August 31, 2009

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In the Matter of
SHAW AREVA MOX SERVICES
Mixed Oxide Fuel Fabrication Facility
Docket No. 70-3098-MLA

Dear Administrative Judges,

For the reasons detailed herein, the NRC staff ("Staff") finds itself unable produce a technical review and evaluation of the Applicant's Safety Evaluation ("SE") by September 1.[1] The Staff's technical review of the SE involves issues not practicably segregated from Staff's overall review of the License Application and, as such, the Staff's technical review cannot reasonably be completed before the completion of the Safety Evaluation Report ("SER"), which documents Staff's review of the License Application, without the imposition of substantial delay in Staff's review schedule.

To ensure that there is sufficient buffer capacity in the liquid high alpha waste reception unit to bring the MOX fuel fabrication facility into a safe configuration in the event that waste transfer is interrupted, the Applicant identified in its SE what it considers to be a sufficient buffer capacity as an item relied on for safety ("IROFS"). The buffer capacity is bounded by the Applicant in its analysis upon the premised availability and function of other IROFSs already identified by the

[1] The Board's Order dated March 23, 2009 summarized the Staff's assertion that it would be would able to "perform a technical review and evaluation of the Applicant's safety analysis … with the expectation that it would take 120 days to complete this review." Order (Summarizing Prehearing Conference), at 2 (March 23, 2009). On June 4, 2009, Counsel for the Staff notified the Board and the parties that the Staff would complete its review of the SE with 120 days, that being September 1, 2009.

Farrar
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Applicant in its License Application. Thus, in order to determine the sufficiency of the buffer capacity specified by the Applicant, the Staff needs to analyze the bounding IROFSs' ability to limit the need for buffer capacity in the event that waste transfer is interrupted. After much thought, the Staff has determined that there is no practicable way to decouple this review of the bounding IROFSs for the purpose of a hearing on Contention 4 from its overall review of the License Application. The Staff estimates that by the time needed to do this separate review of the bounding IROFSs, the Staff would be able to complete its entire review of the License Application. Thus, in light of the foregoing, it does not appear to Staff that a hearing on Contention 4 can occur until after the Staff has published its SER.[2]

Respectfully submitted,

/RA/

Brett Klukan
Counsel for the NRC Staff

cc: Attached Service List

[2] However, the Staff remains open to alternative approaches offered by other parties to this proceeding as how to resolve Contention 4 prior to the publication of the SER.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
SHAW AREVA MOX SERVICES	)	Docket No. 70-3098-MLA
Mixed Oxide Fuel Fabrication Facility	)	
	)	
(License Application for Possession and	)	ASLBP No. 07-856-02-MLA-BD01
Use of Byproduct, Source and Special	)	
Nuclear Materials)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "LETTER IN THE MATTER OF SHAW AREVA MOX SERVICES, LLC" in the above captioned proceeding have been served on the following persons by deposit in the United States Mail; through deposit in the Nuclear Regulatory Commission internal mail system as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**) on this 31st day of August, 2009:

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/RA/

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