

RAS 9989

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

DOCKETED 05/19/05

SERVED 05/19/05

Before Administrative Judges:

Lawrence G. McDade, Chairman
E. Roy Hawkens
Dr. Peter S. Lam

In the Matter of

ANDREW SIEMASZKO

Docket No. IA-05-021
ASLBP No. 05-839-02-EA
May 19, 2005

ORDER

(Granting Licensee's Hearing Request)

On April 21, 2005, the Nuclear Regulatory Commission (NRC) Staff issued an Order to Andrew Siemaszko which, inter alia, prohibited his involvement in NRC-Licensed activities for a period of five (5) years from the effective date of the Order.¹ The Order, which was not made immediately effective, provided Mr. Siemaszko an opportunity to request a hearing. The following day, on April 22, 2005, Mr. Siemaszko requested a hearing.² On May 17, 2005, the NRC Staff stated that, since Mr. Siemaszko's request was timely filed, it did not oppose the Request for a Hearing³ and on May 18, 2005, this Atomic Safety and Licensing Board was established to preside over the Hearing.⁴

¹ See Order Prohibiting Involvement in NRC-Licensed Activities: Andrew Siemaskzo, 70 Fed. Reg. 22719 (May 2, 2005).

² See Request for Hearing, Andrew Siemaszko, IA-05-021 (Apr. 22, 2005).

³ See NRC Staff Answer To Request for Hearing (May 17, 2005).

⁴ See Re: Andrew Siemaszko: Establishment of Atomic Safety and Licensing Board, (May 18, 2005).

Both parties have thus agreed that, for the purposes of this proceeding, the Request for Hearing submitted by Mr. Siemaszko was timely and adequate. Accordingly, this Board GRANTS Mr. Siemaszko's Request for a Hearing.

However, while not opposing Mr. Siemaszko's request for a hearing, the NRC Staff filed a Motion to Delay this proceeding for a period of at least one hundred and twenty (120) days and, in that request, the Staff further noted that its request for a delay was being made subject to the possibility that it may well file a subsequent request for an additional extension.⁵ Resolution of the Staff's Motion to Delay these proceedings is, therefore, the first order of business for this Board.

Pursuant to 10 C.F.R. § 2.323(c), the answer to a motion is to be filed within ten (10) days after service of the motion, or within such other time as may be established. Given the potentially severe economic consequences that a delay in these proceedings could have on Mr. Siemaszko, this Board wants to insure that he has ample time to respond to this motion. Accordingly, the Board will allow an Answer to the Staff's Motion to be filed with this Board on or before 5:00 PM EDT on May 31, 2005. The NRC Staff will then have five (5) days from service of the answer to file a reply.

This Board proposes that the parties participate in a Prehearing Conference by telephone during the week of June 13, 2005. The specific time and date for that conference will be set by a subsequent Order by the Board. At that conference the parties should be prepared to present argument on the Staff's Motion to Delay, and should also be prepared to state their respective positions regarding:

1. Whether this matter should proceed under Subpart G, Subpart L, or Subpart N of 10 C.F.R. Part 2, giving specific attention to the different discovery rules that are applicable under each Subpart;

⁵ See NRC Staff's Motion for Delay (May 17, 2005).

2. What, if any, prehearing discovery should be taken, and how long should it take to complete that discovery. Further, in the event that the Staff's Motion for Delay is granted, whether any, and if so what, discovery could proceed during the period of delay;
3. What specific issues need to be resolved in this proceeding and which, if any, of those issues are ripe for summary disposition. Further, in the event that the Motion for Delay is granted, whether any, and if so which, of those issues could be resolved during the period of delay;
4. Where the hearing should be conducted and, in the event the Motion to Delay is not granted, when the hearing should begin, and the time that each party believes will be necessary to complete the hearing.
5. Whether the Affidavit of Thomas T. Ballantine should be placed under seal. In that regard, we direct that the Ballantine Affidavit not be placed in the electronic docket or otherwise disseminated by the NRC Staff pending further Order of this Board and that the Staff discuss Rule 6(e)(2)&(3), Fed. R. Crim. P. with Mr. Ballantine prior to the Prehearing Conference.

As soon as possible, but in any event within five (5) days of the date of this Order, the parties are directed to contact Jonathan Rund, the Board's law clerk, at JMR3@nrc.gov and advise him of when, if at all, during the week of June 13, 2005, they would not be available to participate in the prehearing telephone conference. The parties are further directed to provide Mr. Rund the telephone number at which they will be available for the conference.⁶ In addition, within five (5) days of the date of this Order, Mr. Siemaszko shall have his attorney, if he will be represented by an attorney in this proceeding, file a notice of appearance in accordance with the provisions of 10

⁶ Because Mr. Rund will serve as the Board's judicial clerk in this proceeding, the parties are directed to include him as an e-mail addressee and service recipient in all submissions to this Board in this proceeding.

C.F.R. § 2.314(b).⁷

Except to the extent that circumstance renders them unnecessary, this Board will, during the course of this proceeding, conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Board Orders.

In accordance with 10 C.F.R. §§ 2.318(a), 2.319, the following directives shall apply to the conduct of this proceeding:

Service on the Board and Other Participants

1. Service on the Board

For each pleading or other submission filed before the Board in this proceeding, subject to the requirement of section B.1.g below, in addition to submitting an original and two conforming copies to the Office of the Secretary as required by 10 C.F.R. § 2.304(f) and serving a copy on every other party in this proceeding in accordance with section 2.305(b), a participant should serve conforming copies on the Board as follows:

a. Regular Mail. To complete service on the Board by regular mail a party should send conforming copies to each of the Board members via first-class mail at the following address:

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

For regular mail service, the NRC Staff may use the NRC internal mail system (Mail Stop T-3F23)

⁷ 10 C.F.R. § 2.314(b) provides as follows: (b) Representation. A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, and facsimile number and email address, if any; the name and address of the person or entity on whose behalf he or she appears; and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative or, in the case of another representative, the basis of his or her authority to act on behalf of the party.

instead of first-class mail.

b. Overnight or Hand Delivery. To complete service on the Board via overnight (e.g., express mail) or hand delivery, a party should send conforming copies to the Board members at the following address:

Atomic Safety and Licensing Board Panel
Third Floor, Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

The use of the Board's regular mail address shall not be used on an overnight/hand delivery (such as Federal Express) since to do so may delay receipt of the filing.

c. Facsimile Transmission. To complete service on the Board by facsimile transmission, a party should (i) send one copy by rapifax to the attention of the Board Chairman at (301) 415-5599 (verification (301) 415-7405); and (ii) that same date, send conforming copies to the Board members by regular mail at the address given in section B.1.a above.

d. E-Mail. To complete service on the Board by e-mail transmission, a party should (i) send the filing (which should include the certificate of service) as a file attached to an e-mail message directed to the Board members (lgm1@nrc.gov, erh@nrc.gov, and psl@nrc.gov); and (ii) send paper conforming copies that same date to the Board members by regular mail at the address given in section B.1.a above.

If a party has a pleading it wishes to send by e-mail that includes attachments it is unable to convert to electronic form, it should do one of the following:

- I. If the attachments the party is unable to convert to electronic form are fifteen pages or less, contemporaneous with the transmission of the pleading by e-mail the attachments should be sent by a separate facsimile transmission. The e-mail and facsimile transmissions should note that separate transmission modes are being used. Four conforming paper copies of the pleading and attachments should be sent to the Board by regular mail at the address given in section B.1.a above.

- ii. If the attachments the party is unable to convert to electronic form are more than fifteen pages, the pleading should be sent by e-mail and four copies of the conforming paper copy of the pleading with the attachments should be sent to the Board by express mail or other means that will ensure delivery on the next business day. The e-mail should note that there will be next-day service of the pleading with the attachments.

e. Timely Service by Hand Delivery, Facsimile Transmission, or E-Mail. To make timely service on the Board, any pleading or other submission served by hand delivery, facsimile transmission, or e-mail must be received by the Board on the due date no later than 5:00 p.m. Eastern Time.

f. Service on Other Parties. Whichever of the methods outlined above (e.g., facsimile or e-mail with conforming paper copies to follow by mail) is used for service on the Board, the party serving the pleading should make service on all other parties and the Office of the Secretary (e-mail: hearingdocket@nrc.gov; facsimile number: (301) 415-1101 (facsimile verification number: (301) 415-1966)) by the same or a comparable method.

g. Service of all Filings. Absent some other directive from the Board, all filings in these cases directed to the Board shall be served on the Board and the other parties so as to ensure receipt on the day of filing. Absent some other directive from the Board, the parties may use any of the methods outlined above so long as the filing is timely received by the Board and the other parties.

C. Limitations on Pleading Length and Reply Pleadings

1. Page Limitation

Any motion filed after the date of this Order and any related responsive pleadings shall not exceed twenty (20) pages in length (including signature page) absent preapproval of the Board. A request for Board preapproval to exceed this page limitation shall be sought in writing no less than three business days prior to the time the motion or responsive pleading is filed or due to be filed.

A request to exceed this page limitation must (1) indicate whether the request is opposed or supported by the other participants to the proceeding; (2) provide a good faith estimate of the number of additional pages that will be filed; and (3) demonstrate good cause for being permitted to exceed the page limitation.

2. Reply Pleadings

In accordance with the NRC's rules of practice, leave must be given to file a reply to a response to a motion. See 10 C.F.R. § 2.323(c). A request for Board approval to file a reply shall be sought in writing no less than three (3) business days prior to the time the reply will be filed.⁸ A request to file a reply must indicate whether the request is opposed or supported by the other parties to this proceeding; and demonstrate good cause for permitting the reply to be filed.

D. Motions for Extension of Time

A motion for extension of time filed with the Board in these proceedings shall be submitted in writing at least three (3) business days before the due date for the pleading or other submission for which an extension is sought. A motion for extension of time must indicate whether the request is opposed or supported by the other participants to the particular proceeding; and demonstrate appropriate cause that supports permitting the extension.

E. Opposing a Request to Exceed the Page Limitation, to File a Reply, or to Extend the Time for Filing a Pleading

Any written opposition to a request to exceed the page limit, to file a reply, or to extend the time for filing a pleading shall be served on the Board, the Office of the Secretary, and counsel for the other parties by facsimile transmission, e-mail, or other means that will ensure receipt on the next business day after the filing of the request.

⁸ Although the agency's rules of practice do not provide for reply pleadings, the Board will presume that for a reply to be timely, it would have to be filed within ten days of the date of service of the response it is intended to address.

F. Exhibits/Attachments to Filings.

If a party files a pleading or other submission with the Board that has additional documents appended to it as exhibits or attachments, a separate alpha or numeric designation for each appended document (e.g., Exhibit 1; Attachment A) should be given to each appended document, either on the first page of the appended document or on a cover/divider sheet in front of the appended document.

Exhibits and attachments to a motion and any related responsive pleadings are not subject to the page limitation set forth in section C.1 above.

If either party has any objection to any aspect of this Order, or if either party has any additional matters they believe should be taken up at the Prehearing Conference, those objections and/or suggestions should be filed within seven (7) days of the date of this Order.

IT IS SO ORDERED.⁹

FOR THE ATOMIC SAFETY AND LICENSING BOARD:

/RA/

LAWRENCE G. McDADE, Chairman
Administrative Judge

Rockville, Maryland
May 19, 2005

⁹ Copies of this order were sent this date by Internet e-mail transmission to: (1) Mr. Siemaszko and (2) the NRC Staff.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ANDREW SIEMASZKO) Docket No. IA-05-021
)
)
(Enforcement Action))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (GRANTING LICENSEE'S HEARING REQUEST) 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
Lawrence G. McDade, Chair
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Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
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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 May 2005