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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD



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

Docket No. 40-8027-EA

February 18, 1994

SEQUOYAH FUELS CORPORATION'S
ANSWER TO
NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S
SUPPLEMENTAL PETITION TO INTERVENE

On February 8, 1994, Native Americans For a Clean Environment ("NACE") filed a Supplemental Petition to Intervene ("NACE's Supplemental Petition") in this proceeding pursuant to 10 CFR § 2.714(b). Sequoyah Fuels Corporation ("SFC") hereby submits its answer pursuant to 10 CFR § 2.714(c).

NACE's Supplemental Petition sets forth two proposed contentions, both of which, as written, appear to relate to the portions of the Order issued by the Nuclear Regulatory Commission ("NRC") on October 15, 1993 (the "Order") that are addressed to General Atomics ("GA"). Accordingly, SFC will not address the overall admissibility of the two contentions, which will be discussed in an answer being filed by GA.

SFC concurs in GA's position that NACE's Contention 2 is inadmissible as unsupported by the bases specified by NACE. If, however, the Board determines to admit some version of Contention 2, SFC requests that the Board exclude from the

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admitted bases for such contention any consideration of NACE's allegations regarding the adequacy of SFC's estimates of decommissioning costs or the components thereof. As discussed below, the Order raises questions as to the adequacy of SFC's funding and seeks to require that GA provide financial assurance in the amount of \$86 million, the total amount of SFC's estimated expenditures for the years 1993-2003 in SFC's Preliminary Plan for Completion of Decommissioning. Order, Section VII. Although the Order reserves a right for the NRC to later increase the amount of financial assurance, the Order does not take issue with SFC's cost estimates. Therefore, the cost of SFC's decommissioning is not within the scope of this proceeding and any basis for any contention on that subject is inadmissible.

ARGUMENT

In the Preliminary Plan for Completion of Decommissioning submitted on February 16, 1993, SFC estimated the direct costs of decommissioning the Sequoyah facility at \$21 million and estimated all of its other expenditures for the period 1993-2003 at \$65 million. Order at 9. The Order does not dispute these estimates or the total estimated expenditures of \$86 million. However, because of the NRC's concerns as to the adequacy of SFC's projected funding of these expenditures, it seeks to require that GA provide financial assurance in the total amount of \$86 million. Order at VII.

Although the adequacy of SFC's source of funding for its estimated expenditures of \$86 million (including its

contractual arrangements with ConverDyn) is an issue in controversy between the NRC and SFC under the Order, the amount of funding is not. Thus, NACE cannot properly raise as a contention that the estimated costs of decommissioning may exceed \$86 million, since such information would be relevant only to requiring financial assurance in an amount greater than \$86 million. Since seeking such additional financial assurance would constitute requesting a remedial action beyond that set forth in the Order, it is beyond the scope of this proceeding. Bellotti v. NRC, 725 F.2d 1380 (D.C. Cir. 1983).

As the NRC Staff pointed out in responding to NACE's initial intervention request:

In the event NACE is permitted to participate in this proceeding and the question of the amount of money needed to decommission the site becomes an issue, the issue should be limited to the amount stated in the Order. As the Commission stated in a previous enforcement action, the Order "like the order in Bellotti, precludes the litigation of questions of the adequacy of the agency's proposed changes. Indeed, the orders are identical insofar as they define and limit the scope of the hearing to whether the requirements imposed on the Licensee should be sustained." Sequoyah Fuels Corp. (UF6 Production Facility), CLI-86-19, 24 NRC 508, 514 n.5. (1986).

NRC Staff's Response to NACE's Motion for Leave to Intervene, at 6 n.9 (Dec. 13, 1993).

In ruling on the admissibility of a contention under 10 CFR § 2.714(d)(2), a Board must refuse to admit a contention if:

- (i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of [Section 2.714]; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

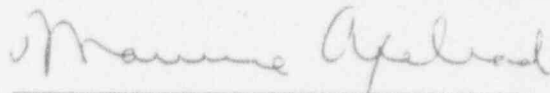
If any of the requirements of 10 CFR § 2.714(b)(2) are not met, a contention must be rejected. See, e.g., Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), CLI-91-12, 34 NRC 149, 155 (1991). Section 2.714(b)(2)(iii) requires the petitioner to show that a genuine dispute exists "on a material issue of law or fact." For the reasons discussed above, whether decommissioning costs may exceed \$86 million is not a "material issue" since a determination on such issue would not affect whether the Order, which is limited to \$86 million, should be sustained. Thus, this asserted basis for NACE's Contention 2 must be rejected under 10 CFR § 2.714(b)(2)(iii).

Moreover, the same result would be mandated under 10 CFR § 2.714(d)(2)(ii) since, even if NACE were to be able to prove that decommissioning costs will exceed \$86 million, it "would be of no consequence in the proceeding because it would not entitle petitioner to relief." Amending the Order to require financial assurance beyond \$86 million would clearly be beyond the scope of this proceeding.

CONCLUSION

For the reasons set forth above, even if the Board determines to admit some version of Contention 2 in this proceeding, it should reject from the admitted bases for such contention any consideration of NACE's allegations regarding the adequacy of SFC's estimates of decommissioning costs or the components thereof.

Respectfully submitted,



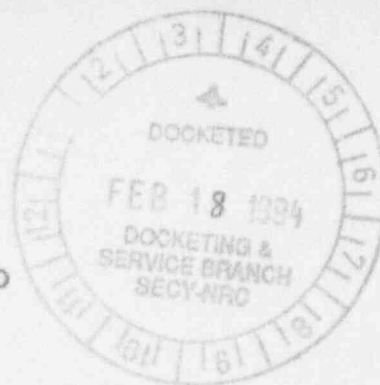
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Sequoyah Fuels Corporation's Answer to Native Americans For a Clean Environment's Supplemental Petition to Intervene" were served upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed on the date shown below and by telecopy, as indicated by an asterisk (*):

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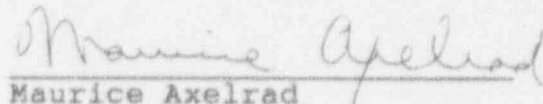
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