

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**BEFORE THE COMMISSION**

January 7, 2002

DOCKETED  
USNRC

February 1, 2002 (11:15AM)

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In the Matter of )

DUKE COGEMA STONE & WEBSTER )

(Savannah River Mixed Oxide Fuel  
Fabrication Facility) )

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Docket No. 0-70-03098-ML

ASLBP No. 01-790-01-ML

**GEORGIANS AGAINST NUCLEAR ENERGY'S  
MOTION FOR RECONSIDERATION OF CLI-01-28**

Georgians Against Nuclear Energy ("GANE") hereby petitions the Commission for reconsideration of CLI-01-28 (December 28, 2001), in which the Commission denied GANE's request to suspend the instant proceeding for authorization of construction of a mixed oxide ("MOX") fuel fabrication facility by Duke, COGEMA, Stone & Webster ("DCS").<sup>1</sup> In the decision, the Commission refuses to stay the pending proceeding while the Staff undertakes a "top-to-bottom review of every aspect" of NRC security requirements. *Id.*, slip op. at 7-8. GANE respectfully submits that the Commissioners should reconsider several aspects of the decision which overlook or misapprehend "(1) some legal principle or decision that should have controlling effect; or (2) some critical factual information." See *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), LBP-00-31, 52 NRC 340, 342 (2000). GANE submits that

<sup>1</sup> See Petition by Georgians Against Nuclear Energy and Nuclear Control Institute to Suspend Construction Authorization Proceeding for Proposed Plutonium Fuel (MOX) Fabrication Facility (October 10, 2001) ("GANE Petition").

reconsideration of these various aspects of CLI-01-28 reasonably would lead to a different decision.

One of the Commission's principal grounds for refusing to stay the proceeding is that "there will be no construction or operation [at the MOX Facility] for years, even assuming DCS gains the NRC's approval of the license application." *Id.*, slip op. at 7. The Commission apparently has overlooked the schedule that was posted on the NRC's former MOX website on May 25, 2001, in which the Staff proposed to issue the Safety Evaluation Report ("SER") for construction of the proposed MOX Facility by September 30, 2002.<sup>2</sup> Presumably, construction will be allowed to begin immediately after issuance of the SER. Therefore, it is possible that construction MOX Facility will begin in less than nine months, rather than "years" from now.

On this basis, GANE asks the Commission to reconsider its ruling that "GANE has advanced no reason that warrants immediate suspension of the MOX car proceeding to protect the health and safety or security of its members." CLI-01-28 , slip op. at 7. If the NRC's thorough review of security requirements leads to proposals for design changes in the MOX Facility, such changes may be foreclosed, as a practical matter, if the facility is already built. Even though the hearing process may be flexible for the purpose of entertaining new issues, *see* CLI-01-28 , slip op. at 7, if changes to the design are foreclosed by the completion of construction, such flexibility will not avail GANE in protecting its interest in assuring the adequacy of the MOX design to protect health and safety.

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<sup>2</sup> A hard copy of the schedule is attached as Exhibit 1.

Second, the Commission states that the proceeding should go forward because it will “require resolution of many issues having nothing to do with terrorism.” *Id.*, slip op. at 8. However, the proceeding for approval of the CAR involves basic questions about the physical design of the proposed MOX Facility. It is difficult to imagine how issues relating to the adequacy of the plant’s design for protection against a terrorist attack can be separated from issues relating to the overall safety of the design. In fact, the relationship between overall safety and physical security is borne out by the CAR itself. For instance, section 5.5.2.7.6.2 of DCS’s Construction Authorization Request (“CAR”) states that:

[t]he impacts of explosions in the F Area are bounded by the impacts accounted for in the MFFF structures for safeguards and security reasons. Thus no new principal SSCs are required for this event.

In other words, with respect to protection against accidental explosions in the facility design, safeguards and security issues determine the bounding considerations.<sup>3</sup>

Moreover, several of the GANE contentions already admitted by the ASLB bear a relationship to the issue of protection against terrorism. *See* LBP-01-35 (December 6, 2001):

- Contentions 1 and 2 challenge the adequacy of the MOX Facility design to meet physical security and material control and accounting requirements, and thus have an obvious relationship to the adequacy of the design to protect against terrorism.

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<sup>3</sup> *See also* Section 6.3.3.2.4 of the CAR, which states that the “use of qualified nondestructive assay (NDA) measurement systems is also acceptable in establishing compliance with the double contingency principle,” for criticality prevention. Qualified NDA measurement systems are commonly used for material control and accounting. Thus, criticality prevention and safeguards measures have an integral relationship.

- Contentions 5 and 8 challenge the size of the controlled area. As DCS has acknowledged, “the location of the controlled area boundary affects the allowable source term, which in turn affects the design.” DCS Motion for Reconsideration, Or, In the Alternative, For Certification to the Commission at 20 (December 17, 2001). As illustrated above by Section 5.5.2.7.6.2 of the CAR, considerations with respect to safeguards and security affect the design of the plant with respect to accident protection. Therefore, they also affect the source term.
- Contention 12 challenges the failure of the Environmental Report to discuss the consequences of a terrorist attack. If it is determined that a terrorist attack is foreseeable and warrants discussion in an EIS, the EIS would also be required to discuss reasonable means of avoiding or mitigating the impacts of an attack.

Therefore, several of GANE’s contentions relate to protection against a terrorist attack on the proposed MOX Facility. It would be grossly inefficient to go ahead with litigation of these issues, only to find at some future point that the entire design basis for the MOX Facility needed to be revamped.<sup>4</sup>

In support of its decision, the Commission also states that:

[d]uring the time when the NRC is pursuing its top-to-bottom reassessment of its regulations and policies on terrorism, the agency must also continue to meet its

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<sup>4</sup> Moreover, as discussed below at page 5, there is no reason to go ahead with the litigation of the CAR now, because it does not constitute a lawful or valid license application. Proceeding with the review of the CAR not only jeopardizes the establishment of a safe and secure design for the MOX Facility, but is a waste of time and resources for GANE, the ASLB, and other parties. The inefficiency and cost of going ahead with this premature proceeding for review of the CAR are set forth in GANE’s Request for Stay Of Hearing On Construction Authorization Request Pending Ruling On Petition For Review, which was filed with the Commission on January 4, 2002.

statutory responsibilities for licensing and regulation of all nuclear facilities and materials in a timely and efficient manner.

CLI-01-28 , slip op. at 8, *citing Statement of Policy on Conduct of Adjudicatory Proceedings*, CLI-98-12, 48 NRC 18 (1998). As discussed in the Petition for Review which GANE filed with the Commission on January 4, 2002, however, the proceeding for approval of the CAR has no basis in the law, and the CAR should never have been docketed. Instead, the NRC should have awaited the filing of a completed license application before going ahead with a hearing. Thus, to press on with the proceeding for approval of the CAR would violate, rather than comply with, the NRC's statutory responsibilities for licensing of nuclear facilities. Now that the ASLB has ruled on GANE's motion to dismiss this proceeding (*see* Memorandum and Order of December 20, 2001), and GANE has placed the issue before the Commission, it is appropriate for the Commission to review whether the pending hearing is a valid and lawful proceeding that is entitled to protection from interference. GANE respectfully submits that this question must be answered in the negative.

The Commission also concludes in CLI-01-28 that the delay requested by GANE is unnecessary, and therefore would "contravene the Commission's fundamental duties to the public." *Id.*, slip op. at 8. As discussed above, however, delay *is* necessary in order to assure that the proposed MOX Facility is not built with a design that is inadequate to protect against terrorist attacks. It is also necessary to ensure that the pending litigation of safety and environmental issues that relate to the adequacy of physical security and safeguards measures is conducted in a meaningful and efficient manner.

Finally, the Commission cites the “additional strong interest in moving forward with this proceeding; specifically, reducing the nation’s inventory of plutonium.” *Id.*, slip op. at 8, *citing* CLI-01-13, 53 NRC 478, 484 (2001). GANE respectfully submits that this statement overlooks the equally important goal, indeed, the basic premise of the MOX program, of reducing the threat of nuclear weapons proliferation in a manner that is “safe” and “secure.” *See* Surplus Plutonium Disposition Final Environmental Impact Statement, Vol. 1 – Part 1A at 1-3 (1999) (“the focus of U.S. nonproliferation efforts includes ensuring the safe, secure, long-term storage and disposition of surplus weapons-usable fissile plutonium.”) Thus, the safety and security of the proposed MOX facility should be a paramount consideration in determining whether to go ahead with this CAR review proceeding. To allow construction and licensing of a facility that does not provide effective protection against a terrorist threat would not meet the ultimate goals of the MOX disposition program.

Accordingly, for the foregoing reasons, the Commission should reconsider its decision to deny GANE’s request that it suspend the proceeding for approval of the CAR, pending review of the Commission’s regulations. The request should be granted.

Respectfully submitted,

A handwritten signature in cursive script that reads "glenn carroll". The signature is written in black ink and is positioned above the printed name.

Glenn Carroll<sup>5</sup>  
for Georgians Against Nuclear Energy  
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404-378-4263

Dated January 7, 2002  
in Decatur, Georgia

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<sup>5</sup> This motion was prepared with substantial assistance from GANE's legal adviser, Diane Curran.

**MOX REVIEW SCHEDULE**  
(Last updated - 5/25/01 (4:00pm))

Reactor-related work shown in italics/NMSS work shown in bold

MOX FFF = MOX fuel fabrication facility

LTA = LA = lead test assembly

C = complete

DATE	ACTION
6/22/00C	(NMSS) DCS submits Quality Assurance Plan
12/19/00C	(NMSS) DCS submits MOX FFF environmental report
2/28/01C	(NMSS) DCS submits MOX application for construction authorization
3/07/01C	(NMSS) NRC issues notice of intent(NOI) for EIS scoping meetgs
3/28/01C	(NMSS) NRC completes acceptance review of application
4/12/01C	(NMSS) NRC issues Notice of Opportunity for Public Hearing
4/17/01- 4/18/01C	(NMSS) Conduct EIS scoping mtgs for MOX FFF (N Augusta, SC; Savannah, GA)
5/08/01C	(NMSS) Conduct EIS scoping mtg for MOX FFF (Charlotte, NC)
6/13/01	(NMSS) Complete technical review of MOX FFF Environmental Report/issue RAI
6/18/01	(NMSS) Issue RAI on QA Program Plan for Construction
6/29/01	(NMSS) Issue RAI re. construction of MOX FFF (allow 60 days to respond)
7/12/01	(NMSS) DCS responds to Environmental Report RAI
7/18/01	(NMSS) DCS responds to QA Program Plan for Construction RAI
7/31/01	(NMSS) Issue EIS scoping summary report
8/17/01	(NMSS) Issue draft SER on QA Program Plan for Construction
8/31/01	(NMSS) DCS responds to construction RAI #1
10/01/01	(NMSS) Issue final SER on QA Program Plan for Construction
10/30/01	(NMSS) Issue RAI #2 re construction of MOX FFF (allow 45 days to respond) (if necessary)
12/15/01	(NMSS) DCS responds to construction RAI #2 (If necessary)
2/28/02	(NMSS) Issue draft MOX FFF EIS for public comment
3/18/02-3/22/02	(NMSS) Conduct EIS public meetings for MOX FFF



4/30/02	(NMSS) EIS public comment period ends for MOX FFF
4/30/02	(NMSS) Issue draft SER for construction of MOX FFF
7/31/02	(NMSS) DCS submits license application for operation of MOX FFF
8/30/02	(NMSS) NRC completes acceptance review of license application
9/30/02	(NMSS) Issue final EIS for MOX FFF
9/30/02	(NMSS) Issue final SER for construction of MOX FFF
10/31/02	(NMSS) Issue FRN opportunity for hearing for operation of MOX FFF
10/31/02	(NMSS) Public hearings begin on construction of MOX FFF
10/31/02	(NMSS) Issue ROD for MOX FFF
10/31/02	(NMSS) Issue licensing decision on Construction Authorization Request for MOX FFF
11/29/02	(NMSS) Issue RAI operating license for MOX FFF
2/29/04	(NMSS) Issue draft SER for operating license of MOX FFF
7/31/04	(NMSS) Issue final SER for operating license of MOX FFF
8/31/04	(NMSS) Issue licensing decision on operation license
10/31/04	(NMSS) Public hearings on operation of MOX FFF begin
3/31/05	(NMSS) DCS cold start-up of MOX FFF (if authorized)
11/30/05	(NMSS) DCS hot start-up of MOX FFF (if authorized)

CERTIFICATE OF SERVICE  
by Georgians Against Nuclear Energy  
(Docket # 70-3098, ASLBP # 01-790-01-ML)

I hereby certify that copies of GANE's Motion for Reconsideration of CLI-01-28 were sent to the following by e-mail with paper copies served via U.S. First Class Mail.

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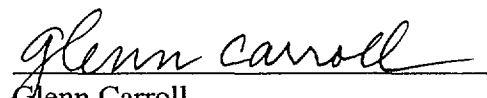
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Respectfully submitted,

  
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January 7, 2002 in Decatur, Georgia