

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE COMMISSION

'95 DEC 11 P3:43

_____)	
In the Matter of)	Docket No. 40-8027A-BAH
SEQUOYAH FUELS CORPORATION)	Source Material License
and GENERAL ATOMICS)	No. SUB-1010
(Gore, Oklahoma Site)	
Decommissioning Funding))	December 8, 1995
_____)	

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SEQUOYAH FUELS CORPORATION'S RESPONSE IN OPPOSITION
TO THE STATE OF OKLAHOMA'S "MOTION FOR LEAVE TO FILE
AMENDED PETITION FOR REVIEW AND BRIEF"

Sequoyah Fuels Corporation ("SFC") submits this response in Opposition to the State of Oklahoma's "Motion for Leave to File Amended Petition for Review and Brief" ("Oklahoma Motion") (Nov. 27, 1995).

The State of Oklahoma previously filed a "Petition for Review and Request for Additional Time to Amend and Supplement" ("Oklahoma Petition") (Nov. 13, 1995), which was opposed by both SFC and the NRC Staff.¹ As pointed out in SFC's Initial Response (at 1), the Commission's regulations provide that only "a party" to proceedings below may file a petition for review. 10 CFR 2.786(b)(1). The State of Oklahoma has never been a party to this proceeding and has never heretofore requested an opportunity

¹ Sequoyah Fuels Corporation's Response in Opposition to the State of Oklahoma's Petition for Review ("SFC's Initial Response") (Nov. 27, 1995); Nuclear Regulatory Commission Staff's Response to the State of Oklahoma's Petition for Review and Request for Additional Time to Amend and Supplement ("NRC Staff's Response") (Nov. 28, 1995).

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to participate in this proceeding, pursuant to 10 CFR 2.715(c) or otherwise. As discussed in SFC's Initial Response (at 3-4), NRC precedents make clear that a state cannot sit idly by during a proceeding and then seek review of a decision with which it disagrees. Therefore, both the State's initial petition and its instant motion to file an amended petition should be summarily rejected.

Moreover, the State of Oklahoma has not shown good cause for filing an amended petition. Although the State seeks to excuse its late filing by its claim that it was not aware of the Board's October 26, 1995 Order (LBP-95-18) until November 9, 1995, the State knew that the Settlement Agreement was pending for approval before the Board well before that time, as evidenced by the letter that it wrote to counsel for the NRC Staff on September 29, 1995.² In fact, the State of Oklahoma knew that decommissioning funding matters at SFC were pending before this Board a couple of years ago when the subject arose in SFC's license renewal proceeding, in which the State was a participant.³ Any interest of the State of Oklahoma in these matters should have been asserted well before the Board's October 26, 1995 Order.

If the State of Oklahoma's motion and amended petition are not summarily rejected for the foregoing reasons, SFC

² See Oklahoma Petition, Exhibit A; see also, Order, LBP-95-18, slip op. at 4.

³ See, e.g., Sequoyah Fuels Corporation (Source Materials License), CLI-95-2, 41 NRC 179, 193 n. 52 (1995).

respectfully submits that the amended petition should be denied for the reasons set forth below.

ARGUMENT

The amended petition should be denied because it is both procedurally deficient and without merit. As was true of its initial petition, the State of Oklahoma's amended petition has failed to comply with the express requirements of 10 CFR 2.786(b)(2). See SFC's Initial Response at 4-5. The State has failed to identify where the matters raised in the amended petition were raised before the Board or why they could not have been raised. Notwithstanding its awareness of the pending proceeding, and even of the pending Settlement Agreement, the State failed to present its arguments to the Board. This glaring deficiency in the petition has not been cured by the amended petition.

Since the thrust of the amended petition remains the same as the initial petition, SFC will not reiterate its previous arguments (SFC's Initial Response at 5-7), which are hereby incorporated by reference. SFC will briefly respond, however, to the State's new, and similarly mistaken, arguments.

The State appears to be claiming that the Settlement Agreement fails to require SFC to provide additional financial assurance sought in the October 15, 1993 Order and that it improperly provides SFC an exemption from the requirements of 10 CFR 40.36(e). Oklahoma Amended Petition at 4-6. Oklahoma argues

that the Settlement Agreement does not appear to be significantly different from the original SFC proposal that was allegedly found deficient in the October 15, 1993 Order, that the NRC found at that time that additional financial assurance was required, and that the Settlement Agreement contains no such assurance. Oklahoma misunderstands and mischaracterizes both the October 15, 1993 Order and the effect of the Settlement Agreement. The basic requirement sought to be imposed upon SFC by the October 15, 1993 Order was to "carry out the funding plan described in its February 16, 1993 submission" (Section VII.B). Under the Settlement Agreement, not only does SFC commit to do so, but it also commits to devote all of its net assets and net revenues from whatever source, to decommissioning. Accordingly, notwithstanding the State's arguments, SFC's obligations go beyond those under the October 15, 1993 Order. To the extent that the October 15, 1993 Order sought supplemental financial assurance beyond that made available by SFC, as shown even by the specific paragraph quoted at page 5 of the Oklahoma Amended Petition, such assurance was not sought from SFC but the Order declared that "supplemental financial assurance is required from SFC's parent corporation, GA." See also, Section VII.C.4. of the October 15, 1993 Order. Differences between the NRC and GA as to the NRC's jurisdiction over GA and GA's obligations are still pending in the instant proceeding, and the Settlement Agreement does not affect in any way the resolution of these differences.

To the extent that the State of Oklahoma appears to be arguing that the Settlement Agreement improperly waives or grants an exception to SFC from the requirements of 10 CFR 40.36(e), SFC has maintained the position that it has satisfied the applicable requirements of that regulation.⁴ In any event, the subject matter of the instant proceeding was not whether SFC should be compelled to satisfy 10 CFR 40.36(e), but whether the October 15, 1993 Order should be upheld. The NRC staff was fully within its authority in entering into the Settlement Agreement, as was the Board in approving the Settlement Agreement pursuant to 10 CFR 2.203.⁵

As previously explained by the Board, "[t]he premise underlying the terms of the Agreement appears to be that the Agency will receive from SFC all that the NRC would be entitled to receive in the absence of an agreement and a decision issued in NRC's favor." LBP-95-18, slip op. at 9. SFC has committed all of its net assets and net revenues to the completion of decommissioning. Approval of the Settlement Agreement was clearly in the public interest. The State of Oklahoma should not

⁴ The State of Oklahoma mistakenly claims that "SFC is entering decommissioning without having provided financial assurance because such was not provided by SFC at the time of SFC's license renewal, in violation of 10 CFR 40.36." Oklahoma Amended Petition at 3. Since SFC's license was not renewed, SFC did not have to provide financial assurance required for a renewed license. SFC has provided, and still maintains, the financial assurance that was required pursuant to 10 CFR 40.36(c)(2).

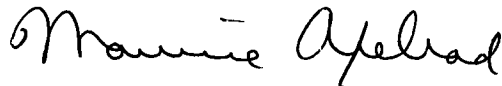
⁵ Even if the Settlement Agreement were to be construed as granting a waiver or exemption from 10 CFR 40.36(e), such action is authorized by 10 CFR 40.14(a).

be permitted to raise peripheral issues before the Commission when it stood idly by and did not choose to raise them before the Board that could have resolved them readily.

CONCLUSION

FOR THE FOREGOING REASONS, and those stated in SFC's Initial Response, the State of Oklahoma's motion for leave to file an amended petition should be summarily rejected and, if the motion is granted, the State's amended petition should be denied.

Respectfully submitted,



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December 8, 1995

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CERTIFICATE OF SERVICE

I hereby certify that copies of SFC's Response in Opposition to the State of Oklahoma's "Motion for Leave to File Amended Petition for Review and Brief" 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:

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