

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USMRC

ATOMIC SAFETY AND LICENSING BOARD -2 P 4 :49

Before Administrative Judges:

Thomas S. Moore, Chairman

Charles N. Kelber

Peter S. Lam

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

DUKE COGEMA STONE & WEBSTER

(Savannah River Mixed Oxide Fuel
Fabrication Facility)

Docket No. 070-03098-ML

ASLBP No. 01-790-01-ML

**Duke Cogema Stone & Webster's Answer in Opposition to
GANE'S Request for
30-Day Extension for Filing Contentions on the CAR**

On June 27, 2001, Georgians Against Nuclear Energy ("GANE") filed a motion with the Licensing Board requesting that an additional 30 days be added to the "deadline for filing proposed contentions and additional information supporting standing." Request for Extension at 1. The sole justification for GANE's extension request is that "Dr. Edwin Lyman, on whose expertise GANE intends to rely in forming, presenting and proving its contentions has several prior commitments which render him unavailable to this process until July 20, 2001." *Id.* Pursuant to the Licensing Board's Order of June 27, 2001, Duke Cogema Stone & Webster ("DCS") hereby files its Answer in opposition to GANE's Request for Extension. For the reasons discussed below, GANE's Request should be denied.

I. Dr. Lyman's Alleged Unavailability Does Not Constitute An Unavoidable and Extreme Circumstance

By Order dated June 14, 2001, the Commission directed that "the presiding officer should not grant requests for extensions of time in this proceeding absent unavoidable and extreme circumstances." *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility) CLI-01-13, slip. op. at 10 (2001) (emphasis added). This standard places a very high burden on a party seeking a time extension, and is a means of assuring that the proceeding is conducted with a high degree of efficiency. *Baltimore Gas and Electric Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 342 (1998), *aff'd* 208 F.3d 256 (D.C. Cir. 2000). During the June 19 and June 26, 2001 conference calls, the Licensing Board reiterated that this standard would apply to all extension requests in this proceeding.

Alleged unavailability of an expert to review documents and help form contentions falls well short of the "unavoidable and extreme circumstances" standard. Indeed, a Licensing Board denied a request for extension of time based on virtually identical circumstances. In the Calvert Cliffs license renewal proceeding, a petitioner requested an extension of time based on the unavailability of experts to review the license renewal application and to provide technical input into contentions. *See Baltimore Gas & Elec. Co.* (Calvert Cliffs Nuclear Power Plant, Units 1 & 2) 1998 WL 634570 (N.R.C.) at 1, *aff'd* CLI-98-25, 48 NRC 325 (1998). The license renewal application had been made available to the public in April 1998 and the petitioner requested the extension in August 1998. *Id.* The Board found that the petitioner:

has not made any showing as to why, in light of this extended [four month] period during which the...application was available, [the petitioner] is unable to complete its contention composition efforts by

the...deadline. Thus, its expert review claim does not provide requisite "unavoidable and extreme circumstances" that warrant an extension.

Id.

GANE has had ample time to prepare contentions. The CAR was filed with the NRC on February 28, 2001. We understand that, by no later than March 22, 2001, it was available for public inspection on the NRC MOX website and in the NRC's Public Document Room (PDR). *See* Electronic Notice from NRC Staff regarding availability of the CAR, March 22, 2001. The CAR was also available for purchase on CD-ROM by no later than that March date.¹ The Commission's notice of opportunity for hearing was also published on April 18, 2001. *See* 66 *Fed. Reg.* 19994 (2001). Even if, *arguendo*, GANE did not gain access to the CAR until April 18, GANE will have had almost three and a half months to prepare for the July 30 deadline.

Moreover, the rationale for why Dr. Lyman is unavailable (prior business or personal commitments) is insufficient to support GANE's request. Such prior commitments do not constitute "unavoidable and extreme circumstances." *See Florida Power and Light Co. (Turkey Point , Units 3 and 4)* 2000 NRC Lexis 149, at 1. In *Turkey Point*, the petitioner requested an extension of time to submit contentions because "she has work and family commitments that she must meet prior to leaving town for the holiday." *Id.* at 3. The Licensing Board denied the petitioner's request, stating that "the

¹ The CAR is a 2 CD set. The cost is \$22 per CD, or \$44 for the set plus shipping. The PDR accepts credit cards such as Visa, Mastercard, and Discover. Turnaround time is 24 hours during business days. *See* Electronic Notice from NRC Staff regarding availability of the CAR, March 22, 2001.

circumstances...simply do not rise to the level of unavoidable and extreme circumstances contemplated by the Commission.”² *See id.* at 4.

Furthermore, available technology (CD-ROM drives, e-mail and fax for non-proprietary material, and express U.S. mail and Federal Express for proprietary material) allows Dr. Lyman to support GANE wherever he may be located. In short, Dr. Lyman’s busy schedule “simply [does] not rise to the level of unavoidable and extreme circumstances contemplated by the Commission.” *See id.*

II. An Extension Would be Inconsistent with the Commission’s Expectations for Timeliness and Efficiency

Granting the requested extension would be inconsistent with the Commission’s stated expectations. As stated in its referral order:

The Commission believes that this proceeding should be completed in a timely and efficient manner because the applicant is seeking authorization to build a facility that would implement a significant objective of national security and policy: reducing the inventory of plutonium in the nation’s nuclear weapons’ inventory in accordance with the U.S. – Russian Federal Plutonium Disposition Agreement.

Duke, Cogema, Stone & Webster, CLI-01-13 at 7. The Commission has placed a high priority on the timeliness and efficiency of the completion of this proceeding. An unjustified extension of time runs completely counter to the Commission’s directive.

III. Additional Time to Prove Standing is Also Unnecessary

Finally, although the title of GANE’s request suggests the extension should only apply to the filing of contentions, the body of the request also seeks an extension for

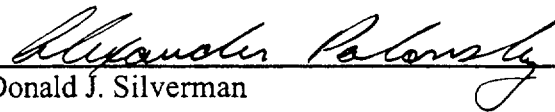
² The Licensing Board in Turkey Point found that the petitioner had ample time to prepare within a shorter time frame than is being provided to GANE in this case. In Turkey Point, the Commission published the notice of opportunity for hearing on October 12. *See Florida Power and Light*, at 4. The Licensing Board set the deadline for filing contentions on December 22. The Board found that two and a half months was enough time for the petitioner to prepare and file final contentions. *See id.* at 5. GANE, with more resources than the individual petitioner in Turkey Point, will have three and a half months to prepare.

filing "additional information supporting standing." Request for Extension at 1. There is no plausible nexus between retention of an expert and formulation of GANE's bases for demonstrating standing. No expert assistance should be needed for this task.³

IV. Conclusion

For the reasons stated above, DCS respectfully requests that GANE's Request for Extension be denied.

Respectfully submitted,


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**Attorneys for Duke Cogema Stone &
Webster**

Dated June 29, 2001

³ GANE also requests that the Licensing Board "present [its] request to the Commission . . ." Request for Extension, at 2. GANE has not demonstrated the compelling need that would be required for such a certification.

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NOTICE OF APPEARANCE OF STEVEN P. FRANTZ

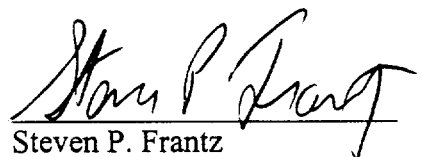
The undersigned, being an attorney at law in good standing admitted to practice before the courts of the District of Columbia, hereby enters his appearance in any proceeding related to the above-captioned matter as counsel on behalf of Applicant, Duke Cogema Stone & Webster, 400 S. Tryon St., Charlotte, North Carolina 28202.

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Dated: June 29, 2001

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CERTIFICATE OF SERVICE

I hereby certify that copies of:

- (1) Duke Cogema Stone & Webster's Answer in Opposition to GANE'S Request for 30-Day Extension for Filing Contentions on the CAR; and
- (2) Notice of Appearance of Steven P. Frantz

were served this day upon the persons listed below, by both e-mail and United States Postal Service, first class mail, with the exception of Environmentalists, Inc, which was served by overnight mail.

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6/29/01
Date