

June 20, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

June 30, 2003 (2:01PM)

Before Administrative Judges:
Thomas S. Moore, Chairman
Charles N. Kelber
Peter S. Lam

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)

DUKE COGEMA STONE & WEBSTER)

(Savannah River Mixed Oxide Fuel
Fabrication Facility))

Docket No. 0-70-03098-ML

ASLBP No. 01-790-01-ML

**GEORGIANS AGAINST NUCLEAR ENERGY'S
MOTION FOR LEAVE TO FILE SURREPLY TO DUKE COGEMA STONE &
WEBSTER'S REPLY TO GANE'S OPPOSITION
TO MOTION FOR SUMMARY DISPOSITION OF
GANE CONTENTIONS 1 AND 2**

Georgians Against Nuclear Energy ("GANE") hereby requests leave to file a surreply to Duke Cogema Stone & Webster Reply to Georgians Against Nuclear Energy Opposition to Motion for Summary Disposition of Contentions 1 and 2 (June 16, 2003) (hereinafter "DCS Reply"). GANE seeks an opportunity to address the following arguments that are made for the first time in DCS's Reply:

- DCS argues that GANE seeks to expand the scope of Contentions 1 and 2 impermissibly, to the question of whether the NRC Staff's review of DCS's Construction Authorization Request ("CAR") is adequate. DCS Reply at 6-7.

GANE seeks an opportunity to clarify its position that while the adequacy of the Staff's review is not the subject of Contentions 1 and 2, the Staff's review must play a role in the resolution of the contentions.

- DCS argues that GANE seeks to expand the scope of Contentions 1 and 2 impermissibly, to challenge DCS's compliance with the revised Design Basis Threat ("DBT"). DCS Reply at 5-6. GANE seeks an opportunity to demonstrate that the question of whether the design of the proposed MOX Facility addresses revisions to the DBT falls within the scope of Contentions 1 and 2.
- DCS argues that in fact, the revised DBT that was issued to two other Category 1 facilities on April 29, 2003, has been taken into account in the design of the proposed MOX Facility. DCS Reply at 9. In support of this argument, DCS attaches the Supplemental Affidavit of Scott Johnson. GANE seeks an opportunity to demonstrate that the statements in DCS's Reply and Mr. Johnson's Affidavit do not demonstrate the absence of a genuine and material factual dispute.
- DCS contests the relevance of the International Atomic Energy Agency's ("IAEA's") "Design Information Questionnaire, which is cited in support of GANE's opposition to DCS's summary disposition motion. DCS Reply at 16. GANE believes that DCS has mischaracterized the manner in which GANE relies on the IAEA Questionnaire, and wishes to correct the record.

GANE was not able to respond to these issues previously, because they were not raised in DCS's original motion. Therefore, an opportunity for a surreply is needed in

order to provide GANE with a fair opportunity to show how DCS has failed to satisfy its burden of proof.¹ Moreover, a surreply by GANE will assist the ASLB in gathering a complete and meaningful record on which to make its summary disposition decision.

GANE requests that the Board establish a deadline of July 3, 2003, for the filing of a surreply. This will allow GANE sufficient time to prepare the surreply, as well as to deal with several other matters that are now pending in the MOX case: the deposition of Dr. Leland Timothy Long on Contention 3, which is now scheduled for two full days on June 25 and 26, 2003, and for which GANE's counsel must prepare Dr. Long on June 24; and the brief in support of GANE's motion for a protective order that is due on June 30, 2003.

Respectfully submitted,



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¹ In this regard, GANE notes that NRC regulations at 10 C.F.R. § 2.749(a) expressly state that aside from summary disposition motions and responses, "[n]o further supporting statements or responses thereto may be entertained." While the Board has authority to modify this rule for compelling circumstances, *see Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), LBP-87-26, 26 NRC 201, 204 (1987), GANE submits that providing GANE with an opportunity to file a surreply will help keep the burden of proof more squarely on the movant's shoulders.

CERTIFICATE OF SERVICE

I hereby certify that on June 20, copies of the foregoing GEORGIANS AGAINST NUCLEAR ENERGY'S MOTION FOR LEAVE TO FILE SURREPLY TO DUKE COGEMA STONE & WEBSTER'S REPLY TO GANE'S OPPOSITION TO MOTION FOR SUMMARY DISPOSITION OF GANE CONTENTIONS 1 AND 2 were served on the following by e-mail and/or first-class mail:

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