

RAS 6455

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## NUCLEAR REGULATORY COMMISSION

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

Docket Number: 70-3098-ML

DOCKETED  
USNRC

Location: (telephone conference)

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Date: Tuesday, May 13, 2003

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL  
LICENSING RENEWAL  
MOX TELECONFERENCE

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

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Tuesday,  
May 13, 2003

The above-entitled matter came on for hearing,  
pursuant to notice, at 10:00 a.m.

BEFORE:

THE HONORABLE THOMAS S. MOORE, Chair  
THE HONORABLE CHARLES N. KELBER  
THE HONORABLE PETER S. LAM

1     APPEARANCES:

2             On Behalf of the Licensee, Duke Cogema Stone &  
3     Webster:

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5             MARJAN MASHHADI, ESQ.

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14            U.S. Nuclear Regulatory Commission

15            Office of the General Counsel

16            On Behalf of Georgians Against Nuclear Energy:

17            GLENN CARROLL

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20            and     DIANE CURRAN, ESQ.

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

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1 ALSO PRESENT:  
2 TIM HARRIS, NRC STAFF  
3 DAVID BROWN, NRC STAFF  
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P R O C E E D I N G S

10:00 A.M.

MS. CURRAN: (Tape begins mid-sentence) --  
the ultimate safety finding will not occur until after  
construction has commenced, if not finished, and  
therefore there is a material dispute to the parties  
that has legal significance.

MR. SILVERMAN: This is Mr. Silverman.  
There has to be an independent, separate safety  
finding on a construction authorization and that does  
have to come before construction occurs. I'm not  
talking about the safety finding with respect to  
operations.

But in any event, the fundamental point  
that I made before we were cut off was that the  
Commission's decision CLI 02-07 addresses this issue,  
makes it clear as a matter of law that safety-unique  
findings can be and are, in fact, independent and that  
makes the contention inadmissible in my view.

JUDGE MOORE: And if I'm recalling  
correctly, my question to you, Mr. Silverman, was that  
because of the Commission's determination, is it not  
irrelevant what determination, if any, the fact has  
made, contingent or otherwise?

MR. SILVERMAN: Yes, we believe it is

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1 irrelevant.

2 JUDGE MOORE: Ms. Curran, 18(b).

3 MS. CURRAN: 18(b), hinges on a small, but  
4 important word, the word "the," which is a specific  
5 modifier, implying that the noun that it modifies  
6 exists.

7 And the Commission has ruled that in this  
8 case, it wasn't necessary for DCF to file its  
9 operating license application before the NEPA process  
10 would go forward.

11 On the other hand, in footnote 30, the  
12 Commission pointed out that a licensee or an applicant  
13 could file its application.

14 And I think it's reasonable, if an  
15 ordinary lay person or a lawyer were to read the  
16 regulation, it would be reasonable to infer that an  
17 application would be filed before a proceeding went  
18 forward and the important thing here is that the EIS  
19 not be misleading, that --

20 JUDGE MOORE: Ms. Curran, let me ask you  
21 a couple of questions.

22 MS. CURRAN: Sure.

23 JUDGE MOORE: First of all, are you  
24 reading a legal issue here or a factual issue?

25 MS. CURRAN: It's a factual issue having

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1 to do with the misleading nature of the EIS.

2 JUDGE MOORE: Do you concede that in other  
3 portions of the draft EIS the process in which the  
4 staff is going through in its environmental review is  
5 fully spelled out?

6 MS. CURRAN: There is another page on  
7 which, a different page, on which the NRC says that  
8 the operation license application hasn't been filed  
9 yet, but I think it's really important for an EIS to  
10 be clear and for a person not to have to sort of hunt  
11 in the haystack, or to put the stack together. By  
12 using the word "a" --

13 JUDGE MOORE: But isn't the part you just  
14 described coming before the portion of the DEIS to  
15 which you're objecting? And may I not assume that  
16 people should read things in order?

17 MS. CURRAN: Of course, one can assume  
18 that people should read things in order, but an EIS is  
19 a very long document. And there's no reason why the  
20 NRC could not have used the correct modifier which  
21 would have been the word "a", because "a" is a general  
22 modifier that refers to something that may or may not  
23 exist.

24 Basically, what we're asking for is  
25 consistency here.

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1 JUDGE LAM: Ms. Curran, this is Judge Lam.

2 MS. CURRAN: Yes.

3 JUDGE LAM: If the staff, if they were  
4 willing to change the word from "the" to "a" would  
5 that satisfy you so the contention will go away?

6 MS. CURRAN: Well, I'd like to think about  
7 it, but it certainly would go a ways towards it, yes.

8 JUDGE MOORE: And since this is only the  
9 draft, not the final, isn't this irrelevant on its  
10 face?

11 MS. CURRAN: Well, the staff could perhaps  
12 moot our concerns, but that doesn't mean the  
13 contention isn't admissible now.

14 JUDGE MOORE: Mr. Silverman --

15 MR. SILVERMAN: Yes, Your Honor, the point  
16 here is the standard of review, the standard is  
17 whether GANE has raised a genuine issue of material  
18 fact or law and the fact that the DEIS in this  
19 location uses the word "the" as opposed to the word  
20 "a" in our view clearly does not rise to that level.

21 Secondly, the use of the word "the" is a  
22 direct quote from the applicable regulations. That  
23 would be 23(a)(7) which sets the determination and the  
24 finding that the staff needs to make the DEIS simply  
25 restates that language.

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1           And finally, if anyone is concerned about  
2       misleading information in the DEIS, a member of the  
3       public would only have to go -- would have to go no  
4       further than reading the executive summary because the  
5       executive summary specifically says, and I quote, "if  
6       the NRC approves the CAR, DCF plans to request a 10  
7       CFR Part 70 license to possess and use special nuclear  
8       material at the proposed MOX facility."

9           And that language is also repeated in  
10      Chapter 1 of the DEIS and perhaps elsewhere.

11           JUDGE MOORE: Mr. Hull?

12           MR. HULL: I'd only add, Your Honor, that  
13      if the staff had not followed the regulatory wording  
14      in 70.23(a)(7), then we would have had a contention  
15      that we weren't following our regulation, so I really  
16      think that the whole contention 18(b) is pretty silly.

17           JUDGE MOORE: Is the staff willing to,  
18      just for the sake of argument at this moment, in the  
19      final EIS make that word "a" instead of "the"?

20           MR. HULL: I would certainly have no  
21      problem doing that, Your Honor.

22           JUDGE MOORE: So that would essentially  
23      moot this contention, would it not, if we know the  
24      EIS, the final EIS would say "a" instead of "the"?

25           MR. HULL: I would think it would, Your Honor.

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1 JUDGE KELBER: This is Judge Kelber. I'm  
2 somewhat bothered, because I believe they are reading  
3 two licenses here. And I don't understand why we have  
4 to make -- have to have this argument at all.

5 One is the acceptance of CAR which is a  
6 form of license, a license to operate, and says  
7 nothing about the proposed license, which is the  
8 license to confront.

9 JUDGE MOORE: Would any of you like to  
10 address Judge Kelber's question?

11 MS. CURRAN: I would. This is Diane  
12 Curran.

13 Judge Kelber, I don't believe that the  
14 construction authorization is a license. It is  
15 something that has been created in this case --

16 JUDGE KELBER: It's not the equivalent of  
17 a license?

18 MS. CURRAN: It's not, no. It's something  
19 else. The license --

20 JUDGE KELBER: Do you know what it is?

21 MS. CURRAN: No, because I have never seen  
22 one before and it's not in the regulations.

23 JUDGE KELBER: Why don't we call it a  
24 license?

25 MS. CURRAN: Well, I'd rather not because

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1 I think it's important to go by what the regulations  
2 prescribe.

3 JUDGE KELBER: Then the staff is correct  
4 in quoting the regulations correctly.

5 MS. CURRAN: Except there is -- no  
6 proposed license exists. The proposed license is the  
7 thing that will be filed in October 2003. And the  
8 EIS, as it's written, contains a false implication  
9 that this proposal is more developed than in fact it  
10 is.

11 JUDGE MOORE: Ms. Curran, it is your  
12 position that the choice of the word "the" in the DEIS  
13 as opposed of the use of "a" arises to a genuine issue  
14 of material fact, a dispute over an issue of genuine  
15 material fact?

16 MS. CURRAN: Yes. Although I would like  
17 to comment on something that Mr. Hull said which is  
18 that -- maybe Mr. Silverman mentioned it also, the  
19 word "the" is in the regulation, and as the Commission  
20 pointed out in footnote 30, there are instances where  
21 -- or there may be instances where there is a proposed  
22 license. It's possible. And really, at bottom, I  
23 think what this issue raises is the problem that's  
24 created by the Commission's interpretation of the  
25 regulation.

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1 JUDGE MOORE: Yes, that is what's at  
2 bottom, and did not the Commission already decide that  
3 issue, and aren't you replotting old ground?

4 MS. CURRAN: What this contention attempts  
5 to do is to show the -- it basically is to prevent the  
6 --

7 JUDGE MOORE: Does not this really tag on  
8 to your contention 18(a) that you concede is  
9 preserving your record to challenge the Commission's  
10 prior decision? Doesn't really 18(b) do the same  
11 thing?

12 Because hasn't the Commission already  
13 decided that there can be a 2-pronged approach of CAR,  
14 a CAR, a construction authorization request and then  
15 a request for a license to possess and use special  
16 nuclear material?

17 MS. CURRAN: There's a separate issue, I  
18 think, that the result of this interpretation is that  
19 the EIS is written in a way that it becomes  
20 misleading.

21 JUDGE MOORE: Ms. Curran, would you like  
22 to address Contention 19(a)?

23 MS. CURRAN: We have decided, in light of  
24 the Amended Record of Decision that DOE noticed in the  
25 Federal Register on April 24, 2003, to withdraw our

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1 contention 19.

2 JUDGE MOORE: Okay.

3 MS. CURRAN: Because it appears that the  
4 DOE has now commented on both the environmental report  
5 and the draft environmental impact statement.

6 JUDGE MOORE: All of contention 19?

7 MS. CURRAN: Yes.

8 JUDGE MOORE: Okay. Would you like to  
9 move on then to contention 20?

10 MR. HULL: Excuse me for a second, Judge,  
11 John Hull for the NRC Staff. I wanted to go back to  
12 18B for just a second and just for the record, the  
13 regulation we've been talking about 70.23(a)(7),  
14 contains the phrase here, "The action called for is  
15 the issuance of the proposed license," and that's  
16 exactly what we had stated in the draft EIS. I just  
17 wanted to make that clear.

18 Thank you.

19 JUDGE MOORE: Ms. Curran, would you like  
20 to address your contention 20?

21 MS. CURRAN: Yes. I think the big issue  
22 here is whether GANE is inexcusably late in filing  
23 this contention, which speaks of restoration of  
24 consideration of the immobilization alternative which  
25 has been a consideration throughout the process of

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1 looking at plutonium disposition.

2 I think DCS argues, well, it was dropped  
3 from the revised environmental report and should have  
4 raised the issue then.

5 Our point here is that the NRC itself has  
6 independently taken up this issue, has held three  
7 separate meetings with the public attended by I think  
8 Mr. Harris who is on the phone today and Chip Cameron  
9 from the Commission's office in which the staff very  
10 explicitly said to the public, "We want your comments  
11 on whether immobilization should be retained as an  
12 alternative in the draft EIS."

13 And there are several hundred pages of  
14 transcripts. I believe the NRC held a comment period  
15 and took written comments and has said -- in the draft  
16 EIS has announced that, based on this notice and  
17 comment exchange, the NRC has decided not to include  
18 immobilization.

19 So we believe it's appropriate to raise  
20 this contention now in the aftermath of that process.  
21 This is based on new information that the NRC itself  
22 solicited, an independent determination by the NRC.

23 JUDGE MOORE: Accepting that for the sake  
24 of argument, why does that preclude the staff from  
25 concluding that they need not go forward because the

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1 old -- the DOE EIS that dealt with immobilization is,  
2 in fact, all that needs to be said on the matter?

3 MS. CURRAN: The pattern that we see in  
4 the way the environmental impacts are tiered, is that  
5 there's a preservation of an issue.

6 You may refer back to other EISes and say  
7 that well, this is an alternative that we've  
8 considered and briefly summarize it and say, "Refer  
9 back to another document." But that's not the case  
10 here.

11 Immobilization has been completely dropped  
12 and as discussed in the contention, the reasons are  
13 economic reasons.

14 And we don't think that for an NRC  
15 decision-making document on a long-term licensing  
16 issue that will have effects for a long time that a  
17 temporal issue like that, that has affected DOE's  
18 short-term decision making should result in the total  
19 abandonment of even mention of immobilization as a  
20 valid and viable alternative.

21 We think it's the essential purpose of  
22 NEPA to keep on pointing out the alternatives and to  
23 seriously consider them at each step. Circumstances  
24 may change. Economic circumstances often change.

25 JUDGE KELBER: Ms. Curran, this is Judge

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1 Kelber. Can you cite a section of NEPA which requires  
2 that repetition?

3 MS. CURRAN: Well, I believe, I doubt that  
4 it's stated specifically. If I were going to look  
5 anywhere, I would look at the CAFLON [phonetic]  
6 environmental quality regulations, but I would think  
7 that this business of tiering, where one agency either  
8 relies on other agency EISes or its own previous EISes  
9 requires enough information so that the reader knows,  
10 first of all, knows where to look to see the previous  
11 analysis and has a general outline of what issues in  
12 the previous analysis are incorporated by reference.  
13 And that -- that's basic common sense as to how  
14 tiering would work in a way that a person would follow  
15 the train of thought for the agency.

16 JUDGE MOORE: Mr. Silverman, do you have  
17 anything?

18 MR. SILVERMAN: Two points, Your Honor,  
19 the first one, the fact that this is late is  
20 demonstrated by the actions of GANE itself.

21 When DCS amended its environmental report  
22 some months ago, GANE filed a number of proposed  
23 contentions. Those contentions were ultimately ruled  
24 to be not timely and none of them were admitted. But  
25 proposed contention No. 15 was titled inadequate

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1 discussion of alternatives and the contention it  
2 stated specifically and I'm quoting, "the  
3 environmental report is inadequate because it does not  
4 discuss the alternative of immobilization for the 6.4  
5 tons of impure, weapons-grade plutonium which was  
6 previously analyzed to be preferred for immobilization  
7 and is now proposed to be manufactured into MOx."

8 To me, that is essentially, if not  
9 exactly, the same contention and now it's being  
10 brought up again for at least the second time in the  
11 context of the DEIS.

12 And secondly, the legal standard here is  
13 set forth in 10 CRF 2.714, and that is whether the  
14 DEIS contains any data or conclusion that differs  
15 significantly from those in the environmental report.  
16 And while -- [inaudible] public comment and held some  
17 public meetings, in fact, on this particular issue  
18 [inaudible] from those in the amended ER.

19 JUDGE MOORE: Your first point, Mr.  
20 Silverman, is that this contention is nothing more  
21 than an attempt at a second bite at the apple for  
22 contention that was previously barred because of its  
23 own timeliness.

24 MR. SILVERMAN: Judge, you might even have  
25 read my notes. I had that phrase in my notes. I

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1 agree completely.

2 JUDGE MOORE: Mr. Hull?

3 MR. HULL: Ms. Bray will speak for the  
4 staff on contention 20, Your Honor.

5 MS. BRAY: Your Honor, Cassie Bray. I  
6 only have two points. First, GANE argues the NRC  
7 needs to analyze the immobilization alternative for  
8 the sake of future decision makers, but the NRC only  
9 needs to analyze reasonable alternatives under NEPA.  
10 The immobilization alternative is not currently a  
11 reasonable alternative. There is no expectation that  
12 the NRC should analyze unreasonable alternatives in  
13 anticipation of the possibility that the alternative  
14 may one day be reasonable and ultimately implemented.

15 If circumstances change in the future, the  
16 NRC then may have to supplement its analysis, but it  
17 is under no obligation or requirement to do that  
18 analysis right now, particularly because DOE has  
19 already done the analysis and the NRC -- we are off of  
20 it.

21 My second point is that GANE argues the  
22 staff's solicitation of public comments constitutes  
23 new and significant data and conclusions. Yet GANE  
24 has no indication that that information changed the  
25 analysis or the data and conclusions in the draft

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1 environmental impact statement so it is insufficient  
2 to justify inclusion of the late filed contention.

3 That's all I have, Your Honor.

4 JUDGE MOORE: Ms. Curran, what is your  
5 response to Mr. Silverman's point that this contention  
6 is essentially identical to the one that we barred for  
7 untimeliness some many months ago.

8 MS. CURRAN: I think it might have been a  
9 good argument had the NRC not set about independently  
10 to make a determination of whether immobilization  
11 should be included. That, the NRC did totally  
12 separate from simply reviewing and adopting the  
13 environmental report.

14 JUDGE MOORE: Ms. Curran, the problem I  
15 have with your argument is they then came to the  
16 conclusion that what had been said before was right on  
17 the mark, so they needed no further analysis.

18 MS. CURRAN: But they --

19 JUDGE MOORE: That puts you at square one,  
20 doesn't it?

21 MS. CURRAN: I don't think so because they  
22 took many comments and they analyzed them and they  
23 made a determination. There is nothing here that  
24 would change our mind, but that was an analysis of  
25 data that was not in the environmental report and it

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1 was solicited particularly by the NRC -- one commentor  
2 even said, "What assurance do we have that if we spend  
3 a lot of time talking about this, you're going to take  
4 it seriously?" That had to mean something to go out  
5 and say to the public, "We want to know what you think  
6 and we're going to make an independent determination."

7 JUDGE KELBER: Isn't that just another way  
8 of saying, "Show us where we're wrong," and they  
9 concluded they were wrong? But they were right the  
10 first time.


11 MS. CURRAN: But they --

12 JUDGE KELBER: The analysis didn't change.

13 MS. CURRAN: But it was renewed. It was  
14 done again.

15 JUDGE MOORE: Okay, Mr. Silverman, how do  
16 you respond to that?

17 MR. SILVERMAN: My response to that is  
18 it's completely irrelevant to the legal standard set



1       lateness issue.

2                   MR. SILVERMAN:   Yes.

3                   MS. CURRAN:   That was the lateness issue.

4                   MR. SILVERMAN:   That was the lateness  
5       issue.

6                   JUDGE MOORE:   All right.   Do any of you  
7       have anything further?

8                   MS. CURRAN:   I would just like to point  
9       out there's something like 400 pages of transcripts  
10      from three separate meetings that the NRC held in  
11      September of 2002.

12                   The NRC also took written comments from  
13      the public.   The NRC went to extraordinary lengths,  
14      put out a Federal Register notice, went down to  
15      Georgia and South Carolina and took comments from the  
16      public, engaged with the public about this, made its  
17      own determination independently of what was in the  
18      environmental report.   It seems to us that that is new  
19      data.   The comments that they got from the public,  
20      including comments immobilization should be included  
21      as an alternative here.

22                   JUDGE LAM:   Ms. Curran, this is Judge Lam.  
23      I just heard earlier from Ms. Cassie Bray from the  
24      Staff indicating that the immobilization alternative  
25      is no longer a reasonable alternative.

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1                   How would you respond to that, despite the  
2                   400 pages of transcript that you just talked about?

3                   MS. CURRAN:    If you look at the DOE  
4                   decision documents that are discussed in the  
5                   contention, the DOE decided that it didn't have enough  
6                   money to pursue both immobilization and MOx. And in  
7                   light of that problem it was going to pursue MOx.

8                   Now that to us is a temporal problem.  
9                   That is not something that ultimately spells a death  
10                  knell for immobilization. It means at the moment  
11                  there isn't enough money to do both and the licensing  
12                  decision is not upon the NRC yet for whether the MOx  
13                  facility should be licensed.

14                  The purpose of NEPA is that all along the  
15                  way, whoever is responsible for making a big decision  
16                  that affects the human environment ought to have all  
17                  the relevant information and because DOE has decided  
18                  there isn't enough money right now to pursue  
19                  immobilization, this has become a reason in the NRC's  
20                  eyes to completely drop consideration of  
21                  immobilization.

22                  We don't think that's appropriate and I  
23                  disagree with Ms. Bray's argument that immobilization  
24                  has become unreasonable or speculative because of  
25                  that. To us, that doesn't seem to be a factor that

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1 should make an alternative remote.

2 JUDGE KELBER: This is Judge Kelber. Ms.  
3 Curran, going back a few sentences, you refer to the  
4 many pages of transcript as being new data.

5 Now as I understand it, the new data are  
6 those in the ER or the amended ER. These transcripts  
7 are not part of the ER, are they?

8 MS. CURRAN: No, they're not.

9 JUDGE MOORE: Okay. Does anyone have  
10 anything further?

11 That being the case, let's take up another  
12 matter briefly. On Friday last, DCS filed a Motion  
13 for Summary Disposition on two contentions, GANE  
14 contention 1 and GANE contention 2.

15 Ms. Curran, are you going to file a  
16 response in accordance with the time and the  
17 regulations or may we expect a motion for an extension  
18 of time on that?

19 MS. CURRAN: At the moment, I'm planning  
20 to file by the 29th.

21 JUDGE MOORE: Okay. Please be advised  
22 that if you do seek additional time, give us at least  
23 three business days, have it in our hands three  
24 business days before your time extension as per my  
25 earlier order in this case.

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1 MS. CURRAN: Okay.

2 JUDGE MOORE: The Board would like to put  
3 you all on mute for one moment and then we'll come  
4 right back to you.

5 (Off the record.)

6 JUDGE MOORE: Okay. We're back on. This  
7 is Judge Moore. I thank the parties for waiting. The  
8 Board has determined that in its view none of the  
9 contentions, that is contention, late filed contention  
10 18A and B and late filed contention 20 are admissible;  
11 late filed contention 19 has been withdrawn.

12 The Board will issue a memorandum and  
13 order to that effect, subsequently, but frankly it's  
14 going to be in due course. The schedules of the Board  
15 are such that it may be some time before you see that  
16 order, but we see no reason not to give you the bottom  
17 line because we don't see any of these contentions as  
18 admissible.

19 We will await Ms. Curran's response to the  
20 Motion for Summary Disposition and the staff response  
21 and then if there are going to be any replies, the  
22 Applicant will need to seek permission to do that.

23 MR. SILVERMAN: Your Honor, this is Don  
24 Silverman. One question about the timing for the  
25 answers to the Summary Disposition Motion?

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1 JUDGE MOORE: Yes.

2 MR. SILVERMAN: We filed that motion and  
3 hand delivered that to the Intervenor on the 9th and  
4 I may be mistaken and I apologize if I am --

5 JUDGE MOORE: Is that a 10-day time  
6 period?

7 MR. SILVERMAN: That's what my  
8 understanding was.

9 MS. CURRAN: I thought summary judgment  
10 was 20 days? I'll look.

11 JUDGE MOORE: I have the regulations and  
12 in one moment I'll give you an answer.

13 (Pause.)

14 It's 10 days.

15 MS. CURRAN: Oh, all right. Well, I will  
16 be asking for an extension.

17 JUDGE MOORE: I kind of thought you might  
18 be.

19 If you would do that within that three  
20 business days --

21 MS. CURRAN: Judge Moore, could I  
22 interrupt for a minute? 2.749, that's the one I'm  
23 reading.

24 "Any other party may serve an answer,  
25 supporting or opposing the motion within 20 days."

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1       Isn't that me?

2                   JUDGE MOORE: Wait, what are you reading,  
3       Ms. Curran? 2.7 what?

4                   MS. CURRAN: 49. Maybe I've got that  
5       wrong.

6                   MR. SILVERMAN: No.

7                   JUDGE MOORE: You may be correct. I was  
8       looking at motions, not summary dispositions. You may  
9       be absolutely correct.

10                  MR. SILVERMAN: I agree, Your Honor. Ms.  
11       Curran, you are correct.

12                  I was hunting for that.

13                  MS. CURRAN: Okay.

14                  JUDGE MOORE: But if you do seek an  
15       extension of that deadline, Ms. Curran, please follow  
16       the three business days.

17                  MS. CURRAN: I certainly will.

18                  MR. HULL: Your Honor, John Hull for the  
19       staff. I assume that in accordance with previous  
20       orders in this proceeding you would also expect the  
21       staff response to be filed at the same time GANE's  
22       response is?

23                  JUDGE MOORE: I don't have either by that  
24       previous order or take the time to read 2.749, but is  
25       the staff given an additional time period under the

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1 regs, Mr. Hull?

2 MR. HULL: I think it is, Your Honor, but  
3 I seem to recall it maybe was the Commission's initial  
4 referral order --

5 JUDGE MOORE: Which means you would be  
6 filing simultaneously?

7 MR. HULL: It encourages simultaneous  
8 filing.

9 JUDGE MOORE: Without having those in  
10 front of me, it's hard to give you a definitive  
11 answer, but if Ms. Curran is going to file on the  
12 20th, the staff is certainly free to do that.

13 I will be out of town for the first two  
14 weeks of June and I know my colleagues' schedules are  
15 equally tied up at that time, so there's no reason  
16 from the Board's standpoint that you not take the  
17 additional time, if you want it, Mr. Hull.

18 MR. HULL: Okay, thank you, Your Honor.

19 JUDGE MOORE: But Mr. Silverman,  
20 recognizing that we'll be out of town during that  
21 period, if you're going to reply, as I'm sure you wish  
22 to do and seek permission to do it, I guess the thing  
23 to do now is to give you -- we'll grant you permission  
24 to reply.

25 MR. SILVERMAN: That will be great.

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1 JUDGE MOORE: We will not be in a position  
2 to deal with it in a timely fashion otherwise.

3 MR. SILVERMAN: Your Honor, can you tell  
4 me again what your schedule was? I apologize. I  
5 missed that.

6 JUDGE MOORE: I will out of time through  
7 the 17th of June, starting with Memorial Day.

8 MR. SILVERMAN: So will you be issuing an  
9 order with schedules for us all on this?

10 JUDGE MOORE: I will go ahead and do that.  
11 And I will grant you an opportunity to reply. Is five  
12 or seven days sufficient?

13 MR. SILVERMAN: Yes, seven would be great.

14 MS. CURRAN: Judge Moore?

15 JUDGE MOORE: Yes.

16 MS. CURRAN: This is Diane Curran. I am  
17 considering asking for an extension of the time for us  
18 to prepare our responses.

19 JUDGE MOORE: Okay, here's what we're  
20 going to do. Will the parties please get together and  
21 present the Board by no later than a week from today  
22 which is the 20th proposed scheduled for dealing with  
23 this.

24 MS. CURRAN: Great.

25 JUDGE MOORE: On each of the filings and

1 the Board will act on it immediately then.

2 MS. CURRAN: Okay.

3 JUDGE MOORE: Is that fine with all  
4 parties?

5 MR. SILVERMAN: Fine with the applicant?

6 JUDGE MOORE: Staff? Then if there's  
7 nothing else, we'll conclude this.

8 Hearing nothing else, I thank you and if  
9 you'd get that into us by next Tuesday on a proposed  
10 schedule, we'll deal with it immediately.

11 Thank you very much.

12 (Whereupon, at 11:00 a.m., the meeting was  
13 concluded.)

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## C E R T I F I C A T E

This is to certify that the attached  
proceedings before the United States Nuclear  
Regulatory Commission in the matter of:

Name of Proceeding: Duke Cogema Stone & Webster  
(Savannah River Fuel Fabrication Facility)

Docket Number: 70-3098-ML

Place of Proceeding: (telephone conference)

were held as herein appears, and that this is the original  
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*Lisa Firestone*

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