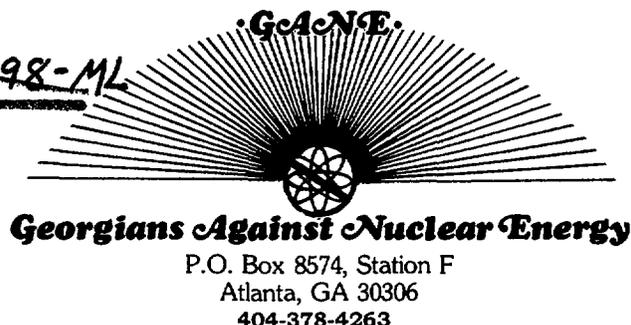


RAS 3495

DOCKET NUMBER
PROD. & UTIL. FAC.

~~70-3098-ML~~



DOCKETED
USNRC

October 15, 2001 (2:36PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

October 10, 2001

Dr. Richard Meserve
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Meserve,

We appreciate the Commission's responsiveness to concerns expressed by us and more than 200 organizations and individuals from all over the world regarding the legal process by which the MOX fuel fabrication facility would be reviewed. We applaud your decision to grant certain procedural rights to the public in hearing safety and environmental issues concerning the MOX facility, and particularly your appointment of a full three-member panel to conduct the public hearings on MOX.

You may already be aware that GANE has submitted a Motion to Dismiss the proceeding to approve the Construction Authorization Request (CAR) which was submitted by Duke Cogema Stone & Webster and accepted for docketing by the NRC Staff. In the course of analyzing the CAR to develop our contentions it became increasingly evident that the CAR was not only gravely deficient in detail but that it was also illegally docketed by the NRC Staff. The failures of the CAR prompted GANE's Motion to Dismiss which we filed simultaneously with 13 contentions, including a contention which raises serious issues about vulnerability of the MOX facility to terrorists and the ~~failure~~ to plan for emergency measures in the event of malevolent acts including terrorism and insider sabotage. Our motion and our contentions are now pending before the Licensing Board.

The tragedies of September 11, 2001, have intervened and irrevocably altered the way we must anticipate harm may befall us. We are extremely concerned that the design and operation requirements for the proposed MOX facility are not sufficient to protect the public against a terrorist attack. Therefore, as an intervenor in a significant licensing proceeding concerning plutonium processing, we are formally requesting the Commission to suspend review of the MOX facility until such time as you have completed regulatory review and necessary rulemaking to ensure NRC's capability to prevent and mitigate terrorist acts involving nuclear facilities. We believe that you will agree with the unshakable logic of holding the line until we can proceed with full information and deliberation and hope your sense of history and public stewardship will compel extraordinary and sweeping measures that enable the NRC to address what we now know, unfortunately, to be credible terrorism scenarios.

Template = SECY-021

SECY-02

Attached is the Petition of Georgians Against Nuclear Energy and Nuclear Control Institute to Suspend Construction Approval Proceeding for Proposed Plutonium Fuel (MOX) Fabrication Facility. We thank you in advance for your thoughtful review of the issues addressed therein and look forward to your favorable response.

Respectfully,

A handwritten signature in cursive script that reads "glenn carroll". The signature is written in black ink and is positioned above the printed name.

Glenn Carroll

Coordinator for Georgians Against Nuclear Energy

cc: Commissioner Greta J. Dicus
Commissioner Nils J. Diaz
Commissioner Edward McGaffigan, Jr.
Commissioner Jeffrey S. Merrifield

Additional cc:

Service List for MOX Proceeding (Docket No. 0-70-03098-ML, ASLBP No. 01-79-001-ML)
Secretary, NRC, Rulemakings and Adjudications Staff
Administrative Judge Thomas S. Moore, Chairman
Administrative Judge Charles N. Kelber
Administrative Judge Peter S. Lam
John T. Hull, Esq., NRC Staff
Donald J. Silverman, Esq., Morgan, Lewis & Bockius, Duke Cogema Stone & Webster
Ruth Thomas, President, Environmentalists, Inc.
Donald J. Moniak, Blue Ridge Environmental Defense League
Edna Foster

Georgia Governor Roy Barnes
South Carolina Governor Jim Hodges
North Carolina Governor Mike Easley
Utah Governor Mike Leavitt

Georgia State Senator Regina Thomas
Georgia State Senator Charles Walker
Georgia State Representative Nan Grogan Orrock
Georgia State Representative Karla Drenner
Georgia State Representative Doug Teper
Georgia State Representative Jack Connell
Georgia State Representative Tom Bordeaux
South Carolina State Senator Phil Leventis
South Carolina State Senator Bill Clyburn
South Carolina State Representative Gilda Cobb-Hunter
South Carolina State Representative Bessie Moody-Lawrence
North Carolina State Senator T. LaFontaine Odom
North Carolina State Representative Beverly Earle

Georgia Delegation to U.S. Congress
South Carolina Delegation to U.S. Congress
North Carolina Delegation to U.S. Congress

U.S. Senator Harry Reid
U.S. Senator Barbara Boxer
U.S. Senator Paul Wellstone
U.S. Representative Ed Markey
U.S. Representative Dennis Kucinich

James L. Setser, Chief, Georgia Environmental Protection Division
James C. Hardeman, Jr., Manager, Georgia Environmental Radiation Program

October 10, 2001

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

_____)
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))
)

**PETITION BY GEORGIANS AGAINST NUCLEAR ENERGY
AND NUCLEAR CONTROL INSTITUTE
TO SUSPEND CONSTRUCTION AUTHORIZATION PROCEEDING
FOR PROPOSED PLUTONIUM FUEL (MOX) FABRICATION FACILITY**

I. INTRODUCTION AND SUMMARY

Georgians Against Nuclear Energy (“GANE”) and the Nuclear Control Institute (“NCI”) hereby petition the Nuclear Regulatory Commission (“NRC” or “Commission”) to immediately suspend the above-captioned proceeding for the authorization of construction of the proposed Mixed Oxide (“MOX”) plutonium fuel fabrication facility at the Savannah River Site (“SRS”) in western South Carolina. GANE and NCI respectfully submit that, in the wake of the tragic and unprecedented terrorist attack of September 11, 2001 on the World Center and the Pentagon, it is now clear that the magnitude of the terrorist threat against U.S. infrastructure is substantially greater than previously assumed; that additional such attacks are foreseeable; and that the nation’s fleet of nuclear reactors and fuel cycle facilities are highly vulnerable because they were not designed to withstand attacks of such severity. Given the ongoing terrorist threat, it

is also clear that the NRC's longstanding refusal to consider the consequences of such attacks in its Environmental Impact Statements ("EIS's") must be reversed.

The Commission now has two proceedings pending before it that would permit construction of new nuclear facilities: the above-captioned proceeding for approval of construction of the proposed Mixed Oxide (MOX) fabrication facility, and the licensing proceeding for the proposed Private Fuel Storage interim spent fuel storage facility, Docket No. 72-22-ISFSI. In light of the events of September 11, the design and operational requirements for both of these facilities are grossly inadequate to protect against a terrorist threat. Accordingly, to proceed with the licensing of these facilities under current standards would constitute a serious dereliction of the Commission's statutory duty to ensure adequate protection of public health and safety and the environment.¹

Therefore, GANE and NCI respectfully submit that the Commission should suspend the pending construction approval proceeding for the proposed MOX facility. It is our understanding that the State of Utah is separately filing a petition to suspend the licensing proceeding for the proposed PFS facility. GANE and NCI endorse the State of Utah's petition.

¹ GANE understands that at a meeting on October 5, 2001, the NRC Staff discussed a "Tasking Memorandum" issued by the Commission, which mandates a comprehensive review of NRC security regulations in light of the September 11 attack. The memorandum was not released to the public. GANE submits that the tasks undertaken by the Commission should include the suspension of any proceedings for the approval of construction of new nuclear facilities until the regulatory review mandated by the Tasking Memorandum is complete.

II. DESCRIPTION OF PETITIONERS

A. Georgians Against Nuclear Energy

GANE is an environmental organization whose purpose is to phase out nuclear power and promote conservation and sustainable energy sources such as wind and solar; to abolish the global use of nuclear weapons; and to promote the formation of ethical social policies for nuclear waste handling and containment. Founded in 1978, GANE has intervened in many NRC licensing proceedings regarding facilities in the State of Georgia. Indeed, in GANE's intervention opposing a license extension for the Georgia Tech research reactor, GANE's contention concerning potential acts of terrorism related to the 1996 Olympic Games was accepted for a hearing but rendered moot when the administration of Georgia Tech made the responsible decision to remove highly enriched uranium fuel from the small reactor near downtown Atlanta. The actual terrorist act that was committed during the 1996 games, less than one mile from Georgia Tech, underscored the wisdom of Georgia Tech's decision.

GANE has petitioned to intervene in the pending proceeding for approval of construction of the proposed MOX facility, and has submitted contentions challenging the adequacy of the construction authorization request ("CAR") filed by Duke Cogema Stone and Webster ("DCS") to satisfy NRC regulations.² GANE's Contention #12 specifically challenges the legality of DCS's failure to address the environmental impacts of a terrorist act against the proposed MOX facility in its Environmental Report, or to

² See Request for Hearing submitted by GANE (May 17, 2001); Georgians Against Nuclear Energy Contentions Opposing a License for Duke Cogema Stone & Webster to Construct a Plutonium Fuel Factory at Savannah River Site (August 13, 2001).

evaluate measures for avoidance or mitigation of such impacts. As discussed below in Section III, GANE has also filed a motion to dismiss the proceeding in its entirety.

The health and safety of GANE's members, most of whom reside in Georgia, South Carolina and the Southeastern United States, would be affected by a severe accident at the proposed MOX facility.

B. Nuclear Control Institute

Founded in 1981, NCI is an independent research and advocacy center specializing in problems of nuclear proliferation. Non-partisan and non-profit, NCI monitors nuclear activities worldwide and pursues strategies to halt the spread and reverse the growth of nuclear arms.

For over 15 years, NCI has studied and reported on the growing threat of nuclear terrorism in the U.S. and other parts of the world. In 1986, NCI convened the International Task Force on Prevention of Nuclear Terrorism, which produced a seminal report on the risks posed by terrorism. Since that time, NCI and its Task Force have been outspoken and consistent advocates of more stringent measures to prevent nuclear theft and sabotage, including arms reduction and improved security measures and government oversight. This work includes the provision of expert assistance to GANE in the proceeding for the approval of construction of the proposed MOX facility, which is inadequately designed to protect against theft and sabotage of special nuclear materials. Dr. Edwin S. Lyman, NCI's Scientific Director, has provided expert support for several of GANE's contentions in the proceeding.³

³ See Declaration of Dr. Edwin S. Lyman in Support of GANE's Contentions (August 13, 2001), attached as Exhibit 1 to Georgians Against Nuclear Energy Contentions

III. FACTUAL AND PROCEDURAL BACKGROUND

On April 18, 2001, the NRC issued a notice announcing an opportunity for a hearing on the issue of whether the NRC should approve the construction of the proposed MOX Facility. *Notice of Acceptance of Application for Docketing, and Notice of Opportunity for a Hearing*, 66 Fed. Reg. 19,994. The proposed facility would process up to 36.4 tons (33 metric tons) of plutonium oxide from surplus nuclear weapons, into MOX fuel. The MOX fuel would be used in nuclear reactors as a substitute for uranium-based fuel. The plant would be built on the Savannah River Site (“SRS”), which was a major center of nuclear weapons research and production during the Cold War. The SRS is now used for some defense operations, and for the storage and processing of a large amount of radioactive waste from past and current operations.

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. GANE also filed a motion to dismiss the proceeding or hold it in abeyance, on the grounds that the CAR does not constitute a valid license application under NRC regulations, that NRC Staff illegally docketed the CAR in lieu of insisting on a complete license application as required by NRC regulations, and that the NRC Staff has violated the National Environmental Policy Act (“NEPA”) by proposing to issue an EIS for the proposed MOX facility before it has approved the adequacy of DCS’s license application to ensure that the facility will be operated safely.⁴

Opposing a License for Duke Cogema Stone & Webster to Construct a Plutonium Fuel Factory at Savannah River Site (August 13, 2001).

⁴ Motion to Dismiss Licensing Proceeding, Or, In The Alternative, Hold It In Abeyance (August 13, 2001). GANE has requested that if the Licensing Board determines that it lacks authority to rule on the motion, it refer the motion to the Commission.

IV. THE COMMISSION SHOULD EXERCISE ITS SUPERVISORY JURISDICTION OVER THIS PETITION.

A. The Commission Has Inherent Supervisory Authority to Suspend The Construction Authorization Proceeding for the Proposed MOX Facility.

This petition is brought before the Commission pursuant to the authority granted to it in 42 U.S.C. §§ 2073(e)(7), 2201(b); and 10 C.F.R. § 70.23. It invokes the inherent supervisory authority of the Commission to oversee all aspects of the regulatory and licensing process and its “overriding responsibility for assuring public health and safety in the operation of nuclear power facilities.” *Commonwealth Edison Co. of N.Y. Inc.* (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173 (1975). As the Commission has previously observed, its supervisory powers include the power to order immediate shutdown of a facility “if public health or safety so requires.” *Petition for Emergency and Remedial Action*, CLI-78-6, 7 NRC 400, 405 (1978). This power necessarily includes the authority to suspend licensing proceedings in which it is apparent that the applicable standards will be inadequate to ensure adequate protection of public health and safety.⁵

B. Exercise of the Commission’s Supervisory Jurisdiction is Appropriate In This Case.

This petition is properly brought before the NRC Commissioners, because the Commission is the only entity with the authority to alter the licensing requirements for

⁵ The Commission has exercised its inherent supervisory authority on a number of occasions. In addition to the cases cited above, see *Yankee Atomic Electric Co.* (Yankee Rowe Nuclear Power Station), CLI-91-11, 34 NRC 3, 6 (1991); *Petition for Emergency and Remedial Action*, CLI-80-21, 11 NRC 700 (1980); *U.S. Energy Research and Development Administration* (Clinch River Breeder Reactor Project), CLI-76-13, 4 NRC 67, 75-76 (1976); *Consumers Power Co.* (Midland Units 1 and 2), CLI-73-38, 6 AEC

the proposed MOX facility. The Commission is also the only entity that has the authority to suspend the pending proceeding for the approval of construction of the proposed facility.

V. GROUNDS FOR REQUESTING SUSPENSION OF PROCEEDING

In light of the September 11 attack, current NRC regulations applicable to the design and operation of the proposed MOX Facility are inadequate to protect against a terrorist threat in three obvious respects: protection against a deliberate airborne assault, protection against attack by a large group of individuals, and emergency response. To the limited extent that DCS has provided information relevant to the licensing of the proposed MOX Facility in the CAR and the Environmental Report, these documents demonstrate that the design of the facility will be inadequate to protect against such a threat. In addition, despite the fact that the U.S. government is now anticipating additional terrorist attacks on U.S. facilities, DCS and the NRC Staff have steadfastly refused to address the foreseeable threat of such an attack in the Environmental Report or the EIS for the MOX facility. Finally, the adequacy of safeguards for the proposed MOX Facility is severely hampered by the NRC Staff's illegal and compartmentalized approach to the licensing review.

A. Inadequate Regulations for Protection Against Terrorist Attack

The Commission should not proceed with the construction approval review for the proposed MOX Facility until it has evaluated the adequacy of its regulations to ensure reasonably sufficient protection against a substantial terrorist threat. This evaluation

1084 (1973); *Public Service Co. of New Hampshire* (Seabrook Nuclear Power Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 515-17 (1977).

should include consultation of relevant experts regarding the entire array of potential credible terrorist scenarios, taking into account the events that occurred on September 11.

Aspects of the current regulations that clearly are inadequate and must be re-evaluated in light of the September 11 events, include:

- 1. Protection of fuel cycle facilities against deliberate airborne assault.**

Currently, the NRC has no regulatory requirement for protection of nuclear facilities against a direct assault by a fully fueled jet aircraft, such as the assaults on the World Trade Center and the Pentagon. The design of the proposed MOX Facility, as presented in the CAR, reflects the absence of any such requirement. In fact, the proposed MOX facility was not designed to withstand the accidental crash of an aircraft of *any* size. According to Tables 5.5-7 and 5.5-8 of the CAR, aircraft accidents involving commercial, military or private aircraft, or SRS helicopters, were "screened out" of consideration on the basis of low-likelihood arguments and the guidelines for power reactors detailed in NUREG-0800. As a result, the CAR does not designate items relied upon for safety ("IROFS") that are necessary to protect public health and safety in the event of an accidental air crash.

The design basis assumptions for missile protection of the proposed MOX Facility are wholly inadequate to protect against the type of impact that would be caused by the intentional crash of a passenger jet into the plant. Typical missile parameters for the engines of a 767 jet are: $Mg=10,000$ lbs, $D=8$ ft, $V=530$ mph. Using the formula recommended by DOE for estimating the missile penetration of reinforced concrete (DOE-STD-96-3014, p. 68), one finds that for concrete with a compressive strength of

4000 psi (the minimum standard for MOX Facility SC-1 structures --- see CAR at 11.1.7.2.2.1), the penetration thickness of such a missile is approximately 4.5 ft.

In contrast, the most challenging missile assumed in the MOX Facility design is a 3-inch diameter, 75-lb steel pipe driven by a tornado into the building with a horizontal impact speed of 75 mph. The penetration thickness for this missile is 0.5 ft, an order of magnitude below what would be needed to prevent penetration of a 767 jet engine.

Given these comparisons, it is reasonable to assume that the impact and ensuing jet fuel fire of a World Trade Center-type attack on the proposed MOX facility, as currently designed, would cause a radiological release far in excess of that calculated to result from the worst design-basis accident considered. Since an event of this type can no longer be considered "highly unlikely," it is inconsistent with the safety philosophy underlying Part 70 to approve the design basis of this plant in the absence of any IROFS to mitigate the severe consequences of such an event.

2. Protection against sabotage or theft by large number of individuals.

NRC regulations for protection against sabotage and theft of special nuclear material specify sizes of the attacking force as "several persons" for sabotage and "a small group" with "the ability to operate as two or more teams" for theft of SNM. *See* 10 C.F.R. §§ 73.1(a)(1)(i) and 73.1(a)(2)(i). These assumptions clearly are inappropriate in view of the fact that at least 19 persons acting in close coordination were responsible for the September 11 attacks. The assumption of only a single insider for both sabotage and theft also needs to be reconsidered. *See* 10 C.F.R. §§ 73.1(a)(1)(i)(B) and 73.1(a)(2)(i)(B).

3. Emergency response requirements

Currently, Part 70 regulations contain no provision for offsite emergency preparedness. Only onsite emergency preparedness is required. Thus, if a terrorist attack on the MOX facility were to cause a significant offsite radiological release, there is no assurance that measures would be taken to safely evacuate the public.

Just as the confused response to the 1979 Three Mile Island accident demonstrated the need for emergency preparedness around nuclear reactors, so the tragedies at the World Trade Center and the Pentagon have highlighted the need to expand emergency planning to other nuclear facilities that could experience offsite radiological releases in the event of such an attack. Given the acknowledged risk of additional terrorist attacks on the U.S., failure to provide for some measure of offsite preparedness would be inexcusable.

B. Failure to Address Impacts of Terrorist Attacks in Environmental Report or Environmental Impact Statement

In spite of the increasing incidence of terrorist attacks on U.S. facilities in recent years, and in spite of the increasing ease with which terrorists may purchase sophisticated and powerful weapons, the NRC has consistently refused to consider the consequences of terrorist attacks in its environmental impact statements. The asserted ground for this refusal has been the alleged difficulty of predicting the likelihood of such an attack.

GANE and NCI believe that the Commission's longstanding refusal to consider the consequences of terrorist attacks in its Environmental Impact Statements for nuclear facilities has become increasingly untenable over the years. Now, in the wake of the September 11 attack, there is no longer any room for doubt that a severe terrorist attack on a U.S. nuclear facility is foreseeable.

Nevertheless, the NRC Staff continues to refuse to take into account this new information and commit to an examination of the consequences of a terrorist attack in this proceeding. Astoundingly, the very next day after the September 11 attack, the NRC Staff filed a pleading opposing the admission of GANE's Contention 12, which calls for consideration of the consequences of a terrorist attack in the Environmental Report and EIS for the proposed MOX Facility. The Staff repeated the same flimsy ground that it has previously relied on – that such attacks are not “reasonably foreseeable.”⁶ In the wake of September 11 and the subsequent warnings by the White House of potential additional terrorist attacks, the Staff's position is completely unacceptable. History demands that this Commission effectively address the looming threat of terrorism involving nuclear materials. We petition the Commission to announce that henceforth, it will not license any nuclear facility without first examining the consequences of a terrorist attack, as well as weighing measures for avoiding and mitigating those consequences.

C. Structure of Licensing Review Hampers Effectiveness of Sabotage Prevention and Safeguards Measures

Moreover, the effectiveness of any NRC evaluation of the adequacy of sabotage-prevention and safeguards measures has been hampered significantly by the NRC Staff's peculiar approach to the licensing of the proposed MOX Facility. The Staff's approach to this licensing process is disturbing in two key respects. First, as discussed at length in GANE's Motion to Dismiss (*see* footnote 4 above), the NRC Staff has misinterpreted the regulations for the licensing of the MOX facility to permit DCS to file separate

⁶ *See* NRC Staff's Response to Contentions, Etc. at 22 (September 12, 2001). Nor did the Staff alter its position under protracted questioning from the Licensing Board at the

applications for construction approval and licensing of operation. This interpretation has no basis in NRC regulations, which require that a single application for construction and operation must be filed, and which contain no provision for the docketing or review of a “construction authorization request.” Not only is the Staff’s approach illegal, but as a practical matter it hampers the NRC Staff’s ability to conduct a comprehensive review of the adequacy of the design to carry out the operational requirements for the facility. This is a particular concern with respect to the adequacy of the design to protect against sabotage and theft of special nuclear material, including plutonium. *See* Motion to Dismiss at 18-19.

Second, the Staff has announced its determination that issues related to the adequacy of safeguards or physical security measures need not be addressed in the proceeding for approval of the CAR.⁷ Thus, it appears that the Staff intends to review the adequacy of the MOX Facility design without the benefit of any details about how DCS plans to protect the facility against sabotage and theft of special nuclear material during operation. By divorcing design issues from operational issues, the Staff undermines its ability to evaluate the adequacy of the design of the physical plant to support DCS’s operational measures for protecting the facility against plutonium theft or sabotage.

September 21, 2001 Pre-Hearing Conference in North Augusta, South Carolina.

⁷ *See* NRC Staff’s Response to Contentions Submitted by Donald Moniak, Blue Ridge Environmental Defense League, Georgians Against Nuclear Energy, and Environmentalists, Inc. at 8-12 (September 12, 2001).

VI. CONCLUSION

With the September 11 attack on the World Trade Center, the world saw quite clearly how, when placed in the wrong hands, an ordinary commercial airliner could become a weapon of mass destruction. Without adequate design and protection, nuclear facilities are also capable of being transformed into weapons, with even more devastating and more long-lasting public health and environmental impacts. Moreover, the current regulatory framework for the design and operation of nuclear facilities is completely inadequate to prevent attacks of the sophistication and severity of September 11.

Under the circumstances, it would be sheer folly to proceed with any review of proposed construction of a new nuclear facility, without first re-examining the adequacy of design and operational requirements to protect against a terrorist attack. It would also be highly irresponsible to prepare an EIS for such a facility, without addressing the environmental consequences of a terrorist attack and the measures that could be taken to prevent or mitigate it.

Accordingly, GANE and NCI request the NRC Commissioners to suspend the pending proceeding for the authorization of construction of the proposed MOX facility, until review and appropriate alterations to the regulatory requirements for protection against terrorist acts are completed. The Commission should also commit to consider the consequences of terrorist attacks in any EIS that is prepared for the proposed MOX facility. Finally, the Commission must take steps to ensure that the structure of the licensing review for the proposed MOX Facility is conducted in the rigorous and comprehensive manner that is required by the regulations.

Respectfully submitted,



Glenn Carroll⁸
for Georgians Against Nuclear Energy
139 Kings Highway
Decatur, GA 30030
404-378-4263

Dr. Edwin S. Lyman
Scientific Director
Nuclear Control Institute
1000 Connecticut Avenue, Suite 410
Washington, D.C. 20036
202/822-8444

Under penalty of perjury, I hereby certify that the factual statements made in the above petition are true and correct to the best of my knowledge, and that the opinions expressed therein regarding the vulnerability of the proposed MOX Facility to a terrorist attack are based on my best professional judgment.

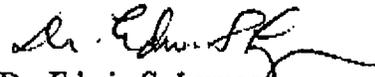
Dr. Edwin S. Lyman

Dated October 10, 2001
in Decatur, Georgia

⁸ This petition was prepared with substantial assistance from GANE's legal adviser, Diane Curran.

Respectfully submitted,

Glenn Carroll⁸
for Georgians Against Nuclear Energy
139 Kings Highway
Decatur, GA 30030
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