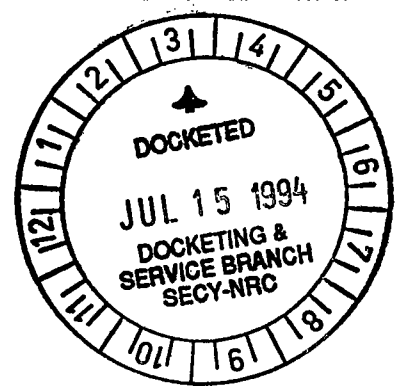


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter Of

Sequoyah Fuels Corporation  
and General Atomics

(Gore, Oklahoma Site Decontamination  
and Decommissioning Funding)

Docket No. 40-8027EA  
Source Materials  
License No. SUB-1010

**NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S  
AND CHEROKEE NATION'S OPPOSITION TO  
GENERAL ATOMICS' MOTION TO STAY DISCOVERY**

Introduction

Intervenors, Native Americans for a Clean Environment and the Cherokee Nation, oppose General Atomics's ("GA's") Motion to Stay Discovery (hereinafter "GA Motion") pending the outcome of its Petition for Review and/or Motion for Directed Certification. Motions to stay discovery are not favored, and GA has not demonstrated the existence of an exceptional circumstance that would warrant the imposition of a stay.

**ARGUMENT**

NRC's procedural rules disfavor the stay of discovery pending the outcome of a Motion for Directed Certification. 10 C.F.R. § 2.730(g) specifically provides that "Unless otherwise ordered, neither the filing of a motion nor the certification of a question to the Commission shall stay the proceeding or extend the time for the performance of any act."

The NRC's rules do not articulate a standard for making an exception to the prohibition in 10 C.F.R. § 2.730(g). However,

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10 C.F.R. § 2.788(e) sets for the Commission's standard for issuing a stay of the effectiveness of a decision pending review, which is appropriately applied in this case:

In determining whether to grant or deny an application for stay, the Commission or presiding officer will consider:

- (1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;
- (2) Whether the party will be irreparably injured unless a stay is granted;
- (3) Whether the granting of a stay would harm other parties; and
- (4) Where the public interest lies.<sup>1</sup>

GA meets none of these criteria. First, GA has not even attempted to make a strong showing that it is likely to succeed in its Petition for Review/Motion for Directed Certification. As discussed in NACE's Opposition to GA's Petition for Review of LBP-94-17 and/or Motion for Directed Certification (July 15, 1994), petitions for directed certification are granted only in the most compelling circumstances, which clearly do not exist here.<sup>2</sup> Public Service Co. of New Hampshire, (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 485 (1975). They are especially disfavored in cases which turn on the resolution of fac-

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<sup>1</sup> Similarly, the Federal Courts do not generally grant a stay of discovery under Fed. R. Civ. P. 26(c) (analogous to 10 C.F.R. 2.740(c)) absent a strong showing of good cause. Wyatt v. Kaplan, 686 F.2d 276, 283 (5th Cir. 1982). The burden of proof is on the party seeking the protective order. Howard v. Galesi, 107 F.R.D. 348, 350 (S.D.N.Y. 1985), citing, 8 C. Wright and A. Miller, Federal Practice and Procedure § 2035, at 264-65 (1970).

<sup>2</sup> NACE's Opposition is attached and incorporated by reference herein.

tual issues, as does this case. Commonwealth Edison Co., (Byron Nuclear Power Station, Units 1 and 2), ALAB-735, 18 NRC 19 (1983). Indeed, the Licensing Board has ruled that the very issue on which GA seeks certification -- its liability -- is a factual question that can only be fully adjudicated through discovery and trial. LBP-94-17, Slip op. at 12.

Second, GA has not demonstrated that it will be irreparably injured if the stay is not issued; instead, it claims that it will have to spend time and money on discovery.<sup>3</sup> GA Motion at 4-5. It is well established, however, that the mere expense of having to continue litigation does not constitute good cause for a stay. Cleveland Electric Illuminating Co., (Perry Nuclear Power Plant, Units 1 and 2), ALAB-706, 16 NRC 1754, 1758 (1982); Pennsylvania Power and Light Co. and Allegheny Electric Cooperative, Inc., (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-641, 13 NRC 550 (1981). Third and fourth, the granting of a stay would delay the resolution of this case and the possible imposition of liability on SFC for millions of dollars in anticipated decommissioning costs at the SFC site. Thus, it would adversely affect Intervenor's interest and the general pub-

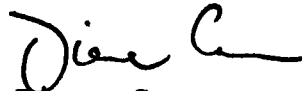
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<sup>3</sup> General Atomics asserts that proceeding with discovery at this point will result in an "unrecoverable diversion" of Licensee's assets from decommissioning activities for further legal costs. GA Motion at 5. In fact, however, motions for the stay of discovery are disfavored because litigating the motions themselves cause unnecessary legal expenses. Kron Medical Corp. v. Groth, 119 F.R.D. 636 (M.D.N.C. 1988); Simpson v. Specialty Retail Concepts, Inc., 121 F.R.D. 261 (M.D.N.C. 1988).

lic interest in obtaining timely assurance that the decommissioning effort will be adequately financed and carried out.<sup>4</sup>

Accordingly, GA has not met the high standard for staying discovery pending resolution of its Petition for Review/Motion for Directed Certification, and therefore its request for a stay should be denied.

Respectfully submitted,



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July 15, 1994

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<sup>4</sup> The NRC Staff is already in the process of conducting discovery. Intervenor are also preparing discovery against GA, which they intend to file in the near future.

CERTIFICATE OF SERVICE

I certify that on July 15, 1994, copies of the foregoing NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S AND CHEROKEE NATION'S OPPOSITION TO GENERAL ATOMICS' MOTION TO STAY DISCOVERY and OPPOSITION TO GENERAL ATOMICS' PETITION FOR REVIEW OF LBP-94-17 AND/OR MOTION FOR DIRECTED CERTIFICATION were served by fax and/or first-class mail on the following, as indicated below:

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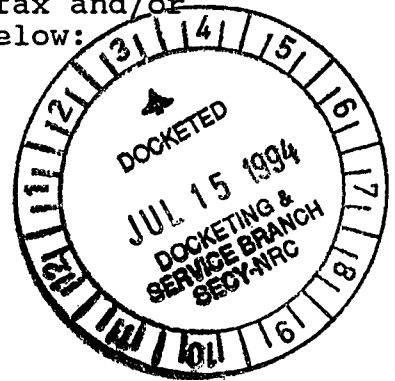
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