

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
JAMES CHAISSON) Docket No. IA-14-025-EA
)
) ASLBP No. 14-932-02-EA-BD01
)

NRC STAFF MOTION TO COMPEL DISCOVERY

Pursuant to 10 C.F.R. § 2.323, the Nuclear Regulatory Commission Staff (Staff) requests that the Board compel Mr. Chaisson to produce his initial mandatory disclosures.¹

BACKGROUND

In its Notice of Hearing and Initial Scheduling Order, dated September 8, 2014, the Board set a deadline of November 4 for the exchange of the parties' initial mandatory disclosures.² These disclosures include "all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues alleged with particularity in the pleadings." 10 C.F.R. 2.704(a)(2).

In an e-mail on October 3, counsel for the NRC Staff reminded Mr. Chaisson of the November 4 deadline and informed him how best to submit documents.³ In a separate e-mail on November 7, after the deadline had passed, counsel for the Staff asked Mr. Chaisson whether he planned to submit any documents. Mr. Chaisson replied on November 11 and described various items of documentation that he was in the process of obtaining. On November 12, counsel for the Staff e-mailed Mr. Chiasson to ask if he planned to seek an extension from the Board for his disclosures and received no response.

¹ In accordance with 10 C.F.R. § 2.323(b), the Staff certifies that, in addition to the correspondence described below, counsel for the Staff contacted Mr. Chaisson via email on December 9, 2014 to resolve the issues raised in this motion and did not receive a response.

² Notice of Hearing and Initial Scheduling Order, LBP-14-11, 80 NRC __ (Sept. 8, 2014) (slip op. at 9).

³ All referenced items of correspondence are included as attachments to this motion.

On December 2, counsel for the Staff sent a letter to Mr. Chaisson requesting the date on which he planned to submit his disclosures. Mr. Chaisson replied by email on December 3 that he is awaiting phone records from Verizon, which he will forward to the Staff. Counsel for the Staff emailed Mr. Chaisson on December 4 to confirm that the phone records are the only documentation the Staff should expect, and Mr. Chaisson provided a response on December 5, in which he mentioned relevant text messages in his possession but gave no indication of whether or when he will submit them to the Staff.

DISCUSSION

The occurrence or circumstance from which this motion arises is Mr. Chaisson's December 5 email to Staff counsel. Should the Board consider the motion to have arisen from Mr. Chaisson's breach of the November 4 deadline, the Staff respectfully requests that the lateness of the motion be excused for good cause, as the Staff was engaged in good faith consultation with Mr. Chaisson in an attempt to resolve the situation. The Staff is sensitive to the fact that Mr. Chaisson is representing himself in this proceeding, and may be unfamiliar with the discovery requirements of a Subpart G hearing. However, the Staff respectfully submits that further delay would be unwarranted in order to preserve the Board's hearing schedule.

To date, the Staff has not received any documents or disclosures from Mr. Chaisson. Mr. Chaisson insists that he is still obtaining and assembling his documents. However, Subpart G rules provide that "[a] party is not excused from making its disclosures because it has not fully completed its investigation of the case." 10 C.F.R. § 2.704(a)(3). During the pre-hearing teleconference, Mr. Chaisson stated that he was in possession of all his documents, that he could submit them within two weeks, and that he understands his obligations:

MR. CHAISSON: Sir, I could -- I would say, because I have all my documents together, within two weeks. And that's giving me a lot of time. Because I have, you know, extensively -- since this -- since she called me that one day, Ms. Patricia Holahan, I have, you know, made sure I went back to each and every company and got all the proper documentation. And I've got, you know, like I said -- like you said, emails. And then I also have -- there's a lot of text messages from the companies of disputing

their findings that they are trying to state in this 2014 order, you know, claiming I've done more and more damage. But I've got all of my documentation, you know, ready to go. That's what I explained to her in detail that just I wasn't going to -- I am aware of what I have to do that, you know, I have been trained extensively about the hearings and the process by, as I said, this wonderful lady, Ms. Laurie McGowan. And at this time I told them we'll go. I'm prepared. I can -- that's why I'm saying I really would like a lot of these 2012 accusations to be allowed to be, you know, brought up in this hearing because I'd have a lot of proof to dispute all their findings.

Tr. at 64–65. Accordingly, Mr. Chaisson has represented that he could meet the deadlines in the Board's Scheduling Order. Mr. Chaisson has not explained why he did not request the phone records earlier in order to meet the deadline, and he did not request an extension of time for the submission of his initial disclosures.

Mr. Chaisson has stated that he will provide the Staff with the phone records he has requested, but the Staff does not know when it may expect to receive such documents. Further, he has failed to explain why he is not submitting the other documents he has referred to during the pre-hearing conference and in his various emails (with the exception of certain information that he states he was unable to obtain from his former employer, Texas Gamma Ray).

CONCLUSION

Mr. Chaisson's most recent correspondence does not provide a definite statement of what he will provide or when he will provide it. In the meantime, the Staff must prepare for a deposition and the hearing without the benefit of Mr. Chaisson's mandatory disclosures.⁴ Therefore, the Staff respectfully requests that the Board order Mr. Chaisson to provide his mandatory initial disclosures without further delay, or take other action as the Board deems appropriate.

⁴ Despite this difficulty, the Staff does not believe the hearing schedule should be extended, and the Staff will be fully prepared for hearing in mid to late March 2015.

Respectfully submitted,

/Signed (electronically) by/

Christopher C. Hair
James L. Maltese

Counsel for NRC Staff

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. IA-14-025-EA
JAMES CHAISSON)	ASLBP No. 14-932-02-EA-BD01
)	
)	Date: December 11, 2014

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NRC STAFF MOTION TO COMPEL DISCOVERY, dated December 11, 2014, has been served over the Electronic Information Exchange, the NRC's E-Filing System, this 11th day of December, 2014.

/Signed (electronically) by/

James L. Maltese
Counsel for the NRC Staff
U.S. Nuclear Regulatory Commission
Mail Stop O-15 F14
Washington, DC 20555-0001
(301) 415-5123
James.Maltese@nrc.gov

Maltese, James

From: Maltese, James
Sent: Friday, October 03, 2014 1:20 PM
To: xrayjames01@yahoo.com
Cc: Hair, Christopher
Subject: NRC Hearing: Documents for Your Review
Attachments: DRAFT Consultation Report.docx; DRAFT_Nondisclosure Agreement.docx

Mr. Chaisson,

Attached to this email is a draft report to the Board of our conversation on September 23rd.

Also as we discussed, we have prepared a draft Protective Order. This would allow us to provide you with information that might otherwise need to be redacted due to privacy concerns. In order to receive this information, you would a non-disclosure agreement.

Please review the documents and let me know if you have any objections – you can make edits if you have any specific changes.

As a reminder, by November 4th you must submit the information described in our regulations at [10 CFR 2.704\(a\)](#). You can submit documents by e-mail to me or Chris Hair, or by regular mail using the mailing address at the bottom of this message.

Regards,

James Maltese
Attorney, Office of the General Counsel
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Mail Stop O15-D21
Rockville, MD 20852
301-415-5123
James.Maltese@nrc.gov

Note: ATTORNEY WORK-PRODUCT

Maltese, James

From: Maltese, James
Sent: Friday, November 07, 2014 4:06 PM
To: xrayjames01@yahoo.com
Subject: Document Disclosures

Mr. Chaisson,

I hope you have received the report that we mailed to you – it should have arrived on Tuesday. In case you weren't aware, you can access the other documents we've made available so far at <http://ehd1.nrc.gov/ehd/> by selecting the "Staff Discovery Materials" tab at the top of the page and then selecting the "James Chaisson" folder in the navigation window on the left.

Were you planning to send any documents to the NRC for your initial disclosures? I want to make sure we know whether to expect anything.

Thank you,

Jim Maltese

James Maltese
Attorney, Office of the General Counsel
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Mail Stop O15-D21
Rockville, MD 20852
301-415-5123
James.Maltese@nrc.gov

Maltese, James

From: James Chaisson <xrayjames01@yahoo.com>
Sent: Tuesday, November 11, 2014 5:47 PM
To: Maltese, James
Subject: Re: Document Disclosures

Hi Mr. Maltese I'm sorry it took me awhile to answer but I have been working nights as a forklift driver to try and make ends meet. But yes I'm trying to get Verizon to get me copies of my phone bills for the 3,4&5th months of 2010 and also trying to get copies of the tow bill to show the truck was broke down a total of 16 or 18 days and not just the 5 that TGR is stating. Also I'm trying to figure out how to get TGR submit the documentation to show that during my time of employment that when I received a source from them that the return shipping papers were sent with the new source. I am also in the wait of documentation to show that the owner of the building in Rock Springs was already convicting TGR due to there lack of lease agreement failure. I have been in touch with the owner of QITI and i'm waiting on his statement to show I had nothing to do with him getting the lease or with QITI getting the LLEA with the local police. I also need to figure out how to transfer my text from my phone to my laptop so I can download the text from Paramount stating that I gave him the papers from ya'll and he just ran off copies. But the biggest thing is I'm going consult with an attorney to see what are my steps to file against the NRC for violating my 5th amendment right and what grounds do I have to pursue my rights as a US Citizen. I have received 2 different packages from ya'll and the pages are all the same in the 2nd package but I'm not understanding all the BLACK OUTS. In the 1st package I'm wondering if I could use parts of that in my Defense because of all the discrepancies I have found in all the testimonies that were giving by all the TGR personnel, so I was wanting to see if we could talk in the next 2 days to see if maybe you could answer at least the last 2 questions I had. Thank You James Chaisson

On Friday, November 7, 2014 3:06 PM, "Maltese, James" <James.Maltese@nrc.gov> wrote:

Mr. Chaisson,

I hope you have received the report that we mailed to you – it should have arrived on Tuesday. In case you weren't aware, you can access the other documents we've made available so far at <http://ehd1.nrc.gov/ehd/> by selecting the "Staff Discovery Materials" tab at the top of the page and then selecting the "James Chaisson" folder in the navigation window on the left.

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Thank you,

Jim Maltese

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Mail Stop O15-D21
Rockville, MD 20852
301-415-5123
James.Maltese@nrc.gov

Maltese, James

From: Maltese, James
Sent: Wednesday, November 12, 2014 4:44 PM
To: 'James Chaisson'
Cc: Hair, Christopher
Subject: RE: Document Disclosures
Attachments: 2014.11.04 NRC Staff Initial Disclosures.pdf

Mr. Chaisson,

The first package is a copy of the Office of Investigations Report that we were required to release to you by NRC regulations. The package contains some redactions (black outs) of personal privacy information. We are unable to release the unredacted version to you because we have not yet received the signed non-disclosure agreement that was part of the Board's Protective Order.

The second package contains copies of the documents the Staff initially withheld as privileged in its Initial Disclosures (see attached). The Board required us to redact the specific material that we claimed as privileged. There are no NRC restrictions regarding your use of any of these documents.

Based on your email, it appears that you have (or will have) documents to disclose—these were due on November 4, 2014 pursuant to the Board's Scheduling Order. Do you plan to seek an extension with the Board? Please let us know as soon as possible.

James Maltese
Attorney, Office of the General Counsel
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Mail Stop O15-D21
Rockville, MD 20852
301-415-5123
James.Maltese@nrc.gov

From: James Chaisson [<mailto:xrayjames01@yahoo.com>]
Sent: Tuesday, November 11, 2014 5:47 PM
To: Maltese, James
Subject: Re: Document Disclosures

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have found in all the testimonies that were giving by all the TGR personnel, so I was wanting to see if we could talk in the next 2 days to see if maybe you could answer at least the last 2 questions I had. Thank You James Chaisson

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Were you planning to send any documents to the NRC for your initial disclosures? I want to make sure we know whether to expect anything.

Thank you,

Jim Maltese

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

December 2, 2014

Mr. James Chaisson
291 West 2000 North
Orem, UT 84057

Subject: Initial Disclosures for Hearing

Dear Mr. Chaisson:

In its order of September 8th, 2014 governing the schedule of this proceeding, the Atomic Safety and Licensing Board set a due date of November 4th for the exchange of our initial mandatory disclosures. These disclosures include "all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues alleged with particularity in the pleadings." 10 C.F.R. 2.704(a)(2).

In an e-mail to you on October 3rd, counsel for the NRC staff reminded you of the deadline and let you know how best to submit your documents. In a separate e-mail to you on November 7th, counsel for the staff asked you whether you planned to submit any documents, and in your reply on November 11th, you described documentation (bills, text messages, etc.) that you were in the process of obtaining. On November 12th, counsel for the staff e-mailed you to ask if you plan to seek an extension from the Board, and you did not respond.

As of the date of this letter, the Staff has not received any documents from you. Pursuant to the NRC's rules, the unavailability of some documents does not excuse your failure to submit others in your possession: "A party is not excused from making its disclosures because it has not fully completed its investigation of the case." 10 C.F.R. 2.704(a)(3). During the pre-hearing teleconference, you stated that you were in possession of all your documents, and that you could submit them within two weeks. Transcript at 64.

Please respond to this letter by December 5th to inform us of the date on which the staff can expect to receive any or all of your disclosures. If we do not receive a response, or you continue to delay in submitting documents, the staff will pursue other remedies with the Board.

Sincerely,

James Maltese
Counsel for the NRC Staff

Cc: Atomic Safety and Licensing Board (via hard copy)
Judge Alex S. Karlin
Judge Michael M. Gibson
Judge Gary S. Arnold

Maltese, James

From: James Chaisson <xrayjames01@yahoo.com>
Sent: Wednesday, December 03, 2014 12:15 PM
To: Maltese, James
Subject: Re: Letter re: Initial Disclosures for Hearing

Hi Mr Maltese sorry but I'm having to work two meaningless jobs to try and make ends meet but I was able to reach Verizon and they were able to retrieve my phone records from the month of April 2010 and they are as we speak mailing them to myself and these will be the only documents I can get my hands on due to the fact that TGR refuses to give me copies of the shipping papers for the sources during my time of employment. But I feel with these phone records that I will receive in 10 days and all the documents and statements from the TGR personnel I will have enough evidence to show that what I stated all along is the TRUTH that all I done was follow orders and I done the safest thing I could have with the camera. As soon as I receive the documents from Verizon I will forward them epidemically to youself. Thank You James Chaisson and I am unable to afford any attorney.

On Tuesday, December 2, 2014 1:07 PM, "Maltese, James" <James.Maltese@nrc.gov> wrote:

Mr. Chaisson,

Please review the attached letter regarding your obligations to provide the NRC with documents for the hearing. A physical copy of the letter is also being mailed to you. I await your response.

Regards,

James Maltese
Attorney, Office of the General Counsel
U.S. Nuclear Regulatory Commission
11545 Rockville Pike
Mail Stop O15-D21
Rockville, MD 20852
301-415-5123
James.Maltese@nrc.gov

Maltese, James

From: Maltese, James
Sent: Friday, December 05, 2014 1:24 PM
To: 'James Chaisson'
Subject: RE: Letter re: Initial Disclosures for Hearing
Attachments: Transcript Excerpt.pdf

Mr. Chaisson,

Thank you for your reply. I would appreciate it if you would let me know when you have placed copies of the phone records in the mail.

Can you confirm that these are the only documents you will be sending us? At the pre-hearing conference you also mentioned emails (see attached transcript excerpt).

Thank you,

Jim Maltese

From: James Chaisson [<mailto:xrayjames01@yahoo.com>]
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301-415-5123

James.Maltese@nrc.gov

Maltese, James

From: James Chaisson <xrayjames01@yahoo.com>
Sent: Friday, December 05, 2014 6:01 PM
To: Maltese, James
Subject: Re: Letter re: Initial Disclosures for Hearing

Yes sir I can do a conference to acknowledge that but I do have text messages from the one employer Paramount but I don't know if it will be something I need because now that I have the proof that all I did was follow orders by my Supervisor, I'm looking to have this overturned and removed off my otherwise spotless record so maybe I can get back to doing the profession I LOVE!! Thank You James Chaisson

On Friday, December 5, 2014 12:23 PM, "Maltese, James" <James.Maltese@nrc.gov> wrote:

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Thank you for your reply. I would appreciate it if you would let me know when you have placed copies of the phone records in the mail.

Can you confirm that these are the only documents you will be sending us? At the pre-hearing conference you also mentioned emails (see attached transcript excerpt).

Thank you,

Jim Maltese

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Regards,

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