

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

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| In the Matter of | Docket No. 70-3098-MLA |
| SHAW AREVA MOX SERVICES | ASLBP No. 07-856-02-MLA-BD01 |
| (Mixed Oxide Fuel Fabrication Facility) | July 19, 2012 |

ORDER

(Granting Intervenors' Motion for Leave to Submit Surreply)

Some time ago, the Intervenors filed a motion seeking leave to submit a surreply to Applicant's Proposed Reply Findings of Fact and Conclusions of Law (Intervenors' motion).¹ In this motion, Intervenors argue that this surreply is necessary to address two assertions Intervenors believe Applicant made for the first time in its May 18, 2012, Proposed Reply Findings of Fact and Conclusions of Law.²

The first of these two assertions states that Applicant "has 'not represented – in testimony or in legal statements of position – any intention of conducting a physical inventory or measuring items as part of alarm resolution.'"³ The second, according to Intervenors, "implicitly asserts . . . that NRC regulations addressing theft of strategic special nuclear material (SSNM)

¹ Intervenors' Motion for Leave to Submit Surreply to Shaw AREVA MOX Services' Proposed Reply Findings of Fact and Conclusions of Law (May 25, 2012).

² See id. at 1.

³ Id.

are concerned only with theft of entire containers of SSNM and not with the theft of SSNM *from* containers [.]”⁴

Applicant opposes this motion.⁵ First, it argues that this motion is “inconsistent with the schedule for filings negotiated and agreed to by the parties and approved by the Board.”⁶

Next, Applicant argues that its assertions discussed in Intervenor’s motion were not raised for the first time in its Proposed Reply Findings of Fact and Conclusions of Law.⁷ In response to the first assertion raised in Intervenor’s motion, Applicant states that it made clear “in its September 2011 initial statement of position and first evidentiary filing . . . that it understood Contention 10 to pertain to an *item* inventory of the four storage areas in question[,]” not a physical inventory.⁸ Thus, it argues that this issue should have been timely addressed in Intervenor’s October 2011 statement of position and evidentiary filing, not in a surreply “at this late stage of the proceeding.”⁹

In response to the second assertion raised in Intervenor’s motion, Applicant maintains that it presented this position in its initial statement of position and first evidentiary filing, and has reiterated this position in several subsequent filings.¹⁰ Thus, it asserts that Intervenor has had many previous opportunities to respond to this assertion, and therefore should not be allowed to do so for the first time at this eleventh hour of the proceeding.¹¹

⁴ Id. at 2.

⁵ See Shaw AREVA MOX Services, LLC’s Answer to Intervenor’s Motion for Leave to Submit Surreply (May 30, 2012).

⁶ Id. at 1.

⁷ See id. at 2.

⁸ Id. at 3.

⁹ Id.

¹⁰ Id. at 4.

¹¹ See id.

We had put this pending motion aside temporarily in light of other action we were contemplating. The Board has now requested, in its June 29, 2012, Order, additional information and filings from the parties.¹² Given that ruling, our accepting, over the Applicant's forceful opposition, the surreply submitted along with Intervenor's motion will not prejudice either the timing or the substance of this proceeding.

Thus, Intervenor's motion is GRANTED. If Applicant would like to file an Answer to Intervenor's Surreply, it may do so by Monday, July 30, 2012.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 19, 2012

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) Intervenor's Blue Ridge Environmental Defense League (BREDL), Nuclear Watch South (NWS), and the Nuclear Information and Resource Service (NIRS).

¹² Licensing Board Memorandum and Order (Requesting Further Information from the Applicant) (June 29, 2012) at 15–16 (unpublished).

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NUCLEAR REGULATORY COMMISSION

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| (Mixed Oxide Fuel Fabrication Facility |) | |
| Possession and Use License) |) | |

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Granting Intervenor's Motion for Leave to Submit Surreply)** 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

ORDER (Granting Intervenor's Motion for Leave to Submit Surreply)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 19th day of July 2012