

ORIGINAL

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

DOCKET NO: 50-537-CP

CLINCH RIVER BREEDER REACTOR PLANT

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :  
: Docket No. 50-537-CP  
CLINCH RIVER BREEDER REACTOR PLANT :  
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Nuclear Regulatory Commission  
Fifth Floor Hearing Room  
4350 East-West Highway  
Bethesda, Maryland

Wednesday, February 27, 1985

The conference of parties in the above-entitled matter  
commenced at 1:30 p.m.

BEFORE:

JUDGE IVAN SMITH, Chairman  
Atomic Safety and Licensing Board  
  
JUDGE GUSTAV LINENBERGER, Member  
Atomic Safety and Licensing Board  
  
STEVE CROCKETT, Legal Advisor to Board

APPEARANCES:

On behalf of Natural Resources Defense Council:

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On behalf of the Nuclear Regulatory Commission Staff:

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LEE SCOTT DEWEY, ESQ.  
MR. LA ROCHE  
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U. S. Nuclear Regulatory Commission  
Washington, D. C. 22207

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P R O C E E D I N G S

1  
2 JUDGE SMITH: We appreciate your coming to talk  
3 with us on such short notice. We tried to get this arranged  
4 before the date that you had set out in your notice to the  
5 Board on February 25th, but it just wasn't possible because  
6 of various conflicts. We do not have any conceptual  
7 difficulty with the papers before us. We do have some  
8 questions.

9 Primarily we note that in withdrawal of an  
10 application as we have here and dismissal of a proceeding  
11 that, as I read the Commission's regulations, the Board is  
12 required to do something more than just approve the  
13 agreement of the parties. Therefore, I thought it would be  
14 much faster and much more efficient if I could be brought up  
15 to speed -- and Judge Linenberger has some questions, too --  
16 by a conference of the parties to make sure that we  
17 understand what our authority is and our responsibility is,  
18 and have a full understanding of what the conditions of  
19 dismissal are.

20 I take it that there is no dispute with my  
21 observation that we are a participant in the settlement,  
22 too. I mean we do have to approve it intellectually, as  
23 well as recognize that the parties have reached an  
24 agreement. And with that, we will go on to the particular  
25 matters.

1                   As I understand it, the authority for the NRC  
2 even to require redress has its immediate source in the  
3 commitment that was made to get the LWA and the language of  
4 the regulation, Section 10 CFR 50.12. We are particularly  
5 concerned about just how far the NRC's responsibility goes,  
6 and therefore, what are the consequences of our acts?

7                   I would like to have the comments from the  
8 parties on what I regard as tentative observations.

9                   One is that after the site is redressed in  
10 accordance with an order the Board might issue in the final  
11 decision of the Commission, the NRC has no interest in that  
12 land. I mean anything can be done with it. That would  
13 happen and our interest and our jurisdiction would cease.

14                   Does anybody dispute that observation?

15                   MR. EDGAR: I don't dispute it. I am prepared to  
16 give you some additional background on what would happen  
17 under those circumstances. There is very a substantial  
18 regulatory and statutory scheme in place through the  
19 Tennessee Valley Authority under those circumstances, and I  
20 am prepared to address that.

21                   JUDGE SMITH: Well, I don't know if we really  
22 have to know. We will let you be the judge of it. I think  
23 that it's sufficient, if it is correct, to observe that once  
24 the land is redressed that it does become the responsibility  
25 of other entities.

1 MR. EDGAR: That's correct.

2 JUDGE SMITH: If you believe that the  
3 responsibility that TWA has and other authorities have has a  
4 bearing on our responsibility, I would like to hear from  
5 you, but I think it is probably just sufficient to have the  
6 agreement that NRC's responsibility quits.

7 And that of course would suggest then that we are  
8 interested in a relative short period of time, and that is  
9 between now and the end of the construction season of this  
10 year, which again suggests that the solution should very  
11 well be a practical solution. I mean if anything can happen  
12 to the land a year from now that would ordinarily happen,  
13 why not look to the practicalities of it?

14 And just exactly what, if I understand, you are  
15 proposing now is that there be an opportunity for some  
16 industrial use for the land, but if that does not come to  
17 pass then that there be redress in accordance with the  
18 plan. And as I understand, as of now there has been no  
19 alternative industrial use. Is that correct?

20 MR. EDGAR: That's correct.

21 JUDGE SMITH: Mr. Crockett had indicated I  
22 believe during the telephone conversation asking me to come  
23 here that we did have a question as to should not any order  
24 issued by this Board provide for a possible change to  
25 industrial use during redress.

1 Does anybody disagree with that possible  
2 modification of the proposed plan?

3 MS. FINAMORE: Your Honor, from our  
4 understanding, this project was terminated nearly a year and  
5 a half ago, and the applicants asked that redress be  
6 postponed until May of 1985 in order to give them a chance  
7 to seek an alternative industrial use for this land.

8 They have also said that the redress that they  
9 had planned would allow for future industrial use of the  
10 land. And we feel that at this point applicants have been  
11 given enough time to seek an alternative use. They have not  
12 been able to secure such an alternative use or an interest  
13 in such alternative use.

14 We feel that at this point redress should begin  
15 in May of this year, and that it should continue until  
16 completion, barring some very, very firm commitments by  
17 another party or by DOE itself for some alternative use.  
18 And in our view that should go far beyond just an expression  
19 of interest which is what -- the term that has been used for  
20 the period until the spring of 1985.

21 JUDGE SMITH: Well, we had noted the use of that  
22 term, too, as compared to "commitment," and we were  
23 wondering if it was a studied difference or not.

24 May I hear from--

25 MS. FINAMORE: I would see quite a difference

1 from an "expression of interest" and a "firm commitment"  
2 towards an alternative use of that land. And barring the  
3 latter, we would support continuation of the site redress  
4 until completion.

5 The reason we give for this is that without such  
6 an agreement, redress could be postponed indefinitely by  
7 rather indefinite expressions of interest.

8 JUDGE SMITH: Well, what could be done to satisfy  
9 your concern and yet avoid an unfortunate waste of money in  
10 the event a legitimate, genuine expression of interest did  
11 arise, and the interest would be inconsistent with  
12 completing the redress? Basically I guess that is why we  
13 are here today.

14 MS. FINAMORE: That's right.

15 JUDGE SMITH: We just don't want to sign off on  
16 an irrevocable, illogical course of action.

17 MS. FINAMORE: Right. That is our position as  
18 well. And we would see something along the lines of a  
19 letter of intent from another party that is firm as to their  
20 intent to seek that land for an alternative use rather than  
21 just a vague expression of interest by another party that  
22 might never come to fruition.

23 JUDGE SMITH: Mr. Edgar.

24 MR. EDGAR: Yes, your Honor. I think there are  
25 two things that need to be said here.



1                   One is we are in a situation where today I am  
2 advised that there are no immediate prospects standing in  
3 line to do this. From a purely practical standpoint, we  
4 think it unlikely that the midstream circumstance to which  
5 we are now addressing ourselves would occur. That is once  
6 redress starts, it is unlikely that an alternate industrial  
7 user would arise. However, there is that possibility, and I  
8 think the Board's question is a good one.

9                   I think also, though, that the structure of the  
10 plan for redress and the Staff's approval establishes a  
11 mechanism for dealing with the situation in making more  
12 concrete the consideration of the alternative use and the  
13 redress without regard for speculation. I think if the  
14 Board were to set a condition which talks about a letter of  
15 intent or a firm contract or some other legal instrument  
16 that could in any event foreclose certain valuable uses.

17                   We think that it is difficult to prescribe a  
18 priori the perfect solution but nevertheless, the mechanism  
19 is in place. Let's assume the user came forward in the  
20 month of June and some of the work was completed. At that  
21 point the project office would be obligated to inform the  
22 Staff.

23                   At that point the project office would be  
24 obligated to file a revised redress plan which would state  
25 specifically, among other things, the nature of the

1 commitment, the use for the land, the scope of activities  
2 which would be either decreased or increased as a result of  
3 that use, and then we would anticipate a Staff review.

4 I think it is difficult now to prescribe some  
5 right-line iron-clad test and not run a significant risk  
6 that a valuable user and use might be found. By the same  
7 token, I think a matter I alluded to earlier is important to  
8 note, and that is that this is federal property. It is  
9 titled in the United States. It is in the custody of the  
10 Tennessee Valley Authority.

11 Aside from the regulatory regime imposed by  
12 virtue of the Staff's commitment to monitor redress  
13 activities and the Environmental Protection Agency's and the  
14 State of Tennessee Water Quality Division's commitments to  
15 monitor, the Tennessee Valley Authority has its own  
16 decision-making process dealing with industrial development  
17 in the Tennessee Valley in general and on its reservoir  
18 systems in particular.

19 Before anything were done with that site, in  
20 addition to the revision of the plan and review by the  
21 Staff, TVA would have to be consulted. TVA is a federal  
22 agency. TVA is subject to NEPA, the Wetlands policy  
23 statement or executive order, the Flood Plains executive  
24 order, Historic Preservation, et cetera.

25 They have a long-standing expertise and a

1 full-time staff in industrial planning and land use. They  
2 routinely have a public decision-making process associated  
3 with land use.

4 So I think it should be noted that there is an  
5 additional layer of consideration that is present here right  
6 now. And I have been to the site, NRDC's consultant has  
7 been to the site, Mr. LaRoche from the Staff is an expert in  
8 this area. I defer to him. But the site has been  
9 maintained in a very acceptable environmental condition.

10 What we are talking about now is putting it in a  
11 more stable condition and putting it in a condition where it  
12 can be released. However, we do not think it would be  
13 prudent to establish some very rigid set of conditions  
14 dealing with the alternate user. We think the plan can be  
15 applied effectively with the Staff to the Midstream case.

16 JUDGE LINENBERGER: Mr. Edgar, in your comments  
17 about TVA's continued oversight of that site you said  
18 something that would cause me to infer, although you didn't  
19 expressly say this, that the site is considered by TVA to  
20 be within their -- the domain of what I think you called  
21 their reservoir system or something like that.

22 MR. EDGAR: Yes.

23 JUDGE LINENBERGER: Now is that indeed so? Do  
24 you know that to be a fact?

25 MR. EDGAR: Yes. And let me give you a few more

1 facts on the nature or the evolution of how the land came to  
2 be where it is, and subject to TVA jurisdiction.

3           The land has been titled in the United States.  
4 It was part of the Oak Ridge reservation during the war. In  
5 1966 the AEC undertook a study and determined that there  
6 were seven candidate areas within the reservation that they  
7 would consider for release for private development. As you  
8 know, on a long-standing basis there has been a concern  
9 about injecting more private development in the Oak Ridge  
10 area and lessening dependence and reliance of the tax base  
11 on the federal facilities.

12           As a result of that, the Tennessee Society of  
13 Professional Engineers undertook a study and recommended to  
14 the AEC that four of the seven identified parcels,  
15 consisting of 1364 acres should be transferred from the Oak  
16 Ridge reservation to be made available for industrial use.  
17 As a result of that, TVA then initiated the activity to have  
18 the land transferred from the AEC to TVA.

19           Now in dealing with federal property that is only  
20 one owner, title rests in the United States, whereas the  
21 custodian can vary. But in 1968 there was a Federal  
22 Register notice, after the GSA process was undertaken, and  
23 at 33 Fed. Reg. 4837, 1968, the custody of the property was  
24 transferred from the AEC to TVA. That has remained the case  
25 today.

1 DOE, under a license agreement with TVA, was  
2 given access to the site to perform site preparation  
3 activities. It was contemplated that when construction  
4 began that the GSA process would be completed and the land  
5 would be transferred to DOE for the Clinch River site.

6 Now at present if you look at the site, and it is  
7 a peninsula up in the northwest corner, there is 106 acres  
8 that were set aside in 1971 in a cooperative project between  
9 TVA and the City of Oak Ridge to develop what is called the  
10 Clinch River Industrial Park, and it is a strip that runs  
11 from the southwest to the northeast up on the peninsula.

12 As a result of that, the City of Oak Ridge  
13 constructed waste water treatment facilities, waste water  
14 collection facilities, and water service for that industrial  
15 park.

16 In the meantime, TVA then reserved the balance of  
17 the site, some 1300-odd acres, -- or it is less than that,  
18 40 acres less than that -- for the Clinch River site. So  
19 that if this project were terminated then TVA remains  
20 custodian and then, through their normal process -- and it  
21 is on the river system -- they would make their land use  
22 planning decisions as candidates came forward and asked for  
23 the property.

24 As one example-- And I spoke with Mr. Louis  
25 Wallace yesterday, who is Deputy General Counsel of TVA.

1 He could not be here but is available if need be by phone.

2 Yesterday the Tennessee Valley Authority board  
3 met and sold 400 acres of land on Watts Bar Reservoir for  
4 private development. Mr. Wallace advises me that this is a  
5 routine process, nevertheless one that they carefully  
6 consider and control for development along the waterfront in  
7 its reservoir system.

8 You know the Clinch River site is basically--  
9 Milton Hill Dam is upstream and the Watts Bar Dam -- correct  
10 me -- I will have to defer to Mr. King on this, but isn't it  
11 Watts Bar downstream? There are two dams.

12 MR. KING: There are two dams, and my memory is  
13 fuzzy also.

14 MR. EDGAR: Mr. Leech knows better than I.

15 MR. LEECH: That's correct.

16 MR. EDGAR: So it part of their-- It is between  
17 two TVA reservoir systems.

18 JUDGE SMITH: Well, would you describe again the  
19 process that you anticipate that would enable the NRC,  
20 through its Staff, to approve an interruption of redress  
21 upon an expression of interest? I didn't note that myself  
22 in the plan.

23 MR. EDGAR: I think the source here is the  
24 Staff's June 6th letter which is Attachment E to our motion  
25 to dismiss. Under the terms of that letter, several things

1 will happen.

2 If a candidate is found, a serious one, then the  
3 Staff will be notified. Furthermore, if a candidate is  
4 found, the project office, under this letter, will have to  
5 send a revised plan in to the NRC Staff. Okay?

6 Under those circumstances-- And the Staff will  
7 have to flash this out.

8 But it is at least our working understanding --  
9 we never had much doubt about it -- that the project office  
10 would propose to the Staff what would be done. We would  
11 redress area A and not redress area B, preserving that for  
12 the site. And the Staff would review that and apply such  
13 conditions as they felt to be appropriate.

14 That was my understanding of the mechanics.  
15 There has never been any doubt insofar as we are concerned.

16 JUDGE SMITH: Could you suggest a way by which  
17 the intervenors could have some protection if they perceived  
18 that the expression of interest was not really an important  
19 one? I think that is your basic problem, isn't it?

20 MS. FINAMORE: That's correct, your Honor.

21 The way I read this it seems to me that the site  
22 plan should be redressed if an alternate use for the site  
23 was found before the spring of '85, that the applicants were  
24 given that year and a half to search for alternate uses.  
25 And at this point it seems to me, because the Board's

1 responsibility here is in ensuring that site redress is  
2 completed and performed satisfactorily, that it should be in  
3 the Board's interest to make sure that that process begins  
4 and is completed.

5 JUDGE SMITH: Well, there is no quarrel that it  
6 should be begin. No one is quarrelling with that. But we  
7 want you to address the point we are making, which is in the  
8 unlikely event that a genuine interest for alternative use  
9 develops during the summer or between May and whenever, have  
10 we set into motion a process that must go to completion  
11 before that interest can be addressed? And we wouldn't want  
12 that, I wouldn't believe.

13 MS. FINAMORE: I think the question in that case  
14 wouldn't be that redress would be interrupted. I think it  
15 might be revised. And what I would suggest--

16 JUDGE SMITH: It might be-- What was your word?

17 MS. FINAMORE: Revised.

18 JUDGE SMITH: Revised.

19 MS. FINAMORE: The types of redress. I don't  
20 believe in any circumstances redress should be interrupted,  
21 and I think Mr. Edgar has also spoken in terms of revising.

22 JUDGE SMITH: Yes, that would be the only  
23 reasonable expectation.

24 MS. FINAMORE: Yes.

25 What I would suggest is that we agree or the



1 Board provides in its ruling that if such a situation occurs  
2 that there be another hearing, and one of the issues that  
3 could be raised at that hearing is whether or not the  
4 expression of interest that has occurred is sufficient  
5 enough to warrant revision of the site redress plan.

6 JUDGE SMITH: If we were to issue the order as  
7 you have agreed upon today, a revision without Board  
8 approval could be brought about any time before May. Isn't  
9 that your understanding?

10 MS. FINAMORE: I'm sorry?

11 JUDGE SMITH: Let's say that we signed off on the  
12 proposal, on the motion which you have agreed to, and we  
13 just said the plan as set forth in the motion and the  
14 Staff's supplement to the -- you know, the clarification  
15 Staff brought about, we issue an order saying that is fine  
16 with us.

17 And this being the last day of February, if in  
18 April a strong interest or a commitment comes up, that plan  
19 could be revised in that direction without any further input  
20 from the Board or any further comment from you. Is that  
21 correct?

22 MS. FINAMORE: I believe that is how the site  
23 redress plan is written.

24 JUDGE SMITH: Yes.

25 MS. FINAMORE: And that's because we agreed that

1 approximately a year and a half period of time for the  
2 applicants to look for another use would be sufficient. But  
3 we feel that no more time than that is warranted, that this  
4 process should not be allowed to drag on indefinitely, --

5 JUDGE SMITH: Right.

6 MS. FINAMORE: -- and that there should be a firm  
7 cutoff point after which any revisions should be looked at  
8 very carefully. And the process should not be disrupted  
9 except for a firm commitment on the part of an alternative  
10 user.

11 MR. EDGAR: My response to that is that you've  
12 just heard the suggestion that we are going to have an  
13 absolute cutoff, that there is no room for consideration of  
14 cost or beneficial public use, or anything like that.

15 I guess as a citizen or a taxpayer I have a little  
16 problem with that, putting aside my views as an advocate  
17 that I don't think that the agency has a compelling interest  
18 in setting cutoff dates for cutoff dates' sake. We all have  
19 to live with them, but the plan didn't contemplate an  
20 absolute cutoff date.

21 I think we are talking about a case that, as I  
22 indicated earlier, is very unlikely to arise. But  
23 nevertheless I think there is still some room for reason,  
24 and I think we can rely on the Staff to exercise sound  
25 judgment as to what to do vis-a-vis approval of the revised

1 plan.

2 I think at the same time that-- There is the  
3 tervenors. We would take a commitment to notify the  
4 interevenors if there were a change. I am not troubled by  
5 that.

6 JUDGE SMITH: Would the intervenors you believe  
7 have the right to move to reopen the proceeding?

8 MR. EDGAR: No, sir.

9 JUDGE SMITH: I don't mean granted by us. If we  
10 are silent on that would they, under prevailing case law,  
11 have that right?

12 MR. EDGAR: No, sir, I do not believe so.

13 JUDGE SMITH: Do you think that we have any  
14 interest whatever in the environmental quality of any  
15 alternative plan?

16 MR. EDGAR: It is a little presumptuous of me to  
17 speak for the Board's interest--

18 JUDGE SMITH: I mean jurisdiction.

19 MR. EDGAR: My view of it, your Honor, is that  
20 the agency does have an interest in environmental  
21 protection, but I believe that in this particular instance  
22 what we are dealing with is a set of issues, one of which is  
23 a bit speculative, that is best left to the NRC Staff for  
24 monitoring and policing pursuant to the plan.

25 I believe that this Board has served well on the

1 adjudication, but we are past the point of adjudication. We  
2 don't have any sharp differences any more to litigate. We  
3 have none.

4 And I think now what we are dealing with is  
5 classical inspection and enforcement, and I think it is the  
6 kind of thing, your Honor, that is delegable to the Staff  
7 under the Byron theory, if you will, that this is something  
8 that is best left to the Staff, and the Board should not  
9 consider it its post-hearing delegation.

10 JUDGE SMITH: My question was a little bit  
11 different than that.

12 Assume as an illustration that there is a  
13 commitment for an environmentally bad industrial use --

14 MR. EDGAR: All right.

15 JUDGE SMITH: -- on the part of the land, with  
16 respect to that part of the land. Is that any concern of  
17 the Board's or the NRC's?

18 MR. EDGAR: Not of the Board's, but I believe if  
19 it happened before redress was complete and the mechanism  
20 was triggered, that would be something that the Staff would  
21 look at.

22 JUDGE SMITH: To approve that or disapprove that?

23 MR. EDGAR: That's right, or to apply conditions  
24 so that it is consistent with the overall redress plan,  
25 consistent with the end result.

1 JUDGE SMITH: Well, I didn't expect to hear that.

2 MR. EDGAR: But in addition, your Honor, I think  
3 we have got to remember -- and it is more than concurrent --  
4 we have got to remember the fundamental jurisdiction of TVA.

5 If this happens after redress there is no  
6 question that TVA has got to consider that matter.

7 JUDGE SMITH: Right, they do. But I am talking  
8 now what is the logic of the Board -- of the NRC losing all  
9 interest in the use of that land, perhaps in December of  
10 this year, and having an interest in the alternative use of  
11 it between now and December?

12 MR. EDGAR: Okay. I am not suggesting that NRC  
13 has land-use jurisdiction, but NRC has before them a certain  
14 set of commitments in the redress plan that established some  
15 envelope of environmental effect. All right? There has  
16 been a commitment made to NRC, the NRC Staff, that we will  
17 leave that land in a certain condition, that there won't be  
18 any additional effect, if you will.

19 I think the Staff -- and it is parsing it  
20 finally, but I think the Staff does have the ability and if  
21 they don't have it, the Water Quality people do, to consider  
22 what might happen vis-a-vis that land.

23 I am not sure that the jurisdictional point can  
24 be so finely divided. I think the project would want to  
25 have NRC take a look at the situation and agree that what

1 the project is doing is acceptable.

2 Implicit in the whole plan, though, is that this  
3 site is going to be used for industrial development, that we  
4 are going to redress those portions not used for industrial  
5 development.

6 JUDGE SMITH: And with respect to the portions  
7 that are used for industrial development, they would be used  
8 for industrial development only to the extent consistent  
9 with the NRC-approved redress plan?

10 MR. EDGAR: That is correct.

11 JUDGE SMITH: Well, not consistent-- Well, no  
12 more than is necessary to avoid violating the NRC redress  
13 plan?

14 MR. EDGAR: That's correct.

15 JUDGE SMITH: The land was dedicated to  
16 industrial use for the LWA.

17 MR. EDGAR: That's correct.

18 JUDGE SMITH: But it was, as I understand it,  
19 pretty much in a natural state, except for that section.

20 MR. EDGAR: There is a section up top. The rest  
21 was undeveloped, practically speaking. There was an access  
22 road, but that was about it.

23 JUDGE SMITH: The Commission's decision approving  
24 the LWA at 16 NRC 428 -- and I must say that is about the  
25 only part of it that I have read, is page 428 -- refers to

1 the OPE report, and it says that:

2 "The report finds that the affected  
3 areas of the site could be restored essentially  
4 to their present conditions of vegetation and  
5 animal life after some time, but the perfect  
6 restoration of the topography could not be  
7 achieved."

8 And then the costs are estimated.

9 I would take that to mean that the Commission did  
10 expect, absent an alternative use, that that would be  
11 achieved.

12 NRDC in its motion-- As I understand your  
13 motion, you call upon us to do some work. You say you are  
14 willing to accept the redress plan which is essentially  
15 Alternate Number 2, but you apparently, as I read it, want  
16 the Board -- or would have preferred the NRC to have done  
17 something more. And I am looking at page 2 of your motion.

18 And this goes to the point I began with, that we  
19 can't just walk away, wash our hands of it, simply because  
20 the parties agree. But you have apparently tried to flag  
21 our attention that something environmentally better should  
22 be achieved.

23 As I read the plan I could see no environmental  
24 preference between Alternate 1 and Alternate 2. They seemed  
25 to be-- You didn't argue any environmental advantage of one

1 over the other. All I could see was that one seemed to be  
2 better suited to an industrial use than the other.

3 Would you agree with that?

4 MS. FINAMORE: I wouldn't necessarily agree that  
5 one alternative is as environmentally acceptable as the  
6 other. I would agree that what we flagged in our response  
7 is that although the applicants said that their proposed  
8 alternative was in line with the desires of the local  
9 community, it occurred to us in reading the documents from  
10 the City Manager of Oak Ridge that the preference there was  
11 for a level land use.

12 JUDGE SMITH: Oh, I'm sorry. I misdirected you.  
13 You are referring to your first full paragraph of page 2,  
14 and I will come to that.

15 I am more interested in your comments on the top  
16 of page 2 of your pleading in which you said:

17 "Redress requires removal of all  
18 structures and facilities, backfilling and...."  
19 et cetera--

20 "...and restoration of a reasonable amount of  
21 contour, all of which applicants have made no  
22 attempt to comply with."

23 What is the basis for that? I couldn't find that  
24 anywhere, except for a recognition that there may be a  
25 legitimate alternative industrial use. But what is the



1 basis for that statement?

2 MS. FINAMORE: For our statement?

3 JUDGE SMITH: Yes.

4 MS. FINAMORE: Well, we were referring to a  
5 document that we had filed in regard to the exemption  
6 request as to what we read the NRC case law to be requiring  
7 site redress, and we were basing this statement on some  
8 decisions that had been made in other cases regarding  
9 redress. That was our interpretation of the existing NRC  
10 case law regarding redress.

11 JUDGE SMITH: Are you arguing here that NRC case  
12 law would require restoration -- a reasonable amount of  
13 restoration to the original contour?

14 MS. FINAMORE: A reasonable amount of  
15 restoration.

16 JUDGE SMITH: To the original contour or of the  
17 natural contour?

18 MS. FINAMORE: The cases that we had read and  
19 cited in that earlier document is that site redress required  
20 restoration to a condition as nearly approaching its  
21 original condition as possible.

22 MR. EDGAR: Your Honor, we responded to that at  
23 the time. In my mind this is a fairly simple thing in two  
24 respects.

25 The first is that they are stating a legal

1 position that they raised with the Commission in 50-12, and  
2 said to the Commission you've got to restore it to perfect  
3 restoration, for want of any better word. And the  
4 Commission didn't impose that condition.

5 JUDGE SMITH: That's right. They recognized that  
6 it may not be achieved.

7 MR. EDGAR: Right.

8 Then looking at it from a purely practical  
9 standpoint, after you get by the point that there is no  
10 requirement, then you look at it practically. And if you  
11 did that, you are going to disrupt more stable areas. The  
12 fill has got to come from somewhere. It is going to cost  
13 more without any identifiable environmental or other  
14 benefit, and it renders the site less amenable to industrial  
15 use.

16 So we can't find any basis for the comment--  
17 Putting aside the fact that they don't oppose the motion, we  
18 can't find a basis for the comment.

19 JUDGE SMITH: Do you agree, however, with some of  
20 the premises of that comment, and that is that you have made  
21 no attempt to, for example, ensure compatibility with the  
22 surrounding area?

23 MR. EDGAR: Oh, no, sir.

24 JUDGE SMITH: Or that you have declined to remove  
25 all structures and facilities?

1 MR. EDGAR: No, sir.

2 JUDGE SMITH: You see that's the way I read it,  
3 and that was perhaps not intended.

4 MR. EDGAR: I don't think the plan says that at  
5 all. I was addressing myself directly to the point of --  
6 quote -- "perfect restoration of the contours." I mean  
7 that's the biggest part of the thing.

8 The site is going to be used for industrial  
9 purposes, and I think the Staff has reviewed the plan and,  
10 by their approval, have agreed that appropriate  
11 consideration has been given to all environmental factors.

12 JUDGE SMITH: All right.

13 Now going to the next point made by NRDC, if the  
14 redress plan is carried to completion, will it be more  
15 useful, less useful, or about the same with respect to  
16 industrial use? And of course you can't anticipate all  
17 industries, but just generally speaking,--

18 MR. EDGAR: Well, the plan itself, if you look at  
19 Alternative 1 versus Alternative 2, goes through a set of  
20 trade-offs on that. It would be. You would have more level  
21 land on the site to--

22 JUDGE SMITH: I'm sorry, I didn't finish my  
23 question: as compared to where it was before the LWA.

24 MR. EDGAR: Okay. The answer is it would be much  
25 more useful than as before the LWA.

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JUDGE SMITH: Under Alternative 2?

MR. EDGAR: Yes, sir.

JUDGE SMITH: All right.

Then that being the case, do you agree with that?

MS. FINAMORE: I suppose I would. It would depend on what industrial use you were talking about, what it would--

JUDGE SMITH: Well, just assume that we are where we are now. We don't know who the industrial user is, but it is going to be a general industrial use.

MS. FINAMORE: Not necessarily. I mean there might not be any industrial use at all forever.

JUDGE SMITH: All right. I'm not talking about that.

You see, under the proposal, we are talking about having an environmentally acceptable redress, but you make the point that you want better industrial use than the redress plan contemplates, don't you?

MS. FINAMORE: Well, your Honor, the big difference I see between the two alternatives is that one would let them bring the ground elevation back to a level one, which I see as having greater -- to be better environmentally, and also to be within the wishes of the local community. And also--

JUDGE SMITH: Now wait a minute. Let's back up.

1                   You see, I couldn't get that answer from you as  
2 it being better environmentally. Now that is the first time  
3 you have said that. You see, I thought that you were  
4 talking about up on the top of page two, but you weren't;  
5 you were talking about something else.

6                   Now it is your view that alternative one would be  
7 better environmentally.

8                   MS. FINAMORE: That's right.

9                   JUDGE SMITH: All right.

10                  But put that aside. Let's assume that  
11 alternative one is only better for a generalized industrial  
12 use, which is the only information we have. I mean you have  
13 not raised before, as far as I can see, that alternative one  
14 is better environmentally. We'll come back to that if you  
15 wish.

16                  Assume now for my question that alternative one  
17 is better only because it provides a better potential for  
18 industrial use. And assume that alternative two is itself  
19 better than the site was before the LWA.

20                  If that is the case what standing do we have,  
21 what jurisdiction do we have and what standing do you have  
22 to request an even better industrial application than before  
23 the LWA?

24                  MS. FINAMORE: Well, as the Applicant said, that  
25 first alternative does represent the wishes of the City of

1 Oak Ridge.

2 MR. EDGAR: We did not say that. And I'll  
3 address that in a moment. But I want to be sure that --  
4 Well, the record will speak for itself on that.

5 JUDGE SMITH: Well, basically I'm trying to find  
6 what our authority and jurisdiction is. That is the  
7 direction of the question.

8 MS. FINAMORE: I think that the first alternative  
9 would provide a wider range of industrial uses than would  
10 the second because you have got a hole in the ground that is  
11 30 feet deep.

12 JUDGE SMITH: I'm giving you that; I assumed that  
13 for the question. I assume that you are correct and they  
14 can see that, that alternative one would be better for a  
15 general industrial use.

16 But the other premise to the question is if  
17 alternative two is better than the land was before the LWA,  
18 what right do we have to require the Applicants to come up  
19 with even a better industrial use?

20 MS. FINAMORE: Well, I think it is within the  
21 Board's authority to order whatever redress it believes is  
22 appropriate under the circumstances.

23 I believe the Board has very broad authority in  
24 this regard. And if it wishes to ensure that the City or  
25 whoever will be able to use it in as broad range of

1 industrial uses as possible, I think it has the general  
2 authority to do so.

3 JUDGE SMITH: And do you think that you have  
4 standing to represent the City's interest in that?

5 MS. FINAMORE: Well, we have not opposed the  
6 motion, as you know. We are raising this as something that  
7 the Board should consider.

8 JUDGE SMITH: Right. That's right. That is a  
9 fair response, yes. Okay.

10 MS. FINAMORE: And, your Honor, if I could  
11 respond to one earlier point as to whether or not you had  
12 jurisdiction to rule on a change, a major revision, say, to  
13 this site redress plan -- and I believe you do.

14 I believe that, as you said before, your  
15 authority ends when site redress is completed. But I think  
16 your authority extends, if you wish it to, until such time  
17 as redress is completed, and that you could continue your  
18 jurisdiction in this area to the extent that there might be  
19 such a change in the site redress plans. And I think that  
20 would be appropriate.

21 And I think if you wished you could retain  
22 authority to rule on any changes in this site redress plan,  
23 should there be any, and that would give you a chance to  
24 have some continuing control over a process over which the  
25 NRC does have continuing responsibility until such time as

1 redress is completed.

2 JUDGE SMITH: The earlier remark suggested that  
3 you believe that the one item that we might have continuing  
4 interest in would be the -- how genuine was an interest.

5 MS. FINAMORE: Well, that would be one. And also  
6 we foresee a possibility where an interest might be  
7 expressed -- maybe it is a firm interest and it would cover  
8 one section of the site.

9 But suppose the redress plan, or suppose the  
10 Applicants use that opportunity to propose stopping redress  
11 all together, for example, or redressing -- or no longer  
12 redressing quite a bit of the site rather than just halting  
13 redress on the site that might be now --

14 JUDGE SMITH: Don't you think that that can be  
15 controlled by the conditions of the order and the conditions  
16 -- actually the agreed to conditions?

17 MS. FINAMORE: I don't think there is any  
18 agreement -- I don't think there is anything really specific  
19 in these site redress plans to cover what a revised site  
20 redress plan would have to cover if there were an  
21 alternative use for part of the land.

22 And I think that's something that the Board might  
23 have a continued interest in, in making sure that redress  
24 was continued to the greatest extent possible, as well as  
25 our earlier point that redress should be continued unless



1 there is a firm commitment for an alternative use in order  
2 to avoid dragging on the whole redress process  
3 indefinitely.

4 MR. DEWEY: Your Honor, Staff has traditionally  
5 handled these restoration problems, and the boards have  
6 recognized this and allowed the Staff to ensure that the  
7 restoration was proper and to take care of the exigent  
8 changes or changes that might be necessary.

9 I don't see that there is any greater reason in  
10 this case than in any other case where they have not done  
11 this for the Board not to allow the Staff this usual and  
12 customary resumption of their duties.

13 MS. FINAMORE: Your Honor, as far as I can see  
14 from having read all the cases on site redress that I could  
15 find, this issue just hasn't come up before. What usually  
16 happens to my recollection is that there is a site redress  
17 plan that is approved, and, although there may be some minor  
18 changes, the Staff is perfectly capable of ensuring that  
19 it's carried out.

20 This I see as a slightly different animal. And I  
21 believe that the Board would be quite within its rights to  
22 make sure that no major revisions are made to such a plan  
23 upon its approval.

24 JUDGE SMITH: The real concern, as I see it, that  
25 we have a responsibility to see is not that the Staff cannot

1 be relied upon to see an alternative industrial plan and  
2 assure that redress goes forward as much as possible  
3 consistent with that alternative industrial plan. That can  
4 well be delegated to the Staff, I think, under traditional  
5 case law.

6           The point that you raised first I think is the  
7 real point, and that is could an expression of interest  
8 which may or may not be a realistic one defer any redress.  
9 I think that's the point you made to begin with, and I think  
10 that is the point that I would like to be satisfied. I  
11 understand it is not likely to come up, and even if it does  
12 come up in December or whenever this is done, it wouldn't  
13 matter to us anyway. So it is a very unusual case that  
14 we're in.

15           MR. DEWEY: Well, maybe Staff can make one  
16 comment here.

17           If an industrial user came along and said that  
18 they had an interest in taking over the site or buying the  
19 site or whatever, I don't think that that would be a problem  
20 because the Staff would maintain, so to speak, jurisdiction  
21 over DOE until the transfer actually took place. And if the  
22 transfer did not take place then the restoration would go on  
23 as originally planned.

24           JUDGE SMITH: Yes, but NRDC is concerned about an  
25 additional delay while a not realistic expression of

1 interest is being evaluated, as I understand it.

2 That is your basic problem?

3 MS. FINAMORE: That is correct.

4 JUDGE SMITH: That is why you are willing to  
5 agree to something you thought was less than ideal in order  
6 to get it going, and you want to make sure there is no  
7 further delay.

8 MS. FINAMORE: That's absolutely correct.

9 JUDGE SMITH: And you do not entirely want to  
10 depend upon the Staff for that.

11 MS. FINAMORE: That's correct.

12 JUDGE SMITH: And you would like to have a  
13 solution to that problem.

14 MS. FINAMORE: Yes, sir.

15 MR. DEWEY: Well, I might add, though, that the  
16 Staff would use its good judgment to evaluate whether the  
17 delay was founded or not; and if it was, to the extent the  
18 delay was too extended we would probably take action  
19 accordingly.

20 I mean we're going to use our good judgment and  
21 we're not going to allow a bad situation to continue  
22 indefinitely.

23 JUDGE SMITH: Well, I am trying to figure out  
24 some way that everybody's interest can be satisfied. We  
25 will lose jurisdiction as soon as we sign off on the order,

1 or after the appellate period. The adjudicatory boards will  
2 lose jurisdiction probably before the redress is completed.

3 Two possibilities occur to me:

4 Mr. Edgar does not believe that the Intervenors  
5 could come forward and move to reopen in the event that they  
6 thought that there was an insincere or unrealistic  
7 expression of interest. But there certainly could be a  
8 petition to the Director of NRR for a show-cause that the  
9 Board's order is not being complied with, or the  
10 Commission's order is not being complied with. I am  
11 wondering if you have thought about that or if that is  
12 adequate.

13 I don't see, just simply because we lose  
14 jurisdiction, that you are rendered helpless.

15 In the first place I have yet to see, in my  
16 experience at the Commission, a violation of an adjudicative  
17 decision. I mean that is not likely to happen. And I'm  
18 wondering if your opportunity to petition the Director of  
19 NRR for a show-cause may not be the recourse open to you  
20 that would satisfy your concerns.

21 MS. FINAMORE: Well, your Honor, that would  
22 depend to a large extent on what the adjudicatory order  
23 said.

24 If the order said that it approved the plan, and  
25 whether or not this was explicitly in the plan or in the

1 order, if it said that the plan could be revised  
2 substantially without a -- with nothing more than an  
3 expression of interest --

4 JUDGE SMITH: No, I'm not talking about -- Oh, I  
5 see.

6 MS. FINAMORE: -- we would have no ability to  
7 challenge or to say that the Board's order wasn't being  
8 complied with.

9 JUDGE SMITH: Okay.

10 MS. FINAMORE: Okay?

11 So as long as there is provision in this redress  
12 plan or any order that major revisions can be made to the  
13 plan on just an expression of interest, I don't see us  
14 having a remedy by going through a petition to the Director  
15 of NRR.

16 MR. EDGAR: If your petition has merit, your  
17 Honor, if -- We're dealing -- The apparent regime in which  
18 we are now speaking is one where, to reduce it to the  
19 extreme, there is a sham expression of interest and DOE  
20 knocks off work at the site, for goodness knows what reason,  
21 but they do so.

22 Now the remedy that your Honor suggested was a  
23 petition of the Director of NRR. The Staff would I assume  
24 be able to see that that was a sham expression of interest  
25 and would take the petition into account and take action.

1 I don't think we're dealing in a real situation  
2 here. I think there is an adequate remedy. I think the  
3 Staff can take into account the facts as they see them, and  
4 that if NRC -- excuse me, NRDC is agreed, there is a means  
5 for seeking their remedy.

6 JUDGE SMITH: Which then brings us to the final  
7 question I had, and that is NRDC has asked that they  
8 continue to be fully informed as to what's happening. And,  
9 of course, before they could petition the Director they would  
10 have to be.

11 I question whether we have jurisdiction to  
12 require anything after we issue our order that you have --  
13 someone I believe has committed this afternoon to,  
14 notwithstanding jurisdiction, to provide them full  
15 information as to what is happening.

16 MR. EDGAR: Well, I spoke that in the context of  
17 if that were the problem I would be willing to take that  
18 commitment.

19 I think that the Department could commit to  
20 provide NRDC with the information supplied to the Staff  
21 under the redress plan. That is, if there is an alternate  
22 user found and the DOE is obligated to inform NRC, then they  
23 could commit to inform NRDC, copy them on the letter.  
24 Likewise if there were a plan revision they could commit to  
25 giving them that.

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JUDGE SMITH: Okay.

Would you object to that, Mr. Dewey?

MR. DEWEY: No, sir.

(The Board conferring.)

JUDGE SMITH: If we can summarize:

If there is an alternate industrial use that would come up that it would only apply to that part of the land which would have that use, and the redress plan would continue and be preserved, if once continued, even to the extent that on a part of the land there is an alternate industrial use, the redress plan would continue and be preserved except as is superseded by the industrial use.

You would not -- You would want to be able to stop or modify a revised redress on a serious expression of interest and not be obligated to have to do it as a commitment. And that you would keep NRDC fully informed of any -- immediately of any provisions for -- or revision in the direction of an alternate industrial use.

MR. EDGAR: That's correct.

JUDGE SMITH: Anything further?

(No response.)

JUDGE SMITH: We had some thought of asking the parties to -- Well, what is the urgency?

Now you have sent out an invitation for bids.

MR. EDGAR: I did not. I was unable to reach

1 the people on that subject as to whether that actually  
2 happened. That was scheduled to happen. I can confirm  
3 that.

4 I think if -- As I read the Board's thinking and  
5 as I listened to the discussion today, there is no basis in  
6 my mind that has been brought forward as to why alternative  
7 two is not a legitimate and an appropriate balance of the  
8 factors here.

9 The only downside for the project is that if  
10 alternative two is not the adopted or the approved  
11 alternative, then they might have to re-bid. But I think  
12 they have got some margin in that schedule so that they can  
13 work with it.

14 JUDGE SMITH: Well, I indicated before we came  
15 here, before we asked the questions of NRDC that the  
16 technical members of the Board had reviewed alternative two  
17 and were satisfied with it environmentally.

18 MR. EDGAR: Yes.

19 JUDGE SMITH: Well, we did have to explore the  
20 representation that NRDC did make there that it may not be  
21 -- and of course in the course of their remarks they did  
22 already indicate that they were satisfied with that.

23 MR. EDGAR: I can't represent to you, your Honor,  
24 that we have an urgent need for a Board order. I just can't  
25 do that. That is not the case --



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JUDGE SMITH: Okay.

MR. EDGAR: -- given that set of facts.

JUDGE SMITH: Well, it is ripe in any event.

MR. EDGAR: Yes.

JUDGE SMITH: Thank you very much.

Anything further?

MS. FINAMORE: No.

JUDGE SMITH: I certainly appreciate your  
coming.

We are adjourned.

(Whereupon, at 2:35 p.m., the conference of  
counsel was adjourned.)

CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: CLINCH RIVER BREEDER REACTOR

DOCKET NO.: 50-537-CP

PLACE: BETHESDA, MARYLAND

DATE: WEDNESDAY, FEBRUARY 27, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sigt) Madelon P. Bloom  
(TYPED)

MADELON P. BLOOM

Official Reporter

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