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Docket No. 50-201 OLA

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MOTION FOR LEAVE TO FILE A BRIEF "AMICUS CURIAE"

Pursuant to 10 C.F.R. § 2.715(d), the Department of Energy (DOE) hereby respectfully requests leave to file a Brief with the Board as "amicus curiae." DOE also requests an additional 10 days in which to file such brief.

In support of this request, DOE states the following:

DOE's interest in this matter is based on its responsibilities under the West Valley Demonstration Project Act (Act), Pub. L. No. 96-368. The Act authorizes the Department to demonstrate solidification techniques which can be used in preparing high level radioactive waste for disposal.

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In furtherance of the Act, the New York State Energy Research and Development Authority and Nuclear Fuel Services, Inc., transferred possession of the West Valley site to DOE pursuant to change No. 31 to Facility License No. CSF-1, and the DOE has begun to carry out the purposes of the Act. Dr. Bross' appeal represents an attempt to use NRC procedures in contravention of the Act's stated purposes, so as to interfere with DOE's project activities.

DOE's brief is desirable because it will provide the Appeal Board with the Department's views on the jurisdiction and indemnification questions raised by Dr. Bross. The Department strongly believes that the Board lacks jurisdiction over the conduct by the DOE of the West Valley Demonstration Project.

Section 2(c) of the Act specifically provides that review and consultation with the Nuclear Regulatory Commission with respect to the project--

"...shall not include nor require formal procedures or actions by the Commission pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, or any other law."

In view of the Department's clear interest, and the desirability of the Board having the Department's views on this matter, DOE's request for leave to file a brief and for an additional 10 days in which to file such brief should be granted.

Respectfully submitted,

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

Dated: May 24, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of )  
 )  
NUCLEAR FUEL SERVICES, INC. )  
 )  
AND ) DOCKET NO.  
 ) 50-201 OLA  
 )  
NEW YORK STATE ENERGY RESEARCH )  
AND DEVELOPMENT AUTHORITY )  
(Western New York Nuclear )  
Service Center) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the MOTION FOR LEAVE TO FILE A BRIEF "AMICUS CURIAE", in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, postage prepaid, this 24<sup>th</sup> day of May, 1982.

- |   |   |
|---|---|
| * Thomas S. Moore, Chairman<br>Administrative Judge<br>Atomic Safety & Licensing<br>Appeal Board<br>U.S. Nuclear Regulatory Comm.<br>Washington, D.C. 20555 | Carmine J. Clemente, Esq.<br>General Counsel<br>New York State Energy Research<br>and Development Authority<br>Two Rockefeller Plaza<br>Albany, New York 12223  |
| * Dr. W. Reed Johnson<br>Administrative Judge<br>Atomic Safety & Licensing<br>Appeal Board<br>U.S. Nuclear Regulatory Comm.<br>Washington, D.C. 20555       | Philip H. Gitlen, Esq.<br>Whiteman, Osterman & Hanna<br>99 Washington Avenue<br>Albany, New York 12210  |
| * Mr. Gary J. Edles<br>Administrative Judge<br>Atomic Safety & Licensing<br>Appeal Board<br>U.S. Nuclear Regulatory Comm.<br>Washington, D.C. 20555         | Guy H. Cunningham, III<br>James R. Wolf<br>John F. Klucsik<br>U.S. Nuclear Regulatory Comm.<br>Office of the Executive Legal Director<br>Washington, D.C. 20555 |
| * Lawrence Brenner, Chairman<br>Administrative Judge<br>Atomic Safety & Licensing Board<br>U.S. Nuclear Regulatory comm.<br>Washington, D.C. 20555          | ** Docketing and Service Section<br>Office of the Secretary<br>U.S. Nuclear Regulatory Comm.<br>Washington, D.C. 20555  |

\* Dr. Jerry Harbour  
 Administrative Judge  
 Atomic Safety & Licensing Board  
 U.S. Nuclear Regulatory Comm.  
 Washington, D.C. 20555

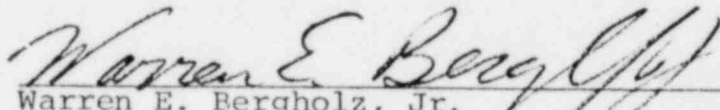
\* Atomic Safety & Licensing Board  
 Panel  
 U.S. Nuclear Regulatory Comm.  
 Washington, D.C. 20555

\* Mr. Peter A. Morris  
 Administrative Judge  
 Atomic Safety & Licensing Board  
 U.S. Nuclear Regulatory Comm.  
 Washington, D.C. 20555

\* Atomic Safety & Licensing  
 Appeal Panel  
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\*\*/ Denotes hand delivery to 1717 H Street, N.W., Washington, D.C.