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November 16, 2004 (11:40am)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:
Alan S. Rosenthal, Presiding Officer
Dr. Anthony J. Baratta, Special Assistant

| | | |
|-----------------------------|---|--------------------------|
| In the Matter of |) | Docket No. 40-8027-MLA-6 |
| SEQUOYAH FUELS CORPORATION, |) | ASLBP No. 03-812-03-MLA |
| (Gore, Oklahoma Site) |) | November 9, 2004 |

JOINT MOTION OF THE STATE OF OKLAHOMA AND THE CHEROKEE
NATION FOR AN EXTENSION OF THE TIME TO FILE WRITTEN
PRESENTATIONS

Pursuant to 10 CFR §2.307, the State of Oklahoma ("State"), and the Cherokee Nation ("CN") ("State and CN" collectively referred to as "Petitioners") respectfully request an extension of the time to file their written presentations in MLA-6 and to continue the stay in MLA-9. The deadlines for filing written presentations were established by agreement of the parties and were adopted by the Presiding Officer through an Order dated October 5, 2004. The Petitioners request that an additional thirty days be added to each of the first two filing deadlines and an additional seven days for the last filing deadline. This would make the written presentations of the Petitioners due on December 15, 2004. The written presentations of Sequoyah Fuels Corporation ("SFC") and the NRC would be due on January 15, 2005. The Petitioners will agree to

reduce the time for submitting their rebuttal written presentations to January 22, 2005, which essentially only prolongs this matter seven days from the original rebuttal response date, demonstrating Petitioners confidence that this matter will be settled.

Petitioners have been negotiating a settlement agreement with SFC in an attempt to resolve the issues related to the reclamation of SFC's Gore, Oklahoma site. The parties, since the last extension, have been in extensive settlement negotiations almost daily with the assistance of the 10th Circuit Court of Appeals Chief Circuit Mediator. These negotiations have narrowed the issues to one primary issue involving the OPDES discharge draft permit issued by the Oklahoma Department of Environmental Quality ("ODEQ"). It was recently discovered that when SFC applied for a renewed discharge permit, SFC's application listed the incorrect stream segment as the receiving water. This error requires ODEQ to recalculate discharge permit limits by running mathematical models, a process that usually takes several weeks but is being expedited for purposes of this settlement. The State's Attorney General's Office has been working diligently to resolve this issue with SFC and the appropriate state agencies. This issue has prevented the State and CN from focusing on the written presentations. It is believed that this process is near completion, and the results will result in a settlement agreement between the parties. Such a result would avoid substantial expenditure of the resources of the parties, as well as reduce burdens on the NRC Staff.

Although State and CN recognize that the Presiding Officer in his Order of October 5, 2004 indicated that absent extraordinary circumstances a request for another

extension would not be favorably received, the State and CN believe these circumstances are extraordinary and justify a thirty day extension.

In addition to the discharge permit, additional circumstances supporting the need for an extension of time include:

1. The correct receiving stream for purposes of calculating discharge permit limits is the Illinois River, a stream with the special designation of "high quality water" in Oklahoma Water Quality Standards. This designation has special restrictions which require additional considerations that are not otherwise required. These new considerations must be addressed in the settlement negotiations, requiring additional time.

2. Effective October 25, 2004, the State and CN received a notice from the counsel for NRC Staff that the NRC has blocked public access to all license/applicant and Staff generated documents relating to this proceeding through the Agency Wide Document Access and Management System (ADAMS). Such action will inhibit and delay retrieval of information normally accessed instantly from ADAMS by the State and CN.

3. Two Federal/State holidays will occur shortly, with the Thanksgiving holiday occurring during the requested extension period, and the Veterans day holiday occurring this week on November 11th, which could further delay the ability of the State and CN to obtain documents normally available on ADAMS.

4. One of the State's two Attorney's, who have recently been assigned

responsibility for this case and are working on the written presentations, is a Technical Sergeant in the United States Air Force Reserve who may be serving on Annual Tour from November 10th to the 19th, thus adversely affecting the State's ability to effectively work on both the written presentations and remaining settlement agreement issues simultaneously.

5. Delaying the written presentations for thirty days will not prevent SFC from continuing its efforts with respect to the reclamation plan. No stays are currently in effect which would prohibit SFC from moving forward. Furthermore, reducing the deadline for submitting Petitioners rebuttable presentations will only extend this matter seven days past the last original deadline set by the Presiding Officer.

6. CN's main expert has resigned from employment with the Nation. Additional time will be required to make arrangements with the ex-employee and his new employer to allow him to assist with the written presentations. Unless there is an extension of time, CN will be unable to proceed with settlement negotiations.

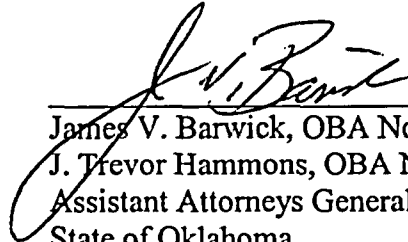
The addition of thirty days to the deadlines for written presentations will allow counsel for Oklahoma and the Cherokee Nation to finalize the settlement agreement and conduct negotiations without limiting the time available for preparing their written presentations. The addition of thirty days to the schedule for written presentations will not cause undue delay in this proceeding and will assist the parties in attempting to reach an agreeable settlement agreement. The delay in settlement was unavoidable and basically the result of the questions surrounding the errors involved with the OPDES

permit through no fault of the Petitioners.

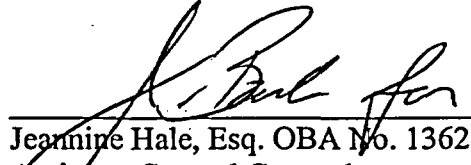
Based on the above, the parties believe that extending the due date for written presentations for thirty days and only seven days for submitting Petitioner's Rebuttal Presentations are in the best interests of the parties, including SFC. Counsel has consulted with Counsel for the NRC Staff who has authorized the Petitioners to state that the NRC staff will not object to the extension sought herein by the State and CN.

If the settlement agreement is not executed by the parties on or before December 1, 2004, Petitioners will terminate settlement negotiations, leaving two weeks to finish the written presentations. No further request for an extension to prepare the written presentations will be made by Petitioners. The revised deadlines will further provide counsel for Oklahoma and Cherokee Nation with adequate time to finalize the settlement agreement, as well as the written presentation if the parties do not reach agreement.

Respectfully submitted,



James V. Barwick, OBA No. 581
J. Trevor Hammons, OBA No. 20234
Assistant Attorneys General
State of Oklahoma
4545 N. Lincoln Boulevard, Suite 260
Oklahoma City, Oklahoma 73105
(405) 522-4413
Facsimile: (405) 528-1867
E-mail: james_barwick@oag.state.ok.us
trevor_hammons@oag.state.ok.us



Jeannine Hale, Esq. OBA No. 13627
Assistant General Counsel
Cherokee Nation Department of Justice
P.O. Box 948
Tahlequah, OK 74465-0948
(918) 456-0671 ext. 2786
Facsimile (918) 458-5099
E-mail: jhale@cherokee.org

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD PANEL

**Before Administrative Judges:
Alan S. Rosenthal, Presiding Officer
Dr. Anthony J. Baratta, Special Assistant**

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| In the Matter of |) | |
| |) | Docket No. 40-8027-MLA-6 |
| SEQUOYAH FUELS CORPORATION |) | |
| (Gore, Oklahoma Site) |) | ASLBP No. 03-807-01-MLA |
| |) | |

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of November, 2004, a true and correct copy of the foregoing, Joint Motion of the State of Oklahoma and the Cherokee Nation for an Extension to the Time to File Written Presentations, was sent by U.S. Mail, first class postage prepaid and by electronic mail where indicated with a single asterisk. A copy was also sent by facsimile transmission to the Office of the Secretary Attention: Rulemaking and Adjudications Staff.

Alan S. Rosenthal, Presiding Officer*
Administrative Judge
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555-0001
E-mail: rsnthl@comcast.net

Office of the Secretary*
ATTN: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555-0001
E-mail: hearingdocket@nrc.gov

Anthony J. Baratta, Special Assistant*
Administrative Judge
Atomic Safety & Licensing board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555-0001
E-mail: ajb5@nrc.gov

Julian Fite, General Counsel
Jeannine Hale, Assistant General Counsel*
Cherokee Nation Department of Justice
PO Box 918
Tahlequah, OK 74465-0948
E-mail: jhale@cherokee.org

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555-0001

John Ellis
Sequoyah Fuels Corporation
PO Box 610
Gore, OK 74435

Darani M. Reddick, Esq.*
Office of General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop: O-15D21
Washington, D.C. 20555-0001
dmr1@nrc.gov

Alvin H. Gutterman, Esq.*
Paul M. Bessette, Esq.
Morgan, Lewis & Bockius, LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
agutterman@morganlewis.com

Angela B. Coggins, Esq.*
Office of General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop: O-15D21
Washington, D.C. 20555-0001
abc1@nrc.gov



James V. Barwick

** Original and 3 copies



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

November 9, 2004

**VIA Electronic and
Postage Prepaid U.S. Mail**

Office of the Secretary
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

**Re: In the Matter of Sequoyah Fuels Corporation, Joint Motion of the
State of Oklahoma and the Cherokee Nation for an Extension of the
Time to File Written Presentations, U.S. Nuclear Regulatory
Commission, Docket No. 40-8027-MLA-6**

Sir or Madam:

An original and three conformed copies of the Joint Motion of the State of Oklahoma and The Cherokee Nation for an Extension of the Time to File Written Presentations, is being sent via U.S. mail, first class, postage prepaid for filing with the Office of the Secretary.

Upon receipt, please return the remaining file-stamped copy of the enclosed to this office in the self-addressed, stamped envelope enclosed for that purpose.

Thank you in advance for your assistance in this matter. Should you have any questions, please do not hesitate to call me at (405) 522-4413.

Sincerely,

A handwritten signature in black ink, appearing to read "J. V. Barwick", is written over the typed name and title.

JAMES V. BARWICK
ASSISTANT ATTORNEY GENERAL

JVB/jb
Enclosures

