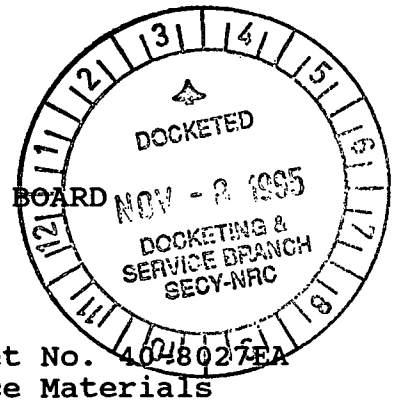

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of	)	
Sequoyah Fuels Corporation	)	Docket No. 40-8027-EA
and General Atomics	)	Source Materials
Gore, Oklahoma Site Decontamination	)	License No. SUB-1010
and Decommissioning Funding	)	November 8, 1995

NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S AND CHEROKEE NATION'S OPPOSITION TO JOINT MOTION FOR ADDITIONAL STAY OF DISCOVERY

Introduction

Intervenors, Native Americans for a Clean Environment ("NACE") and the Cherokee Nation, hereby oppose the joint motion for an indefinite stay of discovery which was filed by the Nuclear Regulatory Commission ("NRC") staff and General Atomics ("GA") on November 3, 1995.[1] As discussed below, the staff and GA have failed to meet either prong of the two-part standard established by the Board in its October 13, 1995 Order for an extension of the stay of discovery. Thus, Intervenors should be allowed to complete their discovery against GA and SFC on jurisdictional issues.[2] Intervenors also renew their previous request

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1 Joint Status Report on Settlement Negotiations and Joint Motion for Additional Stay of Discovery Beyond November 13, 1995 (hereinafter "Joint Motion").

2 Although the Board has approved the settlement between SFC and the NRC staff, SFC may possess information which bears on the relationship between GA and SFC, and thus on GA's liability for decommissioning funding. Therefore, Intervenors renew their request that SFC be included in any order requiring the completion of discovery responses on jurisdictional issues. See Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Joint Motion for Additional Stay of Discovery (October 11, 1995).

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that the Board permit Intervenors to conduct discovery on the merits issues which GA and the staff are seeking to resolve in their settlement negotiations, so that Intervenors may be prepared to comment on any settlement that is proposed.[3]

ARGUMENT

After thrice having approved stays of discovery pending settlement negotiations, in its most recent stay order the Board notified GA and the NRC staff of its intent not to continue the stay of Intervenors' discovery on jurisdictional issues unless GA and the staff demonstrated both that:

> (a) there is significant progress toward settlement by a date certain, and (2) substantial prejudice to the settlement process if the stay is not extended.

Order (Extending Stay of Discovery at 4 (October 13, 1995) (emphasis in original). There is nothing in the Joint Motion which demonstrates satisfaction of either prong of this test, let alone both. With respect to the first prong of the Board's standard, nowhere does GA or the staff represent that they have set -- or even estimated -- a "date certain" for conclusion of their negotiations.[4] Moreover, there is nothing "significant" about the progress they claim to have made. The conduct of "several" "face-to-face" meetings during a period of over nine weeks, and

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[3] See Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Joint Motion for Additional Stay of Discovery at 5, 7-8.

[4] Although GA and the staff request an extension until December 15, they give no indication that they believe that their negotiations can be resolved by that date. Rather, it appears, they simply seek to extend the stay another month.

the involvement of senior GA and NRC staff executives in the preparation of negotiating positions constitute the most basic elements of a settlement negotiation -- not signs of "significant progress" in the substance of the negotiations. Moreover, GA's and the staff's claim that they have resolved "at least one aspect of the potential settlement framework" tells nothing about the degree to which that represents progress, because it gives no information about the nature or significance of the issue that has been resolved, or the degree to which the negotiations remain unresolved.

Nor have GA and the staff satisfied the second prong of the Board's standard, by demonstrating that the settlement process would be substantially prejudiced if the stay is lifted. Notably, the staff does not even attempt to make this claim, and instead merely makes the terse statement that:

> it is appropriate to focus [NRC staff's] resources and to devote full attention to exploring various settlement concepts and options free from the drain on resources that continued discovery would create.

Joint Motion at 10. Thus, the staff does not appear to believe that the settlement negotiations would be prejudiced by lifting the stay on Intervenors' discovery.

The Board should soundly reject GA's attempt to substitute inflated rhetoric for an actual showing that resuming discovery would cause substantial prejudice to the settlement process. It is patently incredible for a corporation of GA's size and resources to assert that it is "effectively impossible" for it to

conduct its business, pursue a settlement with NRC, and respond to discovery by Intervenors at the same time. It should be remembered that this litigation was started by GA, and that such burdens should reasonably be anticipated in any litigation. Moreover, GA's assertion that its concern is to protect precious assets intended for decommissioning from dissipation by the "litigious" and "wast[eful]" Intervenors is disingenuous, hypocritical, and unfounded. Joint Motion at 8-9. From the beginning, it has been clear that GA has no intention of devoting any of its funds or assets to decommissioning of the SFC facility, and thus GA's sudden concern for conserving its funds for decommissioning rings hollow. Moreover, GA itself has invested enormous resources in delaying this case and attempting to throw off the NRC's enforcement order, including its unsuccessful February 17, 1994, summary disposition motion, its failed challenge to the October 15, 1993, order in Federal District Court in California, its unfounded objections to almost every discovery request made by Intervenors, and its continual foot-dragging in producing discovery documents. Thus, the words "litigious" and "wasteful" are best used to describe GA's behavior in this proceeding, not Intervenors'. Moreover, the Board should soundly reject GA's extortionist threat that the simultaneous conduct of discovery activities and settlement negotiations will "poison" the negotiating process and "eliminate any possibility of a successful outcome to the negotiations." Joint Motion at 10. Whatever "poison" GA threatens to inject itself with is of GA's

own making, and cannot be attributed to the legitimate exercise of Intervenors' discovery rights.[5]

Finally, the Board should discard as irrelevant the staff's and GA's long litany of policy statements supporting the obvious proposition that settlements are to be encouraged. Joint Motion at 2-4. The Board did just that in granting the original stay of August 30 (which Intervenors did not oppose), and in renewing the stay twice afterwards. However, where a nine-week stay yields no demonstrable progress toward settlement, but simply serves to delay the ultimate resolution of the litigation, no legitimate purpose can be served by continuing the stay. Moreover, there is nothing to prevent the staff and GA from proceeding with discovery and settlement negotiations concurrently.[6]

Intervenors also note that CLI-81-8, the NRC policy statement cited by GA and NRC, says nothing about whether litigation should be stayed pending settlement negotiations. Statement of Policy on Conduct of Licensing Proceedings, 13 NRC 452, 456 (1981). Indeed, the pressure of litigation may constitute the single most effective spur to completion of settlement negotia-

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5 GA's hyperbolic allusion to the "certain[ty]" of "endless discovery disputes" is unfounded. Joint Motion at 9. First, all of Intervenors' permitted discovery on jurisdictional issues has now being propounded, and thus the disputed issues are quite limited. Moreover, to the extent that Intervenors seek to conduct further discovery into the merits of the case and the role of GA's other faciliities in the negotiations, Intervenors are limited to discovery that is relevant to the proceeding.

6 Indeed, SFC and the NRC staff successfully conducted and completed settlement negotiations while discovery was pending.

tions. In any event, by its own terms, CLI-81-8 is limited to licensing proceedings, in which a stay of a proceeding in order to allow settlement negotiations delays the issuance of the license and therefore adversely affects the license applicant. Thus, in a licensing proceeding, the license applicant has an economic incentive not to request or prolong a stay unless there are strong grounds to believe that settlement can be achieved. Here, in contrast, GA suffers no harm when this proceeding is delayed, and indeed has an economic interest in delaying the resolution of this litigation indefinitely.

Conclusion

For the foregoing reasons, the Board should allow the stay of discovery to expire, GA and SFC should be ordered to complete the discovery responses which remain outstanding, and the Board should take responses to and rule on Intervenors' August 17, 1995, Motion to Compel.

Moreover, as discussed in Intervenors' opposition to GA's and the staff's stay motion of October 6, 1995, in order to ensure that Intervenors have sufficient information in order to make an adequate evaluation of the reasonableness of any proposed GA-NRC staff settlement, the Board should permit discovery into issues related to the costs of decommissioning the SFC facility and the financial wherewithal of GA to finance those costs. In addition, given that GA's liability for decommissioning funding for its <u>other</u> facilities now appears to be a pivotal consideration in the pending settlement negotiations, the Board should

allow discovery against GA regarding these decommissioning costs, as well as GA's ability to pay them. Finally, the Board should permit discovery against the NRC staff regarding the relationship of this case with decommissioning funding issues at other GA facilities.

Respectfully submitted,

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November 8, 1995

CERTIFICATE OF SERVICE

I certify that on November 8, 1995, copies of the foregoing NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S AND CHEROKEE NATION'S OPPOSITION TO JOINT MOTION FOR ADDITIONAL STAY OF DISCOVERY were served by fax and/or first-class mail on the following, as indicated below:

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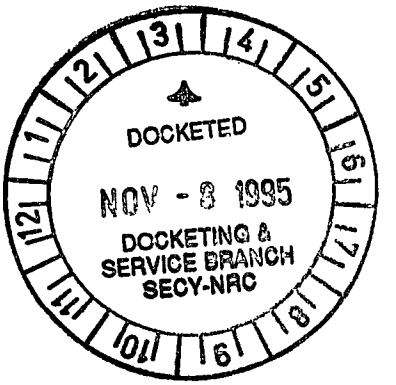

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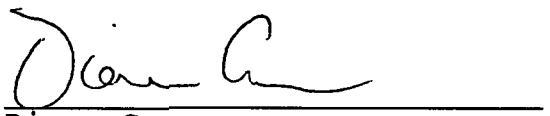

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