

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

September 14, 2007 (2:35pm)

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFBefore Administrative Judges:
Michael C. Farrar, Chairman
Lawrence G. McDade
Dr. Nicholas G. Trikouros

In the Matter of:

September 14, 2007

Shaw AREVA MOX Services, LLC

Docket No. 70-3098

(Mixed Oxide Fuel Fabrication Facility
Possession and Use License)

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

**SHAW AREVA MOX SERVICES, LLC ANSWER TO
NUCLEAR WATCH SOUTH'S LETTER DATED SEPTEMBER 12, 2007**

Pursuant to 10 CFR § 2.323(c), Shaw AREVA MOX Services, LLC (MOX Services) provides its Answer to the letter¹ dated September 12, 2007 from Nuclear Watch South (NWS) and the Blue Ridge Environmental Defense League (BREDL) to the Board ("NWS Letter"). The NWS Letter appears to be a request that the Board delay its decision regarding NWS' and the Blue Ridge Environmental Defense League's (BREDL) May 14, 2007 Petition for Intervention and Request For Hearing.² MOX Services strongly opposes any such delay.

In their letter, Petitioners NWS and BREDL stated: "[i]t appears that there may be new issues arising from the potential new MOX feedstock and we need time to determine if it is a different material than was previously analyzed." NWS Letter at 2. Petitioners further stated:

¹ Letter from Ms. Glenn Carroll and Louis A. Zeller, to Judges Michael C. Farrar, Lawrence G. McDade, and Nicholas G. Trikouros, RE: Docket #70-3098-MLA / ASLBP No. 07-856-02-MLA-BD01 (Sept. 12, 2007).

² *Shaw AREVA MOX Services* (License Application for Possession and Use License), Petition for Intervention and Request for Hearing (May 14, 2007).

“[w]e understand that [the Board is] now scheduled to issue a decision on September 15, 2007, regarding standing and admissibility of the contentions we have already filed. Before issuing a decision, we hope you will take into consideration the recent issuance of [an amended Department of Energy Record of Decision (“ROD”) regarding consolidated storage of surplus non-pit plutonium materials] and the fact that we may be submitting additional contentions in early October.” NWS Letter at 2.

NRC regulations normally require a Board to issue its decision on each request for hearing/petition to intervene within forty-five days after the filing of answers and replies. *See* 10 CFR § 2.309(i). In the present proceeding, the forty-five day rule would have required the Board to issue its decision by August 13, 2007. *See Shaw AREVA MOX Services LLC* (Mixed Oxide Fuel Fabrication Facility), Order (Granting Extension and Calling for Status Reports), ASLBP No. 07-856-02-MLA-BD01 (Jun. 20, 2007) at 4. However, based on the need to coordinate schedules among the various participants, the Board and all the parties, including NWS and BREDL, agreed that no prejudice would result from the Board issuing its decision by mid-September. *Shaw AREVA MOX Services LLC* (Mixed Oxide Fuel Fabrication Facility), Scheduling Order, ASLBP No. 07-856-02-MLA-BD01 (Jul. 16, 2007). The Board therefore determined that a decision by mid-September “would be unobjectionable in [light of] all the circumstances.” *See id.* at n.4.

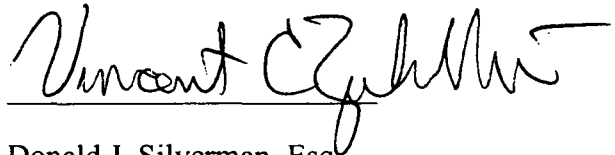
Notwithstanding the above, it now appears that, without any basis, the NWS Letter is requesting a delay in the current proceeding.³ Such a request is not warranted under the

³ A formal Motion would have required NWS and BREDL to have first attempted to resolve the matter with MOX Services and the NRC Staff prior to filing its motion. 10 CFR § 2.323(b) (“A motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant’s efforts to resolve the issue(s) have been unsuccessful”). No such attempt has been made by NWS or BREDL. Indeed, the first time MOX Services learned of the NWS letter was when it was served via electronic mail on September 12, 2007.

circumstances, and is not consistent with the schedule to which the Board and parties have agreed. Moreover, such a delay is unnecessary, because Petitioners (if found to have standing) would still have the opportunity, based on any new or significant information, to file late-filed contentions after the Board's decision. *See* 10 CFR § 2.309(c).

Therefore, MOX Services strongly opposes any delay in the Board's decision regarding NWS' and BREDL's Petition for Intervention and Request for Hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent C. Zabielski", written over a horizontal line.

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**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

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 "Shaw AREVA MOX Services, LLC Answer to Nuclear Watch South's Letter Dated September 12, 2007" were served upon the persons listed below, by e-mail and first class mail, this 14th of September, 2007.

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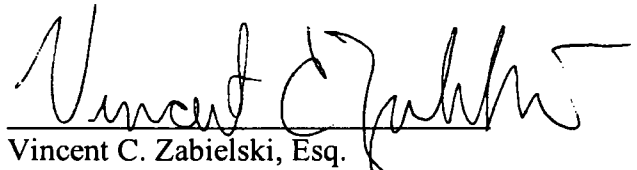
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* E-mail, original and two copies