

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of

DUKE COGEMA STONE & WEBSTER
(Savannah River Mixed Oxide Fuel
Fabrication Facility)

Docket No. 070-03098-ML

ASLBP No. 01-790-01-ML

July 17, 2001

MEMORANDUM AND ORDER

Pursuant to the authority granted in 10 C.F.R. § 2.1209, the Licensing Board sets forth below a number of directives and the schedule for the conduct of the first phase of this proceeding. In its referral order, the Commission set a very aggressive schedule for this proceeding. See CLI-01-13, 53 NRC ___, ___ (slip op. at 9-10, June 14, 2001). In that regard, the Commission stated, inter alia, that

[t]o meet the above milestones, the presiding officer shall direct the participants to serve all filings by electronic mail . . . followed by conforming hard copies that may be sent by regular mail. If participants do not have access to electronic mail, the presiding officer should adopt other expedited methods of service, such as express mail, which would ensure prompt receipt. If pleadings are filed by electronic mail, or other expedited methods of service that ensure receipt on the due date, the additional period provided in 10 C.F.R. § 2.710 for responding to filings served by first-class mail or express delivery shall not be applicable.

Id. at 10.

The process for filing and service of pleadings and overall scheduling in this proceeding is complicated by the fact that Petitioner Environmentalists, Inc., has neither electronic nor

facsimile transmission capability. (Tr. 23). Further, the Licensing Board cannot ignore the significant financial limitations of Petitioner Environmentalists, Inc., and the other environmental organization Petitioners, which are represented by non-attorney, pro se, members of the organizations as permitted by the Commission's Rules of Practice. (Tr. 26, 44-45). Similarly, the Board must be mindful of the not insignificant financial burden that would be imposed upon each of the Petitioners on account of the number of participants in the proceeding and the number of likely filings should the Board order all service by and on Environmentalists, Inc., to be accomplished using express mail. These facts, of course, were not all known to the Commission when it issued the referral order. Moreover, in light of the Commission's exceedingly rigorous schedule for the proceeding, the Board wishes to avoid expending either the Board's or the participants time or resources litigating the inevitable regulatory, statutory, and constitutional challenges to the practice of requiring express mail filings and service in lieu of e-mail even though such electronic filings are, in effect, merely courtesy copies because the agency has yet to establish an official electronic hearing docket and electronic signature provisions for pleadings and conformed copies filed by first-class mail remain the official filings in all proceedings.

Therefore, the Board's directives for the filing and service of pleadings seeks to strike a reasonable balance between these various competing interests. As experience is gained following these directives, the Board will make any needed changes for conducting Phase II of the proceeding.

I. Administrative Matters

A. Service of All Filings

Except in the limited circumstances noted below in the next paragraph with respect to Environmentalists, Inc., all pleadings and other submissions filed before the Licensing Board shall be served on each Member of the Licensing Board and each of the other participants.

Without exception, all filings by all participants shall be accompanied by a certificate of service setting forth the name, electronic or facsimile transmission address and/or other address of each person served, the manner of service (i.e., e-mail, fax, first class mail etc.) of each person served, the date of service, and the certification of service of the person executing the service. Except for Petitioner Environmentalists, Inc., which has neither electronic nor facsimile transmission capability, all other participants shall serve their pleadings and other submissions on the Members of the Licensing Board and the other participants by e-mail and, that same date, send conforming copies to each of them by first class mail. Service on Environmentalists, Inc., by the other participants may be by first class mail except for 1) any pleading or other submission by the Applicant or the NRC Staff responding to the proffered contentions of Environmentalists, Inc., which shall be served by express mail or other overnight delivery service; and 2) any pleading or other submission by the Applicant or the NRC Staff requesting immediate action by the Licensing Board and/or requiring a response by Environmentalists, Inc., which shall also be served by express mail or other overnight delivery service.

Environmentalists, Inc., may serve its pleadings or other submissions on the other participants by first class mail except for 1) any proffered contentions, 2) any pleading requesting immediate action by the Licensing Board or 3) any pleading requiring a response by the Applicant or the Staff which shall be served by express mail or other overnight delivery service on the Licensing Board. In these three instances, Environmentalists, Inc., shall serve the Licensing Board, Applicant, Staff and other Petitioners by first class mail and it shall also serve the Licensing Board by express mail or other overnight delivery service with a single copy of its pleading or other submission addressed to all three Members of the Licensing Board. The Licensing Board will then transmit the pleading or other submission it received by express mail to the Applicant and the Staff by facsimile transmission. The service provisions set forth in this Memorandum and Order regarding Environmentalists, Inc., shall apply only so long as that

Petitioner has no fax or e-mail capability. The Licensing Board, however, encourages Environmentalists, Inc., to acquire or arrange such capability for its own convenience as well as that of the other participants and expresses the hope that Environmentalists, Inc., will make a reasonable effort in this regard.

B. Filing with the Secretary of the Commission

Regardless of the method of service used by a participant for any pleading or other submission (i.e., first class mail, priority mail, express mail, other overnight delivery, hand delivery, facsimile transmission or electronic transmission), the Commission's Rules of Practice, 10 C.F.R. § 2.1203(c) require that an original and two conforming copies also be filed with the Office of the Secretary, Attention: Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Although the participant serving a pleading or other submission is free to use the same or a comparable method of service used in serving the Licensing Board to comply with section 2.1203(c), first class mail is sufficient for all filings of the original and two conforming copies with the Office of the Secretary in this proceeding.

C. Service on the Licensing Board Members

Members of the Licensing Board should be served in accordance with the following instructions:

1. Regular Mail. To complete service via U.S. Postal Service first-class mail, conforming copies should be sent to each Member of the Licensing Board at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

For regular mail service, the NRC Staff may use the NRC internal mail system (Mail Stop T-3 F23) in lieu of first-class mail.

2. Overnight or Hand Delivery. To complete service via overnight (e.g., express mail) or hand delivery, a participant should send conforming copies to each Member of the Licensing Board at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852

It should be noted that use of the regular mail address of the Members of the Licensing Board for overnight (such as Federal Express) or hand delivery may delay receipt of the filing.

3. Facsimile Transmission. To complete service by facsimile transmission, a participant should (i) send copies addressed to the attention of each Member of the Licensing Board at 301-415-5599 (verification 301-415-7409); and (ii) that same date, send conforming copies to each of them by regular mail.

4. E-Mail. To complete service by e-mail transmission, a participant should (i) send the pleading or other submission (which should include the certificate of service) as a file attached to an e-mail message directed to each Member of the Licensing Board (Internet IDs: tsm2@nrc.gov; cnk@nrc.gov; psl@nrc.gov. NRC Agency Upgrade of Technology for Office Systems (Autos) Wide Area Network (WAN) System IDs for the Members of the Licensing Board: TSM2; CNK; PSL); (ii) send any attachments or exhibits to a pleading that cannot be transmitted by e-mail to the Members of the Licensing Board by separate facsimile transmission or other means that will ensure receipt by the due date; and (iii) send paper conforming copies that same date to each of them by first class mail.

5. Timely Service.

To be timely, any pleading or other submission served on the Members of the Licensing Board by hand delivery, facsimile transmission, or e-mail must be received by them no later than 11:59 p.m. Eastern Standard Time or, as applicable, Eastern Daylight Time, on the date

due. Any pleading or other submission of the Applicant, Staff or Environmentalists, Inc., that is required to be served by express mail or other overnight delivery service shall be timely filed if, on the business-day due date, it is delivered in the appropriate manner to the U.S. Postal Service or other delivery service by the appropriate time for next business day delivery.

D. Motions, Responses to Motions, and Reply Pleadings

1. Motions for Extensions of Time.

A motion for an extension of time filed with the Licensing Board shall be submitted in writing so that it is in the hands of the Licensing Board at least three business days before the due date for the pleading or other submission for which the extension is sought. A motion for extension of time shall (a) indicate whether the request is opposed or supported by the other parties; and (b) demonstrate “unavoidable and extreme circumstances” that warrant granting the extension. See Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

2. Reply Pleadings.

The Commission’s Rules of Practice, 10 C.F.R. Part 2, Subpart L, do not provide for any right of reply to a responsive pleading. A motion for leave to file a reply in all other circumstances shall be filed so that it is in the hands of the Licensing Board at least three business days of the filing of the response for which leave to reply is sought. Such motion shall (a) indicate whether the request is opposed or supported by the other parties; and (b) demonstrate good cause for permitting the reply to be filed.

3. Responses to Motions.

Any opposition response to a motion for an extension of time, a motion for leave to file a reply, a motion to extend a page limit or similar motions shall be filed so that it is in the hands of the Licensing Board at least three business days after the filing of the motion.

II. Schedule

As previously set forth in part in the Licensing Board's July 3, 2001, Order, the following schedule is applicable to Phase I of this proceeding:

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|-------------------------------|---|
| July 30, 2001 | - Amendments to any Petitioners' intervention petition to address any shortcomings relating to standing shall be filed. |
| August 10, 2001 | - Answers of the Applicant and Staff to any amended intervention petitions shall be filed. |
| August 13, 2001 | - All Petitioners' contentions shall be filed. Each Petitioner should take care to ensure that each of its proffered contentions complies fully with all of the requirements of 10 C.F.R. § 2.714(b)(2). In this regard, each contention shall be separately numbered setting forth as the first paragraph of the contention the "specific statement of the issue of law or fact to be raised or controverted" as called for in the first sentence of section 2.714(b)(2). The second and subsequent paragraphs of each contention shall contain the basis of the contention as called for by section 2.714(b)(2)(i),(ii), and (iii). |
| September 12, 2001 | - Responses of the Applicant and Staff to contentions shall be filed. |
| September 17, 18, or 21, 2001 | - Oral argument in the area of Augusta, Georgia, on the Petitioners' standing and admissibility of contentions in the event the Board determines such an argument would be helpful. |

November 16, 2001

- If necessary, the Staff shall file the hearing file for the proceeding.

FOR THE ATOMIC SAFETY AND LICENSING BOARD

/RA/

Thomas S. Moore
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 17, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER DATED 07/17/01 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
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Washington, DC 20555-0001

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Docket No. 70-3098-ML
LB MEMORANDUM AND ORDER DATED
07/17/01

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 17th day of July 2001