

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

DOCKETED
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October 18, 2002 (11:09AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

In the Matter of)	October 10, 2002
)	
DUKE COGEMA STONE & WEBSTER)	Docket No. 070-03098-ML
)	
(Savannah River Mixed Oxide Fuel Fabrication Facility))	ASLBP No. 01-790-01-ML
)	
)	

**DUKE COGEMA STONE & WEBSTER'S MOTION
FOR LEAVE TO RESPOND TO GANE'S REPLY
REGARDING NEW AND AMENDED CONTENTIONS ON THE
REVISED ENVIRONMENTAL REPORT**

Pursuant to Section I.D.2 of the Licensing Board's July 17, 2001 Memorandum and Order ("July 17 Order"), Duke Cogema Stone & Webster ("DCS") moves for leave to respond to Georgians Against Nuclear Energy's ("GANE") October 7, 2002 reply regarding new and amended contentions.¹ DCS attempted to consult with the other parties as required by Section I.D.2(a) of the July 17 Order: Glenn Carroll was unavailable, but Diane Curran stated that she does not have sufficient information with which to oppose or consent to the motion; the NRC Staff does not oppose the Motion.

¹ *Georgians Against Nuclear Energy's Reply to DCS's and NRC Staff's Responses to New and Amended Contentions* (October 7, 2002) (hereafter "GANE's Reply").

DCS has good cause to file a response because GANE's Reply includes new information regarding the factors set forth in 10 CFR § 2.714(a)(1) as well as changes to the scope of the new and amended contentions.

First, GANE's initial pleading² failed to include any discussion on the fourth and fifth factors set forth in 10 CFR § 2.714(a)(1) for admission of late-filed contentions, or on the "compelling showing" standard for a party who files late without good cause. Although GANE now concedes it lacks good cause, GANE's Reply contains entirely new arguments concerning the remaining factors set forth in 10 CFR § 2.714(a)(1), and the balancing of those factors. In particular, GANE argues for the first time how it meets the fourth and fifth factors, and that it has made the requisite "compelling showing" that the latter four factors of Section 2.714(a)(1) weigh in its favor.³ DCS has good cause to respond in order to address this new information.

Second, DCS has good cause to file a response because GANE's Reply impermissibly expands or modifies some of the contentions it presented in its September 11 pleading. For example, GANE now seeks to have Amended Contention 9 expanded from an allegation that the revised ER does not discuss accidents at the Waste Solidification Building to an allegation that the "revised ER does not consider the costs of any accidents."⁴ DCS has good cause to respond in order to address this new information.

Finally, through its September 25 Order, the Licensing Board exercised its discretion to provide GANE with an opportunity to reply to DCS' Answer. This opportunity is otherwise

² *Georgians Against Nuclear Energy's New and Amended Contentions Opposing Authorization for Duke Cogema Stone & Webster to Construct a Plutonium Fuel Factory at Savannah River Site* (September 11, 2002).

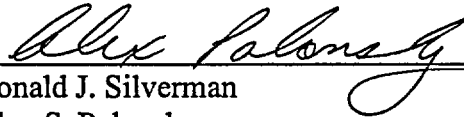
³ *GANE's Reply* at 20-24.

⁴ *GANE's Reply* at 3 (emphasis in original).

unavailable without a request for leave to file such a reply. As a matter of equity, DCS should be afforded an opportunity to respond.

Accordingly, DCS requests an opportunity to respond to GANE's Reply.⁵ If granted leave to respond, DCS intends to do so with a relatively brief pleading.

Respectfully submitted,



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Dated October 10, 2002

⁵ DCS urges the Licensing Board to ignore GANE's discussion of the NRC Staff's Answer. The Licensing Board's September 25, 2002 Order required GANE to reply to DCS' Answer, not the NRC Staff's Answer. GANE should have filed a request for leave to file such a reply, but it did not do so.

CERTIFICATE OF SERVICE

I hereby certify that copies of DUKE COGEMA STONE & WEBSTER'S MOTION FOR LEAVE TO RESPOND TO GANE'S REPLY REGARDING NEW AND AMENDED CONTENTIONS ON THE REVISED ENVIRONMENTAL REPORT were served this day upon the persons listed below, by both e-mail and United States Postal Service, first class mail.

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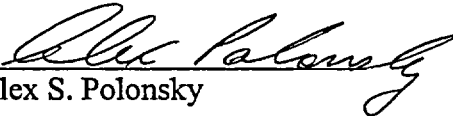
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