

RAS 10361

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

DOCKETED 08/24/05

SERVED 08/24/05

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

August 24, 2005

ORDER

(Scheduling Prehearing Conference)

The NRC Staff has filed a Motion to Extend the Stay of the Proceeding and an Application for a Temporary Stay to Preserve the Status Quo.¹ Accompanying these documents were an Affidavit executed by Thomas T. Ballantine, a trial attorney employed at the U.S. Department of Justice, which was filed under seal, and a Proposed Protective Order, which would allow for the release of the Affidavit to Mr. Siemaszko, but would restrict its use and distribution.

The Board will hold a Prehearing Conference via telephone on August 30, 2005 at 2:00 P.M., E.D.T. At this Prehearing Conference we will determine the willingness of Mr. Siemaszko and Ohio Citizen Action and the Union of Concerned Scientists (OCA/UCS) to enter into the Confidentiality and Non-Disclosure Agreement pursuant to the Proposed Protective Order. In addition, we will question the NRC Staff regarding the harm that the government perceives would flow from a decision to proceed with the resolution of this matter pursuant to the schedule set out in our Order of August 11, 2005.

¹ See NRC Staff Motion to Extend the Stay of Proceedings (Aug. 19, 2005); Application for a Temporary Stay to Preserve the Status Quo (Aug. 19, 2005).

Pursuant to our current schedule, the only discovery that the NRC must provide to Mr. Siemaszko prior to November 23, 2005 (the day before Thanksgiving holiday weekend), is the general discovery mandated by 10 C.F.R. § 2.336(b). We ask that the NRC Staff be prepared to discuss, with a degree of specificity not present in the Ballantine Affidavit, how the release of those documents could possibly interfere with the ongoing investigation being conducted by the Department of Justice. The NRC Staff should also be prepared to discuss whether redaction of those documents would protect those specific governmental interests and, if not, why not. Finally, we ask that the Staff be prepared to discuss what they anticipate would happen to this proceeding, and our discovery schedule, should the Department of Justice move from an investigative to a prosecution stage. Will the NRC Staff then ask that this proceeding be delayed indefinitely, perhaps for years, until all criminal proceedings arising out of the Davis-Besse investigation, including criminal proceedings, which do not involve Mr. Siemaszko, are concluded? We will then solicit comment on these issues from Mr. Siemaszko and OCA/UCS.

We do not anticipate hearing argument during this Prehearing Conference on the other matters which are now pending in this proceeding: whether to admit OCA/UCS to this proceeding pursuant to 10 C.F.R. § 2.309(e) (Discretionary Intervention),² and a resolution of the scope of the proceeding.³ Once all briefs on those matter have been received and analyzed, the Board will determine whether to request additional argument.

On or before 4:00 P.M. E.D.T. on August 29, 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. on August 30, 2005.

² See ASLBP Memorandum and Order (Aug. 2, 2005) (briefing closes on Aug. 29, 2005)

³ See ASLBP Order Requesting Further Briefing Regarding Scope of Proceeding (Aug. 17, 2005) (briefing closes on Aug. 31, 2005)

Prior to the Prehearing Conference the Board will not have ruled on the OCA/UCS request for discretionary intervention. Accordingly, a representative from these organizations will not be permitted to participate as a party at this Prehearing Conference. However, they will be allowed to make a limited appearance, 10 C.F.R. § 2.315(a), to monitor the proceeding and offer argument on the NRC Staff's Motion to Extend the Stay. If the Petitioners wish to make such an appearance at the Prehearing Conference, they must, on or before 4:00 P.M. E.D.T. on August 29, 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.

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 served electronically and filed with the Board no later than August 29, 2005, at 1:00 P.M., E.D.T.

IT IS SO ORDERED.⁴

FOR THE ATOMIC SAFETY
AND LICENSING BOARD:

/RA/

LAWRENCE G. McDADE, Chairman
Administrative Judge

Rockville, Maryland
August 24, 2005

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

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 (SCHEDULING PREHEARING CONFERENCE) 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

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 24th day of August 2005