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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE
ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
UNITED STATES DEPARTMENT OF ENERGY)
)
PROJECT MANAGEMENT CORPORATION)
)
TENNESSEE VALLEY AUTHORITY)
)
(Clinch River Breeder Reactor Plant))

Docket No. 50-537

APPLICANTS' NOTIFICATION
CONCERNING PENDING LITIGATION

The United States Department of Energy ("DOE") and Project Management Corporation ("PMC"), for themselves and on behalf of the Tennessee Valley Authority (the Applicants), hereby file this Notification Concerning Pending Litigation. The Applicants are providing this Notification for the purpose of keeping the Board currently informed as to matters potentially affecting the above-captioned proceeding, as follows:

1. Section 50.12 Case -

On August 19, 1982, NRDC and the Sierra Club ("Intervenors") filed, in the United States Court of Appeals for the District of Columbia Circuit, a Petition for Review and an Application for Stay of the Commission's August 17, 1982 Order granting

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Applicants' July 1, 1982 request to conduct site preparation activities pursuant to 10 C.F.R. § 50.12. As of August 30, 1982, all responsive pleadings concerning the Application for Stay had been filed with the court. On October 4, 1982, the court issued a temporary stay of the Commission order under review in order to afford the court an opportunity to more fully consider the pending Application for Stay and responses thereto. Site preparation activities were halted as a result of the temporary stay. On October 6, 1982, the court issued an order denying the Application for Stay, and establishing an expedited schedule for review on the merits (copy attached). Site preparation activities have now been resumed.

2. 40 C.F.R. § 122.66(c)(4)(i) Agreement Case -

On August 23, 1982, Intervenors filed suit in the United States District Court for the Northern District of Georgia against DOE, DOE's CRBRP Project Office, and the Environmental Protection Agency ("EPA"), alleging that an Agreement, executed by EPA and the CRBRP Project Office under 40 C.F.R. § 122.66(c)(4)(i) to allow site preparation activities, violated NEPA and the aforementioned EPA regulation. On September 3, 1982, the District Court issued an injunction restraining DOE from undertaking site preparation until the FES Supplement is completed and the final NPDES permit is issued for CRBRP. NRC contemplates issuance of the Final FES Supplement on November 1, 1982, and EPA contemplates issuance

of the final permit on December 1, 1982. On September 7, 1982, PMC and the Federal defendants filed Notices of Appeal in the District Court and filed Motions for Expedited Appeal in the United States Court of Appeals for the Eleventh Circuit. These Motions requested that briefing be completed by September 15, 1982, oral argument be held on September 17, 1982, and that a decision be rendered on the merits by September 18, 1982. On September 8, 1982, the Eleventh Circuit issued an Order granting PMC's Motion, requiring completion of briefing on September 14, 1982, and scheduling oral argument for September 15, 1982. On September 21, 1982, the Eleventh Circuit issued a decision finding that the Agreement complied with EPA regulation 40 C.F.R. § 122.66(c)(4)(i), reversing the District Court, dissolving the injunction, and taxing costs against NRDC. Thereafter, site preparation activities commenced.

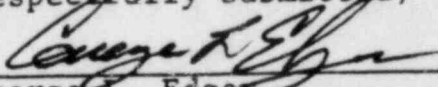
3. LMFBR Program Statement Case -


On September 22, 1982, NRDC filed a complaint, seeking declaratory and injunctive relief against DOE in the United States District Court for the District of Columbia and alleging a failure to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., with respect to DOE's LMFBR Program Environmental Statement. NRDC seeks to enjoin all LMFBR Program commercial demonstration activities, including construction of CRBRP, until completion of an adequate LMFBR Program Environmental Statement. DOE's Answer to the complaint is due within 60 days after September 22, 1982.

4. Consolidated Permit Regulation Case -

On October 1, 1982, NRDC filed with the United States Court of Appeals for the District of Columbia Circuit a Motion to Expedite Consideration of Emergency Motion, an Emergency Motion to Amend the Court's Remand and to Review EPA Regulations, and a Brief on the EPA Construction Prohibition in NRDC v. EPA, No. 80-1607 (and consolidated cases).^{*/} In this regard NRDC sought: a) modification of the D. C. Circuit's August 6, 1982 Order which, inter alia, remanded 40 C.F.R. § 122.66(c)(4)(i) back to EPA for implementation of a June 7, 1977 settlement agreement which would eliminate the 40 C.F.R. § 122.66 (c)(4)(i) prohibition on construction prior to issuance of an NPDES permit; and b) expedited review and a decision concerning the validity of EPA regulation 40 C.F.R. § 122.66(c)(4)(i) as interpreted by EPA and the United States Court of Appeals for the Eleventh Circuit. Responses to the Motions are due on October 12, 1982.

Respectfully submitted,


George L. Edgar
Attorney for
Project Management Corporation


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

DATED: October 7, 1982

^{*/} These cases, which have been pending before the D. C. Circuit since the summer of 1980, involve Petitions for Review filed by numerous parties, including NRDC, in connection with EPA's promulgation of the so-called "consolidated NPDES permit regulations". See 45 Fed. Reg. 33290 (May 19, 1980). The consolidated NPDES permit regulations include 40 C.F.R. § 122.66(c)(4)(i).

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82-1962

September Term, 1982

Natural Resources Defense Council, Inc.
and The Sierra Club,

Petitioners

v.

United States Nuclear Regulatory
Commission and the United States
of America,

Respondents

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 6 1982

GEORGE A. FISHER
CLERK

Project Management Corporation,
Tennessee Valley Authority,

Intervenors

BEFORE: Bazelon, Senior Circuit Judge; Ginsburg and Bork,
Circuit Judges

O R D E R

On consideration of petitioner's motion for a stay pending review of the Nuclear Regulatory Commission's decision to permit commencement of site preparations activities for the Clinch River Breeder Reactor, the opposition thereto, and petitioner's reply, it is

ORDERED by the Court that the motion is denied. Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977). It is

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 82-1962

September Term, 19 82

FURTHER ORDERED, sua sponte that the Clerk shall schedule this case for argument on the merits during the November-December, 1982 sitting of this Court. It is

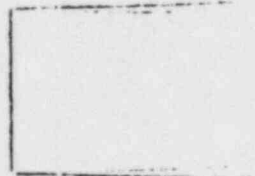
FURTHER ORDERED that the following briefing schedule is established:

| | |
|--|------------------|
| Petitioners' Brief | October 14, 1982 |
| Respondents' and Supporting Intervenors' Briefs | October 28, 1982 |
| Petitioners' Reply Brief, if any | November 5, 1982 |

The Joint Appendix of the parties shall be filed either with the Petitioners' Initial Brief on October 14, 1982, or on November 1, 1982.

No enlargement of time of the foregoing schedule will be granted.

Per Curiam



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
UNITED STATES DEPARTMENT OF ENERGY
PROJECT MANAGEMENT CORPORATION
TENNESSEE VALLEY AUTHORITY
(Clinch River Breeder Reactor Plant)

Docket No. 50-537

CERTIFICATE OF SERVICE

Service has been effected on this date by personal
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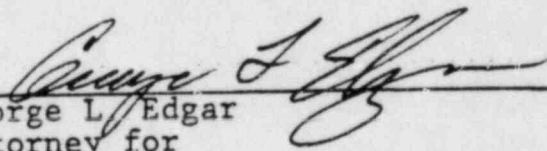
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