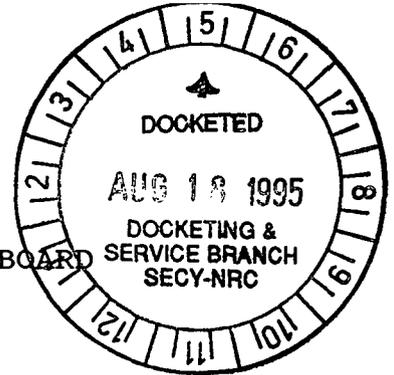


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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  
August 17, 1995

**INTERVENORS' MOTION TO COMPEL  
GENERAL ATOMICS AND SEQUOYAH FUELS CORPORATION  
TO ANSWER INTERVENORS' FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

**I. INTRODUCTION**

Intervenors, Native Americans for a Clean Environment and the Cherokee Nation, hereby move to compel General Atomics ("GA") and Sequoyah Fuels Corporation ("SFC") to produce certain of the documents requested by Intervenors in their First Set of Interrogatories and Requests for Production of Documents (July 10, 1995), whose production GA and SFC have either objected to or failed to provide for in General Atomics' Response to the First Request for Production of Documents of Native Americans for a Clean Environment and Cherokee Nation (August 9, 1995) (hereinafter "GA Response") and Sequoyah Fuels Corporation's Response to First Request for Production of Documents of Native Americans for a Clean Environment and Cherokee Nation (August 9, 1995) (hereinafter "SFC Response").<sup>1</sup>

<sup>1</sup> Although Intervenors filed separate sets of documents production requests to GA and SFC, which were answered separately by them, Intervenors address both sets of answers in one Motion to Compel because so many of the document requests and objections to them are identical.

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## II. ARGUMENT

### A. General Objections

1. GA objects on grounds of burdensomeness to Intervenor's document request insofar as it seeks the production of documents before the end of the week of August 14. GA Response at 1-2. According to GA, the documents requested by Intervenor were mixed in with other documents which have not been requested, and counsel for GA had planned a vacation for the first two weeks of August. Id.

GA's response ignores the Board's August 8 order, which reminded it of its obligation to comply with 10 C.F.R. § 2.741(d). That regulation requires that documents must be produced "as requested," unless the request is objected to. Thus, GA was required to produce documents for which production was not objected to on the date specified in Intervenor's request, which was August 9 (30 days following the filing of Intervenor's request, as provided by the 10 C.F.R. § 2.741(d)). Moreover, the interference of a regulatory deadline with counsel's vacation schedule does not constitute valid grounds for an objection to the deadline. If GA wanted more time to produce documents, it was required to make a timely request for an extension -- not to wait until the day the documents were due to object that it was too "burdensome" to meet the deadline.<sup>2</sup>

This particular dispute is now moot because the end of the week of August 14 is at hand, and GA has stated that the documents are available to review. However, GA's delay in producing the requested documents has impeded Intervenor's ability to conduct discovery. In addition, Intervenor is concerned that GA will continue to flout the regulations and the Board's August 8 order in responding to Intervenor's second set of requests for

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<sup>2</sup> Presumably, counsel for GA knew since at least the date of Intervenor's discovery request that he would be on vacation during two of the four weeks allowed for document production.

production of documents, which Intervenors served on August 11. Accordingly, Intervenors request that the Board explicitly order that GA must comply with all further document production requests within the 30-day period requested by Intervenors and allowed by the rules.

2. GA and SFC raise a general objection to document production requests which they consider to be unrelated to the first, jurisdictional stage of this proceeding. GA Response at 2, SFC Response at 1-2. As they both note, however, Intervenors have agreed in principle to limit their discovery in this phase to jurisdictional issues. Id. As discussed below with respect to individual requests, GA's and SFC's objections to the relevance of specific requests are unfounded.

3. GA and SFC also object to all of Intervenors' document production requests which seek information relating to events that took place subsequent to the date of the NRC's order, October 15, 1993, on the ground that such information is outside the scope of the evidentiary matters relating to this proceeding, i.e., "the sufficiency of the legal and factual predicates outlined in the order as of the time the order was issued." GA Response at 2-3, SFC Response at 2, citing Oncology Services Corp. (Order Suspending Byproduct Material License), LBP-94-2, 39 NRC 11, 26 and n. 11 (1994); Advanced Medical Systems (One Factory Row, Geneva, Ohio) LBP-90-17, 31 NRC 540, 542-42, n. 5, 556-57 (1990); and Nuclear Engineering Co. Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 5 (1980).

GA and SFC have waived this general objection, by failing to object to numerous interrogatories and requests for document production by the NRC staff which also seek information from November 1, 1988, "through the present." For example, SFC answered NRC Interrogatory Nos. 1, and 2 and agreed to produce documents responsive to Requests Nos. 4, 5, 8, and 10; and GA answered

Interrogatory No. 1 and agreed to produce documents responsive to Requests Nos. 4, 7, 8 and 10. Neither GA nor SFC explain why, as a general matter, Intervenors' request for information following the date of the staff's order is objectionable, but the NRC's is not. Thus, the Board should reject this general objection.

In any event, GA and SFC have failed to justify their objection. The cases cited by GA and SFC are inapposite in three significant respects. First, they narrowly involved NRC orders based on particular violations or unsafe practices that had taken place on specific occasions in the past.<sup>3</sup> In contrast, the NRC's

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<sup>3</sup> Oncology Services Corp. concerned an NRC order suspending the license for a brachytherapy business based on a particular incident of unsafe operation, certain inspection results, and a letter alleging particular unsafe management actions in the past. In a summary disposition proceeding on the licensee's challenge to the order, the Licensing Board refused to allow the licensee to present evidence showing that the unsafe management practices which led to the issuance of the enforcement order had been corrected, holding that the scope of the adjudication concerned only whether there was a legitimate basis for the enforcement order at the time it was issued. Id. at 25-26. The Board further held that "the extent to which subsequent circumstances warrant agency action to modify or withdraw a suspension order generally is a matter that is within the discretion of the Staff and is not subject to consideration in an agency adjudication." Id. at 26, citing San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1314 (D.C. Cir. 1984), vacated in part and rehearing en banc granted on other grounds, 760 F.2d 1320 (1985), aff'd en banc, 789 F.2d 26, cert. denied, 479 U.S. 923 (1986).

Advanced Medical Systems involved a summary license suspension order which was based on two investigations of specific incidents. 31 NRC at 545-46. The Licensing Board restricted the scope of evidence that could be presented on summary disposition to adequacy of the staff's basis, at the time of the enforcement action, for concluding that the licensee's activities threatened public health and safety and that no prior notice was required. 31 NRC at 542.

In Nuclear Engineering Co. Inc., the licensee had abandoned its responsibilities and obligations under its license. 11 NRC at 2. The Commission denied a motion for reconsideration of a previous order in which it had sustained the immediate effectiveness of the staff's show-cause order to the licensee to resume its responsibilities. The Commission also refused to reconsider its immediate effectiveness determination in light of documents that had been issued by the NRC staff

order in the instant case seeks to hold SFC and GA "jointly and severably liable," now and in the future, for decommissioning funding for the SFC plant. 558 Fed. Reg. at 55,092. Thus, the scope of the NRC's enforcement order in this case is not bound by specific actions in the past, but extends to GA's ongoing responsibilities to fund the decommissioning of the SFC plant. Accordingly, it would not be appropriate to restrict Intervenor's discovery to events that took place in the past.

Second, none of the cases addressed the jurisdiction of the NRC over the respondent. There is no indication that the Commission or the Licensing Board intended to apply the time-based evidentiary limitations in those cases to questions of jurisdiction, which are not similarly time-bound in their nature, but which are based on the ongoing relationship between the NRC and the respondent.

Moreover, the time-based evidentiary limitations imposed in those cases are based on an enforcement policy which is inapplicable to jurisdictional issues. As the Commission explained in Boston Edison Co. (Pilgrim Nuclear Power Station), CLI-82-16, 16 NRC 44, 45-46 (1982), aff'd sub. nom. Bellotti v. NRC, 725 F.2d 1380 (D.C. Cir. 1983), the purpose for limiting the scope of an enforcement hearing to the veracity of the underlying facts and the justifiability of the remedy is to encourage licensees

to consent to, rather than contest, enforcement actions. Such a policy would be thwarted if licensees which consented to enforcement actions were routinely subjected to formal proceedings possibly leading to more severe or different enforcement actions. Rather than consent and risk a hearing on whether more drastic relief was called for, licensees would, to protect their own interests, call for a hearing on each enforcement order to ensure that the possibility of less severe action would also be considered. The end result

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(continued)

after the show-cause order.

would be a major diversion of agency resources from project inspections and engineering investigations to the conduct of hearings.

11 NRC at 45, footnote. Thus, in order to discourage attempts by licensees to use litigation to reduce or mitigate the severity of enforcement actions, the Commission limits the issues that can be raised in a hearing to the adequacy of the order's stated basis for the enforcement action, and the appropriateness of the remedy. However, that reasoning is inapplicable to jurisdictional issues. The question of whether the NRC has jurisdiction over GA has no bearing on the severity of the enforcement action to which GA is subject. Therefore, prohibiting Intervenors from raising factual matters that occurred after the issuance of the NRC's October 15, 1993, Order, would not give GA any incentive to consent to the enforcement order. Accordingly, there is no basis here for applying the policy that was articulated in Boston Edison. To the contrary, the Commission has a strong policy interest in allowing the discovery and presentation of facts and theories, which may not have been known or sufficiently developed at the time of the enforcement order, regarding the basis for the NRC's assertion of jurisdiction over respondents.

Finally, none of the cases cited by GA and SFC concerned the scope of discovery, but rather addressed the scope of admissible evidence. Clearly, this Board is not presented with the issue of admissibility at this point in time. Regardless of the Board's ultimate decision regarding admissibility, the scope of discovery is much broader and extends to "any matter, not privileged, which is relevant to the subject matter involved in the proceeding." 10 C.F.R. § 2.740(b). "It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Id. Patterns or changes in GA's ongoing implementation of its responsibilities under SFC's license terms and GA's corporate and management structure may

provide important evidence regarding the nature of the relationship between GA and SFC, and the extent of GA's control over SFC, at the time of the enforcement action. Thus, despite any possible restrictions on the admissibility of information discovered by Intervenors regarding GA's current activities and relationship with SFC, the information is discoverable because it is reasonably likely to yield insights and evidence regarding the existence and nature of GA's control over SFC prior to October 15, 1993. Accordingly, unless otherwise specified, GA and SFC should be required to answer Intervenors' document production requests for the period prior to and after October 15, 1993.

4. GA objects on grounds of relevance and burdensomeness to Intervenors' document production requests which seek information from before November 1, 1988. GA Response at 3. However, discovery into a particular time period cannot be "cut off" if it is relevant. Florida Power & Light Co (St. Lucie Plant, Unit No. 2), LBP-79-4, 9 NRC 164, 169 (1979). As discussed below with respect to the specific requests which seek information regarding the time period prior to the purchase of SFC by GA (## 20 - 23 to GA, # 12 to SFC), the requests are highly relevant to this proceeding, and are reasonably likely to lead to the discovery of admissible evidence regarding GA's intentions regarding the nature of the relationship that it was establishing with SFC. Moreover, GA has failed to explain why answering these requests, which are quite specific and clear, would be unduly burdensome.

5. GA also makes a general objection to "certain" document production requests which seek documents that are "in the possession of SFC" and which relate to SFC and not to GA. GA Response at 3. However, none of GA's objections to specific document requests raise this issue. Thus, this general objection does not appear to be attached to any concrete request. Intervenors ask the Board to rule that, as a general matter, GA is

responsible for producing all documents in its possession which are responsive to Intervenor's requests, whether or not they are also in the possession of SFC or pertain solely to SFC. If a particular document or set of documents in GA's possession has already been produced by SFC, it is sufficient for GA to point this out. However, GA remains responsible for producing all documents that are responsive to Intervenor's discovery requests.

**B. Specific Objections**

**Document Production Request # 1 to GA and SFC**

In Document Production Request # 1 to GA and SFC, as amended in a Memorandum from Diane Curran to Maurice Axelrad and Steve Duncan (July 19, 1995), Intervenor requested them to:

Produce each and every document to which you refer or which you have identified in your answers to the foregoing interrogatories, as well as each and every document which you relied on in preparing your answers to the foregoing interrogatories.

GA and SFC object to this request on a number of grounds. First, GA argues that it would require counsel for GA to disclose their mental impressions, conclusions, opinions and thought processes in deciding what objections to make to Intervenor's discovery. GA Response at 4. GA and SFC also argue that the request is unreasonably vague and broad, and could be read to seek copies of every documents that GA or SFC reviewed in answering the interrogatories, whether or not they were relevant.

These objections misconstrue Intervenor's document production request, and are without merit. The request does not seek information about attorney's mental impressions, opinions or thought processes; nor does it seek information about the bases for objections; nor does it seek the production of every document that was reviewed in answering an interrogatory, regardless of its relevance. Rather, it seeks the production of any documents that were relied on in answering the interrogatories, but which were not necessarily identified in answer to the interrogatories.

In other words, it seeks the production of documents containing substantive information that is used to provide information in answer to an interrogatory. This is a reasonable request which should be answered.

**Document Production Request # 2 to GA and SFC**

Document Production Request # 2 asks GA and SFC to:

Identify and produce all documents that you will rely on in your testimony in this proceeding.

GA and SFC object to this request on the grounds that it is vague, unreasonably burdensome in that the term "rely on" is not defined, and seeks documents that are protected by the attorney-client privilege and/or the attorney work product rule. GA Response at 4, SFC Response at 5. Both GA and SFC state that they will produce all documents that they intend to introduce into evidence. Id.

Contrary to GA's and SFC's arguments, this request is not overly vague or burdensome, nor does it seek protected matter. Rather, it is intended to obtain the production of all documents to which GA's and SFC's testimony may directly or indirectly refer in support of their positions, but which are not necessarily introduced into evidence. This is a reasonable request which should be answered.

**Document Production Request # 3 to GA**

Document Production Request # 3 to GA asks GA to:

Produce all complete tax returns filed with the Internal Revenue Service and the State of Oklahoma for the years 1988 through 1994, on behalf of the following entities:

- a. GA
- b. SFC
- c. SFIC
- d. SHC
- c. SFC-GFR  
SFC-MD
- d. GAES
- e. GAESLP
- f. GATC

GA objects to this request on several grounds. First, GA refuses to produce tax returns that were filed after the date of the NRC's October 15, 1993, order. GA Response at 5. Thus, it agrees to produce tax returns only for the years 1988 through 1992. This objection is without merit. The 1993 tax return pertains to the period prior to the issuance of the October 15 order, because it contains information for the entire year of 1993, including the nine and a half months of 1993 that preceded the order. Moreover, the 1994 tax return is relevant and discoverable for the reasons discussed above at pages 3-7.

Second, GA objects to producing documents related to GAES and GAESLP, because they are "not parties to this proceeding" and "do not fall within the corporate structure or relationship between General Atomics and SFC." GA Response at 5. However, GA has waived this objection by failing to object to the NRC's discovery regarding GAES. See GA's Answer to NRC's First Set of Interrogatories at 6. GA has offered no reason why the NRC's discovery related to GAES is relevant, but not Intervenor's'.

Clearly, discovery related to both GAES and GAESLP is relevant. GAES is a subsidiary of GA's parent GATC, and an affiliate of GA. General Atomics' Answer and Request for Hearing at 5 (November 2, 1993). ConverDyn is a joint venture of GAES and Allied-Signal Energy Services, and was established for the purpose of "helping SFC satisfy its business commitments and D&D obligations." Id. at 14. Thus, GA may exercise some degree of control over SFC's business affairs through its affiliate GAES. GA has also stated that it has transferred 90% of its ownership interest in ConverDyn to GAES Limited Partnership [GAESLP]. Id. at 6. GAES is the general partner of GAESLP and owns 10% of the partnership; GATC is a limited partner with 90% ownership. Id. Thus, GA may also exercise control over SFC through GAESLP, which is a partnership between GA's parent and affiliate.

The potential that GA may exercise some control over SFC through the ConverDyn venture is indicated by the fact that in

June of 1993, the vice president of GA, James J. Graham, also became the president of ConverDyn, while continuing in his vice president position for GA. "Graham to be President of ConverDyn," Business Wire (San Francisco: June 24, 1993).

The requested tax returns for GAES and GAESLP may yield relevant information regarding their financial relationship to GA and to SFC, and thus may lead to the discovery of admissible evidence regarding GA's control over SFC. Accordingly, this discovery should be allowed.

Third, GA objects to producing tax returns for Sequoyah Fuels Corporation, Georges Fork Ranch ("SFC-GFR") and Sequoyah Fuels Corporation, Marketing Division ("SFC-MD"), on the grounds that these entities are "outside the scope of the proceeding" and "would have no probative value with respect to the corporate structure or relationship between General Atomics and SFC." GA Response at 5. GA also claims to be "generally unaware" of SFC-MD and SFC-GFR as corporate entities. Id.

Whether or not SFC-MD and SFC-GFR are separate corporate entities, the manner in which their finances are reported on income tax returns is relevant and discoverable.

#### **SFC-MD**

According to SFC, SFC-MD is a division of SFC. SFC Answer to Intervenor's First Set of Interrogatories, Interrogatory 21 (July 21, 1995). Nevertheless, SFC-MD has a separate address from SFC, which is in Oklahoma City. SFC Answers to NRC Staff's First Set of Interrogatories, Attachment 1 at 1-8. The business address for Bruce B. Lenz, who served as SFC's Vice President for Marketing from November 1988 to March of 1993, is SFC-MD's Oklahoma City office. Id. During the entire period when he served as Vice President for Marketing of SFC, Mr. Lenz also served as Vice President, Marketing for Sequoyah Fuels International Corporation ("SFIC"), GA's second-tier subsidiary. GA's Answer to NRC Staff's First Set of Interrogatories at 4. His business address

is the same Oklahoma City address, suite number, and phone number, as SFC-MD. Id.

Moreover, as discussed in Intervenors' Motion to Compel of July 28, 1995 at 11, the American Business Directory (1993) lists SFC-MD as a separate entity, and identifies Neal Blue as its CEO. The 1993 Dun & Bradstreet online "Market Identifiers" service also lists SFC-MD as a separate entity whose "corporate family" is GATC. Although SFC and GA have denied the accuracy of this information, the fact that SFC-MD has been identified in two different business directories as a separate organization, combined with the fact that SFC's and SFIC's Vice Presidents for Marketing are the same individual who works out of an office that is separate from SFC, raises a legitimate question regarding the extent to which GA controls SFC's marketing activities through SFIC. To the extent that tax returns for SFC-MD may reflect the financial relationship between SFC and SFIC, they are thus relevant to the issue of GA's control over SFC. Thus, Intervenors have a reasonable basis for seeking to examine tax returns for SFC-MD.

#### **SFC-GFR**

As discussed in Intervenors' Second Set of Requests for Production of Documents to General Atomics at 4 (August 11, 1995), SFC has stated in correspondence with the U.S. Environmental Protection Agency that while SFC owns the processing facility and the land upon which it is located, SFIC owns the "farming business." Letter from Tom Blachly to Mike Hebert at 2 (June 6, 1994). This "farming business" presumably includes SFC-GFR, a ranch where SFC has deposited a large portion of its raffinate waste. It also appears that despite the fact that the farming business is owned by SFIC, it is managed by SFC. See SFC Answers to NRC Staff's First Set of Interrogatories and Requests for Production of Documents, Attachment 1 at 1-9, listing John V. Moore as "Ranch Manager" from June 1986 to the present. Thus, tax returns for SFC-GFR are relevant to the extent that they may

reveal information regarding the financial relationship between SFC and SFIC, and control by GA over SFC through that operation.

**Document Production Request # 4 to GA**

Document Production Request # 4 to GA, as amended by Inter-venors' Memorandum to Maurice Axelrad and Steve Duncan (July 19, 1995), requests GA to:

For the period from November 1, 1988, to the present, and for GA, GAES, GAESLP, GATC, ConverDyn, SFC, SHC, and SFIC, identify and produce all:

- a. Audited and unaudited financial statements;
- b. Quarterly, semi-annual, and annual reports;
- c. Minutes of meetings of the board of directors or its committees which discuss matters relating to SFC;
- d. Minutes of any other committees relating to protection of health and safety or the environment, which discuss matters relating to SFC.

GA first objects to this request on the ground that it seeks documents that were prepared subsequent to the date of the NRC's October 15, 1993, order. GA Response at 6. For the reasons discussed above at pages 3-7, this argument is without merit. Moreover, GA has waived this objection by failing to make any objection to a virtually identical document request by the NRC staff, which asked for various statements, reports, and committee minutes from November 1, 1988 to the present. See GA Response to NRC Staff's First Request for Production of Documents, Request No. 4 (July 15, 1994).

GA also objects to this request on the ground that GAES, GAESLP, GATC and ConverDyn are not parties to this proceeding and do not fall within the corporate structure or relationship between GA and SFC. GA Response at 6. However, as discussed above with respect to Request for Production # 3 to GA, these entities have a relationship to both GA and SFC, because they were created by GA for the purpose of assisting SFC. Thus, the requested documents, which may contain evidence regarding the extent of GA's control over SFC through these entities.

GA further objects to subsection (a) of this request on the ground that it seeks financial documents which are not relevant to the jurisdictional issue. GA Response at 6, SFC Response at 6. However, the financial statements sought in subsection (a) may contain evidence, or lead to the production of relevant evidence, regarding the financial relationships between GA, its subsidiaries and affiliates, and SFC, and thus may lead to the production of admissible evidence regarding the extent of GA's control over SFC.

GA objects to producing the documents requested in subsection (c) on the grounds that the request is "vague, unreasonably broad, unduly burdensome," and "literally seeks a large number of documents that could not possibly be relevant to the issue to be decided in the first stage of the proceeding." GA Response at 6. This request is quite specific, and thus cannot fairly be characterized as "vague." Moreover, GA has provided no basis for asserting that it is burdensome. In addition, the documents requested in subsection (c) are relevant and are reasonably likely to lead to the discovery of relevant evidence because they may contain information regarding the general management of SFC's affairs by GA, either directly or through its subsidiaries or affiliates.

GA also objects to subsection (d) of this request on the grounds that it is "vague, unreasonably broad, unduly burdensome, and seeks documents unrelated to stage one of the proceeding." GA Response at 6. Again, GA provides no basis for its objection that this request is vague or unduly burdensome. Clearly, minutes of meetings in which safety and environmental issues related to SFC are discussed are relevant because they may show management and control by GA of SFC's licensed operations, whether directly or through its subsidiaries or affiliates.

**Document Production Request # 5 to GA**

Document Production Request # 5 to GA requests GA to:

Identify and produce all documents relating to the nature of the corporate legal relationships between GA, GAES, GAESLP, Tenaya Corporation, SFC, SFIC, SHC, and SFC.

GA first objects to this request on the ground that it is vague and unreasonably broad. In response to this objection, Intervenor will modify the request to ask for "all documents establishing or changing the nature of the corporate legal relationships between GA, GAES, GAESLP, Tenaya Corporation, SFC, SFIC, SHC, and SFC." This request is reasonably specific and should be answered.

GA also objects to producing documents relating to GAES, GAESLP, and Tenaya Corporation, on the grounds that they "are not parties to this proceeding" and "do not fall within the corporate structure or relationship between General Atomics and SFC." GA Response at 6. However, as discussed above with respect to Request for Production # 3 to GA, GAES and GAESLP clearly fall within the relationship between GA and SFC. Moreover, the corporate relationship between GA and its second-tier parent, Tenaya, is a relevant subject of discovery in this proceeding, for purposes of understanding the extent and origins of GA's control over SFC, and determining whether GA's role in the management and control of SFC is directed or assumed in any way by its parent. GA's possible indirect control of SFC through Tenaya is indicated by the overlapping directorates of these organizations. For instance, John E. Jones, who was on SFC's board of directors from November 1988 through April of 1992, also served on the board of SFIC from November 1988 to February 1993, and on the board of SHC from November of 1988 to January of 1993. He also went on the board of GAES when it was created in 1992. Sequoyah Fuels Corporation's Answer to NRC Staff's First Set of Interrogatories at page 1-6 (June 28, 1994); General Atomics' Answer to NRC Staff's

First Set of Interrogatories at 3-10 (June 29, 1994). Finally, John E. Jones is also listed as secretary and treasurer of Tenaya Corporation in Tenaya's 1993 Annual Report to the State of Delaware. Thus, it is highly relevant for Intervenors to inquire into the nature of the corporate relationships among these entities.

**Document Production Request # 7 to GA**

Document Production Request # 7 requests GA to:

Identify and produce all documents relating to each communication between GA, SHC, SFIC, or any other non-SFC entity or person, and each person or entity performing duties, work, or assignments on behalf of SFC or with respect to the SFC site.

In their July 19 Memorandum, in response to a complaint from GA, Intervenors narrowed the phrase "on behalf of SFC" to "which benefited SFC." However, GA now objects to this request on the ground that the word "communication" is vague, unreasonably broad, and unduly burdensome. GA Response at 7. With respect to the alleged vagueness of the term "communication," this is a commonly used term which refers to contacts between individuals, including correspondence, conversations, and electronic mail. GA does not explain the basis for its objection that this request is unreasonably broad and unduly burdensome, nor is any basis evident. The request should be answered.

**Document Production Request # 9 to GA**

Document Production Request # 9 to GA requests GA to:

Identify and produce all documents relating to any direct or indirect transfer or disposition of assets or earnings of SFC during the period November 1, 1988 through the present, to, GA, SHC, SFIC, SFC-MD, SFC-GFR, GAES, GAESLP, Tenayan [sic] Corporation, or any other direct or indirect subsidiary or affiliate of GA.

GA objects to this request with respect to documents relating to GAES, GAESLP, and Tenaya Corporation, on the ground that they are "not parties to this proceeding" and "are not part of the corporate structure" between GA and SFC. GA Response at 8.

However, as discussed above with respect to Requests for Production ## 3 and 5 to GA, discovery regarding these entities is relevant.

GA also objects to this discovery to the extent that documents are in the control of another corporate entity and not GA. Id. However, under the Federal Rules of Evidence, which provide general guidance for NRC discovery, Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-83-17, 17 NRC 490, 494-95 (1983), GA must produce documents that are in its "possession, custody or control." F.R.C.P. 34. This includes documents in the possession of its subsidiaries, SHC and SFIC. George Hantscho Co. v. Miehle-Goss-Dexter, Inco., 33 F.R.D. 332, 334-35 and note 14 (S.D.N.Y. 1963) See also Standard Insurance Co. v. Pittsburgh Electrical Insulation, Inc., 29 F.R.D. 185, 188 (W.D. Pa. 1961), in which a parent corporation defendant was ordered to produce its subsidiary's documents where the defendant owned 100% of stock of the subsidiary, both corporations occupied the same premises, and the defendant's office manager was in charge of the subsidiary's books and records. Similarly, in this case, GA owns 100% of the stock of its subsidiary SHC, which in turn owns 100% of the stock of its subsidiary SFIC. As discussed above, these corporations also have overlapping directorates. Moreover, neither SHC nor SFIC have any purpose other than to facilitate GA's indirect ownership of SFC. Thus, GA has control over these subsidiaries and should be required to produce responsive documents in their possession.

In addition, GA objects to this request as it pertains to SFC-MD and SFC-GFR, referencing its response to Request for Production No. 3. However, as discussed above with respect to Request for Production Request # 3, discovery regarding these entities is relevant.

**Document Production Request # 10 to GA**

Document Production Request # 10 to GA requests GA to:  
Identify and produce all documents relating to the  
"draft agreement" referenced in paragraph 32 on page 12  
of GA's Answer and Request for Hearing.

GA objects to this request on the ground that it "seeks certain documents which are protected by the attorney-client privilege." However, GA has failed to comply with, or to object to, Intervenor's instruction that:

If you withhold any document covered by this request under a claim of privilege, immunity, or for any other reason, please furnish a list identifying each document for which the privilege, immunity, or other reason is asserted, together with the following information: date, author, recipient, persons to whom copies were furnished and the job title of any such persons, the subject matter of the documents, the basis for asserting the privilege, immunity, or other reason, and the name of the person on whose behalf the privilege, immunity, or other reason is asserted.

Intervenor's First Set of Interrogatories and Request for Production of Documents to GA at 2-3 (July 10, 1995). GA should be ordered to comply with this instruction.

GA also objects to this request on the ground that the documents that it seeks would have "no probative value" regarding the jurisdictional issue. GA Response at 8. However, the draft agreement was created for the purpose of fulfilling GA Chairman Neal Blue's oral commitments to the NRC to provide decommissioning funding for SFC. As the Board has ruled, Mr. Blue's statements are material to the jurisdictional question. See Memorandum and Order (Denying General Atomics' Motion Regarding NRC Staff "Reliance" Issues and Establishing Schedule for Bifurcated Issue of Agency Jurisdiction) (June 30, 1995). Documents related to the Draft Agreement are relevant because they may show the manner in which GA exercised control over decommissioning funding for SFC.

**Document Production Request # 11 to GA**

Document Production Request # 11 to GA requests GA to:

Identify and produce all documents relating to the direct or indirect management or supervision by GA of SFC's operations and activities under NRC Materials License No. SUB-1010.

GA objects to Intervenor's refusal to eliminate the word "supervision" from this request, on the ground that it is vague, unreasonably broad, and unduly burdensome.

This objection is without merit. The word "manage" is defined in Webster's New Universal Unabridged Dictionary (Deluxe Second Edition, 1983) as, inter alia, "to have charge of; to direct; conduct; administer." The word "supervise" is defined as, inter alia, "to oversee or direct (work, workers, a project, etc.); to superintend." While these words have overlapping meanings, the term "manage" may be read to infer closer involvement than the term "supervise," which may be read to infer oversight rather than direct managerial involvement. Intervenor seeks to review documents related both to GA's oversight and management roles with respect to SFC, as both roles are relevant to the question of the extent of GA's control over SFC's activities.

**Document Production Request ## 12 and 13 to GA**

Document Production Request # 12 to GA requests GA to:

Identify and produce all documents issued or approved by GA relating to the establishment or change of any of SFC's NRC license terms; measures for protection of health, safety or the environment; operational methods; or corporate policies, strategies, goals, or objectives.

Document Production Request # 13 to GA requests GA to:

Identify and produce all corporate standards, criteria, and procedures issued or approved by GA related to the protection of health, safety, and the environment at the SFC plant.

GA objects to both document production requests 12 and 13 on the grounds that they make "no distinction between activities per-

formed by General Atomics that were required by law, and activities which General Atomics elected to engage in and for which was paid by SFC." GA Response at 9. However, GA does not explain the basis for the distinction it perceives in these two subject areas; nor is it even clear which area GA considers to be relevant, and which area it considers to be irrelevant. Both areas of inquiry are relevant: first, it is relevant to inquire what degree of control by GA is mandated by SFC's license, and second, it is relevant to inquire to what extent GA went beyond the terms of the NRC license to exercise control over SFC.

With respect to the first area, the degree of control mandated by SFC's license, it is clear from SFC's license that GA has significant responsibilities for the establishment of standards, criteria, procedures, and policies for the operation of SFC. For example, Section 2.1 of the license states that:

The Corporate<sup>4</sup> Manager, Health Physics shall be responsible for establishing corporate radiation health and safety standards and procedures, and coordinating them with managers and executive directly affected. Corporate radiation health and safety standards and procedures shall require the approval of the Corporate Vice President, Human Resources.

The Corporate Manager, Health Physics shall publish and maintain the Corporate Radiation Health and Safety Manual. This manual shall contain corporate radiation health and safety standards and procedures, and radiation exposure limits for all employees and other persons (e.g., visitors, contractors, etc.) potentially subject to such exposure from company operations.

License SUB-1010 (as amended April 9, 1993). Section 2.2 also refers to the responsibility of the Corporate Director, Licensing, Safety and Nuclear Compliance, to verify compliance with various standards, including "corporate policies." Id.

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<sup>4</sup> Although GA and SFC are both corporations, SFC's license uses the term "corporate" to identify positions or functions associated with GA.

With respect to the second area, it is relevant for Intervenor to inquire into the extent to which GA went beyond the scope of its licensed responsibilities in setting standards and policies for the troubled SFC plant, in attempts to ensure that it would be allowed to continue to operate. Accordingly, it is relevant for Intervenor to seek the production of all documents related to GA's standards, procedures, policies, and criteria for the SFC plant.

Moreover, GA has provided no information supporting its claim that this request is "unreasonably vague and broad." This document production request is reasonably specific, and any burden on GA is more than outweighed by the importance of these questions to the jurisdictional issue. Accordingly, the requested documents should be produced.

**Document Production Request # 14 to GA**

Document Production Request # 14 to GA requests GA to:

Identify and produce all documents relating to corporate standards, criteria, and procedures related to the protection of health, safety, and the environment at the SFC plant.

GA objects to this request on two grounds. First, GA argues that the request is irrelevant to the jurisdictional question. As discussed above with respect to Document Production Requests ## 12 and 13, this argument has no merit. Second, GA objects that the term "corporate" is too vague, because it is unclear whether the term applies to GA or SFC. However, as indicated in SFC's license, the term "corporate" refers to standards issued or approved by GA. This request should be answered.

**Document Production Request # 15 to GA**

Document Production Request # 15 to GA requests GA to:

With respect to each and every GA official identified in Section 2.2 of SFC's license, identify and produce all documents relating to the establishment or implementation of his/her responsibilities and authorities, including but not limited to procedures and programs, reports, audit results, correspondence, and records of conversations.

GA objects to this request on the grounds that it is "vague, unreasonably broad and unduly burdensome," and may not yield documents that are relevant to the jurisdictional issue. GA Response at 10. This document production request is intended to assist Intervenors in determining the extent of GA officials' day-to-day control and involvement in the activities of SFC, as dictated by the terms of SFC's license. Thus, it is highly relevant to the jurisdictional question. Moreover, contrary to GA's assertion, the request does not seek the production of documents that have no relation to GA's activities with respect to SFC, but is specifically focused on GA's responsibilities under the SFC license. Finally, GA itself has challenged the NRC's assertion that it has extensive day-to-day involvement in SFC's affairs in its Answer and Request for Hearing at 12-13 (November 2, 1993), and thus has opened the area to discovery. Accordingly, Intervenors' document request is relevant.

**Document Production Request # 17 to GA**

Document Production Request # 17 to GA requests GA to:

Identify and produce all documents relating to the establishment and implementation of the independent overview functions performed by the Corporate Vice President, Human Resources and his/her designees, as described in Section 2.3 of SFC's license.

GA objects to this request on the grounds that it is unreasonably broad, burdensome, vague, and irrelevant. GA Response at 11. GA's objection itself is vague and unsupported. This document request is focused and specific, and is intended to yield relevant information regarding on GA's exercise of control over SFC through the exercise of its independent overview functions as provided in SFC's license. Moreover, contrary to GA's argument, this request is not merely a more specific reiteration of document request # 11. It is not clear whether, in answering request # 11, GA would interpret the terms "management" and "supervision" to include the concept of "overview" which is contained in Sec-

tion 2.3 of SFC's license. Moreover, this request asks for documents regarding the implementation and establishment of GA's overview functions, while request # 11 asks only for information regarding the implementation of GA's management and supervision functions.

**Document Production Request # 18 to GA**

Document Production Request # 18 to GA requests GA to: With respect to SFC, SFC-MD, or SFC-GFR, identify and produce any and all documents authored or received by GA that discuss staffing, organizational structure, operations, or adequacy of programs and standards for the protection of health and safety or the environment.

GA objects to this request on several grounds. First, GA contends that to the extent that the requested documents relate to "the internal organization of SFC," it does not relate to the jurisdictional issue. GA Response at 11. However, the very purpose of this request is to determine the extent of GA's involvement in the internal affairs of SFC, which is a central jurisdictional issue. Second, GA contends that the request is unduly broad and burdensome, and would require the production of "voluminous company files containing documents sent by SFC and received by several different company personnel over a several year period and relating to routine matters which have no relationship to the first stage of the proceeding." *Id.* It appears from this answer that there are not many, but only "several" GA personnel whose files must be examined for the requested information. The fact that the requested files are voluminous is not a valid reason to deny discovery. In fact, the sheer volume of correspondence regarding the day-to-day or "routine" activities of SFC may constitute evidence of GA's control over SFC's activities, thus supporting a finding of jurisdiction over GA.

GA also objects to this request to the extent that it applies to documents created before November 1, 1988. However, Intervenor's have demonstrated the relevance of this discovery, and thus it should be allowed. See discussion above at page 7.

Finally, GA objects to this request to the extent that it seeks documents related to SFC-MD or SFC-GFR. As discussed above with respect to Document Production Request # 3, this objection is also without merit.

**Document Production Request # 19 to GA**

**Document Production Request # 11 to SFC**

Document Production Request # 19 to GA requests GA to:

Identify and produce all documents relating to the purchase of SFC from Kerr-McGee Corporation in 1988, including but not limited to notes and memoranda, contracts, agreements, correspondence, minutes of shareholder and directors' meetings, and any and all analyses of the purchase, whether prepared before or afterwards.

Document Production Request # 11 to SFC requests SFC to:

Identify and produce all documents relating to the purchase of SFC from Kerr-McGee Corporation in 1988, including but not limited to contracts, agreements, correspondence, minutes of shareholder and directors' meetings, and any and all analyses of the purchase.

GA and SFC argue that these requests seeks information which is irrelevant to the issue of the NRC's jurisdiction over GA. GA Response at 12, SFC Response at 11.

GA and SFC have waived this objection, by failing to make it to the NRC staff when the staff propounded an identical discovery request. GA's Response to the NRC Staff's First Request for Production of Documents, Request No. 2 (July 15, 1994); SFC's Response to NRC Staff's First Request for Production of Documents, Request No. 2 July 15, 1994).

In any event, their argument is incorrect. Documents relating to the purchase of SFC from Kerr-McGee can reasonably be expected to yield relevant evidence regarding GA's intentions with respect to the degree of control that it would exercise over SFC.

Moreover, GA itself has asserted that the circumstances of its purchase of SFC are relevant to the reliability of statements

by GAO Chairman Neal Blue regarding GA's commitment to guarantee decommissioning funding.<sup>5</sup> The Board has ruled that Mr. Blue's statements are relevant to the jurisdictional issues in this phase of the hearing. Memorandum and Order (Denying General Atomics' Motion Regarding NRC Staff "Reliance" Issues and Establishing Schedule for Bifurcated Issue of Agency Jurisdiction) at 13-14. Thus, GA and SFC have no grounds for objecting to this discovery.

SFC also objects to this request on the ground that it is overly broad and unduly burdensome, and argues that Intervenor should have limited their request to any documents that bear on the alleged relationship between the purchase and the jurisdictional question. SFC Response at 11. However, the rules do not limit discovery only to documents that the respondent determines are relevant, but to documents that can be reasonably calculated to lead to the discovery of relevant evidence. Intervenor has framed a reasonable discovery request related to a transaction that fundamentally established the relationship between GA and SFC: GA's purchase of SFC from Kerr-McGee. Thus, it is reasonably likely to lead to the production of relevant evidence with respect to the issue of jurisdiction.

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<sup>5</sup> In its answer to the NRC's October 15, 1993, order, GA argued that Mr. Blue's statements

must be viewed in the context of GA's acquisition of SFC; that, in connection with this acquisition, NRC fully understood and accepted that GA explicitly refused to furnish any guarantee for D&D of the SFC facility; and that the SFC License makes only SFC financially responsible for D&D.

GA's Answer and Request for Hearing at 17 (November 2, 1993) (emphasis added). GA made this argument again in moving for summary disposition or dismissal on the jurisdictional issue. Brief in Support of General Atomics' Motion for Summary Disposition or for an Order of Dismissal at 38-41 (February 17, 1994).

**Document Production Requests ## 20, 21, 22 and 23 to GA**

**Document Production Request # 12 to SFC**

Document Production Request # 20 to GA requests GA to: Identify and produce all documents which were in GA's possession at the time of its purchase of SFC, regarding the nature and extent of chemical and radioactive contamination at the SFC site.

Document Production Request # 21 to GA requests GA to: Identify and produce all documents which discuss GA's consideration of whether or not to investigate the nature and extent of chemical and radioactive contamination at the SFC site prior to purchasing SFC.

Document Production Request # 22 to GA requests GA to: Identify and produce all documents prepared before the purchase of SFC which relate to estimates of the costs of decommissioning the SFC facility.

Document Production Request # 23 to GA requests GA to: Identify and produce all documents relating to reports of the financial condition of SFC at the time it was purchased by GA.

Document Production Request # 12 to SFC requests SFC to: Identify and produce all documents which SFC provided to GA at the time of GA's purchase of SFC, regarding the nature and extent of contamination at the SFC site.

Both GA and SFC object to these requests on the grounds that they seek information beyond the scope of the Phase I jurisdictional issues. GA Response at 12-13, SFC Response at 11. As discussed above with respect to Request # 19 to GA and Request # 11 to SFC, however, these requests are relevant to the "context" of GA's purchase of SFC, which GA asserts is relevant to the nature of GA's commitment to provide decommissioning funding for SFC. They also relate to the issue of GA's control over SFC. As discussed in Native Americans for a Clean Environment's Opposition to General Atomics' Motion for Summary Disposition or for an Order of Dismissal at 31 (April 13, 1994), there is significant evidence that GA knew, or should have known, that the SFC site

was severely contaminated when it was purchased in 1988. If GA simply used SFC as a shield against liability that it did not want to assume for potentially enormous cleanup costs, this would show that GA controlled SFC to the extent that SFC was simply an alter ego for GA.

Moreover, if GA withheld such material information from the NRC, and deliberately used its corporate form "to defeat an overriding public policy," i.e., the NRC's policy of ensuring that licensees have adequate funding to clean up the contamination of their sites, it would be appropriate for the NRC to disregard the corporate form and assert jurisdiction over GA. Bangor Punta Operations, Inc. v. Bangor & Aroostook RR Co., 417 U.S. 703, 713, 94 S.Ct. 2578, 2584 (1974), Alman v. Danin, 801 F.2d 1, 3-4 (1st Cir. 1986).

Thus, by GA's own assertion, information regarding the circumstances of GA's purchase of SFC is relevant to this proceeding because it establishes the "context" for GA's commitments to the NRC. It also bears on the extent of GA's control over SFC, and question of whether the NRC can pierce the corporate veil to assert jurisdiction over GA. Accordingly, it is relevant to the jurisdiction issues in this case.

GA also objects that these requests seek information which predates the purchase of SFC. Id. However, the relevance of discovery into the circumstances of GA's purchase of SFC has been demonstrated above, and thus the requests should be allowed. See discussion at page 5, supra.

Finally, GA objects, without explanation, that these requests are unreasonably broad. Id. However, each of these requests is quite specific and focused. Thus, they should be answered.

**Document Production Requests ## 24 and 25 to GA**

Document Production Request # 24 to GA requests GA to:  
Identify and produce all documents related to the crea-  
tion of GAESLP.

Document Production Request # 25 to GA requests GA to:  
Identify and produce all documents relating to the  
transfer or interests and/or assets from GAES to  
GAESLP.

GA objects to both of these requests on the grounds that they seek information regarding a private business entity which is not a party to this proceeding and which "does not lie anywhere in the corporate relationship" between GA and SFC. As discussed above with respect to Document Production Request # 3, this argument is without merit. Moreover, it is of no significance that GAES and GAESLP are not named parties -- neither SFIC nor SHC are named parties, yet GA does not deny the relevance of their corporate structure and formation to this case.

**Document Production Requests ## 26-31 to GA**

**Document Production Requests ## 17-22 to SFC**

Document Production Request # 26 to GA requests GA to:  
Identify and produce all documents showing ownership of  
real property in Sequoyah County, Oklahoma, by GA,  
GAES, GAESLP, GATC, Tenaya Corporation, SHIC, SFC, SFC-  
MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 27 to GA requests GA to:  
Identify and produce all documents showing ownership of  
real property in Muskogee County, Oklahoma, by GA,  
GAES, GAESLP, GATC, SHIC, Tenaya Corporation, SFC, SFC-  
MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 28 to GA requests GA to:  
Identify and produce all documents showing ownership of  
real property in McIntosh County, Oklahoma, by GA,  
GAES, GAESLP, GATC, SHIC, Tenaya Corporation, SFC, SFC-  
MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 29 to GA requests GA to:

Identify and produce all documents showing the transfer of ownership of real property in Sequoyah County, Oklahoma, by GA, GAES, GAESLP, GATC, SHIC, Tenaya Corporation, SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 30 to GA requests GA to:

Identify and produce all documents showing the transfer of ownership of real property in Muskogee County, Oklahoma, by GA, GAES, GAESLP, GATC, SHIC, Tenaya Corporation, SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 31 to GA requests GA to:

Identify and produce all documents showing the transfer of ownership of real property in McIntosh County, Oklahoma, by GA, GAES, GAESLP, GATC, Tenaya Corporation, SHIC, SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 17 to SFC requests SFC to:

Identify and produce all documents showing ownership of real property in Sequoyah County, Oklahoma, by SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 18 to SFC requests SFC to:

Identify and produce all documents showing ownership of real property in Muskogee County, Oklahoma, by SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 19 to SFC requests SFC to:

Identify and produce all documents showing ownership of real property in McIntosh County, Oklahoma, by SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 20 to SFC requests SFC to:

Identify and produce all documents showing the transfer or ownership of real property in Sequoyah County, Oklahoma, to or from SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 21 to SFC requests SFC to:

Identify and produce all documents showing the transfer of ownership of real property in Muskogee County, Oklahoma, to or from SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

Document Production Request # 22 to SFC requests SFC to:

Identify and produce all documents showing the transfer of ownership of real property in McIntosh County, Oklahoma, to or from SFC, SFC-MD, or SFC-GFR, since November 1, 1988.

All of these document production requests seek information regarding the ownership and transfer of real property at or in the vicinity of the SFC site by GA and its subsidiaries, parents and affiliates. GA and SFC object to them on several grounds. First, GA and SFC assert that the information sought by the requests is irrelevant to the jurisdictional phase of this proceeding. GA Response at 14, SFC Response at 12. However, GA's direct or indirect ownership (i.e., through its subsidiaries, affiliates, or parents) of real property on which SFC conducts its business is a relevant indicator of the degree to which GA controls SFC's activities.

GA also objects that these requests seek information related to private entities which are not parties to this proceeding and do not form part of the corporate relationship between GA and SFC. GA Response at 14. As discussed above with respect to Document Production Requests ## 3 and 5, this objection is without merit.

GA also objects to the extent that this request seeks information postdating the NRC staff's October 15, 1993 order. Id. As discussed above at pages 3-7, this objection is also without merit.

Finally, SFC objects that answering these request would require "research efforts" by SFC and impose an unreasonable burden "under the circumstances, because no such documents are relevant to Phase I." SFC Response at 12-13. Intervenors do not seek any "research efforts," but merely ask SFC to produce records of property ownership and transfers that are in their possession. Moreover, the requested documents are clearly relevant, and thus, "under the circumstances," Intervenors' request does not impose any undue burden on SFC. Finally, con-

trary to SFC's argument, SFC's responses to Requests ## 5 and 7, which relate to the corporate structure and relationships between GA and its affiliates, subsidiaries, and parents, are not responsive to these requests regarding property ownership and transfers.

**Document Production Request # 3 to SFC**

Document Production Request # 3 to SFC requests SFC to: Identify and produce all documents relating to the corporate relationship between GA, GAES, GAESLP, GATC, SHC, SFIC, and SFC.

SFC objects to this request on the grounds that it is overly broad, vague, unduly burdensome and irrelevant to Phase I, because "corporate legal relationship" is not defined and this request could potentially call for thousands of documents. SFC Response at 5. SFC also refers Intervenors to its answer to Request for Production # 5, which asks for documents relating to the "creation of the parent-subsubsidiary structure or legal relationships between SFC and GA, SFIC, and SHC." In response to this objection, Intervenors will amend this request to ask for documents relating to "the creation of or any subsequent changes to the parent-subsubsidiary structure or legal relationships between GA, GAES, GAESLP, GATC, SHC, SFIC, and SFC."

**Document Production Request # 4 to SFC**

Document Production Request # 4 to SFC requests SFC to: For the period from November 1, 1988, to the present, and for SFC, SHC, SFIC, ConverDyn, and SFC-MD, identify and produce all:

- a. Audited and unaudited financial statements;
- b. Quarterly, semi-annual, and annual reports;
- c. Minutes of meetings of the board of directors or its committees;
- d. Minutes of any other committees relating to protection of health and safety or the environment.

SFC objects to request 4(a) on grounds of relevance, arguing that its financial condition is not relevant to NRC's regulatory authority over GA. SFC Response at 6. However, as

discussed above with respect to Document Production Request # 4 to GA, financial statements for SFC, SHC, SFIC, ConverDyn, and SFC-MD, are likely to contain information regarding the financial relationships between these entities, and thus are relevant to the issue of GA's control over SFC.

SFC also argues that to the extent any financial statements reflect or describe intercompany transfers that might arguably be viewed as relevant to Phase I, the production of such documents would be cumulative and unnecessarily duplicative. In support of this argument, SFC refers to Request for Production # 27, which asks SFC to produce

all documents relating to any direct or indirect transfer or disposition of assets or earnings of SFC during the period November 1, 1988 through the present, to GA, GAES, GAESLP, Tenaya Corp., SHC, SFIC, SFC-MD, SFC-GFR, or any other direct or indirect subsidiary or affiliate of GA.

In its response to Request # 27, SFC agrees to produce those documents that it produced to the NRC staff in response to the staff's Request No. 10, subject to the terms and conditions agreed to in the 1994 Discovery Agreement with the NRC staff and limited to the scope of Request No. 10 (i.e., transfers to GA, SHC, SFIC, or any other direct or indirect subsidiary of GA.) SFC Response at 15.

Although Requests ## 4(a) and 27 may overlap somewhat, Request # 27 is narrower, and thus is not an adequate substitute for # 4(a). Request # 4(a) seeks financial statements which presumably would show all transfers of assets or earnings between SFC, GA, and GA's affiliates and subsidiaries. Request # 27 only seeks documents showing the transfer of assets and earnings from SFC to GA and its affiliates and subsidiaries, and not the other way. In order to achieve the objective of Request # 4(a) and address SFC's objection, Intervenor will consolidate Request 4(a) into Request 27 by modifying Request 27 to ask SFC to produce, for the period from November 1, 1988, to the present:

all documents relating to

(a) any direct or indirect transfer or disposition of assets or earnings of SFC to GA, GAES, GAESLP, Tenaya Corp., SHC, SFIC, SFC-MD, SFC-GFR, or any other direct or indirect subsidiary or affiliate of GA, including records of compensation or benefits to employees or contractors;

(b) any direct or indirect transfer or disposition of assets or earnings of GA, GAES, GAESLP, Tenaya Corp., SHC, SFIC, SFC-MD, SFC-GFR, or any other direct or indirect subsidiary or affiliate of GA, to SFC, including records of compensation or benefits to employees or contractors.

In modifying this request, Intervenors do not agree to the terms and conditions imposed on the NRC staff's Request No. 10, which SFC proposes to impose on Request # 27. SFC Response at 15. Intervenors note that SFC has not raised any objection to justify this proposed limitation. Moreover, the limitation is unreasonable. SFC proposes to omit from its response "any documents relating to payments among SFC, GA, SHC or SFIC in accordance with the inter-company arrangements produced under [NRC] Request # 5." SFC Response at 15, citing letter from Maurice Axelrad to Steven R. Hom, Enclosure 1 at 1-6 (June 15, 1994). The only inter-company arrangements which SFC has agreed to produce under Request # 5 relate to the "methodology for payment." Id. at 1-5. Presumably such documents would cover the procedures for, but not necessarily the substance of, such transfers. While Intervenors do not necessarily seek every canceled check and pay slip that passed between SFC, GA, and GA's related corporations, and will accept contracts or summary documents where they exist, Intervenors seek the production of all documents which reflect what assets or services were transferred, the amount or value or the transfers, and when those transfers took place. Moreover, in addition to the documents that SFC says it will produce regarding transfers or disposition of assets or earnings [SFC Response at

16], SFC should be required to produce all management agreements regarding those transfers and dispositions.

Moreover, the Board should overrule SFC's objection to responding to Requests ## 4 and 27 insofar as it requests documents related to GAES, GAESLP, Tenaya Corp., SFC-MD, and SFC-GFR. See discussion of Document Production Requests ## 3 and 5 to GA, above.

SFC objects to Request # 4(c) on the ground that the request calls for a great number of documents that are totally unrelated to the jurisdictional issues. It may be presumed, however, that the minutes of the SFC board and its committees are key corporate documents in which the operations of SFC are discussed, and in which instruction and supervision from GA are likely to be reflected. Thus, they are relevant to this phase of the proceeding.<sup>6</sup>

SFC also objects to Request 4(d) on the ground of relevance. However, because minutes of SFC committee meetings regarding health and safety may discuss GA's role in the health and safety and environment-related activities at SFC, discovery of these minutes can be reasonably calculated to lead to the production of admissible evidence regarding GA's control over SFC's activities, and thus should be required.

**Document Production Request # 7 to SFC**

Document Production Request # 7 to SFC requests SFC to:  
Identify and produce all documents relating to communication during the period from November 1, 1988, to the present, by GA, SHC, or SFIC, to any directors, officers, managers, or contractors who performed duties, work, or assignments on behalf of SFC or at the SFC site.

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<sup>6</sup> SFC also refers Intervenors to various other requests for documents as a source of the information that Intervenors seek. However, not only are these requests different in nature, but SFC also objects to them.

SFC objects that this request is vague, overly broad, unduly burdensome, and would impose unreasonable expense and hardship on SFC. First, SFC claims that the term "communication" is not defined and thus the request would cover any kind of communication between SFC and GA, SHC, or SFIC. SFC Response at 8. However, one of the purposes of this request is to determine the nature and extent of GA's oversight of SFC's operations. If there are voluminous records of contacts on a variety of subjects related to SFC's operations, this is relevant evidence of GA's involvement in SFC's operations.

SFC also claims that some GA employees were temporarily assigned to positions at SFC in managerial roles during relevant times, and therefore this request would call for every communication they ever made in their capacities as SFC managers. Id. Again, the degree to which GA managers move back and forth from GA to SFC is also relevant to the question of GA's involvement in and control over SFC's operation.

Finally, SFC's claim that the request is so vague and overbroad that "SFC is not capable of identifying the documents that are requested" is not credible. Id. While the document request may lead to the production of a large number of documents, it is stated in a focused and specific manner. Thus, SFC should be able to identify the requested communications. See the discussion of Request for Production # 7 to GA above.

**Document Production Request # 8 to SFC**

Document Production Request # 8 to SFC requests SFC to:

Identify and produce all documents relating to the direct or indirect management or supervision by GA of SFC's operations and activities under NRC Materials License No. SUB-1010.

SFC makes two objections to this request. First, it argues that because some GA personnel were assigned to management positions at SFC, this request would unreasonably encompass "virtually every action taken by such a person, serving in a capacity as

manager within the internal SFC corporate structure." SFC Response at 9. SFC would have Intervenor's adopt the same limitation as was adopted by the NRC staff, which was to exclude from the request any individuals who are identified in response to the staff's first interrogatory to SFC as directors, officers, or managers of SFC at any time. Id. However, a number of SFC directors, officers or managers also served at the same time as directors, officers or managers of GA or its subsidiaries. Thus, the result of this limitation would be to unreasonably exclude information about instances in which those individuals took managerial or supervisory actions over SFC in their capacity as officials of GA or other non-SFC subsidiaries. Accordingly, the proposed limitation would unreasonably exclude relevant information.

SFC also objects to Intervenor's refusal to remove the term "supervision" from this request. As discussed above with respect to Document Production Request # 7 to GA, however, this objection is without merit.

**Document Production Request # 9 to SFC**

Document Production Request # 9 to SFC requests SFC to:

With respect to SFC, SFC-MD, or SFC-GFR, identify and produce any and all records of contacts with GA regarding staffing, organizational structure, operations, or adequacy of programs and standards for the protection of health and safety or the environment.

SFC objects to this request on the ground that it is overly broad, unduly burdensome, duplicative, and irrelevant to Phase I. However, for the same reasons discussed above with respect to Document Production Requests ## 7 and 8 to SFC, this request is relevant and reasonable. Moreover, it is not duplicative of Request for Production # 7. While Request # 7 asks for communications by GA or its subsidiaries to SFC personnel or contractors who performed work on behalf of SFC or at the SFC site, this request seeks records of all contacts between SFC, SFC-MD and

SFC-GFR with GA regarding "staffing, organizational structure, operations, or adequacy of programs and standards for the protection of health and safety or the environment." Although there may be some overlap in the documents produced in response to this request, they are not duplicative.

**Document Production Request # 13 to SFC**

Document Production Request # 13 to SFC requests SFC to:  
Identify and produce all documents related to the creation of SFC-MD.

SFC objects that this request calls for documents "relating to the internal organization of SFC that does not relate to GA and is irrelevant to Phase I of this proceeding." SFC Response at 11. As discussed above with respect to Request to GA # 3, this objection is baseless.

**Document Production Request # 14 to SFC**

Document Production Request # 14 to SFC requests SFC to:  
Identify and produce all documents related to the creation of SFC-GFR.

SFC objects to this request on the ground that "it calls for documents relating to the creation of an entity that does not exist." SFC Response at 12. According to SFC, Georges Fork Ranch "is not an organization but is merely an informal name used to refer to some of all land now owned by SFIC." Id. However, although SFC-GFR may not be an independent corporate entity, it is a place that is used by SFC for its operations (i.e., to dispose of raffinate waste), but that is actually owned by SFIC, the second-tier subsidiary of GA. Moreover, it appears to have been created at the time that GA bought SFC. Discovery of documents regarding the creation of SFC-GFR may be reasonably calculated to lead to the discovery of admissible evidence regarding GA's control through its subsidiary, SFIC, of waste disposal operations at SFC. Thus, and for all the reasons discussed above in relation to Request for Production # 3, SFC's objection to this request is without merit.

**Document Production Request # 15 to SFC**

Document Production Request # 15 to SFC requests SFC to:  
Identify and produce all documents establishing or discussing the corporate relationship between SFC and SFC-MD.

SFC objects to this request on the grounds that it is overly broad, unduly burdensome, calls for documents relating to the internal organization of SFC that does not relate to GA, and is irrelevant to Phase I of this proceeding. SFC Response at 12. As discussed above with respect to Request for Production # 3, SFC's objection to the relevance of discovery regarding SFC-MD is baseless. Nor has SFC justified the alleged burdensomeness of this discovery. However, in light of SFC's representation that SFC-MD is not a separate corporate entity, and in light of SFC's objection that the purely internal workings of SFC are irrelevant, Intervenor will rephrase this request to ask for:

all documents establishing or discussing the role played by SFIC in the management or operation of SFC-MD.

**Document Production Request # 16 to SFC**

Document Production Request # 16 to SFC requests SFC to:  
Identify and produce all documents establishing or discussing the corporate relationship between SFC and SFC-GFR.

SFC objects to this request on grounds of relevance, stating that SFC-GFR is not an organization but is merely an informal name used to refer to some of SFIC's property. SFC Response at 12. The relevance of Intervenor's requested discovery regarding SFC-GFR is discussed above with respect to Request for Production # 3. In light of SFC's statement that SFC-GFR is not an organization, Intervenor will modify this request to seek:

all documents which discuss the management by SFC or its employees of activities at SFC-GFR or any other farming operations owned by SFC.

**Document Production Request # 27 to SFC**

Document Production Request # 27 to SFC requests SFC to:  
Identify and produce all documents relating to any direct or indirect transfer or disposition of assets or earnings of SFC during the period November 1, 1988 through the present, to GA, GAES, GAESLP, Tenaya Corp., SHC, SFIC, SFC-MD, SFC-GFR, or any other direct or indirect subsidiary or affiliate of GA.

Intervenors' motion to compel a more complete response to this request is discussed in relation to Request # 4(a) above.

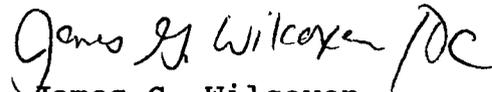
**CONCLUSION**

For the foregoing reasons, GA and SFC should be required to produce the documents requested in the aforementioned document production requests.

Respectfully submitted,



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August 17, 1995

CERTIFICATE OF SERVICE

I certify that on August 17, 1995, copies of the foregoing INTERVENORS' MOTION TO COMPEL GENERAL ATOMICS AND SEQUOYAH FUELS CORPORATION TO ANSWER INTERVENORS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS were served by fax and/or first-class mail on the following, as indicated below:

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\*Administrative Judge James P. Gleason  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\*Administrative Judge G. Paul Bollwerk  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

\*Administrative Judge Jerry R. Kline  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

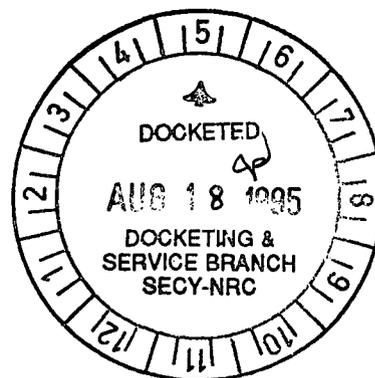
\*Administrative Judge Thomas D. Murphy  
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