UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

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

GENERAL ATOMICS' ANSWER IN OPPOSITION TO THE INTERVENORS' AND THE STATE OF OKLAHOMA'S PETITIONS FOR REVIEW OF LBP-96-24

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General Atomics respectfully submits this Answer in Opposition to the Petitions for Review of LBP-96-24 which have been filed by the Intervenors, Native Americans for a Clean Environment and Cherokee Nation, and by the State of Oklahoma. For the reasons set forth below, the Petitions should be denied.

BACKGROUND

On October 15, 1993, the NRC Staff issued an order (58 Fed. Reg. 55, 087 (1993)) against Sequoyah Fuels Corporation (the sole licensee named in NRC License No. SUB-1010, Docket No. 40-8027, hereinafter referred to as the "Licensee"), and against General Atomics, the Licensee's third-tier parent company. The order would have purportedly held the Licensee and General Atomics jointly and severally liable for the funding of decommissioning and remediation activities at the Licensee's facility in Gore, Oklahoma. The Licensee and General Atomics filed separate requests for a hearing on November 2, 1993.

A Settlement Agreement between the NRC Staff and the Licensee was approved by the Atomic Safety and Licensing Board on October 26, 1995.[1] On November 5, 1996, the Licensing Board approved a Settlement Agreement between the NRC Staff and General Atomics.

In their respective petitions, the Intervenors and the State assume as fact, or presume to state or imply as "factual background," matters which have never been adjudicated, which are baseless or untrue, or which are speculative. For example, the Intervenors state that "after finding significant radioactive and chemical contamination on the [Licensee's] site, the NRC issued a series of enforcement orders, and the plant was shut down for 5 months in late 1991 and early 1992. In the spring of 1992, the NRC permitted [the Licensee] to resume operations, based in part on oral and written commitments by [General Atomics'] CEO . . . to fulfill any decommissioning funding requirements that could not be met by the [Licensee] . . . . The NRC permitted the restart in reasonable reliance on [General Atomics'] promise to fulfill this commitment."[2] The apparently intended implication is that the Commission ordered the permanent closing of the Licensee's facility and that it did so because of significant radioactive and chemical contamination.

In fact, operations at the facility were shut down by the Licensee itself in September 1991 for regular annual maintenance. The NRC later modified the license requiring the plant to remain shut down until certain changes were made in health, safety and environmental procedures. In April 1992, the Licensee received permission from the NRC to begin a phased restart of operations at its facility. Operations were, in fact, subsequently resumed.

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1 *Sequoyah Fuels Corp. and General Atomics* (Gore, Oklahoma Site Decontamination and Decommissioning Funding), LBP-95-18, 42 NRC 150 (1995).

2 Native Americans for a Clean Environment, Cherokee Nation, Petition for Review of LBP-96-24, November 26, 1996, p. 2 (hereinafter, the "Intervenors' Petition").

In November 1992, and after an accidental release of nitrogen dioxide at the facility, the Licensee voluntarily and temporarily ceased operations while it determined the cause of the release. During the same month, the Board of Directors of the Licensee concluded that uranium hexafluoride conversion operations were no longer profitable, that the company could not continue to operate its facility economically, and that a new business arrangement was the best alternative for providing for the Licensee's decommissioning and remediation costs. As a result of the Board's decision, the Licensee permanently ceased operations, but the termination of operations was not the result of radioactive or chemical contamination.

General Atomics also rejects the Intervenors' statement as "fact" that the decision by the NRC to permit the Licensee to resume operations was based in part on commitments by General Atomics' CEO and that the NRC permitted the restart "in reasonable reliance on [General Atomics'] promise to fulfill this commitment." Even if the purported statements of General Atomics' CEO were relevant to any issue in this proceeding -- which General Atomics has always denied -- the Intervenors have offered no evidence, and there has been no adjudication whatsoever, that the Commission reasonably relied upon them. Moreover, since the concerns that caused the Licensee's facility to remain shut down had already been adequately resolved, the NRC had no choice but to permit the restart of operations.[3]

General Atomics further rejects the Intervenors' "factual" background statement that the NRC Staff and General Atomics have entered into some form of "global settlement" which

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[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).

involves not only the Licensee's facility in Gore, Oklahoma, but also certain facilities of General Atomics located in San Diego, California. The Intervenors have apparently contrived the concept of a "global" settlement as part of their continuing effort to obtain discovery on matters which have never been the subject of this proceeding. Nothing in the NRC Staff's October 15, 1993 Order relates to facilities owned by General Atomics in San Diego or elsewhere. Nor are facilities in San Diego or elsewhere the subject of any proceeding before the Commission or a Licensing Board. Consequently, the Licensing Board committed no error by not ordering disclosure of information relating to those facilities. The Intervenors' effort to obtain Commission review by asserting as fact a purportedly "secret ex parte" communication regarding General Atomics' facilities is, therefore, baseless.

DISCUSSION

Petitions for Commission review are not to be granted unless a "substantial question" exists with respect to the following considerations:

> (i) a finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;
>
> (ii) a necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;
>
> (iii) a substantial and important question of law, policy or discretion has been raised;
>
> (iv) the conduct of the proceeding involved a prejudicial procedural error; or
>
> (v) any other consideration which the Commission may deem to be in the public interest."[4]

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[4] 10 C.F.R. § 2.786(b)(4).

Aside from general conclusory arguments which make clear their continuing desire to obstruct a settlement agreement that was intensely negotiated by senior officials of the NRC Staff and General Atomics over a several month period, neither the Intervenors nor the State have demonstrated that a substantial question exists with respect to any of these considerations. No novel questions of policy, law, procedure, or NRC Staff discretion or action have been raised. No compelling basis has been identified upon which the Commission could conclude that the Licensing Board has abused its authority. Rhetoric aside, no showing has been made that the Board's approval of the Settlement Agreement was not legally and factually sound or that it otherwise fails to meet the requirements of law.

Instead, the Intervenors and the State urge the Commission to review the Board's action for the purpose of establishing a new principle of law that is not necessary, that is contrary to reason, that is unworkable, and that would prevent the settlement of any proceeding. In their view, the Settlement Agreement cannot be approved unless it guarantees 100 percent of the funding which they believe to be necessary to the decommissioning and remediation of the Licensee's facility and otherwise meets their own definition of the "public interest."

The question which was before the Licensing Board, however, was not whether the sums to be contributed by General Atomics will turn out to be more or less than the actual costs of decommissioning. Nor was it a question of whether the Settlement Agreement absolutely satisfied all of the personal preferences of the Intervenors and the State. Rather, the narrow issue presented was whether the Settlement Agreement was "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.[5] The Settlement Agreement must thus be approved unless it is "patently arbitrary or contrary to law."[6]

No evidence has been presented that either the Settlement Agreement or the Licensing Board's approval of the Agreement were arbitrary or contrary to law. After months of negotiation, the NRC Staff obviously considers the Agreement to be fair, reasonable and in the public interest and the Licensing Board was expressly required to accord due weight to the position of the Staff.[7]

The NRC has clear enforcement authority and responsibility to regulate the disposal of low-level radioactive waste such as that which exists at the Licensee's facility. The Staff is assumed to be fair and capable of judging a matter on its merits, and to have properly discharged its official duties.[8] The Staff also has first-hand knowledge of the Licensee's facility including the nature and extent of any contaminated material there. Certainly, the Staff has far greater capability to appraise the effectiveness and costs of disposal alternatives, than private parties which are concerned only with their own special interests.

After three years of litigation, the Staff is also in the best position to determine what is legally obtainable under its October 15, 1993 enforcement order and what facts it could and could

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5 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).

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

7 10 C.F.R. § 2.203.

8 Nuclear Engineering Co. Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 11 NRC 1, 4 (1980).

not prove in an adjudicatory proceeding. The Staff recognizes that a substantial question of law exists as to the Commission's jurisdiction over General Atomics and that the Staff's efforts to hold General Atomics liable for the remediation and decommissioning obligations of the Licensee could fail totally. In such circumstances, General Atomics would not be required to pay any of the decommissioning costs, much less the substantial payments to the Trust which it has voluntarily agreed to make in the Settlement Agreement. The Staff is also in the best position to evaluate the likelihood that it could ever collect any money from General Atomics, even if it succeeded in obtaining a judgment after additional years of litigation. It is for these reasons, that in entering into the Settlement Agreement, the NRC Staff "factored in litigative risks and the distinct possibility that the Staff could fail to obtain any relief if the litigation was pursued to its ultimate conclusion."[9] Consequently, the NRC Staff is clearly in the best position to gauge the extent to which the Settlement Agreement meets the Staff's regulatory objectives, is fair and reasonable, and is otherwise in the public interest.

Aside from the due weight which it was required to accord to the position of the Staff, the Licensing Board had more than sufficient information upon which it could independently assess the reasonableness of the Settlement Agreement. Over three years have lapsed since the NRC Staff issued the October 15, 1993 Order. During that period, approximately 330 documents, totaling in excess of 3,000 pages, have been filed in the proceeding. It is undisputed that General Atomics is not a licensee of the Commission in connection with the Licensee's facility. It is also undisputed that the October 15, 1993 Order contains no allegations whatsoever that General Atomics caused any contamination which exists at the facility or that it engaged in any other form

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9 NRC Staff's Answer in Opposition, p. 8.

of wrongdoing. The "de facto" licensee liability theory upon which the October 15, 1993 Order was based has never been adopted by the Commission. Moreover, 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 that those who own shares in a corporation, 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.[10] And, even if a legal basis for the NRC Staff's liability theory could be established, it is not certain that the Staff could prove facts to support the theory. Indeed, General Atomics contends that such facts do not exist. Thus, the Licensing Board had more than sufficient grounds upon which to conclude -- as the Staff did -- that the risks of continued litigation were substantial.

The Licensing Board was also aware that by entering into the Settlement Agreement, the parties have avoided the costs and delay, as well as the uncertainty of continued litigation. Substantial sums will be immediately available for the decommissioning and reclamation of the Licensee's facility. 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 decommissioning and remediation starting immediately. The funds will be contributed irrespective of the Commission's jurisdiction over General Atomics, irrespective of the merit or lack of merit of the legal theory advanced by the Staff, and irrespective of the facts.

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[10] See, e.g., the Revised Model Business Corporation Act, § 6.22(b). See also, Joslyn Manufacturing Company v. T.L. James & Co., Inc., 893 F.2d 80 (5th Cir. 1990), cert denied, 111 S.Ct. 1017 (1991).

CONCLUSION

For all of the foregoing reasons, the Petitions of the Intervenors and the State should be denied.

Respectfully submitted,

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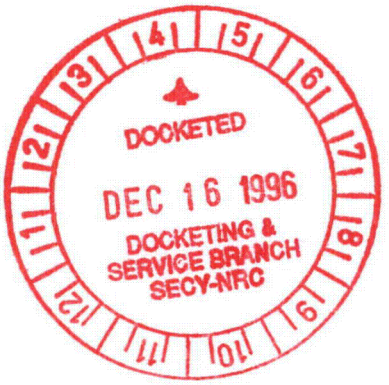

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Decontamination and	)	
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CERTIFICATE OF SERVICE

I hereby certify that copies of General Atomics' Answer in Opposition to the Intervenors' and the State of Oklahoma's Petitions for Review of LBP-96-24 in the above-captioned matter have been served on this 16th day of December, 1996 on the following by deposit in the United States mail, first class; or as indicated by a single asterick via facsimile transmission.

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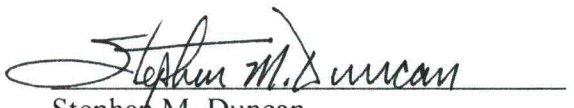

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