

DATE: March 24, 2005

OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
NOTIFICATION OF SIGNIFICANT LICENSING ACTION

APPLICANT: Duke Cogema Stone & Webster, LLC
Mixed Oxide Fuel Fabrication Facility
Docket No. 70-3098

SUBJECT: PROPOSED ISSUANCE OF A CONSTRUCTION AUTHORIZATION AND FINAL
SAFETY EVALUATION REPORT

This is to inform the Commission that the Office of Nuclear Material Safety and Safeguards (NMSS) plans to issue Duke Cogema Stone & Webster (DCS) a construction authorization (CA) for the Mixed Oxide (MOX) Fuel Fabrication Facility (MFFF). Issuance of the CA is based on (1) the evaluations and recommendation in NUREG-1767, the final "Environmental Impact Statement on the Construction and Operation of a [MFFF] at the Savannah River Site, South Carolina" (FEIS), published in January 2005, and (2) the safety findings in the "Final Safety Evaluation Report on the Construction Authorization Request for the [MFFF] at the Savannah River Site, South Carolina" (FSER). NMSS plans to issue the FSER concurrently with the CA. As indicated above, the FSER evaluates the DCS construction authorization request (CAR) dated October 31, 2002 (as supplemented by letters dated December 20, 2002, February 18, 2003, April 1, 2003, April 10, 2003, July 28, 2003, June 10, 2004, July 1, 2004, January 27, 2005, and February 9, 2005), and references the approved MOX Project Quality Assurance Plan (dated March 26, 2002).

An Atomic Safety and Licensing Board is conducting a hearing on the CAR, the parties to which are DCS, the Nuclear Regulatory Commission (NRC) staff, the Blue Ridge Environmental Defense League, and Georgians Against Nuclear Energy (GANE). Two late-filed environmental contentions were submitted by GANE on the FEIS. In addition, as permitted by the Board, late-filed contentions on the FSER may be submitted within 30 days of the FSER's issuance. Pursuant to 10 CFR 2.1205(m), the NRC staff may take licensing actions notwithstanding the fact that hearing issues remain pending.

On January 19, 2005, an NMSS staff member filed DPO-2005-002 regarding the staff's evaluation and acceptance of the DCS safety strategy for preventing red-oil explosions in processing equipment at the proposed MFFF. A panel to consider DPO-2005-002 was only recently established on March 2, 2005. However, in early 2004 NMSS management held discussions with the DPO filer in an effort to resolve the filer's concerns. Also, by letter dated

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VERIFICATION THAT APPLICANT HAS RECEIVED ACTION**

February 24, 2005 (ML050550254), the Advisory Committee on Reactor Safeguards (ACRS) summarized the results of the Committee's review of the staff's safety evaluation. The ACRS considered the red-oil hazard, and concluded that the FSER should be issued. The consensus within NMSS is that the CA should be issued even though DPO-2005-002 will not have been resolved.

On March 3, 2005, two NMSS staff members filed a non-concurrence memorandum on the FSER. The non-concurrence process in the NMSS' Division of Fuel Cycle Safety and Safeguards (FCSS) affords an opportunity for staff to constructively resolve disagreements. In the non-concurrence memorandum, the chemical safety reviewer and electrical reviewer expressed concerns over changes in the FSER text that had been made by concurring managers. The non-concurrence memorandum accompanied the FSER concurrence package, and concurring management has been informed of the disagreement. The Director of NMSS has reviewed the changes made by FCSS management and concludes that none of the changes resulted in substantive changes to the staff's conclusions. Rather, the changes were focused on ensuring that the staff's evaluation and conclusions are clear.

Therefore, NMSS concludes that the DPO filer's concerns reflected in DPO-2005-002, and the NMSS staff concerns expressed in the March 3, 2005, non-concurrence memorandum, have previously received serious and deliberate consideration and that issuance of the CA is now warranted.

On December 3, 2004, the Executive Director for Operations (EDO) issued a decision on a Differing Professional Opinion (DPO) Appeal (NMSS-DPV-2002-03) that had been filed by a member of the NMSS technical review staff who had worked on the CAR review. The DPO Appeal raised concerns regarding the staff's use of specific computer models to estimate downwind dispersion of hazardous chemicals following postulated chemical spills. In the December 3 decision, after consideration of the views of NMSS management, the DPO submitter, and the Differing Professional View (DPV) panel, the EDO closed this DPO Appeal.

On March 8, 2005, the EDO issued a decision on a second DPO Appeal (DPO-2003-02). The DPO Appeal raised concerns regarding the staff's evaluation of the applicant's provisions for worker and facility safety following postulated chemical spills. In the March 8 decision, after consideration of the views of NMSS management, the DPO submitter, and the DPV panel, the EDO also closed this DPO Appeal.

The EDO's decisions on the two DPOs described above, which require no further action on the part of NMSS, support the NMSS decision to issue the CA.

NMSS is providing 5-days advance notice of its intent to issue the CA. This action will be taken 5-days from the date of this notice.

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Date Construction Authorization issued: 3/30/2005 Date received by applicant: 3/31/2005

ML050740411

OFFICE	MOFLS	GCFLS	MOFLS	SPB	FCSS
NAME	DBrown	LMarshall	SMagruder	JGitter	RPierson
DATE	3/16 /05	3/16 /05	3/16/05	3/16/05	3/17/05
OFFICE	OGC	Tech Ed	NMSS	DEDMRS	EDO
NAME	JHull	PKleene	JStrosnider	MVirgilio	LReyes
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