

RAS 10044

HARMON, CURRAN, SPIELBERG & EISENBERG, LLP

1726 M Street, NW, Suite 600 Washington, DC 20036

(202) 328-3500 (202) 328-6918 fax

May 27, 2005

DOCKETED
USNRC

Thomas S. Moore, Chairman
Charles N. Kelber, Administrative Judge
Dr. Peter S. Lam, Administrative Judge
Atomic Safety and Licensing Board
11545 Rockville Pike
Rockville, MD 20852

June 1, 2005 (11:07am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Subject: Accounting for Proprietary Documents in MOX CAR Proceeding

Dear Administrative Judges,

As required by the Protective Order and incorporated Nondisclosure Affidavit governing the handling of proprietary documents in this proceeding, I am providing an accounting of the proprietary documents that were received or generated by myself, Glenn Carroll, and Dr. Edwin S. Lyman. *See* attached Georgians Against Nuclear Energy's Accounting of Proprietary Documents Received or Generated During MOX Construction Authorization Proceeding (May 26, 2005).

I also wish to point out that in reviewing the documents, I found a discrepancy between the number of pages in Dr. Lyman's copy of the February 28, 2001, proprietary version of the Construction Authorization Request ("CAR") and the number of pages in my copy and Ms. Carroll's copy. Dr. Lyman's copy contains several pages which are not in my copy or Ms. Carroll's copy. As explained in the pleading and in my attached declaration, I have very good reason to believe that the discrepancy is due to a copying error by DCS rather than the loss or misplacement of any pages of the CAR.

Finally, I wish to alert you that, as required by the Protective Order, I am sending three boxes of proprietary documents to the ASLB via certified mail. The boxes contain all documents that were generated or received by GANE's representatives during this proceeding.

Sincerely,



Diane Curran

May 26, 2005

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)
)
)

DUKE COGEMA STONE & WEBSTER)

(Savannah River Mixed Oxide Fuel)
Fabrication Facility))
_____)

Docket No. 0-70-03098-ML

ASLBP No. 01-790-01-ML

**GEORGIANS AGAINST NUCLEAR ENERGY'S
ACCOUNTING OF PROPRIETARY DOCUMENTS
RECEIVED OR GENERATED
DURING MOX CONSTRUCTION AUTHORIZATION PROCEEDING**

Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") Protective Order of June 29, 2001 and the Nondisclosure Affidavit incorporated therein, Georgians Against Nuclear Energy ("GANE") hereby provides an accounting of proprietary documents received or generated by GANE's authorized representatives, Diane Curran, Dr. Edwin S. Lyman, and Glenn Carroll, during the adjudication of Duke Cogema Stone & Webster's ("DCS's") application for construction authorization for the MOX Fabrication Facility.

Attachment 1 to this pleading is a table which provides an accounting for each proprietary document or set of documents that was generated or received by GANE's representatives on a given date. As shown in column A of the table, each document or set of documents has been given a number. Column B shows the date of the cover letter

under which the document or set of documents was sent. Column C identifies the party that generated each document or set of documents. Column D provides a description of the individual documents in each set, including the number of pages in each document. Column E identifies the three GANE representatives who have been authorized to receive proprietary documents, and shows which documents were in each person's possession during the proceeding.

As stated in the attached declarations of Diane Curran (Attachment 2), Glenn Carroll (Attachment 3), and Dr. Edwin S. Lyman (Attachment 4), all of the proprietary documents were cared for in compliance with the Protective Order and Nondisclosure Affidavit. Ms. Carroll and Dr. Lyman have sent their collections of proprietary documents to undersigned counsel, who has forwarded all three sets to the ASLB.

On the afternoon of May 26, before sending the proprietary documents to the ASLB, undersigned counsel for GANE reviewed each document for the purpose of verifying that all pages are accounted for, and found that all but one of the 13 packages contain the same number of pages. The exception is Document # 1, the February 2001 revision of the CAR which DCS sent to GANE's representatives on August 2, 2001. Dr. Lyman's copy contains several pages that are not in Ms. Curran's or Ms. Carroll's copy. *See* description of Document 1 in Attachment 1. For two reasons, GANE believes this is due to a copying error by DCS. First, Ms. Carroll never opened the inner envelope in which the CAR was sent to her by DCS. GANE's counsel was the first person to open the envelope, when she reviewed the document yesterday. Moreover, until today,

GANE's counsel did not remove any pages from the 3-ring binder in which DCS had placed the CAR before sending it to her. See Attachment 2.

As discussed in the attached declarations by undersigned counsel and Dr. Lyman, all floppy disks containing proprietary information have been destroyed, and the hard drives of any computers on which proprietary documents were created have been wiped clean as required by Paragraph 7 of the Nondisclosure Affidavit.

Finally, GANE wishes to notify the ASLB that both DCS and the NRC Staff have agreed that two GANE-generated documents, formerly marked as "'proprietary," do not actually contain proprietary information. They are the Declaration of Edwin S. Lyman Regarding GANE Contention 1 (Material Control and Accounting) (June 5, 2003) and the Declaration of Edwin S. Lyman Regarding GANE Contention 2 (Physical Security) (June 5, 2003). The declarations were submitted as exhibits to GANE's June 5, 2003, opposition to DCS' motion for summary disposition of Contentions 1 and 2.

Respectfully submitted,



Diane Curran
Harmon, Curran, Spielberg, & Eisenberg, L.L.P.
1726 M Street N.W., Suite 600
Washington, D.C. 20036
202/328-3500
FAX 202/328-6918
dcurran@harmoncurran.com

May 26, 2005

ATTACHMENT 1

A	B	C	D	E		
#	DATE OF COVER LETTER	GENERATING PARTY	DOCUMENT	Curran	Lyman	Carroll
13	6/10/04	DCS	Proprietary change pages to revised CAR. Package includes: * Letter from L.R. Barnes, DCS, to Document Control Desk, NRC (June 10, 2004), enclosing revisions to Chapter 11 of CAR (Enclosure 3, pages 11.3-111, 11.3-119, 11.3-125) * Letter from Kenneth L. Ashe, DCS, to Document Control Desk, NRC (June 10, 2004), enclosing revisions to Chapter 13 of CAR (Enclosure 1, pages 13-7, 13-12)	x	x	x
12	6/5/03	GANE	GANE Opposition to DCS Motion for Summary Disposition of Contentions 1 and 2. Package includes: * Opposition Brief (21 pages). *Exhibit 1 to GANE's Opposition: Statement of Material Facts in Genuine Dispute re Contention 1 (3 pages) *Exhibit 2 to GANE's Opposition: Statement of Material Facts in Genuine Dispute re Contention 2 (2 pages)	x	x	x

A #	B DATE OF COVER LETTER	C GENERATING PARTY	D DOCUMENT	E		
				Curran	Lyman	Carroll
11	5/9/04	DCS	DCS Motion for Summary Disposition on Contentions 1 and 2. Bound copy includes: * Motion (28 pages) *Exhibit B, Bristol Affidavit (10 pages) *Exhibit C, Joy Affidavit (19 pages) *Exhibit D, Johnson Affidavit (11 pages) *Exhibit E, Lyman Deposition Transcript (pages 19, 25-26, 33-34, 36-37, 39-42, 44, 46, 56-67, 84, 97-99, 121-135, 145-46)	x	x	x
10	4/7/03	GANE	Transcript of deposition of Dr. Edwin S. Lyman (154 pages)	x	x	
9	12/20/02	GANE	GANE's proprietary answers to DCS's Second Set of Interrogatories (5 pages)	x	x	x
8	10/31/02	DCS	Letter from Robert H. Ihde to Document Control Desk, NRC (October 31, 2002), enclosing proprietary attachments to revised CAR. Package includes: * Safeguards Chapter, pages 13-1 – 13-24 * Pages 11.1-43 – 11.1-69 (odd pages only), 11.1-81-11.1-101 (odd pages only), 11.2-4, 11.2-9 – 11.2-16, 11.2-18, 11.2-21-11.2-30, 11.2-34, 11.2-36, 11.2-45, 11.2-55, 11.2-57, 11.2-61-11.2-221 (odd pages only), 11.2-227 - 11.2-241 (odd pages only), 11.3-2, 11.3-9, 11.3.10, 11.3-13, 11.3-14, 11.3-16, 11.3-20, 11.3-22, 11.3-23, 11.3-25, 11.3-27, 11.3-28, 11.3-30, 11.3-41, 11.3-47-11.3-102, 11.3-111-11.3-181 (odd pages only), 11.9-29, 11.9-30, 11.11-20, 11.11-25 - 11.11-36	x	x	x

A	B	C	D	E		
#	DATE OF COVER LETTER	GENERATING PARTY	DOCUMENT	Curran	Lyman	Carroll

7	8/15/02	DCS	Hearing file Document 95A, letter from Peter S. Hastings, DCS, to Document Control Desk, NRC (March 12, 2002), including Enclosure 1, Slides re: "SPDS Program Changes," pages 26-28	x	x	x
6	7/17/02	DCS	Proprietary slides presented at NRC meetings 12/10/99, 1/4-5/01, 3/8/01. Package includes: * Revised Meeting Notice (December 6, 1999) (1 page) * set of slides entitled "NRC Technical Exchange: 10 CFR Part 75 – IAEA (December 10, 1999) (3 pages) * set of slides entitled "NRC Technical Exchange: Material Control and Accounting" (December 10, 1999) (19 pages) * set of slides entitled "NRC Technical Exchange: Security" (December 10, 1999) (16 pages) * Meeting Notice (March 2, 2001) (1 page) * set of slides entitled "MOX Fuel Fabrication Facility, MC&A and Physical Security Meeting with NRC/NMSS" (March 8, 2001) (pages 1 to 11) * set of slides entitled "Physical Security Concepts" (March 8, 2001) * Meeting Notice (December 18, 2001) (pages 13-21) * set of slides entitled "Design Requirements Overview" (January 4-5, 2001) (pages 162-66)	x	x	x
5	7/2/02	DCS	Attachments A (13 pages) and B (17 pages) to DCS's Objections and Responses to GANE and BREDL First Set of Interrogatories	x	x	x

A	B	C	D	E		
#	DATE OF COVER LETTER	GENERATING PARTY	DOCUMENT	Curran	Lyman	Carroll

4	6/18/02	DCS	Hearing File document # 86, Letter from Peter S. Hastings, DCS to Document Control Desk, NRC (February 11, 2002) (proprietary letter and Enclosure A = 7 pages)	x	x	x
3	none	DCS	Set of slides entitled "Changes to MP Powder Pretreatment; Pretreatment Buffer Storage and Milling (pages 28, 29, 33) (February 13, 2002) (distributed to Curran and Lyman by NRC Staff at NRC/DCS meeting on 2/13/02)	x	x	
2	9/5/01	DCS	Proprietary portions of RAI responses. Package includes: <ul style="list-style-type: none"> * table with breakdown of MFF design and construction cost estimates (3 pages) * Independent Accountants' Review Report (December 31, 1999) (8 pages) * Proprietary sections of CAR (pages 117-1, 117-2, 123-1, 124-1 – 124-3, 125-1- 125-4, 126-1, 126-2, 140-1, 140-2, 141-1, 141-2, 141-1 (slightly different than previous 141-1), 208-1, 208-2, 223-1 – 223-17) * Aqueous Polishing Flowsheet Calculation Basis (13 pages) * Aqueous Polishing Chemical Flowsheet (16 pages) 	x	x	x

A	B	C	D	E		
#	DATE OF COVER LETTER	GENERATING PARTY	DOCUMENT	Curran	Lyman	Carroll
1	8/2/01	DCS	Proprietary portion of CAR, revised 2/28/01. All three packages include: * Independent Accounts' Review Report, Financial Statements for the Period from March 22, 1999 (Date of Inception) to December 31, 1999 (9 pages) * Revised CAR pages 11.1-45 - 11.1-61 (odd pages only), 11.1-69 - 11.1-91, 11.2-4, 11.2-8 - 11.2-16, 11.2-18, 11.2-37, 11.2-38, 11.2-47 - 11.2-209 (odd pages only), 11.3-1, 11.3-4, 11.3-5, 11.3-8 - 11.3-12, 11.3-14, 11.3-16, 11.3-17, 11.3-20 - 11.3-22, 11.3-27, 11.3-28, 11.3-31 - 11.3-56, 11.3-63 - 11.3-119) * Two oversized drawings <u>Lyman package also includes:</u> Pages 11.2-22 - 11.2-27, 11.2-31, 11.2-33	x (but see Column D)	x (but see Column D)	x (but see Column D)

May 26, 2005

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)	
)	
DUKE COGEMA STONE & WEBSTER)	Docket No. 0-70-03098-ML
)	
(Savannah River Mixed Oxide Fuel Fabrication Facility))	ASLBP No. 01-790-01-ML
)	

**DECLARATION BY DIANE CURRAN
REGARDING ACCOUNTING FOR
PROPRIETARY DOCUMENTS**

Under penalty of perjury, I, Diane Curran, hereby declare as follows:

(1) Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") Protective Order of June 29, 2001, and the Nondisclosure Affidavit incorporated therein, I have been authorized to receive proprietary documents in this proceeding.

(2) During the course of the proceeding, I received various proprietary documents from Duke Cogema Stone and Webster ("DCS"). I also received a DCS proprietary document from the NRC Staff during a Staff-DCS meeting. In addition, I prepared various proprietary pleadings on behalf of GANE. The documents that I received or generated are identified in Column E of the table that is attached to Georgians

Against Nuclear Energy's Accounting of Proprietary Documents Received or Generated During MOX CAR Proceeding (May 26, 2005).

(3) During the proceeding, I have maintained these proprietary documents in the manner required by the Protective Order and the Nondisclosure Agreement.

(4) In the past week, I have received sets of proprietary documents from GANE's other two representatives who are authorized to possess proprietary documents in this proceeding, Glenn Carroll and Dr. Edwin S. Lyman. They have requested me to forward the documents to the ASLB.

(5) This afternoon, before sending the proprietary documents to the ASLB, I reviewed each package of proprietary documents that was generated or received by GANE's representatives in this proceeding, for the purpose of verifying that all pages are accounted for. I found that all but one of the 13 sets of documents received or generated by GANE's representatives contain the same number of pages. The exception is Document # 1, the February 2001 revision of the CAR which DCS sent to GANE's representatives on August 2, 2001. Dr. Lyman's copy of the CAR contains several pages that are not in my copy or Ms. Carroll's copy. See description of Document 1 in Attachment 1.

(6) For two reasons, I believe this discrepancy is due to a copying error by DCS. First, Ms. Carroll never opened the inner envelope in which the CAR was sent to her by DCS. She sent it to me in the same sealed package in which she had received it. I was the first person to open the envelope, when I reviewed the document yesterday. Moreover, until today, I did not remove any pages from the 3-ring binder in which I

received the CAR and in which I kept it throughout this proceeding. I took the CAR out of the binder only when I was ready to ship it to the ASLB.

(7) I have destroyed the four floppy disks on which Dr. Lyman and I created proprietary documents for purposes of this proceeding. As required by paragraph 7 of the Nondisclosure Affidavit, the hard drive of my computer also has been wiped of any remnants of those proprietary documents that may have been saved to the hard drive in the course of preparing proprietary documents on the floppy disks.



Diane Curran

May 26, 2005

May 25, 2005

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)
)

DUKE COGEMA STONE & WEBSTER)

Docket No. 0-70-03098-ML

(Savannah River Mixed Oxide Fuel)
Fabrication Facility))

ASLBP No. 01-790-01-ML

**DECLARATION BY GLENN CARROLL
REGARDING ACCOUNTING FOR
PROPRIETARY DOCUMENTS**

Under penalty of perjury, I, Glenn Carroll, hereby declare as follows:

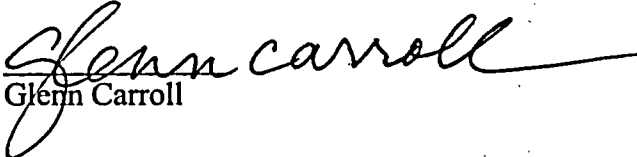
(1) Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") Protective Order of June 29, 2001, and the Nondisclosure Affidavit incorporated therein, I have been authorized to receive proprietary documents in this proceeding.

(2) During the course of the proceeding, I received various proprietary documents from Duke Cogema Stone and Webster ("DCS") and from GANE's counsel, Diane Curran. The documents that I received are identified in Column E of the table that is attached to Georgians Against Nuclear Energy's Accounting of Proprietary Documents Received or Generated During MOX CAR Proceeding (May 26, 2005).

(3) During the proceeding, I have maintained these proprietary documents in the manner required by the Protective Order and the Nondisclosure Agreement.

(4) I have sent all of the proprietary documents that I have received in this proceeding to Diane Curran and requested that she forward them to the ASLB.

(5) I did not generate any proprietary information during this proceeding, nor did I receive any such information electronically. Therefore I have no proprietary information on my computer that would need to be destroyed pursuant to paragraph 7 of the Nondisclosure Affidavit.


Glenn Carroll

May 25, 2005

May 26, 2005

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)	
DUKE COGEMA STONE & WEBSTER)	Docket No. 0-70-03098-ML
(Savannah River Mixed Oxide Fuel)	ASLBP No. 01-790-01-ML
Fabrication Facility))	

**DECLARATION BY DR. EDWIN S. LYMAN
REGARDING ACCOUNTING FOR
PROPRIETARY DOCUMENTS**

Under penalty of perjury, I, Dr. Edwin S. Lyman, hereby declare as follows:

(1) Pursuant to the Atomic Safety and Licensing Board's ("ASLB's") Protective Order of June 29, 2001, and the Nondisclosure Affidavit incorporated therein, I have been authorized to receive proprietary documents in this proceeding.

(2) During the course of the proceeding, I received various proprietary documents from Duke Cogema Stone and Webster ("DCS"). I also received a proprietary document from the NRC Staff. In addition, I assisted in the preparation of various proprietary pleadings on behalf of GANE. The documents that I received or helped to generate are identified in Column E of the table that is attached to Georgians

Against Nuclear Energy's Accounting of Proprietary Documents Received or Generated
During MOX CAR Proceeding (May 26, 2005).

(3) During the proceeding, I have maintained these proprietary documents in the manner required by the Protective Order and the Nondisclosure Agreement.

(4) I have given all of the proprietary documents that I have received or generated in this proceeding to Diane Curran and requested that she forward them to the ASLB. I have also given Ms. Curran two floppy disks on which I created draft portions of pleadings, and have asked her to destroy them.

(5) I have wiped the temporary directory of my computer's hard drive of any proprietary documents that may have remained on my computer, as required by paragraph 7 of the Nondisclosure Affidavit.


Dr. Edwin S. Lyman

May 26, 2005

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2005, the foregoing GEORGIANS AGAINST NUCLEAR ENERGY'S ACCOUNTING OF PROPRIETARY DOCUMENTS RECEIVED OR GENERATED DURING MOX CAR PROCEEDING(May 26, 2005) were served on the following by first-class mail and/or FAX as indicated below:

Rulemakings and Adjudications Staff
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
FAX: 301/415-1101

Louis A. Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629

Administrative Judge Thomas S. Moore
Chairman
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
FAX: 301/415-5599

Glenn Carroll
139 Kings Highway
Decatur, GA 30030

Administrative Judge Charles N. Kelber
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
FAX: 301/415-5599

John T. Hull, Esq.
Tyson Smith, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
FAX: 301/415-3725

Administrative Judge Peter S. Lam
Atomic Safety & Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555
FAX: 301/415-5599

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Donald J. Silverman, Esq.
Alex S. Polonsky, Esq.
Morgan, Lewis & Bockius
1111 Pennsylvania Avenue N.W.
Washington, D.C. 20004
FAX: 202/739-3001


Diane Curran