

DOCKETED

May 9, 2011 (4:38p.m.)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

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

In the Matter of	)	May 9, 2011
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)	)	

**JOINT STATUS REPORT ON PROCEDURAL ISSUES**

I. **Introduction**

In an April 8, 2011 telephone conference between the Atomic Safety and Licensing Board (Board) and the parties in the above-captioned proceeding, the Board requested that, by May 9, 2011, the parties report on various procedural matters. The parties' response to the Board's request is presented below.

II. **Protected Status of the Shaw AREVA MOX Services, LLC Physical Protection Plan and Intervenor Access Thereto**

Shaw AREVA MOX Services, LLC (MOX Services) has confirmed that the Physical Protection Plan (PPP) for the Mixed-Oxide Fuel Fabrication Facility (MFFF) contains Classified Information at the Confidential-National Security Information level. Access to the classified document can be provided to interested parties, their counsel, and

*Exhibit Aug-049*

*DS-03*

other additional persons as the Commission or the Board determines are needed by the parties for preparation or presentation of their case (as described in 10 CFR § 2.905), who have at least an "L" level personnel security clearance, a "need to know," and who have met other legal and regulatory requirements for such access, including possession of an approved Facility Security Clearance (FCL) pursuant to 10 CFR Part 95.

There is, however, an unclassified version of the PPP under preparation, in which MOX Services currently anticipates that only a relatively small amount of information will need to be removed as classified. MOX Services expects that this unclassified version of the PPP will be categorized as Unclassified Controlled Nuclear Information or "UCNI" under the U.S. Department of Energy's (DOE) regulations at 10 CFR Part 1017. This subject is discussed in more detail in Section V below.

MOX Services and the Intervenors have discussed this matter and agreed that MOX Services will provide the unclassified version to the four Intervenor representatives currently listed in the existing Protective Order in this proceeding, upon compliance with the requirements that apply to the unclassified PPP as UCNI, and in lieu of provision of the classified version at this time. As discussed further in Section V below, a request will need to be made to the DOE/National Nuclear Security Administration (NNSA), an affirmative DOE/NNSA access determination will need to be made, a new or revised, Board-approved Protective Order likely will be required, and the Intervenor representatives may need to execute new Non-Disclosure Agreements (NDAs) before such access can be provided, based upon the status of the unclassified PPP as UCNI.

MOX Services and the Intervenors have agreed that provision of the UCNI version of the PPP will enable the Intervenors to obtain information potentially relevant

to Contentions 9-11 in a reasonably prompt manner, while balancing the need to limit access to classified information, and without waiting for the Intervenors to comply with all applicable requirements for access to classified information. The Intervenors have agreed to review the unclassified PPP to determine if it provides sufficient information for their case preparation, and MOX Services has agreed to advise the Intervenors if, in the course of its case preparation, it believes it will need to rely on the classified version of the PPP. MOX Services has encouraged the Intervenors to promptly pursue the necessary actions to qualify for access to classified information, in the event such access is needed, in order to avoid any undue delay in the conduct of this proceeding.

**III. Protected Status of the U.S. Nuclear Regulatory Commission's Chapter 13.1 of the MFFF Safety Evaluation Report and Intervenor Access Thereto**

The U.S. Nuclear Regulatory Commission (NRC) has confirmed that Chapter 13.1, "Physical Protection," of the Staff's Safety Evaluation Report (SER) for the MFFF contains Classified Information at the Secret-National Security Information level. Access to the classified document can be provided to interested parties, their counsel, and other additional persons as the Commission or the Board determines is needed by the parties for preparation or presentation of their case (as described in 10 CFR § 2.905). Such persons shall have at least an "L" level personnel security clearance, a "need to know," and have met other legal and regulatory requirements for such access.

Similarly to MOX Services, in an effort to balance Intervenors' desire to obtain information of potential relevance to the admitted contentions with the need to limit access to classified information, the Staff anticipates that it will prepare a separate version of Chapter 13.1. This separate version of Chapter 13.1 would be in addition to the unclassified version of Chapter 13.1, which was released in the Staff's December 2010

SER. Although this process has yet to begin, the Staff anticipates that a relatively small amount of information will need to be removed as classified. However, the new version is expected to be subject to one of the other potentially applicable categories of information protection.

IV. **Anticipated Request by the Intervenors for a Site Visit**

During the April 8, 2011 teleconference, counsel for the Intervenors indicated their desire for an MFFF site visit. MOX Services has advised the Intervenors that it will oppose any such request, on the basis that such a site visit represents formal discovery (entry upon land) explicitly not authorized by 10 CFR Part 2, Subpart L. MOX Services has also advised the Intervenors of its view that any such visit would likely not provide any particularly relevant or useful information on the existing contentions, given the current state of MFFF construction. However, MOX Services has agreed to provide the Intervenors, on an informal basis, with additional information on MFFF construction status to better enable the Intervenors to determine if they believe a request for a site visit is necessary. Intervenors reserve the right to file a motion seeking such discovery.

V. **Unclassified Controlled Nuclear Information (UCNI)**

Although not a matter raised by the Board in the April 8 teleconference, MOX Services recently received formal directions from DOE/NNSA that some additional information and documents associated with the MFFF will be categorized and protected as UCNI, in accordance with DOE regulations at 10 CFR Part 1017. Part 1017 establishes specific requirements for access to and control of UCNI. Among other things, the appropriate DOE/NNSA official must make a determination as to whether a person may have access to such information.

MOX Services is in the process of determining all of the necessary actions it needs to take to comply with this new direction. The direction may affect previously produced or logged documents in this proceeding (including potentially the Fundamental Nuclear Material Control Plan (FNMCP) currently in the Intervenor's possession), as well as documents to be produced or logged in the future. The impact of this new direction on the proceeding is not expected to be significant, however, given that MOX Services and the Intervenor have agreed to work in good faith to enable access, as may be requested by the Intervenor, to any UCNI documents that are relevant to the admitted contentions, and to minimize the impact on the efficient conduct of this proceeding, consistent with the requirements of Part 1017. MOX Services has directed the attention of the Intervenor's counsel to the Part 1017 requirements, and has provided information to the Intervenor to enable them to submit a request for access to DOE/NNSA under Part 1017, should they choose to do so.

Finally, the parties have agreed to work towards a joint motion to propose a modified or new Protective Order, and as necessary, the NDAs, to incorporate the UCNI requirements. The anticipated changes likely will include specific reference to the Part 1017 requirements for a written request for access to be submitted to the appropriate DOE/NNSA official, as well as any additional UCNI protection and marking requirements not presently in the Protective Order. At the present time, MOX Services does not believe that extensive changes in the Protective Order and NDAs will be required. As referenced in Section II above, approval of a new or revised Protective Order and execution of new NDAs likely will be a prerequisite to Intervenor access to the redacted PPP and other documents that may be categorized as UCNI.

Respectfully submitted,



---

Donald J. Silverman, Esq.  
Timothy P. Matthews, Esq.  
Anna Vinson Jones, Esq.  
MORGAN, LEWIS & BOCKIUS, LLP  
1111 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
Phone: (202) 739-5881  
E-mail: [anna.jones@morganlewis.com](mailto:anna.jones@morganlewis.com)

COUNSEL FOR  
SHAW AREVA MOX SERVICES, LLC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

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

In the Matter of	)	May 9, 2011
	)	
SHAW AREVA MOX SERVICES, LLC	)	
	)	Docket No. 70-3098-MLA
	)	
(Mixed Oxide Fuel Fabrication Facility	)	
Possession and Use License)	)	ALSBP No. 07-856-02-MLA-BD01
	)	

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2011, copies of "Joint Status Report on Procedural Issues" were served upon the persons listed below, by email and first class mail.

Secretary of the Commission \*  
Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: 0-16C1  
Washington, D.C. 20555-0001  
(E-mail: [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov))

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  
(E-Mail: [mcf@nrc.gov](mailto:mcf@nrc.gov))

Administrative Judge  
Dr. Nicholas G. Trikouros  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-mail: [ngt@nrc.gov](mailto:ngt@nrc.gov))

Administrative Judge  
Lawrence G. McDade  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
(E-Mail: [lgm1@nrc.gov](mailto:lgm1@nrc.gov))

\* E-mail, original, and 2 copies

Office of Commission Appellate  
Adjudication  
Mail Stop: 0-16G4  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: [OCAAMail@nrc.gov](mailto:OCAAMail@nrc.gov))

Diane Curran  
Harmon, Curran, Spielberg, & Eisenberg,  
LLP  
1726 M Street N.W., Suite 600  
Washington, D.C. 20036  
(E-mail: [dcurran@harmoncurran.com](mailto:dcurran@harmoncurran.com))

Brett Klukan  
Catherine Scott  
Kimberly Sexton  
Office of General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop: 0-15 D21  
Washington, DC 20555-0001  
(E-mail: [brett.klukan@nrc.gov](mailto:brett.klukan@nrc.gov),  
[catherine.marco@nrc.gov](mailto:catherine.marco@nrc.gov),  
[kimberly.sexton@nrc.gov](mailto:kimberly.sexton@nrc.gov))

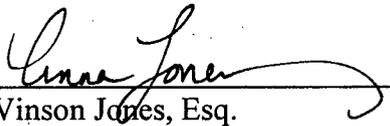
Mary Olson  
Nuclear Information & Resource Service  
P.O. Box 7586  
Ashville, N.C. 28802  
(E-mail: [maryolson@main.nc.us](mailto:maryolson@main.nc.us))

Glenn Carroll  
Nuclear Watch South  
P.O. Box 8754  
Atlanta, GA 31106  
(E-mail: [atom.girl@mindspring.com](mailto:atom.girl@mindspring.com))

Louis A. Zeller  
Blue Ridge Environmental Defense League  
P.O. Box 88  
Glendale Springs, N.C. 28629  
(E-mail: [bredl@skybest.com](mailto:bredl@skybest.com))

Katie Tucker  
Ann Hove  
Law Clerks  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 E2B  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
(E-mail: [zachary.kahn@nrc.gov](mailto:zachary.kahn@nrc.gov))

Dated: 09 May 2011

  
\_\_\_\_\_  
Anna Vinson Jones, Esq.  
Counsel for Shaw AREVA MOX Services, LLC