1/11/83

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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

APPLICANTS' RESPONSE TO
TENNESSEE ATTORNEY GENERAL AND
CITY OF OAK RIDGE

Pursuant to the direction of the Atomic Safety and Licensing Board in the above-captioned proceedings, the United States Department of Energy and Project Management Corporation, for themselves and on behalf of the Tennessee Valley Authority (the Applicants), hereby respond to the Tennessee Attorney General's Position Paper on Socio-Economic Impact Matters of the Clinch River Breeder Reactor Plant, dated November 10, 1982 [hereinafter "A. G. Position Paper"], and the City of Oak Ridge's Statement Relative to the Socio-Economic Impact of the Clinch River Breeder Reactor Plant, dated November 12, 1982 [hereinafter "O. R. Statement"].

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INTRODUCTION -

This matter comes before the Board in the context of a record which contains no disputed issues of fact.*/ The Attorney General ". . . has chosen not to contest the Applicants' or the Staff's analysis of socio-economic impacts . . . ." A. G. Position Paper at 3. The City of Oak Ridge has withdrawn from the proceeding. Board Order, dated September 7, 1982. The positions of the Attorney General and City, which must be evaluated in the context of the state of the uncontroverted facts in the record, can be distilled to the following arguments:**/

1. A socio-economic monitoring program should be part of the license. A. G. Position Paper at 4; O. R. Statement at 4.
2. The monitoring program should monitor the actual impacts of the facility, and also the impacts which would be incurred if CRBRP were a private facility. O. R. Statement at 3-4.
3. Monitoring and mitigation should be provided for the eventuality of premature, mid-construction project closure. A. G. Position Paper at 4-6.

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*/ The Attorney General of Tennessee is participating as an interested state pursuant to 10 C.F.R. §2.715. A. G. Position Paper at 1. Roane County, which had originally advanced a socio-economic contention, withdrew from participation. See Board Order, dated December 14, 1976.

**/ Obviously, the Board need not reach the argument presented at pages 17-18 of the A.G. Position paper which advances an objection to the Commission's August 17, 1982 Order authorizing site preparation activities pursuant to 10 C.F.R. §50.12.

4. Mitigation of impacts, if any, should be a mandatory condition of the license. A. G. Statement at 6-17; O. R. Statement at 1; 4.*/

In what follows, the Applicants will demonstrate that: A) the record shows that significant adverse socio-economic impacts are not likely to occur; B) the monitoring program set forth in the FES is adequate, and neither the City nor the Attorney General have advanced any basis for a contrary conclusion, and C) as a matter of law, mitigation should not be a mandatory condition of the license.

A. The Record Shows That Significant Adverse Socio-Economic Impacts Are Not Likely

The record contains substantial affirmative evidence in the form of detailed analyses which show that significant adverse socio-economic impacts are not likely to occur as a result of the construction and operation of the CRBRP.**/ These analyses

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*/ The City's position is rendered somewhat ambiguous by the concluding sentence appearing at page 4 of its Statement:

> While the City of Oak Ridge recognizes that financial assistance payments are made to the City pursuant to congressional authorization and in the manner set forth in such statute; and further recognizes that funds made available are subject to continuing appropriation, DOE as an Applicant for licensing of a facility under the NRC's jurisdiction should nevertheless be required to declare its intent to provide mitigation as herein prescribed.

**/ A. Exh 36 (Applicants' Environmental Report), Vol. 3, Ch. 8; S. Exh. 8 (Final FES Supplement), Section 4.5 at 4-7 -- 4-29; Section 5.6 at 5-8 -- 5-10; Section 6.1.6 at 6-17 -- 6-18; Section 10.4.1.6 at 10-10; Section 12.4.5 at 12-20; Section 12.6.1.6 at 12-29.

consider the socio-economic effects at peak conditions*/ in terms of housing, schools, health care, utilities, public safety and recreation, and conclude that the revenues generated by the project for local jurisdictions would probably exceed the costs for public services. S. Exh. 8 at 4-29; at 5-9 -- 5-10; A. Exh. 36 at 8.3-8. The record is barren of evidence to the contrary. Accordingly, the Applicants urge the Board to render findings based on the facts noted above, and to evaluate the arguments of the Attorney General and the City in light of those findings.

B. The Monitoring Program Set Forth In The FES Is Adequate And Neither The City Nor The Attorney General Have Advanced Any Basis For A Contrary Conclusion

In spite of the facts set forth in A. above, the Attorney General and the City urge adoption of a license condition to require monitoring of socio-economic impacts. It should be emphasized that the FES Supplement has already imposed monitoring requirements on the Applicants. S. Exh. 8 at 6-17 -- 6-18. The Applicants have no objection to those conditions, and have agreed to provide the findings of the monitoring process to representatives of the State and the City. S. Exh. 8 at 6-17.

Both the State and City provided comments to the NRC Staff on the monitoring process, and the Staff has resolved those comments in the FES Supplement. S. Exh. 8 at 12-20. In their

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*/ See S. Exh. 8, Table A4.3 at 4-10; at 5-8 -- 5-9.

Position Paper and Statement, respectively, neither the Attorney General nor the City have advanced any reason as to why the monitoring conditions imposed and parameters selected for monitoring in the FES Supplement are themselves inadequate. Nor have the Attorney General or City argued that this monitoring process would not address those parameters of importance to socio-economic impacts. Rather, the Attorney General and City would have the Board go beyond the relevant parameters for monitoring, and impose conditions requiring monitoring for two additional hypothetical cases: 1) the impacts which would be incurred if the CRBRP were a private facility (O. R. Statement at 3-4); and 2) the impacts which would be incurred if the project were prematurely terminated. A. G. Position Paper at 4-6. Neither condition should be imposed.

The City's position presents three fundamental problems. First, CRBRP is a federal project, and there is no evidence in the record to suggest that this condition will change. It is speculative in the extreme to consider monitoring conditions which assume a private project organization for CRBRP.*/ Second, the Applicants are at a loss to conceive of how monitoring might be done on the basis of this hypothetical condition. Whatever significant impacts do occur will be

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*/ See Board Order, dated October 5, 1976, at 16-17, rejecting as beyond the scope of NRC's review, portions of NRDC Contention 10 concerning alternative project structures ownership, and management arrangements.

monitored, and one simply cannot monitor actual impacts for a hypothetical private project. Third, the record clearly shows that revenues are likely to exceed costs to local jurisdictions, and there is no evidence of circumstances which would give rise to the need for imposing a factual hypothesis on the monitoring process which presumes that revenues to local jurisdictions will be inadequate. Accordingly, the Board should reject the City's argument.

The Attorney General's position presents a fundamental problem in that it presumes that termination will occur, and this in turn, presumes that there is no need for the facility. This position is in direct conflict with the Commission's August 1976 decision which holds that NRC's environmental review for CRBRP shall accept the need for CRBRP as given. The need for CRBRP is not open to scrutiny in this proceeding.*/ Thus, the Board should reject the State's argument and find that the monitoring program established by the Final FES Supplement is both reasonable and adequate.

C. As A Matter Of Law, Mitigation Should Not Be A Mandatory Condition of the License

This Licensing Board has previously considered the question of whether mitigation can be a mandatory condition of

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*/ United States Energy Research and Development Administration (Clinch River Breeder Reactor Plant), CLI-76-13, 4 NRC 67 (1976).

the license. We believe that the Board's August 26, 1976 Order*/ in this regard was correct and well reasoned, and that little purpose would be served by repeating that analysis here. Applicants believe that the Board's August 26, 1976 Order is and remains controlling here, and as a matter of law, mitigation should not be a mandatory condition of the license.**/

Aside from this matter of law, the Board should consider the arguments of the Attorney General and City from an additional practical perspective. On the basis of the record, there is ample evidence that mitigation will not be required, and in any event, monitoring results will serve to define the need, if any, for mitigation in real terms. Thus, as a practical matter, the Board need not even reach the point of imposing a requirement for mitigation in its decision. In light of the existing evidence in the record, the monitoring program imposed by the FES Supplement, and the existing statutory scheme for assistance payments, there is no need for the Board to reach the speculative decision point urged by the Attorney General and City.

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*/ United States Energy Research and Development Administration (Clinch River Breeder Reactor Plant), LBP-76-31, 4 NRC 153 (1976).

**/ Applicants are aware of no changes in the applicable case law or statutory scheme for assistance payments since that time, nor has the Attorney General or City pointed to any changes which would invalidate the Board's August 26, 1976 Order. Indeed, Applicants are surprised that neither the Attorney General nor the City addressed or even recognized this prior ruling.

CONCLUSION -

For the reasons stated in the foregoing, the Board should reject the arguments presented by the Attorney General of Tennessee and the City of Oak Ridge.

Respectfully submitted,

George E. Edgar
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Project Management Corporation

Warren E. Bergholz, Jr.
Attorney for the U. S.
Department of Energy

DATED: 1/11/83

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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

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