

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

Before Administrative Judges:

Michael M. Gibson, Chairman
G. Paul Bollwerk, III
Dr. Gary S. Arnold

In the Matter of
JAMES CHAISSON
(Enforcement Action)

Docket No. IA-14-025-EA
ASLBP No. 14-932-02-EA-BD01
February 13, 2015

ORDER
(Scheduling Second Prehearing Conference)

This is to notify James P. Chaisson and Patricia K. Holahan, Director, Office of Enforcement of the U.S. Nuclear Regulatory Commission (Director) that the Licensing Board will conduct a second prehearing conference on Monday, February 23, 2015, at 10:00 a.m. Eastern Time. Now that the period for discovery established in the Board's Initial Scheduling Order has been completed, this conference will allow the Board to adjust the balance of the schedule initially outlined in this proceeding to ensure a fair and just resolution of this matter as expeditiously as possible. After the conference, the Board will issue a revised schedule for this proceeding. The conference will be conducted via telephone and each party, or the party's authorized representative, shall participate.

I. RECENT BACKGROUND

This proceeding arises out of Mr. Chaisson's challenge¹ to the Director's July 11, 2014 order alleging that Mr. Chaisson failed to comply with certain provisions of a confirmatory order

¹ Email from James Chaisson to NRC Hearing Docket (July 18, 2014).

issued by the Director in 2012.² The Board held an initial scheduling conference in this matter on August 26, 2014.³ Afterward, the Board issued a Notice of Hearing and Initial Scheduling Order that identified the issues and matters in dispute and established a schedule for discovery and filings leading up to an evidentiary hearing.⁴ The parties have since submitted mandatory disclosures and conducted discovery, which was scheduled to be completed by January 15, 2015. Id. Meanwhile, on October 17, 2014, the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel appointed Administrative Judge Paul S. Ryerson to oversee settlement discussions between the parties.⁵

II. TOPICS FOR SECOND PREHEARING CONFERENCE CALL

The parties should be prepared to address the following matters at the February 23, 2015 prehearing conference call:

A. Update on Mr. Chaisson's Status: First, the Board will inquiry as to whether Mr. Chaisson has been able to access the services of a lawyer. Second, the Board understands that Mr. Chaisson recently broke his collarbone and leg, has been in and out of the hospital, and must undergo some level of rehabilitation. The Board will inquire as to the projected recovery time for Mr. Chaisson's injuries and whether these injuries will hinder Mr. Chaisson's preparation for or attendance at a hearing in the near future.

B. Submission of Pretrial Disclosures: Under 10 C.F.R. § 2.704(c), the parties to a 10 C.F.R. Part 2, Subpart G proceeding such as this one are required to make certain additional disclosures, including witness and exhibit lists, at least 30 days prior to the start of the

² In the Matter of James Chaisson, 79 Fed. Reg. 42,057 (July 18, 2014) [hereinafter 2014 Order].

³ See Licensing Board Order (Scheduling Initial Prehearing Conference) (Aug. 14, 2014) at 1 (unpublished) [hereinafter Scheduling Initial Conference Order].

⁴ LBP-14-11, 80 NRC __, __ (slip op. at 10) (Sept. 8, 2014).

⁵ Licensing Board Order (Appointment of Settlement Judge) (Oct. 17, 2014) (unpublished).

evidentiary hearing. The parties should be prepared to discuss with the Board the need for, content of, and schedule for these disclosures.⁶

C. Submission of Evidentiary Material: Before a Subpart G evidentiary hearing can be conducted, each party may be required to submit certain evidentiary filings. These filings may consist of documents that support the party's position, including (1) the written testimony (under oath or affirmation) of any witnesses; and (2) copies of all other material (such as reports, emails, or other exhibits) that the party wants the Board to admit into evidence so that the Board can consider that material in making its decision on the matters in controversy. During the prehearing conference, the Board will seek information from the parties on their preferred method for submitting and presenting witness testimony and other evidentiary material in this Subpart G proceeding. Additionally, the Board would like to discuss with the parties the utility of providing the Board with a prehearing "Statement of Position," along the lines of that called for in a Subpart L "simplified" proceeding. See 10 C.F.R. § 2.1207(a)(1). This statement would provide the parties' views, based on the evidence they intend to produce, on how the disputed issues and matters in this proceeding should be resolved.

D. Dates of Evidentiary Hearing: The evidentiary hearing will be held after the parties submit, and the Board has read, all prehearing filings. When should the evidentiary hearing be held and how long do the parties estimate it will last? Are there any known scheduling constraints?

E. Place of Evidentiary Hearing: Where should the evidentiary hearing be held?

F. Content of Hearing: In its Initial Scheduling Order, the Board identified issues and matters that are disputed by the parties to this proceeding.⁷ In doing so, the Board noted that

⁶ Although section 2.704(c)(1) indicates that these disclosure requirements do not necessarily apply to the NRC Staff, the Staff should be prepared to explain to the Board why, in the context of this Staff-initiated enforcement proceeding with a pro se litigant, Mr. Chaisson should be required to make such disclosures but the Staff should not.

⁷ LBP-14-11, 80 NRC at ___ (slip op. at 3-6).

these issues are “subject to modification and adjustment.” Id. at 7. Have the parties, during discovery or settlement discussions,⁸ come to any agreement on proposed modifications or adjustments to the disputed matters identified by the Board?

G. Cross-Examination Procedures: Per section 2.711(c), a Subpart G proceeding allows a party to cross-examine each witness of the opposing party regarding his/her initial testimony and any subsequent rebuttal testimony. It also indicates that each party must provide the Board with a plan concerning its cross-examination of each witness relative to that witness’s initial testimony. Per section 2.711(d), should cross-examination plans be utilized in this enforcement proceeding?

The Board intends to cover all of the foregoing topics during the second prehearing conference call, and each party should be prepared to state its position on these matters and to discuss them. The parties need to reserve at least two hours for the conference call. On or before February 18, 2015, each party should contact Matt Zogby at 301-415-5880 or matthew.zogby@nrc.gov to obtain the telephone number and pass code for the second prehearing conference call. Members of the public or media who wish to listen to this conference call may do so, and should contact Mr. Zogby for the requisite information.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael M. Gibson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
February 13, 2015

⁸ In this regard, the parties should also be prepared to provide the Board with their views on the status of their settlement negotiations.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Mr. James Chaisson) IA-14-025-EA
)
(Enforcement Action))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Second Prehearing Conference)** have been served upon the following persons by Electronic Information Exchange.

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

Michael M. Gibson, Chair
Administrative Judge
E-mail: michael.gibson@nrc.gov

Dr. Gary S. Arnold
Administrative Judge
E-mail: gary.arnold@nrc.gov

G. Paul Bollwerk, III
Administrative Judge
E-mail: paul.bollwerk@nrc.gov

Paul S. Ryerson
Settlement Judge
E-mail: paul.ryerson@nrc.gov

Matthew Zogby, Law Clerk
E-mail: matthew.zogby@nrc.gov

Alana Wase, Law Clerk
E-mail: alana.wase@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15D21
Washington, DC 20555-0001
Catherine Scott, Esq.
Mauri Lemoncelli, Esq.
Christopher Hair, Esq.
James Maltese, Esq.
Sabrina Allen, Paralegal
E-mail: catherine.scott@nrc.gov
mauri.lemoncelli@nrc.gov
christopher.hair@nrc.gov
james.maltese@nrc.gov
sabrina.allen@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

James Chaisson
E-mail: xrayjames01@yahoo.com

[Original signed by Herald M. Speiser ____]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of February, 2015