



DUKE COGEMA
STONE & WEBSTER

Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, DC 20555

27 September 2006
DCS-NRC-000195

Subject: Docket Number 070-03098
Duke Cogema Stone & Webster
Mixed Oxide Fuel Fabrication Facility
Request for Exemption from Indemnity Agreement and Financial Protection
Requirements

As stated in Section 1.2.4.2 of the Construction Authorization Request, the Department of Energy (DOE) has agreed to indemnify Duke Cogema Stone & Webster (DCS) in accordance with the provisions of the Price-Anderson Act set forth in Section 170(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2210(d). In particular, the contract between DOE and DCS includes the standard Nuclear Hazards Indemnity Agreement from DOE set forth in Department of Energy Acquisition Regulation (DEAR) 952.250-70 (48 CFR §952.250-70). Based upon the DOE Indemnity Agreement and for the reasons discussed below, DCS requests an exemption from the NRC's requirements concerning agreements of indemnification and related financial protection requirements set forth in 10 CFR §§ 140.20 and 140.13a.

10 CFR § 140.8 provides that:

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and are otherwise in the public interest.

SECY 99-177 "Current Status of Legislative Issues Related to NRC Licensing a Mixed Oxide Fuel Fabrication Facility," Issue 7, addresses the issue of Price-Anderson liability coverage. In particular, SECY-99-177 states that "DOE intends to indemnify the contractors under Price-Anderson. NRC supports this approach and could, if needed, exempt the MOX Facility from the requirement to maintain financial protection."

I. The Requested Exemption is Authorized by Law.

The requested exemption from the requirements to enter into an indemnity agreement with the NRC and to maintain financial protection is authorized by law because:

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(1) the Price-Anderson Act does not require the NRC to enter into indemnity agreements or to impose financial protection requirements in connection with a plutonium fuel fabrication facility; and (2) there is no statutory prohibition on granting the exemption. Nothing in the Price-Anderson Act, the Atomic Energy Act, or any other statute precludes the NRC from granting the requested relief. Indeed, in SECY-99-177, the NRC Staff specifically stated that "[n]o additional legislation is needed" to support the requested exemption. See SECY-99-177, Issue 7.

II. The Requested Exemption is in the Public Interest.

In addition, the requested exemption is in the public interest. DOE has already entered into an indemnity agreement with DCS that provides for effective coverage in the event of a nuclear incident related to the MOX Facility. If DCS were required to enter into an indemnity agreement with the NRC and to obtain \$200 million in financial protection (presumably via private insurance coverage), the cost of the financial protection would be passed through to the U.S. Government under the DCS/DOE contract. Thus, there would be no benefit, and additional costs would be incurred, by imposing the NRC's indemnity agreement and financial protection requirements.

Therefore, DCS requests that the NRC grant an exemption from the indemnity agreement and financial protection requirements of 10 CFR §§ 140.20 and 140.13a.

If you have any questions, please feel free to contact me or Dirk Leach, Vice President and Deputy Project Manager (803) 502-1895.

Sincerely,



David Stinson, President and COO

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