

J-18

Rebecca Giitter

March 31, 2008 (10:27am)

From: Johanna Thibault
Sent: Friday, March 28, 2008 10:27 AM
To: Mary Lampert
Cc: Ann Young; David Lewis; David Roth; James Adler; Kevin Nord; Kimberly Sexton; 'Mark Sylvia'; OCAAMAIL Resource; Paul Abramson; Paul Gaukler; Richard Cole; Richard MacDonald; Hearing Docket; Sheila Hollis(PlyAttorney); Susan Uttal; Zachary Kahn
Subject: RE: Questions about Exhibits

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Ms. Lampert,

At the hearing, the Board will assign an "official exhibit #" to every exhibit filed by each of the parties; therefore, the type of numbering system used by each party is only critical in the respect that each individual exhibit is identified with a number or letter that is unique to each exhibit and may be linked to that party's exhibit list.

Please note that the Statement of Position and Rebuttal documents should not be numbered and submitted as an exhibit at the hearing. These are legal briefings, but are not evidentiary documents. Although these documents are not exhibits, they will become part of the record and they will be considered by the Board at the hearing. However, just to clarify, any exhibits filed as attachments to the Statement of Position and Rebuttal or other exhibits properly filed and accepted by the Board, as well as any pre-filed testimony or declaration, ARE exhibits and should be filed as such.

Please let me know if you have any additional questions regarding the submittal and marking of exhibits.

Johanna Thibault
(301) 415-5833
Law Clerk, ASLBP

From: Mary Lampert [mailto:mary.lampert@comcast.net]
Sent: Friday, March 28, 2008 9:19 AM
To: Johanna Thibault
Cc: Ann Young; David Lewis; David Roth; James Adler; Kevin Nord; Kimberly Sexton; 'Mark Sylvia'; OCAAMAIL Resource; Paul Abramson; Paul Gaukler; Richard Cole; Richard MacDonald; Hearing Docket; Sheila Hollis(PlyAttorney); Susan Uttal; Zachary Kahn
Subject: Questions about Exhibits

March 28, 2008

Dear Ms. Thibault:

Per Judge Young's instructions, I am submitting my questions by email with copies to the Board and all parties.

The materials submitted by Pilgrim Watch fall, generally, into three categories:

- a. Pilgrim Watch's Statement of Position that was resubmitted following the procedure recommended below, and its Rebuttal that followed the same procedure;
- b. Separate numbered exhibits (Exhibits 1-26 submitted with the Statement of Position and Exhibits 27-52B (submitted recently as late filed); and

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- c. Expert declarations (two of which are labeled Exhibits 1 and 2 to the Statement of Position, and a third declaration of which was submitted with Pilgrim Watch's rebuttal but is not marked as a numbered exhibit).

The resubmitted Statement of Position refers to numbered exhibits (including Expert declaration Exhibits 1 and 2). It also includes citations, by document and page number, to documents that themselves are not one of the numbered exhibits.

I assume that the previously numbered exhibits themselves should not be renumbered. Thus, I plan to mark the other required exhibits, i.e., the Statement of Position, Rebuttal, and the third Expert declaration, as respectively Exhibits A, B and C.

Is this acceptable to the Board, or would you prefer that I follow some other procedure?

Thank you and have a nice week-end,

Mary Lampert
781-934-0389

Attachment

Email from Z. Kahn 02.26.08 1:31PM

Dear Ms. Lampert:

I think that the confusion may be that you consider your "Statement of Position" to be your "Prefiled Testimony." However, testimony on technical matters must be by experts qualified to talk about the issues addressed, but your Statement of Position is signed by you, not by your experts, so that the only actual testimony that you have submitted is that provided in the declarations of your various experts. Your Statement of Position, because it is not testimony or evidence, may not be considered as such, except to the extent that there are specific references therein to actual testimony or evidence. In order for the board to consider the matters addressed in your Statement of Position as anything other than argument on how it should interpret the actual evidence, you must make specific references to actual evidence - testimony of experts or specific documents - that supports statements made in your Statement of Position.

Therefore, after consulting with the Board, the following is recommended: Pilgrim Watch should modify its Statement of Position (i.e., the 99-page document entitled "Pilgrim Watch Presents Statements of Position, Direct Testimony . . . Under 10 CFR 2.12108") by adding a reference or footnote for each statement or assertion made. In the reference (which may be done by hand if you wish) or footnote, you should provide a

precise citation (document and page number) that supports the statement or assertion in question. You have done this in some places -- for example, on page 36 you cite the Gunderson Declaration providing paragraph numbers -- but not in others. All portions of the document that you wish to have considered as evidence by the Board in making its decision should be cited in the same manner as you cite the Gunderson Declaration on Page 36, or as a footnote. If you decide to use footnotes, you may add handwritten footnote numbers in the appropriate places in the document, and then create a new document containing the actual footnotes, or, more accurately, the numbered endnotes.

Please resubmit your modified 99-page "Statement of Position . . ." with, or preferably prior to, your submission of your rebuttal testimony. Provide copies to the Board and all parties, and file as you would any filing. In addition, all future filings should contain similar citations as described above.

Again, while you may not consider this as legal advice, I hope that it is helpful and clarifies the matters in question for you.

Sincerely,

Zachary S. Kahn
Law Clerk
Atomic Safety and Licensing Board
United States Nuclear Regulatory Commission
Phone: (301) 415-6754
E-Mail: Zachary.Kahn@nrc.gov