

DOCKETED
USNRC

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

2003 JAN 15 AM 11: 25

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

In the Matter of)	January 9, 2003
DUKE COGEMA STONE & WEBSTER)	Docket No. 070-03098-ML
(Savannah River Mixed Oxide Fuel Fabrication Facility))	ASLBP No. 01-790-01-ML

**UNOPPOSED MOTION TO DISMISS
GEORGIANS AGAINST NUCLEAR ENERGY CONTENTION 9**

Applicant Duke, Cogema, Stone and Webster (“DCS”) hereby files this unopposed motion to dismiss Georgians Against Nuclear Energy’s (“GANE”) Contention 9 (Inadequate Cost Comparison), pursuant to 10 CFR §§ 2.1237 and 2.730.

On December 6, 2001, the Atomic Safety and Licensing Board (“Board”) admitted GANE Contention 9.¹ Contention 9, as admitted, asserts that: “[t]he Environmental Report does not provide any discussion of the costs of the proposed MOX Facility, or make a comparison to the costs of other alternatives.”²

¹ *Duke, Cogema, Stone and Webster (Savannah River Mixed Oxide Fuel Fabrication Facility)*, Memorandum and Order (Ruling on Standing and Admissibility of Contentions), LBP-01-35 (Dec. 6, 2001).

² *Georgians Against Nuclear Energy Contentions Opposing a License for Duke Cogema Stone & Webster to Construct a Plutonium Fuel Factory at Savannah River Site* (Aug. 13, 2001), at 31.

In DCS's second set of interrogatories, DCS asked GANE to "identify and fully explain all economic (monetary) costs GANE believes are still missing" from the Environmental Report ("ER") in light of the information provided by DCS in the revised ER and by the Nuclear Regulatory Commission ("NRC") Staff in the updated Hearing File.³ In response, GANE stated that "[w]hile GANE is not satisfied with the discussion of costs in DCS's revised ER, GANE has nevertheless decided to drop Contention 9."⁴

DCS has consulted with counsel for both GANE and the NRC, and neither opposes this motion. Accordingly, DCS respectfully requests that the Board dismiss Contention 9 from the proceeding. The parties have agreed that dismissal of Contention 9 should be with prejudice. However, the dismissal does not prejudice GANE's right to submit any late-filed contentions based upon new information in any future revisions to the ER that DCS may submit.

Dated: January 9, 2003

Respectfully submitted,

DUKE COGEMA/STONE & WEBSTER



Donald J. Silverman

Alex S. Polonsky

Marjan Mashhadi

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, N.W.

Washington, DC 20004

Telephone: (202) 739-5502

Facsimile: (202) 739-3001

³ See Specific Interrogatory No. 9.7, Duke Cogema Stone & Webster's Second Set of Interrogatories to Georgians Against Nuclear Energy and Blue Ridge Environmental Defense League (Dec. 6, 2002), at 11.

⁴ Georgians Against Nuclear Energy's Response to Applicant's Second Set of Interrogatories (Dec. 20, 2002), at 23 (emphasis added).

**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**

In the Matter of)	January 9, 2003
)	
DUKE COGEMA STONE & WEBSTER)	Docket No. 070-03098-ML
)	
(Savannah River Mixed Oxide Fuel Fabrication Facility))	ASLBP No. 01-790-01-ML
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Unopposed Motion to Dismiss Georgians Against Nuclear Energy Contention 9" were served this day upon the persons listed below, by both e-mail and United States Postal Service, first class mail:

Secretary of the Commission*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff
(E-mail: HEARINGDOCKET@nrc.gov)

Administrative Judge Peter S. Lam
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: psl@nrc.gov)

Administrative Judge
Thomas S. Moore, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: tsm2@nrc.gov)

John T. Hull, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: jth@nrc.gov)

Administrative Judge Charles N. Kelber
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: cnk@nrc.gov)

Dennis C. Dambly, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
(E-mail: dcd@nrc.gov)

Diane Curran, Esq.
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
(E-mail: dcurran@harmoncurran.com)

Donald J. Moniak
Blue Ridge Environmental Defense League
P.O. Box 3487
Aiken, S.C. 29802
(E-mail: donmoniak@earthlink.net)

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: hrb@nrc.gov)

Mitzi A. Young, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
(E-mail: may@nrc.gov)

Louis Zeller
Blue Ridge Environmental Defense League
PO Box 88
Glendale Springs, N.C. 28629
(E-mail: BREDL@skybest.com)

Glenn Carroll**
Georgians Against Nuclear Energy
P.O. Box 8574
Atlanta, GA 30306
(E-mail: atom.girl@mindspring.com)

* Original and 2 copies
** Service by e-mail only



Marjan Mashhadi

01/09/03
Date