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UNITED STATES OF AMERICA
U.S. NUCLEAR REGULATORY COMMISSION

JAN 07 1991
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '91 JAN -8 P2:47

In the Matter of)
)
Sequoyah Fuels Corporation)
)
(Source Material License)
 No. SUB-1010))

Docket No. 40-08027-MLA

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

NRC STAFF'S RESPONSE TO SUPPLEMENTAL REQUEST FOR HEARING
FILED BY THE NATIVE AMERICANS FOR A CLEAN ENVIRONMENT

I. INTRODUCTION

On November 20, 1990 the NRC Staff (Staff) filed a response to Native Americans for a Clean Environment's (NACE) request for hearing in this Subpart L license renewal matter.¹ On December 20, 1990, NACE filed a Supplemental Request for Hearing and reply to the Staff's response to its initial request for hearing. For the reasons set forth below, the Staff submits that the supplemental request for hearing, as filed, meets the requirements relating to standing and interest as set forth in 10 C.F.R. § 2.1205 of the Commission's regulations. Accordingly, the Staff withdraws its opposition to NACE's request for hearing.

¹ The Staff also responded to requests for hearing filed by Earth Concerns of Oklahoma and the National Toxics Campaign. See "NRC Staff's (1) Response to Requests For Hearing Filed by Native Americans For A Clean Environment, Earth Concerns of Oklahoma, and the National Toxics Campaign, and (2) Status Report Concerning the Application", filed November 20, 1990. As stated therein, the requests of those other organizations should be denied.

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II. ARGUMENT

NACE produced the affidavits of two of its members in support of its supplemental request for hearing in this matter. The affidavits and NACE's pleading fairly meet the requirements of 10 CFR § 2.1205(d) and (g), in that they tend to demonstrate standing and interest. The affidavits establish standing for NACE through the interests of these two members who live in close proximity to the Sequoyah Fuels plant and utilize the lands nearby.² Therefore, without conceding the merits of the request for hearing or the merits of any challenge to Sequoyah Fuel's license renewal application, the Staff agrees that NACE has demonstrated standing in this matter.

Pursuant to 10 CFR § 2.1205(g), the presiding officer must not only make a determination of standing, but must also decide whether the areas of concern are germane to the subject matter of the proceeding. As stated in NACE's supplemental request for hearing, many of the areas of concern appear to be germane to Sequoyah's license renewal, which is governed by 10 C.F.R. § 40.32.³ Specifically, permissible areas for inquiry raised by NACE would appear to include (1) whether the license should be renewed in light of allegations of soil and groundwater contamination; (2) whether the alleged poor safety and environmental

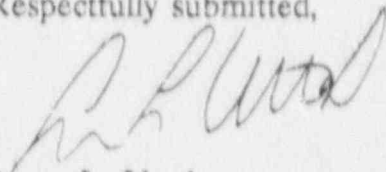
² However, NACE has not established that it is authorized to act on behalf of the Cherokee Nation. It has not made any showing, by affidavit or other acceptable form of proof, that (1) the governing body of the Cherokee Nation has authorized NACE to represent its interests; or (2) the Cherokee Nation is a member of NACE.

³ See NACE's Supplemental Request for Hearing and Response to NRC Staff's Response to NACE's Request for Hearing at pages 6-9.

record should preclude renewal of the license; (3) whether the plant's management is competent and cognizant of "its safety and environmental obligations under the terms of its license and the Atomic Energy Act", and whether the proposed changes to management structure provide "adequate oversight of compliance" with NRC requirements; (4) whether the continued operation of the plant would pose a risk to public health and safety or a significant impact on the environment; and, (5) whether, to the extent germane to this proceeding and to 10 C.F.R. § 40.32, the concerns raised by the Staff in the Order for Modification of License, 55 Fed. Reg. 40,959 (October 5, 1990), and the Demand for Information, dated November 5, 1990, are addressed.⁴ The extent to which these concerns should be deemed germane is, of course, limited by the specific requirements of 10 C.F.R. § 40.32.

Based upon the foregoing, the Staff hereby withdraws its opposition to the request for hearing filed by NACE.

Respectfully submitted,



Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of January, 1991.

⁴ Any other concerns expressed by NACE do not appear to be germane to this proceeding, including, without limitation, consideration of decommissioning, or aspects of nonradioactive releases unrelated to NEPA.

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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF'S RESPONSE TO SUPPLEMENTAL REQUEST FOR HEARING FILED BY THE NATIVE AMERICANS FOR A CLEAN ENVIRONMENT for Susan L. Uttal and Sherwin E. Turk in the above-captioned matter have been served on the following by deposit in the United States mail, first class, or as indicated by asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 7th day of January, 1991.

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Presiding Officer
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Silver Spring, MD 20901

Glenn O. Bright, Administrative Judge
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Atomic Safety and Licensing Board
Panel (1)*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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Washington, DC 20555

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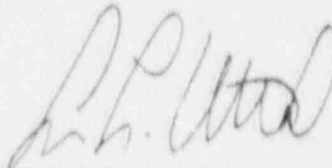
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