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NUCLEAR REGULATORY COMMISSION

Title: Hearing ITMO Charlissa C. Smith

Docket Number: 55-23694-SP

ASLBP Number: 13-925-01-SP-BD01

Location: (teleconference)

Date: Monday, March 18, 2013

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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HEARING

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In the Matter of:	:	Docket No.
CHARLISSA C. SMITH	:	55-23694-SP
	:	ASLBP No.
(Denial of Senior	:	13-925-01-SP-BD01
Reactor License)	:	

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Monday, March 18, 2013

Teleconference

BEFORE:

RONALD M. SPRITZER, Chair

WILLIAM J. FROEHLICH, Administrative Judge

BRIAN K. HAJEK, Administrative Judge

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APPEARANCES :

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On Behalf of the Nuclear Regulatory Commission

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P R O C E E D I N G S

10:00 a.m.

1
2
3 CHAIR SPRITZER: Good morning. My name is
4 Ron Spritzer. I am the newly appointed Chairman of
5 this Hearing Board. And with me in our conference
6 room is Judge William Froehlich. Also our law clerk,
7 Nicole Picard. And with us by telephone is Brian
8 Hajek, a third judge on our Board.

9 We are here in the matter of Charlissa
10 Smith. This is Docket No. 55-23694-SP. And for the
11 record why don't we have those present in addition to
12 the judges identify themselves. Can we start with Ms.
13 Smith?

14 MS. SMITH: Your Honor, this is Charlissa
15 Smith that is present.

16 CHAIR SPRITZER: Very good. And who is
17 present for the NRC staff?

18 MS. UTTAL: This is Susan Uttal from the
19 Office of General Counsel. With me, is Lloyd Subin
20 from the Office of General Counsel and Jeremy
21 Wachutka, the Office of General Counsel. We also have
22 two staff members, Don McHale and John Monroe.

23 CHAIR SPRITZER: Okay. Does anybody have
24 anything they want to bring up? I'm going to go
25 through the various issues we mentioned in our order

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1 for this teleconference. But does anybody have
2 anything they need to bring up before we get started
3 down that road?

4 (No verbal response.)

5 Hearing no takers, we will go and discuss
6 the issues. This is our order of March 12, 2013. And
7 we will discuss them in order.

8 The first issue we need to talk about is
9 the procedure for submission of statements of position
10 written and initial and rebuttal testimony and the
11 various other materials covered in Section 2-1207 of
12 Title 10 of the Code of Federal Regulations.

13 Ms. Smith, since you are going to be
14 representing yourself, needless to say, I don't know
15 whether you -- You probably have done this already.
16 But you need to familiarize yourself with what we
17 refer to as Subpart L. That's the regulations
18 starting at 10 CFR Section 2-1200 and continuing on to
19 Section 2-1213. Have you had a chance to look at
20 those before today?

21 MS. SMITH: Yes, Your Honor. I have read
22 through Subpart L and I do have a copy of it with me.

23 CHAIR SPRITZER: Okay. Great. You'll see
24 in Section 2-1207 there's a procedure for submitting
25 statements of position, written testimony and so

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1 forth. And we're going to try and work out a schedule
2 for doing that.

3 One way to do it which I've used in at
4 least one other case is to simply have the statements
5 of position and the testimony and exhibits together
6 with your supporting affidavits for each side to
7 essentially file everything simultaneously and then
8 for each side to respond to the other side's
9 submissions 20 or 30 days later. And that's one
10 approach we can take here.

11 Another approach would be for Ms. Smith to
12 file at least her statement of position and probably
13 also her initial testimony, the exhibits she's relying
14 on initially followed by the staff's filings and then
15 some opportunity for rebuttal by Ms. Smith. Those are
16 at least two procedures that we're thinking about.

17 Let me ask -- Let me start with the staff
18 and see if you have any reaction to either of those
19 possibilities. Do you have something else you would
20 be in favor of?

21 MR. SUBIN: We have no objection to
22 either. We would prefer -- Go ahead.

23 MS. UTTAL: This is Susan Uttal, Your
24 Honor.

25 CHAIR SPRITZER: Sure.

1 MS. UTTAL: Would the staff have a chance
2 to rebut on the second plan or only be allowed to file
3 a response to the initial testimony?

4 CHAIR SPRITZER: As I described it, you
5 would only get a response to the initial testimony.
6 We could build in time for rebuttal. Of course,
7 that's going to lengthen the process even further.

8 MS. UTTAL: Well --

9 CHAIR SPRITZER: Go ahead.

10 MS. UTTAL: Since we don't really have a
11 contention per se in this proceeding, but we just have
12 little more amorphous areas of concern. I think I'm
13 gravitating towards the second procedure so that Ms.
14 Smith can lay out her contentions more specifically so
15 that the staff has a better idea of exactly what the
16 complaints are.

17 CHAIR SPRITZER: Okay.

18 Ms. Smith, do you have any thoughts about
19 what procedure you would be most comfortable with?

20 MS. SMITH: Your Honor, I would be more
21 comfortable with both parties submitting their
22 positions and being allowed to respond within 30 days.

23 CHAIR SPRITZER: In other words, the first
24 option.

25 MS. SMITH: Yes, Your Honor.

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1 CHAIR SPRITZER: Okay. Let me ask you
2 this. Regardless of which procedure we follow, how
3 long from today, Ms. Smith, do you think you would
4 need to prepare your testimony and your statement of
5 position and get together and label any exhibits you'd
6 want us to review?

7 MS. SMITH: Your Honor, I would like to
8 request at least 30 days.

9 CHAIR SPRITZER: Thirty days.

10 MS. SMITH: Yes, Your Honor.

11 CHAIR SPRITZER: If we followed option
12 one, again for the court reporter, this is Ron
13 Spritzer. Hopefully, I'll try to remember to identify
14 myself. If we file option one, would the staff be
15 able to make its filings also within 30 days from
16 today?

17 MR. SUBIN: I don't know. We may need
18 more time. We have some violations we haven't
19 (Inaudible).

20 CHAIR SPRITZER: I didn't get that.

21 COURT REPORTER: Could you please identify
22 yourself?

23 MR. SUBIN: Yes. This is Lloyd Subin.

24 COURT REPORTER: Okay. Thank you.

25 CHAIR SPRITZER: You were saying.

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1 MR. SUBIN: We probably would need closer
2 to 60 days if that's possible.

3 CHAIR SPRITZER: And why is that?

4 MR. SUBIN: We have a lot of stuff that
5 has to go into the hearing file which is by regulation
6 due on Thursday and we would need time to do that. We
7 have a lot of files that have PII information that we
8 need to sort through. We need to redact and get that
9 into the file. We need time for that. Then we'll
10 have to come up with our affidavits and statements
11 from our parties.

12 MS. UTTAL: And, Your Honor, this is Susan
13 Uttal. We also have some issues we need to discuss
14 with the Board regarding the hearing file because Ms.
15 Smith has requested a lot of information be held as
16 private which would normally go into the hearing file
17 as public. And we don't exactly know how to handle
18 that.

19 CHAIR SPRITZER: All right. We are going
20 to get to the issue of protective order and so forth
21 in due course. If we file procedure number two which
22 the staff said it was in favor -- that is my option
23 number two. Again this is Judge Spritzer -- Ms. Smith
24 said she could file in 30 days. If she does that, can
25 you all still file your rebuttal testimony that is

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1 responding to her testimony and statement of position
2 and so forth within 60 days from today? That is 30
3 days from when you would receive her information.

4 MR. SUBIN: Yes, that we could do. This
5 is Lloyd Subin. Yes, we should be able to do that.

6 CHAIR SPRITZER: All right.

7 And then, Ms. Smith, assuming we decide to
8 give you time to rebut the staff's position -- again
9 this is under option two -- how long would you need
10 for that do you think?

11 MS. SMITH: I would also ask for 30 days
12 on that as well.

13 CHAIR SPRITZER: All right. Under that
14 approach, we have everything in within approximately
15 90 days from today, 30 for Ms. Smith to file her
16 initial filings, 30 days for the staff to respond and
17 30 days for Ms. Smith to file her rebuttal.

18 MS. UTTAL: Yes. Could we have a short
19 period to rebut her rebuttal?

20 CHAIR SPRITZER: Normally, we have --
21 Whoever has the burden of proof and I assume it would
22 be Ms. Smith in this case. Although if you have a
23 different view, let me know. But I would assume that
24 she would have the burden of proof here.

25 The person with the burden of proof

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1 normally gets the last word. We have to call an end
2 to this at some point or we'll never get to the
3 hearing.

4 That would be my initial inclination. If
5 you have some different thoughts about that, I'm
6 willing to listen to them.

7 MS. UTTAL: No, I'm not going to argue
8 with you about the burden of proof.

9 CHAIR SPRITZER: Okay. Probably a wise
10 move.

11 All right. That gives us something to
12 work with. What we're going to do by the way -- again
13 this is Judge Spritzer -- is after this hearing we
14 will get out in a very short time frame an order
15 that's going to resolve these various issues. And
16 we'll need to confer with each other about that.
17 We'll leave it at that.

18 As to the date and location of the
19 evidentiary hearing, my thinking it would be in
20 Augusta, Georgia. We have some experience from the
21 Vogtle -- that's V-O-G-T-L-E -- Combined License
22 proceeding of using the facilities there. I think
23 they've used the Federal District Court and also the
24 Doubletree Hotel.

25 Anybody have any thoughts about the

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1 location and the -- Well, let's talk about the
2 location first. Is there any problem with doing it in
3 Augusta?

4 MS. UTTAL: Not from the staff.

5 CHAIR SPRITZER: Ms. Smith.

6 MS. SMITH: No disagreement from Ms.
7 Smith.

8 CHAIR SPRITZER: All right. Thank you.

9 As far as timing, let's assume we get
10 everything in in the way of written filings within 90
11 days of today. So that would put us -- We would get
12 everything in by June 18th or 19th, somewhere in
13 there. Could we go to hearing within 30 days of that?

14 MS. UTTAL: Nothing like July in Georgia.

15 CHAIR SPRITZER: It would be hot, but if
16 we wait for cool weather it will be another three
17 months.

18 MS. SMITH: Yes. No disagreement from me,
19 Your Honor.

20 MS. UTTAL: I think we're looking at the
21 staff's schedule right now. How are we doing here?

22 (Off the record discussion.)

23 It looks like July 8th through 12th is
24 available for the staff.

25 CHAIR SPRITZER: All right. And when are

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1 you next available after that?

2 MS. UTTAL: The staff looks like it's
3 available August 12th through 15th.

4 (Off the record discussion.)

5 We're checking on it. The 15th through
6 the 19th. July 15th through the 18th.

7 CHAIR SPRITZER: Is that July?

8 MS. UTTAL: July 15th through 18th.

9 CHAIR SPRITZER: All right. In addition
10 to July 8th through 12th.

11 MS. UTTAL: Right.

12 CHAIR SPRITZER: All right.

13 MS. UTTAL: Four days the following week.

14 CHAIR SPRITZER: Realistically unless
15 somebody has a different view, I think this is a
16 hearing we would anticipate completing in one day.

17 MS. UTTAL: Yes. That sounds like a good
18 estimate.

19 CHAIR SPRITZER: All right. That gives
20 some dates to work with. We'll have to check with our
21 potential locations. If for any reason anybody's
22 availability changes before we issue an order setting
23 the date and location of the hearing, please let
24 Nicole, our law clerk, know as soon as possible.

25 MS. SMITH: Your Honor, I have a question.

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1 CHAIR SPRITZER: Sure.

2 MS. SMITH: During this preconference
3 hearing, are we going to discuss the actual individual
4 contentions that will be disputed during the hearing?
5 I'm not sure if I'm absolutely clear on exactly what
6 is being allowed at this point.

7 CHAIR SPRITZER: This is basically a
8 procedural conference. We're trying to work out a
9 procedure. What we're hoping and I guess this is a
10 good time to discuss this is what we'll expect you to
11 do when you make your initial filings. It is to lay
12 out for us -- that is the Board -- as well as for the
13 benefit of the staff in preparing their response in
14 fairly precise form what your specific argument,
15 intents, whatever phrase you want to use for them of
16 what they are.

17 Hopefully, what I would suggest you to do
18 is have separate headings setting forth each separate
19 argument that you have, issue, whatever you want to
20 call it, and then an explanation of what the issue is
21 and what information is. Presuming it will include
22 your own testimony plus any exhibits that you're
23 relying on. And then in your testimony to again have
24 your testimony follow that outline that is set out for
25 us so we can understand what issue given section of

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1 testimony relates to. Of course, it could be more
2 than one issue. But try to make clear for us to the
3 extent you're able what the testimony relates to.

4 That's where we're looking for, not really
5 here today, your initial filings to make it clear to
6 us what claims you're making and what the basis of
7 those claims is, what exhibits you're relying on for
8 those claims. I don't think this is specifically
9 covered in Subpart L, but it would certainly be
10 helpful to us and I suspect to the staff as well if in
11 your testimony when you're basing your testimony on a
12 document, cite the document. It can be in a footnote,
13 however you're comfortable doing it.

14 Your exhibits -- and we're going to step
15 this out in an order that you'll be able to review --
16 will be marked in a specific way, numbered in a
17 specific way. So if you're citing your Exhibit 3, for
18 example, or you're basically your testimony on your
19 Exhibit 3, cite that document.

20 You need to let us know what you're
21 relying on. You can't expect that we're going to
22 necessarily be able to connect all the dots together.

23 Is that reasonably clear? As I say, we'll
24 put this in an order. You're not going to have to
25 remember everything I'm telling you right now. But as

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1 a general outline of what we'd like you to do, is that
2 reasonably clear? Are there any questions you have?

3 MS. SMITH: Yes, Your Honor. It is clear.
4 I would like to add or ask about documents that are
5 hard to reproduce based on the amount of information
6 that's included. I have a couple of documents that
7 may have to be submitted by jump drive strictly
8 because of the format that it would lay out if you
9 were to print it.

10 CHAIR SPRITZER: Okay. We can make
11 arrangements for that if that's what you need to do.

12 JUDGE FROEHLICH: This is Judge Froehlich.
13 I'm new to the case and have been reviewing the
14 materials that have been filed so far. And I notice
15 that they are quite voluminous. I would hope that as
16 we approach the hearing stage that in the testimony
17 and the exhibits if there are voluminous exhibits that
18 the testimony focus on specific parts by page or by
19 paragraph.

20 Because, at least, for me at this stage
21 it's very difficult for me to understand how these
22 many, many pages that have been filed relate to any
23 particular complaint or claim. I think one of the
24 goals I'd ask Ms. Smith to focus on is that in the
25 preparation of her testimony exhibits that she

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1 relates, not only the exhibit that she refers to, but
2 specific portions of it to show whatever facts or
3 allegations she may have. That would help me an awful
4 lot as I move through the materials.

5 MS. SMITH: Yes, Your Honor. I
6 understand.

7 MS. UTTAL: Your Honor, this is Susan
8 Uttal. I would appreciate it if the Board would point
9 Ms. Smith to Section 2.337 regarding evidence at
10 hearing so that she'd understand what kind of evidence
11 is needed and make sure that she understands that the
12 evidence that's presented has to be presented
13 separately.

14 She can't just refer to the stuff she's
15 already sent in. She has to send it in as a package
16 of evidence.

17 CHAIR SPRITZER: Yes. This is Judge
18 Spritzer. That's what we were trying to make clear
19 and I think she does understand that based on her
20 responses so far. And again we will set this out in
21 an order. Hopefully, it will be clear. If the staff
22 has any concerns and it's still not sufficiently
23 clear, you can let us know.

24 But, yes, we do expect -- We don't want
25 you to simply refer to things that have already been

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1 filed. Those weren't filed in form. They need to be
2 filed for an evidentiary hearing. They will need to
3 be filed as separate exhibits.

4 What exactly constitutes an exhibit
5 involves some element of judgment. But, for example,
6 a letter rather than filing four or five letters as
7 one exhibit, each letter typically would be a separate
8 exhibit. If there's an attachment to the letter, that
9 can be included within one exhibit.

10 It's more difficult to work with exhibits
11 that are hundreds of pages than it is with ones that
12 are broken down into separate exhibits. Now if you
13 have a 100 page document and it's just one document,
14 that's going to need to be filed as one exhibit. And
15 we'll have to deal with that.

16 But in that instance it's particularly
17 important as Judge Froehlich just suggested that
18 whoever is citing that exhibit give us a page number
19 and not expect us to look through 100 pages and figure
20 out what page or paragraph relates to the specific
21 issue you're talking about. So that would be
22 memorialized in an order and hopefully that will be
23 clear to everyone.

24 They will need to be filed electronically
25 at least unless there is an exhibit that needs to be

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1 filed on -- What was it called? Ms. Smith, you
2 mentioned a -- What was it called? A flash drive or
3 something of that nature?

4 MS. SMITH: Yes, Your Honor.

5 CHAIR SPRITZER: Okay.

6 JUDGE FROEHLICH: Ms. Smith, I know there
7 are certain limitations on the size of documents.
8 This is Judge Froehlich. If there are large documents
9 they probably should still be filed electronically,
10 but perhaps they'll have to be split into one or more
11 parts in order to be accepted by the system.

12 Would that address your concern on the
13 materials that were on a thumb drive?

14 MS. SMITH: Your Honor, I do know that the
15 files that I'm talking about are larger than 50
16 megabytes. And I did try to upload them through the
17 electronic process. And for whatever reason it did
18 not upload.

19 I could contact the help desk to see if
20 they can assist me in trying to split that document
21 up. But I've tried to email it. I've tried to upload
22 it. And I may not have enough or be knowledgeable
23 enough of Excel spreadsheets to know how to properly
24 break it apart and it not distort some of the data.
25 I can contact the help desk from the NRC and see if

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1 they can assist me with that.

2 JUDGE FROEHLICH: Okay. Please keep the
3 Board advised if you have any problems after speaking
4 with the help desk so that we can get these materials
5 into the record.

6 MS. SMITH: Yes, Your Honor.

7 JUDGE FROEHLICH: Thank you.

8 CHAIR SPRITZER: All right. While we're
9 on the --

10 JUDGE HAJEK: Excuse me. This is Judge
11 Hajek. Before we get too far away from the hearing
12 date, I just want to let you know that I am not
13 available July 10th through 12th.

14 CHAIR SPRITZER: But you would be
15 available July 8th and 9th.

16 JUDGE HAJEK: That is correct.

17 CHAIR SPRITZER: This is Judge Spritzer
18 again. So while we're on the subject of exhibits, let
19 me move ahead to paragraphs 5 and 6. The staff
20 mentioned an issue regarding a request for documents
21 or a request for disclosure of documents and some
22 issues about confidentiality. Perhaps I misphrased
23 that, but maybe we can return to what you mentioned
24 earlier.

25 MR. SUBIN: Ms. Smith requested that --

1 JUDGE FROEHLICH: Please identify yourself
2 and speak a little louder please.

3 MR. SUBIN: Lloyd Subin. I believe Ms.
4 Smith was the one who originally identified that she
5 wanted most of the documents I guess to be left
6 confidential. Usually, everything except what we
7 redact like PII would be public. So we're a little --
8 We're not sure where we stand with that at this point
9 in time.

10 JUDGE FROEHLICH: This is Judge Froehlich.
11 Let me ask the question maybe to start the discussion.
12 The materials for which protected status is requested,
13 is this a thing that if redacted could be made public?
14 Or, Ms. Smith, is your request that all or much of the
15 material that you have even if redacted should be
16 nonpublic?

17 MS. SMITH: Your Honor, I have no problem
18 with the documents being presented in a public forum
19 if they are redacted. I just wanted to ensure that I
20 did not submit anything that would be in violation of
21 Privacy Act. I just wanted to make sure that I stayed
22 in line with the requirements of the Privacy Act
23 myself.

24 JUDGE FROEHLICH: Then let me ask the
25 staff. If Ms. Smith files these things in protected

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1 manner, I guess, as she has done with the initial
2 materials in this case, can they be reviewed and then
3 if need be redacted and then put into the public file?
4 They would initially be filed in a protected file just
5 so that we don't violate anything in the Privacy Act
6 or things that should be protected. And then after
7 redaction they could be made public.

8 MR. SUBIN: Most of what I believe she
9 received was through a FOIA request if I'm not
10 mistaken. So it's already been redacted. Our concern
11 was that she wanted the whole hearing and most of the
12 things with her name on it to be either nonpublic or
13 -- But it doesn't sound like that's what she's looking
14 for at this point in time. But we can make most of
15 this stuff public except for NCII stuff that we have.

16 MS. SMITH: Yes. I was not concerned
17 about my name being protected. I was concerned about
18 people outside of the hearing names being protected.

19 MR. SUBIN: Their names will be protected.
20 We will make sure that that's what redacted.

21 JUDGE FROEHLICH: All right. So then I
22 guess the procedure that will address both these
23 concerns is that there will be files I guess in a
24 nonpublic manner initially and then a review will be
25 made of them. And hopefully after that review has

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1 been made they'll either be redacted or there will be
2 additional redactions made so that it can be placed in
3 a public file for our use during the hearing.

4 MR. SUBIN: Yes, correct.

5 JUDGE FROEHLICH: Okay.

6 MR. SUBIN: That's one of the reasons we
7 needed more time for the hearing file.

8 JUDGE FROEHLICH: I understand. Thank
9 you, staff.

10 CHAIR SPRITZER: This is Judge Spritzer
11 again. Apart from what we've just been discussing,
12 does the staff see any need for any kind of protective
13 order beyond the procedures we've just been talking
14 about?

15 MS. UTTAL: One moment, Judge. We don't
16 see any need for a protective order.

17 CHAIR SPRITZER: Okay. All right.
18 Certainly if that changes let us know.

19 Let's move back to issue number three
20 which is also related to issue number four. Let me
21 ask Ms. Smith. Do you know -- Are you planning to
22 present any kind of testimony or other evidence from
23 Southern Nuclear Operating Company which I take it is
24 your employer?

25 MS. SMITH: Your Honor, I'm not sure

1 exactly what you're inquiring. Are you speaking of
2 documents? Are you speaking of witnesses?

3 CHAIR SPRITZER: Mainly I guess we already
4 have some documents from them. So I guess I'm mainly
5 focusing on will they be providing either written
6 testimony or actually testifying at the hearing.

7 MS. SMITH: Your Honor, I do have some
8 people that are willing to testify.

9 CHAIR SPRITZER: Okay. And do you need a
10 subpoena for them to testify or are they going to
11 appear voluntarily?

12 MS. SMITH: Your Honor, some I am actually
13 waiting on them to get back with me because I believe
14 that they're going to speak with some upper
15 management. Is it okay if I can answer that by phone
16 call or follow up on it? I have some that are
17 willing. But I'm not sure as far as subpoenas.

18 CHAIR SPRITZER: All right. Yes, if you
19 believe a subpoena would be necessary, you'll need to
20 file something with the Board asking for that.
21 Obviously, you don't need to do it until the need
22 arises. But you want to do it sufficiently in advance
23 of the hearing that we can do whatever we need to do.

24 MS. SMITH: Yes, Your Honor.

25 MS. UTTAL: Your Honor.

1 CHAIR SPRITZER: Yes.

2 MS. UTTAL: This is Susan Uttal. Perhaps
3 this would be a good time for the Board to explain the
4 ex parte rule so that Ms. Smith understands that if
5 she files something with the Board or sends an email
6 to the Board that she should also copy the staff.

7 CHAIR SPRITZER: I think that's a
8 generally fair requirement. Has there been any -- I
9 wasn't aware of any problem with that to date. But
10 perhaps there has been that I'm not aware of.

11 MS. UTTAL: There was the issue of whether
12 she was going to have counsel. I don't know if there
13 is anything else. But I just want to cut off it off
14 at the pass.

15 CHAIR SPRITZER: Right. Generally, unless
16 there is some unusual, highly unusual, situation all
17 filings for this hearing and any other are to be,
18 whatever a party files, served on the other party to
19 the case whether you're filing an email request or
20 pleading or testimony or exhibits or whatever.
21 Hopefully, there wouldn't be any question about that.

22 MS. SMITH: Your Honor, can I clarify that
23 particular statement? In the Subpart L it is my
24 understanding that the staff does not have to be
25 copied on recommended questions for the Board.

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1 CHAIR SPRITZER: That's true. That would
2 kind of defeat the purpose. So, yes, that's true. If
3 you have questions you wanted to ask of the staff
4 witnesses, those can be filed on an ex party basis.
5 That is without serving on the other side. In fact,
6 they should be filed or should be made available just
7 to the Board and the Board staff, but not to the NRC
8 staff.

9 JUDGE FROEHLICH: This is Judge Froehlich.
10 As Judge Spritzer just said, any communications with
11 the Board have to be served on all parties. So, Ms.
12 Smith, if you have a request of the Board or an answer
13 to a question, make sure that you copy the other
14 parties in this case, the staff, to that request.

15 The only things that would be outside the
16 ex parte rule as Judge Spritzer said would be those
17 questions that you want the Board to ask at hearing.

18 MS. SMITH: I understand, Your Honor.

19 JUDGE FROEHLICH: Okay. Thank you.

20 We'll put you on hold for a moment,
21 parties. We would like to confer with Judge Hajek and
22 then we'll be back on the record. Off the record.

23 (Off the record discussion.)

24 CHAIR SPRITZER: On the record. This is
25 Judge Spritzer. We should be back on the record. We

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1 don't -- Hold on just a second. We've conferred. We
2 don't have any further issues to discuss. Does
3 anybody else have -- Do either of the parties have
4 anything they want to bring up at this time?

5 MS. UTTAL: Nothing from the staff, Your
6 Honor.

7 CHAIR SPRITZER: Ms. Smith.

8 MS. SMITH: I don't have anything, Your
9 Honor.

10 CHAIR SPRITZER: All right. We'll be
11 getting out an order promptly. I think you should
12 assume, Ms. Smith, that your 30 day period starts from
13 today. We'll be getting out the order shortly that
14 will memorialize what we've covered here today and
15 provide you a little more specific details about how
16 to mark your exhibits. But as I said I think in the
17 interest of moving this along you should assume that
18 your 30 day period will start from today.

19 MS. UTTAL: Your Honor.

20 CHAIR SPRITZER: Yes.

21 MS. UTTAL: Susan Uttal. We had requested
22 I guess at the beginning of this proceeding a two week
23 extension on the hearing file. We're due to file it
24 Thursday. And we can get it partially filed on
25 Thursday, but we can't get it completely filed.

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1 CHAIR SPRITZER: Okay. I guess I wasn't
2 aware of that request. But is there any -- I guess my
3 only concern is is that going to affect the dates for
4 her, Ms. Smith, making her filings that we said would
5 be due within 30 days.

6 MS. UTTAL: I think that what we can file
7 on Thursday should be most of the staff's paperwork
8 having to do with the grading of the operating exam.
9 Is that correct? Yes.

10 And the rest of it comes from a lot of the
11 information that Ms. Smith had requested be kept
12 nonpublic. That was our issue. We didn't know what
13 to do with it. So it's not in the hearing file yet.
14 But the things that came directly from the staff that
15 we had no problem with are ready to be released on
16 Thursday. So I don't think it should interfere with
17 Ms. Smith's filing because she should be in possession
18 of everything she filed with us already.

19 JUDGE FROEHLICH: Ms. Uttal, this is Judge
20 Froehlich. Two quick questions. One, the request for
21 the extra two weeks, is that a filing that the staff
22 had made or has that been brought up beforehand? I
23 don't remember seeing anything on that.

24 And then my second question I think you
25 answered. Is there anything in the staff hearing file

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1 that's going to be put together material that Ms.
2 Smith does not already have?

3 MS. UTTAL: Like I said, the things that
4 we can file on Thursday will be the entire review file
5 from the informal review and other review information
6 and -- What else is in there?

7 (Off the record comment.)

8 Okay. And things from the FOIA review.
9 Yes. So I think that's about the only information she
10 doesn't have which is the entire review packet because
11 I think she only received the review paper having to
12 do with the questions that she was contesting. It's
13 a part of the operating test that she was contesting.
14 That I think is the only really new document.

15 As to a motion, no, we didn't make a
16 motion. We were going to ask today during the pre-
17 hearing telephone conversation.

18 JUDGE FROEHLICH: Okay.

19 MS. UTTAL: So that's why we didn't make
20 a motion.

21 MS. SMITH: Your Honor, I would like to
22 disagree. I have the majority of the information, but
23 there's a lot of information that has to be combed
24 through and looked at. And essentially if there is
25 something in there that I'm not expecting then that

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1 just leaves me with two weeks to make adjustment to a
2 lot of documentation. And I would prefer that if that
3 extension is provided to them, that it is also
4 provided to me.

5 JUDGE FROEHLICH: One way we could handle
6 this, Ms. Smith, is we'll take a look at what comes in
7 the hearing file on Thursday. And then if any
8 additional material comes in two weeks later that
9 would affect your case and you need more time, you
10 could certainly move at that point for two more weeks.
11 And we would be inclined to grant that.

12 MS. SMITH: Thank you, Your Honor.

13 JUDGE FROEHLICH: If that works that way,
14 we'll be able to keep the dates that we have talked
15 about in place. Yet if there is new material which
16 you haven't had access to before which would help your
17 case, you'll have an extra two weeks to put that as
18 part of your testimony.

19 MS. SMITH: Yes, sir.

20 JUDGE FROEHLICH: Staff, in that case, you
21 won't need to file a motion. I'm certainly
22 comfortable with it. I'll leave it to Judge Spritzer
23 and Judge Hajek. But two weeks seems reasonable under
24 the circumstances.

25 CHAIR SPRITZER: Yes. We'll go ahead and

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1 include that in our order. And then, Ms. Smith, if
2 you -- And the dates will be along the lines we've
3 discussed. That is the dates for the filing of
4 testimony, exhibits and so forth.

5 But, Ms. Smith, if you do find something
6 that is in their last disclosure that makes it
7 considerably more difficult for you to meet the
8 deadline, let us know promptly. And we'll extend your
9 deadline.

10 MS. SMITH: I understand, Your Honor.

11 CHAIR SPRITZER: All right. Having solved
12 that problem hopefully, is there anything else we need
13 to talk about?

14 MS. UTTAL: Nothing from the staff.

15 CHAIR SPRITZER: Ms. Smith.

16 MS. SMITH: No, Your Honor.

17 CHAIR SPRITZER: All right. Thank you for
18 your participation. We'll be getting an order out
19 shortly and we'll also be letting you know the precise
20 location and date of the hearing as soon as we're
21 able. As I mentioned if anybody's schedule changes
22 and you're not going to be --

23 Right now, we have July 8th and 9th, July
24 15th through the 18th, August 12th through the 15th.
25 If those change, let us know promptly.

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1 All business having been concluded, we
2 will adjourn this hearing. Thank you. Off the
3 record.

4 (Whereupon, at 10:41 a.m., the above
5 entitled matter was concluded.)
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