

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	)	July 27, 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
	)	

**UNOPPOSED MOTION FOR CLARIFICATION OR CORRECTION OF BOARD  
MEMORANDUM AND ORDER DATED JULY 26, 2011**

Pursuant to 10 C.F.R. § 2.323, Shaw AREVA MOX Services (“MOX Services”) requests a clarification or correction of the Board’s July 26, 2011 Memorandum and Order (“July 26 Order”)<sup>1</sup> summarizing the prehearing conference call, revising the protective order, and scheduling an evidentiary proceeding. The July 26 Order notes that the parties have agreed that the proceeding should be governed by the Agency’s Subpart L procedures, and states that “with no countervailing considerations being apparent, the Board will convene one evidentiary hearing under Subpart L to adjudicate the four contentions.”<sup>2</sup> The Board, however, adds in footnote 14 that “[p]arties may nonetheless request, if they believe the circumstances justify it, that the

<sup>1</sup> Unpublished.

<sup>2</sup> *Id.* at 3.

hearing for resolution of a contention be conducted under Subpart G procedures pursuant to 10 C.F.R. § 2.310(d).”<sup>3</sup>

MOX Services believes that Subpart G procedures are not available for this materials licensing proceeding absent a Commission Order. 10 C.F.R. § 2.310(d) applies only to proceedings for nuclear power reactors. It states:

In proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits for *nuclear power reactors*, where the presiding officer by order finds that resolution of the contention or contested matter necessitates resolution of issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter, the hearing for resolution of that contention or contested matter will be conducted under subpart G of this part. (Emphasis added.)

Because this proceeding does not involve a license or permit for a nuclear power reactor, 10 C.F.R. § 2.310(d) does not apply to this proceeding.

A review of 10 C.F.R. § 2.310 identifies three additional proceedings where the procedures of Subpart G are to be used. 10 C.F.R. § 2.310(b) is limited to enforcement matters, § 2.310(c) is limited to proceedings involving uranium enrichment facilities, and § 2.310(f) is limited to proceedings involving a high-level radioactive waste repository. 10 C.F.R. § 2.310 does not provide for the use of Subpart G procedures in a materials licensing proceeding.

Similarly, a review of the Scope of Subpart G as provided in 10 C.F.R. § 2.700 reiterates that the provisions of Subpart G apply to and supplement the provisions in Subpart C with respect to enforcement proceedings, initial licensing of a uranium enrichment facility, proceedings for the grant, renewal, licensee-initiated amendment or termination of licenses or permits for nuclear power reactors, and proceedings for a high-level radioactive waste repository. 10 C.F.R. § 2.700 goes on to add “and any other proceeding as ordered by the Commission.”

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<sup>3</sup> *Id.*

Therefore, outside of a Commission order, Subpart G procedures are limited to the four identified types of proceedings.

As noted in the Statement of Considerations accompanying 10 C.F.R. Part 2, limiting Subpart G procedures to these four proceedings “is in keeping with the Commission’s intent to expand the use of more informal procedures to improve the effectiveness and efficiency of the NRC’s hearing processes.”<sup>4</sup> The Commission further stated that proceedings meeting one of the four exceptions “would be conducted using Subpart G procedures; hearings for any other contentions which do not meet this test would be conducted using Subpart L (or, upon agreement of all parties, Subpart N) procedures.”<sup>5</sup>

In summary, Subpart G procedures are not available for this proceeding absent a Commission Order. Therefore, MOX Services respectfully requests that the Board clarify or correct the statement in its July 26 Order stating that the parties may request a hearing for resolution of a contention be conducted under Subpart G procedures, pursuant to 10 C.F.R. § 2.310(d).

MOX Services has conferred with counsel for the NRC Staff and counsel for Intervenors. The NRC staff position is that it does not oppose the motion. The Intervenors do not oppose the motion with respect to its narrow request to clarify that 10 C.F.R. § 2.310(d) does not apply to this proceeding. With respect to the broader question of whether rights of cross-examination or other formal hearing procedures may be granted under other NRC regulations or precedents or judicial precedents, Intervenors take no current position and reserve the right to address that question if and when it should become relevant in the future.

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<sup>4</sup> Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2191 (Jan. 14, 2004).

<sup>5</sup> *Id.*

Respectfully submitted,

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	)	

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2011, copies of "Unopposed Motion for Clarification or Correction of Board Memorandum and Order Dated July 26, 2011" were served upon the persons listed below, by email and first class mail.

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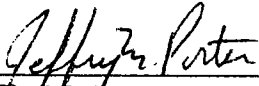
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## Hearing Docket

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**Subject:** Applicant's Unopposed Motion for Clarification or Correction of Board Memorandum and Order Dated July 26, 2011 - Docket No. 70-3098-MLA  
**Attachments:** 2011 07 27 Areva MOX Services Unopposed Motion for Clarification or Correction.pdf

### BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Attached please find a copy of Applicant's "Unopposed Motion for Clarification or Correction of Board Memorandum and Order Dated July 26, 2011." Copies of this filing also are being provided via U.S. Mail, first class, to those persons identified in the attached Certificate of Service.

Please contact me if you have any questions concerning this transmittal.

Sincerely,

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