

April 16, 2002

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

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

**DOCKETED
USNRC**

April 24, 2002 (12:03PM)

**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
AND BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE
PROPOSED DISCOVERY SCHEDULE FOR THE PLUTONIUM FUEL
FACILITY PROPOSED FOR SAVANNAH RIVER SITE**

As directed by the Atomic Safety and Licensing Board's ("ASLB's") order of April 11, 2002, Georgians Against Nuclear Energy ("GANE") submits this proposed revised discovery schedule for the above-captioned adjudicatory proceeding for review of the Construction Authorization Request (CAR) submitted by Duke Cogema Stone & Webster ("DCS"). GANE is submitting this schedule as the lead intervenor, on behalf of itself and Blue Ridge Environmental Defense League ("BREDL").

GANE consulted with DCS and the Nuclear Regulatory Commission ("NRC" or "Commission") Staff regarding its proposed revised discovery schedule, but the parties were unable to reach an agreement.

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Background

As a result of significant changes in the U.S. government's plans for disposition of surplus plutonium, DCS must substantially revise the design and environmental analysis for the proposed MOX facility in key respects. In particular, DCS plans to add a new step to the MOX production process, for removing impurities from 6.4 tons of contaminated plutonium known as "Alternate Feedstock" that the government intends to be processed at the plant. In addition, the Department of Energy plans to build a new facility that will convert the waste generated by the plant to a solid. *See Georgians Against Nuclear Energy and Blue Ridge Environmental Defense League Motion to Postpone Discovery* (February 22, 2002).

As a result, projected dates for completion of the CAR and the Environmental Report by DCS, and for issuance of the final Safety Evaluation Report ("SER") and Draft and Final Environmental Impact Statements ("EISs") by the NRC Staff, have slipped by about a year.¹ *See* attachment to letter from John Hull to the ASLB (March 14, 2002).

Key projected dates are as follows:

¹ GANE and BREDL anticipate that the schedule may slip further, due to other factors that have not yet been taken into account. For instance, it is likely that the Department of Energy will need to supplement and re-circulate for comment the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Impact Statement (1996) and the Surplus Plutonium Disposition Final Environmental Impact Statement (1999) to reflect (a) the abandonment of immobilization as the preferred alternative for surplus plutonium disposition, (b) the determination that impure plutonium stocks are amenable to MOX processing, (c) the processes required to render impure plutonium stocks suitable for MOX, and (d) the ramifications of DOE's decision to solidify liquid waste from the MOX fabrication process. Moreover, DOE must identify or design a facility for solidification of liquid waste, prepare an EIS for the facility, schedule construction, and coordinate the dates of operation of the solidification facility with the dates of operation of the MOX Facility. Finally, the changes to the MOX program

July 15, 2002	DCS submits supplemental Environmental Report
October 31, 2002	DCS submits CAR supplement
February 24, 2003	NRC Staff issues Draft EIS for public comment
April 30, 2003	NRC Staff issues draft SER for CAR and CAR Supplement
August 29, 2003	NRC issues final EIS

As the ASLB recognized in its February 12, 2002, discovery scheduling order, the Commission has directed the establishment of a schedule for this proceeding that is keyed to the issuance of the final EIS and SER. Memorandum and Order at 4. *See also* CLI-01-11, 53 NRC 478, 481-82, 484-5 (2001). For “Phase 2” of the CAR proceeding, for example, the Commission set a milestone for completion of discovery against the NRC Staff at 45 days after the issuance of the EIS and SER (excusing late-filed contentions). *Id.* at 484-85. The ASLB incorporated this milestone into the discovery schedule set forth in its February 12, 2002, Memorandum and Order.

Proposed Schedule

In keeping with the structure of the schedule set forth in the February 12 Memorandum and Order, GANE and BREDL propose a schedule for discovery that is keyed to the issuance of the Final SER and EIS. Like the ASLB’s February 12 Memorandum and Order, GANE’s and BREDL’s proposed schedule establishes the issuance of the Draft EIS as the triggering event for a first key step in the discovery process, identification of expert witnesses. The steps which follow are based on the same

underscore the need for a Memorandum of Understanding between the DOE and NRC that would coordinate DOE and NRC responsibilities for waste disposal.

time frames established in the February 12 Memorandum and Order. The proposed schedule is as follows:

February 23, 2003	Projected date for Staff issuance of draft EIS
March 6, 2003	Parties identify experts for each admitted contention.
March 14, 2003	Parties serve by e-mail first round of interrogatories.
April 11, 2003	Parties respond by e-mail to the first round of interrogatories and identify and make available for copying any documents not in hearing file that their experts plan to rely upon.
April 29, 2003	Projected date for Staff issuance of draft SER.
May 16, 2003	Parties serve by e-mail second round of interrogatories.
June 13, 2003	Parties respond by e-mail to second round of interrogatories.
June 20, 2003	Parties wishing to take oral depositions may begin filing notices of deposition.
August 29, 2003	Projected date for Staff issuance of final EIS
September 30, 2003	Projected date for Staff issuance of final SER.
December 15, 2003	Discovery on currently admitted contentions to be completed.

The schedule proposed above is consistent with CLI-01-13 and the ASLB's February 12, 2002 Memorandum and Order. Moreover, the proposed schedule is fair and efficient, because it schedules discovery for a time period that is reasonably close to the time for submission of written evidentiary and legal presentations; and because it contemplates the completion of the CAR, DCS's Environmental Report, and the DEIS before parties are required to identify their expert witnesses. This will provide the intervenors an opportunity to evaluate the relevance of changes in the CAR and

environmental analyses performed by DCS and the NRC Staff to the contentions that have been admitted. All of these contentions are potentially affected by the prospective changes to the CAR and the environmental review.

For instance, GANE's Contentions 1 and 2 raise issues about the adequacy of the facility design to provide for adequate compliance with Material Control and Accounting and physical security requirements. These concerns are also likely to apply to any new processing system designed by DCS. In fact, material control and accounting is likely to be complicated by the fact that DCS will be adding three new types of feed streams to the MOX production process, with varying amounts of impurities. It would be wasteful of the parties' resources to require them to litigate the issue twice with respect to two different parts of the same plant. Similarly, it would be wasteful of time and resources to go forward with the litigation of GANE Contention 3 (seismic) when DCS plans to submit additional elements of the plant design that must meet seismic qualifications. Changes to the design of the facility may affect the nature of the hazards posed by the facility, which in turn may affect the choice of the design basis earthquake and the scope of DCS's seismic analysis. Likewise, litigation of GANE Contention 6 (Inadequate Safety Analysis) should await DCS's submittal of a supplemental safety analysis for the new processes it intends to employ. GANE notes that in an April 10, 2002 meeting with the Advisory Committee on Reactor Safeguards, the NRC Staff presented a viewgraph that identified safety analysis as one of the areas mostly affected by changes in the DOE program. The safety analysis is an issue that also affects other safety-related issues raised

by GANE and BREDL including the adequacy of seismic analysis and the size of the controlled area boundary.

Litigation of GANE Contentions 5 and 8 and BREDL Contention 9A (Incorrect Designation of Controlled Area) should also be postponed, because design changes to the proposed MOX facility may result in the creation of additional hazards not previously contemplated by DCS. This would enhance the importance of making a correct determination of an appropriate controlled area boundary. Moreover, the controlled area contentions combine safety and environmental issues, and therefore it is appropriate to schedule litigation in a way that assures completion of both the safety and environmental reviews before the litigation goes forward.

GANE Contention 9 and BREDL Contention 1E relate to the adequacy of DCS's process of waste disposal, to which DCS now plans to make dramatic changes. It would be fruitless to conduct discovery or litigation on these contentions.

CONCLUSION

GANE, as lead intervenor, respectfully submits that the ASLB adopt the proposed schedule offered here.

Respectfully submitted,



Glenn Carroll²
for Georgians Against Nuclear Energy
139 Kings Highway
Decatur, GA 30030
404-378-4263

Dated April 16, 2002

² This pleading was prepared with substantial assistance from GANE's legal adviser, Diane Curran.

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

I hereby certify that on April 16, 2002, copies of GEORGIANS AGAINST NUCLEAR ENERGY AND BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE PROPOSED DISCOVERY SCHEDULE FOR THE PLUTONIUM FUEL FACILITY PROPOSED FOR SAVANNAH RIVER SITE were sent to the following list via e-mail with paper copies served via U.S. Postal Service First Class Mail as follows:

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

Donald J. Silverman, Esq.
Morgan, Lewis & Bockius
1111 Pennsylvania Ave. N.W.
Washington, D.C. 20004
dsilverman@morganlewis.com
apolonsky@morganlewis.com

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

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

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

Respectfully submitted,

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


Glenn Carroll
for Georgians Against Nuclear Energy
April 16, 2002

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