

RAS 10170

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

LBP-05-15
DOCKETED 07/20/05
SERVED 07/20/05

Before Administrative Judges:

Thomas S. Moore, Chairman
Dr. Charles N. Kelber
Dr. Peter S. Lam

In the Matter of

DUKE COGEMA STONE & WEBSTER
(Savannah River Mixed Oxide Fuel
Fabrication Facility)

Docket No. 070-03098-ML

ASLBP No. 01-790-01-ML

July 20, 2005

ORDER
(Terminating Proceeding)

On May 10, 2005, Duke Cogema Stone & Webster (DCS) filed a motion to terminate this proceeding because all admitted contentions had been resolved and the deadline for late-filed contentions regarding the NRC Staff's Final Safety Evaluation Report (FSER) had passed. Thereafter, on May 12, 2005, the Licensing Board issued an order stating that "[b]efore terminating the proceeding, however, we must ensure that the terms of our earlier June 29, 2001 protective order and affidavit of nondisclosure regarding the accounting and destruction of proprietary information have been followed by [Georgeans Against Nuclear Energy] GANE with respect to the material it obtained pursuant to that protective order."¹ The order then established a schedule for GANE to file an accounting of the proprietary information in its possession and to deliver the documents to the Board for destruction.

¹ Licensing Board Memorandum and Order (Concerning Responsibilities Under Protective Order) (May 12, 2005) at 1 (unpublished).

GANE timely filed its accounting and delivered the proprietary documents in its possession to the Board for destruction. Neither DCS nor the NRC Staff filed an objection to GANE's accounting. The Board accepts GANE's accounting and has taken the necessary steps to have the proprietary documents destroyed.

In its response to DCS's motion to terminate the proceeding, the Staff indicated that after the Board terminated the proceeding the Staff would initiate actions to terminate the NRC security clearances issued to GANE's counsel and expert.² The Staff's response prompted a request from GANE that its clearances be maintained until it is determined whether the clearances will be needed for the so-called "operating license" proceeding for the MOX facility, a proceeding in which GANE stated it intends to intervene.³ On June 15, 2005, the Board directed the Staff to respond, inter alia, to GANE's request to keep the clearances.⁴ On July 1, 2005, the Staff responded concluding that the Commission's regulations do not permit GANE's security clearances to be maintained.⁵ GANE filed no response to the Staff's filing.

The Board has resolved all the admitted contentions in the proceeding and the time for late-filed contentions on the Staff's FSER has expired without any such contentions being filed. Further, all of GANE's outstanding obligations regarding proprietary information have been fulfilled. Accordingly, the proceeding is hereby terminated. Finally, as the Staff asserts, the

² NRC's Staff's Response to DCS' Motion to Terminate Proceeding (May 25, 2005) at 5.

³ Letter from Diane Curran to Administrative Judges (May 27, 2005) at 1.

⁴ Licensing Board Order (June 15, 2005) at 1 (unpublished).

⁵ NRC Staff's Response to Board's Order (July 1, 2005) at 7.

applicable regulation, 10 CFR § 2.905(g), requires that GANE's security clearances be terminated at the conclusion of the proceeding.

IT IS SO ORDERED

THE ATOMIC SAFETY
AND LICENSING BOARD⁶

[Original signed by]
Thomas S. Moore, Chairman
ADMINISTRATIVE JUDGE

[Original signed by]
Dr. Charles N. Kelber
ADMINISTRATIVE JUDGE

[Original signed by]
Dr. Peter S. Lam
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 20, 2005

⁶ Copies of this Order were sent this date by Internet e-mail transmission to (1) GANE; (2) BREDL; (3) DCS; and (4) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DUKE COGEMA STONE & WEBSTER) Docket No. 70-3098-ML
)
(Savannah River Mixed Oxide Fuel)
Fabrication Facility))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (TERMINATING PROCEEDING) (LBP-05-15) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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LB ORDER (TERMINATING PROCEEDING)
(LBP-05-15)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 20th day of July 2005