

DOCKETED
USNRC

UNITED STATES
NUCLEAR REGULATORY COMMISSION

'99 AUG 30 A8:15

ATOMIC SAFETY LICENSING AND LICENSING BOARD PANEL

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION STAFF

Before Administrative Judges:

Charles Bechhoefer, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION,)	Docket No. 40-8027-MLA-4
)	
(Request to Amend Source Material)	ASLBP No. 99-770-09-MLA
License No. SUB-1010))	

**OBJECTION TO SEQUOYAH FUELS CORPORATION'S
MOTION FOR RECONSIDERATION**

**W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA**

**STEPHEN L. JANTZEN
ASSISTANT ATTORNEY GENERAL
ENVIRONMENTAL PROTECTION UNIT
2300 N. Lincoln Blvd., Suite 112
Oklahoma City, Oklahoma 73105
Telephone: (405) 521-3921
Telefax: (405) 521-6246**

Dated: August 23, 1999

SECY-041

DS03

20770

**U.S. NUCLEAR REGULATORY COMMISSION
RULEMAKING & ADJUDICATIONS STAFF
OFFICE OF THE SECRETARY
OF THE COMMISSION**

Document Statistics

Postmark Date 8/23/99
Copies Received 3
Add'l Copies Reproduced 0
Special Distribution OGC, RIDS

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Charles Bechhoefer, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION,)	Docket No. 40-8027-MLA-4
)	
(Request to Amend Source Material)	ASLBP No. 99-770-09-MLA
License No. SUB-1010))	

**OBJECTION TO SEQUOYAH FUELS CORPORATION'S
MOTION FOR RECONSIDERATION**

The Attorney General of the State of Oklahoma, W.A. Drew Edmondson, by and through the undersigned, Stephen L. Jantzen, Assistant Attorney General, on behalf of the State of Oklahoma ("Oklahoma"), hereby objects to Sequoyah Fuels Corporation's ("SFC") Motion for Reconsideration. The Motion for Reconsideration requests the Presiding Officer reconsider the Memorandum and Order entered in the above-captioned matter on August 12, 1999 (the "Memorandum and Order") for the stated reason that there is an inadequate basis for granting the Oklahoma leave to supplement its Request for Hearing. Unlike Oklahoma's Motion for Leave to Supplement Request for Hearing and to Reply to SFC and NRC Staff, filed on August 12, 1999 (the "Motion for Leave"), and unlike the Memorandum and Order, the Motion for Reconsideration is wholly unsupported by law. The Motion for

Reconsideration fails to demonstrate that the Memorandum and Order is erroneous. The Motion for Reconsideration further fails to demonstrate that granting Oklahoma leave to supplement its Request for Hearing will not materially aid the Presiding Officer and wholly neglects to show that such supplementation will detriment SFC in any way. The Motion for Reconsideration must therefore be denied.

BACKGROUND

On June 9, 1999, the U.S. Nuclear Regulatory Commission caused to be published in the Federal Register its Notice of Consideration of an Amendment Request for Sequoyah Fuels Corporation and Opportunity for a Hearing (the "Notice") relating to the Second Revised Decommissioning Plan proposed by SFC for its uranium conversion facility located near Gore, Oklahoma. In response to the Notice, and as noted by SFC in the Motion for Reconsideration, Oklahoma timely filed its Request for Hearing on July 7, 1999.

SFC filed its Answer in Opposition to Oklahoma's Request for Hearing on July 19, 1999. In its Answer, SFC advanced extensive briefing and lengthy legal argument relating to the Request for Hearing and certain issues, including judicial standards of standing and areas of concern about the licensing activity that is the subject matter of the proceeding. NRC Staff filed its Response to Oklahoma's Request for Hearing on August 6, 1999. NRC Staff's Response also extensively briefed certain issues relating to Oklahoma's Request for Hearing, and set forth legal argument relating to judicial standards of standing and areas of concern about the licensing activity that is the subject matter of the proceeding.

Seeking the opportunity to respond to the legal briefs submitted by SFC and NRC Staff, and to provide details supporting its claims of standing and areas of concern about the licensing activity that is the subject matter of the proceeding, Oklahoma filed the Motion for Leave on August 12, 1999. The Presiding Officer entered the Memorandum and Order granting Oklahoma until September 3, 1999, to supplement its Request for Hearing, and providing both SFC and NRC Staff adequate opportunity to respond. On August 19, 1999, SFC filed its Motion for Reconsideration of the Memorandum and Order.

ARGUMENT

Litigants seeking reconsideration of a final determination by the Presiding Officer are required to show that the particular decision was erroneous. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-35, 36 N.R.C. 355, 357 (1992). In the Motion for Reconsideration, however, SFC advances only generalized points of contention, and wholly fails to show that the Memorandum and Order was erroneous. The Motion for Reconsideration also fails to demonstrate that granting Oklahoma leave to supplement its Request for Hearing will not materially aid the Presiding Officer and wholly neglects to show that such supplementation will detriment SFC in any way. The Motion for Reconsideration must therefore be denied.

A. SFC's Argument that Amendments or Supplements to Requests for Hearing are not Allowed in Subpart L Adjudications is Contrary to Long-Established Precedent

In the Motion for Reconsideration, SFC relies on a formalistic and misplaced argument, namely that references to Subpart G procedures in the rules governing Subpart L adjudications reveal the intent of the U.S. Nuclear Regulatory Commission that supplements or amendments to Requests for Hearing are not allowed. However, SFC sets forth no legal authority whatsoever in support of this proposition, especially in light of the long-standing precedent that requests for hearing in Subpart L informal adjudications may be amended or supplemented.

Presiding Officers are granted broad powers in the conduct of Subpart L adjudications. 10 C.F.R. § 2.1209 (1999). By title and nature, Subpart L adjudications are informal. Consequently, it was long ago decided that the Presiding Officer's extensive powers in Subpart L adjudications include the power to permit amendment or supplementation of requests for hearing. Indeed, amendment or supplementation of requests for hearing has been regularly permitted in Subpart L informal adjudications at the discretion of the Presiding Officer. See, e.g., In the Matter of International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), 1998 WL 518240 (1998); Babcock and Wilcox Company (Pennsylvania Nuclear Services Operations, Parks Township), Pennsylvania, LBP-94-4, 39 N.R.C. 47, 49 (1994); Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 N.R.C. 72, 79 (1993); Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 N.R.C. 149, 152:

153 (1992). SFC has therefore failed to demonstrate that the Memorandum and Order was erroneous.

B. SFC Failed to Demonstrate That Supplementation Will Not Aid the Presiding Officer and that Supplementation Will Work to the Detriment of SFC

In its Motion for Reconsideration, SFC erroneously contends that Oklahoma did not identify the grounds or bases in support of the Motion for Leave. Even a cursory review of the Motion for Leave reveals identification of more than adequate grounds in support of the Motion for Leave, namely: (1) the factors considered by the Presiding Officer in determining whether the Motion for Leave should be granted, e.g., whether supplementation will materially aid the Presiding Officer in making an informed determination as to whether Oklahoma has standing and whether it has presented litigable issues, and whether supplementation will work to the detriment of SFC. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 N.R.C. 149 (1992); (2) the need for an equitable opportunity to respond to the legal briefs propounded by SFC and NRC Staff; and (3) the desirability of the provision of details supporting Oklahoma's claims of standing and areas of concern about the licensing activity that is the subject matter of the proceeding.

Unlike Oklahoma in its Motion for Leave, SFC identified no legal grounds or bases whatsoever in support of the Motion for Reconsideration. Indeed, SFC failed to address how supplementation of Oklahoma's Request for Hearing will not materially aid the Presiding Officer in making an informed determination as to whether Oklahoma has standing and whether it has presented litigable issues. Babcock and Wilcox (Apollo, Pennsylvania Fuel

Fabrication Facility), LBP-92-24, 36 N.R.C. 149, 152-153 (1992). SFC's Answer and NRC Staff's Response to Oklahoma's Request for Hearing are one-sided by their very nature. Permitting Oklahoma to reply to the legal arguments of SFC and NRC Staff, and to provide details in support of its claims, will give the Presiding Officer a complete record upon which to base a decision in this most important matter.¹ Further, due to the importance and complex nature of the standing issue, amendment or supplementation to Requests for Hearing are in no way limited to pro se litigants, as SFC suggests. See, e.g., In the Matter of International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), 1998 WL 518240 (1998).²

Importantly, the Motion for Reconsideration fails to show how the delay in granting Oklahoma an opportunity to supplement its Request for Hearing would work to the detriment of SFC. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 N.R.C. 149, 153 (1992). The Motion for Reconsideration virtually ignores this element of the analysis. It is uncontested by SFC that the Second Revised Decommissioning Plan

¹ For example, in the Motion for Reconsideration, SFC seems to argue that its position and that of the NRC Staff on Oklahoma's Request for Hearing are in complete accord. However, unlike SFC, the NRC Staff believes that the State of Oklahoma has alleged injury-in-fact and causation. NRC Staff Response, pp. 10-11.

² Interestingly, the Memorandum and Order cited here appears to be from the same International Uranium (USA) Corporation matter relied upon by SFC in its Answer relating to Oklahoma's Request for Hearing. SFC Answer, pp. 6-7. In that case, the State of Utah was granted leave to supplement its Request for Hearing and Petition for Leave to Intervene, and it was this Supplement that was at issue in the matter cited by Sequoyah Fuels Corporation. In the Matter of International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), 1998 WL 518240 (1998); In the Matter of International Uranium (USA) Corporation (Receipt of Material from Tonawanda, New York), LBP-98-21, 48 N.R.C. 137, fn. 3 (1998).

is still undergoing technical review by NRC Staff.³ It is also uncontested by SFC, and noted by NRC Staff in its Response, that a full Environmental Impact Statement may be required in relation to the Second Revised Decommissioning Plan, which could take over one (1) year. NRC Staff Response, p. 4. Therefore, any delay encountered by permitting Oklahoma to make the additional filing requested in the Motion for Leave will not work to the detriment of SFC or the NRC Staff. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 N.R.C. 149, 153 (1992). SFC has therefore failed to demonstrate that the Memorandum and Order was erroneous.

Conclusion

In sum, SFC cites absolutely no law or fact that warrants the extreme measure of undoing the Memorandum and Order. The Memorandum and Order was not erroneous, but was in accordance with the precedents and rules of practice of the U.S. Nuclear Regulatory Commission. The Memorandum and Order should stand, and Oklahoma should have the opportunity that fairness demands to supplement the Request for Hearing filed herein on July 7, 1999, and to reply to the Answer of SFC and to the NRC Staff's Response thereto.

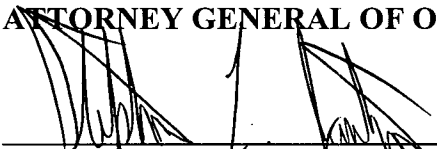
WHEREFORE, premises considered, the Attorney General of the State of Oklahoma,

³ The U.S. Nuclear Regulatory Commission's rules obviate any detriment to SFC in this case that could be caused by delay by providing that the filing or granting of a request for hearing need not delay NRC Staff action regarding an application for license amendment. 10 C.F.R. § 2.1205(m) (1999). Thus, technical review of the Second Revised Decommissioning Plan will continue, even during litigation.

W.A. Drew Edmondson, by and through the undersigned, Stephen L. Jantzen, Assistant Attorney General, on behalf of the State of Oklahoma, hereby prays that SFC's Motion for Reconsideration of the Memorandum and Order be denied so that the State of Oklahoma has the opportunity that fairness demands to supplement the Request for Hearing filed herein on July 7, 1999, and to reply to the Answer of SFC and to the NRC Staff's Response thereto.

Respectfully Submitted,

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA



STEPHEN L. JANTZEN
ASSISTANT ATTORNEY GENERAL
ENVIRONMENTAL PROTECTION UNIT
2300 N. Lincoln Blvd., Suite 112
Oklahoma City, Oklahoma 73105
Telephone: (405) 521-3921
Telefax: (405) 521-6246

Dated: August 23, 1999

CERTIFICATE OF SERVICE

'99 AUG 30 A8:15

The undersigned hereby certifies that on the 23rd day of August, 1999, a true and correct copy of the foregoing was transmitted by facsimile, and by certified U.S. mail, return receipt requested, to the following:

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Administrative Judge Charles Bechhoefer
Presiding Officer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Telefax: (301) 415-5599

Administrative Judge Thomas D. Murphy
Special Assistant
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Telefax: (301) 415-5599

Alvin H. Gutterman, Esq.
Donald J. Silverman, Esq.
Goran P. Stojkovich, Esq.
Morgan, Lewis & Bockius, LLP
1800 M Street, N.W.
Washington, D.C. 20036-5869
Telefax: (202) 467-7176

Giovanna M. Longo, Esq.
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Washington, D.C. 20555
Telefax: (301) 415-3572

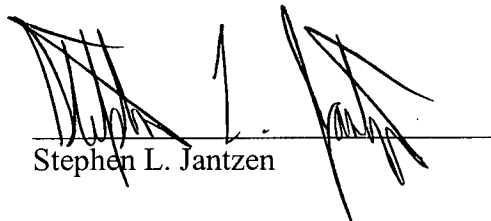
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Telefax: (301) 415-3725

Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telefax: (301) 415-1101

Mr. Craig Harlin
Sequoyah Fuels Corporation
P.O. Box 610
Gore, OK 74435
Telefax: (918) 489-2291

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telefax: (301) 415-2700

Mr. James C. Shepherd
U.S. Nuclear Regulatory Commission
Two White Flint North
Mail Stop 7F27, Room 7C7
11545 Rockville Pike
Rockville, MD 20852-2738
Telefax: (301) 415-5398


Stephen L. Jantzen



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

August 23, 1999

VIA TELEFAX AND FIRST CLASS U.S. MAIL

Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: **Sequoyah Fuels Corporation Source Material License No. SUB-1010, U.S.
Nuclear Regulatory Commission Docket No. 40-8027-MLA-4 (TAC L51639)**

Sir or Madam:

Enclosed please find an original Objection to Sequoyah Fuels Corporation's Motion for Reconsideration, and three (3) conformed copies thereof, prepared for filing with the U.S. Nuclear Regulatory Commission in the referenced matter. Pursuant to 10 C.F.R. § 2.708(f) (1999), only one Objection to Sequoyah Fuels Corporation's Motion for Reconsideration is being transmitted by facsimile as the original and three (3) conformed copies are being mailed this date.

Upon receipt, please return the remaining file-stamped copy of the enclosed Objection to Sequoyah Fuels Corporation's Motion for Reconsideration to this office in the self-addressed, stamped envelope enclosed for that purpose.

Should you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. Jantzen", written over a printed name and title.

STEPHEN L. JANTZEN
ASSISTANT ATTORNEY GENERAL

Enclosures



Correspondence
August 23, 1999
Page 2

cc: (w/encl., via telefax and First Class U.S. mail)

Administrative Judge Charles Bechhoefer
Presiding Officer
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Telefax: (301) 415-5599

Administrative Judge Thomas D. Murphy
Special Assistant
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Telefax: (301) 415-5599

Alvin H. Gutterman, Esq.
Donald J. Silverman, Esq.
Goran P. Stojkovich, Esq.
Morgan, Lewis & Bockius, LLP
1800 M Street, N.W.
Washington, D.C. 20036-5869
Telefax: (202) 467-7176

Giovanna M. Longo, Esq.
U.S. Nuclear Regulatory Commission
Office of the General Counsel
Washington, D.C. 20555
Telefax: (301) 415-3725

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Telefax: (301) 415-3725

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Telefax: (301) 415-2700

Mr. Craig Harlin
Sequoyah Fuels Corporation
P.O. Box 610
Gore, OK 74435
Telefax: (918) 489-2291

Mr. James C. Shepherd
U.S. Nuclear Regulatory Commission
Two White Flint North
Mail Stop 7F27, Room 7C7
11545 Rockville Pike
Rockville, MD 20852-2738
Telefax: (301) 415-5398