

14917

DOCKETED  
USHRC

'94 APR 19 11:08

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
  
BEFORE THE COMMISSION

OFFICE OF SECRETARY  
DOCKETING SERVICE  
BRYANT

\_\_\_\_\_  
In the Matter of )  
 )  
SEQUOYAH FUELS CORPORATION )  
and GENERAL ATOMICS )  
 )  
(Gore, Oklahoma Site) )  
\_\_\_\_\_

Docket No. 40-8027-EA  
  
(Decontamination and  
Decommissioning Funding)

SEQUOYAH FUELS CORPORATION'S RESPONSE TO NACE'S  
MOTION FOR CONSOLIDATION AND/OR EXTENSION OF BRIEFING SCHEDULE

Maurice Axelrad  
John E. Matthews

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

ATTORNEYS FOR  
SEQUOYAH FUELS CORPORATION

April 19, 1994

9405020170 940419  
PDR ADOCK 04008027  
C PDR

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of	)	Docket No. 40-8027-EA
SEQUOYAH FUELS CORPORATION	)	(Decontamination and
and GENERAL ATOMICS	)	Decommissioning Funding)
(Gore, Oklahoma Site)	)	April 19, 1994

SEQUOYAH FUELS CORPORATION'S RESPONSE TO NACE'S  
MOTION FOR CONSOLIDATION AND/OR EXTENSION OF BRIEFING SCHEDULE

Sequoyah Fuels Corporation ("SFC") submits this response in opposition to the "Motion of Native Americans for a Clean Environment ("NACE") For Consolidation And/Or Extension of Briefing Schedule" (April 13, 1994). SFC does not oppose reasonable requests for extensions of time, however, SFC does not believe that NACE has shown good cause for its request for an extension. In addition, SFC wishes to clarify that the "consolidation" requested by NACE is unnecessary.

On February 24, 1994 the Atomic Safety and Licensing Board ("Licensing Board") issued a Memorandum and Order ("LBP-94-5"), in which it ruled that a petitioner can intervene as of right in a 10 CFR 2.202 enforcement proceeding in order to support the NRC Staff's proposed order (Section II.A) and that NACE had shown "injury in fact" sufficient to establish NACE's representational standing in the above-captioned proceeding (Section II.B). LBP-94-5, slip op. at 17-26, 38. NACE's standing to intervene as a party in this proceeding was

contingent upon the admission of at least one qualified contention. See LBP-94-8, slip op. at 1 & n.1.

Because NACE had not yet been admitted as a party, LBP-94-5 was not immediately appealable by SFC pursuant to 10 CFR 2.714a. Nevertheless, the Licensing Board referred its ruling in Section II.A of LBP-94-5 for interlocutory review by the Commission, and this referred ruling has been pending Commission review under the terms of 10 CFR 2.786(g). <sup>1</sup>

On March 22, 1994, the Licensing Board issued LBP-94-8 admitting NACE's two contentions. This order provided that the rulings in LBP-94-5 and LBP-94-8 could be appealed within ten days in accordance with 10 CFR 2.714a(a). On April 7, 1994, SFC perfected its appeal of both LBP-94-5 and LBP-94-8 under the terms of 10 CFR 2.714a. With this appeal, the Licensing Board's ruling in Section II.A is before the Commission under the appellate provisions of 10 CFR 2.714a, and the question of whether the Commission should accept discretionary review of the referred ruling under 10 CFR 2.786(g) is now moot. <sup>2</sup>

---

<sup>1</sup> See "SFC's Initial Brief in Opposition to the Ruling in Section II.A of LBP-94-5" (March 11, 1994); "NRC Staff's Brief In Response to Commission Order of March 3, 1994" (March 11, 1994); "NACE's Initial Brief Regarding Appropriateness of Commission Review of LBP-94-5 and Whether Ruling in Section II.A Should be Sustained" (March 11, 1994); "SFC's Reply Brief in Opposition to the Ruling in Section II.A of LBP-94-5" (March 17, 1994); "NACE's Reply Brief Regarding Appropriateness of Commission Review of LBP-94-5 and Whether Ruling in Section II.A Should be Sustained" (March 17, 1994). GA concurred with and adopted SFC's briefs.

<sup>2</sup> See SFC's Brief On Appeal of LBP-94-5 and LBP-94-8, at 7 n.7 (April 7, 1994).

NACE has requested that the Commission consolidate its consideration of this moot question with SFC's appeal of LBP-94-5. <sup>2/</sup> NACE further requests that the Commission extend the time for NACE to file an appellate brief. The NRC Staff does not oppose NACE's request for more time, but notes that NACE has not established any compelling reason for its consolidation request. <sup>4/</sup>

SFC agrees with the NRC Staff that there is no reason for consolidation. The issue of discretionary review of the referred ruling in Section II.A of LBP-94-5 is moot, and the Commission will certainly consider the merits of the issues raised by Section II.A, as already briefed by the parties, in considering SFC's appeal.

SFC also objects to the basis for NACE's request for more time. All parties to this proceeding have already extensively briefed the merits of the issues presented by the Licensing Board's ruling in Section II.A of LBP-94-5. On Appeal, SFC did not re-brief its views on those issues, but rather summarized and incorporated its arguments by reference. <sup>5/</sup> There is therefore no basis for NACE's concern that it "wishes to conserve its resources and avoid the wasted time and expense

---

<sup>2/</sup> NACE's Motion For Consolidation And/Or Extension of Briefing Schedule (April 13, 1994).

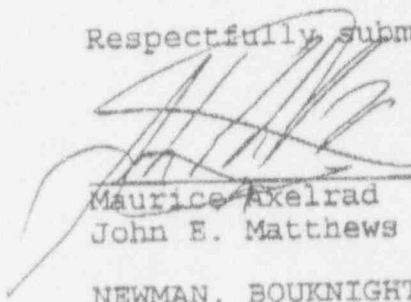
<sup>4/</sup> NRC Staff's Response to NACE's Motion For Consolidation And/Or Extension of Briefing Schedule, at 1-2 & n.1 (April 18, 1994).

<sup>5/</sup> See SFC's Brief On Appeal of LBP-94-5 and LBP-94-8, at 7 (April 7, 1994).

involved in briefing the same issues twice." NACE has also failed to show any other good cause for extending the time for filing its brief. <sup>9/</sup>

FOR THE FOREGOING REASONS, SFC submits that NACE's motion should be denied. Since the question of discretionary review of Section II.A of LBP-94-5 has been rendered moot by SFC's appeal of LBP-94-5 and LBP-94-8, there is no need to consolidate these two matters. NACE's request for additional time should also be denied. Contrary to NACE's assertions, there is no need to brief the same issues twice. Rather, NACE's arguments are already before the Commission, and NACE may simply incorporate them by reference.

Respectfully submitted,



---

Maurice Axelrad  
John E. Matthews

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

ATTORNEYS FOR  
SEQUOYAH FUELS CORPORATION

April 19, 1994

---

<sup>9/</sup> NACE's suggestion that ten days (plus five days for service by mail pursuant to 10 CFR 2.710) is inadequate to respond to SFC's brief "which is almost 30 pages long" is curious in light of the fact that SFC was afforded the exact same amount of time to file its brief.

DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'94 APR 19 11:10

BEFORE THE COMMISSION

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

\_\_\_\_\_  
In the Matter of )  
 )  
SEQUOYAH FUELS CORPORATION )  
and GENERAL ATOMICS )  
 )  
(Gore, Oklahoma Site) )  
\_\_\_\_\_

Docket No. 40-8027-EA

(Decontamination and  
Decommissioning Funding)

CERTIFICATE OF SERVICE

I hereby certify that copies of "Sequoyah Fuels Corporation's Response to NACE's Motion For Consolidation And/Or Extension of Briefing Schedule" 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:

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

Chairman Ivan Selin  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Kenneth C. Rogers  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner Forrest J. Remick  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Commissioner E. Gail de Planque  
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. 20555

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

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

Steven R. Horn, Esq.\*  
Susan L. Urtal, Esq.  
Richard G. Bachmann, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

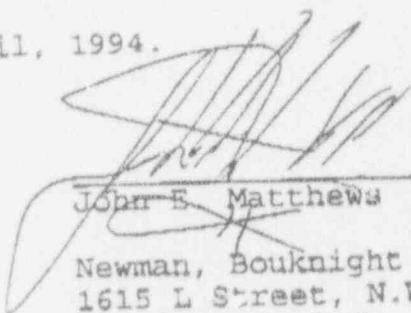
Stephen M. Duncan, Esq.\*  
Mays & Valentine  
110 South Union Street  
P.O. Box 149  
Alexandria, VA 22313-0149

John H. Ellis, President  
Sequoyah Fuels Corporation  
P.O. Box 610  
Gore, Oklahoma 74435

John R. Driscoll  
General Atomics  
P.O. Box 85608  
San Diego, California 92186-9784

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

Dated this 19th day of April, 1994.



---

John E. Matthews

Newman, Bouknight & Edgar, P.C.  
1615 L Street, N.W., Suite 1000  
Washington, D.C. 20036  
(202) 955-6600

---

\* Service also by facsimile.