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Atomic Safety and Licensing Board

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

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P R O C E E D I N G S

[2:00 p.m.]

JUDGE GLEASON: This is Judge James Gleason. I have with me in the room Judge Paul Bollwerk, and our legal assistant Bob Pierce.

The session will be recorded so you can get copies of this proceeding if you so wish.

Judge Kline has been ill lately so he will be advised of the proceeding by getting a copy of the proceeding.

We are involved here in a proceeding on a staff order to the Sequoyah Fuels Corporation and general comments concerning decommissioning funding for the Sequoyah Fuels site.

I thought we would have this prehearing conference to discuss some of the motions that have been filed in connection with NACE's -- Native Americans for a Clean Environment -- request for intervention, and also the planned preliminary conference which is scheduled for January 20th.

The first item is the request for a time extension for filing contentions submitted by NACE which has not been objected to by either the Sequoyah Fuels Corporation, General Atomics, or the NRC staff.

In view of the expedited nature of that request

1 from NACE's attorney, Ms. Curran was advised yesterday by
2 telephone that an extension of 30 days after the Board rules
3 on NACE's petition for intervention has been granted. So
4 that is the Board's order with respect to that request.

5 I was also advised by Ms. Curran in one of the
6 conferences yesterday that NACE had no objection to the
7 request by SFC for leave to respond to NACE's December 30th
8 reply to the answers filed by SFC, General Atomics, and the
9 staff concerning NACE's intervention petition.

10 The Board did not communicate with either the
11 staff or General Atomics regarding that SFC request for
12 responding. Because that request was to respond by January
13 10th, I guess I would like to get some comment from those
14 people who are representatives of parties at this time, if
15 they are able to do so.

16 MR. HOM: Your Honor, this is Steve Hom of the
17 staff. The staff right now does not intend to [radio
18 transmission interrupts call.]

19 I'm sorry?

20 JUDGE GLEASON: That's somebody that has slipped
21 in there. But go ahead, Mr. Hom.

22 MR. HOM: Okay. Right now the staff is not
23 intending to essentially comment on the reply by NACE dated
24 December 30, 1993.

25 JUDGE GLEASON: No, my question was with respect

1 to the request by SFC to be able to respond to NACE's
2 December 30th reply for leave to respond to it. Ms. Curran
3 advised me that she had no objection to SFC being granted
4 the right to respond.

5 Since we have not discussed it with either the
6 staff or General Atomics, I asked whether you could give
7 some reply on that request at this time.

8 MR. HOM: I don't think the staff would have a
9 problem.

10 JUDGE GLEASON: All right. General Atomics?

11 MR. DUNCAN: Your Honor, we have no objection to
12 Sequoyah's. Indeed, we were going to file until I heard
13 yesterday that we would have a conference call a similar
14 request.

15 I am not sure we will file a reply, but I would
16 like to have at least the opportunity to file the same
17 request in the same time -- I mean, the same kind of reply
18 if we deem it necessary, in the same time frame. But we
19 have no objection to Sequoyah's.

20 JUDGE GLEASON: That is fine. That was Mr.
21 Duncan?

22 MR. DUNCAN: Yes, sir.

23 JUDGE GLEASON: Fine. It would be helpful that at
24 the time you speak -- because the Reporter is here -- if you
25 could identify who you are each time you talk. We can make

1 some progress that way.

2 All right. Fine. Let's -- we will be back with
3 you in just a minute. Just hold on, please.

4 [Off the record.]

5 JUDGE GLEASON: All right. This is Judge Gleason
6 back with you.

7 I assume, Ms. Curran, that you don't object --
8 that you wouldn't object to the request being made by
9 General Atomics to the same nature, then; is that correct?

10 MS. CURRAN: That's right.

11 JUDGE GLEASON: Yes, all right. Fine. Well, then
12 the Board grants the leave to respond to her December 30th.
13 Let's say by the close of business January 11th. Is that
14 all right, Mr. Axelrad?

15 MR. AXELRAD: That's fine.

16 JUDGE GLEASON: All right, fine. If you could
17 send us a fax at that time before the close of business, it
18 would be helpful.

19 The next item concerns the request that SFC made
20 that a prehearing conference be postponed to either 15 days
21 after a Board denial of NACE's intervention request, if that
22 should occur, or 15 days after the filing of NACE's
23 contentions.

24 The Board is really not too inclined to postpone
25 that prehearing conference at this time because there are

1 some matters that could be discussed profitably in that
2 forum. We do believe we will be in a position at least to
3 make an oral ruling on the request to intervene at that
4 prehearing conference, or by that time, at least an oral
5 ruling.

6 I guess we are having a little hard time in
7 determining what is to be gained in terms of protecting the
8 public's health and safety by permitting any unnecessary
9 delays in this proceeding, and postponing the prehearing
10 conference. It doesn't seem to have much merit to us.

11 However, since we haven't heard from either NACE
12 or the staff on the matter, I guess we would like to hear
13 their views on that subject now if they are able to provide
14 them.

15 MR. DUNCAN: Your Honor, this is Steve Duncan with
16 General Atomics. My own view is that it would -- it makes
17 sense to do that, but I was basing that assumption on the
18 fact that I didn't anticipate a ruling from the Court --
19 from the Board for the panel for some time.

20 We just are not anxious to spend unnecessary
21 dollars doing discovery when we don't even know who the
22 parties to the matter are. I would prefer to get all of
23 that resolved before we start discussing discovery schedules
24 and those kinds of things.

25 JUDGE GLEASON: Well, is there anything inhibiting

1 your going ahead with discovery with respect to SFC or
2 General Atomics?

3 [Pause.]

4 JUDGE GLEASON: Excuse me. Who was that, that
5 just spoke?

6 MR. DUNCAN: Steve Duncan representing General
7 Atomics.

8 JUDGE GLEASON: All right. Is there anything
9 inhibiting you in proceeding with your discovery now? There
10 is nothing that I can see that stops you from doing that
11 with respect to the staff.

12 MR. AXELRAD: This is Mr. Axelrad. If I may just
13 speak briefly on the reasons.

14 JUDGE GLEASON: I really wanted to hear from the
15 staff and NACE on this subject.

16 MR. AXELRAD: Okay.

17 JUDGE GLEASON: If I could hear from Mr. Hom and
18 Ms. Curran with respect to the suggestions on postponing the
19 prehearing conference, I would appreciate it.

20 MR. HOM: Your Honor, this is Steve Hom.

21 At the moment, I think I would generally agree
22 with [phone dead for a second] helpful to clarify who the
23 parties are to the proceeding before going forward with a
24 prehearing conference, one, just to narrow -- at least to
25 have, to know the parties that are going to be admitted to

1 the proceeding and have the proceeding and a discussion at
2 the prehearing conference limited to those parties.

3 MS. CURRAN: Are you finished, Mr. Hom?

4 MR. HOM: Yes.

5 MS. CURRAN: No, if the Board is going to make a
6 ruling by the time of the prehearing conference on whether
7 NACE is admitted or not, then we will know whether we are
8 going to be in the case. I think if the Board has reasons
9 for wanting to go ahead with it, NACE wouldn't have any
10 problem with going ahead.

11 Our ability to participate might be more limited
12 at that stage, but we wouldn't have any objection to that.
13 I think it depends on what the Board wants to accomplish at
14 the prehearing conference. We would just go with what the
15 Board wishes.

16 MR. AXELRAD: Judge Gleason, this is Mr. Axelrad.
17 May I make a brief statement at this point?

18 JUDGE GLEASON: All right, fine. Yes, please.

19 MR. AXELRAD: The reason we stated our motion the
20 way we did is that it is for a number of the reasons that
21 have now been stated by the staff and by General Atomics.

22 If the Board is, in fact, able to rule on the
23 petition by NACE before the prehearing conference, then if
24 NACE's participation is denied, then the other parties, the
25 parties to the proceeding, will be able to go ahead with the

1 issues and in scheduling discovery.

2 If, however, the Board decides to permit NACE to
3 participate, NACE will not have filed its contentions at
4 that point. The parties will not have had time to respond
5 to those contentions, and the prehearing conference would
6 not be as useful as if it were held as we suggest, 15 days
7 after the filing of contentions as allowed by the Board.

8 Those were really the two reasons why we stated
9 postponing the prehearing conference at this juncture.. One
10 is if scheduling should depend upon whether or not NACE is
11 admitted, if it is not admitted, then the rest of the
12 parties can proceed. If it is admitted, then the prehearing
13 conference should not be held in order to be most effective
14 until after the contention has been filed and responded to.

15 JUDGE BOLLWERK: This is Judge Bollwerk. The one
16 thing that concerns me here and we will let you address at
17 this point, this proceeding fundamentally is between the NRC
18 staff and General Atomics and Sequoyah Fuels. I recognize
19 that there is an intervention petition here. If Ms. Curran
20 is admitted, then she may have some contentions to file and
21 something to say.

22 But the two parties here that are the central
23 focus of this proceeding, which are the staff and General
24 Atomics and Sequoyah Fuel -- they are all here now and
25 should be ready to proceed. I guess I am having some

1 trouble understanding what the problem is.

2 MR. AXELRAD: This is Mr. Axelrad, Judge Bollwerk.
3 The basic problem is we were concerned about how the
4 prehearing conference would proceed if NACE is there in an
5 undeterminate status.

6 Also, we were concerned about the possibility that
7 decisions made at the time of the prehearing conference and
8 matters discussed at that time would later on have to be
9 adjusted, modified, repeated, or gone into again if NACE is
10 admitted later.

11 We didn't detect an urgency to proceed. We
12 thought it might be most effective and less likely to waste
13 anybody's resources if the prehearing conference took place
14 after it was clear who the parties were and their ability to
15 raise issues.

16 [Pause.]

17 JUDGE GLEASON: We're going off on a mute button
18 here for a minute.

19 [Off the record.]

20 JUDGE GLEASON: I guess we're having a hard time
21 figuring a rational reason for postponing this conference.
22 Therefore, the Board will not postpone it. We will get a
23 memorandum out to you outlining the areas which will be
24 covered at the conference.

25 Then I guess we could have some discussion even at

1 that time, at least some questions raised in connection
2 because we will have the response in from SFC on the NACE's
3 response or reply. We could have some discussion in
4 connection with issues raised by that cross-exchange of
5 motions.

6 So, we will go ahead with the prehearing
7 conference. We will get a paper out to you. As I indicated
8 before, there isn't anything that I know of that prevents
9 you people from proceeding with your discovery activity at
10 the present time. But that is a matter that you will be
11 discussing. If it hasn't started by prehearing, we will be
12 discussing with respect to perhaps getting a schedule in
13 connection with it during the conference.

14 MR. AXELRAD: Judge Gleason?

15 JUDGE GLEASON: Yes.

16 MR. AXELRAD: This is Mr. Axelrad. I may be
17 incorrect. I thought that the NRC's regulations provide
18 that discovery starts after the first prehearing conference.
19 Am I right?

20 JUDGE GLEASON: I think that is only in connection
21 with the construction and an operations license.

22 That is about all I have, or the Board has here.
23 Does anybody else have any matter they want to bring up
24 before we conclude the telephone conference?

25 MS. CURRAN: Judge Gleason, this is Diane Curran.

1 I just wanted to confirm that the prehearing conference is
2 the 19th; is that right? You just stated the 20th.

3 JUDGE GLEASON: I'm sorry; it is the 19th.

4 MS. CURRAN: Okay.

5 MR. AXELRAD: I would like to confirm that our
6 reply is due by the close of business on January 11th?

7 JUDGE GLEASON: Mr. Axelrad?

8 MR. AXELRAD: Yes.

9 JUDGE GLEASON: Yes, that is right.

10 All right. Thank you so much for your
11 participation. We will be in contact with you again. Thank
12 you.

13 [Whereupon, at 2:22 p.m., the telephone conference
14 was concluded.]

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REPORTER'S CERTIFICATE

**This is to certify that the attached proceedings
before the United States Nuclear Regulatory
Commission
in the matter of:**

NAME OF PROCEEDING: Sequoyah Fuels Corporation

DOCKET NUMBER: 40-8027-EA

PLACE OF PROCEEDING: Bethesda, MD

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Jan Rothrock

Official Reporter
Ann Riley & Associates, Ltd.