

14934

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 APR 21 A9:15

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION)	Docket No. 40-8027-EA
and GENERAL ATOMICS)	
)	
(Sequoyah Facility in)	April 20, 1994
Gore, Oklahoma))	

**GENERAL ATOMICS' MOTION FOR LEAVE TO FILE A REPLY
TO THE RESPONSES OF THE NRC STAFF AND NACE
TO THE MOTION FOR SUMMARY DISPOSITION**

On February 7, 1994, General Atomics filed its Motion for Summary Disposition or for an Order of Dismissal (the "Motion"). On March 4, and after noting that "this litigation is not a routine dispute," that "the outcome of this proceeding may very well have an impact on decommissioning issues involving other licensees and their parent organizations," and the "complex and far-reaching nature of this case," the NRC Staff requested an additional 30 days to respond to the Motion. See NRC Staff's Motion for Extension of Time to Respond at 3. After receiving the requested extension of time, the NRC Staff served (by First Class mail) its 36 page Answer in Opposition to the Motion on April 13, 1994. On the same day, Native Americans for a Clean Environment ("NACE") served (by First Class mail) its 42 page Opposition to the Motion, along with several pages of attachments. The NRC Staff's Answer in Opposition was not received by General Atomics until April 18, 1994. The Opposition of NACE was not received by General Atomics until April 19, 1994. For the reasons described below, General Atomics

D503

requests that the Licensing Board enter an order granting General Atomics leave to file a reply to both the NRC Staff's Answer in Opposition and the NACE Opposition.

Summary disposition proceedings are governed, in part, by NRC Rule of Practice at 10 C.F.R. § 2.749(a), which provides that no reply to a response to a motion for summary disposition shall be entertained. However, the Board has discretionary authority to "order[] the filing of further pleadings in connection with summary disposition, [which] . . . authority is surely encompassed within the Board's general powers under 10 C.F.R. § 2.718." Florida Power & Light Company (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-950, 33 NRC 492, 499 (1991). Such authority includes allowing a reply brief. Id.

In addition to the importance of the issues raised in GA's Motion, substantial cause exists for the Board to enter an order permitting General Atomics to reply to the NRC Staff's Answer in Opposition. First, the NRC Staff and NACE have raised numerous new issues. These include certain facts which the NRC Staff and NACE contend are both material and in dispute. They also include more definitive statements of the purported legal bases upon which the NRC Staff asserts that the October 15, 1993 Order is, and is not, based. Second, the legal theories advanced by the NRC Staff and NACE in support of the NRC's jurisdiction in this case are novel, as well as complex and far-reaching. Neither the NRC Staff nor NACE has cited a single statute or controlling opinion of a court

the October 15 Order is based. As a case of first impression, this matter requires a full and deliberate exposition of the contending issues.

Given the complexity of this matter and the novelty of the legal issues presented, General Atomics should not be required to have anticipated in its Motion for Summary Disposition, the responses of the NRC Staff and NACE. This is particularly true in the case of NACE, since the Motion for Summary Disposition was filed on February 7, 1994 and the Licensing Board's Order admitting NACE's Contentions 1 and 2 (as included in NACE's February 8, 1994 supplemental intervention petition) was not issued until March 22, 1994. Any significant speculation in its Motion by General Atomics of the responses of the NRC Staff and NACE, would have cluttered an already extensive record of this matter and would have necessarily involved an inefficient expenditure of time and resources. Consequently, General Atomics should now be granted leave to file a Reply to the NRC Staff's Answer in Opposition. See *id.* (affirming a decision to allow a reply to give party opportunity to address new matter).

In any event, and as noted above, the NRC Staff itself recognizes that "the outcome of this proceeding may very well have an impact on decommissioning issues involving other licensees and their parent organizations." This statement acknowledges what should be apparent from the face of the proceeding: that the NRC Staff is attempting to break new ground and establish new precedent through the instant proceeding. The Board should thus permit the

parties to argue the issues in as comprehensive and exhaustive a manner as is possible consistent with an orderly disposition of the case. The risk of error is particularly acute when the Board is acting outside an established body of law.

Finally, allowing a reply in this summary disposition proceeding will advance the ultimate resolution of the litigation, not retard it. If, for example, the Board denies General Atomics' Motion based upon a new matter raised by the NRC Staff in its Answer in Opposition without the benefit of exploring General Atomics' position, General Atomics could be forced to seek reconsideration of the resulting decision or to file another motion for summary disposition. General Atomics would be forced to go to such lengths merely to make an adequate record of its position for later review.

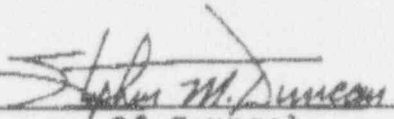
Counsel for the NRC Staff have authorized me to inform the Licensing Board that the NRC Staff does not object to the filing of a Reply Brief by General Atomics so long as it is filed within thirty (30) days of any order by the Licensing Board granting the request contained herein. Counsel for NACE opposes the request.

CONCLUSION

For the foregoing reasons, General Atomics respectfully requests the Board to enter an order permitting General Atomics to file a reply to the NRC Staff's Answer in Opposition and the NACE Opposition. General Atomics further requests that the Board provide that any such reply may be filed within thirty (30) days

of the issuance of such order.

Respectfully submitted,

BY 
Of Counsel

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

ATTORNEYS FOR GENERAL ATOMICS

April 20, 1994

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'94 APR 21 09:15

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION)	Docket No. 40-8027-EA
and GENERAL ATOMICS)	
)	
(Sequoyah Facility in)	April 20, 1994
Gore, Oklahoma))	

CERTIFICATE OF SERVICE

I hereby certify that a copy of General Atomic's Motion for Leave to File a Reply to NRC Staff's Response to the Motion for Summary Disposition was served upon the following persons on April 20, 1994, by deposit in the United States mail, first class postage prepaid and properly addressed:

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing & Service Branch
(Original and two copies)

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge James P. Gleason, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 2-555

Administrative Judge G. Paul. Bollwerk, III
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Thomas D. Murphy
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Steven R. Hom, Esq.
Susan L. Uttal, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dianne Curran, Esq.
c/o IEER
6935 Laurel Avenue, Suite 204
Takoma Park, Maryland 20912

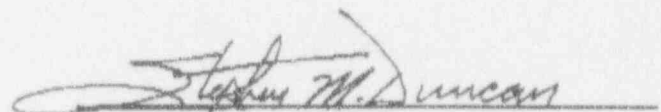
Mr. Lance Hughes, Director
Native Americans for a Clean Environment
P.O. Box 1671
Tahlequah, Oklahoma 74465

John H. Ellis, President
Sequoyah Fuels Corporation
P.O. Box 510
Gore, Oklahoma 74435

Maurice Axelrad, Esq.
Newman, Bouknight & Edgar, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036

Mr. John R. Driscoll
General Atomics
3550 General Atomics Court
San Diego, California 92121-1194

Dated this 20th day of April, 1994.


Stephen M. Duncan

Mays & Valentine
110 South Union Street
Alexandria, Virginia 22314
(703) 519-8000

Counsel for General Atomics