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**NUCLEAR REGULATORY COMMISSION**

Title: Safety Light Corporation

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January 31, 2005 (3:37pm)

Docket Number: 30-5980/5982-EA

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL  
SCHEDULING ORDER FOR HEARING  
ON MOTION TO SET ASIDE IMMEDIATE  
EFFECTIVENESS OF ORDER SUSPENDING LICENSE

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In the matter of : Docket No.  
SAFETY LIGHT CORPORATION : 30-5980/5982-EA  
Bloomsburg, Pennsylvania Site :  
Materials License Suspension :

-----x

Tuesday,  
January 25, 2005

The above-entitled matter came on for  
hearing, pursuant to notice, at 2:00 p.m.

BEFORE:

ADMINISTRATIVE JUDGE E. ROY HAWKENS, CHAIR  
ADMINISTRATIVE JUDGE PETER S. LAM  
ADMINISTRATIVE JUDGE ALAN S. ROSENTHAL

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## P-R-O-C-E-E-D-I-N-G-S

2:03 p.m.

JUDGE HAWKENS: Good afternoon. We're on the record. It's Tuesday, January 25, 2005, and we're conducting a telephone conference in the matter of Safety Light Corporation, Docket Numbers 305980-EA, 305982-EA, 305980-MLA and 305982-MLA.

My name's Roy Hawkens. I'm a legal judge serving as Chair of this panel, and I'm joined by Judge Alan Rosenthal, who's a legal judge, and by Dr. Peter Lam, who's a technical judge.

And I should mention that in the two docket numbers for the material license amendment cases, Judge Ann Young previously had been a member of those panels. An order is being issued today or has already been ordered. Judge Alan Rosenthal will be replacing Judge Young on that panel, so that he will be serving along with myself and Judge Lam in all four dockets.

There are three participants in this conference: Counsel for Licensee, Safety Light, counsel for the NRC staff and counsel for the Pennsylvania Department of Environmental Protection. And would each counsel please identify herself or himself for the record?

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1 MR. GUTTERMAN: This is Al Gutterman from  
2 Morgan, Lewis & Bockius, representing Safety Light  
3 Corporation.

4 MS. YOUNG: Mitzi Young, representing the  
5 NRC staff.

6 MR. CROWLEY: Thomas Crowley, representing  
7 Pennsylvania Department of Environmental Protection.

8 MS. YOUNG: Judge Hawkens, may I ask a  
9 question?

10 JUDGE HAWKENS: Sure.

11 MS. YOUNG: Is this conference being  
12 transcribed?

13 JUDGE HAWKENS: Yes, it is.

14 MS. YOUNG: Thank you.

15 JUDGE HAWKENS: And throughout the  
16 conference would each individual before they speak  
17 please identify herself or himself to assist the court  
18 reporter?

19 By way of background, the case initially  
20 involved a request by Safety Light to renew its  
21 materials licenses. Pennsylvania requested a hearing  
22 to oppose the renewal of License 37003008, and we  
23 granted that hearing request. Shortly thereafter the  
24 staff denied Safety Light's renewal request for both  
25 licenses and issued a suspension order for both

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1 licenses that was effective immediately.

2 Yesterday, this Board issued a decision  
3 rejecting Safety Light's challenge to the effective  
4 immediately order, and we currently have a request for  
5 a hearing by Safety Light on the suspension order as  
6 well as a license renewal request by Safety Light and  
7 an opposition to that by Pennsylvania.

8 At the outset, I'd like to discuss the  
9 scheduling for the suspension order proceeding, which  
10 everyone has agreed may proceed as a Subpart L  
11 hearing. Before addressing that, though, the other  
12 point I'd like to discuss before closing of this  
13 conference call is the possibility of consolidating  
14 that proceeding with the license renewal proceeding  
15 now that we know both are going to be on Subtrack L --  
16 excuse me, Subpart L track and since we know at least  
17 in the view of this Board there will be a substantial  
18 overlap of issues that will be resolved in both cases.

19 But that's generally the things that we  
20 want to discuss, and I'd like to start off discussing  
21 the scheduling for the -- well, first of all, let's  
22 talk about the potential consolidation of the two.  
23 Could I hear from the parties on that, starting with  
24 Safety Light?

25 MR. GUTTERMAN: Okay. Well, Safety Light

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1 filed a response a couple weeks ago in the MLA  
2 proceeding suggesting that there's a substantial  
3 overlap of issues and that there ought to be a maximum  
4 use of consolidation to avoid unnecessary expense. As  
5 I'm reflecting on the fact that the order continues to  
6 be effective and the regulations provide for an  
7 expeditious hearing on an immediately effective order  
8 and also reflecting on the fact that the issues in the  
9 enforcement proceeding relate to the nature of the  
10 violation and the correct factions and issues such as  
11 that whereas the issues in the renewal proceeding  
12 relate to meeting the standards of 30.11 for an  
13 exemption and the requirements for a license, I'm  
14 struck that the overlap is less than I thought  
15 originally, and my sense of urgency with dealing with  
16 the enforcement proceeding expeditiously sort of  
17 overwhelms my consideration of the case.

18 So I'm coming to question whether there  
19 really is a good opportunity to consolidate the case.

20 JUDGE HAWKENS: All right. Ms. Young,  
21 what are your views?

22 MS. YOUNG: Well, Judge Hawken, as the  
23 staff wrote in its response to you on this matter, on  
24 January 7, there's a certain amount of complication  
25 with proceeding with all the aspects of these hearings

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1 simultaneously, particularly since Pennsylvania's  
2 participation has been limited to the application for  
3 renewal and that there are different burdens of proof  
4 that apply to the various participants in this  
5 proceeding.

6 So the staff thinks it would be difficult  
7 to consolidate them, but perhaps that could be done if  
8 somehow the proceeding were structured such that there  
9 is separate litigation of the issues involved. With  
10 respect to the enforcement case, for example,  
11 willfulness is an issue. That's not a matter that's  
12 pertinent to the renewal or the denial proceedings.  
13 So you'd have to somehow structure the proceeding  
14 along the lines of two separate contentions or three  
15 separate contentions, whatever the parties could agree  
16 to. And then the participation of Safety Light, the  
17 staff and Pennsylvania would be circumscribed by the  
18 matter before the Board. The staff would agree that  
19 there are some facts that are similar, but there are  
20 issues that are different with respect to each aspect  
21 of these various hearings.

22 JUDGE ROSENTHAL: Ms. Young, this is Alan  
23 Rosenthal. You indicate that willfulness is one of  
24 the issues in the proceeding. I take it, however,  
25 that unlike in the case of the immediate effectiveness

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1 issue, willfulness isn't the sole consideration. Do  
2 you want to give me the benefit of your view as to  
3 what some of the other issues besides willfulness  
4 might be that we would have to consider in the  
5 enforcement proceeding?

6 MS. YOUNG: Well, in the enforcement  
7 proceeding, the issue before the Board is whether the  
8 staff's issuance of the order based on the violation  
9 of the license condition created a situation where the  
10 staff lacked reasonable assurance.

11 JUDGE ROSENTHAL: Reasonable assurance of  
12 what?

13 MS. YOUNG: For funding for  
14 decommissioning and the future compliance with NRC  
15 regulations. Well, in a sense, the enforcement  
16 proceeding, the issues are narrower than the overall  
17 showing of an applicant for whether they've submitted  
18 a plan as required by 30.32 that shows they have -- a  
19 licensee has complied with financial assurance  
20 requirements.

21 JUDGE ROSENTHAL: All right. Now, Ms.  
22 Young, you took the position in the context of the  
23 immediate effectiveness, that the recent disclosures  
24 that were brought to our attention by Mr. Gutterman  
25 had no probative value. And I refer, of course, to

1 the assertion that Safety Light provides a component  
2 to vendors that are under contract with DOE for --  
3 DOD, rather, for the furnishing of certain radar  
4 systems. Now, is it your position that that  
5 disclosure is equally immaterial with regard to the  
6 enforcement proceeding?

7 MS. YOUNG: Yes, that's correct. The  
8 issue is whether this Licensee violated NRC  
9 requirements. And those requirements are with respect  
10 to provisions in its license establishing financial  
11 assurance for decommissioning.

12 JUDGE ROSENTHAL: Wait a minute. There's  
13 no question, is there, in this case that they didn't  
14 make certain of the payments on the schedule that's  
15 required by license condition. If you're right about  
16 that, there's no case at all here, is there?

17 MS. YOUNG: Well, the staff has never  
18 thought there was much of a case here, Judge  
19 Rosenthal. There was a license condition that  
20 required that payments be made on a certain schedule  
21 and that condition, by its own terms, indicated that  
22 the failure to make such payments would obviate the  
23 exemption. That happened long before the staff took  
24 its action on December 10.

25 JUDGE ROSENTHAL: Mr. Gutterman, what's

1 your response to that? What do you deem to be the  
2 issues in the enforcement proceeding?

3 MR. GUTTERMAN: Well, generally, Judge  
4 Rosenthal, I deem the issues to be whether the order  
5 should have been issued in light of the NRC's  
6 enforcement policy and the relevant facts, which would  
7 include whether the violation indicates that this  
8 Licensee cannot be relied upon to comply with NRC  
9 requirements, whether the public health and safety is  
10 benefitted or detracted from by issuance of the order,  
11 as the staff did -- continuation of the order and,  
12 generally, the application of the NRC enforcement  
13 policy with all the considerations the enforcement  
14 policy uses to assess the appropriate action and  
15 response to a violation, which include factors like  
16 did the Licensee self-identify and was the Licensee's  
17 corrective action appropriate and factors of that  
18 sort.

19 JUDGE ROSENTHAL: Thank you. Judge  
20 Hawkens, pardon my digression from what you were  
21 seeking to obtain.

22 JUDGE HAWKENS: Right. Well, let me hear  
23 from -- if Pennsylvania would like to weigh in on the  
24 consolidation issue, I'd like to hear from them.

25 MR. CROWLEY: Thank you, Judge Hawkens.

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1 This is Thomas Crowley on behalf of the Pennsylvania  
2 Department of Environmental Protection. As Ms. Young  
3 pointed out, and as everyone on the call is aware,  
4 Pennsylvania is not a party to one of the proceedings  
5 that we're discussing consolidating. As a result of  
6 that, I want to tread a little bit lightly here. But  
7 we did express the opinion in our filing on January 7  
8 that the difference in the issues and at least at that  
9 time, this issue is now off the table, as I understand  
10 it, the difference in subparts under which the cases  
11 would proceed we thought argued against consolidation.

12 Listening to Mr. Gutterman and Ms. Young,  
13 it seems to me that the cases are not especially good  
14 candidates for consolidation given the issues and the  
15 different burdens. And, frankly, that's all I have to  
16 say about it. We would stay with the position that we  
17 put forth in our January 7 filing.

18 JUDGE HAWKENS: All right. Thank you.

19 JUDGE LAM: Mr. Crowley, this is Judge  
20 Lam.

21 MR. CROWLEY: Yes, Your Honor.

22 JUDGE LAM: I hear your argument. If  
23 these cases were consolidated, would your client's  
24 interests be harmed by such a consolidation?

25 MR. CROWLEY: I'm still here, Your Honor;

1 I'm thinking about my answer. I cannot see that they  
2 would be.

3 JUDGE LAM: All right. So there would not  
4 be any harm to your client's interests other than  
5 minor inconveniences.

6 MR. CROWLEY: I would say that's correct.

7 JUDGE LAM: Okay. Thank you for your  
8 answer.

9 MS. YOUNG: Judge Lam, this is Ms. Young.

10 JUDGE LAM: Hi.

11 MS. YOUNG: It may be that there are  
12 aspects of this proceeding if they're consolidated  
13 that Pennsylvania could not participate on.

14 JUDGE LAM: Yes. Yes. I hear you loud  
15 and clear, Ms. Young.

16 MS. YOUNG: That may not be inconvenient  
17 in terms of Pennsylvania.

18 JUDGE LAM: Okay. Okay. Thank you for  
19 your comments.

20 MR. CROWLEY: If I might, Judge Lam, Judge  
21 Hawkens and Judge Rosenthal, I would say that were  
22 these cases to be consolidated, my client might want  
23 to decide at that point that we did want to become  
24 involved in the enforcement proceeding. That  
25 obviously would be, however, at the discretion of the

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1 Board. We would have to intervene and have that  
2 intervention approved. But I don't think that's  
3 likely, and, as Ms. Young pointed out, it might not be  
4 inconvenient whatsoever in certain terms.

5 JUDGE HAWKENS: All right. The Board,  
6 after this call, will gather and make a determination  
7 on consolidation. We thank you for your views on it.

8 Mr. Gutterman, a principal concern is that  
9 if we do consolidate, we'll schedule it and structure  
10 it in such a manner that it does not slow down the  
11 enforcement proceeding, because I understand that's,  
12 as you indicated, a primary pressing concern for your  
13 client.

14 And to that extent, let's start talking  
15 about schedule for that. At the hearing last week,  
16 the NRC staff indicated that it would take time for  
17 them to submit the hearing file to locate all the  
18 records. And since that is sort of a triggering date  
19 for everything that follows, Ms. Young, can you  
20 address when is the earliest that you could -- that  
21 the staff would be able to submit the hearing file?

22 MS. YOUNG: The hearing file for a  
23 consolidated proceeding or each of the two  
24 proceedings?

25 JUDGE HAWKENS: For both of them.

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1 MS. YOUNG: Well, the staff's been  
2 gathering the documents, and our target is to have  
3 everything ready around February 7, although I'm not  
4 looking at a calendar. Hold on.

5 JUDGE HAWKENS: February 7 is a Monday.

6 MS. YOUNG: Yes. Our target is February  
7 7.

8 JUDGE HAWKENS: All right. Mr. Gutterman,  
9 we'll assume there will be no slippage on the 7th.  
10 The next date would be for the parties to submit their  
11 initial written statements and positions. And let me  
12 ask you, since I want you to be in the driving seat  
13 since you're the most affected, when would be the  
14 earliest that you could submit that on behalf of your  
15 client?

16 MR. GUTTERMAN: Let's see, I guess I'd  
17 want to have the hearing file for a few days, and if  
18 the 7th is a Monday, I guess I would like to think  
19 about maybe that Friday, which would be --

20 JUDGE HAWKENS: The 11th?

21 MR. GUTTERMAN: Would that be the 12th?

22 JUDGE HAWKENS: Friday would be the 11th;  
23 Monday's the 7th. Are you there, Mr. Gutterman?

24 MR. GUTTERMAN: Yes. Yes, the 11th.

25 JUDGE HAWKENS: All right.

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1 MR. GUTTERMAN: Now, we're talking about  
2 a consolidated proceeding, though.

3 JUDGE HAWKENS: Well, right now we're  
4 talking hypothetically a consolidated proceeding,  
5 that's correct, but, principally, we're talking the  
6 enforcement action aspect of it.

7 MR. GUTTERMAN: And that's really what I  
8 had in mind. I haven't given a whole lot of thought  
9 to the renewal proceeding. But, certainly, at least  
10 on the enforcement proceeding, I would hope to be able  
11 to submit an initial case by the 11th and perhaps the  
12 whole case, perhaps the renewal as well.

13 JUDGE HAWKENS: All right.

14 MS. YOUNG: Judge Hawken, may I ask a  
15 question. What date is Mr. Gutterman referring to?

16 JUDGE HAWKENS: He was -- that was Friday,  
17 February 11, five days after submission of the hearing  
18 file and the mandatory disclosures -- four days.

19 MS. YOUNG: Okay. Mandatory disclosure is  
20 happening five days after the hearing file -- four  
21 days after the hearing file.

22 MR. GUTTERMAN: I'm talking about  
23 submitting Safety Light's presentation --

24 JUDGE HAWKENS: Right.

25 MR. GUTTERMAN: -- on the 11th.

1 JUDGE HAWKENS: Right. Ms. Young, right.  
2 The mandatory disclosures and the submission of the  
3 hearing file would be on or before Monday, February 7.

4 MS. YOUNG: Thank you for the  
5 clarification.

6 JUDGE HAWKENS: All right. And then  
7 Friday, February 11 would be submission of the initial  
8 written statement of positions and written testimony  
9 with supporting affidavits, pursuant to Section  
10 2.1207(a)(1).

11 Mr. Gutterman, let me ask you this again.  
12 The rules provide for within 20 days submitting  
13 written responses. I would assume that you would want  
14 to accelerate that given the fact that the regulations  
15 indicate the proceeding is expedited. Am I correct in  
16 that assumption?

17 MR. GUTTERMAN: Yes, Your Honor.

18 JUDGE HAWKENS: What day would you propose  
19 then for the submission of the written responses and  
20 rebuttal testimony?

21 MR. GUTTERMAN: I would propose two weeks.

22 JUDGE HAWKENS: That would be Friday, the  
23 25th.

24 MR. GUTTERMAN: Yes.

25 MS. YOUNG: Judge Hawken, this is Ms.

1 Young.

2 JUDGE HAWKENS: Yes.

3 MS. YOUNG: Okay. We're talking hearing  
4 file on the 7th, we're talking written presentations  
5 for all parties on the 11th? Are you talking about  
6 the enforcement proceeding where the staff has the  
7 burden of going forward?

8 JUDGE HAWKENS: That's correct.

9 MS. YOUNG: But you asked Mr. Gutterman  
10 what date that should be? I'm just getting confused  
11 on --

12 JUDGE HAWKENS: Well, that's fair. I was  
13 asking him because it does have a substantial impact  
14 on him. But you're right, Ms. Young, is that --

15 MS. YOUNG: That's a little accelerated  
16 behind our disclosure, basically, which is occurring  
17 on the 7th.

18 JUDGE HAWKENS: And I do recognize you do  
19 have the burden in the enforcement order proceeding.

20 MS. YOUNG: That's correct, and I've got  
21 witnesses that are -- a handful of people are at  
22 headquarters but most are in Region I.

23 JUDGE HAWKENS: When --

24 MS. YOUNG: There's a little difficulty in  
25 exchanging information. It just takes time.

1 JUDGE HAWKENS: I understand that and  
2 appreciate that. Tell me what date you would --

3 MS. YOUNG: Is there a question pending  
4 for the staff?

5 JUDGE HAWKENS: Yes. We were waiting for  
6 Ms. --

7 MS. YOUNG: Oh, I'm sorry, I thought you  
8 went off the record; I heard voices. Having the two  
9 full work weeks would benefit us tremendously. That  
10 would be February 21.

11 JUDGE ROSENTHAL: Ms. Young, this is Alan  
12 Rosenthal. Aren't you in a position to start working  
13 on your submission immediately? It seems to me that  
14 given the fact that Safety Light is in substantial  
15 jeopardy of being put out of business by virtue of the  
16 staff's order that there has to be an accommodation to  
17 that fact than the date you suggest. I don't know how  
18 my colleagues feel about it, but --

19 MS. YOUNG: My concern, Judge Rosenthal,  
20 is that there are individuals that have to participate  
21 that aren't even here at work this week for me to  
22 contact about.

23 JUDGE ROSENTHAL: But it seems to me in  
24 the circumstances that the staff has to make the  
25 special additional effort. This cannot be anything

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1 approaching, in my view, business as usual, and it  
2 seems to me that you'll have to go a considerable  
3 extra mile.

4 MS. YOUNG: I agree, and two weeks was an  
5 extra mile, Judge Rosenthal.

6 JUDGE ROSENTHAL: It's not two weeks from  
7 today, and you're in a better position, I would think,  
8 than the Licensee to get started working on this well  
9 in excess of the time that the hearing file is  
10 presented. The case you're presenting is, in effect,  
11 about a month from today, and it seems to me to be,  
12 again, my colleagues may have a different view of  
13 this, that does not seem to me to be reasonable, given  
14 what's at stake for this company as a result of that  
15 suspension order.

16 MS. YOUNG: Well, Judge Rosenthal, you may  
17 appreciate the mandatory disclosures do take a  
18 considerable amount of time, given the unavailability  
19 of ADAM and the need to process documents in ADAM  
20 since we're making them available to participants in  
21 this proceeding. And those activities will be  
22 conducted all the way up till the 7th. And one of the  
23 major witnesses in this proceeding is not even in the  
24 office this week; he's out on travel.

25 JUDGE ROSENTHAL: Well, I assume he'll be

1 in the office next week. Well, I'll defer to my  
2 colleagues on this, but speaking for myself, I do not  
3 find that date to be reasonable in the totality of  
4 circumstances.

5 JUDGE HAWKENS: This is Judge Hawken, and  
6 I'm going to split the difference, taking into account  
7 Mr. Gutterman's understandable need for expedited  
8 proceedings; also, Ms. Young, also seeking to  
9 accommodate somewhat your request. I'm going to cut  
10 you back by two days and make it due on the 16th.

11 MS. YOUNG: Thank you.

12 JUDGE HAWKENS: Mr. Gutterman, in light of  
13 that, you initially said two weeks. Do you want to do  
14 it two weeks from the 16th, which would move it from  
15 February 25th, it would then become March 2, two weeks  
16 from the 16th?

17 MR. GUTTERMAN: Well, I guess there would  
18 be nothing to keep us from filing sooner if we're able  
19 to. So I guess if we put down the 16th -- or March 2  
20 with the understanding that if we can beat that date,  
21 that I guess the staff gets an opportunity to respond,  
22 is that right?

23 JUDGE HAWKENS: What happens is on the  
24 16th it will be your written statement, on the 2nd it  
25 will be written responses and rebuttal testimony.

1 MR. GUTTERMAN: Right.

2 JUDGE HAWKENS: And on that same date, the  
3 parties are submitting examinations to the Board; that  
4 is, proposed questions to be asked to the witnesses  
5 based on the initial written statements and positions  
6 and written testimony.

7 MR. GUTTERMAN: Okay. I was just thinking  
8 I'd like to do it faster than March 2, but I can't be  
9 absolutely sure I can make it faster.

10 JUDGE HAWKENS: Right. And these are  
11 dates that the parties are all bound by the same  
12 dates, so in answer to your initial question, if you  
13 get it in sooner, will that trigger something,  
14 accelerate the process, and it will not. The staff  
15 can still get theirs in on that date as well, even if  
16 you get yours in earlier.

17 JUDGE LAM: This is Judge Lam. I have a  
18 word of caution and advice for Mr. Gutterman. I don't  
19 know if you have participated in any of our Subpart L  
20 proceedings. It is going to be a great deal of work  
21 on all the parties, so just a word of caution for your  
22 consideration and your schedule.

23 MS. YOUNG: The staff would agree with  
24 that, Judge Lam.

25 MR. GUTTERMAN: Well, you're right, Judge

1 Lam, I have not been through one that actually went to  
2 hearing, but I do have this sense of urgency in moving  
3 ahead. So I think we ought set March 2 as the  
4 response date.

5 JUDGE HAWKENS: All right.

6 MS. YOUNG: Judge Hawken, may I ask a  
7 question again? In terms of the written presentations  
8 on the 16th, that's both on the enforcement case and  
9 on the renewal denial proceeding?

10 JUDGE HAWKENS: Right now we're talking  
11 simply about the enforcement proceeding, although it's  
12 possible that we may consolidate them, but we haven't  
13 made that determination yet, Ms. Young. Why, would  
14 that be a --

15 MS. YOUNG: That's the question in terms  
16 of the burden on those dates.

17 JUDGE HAWKENS: Well, of course, for the  
18 license renewal request, the burden's going to be on  
19 the Licensee, not on you.

20 Okay. Mr. Gutterman, as far as the  
21 hearing itself, do you have any suggested timeframe on  
22 that?

23 MR. GUTTERMAN: Well, let's see. What I'm  
24 hesitating over is I'm thinking about Ms. Young's  
25 comment about a half dozen people in headquarters and



1 more in the Region. I'm wondering if she's thinking  
2 about that many different witnesses, which would  
3 affect my ability to prepare quickly, because I had  
4 not contemplated that many witnesses in the hearing.

5 MS. YOUNG: But in a Subpart L proceeding,  
6 you're not cross examining the witnesses, correct?

7 JUDGE HAWKENS: Correct. The parties will  
8 not be doing any of the cross examination or  
9 examination of the witnesses; the Board will. The  
10 parties have the benefit or the opportunity to provide  
11 a suggested examination plan to the Board, however.

12 MS. YOUNG: And this is Ms. Young again.  
13 And the staff often presents witnesses in a panel.

14 JUDGE HAWKENS: Yes.

15 MS. YOUNG: So the issue may be a single  
16 one, although multiple people may testify on different  
17 aspects of that issue.

18 MR. GUTTERMAN: Well, I would hope the  
19 hearing could be the week following the submission of  
20 testimony.

21 JUDGE HAWKENS: I think that's reasonable.  
22 You're saying the week of March 14?

23 MR. GUTTERMAN: Well, let's see, we were  
24 going to set March 2 as the deadline for our --

25 JUDGE HAWKENS: That's correct.

1 MR. GUTTERMAN: -- presentation, so I was  
2 thinking about the hearing being the -- well, being  
3 even the week before that, the week of March 7.

4 JUDGE HAWKENS: The week of March 7.

5 MR. GUTTERMAN: Yes.

6 JUDGE HAWKENS: All right. Let me ask you  
7 this: We have the facilities here, as you're well  
8 aware, for conducting the hearing. We also have it  
9 near the -- Mr. Gutterman.

10 MR. GUTTERMAN: Yes. I'm thinking it  
11 would be more convenient to have it here at White  
12 Flint.

13 JUDGE HAWKENS: Hearing no objection from  
14 the staff, we will defer to that. And March 10, would  
15 that date be agreeable to both Safety Light and the  
16 staff?

17 MS. YOUNG: Yes, we have no objection to  
18 March 10.

19 MR. GUTTERMAN: Neither does Safety Light.  
20 This is Al Gutterman.

21 JUDGE HAWKENS: Mr. Crowley, I know you've  
22 been there in limbo, hearing what's ongoing and not  
23 being able to participate.

24 MR. CROWLEY: That's the price of the  
25 choice we made, Your Honor.

1 JUDGE HAWKENS: All right. That's the  
2 direction we will go. Certainly, for the enforcement  
3 proceeding, if we were to consolidate the two, would  
4 that pose a problem for Pennsylvania?

5 MR. CROWLEY: Having all these filing  
6 submissions on those dates, is that your question,  
7 Judge Hawken?

8 JUDGE HAWKENS: Yes.

9 MR. CROWLEY: I don't think so, Your  
10 Honor. I think we can -- given who the burden is on  
11 and the fact that cross examination would be done by  
12 the panel, I think we can manage those deadlines.

13 JUDGE HAWKENS: All right.

14 JUDGE ROSENTHAL: Do I assume correctly  
15 that along with your evidentiary presentations you're  
16 going to furnish the Board with your view as to the  
17 legal issues involved? I think that would be helpful.  
18 I mean I'm hearing from Ms. Young that the issue  
19 that's involved is whether or not there was in fact a  
20 licensee condition violation. If that is all that's  
21 involved, I would like to see her legal memorandum  
22 setting forth the basis for that conclusion. At the  
23 same time, it seems to me, it would be helpful to have  
24 Mr. Gutterman's view as to what the legal standards  
25 are.

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1 Now, it might well be that in the normal  
2 circumstances a legal memoranda would follow the  
3 hearing, but given the obvious need for an expeditious  
4 resolution of the matter before us, and my colleagues,  
5 again, may have a different view of this, that it  
6 would be helpful to have up-front the parties' views  
7 as to just what are the standards, legal standards,  
8 that we're to apply to the evidence that's put before  
9 us, both in writing and subsequently in the oral  
10 hearing. Do you have a problem with that?

11 MS. YOUNG: Yes, we have no objection  
12 since that's an ability of staff counsel to control.

13 MR. GUTTERMAN: Safety Light has no  
14 objection.

15 MR. CROWLEY: Judge Rosenthal, this is Tom  
16 Crowley. I assume that that would apply to  
17 Pennsylvania, assuming the cases were consolidated.

18 JUDGE ROSENTHAL: Absolutely. We would  
19 certainly want Pennsylvania's view as to what the  
20 legal standards are governing renewal of the --  
21 application for renewal of the license.

22 MR. CROWLEY: And we'd certainly provide  
23 that.

24 JUDGE ROSENTHAL: Okay. That's all I  
25 have.

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1 JUDGE LAM: And this is Judge Lam. Along  
2 that line, what Judge Rosenthal is talking about, I,  
3 for one, want to hear more from Ms. Young on does this  
4 Licensing Board have the obligation or the authority  
5 to consider the impact of a license suspension on  
6 national security. I think I heard you answer  
7 earlier, Ms. Young. Perhaps you would clarify or add  
8 to what you meant regarding our earlier discussion on  
9 the tritium foil manufactured by Safety Light.

10 MS. YOUNG: Judge Lam, your request is  
11 that staff address in its written statement of  
12 position, as provided for under 21207, whether the  
13 Board has jurisdiction to consider the impact of the  
14 order on national security; is that the question?

15 JUDGE LAM: That is the question. To me,  
16 your earlier statement, seems to me, implied that the  
17 Board has no jurisdiction. The only legal defense  
18 that that would be applicable would be does the  
19 company violate NRC license conditions.

20 MS. YOUNG: That's correct.

21 JUDGE ROSENTHAL: So if I understand --  
22 this is Alan Rosenthal -- you will address in your  
23 submission the question as to whether and if not why  
24 the Board can take into consideration the possible  
25 impact of a licensee suspension on national defense

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1 and security.

2 MS. YOUNG: Yes.

3 JUDGE ROSENTHAL: Okay. Thank you.

4 JUDGE HAWKENS: All right. Do the parties  
5 have any issues or anything regarding the scheduling  
6 you wish to address?

7 MS. YOUNG: This is Mitzi Young for the  
8 Staff. When would the Board be issuing an order,  
9 making a decision on the consolidation issue?

10 JUDGE HAWKENS: This week, probably by  
11 tomorrow or if not tomorrow, the next day.

12 MR. CROWLEY: Your Honor, this is Tom  
13 Crowley. Assuming hypothetically that the cases are  
14 not consolidated, are we then looking at a different  
15 schedule for the license renewal hearings?

16 JUDGE HAWKENS: Yes, we would be looking  
17 at a different schedule.

18 MR. CROWLEY: Okay. I assumed that to be  
19 true, but my client will surely ask.

20 JUDGE HAWKENS: Right.

21 MS. YOUNG: And this is Mitzi Young again.  
22 And will the Board's order be addressing whether the  
23 hearing request of Safety Light has been granted with  
24 respect to the denial?

25 JUDGE HAWKENS: Yes, it would.

1 JUDGE HAWKENS: Anything else?

2 MR. CROWLEY: Not from Pennsylvania, Your  
3 Honor.

4 MR. GUTTERMAN: Not from Safety Light,  
5 Your Honor.

6 JUDGE HAWKENS: Ms. Young?

7 MS. YOUNG: One more question. And will  
8 that order also address whether the hearing's been  
9 granted in the suspension order case?

10 JUDGE HAWKENS: Yes, it certainly will.

11 MS. YOUNG: Thank you. Nothing further  
12 from the staff.

13 JUDGE HAWKENS: All right. Thank you very  
14 much.

15 COURT REPORTER: Excuse me, this is the  
16 court reporter. I just have a few questions. Ms.  
17 Young, could you give me your phone number?

18 MS. YOUNG: Sure, 301-415-1523.

19 COURT REPORTER: All right. And then did  
20 someone mention is it tritium foil?

21 JUDGE LAM: Yes. This is Judge Lam. It's  
22 tritium, T-R-I-T-I-U-M.

23 COURT REPORTER: All right. And it's  
24 foil, F-O-I-L?

25 JUDGE LAM: Right.

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1 COURT REPORTER: All right. Thank you.  
2 That's all.

3 JUDGE HAWKENS: Are all the parties aware  
4 in addition to providing -- are people still on board?

5 MS. YOUNG: Staff is here.

6 MR. CROWLEY: Pennsylvania's here.

7 MR. GUTTERMAN: Yes.

8 COURT REPORTER: And the court reporter's  
9 here.

10 JUDGE HAWKENS: Okay. It's important --  
11 there are two email addresses that are not being  
12 consistently copied. One is to Judge Rosenthal at the  
13 following email address: rsnthl, those are the  
14 consonants in my last name, @comcast.net. But I think  
15 that actually -- I think that our law clerk has  
16 probably gotten that word around. But it's very  
17 important to me to have the emails sent to my home  
18 address, as just indicated, because I do most of my  
19 work at home, having that luxury since I serve the  
20 Board and the panel part-time and therefore do not  
21 need to come and look at my colleagues on a daily  
22 basis.

23 (Laughter.)

24 COURT REPORTER: And, Judge Rosenthal, it  
25 was R-S-N-T-H-L?



1 JUDGE ROSENTHAL: That's right. Those are  
2 the consonants in my last name.

3 COURT REPORTER: All right. Thank you.

4 JUDGE ROSENTHAL: Comcast.net.

5 COURT REPORTER: And is there another  
6 email address?

7 JUDGE HAWKENS: Yes. Also, Chris, our law  
8 clerk, and he's going to provide you with his email  
9 address as well.

10 MR. WACHTER: It's cmw.gov.

11 MR. CROWLEY: Chris, this is Tom Crowley,  
12 you went out just a little bit, cmw?

13 MR. WACHTER: Correct.

14 MR. CROWLEY: At --

15 MR. WACHTER: At NRC --

16 MR. CROWLEY: -- nrc.gov. Thank you.

17 COURT REPORTER: And can you give me your  
18 name?

19 MR. WACHTER: Chris Wachter, W-A-C-H-T-E-  
20 R.

21 COURT REPORTER: T-E-R?

22 MR. WACHTER: T-E-R.

23 COURT REPORTER: I'm sorry, you're  
24 breaking up. It's W-A-C-H --

25 MR. WACHTER: Correct, and then T-E-R.

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1 COURT REPORTER: Okay. Thank you.

2 MR. WACHTER: Okay.

3 JUDGE HAWKENS: All right. Thank you very  
4 much.

5 (Whereupon, at 2:47 p.m., the ASLBP  
6 hearing was concluded.)  
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Name of Proceeding: Safety Light Corporation

Docket Number: 30-5980/5982-EA

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