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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of

DUKE COGEMA STONE & WEBSTER
(Savannah River Mixed Oxide Fuel
Fabrication Facility)

Docket No. 070-03098-ML

ASLBP No. 01-790-01-ML

November 20, 2002

ORDER

The Licensing Board will hold a telephone conference with Duke Cogema Stone & Webster (DCS), the NRC Staff, and Georgians Against Nuclear Energy (GANE) at 10:00 a.m. on Wednesday, December 4, 2002, with respect to GANE's application for security clearances. Because Joint Intervenors Blue Ridge Environmental Defense League and Donald J. Moniak are not involved in this matter, they need not participate but are free to listen in on the conference. Counsel for DCS and the NRC Staff shall participate. GANE's representative and its legal advisor shall also participate.

To participate in the telephone conference, counsel, and GANE's representative and its legal advisor shall call 1-800-638-8081 (301-231-5539 for local callers) and enter passcode 1145# at a few minutes before 10 a.m. on Wednesday, December 4, 2002. The Board expects all participants to be punctual in joining the telephone conference and to avoid keeping any other parties or the Board waiting. In the event any party's counsel or GANE's

representative or legal advisor cannot participate, that counsel or representative shall inform the Presiding Officer by 2:00 p.m. on Friday, November 22, 2002 by email and provide the Presiding Officer an alternative time on December 3 acceptable to all participants for holding the conference.

By 12:00 noon on Monday, December 2, 2002, DCS, the Staff, and GANE shall file electronically with the Licensing Board and provide each other their answers to the questions set out below addressed to them. Further, at the telephone conference the parties should be prepared to discuss, inter alia, their filings.

DCS, Staff, and GANE:

- (1) In the absence of an objection by DCS or the Staff, the Board has not raised the issue of GANE's participation pro se with a "legal advisor." Assuming GANE's "legal advisor" is otherwise qualified to receive a security clearance and in the context of Restricted Data and National Security Information, should the Board consider granting access to such information to a "legal advisor" as opposed to a party's counsel of record who has clearly defined legal and ethical responsibilities and obligations?

Staff and, if it wishes, DCS:

- (2) It appears to the Licensing Board that the following sequential steps must occur in order for GANE to be able to obtain access, in appropriate circumstances, to Restricted Data or National Security Information.
 - (a) GANE must file an application (such as its June 7, 2002 filing) with the Board seeking an order granting access to such information (see 10 C.F.R. § 2.905(a), (b), and (f));
 - (b) The Board, upon a finding that access to such information is needed for adequate preparation or presentation of its case, must issue an order to that effect (see 10 C.F.R. § 2.905(a) & (b));
 - (c) GANE, upon issuance of such an order, "requests" appropriate security clearances directly from the Commission (see 10 C.F.R. § 2.905(c));
 - (d) In the event the requested clearances are granted, the Board (see 10 C.F.R. § 2.905(e)(1)), or in appropriate circumstances the Commission (see 10 C.F.R. § 2.905(e)(2) & (h); 10 C.F.R. § 2.740-42; 41 Fed. Reg. 53,328 (Dec. 6, 1978)), may, upon an appropriate application, grant access with appropriate conditions to Restricted Data or National Security Information.

If the Board has misapprehended the necessary regulatory steps, detail the precise steps and sequence (and the regulatory authority for each step) that GANE must follow to obtain access to appropriate Restricted Data or National Security Information.

Staff and, if it wishes, DCS:

- (3) Assuming the steps and sequence outlined above are generally correct, what specific form and information should GANE's "request" to the Commission for security clearances include?

Staff:

- (4) Assuming the steps and sequences outlined above are generally correct, with whom should GANE's "request" be filed and what fee must accompany GANE's request?

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Thomas S. Moore
ADMINISTRATIVE JUDGE

/RA/

Charles N. Kelber
ADMINISTRATIVE JUDGE

/RA/

Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland

November 20, 2002

¹Copies of this Order were sent this date by Internet e-mail transmission to (1) GANE; (2) BREDL; (3) DCS; and (4) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DUKE COGEMA STONE & WEBSTER) Docket No. 70-3098-ML
)
(Savannah River Mixed Oxide Fuel)
Fabrication Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER DATED NOVEMBER 20, 2002 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-3098-ML
LB ORDER DATED NOVEMBER 20, 2002

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 20th day of November 2002