

14566

EXCRETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

JAN -5 10:42

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF REGULATORY
INTEGRITY & REFORM
ATTORNEY GENERAL

In the Matter of)
)
SEQUOYAH FUELS CORPORATION)
and GENERAL ATOMICS)
)
(Sequoyah Facility))
_____)

Docket No. 40-8027-EA

January 3, 1994

SEQUOYAH FUELS CORPORATION'S
ANSWER TO NATIVE AMERICANS FOR A
CLEAN ENVIRONMENT'S REQUEST
FOR EXTENSION OF TIME

On November 18, 1993, Native American for a Clean Environment (NACE) filed a motion to intervene (NACE's Intervention Motion) in a hearing requested by Sequoyah Fuels Corporation (SFC) and General Atomics (GA) regarding the NRC's Order to SFC and GA of October 15, 1993 (October 15 Order). On December 6, 1993, both SFC and GA filed answers in opposition to NACE's Intervention Motion (SFC's Answer; GA's Answer). On December 13, 1993, the NRC Staff filed a response to NACE's Intervention Motion (NRC Staff Response). On December 17, 1993, the Atomic Safety and Licensing Board (Board) issued an order permitting NACE to reply to the NRC, GA and NRC Staff responses by December 30, 1993 and scheduling a prehearing conference for January 19, 1994 (the December 17 Order).

On December 30, 1993, NACE filed its reply to SFC's Answer (NACE's Reply). After close of business that day, NACE also telefaxed Native Americans for a Clean Environment's Request

9401120152 940103
PDR ADOCK 04008027
C PDR

DS03

for Extension of Time for Filing Contentions as of Right and Request for Expedited Consideration (NACE's Extension Request). NACE asserts that, since the Board has scheduled the first prehearing conference for January 19, 1994, it "appears that under [10 CFR § 2.714(a)(3)], NACE has until January 4, 199[4], to file contentions as of right in this proceeding." NACE's Extension Request at 1. NACE then claims that it is impossible for NACE to meet a January 4 deadline because preparation of NACE's Reply consumed much of counsel's time and NACE must also file its appeal of LBP-93-25 on January 4. NACE requests that the Board establish a schedule providing for NACE's submission of contentions within 30 days after the Board's ruling on NACE's standing to participate in this proceeding or grant an extension of 30 days from January 4.

For the reasons set forth below, although SFC does not agree that NACE is entitled to the requested extension, it does not object to the grant thereof by the Board.

SFC believes that NACE is mistaken in asserting that it was entitled to file contentions as a matter of right as late as January 4, 1994. The October 15 Order (at 27) required any person who requested a hearing (other than SFC or GA) to address the criteria set forth in 10 CFR § 2.714(d). As discussed in SFC's Answer (at 33-34), these include the criteria of 10 CFR § 2.714(d)(2) dealing with contentions. Thus, it is SFC's position that NACE had to set forth acceptable contentions in NACE's Intervention Motion.

Even if NACE were correct in its assumption that it could defer filing acceptable contentions until a subsequent pleading, that date could have been no later than December 30, 1993. Both SFC's Answer and NRC's Reply had pointed out that NACE had not filed an acceptable contention. The December 17 Order required NACE to respond by December 30. It was therefore incumbent upon NACE either to show in its December 30 filing that the identification of "issues" in NACE's Intervention Motion satisfied the contentions criteria of the regulations or to set forth acceptable contentions at that time. Since the Board has the authority to establish schedules differing from those in the regulations, NACE could not assume that, notwithstanding the Board's December 17 Order, it could still defer filing contentions until January 4.

Finally, even if NACE were correct in identifying January 4 as its due date for contentions, it could not properly wait until the evening of December 30 to request an extension of that deadline. NACE has known since December 17 that it had to file NACE's Reply on December 30 and, even by its own reckoning, to submit acceptable contentions by January 4. It also knew since mid-December that it had to file its appeal of LBP-93-25 in early January. If these simultaneous burdens were excessive, NACE could have promptly filed a timely request for extension, rather than letting the Board and the other participants rely on NACE's adherence to the established schedules.

Thus, SFC does not agree that NACE is entitled to its requested extension. Nevertheless, SFC has carefully considered NACE's argument that it should not have to expend its resources in the framing of contentions until the Board has determined whether NACE has otherwise established its entitlement to participate in this proceeding. SFC is also anxious not to needlessly expend its own resources in reviewing and responding to contentions, since its responses to other aspects of NACE's intervention Motion will enable the Board to deny such motion without having to reach the question of acceptable contentions.^{1/}


Accordingly, under the present circumstances, SFC does not object to the granting of NACE's Extension Request. SFC further suggests that, unless the Board denies NACE's Intervention Motion prior to January 19, the prehearing conference be delayed until the later of (1) 15 days after the Board's denial of NACE's Intervention Motion, or (2) 15 days after the date of any extension granted for the filing of NACE's contentions.^{2/} Until such time as NACE's potential

^{1/} In light of the extensive new factual information, new legal arguments and new request for discretionary intervention contained in NACE's Reply, SFC plans to respond to such pleading by January 10 and is filing a motion today requesting the Board to confirm the acceptability of that filing date.

^{2/} After issuance of the December 17 Order, for purposes of advance planning, counsel for SFC relied upon the scheduled date of January 19, 1994 for the prehearing conference and the scheduled date of December 30, 1993 for NACE's Response, and took into account the remote possibility of the filing
(continued...)

participation in this proceeding is determined, in SFC's view it would be premature to discuss issues and schedules and there would be a significant likelihood that resources would be squandered needlessly. Since SFC is anxious to conserve its resources for the planning and implementation of decommissioning activities, it would like to avoid involvement of NACE in prehearing activities if it may later be denied intervention and to minimize the conduct of any hearing-related activities that may have to be modified or duplicated if NACE is later admitted as a party.

Respectfully submitted,


Maurice Axelrad

NEWMAN & HOLTZINGER, P.C.
1615 L Street, N.W., Suite 1000
Washington, DC 20036
(202) 955-6600

ATTORNEY FOR
SEQUOYAH FUELS CORPORATION

January 3, 1994

^{2/}(...continued)

of contentions on January 4. Because of such reliance, SFC counsel firmed up plans to be away from his office from January 24 through February 7. Accordingly, SFC respectfully requests that any new dates for filings or for prehearing conferences be discussed with counsel for the participants, and take into account their reliance on previous schedules.