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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, Chair  
Nicholas G. Trikouros  
Lawrence G. McDade

In the Matter of  
  
SHAW AREVA MOX SERVICES  
  
Mixed Oxide Fuel Fabrication Facility  
Possession and Use License

Docket No. 70-3098-MLA  
  
ASLBP No. 07-856-02-MLA-BD01  
  
May 25, 2012

**INTERVENORS' MOTION FOR LEAVE TO SUBMIT SURREPLY  
TO SHAW AREVA MOX SERVICES'  
PROPOSED REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Blue Ridge Environmental Defense League ("BREDL"), Nuclear Watch South ("NWS") and Nuclear Information and Resource Service ("NIRS") (collectively "Intervenors") hereby move for leave to reply to two incorrect statements in Shaw AREVA MOX Services, L.L.C.'s ("MOX Services") Proposed Reply Findings of Fact and Conclusions of Law (May 18, 2012). Intervenors do not believe these statements were previously made by MOX Services, and therefore a surreply is warranted.

The first incorrect statement appears in footnote 133 on page 30, where MOX Services states that it has "not represented – in testimony or in legal statements of position – any intention of conducting a physical inventory or measuring items as part of alarm resolution." Intervenors wish to point out that MOX Services' Fundamental Nuclear Material Control Plan ("FNMCP") is MOX Services' most important legal statement of position in this case, because it will dictate the terms of MOX Services'

operation of the MOX Fuel Fabrication Facility. The portions of the FNMCP that address alarm resolution, particularly §§ 3.1.3, 3.1.4.2, and 3.1.4.3, should be reviewed for their consistency with MOX Services' statement of its intention.

Second, MOX Services implicitly asserts, for the first time, that NRC regulations addressing theft of strategic special nuclear material ("SSNM") are concerned only with theft of entire containers of SSNM and not with the theft of SSNM *from* containers: in paragraph 3.67 MOX Services emphatically characterizes the language of 10 C.F.R. § 74.57(e) as "address[ing] the ability to verify *presence* of SSNM items" and asserts that "[v]erification of item *integrity* is not a component of 10 CFR § 74.57(e)." *Id.* at 35 and n. 164 (emphasis in original).

Intervenors respectfully submit that § 74.57(e) contains no language at all regarding either item presence or item integrity, but instead broadly requires licensees to "provide an ability to rapidly assess the validity of alleged thefts." Thus, the regulation encompasses not only the theft of an item but the theft of the *contents* of an item.

Respectfully submitted,



Diane Curran  
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May 25, 2012

**CERTIFICATION OF COUNSEL PURSUANT  
TO 10 C.F.R. § 2.323(b)**

I certify that on May 24, 2012, I contacted counsel for MOX Services and the NRC Staff in a sincere attempt to resolve the concerns raised by this motion. Counsel for MOX Services stated that it would object and that it plans to submit a written response. Counsel for the NRC Staff said the Staff preferred to review the motion before taking a position.

*Diane Curran/KS*  
Diane Curran

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SHAW AREVA MOX SERVICES

Mixed Oxide Fuel Fabrication Facility  
Possession and Use License

Docket No. 70-3098-MLA

ASLBP No. 07-856-02-MLA-BD01

May 25, 2012

**INTERVENORS' SURREPLY TO SHAW AREVA MOX SERVICES'  
PROPOSED REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Blue Ridge Environmental Defense League ("BREDL"), Nuclear Watch South ("NWS") and Nuclear Information and Resource Service ("NIRS") (collectively "Intervenors") hereby respond to two incorrect statements in Shaw AREVA MOX Services, L.L.C.'s ("MOX Services") Proposed Reply Findings of Fact and Conclusions of Law (May 18, 2012).

The first incorrect statement appears in footnote 133 on page 30, where MOX Services states that it has "not represented – in testimony or in legal statements of position – any intention of conducting a physical inventory or measuring items as part of alarm resolution." Intervenors respectfully submit that the Fundamental Nuclear Material Control Plan ("FNMCP") is MOX Services' most important legal statement of position in this case, because it will dictate the terms of MOX Services' operation of the MOX Fuel Fabrication Facility. The FNMCP should be reviewed for its consistency with MOX Services' statement of its intention. *See* in particular Sections 3.1.3, 3.1.4.2, and 3.1.4.3.

Second, MOX Services implicitly asserts, for the first time, that NRC regulations addressing theft of strategic special nuclear material (“SSNM”) are concerned only with theft of entire containers of SSNM and not with the theft of SSNM *from* containers: in paragraph 3.67 MOX Services emphatically characterizes the language of 10 C.F.R. § 74.57(e) as “address[ing] the ability to verify *presence* of SSNM items” and asserts that “[v]erification of item *integrity* is not a component of 10 CFR § 74.57(e).” *Id.* at 35 and n. 164 (emphasis in original).

Intervenors respectfully submit that 10 C.F.R. § 74.57(e) contains no language at all regarding either item presence or item integrity, but instead broadly requires licensees to “provide an ability to rapidly assess the validity of alleged thefts.” Thus, the regulation encompasses not only the theft of an item but the theft of the *contents* of an item.

Respectfully submitted,



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May 25, 2012

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

In the Matter of ) ) ) Shaw AREVA MOX Services ) ) ) (Mixed Oxide Fuel Fabrication Facility ) Possession and Use License) ) )	Docket No. 70-3098-MLA  ASLBP No. 07-856-02-MLA-BD01
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**CERTIFICATE OF SERVICE**

I certify that on May 25, 2012, copies of Intervenor's Surreply to Shaw Areva MOX Services' Reply Proposed Findings of Fact and Conclusions of Law and Intervenor's Motion for Leave to File Surreply were served on the following parties by e-mail and first class mail:

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Diane Curran  
Diane Curran

K-284

## Hearing Docket

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**From:** Diane Curran [dcurran@harmoncurran.com]  
**Sent:** Friday, May 25, 2012 8:31 AM  
**To:** Anna V. Jones (anna.jones@morganlewis.com); Klukan, Brett; Hair, Christopher; Donald J. Silverman (dsilverman@morganlewis.com); Edwin Lyman (elyman@ucsusa.org); Glenn Carroll (atom.girl@mindspring.com); Janet Marsh and Lou Zeller (bredl@skybest.com); Kirstein, Josh; McDade, Lawrence; Simon, Marcia; Mary Olson (maryolson@main.nc.us); Farrar, Mike; Trikouros, Nicholas; Docket, Hearing; OCAAMAIL Resource; Harich, Patricia; Lewman, Shelbie; Timothy Matthews (tmatthews@morganlewis.com)  
**Subject:** Filing in MOX Licensing Case  
**Attachments:** 0889 DC Certificate of Service -- public -- 5-25-12.pdf; Intervenor Motion for Leave to File Surreply 5-24-12.pdf; Intervenor Surreply 5-24-12.pdf

Dear ASLB and parties,

Attached please find Intervenor's Motion to Submit a Surreply to MOX Services' Proposed Findings of Fact and Conclusions of Law and a Surreply. Copies have been served on the parties by first-class mail.

Sincerely,  
Diane Curran