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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of)

SEQUOYAH FUELS CORPORATION)
and GENERAL ATOMICS)

(Sequoyah Facility))

Docket No. 40-8027-EA

January 21, 1994

SEQUOYAH FUELS CORPORATION'S RESPONSE TO
NACE'S MOTION FOR LEAVE TO FILE REPLY AFFIDAVIT

On January 19, 1994 Native Americans for a Clean Environment (NACE) filed a motion for leave to file a reply affidavit in support of its November 18, 1993 motion to intervene in the hearing requested by Sequoyah Fuels Corporation (SFC) and General Atomics (GA) regarding the NRC's Order to SFC and GA of October 15, 1993. With its motion, NACE requests yet another opportunity to supplement its request for intervention. SFC believes that NACE has been given ample opportunity to provide factual information and legal arguments to support its request for intervention. Therefore, SFC opposes NACE's request for leave to file another affidavit.

As stated in SFC's December 6, 1993 Answer in Opposition to NACE's Motion To Intervene, NACE has the burden to submit sufficient factual information to the Atomic Safety and Licensing Board ("Board") to prove that it has a right to party status in this proceeding. Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-91-2, 33 NRC

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42, 44 (1991) ("the burden rests with the petitioner to demonstrate that he or she satisfies the requirements [of the regulation]"); see also Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 459 ("A petitioner is responsible for providing a Board with sufficient information for determining whether that petitioner has standing of right.").

NACE had an initial opportunity to submit the information required to establish its standing when it filed its initial motion to intervene on November 8, 1993. On December 6, 1993 SFC responded to NACE's arguments. By Order dated December 17, 1993, the Board provided NACE with a second opportunity to provide factual and legal arguments to support its intervention. NACE provided new legal arguments and factual allegations in support of its intervention on December 30, 1993, and on January 11, 1994 SFC responded to those new arguments and factual allegations. SFC submitted factual information (in the form of technical affidavits and documents) which controverted the factual arguments contained in NACE's December 30, 1993 pleading and its attachments. ^{1/} The Affidavit of Bert J. Smith submitted

^{1/} NACE's accusation that SFC's affidavits contained "significant errors, and mischaracterizations" is erroneous. SFC's principal affidavit contained the supported findings and conclusions of Mr. Bert J. Smith, a hydrogeologist with over 14 years of experience, and were based on his intimate knowledge of the SFC site and information developed in the course of the extensive investigations that he managed in 1991 and 1992. In lodging its accusation of "mischaracterizations" in SFC's affidavits, NACE relies upon the statements of a hydrogeologist with two years of
(continued...)

by SFC responded to the arguments raised in the Affidavit of Timothy P. Brown ("Brown Affidavit") submitted by NACE; the Affidavit of Kenneth H. Schlag responded to paragraph 10 of the Brown Affidavit; and the Affidavit of Thomas E. Potter responded to paragraph 12 of the Brown Affidavit.

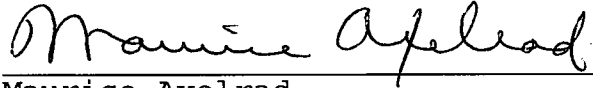
Contrary to NACE's suggestion, SFC has not "instituted a second round of summary disposition regarding NACE's standing." SFC's challenge to NACE's request for standing is not subject to summary disposition procedures under which SFC would carry the burden of proof. Rather, once SFC has presented facts challenging NACE's assertions, the burden is on NACE (see Turkey Point and South Texas Project, supra) to demonstrate to the Board's satisfaction the sufficiency of NACE's factual bases for its claims of standing. NACE has not done so after two attempts and should not be afforded a third opportunity to make the required showing.

^{1/}(...continued)

experience who bases his views upon selective fragmentary data and who, to SFC's knowledge, as never even visited SFC's industrial site. With respect to the alleged "significant errors," the only "error" identified in the new affidavit of Mr. Brown is that the EPA MCL for cadmium is 0.005 mg/L (promulgated 1-30-91 and 7-1-91) and not 0.01 mg/L as stated by Mr. Schlag. Mr. Brown has correctly cited the current EPA value. The MCL for cadmium was 0.01 mg/L at the time of the 1989 Completion Report relied on in Mr. Brown's affidavit. In any event, Mr. Schlag's error is not "significant."

FOR THE FOREGOING REASONS, NACE's motion for leave to
file a reply affidavit should be denied.

Respectfully submitted,



Maurice Axelrad
John E. Matthews

NEWMAN & HOLTZINGER, P.C.
1615 L Street, N.W., Suite 1000
Washington, DC 20036
(202) 955-6600

ATTORNEYS FOR
SEQUOYAH FUELS CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that copies of Sequoyah Fuels Corporation's Response to NACE's Motion for Leave to File Reply Affidavit were served upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed on the date shown below (additional copies by facsimile indicated with an asterisk "*"):

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing & Service Branch
(Original and two copies)

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Administrative Judge James P. Gleason, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Administrative Judge G. Paul Bollwerk, III
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Administrative Judge Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Administrative Judge Thomas D. Murphy
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Steven R. Hom, Esq.
Susan L. Uttal, Esq.
Richard G. Bachmann, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Diane Curran, Esq.
c/o IEER
6935 Laurel Avenue, Suite 204
Takoma Park, Maryland 20912

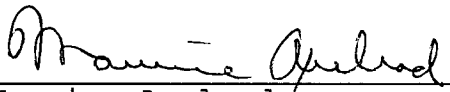
*Stephen M. Duncan, Esq.
Mays & Valentine
110 South Union Street
P.O. Box 149
Alexandria, VA 22313-0149

John H. Ellis, President
Sequoyah Fuels Corporation
P.O. Box 610
Gore, Oklahoma 74435

John R. Driscoll
General Atomics
P.O. Box 85608
San Diego, California 92186-9784

Lance Hughes, Director
Native Americans for a Clean Environment
P.O. Box 1671
Tahlequah, Oklahoma 74465

Dated this 21st day of January 1994.


Maurice Axelrad

Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 955-6600