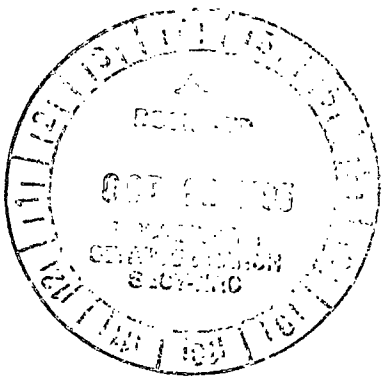

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 and GENERAL ATOMICS	)	Docket No. 40-8027-EA
	)	
	)	
(Gore, Oklahoma Site Decommissioning and Funding)	)	October 12, 1995

GENERAL ATOMICS' MOTION FOR LEAVE TO FILE REPLY

General Atomics hereby moves the Atomic Safety and Licensing Board ("Board") for leave to file the attached Reply to the October 11, 1995 Opposition of the Intervenors, Native Americans for a Clean Environment and Cherokee Nation, to the October 6, 1995 Joint Motion of the NRC Staff and General Atomics for an Additional Stay of Discovery.

As they have in previous filings on other issues, the Intervenors have once again mischaracterized facts, raised issues that are not within the scope of this proceeding, and conveniently ignored the agreed to terms of their entry into the proceeding.

When they filed their October 6, 1995 Status Report on Settlement Negotiations and Joint Motion for Additional Stay of Discovery Beyond October 13, 1995, neither the NRC Staff nor General Atomics could have anticipated the arguments advanced by the Intervenors in their October 11, 1995 Opposition. The attached

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Reply addresses the arguments raised by the Intervenors and will assist the Board during its review and inevitable rejection of the unfounded, and in some cases, frivolous arguments raised by the Intervenors.

For all these reasons, the interest of justice will be advanced if General Atomics is given the opportunity to file replies to the position of the Intervenors.

Respectfully submitted,

By Stephen M. Duncan
Of Counsel

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ATTORNEYS FOR GENERAL ATOMICS

October 12, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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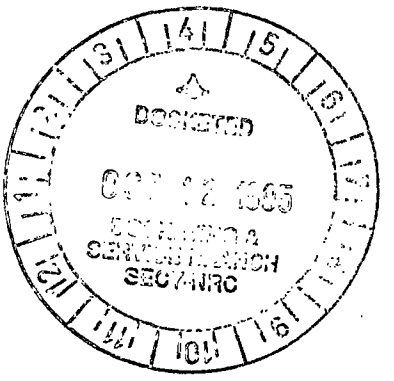

In the Matter of	)	
	)	
SEQUOYAH FUELS CORPORATION	)	Docket No. 40-8027-EA
and GENERAL ATOMICS	)	
	)	
(Gore, Oklahoma Site	)	
Decommissioning and Funding)	)	October 12, 1995

GENERAL ATOMICS' REPLY TO THE OPPOSITION OF THE INTERVENORS TO THE (NRC STAFF-GENERAL ATOMICS) JOINT MOTION FOR AN ADDITIONAL STAY OF DISCOVERY

General Atomics respectfully submits this Reply to the Intervenors' October 11, 1995 Opposition to the October 6, 1995 Joint Motion of the NRC Staff and General Atomics for an Additional Stay of Discovery.

As discussed below, the Intervenors have no standing to object to the additional stay of discovery requested by the NRC Staff and General Atomics. Indeed, the Intervenors' Opposition is contrary to both the terms and the spirit of the conditions to which they agreed in seeking permission to intervene in the first place. It also effectively constitutes an effort to seek information on matters which are clearly outside the scope of this proceeding and the jurisdiction of this Board.

The Intervenors' Opposition is, in fact, nothing less than a thinly disguised effort to disrupt the settlement discussions which

are currently underway between the NRC Staff and General Atomics, and to prevent a settlement of this proceeding, all in contravention of the law and the express policy of the Nuclear Regulatory Commission.

No hearing date has been set in this matter. Since the Intervenors do not even assert that they or the public will incur any form of serious injury if the settlement discussions between the NRC Staff and General Atomics and the attendant order staying all discovery are permitted to continue, the frivolous arguments advanced by the Intervenors must be summarily rejected.

ARGUMENT

I. THE INTERVENORS HAVE NO STANDING TO OBJECT TO THE SETTLEMENT DISCUSSIONS AND THE STAY OF DISCOVERY WHICH IS NECESSARY TO A CONTINUATION OF THOSE DISCUSSIONS

The unreasonable and specious nature of the arguments advanced by the Intervenors in opposition to the additional stay of discovery sought by General Atomics and the NRC Staff can best be understood in the context of the Intervenors' own words. In papers filed before the Nuclear Regulatory Commission on March 17, 1994 by Native Americans for a Clean Environment (NACE) in connection with its efforts to intervene in this proceeding, NACE ridiculed the concern expressed at that time by Sequoyah Fuels Corporation (SFC) that the admission of NACE to the proceeding would result in the proceeding being "run amok" by private prosecutors who would engage

the Commission in "unnecessary litigation."[1] In response, NACE solemnly assured the Commission that "[T]he reality is that . . . the Board has admitted to this ongoing proceeding an additional party, whose role is narrowly restricted to supporting the NRC's October 15th Order with respect to the limited issues that have been put into contention by the licensee."[2] (Emphasis added).

In its March 17, 1994 argument to the Commission, NACE went on to say the following:

> "Similarly, SFC exaggerates in making dire predictions that intervenors who are displeased with proposed settlements between the Staff and licensees will unnecessarily prolong enforcement hearings at great expense to licensees and the government and hamper the NRC Staff in achieving settlements. SFC points to no case law which holds that an intervenor can insist on prolonged litigation of an enforcement order after the principal parties, the NRC Staff and the licensee, have settled; nor are we aware of any.
>
> * * *
>
> SFC's argument that participation by intervenors in enforcement proceedings would 'severely limit the Commission's enforcement discretion' is also unfounded. SFC does not explain the basis for its claim that the presence of an intervenor would somehow hamper the NRC Staff from negotiating a settlement with a licensee, nor can we discern any. These parties are free to discuss and resolve their differences without the participation of an intervenor. While ultimately the Staff and licensee must submit their proposed agreement to the Licensing Board and other parties for review of its reasonableness, this requirement exists regardless of

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[1] Native Americans for a Clean Environment's Reply Brief Regarding the Appropriateness of Commission Review of LBP-94-5 and Whether Ruling in Section II.A Should Be Sustained, March 17, 1994, p. 2.

[2] Id.

whether intervenors participate."[3] (Emphasis added).

Now, however, a different song is heard from NACE. All of the fears previously expressed about its intervention in the proceeding have been proven to be accurate. No longer do the Intervenors speak sweet words about avoiding any unnecessary prolongation of the proceeding at great expense to the parties. Indeed, they now assert that the settlement negotiations "should no longer be allowed to hinder the progress . . . of this proceeding."[4] Apparently, litigation for the sake of litigation, or perhaps as a means of exhausting the resources of General Atomics and SFC, has been the objective of the Intervenors all along.

One thing is clear. The Intervenors had no authority whatsoever to compel the NRC Staff to file the October 15, 1993 Order. If it could not compel the issuance of the Order, it necessarily lacks standing to disrupt and prevent discussions which the NRC Staff and General Atomics believe may lead to a settlement of the issues raised by that Order.[5]

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[3] Id., at pp. 3-4.

[4] 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.

[5] See the argument on a related point in Sequoyah Fuels Corporation's initial brief (before the Commission) in opposition to the (Board's) ruling in Section II.A of LBP-94-5, March 11, 1994, pp. 15-18, and Bellotti v. NRC, 725 F.2d 1380, 1381 (D.C. Cir. 1983).

II. THE INTERVENORS HAVE INCORRECTLY STATED THE FACTS REGARDING THE SETTLEMENT DISCUSSIONS.

In support of their argument that the additional stay of discovery requested by the NRC Staff and General Atomics should not be granted, the Intervenors broadly -- and incorrectly -- assert that "after six weeks GA and the Staff have made virtually no progress in their negotiations."[6] The factual basis for this conclusion is not described, nor could it be. There is none.

It is no secret that the settlement discussions between General Atomics and the NRC Staff are taking place in an atmosphere of confidentiality. Such an atmosphere is critical to the success of any such negotiations. The important issues involved are complex, many of them have no precedents, and some of the information being discussed is confidential proprietary information, the release of which would cause irreparable injury to General Atomics. There is no possibility that a settlement can be reached between the NRC Staff and General Atomics if the discussions do not remain strictly confidential. Moreover, the circumstances of the negotiations are substantially different from those which attended the negotiations between the NRC Staff and SFC. SFC is a licensee of the NRC in connection with its facility in Gore, Oklahoma. General Atomics is not. SFC has uncontested decommissioning responsibilities in connection with the facility.

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[6] 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.

General Atomics does not.

It is also no secret that the Intervenors are not participating in the settlement discussions. They have no right to participate and they have expressly recognized the fact that they have no such right. Since the apparent goal of the Intervenors is to prevent a settlement, their participation would hardly be constructive. Moreover, since any settlement of the issues raised by the NRC Staff's October 15, 1993 Order must be approved by the Board, whatever interest the Intervenors may have in this proceeding, if any, can be fully considered by the Board at that time.

In fact, and as both General Atomics and the NRC Staff stated in their October 6, 1995 Status Report on Settlement Negotiations and Joint Motion for Additional Stay of Discovery, good-faith settlement discussions are continuing. In addition, significant progress is being made. As recently as October 10, 1995, the leadership of General Atomics met with several representatives of the NRC Staff over a several hour period to discuss an entire range of settlement issues. At the conclusion of the October 10 meeting, General Atomics and the NRC Staff agreed to continue the ongoing discussions.

Formal meetings of the parties have constituted only part of the settlement efforts. In between the meetings, General Atomics and the NRC Staff have engaged in substantial internal work. The complexity of the issues under consideration, however, requires thoughtful attention, internal deliberations, and action within

each institution. The matters simply cannot be rushed. Under the circumstances, and from the perspective of General Atomics, both parties are working expeditiously and diligently to find common ground.

III. EFFORTS BY THE INTERVENORS TO DISRUPT THE SETTLEMENT NEGOTIATIONS ARE CONTRARY TO THE LAW AND THE EXPRESS POLICY OF THE COMMISSION.

In the absence of any showing by the Intervenors that a continuation of the settlement discussions and the attendant stay of discovery will immediately endanger the public, or at least the Intervenors themselves, their efforts to disrupt the discussions must be abruptly terminated.

It requires no citation of authority to say that the law strongly encourages the settlement of litigation. Indeed, settlement is the express policy of the Nuclear Regulatory Commission.

The Rules of Practice of the Commission specifically recognize the desirability of a settlement and compromise of disputed contentions and that settlements are in the public interest. 10 C.F.R. § 2.203 thus expressly permits a stipulation effectuating a settlement to be entered into "at any time" after the issuance of an order for any action. The Commission has specifically stressed that the fair and reasonable settlement of contested proceedings is

encouraged.[7]

Since it is expected that all parties to a proceeding "will take appropriate steps" to carry out these purposes, the transparent effort by the Intervenors to disrupt the ongoing settlement discussions between General Atomics and the NRC Staff cannot be permitted to continue.

IV. THE INTERVENORS HAVE NO RIGHT TO CONTINUE ANY DISCOVERY, MUCH LESS DISCOVERY ON MATTERS OUTSIDE THE SCOPE OF THIS PROCEEDING, OVER WHICH THE BOARD HAS NO JURISDICTION.

Whatever else may be said about the extreme and often absurd arguments advanced by the Intervenors, they are imaginative. Having strenuously objected to a proposed settlement between the NRC Staff and SFC in which SFC has committed to devote all of its net assets and net revenues to the decommissioning of the SFC facility, it comes as no surprise that the Intervenors now want to continue extensive discovery efforts in a proceeding in which no hearing date has been set and in which significant settlement negotiations are underway.

Because there is no rapidly approaching hearing date or any other obvious factor which explains the unreasonable effort of the Intervenors to disrupt the settlement negotiations, the answer may require some thought. Two possibilities exist. Either the Intervenors want to prevent a settlement, or they are seeking to

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[7] 10 C.F.R. § 2.759. See also, Philadelphia Electric Company (Peachbottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279, 283 (1979).

make up for the discovery time lost by their own dilatory efforts. General Atomics can only speculate about the first possibility. The second is more clear.

On June 30, 1995, the Board issued its Memorandum and Order directing that discovery in this proceeding would close on September 15, 1995 and that to be timely, a discovery request must be filed or a deposition noticed on or before August 18, 1995.[8] On July 10, 1995, 21 months after the NRC Staff filed its October 15, 1993 Order, the Intervenors filed their first discovery request. Additional requests were subsequently filed on August 11, 1995 and on August 18, 1995. The answers to the latest request were not due until September 1, 14 days before the close of all discovery.

Surprisingly, the fact that the Intervenors only commenced their discovery efforts at the last minute did not spur their efforts. During the week of August 14, 1995, General Atomics informed the Intervenors that inspection of certain General Atomics documents (i.e., those to the production of which General Atomics had no objection) by the Intervenors could commence as early as that week. Arrangements were in fact made for counsel for the Intervenors to commence the examination on August 17, 1995.[9]

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[8] Memorandum and Order, June 30, 1995, p. 19.

[9] General Atomics has previously explained that it had begun the process of segregating in excess of 20 boxes of documents that it was prepared to produce. Because the question of the scope of the Intervenors' discovery requests was in dispute (General Atomics and SFC have obtained from the Commission an order temporarily staying the Board's August 21, 1995 Order and are

Counsel for the Intervenors canceled the August 17 meeting and did not commence her review of any General Atomics documents until October 4, 1995.[10]

It thus appears that the Intervenors previously assumed that they would complete all of their desired discovery, even if at the last minute. Any frustration they may presently feel, however, cannot be permitted to obstruct the on-going settlement negotiations. In addition to the resolution of disputed issues, the very purpose of settlement negotiations is to avoid unnecessary discovery and other litigation and all of the attendant costs.

It is simply not possible for the NRC Staff and General Atomics to engage in serious and complex settlement negotiations if they are simultaneously required to prepare for and to engage in wide-ranging discovery proceedings. Aside from the substantial and potentially unnecessary litigation and related costs that would be involved, the simultaneous conduct of discovery activities and

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seeking review of that Order), however, General Atomics did not wish to unnecessarily spend limited resources paying attorneys to segregate all of the documents in advance of the actual appearance of the Intervenors' counsel (for the purpose of examining the documents), so long as the possibility remained that the Commission might sustain the Board's August 21, 1995 Order, thereby requiring yet another segregation of the voluminous documents.

[10] Had counsel for the Intervenors commenced her review on August 17, 1995, counsel for General Atomics would then have proceeded to review and segregate additional documents from among the numerous remaining boxes of materials in order to identify the documents which were subject to production at that time. 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, August 29, 1995, pp. 4-5.

settlement negotiations would poison the negotiating process and create conditions which would eliminate any possibility of a successful outcome to the negotiations. As General Atomics has already pointed out, the obstacles to success which already exist are formidable enough. Thus far, the negotiations have involved significant work and continuing progress. The continuation of litigation activities could only eliminate the possibility of a successful outcome to the negotiations.

Not content to seek just any discovery, the Intervenors now offer a ridiculous new theory for the proposition that they are entitled to discovery on matters which are not even before this Board. Arguing that the mere discussion by the NRC Staff and General Atomics of matters totally unrelated to the instant proceeding has somehow "broadened the scope of the proceeding," the Intervenors seek discovery on these unrelated matters.[11] This argument is frivolous on its face. If the law permitted intervenors in an administrative proceeding to randomly inject themselves into private discussions between the NRC Staff and a

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[11] Intervenors also make the preposterous argument that "because proposed or contemplated settlement agreements have now moved this case beyond jurisdictional issues into the merits issues of the costs of decommissioning and SFC's and GA's ability to pay those costs, the Board should allow discovery against SFC and GA on those merit issues." Intervenors' Opposition at 7. Not only are the costs of decommissioning outside the scope of the Order and thereby outside the scope of this proceeding, but it is nonsensical to argue that a settlement agreement still under negotiation, or even one that's been proposed would justify not only reopening discovery but expanding it beyond its scope at the time the stay was issued. In any event, arguments relating to the SFC-NRC settlement agreement have been presented directly by Intervenors, and they should not be permitted to rehash them here.

third party on matters totally unrelated to the proceeding, the Staff would be incapable of successfully conducting its work. If the law further permitted intervenors to engage in discovery against such a third party, no one would run the risk of even talking to the NRC Staff in an effort to resolve disputes. The inevitable result would be endless litigation.

CONCLUSION

No hearing date has been set in this matter. No party to the proceeding is in any danger of injury if the order staying discovery continues in effect while the substantive settlement negotiations are taking place. The Intervenors have not even alleged that they would sustain any injury. The public interest would not be adversely affected in any way by a continuation of the requested stay. The request by the Intervenors to continue discovery is otherwise unreasonable on its face and must be rejected.

The law and Commission policy encourage parties to engage in precisely the type of settlement negotiations currently being engaged in by the NRC Staff and General Atomics. Given the nature of this proceeding and the complexity of the issues involved, the Board should grant the NRC Staff and General Atomics full opportunity to reach a successful outcome to their negotiations.

Respectfully submitted,

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ATTORNEYS FOR GENERAL ATOMICS

October 12, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of	)	
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	)	
(Sequoyah Facility in Gore, Oklahoma)	)	October 12, 1995

CERTIFICATE OF SERVICE

I hereby certify that the foregoing General Atomics' Motion for Leave to File Reply and General Atomics' Reply to the Opposition of the Intervenors to the (NRC-General Atomics) Joint Motion for an Additional Stay of Discovery was served on October 12, 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
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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