

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

August 31, 2007 (3:59pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

**Before Administrative Judges:
Michael C. Farrar, Chairman
Lawrence G. McDade
Dr. Nicholas G. Trikourous**

In the Matter of:

Shaw AREVA MOX Services, LLC

(Mixed Oxide Fuel Fabrication Facility
Possession and Use License)

August 31, 2007

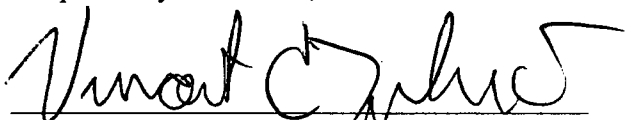
Docket No. 70-3098

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

**MOTION FOR LEAVE TO SUPPLEMENT NRC
STAFF LETTER DATED AUGUST 29, 2007**

Applicant, Shaw AREVA MOX Services, LLC, hereby moves, pursuant to 10 CFR §§2.1204 and 2.323, for leave to Supplement the NRC Staff's August 29, 2007 Letter in response to the Atomic Safety and Licensing Board's inquiries at the August 22, 2007 oral argument in the above-captioned proceeding. Applicant has consulted with counsel for the NRC Staff and with Petitioners' *pro se* representatives pursuant to 10 CFR §2.323. Counsel for the Staff has no objection to the Motion. NWS and BREDL's representatives oppose the Motion. NIRS' representative will respond as appropriate, after reviewing this Motion.

Respectfully submitted,



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COUNSEL FOR

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**SHAW AREVA MOX SERVICES, LLC
SUPPLEMENT TO NRC STAFF LETTER DATED AUGUST 29, 2007**

During the August 22, 2007 oral argument before the Atomic Safety and Licensing Board (Board) in the above-captioned proceeding, the Board directed the NRC Staff to submit a letter describing what documents the Petitioners in this proceeding will receive from the NRC Staff in the future for the purpose of facilitating the submittal of additional contentions based on new information. The Board's request was made in the context of the arguments made by the NRC Staff and Applicant that Petitioners' current contentions relating to the planned U.S. Department of Energy (DOE) Waste Solidification Building (WSB) (Contentions 3 and 4) should be dismissed. On August 29, 2007, the Staff served the requested letter on the Board and the parties.

Shaw AREVA MOX Services (MOX Services) has further considered the Board's inquiries during the oral argument. As a result, MOX Services is supplementing the Staff's letter as follows.

In addition to the processes cited in the NRC Staff's letter, Applicant will give specific written notice, while the license application is pending, of any determination by MOX Services that the WSB will not be utilized for high-alpha liquid waste from the MOX Facility. Such notice will be provided to a representative of each Petitioner organization, if Petitioners' Contentions 3 and 4 are determined by the Board to be inadmissible in their entirety, and are dismissed in the Board's pending Memorandum and Order ruling on the request for hearing in this proceeding, and the respective Petitioner organization is found to have standing.¹

Of course, no such written notification need be provided if all or any portion of Petitioners' Contention 3 or 4 is determined to be admissible, since the admission of any portion of these Contentions would trigger the mandatory disclosure process required by 10 CFR § 2.336. That process will afford Petitioners ample opportunity to discover from MOX Services, documents relevant to the admitted WSB Contentions.

This commitment to provide such notice, despite the Contentions having been determined to be inadmissible, does not create a basis for the Board to hold the record of the proceeding open.² If the record is closed, Petitioners will have the right to seek to reopen it.

Applicant continues to note that the Board does not have jurisdiction over the WSB, which is a DOE facility that is not subject to licensing by the NRC. Furthermore, MOX Services' License Application states only that the liquid radioactive waste from the MOX facility

¹ MOX Services is also filing today a motion with the Board to deny Petitioner NIRS' request for hearing. If that motion is granted, MOX Services would not provide such written notice to NIRS.

² MOX Services continues to believe the Board may not keep the record open if all Contentions are determined to be inadmissible.

will be transferred to “DOE facilities at the Savannah River Site . . . for appropriate storage and disposition.” *See* License Application § 10.1.2.2. DOE is the federal agency with the statutory authority, under the Atomic Energy Act, to manage this waste. In addition, in the event that there was any proposal to change DOE’s plans for dispositioning this waste through the WSB, DOE would evaluate the proposed change in accordance with its NEPA obligations. Finally, Applicant does not: concede any legal position it has taken in this proceeding; admit that there is any requirement to provide such notice; make any suggestion that this Supplement sets a precedent to be followed in this proceeding or in other contexts; nor waive its right to seek Commission or subsequent judicial review of any decision rendered in this proceeding.

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THE ATOMIC SAFETY AND LICENSING BOARD

**Before Administrative Judges:
Michael C. Farrar, Chairman
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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Motion for Leave to Supplement NRC Staff Letter Dated August 29, 2007" were served upon the persons listed below, by e-mail and first class mail, this 31st of August, 2007.

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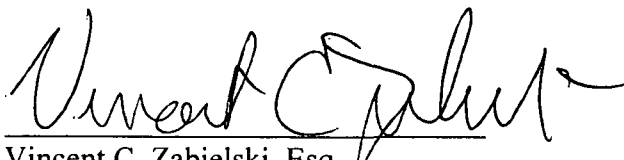
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* E-mail, original and two copies