

RAS 13958

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

DOCKETED 08/03/07

SERVED 08/03/07

Michael C. Farrar, Chairman
Nicholas G. Trikouros
Lawrence G. McDade

In the Matter of

SHAW AREVA MOX SERVICES

(Mixed Oxide Fuel Fabrication Facility)

Docket No. 70-3098-MLA

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

August 3, 2007

SCHEDULING ORDER
(regarding oral argument and related events)

Pursuant to our July 16 Scheduling Order, the parties have filed the responses we requested concerning arrangements for the facility site visit and the limited appearance session that will take place on the day before the Wednesday, August 22 oral argument. In this order, we first set out the schedule that the Board has determined will govern all these events. We then go on (1) to explain briefly why we chose one course over another in those instances where the parties were not in full agreement, and (2) to set out the conditions that will govern those situations about which the parties raised questions.

Finally, we call attention to the accompanying copy of the Notice that will be published in the Federal Register to provide a formal alert to the community of the opportunities available to members of the public as participants or observers. In that regard, however, we ask the Petitioners and the Applicant to use their informal channels as well to make these opportunities known in the surrounding community. We expect to issue a press release to that same end.

SCHEDULE

1. Facility Site Visit:

Meet at site (Applicant to provide directions) at 10:00 AM Tuesday, August 21.

Expected duration – approximately three hours (but see p. 3, below).

Attendees – only those entities formally involved in the proceeding.

2. Limited Appearance Session:

5:00 PM to 8:00 PM, Tuesday, August 21.

North Augusta Community Center (Banquet Room A-2), 495 Brookside Avenue.

See Federal Register Notice for advance sign-up procedures for members of public wishing to present limited appearance statements. Those not registering in advance will be heard after those who did.

Number of presenters will determine time allocation, but 3-5 minutes each is the norm.

3. Oral Argument:

9:00 AM to 11:30 AM, Wednesday, August 22.

Augusta Federal Courthouse, Courtroom # 2 (Second Floor)

(United States District Court for the Southern District of Georgia)

600 James Brown Boulevard

Members of public are welcome to attend as observers.

COMMENTS

In establishing the above schedule, the Board was cognizant of the preference of the Applicant and the NRC Staff that the limited appearance session be held in Aiken. But we were persuaded by the Petitioners' view that North Augusta would be somewhat more convenient for them and for their constituency. In any event, we again commend the parties for their continuing cooperative efforts to reach agreement on this and all the other logistical aspects of this proceeding.

In considering the overall schedule for the two days, the Board came to the view that an earlier starting time than it had first suggested for the site visit (and a slightly earlier starting time for the limited appearance session) would better accommodate all needs. With respect to the site visit, we are persuaded by the Applicant's argument that the additional area that the Petitioners wish to have included is not directly the subject of this proceeding and thus likely not within our jurisdiction to direct be included.

In terms of the scope of the site visit, however, the Board would like to observe the planned locations of the Pit Disassembly and Conversion Facility (PDCF) and the Waste Solidification Building (WSB). If these were not part of the original planned tour, the Board suggests that the Applicant consider thus expanding the site visit, particularly if doing so would not involve any additional site security concerns. If considerably more time would be needed, the tour can be started earlier.

The Petitioners expressed a desire to ask questions of any Department of Energy officials who may be present. There are two points to bear in mind on this score. First, although DOE has an important ownership interest in this proceeding, it is not a formal party thereto. Thus, at least absent some extraordinary need and justification, it does not appear appropriate for us to issue directives to it, including requiring that a representative be present.

Second, the role of questions from the Board and others at site visits has traditionally been limited to asking the guide(s) to provide rudimentary factual information about the identity,

role and functioning of what is being viewed on the property, not to inquire about the policies or plans of the property owner. Petitioners should not hesitate to follow the Board's lead in asking questions of the former nature; if any questions touch on the latter, both the Applicant and any DOE representative may quite properly elect not to answer them, if that is their choice. If any DOE representative elects to defer all legitimate questions to the Applicant's representatives, that too would be a permissible course.

As indicated in our July 16 Scheduling Order (p. 1), the Board expects after further preparation to issue next week a notice (1) indicating to the parties particular areas of controversy upon which they could most usefully devote their time at oral argument, and/or (2) posing particular questions or topics that we believe need to be addressed there. That same notice would set out the order in which the parties should proceed on particular matters and the approximate time allocated to each.¹

FEDERAL REGISTER NOTICE

The accompanying "NOTICE OF ORAL ARGUMENT AND OF OPPORTUNITY TO MAKE LIMITED APPEARANCE STATEMENTS," dated today, will be published in the Federal Register. We call the parties' attention to all its terms, including those concerning security arrangements at the Community Center and the Federal Courthouse.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Rockville, Maryland
August 3, 2007

/RA/
By Michael C. Farrar, Chairman

Copies of this Scheduling Order were sent this date by e-mail transmission to (1) counsel for the Applicant and for the NRC Staff and (2) each of the individuals who entered an appearance on behalf of the three organizations seeking to intervene.

¹ In this regard, the parties should recognize that the Board continues to subscribe to the thoughts expressed at 1-2 of the July 16 Order (text accompanying footnote 1) concerning the terrorism contention.

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NUCLEAR REGULATORY COMMISSION

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| 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 LB SCHEDULING ORDER (REGARDING ORAL ARGUMENT AND RELATED EVENTS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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LB SCHEDULING ORDER (REGARDING ORAL ARGUMENT
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 3rd day of August 2007