

RAS 5097

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 12/18/02

SERVED 12/18/02

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of

DUKE COGEMA STONE & WEBSTER
(Savannah River Mixed Oxide Fuel
Fabrication Facility)

Docket No. 070-03098-ML

ASLBP No. 01-790-01-ML

December 18, 2002

ORDER

Georgians Against Nuclear Power (GANE) has applied to the Licensing Board for security clearances for its representative (Glenn Carroll), legal advisor (Diane Curran), and expert witness (Dr. Edwin S. Lyman).¹ Although its application identifies no classified information that it currently seeks, GANE “anticipates” such information will be generated in the proceeding with respect to GANE contentions 1 and 2.² According to its application, GANE seeks the clearances now because they take months to obtain and it cannot afford to wait until any such documents are identified, especially in light of the fact that “it has been many years since the NRC processed a request for a security clearance in a licensing case” and “there is no well-worn path for obtaining the clearances that GANE seeks.”³ After the filing of GANE’s application, the Board certified to the Commission the question whether the procedures for

¹See Georgians Against Nuclear Energy’s Application for Security Clearances (June 7, 2002).

²See id. at 2.

³Id.

dealing with classified information in a formal agency adjudication, 10 C.F.R. Part 2, Subpart I, should be made applicable to this informal Subpart L proceeding.⁴ Thereafter, the Commission directed that the Subpart I procedures, if necessary, should be applied to the proceeding.⁵

Both Duke Cogema Stone & Webster (DCS) and the NRC Staff now generally agree that, because of the substantial time necessary to process security clearance applications, it is prudent to initiate the security clearance process so as to avoid delaying the proceeding in the event it becomes certain that GANE will need access to Restricted Data or National Security Information to prepare its case.⁶ Without the Board again detailing the entirety of the applicable Subpart I procedures,⁷ DCS and the Staff also agree that 10 C.F.R. § 2.905 (b)(1) calls for the Board, upon proper application, to determine whether classified information may be required for the preparation of GANE's case.⁸ Additionally, that section indicates that the Board should determine by whom such information may be needed.

Upon consideration of its initial security clearance filing, the Board concludes that GANE has made a sufficient showing to continue the prescribed regulatory process by making specific application for security clearances. In particular, the Board finds that it is likely that GANE may need access to Restricted Data or National Security Information in order to prepare its case. GANE has not based its application on the identification of any particular classified document. Rather, GANE argues, in effect, that access to classified information will likely be needed for it to prepare and prosecute its case and, because of the substantial time needed to obtain

⁴See Memorandum and Order (Certifying Question to the Commission) (July 18, 2002) (unpublished).

⁵See CLI-02-19, 56 NRC ___, ___ (Sept. 4, 2002).

⁶See Tr. at 28-30 (Dec. 4, 2002).

⁷See Order (Nov. 20, 2002) (unpublished) at 2.

⁸See Tr. at 8-10 (Dec. 4, 2002).

clearances, it is necessary to initiate the process now to avoid delaying the proceeding. The Board agrees and, as previously noted, DCS and the Staff concur in the soundness of this approach.

Moreover, in its response to GANE's application, the Staff identified two classified NRC guidance document that it provided DCS dealing with design basis threats.⁹ The Staff states that these documents may be relevant to GANE's contentions but indicates that the documents have been withheld from the hearing file because they are classified.¹⁰ The existence of these documents appears to validate GANE's assertion concerning the likely need for security clearances. Indeed, without access to the design basis threat documents already identified by the Staff, or other design basis threat information, it would appear unlikely that GANE can even determine whether, in light of DCS's supplemental filings, it should amend its contentions.

In its application, GANE seeks security clearances for its representative, legal advisor, and expert witness. Since the filing of GANE's initial application and, in choosing one of the options presented to it by the Board's earlier order,¹¹ GANE's legal advisor has filed a notice of appearance and become GANE's counsel of record.¹² In the circumstances presented, GANE's counsel and its expert witness have a basic and significant role to play in preparing and prosecuting GANE's case on contentions 1 and 2. Thus, the need for Ms. Curran and Dr. Lyman to obtain security clearances is obvious, and the Board finds that they should be permitted to file further security clearance applications. The same is not true, however, for GANE's former representative, Ms. Carroll. GANE now has counsel and is no longer appearing

⁹See NRC Staff's Response to Georgians Against Nuclear Energy's Application for Security Clearances (July 5, 2002) at 2-3 and n.1.

¹⁰See id.

¹¹See Order (Dec. 12, 2002) (unpublished).

¹²See Notice of Appearance by Diane Curran (Dec. 16, 2002).

pro se through a lay representative member of the organization. Thus, it is not at all apparent that there is any need for Ms. Carroll to obtain a security clearance, and GANE's application fails to make any showing that such a clearance may be required for GANE to prepare and prosecute its case. Therefore, the Board does not authorize Ms. Carroll to file the required specific application for a security clearance.

Finally, in response to the Board's specific inquiry,¹³ the Staff informed the Board that to pursue a security clearance request, Ms. Curran and Dr. Lyman each should complete and submit to NRC's Division of Facilities and Securities for initial processing, along with a fee of \$145 for each level L security clearance request, the following forms:

- 1) NRC 237;
- 2) SF-86, Parts 1 and 2;
- 3) Two standard FD-258 fingerprint cards;
- 4) NRC 176; and
- 5) SF-312.¹⁴

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹⁵

/RA/

Thomas S. Moore
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 18, 2002

¹³See Order (Nov. 20, 2002) (unpublished) at 3.

¹⁴See NRC Staff's Electronic Response to the Board's Questions (Dec. 2, 2002).

¹⁵Copies of this Order were sent this date by Internet e-mail transmission to (1) GANE; (2) BREDL; (3) DCS; and (4) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
DUKE COGEMA STONE & WEBSTER)	Docket No. 70-3098-ML
)	
(Savannah River Mixed Oxide Fuel)	
Fabrication Facility))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED DECEMBER 18, 2002 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-3098-ML
LB ORDER DATED DECEMBER 18, 2002

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 18th day of December 2002