

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

December 31, 2008

ORDER

(Adopting Protective Order)

Earlier this month, the parties submitted a Joint Motion seeking the Board's approval of the terms of a Protective Order, and the content of a related form Nondisclosure Declaration, which they had agreed were appropriate to govern the exchange of non-public information in this proceeding. By December 23 phone call (memorialized in an email of that date from Applicant's counsel), the Board Chairman informed the parties that the Board would be granting their Joint Motion and that they should feel free to proceed from that day forward on the basis of the agreed-upon documents.

As indicated, the agreed-upon seven-page Protective Order (attached) is APPROVED as submitted, as is the related agreed-upon seven-page form "Controlled Information Nondisclosure Declaration" (also attached). Any actions taken by the parties since December 23 in reliance upon these documents are hereby RATIFIED.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

By Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 31, 2008

Copies of this Order were sent this date by e-mail to counsel for all parties.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	December [XX], 2008
Shaw AREVA MOX Services, LLC)	Docket No. 70-3098-MLA
(Mixed Oxide Fuel Fabrication Facility)	ASLBP No. 07-856-02-MLA-BD01
Possession and Use License))	
)	
)	

PROTECTIVE ORDER

A. This Protective Order governs the disclosure to and use of certain Controlled Information¹ by Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and Nuclear Information and Resource Service (NIRS) (collectively, Intervenor(s)), in the licensing proceeding regarding the possession and use license application of Shaw AREVA MOX Services, LLC (Applicant) to operate a mixed oxide fuel fabrication facility. Intervenor(s) are three citizens' organizations located in the general vicinity of the Savannah River Site, and none are competitors of the Applicant.

B. Pursuant to its mandatory disclosure obligations under 10 CFR §§ 2.336(a) and 2.336(c), the Applicant has produced and continues to produce information relevant to Intervenor(s)' Contention 4 as admitted by this Atomic Safety and Licensing Board (Board) on June 27, 2008 (*see* LBP-08-11). Similarly, the U.S. Nuclear Regulatory Commission (NRC or Commission) Staff (NRC Staff or Staff) has produced and continues to produce the hearing file

¹ For the purposes of this Order "Controlled Information" means information that is: (1) proprietary, (2) sensitive unclassified non-safeguards information (SUNSI), (3) for official use only (OUO), or (4) otherwise appropriately withheld under 10 CFR § 2.390 but required by the Board to be disclosed. "Controlled Information" generally does not include basic information necessary for the identification of a document, such as the title or subject matter of the document, the date it was written, the names and affiliations of the author(s), or the names and affiliations of the recipient(s).

pursuant to 10 CFR §§ 2.336(b), 2.336(c), 2.336(d), and 2.1203. Information within the Applicant's mandatory disclosures or the NRC Staff's hearing file may contain Controlled Information that must be protected from public disclosure. This Protective Order governs the production and use of the following types of Controlled Information:

- Proprietary information. "Proprietary information" is (i) any information that is properly exempt from public disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and 10 CFR § 2.390(a)(4); or (ii) any information obtained by virtue of these proceedings that is not otherwise a matter of public record and that reveals Proprietary Information. This includes commercial proprietary information owned or possessed by the Applicant, or its partners and affiliates, or its predecessor organizations and affiliates. These entities include, but are not limited to: Shaw AREVA MOX Services LLC; AREVA NP, Inc.; the Shaw Group Inc.; Duke Engineering & Services, Inc.; Cogema S.A.; Cogema, Inc.; the Department of Energy (DOE); and Stone & Webster. Documents containing proprietary information shall be clearly marked "Proprietary – withhold from public disclosure in accordance with 10 CFR § 2.390."
- Sensitive unclassified non-safeguards information (SUNSI). This information includes any information of which the loss, misuse, modification, or unauthorized access can reasonably be foreseen to harm the public interest, the commercial or financial interests of the entity or individual to whom the information pertains, the conduct of NRC and Federal programs, or the personal privacy of individuals. This information shall be marked, handled, and protected in accordance with NRC policy. Documents containing SUNSI shall be clearly marked "SUNSI – withhold from public disclosure in accordance with 10 CFR § 2.390."
- Official use only information (OUO). This includes any information that is exempt from public release under the Freedom of Information Act and has the potential to damage governmental, commercial, or private interests if disseminated to persons who do not need the information to perform DOE authorized activities. Each document that contains or reveals OUO shall be clearly marked with the below stamp:

OFFICIAL USE ONLY	
Exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category Exemption Number _____	
Department of Energy review required before public release.	
Name/Org: _____	Date: _____
Guidance (if applicable): DOE Guide	
Determination made by:	
Name/Title:	
Organization: MOX Services	
Basis: NRC/DOE Class Guides	
Signature: _____	Date: _____

- Other controlled information. This includes any other information appropriately withheld under the Freedom of Information Act, 5 USC § 552(b), and 10 CFR § 2.390, the production of which is nonetheless required by NRC discovery regulations or the Board. Documents containing such information shall be clearly marked “Withhold from public disclosure in accordance with 10 CFR 2.390” and any additional markings necessary to ensure the protection of the contained information.

C. This Protective Order shall remain in effect until specifically modified or terminated by the Board or the Commission. Nothing in this Protective Order precludes the Intervenor, Applicant, or the NRC Staff from seeking changes to the Protective Order from the Board or the Commission, as appropriate, as future circumstances warrant. Those persons who are deemed qualified pursuant to this Protective Order and have executed a nondisclosure declaration—the terms of which are hereby incorporated in this Protective Order—in the form attached to this Protective Order, shall be permitted access to proprietary, OOU, SUNSI, or other Controlled Information under the conditions listed below.

D. The following persons will be afforded access to Controlled Information under this Protective Order for the purposes of this proceeding:

1. Diane Curran, Esq.
2. Glenn Carroll
3. Louis Zeller
4. Dr. Edwin S. Lyman

Additions or substitutions to this list of individuals for whom access to Controlled Information may be provided under this Protective Order must be made in accordance with the provisions of this Protective Order. The grant of access to Controlled Information does not waive any participant’s objections to the qualifications of any proposed witness to testify concerning matters in this proceeding.

E. Additional persons may have access to Controlled Information only (a) on a need to know basis, (b) after having been approved by the Board pursuant to this Protective Order, and

(c) after having executed the attached nondisclosure declaration. The Intervenor shall advise the Parties and the Board, in writing, of the names of any additional persons, not named above, for whom access to Controlled Information is sought along with the showing required below.

F. To qualify for access to Controlled Information, an Intervenor must demonstrate that the designated individual is a representative of an Intervenor organization who has responsibility for the direction of the litigation, or is a legal or technical advisor or otherwise necessary for the preparation of materials for this proceeding. The Applicant or the NRC Staff may challenge the need for, or the requisite competence of, the sponsoring party's designee within five business days of receipt of the Intervenor's filing. An Intervenor's need for its designee or a designee's requisite competence to review and evaluate all or portions of the Controlled Information pursuant to this Protective Order may be stipulated by written agreement between the Applicant and the Intervenor, and presented to the Board for approval, or, in the absence of such agreement, may be determined by further order of the Board.

G. Persons who receive Controlled Information (including transcripts of *in camera* hearings, filed testimony, or any other document that reveals Controlled Information) shall maintain the Controlled Information's confidentiality as required by the attached nondisclosure declaration.

H. Persons who receive Controlled Information shall use it solely for the purpose of participation in this proceeding before the Board and participation in any further Commission or appellate proceedings in this specific case, and for no other purpose.

I. Once granted access to Controlled Information, persons shall keep a record of all documents containing or revealing Controlled Information in their possession, custody, or

control and shall account for and ultimately deliver that information for disposal to the Board, in accordance with the nondisclosure declaration attached hereto.

J. The Applicant or the NRC Staff, as appropriate, will provide three copies of any requested Controlled Information to counsel for Intervenors. The transcript of any proceeding conducted on the record in which Controlled Information is revealed shall be treated as Controlled Information. Intervenors will receive three copies of any such transcript. Controlled Information (including transcripts treated as Controlled Information) may only be reviewed by persons qualified to have access to Controlled Information in accordance with the provisions of this Protective Order, and who have executed the attached nondisclosure declaration. Intervenors shall not electronically reproduce or photocopy Controlled Information provided by the Parties or any transcripts containing Controlled Information without the express prior approval of the Board.

K. In addition to the requirements specified in the attached nondisclosure declaration, all pleadings and filings in this proceeding (including testimony) that contain or reveal any Controlled Information or contain information derived from Controlled Information shall:

1. Be segregated and served only on lead counsel for the Applicant, the Assistant for Rulemakings and Adjudications in the Office of the Secretary, the NRC Staff, Intervenors' counsel (in triplicate), and the individual members of the Licensing Board;
2. Be served by U.S. Postal Service registered, express, or certified mail; by messenger-courier or overnight delivery service (*e.g.*, Federal Express); or by personal delivery; and
3. Be placed in two sealed envelopes including (i) an outer mailing envelope bearing the name and address of the addressee and the statement "PRIVATE, TO BE OPENED BY ADDRESSEE ONLY", but will bear no marking or indication that the document within contains or reveals proprietary or security-related information, and (ii) an inner sealed

envelope with the statement "CONTAINS CONTROLLED INFORMATION." Addressees shall take all necessary precautions to ensure that they alone will open envelopes so marked.

4. The transmittal must include an attached cover letter or memorandum that briefly describes the contents of the pleading or correspondence without reference to any Controlled Information such that the cover letter or memorandum can be placed in the public docket of this proceeding.

L. Any person who has reason to believe that documents containing or revealing Controlled Information may have been lost or misplaced (for example, because an expected paper has not been received) or that Controlled Information has otherwise become available to unauthorized persons, shall notify the Board promptly.

M. An organization that is represented by one or more of its members who sign the attached nondisclosure declaration will be bound by and jointly liable with the declarant for any unauthorized disclosure of Controlled Information.

N. Nothing in this Protective Order prevents any Intervenor from seeking public disclosure of information designated as Controlled Information in accordance with NRC regulatory procedures.

O. Nothing in this Protective Order restricts the Applicant's right to pursue any other legal or equitable remedies that may be available to it in the event of actual or anticipated disclosure of Controlled Information.

P. All nondisclosure declarations shall be filed with the Board and served on the Applicant, the NRC Staff, and any other Intervenors.

Q. Upon receipt of a properly executed nondisclosure declaration by an individual approved by the Board as eligible to receive Controlled Information, the Applicant and the NRC Staff shall have five business days to object to any matter involving the execution of the nondisclosure declaration. Absent an objection by the Applicant or the NRC Staff, relating to

the execution of the nondisclosure declaration, the Applicant and the Staff have five business days to transmit by overnight delivery service the specifically requested Controlled Information to the affiant.

It is so ORDERED.

For the Atomic Safety and Licensing Board

Judge Michael Farrar

CONTROLLED INFORMATION NONDISCLOSURE DECLARATION

I, _____, declare under penalty of perjury:

1. As used in this nondisclosure declaration:

(a) "Controlled Information" means information that is: (i) proprietary, (ii) sensitive unclassified non-safeguards information (SUNSI), (iii) for official use only (OUO) or (iv) otherwise appropriately withheld pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b) and under 10 CFR § 2.390, the production of which is nonetheless required by the Board.¹

(b) "Proprietary information" is (i) any information that is properly exempt from public disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552(b)(4) and 10 CFR § 2.390(a)(4); or (ii) any information obtained by virtue of these proceedings that is not otherwise a matter of public record and that reveals Proprietary Information. This includes commercial proprietary information owned or possessed by Shaw AREVA MOX Services, LLC (Applicant), or its partners and affiliates, or its predecessor organizations and affiliates. These entities include, but are not limited to: Shaw AREVA MOX Services LLC; AREVA NP, Inc.; the Shaw Group Inc.; Duke Engineering & Services, Inc.; Cogema S.A.; Cogema, Inc.; the Department of Energy (DOE); and Stone & Webster.

(c) "Sensitive unclassified non-safeguards information (SUNSI)" means any information of which the loss, misuse, modification, or unauthorized access can

¹ "Controlled information" generally does not include basic information necessary for the identification of a document, such as the title or subject matter of the document, the date it was written, the names and affiliations of the author(s), or the names and affiliations of the recipient(s).

reasonably be foreseen to harm the public interest, the commercial or financial interests of the entity or individual to whom the information pertains, the conduct of NRC and Federal programs, or the personal privacy of individuals.

(d) "Official use only information (OUO)" means any information that is exempt from public release under the Freedom of Information Act and has the potential to damage governmental, commercial, or private interests if disseminated to persons who do not need the information to perform DOE authorized activities.

(e) An "authorized person" means: (i) an employee, consultant, or contractor of the NRC entitled to access to the Controlled Information; (ii) a person who has executed a copy of this declaration upon the approval of the Atomic Safety and Licensing Board (Board); or (iii) a person employed by or on behalf of the Applicant and authorized by it in accordance with NRC regulations to have access to Controlled Information.

(f) A "document" means any audio or video tape recording or written matter of any kind, whether produced, reproduced, or stored on paper, cards, tapes, ribbons, disks, belts, charts, film, computer files, computer software, computer disks or diskettes, flash drives, computer storage devices or any other medium; and includes, without limitation, books, reports, studies, statements, speeches, notebooks, calendars, working papers, manuals, memoranda, notes, instructions, directions, records, correspondence, diaries, diagrams, drawings, lists, telephone logs, minutes, and photographs; and also includes, without limitation, originals, copies (with or without notes or changes thereon), and drafts.

2. I have read the December [XX], 2008 Protective Order issued in this proceeding and will comply in all respects with its terms and conditions regarding Controlled Information

produced in connection therewith. With the understanding that all Controlled Information has been properly marked in accordance with the Protective Order, I will protect and keep Controlled Information in accordance with the December [XX], 2008 Protective Order and the terms of this declaration.

3. I will not disclose Controlled Information to anyone except an authorized person. I will protect documents containing or revealing Controlled Information in written or recorded form (including any portions of transcripts of *in camera* hearings, filed testimony, or any other documents that contain or reveal such Controlled Information), so that the Controlled Information contained therein remains at all times under the control of an authorized person and is not revealed to anyone else.

4. I will not transmit by electronic or facsimile transmission any material containing Controlled Information. In addition to pleadings and filings, any transmissions of material containing Controlled Information will be transmitted utilizing the identical method set forth in Paragraph K of the December [XX], 2008 Protective Order.

5. When not under my direct control or the direct control of another individual authorized to have access thereto, I will keep and protect all documents containing or revealing Controlled Information (including, without limitation, transcripts, pleadings that I may generate, and any notes and copies that I may make) in a secure locked place such as a filing cabinet, closet, or other appropriate storage container.

6. Any secretarial or administrative work performed at my request or under my supervision will be performed by personnel who also have been qualified for such access and who also have executed a nondisclosure declaration.

7. To the extent that I use a computer to generate or revise documents that contain or reveal Controlled Information, the generated or revised documents shall only be saved to removable media (not to a hard drive or a network), which media shall be stored in a locked storage container or safe or will be maintained in my direct control. When the information has been saved to removable media, all temporary electronic files that are automatically generated on the hard drive or network must be deleted. At the earlier of (a) the conclusion of this proceeding (including any further Commission or appellate proceedings in this specific case), (b) the conclusion of my participation in this proceeding, or (c) the sale or transfer of the computer used to generate or revise documents that contain or reveal Controlled Information to or by a person not qualified under the December [XX], 2008 Protective Order, I will permanently destroy Controlled Information that may be stored on that computer's storage media, whether permanent hard drive or removable, by using Symantec's "Wipe Info," or similar appropriate software, provided by Applicant at the Applicant's expense.

8. Each document I generate that contains or reveals proprietary information shall be clearly marked "Proprietary – withhold from public disclosure in accordance with 10 CFR § 2.390."

9. Each document I generate that contains or reveals SUNSI shall be clearly marked "SUNSI – withhold from public disclosure in accordance with 10 CFR § 2.390."

10. Each document I generate that contains or reveals OOU shall be clearly marked with the below stamp:

OFFICIAL USE ONLY	
Exempt from public release under the Freedom of Information Act (5 U.S.C. 552), exemption number and category Exemption Number _____	
Department of Energy review required before public release.	
Name/Org: _____	Date: _____
Guidance (if applicable): DOE Guide	
Determination made by:	
Name/Title:	
Organization: MOX Services	
Basis: NRC/DOE Class Guides	
Signature: _____	Date: _____

11. Each document I generate that contains information otherwise appropriately withheld under the Freedom of Information Act, 5 U.S.C. § 552(b) and 10 CFR § 2.390, the production of which is nonetheless required by NRC discovery regulations or the Board, shall be clearly marked "Withhold from public disclosure in accordance with 10 CFR § 2.390" and any additional markings necessary to ensure the protection of the contained information.

12. I shall use Controlled Information only for the purpose of participation in this proceeding (including any further Commission or appellate proceedings in this specific case).

13. I shall keep a record of all documents containing or revealing Controlled Information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding (including any further Commission or appellate proceedings in this specific case), or at the conclusion of my participation in this proceeding (whichever comes first), I shall both (a) account to the Board for all the documents or other materials containing or revealing Controlled Information in my possession, custody, or control, and (b) submit such documents (including any and all portions of any notes taken in

connection with review of the documents) by U.S. Postal Service registered, certified, or express mail to the Board for destruction.

14. Either during or after this proceeding, I will not publicly reveal any Controlled Information that I receive by virtue of this proceeding as long as the information remains Controlled and is not otherwise a matter of public record.

15. I acknowledge that any violation of the terms of this declaration or the December [XX], 2008 Protective Order, which incorporates the terms of this declaration, may result in the imposition of such sanctions on me or the organization I represent by the Board or Commission. I further acknowledge that any unauthorized disclosure of Controlled Information or violation of the Protective Order issued in this proceeding may be grounds for (a) the imposition of civil and/or criminal penalties, as set forth in 10 CFR § 70.91, sections 223 and 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2273, 2282), Chapter 90 of Title 18 to the United States Code, and/or (b) civil liability to the Applicant, its partners, or affiliates.

WHEREFORE, I do solemnly agree to protect and keep confidential such Controlled Information as may be disclosed to me in this proceeding, in accordance with the terms of this declaration and the December [XX], 2008 Protective Order. I clearly understand that my obligations to protect and keep confidential such Controlled Information survive the termination of this proceeding and remain in effect until such time as the information is no longer Controlled Information or is a matter of public record.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20_____.

(Name and Organization)

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 ORDER (ADOPTING PROTECTIVE ORDER) 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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Washington, DC 20555-0001

Administrative Judge
Lawrence G. McDade
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Attention: Dealis Gwyn

Docket No. 70-3098-MLA
LB ORDER (ADOPTING PROTECTIVE ORDER)

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Philadelphia, PA 19103

[Original signed by Nancy Greathead]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 31st day of December 2008