

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of

Docket No. 40-8027-EA

SEQUOYAH FUELS CORPORATION
and GENERAL ATOMICS
(Gore, Oklahoma Site
Decontamination and
Decommissioning Funding)

Source Material License
No. SUB-1010

ASLBP No. 96-24

PETITION FOR REVIEW AND
REQUEST TO FILE BRIEF

COMES NOW the Petitioner State of Oklahoma ex rel. Oklahoma Department of Wildlife Conservation (hereinafter referred to as "State" or "Petitioner"), through Assistant Attorney General Jeannine Hale, and requests that the Commission review the decision of the Board in LBP 96-24 (Approval of Settlement Agreement between NRC staff and General Atomics) served November 6, 1996, requests that the Commission allow the Petitioner to intervene and/or participate in such proceeding and to file such subsequent pleadings and supplemental briefs as may be appropriate to a full consideration of the issues raised in this and related proceedings concerning the Gore, Oklahoma facility. As grounds therefore, Petitioner states as follows:

1. The State hereby requests that the Commission review the most recent of two separate orders of the Board which approve settlement agreements entered into by NRC staff with Sequoyah Fuels (SFC) and its parent company, General Atomics (GA), relating to a NRC-licensed facility near Gore, Oklahoma. This Petition relates specifically to the Order of the Board which was served on November 6, 1996, regarding a settlement with the parent company General Atomics. The Petitioner

adopts by reference its Response to the Joint Motion of NRC Staff and General Atomics to Approve Settlement Agreement and the attachments to Petitioner's Response, filed with the Board in the proceedings below.

2. Petitioner previously filed a Petition for Review of an earlier order of the Board in 1995, LBP95-18, approving a settlement agreement with the licensee, Sequoyah Fuels, which is pending before the Commission. The Petitioner readopts by reference its Petition for Review of the Board's Order approving the Sequoyah Fuels agreement and brief in support thereof. Petitioner requests that the Commission consolidate the review of the two Board orders approving the settlement agreements relating to the Gore facility, since each involves common issues concerning the responsibility of Sequoyah Fuels and General Atomics for payment of financial assurance and decommissioning costs and other actions relating to the same facility.

3. The Petitioner is an "interested state" and is entitled to an opportunity to participate and file briefs on important issues in this proceeding pursuant to federal law, the U.S. Constitution, and NRC regulations codified at 10 C.F.R. 2.715 (Participation by a person not a party; brief allowed under 10 C.F.R. §2.715(d)) and 10 C.F.R. 2.786 (Review of decisions and actions of a presiding officer). The State of Oklahoma is the site of the licensed facility which is the subject of this proceeding and thus the environment and citizens of Oklahoma will be affected by any order issued regarding this facility, including the Order of the Board issued November 6, 1996.

4. On October 25, 1995, the Nuclear Regulatory Commission (hereinafter "NRC" or the "Commission") issued an order which required Sequoyah Fuels Corporation ("SFC") and their parent company, General Atomics (GA), to meet the financial assurance requirements of the Commission regulations at 10 C.F.R. 40.36. SFC and GA disagreed with that Order and various

legal proceedings were commenced as a result thereof, culminating finally in the two settlement agreements approved by the Board.

5. In support of its Petition for Review of the Order of November 6, 1996, Petitioner hereby adopts as its own and incorporates by reference the separate dissenting statement by Judge Bollwerk at pp. 19-24 of the November 5, 1996 Order. Petitioner also points out additional issues and facts involved in these proceedings which affect the public interest and are of such importance that it is imperative that the Commission review the record and "confidential" information relied upon by the staff and the Board as the basis for the agreements and orders approving them.

6. The November 6, 1996 Memorandum and Order, the Atomic Safety and Licensing Board (hereinafter the "Board") has fails to give adequate consideration to how the settlement agreement will affect the public interest and the state. The Board has failed to protect those interests by allowing the NRC staff to unilaterally waive financial assurance requirements intended to protect the public interest, without disclosure to the public of critical information relied upon by the staff and without any independent review of the facts by the Board; by prematurely entering into an agreement to settle regarding payment of costs prior to completion of the NEPA process and final decision on selection of an appropriate decommissioning plan and determination of costs, by failing to provide the state and public with adequate information necessary to evaluate the proposed settlement agreement, and by failing to give proper notice and opportunity to participate to all states containing various facilities affected by the settlement negotiated by NRC staff, in violation of the rights of the public and interested states.

7. Available information indicates that the licensee and/or parent company have responsibilities regarding NRC-licensed facilities in both Oklahoma and other states, that all of these

facilities were considered in reaching a decision on the Gore, Oklahoma facility, and the settlement agreements may affect multiple states and facilities. Contrary to the Board's reasoning, this is not the type of decision by the NRC staff which should be given total deference. The interests at stake warrant appropriate scrutiny by the Commission.

8. The settlement agreements with GA and SFC, and other information disclosed to intervenors via FOIA request, indicate that the financial capabilities of the settling parties were a major factor influencing the NRC decision and settlement terms; that the parties' financial capabilities are inadequate to fully comply with NRC financial assurance requirements under the regulations (10 C.F.R. 40.36), pay decommissioning and other costs, and meet other mandatory requirements; and that NRC and the parties to the agreements relied upon this "confidential" information to limit the parties' liabilities related to both Oklahoma and other out of state facilities.

Information about these other state facilities has not been disclosed to Oklahoma, and the limited information released about the parties' financial capabilities and responsibilities is grossly inadequate for the state or the public to make the necessary evaluation as to whether the agreements are in the public interest. Information in the record about such issues, relied upon by the Board, is inadequate to make an informed decision about the public interest and effect upon state concerns.

9. Information available to the state at this time indicates that the agreement with GA may have the effect of determining GA's liabilities and allocating limited resources to decommissioning or other responsibilities, among three separate facilities - two in California and the Gore facility in Oklahoma. Because of the importance of issues relating to environmental clean up, public safety, and compliance with federal and state laws protecting the public interest, there is an overwhelming need for disclosure of all information necessary to make an informed decision about the settlements

negotiated by NRC staff. This information should be provided, with adequate public notice and an opportunity to respond, to all members of the public and all states potentially affected.

10. Commission review of settlements reached by staff is appropriate especially where resources necessary to full enforcement and litigation of issues by NRC staff are under heavy strain, responsible parties' resources are inadequate to meet all legal requirements, decisions are involved which require allocation of limited resources to cleanup and fulfillment of obligations among multiple states, and decisions are substantially influenced by information to which a confidentiality claim is being asserted. In such cases as this, the Commission may properly find that it is in the public interest to release such information, provide for in camera review and/or to allow limited access for review purposes. It is critical that all affected states have full access to necessary information and be involved in the decision making process in order to fully protect the public interest.

11. The Board has failed to require the parties to the agreements to disclose information necessary for an evaluation of how the public interest is or is not protected, has violated the public's interests by not requiring this disclosure, and has thereby deprived affected states and the public of adequate notice and meaningful opportunity to participate, in violation of their rights protected by the Constitution of the United States and federal law.

12. The Board's Orders set a legal precedent which should be carefully considered by the Commission, particularly with respect to how to balance the rights and interests of affected states and their citizens, and the public's interests in disclosure of information, as opposed to any argument for nondisclosure. The Board has failed to do this balancing of interests at all.

13. Petitioner's interests are not adequately represented by any other party to the proceeding. There appear to be no feasible means available to protect the interests of the State other than to

request Commission review or commence litigation. No prejudice will result to the parties from granting additional time to explore these issues or from suspending a final determination on approval/disapproval of the proposed settlement agreement. There exists a risk of substantial prejudice to the interests of one or more states and the public if the Commission fails to allow the states an opportunity to participate, comment and brief the issues.

14. Approval of the settlement agreements will allow both SFC and GA to forego compliance with financial assurance requirements, allow payment of other secured and unsecured debts and formation of new debts, allow the parties to retain profits which should be directed to decommissioning, and allow the parties to proceed without adequate reporting or oversight to insure that the public interests are protected. Contrary to the Board's indications, nowhere in the settlement agreement does NRC represent that it agrees that SFC income will be adequate to cover the remainder of costs not covered by GA, or vice versa.

15. Petitioner requests review of additional legal issues related to the Board's Orders and the effects thereof, including:

- a. Whether NRC precedent should be established to the effect that NRC does not consider decommissioning costs to be a priority debt or expense necessary to preserve a licensee's assets,
- b. Whether and when NRC should waive the financial assurance requirements at contaminated sites when the responsible parties are unable to pay for both assurance and decommissioning,
- c. If NRC staff have authority or should exercise authority to make final decisions about allocating limited resources among states without disclosure to the public and states, with

essentially no administrative review of the basis for the decision,

d. The legality of making a final determination of decommissioning matters affecting states without providing notice and opportunity to have meaningful participation to affected states.

e. Whether NRC may waive the public's right to have a secured claim against the licensee for decommissioning costs, or otherwise approve terms of an agreement or actions by a licensee which are likely to prejudice the legal status of claims for decommissioning costs.

f. Whether the NRC must first insure compliance with the NEPA process prior to making final decisions affecting the alternatives for decommissioning. The cost of decommissioning is currently unknown and the NEPA process is not complete for the Gore facility. The NRC staff's settlements have the effect of undermining the NEPA process. By predetermining the parties' liabilities for decommissioning, the NRC has prejudiced the ability to make some decisions about selection of alternatives and individual plan requirements- if the settlement won't allow these actions to be paid for, they are no longer a viable option to be considered.

16. No exceptions to the requirements of 40 C.F.R. 40.36(e) are provided in the regulations, and it is not evident from the record what facts justify approval of settlement agreements in this case which allow an exception. The granting of a waiver or exception to compliance with the financial assurance regulations of 40 C.F.R. 40.36 would set a precedent in interpretation of the language of the regulations and in enforcement policy, and other actions taken by the Board without notice and meaningful opportunity for state and public participation, clearly set precedent which should be carefully examined by the Commission to determine if it is in the public interest.

17. The issues raised by Petitioner are substantial in that this proceeding will have both an environmental and financial impact on the State's resources and the resources of affected citizens.

If decommissioning costs are not covered by the licensee and parent company, the Board's decision will ultimately have the effect of leaving the public: state, local communities, and private landowners, to bear the risks and costs. The Commission should grant this petition for review as in the public interest, require disclosure of adequate information necessary to review the settlement agreement to the public, or provide for in camera review with appropriate protective measures, and allow all affected persons, including all affected states, a full opportunity to review available information and documents and brief the issues.

WHEREFORE, the State of Oklahoma petitions for consolidated review of the Board's Order served on November 6, 1996 and the earlier 1995 Order approving settlement agreements with Sequoyah Fuels and General Atomics. Petitioner further requests that the Commission establish a schedule for providing notice to other affected persons/states, allowing persons to intervene or file other pleadings to initiate review, motions relating to discovery or release of information, and deadlines for filing briefs in support of this petition and other pleadings. Petitioner further requests leave to file any documents necessary to support its arguments and provide information necessary for a full evaluation and determination of facts and legal issues affecting the public interest.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF MAILING OR DELIVERY

I certify that I mailed a true and correct copy of the forgoing by overnight mail to the Commission, Administrative Law Judges, Board and NRC counsel, and by first class mail, postage prepaid to all others listed below, this _____ day of November, 1996, addressed to the following:

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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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I certify that I mailed a true and correct copy of the forgoing by overnight mail to the Commission, Administrative Law Judges, Board and NRC counsel, and by first class mail, postage prepaid to all others listed below, this 25th day of November, 1996, addressed to the following:

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