

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

ATOMIC SAFETY AND LICENSING BOARD

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

In the Matter of)	
)	
Shaw AREVA MOX Services)	Docket No. 70-3098-MLA
)	
(Mixed Oxide Fuel Fabrication Facility)	ASLBP No. 07-856-02-MLA-BD01
Possession and Use License))	
)	November 7, 2007

**INTERVENORS' REPLY TO APPLICANT AND NRC STAFF RESPONSES TO
LATE-FILED CONTENTION REGARDING NEED TO SUPPLEMENT EIS FOR
PROPOSED MOX PLUTONIUM PROCESSING FACILITY**

Introduction

Blue Ridge Environmental Defense League (“BREDL”) and Nuclear Watch South (“NWS”) (collectively “Intervenors”) hereby reply to the responses by Shaw AREVA MOX Services (“Applicant”) and the U.S. Nuclear Regulatory Commission (“NRC”) Staff to Intervenors’ Late-Filed Contention Regarding Need to Supplement EIS for Proposed MOX Plutonium Fuel Processing Facility” (“Contention 6”) (October 5, 2007). Shaw AREVA MOX Services LLC’s Answer Opposing Petitioners’ Late-Filed Contention (October 29, 2007) (“Applicant’s Response”); NRC Staff Response to Petitioners’ Late-Filed Contention Regarding Need to Supplement EIS for Proposed MOX Plutonium Fuel Processing Facility (October 31, 2007) (“NRC Staff Response”).¹

¹ On November 1, 2007, Glenn Carroll, on behalf of the Intervenors, contacted the Applicant’s legal counsel Donald J. Silverman to confer about the reply deadline. In the

While both the Applicant and the NRC Staff argue that Contention 6 is untimely and inadmissible, their arguments are unacceptable for the same reasons given by the Atomic Safety and Licensing Board (“ASLB”) in admitting Contentions 3 and 4 in LBP-07-14, Memorandum and Order (Ruling on Standing and Contentions) (October 31, 2007). The ASLB should admit Contention 6 and include it with Contentions 3 and 4 in considering how to handle those contentions in light of the prematurity of the Applicant’s operating license application.

Discussion

Neither the Applicant nor the NRC Staff disputes the accuracy of the U.S. Department of Energy’s (“DOE’s”) statement, cited in Contention 6, that the DOE is considering a plutonium disposition plan in which it would not construct a plutonium immobilization facility at the Savannah River Site (SRS), and instead would modify the plutonium MOX processing facility so that it could process at least some of the impure plutonium that would have been immobilized. Instead, both the Applicant and NRC Staff argue against admitting Contention 6 on grounds of admissibility and timeliness.

First, both the Applicant and NRC Staff argue that the Intervenors have not shown the information proffered in Contention 6 is new and significant or that it has a bearing on the environmental impacts of the plutonium processing project. Applicant’s Response at 6, NRC Staff Response at 7. But the question is whether Intervenors have provided enough information to raise a genuine and material dispute with the Applicant regarding those questions. Intervenors have provided sufficient information, supported by

phone conversation Mr. Silverman agreed to a reply deadline based on the date of the Staff’s response — seven days from October 31, 2007, that is, November 7, 2007.

documentary references and expert opinion, to raise a genuine and material dispute with the Applicant regarding the need for analysis of the environmental impacts of the modifications to the plutonium MOX facility described in the September 2007 plan and cited in our contention. Therefore Contention 6 meets the NRC's admissibility standard.²

Second, both the Applicant and the Staff argue that Contention 6 fails to raise a genuine and material dispute because the DOE has not yet decided whether to modify the plutonium MOX processing facility. Applicants' Response at 5, NRC Staff Response at 7-8. But as the ASLB found in LBP-07-14, mere uncertainty about whether a proposal to change the MOX facility design should be carried out should not defeat the admissibility of the contention. *Id.*, slip op. at 43. Clearly, design changes that could affect the environmental impacts of the factory are under consideration. It is not the Intervenors' fault that the changes have not yet been approved or described in any detail, or that the Applicant itself failed to notify the Parties that the Department of Energy was considering changes to the facility design. The Board should accept Contention 6 and include it with Contentions 3 and 4 in considering what will be the appropriate way to handle these concerns with a mind to the greatest protection of the affected public.

² Intervenors discovered that one of the documents cited in Contention 6 was removed from the website of the Office of Scientific and Technical Information (OSTI) "Information Bridge:" www.osti.gov/bridge: "Chemical and Radiochemical Composition of Thermally Stabilized Plutonium Oxide from the Plutonium Finishing Plant Considered as Alternate Feedstock for the Mixed Oxide Fuel Fabrication Facility," by J.M. Tingey and S.A. Jones, PNNL-15241, Pacific Northwest National Laboratory, July 2005. *See* Contention 6 at page 6 note 16. For the convenience of the ASLB and the parties, BREDL has placed the document on its website at <http://www.bredl.org/pdf/PNNL-15241-altfeedstockhanford.pdf>

Conclusion

For the foregoing reasons, the ASLB should admit Contention 6 and consider how to address it along with Contentions 3 and 4.

Respectfully submitted,

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Dated November 7, 2007
in Decatur, Georgia