

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

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USNRC

'95 NOV 28 P3:38

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In the Matter of)

SEQUOYAH FUELS CORPORATION)
and GENERAL ATOMICS)

(Sequoyah Facility in)
Gore, Oklahoma))

Docket No. 40-8027-EA

November 27, 1995

**SUPPLEMENTAL STATUS REPORT ON SETTLEMENT NEGOTIATIONS AND MOTION
FOR EXTENSION OF STAY OF DISCOVERY BEYOND DECEMBER 8, 1995**

Pursuant to the November 13, 1995 Memorandum and Order of the Atomic Safety and Licensing Board ("Board"), General Atomics submits this supplemental status report on the settlement negotiations in which it is currently engaged with the NRC Staff, and its motion for an extension of the current stay of discovery beyond December 8, 1995.

STATUS OF SETTLEMENT NEGOTIATIONS

Because the NRC Staff wishes to describe the nature of its internal deliberations -- deliberations in which General Atomics is obviously not participating -- it is submitting a separate status report and motion for an extension of the stay of discovery. Both parties, however, reaffirm their belief that they are negotiating diligently and in good faith. This is evident from both the pace of the negotiations and the seniority of the (General Atomics)

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management and (NRC Staff) policy officials who have been involved in the negotiations.

The first negotiating session between the parties took place on August 31, 1995, the day following the issuance of the Board's August 30 Order granting a limited stay of discovery.¹ The participants included Litigation Counsel for both parties and the General Counsel of General Atomics who travelled from California to participate in the meeting. The August 31 discussions were substantive in nature and took place over a period of several hours. Several subject areas were identified that would require subsequent exchanges of information and extensive additional negotiations.

Over the next three weeks, internal discussions took place within each party. On September 21, 1995, counsel for the two parties continued the negotiations. Specific issues were identified for initial resolution. Additional discussions took place on September 25 and September 26.

On October 10, 1995, the parties engaged in a second face-to-face negotiating session over a period several hours. In addition to its Litigation Counsel, the participants included General Atomics' Senior Vice President for Administration, its Vice President and General Counsel, and its Senior Vice President/Chief Financial Officer. All three of the Company's officers traveled

¹ The Order did direct General Atomics to make available to the Intervenor certain documents subject to production under the Intervenor's July 10, 1995 first document production request. The documents were subsequently produced.

from California in order to participate in the meeting. The participants from the NRC Staff included its Litigation Counsel, the Project Manager for the Sequoyah Fuels Corporation (SFC) facility, a Team Leader from the Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, and two outside consultants. The discussions were wide-ranging and at the conclusion of the meeting, the parties agreed once again that progress was being made and that negotiations should continue after each had an opportunity to engage in further internal deliberations.

On October 20, 1995, information previously requested by the NRC Staff was delivered to it by General Atomics. Discussions by telephone continued the following week.

On November 1, a meeting took place between the respective Litigation Counsel for each party. Specific concepts and a structure of a possible settlement were discussed. A follow-up telephone conference (which included Litigation Counsel for the parties and General Atomics' General Counsel) took place on November 7 in order to ensure that the concepts were fully understood by each party. Since then, negotiations have continued. Another meeting involving the General Counsel of General Atomics is scheduled for December 8, 1995. Significant progress has been made in resolving some of the issues in contention. The resolution of others is dependent upon information which is not yet available and the results of internal deliberations which are currently underway within each of the two parties.

The parties have thus established a clear procedural framework for the negotiating process which has kept the process moving forward at a sustained pace. In fact, the parties have been and continue to be in regular, on-going contact. Substantial efforts are also being made to resolve the many remaining issues within a concrete time frame. When questions are raised about particular matters, dates are usually set by which the responding party agrees to supply the requested information or its position on a specific issue.

It is very difficult for General Atomics to accurately estimate the amount of time which the negotiating process will ultimately require. Both parties hold the view that the negotiations are proceeding very expeditiously. They previously noted,² however, that the negotiations and deliberations between the NRC Staff and SFC which resulted in the settlement that was approved by the Board on October 26, 1995, consumed more than six months of time; that during those negotiations, it was undisputed that SFC was a licensee of the Commission and that it had clear decommissioning funding obligations; that SFC was prepared to devote one hundred percent of its net assets and revenues to the completion of decommissioning; and that the number of potential obstacles to settlement in the negotiations between the NRC Staff and General Atomics is much greater and the issues are

² Joint Status Report on Settlement Negotiations and Motion for Extension of Stay of Discovery Beyond November 13, 1995, November 3, 1995, pp. 5-6.

substantially more far-reaching and complex, than the negotiations between the NRC Staff and SFC. It should also be noted that the NRC Staff-SFC negotiations took place during a six-month period in which the Intervenor chose not to participate in the discovery process at all.

Under the present circumstances, it is reasonable to assume that the negotiating process cannot be completed any sooner than the six months which was required for the completion of the NRC Staff-SFC negotiations. It may be well be possible, however, to either reach a settlement or to conclude that a settlement is not possible, within that same time frame. To date, the parties have been negotiating for less than three months.

MOTION FOR EXTENSION OF STAY

For the reasons set forth above, General Atomics submits that the negotiating parties have made significant progress toward settlement by a date certain and that if they are permitted to continue those negotiations for a reasonable period of time, unhindered by unnecessary litigation, there are good and reasonable prospects for ultimate success.

General Atomics further submits that there are compelling reasons why substantial prejudice to the settlement process will occur if the stay of discovery is vacated and it is required to engage in inevitable and endless discovery disputes with the Intervenor. In this regard, General Atomics hereby incorporates by reference, the arguments which it previously submitted on this

question.³ There are other important factors which are also relevant.

Contrary to the assertions of the Intervenors, General Atomics is not a large corporation that is capable of undertaking several litigation-related activities at once. While it does not wish to fully disclose its financial condition in this public document, it is no secret that it is not primarily a manufacturing concern, but rather a company which specializes in diversified research and development in advanced technologies. It is also no secret that in recent months, it has sustained several substantial setbacks as a result of the loss of congressional funding for major projects.

Earlier this year, Congress eliminated all funding for the development of the Company's gas-cooled nuclear power technology. Annual funding for that project had previously been as high as \$106,982,000.00. Funding for its fusion program was also reduced. As a consequence of these and related developments, the Company has been forced to terminate (or will soon terminate) the employment of approximately 213 employees, most of whom have advanced degrees, many of whom have worked for the Company for over two decades.

The continuation of litigation would thus involve not merely the payment of attorney's fees. It would require major investments of the time of the Company's executives and key employees, time which must by necessity be devoted to much more urgent and

³ Joint Status Report on Settlement Negotiations and Motion for Extension of Stay of Discovery Beyond November 13, 1995, November 3, 1995, pp. 4-5, 7-10.

important matters, such as the expansion of current business relationships, the search for new business opportunities, and the development of new technologies. This is especially true given the nature of the Intervenor's litigation theories.

These factors heavily influenced the decision of General Atomics to engage in settlement negotiations in the first place. If, however, much of this incentive is removed and the Company is forced to continue the litigation, Company executive will be faced with the prospect of investing substantial time in simultaneously responding to discovery requests and in negotiating with the NRC Staff, all while they attempt to grapple with the Company's financial problems.

General Atomics also believes strongly that if it is forced to continue litigation, the settlement negotiating process will be fatally poisoned. If the Company had substantially greater resources and several additional executives, it might, perhaps, be possible for it to segregate the litigation work from its immediate business pressures and the work which is required in the settlement negotiations. Unfortunately, the Company possesses neither the resources nor the management personnel.

On the basis of actual experience in this proceeding, it is certain that the continuation of litigation will involve additional hotly-contested discovery and other disputes with the Intervenor's. Aside from the executive time and other costs which would be involved, it is inevitable that such litigation would exacerbate a relationship between the Intervenor's and General Atomics which is

already hostile. It is unreasonable to expect a company which has expended substantial resources defending itself against claims that it believes are totally unfounded -- by a regulatory agency which the Company believes doesn't even have jurisdiction over it -- to willingly accept the fate of being forced to continue rancorous litigation even while it engages in exhaustive efforts to amicably resolve the underlying claims.

Finally, General Atomics wishes to address the question of the Intervenor's "right" to litigate the contentions they have put forth in an effort to see that the Staff's order, as issued, is sustained.⁴ Whatever the basis of this "right" it is, as General Atomics has previously asserted, nothing more than an abstract procedural objective at this stage of the proceeding. It remains to be seen whether the NRC Staff and General Atomics can successfully conclude their present negotiations and amicably settle the dispute which was raised by the Staff's October 15, 1993 Order. If a settlement is reached, however, the Intervenor will have full opportunity to make known to the Board their views on (1) the merits of the settlement, and (2) whether it should be rejected in order to give the Intervenor an opportunity to see that the Staff's order, as issued, is sustained.

Because the law and the policies of the Nuclear Regulatory Commission strongly favor the settlement of litigation, any party which attempts to obstruct on-going settlement negotiations must

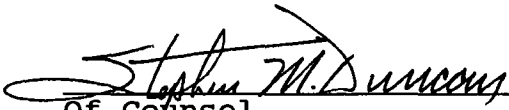
⁴ Memorandum and Order, November 13, 1995, p. 8.

necessarily assume a heavy burden of demonstrating why the negotiations should suffer interference. In the instant proceeding, the Intervenor's have not demonstrated that they will sustain any form of injury or that the public interest will be adversely affected in any way, if the present stay of discovery is continued. They cannot make such a demonstration. There is no public interest in rushing to a time-consuming and costly adjudication if a better alternative is possible.

Whatever importance, therefore, may be attached to the Intervenor's desire to continue litigation at this time, that desire is substantially outweighed by the policies favoring settlement and the strong public interest in giving the primary contesting parties full and reasonable opportunity to amicably -- and with greater speed than if litigation is continued -- resolve the issues raised by the Staff's order.

For all of these reasons, General Atomics respectfully moves the Board for an order directing that all discovery activities in this proceeding be stayed for an additional ninety (90) days.

Respectfully submitted,


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DATE: November 27, 1995

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Supplemental Status Report on Settlement Negotiations and Motion for Extension of Stay of Discovery Beyond December 8, 1995 was served on November 27, 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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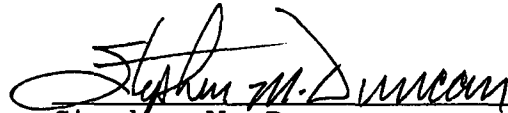
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