

RAS 3714

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## NUCLEAR REGULATORY COMMISSION

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Title: Duke Cogema Stone and Webster  
Savannah River MOX Fuel Fabrication  
Facility

Docket Number: 70-3098-ML

Location: (telephone conference)

Date: Thursday, December 20, 2001

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 HEARING

6 -----x

7 IN THE MATTER OF: :

8 DUKE COGEMA STONE & WEBSTER : Docket No.

9 (Savannah River Mixed Oxide : 70-3098-ML

10 Fuel Fabrication Facility) :

11 -----x

12 Thursday, December 20, 2001

13  
14 Via telephone conference call

15  
16 The above-entitled matter came on for  
17 hearing, pursuant to notice, at 9:00 a.m.

18  
19 BEFORE:

20 THOMAS MOORE Administrative Judge

21 PETER LAM Administrative Judge

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17  
18 ALSO PRESENT:

19 TIM JOHNSON, NRC  
20 ANDREW PERSINKO, NRC

21  
22  
23  
24  
25

P-R-O-C-E-E-D-I-N-G-S

(9:01 a.m.)

ADMINISTRATIVE JUDGE MOORE: This is Judge Moore, with me is Judge Lam. In the future, it would be appreciated if the staff and intervenors would watch the clock, you've been keeping others waiting.

MS. CURRAN: I was unaware that we had to call in. It seems like previously we've been called. I don't know when we were noticed on this but I apologize.

ADMINISTRATIVE JUDGE MOORE: It would be appreciated if, starting with the staff, if you'd all identify yourself for the Court Reporter, please.

MS. YOUNG: Hi, this is Mitzi Young representing the NRC staff. With me are Joseph Gitter and Tim Johnson and Drew Persinko. Oh, I'm sorry, Joe Gitter's not here, I'm sorry.

MR. SILVERMAN: This is Don Silverman and Alex Polonsky representing Duke Cogema Stone & Webster.

MS. CARROLL: This is Glenn Carroll from Georgians Against Nuclear Energy. Not in this location but on the call is Dianne Curran who is our legal advisor.

MR. MONIAK: This is Don Moniak with Blue

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1 Ridge Environmental Defense League.

2 ADMINISTRATIVE JUDGE MOORE: Thank you.  
3 Just for your information, the Board will not be  
4 available next week in light of DCS's motion for  
5 reconsideration. If anyone is going to be seeking  
6 extension time, we will take that matter up right now.

7 MS. CARROLL: Thank you. This is Glenn  
8 Carroll. We wanted to request an extension till  
9 January 9<sup>th</sup>. Would you like to hear our reasons?

10 ADMINISTRATIVE JUDGE MOORE: Please.

11 MS. CARROLL: Well, Dianne, our legal  
12 advisor, has the 'flu and another deadline this week,  
13 and then Dianne and Dr. Lyman are both out of town  
14 from Christmas through New Year's.

15 MR. MONIAK: I was going to request until  
16 January 3<sup>rd</sup> because of the holiday season simply.

17 ADMINISTRATIVE JUDGE MOORE: Who just  
18 spoke?

19 MR. MONIAK: Don Moniak.

20 ADMINISTRATIVE JUDGE MOORE: Thank you,  
21 Mr. Moniak. Ms. Young, do you have anything on this?

22 MS. YOUNG: The subject matter of the  
23 motion again, Judge?

24 ADMINISTRATIVE JUDGE MOORE: I'm sorry,  
25 Ms. Young, I can't hear you. Would you repeat what

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1       you said please?

2                   MS. YOUNG: The intervenors are requesting  
3       extension of time with respect to which filing, Judge?

4                   ADMINISTRATIVE JUDGE MOORE: To the DCS  
5       motion for reconsideration and then the alternative  
6       certification through the Commission.

7                   MS. YOUNG: Right now isn't that deadlined  
8       around January 2<sup>nd</sup> anyway? Or have I miscalculated  
9       it?

10                   ADMINISTRATIVE JUDGE MOORE: Mr.  
11       Silverman, you can probably tell us that, I have not  
12       calculated it.

13                   MR. SILVERMAN: Well, the intervenors are  
14       due ten days after the filing and, Sir, that I believe  
15       is the 27<sup>th</sup>. I don't recall whether the staff gets an  
16       extra five days, perhaps ten days.

17                   ADMINISTRATIVE JUDGE MOORE: Sorry, didn't  
18       you file on the 7<sup>th</sup>, I'm sorry, I have the wrong month  
19       in front of me on the calendar.

20                   MS. YOUNG: Filing was the 17<sup>th</sup>.

21                   MR. SILVERMAN: We filed on the 17<sup>th</sup>,  
22       your Honor, and ten days by my count is the 27<sup>th</sup>.

23                   ADMINISTRATIVE JUDGE MOORE: All right. Do  
24       you have any objection to an extension on this, Mr.  
25       Silverman?

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1 MR. SILVERMAN: Your Honor, we wouldn't  
2 oppose the BREDL extension until the 3<sup>rd</sup>, we'd rather  
3 not have an extension until I believe the 9<sup>th</sup>. The  
4 primary rationale is that, as you know, the terrorism  
5 impact on NEFA is already before the Commission on the  
6 fuel storage case and it's important that your  
7 decision be made as soon as possible on that.

8 Should you decide to refer that to the  
9 Commission, it would be best to do that as soon as  
10 possible, so we'd like to keep the ball rolling but we  
11 wouldn't object to an extension to the 3<sup>rd</sup>.

12 MR. MONIAK: Judge Moore, this is Don  
13 Moniak from BREDL. I just want to point out I have  
14 less work to do, that's why I only cited the 3<sup>rd</sup>, too.

15 MS. CURRAN: Judge Moore, this is Dianne  
16 Curran. I'm the person who will be responsible for  
17 helping GANE respond to this motion. It's 28 pages  
18 long and I had for a long time planned to take a  
19 vacation with my family during Christmas week, and to  
20 file something on the 3<sup>rd</sup> I would have to spend a  
21 certain amount of time preparing, you know, helping  
22 GANE to prepare. This is quite a bit of argument here  
23 that needs to be responded to so it doesn't do us much  
24 good to have an extension till the 3<sup>rd</sup>.

25 ADMINISTRATIVE JUDGE MOORE: Well in light

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1 of the timing of the filing and recognizing the  
2 inherent difficulty this time of year, let's have all  
3 responses due on the 7<sup>th</sup> of January, 2002 and if the  
4 Board wishes to hear argument, it will do so on the  
5 8<sup>th</sup>. And we will let you know on the 7<sup>th</sup> whether we  
6 wish to have a telephone conference and hear argument  
7 on the 8<sup>th</sup>.

8 MR. SILVERMAN: What time then would the  
9 filing deadline be?

10 ADMINISTRATIVE JUDGE MOORE: Close of  
11 business on the 7<sup>th</sup>.

12 MR. SILVERMAN: Because usually it's  
13 midnight, your Honor, that's why I'm asking.

14 ADMINISTRATIVE JUDGE MOORE: Well, let's  
15 make it close of business.

16 MS. CURRAN: Can you give us the time?

17 ADMINISTRATIVE JUDGE MOORE: Four thirty  
18 is the official business hours of the NRC.

19 MS. CURRAN: Okay.

20 MR. SILVERMAN: Thank you.

21 ADMINISTRATIVE JUDGE MOORE: And we will  
22 notify you that evening by e-mail whether we wish to  
23 have an argument on the 8<sup>th</sup>.

24 MS. CARROLL: At what time? Do you want  
25 to set a time on the 8<sup>th</sup>?

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1 ADMINISTRATIVE JUDGE MOORE: Yes. It  
2 would be three o'clock in the afternoon. All right,  
3 I wanted to get that out of the way.

4 Turning to the matters of scheduling for  
5 discovery, first question for Ms. Young and the staff,  
6 I have four dates and I frankly cannot remember where  
7 I obtained them for the projected dates for the draft  
8 and final SER and draft of final EIS. Those dates are  
9 for the SER, 4/30/02 and the final 9/30/02, and for  
10 the EIS the draft 2/25/02 and the final EIS 9/30/02.

11 Ms. Young, are those dates still operative  
12 and will they hold?

13 MS. YOUNG: These are dates the staff is  
14 working towards, Judge Moore.

15 ADMINISTRATIVE JUDGE MOORE: Okay. So for  
16 planning purposes, scheduling purposes then, those  
17 dates are the usable dates?

18 MS. YOUNG: That's correct.

19 ADMINISTRATIVE JUDGE MOORE: Okay, fine.

20 MR. POLONSKY: Judge Moore, this is Mr.  
21 Polonsky. Could you clarify, did you say 4/3/02 or  
22 4/30/02?

23 ADMINISTRATIVE JUDGE MOORE: For the SER  
24 draft the date I have is 4/30 -- three zero/02.

25 MR. POLONSKY: Thank you.

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1 ADMINISTRATIVE JUDGE MOORE: Ms. Young,  
2 you might just fill me in. I have had these marked on  
3 the calendar, were these announced on your web site?

4 MS. YOUNG: That's correct.

5 ADMINISTRATIVE JUDGE MOORE: Okay, that's  
6 where they came from.

7 Second question, Ms. Young, the hearing  
8 file, you have now filed it. What is the staff's plan  
9 for supplementing the hearing file? What turnaround  
10 time on each entry?

11 MS. YOUNG: Are you saying with respect to  
12 issuance of these later documents, or the  
13 correspondence?

14 ADMINISTRATIVE JUDGE MOORE: Each and  
15 every piece of paper you're going to supplement the  
16 hearing file with, what's your turnaround time going  
17 to be?

18 MS. YOUNG: Generally, depending on how  
19 voluminous it is, it's either five to ten days.

20 ADMINISTRATIVE JUDGE MOORE: You'll have  
21 to do better. Why can't it be done in three?

22 MS. YOUNG: Again, the size of the  
23 document, Judge Moore. But, you know, for a piece of  
24 paper like a letter three days is not a problem.

25 ADMINISTRATIVE JUDGE MOORE: I think that

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1 would be helpful if the staff --

2 MS. YOUNG: We're talking business days,  
3 of course.

4 ADMINISTRATIVE JUDGE MOORE: Do any of the  
5 parties wish to address this issue?

6 MR. MONIAK: Yes. This is Don Moniak from  
7 Blue Ridge Environmental Defense League.

8 ADMINISTRATIVE JUDGE MOORE: Yes, Mr.  
9 Moniak?

10 MR. MONIAK: Were we notified by e-mail or  
11 anything of the hearing file and where is it?

12 ADMINISTRATIVE JUDGE MOORE: Ms. Young?

13 MS. YOUNG: My understanding is that that  
14 file was observed by the Project Office.

15 ADMINISTRATIVE JUDGE MOORE: By the NRC  
16 staff then?

17 MS. YOUNG: Right, but not the Office of  
18 General Counsel. That's what John Hull arranged  
19 before his departure on business this week.

20 MS. CARROLL: When can we expect to  
21 receive it?

22 MS. YOUNG: You haven't gotten anything  
23 yet?

24 MR. MONIAK: I haven't. Don Moniak from  
25 BREDL, I have not received anything that I can find.

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1 ADMINISTRATIVE JUDGE MOORE: All right.  
2 Ms. Young, as soon as this telephone conference you  
3 will immediately check to see the status of that. If  
4 it has not been served you will re-serve it by Federal  
5 Express to these people.

6 MS. YOUNG: All right, Judge Moore.

7 ADMINISTRATIVE JUDGE MOORE: I received  
8 it. Mr. Silverman, have you received it?

9 MR. SILVERMAN: We have not.

10 MR. MONIAK: Judge Moore, this is Don  
11 Moniak, were we supposed to receive at least notice  
12 that it was filed? I understood it was to be posted  
13 on the NRC web site.

14 ADMINISTRATIVE JUDGE MOORE: I'm sorry,  
15 Mr. Moniak, the notice or the entire thing?

16 MR. MONIAK: Either. I'd have to look at  
17 the rules, I know somewhere in the rules some part of  
18 it has to be posted to the NRC.gov. I don't have it  
19 in front of me though.

20 ADMINISTRATIVE JUDGE MOORE: Well, Mr.  
21 Moniak, I believe the rule on the hearing file merely  
22 indicates that they can incorporate by reference and  
23 address if it's already available electronically, an  
24 electronic address.

25 MS. YOUNG: I don't have that electronic

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1 address with me today but I'll get that to the parties  
2 as soon as I can.

3 ADMINISTRATIVE JUDGE MOORE: You will get  
4 that to them today, Ms. Young.

5 I received a box containing a dozen or so  
6 volumes earlier this week, I believe it was Tuesday,  
7 and I assumed at that time as it was delivered to me  
8 and each of the other Board members, it had gone out  
9 to all the parties. But Ms. Young, you will check and  
10 if it has not, you will do it by Federal Express. If  
11 it has gone out, you will find out and notify the  
12 parties when they will be receiving it. If by chance  
13 it went by slow boat, you will need to reconsider your  
14 decision and perhaps re-serve it.

15 ADMINISTRATIVE JUDGE LAM: Judge Lam. The  
16 volume of material, two boxes of documents?

17 MS. YOUNG: That's correct.

18 MR. MONIAK: Two boxes, what size? Don  
19 Moniak.

20 MS. YOUNG: Xerox box sizes.

21 MR. MONIAK: That's not much considering  
22 what we've received already.

23 MS. YOUNG: No, in terms of reproducing  
24 that if it's somewhere in transit.

25 ADMINISTRATIVE JUDGE MOORE: I was just

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1 thinking, Ms. Young, there will be a reproduction  
2 problem. What we will do is you check on it, inform  
3 by e-mail the Board and the parties what the status of  
4 it is and then if it has not been served you must do  
5 it immediately. And you should go ahead and do it by  
6 Federal Express if it's not been served because you've  
7 already had plenty of time to reproduce it.

8 MS. YOUNG: Certainly.

9 ADMINISTRATIVE JUDGE MOORE: If it is lost  
10 and can't be traced, then we'll determine the most  
11 expeditious course of action and just let me know by  
12 close of business today.

13 MS. YOUNG: All right, we will do that.

14 MR. MONIAK: This is Don Moniak from  
15 BREDL. If that's the case, if we could receive by e-  
16 mail as soon as possible, meaning today, an index to  
17 the hearing file, just titles, bibliography, whatever,  
18 if that arrives it could be that we don't need you to  
19 copy everything.

20 ADMINISTRATIVE JUDGE MOORE: Ms. Young, is  
21 an index, can it be posted or is that not possible?

22 MS. YOUNG: I'm sure an index can be  
23 posted. Not having worked with the service of this  
24 document, Mr. Hull handled that, I'm a little ignorant  
25 about the details but I'll certainly find them out

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1 today.

2 ADMINISTRATIVE JUDGE MOORE: Okay.  
3 Understand.

4 MS. CARROLL: This is Glenn Carroll. GANE  
5 is not nearly as computer savvy as BREDL so we require  
6 the boxes of documents.

7 MS. YOUNG: Oh you'll have the documents.  
8 Right now where they are is the question.

9 MS. CARROLL: I just wanted you to know  
10 you need to, we need that.

11 ADMINISTRATIVE JUDGE MOORE: Let's move  
12 on, please.

13 MS. CARROLL: Judge Moore, we do have some  
14 concerns with the hearing file but not what you  
15 raised, which was timing, so I held that in reserve.

16 ADMINISTRATIVE JUDGE MOORE: I'm sorry,  
17 Ms. Carroll, you're too obtuse for me this morning.

18 MS. CARROLL: I'm sorry. We did have some  
19 concerns with the hearing file but they weren't  
20 related to the time issues that you just raised, so if  
21 we're closing out the hearing file topic, then I do  
22 have some things to say but I think they apply more to  
23 the --

24 ADMINISTRATIVE JUDGE MOORE: Well let's  
25 address any questions on the hearing file right now.

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1 Ms. Carroll, go ahead.

2 MS. CARROLL: Yes, if I am to review it  
3 carefully I'm a little frightened that it's two Xerox  
4 boxes of material, but we are very concerned about its  
5 completeness and now, more than ever, we think it'll  
6 take a couple of months to straighten it out to make  
7 sure it's complete. So I expect we may have some  
8 document discovery but not perhaps right away.

9 And also there'll be issues about  
10 protections for proprietary, which we've already  
11 engaged in but we're not sure how the staff is  
12 planning to handle proprietary information for us, but  
13 also safeguards and classified information.

14 ADMINISTRATIVE JUDGE MOORE: Right. Ms.  
15 Young, in the material that's served there should not  
16 be any safeguards, classified or proprietary  
17 information in the hearing file. Is that correct?

18 MS. YOUNG: That's correct. Otherwise we  
19 require a protective order to release such things.

20 ADMINISTRATIVE JUDGE MOORE: Yes. Is  
21 there such material that should be in the hearing file  
22 and is only noted in the index because of its status  
23 as protected, safeguards or classified?

24 MS. YOUNG: Let me confer with the staff,  
25 I'm not familiar with the file, Judge Moore.

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1                   Unfortunately, the people in this room did  
2 not work assembling the hearing file but it's my  
3 understanding in general and NRC practice that we have  
4 both proprietary and non-proprietary versions of  
5 documents, and I would assume that the non-proprietary  
6 version was included as part of the hearing file. So  
7 the answer to your question is, yes, there is  
8 proprietary information that was not put in the  
9 hearing file.

10                   ADMINISTRATIVE JUDGE MOORE: But it is  
11 noted in the index that it is proprietary and the non-  
12 proprietary version is included?

13                   MS. YOUNG: Well, not having seen the  
14 index I can't answer that question.

15                   ADMINISTRATIVE JUDGE MOORE: All right.

16                   MS. CARROLL: But since GANE has signed  
17 the non-disclosure agreement, then is it safe to  
18 assume the proprietary version was sent to us?

19                   MS. YOUNG: When did you sign it?

20                   MS. YOUNG: This was August I think.

21                   MR. MONIAK: July.

22                   MS. YOUNG: I'll have to reach Mr. Hull by  
23 phone today and find out exactly what --

24                   ADMINISTRATIVE JUDGE MOORE: Right. If  
25 there are any problems with proprietary information in

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1 the hearing file, please notify me and we'll deal with  
2 it directly.

3 MS. CARROLL: Thank you, Judge Moore.

4 ADMINISTRATIVE JUDGE MOORE: Yes?

5 MR. MONIAK: Don Moniak. Judge, in terms  
6 of proprietary information, there's one issue in that  
7 the last, there's a voluminous response to a request  
8 for additional information that was sent out  
9 September, early September, and there was  
10 inadvertently put in some proprietary information.  
11 However, the staff determined that some of the  
12 information was not proprietary and DCS had 30 days to  
13 respond to that. Is this the time for the staff and  
14 everybody else to be aware that, we'd like to know  
15 what the status of that information that was not  
16 proprietary is.

17 MR. SILVERMAN: I'm not familiar with that  
18 at all, this is Mr. Silverman, what you're referring  
19 to.

20 MR. MONIAK: I will put it in writing in  
21 an e-mail after this. Is that okay? That is a  
22 question.

23 ADMINISTRATIVE JUDGE MOORE: No. What I'd  
24 like, let's go ahead to discovery for a moment. Most  
25 of the matters, such as the one you just raised, Mr.

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1 Moniak, can and should be resolved among the parties  
2 without the necessity of formal motions with the  
3 Board.

4 MR. MONIAK: Okay.

5 ADMINISTRATIVE JUDGE MOORE: And when I  
6 schedule an order after the first of the year, after  
7 we deal with schedule, I will reiterate what I'm now  
8 telling you that it will not be appreciated if you all  
9 do not resolve these matters. And, indeed, I will  
10 require you in any motion filed involving a discovery  
11 matter to reiterate that you have attempted, and  
12 failed, to resolve the issue amicably among  
13 yourselves.

14 So you will be required to do that before  
15 you can come to me because most of this can all be  
16 worked out and the Board, frankly, expects all of you  
17 to cooperate with one another and to resolve these and  
18 not let it deteriorate where we move into the motion  
19 practice and protective orders and motions to compel.

20 That said, Mr. Moniak, Mr. Silverman, Ms.  
21 Young, Ms. Carroll, Ms. Curran, you should be working  
22 out these matters, such as the one that Mr. Moniak  
23 just raised.

24 MR. MONIAK: Understood.

25 MS. CARROLL: Your Honor, there was one

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1 more item I have on the hearing file that's rather  
2 large and has already not been resolved in phone  
3 conversations. And that is that the operating license  
4 application, according to the schedule that also  
5 states when the SER and the EIS will be released,  
6 states that DCS is expected to apply for their  
7 operating license in late July. And we need to  
8 establish up front that this document will be included  
9 in the hearing file and that it is relevant.

10 ADMINISTRATIVE JUDGE MOORE: Well, no, Ms.  
11 Carroll it is not; well, without getting ahead, we  
12 will be issuing, in all probability, a memorandum, an  
13 order dealing with your motion, GANE motion to dismiss  
14 or in the alternative to hold the proceeding in  
15 abeyance. One of the Board members, hopefully, will  
16 be returning to the office from I believe they were in  
17 Charlotte on one of the Duke cases and when Judge  
18 Kelter returns, hopefully we'll be issuing and  
19 resolving that motion.

20 At this point, on the face of it, in light  
21 of what the Commission's notice has previously  
22 indicated, that will be on a separate -- that being  
23 the DCS's application for operating authority -- will  
24 be on a separate track in a separate hearing file.

25 MS. CARROLL: Well, your Honor, since it

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1 appears that it's not evident to you that this meets  
2 the criteria in -- 2.740, as a relevant document which  
3 is the standard for the hearing file, then may we have  
4 the opportunity to present a written brief containing  
5 this concept?

6 ADMINISTRATIVE JUDGE MOORE: Well, once we  
7 resolve your motion to dismiss, we can take that up.

8 MS. YOUNG: Judge Moore, I believe the  
9 hearing file talks about documents relevant to the  
10 pending application.

11 ADMINISTRATIVE JUDGE MOORE: Correct.

12 MS. YOUNG: And all correspondence related  
13 to the pending application. I don't believe that that  
14 document would come within the scope of that.

15 ADMINISTRATIVE JUDGE MOORE: And Mr.  
16 Silverman I believe you'll be in concurrence with the  
17 staff on this?

18 MR. SILVERMAN: Yes, sir.

19 ADMINISTRATIVE JUDGE MOORE: Ms. Carroll,  
20 it appears that that is correct and that that  
21 proceeding, as indicated by the Commission, is a  
22 separate proceeding and not part of this proceeding.  
23 So to bring that license application into this hearing  
24 file, would appear not necessary and therefor also  
25 it's not relevant.

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1 MS. YOUNG: But Judge Moore, that doesn't  
2 mean the document would be unavailable to Ms. Carroll  
3 when it's issued, it will be available through ADAMS.

4 MS. CARROLL: Well, but the thing is is  
5 that that might be satisfactory except that it will be  
6 held up internally at the NRC for review and it looked  
7 like it wouldn't be issued until an obvious milestone,  
8 which is September 30, which is when discovery would  
9 open on the NRC. We haven't decided yet how DCS would  
10 be affected, but assuming it would be as voluminous or  
11 more so than the CAR, there's no way that we will be  
12 able to absorb that, deal with discovery and, frankly,  
13 it blows my mind that all these smart people don't  
14 think it's relevant. It's the operating life for what  
15 we plan to -- what could be more relevant?

16 ADMINISTRATIVE JUDGE MOORE: Ms. Carroll,  
17 Ms. Curran, on that matter if you feel you must, file  
18 appropriate papers and the Board will deal with them,  
19 but on the face of it it would appear not to be on  
20 this track and if it's available to you for sources,  
21 you may wish to pursue those other sources.

22 MS. CARROLL: Well, our main interest is  
23 in having it available to us on the same date that  
24 it's made available to the NRC. Maybe it's less  
25 important whether it's officially part of the hearing

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1 file than that it be available to us as a party to the  
2 CAR proceeding.

3 ADMINISTRATIVE JUDGE MOORE: Ms. Carroll,  
4 file, if you feel you must, appropriate papers.

5 MS. CARROLL: Okay.

6 ADMINISTRATIVE JUDGE MOORE: Anything  
7 else?

8 MS. CARROLL: Not on the hearing file.

9 ADMINISTRATIVE JUDGE MOORE: We'll move  
10 directly then to the discovery schedule. I will be  
11 setting the schedule after the first of the year,  
12 shortly after the first of the year, reiterating in  
13 part what I've said about cooperation and reviewing  
14 those efforts in any filings which were dealing with  
15 discovery.

16 Second, is the filing of a proposed  
17 schedule by DCS, accurate in the sense that he says  
18 there are two issues on which you couldn't agree, the  
19 period for taking depositions and the date on which  
20 all experts must be named. Is that the crux of the  
21 disagreement among the parties?

22 MS. CARROLL: That and then a less central  
23 point which is a proposal actually shapes the  
24 discovery schedule. We see a possibility for a third  
25 round of interrogatories.

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1 ADMINISTRATIVE JUDGE MOORE: Mr.  
2 Silverman.

3 MR. POLONSKY: Correct. If these two  
4 issues are resolved then either there is room for a  
5 third round or there is not room for a third round.

6 ADMINISTRATIVE JUDGE MOORE: All right.  
7 As I will make plain in the discovery schedule order,  
8 the Board wishes you all to begin immediately, which  
9 would be the time over the next several weeks. The  
10 clock has started as of this telephone conference on  
11 your time for preparing interrogatories. I will set  
12 the schedule.

13 Are you in agreement, all of you, that two  
14 rounds in any event of interrogatories is appropriate?

15 MS. CARROLL: I'd like Dianne to pipe up  
16 if not, but I think we feel that would be sufficient.

17 ADMINISTRATIVE JUDGE MOORE: Right.  
18 You've noted a third round and if I understood Mr.  
19 Silverman just moments ago, he indicated that that  
20 would be dependent of the time line of the schedule.

21 MR. POLONSKY: That was Mr. Polonsky. I'm  
22 sorry I didn't identify myself earlier but that's  
23 correct.

24 MS. CARROLL: And what I'm trying to say  
25 is we feel very strongly about the freedom to

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1 establish experts for a longer period and the need to  
2 consolidate depositions, which is mainly a function of  
3 how much money GANE can hope to come up with to  
4 conduct all of this.

5 ADMINISTRATIVE JUDGE MOORE: Well, late  
6 filed contentions are possible, and a late file  
7 contention may require a new expert, that kind of  
8 thing of course would not be precluded under any  
9 schedule. Would recognizing now that you would have  
10 that ability, does that change your view as the time  
11 for naming experts?

12 MS. CARROLL: Well, I want to make clear  
13 that the way we read 2.740, it protects the parties  
14 from trying to spring surprise experts out at the late  
15 minute. We think that obligates us to identify our  
16 experts as we identified them. So that, given our  
17 resources, and we just don't see any reason, I mean  
18 it's strategically advantageous to us to identify our  
19 experts early on to go through discovery with us, but  
20 we are loath to get into a lot of complication and  
21 opposition to introducing experts, and February 15,  
22 which is proposed by DCS, is just too soon for us.

23 So we want to avoid legal complications.

24 MR. POLONSKY: Your Honor, this is Mr.  
25 Polonsky.

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1 ADMINISTRATIVE JUDGE MOORE: Yes, Mr.  
2 Polonsky.

3 MR. POLONSKY: From what you've stated it  
4 appears that February 15 might be too late in your  
5 mind but, in any event, we believe that experts need  
6 to be identified for each admitted contention before  
7 interrogatories can be useful, so that they should be  
8 geared directly towards an individual.

9 Now GANE has identified certain experts  
10 that they use for admission of contentions but they  
11 clearly can identify others for testimony and  
12 specifically on issues like seismic, which are not  
13 being brought up right now for reconsideration or  
14 appeal, those are highly technical specific issues and  
15 any interrogatories would need to be directed to an  
16 expert. And we would need to know who that expert is  
17 in order to draft interrogatories for that admitted  
18 contention, for example.

19 ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
20 wouldn't the answers to a first round of  
21 interrogatories necessarily reveal the expert at that  
22 time?

23 MR. POLONSKY: Well, based on informal  
24 conversations, and I would like to give credit to GANE  
25 and BREDL for all of us trying to work this out before

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1 we got to this conference call, but it appears that  
2 even after a first or second round that GANE may not  
3 have identified who that expert is, and a response to  
4 an interrogatory could be we have not identified an  
5 expert at this time. And to us that would not be a  
6 useful good use of our time.

7 ADMINISTRATIVE JUDGE MOORE: Okay. Let's  
8 go to the end and work backwards. Are we all  
9 agreed that the 28<sup>th</sup> of February 2003 is the date on  
10 which the Board's final decision will issue in this  
11 case?

12 MR. POLONSKY: This is Mr. Polonsky.  
13 Assuming that the schedule for deliverables by the NRC  
14 staff remains the same, if you're talking about 135  
15 days after, yes, we agree.

16 ADMINISTRATIVE JUDGE MOORE: Well the  
17 staff I trust, Mr. Polonsky, is working under the same  
18 admonition of the Commission that this will be  
19 completed within approximately two years of when you  
20 filed your --

21 MS. YOUNG: Application.

22 ADMINISTRATIVE JUDGE MOORE: The  
23 application, yes.

24 MS. YOUNG: That's correct.

25 ADMINISTRATIVE JUDGE MOORE: So with that

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1 assumption and we'll hope it's not a large one, then  
2 any hearing session would take place at the very end  
3 of 2002.

4 MS. CARROLL: By my calculation, your  
5 Honor, it was September 30 being the date that that  
6 135 days begins, then it would be, our hearings would  
7 be around the middle of February and perhaps you would  
8 issue a decision at the end of February.

9 ADMINISTRATIVE JUDGE MOORE: February of  
10 2003?

11 MS. CARROLL? February of 2003.

12 ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
13 where is the math error here?

14 MR. POLONSKY: We are assuming that the  
15 paper presentations will be sufficient and that an  
16 oral presentation may not be required. If that's the  
17 case, then February 2003 is the date that the Board  
18 could issue a decision. If not, then Ms. Carroll is  
19 correct, that 2003 February would likely be the date  
20 that an oral presentation would start in accordance  
21 with the --

22 ADMINISTRATIVE JUDGE MOORE: I'm sorry,  
23 and before that where are you finding that difference?

24 MS. CARROLL: I can explain that, your  
25 Honor, I believe. There is the schedule that was

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1 posted by the staff of the milestones and we are still  
2 working with that on the SER and the EIS schedule.  
3 But the CRI 01-13, the Commission Order, established  
4 some differences in the schedule and they linked oral  
5 arguments to the final EIS, establishing it as 135  
6 days after.

7 ADMINISTRATIVE JUDGE MOORE: I see. But  
8 that would not be, the discovery schedule with the  
9 possible exception of late filed contentions, that  
10 would be aimed at the final SER and the EIS. The rest  
11 of the discovery can all be concluded well in advance  
12 of the dates of the filings of those documents. Do we  
13 have general agreement on that?

14 MR. POLONSKY: This is Mr. Polonsky.  
15 Absolutely. We thought you were talking about the  
16 entire duration of the entire proceeding.

17 ADMINISTRATIVE JUDGE MOORE: Well, the  
18 problem I have with GANE's approach is the Board is  
19 very loath to agree to issuing a discovery schedule  
20 that would put all the depositions in such a short  
21 time period. It is the Board's view that the draft  
22 EIS and the draft SER should, for all intents and  
23 purposes, be treated as if they are final documents  
24 for discovery purposes.

25 MS. CURRAN: This is Dianne Curran. Judge

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1 Moore, can I respond on the issue of the depositions?

2 ADMINISTRATIVE JUDGE MOORE: Yes.

3 MS. CURRAN: This is just based on  
4 experience of when you're looking, the depositions to  
5 me, it seems like there's two very crucial parts of  
6 discovery. One is document discovery and the other is  
7 depositions. The interrogatories can be helpful but  
8 not nearly as helpful as those other two parts. And  
9 when you are spending the money that it requires to  
10 take depositions, the time to do it is when the case  
11 is at its most, the preparation is at its most fully  
12 developed.

13 I think given that the NRC staff is  
14 reviewing this application, that their evaluation has  
15 a major effect on the application on both the safety  
16 and environmental side, it is most efficient and  
17 effective if one can do the depositions together so  
18 that you basically fly your experts to a given  
19 location once and you prepare your experts to look at  
20 the whole array of what's out there in terms of the  
21 other side's case.

22 And I don't personally feel that we could  
23 be as effective as we need to if we are having to take  
24 depositions several months before we have the staff's  
25 ultimate conclusions about the application, because

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1 you want to be able to ask the applicant about, you  
2 know, the staff's conclusions. You want to be able to  
3 ask the staff about the applicants, you want your  
4 experts to be able to look at the whole, and I've  
5 never been in a case where we were not able to do  
6 that.

7           Aside from being very expensive for us, I  
8 just can't see how it would be very effective.

9           MS. YOUNG: Judge Moore, I think Ms.  
10 Curran is remembering the days of NRC practice before  
11 the NRC became a lot more conscious of deadlines and  
12 schedules. It has been found in a number of cases  
13 that discovery has proceeded in advance of documents  
14 being produced by the staff, including in one I was  
15 involved in in the mid-90s, the Vogtle proceeding.  
16 There was considerable discovery before the staff came  
17 out with any piece of paper on any position in the  
18 proceeding.

19           So this not unusual. It's an effort to  
20 make sure that the things that can be handled and  
21 discovered and the positions of the parties revealed,  
22 can be treated on an expeditious basis and then those  
23 matters that are left which are -- findings in the  
24 environmental and safety documents could be treated at  
25 a later date.

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1 And I understand that the Commission's  
2 ruling in CRI 01-13 envisioned it to the extent that  
3 it talked about late filed contention discovery only  
4 transpiring 80 days from issuance of the final EIS and  
5 SER.

6 ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
7 do you wish to address anything on this issue, other  
8 than what you've already put in your paper?

9 MR. POLONSKY: Just to concur with the NRC  
10 staff that if additional discovery is required, then  
11 there is an opportunity for late filed contentions.

12 ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
13 while you're there before I turned back to Ms. Curran  
14 and Ms. Young, in your view, late filed contentions  
15 after the SER, final SER and EIS or for that matter  
16 contentions in the draft SER and EIS, do you believe  
17 30 days is an appropriate time period for late filed  
18 contentions after those documents?

19 MR. POLONSKY: After they are issued?  
20 After they are issued, yes.

21 ADMINISTRATIVE JUDGE MOORE: Ms. Young?

22 MR. POLONSKY: If I might, your Honor, the  
23 entire document is not going to need to be reviewed.  
24 I think there are specific contentions that have been  
25 brought out and to the extent that late filed

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1 contentions are likely to relate to those, those  
2 particular sections of the document can be reviewed  
3 and contentions can be based on that.

4 ADMINISTRATIVE JUDGE MOORE: Ms. Young?

5 MS. YOUNG: Judge Moore, I've got a  
6 concern. To the extent you're talking about --

7 ADMINISTRATIVE JUDGE MOORE: Who is this  
8 please?

9 MS. YOUNG: This is Ms. Young.

10 ADMINISTRATIVE JUDGE MOORE: Okay, Ms.  
11 Young. I didn't recognize your voice, go ahead.

12 MS. YOUNG: No problem. I've got a  
13 concern. To the extent that you would envision a  
14 schedule which would have intervenors filing  
15 contentions 30 days after a draft document --

16 ADMINISTRATIVE JUDGE MOORE: Well, no. My  
17 thought was that that would be the window in which  
18 late filed contentions would be considered to meet the  
19 good cause timeliness quite clearly of the late filed  
20 contentions standards.

21 MS. YOUNG: But 30 days from a draft  
22 document, Judge Moore? That's what's confusing me  
23 because it could be that issues that intervenors would  
24 be concerned about that may be apparent from the draft  
25 would be totally resolved by the time the file is

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1 issued and there would be a lot of needless resources  
2 expended addressing such contention.

3 ADMINISTRATIVE JUDGE MOORE: I didn't have  
4 in mind requiring anyone to file them, what I was  
5 merely saying is that a reasonable period in which to  
6 expect file filed contentions that would relate to  
7 those documents, assuming the party wished to file  
8 them.

9 MS. CARROLL: Well, I'm confused because  
10 I thought I heard you say 30 days from the final.

11 ADMINISTRATIVE JUDGE MOORE: Both the  
12 draft and the final, I said.

13 MS. CARROLL: Oh both opportunities, I  
14 see.

15 MR. POLONSKY: Your Honor, if we could,  
16 when you do address this, if you could clarify that a  
17 good cause showing still needs to be shown for any  
18 late filed contention, even if filed within the 30  
19 days.

20 ADMINISTRATIVE JUDGE MOORE: Yes, but Mr.  
21 Polonsky, as a practical matter, documents have to be  
22 reviewed and if we just generally set the mark that  
23 after 30 days, it essentially forces it all to get  
24 done in 30 days for late filed contentions. I fully  
25 recognize that the standards have to be met. But if

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1 we are in agreement that that's the target, then I  
2 wanted each party's view on the reasonableness of that  
3 window.

4 MR. POLONSKY: Thank you for the  
5 clarification.

6 ADMINISTRATIVE JUDGE MOORE: Ms. Curran,  
7 Ms. Carroll, do you think that 30 days, assuming you  
8 wish to file a late file contention because of new  
9 information in either a draft or a file document, is  
10 a reasonable period of time?

11 MS. CARROLL: What do you think, Dianne?

12 MS. CURRAN: Yes, I think it is.

13 ADMINISTRATIVE JUDGE MOORE: Okay. The  
14 Board will take all of this into account in issuing a  
15 schedule right after the first of the year, but you  
16 should not waste the days, starting today, in working  
17 toward your first set of interrogatories. The Board  
18 is loath to schedule a third round of interrogatories  
19 because, frankly, I don't see why it can't be done in  
20 two, recognizing that any late filed contentions would  
21 require discovery on them.

22 MS. CURRAN: Judge Moore, this is Dianne  
23 Curran. It doesn't seem likely that a third round of  
24 interrogatories would be needed, but I guess what we'd  
25 like to do is just leave open the potential that if

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1 they were, if there's time, that we could make some  
2 kind of a showing as quickly as we could.

3 ADMINISTRATIVE JUDGE MOORE: Well, I'd  
4 never close it in a -- showing good cause that it's  
5 necessary, the Board would consider. But to put it  
6 into the schedule I think is probably unnecessary.

7 MS. CARROLL: Your Honor, this is Glenn  
8 and I want to point out something and Don Silverman  
9 can correct me or Alex if I miss the changed. They've  
10 maintained their desire, DCS has maintained its desire  
11 to hold the depositions prior to September 30. In  
12 previous conversations they did say that it was  
13 acceptable for them if GANE and BREDL consolidated all  
14 their depositions at the end.

15 And I want to point that out and is that  
16 still okay with you guys?

17 MR. POLONSKY: The submittal that we sent  
18 in, Glenn, gave you that option, but DCS does not want  
19 to be restricted itself in taking depositions.

20 MS. CARROLL: But you don't mind if we  
21 choose to do all those at the end? You're still in  
22 that position?

23 MR. POLONSKY: We are, but we don't  
24 believe that an extension should be granted just  
25 because you choose to consolidate them all at the end.

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1 You do so at your own risk.

2 MS. CARROLL: You're talking about our  
3 note about believing that the 45 days discovery  
4 against NRC staff is too short?

5 MR. POLONSKY: That's right. We think at  
6 that time you find that it is too short that you  
7 wouldn't be granted an extension for any type of  
8 discovery that you left till the last minute.

9 ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
10 there's also the risk that your experts might not be  
11 available at that time isn't there?

12 MR. POLONSKY: Well, that's certainly  
13 possible.

14 MS. CARROLL: Why would that be?

15 MR. POLONSKY: Maybe they're out of town  
16 for six weeks.

17 MS. CARROLL: So depending on what  
18 schedule is set for deposition, so it's incumbent on  
19 the parties to guarantee the availability of their  
20 witnesses?

21 MS. POLONSKY: Well that's why we would  
22 confer and try and organize a schedule where witnesses  
23 would be available, but it may not be necessarily  
24 convenient for you or Dianne, and it may not be  
25 convenient for us. We have to recognize that.

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1 ADMINISTRATIVE JUDGE MOORE: And would it  
2 be helpful if you held further discussions among  
3 yourself to try to come to full agreement on a  
4 complete schedule, or are you past the point where you  
5 think it would do any good at all just to order it?

6 MR. POLONSKY: This is Mr. Polonsky. At  
7 this point, we have made a good faith effort and we  
8 have had good discussions, as evident of what we  
9 submitted to you, but at this time DCS would prefer if  
10 you just set a schedule.

11 ADMINISTRATIVE JUDGE MOORE: Okay. Ms.  
12 Carroll, Ms. Curran, do you concur in that?

13 MS. CARROLL: Yes, but it's a sticking  
14 point, neither of us will budge.

15 MS. CURRAN: Judge Moore, this is Dianne  
16 Curran. There's just one more point I just want to be  
17 clear on. In terms of this date for identifying  
18 expert witnesses, our concern about this is we think  
19 that we're going to be identifying experts fairly  
20 early because all of our contentions require some kind  
21 of expert assistance. As we develop our case, which  
22 you know we have a considerable amount of time to do  
23 this, what we're concerned about is not being  
24 penalized if we find that we need to add experts  
25 later.

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1           That's our principal concern on the  
2           deadline for identifying experts, not that we wouldn't  
3           be prepared to identify experts early but that there's  
4           some penalty that would kick in if we didn't have them  
5           all at a certain point. And we think that putting  
6           that date close to the time of depositions is  
7           reasonable.

8           ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
9           I can't fathom that you can name all your experts up  
10          front and might not need one later. What would you do  
11          with that situation?

12          MR. POLONSKY: The same principles that  
13          applies to them applies to us. We would hope that  
14          that there's a good faith effort to identify parties  
15          up front and identify those experts informally to each  
16          other if it needs to be set, and we would prefer it to  
17          be set in a schedule, we'd like it to be. Clearly, a  
18          set of interrogatories raise issues that the current  
19          experts that have been retained cannot answer, or  
20          other issues arise where --

21          ADMINISTRATIVE JUDGE MOORE: Or an expert  
22          becomes unavailable or something, you must get a new  
23          expert. And you fully anticipate that in what you've  
24          proposed I assume?

25          MR. POLONSKY: That's correct.

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1 ADMINISTRATIVE JUDGE MOORE: Okay.

2 MR. POLONSKY: I think some clarification  
3 would be useful from the Board as to the procedure of  
4 how, for example, additional interrogatories would  
5 need to be filed against new experts if they are  
6 identified at a late date. Or if you could just  
7 clarify that now.

8 ADMINISTRATIVE JUDGE MOORE: What would be  
9 your suggestion, Mr. Polonsky?

10 MR. POLONSKY: I guess it all depends on  
11 what that expert is being proposed to espouse. It  
12 would be very difficult for us to take the deposition  
13 of an expert if that expert has been identified after  
14 all the rounds of interrogatories have expired.

15 ADMINISTRATIVE JUDGE MOORE: Yes, I  
16 understand. Ms. Curran, what would you propose in  
17 that regard?

18 MS. CURRAN: Well, we're always under an  
19 obligation to update our responses to interrogatories,  
20 so the moment a new expert comes on and we think  
21 that's what you would do, I guess I'm, to me it just  
22 seems that there should be an alternate deadline just  
23 before deposition for identifying anybody who's going  
24 to be at the hearing and supplementing all discovery  
25 responses.

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1 I've had that in the past and it works  
2 fine.

3 ADMINISTRATIVE JUDGE MOORE: Ms. Young,  
4 the staff didn't feel the necessity to propose a  
5 schedule, even though there will be discovery after  
6 the SER and the final SER and EIS of the staff, or  
7 it's possible. Do you wish to state anything, even  
8 though you did not file a proposed schedule?

9 MS. YOUNG: Well, Judge Moore, we talked  
10 to counsel for DCS and made sure that the end of  
11 discovery against the staff was noted in the  
12 consolidated schedule.

13 ADMINISTRATIVE JUDGE MOORE: The problem  
14 often arises or we'd like to avoid, is that those  
15 staff witnesses who might be, or staff individuals who  
16 might be deposed would not be available. What steps  
17 is the staff prepared to make to make sure that  
18 doesn't happen in this case?

19 MS. YOUNG: You mean not available at the  
20 time of discovery?

21 ADMINISTRATIVE JUDGE MOORE: Yes, after  
22 that, because it's going to be a very small window  
23 after the final SER and final EIS.

24 MS. YOUNG: Well, generally speaking, the  
25 EDO is involved in selecting individuals who are

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1 offered for depositions and the staff will do a best  
2 effort to make sure those people are available.

3 ADMINISTRATIVE JUDGE MOORE: But there is  
4 the element in the selection that they must be  
5 involved and knowledgeable in the process.

6 MS. YOUNG: That's correct.

7 ADMINISTRATIVE JUDGE MOORE: And as a  
8 practical matter, it doesn't do any good to send in  
9 the third string that doesn't know the playbook,  
10 simply because the first string or the second string  
11 are unavailable.

12 What am I saying is because of that short  
13 window, are there steps that can be taken to assure  
14 that those staff people will be available, the likely  
15 ones? And you know who they will be well in advance.

16 MS. YOUNG: Right. Knowing that in  
17 advance, having a Board order that sets those  
18 schedules, people will adjust their schedules except  
19 for family emergencies.

20 ADMINISTRATIVE JUDGE MOORE: Well we, of  
21 course, understand that.

22 MS. YOUNG: And, unfortunately, we're not  
23 so deep in staff that we have a third string around  
24 here.

25 ADMINISTRATIVE JUDGE MOORE: Thank you,

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1 Ms. Young.

2 Does anyone have any other matters?

3 MR. POLONSKY: DCS does not.

4 MS. YOUNG: I have a question from the  
5 staff, Judge Moore.

6 ADMINISTRATIVE JUDGE MOORE: Yes, Ms.  
7 Young.

8 MS. YOUNG: Will all copies of notices of  
9 depositions be filed on the dockets, so if the staff  
10 wanted to attend they've got sufficient notice by DCS,  
11 or intervenors?

12 ADMINISTRATIVE JUDGE MOORE: That would be  
13 something that the parties may wish to work out  
14 amongst themselves, but it would be surprising if they  
15 didn't. Does anyone have an objection to filing the  
16 notices?

17 MR. POLONSKY: No, not DCS.

18 ADMINISTRATIVE JUDGE MOORE: Ms. Curran?

19 MS. CURRAN: No.

20 MR. MONIAK: No.

21 ADMINISTRATIVE JUDGE MOORE: Then all  
22 parties should file notices of depositions and, of  
23 course, all the interrogatories and the interrogatory  
24 answers may I assume that you're all prepared to serve  
25 them on all parties or not?

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1 MS. YOUNG: Yes, on all parties. The  
2 staff normally does that.

3 ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
4 the applicant doesn't have any difficulty with that do  
5 they?

6 MR. POLONSKY: No.

7 ADMINISTRATIVE JUDGE MOORE: And Ms.  
8 Curran, you don't have any difficulty with that, do  
9 you?

10 MS. CURRAN: No.

11 ADMINISTRATIVE JUDGE MOORE: Mr. Moniak?

12 MR. MONIAK: No.

13 ADMINISTRATIVE JUDGE MOORE: All right.  
14 Now one further thing, Mr. Polonsky do you anticipate  
15 any significant number of either documents or material  
16 during any deposition that would be proprietary,  
17 involve proprietary safeguards or classified  
18 information?

19 MR. POLONSKY: Under the first contention  
20 possibly.

21 ADMINISTRATIVE JUDGE MOORE: All right.  
22 Now you recognize that we will have to put into effect  
23 special procedures if we're going to be dealing with  
24 safeguards or, most especially, classified  
25 information. And all of you are aware of that.

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1 MR. POLONSKY: Yes.

2 ADMINISTRATIVE JUDGE MOORE: All right.

3 So the one thing that must be done up front is that  
4 everyone remain aware of it so that it isn't a matter  
5 of fixing, putting the cat back in the bag after the  
6 cat is out. And so I would ask you all to keep that  
7 in mind, and on those matters I would hope that you  
8 would come to the Board earlier rather than later if  
9 a problem arises.

10 And it's not my intention to try to  
11 anticipate what we'll do with that information. The  
12 Board would appreciate it when the problem looks like  
13 it's going to arise, then we will set the course for  
14 dealing with it. Is that agreeable with all of you as  
15 probably the most efficient way to deal with those  
16 problems?

17 MS. CARROLL: Dianne?

18 MS. CURRAN: Yes.

19 ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
20 will that fully protect your client's interest?

21 MR. POLONSKY: Yes, I think so although --

22  
23 ADMINISTRATIVE JUDGE MOORE: Ms. Young,  
24 will that protect the staff's interest.

25 MS. YOUNG: No objections.

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1 ADMINISTRATIVE JUDGE MOORE: Okay.  
2 Proprietary information, the GANE through Ms. Curran  
3 has one designated expert they use in preparing  
4 contentions, have already signed affidavits of non-  
5 disclosure. And nothing further would be needed to be  
6 done with them. Do you agree with that, Mr. Polonsky?

7 MR. POLONSKY: I would just like to  
8 clarify. I think Glenn can you confirm that you also  
9 signed an affidavit?

10 MS. CARROLL: Yes, I did.

11 MR. POLONSKY: Oh so there are three  
12 parties who are members of GANE who currently have.

13 ADMINISTRATIVE JUDGE MOORE: And you see  
14 no reason why that is insufficient for proprietary  
15 information for the rest of this case?

16 MR. POLONSKY: We would like to review the  
17 text of the protective order.

18 ADMINISTRATIVE JUDGE MOORE: Sorry, that's  
19 why I was asking because I don't have it in front of  
20 me and I frankly don't remember.

21 MR. SILVERMAN: You know, we have no  
22 problem with the concept as long as, we should  
23 probably review text as a housekeeping matter, your  
24 Honor, and if it does need to be tweaked to make sure  
25 it's sufficiently broad, we may want to do that.

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1 ADMINISTRATIVE JUDGE MOORE: Okay, let's  
2 do that and, hopefully, it can be done without the  
3 need to do affidavits that could only be done with the  
4 protective order itself, if that's possible.

5 Mr. Moniak, you opted not to receive  
6 proprietary information.

7 MR. MONIAK: At this point, yes.

8 ADMINISTRATIVE JUDGE MOORE: And your  
9 admitted contentions probably don't involve that  
10 material. Or safeguards or potential for classified  
11 information. So in all likelihood, you would not be  
12 involved in any such matters in the future involving  
13 either classified or safeguards information.

14 MR. MONIAK: No, that's true.

15 ADMINISTRATIVE JUDGE MOORE: Okay.

16 MR. MONIAK: However --

17 ADMINISTRATIVE JUDGE MOORE: Late filed  
18 contentions obviously could change all that.

19 MR. MONIAK: Yes.

20 ADMINISTRATIVE JUDGE MOORE: All right.  
21 If no one has anything else --

22 MS. CARROLL: I have one kind of random  
23 question here that came up, this is Glenn. There was  
24 a newspaper article in which a public relations guy  
25 with DCS said that they expected to break ground in

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1 mid-2002. Wouldn't they be unable to begin  
2 construction until after this CAR proceeding?

3 ADMINISTRATIVE JUDGE MOORE: I'm sorry,  
4 Ms. Carroll, I have no idea what the implications of  
5 what you just said are.

6 MS. CARROLL: Did you not understand my  
7 question?

8 ADMINISTRATIVE JUDGE MOORE: Frankly, no,

9 MR. CARROLL: Oh okay. Can construction  
10 on the MOX factory begin before this proceeding is  
11 completed?

12 ADMINISTRATIVE JUDGE MOORE: Ms. Carroll,  
13 I can't foresee the future. But Mr. Polonsky, do you  
14 know what she's talking about?

15 MR. SILVERMAN: Yes, this is Mr.  
16 Silverman, I understand the question.

17 ADMINISTRATIVE JUDGE MOORE: Do you know  
18 anything about a press release?

19 MR. SILVERMAN: Glenn forwarded to us an  
20 article from the Charlotte Observer I think, Ms.  
21 Carroll?

22 MS. CARROLL: Yes.

23 MR. SILVERMAN: And it's not a quote but  
24 there is a statement in there written by the reporter  
25 regarding DCS plans to break ground. I've looked at

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1 it but I haven't conferred with my client about it.  
2 It's a news article, it's not a quote.

3 ADMINISTRATIVE JUDGE MOORE: Okay.

4 MS. CARROLL: But that doesn't really  
5 matter I suppose. It just raised the question for me  
6 because I assumed that construction couldn't begin  
7 until this proceeding had been completed, and raised  
8 doubts in my mind.

9 ADMINISTRATIVE JUDGE MOORE: Well, I  
10 frankly don't know the answer to that. If  
11 appropriate, if you put something in front of us that  
12 raises the question that requires answering, the Board  
13 will deal with it. But I would be surprised to learn  
14 -- there may well be a procedure for some kind of  
15 early site preparation. I frankly don't know, but  
16 these are the kinds of things, Ms. Carroll, that I  
17 hope that you will be able to deal with DCS on  
18 directly and receive answers directly on and then you  
19 can take the appropriate steps, legal steps if you  
20 think they're necessary.

21 MS. CARROLL: We hope.

22 MS YOUNG: Judge Moore, maybe you're  
23 missing something in the discussion but it's my  
24 understanding that under subpart L, the staff could  
25 issue the issue the construction authorization and

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1 that would remain effective during the pendency of the  
2 proceeding. But Ms. Carroll and other intervenors  
3 would be aware of that decision when it's made.

4 ADMINISTRATIVE JUDGE MOORE: And that is  
5 applicable for a part 70 plutonium proceeding?

6 MS. YOUNG: I think those are procedures  
7 that the Commission would follow here, yes. Subpart  
8 L.

9 ADMINISTRATIVE JUDGE MOORE: But that  
10 can't occur before the staff would issue a  
11 construction authorization?

12 MS. YOUNG: Right. Just as the hydro  
13 proceeding which you're familiar with, if the staff  
14 makes a finding to issue the license authorization,  
15 then that becomes effective and --

16 ADMINISTRATIVE JUDGE MOORE: Does the  
17 staff currently have such a plan?

18 MS. YOUNG: If the information becomes  
19 available at the time we complete the EIS and the SER,  
20 we could do that.

21 MS. CURRAN: Well, since there's no  
22 license application in this case it raises an  
23 interesting question that I'm sure we'll be dealing  
24 with.

25 MS. YOUNG: Well the license application

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1 I'm referring to is a construction authorization  
2 request.

3 MS. CURRAN: Well you said that isn't a  
4 license application.

5 ADMINISTRATIVE JUDGE MOORE: Let's not  
6 argue this, the motion to dismiss any further today.  
7 If no one -- what would be stated Ms. Young is that if  
8 the staff plans to take such action, notify the  
9 parties of it as soon as that information is available  
10 is something that at least as a courtesy to the  
11 parties and the Board would be greatly appreciated.

12 MS. YOUNG: Certainly, we can do that.

13 MR. MONIAK: This is Don Moniak from  
14 BREDL. The only thing I can think of is that DCS  
15 could be applying for an exemption to start some  
16 construction work and we'd ask to be notified of that  
17 if it happens and hopefully what you said will happen.

18 ADMINISTRATIVE JUDGE MOORE: This is not  
19 a matter that we need to concern ourselves with today.

20 If no one has anything else, the Board  
21 will issue a scheduling order for discovery after the  
22 1<sup>st</sup> of the year, after next week, and I have granted  
23 an extension until I believe it was January 7<sup>th</sup> for  
24 any responses to the applicant's motion for  
25 reconsideration of the Board's contention and standing

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1 ruling and if the Board will hold oral argument it  
2 will be three o'clock on the 8<sup>th</sup> of January.

3 If there's nothing further, I --

4 MS. YOUNG: Judge Moore, this is Mitzi  
5 Young from the staff.

6 ADMINISTRATIVE JUDGE MOORE: Yes, Ms.  
7 Young?

8 MS. YOUNG: Two things. One, your order  
9 made clear that the discovery schedule that has been  
10 agreed upon primarily concerns discovery for non staff  
11 parties. Is that correct?

12 ADMINISTRATIVE JUDGE MOORE: Yes, Ms.  
13 Young.

14 MS. YOUNG: Okay. The second thing is we  
15 ran around to find out what happened to the hearing  
16 file during this call and I've been informed that the  
17 boxes were sent to our mailroom for mailing only by  
18 first class mail as early as Friday and then Monday  
19 for DCS, but through some miscommunication the boxes  
20 did not leave NRC offices until yesterday.

21 I have in my hand a copy of the letter  
22 which includes the index. I will e-mail that to the  
23 parties as soon as I get off this call, and that index  
24 includes about 75 documents and there is an indication  
25 with respect to a number of documents that the non-

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1 proprietary version was included in the hearing file.

2 ADMINISTRATIVE JUDGE MOORE: Okay. And  
3 because they only went out yesterday and you used  
4 first class mail --

5 MS. YOUNG: The delivery time is going to  
6 vary depending upon the location.

7 ADMINISTRATIVE JUDGE MOORE: So it could  
8 be as much as two weeks?

9 MS. YOUNG: No, no, first class mail is  
10 normally three to five days depending, but I don't  
11 know about the Christmas rush.

12 ADMINISTRATIVE JUDGE MOORE: Well that is  
13 the problem.

14 MS. CARROLL: Your Honor, I'd like to  
15 point out one thing. GANE will need a proprietary  
16 version and I'm not sure, you know, we worked this out  
17 with DCS and we have doubts that the NRC may not be  
18 clear on this so it sounds like in some that's the  
19 proprietary version and we would welcome a Fed Ex  
20 copy.

21 ADMINISTRATIVE JUDGE MOORE: Well, the  
22 only thing that would need to be done, Ms. Carroll, is  
23 those documents that are proprietary, after everyone  
24 has a chance to check to make sure that the current  
25 protective order and affidavits of non-disclosure

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1 fully cover all this, would need to be provided to you  
2 not the entire hearing file reduplicated.

3 MS. YOUNG: Judge Moore, is it Ms.  
4 Carroll's understanding that under the agreement with  
5 DCS she gets those documents directly? Is she asking  
6 to get them again from the staff? I guess I'm  
7 confused.

8 MS. CARROLL: We'll automatically serve  
9 the proprietary version because we have the non-  
10 disclosure agreement.

11 MS. YOUNG: Okay, but the staff  
12 distributed the hearing file which only has the non-  
13 proprietary version, it would be another version of a  
14 document you already have.

15 MS. CARROLL: Well there are two points in  
16 my comment here and one is we would welcome a Fed Ex  
17 copy because we would like to have that right away.  
18 And I thought that, at the same time, I would mention  
19 it would be appropriate to send us the proprietary  
20 version.

21 ADMINISTRATIVE JUDGE MOORE: Ms. Carroll,  
22 it will take the staff, this is Thursday, there's no  
23 way the staff with Monday and Tuesday being holidays  
24 next week, can send that to reproduction and get it  
25 before next Wednesday into the hands of Fed Ex.

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1 That's a fact of life.

2 MS. CARROLL: I misunderstood your earlier  
3 comment I guess.

4 ADMINISTRATIVE JUDGE MOORE: It has been  
5 mailed.

6 MS. YOUNG: It has been mailed. We will  
7 get an e-mail version of the correspondence, the cover  
8 letter with the index, to everyone today.

9 ADMINISTRATIVE JUDGE MOORE: And if you  
10 have not received it in due course, and I apologize  
11 for the staff's --

12 MS. YOUNG: Yes, the staff apologizes,  
13 Judge Moore. I wasn't involved in this.

14 ADMINISTRATIVE JUDGE MOORE: -- procedure  
15 here that didn't ensure that this material went out  
16 earlier. But, nevertheless, if it has not been  
17 received by Wednesday, the day after Christmas, if you  
18 would notify Ms. Young by e-mail or telephone call,  
19 the staff will then make every effort to put one in  
20 the mail immediately to you by Fed Ex. Is that  
21 reasonable, Ms. Young?

22 MS. YOUNG: Yes, that's reasonable but  
23 let's clarify for a minute. Is Ms. Carroll expecting  
24 to get a proprietary version from the staff or a  
25 document she already received from applicants?

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1 ADMINISTRATIVE JUDGE MOORE: Mr. Polonsky,  
2 I do frankly not recall how the protective order and  
3 affidavits of non-disclosure are set up. Previously,  
4 that information came from you to the intervenor, did  
5 it not?

6 MR. POLONSKY: Yes, and we have done so on  
7 three separate occasions for three individual  
8 representatives.

9 ADMINISTRATIVE JUDGE MOORE: So the  
10 proprietary information will not come from the staff,  
11 it will come from you.

12 MR. POLONSKY: I believe that all  
13 proprietary versions of the CAR and a proprietary  
14 financial statement were already mailed to them, and  
15 I believed at follow up conversations that they  
16 received them.

17 MR. SILVERMAN: And we sent them the  
18 proprietary versions of our answers to the RAI. There  
19 may possibly be some additional documents in the  
20 hearing file, of course, on this perhaps that are  
21 proprietary that we perhaps have not sent to the  
22 intervenors.

23 ADMINISTRATIVE JUDGE MOORE: What would be  
24 the most efficient way to deal with those, Mr.  
25 Silverman?

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1 MR. SILVERMAN: Well I'm concerned, the  
2 hearing file should be complete so, clearly, the  
3 hearing file should identify all documents that are  
4 relevant. If we can work out the tweaking of the  
5 protective order, I'd like to think about it, but it  
6 may be that we can provide those documents directly to  
7 --

8 ADMINISTRATIVE JUDGE MOORE: That I think  
9 would be certainly the most efficient and probably  
10 involve the least opportunity for error. And could  
11 that be done with the cooperation of the staff with  
12 its index and you, the applicant, as quickly as  
13 possible so that any documents that haven't been  
14 turned over by the first week of the New Year, those  
15 can be turned over assuming once again we don't have  
16 to go through any further steps on the affidavits of  
17 non-disclosure.

18 MR. POLONSKY: This is Mr. Polonsky. We  
19 can review the index the minute it comes in, identify  
20 any proprietary documents that have not yet been  
21 provided to GANE and provide those documents.

22 ADMINISTRATIVE JUDGE MOORE: That would be  
23 most helpful.

24 Okay, if there's nothing further I'm sorry  
25 this has taken as long as it has.

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1 MR. POLONSKY: One other issue and it is  
2 very minor.

3 ADMINISTRATIVE JUDGE MOORE: And this is  
4 Mr. Polonsky.

5 MR. POLONSKY: I'm sorry. If you wouldn't  
6 mind addressing the issue, just by mention, of lead  
7 parties in your order.

8 ADMINISTRATIVE JUDGE MOORE: Thank you.

9 MR. POLONSKY: Can we come to an  
10 agreement?

11 ADMINISTRATIVE JUDGE MOORE: Well, that is  
12 something in the first instance that I would  
13 appreciate if GANE and BREDL would work out. Do you  
14 have anything on that that you would like to say, Ms.  
15 Curran or Ms. Carroll?

16 MS. CARROLL: We do intend to work it out.  
17 We've been scrambling, as you can imagine, since all  
18 this discovery started working so we've had a  
19 preliminary conversation about it but we do need to  
20 work it out and we embrace the lead party concept and  
21 will inform you we just definitely did not --

22 ADMINISTRATIVE JUDGE MOORE: All right.  
23 Can you do that by the first week of the New Year?

24 MR. MONIAK: Absolutely.

25 MS. CARROLL: Is that possible, Dianne?

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1 MS. CURRAN: For me it may be difficult  
2 but I think it's something that, hopefully, that you  
3 can work out, but if we need more time we'll ask for  
4 it. We'll certainly try to make that and it could be  
5 any time within that first week so up till the, oh man  
6 the fourth.

7 MS. YOUNG: Judge Moore, would it be  
8 appropriate to indicate that in the January 7<sup>th</sup>  
9 filing?

10 ADMINISTRATIVE JUDGE MOORE: I'm sorry,  
11 Ms. Young. Oh in response --

12 MS. YOUNG: This is in response to motion  
13 to reconsider, could the parties notify us in that  
14 filing?

15 ADMINISTRATIVE JUDGE MOORE: That will be  
16 fine.

17 MR. MONIAK: That will be very convenient,  
18 too. Thank you.

19 ADMINISTRATIVE JUDGE MOORE: All right, if  
20 there's nothing --

21 MS. CURRAN: Judge Moore, I do have one  
22 more thing. This is Dianne Curran. We have filed  
23 yesterday a motion for stay of discovery pending a  
24 ruling on the motion to dismiss. Can you give us any  
25 more sense of when you might be likely to rule on the

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1 motion to dismiss? I know you said you were waiting  
2 for --

3 ADMINISTRATIVE JUDGE MOORE: We're waiting  
4 for our colleague.

5 MS. CURRAN: And do you think it might be,  
6 I mean he's probably coming back, he's back today or  
7 tomorrow.

8 ADMINISTRATIVE JUDGE MOORE: I'm hopeful  
9 that he is returning today and we will see him this  
10 afternoon. If not, we will be making every effort to  
11 issue it tomorrow, assuming Judge Kelter returns from  
12 North Carolina.

13 ADMINISTRATIVE JUDGE LAM: This is Judge  
14 Lam. More likely than not, Judge Kelter will not be  
15 in the office today but we expect to see him tomorrow.

16 MS. CURRAN: So it's likely that an order  
17 will come out tomorrow?

18 ADMINISTRATIVE JUDGE MOORE: Correct.

19 MS. CURRAN: Okay.

20 ADMINISTRATIVE JUDGE MOORE: I'm afraid to  
21 ask if anyone has anything else, so I will just end  
22 this now and your next filing will be due on the 7<sup>th</sup>  
23 of January and the Board will notify you immediately  
24 that day if it wishes to have any oral argument on the  
25 8<sup>th</sup>.

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1 Thank you very much and that concludes the  
2 matter today.

3 (Whereupon, the above-titled matter went  
4 off the record at 10:20 a.m.)

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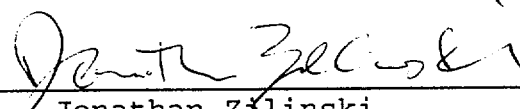
This is to certify that the attached proceedings  
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in the matter of:

Name of Proceeding: Duke Cogema & Webster  
Savannah River MOX Fuel  
Fabrication Facility

Docket Number: 70-3098-ML

Location: Rockville, MD

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