RAS 6262

March 27, 2003

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	
DUKE COGEMA STONE & WEBSTER	Docket No. 0-70-03098-ML
(Savannah River Mixed Oxide Fuel Fabrication Facility)	ASLBP No. 01-790-01-ML

GEORGIANS AGAINST NUCLEAR ENERGY LATE-FILED CONTENTIONS REGARDING INADEQUACIES IN THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED MOX PLUTONIUM FUEL FACTORY AT SAVANNAH RIVER SITE

Georgians Against Nuclear Energy ("GANE") hereby submits contentions regarding inadequacies in NUREG-1767, the Draft Environmental Impact Statement on the Construction and Operation of a Mixed Oxide Fuel Fabrication Facility at the Savannah River Site, South Carolina (February 2003) (hereinafter "Draft EIS"). As discussed in GANE's contentions, the Draft EIS is legally and factually insufficient to support the construction and operation of the Mixed Oxide ("MOX") Fuel Fabrication Facility by Duke COGEMA Stone & Webster ("DCS"), where DCS proposes to manufacture nuclear reactor fuel from weapons-grade plutonium.

Template = SECY-037

SECY-02

As demonstrated below, these contentions meet the NRC's standard for admissibility and late-filing in 10 C.F.R. § 2.714.

Contention 18. Inadequate basis for recommendation that MOX Facility Should be Licensed.

a. Conditional finding fails to comply with NEPA

Contention: As provided by 10 C.F.R. § 51.71(e), the Draft EIS makes a preliminary recommendation that "unless safety issues mandate otherwise, the action called for is the issuance of the proposed license to DCS, with conditions to protect environmental values." DEIS at 33. This conclusion is repeated in Chapter 2.5. DEIS at 2-36.

The Staff's conditional finding that a license should be issued for the proposed MOX Facility "unless safety issues mandate otherwise" fails to satisfy the National Environmental Policy Act ("NEPA") or its implementing regulations at 10 C.F.R. § 51.71(e) and 10 C.F.R. § 70.22(a)(7), because it appears to be contingent upon the results of a future safety review.

Basis: Pursuant to 10 C.F.R. § 51.71(e), a draft EIS must contain a "preliminary recommendation" as to whether the proposed action should be authorized.[1] Similarly, 10

[1] The full text of the regulation reads as follows:

> *Preliminary recommendation.* The draft environmental impact statement normally will include a preliminary recommendation by the NRC staff respecting the proposed action. This preliminary recommendation will be based on the information and analysis described in paragraphs (a) through (d) of this section and §§ 51.75, 51.76, 51.80, 51.85, and 51.95, as appropriate, and will be reached after considering the environmental alternatives, and except for supplemental environmental impact statement for the operating license renewal stage prepared

C.F.R. § 70.23(a)(7) prohibits commencement of construction of a fuel fabrication facility unless and until the Director of Nuclear Material Safety and Safeguards has concluded that the action called for is the issuance of the proposed license.[2]

The conditional language of the recommendation presented in the Draft EIS seems to contemplate that the NRC Staff may change its recommendation at some point in the future if it should later determine that construction or operation of the facility will not comply with NRC safety requirements.[3] The NRC does not state at what time in the

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pursuant to § 51.95(c), after weighing the costs and benefits of the proposed action. In lieu of a recommendation, the NRC staff may indicate in the draft statement that two or more alternatives remain under consideration.

[2] The full text of § 70.23(a)(7) provides as follows:

> Where the proposed activity is processing and fuel fabrication, ... the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion is grounds for denial to possess and use special nuclear material in the plant or facility. As used in this paragraph, the term 'commencement of construction' means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, roads necessary for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

[3] Although the Draft EIS does not explain the reasoning behind the Staff's equivocal conclusion, the Staff's caveat may stem from the fact that it has not yet conducted any safety review of the operation of the proposed MOX Facility, to determine whether the facility will be operated in compliance with NRC safety requirements. Under the circumstances, it is not surprising that the Staff is unwilling, at this juncture, to issue a conclusive determination regarding the significance of the risk posed by the facility to the human environment under NEPA.

future it expects to be able to reach a final recommendation or conclusion regarding the environmental impacts of the proposed MOX Facility. Under the schedule that has been proposed by the NRC for review of the MOX Facility operating license application, however, the NRC will not review the safety of operation until *after* the Final EIS is issued.[4]

For purposes of this contention, GANE must assume that the "preliminary" recommendation in the Draft EIS will become a final recommendation in the Final EIS pursuant to 10 C.F.R. § 51.91(d). To issue a Final EIS based on a conditional conclusion or recommendation that the proposed action should go forward would constitute a gross violation of NEPA's requirement for prior evaluation of environmental impacts. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA requires federal agencies to examine the environmental consequences of their actions *before* taking those actions, in order to ensure "that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast"). The NRC is not permitted to wait until after it issues the EIS and allows construction of the proposed MOX Facility before resolving any remaining questions regarding the significance of the environmental impacts of the proposed project. As long as the Staff continues to use conditional language regarding the significance of the impacts of the proposed MOX Facility, its finding must be considered inadequate to support either construction or operation of the proposed MOX Facility

[4] The Staff expects to issue the Final EIS on August 29, 2003, several months before December, when DCS plans to submit the operating license application for the proposed MOX Facility.

under the requirements of NEPA.

GANE recognizes that, to some extent, this contention challenges the Commission's ruling in *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), CLI-02-07, 56 NRC 205, 220-221 (2002), in which the Commission rejected Georgians Against Nuclear Energy's Motion to Dismiss Licensing Proceeding Or, In the Alternative, Hold it In Abeyance (August 13, 2001). GANE believes that the Commission's NEPA ruling in CLI-02-07 is in error, and lodges this contention in part for the purpose of making a record for a possible appeal.

To some extent, however, this contention raises a question that is not addressed by the Commission's decision in CLI-02-07. In that decision, the Commission found that NEPA does not require the Staff to complete its safety review for operation of the proposed MOX Facility before issuing the EIS. 56 NRC at 220-21 (holding that GANE had not provided any "reason to conclude that the NRC cannot complete a full environmental review, based on DCS's already-filed environmental report, prior to completion of its operating license safety review.") In the Draft EIS, the Staff itself has refused to make an unequivocal recommendation to issue the proposed construction authorization and license. GANE submits that it is entitled to raise the issue of whether an equivocal or conditional recommendation from the Staff is sufficient to satisfy NEPA and NRC implementing regulations.

b. The Draft EIS contains a misleading implication that a license for the proposed MOX Facility has been prepared.

Contention: At pages xx and 2-6 of the Draft EIS, the Staff misleadingly describes the

action to be taken as issuance of "the" proposed license to DCS. In fact, there is no license, or even a license application. The Staff's misleading statement violates NEPA's cardinal requirement for accuracy in representations made in an EIS.

Basis: In order for an EIS to serve its functions of informing decisionmakers and the public, it is "essential" that the EIS not be based on "misleading" assumptions. *Hughes River Watershed Conservancy v. Agriculture Dept.*, 81 F.3d 437, 446 (4th Cir. 1996) (rejecting EIS that contained misleading projections of a project's economic benefits) (hereinafter "*Hughes*"). Misleading assumptions "can defeat the first function of an EIS by impairing the agency's consideration of the adverse environmental effects of a proposed project", and by "skewing the public's evaluation of a project." *Id., citing South Louisiana Environmental Council, Inc. v. Sand,* 629 F.2d 1005, 1011-12 (5th Cir. 1980).

The NRC Staff has violated this cardinal requirement of NEPA by mischaracterizing the nature of the action it proposes to take. By using the word "the" to modify "license," the NRC Staff implies that a specific license exists, which the NRC Staff has prepared and could issue to DCS. In reality, no license exists, nor does any application for a license exist. A license may exist eventually, but not until some time far in the future. DCS has stated its intentions to submit a license application to the NRC in December 2003, at which time the EIS will have been finalized for several months according to current NRC published schedules.

The false impression conveyed by the Staff's statement is significant, because it has the reasonable potential to inspire an inappropriately high level of public confidence in the degree to which the Staff is familiar with DCS's proposed operation. The

existence of a license for a nuclear facility implies that the design and operation of the facility have been thought out to a very high level of detail, with careful attention to compliance with NRC safety standards. When the NRC issues a specific license for a facility like the MOX plant, the license is based on, and indeed incorporates, extensive details in the license application regarding the applicant's proposed measures for complying with NRC safety limits. To imply that a license for the proposed MOX Facility exists also implies that a license application exists, and that there are detailed and concrete plans regarding the measures proposed by the applicant for controlling the plant's emissions and protecting public health and safety, in conformance with NRC safety requirements. Moreover, if a license exists, there is also an implication that it is the product of a license application that has gone through some kind of NRC Staff review. Of course, this is far from the case. DCS has not yet submitted an application to operate the proposed MOX Facility, let alone subjected it to NRC review. The Draft EIS should not be permitted to contain language that may reasonably be read to inspire a false sense of confidence in the breadth and rigor of the Staff's review of the proposed operation of the MOX Facility.

Contention 19. Inadequate Support for Conclusions Regarding Environmental Impacts of MOX Facility

(a) Impacts of Waste Solidification Building and Pit Disassembly and Conversion Facility.

Contention: According to the Draft EIS, two new U.S. Department of Energy ("DOE") facilities are "needed" to support the proposed MOX Facility: the Waste Solidification

Building ("WSB") and the Pit Disassembly and Conversion Facility ("PDCF"). Draft EIS at 1-7. The PDCF is needed to convert some 25.6 metric tons of surplus plutonium metal to plutonium dioxide, which would be processed at the MOX Facility. *Id.* The WSB is proposed in order to process the waste product from the proposed MOX Facility into Transuranic ("TRU") waste that can be disposed of at the Waste Isolation Pilot Project. *Id.*

Although the DOE is responsible for building and operating the WSB and the PDCF, the NRC Staff does not appear to have consulted the DOE or any current DOE environmental document regarding the environmental impacts of the WSB and the PDCF, in order to verify the factual information or the conclusions it presents in the Draft EIS regarding the environmental impacts of these facilities. Thus, the Draft EIS fails to satisfy NEPA's requirements for cooperation and consultation with other agencies. *See* 42 U.S.C. § 4332(2)(C), 10 C.F.R. § 51.70(c), and 40 C.F.R. § 1501.6.

The Staff's failure to consult DOE for the purpose of verifying DCS's representations about the WSB and the PDCF also violates NEPA's well-established requirements that agencies must take a "hard look" at environmental impacts of proposed decisions, and exercise independence in its judgments. *See Foundation on Economic Trends v. Heckler,* 756 F.2d 143, 151 (D.C. Cir. 1985); *Sierra Club v. Peterson,* 717 F.2d 1409, 1413 (D.C. Cir. 1983); 10 C.F.R. § 51.70(b).

Before reaching any definitive conclusions regarding the environmental impacts of the WSB or the PDCF, the NRC Staff should be required to await DOE's determination as to whether these facilities require preparation of an EIS. If the DOE

decides that an EIS is warranted for the WSB and/or the PDCF, the EIS should be prepared *before* the MOX Facility is licensed or built, in order to ensure that all impacts of this integral project are considered.

Basis: Because the DOE is responsible for construction and operation of the WSB and the PDCF, and because they will not be regulated by the NRC, the WSB and PDCF are not included as part of the "proposed action" that is subject to the NRC's NEPA review. *Id.* Instead, they are evaluated as "connected actions" in Section 4.5.[5] *Id.* This information is factored into the NRC's overall conclusion, in Section 2.5, that the action called for is the issuance of the proposed license to DCS.

Although the DOE is responsible for building and operating the WSB and the PDCF, the NRC Staff does not appear to have consulted the DOE or any current DOE document regarding the environmental impacts of the WSB and the PDCF, in order to verify the factual information or the conclusions it presents in the Draft EIS. For instance, the DOE is not listed as a "cooperating agency" in Section 1.5. Moreover, while the lists of references in Chapters 2 and 4 include some older DOE EISs regarding the environmental impacts of plutonium disposition, they do not include any recent reports or correspondence from the DOE. Thus, it does not appear that DOE played any role in evaluating the environmental impacts of the WSB or new processes to be carried out at the PDCF.

The NRC Staff's failure to await any EIS that may be prepared by the DOE for the WSB or the PDCF, or even to consult the DOE before issuing its own Draft EIS,

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[5] The Draft EIS also generally describes the WSB and the waste stream from the PDCF in Section 2.2.4.

violates NEPA's requirements for consulting other agencies with jurisdiction and experience. *See* 42 U.S.C. § 4332(2)(C); NRC regulations contemplate that the lead agency will work with cooperating agencies from an early stage, in order to maximize efficiency. 10 C.F.R. § 51.70(c), and 40 C.F.R. § 1501.6.

It appears that the Staff has relied on and repeated DCS's representations regarding the characteristics and environmental impacts of the WSB and PDCF, without attempting to verify the accuracy of the information with DOE. The Staff's failure to verify its factual assumptions and the validity of its conclusions with DOE undermines the credibility of the Draft EIS as a well-researched document that reflects a "hard look" at the environmental impacts of the proposed action. *Foundation on Economic Trends v. Heckler,* 756 F.2d at 151; *Sierra Club v. Peterson,* 717 F.2d at 1413. The Staff's unquestioning reliance on DCS also violates the Staff's obligation to make an independent assessment of the environmental impacts of its proposed actions. 10 C.F.R. § 51.70(b) ("The NRC Staff will independently evaluate and be responsible for the reliability of all information used in the draft environmental impact statement.")

The NRC Staff's failure to consult with DOE is also unsupportable because it ignores the fact that DOE itself has announced that it is revisiting the environmental implications of the changes to the plutonium disposition program. In an Amended Record of Decision issued on April 19, 2002, the DOE stated that:

> DOE/NNSA is currently evaluating the changes to the MOX fuel portion of the surplus plutonium disposition program necessitated by this strategy, *including the need for additional environmental review pursuant to the National Environmental Policy Act (NEPA).*

Surplus Plutonium Disposition Program; Department of Energy, National Nuclear

Security Administration: Amended Record of Decision, 67 Fed. Reg. 19,432 (hereinafter "Amended ROD"). Before reaching any definitive conclusions regarding the environmental impacts of the WSB or the PDCF, the NRC Staff should be required to await DOE's determination as to whether these facilities require preparation of an EIS. If the DOE decides that an EIS is warranted, the EIS should be prepared *before* the MOX Facility is licensed or built, in order to ensure that all impacts of this integral project are considered.

(b) Assumption Regarding Quantity of Plutonium to be Processed at Proposed MOX Facility.

Contention: The Draft EIS's assumption that that 34 metric tons ("MT") of plutonium will be sent to the proposed MOX Facility for processing is not supported by a valid NEPA decision by the DOE.

Basis: The Draft EIS assumes that 34 MT of plutonium will be sent to the proposed MOX Facility for processing into nuclear power plant fuel. Draft EIS at 1-4. This 34 MT of plutonium, however, includes 6.5 MT of plutonium from Rocky Flats that DOE has yet to re-assign from the immobilization program to the MOX program in a supplemental EIS or amended Record of Decision. NRC has neither awaited an Amended ROD from DOE or otherwise consulted the DOE about the viability of its assumption. Accordingly, for the reasons discussed in section (a) above, the Draft EIS fails to satisfy NEPA or NRC implementing regulations.

Contention 20. Failure to Discuss Immobilization Alternative

Contention: In Section 2.3.3, the Draft EIS unreasonably rules out immobilization as an alternative strategy for disposing of weapons-grade plutonium, in violation of 10 C.F.R. § 51.71(d). Although the DOE has dropped the immobilization portion of its plutonium disposition strategy for economic reasons, these temporal economic circumstances may change, and thus do not justify the NRC's decision to completely eliminate consideration of the immobilization alternative. To the contrary, consideration of immobilization must be preserved in order to ensure that (a) if and when the DOE's economic circumstances change, the NRC has prepared a decisionmaking document that fully and fairly evaluates a set of reasonable alternative approaches, and (b) the lack of consideration of the immobilization in the Draft EIS does not create a self-fulfilling prophecy, i.e., lead to a failure to fund immobilization because it is not perceived as a viable alternative.

Moreover, consideration of immobilization should not be "all-or-nothing." Just as the DOE has done in the past, the NRC should consider immobilization as both a complete alternative and a partial strategy.

Basis:

a. Background

The Draft EIS describes the "general purpose of and need" for the proposed MOX Facility as "to help reduce the threat of nuclear weapons proliferation by ensuring the surplus plutonium is converted to proliferation-resistant forms." Draft EIS at 1-10. Until January of 2002, immoblization was a key part of the U.S. government's strategy for achieving this purpose. The DOE addressed the immobilization alternative in general

terms in the DOE's generic Surplus Plutonium Disposition Final Environmental Impact Statement (1999) (hereinafter "Surplus Plutonium GEIS"). The discussion of alternatives included immobilizing the entire inventory of surplus plutonium, as well as a dual strategy of immobilization and MOX production. *Id.*

On April 19, 2002, the DOE and the National Nuclear Security Administration ("NNSA") issued the Amended ROD, stating that for economic reasons, they could no longer pursue both the immoblization and MOX production elements of their plutonium disposition strategy. According to the Amended ROD:

> DOE/NNSA has evaluated its ability to continue implementing two disposition approaches and has determined that in order to make progress with available funds, only one approach can be supported.

67 Fed. Reg. At 19,434. Forced to choose between the two options, DOE picked MOX production, on the following ground:

> Russia does not consider immobilization alone to be an acceptable approach because immobilization, unlike the irradiation of MOX fuel, fails to degrade the isotopic composition of the plutonium. Russia has contended that the United States could easily obtain plutonium by removing it from the immobilized waste form in the event of a desire to reuse the plutonium for nuclear weapons. Because selection of an immobilization-only approach would lead to loss of Russian interest in and commitment to surplus plutonium disposition, DOE is of the view that if only one disposition approach is to be pursued, the MOX approach rather than the immobilization approach is the preferable one.

67 Fed. Reg. at 19,434.

According to the Draft EIS, after the DOE issued the Amended ROD, the NRC Staff solicited comments "on whether the immobilization alternative should still be evaluated in this DEIS," and found that the comments "did not identify any persuasive reasons to further consider the immobilization alternative." Draft EIS at 2-23. The Draft

EIS then sets forth the two reasons that underlie the Staff's decision not to consider the immobilization alternative.

First, the Draft EIS claims that immobilization of the 34 MT of surplus plutonium "would not meet a key element of the purpose and need for the proposed action," because DOE believes that "Russia does not consider immobilization alone to be an acceptable approach." *Id.* According to the Draft EIS, DOE concluded that "reliance by the United States on immobilization would therefore cause Russia to abandon its plutonium disposition efforts." *Id.*

Second, the Draft EIS concludes that to analyze immobilization "would involve the NRC in foreign policy matters that the DOE has been conducting on behalf of the United States," and "an alternative that would block the implementation of an agreement with another country involves foreign policy matters that are outside NEPA's scope." *Id.*

b. Legal requirements for consideration of alternatives

NEPA and NRC implementing regulations require the consideration of reasonable alternatives to the proposed action. 42 U.S.C. § 4332, 10 C.F.R. § 51.71(d). The range of alternatives to be considered is governed by the purpose of the proposed action. *City of New York v. United States Department of Transportation,* 715 F.2d 732, 743 (2nd Cir. 1983). Consideration of alternatives is also governed by a "rule of reason." *Natural Resources Defense Council v. Morton,* 458 F.2d 827, 834 (D.C. Cir. 1972). Alternatives may not be disregarded if they do not provide a complete solution to the problem. *Id.,* 458 F.2d at 837. If an alternative would make a significant contribution to alleviation of the environmental problem at hand, it should be considered. *Id.*

c. NRC's elimination of immobilization alternative is unreasonable.

The NRC Staff's decision to completely eliminate consideration of immobilization is unreasonable for two reasons. First, budgetary concerns constituted DOE's chief reason for dropping the immobilization portion of its surplus plutonium disposition strategy. These economic concerns constitute temporal obstacles that should not preclude consideration of immobilization, which is a recognized and reasonable alternative for disposing of weapons-grade plutonium. To restore funding for immobilization would not require "significant changes in governmental policy or legislation" or "similar alterations of existing restrictions." *See Natural Resources Defense Council v. Callaway,* 524 F.2d 79, 93 (2nd Cir. 1975). Nor is immobilization an alternative whose effects are "not . . . reasonably ascertained," or whose implementation is "deemed remote and speculative." *Sierra Club v. Lynn,* 502 F.2d 43, 62 (5th Cir. 1974), citing *Life of the Land v. Brinegar,* 485 F.2d 460, 472 (9th Cir. 1973). It is entirely possible that sufficient funding will be restored so that the DOE can continue to pursue a dual strategy of MOX production and immobilization. In that event, it will be important for the MOX Facility EIS to present a thorough discussion of the relative merits of the immobilization so that the benefits of immobilization or a partial immobilization can be assessed. Indeed, the availability of this information may have an influence on whether entities responsible for funding the surplus plutonium disposition program decide to allocate resources for pursuit of the immobilization alternative.

Second, it is difficult to see how an evaluation of the technical merits of immobilization by the NRC would involve the NRC in foreign policy matters, or block

implementation of foreign agreements. A discussion of immobilization would not undermine U.S.-Russian relations because, as the DOE itself states, Russia is leery only of an *all-immobilization* strategy. 67 Fed. Reg. at 19,434. There is no indication that Russia objects to a dual strategy that involves some plutonium immobilization. In fact, as recognized in the Amended ROD, the U.S.-Russian agreement regarding plutonium disposition "allows for disposition either by immobilization, or by MOX fuel fabrication and subsequent irradiation." 67 Fed. Reg. at 19,433, citing Agreement Between the Government of the United States of America and the Government of the Russian Federation concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation (September 1, 2000).

The EIS for the proposed MOX Facility should discuss the affirmative alternative of immobilization, and also compare its costs and benefits with those of the proposed action and the no-action alternative.

THESE CONTENTIONS SATISFY THE LATE-FILED CONTENTION STANDARD.

The contentions described above satisfy a balancing of the NRC's standards for late-filed contentions in 10 C.F.R. §§ (a)(1)(i)-(v) and 2.714(b)(2)(iii). First, GANE has good cause for filing late. The contentions are being filed within 30 days of February 25, 2003, the day on which GANE received a copy of the Draft EIS. Moreover, the contentions are based on significant new information in the DEIS that was not available in DCS's Environmental Report or other documents. Contention 18 challenges the NRC's equivocal nature of the Draft EIS's recommendation that the proposed action

should be taken. This recommendation must be made by the Staff in the first instance, not DCS. Contention 19 relates to the NRC's Staff's statutory and regulatory obligations to (a) consult other agencies with jurisdiction and expertise in preparing an EIS and (b) to exercise independence from the applicant. GANE could not have raised these issues with respect to the Environmental Report, because they relate to the Staff's legal obligations, not DCS's. Contention 20 challenges a decision by the NRC Staff to drop consideration of the immobilization alternative, after soliciting comments. There is no equivalent discussion in the ER on which GANE could have based the contention. Thus, the contentions are timely.

GANE also satisfies the other four elements of the late-filing standard. Aside from this proceeding, GANE has no means for protecting its interest in a full and fair environmental analysis of the application for the proposed MOX Facility. While GANE can comment on the Draft EIS, this proceeding is the only route through which GANE can seek to legally enforce NRC's obligation to consider and respond to its comments.

In addition, GANE's participation may reasonably be expected to assist in the development of a sound record. To a significant degree, the contentions are legal in nature, because they raise questions regarding the NRC Staff's procedural compliance with NEPA. GANE is represented by experienced counsel, who will contribute to the development of a sound record regarding these issues. To the extent that GANE requires assistance of technical experts, it intends to obtain their help.

Moreover, there are no other parties who represent GANE's interests with respect to the issues raised by GANE's contentions because, to GANE's knowledge, no other parties have filed contentions similar to GANE's.

Finally, while litigation of these issues may broaden or delay the proceeding, such delay is anticipated by NRC's regulations, which contemplate the filing of contentions raised by new information in the Staff's environmental documents. *See* 10 C.F.R. § 2.714(b)(2)(iii), which provides that:

> The petitioner *can amend* those contentions or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

(emphasis added). Thus, while the Commission attempts to ensure efficiency by requiring parties to base environmental contentions on the earliest documents that are available, it does recognize that Staff environmental review documents appearing later in the process may contain significant new information on which contentions may be based. The language quoted above implies that the Commission believes that intervenors should not be penalized for doing so.

CONCLUSION

For the foregoing reasons, the ASLB should admit GANE's late-filed contentions regarding the Draft EIS.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2003, copies of the foregoing Georgians Against Nuclear Energy's Late-Filed Contenions Regarding Inadequacies in the Draft Environmental Impact Statement for the Proposed MOX Plutonium Factory at Savannah River Site were served on the following by e-mail and/or first-class mail:

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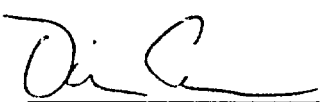

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