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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  
: ASLBP No.  
(Enforcement Action) : 14-932-02-EA-BD01

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Monday, February 23, 2015

By Teleconference

BEFORE:

MICHAEL M. GIBSON, Chair, Administrative Judge

DR. GARY S. ARNOLD, Administrative Judge

G. PAUL BOLLWERK III, Administrative Judge

1 APPEARANCES:

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Also Present

Rob Carpenter

Grant Chaisson

Twana Ellis

Nick Hilton

Tahirih Solomon

Alana Wase, Law Clerk

Matthew Zogby, Law Clerk

## P R O C E E D I N G S

10:04 a.m.

JUDGE BOLLWERK: Good morning, everyone.

We are here for a second pre-hearing conference for the enforcement case with Mr. James Chaisson, and the NRC Staff is the other party to the case.

I would like to first introduce the Board members and the other individuals who are here with the Board.

Judge Michael Gibson, one of our legal judges, is here, and he's a full-time member of the Panel. Another full-time member of the Panel is Judge Gary Arnold. Judge -- Dr. Arnold is a nuclear engineer. And I am -- my name is Paul Bollwerk, and I am one of the legal judges with the Panel.

Also in the room with me are law clerk Matt Zogby as well as law clerk Alana Wase. Alana is working with Judge Ryerson on the settlement of this case. He is aware that she is attending today, and I wanted to check with the parties to see if either of them have any objection to her being in the room.

MR. CHAISSON: No sir.

ADMIN. JUDGE BOLLWERK: All right.

MR. MALTESE: No objection from the Staff,  
Your Honor.

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1 ADMIN. JUDGE BOLLWERK: All right. I  
2 should say, this is going to be a public transcript in  
3 any event, so she could go back and read it, but it  
4 probably just makes it easier if she is here.

5 And then Twana Ellis is also with us  
6 today. She is our administrative person, and she is  
7 the one that's going to make this case run smoothly,  
8 right?

9 MS. ELLIS: Absolutely.

10 ADMIN. JUDGE BOLLWERK: All right.

11 I'd like now to have the parties identify  
12 themselves for the record, and again, for the Staff,  
13 anybody that might be in the room with you, as well as  
14 I know Mr. Maltese is there.

15 MR. MALTESE: That's correct, Your Honor.  
16 In addition to myself, Christopher Hair, my co-  
17 counsel, is here. Also, from the Office of  
18 Enforcement, we have Nick Hilton and Rob Carpenter,  
19 and from the Office of Investigations, Tahirih  
20 Solomon. But Chris and I will be speaking for the  
21 Staff.

22 ADMIN. JUDGE BOLLWERK: All right. And  
23 then Mr. Chaisson, do you want to identify yourself  
24 for the record?

25 MR. CHAISSON: Yes sir. It is just me,

1 James Chaisson.

2 ADMIN. JUDGE BOLLWERK: Okay, thank you,  
3 sir.

4 One thing that will be important today,  
5 and I think given you've done a couple of telephone  
6 conferences before you're aware of this, is that to  
7 the degree we can, we need to have everybody before  
8 they start speaking identify themselves for the  
9 record.

10 I am probably going to be the worst  
11 offender. I will try to remember to do that, but if  
12 I forget, or if the court reporter is losing track of  
13 who is speaking, Mr. Cam -- Mr. Sharp, I am sorry, I  
14 would ask you please to interrupt us and make sure  
15 that you know exactly who is speaking because we don't  
16 want to have anything inaccurate on the record in  
17 terms of attribution to a particular person that might  
18 be speaking, so I will rely on you, Mr. Sharp, to keep  
19 us on the straight and narrow if we begin to fade in  
20 a direction that's not helping you.

21 THE COURT REPORTER: All right, sounds  
22 good.

23 ADMIN. JUDGE BOLLWERK: Thank you.

24 Let me speak first to just an  
25 administrative matter. There have been some changes

1 in the Board membership since the last time you all  
2 spoke, which was back in January, I believe, for a  
3 discovery conference.

4 As Judge Karlin had indicated at that  
5 time, he has left the Licensing Board Panel. Judge  
6 Karlin is actually now in Oregon. He is a Social  
7 Security Administration Judge, or Administrative Law  
8 Judge.

9 Then I was assigned to the case as a  
10 replacement for Judge Karlin. Judge Hawkens then, in  
11 consultation with both Judge Gibson and me, looking at  
12 our case loads, decided that things would probably  
13 work out better if I became the Chairman of the case  
14 because Judge Gibson has got several pressing matters  
15 going on right now, particularly the Crow Butte in  
16 situ recovery uranium mining case, which is keeping  
17 him fairly busy, and I happen to be -- I won't say,  
18 well, sort of between things in one sense. I just  
19 finished with a major in situ recovery case that  
20 actually Ms. Wase and I worked on, and my next case  
21 doesn't go to hearing until, oh, I don't know, 2016 I  
22 think, so I have some time to deal with this case, and  
23 I am delighted to help out Judge Gibson, and I'm glad  
24 to be a member of the Licensing Board with both Judge  
25 Gibson and Judge Arnold.

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1           So that is kind of how that played out and  
2           how I became Chairman at this point.

3           Let's speak then -- let me go over briefly  
4           the items that we're going to try to cover in this  
5           pre-hearing conference, and there are a number of  
6           things that are going on and we need to talk about.

7           The first one we indicated in the order,  
8           and this is the February 13th order setting this pre-  
9           hearing conference. We need to talk a little bit  
10          about Mr. Chaisson's status, both in terms of his  
11          health and also in terms of his computer. We also  
12          need to talk about the submission of pre-trial  
13          disclosures now that discovery has closed.

14          And one thing -- that is under Section  
15          2.704(c) of the Commission's Rules. I know Judge  
16          Karlin spent some time talking with Mr. Chaisson at  
17          one point about the Commission's Rules. Those will be  
18          important going forward. I hope you were able, if you  
19          felt the need to, to get a copy of that Rule and take  
20          a look at it.

21          It does a couple of different things in  
22          terms of disclosures that are required prior to a  
23          hearing. One thing that wasn't mentioned in the  
24          order, and actually, we need to speak -- probably talk  
25          about a little bit today is the third part of

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1 2.704(c), which talks about the need for the use of  
2 motions in limine, and in limine is a Latin term,  
3 basically it means limited, so the possibility is that  
4 once the parties have specified who their witnesses  
5 are going to be and what evidentiary material,  
6 documentary or otherwise, they are going to be using,  
7 one of the other parties may wish to file motions to  
8 have that evidence limited or excluded in some way,  
9 and so we need to talk about the potential for the use  
10 of those types of motions.

11 The other thing we need to talk about, and  
12 it's sort of related, is the submission of evidentiary  
13 material. This is a subpart G proceeding. We have  
14 some flexibility in terms of the use of pre-trial  
15 testimony versus live testimony. In most of our  
16 subpart L cases, which are the simplified cases, not  
17 the formal cases like this one, we tend to use more  
18 pre-filed testimony. In an enforcement case like this  
19 one, however, it's a subpart G, a formal proceeding,  
20 we have the opportunity to take live testimony rather  
21 than using pre-filed testimony, so that's one of the  
22 things we want to talk a little bit about.

23 Also, then, getting more to the  
24 administrative matters, the dates of the evidentiary  
25 hearing, the place of the evidentiary hearing, and as

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1 the order mentioned, the content of the evidentiary  
2 hearing, to the degree that the parties have through  
3 either the discovery process or their settlement  
4 negotiations with Judge Ryerson, have come to any  
5 different conclusions or thoughts about what the  
6 issues in the case are and how they ought to be posed.

7 And then finally, the question of cross-  
8 examination procedures. This, again, is a subpart G  
9 proceeding, which actually allows the parties to  
10 cross-examine witnesses for the other party, unlike a  
11 subpart L proceeding, which are the ones we use in  
12 most of our licensing cases, where the Board, the  
13 judges on the Board are actually responsible in the  
14 first instance for asking all the questions.

15 And with cross-examination then comes the  
16 possibility of filing cross-examination plans where  
17 the parties are to specify what type of cross-  
18 examination they would intend to conduct with respect  
19 to the witnesses that have been specified by the  
20 opposing party.

21 Mr. Chaisson, I recognize this may sound  
22 a little complicated. We are going to step through  
23 this one step at a time. I would urge you, sir, if  
24 you have any questions, please let us know. We will  
25 try to explain it to you the best we can because I am

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1 not trying to confuse you here. I want to make sure  
2 that we walk through the process and everyone knows  
3 where this proceeding is headed.

4 Okay, sir?

5 MR. CHAISSON: Yes sir.

6 ADMIN. JUDGE BOLLWERK: All right. Let me  
7 just stop what I'm saying before we start into the  
8 agenda and see if Judge Gibson or Judge Arnold have  
9 anything they want to say.

10 ADMIN. JUDGE ARNOLD: I don't.

11 ADMIN. JUDGE BOLLWERK: No?

12 ADMIN. JUDGE GIBSON: No.

13 ADMIN. JUDGE BOLLWERK: All right.

14 All right. Let's then move into the  
15 specifics of -- well let me actually also state,  
16 anything the Staff or Mr. Chaisson want to say at this  
17 point before we start into the agenda?

18 MR. MALTESE: No sir.

19 ADMIN. JUDGE BOLLWERK: Nothing?

20 MR. CHAISSON: Not at this time, Your  
21 Honor.

22 ADMIN. JUDGE BOLLWERK: Okay. Let's move  
23 forward then, and we'll see where this goes.

24 Mr. Chaisson, let's talk to you -- talk  
25 for a couple minutes with you about your status.

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1 I understand from some things that have  
2 been filed recently or sent to the -- sent in in the  
3 hearing docket that you've recently had an injury. Do  
4 you want to tell us anything about that and what that  
5 kind of does to you in terms of your ability to  
6 prepare for and participate in a hearing?

7 MR. CHAISSON: Well, I was -- six weeks  
8 ago I was in a motorcycle accident, and I have a  
9 compound fracture on my leg where they had to put a  
10 20-inch rod in, and I now have a plate in my shoulder,  
11 so I am on medication and I am generally disabled  
12 right now. I mean, I am stuck in a wheelchair, I  
13 can't do anything, you know, without the help of my  
14 children, so I mean -- and you know my laptop fried,  
15 I have no ability to pay to get it fixed because my  
16 employment ran out, I can't file unemployment legally  
17 due to my injuries, so I'm filing for disability, so  
18 right now, I am without income, and you know, I'm  
19 trying to explain that, you know, I am pretty much in  
20 pain 24 hours a day, 7 days a week.

21 ADMIN. JUDGE GIBSON: This is Judge  
22 Gibson. Have your doctors indicated to you how long  
23 you'll be in this state where you have this much pain?  
24 Is this a matter of days, or weeks, or months? I  
25 mean, we're just --

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1 MR. CHAISSON: I will be in this -- I will  
2 be in this wheelchair for three to six months, and  
3 then we'll work -- then they're going to start working  
4 on rehabilitating me, seeing if I can walk again.

5 ADMIN. JUDGE GIBSON: Thank you.

6 ADMIN. JUDGE BOLLWERK: I should mention,  
7 Judge Arnold is a motorcycle rider, so he's listening  
8 to all this very carefully.

9 But let me ask you, Mr. Chaisson, just  
10 sort of as a general, how -- I mean, to some degree we  
11 have to resolve this case at some point. Having said  
12 that, you're the one that the order has been directed  
13 against.

14 MR. CHAISSON: Correct.

15 ADMIN. JUDGE BOLLWERK: How would you like  
16 to proceed? What are your feelings about -- in terms  
17 of having some kind of an evidentiary hearing at some  
18 point?

19 MR. CHAISSON: Well, Your Honor, if you  
20 want my honest opinion, I'll give it to you.

21 I thought I could actually get a fair  
22 trial here, but I mean every offer I have been given  
23 so far has still -- it's eliminating me from moving  
24 farther. I have been through the NDT field that's  
25 trying to hold me down to be nothing but a worker my

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1 whole life, which I have more knowledge and more  
2 experience than to literally just be a helper as with  
3 their offering in their last offer for a settlement,  
4 and everybody seems to forget my constitutional rights  
5 were violated by the NRC, and the bottom line is I  
6 showed them proof, when the truck broke down, I did  
7 exactly what I was told by my company. I had no other  
8 choice but to do what I did with the camera, and  
9 everybody seems to overlook that.

10 So it doesn't seem to matter what I say  
11 because it doesn't get heard.

12 ADMIN. JUDGE BOLLWERK: Well, Mr.  
13 Chaisson, I guess that is the point of why we're here,  
14 which is we're -- and what we want to do is hear the  
15 evidence that's relevant, and to do that, we have to  
16 have the hearing, and I guess that's the question I am  
17 asking.

18 You will be given an opportunity, as we'll  
19 talk about a little more today, to present whatever  
20 evidence you think is appropriate. The question is  
21 when do you think you'll be available and in good  
22 enough health to provide us with that evidence in an  
23 evidentiary hearing, which would be in a hotel  
24 ballroom or a courtroom somewhere for a day or so  
25 while we're holding the hearing?

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1 MR. CHAISSON: Well, I mean, I am able to,  
2 like I say, I am out of the hospital, I am at home  
3 now, thank God. I'll try to get around in a  
4 wheelchair. I mean, when I do, it's like when I have  
5 to go to the doctor, it's just -- my son would help me  
6 in the car, and we'd put my wheelchair in the trunk,  
7 and then we go to the doctor, and then they pull it  
8 out for me, so I am able to get around.

9 You know, my -- it's just really hard  
10 right now, you know. Like I said, first motorcycle  
11 accident I've ever been in, and I don't want to go  
12 through another one. Thank God my bike is all right.

13 ADMIN. JUDGE BOLLWERK: Well, you have to  
14 have your priorities straight, Judge Arnold is  
15 agreeing with you. So --

16 MR. CHAISSON: Yes sir. I figured he  
17 would.

18 ADMIN. JUDGE BOLLWERK: All right. Let me  
19 just -- let me ask just a couple questions.

20 You had previously said that you were in  
21 Salt Lake City or in the environs of Salt Lake City.  
22 Is that where you're still at?

23 MR. CHAISSON: Yes sir. I am in a town  
24 probably about 30 miles south of Salt Lake. It is  
25 called Orem, Utah, but --

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1 ADMIN. JUDGE BOLLWERK: Right.

2 MR. CHAISSON: -- yes sir.

3 ADMIN. JUDGE BOLLWERK: Okay. And you  
4 don't have any plans on moving from Orem any time in  
5 the near future, do you?

6 MR. CHAISSON: Oh, no sir, no sir. This  
7 is my home now, and my children have grown to like it  
8 here. You know, we've been here for over six years,  
9 so -- well, four years, so we came to like it.

10 ADMIN. JUDGE BOLLWERK: All right. Let's  
11 talk for one second about -- I guess this is technical  
12 health as opposed to physical health.

13 You mentioned that your computer hard  
14 drive had crashed. At one point, you were trying to  
15 get it fixed, but there was a problem with doing that  
16 given funding issues. Where do you stand right now in  
17 terms of your ability to connect to the internet, to  
18 receive email, to interact with the NRC or any other  
19 website? Can you give us some sense of where you're  
20 at?

21 MR. CHAISSON: Yes, sure. I do have an  
22 old laptop. I just don't -- it doesn't have the  
23 download information. But I emailed Mr. Maltese and  
24 just -- I think it was Mr. Hair, and they have been  
25 sending it to me the way I am able to read the

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1 documents, so we have been, you know, we have been  
2 communicating through that.

3 ADMIN. JUDGE BOLLWERK: So basically  
4 through email then?

5 MR. CHAISSON: Yes sir.

6 ADMIN. JUDGE BOLLWERK: And do you have  
7 any web access at all, in terms of the internet?

8 MR. CHAISSON: Yes sir, yes sir.

9 ADMIN. JUDGE BOLLWERK: Do you feel like  
10 you're unable at this point to use the NRC's e-filing  
11 system where you have to have a digital certificate?

12 MR. CHAISSON: Yes. I don't have my own  
13 laptop to do that on. This is my son's laptop that  
14 he's using for school, and you know, I just use it,  
15 you know, to view all my emails here every day or so  
16 --

17 ADMIN. JUDGE BOLLWERK: I mean --

18 MR. CHAISSON: -- but it's -- go ahead.

19 ADMIN. JUDGE BOLLWERK: One thing you  
20 should be aware of is your digital certificate can  
21 reside on any laptop you want it to, so if, again, you  
22 found the e-filing system useful to you before in  
23 terms of what you were sending in, if you wanted to  
24 interact with the NRC's Help Desk again, they could  
25 download that or get that downloaded onto your son's

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1 laptop just like it was on your laptop so that you  
2 could interact with the e-filing system.

3 MR. CHAISSON: Okay, all right, then I  
4 understand that. I will -- but yeah, I mean it was  
5 helpful. When I was able to send them, you know, the  
6 hard copy of my phone records which, you know, like I  
7 said was, as far as the evidence that I have proof of  
8 of when the truck broke down, you know, of how they  
9 lied on what date they said it broke down, and I  
10 showed proof that it wasn't that day, it was way  
11 before that.

12 Anyone that worked with me at that time,  
13 I have no further contact with anymore --

14 ADMIN. JUDGE BOLLWERK: Right.

15 MR. CHAISSON: -- so --

16 ADMIN. JUDGE BOLLWERK: Well --

17 MR. CHAISSON: -- as far as the live  
18 witnesses, I don't have any.

19 ADMIN. JUDGE BOLLWERK: Just in terms of  
20 your ability to interact with our hearing filing  
21 system, it sounds like you would be willing at least  
22 to give it a shot in terms of dealing with the Help  
23 Desk folks, like you did before, I believe, and trying  
24 to get your digital stamp to get put on your son's  
25 laptop so you can continue to file things with the

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1 Agency's e-filing system.

2 The reason I am bringing this up is if you  
3 can't do that, we have to kind of set up a different  
4 protocol for how things are going to be filed. In  
5 terms of the -- using email, the Office of the  
6 Secretary has to understand how that is going to work.  
7 Everybody else needs to understand how that is going  
8 to work.

9 I would prefer to stick with e-filing, but  
10 if that is not possible -- and we're hear from the  
11 Staff on this in a second -- we obviously need to move  
12 to some other measure or protocol that would allow you  
13 to put your documents into the record, and as we come  
14 forward -- go forward, there's going to be a lot more  
15 filings that may potentially be involved.

16 We could do that by email, but the e-  
17 filing system would be better, everything being equal,  
18 if you can still use that.

19 Let me see if the Staff has any thoughts  
20 about this one way or the other.

21 ADMIN. JUDGE ARNOLD: This is Judge  
22 Arnold. I just want to go back again to your -- the  
23 effects of your motorcycle accident.

24 In order to have a meaningful hearing,  
25 you're going to have to be able to participate both

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1 physically and mentally, because you're going to be  
2 the person primarily questioning the Staff about their  
3 evidence.

4           Between the pain and the pain medications  
5 you're taking, are you currently in a position that  
6 you can mentally participate in a hearing?

7           MR. CHAISSON: Yes sir, yes sir. I mean,  
8 my mind is all here. I -- the doctor was pretty much  
9 amazed that, you know, like you said, he just brought  
10 me all kinds of stuff, and I'm not much for pain  
11 medicine. I am down to just one.

12           And he was surprised how little I take of  
13 it, so I just deal with it, you know, just something  
14 I am going to have to learn to deal with, so I  
15 mentally got it in my mind, I have got to -- this is  
16 something that I can't change. It's now a part of my  
17 body that I've got to learn to deal with a different  
18 feeling I have.

19           ADMIN. JUDGE ARNOLD: Thank you.

20           ADMIN. JUDGE BOLLWERK: Okay. That was a  
21 good point. Thank you, Judge Arnold, for making that.

22           We are going to need to go off the record  
23 for one second, please.

24           MR. CHAISSON: Yes sir.

25           ADMIN. JUDGE BOLLWERK: We'll be right

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1 back.

2 (Whereupon, the pre-hearing conference  
3 went off the record at 10:23 a.m. and resumed at 10:23  
4 a.m.)

5 ADMIN. JUDGE BOLLWERK: Okay, we're back  
6 on the record.

7 Thank you for clarifying that, Mr.  
8 Chaisson, and I think Judge Arnold made a good point.  
9 I was assuming you felt you were at enough clarity,  
10 but I think it's better to get that on the record and  
11 make it clear.

12 Let me just ask the Staff: do you have any  
13 thoughts about the e-filing situation?

14 MR. MALTESE: Your Honor, I think we feel  
15 very similar to the Board that we have a preference  
16 for e-filing, but if circumstances were such that the  
17 Board would ask for another method of filing, the  
18 Staff would be ready and willing to submit in any  
19 manner.

20 ADMIN. JUDGE BOLLWERK: Okay, all right.

21 THE COURT REPORTER: Excuse me, I am  
22 sorry, who spoke?

23 ADMIN. JUDGE BOLLWERK: Mr. Chaisson, let  
24 me ask you a question, and if you don't feel  
25 comfortable --

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1 THE COURT REPORTER: Your Honor --

2 ADMIN. JUDGE BOLLWERK: -- I ask that you

3 --

4 THE COURT REPORTER: Your Honor --

5 ADMIN. JUDGE BOLLWERK: -- sir. You  
6 mentioned a number of -- oh, I am sorry.

7 THE COURT REPORTER: I just wanted to --

8 ADMIN. JUDGE BOLLWERK: Someone had a --

9 THE COURT REPORTER: -- make sure -- Your  
10 Honor, this is the court reporter. I just wanted to  
11 get clarity about who just spoke for the NRC.

12 MR. MALTESE: That was Mr. Maltese.

13 THE COURT REPORTER: All right, thank you.

14 MR. MALTESE: I apologize. And I will  
15 identify myself before I speak in the future.

16 ADMIN. JUDGE BOLLWERK: All right. That  
17 was the court reporter. Okay, Mr. Court Reporter,  
18 we're straight? I think we are.

19 THE COURT REPORTER: Yes, Your Honor.

20 ADMIN. JUDGE BOLLWERK: Okay.

21 Mr. Chaisson, this is Judge Bollwerk. I  
22 was just mentioning that there's a question I want to  
23 ask you, and if you feel kind of uncomfortable  
24 answering it, certainly don't feel that you're obliged  
25 to, but in terms of the IT, you've mentioned you have

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1 three children. Can you -- would you mind telling us  
2 what their ages are?

3 MR. CHAISSON: This is James Chaisson. I  
4 have -- my oldest son is 20 years old. I have my --  
5 his name is Grant Chaisson. My second son, James  
6 Chaisson Jr., is 16. And I have my 14-year-old  
7 daughter, whose name is Patricia Lynn Chaisson.

8 ADMIN. JUDGE BOLLWERK: Okay. And today,  
9 are they able to provide you any IT help? I sometimes  
10 find my kids know a lot more about this than I do, so  
11 -- .

12 MR. CHAISSON: You're exactly right, yes,  
13 yes sir they do.

14 ADMIN. JUDGE BOLLWERK: Okay. Well, maybe  
15 I'll make a suggestion, and I recognize your kids, at  
16 least a couple of them are still high-school age. Is  
17 your oldest son working, in school, is he there to  
18 help you? I guess that's my question.

19 MR. CHAISSON: Yes sir. My oldest son, he  
20 works with my neighbor next door. They do  
21 landscaping, and then I've got my 16-year-old doing  
22 the online schooling, and my daughter is in high  
23 school.

24 ADMIN. JUDGE BOLLWERK: Okay. Well, if  
25 you feel that -- and again, you worked with our Help

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1 Desk before, the NRC Help Desk, and I'll actually give  
2 them a heads-up that you may be calling them. See  
3 again if you can get your digital certificate put onto  
4 whatever laptop you're currently using and continue to  
5 use the e-filing system.

6 If that's not going to happen, maybe you  
7 can let our law clerk know through an email that you  
8 also send to the Staff that you just don't feel at  
9 this point that you can use the e-filing system, and  
10 you need to rely on email, and then we'll take  
11 whatever step is the next one.

12 Just in terms of timing -- oh, the Help  
13 Desk number, by the way -- thank you, Matt Zogby just  
14 gave it to me -- it's 1 -- do you have that number,  
15 sir? I can give it to you again if you need it.

16 MR. CHAISSON: All right, yes, if you  
17 don't mind giving it to me again.

18 ADMIN. JUDGE BOLLWERK: It's 1-866-672-  
19 7640. Do you need me to repeat that?

20 MR. CHAISSON: No sir. My son was writing  
21 it as you were speaking.

22 ADMIN. JUDGE BOLLWERK: Very good. And  
23 one of your sons is there with me?

24 MR. CHAISSON: Yes. My oldest son is here  
25 with me, he was just getting ready to go to work and

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1 just --

2 ADMIN. JUDGE BOLLWERK: Okay.

3 MR. CHAISSON: -- he checks on me before  
4 he goes.

5 ADMIN. JUDGE BOLLWERK: Okay. Well, how  
6 quickly do you think you can interact with the Help  
7 Desk and get back to us as to whether you think you  
8 can continue to do e-filing or not?

9 MR. CHAISSON: I can have it uploaded  
10 before this Friday without a problem.

11 ADMIN. JUDGE BOLLWERK: So maybe by the  
12 end of the week, you'll get back, or the beginning --  
13 the very beginning of next week, you get back to us  
14 and let us know if you think you can continue to do e-  
15 filing or we need to move forward with simply email so  
16 we can also let the Office of the Secretary know how  
17 they're going to be getting documents, all right?

18 MR. CHAISSON: Yes sir.

19 ADMIN. JUDGE BOLLWERK: Okay?

20 MR. CHAISSON: Yes sir.

21 ADMIN. JUDGE BOLLWERK: And again, an  
22 email to Mr. Zogby indicating what your status is with  
23 a copy to the Staff would work just fine.

24 MR. CHAISSON: Okay sir.

25 ADMIN. JUDGE BOLLWERK: All right? Thank

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1 you.

2 All right. So we have some sense, then,  
3 of Mr. Chaisson's status, both in terms of his IT and  
4 his physical health, the physical health being the  
5 more important thing, obviously.

6 Let's talk for another second about --  
7 let's talk for a second about the status of discovery,  
8 which is something that was just completed at the end  
9 of last month, I believe January 30th was the closing  
10 date, wasn't it?

11 And I understand Mr. Chaisson's deposition  
12 was taken on January 8th by the Staff. Mr. Chaisson  
13 didn't try to take any depositions. I know there had  
14 been some talk about that at one point, but -- and  
15 neither party, as I understand it, served  
16 interrogatories, which are questions that they could  
17 have posed to each other, or did what we call  
18 admission requests, which are statements that are made  
19 by one party and the other party then has to respond  
20 as to whether the statement is true or false. Those  
21 were not used as well.

22 I guess discovery closed, I am sorry,  
23 January 15th.

24 Is my understanding in that regard  
25 correct? The Staff first, if you would please.

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1 MR. MALTESE: Yes Your Honor, we have  
2 completed our discovery.

3 ADMIN. JUDGE BOLLWERK: All right. Mr.  
4 Chaisson, anything you want to say about that?

5 MR. CHAISSON: No sir.

6 ADMIN. JUDGE BOLLWERK: Okay. One thing  
7 I would remind both parties is that under the Board's  
8 order, initial pre-hearing order, you have a  
9 continuing duty to update your document disclosures on  
10 a monthly basis, and that was, I believe, on the  
11 second Wednesday of every month, if I am -- if I  
12 remember that. So that will -- we'll assume that is  
13 going to happen going forward.

14 Do either of the parties have any comments  
15 on the discovery process at this point? Staff first?

16 (No audible response.)

17 ADMIN. JUDGE BOLLWERK: No? Nothing from  
18 the Staff?

19 MR. MALTESE: No, Your Honor --

20 ADMIN. JUDGE BOLLWERK: All right --

21 MR. MALTESE: -- this is Mr. Maltese, no.

22 ADMIN. JUDGE BOLLWERK: All right.  
23 Anything from Mr. Chaisson?

24 MR. CHAISSON: This is James Chaisson. No  
25 sir, Your Honor, I don't.

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1 ADMIN. JUDGE BOLLWERK: All right, thank  
2 you.

3 In theory, then, that would bring us to  
4 the potential of going forward with an evidentiary  
5 hearing, and that again, Mr. Chaisson, would be the  
6 situation that we've talked about a little bit where  
7 you would -- you and the Staff would both have an  
8 opportunity to put in evidence, testimony under oath  
9 -- some of it might be either written testimony or it  
10 might be live testimony. You would also have the  
11 opportunity to have documentary material admitted into  
12 evidence. It would become part of the evidentiary  
13 hearing record. And based on the evidence that we  
14 hear, the sworn testimony, whether written or oral,  
15 and the documentary material that's filed by the  
16 parties, that would be the basis on which the Board  
17 would make its decision, so that evidentiary record,  
18 then, would control the -- that would be the factual  
19 material that the Board would use to make any legal  
20 conclusions about the validity of the order and the  
21 various provisions that are in the order.

22 Is that clear to you, sir? I just want to  
23 make sure you understand what we're talking about when  
24 we talk about an evidentiary hearing.

25 (No audible response.)

1 ADMIN. JUDGE BOLLWERK: Mr. Chaisson?

2 MR. CHAISSON: Yes, James Chaisson, yes  
3 sir, it is clear to me.

4 ADMIN. JUDGE BOLLWERK: Okay, thank you.

5 One of the things that we didn't mention  
6 in our order is notwithstanding the fact that you all  
7 have been through discovery, under the Rules for a  
8 subpart G proceeding, this is the formal proceeding  
9 that we'll be using in this enforcement case, there  
10 are several things that are covered under Section  
11 2.704(c) of the Agency's Rules, Part 2.

12 Part C(1) indicates that the parties are  
13 to provide each other with the name and address of  
14 each witness that they plan on having as a witness for  
15 that party, any deposition testimony that they plan to  
16 use in the proceeding, as well as identification of  
17 each of the physical exhibits or documentary exhibits  
18 or whatever other kinds of exhibits they might have,  
19 in the proceeding, and that has to be done at least 30  
20 days before the evidentiary hearing begins.

21 Let me just go through the different parts  
22 of subpart C, and then we'll come back and talk about  
23 each one individually. Actually, subpart C(2) says  
24 that it has to be 30 days for the hearing, and then  
25 the third part of it, which we didn't really mention

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1 in the order but which I mentioned in the  
2 introduction, was part C(3), which talks about  
3 objections to the evidentiary material by motions for  
4 -- motions in limine, which can be filed by the  
5 parties.

6 Let's go back to the first part, C(1).  
7 And what this would involve is basically both of the  
8 parties laying out in some detail, at least in terms  
9 of the listings, what types of evidentiary information  
10 they intend to put into the proceeding.

11 Are they going to have witness testimony  
12 because they're going to be naming their witnesses?  
13 That indicates that obviously they're going to have  
14 that witness available to testify in the hearing. Are  
15 they then -- are they going to be using any kind of  
16 deposition testimony? And the only -- at least at  
17 this point, the only possibility there is Mr.  
18 Chaisson's deposition, which was taken back in  
19 January, but that would be something the Staff, or Mr.  
20 Chaisson, if he felt it was appropriate, although he's  
21 going to -- he, in theory, will be there, use that  
22 deposition testimony.

23 And then finally, an identification of all  
24 the documentary material that the party plans to use  
25 in the proceeding.

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1           Let me start with the Staff. When do you  
2 feel that the Staff would be ready to produce that  
3 sort of evidence -- this sort of information, excuse  
4 me?

5           MR. MALTESE: Your Honor, this is Jim  
6 Maltese, the Staff would be ready to provide that  
7 information honestly as early as the Board is prepared  
8 to receive it.

9           We -- we talked about the -- when we talk  
10 later about the timeline for the hearing, I think we  
11 can sort of get a more firm schedule, but the --  
12 there's -- at this point, I don't have a certain, you  
13 know, length of time that it would take. We can  
14 provide that in relatively short order.

15           ADMIN. JUDGE BOLLWERK: All right. So it  
16 sounds like the Staff -- this is Judge Bollwerk -- it  
17 sounds like the Staff then could do this in -- fairly  
18 promptly. All right, I appreciate that.

19           Mr. Chaisson, let's talk with you for a  
20 second about what we're -- you understand, first of  
21 all, I want to make sure, what sort of information  
22 that you would be providing for the Board and the  
23 Staff? Mr. Chaisson?

24           MR. CHAISSON: This is James Chaisson, yes  
25 sir.

1           What I have is, like I said, my copy of my  
2 phone records to show what occurred on the weeks  
3 before and the weeks after the truck broke down and  
4 the time of this original incident, and I have the  
5 paperwork that I have received from them of the  
6 depositions of the people they interviewed from Texas  
7 Gamma Ray, and received their proof of their evidence,  
8 just the dates and all, they totally just don't  
9 account with their statements at all. It conflicts  
10 everything they've said in their statements, their  
11 receipts that they turned in.

12           So I'd be using their own evidence against  
13 them.

14           ADMIN. JUDGE BOLLWERK:    So we -- we  
15 haven't had access, I don't think, to these  
16 depositions. This is -- the Texas Gamma Ray, this is  
17 the enforcement proceeding that was brought against  
18 Texas Gamma Ray, the civil penalty proceeding, or part  
19 of the investigation that led to that civil penalty?

20           MR. CHAISSON:    Yes sir.

21           ADMIN. JUDGE BOLLWERK:    I'm just asking  
22 about testimony.

23           MR. MALTESE:    Yes, Your Honor, this is Mr.  
24 Jim Maltese. Those are -- I think what Mr. Chaisson  
25 is referring to are transcripts of interviews that

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1 were conducted in an investigation report by the  
2 Office of Investigations that then led to the  
3 enforcement orders.

4 ADMIN. JUDGE BOLLWERK: And those  
5 transcripts were -- were the individuals under oath?

6 MR. MALTESE: They were, yes.

7 ADMIN. JUDGE BOLLWERK: So in one sense,  
8 I mean, they're not depositions in the classic sense,  
9 but the individuals were under oath and being  
10 questioned by witnesses. Did they have counsel with  
11 them?

12 MR. MALTESE: They did not. Well, I am  
13 sorry, and -- it depends on -- in some cases, yes. It  
14 -- depending on interview. They were -- the  
15 opportunity existed for counsel.

16 ADMIN. JUDGE BOLLWERK: Right. And could  
17 -- if you have them, or you know them, could you just  
18 give me the names of the witnesses that were the  
19 depositions you provided Mr. Chaisson?

20 MR. MALTESE: Interviews.

21 ADMIN. JUDGE BOLLWERK: The interviews, I  
22 am sorry, the interviews, excuse me, yes, good point.

23 MR. MALTESE: There was quite a variety of  
24 names. I don't -- we can run down that, yes. Those  
25 are -- and these are part of the hearing file when

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1 they were provided to --

2 MR. HAIR: Yes, Your Honor, this is Chris  
3 Hair with the NRC Staff. Just to clarify, the Office  
4 of Investigations -- this report goes back to our  
5 investigation of Mr. Chaisson back in 2011, so there  
6 was a number of witnesses that OI interviewed there.  
7 We can provide a witness list that occurred in the OI  
8 report to the Board if it's helpful, but there are  
9 numerous individuals, some represented by counsel,  
10 some chose not to have counsel present. It's standard  
11 practice for OI to go out and interview a number of  
12 --

13 MR. MALTESE: Right.

14 MR. HAIR: -- witnesses for each  
15 allegation or case they're working on.

16 ADMIN. JUDGE BOLLWERK: Just a round  
17 number, can you tell me approximately how many of  
18 those interviews there are?

19 MR. HAIR: 10-15, Your Honor, this is  
20 Chris Hair again, if I -- if I had to hazard a guess.  
21 We are counting them now, Your Honor.

22 ADMIN. JUDGE BOLLWERK: Okay.

23 MR. HAIR: We will get you a more exact  
24 number in a second.

25 ADMIN. JUDGE BOLLWERK: I am going to go

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1 off the record one second, please.

2 MR. HAIR: Sure.

3 (Whereupon, the pre-hearing conference  
4 went off the record at 10:38 a.m. and resumed at 10:38  
5 a.m.)

6 ADMIN. JUDGE BOLLWERK: This is Judge  
7 Bollwerk, I am back on the record.

8 You had mentioned that I think -- the  
9 Staff had mentioned that these are in the hearing  
10 file. Is it the hearing file for this case? Because  
11 I don't remember seeing them, but maybe I wasn't  
12 looking in the right place.

13 Were these -- I know there were several  
14 actually things that were sent directly to Mr.  
15 Chaisson by mail that were not put into the -- into  
16 the -- that were not listed in ADAMS. Are these  
17 documents among those documents?

18 MR. HAIR: These documents, Your Honor,  
19 exist in the non-public ADAMS, in the hearing file,  
20 and Judge Karlin had ordered us to produce these  
21 documents in hard copy to Mr. Chaisson previously, so  
22 you're correct in that the redacted documents that  
23 were sent to Mr. Chaisson are not in public ADAMS.

24 ADMIN. JUDGE BOLLWERK: Okay. I think it  
25 would be useful for us if you could -- if you, in the

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1 near-term, say certainly by the close of this week,  
2 could provide for the record, again, this is simply I  
3 guess kind of reproducing in a different form  
4 something you've already given to Mr. Chaisson, a list  
5 of the witnesses, where they were interviewed, and if  
6 they did or did not have counsel.

7 MR. HAIR: No problem, Your Honor, this is  
8 Chris Hair again. We can provide that to you by the  
9 end of the week.

10 ADMIN. JUDGE BOLLWERK: Okay.

11 Mr. Chaisson, let me go back to you for a  
12 second.

13 You -- I recall that in some of the  
14 statements you had made to the Board previously, you  
15 had indicated that there might be some letters that  
16 you were trying to get in support of certain  
17 information that you felt would help your case. Do  
18 you still have any of those types of letters you  
19 intend to put in the record?

20 MR. CHAISSON: Your Honor, yes sir. I was  
21 going to get the letters from the previous -- the  
22 company that I worked for after Texas Gamma Ray to  
23 prove -- to disprove the statements that -- during the  
24 interviews that were made -- the statements that were  
25 made during some of the interviews of Texas Gamma Ray

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1 employees and their representative, Ms. Laurie  
2 McGowan, but then the Judge told me that anyone I had  
3 written a letter with, it has to be available to be at  
4 this hearing, and they just -- they don't -- the man  
5 who owns the company and the other guys, it's the  
6 corporate RSO, and they just wouldn't be available to  
7 -- I mean, on their own dime, they wouldn't just come  
8 to Utah to, be a witness, I mean, I don't know anyone  
9 who would be willing to do that.

10 ADMIN. JUDGE BOLLWERK: All right.

11 MR. CHAISSON: I mean, this is the x-ray  
12 industry. Every x-ray owner -- every x-ray company's  
13 owner has the same dad, and his name is greed, because  
14 that is all they are driven by, is greed.

15 ADMIN. JUDGE BOLLWERK: Mr. Chaisson, I am  
16 sorry, did you say someone told you that these --  
17 there was no point in getting information about these  
18 witnesses if they couldn't show up for trial?

19 MR. CHAISSON: Yes sir.

20 ADMIN. JUDGE BOLLWERK: Did I hear you say  
21 that, sir?

22 MR. CHAISSON: Yes sir, you did, this is  
23 James Chaisson.

24 ADMIN. JUDGE BOLLWERK: Who was it who  
25 said that? I am sorry.

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1 MR. CHAISSON: If I am not mistaken, Your  
2 Honor, it was the Judge that isn't there anymore --

3 ADMIN. JUDGE BOLLWERK: Judge Karlin.

4 MR. CHAISSON: Yes sir.

5 ADMIN. JUDGE BOLLWERK: I know he did make  
6 a point about witnesses being available, and the  
7 ability to cross-examine witnesses would be important,  
8 obviously, and that's what I think Judge Karlin was  
9 referring to.

10 MR. CHAISSON: Yes sir.

11 ADMIN. JUDGE ARNOLD: Well I just want to  
12 be sure you understand that Judge Karlin didn't -- I  
13 don't think he used those exact words, though. I  
14 believe what he -- he made the same point that Judge  
15 Bollwerk did, which is that if you're going to call --  
16 if you're going to have a witness, the witness needs  
17 to be available to be cross-examined.

18 He didn't mean that you didn't need to  
19 make an effort to try to get testimony. Those are two  
20 separate things.

21 ADMIN. JUDGE BOLLWERK: Right. So let's  
22 talk about this for a second, and maybe we can --  
23 let's say that you were able to -- well, one thing you  
24 should be aware of, Mr. Chaisson, let me just mention  
25 it as a general thing, is that there is the ability

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1 under our Rules to do what's called subpoena a  
2 witness, and I think Judge Karlin may have mentioned  
3 that at one point.

4 Let me just explain that a second.  
5 Basically, either of the parties can come to the Board  
6 and ask the Board to issue a subpoena for a particular  
7 individual and have that individual come to the  
8 hearing. Now, that has -- that's a fairly powerful  
9 document to the degree that person needs to show up.  
10 If that subpoena is not -- is a valid subpoena, they  
11 have to be there.

12 Having said that, there are certain  
13 requirements that come with that. Basically, you have  
14 to make a -- you have to pay the person \$40 a day for  
15 their time for them to show up as well as any  
16 transportation expenses that they have to the site of  
17 the hearing. So that's part of what's involved.

18 In terms of talking for a second about the  
19 letters that you might be able to get from people that  
20 might support part of your position, if Mr. Chaisson  
21 were able to present those letters, I am talking to  
22 the Staff now, what would the Staff want to do in  
23 response to that?

24 MR. MALTESE: Your Honor, the Staff, this  
25 is Jim Maltese, the Staff would take the opportunity

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1 to have some form of correspondence with the person  
2 who was providing testimony on Mr. Chaisson's behalf,  
3 either through interrogatories or would -- perhaps we  
4 would seek to have a deposition, because obviously the  
5 time for discovery has closed at this point.

6 ADMIN. JUDGE BOLLWERK: Right. So I take  
7 it then the Staff would be willing, if for instance  
8 that could be arranged, to take a deposition over the  
9 phone like we did with Mr. Chaisson?

10 MR. MALTESE: Yes, certainly.

11 ADMIN. JUDGE BOLLWERK: And I take it the  
12 Staff would at that point be the party issuing the, if  
13 it were necessary, the subpoena to the particular  
14 individual in order to get their deposition taken?

15 MR. MALTESE: Your Honor, I can't really  
16 speculate at this time whether we would be seeing a  
17 subpoena or not.

18 ADMIN. JUDGE BOLLWERK: Well, if the  
19 person agreed to it, then you don't need the subpoena,  
20 but if they don't, then you're going to need the  
21 subpoena if you want their deposition, so -- .

22 MR. MALTESE: Yes, yes --

23 ADMIN. JUDGE BOLLWERK: Okay.

24 MR. MALTESE: -- to take the deposition,  
25 I understand, yes.

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1 ADMIN. JUDGE BOLLWERK: All right, okay.

2 So Mr. Chaisson, I think what you just  
3 heard is that there is a way forward for you if you  
4 wish to come up with some letters or other sworn -- it  
5 would be better to have sworn statements that support  
6 your case in some way, shape, or form.

7 So I think there is an opportunity for you  
8 to do that, but you're going to have to sort of move  
9 forward, decide who those people are, and get their  
10 agreement to provide you that information, and then  
11 you're going to have to basically provide it to the  
12 Staff because the Staff is going to have an  
13 opportunity, needs to have an opportunity, to talk to  
14 those individuals.

15 MR. CHAISSON: Yes.

16 ADMIN. JUDGE BOLLWERK: And I just  
17 mentioned, if a deposition were taken like the one we  
18 just described, you would be able to participate in  
19 that as well in terms of the telephone deposition.

20 MR. CHAISSON: I understand that, Your  
21 Honor, this is James Chaisson. Yes sir, I will see if  
22 I can get in touch with the owner of the company that,  
23 like I said, I went to work for right after. His name  
24 is Mr. Jason Stone, and the corporate RSO is Mr. Steve  
25 Ercoli --

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1 ADMIN. JUDGE BOLLWERK: All right.

2 MR. CHAISSON: -- you know.

3 ADMIN. JUDGE BOLLWERK: Okay. So -- and  
4 I should say, at this point you need to be thinking  
5 about those individuals or anybody else you think has  
6 testimony that would support your case in terms of  
7 people that you believe would be willing to provide  
8 you with a statement on the record that somehow  
9 supports some aspect of your case.

10 So again, think about that sort of as a  
11 unitary, as a whole. Don't just think about it in  
12 terms of one particular part of your case, but any  
13 part of your case you think that there is someone you  
14 know that can provide you with some kind of  
15 information, that's willing to provide you with some  
16 kind of information, that would support your case.

17 So that's something you need to think  
18 about seriously, because the way this needs to proceed  
19 is if you're going to be able to identify those  
20 individuals, then we need to set a schedule by which  
21 you would then provide that information to the Staff  
22 and to the Board, to put it on the record, basically,  
23 and then the Staff is going to have to notice that  
24 deposition, which is going to take a little time, and  
25 then conduct the deposition, and then basically then

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1 we can have that information and in theory we'd have  
2 the evidentiary information potentially that would  
3 come into the hearing.

4 So think about that, sir. How long do you  
5 think it would take you to sort of provide a list to  
6 the Staff of the people you think will be available to  
7 provide you with some kind of statements? Maybe what  
8 we're talking about here is really a statement of your  
9 witnesses.

10 MR. CHAISSON: This is James Chaisson  
11 again. I would be willing -- I can make phone calls.  
12 I am sure by Monday I can let them know if I'll have  
13 any, and I -- since what you just said, I have a few  
14 other people I'd like to make a phone call to and see  
15 if I can reach them and see if they'd be willing to  
16 give me -- be willing to go through a deposition with  
17 the NRC because I worked with them throughout the  
18 years in this industry, so -- . By Monday I could  
19 have a list, Your Honor.

20 ADMIN. JUDGE BOLLWERK: All right. So  
21 let's -- let's consider this, and we may do this in  
22 several stages, and again, Mr. Chaisson, because  
23 you're a pro se individual, I want to give you a --  
24 we're going to -- we may kind of -- we wouldn't  
25 normally do this with attorneys, but we're going to

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1 have a little more latitude with the schedule here,  
2 and I'm hoping the Staff is going to be agreeable to  
3 this because I'm hoping it's going to work out for  
4 everybody.

5 In terms of -- we may have an initial set  
6 of some witnesses, we may have a revised set of  
7 witnesses, and the Staff may end up doing the same  
8 thing as well.

9 Mr. Chaisson has indicated that he might  
10 be able to present us with a list of his witnesses  
11 that will support him in about a week, I heard, so  
12 that would be -- let me get the right month here -- so  
13 yeah, let's give it enough time. March 7th, would  
14 that be good for Mr. Chaisson?

15 MR. CHAISSON: Yes sir, this is James  
16 Chaisson, that would be --

17 ADMIN. JUDGE BOLLWERK: Or 6th, I am sorry  
18 --

19 MR. CHAISSON: -- wonderful.

20 ADMIN. JUDGE BOLLWERK: -- the 6th is a  
21 Friday. So Friday, March 6th?

22 MR. CHAISSON: Yes sir, that would be a  
23 good date.

24 ADMIN. JUDGE BOLLWERK: Okay. Could the  
25 Staff, provide, then, a list of their potential

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1 witnesses by the 6th?

2 MR. HAIR: Your Honor, this is Chris Hair  
3 from the NRC Staff. We are just a little confused,  
4 and we'd like to seek a little clarification. Is this  
5 that Mr. Chaisson would seek to reopen discovery and  
6 produce an initial witness list, just a list, or a  
7 list of individuals who he anticipates will be  
8 providing a statement in terms of pre-filed testimony?

9 ADMIN. JUDGE BOLLWERK: These are people  
10 that he anticipates will be providing him some kind of  
11 support.

12 MR. HAIR: Okay.

13 ADMIN. JUDGE BOLLWERK: All right? Now I  
14 should say that the Staff could have filed with Mr.  
15 Chaisson and asked him the exact same questions I am  
16 asking him, and you didn't do that, so to some degree  
17 this process was going to move forward post-discovery.  
18 Having said that, it may well be necessary given the  
19 list of witnesses we get that we may need to reopen  
20 discovery to a degree to get some depositions taken.

21 MR. HAIR: I understand --

22 ADMIN. JUDGE BOLLWERK: But now we're sort  
23 of in --

24 MR. HAIR: This is --

25 ADMIN. JUDGE BOLLWERK: -- realm.

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1 MR. HAIR: Right, because the Staff has --  
2 our expectation has been we did not receive any  
3 identification of witnesses that might have been  
4 required under 10 CFR 2704(b) --

5 ADMIN. JUDGE BOLLWERK: And I think if you  
6 look at that, it generally talks about experts,  
7 doesn't it?

8 MR. HAIR: Yes, it's just expert, I mean  
9 in terms of --

10 ADMIN. JUDGE BOLLWERK: I don't think any  
11 people are going to be experts. I could be wrong, but  
12 --

13 MR. HAIR: I understand --

14 MR. CHAISSON: No sir.

15 MR. HAIR: -- Your Honor, if the Board  
16 doesn't want to classify them as expert witnesses or  
17 if Mr. Chaisson doesn't seek to, then you know I have  
18 no issue with that. We're -- we've been under the  
19 impression that Mr. Chaisson does not plan on  
20 producing any live witnesses, which I believe he  
21 discussed earlier in this call.

22 ADMIN. JUDGE BOLLWERK: And I am -- I  
23 haven't heard anything about a live witness yet. What  
24 I have heard is some information he may be producing  
25 from individuals that would support his positions, and

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1 if that were the case, then we would provide the Staff  
2 an opportunity to take a deposition if they need to to  
3 find out what those folks know.

4 MR. HAIR: Okay, Your Honor, this is Chris  
5 Hair again, I am sorry, I haven't been identifying  
6 myself.

7 The -- I think we understand it a lot  
8 better now, and I think we are aligned with what you  
9 said before. We certainly want to -- we don't want to  
10 be, you know, in the way of producing relevant  
11 evidence or put up unnecessary barriers to Mr.  
12 Chaisson producing, you know, statements to support  
13 his case.

14 All we would ask, as we discussed earlier,  
15 is the opportunity to, you know, speak with these  
16 witnesses either through a deposition or  
17 interrogatories --

18 ADMIN. JUDGE BOLLWERK: Okay.

19 MR. HAIR: -- so I think we're aligned on  
20 that point --

21 ADMIN. JUDGE BOLLWERK: We're not trying  
22 to surprise anybody here. We want to give everybody  
23 an equal chance or an even chance to get evidentiary  
24 material into the record, so --

25 MR. HAIR: I think we all agree with that

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1 on the Staff side, Your Honor.

2 ADMIN. JUDGE BOLLWERK: And I appreciate  
3 that. Thank you.

4 So that's -- so Mr. Chaisson, you are  
5 going to produce by the 7th of March -- the 6th of  
6 March, excuse me, that's Friday the 6th of March, as  
7 is the Staff, a list of their potential witnesses that  
8 they plan on providing in support of their case.

9 Now Mr. Chaisson, given what I said --  
10 what we talked about in terms of subpoenas, subpoenas  
11 are often given to people who you think have  
12 information that might support your case, but they  
13 will not appear voluntarily. Is there anyone you  
14 would contemplate falling into that category?

15 MR. CHAISSON: Like I said, Your Honor,  
16 I'd like to talk to them on the phone and see what  
17 their position is. You know, the one guy I know, his  
18 name is Thomas Tucker, he has been an employee of mine  
19 during this -- during the Texas Gamma Ray and the  
20 company right after Texas Gamma Ray, he can elaborate  
21 a lot of my statements.

22 The -- the main thing was -- I am trying  
23 to dispute is that the people that were interviewed  
24 from Texas Gamma Ray stated to the NRC that I set up  
25 shop with another company in the same building that we

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1 had with Texas Gamma Ray and that I did everything for  
2 the new company that Texas Gamma Ray stated I was  
3 supposed to do for them, which is just proof that I  
4 didn't have anything to do with none of it, it was the  
5 corporate RSO who handled everything, and that's what  
6 their statements would be, that, you know, James  
7 Chaisson had nothing to do with the licensing part of  
8 any of the companies.

9 ADMIN. JUDGE BOLLWERK: So those  
10 individuals that you just mentioned, Mr. Chaisson, I  
11 mean in theory if you were to subpoena them, they  
12 would have to show up for the hearing, and you could  
13 then question them about what they told the Staff.

14 MR. CHAISSON: Well these people never  
15 talked to the Staff at all, Your Honor. The other  
16 people, I don't even know where -- like I said, I  
17 don't talk to anyone from Texas Gamma Ray anymore. I  
18 don't speak to Ms. Laurie McGowan anymore since I read  
19 her interview statements, so the ones that I was  
20 talking about have never been interviewed, sir.

21 ADMIN. JUDGE BOLLWERK: All right. Well  
22 I just want to make it clear to you though, sir, that  
23 if there is someone that you're not talking to now  
24 that you want to at the hearing, and you think they  
25 won't show up voluntarily, that's what the subpoena is

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1 for.

2 Am I -- am I stating that correctly, Judge  
3 Gibson? Is there any -- am I causing any confusion  
4 here?

5 ADMIN. JUDGE GIBSON: No, you're being  
6 very clear.

7 ADMIN. JUDGE BOLLWERK: You have the  
8 opportunity to subpoena anyone that you think can  
9 provide testimony that would support your case,  
10 including on cross-examination, which means that you  
11 would ask them questions and they would have to answer  
12 under oath truthfully.

13 MR. CHAISSON: So you're stating that I  
14 could subpoena people that have already given  
15 interviews, and I could cross-examine them to try to  
16 get them to tell the truth? Like the people that --

17 ADMIN. JUDGE BOLLWERK: That is the case.  
18 Now, again, remember, there's a caveat here, which is  
19 you have to -- in theory, you would have to pay them  
20 a witness fee and also their transportation, but --

21 MR. CHAISSON: Right. That's -- in  
22 theory, that's what -- in theory, that's where I am  
23 unable to do that, so I mean --

24 ADMIN. JUDGE BOLLWERK: All right.

25 MR. CHAISSON: -- I really couldn't --

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1 ADMIN. JUDGE BOLLWERK: Okay. Let me then  
2 ask another question, sir.

3 There is, in NRC practice, there is some  
4 precedent for the Board calling a witness on behalf of  
5 a party who considers himself to be indigent,  
6 basically cannot afford to have a witness come on  
7 their behalf that they believe -- basically, hold on  
8 one second here -- is -- there's a genuine need for  
9 that individual's testimony.

10 And the case I am referring to is an  
11 Appeal Panel case, Consumers Power Company ALAB-382 5  
12 NRC 603, it's a 1977 case, on pages 607 and 608.

13 Would you be willing, Mr. Chaisson, to  
14 provide for the record an affidavit indicating that  
15 you are indigent, that you cannot pay for having a  
16 witness subpoenaed?

17 MR. CHAISSON: Oh, yes sir.

18 ADMIN. JUDGE BOLLWERK: And then the other  
19 part of this, then, is that you would have to show  
20 that there is a genuine need, really really really  
21 important that you be able to talk to a witness. Can  
22 you show that, sir?

23 MR. CHAISSON: I really would -- it's  
24 James Chaisson again, I am sorry. I -- I mean, on my  
25 part, I think I'd be able to, yes sir.

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1 I mean -- if the main character in this,  
2 which is the guy who was the corporate RSO at the time  
3 for Texas Gamma Ray is the one I'm speaking of, Mr.  
4 Robert Denton, because his statements that he gave in  
5 his interview, if the NRC would have looked really  
6 good, the statement that he gave indicates that he  
7 said he'd done these things, and the receipts that he  
8 turned in for proof and evidence against me all  
9 contradict themselves.

10 Days he said he sent something to me from  
11 Texas that I received with his signature on it were  
12 the exact same date that he signed it in Wyoming, he  
13 stated he was in Texas sending me a letter.

14 ADMIN. JUDGE BOLLWERK: Okay. Well I --  
15 let me suggest this to you, Mr. Chaisson. By the 6th  
16 of March, we'd appreciate it if you could do two other  
17 things then, if you really believe that this is the  
18 case.

19 One is that you need to provide us, and  
20 maybe the Board can provide you a little additional  
21 information on what it needs to say, we're going to be  
22 issuing an order that memorializes what goes on in  
23 this pre-hearing conference, but the first thing you  
24 would need to do on the 6th of March when you file the  
25 list of witnesses that are going to be supporting your

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1 case, that you know that you think will be able to  
2 provide -- will be voluntarily willing to provide you  
3 with some information that will support your case,  
4 that same date, you need to provide us then with two  
5 other things.

6 One of those would be an affidavit or a  
7 sworn statement that you believe that you're indigent  
8 and cannot afford to subpoena any witnesses on your  
9 behalf who could provide testimony for you.

10 The second is a statement of a witness or  
11 witnesses that you believe you have a genuine need  
12 for, and again, that is something that is extremely  
13 important to you, that those individuals be available  
14 for cross-examination, because they are critical to  
15 you being able to make your case.

16 And it sounds like --

17 MR. CHAISSON: I understand.

18 ADMIN. JUDGE BOLLWERK: -- that may be  
19 just one individual, and that -- you know, but we'll  
20 leave that up to you in terms of how many there are  
21 and who they are, but you need to be able to show the  
22 Board as well that there is a genuine need for these  
23 individuals.

24 MR. CHAISSON: This is James Chaisson.  
25 Yes sir. Like I said, I -- thank you for putting it

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1 in layman's terms. Again, I understand that, like I  
2 said, he would be -- it's mainly his word against  
3 mine, but like I said, with the statements he made and  
4 the receipts and everything else, and, you know, his  
5 own statements, yeah, he would be the one I would need  
6 there to show that he flat-right-out lied on all of  
7 this and they all put the blame on the fall guy for  
8 the whole company --

9 ADMIN. JUDGE BOLLWERK: All right.

10 MR. CHAISSON: -- and it was all because  
11 the company that I was through working for in Wyoming  
12 chose to run them off, and I went to work for another  
13 company and continued working for that company for  
14 four years after that, that Texas Gamma Ray was mad  
15 over it, but it seems awfully funny that they hired me  
16 three other times since then.

17 ADMIN. JUDGE BOLLWERK: Okay. Well that's  
18 all the information you will have to be providing us  
19 in what you're going to file a week from Friday, all  
20 right?

21 MR. CHAISSON: Yes sir.

22 ADMIN. JUDGE BOLLWERK: Oh, and I should  
23 mention, by the way, that we hope this transcript will  
24 be on the record by the end of this week, so you can  
25 certainly go back and look at what you said and take

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1 anything you need to from that transcript.

2 But okay --

3 MR. CHAISSON: This is James Chaisson  
4 again. Like I said, I will -- I will get with the  
5 Help Line and get that downloaded again on this  
6 laptop, sir.

7 ADMIN. JUDGE BOLLWERK: Okay. Let me turn  
8 to the Staff. Any questions you have about what I  
9 have just outlined? And you all, obviously, have an  
10 opportunity to respond, particularly with this showing  
11 of Mr. Chaisson.

12 MR. HAIR: Yes sir, this is Chris Hair.  
13 I have no objection to the course that the Board has  
14 set, and you know, we'll look forward to the  
15 information that Mr. Chaisson will provide.

16 I would just note that one, the Staff will  
17 just reserve our right to, you know, object to any new  
18 information that may have been available previously  
19 that could have been handled through initial  
20 discovery, although it seems like this is information  
21 that, you know, the Staff would already know about, so  
22 if it's just the one witness, I don't think we would  
23 have an issue, Your Honor, so I am not supposing that  
24 we have an issue, I just want to make sure that, you  
25 know, we reserve our right to object to any new

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1 information if it's appropriate to do so.

2 And two is just, you know, I think it's  
3 more appropriate for when we get closer to the  
4 hearing, but it seems like the witnesses that Mr.  
5 Chaisson is bringing up go back to the initial  
6 investigation, which was settled out -- which led to  
7 the confirmatory order, so I just want to, you know,  
8 make it clear that the Staff's position is that, you  
9 know, the confirmatory order should be the issue for  
10 the hearing, and to the extent it's necessary to go  
11 back to the initial investigation, which it very well  
12 might be, you know, the Staff doesn't take that as a  
13 given at this point. I just wanted to make that  
14 clear.

15 ADMIN. JUDGE BOLLWERK: Well now you've  
16 gone into something maybe we need to talk about a  
17 little bit, and that is motions in limine.

18 Obviously, given the information that's  
19 going to be submitted, there will be a chance at some  
20 point to submit those motions.

21 I think one other thing we'd have to --  
22 we'd want to have before we took that step is  
23 obviously we want to go ahead and identify each of the  
24 exhibits, the documentary exhibits as well, because  
25 those may be subject to some kind of objection.

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1           Let's not, in terms of a schedule, go  
2 there yet. Let's get these witness listings filed by  
3 the parties, see what those look like, see what's been  
4 submitted, and then we'll take the next step in terms  
5 of trying to set some more schedules in terms of the  
6 next parts of 2.704(c), both in terms of the  
7 deposition testimony, the identification of exhibits,  
8 and also the in limine motions.

9           But you make a point, it's a good one,  
10 which is we need to bear that in mind. You are right,  
11 the Staff should have an opportunity at some point to  
12 make any objections on the evidentiary record before  
13 we go to hearing, unless we're going to go to hearing  
14 and resolve all that at hearing, which is not  
15 necessarily -- I don't know about Judge Gibson,  
16 wouldn't necessarily be my choice in this case, so  
17 -- .

18           So the point is well-taken and one that  
19 we'll continue to bear in mind.

20           So Mr. Chaisson, let me stop right here  
21 and just make sure that you're aware and the Staff is  
22 aware as well, on the 6th of March, which is a week  
23 from Friday, what we're anticipating from the parties  
24 is a list from both parties of the witnesses that they  
25 at this point in the proceeding would intend to call

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1 in support of their case, and that means basically you  
2 can -- in your case, Mr. Chaisson, you can provide  
3 some kind of a written statement from that individual  
4 supporting your case in some way.

5 We will also bear in mind that if it's  
6 going to be -- and you need to let us know if it's  
7 going to be a written statement or that individual  
8 intends to show up at the hearing. I am thinking in  
9 most cases it's going to be a written statement, but  
10 if they're going to show up, in theory, the Staff  
11 would have their opportunity to cross-examine the  
12 individual then, so we'll see how that plays out.

13 So is that clear to you, sir, in terms of  
14 what you need to provide for your witnesses supporting  
15 your case?

16 MR. CHAISSON: James Chaisson --

17 ADMIN. JUDGE BOLLWERK: Oh --

18 MR. CHAISSON: This is James Chaisson, yes  
19 sir, it's clear to me, and I was wanting to say --

20 ADMIN. JUDGE BOLLWERK: These again are  
21 voluntary witnesses, folks that you believe will show  
22 up voluntarily to support your case, to provide you  
23 something voluntarily to support your case.

24 MR. CHAISSON: Correct, yes sir, I  
25 understand that, yes. It would be written -- it would

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1 be written testimony by them.

2 ADMIN. JUDGE BOLLWERK: Right.

3 MR. CHAISSON: And I am sure, like I said,  
4 I want to explain to them that, you know, what they  
5 write in the letter that the NRC would be able to  
6 contact them and have a -- you know, inform them of  
7 what their written statement would, you know, would  
8 occur to them that they would be obligated to -- the  
9 NRC being able to cross-examine them on whatever they  
10 write down in their statements.

11 ADMIN. JUDGE BOLLWERK: Okay.

12 MR. CHAISSON: And --

13 ADMIN. JUDGE BOLLWERK: That's good advice  
14 to give them, or a good heads-up to give them, because  
15 that's absolutely correct. You --

16 MR. CHAISSON: Yes sir. And also --

17 ADMIN. JUDGE BOLLWERK: Oh, sorry --

18 MR. CHAISSON: Your Honor, I was going to  
19 say that the NRC keeps going back to the confirmatory  
20 order. Well, I understand that that's all they want  
21 to concentrate on as it's what I was ordered to do in  
22 2012, but I am trying to get the -- you and the other  
23 Judges to hear the initial cause of the, you know --  
24 without the initial findings and their rulings, how  
25 can we have an order for 2012, which is what I feel I

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1 never was given a fair chance at?

2 When they filed against me -- I was never  
3 given the opportunity to present my side of the  
4 evidence, you know, literally by a lack of knowledge  
5 of the proceedings and what I was being told by the  
6 NRC Staff at that time, and what I was advised to do  
7 by them, so I mean they -- they keep wanting to steer  
8 away from the original cause of this.

9 I am saying, you know, like Mr. Hair was  
10 saying, all my witnesses are from the initial finding  
11 of this, you know, what initially happened with the  
12 NRC to get involved with this and how they found me  
13 guilty of something that literally I had no control of  
14 and that, you know, that's what needs to be heard here  
15 is that, you know, all that keeps getting overlooked.

16 ADMIN. JUDGE BOLLWERK: Right. And sir,  
17 this is Judge Bollwerk, in the Board's September 8th  
18 order, on page 7, this was the initial scheduling  
19 order, the Board indicated that relative to the scope  
20 of the proceeding, the appropriateness of the  
21 sanctions in the 2014 order -- "The appropriateness of  
22 the sanctions in the 2014 order is based in  
23 significant part on NRC's allegation that he engaged  
24 in deliberate misconduct in 2009-2010. This is an  
25 issue or matter in dispute in the case, and the

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1 Director and Mr. Chaisson are entitled to present  
2 evidence on it."

3 And what the Staff is raising an issue  
4 about is the scope of that ruling by the Board, and  
5 that is something, sir, we can -- we'll deal with  
6 later. You don't have to keep coming back to that.  
7 We understand your concern, and we understand the  
8 Staff's concern, and that's something we'll have to  
9 deal with at some point, but not right this second.

10 MR. CHAISSON: Okay, sir, this is James  
11 Chaisson.

12 ADMIN. JUDGE BOLLWERK: Okay. Now that's  
13 in terms of your voluntary witnesses, sir, so that's,  
14 remember, you've got those. If there's an involuntary  
15 witness, someone that you do not think will appear  
16 voluntarily or give you a statement voluntarily, you  
17 mentioned Mr. Denton, but you think there is a genuine  
18 need for that individual, then you need to, on the 6th  
19 of March, you need to as well indicate that  
20 individual's name and why you think there is a genuine  
21 need for that person to show up at the hearing.

22 Also, if you believe that that's the case  
23 and you cannot -- you believe you are indigent and  
24 cannot afford to provide for a subpoena for that  
25 individual in terms of the fees that are involved, you

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1 would also need to provide us with an affidavit, a  
2 sworn statement that indicates that you believe you  
3 are indigent and cannot do that, and we'll provide  
4 some language that you can think about in terms of  
5 providing that statement in our order. All right?

6 So is that clear, sir? Two things, then,  
7 on March 6th. Voluntary witnesses and involuntary  
8 witnesses.

9 MR. CHAISSON: This is James Chaisson, and  
10 yes sir, that's very clear.

11 ADMIN. JUDGE BOLLWERK: Okay, thank you.

12 Now for the Staff. In terms of -- you  
13 said you'd be able to provide us by the end of this  
14 week a list of the individuals that were interviewed  
15 for the Texas Gamma Ray investigation, where they were  
16 interviewed, and also whether they were represented by  
17 counsel, and then by the 6th of March, you will be  
18 able to provide us with your list of proposed  
19 witnesses that the Staff would intend to call in  
20 support of its case in this proceeding.

21 MR. HAIR: Your Honor, this is Chris Hair.  
22 We can do all of those things.

23 ADMIN. JUDGE BOLLWERK: Okay. And then  
24 again, once you see Mr. Chaisson's statements, and Mr.  
25 Chaisson, once you see the -- well, I don't know that

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1 you're going to have any objections to the Staff's  
2 statements, but certainly if the Staff has some  
3 concerns about what Mr. Chaisson has presented, within  
4 a week after that you need to provide those to the  
5 Board.

6 MR. CHAISSON: This is James Chaisson, yes  
7 sir, I understand.

8 ADMIN. JUDGE BOLLWERK: Okay. That would  
9 be by the 13th of March, all right? Any questions  
10 from the Staff?

11 MR. CHAISSON: No sir --

12 ADMIN. JUDGE BOLLWERK: Go ahead, Mr.  
13 Chaisson. You don't have any question or anything  
14 from the Staff?

15 (No audible response.)

16 ADMIN. JUDGE BOLLWERK: All right. So at  
17 this point, what we're really looking for is our list  
18 of witnesses, and I think that, once we have that  
19 information, we can then move forward on the next  
20 aspects of this, which would be the other parts of  
21 2.704(c) which would be the deposition testimony and  
22 also the notification of any exhibits.

23 Let me, however, raise a couple other  
24 questions while we have you here this morning, talk  
25 about evidentiary material.

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1 In terms of direct -- pre-filed direct  
2 testimony versus live direct testimony, does the Staff  
3 have any feelings at this point one way or the other  
4 which they intend to use for their witnesses, or which  
5 they prefer to use?

6 MR. MALTESE: Well, the Staff prefers to  
7 use both, Your Honor. Under 2.709 -- I am sorry, I am  
8 looking at the wrong Rule there.

9 ADMIN. JUDGE BOLLWERK: How about 2.711?

10 MR. MALTESE: 2.711(b), the default for a  
11 subpart G hearing is to provide written direct  
12 testimony, and we would seek the opportunity to do  
13 that and also to produce the witnesses at the hearing.

14 ADMIN. JUDGE BOLLWERK: All right. What  
15 about 2.711(d)?

16 THE COURT REPORTER: Your Honor, can I  
17 interject for a second? Can I just --

18 ADMIN. JUDGE BOLLWERK: Sure.

19 THE COURT REPORTER: -- ask who is  
20 speaking, the attorney who is speaking for the NRC  
21 right now?

22 ADMIN. JUDGE BOLLWERK: That was -- this  
23 is Judge Bollwerk. That was Mr. Maltese.

24 THE COURT REPORTER: Thank you.

25 MR. MALTESE: Your Honor, I appreciate you

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1 drawing that to the Staff's attention.

2           Nevertheless, the Staff still does also  
3 believe that written testimony would be helpful for  
4 all parties in the case to be better prepared for the  
5 evidentiary hearing.

6           ADMIN. JUDGE BOLLWERK: All right.

7           So Mr. Chaisson, what the Staff has just  
8 said is that the list of witnesses they are going to  
9 provide to the Board and to you in two weeks, what  
10 they're proposing is that for each one of those  
11 witnesses, that individual would file with you, with  
12 the Board, into the record a testimony, questions and  
13 answers, prior to the hearing, that you would be able  
14 to read and the Board would be able to read.

15           It would provide what's called their  
16 direct testimony, the testimony that they would  
17 provide directly in support of the Staff's case.

18           You would then have the opportunity to  
19 cross-examine those witnesses, to ask them questions  
20 based on that direct testimony that they provided.

21           Now, the other way that this can be done,  
22 and I am going to come to you in a second and talk  
23 with you about that, is that normally that would be  
24 the process that we'd use. In most of our licensing  
25 cases, that's how I'd proceed. But in enforcement

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1 cases, there is a possibility that direct testimony,  
2 the direct testimony directly in support of your case,  
3 can be provided by a witness live, which means that  
4 the first time it's spoken or set forth is in the  
5 hearing itself, under oath.

6 And I should mention that the written  
7 statements that they would file would be filed under  
8 oath. They would have to be under oath as well.

9 Part of the question for you, Mr.  
10 Chaisson, I am assuming that you're going to want to  
11 get on the witness stand, be sworn in, and present  
12 your story. The question is, for you sir, initially,  
13 would you like to have that story presented in  
14 writing, or would you prefer to be -- to get on the  
15 stand and present it orally live at the hearing for  
16 the first time?

17 MR. CHAISSON: I would prefer to do it  
18 live on the stand, Your Honor. This is James  
19 Chaisson.

20 ADMIN. JUDGE BOLLWERK: Okay. Does the  
21 Staff -- would the Staff have any objection to that,  
22 given you've taken his deposition?

23 MR. MALTESE: No, Your Honor, the Staff  
24 would be willing to proceed under that.

25 ADMIN. JUDGE BOLLWERK: All right. Mr.

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1 Chaisson, just so we make -- you're not an attorney,  
2 I am going to just lay -- I want to make sure you  
3 understand the implications of this.

4 What the Staff is going to do is have the  
5 witnesses bring their testimony forward, lay it out in  
6 detail prior to the hearing. They are going to have  
7 an opportunity to go over it to make sure it reads  
8 exactly the way they want it to. It's under oath, so  
9 it has to be truthful, but they will have an  
10 opportunity to say what they think needs to be said in  
11 a written form.

12 You, sir, are not going to do that. You  
13 are going to be presenting this live. You have the  
14 opportunity, if you want, to put it in writing first  
15 where you can look through it and make sure it reads  
16 as you want it to, but if your preference is to put it  
17 live, that's certainly something you can do, sir.

18 MR. CHAISSON: Okay. So what you're  
19 saying is, like, for my original -- my statement for  
20 the original cause of this, I would need to present  
21 that in writing first?

22 ADMIN. JUDGE BOLLWERK: You can, sir. It  
23 is up to you.

24 Again, there's two possibilities here.  
25 One is to put the whole thing in writing. You would

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1 have to swear to it. It's just like you got on the  
2 stand, raised your hand, were sworn in, and spoke in.

3 In fact, you look at the Staff's evidence  
4 that they're going to be putting in, their testimony,  
5 it's going to be in question-and-answer form. There  
6 will be a question, and then there will be an answer,  
7 with the person that's answering the question  
8 identified if there are multiple people that happen to  
9 be on a panel.

10 I don't -- let me just go back to the  
11 Staff one second. Are you planning on using any  
12 panels?

13 MR. MALTESE: We would be open to a panel.  
14 I think we envisioned calling witnesses --

15 ADMIN. JUDGE BOLLWERK: Okay.

16 MR. MALTESE: -- one at a time. However,  
17 since we will be providing pre-filed testimony of our  
18 witnesses, it might be helpful to the Board to have a  
19 panel of our witnesses.

20 ADMIN. JUDGE BOLLWERK: I am not -- well,  
21 I am -- we're going to go off the record one second,  
22 please.

23 (Whereupon, the pre-hearing conference  
24 went off the record at 11:16 a.m. and resumed at 11:17  
25 a.m.)

1 ADMIN. JUDGE BOLLWERK: Okay, Mr. Maltese  
2 has said I think from the Board's perspective,  
3 especially if that's what the Staff intended to do, I  
4 think individually probably would be better.

5 I think it would be less confusing in this  
6 instance if -- particularly given Mr. Chaisson's pro  
7 se status -- if he were listening to the witnesses  
8 individually rather than having to deal with a panel,  
9 so if that was the Staff's original intent, the Board  
10 does not have any objection if you continue to proceed  
11 that way.

12 MR. MALTESE: Understood, Your Honor.

13 ADMIN. JUDGE BOLLWERK: All right.

14 So Mr. Chaisson, what I have just been  
15 talking about, this is not an election you have to  
16 make right now. I wanted, however, to make it clear  
17 to you what the implications of it are.

18 You need to think about whether, from your  
19 perspective, it is better to present the testimony  
20 live, or whether it is better that you put it in  
21 writing, and I should mention, whether you do either  
22 one, both of them are going to be sworn statements,  
23 and you are going to be subject to cross-examination  
24 by the Staff in terms of either method that you use,  
25 whether you put it in as a written document or whether

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1 you get on the stand, raise your hand, are sworn in,  
2 and speak it first, the Staff is going to have the  
3 same opportunity to cross-examine you, so in that  
4 respect, that doesn't change.

5 Again, not an election you need to make  
6 now, but I wanted to make you aware of it. It's  
7 something you need to think about because there will  
8 come a point where you will have to make that election  
9 and let us know what your intent is.

10 MR. CHAISSON: All right, yes sir, now I  
11 understand it more clearly. I think I will do the  
12 same, I would prefer to put it in writing first.

13 ADMIN. JUDGE BOLLWERK: All right. Well  
14 think about that, and again, we'll talk about it  
15 again.

16 Does -- I take it since the Staff are  
17 using pre-filed testimony, they don't have any  
18 objection with Mr. Chaisson doing pre-filed testimony?

19 MR. MALTESE: This is Jim Maltese, no,  
20 Your Honor.

21 ADMIN. JUDGE BOLLWERK: All right.

22 Again, Mr. Chaisson, I am a little  
23 concerned I am going to get a legal overload on you  
24 here, but let me -- let me just mention a couple of  
25 other items just so you're aware of what's coming

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1 forward.

2 We will also probably be asking the  
3 parties, and I think we will be asking the parties, to  
4 file their exhibits before the trial so that everyone  
5 will have the exhibits.

6 Will there be a numbering system that you  
7 will be giving? I don't know how many documents you  
8 will have. You need to start thinking about that. At  
9 some point, we'll be asking you to provide a list of  
10 those, and then eventually, before the hearing,  
11 actually providing copies of those documents as well,  
12 so that's something that you just need to be aware of.

13 And again, if you have access to the e-  
14 filing system and you can digitize that information,  
15 that would work out probably better for you, but I  
16 don't know what your capabilities are in that regard,  
17 so -- but again, it's something to be thinking about.

18 One of the things we'd also mentioned in  
19 the order in terms of status was a question of  
20 statements of position, and Mr. Chaisson, that is  
21 something that's actually used more in our subpart L  
22 proceedings, the licensing proceedings we do, where  
23 the Board is asking the questions.

24 It's an opportunity for the parties to  
25 provide the Board with a written statement, sort of a

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1 summary of their position in terms of all the issues  
2 that are in the case so that the Board can have that  
3 opportunity to read that before the case goes forward.

4 I think the Staff had -- let me go to the  
5 Staff first. Does the Staff -- would the Staff want  
6 to file such a statement of position?

7 MR. MALTESE: Again, Your Honor, this is  
8 Jim Maltese --

9 ADMIN. JUDGE BOLLWERK: This is a subpart  
10 G thing, not a subpart L thing, but --

11 MR. MALTESE: Yes, but in this case, the  
12 Staff has a strong preference for filing a statement  
13 of position. We think that would be helpful for  
14 clarifying the issues for the Board in advance of the  
15 hearing.

16 ADMIN. JUDGE BOLLWERK: All right. And  
17 would you contemplate, as well -- normally there's an  
18 opportunity for a reply or a rebuttal statement?

19 MR. MALTESE: No, we would have no  
20 objection to the opportunity for reply through  
21 rebuttal.

22 ADMIN. JUDGE BOLLWERK: All right, well  
23 that's something we can think about.

24 Mr. Chaisson, let me go to you. Do you  
25 have any concerns about that, something you would want

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1 to do or wouldn't want to do?

2 MR. CHAISSON: I'd be fine with either  
3 way, Your Honor. I -- like I said, I am just trying  
4 to get a fair hearing, sir, so I am putting my trust  
5 in you all.

6 ADMIN. JUDGE BOLLWERK: All right. Well,  
7 in the end, you're the one that has to litigate this  
8 case, not the Board, sir, but --

9 MR. CHAISSON: Yes sir.

10 ADMIN. JUDGE BOLLWERK: -- but think about  
11 that. Again, it's not something you have to commit to  
12 right now, but there will come a point in the not-too-  
13 distant future where that will be the case, because we  
14 have to have in series both parties doing the same  
15 thing, unless one party wants to do it and the other  
16 party wants to waive it. That's something I don't  
17 necessarily, I wouldn't suggest that you do, but that  
18 would be up to you, so -- .

19 Well, we have sort of a schedule that's a  
20 little bit, I wouldn't say Swiss cheesy, but it's not  
21 real firm at this point in terms of an actual  
22 evidentiary hearing in terms of a date and a place.

23 But it sounds like, Mr. Chaisson, that  
24 given the things we're talking about here, we're going  
25 to need several months to get to the point where we're

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1 ready for an evidentiary hearing.

2 I also know that Judge Gibson has a  
3 hearing in the end of August, so it would be best if  
4 possible to get this hearing done before he has to go  
5 to that hearing.

6 So I think we're looking at something in  
7 the early-to-mid summer.

8 Does the Staff have any -- we'll turn to  
9 the Staff first. Does the Staff have any thoughts  
10 about that in terms of the hearing date?

11 MR. MALTESE: Well, I -- this is Jim  
12 Maltese, Your Honor -- I personally will be  
13 unavailable for the bulk of the mid to second half of  
14 May, and so would appreciate if the Board would  
15 consider in that time frame that we would look beyond  
16 to June.

17 ADMIN. JUDGE BOLLWERK: Something in June,  
18 or something in April? That's going to be the --

19 MR. MALTESE: April is absolutely a  
20 possibility.

21 I think based on the issues that we've  
22 identified in the call this morning, the new deadlines  
23 and procedures, that April would be a tight fit, but  
24 the Staff would be willing to accommodate it.

25 ADMIN. JUDGE BOLLWERK: All right. I

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1 would tend to agree. I am just trying to get your  
2 availability.

3 So it sounds like if it's not going to be  
4 April, it's going to need to be June or thereafter for  
5 the Staff.

6 All right. Mr. Chaisson, do you have any  
7 thoughts about the June time frame or thereafter? Any  
8 issues that you might have that you would be  
9 unavailable? For instance, Mr. Maltese just indicated  
10 he is unavailable in part of May. Is there any time  
11 in that June/July time frame you're unavailable?

12 MR. CHAISSON: This is James Chaisson  
13 again. No sir. I think that would probably sit  
14 better as far as I was concerned. That would give me  
15 more time for my leg and my wounds to heal.

16 And if that would help Mr. Maltese, I am  
17 more than willing to -- you know, like I said, I am  
18 unable to get out there and work right now anyway, so  
19 I have no objection to that, Your Honor.

20 ADMIN. JUDGE BOLLWERK: All right.

21 And I take it your preference would  
22 continue to be that we have it in the Utah area  
23 somewhere?

24 MR. CHAISSON: This is James Chaisson.  
25 That is correct, Your Honor.

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1 ADMIN. JUDGE BOLLWERK: I take it you have  
2 access to Salt Lake City if need be? We're talking  
3 probably one to two days.

4 MR. CHAISSON: James Chaisson again, yes  
5 sir, that's correct, Your Honor.

6 ADMIN. JUDGE BOLLWERK: All right.

7 And let me just ask the Staff, I am making  
8 an estimate, but in the end, unlike a subpart L, it  
9 really depends on the parties in terms of the cross-  
10 examination of the witnesses they put in.

11 Does the Staff have any idea how long they  
12 think this hearing might last, recognizing we've got  
13 some uncertainty about the number of witnesses and who  
14 they are?

15 MR. MALTESE: Your Honor, this is Jim  
16 Maltese. The Staff believes it could complete the  
17 hearing in a single day, but as you mentioned, with  
18 the uncertainty about number of witnesses, probably  
19 allowing for a second day would be prudent.

20 ADMIN. JUDGE BOLLWERK: All right. And  
21 Mr. Chaisson, anything you want to say in that regard?

22 MR. CHAISSON: James Chaisson. I agree  
23 with the Staff. One day, if need be possibly two, but  
24 -- .

25 ADMIN. JUDGE BOLLWERK: Okay. All right.

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1           So it looks like we're looking at about a  
2 two-day hearing sometime in June or thereafter, and in  
3 the Salt Lake City area. I have actually been in a  
4 hearing in Salt Lake City for the Private Fuels  
5 Storage case a number of years ago, so I know a little  
6 bit about that area. But we will have to look around  
7 and see what a good place would be.

8           Let's move on to one last question. In  
9 terms of the order, there's two other things in the  
10 order that were at issue.

11           One was the question of the issues in the  
12 case -- do the parties have anything further they want  
13 to say about the issues relative to the -- I guess  
14 post-discovery and also the settlement negotiation  
15 that you've had, anything that's come up in terms of  
16 defining the issues, or anything you want to present  
17 to the Board? I will go to the Staff first.

18           MR. MALTESE: Your Honor, we don't have  
19 any amendments to the issues to offer. As I've  
20 alluded to previously, we do want to preserve the  
21 Staff's view of what the proper scope of the hearing  
22 should be and that it applies to the issues limited to  
23 the violation of the confirmatory order which led to  
24 the prohibitory order that's being challenged by Mr.  
25 Chaisson.

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1           ADMIN. JUDGE BOLLWERK:    Right, and we  
2 understand that, and I -- we certainly are well aware  
3 of that and appreciate you bringing it up again,  
4 making it clear.

5           All right.   Mr. Chaisson, anything you  
6 want to say, understanding, again, that the scope of  
7 the hearing, as I've explained before, given that  
8 statement in the scheduling order back in September,  
9 is somewhat in doubt at this point, or that it's  
10 contested by the Staff and perhaps potentially by you  
11 as well? Anything you want to say about issues in the  
12 case?

13          MR. CHAISSON:   James Chaisson again, no  
14 sir, Your Honor, not at this time.

15          ADMIN. JUDGE BOLLWERK:   All right.

16          The last item we have on our agenda is  
17 this question of settlement negotiations.

18          And I will just put it to the parties,  
19 anything they want to tell the Board about settlement?

20          I will ask the Staff first, please.

21          MR. MALTESE:   Yes Your Honor, Jim Maltese.

22          We -- the Staff would just like to clarify  
23 that we are still open to the prospect of settlement  
24 and that we look forward to additional negotiation as  
25 necessary with Mr. Chaisson, which we haven't had much

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1 in the nature of in the last few weeks of getting our  
2 viewpoints back and forth as to where the things  
3 currently stand, but the Staff is hopeful that further  
4 discussions may be fruitful.

5 ADMIN. JUDGE BOLLWERK: All right. Mr.  
6 Chaisson, anything you want to say?

7 MR. CHAISSON: This is James Chaisson  
8 again.

9 Yes sir, Your Honor. I'd like to say that  
10 I apologize for the last two weeks, you know, due to  
11 my accident, but now that, you know, I am able to be  
12 aware of my surroundings and everything that's going  
13 on, I will download the -- get with the Help Desk and  
14 get that downloaded, and I am still hoping for a  
15 settlement, but, you know, from what they're offering,  
16 like I said, I refuse to be held down anymore, and so  
17 if what they offered in this last settlement, if  
18 that's the best they can do, I don't foresee a  
19 settlement coming.

20 ADMIN. JUDGE BOLLWERK: All right. Well,  
21 again, that's between the parties. That is not  
22 something we're involved with.

23 Having said that, you now have a little  
24 bit better sense of where the Board is heading with  
25 this case. There's going to be things that both

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1 parties are required to do, witnesses that are going  
2 to be involved, potentially subpoenas, more  
3 depositions maybe: a lot of things are potentially  
4 going to happen heading toward a hearing in the  
5 June/July time frame.

6 Now might be a good time for both parties  
7 to assess their position, see where they're at, think  
8 seriously about settlement, and I would urge you to  
9 get back in touch. I don't know where you left it  
10 with Judge Ryerson, if you owe him a call or he owes  
11 you a call, but it's probably a good time over the  
12 next several weeks, I know you're going to be doing  
13 some things with witness lists and things like that,  
14 but to get back in touch with him, maybe, and see if  
15 there's a way that this can work out for both parties  
16 in a way that satisfies your interests.

17 It's been my experience that what you're  
18 going to come with is going to be more satisfactory --  
19 what you two -- what both the parties might come up  
20 with is probably better, more satisfactory to you all  
21 than what you're going to get from the Board, so  
22 someone is going to be unhappy, and if you go away  
23 from a settlement, probably both parties will be happy  
24 to some degree.

25 So again, I would urge you, think about

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1 it, talk with Judge Ryerson. Ms. Wase is here, and  
2 she will make him aware that we've had this  
3 discussion, but it might be an opportunity, again,  
4 just to review the bidding with Judge Ryerson and see  
5 if there's any way you can come to an agreement about  
6 where we're at, all right?

7 Let me see, at this point, if either of  
8 the parties have anything they want to bring to the  
9 Board's attention. Anything that isn't clear? I hope  
10 within the next several days to get out a sort of  
11 confirmatory order about what we've talked about  
12 today, but let me give you an opportunity, first the  
13 Staff, if there's anything you need to bring to the  
14 Board's attention or you want to discuss with the  
15 Board.

16 MR. MALTESE: No, Your Honor, not at this  
17 time.

18 ADMIN. JUDGE BOLLWERK: All right.

19 Mr. Chaisson, anything you'd like to bring  
20 to the Board's attention?

21 MR. CHAISSON: This is James Chaisson  
22 again.

23 Yes sir, about what you were saying with  
24 Judge Ryerson, I have been in email contact with Ms.  
25 Wase, and I plan on getting with Judge Ryerson either

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1 late this afternoon because I have a doctor's  
2 appointment after this or tomorrow morning with her,  
3 and seeing if, like you said, maybe hopefully we can  
4 come up with a settlement where we don't have to go  
5 through this hearing.

6 ADMIN. JUDGE BOLLWERK: All right.

7 Again, as I was -- I think that's a good  
8 thing to do. I think both parties should be aware now  
9 that we're moving forward toward a hearing, and  
10 there's going to be things that need to be done, a lot  
11 of work that needs to be done, and I know Mr. Chaisson  
12 you're not a lawyer, we have to take that into  
13 account, but there's going to be deadlines that you're  
14 going to have to make and things that have to be  
15 filed, things that have to be presented, and if you  
16 can't do that, that's going to cause problems for the  
17 evidentiary hearing.

18 The Staff is aware of these things. I  
19 know Mr. Maltese and Mr. Hair, I am sure, are used to  
20 meeting the deadlines that the Board sets. You are  
21 going to have to do the same thing as we move forward  
22 toward the hearing, recognizing you've got some  
23 physical problems and some IT problems, but in the  
24 end, we have to come to a resolution in this case,  
25 which means we have to move forward, and you need to

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1 be prepared, sir, to provide the Board with the  
2 information we need to make a decision.

3 MR. CHAISSON: This is James Chaisson, yes  
4 sir, I understand that fully.

5 ADMIN. JUDGE BOLLWERK: All right, thank  
6 you very much sir.

7 Let me see if either of the other Board  
8 members have anything at this point. Judge Gibson?

9 ADMIN. JUDGE GIBSON: I have nothing else.

10 ADMIN. JUDGE BOLLWERK: All right. Judge  
11 Arnold?

12 ADMIN. JUDGE ARNOLD: Well let me just ask  
13 Mr. Chaisson, we've mentioned a couple of sworn  
14 affidavits that you may be required to submit: are you  
15 clear on what exactly that is and how you go about  
16 obtaining them?

17 MR. CHAISSON: No sir, I am not clear on  
18 how I go about obtaining it.

19 ADMIN. JUDGE BOLLWERK: Well, we'll talk  
20 -- we will try in the confirmatory order that we send  
21 out to give you some information about how you need to  
22 get your witnesses to provide the statements that  
23 you're going to try to get from them, as long as the  
24 statement of indigency -- the in forma pauperis, as  
25 it's called in the federal court, the statement that

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1 would indicate that you cannot -- you don't have the  
2 resources to be able to support subpoenaing witnesses  
3 who would not appear voluntarily.

4 Is that -- that's basically the idea?

5 MR. CHAISSON: Yes.

6 ADMIN. JUDGE BOLLWERK: Okay. So we will  
7 try to lay that out in a little more detail in the  
8 confirmatory order, all right sir?

9 MR. CHAISSON: This is James --

10 ADMIN. JUDGE BOLLWERK: Have --

11 MR. CHAISSON: -- yes sir, James --

12 ADMIN. JUDGE BOLLWERK: Do the law clerks  
13 have anything we've forgotten? Are we good?

14 All right. Twana?

15 MS. ELLIS: Nope.

16 ADMIN. JUDGE BOLLWERK: Nope, are we good?  
17 Ms. Ellis? All right.

18 All right. At this point, I thank you  
19 very much for your time, both from the Staff and Mr.  
20 Chaisson.

21 As someone who is new to this case, I have  
22 been -- found it very interesting to get a lot of  
23 information, and to some degree, the interesting part  
24 of the case, if we're going to go to the evidentiary  
25 hearing, that's always a big deal for the Board

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1 because we get to hear from the witnesses and then we  
2 make a decision.

3 Having said that, it's a lot of work for  
4 the parties coming up, so again, if you think it's now  
5 the time to settle, it's a good one, because we're  
6 moving forward. From now, we're going to be under a  
7 schedule with some deadlines and things that need to  
8 be produced. So think about that as you're talking  
9 with Judge Ryerson in the future.

10 And again, thank you all. Let me just  
11 check with the court reporter. Anything, sir, we need  
12 to do for you?

13 THE COURT REPORTER: I have some spellings  
14 and I want to check a docket number, but we can go off  
15 the record before we do that.

16 ADMIN. JUDGE BOLLWERK: Okay. Why don't  
17 you -- do you need to check with us?

18 THE COURT REPORTER: Staff and Mr.  
19 Chaisson, really.

20 ADMIN. JUDGE BOLLWERK: Okay. What we'll  
21 do, then, is we'll just sign off, and if you need to  
22 also -- Matt Zogby has got -- is that Matt? Matt  
23 Zogby, our law clerk, is here. Should he stay on the  
24 line as well?

25 THE COURT REPORTER: I will be very quick,

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1 so why not?

2 ADMIN. JUDGE BOLLWERK: Okay, all right.

3 At this point, then, we're going to  
4 consider this pre-hearing conference to be adjourned.  
5 Please be aware that we will be setting another one,  
6 probably in the near future after we see some of these  
7 witness lists and other things because we need to keep  
8 talking and moving forward on our scheduled hearing.

9 Thank you very much, everyone. Have a  
10 good day.

11 (Whereupon, the pre-hearing conference  
12 went off the record at 11:35 a.m.)

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