

August 24, 2001

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

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

August 28, 2001 (1:06PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

\_\_\_\_\_  
In the Matter of )  
 )  
DUKE COGEMA STONE & WEBSTER )  
 )  
(Savannah River Mixed Oxide Fuel )  
Fabrication Facility) )  
\_\_\_\_\_ )

Docket No. 0-70-03098-ML

ASLBP No. 01-790-01-ML

**GEORGIANS AGAINST NUCLEAR ENERGY'S  
MOTION FOR LEAVE TO REPLY TO  
DCS AND NRC STAFF RESPONSES TO MOTION TO DISMISS**

Georgians Against Nuclear Energy ("GANE") respectfully requests leave to reply to Duke Cogema Stone & Webster's Answer to Georgians Against Nuclear Energy's Motion to Dismiss Licensing Proceeding or, in the Alternative, to Hold it in Abeyance (August 21, 2001) ("DCS Opposition").<sup>1</sup> GANE has consulted counsel for DCS, who stated that DCS will oppose GANE's request for leave to reply.

<sup>1</sup> GANE interprets the Licensing Board's July 17, 2001, Order, to require GANE to file a motion for leave to reply within three days after receiving a response to a motion. However, GANE is somewhat uncertain, because there seems to be at least one typographical error in the Order, which makes it unclear. On page 6, in par. 2, the Order states that "[a] motion for leave to reply in all other circumstances shall be filed so that it is in the hands of the Licensing Board at least three business days of the filing of the

GANE has good cause for filing a reply. The legal issues raised in GANE's motion and in DCS's response involve complicated questions regarding the interpretation and application of the Atomic Energy Act, the National Environmental Policy Act, NRC regulations, and NRC and court decisions. The issues raised in GANE's motion are also novel, because to GANE's knowledge, this is the first time in over 25 years that a plutonium processing factory license application has been reviewed. It also may be the first time that the NRC has applied some of the regulations in 10 C.F.R. Part 70 that are designed specifically for plutonium processing facilities. DCS has provided a very different interpretation of the statutes, regulations and case law than GANE. In order to ensure that the legal issues raised by GANE's motion are adequately aired, GANE seeks an opportunity to point out the ways in which DCS's position is illogical or inconsistent with other precedents.

GANE also seeks leave to reply to the NRC Staff's response to GANE's Motion to Dismiss, which is not due until August 28. Although GANE has not seen the Staff's response, counsel for the Staff has informed GANE's representative that the Staff will oppose GANE's motion to dismiss. GANE anticipates that like DCS, the NRC Staff will provide alternative interpretations of statutes, regulations and case law, to which GANE

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response of which leave to reply is sought." (emphasis in original). GANE believes that the Board may have intended to put the word "within" after "Licensing Board." In addition, GANE is somewhat confused by the phrase "at least," and wonders if the Board meant to say "at most."

will wish to respond. GANE has consulted counsel for NRC Staff, who stated that the NRC Staff will oppose GANE's motion for leave to reply.

GANE believes that it can best conserve its resources by making a single reply to both DCS and the NRC Staff. In order to allow GANE to obtain assistance from GANE's legal advisor, who will be out of town on a long-planned family vacation from August 26 through September 3, GANE asks that it not be required to file its reply before midnight on September 7.

Respectfully submitted,

A handwritten signature in cursive script that reads "glenn carroll".

Glenn Carroll  
for Georgians Against Nuclear Energy  
139 Kings Highway  
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Dated August 24, 2001  
in Decatur, Georgia

CERTIFICATE OF SERVICE  
by Georgians Against Nuclear Energy  
(Docket # 70-3098, ASLBP # 01-790-01-ML)

I hereby certify that copies of GANE's Motion for Leave to Reply were sent to the following list via e-mail with paper copies served via U.S. Postal Service First Class Mail.

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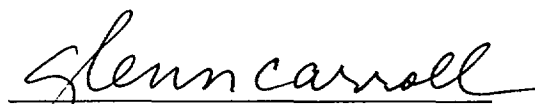
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Respectfully submitted,

  
Glenn Carroll

for Georgians Against Nuclear Energy  
August 24, 2001 in Atlanta, Georgia