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October 16, 1995

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF'S ANSWER TO NATIVE AMERICANS FOR
A CLEAN ENVIRONMENT'S AND CHEROKEE NATION'S MOTION FOR
LEAVE TO REPLY TO SEQUOYAH FUELS CORPORATION AND NRC STAFF

The NRC Staff (Staff) hereby files its answer to Native Americans for a Clean Environment's and Cherokee Nation's Motion for Leave to Reply to [Sequoyah Fuels Corporation] and NRC Staff (Sept. 25, 1995) (Intervenors' Motion). For the reasons set forth below, the Atomic Safety and Licensing Board (Board) should deny Intervenors' Motion.

BACKGROUND

On August 24, 1995, Sequoyah Fuels Corporation (SFC) and the Staff filed a Joint Motion for Approval of Settlement Agreement (Joint Motion). In summary, the Settlement Agreement, which has been executed by the Staff and SFC, provides that SFC devote all of its present and future net assets and revenues, as defined in the Agreement, to decommissioning in exchange for the cessation of litigation against SFC for

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decommissioning funding assurance. Native Americans for a Clean Environment (NACE) and the Cherokee Nation (collectively Intervenors) filed their response to the Joint Motion with several attachments on September 8, 1995.¹ Pursuant to leave granted by the Board, SFC and the Staff filed replies to Intervenors' response.² Intervenors have now filed Intervenors' Motion, which is a motion for leave to reply to the replies of SFC and the Staff. Intervenors have also attached to their Motion a proposed reply.

DISCUSSION

The Commission's rules of practice regarding the filing of motions and answers thereto provide as follows:

§ 2.730 Motions

* * *

(c) *Answers to motions.* Within ten (10) days after service of a written motion, or such other period as the Secretary or the Assistant Secretary or presiding officer may prescribe, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. However, the staff may file such an answer within fifteen (15) days after service of a written motion. The moving party shall have no right to reply, except as permitted by the presiding officer or the Secretary or the Assistant Secretary.

¹ Intervenors' Response to Joint Motion for Approval of Settlement Agreement (Sept. 8, 1995).

² See SFC's Motion for Leave to File Reply (Sept. 15, 1995); SFC's Reply to Intervenors' Opposition to Settlement Agreement (Sept. 15, 1995); NRC Staff's Motion for Leave to Reply to Intervenors' Response to Joint Motion for Approval of Settlement Agreement (Sept. 18, 1995); Order (Granting Requests to File Reply Pleadings) (Sept. 21, 1995); NRC Staff's Reply to Intervenors' Response to Joint Motion for Approval of Settlement Agreement (Sept. 22, 1995).

10 C.F.R. § 2.730. Clearly, under this rule, an answer to a motion is the one and only pleading following a motion to which parties are accorded a right to file, while replies to answers are discouraged. The rule does not even make any allowance whatsoever for the possibility of a reply to a reply. It thus follows that replies to replies are equally if not more disdained by the Commission's rules.

Granting Intervenors' Motion would only serve to encourage a continuous cycle of responsive pleadings.³ Moreover, Intervenors' Motion and the proposed reply attached thereto seek only to have the last word on fundamental concerns and issues that the Intervenors have already raised in their original response to the Joint Motion filed by SFC and the Staff. Since these issues and concerns discussed in the proposed reply have already been put in front of the Board by virtue of the Intervenors' September 8, 1995 response to the Joint Motion, it is simply now up to the Board to weigh these concerns and then determine whether to approve the Settlement Agreement, giving due weight to the Staff's position. *See* 10 C.F.R. § 2.203.

Thus, in light of the intended limits on the filing of responsive pleadings as reflected in the Commission's rules of practice, and the fact that Intervenors have already had a full opportunity under the rules to file and have considered the concerns already addressed in their response to the Joint Motion filed by the Staff and SFC, the Board should deny Intervenors' Motion. Of course, should the Board have any questions that

³ Indeed, SFC has pending a motion for leave to respond if Intervenors' Motion is granted. *See* SFC's Opposition to Intervenors' Motion for Leave to Reply; SFC's Motion for Leave to Respond if Intervenors' Motion is Granted (Sept. 29, 1995).

need to be addressed by the parties, the Board always has the option of requesting that the parties file answers to specific questions.

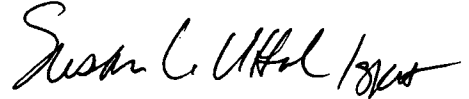
CONCLUSION

In consideration of the foregoing, the Board should deny Intervenors' Motion.

Respectfully submitted,



Steven R. Hom
Counsel for NRC Staff



Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 16th day of October 1995

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S AND CHEROKEE NATION'S MOTION FOR LEAVE TO REPLY TO SEQUOYAH FUELS CORPORATION AND NRC STAFF" in the above-captioned matter have been served on the following by deposit in the United States mail, first class; or as indicated by single asterisk through deposit in the Nuclear Regulatory Commission's internal mail system; or as indicated by double asterisk by hand delivery this 16th day of October 1995.

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