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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD**

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

_____)	
In the Matter of)	
DUKE COGEMA STONE & WEBSTER)	Docket No. 0-70-03098-ML
(Savannah River Mixed Oxide Fuel)	ASLBP No. 01-790-01-ML
Fabrication Facility))	
_____)	

**GEORGIANS AGAINST NUCLEAR ENERGY'S
MOTION TO DISMISS LICENSING PROCEEDING
OR, IN THE ALTERNATIVE, HOLD IT IN ABEYANCE**

I. INTRODUCTION AND SUMMARY

Georgians Against Nuclear Energy ("GANE") respectfully requests that the Atomic Safety and Licensing Board ("ASLB") dismiss this proceeding for the authorization of construction of Duke Cogema Stone & Webster's ("DCS's") proposed Mixed Oxide Fuel Fabrication Facility ("MOX Facility"), on the ground that NRC regulations contain no provision for separate docketing of an application for construction authorization. At least nine months before receiving approval for construction, 10 C.F.R. §§ 70.21 (f) and 70.22 require that DCS must submit a completed license application for

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construction *and* operation. Because DCS has failed to meet these requirements, the construction application must be dismissed.

This is not a case involving a “minimally flawed” application, *see Curators of the University of Missouri* (TRUMP-S Project), CLI-95-8, 41 NRC 386, 395 (1995), in which the Commission generally leaves the question of whether a license application is sufficiently complete to the NRC Staff. Instead, this case involves an unlawful decision by the Nuclear Regulatory Commission (“NRC”) Staff to allow DCS to submit a construction permit application in lieu of the complete construction/operating license application required by the regulations, and to conduct an illegally truncated safety and environmental review based on an incomplete record.

Moreover, the NRC Staff’s decision to permit DCS to file an incomplete license application reflects a fundamental procedural infirmity in the environmental review as planned by the NRC Staff. The Staff apparently intends to prepare and issue an Environmental Impact Statement (“EIS”) for the entire life of the MOX facility, including construction and operation, without conducting a safety review of the operation-related portions of the license application. The NRC cannot claim to have taken the “hard look” at environmental impacts that is required by the National Environmental Policy Act (“NEPA”), *see Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972), if it fails to make the fundamental safety

determination of whether a proposed nuclear facility poses undue risk to public health and safety.

This proceeding also lacks other procedural ingredients that are necessary to a full and fair hearing. Contrary to the requirements of 10 C.F.R. § 2.1231, there is no hearing file containing a complete license application and NRC safety and environmental findings; nor is there any prospect that one will be completed anytime soon. In addition, because the NRC Staff has yet to establish a Memorandum of Understanding (“MOU”) with the Department of Energy (“DOE”) that would clarify respective NRC roles and responsibilities with respect to the operation of the MOX Facility, the standards governing facility operation remain unclear.

DCS’s failure to file a completed license application or environmental report, the lack of a completed hearing file that includes NRC Staff safety and environmental conclusions, and the NRC’s failure to clarify potential conflicts between DOE and NRC operational requirements, have severely prejudiced the ability of GANE and other intervenors to evaluate and prepare contentions on safety and environmental issues. Under the circumstances, it would be a serious miscarriage of justice to proceed with the hearing. Therefore, GANE respectfully requests that the ASLB dismiss this licensing proceeding, without prejudice to DCS’s ability to file a complete license application at some later date. In the alternative, GANE requests the ASLB to hold the proceeding in abeyance until a complete license application is submitted and the hearing file has been

completed. If and when the license application is completed and the proceeding is resumed, GANE requests that it be given leave to submit a new set of contentions without application of the late-filing standard.

Because the NRC Commissioners have adopted a litigation schedule for this proceeding that implicitly suggests approval of the Staff's approach to the litigation, *see* CLI-01-13, Order Referring Petitions for Intervention and Requests for Hearing to Atomic Safety and Licensing Board Panel (June 14, 2001), GANE recognizes that the ASLB may not consider that it has authority to rule on the issues raised in this motion. Therefore, GANE requests that to the extent necessary, the ASLB refer this motion to the Commission pursuant to 10 C.F.R. §§ 2.718(i) and 2.730(f).¹

II. BACKGROUND

A. Regulatory Framework

1. Applications for plutonium processing licenses

Construction and operation of plutonium processing facilities is governed by NRC regulations in 10 C.F.R. Part 70. These regulations contemplate that an applicant will file

¹ GANE also notes that, while this motion does not directly relate to the contents of a contention, it concerns the entire scheme of this proceeding for the filing of contentions, and therefore directed certification may be appropriate under the Commission's Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 23 (1998) (encouraging boards to certify "novel" issues relating to the admission and litigation of contentions); and CLI-01-13 ("If rulings on the admission of contentions, or the admitted contentions themselves, raise novel legal or policy questions, the presiding

a single application that is complete with respect to both construction and operation. 10 C.F.R. § 70.21(a) provides that a person “may apply for a license to possess and use special nuclear material in a plutonium processing or fuel fabrication plant ... by filing 25 copies of the application with the Director, Office of Nuclear Material Safety and Safeguards.” Pursuant to 10 C.F.R. § 70.21(f), an application for a license to possess and use special nuclear material for processing and fuel fabrication, “or for the conduct of any other activity which the Commission has determined pursuant to Subpart A of Part 51 of this chapter will significantly affect the quality of the environment,” must be filed “at least 9 months prior to commencement of construction of the plant or facility in which the activity will be conducted.” In addition, § 70.21(f) requires that the application “shall be accompanied by an Environmental Report required under Subpart A of Part 51 of this Chapter.”

The contents of a special nuclear materials license application are specified in 10 C.F.R. § 70.22. The subsections of this regulation applicable to plutonium processing facilities require an applicant to provide a description of its technical qualifications (§ 70.22(a)(6)), a description of equipment and facilities which will be used by the applicant to protect health and minimize danger to life or property (§ 70.22(a)(7)), proposed procedures to protect health and minimize danger to life or property (§ 70.22(a)(8)), a

officer should readily refer or certify such rulings or questions to the Commission on an interlocutory basis.”)

decommissioning funding plan or certification of financial assurance for decommissioning (§ 70.22(a)(9)), a description of the material control and accounting plan (§ 70.22(b)), a physical protection plan (§ 70.22(h)), either an evaluation showing that offsite doses are minimal or an emergency plan (§ 70.22(i)), a safeguards contingency plan (§ 70.22(j)), and a security plan (§ 70.22(k)). In addition, under certain circumstances, 10 C.F.R. § 70.24 requires an applicant to address measures for preventing criticality accidents, and § 70.25 requires financial assurance for decommissioning.

Included in these requirements, § 70.22(f) requires that:

Each application for a license to possess and use special nuclear material in a plutonium processing and fuel fabrication plant shall contain, *in addition to the other information required by this section*, a description of the plantsite, a description and safety assessment of the design bases of the principal structure, systems, and components of the plant, including provisions for protection against natural phenomena, and a description of the quality assurance program to be applied to the design, fabrication, construction, testing and operation of the structures, systems, and components of the plant.

(emphasis added). Thus, the regulations contemplate that information related to design and quality assurance will be submitted in addition to, not in lieu of, the other elements of a license application.

2. Review of applications

The standard for approval of a special nuclear materials license application is found in 10 C.F.R. § 70.23(a), which provides that an application will be approved if the

Commission determines that the facility meets various requirements for safe operation, e.g., that it will be used for an appropriate purpose under the Atomic Energy Act, that the applicant is qualified by reason of training and experience to use the material, that the proposed equipment and facilities are adequate to protect health and minimize danger to life or property, that the applicant's procedures are adequate, and that the applicant is financially qualified (where appropriate). See 10 C.F.R. 70.23(a)(1)-(12). Other provisions require the NRC to approve measures for preventing criticality accidents and financing decommissioning. See 10 C.F.R. §§ 70.24 and 70.25.

For plutonium processing and fuel fabrication plants, § 70.23 establishes an additional licensing requirement related to the safe design and construction of the facility. Section 70.23(b) requires prior NRC approval of the construction of "the principal structures, systems, and components" of the plant. This approval is to take place:

when the Commission has determined that the design bases of the principal structures, systems, and components, and the quality assurance program provide reasonable assurance of protection against natural phenomena and the consequences of potential accidents.

Id. When construction is completed, and in order to issue the license, the NRC must find that "construction of the principal structures, systems, and components approved pursuant to paragraph (b) of this section has been completed in accordance with the application."

10 C.F.R. § 70.23(a)(8).

Section 70.23(a)(7) also requires that, before construction of a processing and fuel fabrication facility begins, the NRC must complete its environmental review.

Accordingly, the NRC Staff must weigh “the environmental, economic, technical and other benefits against environmental costs and considering available alternatives,” and determine “that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values.” *Id.*² See also letter from Andrew Persinko, NRC, to Peter S. Hastings at 2, DCS (January 17, 2001) (“Persinko Letter”) (construction of the proposed MOX facility cannot begin “until the NRC’s environmental review is completed”) (attached as Exhibit 1 to this motion).

² The full text of § 70.23(a)(7) provides as follows:

Where the proposed activity is processing and fuel fabrication, ... the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion is grounds for denial to possess and use special nuclear material in the plant or facility. As used in this paragraph, the term ‘commencement of construction’ means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, roads necessary for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

B. Factual and Procedural Background

On February 28, 2001, via letter from Robert H. Ihde, DCS, to William F. Kane, NRC, DCS submitted a Construction Authorization Request (“CAR”), Quality Assurance (“QA”) Plan, and Environmental Report. The CAR does not purport to be the complete license application for the MOX Facility. Instead, it contains only that information which DCS considers necessary to satisfy 10 C.F.R. § 70.23(b), *i.e.*, information related to the design of the facility and the QA program. The CAR omits information related to operating the MOX Facility that it does not consider relevant to the approval of construction.³

Before filing the CAR, DCS sought and obtained NRC Staff approval to file the MOX Facility license application in stages. *See* letter from Peter S. Hastings, DCS, to Eric J. Leeds, NRC (November 1, 2000) (attached as Exhibit 2 to this motion) and the responsive Persinko Letter. The Persinko Letter confirms that the CAR will be treated as a “first step” in the process of seeking authorization to build and operate the MOX Facility, and that the NRC Staff considers it a part of the license application. *Id.* at 2. The letter also informs DCS that under a schedule proposed by DCS for review of the CAR and issuance of a construction permit, the NRC intends to treat the filing of the

³ *See, for example*, Duke Cogema Stone & Webster’s Answer to Georgians Against Nuclear Energy’s Request for Hearing Regarding Mixed Oxide Fuel Fabrication Facility Construction Authorization Request at 15, 24 (June 1, 2001), which opposes admission of

CAR and Environmental Report as complying with the requirement of 10 C.F.R. § 70.21(f) that the license application must be filed at least nine months prior to the commencement of construction. *Id.* Finally, the Persinko Letter states that construction of the proposed MOX Facility cannot begin “until the NRC’s environmental review is completed.” *Id.*

On March 7, 2001, the NRC published a Notice of Intent to Prepare an Environmental Impact Statement for the Mixed Oxide Fuel Fabrication Facility, 66 Fed. Reg. 13,794. The Notice of Intent announced that the NRC Staff had received the CAR from DCS, and was in the course of determining its acceptability for docketing. *Id.* at 13,795. The Notice of Intent also stated that the NRC would continue the process of scoping the EIS and issue a notice of opportunity for hearing regarding the CAR if the CAR were accepted for docketing. *Id.*

In addition, the Notice of Intent also announced the NRC’s expectation that the license application for authorization to operate the MOX Facility would not be filed until 2002, and that the NRC plans to hold a separate hearing regarding operation if that application is accepted and formally docketed. *Id.*

a number of safety-related contentions on the ground that they relate to operational aspects of the license application that have not yet been filed.

On April 18, 2001, the NRC issued a notice declaring that the CAR had been accepted for docketing, and announcing an opportunity for a hearing with the following scope:

In order to approve the CAR, the NRC must find that the design bases of the proposed MOX fuel fabrication facility's principal structures, systems, and components, together with the DCS quality assurance plan, 'provides reasonable assurance of protection against natural phenomena and the consequences of potential accidents.' 10 CFR 70.23(b). Additionally, to meet the NRC's responsibilities under the National Environmental Policy Act (NEPA), the NRC's environmental review of the proposed licensing action must determine whether 'the action called for is the issuance of the proposed license.' 10 C.F.R. 70.23(a)(7).

Notice of Acceptance of Application for Docketing, and Notice of Opportunity for a Hearing, 66 Fed. Reg. 19,994, 19,995. The Notice of Hearing added that:

If the necessary findings are made and the CAR is approved, construction of the MOX fuel fabrication facility could then begin. In order to authorize operation of a MOX fuel fabrication facility (i.e., by granting a 10 CFR part 70 license), the NRC must find that construction of the facility has been properly completed (see 10 CFR 70.23(a)(8)), and that all other applicable 10 CFR part 70 requirements have been met.

Id. Finally, the Notice stated that the proceeding would be conducted under the informal hearing procedures of Subpart L to 10 C.F.R. Part 2 except as otherwise specified. *Id.*

In response to the Notice of Hearing, GANE, Blue Ridge Environmental Defense League, Environmentalists, Inc., and Charles and Edna Foster filed petitions to intervene and requests for hearing.

On May 25, 2001 the NRC Staff issued a revision to a detailed proposed schedule for the MOX Facility review and published the schedule on its website. See www.nrc.gov/NRC/NMSS/MOX/licensprocess.html (“MOX licensing process,” “Proposed MOX Fuel Fabrication Facility Licensing Schedule”).)A hard copy of the proposed schedule is attached as Exhibit 3 to this motion.) The proposed schedule includes the following milestones:

February 28, 2002	Staff issues Draft EIS for public comment
April 30, 2002	Staff issues draft Safety Evaluation Report (“SER”) for construction of MOX Facility
July 31, 2002	DCS submits license application for operation of MOX Facility
September 30, 2002	Staff issues Final EIS
September 30, 2002	Staff issues SER for construction of MOX Facility
July 31, 2004	Staff issues final SER for operating license
October 31, 2004	Hearing on operating license begins

Thus, it is apparent from this schedule that the Staff does not intend to begin, let alone complete, the safety review for operation of the proposed MOX Facility until after the EIS is issued.

On June 14, 2001, the NRC Commissioners issued CLI-01-13. The Commission reiterated that Subpart L would apply unless otherwise specified, and modified the Subpart L procedures somewhat to provide for the filing of contentions in lieu of

statements of concern, a period of discovery, and the option for oral questioning of witnesses by the presiding officer as necessary. *Id.*, slip op. at 2, 3-5. The Commission also confirmed the scope of the proceeding as defined in the Notice of Hearing. *Id.*, slip op. at 6. Finally, the Commission directed the ASLB to establish a schedule for the hearing, based on a goal of issuing an initial decision on the CAR within two years of the submission of the CAR. *Id.*, slip op. at 7. On July 17, 2001, the ASLB issued a Memorandum and Order setting a litigation schedule and establishing procedures for the “first phase” of the MOX Facility licensing proceeding.

III. ARGUMENT

The Staff’s decision to docket DCS’s CAR and put out a notice of hearing is fundamentally defective, for several reasons. First, there is no provision in Part 70 regulations for the separate docketing of a construction permit application, and the CAR filed by DCS is fundamentally inadequate to constitute the completed license application that is required by 10 C.F.R. § 70.22. Second, the Staff’s decision to allow DCS to postpone the filing of a complete license application violates NEPA because it is based on the Staff’s unlawful intention to issue an EIS without evaluating the question of whether operation of the MOX Facility will comply with NRC regulations and therefore pose no undue risk to public health and safety. Third, the NRC Staff’s proposed schedule unlawfully contemplates that litigation will go forward before the completion of the hearing file, which must include Staff safety evaluations and the final EIS. Finally, it

appears that the NRC and DOE have not yet resolved questions about their respective regulatory functions over the MOX Facility, and therefore the nature of applicable standards remains unresolved.

Under these circumstances, continuation of this litigation would be prejudicial to GANE and other intervenors. The proceeding should therefore be dismissed. In the alternative, it should be held in abeyance pending submission of a complete license application and completion of the hearing file.

A. The License Application Is Fundamentally Deficient Because It Lacks Information Relating to the Safety of Operation.

The NRC Staff has established a two-step licensing process for the MOX facility, under which it has permitted DCS to file its license application in two parts, (1) construction/QA/environmental and (2) operational, and for which the NRC intends to review the application in two phases. The Staff also intends to cut off environmental review before the second phase is complete.

In the current phase of the proceeding, the NRC Staff proposes to issue what amounts to a construction permit, based only on the information contained in the CAR, the Environmental Report, and the Quality Assurance Plan. Not until the year 2004, long after the construction permit and Final EIS have been issued, does the NRC Staff plan to issue findings regarding the safety of operating the MOX Facility.

The two-step construction permit/operating license process established by the NRC Staff is similar to a two-step licensing proceeding for the licensing of a nuclear power plant. The trouble with the Staff's scheme is that unlike two-step reactor licensing, which is permitted by both the Atomic Energy Act and its implementing regulations, neither the Atomic Energy Act nor NRC regulations authorizes two-step licensing of plutonium processing plants. The Act does not contain any such provision moreover, as discussed above in Section II.A.1, the Part 70 regulations specifically provide for the filing of a single license application.⁴

The NRC Staff and DCS apparently believe that, because the regulations provide for approval of construction before issuance of the license, this means that an applicant can get approval to build a plutonium processing facility based on submission of construction-related and environmental documents alone, without turning in a complete license application for the operation of the facility. However, their position is inconsistent with the plain language of 10 C.F.R. § 70.22, which dictates in detail the required contents of a single "license application," and makes no distinction between construction-related and operations-related applications. Indeed, 10 C.F.R. § 70.22(f)

⁴ In contrast, two-step licensing of nuclear power plants is specifically permitted by the Atomic Energy Act. *See* 42 U.S.C. § 2235. In addition, NRC regulations set forth in detail separate sets of requirements for the contents of construction permit and operating license applications for nuclear power plants. *See* 10 C.F.R. §§ 50.34(a) and (b). 10 C.F.R. § 2.101(a)(3) also specifically provides that construction permit and operating

specifically provides that the construction-related information required by subsection (f) is “*in addition to* the other information required by [§ 70.22].” *Id.* (emphasis added). In addition, § 70.21(f) refers to a single license application that must be filed nine months before commencement of construction.

Moreover, the history of the Part 70 regulations for plutonium processing shows that the Commission’s purpose in providing for pre-licensing approval of plutonium plant designs was to strengthen the safety requirements for a particularly dangerous type of facility, not to provide a short-cut for early construction before completion of a license application. As the Commission announced in proposing the regulations, their purpose was to “provide for Commission review of the site and design bases for plutonium processing and fuel fabrication for which a license is sought, prior to the beginning of plant construction.” Proposed Rule, Plutonium Processing and Fuel Fabrication Plants, 36 Fed. Reg. 9,786 (May 28, 1971). The Commission’s heightened concern for the safety of plutonium processing facilities is evident in the statement of considerations for the Final Rule, which directs applicants to “select sites which are at reasonable distances from densely populated areas.” Final Rule, Plutonium Processing and Fuel Fabrication Plants, 36 Fed. Reg. 17,573, 17,574 (September 2, 1971). In addition, the Commission

license applications will be filed separately. No comparable provisions exist for plutonium processing facilities.

considered the rule to be so important “in regard to the public health and safety” that it made the rule immediately effective on publication. *Id.*

An important element of the new rule was the requirement that the entire application must be filed at least six months before commencement of construction:

Under the proposed amendments, an application for a license to possess and use special nuclear material in a plutonium processing and fuel fabrication plant would have to be filed at least 6 months before the beginning of plan construction. Such an application would be required to contain, *in addition to other required information*, a description of the plant site, a description and safety assessment of the design bases of the principal plant structures, systems and components and a description of the quality assurance program to be applied to the design, fabrication, construction, testing and operation of structures, systems and components of the plant.

Id. (emphasis added).⁵ Thus, the Commission clearly contemplated that the review of the operating license application and design bases would take place simultaneously, not sequentially as proposed in this case. *See* 36 Fed. Reg. at 17,574.

Accordingly, the regulations and their history reflect the Commission’s intention to require the filing of a single and complete license application covering all design and operational issues, in order to ensure that the special hazards posed by plutonium processing facilities are adequately addressed. The Commission’s intent was to

⁵ The time for filing a license application was subsequently lengthened to nine months, “[i]n order to assure that an opportunity is provided for full consideration of environmental effects before site preparation is begun.” Final Rule, Prohibition of Site Preparation and Related Activities, 37 Fed.Reg. 5,745 (March 21, 1972). Again, this change shows an intention by the Commission to permit sufficient time for review of the

strengthen the NRC's safety review for plutonium processing facilities, not weaken it by permitting construction to begin before a completed license application had been submitted.⁶

The weakening effect of the NRC's bifurcated approach to reviewing the DCS license application is readily apparent. Under 10 C.F.R. § 70.23(b), in order to approve construction, the NRC must find that "the design bases of the principal structures, systems, and components and the quality assurance program provide reasonable assurance of protection against natural phenomena and the consequences of accidents." Without the benefit of details about the proposed operation and procedures as required by 10 C.F.R. § 70.22(a)(8), however, it is difficult to fully assess the manner in which natural phenomena may affect the plant, and what kinds of accidents may occur. As a result, it is difficult to determine whether structures, systems and components are adequately designed to protect against natural phenomena and accident consequences. Similarly, it is difficult to fully assess the adequacy of a quality assurance plan for plant

entire license application before construction began, including newly required environmental documents.

⁶ GANE is not aware of any Commission adjudicatory decisions applying the Part 70 regulations to plutonium processing facilities. Although a separate construction permit was issued for a plutonium processing facility in December of 1970, the application was filed in 1968, before the regulations were promulgated. *See* Initial Decision, *Allied-Gulf Nuclear Services, Allied Chemical Nuclear Products, Inc., and Gulf Energy and Environmental Systems, Inc.* (Barnwell Nuclear Fuel Plant), 3 AEC 483 (1970), *affirmed*, 4 AEC 523 (1971). Thus, it does not appear that the Part 70 regulations were applied in that case.

operations, where detailed information about operations and procedures has not been provided.

This difficulty is illustrated in GANE's Contention 1, regarding the adequacy of the design of the MOX Facility to comply with NRC safeguards requirements. In evaluating DCS's satisfaction of 10 C.F.R. § 70.23(b), GANE has found that it is extremely difficult to assess the adequacy of the facility's design in the absence of a Material Control and Accounting Plan. *See* GANE's Contentions (August 13, 2001). In addition, as discussed in Section B. below, the incompleteness of the license application frustrates a complete environmental review.⁷

B. The Current Litigation Schedule Violates NEPA Because It Is Based on the Staff's Unlawful Proposal to Issue an EIS Without Reviewing the Safety of Operating the MOX Facility.

As provided by 10 C.F.R. § 70.22(a)(7), the NRC Staff must complete its environmental review of the entire license application, from construction through termination of the license, before allowing any construction to begin on the MOX

⁷ Recently, the NRC Staff issued a Standard Review Plan that is specifically tailored to the licensing of the proposed MOX Facility. NUREG-1718, Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility (August 2000). The Standard Review Plan states that the NRC Staff "does not require the applicant to submit a full license application to make a determination regarding the construction approval." A Standard Review Plan, however, does not have the force of law; it merely constitutes guidance by the NRC Staff. *Louisiana Energy Services, L.P.* (Claiborne Enrichment Center), LBP-91-41, 34 NRC 332, 354 (1991). Because the Staff's guidance in this case is so thoroughly inconsistent with the

Facility. The NRC Staff appears to concur that a complete environmental review is required. *See* Persinko Letter, Exhibit 1. In conducting its environmental review, however, the NRC Staff apparently has no intention of reviewing DCS's compliance with NRC requirements for safe operation of the MOX Facility. Under the schedule proposed by the NRC Staff, at the time the Final EIS is issued (September 30, 2002), the Staff will have completed its safety review only for the construction of the facility.⁸ The proposed date for submission by DCS of the license application for operation of the MOX Facility is not until July 31, 2002, two months before issuance of the Final EIS; and the Staff does not anticipate issuing an SER for operation until July 31, 2004, almost two years *after* issuance of the Final EIS. *See* Exhibit 3.

In an EIS, the NRC must comply with NEPA "to the fullest extent possible" by taking a "hard look" at environmental impacts. *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972). The NRC Staff cannot possibly be deemed to have taken a "hard look" at the impacts of the proposed MOX Facility if its evaluation does not include an assessment of whether the applicant will minimize risks to public health and the environment by complying with safety and safeguards regulations. As the D.C. Circuit Court of Appeals held in *Citizens for Safe Power v. NRC*, 524 F.2d 1291,

regulations and the contemporaneous statements by the NRC Commissioners in promulgating them, it must be rejected as an inappropriate interpretation of the rules.

⁸ The proposed schedule anticipates that the Safety Evaluation Report ("SER") for construction will be issued on the same date as the Final EIS. *See* Exhibit 3.

1299 (D.C. Cir. 1975), the requirements of the Atomic Energy Act cannot “be viewed separate and apart from NEPA considerations.”⁹ As the Commission held in *Maine Yankee Atomic Power Company* (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1004 (1973), compliance with NRC regulations is the “*sine qua non*” of fulfillment of the statutory standard of “adequate protection” and “no undue risk” to public health and safety. After the determination of regulatory compliance and adequate protection is made, then the EIS must also concern itself with the “residual risk” that remains. *Citizens for Safe Power*, 524 F.2d at 1300.¹⁰

⁹ Subsequent to the D.C. Circuit’s decision in *Citizens for Safe Power*, in *Limerick Ecology Action v. NRC*, 869 F.2d 719, 729 (3rd Cir. 1989), the Third Circuit Court of Appeals rejected an argument by the NRC that a finding of compliance with NRC safety requirements obviated any need to consider alternatives for mitigating severe accident consequences under NEPA. However, the Court did not disturb the finding in *Citizens for Safe Energy* that, where the concerns under the Atomic Energy Act and NEPA are the same, “it would be stultifying formalism to disregard the whole record and test AEA compliance by only the evidence received at so-called “health and safety hearings; or NEPA compliance only on the basis of so-called “environmental hearings.” See *Citizens for Safe Power*, 524 F.2d at 1299; *Limerick Ecology Action*, 869 F.2d at 730.

¹⁰ Two examples of previously issued EIS’s illustrate the NRC’s longstanding practice of relying on findings of regulatory compliance in their environmental reviews. For instance, the Final EIS for the construction and operation of the Claiborne Enrichment Center, a proposed uranium enrichment plant, placed fundamental reliance on safety findings for its assessment of environmental impacts:

In conclusion, analyses of the potential environmental impacts associated with construction and operation of CEC [Claiborne Enrichment Center] indicates that adverse impacts are small and are outweighed by the substantial socioeconomic benefits associated with plant construction and operation. Concurrently, NRC has completed a safety evaluation of the proposed facility (NUREG-1491), in which

With respect to the operation of nuclear facilities, the health and environmental impacts of greatest concern are the radiological impacts incurred during normal operations and accidents. These impacts are controlled chiefly through the imposition of regulatory limits on the design and operation of the facilities. If an EIS lacks sufficient information to reach a conclusion regarding an applicant's compliance with the "no undue risk" standard, *i.e.*, the applicant's compliance with NRC regulations for protection of the public from radiological hazards, then it lacks a fundamental basis for any assessment of environmental impacts under NEPA. Yet, this is exactly what the NRC Staff proposes to do, by issuing an EIS before it has had an opportunity to review the adequacy of the license application to support the safety of operation of the MOX Fuel Facility.

the NRC staff concluded that CEC operation will be conducted in a safe and acceptable manner. The FEIS supports licensing for LES [Louisiana Energy Services].

NUREG-1484, Final Environmental Impact Statement for the Construction and Operation of Claiborne Enrichment Center, Homer, Louisiana at xxvi (August 1994) (relevant pages attached as Exhibit 4).

Another example can be seen in the Final EIS for operation of the Seabrook nuclear power plant. NUREG-0895, Final Environmental Statement Related to the Operation of Seabrook Station Units 1 and 2 (December 1982) (relevant pages attached as Exhibit 5). With respect to the analysis of the risks of design-basis accident, the EIS relies on the "safety analysis and evaluation of Seabrook Units 1 and 2." *Id.* at 5-46. The NRC Staff's conclusion that the likelihood of an accident is small is based in part on "the fact that, in order to obtain a license to operate the Seabrook facility, the applicant must comply with the applicable Commission regulations and requirements." *Id.* at 5-71.

C. The Litigation Should Not Go Forward Because the Hearing File Is Substantially Incomplete and Will Remain So For An Extended Period.

Subpart L, which governs this proceeding, requires the establishment of a hearing file consisting of:

the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application.

10 C.F.R. § 2.1231(b). Here, the majority of the DCS license application is missing, and will not be filed until the summer of 2002. In addition, the Staff does not plan to issue the Final EIS or the SER for construction until the fall of 2002; nor does it plan to issue the SER for operation until the summer of 2004. *See* Exhibit 3.

As the Chief Administrative Judge of the ASLB previously noted while presiding in another Subpart L case, “the hearing file forms the basis upon which potential litigants contest the licensing action.” *Hydro Resources, Inc. (Crownpoint Project)*, Memorandum and Order (Proceeding Status) (September 13, 1995) (unpublished) (B. Paul Cotter, Jr., Presiding Officer). (A copy of the decision is attached as Exhibit 6.) In that case, as in this one, the proceeding was docketed and noticed for hearing long before the NRC Staff had completed its safety review or issued the Final EIS. Judge Cotter found that “[u]ntil the staff completes that review and makes its determination either to grant or deny the license application, the hearing file in this proceeding remains incomplete.” *Id.*, slip op.

at 3. Finding that there was “little merit to moving forward at this time on the basis of an incomplete record,” the Presiding Officer ruled that the proceeding should be held in abeyance until the NRC Staff had completed its review of the license application and “a decision has been made to either grant or deny the license application.” *Id.* As the Presiding Officer reasoned, “[t]his will remove any possibility that issues developed on the basis of an incomplete hearing file would have to be relitigated as the hearing file is updated with new information or that resources would be wasted if the application is denied.” *Id.*

The Subpart L regulations clearly preclude informal hearings from going forward until the hearing file is complete, *i.e.*, until the issuance of NRC Staff safety findings and any Final EIS that is required. Accordingly, the proceeding should not be permitted to go forward unless and until the hearing file is complete.

E. The Litigation Is Premature Because the NRC Lacks a Memorandum of Understanding With the Department of Energy.

According to correspondence from Michael F. Weber, Director, Division of Fuel Cycle Safety and Safeguards of the NRC, the NRC is in the process of developing a Memorandum of Understanding with DOE “to clarify respective roles and responsibilities with respect to information, personnel, and physical security.” (E-mail message from Michael F. Weber to Glenn Carroll (June 22, 2001), attached as Exhibit 7.) In a later e-mail message of June 25, 2001, Mr. Weber indicated that the MOU only

addresses security issues, and that responsibilities with respect to protecting safety and the environment” are “sufficiently clear.” *See* Exhibit 7.

According to Mr. Weber, the MOU is “predecisional,” and thus GANE has not been able to review it. Thus, it is impossible for GANE to evaluate whether Mr. Weber’s characterization of the limited scope of the MOU is correct. Even if he is correct, it is difficult to see how security at a plutonium processing plant could be unrelated to protection of public safety and the environment. It is possible that the MOU will affect the standards for safe operation of the MOX Facility, and that measures described in the MOU will also have a bearing on the NRC’s assessment of the environmental impacts of the facility. Therefore, GANE believes that it is premature to go forward with the hearing at this time.

F. Continuation of the Litigation Under the Current Schedule Would Be Prejudicial to GANE and Other Intervenors.

To go forward with the litigation under the current circumstances would be prejudicial to GANE and other intervenors, and wasteful of their resources. Not only is the Staff’s bifurcation of this proceeding illegal as a matter of law, but the piecemeal nature of the license application makes it impossible to perform a complete or effective evaluation of the design, QA and environmental issues that are within the scope of the current hearing. Although this proceeding is limited to issues relating to the design of the facility as described in the CAR, the QA program, and the Environmental Report, it is

impossible to make a meaningful evaluation of those issues without access to the broader context of the complete license application. As discussed above in Section III.A, GANE cannot evaluate the adequacy of the design to ensure adequate safeguards, when there is no safeguards program included in the CAR. Similarly, GANE cannot adequately evaluate the adequacy of the QA program for operation, where a detailed description of the operation and procedures are not provided. In addition, GANE is prejudiced by the lack of clarification regarding the relationship between NRC and DOE operational requirements, and how that may affect standards for operation.

Finally, any assessment of the adequacy of the Environmental Report to address the environmental impacts of the proposed MOX facility depends in large part on whether the operation of the facility will comply with NRC safety requirements. Without a completed license application, there is no basis for making such an evaluation.

GANE and other intervenors are therefore severely handicapped in their ability to participate in this proceeding in a meaningful way. Not only is their ability to participate in this proceeding frustrated, but the anticipated future proceeding on the operating license application will be a largely empty process, because the Final EIS will already have been issued. Moreover, this piecemeal litigation is wasteful of Intervenor's time and resources, because they must spend a great deal of time guessing at information that should have been provided by DCS. In addition, issues raised now may change later

because critical NRC review documents such as safety evaluations and the draft and Final EIS have not been prepared.

IV. CONCLUSION

For the foregoing reasons, the ASLB should dismiss this proceeding. In the alternative, it should hold the proceeding in abeyance pending the submission of a complete license application and the completion of the hearing file. If the ASLB considers that it lacks authority to rule on the issues raised in this motion, GANE requests that the motion be certified to the Commission.

Respectfully submitted,



Glenn Carroll¹¹
for Georgians Against Nuclear Energy
139 Kings Highway
Decatur, GA 30030
404-378-4263

Dated August 13, 2001
in Decatur, Georgia

¹¹ This motion was prepared with substantial assistance from GANE's legal adviser, Diane Curran.

January 17, 2001

Mr. Peter S. Hastings
Licensing Manager
Duke Cogema Stone & Webster
P.O. Box 31847
Charlotte, NC 28231-1847

**SUBJECT: NUCLEAR REGULATORY COMMISSION RESPONSE TO DUKE COGEMA
STONE & WEBSTER LETTERS DCS-NRC-000027 (NOVEMBER 1, 2000) AND
000028 (DECEMBER 6, 2000) REGARDING MIXED OXIDE (MOX) FUEL
FABRICATION FACILITY**

Dear Mr. Hastings:

This letter responds to Duke Cogema Stone & Webster's (DCS') letters to the Nuclear Regulatory Commission (NRC) dated November 1, 2000, about the format and content of the construction authorization request (CAR) and safety assessment of the design bases and December 6, 2000, about the licensing schedule.

Your letter dated November 1, 2000, reflects your intention to submit a CAR as the first step in seeking authorization to build and eventually operate a proposed mixed oxide (MOX) fuel fabrication facility, pursuant to the 10 CFR Part 70 licensing requirements. One of the documents you intend to submit with the CAR is a safety assessment regarding the design bases for the principle structures, systems, and components of the proposed MOX facility. In the letter, you state a concern about "future confusion" as to whether design basis details would be part of the DCS application, and request our concurrence with your view that the safety assessment would not be part of the license application regarding the proposed MOX facility. You proposed this approach in order to be parallel with the revised Subpart H of 10 CFR Part 70 that requires that the Integrated Safety Analysis (ISA) be submitted with a license application, but not be incorporated in the license.

We have reviewed your proposed approach and conclude that the CAR will be considered by NRC to be part of the license application. The provisions of 10 CFR 70.22 set forth the required contents of applications for Part 70 licenses. In these provisions, 10 CFR 70.22(f) specifies that a license application "shall contain" among other things, a "safety assessment of the design bases of the principal structure, systems, and components" of the fuel fabrication facility. As discussed at a meeting on August 31, 1999, that was open to the public, the NRC regards the CAR as being the first part of the DCS license application concerning the proposed MOX facility. Accordingly, the safety assessment, whether you choose to submit it as a separate document or not, will be regarded as part of the CAR and, hence, part of the DCS license application.

In the same letter, you indicated that the ISA summary will summarize the fire hazards analysis but that the fire hazards analysis will be maintained onsite and available for NRC review. Part 70 of 10 CFR does not require that the fire hazards analysis be submitted to NRC. NUREG-1718, the MOX fuel fabrication Standard Review Plan (SRP), describes information that NRC will review and the acceptance criteria that the staff will use in performing a safety

evaluation, including information with respect to a fire hazards analysis. While the staff's preference is that the fire hazards analysis be submitted, it is not required to be submitted. However, sufficient information must be submitted in the application for the staff to review the safety of the facility with respect to fire hazards, regardless of whether that information is submitted in the form of a fire hazards analysis. If necessary, the staff will supplement its review of information included in the application with review of information maintained by DCS either at the facility location or at DCS offices.

Your letter dated December 6, 2000, proposes a schedule whereby DCS will file its Environmental Report on December 22, 2000, the CAR on February 28, 2001, and the filing of the rest of the license application will be deferred until June or July of 2002 [Note that the Environmental Report was submitted to NRC by letter dated December 19, 2000]. The December 6 letter raises a question regarding whether this schedule complies with 10 CFR 70.21(f). The provisions of 10 CFR 70.21(f) state various filing requirements pertaining to applications for Part 70 licenses. The requirement in question states, in pertinent part, that an "application for a license ... shall be accompanied by an Environmental Report," and further specifies that the application is to be filed "at least 9 months prior to commencement of construction." Your view is that filing the Environmental Report and CAR on the dates stated above will constitute compliance with 10 CFR 70.21(f)'s 9-month requirement, and you request our "concurrence with this position." As previously stated, we regard the CAR as constituting the first part of the DCS application for a 10 CFR Part 70 license. Going from February 28, 2001, forward, the NRC's environmental review process concerning construction of the proposed MOX facility would take more than 9 months to complete. Since construction of the proposed MOX facility cannot begin until the NRC's environmental review is completed, and the required findings are made (see 10 CFR 70.23(a)(7)), we agree that under this scenario, the 9-month requirement of 10 CFR 70.21(f) would be met. Of course, our position in this regard is not to be construed as indicating that the NRC's environmental review findings will favor construction of the MOX facility. Concerning the dates proposed in your letter, if the required findings are made, the NRC estimates that it would approve the CAR no later than September 30, 2002. Factored into this date is that NRC will not hold public scoping meetings associated with the environmental review until the CAR has been submitted and accepted by NRC. As you indicated in the letter, a more detailed milestone schedule should be developed and we will work with your staff to develop this schedule.

P. Hastings

3

If have any further questions, please contact me at (301) 415-6522.

Sincerely,

/RA/

Andrew Persinko, MOX Project Manager
Enrichment Section
Special Projects Branch
Division of Fuel Cycle Safety
and Safeguards, NMSS

Docket: 70-3098

cc: Mr. James Johnson, DOE
Mr. Henry Potter, SC Dept of Health &
Environmental Control
Mr. John T. Conway, DNFSB

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DATE	1/10/01		1/12/01		1/12/01		1/17/01			

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DUKE COGEMA
STONE & WEBSTER

Mr. Eric J. Leeds, Chief
Special Projects Branch
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

01 November 2000
DCS-NRC-000027

Attention: Document Control Desk

Subject: Docket Number 070-03098
Duke Cogema Stone & Webster
Mixed Oxide (MOX) Fuel Fabrication Facility
Format and Content of the Construction Authorization Request and Safety
Assessment of the Design Bases

Dear Mr. Leeds:

As you know, Duke Cogema Stone & Webster, LLC (DCS) will be submitting a construction authorization request (CAR) for NRC's approval of construction of the DOE-owned Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF) in the near future. In accordance with the recently revised 10 CFR 70, our request will include a safety assessment (SA) of the design bases for the principle structures, systems, and components of the MFFF, an updated MOX Project Quality Assurance Plan, and an Environmental Report. Subsequently, concurrent with the completion of the final design, we will submit an application for a license to possess and use special nuclear material, along with an Integrated Safety Assessment (ISA) Summary.

In keeping with the provisions of the recently revised 10 CFR 70, the ISA Summary will be submitted with, but will not be part of, the license application (LA). The ISA Summary will be based on and will summarize the various analyses comprising the ISA itself, including nuclear criticality safety analyses, fire hazard analyses, chemical safety analyses, and so forth, which will be maintained by DCS onsite (i.e., at the DCS offices, and later at the MFFF site) and available for NRC review.

Because the ISA Summary's relation to the LA is virtually identical to that of the SA to the CAR, our intent is to submit the SA along with, but not as part of, the CAR. The SA will contain sufficiently detailed descriptions of supporting analyses to enable the NRC Staff to reach their conclusions. In keeping with typical safety analysis report submittals, however, and indeed in keeping with the intent of the ISA Summary as envisioned by 10 CFR 70, the SA will not contain the analyses themselves.

PO Box 31847
Charlotte, NC 28231-1847

400 South Tryon Street, WC-32G
Charlotte, NC 28202

NmssolPublic

Mr. Eric J. Leeds
DCS-NRC-000027
01 November 2000
Page 2 of 2

We intend generally to follow the format indicated in NUREG-1718 for the CAR and SA. For Chapters 5, 6, 7, 8, and 9, programmatic descriptions and commitments will be included in the CAR, and descriptions of design bases and results of analytical work to date will be contained in the SA. For Chapter 11, the descriptions of principle SSCs will be included in the SA.

Chapter 9 deals primarily with radiological safety during normal operations, which is not the focus of the SA (nor of the later ISA and ISA Summary). We nonetheless intend to include related design basis information and analytical results in the SA (and ISA Summary). The reason is that the level of detail of information is generally consistent with that of the SA, and there is an important interface between radiological safety during normal operations and the facility's safety basis intended to protect the workers and the public during postulated accidents. We believe this construct is consistent with previous discussions between the NRC Staff and fuel cycle industry representatives.

The separation of the CAR and SA into two documents is consistent with the intent of the recent changes to 10 CFR 70 and its separation of the LA and ISA Summary. We believe submitting the CAR and SA as separate documents for the construction authorization phase is the most straightforward and logical way to establish the framework for future submittals in accordance with the new §70.65. Given the fact that the CAR can be viewed as the first step of the MFFF LA, submittal in this way will also preclude the potential for future confusion regarding details of the design basis that are or are not "part of" the application itself.

It is important to recognize that the largely procedural distinction between the CAR and the SA (as with the distinction between the LA and the ISA Summary) is neither intended to nor will it restrict the amount of information available for review by the NRC Staff.

We would appreciate your concurrence with this approach at your earliest opportunity so that we may proceed with final document formatting and production. If you have any questions, comments, or concerns, please feel free to contact me anytime at (704) 373-7820 or at pshastings@dukeengineering.com. Thank you for your consideration.

Sincerely,



Peter S. Hastings, P.E.
Licensing Manager

xc: Edward J. Brabazon, DCS
Melanie A. Galloway, USNRC
Robert H. Ihde, DCS
James V. Johnson, USDOE
Andrew Persinko, USNRC
PRA/EDMS: Corresp\Outgoing\NRC\Licensing\DCS-NRC-000027

MOX Licensing Process

[NEW NRC's Response to DCS' request for withholding from public disclosure for the Mixed Oxide Fuel Fabrication Facility Construction Authorization Request \(48 KB pdf\)](#)

[NEW Mixed Oxide Fuel Fabrication Facility Construction Application Authorization Request - Request for Additional Information, dated June 21, 2001 \(396 KB pdf\)](#)

[Question and Answers on the licensing process from public meetings held in Columbia and North Augusta, SC.](#)

[Standard Review Plan for the Review of an Application for a Mixed Oxide \(MOX\) Fuel Fabrication Facility \(Final Version\)](#)

[MOX Standard Review Plan-Public Comments and Responses](#)

[MOX Construction Application Acceptance Letter, March 28, 2001 \(9 KB pdf\)](#)

→ [Proposed MOX Fuel Fabrication Facility Licensing Schedule \(278 KB pdf\)](#)

[MOX Fuel Fabrication Facility: DCS Report on choice of MFFF Process Glovebox Window Material \(3,686 KB pdf\)](#)

MOX Fuel Fabrication Facility Quality Assurance Plan

[NEW Responses to NRC request for additional information for the Duke Cogema Stone & Webster \(DCS\) Mixed Oxide Quality Assurance Plan, Rev.2 \(7/18/01\) \(2,359 KB\)](#)

[NEW NRC Request for Additional Information #2 on MOX FFF Quality Assurance Plan -- Updated June 19, 2001 \(68KB pdf\)](#)

[Quality Assurance Plan -- Results of the NRC's initial acceptance review of the MOX QA program. \(59.1 KB pdf\)](#)

[Quality Assurance Plan -- Summary of in-office review of MOX QA documents \(1690 KB pdf\)](#)

[Quality Assurance Plan -- DCS' response to NRC's request for additional information, \(2.40 MB pdf\)](#)

[Quality Assurance Plan -- Updated Jan 24, 2001 to add topics related to Construction \(9.85 MB pdf\)](#)

[Quality Assurance Plan -- Rev. 1 of QA Plan submitted by DCS, June 22, 2000 \(4,855 KB pdf\)](#)

MOX Fuel Fabrication Facility Construction Application

[MOX Fuel Fabrication Facility Transmittal Letter + Construction Application: \(including Table of Contents through the end of Section 1.3.8\) \(28.2 MB pdf\)](#)

[MOX Fuel Fabrication Facility Construction Application: \(Section 2.0 through Appendix 5A Tables\) \(20.0 MB pdf\)](#)

MOX REVIEW SCHEDULE
(Last updated - 5/25/01 (4:00pm))

Reactor-related work shown in italics/NMSS work shown in bold

MOX FFF = MOX fuel fabrication facility

LTA = LA = lead test assembly

C = complete

DATE	ACTION
6/22/00C	(NMSS) DCS submits Quality Assurance Plan
12/19/00C	(NMSS) DCS submits MOX FFF environmental report
2/28/01C	(NMSS) DCS submits MOX application for construction authorization
3/07/01C	(NMSS) NRC issues notice of intent(NOI) for EIS scoping meetgs
3/28/01C	(NMSS) NRC completes acceptance review of application
4/12/01C	(NMSS) NRC issues Notice of Opportunity for Public Hearing
4/17/01- 4/18/01C	(NMSS) Conduct EIS scoping mtgs for MOX FFF (N Augusta, SC; Savannah, GA)
5/08/01C	(NMSS) Conduct EIS scoping mtg for MOX FFF (Charlotte, NC)
6/13/01	(NMSS) Complete technical review of MOX FFF Environmental Report/issue RAI
6/18/01	(NMSS) Issue RAI on QA Program Plan for Construction
6/29/01	(NMSS) Issue RAI re. construction of MOX FFF (allow 60 days to respond)
7/12/01	(NMSS) DCS responds to Environmental Report RAI
7/18/01	(NMSS) DCS responds to QA Program Plan for Construction RAI
7/31/01	(NMSS) Issue EIS scoping summary report
8/17/01	(NMSS) Issue draft SER on QA Program Plan for Construction
8/31/01	(NMSS) DCS responds to construction RAI #1
10/01/01	(NMSS) Issue final SER on QA Program Plan for Construction
10/30/01	(NMSS) Issue RAI #2 re construction of MOX FFF (allow 45 days to respond) (if necessary)
12/15/01	(NMSS) DCS responds to construction RAI #2 (if necessary)
2/28/02	(NMSS) Issue draft MOX FFF EIS for public comment
3/18/02-3/22/02	(NMSS) Conduct EIS public meetings for MOX FFF

4/30/02	(NMSS) EIS public comment period ends for MOX FFF
4/30/02	(NMSS) Issue draft SER for construction of MOX FFF
7/31/02	(NMSS) DCS submits license application for operation of MOX FFF
8/30/02	(NMSS) NRC completes acceptance review of license application
9/30/02	(NMSS) Issue final EIS for MOX FFF
9/30/02	(NMSS) Issue final SER for construction of MOX FFF
10/31/02	(NMSS) Issue FRN opportunity for hearing for operation of MOX FFF
10/31/02	(NMSS) Public hearings begin on construction of MOX FFF
10/31/02	(NMSS) Issue ROD for MOX FFF
10/31/02	(NMSS) Issue licensing decision on Construction Authorization Request for MOX FFF
11/29/02	(NMSS) Issue RAI operating license for MOX FFF
2/29/04	(NMSS) Issue draft SER for operating license of MOX FFF
7/31/04	(NMSS) Issue final SER for operating license of MOX FFF
8/31/04	(NMSS) Issue licensing decision on operation license
10/31/04	(NMSS) Public hearings on operation of MOX FFF begin
3/31/05	(NMSS) DCS cold start-up of MOX FFF (if authorized)
11/30/05	(NMSS) DCS hot start-up of MOX FFF (if authorized)

NUREG-1484
Vol. 1

**Final
Environmental Impact Statement
for the Construction and Operation
of Claiborne Enrichment Center,
Homer, Louisiana**

Environmental Impact Statement

Docket No. 70-3070

Louisiana Energy Services, L.P.

U.S. Nuclear Regulatory Commission

Office of Nuclear Material Safety and Safeguards

August 1994



SUMMARY AND CONCLUSIONS

Introduction:

This Environmental Impact Statement (EIS) was prepared by the U.S. Nuclear Regulatory Commission (NRC) Office of Nuclear Material Safety and Safeguards to assess the potential environmental impacts of licensing the construction and operation of a uranium enrichment facility to be located in Claiborne Parish, Louisiana (the proposed action). The proposed facility will use the centrifuge enrichment process, which is an energy-efficient, proven advanced technology.

The facility, Claiborne Enrichment Center (CEC), will be owned and operated by Louisiana Energy Services, L.P. (LES), which is a Delaware limited partnership company. The EIS was prepared in accordance with NRC regulation 10 CFR Part 51, which implements the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended. The EIS analyzes the potential environmental impacts of the proposed action and eventual decontamination and decommissioning (D&D) of the facility, and discusses the effluent and environmental monitoring programs proposed to assess the potential environmental impacts of facility construction and operation. The EIS also considers a no-action alternative.

Proposed Action:

The proposed action is to license the construction and operation of a uranium enrichment facility at the CEC near Homer, Louisiana, which will use the gas centrifuge process to separate natural uranium hexafluoride feed material containing 0.71 weight percent ^{235}U into a product stream enriched up to 5.0 weight percent ^{235}U and a tails stream containing approximately 0.2 to 0.34 weight percent ^{235}U . Production capacity at design throughput is approximately 1.5 million separative work units (SWU) per year. Facility construction is expected to require 6 years. Construction would be conducted in three phases. Operation would commence after the completion of the first 0.5 million SWU capacity phase. The facility is designed for 30 years of operation. D&D is projected to take 7 years.

LES estimates the cost of the plant, including interest, property tax, and transmission facilities to be approximately \$855 million. Escalation, capitalized interest, contingency, tails disposal, decommissioning, and replacement centrifuges raise the total investment to about \$1.6 billion. Revenue from SWU sales is estimated at \$165 million/year. All values are expressed in 1990 dollars.

Need for the Proposed Action:

LES estimates that the proposed facility production represents about 17 percent of the estimated U.S. requirement for enrichment services in the year 2000. LES also estimates that approximately 70 percent of the U.S. demand for enrichment services in 2000 is

that the tails will be converted from fluoride to the more stable oxide form, and disposed of in a deep geological facility or placed in long-term storage. The staff estimates that the environmental impacts associated with such a strategy will be small.

Environmental Justice:

The proposed site for the CEC is between two communities, Center Springs and Forest Grove, which consist almost entirely of African-American residents. The NRC staff carefully considered the issue of environmental justice; that is, whether the site selection process was based on racial considerations, and whether the impacts of the CEC would have a disproportionate adverse impact on minority and economically disadvantaged populations. The staff found no evidence that the site selection was based on racial considerations. Furthermore, although the persons living nearest the site are predominantly African-American, the staff concluded that the proposed CEC will not cause any significant adverse impacts on nearby residents or anybody else; and therefore, there will be no significant disproportionate adverse impact.

Conclusion:

In conclusion, analysis of the potential environmental impacts associated with construction and operation of CEC indicates that adverse impacts are small and are outweighed by the substantial socioeconomic benefits associated with plant construction and operation. Concurrently, NRC has completed a safety evaluation of the proposed facility (NUREG-1491), in which the NRC staff concluded that CEC operation will be conducted in a safe and acceptable manner. The FEIS supports licensing for LES.

NUREG-0895

Final Environmental Statement
related to the operation of
Seabrook Station,
Units 1 and 2

Docket Nos. 50-443 and 50-444

Public Service Company of New Hampshire, et al.

**U.S. Nuclear Regulatory
Commission**

Office of Nuclear Reactor Regulation

December 1982



results shown. It is the judgment of the staff that the uncertainty bounds could be well over a factor of 10, but are not likely to be as large as a factor of 100.

5.9.4.6 Conclusions

The foregoing sections consider the potential environmental impacts from accidents at the Seabrook facility. These have covered a broad spectrum of possible accidental releases of radioactive materials into the environment by atmospheric and groundwater pathways. Included in the considerations are postulated design-basis accidents and more severe accident sequences that lead to a severely damaged reactor core or core melt.

The environmental impacts that have been considered include potential radiation exposures to individuals and to the population as a whole, the risk of near- and long-term adverse health effects that such exposures could entail, and the potential economic and societal consequences of accidental contamination of the environment. These impacts could be severe, but the likelihood of their occurrence is judged to be small. This conclusion is based on (1) the fact that considerable experience has been gained with the operation of similar facilities without significant degradation of the environment, (2) the fact that, in order to obtain a license to operate the Seabrook facility, the applicant must comply with the applicable Commission regulations and requirements, and (3) a probabilistic assessment of the risk based upon the methodology developed in the Reactor Safety Study. The overall assessment of environmental risk of accidents, assuming protective action, shows that it is on the same order as the risk from normal operation, although accidents have a potential for early fatalities and economic costs that cannot arise from normal operations. The risks of early fatality from potential accidents at the site are small in comparison with risks of early fatality from other human activities in a comparably sized population.

The staff has concluded that there are no special or unique circumstances about the Seabrook site and environs that would warrant special mitigation features for the Seabrook plant.

5.10 Impacts from the Uranium Fuel Cycle

The uranium fuel cycle rule, 10 CFR 51.20 (44 FR 45362), reflects the latest information relative to the reprocessing of spent fuel and to radioactive waste management as discussed in NUREG-0116, "Environmental Survey of the Reprocessing and Waste Management Portions of the LWR Fuel Cycle," and NUREG-0216, which presents staff responses to comments on NUREG-0116. The rule also considers other environmental factors of the uranium fuel cycle, including aspects of mining and milling, isotopic enrichment, fuel fabrication, and management of low- and high-level wastes. These are described in the AEC report WASH-1248, "Environmental Survey of the Uranium Fuel Cycle." The NRC staff was also directed to develop an explanatory narrative that would convey in understandable terms the significance of releases in the table. The narrative was also to address such important fuel cycle impacts as environmental dose commitments and health effects, socioeconomic impacts, and cumulative impacts, where these are appropriate for generic treatment. This explanatory narrative was published in the Federal Register on March 4, 1981 (46 FR 15154-15175). Appendix C to

develop only after a lapse of 2 to 15 years (latent period) from the time of exposure and then continue over a period of about 30 years (plateau period). However, in the case of exposure of fetuses (in utero), occurrences of cancer may begin to develop at birth (no latent period) and end at age 10 (that is, the plateau period is 10 years). The health consequences model currently being used is based on the 1972 BEIR Report of the National Academy of Sciences (BEIR I). The occurrence of cancer itself is not necessarily indicative of fatality.

Most authorities agree that a reasonable--and probably conservative--estimate of the randomly occurring number of health effects of low levels of radiation exposure to a large number of people is within the range of about 10 to 500 potential cancer deaths (although zero is not excluded by the data) per million person-rems. The range comes from the NAS BEIR III Report (1980), which also indicates a probable value of about 150. This value is virtually identical to the value of about 140 used in the current NRC health-effects models. In addition, approximately 220 genetic changes per million person-rems would be projected by BEIR III over succeeding generations. That also compares well with the value of about 260 per million person-rems currently used by the NRC staff.

(4) Health Effects Avoidance

Radiation hazards in the environment tend to disappear by the natural process of radioactive decay. Where the decay process is a slow one, however, and when the material becomes relatively fixed in its location as an environmental contaminant (such as in soil), the hazard can continue to exist for a relatively long period of time--months, years, or even decades. Thus, a possible consequential environmental societal impact of severe accidents is the avoidance of the health hazard rather than the health hazard itself, by restrictions on the use of the contaminated property or contaminated foodstuffs, milk, and drinking water. The potential economic impacts that this can cause are discussed below

5.9.4.3 Accident Experience and Observed Impacts

The evidence of accident frequency and impacts in the past is a useful indicator of future probabilities and impacts. As of mid-1981, there were 71 commercial nuclear power reactor units licensed for operation in the United States at 50 sites with power-generating capacities ranging from 50 to 1130 MWe. (The Seabrook Units 1 and 2 are designed for electric power output of 1198 MWe each. The combined experience with these units represents approximately 500 reactor years of operation over an elapsed time of about 20 years. Accidents have occurred at several of these facilities (Bertini; NUREG-0651). Some of these have resulted in releases of radioactive material to the environment, ranging from very small fractions of a curie to a few million curies. None is known to have caused any radiation injury or fatality to any member of the public, nor any significant individual or collective public radiation exposure, nor any significant contamination of the environment. This experience base is not large enough to permit a reliable quantitative statistical inference. It does, however, suggest that significant environmental impacts caused by accidents are very unlikely to occur over time periods of a few decades.

Melting or severe degradation of reactor fuel has occurred in only one of these units, during the accident at Three Mile Island Unit 2 (TMI-2) on March 28, 1979. In addition to the release of a few million curies of xenon-133, it has been estimated that approximately 15 curies of radioiodine was also released to the environment at TMI-2 (Rogovin). This amount represents an extremely minute fraction of the total radioiodine inventory present in the reactor at the time of the accident. No other radioactive fission products were released in measurable quantity.

It has been estimated that the maximum cumulative offsite radiation dose to an individual was less than 100 millirems (Rogovin, President's Commission). The total population exposure has been estimated to be in the range from about 1000 to 3000 person-rems. This exposure could produce between none and one additional fatal cancer over the lifetime of the population. The same population receives each year from natural background radiation about 240,000 person-rems, and approximately a half-million cancers are expected to develop in this group over its lifetime (ibid), primarily from causes other than radiation. Trace quantities (barely above the limit of detectability) of radioiodine were found in a few samples of milk produced in the area. No other food or water supplies were impacted.

Accidents at nuclear power plants have also caused occupational injuries and a few fatalities but none attributed to radiation exposure. Individual worker exposures have ranged up to about 4 rems as a direct consequence of reactor accidents (although there have been higher exposures to individual workers as a result of other unusual occurrences). However, the collective worker exposure levels (person-rems) are a small fraction of the exposures experienced during normal routine operations that average about 440 to 1300 person-rems in a PWR and 740 to 1650 person-rems in a BWR per reactor-year.

Accidents have also occurred at other nuclear reactor facilities in the United States and in other countries (Bertini; NUREG-0651). Because of inherent differences in design, construction, operation, and purpose of most of these other facilities, their accident record has only indirect relevance to current nuclear power plants. Melting of reactor fuel occurred in at least seven of these accidents, including the one in 1966 at the Enrico Fermi Atomic Power Plant Unit 1. Fermi Unit 1 was a sodium-cooled fast breeder demonstration reactor designed to generate 61 MWe. The damages were repaired and the reactor reached full power in 4 years following the accident. It operated successfully and completed its mission in 1973. This accident did not release any radioactivity to the environment.

A reactor accident in 1957 at Windscale, England, released a significant quantity of radioiodine, approximately 20,000 curies, to the environment. This reactor, which was not operated to generate electricity, used air rather than water to cool the uranium fuel. During a special operation to heat the large amount of graphite in this reactor, the fuel overheated and radioiodine and noble gases were released directly to the atmosphere from a 123-m (405-foot) stack. Milk produced in a 518-km² (200-mi²) area around the facility was impounded for up to 44 days. This kind of accident cannot occur in a water-cooled reactor like Seabrook, however.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Before Chief Administrative Judge
B. Paul Cotter, Jr., Presiding Officer

Administrative Judge
Thomas D. Murphy, Special Assistant

SERVED SEP 14 1995

In the Matter of

HYDRO RESOURCES, INC.
12750 Merit Drive
Suite 1210 LB12
Dallas, TX 75251

Docket No. 40-8968-ML

ASLBP No. 95-706-01-ML

September 13, 1995

MEMORANDUM AND ORDER
(Proceeding Status)

The Presiding Officer has received eight petitions for hearing concerning the proposed licensing of an in situ leach mining operation at three separate locations in McKinley County, New Mexico.¹ The manner in which the petitions will be acted upon has yet to be determined, and

¹The Petitioners are the Zuni Mountain Coalition, Bernadine Martin, Water Information Network, Dine' CARE, Southwest Research and Information Center, Mervyn Tilden, Grace and Marilyn Sam, and Eastern Navajo Dine' Against Uranium Mining, Inc. ("ENDAUM").

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PDR ADOCK 04008968
C PDR

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the petitioners will be served with the results of the Presiding Officer's rulings when they are complete.²

However, the delay in ruling on the hearing petitions does not prejudice the petitioners' rights. As the petitioners are aware, the Final Environmental Impact Statement is not scheduled to be issued before December, 1995 and the NRC staff will not complete its review of the Hydro Resources, Inc. license application until some time early in 1996.³ Until the staff completes that review and makes its determination either to grant or deny the license application, the hearing file in this proceeding remains

²The Presiding Officer received by first class mail a letter dated August 22, 1995 from Mr. Mitchel Capitan, President of the Eastern Navajo Dine' Against Uranium Mining, concerning the "Status of Application of Hydro Resources, Inc." While Mr. Capitan's letter expresses interest in the status of ENDAUM's petition for hearing, in the same breath, it also inquires about "the status of HRI's application or how soon uranium mining may begin here, if at all." The letter goes on to recommend that "NRC provide the citizens here with an update as soon as possible." ENDAUM's petition for hearing is the only matter upon which this Presiding Officer may comment to the public. Inquiries concerning the status of the license application should be addressed to the NRC Executive Director of Operations.

Mr. Capitan's letter is an *ex parte* communication and is therefore attached for service on the other petitioners and the applicant.

³Letter dated March 8, 1995 from Robert Bernaro, Director, Office of Nuclear safety and Safeguards to Dr. Ann E. Reitz, Crownpoint Health Care Facility.

incomplete. Because the hearing file forms the basis upon which potential litigants contest the licensing action, there is little merit to moving forward with this proceeding at this time on the basis of an incomplete record.⁴

The Presiding Officer has determined that this proceeding shall be held in abeyance until the staff has completed its review of the Hydro Resources, Inc. license application. This will remove any possibility that issues developed on the basis of an incomplete hearing file would have to be relitigated as the hearing file is updated with new information or that resources would be wasted if the application is denied. When there is indication from the staff that a decision has been made to either grant or deny the license application, the Presiding Officer will proceed accordingly.

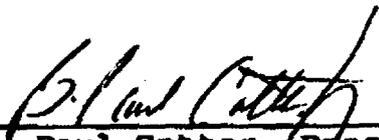
For all the foregoing reasons and upon consideration of the entire record in this proceeding, it is, this 13th day of September, 1995

ORDERED

This hearing shall be held in abeyance until such time as the Presiding Officer is informed by the staff that review of the Hydro Resources, Inc. license application has

⁴See 10 C.F.R. §§ 2.1231 and 2.1233.

been completed and that the hearing file has been updated to reflect the conclusions of that review.



B. Paul Cotter, Presiding Officer
CHIEF ADMINISTRATIVE JUDGE

Rockville, Maryland

September 13, 1995.

Eastern Navajo Diné Against Uranium Mining
P.O. Box 471, Crownpoint, NM 87313
(505) 786-5341

August 22, 1995

The Hon. B. Paul Cotter Jr.
Presiding Officer and Administrative Law Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Re: Status of Application of Hydro Resources Inc. in Docket
No. 40-8968-ML and ASLBP No. 95-706-01-ML

Dear Judge Cotter:

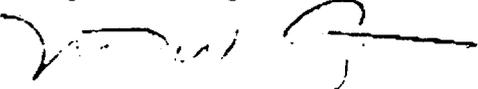
Yá'át'ééh, which means "greetings" in the Diné language. As you no doubt remember, Eastern Navajo Diné Against Uranium Mining ("ENDAUM") filed an amended petition for leave to intervene in the above-captioned matter on February 15, 1995, and a motion and response to the response of the Applicant on March 20, 1995. Both documents were filed pursuant to your Memorandum and Order of January 20, 1995.

I am writing to respectfully request your advisement about the status of our petitions in this matter. ENDAUM has received no communication from your office or from the NRC staff since its March 20 filing. As a result, I, as president of ENDAUM, and many of ENDAUM's members are unable to tell people in our community about the status of HRI's application or how soon uranium solution mining may begin here, if at all. We are simply requesting a status report, not an expedited decision. We appreciate the complexity of the issues that we and others have put before you.

Neither I nor any member of ENDAUM has heard from the NRC staff since it held public meetings in Crownpoint and Church Rock in late February. We assume that the staff is busy responding to the many oral and written comments that were made at that time on the draft EIS. However, routine communication with the affected communities is appropriate and necessary, and we recommend that NRC provide the citizens here with an update as soon as possible.

We appreciate your kind consideration of this letter and extend our *Ahééhéé* (thanks) in advance.

Respectfully Submitted,



Mitchell Capitan, President

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the Matter of
HYDRO RESOURCES, INC.

Docket No.(s) 40-8968-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (PROCEEDING STATUS) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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Special Assistant
Atomic Safety and Licensing Board
Mail Stop T-3 F 23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Jep Hill, Esq.
Attorney for Hydro Resources, Inc.
Jep Hill & Associates
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Lila Bird
Executive Director
Water Information Network
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Albuquerque, NM 87106

Administrative Judge
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Presiding Officer
Atomic Safety and Licensing Board
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Washington, DC 20555

Office of the General Counsel
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Washington, DC 20555

Mervyn Tilden
Mary Lou Jones
Zuni Mountain Coalition
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Lori Goodman
Dine' CARE
Navajo Nation
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Durango, CO 81301

Docket No.(s)40-8964-ML
LB M&O (PROCEEDING STATUS)

Mr. Paul Robinson
Chris Shuey
Southwest Research and Information
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P.O. Box 4524
Albuquerque, NM 87106

Bernadine Martin
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Crowpoint, NM 87313

Mervyn Tilden
P.O. Box 457
Church Rock, NM 87311

Grace Sam
Marilyn Sam
P.O. Box 800
Gallup, NM 87323

Dated at Rockville, Md. this
14 day of September 1995


~~James S. ...~~
Office of the Secretary of the Commission

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November 19, 1996

Re: MOU on MOX

Sat, Aug 11, 2001 1:20 PM

From: "Michael Weber" <MFW@nrc.gov>
To: <atom.girl@mindspring.com>
Cc: "Eric Leeds" <EJL@nrc.gov>, "Joseph Giitter" <JGG@nrc.gov>, "Timothy Johnson" <TCJ@nrc.gov>
Date: Mon, Jun 25, 2001, 6:44 AM
Subject: Re: MOU on MOX

You are correct. We believe the responsibilities with respect to protecting safety and the environment is sufficiently clear.

>>> "Glenn Carroll" <atom.girl@mindspring.com> 06/22/01 06:36PM >>>
 Dear Mike,

I was advised to read the MOU and just assumed that it covered many issues. If I'm understanding you, then, the only issue that DOE and NRC feel a need to delineate is security?

Glenn

*

 >From: "Michael Weber" <MFW@nrc.gov>
 >To: <atom.girl@mindspring.com>
 >Subject: Re: MOU on MOX
 >Date: Fri, Jun 22, 2001, 5:56 PM
 >

> Please elaborate on your concern with respect to the MOU on security. This
 > will help NRC in responding to your question. At this time, NRC has not
 > identified any issues about roles and responsibilities that need to be
 > resolved to allow the current licensing review to proceed.
 >

>>>> "Glenn Carroll" <atom.girl@mindspring.com> 06/22/01 05:25PM >>>>
 > Mike, et al.

> Seems to me that this further confuses issues of scope and jurisdiction,
 > like disposition of the waste streams from MOX, and here we are immersed in
 > licensing decisions ... can you explain why GANE should be comfortable with
 > this sequence?
 >

> Glenn

> *

> --

> Glenn Carroll
 > Coordinator
 > GANE - Georgians Against Nuclear Energy
 > P.O. Box 8574
 > Atlanta, GA 30306
 > 404-378-4263
 > FAX 404-378-4263 (call first)
 > atom.girl@mindspring.com
 >

>>From: "Michael Weber" <MFW@nrc.gov>
 >>To: <atom.girl@mindspring.com>
 >>Cc: "Eric Leeds" <EJL@nrc.gov>, "Joseph Giitter" <JGG@nrc.gov>, "Timothy

Re: MOU on MOX

Sat, Aug 11, 2001 1:20 PM

> Johnson" <TCJ@nrc.gov>
>>Subject: Re: MOU on MOX
>>Date: Fri, Jun 22, 2001, 4:57 PM

>>
>>
>> At this time, we do not have a completed Memorandum of Understanding with
>> DOE on the MOX Fuel Fabrication Facility. The "draft" MOU we have is
>> predecisional information. Let me explain. We had started to develop an
>> MOU with DOE last year to clarify respective roles and responsibilities
>> with respect to information, personnel, and physical security. However,
>> DOE was unable to support the schedule that we had set out for earlier this
>> year. Recent consultations with DOE indicate that they may need an
>> extensive amount of time to complete internal consultations (e.g., year or
>> so). Consequently, until we receive something more definitive from DOE, I
>> would be reluctant to call our current draft of the MOU even a "draft".

>> Tim Johnson has the lead on working with DOE on this topic.

>> Hope this helps.

>>>>> "Glenn Carroll" <atom.girl@mindspring.com> 06/22/01 04:46PM >>>

>> Dear Mike,

>> Can you tell me how I can view the Memorandum of Understanding between DOE
>> and NRC about the MOX factory?

>> Thanks!

>> Glenn

>> *

>> --

>> Glenn Carroll

>> Coordinator

>> GANE - Georgians Against Nuclear Energy

>> P.O. Box 8574

>> Atlanta, GA 30306

>> 404-378-4263

>> FAX 404-378-4263 (call first)

>> atom.girl@mindspring.com

>>

>>

>

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

I hereby certify that copies of GANE Motion to Dismiss Licensing Proceeding or,
in the Alternative, Hold It In Abeyance was served on 8/13/01 to the list below
via e-mail and hard copies served on August 14, 2001 with attachments
via Fed EX to NRC and to DCS and by 1st Class U.S. Postal Service to others.

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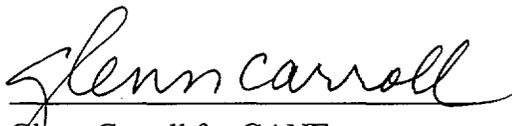
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Glenn Carroll for GANE
August 13 & 14, 2001 in Decatur, GA