

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

DOCKETED  
USNRC

November 8, 2007 (7:38am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**Before Administrative Judges:  
Michael C. Farrar, Chairman  
Lawrence G. McDade  
Nicholas G. Trikouros**

In the Matter of	)	
	)	
Shaw AREVA MOX Services	)	Docket No. 70-3098-MLA
	)	
(Mixed Oxide Fuel Fabrication Facility	)	ASLBP No. 07-856-02-MLA-BD01
Possession and Use License)	)	November 7, 2007
	)	

**INTERVENORS' REPLY TO APPLICANT AND NRC STAFF RESPONSES TO  
LATE-FILED CONTENTION REGARDING NEED TO SUPPLEMENT EIS FOR  
PROPOSED MOX PLUTONIUM PROCESSING FACILITY**

**Introduction**

Blue Ridge Environmental Defense League ("BREDL") and Nuclear Watch South ("NWS") (collectively "Intervenors") hereby reply to the responses by Shaw AREVA MOX Services ("Applicant") and the U.S. Nuclear Regulatory Commission ("NRC") Staff to Intervenors' Late-Filed Contention Regarding Need to Supplement EIS for Proposed MOX Plutonium Fuel Processing Facility" ("Contention 6") (October 5, 2007). Shaw AREVA MOX Services LLC's Answer Opposing Petitioners' Late-Filed Contention (October 29, 2007) ("Applicant's Response"); NRC Staff Response to Petitioners' Late-Filed Contention Regarding Need to Supplement EIS for Proposed MOX Plutonium Fuel Processing Facility (October 31, 2007) ("NRC Staff Response").<sup>1</sup>

<sup>1</sup> On November 1, 2007, Glenn Carroll, on behalf of the Intervenors, contacted the Applicant's legal counsel Donald J. Silverman to confer about the reply deadline. In the

While both the Applicant and the NRC Staff argue that Contention 6 is untimely and inadmissible, their arguments are unacceptable for the same reasons given by the Atomic Safety and Licensing Board (“ASLB”) in admitting Contentions 3 and 4 in LBP-07-14, Memorandum and Order (Ruling on Standing and Contentions) (October 31, 2007). The ASLB should admit Contention 6 and include it with Contentions 3 and 4 in considering how to handle those contentions in light of the prematurity of the Applicant’s operating license application.

#### **Discussion**

Neither the Applicant nor the NRC Staff disputes the accuracy of the U.S. Department of Energy’s (“DOE’s”) statement, cited in Contention 6, that the DOE is considering a plutonium disposition plan in which it would not construct a plutonium immobilization facility at the Savannah River Site (SRS), and instead would modify the plutonium MOX processing facility so that it could process at least some of the impure plutonium that would have been immobilized. Instead, both the Applicant and NRC Staff argue against admitting Contention 6 on grounds of admissibility and timeliness.

First, both the Applicant and NRC Staff argue that the Intervenor’s have not shown the information proffered in Contention 6 is new and significant or that it has a bearing on the environmental impacts of the plutonium processing project. Applicant’s Response at 6, NRC Staff Response at 7. But the question is whether Intervenor’s have provided enough information to raise a genuine and material dispute with the Applicant regarding those questions. Intervenor’s have provided sufficient information, supported by

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phone conversation Mr. Silverman agreed to a reply deadline based on the date of the Staff’s response — seven days from October 31, 2007, that is, November 7, 2007.

documentary references and expert opinion, to raise a genuine and material dispute with the Applicant regarding the need for analysis of the environmental impacts of the modifications to the plutonium MOX facility described in the September 2007 plan and cited in our contention. Therefore Contention 6 meets the NRC's admissibility standard.<sup>2</sup>

Second, both the Applicant and the Staff argue that Contention 6 fails to raise a genuine and material dispute because the DOE has not yet decided whether to modify the plutonium MOX processing facility. Applicants' Response at 5, NRC Staff Response at 7-8. But as the ASLB found in LBP-07-14, mere uncertainty about whether a proposal to change the MOX facility design should be carried out should not defeat the admissibility of the contention. *Id.*, slip op. at 43. Clearly, design changes that could affect the environmental impacts of the factory are under consideration. It is not the Intervenor's fault that the changes have not yet been approved or described in any detail, or that the Applicant itself failed to notify the Parties that the Department of Energy was considering changes to the facility design. The Board should accept Contention 6 and include it with Contentions 3 and 4 in considering what will be the appropriate way to handle these concerns with a mind to the greatest protection of the affected public.

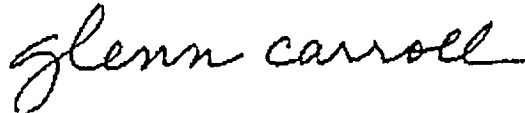
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<sup>2</sup> Intervenor discovered that one of the documents cited in Contention 6 was removed from the website of the Office of Scientific and Technical Information (OSTI) "Information Bridge:" [www.osti.gov/bridge](http://www.osti.gov/bridge): "Chemical and Radiochemical Composition of Thermally Stabilized Plutonium Oxide from the Plutonium Finishing Plant Considered as Alternate Feedstock for the Mixed Oxide Fuel Fabrication Facility," by J.M. Tingey and S.A. Jones, PNNL-15241, Pacific Northwest National Laboratory, July 2005. See Contention 6 at page 6 note 16. For the convenience of the ASLB and the parties, BREDL has placed the document on its website at <http://www.bredl.org/pdf/PNNL-15241-altfeedstockhanford.pdf>

## Conclusion

For the foregoing reasons, the ASLB should admit Contention 6 and consider how to address it along with Contentions 3 and 4.

Respectfully submitted,

A handwritten signature in cursive script that reads "glenn carroll".

Glenn Carroll  
Nuclear Watch South

A handwritten signature in cursive script that reads "Louis A. Zeller", followed by a horizontal line.

Louis A. Zeller  
Blue Ridge Environmental Defense League

Dated November 7, 2007  
in Decatur, Georgia

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Docket No. 70-3098-MLA

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

November 7, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that copies of Nuclear Watch South and Blue Ridge Environmental Defense League's "Intervenors' Reply to Applicant and NRC Staff Responses to Late-Filed Contention regarding Need to Supplement EIS for Proposed MOX Plutonium Processing Facility" was e-mailed to the following with hard copies served by First Class U.S. Mail.

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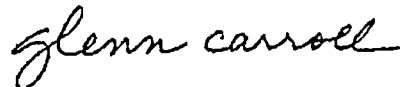
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Respectfully submitted,



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Glenn Carroll  
for Nuclear Watch South  
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November 7, 2007 in Decatur, Georgia