

RAS 5057

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Duke Cogema Stone and Webster
Savannah River MOX Fabrication Facility

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USNRC

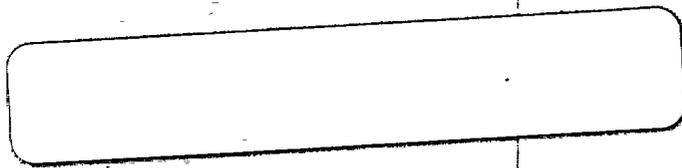
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PRESENT: (CONT'D)

DIANE CURRAN, Esq.

KATHLEEN MARTIN

PETER HASTINGS, Esq.

PATRICK ROADS

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APPEARANCES:

On Behalf of Duke Cogema Stone & Webster:

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On Behalf of the NRC:

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P-R-O-C-E-E-D-I-N-G-S

10:00 a.m.

MR. HULL: -- for the Staff today. I have on the line with me Ed Yohanaman and Keith Everly, both with the Nuclear Security and Incident Response Office, Tom Martin with the Office of Administration, and Dave Brown with the Nuclear Material Safety and Safeguards. He's backup Project Manager for the MOX project.

JUDGE MOORE: Applicants?

MR. SILVERMAN: This is Don Silverman with Morgan, Lewis and Bockius.

MR. POLONSKY: Alex Polonsky with Morgan, Lewis.

MR. HASTINGS: And Peter Hastings with Duke Cogema Stone and Webster.

JUDGE MOORE: Intervenor, Ms. Carroll?

MS. CARROLL: This is Glenn Carroll from Georgians Against Nuclear Energy.

MS. CURRAN: This is Diane Curran, Legal Advisor to GANE.

JUDGE MOORE: I thank you. Court Reporter, did you --

MS. MARTIN: Your Honor, we have two more.

MR. ROADS: My name is Patrick Roads,

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1 Department of Energy.

2 MS. MARTIN: And I'm Kathleen Martin,
3 Department of Energy.

4 JUDGE MOORE: I'm sorry, I didn't catch
5 the one before Ms. Martin.

6 MR. ROADS: Roads, Patrick Roads is my
7 name.

8 JUDGE MOORE: R-H-O-D-E?

9 MR. ROADS: O-A-D-S.

10 JUDGE MOORE: Thank you. You've all
11 received copies of the Board's November 20, 2002 order
12 and responded to it. The Board would like to go right
13 to our questions for you regarding that. The first
14 question dealt with the status of GANE's pro se status
15 with a legal advisor. The Board has considered all
16 the parties' answers to its first questions contained
17 in that November 20, 2002 order and concluded that
18 GANE's, quote, "legal advisor," unquote, must either
19 enter an appearance as counsel of record or if they
20 are -- if she is only to play a behind-the-scenes role
21 and in that case the Board will not entertain any
22 application for a security clearance for that legal
23 advisor. If that is not something that the GANE finds
24 suitable, they can find a way to appeal it to the
25 Commission.

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1 MS. CURRAN: Judge Moore?

2 JUDGE MOORE: Yes.

3 MS. CURRAN: This is Diane Curran. These
4 regulations are a bit confusing, but it seems to us
5 that applying a security clearance and applying for
6 access to documents on a need-to-know basis are two
7 different operations. Do you consider that it's the
8 Board where we will be applying for a security
9 clearance?

10 JUDGE MOORE: That's one of the things
11 that we will be working through today, but, Ms.
12 Curran, the Board is very concerned and has been
13 concerned for some time with the neither fish nor fowl
14 status, frankly, of you. In all my years on the
15 Boards and in anyone else's knowledge here, we've
16 never had a pro se intervenor with a legal advisor,
17 and the parties did not raise an objection so the
18 Board did not on its own raise it, but it comes to a
19 head in the context of dealing with classified
20 information and frankly safeguards information.

21 And the Board is no longer willing to deal
22 with this novel approach and wishes to put things on
23 a more traditional track that we're all used to
24 dealing with, which is you must either be counsel of
25 record or you're only a behind-the-scenes person,

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1 neither entitled to any service or anything else in
2 this proceeding, and the Board will not consider
3 because you are capable of becoming counsel of record
4 allowing you to have classified information or
5 safeguards information. If that ruling is not
6 suitable to you, appeal it to the Commission.

7 MS. CURRAN: All right.

8 JUDGE MOORE: Next, I have a question for
9 the staff to start this off. Mr. Hull, on Page 4 of
10 your response to the Board's second question, you
11 generally agreed with the Board's recitation of the
12 steps necessary for GANE to gain security clearances
13 for its designated representatives. Is that a correct
14 reading of your response?

15 MR. HULL: You're referring, Your Honor,
16 to the paragraph that starts, "Notwithstanding the
17 above"?

18 JUDGE MOORE: The second question that set
19 forth the Board's understanding of the steps that
20 would be necessary for GANE to obtain security
21 clearances.

22 MR. HULL: Yes. My problem is that my e-
23 mail copy of what I sent you on December 2 is not
24 numbered, so you refer to a Page 4 but my pages are
25 not numbered.

1 JUDGE MOORE: All right. It's Paragraph
2 -- it would appear to be Paragraph 5 if I've properly
3 counted, the paragraph beginning, "Notwithstanding the
4 above."

5 MR. HULL: Yes. I think your Question 2
6 basically set forth the process and the correct order.
7 The Board would first have to issue an order, pursuant
8 to 2.905(b).

9 JUDGE MOORE: Thank you, Mr. Hull, we
10 understand that. Let me move now to the Applicant.
11 Mr. Silverman?

12 MR. SILVERMAN: Yes, sir.

13 JUDGE MOORE: It appears from your answer
14 on Page 3, your answer to the Board's second question,
15 that you disagree with, one, the staff and, two, the
16 Board's recitation of those steps. Now, specifically,
17 do you agree or disagree?

18 MR. SILVERMAN: With the Board's and
19 Staff's recitation? We don't completely agree, Your
20 Honor, so I guess --

21 JUDGE MOORE: Well, now, let me ask the
22 question, please.

23 MR. SILVERMAN: Oh, I'm sorry, go ahead.

24 JUDGE MOORE: Ten CFR 2.905(a) and (b), do
25 you agree or disagree that 10 CFR Section 2.905(a) and

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1 (b) indicates that the Board must upon proper
2 application or appropriate application first make a
3 determination that access to restricted data or
4 national security information may be required for the
5 preparation of a party's case?

6 MR. SILVERMAN: Yes. And you used the
7 word, "first." I think in our pleading we took the
8 position that there are several steps in the process.
9 There is a security clearance determination, a need-
10 to-know determination by the appropriate agency and
11 then this determination that you allude to by the
12 Board, but I don't think the order is particularly
13 important. So, yes --

14 JUDGE MOORE: Did you say that the order
15 is not particularly important?

16 MR. SILVERMAN: I don't think so.

17 JUDGE MOORE: That leads me to the next
18 question. From Page 3 of your answer, as I read it,
19 again, to your answer to the second question, it
20 appears that you indicate that the Board has no role
21 to play in this process until security clearances have
22 already been granted, but if your position is that the
23 order in which these steps are taken does not matter,
24 then that would not be a correct reading of your
25 answer.

1 MR. SILVERMAN: In all honesty, Your
2 Honor, we set the answer out in the logical order that
3 we thought made sense for our reading of the
4 regulations. We thought that it made sense, first,
5 for the appropriate cognizant security agency to make
6 the security clearance determination. We felt that
7 the need-to-know determination by the appropriate
8 agency needed to be made. And then, as we set out in
9 our answer, it made sense to then if those conditions
10 are met, then you go into Subpart I if you're talking
11 about information received by the NRC. I noticed --
12 if I may, I noticed that the Staff answer seems to
13 reverse that order, and I'm not sure we have any great
14 objection to that.

15 JUDGE MOORE: Well, my problem with your
16 approach is how can anyone other than this Board make
17 the determination whether a party needs, for the
18 preparation of its case, this type of material?

19 MR. SILVERMAN: Right. We think there are
20 two different determinations to be made, Your Honor.
21 We think that Subpart I does not obviate the need for
22 the agency through its internal procedures and regular
23 processes to make a need-to-know determination and
24 that that is separate from this finding in Subpart I,
25 which only comes into play with respect to information

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1 that's in the possession of the NRC.

2 JUDGE MOORE: Correct. Now, let's shift
3 gears a moment with information that -- let's back up
4 even further. There's three classes of information,
5 as we understand it. Information that is generated by
6 the NRC and receives a classification. The second
7 category would be information received by the NRC, and
8 we'll get to what received means in a moment, that
9 emanates from the applicant and/or, in this instance,
10 DOE. And then a third category of information would
11 seem to be information that's in DOE's and/or the
12 applicant's sole possession and has not been received
13 by the NRC. Are those the three possibilities we deal
14 with?

15 MR. SILVERMAN: I think so, Your Honor,
16 yes.

17 JUDGE MOORE: Okay. Looking at the third
18 category, that is classified information that has not
19 been received by the NRC, the Board's understanding
20 from the parties' original filings and its readings of
21 the regulations and the appropriate legislative
22 history here is that that category of information, if
23 the Intervenor were to seek it, for example, through
24 the discovery process, that the Board would certify
25 any such question to the Commission under the normal

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1 discovery rules, and it would then be in the
2 Commission's bailiwick. Is that a current reading for
3 those rules? Specifically, that's what the Commission
4 said in the legislative history of the --

5 MR. SILVERMAN: Yes.

6 JUDGE MOORE: -- revision of Subpart I.

7 MR. SILVERMAN: Yes. I think that's
8 right, Your Honor.

9 JUDGE MOORE: Now, if that's correct, then
10 the material in your responses to our recent questions
11 that say that's a matter solely within DOE's bailiwick
12 may be true in the context of the Commission will have
13 to deal with DOE in some manner or fashion, but it
14 doesn't involve this Board.

15 MR. SILVERMAN: It doesn't involve the
16 Board. I think that's right. And, of course, we
17 think that information -- security clearance authority
18 for that information rests with DOE as well as the
19 need-to-know determination. Now, that's separate --

20 JUDGE MOORE: That's something that you
21 and the Commission need to work out.

22 MR. SILVERMAN: Fair enough.

23 JUDGE MOORE: So the Board, as we read all
24 of this, is out of that loop, if you will. Does the
25 Staff agree with that?

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1 MR. HULL: Yes, Your Honor. I think
2 that's the position we took in our July 5 filing.

3 JUDGE MOORE: Ms. Curran, is that your
4 understanding of all of this?

5 MS. CURRAN: Yes, with respect to that
6 third category of information.

7 JUDGE MOORE: Okay.

8 MS. CARROLL: Your Honor?

9 JUDGE MOORE: Yes. Who's speaking,
10 please?

11 MS. CARROLL: Glenn Carroll.

12 JUDGE MOORE: Yes, Ms. Carroll?

13 MS. CARROLL: To back up, I take it that
14 your order to strip us of pro se status is in effect?

15 JUDGE MOORE: I have not stripped you of
16 pro se status. It's something solely within your
17 discretion as to how you wish to proceed.

18 MS. CARROLL: But is your discomfort with
19 our pro se status linked to our request for a security
20 clearance?

21 JUDGE MOORE: Yes, among others, but for
22 today's telephone conference, you are free to speak,
23 as is with Ms. Curran.

24 MS. CARROLL: If we don't apply for a
25 security clearance, then are you willing to let us

1 continue pro se for the time being?

2 JUDGE MOORE: Well, the Board's concern is
3 deeper than just the security clearance. It goes to
4 safeguards information and, frankly, proprietary. The
5 Board has from the beginning been uncomfortable with
6 a pro se status with a legal advisor. Pro se status
7 is without counsel.

8 MS. CARROLL: It seems that --

9 JUDGE MOORE: But heed our ruling, Ms.
10 Carroll, and the Board does not wish to discuss it
11 further. You may appeal it to the Commission.

12 MS. CARROLL: Well, then we're still
13 confused that you are intending to issue an order
14 stripping us of our pro se status whether or not we
15 apply for a security clearance.

16 JUDGE MOORE: Well, perhaps Ms. Curran can
17 help you in your confusion. The matter is, for this
18 telephone conference, now at rest.

19 The Board has an additional question for
20 the Staff. Mr. Hull, in Footnote 5 of COI-02-09,
21 that's the Commission September 4, 2002 Memorandum in
22 Order directing the application of the 10 CFR Part 2
23 Subpart I procedures for this proceeding, the
24 Commission states in regard to security clearances in
25 Footnote 4 -- I'm sorry, in Footnote 5 that, and I

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1 quote, "The Staff recently informed the Commission
2 that the DOE has proposed that it take on this
3 responsibility pending the completion of the MOU,"
4 unquote. What information did the Staff impart to the
5 Commission so that we can determine what the
6 indefinite pronoun "it" refers to in that Footnote?
7 And in this regard the Board understands that at least
8 one draft of that MOU that we have seen places the
9 responsibility for granting security clearances for
10 the MOX Facility on the NRC.

11 MR. HULL: This reference in Footnote 5
12 that the Commission made was to the Board notification
13 that the Staff issued I believe it was in late July
14 following the Staff's receipt of a letter from the DOE
15 addressed to Mr. Traverse, the EDO, that that DOE
16 letter was dated July 17, 2002.

17 JUDGE MOORE: Well, what does "it" refer
18 to in the Commission's footnote, DOE or the Staff?

19 MR. HULL: As I read it, Your Honor, the
20 "it" would refer back to DOE.

21 JUDGE MOORE: Okay. So the underlying
22 information that the Staff imparted to the Commission
23 was that DOE had proposed that DOE take on the
24 responsibility of issuing security clearances for the
25 MOX Facility.

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1 MR. HULL: As stated in DOE's letter dated
2 July 17, 2002.

3 JUDGE MOORE: Okay. Thank you. What is
4 the current status of the MOU, Mr. Hull?

5 MR. HULL: We have also been under the
6 obligation, Your Honor, of the Commission's early
7 September order which directed that the Subpart I
8 hearing procedures be applied to the MOX proceedings.
9 The Commission had requested the Staff to keep the
10 Board informed about any progress between the NRC and
11 the DOE on finalizing the Memorandum of Understanding
12 that's still in draft form, and there has been no
13 progress to date on that, and that is why we had not
14 advised the Board or parties as yet. The Staff is
15 mindful of that Commission request, but there's no
16 progress to report as yet.

17 JUDGE MOORE: Okay. Now, if DOE is
18 responsible for security clearances with respect to
19 the MOX Facility, of my categories 1, 2 and 3 of
20 potential classified information, what, if any, of
21 those categories is DOE going to be issuing security
22 clearances for, assuming all the other hoops have been
23 jumped through?

24 MR. HULL: Well, I think it's correct to
25 say that DOE has been responsible for issuing any

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1 necessary security clearances to its DCS contractors.
2 Those security clearances would obviously be necessary
3 in order for its DCS representatives to be able to
4 handle any classified information. But I'm not sure
5 that it's been determined that the DOE has any role at
6 this point in issuing security clearances to anybody
7 else.

8 JUDGE MOORE: Mr. Silverman?

9 MR. SILVERMAN: Your Honor, our position
10 is that whoever the cognizant security agency is is
11 responsible for issuing security clearances regardless
12 of the nature of the information.

13 JUDGE MOORE: So categories 1, 2 and 3
14 that I set forth, in your view, the CSA is currently
15 DOE and DOE must issue all security clearances?

16 MR. POLONSKY: This is Mr. Polonsky. I
17 think we'd like to make a distinction between security
18 clearance and then access need to know to the three
19 types of classified information you've identified. If
20 DOE is the CSA, then the application for security
21 clearances would go from the intervenors to DOE.
22 However, the need to know --

23 JUDGE MOORE: Stop right there.

24 MR. POLONSKY: Okay.

25 JUDGE MOORE: For Category 1?

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1 MR. POLONSKY: Well, again, Category 1
2 security clearance is just security clearance in
3 general. The answer is yes, but they would need to
4 identify --

5 JUDGE MOORE: I'm sorry, there were two
6 speaking. Your answer is for Category 1 information
7 --

8 MR. SILVERMAN: For the security clearance
9 only, Your Honor, Category 1, 2 and 3 information, for
10 all three categories the security clearance itself
11 would be granted by the cognizant security agency. If
12 it's DOE, it would be DOE.

13 JUDGE MOORE: Even if it's NRC-generated
14 classified information, such as the two documents that
15 the Staff has not placed in the hearing record but for
16 the fact that they're classified?

17 MR. POLONSKY: Your Honor, yes. We're
18 distinguishing there's two steps in this process. One
19 is the granting of a security clearance, and that's
20 what I'm referring to now. That's the processing of
21 the application to get an L clearance, for example.
22 That in and of itself does not give an individual the
23 right to access any particular piece of information.
24 They must also get --

25 JUDGE MOORE: Know that much, but other

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1 than that much, I'm not sure we do know, Mr. Polonsky.
2 Frankly, you're not helping us clear up the confusion
3 here.

4 MR. HULL: Your Honor, this is John Hull
5 for the Staff. I think one of the problems here is
6 that there is no CSA at this point for the proposed
7 MOX Facility.

8 JUDGE MOORE: How do we remedy that?

9 MR. HULL: That's a good question.

10 MS. CARROLL: Memorandum of Understanding.

11 JUDGE MOORE: I'm sorry.

12 MS. CARROLL: Memorandum of Understanding.

13 JUDGE MOORE: Who's speaking, please?

14 MS. CARROLL: Glenn Carroll.

15 JUDGE MOORE: All of you please identify
16 yourself before you speak. Yes, Ms. Carroll, but it's
17 not a perfect world, and the Board has no power to
18 either direct a time nor the substance of an MOU
19 between NRC and DOE.

20 MS. CURRAN: This is Diane Curran. I'd
21 like to ask a question, and that is I would guess this
22 kind of problem comes up in other contracts. Do the
23 DOE and the NRC recognize each other's security
24 clearances such that the Board could choose one and
25 have some kind of an agreement to recognize the other

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1 agency's clearance?

2 JUDGE MOORE: Applicant, is that doable?

3 MR. POLONSKY: I think that question ought
4 to be directed to the Staff, Your Honor. We really
5 don't know the answer to that.

6 JUDGE MOORE: Mr. Hull?

7 MR. HULL: Going back to something you
8 said earlier, Your Honor, about the three -- you would
9 split the possible types of classified information
10 into three parts, I think the focus needs to be on
11 which agency originated the classified information as
12 opposed to which agency has possession of the
13 information. As I read 2.905(h), the critical point
14 is which agency has originated the classified
15 information. That agency has control over to whom
16 access to that information is given. If it's NRC-
17 originated information, the NRC has control; if it's
18 DOE information or if it's DCS information that's been
19 classified, pursuant to derivative authority obtained
20 from DOE, the DOE would have the call on whether a
21 given individual would be able to have access to that
22 information.

23 JUDGE KELBER: This is Judge Kelber. Mr.
24 Hull, what we're trying to determine right now is
25 where does the security clearance get granted. For

1 example, you sent NRC-generated information to DCS.
2 Presumably, the DCS people did not have clearances
3 obtained from the NRC, they have them from DOE or so
4 we've heard. Nevertheless, you sent the information.
5 Is it necessary for -- do they have to get their
6 clearances from NRC as well?

7 MR. HULL: No, they had clearances from
8 the DOE, Your Honor.

9 JUDGE KELBER: So that was good enough.

10 JUDGE MOORE: So you recognize the DOE's
11 security clearance as to that NRC-generated secure
12 classified information.

13 MR. HULL: Yes. We would not have sent
14 any classified information to DCS if they had not had
15 security clearances.

16 JUDGE MOORE: From whom?

17 MR. HULL: From DOE.

18 JUDGE MOORE: But not from you.

19 MR. HULL: To my knowledge, the Staff has
20 not issued any security clearances -- I'm sorry, the
21 NRC has not issued any security clearances to DCS.

22 JUDGE MOORE: Okay. Mr. Hull, and I'm not
23 in any way intending to put you on the spot, but did
24 the question ever come up as to who needed to have
25 issued that security clearance for NRC-generated?

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1 MR. HULL: All I can say, Your Honor, is
2 that I was not directly involved with when NRC, and I
3 believe it was Mike Weber, sent the classified
4 information to DCS. As I think I indicated in an
5 earlier filing, I did not become even aware of that
6 document until several months after the fact, so I do
7 not have any information as to what considerations
8 were made at that time. I can only assume that the
9 necessary verification was made that the DCS had the
10 necessary security clearances. And I'm getting
11 confirmation here from Keith Everly that that
12 confirmation was made.

13 JUDGE MOORE: So that would seem to imply
14 that a security clearance by either agency is
15 sufficient and readily recognized by each agency for
16 their own classified information; that is, information
17 they generate.

18 MR. HULL: I think that's correct, Your
19 Honor, but, again --

20 JUDGE MOORE: Stop right there, Mr. Hull.

21 MR. HULL: What's that?

22 JUDGE MOORE: Stop right there.
23 Applicant, is that your understanding?

24 MR. POLONSKY: The understanding from the
25 facts that you've presented are that the NRC would

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1 accept a DOE clearance, but the Applicant doesn't have
2 an opinion on whether DOE would accept --

3 JUDGE MOORE: Well, now wait a minute,
4 Applicant. How can you accept classified information
5 from another agency if it's not properly to be in your
6 hands? I mean it would seem to the Board that you
7 can't have it both ways here.

8 MR. POLONSKY: I understand, Your Honor.
9 We don't know -- to answer your question, we don't
10 know how -- whether it's a reciprocal.

11 JUDGE MOORE: All right. Is there any
12 chance, for purposes of this proceeding, and is there
13 any way in which the NRC and DOE can reach some kind
14 of an agreement, and we're not talking about the
15 Memorandum of Understanding, for dealing with this
16 specific problem of how we're going to deal with
17 security clearances? Can we have, for purposes of
18 this proceeding, an agreement among the parties on how
19 it will be handled in the same way the parties would
20 present to the Board in a situation not involving
21 classified information an agreed upon procedure for
22 handling something?

23 MR. HULL: Your Honor, my concern here, I
24 would say, yes, I would hope that something could be
25 worked out. I do not want to see this hearing process

1 delayed unnecessarily by this dispute. I'm advised by
2 Tom Martin here that there is a reciprocity between
3 the NRC and DOE in terms of recognizing each other's
4 -- each agency's security clearances.

5 JUDGE MOORE: All right. Would you file
6 that with the Board immediately, Mr. Hull?

7 MR. HULL: Yes, but let me add something
8 that I tried to add earlier, Your Honor. We're
9 focusing here on security clearances, but, again, I
10 think you also need to keep in mind that with respect
11 to any particular piece of classified information,
12 need-to-know determination still has to be made by the
13 originating agency.

14 JUDGE MOORE: The Board is well aware of
15 that, Mr. Hull, and that's spelled out in that
16 sequence of steps that we put forth in our questions.

17 MR. HULL: Very well.

18 JUDGE MOORE: Judge Kelber has a number of
19 questions in this regard.

20 JUDGE KELBER: Okay. This is Judge
21 Kelber. I have a set of questions, first, for the
22 Applicant and then for the Staff, and then I'm going
23 to come back to the Applicant. And forgive me if it's
24 a little bit repetitious of some of the material
25 that's already been discussed.

1 To the Applicant, in your brief dated July
2 3 of this year you stated, and I quote, "GANE has no
3 need for access to classified information to litigate
4 Contention 1." To cite various sets of information
5 illustrating that finding, you state, "Even DCS'
6 fundamental Nuclear Material Control Plan is not
7 expected to be classified." Then you go off and state
8 similar reasoning with respect to Contention 2. You,
9 however, concede that some of GANE's interrogatories
10 illicit, or try to illicit, classified information.
11 So I'm going to ask, do DCS or DOE possess restricted
12 data or national security information which might
13 reasonably be expected to be relevant to a decision on
14 the adequacy on the design basis of the physical
15 security of the facility or the material controller
16 and accounting provisions, given the questions raised
17 to date?

18 MR. SILVERMAN: Your Honor, this is the
19 Don Silverman for the Applicant. Our position is that
20 there is, to this date, no classified information that
21 is needed to litigate those two contentions as they
22 have been admitted by the Board.

23 JUDGE KELBER: But my question concerns
24 expectations.

25 MR. SILVERMAN: Okay.

1 JUDGE KELBER: Do you possess restricted
2 data or national security information which might
3 reasonably be expected to be relevant?

4 MR. SILVERMAN: Our position is no. There
5 is no such information that we possess that we would
6 reasonably expect to be relevant to the contention.

7 JUDGE KELBER: All right. Now, in that
8 regard, is there that same category of information
9 that it could be reasonably be expected that the Staff
10 will need to reach a determination on these questions?

11 MR. SILVERMAN: No, Your Honor, not in our
12 view. W, for example, have submitted voluntarily
13 design basis information in the revision to the CAR.
14 None of that is classified, and we've taken the
15 position, and continue to adhere to the position,
16 that, one, we are not required to provide that
17 information under the regulations, and, two, the
18 contentions are limited to the lack of design basis
19 information in the CAR not the adequacy of any
20 information we may have recently put into the CAR.

21 JUDGE LAM: This is Judge Lam. Mr.
22 Silverman, in that regard, if the Board takes your
23 position to say that no security clearances is
24 necessary for the Intervenor, would you anticipate any
25 delay in this proceeding if you're wrong?

1 MR. SILVERMAN: I imagine that the
2 potential for some delay would exist if there were
3 later a determination that access to classified
4 information was required. I can't quantify it but
5 there would probably be some.

6 JUDGE MOORE: Mr. Silverman, now you
7 understand what one of our concerns is, if your
8 position as an advocate is found not to be the case
9 downstream, and yet we accept your position today, the
10 delay is inevitable, and that delay is on your head.
11 Is that something you're willing to accept in light of
12 what we are told in your previous filings that this is
13 a national interest and national security that this
14 program move forward with all deliberate speed?

15 MR. SILVERMAN: Your Honor, the answer is
16 yes, our position is reflected in the pleadings we've
17 filed to date on the subject.

18 JUDGE MOORE: So your position is that you
19 are perfectly willing to accept the delay if your
20 position proves to be wrong that we need to stop this
21 process in the middle so that security clearances can
22 be obtained if there is such information.

23 MR. SILVERMAN: Your Honor, I don't know
24 -- like I said, I can't quantify the delay and I
25 haven't sat down and tried to figure out the what ifs

1 of perhaps a Commission determination a year from now
2 or whenever that there was error in not providing
3 classified information to the Intervenors. I haven't
4 laid that out. We don't want delay. We're interested
5 in moving this forward as quickly as possible. We
6 would like to do everything possible for that to
7 occur, but we adhere to the position that as the
8 contentions have been admitted we haven't yet heard
9 any reason why classified information would be needed
10 to pursue those contentions.

11 JUDGE MOORE: In that regard, Mr.
12 Silverman, what is the downside risk to having these
13 security clearances processed and granted or denied so
14 that we would not have any delay if it arises that
15 there is a need for the parties to prepare their cases
16 if they need this information?

17 MR. SILVERMAN: Your Honor, there's -- I
18 guess we don't really have a problem with that. The
19 reason that we raised the issue of whether this
20 information is needed at all was really to possess a
21 potential way of dealing with this issue that avoids
22 all the complicated questions we're coming across now
23 on this whole issue of security clearances. We're
24 simply making the point that it may be premature to
25 get into all this. But we can't disagree with you

1 that, and I think we've even said in our pleadings in
2 the past that, and our interest is, if clearances are
3 needed, they should be processed as promptly as
4 possible, and the GANE should apply as soon as
5 possible.

6 JUDGE MOORE: Judge Kelber, go ahead,
7 please.

8 JUDGE KELBER: Okay. I have a follow-on
9 question to the Staff, and then I have some others.
10 Mr. Hull, if either a request for additional
11 information or the answer thereto includes restricted
12 data or national security information, how will that
13 exchange be handled? Will there, for example, be an
14 unclassified redacted version?

15 MR. HULL: I imagine there would be, Your
16 Honor, and keep in mind that under the Subpart I
17 provisions, which we're now operating under, the
18 parties are obligated to try and avoid introducing
19 classified information into proceedings.

20 JUDGE KELBER: We understand that, and we
21 hope that that's the case, but we can't take the
22 chance because of the delays involved. But there
23 would be a redacted version is your understanding.

24 MR. HULL: Yes, Your Honor.

25 JUDGE KELBER: Okay. I have some further

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1 questions. You stated in your filing of July 5 that
2 --

3 JUDGE MOORE: Judge Kelber, let me
4 interrupt you just one moment. Mr. Hull, do you agree
5 with Mr. Silverman's assessment that, if I'm fairly
6 paraphrasing him now, that it would be prudent to go
7 ahead and take whatever steps are necessary to have
8 the security clearances in place now so that if
9 eventualities arise that it's necessary to determine
10 or it's necessary that for the parties to prepare
11 their cases that they need classified information, the
12 steps that take the most time are already out of the
13 way?

14 MR. HULL: I think it would be prudent to
15 process the security clearances, Your Honor, for the
16 very fact that down the road we might avoid a
17 substantial delay. It's my understanding, and the
18 other gentlemen here can correct me if I'm wrong, that
19 at a minimum it will take four months to process a
20 Level L security clearance request.

21 JUDGE MOORE: Okay.

22 MR. HULL: And so that because of that, I
23 think we do need to take steps to avoid the
24 possibility of substantial delay down the road.

25 JUDGE MOORE: Judge Kelber, go ahead.

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1 JUDGE KELBER: Let me go on. You stated
2 in your filing that the only classified information of
3 this type and identified to date which may be relevant
4 to GANE's admitted contention is contained in two NRC
5 guidance documents, both of which were sent to DCS
6 along with a cover letter dated March 13, 2000. Now,
7 we've gone over that earlier. In your response of
8 December 12 you state, "The Staff maintains, pursuant
9 to 10 CFR 70,23(b), that any MYNA and fiscal security
10 information of a classified nature is not needed to
11 approve the construction of the proposed MOX Fuel
12 Fabrication Facility, and such an approval would not
13 authorize the use of special nuclear material.

14 So my question is why was the classified
15 material sent to DCS on March 13, 2000 if it is not
16 needed? What was DCS' need to know at that time?

17 MR. HULL: Your Honor, as I said before,
18 I was not directly involved in sending that March 2000
19 information to DCS, so I'm really not in a position to
20 answer that question at this point.

21 JUDGE KELBER: Well, Mr. Hull, you need to
22 get yourself in a position to answer that question,
23 because it seems to directly contradict what you've
24 stated in your filing with us. It strikes the Board
25 as these materials from the NRC sent to DCS are in

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1 fact highly relevant to a determination of the
2 adequacy of the design bases for physical security and
3 material control of the county because they
4 essentially deal with, we gather from the description
5 that you have of them, of what your designing against.

6 MR. HULL: I myself have not looked at
7 that classified information, so I really -- I can't
8 say anything at this point as to how relevant they
9 might be to --

10 JUDGE KELBER: Well, let me put it this
11 way -- this is Judge Kelber again -- had the Staff
12 approved the construction of the facility, had access
13 to the classified documents? If so, what was their
14 need to know in as much as they do not require such
15 information at this time? I mean this is the thing
16 that's bothering us is that these documents were sent.
17 Presumably, the Staff is familiar with them, it's in
18 their minds, and how can they approve the construction
19 without classified information? I mean they have it,
20 they're using it, I think. If they don't need it, why
21 did they get it?

22 MR. HULL: Your Honor, I was looking for
23 that July 5 file, and I know I have it here somewhere,
24 but I believe I stated in the footnote there that this
25 was a March 2000 document.

1 JUDGE KELBER: Oh, I understand that, and
2 that that happens before this --

3 MR. HULL: Happens a year before we even
4 received the construction authorization request.

5 JUDGE KELBER: Oh, I understand that. The
6 question that we face is are these documents relevant,
7 is this classified information relevant? And you
8 state in your December 12 that it isn't needed, and
9 yet Staff has used it. If it isn't relevant, why does
10 the Staff use it? Why does the Staff need it? I've
11 handled classified information for many years, and you
12 don't have it unless you need to have it.

13 JUDGE MOORE: I don't think we're going to
14 get a satisfactory answer to your question today, Your
15 Honor.

16 JUDGE KELBER: Well, perhaps we ought to
17 get it soon.

18 JUDGE MOORE: In that regard, Mr. Hull,
19 but for the classified nature of those documents, they
20 would have been in the hearing file, would they not?

21 MR. HULL: Well, I'd have to look at that
22 information before I could answer that question, Your
23 Honor.

24 JUDGE LAM: This is Judge Lam. Regarding
25 the last question Judge Kelber and Judge Moore asked,

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1 Mr. Hall, would you be able to find the answer and
2 provide it to us at a later time? I understand you
3 are not able to answer them today.

4 MR. HULL: I can certainly check with Mr.
5 Weber and if there's certain information that's not
6 classified that can be revealed, I will see what I can
7 do in that regard.

8 JUDGE MOORE: That's not the question.
9 The question is, most simply, but for the classified
10 nature of those documents, would they have been in the
11 hearing file?

12 MR. HULL: And, again, I can't answer that
13 question without looking at the classified material.

14 JUDGE MOORE: Why did you then put the
15 correspondence to have those attached or have stated
16 that -- have put that in the hearing file?

17 MR. HULL: Well, because I think the
18 standard for material that's supposed to be in the
19 hearing file is that if there's any potential that it
20 could be relevant, you put it in, but that's not to
21 say that it is relevant.

22 JUDGE MOORE: No. The standard, if you'll
23 look at the regulations, is that all correspondence
24 between the applicant and the Staff dealing with the
25 subject at the hand and any reports is to be in the

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1 hearing file.

2 MR. HULL: Okay.

3 JUDGE MOORE: And because it is, I
4 believe, assumed by the regulations that it's relevant
5 or you wouldn't be corresponding about it.

6 MR. HULL: The problem is here, Your
7 Honor, we don't know if it's relevant or not, because,
8 again, that information was sent before we even had
9 the CAR in hand.

10 JUDGE MOORE: Can you tell us the nature
11 of what's in those documents?

12 MR. HULL: I can't, Your Honor, because I
13 haven't seen those documents.

14 JUDGE MOORE: All right. You have a
15 number of people that are sitting with you who have
16 because they sent them. Without revealing the
17 classified information, in the same way that a
18 classified document has to have a title that
19 essentially describes its nature, can you describe the
20 nature of those for us?

21 MR. HULL: I'm going to put you on mute
22 for a minute and then confer with the others here.
23 Hold on.

24 JUDGE MOORE: That's fine.

25 (Pause.)

1 MR. HULL: Hello. This is the Staff
2 Counsel, am I on the line again?

3 JUDGE MOORE: Yes, you are.

4 MR. HULL: I mistakenly cut us off. I
5 just meant to put you on mute. None of the gentlemen
6 here at the table with me have any knowledge of what
7 that classified information was that was sent by Mr.
8 Weber back in March of 2000. We're surmising that at
9 that point we anticipated getting a single application
10 from DCS that would cover both the construction and
11 operation of the proposed facility. It was at some
12 point later on that we learned that initially DCS
13 would only be requesting authority to construct the
14 proposed facility. So it's quite possible that this
15 information, while being relevant to operating the MOX
16 Facility, is not relevant to whether to authorize
17 construction of the MOX Facility.

18 JUDGE MOORE: Okay. Mr. Hall, we've done
19 some digging and we have what we believe you sent to
20 us is the cover letter to that material which you're
21 apparently going to include in the cover letter anyway
22 included in the hearing file. It's marked
23 confidential but it says, "Upon removal of enclosure,
24 this document is not classified," and there are no
25 enclosures that were sent to us.

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1 MR. HULL: I recall that as being the
2 case, Your Honor.

3 JUDGE MOORE: Okay. Now, that is
4 entitled, "Subject: Design Basis Threat Guidance
5 Applicable to the Mixed Oxide Fuel Fabrication
6 Facility." And the under enclosures, Enclosure 1 was
7 Design Basis Threat or Theft or Diversion of Guidance,
8 Confidential," and Number 2, "Design Basis Threat for
9 Radiological Sabotage Guidance, Confidential." Those
10 titles in and of themselves indicate that the subject
11 matter of the material that was sent in those guidance
12 documents dealt with the design basis threat that
13 would have to be designed against.

14 The thing that concerns the Board is it
15 would appear from these two documents alone that for
16 Contentions 1 and 2 that the Intervenors need this
17 information to adequately prepare for their case
18 because how do they know whether you have fulfilled --
19 that the Applicant has fulfilled its responsibility
20 and the Staff has fulfilled its responsibility without
21 knowing what the design basis needed to be designed
22 to, if I can be unartful and state it that way?

23 MR. HULL: Your Honor, if indeed the
24 supposition turns out to be correct in that there is
25 relevant information in that classified material,

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1 since the document was an NRC-originated document, the
2 GANE representatives would first need to obtain the
3 necessary security clearances and a need-to-know
4 determination would need to be made by the NRC as to
5 whether GANE's representatives could be given access
6 to those classified documents.

7 JUDGE MOORE: Applicant, in your earlier
8 filings on Page 9 of the July filing, cover page, you
9 state, "The design bases will not include any
10 classified information with the exception of the
11 specific attributes of the design basis threat
12 mandated by the NRC under 10 CFR Part 73." The same
13 basic question I'm addressing now to you that I just
14 addressed to Mr. Hull: Doesn't that in and of itself
15 indicate that there is classified information that
16 will be needed by these Intervenors under Contentions
17 1 and 2 to determine whether the design bases that the
18 Applicant has put forward meet the regulations?

19 MR. SILVERMAN: Your Honor, of the
20 Contentions admitted, we don't think the answer -- we
21 think the answer to that question is no. It's the
22 lack of information in the CAR, it's not the adequacy
23 of information that was not there. And, you know, we
24 have --

25 JUDGE MOORE: Have you amended your

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1 application to provide any new information?

2 MR. SILVERMAN: We have amended our
3 application to include our proposed design bases for
4 MYNA and physical security, yes.

5 JUDGE MOORE: Why wasn't that included
6 originally in your application?

7 MR. SILVERMAN: We don't believe it was
8 required, we still don't believe it was required, but
9 we made the decision on a voluntary basis to include
10 that information in the supplement to the CAR. And we
11 believe in fact that, if I remember correctly, the
12 Staff SER, draft SER, on the subject acknowledges that
13 that information isn't needed for construction
14 authorization, and certainly we believe it's not
15 needed for processing of the contentions, as admitted.

16 JUDGE MOORE: Okay. Thank you. Judge
17 Kelber, you have some more questions.

18 JUDGE KELBER: Let me continue now with
19 Mr. Hull. And we may go around the same bar as we
20 have previously, but if this -- you said that the
21 Staff don't need to refer to any classified
22 information, but if the Staff were to approve
23 construction to need the classification information
24 now, since they have it and they thought that somebody
25 else needed it, but will not refer to such information

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1 in their approval documents, how are review bodies
2 such as the ACRS, the EDO and the Commission to
3 conduct their reviews?

4 MR. HULL: I'm sorry, Your Honor, I didn't
5 quite follow your question there.

6 JUDGE KELBER: Well, basically, the Staff
7 has got access to these design basis documents. They
8 may feel that they can approve it without referring to
9 that information, but they have the information. Now,
10 how do the ACRS, the EDO and the Commission review
11 what the Staff has set forth without that information,
12 without that same information?

13 MR. HULL: What the Agency would be
14 approving, Your Honor, is what DCS has submitted to us
15 in its application. If DCS has made the determination
16 that no classified information is necessary to approve
17 the CAR, that is what the NRC would be evaluating.
18 The NRC is not necessarily evaluating information that
19 we gave DCS but that DCS did not make part of its
20 application.

21 JUDGE KELBER: In other words, you're
22 saying that the Agency could approve a design whose
23 basis may or may not conform to regulations?

24 MR. HULL: No, I'm not saying that, I'm
25 just saying that we -- the NRC approves applications

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1 that are submitted to us. If those applications don't
2 contain classified information, then there's no need
3 to know that classified information in order to
4 approve the application.

5 JUDGE KELBER: Let me use a homemade
6 example, Mr. Hull, to try and get my point across. I
7 say to you, "Design m a physical security system for
8 my plant." And you say, "What threat do you want to
9 design against?" I say, "I can't tell you that, it's
10 classified." So you come up with a design calling for
11 a chain link fence with a gate and a padlock and a
12 sign, "Keep Out." I say, "No, that's not good
13 enough." So you come back with another design which
14 has multiple walls, moats, mine fields and all the
15 rest, and you say, "Gee, that's overdone." Do you see
16 my point? Somebody knows what you're designing
17 against, what the design basis is, and you're using
18 that in making the approval.

19 MR. HULL: Your Honor, you are correct in
20 that interaction does go on while a license
21 application is being considered, and the interaction
22 I'm referring to is requests for additional
23 information that the Staff makes of applicants. If
24 the Staff receives the CAR or any other application
25 and determines it needs more information before it can

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1 approve the application, it sends out a request for
2 additional information to the applicant. That's been
3 done here to a very extensive extent, but to date, at
4 least to my knowledge, the Staff has not said to DCS
5 in any RAI that, "Well, you need to submit classified
6 information in order for us to approve the design
7 basis."

8 JUDGE KELBER: No, I understand that.
9 They could come up with a design which clearly meets
10 the design basis, which they know. And the Staff
11 could say to themselves, yes, it meets the design
12 basis but they don't have to say what the design is
13 because it's classified. Is that your point, that
14 they can keep this all under their hat?

15 MR. HULL: I don't believe there's been
16 any -- the point has not been established yet, Your
17 Honor, that any classified information is necessary in
18 order to approve the CAR. Both DCS and the Staff,
19 think, have been consistent in stating that in our
20 various pleadings.

21 JUDGE KELBER: In other words, the design
22 basis issued by the NRC is irrelevant to this entire
23 proceeding?

24 MR. HULL: No, Your Honor, but hang on --

25 JUDGE KELBER: How is it relevant?

1 MR. HULL: Hang on a second, please.

2 (Pause.)

3 MR. HULL: Your Honor?

4 JUDGE MOORE: Yes, go ahead, Mr. Hull.

5 MR. HULL: Okay. We have just been
6 conferring here amongst ourselves to try to answer
7 Judge Kelber's question. There may very well be down
8 the road classified information that will be relevant,
9 but it will be relevant to whether there should be an
10 operating license issued to DCS. There's no
11 information at this point of which the Staff is aware
12 that would be relevant to the question of whether the
13 Construction Authorization Request could be granted.
14 No classified information is needed in order to make
15 that determination.

16 JUDGE KELBER: Okay. Let me ask a
17 question now of DCS and then I'm going to come back to
18 your, Mr. Hall. Mr. Silverman, if the Staff visits
19 DCS or DOE and there reviews classified information,
20 has NRC received the information?

21 MR. SILVERMAN: Oh, Your Honor, I'll be
22 honest with you, I haven't thought through that one
23 before. I don't think so, but I certainly can't cite
24 you precedent on that. I've read received to mean
25 information in the physical possession of the NRC, but

1 --

2 JUDGE KELBER: The question in my mind, I
3 go back quite a ways in handling secure information,
4 and in my days, if it was in your mind, you had
5 received it. But I must say that I think we would
6 appreciate any information people can cite to us on
7 what the meaning of the term "received" is. I
8 continue until then to think that if it's in your
9 mind, you've received it. But, well, maybe Mr. Hull
10 has got some view on that.

11 MR. HULL: Judge Kelber, I think I touched
12 on this earlier today where I think the key thing we
13 need to focus on is what agency originated the
14 classified information, not so much as who has
15 received it or not.

16 JUDGE KELBER: Well, the regulations call
17 for -- do discuss the question of information received
18 by the NRC. That's why this question was put.

19 MR. HULL: But if you refer to 2.905(a),
20 it talks about which agency originated the classified
21 information.

22 MR. SILVERMAN: Your Honor, if I may, I
23 think this is right, I understand where you're coming
24 from on the receipt issue, and I'm not a security
25 expert but my understanding is you can't ever be told

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1 about classified information, and we're not talking
2 about written information, but you can't be told
3 without a clearance. So for purposes of whether you
4 must have a clearance or not, and whether you have a
5 need to know, I think someone does receive information
6 when they are told of it. But received in the context
7 of that Subpart I is different. It's not do you have
8 to have a clearance, it is what procedure is used for
9 the clearance process?

10 JUDGE KELBER: Well, for the need to know,
11 anyhow.

12 MR. SILVERMAN: Yes. So I think there's
13 a distinction there.

14 JUDGE KELBER: Okay. Thank you. Now,
15 back to Mr. Hull. Are there regulations regarding
16 safeguards physical security and MYNA stable, at least
17 as far as this facility is concerned, or are there
18 likely to be changes over the next year?

19 MR. HULL: I think in response to the
20 September 11, 2001 terrorist attacks, the design basis
21 threat, the whole design basis threat issue has been
22 under review. So it's quite possible that we could be
23 seeing some changes in that. But at this point, I
24 don't have any idea what those changes could be.

25 JUDGE MOORE: Okay. Thank you very much

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1 for pairing up with me. Although the Board is trying
2 to admit that in this area we have not had previous
3 occasion to have to wrestle with these, and we
4 understand the parties' difficulty in also wrestling
5 with this because this is not an area that we often
6 have to get into, however, we do feel a bit like the
7 dentist having to deal with a great number of impacted
8 wisdom teeth in trying to extract this information
9 today.

10 Be that as it may, let's switch to
11 schedules. Mr. Hull, are there any changes that you
12 know of today in the Staff's schedule?

13 MR. HULL: You're talking in terms of when
14 the draft Environmental Impact Statement and draft SER
15 will be issued?

16 JUDGE MOORE: Yes or anything else that
17 will impact the time in which it will take to complete
18 this case.

19 MR. HULL: I'm aware of no such schedule
20 change at this point, Your Honor. The Staff still
21 intends to issue the draft EIS in February of 2003,
22 and we'll issue the next draft SER in April of 2003.

23 JUDGE MOORE: Mr. Silverman, are there any
24 changes that the Applicant is aware of or that your
25 colleagues at DOE are aware of that will be impacting

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1 the schedule?

2 MR. SILVERMAN: I can only speak for us,
3 Your Honor, and as far as we know, the schedule is
4 holding at this time.

5 JUDGE MOORE: We, like you, read the
6 newspapers and the trade press, and we were somewhat
7 astounded, frankly, to see that DOE is proposing a new
8 plutonium pit facility. Will that impact your needs
9 to do a revised ER in this case? And, Mr. Hull, will
10 that affect your draft or final EIS in this case?

11 MR. HULL: I'm advised that it will not,
12 Your Honor, although I have not -- I don't think I've
13 seen this DOE announcement you seem to be referring
14 to.

15 MR. SILVERMAN: I don't believe there is
16 any impact on our environmental report, Your Honor.

17 MS. CARROLL: Your Honor, if I may, this
18 is Glenn Carroll, and we participated at both EIS
19 processes, and David Brown, who's part of the team
20 doing the NRC EIS on the MOX Facility, said that if
21 Savannah River Site is chosen for the pit facility,
22 and I believe the DOE will be publishing its draft EIS
23 in May, then they would have to look at that question.
24 Although they may find no impact, they would have to
25 look at it, so it would mean they would have to revise

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1 the EIS for the MOX Facility.

2 JUDGE MOORE: Did you say May of this
3 coming year?

4 MS. CARROLL: I believe that's correct.

5 JUDGE MOORE: Thank you. Okay.

6 MS. CARROLL: That's in the Federal
7 Register Notice. I don't have it at my fingertips.

8 JUDGE MOORE: The Board would finally like
9 to let the parties know that they're in full agreement
10 with Ms. Curran's correspondence by letter in response
11 to the Applicant's correspondence to the Board by
12 letter concerning narrowing Contentions 1 and 2, and
13 that if the Applicant wishes these contentions to be
14 narrowed from the way in which they were admitted, it
15 should file appropriate pleadings, such as a Motion
16 for Summary Disposition, in the Board's view.

17 MR. SILVERMAN: We understand, Your Honor.

18 JUDGE MOORE: Or whatever other
19 appropriate pleadings is necessary.

20 MR. SILVERMAN: Okay. Very good.

21 JUDGE MOORE: Do the parties have anything
22 further that they would like to bring to our
23 attention?

24 MS. CURRAN: Judge Moore, this is Diane
25 Curran. I just wanted to briefly comment on something

1 that I think Mr. Silverman said earlier, that the
2 supplemental CAR contains design basis information on
3 security and MYNA. I think you said that, right, Don?

4 MR. SILVERMAN: Yes.

5 MS. CURRAN: We have reviewed that
6 information, and we don't believe it satisfies the
7 concerns in our contention, so I just wanted to make
8 that clear.

9 JUDGE MOORE: All right. Is there
10 anything else?

11 MS. CARROLL: This is Glenn Carroll and
12 I'm a little blown away by some unexpected turn of
13 events like the question of our pro se status. And I
14 just would like to express that I would feel that this
15 group of parties should have had an opportunity to
16 discuss it formally. GANE should have an opportunity
17 to defend its reasons for conducting a pro se
18 intervention ideally prior to your issuing an order
19 about it and us being thrown into what looks to be a
20 very lengthy process to have the Commission consider
21 these things so that it would -- it looks to me like
22 we might lose our pro se status for several months at
23 best without ever having had an opportunity to even
24 address the question before now.

25 And I want to reiterate that if we can

1 establish which agency we should apply for a clearance
2 to, it seems to me that there's nothing threatening
3 about applying for a clearance, and the real question
4 is it a need at the time when we attempt to get a
5 document. And it even would seem to me that any bozo
6 could step up to the plate and say, "Hey, I'd like a
7 security clearance."

8 JUDGE MOORE: The Board will be issuing an
9 order in due course, and we believe that our rendition
10 and our questions in our previous order setting forth
11 the sequence of events is generally correct, and it is
12 on that basis in which the Board will proceed. And if
13 the Board determines that there appears at this point
14 to be a need for the parties to be able to prepare
15 their case to need security clearances, we will issue
16 an order which as we read these regulations is a first
17 step. Then the parties seeking the clearances will
18 need to make the formal application, and we will tell
19 you where that formal application should be made in
20 our order.

21 Is there anything else? Hearing nothing
22 else, then we thank you for your participation today.
23 We're sorry it took this long, but the Board had a
24 number of questions in trying to wrestle with this,
25 and we appreciate your best efforts in trying to

1 answer them. Again, we apologize for tying you up
2 this long. Hearing nothing further, we'll say good
3 day and we'll be issuing an order in due course.

4 (Whereupon, at 11:14 a.m., the NRC
5 Teleconference was concluded.)
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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Duke Cogema Stone and
Webster Savannah River MOX
Fabrication Facility

Docket Number: 701-3098-ML

Location: (Telephone Conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

15/ Alex Patton
Alex Patton
Official Reporter
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