

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

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
June 9, 2006

ORDER

(Requesting Position of Union of Concerned Scientists On Discretionary Intervention)

INTRODUCTION

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 provided for the opportunity to request a hearing, and on April 22, 2005, Mr. Siemaszko requested a hearing.² On May 18, 2005, this Atomic Safety and Licensing Board was established³ and the following day this Board granted Mr. Siemaszko's request for a hearing.⁴

While not opposing Mr. Siemaszko's request for a hearing, the NRC Staff filed a motion to delay this proceeding and noted that its request for a delay was being made subject to the

¹ Order Prohibiting Involvement in NRC-Licensed Activities: Andrew Siemaskzo, 70 Fed. Reg. 22,719 (May 2, 2005).

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

³ In the Matter of Andrew Siemaszko: Establishment of Atomic Safety and Licensing Board (May 18, 2005).

⁴ Licensing Board Order Granting Mr. Siemaszko's Hearing Request (May 19, 2005).

possibility that it might file subsequent requests for additional extensions.⁵ That initial request for a stay was followed up by several additional requests from the NRC Staff that this proceeding be stayed,⁶ all of which were granted by this Board.⁷ The most recent stay, which will run for an indefinite period and could last several years, was granted by the Board on March 2, 2006, and was affirmed by the Commission on May 3, 2006.⁸

Meanwhile, two public interest groups, the Union of Concerned Scientists and Ohio Citizen Action (UCS/OCA), sought to intervene in the Siemaszko enforcement action.⁹ Finding that UCS/OCA lacked standing within the meaning of 10 C.F.R. § 2.309(d), the Board denied the Petition to Intervene as a matter of right but sought additional briefing on the appropriateness of granting UCS/OCA “discretionary intervention” status pursuant to 10 C.F.R. § 2.309(e).¹⁰ The NRC Staff opposed the granting of discretionary intervention to UCS/OCA,¹¹ but Mr. Siemaszko and UCS/OCA both strongly urged that discretionary intervention status be granted.¹²

⁵ NRC Staff Motion for Delay of Proceeding (May 17, 2005).

⁶ NRC Staff Motion to Extend the Stay of the Proceeding (Aug. 19, 2005), (Dec. 6, 2005); NRC Staff Motion to Hold the Proceeding in Abeyance (Feb. 1, 2006).

⁷ Licensing Board Orders (Granting NRC Staff Motions to Stay Proceedings) (July 22, 2005), (Sept. 29, 2005), (Dec. 22, 2005); Licensing Board Order granting NRC Staff Motion to Hold Proceeding in Abeyance (Mar. 2, 2006) (unpublished).

⁸ Commission Memorandum and Order, CLI-06-12 (May 3, 2006).

⁹ UCS/OCA Request for Hearing and Petition to Intervene (May 13, 2005) [hereinafter UCS/OCA Petition].

¹⁰ Licensing Board Memorandum and Order (Denying UCS/OCA Petition to Intervene) (Aug. 2, 2005) (unpublished).

¹¹ NRC Staff Reply – Discretionary Intervention (Aug. 29, 2005).

¹² Response of UCS/OCA – Discretionary Intervention (Aug. 12, 2005) [hereinafter UCS/OCA Response - Intervention]; Reply of Andrew Siemaszko - Discretionary Intervention (Aug. 29, 2005) [hereinafter Siemaszko Reply – Intervention].

Having fully considered UCS/OCA's initial petition and the additional briefing, the Board granted discretionary intervention status to UCS/OCA, concluding that they would "meaningfully contribute to the development of a sound record on contested matters"¹³ and that by admitting UCS/OCA into this proceeding we would not "inappropriately broaden or delay the proceeding."¹⁴

The NRC Staff appealed this Board's Order granting discretionary intervention status to UCS/OCA.¹⁵ Acting on the NRC Staff's appeal, on June 2, 2006, the Commission vacated the "discretionary intervention" portion of the Board's December 22nd Order and remanded the "discretionary intervention" issue to the Board.¹⁶

DISCUSSION

It has now been 13 months since UCS/OCA initially sought to intervene in this proceeding and, because of the indefinite stay requested by the NRC Staff which was granted by the Board and affirmed by the Commission, it may be years before this Board conducts a hearing to adjudicate the allegations which the NRC Staff made against Mr. Siemaszko. During the interim, three additional hearings arising out of the Davis-Besse incident have been granted,¹⁷ and an Indictment was handed up by a federal grand jury in the Northern District of Ohio charging Mr. Siemaszko and two other individuals with crimes allegedly committed at

¹³ Licensing Board Order Granting Discretionary Intervention Status (Mar. 2, 2006) at 2 (unpublished). See also Final Rule: Changes to Adjudicatory Process, 69 Fed. Reg. 2182, 2201 (Jan. 14, 2004).

¹⁴ Id.

¹⁵ See NRC Staff's Notice of Appeal (Jan. 3, 2006).

¹⁶ Commission Memorandum and Order, CLI-06-16 (June 2, 2006) at 15.

¹⁷ David Geisen, IA-05-052; Dale Miller, IA-05-053; Steven Moffitt, IA-05-054.

Davis-Besse.¹⁸ In short, time has passed and significant events have occurred.

When the Board granted discretionary intervention status to UCS/OCA, we did so primarily because of the scope and complexity of the Davis-Besse investigation (the NRC Staff represented that the investigation had generated “some 70,00 pages of material”¹⁹). The Board believed, since UCS/OCA had spent more than 3 years studying the Davis-Besse incident and reviewing documents generated by the NRC’s investigation,²⁰ and since Mr. Siemaszko’s counsel would be starting from a standing stop, that by allowing the participation of UCS/OCA as a party to this proceeding we would both expedite these proceedings and allow UCS/OCA to “meaningfully contribute to the development of a sound record on contested matters.”²¹

¹⁸ United States v. David Geisen, Rodney Cook, and Andrew Siemaszko, N.D. Ohio, Case # 06 CR 712 Katz.

¹⁹ Prehearing Conference Transcript (Aug. 30, 2005) at 30.

²⁰ See UCS/OCA Petition, UCS/OCA Response Intervention at 3: “UCS [has] monitored events at Davis-Besse quite closely since the reactor vessel head damage was announced in March 2002. UCS even retained outside counsel who reviewed publically available documents and prepared a legal memo Ohio Citizen Action and UCS teamed up to present that legal memo and its findings to the Attorney General’s office in Ohio. . . . [UCS/OCA] have acquired a deep and thorough understanding of the information within these documents and [represented that they] are well-equipped to match applicable documents to the issues within the scope of this proceeding. . . . [They further represented that] inclusion of [UCS/OCA] in the proceeding will . . . help ensure that all pertinent documents are placed on the record.”

²¹ 69 Fed. Reg. at 2201. What the Board viewed as relevant on this point was that, since Mr. Siemaszko was represented by a small law firm on a pro bono basis, finite resources would be available to prepare Mr. Siemaszko’s defense. Accordingly, given the resources available to Mr. Siemaszko, and given the scope and complexity of the Davis-Besse investigation (as noted above, the NRC Staff represented that the investigation had generated some 70,00 pages of material), the Board believed (because UCS/OCA was experienced in NRC Proceedings **and** because UCS/OCA had spent more than 3 years studying the Davis-Besse incident and reviewing documents generated by the investigation) that by allowing the full participation of UCS/OCA as a party to this proceeding we would compress the prehearing preparation period and allow UCS/OCA to meaningfully contribute to the development of a sound record on contested matters.

At that time, however, it was our belief that we would be promptly proceeding to a hearing on this matter. We assume that UCS/OCA, in requesting that “the Board exercise its discretion and allow [UCS/OCA] to participate in the proceeding,” and Mr. Siemaszko in urging the Board to admit UCS/OCA to this proceeding, were operating under a similar assumption.

Accordingly, before we proceed to adjudicate whether UCS/OCA should be granted discretionary intervention status, the Board believes that it is appropriate to ask UCS/OCA whether, given the passage of time, the occurrence of significant intervening events, and the uncertainty regarding when the Siemaszko hearing will be held, they still wish to participate in this proceeding as a party.

CONCLUSION

Therefore, we direct UCS/OCA to inform the Board no later than June 16, 2006, whether they still wish to obtain discretionary intervention status in this proceeding.

IT IS SO ORDERED.²²

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Lawrence G. McDade
ADMINISTRATIVE JUDGE

Rockville, Maryland
June 9, 2006

²² Copies of this order were sent this date by Internet e-mail transmission to: (1) counsel for Mr. Siemaszko, (2) counsel for the NRC Staff, (3) David Lochbaum, Union of Concerned Scientists, and (4) Sandy Buchanan, Ohio Citizen Action.