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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'95 AUG 30 P3:01

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James P. Gleason, Chairman

Dr. Jerry R. Kline

G. Paul Bollwerk, III

Thomas D. Murphy

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
FRANCH

In the Matter of )

SEQUOYAH FUELS CORPORATION )  
and GENERAL ATOMICS )

(Sequoyah Facility in )  
Gore, Oklahoma) )

Docket No. 40-8027-EA

August 29, 1995

**GENERAL ATOMICS' OPPOSITION TO THE INTERVENORS'  
RESPONSE TO THE JOINT MOTION FOR AN ORDER  
TEMPORARILY STAYING ALL ACTIVITIES IN THE PROCEEDING  
IN ORDER TO PERMIT THE PARTIES TO ENGAGE IN  
SETTLEMENT DISCUSSIONS**

General Atomics respectfully submits its response as set forth below to Native Americans for a Clean Environment's and Cherokee Nation's August 28, 1995 Response to the Joint Motion for an Order Temporarily Staying All Activities In The Proceeding In Order For The Parties To Engage In Settlement Discussions.

By their response, the Intervenor's seek to impose unnecessary and unreasonable conditions on a requested order of the Atomic Safety and Licensing Board ("Board") which would, by any standard, be in the best interests of all parties to this proceeding and to the public.

The Joint Motion of the NRC Staff and General Atomics seeks no partisan advantage for any party. It seeks no unreasonable delay

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of this proceeding. It seeks nothing more than what the law, the express policy of the Nuclear Regulatory Commission, and common sense encourage -- amicable discussions between litigants in an effort to resolve complex and highly contentious issues.

It is a fact that no hearing date has been set in this proceeding. It is a fact that the Intervenorors have not contended, nor could they contend that any person or the environment would be in any danger if this proceeding is temporarily delayed to permit the primary parties an opportunity to explore a possible settlement. The only time pressures which exist in this proceeding are discovery cutoff dates, which can be easily adjusted by the Board.

Both conditions which the Intervenorors seek to impose are unacceptable to General Atomics. The demand of the Intervenorors that the NRC Staff and General Atomics demonstrate -- within 14 days of the issuance of the requested order -- "good cause" for continuing their negotiations, is nothing more than a transparent attempt to prevent the commencement of the negotiations, to inject the Intervenorors into the negotiations, or to add unreasonable time pressures to the negotiations to impede any possible success.

The NRC Staff and General Atomics have already offered to report to the Board no later than 14 days from the entry of the order, on the question of whether or not the negotiations are continuing in good faith. These parties have further agreed that the requested order would immediately terminate if either party should report to the Board that continued negotiations would not be

productive for any reason. These strict conditions would, in effect, constitute a "good cause" standard. In order to meet some arbitrary additional standard as proposed by the Intervenor, the NRC Staff and General Atomics would necessarily have to explain at least some part of the negotiations. Premature disclosure of the outline or terms of a possible settlement could doom the negotiations. Moreover, by assuming the burden of reporting to the Board, the NRC Staff and General Atomics have stated their willingness to set specific time goals within which to conclude, or at least to address in substantive manner, the complex issues to be negotiated.

General Atomics also rejects the second condition demanded by the Intervenor and any similar condition which would permit the Intervenor to continue discovery of any kind against General Atomics or Sequoyah Fuels Corporation, while settlement negotiations are underway. As explained in the Joint Motion, the simultaneous conduct of litigation discovery activities and settlement negotiations would poison the negotiating process and create conditions which would eliminate any possibility of a successful outcome to the negotiations. The obstacles to success which already exist are formidable enough. Negotiations should only be commenced if there is at least a serious potential for success. Continuation of litigation activities here would eliminate any such potential.

It would also involve substantial, potentially unnecessary, and at least from the standpoint of General Atomics, unacceptable

litigation costs. It is true that General Atomics informed the Intervenor during the week of August 14, 1995 that the inspection of certain General Atomics documents (i.e., those to the production of which General Atomics had no objection) by the Intervenor could commence as early as that week. Arrangements were in fact made for counsel for the Intervenor to commence the examination on August 17. Counsel for the Intervenor canceled that meeting and has not commenced any review of the documents since that time. Clearly, the Intervenor feels no unusual need to commence the examination.

It should also be noted that contrary to the assumption of the Intervenor, the examination of General Atomics' documents by the Intervenor would cause considerable and unacceptable "inconvenience" for General Atomics during settlement negotiations. The company and its counsel do not have unlimited resources.

In an effort to fully comply with the several document requests of the NRC Staff and the Intervenor, General Atomics shipped to its counsel voluminous documents, including complete files which total in excess of 20 boxes of documents. Many of the documents are not subject to the Intervenor's request. General Atomics has objected to the production of others. General Atomics had begun the process of segregating the documents that it was prepared to produce and these documents were available for examination on August 17, 1995. Had Intervenor's counsel commenced her review at that time, General Atomics counsel would then have proceeded to review and segregate documents from among the numerous remaining boxes of materials in order to identify the documents

which were subject to production. When Intervenor's counsel did not commence examination of documents either on August 17 or during the following week, General Atomics' counsel prudently and reasonably focused on other important, pending matters, including substantial new discovery requests which were filed by the Intervenor and the NRC Staff.<sup>1</sup> In order to preserve the integrity of General Atomics' company files, it would be necessary for its counsel to segregate the requested documents (for which there is no objection) from all others.

Since no hearing date has been set because the requested order would not in any way prevent the Intervenor from examining General Atomics' documents after any termination of the order, and because the Intervenor would not otherwise be prejudiced by the temporary delay in discovery which has been requested, it is totally unnecessary for General Atomics to engage in such extensive efforts and for the Intervenor to engage in an examination of either General Atomics' or Sequoyah Fuels Corporation's materials, at this time.

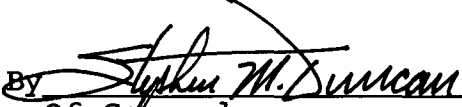
General Atomics and the NRC Staff are prepared to commence negotiations as early as this week. The stay order which they have requested is more than reasonable in the circumstances. If the

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<sup>1</sup> On August 11, the Intervenor filed a Second Set of Requests for Production of Documents. On August 16, the NRC Staff served Notices of Deposition for 18 deponents. On August 17, the Intervenor filed a 39 page motion to compel discovery (full service was made on General Atomics on August 21, 1995). On August 18, the Intervenor served a Second Set of Interrogatories. On August 23, the NRC Staff served a Third Set of Interrogatories. Answers to the NRC Staff's Second Set of Interrogatories were due on the same day.

negotiations are to have any prospect of success whatsoever, it is important that they not be encumbered with the kind of unnecessary and unreasonable conditions requested by the intervening parties. If either of the conditions sought by the Intervenors was to be imposed by the Board, General Atomics would reluctantly have no alternative but to withdraw from the Joint Motion with the NRC Staff and from the proposed settlement negotiations.

Respectfully submitted,

By   
Of Counsel

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ATTORNEYS FOR GENERAL ATOMICS

August 29, 1995

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'95 AUG 30 P3:02

Before Administrative Judges:

James P. Gleason, Chairman  
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing General Atomics' Opposition to the Intervenor's Response to the Joint Motion for an Order Temporarily Staying All Activities in the Proceeding in Order to Permit the Parties to Engage in Settlement Discussions was served on August 29, 1995, upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed, and to those persons marked with an asterisk by telecopier:

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U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
Attention: Docketing & Service Branch  
(Original and two copies)

Office of Commission Appellate Adjudication  
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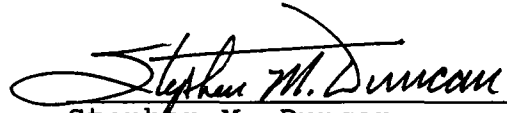
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Dated this 29th day of August, 1995.

A handwritten signature in cursive script, reading "Stephen M. Duncan". The signature is written in dark ink and is positioned above a horizontal line.

Stephen M. Duncan

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