UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

Michael C. Farrar, Chairman
Nicholas G. Trikouros
Paul B. Abramson

In the Matter of	Docket No. 70-3098-MLA
SHAW AREVA MOX SERVICES	ASLBP No. 07-856-02-MLA-BD01
(Mixed Oxide Fuel Fabrication Facility)	February 21, 2013

MEMORANDUM AND ORDER
(Granting Intervenors' Motion for Extension of Time to Respond to Post-Hearing Information)

We are presented with the Applicant's strenuous opposition to the Intervenors' motion for a lengthy extension of time to file the post-hearing supplementary evidentiary submission for which we had called. Although we do not agree with all their characterizations, the Applicant and our dissenting colleague challenge the requested extension on grounds that appear to create a colorable basis for their urging its denial.

But with due respect, we think that their position disregards important contextual aspects of this case, both historical and projected. These include (1) the large amounts of time that other parties have rightly been awarded to put fully before us their positions on the important materials-accounting issues being litigated; (2) the value we have already seen contributed by Intervenors' expert witness in the first hearing; and (3) the absence of any prejudicial delay to the Applicant in terms of the still-far-distant completion of the MOX facility's construction.

These factors, which we detail herein, compel us to grant the requested extension. In doing so, we also plot the future course of the proceeding -- including reserving now an early date for a supplemental hearing so as to try to avoid a scheduling delay if we later decide that such a hearing is necessary to the proper exercise of our Subpart L obligations.

The Pending Motion: After conducting a Subpart L hearing, we issued an interim decision last June that called for supplemental evidentiary filings by all parties on a sequential basis (Applicant, Staff, Intervenors, Applicant), not a parallel one.[1] Although we had suggested a rather stringent schedule for those filings,[2] the substitute schedule negotiated by the parties (about which we say more later) was far more expansive (e.g., it gave the Applicant 3 ½ months instead of one month to prepare its opening submission).[3]

That schedule provided the Intervenors six weeks after receipt of the Staff filing to submit their evidence responding to that of the other two parties. After certain intervening schedule adjustments that we discuss later, the Intervenors' six-week filing period was set to end on February 28, 2013.[4]

On February 11, 2013, Intervenors moved to extend that deadline to April 19, 2013, an extension of approximately seven weeks.[5] Intervenors contend that this extension is necessary because their expert, Dr. Edwin Lyman, and their attorney have encountered separate and sequential scheduling conflicts.[6] We are told that these developed, and their impact became apparent, "[s]ince the end of January."[7]

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[1] See Licensing Board Memorandum and Order (Requesting Further Information from the Applicant) (June 29, 2012) at 15–16 [hereinafter Order Requesting Further Information].

[2] See id.

[3] See Licensing Board Order (Adopting the Parties' Jointly Proposed Schedule for Submittal of Additional Information) (July 16, 2012) at 2 [hereinafter Order Adopting Jointly Proposed Schedule].

[4] See Order (Granting NRC Staff's Unopposed Motion for Extension of Time) (Dec. 18, 2012) [hereinafter Order Granting Extension of Time].

[5] Intervenors' Motion for Extension of Time to Respond to Post-Hearing Information (Feb. 11, 2013) at 1 [hereinafter Intervenors' Motion].

[6] See id. at 2–3.

[7] See id. at 2.

As to Dr. Lyman, we are told he needs the month of February to complete a book about the Fukushima accident that, having taken longer than anticipated, now has an extended completion deadline of March 1, 2013.[8] After that, Dr. Lyman has other nuclear-related responsibilities -- which he undertook while believing his work on the book and in this proceeding would have been completed earlier -- including (1) a March deadline for a report he is authoring on small modular reactors and (2) two speaking obligations in March, one at the NRC Regulatory Information Conference in Rockville and the other in London.[9]

Thus, according to Intervenors, Dr. Lyman will need two weeks in April, after he completes the professional obligations listed above, to work with Intervenors' counsel to complete Intervenors' responsive submission.[10] Intervenors' counsel, however, has long-established out-of-state family obligations during the week of April 8, 2013, and therefore cannot work with Dr. Lyman during that week.[11]

Therefore, the Intervenors are asking for an extended deadline of April 19, 2013, to accommodate the scheduling conflicts of their expert and attorney described above.[12] As we understand it, they are not asserting that their work in this case will take a large portion of the intervening time, but rather that the necessary work effort cannot be undertaken until some time elapses.

The Staff does not oppose the requested extension.[13] The Applicant does.[14]

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[8] See id. at 2–3.

[9] See id. at 3.

[10] See id.

[11] See id.

[12] See id.

[13] See id. at 4.

[14] Shaw AREVA MOX Services, LLC Answer Opposing Intervenors' Motion for Extension of Time to Respond to Post-Hearing Information (Feb. 13, 2013) [hereinafter Applicant's Answer].

Applicant preliminarily argues that Intervenors have already been afforded one extension of time for their responsive submission.[15] Applicant's premise for this assertion is that the Intervenors' deadline was moved ahead four weeks (from January 31, 2013, to February 28, 2013) as a result of the Board granting the Staff's unopposed motion for a month's extension of time (from December 17, 2012, to January 16, 2013) after the Applicant had amended its supplemental filing shortly before the Staff's sequential filing was due.[16]

Applicant next argues that this requested extension was not filed within the regulatory mandate of ten days of the developments that triggered it.[17] Applicant's premise is that Intervenors must have been aware of the conflicting obligations of their attorney and expert some time ago, but inexplicably waited until February 11, 2013, to seek an extension of time for the deadline at issue.[18] Applicant claims that this motion should thus be denied as untimely filed.[19]

The Applicant's main argument is, in essence, that Intervenors have failed to provide good cause for this requested extension because they failed to provide a reason why Dr. Lyman could not have worked on his responsive submission in conjunction with his other professional responsibilities.[20] In sum, the Applicant maintains that the requested extension of time "is extraordinary, unwarranted, and unfair to MOX Services—which is entitled to a reasonably prompt disposition of the pending Contentions."[21]

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[15] See id. at 1–2.

[16] See id.

[17] See id. at 2.

[18] See id. at 2–3.

[19] See id. at 3.

[20] See id. at 3–4.

[21] Id. at 4–5.

As we explain in the margin, we need spend little time on the Applicant's first two arguments.[22] As to its third argument, regarding a lack of good cause, were we to look in isolation at the lengthy extension request presented here, we could see some support for the criticisms leveled by the Applicant and our dissenting colleague. But as indicated in our opening page, there is much more to consider here, in terms of context and background that fairly comes into play.

Thus, while we are mindful of the Commission policy mandate that intervenors generally need to structure their work schedules and other professional responsibilities around their

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[22] The Applicant asserts that our earlier moving back the Intervenors' sequential deadline -- which we did simply and automatically because one of the parties standing before it in the filing line had sought and obtained an unopposed extension -- amounted to a previous extension for the Intervenors. See id. at 1–2. That assertion does withstand scrutiny, for the Intervenors' filing time was set on every occasion (i.e., in our opening suggested schedule, in the parties' negotiated alteration, and after the Staff extension) to run from the time of the Staff filing. See Order Requesting Further Information at 15–16; Order Adopting Jointly Proposed Schedule at 1–2; Order Granting Extension of Time. To be sure, looking back after the Staff extension, the Intervenors would be seen to have had more time available, measured from the Applicant's filing, than they had earlier. See Order Adopting Jointly Proposed Schedule at 1–2; Order Granting Extension of Time. But the sequential filing schedule we established was intended to allow the Intervenors to await the Staff filing to prepare their own materials. One reason for taking that approach is to allow intervenors, who frequently have fewer resources to draw upon than do the other parties, to husband those resources and not dissipate them on a work effort that might have to be redone, or even discarded, because of another intervening sequential filing. Thus, the Applicant cannot convert the pending first extension request into a second (disfavored) extension.

The Applicant's assertion that the Intervenors should have filed their motion earlier to comply with the rule that motions must be filed within ten days of the triggering event is based on a crabbed reading of the facts recited in the Intervenors' motion. The Intervenors say plainly that the developments which triggered their February 11 request all came together "since the end of January." Intervenors' Motion at 2. In terms of the 10-day period, February 10 was a Sunday. No more need be said on this procedural point.

deadlines in licensing proceedings,[23] the Intervenors here have presented plausible reasons why their witness and their counsel cannot attend to this matter earlier. Perhaps with the benefit of hindsight, they could have proceeded differently, and might even have taken the precaution of anticipating the development of conflicts of some nature and finding a way to guard against them. But whatever challenges may be made on this score to the sufficiency of the reasons for the delay in terms of agency policies, we deem that in this unique instance the Intervenors' requested extension is reasonable and should be granted for good cause shown.

We explain why in the next two sections, which take a look at the past and at the future of the proceeding. We conclude with a section setting the course the proceeding will take from here forward, so as to avoid any future scheduling delays to the greatest extent possible.

A Look Back: The Board conducted a Subpart L evidentiary hearing[24] in March 2012 on Contentions 9, 10, and 11, which challenged the adequacy of the Applicant's revised Fundamental Nuclear Material Control Plan.[25] At that hearing, the Applicant of course had the burden of proof.[26]

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[23] See Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 to the effect that "[f]airness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations. . . ." See also Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998) ("Although the Commission expects its licensing boards to set and adhere to reasonable schedules for the various steps in the hearing process, the Commission recognizes that the boards will be unable to achieve the objectives of this policy statement unless the parties satisfy their obligations. The parties to a proceeding, therefore, are expected to adhere to the time frames specified in the Rules of Practice in 10 CFR Part 2 for filing and the scheduling orders in the proceeding. As set forth in the 1981 policy statement, the licensing boards are expected to take appropriate actions to enforce compliance with these schedules. The Commission, of course, recognizes that the boards may grant extensions of time under some circumstances, but this should be done only when warranted by unavoidable and extreme circumstances.").

[24] The hearing was governed by the procedures set forth in 10 C.F.R. Part 2, Subpart L, 10 C.F.R. § 2.1207(b).

[25] See LBP-11-09, 73 NRC __,__ (slip op. at 2)(Apr. 1, 2011); Tr. at 1072–1597.

Based on the evidence presented to us before and during that hearing, the Board was not necessarily sufficiently convinced that the Applicant's plans met the regulatory requirements.[27] As we saw it, the Applicant "ha[d] yet to present . . . to the Board" certain verification procedures it had long been promising to develop.[28]

Had we rendered a decision on these contentions immediately following the hearing, and had that decision gone against the Applicant and been upheld by the Commission, the license request would have been rejected. In that event, the Applicant would have been required to go through the lengthy delay of re-applying for its license had it wished to preserve the project.[29]

Instead, we determined that we needed additional information before rendering a decision. To that end, we issued an interim Memorandum and Order requesting additional information from Applicant and providing the Staff and Intervenors an opportunity to respond to the new information.[30]

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[26] See 10 C.F.R. § 2.325; Duke Power Co. (Catawba Nuclear Station, Units 1&2), CLI-83-19, 17 NRC 1041,1048 (1983) (citing Consumers Power Co. (Midland Plant, Units 1 & 2), ALAB-283, 2 NRC 11, 17 (1975).

[27] Order Requesting Further Information at 11, 14.

[28] Id. at 11; see also id. at 14.

[29] We recognize that, in filing the additional information we called for, the Applicant makes the alternative assertion that the questions underlying that request are not ones that the regulations require be answered at this stage and thus that the entire pending stage of this proceeding is unnecessary. See Shaw AREVA MOX Services, LLC Supplemental Statement of Position on Contentions 9 and 11 and Response to Surreply (Oct. 15, 2012) at 7–13, 17–24. That argument has been in effect carried with the case and we will address it at the appropriate time. For present purposes, however, the time needed to obtain that information can reasonably be placed at the Applicant's doorstep, for over ten years ago the Applicant was called upon to address the underlying issues and the promise has always been that it would be done at a later stage. See e.g. Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility), LBP-04-9, 59 NRC 286, 287, 291–95 (2004); see also LBP-11-09, 73 NRC __ (slip op. at 4) (Apr. 1, 2011).

[30] See Order Requesting Further Information at 12, 15–16.

In that Memorandum and Order, the Board proposed the following schedule for the additional submissions it requested: (1) Applicant to file the requested additional information within 1 month, i.e., by July 29, 2012; (2) Staff to file its response to Applicant's submittals within 30 days after receipt; (3) Intervenors to file their responses to the Staff's and Applicant's submissions within 3 weeks after receiving Staff's submittal; and (4) Applicant to file its reply to the Staff's and Intervenors' material within 2 weeks of Intervenors' submittal.[31] We invited the parties, however, to notify us if they believed that a different submittal schedule was more appropriate given the effort needed.[32]

The parties took us up on our invitation, and agreed among themselves to propose the following expanded schedule to replace our initial more stringent one: (1) Applicant to file the requested additional information within 3 ½ months, i.e., by October 15, 2012; (2) Staff to file its response to Applicant's submittal in slightly more than 2 months after receipt, i.e., by December 19, 2012; (3) Intervenors to file their responses to the Applicant's and Staff's submittals within 6 weeks of the latter, i.e., by January 31, 2013; and (4) Applicant to file its reply to the Staff's and Intervenors' responses within 2 weeks, i.e., by February 14, 2013.[33]

As may be seen, this jointly suggested submittal schedule in essence extended the Applicant's initial submission deadline by 2½ months from what we had first thought reasonable.[34] The Board nonetheless adopted the schedule; thereafter, the Applicant did meet its submission deadline of October 15, 2012.

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[31] Id. at 15–16.

[32] See id. at 16.

[33] Order Adopting Jointly Proposed Schedule at 1–2.

[34] See id. at 2; Order Requesting Further Information at 15–16.

On November 27, 2012, however, the Applicant moved to supplement that October 15, 2012, filing.[35] The Board granted its motion,[36] and in turn the Applicant submitted its supplementary filing on December 5, 2012, more than six weeks after its October 15, 2012, filing.[37]

Applicant's supplementary filing was followed by the Staff's filing, 12 days thereafter, an unopposed motion to extend its submission deadline by four weeks, to January 16, 2013,[38] a motion which we granted.[39] At that time, we took the same pro forma action we customarily take in virtually all similar circumstances -- we automatically adjusted the Intervenors' sequential deadline, as the Staff had suggested we do in its unopposed motion, by moving it a correlative span of time later.[40]

To that point, then, Applicant's filing needs had contributed in some fashion to more than 3½ months of delay in the supplemental submittal schedule originally suggested by the Board. Indeed, looking at the matter another way, the responsibility for the much longer decisional delay occasioned by the entirety of this supplemental stage could be placed upon the Applicant, for the additional information we requested stemmed from our finding that the Applicant's presentation at the March 2012 evidentiary hearing needed to be supplemented.

No one has suggested that the delay caused by the Applicant is fundamentally

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[35] Shaw AREVA MOX Services, LLC Unopposed Motion to Supplement Statement of Position and Testimony (Nov. 27, 2012) at 1–2.

[36] Licensing Board Order (Granting Applicant's Unopposed Motion to Supplement Statement of Position and Testimony) (Nov. 29, 2012).

[37] See Shaw AREVA MOX Services, LLC Clarification of Supplemental Statement of Position on Contentions 9 and 11 and Response to Surreply (Dec. 5, 2012).

[38] NRC Staff's Unopposed Motion for Extension of Time (Dec. 17, 2012) at 1 [hereinafter Staff's Motion for Extension of Time].

[39] Licensing Board Order (Granting NRC Staff's Unopposed Motion for Extension of Time) (Dec. 18, 2012) [hereinafter Order Granting Staff's Motion for Extension of Time].

[40] Id.

objectionable. And it would seem apparent that the history and context of delay attributable to one party's need for additional time to get its case put together would need to be considered in evaluating another party's extension request based on a similar need. Otherwise, rigid application of Commission policy statements designed and intended to apply in another context could result in fundamentally different -- and thus unfair -- treatment of similarly situated parties.

Here, history and context shine an unflattering light on the Applicant's claim that this, the Intervenors' first real extension request (not counting the automatic deferral it received earlier because of another party's extension), is "extraordinary, unwarranted, and unfair."[41] Extraordinary it may be, because of its length and the peculiar circumstances underlying it; but in the context of what has gone before, unwarranted and unfair it is not.

It is not just the treatment afforded the Applicant that is instructive in that regard. For its part, the Staff -- which has not opposed the Intervenors' pending extension request[42] -- also was freely granted a delay.[43] Specifically, the Staff filed a request for a month's extension just before its submission was due, and in doing so indicated, in the broadest terms, only that "the Staff has determined that additional time beyond the [existing] deadline is necessary . . . for the Staff to fully and articulately document its review of the Applicant's submittals. . . ."[44] Neither the Applicant nor the Intervenor objected to that extension,[45] and we granted it in perfunctory fashion without any further inquiry.[46]

Two factors motivated us in doing so. First, it is presumed that the public interest is

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[41] Applicant's Answer at 4.

[42] Intervenors' Motion at 4.

[43] See Order Granting Staff's Motion for Extension of Time.

[44] Staff's Motion for Extension of Time at 1.

[45] Id.

[46] See Order Granting Staff's Motion for Extension of Time.

served by the Staff doing a thorough job analyzing an applicant's proposal. Second, this entire supplemental proceeding is in uncharted waters in terms of the (1) nature of the issues being considered and (2) the content of the supplemental showings being provided. That is why, when we suggested a schedule for the filings, the parties responded with a far longer schedule, to which we agreed.

In short, as has been seen so far, no one could fairly predict how much time would be needed for this phase. And as pointed out in the next section, no licensing exigency of any nature has been brought to our attention, much less one that would call for rigid adherence to schedules that thus far have served at best as approximations of the time that might be needed.

All this being so, this is not the time to change the standards we applied to the delays sought herein by both other parties, so as to restrict inequitably the time for Intervenors to make their contribution. After all, the fact that we employ a hearing process carries with it the presumption that the public interest is also served by having available the best criticism a qualified, focused intervenor can provide.[47]

To be sure, the reasons cited in the pending extension request are unusual in nature. That does not make them unwarranted. And in the circumstances of this case, granting the request would not be unfair to the other parties. But denying it would be unfair to the Intervenors, who have thus demonstrated "good cause" as defined by the overall context of this proceeding.

A Look Ahead: It seems common knowledge that the construction of the MOX Facility will not be complete until at least 2016. Thus, granting the Intervenors' requested extension will not prevent the Applicant from obtaining a Board decision on this issue, and obtaining an operating license if that eventually proves warranted, well before the planned opening of the MOX Facility.

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[47] See LBP-08-11, 67 NRC 460, 508 (2008) (Farrar, J., concurring).

In other words, we have not had brought to our attention any critical path that might be disrupted by the delay associated with this extension request. The absence of prejudice to the Applicant is a factor we must consider when what is at stake is the comparability -- and the fairness -- of the treatment we afford the respective parties.

Our action on the extension request is also influenced by our expectation that the submittal we eventually receive from the Intervenors will be worthwhile, if not essential, to our evaluation of the merits of the pending contentions. In the first place, Dr. Lyman is generally regarded as a proven and acknowledged expert in a number of nuclear-related fields. But here we rely not so much on that general reputation as on our specific involvement with him in the initial hearing, where he demonstrated not only thoroughness but also thoughtfulness in his written evidence and his oral responses.

These characteristics were and are valuable to the development and understanding of the issues before us. Without intending in any way to express a judgment on the ultimate merits of what has come before us, we can say with some assurance that it is in the public interest that we receive from Dr. Lyman a full and careful response to Applicant's additional information and the Staff's response to that information, a response that we would most likely not receive if we were to deny the pending motion.[48]

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[48] It seems appropriate at this juncture, given the importance that attaches to the underlying material accounting issues, to recall what we have said elsewhere (Private Fuel Storage, LBP-05-29, 62 NRC 635, 698 (2005)) concerning the obligation to hear both sides of a case fully. There, citing United States v. Steel Tank Barge H1651, 272 F.Supp. 658, 659 n. 1 and accompanying text (E.D. La. 1967), we took note of what is often overlooked, i.e., that although hearing both sides is now most often viewed as a Constitutionally-based rule of *fairness* (from the parties' point of view), the ancient Greeks and Romans also viewed it as a common sense rule of *wisdom* (from the decider's point of view).

In other words, when faced with a difficult matter, why would a decision-maker risk making an uninformed and incorrect decision by failing to hear all sides? On that score, the issues here are of great importance, and we have no desire to decide them without the input of an expert who we have reason to expect will have something valuable to offer. [continued on the next page]

Thus, in the interests of fairness revealed by our looking back and of thoroughness revealed by our looking ahead, and in the absence of any prejudice to the Applicant, we conclude that Intervenors' requested extension is reasonable and therefore GRANT their motion for good cause shown. As a result, the Intervenors' responsive submittal is due on or before Friday, April 19, 2013, and the Applicant's reply is due on or before Friday, May 3, 2013.

The Path Forward: We proceed on the assumption that no further requests for extensions will be sought in this phase. To assist in getting the matter before for us for decision without encountering avoidable scheduling problems, we address now, rather than later, the timing of an additional Subpart L evidentiary hearing.

We have made no decision as to whether such a hearing will be needed. But against the possibility we will need one, we wish to give the parties' counsel and witnesses the maximum time to plan and prepare therefor.

To that end, we hereby advise the parties to be prepared for an additional evidentiary hearing to begin on Tuesday, May 21, 2013. Although our present expectation is that any such hearing could be concluded within one day, the parties should also prepare for the eventuality that the hearing could continue into Wednesday, May 22, 2013.

Thus, the parties are INSTRUCTED to make the appropriate arrangements necessary to have their attorneys and witnesses available for an evidentiary hearing at NRC Headquarters in Rockville, Maryland, on May 21-22, 2013. For our part, we will (1) decide no later than noon on

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[continued from previous page] The agency's rules themselves require only that there be good cause demonstrated to obtain a time extension. The gloss on that requirement added by Commission policy statements upon which our dissenting colleague focuses is indeed instructive. But proceedings must be conducted fairly, and those policy precepts should be applied judiciously to the circumstances of each case, so as in a non-exigent case not to elevate expedition in moving forward above fairness to the parties and wisdom in the ultimate decision. To do otherwise would be to risk infecting the proceeding with a procedural defect that could be its eventual undoing -- and to do so for no valid purpose, given that the near-term delay sought to be avoided is, for all that appears, not prejudicial or even consequential.

Friday, May 10, 2013, i.e., within a week of the last of the scheduled sequential submissions, whether we have questions that would require convening the supplemental additional hearing and (2) advise the parties of that determination immediately.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

_____
Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

/RA/

_____
Nicholas G. Trikouros
ADMINISTRATIVE JUDGE

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_____
Paul B. Abramson
ADMINISTRATIVE JUDGE

*The dissenting opinion of Judge Abramson follows.

Rockville, Maryland
February 21, 2013

Dissenting Opinion of Judge Abramson

Notwithstanding the history of this proceeding, I disagree with the opinion of my colleagues; for all of the reasons cited by Applicant, I find no extension was appropriate at the time the request was made.[1] While I fully support the proposition that fairness must be equally extended to all parties, and it is clear that my colleagues value and respect the opinions heretofore rendered by Dr. Lyman in this proceeding, I see neither any issue of fairness, nor any risk that the Board would be somehow deprived of Dr. Lyman's valued professional opinion, which would have been presented by enforcing the established schedule. As to the black letter law on the matter, I see absolutely nothing to support the singular proposition underlying Intervenors' request for an extension -- the mere fact that Dr. Lyman needed to prioritize allocation of his time over the more than three months that he will have had the relevant technical materials before him so that he could complete his review and documentation in this proceeding -- that rises to the unavoidable and extreme circumstances the Commission has unequivocally established as the conditions under which we may grant the requested extension. I see nothing which would advise this Board that Dr. Lyman could not have juggled his commitments, even had he waited until his conflict became evident to him, to enable meeting his current commitments to this proceeding.

Moreover, two facts make the extension and concomitant delay in this proceeding particularly egregious: (a) the apparent fact that Dr. Lyman has not sufficiently addressed these matters over the many months during which he has had the relevant materials before him so that his "final touches" could have been put on his work thereon in time to meet his original commitment to his client;[2] and (b) the fact that he now proposes to make his commitments to his

[1] I note that previous extensions referred to by the Majority were all agreed and/or developed by the Parties -- there was no objection to any thereof -- plainly distinguishing the circumstances from those facing us here.

client (Intervenors), the other parties and this Board in this proceeding secondary to his efforts to address his lateness in satisfying his personal commercial book-writing obligations for his publisher. While plainly these are scheduling problems of Intervenors' expert, and not of Intervenors themselves, and therefore not properly subject of strict application of the Commissions' Statements of Policy on this matter, I would have expected Intervenors to be more diligent in monitoring the work of their expert; the lateness of the matter being brought to our attention is likely in large part responsible for any need for extension. Had these matters been brought to our attention in time to avoid any need to slip Dr. Lyman's work into the month of March, and had the Board acted promptly, I believe any extension could, and should, have been avoided.

Finally, I applaud, and concur with, my colleagues' efforts to speed this hearing along by establishing a schedule for any necessary hearing on this present matter.

Copies of this Memorandum and 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).

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[2] At the time we received the subject request, Dr. Lyman had two and one half weeks left in this month to complete his review and to work with his client to complete their documentary submissions. And while I find it unlikely that he had theretofore devoted absolutely no time to review of the Applicant and Staff pleadings, even if that were the case, two weeks of full time effort should have been, in my view as a technical Judge thoroughly familiar with the pleadings, more than sufficient to enable Dr. Lyman to formulate, develop and work with his client to adequately document, his professional opinion, and assist with timely preparation of their pleadings. Thus, even at that late date, no extension was necessary -- only a realignment of Dr. Lyman's personal priorities.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (GRANTING INTERVENORS' MOTION FOR THE EXTENSION OF TIME TO RESPOND TO POST-HEARING INFORMATION)** have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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_____
Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 21st day of February 2013