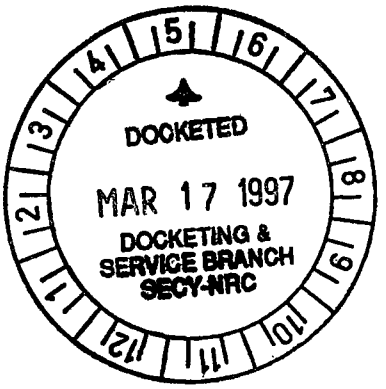

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of	)	
	)	
SEQUOYAH FUELS CORPORATION	)	Docket No. 40-8027-EA
and GENERAL ATOMICS	)	
(Gore, Oklahoma Site	)	
Decontamination and	)	
Decommissioning Funding	)	
	)	

GENERAL ATOMICS' BRIEF IN SUPPORT OF AFFIRMATION OF LBP-96-24

March 17, 1997

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INTRODUCTION

In accordance with the January 22, 1997 Memorandum and Order of the Commission and the Commission's March 10, 1997 Order, General Atomics respectfully submits this responsive brief in support of the affirmation of the November 5, 1996 Memorandum and Order of the Atomic Safety and Licensing Board ("Licensing Board" or "Board") (LBP-96-24) in which the Board approved the Settlement Agreement between the NRC Staff and General Atomics.

After ten months of negotiation on a wide range of issues, the NRC Staff and General Atomics reached agreement on a settlement of all of the issues which have been in litigation for over three years. The resulting Settlement Agreement commits General Atomics -- a company which is not a licensee of the Commission in connection with the Sequoyah Fuels Corporation ("SFC") facility (site) which is the subject of this proceeding and over which the Commission has no jurisdiction -- to immediately start payment of no less than $5.4 million and as much as $9 million into a trust fund. The NRC Staff will have exclusive control of that fund. It is free to apply the accumulated moneys to the decommissioning of the SFC site or to any other proper public purpose. The Settlement Agreement also eliminates the substantial risk to the public that continued litigation will result in no judgment whatsoever against General Atomics. It eliminates the risk that any judgment that might be obtained would be unenforceable. It eliminates both the substantial costs and the delay of continued litigation. The NRC Staff has certified that the Agreement is fair and reasonable.

After (a) considering all arguments advanced by the Intervenors and the State, (b) considering several public interest and other factors, and (c) giving due weight to the judgment of

the NRC Staff, the Licensing Board approved the Settlement Agreement. That approval was consistent with the law, justified by the facts, and correct. It should be affirmed.

STATEMENT OF FACTS

Native Americans for a Clean Environment, Cherokee Nation (hereinafter, the "Intervenors"), and the State of Oklahoma (hereinafter, the "State"), have continually assumed and declared as fact, or have presumed to state or imply as fact, matters and contested allegations on which evidence has never been presented, which have never been adjudicated, which are baseless or demonstratively untrue, which are totally irrelevant to this proceeding, or which are speculative by any standard. For the reasons described below, General Atomics thus denies and rejects the inclusion by the Intervenors and the State of each of the following matters in their respective descriptions of the "Factual Background" and the "Historical Overview" of this proceeding.

First, the Intervenors and the State have gone to almost comical lengths to avoid any admission of what has always been an undisputed fact, namely, that General Atomics is not now and has never been a licensee of the Commission in connection with the SFC site. The Intervenors and the State concede that General Atomics has never been "named as a licensee,"[1] but they apparently seek to imply that this is somehow a mere technicality because the Company has performed certain oversight and audit functions at the SFC site.

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[1] Intervenors' Brief on Review of LBP-96-24 (hereinafter "Intervenors' Brief"), p. 2; Brief in Support of Petition for Review Filed by State of Oklahoma (hereinafter "State's Brief"), p. 3.

General Atomics has never denied the obvious fact that in 1988 it voluntarily agreed to perform the oversight and audit functions. The new responsibilities were assumed then and have continued solely in order to ensure the safety of the SFC facility (e.g., by auditing safety-related activities involving health physics, radiation protection, etc., and by verifying SFC compliance with NRC license conditions and applicable federal and state regulations). These voluntarily-assumed responsibilities have not changed in any way, however, the facts that General Atomics has never been a licensee of the Commission in connection with the SFC site; that General Atomics is not and has never been engaged in licensed activities at that facility; and that it does not possess licensed materials in connection with the facility.

Second, the Intervenors continue to state as "fact," an allegation that in the spring of 1992 "the NRC permitted SFC to resume operations, based in part on oral and written commitments by GA CEO J. Neal Blue to fulfill any decommissioning funding requirements that could not be met by SFC," that "The NRC ordered the restart in reasonable reliance on GA's promise to fulfill this commitment," and that "GA reneged on its promise."[2] The Intervenors have offered no deposition testimony, no answers to interrogatories, no documentation, or any other evidence that the Commission reasonably relied upon anything said by Mr. Blue. Moreover, the point raised by the Intervenors is not relevant to any issue in this proceeding. Since the concerns that had caused the SFC facility to remain shut down had already been adequately resolved, the NRC had no choice but to permit the re-start of operations.[3]

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[2] Intervenors' Brief, pp. 2-3.

[3] 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., 539 F.2d 846 (D.C. Cir. 1976); Airline Pilots Ass'n, International v. C.A.B., 458 F.2d 846 (D.C. Cir. 1972), cert. denied, 420 U.S. 972 (1975).

Third, the Intervenors state as fact that "[I]n lieu of guaranteeing decommissioning funding for the SFC site, GA helped to create a new business entity called 'ConverDyn, ...'[4] Since it is not the licensee, and because the NRC Staff has never claimed either (1) that General Atomics caused any contamination which may exist at the SFC facility, or (2) that General Atomics has otherwise engaged in any form of activity that is wrongful or dangerous to the public health and safety,[5] General Atomics has never had any obligation to guarantee funding for the SFC site. The business factors which led General Atomics to help SFC establish ConverDyn were most certainly not related to any belief by the leadership of the Company that it had a legal obligation to guarantee decommissioning funding for the SFC site.

Fourth, the Intervenors and the State assert in their "Factual Background" and "Historical Overview" that the NRC Staff "found" the various allegations of fact that were contained in its October 15, 1993 Order, including the allegation that General Atomics is "responsible for decommissioning funding"[6] These assertions imply some form of adjudication or at least a determination based upon examination of all relevant evidence. The State goes even further and asserts that General Atomics' request for a hearing on the enforcement order amounted to an "appeal" of the order.[7] General Atomics joins the NRC Staff in unequivocally rejecting these contentions: "although the 1993 Order alleges certain facts and conclusions, there have been no

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4 Intervenors' Brief, p. 3.

5 See the July, 1996 NRC Staff-General Atomics Settlement Agreement (hereinafter, "Settlement Agreement"), pp. 1-2.

6 See, e.g., Intervenors' Brief, pp. 3-4; State's Brief, pp. 2, 4, 7, 9, 17, 18.

7 State's Brief, p. 5.

findings as to any fact or legal conclusion" (emphasis added).[8] Moreover, the Commission's Rules of Practice clearly recognize and establish that a Staff enforcement order constitutes nothing more than a series of allegations. The Rules expressly authorize a party to file an "answer" which states the "nature of his defense" and which admits or denies each material "allegation" of fact contained in an enforcement order.[9] This is exactly what General Atomics did. The Atomic Safety and Licensing Board has never adjudicated any of the allegations contained in the Staff's October 15, 1993 Order.

Fifth, the Intervenors improperly characterize as "factual background," a general description of an unrelated settlement between the NRC Staff and SFC.[10] After requesting that the Commission consider the separate settlement agreements together,[11] the State does not wait for an answer. It blithely proceeds to present argument as if the two matters could be, and will be, considered together. Much of the State's Brief thus improperly discusses its objections to the terms of the NRC Staff-SFC settlement agreement.

General Atomics denies that a settlement agreement to which it is not a party, and which was the result of negotiations between the Staff and SFC in which it did not participate, is in any way relevant to the Commission's consideration of the Licensing Board's approval of the settlement agreement into which General Atomics entered with the NRC Staff. Factors which

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8 NRC Staff's Brief in Support of Affirmation of LBP-96-24 (hereinafter, "Staff's Brief"), pp. 21, 24.

9 10 C.F.R. § 2.705(a)(1), (b).

10 Intervenors' Brief, p. 5.

11 Id., at p. 2.

were obviously of importance in the consideration by the Staff and Licensing Board of the NRC Staff-General Atomics Settlement Agreement (e.g., the fact that General Atomics is not a licensee of the Commission), were not present at all in their consideration of the Staff-SFC settlement agreement. To consider the two matters together is to assume -- unfairly and contrary to law -- the outcome of an adjudication which has never taken place.

Sixth, General Atomics objects to (a) the State's description of certain pollutants which it asserts "may" be found in wastewater discharges of the SFC facility, and (b) its further description of the possible consequences of the decommissioning process.[12] These matters have never been adjudicated and are speculative at best.

Seventh, the Intervenors improperly include in their description of the purported "factual" background of the instant proceeding, a discussion of matters (1) relating to facilities which are not even mentioned in the NRC Staff's October 15, 1993 enforcement order, (2) which are not the subject of any proceeding before a Licensing Board or the Commission, and (3) over which the Licensing Board had no jurisdiction whatsoever.[13] General Atomics strenuously objects to this attempt to inject into this proceeding matters which are totally irrelevant to the allegations contained in the October 15, 1993 Order.

Eighth, General Atomics objects to the statement of the Intervenors that "Uncle Sam will pay a portion of the bill."[14] The "bill" is not identified, nor has any evidence been offered by the Intervenors that any "bill" exists. The improper implication is that a future -- and presumably

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12 Id., at p. 5.

13 Id., at pp. 5-7.

14 Id., p. 7.

lawful -- tax ruling by the Internal Revenue Service in favor of General Atomics (which would result in the availability to the Staff of several million additional dollars for the decommissioning of the SFC site or any other proper public purpose) could somehow constitute a ground upon which the Commission could and should reject the Settlement Agreement.

Finally, General Atomics objects to the Intervenors' statement as "fact," their own selective, incomplete, and incorrect description of the terms of the Settlement Agreement.

ARGUMENT

I. THE LICENSING BOARD'S APPROVAL OF THE SETTLEMENT AGREEMENT WAS CONSISTENT WITH THE LAW, JUSTIFIED BY THE FACTS, AND CORRECT.

A. In reviewing the Agreement, the Licensing Board's role was to determine whether the Agreement is fair and reasonable, not to substitute its own or others' notions of desirable settlement terms.

In urging the Commission to reverse the Licensing Board's approval of the Settlement Agreement between the NRC Staff and General Atomics, the Intervenors and the State seek nothing less than a standard of approval which would be contrary to reason. In their view, the Settlement Agreement could not be approved unless it guaranteed one hundred percent of the funding which is necessary to the decommissioning and remediation of the SFC facility. Such a standard of approval has no basis in law. It would clearly be unworkable and contrary to sound public policy because it would prevent the settlement of future proceedings, all to the long-term injury of the public interest.

In reviewing the Settlement Agreement, the issue before the Board was not whether the substantial sums to be contributed by General Atomics are likely to turn out to be necessary for the completion of the decommissioning, or totally superfluous. Nor was the issue whether all of the terms of the Settlement Agreement satisfied all of the personal preferences of each member of the Board, each of the Intervenors, and the State. Rather, the narrow issue presented was whether the Settlement Agreement is "fair and reasonable." 10 C.F.R. § 2.759 expressly provides, and the Commission has consistently stressed, that the fair and reasonable settlement of contested proceedings is encouraged.[15] The Settlement Agreement had to be approved unless it is "patently arbitrary or contrary to law."[16] The burden necessarily rests now on the objecting Intervenors to demonstrate that the Board's ruling was a miscarriage of justice.[17]

The "fair and reasonable" standard does not have the preciseness of a mathematical formula,[18] but approval of a settlement cannot be withheld by a licensing board merely because an intervening party, or even a member of the board, might have advocated different terms if they had been one of the negotiating parties. It is not required that a settlement agreement be perfect in every respect in the eyes of all who might have occasion to review it. Rather, in deciding

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15 Philadelphia Electric Company (Peachbottom Atomic Power Station, Unit 3) ALAB-532, 9 NRC 279, 283 (1979); Statement of Policy on the Conduct of Licensing Proceedings, CLI 81-8, 13 NRC 452, 456 (1981).

16 In the Matter of New York Shipbuilding Corporation, 1 AEC 842, 844 (1961).

17 Department of Financial Institutions v. State Bank of Lizton, 253 Ind. 172, 252 N.E.2d 248 (1969).

18 The term "fair" may be defined as even-handed, as between the conflicting interests of the parties. Black's Law Dictionary, West Publishing Co., 1968, p. 713. Similarly, an agreement is "reasonable" if it is governed by reason and is not immoderate or excessive. Id., at 1431.

whether a particular settlement is fair and reasonable, a licensing board is bound by two guiding principles. First, and pursuant to the express language of the Commission's Rules of Practice, a licensing board is required to accord "due weight to the position of the [NRC] Staff."[19] Second, "due consideration" must be given to the public interest[20]

B. The Licensing Board properly gave due weight to the enforcement discretion of the NRC Staff.

The Administrative Procedure Act gives agencies the power and the responsibility to offer interested persons an opportunity to settle litigated cases.[21] Although settlement usually arises in the context of formal proceedings, the settlement process itself is usually informal and highly discretionary. The importance of an agency's enforcement discretion was emphasized by a distinguished member of a U.S. Court of Appeals in an opinion which discussed the power of an agency's counsel to settle administrative complaint cases:

> "His statutory authority 'in respect of the prosecution of such complaints before the Board' must include the power to determine whether a complaint can be successfully prosecuted and, if he thinks not, to drop it; by the same token he has power to consider and decide whether the public interest would be better served by settlement . . . . The policy of the [statute] requires that the Board be recognized as empowered to determine when the possibly slight merit of a charge is outweighed by the sure and speedy concessions, the industry harmony restored, and the saving of Board resources which a settlement can achieve."[22]

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19 10 C.F.R. § 2.230.

20 Sequoyah Fuels Corp. and General Atomics,(Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994).

21 See 5 U.S.C. § 554(c)(1); 5 U.S.C. § 556(c)(6).

22 Gary J. Edles and Jerome Nelson, Federal Regulatory Process: Agency Practices and Procedures, 2nd ed., Prentice Hall Law and Business, 1992 Supplement, p. 120.

The NRC Staff has clear enforcement authority and responsibility to regulate the disposal of low-level radioactive waste such as that which exists at the SFC facility.[23] The Staff is assumed to be fair and capable of judging a matter on its merits, i.e., capable of determining what is legally obtainable and what facts it could and could not prove. The Staff is also presumed to have properly discharged its official duties[24]

The Staff may further be presumed to be at least as concerned with the "public" interest as are the Intervenors who, based upon the papers which they have filed over three years, are clearly concerned with their own special interests. The Staff has first-hand knowledge of the SFC facility, including the nature and extent of any contaminated material there.[25] Certainly, the Staff has far greater capability to appraise the effectiveness and the costs of disposal alternatives, than

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[23] The Settlement Agreement was executed on behalf of the Staff by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support. The Office of Nuclear Materials Safety and Safeguards is expressly responsible for protecting the public health and safety and the environment and is specifically charged with management of the decommissioning of facilities and sites when their licensed functions are over. 10 C.F.R. § 1.42(a), (b)(9).

[24] Nuclear Engineering Co., Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4 (1980). See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-89-4, 29 NRC 62, 73 (1989), aff'd on other grounds, ALAB-918, 29 NRC 473 (1989), remanded on other grounds, Massachusetts v. NRC, 924 F.2d 311 (D.C. Cir. 1991), appeal dismissed as moot, ALAB-946, 33 NRC 245 (1991).

[25] When the SFC facility was in operation, teams of 1-8 NRC Staff representatives inspected the facility at least monthly (e.g., in 1991, 17 inspections were conducted; in 1992, 32 inspections were conducted, some of which covered several days). Even now, over four years after operations at the site were terminated, the facility receives two scheduled inspections each year and other non-routine site visits by Staff personnel. In addition, SFC files semi-annual, compliance-based Effluent Reports and annual Environmental Reports with the Staff, submits to Staff oversight during the site characterization process, and remains in close contact with the Staff through correspondence and telephone conferences with the Staff's Project Manager.

the Intervenors and the State, which are concerned only with their own interests. The Staff is clearly in the superior position to gauge the extent to which the Settlement Agreement is fair and reasonable, is in the public interest, and otherwise meets the Staff's regulatory objectives to the extent possible.

Because the exercise of enforcement discretion is so essential to the proper functioning of the administrative process, the Licensing Board was required to look for reasons to sustain, not to overturn, the Staff's decision to settle the case. Since the Settlement Agreement was approved and entered into by the Commission's Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support after months of arduous negotiations between senior officials of both the NRC Staff and General Atomics, a very heavy presumption exists that the settlement is fair, reasonable and in the public interest. The Board properly gave due weight, therefor, to "the merited understanding that, in the end, the Staff is responsible for maintaining protection for the health and safety of the public."[26] It also concluded properly that "in the absence of evidence substantiating challenges to the exercise of that responsibility, the Staff's position should be upheld" and that an intrusion by the Board into the merits of the issues of the case would make it a participant in settlement negotiations and constitute an invasion of Staff responsibility.[27]

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[26] Memorandum and Order, LBP-96-24, November 5, 1996, p. 13.

[27] Id., at pp. 17-18.

C. The Licensing Board properly considered several factors in the public interest.

In examining the Settlement Agreement, the Licensing Board considered a wide range of factors which demonstrate the fairness and reasonableness of the Agreement and why it is in the public interest that it be sustained.

First, the Board considered the intensity of the negotiations, i.e., whether the settlement was fairly and honestly negotiated. It properly noted that the NRC Staff and General Atomics negotiated the terms of the Agreement over a period of ten months, "a fact which supports a recognition by the parties of the seriousness of resolving the litigative differences involved."[28] It is undisputed that senior officials of both the Staff and the Company participated in the negotiations.

Second, the Board considered whether the complexity of the many questions of law and fact which are present in the proceeding place the ultimate outcome of the litigation in doubt. Both signatory parties cited to the Board the complexity of the legal and factual issues between them. And, as the Board noted, "the Staff recognizes the risk of not receiving any funds if, either, its unique legal theory of holding [General Atomics] liable as a *de facto licensee* does not prevail or the Company's finances are depleted as a competitive business entity."[29]

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[28] Memorandum and Order, LBP-96-24, November 5, 1996, p. 15.

[29] Memorandum and Order, LBP-96-24, November 5, 1996, p. 16. The point has also been made more recently by the Staff, which acknowledges that without the settlement, it "could only speculate that after the litigation process has run its course, there may be a judgment, which in turn may be collectible to some uncertain degree." Staff's Brief, p. 22.

The Staff's recognition of this risk and what it could and could not prove in an adjudicatory hearing is well justified. It is undisputed that General Atomics is not a licensee of the Commission in connection with the SFC facility. It is also undisputed that the October 15, 1993 Order contains no allegations whatsoever that General Atomics caused any contamination which exists at that facility or that it engaged in any other form of wrongdoing. It is further undisputed that when it approved the transfer of the license in 1988 from Kerr-McGee Corporation to Sequoyah Holding Corporation,[30] the Commission did not require General Atomics to agree to guarantee the decommissioning costs of the SFC facility, even though the former parent of SFC had been required to comply with such a license condition.

The *de facto licensee* liability theory upon which the enforcement order against General Atomics was based has never been adopted by the Commission. In order for General Atomics to be held liable for the obligations of its third-tier subsidiary company, a fundamental doctrine of law would have to be overcome. It has long been accepted as one of the first principles of American law that those who own shares in corporations, whether such shareholders are individuals or are themselves corporations, are normally not liable for the debts or other obligations of their corporations, especially where fraud or other wrongful conduct is not present.[31]

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30 Sequoyah Holding Corporation is a wholly-owned subsidiary of General Atomics.

31 See, e.g., the Revised Model Business Corporation Act, § 6.22(b), which states that "Unless otherwise provided in the articles of incorporation a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct." See also, Joslyn Manufacturing Company v. T. L. James & Co., Inc., 893 F.2d 80 (5th Cir. 1990), cert. denied, 111 Sup.Ct. 1017 (1991).

Even if a legal basis for the NRC Staff's liability theory was established by the Commission, it is not certain that the Staff could prove facts to support the theory. Indeed, General Atomics believes that the only certainty is that the Staff could not prove such facts. It is also not clear that a federal court would sustain such a broad alteration of law in an area in which the federal statutory regulation is comprehensive and detailed.[32] General Atomics has also raised certain due process and other issues which have yet to be considered by a court of law. The resolution of all of those issues against General Atomics is hardly something that can be assumed.[33]

The third public interest factor which the Licensing Board properly considered in evaluating the fairness and reasonableness of the Settlement Agreement, was the question of whether the value of an immediate recovery outweighs the mere possibility of (1) prevailing after protracted and expensive litigation, and (2) collecting any money from General Atomics even if a judgment was obtained. An uncollectible judgment after years of major litigation costs, is hardly in the public's interest. The Settlement Agreement eliminates all of the risks and delay associated with continued litigation. The terms of the Agreement require General Atomics to contribute millions of dollars to the Trust, which, at the discretion of the Commission, may be used for the decommissioning and remediation of the SFC facility starting immediately. These funds will be contributed irrespective of the Commission's jurisdiction over General Atomics, irrespective of

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[32] See, e.g., O'Melveny & Myers v. FDIC, 512 U.S. _____, 114 S. Ct. 2048, 2054 (1994).

[33] These issues are set forth with particularity in General Atomics Brief in Support of Motion for Summary Disposition or for an Order of Dismissal, February 17, 1994.

the facts, and irrespective of the adverse economic impact the contributions may have on General Atomics' immediate business opportunities.

The fourth public interest factor which the Board considered was the judgment of the signing parties concerning the fairness and the reasonableness of the settlement. In this regard, the Board noted that "both parties, in consideration of the total circumstances of the controversy, assent to the fairness and reasonableness of the agreement" and concur that it represents a "fair and reasonable compromise of their positions."[34]

The fifth public interest factor which the Licensing Board should, and did properly consider in approving the Settlement Agreement, was the certainty that continued litigation would dissipate the Company's limited financial resources and manpower. As General Atomics has previously noted[35] in the first three years after the NRC Staff issued its enforcement order, approximately 330 documents, totaling approximately 3,039 pages, were filed in the instant proceeding. A hearing date had not yet been set. Discovery requests, including several unreasonably broad requests by the Intervenors, required the collection, review (and in the case of General Atomics, the shipment from California) by NRC Staff and General Atomics personnel of tens of thousands of documents. If the Settlement Agreement had not been entered into and the litigation had been recommenced, substantial resources would have been exhausted simply

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34 Memorandum and Order, LBP-96-24, November 5, 1996, pp. 10, 16.

35 General Atomics' Response to the Opposition of the Intervenors and the Attorney General of Oklahoma to the Joint Motion for Approval of Settlement Agreement Between NRC Staff and General Atomics, October 11, 1996, p. 17.

responding to pending discovery requests.[36] Endless discovery disputes would have been certain,[37] especially since the scope of permissible discovery was in substantial doubt.

Perhaps even more costly would have been the investment of substantial time by senior NRC Staff officials and senior management personnel of General Atomics. They would not be pursuing matters which have much higher public priority or business opportunities which might ensure the continued viability of the Company, but rather responding to discovery requests.

Nor was it at all clear how long the litigation would have continued. By its Memorandum and Order of June 30, 1995, the Licensing Board bifurcated this proceeding in order that the issue of agency regulatory jurisdiction over General Atomics could be adjudicated before proceeding to the "merits" of the Staff's enforcement order as it related to the adequacy of SFC decommissioning funding. Even if the continuing litigation had never reached the merits phase, the jurisdiction issue would have undoubtedly been fully litigated before the Board, the Commission, and a U.S. Court of Appeals. If the "merits" phase had ever been reached, it too would have undoubtedly been fully litigated before all three tribunals. It is thus highly possible, if not likely, that completion of the litigation would have taken longer than the decommissioning process itself. The unnecessary prolongation of the dispute and all of these unnecessary costs will be avoided as the Settlement Agreement is implemented.

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[36] Prior to the commencement of settlement negotiations, the Intervenors served two sets of interrogatories upon General Atomics, two sets of interrogatories upon its third-tier subsidiary, SFC, and lengthy requests for production of documents upon each company. In excess of two dozen depositions in various parts of the country had also been tentatively scheduled.

[37] The Intervenors had already filed two motions to compel additional responses by General Atomics to its discovery requests, and two motions to compel additional responses by SFC to separate discovery requests.

Yet another public interest factor which was considered by the Board in approving the Settlement Agreement, was the danger posed by the continuing litigation to General Atomics' continued existence as a viable business entity. It is self-evident that it is in the public interest that General Atomics retain the financial capability to contribute to the Trust, funds which may be used for the decommissioning of the SFC facility. It is also in the public interest that General Atomics continue the health and safety oversight/audit responsibilities at the SFC facility which it voluntarily assumed in 1988.

As a direct result of the NRC Staff's issuance of and attempted enforcement of its October 15, 1993 enforcement order, and irrespective of the lawfulness or the merits of that order, General Atomics' credit rating and its ability to engage in its regular business activities have been adversely affected.[38] In addition, subsequent to the commencement of this proceeding, the business of General Atomics suffered from the loss of substantial funding.[39]

By its enforcement order, the NRC Staff sought a judgment against General Atomics in the amount of $86 million. Because the Company's revenues are based to a great extent on government contracts which are renewable or funded annually, the entry of an invalid judgment in that amount, in all likelihood, would have precluded the Company from obtaining renewal of existing contracts and from competing successfully for new contracts. Those developments would have placed the economic survival of the Company in serious jeopardy, even if the invalid judgment had been later set aside in a court of law.[40] If General Atomics had become financially

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[38] These injuries are described in the above-referenced Declaration of (Affidavit) General Atomics' Senior Vice President - Administration, paragraphs 13-14.

[39] Id., at paragraph 15.

[40] Id., at ¶ 16.

unable to continue its business operations as a result of the costs of continued litigation or an adverse judgment, it would have had no capability of contributing funds to the SFC decommissioning. It would also have been unable to continue its oversight responsibilities at the SFC facility.

The financial condition of General Atomics is highly confidential. The Company is not a public company and its competitive position in the market place could be gravely affected if such proprietary information became known. Nevertheless, during its confidential settlement negotiations with the NRC Staff, the Company did provided financial information to the Staff. A complete, independent review of that information by the Board was not necessary for it to reasonably conclude after consideration that continued litigation posed at least some significant risk to General Atomics' financial condition and that it is clearly in the public interest that the Company retain the ability to comply with the terms of the Settlement Agreement.

D. The Licensing Board also considered the question of the amount of funding available for decommissioning.

In the Dissenting Statement which he filed with the Licensing Board's November 5, 1996 Memorandum Order approving the Settlement Agreement, Judge Bollwerk stated that before joining in the approval, he would pose certain questions to the NRC Staff. It is the position of General Atomics that by conditioning his approval of the Settlement Agreement upon the Staff's answers to his questions, Judge Bollwerk would inject the Board unnecessarily and improperly into the negotiating process in a manner that would ultimately be self-defeating.

The apparent purpose of the questions would be to require assurance of "adequate funding" i.e., total funding for the decommissioning of the SFC site. Implicitly, the questions

suggest that he would deny approval of the Settlement Agreement -- irrespective of (a) the inability of the Staff to prove its claims against General Atomics if litigation continued, and (b) the ability of the Company to contribute anything more -- if he did not consider the combined funding from this settlement and the unrelated Staff settlement with the Licensee to be "adequate" and no other "clean up mechanism" was obviously available. The Intervenors have taken this same position and have argued that the key issue before the Board was whether the Settlement Agreement "assure[s] the sufficiency of funding" to complete the remediation of the SFC cite[41], and when they asserted that the Settlement Agreement must guarantee that General Atomics satisfies whatever shortfall may arise as a result of SFC's inability to "fully cover" the commissioning costs.[42]

Such an absolute standard of approval is not required by law. The reason why it is not, is obvious. It would inevitably prevent the settlement of contested proceedings. Why would any party in a dispute with the NRC Staff waste time negotiating if the end result of the negotiations could never be better than an adverse judgment for the total amount claimed by the Staff? Why would any party voluntarily contribute substantial funds to a trust, which could be used for decommissioning and remediation costs if, as is the situation in the instant proceeding, it believed that it could succeed in litigation and not be required to pay anything? The clear incentive would be for parties adverse to the Staff to take their chances in continued litigation.

Moreover, such a standard would prohibit compromise, which is the very essence of settlement, and require interminable delay. If the NRC Staff could not compromise claims which

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41 Intervenors' Opposition to Joint Motion for Approval of Settlement Agreement Between NRC Staff and General Atomics (herein "Intervenors' Opposition", p. 13.

42 Id., at p. 19.

it makes in its own enforcement orders, whether because of litigation risks, the value of an immediate recovery, or other factors, the parties against whom such orders are directed would have no choice but to aggressively defend themselves through litigation. The value of any settlement must, of course, be weighed not against the amount claimed by the plaintiff, but rather against "the possibility of some greater relief at a later time, taking into consideration the additional risks and costs that go hand in hand with protracted litigation."[43] And, why would a party enter into settlement negotiations at all if it knew that any potential settlement agreement could not be approved until the completion of a time-consuming and costly environmental impact statement and the final administrative approval of a decommissioning plan?

The absolute standard of approval urged by the Intervenors and implicitly suggested by Judge Bollwerk is also unrealistic and unworkable in other ways. It bears no relationship to the actual financial condition of parties who are the subject of Staff enforcement orders. Just because a party is the subject of an enforcement order does not mean that it has the capability to pay any judgment that might be entered against it. Were the Commission to adopt such an absolute standard, the only "settlements" that would ever be possible would be those involving parties which elect not to contest enforcement orders against them and which have adequate resources to pay whatever amount is sought by the Staff. Since this would rarely, if ever occur, flexibility must be incorporated into the regulatory process if the Staff is to carry out the Commission's mandate.[44]

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[43] Gottlieb v. Wiles, 11 F.3d 1004, 1015 (10th Cir. 1993).

[44] Union of Concerned Scientists v. Nuclear Reg.Com'n, 711 F.2d 370 (D.C. Cir. 1983). Exemptions from the regulatory scheme are, of course, expressly authorized if they are in the public interest. 10 C.F.R. § 40.14.

As a practical matter, however, and as the Licensing Board properly noted, "no basis exists for concluding that NRC's regulatory requirements for funding decommissioning will not be met."[45] In other words, no basis exists for concluding that the Settlement Agreement does not protect the public's health and safety. Indeed, there was every reason for the Board to believe and for the Commission to now recognize that SFC's net assets and net revenues, as defined in the NRC Staff-SFC Settlement Agreement, will provide adequate capital resources to allow SFC to conduct its ongoing stand-by operations and to complete the decommissioning and reclamation pursuant to the SFC decommissioning plan. The Settlement Agreement itself notes this likelihood and it is further referred to in the October 10, 1996 Declaration (Affidavit) of General Atomics' Senior Vice President - Administration.[46]

In considering the factor of available funding, the Licensing Board also recognized that if, as expected, SFC's net revenues and assets are sufficient for decommissioning, the substantial monies (as much as $9 million, depending upon a future tax ruling by the Internal Revenue Service) which General Atomics has voluntarily agreed to pay into the trust fund, may be used in any lawful manner which the Commission deems most appropriate to the public interest. The Board correctly noted that General Atomics will have "no control over the fund or the payments deposited therein."[47]

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45 Memorandum and Order, LBP-96-24, November 5, 1996, p. 16.

46 The Declaration was attached to General Atomics' Response to the Opposition of the Intervenors and the Attorney General of Oklahoma to the Joint Motion for Approval of Settlement Agreement Between NRC Staff and General Atomics, October 11, 1996. See also, General Atomics' Answer to Question No. 2 posed by Judge Bollwerk, infra.

47 Memorandum and Order, LBP-96-24, November 5, 1996, p. 2.

Having set forth the general bases of its objection to the questions posed by Judge Bollwerk, General Atomics is nevertheless mindful of the Commission's direction that the briefs of all parties "should address...(4) the questions raised by Judge Bollwerk."[48] The questions and General Atomics' responses are as follows:

> QUESTION NO. 1: As was noted in the staff's 1993 enforcement order, it was estimated by SFC that decommissioning costs for its Gore, Oklahoma facility would total at least $86 million. What is the staff's present best estimate of the total costs of decommissioning the facility?
>
> > GENERAL ATOMICS' ANSWER: Decommissioning activities have continued at the SFC site since this proceeding was commenced. SFC presently estimates that the total costs of completing decommissioning, including indirect costs such as personnel salaries, taxes, insurance and NRC fees, will total approximately $82,268,000.00.[49]
>
> QUESTION NO. 2: As was also noted in the staff's 1993 enforcement order, it was estimated the ConverDyn agreement would result in revenues of no more than $72 million available to pay decommissioning costs and there would be $17 million from other sources to pay such costs. In light of developments since 1993, what is the staff's present best estimate of (a) the maximum revenue that will be generated for facility decommissioning work under the ConverDyn agreement; and (b) the amount that would be available for such work from other sources (not including funds generated by the proposed GA/Staff Settlement Agreement?
>
> > GENERAL ATOMICS' ANSWER: Since it entered into the long-term contract (Standby Agreement) with ConverDyn which is described in paragraphs 4-12 of the above-referenced Declaration (Affidavit) of John E. Jones, SFC has had four years of actual experience upon which to base its current estimate of future revenues and cash flow from the contract. A new summary of projected cash flow through the year 2005 was very recently provided to the NRC Staff. (See Appendix 1). On the basis of this projection, it is now estimated by SFC that it will have (1) sufficient funds to complete the decommissioning and remediation of its facility, and (2) a remaining positive cash balance of $12.16 million. The estimate assumes that SFC will receive no benefit from the NRC Staff - General Atomics Settlement Agreement.

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[48] Memorandum and Order, CLI-97-01, January 22, 1997, p. 2.

[49] See the February 28, 1997 letter from SFC to the NRC Staff, a copy of which is attached hereto as Appendix 1.

QUESTION NO. 3: If the total funds available for decommissioning under the SFC and GA settlement agreements with the staff ultimately are insufficient to cover the total costs of decommissioning the Gore facility (a) what, if any, additional cleanup mechanisms are available to complete decommissioning (e.g., Superfund); and (b) if there are additional clean up mechanisms, would anything in the provisions of the GA/staff settlement agreement have an adverse impact on GA's liability, if any, under those cleanup mechanisms?

GENERAL ATOMICS' ANSWER: The issue of the availability of other cleanup mechanisms is not relevant to the question of whether the Settlement Agreement should have been approved by the Licensing Board and should now be approved by the Commission. If, as it has consistently asserted, General Atomics is not liable for the costs of decommissioning and remediation of the SFC facility, the availability or lack of availability of other cleanup mechanisms will not create liability against General Atomics where none exists now.

QUESTION NO. 4: Under paragraph two of the settlement agreement, GA was to request an IRS opinion regarding the tax status of the settlement trust fund "immediately" following execution of the agreement. To the best of the staff's knowledge, what is the status of the GA request for an IRS determination and when is an IRS determination expected?

GENERAL ATOMICS' ANSWER: The question of when an IRS determination on General Atomics' request for a tax ruling will be made is also not relevant to the question of whether the Settlement Agreement should have been approved by the Licensing Board. If General Atomics is not liable for the costs of decommissioning, its voluntary contribution of a lesser amount to the trust fund (as a result of any future adverse tax ruling) will not create liability where none exists now.

Despite its objection to this question, General Atomics represents that it has submitted documentation to the IRS and its counsel have met on two occasions with the IRS to discuss all aspects of the tax ruling which has been formally requested. Additional documentation has been requested by the IRS and an additional meeting is planned. General Atomics is unable to predict when the IRS determination will ultimately be made.

QUESTION NO. 5: Under paragraph eight of the settlement agreement, if amounts borrowed by SFC from GA pursuant to certain "Lines of Credit" are not repaid by December 31, 1998, then GA is permitted to delay for one year payment to the trust fund of one-half of the amounts otherwise due no later than December 31, 1998. Because the "Lines of Credit" in question apparently relate to a separate Environmental Protection Agency administrative order, why does their repayment have an impact on payments due under this settlement agreement between GA and the staff?

GENERAL ATOMICS' ANSWER: The issue is one of cash flow. If SFC is unable to repay the amounts borrowed from General Atomics, the latter company could have insufficient cash flow to make payments to the trust fund on schedule.

II. THE LICENSING BOARD PROPERLY REJECTED THE INTERVENORS' AND THE STATE'S REQUEST FOR DISCOVERY ON MATTERS WHICH, IF DISCOVERABLE AT ALL, WOULD ONLY BE SUBJECT TO DISCOVERY AS PART OF A FULLY-LITIGATED PROCEEDING.

As the weakness of their primary challenges to the Settlement Agreement have become more obvious, the Intervenors have asserted other claims with growing passion and self-righteousness. Thus, they argue that they are vested with a "procedural right" to a "meaningful opportunity" to challenge the "adequacy" of the Settlement Agreement. [50] It is alleged that this "right" guarantees them access to "material information supporting the reasonableness of the settlement," [51]. including discovery on such ultimate litigation issues as "whether GA continues to have any control over SFC,"[52] "the costs of decommissioning the SFC site" [53] and "the adequacy of SFC's and GA's existing and anticipated resources." [54]

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50 Intervenors Brief, page 12.

51 Id., at page 14.

52 Intervenors' Opposition, page 17.

53 Id., at page 18.

54 Id.

According to the Intervenors, this "procedural right" stems from three sources. [55] First, from the Board's initial decision to let them intervene in the proceeding; second, from a presidential directive to executive agencies to consult with the Cherokee Nation, which the Intervenors characterize as a "sovereign government;" third, from language contained in an order issued by a licensing board in another proceeding. In response, it need only be noted that the Intervenors have in fact participated fully in this proceeding (including the filing of the voluminous briefs, motions, and discovery requests; participation in all hearings and conferences; etc.); that unlike federal agencies which are subject to presidential supervision through consultation with cabinet officers, independent agencies like the Commission are charged by Congress to remain independent of the Executive Branch;[56] and that General Atomics cannot be governed in this proceeding by a procedural ruling made by another licensing board in a proceeding to which General Atomics was not a party and had no opportunity to present its views.

Leaving aside the question of whether proprietary information regarding General Atomics' financial condition could ever be discoverable, it can at least be said that the discovery that the Intervenors seek here would involve matters which could only be the subject of discovery prior to an evidentiary hearing in either the jurisdictional phase, or the merits phase of this bifurcated proceeding. A major purpose of any settlement, of course, including the NRC Staff - General Atomics Settlement Agreement, is the avoidance of protracted discovery and the other costly aspects of litigation. If such discovery were permitted, a major purpose to be achieved by the

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55 Intervenors' Brief, pages 12-13.

56 Westinghouse Electric Corporation v. United States Nuclear Regulatory Commission, 598 F. 2d 759 (3d Cir. 1979).

Settlement Agreement would be eliminated. Moreover, the Licensing Board was not required to "conduct a foray into the wilderness in search of evidence that might undermine the conclusion that the settlement is fair."[57]

III. THE LICENSING BOARD PROPERLY REJECTED THE INTERVENORS' ATTEMPT TO EXPAND THE BREADTH OF THE PROCEEDING.

The Intervenors and the State are not content to seek broad discovery on matters that go to the merits of both parts of this bifurcated proceeding. They also seek discovery on matters which have absolutely nothing to do with the instant proceeding, including discovery on "the size of GA's claimed liability for decommissioning costs at its San Diego facility," and "all documents related to the consideration of the clean-up costs for the San Diego facilities and GA's ability to pay for them." [58] The Intervenors also argue that the Licensing Board erred in refusing to condition its approval of the Settlement Agreement upon disclosure of matters which have nothing whatsoever to do with the instant proceeding. [59] To fully appreciate the impropriety and overreaching nature of this request, it must be remembered that it is undisputed that absolutely nothing in the NRC Staff's October 15, 1993 Order relates to facilities owned by General Atomics in San Diego or anywhere else. Nor are facilities in San Diego or elsewhere the subject of any proceeding before either the Commission or an Atomic Safety and Licensing Board.

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57 Gottlieb v. Wiles, supra.

58 Intervenors' Opposition, pp. 18, 25-26.

59 Intervenors' Brief, p. 20.

It is a generally accepted principle of procedural law that since intervention is an ancillary and supplemental proceeding which must be in subordination to the main proceeding, intervenors must take a case as they find it. They may not raise new issues or assert an independent controversy.[60] Moreover, adjudicatory boards do not have plenary subject matter jurisdiction in Commission proceedings. [61] Boards are delegates of the Commission and, as such, they may exercise authority only over those matters that the Commission commits to them. [62] Nothing in the Commission's delegation of jurisdiction for this proceeding relates in any way to General Atomics' San Diego facilities. Consequently, the NRC Staff has exclusive authority currently to take regulatory action involving those facilities and that action may not be the subject of inquiry in this proceeding.

The information sought by the Intervenors and the State is also beyond the scope of permissible discovery generally. The instant proceeding is not a licensing proceeding. General Atomics is not a licensee in connection with the SFC facility. It seeks nothing more than the dismissal of the October 15, 1993 Order. Even in licensing proceedings, an intervenor may not proceed on the basis of allegations that the NRC Staff has somehow failed in its performance.[63] The scope of the discovery under the Commission's Rules of Practice is similar to discovery under

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60 General Insurance Co. of America v. Hercules Construction Co., 385 F.2d 13 (8th Cir. 1967).

61 Duke Power Company (Catawba Nuclear Station, Units 1 and 2) ALAB-825, 22 NRC 785, 790 (1985).

62 Id.

63 Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-83-57, 18 NRC 445, 565 n. 29 (1983), citing, Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-728, 17 NRC 777, 807 (1983), review denied, CLI 83-32, 18 NRC 1309 (1983).

the Federal Rules of Civil Procedure.[64] Federal Rule of Civil Procedure 26(b)(1) limits discovery to that "which is relevant to the subject matter involved in the pending action" (emphasis added). The information sought by the Intervenors and the State regarding facilities owned by General Atomics (not SFC) which are located in California (not Gore, Oklahoma), which are not the subject of a licensing or any other proceeding, and which are not remotely referred to in the October 15, 1993 NRC enforcement order, can have no possible bearing on the subject matter of this proceeding.

CONCLUSION

The NRC Staff-General Atomics Settlement Agreement is fair, reasonable and in the public interest. The Agreement commits a company which is not even a licensee of the Commission and over which the Commission has no jurisdiction, to immediately start payment of no less than $5.4 million and as much as $9 million into a trust fund. The NRC Staff will have exclusive control of the fund. It can apply the moneys to the decommissioning of the SFC site or to any other proper public purpose.

The Agreement eliminates the substantial risk to the public that continued litigation will result in no judgment whatsoever against General Atomics. It eliminates the risk that any judgment that might be obtained would be unenforceable. It eliminates both the substantial costs and the delay of continued litigation.

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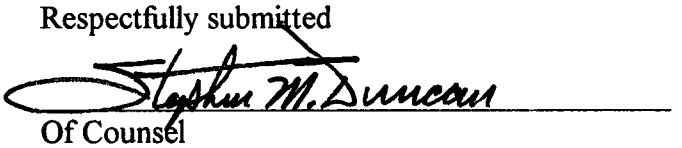
64 Pacific Gas and Electric Co. (Stanislus Nuclear Project, Unit 1), LPB-78-20, 7 NRC 1038, 1040 (1978).

The NRC Staff, which is charged by law with the protection of the public interest and whose judgment the Licensing Board was required to give due weight, has certified that the Agreement is fair and reasonable. After considering all arguments advanced by the Intervenors and the State, it was the judgment of the Licensing Board that "it is clear that the interests of the public have not been neglected in the [Settlement Agreement]" and that nothing propounded by the opponents of the Agreement evidences a conclusion that the public's health and safety will not be protected.[65]

By its Rules of Practice and otherwise, the Commission has consistently stressed that the fair and reasonable settlement of contested proceedings is encouraged. The Settlement Agreement between the NRC Staff and General Atomics and the Licensing Board's approval of that agreement, are consistent with the law, are justified by the facts, are fair and reasonable, and are in the public interest. For these reasons, the decision of the Licensing Board in LBP-96-24 should be affirmed.

Respectfully submitted



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ATTORNEYS FOR GENERAL ATOMICS

DATE: March 17, 1997

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65 Memorandum and Order, November 5, 1996, pp. 14, 16.

SEQUOYAH FUELS
A GENERAL ATOMICS COMPANY

February 28, 1997 RE: 9718-N

Certified Mail
Return Receipt Requested

Carl J. Paperiello
U.S. Nuclear Regulatory Commission
Mail Stop 8 A 23
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Subject: License No. SUB-1010: Docket No. 40-8027
Update of Preliminary Plan for Completion of Decommissioning
Projection of SFC Cash Flow

Dear Dr. Paperiello:

By letter dated February 16, 1993, Sequoyah Fuels Corporation (SFC) provided to the Nuclear Regulatory Commission (NRC) its Preliminary Plan for Completion of Decommissioning (PPCD). This plan included a projection of SFC's cash flow (revenues and costs) for the years 1993 through 2003 (Table 10-2). The cash flow projection was subsequently updated on February 17, 1995 to reflect actual cash flow for the first two years and revisions to the decommissioning cost estimates.

In 1996, SFC completed a more detailed evaluation of alternatives for decommissioning its facility, including the preparation of conceptual designs and costs estimates for the major elements in SFC's preferred decommissioning alternative. This evaluation, entitled the Decommissioning Alternatives Study Report (DASR), was submitted to the NRC on December 18, 1996.

The cash flow projection in Table 10-2 (attached) has again been updated to incorporate these more definitive cost estimates and to reflect actual cash flow experience through the end of 1996. Non-direct costs have been adjusted for the years 1997 through 2005 and ConverDyn revenues have been escalated to 1997 dollars.

APPENDIX 1

HIGHWAY 10 & I-40 PO BOX 610, GORE, OKLAHOMA 74435 (918) 489-5511 FAX: (918) 489-2291

Should you have any questions or desire more information, please call me at (918) 489-3390.

Sincerely,

John H. Ellis
President, SFC

Attachment: (1)

cc: NRC, Region IV
Mike Hebert, EPA
H.A. Caves, ODEQ

bc: Al Gutterman
Jim Edwards
Jeff Zimmerman
Loren Mason, COE
Pat Gwin, Cherokee Nation
Steve Duncan
Reau Graves
Paul Bissonette
Ralph Bird
Reading room

SEQUOYAH FUELS CORPORATION
ESTIMATED CASH FLOW
(000'S OF DOLLARS)

Table 10-2
Revision 2
2/25/97

	1993 ACTUAL	1994 ACTUAL	1995 ACTUAL	1996 ACTUAL	1997	1998	1999
INCOME							
UF6 CONVERSION REVENUE	8,288	64	68	39	31	18	17
DUF4 REDUCTION REVENUE	4,562						
DISPOSITION OF INVENTORY	2,034	189	2,004	146	50		
RANCH REVENUE	293	235	317	248	260	200	200
CONVERDYN FEES	7,386	5,098	2,111	7,099	9,140	9,672	10,336
TOTAL REVENUES	22,563	5,586	4,500	7,532	9,481	9,890	10,553
ACTIVITIES RELATED TO DECOMMISSIONING							
CLEAN-UP:							
RAFFINATE SLUDGE	1,633	273	7				
FERTILIZER PONDS	622	780	129	44	14		
SHIP U308/URANIUM PRODUCTS	349	901	3				
DECOMMISSIONING:							
DECOMMISSIONING PLAN				179	86	235	
SITE CHARACTERIZATION		167	464	140	122		
CONTRACTOR MOBILIZATION							650
ENG/CONST. MGMT							
SLUDGE, SEDIMENT SOLID.							
CELL CONST/CLOSE							
SOIL REMEDIATION							
BUILDING DECONSTRUCTION							
SITE RESTORATION							
WASTE WATER MGMT						500	
EIS SUPPORT					647	953	
ADDL SITE RECL						250	250
LONG TERM SITE CONTROL							
POST CLOSURE MONITORING							
GEN & ADMIN:							
PERSONNEL	7,617	5,878	2,002	2,143	1,627	1,667	1,667
NRC LIC./FEES	1,181	206	332	156	287	287	287
TAXES, INSUR. & OTHER	6,594	2,785	854	938	862	650	650
DUF4 OPERATING	1,773						
PLANT CLEAN-OUT	1,305	(178)					
TRANSITION COST	283						
INTEREST (INC)\EXP	396	162	259	270	(25)	(172)	(331)
RANCH COSTS	208	105	118	31	21	41	41
TOTAL COSTS	21,961	11,079	4,168	3,901	3,641	4,411	3,214
CASH MARGIN	602	(5,493)	332	3,631	5,840	5,479	7,339
(INCR)DECR IN RECEIVABLES	2,290	343	(1,239)	(1,135)	(803)	(1,260)	(1,220)
INCR(DECR) IN PAYABLES	(1,112)	2,950	1,148	(1,497)	(3,655)	(1,180)	(1,180)
PROJECTED NET CASH FLOW BEFORE KM DEBT REPAYMENT	1,780	(2,200)	241	999	1,382	3,039	4,939
CUMULATIVE CASH BALANCE	2,359	159	400	1,399	2,781	5,820	10,759

1) The schedule includes repayment of General Atomics note by the end of 1997, but does not reflect the 10.6 million dollar note with Kerr Mcgee that is currently under a tolling agreement that defers payment on that note until the completion of decommissioning.

2) 1996 forward includes the 750,000 dollar escrow agreement in the cumulative cash balance.

3) Decommissioning costs are based on the preferred alternative submitted in the Decommissioning Alternatives Study Report, dated December 18, 1996.

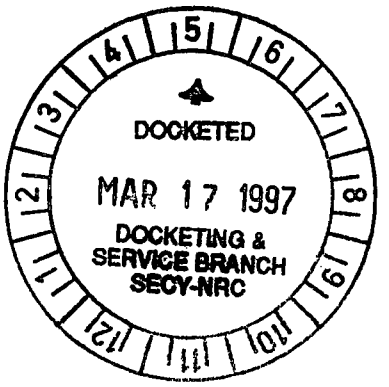
4) The schedule does not reflect any monies from the NRC/General Atomic Settlement Agreement.

5) Converdyn revenues are adjusted to 1997 dollars.

SEQUOYAH FUELS CORPORATION
ESTIMATED CASH FLOW
(000'S OF DOLLARS)

Table 10-2
Revision 2
2/25/97

	2000	2001	2002	2003	2004	2005	TOTAL
INCOME							
UF6 CONVERSION REVENUE	7	4	5	2			8,543
DUF4 REDUCTION REVENUE							4,562
DISPOSITION OF INVENTORY							4,423
RANCH REVENUE	200	200	200	200	200		2,753
CONVERDYN FEES	4,615	4,345	4,345	4,178	4,067	4,022	76,414
TOTAL REVENUES	4,822	4,549	4,550	4,380	4,267	4,022	96,695
ACTIVITIES RELATED TO DECOMMISSIONING							
CLEAN-UP:							
RAFFINATE SLUDGE							1,913
FERTILIZER PONDS							1,589
SHIP U308/URANIUM PRODUCTS							1,253
DECOMMISSIONING:							
DECOMMISSIONING PLAN							500
SITE CHARACTERIZATION							893
CONTRACTOR MOBILIZATION							650
ENG/CONST. MGMT	993	993	497				2,483
SLUDGE, SEDIMENT SOLID.	1,743	1,743	871				4,357
CELL CONST/CLOSE	1,540	1,540	770				3,850
SOIL REMEDIATION	369	369	185				923
BUILDING DECONSTRUCTION	1,880	1,880	940				4,700
SITE RESTORATION	890	890	446				2,226
WASTE WATER MGMT							500
EIS SUPPORT							1,600
ADDL SITE RECL							500
LONG TERM SITE CONTROL					2,124		2,124
POST CLOSURE MONITORING				20	20	20	60
GEN & ADMIN:							
PERSONNEL	1,667	1,667	1,667	1,067	567		29,236
NRC LIC./FEES	287	287	287	287	287		4,171
TAXES, INSUR. & OTHER	650	650	650	500	250		16,033
DUF4 OPERATING							1,773
PLANT CLEAN-OUT							1,127
TRANSITION COST							283
INTEREST (INC)\EXP	(425)	(319)	(186)	(207)	(270)	(398)	(1,246)
RANCH COSTS	41	41	41	41	41		770
TOTAL COSTS	9,635	9,741	6,168	1,708	3,019	(378)	82,268
CASH MARGIN	(4,813)	(5,192)	(1,618)	2,672	1,248	4,400	14,427
(INCR)DECR IN RECEIVABLES	5,721	158					2,855
INCR(DECR) IN PAYABLES	(1,175)						(5,701)
PROJECTED NET CASH FLOW BEFORE KM DEBT REPAYMENT	(267)	(5,034)	(1,618)	2,672	1,248	4,400	11,581
CUMULATIVE CASH BALANCE	10,492	5,458	3,840	6,512	7,760	12,160	



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of	)	
	)	
SEQUOYAH FUELS CORPORATION	)	Docket No. 40-8027-EA
and GENERAL ATOMICS	)	
(Gore, Oklahoma Site	)	
Decontamination and	)	
Decommissioning Funding	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of GENERAL ATOMICS' BRIEF IN SUPPORT OF AFFIRMATION OF LBP-96-24 in the above-captioned matter have been served on the following by deposit in the United States mail, first-class, postage prepaid and as indicated by asterisk by hand-delivery this 17th day of March, 1997.

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