UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter Of	)	
Sequoyah Fuels Corporation and General Atomics Gore, Oklahoma Site Decontamination and Decommissioning Funding	)	Docket No. 40-8027EA Source Materials License No. SUB-1010 December 4, 1995

NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S AND CHEROKEE NATION'S OPPOSITION TO MOTIONS FOR ADDITIONAL STAY OF DISCOVERY

Introduction

Intervenors, Native Americans for a Clean Environment ("NACE") and the Cherokee Nation, hereby oppose General Atomics' ("GA's") and the Nuclear Regulatory Commission ("NRC" or "Commission") staff's motions for an additional stay of discovery.[1] As discussed below, the staff and GA have failed to justify a further extension of the stay that has now been in effect for three months. Thus, Intervenors should be allowed to complete their discovery against GA and SFC on jurisdictional issues. Intervenors also renew their previous request that the Board permit Intervenors to conduct discovery on the merits issues which GA and the staff are seeking to resolve in their settlement negotia-

1 Supplemental Status Report on Settlement Negotiations and Joint Motion for Additional Stay of Discovery Beyond December 8, 1995 (November 17, 1995) (hereinafter "GA's Motion") and NRC Staff's Additional Information in Support of Stay Proceedings (November 27, 1995) (hereinafter "NRC's Motion").

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tions, so that Intervenors may be prepared to comment on any settlement that is proposed.[2]

ARGUMENT

Neither GA nor the NRC staff has met the Board's test for demonstrating that they have made "substantial progress toward settlement by a date certain."[3] First, although it appears that senior management and policy staff for GA have been involved at various junctures in the settlement process, it is not clear that they are involved on a "continuing basis" in "both internal deliberations on settlement strategy and, as appropriate, the parties' negotiation sessions."[4] Second, neither GA nor the staff assert that the parties have agreed upon "the type and number of major issues that are in dispute."[5] GA states only that they have discussed "[s]pecific concepts", and that they have made "[s]ignificant progress in resolving some of the issues in contention."[6] This statement contains no indication of the num-

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2 See Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Joint Motion for Additional Stay of Discovery at 5, 7-8 (October 11, 1995); Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Joint Motion for Additional Stay of Discovery at 2, 7 (November 8, 1995).

3 Memorandum and Order (Extending Discovery Stay Pending Submission of Additional Settlement Status Information) at 9 (November 13, 1995).

4 Memorandum and Order at 9.

5 Id.

6 GA Motion at 3.

ber and type of significant issues that GA considers to requires resolution, or on what portion the parties have made progress. The NRC states that it has identified "what it believes to be the most significant issues that would need to be resolved in connection with any settlement with GA."[7] Again, no information is given regarding the type and number of issues to be resolved. Nor is there any indication that GA and the staff are in agreement on the number and type of issues to be resolved. In fact, their failure to make any joint representation on the subject indicates otherwise. Finally, other than to state that another settlement meeting is planned for December 8, GA and the staff do not represent any "kind of schedule (with dates as appropriate) for internal strategy sessions and negotiating sessions that will bring them together on a regular basis to work to resolve the identified issues in an orderly manner."[8] GA does not make any representations regarding its schedule for internal deliberations, but simply states a minimum time estimate of six months for the conclusion of the negotiations.[9] Although the staff represents that it has daily internal discussions on the settlement issues, it does not identify any milestones for the deliberations. And there is no indication that the parties have agreed on any schedule for moving the negotiations forward.

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7 NRC Motion at 5.

8 Memorandum and Order at 9.

9 GA's Motion at 4-5.

Moreover, neither GA nor the NRC has justified the requested stay by demonstrating that the substantive status quo will be preserved during the stay period.[10] To the contrary, it appears that the status quo has already been altered during the three months since the stay began, potentially jeopardizing the substantive resolution of this case. First, GA is now taking action which would move assets and revenues out of the country, and potentially out of reach of the NRC. In September, GA sought NRC approval to obtain a "possession-only" license for its TRIGA research reactor fuel fabrication facility and move the operation to France.[11] The application is still pending.[12] The NRC has found significant deficiencies in the decommissioning funding plan for the the TRIGA facility.[13] The staff's evaluation of the funding plan also noted that GA's parent guarantor, General Atomics Technologies Corporation, had $17 million in negative earnings in 1994,[14] thus raising questions about GATC's ability to back decommissioning costs for the TRIGA plant. It is

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10 Contrary to GA's assertion at page 8-9, GA has the burden of justifying the stay, rather than Intervenors having the burden of showing it is unwarranted.

11 Letter from Keith E. Asumussen, GA to Carl J. Paperiello, NRC (September 26, 1995), see Attachment 1 to this Opposition.

12 Letter from Charles E. Gaskin, NRC to Keith E. Asmussen, GA (October 12, 1995), see Attachment 2 to this Opposition.

13 Letter from Charles E. Gaskin, NRC to Keith E. Asmussen, GA (August 10, 1995), Attachment 3 to this Opposition.

14 Id. at 2.

entirely unclear whether the assets and revenues from the French operation will be committed to cleaning up the U.S. site, or whether they now will be out of the NRC's reach.[15]

Second, GA represents that it has terminated or is about to terminate approximately 213 employees, "many of whom have worked for the Company for over two decades."[16] The termination of long-standing employees could adversely affect GA's ability to respond to Intervenors' interrogatories and document production requests regarding events that took place in the past, such as GA's purchase of the SFC facility. Thus, contrary to the staff's argument at page 6, Intervenors' interest in full and meaningful discovery would be jeopardized by further delay.

Finally, GA's claims regarding the burdens of complying with Intervenors' discovery are exaggerated and frivolous. The parties' disputes regarding discovery on jurisdictional issues have already been defined. The demands of briefing these issues to the Commission and answering Intervenors' discovery are well within the demands of ordinary litigation. Moreover, GA's claim that resuming this litigation would destroy its "incentive" to settle with the staff is disingenuous.[17] Since late 1993, when

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15 Notably, although the staff claims to be closely considering the decommissioning funding issues posed by all of GA's facilities [NRC Motion at 4], it appears to have been unaware of GA's attempt to move the TRIGA operation out of the country. Telecon between Diane Curran and Steven Hom, November 20, 1995.

16 GA Motion at 6.

17 GA's Motion at 7.

it requested this hearing, GA has had the opportunity to settle this case with the NRC. GA did not seek settlement negotiations until the eve of NRC staff depositions of GA staff. If anything, the pressure of litigation has had the effect of spurring the parties forward toward settlement, not stalling it. Although Intervenors initially did not oppose a brief stay to see whether GA and the staff could resolve their differences expeditiously, a continued stay would only allow GA further opportunity to move its assets out of NRC's reach, and would jeopardize the quality of GA's response to Intervenors' discovery.

Conclusion

For the foregoing reasons, the Board should allow the stay of discovery to expire, GA and SFC should be ordered to complete the discovery responses which remain outstanding, and the Board should take responses to and rule on Intervenors' August 17, 1995, Motion to Compel.

Moreover, as discussed in Intervenors' opposition to GA's and the staff's stay motion of October 6, 1995, in order to ensure that Intervenors have sufficient information in order to make an adequate evaluation of the reasonableness of any proposed GA-NRC staff settlement, the Board should permit discovery into issues related to the costs of decommissioning the SFC facility and the financial wherewithal of GA to finance those costs. In addition, given that GA's liability for decommissioning funding for its <u>other</u> facilities now appears to be a pivotal considera-

tion in the pending settlement negotiations, the Board should allow discovery against GA regarding these decommissioning costs, as well as GA's ability to pay them. Finally, the Board should permit discovery against the NRC staff regarding the relationship of this case with decommissioning funding issues at other GA facilities.

Respectfully submitted,

Diane Curran
6935 Laurel Avenue Suite 204
Takoma Park, MD 20912
(301) 891-2774
Counsel to NACE

James G. Wilcoxen
Wilcoxen, Wilcoxen & Primomo
P.O. Box 357
Muskogee, OK 74402
(918) 683-6696
Counsel to the Cherokee Nation

December 4, 1995

Attachment 1

GENERAL ATOMICS

September 26, 1995

Via Overnight Delivery

Mr. Carl J. Paperiello, Director
Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Two White Flint North - Mail Stop 8 A23
11545 Rockville Pike
Rockville, MD 20852 2738

Subject: Docket No. 70-734; License No. SNM-696;
REQUEST FOR POSSESSION ONLY LICENSE AMENDMENT
and Notification of
PERMANENT CESSATION OF PRINCIPAL ACTIVITIES

Dear Mr. Paperiello:

General Atomics (GA) hereby notifies the Commission pursuant to 10 CFR 70.38(d) that it has decided to permanently cease principal activities, as defined in 10 CFR 70.4, authorized by Special Nuclear Material License SNM-696. Furthermore, GA hereby provides notification of its commitment to permanently cease such NRC licensed activities on or before September 30, 1995. Accordingly, GA hereby requests a possession only license amendment (POLA) to its Special Nuclear Material License SNM-696.

GA has found it necessary to take the above actions for a number of reasons. These include recent major reductions in funding for GA's fusion and modular helium reactor programs and the financial burden of the NRC's annual fee for GA's special nuclear material license - which led to the decision to export GA's small TRIGA research reactor fuel fabrication operation to France. (Having made the above notification and request for POLA in a timely manner, consistent with the provisions of footnote 1 of 10 CFR 171.16(d) and 10 CFR 171.17 (b), GA understands that it will not be subject to the annual fee for FY 1996.)

Coincident with the above mentioned permanent cessation of principal activities authorized by SNM-696, GA will: limit its actions involving special nuclear material to those related to decommissioning and as will be specified by NRC in this requested POLA; continue to control entry to restricted areas until they are suitable for release in accordance with NRC requirements; continue to maintain and implement its plan for the physical protection of special nuclear material of moderate and low strategic significance until these materials are shipped off-site; and continue to maintain and implement its emergency plan until NRC agrees that it is no longer required.

NF04

It is to be noted that even with the cessation of the principal activities authorized by SNM-696, there are still a number of activities being conducted at GA facilities that involve the use of State of California licensed radioactive material, including an ongoing joint Government-Extended Page ment of Energy (DOE) project to decommission GA's Hot Cell Facility, the continuing DOE supported magnetic confinement fusion energy R&D program, a DOE supported inertial confinement fusion R&D project, radiation detection and monitoring equipment design, manufacturing and calibration, and bioscience research. All of these involve a GA commitment, beyond that associated with its SNM license, for maintaining an appropriate qualified staff to assure the health and safety of employees, the public, and the environment.

GA's SNM-696 licensed principal activities were conducted in several different buildings, areas, or portions thereof on GA's site. With the exception of GA's TRIGA fuel fabrication operation, which was conducted in Building 22, the other buildings, areas, or portions thereof, where SNM was used are also locations where activities involving the use of radioactive materials licensed by the State of California were, are being, and may continue to be, conducted. Therefore, the cessation of NRC licensed principal activities does not, by itself, necessarily mean that the locations where those activities were conducted need, or should be, decommissioned at this time. As just mentioned, the TRIGA Fuel Fabrication Facility (Bldg 22) is the one exception, and GA is currently evaluating what future use, if any, will be made of Building 22. If no future application involving the use of radioactive materials is identified for it, it is GA's intent to decontaminate and decommission the building within 24 months and obtain its release to unrestricted use.

If you have any questions regarding the above, please don't hesitate to contact me at (619) 455-2823.

Very truly yours,

Keith E. Asmussen

Keith E. Asmussen, Director
Licensing, Safety & Nuclear Compliance

KEA:shs

cc: Mr. Leonard J. Callan, Regional Administrator, U.S. NRC Region IV
Mr. Kenneth E. Perkins, Jr., Office Mgr., NRC Region IV, WC Field Office
Mr. Robert C. Pierson, FCLB, NRC Headquarters
Mr. Ronald M. Scroggins, Office of the Controller, NRC Headquarters

October 17, 1995

Dr. Keith E. Asmussen, Director
Licensing, Safety and Nuclear Compliance
General Atomics
P.O. Box 85608
San Diego, California 92186-9784

SUBJECT: REQUEST FOR POSSESSION ONLY LICENSE AMENDMENT AND NOTIFICATION OF PERMANENT CESSATION OF PRINCIPAL ACTIVITIES - (TAC NO. L30809).

Dear Dr. Asmussen:

This refers to your application dated September 26, 1995, in which you requested an amendment to Materials License SNM-696 for a possession only license and notified the NRC of a permanent cessation of principal activities at your site.

You must submit a modification to your license describing anticipated activities and operations under a possession only license during the decommissioning of your facility. Please provide the additional information within 60 days of the date of this letter. Please reference the above TAC No. in future correspondence related to this request.

Further, you are reminded that you are required to develop a schedule and plan for decommissioning of your site under the timeliness rule cited in 10 CFR 70.38.

If you have questions regarding this matter, please contact me at (301) 415-8116.

Sincerely,

Original signed by:

Charles E. Gaskin
Project Manager
Licensing Section 1
Licensing Branch
Division of Fuel Cycle
Safety and Safeguards, NMSS

Docket No. 70-734
License No. SNM-696

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August 10, 1995

Dr. Keith E. Asmussen
Director Licensing, Safety
and Nuclear Compliance
General Atomics
P. O. Box 85608
San Diego, CA 92186-9784

'95 AUG 20 A7:31

SUBJECT: FINANCIAL ASSURANCE FOR DECOMMISSIONING (TAC NO. L21653)

Dear Dr. Asmussen:

This refers to your letter dated March 31, 1995, which responded to our February 3, 1995, letter which requested additional information and provided comments on your March 31, 1994, submittal regarding financial assurance for decommissioning.

Enclosed are additional comments that are based upon our review of your submittal. Please provide the additional information, specified in the enclosure, within 60 days of the date of this letter. Please reference the above TAC No. in future correspondence related to this request.

If you have questions regarding this matter, I can be contacted at (301) 415-8116.

Sincerely,
Original signed by:
Charles E. Gaskin
Project Manager
Licensing Section 1
Licensing Branch
Division of Fuel Cycle Safety
and Safeguards, NMSS

Docket 70-734
License SNM-696

Enclosure: As stated

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NF05
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Request for Addition Information
Supplemental Information dated March 31, 1995
General Atomics
Docket 70-734

Please provide the following information:

(1) Implement all necessary changes to the Decommissioning Funding Plan (DFP) at the present time.

(2) Eliminate the tax adjustment from the cost estimate.

(3) Revise procedures for adjusting the cost estimate and associated funding levels over the life of the facility (10 CFR 30.35(e)).

(4) Revise recital 7 of the parent company guarantee to delete added sentence (*Regulatory Guide 3.66*, page 4-42).

(5) Revise parent company guarantee to delete added recital (*Regulatory Guide 3.66*, pages 4-41 through 4-44).

The above recommendations and other issues are discussed below.

(1) Implement All Necessary Changes to the DFP at the Present Time

In response to Issues 1, 2, 4, and 8 in NRC's letter of February 3, 1995, GA proposes to revise its submission as called for by NRC, but not until its next annual submittal (presumably in March 1996).[1] Until Issues 1, 2, 4, and 8 are addressed by the licensee, NRC's concerns regarding the decommissioning cost estimate (Issues 1, 2, and 4) and the parent company guarantee (Issue 8) remain. These issues are not insignificant. For example, one item in Issue 8 noted that the licensee's guarantee agreement stated that "The current cost estimate of [the licensee's] cost for decommissioning is $3,885.000" (emphasis added). The inappropriate use of a period instead of a comma in the stated dollar figure reduces the amount of the guarantee by 99.9 percent, from over $3.8 million to less than $4,000.

To avoid an additional year (at a minimum) of inadequate financial assurance, GA must implement all necessary changes to its DFP at the present time.

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[1] The licensee's response indicates that, at the same time, the DFP will also be revised to address Issue 6. The response adequately clarifies why the issue raised by NRC (i.e., crediting the cost estimate for salvage value) is not a problem in its current cost estimate. Therefore, addressing this issue in the next annual submittal would be acceptable.

(2) Eliminate the Tax Adjustment from the Cost Estimate

The previously-submitted "total" decommissioning cost estimate of $3,885,000 represents only 60 percent of the $6,475,000 in decommissioning costs anticipated by the DFP. The submission's rationale for this 40 percent reduction, as clarified by the current response, is that payment of decommissioning costs results in "an immediate reduction in [federal and state tax] payments otherwise due" equal to 40 percent of the total costs incurred for decommissioning activities.[2] In other words, the submission does not claim that less than $6,475,000 will be required to carry out decommissioning, but rather that the licensee's "net" after-tax cost will be $3,885,000 because of a reduced tax liability for the year.[3]

Even assuming, however, that the licensee does in fact receive an immediate reduction in tax liability equal to 40 percent of decommissioning costs, this would be irrelevant for financial assurance purposes for at least two reasons:

(a) The purpose of financial assurance is to protect against situations where the licensee is unable or unwilling to conduct the required activities when necessary. Thus, the estimate must account for the possibility that the licensee is bankrupt or otherwise unable or unwilling to pay. No business could reasonably reduce the size of a security interest covering a debt it owes because of the net tax effects of paying off the debt. Similarly, the financial assurance necessary to cover decommissioning is measured by the cost estimate, irrespective of any tax effects. Presumably, if the security mechanism must be drawn upon (as in the case of bankruptcy), the licensee would be unable to pay for decommissioning, and the tax adjustment would not apply.[4]

(b) The tax adjustment is also inappropriate given the licensee's use of the parent company guarantee mechanism. Like other surety mechanisms, the terms of the submitted guarantee limit the guarantor's liability for decommissioning costs to a specified dollar amount. In an acceptable guarantee, this dollar amount is at

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[2] Thus, the submission implies that the licensee's effective combined federal and state tax rate equals 40 percent.

[3] The letter from the chief financial officer of the licensee's parent company guarantor also references the "net cost" of decommissioning.

[4] Even without bankruptcy, it is not certain that a tax savings would be realized. This is because the full tax benefit can be realized only if gross income before the deduction of any decommissioning costs equals or exceeds 100 percent of *actual* decommissioning costs or, in this case, $6,475,000. According to the 1994 financial statements of the licensee's parent guarantor (General Atomic Technologies Corporation), the guarantor had *negative* earnings of more than $17 million in 1994 before taxes.

least equal to the amount of the cost estimate.[5] If the 40 percent tax adjustment is included in the cost estimate, the guarantor's liability would be limited to $3,885,000. Once the guarantor pays this amount (at an after-tax cost of less than $3,885,000), the guarantor will face no further liability, even though 40 percent of decommissioning activities remain uncompleted.

In order to ensure that all necessary decommissioning activities can be funded regardless of what happens to the licensee, the licensee should eliminate from its cost estimate the after-tax adjustment that currently reduces the estimate by 40 percent.

(3) Revise Procedures for Adjusting the Cost Estimate and Associated Funding Levels Over the Life of the Facility (10 CFR 30.35(e))

As required by 10 CFR 30.35(e), the licensee's previously-submitted DFP described the means the licensee will use to adjust the decommissioning cost estimate and associated funding level over the life of its facility. The stated procedures, however, could result in indefinite periods of time during which the licensee's financial assurance may be inadequate to pay for all anticipated decommissioning costs. Further discussion provided in the licensee's current response states that the cost estimate:

> "...will be reviewed periodically, with no period exceeding 5 years, and that the financial assurance documents will be adjusted accordingly when such a review results in a significant change in the estimated decommissioning costs.... A change in estimated decommissioning costs of 25% or more is considered to be 'significant.'"

This procedure would effectively allow the licensee's financial assurance to be up to 25 percent too low - over $1.6 million - before the financial assurance mechanism would be adjusted. Thus, an increase of up to $1.6 million would not necessarily be addressed by the licensee even if the increase persisted for five or ten years or longer. To ensure that the licensee's financial assurance will be adequate to pay for all anticipated decommissioning costs, the licensee should increase the amount of its cost estimate and financial assurance mechanism(s) whenever the licensee's periodic review of the cost estimate indicates that costs have increased.

(4) Revise Recital 7 of the Parent Company Guarantee to Delete Added Sentence (*Regulatory Guide 3.66*, page 4-42)

Under Recital 7 of the parent company guarantee, the guarantor agrees that if the licensee fails to perform required decommissioning activities, the guarantor will either (1) carry out required decommissioning activities, or (2) fund a trust fund in the amount of the cost estimate to allow NRC to pay for decommissioning. The previously-submitted guarantee agreement modified

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[5] The licensee's guarantee agreement is not currently acceptable, as discussed in Recommendation 1.

the second, trust fund option, however, by adding the following wording, which is not recommended in *Regulatory Guide 3.66*, page 4-42:

> "The amount of funds to be placed in the trust fund by guarantor may be adjusted to account for the sums paid by [the licensee] towards the required decommissioning."

The licensee's current response objects to NRC's request that this sentence be deleted from the guarantee. NRC's rationale for objecting to the sentence was that the sentence effectively allows the guarantor to reduce the amount of the guarantee without the knowledge or consent of NRC and regardless of the cost of uncompleted decommissioning activities.

In the current response, the licensee states that it believes the guarantee is reasonable as originally stated because it provides NRC with the required "reasonable assurance of the availability of funds for decommissioning" and because

> "The regulations do not require that a trust fund be established for an amount in excess of the estimated remaining cost to decommission." (emphasis in original)

Although this statement is true, the added sentence in Recital 7 could allow the guarantor to reduce the amount of the guarantee, without NRC's knowledge or consent, even if the value of the guarantee did not exceed the estimated remaining cost to decommission. The sentence accomplishes this by, in effect, defining the estimated remaining cost to decommission as equal to the cost estimate minus any amount the licensee claims to have spent on decommissioning (regardless of actual remaining costs). In contrast, NRC procedures allow the licensee to reduce the amount of a financial assurance mechanism after NRC has approved a lower cost estimate.

Because the added sentence could significantly reduce NRC's ability to ensure that adequate funds will be available to conduct required decommissioning activities, the licensee should revise the guarantee to delete the added sentence from Recital 7.

(5) Revise Parent Company Guarantee to Delete Added Recital (*Regulatory Guide 3.66*, pages 4-41 through 4-44)

The previously-submitted guarantee agreement included all of the provisions recommended in *Regulatory Guide 3.66*, pages 4-41 through 4-44, but also added an extra paragraph as Recital 16. The licensee's current response objects to NRC's request that this added recital be deleted from the guarantee. NRC's rationale for objecting to the sentence was that the added recital may negate some of the protections provided to NRC by other provisions, such as Recitals 14 and 15. Recital 14 requires the guarantor to provide NRC and the licensee with at least 120 days advance notice of its intent to cancel the guarantee. Recital 15 addresses what the guarantor must do if it has notified NRC of its intent to cancel the guarantee (pursuant to Recital 14) and if the licensee is

unable to provide alternative financial assurance and obtain written approval of such assurance from the NRC prior to cancellation of the guarantee.

Although Recitals 14 and 15 were acceptable as submitted, the guarantee added a related recital (Recital 16) which is not called for in *Regulatory Guide 3.66*. The added paragraph reads as follows:

> If [the licensee] or the guarantor substitutes a commercial letter of credit in the amount of these current cost estimates for the decommissioning activities, then this guarantee shall terminate and be returned to guarantor within 30 days after receipt of such notice by the NRC as evidenced by the return receipt.

This recital could be interpreted as an automatic cancellation of the guarantee whenever a letter of credit is substituted, even if NRC has been provided with neither advance notice of cancellation of the guarantee, nor an opportunity to review and approve the letter of credit. Consequently, the added recital may reduce the assurance provided to NRC by the guarantee. Moreover, because Recitals 14 and 15 effectively govern the replacement of the guarantee by other mechanisms (including letters of credit), the extra paragraph is not necessary.

In the current response, the licensee states that it believes the guarantee is reasonable as originally stated because it provides NRC with the required "reasonable assurance of the availability of funds for decommissioning" and because

> "...the subject recital is consistent with the regulatory requirement for the licensee to provide a replacement method of guarantee acceptable to the Commission within 30 days after receipt of notification of cancellation (10 CFR 70.25). A letter of credit is one of the surety methods identified in the regulations as being acceptable to the Commission for providing financial assurance for decommissioning (10 CFR 70.25(f))."

Although the licensee's statement is true, we do not believe that the regulations cited suggest or imply that a letter of credit, or any mechanism specifically listed in the requirements, is automatically acceptable to NRC without NRC's review and approval. NRC's current review of the licensee's parent company guarantee clearly demonstrates that the acceptability of a financial assurance mechanism is determined only following NRC's active review and approval of the mechanism.

The licensee should revise the guarantee to delete the added recital shown above, in order to ensure that the guarantee will function properly should the licensee or the guarantor seek to substitute a letter of credit for the guarantee.

Other Issues

Apart from editorial and non-substantive changes to the standard wording provided in *Regulatory Guide 3.66*, the following modifications are noteworthy:

(1) The newly-submitted letter from General Atomic Technologies Corporation's (GATC's) chief financial officer (CFO) omits specific language indicating that GATC is guaranteeing costs for General Atomics and that General Atomics is GATC's subsidiary. Because both of these statements are included in the parent company guarantee, their omission from the CFO letter should not affect NRC.

(2) It is not clear that the special report (dated March 25, 1994) from the certified public accountant adequately confirms the guarantor's tangible net worth figure as used in the financial test submission. The financial test uses the same figure for both net worth and tangible net worth. A footnote to the special report's schedule attachment states the following:

> "The Company's assets and liabilities are all tangible. There is no difference between the Company's net worth and its tangible net worth."

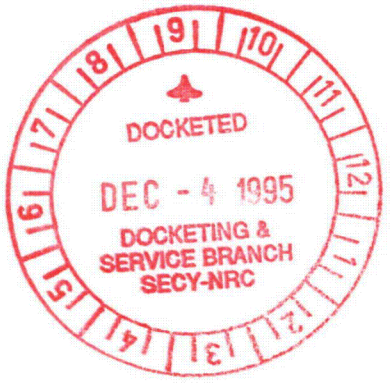
The procedures undertaken by the accountant are clearly described in the special report, but do not encompass an evaluation of this statement. Consequently, NRC cannot be sure that the tangible net worth figure (and hence the financial test as a whole) is accurate. However, a review of GATC's financial statements (see Note 5) revealed $1,193,000 in "other assets" that were not identified. While it may be worthwhile to seek an explanation regarding the nature of these assets, the amount is sufficiently low that it would not affect the guarantor's ability to pass the financial test.

(3) The licensee did not submit a standby trust fund, and instead noted that it did not believe a standby trust was required by NRC regulations. *Regulatory Guide 3.66* states that a standby trust fund "should" be used with a parent company guarantee to avoid the possibility that a trust fund will not be available if and when needed. Thus, the licensee is correct that a standby trust is not required with a parent company guarantee.

Finally, the licensee should ensure that documents submitted are originally signed duplicates, as recommended in *Regulatory Guide 3.66*. Unless the documents have been properly signed, NRC cannot be certain that the financial assurance mechanism is enforceable.

CERTIFICATE OF SERVICE

I certify that on December 4, 1995, copies of the foregoing NATIVE AMERICANS FOR A CLEAN ENVIRONMENT'S AND CHEROKEE NATION'S OPPOSITION TO JOINT MOTION FOR ADDITIONAL STAY OF DISCOVERY were served by fax and/or first-class mail on the following, as indicated below:



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