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

Before Administrative Judges:
Marshall E. Miller, Chairman
Gustave A. Linenberger, Jr.
Dr. Cadet H. Hand, Jr.

In the Matter of

UNITED STATES DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CORPORATION
TENNESSEE VALLEY AUTHORITY

(Clinch River Breeder Reactor Plant)

Docket No. 50-537

RESPONSE OF INTERVENORS, NATURAL RESOURCES
DEFENSE COUNCIL, INC. AND THE SIERRA CLUB,
TO APPLICANTS' MOTION FOR A PROTECTIVE ORDER

On April 15, 1982, Intervenor, Natural Resources Defense Council, Inc. and the Sierra Club, propounded the following interrogatory upon Applicants in Intervenor's Eighteenth Set of Interrogatories and Request to Produce to Applicants:

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V. Contention 6

8. If plutonium for the CRBR may be obtained from the United Kingdom,
 - a. what regulations would govern the transportation of such materials,
 - b. what requirements or constraints, e.g. application of IAEA safeguards, has the United Kingdom indicated must be met in order that such a sale or transfer of plutonium could take place, and
 - c. how much United Kingdom plutonium has the U.S. indicated it may wish to obtain to meet U.S. R&D needs?

Although Applicants have agreed to answer Interrogatory 8(a), they have refused to answer Interrogatories 8(b) and 8(c), and instead filed a motion for a protective order on May 4, 1982 regarding those Interrogatories. For reasons stated below, Intervenor urge that such motion be denied and that Applicants be instructed to answer Interrogatories 8(b) and 8(c).

A. The Information Sought is Directly Relevant
to Intervenor's Contention 6

The information sought in Interrogatories 8(b) and (c) is directly relevant to Intervenor's Contention 6 (old Contention 9) which reads as follows:

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:

- a. The ER and FES estimate the environmental impacts of the fuel cycle based upon a scale-down of analyses presented in the LMFBR Program Environmental Statement and Supplement for a model LMFBR and fuel cycle. The analyses of the environmental impacts of the model LMFBR and fuel cycle in the LMFBR Program Statement and Supplement are based upon a series of faulty assumptions.
- b. The impacts of the actual fuel cycle associated with CRBR will differ from the model LMFBR and fuel cycle analyzed in the LMFBR Program Environmental Statement and Supplement. The analysis of fuel cycle impacts must be done for the particular circumstances applicable to the CRBR. The analyses of fuel cycle impacts in the ER and FES are inadequate since:
 - (1) The impact of reprocessing of spent fuel and plutonium separation required for the CRBR is not included or is inadequately assessed;
 - (2) The impact of transportation of plutonium required for the CRBR is not included, or is inadequately assessed;
 - (3) The impact of disposal of wastes from the CRBR spent fuel is not included, or is inadequately assessed.
 - (4) The impact of an act of sabotage, terrorism or theft directed against the plutonium in the CRBR fuel cycle, including the plant, is not included or is inadequately assessed, nor is the impact of various measures intended to be used to prevent sabotage, theft or diversion (emphasis added).

This contention was admitted without objection in 1976 (Special Prehearing Conference Memorandum and Order, April 6, 1976, p. 12) and readmitted as modified without objection in 1982 (Order Following Conference With Parties, April 14, 1982, p. 5).

Intervenors have repeatedly described the scope of this contention as requiring analysis of "the probable fuel cycle facilities where they are reasonably identifiable," and have noted that "the alternative sources of fuel for the CRBR are quite limited and...they clearly define the available fuel cycle facilities associated with the front end of the CRBR fuel cycle." Response of Intervenors, Natural Resources Defense Council, Inc. and the Sierra Club, to NRC Staff First Round of Discovery to NRDC, et al., May 6, 1982, pp. 44-45. This contention, and the requirements of NEPA, apply regardless of the original location of the fuel cycle source or facility.

Interrogatories 8(b) and 8(c) are directly relevant to Contention 6 because it has become increasingly clear that a major option being considered for the front end of the CRBR fuel cycle is plutonium obtained from the United Kingdom. DOE's Assistant Secretary for Defense Programs, Herman E. Roser, in response to a question by DOE's Energy Research Advisory Board regarding options for obtaining CRBR plutonium, recently stated:

[O]ur forecasts do include the breeder program and you mentioned the principal options that are under consideration -- purchase from the British and the other, special isotope separation.

Transcript of Meeting of United States Department of Energy, Energy Research Advisory Board, April 8, 1982, pp. 86-87. See also New Scientist, Vol. 94, No. 1304, p. 335 (London, England, May 6, 1982); Energy Daily, Tuesday, April 20, 1982, p. 3.

Applicants nowhere disagree with Intervenor's position that U.K. plutonium is a probable fuel cycle source which is reasonably identifiable. To the contrary, the latest amendment to Applicants' CRBR Environmental Report explicitly mentions such an option:

DOE will supply plutonium to startup and operate CRBRP during the five-year demonstration period. The plutonium will come from existing DOE inventories, processed domestic nuclear power reactor spent fuel and, if necessary, foreign sources (emphasis added).

ER Section 5.7.1 at p. 5.7-2 (Amendment XIV, May 1982).

Interrogatories 8(b) and 8(c) were specifically designed to elicit admissible evidence concerning the environmental impacts of a probable and reasonably identifiable source of plutonium. Interrogatory 8(b) seeks to discover what safeguards, regulations, or other protective measures, if any, would be used to guard U.K. plutonium on its way to the CRBR, should that be the ultimate method chosen. Information of this type is essential to determine the impacts of that method of plutonium supply. Applicants cannot shield the entire front end of the CRBR fuel cycle from a reasonable evaluation or inquiry merely by stating that the fuel will be obtained from the United Kingdom.

Interrogatory 8(c) requests information on the amount of CRBR plutonium that DOE might wish to obtain from the U.K. The sole purpose of the interrogatory is to aid in an evaluation of the probable impacts of such plutonium shipment and the

safeguards to be applied to it. If only a small fraction of the CRBR fuel were to be obtained in such a manner, the probable impacts would be smaller and the required safeguards may be less than if a greater shipment were undertaken. If Applicants do not yet know the answer to these interrogatories, they should be required to so indicate under oath, rather than bury their answers in a motion for a protective order.

The importance of thorough evaluation of the environmental effects of the fuel cycle was recently emphasized by the United States Court of Appeals for the D.C. Circuit in Natural Resources Defense Council, Inc. v. U.S. Nuclear Regulatory Commission, No. 74-1586 (D.C. Cir. Apr. 27, 1982). In particular, Judge Edwards highlighted the failure of NRC adequately to consider the potential environmental impacts of plutonium transportation and safeguards, or the potential theft or diversion of plutonium by foreign or domestic terrorists. NRDC v. NRC, supra, slip op. at 4-6 (Edwards, J., concurring). Through Interrogatory 8(b) and 8(c), Intervenors are attempting to determine the extent of Staff and Applicants' compliance with these requirements, and such discovery should therefore be permitted.

B. The Board's Previous Ruling Regarding Contention 17 Does Not Affect the Scope of Discovery Under Contention 6

Applicants' main objection to Interrogatories 8(b) and 8(c) appears to be that, since the information sought might also be relevant to Intervenors' proposed Contention 17, which was not

admitted, it should not be sought under Contention 6, despite its admitted relevancy to that contention for a different purpose. Such an approach not only defies logic but, if followed, could result in the Board's striking large portions of all parties' discovery requests based on their relevancy to unadmitted contentions. For example, the Board would have to strike all discovery requests concerning ALARA or containment design, since it did not admit Contention 22, which sought to apply ALARA to accidents.

The Board based its rejection of Contention 17 on the belief that the issue of sufficient CRBR fuel availability is beyond the scope of this proceeding. The Board cited the Commission's August 27, 1976 ruling that the validity of the LMFBR program informational goals should be accepted by NRC as given (CLI-76-13, 4 NRC 67, 78 (1976)). The Board apparently concluded that the Commission's ruling required it to assume that sufficient fuel would be made available by DOE, and rejected Contention 17 as a matter of law. The Board then ruled all discovery "regarding fuel availability" to be moot because Contention 17 was not admitted. Order Following Conference with Parties, April 14, 1982, at 14.

These ruling are applicable to Interrogatories 8(b) and 8(c) only to the extent they affect the purpose for which these requests were made. Intervenors do not disagree with Applicants that they may not raise the issue of whether there will be sufficient fuel to operate the CRBR. But that in no

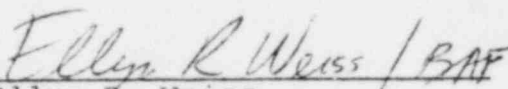
way prevents Intervenor, or any other party, from examining the environmental impacts of obtaining, safeguarding, and transporting plutonium to fuel the CRBR. The environmental impacts of each step in the fuel cycle is neither a programmatic nor a policy issue, but rather a matter squarely within the Board's jurisdiction in this proceeding, upon which the Board is required to make findings. Since Interrogatories 8(b) and 8(c) are directly relevant to these matters, they should be answered regardless of their incidental relevancy to unadmitted contentions.

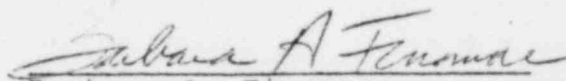
Applicants contend that these interrogatories should be disallowed since they resemble the "discovery requests regarding fuel availability" earlier considered moot by the Board. Applicants also argue that Intervenor is raising fuel availability issues "under the guise of Contention 6." Motion for a Protective Order, May 4, 1982, pp. 9-10. Applicants ignore the fact that the question of plutonium safeguards has absolutely nothing to do with fuel availability. Applicants also ignore the fact that the Board's disallowance of earlier discovery requests resulted in large part from Applicants' mischaracterization of Intervenor's requests as falling solely under Contention 17. It is obvious from Intervenor's interrogatory headings that several of the questions were seeking information under Contention 6 as well. If information is relevant and can be used to prove an admitted contention, it is difficult to see how any "guise" is involved.

CONCLUSION

For all the reasons stated above, we urge that Applicants' motion be denied.

Respectfully submitted,


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Dated: May 14, 1982
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CERTIFICATE OF SERVICE 7 11:57

I hereby certify that copies of RESPONSE OF INTERVENORS, NATURAL RESOURCES DEFENSE COUNCIL, INC. AND THE SIERRA CLUB, TO APPLICANTS' MOTION FOR A PROTECTIVE ORDER were served this 14th day of May 1982 on the following:

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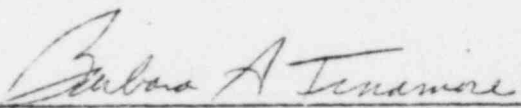
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