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UNITED STATE OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE COMMISSIONERS

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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

ANSWER OF INTERVENORS, NATURAL RESOURCES  
DEFENSE COUNCIL, INC. AND THE SIERRA CLUB,  
TO APPLICANTS' PETITION FOR REVIEW

Pursuant to 10 C.F.R. §2.786(b)(3), Intervenor Natural Resources Defense Council, Inc. and the Sierra Club, hereby submit an answer in opposition to Applicants' petition for review of the February 29, 1984 Appeal Board Memorandum and Order, insofar as it vacated the Licensing Board's determination to limit Intervenor's participation in the Clinch River Breeder Reactor (CRBR) Limited Work Authorization (LWA) proceedings on remand.

I. ISSUE PRESENTED

The issue presented is very straightforward: whether the Appeal Board was correct in holding that, by remanding to the Licensing Board the LWA issues of revocation of the CRBR LWA and associated site redress, it did not intend to alter Intervenor's

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longstanding status as intervenors in the LWA portion of the case.

II. SUMMARY OF THE DECISION FOR WHICH REVIEW IS SOUGHT

Despite Applicants' attempts to burden the record, the decision can be stated very concisely. On November 23, 1983, Intervenor Natural Resource Defense Council, Inc. and the Sierra Club ("Intervenors"), who have been full parties to the CRBR Limited Work Authorization proceedings since 1975, filed with this Appeal Board a Motion of Intervenor to Terminate Appeal Proceedings, Vacate Partial Initial Decision, and Authorize Revocation of Limited Work Authorization. On December 15, 1983, the Appeal Board issued an order which terminated the appeal proceedings and vacated the LWA Partial Initial Decision. The Appeal Board, however, remanded to the Licensing Board Intervenor's request for revocation of the LWA.<sup>1/</sup> The Appeal Board anticipated that the Licensing Board would determine if any conditions for LWA revocation were needed to ameliorate the environmental impacts of site preparation.

On remand, the Licensing Board on January 20, 1984 issued a Notice of Conference With Parties, which scheduled a conference to discuss revocation of the LWA and appropriate measures for site redress. Inexplicably, however, the Licensing Board stated that Intervenor Natural Resources Defense Council and the Sierra

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<sup>1/</sup> ALAB-755 at 3-4; ALAB-761 at 4.

Club would only be permitted to participate in the conference by making limited appearance statements in accordance with 10 C.F.R. §2.715. This ruling has the effect of wholly denying NRDC and the Sierra Club the right to participate in the LWA conference as full party intervenors.

Intervenors appealed the Licensing Board's relegation of Intervenors to limited appearance status on February 6, 1984. On February 29, the Appeal Board vacated the Licensing Board's determination as inconsistent with ALAB-755.<sup>2/</sup> The Appeal Board stated that nothing in their remand order was designed to alter Intervenors' status as full parties in the LWA portion of the case, noting that intervenors have been active participants in the LWA proceedings, that they have demonstrated interest in site redress issues, and that no public purpose is served in circumscribing their participation at this stage.<sup>3/</sup>

### III. MATTERS PREVIOUSLY RAISED BEFORE THE APPEAL BOARD

Applicants argue that the Appeal Board did not remand and could not have remanded the LWA decision to the Licensing Board.<sup>4/</sup> These matters were not previously raised before the Appeal Board.

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<sup>2/</sup> ALAB-761 at 7, 14.

<sup>3/</sup> Id. at 7-9.

<sup>4/</sup> Applicants' Petition for Review at 5-8.

IV. THE APPEAL BOARD'S DECISION IS CLEARLY CORRECT

The Appeal Board's decision is clearly correct. The Appeal Board stated that in remanding Intervenor's motion to revoke the CRBR LWA to the Licensing Board to allow consideration of site redress issues, the Appeal Board did not intend to strip Intervenor of party status with respect to that motion. Surely the Appeal Board's interpretation of its own recent decision must be given deference as opposed to Applicants' interpretation of that decision.

That the Appeal Board had full power to remand LWA issues to the Licensing Board has never been disputed by the Licensing Board or any party. To the contrary, Applicants, NRC Staff, and the Licensing Board have expressly recognized the possibility of such remand and the rights of Intervenor to participate fully on any such remand.<sup>5/</sup>

Applicants' argument that Intervenor have not demonstrated interest in site redress issues is clearly incorrect. When the issue first arose in connection with Applicants' requested emergency exemption under 10 C.F.R. §50.12, Intervenor argued repeatedly that the environmental impacts of site preparation could be significant and that Applicants' site redress plans were inadequate.<sup>6/</sup> Intervenor also appealed the §50.12 exemption to

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<sup>5/</sup> See ALAB-761 at 7-8, n. 12.

<sup>6/</sup> Memorandum of Intervenor in Opposition to Applicants' Request to Conduct Site Preparation Activities (Dec. 15, 1981); Comments of Intervenor In Opposition to Applicants' Exemption Request Under 10 C.F.R. §50.12 (Jan. 18, 1982); footnote cont'd

federal court largely on grounds concerning site preparation impacts.<sup>7/</sup> And as the Appeal Board noted, the issue of site redress has come before the Board for the first time as a result of the project's termination. Given Intervenor's demonstrated interest in site redress, the Appeal Board properly found no public interest purpose in circumscribing their participation at this stage.

V. THIS PETITION RAISES NO IMPORTANT QUESTIONS TO JUSTIFY COMMISSION REVIEW

Applicants' claims that this petition for review raises important procedural issues and public policy questions is of the purest gossamer. Intervenor's have actively participated without fail in all aspects of the CRBR LWA licensing proceeding since 1975, and no important procedural question is raised by allowing them to continue that participation during the final stage of the LWA process.

As a matter of public policy, Applicants are simply incorrect in their claim that Intervenor's continued participation will delay the proceedings. As their earlier submissions demonstrate, Intervenor's main concern is that site redress be rapid and effective. In contrast, Applicants have

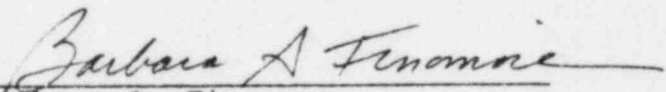
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Supplemental Comments of Intervenor's In Opposition to Applicants' Exemption Request Under 10 C.F.R. §50.12 (Jan. 28, 1982); Brief of Intervenor's In Opposition to Applicants' Exemption Request Under 10 C.F.R. §50.12 (July 22, 1982).

<sup>7/</sup> Natural Resources Defense Council, Inc. v Zeller,  
No. C-82-1830A (N.D.Ga).

proposed to delay the start of site redress activities for over a year.<sup>8/</sup> Given Intervenor's expertise as environmental protection organizations, Intervenor submit that the sound course is to permit their assessment of Applicants' site redress plan to be heard.

Respectfully submitted,

  
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<sup>8/</sup> CRBR Site Redress Plan at 12 (March 5, 1984).

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CERTIFICATE OF SERVICE

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I hereby certify that copies of ANSWER OF INTERVENORS, NATURAL RESOURCES DEFENSE COUNCIL AND THE SIERRA CLUB TO APPLICANTS' PETITION FOR REVIEW were served this 15th day of March 1984 by hand\* or by first class mail upon:

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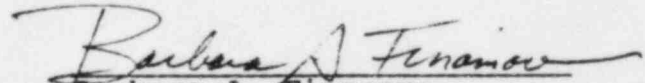
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