

2.0 FINANCIAL QUALIFICATIONS

2.1 CONDUCT OF REVIEW

This chapter of the revised draft Safety Evaluation Report (DSER) contains the staff's review of the financial qualifications presented by the applicant in Chapter 2 of the revised Construction Authorization Request (CAR). The staff used Chapter 2 in NUREG-1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," (Reference 2.3.1) as guidance in performing the review. The objective of this review is to assure that: 1) the applicant can properly construct the facility with adequate funding provided for engineering, design, materials, and quality assurance, and 2) principal structures, systems and components (PSSCs) and their design bases identified by the applicant provide reasonable assurance of protection against natural phenomena and the consequences of potential accidents. The staff evaluated the financial qualification information provided by the applicant by reviewing Chapter 2 of the revised CAR and supplementary information provided by the applicant (References 2.3.2, 2.3.3, 2.3.4, 2.3.5, and 2.3.6). The applicant must demonstrate that it has planned for the necessary funds, considers alternative sources of funding, and considers any contingencies such as delays in government funding, other shortfalls, and cost overruns.

The applicant, Duke, Cogema, Stone & Webster (DCS), is a limited liability company registered in the State of South Carolina and headquartered in Charlotte, North Carolina. DCS is consortium of Duke Project Services Group, Inc. (DPSG), COGEMA, and Stone & Webster, Inc. The applicant is proposing to construct the Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF or the facility) at the U.S. Department of Energy's (DOE's) Savannah River Site (SRS) near Aiken, South Carolina, under a cost-plus-fixed-fee contract with DOE. COGEMA, a French company, owns 30 percent of DCS. The remainder of the corporation is owned by DPSG (40 percent) and Stone & Webster, Inc. (30 percent), which are both United States companies. In a proprietary document (Reference 2.3.2), the applicant provided financial statements for its fiscal year ending December 31, 2000, and an estimate of project costs.

2.1.1 Project Costs

The applicant has a contract with DOE to design, construct, and operate the facility. The Base Scope of Work of the contract covers design and engineering of the facility. An option, which has not yet been exercised, includes construction, functional testing, and preliminary startup. A second option, also not yet exercised, includes final startup and full operations. All funding for completion of the facility will be from DOE. The applicant does not plan to self-finance the facility or seek external funding other than that under the DOE contract. In the event of cost overruns or funding shortfalls, the applicant would seek additional funding from DOE. If such funds were not provided, the applicant would stop any ongoing engineering, design, and construction activities.

In its August 31, 2001, response to the Request for Additional Information (RAI) (Reference 2.3.2), the applicant provided project cost information. These costs included costs for facility design and construction. Design costs include licensing costs, contingencies, and escalation. The applicant, however, did not detail the project design cost estimate, which was provided as a single value. The applicant indicated that such information was currently under review. Specifically, NRC needs design cost information, including licensing costs, contingencies, and escalation, at least in the level of detail the applicant provided in its construction cost estimate.

Without this information, NRC staff cannot make the needed determination, as described in section 2.4.3.A of Reference 2.3.1, that the project costs are reasonable and appropriate for the size and scope of the proposed actions. In the March 8, 2002, clarification to the RAI responses (Reference 2.3.3), DCS stated that revised proprietary design cost information will be provided at a later date when available.

On February 18, 2003 (Reference 2.3.6), the applicant retracted an earlier commitment (Reference 2.3.3) to provide revised proprietary design cost information in response to the staff's open item FQ-1 in the DSER (Reference 2.3.7). With regard to this request, DCS stated that because the project is being performed under the direction and funding of the U.S. Government, the requested information does not need to be submitted and a determination that the applicant appears financially qualified is not warranted. The NRC staff disagrees with the DCS response.

In NUREG-1718 (Reference 2.3.1), the NRC staff stated, "Although construction funding is expected to be provided by DOE, financial qualification information is needed for the construction approval to ensure that the applicant will construct the facility properly with adequate funding provided for engineering, design, materials, and quality assurance. To support the construction approval review, the applicant needs to adequately demonstrate that it has planned for the necessary funds, considers alternative sources of funding, and considers any contingencies such as delays in government funding, other shortfalls and cost overruns." The purpose of the financial qualification review is to ensure that the applicant is financially capable of carrying out the project to meet all the NRC's safety requirements.

2.1.2 Financial Qualifications

The applicant is not a publically-held company and, therefore, is not required to submit Report 10-K to the U.S. Security and Exchange Commission. However, in its August 31, 2001, response to the RAI (Reference 2.3.2), it provided a proprietary Independent Accountant's Review Report for the fiscal year ending December 31, 2000, and for the period of corporate inception (March 22, 1999), to December 31, 1999. Balance sheets, cash flows, income statements, and equity statements were included in the accountant's report. The Independent Accountant concluded that it was not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with accounting principles generally accepted in the United States.

On February 13, 2003, NRC staff requested current financial statements and a commitment to provide annual updates of this information (Reference 2.3.5). In its response dated February 18, 2003 (Reference 2.3.6), DCS stated that because the project is being performed under the direction and funding of the U.S. Government, the requested information does not need to be submitted and a determination that the applicant appears financially qualified is warranted. The NRC staff disagrees with the DCS response. Current financial statements are needed to verify that adequate levels of capital and funding exist to conduct construction operations so that NRC staff can make its determination that the applicant is financially qualified to construct the proposed facility and will remain qualified during the construction phase of the project.

2.1.3 Liability Insurance

Under 10 CFR 140.13a, a holder of a license to possess and use plutonium at a plutonium processing and fuel fabrication plant is required to have and maintain public liability insurance in

the amount of \$200,000,000. This insurance is not required for MOX facility construction approval. The applicant stated that as a DOE contractor it is fully covered by the DOE nuclear liability protection under the Price-Anderson Act, as amended. Under Section 170d of the Atomic Energy Act, 42 U.S.C. 2210(d), the applicant and DOE have entered into an agreement that fully indemnifies the applicant and its contractors up to the statutory limit of liability. The applicant intends to request an exemption to 10 CFR 140.13a in its possession and use license application to use the DOE indemnification to meet its public liability insurance requirements.

2.2 EVALUATION FINDINGS

The staff reviewed the project costs, financial qualifications, and liability insurance plans for construction approval for the applicant, DCS, according to Chapter 2.0 of NUREG-1718 (Reference 2.3.1). The staff evaluated estimates of project construction costs, sources of funds, contingencies, and financial qualifications, and found that these areas do not provide reasonable assurance that the applicant is qualified to properly construct the facility with adequate funding. DCS's approach for addressing public liability insurance in an exemption request to be submitted with the possession and use license application is acceptable.

The open items in this section of the DSER are as follows:

- Provide information on project design costs. (Revised DSER Section 2.1.1) (FQ-1)
- Provide current financial statements. (Revised DSER Section 2.1.2)(FQ-2)

2.3 REFERENCES

- 2.3.1 U.S. Nuclear Regulatory Commission (U.S.)(NRC). NUREG-1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide Fuel Fabrication Facility." NRC: Washington, D.C. 2000.
- 2.3.2 Hastings, P., Duke Cogema Stone & Webster, letter to U.S. Nuclear Regulatory Commission, Proprietary DCS Financial Information, August 31, 2001.
- 2.3.3 Hastings, P., Duke Cogema Stone & Webster, letter to U.S. Nuclear Regulatory Commission, RE Clarification of Responses to NRC Request for Additional Information, March 8, 2002.
- 2.3.4 Hastings, P., Duke Cogema Stone & Webster, letter to U.S. Nuclear Regulatory Commission, RE Requests for Additional Information, Clarifications, and Open Item Mapping into the Construction Authorization Request Revision, November 22, 2002.
- 2.3.5 Persinko, A., U.S. Nuclear Regulatory Commission, letter to Duke Cogema Stone & Webster, February 2003 Monthly Open Item Status Report, February 13, 2003.
- 2.3.6 Hastings, P., Duke Cogema Stone & Webster, letter to U.S. Nuclear Regulatory Commission, February 2003 Monthly Open Item Status Report, February 18, 2003.
- 2.3.7 U.S. Nuclear Regulatory Commission (U.S.)(NRC). "Draft Safety Evaluation Report on the Construction Authorization Request for the Mixed Oxide Fuel Fabrication Facility." NRC: Washington, D.C., April 30, 2002

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