

RAS 8991  
RAS 8992

DOCKETED  
USNRC

December 15, 2004 (11:21am)

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

_____	)	Docket No. 40-8027-MLA-6 &
In the Matter of	)	MLA-9
	)	
SEQUOYAH FUELS CORPORATION,	)	
(Gore, Oklahoma)	)	December 8, 2004
_____	)	

ANSWER OF SEQUOYAH FUELS CORPORATION TO THE JOINT MOTION  
OF THE STATE OF OKLAHOMA AND THE CHEROKEE NATION TO  
TERMINATE PROCEEDINGS

Sequoyah Fuels Corporation ("SFC") supports the Joint Motion of the State of Oklahoma ("Oklahoma") and the Cherokee Nation ("CN") requesting termination of both MLA-6 and MLA-9. Termination of these hearings is appropriate because the Settlement Agreement reached between SFC, Oklahoma, and CN on November 30, 2004 resolved all of the concerns of Oklahoma and CN regarding the affected SFC license amendment applications.

SFC also supports the request that the Presiding Officer include in the order terminating MLA-6 the paragraph suggested by the Joint Motion regarding what

<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.

constitutes good cause for filing an untimely hearing request. The proposed paragraph is acceptable because it is consistent with, and in essence restates, the Commission's existing standards. See 10 CFR § 2.309(c)(i); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-13, 53 NRC 319, 324-26 (2001). As discussed in the subject motion, Oklahoma and CN both consider such a statement to be of value. In addition, the proposed statement would not prejudice any questions that might arise in a future hearing request about such issues as whether certain knowledge should be imputed to a party or whether the new information provides an adequate basis for requesting a hearing. Accordingly, SFC supports the inclusion of this paragraph.

Termination of MLA-6 is appropriate based on 10 CFR § 2.1241 (2004). MLA-6 is governed by the old 10 CFR Part 2 rules, which states that fair and reasonable settlement of proceedings is encouraged. While section 2.1241 also states that "[a] settlement must be approved by the presiding officer or the Commission as appropriate in order to be binding in the proceeding," the applicable settlement agreement does not seek to bind the NRC in any respect and therefore review and approval by the Presiding Officer is not required to terminate MLA-6.

MLA-9 is governed by the revised 10 CFR Part 2 rules. Under the revised Part 2 rules, the parties are similarly encouraged to resolve differences without litigation. Under 10 CFR § 2.338(i), a Settlement Agreement must be approved by the Presiding Officer if it follows the issuance of a notice of hearing and is to be binding in the proceeding. No notice of hearing has been issued in MLA-9 and, again, the Settlement Agreement does not seek to bind the NRC. Accordingly, the Licensing Board in MLA-9 also is not

required to review and approve the Settlement Agreement as a prerequisite to termination of MLA-9.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alvin H. Gutterman", is written over a horizontal line.

Alvin H. Gutterman

Paul M. Bessette

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

(202)739-3000

Facsimile (202) 739-3001

pbessette@morganlewis.com

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

In the Matter of	)	Docket No. 40-8027-MLA-6 & MLA-9
	)	
SEQUOYAH FUELS CORPORATION, (Gore, Oklahoma)	)	December 8, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the "Answer of Sequoyah Fuels Corporation to the Joint Motion of the State of Oklahoma and the Cherokee Nation to Terminate Proceedings" were served upon the persons listed below by U.S. mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, on this 8th day of December, 2004.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Julian Fite, Esq.\*  
General Counsel  
Jeannine Hale, Esq.\*  
Asst. General Counsel  
Cherokee Nation  
P.O. Box 948  
Tahlequah, OK 74465-0948  
(E-mail: [jhale@cherokee.org](mailto:jhale@cherokee.org))  
(E-mail: [jfite@cherokee.org](mailto:jfite@cherokee.org))

Secretary of the Commission\*\*  
Attn: Rulemakings and Adjudication Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov))

Administrative Judge  
Anthony J. Baratta\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [ajb5@nrc.gov](mailto:ajb5@nrc.gov))

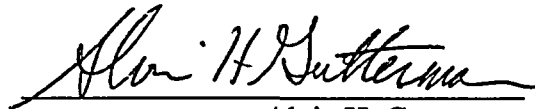
Administrative Judge  
Alan S. Rosenthal\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [rsnthl@comcast.net](mailto:rsnthl@comcast.net))

Administrative Judge  
Richard F. Cole\*  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [rfcl@nrc.gov](mailto:rfcl@nrc.gov))

James V. Barwick, Esq.\*  
Assistant Attorney General for the  
State of Oklahoma  
J. Trevor Hammons, Esq.\*  
Assistant Attorney General for the  
State of Oklahoma  
Environmental Protection Unit  
4545 N. Lincoln Blvd., Suite 260  
Oklahoma, City, OK 73105-3498  
(E-mail: James\_Barwick@oag.state.ok.us)  
(E-mail: thammons@oag.state.ok.us)

Darani M. Reddick, Esq.\*  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: dmrl@nrc.gov)

SherVerne R. Cloyd\*  
Atomic Safety and Licensing Board Panel  
M/S T-3F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: src2@nrc.gov)



Alvin H. Gutterman  
Counsel for Sequoyah Fuels Corporation

\* e-mail

\*\* Original and two copies