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June 20, 2007 (8:00am)

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Before Administrative Judges:  
Michael C. Farrar, Chairman  
Dr. William M. Murphy  
Dr. Nicholas G. Trikouros

|   |   |                              |
|---|---|------------------------------|
| In the Matter of:   | ) | June 19, 2007                |
| Shaw AREVA MOX Services, LLC  | ) | Docket No. 70-3098           |
| (Mixed Oxide Fuel Fabrication Facility<br>Possession and Use License) | ) | ASLBP No. 07-856-02-MLA-BD01 |
|   | ) |                              |

**SHAW AREVA MOX SERVICES, LLC ANSWER  
OPPOSING JOINT REQUEST FOR 5-DAY EXTENSION FOR FILING  
CONSOLIDATED REPLY ON MOX LICENSE APPLICATION**

Pursuant to 10 C.F.R. § 2.323(c), Shaw AREVA MOX Services, LLC (MOX Services) opposes the "Joint Request for 5-Day Extension for Filing Consolidated Reply on MOX License Application" (Petitioners' June 19, 2007 Motion) filed earlier today by the Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and the Nuclear Information and Resource Service (NIRS), (collectively "Petitioners" hereafter) requesting a five day extension to file its reply to "Shaw Areva MOX Services, LLC Answer Opposing BREDL et al. Petition for Intervention and Request for Hearing" (MOX Services' Answer), filed on June 13, 2007. Petitioners' reply to MOX Services' Answer ("Petitioners' Reply" hereafter) is due tomorrow, on Wednesday, June 20, 2007. For the reasons presented below, we respectfully request that the Board deny Petitioners' Motion.

First, a motion must be made no later than ten days after the occurrence or circumstance from which the motion arises. 10 CFR § 2.323(a). Here, it appears that Petitioners<sup>1</sup> were well aware of their internal resource scheduling issues for quite some time now. For example, BREDL has “several prior commitments” that “render its representatives unavailable.” Petitioners’ June 19, 2007 Motion at 1. These commitments include “meetings booked *two months [ago]*” and “*regularly scheduled* commitments for air sample field testing.” *Id.* (emphasis added). NWS states that its representative is likewise unavailable due to “uncertainties that make it impractical for the parties to coordinate a consolidated reply earlier than June 27, 2007” due to the pending birth of her grandson “on or before June 23, 2007.” *Id.* at 2. Petitioners appear to have been aware of the events that they have cited for well over ten days, but took no action to extend time until today. Because Petitioners’ Motion was filed more than ten days after Petitioners became aware of their need for more time, the motion is not timely, and should be denied.

Second, to warrant an extension of time for filing their Reply, Petitioners must show “good cause.” *See* 10 CFR § 2.307(a). The Commission has stated that, in order to ensure a disciplined and efficient adjudicatory process, and to avoid unnecessary delay, extensions of time are ordinarily granted “only when warranted by unavoidable and extreme circumstances.” Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998); *see also* USEC, Inc. (American Centrifuge Plant), CLI-04-30, 60 NRC 426, 435 (2004) (citing the same). However, the conditions discussed above that gave rise to Petitioners’ Motion were known by the Petitioners for quite some time, and in the case of BREDL at least, entirely within that Petitioner’s control. *See* Petitioners’ June 19, 2007 Motion at 2. Likewise, NWS has

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<sup>1</sup> Petitioner NIRS has offered no reason for its need for an extension of time to file. *See* Petitioners’ June 19, 2007 Motion.

provided no explanation of why the expected birth of its representative's grandchild *three days after Petitioners' Reply is due* warrants a scheduling change in the present proceeding. *Id.* Indeed, Petitioners have not even attempted to explain why "prior commitments and family events present unavoidable and extreme circumstances" that give rise to the need for additional time. *See id.* at 2. Such bases do not constitute "good cause," but are rather requests of convenience. Therefore, the Board could deny Petitioners' Motion on this basis alone.

Third, the Board should look unfavorably on Petitioners' Motion because Petitioners have had ample time to petition the Board regarding scheduling issues, but have chosen to wait until the eleventh hour. Indeed, Petitioners have been on notice regarding the schedule in this proceeding since the "Notice of License Application for Possession and Use of Byproduct, Source, and Special Nuclear Materials for the Mixed Oxide Fuel Fabrication Facility, Aiken, SC, and Opportunity to Request a Hearing" (Hearing Notice) was published in the Federal Register on March 15, 2007. (Hearing Notice, 72 Fed. Reg. 12,204). Petitioners have had well over three months to schedule internal resources necessary to develop their Reply or petition the Board for additional time, but have waited until the *day before* Petitioners' Reply is due to file their Motion. Such tactics undermine a disciplined and efficient adjudicatory process, and cause unnecessary delay in contravention of the Commission's Policy on Conduct of Adjudicatory Proceedings. Moreover, Petitioners' eleventh-hour filing prejudices MOX Services (and the NRC Staff) by essentially forcing it to file an Answer immediately (instead of within 10 days of service of the motion as authorized by 10 C.F.R. § 2.323(c)), or take the risk that the Board will decide Petitioners' Motion without having had opportunity to consider MOX Services' views. The Board should not reward such behavior by granting Petitioners Motion.

For all these reasons, MOX Services urges the Board to deny Petitioners' Motion for an extension of time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent C. Zabielski". The signature is written in a cursive style with a horizontal line underneath the name.

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| Possession and Use License) )            | ASLBP No. 07-856-02-MLA-BD01 |
| _____ )                                  |                              |

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Shaw Areva MOX Services, LLC Answer Opposing Joint Request for 5-Day Extension for Filing Consolidated Reply on MOX License Application" was served upon the persons listed below, by e-mail and first class mail, this 19th day of June, 2007.

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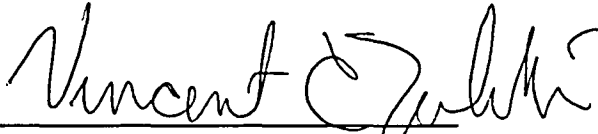
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\* E-mail, original and two copies