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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'94 FEB 24 P5:18

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING SERVICE
BETHESDA

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

NRC STAFF'S RESPONSE TO NATIVE AMERICANS FOR A CLEAN
ENVIRONMENT'S SUPPLEMENTAL PETITION TO INTERVENE

INTRODUCTION

On February 8, 1994, Native Americans for a Clean Environment (NACE) filed its supplemental petition to intervene in this proceeding regarding the NRC's October 15, 1993 Order against Sequoyah Fuels Corporation (SFC) and General Atomics (GA),¹ pursuant to the Licensing Board's Order of January 25, 1994.² In the Supplemental Petition, NACE proffers its contentions and bases in support thereof. The NRC staff (Staff), for the reasons discussed below, does not object to NACE's first of its two contentions. However, the Staff objects to the admission of NACE's second contention.

¹ Native Americans for a Clean Environment's Supplemental Petition to Intervene (Supplemental Petition) (Feb. 8, 1993).

² Memorandum and Order (Petition for Intervention) (Jan. 25, 1994).

DESIGNATED ORIGINAL

Certified By DS07. slw

SECY-036

DS03

BACKGROUND

On October 15, 1993, the Deputy Director for Nuclear Materials Safety, Safeguards, and Operations Support issued an Order to SFC and GA addressing decommissioning funding for the SFC site (Order).³ In the Order, the Staff, after reviewing the relationship between SFC and its corporate parent GA, concluded that SFC did not appear to be able to satisfy the Commission's financial assurance standards, and that GA is required to provide supplemental financial assurance. On November 3, 1993, SFC and GA filed requests for hearing on the Order with the Secretary of the Commission.⁴ The hearing requests were referred to the Atomic Safety and Licensing Board Panel on November 18, 1993, for appropriate action.⁵ On that same date, NACE filed its motion to intervene in the proceeding.⁶ On November 22, 1993 this Licensing Board was established. A pre-hearing conference was held on January 19, 1994. On

³ 58 Fed. Reg. 55087 (Oct. 25, 1993).

⁴ Sequoyah Fuels Corporation's Answer and Request for Hearing (Nov. 2, 1993); General Atomics' Answer and Request for Hearing (Nov. 2, 1993).

⁵ Memorandum from Samuel J. Chilk, Secretary to B. Paul Cotter, Chief Administrative Judge (Nov. 18, 1993).

⁶ Motion for Leave to Intervene in Proceeding Regarding Sequoyah Fuels Corporation's and General Atomic's Appeal of Nuclear Regulatory Commission's October 15, 1993, Order (Nov. 18, 1993).

January 25, 1994, the Board ordered NACE to file its contentions, pursuant to 10 C.F.R. § 2.714(b), by close of business on January 8, 1994.⁷

DISCUSSION

I. Principles Governing the Admission of Contentions

Pursuant to 10 C.F.R. § 2.714(b)(1), a petitioner for intervention is required to file a "list of the contentions which petitioner seeks to have litigated in the hearing." The contentions must satisfy the requirements of 10 C.F.R. § 2.714(b)(2), which provides that each contention "must consist of a specific statement of the issue of law or fact to be raised or controverted." In addition, section 2.714(b)(2) requires that the following information must be provided for each contention:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

(iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. * * *

⁷ Memorandum and Order (Petition for Intervention) (Jan. 25, 1994).

10 C.F.R. § 2.714(b)(2).

An intervenor must provide a "clear statement as to the basis for the contentions" and submit "supporting information and references to specific documents and sources that establish the validity of the contention." *Arizona Public Service Co.* (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), CLI-91-12, 34 NRC 149, 155-56 (1991). In *Palo Verde*, the Commission concluded that the rules governing intervention required:

that all Petitioners provide an explanation of the bases for the contention, a statement of fact or expert opinion upon which they intend to rely, and sufficient information to show a dispute with the applicant on a material issue of law or fact. If any one of these requirements is not met, a contention must be rejected.

Id. at 155.

In accordance with these requirements, a Licensing Board must refuse to admit any contention (1) if the contention and supporting material fail to meet the requirements of 10 C.F.R. § 2.714(b), or (2) if the contention, should it be proven, would be of no consequence in the proceeding because it would not entitle the petitioner to relief. 10 C.F.R. § 2.714(d)(2). Further, if a contention fails to meet any one of the specific requirements of 10 C.F.R. § 2.714(b)(2)(i), (ii), and (iii), it must be rejected. *Palo Verde*, 34 NRC at 155.

II. The Admissibility of NACE's Contentions

In its Supplemental Petition, NACE raises two contentions. The first contention is that "[t]he NRC has enforcement authority over General Atomics." Supplemental

Petition at 1. NACE provides an explanation of its proffered bases in support of this contention, alleges facts which support the contention (e.g., the roles of certain GA personnel regarding oversight of SFC), and refers to documents (e.g., the SFC license) on which NACE intends to rely to prove such facts. *Id.* at 2-10. NACE has also articulated a "genuine dispute" between itself and GA concerning a material issue of fact and law, namely, whether, because of the relationship between SFC and GA, the NRC has jurisdiction and authority over GA to sustain the subject Order. Based on the foregoing, the Staff believes that NACE's first contention is valid, that NACE has satisfied the requirements of 10 C.F.R. § 2.714(b), and accordingly should be allowed to participate as a party in this proceeding.⁸

NACE's second contention asserts that "guaranteed decommissioning funding by GA is required by NRC regulations, and is necessary to adequately protect the public health and safety." Supplemental Petition at 11 (emphasis added). NACE explains that GA and SFC have denied that they are bound by regulatory requirements contained in 10 C.F.R. § 40.36 to provide guaranteed decommissioning funding for the SFC site, and have asserted that SFC has satisfied the requirements of 10 C.F.R. § 40.42(c)(2)(iii)(D), contrary to NACE's view. The bases NACE provides for this contention, however, concern whether SFC (as opposed to specifically GA) was bound to submit a

⁸ NACE has proffered a number of bases for its first contention. While it appears that there are sufficient bases to support NACE's contention, the Staff's conclusion in this regard should not be taken as the Staff's endorsement of each and every basis stated by NACE or the legal theories that may be reflected by NACE's bases.


decommissioning funding plan once it filed for license renewal, whether the Preliminary Plan for the Completion of Decommissioning submitted by SFC meets the requirements of 10 C.F.R. § 40.42, and whether SFC's current plans for funding decommissioning of the SFC site are adequate under 10 C.F.R. § 40.42. Supplemental Petition at 11-15.


NACE's stated bases regarding the second contention do not clearly support the contention. The bases, on their face, involve SFC and its compliance with the subject regulations; although they may set the stage as to why GA may be required by NRC regulations to guarantee decommissioning funding, they do not appear to directly support the specific contention NACE has proposed. Notwithstanding the genuine dispute between NACE and GA as to the second contention, NACE has not adequately explained the bases in regard to the stated contention or provided facts that clearly support the contention. *See* 10 C.F.R. § 2.714(b)(2)(i) and (ii); *Palo Verde*, 34 NRC at 155. Accordingly, NACE's second contention should not be admitted.

CONCLUSION

For the foregoing reasons, the Staff does not object to NACE's first contention. Accordingly, NACE should be admitted to participate as a party to this proceeding having submitted one valid contention. NACE's second contention, however, should be rejected.

Respectfully submitted,


Steven R. Horn
Counsel for NRC Staff


Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 23rd day of February, 1994

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BRANCH

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S SUPPLEMENTAL PETITION TO INTERVENE" 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 23rd day of February, 1994:

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