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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:
James P. Gleason, Chairman
Dr. Jerry R. Kline
G. Paul Bollwerk, III

OFFICE OF SECRETARY
DOCKETING & SERVICE
607.01

Thomas D. Murphy
Alternate Board Member

SERVED NOV 14 1995

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

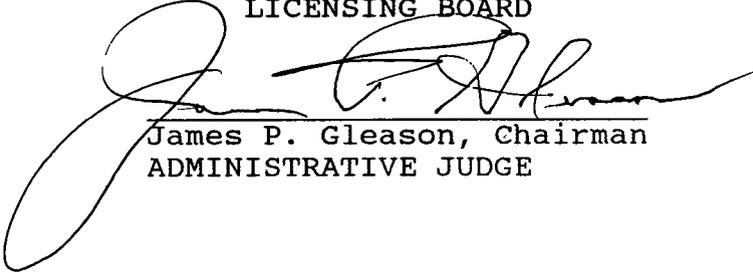
ASLBP No. 94-684-01-EA

November 13, 1995

MEMORANDUM

Due to an inadvertence, the Settlement Agreement,
approved by the Board in the Decision of October 26, 1995
(LBP-95-18) in the above designated proceeding, was omitted
and is submitted herewith.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



James P. Gleason, Chairman
ADMINISTRATIVE JUDGE

ATTACHMENT:
Settlement Agreement, 8/18/95

SECY-048

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SETTLEMENT AGREEMENT

THIS AGREEMENT is made by and between Sequoyah Fuels Corporation ("SFC") and the Staff of the United States Nuclear Regulatory Commission ("NRC" or "Commission"), to wit:

WHEREAS, on October 15, 1993 the Commission issued an order to SFC and General Atomics ("GA") (58 Fed. Reg. 55087 (Oct. 25, 1993)) (the "Order"), relating to the site decontamination and decommissioning funding for the facilities located in Gore, Oklahoma that are licensed under NRC License No. SUB-1010, Docket No. 40-8027 ("Sequoyah Facility"); and

WHEREAS, a hearing on the Order is now being held before an Atomic Safety and Licensing Board (the "Board") in Docket No. 40-8027-EA, and SFC and the NRC Staff are parties in such hearing; and

WHEREAS, the NRC Staff and SFC understand and acknowledge that, in meeting any obligations that SFC has under existing regulations or may have under future regulations, SFC cannot provide funds for decommissioning the Sequoyah Facility in excess of all of its "net assets" and "net revenues," as those terms are defined in this Agreement, and is unable to obtain and provide financial assurance for decommissioning beyond pledging all of its net assets and net revenues; and

WHEREAS, the NRC Staff and SFC understand and acknowledge that it is in the public interest to avoid the dissipation of their manpower and financial resources in litigation, particularly since it is in the public interest that SFC's resources be devoted to completion of decommissioning of the Sequoyah Facility; and

WHEREAS, both the NRC Staff and SFC have engaged in negotiation and compromise because they recognize that certain advantages and benefits may be obtained by each of them through settlement and compromise of the controverted matters now pending; and

WHEREAS, the NRC Staff and SFC believe that this Agreement is in the public interest.

NOW, THEREFORE, in consideration of the mutual promises made herein, SFC and the NRC Staff agree as follows:

1. Definitions. The following terms used in this Agreement are defined as follows:

- a. "Gross assets." SFC's gross assets include, but are not limited to, cash and cash equivalents on hand, accounts receivable, materials and supplies inventories, prepaid expenses, unbilled receivables, property, plant and equipment, and any other known or future assets owned or acquired by SFC.
- b. "Gross revenues." SFC's gross revenues include, but are not limited to, standby fees and additional standby fees received by SFC under the "Sequoyah Fuels Corporation Standby Agreement" (Nov. 19, 1992) with ConverDyn, revenues received by SFC under the "Sequoyah Fuels Corporation Conversion Services Agreement" (Nov. 19, 1992) with ConverDyn (these foregoing two agreements are hereafter collectively referred to as the "ConverDyn Arrangements"), revenues received by SFC under contracts for conversion services with entities listed in Schedule C of the foregoing agreement, revenues from the sale or salvage of plant, equipment, material or supplies, cash flow from financing activities, and any other known or future revenues derived by SFC from whatever source.
- c. "Reasonable and necessary expenses." SFC's reasonable and necessary expenses include:
 - (1) reasonable and necessary expenses paid by SFC that are consistent with SFC's obligations under this Agreement and its business needs and sound judgment, exercising due care to preserve its assets and revenues for the completion of decommissioning; and
 - (2) salaries and benefits of SFC personnel and expenses for contractor personnel that are reasonable and commensurate with salaries and benefits of personnel performing similar functions for other companies engaged in activities of similar complexity in the nuclear industry; and
 - (3) payments for taxes, utilities, reasonable and necessary insurance expenses, reasonable and necessary professional services, license fees, inspection fees, and any other payments made to fulfill SFC's contractual obligations; and
 - (4) payments for conversion services provided by ConverDyn in satisfaction of SFC's current conversion contracts; and
 - (5) reasonable and necessary costs incurred in meeting SFC's on-going decontamination and decommissioning

obligations, in complying with regulatory requirements, and in complying with orders or otherwise fulfilling obligations imposed by competent federal, state, and local governmental authorities; and

- (6) reasonable and necessary costs incurred in the sale or salvage of SFC's plant, equipment, materials and supplies; and
 - (7) costs paid for goods and services provided to SFC by GA and/or its parent companies, affiliates and subsidiaries ("Related Companies") that are rendered to SFC at rates consistent with those charged by GA, and/or Related Companies, to other customers for comparable services, and not in excess of rates otherwise available to SFC for performance of such services; and
 - (8) general and administrative expenses and overhead costs and expenses allocated to SFC by GA and/or Related Companies (not covered by the services charges referred to in section 1.c.(7) immediately above) that are allocated in accordance with established practices for allocating expenses among related privately held corporations, consistently applied, and consistent with generally accepted accounting principles; and
 - (9) payments of debts incurred by SFC including principal and interest payments to SFC's creditors, including, but not limited to, those made in accordance with the two revolving notes, for \$4.5 million and \$2.5 million, respectively, currently in place with GA (the two notes together are hereinafter referred to as the "Lines of Credit"). All such payments shall be made in accordance with the reasonable and ordinary terms and conditions of SFC's agreements with its creditors.
- d. "Net assets." SFC's net assets are its gross assets, subject to its obligations to ConverDyn and subject to the rights of senior lien-holders.
 - e. "Net revenues." SFC's net revenues are its gross revenues that are available after SFC has paid its reasonable and necessary expenses, subject to its obligations to ConverDyn and subject to the rights of senior lien-holders.

2. SFC will carry out the funding plan described in the Preliminary Plan for Completion of Decommissioning submitted to the NRC on February 16, 1993, by devoting all of its net assets and net revenues to the completion of decommissioning of the Sequoyah Facility, in accordance with the requirements of the NRC, the Environmental Protection Agency, and any other state or federal agency with jurisdiction, until the NRC Staff determines that such decommissioning has been satisfactorily completed.
3. SFC specifically pledges by this Agreement to devote all of its net assets and net revenues to completion of decommissioning and pledges 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.
4. In committing its net assets and net revenues to the completion of decommissioning, SFC's expenditure of funds to pay its reasonable and necessary expenses shall be consistent with its business needs and sound judgment within the following terms and conditions:
 - a. SFC shall not enter into any agreement, or any amendment to an agreement, with GA and/or Related Companies which would require SFC to pay interest charges or fees in excess of those charges and fees normally charged by GA and/or such Related Companies for such loans to a similarly situated Related Company or to accept terms and/or pay interest charges or fees higher than those that would be available to SFC in a similar transaction negotiated at arms length with another lender; and
 - b. acknowledging and understanding that GA has deposited sums of money in two cash collateral accounts held by GA at a financial institution so that SFC could obtain a letter of credit for purposes of compliance with Oklahoma's workmen's compensation requirements (\$500,000) and a letter of credit for purposes of compliance with 10 CFR § 40.36 (\$750,000), that GA's deposit of these sums of money reduces the funds available to SFC pursuant to the Lines of Credit currently being provided by GA to SFC, and that SFC is obligated to repay these sums of money and would do so under the terms of the Lines of Credit, nothing in this Agreement shall be construed to prohibit or limit: (1) the return to GA of its funds currently held in the cash collateral accounts which support SFC's letters of credit; (2) the substitution of SFC funds for the cash collateral accounts held by GA, if SFC has the funds available to do so; or (3) the repayment of funds to GA

by SFC under the terms of its Lines of Credit and in fulfillment of its obligations, if SFC has the funds available to do so; and

- c. any sale or disposition of assets, as appropriate, reasonable and warranted in SFC's discretion, including the sale or transfer of assets to GA or Related Companies, shall be made at prices that assure that SFC receives payment at fair market value or salvage value upon the sale of such assets, such prices to be established either in good faith arms length negotiations, exercising sound business judgement, or by obtaining an objective evaluation by an expert third party; and
 - d. SFC will exercise due care to preserve its entitlement to standby fees and additional standby fees by fulfilling its contractual obligations pursuant to the ConverDyn Arrangements.
5. Until the NRC Staff determines that the decommissioning of the Sequoyah Facility has been satisfactorily completed, SFC will provide the NRC Staff with copies of those annual audited financial statements in which SFC's financial information is consolidated. In addition, SFC will make its financial records and books available for audit by the NRC Staff at any reasonable time.
 6. The NRC Staff and SFC agree that SFC's commitments in the Agreement represent a good faith effort to provide for the funding of the decommissioning of the Sequoyah Facility and to assure that its assets and revenues are effectively utilized to fulfill SFC's obligations and to complete decommissioning. Therefore, the NRC Staff hereby rescinds the Order insofar as it applies to SFC and accepts the terms of this Agreement in lieu of those provisions of the Order that are directed to SFC. Subject to the provisions of section 7 below, the NRC Staff also agrees to forbear from taking any enforcement or other action against SFC or its current or former officers, directors or employees (relating to their actions in their official capacities), (a) based upon any alleged requirement to provide funds for decommissioning the Sequoyah Facility or to provide financial assurance for decommissioning the Sequoyah Facility beyond the commitments of all of SFC's net assets and net revenues provided for in this Agreement, whether such requirement arises under any current NRC regulations or under any future regulation that might alter, redefine or clarify the currently applicable requirements, or (b) based upon the facts alleged in the Order and/or those reasonably known by the NRC that are related to the subject matter of the Order.

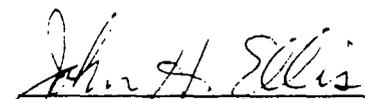
7. Nothing in this Agreement shall limit the NRC Staff's ability to take appropriate enforcement action to enforce SFC's compliance with this Agreement, or to take appropriate enforcement action based upon material information that is not currently available to or known by the NRC Staff or based upon evidence that any representation in this Agreement is incomplete or inaccurate in a material respect. The NRC Staff and SFC acknowledge that the terms and provisions of this Agreement, once approved by the Board, shall be incorporated by reference into an order issued by the Board, as the term "order" is used in subsections (b), (i) and (o) of section 161 of the Atomic Energy Act of 1954, as amended (the "Act"), 42 U.S.C. § 2201, and shall be subject to enforcement pursuant to the Commission's regulations and Chapter 18 of the Act, 42 U.S.C. § 2271 et seq.
8. Nothing in this Agreement shall be construed to limit the NRC Staff's ability to continue to pursue litigation with GA regarding those provisions of the Order, and any related factual allegations in the Order, that are directed to GA.
9. The NRC Staff and SFC understand and acknowledge that this Agreement is the result of a compromise and shall not for any purpose be construed as an admission of the facts alleged or conclusions of law drawn in the Order, as an admission of the alleged joint and several responsibilities of SFC included in Section VII.A and other sections of the Order, or as an admission by SFC of any violation of 10 CFR § 40.36, 10 CFR § 40.42, or of any statute, regulation, license condition, or other regulatory requirement.
10. The NRC Staff and SFC agree that no inference adverse to either party shall be drawn based upon the parties having entered into this Agreement. They further agree that any factual findings or conclusions of law reached in any proceedings against GA relating to the Order shall not be binding on SFC, and SFC shall not be prejudiced by such findings or conclusions in any subsequent administrative or judicial proceedings involving SFC.
11. The NRC Staff and SFC agree to file a joint motion requesting that the Board approve this Settlement Agreement and dismiss SFC from the proceeding, pursuant to the Commission's regulations in 10 CFR § 2.203. Upon approval of this Settlement Agreement by the Board, without any substantive modification by the Board, the NRC Staff and SFC agree that they will not appeal the Board's approval or otherwise seek judicial review of such approval. If this Agreement is not approved by the Board, or if this Agreement is approved by the Board but is modified in any substantive manner by the Board, or if any body or court to which the

Board's approval is appealed reverses such approval or affirms the approval but modifies the Agreement in any substantive manner, either the NRC Staff or SFC may void this Agreement by giving written notice to the other party within ninety (90) days of such action by the Board, body or court, unless such 90-day period is extended by written agreement of both parties. The NRC Staff and SFC agree that under such circumstances and upon request they will negotiate in good faith to resolve differences.

12. This Agreement shall become effective upon final action approving this Agreement by the Board.

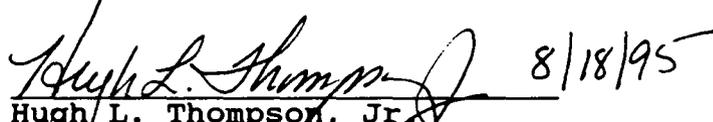
IN WITNESS WHEREOF, the NRC Staff and SFC have caused this Settlement Agreement to be executed by their duly authorized representatives on this ~~11th~~ ^{18th} day of August, 1995.

FOR SEQUOYAH FUELS
CORPORATION:



John H. Ellis
President

FOR THE NUCLEAR REGULATORY
COMMISSION:



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety,
Safeguards and Operations Support

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

SEQUOYAH FUELS CORPORATION
GENERAL ATOMICS
(Gore, Oklahoma, Site Decontamina-
tion and Decommissioning Funding)

Docket No.(s) 40-8027-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM WITH SETTLEMENT have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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**Docket No.(s)40-8027-EA
LB MEMORANDUM WITH SETTLEMENT**

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**Betty Robertson
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Vian, OK 74962**

**Dated at Rockville, Md. this
14 day of November 1995**


Office of the Secretary of the Commission