RAS 9648

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

In the Matter of	March 22, 2005
DUKE COGEMA STONE & WEBSTER	Docket No. 0-70-03098-ML
(Savannah River Mixed Oxide Fuel Fabrication Facility)	ASLBP No. 01-790-01-ML

DCS OPPOSITION TO GANE'S MOTION FOR LEAVE TO REPLY TO DCS AND NRC STAFF RESPONSES TO LATE-FILED CONTENTIONS ON THE MOX FACILITY FINAL ENVIRONMENTAL IMPACT STATEMENT

Duke Cogema Stone & Webster LLC ("DCS") opposes Georgians Against Nuclear Energy's ("GANE") March 17, 2005, Motion for Leave to Reply.[1] On March 18, 2005, the Licensing Board issued an Order directing the opposing parties to address the merits of GANE's Reply, which accompanied its Motion for Leave. DCS responds below in accordance with the Board's Order.

As discussed in Section I below, GANE's Motion for Leave is late and should be rejected on that ground alone. Also, GANE has not demonstrated good cause for its request. As discussed in Section II below, GANE's substantive bases for admitting these contentions are

[1] *Georgian Against Nuclear Energy's Motion for Leave to Reply to DCS and NRC Staff Responses to Late-Filed Contentions Regarding Final Environmental Impact Statement for Proposed Plutonium MOX Fuel Fabrication Facility* ("Motion for Leave") (Mar. 17, 2005).

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insufficient to warrant their admission. GANE's Reply provides no new information demonstrating the existence of a genuine dispute of material fact or law, and adds nothing to its prior authorized pleading. Accordingly, the Board should deny the Motion and not admit GANE's late-filed contentions.

I. GANE'S MOTION IS LATE AND LACKS GOOD CAUSE

In a previous Order, the Board set forth a number of directives governing the conduct of this proceeding.[2] The Board recognized that NRC regulations "do not provide for any right of reply to a responsive pleading."[3] Thus, the Board directed that, to obtain leave to reply, a party must "demonstrate good cause for permitting the reply to be filed."[4] This is consistent with NRC precedent, which holds that the standard for granting a request for leave to file a reply is a "high one" and that "leave will be granted sparingly and then only upon a strong showing of good cause."[5]

Of particular importance, the Board specifically directed that a "motion for leave to file a reply ... shall be filed so that it is in the hands of the Licensing Board at least three business days of the filing of the response for which leave to reply is sought."[6] A Board "has the power and the duty to maintain order, to take appropriate action to avoid delay and to regulate the course of

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2 *Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), Memorandum and Order, slip op. (July 17, 2001).

3 *Id.* at 6.

4 *Id.*

5 *See Hydro Resources, Inc.* (P.O. Box 777, Crownpoint, NM 87313), Order, slip op. at 1-2 (July 29, 2004) (*citing Detroit Edison Co.* (Enrico Fermi Atomic Plant, Unit 2), ALAB-469, 7 NRC 470, 471 (1978); *Commonwealth Edison Co.* (Byron Station, Units 1 and 2), LBP-81-30A, 14 NRC 364, 372 (1981)).

6 Memorandum and Order, slip op. at 6 (July 17, 2001) (emphasis in original).

the hearing and the conduct of the participants" and is not expected to "sit idly by when parties refuse to comply with its orders."[7]

GANE's Motion for Leave is late. DCS filed its Opposition to GANE's late-filed contentions on Thursday, March 10, 2005. GANE filed its Motion for Leave one week later, on Thursday, March 17, 2005. Accordingly, GANE did not file its Motion for Leave within three business days of DCS's Opposition, as specifically required by this Licensing Board.

GANE offers no explanation for failing to meet this three-day deadline. GANE is represented by competent counsel well versed in NRC procedures and practice, and aware of this Board's Order. For example, shortly after the Board issued the Order, GANE filed a motion for leave to reply and specifically discussed the Order.[8] Yet GANE provides no justification for, or indeed even attempts to address, its failure to comply with the Board's Order to request leave to reply within *three business days* of the opposition's response. Accordingly, GANE's Motion for Leave should be denied.

Furthermore, GANE has not demonstrated good cause to be afforded a right of reply. GANE states that "[a]lthough the NRC's regulations do not specifically provide an opportunity for replies to responses to contentions, it is well-established that petitioners are entitled to an opportunity to reply."[9] The *Allens Creek* decision cited by GANE is "advisory" in nature and not binding upon the Board. The Appeal Board in that proceeding specifically noted (with

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7 *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-82-115, 16 NRC 1923, 1928 (1982).

8 *See Georgians Against Nuclear Energy's Motion for Leave to Reply to DCS and NRC Staff Responses to Motion to Dismiss*, n. 1 (Aug. 24, 2001).

9 *Motion for Leave* at 2 (*citing Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-5465, 10 NRC 521, 525 (1979); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71, 72-73 (1981) (*citing Allens Creek*)).

respect to giving an intervenor an opportunity to be heard in response) that its "views are somewhat tentative, for necessarily we reached them without benefit of briefing by the parties," and that it was "not directing the Board to take any particular action."[10] The Appeal Board's comments do not obviate the fact that the applicable Commission Rules of Practice make clear that an intervenor has no right to reply without prior Board permission.[11] The notion that the Board "must" give a proponent of late-filed contentions the opportunity to reply to any opposition to the contentions is inconsistent with the Commission's Rules of Practice and the Board's Order in this proceeding. Accordingly, GANE's citation to *Allens Creek* alone does not establish "good cause."

GANE also asserts that it seeks permission to reply to various arguments that "mischaracterize GANE's contentions, the history of the proceeding, and the governing law."[12] A mere assertion that a reply is necessary to illuminate the Board on the other parties' alleged misrepresentations has previously been rejected as grounds for good cause.[13] In *Seabrook*, a Licensing Board denied the Petitioner's motion for a limited reply. It held that the good cause requirement of Section 2.730(c) is not satisfied by merely claiming that there is a "misrepresentation" in the applicant's answer, and noted that "a moving party has no right to reply" and that the "Board itself is quite capable of discerning misrepresentations, if any, and

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10 *Houston Lighting and Power Co.*, 10 NRC at 525, n. 17.

11 10 CFR § 2.730(c). *See Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-89-6, 29 NRC 348, 353 n.2 (1989) (*referencing* 10 CFR § 2.730(c) and noting that NRC regulations specifically reject replies to responses except as permitted by the presiding officer or the Secretary or the Assistant Secretary).

12 *Motion for Leave* at 2.

13 *See Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), 1987 WL 109481 (N.R.C. March 24, 1987).

whether apparent or not."[14] Thus, GANE's assertions regarding alleged misrepresentations do not provide good cause for the Board to accept its Reply.

In summary, GANE has failed to comply with the Board's explicit directive and has filed its Motion for Leave out of time without any excuse or explanation. Furthermore, it has failed to demonstrate good cause to permit a reply. Thus, its Motion for Leave must be denied.

II. GANE'S REPLY CONTAINS NO ADDITIONAL INFORMATION TO SUPPORT ADMISSION OF ITS LATE-FILED CONTENTIONS

On March 10, 2005, DCS filed its Opposition to GANE's late-filed contentions.[15] GANE submitted a Reply with its Motion for Leave.[16] For the reasons discussed below, the positions set forth in the DCS Opposition remain valid and support rejection of GANE's late-filed contentions.

A. Contention 21 Is Not Admissible

Late-filed Contention 21 challenges the adequacy of the FEIS based on "new" information allegedly indicating that DOE has "suspended" its plan to construct a Waste Solidification Building ("WSB") to be used to solidify liquid radioactive waste generated by the MOX Facility. GANE asserts that the NRC "must await" a decision by the DOE on how it intends to handle liquid radioactive waste before considering the NEPA process complete.[17]

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[14] *Id.*

[15] *DCS Opposition to GANE's Late-Filed Contentions on the MOX Facility Final Environmental Impact Statement* ("DCS Opposition") (Mar. 10, 2005).

[16] *Georgians Against Nuclear Energy's Reply to DCS and NRC Staff Responses to Late-Filed Contentions Regarding Final Environmental Impact Statement for Proposed Plutonium MOX Fuel Fabrication Facility* ("GANE Reply") (Mar. 17, 2005).

[17] *Georgians Against Nuclear Energy's Late-Filed Contentions Regarding Final Environmental Impact Statement for Proposed Plutonium MOX Fuel Fabrication Facility* ("GANE Late-Filed Contentions") at 2 (Feb. 28, 2005).

1. **GANE Does Not Raise a Material Issue of Fact or Law**

GANE once again asserts in its Reply that the information in DOE's Fiscal Year ("FY") 2006 Budget Request regarding placing the WSB detailed design "on hold" obligates the NRC to reconsider the environmental impacts of the MOX Facility. In its Opposition, DCS made clear why GANE's late-filed contention does not meet the legal standards in 10 CFR § 2.714(b)(2) and should be rejected:

- The "new" information from DOE's FY 2006 Budget Request does not show that DOE has decided to change the WSB baseline from that evaluated by the NRC in the MOX Facility FEIS.
- The Supreme Court and NEPA regulations do not include "budget appropriations" in the definition of "legislation" that triggers a NEPA obligation.
- Any future DOE changes in the WSB design are speculative and, even if made, may or may not cause the NRC to consider whether it should revisit the MOX Facility FEIS.

GANE's Reply presents no new information that warrants admission of this contention.

As to the first point, GANE continues to assert that the information in the Budget Request is sufficient to raise doubts about the status of the WSB and the NRC's conclusions in the FEIS regarding liquid radioactive waste treatment. It provides no new or additional information on this point. As DCS discussed in its Opposition, placing the WSB design "on hold" is not indicative of a decision by DOE to cancel the WSB. Until DOE makes a decision and announces a change from the WSB baseline, any action that the NRC might take in reaction to the information would be speculative and uninformed.

As to the second point, DCS explained in its Opposition that the NEPA process itself would not require action on information presented in a budget request. GANE states that the

"information relied on by GANE is not DOE's request for Congressional funding, but its announcement that it has decided to suspend a measure on which the NRC has relied."[18] But GANE cannot separate the information from its source.

Andrus stands for the legal principle that Section 102(2)(C) of NEPA does not apply to funding requests.[19] The Supreme Court stated that NEPA applies "to those recommendations or reports that actually propose programmatic actions, rather than to those which merely suggest how such actions may be funded," and that "[e]ven if changes in agency program occur *because* of budgetary decisions, an EIS at the appropriation stage would only be repetitive" to the EIS accompanying a program decision.[20] The same principles apply to revisiting an existing EIS. Thus, as DCS has correctly argued, any NRC NEPA-driven action on the FEIS is not required for a DOE budget request.

As to the third point, GANE attempts to argue that the NRC has a current NEPA obligation. However, its final conclusion for Contention 21 indicates that it clearly understands the premature and speculative nature of the information in the DOE Budget Request. Specifically, GANE recognizes that a DOE decision may, *in the future*, trigger NRC consideration of its NEPA obligations:

> *[I]f DOE decides to pursue some waste disposal alternative that is significantly different from the WSB*, and that has not previously been exposed to public comment, *the NRC must supplement the FEIS* to address the environmental impacts of that alternative and must provide an opportunity for public comment on the supplemental analysis.[21]

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18 *GANE Reply* at 4.

19 *Andrus v. Sierra Club*, 442 U.S. 347 (1979).

20 *Id.* at 362-63 (emphasis in original).

21 *GANE Late-Filed Contentions* at 7 (emphasis added).

GANE's conclusion is consistent with the point in the DCS Opposition. As DCS noted, "the NRC has no current obligation under NEPA to supplement or revise the MOX Facility FEIS based on the information provided by GANE in Contention 21."[22]

GANE asserts in its Reply that "the NRC does have a legal obligation to ensure that all of the environmental impacts of the proposed MOX Facility are addressed before construction is authorized."[23] As a basis for this assertion, GANE cites *Robertson v. Methow Valley Citizens Council.*[24] The cited portion of *Robertson* discusses the requirements regarding when an agency is to conduct an EIS, and in pertinent part, states that "NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."[25] In *Robertson*, the Supreme Court held, however, that the Forest Service did not improperly interpret NEPA by issuing a permit before local agencies had completed a detailed plan for mitigating offsite environmental impacts of the project.[26]

The NEPA process provides that agencies must supplement a final EIS if there are "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 CFR § 1502.9(c)(1)(ii). As discussed above, the speculative nature of the information in DOE's Budget Request does not, as GANE asserts,

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22 *DCS Opposition* at 13.

23 *GANE Reply* at 5.

24 *Id. (citing Robertson*, 490 U.S. 332, 349 (1989)).

25 *Robertson*, 490 U.S. at 349 (*citing Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976).

26 *Id.* at 358-59. *Also see Kleppe*, which held that the Department of the Interior need not prepare a comprehensive EIS for mining operations over an entire area because petitioners were "contemplating" a regional development plan, recognizing that the mere contemplation of an action is not sufficient to require an impact statement. *Kleppe*, 427 U.S. at 403-04.

represent "significant new circumstances" regarding the WSB baseline approach. Consequently, the NRC is under no current obligation to revisit the final EIS or to delay action.

2. **GANE Fails to Satisfy the Balancing of the Late-Filed Criteria**

In its Opposition, DCS addressed each of the five factors in 10 CFR § 2.714(a)(1) that the Board must balance in determining whether GANE has met the legal standards for admission of its late-filed contention. DCS did not contest the "good cause" factor for Contention 21, but concluded that, considering the other four factors, on balance, GANE had not justified admission under the legal standards for late-filed contentions.

GANE continues to argue that it satisfies a balancing of the late-filing criteria for Contention 21.[27] Specifically, GANE maintains that DCS "overlook[ed] a crucial distinction" by referencing the Board's November 19, 2002 Order in discussing the third factor (the extent to which the intervenor's participation may reasonably be expected to assist in developing a sound record), because in the present circumstances DCS did not contest the "good cause" factor.[28] GANE contrasts the circumstances in the November Order (where it conceded that it did not have good cause for its late filing), and argues that, with "good cause," it need not make a "compelling showing" on the other factors.

DCS missed no "crucial distinction" and has not argued that GANE must make a "compelling showing" in balancing the five factors for this late-filed contention. Even with "good cause," GANE still must demonstrate that its late-filed contentions should be admitted

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27 *GANE Reply* at 7.

28 *Id.*

based on a balancing of the five factors.[29] In its Opposition, DCS simply referred to the prior discussion of the third factor in the November 2002 Order as information the Board should consider when balancing these factors. Whether or not GANE has good cause has no relevance to whether it has demonstrated that the third factor weighs in favor of admitting its late-filed contention. Like the previous case, this third factor weighs *against* such admission.

Finally, GANE continues to argue that it need not identify a potential witness or offer possible testimony "because it does not take any particular technical expertise to determine whether or not the DOE has suspended its plans for the WSB."[30] On the contrary, GANE must provide more. It simply offers its own interpretation of a statement in the DOE Budget Request in favor of its position that delaying the detailed design of the WSB implies that DOE has changed its baseline approach to solidify liquid radioactive waste. DOE has not. GANE provides no support for its conjecture, and thus, has not met its burden of demonstrating that the statement conveys all that GANE implies. The Board must, therefore, weigh this factor against GANE.

As DCS concluded in its Opposition, GANE has not demonstrated that, on balance, the five factors in 10 CFR § 2.714(a)(1) favor admission. Therefore, the Board should not admit Contention 21 because the legal standards for late filing have not been met.

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29 *DCS Opposition* at 3 (*citing Duke Cogema Stone & Webster* (Savannah River Mixed Oxide Fuel Fabrication Facility), Memorandum and Order (Denying Admission of Late-Filed Contentions), slip op. at 5 (Nov. 19, 2002)).

30 *GANE Reply* at 8.

3. Conclusion

In its Reply, GANE has provided no additional insights in support of its assertions regarding late-filed Contention 21. The information upon which GANE relies as evidence is speculative and premature and does not – on GANE's own admission – trigger a current NEPA obligation on the part of the NRC. GANE has failed to show that a genuine dispute exists on a material issue of law or fact. And on a fair balancing of the five factors, GANE has not met the legal standards for late-filed Contention 21.

B. Contention 22 Is Not Admissible

Late-filed Contention 22 challenges the adequacy of the FEIS based on "new" information that DOE has allegedly "revived" immobilization of surplus plutonium as a viable alternative to the fabrication of MOX fuel.

1. GANE Does Not Raise a Material Issue of Fact or Law

GANE's Reply simply rehashes information presented previously. It continues to assert that DOE's request for funding to evaluate a conceptual design for a Plutonium Disposition Facility represents a "revival" of the immobilization program. In its Opposition, DCS made clear why GANE's late-filed contention does not meet the legal standards in 10 CFR § 2.714(b)(2) and should be rejected:

- The information in DOE's Budget Request explicitly addresses options for disposition of the surplus plutonium that is *not* suitable for the MOX Facility.
- The other Exhibits provided by GANE demonstrate on their face that the disposition options relate only to surplus plutonium that is *not* suitable for the MOX Facility.

- GANE previously raised essentially the same issue in Contention 15 (which the Board rejected on the basis of the late-filing) and Contention 20 (which the Board rejected because GANE had failed to provide the required factual support or expert opinion).
- Under the *Andrus* decision, the DOE Budget Request does not trigger a NEPA obligation and is not, therefore, indicative that DOE has "revived" the immobilization option.
- Even if DOE ultimately makes a decision to immobilize the surplus plutonium *not* suitable for the MOX Facility, it would not affect the FEIS, because immobilization still would not be a reasonable alternative for the surplus plutonium that is suitable for the MOX Facility.

As to the first point, GANE asserts that a portion of the 34 metric tons ("MT") of surplus plutonium suitable for the MOX Facility might instead be immobilized by DOE. However, the portion of DOE's Budget Request upon which GANE relies clearly identifies the surplus plutonium requiring further disposition: "EM is reviewing options to transfer or disposition the *remaining fissile materials that cannot go into the mixed-oxide fuel process.*"[31]

As to the second point, GANE asserts that information contained in its Exhibits is internally inconsistent and confusing as to what surplus plutonium will be used at the MOX Facility. Yet the Exhibits are clear that the potential immobilization process being considered applies only to that portion of the excess plutonium that cannot be processed by the MOX Facility.[32]

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31 *See GANE Late-Filed Contentions*, Exhibit 5 at 2 (emphasis added).

32 *See id.*, Exhibit 3 at 2; Exhibit 4 at 4; and Exhibit 5 at 2.

As to the third point, GANE claims that Contention 22 raises a different issue than it raised in its previous contentions on the subject of immobilization. GANE claims that the previous contentions challenged the reasonableness of excluding immobilization from the alternatives considered in the Environmental Report and the Draft EIS after DOE dropped consideration of the alternative. GANE now claims that "DOE itself has established the reasonableness of the immobilization alternative by reviving it."[33] But DOE has not revived immobilization *as an alternative to the MOX process.*

GANE complains in its Reply that "DCS never grapples with the internal contradiction" in the Exhibits regarding amounts of surplus plutonium subject to disposition.[34] Because it is outside the scope of this proceeding, DCS need not reconcile amounts of surplus plutonium *not* suitable for the MOX Facility under government policy or legislation. And as the Board recognized, the NRC need not consider alternatives that can be implemented only after changes in government policy or legislation.[35] That GANE has identified what it perceives as a discrepancy in amounts of surplus plutonium subject to continued storage or other disposition, does not raise a genuine issue.

As to the fourth point, for the same reasons discussed above for Contention 21, the *Andrus* decision makes it clear that a funding request does not trigger a NEPA obligation. GANE claims in its Reply that it intended to rely on the Budget Request information simply as "evidence" that DOE is actively pursuing the immobilization alternative. However, GANE cannot rely on information without consideration of its source.

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33 *GANE Reply* at 10.

34 *Id.* at 9.

35 *See DCS Opposition* at 21.

As to the fifth point, GANE continues to argue that some portion of the 34 MT of plutonium to be used in the MOX Facility still could be considered for immobilization. Yet none of the Exhibits discuss this as a possibility. GANE provides no new information that invalidates the NRC's decision regarding the immobilization alternative. The NRC explains in the FEIS why it eliminated immobilization as an alternative for the 34 MT suitable for the MOX Facility:

> In response to the cancellation of the plutonium immobilization facility (DOE 2002), the NRC delayed the issuance of the DEIS. The NRC held three public meetings in North Augusta, South Carolina; Savannah, Georgia; and Charlotte, North Carolina, and solicited additional written comments on how the immobilization of surplus plutonium as a no-action alternative should be discussed (NRC 2002). The NRC also solicited views on other alternatives that should be considered in the DEIS. In response, most commenters said they still wanted immobilization considered as an alternative in the DEIS, while some urged the NRC to instead focus on the proposed action. As discussed further in Section 2.3, the NRC has determined that immobilization of plutonium did not require an in-depth evaluation in the DEIS, because it was not a reasonable alternative to the proposed action.[36]

This discussion comports with NEPA regulations that an agency "evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."[37] Unless DOE makes a program change that establishes immobilization as an alternative for the 34 MT suitable for the MOX Facility, immobilization is not a reasonable alternative.[38]

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36 NUREG-1767, *Environmental Impact Statement on the Construction and Operation of a Proposed Mixed Oxide Fuel Fabrication Facility at the Savannah River Site, South Carolina*, at 1-15 (Jan. 2005). For a full discussion of the NRC's reasons for eliminating immobilization as an alternative, *see* § 2.3.3 at 2-23.

37 40 CFR § 1502.14(a).

38 Note also that foreign policy issues would be raised by any consideration of reviving the immobilization alternative for the 34 MT suitable for the MOX Facility. *See* FEIS § 2.3.3 at 2-23.

2. GANE Fails to Satisfy the Balancing of the Late-Filed Criteria

In an effort to demonstrate "good cause," GANE argues that it could not have raised Contention 22 when the DOE notified Congress last summer of its intention to investigate the immobilization alternative.[39] GANE considers that notification "preliminary," and argues that it was not until the FY 2006 Budget Request that DOE concretized an intent to pursue immobilization.

But the particular statements that GANE relies on in the DOE Budget Request are just as speculative regarding immobilization as those that were available to GANE last summer. And neither are indicative of a DOE decision to revive immobilization. Specifically, GANE Exhibits 3 and 4 refer to DOE's review of "potential vitrification" as a "preliminary investigation."[40] Similarly, Exhibit 5 states that DOE's Environmental Management Office is "reviewing options" and refers to the "initiation" only of a "conceptual design." Thus, the conclusions in the DCS Opposition regarding balancing the late-filing factors remain valid and Contention 22 should be rejected.

GANE also points to an alleged inconsistency in the DCS Opposition: that GANE should have raised the contention last summer, while arguing that even the DOE Budget Request does not trigger a NEPA obligation. There is no inconsistency here. If GANE believes that the statements in the recent DOE Budget Request are sufficient to form an admissible contention, then its own Exhibits demonstrate that it should have filed the contention last summer. As explained in the previous paragraph, the information available then was substantially the same as the information available now. That is why the contention is unforgivably late. But apart from

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39 *GANE Reply* at 12.

40 *DCS Opposition*, at 20.

GANE's beliefs, the reality is that all of the information identified by GANE—from last summer and February 2005—is speculative in the context of analyzing an agency's obligations under NEPA. Accordingly, it does not form an adequate basis for an admissible contention.

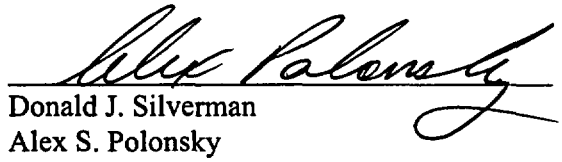
3. Conclusion

In its Reply, GANE has provided no additional insights in support of its assertions regarding late-filed Contention 22. The information upon which GANE relies as evidence is speculative. It also does not trigger a current NRC NEPA obligation – as a matter of law – and is outside the scope of the proceeding. GANE has failed to show that a genuine dispute exists on a material issue of law or fact. Finally, on a fair balancing of the late filing factors, GANE has not met the legal standards for late-filed Contention 22.

III. CONCLUSION

For the foregoing reasons, the Board should dismiss GANE's Motion for Leave and should exclude from consideration any arguments proffered by GANE in its Reply. Should the Board nevertheless grant the Motion for Leave, DCS respectfully submits that GANE has failed to raise any new information to create a genuine issue of material fact or law, and thus its late-filed contentions should be dismissed.

Respectfully submitted,



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Dated March 22, 2005

UNITED STATES OF AMERICA
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ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of "DCS Opposition To GANE's Motion for Leave to Reply to DCS's Opposition to GANE's Late-Filed Contentions on the MOX Facility Final Environmental Impact Statement" were served this day upon the persons listed below by electronic and First Class Mail.

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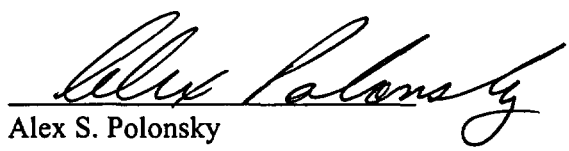

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3-22-05

Date