

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'94 APR 28 P3:59

In the Matter Of)

Sequoyah Fuels Corporation)
and General Atomics)

(Gore, Oklahoma Site Decontamination)
and Decommissioning Funding))

OFFICE OF SECRETARY
DOCKETING & SERVICE
Docket No. 40086278A
Source Materials BRANCH
License No. SUB-1010

April 25, 1994

**NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S
OPPOSITION TO GENERAL ATOMICS' MOTION
FOR LEAVE TO FILE A REPLY**

Native Americans for a Clean Environment ("NACE") opposes General Atomics' ("GA's") Motion for Leave to File a Reply to the Responses of the NRC Staff and NACE to the Motion for Summary Disposition (April 20, 1994) (hereinafter "GA's Motion"). GA has failed to show any compelling reason why the Licensing Board should make an exception to 10 C.F.R. § 2.749(a)'s general bar against such replies.¹

As discussed in Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1, LBP-87-26, 26 NRC 201, 204 (1987)), § 2.749(a) contemplates the filing only of a motion for summary disposition and an answer, and provides that "no further supporting statements or responses thereto shall be entertained." Pursuant to its authority under 10 C.F.R. § 2.718(e), the Board may exercise its discretion to "lift the prohibition in § 2.749(a)," but only for a "compelling reason." Id. As the Board observed

¹ According to GA's Motion, the NRC Staff does not oppose the filing of a reply.

SECY-041

DS03

14969

U.S. NUCLEAR REGULATORY COMMISSION
DOCKETING & SERVICE SECTION
OFFICE OF THE SECRETARY
OF THE COMMISSION

Document Statistics

Postmark Date 4/25/94
Copies Received 3
Add'l Copies Reproduced 0
Special Distribution OGG, R105

in Shoreham, the purpose of summary disposition is to "avoid the cost and delay of unnecessary litigation," and "should not be employed in a way that would add to cost and delay." Id. Thus, the Board denied leave to reply where the parties had received an adequate opportunity to make their legal arguments, and no new facts were being offered in the proposed reply.

Like the Applicant in Shoreham, GA has failed to show a compelling reason to waive the prohibition in § 2.749(a). GA asserts vaguely that it needs to respond to "certain facts" stated by the Nuclear Regulatory Commission ("NRC") Staff and NACE, but it does not say what those facts are, nor indeed have the parties raised any facts that were not already a matter of public record.² GA also seeks an opportunity to respond to legal arguments by the Staff and NACE which it claims are "novel" and "far-reaching." GA Motion at 2. Aside from the lack of basis for this hyperbole, the alleged uniqueness or importance of legal issues raised by a case is not, by itself, sufficient grounds for permitting one party another round of argument. Nor can GA

² In contrast, in the case relied on by GA, Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4), ALAB-950, 33 NRC 492, 500 (1991), the Appeal Board found that the Licensing Board possessed the authority to order a reply in a summary disposition proceeding where the Intervenor's response had raised new factual issues not previously identified in their contention. It is also important to note that in Turkey Point, the Licensing Board ordered the reply "inadvertently," and ultimately decided not to consider it in deciding on the summary disposition motion. See Florida Power & Light Co. (Turkey Point Nuclear Generating Plant, Units 3 & 4), LBP-90-4, 31 NRC 54, 63 n. (1990). Thus, the portion of ALAB-950 cited by GA is dictum.

legitimately claim to have been "surprise[d]" by the NRC's and NACE's legal arguments: both the Staff's October 15, 1993, order and NACE's contentions gave GA notice of the legal basis for their positions regarding GA's liability for decommissioning funding. See Shoreham, 26 NRC at 205 (Based on the "history of the proceeding, it "could only be expected" that the parties would interpret the law differently and "emphasize different areas in making their cases on summary disposition.")³ Each side has now had a sufficient and fair opportunity to make "its strongest case in the single pleading allowed by the regulation," and thus GA's Motion should be decided on the pleadings now before the Board. Shoreham, 26 NRC at 206. If, for any reason, the Board should find it needs further elucidation of the legal issues, it should grant leave for replies in an "evenhanded" manner and allow NACE and the NRC to respond to GA's reply. See Turkey Point, ALAB-950 at 500.

Accordingly, for the foregoing reasons, GA's Motion should be denied.

³ NACE notes that an apparent typographical error in GA's Motion gives the erroneous impression that GA filed its Motion for Summary Disposition before NACE filed its contentions, and thus that GA did not have adequate notice of NACE's legal position. GA filed its Motion for Summary Disposition on February 17, 1994, not on February 7, 1994, as stated in GA's Motion at 3. NACE had filed its contentions several weeks before, on February 8.

Respectfully submitted,



Diane Curran
Harmon, Curran, Gallagher
& Spielberg
6935 Laurel Avenue, Suite 204
Takoma Park, MD 20912
(301) 270-5518

April 25, 1994

CERTIFICATE OF SERVICE

I certify that on April 25, 1994, copies of the foregoing NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S OPPOSITION TO GENERAL ATOMICS' MOTION FOR LEAVE TO FILE A REPLY were served by first-class mail on the following:

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

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

Administrative Judge G. Paul Bollwerk
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.
Richard G. Bachmann, Esq.
Susan G. Uttal, Esq.
Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Maurice Axelrad, Esq.
Newman, Bouknight & Edgar, P.C.
1615 L Street N.W. Suite 1000
Washington, D.C. 20036

Stephen M. Duncan, Esq.
Bradfute W. Davenport, Jr., Esq.
Mays & Valentine
110 South Union Street
Alexandria, VA 23314

Office of the Secretary
Docketing and Service
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

94 APR 28 P3:59

DOCKETED
USNRC

John R. Driscoll
General Atomics
3550 General Atomics Court
San Diego, CA 92121

John H. Ellis, President
Sequoyah Fuels Corp.
P.O. Box 610
Gore, OK 74435



Diane Curran