

August 26, 2003

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

September 4, 2003 (9:47AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

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 EXTENSION OF TIME TO RESPOND TO
TO DCS'S MOTION FOR SUMMARY DISPOSITION
OF CONTENTION 3**

Georgians Against Nuclear Energy ("GANE") hereby requests an extension of time to respond to Duke Cogema Stone & Webster's Motion for Summary Disposition on Contention 3 (August 22, 2003) (hereinafter "DCS's Motion"). Under 10 C.F.R. § 2.749, GANE's response to DCS's Motion currently is due September 11, 2003.

GANE seeks an extension until twenty days after the Atomic Safety and Licensing Board ("ASLB") rules on the pending question of whether summary disposition motions are allowed in this proceeding.¹ GANE also asks that if the granting

¹ GANE challenged the permissibility of motions for summary disposition in Section III.A of its July 29, 2003, Response to DCS's Motion for Summary Disposition on Consolidated Contention 11, and DCS replied to GANE's argument in its August 11,

of this motion results in a response schedule that includes September 25-29, the ASLB add five days to the twenty-day response time. GANE makes this additional conditional request because GANE's seismic expert, Dr. Leland T. Long, will be out of town for a family wedding on those dates.

GANE seeks an extension in order to avoid any unnecessary expenditure of its limited resources on a summary disposition proceeding regarding Contention 3. DCS's motion is lengthy and quite fact-intensive, and therefore the effort and expense of preparing a response will be considerable. If the ASLB rules in GANE's favor regarding the permissibility of summary disposition motions, GANE may avoid this significant expense.

GANE also wishes to avoid the expense of preparing a response to DCS's Motion because the summary disposition process is unlikely to yield any useful result with respect to the resolution of Contention 3. As the Commission counseled in CLI-98-12, Statement of Policy on Conduct of Adjudicatory Proceedings, summary disposition should be avoided unless it will "likely substantially reduce the number of issues to be decided, or otherwise expedite the proceeding." CLI-98-12, 48 NRC 18, 20-21 (1998). Here, as DCS acknowledges in its Motion at pages 7-8, GANE has already narrowed and clarified the scope of the contention significantly. The outstanding issues raised by the contention are quite fact-intensive and heavily dependent on the professional opinions of Dr. Long. Thus, they are unlikely to be resolved through summary disposition. For the same reason, the summary disposition process is unlikely to expedite the proceeding.

GANE is concerned that the only purpose that would be achieved by preparing a response to DCS's Motion would be to drain the organization's limited funds.

Finally, the requested delay will not adversely affect the hearing process. As the NRC Staff notified the ASLB in a letter dated August 25, 2003, the dates for issuing the Final Environmental Impact Statement and the Final Safety Evaluation Report for the proposed MOX Facility have been delayed by approximately two months. This delay will, in turn, result in a corresponding postponement of the hearing schedule. Therefore, the hearing schedule can accommodate the requested delay.

Accordingly, GANE requests an extension of time to respond to DCS's Motion, until twenty days after the ASLB issues any ruling that summary disposition is permitted in this proceeding. If the response time falls on September 25-29, GANE requests an additional five days' time to respond.

GANE has consulted counsel for DCS and the Staff regarding this motion. DCS plans to oppose the motion. If the motion is granted, however, and if the response period falls on September 25-29, DCS would not oppose the addition of five days to GANE's response period. The Staff plans to oppose the motion.

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

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2003, copies of the foregoing GEORGIAN
AGAINST NUCLEAR ENERGY'S MOTION FOR EXTENSION OF TIME TO
RESPOND TO DCS'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION
3 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

Donald J. Silverman, Esq.
Alex S. Polonsky, Esq.
Marjan Mashadi
Morgan, Lewis & Bockius
1111 Pennsylvania Avenue N.W.
Washington, D.C. 20004
dsilverman@morganlewis.com
mmashadi@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.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
jth@nrc.gov

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



Diane Curran