

RAS 9323

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

Title: Duke Cogema Stone & Webster  
Mixed Oxide Fuel Fabrication Facility  
(Construction Authorization Request)

Docket Number: 070-03098-ML

DOCKETED  
USNRC

February 9, 2005 (11:04am)

Location: (telephone conference)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Date: Thursday, February 3, 2005

Work Order No.: NRC-221

Pages 1-17

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

TELEPHONE SCHEDULING CONFERENCE

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In the matter of : Docket No.  
DUKE COGEMA STONE & WEBSTER : 070-03098-ML  
Mixed Oxide Fuel Fabrication :  
Facility :  
(Construction Authorization :  
Request) :

-----X

Thursday,  
February 3, 2005

The above-entitled matter came on for hearing,  
pursuant to notice, at 2:00 p.m.

BEFORE:

THE HONORABLE THOMAS S. MOORE, Chairman  
THE HONORABLE PETER S. LAM  
THE HONORABLE CHARLES N. KELBER

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1 APPEARANCES:

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17 On Behalf of the Nuclear Regulatory Commission:

18 JOHN T. HULL, ESQ.

19 of: Office of the General Counsel

20 U.S. Nuclear Regulatory Commission

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23 (301) 415-1573

24 ALSO PRESENT:

25 Tyson R. Smith, NRC staff

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P-R-O-C-E-E-D-I-N-G-S

2:07 P.M.

1  
2  
3 JUDGE MOORE: Before we go any further, in  
4 light of the issuance yesterday, the Board's ruling  
5 granting DCS's motion for summary disposition GANE  
6 contention 3, it is the Board's understanding that  
7 there's only one remaining outstanding contention. I  
8 believe it is contention GANE contention 9.

9 Is that correct, Ms. Curran?

10 MS. CURRAN: Let me check because I  
11 thought they were all basically resolved.

12 Do you know what the title is of 9  
13 offhand?

14 JUDGE MOORE: Yes. Inadequate Cost  
15 Comparison.

16 MR. SILVERMAN: Your Honor, this is Don  
17 Silverman. Our understanding was all contentions that  
18 had been submitted, may have been dismissed or  
19 withdrawn and there was nothing remaining. I'll have  
20 to go back and double check.

21 JUDGE MOORE: That's why I asked the  
22 question. Perhaps my review of the file is in error,  
23 but it was my understanding from what I saw in the  
24 case file that GANE contention 9 was outstanding which  
25 was the Cost Comparison one.

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1 My question with regard to that was  
2 because it dealt with the ER and now that the EIS is  
3 out, what the time frame should be to expect motion to  
4 dismiss from DCS that it was now moot because there is  
5 in the EIS a cost benefit analysis. But if it is  
6 already gone, my question is moot. But I would  
7 appreciate if each of you would go back and check your  
8 files to ensure that I am in error.

9 MR. SILVERMAN: We will do that.

10 JUDGE MOORE: And then I would appreciate  
11 it if you would file as quickly as practicable the --  
12 by what action and the date of the action if it was  
13 previously dismissed.

14 Let's then move on to the schedule for the  
15 remaining of the proceedings. Since there are no  
16 more, and we'll assume for the moment that there are  
17 no more outstanding contentions, Ms. Curran, do you  
18 intend to file at this time any late filed or amended  
19 contentions?

20 MS. CURRAN: We're still reviewing the EIS  
21 and we're looking at the draft SER and plan to look at  
22 the final SER when it comes out at the end of  
23 February.

24 JUDGE MOORE: Okay, then let's turn right  
25 to the Commission's order. For those of you who might

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1 have it in front of you, it's 53 NRC and the page  
2 we're interested in is 485 which sets forth the  
3 Commission's notion of a schedule for phase two of the  
4 proceeding, although I guess we're to the month now  
5 because of the various delays engendered by the  
6 Applicant, two years, precisely two years to the month  
7 delayed. But the question remains when the Commission  
8 set this schedule the projected dates for the Staff  
9 EIS and SER were one and the same date. And I presume  
10 the Commission must have known that when it wrote this  
11 schedule stating that 30 days from the issuance of EIS  
12 and SER as being the starting point and would indicate  
13 in that phrase that they were linked.

14 Starting with you Ms. Curran, what's your  
15 reading of when the clock begins to run since they're  
16 not two distinct documents issued on two distinct  
17 dates?

18 MS. CURRAN: Well, just kind of from a  
19 rule of reason, I would say that we should get 30 days  
20 to look at each document and submit contentions and  
21 then the schedule gives the Board deadlines for ruling  
22 on admissibility of --

23 JUDGE MOORE: Okay, then from your  
24 perspective 30 days after the issuance of the EIS is  
25 a time frame that you're willing to live with?

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1 MS. CURRAN: Yes.

2 JUDGE MOORE: Mr. Silverman, I'm sure that  
3 that's agreeable with you?

4 MR. SILVERMAN: Yes sir.

5 JUDGE MOORE: And Mr. Hull, I imagine it's  
6 agreeable with you?

7 MR. HULL: Yes sir.

8 JUDGE MOORE: Okay, since they're split  
9 apart then we'll have 30 days running from the  
10 issuance of the EIS and we'll try to figure out when  
11 that was or is in a moment and then 30 days after the  
12 issuance of the SER in the second period will begin to  
13 run. Is that agreeable with each of you?

14 MS. CURRAN: From GANE's standpoint, yes.

15 MR. SILVERMAN: It's agreement to the  
16 Applicant.

17 JUDGE MOORE: Mr. Hull?

18 MR. HULL: Yes, with respect to when the  
19 late-filed contentions would be due, although I think  
20 maybe some of the other schedule milestones further  
21 down the road might differ.

22 JUDGE MOORE: Mr. Hull, if I'm  
23 understanding what you're saying, what we'll do is it  
24 will be run on two tracks.

25 MR. HULL: With respect to when the late

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1 filed contentions would be due, yes. But it might add  
2 some unnecessary complications if we continued on that  
3 dual track past the time when the late-filed  
4 contentions would be due.

5 MR. SILVERMAN: This is Mr. Silverman. If  
6 I may, Your Honor, actually, I won't speak for the  
7 other parties, but I will a bit because have all  
8 talked in advance of this call.

9 I think we all agreed that it made sense  
10 to us to have the staggered deadlines for the filing  
11 of new contentions, triggered by the availability  
12 dates for the EIS and the SER and of course, the  
13 responses to those new contentions, again, in  
14 staggered dates.

15 JUDGE MOORE: Okay.

16 MR. SILVERMAN: What we then thought might  
17 be a good idea and to simplify the process, frankly,  
18 would be to consolidate or unify the schedule after  
19 that point. And basically trigger the rest of the  
20 schedule from the later date, which is the issuance  
21 date of the SER. So for example, if the SER is issued  
22 on February 28th, there is a -- the decision, your  
23 decision on the admissibility of late-filed  
24 contentions is according to the Commission's schedule  
25 50 days after the issuance of the EIS and SER. We

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1 would take that date just simply from the SER date of  
2 February 28th and the Board's decision on admission of  
3 new contentions would be due if my calculations are  
4 right on April 19th and we would just follow through  
5 -- we have one exception we want to talk about, but  
6 basically follow through on a unified schedule from  
7 that point on to avoid confusion.

8 JUDGE MOORE: The Board is in full  
9 agreement with that. Please get to the exceptions.

10 MR. SILVERMAN: And of course, the other  
11 parties will chime in if I'm misrepresenting anything.

12 You'll notice that there is a 30-day  
13 period for discovery on any admittedly filed  
14 contentions.

15 JUDGE MOORE: Yes.

16 MR. SILVERMAN: And as we thought about  
17 that I think, I know we felt that trying to get  
18 discovery done on what could be a substantial number  
19 of contentions, we don't know at this point, in 30  
20 days was quite difficult. So what we were going to  
21 propose was that discovery period get extended for  
22 another 30 days to make it a 60-day discovery period  
23 and that does not require you to go back to the  
24 Commission, I believe, because you're still within 30  
25 days of a milestone. And then once again, just

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1 trigger the schedule back on schedule in accordance  
2 with the Commission milestones from that point on.

3 So for example, if you look at the date  
4 for written presentations, that's 10 days after  
5 completion of discovery. We would still make it 10  
6 days after completion of discovery. It's just that  
7 the discovery period will have been extended.

8 JUDGE MOORE: In reviewing the file, Mr.  
9 Silverman, I recall issuing, the Board issuing an  
10 admonition that because of the tight discovery  
11 schedule, the parties would be well advised to treat  
12 the draft EIS and the draft SER as essentially final  
13 Boards so what you're proposing would not be  
14 necessary. Is that not something that is feasible  
15 because they're significantly different from what  
16 you've seen in the EIS from the draft EIS?

17 MR. SILVERMAN: No, but I thought the  
18 intent of that was to treat them as final for purposes  
19 of discovery on the existing contentions. We don't  
20 even know whether or what the new contentions will be.

21 JUDGE MOORE: Well, the Board certainly  
22 has no objection to that schedule. Indeed, what I  
23 would propose, since you've all discussed this and  
24 apparently reached agreement, if you would submit a  
25 joint status report with this proposed schedule in it,

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1 the Board will then act upon that and issue -- a  
2 status report and also a motion. The Board will grant  
3 the motion and then we'll -- which will lock in the  
4 schedule and then we'll issue a scheduling order just  
5 so there's no misunderstanding.

6 Is that agreeable to everyone?

7 MS. CURRAN: Yes.

8 MR. HULL: Yes, that's fine for the Staff.

9 JUDGE MOORE: Mr. Silverman, when can you  
10 have such a status report in motion since you're the  
11 one who spoke in lead here to us? Can you have it --  
12 this is Thursday, can you have it by Monday?

13 MR. SILVERMAN: As long as the other  
14 parties are available to review and comment in a  
15 timely manner, yes sir.

16 JUDGE MOORE: Ms. Curran, will that meet  
17 your schedule?

18 MS. CURRAN: Yes.

19 JUDGE MOORE: Mr. Hull?

20 MR. HULL: Yes.

21 JUDGE MOORE: Okay, Ms. Curran, BREDL,  
22 your lead counsel, I'm sorry, there are no more  
23 outstanding contentions is the assumption we were  
24 going on.

25 So we'll just wait and see. Can you

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1 contact BREDL's representative and deal with them to  
2 see if they're on board with all of this?

3 MS. CURRAN: I will.

4 JUDGE MOORE: Thank you.

5 MS. CURRAN: They're a little bit hard to  
6 reach so I'll do my best.

7 JUDGE MOORE: I understand.

8 MS. CURRAN: Yes.

9 JUDGE MOORE: All our e-mails bounce.  
10 Then we need to establish what is an agreed-upon  
11 issuance date of the EIS for when we start the 30-day  
12 recounting.

13 Mr. Hull?

14 MR. HULL: Yes, Your Honor.

15 JUDGE MOORE: What date are you proposing?

16 MR. HULL: Well, I'm looking here at the  
17 letter that my co-counsel, Tyson Smith, sent out. I  
18 know it was also sent out by e-mail on January 19th,  
19 so it would have been -- the e-mail version would have  
20 been received January 19, alerting the parties that  
21 the EIS at that point had been available, I believe it  
22 was already for some days at that point on the NRC  
23 website. So I would propose that the 30-day clock  
24 begin running on January 19.

25 JUDGE MOORE: When, in fact, did anybody

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1 get a hard copy of it, Mr. Hull?

2 MR. HULL: In a conversation I had with  
3 Don Silverman, he advised that he did not get his hard  
4 copy, I believe it was either the very end of January  
5 or very first of February.

6 JUDGE MOORE: Ms. Curran, do you know when  
7 you received yours?

8 MS. CURRAN: Well, my copy, the envelope  
9 was postmarked January 28th and I think I got it  
10 around the 1st of February. And I have to say I think  
11 Mr. Smith's letter said something about mailing one  
12 out, so I just figured it's really hard to read it on  
13 the internet. I thought I'll wait and get my copy.  
14 But it did take an awful long time to get here.

15 MR. SILVERMAN: My understanding is that  
16 it was available on ADAMS as of the 19th. And that  
17 the parties were notified to that effect.

18 JUDGE MOORE: Mr. Silverman, you are  
19 agreeing with the 19th date?

20 MR. SILVERMAN: Yes, I believe the 19th is  
21 the correct date.

22 MS. CURRAN: I'd like to ask for a little  
23 leeway on that just because we were told that it was  
24 being mailed to us and it just took so long to get to  
25 us. If it had taken a couple of days, that would have

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1           been one thing, but it took I don't know, over a week,  
2           week and a half.

3                       JUDGE MOORE:       Mr. Hull, were you  
4           responsible for mailing these?

5                       MR. HULL:    No.    It's my understanding,  
6           Your Honor, that the printer's office was in charge of  
7           mailing and it was certainly our understanding that  
8           the time the January 19 letter went out that that  
9           mailing was going to be done either that day or on the  
10          21st, but obviously that did not take place.

11                      JUDGE MOORE:   And I'm assuming that on the  
12          20th or the 21st, you didn't check to see if it had?

13                      MR. HULL:    No.

14                      JUDGE MOORE:   On this, Ms. Curran, I think  
15          the Board is inclined to agree with you, trying to  
16          read a large document off of ADAMS or indeed trying to  
17          print it off ADAMS is often a challenge, is  
18          exasperating at best.

19                      Why don't we say that -- and you think you  
20          received it about the 1st of February?

21                      MS. CURRAN:   Yes.

22                      JUDGE MOORE:   What was the post mark on  
23          it?

24                      MS. CURRAN:   January 28th, as I recall.

25                      JUDGE MOORE:   We'll call it available --

1 let's use the January 28th date and unfortunately, I  
2 didn't bring a calendar. Is that a --

3 MS. CURRAN: So let's see. February 27th  
4 is a Sunday.

5 JUDGE MOORE: So the 28th of February  
6 would essentially be 30 days?

7 MS. CURRAN: It would be 31, but --

8 JUDGE MOORE: Well, Sunday is Sunday.

9 MS. CURRAN: Yes. Well, the 28th would be  
10 just fine for us.

11 JUDGE MOORE: Okay, Mr. Silverman, let's  
12 use that as the starting gun, if you could get the  
13 status report in, the motion, then we'll turn it  
14 around with a scheduling order to make sure that all  
15 those dates are clearly in everyone's mind.

16 Is there anything else we need to deal  
17 with today for scheduling?

18 MR. SILVERMAN: Let me just make sure that  
19 the date you folks just discussed for the filing of  
20 contentions on the EIS is February 28th?

21 JUDGE MOORE: Thirty days from --

22 MR. SILVERMAN: From January 28th?

23 JUDGE MOORE: -- the 28th. And Ms. Curran  
24 informs us and unfortunately, I don't have a calendar,  
25 that that is --

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1 MS. CURRAN: It's a Sunday, the 27th.

2 JUDGE MOORE: The rules would make it a  
3 Monday.

4 MR. HULL: I do have a calendar, Your  
5 Honor, and Ms. Curran is correct. The 30 days would  
6 end on the 27th of February which is a Sunday.

7 JUDGE MOORE: Okay, then it will be  
8 Monday, February 28th is the due date.

9 MR. SILVERMAN: This is Mr. Silverman.  
10 The only other thing I'll mention, I don't have the  
11 actual order in front of me, but my index to my file  
12 indicates that there is an order dismissing GANE  
13 contention 9, dated January 28 of 2003. I have to  
14 verify that, but that's what my index indicates.

15 JUDGE MOORE: That will allow me to delve  
16 into the file and try to find it.

17 Is there any other outstanding business  
18 that the Board, that needs to be brought before the  
19 Board?

20 MR. HULL: Your Honor, John Hull for the  
21 Staff. I just had one question. I know it's  
22 unlikely, but let's say a late filed contention was  
23 filed 25 days as opposed to 30 days after the issuance  
24 of a document. Would the schedule thereafter be keyed  
25 on when the late filed contention was actually filed

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1 or would we still go by the guidance set out in the  
2 Commission's order?

3 JUDGE MOORE: Mr. Silverman, your view?

4 MR. SILVERMAN: I --

5 JUDGE MOORE: It's a moot question,  
6 frankly. Ms. Curran, are you going to  
7 file any staggered contentions or are they all going  
8 to come in together?

9 MS. CURRAN: I guess they'll all come in  
10 together.

11 JUDGE MOORE: And Ms. Curran, is it safe  
12 to assume they'll come in at the last appropriate date  
13 and not before?

14 MS. CURRAN: No. But it seems to me it  
15 makes sense to just trigger the time for responding  
16 from when they come in. It's just generally the way  
17 it's done.

18 JUDGE MOORE: Mr. Silverman?

19 MR. SILVERMAN: That's fine.

20 JUDGE MOORE: Then please set up your  
21 status report on days from instead of exact dates  
22 because then I will make sure we lock in the exact  
23 dates from when, in fact, we know what the starting  
24 date is as opposed to a date from which we're  
25 counting.

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Is that clear?

MR. SILVERMAN: Yes.

JUDGE MOORE: Anything else?

MS. CURRAN: Not from GANE.

JUDGE MOORE: Mr. Silverman for DCS?

MR. SILVERMAN: No sir.

JUDGE MOORE: Mr. Hull for the Staff?

MR. HULL: No, Your Honor.

JUDGE MOORE: Thank you very much. I look forward to the status report and motion this coming Monday and again, thank you for calling in on the conference call.

Good day now.

(Whereupon, at 2:25 p.m., the conference call was concluded.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Duke Cogema Stone & Webster  
Mixed Oxide Fuel Fabrication  
Facility  
(Construction Authorization  
Request)

Docket Number: 070-03098-ML

Location: teleconference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



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