Commission to conclude that granting the request was "particularly appropriate."

> In the circumstances of this case, it was particularly appropriate to authorize Carolina Power to perform such work. As explained above, even though the staff has issued a final environmental statement recommending the grant of construction permits for the Shearon-Harris reactor, the original licensing schedule had been substantially delayed because of design revisions which Carolina Power had to make to satisfy new requirements of the EPA. Moreover, a draft environmental statement based on these revisions (recommending a grant of construction permits) had been issued. And shortly after approval of the site preparation work, a final environmental statement of the revised plant was issued also recommending granting of the permits. In essence, this agency's environmental consideration of the proposed reactor was far from incomplete at the time the site preparation was authorized.

Shearon-Harris, supra, at 945.

In addition, it was found that permitting site preparation work would accelerate plant construction by six months and result in substantial cost savings to the public. Thus, in Shearon-Harris, the Commission identified the following factors as important to finding of extraordinary or compelling circumstances:

1. The environmental review was at an advanced stage.

2. The delay was caused by events outside the control of the applicant.[5]

3. Granting the request would accelerate project completion by six months, and

4. Granting the request would result in substantial cost savings to the public.

In Washington Public Power Supply, supra, the Commission noted an additional factor to be taken into account in a Section 50.12 proceeding. After finding that the Applicant had already been granted much of the relief it sought from the Licensing Board, the Commission stated that relief under 50.12 should be granted

> only in the presence of exigent circumstances, such as emergency situations in which time is of the essence and relief from a Licensing Board is impossible or highly unlikely.[6]

Id. at 723.

Finally, as the rulemaking history of Section 50.12 makes clear, authorization to commence site preparation is appropriate where the particular plant is "in an advanced stage of development, but where no site preparation work has yet been started...." 37 Fed. Reg. 5746 (March 21, 1972).

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5 In Gulf States Utilities Company (River Bend Station Units 1 and 2) CLI 76-16, 4 NRC 449 (1976), the Commission again noted that the delay was caused by events outside the applicants' control -- in that case the decision in NRDC v. NRC, Nos. 74-1385 and 74-1586 (July 21, 1976).

6 This factor was implicitly considered in Shearon-Harris in the finding that a delay was inevitable due to a revision of the final environmental statement and that grant of the request would accelerate construction by six months.

As shown in the Commission's decision of August 17, 1982, the factors considered important by the Commission are present in this case and a finding of extraordinary circumstances is clearly warranted. Because the Commission's decision was fully in accord with its past precedent regarding Section 50.12, the Commission should reaffirm that decision.

II. IN VIEW OF THE EXTRAORDINARY AND COMPELLING CIRCUMSTANCES OF THIS REQUEST, THE COMMISSION SHOULD REAFFIRM ITS DECISION OF AUGUST 16, 1982

This request, as the Commission clearly found in its August 17, 1982 decision, is extraordinary in a number of important respects. As an initial matter, it should be emphasized that the net result of the Commission's decision is to advance the completion date of this Project by 9-12 months. At the time Applicants filed their request, Applicants estimated (and Intervenors did not seriously dispute) that grant of this request would save 6-12 months. Subsequent events have amply demonstrated the accuracy of that estimate. At the present time, and under an ambitious, albeit exhausting hearing schedule, the Licensing Board in the underlying licensing proceedings will be in a position to issue an initial decision on LWA-1 issues by mid-to-late February 1983, at the earliest.[7] Moreover, in light of the Commission's regulations regarding immediate effectiveness review of initial decisions by Licensing Boards, authorization to proceed pursuant to an LWA-1 will not be

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7 Proposed findings are due January 24, 1983. Applicants have ten days to reply. Thus, the Board must issue a decision within 11 to 24 days of completion of briefing.

forthcoming until at least three months after the date of the Board decision.[8] Thus, the net effect of the Commission's decision has been to accelerate the completion of this vital project by approximately 9-12 months.[9]

While the schedular saving is significant in and of itself, its real importance lies in the beneficial consequences both to the Project and to DOE's LMFBR Program which will flow from the avoidance of further delay. As was thoroughly discussed in the Commission's decision of August 17, 1982, grant of this request was "particularly appropriate" and clearly warranted for at least five reasons. First, in light of the Project's unique nature, the grant of relief in this case is not precedent-setting and is entirely consistent with the Commission's sparing use of its Section 50.12 authority. Second, there are important national policies in favor of expeditious project completion which were clearly and properly advanced by the Commission's decision. Third, the Project is in an advanced stage of development and relief was necessary to avoid undue hardship. Fourth, grant of the request ensured the timely transfer of

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8 10 C.F.R. Subsection 2.764.

9 The Commission should review its August decision based on the facts before it as of that time. Even when viewed as of this date, however, a substantial time savings will result by permitting Applicants to proceed with site preparation activities. As shown above, an initial decision by the Board in February 1983 will not be effective under Commission regulations for approximately 3 months. Thus, as of this date, allowing Applicants to continue site preparation will advance the project completion by at least five months.

information from the CRBRP to other elements of the Department of Energy's LMFBR Program. Fifth, grant of the request will have a substantial positive impact on DOE'S international efforts.

A. In Light of the Project's Unique Characteristics, the Grant of Relief Was Entirely Consistent With The Commission's Sparing Use of its Section 50.12 Authority

In addition to the extraordinary circumstances attending this Project (which are discussed in detail below), the Project has certain unique characteristics which offer additional assurance against precedent-setting action. The plant will be licensed as a research and development reactor. Its primary mission is development of information, and not production of power. It is a key step in the development of the LMFBR, and thus must be constructed in a timely and expeditious manner to support the Nation's preparedness for longer-term nuclear power needs. Moreover, it will be owned by the United States Government, managed by DOE, located on government-owned land, and operated by another federal agency (the Tennessee Valley Authority) under contract to DOE. It is relatively small (375 MWe), compared to modern commercial reactors (1200 MWe). These unique Project characteristics, coupled with the exceptional circumstances discussed below, demonstrate that the Commission's authorization to begin site preparation will not be precedent-setting, but entirely consistent with the Commission's long-standing policy of granting such requests sparingly and only in exceptional circumstances.

B. The Commission's Grant of the Request Advances Established National Policies

In submitting their request pursuant to Section 50.12, Applicants requested the Commission to give consideration to the established national policy in favor of expeditious project completion. The Congress, the President and the Department of Energy have all determined that the CRBRP must be completed as soon as possible. Clearly these expressions of national policy constitute extraordinary and exigent circumstances which the Commission can and should take into account.

The intent of Congress, as reflected in the Omnibus Budget Reconciliation Act of 1981, can be summarized as follows:

a. The plant must be constructed in a timely and expeditious manner; construction must be undertaken as expeditiously as possible; the cooperation of all agencies is required;

b. Unrecoverable delays resulting from the 1977 decision to stop the project must be minimized; construction must be undertaken with as little delay as discretion will allow; and

c. The CRBRP is a key step in the development of the Liquid Metal Fast Breeder Reactor (LMFBR).[10]

The President's October 8, 1981, policy statement reflects a similar policy on the part of the Executive:

> I am directing that government agencies proceed with the demonstration of breeder reactor technology, including completion of the Clinch River Breeder Reactor. This is essential to ensure our preparedness for longer-term nuclear power needs.

17 Weekly Compilation of Presidential Documents, 1101-02 (1981).

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10 See H. R. Rep. No. 97-208, 97th Cong., 1st Sess. (1981); 127 Cong. Rec. H5817-18 (1981); 127 Cong. Rec. 58958 (1981)

The Department of Energy has implemented Congressional and Presidential policy and its own statutory responsibility for energy research and development, by determining that CRBRP should be completed as expeditiously as possible. The program called for in the Environmental Impact Statement for the Liquid Metal Fast Breeder Reactor Program (Supplement to ERDA-1535, DOE/EIS-0085-FS, May 1982) is construction of CRBRP as soon as possible.[11] In granting relief under Section 50.12, the Commission appropriately took this national policy into account. In its decision, the Commission, after reviewing the relevant legislative history, found:

> that the legislative history of the Omnibus Budget Reconciliation Act of 1981 clearly indicates a national policy that all federal agencies should exercise their discretion to enable CRBRP to be completed in a "timely and expeditious manner" so as to recoup some of the time lost since 1977. While this congressional intent may not rise to the level of a mandate that compels grant of the exemption, the Commission believes it is one important factor to consider that argues strongly in favor of the exemption.

CLI 82-23 at 26.

C. The Project Is In An Advanced Stage of Development and Relief was Necessary to Avoid Undue Hardship

As the Commission noted at the time it promulgated Section 50.12, the advanced stage of development of the Project is an important factor in considering the grant of relief under Section 50.12.[12] In addition, as the Commission noted in

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11 47 Fed. Reg. 33771 (Aug. 4, 1982)

12 37 Fed. Reg. 5746 (March 21, 1972).

Shearon-Harris, the advanced stage of the environmental review is similarly an important factor in assessing whether extraordinary circumstances are present. In this case, both the project and the environmental review of the Project are in an advanced stage of development. Further delay, therefore, would have resulted in undue hardship to the Project.

In February of 1977, the NRC Staff completed its review of the radiological suitability of the Clinch River site, and issued a Site Suitability Report ("SSR") which concluded that the site was suitable for a reactor of the general size and type described in the application. See 10 C.F.R. subsection 50.10(e)(ii). In March of 1977, the NRC Staff completed its environmental review of CRBRP and issued its CRBRP Final Environmental Statement ("FES"), NUREG-1039. See 10 C.F.R. subsection 50.10(e)(i). The FES concluded that the action called for under NEPA was construction of the CRBRP.

On March 28, 1977, the Board issued an Order which set June 14, 1977 as the date of commencement of LWA hearings in Oak Ridge, Tennessee. The hearings were scheduled to continue until completion. On that basis, the Applicants anticipated that an LWA decision would be rendered in the fall of 1977, and that site preparation would then commence. On April 20, 1977, however, President Carter announced the previous Administration's decision to cancel the Project. Thereafter, the NRC licensing proceedings were suspended at ERDA's request and the NRC Staff suspended its review of the application.

In the ensuing four-year period, design, research and

development ("R&D"), and procurement activities for the CRBRP continued, while licensing activities and any possibility of commencing site preparation were precluded. By September 30, 1981, design and R&D were 90 percent complete, and more than $500 million of hardware had been placed on order. The Project had advanced to the point that further progress toward completion could not be gained without commencement of site preparation. Indeed, the commencement of site preparation for Clinch River had become a critical path element of DOE's entire LMFBR Program.[13]

On January 18, 1982, the Licensing Board resumed the adjudicatory proceedings which had been suspended nearly five years earlier. In response, the NRC Staff began once again its radiological and environmental review of the Project.

On June 11, 1982, the NRC Staff issued its update to the 1977 radiological Site Suitability Report for CRBRP and again concluded that the Clinch River site was suitable for a reactor of the general size and type described in the application from the standpoint of radiological health and safety (NUREG-0786).

On July 19, 1982, the NRC Staff completed its documentation updating the 1977 FES for CRBRP. The NRC Staff determined that the document should be issued as a draft supplement and recirculated for comment. See 47 Fed. Reg. 33028 (July 30, 1982). This Supplement to the 1977 CRBRP FES noted that, although new information was included, the conclusions of the 1977 CRBRP FES had not changed. The Supplement concluded, as

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13 NRC Hearing Transcript, July 29, 1982 at 57.

did the 1977 CRBRP FES, that "the action called for is the issuance of a construction permit for the plant subject to certain limitations for the protection of the environment." As to site preparation activities, the Supplement reaffirmed the conclusion in the 1977 CRBRP FES that the environmental effects of site preparation would not be significant. Commission Order CLI-82-23 at 18-20.

As these facts demonstrate, at the time the Commission issued its order on August 17, 1982, the Project had advanced to the point that further progress toward completion was impossible unless site preparation activities were commenced. Moreover, the decision to recirculate the Supplement to the FES precluded the possibility of any timely relief by the Licensing Board.[14]

Because of the advanced stage of development, the Project lost its ability to work around delays in the licensing process. Absent Commission authorization, the Project would have been forced to mark time while awaiting an LWA decision by the Licensing Board and subsequent review by the Appeal Board and Commission. The net effect would have been to force the Project

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14 The Board had originally scheduled hearings on all LWA-1 issues for August 23, 1982. Up to the time of the Staff's decision to issue the update as a Supplement and recirculate it for comment, all milestones in the prehearing schedule had been completed. Once the staff determined that recirculation was necessary, the FES Supplement could not be issued in final form until November 1, 1982. As a result of the recirculation decision, the Board bifurcated the hearings, setting a site suitability phase for August 23-27, and an environmental stage for the weeks of November 17 and December 13. As a result, the Applicants' estimate of a 6-12 month savings associated with grant of Section 50.12 relief was modified to 9-12 months.

to maintain its design and construction team throughout the period of delay without any appreciable benefit to the Project, thus precluding the most productive use of Project funding, and inevitably increasing cost. Applicants estimated and the Commission found that the grant of the Section 50.12 request would save or avoid $28,000,000 per year on a present worth basis.

In addition, the further delay of this Project threatened the technical resources of the Project. As noted in the Site Preparation Activities Report (as well as the Commission decision):

> Another serious concern would be the continued loss of the cadre of technical experts as they transfer to other areas in which they could hope to see more tangible progress during their technical careers. In fact, over the last five years, a substantial number of qualified personnel have left the CRBRP Project. Extensive efforts were undertaken during the last year to restore the necessary talent for effective project completion. However, retaining this nucleus of qualified personnel will be difficult without tangible progress on the Project.

SPAR at 7-4; Commission Memorandum and Order at 27-28.

Based on these facts, Applicants submit that the grant of relief was fully justified and clearly in accord with past Commission precedent. In particular, the facts of this case closely parallel those in Shearon-Harris which the Commission found compelling. As in Shearon-Harris, the environmental review process is at an advanced stage. As of 1977, the Final Environmental Statement was completed and concluded that the action called for is construction of CRBRP. Due to circumstances

and events beyond Applicants' control, including the four-year suspension of licensing and more recently the decision to recirculate a draft supplement to the FES, any possbiility of timely relief from the Licensing Board was effectively eliminated.[15] Like the circumstances in Shearon-Harris compelling circumstances were present. The grant of relief would avoid an additional delay of 6-12 months and the undue hardship of increased costs to the Project and the Nation's taxpayers.

The consequences of further delay in this case, however, extend beyond the substantial immediate effects on the Project and the taxpayer. Unlike a commercial reactor, where the impacts of delay extend only to the project itself, additional delays in this Project will extend further to affect adversely the Nation's preparedness for longer-term nuclear power needs and vital international policies and programs.

D. Absent Immediate Relief From the Commission, the DOE LMFBR Program Would Have Suffered Undue Hardship

The primary role of the CRBRP is to provide technical information on a timely basis to LMFBR Program. The information to be obtained from design, construction, and operation of CRBRP is crucial to the timely and effective development of the major

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15 Given the extensive environmental reviews and the decision to recirculate, the circumstances of this case are plainly different than those in WPPSS, supra. There, the decision by the Board had already afforded the applicants much relief and the decision by the Board on an LWA-1 was "not too far off." In contrast, here, the likely delay as of the time of the Commission decision amounted to at least 10 months - the earliest period of time in which Board decision recommending an LWA-1 could become effective.

elements of the LMFBR Program including the Base Research and Development Program, the Large Development Plant and the LMFBR Fuel Cycle Program. At the time of the Commission decision, due to past delays, the CRBRP was out of optimum synchronization with the overall LMFBR Program and had become the critical path element within the overall LMFBR Program. Any further delay of the CRBRP Project would have delayed the informational benefits to the LMFBR Program that would flow from CRBRP, adversely affected the coordination of the entire LMFBR Program and, as noted earlier, eroded the talented cadre of technical personnel which has been assembled to carry out the Projects.

The Department of Energy's experience with the Fast Flux Test Reactor amply demonstrates the importance of the timely transfer of information between related project. As a result of the information obtained from the FFTF, improvements in the CRBRP design were made in a number of areas, including containment, reactor vessel access, all construction, maintenance and clamp, and hatch design.

As with FFTF, the informational benefits to be derived from the CRBRP are particularily needed for the the Large Developmental Plant (LDP). Because the design of CRBRP is virtually complete, however, the CRBRP must move into construction and operation as soon as possible in order that as the LDP is being designed, the lessons of CRBRP construction can be factored into the LDP design effort on a timely basis.

In its decision of August 17, 1982, the Commission specifically addressed the need for the early transfer of

information from CRBRP.

> The Commission finds that if the ultimate decision is to proceed with CRBR, then delay now would adversely affect the public interest by foreclosing the opportunity to transfer early information from CRBR to the rest of the LMFBR Program. While it is not feasible to quantify, or otherwise precisely identify the specific adverse effects of delay, or to identify in advance just which items of information provided by CRBR will be of early value to the base R&D program or to the LDP, it is clear from the experience with the FFTF that the sooner CRBR is begun, the more likely that it will provide useful information at an early enough time to be integrated into the overall LMFBR Program.

CLI 82-23 at 27.

The effect of further delay on the DOE LMFBR Program is an extraordinary or exigent circumstance which demanded relief pursuant to Section 50.12.

E. Immediate Relief Was Necessary To Promote International Interests

Timely development of the CRBRP and continuation of the LMFBR Program also advance a number of vitally important and interrelated international policy considerations. These include reestablishment of the United States' influence and leadership in the international nuclear field as a technological leader, as a reliable venture partner, and as a leader in establishing effective measures toward a credible nonproliferation policy.

Other major industrial nations have now surpassed the United States in terms of demonstrating LMFBR technology at intermediate and near-commercial sizes. For example, France, the United Kingdom, and the Soviet Union have surpassed the United States in intermediate-scale plant experience, the Japanese and

Germans are both constructing CRBRP-size developmental plants, and the French plan to bring their first large-scale plant on line in 1983. SPAR at 7-10. Since several nations will have operating commercial or near-commercial size breeders by the mid-1990's, any delay of CRBRP places the United States' commitment and technology further behind the rest of the world.

Delay of the CRBRP also lessens the ability of the United States to enter into ventures with foreign countries in the development of nuclear technology. As Deputy Secretary of Energy W. Kenneth Davis said in answer to a question at the Section 50.12 hearing before the NRC, there have been negotiations with the British, Japanese, and French with the aim of being full partners in follow-on development work. In this regard, he stated that an important element in concluding negotiations is some indication of this country's ability to move ahead promptly in LMFBR development. Transcript of Oral Presentations before the Nuclear Regulatory Commission (July 29, 1982), at 32-33 (hereinafter Hearing Transcript). Also see SPAR 7-4 and 7-8.

Just as delay in CRBRP diminishes the ability of United States industry to compete effectively in world nuclear markets over the long term, it also diminishes the ability of the United States to influence the development and control of nuclear energy in a positive and peaceful manner.

At the hearing, Deputy Secretary Davis read into the record a July 29, 1982 letter to him from Under Secretary of State Richard T. Kennedy that stated that the United States must

actively develop breeder technology domestically if it is to participate effectively in international cooperative efforts for developing and controlling such technology. Hearing Transcript at 9-10. Tangible progress on CRBRP at this "critical phase" (Hearing Transcript at 32) in the international safeguards arena is required to provide the United States with the needed technological basis to continue its influence over LMFBR matters, not the least consequential of which is the worldwide nonproliferation aspect of LMFBR applications.

In a July 16, 1981 Statement, President Reagan expressed his view on the importance of supporting effective international measures to reduce the threat of proliferation to help achieve a credible nonproliferation policy. He also made it clear in that Statement that the United States must reestablish its credibility in developing international nuclear policy and safeguards, as well as its credibility as a supplier of nuclear equipment, technology and fuels.

In its decision of August 17, 1982, the Commission recognized the extraordinary international implications of continued delay of the CRBRP and concluded that "the public interest will likely be adversely affected by the loss of these benefits through further delay of the CRBRP Program." Commission Memorandum and Order at 28.

CONCLUSION

For the reasons set forth above, Applicants submit that

there are extraordinary or exigent circumstances attending this request. These circumstances clearly warranted the Commission's exercise of its 50.12 authority. Accordingly, Applicants respectfully request that the Commission reaffirm its previous decision.

Respectfully submitted,

for George L. Edgar
Attorney for Project
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Leon S. Silverstrom
Attorney for the Department
of Energy

December 15, 1982

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NUCLEAR REGULATORY COMMISSION

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(Clinch River Breeder Reactor Plant)	)	
	)	

CERTIFICATE OF SERVICE

Service has been effected on this date by personal delivery or first-class mail to the following:

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* Denotes hand delivery.