

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

May 17, 2005 (1:50pm)  
OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matter of	)	May 10, 2005
DUKE COGEMA STONE & WEBSTER	)	Docket No. 070-03098-ML
(Savannah River Mixed Oxide Fuel Fabrication Facility)	)	ASLBP No. 01-790-01-ML

**DUKE COGEMA STONE & WEBSTER  
MOTION TO TERMINATE PROCEEDING**

Duke Cogema Stone & Webster (DCS) hereby requests that the Atomic Safety and Licensing Board (ASLB) terminate the proceeding now pending before it on DCS' Construction Authorization Request (CAR) for the Mixed-Oxide Fuel Fabrication Facility (MFFF).

The CAR proceeding commenced with an April 18, 2001 Commission Notice of Opportunity for Hearing,<sup>1</sup> and after various requests for hearing were submitted, the Commission referred the hearing requests to the ASLB Panel.<sup>2</sup> This ASLB was then

<sup>1</sup> Notice of Acceptance for Docketing of the Application, and Notice of Opportunity for a Hearing, on an Application to Construct a Mixed Oxide Fuel Fabrication Facility, 66 Fed. Reg. 1994 (Apr. 18, 2001).

<sup>2</sup> Order Referring Petitions for Intervention and Requests for Hearing to Atomic Safety and Licensing Board Panel, CLI-01-13 (June 14, 2001).

established by order of the Chief Administrative Law Judge.<sup>3</sup> Ultimately, the ASLB granted standing to two parties, Georgians Against Nuclear Energy (GANE) and the Blue Ridge Environmental Defense League (BREDL), and admitted a number of contentions.<sup>4</sup>

As the ASLB is aware, all admitted contentions have now been withdrawn, or dismissed based on ASLB decisions that disposed of the contentions on their merits.<sup>5</sup> Furthermore, the last deadline for Intervenor to submit contentions (April 29, 2005 for late-filed contentions on the NRC Staff's Final Safety Evaluation Report (FSER)) has now passed,<sup>6</sup> without any such contentions being submitted. DCS counsel has confirmed with GANE's counsel that no contentions on the FSER have been, or are being, submitted by GANE. In short, there are no remaining contentions to be litigated in this proceeding and Intervenor have exhausted their opportunities to seek the admission of additional contentions.

The ASLB should retain limited jurisdiction over one collateral matter. Pursuant to the terms of the Protective Order issued by the ASLB on June 29, 2001, and the accompanying

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<sup>3</sup> Order, Establishment of Atomic Safety and Licensing Board (June 15, 2001).

<sup>4</sup> Memorandum and Order (Ruling on Standing and Admissibility of Contentions), LBP-01-35 (Dec. 6, 2001).

<sup>5</sup> GANE Contention 12 (consideration of terrorism under NEPA) was rejected by the Commission in CLI-02-24 (Dec. 18, 2002). GANE Contention 9 (cost comparison in the ER) was dismissed by a January 28, 2003 order of the ASLB. GANE Contention 6 (inadequate safety analysis) was withdrawn. *See* ASLB Order, Aug. 4, 2003. Consolidated Contention 11 (ER consideration of liquid waste impacts) was disposed of through summary disposition in LBP-03-21 (Oct. 31, 2003). Consolidated Contention 5 (controlled area boundary) was withdrawn by the Intervenor (See ASLB Order, Nov. 26, 2003). Finally, GANE Contentions 1 and 2 (MC&A and physical protection design bases) were addressed through summary disposition (LBP-04-09, May 28, 2004), as was GANE Contention 3 on DCS' seismic analysis (LBP-05-04, Feb. 2, 2005).

<sup>6</sup> *See* Joint Motion to Establish Hearing Schedule (Feb. 7, 2005) and ASLB Order (Granting Joint Motion to Adopt Schedule) (Feb. 10, 2005).

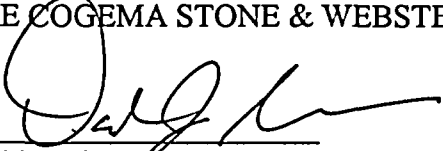
Nondisclosure Affidavit,<sup>7</sup> three of GANE's representatives (Ms. Carroll, Ms. Curran, and Dr. Lyman) have obligations related to the accounting for, and destruction of, proprietary information that they are required to fulfill "at the conclusion of [the] proceeding (including any related Commission or judicial proceedings)." These obligations include, among other things, accounting to the ASLB and submittal of proprietary documents "to the Licensing Board for destruction."<sup>8</sup> Accordingly, the ASLB should expressly retain jurisdiction for the limited purpose of ensuring compliance with the terms of the Protective Order and Nondisclosure Affidavits.

For the reasons set forth above, DCS requests that the proceeding on the MFFF CAR now be terminated.

Dated: May 10, 2005

Respectfully submitted,

DUKE COGEMA STONE & WEBSTER



Donald J. Silverman  
Alex S. Polonsky  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Telephone: (202) 739-5502  
Facsimile: (202) 739-3001

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<sup>7</sup> "Protective Order" (June 29, 2001).

<sup>8</sup> *Id.*, Nondisclosure Affidavit, at 3-4.

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of Duke Cogema Stone & Webster's "Motion to Terminate Proceeding" were served this day upon the persons listed below, by both e-mail and United States Postal Service, first class mail.

Secretary of the Commission\*  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attn: Rulemakings and Adjudications Staff  
(E-mail: [HEARINGDOCKET@nrc.gov](mailto:HEARINGDOCKET@nrc.gov))

Administrative Judge Peter S. Lam  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: [psl@nrc.gov](mailto:psl@nrc.gov))

Administrative Judge  
Thomas S. Moore, Chairman  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: [tsm2@nrc.gov](mailto:tsm2@nrc.gov))

Tyson R. Smith  
Office of the General Counsel  
Mail Stop: O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
(E-mail: [trs1@nrc.gov](mailto:trs1@nrc.gov))

Administrative Judge Charles N. Kelber  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: [cnk@nrc.gov](mailto:cnk@nrc.gov))

John T. Hull, Esq.  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: [jth@nrc.gov](mailto:jth@nrc.gov))

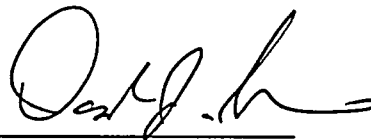
Glenn Carroll  
Georgians Against Nuclear Energy  
P.O. Box 8574  
Atlanta, Georgia 30306  
(E-mail: [atom.girl@mindspring.com](mailto:atom.girl@mindspring.com))

Louis Zeller  
Blue Ridge Environmental Defense League  
PO Box 88  
Glendale Springs, N.C. 28629  
(E-mail: [BREDL@skybest.com](mailto:BREDL@skybest.com))

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: [hrb@nrc.gov](mailto:hrb@nrc.gov))

Diane Curran, Esq.  
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.  
1726 M Street N.W., Suite 600  
Washington, D.C. 20036  
(E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com))

\* Original and 2 copies

  
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Donald J. Silverman