

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

DOCKETED
USNRC

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

June 27, 2003 (3:24PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)	June 25, 2003
DUKE COGEMA STONE & WEBSTER)	Docket No. 070-03098-ML
(Savannah River Mixed Oxide Fuel Fabrication Facility))	ASLBP No. 01-790-01-ML

**DUKE COGEMA STONE & WEBSTER'S RESPONSE TO
GEORGIANS AGAINST NUCLEAR ENERGY'S
MOTION FOR LEAVE TO FILE SURREPLY**

Georgians Against Nuclear Energy (GANE) has submitted a motion dated June 20, 2003 for leave to file a Surreply to Duke Cogema Stone & Webster's (DCS) Reply to GANE's Opposition to Motion for Summary Disposition of GANE Contentions 1 and 2 (GANE Motion for Leave). GANE seeks the opportunity to provide further legal arguments in response to arguments made by DCS that were, themselves, responses to the positions taken by GANE in its Opposition to DCS' Motion for Summary Disposition.

GANE cites Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-87-26, 26 NRC 201, 204 (1987) for the proposition that under 10 CFR § 2.749, the Atomic Safety and Licensing Board (Board) may allow additional responses "for compelling circumstances." GANE has failed to demonstrate such compelling circumstances. It argues that it needs the opportunity to address arguments raised "for the first time in DCS's Reply" and that

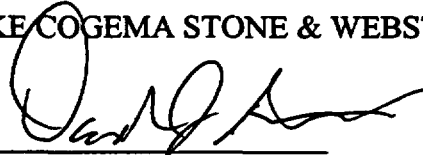
allowing it to file a Surreply “will keep the burden of proof more squarely on the movant’s shoulders.” GANE Motion for Leave at 1, 3, n. 1.

This case is similar to the circumstances in Shoreham, 26 NRC at 205, in which the Applicant’s request for leave to reply was “premised on its inability to have anticipated Intervenors’ answer . . . and [was submitted] in order to focus issues and correct misstatements.” In denying the Applicant’s request, the Shoreham Board stated “[t]he parties do not propose to present to the Board anything by way of additional facts but of argument of which we have had enough.” Id. Accordingly, GANE has failed to show compelling circumstances and its Motion for Leave should be denied.

Dated: June 25, 2003

Respectfully submitted,

DUKE COGEMA STONE & WEBSTER



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Duke Cogema Stone & Webster's Response to Georgians Against Nuclear Energy's Motion for Leave to File Surreply" dated June 25, 2003, was served this day upon the persons listed below, by e-mail and first class mail.

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