

RAS 13957

NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 08/03/07

SERVED 08/03/07

Before Administrative Judges:

Michael C. Farrar, Chairman
Nicholas G. Trikouros
Lawrence G. McDade

In the Matter of

SHAW AREVA MOX SERVICES

(Mixed Oxide Fuel Fabrication Facility)

Docket No. 70-3098-MLA

ASLBP No. 07-856-02-MLA-BD01

August 3, 2007

NOTICE OF ORAL ARGUMENT
AND OF
OPPORTUNITY TO MAKE LIMITED APPEARANCE STATEMENTS

This proceeding involves the September 2006 application of Shaw AREVA MOX Services (MOX Services, or Applicant) for a license to possess and use byproduct, source, and special nuclear materials at the Mixed Oxide Fuel Fabrication Facility (MFFF) at the Department of Energy's Savannah River Site, which lies south of Aiken, South Carolina, and extends to the Georgia border. This Atomic Safety and Licensing Board hereby gives NOTICE that it will, on Wednesday, August 22, 2007, in Augusta, Georgia, be hearing oral argument from the formal participants in the proceeding regarding the petition to intervene that has been submitted by three organizations. Information about that oral argument appears in Section A below.

In addition, the Board gives NOTICE that, in accordance with 10 C.F.R. § 2.315(a), it will entertain oral "limited appearance" statements from members of the public in North Augusta, South Carolina, on the evening of Tuesday, August 21, 2007. Information about these statements appears in Section B below.

This matter began on March 15, 2007, when the Commission published a notice of acceptance for docketing of the MOX Services license application and a notice of opportunity to request a hearing on the application. 72 Fed. Reg. 12,204 (Mar. 15, 2007). Thereafter, a

“Petition for Intervention and Request for Hearing” (hereinafter Petition) was timely filed on May 14, 2007, by a group of three organizations (collectively, Petitioners): the Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS)¹, and the Nuclear Information Service (NIRS).

On June 5, 2007, this Atomic Safety and Licensing Board was established to conduct this adjudication.² As part of that process, this Board will now hear oral argument on the standing of the Petitioners to intervene in this proceeding and on the admissibility of the five contentions they submitted as part of the petition to intervene.

A. Nature, Timing, and Location of Oral Argument

The oral argument is currently scheduled to cover two categories of issues: standing and contention admissibility. The Petitioners have claimed representational standing on behalf of their members who reside within 50 miles of the proposed facility, a claim that is disputed by the Applicant and by the NRC Staff. The Petitioners have also submitted five contentions, which they list in summary as follows:

- 1) Whether MOX Services' License Application and/or EIS meet the relevant requirements in the National Environmental Policy Act and/or the Clean Air Act because of failures to address critical aspects regarding limits on emissions of hazardous air pollutants necessary for the protection of public health and safety;
- 2) Whether MOX Services License Application meets the relevant requirements of the Atomic Energy Act because of its failure to prepare and submit an emergency plan to the NRC for potential radioactive releases to the public;
- 3) Whether the Final Environmental Impact Statement on the construction and operation of a plutonium fuel factory is adequate to satisfy the requirements of NEPA and NRC implementing regulations because it fails to address new and significant information showing that neither MOX Services nor the U.S. Department of Energy ("DOE") has any concrete plans for the Waste

¹ Nuclear Watch South was previously known as Georgians Against Nuclear Energy (GANE) and participated in the prior proceeding related to this facility under that name.

² 72 Fed. Reg. 32,139 (June 11, 2007). The Board was subsequently reconstituted, pursuant to 10 C.F.R. § 2.313(c), due to the unavailability of one of the judges. 72 Fed. Reg. 40,344 (July 24, 2007).

Solidification Building ("WSB") that was proposed in the EIS and, as a result, high-alpha liquid waste from the proposed facility may have to be stored onsite posing hazards which have not been addressed by the NRC in the EIS;

4) Whether the License Application for the proposed plutonium processing facility is inadequate because it does not address safety and public health risks posed by indefinite storage of liquid high-alpha waste at the site or contain measures for the safe storage of that waste; and

5) Whether the Final Environmental Impact Statement for the proposed plutonium processing facility meets the relevant requirements of NEPA because it does not evaluate the environmental impacts of a terrorist attack on the proposed factory.

Petition at 5-6. The Board will hear argument from counsel for the Applicant and for the NRC Staff and from pro se representatives of the Petitioners regarding the Petitioners' standing claim and the admissibility of these contentions under 10 C.F.R. § 2.309(f)(1).

The specific date, time, and location of the oral argument is as follows:

DATE: Wednesday, August 22, 2007

LOCATION: Courtroom # 2 (Second Floor)
Augusta Federal Courthouse
600 James Brown Blvd.
Augusta, Georgia 30901

TIME: 9:00 a.m. to 11:30 a.m (EDT)

Members of the public are welcome to attend the oral argument as spectators (this session is a formal adjudicatory proceeding open to public observation but not to public participation – those who wish to participate in other aspects are invited to offer limited appearance statements as provided in Section B, below.) Conduct of members of the public at NRC adjudicatory proceedings is governed by 66 Fed. Reg. 31,719 (June 12, 2001), an excerpt from which follows this notice. In addition, normal federal courthouse security procedures will be followed.

Attendees are strongly advised to arrive sufficiently early to allow time to pass through a security screening checkpoint. Further, in the interest of permitting prompt access to the hearing room, attendees are requested to refrain from bringing any unnecessary hand-carried

items. (Items such as packages, briefcases, and backpacks may need to be examined individually, and items that could readily be used as weapons will not be permitted in the hearing room.) There will be no facilities available for storing any items outside the hearing room, and attendees with items requiring inspection may be delayed in obtaining entry.

B. Oral Limited Appearance Statement Session

1. Date, Time, and Location

The Board will conduct a session to provide members of the public with an opportunity to make oral limited appearance statements on the following date at the specified location and time:

DATE: Tuesday, August 21, 2007

LOCATION: Banquet Room A-2
North Augusta Community Center
495 Brookside Avenue
North Augusta, South Carolina 29861

TIME: 5:00 - 8:00 p.m. (EDT)

2. Participation Guidelines for Oral Limited Appearance Statements

Any person not party to the proceeding has the opportunity, as specified below, to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. These statements will be transcribed and will become part of the record of the proceeding for future reference, and they may – if focused on the contentions under consideration – assist the Board in formulating questions to ask the parties during oral argument or prompt the parties to address particular matters at the argument or in some other fashion. They do not, however, constitute evidence upon which a decision may be based.

Oral limited appearance statements will be entertained during the hours specified above, although a lesser time period may be sufficient to accommodate the speakers who are present.

If all scheduled and unscheduled speakers present at a session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed above.

In order to accommodate as many speakers as feasible, the time allotted for each statement normally will be no more than three minutes, and speakers should prepare accordingly. That time limit may be altered, depending on the number of written requests that are submitted in accordance with subsection 3 below, and/or the number of persons present at the designated time. The same security guidelines applicable to the oral argument will be applicable to the limited appearance session as well, although limited appearance sessions are not deemed to be "adjudicatory proceedings" within the meaning of those guidelines.

3. Submitting a Request to Make an Oral Limited Appearance Statement

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. In order to be considered timely for priority purposes, a written request to make an oral statement must be mailed, faxed, or sent by e-mail so as to be received at NRC Headquarters by noon, EDT on Friday, August 17, 2007. In light of possible mail delivery delays, persons able to do so may wish to use fax or e-mail to assure that their requests are timely received.

These written requests to make an oral statement are to be submitted in one of the following fashions:

Mail: Office of the Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-1101 (verification (301) 415-1966)

E-mail: hearingdocket@nrc.gov

In addition, using the same method of service, a copy of the request must be sent to the Licensing Board as follows:

Mail: MOX Limited Appearance Box
Atomic Safety and Licensing Board Panel
Mail Stop T-3F23
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Fax: (301) 415-5599 (verification (301) 415-7550)

E-mail: pah@nrc.gov and mxc7@nrc.gov

Phone requests to make limited appearance statements will not be accepted.

4. Submitting Written Limited Appearance Statements

A written limited appearance statement (in lieu of or in addition to an oral presentation) may be submitted at any time. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board as noted above.

* * * * *

Documents relating to the MOX facility license application at issue in this proceeding are on file at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20850, and may also be obtained electronically through ADAMS, the Agencywide Documents Access and Management System, accessible through the NRC website at www.nrc.gov/reading-rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located therein should contact the PDR reference staff by telephone at 800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

Any updated/revised scheduling information regarding the oral argument or the limited appearance session can be found on the NRC website at www.nrc.gov/public-involve/public-meetings/index.cfm.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Rockville, Maryland
August 3, 2007

/RA/
Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

Copies of this notice were sent this date by Internet e-mail transmission to (1) counsel for Applicant Shaw AREVA MOX Services and for the NRC Staff; and (2) each of the individuals who entered an appearance on behalf of Petitioners Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and the Nuclear Information Service (NIRS).

Excerpt from Federal Register notice published on June 12, 2001 (66 Fed. Reg. 31,719):

In order to balance the orderly conduct of government business with the right of free speech, the following procedures regarding attendance at NRC public meetings and hearings have been established:

Visitors (other than properly identified Congressional, press, and government personnel) may be subject to personnel screening, such as passing through metal detectors and inspecting visitors' briefcases, packages, etc.

Signs, banners, posters and displays will be prohibited from all NRC adjudicatory proceedings (Commission and Atomic Safety and Licensing Board Panel hearings) because they are disruptive to the conduct of the adjudicatory process. Signs, banners, posters and displays not larger than 18" X 18" will be permitted at all other NRC proceedings, but cannot be waved, held over one's head or generally moved about while in the meeting room. Signs, banners, posters and displays larger than 18" X 18" will not be permitted in the meeting room because they are disruptive both to the participants and the audience. Additionally, signs, banners, posters, and displays affixed to any sticks, poles or other similar devices will not be permitted in the meeting room.

The presiding official will note, on the record, any disruptive behavior and warn the person to cease the behavior. If the person does not cease the behavior, the presiding official may call a brief recess to restore order and/or ask one of the security personnel on hand to remove the person.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Shaw AREVA MOX Services, LLC) Docket No. 70-3098-MLA
)
(Mixed Oxide Fuel Fabrication Facility)
Possession and Use License)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB NOTICE OF ORAL ARGUMENT AND OF OPPORTUNITY TO MAKE LIMITED APPEARANCE STATEMENTS have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Michael C. Farrar, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
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Administrative Judge
Lawrence G. McDade
Atomic Safety and Licensing Board Panel
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Washington, DC 20555-0001

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Attention: Dealis Gwyn

Docket No. 70-3098-MLA
LB NOTICE OF ORAL ARGUMENT AND OF
OPPORTUNITY TO MAKE LIMITED APPEARANCE
STATEMENTS

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of August 2007