

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'01 AUG -1 P3:07

Before Administrative Judges:
Thomas S. Moore, Chairman
Charles N. Kelber
Peter S. Lam

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

DUKE COGEMA STONE & WEBSTER

Docket No. 070-03098-ML

(Savannah River Mixed Oxide Fuel
Fabrication Facility)

ASLBP No. 01-790-01-ML

**Stipulation Between Duke Cogema Stone & Webster and
Georgians Against Nuclear Energy Regarding
Access to Proprietary Information**

Duke Cogema Stone & Webster ("DCS") and Georgians Against Nuclear Energy ("GANE") (collectively, "the parties"), agree to the following:

Subject to, and in accordance with, the terms and restrictions of the Atomic Safety and Licensing Board's June 29, 2001 Protective Order (ASLBP 01-790-01-ML) ("Protective Order"), DCS will provide access to the proprietary portions of the DCS Mixed Oxide Fuel Fabrication Facility ("MOX Facility") Construction Authorization Request and DCS' proprietary financial statement for fiscal year 1999 as submitted to the Nuclear Regulatory Commission (the "proprietary information") to: (1) Ms. Diane Curran, Esquire, of Harmon, Curran, Spielberg & Eisenberg, LLP, 1726 M Street NW, Suite 600, Washington, D.C. 20036; and (2) Dr. Edwin Lyman, of Nuclear Control Institute, 1000 Connecticut Avenue NW, Suite 410, Washington, D.C. 20036, when both of the following conditions are met:

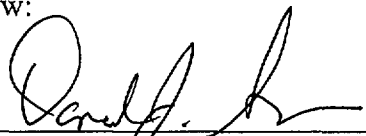
- (1) Approval by the Licensing Board of this Stipulation, pursuant to ¶ B.2 of the Protective Order; and
- (2) Proper execution by Ms. Curran and Dr. Lyman ("Affiants") of the Nondisclosure Affidavit attached to the Protective Order and receipt of those Nondisclosure Affidavits by DCS counsel.

Based on conversations between GANE's representative and counsel for DCS, DCS has no objection to the Affiants' use of their own copies of Symantec's "Wipe Info" in lieu of DCS providing such software in accordance with ¶ 7 of the Nondisclosure Affidavit. However, nothing in this Stipulation will release GANE, Ms. Curran or Dr. Lyman from otherwise fulfilling their obligations under ¶ 7 of the Nondisclosure Affidavit.

As provided in ¶ A of the Protective Order, the grant of access to proprietary information does not waive any of DCS' objections to the qualifications of any proposed witness, including Ms. Curran and Dr. Lyman, to testify in any proceeding regarding the MOX Facility.

Although the Protective Order appears to require only that "DCS will provide one copy [of the proprietary information] per Petitioner" (*see* ¶ F), in an effort to foster continued and efficient cooperation between GANE and DCS, DCS will make one copy of the proprietary information available to both Dr. Lyman and Ms. Curran at their business addresses listed above, in addition to the copy that DCS will provide to Ms. Glenn Carroll.

In witness hereof, the parties have executed this Stipulation as of the date last written below:



Donald J. Silverman
For Duke Cogema Stone & Webster

7/30/01
Date



Glenn Carroll
For Georgians Against Nuclear Energy

7/31/01
Date

NONDISCLOSURE AFFIDAVIT

I, Glenn Carroll, being duly sworn, state:

1. As used in this nondisclosure affidavit:

(a) "Proprietary information" is (i) any information that is properly exempt from public disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and 10 C.F.R. § 2.790(a)(4), or (ii) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which reveals the proprietary information.

(b) Proprietary information does not include any information or document contained in the files of the Commission, any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court.

(c) An "authorized person" is (i) an employee, consultant, or contractor of the United States Nuclear Regulatory Commission (Commission or NRC) entitled to access to the proprietary information; (ii) a person who, at the invitation of the Atomic Safety and Licensing Board (Licensing Board), has executed a copy of this affidavit; or (iii) a person employed by or on behalf of the Applicant and authorized by it in accordance with NRC regulations to have access to proprietary information.

(d) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer software, computer disks or diskettes, computer storage devices or any other medium, and

includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

2. I have read the June 29, 2001 Licensing Board protective order issued in this proceeding and will comply in all respects with its terms and conditions regarding the proprietary information produced in connection therewith. I will protect and keep confidential proprietary information in accordance with the terms of this affidavit.

3. I will not disclose proprietary information to anyone except an authorized person. I will protect documents containing or revealing proprietary information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such proprietary information), so that the proprietary information contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.

4. I will not transmit by electronic or facsimile transmission any material containing proprietary information. In addition to pleadings and filings, any transmissions of material containing proprietary information will be transmitted utilizing the identical method set forth in Paragraph G.1. b. and c. of the Licensing Board's June 29, 2001 protective order.

5. When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and protect all documents containing or revealing proprietary information (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place

such as a filing cabinet, closet, or other storage container.

6. Any secretarial or administrative work performed at my request or under my supervision will be performed by personnel who also have been qualified for such access and who also have executed a nondisclosure affidavit.

7. To the extent that I use a computer to generate or revise documents that contain or reveal proprietary information, the generated or revised documents shall only be saved to disks (not to a hard drive), which disks shall be stored in a locked storage container or safe. When the information has been saved to disk, all temporary electronic files that are automatically generated on the hard drive must be deleted. At the earlier of (a) the conclusion of this proceeding (including any related Commission or judicial proceedings), (b) the conclusion of my participation in this proceeding, or (c) the sale or transfer of the computer used to generate or revise documents that contain or reveal proprietary information to or by a person not qualified under the Licensing Board's June 29, 2001 protective order, I will permanently destroy proprietary information that may be stored on that computer's storage media, whether permanent hard drive or removable, ^{my own copy of} by using Symantec's "Wipe Info," ~~or similar software, provided~~ ~~by Applicant at the Applicant's expense.~~ *see "Stipulation."*

8. Each document that contains or reveals proprietary information shall be marked "Contains Proprietary Information" in a conspicuous manner.

9. I shall use proprietary information only for the purpose of preparation for this proceeding (including any related Commission or judicial proceedings).

10. I shall keep a record of all documents containing or revealing proprietary information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding (including any related Commission or judicial proceedings), or at the conclusion of my participation

in this proceeding (whichever comes first), I shall both (a) account to the Licensing Board for all the documents or other materials containing or revealing proprietary information in my possession or control, and (b) submit such documents (including any and all portions of any notes taken in connection with review of the documents) by U.S. Postal Service registered, certified, or express mail to the Licensing Board for destruction.

11. Either during or after this proceeding, I will not publicly reveal any proprietary information that I receive by virtue of this proceeding as long as the information remains proprietary and is not otherwise a matter of public record.

12. I acknowledge that any violation of the terms of this affidavit or the Licensing Board's June 29, 2001 protective order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions on me or the organization I represent, as the Licensing Board or the Commission may deem to be appropriate. I further acknowledge that any unauthorized disclosure of proprietary information or violation of the protective order issued in this proceeding may be grounds for (a) the imposition of civil and/or criminal penalties, as set forth in 10 C.F.R. § 70.91, sections 223 and 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2273, 2282), Chapter 90 of Title 18 to the United States Code and/or (b) civil liability to DCS, its partners, or affiliates.

WHEREFORE, I do solemnly agree to protect and keep confidential such proprietary information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit. I clearly understand that my obligations to protect and keep confidential such proprietary information survive the termination of this proceeding and remain in effect until such time as the information is no longer proprietary or is a matter of public record.

Glenn Carroll

GEORGIAN AGAINST NUCLEAR
ENERGY

(Name and Organization)

Subscribed to and sworn before me this 27th day of July, 2001.

[Signature]
Notary Public

My commission expires: _____

Notary Public, Dekalb County, Georgia
My Commission Expires March 4, 2003

NONDISCLOSURE AFFIDAVIT

I, Diane Curran, being duly sworn, state:

1. As used in this nondisclosure affidavit:

(a) "Proprietary information" is (i) any information that is properly exempt from public disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and 10 C.F.R. § 2.790(a)(4), or (ii) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which reveals the proprietary information.

(b) Proprietary information does not include any information or document contained in the files of the Commission, any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court.

(c) An "authorized person" is (i) an employee, consultant, or contractor of the United States Nuclear Regulatory Commission (Commission or NRC) entitled to access to the proprietary information; (ii) a person who, at the invitation of the Atomic Safety and Licensing Board (Licensing Board), has executed a copy of this affidavit; or (iii) a person employed by or on behalf of the Applicant and authorized by it in accordance with NRC regulations to have access to proprietary information.

(d) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer software, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches,

notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

2. I have read the June 29, 2001 Licensing Board protective order issued in this proceeding and will comply in all respects with its terms and conditions regarding the proprietary information produced in connection therewith. I will protect and keep confidential proprietary information in accordance with the terms of this affidavit.

3. I will not disclose proprietary information to anyone except an authorized person. I will protect documents containing or revealing proprietary information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such proprietary information), so that the proprietary information contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.

4. I will not transmit by electronic or facsimile transmission any material containing proprietary information. In addition to pleadings and filings, any transmissions of material containing proprietary information will be transmitted utilizing the identical method set forth in Paragraph G.1. b. and c. of the Licensing Board's June 29, 2001 protective order.

5. When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and protect all documents containing or revealing proprietary information (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other storage container.

6. Any secretarial or administrative work performed at my request or under my

supervision will be performed by personnel who also have been qualified for such access and who also have executed a nondisclosure affidavit.

7. To the extent that I use a computer to generate or revise documents that contain or reveal proprietary information, the generated or revised documents shall only be saved to disks (not to a hard drive), which disks shall be stored in a locked storage container or safe. When the information has been saved to disk, all temporary electronic files that are automatically generated on the hard drive must be deleted. At the earlier of (a) the conclusion of this proceeding (including any related Commission or judicial proceedings), (b) the conclusion of my participation in this proceeding, or (c) the sale or transfer of the computer used to generate or revise documents that contain or reveal proprietary information to or by a person not qualified under the Licensing Board's June 29, 2001 protective order, I will permanently destroy proprietary information that may be stored on that computer's storage media, whether permanent hard drive or removable, by using Symantec's "Wipe Info," or similar software, provided by Applicant at the Applicant's expense.

8. Each document that contains or reveals proprietary information shall be marked "Contains Proprietary Information" in a conspicuous manner.

9. I shall use proprietary information only for the purpose of preparation for this proceeding (including any related Commission or judicial proceedings).

10. I shall keep a record of all documents containing or revealing proprietary information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding (including any related Commission or judicial proceedings), or at the conclusion of my participation in this proceeding (whichever comes first), I shall both (a) account to the Licensing Board for all the documents or other materials containing or revealing proprietary information in

my possession or control, and (b) submit such documents (including any and all portions of any notes taken in connection with review of the documents) by U.S. Postal Service registered, certified, or express mail to the Licensing Board for destruction.

11. Either during or after this proceeding, I will not publicly reveal any proprietary information that I receive by virtue of this proceeding as long as the information remains proprietary and is not otherwise a matter of public record.

12. I acknowledge that any violation of the terms of this affidavit or the Licensing Board's June 29, 2001 protective order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions on me or the organization I represent, as the Licensing Board or the Commission may deem to be appropriate. I further acknowledge that any unauthorized disclosure of proprietary information or violation of the protective order issued in this proceeding may be grounds for (a) the imposition of civil and/or criminal penalties, as set forth in 10 C.F.R. § 70.91, sections 223 and 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2273, 2282), Chapter 90 of Title 18 to the United States Code and/or (b) civil liability to DCS, its partners, or affiliates.

WHEREFORE, I do solemnly agree to protect and keep confidential such proprietary information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit. I clearly understand that my obligations to protect and keep confidential such proprietary information survive the termination of this proceeding and remain in effect until such time as the information is no longer proprietary or is a matter of public record.

Dein C., Harman, Curran, Spielberg & Spielberg
(Name and Organization)

Subscribed to and sworn before me this 19th day of July, 2001.

Beverly R. Phillips
Notary Public **Beverly Y.R. Phillips**
Notary Public, District of Columbia
My commission expires: My Commission Expires 5-31-04

NONDISCLOSURE AFFIDAVIT

I, Edwin S. Lyman, PhD, being duly sworn, state:

1. As used in this nondisclosure affidavit:

(a) "Proprietary information" is (i) any information that is properly exempt from public disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and 10 C.F.R. § 2.790(a)(4), or (ii) any information obtained by virtue of these proceedings which is not otherwise a matter of public record and which reveals the proprietary information.

(b) Proprietary information does not include any information or document contained in the files of the Commission, any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court.

(c) An "authorized person" is (i) an employee, consultant, or contractor of the United States Nuclear Regulatory Commission (Commission or NRC) entitled to access to the proprietary information; (ii) a person who, at the invitation of the Atomic Safety and Licensing Board (Licensing Board), has executed a copy of this affidavit; or (iii) a person employed by or on behalf of the

Applicant and authorized by it in accordance with NRC regulations to have access to proprietary information.

(d) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer software, computer disks or diskettes, computer storage devices or any other medium, and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs, and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

2. I have read the June 29, 2001 Licensing Board protective order issued in this proceeding and will comply in all respects with its terms and conditions regarding the proprietary information produced in connection therewith. I will protect and keep confidential proprietary information in accordance with the terms of this affidavit.

3. I will not disclose proprietary information to anyone except an authorized person. I will protect documents containing or revealing proprietary information in written or recorded form (including any portions of transcripts of in camera hearings, filed testimony, or any other documents that contain or reveal such proprietary information), so that the proprietary information contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.

4. I will not transmit by electronic or facsimile transmission any material containing proprietary information. In addition to pleadings and filings, any transmissions of material containing proprietary information will be transmitted utilizing the identical method set forth in Paragraph G.1. b. and c. of the Licensing Board's

June 29, 2001 protective order.

5. When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and protect all documents containing or revealing proprietary information (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other storage container.

6. Any secretarial or administrative work performed at my request or under my supervision will be performed by personnel who also have been qualified for such access and who also have executed a nondisclosure affidavit.

7. To the extent that I use a computer to generate or revise documents that contain or reveal proprietary information, the generated or revised documents shall only be saved to disks (not to a hard drive), which disks shall be stored in a locked storage container or safe. When the information has been saved to disk, all temporary electronic files that are automatically generated on the hard drive must be deleted. At the earlier of (a) the conclusion of this proceeding (including any related Commission or judicial proceedings), (b) the conclusion of my participation in this proceeding, or (c) the sale or transfer of the computer used to generate or revise documents that contain or reveal proprietary information to or by a person not qualified under the Licensing Board's June 29, 2001 protective order, I will permanently destroy proprietary information that may be stored on that computer's storage media, whether permanent hard drive or removable, by using Symantec's "Wipe Info," or similar software, provided by Applicant at the Applicant's expense.

8. Each document that contains or reveals proprietary information shall be marked "Contains Proprietary Information" in a conspicuous manner.

9. I shall use proprietary information only for the purpose of preparation for this

proceeding (including any related Commission or judicial proceedings).

10. I shall keep a record of all documents containing or revealing proprietary information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding (including any related Commission or judicial proceedings), or at the conclusion of my participation in this proceeding (whichever comes first), I shall both (a) account to the Licensing Board for all the documents or other materials containing or revealing proprietary information in my possession or control, and (b) submit such documents (including any and all portions of any notes taken in connection with review of the documents) by U.S. Postal Service registered, certified, or express mail to the Licensing Board for destruction.

11. Either during or after this proceeding, I will not publicly reveal any proprietary information that I receive by virtue of this proceeding as long as the information remains proprietary and is not otherwise a matter of public record.

12. I acknowledge that any violation of the terms of this affidavit or the Licensing Board's June 29, 2001 protective order, which incorporates the terms of this affidavit, may result in the imposition of such sanctions on me or the organization I represent, as the Licensing Board or the Commission may deem to be appropriate. I further acknowledge that any unauthorized disclosure of proprietary information or violation of the protective order issued in this proceeding may be grounds for (a) the imposition of civil and/or criminal penalties, as set forth in 10 C.F.R. § 70.91, sections 223 and 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2273, 2282), Chapter 90 of Title 18 to the United States Code and/or (b) civil liability to DCS, its partners, or affiliates.

WHEREFORE, I do solemnly agree to protect and keep confidential such proprietary information as may be disclosed to me in this proceeding, in accordance with the terms of this affidavit. I clearly understand that my obligations to protect and keep confidential such proprietary information survive the termination of this proceeding and remain in effect until such time as the information is no longer proprietary or is a matter of public record.

Chad G. Ph.D. Nuclear Control Institute
(Name and Organization)

Subscribed to and sworn before me this 25th day of July, 2001.

Chang Ho Choi
Notary Public CHANG HO CHOI, NOTARY PUBLIC
DISTRICT OF COLUMBIA
My commission expires: COMMISSION EXPIRES: 6/14/2004

CERTIFICATE OF SERVICE
by Georgians Against Nuclear Energy
(Docket # 70-3098)

I hereby certify that copies of Stipulation between DCS and GANE regarding access to proprietary information were served July 30, 2001 upon the persons listed below by both e-mail and U.S. Postal Service First Class Mail.

Rulemakings and Adjudications Staff
Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
hearingdocket@nrc.gov

Donald J. Silverman, Esq.
Morgan, Lewis & Bockius
1800 M Street N.W.
Washington, D.C. 20036
dsilverman@morganlewis.com

Administrative Judge Thomas S. Moore
Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
tsm2@nrc.gov

Ruth Thomas, President
Environmentalists, Inc.
1339 Sinkler Road
Columbia, SC 29206

Administrative Judge Charles N. Kelber
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
cnk@nrc.gov

Donald J. Moniak
Blue Ridge Environmental Defense
League
P.O. Box 3487
Aiken, SC 29802
donmoniak@earthlink.net

Administrative Judge Peter S. Lam
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
psl@nrc.gov

Edna Foster
120 Balsam Lane
Highlands, NC 28741
emfoster@gte.net

John T. Hull, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
jth@nrc.gov