

RAS 7100

November 17, 2003

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

November 28, 2003 (3:19PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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
AND BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S
UNOPPOSED MOTION TO WITHDRAW CONTENTION 5**

Georgians Against Nuclear Energy ("GANE") and Blue Ridge Environmental Defense League ("BREDL") hereby move to withdraw Contention 5, which charges that Duke Cogema Stone & Webster ("DCS") incorrectly designated the site boundary for the entire Savannah River Site as the Controlled Area boundary for the proposed Mixed Oxide ("MOX") plutonium fuel fabrication facility.¹ GANE and BREDL seek to withdraw the contention, because they have effectively prevailed. As noted in a recent letter from DCS's counsel to the ASLB, the U.S. Department of Energy ("DOE") has

¹ In admitting GANE Contention 5, the Atomic Safety and Licensing Board ("ASLB") consolidated it with GANE Contention 8 and BREDL Contention 9A. LBP-01-35, 54 NRC 403, 433-436, 461-62 (2001).

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SECY-02

instructed DCS to move the Controlled Area boundary to be contiguous with the Restricted Area boundary.²

GANE and BREDL wish to make clear their position that, while the DOE's order to move the Controlled Area boundary resolves the issue raised by Contention 5, a number of questions regarding the new Controlled Area boundary remain open. The DOE has instructed DCS to revise the Construction Authorization Request ("CAR"), and possibly the Environmental Report ("ER"), to show that the location of the new Controlled Area boundary is contiguous with the Restricted Area Boundary, and to satisfy NRC performance requirements for workers and members of the public outside the new Controlled Area boundary. DOE Letter at 2. The DOE has also given DCS the opportunity to seek DOE approval to place the new Controlled Area boundary in a location that is not contiguous with the Restricted Area boundary. *Id.* Thus, it remains to be seen whether (a) DCS will be able to satisfy the NRC's performance requirements for the new Controlled Area boundary location, (b) whether DCS will place the new Controlled Area boundary in a satisfactory location, and (c) whether any revisions made by DCS to the ER adequately address the environmental impacts of the new Controlled Area boundary location. Accordingly, GANE and BREDL reserve their right to challenge the adequacy of any relevant revisions made by DCS to the CAR and/or the ER in timely late-filed contentions.

² See letter from Donald J. Silverman to Administrative Judge Thomas S. Moore re: Notice of Change to the MOX Facility Controlled Area Boundary, etc. (November 5, 2003), enclosing letter from David H. Hess, DOE, to Robert Ihde, DCS re: Contract No. DE-AC02-99CH10888, Technical Direction and Change Order Relating to the Mixed Oxide Fuel Fabrication Facility (November 3, 2003) (hereinafter "DOE Letter").

Counsel for DCS and the Staff have stated that they do not oppose the withdrawal
of Contention 5.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2003, copies of the foregoing GEORGIANS AGAINST NUCLEAR ENERGY'S AND BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE'S UNOPPOSED MOTION TO WITHDRAW CONTENTION 5 were served on the following by e-mail and first-class mail:

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