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

DOCKETED 05/25/05

SERVED 05/25/05

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-EA
ASLBP No. 05-839-02-EA
May 25, 2005

ORDER

(Scheduling Prehearing Conference Call, and
Granting In Part The NRC Staff's Motion For A Temporary Stay)

Pursuant to the Licensing Board's Order dated May 19, 2005, which granted the Request for Hearing submitted by Mr. Siemaszko, the Board will hold a Prehearing Conference via telephone on June 16, 2005 at 2 P.M., EDT. On or before June 9, 2005, counsel for each of the parties shall contact Karen S. Valloch at 301-415-7405 to obtain the telephone number and pass code for the conference call. To assure that the conference commences promptly at the scheduled time, all participants should access the conference a few minutes before 2:00 P.M.

Prior to the Prehearing Conference the Board will not have ruled on the Petition to Intervene which was submitted on May 13, 2005, by Ohio Citizen Action and the Union of Concerned Scientists.¹ Accordingly, representatives from these organizations will not be permitted to

¹ The NRC Staff and Mr. Siemaszko have until June 7, 2005, to file Answers to the Petition to Intervene that was filed by Ohio Citizen Action and the Union of Concerned Scientists. 10 C.F.R. § 2.309(h)(1). The Petitioners shall have up to 7 days after the service of those Answers within which to file a Reply. 10 .C.F.R. § 2.309(h)(2). In any event, Petitioners' Reply, if they chose to submit one, must be received by the Board no later than 5:00 P.M. EDT on June 14, 2005.

participate as parties at this Prehearing Conference. However, they will be allowed to make a limited appearance, 10 C.F.R. § 2.315(a), for the purpose of presenting oral argument on their Petition to Intervene.² If the Petitioners wish to make such a limited appearance at the Prehearing Conference, they must, on or before June 9, 2005, contact Ms. Valloch to obtain the telephone number and pass code for the conference call. Counsel for Mr. Siemaszko and the NRC Staff shall participate as parties at this Prehearing Conference.

As noted above, on May 19, 2005, this Board issued an Order which, among other things, granted Mr. Andrew Siemaszko's Request for a Hearing.³ Thereafter, on May 23, 2005, the NRC Staff filed an Application for a Temporary Stay of that Order, noting that pursuant to 10 C.F.R. § 2.336(b) the Staff would be required to produce all documents supporting its review of the proposed enforcement action within 30 days of the date of the order granting the hearing. In their Application for a Stay, the Staff argued that if they were required to produce documents pursuant to Section 2.336(b) that act would render moot the Staff's Motion to Delay the Proceedings which was filed on May 17, 2005, without a substantive ruling on the Staff's Motion.

The Board comprehends the logic underlying the Staff's argument. Pursuant to Section 2.336(b), except as ordered by this Board or other competent authority, the Staff would have to produce its general discovery no later than June 20, 2005, and this Board may, or may not, have ruled on the Staff's Motion to Delay these proceedings by that time.

Accordingly, pursuant to Section 2.336(b) we direct that the NRC Staff not provide the general discovery documents in this case until it receives further guidance in the form of a Order from this Board. Likewise, pending further Order from the Board Mr. Siemaszko will not be required to make disclosures pursuant to Section 2.336(a). In any event, the parties will not be

² At the Prehearing Conference the Board will also entertain oral argument on this issue from Mr. Siemaszko and the Staff.

³ Mr. Siemaszko's request for a Hearing was not opposed by the NRC staff.

required to provide the general discovery specified in 10 C.F.R. § 2.336 prior to June 20, 2005, and the Board will allow the parties at least fifteen (15) days after the entry of an appropriate order, to comply with Section 2.336.

To the extent, if any, that the Staff's Application for a Stay requests relief in excess of that which has been granted by this Order, it is denied. If the Staff has further questions regarding this issue they can be addressed during the Prehearing Conference on June 16, 2005. Likewise, if Mr. Siemaszko objects to this procedure he may submit written objections within seven (7) days, and may present oral argument on this point at the Prehearing Conference.

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

IT IS SO ORDERED.⁴

FOR THE ATOMIC SAFETY
AND LICENSING BOARD:

/RA/

LAWRENCE G. McDADE, Chairman
Administrative Judge

Rockville, Maryland
May 25, 2005

⁴ Copies of this order were sent this date by Internet e-mail transmission to: (1) Billie Pirner Garde, counsel for Mr. Siemaszko, (2) the NRC Staff, (3) David Lochbaum, Union for Concerned Scientists, and (4) Sandy Buchanon, Ohio Citizen Action.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SCHEDULING PREHEARING CONFERENCE CALL, AND GRANTING IN PART THE NRC STAFF'S MOTION FOR A TEMPORARY STAY) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 25th day of May 2005