

June 12 1995
DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'95 JUN 13 P2:45

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION)	Docket No. 40-8027-EA
GENERAL ATOMICS)	
)	Source Material License
(Gore, Oklahoma Site)	No. SUB-1010
Decontamination and)	
Decommissioning Funding))	

NRC STAFF'S ANSWER TO GENERAL ATOMICS' MOTION
FOR SUMMARY DISPOSITION, TO STRIKE LANGUAGE
FROM THE OCTOBER 15, 1993 ORDER
AND TO LIMIT ISSUES IN THE PROCEEDING

The staff of the Nuclear Regulatory Commission (Staff) hereby responds¹ to General Atomic's Motion for Summary Disposition, to Strike Language From the October 15, 1993 Order, and to Limit Issues in the Proceeding (June 6, 1995) (GA's Motion). For the reasons set forth below, GA's Motion should be denied.

BACKGROUND

On May 23, 1995, the Atomic Safety and Licensing Board (Board) issued its Memorandum and Order (Order to Show Cause), directing the Staff to appear at a hearing and show cause why the Board should not declare that the Staff has abandoned the "reliance" theory purportedly set forth in the October 15, 1993 Order issued to Sequoyah Fuels Corporation (SFC) and General Atomics (GA). Oral argument was held

¹ The Staff is filing its answer on this date pursuant to the Atomic Safety and Licensing Board's directive at the close of the oral argument held on May 31, 1995.

SECY-042

DS03

16810

on May 31, 1995. At the argument, the Staff reiterated its longstanding position that it was not pursuing a quasi-contractual theory of liability, and that, therefore, "reliance in fact" by the Commission or any person was not material to the issue of whether the October 15, 1993 Order should be sustained. The Staff also clarified that, in contrast, the fact that Mr. Blue, the Chairman of General Atomics, made certain statements during a meeting with the Commission in 1992, followed up in writing, was material to a theory of liability being proffered by the Staff. GA argued, and continues to argue, that if "reliance in fact" is not material to this proceeding, Mr. Blue's statements cannot be a relevant fact.

DISCUSSION

I. GA's Motion for Summary Disposition and Modification of the Staff's Order

GA's Motion requests that the Board grant summary disposition in GA's favor "on all issues and claims in the NRC Staff's October 15, 1995 Order which relate to any purported reliance . . . on any statements or representations made by Mr. J. Neal Blue, the Chairman of General Atomics." GA Motion at 1. In addition, GA's Motion requests relief in the form of striking from the October 15, 1993 Order "all statements . . . which relate directly or indirectly to any statements or representations made either orally or in writing by Mr. J. Neal Blue" *Id.* Finally, GA "moves for an order limiting the NRC Staff's theories of liability," in essence seeking to exclude a theory of liability that rests in part on the fact that GA made financial assurance commitments. *Id.* at 1-2.

The Commission's Rules of Practice in 10 C.F.R. § 2.749 authorize a presiding officer to summarily decide any matters involved in a proceeding. Section 2.749(d) provides that:

The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.

The moving party seeking summary disposition has the burden of demonstrating the absence of any genuine issue of material fact. *Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2)*, ALAB-443, 6 NRC 741, 753 (1977). If the movant does not demonstrate that a genuine issue of fact does not exist, the motion for summary disposition must be denied. *Id.* at 754.

In support of its Motion, GA argues that there is no material fact dispute concerning which legal theories are not being pursued by the Staff. GA's Motion at 2. While it is true that GA and the Staff may agree that a quasi-contractual theory is not at issue in this proceeding, and to that extent there is no dispute, this does not mean that all other legal theories or claims that relate in any manner to the statements of Mr. Blue should be resolved in favor of GA. As the Staff made clear at the May 31, 1995 oral argument, the legal theories that have been proffered by the Staff may be based in part on the fact that certain statements were made by Mr. Blue, along with other facts that are clearly in dispute as to the degree of control GA exercises over SFC. Summary disposition as to "all issues and claims . . . which relate to any purported reliance . . .

on any statements" by Mr. Blue, to the extent such issues and claims would include any of the legal theories proffered thus far by the Staff, is simply inappropriate where there are relevant facts material to such claims and theories still in dispute. *See* 10 C.F.R. § 2.749(d) (Summary disposition should be entered only when there is no genuine issue as to any material fact).

GA next argues that issues relating to reliance add "nothing to the case," and are "prejudicial" to GA.² It cites to the Federal Rules of Civil Procedure, specifically Rule 12(f), for the proposition that "redundant, immaterial, impertinent, or scandalous" matter may be stricken from pleadings, and thus, that there is a basis for the Board to strike language from the October 15, 1993 Order relating to the statements of Mr. Blue. GA's Motion at 5. Although the issue of whether any specific person or entity in fact "relied" on Mr. Blue's statements is not material to whether the October 15, 1993 Order should be sustained, the fact that the statements were made in the circumstances described in the October 15, 1993 Order is a separate matter which is relevant and material to one or more of the Staff's theories of liability, as was fully explained during the May 31, 1995 oral argument. Contrary to GA's claim that the "Blue statements are not essential or even relevant to the determination of whether General Atomics and Sequoyah Fuels Corporation are essentially the same company," *id.* at 9, statements by the chairman of a parent company, who is not an officer of its subsidiary, on behalf of the

² Just how such matters may be "prejudicial" to GA is anything but clear. Indeed, it is only later in its Motion that GA boldly asserts that the Staff's allegations regarding Mr. Blue's statements have a prejudicial effect "on the ability of General Atomics to conduct business." GA's Motion at 11.

subsidiary before a federal regulatory agency, most certainly are relevant and probative of the relationship between the parent and subsidiary.³ Thus, the Staff is entitled to place such statements into the record in order for the Board to evaluate their probative worth. Moreover, the statements were made in public, voluntarily, as GA acknowledges, and are contained in a transcript and letter, which Mr. Blue himself wrote, available to the public. Taking the statements out of the October 15, 1993 Order would not change the fact that they were made, or change the purpose or intent behind Mr. Blue's making such statements, which appears to be the underlying cause of the concerns espoused by GA. Thus, GA's argument that the language in the October 15, 1993 Order is prejudicial and thus should be stricken has no merit.

GA attempts to make much of the distinctions between this matter and the cases referred to by the Staff during the May 31, 1995 oral argument, *Randall C. Orem*, CLI-93-14, 37 NRC 423 (1993), and *Virginia Electric and Power Co.* (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480 (1976), *aff'd*, 571 F.2d 1289 (4th Cir. 1978) (VEPCO), cases involving material false statements. See GA's Motion at 6-7. The Staff's only purpose in referencing the *Orem* and *VEPCO* cases was to illustrate the

³ The statements by Mr. Blue certainly come within the definition of "relevant evidence" under the Federal Rules of Evidence:

Relevant evidence means evidence having *any* tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Fed. R. Evid. 401 (emphasis added).

way in which references in the October 15, 1993 Order to "reliance" may be construed, *i.e.*, in the sense that Mr. Blue's statements were objectively of a material nature, or of some relevance to this agency, based on the subject matter over which the NRC has responsibilities. *See* Prehearing Conference Transcript (May 31, 1995) at 257. In this context the Staff again reaffirmed its position that "reliance in fact" is not germane to this case. Therefore, GA's effort to distinguish the *Orem* and *VEPCO* cases is of no import, given the Staff's limited use of these cases for illustrative purposes.

GA next argues that the Staff's proffered theory of liability that specifically makes reference to the statements of Mr. Blue, *see* NRC Staff's Answer in Opposition to General Atomics' Motion for Summary Disposition or For An Order of Dismissal (Apr. 13, 1994) at 27, should be rejected on the basis that all references to Mr. Blue's statements should be stricken for the reasons GA has argued above. Quite simply, GA has not demonstrated that any of the language referring to the statements made by Mr. Blue should be stricken from the October 15, 1993 Order; therefore, the Staff has the right to pursue this particular theory of liability throughout this proceeding.

II. The Scope of Discovery

GA asserts that should the Board deny its Motion, "[d]iscovery would be prolonged;" specifically, GA claims that it would be entitled to "full discovery on the circumstances of Mr. Blue's statements, including inquiry into the reliance -- or lack of reliance -- on the statements by each member of the Commission and the NRC Staff." GA's Motion at 11-12. This is not so much an argument as it is a threat. Under 10 C.F.R. § 2.740, GA is entitled to discovery regarding any matter relevant to the

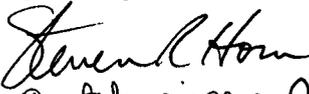
subject matter involved in this proceeding, and of information which appears reasonably calculated to lead to the discovery of admissible evidence. Conversely, GA is *not* entitled to discovery of any matter irrelevant to this proceeding, including "reliance in fact." Therefore, GA's assertion that discovery would be prolonged should the language at issue remain in the October 15, 1993 Order, carries no weight.

GA finally argues that if the statements by Mr. Blue should be deemed relevant, GA "cannot be deprived of an opportunity to demonstrate that absence of reliance on the statements is also relevant." GA's Motion at 12. Since the Staff has made it clear that it intends not to present any evidence as to "reliance in fact" in this proceeding, such position is not inconsistent with GA being able to make any legal argument it so chooses as to the absence of "reliance in fact."

CONCLUSION

In view of the foregoing, GA's Motion should be denied in its entirety.

Respectfully submitted,



Steven R. Hom
Catherine L. Marco
Counsel for NRC Staff

Dated at Rockville, Maryland
this 12th day of June 1995

DOCKETED
USNRC

'95 JUN 13 P2:45

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
SEQUOYAH FUELS CORPORATION) Docket No. 40-8027-EA
GENERAL ATOMICS)
) Source Material License
(Gore, Oklahoma Site) No. SUB-1010
Decontamination and)
Decommissioning Funding))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO GENERAL ATOMICS' MOTION FOR SUMMARY DISPOSITION, TO STRIKE LANGUAGE FROM THE OCTOBER 15, 1993 ORDER AND TO LIMIT ISSUES IN THE PROCEEDING" 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 or as indicated by a double asterisk by facsimile or as indicated by a triple asterisk by electronic mail this 12th day of June 1995.

James P. Gleason, Chairman***
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

G. Paul Bollwerk, III, Esq.***
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Jerry R. Kline***
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Thomas D. Murphy***
Administrative Judge
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Stephen M. Duncan, Esq.**
Bradfute W. Davenport, Jr., Esq.
Mays & Valentine
110 South Union Street
Alexandria, Virginia 22314
Fax: 703-519-0140

John H. Ellis, President
Sequoyah Fuels Corporation
P. O. Box 610
Gore, Oklahoma 74435

Diane Curran, Esq.**
c/o IEER
6935 Laurel Avenue, Suite 204
Takoma Park, Maryland 20912
D.C. office Fax: 202-328-6918

Mr. John R. Driscoll
General Atomics Corporation
3550 General Atomics Court
San Diego, California 92121-1194

Office of the Commission Appellate
Adjudication*
Mail Stop: O-16 G15
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Adjudicatory File (2)*
Atomic Safety and Licensing Board
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Office of the Secretary* (2)
ATTN: Docketing and Service Branch
Mail Stop: O-16 G15
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

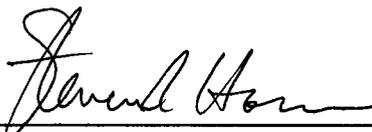
Atomic Safety and Licensing Board
Panel*
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Maurice Axelrad, Esq.**
John E. Matthews, Esq.
Morgan, Lewis & Bockius
1800 M Street, N. W.
Washington, D. C. 20036
Fax: 202-467-7176

Betty Robertson
HCR 68 Box 360
Vian, Oklahoma 74962

Lance Hughes, Director
Native Americans for a Clean
Environment*
P. O. Box 1671
Tahlequah, Oklahoma 74465

James Wilcoxon, Esq.*
Wilcoxon & Wilcoxon
P. O. Box 357
Muskogee, Oklahoma 74402-0357



Steven R. Hom
Counsel for NRC Staff