

RAS 3172

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

01 JUN 29 A10:24

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Title: Duke Cogema Stone and Webster
MOX Fuel Fabrication Facility

Docket Number: ~~XXXXXXXXXXXXXXXXXXXX~~ (not assigned) 070-03098-ML

Location: (telephone conference)

Date: Tuesday, June 19, 2001

Work Order No.: NRC-301

Pages 1-57

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22 ALSO PRESENT:

23

24 JOE GIITER, NRC

25 TIM JOHNSON, NRC

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1 P-R-O-C-E-E-D-I-N-G-S

2 (2:02 p.m.)

3 ADMINISTRATIVE JUDGE MOORE: I am Judge
4 Thomas Moore, Chairman of this Licensing Board. With
5 me is Judge Lam, the second member of the Licensing
6 Board assigned to this matter. And the third member,
7 Judge Kelber, is unavailable today. The court
8 reporter is on the line?

9 COURT REPORTER: Yes.

10 ADMINISTRATIVE JUDGE MOORE: Because this
11 is being recorded, starting with the Applicant's
12 counsel, would each of you identify yourself for the
13 record?

14 MR. SILVERMAN: Yes. This is Donald
15 Silverman, from Morgan, Lewis & Bockius. And with me
16 today is Steve Frantz, F-R-A-N-T-Z, also from Morgan,
17 Lewis & Bockius.

18 ADMINISTRATIVE JUDGE MOORE: NRC staff?

19 MR. HULL: Yes, Your Honor. This is John
20 Hull. I'm acting as counsel for NRC staff in this
21 matter. I have with me in the room three other
22 individuals. I'll let them give their names and
23 titles.

24 MR. FERNANDEZ: This is Antonio Fernandez,
25 attorney for OGC, NRC.

1 MR. GIITER: Joe Giitter, Chief of the
2 Enrichment Section at NRC.

3 MR. JOHNSON: Tim Johnson, Senior
4 Mechanical Engineer.

5 ADMINISTRATIVE JUDGE MOORE: All right.
6 Georgians Against Nuclear Energy?

7 MS. CARROLL: This is Glenn Carroll for
8 Georgians Against Nuclear Energy.

9 ADMINISTRATIVE JUDGE MOORE:
10 Environmentalist, Inc.?

11 MS. THOMAS: This is Ruth Thomas. I'm
12 representing the Environmentalist, Incorporated.

13 ADMINISTRATIVE JUDGE MOORE: Blue Ridge
14 Environmental Defense League?

15 MR. MONIAK: This is Donald Moniak,
16 representing Blue Ridge Environmental Defense League,
17 and myself.

18 ADMINISTRATIVE JUDGE MOORE: And Ms.
19 Foster?

20 MS. FOSTER: Yes. This is Ms. Foster.
21 I'm just representing myself.

22 ADMINISTRATIVE JUDGE MOORE: Thank you
23 very much for attending this conference call today.
24 The purpose of the call is, frankly, to obtain some
25 information from you, so that the Licensing Board is

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1 in a position to establish a schedule.

2 In the Commission's Referral Order, issued
3 on June 14th, CLI-01-13, there is, on the face of the
4 Commission Order, an apparent inconsistency, which
5 necessitates this call.

6 If you all have it in front of you, you
7 will see on page 3 of that Order, the last sentence
8 state, and I quote, "Access to the proprietary version
9 of the CAR, which stands for the Construction
10 Authorization Request, for purposes of submitting any
11 contentions based upon withheld information will be
12 subject to later determination by the presiding
13 officer, after rulings on standing are made."

14 And if you'll turn to page 8 in the
15 Commission's -- I guess it's page 9 -- in the
16 Commission's schedule; on the line starting with, "130
17 days from the date the presiding officer is
18 appointed," it states, "decision on standing and
19 admissibility of the proposed original contention,
20 start of discovery," et cetera.

21 The Order appears to anticipate one
22 decision on standing and contentions. But earlier in
23 the decision, the first matter that I quoted you,
24 suggests otherwise. That being the case, it's
25 difficult to set a schedule that complies with what

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1 appears to be impossible. So what we'll do instead --

2 MR. MONIAK: Could you explain why this
3 is, go over it one more time?

4 ADMINISTRATIVE JUDGE MOORE: Who is
5 speaking, please?

6 MR. MONIAK: My name is Don Moniak. Could
7 you explain why the issue of the proprietary version?
8 How you are distinguishing that from the other issues?

9 ADMINISTRATIVE JUDGE MOORE: I'm just
10 merely pointing out what the Commission's decision
11 states. And on page 3 it appears that the Commission
12 anticipates having a standing determination, prior to
13 anyone obtaining proprietary information. Yet,
14 subsequent in the schedule, that is not a distinction
15 which has been carried through.

16 So my first question for the four
17 petitioners is one, do any of you recognizing the
18 staff has yet to respond to your petitions, but that
19 the applicant has responded fully to all your
20 petitions, and -- I believe, if I'm remembering
21 correctly -- has objected to the standing of all four
22 petitioners; do any of you petitioners plan on
23 amending your petitions, with respect to standing?
24 Because the Commissions decision, again on page 9,
25 appears to anticipate permission to do that in the

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1 second line of their proposed schedule.

2 MS. CARROLL: This is Glenn Carroll from
3 GANE. And we have, just as of last Friday, made
4 contact with someone who's going to give us some legal
5 assistance. And I wanted her input on whether she
6 thought there were -- if we needed to strengthen our
7 standing. So, I expect that she'll be available
8 tomorrow to talk. So, I don't know about that.

9 But I did want to say that the DCS lawyers
10 responded to our interpretation of putting forth with
11 particularity, as if they were contentions. And we
12 have not filed contentions in our opinion, yet.

13 ADMINISTRATIVE JUDGE MOORE: All right.
14 Environmentalist, Inc., Ms. Thomas, do you, at this
15 time, plan to amend your petition with regard to your
16 standing issue?

17 MS. THOMAS: Yes, we do.

18 ADMINISTRATIVE JUDGE MOORE: All right.
19 Blue Ridge Environmental Defense League?

20 MR. MONIAK: This is Don Moniak. Let me
21 make sure I'm clear on this. We have at least 45 days
22 from June, from the time of this Order, where the
23 presiding officer was appointed, to file additional
24 information on standing, is that correct?

25 ADMINISTRATIVE JUDGE MOORE: The

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1 Commission's schedule are milestones. The purpose of
2 this call is so that the Board can establish a
3 schedule. So that date is not inviolate.

4 MR. MONIAK: Okay. First of all I'd like
5 to say the response from Duke Cogema Stone & Webster
6 on this Sub-Part L was late in getting here. They did
7 not file it within 10 days of service of a request for
8 a hearing to any of the requestors. I want to get
9 that on the record, and ask what implications that
10 has, if any?

11 Second, I'd like to request a 30-day
12 extension to what the Commission recommended. They
13 recommended 45 days. I'd like request 30 additional
14 days, at least. And third, we will be filing
15 additional information on standing, as well as
16 contentions. And we have not filed any contentions,
17 yet, formally.

18 MS. THOMAS: Ruth Thomas with
19 Environmentalist, Inc. I really didn't have time to.

20 ADMINISTRATIVE JUDGE MOORE: Ms. Thomas,
21 let me hear from Ms. Foster. Ms. Foster, do you plan
22 at this point to file further pleadings with regards
23 to the standing issue?

24 MS. FOSTER: I don't that I'll be able to
25 afford the counsel, and the expense of doing that.

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1 But I just wanted to register my dismay with this Mox
2 Field plan as it is. I plan to contact -- you know,
3 take a political avenue, and contact the senators
4 involved, from Nevada, and so on.

5 ADMINISTRATIVE JUDGE MOORE: Thank you
6 very much, Ms. Foster. Having found that you all do
7 plan to, with the exception of Ms. Foster --

8 MR. MONIAK: Well, she said she wasn't
9 sure.

10 ADMINISTRATIVE JUDGE MOORE: To amend your
11 pleadings, the Board will take that into account in
12 establishing a schedule then. Second question --

13 MS. THOMAS: I have question about this.

14 ADMINISTRATIVE JUDGE MOORE: Who is
15 speaking, please?

16 MS. THOMAS: Ruth Thomas, with
17 Environmentalist, Inc. And we had certain corrections
18 that needed to be made. One of them was as basic as
19 not having the right telephone number. And would this
20 filing, or submittal, or amendment, would it be a
21 replacement for what has already been sent? Or would
22 it be treated as another -- something that's amending
23 what we sent originally?

24 ADMINISTRATIVE JUDGE MOORE: It would be
25 treated as an amendment of your initial petition.

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1 MS. THOMAS: And we also would like more
2 time. Our organization depends on volunteers. We do
3 have not have any lawyers. We also have people who,
4 during this time, are going to be on vacation. So, we
5 feel like we need more time.

6 ADMINISTRATIVE JUDGE MOORE: Okay. The
7 next question that I'd like to bring up is --

8 MR. SILVERMAN: Don Silverman. Real
9 quickly, just before you close that out. As you set
10 that schedule for additional filings on standings, can
11 we presume that the Applicant will have an opportunity
12 to respond to those?

13 ADMINISTRATIVE JUDGE MOORE: Absolutely,
14 Mr. Silverman.

15 MS. CARROLL: This is Glenn Carroll, from
16 GANE. So if we're going to close out, the
17 encouragement to add an additional 30 days, GANE
18 concurs with that. We would like that also.

19 ADMINISTRATIVE JUDGE MOORE: It will make
20 this go quicker if the parties will only answer when
21 I speak to that party. I'd appreciate that. The next
22 matter is a question addressed to the staff of Mr.
23 Hull. I assume that you will be, at least, filing an
24 initial response 10 days from last Friday?

25 MR. HULL: Yes, Your Honor. I plan to

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1 file our answer this next Monday.

2 ADMINISTRATIVE JUDGE MOORE: Fine. We
3 then have the question, Mr. Silverman, of how to deal
4 with the proprietary version of the Construction
5 Authorization Request?

6 MR. SILVERMAN: Yes. We didn't read the
7 Commission Order as being inconsistent. On page 3, it
8 does say that access to the proprietary version will
9 be addressed by the presiding officer after rulings on
10 standing.

11 And then as you pointed out correctly, on
12 page 9, what it says is that petitioners -- the 130-
13 day milestone is for the filing of original
14 contentions.

15 I think that the way we read that is once
16 the presiding officer made a ruling on standing, and
17 the initial contentions filed by the parties with
18 respect to the information that they already have
19 available to them; that if there is, indeed, to be a
20 hearing, that it would then be for those parties that
21 have been admitted. We would discuss the issue of
22 proprietary information.

23 ADMINISTRATIVE JUDGE MOORE: Well, Mr.
24 Silverman, the problem with that is it doesn't jive
25 with the next part of the Phase I schedule, a decision

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1 in the singular on standing and admissibility of
2 contentions.

3 MR. SILVERMAN: It says, though, the
4 admissibility of proposed original contentions. I
5 don't think the Commission spoke to a date.

6 ADMINISTRATIVE JUDGE MOORE: But there is
7 no date for a standing decision that the Commission
8 has set forth.

9 MR. SILVERMAN: We presume that the
10 standing issue can be decided separate from whether or
11 not there is access to proprietary information.

12 ADMINISTRATIVE JUDGE MOORE: But, Mr.
13 Silverman, I don't read it that way. And I'll tell
14 you, frankly, why. The purpose of this, and this not
15 anything particularly new, is the concern of the
16 Commission in these circumstances deals with a
17 competitor of an applicant being able to obtain
18 information useful in a competitive sense, without
19 them being a serious intervenor or petitioner. And
20 from reading the papers at hand with the petitioners
21 who have filed petitions, that is not an issue in this
22 case.

23 So, I think one way to deal with this in
24 a rather straight-forward manner, is simply to up
25 front deal with the proprietary information question.

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1 And traditionally, the way we've done that is with a
2 protective order, and affidavits of non-disclosure.
3 Do you have an objection to proceeding in that manner
4 in this proceeding?

5 MR. SILVERMAN: Oh, yes. The only thing
6 I'd point out first, and I will directly answer your
7 question, sir, is I don't believe the intervenors have
8 specifically asked for access to that information,
9 yet, in this proceeding.

10 MR. MONIAK: We were going to, today.

11 MR. SILVERMAN: Were they to do that, if
12 we could arrange an appropriate protective order that
13 gives the company adequate protection, we would move
14 forward.

15 ADMINISTRATIVE JUDGE MOORE: Well that is
16 the usual manner of proceeding. In this case, since
17 the information -- and, incidentally, there is a
18 letter that was filed, I believe, by GANE requesting
19 the Commission to make available the non-proprietary
20 version -- or the proprietary version of the
21 Construction Authorization Request.

22 But putting that aside for the moment,
23 what is the nature of the information in this case?
24 Is it something to deal with Cogema's process?

25 MR. SILVERMAN: My understanding is there

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1 are two general types of information, Your Honor. One
2 is financial information related to BS and its parent
3 companies. And the other process information which is
4 related to the Cogema French Processes. And then in
5 both cases, the staff, at least at this point, has
6 ruled that that material is, in fact, proprietary.

7 ADMINISTRATIVE JUDGE MOORE: So we have no
8 safeguards information involved?

9 MR. SILVERMAN: I believe that's correct.

10 ADMINISTRATIVE JUDGE MOORE: All right.
11 Now how does the financial information come into play,
12 if at all?

13 MR. SILVERMAN: Could you clarify your
14 question? I'm not sure what you're asking me.

15 ADMINISTRATIVE JUDGE MOORE: This is a
16 Part 70 licensing proceeding, correct?

17 MR. SILVERMAN: Yes.

18 ADMINISTRATIVE JUDGE MOORE: There is some
19 financial qualifications requirements under Part 70,
20 correct?

21 MR. SILVERMAN: The staff is authorized to
22 look into the financial qualifications of the
23 applicant, if we believe that's necessary. Yes, sir.

24 ADMINISTRATIVE JUDGE MOORE: And that
25 information, what you've dubbed "financial

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1 information," presumably would be relevant to that
2 matter.

3 MR. SILVERMAN: Well, actually, our
4 position is, "no." This is an unusual project, as I
5 think you're aware. This is a project where the
6 entire funding is coming from the federal government,
7 through the Department of Energy. And our legal
8 position is that the financial information associated
9 with DCS, its parent financial resources, and the
10 like, is really not relevant.

11 Now some of that information has, in fact,
12 been submitted to the staff, because they have
13 requested it, and in accordance with a staff guidance
14 document, the Standard Review Plan. But we're not in
15 a position today to concede that that is, in fact,
16 relevant.

17 ADMINISTRATIVE JUDGE MOORE: All right.

18 MR. MONIAK: Can I address that? This is
19 Don Moniak from BREDL?

20 ADMINISTRATIVE JUDGE MOORE: One moment,
21 Mr. Moniak. We'll get to that.

22 MR. MONIAK: Okay.

23 ADMINISTRATIVE JUDGE MOORE: The
24 Applicant's position then is with appropriate
25 protective order, affidavits of non-disclosure,

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1 they're prepared, and all the requisite safeguards are
2 prepared to make the information available?

3 MR. MONIAK: Yes, sir.

4 ADMINISTRATIVE JUDGE MOORE: Starting with
5 GANE, Ms. Carroll, does your organization need access
6 to the proprietary information to file contentions?

7 MS. CARROLL: Yes.

8 ADMINISTRATIVE JUDGE MOORE: Ms. Thomas,
9 does Environmentalist, Inc., need this information to
10 file contentions?

11 MS. THOMAS: Yes, we do.

12 ADMINISTRATIVE JUDGE MOORE: Mr. Moniak?
13 Am I pronouncing that right?

14 MR. MONIAK: Yes, that's good.

15 ADMINISTRATIVE JUDGE MOORE: All right.
16 Do you need the information to file contentions?

17 MR. MONIAK: Absolutely. And we've also
18 filed a Freedom of Information Act Request for this.

19 ADMINISTRATIVE JUDGE MOORE: Ms. Foster?

20 MS. FOSTER: No, I don't think that's
21 necessary.

22 ADMINISTRATIVE JUDGE MOORE: Fine. Thank
23 you. Because it is your information, Mr. Silverman --
24 your client's information -- then why don't you
25 immediately take the lead in drafting an appropriate

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1 affidavit of non-disclosure and protective order. In
2 that regard, I would suggest that you may wish to
3 consult with the staff attorney, Mr. Hull.

4 And I would point out to you two recent
5 matters, I think both of them current proceedings
6 before licensing boards, in which they've used such
7 things. The first one is private fuel storage case,
8 in which there is an outstanding protective order and
9 affidavits on non-disclosure, which you might find
10 very fruitful to use as a guide; as well as the
11 license amendment matter in Carolina Power and Light,
12 the Shearon Harris facility, which also dealt with
13 material that was publicly available, and a affidavit
14 of non-disclosure and suitable protective order. Is
15 that agreeable with you, Mr. Silverman?

16 MR. SILVERMAN: Thank you for the
17 references.

18 ADMINISTRATIVE JUDGE MOORE: Well those --
19 I have copied previous ones that have been used over
20 the years. And it has been found to be satisfactory
21 in the past. I would you caution you to make it as
22 simple as possible. And that brings up another
23 question.

24 Is this information such that, recognizing
25 that all the intervenors are pro se, that it need be

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1 done at a central location in the area of the
2 facility; they be made available at that facility, and
3 that information can't leave the facility?

4 MR. SILVERMAN: I don't know that answer
5 to that, Your Honor. I would have to check with the
6 client. I, personally, am not familiar with all the
7 details of the information.

8 ADMINISTRATIVE JUDGE MOORE: That is an
9 avenue that can be pursued. But we will assume, for
10 present purposes, that we need not go that route,
11 because it is not safeguarded information, which is
12 generally where we need to take those steps.

13 So if you could immediately take the lead,
14 Mr. Silverman, with preparing an appropriate affidavit
15 of non-disclosure, using as a guide the two references
16 I gave you, and an appropriate protective order, and
17 submit it to the Board by this coming Monday; I will
18 then peruse it. And you may wish to serve it on each
19 of the four petitioners, as well as the staff.

20 And then, I will take a look at it. And
21 if any party has vigorous objections, they can
22 immediately -- hopefully by e-mail -- voice those
23 objections. I'm thinking ahead of myself, but let's
24 take care of that right now.

25 MR. MONIAK: Your Honor, my name is Don

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1 Moniak. Before we go any further, there are some
2 questions on whether this is safeguard information, or
3 not?

4 ADMINISTRATIVE JUDGE MOORE: No there is
5 no question. Mr. Silverman has said it is not
6 safeguard, just proprietary.

7 MR. MONIAK: Last July, there was a
8 meeting between DCS and NRC and DOE, in which they
9 discussed the differences in classification between
10 NRC and DOE. And it was tentatively decided that
11 unclassified controlled nuclear information, which is
12 a DOE category, UCNI safeguard information would be
13 considered as privileged information. And it's
14 unclear as to whether this has been implemented or
15 not. So I just want to caution that there may be some
16 instances where some of the proprietary information is
17 actually unclassified controlled nuclear information.

18 ADMINISTRATIVE JUDGE MOORE: Well, is that
19 a category of information, Mr. Silverman, that is
20 contained in the Construction Authorization Request?

21 MR. SILVERMAN: I appreciate Mr. Moniak's
22 reference. I believe the answer is "no." And I
23 believe -- and I will verify with the client -- that
24 there is no material, there is no information that is
25 unclassified controlled nuclear information within the

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1 meaning of the DOE definition; that we are talking
2 about the classic types of proprietary, commercial
3 information. And I will verify that.

4 MR. HULL: Your Honor, this is John Hull
5 for the staff. I am advised by Mr. Johnson here that
6 there is no -- and he has seen the information.
7 There's no safeguard information, and no OCNE
8 information.

9 ADMINISTRATIVE JUDGE MOORE: All right,
10 then. We will proceed on the assumption today that it
11 is proprietary information we're dealing with, and
12 proceed accordingly.

13 Let me quickly find out from each of the
14 petitioners whether you all have access to, and can
15 file things electronically, and receive things
16 electronically? GANE?

17 MS. CARROLL: GANE can.

18 ADMINISTRATIVE JUDGE MOORE:
19 Environmentalist?

20 MS. THOMAS: No, we cannot.

21 ADMINISTRATIVE JUDGE MOORE: You cannot.

22 MS. FOSTER: This is Ms. Foster. I have
23 e-mail.

24 ADMINISTRATIVE JUDGE MOORE: I'm sorry,
25 who just spoke?

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1 MS. FOSTER: Ms. Foster. I have e-mail.

2 ADMINISTRATIVE JUDGE MOORE: And Blue
3 Ridge Environmental Defense League?

4 MR. MONIAK: Yes, we can file
5 electronically.

6 ADMINISTRATIVE JUDGE MOORE: Ms. Carroll,
7 do you have fax available to you, and can you send by
8 fax?

9 MS. CARROLL: Yes.

10 ADMINISTRATIVE JUDGE MOORE: Would you be
11 so kind right now to give us your fax number?

12 MS. CARROLL: 404 --

13 ADMINISTRATIVE JUDGE MOORE: Everyone,
14 please -- this will all be in a subsequent order, so
15 everyone has it.

16 MS. CARROLL: 404-378-4263.

17 ADMINISTRATIVE JUDGE MOORE: And could you
18 repeat that one more time, please?

19 MS. CARROLL: 404-378-4263.

20 ADMINISTRATIVE JUDGE MOORE: Thank you.
21 Then in serving papers on GANE, they should be faxed
22 to GANE. Do each of the rest of you have access to
23 fax, and can use fax?

24 MS. THOMAS: We don't. Ruth Thomas with
25 Environmentalist, Inc. We don't have fax.

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1 ADMINISTRATIVE JUDGE MOORE:
2 Environmentalist, Inc. does not have fax.

3 MR. SILVERMAN: Your Honor, Don Silverman
4 here. I think GANE said they did have access to e-
5 mail.

6 MS. CARROLL: Yes, we have e-mail, also.

7 MR. SILVERMAN: It was Environmentalist,
8 Incorporated that indicated they did not have access
9 to e-mail.

10 ADMINISTRATIVE JUDGE MOORE: Oh, I'm
11 sorry. Ms. Thomas, you do not have access to e-mail?
12 Is that correct?

13 MS. THOMAS: That's right. Or fax.

14 ADMINISTRATIVE JUDGE MOORE: Sorry. Or
15 fax. All right. As an initial step, Mr. Silverman,
16 if you would serve everyone with that proposed
17 protective order and affidavit of non-disclosure by e-
18 mail, and then regular service. And in serving Ms.
19 Thomas of Environmentalist, Inc., serve it by
20 overnight mail. That would be helpful.

21 And before we get off the line today,
22 we'll make sure that we put out the e-mail addresses
23 for everyone, until I get a chance to issue an order
24 that contains all that information.

25 MS. CARROLL: Your Honor, this is Glenn

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1 Carroll from GANE. Would e-mail filings be in
2 addition to paper filings?

3 ADMINISTRATIVE JUDGE MOORE: Yes, they
4 will.

5 MS. THOMAS: Ruth Thomas, with
6 Environmentalist, Inc. I wanted to --

7 ADMINISTRATIVE JUDGE MOORE: Ms. Thomas,
8 can you speak up? We cannot hear you.

9 MS. THOMAS: Yes. I wanted to know more
10 about sending in a response to DCS' answer to our
11 petition. Is that going to be a separate filing? And
12 what would be the time line on that?

13 ADMINISTRATIVE JUDGE MOORE: In a word,
14 Ms. Thomas, you have no right respond to their filing.
15 But the Commission's Order anticipates that you may
16 amend your hearing petition, your Petition for
17 Intervention and Request for Hearing.

18 MS. THOMAS: And take into consideration
19 what they said? Take into consideration the answer
20 that we got from DCS?

21 ADMINISTRATIVE JUDGE MOORE: If I've
22 understood you correctly, yes. And the staff will be
23 filing a response to your Petition, from what Mr. Hull
24 said, on Monday. You should be receiving shortly
25 thereafter. I will be establishing a schedule for

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1 those responses, amended petitions, in due course.

2 MS. THOMAS: And, Judge, are there any
3 guidelines for information that will help us further,
4 in addition to this conference, which is helpful, too?
5 But I just wondered.

6 ADMINISTRATIVE JUDGE MOORE: The
7 Commission's Rules of Practice can be found on the
8 Commission's Web site. And the informal rules, which
9 are applicable with modifications by the Commission
10 for this proceeding, are the procedural rules
11 applicable to here.

12 MR. MONIAK: Your Honor, this is Don
13 Moniak from BREDL. If somebody doesn't have access to
14 electronic e-mail, they don't have access to the
15 Internet.

16 ADMINISTRATIVE JUDGE MOORE: That's
17 correct. Thank you for reminding me of that. Ms.
18 Thomas, do you have access to the Commission's Rules
19 of Practice?

20 MS. THOMAS: Well, no, I don't think. I
21 mean, we don't have a lawyer. That's one of our big
22 problems. And that's something that lawyers would
23 have, right?

24 ADMINISTRATIVE JUDGE MOORE: I believe.
25 Is there a public document room in the area of this

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1 facility? Mr. Silverman, Mr. Hull, can either of you
2 answer that?

3 MR. SILVERMAN: I'm not positive anything
4 has been set up locally, yet. Perhaps Mr. Hull knows.

5 MR. MONIAK: There is a Department of
6 Energy reading room, but not a Nuclear Regulatory
7 Commission reading room, to my knowledge. Don Moniak.

8 MS. THOMAS: And this is Ruth Thomas,
9 again. Even if it was down there based in the Augusta
10 area, it wouldn't be helpful to me and other
11 volunteers that are working on this, because most of
12 us are in Columbia. Which brings up the subject -- I
13 don't know if we're going to cover it today is where
14 is the pre-hearing being planned? What location is it
15 being planned at?

16 ADMINISTRATIVE JUDGE MOORE: I'm sorry.
17 Your last question, Ms. Thomas?

18 MS. THOMAS: Where is the pre-hearing
19 planned for, the location of it?

20 ADMINISTRATIVE JUDGE MOORE: That has yet
21 to be determined, Ms. Thomas.

22 MS. THOMAS: And how can we,
23 Environmentalist, Inc., let you know what would be
24 helpful to us, and why, and give reasons why we think
25 it needs to be in Columbia?

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1 ADMINISTRATIVE JUDGE MOORE: Well,
2 generally speaking, Ms. Thomas, those hearings and
3 pre-hearing conferences, if they are not held in the
4 Commission's headquarter in Rockville, Maryland, are
5 held in the vicinity of the proposed facility. And in
6 this case, that would likely be the Aiken area.

7 MS. CARROLL: Your Honor, this is Glenn
8 Carroll from GANE. The NRC has set up, I think, seven
9 locations with the non-proprietary version of the
10 Construction Authorization Request. And, perhaps,
11 this could be the seed of document room, and the Rules
12 of Practice would be added to that.

13 ADMINISTRATIVE JUDGE MOORE: Well, Ms.
14 Carroll, one of the problems is that the Commission
15 has done away, in large measure, with public documents
16 rooms because all of the information is now available
17 over the Internet, on the Commission's Web site. And
18 through its ADAMS system, all the documents in this
19 case are readily available to the public over the Web.

20 MR. MONIAK: Your Honor, with all due
21 respect, you're aware that the ADAMS system is the
22 most criticized government system in terms of access
23 that anybody knows of. It's very slow. It's hard to
24 access. And I can access it, but it's very difficult,
25 even for me.

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1 ADMINISTRATIVE JUDGE MOORE: I am not here
2 to debate this.

3 MR. MONIAK: Yes, I know this.

4 ADMINISTRATIVE JUDGE MOORE: But I would
5 point out that public libraries, generally today, have
6 access to the Web. And through that doorway, you can
7 access this material at the Commission. So, any
8 public libraries that have computer access to the Web
9 are available to obtain this information. Ms. Thomas,
10 does your local library have computers?

11 MS. THOMAS: Yes, they do.

12 ADMINISTRATIVE JUDGE MOORE: Well that,
13 then, is the most likely and easiest way for you to
14 obtain information and documents. And the ADAMS
15 system has just recently undergone its first fix-it --
16 that's the appropriate term. And I think that you
17 will find that, at least for obtaining and printing
18 documents, it has become much more user-friendly, and
19 a more useful tool for you all.

20 MS. CARROLL: Your Honor, this is Glenn
21 Carroll from GANE. Does the Rules of Practice have a
22 C.F.R. number?

23 ADMINISTRATIVE JUDGE MOORE: Yes. It
24 would be 10 C.F.R., Part 2, specifically Sub-Part L,
25 which is 2.1200. But the Commission's Referral Order

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1 specifically delineates the provisions of Sub-Part G,
2 of Part 2, which are also made applicable by its Order
3 to this proceeding.

4 MR. HULL: John Hull for the staff. I'd
5 add to that that also the Notice of Opportunity for
6 Hearing, published in the *Federal Register* also
7 contains material to that effect.

8 ADMINISTRATIVE JUDGE MOORE: Thank you,
9 Mr. Hull. Well, the point of this conference today
10 was to try to get the ball rolling so that everyone
11 would have immediate access to the proprietary
12 information that is necessary for filing contentions.

13 MR. MONIAK: Your Honor, are we going to
14 discuss the proprietary information any more? Because
15 I would like to point out that it is my contention, or
16 my belief, that this was overdone in terms of what's
17 proprietary and what is not.

18 This information is basic source
19 information. It involves the process, but most of it
20 is tables that list inventories of chemicals and
21 radionuclides they need to process. So it's the very
22 foundation for what will be come the safety evaluation
23 report.

24 And I want to ask if there's a possibility
25 that this panel could order another review within the

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1 Commission, or whatever, to determine if, maybe, some
2 of this really is not proprietary? And I can argue
3 that some of it certainly should not be.

4 For example, the material that's coming
5 into the facility is supposed to unclassified
6 information, and they're claiming it as proprietary.
7 And it's not owned, and not produced by the
8 Applicants.

9 ADMINISTRATIVE JUDGE MOORE: And the basis
10 of your statement, I take it, is that the non-
11 proprietary version -- or the proprietary version that
12 you are looking at -- I'm sorry?

13 MR. MONIAK: The non-proprietary version.

14 ADMINISTRATIVE JUDGE MOORE: You're
15 looking at, and you're assuming that that's the
16 deleted material?

17 MR. MONIAK: Oh, yes. They released a
18 non-proprietary version with all of the proprietary
19 information redacted. It's very cut-hair. It's
20 almost all in Section 11. Sections 11.2 and 11.3
21 contain nearly all of the proprietary information.
22 And quite frankly, I could fill in many of the blanks,
23 other than numbers.

24 I mean, I think this has been serious
25 overdone. I have never seen the Department of Energy

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1 redacting on such a grand scale as this. The don't
2 even list the radionuclides, which anybody should be
3 able to at least get that.

4 ADMINISTRATIVE JUDGE LAM: This is Judge
5 Lam. I hear you loud and clear about what you are
6 saying. But I'd like to enter my comment on this type
7 of safety -- if I may phrase it that way -- measure.

8 When one deals with plutonium, one cannot
9 be too cautious in protecting that information,
10 particularly in the area of safeguard. I felt
11 reassured by Mr. Hull and Mr. Silverman talking about
12 there will not be any safeguard information here.
13 Therefore, I think my concern has been eased. Now,
14 where you are going, it's a little different in trying
15 to remove material from being labelled "proprietary."

16 MR. MONIAK: Absolutely. I believe that -
17 - as I stated earlier, we filed a Freedom of
18 Information Act Request. I was late in filing an
19 appeal, so I did not file the appeal. And I believe -
20 -

21 ADMINISTRATIVE JUDGE MOORE: Mr. Moniak,
22 to be taken care of, you will be given, upon signing
23 the affidavit of non-disclosure, which includes you
24 becoming subject to, and agreeing to become subject
25 to, the protective order, and all the consequences,

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1 finally, you will have available this information to
2 you.

3 MR. MONIAK: The problem with that is that
4 the information is so basic, in some instances, that
5 I'm afraid that we'll violate the order just by
6 speaking in public. The fact that plutonium is in
7 many of the tables, for example, tables 11.21 through
8 11.2-whatever, and 11.31 and 11.3-whatever, is
9 plutonium, Americium, highly-enriched uranium, at a
10 minimum. And I can list many of the chemicals. I'm
11 afraid that we could be held liable under that
12 protective order for stating the obvious, just because
13 it's unfairly, and inaccurately, and inappropriately
14 defined as proprietary.

15 ADMINISTRATIVE JUDGE MOORE: For current
16 purposes, to get started, I think let's proceed this
17 way. Then you will be free once you have access to
18 that information -- or, perhaps, you don't want acces
19 -- to protect yourself from that problem to file
20 appropriate pleadings that will address that subject.
21 And at this point --

22 MR. MONIAK: Could I request that, Your
23 Honor, that the panel make a formal request to have
24 that reevaluated? Because the NRC just came out with
25 new information, a new procedure on evaluating

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1 proprietary data and information, just last week, I
2 believe it was. It was up on ADAMS. I'm not sure
3 what the procedure was before.

4 And I've asked for the information, the
5 sign-off sheet, or whatever it is, that says that
6 somebody actually reviewed this, and said it was
7 proprietary, and it fit all the needs.

8 I believe if you were to look at it, you'd
9 find that it's really a stretch. There's information,
10 I know -- I don't want anybody to laugh, because I'm
11 going to cite Los Alamos. But nonetheless, Los Alamos
12 has information about plutonium pit production that is
13 far more -- and mixed oxide fuel fabrication -- that
14 is far more revealing than this information is. And
15 I don't see how anybody can argue that a plutonium
16 fuel facility can claim that the use of the word
17 "plutonium" in tables is proprietary.

18 ADMINISTRATIVE JUDGE MOORE: As I said, I
19 think the way we will proceed is as outlined. And
20 then, you will be free to take whatever legal steps to
21 challenge the designation of this material as
22 proprietary that you deem fit.

23 MR. MONIAK: Okay, thank you.

24 ADMINISTRATIVE JUDGE MOORE: Mr.
25 Silverman?

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1 MR. SILVERMAN: Yes, sir.

2 ADMINISTRATIVE JUDGE MOORE: It may be
3 prudent, and certainly will save a lot of time for all
4 concerned, if you, in consultation with the staff, are
5 positive that the material you claim to proprietary
6 is, in fact, something that should be proprietary.

7 We both know some of what Mr. Moniak said
8 that there tends to be a conservatism in these matters
9 that is often found, after excruciating litigation, to
10 be unnecessary. So, a word to the wise. It's easier
11 to take the time now to do it right, than to fight
12 about it later.

13 So, with that admonition in mind, it would
14 probably be helpful if you would make sure in your
15 designations that you've got it; that you're satisfied
16 that it's all defensible.

17 MR. SILVERMAN: I understand.

18 MS. CARROLL: Your Honor, this is Glenn
19 Carroll from GANE. We have a couple of potential
20 expert witnesses that are reviewing materials with us.
21 How will they be?

22 ADMINISTRATIVE JUDGE MOORE: Well, as Mr.
23 Silverman's, in consultation with Mr. Hull's, proposed
24 protective order and affidavit of non-disclosure, if
25 they follow the guidance which I suggested to them in

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1 the Shearon Harris case, the Carolina Power and Light
2 matter, and the private fuel storage case, there will
3 be access by your experts to that proprietary
4 information, upon their signing an affidavit on non-
5 disclosure.

6 MS. CARROLL: And we're talking about?

7 ADMINISTRATIVE JUDGE MOORE: And these are
8 all ex terr.

9 MS. CARROLL: And then we're talking about
10 the need to travel to, for instance, Aiken, South
11 Carolina, in order to review the materials? There
12 will be no other method of distribution?

13 ADMINISTRATIVE JUDGE MOORE: No, not
14 necessarily at all. Since this material does not
15 include safeguards material, but simply commercial
16 proprietary information, it will be available to you
17 in your custody. And you must protect it, according
18 to the terms of the protective order, and your
19 affidavit of non-disclosure, which you will be
20 required to sign before you have access to the
21 information. And you, by doing that, will subject
22 yourself to civil and criminal penalties, should you
23 violate that order, the protective order, and your
24 affidavit of non-disclosure.

25 MS. CARROLL: So, in other words, any

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1 experts -- I'm anticipating, and there are a lot of
2 variables, I'm understanding -- that a potential
3 expert witness would also sign an affidavit, if they
4 wanted to; and then could look at.

5 ADMINISTRATIVE JUDGE MOORE: Correct. A
6 prescribed affidavit.

7 MR. MONIAK: Also, Your Honor, given the
8 fact that this is a federally-funded program -- I'm
9 not going to go there. I want to follow up, too. When
10 they come up with this affidavit, I assume there will
11 be some negotiations over its content?

12 ADMINISTRATIVE JUDGE MOORE: That was the
13 point of having him, Mr. Silverman, file it next
14 Monday. I would appreciate receiving any objections
15 by next Thursday. And the Board will then be in a
16 position to set forth and issue the requisite
17 protective order and affidavit of non-disclosure that
18 will be required for you to obtain this information.

19 MR. MONIAK: Considering that we're
20 operating with a lot of volunteers, as well, could
21 that be extended to the following Monday, five days?

22 ADMINISTRATIVE JUDGE MOORE: In this
23 regard it can be. But I would caution all of you that
24 a great deal of the information in this case is in the
25 non-proprietary version, and you should not be sitting

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1 on your hands, waiting for the proprietary version in
2 preparing your contentions.

3 And I would call your attention -- which
4 I will again set forth in a subsequent order -- the
5 Commission's admonition that, and I quote, "to avoid
6 unnecessary delays, the presiding officer should not
7 grand requests for extension of time absent
8 unavoidable and extreme circumstances." That is a
9 test far higher than mere good cause.

10 And as a practical matter, extensions of
11 time will not be granted in this case. The schedule
12 that I publish will be kept. And absent unavoidable
13 and extreme circumstances -- and that is a very high
14 bar which one must cross in seeking an extension --
15 and that is the standard the Commission has set for
16 this adjudication.

17 MR. MONIAK: Where exactly is that?

18 ADMINISTRATIVE JUDGE MOORE: That is found
19 on page 10 of the Referral Order.

20 MR. MONIAK: Page 10, okay.

21 ADMINISTRATIVE JUDGE LAM: To add to Judge
22 Moore's comment on this, my reading of that Order
23 tells me that as a goal the Commission has said that
24 the issue on the initial decision, on the CAR, will be
25 within approximately two years from the day that the

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1 NRC receives the request. And that's an extremely
2 tight schedule.

3 MS. THOMAS: Ruth Thomas, with
4 Environmentalist, Incorporated. Am I correct that
5 that four-to-five day period of the deadline will be
6 around July 29th?

7 ADMINISTRATIVE JUDGE MOORE: Ms. Thomas,
8 I have not sat down with a calendar to set that forth.
9 But the starting date is last Friday, when I was
10 appointed as the Board was appointed.

11 And so for current purposes, all parties
12 should be following the schedule proposed by the
13 Commission, until I issue an order which will set
14 forth, with date certain, these days. But your
15 amendments containing to your intervention petitions
16 are due 45 days from last Friday, which was the --

17 MS. CARROLL: Fifteenth.

18 ADMINISTRATIVE JUDGE MOORE: Was that the
19 15th of June? Putting it approximately the 29th of
20 July. Without a calendar, that's a close guess. And
21 then your contentions are due 75 days from last
22 Friday. And a pre-hearing conference will be within
23 85 days. So it will follow on the heels immediately
24 of the contentions -- of the responses, rather, to the
25 contentions.

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1 Your contentions, I apologize, are due 45
2 days from last Friday, as well as any amendments to
3 your petitions for standing. So you do not have time
4 to sit on your hands waiting for a proprietary
5 version. You should already be well immersed in the
6 non-proprietary version.

7 So by extending that time line, Mr.
8 Moniak, you're just cutting short your own time.

9 MR. MONIAK: Could you explain that,
10 please, why we would be cutting short our own time?

11 ADMINISTRATIVE JUDGE MOORE: Because until
12 the affidavits on non-disclosure at signed, you will
13 not have access to the proprietary version.

14 MR. MONIAK: Yes, this is correct. I
15 understand. Your Honor, could I just ask though, in
16 terms of timeliness; on the Sub-Part L, 2.1205,
17 Section G, it says that -- no, it's not G -- somewhere
18 in here that the applicant can respond within 10 days
19 to a request for hearing. And the applicant did not
20 respond to us within 10 days.

21 ADMINISTRATIVE JUDGE MOORE: It
22 essentially becomes a moot point. Because the
23 Commission in its schedule said that 10 days from the
24 date of the presiding officer being appointed, the
25 Applicant and the staff shall file such responses. So

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1 under that schedule, the Applicant beat the commission
2 schedule, which overrode, in this case, the general
3 rule of the Rules. They specifically ordered a
4 different time period.

5 MR. MONIAK: Well, I thought it only said
6 that the staff was going to respond within 10 days.

7 ADMINISTRATIVE JUDGE MOORE: No. It says,
8 "Simultaneous answers to hearing requests filed by the
9 Applicant and the NRC staff."

10 MR. MONIAK: What page is that?

11 ADMINISTRATIVE JUDGE MOORE: Nine.

12 MR. MONIAK: Oh, okay. But that's within
13 75 days.

14 ADMINISTRATIVE JUDGE MOORE: No. It says,
15 "10 days from the date presiding officer is
16 appointed."

17 MR. MONIAK: Oh, okay. So the answer
18 that's already been filed by the Applicants prior to
19 the presiding officer being appointed is considered
20 their simultaneous answers? Because if it's
21 simultaneous, isn't that filed by the Applicant and
22 the NRC staff? We've not received anything by the NRC
23 staff. The Applicants didn't file their response.

24 ADMINISTRATIVE JUDGE MOORE: Mr. Moniak,
25 your objection is heard. It is overruled.

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1 MR. MONIAK: Thank you.

2 ADMINISTRATIVE JUDGE MOORE: The purpose
3 of this phone call, as I said the conference call, was
4 to get the ball moving on proprietary information so
5 that the parties would have immediate access to that.
6 So I recognize it's a very tight schedule.

7 But I would appreciate it if the
8 Applicant, Mr. Silverman, you would have in the hands
9 of all parties next Monday, and filed with the Board,
10 your proposed affidavit of non-disclosure, and a
11 proposed protective order.

12 MR. SILVERMAN: Yes, sir.

13 ADMINISTRATIVE JUDGE MOORE: And then each
14 of you has until Wednesday to file your objections
15 with me. And I recognize that's a tight schedule.
16 But you should file them by e-mail, and/or fax, and/or
17 overnight mail, so that they are in my hands.

18 MS. CARROLL: On Thursday?

19 ADMINISTRATIVE JUDGE MOORE: On Thursday,
20 and I will -- no, on Wednesday. You're going to have
21 it in your hands on Monday. No, on Thursday, you're
22 correct. That will give you two days. And then I
23 will approve the order. And then you can each sign
24 it, and file it. And then the information will be
25 able to be served on you by Mr. Silverman. Mr.

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1 Silverman, does that schedule sound do-able by you?

2 MR. SILVERMAN: It does. I just want to
3 make sure. I wasn't clear whether you indicated that
4 the requestors would serve us, as well, with those
5 objections in the same time-frame?

6 ADMINISTRATIVE JUDGE MOORE: Sorry, could
7 you repeat that, please?

8 MR. SILVERMAN: Sorry. You've asked that
9 the requestors submit their objections to you by
10 Thursday. And I just wanted to clarify that they
11 would also transmit those to us on the same schedule.

12 ADMINISTRATIVE JUDGE MOORE: Yes. They
13 will be served on each other, as well as ensure that
14 they're in my hands by Thursday. I will then get an
15 order out that will set forth the manner in which
16 we're going to serve all documents in this case, which
17 will be by e-mail, with the exception of Ms. Thomas,
18 who is going to have to file by overnight mail. And
19 we will have to file things -- serve her -- by
20 overnight mail, unless someone has another suggestion.
21 Because these time periods are quite tight.

22 And having five days for service by
23 regular mail eats up everyone's time. And it inures
24 to your benefit to serve by e-mail, and then with hard
25 copies served by regular mail so that you can go ahead

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1 and have the document, even though it won't be signed,
2 in your possession instantly on the date it's due, for
3 an electronic filing date.

4 MR. SILVERMAN: Your Honor, Don Silverman.
5 If I may just ask, in looking at the Commission's
6 Order, CLI-01-13, the Certificate of Service, the
7 reference to Ms. Thomas in this certificate, there is
8 an e-mail address on there for an iminard@hotmail.com.

9 MR. MONIAK: Lminard.

10 MS. THOMAS: That's not office of
11 Environmentalist, Inc. And when you volunteers, and
12 you have things come up, it may take longer than the
13 mail for me to get it.

14 ADMINISTRATIVE JUDGE MOORE: Ms. Thomas,
15 do you have access to an e-mail account? Or one of
16 your members, one of your volunteers that will short-
17 circuit this so you can be served as everyone else,
18 and have it immediately, and vice-versa?

19 MS. THOMAS: Not unless we're able to get
20 funding. And we haven't been able to do that. At one
21 time we qualified for funding through the Nuclear
22 Regulatory Commission. That was years ago. But we
23 have no funding now through that.

24 MR. MONIAK: Your Honor, with 100 percent
25 sincerity, I would offer that Blue Ridge Environmental

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1 Defense League would help train Ms. Thomas, and any
2 volunteers, if Duke Cogema Stone & Webster, and/or the
3 Nuclear Regulatory Commission were willing to donate,
4 or loan, a computer during this period. That could
5 possibly save everybody a lot of time and money.

6 ADMINISTRATIVE JUDGE MOORE: Mr. Hull,
7 you're in a better position than I to speak to the
8 current state of --

9 MR. MONIAK: If that's okay with
10 Environmentalist, Inc.

11 ADMINISTRATIVE JUDGE MOORE: The
12 congressional prohibition on intervenor funding.

13 MR. HULL: As far as I know, Your Honor,
14 that prohibition is still in effect. I don't know if
15 it would cover the loan of a computer, or not.

16 MS. THOMAS: Ruth Thomas, with
17 Environmentalist, Inc. We make every effort to save
18 money. The office is in my home, and at quite a
19 burden to me. And of these things to -- I don't like
20 to interrupt -- but it does need to be remembered that
21 I'm 81 years old. And there are handicaps to being
22 that age. In case most of you are younger than that,
23 you've yet to learn it. So we would appreciate any
24 kind of help.

25 Because we feel as though our past

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1 experience, Environmentalist, Inc.'s, experience for
2 29 years is a way of contributing to the good
3 decisions being made. So any ideas that people have,
4 if they would keep that in mind.

5 Like going to the library and having
6 access to Internet is not something I'm going to be
7 able to do. And, of course, I'm going to make every
8 effort to have people help me. But I just want to let
9 you know what the situation is.

10 ADMINISTRATIVE JUDGE MOORE: Ms. Thomas,
11 when one undertakes intervention in a Commission
12 proceeding, one undertakes certain obligations, and
13 that is to meet the deadlines that are set. And that
14 is a choice that has to be made in determining whether
15 one intervenes, or not.

16 MS. THOMAS: Well, I'm not saying that
17 we're not going to meet our deadlines. We have over
18 all these years. And we're still doing it. And we've
19 got to get in on time. And we're going to continue to
20 do that.

21 ADMINISTRATIVE JUDGE MOORE: And the Board
22 appreciates it, and understands your situation. But
23 because the Board is operating under a schedule that
24 has essentially been set by the Commission, to some
25 extent, the amount of latitude that can be granted you

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1 by the Board is very, very limited. So, we appreciate
2 your situation. And we will do the best we can to
3 take that into account. But by the same token, we're
4 operating under instructions from a higher tribunal.

5 MS. THOMAS: Well, thank you. Thank you,
6 Judge Moore. And I'm familiar with working under
7 great challenges, and I'll continue to.

8 ADMINISTRATIVE JUDGE MOORE: Having said
9 that, the earlier request by GANE and Blue Ridge
10 Environmental Defense League for extension of time; I
11 am not in a position to grant those today.

12 And, secondly, as will be set forth in a
13 subsequent order, all motions seeking relief will have
14 to be filed in writing. I would not entertain, during
15 this proceeding, unless we're in an actual hearing
16 format, any oral motions for that purpose.

17 Is there anything, before we close, else
18 that needs to be dealt with?

19 MR. MONIAK: Yes, a few things. Your
20 Honor, Don Moniak, from Blue Ridge Environmental
21 Defense League.

22 I'd like to know, in the DCS response to
23 the Request for Hearings, they cite quite a few past
24 decisions made by the NRC, of which some might be
25 available on the Internet, but I don't believe so.

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1 And I'm wondering how, without public reading rooms,
2 can we obtain information to those decisions in a
3 timely manner in order to submit more information on
4 standing, and also contentions?

5 And also in that same regard, obtaining
6 information on past licensing of fuel fabricators.
7 Because DCS has consistently argued that past
8 licensing of uranium fuel fabrication facilities, LEU,
9 that facility, sets precedent in this process.

10 ADMINISTRATIVE JUDGE MOORE: I do not have
11 an answer for you, Mr. Moniak. Mr. Hull?

12 MR. HULL: Yes, Your Honor?

13 ADMINISTRATIVE JUDGE MOORE: Do you know
14 what public reading rooms are in that area? And are
15 they still staffed with NRC reports?

16 MR. HULL: I don't have any specific
17 information in that regard. But something Mr. Moniak
18 just said a minute ago -- I believe there is access to
19 NRC, past NRC, legal decisions through Lexis/Nexis, or
20 similar programs you can get over the computer.

21 MR. MONIAK: Okay. Could you provide us
22 with that information in more detail?

23 ADMINISTRATIVE JUDGE MOORE: Mr. Moniak,
24 those are -- Westlaw and Lexis are paid legal
25 subscription services.

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1 MR. MONIAK: Okay. What I'm wondering is
2 does the NRC have it available? Clearly, you must
3 have it in your files.

4 ADMINISTRATIVE JUDGE MOORE: Mr. Hull, are
5 NRC decisions available on the NRC's Web site.

6 MR. HULL: I don't believe they are, Your
7 Honor.

8 MR. MONIAK: Safety Light Corporation, 36
9 NRC 7987, 1992; CLR 9213. How would we -- if I filed
10 a Freedom of Information Act request, it would become
11 available on the Web site, right?

12 ADMINISTRATIVE JUDGE MOORE: I'm sorry,
13 Mr. Moniak. I'm not in a position to answer that.

14 MR. MONIAK: Oh, no. That's a statement
15 of fact. That sounded like a question. My apologies.

16 ADMINISTRATIVE JUDGE MOORE: I'm afraid
17 there's a certain element here that -- frankly, the
18 Boards are used to dealing with groups of
19 practitioners that have access to this material. And
20 this matter is going to present some challenges in
21 that regard.

22 MR. MONIAK: That's what I was asking for.
23 I was asking for, essentially, guidance in the matter.
24 How much guidance can we ask for in this process, on
25 legal matters?

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1 ADMINISTRATIVE JUDGE MOORE: Well, I think
2 the Board will undertake to determine whether there is
3 any access to those materials from the NRC through its
4 Web site. Mr. Hull believes that answer to that is
5 "no." But I will attempt to confirm that, and address
6 that subject, at least to that extent, in the upcoming
7 order that I will issue.

8 Generally, when parties -- well, not
9 generally -- when parties undertake, and whether
10 they're pro se, or represented by counsel, to
11 intervene in a proceeding, as far as legal resources,
12 as opposed to documents in the case, it is their own
13 responsibility to secure access to those legal
14 research materials.

15 And, as I say, I will endeavor to find out
16 whether the NRC has put on its Web site such
17 materials. And it may be that those materials are
18 available on CD-ROM for purchase from the agency. I
19 do not know the answer to that.

20 MR. MONIAK: I can tell you that on the
21 Atomic Licensing -- on your Board -- you do have all
22 the 1996 and 1997 decisions.

23 ADMINISTRATIVE JUDGE MOORE: Yes. There
24 are no others, because all funding was cut off to do
25 that.

1 MR. MONIAK: Oh, really? That's
2 unfortunate.

3 ADMINISTRATIVE JUDGE MOORE: That was on
4 the Licensing Board's Web page.

5 MR. MONIAK: Are subsequent decisions
6 being posted on ADAMS? There's a gap there between
7 '98 and '99, I guess.

8 ADMINISTRATIVE JUDGE MOORE: Yes, there's
9 a huge gap there. Starting with number 98-7,
10 November, 1998, Commission decision -- well, all
11 agency decisions are on ADAMS.

12 MR. MONIAK: Okay.

13 MS. CARROLL: From 1998 on?

14 ADMINISTRATIVE JUDGE MOORE: November of
15 1998, onward.

16 MS. CARROLL: This is Glenn Carroll from
17 GANE. We've intervened several times over our 20-year
18 history. And it was a real shock to us to learn how
19 restrictive the rule of the NRC have become towards
20 petitioners; and that paper has been destroyed; and
21 public document rooms don't exist anymore.

22 And this was -- you know, we don't even
23 have a copy of the Construction Authorization Request
24 yet, because our computer is too old to handle the CD-
25 ROM. And we're just now facing a \$278.50 fee to

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1 acquire a paper copy of the CAR. And so, we haven't
2 even gotten the CAR in our hands, yet, for that
3 reason. That was our motivation for asking for more
4 time, because we've just decided we're going to have
5 to budget the almost \$300 to get this copy.

6 ADMINISTRATIVE JUDGE MOORE: Ms. Carroll,
7 the Board is aware of the obstacles that you're
8 facing. Over the years, as budgets have been slashed,
9 many of these things have been done away with by the
10 Commission. And the Board is not in a position to be
11 able to do anything about the closing of the public
12 document rooms. But we will attempt to find out.
13 Sources are available that the parties might use, and
14 be, hopefully, with some degree of convenience.

15 MS. CARROLL: Appreciate it.

16 ADMINISTRATIVE JUDGE MOORE: I'm not in a
17 position to do anything else.

18 MR. MONIAK: Your Honor?

19 ADMINISTRATIVE JUDGE MOORE: Yes?

20 MR. MONIAK: Let me ask something very
21 naive. I don't understand why NRC legal counsel will
22 work with the Applicants, in guiding them through
23 things like affidavits and all that. Can we get equal
24 access to that expertise?

25 ADMINISTRATIVE JUDGE MOORE: Yes you can.

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1 Set the record straight. That was done at my request,
2 because counsel, over the last many years, has been
3 involved in many cases where affidavits of non-
4 disclosure and protective orders have been used.

5 And that was being done because I
6 recognized, in reviewing these papers, that Mr.
7 Silverman has not appeared before the Licensing Board,
8 if ever, in a very long time. His name is not one
9 that regularly appears here. And I recognized that,
10 although Morgan, Lewis & Bockius as his firm, used to
11 be regulars years ago before the Commission; they, in
12 recent years -- and I may well be mistaken -- have not
13 represented a lot of clients in front of the Agency.

14 So, because of the time constraints we're
15 all operating on, I was seeking to short-circuit a
16 great deal of that. And that's why I made the
17 suggestion that Mr. Silverman and Mr. Hull consult on
18 that matter.

19 MR. MONIAK: Within the same confines, is
20 it possible for BREDL to request that you direct Mr.
21 Hull to work with us, to make the cases that are being
22 cited by DCS in their additional response, and any
23 cases that NRC cites, to make them as easily available
24 as possible?

25 ADMINISTRATIVE JUDGE MOORE: That is

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1 something the Board will consider.

2 MR. MONIAK: Thank you.

3 ADMINISTRATIVE JUDGE MOORE: And I don't
4 know the current state of the situation, Mr. Moniak,
5 but for years the Commission has operated under a
6 congressional prohibition against funding of
7 intervenor intervention. And that congressional
8 prohibition, as it has been interpreted by the General
9 Counsel's Office, has led to the severe restrictions
10 on what the staff can and can't do.

11 So that -- and I do not know the current
12 state of that. The Board will endeavor to find out.
13 But your suggestion will be taken under consideration.
14 And it may well be that in citing decisions that the
15 parties can be ordered to include copies with their
16 pleadings of the decisions they cite. That may be a
17 convenient way to deal with the problem. And the
18 Board will look into that.

19 MR. MONIAK: Okay, thank you. In regard
20 to that prohibition, if we had access to that, we
21 could probably avoid a lot of unnecessary requests,
22 too. Because I didn't know about this, either, the
23 prohibition.

24 ADMINISTRATIVE JUDGE MOORE: Does anyone
25 else have any matters, before we close, then, so that

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1 we can get started on the protective order and
2 affidavit on non-disclosure?

3 MS. THOMAS: Ruth Thomas. Wanted to ask
4 a question about whether it can be a combined
5 submittal of the amendment to the original petition,
6 and the contentions?

7 ADMINISTRATIVE JUDGE MOORE: The answer
8 would be certainly you may do that, Ms. Thomas.

9 MS. THOMAS: Thank you.

10 ADMINISTRATIVE JUDGE MOORE: Mr.
11 Silverman, do you have anything else that you'd like
12 to bring up at this point?

13 MR. SILVERMAN: No, Your Honor.

14 ADMINISTRATIVE JUDGE MOORE: Mr. Hull, for
15 the staff?

16 MR. HULL: No, Your Honor?

17 ADMINISTRATIVE JUDGE MOORE: Ms. Carroll,
18 do you have anything?

19 MS. CARROLL: If I heard you correctly,
20 any further discussion of 30-day requests should be
21 made in writing?

22 ADMINISTRATIVE JUDGE MOORE: Yes. And
23 remember the standard that I just read you, which I
24 will repeat to you --

25 MS. CARROLL: Okay. Right. I got you.

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1 We have to meet the threshold put forth by the
2 Commission? So don't even bother, unless you've got
3 that threshold, and you can meet it.

4 ADMINISTRATIVE JUDGE MOORE: Can
5 demonstrate "unavoidable and extreme circumstances,"
6 no extensions of time will be granted.

7 MR. MONIAK: Could you provide an example
8 of "unavoidable and extreme" that you consider to be
9 an example? Because, I mean, that's a subjective
10 criteria. If you could provide a few examples, so
11 that I can kind of see where it falls?

12 ADMINISTRATIVE JUDGE MOORE: Well, Mr.
13 Moniak, I could probably give you a long list, none of
14 which you would like.

15 MR. MONIAK: Probably not, I don't know.

16 MS. CARROLL: Death, and disaster, and
17 that sort of thing?

18 MR. MONIAK: My house gets hit by
19 lightning strike, and burns down?

20 ADMINISTRATIVE JUDGE MOORE: Well, it
21 depends if you put it in, deliberately put it in, the
22 path of the lightning, Mr. Moniak.

23 MR. MONIAK: Oh, I didn't build the house.
24 Okay.

25 ADMINISTRATIVE JUDGE MOORE: Remember it's

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1 unavoidable and extreme circumstances.

2 MR. MONIAK: Okay, then, you're talking a
3 very high bar to jump.

4 ADMINISTRATIVE JUDGE MOORE: Yes it is an
5 exceedingly high bar that the Commission has set.

6 MR. MONIAK: Is there any other legal
7 language in this Order that appears to be just part of
8 the narrative that we should be greatly aware of?

9 ADMINISTRATIVE JUDGE MOORE: Well, Mr.
10 Moniak, you can read the Commission's Order as well as
11 I.

12 MR. MONIAK: I have to read it even
13 closer. Okay.

14 ADMINISTRATIVE JUDGE MOORE: Ms. Foster,
15 do you have anything further?

16 MS. FOSTER: I don't want to sign
17 something saying that I will not use any of this
18 information. So don't give me any proprietary
19 information, because I want to be free to say and do
20 what I want, with whatever information I can gain.

21 ADMINISTRATIVE JUDGE MOORE: Okay, when
22 the Board issues the protective order, and sets forth
23 its agreement with the affidavit of non-disclosure,
24 your course of action is simply not to sign it. And
25 then you will not be given the proprietary

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1 information.

2 MS. FOSTER: Okay. That's right.

3 ADMINISTRATIVE JUDGE MOORE: Well, if
4 there's nothing further, then we will close this
5 conference. I thank you call for your participation.

6 And, Mr. Silverman, I look forward, on
7 Monday, to receiving the proposed protective order and
8 affidavit of non-disclosure. And I would then, again,
9 admonish all the parties that you have a very short
10 time period in which to file contentions. So you
11 should not be waiting for a proprietary version in
12 formulating your contentions.

13 MS. FOSTER: Thank you very much.

14 MS. THOMAS: Thank you.

15 ADMINISTRATIVE JUDGE MOORE: If there's
16 nothing further, good day, and thank you very much.

17 (Whereupon the pre-hearing
18 teleconference was concluded at
19 3:15 p.m.)

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CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of:

Name of Proceeding: Duke Cogema Stone and
Webster MOX Fuel Fabrication
Facility

Docket Number: (Not Assigned)

Location: (Telephone Conference)

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
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direction of the court reporting company, and that the
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Jonathan Zilinski
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