

RAS 8355

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before the Atomic Safety and Licensing Board<sup>1</sup> and Presiding Officer<sup>2</sup>:

Alan S. Rosenthal, Chairman and Presiding Officer  
Anthony J. Baratta, Administrative Judge and Special Assistant  
Richard F. Cole, Administrative Judge

In the Matter of

SEQUOYAH FUELS CORPORATION,

(Gore, Oklahoma Site)

)  
) Docket No. 40-8027-MLA-6

) Docket No. 40-8027-MLA-9

)  
)  
) August 6, 2004

JOINT STATUS REPORT ON SETTLEMENT NEGOTIATIONS

Pursuant to a request conveyed by Ms. SherVerne Cloyd via e-mail on July 22, 2004, on behalf of the Presiding Officer in MLA-6 and of the Atomic Safety and Licensing Board in MLA-9, counsel for the State of Oklahoma ("Oklahoma"), the Cherokee Nation ("CN")<sup>3</sup> and Sequoyah Fuels Corporation ("SFC") hereby submit a joint report on the status of their settlement negotiations concerning the reclamation of

<sup>1</sup> The State of Oklahoma's Request for Hearing on Sequoyah Fuels Corporation's license amendment request for the proposed raffinate dewatering project (Docket No. 40-8027-MLA-9) was referred to the Atomic Safety and Licensing Board on June 17, 2004.

<sup>2</sup> The State of Oklahoma's Request for Hearing on Sequoyah Fuels Corporation's license amendment request for the proposed Reclamation Plan (Docket No. 40-8027-MLA-6) is pending before Alan S. Rosenthal, Presiding Officer, and Anthony J. Baratta, Special Assistant.

<sup>3</sup> Although Ms. Cloyd's e-mail specifically requested a report from Oklahoma and SFC, CN is joining in this report because it is a party in MLA-6 and is actively participating in the settlement negotiations that are the subject of this joint report.

SFC's Gore, Oklahoma site. Ms. Cloyd requested that this status report be submitted to the Presiding Officer and the Licensing Board by August 6, 2004.

As noted in the Unopposed Motion For Extension Of The Time To File Written Presentations filed in MLA-6 by Oklahoma, CN and SFC on June 8, 2004, Oklahoma, CN and SFC (collectively referred to as the "Parties") are actively engaged in settlement negotiations in an attempt to identify and resolve areas of dispute with regard to the reclamation of SFC's Gore, Oklahoma site. The negotiations are not limited to the Reclamation Plan, but involve a broad scope of issues relevant to the decommissioning activities currently pending before the NRC Staff, including matters that are covered by the proposed Dewatering Plan (at issue in MLA-9), the Groundwater Monitoring Plan (was at issue in MLA-7), the Groundwater Corrective Action Plan (was at issue in MLA-8) and the license amendment to authorize SFC to possess byproduct material (at issue in MLA-5).

In addition to the pending NRC proceedings, Oklahoma has filed a petition in the United States Court of Appeals for the Tenth Circuit for the review of the Commission's decision in MLA-5. As a result, the settlement negotiations among the Parties have been conducted through mediation with the active participation of David W. Aemmer, the Chief Circuit Mediator for the United States Court of Appeals for the Tenth Circuit. These mediation sessions encompass the full scope of the issues raised by Oklahoma and CN regarding site decommissioning, not just those raised by Oklahoma's Petition to the Tenth Circuit.

In an effort to expeditiously resolve these and related issues, the Parties have had numerous communications, including in-person meetings, teleconferences and other

communications. Some of the communications have been between the Parties' respective attorneys and others have been directly between the Parties' respective technical personnel. A number of the discussions between the Parties' attorneys have been facilitated by the Tenth Circuit Mediator.

In these negotiations, Oklahoma and CN have raised a large number of concerns about the decommissioning, many of which are of a highly technical nature. The Parties have spent a significant amount of time and resources defining the concerns and conducting technical analyses. SFC has provided a large amount of technical information to Oklahoma and CN for review, and is in the process of conducting additional technical analyses. Oklahoma's Department of Environmental Quality and other technical consultants have conducted detailed technical reviews and analyses of various aspects of the decommissioning plans including, but not limited to, radiation dose assessment, cell design, surface and groundwater protection, and the risks associated with various wastes, and also are in the process of conducting additional technical analyses. The Parties also have been discussing various legal issues, including state and federal jurisdiction over wastewater, impoundment closure, and disposal of solid and hazardous wastes.

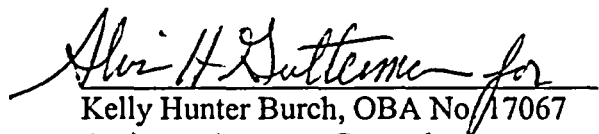
While settlement of the issues will require the execution of formal agreements that are in the process of being drafted, terms have been identified that appear likely to resolve many of the concerns. In addition, there has been substantial progress toward resolving the remaining issues and the Parties have agreed to a process for resolving those concerns. While these issues are not fully resolved, the Parties are working diligently to resolve them and remain committed to the successful conclusion of negotiations.

The Parties are confident that the negotiations will continue to proceed as expeditiously as possible with the oversight and assistance of the Chief Mediator for the Tenth Circuit Court of Appeals. The Parties further believe that a settlement is likely, given the significant progress to date and substantial commitment of resources to this effort.

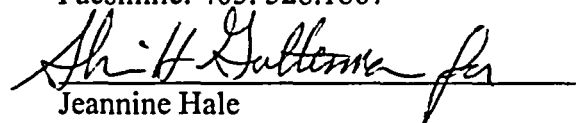
The parties have agreed to a schedule for negotiations that has the objective of achieving settlement prior to August 31, 2004. This deadline was established through the mediation process to give Oklahoma one week to file its initial brief in the proceeding pending before the Tenth Circuit Court of Appeals, and CN and Oklahoma one additional week to file their written presentations in MLA-6, in the event that the Parties are unable to reach agreement. However, if an agreement in principle is reached on all of the issues, but the parties have not been able to formally embody their agreement in principle in a written document, the Parties may find it necessary to request a brief, additional period of

time to document their agreement. Accordingly, the Parties plan to supplement this report on September 3, 2004.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Joint Status Report on Settlement Negotiations were served upon each of the persons listed below by e-mail (as indicated) and by U.S. mail, first class, postage prepaid, on this 6th day of August 2004.

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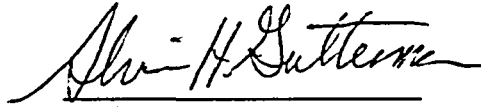
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