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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 APR -1 P12:01

Commissioners:

Ivan Selin, Chairman
Kenneth C. Rogers
Forrest J. Remick
E. Gail de Planque

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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In the Matter of)
)
SEQUOYAH FUELS CORPORATION)
)
(Source Material License)
No. SUB-1010))
)

Docket No. 40-08027-MLA

ORDER

CLI-94-04

The Native Americans for a Clean Environment and the Cherokee Nation (petitioners) have filed a petition before the Commission, pursuant to 10 C.F.R. § 2.786(b), for review of the presiding officer's Memorandum and Order, LBP-93-25, which allowed the Sequoyah Fuels Corporation (SFC) to withdraw its license renewal application and terminated the proceeding. 38 NRC ____ (Dec. 15, 1993). The NRC staff and SFC oppose Commission review. The petitioners also have filed a motion for leave to reply to the NRC staff and SFC's responses to the petition for review.

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In accordance with 10 C.F.R. § 2.786(d), the Commission has decided to grant review of LBP-93-25.¹ The parties to the review proceeding shall be the petitioners, SFC, and the NRC staff. In reviewing LBP-93-25, the Commission is particularly interested in the parties' arguments on the following matters, which should be addressed in their briefs:

- 1) What is the basis for the presiding officer's jurisdiction over decommissioning activities in a license renewal proceeding in which the licensee requests to withdraw its renewal application?
- 2) Faced with a request to withdraw an application under 10 C.F.R. § 2.107(a), what actions may the presiding officer in a license renewal proceeding take? May a presiding officer deny the withdrawal of an application?
- 3) Was a determination of the licensee's compliance with 10 C.F.R. §§ 40.42(b) and (c) necessary to the presiding officer's decision on whether to permit the withdrawal of the renewal application? If so, has the licensee satisfied the requirements of those regulations?
- 4) Upon withdrawal of the license renewal application, does 10 C.F.R. § 40.42(e) maintain SFC's license in effect?

¹ We have accepted the petitioners' reply for filing; however, our decision to take review of LBP-93-25 does not turn on the acceptance of their reply. Although much of the reply appears merely to reinforce arguments made in their initial petition for review, the petitioners arguably raise some issues for the first time in their reply. Although we will not bar the petitioners from pursuing in their brief filed in response to this order arguments made in their reply, we caution that we expect petitioners to provide in their original petition their full statement of reasons for why Commission review is warranted. SFC has asked for an opportunity to reply to the petitioners' motion. We deny that request. To the extent that the petitioners pursue arguments in their brief that are derived from their reply, SFC will suffer no prejudice, because SFC will have a full opportunity to rebut those arguments in its responsive brief. See Safety Light Corp., CLI-92-13, 36 NRC 79, 85 (1992).

5) What prejudice, if any, occurs to the intervenors' hearing rights under the Atomic Energy Act from the presiding officer's approval of the withdrawal of the renewal application?

In addressing these questions, the petitioners' brief must clearly identify the errors of fact or law in LBP-93-25 on which the petitioners rely, with appropriate citations to the portion of the record relied upon to support each assertion of error. The petitioners' brief must be limited to those issues the petitioners placed or sought to place in controversy in the proceeding. Responsive briefs must contain a reference to the portion of the record which supports each factual assertion made.

A brief in excess of 10 pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited. Briefs must not exceed 30 pages, exclusive of pages containing the table of contents, table of citations, and any addendum containing statutes, rules, regulations, etc. A brief that fails to comply with the provisions of this order may be stricken, either on motion of a party or by the Commission on its own initiative.

Within 30 days after service of this order, the petitioners may file their brief. Within 30 days after service of the petitioners' brief, staff and SFC may file a response. Within 15 days after service of the responsive briefs, the petitioners may

file a reply. If the petitioners choose to reply, their reply brief shall be limited to 15 pages.

It is so ORDERED.

For the Commission



John C. Hoyle

John C. Hoyle
Assistant Secretary of the Commission

Dated at Rockville, Maryland,
this 15th day of April 1994.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

SEQUOYAH FUELS CORPORATION
SOURCE MATERIAL LICENSE NO.
(SUB-1019)

Docket No. (s) 40-08027-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM ORDER (CLI-94-4) DTD 4/1 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Docket No.(s)40-08027-MLA
COMM ORDER (CLI-94-4) DTD 4/1

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Dated at Rockville, Md. this
1 day of April 1994


Office of the Secretary of the Commission