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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF THE
RULES AND
ADJUDICATION

A-F

Before Administrative Judges:

Charles Bechhoefer, Presiding Officer
Thomas D. Murphy, Special Assistant

In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION,)	Docket No. 40-8027-MLA-4
)	
(Request to Amend Source Material)	ASLBP No. 99-770-09-MLA
License No. SUB-1010))	

**OBJECTION TO SEQUOYAH FUELS CORPORATION'S MOTION FOR
LEAVE TO REPLY AND REQUEST FOR SURREPLY**

THE STATE OF OKLAHOMA ("Oklahoma"), by and through the undersigned, Stephen L. Jantzen, Assistant Attorney General, hereby objects to Sequoyah Fuels Corporation's ("SFC") Motion for Leave to Reply to the NRC Staff's Answer. SFC's Motion for Leave fails to demonstrate that permitting SFC to file its proposed Reply to the NRC Staff's Answer will materially aid the Presiding Officer. Further, allowing SFC to file its proposed Reply to the NRC Staff's Answer will work to the detriment of Oklahoma. SFC's Motion for Leave must therefore be denied. Alternatively, in the event that SFC's Motion for Leave is granted, Oklahoma, without waiving its objection, requests and should be granted, the opportunity to file a prompt and brief surreply for the purpose of addressing the assertions of SFC in its proposed Reply to the NRC Staff's Answer.

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ARGUMENT

SFC's position throughout the early stages of this matter has been characterized by consistent attempts to force consideration and litigation of the merits of the Oklahoma's Request for Hearing and Oklahoma's Supplemental Request for Hearing. SFC's Motion for Leave to Reply to the NRC Staff's Answer is no different. Despite SFC's efforts to the contrary, as stated in Oklahoma's Supplemental Request for Hearing, this early stage of the above-captioned matter cannot revolve around litigating the merits of Oklahoma's contentions. 10 C.F.R. § 2.1233(c) (1999); Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility, Special Nuclear Materials License No. SNM-33), LBP-89-23, 30 N.R.C. 140 (1989). SFC cannot be permitted to force this stage of the above-captioned matter into merits-based adjudication through its Motion for Leave and its proposed Reply to NRC Staff's Answer.

Additionally, SFC's Motion for Leave to Reply to the NRC Staff's Answer identifies three issues purportedly raised by NRC Staff that SFC desires to address in its proposed Reply to the NRC Staff's Answer. These supposed "issues" are so far-removed from the current focus of the above-captioned matter as to be somewhat suspect. In fact, a close inspection of SFC's Motion for Leave, as well as the proposed Reply to NRC Staff's Answer attached thereto, reveals that SFC's proposed Reply to the NRC Staff's Answer repeats and restates arguments from SFC's Response to Oklahoma's Supplemental Request for Hearing. SFC's proposed Reply to the NRC Staff's Answer adds nothing new to SFC's position in this matter appropriate for consideration at this early stage of the above-captioned matter, but

rather seeks to “get in the last word” in the context of certain “issues.” SFC’s Motion for Leave and its proposed Reply to the NRC Staff’s Answer seeks to restate SFC’s original assault on Oklahoma’s Supplemental Request for Hearing. SFC has therefore failed to demonstrate that its proposed Reply to the NRC Staff’s Answer will materially aid the Presiding Officer.

Ignoring well-settled NRC precedent, SFC’s Motion for Leave, as well as the proposed Reply to NRC Staff’s Answer attached thereto, reiterates the argument from its Response to Oklahoma’s Supplemental Request for Hearing that “areas of concern” must be exhaustively detailed. SFC’s Proposed Reply, at 10. SFC does not, and cannot, provide any legal authority to support its contention. To the contrary, well-established NRC precedent provides that, at this early stage of the above-captioned matter, Oklahoma is not required to put forth an exhaustive exposition in support of the issues it wishes to litigate. Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-92-24, 36 N.R.C. 149, 154 (1992). A comprehensive statement of issues (resembling the merits of Oklahoma contentions), must only be provided at a later date. 10 C.F.R. § 2.1233(c) (1999); Combustion Engineering, Inc. (Hematite Fuel Fabrication Facility, Special Nuclear Materials License No. SNM-33), LBP-89-23, 30 N.R.C. 140, 147 (1989). Oklahoma’s statement of “areas of concern” need only “identify” its areas of concern by providing “minimal” information to ensure that the “areas of concern” are germane to the proceeding. Babcock and Wilcox Company (Pennsylvania Nuclear Services Operations, Parks Township, Pennsylvania, LBP-94-12, 39 N.R.C. 215, 217 (1994).

Oklahoma's Supplemental Request for Hearing, over 80 pages in length (with exhibits) describes in arduous, painstaking detail its "areas of concern," as well as the facts and circumstances that support its standing in the above-captioned matter. Oklahoma's Supplemental Request for Hearing exceeds NRC's requirements on requisite detail. SFC's attempt to continue reiterating its groundless arguments on this issue should not be well-taken.

SFC's proposed Reply to the NRC Staff's Answer also restates arguments as to redressability in relation to Oklahoma's Supplemental Request for Hearing. SFC's Proposed Reply, at 2. To the contrary, it is nearly self-evident that Oklahoma's injuries are redressable in the above-captioned matter. As NRC Staff recognized, Oklahoma will suffer numerous injuries-in-fact in the event that Source Material License No. SUB-1010 is amended by NRC's approval of SFC's Second Revised Decommissioning Plan. These injuries will be redressed in the Proceeding by a decision holding that the Second Revised Decommissioning Plan is not in compliance with NRC rules and regulations, specifically 10 C.F.R. § 20.1403 (1999). Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). As set forth in Oklahoma's Supplemental Request for Hearing, the entire SFC Site should be decommissioned for unrestricted release as required by applicable rules and regulations and by the plain language of SFC's Source Material License No. SUB-1010. Decommissioning the SFC Site for unrestricted release, as Oklahoma maintains it must be, will spare Oklahoma the injuries of which it complains in its Request for Hearing and its Supplemental Request for Hearing. Again, SFC's attempt to restate its arguments on this issue should not be well-

taken.

In conclusion, SFC's Motion for Leave, and its proposed Reply to the NRC Staff's Answer, are each bereft of new and helpful information not forwarded in an attempt to litigate the merits of this matter, and in reality seek to restate and reargue SFC's Response to Oklahoma's Supplemental Request for Hearing. SFC has therefore failed to demonstrate that, in the event its Motion for Leave is granted, its proposed Reply to the NRC Staff's Answer will materially aid the Presiding Officer. Moreover, by failing to demonstrate that its proposed Reply to the NRC Staff's Answer will materially aid the Presiding Officer, SFC has clearly demonstrated that granting its Motion for Leave will materially prejudice Oklahoma, as well as NRC Staff and the Presiding Officer. The scarce resources of all parties in this matter are better invested in endeavors other than SFC's Motion for Leave to Reply to the NRC Staff's Answer. It must therefore be denied.

Alternatively, and without waiving its objection set forth herein, in the event SFC's Motion for Leave is granted, Oklahoma respectfully requests that it be granted a reasonable opportunity to file a prompt and brief surreply to address the merits of SFC's contentions in its proposed Reply to NRC Staff's Answer.

WHEREFORE, premises considered, the State of Oklahoma, by and through the undersigned, Stephen L. Jantzen, Assistant Attorney General, requests that SFC's Motion for Leave to Reply to the NRC Staff's Answer, must be denied for the reasons stated above. In the event that SFC's Motion for Leave to Reply to the NRC Staff's Answer is granted, the

State of Oklahoma, without waiver, respectfully requests that it be granted a reasonable opportunity to file a prompt and brief surreply to address the merits of SFC's contentions in its Reply to NRC Staff's Answer.

Respectfully Submitted,

~~OFFICE OF THE OKLAHOMA
ATTORNEY GENERAL~~

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Dated: October 25, 1999

CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on the 25th day of October, 1999, a true and correct copy of the foregoing was transmitted by first class U.S. mail, and by telefax where indicated, to the following:

DET. 10/25/99
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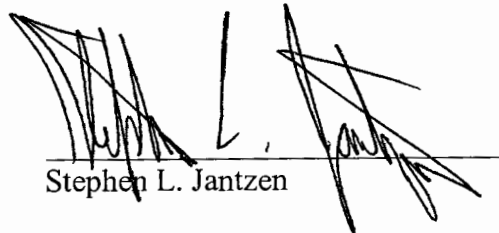
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OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

October 25, 1999

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Rulemakings and Adjudications Staff
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Washington, DC 20555-0001

Re: **In the Matter of Sequoyah Fuels Corporation, Request to Amend Source Materials License No. SUB-1010, U.S. Nuclear Regulatory Commission, Docket No. 40-8027-MLA-4, ASLBP, No. 99-770-09-MLA**

Sir or Madam:

Enclosed please find an original Objection to Sequoyah Fuels Corporation's Motion for Leave to Reply and Request for Surreply, and three conformed copies thereof, prepared for filing with the U.S. Nuclear Regulatory Commission in the referenced matter.

Upon receipt, please return the remaining file-stamped copy of the enclosed to this office in the self-addressed, stamped envelope enclosed for that purpose.

Thank you for your assistance. Should you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. Jantzen", is written over a printed name.

STEPHEN L. JANTZEN
ASSISTANT ATTORNEY GENERAL

Enclosures