

DOCKETED  
USNRC

November 15, 1982

In the Matter of

Docket No. 50-537

(Clinch River Breeder Reactor Plant)

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6. The ER and FES do not include an adequate analysis of the environmental impact of the fuel cycle associated with the CRBR for the following reasons:

. . . .

1) The impact of reprocessing of spent fuel and plutonium separation required for the CRBR is inadequately assessed.

In his testimony, Dr. Cochran demonstrates that the impacts of reprocessing of CRBR fuel depend heavily upon the origin and plutonium isotopic content of the CRBR fuel itself. As noted by Dr. Cochran:

... [T]he origin of the plutonium and the manner in which it is recycled determines the isotopic concentrations of the plutonium isotopes that are released to the environment from the CRBR and its fuel cycle under normal and accidental conditions. The somatic (and, to a lesser extent, genetic) risks associated with plutonium releases are a function of the concentrations of the various Pu isotopes.

Testimony of Dr. Thomas B. Cochran, Part III, at pp. 7-8; see also pp. 20-25. Therefore, the origin and type of fuel used in the CRBR is directly linked to the environmental effects of the CRBR fuel cycle. Both Applicants and Staff have admitted this linkage in their recent analyses of the CRBR fuel cycle, in which they examine the environmental impacts of using recycled CRBR fuel. (CRBR Final Supplemental Environmental Impact Statement (hereinafter "FSFES"), Section D.2.4.7; Applicants' Environmental Report (hereinafter "ER"), Amendment XVI, Section 14.4A.

Dr. Cochran's testimony asserts that several sources of CRBR fuel are reasonably foreseeable (such as recycled LWR or FFTF

fuel) and thus the Staff and Applicants must analyze the environmental effects of reprocessing such fuel. Information in the testimony regarding the availability of CRBR fuel from other sources, such as the DOE stockpiles or foreign sources, is included to demonstrate that, since such sources will probably not suffice to fuel the CRBR, other alternative sources, such as recycled commercial spent fuel, are indeed reasonably foreseeable. This information, contained in Answers 7, 8, and 9, and Question 9, is therefore relevant to Contention 6 and should be admitted into evidence.

Applicants claim that the portions of the testimony indicated above were ruled outside the scope of the proceeding by the Board's denial of Contention 17 (Order Following Conference with Parties, April 14, 1982, at 7-8). Contention 17, however, dealt with the ability of Applicants to meet the CRBR programmatic objectives, and thereby justify the project, if insufficient plutonium were available to fuel the CRBR:

Contention 17

Neither Applicants nor Staff have demonstrated that sufficient fuel would be available for CRBR operation to enable the CRBR to demonstrate the objectives of the LMFBR program and remain in operation for a sufficient length of time to justify the project.

Revised Statement of Contentions and Bases of Intervenor's Natural Resources Defense Council, Inc., and the Sierra Club, March 5, 1982, at 19. Although the subject matter of Contention 17

admittedly overlaps to some extent with Dr. Cochran's testimony on Contention 6, the purpose for which Contention 17 was introduced, and the reasons given for its denial, are wholly independent from Contention 6. The Board denied Contention 17 because it purportedly "concerns a policy or programmatic issue" and "goes wholly beyond the proper issues relevant to this particular plant." (April 14, 1982, Order at 7-8.) In contrast, an analysis of reasonably foreseeable fuel types (and the related matter of which fuel types are reasonably foreseeable) falls squarely within the scope of this proceeding -- namely, the environmental impacts of the CRBR fuel cycle. Any overlap with the subject matter of Contention 17 is irrelevant as long as the testimony is properly within the scope of Contention 6.

The instant motion constitutes the second time the Applicants have attempted to exclude certain matters from the scope of this hearing because the subject matter overlaps in part with Contention 17, even though the purpose for which information was sought or received related entirely to Contention 6. In its first attempt the Board granted Applicants Motion for a Protective Order concerning a discovery matter solely because the information sought was not necessary to resolve the issues raised in Contention 6 (Protective Order, May 27, 1982, at 2). The Board, however, agreed with Intervenors that the information sought (which related to foreign plutonium sources) does pertain to the environmental impact of the fuel cycle associated with the

CRBR (id.) and did not exclude the discovery request on the grounds that it might also fall within the bounds of Contention 17. Since, as shown above, the testimony under Question 9, and Answers 7, 8, and 9 is relevant to Contention 6, and relates to environmental impacts within the United States, it should be admitted.

II. Answer A.18(b), (c), and (d)

Applicants' arguments regarding Answer A.18(b), (c), and (d) are similarly misplaced. First, Applicants' claim that the testimony constitutes a challenge to the validity of Table S-3 is simply incorrect. The Staff, in response to comments on the Draft Supplement to the CRBR Environmental Statement, stated explicitly that:

The analysis performed in the Draft Supplement was not based on 10 CFR 51.20 Table S-3.

FSFES, p. 12-61. Since the Staff claims not to have applied Table S-3 to its CRBR analysis, Intervenor's fail to see how their testimony can constitute a challenge to that regulation.

Second, Applicants rely on a 1977 denial of an NRDC petition for rulemaking on an issue that has subsequently been taken up by the NRC. (Applicants' Motion at 6.) As Applicants are well aware, the NRC has indeed been conducting a generic rulemaking on the issues of safe disposal of commercial spent fuel -- the subject of NRDC's Petition for Rulemaking -- and is shortly expected to issue a rule. In the Matter of PROPOSED RULEMAKING ON THE STORAGE AND DISPOSAL OF NUCLEAR WASTE (Waste Confidence

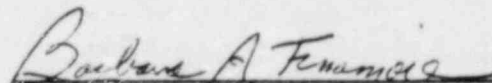
Rulemaking), Docket No. PR-50, 51 (44 Fed. Reg. 61372).

The Waste Confidence proceeding, however, does not dispose of the issues covered in Intervenor's testimony, since the scope of that proceeding specifically excludes reprocessing and apparently applies only to the disposal of spent fuel taken directly from commercial licensed nuclear reactors. Id.; First Prehearing Conference Order, February 1, 1980; see also, Cross Statement of the U.S. Department of Energy, Sept. 5, 1980, at pp. 1-3 to 1-4. The existence of the ongoing Waste Confidence proceeding, therefore, should not serve to prevent Intervenor's from submitting testimony regarding the impacts of disposal of CRBR wastes, particularly wastes from reprocessed CRBR fuel.

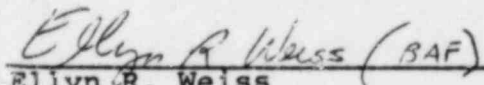
Finally, Applicants claim that Intervenor's Answer A.18(b), (c), and (d) must be stricken because it relates to Intervenor's Contention 12, which was denied by the Board in 1976. (Board Order of April 6, 1976, 3 NRC at 442.) To the extent that decision retains its validity in the light of subsequent NRC rulemakings and court decisions, it again regards a subject not at issue here, namely whether construction of CRBR should be stayed pending resolution of the problem of disposal of nuclear waste. Id. Intervenor's testimony concerns a different issue, that of whether the FSFES adequately discusses the uncertainties environmental effects, and health effects associated with CRBR waste disposal. As such, this relevant testimony is not subsumed within Contention 12 and should be admitted.



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Dated: November 15, 1982

CERTIFICATE OF SERVICE

I hereby certify that copies of INTERVENORS' RESPONSE TO APPLICANTS' MOTION TO STRIKE PORTIONS OF THE TESTIMONY OF DR. THOMAS B. COCHRAN PART III were served this 16th day of November 1982 by first class mail upon:

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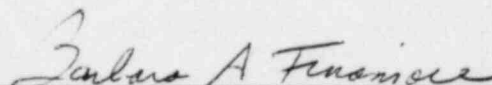
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