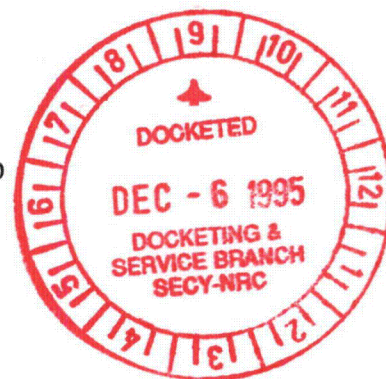


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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)
and GENERAL ATOMICS)

(Sequoyah Facility in)
Gore, Oklahoma))

Docket No. 40-8027-EA

December 6, 1995

**GENERAL ATOMICS' MOTION FOR LEAVE TO REPLY
TO INTERVENORS' OPPOSITION TO MOTIONS FOR
ADDITIONAL STAY OF DISCOVERY**

In accordance with the provisions of 10 C.F.R. § 2.730, General Atomics respectfully moves the presiding officer for leave to file its attached reply to "Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Motions for Additional Stay of Discovery," dated December 4, 1995.

BACKGROUND

By its Memorandum and Order of November 13, 1995, the Atomic Safety and Licensing Board ("Licensing Board") ordered that on or before November 27, 1995, the NRC Staff and General Atomics were to file additional information for consideration by the Licensing Board on the question of whether discovery activities should be stayed beyond December 8, 1995 in order to permit the NRC Staff and General Atomics to continue their on-going settlement discussions.

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Documents containing such additional information were subsequently and timely filed.¹ On December 4, 1995, the Intervenor filed their response arguing that the stay should not be continued and that the scope of discovery should be substantially broadened to permit discovery into matters which are clearly not within the jurisdiction of the Licensing Board or the scope of this proceeding.²

DISCUSSION

In their December 4, 1995 Opposition to Motions for Additional Stay of Discovery, the Intervenor has once again misread information provided to the Licensing Board by the NRC Staff and General Atomics. Of much greater significance, is the fact that the Intervenor has once again, and totally without justification, attempted to advance their procedural objectives by incorrectly accusing General Atomics of wrongful conduct. The Intervenor now asserts that General Atomics is "jeopardizing the substantive resolution of this case" by "taking action which would move assets and revenues out of the country, and potentially out of reach of

¹ Supplemental Status Report on Settlement Negotiations and Motion for Extension of Stay of Discovery Beyond December 8, 1995, November 27, 1995; NRC Staff's Additional Information in Support of Stay of Proceedings, November 27, 1995.

² Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Motions for Additional Stay of Discovery, December 4, 1995.

the NRC."³ The Intervenor further -- and incorrectly -- assert that the highly regrettable, but necessary termination by General Atomics of approximately 213 employees, "could adversely affect" General Atomics' ability to respond to pending discovery requests in the event that the current settlement discussions are unsuccessful.⁴ The Intervenor has also raised other unfounded objections to the separate motions of the NRC Staff and General Atomics for an additional stay of discovery.

General Atomics requests an opportunity to briefly address the incorrect statements and unfounded allegations of the Intervenor in order to give the Licensing Board a correct and complete understanding of these matters. No party will be prejudiced by the filing of such a reply.

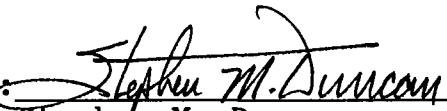
CONCLUSION

For the reasons set forth above, General Atomics' motion should be granted.

³ Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Motions for Additional Stay of Discovery, December 4, 1995, p. 4.

⁴ Id. at p. 5.

Respectfully submitted,

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ATTORNEYS FOR GENERAL ATOMICS

December 6, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

James P. Gleason, Chairman
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In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION)	Docket No. 40-8027-EA
and GENERAL ATOMICS)	
)	
(Sequoyah Facility in)	
Gore, Oklahoma))	December 6, 1995

**GENERAL ATOMICS' REPLY TO INTERVENORS' OPPOSITION
TO MOTIONS FOR ADDITIONAL STAY OF DISCOVERY**

General Atomics respectfully submits the following reply to the Opposition of the Intervenor to (1) General Atomics' Supplemental Status Report on Settlement Negotiations and Motion for Extension of Stay of Discovery Beyond December 8, 1995 (November 27, 1995), and (2) the NRC Staff's Additional Information in Support of Stay of Proceedings (November 27, 1995).

ARGUMENT

**I. THE INTERVENORS' FRIVOLOUS ALLEGATIONS OF
WRONGDOING MUST BE SUMMARILY REJECTED.**

The December 4, 1995 Opposition of the Intervenor to the motions of the NRC Staff and General Atomics for an additional stay of discovery, is yet another example of the type of irresponsible and frivolous litigation consistently engaged in by the Intervenor, all aimed at one objective: prolongation of this

proceeding and prevention of an amicable resolution of the matters raised by the NRC Staff's October 15, 1993 Order.

Within a period of only 21 days, the Intervenor's have unleashed a stream of false and totally unfounded invectives against General Atomics. First, the Intervenor's have strongly suggested that General Atomics intends to "misuse," "manipulate," and "dissipate" the resources of Sequoyah Fuels Corporation ("SFC") so that that company's net assets and net revenues cannot be used for the purpose of decommissioning the SFC facility in Gore, Oklahoma.¹ Second, the Intervenor's have mischaracterized the circumstances in which the SFC facility ceased operations in 1991 and 1992.²

The previous allegations of the Intervenor's, however, pale beside the hysterical fulminations which appear in their most recent filing. Declaring that the status quo has been altered in a way which jeopardizes the substantive resolution of this case, they now assert that General Atomics is "taking action which would move assets and revenues out of the country and potentially out of reach of the NRC," and that "a continued stay would only allow [General Atomics] further opportunity to move its assets out of

¹ Intervenor's' Petition for Review of LBP-95-18, November 13, 1995, pp. 7, 9.

² Id., at p. 2.

NRC's reach."³ The clear implication is that General Atomics is engaging in some form of wrongful conduct. The only evidence cited in support of this spurious allegation, is the fact that General Atomics is seeking "NRC approval to obtain a 'possession-only' license for its TRIGA research reactor fuel fabrication facility" in San Diego.⁴

In their zeal to prevent a settlement of this proceeding at all costs, the Intervenors are causing wasteful and senseless litigation by their unsubstantiated assertions of wrongdoing by General Atomics. At the risk of repeating the obvious, General Atomics would remind the Licensing Board that there is no allegation whatsoever in this proceeding that General Atomics has misused, manipulated, or dissipated any resources of SFC, or that it has otherwise engaged in any form of wrongdoing. Indeed, counsel for the NRC Staff have expressly stated that the question of wrongdoing is not even hinted at.⁵ Moreover, if the Intervenors

³ Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Motions for Additional Stay of Discovery, December 4, 1995, p. 4, 6.

⁴ Id.

⁵ At a January 27, 1995 hearing before the Licensing Board, questions were asked by a member of the Board and answered by the Commission's counsel as follows:

ADMINISTRATIVE JUDGE KLINE: At the moment, as the record stands before us though, the question of wrongdoing is not even hinted at in our record at present, is it?

MS. UTTAL: No.

ADMINISTRATIVE JUDGE KLINE: And in fact, the order that the

were interested in the truth, the inaccuracy of their broad allegations of wrongdoing could be quickly and easily determined.

Matters relating to General Atomics' TRIGA fuel fabrication technology are, of course, totally outside the scope of this proceeding and the jurisdiction of the Licensing Board. Nevertheless, for the limited purpose of demonstrating the frivolous nature of the argument advanced by the Intervenor in opposition to a continuation of the stay of discovery, it is necessary to describe the nature of the transaction referred to.

On July 25, 1995, General Atomics and CERCA of Paris, a French company, announced the formation of TRIGA International, a joint venture company which will market and sell General Atomics' TRIGA nuclear research reactor fuel worldwide. There are 60 TRIGA reactors in 23 countries around the world being used for education, training and research, and medical applications such as production of medical radioisotopes used in nuclear medicine and for cancer treatment.

The joint venture presents a clear business opportunity for General Atomics. Because of the excessive license fees of the NRC (approximately \$340,000.00 annually), the cost of producing fuel for the research reactors in the United States has become unacceptably high. By making a modest investment in the new joint venture, General Atomics can avoid the high cost of production in

Staff issued to the General Atomics was not premised on any allegation of wrongdoing, isn't that correct?

MS. UTTAL: That's correct.

the United States, retain an ownership interest in the technology, and share in the enhanced revenues which are likely to result from the expanded marketing effort. The alternative was unacceptable. Since General Atomics is the sole possessor of the fuel fabrication technology in the world, a termination of fabrication operations would necessarily have stopped the flow of revenue to General Atomics, and resulted in the eventual closing of all the TRIGA reactors due to lack of fuel.

The formation of the joint venture has been widely known for several months. After informing the Department of Energy, the NRC, and the Department of State of the details of the proposed joint venture and obtaining a favorable response to it, a Joint Press Release was issued on July 25, 1995 announcing this business development. A copy of the Press Release is attached hereto as Annex A. Since that time, articles discussing the joint venture have appeared in at least nuclear news (September 1995), the San Diego Union-Tribune (July 29, 1995), NuclearFuel (July 31, 1995), Atomic Energy Clearing House (July 28, 1995, and Nuclear Europe Worldscan. On September 15, 1995, the Department of Energy, with the concurrence of the Department of State, and after consultations with the Departments of Defense and Commerce, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, authorized the transfer of the TRIGA fuel fabrication technology.

The Intervenor further oppose a continuation of the stay of discovery in this proceeding on the ground of alleged questions about the ability of General Atomic Technologies Corporation

("GATC") to "back decommissioning costs for the TRIGA plant."⁶ Aside from the fact that any questions regarding the decommissioning of General Atomics' fuel fabrication facility in San Diego are premature, they are also far outside the scope of this proceeding and the jurisdiction of this Licensing Board. Moreover, this Board has no jurisdiction over GATC. As a practical matter, however, General Atomics represents to the Licensing Board that the NRC Staff has not challenged the ability of GATC to fulfill whatever obligations it may have with respect to the decommissioning of the San Diego facility.

In making allegations which have no foundation in fact, which raise issues clearly outside the scope of the Licensing Board's jurisdiction, and which have been made solely for the purpose of obtaining an immediate continuation of the litigation, the Intervenor has engaged in disruptive and disorderly conduct. The allegations they advance must be summarily rejected. If the conduct continues, the Intervenor should be the subject of the disciplinary provisions of 10 C.F.R. § 2.713(c).

**II. THE TERMINATION OF EMPLOYEES WILL NOT
ADVERSELY AFFECT GENERAL ATOMICS' ABILITY
TO RESPOND TO DISCOVERY REQUESTS.**

In what must be a new model of disputatious discourse without substance, the Intervenor now argue that discovery should no

⁶ Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Motions for Additional Stay of Discovery, December 4, 1995, p. 4.

longer be stayed because General Atomics' termination of the employment of approximately 213 of its employees "could adversely affect [General Atomics'] ability to respond" to the Intervenor's discovery requests "regarding events that took place in the past, such [General Atomics'] purchase of the SFC facility."⁷

Leaving aside the fact that there is no assurance that the Intervenor would be able to inquire into such matters at all,⁸ their "argument" makes no sense. However regrettable the termination of the employees may be to General Atomics, it does not follow that such terminations would have any effect on potential future discovery. The employees have not disappeared from the face of the earth. Nor have they suddenly suffered mass amnesia. They have merely ceased their employment with General Atomics. Presumably, if a future discovery request of the Intervenor was otherwise lawful and proper, the terminated employees could still speak to any issues raised. In any event, a continuation of discovery in this proceeding would not reinstate the employees. The Intervenor has otherwise failed to demonstrate any significant interest which would be adversely affected by a

⁷ Id., at p. 5.

⁸ In their August 25, 1995 Application for a Stay of (the Licensing Board's August 21, 1995) Order (Ruling on Intervenor's Motion to Compel Answers to First Interrogatories) and Request for a Temporary Housekeeping Stay, General Atomics informed the Nuclear Regulatory Commission ("Commission") of its intent to file a petition for review of the Licensing Board's Order and/or a motion for directed certification pursuant to 10 C.F.R. § 2.718(i) and 10 C.F.R. § 2.786(g). On August 30, 1995, the Commission granted the requested stay. It remains in effect.

continuation of the stay.

**III. THE OTHER "ARGUMENTS" ADVANCED BY THE
INTERVENORS MUST ALSO BE REJECTED.**

The other "arguments" made by the Intervenor in opposition to a continuation of the stay of discovery require little comment. First, it is self-evident that the senior management of General Atomics has been involved in both the Company's internal deliberations and the settlement negotiations on a continuing basis. This is not merely a matter of choice. The Company's management structure is too small and the issues under negotiation are too large to permit any other approach.

Second, and to the extent that it is possible to do so, a schedule for moving the negotiations forward has been agreed upon. Generally, the negotiating parties are proceeding with negotiations at the fastest pace possible. As General Atomics has previously stated, however, flexibility is required since the resolution of certain individual issues 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.

Finally, General Atomics rejects the implication of the Intervenor's incorrect assertion that "[General Atomics] did not seek settlement negotiations until the eve of NRC depositions of [General Atomics] staff."⁹ If that assertion is intended to

⁹ Native Americans for a Clean Environment's and Cherokee Nation's Opposition to Motions for Additional Stay of Discovery, December 4, 1995, p. 6.

suggest the reasons for which the negotiating parties entered into discussions, it is very uninformed. The settlement incentives for both negotiating parties are obvious and include the avoidance of huge litigation costs and the risks of adverse judgments (either in federal court or in this proceeding). Continued litigation will not act as a spur to settlement. To the contrary, if litigation costs become unavoidable, most of the incentives for settlement will disappear.

CONCLUSION

For all of these reasons, the arguments advanced by the Intervenors in opposition to the motions of the NRC Staff and General Atomics for an extension of the stay of discovery beyond December 8, 1995 must be rejected and the respective motions granted.

Respectfully submitted,

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COUNSEL FOR GENERAL ATOMICS

December 6, 1995



CERCA

Paris, July 25, 1995

JOINT PRESS RELEASE

General Atomics (US) and Cerca (France) A Joint Venture for TRIGA® Research Reactor Fuel Manufacturing

General Atomics (GA) of San Diego and Cerca of Paris (a Framatome subsidiary) announced today the formation of TRIGA International, a joint venture company located in France.

TRIGA International will market and sell GA's TRIGA® nuclear research reactor fuel worldwide and be the exclusive agent for Cerca's research reactor fuel products in the United States. The TRIGA® fuel is a uranium-zirconium hydride fuel allowing operational flexibility and repetitive high-power pulsing. The TRIGA International fuel manufacturing facility will be installed at Cerca's current manufacturing unit at Romans. All of the other TRIGA® research reactor-related activities of General Atomics will continue to be provided by the GA TRIGA® Group in San Diego.

In announcing the formation of this joint venture, Neal Blue, Chief Executive Officer of General Atomics, stated that "Cerca is one of the first suppliers of research reactor nuclear fuel around the world. The teaming of GA and Cerca not only gives GA a strong partner for its established TRIGA® nuclear reactor programs but also provides access to other related research reactor markets in the United States." Jean-Paul Lannegrace, Senior Vice President, Nuclear Fuel of Framatome and Chairman of the Board of Cerca, added for his part, that "this new partnership will allow Cerca, which already manufactures several types of nuclear fuels for research reactors, to widen its range of products."

The company will be jointly managed by Brian Thurgood (General Atomics) as President and Rene Romano (Cerca) as Managing Director.

GA has been a leader in the design, construction and operation of nuclear research reactors since 1958. There are 60 TRIGA® reactors in 23 countries around the world being used for education, training and research, and medical applications such as production of medical radioisotopes used in nuclear medicine and for cancer treatment. Cerca, created in 1957, is a world leader in the design and manufacturing of nuclear fuel for research reactors. Both companies also actively participate in all new developments in this field.

The combined experience of General Atomics' TRIGA® Group and Framatome-Cerca's manufacturing experience and know how will provide resources for accelerated research and development of advanced fuel products to better serve customers' requirements.

Press contacts:

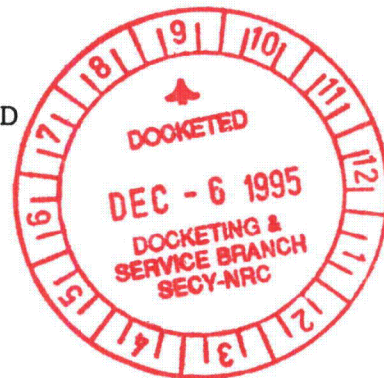
General Atomics: Doug Fouquet (San Diego) - Phone (619) 455 2173, Fax 455 4215
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(Sequoyah Facility in)
Gore, Oklahoma))

Docket No. 40-8027-EA

December 6, 1995

CERTIFICATE OF SERVICE

I hereby certify that the foregoing General Atomics' Motion for Leave to Reply to Intervenor's' Opposition to Motions for Additional Stay of Discovery and General Atomics' Reply to Intervenor's' Opposition to Motions for Additional Stay of Discovery were served on December 6, 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:

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

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Dated this 6th day of December, 1995.



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