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NUCLEAR REGULATORY COMMISSION

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

Docket Number: 70-3098-ML

Location: (telephone conference)

Date: Thursday, April 18, 2002

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF: :

DUKE COGEMA STONE & WEBSTER : Docket No.

(Savannah River Mixed Oxide : 70-3098-ML

Fuel Fabrication Facility) :

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Thursday, April 18, 2002

TELECONFERENCE

The above-entitled matter was conducted at 1:00
p.m.

BEFORE:

THOMAS S. MOORE, Chairman

CHARLES N. KELBER, Administrative Judge

PETER S. LAM, Administrative Judge

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1 APPEARANCES:

2 On Behalf of Applicant:

3 DONALD J. SILVERMAN, ESQ.

4 ALEX S. POLONSKY, ESQ.

5 of: Morgan, Lewis & Bockius, LLP

6 1111 Pennsylvania Avenue, N.W.

7 Washington, D.C. 20004

8

9 On Behalf of GANE:

10 DIANE CURRAN, ESQ.

11 of: Harmon, Curran, Spielberg & Eisenberg, LLP

12 1726 M Street, N.W., Suite 600

13 Washington, D.C. 20036

14 Glenn Carroll

15 P.O. Box 8574

16 Atlanta, GA 30306

17

18 ALSO PRESENT:

19 JOHN T. HULL, ESQ.

20 Office of General Counsel

21 U.S. Nuclear Regulatory Commission

22 Washington, D.C. 20555-0001

23

24

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ALSO PRESENT (CONTINUED):

LOUIS ZELLER

Blue Ridge Environmental Defense League

P.O. Box 3487

Aiken, SC 29802

PETER HASTINGS

Duke Cogema Stone & Webster

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

1:00 P.M.

CHAIRMAN MOORE: For the Court Reporter's benefit would each of you, starting with the Staff, tell us who's on the line, please.

MR. HULL: This is John Hull, spelled H-U-L-L, acting as counsel for the NRC Staff. I'm also expecting Tim Johnson, but he has not yet arrived.

CHAIRMAN MOORE: Applicant?

MR. POLONSKY: On the line for Applicant is Alex Polonsky, P-O-L-O-N-S-K-Y, and Don Silverman, S-I-L-V-E-R-M-A-N.

We also are expecting the DCS Licensing Manager, Peter Hastings, but he has not yet joined the call.

CHAIRMAN MOORE: And GANE?

MS. CARROLL: This is Glenn Carroll, that's G-L-E-N-N Carroll, C-A-R-R-O-L-L for Georgia Against Nuclear Energy.

MS. CURRAN: This is Diane Curran, C-U-R-R-A-N, GANE's legal advisor.

CHAIRMAN MOORE: Do any of you have an objection that we go ahead and proceed without Staff and the Applicant licensing managers and project managers?

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1 MR. HULL: I have no objection.

2 MR. ZELLER: Pardon me. This is Louis
3 Zeller, L-O-U-I-S Z-E-L-L-E-R, Blue Ridge
4 Environmental Defense League.

5 CHAIRMAN MOORE: Thank you very much, I
6 apologize. Then let's move ahead.

7 Initially, the Board expresses its dismay
8 that the parties were unable to reach an agreement on
9 a schedule. We really thought that it would be not
10 that difficult a task in light of the Board's previous
11 order and schedule that was then subsequently
12 canceled. However, we'll take it as we find it and I
13 would be interested in having each of you respond
14 quickly to the filings of each of the other parties.

15 Diane Curran, would you start please?

16 MS. CURRAN: I think Glenn Carroll is
17 going to be speaking for GANE.

18 CHAIRMAN MOORE: All right.

19 MS. CARROLL: Yes, we -- I'm sorry, I have
20 one correction to our submitted schedule. And the
21 last date that the discovery would be completed should
22 be November 14, 2003.

23 CHAIRMAN MOORE: Not December 15th?

24 MS. CARROLL: Oh shoot, let's agree with
25 DCS and go for December 17th. We were trying to model

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1 it after the schedule that was accepted before the
2 change to the program and I would like to point out
3 for you that while the owners received the discovery
4 schedule where they establish a start, doesn't seem to
5 end. I wonder if I even got the whole thing. The
6 last date I have on NRC is December 16, 2002.

7 CHAIRMAN MOORE: I'm sorry, Ms. Carroll,
8 are you speaking of the e-mail from John Hull on --

9 MS. CARROLL: Yes sir.

10 CHAIRMAN MOORE: 4/17?

11 MS. CARROLL: Yes sir.

12 CHAIRMAN MOORE: As it ends with December
13 16, 2002?

14 MS. CARROLL: It does.

15 MR. HULL: This is John Hull for the
16 Staff. As I stated in e-mail, I was just setting
17 forth the initial discovery deadlines.

18 CHAIRMAN MOORE: Ms. Carroll, proceed.

19 MS. CARROLL: Yes, that's what it looks
20 like. Yes sir, was someone addressing me?

21 CHAIRMAN MOORE: Yes, I said proceed,
22 please.

23 MS. CARROLL: I'd like to point out for
24 you that GANE's proposed schedule does wrap up at the
25 same time as DCS's. We see no need to proceed for a

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1 full 10 months prior to where our dates start to
2 coincide in April, I'm sorry, yes. I think we have
3 essentially closed discovery on DCS prior to the
4 issuance of the final EIS which we don't agree with
5 and then have a rather large gap until we take up
6 discovery with the NRC. And I'd like to just really
7 emphasize that we talk about wrapping up the schedule
8 at the same time which seems the most critical date
9 for keeping the project on schedule and just don't see
10 a need to now where there, who knows, what will be in
11 the supplemental CAR which is not to be submitted
12 until October and which is certainly -- certainly the
13 triggering of the entire process so far was the
14 submission of the CAR and so the supplemental CAR, we
15 perceive as vital to the process.

16 We want to point out for you that our
17 schedule allows for review of that supplemented CAR.
18 We can compare our contentions to it, submit any
19 revisions to you and the Board will have time to
20 review them and then we can go into discovery. We
21 think to start prior to that will amount to a real
22 possibility of a wasted effort on the part of the
23 parties concerned and more importantly as an
24 unreasonable burden on us to string out legal advice
25 over an unnecessarily lengthy discovery period.

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1 CHAIRMAN MOORE: Okay, thank you, Ms.
2 Carroll.

3 MS. CARROLL: Would you add anything to
4 that, Diane?

5 MS. CURRAN: No, that's exactly what I
6 would say.

7 CHAIRMAN MOORE: Mr. Polonsky, are you
8 speaking for the Applicant?

9 MR. POLONSKY: Yes, Your Honor.

10 CHAIRMAN MOORE: Proceed.

11 MR. POLONSKY: Someone has just joined us.
12 I heard a beep during Glenn's presentation.

13 MR. HASTINGS: Yes, this is Peter Hastings
14 from DCS, I apologize. I had the wrong number to dial
15 in originally.

16 MR. POLONSKY: Okay, the submittal that we
17 sent pretty much summarizes our position of why we
18 would like to get things started promptly. We have
19 two reasons. We think, let's go to the first
20 interrogatories, could determine if RD or NSI is going
21 to be part of the CAR proceeding and we'd like to get
22 the necessary clearances in place with that and get
23 that on the table if that is going to be the case.

24 The second is simply that the information
25 that's going to come out here is going to end up

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1 saving everybody a lot of time and resources if the
2 answers to the interrogatories supplies sufficient
3 information for us to dispose of some of the issues.
4 We would not need a second round of interrogatories on
5 those issues or need to have depositions on those
6 issues.

7 Also, we don't believe that there will be
8 any additional burden on any of the parties in the
9 near term for preparing a first round of
10 interrogatories or submitting their experts and when
11 this Board suspended discovery on March 7th that was
12 the date that experts were to be identified under the
13 original schedule and a week later, I believe it was
14 March 15th or 14th, the first round of interrogatories
15 were due. So if GANE plans to submit any
16 interrogatories on its behalf or on behalf of BREDL,
17 we assume that those are substantially complete at
18 this point.

19 CHAIRMAN MOORE: All right, Mr. Hull, do
20 you have anything that you would like to add?

21 MR. HULL: Yes, thank you, Your Honor.

22 CHAIRMAN MOORE: Before you start, let me
23 interrupt, Mr. Hull. Are the dates for the issuances
24 of the draft EIS, the draft SR and the SER still
25 holding that you gave us in a letter some time in

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1 March?

2 MR. HULL: Yes, Your Honor. I would not
3 anticipate any changes in those dates unless there's
4 a delay in getting the supplemental environment report
5 and/or the supplemental CAR from DCS.

6 CHAIRMAN MOORE: All right. Proceed, Mr.
7 Hull. Oh, I'm sorry, Judge Kelber has something.

8 JUDGE KELBER: As long as we're talking
9 about project schedules, I'm confused on that because
10 recently in the CLI 2-14, the Commission said and I'm
11 quoting now, "DOE, however, has recently modified its
12 plutonium disposition program in a way that will
13 postpone until the fall of 2008 the delivery of the
14 first MOX fuel assembly to Maguire."

15 I had the impression that the schedule was
16 2006. Am I incorrect in my impression? Was it all of
17 2008 -- is 2008 the result of this latest delay or
18 what is the situation there?

19 MR. HULL: This is John Hull for the
20 Staff. I'm told by Ken Johnson who is now with us
21 that the original date was 2007 and it's been
22 postponed by one year.

23 JUDGE KELBER: Thank you.

24 CHAIRMAN MOORE: Go ahead, Mr. Hull.

25 MR. HULL: The only general comment I had

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1 about the proposed discovery schedule of GANE was that
2 it seemed to load all of the discovery on to the back
3 end of the process and I would just have a concern
4 that we will run into real problems if we followed
5 that route.

6 CHAIRMAN MOORE: All right, we have a
7 question for GANE and that deals with the matter that
8 is raised by DCS in its filing. What, if anything,
9 does GANE plan to do about security clearances should
10 they be necessary?

11 MS. CURRAN: Yes sir, we plan to identify
12 -- well, this is something we'd like to clarify right
13 now. We understand that a type L clearance would be
14 required to look at the information. Is that correct?

15 CHAIRMAN MOORE: The Board is not in a
16 position to answer that, however, both the staff and
17 the Applicant probably can, since it's their
18 information.

19 MR. SILVERMAN: This is Don Silverman for
20 the Applicant. To the best of my knowledge, I believe
21 an L clearance would be required, but it may depend
22 upon the nature of the information and perhaps Peter
23 Hastings can correct me if I'm wrong, but I think if
24 we're dealing with NSI which is the type of
25 information that's most likely implicated here I

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1 believe an L clearance is what would be needed.

2 MS. CURRAN: Well, it's GANE's intention
3 to retain experts and legal advisors who already
4 possess that clearance and it's our understanding that
5 once the parties are satisfactorily identified to the
6 Applicant and the staff, the clearance would be in
7 place for these people because they already have it.
8 And so we don't think that type of lead time talked
9 about in the DCS filing applies to the situation.

10 CHAIRMAN MOORE: Well, if that's the case
11 all well and good. The Board would admonish GANE,
12 however, that the prudent course would be to ensure
13 that all i's are dotted and t's crossed with respect
14 to security clearances for advisors and experts
15 because you have ample time and the Board will not
16 look favorably upon any delay caused by GANE's failure
17 having had ample time to secure all clearances, not to
18 have done so. So I hope that the matter will be taken
19 care of by all concerned expeditiously and because the
20 Board in light of the long time span that is available
21 will not delay the proceeding if a party has not done
22 all they can do starting now to ensure that this is
23 not a problem.

24 MS. CURRAN: That's understood. Thank
25 you.

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1 CHAIRMAN MOORE: Well, frankly, the Board
2 will confer after this telephone conference and decide
3 on a schedule which we will issue in due course, but
4 I think it's fair to say that we all believe that
5 there's a great deal of merit in the proposal put
6 forth by the Applicant. We see no need to delay all
7 discovery until the end and some of these matters may
8 prove to resolve themselves as we go along and we
9 think they should have that opportunity.

10 In that regard, let's start with DCS. Is
11 there any likelihood or -- let's start with GANE. Is
12 there any likelihood that some or all of these
13 contentions could settle?

14 MS. CARROLL: Your Honor, I would take the
15 exact opposite view and I would have hoped that the --
16 what we filed with you already would have laid out for
17 you point by point the potential for the impact.
18 We're talking in the range of 25 percent more
19 plutonium of a contaminated character which will
20 require not only the footprint alteration, the size
21 and scope of the facility, significantly change, but
22 the nature of the plutonium itself is such that the
23 processes will added to, from what we've been
24 discussing. Certainly the waste issue, I hope you
25 wouldn't even consider going forward with the waste

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1 issue since that is acknowledged to be undergoing
2 significant change.

3 CHAIRMAN MOORE: Well, Ms. Carroll, let me
4 give you an example.

5 MS. CARROLL: Yes sir.

6 CHAIRMAN MOORE: GANE contention 1 and 2
7 deal with the lack of material in the construction
8 authorization request dealing with material control
9 and accounting and physical security. They don't deal
10 with the adequacy of something that's not yet there.
11 And anything dealing with the latter, of course, would
12 require a late filed contention. That's why I'm
13 inquiring whether if the Applicant and you can sit
14 down and agree on the basic information that they will
15 be providing and if that is adequate, in your view,
16 whether these contentions can be settled because
17 that's what your contention is.

18 MS. CARROLL: I appreciate what you're
19 saying. One possible, however remote, was that that
20 information would be included in the supplemental CAR,
21 then we would see if it mooted that contention or not
22 and all of us would get out of a hearing on it. But
23 that's a good point.

24 CHAIRMAN MOORE: Would you be willing to
25 entertain discussions with the Applicant and the staff

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1 on settlement on any of these contentions?

2 MS. CARROLL: We can talk, absolutely. We
3 would not opposed to talk.

4 CHAIRMAN MOORE: Thank you. Applicant,
5 would you be interested in entertaining such
6 discussions with GANE?

7 MR. SILVERMAN: Yes, we clearly would be
8 interested in entering discussions on settlement of
9 the admitted contentions, but we would not want
10 discovery to be postponed while we were entering into
11 those discussions.

12 CHAIRMAN MOORE: I understand. This is
13 independent of discovery, although discovery may help
14 that settlement protest, might it not?

15 MR. SILVERMAN: Absolutely.

16 CHAIRMAN MOORE: Assuming that the parties
17 are willing to discuss settlement on some or all of
18 these contentions and for ease of reference let's just
19 say several of them, Mr. Polonsky, how would you
20 propose pursuing that?

21 MR. POLONSKY: Well, I think Glenn Carroll
22 and I have -- I hope I'm characterizing this right,
23 but it's a pretty amicable relationship and I think
24 she and I can just get on the phone and work out the
25 details ourselves.

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1 CHAIRMAN MOORE: Well, I think that it
2 would be appreciated certainly by the Board if the
3 parties would make an effort to see if on the admitted
4 contentions some or all of them may now or after some
5 discovery goes forth, whether they could be settled.

6 MS. CARROLL: Your Honor, this is Glenn.
7 I feel a little uncomfortable -- this is a real big
8 question and BREDL is on the phone and their party and
9 our advisor is on the phone. I didn't see a downside
10 to entertaining suggestions about settling, but this
11 is moving really fast and I want to check in with Lou
12 and Diane.

13 I mean --

14 CHAIRMAN MOORE: The Board would like to
15 comment that BREDL's interest, only contention 9A,
16 BREDL contention 9A consolidated with GANE contention
17 5, consolidated with GANE contention 8. So it has a
18 much narrower interest.

19 MS. CARROLL: But I don't feel comfortable
20 --

21 CHAIRMAN MOORE: Ms. Carroll, that same
22 question to BREDL's representative and do so now.

23 MR. HASTINGS: Thank you, Your Honor. We
24 would like to be involved in any kind of on-going
25 discussions about this, however, I would like to be

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1 able to have access and to consider all of the
2 details.

3 CHAIRMAN MOORE: Certainly. Well, if
4 you're all agreed that you would at least entertain
5 discussions, the Board would urge you over the next
6 six weeks to do so and then at appropriate, if there
7 is anything appropriate to report to the Board, please
8 do so. And the Board then will put it on the agenda
9 at the next conference call for status report. That
10 will be one of the items that will be brought up. But
11 it occurs to us that there are a number of things here
12 that might well be able to be settled once GANE
13 perhaps has some discovery and the Applicant has some
14 discovery to see if the areas of disagreement might
15 disappear.

16 MS. CURRAN: Judge, this is Diane Curran.
17 I just want to make a comment, sort of a general
18 comment on this and that is I think that the
19 prospective modifications to the design of the MOX
20 facility may have an effect on our ability to resolve
21 these issues at this point. Just because as we have
22 already said in our proposed scheduled and in our
23 motion that we filed, we think that these
24 modifications may be relevant to the issues that we've
25 raised, so I would just put that in as a concern or a

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1 caution that we would have to keep in mind the fact
2 that we really don't know too -- we know these
3 modifications are significant, but I'm not sure that
4 DCS even has the details yet. And that we wouldn't
5 want to by settling issues that we know of now,
6 foreclose related issues later on. And that would be
7 a real concern for us.

8 CHAIRMAN MOORE: Ms. Curran, from the Board's
9 perspective, anyway, I don't think that the fact that
10 the facility is being modified presents insurmountable
11 barriers to settling contentions. Once the parties
12 are all informed and aware of what the modifications
13 are, it may proceed, discussions may proceed to
14 settling some of these contentions, but if the parties
15 are not adverse, I would hope that it would keep an
16 open mind and pursue settlement because it appears to
17 us some of them may.

18 Judge Lam has a comment.

19 JUDGE LAM: This is Judge Lam. Also, if
20 the parties are interested a settlement mediator may
21 be appointed. All it takes is for Judge Lowell to
22 seek concurrence with our Chief Administrative Judge
23 to work out in that regard.

24 CHAIRMAN MOORE: Well, it goes without
25 saying that if the parties think it would be helpful

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1 and they request, we would be happy to aid the parties
2 in any way we can towards settlement.

3 MS. CARROLL: Your Honor, this is Glenn.
4 This is going way too fast. We were talking about
5 contentions 1 and 2 which was the absolute lack of
6 materials control and accounting. And the issue there
7 is should be included or not?

8 Everything else, the seismic contention
9 cannot be waived until we see the facility, see what
10 seismic analysis they offer and so where we bleeped
11 from a discussion of one specific contention which is
12 very different in nature from all of the others, I'm
13 not comfortable with the direction this is going. I
14 don't think that the only resolution that GANE would
15 accept, two contentions, 1 and 2, would be that they
16 say we will submit this information in the CAR, at
17 which case then we will look at the adequacy of it and
18 take issue with that, if we don't agree. Every other
19 contention here depends on the supplemental CAR for
20 the basis and so it's just make work. It's just busy
21 work to do it beforehand and we give up one of our two
22 rounds of interrogatories before the fact and since
23 GANE's schedule, I mean it seems like it's to the
24 benefit of DCS to shorten the interrogatory period.
25 The only benefit that DCS, from their schedule would

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1 be to have fully one round, fully half of the
2 interrogatories, half of the discovery prior to the
3 submission of complete information. We propose ending
4 at the same time. The schedule is on track. GANE
5 doesn't suggest anything that would delay the overall
6 schedule so I want to back off of this mediation thing
7 as far as GANE is concerned. I don't see it as being
8 possible.

9 CHAIRMAN MOORE: Ms. Carroll, so that
10 there's no misunderstanding, the Board was only
11 suggesting that the parties, if they are willing to
12 sit down and entertain settlement discussions, they do
13 so. Nothing more, nothing less. Nor was the Board
14 suggesting that there was a time line on this, that it
15 had to be wrapped up by any particular time. It would
16 be disappointing if the Board was of the view that a
17 party in this case would close the door to even
18 discussing settlement. Of course, that is every
19 party's right, but that certainly is not reasonable in
20 the circumstances we would suggest.

21 We're merely that some of these matters
22 may be able to be settled by the parties and we would
23 hope that they would not close the door to
24 entertaining that thought.

25 I don't think we need to go further with

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1 settlement. The Board just wished to propose to the
2 parties that they consider it.

3 MS. CARROLL: Well, I would offer that we
4 would be open to considering it, but my argument on
5 choosing DCS's schedule over GANE's stands and I would
6 think that the use of time now would be better to talk
7 about resolving these issues without engaging your
8 time and energy and taking up the discovery when
9 there's something to discover when there's some agreed
10 upon information on the table.

11 CHAIRMAN MOORE: Ms. Carroll, the Board --

12 MS. CARROLL: You can see they haven't
13 even published an entire schedule, the schedule that
14 the NRC offered is very short compared to the overall
15 schedule for the MOX program. This thing is taking
16 shape as we speak.

17 CHAIRMAN MOORE: Thank you, Ms. Carroll,
18 we've heard your arguments on the schedule and as the
19 Board stated once and I will now state again, we will
20 be issuing after the Board consults a new schedule for
21 discovery.

22 JUDGE KELBER: I have a question.

23 CHAIRMAN MOORE: Judge Kelber has a
24 question.

25 JUDGE KELBER: Ms. Carroll --

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1 MS. CARROLL: Yes sir.

2 JUDGE KELBER: Looking at your discussion
3 and focusing on contention C, the seismic contention -
4 -

5 MS. CARROLL: Yes sir.

6 JUDGE KELBER: I do not follow the logic
7 here. It seems to me that your contention focused on
8 what is a Design Basis Earthquake and I do not
9 understand why the Design Basis Earthquake changes
10 with the nature of the substances in the building.
11 The earthquake remains the same whether it's arsenic
12 or plutonium or spinach.

13 MS. CARROLL: But the Design Basis
14 Earthquake is compared to the design of the facility
15 which isn't designed.

16 JUDGE KELBER: I'm sorry, is your
17 contention focused on the Design Basis Earthquake?

18 MS. CARROLL: But the Design Basis
19 Earthquake is connected to the design of the facility,
20 so without the design of the facility, you can't
21 complete the equation.

22 JUDGE KELBER: I'll have to take another
23 look. I do not understand that logic, but thank you.

24 CHAIRMAN MOORE: Let's move on to the
25 other matter that the Board alluded to in its order of

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1 last week.

2 Applicant, could you inform us what your
3 current intention is with regard to GANE contentions
4 1 and 2, GANE contention 5A, consolidated with BREDL
5 9A?

6 MR. SILVERMAN: Your Honor, we think we
7 know what you're referring to and let me be sure that
8 if we're not on the same wavelength, please let me
9 know. I assume that you're referring back to the
10 Commission's order, the recent one which denied our
11 interlocutory reviews. This is Don Silverman, by the
12 way. And in that order there was, obviously, the
13 denied interlocutory review request, but there was
14 this additional language that discussed, as I saw it,
15 we only had contentions 1 and 2 and the need for some
16 refinement or specification of the standards to be
17 applied. Is that what you're referring to?

18 CHAIRMAN MOORE: Correct, which brings up
19 the broader question though of what is your current
20 intention and how you plan to proceed with contentions
21 1 and 2 and 5A and 9.

22 Let me give you an example. Well, let me
23 jump way ahead and ask you point blank, are you
24 planning to file for an exemption for the controlled
25 area?

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1 MR. SILVERMAN: At this point in time, I
2 don't believe so.

3 CHAIRMAN MOORE: All right, for example,
4 if you were there's going to be a lot of unnecessary
5 wheel spinning that we can avoid just by you placing
6 on the record that you're planning to seek an
7 exemption for the controlled area.

8 MR. SILVERMAN: I am not aware of any plan
9 to do that at this time.

10 CHAIRMAN MOORE: What then is your
11 suggestion on what might be required by the
12 Commission's language in its order denying your motion
13 for interlocutory review?

14 MR. SILVERMAN: Again, I think the
15 Commission's language refers to contentions 1 and 2
16 and with respect to those, if I may address those, at
17 least first --

18 CHAIRMAN MOORE: Certainly.

19 MR. SILVERMAN: What we think the
20 Commission is saying is essentially that there ought
21 to be some effort made to reformulate and clarify the
22 contention and to develop a little more clearly the
23 standard by which that contention would be evaluated
24 in the litigation should it go forward.

25 Therefore, we think it might be the

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1 appropriate approach may be for the parties to make an
2 effort to specify how that contention might be
3 reformulated. We can certainly come up with our own
4 recommendations on that, as well as specific criteria
5 or ground rules that would be used to litigate the
6 contention. And let me just give you an obvious
7 example which I think should be clear to all. I don't
8 think there's any debate any more that DCS is not
9 required to submit at this CAR stage an entire
10 material control and accounting plan or physical
11 security plan and demonstrate that it's going to fully
12 implement that in accordance with all the applicable
13 regulations.

14 The issue here is design basic issue. So
15 for example, such criteria might state very clearly
16 just so that the parties are clear on it that to
17 satisfy this contention to litigate it is not
18 necessary to submit and demonstrate full compliance
19 with all the requirements of part 73 and 74 and submit
20 a full plan.

21 We would be willing and amenable to
22 submitting something to the Board for its
23 consideration in both reformulating the contention and
24 laying out specific standards or criteria.

25 I think that's what the Commission had in

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1 mind, but I will admit the language isn't as clear as
2 it might have been.

3 CHAIRMAN MOORE: Thank you. GANE?

4 MS. CURRAN: I'd like to respond on that.
5 I think the Commission's decision is a little
6 difficult to understand, but I don't see it as a call
7 to reformulate the contention. I think that, first of
8 all, it's appropriate to do some discovery on this and
9 that it may be a question of legal briefing based on
10 some of the factual information that we obtain, but it
11 seems to me the whole debate was whether the
12 contention was admissible and the Board admitted the
13 contention. The Board confirmed that the contention
14 was admissible after motions for reconsideration and
15 now the Commission has said we're not going to review
16 that. And we would oppose any rehash of the
17 admissability of this contention.

18 MR. SILVERMAN: We're not suggesting that,
19 Ms. Curran. I'm just literally referring to, in
20 particular, the language in the footnote 15 of the
21 Commission's order because we expect the Board to go
22 forward in a manner that refines and specifies the
23 standards by which these design basis issues will be
24 deemed appropriately litigated and resolved. We're
25 not arguing whether that contention is admissible at

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1 this stage. It's a clarifying function and a focusing
2 function.

3 CHAIRMAN MOORE: Yes, I think DCS has
4 captured precisely the Board's concern. And I think
5 it probably would be fruitful for at least DCS and
6 GANE to perhaps see if they can reach a proposed
7 resolution that downstream you then proffer to the
8 Board on how we should deal in light of that
9 Commission language with contention 1 and 2.

10 MS. CARROLL: Your Honor, this is Glenn.
11 I read that to say that the Board's involvement in
12 this will -- the process will refine and specify the
13 standards which aren't clear, so they expect this
14 adjudication and you, in particular, to help refine
15 this by the standards, by setting the precedent on
16 deciding this issue.

17 CHAIRMAN MOORE: Well, Ms. Carroll, I can
18 almost promise you that the Board will ultimately do
19 that, but it would very much appreciate the input of
20 the parties which also avoids, in part, the notion
21 that what we do will not surprise anyone. I think
22 it's useful for the parties to see if they have any
23 agreement and it may be that we have to formally brief
24 this downstream, but perhaps it can be handled much
25 more simply. That's the purpose of why we thought it

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1 deserved mention today.

2 So I think it might well be fruitful and
3 there's no specific time line on this. It's just that
4 we would appreciate if the parties would see if they
5 can agree amongst themselves as to what the Commission
6 meant and present that to us.

7 MS. CARROLL: I'd like to clarify
8 something, I had to run and grab that brief partway
9 through the discussion, I'm sorry, that Commission
10 order. But when we went into this discussion I
11 thought you had just specified -- I've got so many
12 pieces of paper out now -- contention 5 and 8 and 9A,
13 but this goes to contention 1 and 2 and I just want to
14 clarify that. This discussion is about the materials'
15 control and accounting not the boundary.

16 CHAIRMAN MOORE: Are you referring to the
17 Board's order of last week?

18 MS. CARROLL: I'm referring to the
19 Commission order that footnote 15, when you started
20 this discussion I didn't have the paperwork in front
21 of me. And I thought you were talking about the
22 boundary. I thought you launched this discussion
23 talking about the boundary and I want to clarify for
24 the record and get your -- we're talking about
25 materials' control and accounting.

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1 CHAIRMAN MOORE: Ms. Carroll, the Board's
2 order of last week indicates, I believe, both
3 contentions 1 and 2 as well as 5A, BREDL 9A because we
4 think there may well be the same kind of concern. We
5 may well be wrong, that the Commission was perhaps
6 expressing there as well is something that probably
7 would be fruitful for the parties to take up.

8 What the Board was also wondering was
9 frankly, if contentions, for example, 1 and 2 deal
10 with, as it is the Board's understanding when we
11 admitted them, the lack of information concerning
12 material control and accounting as it relates to the
13 design basis and physical security as it relates to
14 design basis, and if the Applicant is intending in its
15 supplemental filings with the Commission to be
16 providing much of this information, will that not
17 essentially resolve any of these contentions. That's
18 what the Board was pointing at.

19 Applicant, do you have a comment on that?

20 MR. SILVERMAN: We agree with your logic,
21 Your Honor.

22 CHAIRMAN MOORE: And that's what it may
23 well, at least to 1 and 2, take care of itself after
24 that information is provided. I have no idea what the
25 Applicant's schedule is for coming up with all that

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1 various information, but I presume that if discovery
2 were to proceed it would be provided to GANE at least
3 as soon as it's provided to the Commission.

4 MR. SILVERMAN: Your Honor, Don Silverman.
5 Obviously, if we put that information in our
6 supplemental filings, you know, we have an ER
7 supplement to be filed in July and the CAR supplement
8 to be filed later in the year. That information would
9 be there for everyone.

10 MS. CARROLL: Well, why should discovery
11 precede before that?

12 CHAIRMAN MOORE: We're no longer
13 specifically on the subject of discovery, Ms. Carroll.
14 As I said, the Board will set forth the discovery
15 schedule after this conference in due course.

16 Do any of the other parties have any other
17 matters they wish to raise with us?

18 MR. POLONSKY: One administrative one.
19 This is Mr. Polonsky.

20 CHAIRMAN MOORE: Yes, Mr. Polonsky.

21 MR. POLONSKY: Service upon Mr. Moniak at
22 BREDL via e-mail keeps getting returned. I'm just
23 sort of informing the parties via e-mail that his e-
24 mail has, in fact, changed and we're just wondering if
25 BREDL, although we welcome the participation of Mr.

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1 Zeller, if BREDL would be willing to file an official
2 notification so we know exactly what to do at this
3 point going forward?

4 CHAIRMAN MOORE: That is an excellent
5 suggestion, Mr. Polonsky. The Board was able and I
6 frankly can't remember how we did it, but it was in
7 another matter, another case. I think we came up with
8 his e-mail to be able to reach him by e-mail with last
9 week's order and all parties at all times should file
10 an immediate notice with the Board if anything from
11 their initial appearance notice changes.

12 MR. ZELLER: This is Lou Zeller with BREDL
13 and it was my understanding that the thing had been
14 filed, but we will certainly do everything to ensure
15 that the documents arrive at the right place and that
16 to me, louis@lr -- which is B-R-E-D-L at scotts.com.

17 CHAIRMAN MOORE: Are you replacing Mr.
18 Zeller, Mr. Moniak?

19 MR. ZELLER: Pardon?

20 CHAIRMAN MOORE: Are you replacing Mr.
21 Moniak in this matter?

22 MR. ZELLER: Correct.

23 CHAIRMAN MOORE: Would -- have you filed
24 a notice of appearance?

25 MR. ZELLER: Yes.

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1 CHAIRMAN MOORE: You have?

2 MR. ZELLER: I believe so.

3 CHAIRMAN MOORE: When was that filed?

4 MR. ZELLER: I believe Mr. Moniak had done
5 that, but I have to admit that I'm not sure when it
6 happened.

7 CHAIRMAN MOORE: Well, would you please
8 check and indeed it just might be easier, would you
9 file a new notice of appearance with all the proper
10 material in it. You can get that from the Board's
11 previous orders and make sure that it is served on all
12 the parties to the case and do that immediately.

13 MR. ZELLER: Yes sir, I will do that.

14 CHAIRMAN MOORE: We would appreciate it.
15 Is there anything else?

16 MS. CARROLL: Your Honor, this is Glenn
17 with GANE. We wondered at the different scope of the
18 updated MOX for the new schedule and wondered if the
19 NRC would be supplementing that, for instance, it
20 doesn't note expected dates of evidentiary hearings,
21 etcetera; submission of the operating license,
22 etcetera. If they would submit that as they get it.

23 CHAIRMAN MOORE: I'm sorry, Ms. Carroll,
24 I frankly did not understand your request.

25 MS. CARROLL: Yes sir. The schedule that

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1 we've operating with up until March 14th, I think it
2 was, was very comprehensive and went through the end
3 of 2005 and the start up of the MOX facility. And the
4 revised schedule just goes through October 1, 2003 and
5 then anticipated construction start date and --

6 CHAIRMAN MOORE: This is the Staff's
7 revised schedule?

8 MS. CARROLL: Yes sir.

9 CHAIRMAN MOORE: And what schedule
10 precisely is that?

11 MS. CARROLL: That was what was attached
12 to a letter dated March 14th.

13 CHAIRMAN MOORE: I see. Mr. Hull, does the
14 Staff have a new complete schedule?

15 MR. HULL: I don't know offhand, Your
16 Honor. I'll have to check.

17 CHAIRMAN MOORE: If they do, would you be
18 so kind as to file it?

19 MR. HULL: I will.

20 CHAIRMAN MOORE: If you don't, you don't.
21 Does anyone have anything else? Well, then the Board
22 thanks all of you and the Board will be getting out a
23 new discovery schedule. Thank you very much.

24 (Whereupon, at 1:44 p.m., the
25 teleconference was concluded.)

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Facility

Docket Number: 70-3098-ML

Location: Telephone Conference

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