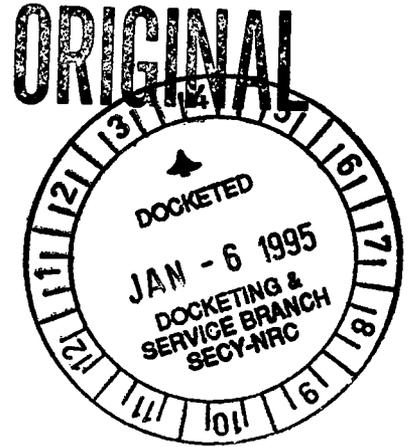


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

James P. Gleason, Chairman
Dr. Jerry R. Kline
G. Paul Bollwerk, III
Thomas D. Murphy



_____)	
In the Matter of)	Docket No. 40-8027-EA
SEQUOYAH FUELS CORPORATION)	(Decontamination and
and GENERAL ATOMICS)	Decommissioning Funding)
(Gore, Oklahoma Site))	January 6, 1995
_____)	

**SEQUOYAH FUELS CORPORATION'S REPLY TO
NRC STAFF'S RESPONSE TO
MOTION FOR PROTECTIVE ORDER**

Pursuant to the Order of December 7, 1994, permitting reply to any party's pleading, Sequoyah Fuels Corporation ("SFC") submits this reply to the Nuclear Regulatory Commission Staff's ("NRC Staff") December 22, 1994 response ("NRC Staff's Response") to SFC's December 2, 1994 Motion for a Protective Order ("SFC's Motion").

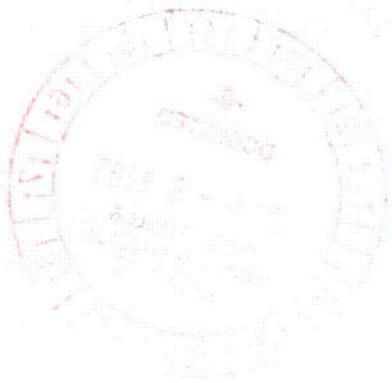
ARGUMENT

As pointed out in the NRC Staff's Response (at 1), only a narrow controversy exists between the parties regarding the proposed Protective Order submitted in SFC's Motion with the concurrence of all parties. All "parties have agreed that a protective order is desirable in this case and have agreed to all but one paragraph of the Proposed Order, i.e., paragraph 7." Id.

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The NRC Staff argues that it is opposed to the version of paragraph 7 proposed by SFC and General Atomics ("GA") because its requirements would allegedly interfere with the NRC Staff's legitimate exercise of its duties. Id. at 2. The NRC Staff's arguments are mistaken.

First, the NRC Staff argues that the language proposed by SFC and GA would interfere with the NRC Staff's ability to inform and consult with the Executive Director of Operations ("EDO"), even though the EDO plays an important role in formulating NRC Staff positions in a pending case. Id. at 3-4. The error in this argument is self-evident. Under the language of paragraph 3.a of the Proposed Order agreed to by the parties, the Protected Discovery Material can be disclosed to members of the NRC Staff who are assisting in the preparation of this case. Obviously, this category includes all levels of NRC Staff management, including the EDO, who may be consulted in formulating or deciding upon the NRC Staff's position in this proceeding. Nothing in paragraph 7 would affect making protected materials available to the EDO in connection with this proceeding, nor would it affect the EDO's ability to use such material as is appropriate in the legitimate exercise of his duties.

The NRC Staff's second argument is that paragraph 7 as proposed by SFC and GA would interfere with the free flow of information from members of the NRC Staff to the Office of Investigations ("OI") and the Office of the Inspector General

("OIG"), and their discharges of their respective duties. Id. at 4-9. However, such argument ignores the legitimate interests of other parties and mischaracterizes the limited impact of proposed paragraph 7 on the NRC Staff's hypothetical discharge of additional duties.

As GA has previously noted, courts have protected the legitimate rights of parties involved in litigation that confidential materials produced in discovery not be disclosed to persons not directly involved in the case and that the materials not be used for purposes other than those directly related to the case. General Atomics' Brief in Support of the Motion for a Protective Order at 2 (Dec. 22, 1994). But SFC and GA have not sought such an absolute limitation upon the NRC Staff's use of any materials obtained by the NRC Staff in discovery in this proceeding. Instead, they have simply proposed that the NRC Staff not have the unfettered ability to decide unilaterally and arbitrarily that it can widely distribute within the NRC Staff any protected information that it receives even though such distribution has no relationship to the NRC Staff's participation in this proceeding. SFC and GA have appropriately suggested that the NRC Staff either seek the party's consent or obtain the Licensing Board's approval.^{1/}

^{1/} The NRC Staff would not have to seek the party's consent if it chose, for whatever reason, to proceed directly with a request for the Licensing Board's approval, including, for example, an ex parte request, if it convinced the Licensing Board that confidentiality was required.

The NRC Staff's response appears to be that requiring the Licensing Board's approval would exceed the Board's jurisdiction, since the Board cannot direct or supervise the NRC Staff's discharge of its independent responsibilities. NRC Staff's Response at 7-8. This argument mischaracterizes the authority that would be exercised by the Board under paragraph 7. Clearly, the Board has jurisdiction over the parties' entitlement to discovery in this proceeding and has the authority to impose limitations on the exercise of discovery rights. 10 CFR § 2.740(c). If, at any time, the NRC Staff requests the Board's approval of additional dissemination of protected materials because of the alleged need to discharge other regulatory responsibilities, the Board will be fully capable of acting on such request. The NRC Staff cannot maintain that the Board would not rule properly on such request and would therefore interfere with the Staff's discharge of its responsibilities. Moreover, the NRC Staff's remedy for any such alleged mistaken action by the Board would be an appeal to the Commission. The answer is not, as argued by the NRC Staff, that the Staff should be able to decide for itself, and without recourse to any other party, whether it can disseminate protected information indiscriminately to persons who are not involved in the Staff's participation in this proceeding.

Finally, in its Memorandum (Requesting Party Comments) of December 27, 1994, the Board asked, whether, if it decides that the NRC Staff's position on paragraph 7 is correct, the NRC

Staff need be the subject of any protective order in light of the Staff's assertion that it is subject to the nondisclosure regulations of 10 CFR § 2.790 and/or 10 CFR §§ 9.17 and 9.25 and related penalties for unauthorized disclosure. SFC agrees that the NRC Staff is subject to the non-disclosure regulations in 10 CFR § 2.790 and/or 10 CFR §§ 9.17 and 9.25. However, these regulations do not control the production of documents in discovery pursuant to 10 CFR §§ 2.741 and 2.744. Rather, the Board has explicit authority under 10 CFR § 2.740(c) to govern the production of documents in discovery.

The NRC's regulations provide that the Board may enter "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden and expense" in discovery. 10 CFR § 2.740(c). In this case, the parties have negotiated a protective order to provide for production of documents that contain sensitive and confidential information in an efficient and cost effective manner. Thus, the Protective Order serves the interest of justice by assuring the production of documents and protection of sensitive information without unnecessary burden and expense to the parties.

The Order reflects the considered agreement among the parties as to how Protected Discovery Material (as defined in paragraph 1 thereof) should be designated, segregated, and marked (see paragraph 2); how such information can be disclosed to others (see paragraph 6); how the status of such information would be affected by a party's non-public or public dissemination

(see paragraphs 8 and 9); how a party should take necessary and prudent steps to prevent disclosure, including limiting the number of copies, maintaining a log, and returning copies after the proceeding is completed (see paragraph 10); how such information shall be kept separate in testimony or pleadings (see paragraph 11); and how disputes regarding the designation of material as Protected Discovery Material would be resolved (see paragraph 12). These provisions permit the efficient free flow of information between the parties, while at the same time providing specific rules to protect the information. The production of documents to the NRC Staff would be governed by these provisions and would not be a submission of documents under 10 CFR § 2.790.

In contrast, the production of documents to the NRC Staff pursuant to the provisions of 10 CFR § 2.790 would not provide the same level of protection as the proposed Protective Order. In addition, the submission of information under the terms of 10 CFR § 2.790 would require a burdensome review of documents that would be costly to both the parties and the NRC Staff. Under the terms of 10 CFR § 2.790, a party submitting information to the NRC Staff would be required to provide affidavits to support each request for protected treatment. The responsible NRC Staff personnel (independent from this litigation) would be required to conduct a formal review of each document and make an affirmative determination that the document

should be given protected treatment.^{2/} As a result, both the party and the NRC Staff would be required to perform needless, time-consuming reviews which would not only waste manpower and resources but would chill and delay a discovery process that would otherwise proceed smoothly. Moreover, NRC Staff personnel responsible for conducting the 10 CFR § 2.790 review would determine which documents should be protected. This would appear to shift the decision-making function from the Board to the NRC Staff in cases where the parties might disagree as to which documents should be protected.

Thus, it is apparent that the NRC Staff's obligations to protect material covered by 10 CFR § 2.790 deals only with a limited aspect of the protection required for Protected Discovery Material and that such obligation cannot be relied upon as a substitute for all of the specific provisions of the proposed Protective Order. Accordingly, SFC respectfully suggests that the Board accept the efficient and workmanlike process that the parties have negotiated with respect to protection of Protected Discovery Material by all parties, including the NRC Staff, and not disrupt that process by reliance upon regulatory provisions that, at most, deal imperfectly with only one aspect of the

^{2/} The parties do not dispute that obligations under the regulations cited by the NRC Staff may be triggered, if a document covered by the Protective Order is subject to a request for disclosure. In such case, the NRC Staff would be required to review the specific document for purposes of assuring its compliance with its regulatory and statutory obligations.

required protection for the broad categories of material covered by the parties' proposed Protective Order.

CONCLUSION

For the foregoing reasons, SFC respectfully suggests that the Protective Order be entered with the version of paragraph 7 proposed by SFC and GA. Even if the Board decides in favor of the version of paragraph 7 proposed by the NRC Staff, the Protective Order should still be issued with all of the other provisions that were previously agreed upon by all parties.

Respectfully submitted,



Maurice Axelrad
John E. Matthews

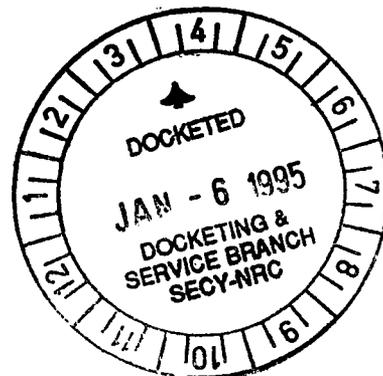
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ATOMIC SAFETY AND LICENSING BOARD

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) Docket No. 40-8027-EA

) Source Material License
) No. SUB-1010

) January 6, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of "Sequoyah Fuels Corporation's Reply to NRC Staff's Response to Motion for Protective Order" were served upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed and by telecopy, as indicated by an asterisk (*), on the date shown below:

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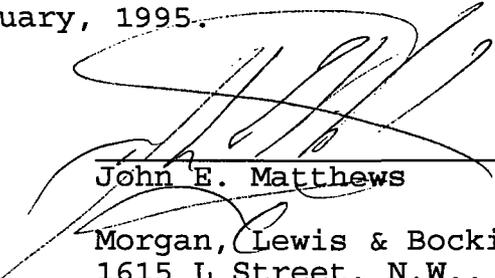
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