UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	Docket No. 40-8027-EA
SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS	Source Material License No. SUB-1010
(Gore, Oklahoma Site Decommissioning Funding)	September 29, 1995

SFC'S OPPOSITION TO INTERVENORS' MOTION FOR LEAVE TO REPLY; SFC'S MOTION FOR LEAVE TO RESPOND IF INTERVENORS' MOTION IS GRANTED

Having previously expressed their opposition[1] to the Settlement Agreement jointly proposed by Sequoyah Fuels Corporation ("SFC") and the Nuclear Regulatory Commission ("NRC") Staff, Native Americans for a Clean Environment ("NACE") and the Cherokee Nation (collectively, the "Intervenors") now seek to file a reply to the replies filed by SFC and the NRC Staff.[2] Native Americans for a Clean Environment's and Cherokee Nation's Motion for Leave for Reply to SFC and NRC Staff ("Intervenors' Reply Motion") (Sept. 25, 1995), with attached Native Americans for a Clean Environment's and Cherokee Nation's Reply to SFC's

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

[2] SFC's Reply to Intervenors' Opposition to Settlement Agreement (Sept. 15, 1995); NRC Staff's Reply to Intervenors' Response to Joint Motion for Approval of Settlement Agreement (Sept. 22, 1995).

and NRC Staff's Replies to Intervenors' Response to Settlement Agreement ("Intervenors' Proposed Reply") (Sept. 25, 1995).

SFC respectfully requests that Intervenors' motion for leave to file a reply be denied, since none of the arguments in support of their motion are persuasive.

Intervenors first claim that they should be allowed to reply because of new information allegedly provided by SFC and the NRC Staff that Intervenors have not had a previous opportunity to evaluate and respond to, listing the nature of SFC's financial obligation to Kerr-McGee, the nature of the decommissioning reserve, and the relationship of the Standby Trust to the letter of credit. Intervenors' Reply Motion at 1-2. However, as reflected in Intervenors' Proposed Reply (at 3 n.2), Intervenors were fully aware that SFC had an obligation of $10.6 million to Kerr-McGee. Intervenors were also fully aware of the nature of the decommissioning reserve from copies of NRC-SFC correspondence and NRC Staff evaluations in their possession.[3] Finally, although Intervenors continue to misunderstand and mischaracterize the relationship between a letter of credit and a Standby Trust under NRC regulations, they were obviously fully aware of the regulatory guidance that explains such relationship, i.e., "Standard Format and Content of Financial Assurance

---

[3] See letter from John P. Roberts/Leland C. Rouse to Reau Graves (Oct. 27, 1988), Attachment 2 to the Intervenors' Response; Memorandum from Robert S. Wood to Leland C. Rouse re: Proposed Transfer of Ownership of Kerr-McGee's Gore Facility to Sequoyah Holding Corporation (Sept. 19, 1988), enclosed with Intervenors' Proposed Rely.

Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72", Reg. Guide 3.66. See Intervenors' Response at 13; Intervenors' Proposed Reply at 10. Thus, Intervenors could have and should have presented any relevant arguments on these subjects in their original response.

Intervenors also seek to respond to various legal arguments allegedly made for the first time in the replies of SFC and the NRC Staff, including NRC's arguments on the rights of senior lienholders, SFC's statement that it does not intend to make payments on the Kerr-McGee obligation until decommissioning has been completed, and the adequacy of NRC's proposed remedy if SFC makes improper payments. Intervenors' Motion at 2-3. Intervenors provide no justification for not having included in their initial opposition all of their arguments regarding the rights of senior lienholders or alleged inadequacies of NRC's remedies under the Settlement Agreement. Concededly, Intervenors were not previously aware of SFC's intent not to make payments on the Kerr-McGee obligation. However, this limited subject would not warrant the filing of a reply by Intervenors, let alone the wide-ranging reply on numerous other issues sought to be filed by Intervenors.

Next, Intervenors seek to reply to arguments presented by SFC and the NRC Staff on the current letter of credit, the decommissioning reserve and the ConverDyn arrangements. Intervenors' Motion at 3-4. But Intervenors fail to identify any new information presented in the SFC and NRC Staff replies, nor

to show why they could not have presented their arguments in their original opposition.

Intervenors then seek to respond to a footnote in SFC's reply stating that SFC's file copy of a transmittal to Mr. Hughes indicates that confidential information was not transmitted to Mr. Hughes. Id. at 4. The thrust of that footnote was that SFC had not waived the confidentiality of that information. In any event, since no ruling by the Board on such irrelevant and peripheral question is required, it does not justify the filing of a reply by Intervenors.

Finally, Intervenors argue that their motion is timely. Id. at 4. Although SFC does not dispute the timeliness of the motion, such timeliness does not provide justification for admitting an unwarranted reply.

After reading on opponent's reply, a party can always identify additional arguments that it wishes it had made in its original pleading. However, if the Board were to allow such unwarranted filing, the cycle of pleadings would never end. For the reasons set forth above, Intervenors' motion should be denied.

If the Board determines in its discretion, however, to accept Intervenors' Proposed Rely, or any portion thereof, SFC respectfully moves for leave to file the attached "SFC's Reply to Intervenors' Renewed Opposition." Intervenors continue to raise issues that are beyond the scope of this proceeding or irrelevant to approval of the Settlement Agreement; to mischaracterize

facts; and to misconstrue the terms of the Settlement Agreement, NRC regulations and regulatory guidance that they cite. The attached Reply clarifies both the facts and those terms, and will assist the Board in reviewing and rejecting Intervenors' unfounded arguments. In addition, it encloses a letter to SFC from Kerr-McGee, confirming Kerr-McGee's intention to defer taking legal action to enforce its rights under SFC's obligation to Kerr-McGee until decommissioning has been completed, thus mooting the sole argument raised by Intervenors that was arguably based on new information. Accordingly, the interests of justice will be served if SFC is given the opportunity to file the attached Reply.

Respectfully submitted,

Maurice Axelrad
John E. Matthews

Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, DC 20036
(202) 467-7000
Attorneys for
Sequoyah Fuels Corporation

September 29, 1995

Enclosure

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	Docket No. 40-8027-EA
SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS	Source Material License No. SUB-1010
(Gore, Oklahoma Site Decommissioning Funding)	September 29, 1995

SFC'S REPLY TO
INTERVENORS' RENEWED OPPOSITION

Sequoyah Fuels Corporation ("SFC") respectfully submits this Reply to "Native Americans for a Clean Environment's and Cherokee Nation's Reply to SFC's and NRC Staff's Replies to Intervenors' Response to Settlement Agreement" ("Intervenors' Proposed Reply") (Sept. 25, 1995). Intervenors argue that the information provided by SFC and the NRC Staff in their replies[1] have not satisfied Intervenors' concerns regarding the Settlement Agreement and that the legal arguments of SFC and the NRC Staff that Intervenors' concerns are either irrelevant or baseless are in error or unsupported. Intervenors' Proposed Reply at 1. They request that the Atomic Safety and Licensing Board ("Board") conduct an adjudication of Intervenors' concerns, including

[1] SFC's Reply to Intervenors' Opposition to Settlement Agreement ("SFC Reply") (Sept. 15, 1995); NRC Staff's Reply to Intervenors' Response to Joint Motion for Approval of Settlement Agreement ("NRC Reply") (Sept. 22, 1995).

providing an opportunity for discovery, before approving the Settlement Agreement. Id. at 4.

As discussed in greater detail below, Intervenors' renewed arguments continue to be without merit and they have identified no issue that cannot be disposed of upon these pleadings, without the need for any further adjudication or discovery. SFC respectfully requests that the Board summarily reject Intervenors' concerns, and promptly approve the Settlement Agreement, thus permitting SFC to devote its full attention to the decommissioning task before it rather than wasting its resources in continuing needless litigation.

ARGUMENT

I. INTERVENORS' CONCERNS REGARDING POTENTIAL PAYMENTS TO KERR-MCGEE ARE WITHOUT MERIT

Intervenors appear to have abandoned their original argument that the Settlement Agreement gives "primacy" to senior lien-holders and to recognize that the Agreement merely acknowledges that certain third parties may have legal rights that they may exercise with respect to SFC's property. However, they continue to fantasize that SFC might make payments on the Kerr-McGee note in order to benefit GA and its subsidiaries.[2]

---

[2] It should be noted that the Kerr-KcGee note is the obligation of SFC, Sequoyah Fuels International Corporation and Sequoyah Holding Corporation, and not GA. Kerr-McGee has no claim on GA for the $10.6 million due pursuant to the note. Therefore, GA does not have any incentive to engage in the Machiavellian scheme

Intervenors' Proposed Reply at 2-4. Even SFC's representations that it has no intention of resuming any principal or interest payments to Kerr-McGee prior to completion of decommissioning and that it will make no such payments unless ordered to do so by a competent judicial or governmental authority (SFC Reply at 5) fail to satisfy Intervenors because it is not reflected in the Settlement Agreement. Intervenors' Proposed Reply at 4. Moreover, they express concern that SFC's intentions regarding those payments may change as a result of ongoing negotiations with Kerr-McGee. Id. at 4-5.

SFC considers it reprehensible that Intervenors would suggest that SFC would conduct negotiations with Kerr-McGee in a manner that would be inconsistent with its explicit representations to the NRC.[3] To the contrary, SFC has obtained

---

hypothesized by Intervenors.

[3] Intervenors continue to go out of their way to include baseless and slanderous attacks on SFC in their pleadings. For example, they claim that, in the Preliminary Plan for Completion of Decommissioning, SFC "misrepresents the $10.6 (sic) debt [to Kerr-McGee] as belonging entirely to SFC." Intervenors' Proposed Reply at 3 n.2. Nothing could be further from the truth. SFC made no claim or representation that it was the sole signator on the note. The footnote in the PPCD referring to the Kerr-McGee note did not purport to explain the entire transaction. It was included only to assure that reviewers of the financial projections in the PPCD were not misled into believing that there were no outstanding potential claims against SFC's assets and revenues. It fully and effectively accomplished that overarching purpose.

Intervenors also attack SFC for a lack of "professionalism and commitment" because of the contamination present at the site. Id. at 4 n.4. In addition to the fact that such charges are wholly

the enclosed letter dated September 27, 1995 from Kerr-McGee, (Attachment 1), that confirms Kerr-McGee's intention to defer taking legal action to enforce its rights under SFC's obligation to Kerr-McGee until decommissioning has been complete.

Such confirmation by Kerr-McGee, in combination with SFC's representations, effectively moots any possible concern that payments to Kerr-McGee could diminish funds otherwise available for decommissioning, or otherwise benefit some party other than SFC.

III. THE DECOMMISSIONING RESERVE AND LETTER OF CREDIT ARE UNAFFECTED BY THE SETTLEMENT AGREEMENT

Intervenors continue to argue that somehow the Settlement Agreement will allow SFC to violate the requirement under its license to maintain a decommissioning reserve. Intervenors' Proposed Reply at 6-9. Intervenors are simply wrong, since nothing in the Settlement Agreement modifies the

---

irrelevant to this proceeding and to the Settlement Agreement pending before this Board, they are totally without basis with respect to the causes of such contamination and particularly groundless as to any alleged lack of professionalism and commitment of SFC management since the acquisition of SFC by Sequoyah Holding Corporation in 1988.

SFC respectfully requests that the Board admonish Intervenors not to persist in their misuse of pleadings in this proceeding as a forum for their unsupported and malicious attacks.

existing license condition or prevents the NRC from enforcing it.[4]

More fundamentally, Intervenors continue to misunderstand the accounting meaning and treatment of SFC's decommissioning reserve. Their confusion stems from their misuse of a dictionary definition of "reserve" (Intervenors' Proposed Reply at 8), which they then, inso facto, translate into funds "set aside and protected from incursions by other business expenses" (Id. at 9). Intervenors' untutored understanding of an accounting reserve finds no support in accounting practice. As reflected in standard accounting texts, a reserve is simply used "to indicate that retained earnings have been appropriated in accordance with legal or contractual requirements or as a result of authorization by the board of directors." See Attachment 2, Intermediate Accounting, Comprehensive Volume, Fifth Edition

---

[4] In referring to the SFC Reply, Intervenors complain that SFC "suggested" that Mr. Hughes misrepresented the facts as to how he obtained certain confidential SFC information. Intervenors' Proposed Reply at 6 n.6. The Board's reading of SFC's statement (SFC Reply at 8 n.6) will confirm that it contained no such suggestion. It simply pointed out what was self-evident from Mr. Ellis' letter to Mr. Hughes, namely that SFC had expressly not waived the confidentiality of that information and that SFC's file copy of the transmittal indicated that SFC did not send the confidential information to Mr. Hughes. It appears from Mr. Hughes' affidavit and from the discussion in note 6 of Intervenors' Reply Brief that three other recipients of Mr. Ellis' letter, including NACE's counsel, did not receive the confidential information. Since Mr. Hughes apparently did receive it through some clerical error, knew that he was not intended to receive it, and confirmed that others did not receive it, it is interesting that NACE did not believe it had any moral or ethical obligation to make the error known to SFC and seek to rectify it.

(1972) at 744. As the text indicates, "The appropriation balance is no guarantee that cash or any other specific asset will be available in carrying out the purpose of the appropriation." Id. Thus, contrary to the Intervenors' supposition, compliance with the existing license condition to maintain a decommissioning reserve does not require that the reserve be backed by cash or any specific asset, nor prevent SFC from utilizing its existing assets to meet its expenses. The Settlement Agreement does not detract from SFC's current obligation to maintain a decommissioning reserve. Rather it goes well beyond that condition by requiring that SFC's net assets and revenues be applied to decommissioning and by limiting SFC's expenditures to reasonable and necessary expenses. Thus, there is no reason to explore a non-existent effect of the Settlement Agreement upon the decommissioning reserve.[5]

Intervenors also continue to confuse several aspects of the existing letter of credit and to make totally erroneous

---

[5] It is also beyond the scope of this proceeding for this Board to inquire, as suggested by Intervenors, how the decommissioning reserve has been reduced from 1988 to 1994. Intervenors' Reply Brief at 8 n.7. Whether or not the reserve has been properly maintained is an enforcement matter within the responsibility of the NRC Staff, not within the scope of either the Order or the Settlement Agreement. However, as the Board is undoubtedly aware, a reserve is appropriately reduced when expenditures are made for the purposes for which the reserve has been established. Thus, for example, since one segment of NRC's decommissioning reserve had been established for disposition of the raffinate sludge, the reserve was properly reduced during the 1988-94 time frame when expenditures were made for that purpose.

arguments concerning each aspect. Intervenors' Reply Brief at 9-11.

First, they claim that because the existing $750,000 letter of credit is backed with a loan from GA, after SFC's debts and expenses are paid there is no assurance that $750,000 will be available for decommissioning costs. Intervenors have apparently not bothered to even read the letter of credit. Consistent with the guidance in Reg. Guide 3.66, the letter of credit provided by SFC (see Attachment 3) is an irrevocable commitment to pay $750,000 made by the bank, which is automatically renewed each year unless the bank provides 90 days' notice to the NRC. If, upon any such notice, SFC cannot provide alternative financial assurance to replace the letter of credit within 30 days, the NRC may draw the full value prior to cancellation. Therefore, the fact that the bank has required backing of SFC's letter of credit is irrelevant to the bank's obligation to the NRC under the letter of credit. If for any reason, including any related to the backing, the bank were to decide not to renew the letter of credit, the NRC would still be able to draw the full amount upon receiving the bank's notice, unless an acceptable alternative were provided by SFC in timely fashion.

Intervenors then mischaracterize the $750,000 cash collateral account that the bank has required as backup for the letter of credit as "cash in a bank account that is dedicated to decommissioning funding." Intervenors' Reply Brief at 10. This statement is totally false. The amount that is dedicated to

decommissioning funding is the $750,000 letter of credit. The NRC did not and does not require the collateral account and has no interest in it. If the bank no longer required the collateral account, it would no longer exist, but all applicable NRC requirements would still be satisfied.

Intervenors then suggest that the failure to commit the interest from the cash collateral account to decommissioning funding is somehow inconsistent with the guidance in Reg. Guide 3.66. Id. That claim is absurd. Since nothing in Reg. Guide 3.66 suggests that a cash collateral account be maintained for a letter of credit -- which in and of itself satisfies NRC requirements -- nothing in Reg. Guide 3.66 suggests that the interest on a non-required cash collateral account should be committed to decommissioning funding.

Finally, Intervenors repeat their argument that the Settlement Agreement should require that, if SFC is allowed to substitute an escrow account for the letter of credit, the interest on that account should be committed to decommissioning. Id. at 10-11. As SFC has pointed out, the proposed escrow arrangement is not within the scope of this proceeding, and constitutes a separate regulatory matter currently subject to review and approval by the NRC Staff. SFC Reply at 9-10. Intervenors' sole rebuttal is that the Settlement Agreement would prevent the NRC from enforcing the letter of credit or the proposed escrow account. That argument is simply wrong, since nothing in the Settlement Agreement would prevent the NRC from

enforcing SFC's current funding mechanism or any alternative proposed by SFC.

IV. THE REASONABLENESS OF SFC'S FINANCIAL RELATIONSHIP WITH CONVERDYN IS NOT AN ISSUE BEFORE THIS BOARD

Intervenors continue to argue that the Board should review the "reasonableness" of SFC's agreements with ConverDyn, i.e., "the Board should obtain enough information to assure itself that ConverDyn profits that are reasonably due to SFC will go to the decommissioning of the facility." Intervenors' Proposed Reply at 11.

However, as SFC has demonstrated, the reasonableness of SFC's financial relationship with ConverDyn is not within the scope of this proceeding. In issuing the October 15, 1993 Order (the "Order"), the NRC had concluded that it "appears to be a bona fide arrangement among the various parties." Order at 8-9. The issue raised by the Order was not the bona fides of the ConverDyn agreements but whether they provided the financial assurance required by NRC's regulations. SFC's Reply at 10-11. Intervenors dispute SFC's argument by focusing on the word "appears" in the Order, and thus claiming that the Order commented on "appearance" rather than reaching any conclusions regarding the nature of the relationship. Intervenors' Proposed Reply at 11-12. Intervenors' play on semantics in inappropriate. The basic fact is that the Order did not purport to require SFC to reexamine or restructure the ConverDyn agreements but simply to "carry out the funding plan described in its February 16,

1993 submission" (Order at ¶VII.B), which was dependent upon the executed ConverDyn agreements. Thus, nothing in the Order nor in the Settlement Agreement has placed in issue the bona fides of the ConverDyn agreements.

Moreover, Intervenors' stated concern with the ConverDyn agreements appears to be that GA may exercise some controls to serve GA's financial interests rather than SFC's interests in maximizing decommissioning funding. Intervenors' Proposed Reply. The answers to this concern are apparent, and do not require any review by the Board of the ConverDyn agreements. First, SFC has specifically pledged "to diligently pursue and use its best efforts to preserve all of its contractual rights under the ConverDyn Arrangements, until the NRC Staff determines that such decommissioning has been satisfactorily completed." Settlement Agreement at ¶3. The NRC Staff can enforce that obligation, if necessary, and assure that SFC fully protects its interest under the ConverDyn agreements. Second, the Settlement Agreement does not relieve GA from any alleged obligations regarding decommissioning funding, including any alleged obligations relating to the ConverDyn agreements. Thus, Intervenors' arguments are without merit.[6]

---

[6] Since the reasonableness of the ConverDyn agreements is not an issue before this Board, Intervenors' purported need for discovery to determine specific remedies it could propose for "weaknesses" in the agreements is moot. It is apparent that Intervenors seek to prolong SFC's forced participation in this proceeding, rather than permitting SFC to avoid wasteful dissipation of its resources through the Board's approval of a reasonable Settlement Agreement.

V. NOTHING IN THE SETTLEMENT AGREEMENT ABSOLVES FROM LIABILITY ANY SUCCESSOR IN TITLE

Intervenors repeat their concern that the Settlement Agreement may absolve successors in title from liability for decommissioning funding. Intervenors' Proposed Reply at 13. Intervenors cite no authority for this absurd legal position. In the absence of an explicit provision in the Settlement Agreement stating that a successor would be absolved, SFC fails to fathom how such a result could be implied. Moreover, not only could there be no transfer of control of the licensed activities without the NRC's explicit approval (with such conditions as might be imposed upon the transfer), but any possessor of the material would require an NRC license, with its attendant conditions.

CONCLUSION

FOR THE FOREGOING REASONS, and those previously stated in the NRC Staff and SFC's Joint Motion for Approval of Settlement Agreement dated August 24, 1995, in the SFC Reply and in the NRC Reply, the Settlement Agreement is in the public interest. Intervenors' concerns as originally stated and restated are without merit. SFC respectfully requests that the

Board approve the Settlement Agreement and dismiss SFC from this proceeding.

Respectfully submitted,

Maurice Axelrad
John E. Matthews

Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, DC 20036
(202) 467-7000

Attorneys for
Sequoyah Fuels Corporation

September 29, 1995

KERR-McGEE CORPORATION
KERR-McGEE CENTER • OKLAHOMA CITY, OKLAHOMA 73125

September 27, 1995

Mr. John Ellis
President
Sequoyah Fuels Corporation
I-40 and Highway 10
Gore, OK 74435

Re: Promissory Note for $10,567,000 dated November 8, 1988, as amended, executed by: Sequoyah Holding Corporation, Sequoyah Fuels International Corporation and Sequoyah Fuels Corporation, in favor of Kerr-McGee Corporation ("Note")

Dear Mr. Ellis:

Subject to the approval by the Atomic Safety and Licensing Board of the U.S. Nuclear Regulatory Commission ("NRC") of the Settlement Agreement executed by Sequoyah Fuels Corporation ("SFC") on August 11, 1995, and the NRC Staff on August 18, 1995, and the fulfillment by SFC of its obligations under that Settlement Agreement, Kerr-McGee confirms its intention to defer taking legal action to enforce its rights under the above-captioned note and the related mortgages and security agreements until the completion of the decommissioning of the SFC facilities in Gore, Oklahoma.

SFC is free to disclose the terms of this letter or a photocopy hereof to the NRC or others, on such terms or conditions as SFC deems appropriate.

Very truly yours,

Russell G. Horner, Jr.

cc: J. R. Edwards, Esq.

fifth edition

intermediate ACCOUNTING

comprehensive volume

Harry Simons, MA, CPA
Professor of Accounting
University of California, Los Angeles

Consulting Editor
Jay M. Smith, PhD, CPA
Professor of Accounting
Brigham Young University

A61

Published by
SOUTH-WESTERN PUBLISHING CO.
CINCINNATI WEST CHICAGO, ILL. DALLAS NEW ROCHELLE, N.Y.
BURLINGAME, CALIF. BRIGHTON, ENGLAND

Use of term "reserve"

It has already been indicated that the term "reserve" has been employed in a variety of different senses in accounting practice. It has been used in the following ways:

(1) *As a valuation account.* The reserve designation has been employed to report a valuation account related to a balance sheet item. For example, deductions may be required from the face amount of assets in arriving at the amounts that they are expected to realize, as in the case of marketable securities, receivables, or inventories. Deductions may also be required from the face amount of assets in the recognition of cost expirations, as in the case of assets subject to depreciation, depletion, or amortization. When such reductions are related to current revenues, expense accounts are charged and asset valuation accounts are credited. Valuation accounts are ultimately applied against the items to which they relate. The accounts receivable valuation account is used to absorb accounts that prove to be uncollectible; the property valuation account is applied against the property item when the latter is disposed of or scrapped. It was suggested earlier that a term such as "allowance" should be substituted for the term reserve in designating valuation accounts.

(2) *As an estimate of a liability of uncertain amount.* The reserve title has been employed to designate a liability of uncertain amount requiring an estimate. Estimates may be required for such items as unsettled claims for damages and injuries, premium claims outstanding, claims under guarantees for services and replacements, tax obligations, and obligations under pension plans. When such claims are related to current revenue, expense accounts are charged and liability accounts are credited. The liabilities are ultimately canceled through payment. Designation of the accounts in this class as "estimated liabilities" rather than as reserves would clarify the nature of the items presented.

(3) *As an appropriation of retained earnings.* The reserve title is used to indicate that retained earnings have been appropriated in accordance with legal or contractual requirements or as a result of authorization by the board of directors. The appropriation of retained earnings has no effect upon individual assets and liabilities nor does it change total capital; amounts are merely transferred from retained earnings to special retained earnings accounts and assets that might otherwise be distributed as dividends are thus kept within the business. The appropriation balance is no guarantee that cash or any other specific asset will be available in carrying out the purpose of the appropriation. Resources represented by retained earnings may have been applied to the enlargement of plant, to the increase of working capital, or possibly to the retire-

ment of corporate indebtedness. If assets are to be made available for a particular purpose, special action relative to asset use would be required. When the purpose of the appropriation has been served, the appropriation balance is returned to Retained Earnings.

It was indicated in an earlier chapter that the American Institute Committee on Terminology has held that the use of the term reserve to indicate the retention of assets comes closest to its popular meaning. Accordingly, the Committee has recommended that the term reserve be limited to appropriations of retained earnings and that any alternative use of the term on the financial statements be discontinued.[1] The American Accounting Association Committee on Concepts and Standards Underlying Corporate Financial Statements, however, would abandon the use of the term in financial statements. The Committee has maintained that although accounting terminology would be improved if the term were limited to balances includible in capital, this would still leave unresolved the conflict between the general and the accounting connotations of the word.[2] There can be little question that greater clarity in financial statement presentation would be promoted through abandonment of the term "reserve" and the adoption of more descriptive terminology.

Retained earnings appropriations

Appropriations of retained earnings may be classified under the following headings:

(1) *Appropriations to report legal restrictions on retained earnings.* Laws of the state of incorporation may require that a company, upon reacquiring its own stock, retain its earnings as a means of maintaining its legal capital. The restriction may be recognized in the accounts by the appropriation of retained earnings.

(2) *Appropriations to report contractual restrictions on retained earnings.* Agreements with creditors or stockholders may provide for the retention of earnings within the company to protect the interests of these parties and assure redemption of the securities they hold. The restriction may be indicated in the accounts by the appropriation of retained earnings.

(3) *Appropriations to report discretionary action by the board of directors in the presentation of retained earnings.* The board of directors may authorize that a portion or all of the retained earnings be presented in a manner

[1] *Accounting Terminology Bulletin No. 1* (New York: American Institute of Certified Public Accountants, 1953), par. 57–64.

[2] *Accounting and Reporting Standards for Corporate Financial Statements and Preceding Statements and Supplements.* Supplementary Statement No. 1 (1957 rev.; Madison, Wisconsin: American Accounting Association), p. 20.

Citibank, N.A.

Attachment 3

NORTH AMERICAN FINANCE GROUP - TRADE FINANCIAL SERVICES
SORT # 3878
111 WALL STREET NEW YORK, NY 10043

JULY 27, 1990

U.S NUCLEAR REGULATORY
COMMISSION
WASHINGTON, DC 20555

REF: IRREVOCABLE LETTER OF CREDIT NO. NY-0656-30007152

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.NY-0656-30007152 IN YOUR FAVOR,AT THE REQUEST AND FOR THE ACCOUNT OF SEQUOYAH FUELS CORP.,P.O.BOX 610.GORE,OKLAHOMA,UP TO THE AGGREGATE AMOUNT OF SEVEN HUNDRED FIFTY THOUSAND U.S.DOLLARS (US $750,000.00),AVAILABLE UPON PRESENTATION OF:

(1) YOUR SIGHT DRAFT DRAWN ON US.BEARING REFERENCE TO THIS LETTER OF CREDIT NO. NY-0656-30007152,AND

(2) YOUR SIGNED STATEMENT READING AS FOLLOWS:"I CERTIFY THAT THE AMOUNT OF THE DRAFT IS PAYABLE PURSUANT TO REGULATIONS ISSUED UNDER AUTHORITY OF U.S.NUCLEAR REGULATORY COMMISSION.

WE HAVE BEEN ADVISED BY OUR CLIENT THAT THIS LETTER OF CREDIT RELATES TO REGULATIONS ISSUED UNDER THE AUTHORITY OF THE U.S.NUCLEAR REGULATORY COMMISSION (NRC),AN AGENCY OF THE U.S.GOVERNMENT,PURSUANT TO THE ATOMIC ENERGY ACT OF 1954.AS AMENDED,AND THE ENERGY REORGANIZATION ACT OF 1974; AND THAT THE NRC HAS PROMULGATED REGULATIONS IN TITLE 10, CHAPTER I OF THE CODE OF FEDERAL REGULATIONS,PART 40 WHICH REQUIRE THAT A HOLDER OF,OR AN APPLICANT FOR, A LICENSE ISSUED UNDER 10 CFR PART 40 PROVIDE ASSURANCE THAT FUNDS WILL BE AVAILABLE WHEN NEEDED FOR DECOMMISSIONING.

REGULATIONS

THIS LETTER OF CREDIT IS EFFECTIVE AS OF JULY 27,1990 AND SHALL EXPIRE ON JULY 27,1991 AT OUR QOUNTERS,111 WALL STREET,NEW YORK,NEW YORK 10043,BUT SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED FOR A PERIOD OF 1 YEAR ON JULY 27,1991 AND ON EACH SUCCESSIVE EXPIRATION DATE,UNLESS, AT LEAST 90 DAYS BEFORE THE THEN CURRENT EXPIRATION DATE,WE NOTIFY BOTH YOU AND SEQUOYAH FUELS CORP.BY REGISTERED AIRMAIL OF OUR INTENT NOT TO EXTEND THE LETTER OF CREDIT FOR ANY FURTHER PERIOD AS SHOWN ON THE SIGNED RETURN RECEIPTS. IF SEQUOYAH FUELS CORP.IS UNABLE TO SECURE ALTERNATIVE FINANCIAL ASSURANCE TO REPLACE THIS LETTER OF CREDIT WITHIN 30 DAYS OF NOTIFICATION OF CANCELLATION THE NRC MAY DRAW BY YOUR ONE SIGHT DRAFT DRAWN ON US FOR THE UNUTILIZED BALANCE OF THIS LETTER OF CREDIT PRIOR TO CANCELLATION. THE

SEE NEXT PAGE

BANK SHALL GIVE IMMEDIATE NOTICE TO THE APPLICANT AND THE NRC OF ANY NOTICE RECEIVED OR ACTION FILED ALLEGING (1) THE INSOLVENCY OR BANKRUPTCY OF THE FINANCIAL INSTITUTION OR (2) ANY VIOLATIONS OF REGULATORY REQUIREMENTS THAT COULD RESULT IN SUSPENSION OR REVOCATION OF THE BANK'S CHARTER OR LICENSE TO DO BUSINESS. THE FINANCIAL INSTITUTION ALSO SHALL GIVE IMMEDIATE NOTICE IF THE BANK,FOR ANY REASON,BECOMES UNABLE TO FULFILL ITS OBLIGATION UNDER THE LETTER OF CREDIT. WHENEVER THIS LETTER OF CREDIT IS DRAWN ON UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT, WE SHALL DULY HONOR SUCH DRAFT WITHIN 30 DAYS FROM ITS PRESENTATION TO US AND WE SHALL DEPOSIT THE AMOUNT OF THE DRAFT DIRECTLY INTO THE STANDBY TRUST FUND OF SEQUOYAH FUELS CORP.IN ACCORDANCE WITH YOUR INSTRUCTIONS.

EACH DRAFT MUST BEAR ON ITS FACE THE CLAUSE: "DRAWN UNDER LETTER OF CREDIT NO. NY-0656-30007152,DATED JULY 27,1990, AND THE TOTAL OF THIS DRAFT AND ALL OTHER DRAFTS PREVIOUSLY DRAWN UNDER THIS LETTER OF CREDIT DOES NOT EXCEED $750,000."

PLEASE ADDRESS ALL CORRESPONDENCE TO OUR NORTH AMERICAN TRADE FINANCE SERVICES,111 WALL STREET,3RD FLOOR,NEW YORK,NEW YORK 10043,MAKING SPECIFIC REFERENCE TO OUR LETTER OF CREDIT NUMBER.

EXCEPT AS FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1983 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATIONS NO. 400

CITIBANK N.A.

AUTHORIZED SIGNATURE.

Citibank, N.A.

NORTH AMERICAN FINANCE GROUP - TRADE FINANCIAL SERVICES
SORT # 5978
111 WALL STREET NEW YORK, NY, 10043 1

JULY 15, 1992

U.S NUCLEAR REGULATORY
COMMISSION
WASHINGTON, DC 20555

REF: IRREVOCABLE LETTER OF CREDIT NO. NY-0656-30007152

GENTLEMEN:

AT THE REQUEST OF: SEQUOYAH FUELS CORPORATION ATTN: J.R. EDWARDS, SECRETARY I40 AND HIGHWAY 10 GORE, OK 74435 WE AMEND OUR REFERENCED LETTER OF CREDIT AS FOLLOWS:

THIS LETTER OF CREDIT IS EFFECTIVE AS OF JULY 27, 1990 AND SHALL EXPIRE ON JULY 27, 1991 AT OUR COUNTERS, 111 WALL STREET, NEW YORK, NEW YORK 10043, BUT SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED FOR A PERIOD OF 1 YEAR ON JULY 27, 1991 AND ON EACH SUCCESSIVE EXPIRATION DATE, UNLESS, AT LEAST 90 DAYS BEFORE THE THEN CURRENT EXPIRATION DATE, WE NOTIFY BOTH YOU AND SEQUOYAH FUELS CORP, BY CERTIFIED MAIL, AS SHOWN ON THE SIGNED RETURN RECEIPTS. IF SWQUOYAH FUELS CORP, IS UNABLE TO SECURE ALTERNATIVE FINANCIAL ASSURANCE TO REPLACE THIS LETTER OF CREDIT WITHIN 30 DAYS OF NOTIFICATION OF CANCELLATION THE NRC MAY DRAW BY YOUR ONE SIGHT DRAFT DRAWN ON US FOR THE UNUTILIZED BALANCE OF THIS LETTER OF CREDIT PRIOR TO CANCELLATION. THE BANK SHALL GIVE IMMEDIATE NOTICE TO THE APPLICANT AND THE NRC OF ANY NOTICE RECEIVED OR ACTION FILED ALLEGING (1) THE INSOLVENCY OR BANKRUPTCY OF THE FINANCIAL INSTUTITION OR (2) ANY VIOLATIONS OF REGULATORY REQUIREMENTS THAT COULD RESULT IN SUSPENSION OR REVOCATION OF THE BANK'S CHARTER OR LICENSE TO DO BUSINESS. THE FINANCIAL INSTITUTION ALSO SHALL GIVE IMMEDIATE NOTICE IF THE BANK, FOR ANY REASON, BECOMES UNABLE TO FULFILL ITS OBLIGATION UNDER THE LETTER OF CREDIT. WHENEVER THIS LETTER OF CREDIT IS DRAWN ON UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT, WE SHALL DULY HONOR SUCH DRAFT WITHIN 30 DAYS FROM ITS PRESENTATION TO US AND WE SHALL DEPOSIT THE AMOUNT OF THE DRAFT DIRECTLY INTO THE STANDBY TRUST FUND OF SEQUOYAH FUELS CORP, IN ACCORDANCE WITH YOUR INSTRUCTIONS.

THIS AMENDMENT IS AN INTEGRAL PART OF THE ORIGINAL CREDIT. ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

IMMEDIATE NOTIFICATION MUST BE GIVEN TO US IF THIS AMENDMENT IS NOT ACCEPTABLE TO YOU.

SEE NEXT PAGE

EXCEPT AS FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 400

CITIBANK N.A.

AUTHORIZED SIGNATURE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	Docket No. 40-8027-EA
SEQUOYAH FUELS CORPORATION and GENERAL ATOMICS	Source Material License No. SUB-1010
(Gore, Oklahoma Site Decommissioning Funding)	September 29, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of SFC's Reply to Intervenors' Renewed Opposition and SFC's Opposition to Intervenors' Motion for Leave to Reply; SFC's Motion for Leave to Respond if Intervenors' Motion is Granted were served upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed on the date shown below:

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attention: Docketing & Service Branch
(Original and two copies)

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

Administrative Judge James P. Gleason
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge G. Paul Bollwerk, III
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge Thomas D. Murphy
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC. 20555

Steven R. Hom, Esq.
Susan L. Uttal, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Diane Curran, Esq.
c/o Institute for Energy and
Environmental Research
6935 Laurel Avenue
Suite 203
Takoma Park, MD 20912

Stephen M. Duncan, Esq.
Mays & Valentine
110 South Union Street
P.O. Box 149
Alexandria, VA 22313-0149

John H. Ellis, President
Sequoyah Fuels Corporation
P.O. Box 610
Gore, Oklahoma 74435

John R. Driscoll
General Atomics
P.O. Box 85608
San Diego, California 92186-9784

Lance Hughes, Director
Native Americans for a Clean Environment
P.O. Box 1671
Tahlequah, Oklahoma 74465

James Wilcoxen, Esq.
Wilcoxen & Wilcoxen
P.O. Box 357
Muskogee, Oklahoma 74402-0357

Dated this 29th day of September, 1995.

Maurice Axelrad

Maurice Axelrad

MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, DC 20036
(202) 467-7000

ATTORNEY FOR
SEQUOYAH FUELS CORPORATION