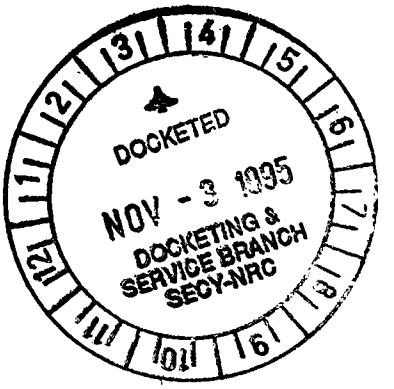

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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

In the Matter of	)	
	)	
SEQUOYAH FUELS CORPORATION	)	Docket No. 40-8027-EA
and GENERAL ATOMICS	)	
	)	
(Gore, Oklahoma Site	)	
Decommissioning and Funding)	)	November 3, 1995

JOINT STATUS REPORT ON SETTLEMENT NEGOTIATIONS AND MOTION FOR EXTENSION OF STAY OF DISCOVERY BEYOND NOVEMBER 13, 1995

In accordance with the October 13, 1995 Order of the Atomic Safety and Licensing Board ("Board"), the NRC Staff and General Atomics submit this status report on their settlement negotiations, and their joint motion for an extension of the current stay of discovery beyond November 13, 1995.

STATUS OF SETTLEMENT DISCUSSIONS

The NRC Staff and General Atomics continue to believe and hereby represent to the Board (1) that both parties are negotiating diligently and in good faith, (2) that the discussions between the parties have involved several face-to-face meetings, the most recent of which took place on November 1, 1995, (3) that senior executives of General Atomics and senior NRC Staff personnel have been personally involved in the preparation of the respective negotiating positions of the parties, (4) that significant progress

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is being made in the negotiations and the parties have resolved at least one aspect of the potential settlement framework, (5) that given the complexity and far-reaching nature of the many matters which are being discussed, the negotiations are proceeding at a pace that is expeditious, and (6) that substantial prejudice to the settlement process will occur if the parties are permitted to resume pre-hearing discovery.

JOINT MOTION FOR EXTENSION OF STAY

The NRC Staff and General Atomics recognize the reasonableness of the Board's efforts to ensure that the on-going settlement discussions are not used as a vehicle for obtaining unreasonable delay in the resolution of this proceeding. These parties submit, however, that the following factors establish conclusively the importance of permitting their settlement negotiations to proceed unhindered by either unnecessary time pressures, or pressures which result from having to simultaneously engage in very difficult negotiations and extensive pre-hearing discovery activities:

1. The Board has recently and clearly noted the very strong predisposition of the Commission toward settlement negotiations.

> "A settlement of contested proceedings has long been encouraged by the Commission. See 10 C.F.R. §§ 2.759, 2.1241. In guidance to Boards on licensing proceedings, the Commission's policy statement encourages Boards to conduct settlement conferences for the purpose of resolving contentions by negotiation. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC

452, 456."[1]

2. The President, Congress and the courts have separately and forcefully encouraged the compromise and settlement of disputes like that which is the subject of this proceeding.

a. In an Executive Order on Civil Justice Reform issued only four years ago, the President specifically noted that the tremendous growth in civil litigation has "imposed high costs on American individuals, small businesses, industry, professionals, and government at all levels;" that "several current litigation practices add to these burdens and costs by prolonging the resolution of disputes, . . . and encouraging wasteful litigation;" and that "the harmful consequences of these litigation practices may be ameliorated by encouraging . . . limitations on unnecessary discovery, ..."[2] In order to "facilitate the just and efficient resolution of civil claims involving the United States Government," the President ordered that those Federal agencies and litigation counsel that conduct or otherwise participate in civil litigation on behalf of the United States Government in Federal court shall respect and adhere to certain guidelines during the conduct of such litigation. The guidelines

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[1] Memorandum and Order (Approval of Settlement Agreement) October 26, 1995, p. 9. See also Philadelphia Electric Company (Peachbottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279, 283 (1979).

[2] Executive Order No. 12778 (Civil Justice Reform), October 23, 1991, 56 F.R. 55195.

included the following:

> (b) ". . . throughout the litigation, litigation counsel shall evaluate settlement possibilities and make reasonable efforts to settle the litigation."[3]

b. The Administrative Procedures Act directs agencies to give parties opportunities for the submission and consideration of offers of settlement when time, the nature of the proceeding, and the public interest permit.[4]

c. Federal Rule of Civil Procedure 16 expressly vests district courts with the authority to direct the attorneys for parties to appear for a conference or conferences before trial for such purposes as facilitating the settlement of the case.[5]

d. The United States Supreme Court and other Federal courts have long encouraged the resolution of controversies and uncertainties through compromise and settlement rather than through litigation,[6] because settlement is generally faster and less expensive than litigation.

3. The Intervenors have not demonstrated that they will sustain injury or that the public interest will be adversely affected if the present stay of discovery is continued. They

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[3] Id.

[4] 5 U.S. Code §554(c).

[5] F.R.C.P. 16(a)(5).

[6] See, e.g., Williams v. First National Bank of Pauls Valley, 216 U.S. 582, 30 S.Ct. 441 (1910).

cannot make such a demonstration. There is no public interest in rushing to a time-consuming and costly adjudication (including likely appeals) of a dispute which may be resolved amicably and with greater speed if the primary contesting parties are given full opportunity to explore avenues of possible settlement. The only reason that the Intervenors have ever advanced as the basis of their objection to a stay of the proceeding is that the settlement negotiations "should no longer be allowed to hinder the progress . . . of this proceeding."[7] Abstract procedural objectives cannot be permitted to have priority over the resolution of the underlying issues in dispute.

The public health and safety are obviously not threatened in any way by the on-going settlement discussions. No hearing date has been set. If the settlement discussions are successful, the public interest will be favorably affected in several obvious ways and additional discovery by any party will be totally unnecessary. If the settlement discussions are not successful, the Intervenors will be free to immediately recommence their discovery. The Board has already ruled that in the event that the stay of discovery is terminated for any reason, discovery will immediately resume for the (jurisdiction) phase of the proceeding.[8]

4. The negotiations and deliberations between the NRC Staff

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[7] Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Joint Motion for Additional Stay of Discovery, October 11, 1995, p. 6.

[8] Order (Extending Discovery Stay), October 13, 1995, p. 3.

and Sequoyah Fuels Corporation (SFC) which ultimately resulted in the settlement that was approved by the Board on October 26, 1995,[9] consumed more than a half of a year of time. During those negotiations, it was undisputed that SFC was a licensee of the Commission and that it had clear decommissioning funding obligations. Moreover, SFC was prepared to devote one hundred percent of its net assets and revenues to the completion of decommissioning.

In this set of negotiations, the number of potential obstacles to settlement is much greater and the issues are substantially more far-reaching and complex. General Atomics categorically denies the Staff's position that it is a licensee of the Commission, that the Commission otherwise has jurisdiction over it, and that it has any decommissioning funding obligations whatsoever for the SFC facility. Only two months have passed since the Board entered its first order staying discovery and the parties entered into negotiations.[10] Since that time, and in addition to the direct meetings between the parties, numerous internal meetings and much internal work has taken place within both the NRC Staff and General Atomics.[11] These circumstances require that the NRC Staff and

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[9] Memorandum and Order (Approval of Settlement Agreement), October 26, 1995.

[10] Order (Ruling on Joint Motion for Stay of Proceeding), August 30, 1995.

[11] If any greater detail regarding this work is provided, the sensitive nature of the on-going settlement discussions may be compromised.

General Atomics be given full opportunity and substantially greater time than has elapsed since the Board's August 30, 1995 Order, to explore all possible avenues of settlement.

5. The Intervenors are now attempting to broaden the scope of discovery to include matters which are not even the subject of the NRC Staff's October 15, 1993 Order, including General Atomics' liability for decommissioning costs associated with facilities other than the facility in Gore, Oklahoma, previously operated by Sequoyah Fuels Corporation.[12] All matters in this proceeding other than the issue of the Commission's jurisdiction over General Atomics, have clearly been held in abeyance by virtue of the Board's June 30, 1995 Memorandum and Order (Denying General Atomics' Motion Regarding NRC Staff "Reliance" Issues and Establishing Schedule for Bifurcated Issue Agency Jurisdiction). Discovery on matters which are not even within the scope of the Staff's October 15, 1993 Order, is clearly inappropriate.[13]

The NRC Staff and General Atomics jointly believe that the

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[12] Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Joint Motion for Additional Stay of Discovery, October 11, 1995, p. 8.

[13] NRC Staff's Reply to Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Joint Motion for Additional Stay of Discovery, pp. 5-7; General Atomics' Reply to the Opposition of the Intervenors to the (NRC Staff-General Atomics) Joint Motion for an Additional Stay of Discovery, pp. 11-12.

factors described above militate against any requirement to resume pre-hearing discovery while simultaneously engaging in difficult settlement negotiations.

Separate Statement of General Atomics

General Atomics submits that there are three compelling reasons why substantial prejudice to the settlement process will occur if the present stay of discovery is vacated.

First, the resumption of discovery would create an unreasonable and unacceptable drain on the limited resources of General Atomics, in addition to the obvious interference it would pose to the on-going negotiations. It is effectively impossible for General Atomics to simultaneously manage the major business challenges which face it currently, engage in very difficult settlement negotiations of this importance, and continue with major litigation. The negotiations involve substantially more than face-to-face meetings. The collection of a wide variety of information (much of which is not readily available), internal deliberations, and the evaluation of settlement proposals, are all involved.

Second, it must be recognized that the primary, if not sole incentive for seeking a settlement, is the avoidance of wasteful litigation expenses (including both the loss of cash and executive/employee time) and the preservation of tangible assets for application to decommissioning activities. The record of this proceeding is replete with documents which illustrate the litigious

nature of the Intervenors. If the Board permits them to recommence discovery activities, substantial resources will be exhausted responding to discovery requests.[14] Endless discovery disputes are certain.[15] Because the scope of permissible discovery is in substantial doubt,[16] a resumption of discovery at this time would place General Atomics in the position of having to either (1) produce confidential, proprietary information which may ultimately be ruled to be outside the scope of permissible discovery, or (2) produce limited information in the short term and later be required to duplicate the effort -- thereby wasting yet additional resources -- if the Commission sustains the Board's recent ruling on the scope of discovery permitted the Intervenors.

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[14] The Intervenors have served two sets of interrogatories upon General Atomics, two sets of interrogatories upon its third-tier subsidiary, SFC, and lengthy requests for production of documents upon each company.

[15] The Intervenors have already filed two motions to compel additional responses by General Atomics to its discovery requests, and two motions to compel additional responses by SFC to separate discovery requests.

[16] In addition to the Intervenors' efforts to expand the scope of permissible discovery as described above, they also seek to expand discovery in other ways. On August 25, 1995, General Atomics and SFC applied to the Commission for a temporary housekeeping stay of the effectiveness of the Board's August 21, 1995 Order (Ruling on Intervenors' Motion to Compel Answers to First Interrogatories). That Order would permit the Intervenors to seek discovery on a jurisdictional theory which General Atomics and SFC assert is outside the scope of the Staff's October 15, 1993 Order. General Atomics and SFC further informed the Commission on August 25, 1995 of their intent to seek Commission review of the Board's Order. On August 30, 1995, the Commission granted the stay. Nuclear Regulatory Commission, Order, August 30, 1995.

Finally, it is certain that the simultaneous conduct of 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.

Separate Statement of the NRC Staff

The NRC Staff continues to believe that it is appropriate to focus its resources and to devote full attention to exploring various settlement concepts and options free from the drain on resources that continued discovery would create.

For all of these reasons, the NRC Staff and General Atomics jointly move the Board to order that all discovery activities in this proceeding are stayed until December 15, 1995.

Respectfully submitted,

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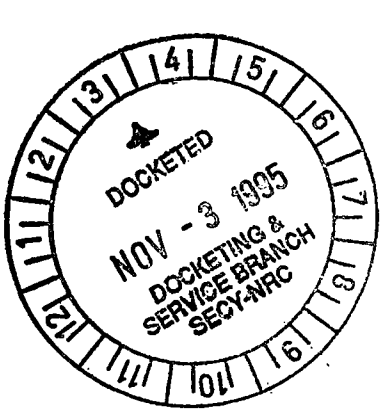
DATE: November 3, 1995



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SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS	)	Docket No. 40-8027-EA
	)	
	)	
(Sequoyah Facility in Gore, Oklahoma)	)	November 3, 1995

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Status Report on Settlement Negotiations and Motion for Extension of Stay of Discovery Beyond November 13, 1995 was served on November 3, 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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Washington, D.C. 20555
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(Original and two copies)

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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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