



DUKE COGEMA  
STONE & WEBSTER

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RULEMAKINGS AND  
ADJUDICATIONS STAFF

1 March 2006  
DCS-NRC-000186

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
ATTN: Rulemakings & Adjudication Staff

Subject: Docket Number 070-03098  
Duke Cogema Stone & Webster  
Mixed Oxide Fuel Fabrication Facility  
Proposed Rule for Electronic Submissions in NRC Hearings (3150-RJN AH74)

Rulemaking and Adjudications Staff:

Duke Cogema Stone & Webster, LLC (DCS) supports the agency's proposed rule and associated guidance that would govern electronic submissions in NRC adjudicatory proceedings (70 Fed. Reg. 74950 (Dec. 16, 2005)). The migration from paper to electronic submissions contemplated by the proposed rule should translate into a faster, more efficient, and less expensive process for all participants. We agree with the NRC that the rule will be beneficial, cost little to implement, and reduce costs for those who participate in the NRC's adjudicatory proceedings. That being said, DCS offers the following constructive comments for the Staff's consideration:

1. Proposed section 2.304(g)(1) would exempt filings containing Classified Information from being transmitted through the Internet via the Electronic Information Exchange ("EIE"). Instead, that section requires that filings containing classified information be placed on an optical storage medium ("OSM") and mailed or hand-delivered to the NRC. *See also* Proposed Guidance, §§ 1.3 and 3.14. Thus, the rule would apply only when participants have the authority not only to possess Classified Information, but also to process that information electronically. We believe few representatives in NRC adjudicatory proceedings will have the necessary authorizations to comply with this provision. DCS recommends that section 2.304(g)(1) be changed to authorize a participant to file paper copies of filings containing Classified Information in lieu of an OSM.
2. The NRC acknowledges that its proposed requirements to file electronically in adjudicatory proceedings are similar to those being adopted in the Federal courts. The Federal electronic docketing system, however, experiences intermittent outages or

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unavailability. Prior to or during those periods of unavailability, the Court notifies all registered users via e-mail. The NRC's proposed rule and its guidance, however, are silent about how such outages or unavailability will be handled. For example, will such outages excuse timely filing to the EIE? Would a participant receive additional days to respond to a filing if the outage occurs after a filing is made but before the participants have a chance to download the filing? An e-mail from the EIE notifying its registered users of planned or unexpected outages and their duration would resolve disputes related to the timeliness of filings that may arise as the result of an outage. We urge the NRC to send such e-mails to registered users if there are outages, even if the NRC does not alter the proposed rule.

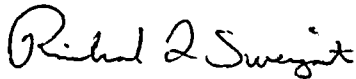
3. The proposed rule uses the term "participant" rather than terms currently used throughout Part 2, such as "party." To avoid confusion about the scope of the proposed rule, a definition of "participant" should be added to section 2.4. The definition should clarify that "participant" includes individuals and entities who have petitioned to intervene in a proceeding, but who a Licensing Board has not yet granted intervenor/party status (*i.e.* not determined to have standing and at least one admissible contention), as well as parties to a proceeding. That being said, the word "participant" in section 2.305(g)(2) should be changed to "party" to reflect the fact that the NRC Staff, like an applicant, is immediately afforded "party" status when it participates in a proceeding ("If the NRC staff decides not to participate as a *party* [delete "participant"] in a proceeding . . .").
4. Proposed section 2.306(b)(3) would give additional time to all participants in a proceeding when multiple service methods are used; for example, a partial filing through the EIE but the complete filing made by OSM. The additional time would be computed based on the service method used to deliver the entire document which, in the example here, would be OSM. There may be circumstances, however, where documents filed by OSM will not be served on all participants; for example where not all participants execute non-disclosure agreements related to security-related information. The computation of time for participants who are not entitled to the complete filing should not be affected by the complete filing by OSM. Accordingly, the following language should be added to the end of section 2.306(b): "unless the participant is not entitled to receive the complete filing because, for example, it did not execute a non-disclosure agreement, in which case the additional number of days, if any, for that participant is computed under other applicable subsections of section 2.306."
5. We have three comments on proposed section 2.306(b)(5). First, the proposed rule would provide different response times for a document hand-delivered after 5:30 p.m. (one additional day) and a document served by the Hearings Network or e-mailed at 11:59 p.m. (no additional time). No explanation is provided for this discrepancy. We believe that the same additional time—one day—should be provided for any responses

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to documents hand-served after 5 p.m. or served by the Hearings Network or e-mailed after 5 p.m. in the sender's time zone. Second, the proposed rule appears to afford "all participants" an extra day even if only one participant is served by hand delivery after 5 p.m. This is a change from current practice and we believe it would be difficult to implement. For example, how would another participant know that it had an extra day because one of the participants was served by hand-delivery after 5 p.m.? The computation of time should be based on when the document is hand-delivered to each particular participant, not whether one of the participants was served after 5 p.m. Finally, there appear to be two typographical errors in section 2.306(b)(5)(i): "documents" should be "document" and "in" should be "if".

If you have any questions, please feel free to contact me at (980) 373-3787.

Sincerely,



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Vice President, Regulatory Affairs

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