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MOX Fuel Fabrication Facility

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Number: 070-03098-ML

Location: (telephone conference)

Date: Tuesday, June 26, 2001

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ATOMIC SAFETY AND LICENSING BOARD PANEL

PRE-HEARING TELEPHONE CONFERENCE

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

-----X

IN THE MATTER OF: : Docket No.
DUKE COGEMA STONE & WEBSTER : 070-03098-ML
MOX FUEL FABRICATION FACILITY :

-----X

Tuesday, June 26, 2001

Via telephone conference call

The above-entitled matter came on for
hearing, pursuant to notice, at 2:00 p.m.

BEFORE:

THOMAS MOORE Administrative Judge

CHARLES KELBER Administrative Judge

PETER LAM Administrative Judge

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WASHINGTON, D.C. 20005-3701

1 APPEARANCES:2 On Behalf of the Applicant, Duke Cogema Stone &
3 Webster LLC:

4 DONALD SILVERMAN, ESQ.

5 ALEX POLONSKY, ESQ.

6 of: Morgan, Lewis & Bockius

7 1800 M Street, NW

8 Washington, D.C. 20036-5861

9 (202) 467-7502 (Silverman)

10

11 On Behalf of the Intervenor, Georgians Against
12 Nuclear Energy:

13 GLENN CARROLL

14 P.O. Box 8574

15 Atlanta, GA 30306

16 (404) 378-4263 (Facsimile)

17

18 On Behalf of the Intervenor, Blue Ridge19 Environmental Defense League:

20 DONALD MONIAK

21 P.O. Box 3487

22 Aiken, GA 29802

23 (803) 644-6953

24

25

1 APPEARANCES (continued):

2 On Behalf of the Intervenor, Environmentalist
3 Inc.:

4 RUTH THOMAS
5 1339 Sinkler Road
6 Columbia, S.C. 29206
7 (803) 782-3000

8
9 On Behalf of the Nuclear Regulatory
10 Commission:

11 JOHN HULL, ESQ.
12 ANTONIO FERNANDEZ, ESQ.
13 of: Office of General Counsel
14 Nuclear Regulatory Commission
15 Room 15 E20
16 One White Flint North
17 Rockville, MD 80521
18 (301) 415-1573

19
20
21
22
23
24
25

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

(2:03 p.m.)

JUDGE MOORE: This is Judge Moore along with Judge Kelber and Judge Lam. Thank you all for being here. If each of you would first for the court reporter identify yourself, please.

MS. CARROLL: This is Glenn Carroll from Georgians Against Nuclear Energy.

MR. SILVERMAN: This is Don Silverman with Morgan, Lewis & Bockius.

MR. POLONSKY: This is Alex Polonsky, also with Morgan, Lewis & Bockius.

MR. HULL: John Hull spelled H-U-L-L, Counsel for the NRC staff.

MR. FERNANDEZ: Antonio Fernandez, attorney, Office of General Counsel, NRC.

MS. THOMAS: Ruth Thomas with Environmentalist, Inc.

MR. MONIAK: Don Moniak with Blue Ridge Environmental Defense League and also --

JUDGE MOORE: And for yourself.

MR. MONIAK: For myself.

JUDGE MOORE: Thank you very much. The purpose of this conference call deals with the applicant's proposed protective order and affidavit of

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1 nondisclosure. Then as a secondary matter I would
2 like at the end to discuss document access for the
3 participants.

4 While I think of it, Mr. Silverman, would
5 you be so kind as to strike from your service list
6 Chief Administrative Judge Bollwerk?

7 MR. SILVERMAN: I would be happy to.

8 JUDGE MOORE: He appreciates the thought
9 but doesn't need the additional volumes.

10 MR. SILVERMAN: No problem.

11 JUDGE MOORE: In our June 19th conference,
12 I stated something to the effect that because the
13 proprietary material at issue in the CAR was not
14 safeguard material, that there was no need to have the
15 material available only at the applicant's facilities.

16 Upon stating that, my very clear
17 recollection of that conference was the applicant did
18 not voice any objection or offer any argument to the
19 contrary.

20 Subsequently, after that conference I had
21 the Licensing Board's counsel impose upon staff
22 counsel Mr. Hull's good offices to convey to the
23 applicant copies of the two decisions that I had cited
24 in that telephone conference, the Carolina Power Light
25 Company Shearon Harris memorandum and order and

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1 attached affidavit of nondisclosure of several years
2 ago. And a similar order and affidavit of
3 nondisclosure in the private fuel storage proceedings
4 here before the Licensing Board, although other
5 boards.

6 I did not provide copies of that material
7 to the other participants, frankly, because I thought
8 it was unnecessary. It is unpublished material. In
9 light of the applicant's proposed order and affidavit,
10 however, it is now obviously necessary that material
11 be provided to the other participants and upon the
12 conclusion of this telephone conference, I will be e-
13 mailing those participants with electronic mail copies
14 of those materials from those other proceedings so
15 that they have them available.

16 I will by overnight mail send a copy to
17 Environmentalist, Inc. so that they will have that if
18 they wish to pose any objections and their objections
19 are due one day later than everyone else's so they
20 will still have the same amount of time.

21 MR. CARROLL: Judge Moore, this is Glenn
22 Carroll from GANE. I'm unable to open WordPerfect
23 documents on my computer and I don't know how to
24 overcome this. I can open Microsoft Word.

25 JUDGE MOORE: We will try to accommodate

1 that and transmit in Microsoft Word.

2 MR. CARROLL: That would be perfect for
3 me. Thank you.

4 JUDGE MOORE: At the conclusion of the
5 June 19th conference, I issued a follow-up order in
6 which I directed the applicant to propose a reasonable
7 order and affidavit of nondisclosure.

8 Apparently we have differing views on
9 reasonable but, in any event, the applicant has now
10 proposed a protective order and nondisclosure
11 affidavit that does precisely the opposite of what I
12 said should be done and that is make the material
13 available only at the applicant's facilities. It
14 contains a number of other conditions as well.

15 In the cover letter that accompanied that
16 filing, the applicant relied upon the LEF proceeding
17 as precedent indicating that in that case, proprietary
18 financial information was made available to the
19 participants in the proceeding only at the applicant's
20 facility.

21 In that regard, I would point out to the
22 applicant that that case, indeed it was a case in
23 which I presided, that as the order on its face
24 clearly suggest, was a negotiated and consent order by
25 the parties.

1 In this case, I'm holding this conference
2 because of the tremendous time constraints the
3 Commission has placed on us for the filing of
4 contingency.

5 I don't have time, frankly, to have two
6 more, and perhaps three more rounds of pleadings on
7 this issue. Hence, we are going to deal with it now
8 and in telephone conference.

9 My research shows that there has never
10 been a case at the Licensing Board in which commercial
11 proprietary information was made available only at the
12 applicant's facilities. We have done that in the past
13 for safeguards information and that is the only
14 situation in which I can find precedent for.

15 In this proceeding absent the consent of
16 all the participants, I am loathe to order any scheme
17 in which the proprietary commercial information is
18 only made available at the applicant's facility.

19 Mr. Silverman, I'm sure you would like to
20 comment on what I've just said and we'll start with
21 you.

22 MR. SILVERMAN: Thank you, Your Honor.
23 Our recollection of the telecon on June 19th is very
24 similar to yours. I believe at that time I did not
25 express any objection to your suggestion or statement

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1 that you didn't see any reason why the materials could
2 not be provided to the petitioners at their location.

3 Subsequent to that in accordance with your
4 direction, I also consulted with my client at some
5 length about whether any of this information could be
6 released as nonproprietary and spoke to them in more
7 detail about the significance of the information.

8 We did try to strike a balance and I have,
9 I think, an obligation to my clients to strike a
10 balance here to move the proceeding along and give the
11 intervenors what they need but, at the same time,
12 protect what we think to be extremely important
13 commercial information, particularly at this early
14 stage of the proceeding. What we proposed was a
15 hierarchial scheme, if you will.

16 While the financial information, as I
17 stated, is important commercial information, we are
18 willing to make copies of that available immediately
19 upon signing of the protective order.

20 But my client felt very strongly that some
21 of the commercial details that have been excised from
22 the CAR are so important and so fundamental to the
23 financial affairs and commercial affairs of the
24 company that we felt it was important to maintain as
25 much control as possible.

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1 We did refer to the LEF decision and you
2 are correct in that. That was the citation we
3 provided. That was the financial information. But we
4 believe that under the circumstances -- we also
5 noticed in that case while, I guess, you say it was a
6 consent order and I apologize because I didn't note
7 that, it was a situation where there was simply access
8 provided at one location.

9 We did make an effort to accommodate the
10 petitioners. We would be willing to open up an office
11 in Aiken and in Charlotte but we would like to urge
12 the Board to consider our protective order as written
13 and to have that information made available only at
14 those offices.

15 JUDGE MOORE: Let's start with Mr. Moniak.

16 MR. MONIAK: We will be rejecting this
17 proposal, objecting to it and rejecting it for all the
18 reasons that you highlighted but I want to add a few
19 things.

20 First, we don't need the financial
21 information. I thought we made clear that is
22 something we're not even interested in obtaining the
23 financial information submitted with the construction
24 authorization request is old information. It's from
25 Fiscal Year '99 anyhow. Frankly, it's not going to be

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1 -- we won't be using it.

2 The only issue is the proprietary
3 technical information. I'm the only person who would
4 have access to this information on a fairly easy basis
5 if I was to work regular hours and go to their office
6 in Aiken. I don't think that is acceptable.

7 There's a few other things. There's quite
8 a few things missing in it but I think we have to put
9 that in the objection. Right?

10 JUDGE MOORE: I'll get to more than
11 location shortly.

12 MR. MONIAK: Okay.

13 JUDGE MOORE: Mr. Moniak, do you agree if
14 the applicant made it available 24/7 or 24 hours a day
15 or 7 days a week until contentions are due to using
16 it, that information is under his control?

17 MR. MONIAK: It's a bad precedent is our
18 concern. I just happened to live in Aiken. I had
19 many choices in this area where to live. If I was not
20 in Aiken, I would have to travel to it.

21 Even here leaving the office just to do
22 something like that puts an inconvenience on me
23 because I'm not here to answer phone calls and that
24 kind of thing. I don't just do one thing at a time.
25 I would reject any proposal to only have the access

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1 available at their facility because it sets a bad
2 precedent as well.

3 JUDGE MOORE: Even if it was available 24
4 hours a day, seven days a week?

5 MR. MONIAK: Even if it was because --

6 JUDGE MOORE: Okay.

7 MR. MONIAK: -- it's a precedent setting
8 document. We don't want the precedent set.

9 JUDGE MOORE: Ms. Thomas.

10 MS. THOMAS: It would be a burden to us
11 being in Columbia and either direction would be just
12 impossible as far as I can tell from people that I've
13 talked with in the organization. I don't see that it
14 would be practical, Your Honor.

15 JUDGE MOORE: Okay. Thank you.

16 Ms. Carroll.

17 MR. CARROLL: Okay. Are we going to talk
18 about the conditions later and we're just talking
19 about the location of it now?

20 JUDGE MOORE: Correct.

21 MR. CARROLL: My problem is that our
22 expert took off for Germany for the week before this
23 order came out and he had the benefit of my briefing
24 about the prehearing conference last week. He feels
25 a strong need to see the proprietary information.

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1 He is located in Washington, D.C. He did not know,
2 because I didn't know, about the restrictions on it.

3 He did express some reservations that I
4 think go to the other parts of the proposal by DCS
5 which was since he is employed by Nuclear Control
6 Institute. He does not know what the constraints on
7 him would be to even sign the nondisclosure affidavit
8 so we've just got lots of problems with this.

9 JUDGE MOORE: All right, staff. Mr. Hull.

10 MR. HULL: Yes, Your Honor.

11 JUDGE MOORE: I know you don't have a dog
12 in this fight but do you have any comment you would
13 like to make?

14 MR. HULL: Not at this time, Your Honor.

15 JUDGE MOORE: Mr. Silverman, I frankly
16 don't understand a number of things in your proposal
17 protective order but I fail to see the need if we
18 craft properly the protective order and affidavit of
19 nondisclosure why your information will not be
20 adequately protected.

21 As I say, I can find no precedent for
22 doing this other than for safeguards material unless
23 the parties have negotiated it and worked it out and
24 here there is an indication that is not a readily
25 likely occurrence.

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1 MR. POLONSKY: Judge Moore, if I may.
2 This is Mr. Polonsky.

3 JUDGE MOORE: Yes, Mr. Polonsky.

4 MR. POLONSKY: The type of information
5 that has been made available in the past is the type
6 of information that over time loses its sensitivity
7 and proprietary nature. Transportation routes for
8 certain safeguards material can be changed if that
9 information is inadvertently released. Financial
10 information as Mr. Moniak rightfully pointed out
11 becomes dated and is no longer sensitive or critical.

12
13 The type of technical information we are
14 talking about can best be characterized as a protected
15 trade secret which is not in the public domain and
16 which currently our client never intends to put into
17 the public domain and, therefore, no time would pass
18 in which it would not become unsensitive.

19 To keep it very closely guarded and
20 watched is of critical importance to our client for
21 that particular reason.

22 JUDGE MOORE: I understand that, Mr.
23 Polonsky, but I also recognize that this is basic
24 commercial proprietary information and in that regard
25 it is little different from any other applicants or

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1 any other participants commercial proprietary
2 information.

3 Trade secrets is one category of that
4 information but, nonetheless, it does remain at that
5 level. I fail to see why this case is different from
6 all the others in which commercial proprietary
7 information was involved and other participants were
8 provided access to it with the perfections of a
9 protective order and affidavit of nondisclosure.
10 What makes this unique?

11 MR. SILVERMAN: Your Honor, this is Mr.
12 Silverman. The only thing I think we would add at
13 this point, I think we have expressed to you the
14 strong concern our client has and the importance of
15 the information.

16 The other rationale, I think, for
17 protecting this information in this way particularly
18 at this time is that we are making arrangements to
19 provide information to individuals and organizations
20 that may ultimately not even have standing in the
21 cake. It's at a very early stage of the process that
22 we are doing that. We think, in fact, we couldn't
23 find a situation where this has been done before.

24 It may very well be that several months
25 down the line these parties no longer have any

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1 interest in the case and they are not involved in it.
2 We think particularly in that kind of a situation a
3 little extra control is warranted under the
4 circumstances.

5 JUDGE MOORE: But what is the difference
6 between the status of the participants today and the
7 status tomorrow if they are parties? As far as the
8 protective order and affidavit of nondisclosure, the
9 club, if you will, is 5 U.S.C. Section 1.

10 This Licensing Board, as you well know,
11 has not contempt power. They are subject to the same
12 structures as a participant at this point as they will
13 be, or would be, if they were tomorrow to be a party
14 with standing and one admissible contention.

15 If they do not achieve that status under
16 the terms of the protective order as proposed by you
17 and the affidavit of nondisclosure as proposed by you,
18 that information has to be immediately returned.

19 MR. SILVERMAN: That's correct.

20 JUDGE MOORE: In the same way it has to be
21 returned if they are parties at the conclusion of the
22 proceeding or should they for any reason be dismissed
23 from the proceeding or voluntarily drop out of the
24 proceeding.

25 I'm just having difficulty discerning

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1 what's different about the early stage in this case
2 where we are not dealing with anyone that is a
3 competitor of the applicant. The case would be
4 different admittedly if we were dealing with a
5 competitor.

6 MR. SILVERMAN: A concern we have, Your
7 Honor, is that this inadvertent disclosure is
8 inadvertent disclosure to the world and that would
9 include competitors. That is the concern.

10 JUDGE MOORE: That is a risk that is
11 inherent in all litigation. Is it not?

12 MR. SILVERMAN: Yes, sir.

13 JUDGE MOORE: Would the situation be
14 different if they were not pro se and they all had
15 attorneys?

16 MR. SILVERMAN: No.

17 JUDGE MOORE: In the circumstances the
18 Licensing Board will not order the commercial
19 proprietary information made available only at the
20 applicant's facilities.

21 I will after hearing the objections from
22 the other parties, the other participants that are due
23 Wednesday and Thursday, then taking the proposed order
24 and proposed affidavit, the Licensing Board will craft
25 an order that we think will provide adequate

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1 protection for all concerned.

2 Moving on, there are a couple of other
3 points that I would like to quickly get out of the
4 way, again because there is not time under the
5 Commission's schedule to have rounds of pleadings on
6 these issues.

7 The provisions in the protective order in
8 which the applicant has proposed that a showing must
9 be made in every instance for any particular piece or
10 subject matter of the proprietary material is frankly
11 impossible under the time constraints that we are
12 operating.

13 Also, the Board is somewhat puzzled as to
14 -- I recognize the applicant feels that contentions
15 can be drafted without seeing the proprietary
16 information, but in light of the Commission's
17 contention requirements in 2.714 of the regulations
18 where specificity is the hallmark and for the last
19 decade now has been a requirement that a great deal of
20 specificity, among other things, is necessary to admit
21 a contention.

22 The Licensing Board has a problem
23 understanding how it is not really asking the
24 impossible to make the showing that the applicant
25 wishes to be made. Again, the Licensing Board is

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1 somewhat mystified as to what purpose it serves.

2 Mr. Silverman, would you care to explain
3 how that process -- why that process is necessary and
4 how it could ever work under the time constraints
5 we're operating.

6 MR. SILVERMAN: Yes, sir. I'll certainly
7 take a crack at that. With respect to operating under
8 the time constraints of the Commission, we are very
9 mindful of those, first of all, and we are obviously
10 anxious to see the process move forward as efficiently
11 and as expeditiously as possible.

12 We have taken a quick look at how that
13 process would work within the bounds of the existing
14 schedule. I think it is possible to do it. If you
15 would like me to give you a scenario of dates and
16 suggested milestones, I would be happy to do that.

17 Before doing that, let me say that with
18 respect to the specificity issue, we do also recognize
19 that a substantial amount of specificity is necessary
20 to formulate an adequate contention. But we believe
21 fairly strongly that if you examine the CAR and the
22 nonproprietary burdens of the CAR, there is a great
23 deal of technical information provided there.

24 There is a substantial amount of detail,
25 for example, on different systems and components of

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1 the
2 MOX fuel fab facility.

3 I hope I don't mischaracterize this
4 because I am not familiar with each and every
5 proprietary detail, but my review of those suggested
6 in many, many cases is a small aspect of a particular
7 component or system that needs to be protected as
8 proprietary where we have described the function of
9 the system, the nature of the system, and many of the
10 significant physical components of the system.

11 We think there is ample information in the
12 CAR in the nonproprietary version. With respect to
13 the schedule --

14 JUDGE MOORE: May I assume that you are
15 then willing to waive your objections to
16 nonspecificity if the proprietary information were
17 deemed to color any such judgment?

18 MR. SILVERMAN: I don't think I want to
19 waive any objections of that type at this time, sir.

20 JUDGE MOORE: Okay. Continue.

21 MR. SILVERMAN: I was going to suggest
22 that one model for a schedule to be considered by the
23 Board would be that the petitioners be asked to show
24 within about a week from now the relevance and
25 necessity of this information. We would at DCS

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1 respond within a week. That would put us at about
2 July 10th.

3 If the Board were in a position to rule
4 fairly expeditiously on that in perhaps a week later
5 by about the 17th of July, and the decision was to
6 make information available, then DCS would very
7 promptly thereafter make that information available.
8 That would probably be on the 18th or 19th of July.

9 The intervenors, the petitioners, have
10 until the 30th to file their original contention and
11 their updated filings on standings. But perhaps they
12 could be given until something like August 5th or
13 August 10th or something along those lines to file
14 supplemental contention based upon the proprietary
15 information.

16 They would have for that material that is
17 proprietary, let's say from about the 17th of July to
18 about the 5th or 10th of August, DCS would commit to
19 respond to all the contentions on the same schedule
20 that is proposed by the Commission's referral order so
21 there would be no delay and that would be August 30th
22 if I have my dates correct.

23 We would be taking a somewhat smaller
24 period of time to respond to the contentions on the
25 proprietary information but we assume that would be a

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1 supplement or some modest addition to the basic
2 contention.

3 If we were to have taken an approach
4 similar to that, we would be able to adhere to the
5 Commission's schedule.

6 JUDGE MOORE: Before moving on, Mr.
7 Silverman, to hear what the other participants would
8 like to say to that, it just strikes me that, in
9 effect, though, the problem with that proposal is that
10 the intervenors for solar and, indeed, perhaps all of
11 their contentions have a week and that is the week in
12 which they need to make their showing whether they
13 need the proprietary information.

14 They essentially have to have their
15 contentions formulated to know that assuming it can be
16 done without the proprietary information.

17 MR. SILVERMAN: I'm not sure I follow. My
18 understanding is they have until the 30th to file the
19 original contention.

20 JUDGE MOORE: So you want to give them
21 essentially a week from today to make the showing why
22 they need the proprietary information and that showing
23 can only be made effectively by having essentially
24 drafted the contentions and judged that you need the
25 proprietary information to be able to meet the

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1 admissions standards for contention.

2 MR. SILVERMAN: I would think that the
3 intervenors should have a pretty good handle on the
4 issues that are of concern to them. They've had the
5 CAR, the nonproprietary version, for quite a long time
6 and have had access to it for quite a long time.

7 JUDGE MOORE: Good, but I'm not sure they
8 knew that the real deadline was a week from today.
9 Let's hear from the other participants.

10 MR. MONIAK: Okay. How do you know what
11 is relevant and necessary if you haven't seen it? The
12 justifications that the DCS and the applicants are
13 proposing to make us jump through are just too time
14 consuming and they are really a diversion.

15 We don't believe you can separate what is
16 in the CAR, the proprietary version, from what is not
17 in the proprietary version -- from what is in the
18 nonproprietary version.

19 What this document is is describing a
20 system and the proprietary information is very
21 essential to state the analysis. In fact, in the
22 85.41 it CAR says, "The first step of the safety
23 assessment is to identify the hazards applicable to
24 the facility."

25 The identification of hazards is based on

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1 the MFF preliminary design Chapter 11. Chapter 11 is
2 where all of the proprietary information is. Sections
3 11.1, 11.2, and 11.3 are the only three sections with
4 all the proprietary information.

5 The NRC staff would be unable to formulate
6 a safety evaluation report without that information.
7 That is the source information, particularly tables
8 11.21 through like 11.227 and the same in 11.3. It's
9 the source information for determining the source
10 term, for determining accident scenarios, and other
11 things like that.

12 We maintain that the information should
13 not all be proprietary at this time. There are
14 numbers in there that maybe could be proprietary but
15 the tables and Sections 11.2 and 11.3 contain basic
16 source data that we are going to have to accept and
17 the NRC is going to have to use to determine the
18 potential consequences off site.

19 Frankly, there is no other place in the
20 Department of Energy's nuclear weapons complex where
21 that source data is this restricted at this time. The
22 answer is we reject everything they have offered.
23 Everything.

24 JUDGE MOORE: Before moving on, it will be
25 easier.

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1 Mr. Silverman, would you care to respond
2 to that at this point or do you want to respond after
3 all the other participants have spoken?

4 MR. SILVERMAN: I would prefer to respond
5 after all have spoken.

6 JUDGE MOORE: Okay.

7 Ms. Thomas.

8 MS. THOMAS: Yes, Your Honor. I'm having
9 a real problem with this. I don't know when the --
10 oh, you said about 10 days ago it changed as far as
11 being very specific about contingency because in the
12 past, as long as the petitioners had a basic
13 understanding and they could form contingency that
14 pointed out what they considered to be inadequate
15 information, incomplete, or faulty information or
16 misleading information.

17 Now, that, as I understand it, is no
18 longer possible under the Nuclear Regulatory
19 Commission rules. Am I correct in that?

20 JUDGE MOORE: Well, the rules must speak
21 for themselves but 2.714 was amended in about 1990 or
22 1991 when the new contention standard was adopted. It
23 requires -- it did away with the former notice
24 pleading that had been in effect so it requires a
25 great deal of specificity. I can only refer you to

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1 2.714 of the Commission's rules.

2 MS. THOMAS: Well, Your Honor --

3 JUDGE MOORE: But --

4 MS. THOMAS: Excuse me. I thought you
5 were through.

6 JUDGE MOORE: But what I would like you to
7 comment on, Ms. Thomas, is the subject at hand as to
8 the applicant's proposal to make a showing of why the
9 proprietary information is necessary to the
10 formulation of an admissible contention before that
11 information can be seen.

12 MS. THOMAS: Well, I agree with you that
13 there is not enough time. There is certainly not
14 enough time for a voluntary organization to meet such
15 deadlines.

16 I mean, we would be trying to prepare the
17 contingency and then try to see what information we
18 needed to be as specific as possible and whether that
19 information was available or whether we had to go
20 through the proprietary complex system. It just would
21 be completely beyond us.

22 JUDGE MOORE: Ms. Thomas, does
23 Environmentalist, Inc. intend to sign an affidavit of
24 nondisclosure?

25 MS. THOMAS: At this time we have not made

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1 a decision because of the what we have received from
2 DCS which wasn't at all what we expected from the last
3 conference call. We are having to reevaluate and just
4 try to rethink it because it is so much different.

5 JUDGE MOORE: Okay. Ms. Carroll.

6 MS. CARROLL: I agree that the burden to
7 take on several rounds of this process while trying to
8 meet an unreasonable deadline of July 30th is totally
9 unappealing to us. I want to make a couple of
10 observations. We don't understand why they aren't
11 getting these trade secrets patented which would
12 protect them.

13 We would observe that depending on who you
14 ask, devil and God are in the details. They matter.
15 That is where leaks occur. That is where workers get
16 contaminated. We need to know the details of this
17 process to protect the public.

18 As far as whether we would sign this or
19 not depends on how the affidavit of nondisclosure
20 comes down. Our expert has expressed a need to see
21 this document but it is fundamental and vital.

22 Hopefully we can get subtle contentions
23 including in this realm accepted but in the realm of
24 the processors and the physical nature of these
25 processors, the proprietary information is

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1 fundamental. Unfortunately, he is not even available
2 to review the affidavit we're talking about imposing
3 on him.

4 JUDGE MOORE: You will be given that
5 opportunity when it is issued by the Board whether you
6 wish to come under the terms of the protective order
7 by signing the affidavit of nondisclosure and then you
8 will be bound to abide by its terms in every specific
9 detail.

10 MR. CARROLL: I have a basic question and
11 I can defer it if it is inappropriate but, you know,
12 I don't have a need to see this document because I
13 don't believe I'll understand it. My role in this is
14 to write and file the contentions with an expert who
15 needs to see the document. I would assume we both
16 have to sign the affidavit of nondisclosure.

17 JUDGE MOORE: Mr. Silverman.

18 MR. SILVERMAN: I'm sorry, Your Honor?

19 JUDGE MOORE: Would you be of the view
20 that if Ms. Carroll does not wish to see the
21 information but only her expert, that Ms. Carroll need
22 not either view it or sign the affidavit of
23 nondisclosure?

24 MR. SILVERMAN: We have the view, sir,
25 that if anyone in the organization in GANE or working

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1 with GANE has access to this information at any time
2 in the course of a conversation or a document or a
3 memo or in any such form that they would need to
4 execute them.

5 MR. CARROLL: Now, I have one more comment
6 I would like to make. As far as I know, you're saying
7 that you produced 95 percent of the mixed dot side
8 fuel on this planet. Your competitor would be BNFL
9 and you plan to construct this facility which will
10 have, you know, thousands of people working in it
11 seeing how its dumped and BNFL is the primary
12 contractor at Westinghouse.

13 I mean, who are you protecting this from?
14 I want to go back to Don's comment the other day that
15 this information shouldn't even be proprietary and we
16 are going through a lot of hoops over nothing.

17 JUDGE MOORE: Ms. Carroll, the fact
18 remains it is proprietary and we must deal with it as
19 such.

20 MR. CARROLL: Well, I think I've got worse
21 problems than Environmentalist, Inc., BREDL, and GANE.

22 JUDGE MOORE: Ms. Carroll, you will have
23 an opportunity subsequently if you wish to challenge
24 it in the appropriate form. Whether that's this Board
25 or not, I can't say but you will not be waiving any

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1 rights to such challenges by going forward with this
2 process now.

3 Mr. Hull, do you have any comment you
4 would like to share with us?

5 MR. HULL: Well, what Mr. Silverman said
6 earlier just didn't seem real workable to me. Without
7 the petitioners having access to the proprietary
8 information, I just don't see how they would be fairly
9 or could be fairly required to make decisions based on
10 information they haven't seen. I just don't see that
11 as being very workable.

12 JUDGE MOORE: May I also assume that the
13 time limits that the applicant has proposed to us in
14 this conference might be painful for the staff?

15 MR. HULL: Well, it wouldn't be as painful
16 for the staff, I guess, as it would be for the
17 petitioners because the staff doesn't have to file
18 contentions by July 30.

19 JUDGE MOORE: But, your response time.

20 MR. HULL: Well, Your Honor, I do plan to
21 be on vacation the first two weeks in July. I don't
22 think that should factor into this but it would
23 certainly be a burden.

24 MR. SILVERMAN: This is Mr. Silverman

25 JUDGE MOORE: Yes, Mr. Silverman.

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1 MR. SILVERMAN: Could I follow up here?

2 JUDGE MOORE: I'm sorry. Could you repeat
3 that, please?

4 MR. SILVERMAN: Could I just follow up
5 now?

6 JUDGE MOORE: You certainly may.

7 MR. SILVERMAN: Thank you. Just two
8 points. First of all, with respect to the notion that
9 it is unworkable, which Mr. Hull indicated and I think
10 that was the essence of some of Mr. Moniak's comments.
11

12 I would just like to call to the Board's
13 attention that this language regarding relevant and
14 necessary information was taken directly from the
15 private fuel storage model. Now albeit that was for
16 safeguards information, I understand the Board sees a
17 distinction there but that distinction I don't think
18 is relevant here.

19 This was the language that was included in
20 that order which required petitioners to make a
21 showing of relevance and necessity for certain types
22 of information before it was provided to them. I
23 presume it was workable in that situation.

24 Then the only other point I wanted to make
25 was that I don't think Mr. Moniak or I know whether

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1 this information is absolutely essential for the
2 staff's safety evaluation report or not.

3 MR. MONIAK: No, it says in the CAR that
4 it is so it is.

5 MR. SILVERMAN: I don't believe it says
6 that.

7 MR. MONIAK: Well, I think you're wrong
8 and I don't think you should argue about that.

9 JUDGE MOORE: Gentlemen, that need not be
10 resolved in this conference.

11 Mr. Silverman, please continue.

12 MR. SILVERMAN: Those are the only points
13 I wanted to make, Your Honor.

14 JUDGE MOORE: Before moving on to the more
15 or less housekeeping matters, the Board has one final
16 comment on the proposal. I understand, Mr. Silverman,
17 your client's anxieties over this information but I
18 was puzzled when looking at the private fuel storage
19 protective order and affidavit of nondisclosure that
20 mailing by first class mail was permissible, and yet
21 you struck that in yours.

22 I guess the thing that is puzzling to us
23 is because by federal regulation the lowest category
24 of classified information is sent by first class mail.
25 We think surely if a category of classified

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1 information qualifies for trust in the United States
2 mail service, that commercial proprietary information
3 should too.

4 MR. SILVERMAN: Your Honor, we would be
5 happy to reinsert that provision. We don't have a
6 problem with that.

7 MR. POLONSKY: Your Honor, this is Mr.
8 Polonsky. The rationale for it was just that so many
9 parties may ending up having access to this
10 information and we thought there should be a way to
11 track it for the benefit of anyone having it so they
12 could prove that they, in fact, had mailed or
13 delivered something in order to track it down if it
14 was misdirected and we thought that wouldn't be
15 possible with just regular mail.

16 JUDGE MOORE: I see.

17 Mr. Moniak, do you have an objection to
18 using registered or certified mail for filings that
19 contain proprietary information or reference thereto?

20 MR. MONIAK: I probably would have used it
21 anyway, but I don't think that it should be mandated
22 by the applicant.

23 JUDGE MOORE: Mr. Moniak, rest assured
24 nothing is mandated by the applicant. It will be
25 mandated by this Licensing Board.

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1 MR. MONIAK: Oh, okay. Let me just
2 explain that everything right now feels like the
3 applicant is trying to mandate things. I guess that
4 is just the litigation process.

5 It's a very difficult question. I really
6 can't say yes or no at this point. It wasn't one of
7 our big issues.

8 JUDGE MOORE: Okay.

9 Ms. Thomas, you are the one who doesn't
10 have the computer and fax access. You will be running
11 to the post office more than most.

12 MS. THOMAS: I don't know. There's so
13 much to consider. I guess one of the concerns
14 involving how it's mailed or otherwise, the petition
15 of the people in the organization to be able to speak
16 and talk on these subjects.

17 If they are going to -- say that certain
18 information becomes available through other sources
19 other than this proprietary, how is that going to
20 affect them? Are they going to be accused of
21 releasing information?

22 There are lots of questions that we have
23 about this, I guess, because we've been involved in
24 similar type facilities and we haven't come up against
25 this problem before because there was enough

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1 information provided by the applicants so that you
2 could form your contentions.

3 Maybe they weren't as specific as required
4 now. Maybe that's the difference but we are just
5 unfamiliar with this type of situation. It's hard for
6 us to say.

7 JUDGE MOORE: If you undertake to receive
8 the proprietary information, you clearly will be
9 undertaking a number of burdens, one of which is that
10 of what you just spoke of the ability to speak and
11 right about what you're doing.

12 If proprietary information is involved
13 that you receive through this process, it could only
14 be your discussions and writing can only be with
15 another person who is under the protective order and
16 has signed an affidavit of nondisclosure. These are
17 burdens that you must be well aware of before you
18 obtain this information because you must abide by the
19 terms of this.

20 MS. THOMAS: I understand that, Your
21 Honor, but what I feel is that DCS has not fulfilled
22 its burden of providing enough information in a form
23 that individuals such as myself can understand without
24 using the proprietary. I don't see why they can't do
25 that.

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1 I'm not interested nor are any of our
2 members interested in going into competition in
3 developing this process in any way. We just want
4 enough information for us to understand how it's going
5 to affect us and we don't think that is unreasonable.

6 JUDGE MOORE: Ms. Carroll.

7 MR. CARROLL: I'm under the impression
8 that industrial spies will be invading my home if I'm
9 given this and it's a pretty frightening prospect.
10 It's just that I see the conditions.

11 JUDGE MOORE: Certified mail, Ms. Carroll.

12

13 MR. CARROLL: Certified mail. Sure.
14 Fine.

15 JUDGE MOORE: Do you have an objection to
16 using registered or certified mail for all filings
17 that contain proprietary information?

18 MR. CARROLL: We'll agree. It seems
19 nonthreatening.

20 JUDGE MOORE: In that regard, let me just
21 add that none of the -- any materials containing
22 proprietary information will not be able to be filed
23 or served through electronic filing. They will all
24 have to use the United States mail.

25 MR. CARROLL: Could we go to a postmarked

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1 date instead of a delivery date?

2 JUDGE MOORE: On filings containing
3 proprietary information they will, (1) have to be
4 segregated, and (2) mailed. That is precisely what
5 we'll have to do for those portions that contain
6 proprietary information of any filing.

7 For example, if a filing is due July 18,
8 you can file the nonproprietary portions of it by
9 electronic mail by the requisite time on July 18. The
10 proprietary portions of that filing will have to be
11 placed in the United States mail on that date. It's
12 not a received date.

13 MR. CARROLL: Okay. Now, I'm curious.
14 Having a long distance expert, are we allowed to
15 discuss it on e-mail? Are we allowed to discuss it on
16 the phone or is he going to have to write up his
17 contentions and file them without the benefit of me if
18 I haven't signed the document without the benefit of
19 any legal assistance we may get if --

20 JUDGE MOORE: Ms. Carroll, if you are
21 going to in any way receive proprietary information;
22 that is, if your expert views it and wishes to discuss
23 it with you, you must sign an affidavit of
24 nondisclosure and come under the protective order to
25 be able to carry on that way.

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1 So the answer to your question in a word
2 is you may not discuss it on the telephone or by e-
3 mail if you have not signed the affidavit of
4 nondisclosure and put yourself under the protective
5 order.

6 MR. CARROLL: So they are not worried
7 about phone tapping and computer hacking? I mean, I
8 noticed you say it has to be kept offline. After you
9 have worked on your computer you have to download it
10 and you have to erase it from your computer and you
11 have to keep things under lock and key.

12 JUDGE MOORE: That's the next subject.

13 MR. CARROLL: Okay.

14 JUDGE MOORE: Now that you've brought it
15 up, let's first hear from Mr. Hull if he has any
16 comment he would like to make on certified or
17 registered mail as opposed to first class mail.

18 MR. HULL: I don't have any comment on
19 that, Your Honor.

20 JUDGE MOORE: Thank you.

21 The last subject then is, Mr. Silverman,
22 let's address the electronic world and work place.
23 Are you of the view that this material should not come
24 over the Internet if in a situation, for example,
25 where Ms. Carroll has an expert in another location

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1 and they need to pass drafts of a proposed contention
2 back and forth?

3 MR. SILVERMAN: I'm going to ask if Mr.
4 Polonsky is in a position to answer that question and,
5 if not, I'll take a stab at it.

6 MR. POLONSKY: Your Honor, this is Mr.
7 Polonsky. We clearly have a concern of any electronic
8 filing of this material in final form and any
9 electronic distribution of drafts back and forth
10 between any parties would fall into that same concern.
11 Yes, we would prefer a prohibition on any transfer
12 electronically of this type of material in either a
13 draft or a final pleading.

14 JUDGE MOORE: In the private fuel storage
15 case, I believe, and, if not, it was in the Shearon
16 Harris matter this same question arose. In the last
17 analysis it was determined by the applicant who
18 withdrew his objection that the way the electronic
19 transfer works in compressing information and sending
20 it out that it would take an incredibly high degree of
21 sophistication to capture a whole document. Indeed,
22 even capturing smidgens of a document would be quite
23 a labor.

24 That is why we are at this point. Because
25 of the Commissions time constraints the Board

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1 understands the concern and is not unmindful of them
2 and there is no objection from the Board's standpoint
3 to opposing such a condition if it is necessary.

4 Let's take the telephone for a moment. No
5 one has an objection with those that have signed
6 affidavits of nondisclosure speaking on the telephone
7 to one another. Do they?

8 MR. POLONSKY: Your Honor, there wouldn't
9 be a concern so long as, again, there weren't other
10 individuals within earshot who had not signed the
11 nondisclosure affidavit.

12 A conversation in the general office of
13 one of the organizations of the petitioners, if there
14 were others around, we would prefer not occur unless
15 the others who were present in that room or within
16 earshot had signed the nondisclosure affidavit.

17 JUDGE MOORE: And the affidavit and
18 protective order make clear that is not allowed in
19 effect.

20 MR. POLONSKY: I just want to reiterate
21 that. Thank you.

22 JUDGE MOORE: Then for electronic exchange
23 of information, does the applicant have an alternative
24 so that modern technology can still be used here? Is
25 there a way without inscription?

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1 MR. SILVERMAN: Your Honor, Mr. Polonsky
2 will correct me if I'm wrong. I'm deferring to him
3 because he understands the computer world better than
4 I do. I believe we didn't prohibit intervenors from
5 using their computers to generate revised information.

6 JUDGE MOORE: No, I'm talking about
7 passing it over the Internet. E-mail essentially.

8 MR. POLONSKY: We have a very strong
9 preference that e-mail not be used to transfer any
10 information.

11 JUDGE MOORE: Does the applicant know if
12 there is readily available inscription that one can
13 use for this purpose if they were so inclined?

14 MR. SILVERMAN: We don't know that but we
15 did inquire into whether it would be reasonably
16 feasible for a party to obtain this information.
17 Well, this may not address your question. I
18 apologize. We didn't look into that.

19 MR. CARROLL: Your Honor, this is Glenn
20 Carroll from GANE. Is Emile Julian going to have to
21 sign an affidavit in order to docket this thing?

22 JUDGE MOORE: Ms. Carroll, the NRC staff
23 already falls under statutory regulatory prohibitions
24 as government employees and as NRC employees. They
25 are not covered by any of this and need not be.

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1 MR. CARROLL: This is so cloak and dagger
2 I'm afraid I'm going to be jumped on my way into
3 Kinko's one night. Who is after this information?

4 I think we need to know that before we
5 sign it because this sounds really scary like people
6 are going to break into our house, they are going to
7 steal our computers, they are going to jump us on the
8 way to the copy store or the post office. This is
9 ridiculous. We are for the most part volunteer
10 environmentalists.

11 JUDGE MOORE: I understand your concern.

12 MR. CARROLL: It sounds like if we broke
13 the law and sold this, you know, we could all retire.
14 I mean, I just think this is way too much and I'm
15 concerned about how far we're going with this. It
16 seems really overboard. I don't know what is in there
17 so I have no idea what is being protected but it just
18 seems really extreme.

19 MR. SILVERMAN: Your Honor, if I may very
20 briefly and then I will --

21 MR. CARROLL: My money is being used --
22 I'm sorry. I wasn't finished. My money is being used
23 to pay Cogema who is a foreign company to do this on
24 my land in South Carolina and it's just getting
25 ridiculous.

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1 JUDGE MOORE: Any objections to that that
2 you wish to place in your written objections, that is
3 the place to do it. I would rather we didn't bring
4 those matters to the fore now.

5 Mr. Silverman, you were speaking.

6 MR. SILVERMAN: I was just going to say
7 that the conversation that we had been having points
8 out that there is a fair amount of this that the
9 petitioners don't understand as to their obligations
10 it appears under this type of an arrangement wholly
11 putting aside the details of our proposal.

12 I just want to reiterate that we are
13 dealing with very vital commercial information to the
14 client and we will be handing it to people who, and no
15 negative inference intended, are uninitiated with
16 respect --

17 MR. MONIAK: I have to object to that.
18 This is Don Moniak. You are painting a generalized
19 picture here. The thing is we are aware of the
20 onerous requirements this would take and we are
21 discussing this because we are aware of it. You are
22 going overboard.

23 JUDGE MOORE: Mr. Moniak --

24 MR. MONIAK: Well, he is essentially --

25 JUDGE MOORE: This is not the place to

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1 resolve these matters. The Board is trying to get
2 through a couple of basic problems. I have covered
3 the matters on the proposed protective order an
4 affidavit of nondisclosure.

5 I look forward to receiving the objections
6 of the parties under the schedule that I set forth in
7 the June 20th order. All of them will be carefully
8 weighed before the Board issues its protective order
9 and attached affidavit of nondisclosure for the
10 parties to sign if they wish to come under its terms.

11 MR. MONIAK: What is the schedule that you
12 have for the Board putting forth its version? When
13 should we expect to see that?

14 JUDGE MOORE: They must be filed by
15 electronic mail no later than 4:30 p.m. Wednesday,
16 June 27, 2001.

17 MR. MONIAK: So you will review those and
18 then the Board will --

19 JUDGE MOORE: Ms. Thomas has an additional
20 day because we will be mailing out. As I said at the
21 start, we will e-mail each of you copies of the
22 Shearon Harris materials and the private fuel storage
23 materials. You will be receiving them. At the close
24 of this proceeding we will e-mail them.

25 Ms. Thomas, you will receive it in

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1 overnight mail.

2 Ms. Thomas' objections are due on Thursday
3 by overnight mail.

4 MR. MONIAK: My question was when will the
5 Board --

6 JUDGE MOORE: Issue its protective order?

7 MR. MONIAK: Yes, issue its protective
8 order.

9 JUDGE MOORE: As soon as we can but no
10 later than Monday and hopefully Friday.

11 MR. MONIAK: Okay.

12 JUDGE MOORE: Mr. Silverman, do you have
13 anything further with regard to your proposed
14 protective order that you wish to raise at this
15 moment?

16 MR. MONIAK: No, Your Honor.

17 JUDGE MOORE: Judge Kelber said we have
18 covered telephone and e-mail but not fax. Mr.
19 Silverman, what is your position on sending faxes such
20 as for filing containing this information? Is that
21 any different from a telephone line?

22 MR. SILVERMAN: Mr. Polonsky, can you
23 speak to that? Is that in the protective order?

24 MR. POLONSKY: Our view on a fax machine
25 is the same issue. There, unlike the mailing which

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1 will have two envelopes hopefully where inadvertent
2 eyes will not land on the piece of paper, fax does not
3 have that protection. A fax can also be inadvertently
4 misdirected if the wrong number is dialed.

5 JUDGE MOORE: No fax.

6 MR. POLONSKY: We would prefer no fax.
7 Yes, Your Honor.

8 JUDGE MOORE: Do any of the other
9 participants wish to speak to fax at all?

10 MR. MONIAK: Don Moniak. Frankly, I think
11 you are far less likely to have other people view a
12 fax than you are mail. I think you are showing an
13 astonishing trust in the U.S. mail system which I
14 greatly respect the postal service but every day
15 letters are inadvertently opened.

16 JUDGE MOORE: Ms. Thomas or Ms. Carroll,
17 do either of you have anything about using fax?

18 MS. THOMAS: No, I don't have an opinion
19 on that. I don't know much about it.

20 JUDGE MOORE: Thank you.

21 Ms. Carroll.

22 MR. CARROLL: Well, I work out of my home.
23 Anyway, I've said my piece. This is like cloak and
24 dagger.

25 JUDGE MOORE: Thank you.

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1 Mr. Hull, do you have anything you would
2 like to add about fax?

3 MR. HULL: No, Your Honor.

4 JUDGE MOORE: Thank you. Then let's move
5 on to some material that the Board has looked into for
6 the participants in an attempt to see if there was
7 anything the Board could do to alleviate the problem
8 that some of the participants were experiencing in
9 obtaining documents and Licensing Board, Appeal Board,
10 and Commission decisions.

11 If the participants have pencil and paper
12 handy, they may wish to write these down. These are
13 going to be a number of web addresses where some of
14 this information resides and it might be found useful.

15 Mr. Moniak, I'm assuming you probably
16 already know this. Please bear with us.

17 MR. MONIAK: Yes.

18 JUDGE MOORE: The NRC's website contains
19 all of 10 C.F.R. 10 C.F.R. contains the Commission's
20 procedural rules -- rules of practice, that is, and
21 its substantive rules. Those can be found on the
22 Commission's website and that website is at
23 www.NRC.gov.

24 MR. MONIAK: You can use small nrc too.

25 JUDGE MOORE: All right. Thank you, Mr.

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1 Moniak.

2 MS. THOMAS: Your Honor, what came after
3 capital?

4 JUDGE MOORE: Mr. Moniak informs me that
5 it can all be small letters.

6 MR. MONIAK: As long as it's nrc.gov.

7 MS. THOMAS: Okay.

8 JUDGE MOORE: Secondly, 1999 through 2001
9 to-date Commission decisions are on the same website
10 under a heading called Commission's Activities. When
11 you go to the website there's a number of things
12 listed at the bottom in a horizontal way and one of
13 them is Commission's Activities.

14 If one clicks on that, then one of your
15 choices is Commission Orders. When you scroll down,
16 you will find under Commission's Activities Commission
17 Orders. If you then click on the blue H it will bring
18 up that decision. Unfortunately, those are just for
19 the last two years Commission's decisions.

20 MR. MONIAK: But you're saying we don't
21 have to go through ADAMS to get to those?

22 JUDGE MOORE: That's correct.

23 MR. MONIAK: Okay. That's news to me.
24 Thank you. And then '96 to '97 is on your site.

25 JUDGE MOORE: Those are only Licensing

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1 Board decisions, Mr. Moniak.

2 MR. MONIAK: Oh, okay.

3 JUDGE MOORE: Not Commission decisions.

4 MR. MONIAK: What's the difference? I
5 mean, I know there's a difference but --

6 JUDGE MOORE: The Commission is the last
7 authority within the NRC. The final authority.

8 MR. MONIAK: Okay. Can I also ask do
9 Licensing Board decisions generally upheld by the
10 Commission and, therefore, establish precedence?

11 JUDGE MOORE: That decision should
12 probably best be directed to someone like Mr. Hull or
13 Mr. Silverman, Mr. Moniak.

14 MR. MONIAK: Okay. Mr. Hull -- oh, I can
15 do that later. Thank you.

16 JUDGE MOORE: Thirdly, under the agency's
17 bibliographic retrieval system, in a word that is the
18 index for the old NUDOCs system, the NUDOCs fiche
19 document collection. That index is also on the NRC's
20 website and you would find it by going to www.NRC.gov.
21 Then you would find it by `\NRC\PDR\brffacts.htm`.

22 MR. MONIAK: Okay. brsfacts?

23 JUDGE MOORE: `brffacts.htm`.

24 MR. CARROLL: Is that boy retriever system
25 s? I'm sorry. Is it brf?

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1 JUDGE MOORE: b as in boy, r as in ralph,
2 f as in fled.

3 MR. CARROLL: Okay. facts. And then what
4 happened after facts?

5 JUDGE MOORE: .htm. If you go to that
6 website it lays out the instructions on how to use the
7 system and also telephone numbers that you can call,
8 and I believe it's an 800 number, to obtain assistance
9 from purported experts in using the system.

10 Now, unfortunately all that is is an index
11 system to the old NUDOCs which is a fiche document
12 collection of several million documents predating
13 1999. But literally most every piece of paper
14 received or issued by the agency is in that system.

15 But, and unfortunately this is the catch
16 22, you need to have a collection of the fiche
17 material. The only one that still survived the
18 closing of the PDRs is in Columbia, South Carolina
19 which is at least modestly convenient to Mr. Moniak's
20 and Ms. Thomas' backyard.

21 MS. THOMAS: Your Honor, is that the
22 University of South Carolina?

23 JUDGE MOORE: I believe it is. We are
24 looking for the piece of paper that gives us the
25 address. Here it is. It's at the Thomas Cooper

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1 Library, University of South Carolina, Sumter and
2 Green Streets. Their telephone number is (803) 777-84
3 -- I'm sorry, 4841. That's 777-4841.

4 Now, a new development. The NMSS, Nuclear
5 Materials Safety and Safeguards Division of the NRC,
6 has opened a new website that does not use ADAMS.
7 That website can be found at www.NRC.gov\NRC\NMSS\MOX.

8 That site has posted -- well, it is
9 relatively easy to use. It has an index and they have
10 to date posted what they consider to be the
11 significant documents relating to MOX fuel.

12 I met with them yesterday and they will
13 continue to do that. According to their estimates,
14 they believe they are posting about two out of every
15 three documents that have anything to do with MOX fuel
16 and all of the significant ones.

17 They consider the ones that are not posted
18 as not significant. I have urged them to look
19 carefully and post if they can see their way fit to
20 literally all of the documents that the applicant
21 submits and that the NRC inquires or sends to the
22 applicant.

23 Only time will tell how useful it is but
24 it is a quick easy way to get documents and it was
25 done precisely to avoid all the problems on ADAMS.

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1 MR. MONIAK: I would like to address that.
2 That is a good site. In fact, I sent an e-mail on
3 Friday recommending that information be put up
4 recognizing that a lot of it is there.

5 JUDGE MOORE: Mr. Moniak, we all --

6 MR. MONIAK: I just want to say thank you.

7 JUDGE MOORE: We all received your e-mail
8 and I'm sorry it is not a site that is either within
9 the Board's control and it is NMSS's site and there
10 are certain budgetary and time constraints on the
11 people that are running it so we cannot be a complete
12 document repository.

13 It is a quick and easy way to get the
14 significant documents without having to use ADAMS.
15 They usually go up much more quickly than ADAMS which
16 can have up to a five-day lag.

17 In that regard, they have agreed to put
18 under the heading that they currently have called the
19 MOX Licensing Process, I believe, is the heading, a
20 subheading or subfile which will be the MOX Licensing
21 Hearing and the Board will submit to them the
22 significant party filings and all the significant
23 Board issuances. It will also be a quick access file
24 to this proceeding for significant filings and Board
25 rulings and other issuances.

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1 MR. MONIAK: It's already up.

2 JUDGE MOORE: Pardon?

3 MR. MONIAK: It's already up as a matter
4 of fact.

5 JUDGE MOORE: Well, they told me they were
6 quick.

7 MR. MONIAK: They are. They are.

8 JUDGE MOORE: So the Board hopes that
9 although this is being done primarily for the general
10 public, that it will be useful to the participants
11 here.

12 Now, the final matter, and it is still
13 unresolved, is the question of whether ready access to
14 Commission Appeal Board and Licensing Board decisions
15 are available. Unfortunately, only through the fiche
16 collection up to 1999 are they available and it
17 requires using the bibliographic retrieval system.

18 Incidentally, the Columbia, South Carolina
19 site has online computers that will allow you to dial
20 up the toll-free number, as I understand it, to get
21 into that bibliographic retrieval system. That
22 retrieval system will get you a fiche address where
23 you can then go manually retrieve the fiche card and
24 put it in a viewer to read the document.

25 Currently, that is the -- and, of course,

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1 since 1999 all Licensing Board and Commission
2 decisions are in ADAMS but one does have to navigate
3 those treacherous waters to obtain them.

4 There is a glimmer of hope that an easier
5 method might be found making those Commission
6 decisions readily available to the parties and the
7 Board is still working on it but to date only the
8 matters that I have recited to you can be used other
9 than the paid services of West Law and Lexis to find
10 Commission Appeal Board and Licensing Board Issuances.

11 The Board hopes that is some help to the
12 parties. If there are future developments where there
13 is more readily available and easy access to
14 decisions, the Board will let the parties know.

15 That concludes all the Board has. Oh,
16 Judge Kelber has one item.

17 JUDGE KELBER: With respect to the
18 bibliographic retrieval system service. The website
19 does mention the possibility of using telnet. I have
20 tried it and have been unsuccessful. I am told that
21 it is only spottily successful. I wouldn't recommend
22 it.

23 JUDGE MOORE: So the other -- there is an
24 alternative in that bibliographic system that one
25 should put their efforts into, not the system Judge

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1 Kelber mentioned.

2 Do any of the participants have anything
3 further?

4 MR. CARROLL: I have something, Your
5 Honor.

6 JUDGE MOORE: Yes, Ms. Carroll.

7 MR. CARROLL: I can't believe I'm going to
8 ask this but we've got to ask it sometime. How are we
9 going to access safeguards information because
10 security is one of the most important issues about a
11 plutonium factory.

12 JUDGE MOORE: Mr. Silverman, you probably,
13 or Mr. Hull, are in a much better position than the
14 Board. Is safeguards information involved in this
15 proceeding at all in the application?

16 MR. SILVERMAN: This is Mr. Silverman. My
17 understanding is the answer is no.

18 MR. HULL: This is Mr. Hull. I don't have
19 Tim Johnson here who was here at the other
20 teleconference on June 19. He is the one that has
21 looked at all of the proprietary information but my
22 recollection is he told me during that teleconference
23 there is no safeguards information in the CAR.

24 JUDGE MOORE: Would it reside anywhere
25 else?

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1 MR. HULL: I don't think there is any
2 safeguards information that has been submitted by DCS.

3 MR. SILVERMAN: Or that is necessary for
4 the processing of the construction authorization
5 request under the regulations.

6 JUDGE MOORE: Mr. Silverman, is that
7 something that would come into play at phase II, the
8 operating state?

9 MR. SILVERMAN: My understanding is if at
10 all, yes, sir.

11 JUDGE MOORE: Okay.

12 MR. CARROLL: If we have an issue, like
13 I'll just frame it real quickly, that, first of all,
14 there isn't a memorandum of understanding, yeah,
15 between DOE and NRC on security so we really don't
16 know what the NRC thinks this jurisdiction will be or
17 what DOE thinks.

18 It would be basic that there would be
19 certain monitoring stations and cameras and things
20 built in to the facility that would support security
21 so it just defies common sense that is absent at this
22 juncture that we should raise that as a contention of
23 an omission from the CAR.

24 JUDGE MOORE: But it may be just
25 premature, Ms. Carroll, as Mr. Silverman said, and the

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1 Board is not in a position from not having viewed the
2 entire application to know, but it may be that is an
3 issue that would be reserved for the operating stage
4 in which there will be, I believe, and Mr. Silverman,
5 correct me if I'm wrong, isn't this a two-stage
6 process?

7 MR. SILVERMAN: Yes, it is. A
8 construction authorization request. and then a
9 possession and use license.

10 JUDGE MOORE: And if it is a matter that
11 the Commission decrees is in the scope of the
12 proceeding, it would be brought up at that time.

13 Is there anything further?

14 MR. MONIAK: I had something further.

15 JUDGE MOORE: The Board will, as we
16 stated, be issuing the protective orders as soon as we
17 get the objections in and have had time to consider
18 them.

19 In the prior order that the Board issued
20 that week setting forth the date the contentions are
21 due as July 30th, the Board had made plain during the
22 conference that since the Commission had indicated the
23 parties were to be given an opportunity to amend their
24 petitions, those amendments to establish their -- to
25 further establish -- no.

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1 Any amendments speaking to standing will
2 be due on that same date under the Commission's
3 schedule and I failed to put that in the last order
4 and I wanted to make sure that all of you are aware of
5 that and understand it.

6 Mr. Moniak, I interrupted you. What was
7 your comment?

8 MR. MONIAK: I had a few questions.
9 Earlier you cited to Mr. Silverman a rule that we
10 would have to follow, 5 U.S.C. Section 1 as a
11 governing rule?

12 JUDGE MOORE: 5 U.S.C. Section 1 is a
13 federal statute setting forth the penalties for
14 violating Commission orders, among other things and,
15 of course, a protective order falls within that realm.

16 MR. MONIAK: Okay. When you send us the
17 e-mail versions of the private fuel services and the
18 other one, Carolina Power and Light, could you just
19 include that?

20 That is one of the few things on the
21 Internet I have trouble accessing is the U.S.C. rules.
22 I don't know why but it takes me forever to find one
23 and I was wondering if you could just provide that.

24 JUDGE MOORE: We may not be able to do
25 that, Mr. Moniak, because we do not have it in

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1 electronic form.

2 MR. MONIAK: Oh, okay. Then I'll find it.

3 Thank you. Could it be faxed?

4 JUDGE MOORE: We'll see if we can do that.

5 MR. MONIAK: Okay.

6 JUDGE MOORE: I don't think there's a
7 problem with that.

8 MR. MONIAK: My other question is --

9 JUDGE MOORE: You have a fax. Do the
10 other parties?

11 Ms. Carroll, do you have a fax?

12 MR. CARROLL: Yes, sir.

13 JUDGE MOORE: Do we have that number?

14 MR. CARROLL: I can give it to you again.

15 (404) 378-4263. And I am unable to read WordPerfect.

16 Microsoft Word is accessible to me and I don't know --

17 JUDGE MOORE: We'll make every effort to
18 translate and have it sent to you in Word.

19 MR. CARROLL: I would appreciate it.

20 MR. MONIAK: You can send it to me in
21 Word, too. I can do either one so if it's easier to
22 do things in Word, feel free.

23 JUDGE MOORE: Well, no. Actually, it's
24 not, Mr. Moniak.

25 MR. MONIAK: Okay.

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1 JUDGE MOORE: The whole world operates in
2 Word except we are still operating in WordPerfect.

3 MR. CARROLL: You said it, not me.

4 MR. MONIAK: I'm still in WordPerfect,
5 too. It's just that I have Word because it came with
6 the computer.

7 JUDGE MOORE: Mr. Moniak, might we have
8 your fax, please?

9 MR. MONIAK: (803) 644-6953.

10 JUDGE MOORE: 6953?

11 MR. MONIAK: Yes. My other question --
12 no, the fax number is 644-7369. My apologies.

13 JUDGE MOORE: 7369?

14 MR. MONIAK: Yes. Where --

15 JUDGE MOORE: Excuse me, Mr. Moniak.

16 Ms. Thomas, you do not have fax. Is that
17 correct?

18 MS. THOMAS: That's right.

19 JUDGE MOORE: We'll include that in the
20 mail package containing these materials to you.

21 MS. THOMAS: Thank you, Your Honor.

22 JUDGE MOORE: Yes, Mr. Moniak?

23 MR. MONIAK: Where do we find information
24 about what kind of safeguards there are for us in our
25 organizations regarding given the history to date, I

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1 believe the DCS will challenge everything we say is a
2 violation possibly regardless of whether they can
3 prove it or not.

4 They have been very aggressive and have
5 made some very generalized assumptions and have not
6 followed the procedures very well. We have to be
7 protected from aggressive challenges that allege that
8 we violated an agreement and it has to be written
9 down.

10 JUDGE MOORE: Mr. Moniak, the Board is
11 unable to help you in that regard. The protective
12 order and affidavit of nondisclosure will be issued by
13 the Board. If you wish to proceed, it will be under
14 conditions that are set forth in that order and in
15 that affidavit.

16 MR. MONIAK: I have one more thing. I
17 want to point out one more time according to the
18 Federal Register notice of April 18th, we were not
19 obligated or required to submit contentions. We were
20 only required to submit request for hearings, yet we
21 keep getting bogged down on this issue that we have
22 not made contentions and, therefore, we don't have --
23 it's as if we have a lower -- we are a lower class.

24 We were not required so I just want to
25 make the point that DCS seems to not have read that

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1 Federal Register notice and they don't seem to
2 understand what we were required to do. Thank you.

3 JUDGE MOORE: Okay. Mr. Moniak, the
4 applicant I have every confidence is able to read the
5 Federal Register notices and the Commission's
6 decisions.

7 If no one has anything further, I thank
8 you for your participation but we felt that because of
9 the time constraints, we needed to get these matters
10 dealt with as best we could because we do not have the
11 luxury of exchanging pleadings over the next couple of
12 weeks if this process is going to move forward.

13 MS. THOMAS: Your Honor, I have one
14 clarifying question. Did you mean that our amendments
15 that speak to standings are due on July 30th?

16 JUDGE MOORE: That is correct, with your
17 contentions.

18 MS. THOMAS: With the contentions. Thank
19 you very much.

20 MR. SILVERMAN: Your Honor, I'm sorry.
21 Mr. Silverman. One more housekeeping item.

22 JUDGE MOORE: Yes, Mr. Silverman.

23 MR. SILVERMAN: Obviously the NRC staff's
24 answer today to the hearing request of the petitioners
25 and in a footnote in that response there is a

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1 reference to an affidavit filed by Ms. Carroll on June
2 15th curing some alleged defects and hearing them in
3 her petition. We don't believe we were served with
4 that and we just want to be sure that the parties
5 understand the rules governing service because we have
6 not seen that document.

7 MR. CARROLL: That was mailed to you
8 Friday a week ago which would have been the 15th of
9 June. You should have received it by now.

10 MR. SILVERMAN: Maybe we can just double
11 check the address you have, Ms. Carroll, because I
12 don't believe we've received it.

13 MR. CARROLL: You know what? The service
14 name is not yours, Mr. Silverman, I don't believe.
15 Perhaps if you would check with your colleague. No,
16 it was served to you. Here, let me -- I'm covered up
17 in paper. I am shuffling as fast as I can.

18 MR. MONIAK: It's in ADAMS. I can fax it
19 to you. I've got it.

20 MR. CARROLL: I'm sure the date was June
21 15th because I was hoping it would be received before
22 our first conference call which was on Tuesday of last
23 week.

24 MR. SILVERMAN: We'll double check it. We
25 don't believe we received it and my only concern was

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1 that the parties understand their obligations for
2 service and, if they do, that is acceptable.

3 MR. CARROLL: The address is 1800 M Street
4 N.W. 20036.

5 JUDGE MOORE: Mr. Silverman?

6 MR. SILVERMAN: Yes, it is.

7 JUDGE MOORE: In that regard, the Board
8 would emphasize to the parties what Mr. Silverman just
9 said. Every filing must be accompanied by a
10 certificate of service certifying that you served all
11 the other participants and you have all of their
12 addresses now from the filings that have been passed
13 back and forth to date.

14 If you file something electronically, you
15 should be e-mailing it electronically to all the other
16 participants that are capable of receiving it and then
17 obviously placing it in the mail to those who don't.
18 In this case, it is only Ms. Thomas.

19
20 MR. MONIAK: Can you please repeat that
21 one more time? Sorry. I wrote down most of it but I
22 didn't get it all.

23 JUDGE MOORE: Mr. Moniak, the Board will
24 be issuing a housekeeping order in which it will spell
25 out all of those.

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1 MR. MONIAK: That will be just fine.
2 Thank you.

3 JUDGE MOORE: If there's nothing further,
4 I thank you for your patience and cooperation. The
5 Board will then await the written objections of the
6 parties on the schedule that it set last week in its
7 order. Thank you very much.

8 (Whereupon, at 3:32 p.m. the hearing was
9 adjourned.)

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CERTIFICATE

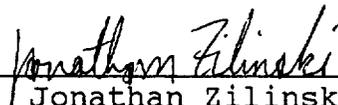
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

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

Docket Number: 070-03098-ML

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, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Jonathan Zilinski
Official Reporter
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