

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

Before Administrative Judges:

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 19, 2011

ORDER
(Regarding Pre-hearing Teleconference)

Our July 26, 2011 Memorandum and Order stated that we would convene a pre-hearing conference call “within the next few weeks” to discuss the process for setting the date for the evidentiary hearing herein.¹ Confirming the information the parties were given on August 4th,² that teleconference will be held on Wednesday, August 31, 2011, beginning at 2:00 PM EDT.

To aid the scheduling discussion, the Board has prepared the attached “Working Draft Timetable.” That draft combines (1) the elements of the schedule the parties agreed upon and the Board approved with (2) other procedural steps reflected in the applicable 10 C.F.R. Part 2 regulations to portray a twenty-two step process (grouped by activity to display overlapping dates) that will lead to a Board decision.

Our purpose in distributing that draft is not to suggest that the schedule it embodies will govern. Rather, our purpose is to use it to highlight potential conflicts of activities, so that the

¹ See Licensing Board Memorandum and Order (Summarizing Prehearing Conference Call, Revising Protective Order, and Scheduling Evidentiary Proceeding) (July 26, 2011) at 9 (unpublished).

² Via e-mail from the Board’s law clerk to counsel.

upcoming pre-hearing conference call can be used to resolve any problematic matters and to create any needed scheduling modifications.

The Board expects each party to use the occasion of the teleconference to assist the Board in establishing a comprehensive and workable schedule, one that will enable the Board and all parties to be fully prepared at the outset of the hearing.³ To that end, the parties should consider the implications of matters such as these:

1. Should the pendency of any motions in limine or motions to strike result in deferring the filing of the moving party's evidence, which would otherwise then be due? Should the Board accelerate its rulings on such matters by deferring until later any explanation of the reasoning underlying those rulings?
2. Given the elimination of the summary disposition stage, do the twenty (20) days allotted for the step # 6 evidentiary filing provide adequate time for that purpose?
3. Can step # 12, regarding the submission of suggested questions, be practicably taken before the parties know, based on the Board's rulings on pending motions, what the complete body of evidence is (compare, e.g., the timing of step # 11)?
4. After steps ## 13-14, by when should the Board rule regarding cross-examination: (1) at that juncture; (2) after the Board's inquiries during the hearing (at which point the movant might be willing to withdraw the motion); or (3) at some other point?
5. What information and data security measures need to be taken in light of the nature of the evidence to be presented?

Other matters to discuss at the pre-hearing conference involve how the pre-filed written testimony should be organized and marked, and whether, and to what extent, the three contentions admitted in April 2011 should be treated separately rather than on a consolidated basis.

³ The Board will shortly be issuing an order granting the essence of the unopposed relief sought by the Applicant regarding any role for Subpart G herein.

These matters, and others the Board or the parties might raise, will need to be addressed as part of the process for setting a date for the evidentiary hearing. In many instances, the answer may be as simple as adjusting the due dates. But, in any event, the Board encourages the parties to bring forward any such matters of concern at the pre-hearing conference call in order to enable the Board to convert the attached "Working Draft Timetable" into a definitive schedule.

On or before 4:00 PM EDT on Thursday, August 25, counsel for each of the parties should contact the Board's law clerk, Joshua Kirstein (via e-mail at Josh.Kirstein@nrc.gov), to obtain the telephone number and the passcode for the pre-hearing conference call. The Board expects the call to last no longer than ninety (90) minutes.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 19, 2011

Copies of this Order were sent this date by e-mail to counsel for (1) Applicant Shaw AREVA MOX Services, (2) the NRC Staff, and (3) Intervenors Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and the Nuclear Information and Resource Service (NIRS).

WORKING DRAFT TIMETABLE
LEADING TO SHAW AREVA MOX SERVICES EVIDENTIARY HEARING
(Derived from July 26, 2011 Memorandum and Order and 10 C.F.R. Part 2)

Step #	Action	Time Allowed	Due Date	Modified Date?
1	Final Mandatory Disclosures	-----	Su. July 31	
2	Pre-hearing Conference Call	"next few weeks"	Wed. Aug. 31	
3	Applicant Initial Evidentiary Statement	60 days from # 1	Th. Sept. 29	
4	Motion in Limine / to Strike re # 3	10 days from # 3	Tu. Oct. 11	
5	Answer to # 4 Motion	10 days from # 4	Fri. Oct. 21	
6	Intervenor / Staff Evidentiary Statements	20 days from # 3	Wed. Oct. 19	
7	Motion in Limine / to Strike re # 6	10 days from # 6	Mon. Oct. 31	
8	Answer to # 7 Motion	10 days from # 7	Th. Nov. 10	
9	Applicant Reply Statement (<i>last evidence</i>)	20 days from # 6	Tu. Nov. 8	
10	Motion in Limine / to Strike re # 9	10 days from # 9	Fri. Nov. 18	
11	Answer to # 10 Motion	10 days from # 10	Mon. Nov. 28	
12	All Parties' Suggested <i>Confidential Questions</i>	10 days from # 9	Fri. Nov. 18	
13	Any Party's Request to Cross-Examine	10 days from # 9	Fri. Nov. 18	
14	Answer to # 13 Request	10 days from # 13	Mon. Nov. 28	
15	Board Studies Evidence and Decides on Motions, Proposed Questions, & Cross-Exam	<i>to be determined</i>		
16	Final Pre-hearing Conference Call	<i>to be determined</i>		
17	Start Evidentiary Hearing		<i>to be determined</i>	
18	Conclude Evidentiary Hearing	2-3 days from # 17		
19	Transcript Corrections / Close Record	<i>to be determined</i>		
20	All Parties' Proposed Findings & Conclusions	30 days from # 18		
21	All Parties' Reply Findings & Conclusions	20 days from # 20		
22	Board Decision	<i>[Per Regs. = 90 days from # 19]</i>		

(As of 08/19/2011)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 ORDER (REGARDING PRE-HEARING TELECONFERENCE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Michael C. Farrar, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Lawrence G. McDade
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Katie Tucker, Law Clerk
Ann Hove, Law Clerk

Catherine Scott, Esq.
Brett Michael Patrick Klukan, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Shaw AREVA MOX Services
P.O. Box 7097
Aiken, SC 29804
Attention: Dealis Gwyn

Docket No. 70-3098-MLA
LB ORDER (REGARDING PRE-HEARING TELECONFERENCE)

Glenn Carroll
Coordinator
Nuclear Watch South
P.O. Box 8574
Atlanta, GA 31106

Louis A. Zeller
Blue Ridge Environmental Defense League
P.O. Box 88
Glendale Springs, NC 28629

Mary Olson
Nuclear Information and Resource Service
P.O. Box 7586
Asheville, NC 28802

Donald J. Silverman, Esq.
Timothy P. Matthews, Esq.
Anna L. Vinson, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Diane Curran, Esq.
Harmon, Curran, Spielberg &
Eisenberg, L.L.P.
1726 M Street, NW, Suite 600
Washington, DC 20036

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 19th day of August 2011