

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

APPLICANTS' NOTIFICATION
CONCERNING PENDING LITIGATION

The United States Department of Energy ("DOE") and Project Management Corporation ("PMC"), for themselves and on behalf of the Tennessee Valley Authority (the Applicants), hereby file this Notification Concerning Pending Litigation. The Applicants are providing this Notification for the purpose of keeping the Board currently informed as to matters potentially affecting the above-captioned proceeding, as follows:

1. Section 50.12 Case - On August 19, 1982, NRDC and the Sierra Club ("Intervenors") filed, in the United States Court of Appeals for the District of Columbia Circuit, a Petition for Review and an Application for Stay of the Commission's August 17, 1982 Order granting Applicants' July 1, 1982 request to conduct site preparation activities pursuant to 10 C.F.R. § 50.12. As of August 30, 1982, all responsive pleadings concerning the Application for Stay had been filed

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with the court. On October 4, 1982, the court issued a temporary stay of the Commission order under review in order to afford the court an opportunity to more fully consider the pending Application for Stay and responses thereto. Site preparation activities were halted as a result of the temporary stay. On October 6, 1982, the court issued an order denying the Application for Stay, and establishing an expedited schedule for review on the merits. On December 2, 1982, the court issued its opinion remanding the cause to the Commission for the conduct of an adjudicatory hearing and reconsideration of its August 17, 1982 decision before February 4, 1983. The court further ordered that site preparation activities could continue under the Commission's August 17, 1982 Order.

On December 7, 1982, the court, sua sponte, withdrew its December 2 opinion, and remanded the case to the Commission: (1) to reconsider the availability of Section 50.12 under the Commission's own interpretation of that provision, or (2) to proceed with the LWA hearings. On December 10, 1982, the Commission issued an order calling for supplemental statements addressing the issues raised on remand. The Commission determined that there was no reason to stay construction pending completion of the remand proceeding initiated by the order, and directed that the LWA proceedings should continue. In response to the December 10, 1982 order, Applicants filed a supplemental statement on December 15, 1982, NRDC filed a reply on December 21, 1982, and Applicants filed a rebuttal

on December 28, 1982. On January 6, 1983, the Commission issued an Order affirming its August 17, 1982 decision.

On February 28, 1983, the Board issued its LWA-1 Partial Initial Decision (PID). On March 17, 1983, the court ordered the Commission to file the LWA-1 decision with the court, and to advise when it would become effective. On March 28, 1983, the Commission filed the LWA-1 decision with the court. On May 5, 1983, the Commission issued and filed with the court an Order denying Intervenor's Motion for a Stay of the LWA-1 decision and rendering the PID effective. On May 19, 1983, the NRC Staff issued the LWA-1. On May 19, 1983, the court issued an Order dismissing Intervenor's Petition for Review as moot (copy attached).

2. 40 C.F.R. § 122.66(c)(4)(i) Agreement Case - On August 23, 1982, Intervenor's filed suit in the United States District Court for the Northern District of Georgia against DOE, DOE's CRBRP Project Office, and the Environmental Protection Agency ("EPA"), alleging that an Agreement, executed by EPA and the CRBRP Project Office under 40 C.F.R. § 122.66 (c)(4)(i) to allow site preparation activities, violated NEPA and the aforementioned EPA regulation. On September 3, 1982, the District Court issued an injunction restraining DOE from undertaking site preparation until the FES Supplement is completed and the final NPDES permit is issued for CRBRP. NRC contemplates issuance of the Final FES Supplement on November 1, 1982, and EPA contemplates issuance of the final permit on

December 13, 1982. ^{1/} On September 7, 1982, PMC and the Federal defendants filed Notices of Appeal in the District Court and filed Motions for Expedited Appeal in the United States Court of Appeals for the Eleventh Circuit. These Motions requested that briefing be completed by September 15, 1982, oral argument be held on September 17, 1982, and that a decision be rendered on the merits by September 18, 1982. On September 8, 1982, the Eleventh Circuit issued an Order granting PMC's Motion, requiring completion of briefing on September 14, 1982, and scheduling oral argument for September 15, 1982. On September 21, 1982, the Eleventh Circuit issued a decision finding that the Agreement complied with EPA regulation 40 C.F.R. § 122.66(c)(4)(i), reversing the District Court, dissolving the injunction, and taxing costs against NRDC. Thereafter, site preparation activities commenced. On October 8, 1982, NRDC filed a request for rehearing, which was denied by the court on October 29, 1982. On October 21, 1982, the government filed a Motion to Dismiss the case in the U.S. District Court for the Northern District of Georgia. On December 14, 1982, the District Court issued an Order dismissing the case, and entered a Judgment for Defendants for costs of the action.

3. LMFBR Program Statement Case - On September 22, 1982, NRDC filed a complaint, seeking declaratory and injunctive

^{1/} The permit was issued by EPA on December 17, 1982.

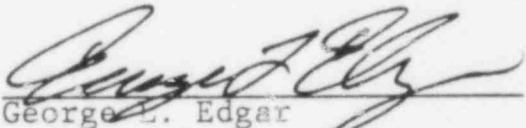
relief against DOE in the United States District Court for the District of Columbia and alleging a failure to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., with respect to DOE's LMFBR Program Environmental Statement. NRDC seeks to enjoin all LMFBR Program commercial demonstration activities, including construction of CRBRP, until completion of an adequate LMFBR Program Environmental Statement. On March 11, 1983, the government filed a Motion for Summary Judgment as to all of NRDC's stated claims for relief. On May 13, 1983, NRDC responded in opposition to the government's Motion and filed a Cross-Motion for Summary Judgment. Responses to NRDC's Cross-Motion will be due on June 22, 1983.


4. Consolidated Permit Regulation Case - On October 1, 1982, NRDC filed with the United States Court of Appeals for the District of Columbia Circuit a Motion to Expedite Consideration of Emergency Motion, an Emergency Motion to Amend the Court's Remand and to Review EPA Regulations, and a Brief on the EPA Construction Prohibition in NRDC v. EPA, No. 80-1607 (and consolidated cases). ^{2/} In this regard NRDC sought:

^{2/} These cases, which have been pending before the D.C. Circuit since the summer of 1980, involve Petitions for Review filed by numerous parties, including NRDC, in connection with EPA's promulgation of the so-called "consolidated NPDES permit regulations." See 45 Fed. Reg. 33290 (May 19, 1980). The consolidated NPDES permit regulations include 40 C.F.R. § 122.66 (c)(4)(i).

(a) modification of the D.C. Circuit's August 6, 1982 Order which, inter alia, remanded 40 C.F.R. § 122.66(c)(4)(i) back to EPA for implementation of a June 7, 1977 settlement agreement which would eliminate the 40 C.F.R. § 122.66(c)(4)(i) prohibition on construction prior to issuance of an NPDES permit; and (b) expedited review and a decision concerning the validity of EPA regulation 40 C.F.R. § 122.66(c)(4)(i) as interpreted by EPA and the United States Court of Appeals for the Eleventh Circuit. Responses to the NRDC Motions were filed on October 7, 1982 and NRDC's Motions have remained pending before the court since that time. Inasmuch as the EPA water permit for CRBRP was issued on December 17, 1982, and became final and effective on February 17, 1983, the validity of the 40 C.F.R. § 122.66(c)(4)(i) Agreement for CRBRP is of no consequence to continuation of site preparation activities.

Respectfully submitted,


George L. Edgar
Attorney for Project
Management Corporation


William D. Luck
Attorney for the
Department of Energy

DATED: May 27, 1983

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82-1962

September Term, 1982

Natural Resources Defense Council, Inc.,
and the Sierra Club, Petitioners,

v.

United States Nuclear Regulatory Commission
and the United States of America, Respondents,

Project Management Corporation and the
Tennessee Valley Authority, Intervenor.

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 19 1983

GEORGE A. FISHER

Before: MacKINNON, MIKVA, and EDWARDS, Circuit Judges.

ORDER

This case came before the Court for consideration on petitions to review an order of the Nuclear Regulatory Commission (NRC or Commission) issued pursuant to 10 C.F.R. § 50.12 (1982). That section provides that the NRC may, upon consideration of certain factors, grant exemptions from its regulations under 10 C.F.R. § 50.10, which require a hearing. The order granted such an exemption to the Department of Energy (DOE) and the Project Management Corporation and the Tennessee Valley Authority (intervenors), allowing them to commence site preparation activities prior to the issuance of a construction permit under section 50.10.

On December 7, 1982 we remanded the record to the NRC "either (1) to reconsider the availability of section 50.12 under the Commission's own interpretation of that provision or (2) to proceed with its adjudicatory hearing pursuant to section 50.10 to determine if site preparation activities may continue." NRC filed a supplemental record on January 6, 1983 identifying what it considered to be exigent circumstances and reaffirming its decision to grant an exemption pursuant to section 50.12. See CLI-83-1. Our review of that decision has been cut short, however, by the decision of the Atomic Safety and Licensing Board to grant DOE and intervenors a limited work authorization (LWA-1) under section 50.10(e)(1), which became effective on May 5, 1983. The Atomic Safety and Licensing Board made this decision after a series of full adjudicatory hearings, and their granting of the LWA-1 allows the DOE and intervenors to continue the site preparation activities. This decision has effectively foreclosed any relief open to petitioners, the National Resources Defense Council and the Sierra Club. Upon consideration of the foregoing, it is

ORDERED, by the court, that the petitions in Appeal No. 82-1962 are dismissed as moot. And it is

FURTHER ORDERED, by the court, that the Clerk shall issue the mandate herein on the seventh day following entry of this order.

Per Curiam
For the Court

George A. Fisher

George A. Fisher
Clerk

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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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

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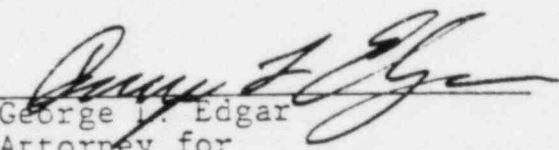
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DATED: May 27, 1983

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