

August 25, 2004

Mr. Peter S. Hastings  
Licensing and Safety Analysis Manager  
Duke Cogema Stone & Webster  
128 S. Tryon St.  
Charlotte, NC 28202

SUBJECT: REQUEST FOR WITHHOLDING INFORMATION FROM PUBLIC DISCLOSURE  
(DUKE COGEMA STONE & WEBSTER MIXED OXIDE FUEL FABRICATION  
FACILITY)

Dear Mr. Hastings:

By letter dated October 10, 2003, Duke Cogema Stone & Webster (DCS) provided additional information regarding Open Items MP-01 and AP-03 in the Nuclear Regulatory Commission's (NRC's) April 2003, Draft Safety Evaluation Report for the Mixed Oxide Fuel Fabrication Facility (MFFF) Construction Authorization Request (CAR). The additional information was accompanied by an affidavit requesting that the information be withheld from public disclosure in accordance with 10 CFR 2.790(b). This letter is a response to DCS' request.

The affidavit, dated October 10, 2003, stated that the additional information provided should be withheld from public disclosure for the following reasons:

1. The information sought to be withheld from public disclosure is owned by DCS, its partners, and/or affiliates, and has been held in confidence by the same.
2. The information is of a type that would customarily be held in confidence by DCS, its partners, and/or affiliates. The information consists of design details and processing methods and mechanisms relative to a method of processing that provides a competitive advantage to DCS, its partners, and/or affiliates.
3. The information was transmitted to the NRC in confidence and under the provisions of 10 CFR 2.790, it is to be received in confidence by the NRC.
4. The information sought to be protected is not available in public to the best of our knowledge and belief.
5. The proprietary information sought to be withheld in this submittal is that which is marked in the proprietary version of the accompanying enclosure, and omitted from the non-proprietary version. This information describes DCS' design for the MFFF. This information enables DCS, its partners, and/or affiliates to support license amendment applications for the MFFF.

6. The proprietary information sought to be withheld from public disclosure has substantial commercial value to DCS, its partners, and/or affiliates.

The NRC reviewed the justification that DCS provided in accordance with the requirements of 10 CFR 2.390, as amended on January 14, 2004, which are identical to the requirements of 10 CFR 2.790 of the former rule. On the basis of the justification statements provided by DCS, NRC has determined that the submitted information sought to be withheld contains proprietary commercial information. Therefore, the submitted information will be withheld from public disclosure pursuant to 10 CFR 2.390(a)(4) and Section 103(b) of the Atomic Energy Act of 1954, as amended.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, NRC may send copies of this information to consultants working in this area. The NRC will, of course, ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future such that the information could then be made available for public inspection, DCS should promptly notify the NRC. DCS also should understand that the NRC may have cause to review this determination in the future, for example, if the scope of a Freedom of Information Act request includes the information provided. In all review situations, if the NRC makes a determination adverse to the above, DCS will be notified in advance of any public disclosure.

Sincerely,

/RA/

Robert C. Pierson, Director  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Docket: 70-3098

cc: J. Johnson, DOE  
H. Porter, SCDHEC  
J. Conway, DNFSB  
L. Zeller, BREDL  
G. Carroll, GANE  
D. Curran, GANE  
D. Silverman, DCS

6. The proprietary information sought to be withheld from public disclosure has substantial commercial value to DCS, its partners, and/or affiliates.

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