

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

March 23, 2009

ORDER  
(Summarizing Prehearing Conference)

Pursuant to the Board's Orders of November 20, 2008,<sup>1</sup> and January 22, 2009,<sup>2</sup> the Applicant, Shaw AREVA MOX Services (MOX), submitted on January 27, 2009, its proposal regarding how the pending litigation on the sole admitted contention might be conducted.<sup>3</sup> As had been scheduled, the Board held a prehearing conference on February 4, 2009, to discuss that Litigation Proposal and other pending issues.

1. The Litigation Proposal contemplates that Subpart N, the least formal type of proceeding available under NRC regulations, would be used once a series of actions is completed. Those actions would start with the Applicant preparing a written safety analysis to address the issues raised by the pending contention. Litigation Proposal at 6-7. That analysis, along with information from the Applicant's disclosures, would be made available for the NRC Staff and the Intervenors (with a copy to the Board) by April, 2009. Id. at 6-7, 10.

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<sup>1</sup> Order (Summarizing Prehearing Conference) at 2 (unpublished).

<sup>2</sup> Order (Convening Prehearing Conference) at 1-2 (unpublished).

<sup>3</sup> Shaw AREVA MOX Services, LLC's Proposed Procedures and Hearing Schedule in Response to Board's November 20, 2008 Order (Jan. 27, 2009) [hereinafter Litigation Proposal].

Under the proposal, the NRC Staff would then perform a technical review and evaluation of the Applicant's safety analysis, id. at 6, with the expectation that it would take 120 days to complete this review. Id. at 10. The Subpart N litigation would begin upon the NRC Staff's completion of its review, so that the standard Subpart N prehearing conference would be held within 40 days thereafter. Cf. 10 C.F.R. § 2.1404(a). The hearing, expected to last less than two days,<sup>4</sup> would take place within 20 days thereafter. 10 C.F.R. § 2.1405. The Board would then have 30 days to issue its decision (if the Board issues a bench decision it would have 20 days to memorialize it in writing). 10 C.F.R. § 2.1406.

2. During the February 4 Prehearing Conference, the NRC Staff and the Intervenors took the opportunity to respond orally to the above-described Litigation Proposal. The NRC Staff's position was that it would agree to the use of Subpart N if all other parties agreed to do so. Tr. at 647-48. If the Intervenors were not to agree to the use of Subpart N, the NRC Staff stated that it would defer to the judgment of the Board on the matter. Tr. at 648. For their part, the Intervenors generally felt that any consideration of which litigation procedure to use was premature.<sup>5</sup> Tr. at 647.

After extensive discussion regarding the Litigation Proposal, the Parties and the Board agreed to the following approach. For now, the proceeding will continue as it currently stands, i.e., as a Subpart L proceeding. The Applicant will perform its safety analysis and upon its completion (expected by the end of April<sup>6</sup>) make it available to the NRC Staff and the Intervenors. The Applicant will also provide a copy to the Board (as discussed during the

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<sup>4</sup> See 10 C.F.R. § 2.310(h).

<sup>5</sup> The discussion during the prehearing conference was lengthy; because it can be found in the transcript (Tr. at 646-703), we provide here only the briefest recap.

<sup>6</sup> Tr. at 674.

prehearing conference, the Applicant need not file the document as part the adjudicatory docket for this proceeding). Tr. at 702.

The NRC Staff will then begin its 120-day technical review of the Applicant's analysis. After 30 days, the NRC Staff will notify the Board and the Parties as to whether the contemplated 90 additional days thereafter is still seen as a long enough period to complete its evaluation. Tr. at 648-49, 692-93, see also Tr. at 651-52.

During this same time, the Intervenors will also analyze the Applicant's safety analysis and prepare their own evaluation. After the NRC Staff makes its evaluation available to the Applicant and the Intervenors (with a copy sent to the Board), the Intervenors will have an additional two weeks to complete and to submit their own evaluation of the Applicant's safety analysis. Tr. at 693. The Intervenors will make their analysis available to the Applicant and the NRC Staff (with a copy to the Board).

At that point, the Board will schedule a preliminary prehearing conference whose initial purpose will be to determine which procedure – Subpart L or Subpart N – would be most appropriate. Tr. at 693, 700. A litigation schedule will then be prepared accordingly.

If the Board decides to proceed under Subpart N, the prescribed schedule envisions a more formal prehearing conference within 40 days. See 10 C.F.R. § 2.1404(a). In a departure from the procedure set out for that conference, however, the Board will ask each party to provide to the Board, at least five days prior to that prehearing conference (rather than at the conference), the list of proposed witnesses and the summaries of the testimony of each

witness, required under 10 C.F.R. § 2.1404(b), so as to make the conference proceed more effectively and efficiently. Tr. at 694.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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By Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
March 23, 2009

Copies of this Order were sent this date by e-mail to counsel for (1) Applicant Shaw AREVA MOX Services, (2) the NRC Staff, and (3) Intervenors Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and the Nuclear Information and Resource Service (NIRS).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SUMMARIZING PREHEARING CONFERENCE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-3098-MLA  
LB ORDER (SUMMARIZING PREHEARING CONFERENCE)

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[Original signed by Nancy Greathead]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,  
this 23<sup>rd</sup> day of March 2009