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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Commission

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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 )	
Decommissioning Funding) )	November 27, 1995
_____ )	

SEQUOYAH FUELS CORPORATION'S  
RESPONSE IN OPPOSITION TO INTERVENORS' PETITION FOR REVIEW

Sequoyah Fuels Corporation ("SFC") submits this Response in Opposition to "Intervenors' Petition For Review of LBP-95-18" ("Intervenors' Petition") dated November 13, 1995. For the reasons more fully stated below, SFC respectfully requests that the Intervenors' Petition be denied.

BACKGROUND

On October 26, 1995, the Atomic Safety and Licensing Board ("Licensing Board") issued LBP-95-18, its Memorandum and Order approving a Settlement Agreement ("Agreement") entered into between SFC and the NRC Staff. Under the terms of the Agreement, SFC has pledged to use its best efforts to preserve and use all of its net assets and net revenues for the purpose of decommissioning the Sequoyah facility and to do so until the NRC Staff determines that the decommissioning has been satisfactorily completed. In approving the Agreement, the Licensing Board appropriately concluded that "[t]he premise underlying the terms of the Agreement appears to be that the Agency will receive from

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SFC all that the NRC would be entitled to receive in the absence of an agreement and a decision issued in NRC's favor." The Licensing Board dismissed SFC as a party to the proceeding, while other aspects of the proceeding relating to SFC's parent company, General Atomics ("GA"), continue unaffected by the Agreement.

Nevertheless, the Native Americans for a Clean Environment ("NACE") and the Cherokee Nation (together, "Intervenors") have filed a petition seeking review of the Licensing Board's order.<sup>1/</sup> The Intervenors' Petition fails to provide any "concise statement why Commission review should be exercised," as required by 10 CFR 2.786(b)(2)(iv). However, the Intervenors appear to be suggesting implicitly that there is a "substantial question" to be reviewed by the Commission based upon their three arguments that: (1) the Board has not addressed SFC's relationship with GA (an issue which is beyond the scope of the settlement); (2) the Board improperly concluded that NRC lacked authority to resolve "other parties' legal disputations" regarding potential claims against SFC's assets; and (3) the Board erred in concluding that the Agreement did not have any impact on SFC's pre-existing decommissioning funding mechanisms (a reserve account and a letter of credit). These arguments are discussed below.

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<sup>1/</sup> The State of Oklahoma has also filed a "Petition For Review and Request For Additional Time To Amend and Supplement" dated November 13, 1995. SFC is submitting its response in opposition to that petition separately and concurrently with the filing of this response. SFC incorporates by reference the relevant arguments in that response, as if fully set forth herein.

## ARGUMENT

**I. THE BOARD PROPERLY DID NOT ADDRESS SFC'S RELATIONSHIP WITH GA BECAUSE THIS IS AN ISSUE THAT REMAINS TO BE RESOLVED IN THE PROCEEDING AND IS IRRELEVANT TO THE SETTLEMENT BETWEEN SFC AND THE NRC STAFF**

The question of GA's relationship with SFC is the subject of ongoing litigation in the proceeding below. In fact the Agreement expressly provides that nothing in the Agreement "shall be construed to limit the NRC staff's ability to continue to pursue litigation with GA." Agreement, ¶ 8. Nevertheless, the Intervenors contend that the Board cannot approve the settlement between SFC and the NRC Staff without resolving all of the remaining issues in the proceeding below relating to GA. In addition, Intervenors suggest that consideration of the SFC settlement should be deferred until the Staff reaches a settlement with GA. These arguments should be rejected.

As an initial matter, the Intervenors' argument (based upon a similar suggestion by Judge Bollwerk) seems to improperly presume that a settlement between the NRC Staff and GA is imminent. Such a settlement is by no means assured, and more importantly, the independent Agreement reached between SFC and the NRC Staff should not be held hostage to the NRC Staff's negotiations with another party. Moreover, if the arguments posited by the Intervenors were accepted, SFC could never extricate itself from the unnecessary and costly litigation in the proceeding below, despite the fact that SFC and the NRC Staff have already resolved their differences and reached a settlement. Such a result would be not only absurd but unjust.

The Intervenors propose two illustrative examples which are intended to confirm the desirability of linking any SFC settlement with a resolution of the NRC Staff's disputes with GA. In fact, the examples confirm that the Intervenors' concerns are without foundation. Intervenors argue first, that the Agreement does not "protect against improper payment" by SFC of a secured note held by the Kerr-McGee Corporation relating to Sequoyah Holding Corporation's acquisition of SFC in 1988. <sup>2/</sup> Intervenors' Petition at 6. Although Kerr-McGee has no claim against GA with regard to this note, the Intervenors suggest that SFC will somehow be motivated to pay the entire amount due on the note so as to relieve GA of liability. Of course, this claim is nonsensical.

The Settlement Agreement expressly commits SFC to preserve and devote its net assets and net revenues to the completion of decommissioning "until the NRC Staff determines that such decommissioning has been satisfactorily completed." Agreement, ¶ 3. Therefore, the Agreement prohibits any "improper" payment to Kerr-McGee. Moreover, SFC has no incentive to make any payments to Kerr-McGee, has not done so for more than a year, and has represented to the Licensing Board as follows:

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<sup>2/</sup> SFC's notes with GA are unsecured, and GA does not have any liens on SFC's assets. Other than the Kerr-McGee note, the only liens on SFC's assets are a number of liens on automobiles and office equipment (e.g., xerox machines, computers), in accordance with standard business practices for such assets. Any limitations on these liens would be inappropriate, as such limitations would only serve to disrupt SFC's ability to conduct its activities. This would potentially increase the costs of decommissioning.

SFC has no intention of resuming any principal or interest payments to Kerr-McGee prior to such time as the NRC Staff determines that decommissioning has been satisfactorily completed. SFC will not make any such payments to Kerr-McGee unless it is ordered to do so by a competent judicial or other governmental authority. <sup>3/</sup>

In fact, SFC has obtained a commitment from Kerr-McGee that Kerr-McGee would not take any legal action to enforce its rights until decommissioning is complete. <sup>4/</sup> Nor would Kerr-McGee have any incentive to attempt to enforce its claim on SFC's assets, because, as noted in Judge Bollwerk's separate views, the "foreclosure on the note likely would bring the SFC property back into Kerr-McGee's hands, along with the accompanying responsibility for clean-up of contamination on the property." LBP-95-18, slip op. at 16 n.4.

As a second "illustrative example," Intervenors contend that SFC's relationship with GA is implicated by SFC's arrangements with ConverDyn. <sup>5/</sup> Noting that "SFC's 'obligations to ConverDyn'" are included as a limitation on SFC's net assets, Intervenors' Petition at 5-6, the Intervenors appear to be suggesting there is something untoward about SFC's meeting its

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<sup>3/</sup> "SFC's Reply to Intervenors' Response to Joint Motion For Approval of Settlement Agreement," dated September 15, 1995.

<sup>4/</sup> The Kerr-McGee commitment was made in a letter to SFC dated September 27, 1995, that is appended as Attachment 1 to "SFC's Reply to Intervenors' Renewed Opposition," dated September 29, 1995.

<sup>5/</sup> The Intervenors erroneously claim that ConverDyn "is controlled by an affiliate of GA." Intervenors' Petition at 6. However, 50% of ConverDyn is owned by an independent third party, Allied-Signal Energy Services, Inc.

contractual obligations to ConverDyn. Under the Agreement, SFC has pledged to "exercise due care to preserve its entitlement to standby fees and additional standby fees by fulfilling its contractual obligations pursuant to the ConverDyn Arrangements." Agreement, ¶ 4(d). Despite Intervenors' implications to the contrary, this commitment is made to preserve the flow of funds available for decommissioning. Moreover, there are numerous adequate mechanisms in the Agreement to assure that SFC assets are not dissipated or used for improper purposes. Thus, the concerns expressed by Intervenors have no merit.

**II. THE BOARD PROPERLY CONCLUDED THAT THE SETTLEMENT AGREEMENT IS ADEQUATE TO ASSURE THAT SFC'S ASSETS AND REVENUES WILL BE CONSERVED FOR DECOMMISSIONING FUNDING**

In its order approving the Agreement, the Licensing Board appropriately held that "[t]he NRC is neither impacted by nor involved in the resolution of other parties' legal disputations." LBP-95-18, slip op. at 5. The Intervenors now contend that the Licensing Board erred in failing to resolve hypothetical future claims that might be brought by third parties against the assets of SFC. Intervenors' Petition at 7-9. In addition, Intervenors assert that SFC has no "institutional incentive to conserve its resources for the future." Id. at 8.

The Intervenors' suggestion that the Commission should resolve intangible legal disputes that have not yet arisen has no merit. Even if the NRC had the present authority to alter the pre-existing rights of third parties, there is no reason for the Commission to broach this issue at this time. If third parties

attempted improperly to exercise rights to SFC assets, or if the NRC disagreed with a payment or transfer of funds to be made by SFC, the NRC could exercise any authority it has to enjoin such an action at that time. <sup>6/</sup> In any event, these unlikely hypotheticals are best addressed at a time when the Commission is presented with a concrete legal dispute. Moreover, SFC has committed in the Agreement to "make its financial records and books available for audit by the NRC Staff at any reasonable time." Agreement, ¶ 5. If the NRC Staff has any concerns about SFC's expenditures, it will undoubtedly exercise its continuing oversight authority to assure that SFC's assets and revenues are appropriately conserved for decommissioning. <sup>7/</sup>

Furthermore, the Intervenor's claims that SFC has no incentive to conserve its resources find no support in fact or law. SFC is managed by experienced and dedicated professionals who have every incentive to accomplish their current goal to decommission the facility. Many of these dedicated individuals have families that live in the local community around the Sequoyah facility, and they are motivated to assure the health and safety of their community. The Intervenor has repeatedly

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<sup>6/</sup> See, e.g., "Order to Safety Light Corp. Prohibiting Transfer of Assets and Requiring the Preservation of the Status Quo (Effective Immediately) and Demand for Information," 58 FR 7268 (Feb. 5, 1993).

<sup>7/</sup> The Intervenor's claim that "reporting requirements have been reduced significantly under the [Agreement]" have no foundation. Intervenor's Petition, at 8 n.8. Nothing in the Agreement abrogates SFC's prior commitments to submit annual financial statements, and if anything, the Agreement provides broader access to SFC's financial information.

made unfounded allegations regarding SFC management that are offensive and do a disservice to those individuals who have the primary responsibility for the successful completion of decommissioning the Sequoyah facility. Moreover, the Agreement itself provides detailed commitments pledging to preserve SFC's net assets and net revenues for decommissioning.

E.g., Agreement, ¶¶ 3-4. Additionally, it specifically preserves the NRC Staff's continuing authority to enforce compliance with SFC's commitments in the Agreement. Id., ¶ 7.

**III. THE BOARD PROPERLY CONCLUDED THAT THE SETTLEMENT AGREEMENT DOES NOT AFFECT THE FUNDS THAT ARE ALREADY COMMITTED TO SFC'S DECOMMISSIONING**

Intervenors argue that the Licensing Board erred in "refusing to allow or conduct further inquiry into the impact of the settlement agreement" on SFC's pre-existing decommissioning funding mechanisms, a reserve account provided for in the SFC License and a \$750,000 letter of credit provided in accordance with 10 CFR 40.36(c)(2). Intervenors' Petition at 9-10.

Significantly, the Intervenors do not cite a single provision of the Agreement that could potentially impact these funding mechanisms. Rather, both the NRC Staff and SFC have repeatedly explained that these two funding mechanisms are not affected by the Agreement.<sup>8/</sup> In addition, the Licensing Board has held that "[t]he Agreement is not intended to, nor does it, permit any

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<sup>8/</sup> See, e.g., "NRC Staff's Reply To Intervenors' Response To Joint Motion For Approval of Settlement Agreement," at 7 (Sept. 22, 1995); "SFC's Reply To Intervenors' Opposition To Settlement Agreement," at 7 (Sept. 15, 1995).

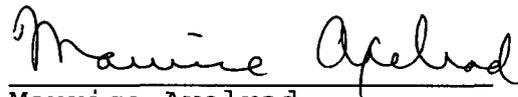
financial allocations or obligations for decommissioning previously committed by SFC to be obviated by the terms therein." LBP-95-18, slip op. at 6.

The Intervenors' continued spurious arguments requesting further review regarding this well-settled issue suggest only that the Intervenors' claims are not being brought in good faith. To the contrary, it would appear that this claim is interposed for purposes of delay or in an attempt to expand the scope of the Licensing Board's inquiry into areas that are in no way impacted by the Settlement Agreement.

**CONCLUSION**

FOR THE FOREGOING REASONS, and those stated in SFC's accompanying "Response in Opposition to the State of Oklahoma's Petition For Review," the Intervenors' Petition for Review of LBP-95-18 should be denied.

Respectfully Submitted,



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November 27, 1995

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November 27, 1995

CERTIFICATE OF SERVICE

I hereby certify that copies of Sequoyah Fuels Corporation's "Response in Opposition to Intervenors' Petition For Review of LBP-95-18" and "Response in Opposition to the State of Oklahoma's Petition For Review" 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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