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USNRC

February 6, 1984

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING APPEAL BOARD

Before Administrative Judges:  
Gary J. Edles, Chairman  
Dr. W. Reed Johnson  
Howard A. Wilber

In the Matter of )

UNITED STATES DEPARTMENT OF ENERGY )  
PROJECT MANAGEMENT CORPORATION )  
TENNESSEE VALLEY AUTHORITY )

(Clinch River Breeder Reactor Plant) )

) Docket No. 50-537

BRIEF OF INTERVENORS, NATURAL RESOURCES  
DEFENSE COUNCIL, INC. AND THE SIERRA CLUB,  
IN SUPPORT OF APPEAL

On November 23, 1983, Intervenor Natural Resources 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 held, however, that the issue of revocation of the LWA was better left to the Licensing Board,

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which at that time still retained jurisdiction over the CRBR construction permit proceedings. The Appeal Board anticipated that the Licensing Board would determine if any conditions were needed to ameliorate the environmental impacts of site preparation. Order, December 15, 1983, at 3-4.

In view of these statements by the Appeal Board, the Licensing Board on January 20, 1984 issued a Notice of Conference With Parties, which scheduled a conference on March 14, 1984 to discuss revocation of the LWA and appropriate measures for site redress. Inexplicably, however, the Licensing Board stated that Intervenors Natural Resources Defense Council and the Sierra 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, thus warranting an immediate appeal under 10 C.F.R. §2.714a. See Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 1), ALAB-696, 16 NRC 1245, 1256 (1982).

The Licensing Board's termination of NRDC and the Sierra Club's intervention is completely unjustified. Both groups have been full parties to the CRBR LWA proceedings since 1975 to the same extent as Applicants and Staff, who were invited to the

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\* / A person making a limited appearance does not become a party, may only make a nonevidentiary oral or written statement on the record, and may not participate in the proceeding in any other way. 10 C.F.R. §2.715; 10 C.F.R. Part 2, Appendix A, Section III(b).

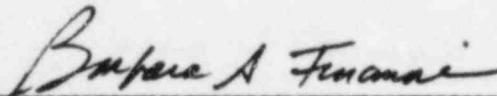
March 14, 1984 conference as full parties. The termination of the LWA appeal proceedings should have no effect on the ability of Intervenors to continue to participate in whatever LWA proceedings remain before the Licensing Board. In fact, it was Intervenors NRDC and the Sierra Club who first raised the issue of revocation of the LWA to the Appeal Board. Surely the Appeal Board, by granting part of Intervenors' motion (to terminate the appeal proceedings and vacate the PID), did not intend to strip Intervenors of party status with respect to the remainder of its motion, simply by transferring that portion to the Licensing Board.

The Licensing Board may be under the impression that since it dismissed NRDC and the Sierra Club as parties to the CRBR Construction Permit proceedings, that these parties are somehow dismissed from the LWA proceedings as well. This impression is clearly mistaken. The Board's dismissal on its face applies only to the CRBR construction permit proceedings. Transcript of Conference With Counsel, June 29, 1983, at 7330. All parties agreed that NRDC and the Sierra Club would have full party status to participate in any further proceedings before the Licensing Board on LWA matters. Id. at 7314, 7316-17.

The upcoming March 14, 1984 Conference With Parties is indisputably a LWA proceeding. The only issues on the agenda are revocation of the LWA, and the extent of appropriate site redress measures in connection with LWA revocation. Notice of Conference With Parties at 2. Intervenors NRDC and the Sierra Club

therefore request that an order be entered directing the Licensing Board to permit these parties to participate fully as intervenors in the March 14, 1984 Conference With Parties.

Respectfully submitted,



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Barbara A. Finamore  
S. Jacob Scherr

Attorneys for Intervenors,  
Natural Resources Defense  
Council, Inc. and the  
Sierra Club

Dated: February 6, 1984

CERTIFICATE OF SERVICE

I hereby certify that copies of NATURAL RESOURCES DEFENSE COUNCIL NOTICE OF APPEAL and SUPPORTING BRIEF, and NATURAL RESOURCES DEFENSE COUNCIL AND SIERRA CLUB NOTICE OF APPEAL and SUPPORTING BRIEF were served this 6th day of February 1984 by hand\* or by first class mail upon:

- \* Marshall E. Miller, Esq.  
Chairman  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
4350 East West Highway, 4th floor  
Bethesda, MD 20014
- \* Gustave A. Linenberger  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
4350 East West Highway, 4th floor  
Bethesda, MD 20014
- \* Gary J. Edles, Chairman  
Atomic Safety & Licensing Appeal Board  
4350 East West Highway,  
Bethesda, MD 20014
- \* Dr. W. Reed Johnson  
Atomic Safety & Licensing Appeal Board  
4350 East West Highway,  
Bethesda, MD 20014
- \* Howard A. Wilber  
Atomic Safety & Licensing Appeal Board  
4350 East West Highway,  
Bethesda, MD 20014
- \* Sherwin E. Turk, Esq.  
Stuart Treby, Esq.  
Geary S. Mizuno, Esq.  
Elaine I. Chan, Esq.  
Office of Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Maryland National Bank Building  
7735 Old Georgetown Road  
Bethesda, MD 20014

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\* Indicates hand delivery.

Certificate of Service - ?

- \* Atomic Safety & Licensing Appeal Board  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555
- \* Atomic Safety & Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
1717 H Street, NW, Room 1121  
Washington, D.C. 20555
- \* Docketing & Service Section  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
1717 H Street, NW, Room 1121  
Washington, D.C. 20555 (3 copies)
- \* R. Tenney Johnson, Esq.  
Leon Silverstrom, Esq.  
Warren E. Bergholz, Jr., Esq.  
William D. Luck, Esq.  
Office of General Counsel  
U.S. Department of Energy  
1000 Independence Ave., SW, Rm. 6-B-256  
Washington, D.C. 20585
- \* George L. Edgar, Esq.  
Thomas A. Schmutz, Esq.  
Newman and Holtzinger, P.C.  
1025 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Dr. Cadet H. Hand, Jr., Director  
Bodega Marine Laboratory  
University of California  
P.O. Box 247  
West Side Road  
Bodega Bay, CA 94923  
(Federal Express Mail)

Herbert S. Sanger, Jr., Esq.  
Lewis E. Wallace, Esq.  
James F. Burger, Esq.  
W. Walker LaRoche, Esq.  
Edward J. Vigluicci, Esq.  
Office of the General Counsel  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, TN 37902



Certificate of Service - 3

William M. Leach, Jr., Esq.,  
Attorney General  
William B. Hubbard, Esq.,  
Chief Deputy Attorney General  
Michael D. Pearigen, Esq.  
State of Tennessee  
Office of the Attorney General  
450 James Robertson Parkway  
Nashville, TN 37219

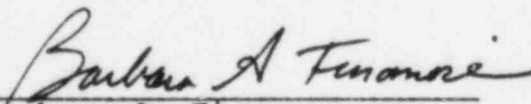
Lawson McGhee Public Library  
500 West Church Street  
Knoxville, TN 37902

William E. Lantrip, Esq.  
City Attorney  
Municipal Building  
P.O. Box 1  
Oak Ridge, TN 37830

Oak Ridge Public Library  
Civic Center  
Oak Ridge, TN 37830

Joe H. Walker  
401 Roane Street  
Harriman, TN 37748

Commissioner John L. Parish  
Tennessee Department of Economic and  
Community Development  
Andrew Jackson Building, Suite 1007  
Nashville, TN 37219

  
Barbara A. Finamore

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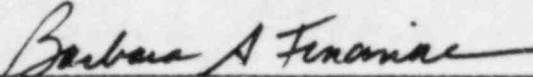
NATURAL RESOURCES DEFENSE COUNCIL INC.  
NOTICE OF APPEAL

Pursuant to 10 C.F.R. §2.714a, the Natural Resources Defense Council, Inc. (NRDC) hereby files a notice of appeal of the Atomic Safety and Licensing Board's January 20, 1984 Order Regarding NRDC Motion to Intervene, which wholly denied NRDC's motion to intervene in the Clinch River Breeder Reactor Construction Permit proceedings. A supporting brief is attached.

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Respectfully submitted,

  
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Barbara A. Finamore  
S. Jacob Scherr

Attorneys for  
Natural Resources Defense  
Council, Inc.

Dated: February 6, 1984

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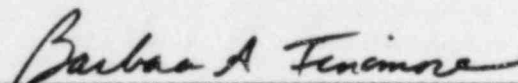
(Clinch River Breeder Reactor Plant) )

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INTERVENORS, NATURAL RESOURCES DEFENSE COUNCIL INC.  
AND SIERRA CLUB, NOTICE OF APPEAL

Pursuant to 10 C.F.R. §2.714a, the Natural Resources Defense Council, Inc. and the Sierra Club hereby file a notice of appeal of the Atomic Safety and Licensing Board's January 20, 1984, Notice of Conference With Parties which, by permitting NRDC and the Sierra Club only the right to submit limited appearance statements, wholly denies these parties the right to participate as full party intervenors in the remaining CRBR Limited Work Authorization proceedings. A supporting brief is attached.

Respectfully submitted,



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Barbara A. Finamore  
S. Jacob Scherr

Attorneys for Intervenors,  
Natural Resources Defense  
Council, Inc. and the  
Sierra Club

Dated: February 6, 1984