

June 14, 1996  
DOCKETED  
USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

'96 JUN 17 A8:12

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD BOARD OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )

SEQUOYAH FUELS CORPORATION )  
GENERAL ATOMICS )

Docket No. 40-8027-EA

(Gore, Oklahoma Site )  
Decontamination and )  
Decommissioning Funding) )

Source Material License  
No. SUB-1010

NRC STAFF'S AND GENERAL ATOMICS' JOINT MOTION FOR  
EXTENSION OF STAY OF DISCOVERY THROUGH JULY 1, 1996

In connection with the settlement process taking place between the NRC Staff (Staff) and General Atomics (GA), the Staff and GA hereby file this Joint Motion for Additional Extension of Stay of Discovery Through July 1, 1996, in order to permit the Staff and GA to clarify the details of a trust arrangement involved in the tentative settlement of this proceeding, consult with the Environmental Protection Agency, and to permit other events to be completed that will allow the tentative settlement to go forward.

BACKGROUND

The Atomic Safety and Licensing Board's (Board) most recent Order (Granting Additional Stay of Discovery) (May 14, 1996) (Order), suspended all discovery activities in this proceeding through June 14, 1996. The Order also provided that if the Staff and GA needed an additional stay of discovery beyond June 14, 1996, they should file on or before June 3, 1996, a motion addressing the "significant progress" and "substantial

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prejudice" concepts set forth in the Board's Memorandum and Order (Extending Discovery Stay Pending Submission of Additional Settlement Status Information) (Nov. 13, 1995), and Memorandum and Order (Granting Additional Stay of Discovery) (Dec. 8, 1995). *Id.* at 2. On June 3, 1996, the Staff filed a letter (Staff Letter) with the Board indicating that the Staff and GA were preparing to file by June 14 a settlement agreement, and thus were not moving at that time for a further extension of the stay.<sup>1</sup> The Staff Letter noted, however, that the filing of a settlement was dependent upon the completion of other matters outside the scope of this proceeding.

#### DISCUSSION

The Staff submitted the Staff Letter in anticipation of the other matters referred to in the letter, which involve GA's San Diego facilities, being completed by June 13, 1996.<sup>2</sup> Despite the diligence of other offices of the NRC handling these other matters, certain schedules have been delayed. In particular, the Commission has been provided a description of, and has until June 24, 1996, to object to the Staff's proposed course of action regarding the San Diego facilities.<sup>3</sup> Although these matters are outside the scope

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<sup>1</sup> Letter from S. Hom to the Board (June 3, 1996).

<sup>2</sup> In fact, the Staff had earlier planned for a completion date of May 28, 1996, but it later became clear that such date would not realistically be met.

<sup>3</sup> By presenting to the Commission issues relating to the San Diego facilities, the Staff is not seeking any prejudgment of any matter currently in litigation, including any potential settlement that may be offered concerning the Sequoyah Fuels Gore facility.

of this proceeding and the jurisdiction of this Board, they must be resolved before the execution of any settlement in this proceeding.<sup>4</sup>

In addition, certain complex issues regarding the establishment of a trust fund as part of a settlement of this proceeding have come more into focus. Although a certain amount of money to be voluntarily paid by GA to settle the litigation has been agreed

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<sup>4</sup> In the NRC Staff's and General Atomics' Joint Motion For Extension of Stay of Discovery Through June 14, 1996 (May 6, 1996), the parties stated:

As has been discussed in earlier pleadings before the Board, the resolution of this litigation may have a spillover effect on matters which are outside the scope of this proceeding and which are outside the jurisdiction of this Board. To reiterate, GA holds NRC licenses for a number of facilities in San Diego, California, including two TRIGA reactors, and hot cell and fuel fabrication facilities, for which GA has uncontested decommissioning liabilities. Any commitment of funds by GA to the Gore facility in settlement of this proceeding may impact GA's responsibilities for its San Diego facilities. Any such impact must be weighed and considered by Staff not involved in the instant litigation, including Staff in the Office of Nuclear Reactor Regulation, as well as the Office of Nuclear Material Safety and Safeguards. Ensuring that the agency as a whole is aware of the larger picture involving GA has required, and continues to require, a significant amount of resources and, consequently, time. Thus, in addition to devoting energies to drafting settlement documents and negotiating final points, the Staff has been involved in focusing the agency as a whole on the various broader issues that the agency faces by reason of a settlement on the Sequoyah Fuels litigation. In particular, the agency must decide what may be appropriate courses of action if GA's voluntary contribution of resources to settle this litigation reduces its ability to comply fully with the regulations on financial assurance regarding the San Diego facilities.

*Id.* at 2-3.

upon for some time, it has recently become apparent that further assistance from experts in the relevant areas is required to ensure that the goals of both parties and all applicable statutory provisions are met. It is conceivable that the mechanics of establishing a trust fund satisfactory to both parties may not be resolved. However, both parties believe it is worth expending the additional limited time and resources in an attempt to find an acceptable solution. Should there be no satisfactory solution, the parties would promptly notify the Board.

Finally, some coordination with another Federal government agency must be completed. The NRC Staff has had some discussions with the staff of that agency and is not aware of any likely impediment to a settlement between GA and the NRC Staff as a result of these discussions. However, as presently drafted the settlement is contingent upon certain approval by the other agency. Although the parties are not intimately familiar with the inner workings of that agency, the parties do not believe that obtaining such approval should take an extraordinary amount of time.

The four "significant progress" concepts<sup>5</sup> from the Board's November 13, 1995 Memorandum and Order still appear to be relevant only to the extent an estimate of time to complete negotiations is to be provided. At this stage, the uncertainty lies with the timing of the Commission's consideration of the matters relating to the San Diego

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<sup>5</sup> These concepts are: (1) that in addition to litigation counsel, senior management and policy staff for both GA and the Staff are involved in developing respective internal strategy as well as negotiations, as appropriate; (2) that the parties have identified the type and number of major issues in dispute; (3) that there is a schedule for internal strategy meetings as well as negotiation sessions on a regular basis that will ensure resolution of the issues in an orderly manner; and (4) that there is a reasonable estimate of time that negotiations will take.

facilities, the resolution of the trust issues that both parties are relying in part on expert opinions, and interaction with the EPA. Unfortunately, the parties do not have absolute control over the time it will take to complete these matters. Nonetheless, the Staff's and GA's best estimate is that an additional two weeks should allow sufficient time to resolve the foregoing matters (or determine whether there is an insurmountable obstacle) and enable the parties to move forward with the filing of a settlement before the Board.

With respect to the factor of "substantial prejudice," GA incorporates here the several factors which it has previously described<sup>6</sup> and which together constitute compelling reasons why substantial prejudice to the anticipated settlement will occur if the stay of discovery is not continued and GA is required to engage in discovery efforts and disputes with the intervenors in this proceeding. GA further notes that it would still make even less sense now than it would have previously, to divert the time and attention of GA's counsel and management from constructive efforts to resolve the dispute, to time-consuming and costly discovery efforts that will be made moot by the execution of a settlement agreement.

The Staff reaffirms its position regarding "substantial prejudice" stated in its pleading filed on November 27, 1995.<sup>7</sup> In summary, the Staff is concerned that any resumption of discovery against GA by the intervenors in this proceeding is likely to

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<sup>6</sup> See NRC Staff's and General Atomics' Joint Motion for Extension of Stay of Discovery Through May 15, 1996 (Apr. 1, 1996); Supplemental Status Report on Settlement Negotiations and Motion for Extension of Stay of Discovery Beyond December 8, 1995 (Nov. 27, 1995) at 5-8.

<sup>7</sup> See NRC Staff's Additional Information in Support of Stay of Proceedings (Nov. 27, 1995) at 6-7.

consume a very substantial amount of resources in terms of litigating discovery disputes and responding to discovery requests, particularly given the number of outstanding discovery disputes pending between GA and the intervenors. Accordingly, the Staff would anticipate a substantial impact on the completion of the settlement process with GA if discovery is permitted to resume. Also, since the intervenors appear to be principally seeking documents and have noticed no depositions, no prejudice in terms of fading memories or witnesses becoming unavailable is likely to occur, particularly in light of the limited additional period of time the Staff and GA anticipate it will take to resolve the issues described above. Therefore, the Staff believes that substantial prejudice to the settlement process will occur if discovery is permitted to resume.


#### CONCLUSION

Due to delays in certain matters outside of this litigation, but that bear on whether a settlement here can be reached, and difficult legal issues that the parties are still confronted with, the Staff and GA, unfortunately, have not been able to execute final settlement documents. The remaining issues ought to be able to be resolved within the next two weeks. Therefore, in consideration of the foregoing, the Staff and GA respectfully request that this motion to stay all discovery in this proceeding through


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July 1, 1996, be granted. Immediately prior to the filing of this motion, the Staff attempted to contact by telephone counsel for Native Americans for a Clean Environment and the Cherokee Nation to determine whether they oppose this motion; the Staff was unsuccessful in reaching both counsel.

Respectfully submitted,

  
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Dated at Rockville, Maryland  
this 14th day of June 1996

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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	)	OFFICE OF SECRETARY DOCKETING & SERVICE BRANCH
	)	Source Material License
(Gore, Oklahoma Site	)	No. SUB-1010
Decontamination and	)	
Decommissioning Funding)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S AND GENERAL ATOMICS' JOINT MOTION FOR EXTENSION OF STAY OF DISCOVERY THROUGH JULY 1, 1996" in the above-captioned matter have been served on the following by deposit in the United States mail, first class; or as indicated by single asterisk through deposit in the Nuclear Regulatory Commission's internal mail system; or as indicated by double asterisk via facsimile transmission; or as indicated by triple asterisk by hand delivery this 14th day of June 1996.

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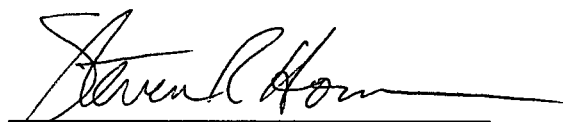
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