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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

Before

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John H Frye, III  
Administrative Judge

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of:

SEQUOYAH FUELS CORPORATION

(Sequoyah Facility)

Docket No. 40-8027

ASLBP No. 85-513-03-ML

September 26, 1985

MEMORANDUM AND ORDER  
(Ruling on Petitions to Intervene)

Introduction

On August 8, 1985, I issued a Memorandum and Order (50 Fed. Reg. 32665, August 13, 1985) which set a deadline of September 12 for filing petitions to participate as a party in this proceeding. These petitions were to establish each petitioner's interest in the proceeding, state the aspects of the proceeding on which petitioner wished to be heard, and state the nature of the relief sought with respect to each of petitioner's complaints. Petitioners were instructed to describe in detail any deficiencies in the application and to submit all data and material in their possession which supports their position. Petitioners were advised that this proceeding might be concluded on the basis of their petitions without the opportunity for further submissions. The Memorandum and Order also provided that those who did not wish to become parties could submit limited appearance statements by September 12.

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Those petitions which did not meet the requirements for party status would be treated as limited appearance statements.

#### Petitions and Limited Appearance Statements

Fourteen individuals and organizations responded to the Memorandum and Order. Each response is addressed below.

Native Americans for a Clean Environment Client Council (NACE), one of the three organizations which had requested that the Commission institute a proceeding, filed a timely petition. NACE identifies itself as an incorporated association of Native American Citizens, primarily of the Cherokee Nation, which has at least 40 paid members. NACE's purposes include public education and protection with regard to the hazards of toxic chemical and radioactive waste, particularly those generated by Sequoyah Fuels Corporation's (SFC) Sequoyah Fuels Facility, whose license amendment application is the subject of this proceeding.

NACE seeks to intervene to represent its members, one of whom, Jessie Deer in water, resides within ten air miles of the SFC facility and who has authorized NACE to represent her interests. Ms. Deer in water serves as chairperson of NACE and has joined the petition pro se. NACE is represented by counsel.

The petition recites that NACE's members will suffer injury as a result of additional radiological contamination of the environment if the proposed amendment is granted. The petition notes that NACE's

members reside, recreate, and gather foodstuffs in the vicinity of the SFC facility and that their property and health may be damaged.

NACE and Ms. Deer in water have established that they have standing to participate and are hereby granted party status. Their complaints will be addressed below.

The Cherokee Nation (Cherokee) also requested that the Commission institute a proceeding on the SFC application and filed a timely petition in response to the August 8 Memorandum and Order. That petition recites that SFC's facility is sited on lands which were allotted to Cherokee's members pursuant to the Act of June 1, 1902, 32 Stat. 716, and lands held in trust by the United States pursuant to the Act of April 26, 1906, § 27, 34 Stat. 148.

The petition recites that several thousand of Cherokee's members reside in the immediate geographic vicinity of SFC's facility, that the proposed expansion poses a health threat, and that the Cherokee Tribal Council is concerned about the high incidence of cancer among tribal members. The petition also asserts that the bed of the Arkansas River is owned by Cherokee, citing Choctaw Nation v. Oklahoma, 397 US 620 (1970).

Cherokee has established that it has standing to participate as a party in this proceeding. However, Cherokee has not stated any specific complaints in its petition. Rather the petition recites that Cherokee will ". . . file contentions on the health and safety issues created by the pending application." The petition was filed by counsel for Cherokee.

While Cherokee would be permitted to file contentions in the future under the procedure sanctioned by 10 CFR § 2.714(b) in formal proceedings, the Commission did not adopt that provision for this proceeding. Rather, the Commission adopted only § 2.714(d) relating to standing. The August 8 Memorandum and Order stated plainly that a petitioner's complaints were to be detailed and supported in its petition. Cherokee's failure to have complied with this requirement would justify dismissal of its petition.

However, Cherokee clearly has standing, and the concern of the Tribal Council over the apparently high incidence of cancer among tribal members parallels similar concerns detailed in ¶ VI of NACE's petition. NACE and Cherokee are represented by the same counsel. Consequently I will permit Cherokee to participate as a party on condition that it consolidates its participation with NACE.

Citizen's Action for a Safe Environment (CASE) was the third organization to request that the Commission institute a proceeding. In response to the August 8 Memorandum and Order, Dr. Charles A. Gourd, Co-chair of CASE submitted a petition which was filed on September 16 pursuant to an extension of time which I orally granted.

CASE bases its standing to participate on the interest of its members. The petition recites that these members' health and property are threatened by radioactive effluents from the proposed addition to the SFC facility, and expresses concern that that facility may be turned into a nuclear waste dump. The petition notes Dr. Gourd resides fifteen miles from the facility. I find that CASE has established standing

based on the interest of its members and that Dr. Gourd's filing of the petition on CASE's behalf constitutes his authorization to CASE to represent his interest. Accordingly, CASE is granted party status. Its complaints are discussed below.

In addition to the above, petitions were received from persons who did not request that the Commission institute a proceeding. One of these was filed by Aerojet Heavy Metals Company (Aerojet) of Jonesborough, Tennessee.

Aerojet has entered into a contract with SFC under which it will purchase the  $UF_4$  which would be produced by SFC if the license amendment is granted. Aerojet needs to acquire the  $UF_4$  on a timely basis if it is to comply with contracts it has entered with the U.S. Department of Defense.

Aerojet's interest in this proceeding is purely economic, and hence outside the zone of interests protected by the Atomic Energy Act. Consequently Aerojet lacks standing and its petition is denied. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). I am confident that Aerojet's interest will be adequately represented by SFC. Aerojet's petition will be treated as a limited appearance statement.

The Town of Gore has petitioned to intervene in support of the application, citing the fact that it is vitally interested, because of SFC's economic effect on the town as an employer, in the continued operation and prosperity of SFC. In support of this interest, Gore points out that the purposes of the Atomic Energy Act include improving

the general welfare and increasing the standard of living and that Gore's general welfare and standard of living are significantly related to the continued operation and growth of SFC. Gore understandably has not filed complaints with respect to the application, and requests that the application be granted without delay. In the event further proceedings are held, Gore wishes the opportunity to respond to any complaints that are raised.

I do not believe it necessary to address the question whether Gore's interest falls within the zone of interests protected by the Atomic Energy Act. In formal Commission proceedings, municipalities are afforded the opportunity to participate as Gore wishes. See 10 CFR § 2.715(c). I see no reason why Gore should not be afforded a similar opportunity in this proceeding, and grant its petition.

The Oklahoma State Department of Health has filed a petition to participate by introducing evidence and interrogating witnesses. The Department notes that it is charged with administering various environmental laws, that SFC's proposed facility will generate air emissions and various wastes, that the Department has previously issued SFC a permit to inject industrial waste underground and is considering an application to increase the volume of wastes so injected, and that jurisdictional boundaries between hazardous waste which may also be classified as radioactive waste are unclear. The Department's request appears to be framed under 10 CFR § 2.715(c). For the reasons stated with respect to the Town of Gore's petition, the Department's petition is granted. However, both Gore and the Department are reminded that,



because this is an informal proceeding, no cross-examination of witnesses will be permitted at any hearing. Rather, questions may be suggested to the Presiding Officer which he may elect to pose.

Ed Henshaw, an adjoining property owner to the SFC facility, filed a petition on September 16 pursuant to an extension of time which I orally granted to him. His petition recites that he owns ten acres adjoining the SFC facility on which he resides with his family and keeps livestock. He is concerned that the proposed facility may injure his and his family's health, his real and personal property, and his livestock. Mr. Henshaw has standing to participate as a party; his petition is granted. His complaints are discussed below.

The Arkansas Peace Center (APC), a non-profit citizens organization established in 1982 to work against the threat of nuclear war whose headquarters are in Little Rock, filed a timely petition. The petition indicates that APC's interest is founded on that of its members, one of whom resides in Fort Smith, Arkansas (about 40 miles from the facility) and who authorized APC to represent her interests. APC is concerned about the expenditure of funds for processing nuclear materials, the pollution of the Arkansas River and ground water supplies linked to it (Fort Smith is located on the Arkansas River downstream of the facility), the underground injection of wastes, and seismicity.

APC has demonstrated standing to participate and is granted party status. Its complaints are discussed below.

The Muskogee County Client Council (MCCC) filed a timely petition. MCCC is a citizens' organization composed of low-income residents of

Muskogee County. The petition recites that MCCC's members live, work, and recreate within a 75-mile radius of the SFC facility. MCCC bases its interest on the interest of its members and expresses concern for their health and safety should the application be granted. MCCC has not included the affidavit of one of its members authorizing MCCC to represent his or her interest.

The National Water Center (NWC) of Eureka Springs, Arkansas, has also filed a timely petition. As its name implies, NWC is primarily interested in the protection of water resources. Its members reside throughout the U.S., with the majority in Arkansas and neighboring states. The petition recites that Mr. Wolf Grulkey of Alma, Arkansas, lives within 50 miles of SFC and has authorized the petition, but no authorization has been supplied.

In its Order initiating this proceeding, the Commission specifically made the requirements of and decisions under 10 CFR § 2.714(d) applicable to petitions to intervene. One of those decisions, Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-400 (1979), requires that an authorization be furnished to the organization by a member with standing authorizing the former to represent the latter's interest if the organization is to be permitted to intervene based on its members' interest. MCCC has not furnished such an authorization, and NWC, while indicating that one exists, did not furnish it. NWC is granted until October 4 to furnish this authorization. After receipt, I will rule on NWC's standing. Because MCCC's petition fails on other



grounds which are discussed below, I have not granted it a similar opportunity.

Like Cherokee, NWC has indicated that if its petition is granted, it will file contentions on certain identified aspects. However, NWC has, in identifying the aspects of the proceeding which interest it and in describing how its interest may be affected by the proceeding, substantially complied with the August 8 Memorandum and Order. Consequently NWC is conditionally permitted to participate as a party based on the information furnished in its petition, and pending receipt of the authorization called for above.

Similarly, MCCC has not identified its complaints as required by the August 8 Memorandum and Order. Moreover, the aspects it has identified on which it wishes to file contentions provide only conclusions without any explanatory information, and no elaboration of its complaints can be found elsewhere in the petition. Consequently, MCCC's petition to participate as a party is denied and will be treated as a limited appearance statement.

The City of Webbers Falls and The Sallisaw Chamber have filed limited appearance statements. These will be considered. The People's Action for a Safe Environment has requested authorization to make a limited appearance statement at a public hearing. This request is granted.

Preliminary Matters

Before discussing the complaints of the parties, some preliminary matters must be addressed.

First, some parties have complained about the short period of time allowed to file their petitions, the difficulty of obtaining expert consultation during August, and the fact that they must detail their case "in advance" to SFC. One party has withheld some information in order to prevent any advance disclosure to SFC.

I recognize that the time available has been short. However, a review of the successful petitions indicates that the petitioners have, on the whole, outlined their complaints and the reasons for them very well. This is necessary if SFC is to be afforded a reasonable opportunity to respond, also in a short period of time. I do not perceive any unfairness to the intervening parties in requiring that their complaints be detailed initially. Their complaints form the subject matter of the proceeding. If they are not detailed initially, the proceeding will lack direction and purpose. Consequently, the intervening parties must recognize that their further participation will be limited by the contents of their petitions, absent a showing of "good cause" to introduce a new complaint. Compare 10 CFR § 2.714(a)(1).

This is not to say that the intervening parties are strictly limited to the "testimony" contained in their petitions. At the public hearing which will take place, they may introduce testimony which elaborates on the points raised in their petitions. SFC will be given

the opportunity to respond, and all parties may suggest questions to be posed by me to another party.

Second, I also recognize that there is some degree of overlap between the application for a license amendment which is before me and the underlying license which the NRC Staff is considering renewing. However, all parties must recognize that I have been empowered by the Commission to hear the license amendment only. I have no authority with respect to SFC's request for a renewal of its license.

Third, now that the parties have been identified, all written submissions made by a party are to be served on the other parties (including SFC) and the Presiding Officer by deposit in the mails, first class postage paid, or by hand delivery on or before the due date for the submission. The original of any submission is to be filed with Office of the Secretary, U.S. Nuclear Regulatory Commission (Attention: Docketing and Service Branch), 1717 H Street, N.W., Washington, D.C. 20555. The Presiding Officer's address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Parties' addresses may be ascertained from the service list attached hereto.

Fourth, on September 25, Staff advised that it would not participate as a party but wished to be placed on the service list. Accordingly Stephen H. Lewis, Deputy Assistant Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is to be added to the service list. All parties are to serve Mr. Lewis with their written submissions.

### Complaints

Before holding a public hearing, SFC must be afforded the opportunity to respond to the complaints raised by the petitions. I have reviewed the safety, pollution and other technical concerns of the intervening parties, including NWC. It appears that many of these concerns stem from a too succinct treatment presented by SFC in its  $UF_6$ -to- $UF_4$  license amendment request. SFC is to respond in detail to the technical questions raised in the petitions of the intervening parties and NWC. Particular attention will be given to the following:

1. the incremental increase in releases of radioactivity;
2. the incremental increase in wastes to be disposed of by deep-well injection;
3. the incremental increase in wastes to be disposed of by burial at approved sites;
4. the incremental use and loss of water in the  $UF_6$ - $UF_4$  process;
5. the reasoning behind the allocation of \$500,000 for decommissioning; and
6. the technical reasons for there being no accidental criticality problems, considering the actual depletion percentage of the uranium used in the conversion process.

To the extent that SFC believes that questions raised in the petitions do not impinge on the license amendment request, it is to provide a detailed explanation. The responses will be made by

affidavit, filed, and transmitted to me and all the intervening parties no later than October 15, 1985.

On receipt of SFC's response, I will determine which of the complaints raised by the petitioning parties are to be addressed at the public hearing and which are not. I will also establish the procedures to be followed at that hearing and set a time and place (in the vicinity of the SFC facility) for the hearing.

NACE and APC questioned the propriety of considering a substantial amendment to SFC's license prior to final action on SFC's license renewal request. They point out that the renewal request has been pending for three years. On September 25, Staff advised me that it issued the renewed license on September 20. This moots the question raised by NACE and APC.

NACE has also questioned the adequacy of the environmental information submitted by SFC (See pp. 7-10 of the NACE petition.) I wish to know Staff's position as to the adequacy of this information to permit Staff to prepare its environmental assessment. Further, I would appreciate being advised of Staff's schedule for completing its environmental assessment and completing review of the SFC license amendment request. I would appreciate Staff's responses by October 25, 1985.

In my review of SFC's application and the petitions, I have been assisted by Administrative Judge Glenn O. Bright, a nuclear engineer and permanent member of the NRC's Atomic Safety and Licensing Board Panel. Judge Bright will continue to assist throughout this proceeding.

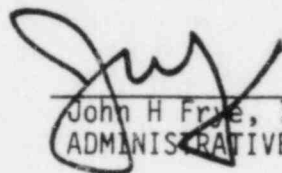
ORDER

In consideration of the foregoing, it is ORDERED:

1. The petitions to participate as a party of:
  - a. NACE, Ms. Jessie Deer in water, CASE, Mr. Ed Henshaw, APC, the Town of Gore, and the Oklahoma Department of Health are granted;
  - b. Cherokee is granted conditioned on its consolidation of its participation with NACE;
  - c. NWC is granted conditioned on its furnishing the authorization of one of its members with standing to represent his or her interest;
  - d. MCCC and Aerojet are denied.
2. SFC is to respond to the allegations of the petitions which have been granted no later than October 15, 1985. SFC is to serve its response on all parties.
3. Staff is requested to respond to the questions posed herein by October 25, 1985 and to serve its response on all parties.
4. In the future, all written submissions of a party are to be filed and served in accord with the instructions on page 11-12 of this Memorandum and Order.



5. Stephen H. Lewis, Deputy Assistant Chief Hearing Counsel,  
Office of the Executive Legal Director, U.S. Nuclear Regulatory  
Commission, is to be added to the service list.

  
John H. Frye, III  
ADMINISTRATIVE JUDGE

Attachment:  
As stated

Bethesda, Maryland  
September 26, 1985

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

SEQUOYAH FUELS CORPORATION

(Sequoyah Facility)

Docket No.(s) 40-8027-MLA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB Order re: Intervention have been served upon the following persons in accordance with the requirements of 10 CFR section 2.712.

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Docket No.(s) 40-8027-MLA

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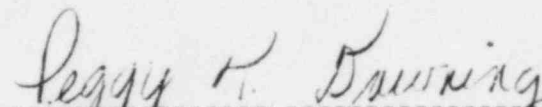
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Dated at Washington, D.C. this  
27 day of September 1985

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