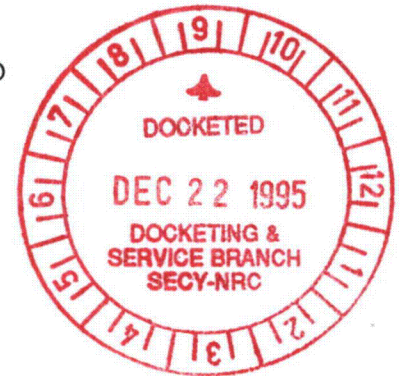


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James P. Gleason, Chairman
Dr. Jerry R. Kline
G. Paul Bollwerk, III
Thomas D. Murphy



In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION)	Docket No. 40-8027-EA
and GENERAL ATOMICS)	
)	
(Sequoyah Facility in)	
Gore, Oklahoma))	December 21, 1995

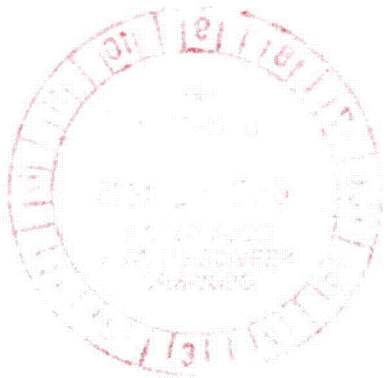
MOTION TO AMEND PROTECTIVE ORDER

General Atomics respectfully moves the Atomic Safety and Licensing Board ("Board") to amend Paragraph 7.a. of the Board's December 18, 1995 Order (Modification of Protective Order) by deleting the Board's amendment to the original Paragraph 7, and replacing it with the following language:

7.a. "Upon determining that Protected Discovery Materials reasonably contain evidence of possible wrongdoing, NRC Staff authorized to receive Protected Discovery Materials shall refer such documents to the General Counsel of the NRC. If the General Counsel concurs in writing with the previous determination of the NRC Staff, the documents shall then be referred to the NRC Executive Director for Operations, the NRC Director of the Office of Investigations, or the NRC Inspector General, or their staffs for such use as is appropriate in the legitimate exercise of their respective duties, but NRC Staff making the referral shall inform each of the foregoing to whom Protective Discovery Material is disclosed that the material was obtained from documents covered by this Protective Order. If the General Counsel does not concur with the determination of the NRC Staff, the documents shall be retained in the possession of the

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NRC Staff authorized to receive Protected Discovery Material.

As grounds for this motion, General Atomics submits the following:

1. In its December 14, 1995 Memorandum and Order, the Commission expressly agreed with the Board "that GA and SFC have demonstrated a legitimate, significant interest in protecting their confidential documents."¹ The Commission also vested the Board with clear authority "to consider motions to modify the Protective Order."²

2. Although it substituted a new Paragraph 7 that eliminates any pre-screening by the Board, the Commission nevertheless imposed a strict standard of reasonableness upon the NRC Staff by requiring that GA or SFC documents can be referred to Staff investigatory or enforcement offices only after a threshold determination has been made "that the documents reasonably contain evidence of possible wrongdoing."³

3. In imposing the reasonableness standard on the NRC Staff, the Commission obviously intended to prevent well-meaning but over-zealous dissemination of confidential GA or SFC documents that do

¹ Memorandum and Order (CLI-95-16), December 14, 1995, p. 10.

² Id., at p. 11.

³ Id.

not in fact contain evidence of possible wrongdoing.⁴

4. The Board's December 18, 1995 Amendment to the Protective Order would permit any member of the NRC Staff (authorized to receive Protected Discovery Materials) to refer GA or SFC documents to the investigatory and enforcement offices, whether the Staff member is legally-trained or not. It cannot be assumed that all such Staff members are capable of making informed, fair, and balanced -- i.e., "reasonable" -- determinations that documents "reasonably contain evidence" of possible wrongdoing.

5. A requirement that the NRC General Counsel concur in a Staff member's determination of possible wrongdoing is easily workable as a practical matter, is appropriate under the circumstances of this proceeding, and is well within the power of the presiding officer to conduct a fair and impartial hearing according to law by regulating the course of the hearing and the conduct of the participants.⁵ While the General Counsel is adverse to General Atomics in the proceeding, it may nevertheless be presumed that she has legal training and experience in evaluating evidence and determining questions of reasonableness.

6. Any cost of additional staff work that the amendment

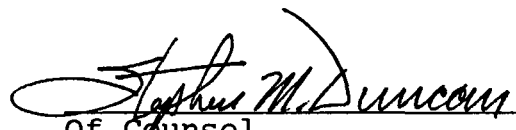
⁴ The Commission rejected as "meaningless" the reasonableness standard set forth in the Board's April 18, 1995 Memorandum and Order (Ruling on Motion for Protective Order), if that standard was intended to simply ensure that discovery documents contain the information the NRC Staff says they do. Id., p. 9.

⁵ 10 C.F.R. § 2.718(e).

requested herein may require is far outweighed by the importance of ensuring (1) that the discovery process in this proceeding is not abused, whether intentionally or inadvertently, (2) that the confidentiality of General Atomics' private business records is not breached, and (3) that the proceeding is fundamentally fair, and (4) that the risk of avoidable and costly future litigation is minimized.

For all of these reasons, General Atomics respectfully moves the Board to amend Paragraph 7.a. of the Protective Order as set forth herein.

Respectfully submitted,


Of Counsel

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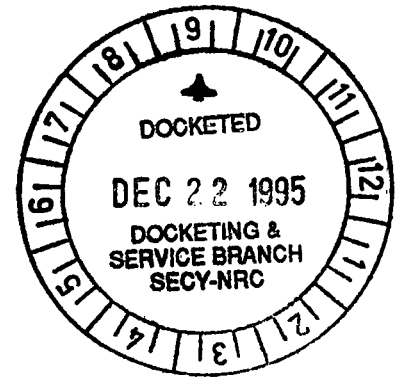
ATTORNEYS FOR GENERAL ATOMICS

DATE: December 21, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing General Atomics' Motion to Amend Protective Order was served on December 21, 1995, upon the following persons by deposit in the United States mail, first class postage prepaid and properly addressed, and to those persons marked with an asterisk by telecopier:

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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 *

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Dated this 21st day of December, 1995.

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