

August 12, 2003

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

DOCKETED
USNRC

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

August 19, 2003 (9:30AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	
)	
DUKE COGEMA STONE & WEBSTER)	Docket No. 0-70-03098-ML
)	
(Savannah River Mixed Oxide Fuel)	ASLBP No. 01-790-01-ML
Fabrication Facility))	
)	

**GEORGIANS AGAINST NUCLEAR ENERGY'S
MOTION FOR LEAVE TO FILE SURREPLY
TO DCS'S REPLY TO GANE'S OPPOSITION TO
DCS'S MOTION FOR SUMMARY DISPOSITION
OF CONSOLIDATED CONTENTION 11**

Georgians Against Nuclear Energy ("GANE") hereby requests leave from the Atomic Safety and Licensing Board ("ASLB") to file a surreply to DCS's Reply to GANE's Opposition to Motion for Summary Disposition of Consolidated Contention 11 (hereinafter "DCS's Reply"). In its surreply, GANE seeks to respond to DCS's assertion that GANE's criticisms of Table 4.11 of the draft Environmental Impact Statement ("EIS") for the proposed MOX Facility are outside the scope of Contention 11 because GANE has not amended Contention 11 to address deficiencies in the draft EIS. DCS's Reply at 4. As confirmed in paragraph 6 of the Affidavit of David Brown, submitted by the NRC Staff in support of its response to DCS's summary disposition motion, the data

on solid TRU waste in Table 4.11 of the draft EIS is based on information provided in DCS's Environmental Report ("ER"). While there are differences between Table 3-3 of the ER and Table 4.11 of the draft EIS with respect to the manner of presentation of information, including units of measure and categorization of information, these differences are not, in GANE's view, significant enough to have warranted amendment of Contention 11 when Table 4.11 was published.¹ GANE seeks an opportunity to discuss the factual and legal bases for its position in a surreply.

Counsel for GANE has consulted counsel for DCS, who stated that DCS intends to oppose this motion. Counsel for GANE was unable to reach counsel for the NRC Staff.

Respectfully submitted,



Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
202/328-3500
FAX 202/328-6918
dcurran@harmoncurran.com

August 12, 2003

¹ GANE notes that is in the process of evaluating whether the more recently disclosed internal discrepancy in Table 4.11 warrants an amendment to Contention 11.

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2003, copies of the foregoing GEORGIANS AGAINST NUCLEAR ENERGY'S REPLY TO NRC STFF'S RESPONSE TO DCS MOTION FOR SUMMARY DISPOSITION OF CONTENTION 11 and GEORGIANS AGAINST NUCLEAR ENERGY'S MOTION FOR LEAVE TO FILE SURREPLY TO DCS'S REPLY TO GANE'S OPPOSITION TO DCS'S MOTION FOR SUMMARY DISPOSITION OF CONSOLIDATED CONTENTION 11 were served on the following by e-mail and first-class mail:

Rulemakings and Adjudications Staff
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
hearingdocket@nrc.gov

Administrative Judge Thomas S. Moore
Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
tsm2@nrc.gov

Administrative Judge Charles N. Kelber
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
cnk@nrc.gov

Administrative Judge Peter S. Lam
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
psl@nrc.gov

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555
hrb@nrc.gov

Donald J. Silverman, Esq.
Alex S. Polonsky, Esq.
Morgan, Lewis & Bockius
1111 Pennsylvania Avenue N.W.
Washington, D.C. 20004
dsilverman@morganlewis.com
apolonsky@morganlewis.com

Louis A. Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629
bredl@skybest.com

Glenn Carroll
139 Kings Highway
Decatur, GA 30030
atom.girl@mindspring.com

John T. Hull, Esq.
Cassie E. Bray, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
jth@nrc.gov
ceb4@nrc.gov



Diane Curran