

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of)	
)	Docket No. 070-03098
DUKE COGEMA STONE & WEBSTER)	
)	
Mixed Oxide Fuel Fabrication Facility)	
(Construction Authorization Request))	

NRC STAFF'S RESPONSE TO GANE'S REQUEST FOR EXTENSION OF TIME

INTRODUCTION

This proceeding concerns the Construction Authorization Request (CAR) submitted by Duke Cogema Stone & Webster (DCS) regarding a proposed mixed oxide fuel fabrication facility (MOX Facility). On June 19, 2001, the Presiding Officer conducted a telephone conference in which counsel for the Staff, counsel for DCS, and the hearing petitioners,¹ including GANE, participated. By unpublished order dated June 20, 2001 (June 20 Order), the Presiding Officer established July 30, 2001, as the deadline for the hearing petitioners to file their contentions. See June 20 Order, at 3.

On June 26, 2001, the Presiding Officer conducted another telephone conference in which counsel for the Staff, counsel for DCS, GANE, and the other hearing petitioners (with the exception of Mrs. Foster) participated. During this conference, the Presiding Officer stated that July 30, 2001, would also be the deadline for the hearing petitioners to submit any supplements to their initial petitions on the subject of standing.

¹ Donald J. Moniak on behalf of himself and on behalf of Blue Ridge Environmental Defense League (BREDL); Glenn Carroll on behalf of Georgians Against Nuclear Energy (GANE); Ruth Thomas on behalf of Environmentalists, Inc. (EI); and Edna Foster participated in the June 19 telephone conference.

Early on June 27, 2001, GANE submitted a request for an extension of time,² stating in part that it was requesting “a 30-day extension of the deadline for filing proposed contentions and additional information supporting standing.” GANE’s Request, at 1. By unpublished order dated June 27, 2001, the Presiding Officer directed that any responses to GANE’s Request be filed by noon on June 29, 2001. For the reasons discussed below, the Presiding Officer should deny GANE’s Request.

DISCUSSION

In support of its extension request, GANE states that it intends to rely on the expertise of Dr. Edwin Lyman “in forming, presenting and proving its contentions,”³ and that Dr. Lyman “has several prior commitments which render him unavailable to this process until July 20, 2001.” GANE’s Request, at 1. GANE argues that Dr. Lyman’s prior commitments “present unavoidable and extreme circumstances” which support a 30-day extension of time -- until August 29, 2001 -- in which to file contentions. *Id.*

On June 14, 2001, the Commission referred GANE’s May 17, 2001 petition for a hearing on the CAR (along with others) to the Atomic Safety and Licensing Board Panel for appointment of a presiding officer, and issued an order containing a proposed schedule for the CAR proceeding. See CLI-01-13, “Order Referring Petitions For Intervention and Requests For Hearing to Atomic Safety and Licensing Board Panel,” 53 NRC __ (June 14 Order). The Commission stated in pertinent part that extensions of time should not be granted “absent unavoidable and extreme circumstances.” June 14 Order, at 10. The Presiding Officer spoke of this high standard during the above-referenced June 19, 2001, telephone conference. GANE’s arguments for a 30-day extension of time do not satisfy this standard.

² See “Request For 30-Day Extension For Filing Contentions On Construction Authorization Request” (GANE’s Request).

³ At this stage of the proceeding, there is no need for GANE to prove its contentions.

The Staff first notes that during the June 19, 2001, conference, Ms. Carroll on behalf of GANE stated that GANE had not yet looked at the CAR -- which DCS submitted to the NRC on February 28, 2001. The CAR was placed into the NRC's ADAMS system in early March, and has also been accessible on the NRC's MOX website since March 22, 2001. The CAR has thus now been available for public review for many weeks. Any difficulty GANE now has in obtaining expert review of the CAR is one of GANE's own making.

Additionally, the Staff takes the position that this proceeding's schedule should not be controlled by GANE's choice of a particular expert, especially in the absence of any showing that Dr. Lyman has unique credentials or knowledge that is unavailable elsewhere. Moreover, GANE does not explain why Dr. Lyman could not have been consulted earlier. On April 18, 2001, the "Notice of Acceptance for Docketing of the Application, and Notice of Opportunity for a Hearing, on an Application for Authority to Construct a Mixed Oxide Fuel Fabrication Facility" (Notice) was published by the Commission in the Federal Register. The Notice detailed the contention requirements which would be applicable here, including the potential need for expert opinion. See 66 *Fed. Reg.* at 19,996, cols. 1-2 (April 18, 2001). The circumstances described in GANE's Request are thus neither unavoidable nor extreme.

GANE also does not explain why it needs a 30-day extension of time to submit additional information supporting its claim for representational standing. No indication is given that its member (Susan Bloomfield) on whom this claim relies is unavailable to supplement her affidavit dated May 14, 2001. See "NRC Staff's Answer To Hearing Requests of Donald Moniak, BlueRidge Environmental Defense League, Georgians Against Nuclear Energy, Environmentalists, Inc., and Edna Foster," dated June 25, 2001, at 28-29. Therefore, there are no unavoidable and extreme circumstances which prevent GANE from supplementing its claim for standing in accordance with the established schedule.

CONCLUSION

For all of the above-stated reasons, the Presiding Officer should deny GANE's Request.

Respectfully submitted

/RA/

John T. Hull
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of June, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of)
)
DUKE COGEMA STONE & WEBSTER) Docket No. 70-3098
)
(Savannah River Mixed Oxide Fuel)
Fabrication Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC STAFF'S RESPONSE TO GANE'S REQUEST FOR EXTENSION OF TIME" have been served upon the following persons this 28th day of June, 2001, by electronic mail, and by U.S. mail, first class (or as indicated by an asterisk (*) through the Nuclear Regulatory Commission's internal distribution); or as indicated by double asterisks (**), solely by express overnight mail.

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