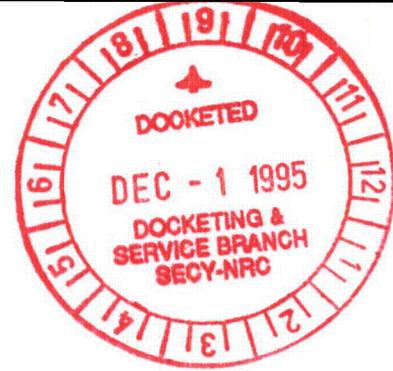


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission



_____))
In the Matter of))

SEQUOYAH FUELS CORPORATION))
and GENERAL ATOMICS))

(Gore, Oklahoma Site))
Decontamination and))
Decommissioning Funding))

Docket No. 40-8027-EA

Source Material License
No. SUB-1010

December 1, 1995

**GENERAL ATOMICS' RESPONSE IN OPPOSITION
TO INTERVENORS' PETITION FOR REVIEW**

Although General Atomics is not a party to the Settlement Agreement entered into between the NRC Staff and Sequoyah Fuels Corporation ("SFC") and approved by the Atomic Safety and Licensing Board ("Licensing Board") in its October 26, 1995 Memorandum and Order (LBP-95-18), it nevertheless submits this response in opposition to the "Intervenors' Petition for Review of LBP-95-18," along with the request that the Intervenors' Petition be denied.

ARGUMENT

In normal circumstances, General Atomics would not offer its views on questions relating to a settlement between the two parties in the proceeding below. Each of the settling parties is fully capable of addressing the merits of the settlement through their respective counsel. In their efforts to obtain Commission review of LBP-95-18, however, the Intervenors have made numerous statements about General Atomics which are either incorrect, or misleading, or both. Those statements cannot go unanswered.

SECY-041

D 5-03

17331

U.S. NUCLEAR REGULATORY COMMISSION
DOCKETING & SERVICE SECTION
OFFICE OF THE SECRETARY
OF THE COMMISSION

Document Statistics

Postmark Date 12/1/95 (fax)
Copies Received 1 + 3
Add'l Copies Reproduced 10
Special Distribution SIDS, RIDS

First, the Intervenor suggest broadly that General Atomics intends to "misuse," "manipulate," and "dissipate" SFC's resources so that that company's net assets and net revenues cannot be used for the purpose of decommissioning.¹ This unfounded assertion is outrageous.

There is no allegation whatsoever in the proceeding below that General Atomics has misused, manipulated, or dissipated any resources of SFC, or that it has otherwise engaged in any other form of wrongdoing. Indeed, counsel for the NRC Staff have expressly stated that the question of wrongdoing is not even hinted at.² In the absence of even an allegation of wrongdoing by General Atomics, much less any evidence of wrongdoing, the irresponsible statements of the Intervenor come perilously close to the type of representations that merit the sanctions authorized by Federal Rule of Civil Procedure 11. At any rate, both the statements and the

¹ Intervenor's Petition for Review of LBP-95-18, November 13, 1995, pp. 7, 9.

² At a January 27, 1995 hearing before the Atomic Safety and Licensing Board in the Administrative Proceeding, questions were asked by a member of the Board and answered by the Commission's counsel as follows:

ADMINISTRATIVE JUDGE KLINE: At the moment, as the record stands before us though, the question of wrongdoing is not even hinted at in our record at present, is it?

MS. UTTAL: No.

ADMINISTRATIVE JUDGE KLINE: And in fact, the order that the Staff issued to the General Atomics was not premised on any allegation of wrongdoing, isn't that correct?

MS. UTTAL: That's correct.

arguments which follow the statements, should be summarily rejected.

Second, and contrary to the assertions of the Intervenors, the SFC facility did not cease operations because of the discovery of "significant radioactive and chemical contamination on the site."³ In fact, operations at the facility were shut down in September 1991 for regular annual maintenance. The Commission later modified the license of SFC requiring the plant to remain shut down until certain changes were made in health, safety and environmental procedures.⁴ In April 1992, SFC received permission from the Commission to begin a phased restart of operations at its facility. Operations were, in fact, subsequently resumed.

On November 17, 1992, an accidental release of nitric oxide occurred at the SFC facility. The site was evacuated and operations were voluntarily and temporarily halted while the cause of the release was determined. No serious problems occurred and corrective actions were taken. A few days later, however, the Board of Directors of SFC concluded that uranium hexafluoride conversion operations were no longer profitable, that the company could not continue to operate its facility economically, and that a new business arrangement was the best alternative for providing

³ Intervenors' Petition for Review of LBP-95-18, November 13, 1995, p. 2.

⁴ Over the course of the next several months and at a cost in excess of \$25 million dollars, SFC took numerous actions to meet the requirements imposed by the Commission.

for SFC's decommissioning and remediation costs.

Third, and as it has stated in numerous previous filings, General Atomics categorically rejects the Intervenors' assertion that "[I]n support of SFC's bid to reopen the plant, GA promised the NRC Commissioners that it would guarantee sufficient decommissioning funding to clean up the site at the end of the plant's life."⁵ The purported "promise" and "commitment" of General Atomics' Chairman were not relevant in any way to the restart of the operations at the SFC facility, nor are they relevant to any other issue in the proceeding below. Since the concerns that caused the plant to remain shutdown had already been adequately resolved, the Commission had no choice but to permit the restart of operations.⁶ That decision was not dependent upon anything said or not said by General Atomics' Chairman or anyone else. Moreover, while the parties dispute the intent and meaning of the statements of General Atomics' Chairman, it is undisputed that the statements were voluntary. Neither the NRC Staff nor any other party has alleged that the statements were in any way legally binding.

Fourth, General Atomics rejects the Intervenors' assertion

⁵ Intervenors' Petition for Review of LBP-95-18, November 13, 1995, p. 2, footnote 1.

⁶ Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-9, 21 NRC 1118, 1124 (1985); Pan American Airways v. C.A.B., 684 F.2d 31 (D.C. Cir. 1982); Northwest Airlines v. C.A.B., 458 F.2d 846 (D.C. Cir. 1972), cert. denied, 420 U.S. 972 (1975).

that "it appears" that "GA controls activities of SFC."⁷ Such control has merely been alleged by the parties below which are adverse to General Atomics. General Atomics has consistently and unequivocally denied the allegation. The only evidence cited by the Intervenors in support of this alleged "control," is cited indirectly. It consists of nothing more than the statement that although it is not a licensee of the Commission, "GA took over the 'corporate oversight and audit responsibilities' that were previously held by Kerr-McGee, and assumed various functions under the license."⁸ General Atomics concedes that it has undertaken, at the Commission's request, some of the health physics and regulatory compliance oversight responsibilities which were previously performed by Kerr-McGee. General Atomics' performance of specifically-defined responsibilities required by the SFC license, is, however, substantially different from an exercise of the control of all of the activities of SFC.

Finally, and with respect to the Intervenors' argument that the settlement between the NRC Staff and SFC should await a settlement between the NRC Staff and General Atomics, it must be noted that such a settlement is not certain. The NRC Staff and General Atomics are, indeed, currently engaged in settlement negotiations. Both parties believe that the negotiations are

⁷ Intervenors' Petition for Review of LBP-95-18, November 13, 1995, p. 5.

⁸ Intervenors' Petition for Review of LBP-95-18, November 13, 1995, p. 2.

proceeding diligently and in good faith. To date, however, the parties have been negotiating for less than three months.

The negotiations and deliberations between the NRC Staff and SFC which resulted in the settlement that was approved by the Licensing Board on October 26, 1995, consumed more than six months of time. During those negotiations, it was undisputed that SFC was a licensee of the Commission and that it had clear decommissioning funding obligations. SFC was also prepared to devote one-hundred percent of its net assets and net revenues to the completion of the decommissioning of its facility.

The number of potential obstacles to settlement in the negotiations between the NRC Staff and General Atomics is much greater and the issues under negotiation are substantially more far-reaching and complex than the negotiations between the NRC Staff and SFC. It would be unwise, as well as unnecessary public policy, therefore, and contrary to the interests of the settling parties, to condition approval of the settlement agreement between the NRC Staff and SFC, upon a hoped for settlement between the NRC Staff and General Atomics.

CONCLUSION

For the reasons set forth above, and for the reasons stated in SFC's November 27, 1995 Response in Opposition to Intervenors' Petition for Review, which response is hereby incorporated by this reference, General Atomics respectfully submits that the Intervenors' Petition for Review of LBP-95-18 should be denied.

Respectfully submitted,

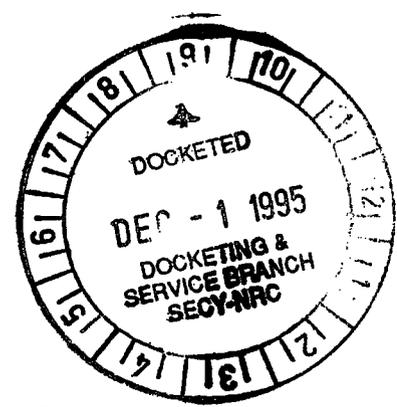
By: *Stephen M. Duncan*
Stephen M. Duncan
Bradfute W. Davenport, Jr.
MAYS & VALENTINE
110 South Union Street
Alexandria, Virginia 22314
(703) 519-8000

ATTORNEYS FOR GENERAL ATOMICS

Dated: December 1, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Commission



In the Matter of)	Docket No. 40-8027-EA
SEQUOYAH FUELS CORPORATION)	Source Material License
and GENERAL ATOMICS)	No. SUB-1010
(Gore, Oklahoma Site)	
Decontamination and)	December 1, 1995
Decommissioning Funding))	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing General Atomics' Response in Opposition to Intervenors' Petition for Review was served on December 1, 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:

Office of the Secretary *
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

Shirley Jackson, Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Kenneth C. Rogers, Commissioner
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

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

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

Administrative Judge Thomas D. Murphy
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 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 IEER
6935 Laurel Avenue, Suite 204
Takoma Park, Maryland 20912

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

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

Maurice Axelrad, Esq. *
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036

Mr. John R. Driscoll
General Atomics
3550 General Atomics Court
San Diego, California 92121-1194

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

Dated this 1st day of December, 1995.


Stephen M. Duncan

Mays & Valentine
110 South Union Street
Alexandria, Virginia 22314
(703) 519-8000

Counsel for General Atomics