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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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BRANCH

In the Matter of	)	Docket No. 40-8027-EA
SEQUOYAH FUELS CORPORATION	)	(Decontamination and
and GENERAL ATOMICS	)	Decommissioning Funding)
(Gore, Oklahoma Site)	)	

SEQUOYAH FUELS CORPORATION'S  
NOTICE OF APPEAL OF LBP-94-19, INCORPORATED  
SUPPORTING BRIEF, AND REQUEST THAT APPEALS BE CONSOLIDATED

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July 18, 1994

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SUPPORTING BRIEF, AND REQUEST THAT APPEALS BE CONSOLIDATED**

Pursuant to 10 CFR §§ 2.714a(a) and (c), Sequoyah Fuels Corporation ("SFC") hereby files its Notice of Appeal and this incorporated supporting brief. SFC appeals the ruling of the Atomic Safety and Licensing Board's ("Licensing Board") in its Memorandum and Order (Granting Intervention motion) dated July 7, 1994 (LBP-94-19), and SFC further requests that this appeal be consolidated with SFC's appeal of LBP-94-5 and LBP-94-8, which is currently pending before the Commission.

In LBP-94-19, the Licensing Board granted the Cherokee Nation standing to intervene in support of the NRC Staff's enforcement order at issue in this proceeding and admitted the Cherokee Nation as a party to the proceeding.<sup>1/</sup> SFC appeals the Licensing Board's ruling in LBP-94-19 because the Cherokee

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<sup>1/</sup> This proceeding relates to an Order dated October 15, 1993 (hereafter, "Order") that was issued by the Nuclear Regulatory Commission ("NRC") to SFC and General Atomics ("GA").

Nation's petition should have been wholly denied. The Licensing Board erred in granting the Cherokee Nation standing because the Cherokee Nation favors the enforcement action at issue in this proceeding and therefore cannot be adversely affected by this proceeding.

The issue in this proceeding is whether NRC should take a proposed discretionary enforcement action directed at SFC and GA in an order issued on October 15, 1993.<sup>2/</sup> The Order was published in the Federal Register on October 25, 1993 (58 Fed. Reg. 55,087). It provided that SFC, GA, and "any other person adversely affected by this Order" could request a hearing within 20 days, i.e., by November 4, 1993. The Cherokee Nation favors the Order and therefore will not be adversely affected by issuance of the Order.

On November 2, 1993, SFC and GA separately requested a hearing on the Order. Native Americans for a Clean Environment ("NACE") filed a motion for leave to intervene in this proceeding for the purpose of arguing that the Order should be fully sustained. A Licensing Board was established on November 22, 1993, and notice of the proceeding, including the hearing

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<sup>2/</sup> SFC is the owner of NRC-licensed facilities at Gore, Oklahoma ("SFC Facility"). SFC is the sole licensee named in NRC Source Materials License No. SUB-1010 (Docket No. 40-8027) ("SFC License"), and, pursuant to 10 CFR § 40.42(e), its activities are limited to those related to decommissioning the SFC Facility in accordance with the terms of its license, NRC regulations, and the Atomic Energy Act of 1954, as amended ("the Act"). Atomic Energy Act of 1954, Pub. L. No. 83-703, 68 Stat. 919 (codified as amended in scattered sections at 42 U.S.C.).

requests of SFC and GA, was provided in the Federal Register on December 1, 1993. 58 Fed. Reg. 63,406.

The NACE motion presented the novel legal question of whether a petitioner can claim to be injured based upon the fact that the outcome of a proceeding may be that the NRC will not take an enforcement action (or will take some other lesser action) that the petitioner could not compel in the first instance. The Licensing Board answered this question in the affirmative, concluding in Section II.A of LBP-94-5, 39 NRC 54 (1994), that a petitioner can intervene as of right in a 10 CFR § 2.202 enforcement proceeding in order to support the NRC Staff's proposed Order. LBP-94-5, 39 NRC at 66. However, the Licensing Board referred this question, in accordance with 10 CFR § 2.730(f), for immediate review by the Commission.<sup>3/</sup>

In LBP-94-5, the Licensing Board also ruled that NACE had shown "injury in fact" sufficient to establish NACE's representational standing on behalf of one of its members. The Licensing Board's decision that NACE had standing to intervene as a party in this proceeding was contingent upon the admission of

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<sup>3/</sup> By order dated March 3, 1994, the Commission invited the parties to this proceeding to file briefs with the Commission addressing the questions of whether Commission review is appropriate under the standards of 10 CFR § 2.786(g) and whether the ruling in section II.A of LBP-94-5 should be sustained. SFC filed its "Initial Brief in Opposition to the Ruling in Section II.A of LBP-94-5" on March 11, 1994 ("SFC's Initial Brief"), and filed its "Reply Brief in Opposition to the Ruling in Section II.A of LBP-94-5" on March 17, 1994 ("SFC's Reply Brief"). GA concurred with and adopted SFC's briefs, and NACE and the NRC Staff filed briefs opposing Commission review and supporting the Licensing Board's rulings.

at least one qualified contention. This contingency was fulfilled when the Licensing Board issued LBP-94-8, in which it admitted NACE's two contentions. 39 NRC 116 (1994).

In LBP-94-8 the Licensing Board provided that its decisions in LBP-94-5 and LBP-94-8 could be appealed within ten days in accordance with 10 CFR § 2.714a(a). SFC filed a timely appeal on April 13, 1994, and that appeal, including an appeal of the ruling in section II.A of LBP-94-5, remains pending before the Commission. In its "Brief on Appeal of LBP-94-5 and LBP-94-8," SFC incorporated by reference its Initial Brief and Reply Brief regarding the referred ruling in Section II.A of LBP-94-5.

On April 20, 1994, the Cherokee Nation submitted its "Application for Order Allowing Intervention" pursuant to a Notice of Hearing published in the Federal Register on April 5, 1994 (59 Fed. Reg. 15,953) in accordance with a March 29, 1994 order of the Licensing Board. SFC filed a timely answer in opposition to the Cherokee Nation's "Application" on May 5, 1994. SFC argued, inter alia, that petitioners cannot intervene in support of an enforcement order for the reasons set forth in SFC's Initial Brief and Reply Brief regarding the ruling in Section II.A of LBP-94-5.<sup>4/</sup> The Cherokee Nation provided two supplemental pleadings on May 19, 1994 and June 3, 1994,<sup>5/</sup> and in

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<sup>4/</sup> Simultaneously with the filing of its answer, SFC provided courtesy copies of its Initial Brief and Reply Brief (as identified in footnote 3 above) to the Cherokee Nation.

<sup>5/</sup> "Cherokee Nation's Combined Response to [SFC's Answer in Opposition and NRC Staff's Response to Cherokee Nation's  
(continued...)

a June 22, 1994 response, SFC once again renewed its opposition to the Cherokee Nation's intervention based upon the arguments raised in its pending appeal of LBP-94-5 and LBP-94-8.<sup>5/</sup>

In LBP-94-19, the Licensing Board held that "[w]ith the Cherokee Nation in the same litigative posture as NACE, we need not revisit our ruling in LBP-94-5 regarding intervention by interested persons seeking to support a staff enforcement order." Slip op. at 2 n.2. Thus, the Licensing Board did not offer any new rationale or legal argument regarding its earlier ruling and granted the Cherokee Nation standing based upon the same fundamental ruling.

SFC appeals the Licensing Board's ruling with regard to Cherokee Nation on the same grounds that it opposed the Licensing Board's ruling in Section II.A of LBP-94-5. SFC further requests that this appeal be consolidated with its pending appeal, because the Cherokee Nation and NACE are in the same litigative posture and both SFC appeals involve the same legal issue.

In its Initial Brief and Reply Brief to the Commission regarding the referred ruling in Section II.A of LBP-94-5, SFC demonstrates that the Licensing Board erred in finding that an otherwise qualified petitioner has the right to intervene in an

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<sup>5/</sup>(...continued)

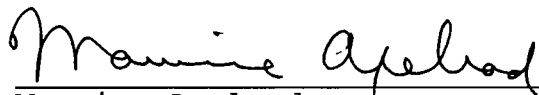
Application for Order Allowing Intervention" (May 19, 1994); and "Supplement to Cherokee Nation's Combined Response to [SFC's] Answer in Opposition and NRC Staff's Response to Cherokee Nation's Application for Order Allowing Intervention" (June 3, 1994).

<sup>6/</sup> SFC's "Response in Opposition to the Cherokee Nation's Amended Intervention Application" (June 22, 1994).

enforcement proceeding for the purpose of arguing that a proposed order should be fully sustained. Therefore, for the sake of efficiency, SFC incorporates its prior briefs by reference, as if fully set forth herein, and respectfully requests that the Commission consider the arguments contained therein and reverse the Licensing Board's ruling in LBP-94-19, as well as Section II.A of LBP-94-5.

FOR THE FOREGOING REASONS, and the other reasons described more fully in SFC's Initial Brief and Reply Brief regarding the earlier referred ruling in Section II.A of LBP-94-5, the Commission should consolidate this appeal with SFC's pending appeal and reverse the Licensing Board's rulings in LBP-94-19, LBP-94-5 and LBP-94-8.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Sequoyah Fuels Corporation's Notice of Appeal of LBP-94-19, Incorporated Supporting Brief, and Request that Appeals Be Consolidated" were served upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed on the date shown below:

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