

August 22, 1996
SECRET
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'96 AUG 23 P12:05

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE

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

NUCLEAR REGULATORY COMMISSION STAFF'S RESPONSE
TO THE STATE OF OKLAHOMA'S MOTION FOR EXTENSION OF TIME

INTRODUCTION

On August 6, 1996, the State of Oklahoma (Oklahoma), by its Attorney General, filed a Motion for Extension of Time to review and comment on the Nuclear Regulatory Commission Staff's and General Atomics' Joint Motion for Approval of Settlement Agreement, filed on July 11, 1996 (Joint Motion). Oklahoma has not previously participated in the proceedings before this Atomic Safety and Licensing Board (Board). On August 19, 1996, the Board issued a Memorandum and Order indicating that it would entertain responses to Oklahoma's motion. Pursuant to the Board's order, the Staff now files its response to Oklahoma's Motion.

BACKGROUND

On October 15, 1993, the Staff issued an enforcement order requiring General Atomics (GA) and Sequoyah Fuels Corporation (SFC) to, *inter alia*, provide funding for decommissioning in accordance with 10 C.F.R. §§ 40.36 and 40.42. Both SFC and GA

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requested hearings on the Order. Native Americans for a Clean Environment (NACE) and the Cherokee Nation requested and were granted intervenor status in support of the Staff's Order. Oklahoma did not seek to intervene, pursuant to 10 C.F.R. § 2.714, nor did it seek participation as an interested state, pursuant to 10 C.F.R. § 2.715(c).

The Staff and SFC entered into a settlement agreement which was approved by the Board.¹ See Memorandum and Order (Approval of Settlement Agreement), LBP-95-18, 42 NRC 150 (1995) (LBP-95-18). Subsequent to the Board's issuance of LBP-95-18², Oklahoma filed a Petition for Review and Request for Additional Time to Amend and Supplement (November 13, 1995) and a Motion for Leave to File Amended Petition for Review and Brief (November 27, 1995), seeking, *inter alia*, to file a petition for review of the Board's decision approving the settlement agreement.³ The Commission denied Oklahoma's petition for review, while granting the Intervenors' petition, but granted Oklahoma leave to file a brief *amicus curiae* on issues outlined in the Order. CLI-96-3, 43 NRC 16, 17 (1996). The Commission held that because Oklahoma did not participate

² On September 29, 1995, the Attorney General of Oklahoma filed a letter, on behalf of the Oklahoma Department of Wildlife Conservation, requesting more time to review the settlement agreement. See LBP-95-18, 42 NRC at 151-152. The Licensing Board found that because Oklahoma was not a party to the proceeding, the Licensing Board lacked jurisdiction to address the concerns raised in its letter. *Id.* at 154.

³ On November 13, 1995, Native Americans for a Clean Environment and the Cherokee Nation, intervenors in this proceeding (Intervenors), also filed a petition for review with the Commission. Intervenors' Petition for Review, November 13, 1995.

in the proceeding before the Board, it could not file its own petition for review, but was limited to filing a brief *amicus curiae*, pursuant to 10 C.F.R. § 2.715(d). *Id.*

On July 10, 1996, after extended negotiations, the Staff and GA entered into a settlement agreement. On July 11, 1996, the Staff and GA filed a joint motion for approval of the settlement agreement.⁴

As of this date, Oklahoma has still not requested to participate in this proceeding, pursuant to 10 C.F.R. § 2.714 or § 2.715(c).

ARGUMENT

The State of Oklahoma has not heretofore requested leave to participate in this matter as a party, pursuant to 10 C.F.R. § 2.714, or as an "interested state" pursuant to 10 C.F.R. § 2.715(c). Its present motion contains no such request. Therefore, Oklahoma is not a participant in these proceedings and the Board does not have jurisdiction to address Oklahoma's concerns. *See* LBP-95-18, 42 NRC at 154. In permitting Oklahoma to participate as *amicus* in the Commission's review of LBP-95-18, the Commission said:

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 own petition for review. 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 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.

⁴ The Staff notes that a copy of the Joint Motion was served on all persons and entities listed on the certificate of service appended thereto, including Jeannine Hale, Esq., Assistant Attorney General. (Exhibit 1).

CLI-96-3, 43 NRC 16, 17 (1996). Clearly, the Commission's Order granted Oklahoma only the opportunity to file an *amicus curiae* brief in the matter pending before the Commission -- the Intervenor's petition for review of LBP-95-18. Thus, Oklahoma has no standing to request an extension of time to review and comment on the Joint Motion.

The Commission's regulations afford interested states the opportunity to participate in proceedings before NRC tribunals without the necessity of submitting contentions or taking positions on issues. 10 C.F.R. § 2.715(c). *See also Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977). Moreover, the participation of interested states in NRC proceedings is desirable. *See e.g., Public Service Company of New Hampshire* (Seabrook Station, Units 1 & 2), CLI-77-25, 6 NRC 535, 537 (1977). Nonetheless, the interested states, and their representatives, are under an obligation to be cognizant of, and comply with, the Commission's regulations. *See Boston Edison Co.* (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 467 n.24 (1985), *citing, Duke Power Co.* (Perkins Nuclear Station, Units 1, 2 and 3), ALAB-615, 12 NRC 350, 352 (1980). That apparently has not been done in this case, as evidenced by Oklahoma's failure to comply with the Commission's regulations governing participation in NRC proceedings.

CONCLUSION

Based upon the foregoing, the Staff respectfully requests that Oklahoma's motion be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Uttal', written in a cursive style.

Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of August 1996

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
SEQUOYAH FUELS CORPORATION)	Docket No. 40-8027-EA
GENERAL ATOMICS)	
)	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 APPROVAL OF SETTLEMENT AGREEMENT" 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 triple asterisk by hand delivery this 11th day of July 1996.

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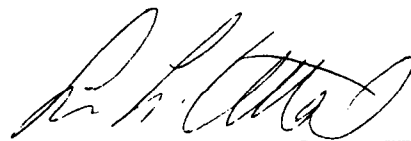
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NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'96 AUG 23 P12:06

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