

February 18, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF MOTION FOR PROTECTIVE ORDER
GOVERNING DISCLOSURE OF SENSITIVE INFORMATION

INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.1237 and 2.730, the NRC Staff ("Staff") files this motion requesting that the Atomic Safety and Licensing Board ("Board") issue a Protective Order governing access to and disclosure of certain sensitive information in the above captioned proceeding. The Staff requests that the Board adopt the attached draft Protective Order (which includes a draft Confidentiality and Non-Disclosure Agreement). Counsel for applicant Duke Cogema Stone & Webster ("DCS"), and for intervenor Georgians Against Nuclear Energy ("GANE"), were provided with drafts of this motion and Protective Order, and were given an opportunity to comment. The undersigned and GANE's counsel attempted to reach agreement on the terms stated in the draft Protective Order, but failed to do so. Counsel for GANE indicated that GANE will submit alternative language or otherwise respond to this motion next week. Counsel for DCS provided some comments on the attached draft Protective Order, but DCS has not yet formulated a position on this motion.

DISCUSSION

On January 19, 2005, the NRC Staff informed the Board that NUREG-1767, "Environmental Impact Statement on the Construction and Operation of a Mixed Oxide Fuel Fabrication Facility at

the Savannah River Site, South Carolina - Final Report," ("FEIS") was available.¹ Prior to releasing the document to the public, the NRC Staff performed a review of the FEIS to ensure that potentially sensitive unclassified information which might provide assistance to terrorists would not be disseminated. During that review, the Staff identified some protected sensitive information. So that all parties may be afforded prompt and unrestricted access to relevant documents to ensure the fair and efficient conduct of this proceeding, the issuance of a Protective Order is appropriate. The draft Protective Order covers the FEIS, as well as documents subsequently added to the hearing docket. The terms of the draft Protective Order set forth provisions on handling and treatment of protected sensitive information, and restrict the distribution of such information to authorized persons pursuant to the attached draft Confidentiality and Non-Disclosure Agreement. While the Protective Order (if adopted) remains in effect, the Staff would provide the parties with copies of sensitive unclassified information in any new documents, subject to the terms of the Order. Adopting the draft Protective Order would not affect this Board's Protective Order dated June 29, 2001, which covers DCS proprietary information.

CONCLUSION

For the foregoing reasons, the Staff requests that the Board issue a Protective Order in the form attached.

Respectfully submitted,

/RA/

Tyson R. Smith
Counsel for NRC Staff

Dated at Rockville, Maryland
this 18th day of February, 2005

¹ See Letter from Tyson R. Smith, Counsel for NRC Staff, to the Licensing Board dated January 19, 2005.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

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

In the Matter of

DUKE COGEMA STONE & WEBSTER

Mixed Oxide Fuel Fabrication Facility
(Construction Authorization Request)

Docket No. 070-03098-ML

ASLBP No. 01-790-01-ML

MEMORANDUM AND ORDER
(Protective Order)

This Protective Order governs the disclosure and use of certain protected sensitive information¹ potentially relevant to the application of Duke Cogema Stone & Webster (“DCS”) for authority to construct a mixed oxide fuel fabrication facility at the Savannah River Site in South Carolina.

Specifically, counsel, consultants, and others representing DCS, Georgians Against Nuclear Energy (“GANE”) and the Blue Ridge Environmental Defense League (“BREDL”) shall be permitted access to protected sensitive information upon the following conditions:

1. Any person permitted access to protected sensitive information on behalf of DCS,

¹ “Protected sensitive information” is defined as any information in the possession of the NRC Staff that has been screened to guard against its release and potential use by terrorists, and not approved for public release by the NRC Staff in accordance with the Staff’s Sensitive Information Screening criteria. See <http://www.nrc.gov/materials/fuel-cycle-fac/review-criteria-fuel-cycle.html>. A document that has been screened and approved by the NRC Staff as suitable for public release is not protected sensitive information under this Order. The Board’s previously-issued Protective Order dated June 29, 2001, which covers certain proprietary information (“protected information”) in connection with this proceeding, is unaffected by this Order. The definition of protected sensitive information in this Order does not include classified or safeguards information which would be the subject of separate provisions with respect to handling, use and disclosure; it includes information that is unclassified, but potentially sensitive.

GANE or BREDL shall execute the attached Confidentiality and Non-Disclosure Agreement.

2. Only individual counsel, consultants, and others representing a party² who have executed the attached Confidentiality and Non-Disclosure Agreement may have access to protected sensitive information. Protected sensitive information shall not be used except as necessary for the conduct of this proceeding, nor shall it be disclosed in any manner to any person except to the minimum number of counsel, consultants, or other party representatives who are engaged in the conduct of this proceeding and who need to know the information in order to carry out their responsibilities in this proceeding. Individuals with access to protected sensitive information pursuant to this Order may make copies of and take notes on the protected sensitive information, but such copies and notes become protected sensitive information. Such notes and copies will not be included in ADAMS or the Electronic Hearing Docket for this proceeding unless submitted for inclusion by the designated representative of that party.

3. Counsel, consultants, and others representing a party who receive any protected sensitive information shall maintain its confidentiality as required in the attached Confidentiality and Non-Disclosure Agreement, the terms of which are hereby incorporated in this Protective Order.

4. All pleadings and correspondence in this proceeding that contain protected sensitive information shall:

a. be served in a single, opaque envelope by United States first class, registered, express, or certified mail, internal NRC mail, or messenger-courier or overnight delivery service (e.g. , Federal Express), with an additional copy served by electronic mail;

b. include an attached cover sheet identifying the pleading or correspondence as protected sensitive information and a cover letter that summarizes the contents of the pleading

² The term "party" shall mean DCS, GANE and BREDL. For the purposes of this protective order, the term "party" does not include the NRC staff. The provisions of this Protective Order, unless expressly stated, do not apply to NRC employees, contractors, or consultants.

or correspondence without reference to any protected sensitive information; and

c. be served only on the Board, NRC's Office of the Secretary, and persons authorized to receive protected sensitive information under this Protective Order.

5. Counsel, consultants, and others representing a party shall take all reasonable precautions necessary to assure that protected sensitive information is not distributed to unauthorized persons. Counsel, consultants, and others representing a party are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

6. The terms of this Protective Order apply to protected sensitive information notwithstanding any prior releases in which this information was treated as public. A public release of protected sensitive information before this Order became effective shall not serve as grounds for subsequent distribution of protected sensitive information to unauthorized persons.

7. Protected sensitive information shall remain available to all parties until the date that an order terminating this proceeding is no longer subject to judicial review. The parties shall, within fifteen (15) days of the date described above, return the protected sensitive information (excluding notes of protected sensitive information) to the party that produced them, or shall destroy the information, except that copies of filings, official transcripts, and exhibits in this proceeding that contain protected sensitive information, and notes of protected sensitive information may be retained, if they are maintained in a secure place.³ Within such time period, each party shall also submit to the producing party an affidavit stating that, to the best of its knowledge, all protected sensitive information and all notes of protected sensitive information have been returned or have been destroyed or will be maintained in accordance with the above. To the extent protected sensitive information is not returned or destroyed, it shall remain subject to the provisions of this

³ Counsel are responsible for determining what measures are necessary to assure that protected sensitive information is kept in a secure place such that no distribution of protected sensitive information to unauthorized individuals will occur.

Protective Order.

8. Counsel, consultants, or any other individual representing a party who has reason to suspect that protected sensitive information disseminated under this Protective Order may have been lost or misplaced or that protected sensitive information has otherwise become available to unauthorized persons during the pendency of this proceeding shall notify this Board promptly of those suspicions and the reasons for them.

9. Any violation of the terms of this Protective Order or a Confidentiality and Non-Disclosure Agreement executed in furtherance of this Protective Order may result in the imposition of sanctions as the Board or the Commission may deem appropriate, including but not limited to referral of the violation to appropriate bar associations and/or other disciplinary authorities.

10. The Board may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

It is so ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Under penalty of perjury, I hereby certify my understanding that access to protected sensitive information is provided to me pursuant to the terms and restrictions of the Board's Protective Order, dated February __, 2005, in this proceeding, that I have been given a copy of and have read this Protective Order, and that I agree to be bound by it. I understand that the contents of the protected sensitive information, any notes or other memoranda, or any form of information that copies or discloses protected sensitive information shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this Declaration or the Protective Order, which incorporates the terms of this Declaration, constitutes a violation of an order of the Nuclear Regulatory Commission and may result in the imposition of sanctions as the Board or Commission may deem to be appropriate, including, but not limited to, referral of the violation to appropriate bar associations and other disciplinary authorities.

WHEREFORE, I do solemnly agree to protect such protected sensitive information as may be disclosed to me in this NRC proceeding, in accordance with the terms of this declaration.

Name (printed): _____

Title: _____

Representing: _____

Signature: _____

Date: _____

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
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DUKE COGEMA STONE & WEBSTER) Docket No. 0-70-3098-ML
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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF MOTION FOR PROTECTIVE ORDER GOVERNING DISCLOSURE OF SENSITIVE INFORMATION" in the above captioned proceeding have been served upon the following persons, by electronic mail, and by U.S. mail, first class, or as indicated by an asterisk (*) through the Nuclear Regulatory Commission's internal distribution, this 18th day of February, 2005.

Administrative Judge *
Thomas S. Moore, Chairman
U. S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Administrative Judge *
Peter S. Lam
U.S. Nuclear Regulatory Commission
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Administrative Judge *
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/RA/

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Counsel for NRC Staff