

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

FILE IN SECRETARY
DOCKET AND INDEX
BRANCH

In the Matter of)
)
SEQUOYAH FUELS CORPORATION) Docket No. 40-8027-EA
and GENERAL ATOMICS)
)
(Sequoyah Facility in) February 17, 1994
Gore, Oklahoma))

GENERAL ATOMICS' MOTION FOR SUMMARY DISPOSITION
OR FOR AN ORDER OF DISMISSAL

Pursuant to Nuclear Regulatory Commission Rule of Practice § 2.749, General Atomics hereby moves for an order granting summary disposition in its favor on all matters involved in this proceeding or for an order of dismissal.

AS GROUNDS for its motion for summary disposition, General Atomics submits the following:

1. For the purpose of granting this motion, it is not necessary for the Atomic Safety and Licensing Board ("Board") to determine certain material facts as to which there is no genuine issue and which are set forth in the Annex attached hereto.

2. The statutes upon which the Nuclear Regulatory Commission ("NRC") relied in its Order of October 15, 1993, do not authorize it to either assert jurisdiction over General Atomics in this matter or to impose upon General Atomics the non-civil penalty financial liability which is claimed.

3. Congress never intended to delegate to the NRC the authority which it now seeks to assert over General Atomics.

4. By their own terms, the NRC's regulations do not apply to General Atomics, and to any extent that they appear to apply, the regulations are void, since they cannot confer any greater authority than that granted by Congress.

5. The attempt by the NRC to stretch its jurisdiction far enough to encompass a non-licensee in these circumstances is arbitrary and so unreasonable as to be unlawful, even if it were not obviously beyond the NRC's authority.

6. In its October 15, 1993 Order (the "October 15 Order"), the NRC has otherwise failed to plead or assert a legally cognizable claim against General Atomics.

7. The NRC has admitted that General Atomics is not legally obligated to provide assurance of the decommissioning and remediation costs of the Gore, Oklahoma facility operated by Sequoyah Fuels Corporation (the "Licensee"). The NRC is thus estopped from seeking to compel such assurance and General Atomics should not now be forced to defend against the allegations contained in the NRC's October 15, 1993 Order.

8. In its Order of October 15, 1993, the NRC made numerous allegations about the purported reliance by members of the NRC on certain verbal and written statements by the Chairman of General Atomics. Since they have personal knowledge of disputed evidentiary facts, each of the individual NRC Commissioners are material witnesses in the matter in controversy. Under such

circumstances, each of the Commissioners must be disqualified and a decision must be rendered in favor of General Atomics. Otherwise, General Atomics will be required to contest the October 15, 1993 Order before this Board and ultimately before the same Commissioners who are material witnesses, thereby depriving it of procedural due process rights guaranteed by the Constitution and the Administrative Procedure Act.

9. The NRC's own Rule of Practice § 2.720(h)(1) prohibits the issuance of a subpoena requiring the attendance and testimony of the same members of the NRC who are alleged to have reasonably relied upon statements made by the Chairman of General Atomics. The testimony of the Commissioners is essential to the adjudication of the issues raised by the October 15 Order. If General Atomics is barred from obtaining such evidence, it will necessarily be deprived of procedural due process rights guaranteed by the Constitution, the Administrative Procedure Act, and Section 2.718 of the NRC's own Rules of Practice.

10. The actions of the NRC strongly suggest that it has prejudged the contested matters raised by the October 15 Order. To require General Atomics to contest the NRC assertions further before the NRC itself or in this or any other administrative forum which is inferior to the NRC would be to deprive General Atomics of the fairness traditionally associated with any form of judicial process and violate due process rights that are guaranteed to General Atomics under the Constitution.

IN THE ALTERNATIVE, and pursuant to Rule of Practice § 2.730, General Atomics moves for an order by the presiding officer of the Board dismissing the claims against General Atomics which are contained in the NRC's Order of October 15, 1993.

AS GROUNDS for its motion for an order of dismissal, General Atomics reasserts the grounds set forth above and in addition, submits the following:

1. In its October 15 Order (p. 21), the NRC alleges that General Atomics is responsible for the decommissioning and related costs of the Licensee because it "exercised and exercises de facto control over the day-to-day business of" the Licensee. The NRC has not, and cannot cite a statute or a controlling opinion of a court of law that establishes a "de facto control" doctrine for the definition of the NRC's jurisdiction. Even if such a doctrine did exist, it could not be relied upon in this proceeding for the kind of relief that the NRC seeks. The NRC has, therefore, failed to state a legally cognizable claim against General Atomics and it can prove no set of facts that would entitle it to impose the non-civil penalty financial liability upon General Atomics which it seeks here.

2. When pressed by the Board at the January 19, 1994 Prehearing Conference to more clearly state the NRC's theory of the case, Staff Counsel for the NRC stated that the theory is "more akin to the common law, corporation/contract, sometimes tort action involving parent-subsidary relationships where a claimant attempts to pierce the corporate veil between the subsidiary and the parent

. . . ." The NRC has not, and cannot cite a statute or a controlling opinion of a court of law that vests the NRC with jurisdiction to make such claims against non-licensees based upon the common law doctrine of a state that has not even been identified. Nor has the NRC even alleged any of the factors that must be present for the formal differences between affiliated corporations to be disregarded. The NRC has failed, therefore, to state a legally cognizable claim against General Atomics and it can prove no set of facts that would entitle it to impose the non-civil penalty financial liability upon General Atomics which it seeks here.

3. At the Prehearing Conference on January 19, 1994, Staff Counsel for the NRC agreed that the NRC has the burden to prove those claims against General Atomics which are set forth in the October 15 Order. Staff Counsel further advised the Board that the NRC's "theory [of the case] can be developing upon facts that are later discovered" Having already issued a Demand for Information to which General Atomics responded, the NRC is now improperly attempting to use the October 15 Order as a fishing expedition for any facts upon which it might somehow base some claim. General Atomics must not be required to defend itself against insufficient and conclusory allegations of facts which have not even been discovered, and which if true, would not support a legally cognizable claim against it.

4. At the Prehearing conference, Staff Counsel for the NRC further stated (a) that the October 15 Order is not based on and

the NRC does not allege deliberate misconduct by General Atomics; (b) that the NRC's claim against General Atomics is not based upon "a contractual obligation or legal duty it has to Sequoyah Fuels Corporation or to the agency, which may flow from, among other things, the Commission's purported reliance upon representations made by GA," (see pp. 3-4 of the Board's January 13, 1994 Memorandum Posing Matters for Consideration at Prehearing Conference); and (c) that the Staff does not intend to pursue any quasi-contract "theory of the case" which is based on allegations of reliance. All claims against General Atomics which are expressly or implicitly based on these two grounds must, therefore, be dismissed in order to prevent unnecessary and costly discovery on matters that are not relevant to the controversy.

GENERAL ATOMICS RESPECTFULLY REQUESTS ORAL ARGUMENT ON
THESE MOTIONS PURSUANT TO RULE OF PRACTICE § 2.730(d).

Respectfully submitted,

By Stephen M. Duncan
Of Counsel

Stephen M. Duncan
Bradfute W. Davenport, Jr.
MAYS & VALENTINE
110 South Union Street
Alexandria, Virginia 22314

ATTORNEYS FOR GENERAL ATOMICS

February 17, 1994

ANNEX "A"

MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE

For the purpose of its Motion for Summary Disposition or for an Order of Dismissal, General Atomics contends that there is no genuine issue as to the following material facts:

1. Sequoyah Fuels Corporation (the "Licensee") is the holder of Source Material License No. SUB-1010 (the "License") issued by the Nuclear Regulatory Commission ("NRC") pursuant to 10 C.F.R. Part 40. The License authorized the Licensee to possess and use source material in the production of uranium hexafluoride (UF_6) and depleted uranium tetrafluoride (DUF_4). The License for UF_6 production was originally issued on February 20, 1970 by the Atomic Energy Commission.
2. Sequoyah Fuels Corporation is the sole licensee named in the License.
3. For several years, and until July 6, 1993, the Licensee engaged in the activities described above at its facility in Gore, Oklahoma (the "Sequoyah Facility").
4. General Atomics is not now and has never been a licensee of the NRC in connection with the Sequoyah Facility.
5. General Atomics is not engaged in licensed activities and it does not possess licensed or other NRC regulated materials in connection with the Sequoyah Facility.
6. On June 20, 1988, Sequoyah Holding Corporation ("SHC")

was incorporated in the State of Delaware. SHC was, and is a wholly-owned subsidiary of General Atomics. From June 30, 1988 to January 28, 1992, Reau Graves, Jr. ("Graves") served as Chairman of SHC.

7. On July 7 and August 2, 1988, meetings were held between the NRC Staff and representatives of General Atomics to discuss the consent of the NRC to the transfer of control of the Licensee from Kerr-McGee Corporation ("Kerr-McGee") to SHC, a subsidiary of General Atomics, and of the license amendment application of the Licensee to reflect a change in ownership. As part of its review of the situation, the NRC Staff performed a financial review of the proposed transfer of ownership to determine whether the change would affect the financial resources of the Licensee for safely operating the plant and for future decommissioning of the Sequoyah Facility. The review concluded that "the proposed transfer of ownership will not impair [the Licensee's] ability to perform decommissioning and reclamation activities or to safely operate the plant." (See the October 27, 1988 internal NRC Memorandum of W. Scott Pennington, attached hereto as Appendix 1).

8. On or shortly after September 19, 1988, Robert S. Wood of the NRC Staff forwarded an internal NRC Memorandum to Leland C. Rouse of the NRC Staff. A copy of that memorandum is attached hereto as Appendix 2.

9. On or shortly after October 18, 1988, Graves forwarded a

letter to Rouse. A copy of that letter is attached hereto as Appendix 3 and to the Affidavit of Graves. That letter formally requested that the NRC provide its advance consent to the transfer of control of Sequoyah Fuels Corporation, then a wholly-owned subsidiary of Kerr-McGee, to SHC. In that letter, SHC also requested that the NRC confirm that, through an amendment to Chapter 7.5 of the License, "Kerr-McGee will be released from its obligation to provide the NRC assurance of proper decommissioning and reclamation of the Sequoyah Facility." (Letter from Graves to Rouse, at page 3). This amendment, along with several other revisions to the License, was reflected in SHC's application for amendment of the License, which was also dated October 18, 1988.

10. Sometime prior to the filing of his October 18, 1988 letter, Graves had met with representatives of the NRC in the Washington, D.C. area to discuss the acquisition of Sequoyah Fuels Corporation by SHC. They specifically discussed the question of whether or not the NRC would require a guarantee by General Atomics of decommissioning costs. At the time, Graves was familiar with the guarantee of those costs that had been required of Kerr-McGee. If a guarantee had been required of General Atomics, the acquisition would not have taken place. (See the Affidavit of J. Neal Blue.)

11. By letter to Graves dated October 27, 1988, the NRC approved the transfer of control of Sequoyah Fuels Corporation from Kerr-McGee to SHC. A copy of that letter is attached

hereto as Appendix 4 and to Graves' Affidavit. By letter dated October 28, 1988, the NRC also approved the proposed amendments to the License, including the revisions to Chapter 7.5 which effected the release of Kerr-McGee. The revisions to Chapter 7.5 approved by the NRC did not substitute General Atomics for Kerr-McGee and did not in any way impose an obligation on General Atomics that was similar to the one from which Kerr-McGee was being released. Moreover, no other conditions were placed upon the License which created any such obligation on the part of General Atomics.

12. On November 4, 1988, SHC purchased Sequoyah Fuels Corporation from Kerr-McGee.

13. On August 29, 1989, New Sequoyah Fuels Corporation ("NSFC") was incorporated in Delaware as a wholly-owned subsidiary of Sequoyah Fuels Corporation.

14. On December 29, 1989, the NRC amended the Sequoyah license to authorize a change in the Licensee's name to NSFC, the incorporation of NSFC, and a transfer of assets to NSFC. On December 31, 1989, Sequoyah Fuels Corporation and NSFC entered into a Transfer Agreement in which Sequoyah Fuels Corporation transferred its assets and ongoing business (excluding certain farm-related business and assets and certain conversion contracts with international customers) to NSFC.

16. On March 26, 1990, the NRC amended the Sequoyah license to authorize the change of the Licensee's name from NSFC to

"Sequoyah Fuels Corporation." The former Sequoyah Fuels Corporation changed its name to "Sequoyah Fuels International Corporation" ("SFIC").

16. Sequoyah Fuels Corporation is now a wholly-owned subsidiary of SFIC. SFIC is a wholly-owned subsidiary of Sequoyah Holding Corporation ("SHC"). SHC is a wholly-owned subsidiary of General Atomics. General Atomics is a third-tier parent company of Sequoyah Fuels Corporation.

17. On or shortly after March 27, 1992, Samuel J. Chilk, the Secretary of the NRC forwarded to James M. Taylor, Executive Director of Operations, an internal NRC Memorandum. A copy of that memorandum is attached as Appendix 5.

18. On or shortly after May 6, 1992, Richard E. Cunningham of the NRC Staff, forwarded a letter to James J. Sheppard of the Sequoyah Fuels Corporation. A copy of that letter is attached as Appendix 6.

19. The proposed contract referred to in Appendix 5 was never entered into (See the Affidavit of J. Neal Blue).



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OCT 27 1988

DOCKET NO: 40-8027
LICENSEE: Sequoyah Fuels Corporation
FACILITY: Sequoyah Facility
Gore, Oklahoma
SUBJECT: NRC STAFF ASSESSMENT OF ACQUISITION OF SEQUOYAH FUELS
CORPORATION BY SEQUOYAH HOLDING CORPORATION

Background

Sequoyah Fuels Corporation (SFC) is an NRC licensee engaged in uranium hexafluoride production and uranium hexafluoride reduction activities. All SFC stock is held by Kerr-McGee Corporation.

Meetings were held between NRC staff and representatives of General Atomics and the firm's legal counsel, Winthrop, Stimson, Putman, and Roberts, on July 7 and August 2, 1988. During the August 2, 1988, meeting and by letter dated September 16, 1988, draft copies of the letter requesting NRC consent to the transfer of control of SFC from Kerr-McGee Corporation to Sequoyah Holding Corporation, a subsidiary of General Atomics, and of the license amendment application to reflect a change in ownership and corporate oversight were provided for staff comment. By letter dated October 7, 1988, staff provided General Atomics counsel with additional topics to be addressed in the letter and comments for the license amendment application. By separate letters dated October 18, 1988, Sequoyah Holding Corporation formally requested NRC consent for the transfer of control of SFC and an amendment to the license. The transfer of control of SFC would be effected by a transfer of stock ownership.

Staff's review of the request for consent was conducted pursuant to requirements in 10 CFR 40.46 to ensure there would be no adverse impact on the public health and safety or common defense and security as a result of the transfer of control of SFC. A separate evaluation is being prepared for the amendment application.

In support of the consent review, staff performed a financial review to determine whether the proposed change in SFC ownership will affect the financial resources of SFC for safely operating the plant and for future decommissioning of the Gore facility. Financial information for this review was provided in the draft documents submitted at the August 2, 1988, meeting, by telefax on August 25, 1988, and telephonically on August 29, 1988.

Discussion

Subject to NRC consent and the issuance of an amendment to the license, Sequoyah Holding Corporation (Purchaser) has agreed to purchase SFC from Kerr-McGee Corporation, the current holder of SFC stock. The purchase includes acquisition of the uranium hexafluoride production and reduction facilities near Gore, Oklahoma, as well as ranches near the plant. The Purchaser will not acquire the Cimarron facility, the Wyoming properties, and other properties previously owned by SFC.

Sequoyah Holding Corporation is a wholly-owned subsidiary of General Atomics which is itself a wholly-owned subsidiary of General Atomics Technologies Corporation. General Atomics is a corporation that engages in commercial research and development in the areas of nuclear energy and defense products. Sequoyah Holding Corporation is not owned, controlled, or dominated by an alien, a foreign corporation, or foreign government.

SFC will remain as a separate corporate entity. The Purchaser has stated that (a) it will install a new board of directors for SFC, (b) the new President of SFC is currently an employee of General Atomics and will be located at the facility, (c) the principal officers of SFC will be changed, and (d) the current oversight and audit responsibilities of the Kerr-McGee corporate staff will be assumed by the General Atomics corporate staff.

The transfer of control of the license requires an amendment to the license. An amendment application was submitted to reflect a change in SFC ownership and corporate oversight. The proposed change in control is effected by a change in SFC ownership through a purchase of stock. There will be no changes in the current license conditions affecting health and safety requirements or plant operations. There are no major changes in onsite management and operating personnel.

A financial review to determine whether the proposed acquisition will affect SFC's financial resources to operate and decommission the Gore facilities has been conducted by Robert Wood, Office of Nuclear Reactor Regulation. The financial analysis evaluated SFC's ability to perform the activities authorized by the license and how such activities would be affected by the proposed transfer of ownership of SFC from Kerr-McGee Corporation to Sequoyah Holding Corporation. The review concluded that the proposed transfer of ownership will not impair SFC's ability to perform decommissioning and reclamation activities or to safely operate the plant.

Regarding the staff's additional topics provided to General Atomics' counsel by letter dated October 7, 1988, the Purchaser has addressed each topic and provided the following information and commitments:

1. Sequoyah Fuels Corporation and Quivira Mining Company have executed a contract which provides that the Quivira Uranium Mill continue to accept the Sequoyah Facility's raffinate and fluoride sludges for uranium

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Sequoyah Fuels Corporation

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- recovery. The contract remains in effect through December 1, 1992, and provides for yearly extensions for so long as Quivira is licensed to process source material. If Quivira terminates the contract at its completion, a portion of the mill will remain operable at an agreed upon rental rate to handle SFC processing needs. The provisions of the contract will survive if the mill is transferred to another party.
2. Sequoyah Holding Corporation has committed to submittal of the financial statements for itself and SFC within 90 days of December 31, 1988, and within 90 days of the close of each fiscal year thereafter until the time that SFC files a decommissioning funding plan.
 3. Sequoyah Holding Corporation has committed SFC to the submittal of a decommissioning funding plan pursuant to the new decommissioning rule, Section 40.36 of 10 CFR Part 40, at the time SFC submits a license renewal application. The license is scheduled to expire September 30, 1990.
 4. Sequoyah Fuels Corporation has an established policy for accruing expense for waste disposal projects and decommissioning activities. Upon transfer of control, SHC intends to continue this policy. These accruals are based on units of production or a fixed monthly charge depending on the nature of the activity. The balance of the accounts for these activities appears as a decommission and reclamation reserve on the SFC balance sheet. The reserve is funded from working capital and is reduced to reflect costs related to specific disposal projects and decommissioning.

Conclusions/Recommendations

Based on the above, the staff concludes that the proposed transfer of control of Sequoyah Fuels Corporation to Sequoyah Holding Corporation:

- a) Is in accordance with requirements in 10 CFR 40.46;
- b) Will not have an adverse effect on the public health and safety;
- c) Will not change the health and safety requirements in the license;
- d) Will not significantly change onsite management and operating personnel;
- e) Is not likely to adversely affect the common defense and security based on statements and representations of the Purchaser and the requirements of the license;
- f) Will provide for the continued acceptance of the plant's raffinate and fluoride sludges for uranium recovery at the Quivira Uranium Mill in New Mexico;

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Sequoyah Fuels Corporation

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- g) Includes the acquisition of the Gore facilities and nearby ranches but not the Cimarron facility, the Wyoming properties, and other previously owned SFC properties;
- h) Provides a commitment for the submittal of annual financial statements for Sequoyah Fuels Corporation and Sequoyah Holding Corporation;
- i) Provides a commitment to maintain the reserves for decommissioning and reclamation expenses;
- j) Provides a commitment for SFC to submit a decommissioning funding plan at the time SFC submits a license renewal application.

Based on these conclusions, staff recommends NRC consent to the transfer of Sequoyah Fuels Corporation to Sequoyah Holding Corporation subject to the issuance of a license amendment and the commitments described in the above items h) and i). Furthermore, staff recommends that item j) be made a condition of the SFC license.

W. Scott Pennington

W. Scott Pennington
Uranium Fuel Section
Fuel Cycle Safety Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Approved by:

George H. Bidinger
George H. Bidinger, Section Leader

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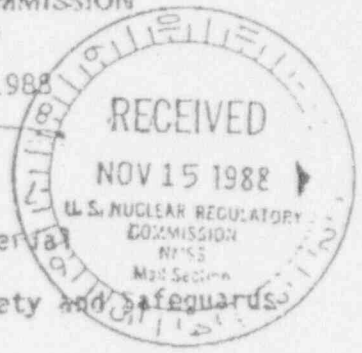
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PDR




UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

September 19, 1988



MEMORANDUM FOR: ~~Robert S. Wood~~ Chief
Uranium Fuel Licensing Branch
Division of Fuel Cycle and Material
Safety
Office of Nuclear Material Safety and Safeguards

THRU:  Darrel Nash, Section Chief
Policy Development Financial Evaluation Section
Policy Development and Technical Support Branch
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation



FROM: Robert S. Wood
Policy Development Financial Evaluation Section
Policy Development and Technical Support Branch
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

SUBJECT: PROPOSED TRANSFER OF OWNERSHIP OF KERR-MCGEE'S
GORE FACILITY TO SEQUOYAH HOLDING CORPORATION

As you requested, I have performed a financial evaluation of the proposed transfer of ownership of the Gore facility of the Kerr-McGee subsidiary, Sequoyah Fuels Corporation, to Sequoyah Holding Corporation, a subsidiary of General Atomics Corporation.

I. BACKGROUND

This evaluation is based on material submitted by officials of and counsel to Sequoyah Holding Corporation, with emphasis on the balance sheet dated May 31, 1988 and the balance sheet and income statement dated June 30, 1988. The June 30 statements were not part of Sequoyah Holding Corporation's original submission to NMSS but rather were telefaxed directly to me on August 25, 1988. Information for this financial evaluation was further supplemented by a conference call on August 29, 1988 among me, Chuca Meyer, an attorney for Winthrop, Stimson, Putnam and Roberts, counsel to Sequoyah Holding Company, and Reau Graves, Jr., President of Sequoyah Holding Company. The purpose of this conference call was to answer questions on and clarify the May 31 and June 30, 1988 financial statements cited above. (See Appendix A for a list of questions asked by me in the conference call.)

II. ANALYSIS

A. Balance Sheets

1. Reau Graves indicated that the purchase of the Gore and associated facilities would be financed by a \$5,000,000 direct stock purchase

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plus a \$10.5 million ten-year note payable to Kerr-McGee at an interest rate within the range available in international financial markets. This would have the effect of increasing the long-term debt liability on future balance sheet statements and, in effect, increasing the ratio of capitalization of debt to stockholders' equity to approximately one to one. That is, other things being equal, long term debt would increase to approximately \$10.8 million and stockholders' equity would decrease to approximately \$13.4 million. This is a reasonably acceptable debt-to-equity ratio, and is consistent with similar ratios of net worth-to-total liabilities (less decommissioning reserves) proposed elsewhere in NRC regulations and guidance for use in parent company guarantees.

2. The current-asset-to-current-liability position reflected in the balance sheets is quite strong. As an indication of short-term solvency, current assets should exceed current liabilities. The minimum acceptable ratio in NRC's parent company guarantee requirements is 2:1. The May 31, 1988 balance sheet for Gore and related facilities showed a current ratio of nearly 4.5. For the June 30, 1988 balance sheet the current ratio improved to over 5.0. In absolute terms, current assets exceed current liabilities by nearly \$12,000,000.

As part of current assets, the Gore and related facilities maintain a strong cash position, although this in part appears to reflect a stipulation by buyers as part of the purchase agreement that cash position be improved.

Another primary component of current assets; accounts receivable, also appears to be strong. Reau Graves indicated that a recent Citibank evaluation of the facility's accounts receivable indicated that they were all from utilities and had a 30-35 day average maturity term. Further, there has never been an instance of a bad debt write-off for a delinquent customer account.

Product inventories account for nearly 30% of current assets. Apparently, this line item represents work already under contract and is analogous to unbilled accounts receivable with a 60 to 90 day term.

Materials and supplies are shorter term assets used in the production process. Of all the current assets these are the least liquid (i.e., would be the most difficult to convert to cash on short notice.) Materials and supplies represent only about 17% of total current assets and, according to a recent audit by Arther Anderson Co. as indicated by Reau Graves, are accurately valued. Thus, the overall current asset position of the Gore facility is strong and demonstrates good liquidity.

3. Longer-term assets are carried at book value (which normally means original purchase price) less depreciation. Because of the limited number of UF6 conversion plants extant, it is difficult to determine the

salvage value of existing fixed assets. Mr. Graves indicated that a plant recently built in Canada using similar processes and of similar capacity cost nearly \$100,000,000. This suggests that, in the event of a liquidation of the Gore facility and assuming a market for its equipment, there would be some salvage value obtainable. The fixed assets appear to be fairly valued according to audits performed during the purchase agreement negotiations.

B. Income statement

An income statement for the period (unspecified) ending June 30, 1988 was included with material telefaxed on August 25, 1988. A net income of approximately \$1.48 million was realized on operating revenues of \$11.1 million. However, a significant component of operating expenses for the period, the cost of product and material, is shown as a negative operating expense (i.e., as a received asset rather than expense requiring cash outlay). Reau Graves explained that this included a transfer from Kerr-McGee as part of the conditions of sale and would not be a recurring item. (However, I also understand that the material is generally owned by utilities and thus may not be reflected as a cost per se. I will have to clarify this point with Reau Graves when he returns to his office.) If this negative expense is eliminated (i.e., if cost of product and material required cash outlay), and other items were equal, a loss rather than a profit would have been realized.

Depreciation as a non-cash expense contributed nearly \$2.4 million to cash flow during the period ending June 30, 1988. Although significant, it might not be sufficient in future years to compensate for possible cash outlays for cost of product and material. Of course, an effective management could increase revenues or reduce other expenses to improve both income and cash flow.

III. Conclusions and Recommendations

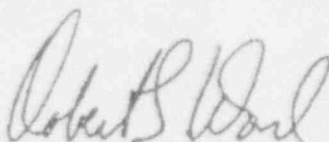
The balance sheet for the Gore and related facilities appears quite strong. The excess of current assets over current liabilities appears sufficient to cover the decommissioning and reclamation reserves carried on the liabilities side of the balance sheet. Additional protection is afforded by the likelihood that significant value still resides in the salvage value of the fixed assets of the facility. Another positive indicator is the relatively strong proportion of stockholders' equity in Sequoyah Holding Corporation's overall capital structure.

The income statement is less positive, if my understanding of cost of product and material is correct. Nevertheless, there appears to be sufficient leeway for improvement and limited potential for losses that would significantly impair the ability of Sequoyah Holding Corporation to

~~perform necessary decommissioning and reclamation activities. (This assumes that the \$11.7 million figure given on the balance sheet reasonably represents decommissioning and reclamation costs.)~~

Therefore, I conclude that, based on the information provided, Sequoyah Holding Corporation is financially qualified to assume the license to operate the Gore facility. Notwithstanding this conclusion, you may wish to consider the following additional safeguards:

1. Require Sequoyah Holding Corporation to provide annual balance sheets and income statements certified by a corporate officer. A statement that these financial statements meet generally accepted accounting principles should also be required from a Certified Public Accountant. The first statements should be required at the time the license is transferred.
2. Ask for a guarantee from Sequoyah Holding Corporation's parent, General Atomics Corporation, for decommissioning and reclamation expenses. You indicated that General Atomics would probably be unwilling to do this. If they refuse, we shouldn't make an issue of it, given the relative strength of Sequoyah Holding Corporation's financial statements; but it does not hurt to ask again. I don't believe this is essential, given the information provided to date; but it would provide an added degree of assurance.



Robert S. Wood
 Policy Development Financial
 Evaluation Section
 Policy Development and Technical
 Support Branch
 Program Management, Policy Development
 and Analysis Staff
 Office of Nuclear Reactor Regulation

cc: R. Fonner, OGC

40-8027
PDR/LPDR

SEQUOYAH HOLDING CORPORATION

PO. BOX 610 • 140 AND HIGHWAY 10 • GORE, OKLAHOMA 74435

PHONE: (918) 489-5511 • FAX: (918) 489-5620



October 18, 1988

Mr. Leland C. Rouse, Chief
U.S. Nuclear Regulatory Commission
Fuel Cycle Safety Branch
Division of Industrial and Medical Nuclear Safety
Office of Nuclear Material Safety & Safeguards
Washington, DC 20555

Re: License SUB-1010; Docket 40-8027
Transfer of Control of Licensee

Dear Mr. Rouse:

Sequoyah Holding Corporation ("Holding"), a corporation organized under the laws of the State of Delaware, hereby seeks the consent of the Nuclear Regulatory Commission ("NRC"), pursuant to the Atomic Energy Act of 1954 and the regulations promulgated thereunder, to a transfer of control of Sequoyah Fuels Corporation ("Sequoyah"), a corporation organized under the laws of the State of Delaware. Sequoyah presently is a wholly-owned subsidiary of Kerr-McGee Corporation ("Kerr-McGee"), a corporation organized under the laws of the State of Delaware. Sequoyah is the present holder of NRC Source Material License Number SUB-1010 (the "License"). Holding has entered into an acquisition agreement with Kerr-McGee, pursuant to which, subject to the approval of the NRC, Holding will acquire all of the outstanding stock of Sequoyah.

Holding is a wholly-owned subsidiary of General Atomics ("GA"), a corporation organized under the laws of the State of California, which is itself a wholly-owned subsidiary of General Atomic Technologies Corporation ("GATC"), a corporation organized under the laws of the State of Wyoming. The capital stock of GATC is owned 79.5% by Tenaya Corporation, a corporation organized under the laws of the State of Delaware, 20.01% by Linden S. Blue, a United States citizen and .49% by James N. Blue, a United States citizen. Tenaya is a holding company for investments of the family of James N. Blue. Mr. Blue owns 60.6% of the voting stock of Tenaya, his wife Anne P. Blue, a citizen of the Federal Republic of Germany, owns 18.2%, and 21.2% is held in trust for the benefit of their children. Holding is not

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owned, controlled or dominated by an alien, a foreign corporation or a foreign government. Further information concerning Holding is provided in Appendix A.

Holding has simultaneously filed, with the consent of Kerr-McGee and Sequoyah Fuels Corporation, an application for an amendment to the License seeking to delete references to Sequoyah's current parent company, Kerr-McGee, to reflect the new ownership of Sequoyah. As reflected in the letters from Mr. Randolph and Mr. Luke attached to the application for amendment, Sequoyah and Kerr-McGee consent to this request for consent to a transfer of control of Sequoyah. ←

Holding will acquire Sequoyah which owns and operates the Sequoyah facility situated near Gore, Oklahoma and consists of a uranium hexafluoride conversion facility and a depleted UF₄ facility (the "Sequoyah Facility") and the ranches in the vicinity owned by Sequoyah. Holding will not acquire the Cimarron Facility, the Wyoming properties and other properties which have been owned by Sequoyah and which have been transferred to other Kerr-McGee entities.

The Sequoyah Facility will continue to be operated in the same manner as it has been operated; nothing will change in the manner in which Sequoyah, as the licensee, conducts its operations and discharges its obligations under the License. No major changes are anticipated in the on-site operating and management personnel of Sequoyah, other than that the President of Sequoyah will no longer be an employee of Kerr-McGee. As set forth in Appendix A, the President of both Sequoyah and Holding will be Reau Graves, Jr. Mr. Graves is also a Senior Vice President and Director of GA.

The only other changes will be in the ownership of the stock of Sequoyah and the directors of Sequoyah as set forth in Appendix A. The oversight responsibilities and obligations of off-site personnel who are currently employees of Kerr-McGee will be assumed by employees of GA, as set forth in the application for an amendment to the License, filed simultaneously with this request for consent.

Sequoyah currently has numerous contracts with a number of utilities and other domestic and foreign corporations. These contracts will remain in place following the acquisition and will be the basis of Sequoyah's ability to finance its on-going operations and to comply with the safety and other requirements of the License. Holding will submit to the NRC copies of audited financial statements for itself and Sequoyah within 90 days of December 31, 1988, the close of Holding's and Sequoyah's fiscal years. Holding and Sequoyah will submit such financial statements to the NRC within 90 days of the close of each fiscal year, until the-

time that Sequoyah files with the NRC a decommissioning funding plan pursuant to 10 C.F.R. § 40.36 (as published in the Federal Register on June 27, 1988). The License is currently scheduled to expire September 30, 1990. Sequoyah will submit to the NRC a decommissioning funding plan pursuant to 10 C.F.R. § 40.36 at the time it submits a renewal application for the License.

Sequoyah and Quivira Mining Company ("QMC") have executed a Source Material Toll Milling Contract, dated September 28, 1987 (the "Contract"), which provides that the Quivira Uranium Mill continue to accept the Sequoyah Facility's raffinate and fluoride sludges for uranium recovery. The Contract remains in effect through December 1, 1992, and provides for year by year extensions for so long as QMC is allowed to process source material. Sequoyah may terminate the Contract at any time; however, QMC may not terminate the Contract until December 1, 1992, and may do so only if QMC elects to permanently cease the operation of the mill. If QMC terminates the Contract, QMC will leave in place such portion of the mill facilities sufficient to handle Sequoyah's anticipated processing requirements and the parties will mutually agree upon a rental rate for the continued use of those facilities. The Contract and all its provisions shall inure to the benefit of, and shall be binding upon, the respective parties, their successors and assigns and, except for the sale or transfer of the mill, neither party can assign the Contract without the written consent of the other.

Sequoyah has established a policy of accruing decommission and reclamation expense for specific waste disposal projects and decommissioning activities, and intends to continue this policy upon transfer of ownership. These accruals are made based on units of production or a fixed monthly charge depending on the nature of the account. The sum of the balance of these accounts appears on Sequoyah's balance sheet as a Decommission and Reclamation Reserve. As work is performed on a specific project for which a reserve has been established, the related expense is funded from working capital and the balance of the reserve account is reduced. In the unlikely event the Sequoyah Facility would be required to decommission prematurely, the related cost would be funded from working capital.

Holding requests that the NRC confirm that, at the time an amendment to the License is issued pursuant to the application submitted on the same date as this letter, Kerr-McGee will be released from its obligation to provide the NRC assurance of proper decommissioning and reclamation of the Sequoyah Facility, and, that in accordance with that release, the third paragraph in Chapter 7.5 will be deleted.

After the NRC has consented to the transfer of control of Sequoyah and has issued an amendment to the License, the transaction will be consummated. Holding will immediately notify the NRC of the closing when it occurs.

SEQUOYAH HOLDING CORPORATION

BY Reau Graves Jr
President

STATE OF OKLAHOMA)
)
COUNTY OF SEQUOYAH)

On this 8 day of October 1988, before me, D. M. Dixon, a Notary Public for the State of Oklahoma, personally appeared Reau Graves, Jr. who being duly sworn, stated that he is President of Sequoyah Holding Corporation, that he has read the foregoing letter to Leland C. Rouse and that the information and statements therein are true and correct to the best of his knowledge and belief.

D. M. Dixon
Notary Public



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OCT 27 1988

Docket No: 40-8027
License No: SUB-1010

Sequoyah Holding Corporation
ATTN: Mr. Reau Graves, Jr., President
P. O. Box 610
Gore, Oklahoma 74435

Gentlemen:

In accordance with your letter dated October 18, 1988, we have reviewed your request for NRC consent to the transfer of control of Sequoyah Fuels Corporation from Kerr-McGee Corporation to Sequoyah Holding Corporation. We understand that the proposed transfer will be a purchase of the outstanding stock of Sequoyah Fuels Corporation.

In your letter, you have stated that there will be no change to operations or in the existing conditions of the license affecting health and safety requirements and no major changes for the current onsite operating and management personnel. The President of Sequoyah Fuels Corporation, who is presently a Kerr-McGee employee, will be replaced by an employee of General Atomics. Kerr-McGee corporate positions with oversight and audit responsibilities will be assumed by General Atomics corporate staff.

Based upon the information submitted, we have determined that the transfer of control is in accordance with the provisions of Title 10, Code of Federal Regulations, Section 40.46. We find that there will be no adverse impact on the public health and safety or the common defense and security as a result of the transfer of control of Sequoyah Fuels Corporation by virtue of the change in stock ownership. Accordingly, pursuant to 10 CFR 40.46, the Commission hereby consents to Sequoyah Holding Corporation acquiring control of Sequoyah Fuels Corporation. The consent is subject to the issuance of a license amendment and commitments to submit financial statements for Sequoyah Holding Corporation and Sequoyah Fuels Corporation and to maintain the decommissioning and reclamation reserves. Sequoyah Holding Corporation's commitment for Sequoyah Fuels Corporation to submit a decommissioning funding plan at the time Sequoyah Fuels Corporation submits a license renewal application will become a condition in the license.


By separate letter, a license amendment reflecting changes in ownership and corporate oversight is being issued prior to the stock transfer. The amendment will become effective at the time of stock transfer. We understand that you will notify NRC at the time the transaction is consummated.

OCT 27 1988

Sequoyah Holding Corporation 2

For your information, a copy of the staff assessment concerning this decision is enclosed. If you should have any questions regarding this matter, please contact Mr. Scott Pennington on (301) 492-0693 or me on (301) 492-0642.

FOR THE NUCLEAR REGULATORY COMMISSION


Leland C. Rouse, Chief
Fuel Cycle Safety Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Enclosure:
Staff Assessment of Acquisition

cc w/enc): Dr. John C. Stauter
Sequoyah Fuels Corporation



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545

IN RESPONSE, PLEASE
REFER TO: M920317A

March 27, 1992

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary *[Signature]*

SUBJECT: STAFF REQUIREMENTS - BRIEFING ON STATUS OF
RESTART OF GENERAL ATOMICS' SEQUOYAH FUELS
FACILITY, 8:30 A.M., TUESDAY, MARCH 17, 1992,
COMMISSIONERS' CONFERENCE ROOM, ONE WHITE
FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO
PUBLIC ATTENDANCE)

The Commission was briefed by the NRC staff, the licensee, and petitioners (Native Americans for a Clean Environment and the Cherokee Nation of Oklahoma) on the status of restart of the licensee's facility in Gore, Oklahoma. The issues which were discussed fall into two categories: a.) solutions to problems identified in the October 3, 1991 order, which therefore are preconditions to restart and b.) gaps in the current license which should be remedied, but not as a precondition to restart. Based on the discussions at that meeting the Commission directs the staff to undertake the following:

1. When and if the staff is prepared to permit restart, taking into account the results of the OI investigation, a memo should be sent to the Commission before restart is permitted. This memorandum should announce the staff's intentions and the rationale behind them. The staff should consult with the solicitor about incorporating into any restart decision a "housekeeping" stay of up to eight business days.
2. To deal with some of the concerns expressed about the depth of understanding and commitment to changes implemented at SFC, the staff should consider approving a phased start-up of the facility, rather than moving directly to full process operation. This start-up could be based on appropriate hold points, at which the staff would observe and evaluate performance of the management and work force in terms of compliance with procedures, adequacy of training, and management awareness of overall operations. Once the staff finds performance at a given level of operation to be

acceptable, approval could be granted to move to operation at the next level. SFC has identified the DUF4 facility as such a hold point in its March 20, 1992 letter. The staff should explore the feasibility and advisability of this and other possible hold points with the licensee.

3. To ensure that past commitments and lessons learned have not been overlooked, the staff should:
 - i. Beginning with the 1986 incident at Gore, examine its own reports and studies as well as those conducted by the licensee, for recommendations and lessons learned that were identified in those reports and studies;
 - ii. Identify those recommendations or lessons which are important but have not been implemented, including any additional commitments made by the licensee at the March 17 briefing (such as those relating to quality assurance, training, etc.); and
 - iii. Obtain from the licensee written assurances and schedules for implementation of those recommendations or lessons which are important but have not been implemented. The staff should also establish a mechanism for tracking such commitments.

These steps, insofar as feasible, should be completed prior to restart. If, in evaluating the agency's follow through on the lessons-learned from the 1986 event, the staff identifies issues of concern that were overlooked at the time, the staff should bring such issues to the Commission's attention.

4. The staff should pay particular attention to: (1) the development and full implementation of a formal internal quality assurance program; and (2) the position of a dedicated full-time QA manager within the SFC organizational structure. The reliance on augmented oversight for quality assurance by General Atomics is acknowledged to be an interim measure while the internal program matures. Staff should ensure that effective external and internal programs emerge. This is not a precondition to restart.
5. The staff should communicate with EPA prior to any decision on restart and should also inform the Commission of its past and present interactions with EPA and OSHA regarding SFC, including consideration of a joint inspection. If appropriate and feasible, such consideration should include a joint inspection prior to restart.

6. The role of the Plant Operations Review Committee (PORC) needs elaboration. What will its role be in the future? If it has a role, what is needed to assure it is effective?
- 7.a. The staff should ensure that the licensee's commitments for monitoring and remediating environmental conditions made at the March 17, 1992 meeting as well as appropriate requirements for reporting the results of such monitoring are included in the license.
- b. The staff, in connection with its review of the license renewal application, should expedite completion of the environmental assessment.

These requirements are not preconditions for restart.

8. In the paragraphs marked "(1)" and "(2)" in its March 19, 1992 letter to the Commission, General Atomics has made certain financial commitments regarding cleanup of the Gore site. The staff should make these commitments legally binding on General Atomics if it is practicable and advisable to do so.

This is not a precondition to restart.

9. Finally, with respect to restart issues, the staff should instruct the licensee to continue to make available to the petitioners documents sent to the NRC on the same schedule that we receive them.
10. The actions in Items 3-9 above are without prejudice to any matter in the pending license renewal proceeding. They are included here to address any possible concerns about potential effects of operations, in the event restart is authorized.

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OGC
OCAA
OIG
ACRS
PDR - Advance
DCS - P1-24