

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'93 DEC 14 P2:53

In the Matter of )  
)  
)  
SEQUOYAH FUELS CORPORATION )  
GENERAL ATOMICS )  
)  
(Gore, Oklahoma Site )  
Decontamination and )  
Decommissioning Funding) )

Docket No. 40-8027-EA

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Source Material License No. SUB-1010

NRC STAFF'S RESPONSE TO  
NACE'S MOTION FOR LEAVE TO INTERVENE

INTRODUCTION

On November 18, 1993, Native Americans for a Clean Environment (NACE) filed its "Motion for Leave to Intervene in Proceeding Regarding Sequoyah Fuels Corporation's and General Atomics' Appeal of Nuclear Regulatory Commission's October 15, 1993, Order" (Motion). The Staff hereby responds to NACE's Motion.

BACKGROUND

On October 15, 1993, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support issued an Order to Sequoyah Fuels Corporation (SFC) and General Atomics (GA) addressing decommissioning funding for the Sequoyah Fuels site (Order).<sup>1</sup> In the Order the Staff concluded that SFC did not appear able to satisfy the Commission's financial assurance standards. The Order requires General Atomics (GA) to provide supplemental financial assurance based on, *inter alia*, the Staff's conclusion that "GA has had and now has *de facto* control over the day-to-day business of SFC." Order at 14. On

<sup>1</sup> 58 Red. Reg. 55087 (October 25, 1993).

DESIGNATED ORIGINAL

Certified By DSO7. jln

SECY-036

DSO3

14521

November 3, 1993, SFC and GA filed requests for hearing on the Order with the Secretary of the Commission.<sup>2</sup> The hearing requests were referred to the Atomic Safety and Licensing Board Panel for appropriate action.<sup>3</sup> On November 22, 1993, this Licensing Board was established.<sup>4</sup> As noted above, NACE filed its Motion to intervene in the proceeding on November 18, 1993.<sup>5</sup> For the reasons set forth below, the Staff does not oppose NACE's Motion that it be permitted to intervene in this proceeding, subject to its submission of a valid contention.

#### DISCUSSION

The NRC regulations provide that a petition to intervene "shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results

---

<sup>2</sup> Sequoyah Fuels Corporation's Answer and Request for Hearing (November 2, 1993); General Atomics' Answer and Request for Hearing (November 2, 1993).

<sup>3</sup> Memorandum from Samuel J. Chilk, Secretary to B. Paul Cotter, Chief Administrative Judge (November 18, 1993).

<sup>4</sup> 58 Fed. Reg. 63406 (December 1, 1993).

<sup>5</sup> NACE states that since it received notice of the SFC and GA hearing requests on November 8, 1993, and filed its Motion on November 18, 1993, the Motion was timely. Motion at 2-3. NACE argues that it was not adversely affected by the Order and thus it believed there was no reason for it to file a request for a hearing. Motion at 3. However, NACE, being aware of the status of this proceeding and knowing that it could be adversely affected by any proceeding on this Order, should have protected its right to participate in the hearing by advising the Commission within the 20 day time frame provided in the Order that it would like to participate in any proceeding that might be held in connection with this Order. This would have avoided any question that its request to intervene was timely; NACE, however, did not do so, and its Motion is thus untimely. Nonetheless, given the short amount of time by which its Motion was filed late, the Staff does not oppose the Motion on the basis of timeliness.

of the proceeding, including the reason why petitioner should be permitted to intervene." 10 C.F.R. § 2.714(a)(2). In order to determine whether a petitioner has met these standards, the Commission has applied contemporaneous judicial concepts of standing. *See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1)*, CLI-93-21, slip op. at 8 (September 30, 1993); *Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station)*, CLI-92-2, 35 NRC 47, 56 (1992), *aff'd*, *Environmental & Resources Conservation Organization v. NRC*, 996 F.2d 1224 (9th Cir. 1993); *Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1)*, CLI-83-25, 18 NRC 327, 332 (1983). In order to establish standing, a petitioner must allege "a concrete and particularized injury that is fairly traceable to the challenged action and is likely to be redressed by a favorable decision," and the "injury must be to an interest arguably within the zone of interests protected by the governing statute." *Perry*, slip op. at 9.

NACE has attached to its Petition an affidavit demonstrating that at least one of its members lives close to the SFC site and that NACE is authorized to help represent that member. Accordingly, NACE is authorized to represent at least one of its members living close to the site and in order to intervene must allege an injury that is fairly traceable to the challenged action.

NACE states that it is not "adversely affected" by the Order, and that it is not seeking to intervene in this proceeding to question whether the Order is adequate to protect public health and safety, or whether additional measures are needed. Motion at 3, 4. On the contrary, NACE states that it seeks to intervene on behalf of members who are neighbors of the SFC site, Motion at 1, "for the purpose of advocating the legal authority for and the reasonableness of the

October 15 order," and "for the purpose of protecting its interest in seeing that the October 15 order is fully defended." *Id.* at 3, 4.

By its terms, the Order limits the scope of the proceeding to whether the Order should be sustained. Order at 27. NACE and its members will not suffer injury if the Order is sustained; however, NACE alleges that it would be adversely affected if the Order "were reversed or weakened." Motion at 1. NACE further states that if sufficient and guaranteed funds are not set aside for decommissioning, the SFC site "may become a long term nuclear and toxic waste dump." *Id.*

If SFC and GA had not requested a hearing, NACE would not have been in a position to request a hearing and to intervene.<sup>6</sup> Since GA and SFC have requested a hearing, a proceeding has been initiated to determine whether the Order should be sustained. It is conceivable that NACE might be adversely affected, "if the [now existing] proceeding has one outcome or another," *i.e.*, if the Order is not sustained and the financial assurance requirements contained therein no longer apply. *See Public Service Co. of Indiana* (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438 (1980) (*citing Nuclear Engineering Co.* (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737 (1978)). On this basis, the reasoning followed by the Licensing Board in *La Crosse*<sup>7</sup> suggests

---

<sup>6</sup> *See Bellotti v. NRC*, 725 F.2d 1380 (D.C. Cir. 1983).

<sup>7</sup> *Dairyland Power Cooperative* (La Crosse Boiling Water Reactor), LBP-80-29, 12 NRC 367 (1980). The Staff agrees with the argument made by SFC in its answer to NACE's request for a hearing (Sequoyah Fuel Corporation's Answer in Opposition to NACE's Motion to Intervene, December 6, 1993) that this decision does not constitute *stare decisis*, but the reasoning of this decision may be considered by this Board in ruling on NACE's Motion.

that if NACE establishes standing and interest and proposes a valid contention it should be allowed to participate.<sup>8</sup>

Based on its Motion, NACE has asserted enough information to demonstrate that it has standing, and it has expressed an appropriate aspect within the scope of the proceeding, (*i.e.*, that it wants to assure that the Order is sustained) as to which it seeks to participate. Accordingly, the Staff does not oppose its request for hearing, subject to its identification of appropriate issues as to which it seeks to be heard.

In order to be admitted as a party, a petitioner must submit at least one admissible contention. 10 C.F.R. § 2.714(b). Here, NACE has listed ten specific issues on which it seeks to intervene. Motion at 5-8. The list of issues does not, however, provide sufficient information to determine if a valid contention has been submitted. In framing its issues, NACE refers to nine specific statements contained in either SFC's Answer or GA's Answer. *Id.* As to the issues delineated, NACE states only that: it "seeks to be heard" on issues 1 - 4, 6 and 9; it claims that SFC and GA's assertion relating to issue 7 is "not supportable"; it denies SFC's assertions relating to issue 8; it reserves the right in issue 10 "to respond to any further attacks

---

<sup>8</sup>The Staff does not believe that either the *Bellotti* decision or the reasoning of that decision precludes NACE's participation. *Bellotti* involved a situation where a licensee did not request a hearing on an Order issued by the Staff, and an effort was made by a third person to request a hearing so as to argue for an expansion of the scope of the Order. In this case, NACE asserted that it does not seek to expand the scope of the Order, but seeks to support the Order so as to avoid injury in the event the Order is not sustained.

by SFC or GA on the Order;" and, as to issue 5, it "seeks to introduce expert testimony" on the costs of decommissioning.<sup>9</sup> *Id.* at 5-8.

These issues do not provide the basis and specificity contemplated in 10 C.F.R. § 2.714(b)(2). A contention must, among other things, consist of a specific statement of law or fact to be raised or controverted. The purpose of the contention requirements are (1) to assure that the contention in question raises a matter appropriate for adjudication in a particular proceeding, (2) to establish a sufficient foundation for the contention to warrant further inquiry into the subject matter addressed by the assertion, and (3) to put the other parties sufficiently on notice of the issues so that they know generally what they have to defend against or oppose. *See Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3)*, ALAB-216, 8 AEC 13, 20-21 (1976). With the information provided by NACE, there is no way to determine the scope of the issues in contention that NACE wishes to pursue, or the basis for any contention. NACE's statement therefore, does not comply with the Commission's rules of practice.

Thus, while NACE has established standing and interest and has raised an appropriate aspect within the scope of this proceeding as to which it seeks to participate, it has not yet

---

<sup>9</sup> In the event NACE is permitted to participate in this proceeding and the question of the amount of money needed to decommission the site becomes an issue, the issue should be limited to the amount stated in the Order. As the Commission stated in a previous enforcement action, the Order "like the order in *Bellotti*, precludes the litigation of questions of the adequacy of the agency's proposed changes. Indeed, the orders are identical insofar as they define and limit the scope of the hearing to whether the requirements imposed on the Licensee should be sustained." *Sequoyah Fuels Corp. (UF6 Production Facility)*, CLI-86-19, 24 NRC 508, 514 n.5. (1986).

submitted a valid contention. Accordingly, the Staff does not object to the granting of NACE's Motion, subject to its submission of a valid contention at the appropriate time.

CONCLUSION

For the foregoing reasons, the Staff does not object to NACE's Motion, subject to its submission of a valid contention.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. G. Bachmann', with a long horizontal flourish extending to the right.

Richard G. Bachmann  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 13th day of December 1993

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'93 DEC 14 P2:54

In the Matter of )

) Docket No. 40-8027-EA

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BLANK 4

SEQUOYAH FUELS CORPORATION )  
GENERAL ATOMICS )

) Source Material License No. SUB-1010

(Gore, Oklahoma Site )  
Decontamination and )  
Decommissioning Funding) )

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

Name: Richard G. Bachmann  
Address: Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Telephone: (301) 504-1574  
Admissions: Supreme Court of California  
Name of Party: NRC Staff

Respectfully submitted,



Richard G. Bachmann  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 13th day of December, 1993.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '93 DEC 14 P2:54

In the Matter of )  
)  
SEQUOYAH FUELS CORPORATION ) Docket No. 40-8027-EA  
GENERAL ATOMICS )  
) Source Material License No. SUB-1010  
(Gore, Oklahoma Site )  
Decontamination and ) ASLBP No. 94-684-01-EA  
Decommission Funding) )

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH


NOTICE OF APPEARANCE

I hereby give notice of my appearance in the above-captioned proceeding.

Pursuant to 10 C.F.R. § 2.713, I am providing the following information:

Name: Steven R. Hom  
Address: Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Telephone: (301) 504-1537  
Admissions: United States Court of Appeals  
for the Ninth Circuit  
State of California  
State of New York  
Name of Party: NRC Staff

Respectfully submitted,

  
Steven R. Hom  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 13th day of December, 1993.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'93 DEC 14 P2:54

In the Matter of )  
)  
)  
)  
SEQUOYAH FUELS CORPORATION )  
GENERAL ATOMICS )  
)  
)  
(Gore, Oklahoma Site )  
Decontamination and )  
Decommissioning Funding) )

Docket No. 40-8027-EA

Source Material License No. SUB-1010

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

Name: Susan L. Uttal

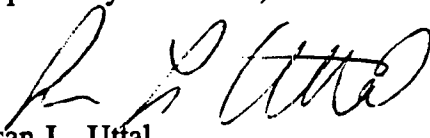
Address: Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Telephone: (301) 504-1582

Admissions: New Jersey; Pennsylvania; Maryland;  
U.S. Court of Appeals 3rd Circuit

Name of Party: NRC Staff

Respectfully submitted,

  
Susan L. Uttal  
Counsel for NRC Staff

Dated at Rockville, Maryland  
this 13th day of December, 1993.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '93 DEC 14 P2:54

In the Matter of )

SEQUOYAH FUELS CORPORATION )  
GENERAL ATOMICS )

(Gore, Oklahoma Site Decontamination )  
and Decommissioning Funding) )

) Docket No. 40-08027-EA

) Source Material License  
) No. SUB-1010

) ASLBP No. 94-684-01-EA  
)

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO NACE'S MOTION FOR LEAVE TO INTERVENE" and "NOTICES OF APPEARANCE" for Richard G. Bachmann, Steven R. Hom and Susan L. Uttal in the above-captioned matter have been served on the following by deposit in the United States mail, first class, or as indicated by asterisk through deposit in the Nuclear Regulatory Commission's internal mail system this 13th day of December, 1993:

James P. Gleason, Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop: EW-439  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Jerry R. Kline\*  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop: EW-439  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

G. Paul Bollwerk, III  
Administrative Judge  
Atomic Safety and Licensing Board  
Mail Stop: EW-439  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Stephen M. Duncan, Esq.  
Bradfute W. Davenport, Jr., Esq.  
Mays & Valentine  
110 South Union Street  
Alexandria, Virginia 22314

Diane Curran, Esq.  
c/o IEER  
6935 Laurel Avenue, Suite 204  
Takoma Park, MD 20912

Office of the Commission Appellate  
Adjudication\*  
Mail Stop: 16-G-15 OWFN  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Office of the Secretary\* (2)  
ATTN: Docketing and Service  
Mail Stop: 16-G-15 OWFN  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

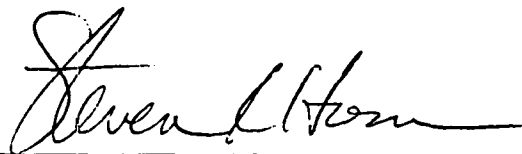
Maurice Axelrad, Esq.  
John E. Matthews, Esq.  
Newman & Holtzinger, P.C.  
1615 L Street, N.W.  
Suite 1000  
Washington, DC 20036

John H. Ellis, President  
Sequoyah Fuels Corporation  
P.O. Box 610  
Gore, Oklahoma 74435

Mr. John R. Driscoll  
General Atomics Corporation  
3550 General Atomics Court  
San Diego, California 92121-1194

Adjudicatory File (2)\*  
Atomic Safety and Licensing Board  
Mail Stop: EW-439  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Atomic Safety and Licensing Board  
Panel\*  
Mail Stop: EW-439  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555



---

Steven R. Hom  
Counsel for NRC Staff