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ASLBP Number: 14-932-02-EA-BD01

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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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PRE-HEARING CONFERENCE

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In the Matter of: : Docket No.

JAMES CHAISSON : IA-14-025-EA

(Enforcement Action) : ASLBP No.

-----x 14-932-02-EA-BD01

Wednesday, December 17, 2014

Teleconference

BEFORE:

ALEX S. KARLIN, Chair

MICHAEL M. GIBSON, Administrative Judge

DR. GARY S. ARNOLD, Administrative Judge

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21 ALSO PRESENT:

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25 MATTHEW ZOGBY, ASLBP Law Clerk

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11:05 a.m.

JUDGE KARLIN: My name is Alex Karlin. I am one of the judges on the Atomic Safety and Licensing Board.

We are conducting a pre-hearing conference call in the matter of James Chaisson. We have the ASLBP Number 14-932-02-EZ-BD01 and I believe it's EA-14-027-EA.

Today's date is December 17th, 2014, and this is a conference call being conducted among the parties.

The board members are sitting in a conference room in Rockville, Maryland, and I believe the NRC staff must be somewhere else, perhaps in Rockville, Maryland, and Mr. Chaisson is on the line.

So, first, we'll just go through introductions. As I indicated, the board is here in Rockville.

That consists of Michael Gibson, Gary Arnold and myself, Alex Karlin, also Matt Zogby, who is our lawyer and law clerk who is assisting us, and Twana Ellis, who is our administrative analyst and is assisting us.

So that's the introduction of the board.

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1 Mr. Chaisson, are you on the line, sir?

2 MR. CHAISSON: Yes, sir.

3 JUDGE KARLIN: Okay. Do you have anyone
4 else assisting you on the line or anyone else with
5 you?

6 MR. CHAISSON: No, sir.

7 JUDGE KARLIN: No? Did you say no?

8 MR. CHAISSON: Yes. No, sir. I do not
9 have anyone else with me.

10 JUDGE KARLIN: Okay. Fine. I just wanted
11 to get the introductions in. The staff - Mr. Maltese,
12 could you introduce the attorneys representing Ms.
13 Houlihan, please?

14 MR. MALTESE: Yes, your Honor. In
15 addition to myself I'm joined with Christopher Hair
16 and Mauri Lemoncelli. Also in the room with us we
17 have Rob Carpenter and Nick Hilton from the Office of
18 Enforcement.

19 JUDGE KARLIN: Okay. Welcome. Welcome to
20 you all, and who will be the spokesman for the staff
21 today?

22 MR. MALTESE: That will be me, your Honor
23 - Mr. Maltese.

24 JUDGE KARLIN: Okay.

25 MR. MALTESE: Joined at times by my co-

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1 counsel, Mr. Hair.

2 JUDGE KARLIN: Okay. All right. Fine.
3 Thank you. Okay.

4 So the purpose of this call is to deal
5 with the motion the compel that was filed by the NRC
6 staff on December 11th - last Thursday - and the
7 motion was to compel Mr. Chaisson to - alleging that
8 he had not made certain mandatory productions and to
9 compel him to do so.

10 Mr. Chaisson then sent an email to Mr.
11 Maltese with some information on December 14th. So
12 what we're going to do is deal with whether or not the
13 motion is supported and valid and what we should do
14 about the situation.

15 I will remind everyone once again this is
16 not the hearing on the merits. This is just dealing
17 with whether or not Mr. Chaisson has complied with his
18 duty to make certain mandatory productions and if he
19 hasn't what we should do about it.

20 So the agenda for this is relatively
21 straightforward - three things, really. First, we
22 will hear from the staff - from Mr. Maltese. They
23 made the motion and therefore they get to go first and
24 explain what the situation is and what they want.

25 Second, we will hear from Mr. Chaisson

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1 responding to the motion, and third, we will ask
2 questions.

3 The board, the members, the judges will
4 ask questions and perhaps finally we may end up being
5 able to rule right here on the phone or we may take it
6 under advisement.

7 So is there any other issues that needs to
8 be added to the agenda today? Mr. Maltese, do you
9 have anything additional that - to the agenda?

10 MR. MALTESE: No, your Honor.

11 JUDGE KARLIN: Okay. Mr. Chaisson, do you
12 have anything additional that must be heard today?

13 MR. CHAISSON: No, sir.

14 JUDGE KARLIN: Okay. Great. Then we will
15 proceed, unless my colleagues have anything to add.
16 Hearing none, Mr. Maltese, please, could you present
17 your case underlying the motion, please?

18 MR. MALTESE: Certainly, your Honor.

19 Prior to the board's November 4th deadline
20 for the exchange of initial mandatory disclosures, Mr.
21 Chaisson made representations that he had documents
22 relevant to the issues in the hearing that would be
23 disclosed, and after November 4th came and went the
24 staff corresponded with Mr. Chaisson on several
25 occasions about those disclosures, seeking more

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1 information about when they would be provided and what
2 they were.

3 Those - Mr. Chaisson's communications to
4 the staff explained his progress in assembling some
5 documents but from the staff's perspective were not
6 100 percent clear on when information would be
7 provided to us and what the full spectrum of
8 information Mr. Chaisson had in his possession and
9 whether or when those would be provided to us.

10 And so after multiple occasions of seeking
11 that information the staff felt that the best course
12 going forward would be to seek an order from the board
13 so that we can move forward.

14 And with discovery, especially considering
15 that it has been over a month past the deadline and
16 discovery is scheduled to end according to the
17 scheduling order on January 15th and that the staff is
18 in - is in some need of Mr. Chaisson's documents to
19 prepare our case, to prepare for a deposition,
20 essentially what the staff is seeking is we want to
21 ensure that we have the opportunity to review prior to
22 the hearing any materials that Mr. Chaisson plans to
23 use in support of his case.

24 Your Honor, you mentioned the email that
25 we - that Mr. Chaisson sent on December 14th and that

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1 seemed to indicate that he is - Mr. Chaisson is in
2 possession of the phone records that he mentioned and
3 that he will provide them in short order.

4 If it is the case that that is the full
5 universe of documents that Mr. Chaisson has in his
6 possession and that is what he will provide then the
7 staff is satisfied. But we would like to confirm that
8 that is in fact the case.

9 JUDGE KARLIN: May I ask you has he
10 provided you with those phone records as of this time?

11 MR. MALTESE: As of this time, no.

12 JUDGE KARLIN: Okay. Is that - are you
13 finished, Mr. Maltese, or anything else you wanted to
14 add?

15 MR. MALTESE: I have nothing further, your
16 Honor.

17 JUDGE KARLIN: Okay. Thank you.

18 Mr. Chaisson, your turn. Please give us
19 your response to this motion to compel.

20 MR. CHAISSON: All right. Yes, sir.
21 Whenever we had went to the initial hearing and I said
22 I had documents in my possession, I had switched
23 residence from when I moved from Wyoming to Utah and
24 I had a lot of stuff in storage, and without checking
25 first I just assumed I still had a copy of my records

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1 but it just so happened I didn't.

2 So I had to get a hold of Verizon and with
3 it being me getting a copy of my records from the year
4 2010 it took them a little while to get them to me.

5 But once - the day I did receive them was
6 the day I emailed Mr. Maltese to let him know I do
7 have them in my possession and I explained to him that
8 I am on unemployment, trying to raise three kids on
9 it, that I did get - receive a check today.

10 I will send over a copy of this and mail
11 them to him because as far as - I can't afford to fax
12 them or I can see what they were charging me to send
13 him this and then email them to him.

14 But as far as for any other documents,
15 like I explained to him in the past what they had
16 presented me was all the depositions from everyone
17 else that they interviewed in this case.

18 I'm going to use that paperwork and this
19 phone bill to prove my case. That will be all I'll
20 need.

21 JUDGE KARLIN: Okay. That's - is that the
22 end of your statement, Mr. Chaisson?

23 MR. CHAISSON: Yes, sir.

24 JUDGE KARLIN: Okay. Well, maybe I've got
25 a few questions. Mr. Chaisson, when did you switch

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1 your residence?

2 MR. CHAISSON: I moved from what was - it
3 was in 2013 we moved over here, or 2012 actually was
4 when I started with QTI was when I established
5 residence here.

6 JUDGE KARLIN: Okay. You switched your
7 residence in 2012?

8 MR. CHAISSON: Yes, sir.

9 JUDGE KARLIN: And you told us on August
10 27 - 26, 2014, that you had the documents in your
11 possession and you'd get them to us in two weeks.

12 So two years later you told us you had the
13 documents and you were going to send them to us. You
14 didn't switch your residence recently. This was a
15 long time ago, wasn't it?

16 MR. CHAISSON: Yes, sir. I had what I
17 thought I had was all my documents in storage but
18 turned out to be I didn't.

19 JUDGE KARLIN: All right. When did you
20 ask Verizon for the email - for the documents?

21 MR. CHAISSON: I asked Verizon for the
22 documents at the beginning - the end of October,
23 beginning of November, and I have the Fed Ex envelope.

24 I received them on - let me see the date
25 on this - get my glasses - okay. I received them on

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1 December the 13th through a priority mail envelope.

2 JUDGE KARLIN: All right.

3 MR. CHAISSON: And what they ended up
4 sending me was, like, I had three telephones
5 underneath my contract - me and my two sons - so I had
6 to go through all of them just to get the ones I
7 needed for this case, which are dated from before 4/18
8 to 4/30.

9 JUDGE KARLIN: What documents are you
10 referring to, sir?

11 MR. CHAISSON: My phone documents, sir.

12 JUDGE KARLIN: Oh, okay. Your phone
13 documents. And the phone documents are the only
14 documents you have related - relevant to this case?

15 MR. CHAISSON: Yes, sir. That and what I
16 had talked to Mr. Maltese during all this about asking
17 him if I would be able to use the paperwork in the
18 depositions that they mailed me from the other - from
19 the other TGR employees including Mr. Pete Moss, Mr.
20 Steve Steen and Mr. Robert Denton, because with their
21 paperwork and these phone records I'll be able to
22 prove that everything they stated in their deposition
23 was a lie.

24 JUDGE KARLIN: Well, how about emails? Do
25 you have any emails?

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1 MR. CHAISSON: No, sir. Not from back
2 then. I didn't own a laptop back then.

3 JUDGE KARLIN: All right. Well -

4 MR. CHAISSON: Now, I have - I do have,
5 like I said, a text message but that's to do with the
6 new allegations with Paramount NDT. But it's nothing
7 to do with Texas Gamma Ray. That was from the year
8 2014.

9 JUDGE KARLIN: Well, let me just ask - you
10 know, we're going to have a hearing that's coming up
11 here in March and you're representing, as I understand
12 it here today, that the only documents that you have
13 in your possession at this point concerning relevance
14 to your case are these emails - I'm sorry, these phone
15 documents.

16 MR. CHAISSON: Yes, sir.

17 JUDGE KARLIN: And if that's all you've
18 got then - that's all you're going to be able to put
19 into the evidence at the hearing - you might - you can
20 make your own statements if something new, a document
21 comes up later then that's okay.

22 But don't go telling us that oh, I found
23 some new documents, you know, suddenly and I want to
24 put them in. You know, this is kind of your full shot
25 of what you've got in existence now.

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1 MR. CHAISSON: Well, you know, like I
2 said, that I have - I'm going to use the documents
3 that the NRC presented to me of the deposition from
4 the other - from the two employees of Texas Gamma Ray
5 and their statement with their paperwork that they
6 presented and their receipts and what they claim that
7 I didn't do and what I was supposed to do.

8 Just in their depositions and the dates on
9 their receipts and their letters shows that there's no
10 physically way possible what this man is claiming he's
11 done he could have done.

12 JUDGE KARLIN: All right. We're not here
13 to get into the merits of the -

14 MR. CHAISSON: That's right. I know that,
15 sir. But I'm saying I'm going to use them documents
16 as well.

17 JUDGE KARLIN: Okay. All right. That's
18 good. Judge Gibson, any questions? Judge Arnold?

19 Mr. Maltese, you've asked us to order Mr.
20 Chaisson to compel him to produce these documents.
21 Well, let me ask Mr. Chaisson.

22 You know, you've got these documents. You
23 got them on December 13th. It's now December 17th.
24 When are you going to produce them to Mr. Maltese?

25 MR. CHAISSON: Well, like I explained to

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1 him, I didn't get an unemployment check until today.
2 I will go take care of that today.

3 I'll go to a Fed Ex Kinko's and run a copy
4 of it and highlight the ones I got to highlight and
5 I'll mail them to him because he gave me a mailing
6 address to mail this to him.

7 JUDGE KARLIN: Mr. Maltese, what's your
8 reaction to that?

9 MR. MALTESE: Your Honor, that's fine with
10 the staff. I'd actually like to take the opportunity
11 to ask for one point of clarification, which is that
12 Mr. Caisson referring to the phone records, my
13 question is so that we can discuss this now instead of
14 once we receive the documents and I've had a chance to
15 look at them, do those phone records just show the
16 time and date of outgoing and received calls to
17 certain phone numbers or is there some indication of
18 the content of those discussions?

19 And if they show just phone numbers and
20 times and dates of calls, if Mr. Chaisson could
21 provide a cross log or something so that we know what
22 those phone numbers represent, who those - who those
23 conversations are with so we can understand the
24 relevance of that. And also he mentioned -

25 JUDGE KARLIN: Well, wait a second. Wait

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1 a second. You've got a multiple choice question here.
2 Let's get the first one. Do the records show just
3 phone numbers or do they show anything else, Mr.
4 Chaisson?

5 MR. CHAISSON: It shows phone numbers and
6 it shows the amount of time of the phone call and it
7 shows my location of where I was when the phone call
8 was made and the location - the destination of where
9 the phone call was made to.

10 JUDGE KARLIN: Okay. That sounds like a
11 normal phone record to me. What is it that you want,
12 Mr. Maltese?

13 MR. MALTESE: That was the information we
14 were seeking. Also, we wanted to ensure that Mr.
15 Chaisson may know, based on the phone number, whose
16 phone number that was.

17 I wanted to confirm whether there was
18 caller ID information attached to those phone numbers
19 or if it's just a tentative phone number - whether Mr.
20 Chaisson would provide the identity associated with
21 those phone numbers.

22 MR. CHAISSON: Oh, yes, sir. Yes, sir.
23 I'll definitely give you the name of who the number
24 belongs to.

25 JUDGE KARLIN: Well, from a - from our

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1 perspective that's not required, Mr. Maltese. You
2 know, this is a document production. He produces the
3 documents that he has in his possession.

4 If this is all the documents that he has
5 custody or control over then that's all he has to
6 produce. If you want to depose him or ask
7 interrogatories about documents, although we don't
8 have much time left in the discovery, you can
9 obviously do that.

10 But, you know, there's no requirement for
11 Mr. Chaisson to generate new documents or to, you
12 know, to annotate existing documents to assist the
13 staff in this matter. It's my - I think that's the
14 way we react to that. So -

15 JUDGE GIBSON: Mr. Maltese, this is Judge
16 Gibson. Were you envisioning that if you got this
17 information you would not need to take his deposition
18 or are you going to need to take his deposition
19 anyway?

20 MR. MALTESE: At this - at this point,
21 your Honor, we are still contemplating and planning on
22 taking Mr. Chaisson's deposition.

23 Those plans may change but currently we
24 are - we, in fact, just recently we reached out to Mr.
25 Chaisson asking him on his availability of dates for

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1 a deposition.

2 JUDGE GIBSON: Okay.

3 JUDGE KARLIN: Okay. Let me turn to that
4 issue a little bit. What dates are you contemplating
5 for the deposition? Discovery is to close on January
6 15th, as you articulated, Mr. Maltese. So when are
7 you choosing to have this deposition? Hello?

8 MR. MALTESE: Mr. - after the 1st of the
9 year or at Mr. Chaisson's earliest availability.

10 JUDGE KARLIN: Okay. Mr. Chaisson, do you
11 understand that you need to make yourself available
12 for a deposition?

13 MR. CHAISSON: Yes, sir.

14 JUDGE KARLIN: All right. You know, this
15 is important.

16 MR. CHAISSON: Where will this deposition
17 take place?

18 JUDGE KARLIN: Where do you contemplate,
19 Mr. Maltese, having this? Salt Lake City?

20 MR. MALTESE: We plan to have it over the
21 telephone, your Honor, with the court reporter.

22 JUDGE KARLIN: Okay. Yeah. Either that
23 or, you know, that's probably the best way to do this.
24 Mr. Chaisson is probably not in a position to come
25 flying in to D.C. at his own expense to do this sort

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1 of thing and so a phone deposition might work well.

2 Okay. But, Mr. Chaisson, I want to alert
3 you that when this deposition is scheduled you need to
4 be there and no ifs, ands or buts about it.

5 You know, you need to be there and you
6 need to answer the questions straight because this is
7 important, and if you have a problem with the date you
8 need to let everybody know about it way ahead of the
9 date of the - if they set the deposition date for
10 January 8th you better show up on January 8th, and if
11 you can't show up on January 8th because some terrible
12 thing happened you better let everybody know including
13 us long before January 8th.

14 We don't want something showing up on
15 January 8th and you not being there. So let's just
16 see what we've got now.

17 Hold on a second. We're going to go on
18 mute for a moment and I'm going to confer with my
19 colleagues of where we go from here.

20 (Pause)

21 Okay. We're back on. The board has
22 conferred. Mr. Chaisson, you indicate that you - when
23 will you be able to put this - these documents in the
24 mail?

25 MR. CHAISSON: Today, sir.

1 JUDGE KARLIN: Okay. Then we're going to
2 hold you to that. Here's the deal.

3 We want - we're going to order you, and
4 we'll put this in writing afterwards - we're going to
5 order you to mail first class mail to Mr. Maltese by -
6 and we're going to give a couple extra days - by
7 Friday.

8 What is that date? December 19th, first
9 class mail you put all of those documents you've got
10 in the mail to Mr. Maltese and that document better be
11 postmarked by December 19th or earlier, and Mr.
12 Maltese will get it presumably as soon as possible and
13 if he doesn't get it he's going to let us know.

14 MR. CHAISSON: Oh, you will receive it.

15 JUDGE KARLIN: Well, okay. Very good.
16 Very good. We're glad we've been able to resolve this
17 thing. You don't need to annotate - do anything
18 except put the telephone records in the mail.

19 You don't need to mark the names of
20 anybody's name. You don't have to do anything else.
21 You just put these documents - the stuff you've got
22 from the phone company in the mail.

23 Now, those are the only documents you're
24 going to be able to bring to the trial and say, these
25 are my documents.

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1 MR. CHAISSON: Well -

2 JUDGE KARLIN: Keep that in mind. You
3 can't come in later and say, oh, I forgot something.

4 MR. CHAISSON: Excuse me. Well, and I'm
5 glad you said that. If you'd tell Mr. Maltese I'm
6 trying to get the guy from Quality, Inspection and
7 Testing, which was the company I went to work for
8 after Texas Gamma Ray - they're the ones that came and
9 took over the building which I was accused of getting
10 them their LLEA with the police department and how I'm
11 trying to get the RSO and the owner to write a letter
12 stating that I had nothing to do with either them
13 getting the building or them getting the LLEA with the
14 local law enforcement either.

15 JUDGE KARLIN: Okay. Well, here's - I
16 understand that and that's a good point for us to talk
17 about here a little bit. Yeah. You know, right now
18 you just got to make - produce - you got to give Mr.
19 Maltese all documents that exist right now.

20 MR. CHAISSON: Right.

21 JUDGE KARLIN: Now, if a month from now
22 when you're getting ready for a trial, you get a
23 written statement from one of these gentlemen, Mr.
24 Stone or whoever or Mr. Orcola -

25 MR. CHAISSON: Orcola - yes, sir.

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1 JUDGE KARLIN: - and then two things are
2 going to happen. One, you have a duty to update your
3 disclosures every month and you need to let Mr.
4 Maltese see that document. That's the first thing.
5 You've got to update your mandatory disclosures
6 promptly.

7 The other thing is you can present that
8 document at the trial - at the hearing when we have
9 the hearing.

10 But those - the main point is any
11 documents that exist at this time in the world you
12 need to produce by Friday in the mail.

13 Anything - document that comes into
14 existence later because somebody wrote it later, well,
15 that's a different story and, you know, you have to
16 produce that in a timely way to Mr. Maltese and you
17 can, if you choose, put it into evidence at the
18 hearing when your day comes for the hearing, okay?

19 MR. CHAISSON: Okay. Yes, sir.

20 JUDGE KARLIN: Okay. Does that make sense
21 to you, Mr. Maltese?

22 MR. MALTESE: Yes, your Honor.

23 JUDGE KARLIN: Okay. So that's what it's
24 going to be. We're going issue an order. Mr.
25 Chaisson, you're going to put - your deadline is put

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1 it postmarked in the mail December 19th or earlier and
2 that, I think - hopefully, that will resolve this
3 issue because we certainly don't want to hear Mr.
4 Maltese coming in a week from now and saying that it
5 didn't show up in the mail.

6 I know it's Christmas and there's a lot of
7 Christmas cards going on out there. This is going to
8 be first class mail and you need to get it to him.

9 MR. CHAISSON: Yes, sir.

10 JUDGE KARLIN: All right. All right.
11 Now, that's kind of the end of what we've got here -
12 the end of discovery is January 5th. I'm going to
13 talk about where do we go from here.

14 The hearing is coming. Judgment Day is
15 coming, Mr. Chaisson, and you need to be - have your
16 ducks in a row. So the discovery ends on January
17 15th.

18 There's going to be, presumably, a
19 deposition, Mr. Chaisson. You will be deposed,
20 presumably, and you need to be there.

21 Then our plan is, under the scheduling
22 order is that we'll have a pre-hearing - another
23 conference call with everybody probably by the end of
24 January.

25 Then under that schedule we got now on

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1 February 20th you've got to file all your evidence,
2 Mr. Chaisson, and so does Mr. Maltese. You got to
3 file all your exhibits, all your written testimony.

4 If you want to write something out under
5 oath as to what you believe what happened, that's what
6 you should do and you should also get whatever
7 statements you have from Mr. Stone or Mr. Orcola or
8 anybody else under oath in writing and they can put -
9 you can put that in.

10 And so you get your testimony - written
11 testimony, your exhibits and a statement of position.
12 Maybe it's kind of a little cover letter or cover memo
13 that says okay, here are my exhibits and here is my
14 written statements, the testimony by these three or
15 four people and here's what it all means and why I -
16 you know, this order shouldn't be upheld, and you get
17 to do that.

18 And I would also remind you if you submit
19 some testimony by somebody in writing, by Mr. Stone,
20 then that person needs to be at the hearing. When we
21 have the hearing in Salt Lake City, Utah, we need to
22 be able to cross examine that person.

23 We need to be able to ask questions of
24 that person to see what he or she is saying and
25 whether it's true, whether there are any problems with

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1 it. So that's an issue.

2 MR. CHAISSON: Yes, that is an issue.

3 JUDGE KARLIN: And then the hearing will
4 be held late March or so, maybe April, in Salt Lake
5 City.

6 So you've got to take this thing very
7 seriously, Mr. Chaisson, and I know it takes - I know
8 it takes time out of your day and time out of your
9 work and you've got limited resources.

10 But this is your job. You want to be a
11 radiographer, you want to do this, then you got to
12 focus on this thing because otherwise you're going to
13 have a problem.

14 This is going to be - this is important.
15 It's important to us anyway. It should be important
16 to you.

17 MR. CHAISSON: Well, I would say so, sir.
18 It's my career and my life. It's how I raised my
19 children.

20 JUDGE KARLIN: Right. So buckle down and
21 get your act together because we're going to have a
22 hearing.

23 Now, the final thing I just want to add
24 here is to let everybody know - some people in the NRC
25 already know this and so I think it should be on the

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1 table basically - that I'm going to - I, Alex Karlin,
2 I'm going to be leaving the NRC, the board, in
3 January.

4 So there will be a new judge appointed in
5 my place, I presume, but - so they always try to have
6 three judges on these cases. But I'll be gone so
7 Judge Gibson and Judge Arnold will continue and
8 somebody else will help them out.

9 With that, I think we're done. Anything
10 else from my colleagues? Anything else from you, Mr.
11 Chaisson?

12 MR. CHAISSON: No, sir.

13 JUDGE KARLIN: Mr. Maltese?

14 MR. MALTESE: No, your Honor.

15 JUDGE KARLIN: Okay. Thank you. Mr.
16 Chaisson will put it in the mail postmarked no later
17 than this Friday, December 19th. We will issue a
18 short order to that effect and let's hope this thing
19 gets moving ahead in an orderly fashion.

20 Thanks for participating on the call on
21 such short notice and we will now stand adjourned.
22 Thank you.

23 MR. CHAISSON: Thank you.

24 (Whereupon, the above-entitled matter
25 concluded at 11:38 a.m.)

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