

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

September 16, 2003 (2:46PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

DUKE COGEMA STONE & WEBSTER

(Savannah River Mixed Oxide Fuel
Fabrication Facility)

September 9, 2003

Docket No. 070-03098-ML

ASLBP No. 01-790-01-ML

**DUKE COGEMA STONE & WEBSTER RESPONSE TO
DIANE CURRAN'S REQUEST FOR DETERMINATION OF
RELEASABILITY OF INFORMATION**

By letter dated September 8, 2003 Ms. Diane Curran, Counsel for Georgians Against Nuclear Energy, has requested that the Atomic Safety and Licensing Board (Board) in the above-captioned proceeding determine whether certain statements by the NRC Staff, paraphrased in Ms. Curran's letter, contain any proprietary information that must be withheld from public release.¹

By Order dated September 8, 2003, the Board has indicated that it is treating Ms. Curran's letter as a motion, and has directed DCS and the NRC Staff to file responses stating their positions on whether the identified material may be publicly released.²

¹ Letter, Diane Curran to Thomas S. Moore "Request for determination of releasability of information from closed hearing on MOX Facility Construction Authorization Request, Docket No. 70-3098" (Sept. 8, 2003).

² Order (Sept. 8, 2003).

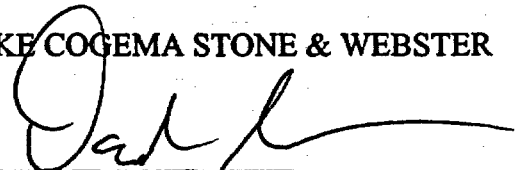
The two sentences provided by Ms. Curran in her September 8 letter which are the subject of her request contain no DCS proprietary information. As a result, DCS is not aware of any legal basis for withholding such information from public disclosure.

However, DCS does not agree that the second sentence of the passage which Ms. Curran desires to release accurately characterizes the NRC Staff position in this proceeding. In ruling on DCS's Motion for Summary Disposition on Contention 2, the Board should keep in mind that the fact that the NRC Staff is properly using existing law (as reflected in applicable NRC regulations) to assess the adequacy of DCS's pending Construction Authorization Request does not suggest anything about the requirements that may be imposed on DCS by Order, regulation or license condition in connection with the license to possess and use radioactive material at the MOX Facility. NRC actions at the operating BWX Technologies and Nuclear Fuel Services facilities, as well as the Staff's July 28, 2003 transmission of certain design basis related information to DCS, strongly suggest that Ms. Curran's statement regarding the "licensing review for the proposed MOX Facility" is too broad.

Dated: September 9, 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 Diane Curran's Request for Determination of Releasability of Information," dated September 9, 2003 were served this day upon the persons listed below, by e-mail and first class mail.

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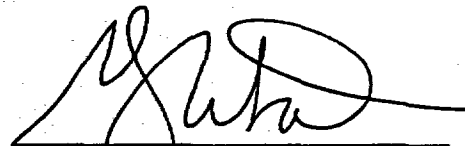
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9/9/03

Date