

May 17, 2016

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE SECRETARY

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

**INTERVENORS' UNOPPOSED MOTION
TO AMEND PROTECTIVE ORDER**

I. INTRODUCTION

Pursuant to 10 C.F.R. §§ 2.323, Intervenor Blue Ridge Environmental Defense League (“BREDL”) and Nuclear Watch South hereby request the Secretary of the U.S. Nuclear Regulatory Commission (“NRC”) to amend the Protective Order and related Nondisclosure Declaration relating to an application by CB&I Areva MOX Services (“MOX Services”) (formerly Shaw Areva MOX Services and Duke Cogema Stone & Webster) to the U.S. Nuclear Regulatory Commission (“NRC”) for a license to possess and use strategic special nuclear material (“SSNM”) at the proposed Mixed Oxide plutonium Fuel Fabrication Facility (“MOX Facility”). *See* Order (Adopting Protective Order) (Dec. 31, 2008), as amended, July 26, 2011. The requested amendment would allow Intervenor to destroy documents rather than mail them to the Atomic Safety and Licensing Board (“ASLB”) at the conclusion of the licensing proceeding. Neither MOX Services nor the NRC Staff opposes this motion.¹

¹ A third intervenor in the proceeding, Nuclear Information and Resource Service, did not receive Controlled Information under the Protective Order and therefore does not participate in this Motion.

II. BACKGROUND

As described in *Shaw Areva MOX Services, LLC* (Mixed Oxide Fuel Fabrication Facility), LBP-14-01, 79 NRC 39, 49 (2014) (“LBP-14-01”), (*aff’d*, CLI-15-09, 81 NRC 512 (2015)), the licensing proceeding for the proposed MOX Facility began in 2007 and ended in 2015 with a hearing on Intervenor’s Contentions 9, 10, and 11 (relating to material control and accounting (“MC&A”)). Early in the proceeding, on December 31, 2008, the ASLB issued a Protective Order governing access by Intervenor to certain “Controlled Information” *i.e.*, proprietary information and sensitive unclassified non-safeguards information (“SUNSI”) relevant to Intervenor’s admitted safety contention (Contention 4). On July 26, 2011, after admitting additional contentions (Contentions 9, 10, and 11), the ASLB amended the Protective Order to permit access by Intervenor to Controlled Information designated by the U.S. Department of Energy (“DOE”) as unclassified controlled nuclear information (“UCNI”).

Among other things, the Protective Order, as amended, required the Intervenor to:

keep a record of all documents containing or revealing Controlled Information in their possession, custody, or control and . . . account for and ultimately deliver that information for disposal to the Board, in accordance with the nondisclosure declaration attached hereto.

Id., par. I. The attached nondisclosure declaration, in turn, included the following commitments by each individual who had access to Controlled Information:

I shall keep a record of all documents containing or revealing Controlled Information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding (including any further Commission or appellate proceedings in this specific case), or at the conclusion of my participation in this proceeding (whichever comes first), I shall both (a) account to the Board for all the documents or other materials containing or revealing Controlled Information in my possession, custody, or control and (b) submit such documents (including any and all portions of any notes taken in connection with review of the documents)

by the U.S. Postal Service registered, certified, or express mail to the Board for destruction.

Id., par. 13. In sending Controlled Information to the ASLB, the Intervenors must ensure that the information is:

placed in two sealed envelopes, including (i) an outer mailing envelope bearing the name and address of the addressee and the statement ‘PRIVATE, TO BE OPENED BY ADDRESSEE ONLY’ . . . and (ii) an inner sealed envelope with the statement ‘CONTAINS CONTROLLED INFORMATION.’

Protective order, par. K. Finally, the nondisclosure declaration required Intervenors to “permanently destroy Controlled Information that may be stored on [their] computer’s storage media, whether permanent hard drive or removable, by using Symantec’s ‘Wipe Info,’ or similar appropriate software, provided by Applicant at the Applicant’s expense.

The nondisclosure declaration was completed by four individuals: representatives of two of the Intervenors (BREDL and Nuclear Watch South); their undersigned counsel; and their expert witness, Dr. Edwin S. Lyman. Throughout the licensing proceeding for the proposed MOX Facility, these individuals have complied with the requirements of the Protective Order and the Nondisclosure Declaration for all of the Controlled Information they received during the proceeding.

During the licensing proceeding for the proposed MOX Facility, Intervenors’ counsel -- who possesses the majority of the documents provided to the Intervenors -- accumulated enough documents related to Contentions 4, 9, 10, and 11 to fill five file cabinet drawers. Now that the proceeding has concluded, the Protective Order requires Intervenors to mail this large volume of documents to the ASLB in sealed double envelopes that are specially marked, and to use a special delivery service. This motion seeks relief from those requirements.

III. ARGUMENT

In order to avoid the time and expense of packaging the large volume of documents possessed by Intervenor to the specifications of the Protective Order and mailing them to the ASLB by a special delivery service, the Intervenor seeks an amendment to the Protective Order that would allow them to shred the documents; and to mail any CDs containing Controlled Information to MOX Services.

Intervenor will comply with all other requirements of the Protective Order, including making an accounting of the documents to the Secretary of the Commission. Intervenor will also comply with the DOE's specifications for shredding UCNI documents. Finally, Intervenor will confirm by declaration that they have destroyed the documents.

Therefore Intervenor proposes to modify paragraph I of the Protective Order as follows:

Once granted access to Controlled Information, persons shall keep a record of all documents containing or revealing Controlled Information in their possession, custody, or control and shall account for and ultimately destroy ~~deliver~~ that information ~~for disposal to the Board~~, in accordance with the nondisclosure declaration attached hereto. Any CDs containing Controlled Information shall be delivered to MOX Services c/o Dealis Gwyn, under the terms of this Protective Order.

Intervenor also proposes to modify paragraph 13 of the nondisclosure declaration as follows:

I shall keep a record of all documents containing or revealing Controlled Information in my possession, including any copies of those documents or portions thereof made by me or on my behalf. At the conclusion of this proceeding (including any further Commission or appellate proceedings in this specific case), or at the conclusion of my participation in this proceeding (whichever comes first), I shall both (a) account to the ~~Board~~ the Secretary of the Commission for all the documents or other materials containing or revealing Controlled Information in my possession, custody, or control and (b) destroy ~~submit~~ such documents (including any and all portions of any notes taken in connection with review of the documents) by ~~the U.S. Postal Service~~

registered, certified, or express mail to the Board for destruction. shredding them in conformance with the requirements of 10 C.F.R. § 1017.26, i.e., by using a cross-cut shredder that produces particles no larger than ¼-inch wide and 2 inches long. If I do not possess such a shredder, I shall mail the documents to counsel for Intervenors in a manner that conforms with the requirements of the Protective Order, and shall request her to destroy them. I shall mail any CDs received from MOX Services to the following address:

CB&I AREVA MOX Services
Attn: Dealis Gwyn (706-5F)
P.O. Box 7097
Aiken, SC 29804-7097

Finally, I shall prepare a declaration, to be submitted to the Secretary of the Commission, confirming that the Controlled Information in my possession was destroyed, sent to counsel for the Intervenors, or sent to MOX Services at the above address.

Intervenors respectfully submit that the measures proposed above will conserve their resources and the resources of the NRC (who would otherwise be required to accept and destroy the documents), without compromising the security of the Controlled Information. Intervenors intend to implement the amended Protective Order within fifteen days after approval of this motion by the Secretary.

IV. CONCLUSION

For the foregoing reasons, the Motion should be granted.

Respectfully submitted,

[Electronically signed by]

Diane Curran

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May 17, 2016

CERTIFICATE OF SERVICE

I certify that on May 17, 2015 copies of Intervenor's Unopposed Motion to Amend Protective Order were served on the following parties by e-mail and first-class mail:

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[Electronically signed by]
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