

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

Stephen G. Burns, Chairman
Kristine L. Svinicki
Jeff Baran

In the Matter of

CB&I AREVA MOX SERVICES, LLC

(Mixed Oxide Fuel Fabrication Facility
Possession and Use License)

Docket No. 70-3098-MLA

CLI-16-14

MEMORANDUM AND ORDER

Intervenors Blue Ridge Environmental Defense League (BREDL) and Nuclear Watch South request that we amend the Protective Order governing “Controlled Information” in the now-closed proceeding related to the mixed oxide fuel fabrication facility (the MOX Facility).¹ We grant the motion as discussed below.

In 2005, Duke, Cogema, Stone & Webster (later renamed Shaw AREVA MOX Services, LLC, which subsequently became CB&I AREVA MOX Services, LLC (MOX Services))² received

¹ *Intervenors’ Unopposed Motion to Amend Protective Order* (May 17, 2016), at 1 (Motion). A third intervenor, Nuclear Information and Resource Service, did not receive Controlled Information under the Protective Order and therefore did not participate in this Motion. *Id.* at 1 n.1.

² Letter from Jack Strosnider, NRC, to David Stinson, Shaw AREVA MOX Services (Nov. 30, 2006), at 1 (ADAMS accession no. ML063200264); In the Matter of CB&I AREVA MOX Services, LLC; Order, 79 Fed. Reg. 69,886, 69,887 (Nov. 24, 2014).

a construction authorization for the MOX Facility located at the Department of Energy's (DOE) Savannah River Site.³ The next year, Shaw AREVA MOX Services filed an application to possess and use strategic special nuclear material, byproduct material, and source material at the MOX Facility. An adjudicatory proceeding related to the application began in 2007 and ended in 2015.⁴ The Atomic Safety and Licensing Board held hearings on three admitted contentions related to material control and accounting (Contentions 9, 10, and 11).⁵ The Board ruled on the merits of the three contentions and ultimately found in favor of Shaw AREVA MOX Services.⁶ The Intervenors appealed; we denied their petition for review and terminated the proceeding last year in CLI-15-9.⁷

Early in the proceeding, the Board issued a Protective Order governing the Intervenors' access to certain "Controlled Information," i.e., proprietary information and sensitive unclassified non-safeguards information (SUNSI).⁸ After admitting Contentions 9, 10, and 11, the Board amended the Protective Order to allow the Intervenors access to information designated by DOE as unclassified controlled nuclear information (UCNI).⁹ As relevant here, the Protective

³ Mixed Oxide Fuel Fabrication Facility Construction Authorization; Construction Authorization No. CAMOX-001 (Mar. 30, 2005) (ML050660392).

⁴ See CLI-15-9, 81 NRC 512, 513-14 (2015); LBP-14-1, 79 NRC 39, 47-48 (2014).

⁵ CLI-15-9, 81 NRC at 514-15.

⁶ *Id.* at 515 (citing LBP-14-1, 79 NRC at 46).

⁷ *Id.* at 519.

⁸ Licensing Board Order (Adopting Protective Order) (Dec. 31, 2008) (unpublished) (attaching Protective Order and Controlled Information Nondisclosure Declaration (Nondisclosure Declaration)).

⁹ Licensing Board Memorandum and Order (Summarizing Prehearing Conference Call, Revising Protective Order, and Scheduling Evidentiary Proceeding) (July 26, 2011), at 6-7 (unpublished) (Order Revising Protective Order). The Motion cites to the document destruction requirements

Order required the Intervenors to dispose of any documents containing Controlled Information by delivering them to the Board in accordance with the Nondisclosure Declaration attached to the Protective Order.¹⁰ The Nondisclosure Declaration, in turn, provided that an individual with access to Controlled Information would, among other things, provide the Board with an accounting of all documents with Controlled Information and submit such documents to the Board via U.S. Postal Service registered, certified, or express mail for destruction either at the conclusion of the proceeding or at the conclusion of the individual's participation in the proceeding.¹¹

The Nondisclosure Declaration was signed by four individuals: representatives of BREDL and Nuclear Watch South, the Intervenors' counsel, and the Intervenors' expert witness; the Intervenors' counsel possesses the majority of the documents provided to the Intervenors.¹²

BREDL and Nuclear Watch South now seek to amend the Protective Order and Nondisclosure Declaration to dispose of documents in a way not specified by the Protective Order and Nondisclosure Declaration. In particular, they seek to shred paper documents in accordance with the DOE regulation governing destruction of UCNI and mail any compact discs

in paragraph I of the Protective Order and paragraph 13 of the Nondisclosure Declaration. Motion at 4-5. Following the revision, those paragraphs were retitled paragraph J and paragraph 14, respectively. Order Revising Protective Order at 6-7 (citing *Joint Motion for Board Approval of Revised Protective Order and Nondisclosure Declaration* (June 29, 2011) (attachments)). For clarity's sake, we cite to the revised paragraph titles.

¹⁰ Protective Order ¶ J.

¹¹ Nondisclosure Declaration ¶ 14.

¹² Motion at 3.

containing Controlled Information to MOX Services.¹³ The Intervenors represent that such an amendment would save the time and expense associated with packaging a large volume of documents (approximately five file cabinet drawers) in sealed double envelopes that are specially marked and mailing them by special delivery service.¹⁴ BREDL and Nuclear Watch South represent that they will (1) comply with all requirements of the Protective Order as modified, including making an accounting of the documents to the Secretary of the Commission; (2) shred paper documents pursuant to DOE's specifications for UCNI documents; and (3) confirm by declaration that they have destroyed or mailed the documents to the appropriate person.¹⁵ Neither MOX Services nor the NRC Staff opposes the Motion.¹⁶

We grant the Motion as follows. We find that the requested amendments to the Protective Order and the associated relief related to the Nondisclosure Declaration would not compromise the security of the Controlled Information because the information will be destroyed in a manner that complies with relevant DOE regulations and NRC guidance. However, the more efficient course is to amend only the Protective Order to avoid a need for the Intervenors

¹³ *Id.* at 4; see 10 C.F.R. § 1017.26 (allowing for shredding by using a cross-cut shredder that produces pieces no larger than one-quarter inch wide by two inches long). Of the types of Controlled Information addressed by the Protective Order, UCNI has the strictest level of controls. NRC guidance provides that sensitive unclassified information should be destroyed "by a method that will prevent reconstruction of the information in whole or in part" and includes shredding as an option. Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program," (revised Dec. 20, 1999), Handbook 12.6, at 17.

¹⁴ Motion at 3-4.

¹⁵ *Id.* at 4. Under the terms of the Nondisclosure Declaration, "documents" include information on paper or electronic media. Nondisclosure Declaration ¶ 1.(g).

¹⁶ Motion at 1; see *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 781-83 (1st Cir. 1988) (noting that courts retain the power to modify protective orders even after the underlying proceeding closes).

to re-file amended Nondisclosure Declarations. We therefore modify paragraph J of the Protective Order as follows:¹⁷

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~~ by shredding paper documents with a cross-cut shredder that produces particles no larger than one-quarter inch wide and two inches long, in conformance with the requirements of 10 C.F.R. § 1017.26. If a person does not possess such a shredder, he or she shall mail the documents to counsel for Intervenors in a manner that conforms to the requirements of the Protective Order and shall request her to destroy them. Any CDs containing Controlled Information shall be delivered to MOX Services c/o Dealis Gwyn under the terms of this Protective Order.

Consistent with this modification, CDs containing Controlled Information shall be mailed to the following address:

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

Upon completion of document destruction activities, each individual subject to the Nondisclosure Declaration shall prepare a declaration confirming that the Controlled Information in his or her possession was destroyed, mailed to counsel for the Intervenors, or mailed to MOX Services at the above address.¹⁸ These declarations shall be submitted to the Secretary of the Commission within thirty days from the date of this Order.

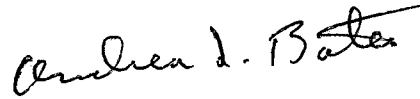
This decision supersedes the document disposal provisions of paragraph J of the Protective Order and paragraph 14 of the Nondisclosure Declaration. Individuals subject to the Nondisclosure Declaration are not required to execute an amended Nondisclosure Declaration.

¹⁷ Deletions are indicated with a line through the text, and insertions are underlined.

¹⁸ See Protective Order ¶ J; Nondisclosure Declaration ¶ 14.

IT IS SO ORDERED.¹⁹

For the Commission



Andrew L. Bates
Acting Secretary of the Commission

Dated at Rockville, Maryland,
this 9th day of September 2016.

¹⁹ Chairman Burns has in the past disqualified himself from participating in this proceeding because of his prior service as Deputy General Counsel of the Nuclear Regulatory Commission. He abstains from this matter and is participating solely for the purpose of establishing a quorum for Commission action. See 42 U.S.C. § 5841(a).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **COMMISSION MEMORANDUM AND ORDER CLI-16-14** have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket No. 70-3098-MLA

COMMISSION MEMORANDUM AND ORDER CLI-16-14

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[Original signed by Brian Newell]

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Dated at Rockville, Maryland,
this 9th day of September, 2016