

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

COMMISSIONERS:

'96 FEB 27 12:19

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In the Matter of)
)
SEQUOYAH FUELS CORPORATION)
and GENERAL ATOMICS)
)
(Gore, Oklahoma Site))

RECEIVED FEB 27 1996
Docket No. 40-8027-EA
(Decontamination and
Decommissioning Funding)

CLI-96-3

MEMORANDUM AND ORDER

The intervenors in this enforcement proceeding, Native Americans for a Clean Environment (NACE) and the Cherokee Nation, have filed a petition for Commission review of the Atomic Safety and Licensing Board's Memorandum and Order, LBP-95-18, 42 NRC 150 (1995). The State of Oklahoma also filed a petition for review and motion for leave to file an amendment to its original petition. The NRC staff, the licensee Sequoyah Fuels Corporation and its parent, General Atomics (GA), oppose Commission review. In accordance with the considerations discussed in 10 C.F.R. § 2.786(b)(4), the Commission has decided that review of LBP-95-18 is appropriate.

The record does not show, nor does the State of Oklahoma contend, that it is a party to this proceeding. It also did not participate as an "interested State" before the Licensing Board pursuant to 10 C.F.R. § 2.715(c). Therefore, it may not file its

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own petition for review.¹ Nevertheless, our regulations provide that if the Commission takes review of a Board order a person who is not a party may be permitted to file an amicus curiae brief, if the person requests by motion to file such a brief. 10 C.F.R. § 2.715(d). The Commission views the State's petition for review and subsequent motion as fulfilling this requirement. Accordingly, the State will be permitted, along with the parties, to provide a brief on the matters discussed below.

In LBP-95-18, a majority of the Board concluded that a joint settlement agreement between the NRC staff and SFC is in the public interest. 42 NRC 150 (1995). Judge Bollwerk did not join the majority and in a separate statement raised several issues which in his opinion merited further inquiry before reaching a final conclusion about whether to approve the settlement agreement. 42 NRC 156-59.

Answers to the following question would aid the Commission in its review of this matter:

1. Does SFC lack the financial resources to provide any surety instrument to guarantee additional funds for clean-up beyond the \$750,000 letter of credit?
2. Under paragraph 5 of the agreement, what process does the NRC staff intend to implement to ensure proper and timely review of SFC's annual audited financial statements?
3. What prejudice, if any, will occur if the Commission were to delay final approval of a settlement with SFC until after the NRC staff and General Atomics conclude their settlement negotiations?

¹ See Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), CLI-91-8, 33 NRC 461, 468-69 (1991); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Unit 1 and 2), ALAB-583, 11 NRC 447, 448-49 (1980).

Answers to these questions may address some of the inquiries raised by Judge Bollwerk in his separate statement. In their briefs, the parties and the State should also address the remaining matters raised by Judge Bollwerk.

Pursuant to 10 C.F.R. § 2.786(d), the Commission sets the following briefing schedule:

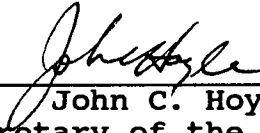
1. The intervenors and the State (hereinafter "petitioners") shall file their briefs within 21 days after service of this order. Their briefs shall be no longer than 25 pages each.
2. The NRC staff, SFC, and GA shall file their responsive briefs within 21 days after service of the petitioners' brief. Their responses shall be no longer than 25 pages each.
3. Within 10 days after service of the responsive briefs, the petitioners may file reply briefs. Their replies shall be no longer than 10 pages each.

Briefs in excess of 10 pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited. Page limitations on briefs are exclusive of pages containing a table of contents, table of cases, and of any addendum containing statutes, rules, regulations, etc.

IT IS SO ORDERED.



For the Commission



John C. Hoyle
Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of February, 1996.

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NUCLEAR REGULATORY COMMISSION

In the Matter of

SEQUOYAH FUELS CORPORATION
GENERAL ATOMICS
(Gore, Oklahoma, Site Decontamina-
tion and Decommissioning Funding)

Docket No.(s) 40-8027-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM MEMO & ORDER (CLI-96-3) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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COMM MEMO & ORDER (CLI-96-3)

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Dated at Rockville, Md. this
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