

RAS 5062

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 12/12/02
SERVED 12/12/02

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

December 12, 2002

ORDER

In its December 4, 2002, telephone conference with the parties the Board instructed Georgians Against Nuclear Energy (GANE) that its self-described "legal advisor," Diane Curran, must either enter an appearance as counsel of record for GANE or act only as a behind the scenes advisor that, for example, would not be served with any pleadings or have access to classified or safeguards information. (Tr. at 6-7). Even though neither Duke Cogema Stone & Webster (DCS) nor the NRC Staff have raised a formal objection to GANE's asserted pro se status, with a "legal advisor," a number of factors led the Board to raise the matter and make its ruling.

First, the applicable Commission regulation, 10 C.F.R. § 2.1215, states that a party such as GANE may be represented by an attorney or may appear and participate in the proceeding through a member or officer of the organization. Here, GANE purportedly has chosen to participate pro se with Glenn Carrol, a member and officer of GANE, as its representative. GANE also has, however, a "legal advisor," a practicing attorney in the District of Columbia

who, for example, participates in telephone conferences,¹ prepares GANES's filings,² files correspondence with the Board on behalf of Glenn Carrol,³ and corresponds directly with the Board.⁴ Indeed, in her December 2, 2002 letter to the Board Chairman, Ms. Curran indicates that GANE is her "client."⁵ This novel arrangement, on its face, belies what GANE's representative calls its "pro se" status (Dec. 4, 2002 Tr. at 13-14) which by definition, means: "For one's own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court."⁶ Thus, the pertinent regulation, which only authorizes representation by an attorney of record or the appearance pro se by a member or officer on behalf of an organization, does not permit the arrangement that GANE, in practice, has followed.

Second, GANE now seeks a security clearance for, inter alia, its "legal advisor," Diane Curran. The NRC regulations dealing with the use of classified information in adjudications that the Commission made applicable to this proceeding,⁷ 10 C.F.R. Part 2, Subpart I, provide that access to classified information introduced into a proceeding or needed for preparation of a party's case may be made available "to counsel" for a party upon obtaining

¹See, e.g., Apr. 18, 2002 Tr. at 26.

²See, e.g., Georgians Against Nuclear Energy's and Blue Ridge Environmental Defense League's First Supplemental Response to Applicant's First Set of Interrogatories (Nov. 11, 2002) at 3 n.2 and Declaration of Diane Curran in Support of Intervenors' Discovery Responses.

³See, e.g., Letter from Glenn Carrol by Diane Curran to Thomas S. Moore, Chairman, Atomic Safety and Licensing Board (Sept. 24, 2002) at 3.

⁴See, e.g., Letter from Diane Curran to Thomas S. Moore, Chairman, Atomic Safety and Licensing Board (Dec. 2, 2002).

⁵Id.

⁶Black's Law Dictionary 1221 (6th ed. 1990).

⁷See CLI-02-19, 56 NRC ___, ___ (Sept. 4, 2002).

the required security clearance. 10 C.F.R. § 2.905 (a) & (b). Thus the term "counsel" in the regulations necessarily means counsel of record because, in the adjudicatory context, the only attorney who can properly participate and appear before the Board in a proceeding is counsel of record. Accordingly, if GANE intends to have Ms. Curran become its counsel of record, it should notify the Board by e-mail no later than 12:00 noon, Monday, December 16, 2002, and have Ms. Curran file a notice of appearance at the same time. In the event GANE chooses to proceed pro se, it should notify the Board of its decision by the same time and in the same manner.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD⁸

/RA/

Thomas S. Moore
ADMINISTRATIVE JUDGE

Rockville, Maryland

December 12, 2002

⁸Copies 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 DECEMBER 12, 2002 have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Thomas S. Moore, Chairman
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Peter S. Lam
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

John T. Hull, Esq.
Antonio Fernández, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Donald J. Silverman, Esq.
Steven P. Frantz, Esq.
Marjan Mashhadi, Esq.
Alex S. Polonsky, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Docket No. 70-3098-ML
LB ORDER DATED DECEMBER 12, 2002

Glenn Carroll
Georgians Against Nuclear Energy
P.O. Box 8574
Atlanta, GA 30306

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

Diane Curran, Esq.
Harmon, Curran, Spielberg
& Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 12th day of December 2002