

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

DOCKETED
USNRC

January 19, 2005 (12:14 pm)

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Charles Bechhoefer, Presiding Officer
Anthony J. Baratta, Special Assistant

In the Matter of

SEQUOYAH FUELS CORPORATION
(Gore, Oklahoma)

Docket No. 40-8027-MLA-4
ASLBP No. 99-770-09-MLA

January 19, 2005

**MOTION TO APPROVE WITHDRAWAL OF LICENSE AMENDMENT REQUEST
AND TERMINATE HEARING**

Pursuant to 10 C.F.R. § 2.107, Sequoyah Fuels Corporation (“SFC”) requests approval of withdrawal of the license amendment application for approval of decommissioning in accordance with the March 26, 1999 Decommissioning Plan and termination of this proceeding. The reason for this withdrawal is that SFC has proposed alternate plans for site remediation, monitoring and license termination that also specifically address the requirements of 10 CFR Part 40, Appendix A.

The NRC Staff stopped its review of the proposed license amendment and associated Decommissioning Plan in 2002, after SFC requested a license amendment to classify some waste at the SFC site as 11e.(2) byproduct material. *See* Letter from G. Longo, to the Administrative Judges, dated March 31, 2003. SFC did not withdraw the license amendment request associated with the Decommissioning Plan at that time because of the possibility that the NRC's reclassification of this material might be reversed. Subsequently the NRC granted a license amendment authorizing SFC to possess 11e.(2) byproduct material and the State of Oklahoma (Oklahoma), among other persons, requested a hearing. *See Sequoyah Fuels Corporation, CLI-*

Template = SECY-041

SECY-02

04-01, Jan. 8, 2004. After the various requests for hearing were denied, Oklahoma sought review by the U.S. Court of Appeals for the Tenth Circuit.

On November 30, 2004, SFC entered into a Settlement Agreement with Oklahoma and the Cherokee Nation, and Oklahoma withdrew its appeals to the Tenth Circuit. As a result, the NRC decision to classify some of the SFC waste as 11e.(2) byproduct material became final, and there is no further question concerning whether NRC may apply the NRC 11e.(2) byproduct material regulations to the SFC site. In light of these developments, SFC wrote to the NRC on December 29, 2004 seeking to withdraw the license amendment request associated with the Decommissioning Plan (a copy that letter is attached).

Approval of the withdrawal request is appropriate in these circumstances because withdrawal of the application will not prejudice any party. *See Philadelphia Electric Company* (Fulton Generating Station, Units 1 and 2), ALAB-657, 14 NRC 967 (1981); *Sequoyah Fuels Corporation*, LBP-93-25, 38 NRC 304 (1993), *aff'd* CLI-95-02, 41 NRC 179 (1995). For these reasons, termination of this hearing is appropriate.

Counsel for the NRC staff has authorized SFC to state that the NRC staff does not object to this withdrawal request.

Respectfully submitted,



Alvin H. Gutterman

Paul M. Bessette

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

Phone (202)739-3000

Facsimile (202) 739-3001

agutterman@morganlewis.com

pbessette@morganlewis.com

ATTACHMENT



RE: 0455-N

December 29, 2004

U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Director, Office of Nuclear Material Safety and Safeguards

Dear Mr. Strosnider:

Sequoyah Fuels Corporation (SFC), the State of Oklahoma, and the Cherokee Nation reached a Settlement Agreement on November 30, 2004. As a result of this Settlement Agreement, on December 9, 2004, the 10th Circuit Court of Appeals dismissed the State of Oklahoma's appeals regarding amendment 29 of SFC's license, the associated Commission decisions are now final. Accordingly, SFC withdraws its request for a license amendment authorizing decommissioning in accordance with the site decommissioning plan submitted on March 26, 1999.

Sincerely,

John H. Ellis
President, Sequoyah Fuels Corporation

cc: D. Reddick
J. Barwick
J. Hale
M. Fliegel
J. Shepherd

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of

**SEQUOYAH FUELS CORPORATION
(Gore, Oklahoma)**

**Docket No. 40-8027-MLA-4
ASLBP No. 99-770-09-MLA**

January 19, 2005

CERTIFICATE OF SERVICE

I hereby certify a copy of the "Motion to Approve Withdrawal of License Amendment Request and Terminate Hearing" was 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 19th day of January, 2005.

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

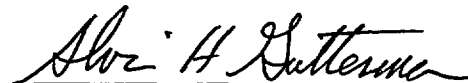
Darani M. Reddick, Esq.*
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: dmr1@nrc.gov)

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

Administrative Judge
Anthony J. Baratta, Special Assistant*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: ajb5@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)

Administrative Judge
Charles Bechhoefer, Presiding Officer*
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: cxb2@nrc.gov)


Alvin H. Gutterman
Counsel for Sequoyah Fuels Corporation

* e-mail

** Original and two copies