

August 26, 2003

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

September 4, 2003 (9:47AM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

In the Matter of

DUKE COGEMA STONE & WEBSTER

(Savannah River Mixed Oxide Fuel  
Fabrication Facility)

Docket No. 0-70-03098-ML

ASLBP No. 01-790-01-ML

**GEORGIANS AGAINST NUCLEAR ENERGY'S  
MOTION FOR EXTENSION OF TIME TO RESPOND TO  
TO DCS'S MOTION FOR SUMMARY DISPOSITION  
OF CONTENTION 3**

Georgians Against Nuclear Energy ("GANE") hereby requests an extension of time to respond to Duke Cogema Stone & Webster's Motion for Summary Disposition on Contention 3 (August 22, 2003) (hereinafter "DCS's Motion"). Under 10 C.F.R. § 2.749, GANE's response to DCS's Motion currently is due September 11, 2003.

GANE seeks an extension until twenty days after the Atomic Safety and Licensing Board ("ASLB") rules on the pending question of whether summary disposition motions are allowed in this proceeding.<sup>1</sup> GANE also asks that if the granting

<sup>1</sup> GANE challenged the permissibility of motions for summary disposition in Section III.A of its July 29, 2003, Response to DCS's Motion for Summary Disposition on Consolidated Contention 11, and DCS replied to GANE's argument in its August 11,

of this motion results in a response schedule that includes September 25-29, the ASLB add five days to the twenty-day response time. GANE makes this additional conditional request because GANE's seismic expert, Dr. Leland T. Long, will be out of town for a family wedding on those dates.

GANE seeks an extension in order to avoid any unnecessary expenditure of its limited resources on a summary disposition proceeding regarding Contention 3. DCS's motion is lengthy and quite fact-intensive, and therefore the effort and expense of preparing a response will be considerable. If the ASLB rules in GANE's favor regarding the permissibility of summary disposition motions, GANE may avoid this significant expense.

GANE also wishes to avoid the expense of preparing a response to DCS's Motion because the summary disposition process is unlikely to yield any useful result with respect to the resolution of Contention 3. As the Commission counseled in CLI-98-12, Statement of Policy on Conduct of Adjudicatory Proceedings, summary disposition should be avoided unless it will "likely substantially reduce the number of issues to be decided, or otherwise expedite the proceeding." CLI-98-12, 48 NRC 18, 20-21 (1998). Here, as DCS acknowledges in its Motion at pages 7-8, GANE has already narrowed and clarified the scope of the contention significantly. The outstanding issues raised by the contention are quite fact-intensive and heavily dependent on the professional opinions of Dr. Long. Thus, they are unlikely to be resolved through summary disposition. For the same reason, the summary disposition process is unlikely to expedite the proceeding.

GANE is concerned that the only purpose that would be achieved by preparing a response to DCS's Motion would be to drain the organization's limited funds.

Finally, the requested delay will not adversely affect the hearing process. As the NRC Staff notified the ASLB in a letter dated August 25, 2003, the dates for issuing the Final Environmental Impact Statement and the Final Safety Evaluation Report for the proposed MOX Facility have been delayed by approximately two months. This delay will, in turn, result in a corresponding postponement of the hearing schedule. Therefore, the hearing schedule can accommodate the requested delay.

Accordingly, GANE requests an extension of time to respond to DCS's Motion, until twenty days after the ASLB issues any ruling that summary disposition is permitted in this proceeding. If the response time falls on September 25-29, GANE requests an additional five days' time to respond.

GANE has consulted counsel for DCS and the Staff regarding this motion. DCS plans to oppose the motion. If the motion is granted, however, and if the response period falls on September 25-29, DCS would not oppose the addition of five days to GANE's response period. The Staff plans to oppose the motion.

Respectfully submitted,



Diane Curran  
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.  
1726 M Street N.W., Suite 600  
Washington, D.C. 20036  
202/328-3500  
FAX 202/328-6918  
[dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com)

August 26, 2003

## CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2003, copies of the foregoing GEORGIAN  
AGAINST NUCLEAR ENERGY'S MOTION FOR EXTENSION OF TIME TO  
RESPOND TO DCS'S MOTION FOR SUMMARY DISPOSITION OF CONTENTION  
3 were served on the following by e-mail and first-class mail:

Rulemakings and Adjudications Staff  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
[hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov)

Administrative Judge Thomas S. Moore  
Chairman  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
[tsm2@nrc.gov](mailto:tsm2@nrc.gov)

Administrative Judge Charles N. Kelber  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
[cnk@nrc.gov](mailto:cnk@nrc.gov)

Administrative Judge Peter S. Lam  
Atomic Safety & Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
[psl@nrc.gov](mailto:psl@nrc.gov)

Donald J. Silverman, Esq.  
Alex S. Polonsky, Esq.  
Marjan Mashadi  
Morgan, Lewis & Bockius  
1111 Pennsylvania Avenue N.W.  
Washington, D.C. 20004  
[dsilverman@morganlewis.com](mailto:dsilverman@morganlewis.com)  
[mmashadi@morganlewis.com](mailto:mmashadi@morganlewis.com)  
[apolonsky@morganlewis.com](mailto:apolonsky@morganlewis.com)

Louis A. Zeller  
Blue Ridge Environmental Defense League  
P.O. Box 88  
Glendale Springs, NC 28629  
[bredl@skybest.com](mailto:bredl@skybest.com)

Glenn Carroll  
139 Kings Highway  
Decatur, GA 30030  
[atom.girl@mindspring.com](mailto:atom.girl@mindspring.com)

John T. Hull, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
[jth@nrc.gov](mailto:jth@nrc.gov)

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
[hrb@nrc.gov](mailto:hrb@nrc.gov)



Diane Curran