

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**DOCKETED
USNRC**

ATOMIC SAFETY AND LICENSING BOARD

August 19, 2003 (9:30AM)

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

**OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF**

In the Matter of)

August 11, 2003

DUKE COGEMA STONE & WEBSTER)

Docket No. 070-03098-ML

(Savannah River Mixed Oxide Fuel
Fabrication Facility))

ASLBP No. 01-790-01-ML

**DCS MOTION TO STRIKE AND
RESPONSE TO GANE'S MOTION FOR LEAVE TO
SUPPLEMENT ITS OPPOSITION TO DCS'S
MOTION FOR SUMMARY DISPOSITION OF CONTENTION 1**

Duke Cogema Stone & Webster ("DCS") hereby files this Motion to Strike and Response to "Georgians Against Nuclear Energy's Motion For Leave to Supplement its Opposition to DCS's Motion for Summary Disposition of Contention 1" (August 6, 2003) ("GANE Motion"). GANE seeks to introduce a paper presented at a July 13-17, 2003 conference of the Institute of Nuclear Materials Management ("INMM") which GANE claims shows that the NRC has commissioned an independent vulnerability assessment ("VA") of material control & accounting ("MC&A") systems at NRC-regulated nonreactor facilities ("INMM paper"). Because this paper is irrelevant, both to

Contention 1, and to the Motion for Summary Disposition for Contention 1, GANE's Motion should be denied.

In addition, GANE attaches a number of substantive documents to its Motion, including the INMM paper, and an expert affidavit. In so doing, GANE has in fact supplemented the record with these documents. DCS therefore also requests that the Board strike these documents from the record.

ARGUMENT

GANE's Basis Statement for Contention 1 states that U.S. Department of Energy ("DOE") facilities perform VAs during the design process "to determine if the design meets the intent of the DOE Orders for preventing and detecting theft or diversion of nuclear materials," and suggests that DCS do the same at the MOX Facility.¹ However, GANE acknowledged,² and continues to acknowledge,³ that NRC regulations do not require VAs of MC&A systems.

Because the NRC does not require an applicant for Construction Authorization to perform a VA of the design bases of its MC&A system, GANE's suggestion that DCS do so does not present a material issue of law or fact. Moreover, the INMM paper suggesting that NRC has chosen to commission such an assessment for certain licensed facilities is extraneous. As such, the INMM paper would serve only to confuse – rather than clarify – the record. Therefore, GANE's Motion should be denied.

¹ Georgians Against Nuclear Energy Contentions Opposing a License for Duke Cogema Stone & Webster to Construct a Plutonium Fuel Factory at Savannah River Site ("GANE Contentions"), at 6 (Aug. 13, 2001).

² *Id.*

³ Supplemental Declaration of Dr. Edwin S. Lyman Regarding Contention 1 (MC&A), at 2 (Aug. 6, 2003).

In addition, GANE has gone way beyond seeking leave to supplement its Opposition by including the INMM paper and affidavit in support with its Motion. Indeed, GANE has essentially supplemented the record. Since permission has not been, and should not be, granted by the Board, the substantive documents attached to that Motion should be stricken.

Should the Board decide to grant GANE's Motion, DCS hereby requests the opportunity to respond to the substantive information contained therein at that time.

CONCLUSION

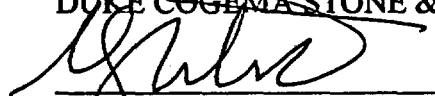
For the reasons stated above, the information presented by GANE is extraneous and irrelevant. Accordingly, GANE's Motion for Leave to Supplement its Opposition to DCS' Motion for Summary Disposition of Contention 1 should be denied, and the substantive information therein stricken from the record.

GANE has failed to demonstrate that there is any genuine issue of material fact within the scope of Contention 1. Therefore, DCS's Motion for Summary Disposition on GANE Contention 1 should be granted.

Dated: August 11, 2003

Respectfully submitted,

~~DUKE COGEMA STONE & WEBSTER~~



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CERTIFICATE OF SERVICE

I hereby certify that copies of DCS's: (1) "Reply to GANE's Opposition to Motion for Summary Disposition of Consolidated Contention 11"; and (2) "Motion to Strike and Response to GANE's Motion for Leave to Supplement its Opposition to DCS's Motion for Summary Disposition of Contention 1," dated August 11, 2003, were served this day upon the persons listed below, by e-mail and first class mail.

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8/11/03

Date