

1/11/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF RESPONSE TO POSITION PAPER
OF THE TENNESSEE ATTORNEY GENERAL, AND
THE STATEMENT OF THE CITY OF OAK RIDGE

I. INTRODUCTION

On November 12, 1982, the NRC Staff ("Staff") received the "Position Paper of the Tennessee Attorney General on Socio-Economic Impact Matters and Other Matters Relating to the Clinch River Breeder Reactor Plant," ("Position Paper"), dated November 10, 1982. Subsequently, the Staff received "The City of Oak Ridge's Statement Relative to the Socio-Economic Impact of the Clinch River Breeder Reactor Plant," ("City's Statement"), dated November 12, 1982.

At the beginning of the hearing session commencing November 16, 1982, the Atomic Safety and Licensing Board ("Board") directed the Staff and Applicants to file their responses to the Tennessee Attorney General's ("State's") Position Paper by January 6, 1983 (Tr. 3356-58). At the hearing session commencing December 13, 1982, the Board also directed the Staff and Applicants to file their responses to the City's

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Statement simultaneously with the responses to the State's Position Paper. (Tr. 4961-62).

For the reasons set forth below, the Staff agrees in most aspects with the State's and City of Oak Ridge's ("City's") requests for socio-economic monitoring. The Staff notes that it has proposed a license conditions which require Applicants to implement a comprehensive socio-economic monitoring program in Section 6.1.6 of the 1982 FES Supplement for CRBR.

The Staff finds that any license condition requiring Applicants to "mitigate adverse socio-economic impacts," as requested by the State, is not warranted at this time. The Staff also finds that the City's request that 42 U.S.C. Section 2391 financial assistance payments from DOE to the City be made on an in-lieu-of-tax basis, is not an appropriate issue in this proceeding, and should be denied.

II. BACKGROUND

The State of Tennessee (State) filed a petition for leave to intervene pursuant to 10 C.F.R. Section 2.714 on July 17, 1975, which was subsequently amended on September 24, 1975. The Atomic Safety and Licensing Board ("Board") admitted the State as a party to this proceeding in its "Special Prehearing Conference Order of October 9, 1975. Following the resumption of the proceeding, the State filed a motion to withdraw as a 10 C.F.R. Section 2.714 party, and for leave to continue participation as an "interested state" pursuant to 10 C.F.R. Section 2.715(c). This motion was granted by the Board on March 31, 1982.

The City of Oak Ridge ("City") filed a petition to intervene pursuant to 10 C.F.R. Section 2.714 on July 17, 1975, which was amended on January 22, 1976. The Board admitted the City as a party in its "Memorandum and Order Regarding Amended Petition to Intervene Filed by City of Oak Ridge", March 4, 1976. On August 20, 1982, the City of Oak Ridge requested leave to withdraw as a party to the proceeding, but continue to participate as an "interested municipality" in accordance with 10 C.F.R Section 2.715(c). On September 7, 1982, the Board granted the City's motion.

The City and the State did not present any evidence regarding socio-economic impacts at any of the three (1982) hearing sessions (August 23-27; November 16-19; and December 13-17). The City and the State failed to present any witnesses, nor did they seek to introduce any documents or other evidence, other than the State's Position Paper and the City's Statement. In addition, the State and the City did not seek to cross-examine an appropriate Staff or Applicant expert witness regarding socio-economic impacts.

III. DISCUSSION

A. Socio-Economic Monitoring

The State requests that a "monitoring program" be made a condition of Applicants' LWA-1, in order to assess the socio-economic impacts of CRBR construction. Position Paper, pp. 3-5. The State does not specify what parameters or impacts it believes should be monitored.

The City also requests that monitoring "with respect to service impacts associated with the construction and operation^{1/} of CRBR" be made a part of the CRBR construction permit. City's Statement, p. 4.

The Staff concurs in most aspects with the State and City's requests. Section 6.1.6 of the 1982 FES Supplement for CRBR provides:

[T]he staff will impose a monitoring requirement on the applicants. This monitoring effort will involve the following elements:

- (1) A survey of the primary work force as discussed in Section 6.1.6.1 below.
- (2) Traffic counts on selected roads.
- (3) Surveys of the school enrollment of children from inmoving construction and operating phase worker households.
- (4) Surveys of mobile home developments.
- (5) Surveys of the demand for other publicly supplied services as appropriate.

The procedures used to implement these surveys and their scope shall be developed so as to record impacts of significance. The applicants agree to provide the findings of the socio-economic monitoring process to appropriate representatives of the State of Tennessee and the City of Oak Ridge and planning agencies in the project area as surveys are conducted. In addition, the applicants agree to evaluate the significance of socio-economic effects resulting from construction of the CRBRP and to provide descriptions of the project-related effects to representatives of both the State of Tennessee and the City of Oak Ridge and appropriate planning agencies. In cases where the project-related effects are significantly different from effects projected in the CRBRP FES, the applicants will provide the opportunity for meetings with appropriate state and local officials to (1) identify specific assessments necessary to determine the magnitude of impacts, and (2) arrange for corrective measures, procedure plans or program development, consistent with existing statutory authority, to minimize the severity of adverse socio-economic impacts.

^{1/} Since this proceeding does not involve an application for operation of CRBR, the Staff regards the City's request for monitoring during operation to be inappropriate in this proceeding.

The primary work force survey is a detailed program to gather demographic information which will be useful in determining where in-moving workers are settling, and assessing the probable demands on services by these workers. This survey is described in Section 6.1.6.1 as follows:

On a periodic basis the applicants shall determine certain demographic-sociological data on the primary work force. The primary work force is taken to mean direct manual, nonmanual, subcontractor, and operations employees (see Table A4.1). The desirable data would be family composition, place of residence, type of housing, length of time at current address, length of time at previous address, number and grades of school-age dependents, and occupation. Surveys should be undertaken when employment changes by 1000 and should not be initiated more frequently than every 6 months or more infrequently than once per year.

The Staff submits that the monitoring program described in Section 6.1.6 of the CRBR FES Supplement will provide useful information to the Staff, Applicants, the State, and the City for assessing any socio-economic impacts attributable to CRBR construction. The State's and City's requests in this regard are covered by the Staff's proposed license condition. The Staff urges the Board to approve the Staff's proposed license condition.

The State contends that the possibility of termination of CRBR construction prior to completion of the plant "is not so speculative that it can be ignored." Position Paper, p. 5. Accordingly, the State requests that socio-economic monitoring should "extend to cover such an eventuality." Position Paper, pp. 5-6. The socio-economic impacts due to a hypothetical premature CRBR construction termination are speculative and therefore were not evaluated in the FES Supplement. However, the Staff proposes two license

conditions to assure that Applicants will monitor, identify, and evaluate any adverse socio-economic impacts in the four county impact area^{2/} due to unevaluated activities at the construction stage, including those related to the premature CRBR construction termination. These license conditions are items 7(e) and (f), on p. vi of the 1982 FES Supplement for CRBR, which provide:

- (e) Before engaging in a construction activity not evaluated by the Commission, the applicants will prepare and record an environmental evaluation of such activity. When the evaluation indicates that such activity may result in a significant adverse environmental impact that was not evaluated, or that is significantly greater than that evaluated in the Final Environmental Statement, as supplemented in 1982, the applicants shall provide a written evaluation of such activities and obtain approval of the Director of the Office of Nuclear Reactor Regulation prior to undertaking the activities.
- (f) If unexpected harmful effects or evidence of serious damage are detected during plant construction, the applicants shall provide to the staff an acceptable analysis of the problem and a plan of action to eliminate or significantly reduce the harmful effects or damage.

Thus, the Staff concludes that no additional license conditions are necessary.

In addition to monitoring of "service impacts", the City requests that:

"monitoring of the fiscal impact of the development of the CRBRP as a federal project be required and that such monitoring compare the municipal revenues generated by CRBRP with those which would have been generated under taxable status."

^{2/} The Staff anticipates that the majority of impacts due to CRBR construction will occur in the "four county impact area" consisting of Anderson, Knox, Loudon, and Roane counties. See FES Supplement, pp. 2-20 to 21; 4-17 to 25.

City's Statement, p. 4. Presumably, the reason for this monitoring is to serve as a basis for setting in-lieu-of-tax payments from DOE to the City. See, e.g., City's Statement, pp. 3, 4. In light of the Staff's conclusion in Section II.C. of this response that the issue of in-lieu-of-tax payments are outside the scope of this proceeding, there is no reason to impose the requested "fiscal impact" monitoring as a LWA-1 condition. The Staff opposes any LWA-1 condition requiring "fiscal impact" monitoring.

B. Mitigation Conditions

The State devotes a substantial portion of its Position Paper to a discussion of the NRC's duty under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4331 et seq., to require Applicants to mitigate adverse socio-economic impacts. Position Paper, pp. 6-17. The City also asserts that the Staff should require Applicants to "declare its intent to provide mitigation. . . ." City's Statement, pp. 1, 4. The Staff submits that this issue is not appropriate for consideration at this time, since there is no evidence that there will be any adverse socio-economic impacts due to CRBR construction which will not be offset by benefits flowing from CRBR.

The Staff evaluated the possible adverse and offsetting beneficial socio-economic impacts in Section 4.5 of the 1982 FES Supplement for CRBR. The Staff found that the adverse impacts on the surrounding counties would be primarily on road capacity, housing, and schools, with the need to hire new teachers being the most important impact. The Staff concluded that the revenues generated by the CRBR project from

sales taxes, property and beverage taxes, and fees and fines, would "be more than sufficient to cover the local costs of increased educational expenditures." FES Supplement, Section 4.5.5. Thus, the Staff predicts that there will be no need for mitigation at this time. The State appears to agree with the evaluation and conclusion of the Staff:

[T]he State has chosen not to contest the Applicants' or the Staff's analysis of possible socio-economic impacts . . ."

Position Paper, p. 3. Neither the State nor the City chose to present any evidence contradicting the Staff's position, nor did they indicate that they wished to pursue the issue of socio-economic impacts by examining a Staff witness. Since there has been no showing that there will be adverse impacts, there is no basis for arguing that the Board consider whether mitigation should be required. The practical difficulties of formulating a mitigation program to address as-yet unknown and unquantified impacts are obvious.

The State and City suggest that Applicants should be required to commit to mitigate unknown, unquantified impacts because impacts may occur which are unanticipated by the Staff. See, e.g., Position Paper, p. 3; City's Statement, p. 3. The Staff has anticipated that possibility, and has proposed two license conditions in the CRBR FES Supplement to address that possibility:

- (e) Before engaging in a construction activity not evaluated by the Commission, the applicants will prepare and record an environmental evaluation of such activity. When the evaluation indicates that such activity may result in a significant adverse environmental impact that was not evaluated, or that is significantly greater than that evaluated in the Final Environmental Statement, as supplemented in 1982, the applicants shall provide a

written evaluation of such activities and obtain approval of the Director of the Office of Nuclear Reactor Regulation prior to undertaking the activities.

- (f) If unexpected harmful effects or evidence of serious damage are detected during plant construction, the applicants shall provide to the staff an acceptable analysis of the problem and a plan of action to eliminate or significantly reduce the harmful effects or damage.

FES Supplement, p. vi., items 7(e) and (f). These proposed license conditions have been accepted in other proceedings, see e.g., Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-434, 15 NRC 1423, 1477-1478, and will assure continuing Applicant responsibility for the identification, evaluation, and mitigation of any unanticipated impacts resulting from CRBR construction.

The Staff concludes that the issue of mitigation should not be addressed by this Board, since the issue is inappropriate for consideration, and since there are two license conditions which will assure that Applicants will evaluate and mitigate substantial unanticipated impacts.

C. In-Lieu-of-Tax Payments

The City states that "the issue of in-lieu-of-tax payments to the City should also be addressed in this proceeding." City's Statement, p. 1. More specifically, the City requests that "[m]itigation of impacts should be required in the form of appropriate payments in-lieu-of-taxes by the Department of Energy . . ." City's Statement, p. 1. The Staff finds that the issue of in-lieu-of-tax payments as a license condition has been conclusively decided by this Board. Project Management Corporation (Clinch River Breeder Reactor Plant), LBP-76-31, 4 NRC 153

(1976). In denying the petitions to intervene filed by, inter alia, Lenoir City, the Board stated that the financial assistance payments authorized by the Atomic Energy Community Act of 1955, 42 U.S.C. Sections 2301-44, are "determined in ERDA's sole discretion." 4 NRC at 158. The Board therefore said:

[W]e hold that Congress has created an exclusive remedy for payments in lieu of taxes, allocating sole discretion as to amounts and manner of payment to ERDA, and that NRC and this Board do not have authority to order or otherwise effect such payments.

4 NRC at 158. The Board went on to say that the provisions of the Atomic Energy Community Act "require[s] this Board to abstain from conditioning any construction permit subsequently authorized in respect to payments in lieu of taxes." 4 NRC at 159. No relevant change in the statute has occurred since the Board's decision. Accordingly, the Staff concludes that the Board's decision in LBP-76-31 is still controlling in this proceeding. For this reason, the Staff opposes the City's position that in-lieu-of-tax payments should be made by DOE to the City.

V. CONCLUSION

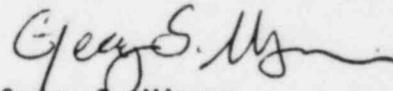
The Staff agrees with the State's and the City's requests for socio-economic monitoring at the construction stage and has proposed conditions in FES Supplement Section 6.1.6 to require Applicants to implement a comprehensive socio-economic monitoring program. The Staff considers the State's request for socio-economic monitoring during the operation of CRBR to be inappropriate, and opposes the State in this regard. The Staff also concludes that the State's request for socio-economic monitoring for

a limited period following premature CRBR construction termination is unnecessary in light of two license conditions proposed by the Staff. Accordingly, the Staff opposes the State's request concerning such monitoring. The Staff also opposes any license condition requiring Applicants to monitor the "fiscal impacts" of CRBR construction, as described and requested by the City.

With regard to the State's and City's request that Applicants be required to mitigate adverse impacts, the Staff concludes that the issue is not appropriate for consideration during this licensing proceeding, since it is the uncontested Staff conclusion in Section 4.5 of the FES Supplement that adverse impacts will be more than offset by projected revenues.

Finally, the Staff submits that the City's request for in-lieu-of-tax payments is an issue which the Board has ruled is beyond the scope of this proceeding. The Staff therefore opposes the City's request in this regard.

Respectfully submitted,



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Dated at Bethesda, Maryland
this 11th day of January, 1983

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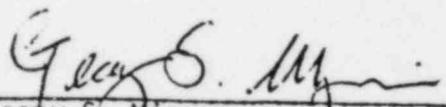
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