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

(3:02 p.m.)

JUDGE BOLLWERK: All right. Let's go ahead and go on the record, then, please.

Good afternoon. We are here for a prehearing conference in the -- the Chaisson case. The three Board Members are present. Judge Gibson, our full-time legal Judge. Judge Arnold, Nuclear engineer and a full-time technical Judge with the Licensing Board Panel.

And my name is Paul Bollwerk. I am the Chair of this Panel and -- I am the Chair of this Board, rather, and also a legal Judge, full-time Member of the Licensing Board Panel.

Also in the room with us are our law clerk Matt Zogby, and our administrative assistant Tawanana Ellis.

If we could, let's have the parties identify themselves for the record. Let's start with the NRC staff, please.

MR. MALTESE: Yes, Your Honor. This is Jim Maltese for the staff. And with me here at Headquarters is Mauri Lemoncelli, also with the Office of General Counsel. And, from the Office of Enforcement, Nick Hilton and Rob Carpenter.

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1 I believe there may be some folks from our
2 Region IV Office in Texas who are on -- listed only.

3 JUDGE BOLLWERK: All right. And then, Mr.
4 Chaisson, if you could identify yourself for the
5 record, please.

6 MR. CHAISSON: Yes, Your Honor. This is
7 James Chaisson and I am by myself.

8 JUDGE BOLLWERK: All right. Thank you,
9 sir.

10 All right. And again, as with the
11 protocol at the last prehearing conference, we should
12 all try to remember to identify ourselves when we
13 begin to speak. I will probably be the worst offender
14 and if I happen -- I don't do that and the court
15 report is uncertain about who the speaker is, I would
16 certainly urge him to interrupt us and -- so we can
17 clarify the record and make sure we get these
18 statements attributed to the right individual.

19 All right. At this point, let's go ahead
20 and move forward with the conference. There are a
21 number of matters I want to cover this afternoon. The
22 first one I would like to check on, though, is Mr.
23 Chaisson, your status in terms of your injury, your
24 medications, how you are feeling in terms of being
25 able to participate in the hearing.

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1 MR. CHAISSON: This is James Chaisson. I
2 mean, I am moving forward with my injuries. I am
3 still under doctors' care, still bound to a
4 wheelchair, still under the same medication, Oxycodone
5 and acetamaphine but, like I said, I take it as
6 least as possible because I still have two children to
7 pay attention to all day.

8 So, you know, as far for being coherent,
9 I am coherent.

10 JUDGE BOLLWERK: Okay. So you feel like
11 you are in good shape, then, to talk about the hearing
12 today as well as to proceed forward as we need to in
13 the future?

14 MR. CHAISSON: Yes, sir.

15 JUDGE BOLLWERK: Okay.

16 MR. CHAISSON: I am ready to testify, sir.

17 JUDGE BOLLWERK: All right. Thank you
18 very much.

19 Let's talk about a couple of housekeeping
20 items and let me start with respect to the March 9th
21 email that we received from Mr. Chaisson after we set
22 this prehearing conference, or as we were trying to
23 set the prehearing conference.

24 Let me just say that I -- I apologize for
25 the short notice with respect to the setting the

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1 prehearing conference. We really -- I didn't really
2 see your March 16 mail until Monday morning because it
3 was sent only to our law clerk, and that is some of
4 the things we need to address in terms of how the
5 filing is occurring in this case.

6 But, having said that, I think it was
7 important. It is important that we have this
8 prehearing conference call. I know that you have
9 expressed some concern about why we were doing this
10 again.

11 I should say, I don't, frankly, have a lot
12 of prehearing conference calls. I just finished a
13 case that went over three years and we had three
14 prehearing conference calls during the three-year
15 period.

16 Having two in a ten-day or two-week period
17 is a little unusual for me, but I felt it was
18 necessary. So, I am hoping, as this proceeds forward,
19 you will understand why we called another prehearing
20 conference on such short notice, as well as having
21 just had one in the last couple of weeks.

22 With respect to that email, let me also
23 make one other statement. I think that Judge Carlin
24 had emphasized at the beginning of the case, but I
25 want to make it clear to you again, there seems to be

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1 some sense on your part that -- or the outcome of this
2 case is somehow preordained, and I want to make it
3 clear to you, sir, that that is, indeed, not the case.

4 We have not heard one piece of evidence in
5 this case yet. And, what the Board makes its decision
6 on relative to the staff's order is the evidence in
7 the case.

8 We will not receive that evidence until we
9 have the evidentiary hearing. So, there has been no
10 decision about anything here in terms of the substance
11 of the staff's order that has been made, and it is
12 still something the Board has to determine based on
13 the evidence we get at the hearing, which is why the
14 evidentiary hearing is so important.

15 That is a statement about this Board and
16 this case. Let me also make it clear that while
17 sometimes boards sustain staff orders, sometimes they
18 do not.

19 I will give you two examples. There is a
20 case, the Geisen case, G-e-i-s-e-n, that was litigated
21 before a licensing board several years ago. Mr.
22 Geisen, although he was on the reactor side, was
23 actually someone who was in the same situation you
24 were in terms of having an order that was directed to
25 him, saying he couldn't participate in the nuclear

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1 industry for a period of time.

2 Mr. Geisen did have the advantage of
3 counsel, but after litigating that case, he actually
4 was able to sustain his case and the order was not
5 sustained.

6 Another example, similar, is the -- the
7 Clarissa -- excuse me. The Clarissa case -- the
8 Clarissa Smith case -- I am sorry, the Charlissa Smith
9 case, C-h-a-r-l-i-s-s-a, Charlissa Smith case, that is
10 a licensing -- that was a licensing proceeding that
11 happened several years ago.

12 A little different from this enforcement
13 proceeding, but in that instance Ms. Smith, who was
14 appearing and representing herself, she did not have
15 counsel, was objecting to the fact that she had taken
16 an exam to be a senior reactor operator, had not
17 passed it, and felt that how the exam was administered
18 was not appropriate.

19 She litigated that case on her own and it
20 was ultimately successful in terms of her position in
21 terms of what would be appropriate as to how the exam
22 was handled.

23 So, it is possible that in these cases,
24 again, based on the evidence in the hearing, for
25 someone to prevail against a staff order. I am not

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1 saying it is going to happen here. I don't know what
2 is going to happen here because we haven't heard one
3 bit of evidence yet.

4 But, I want to make that clear to you. I
5 would say, with respect, particularly with respect to
6 Ms. Smith, talking with some of the Board Members on
7 that case, she stayed with a laser focus on making
8 sure that she was aware of trying to deal with,
9 encounter the information that the staff was using to
10 support its order.

11 I don't know how you are going to approach
12 this case, but that would be something to bear in mind
13 as we go forward. So, I will just -- I put that on
14 the table for you to consider, sir, and think about.

15 Let me then move on to the March 6th email
16 that you sent us and the use of some of the language
17 in that email. I have been an administrative officer
18 and an adjudicative officer for a little over 25 years
19 and this is the first time I have had to have this
20 conversation with a litigant.

21 I have had a number of pro se litigants
22 that were not represented by counsel before me, and I
23 have to say, sir, that some of the language in that
24 email was not appropriate for this forum.

25 It raises the possibility that -- we have

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1 the F-word. We have the word "screw," and not
2 referring to using a screwdriver. Those, I can't --
3 the best I can say is that is not appropriate in this
4 forum.

5 That raises the possibility,
6 unfortunately, that we are going to have to start
7 redacting or putting your emails in a protective order
8 file where no one can see them. I don't want to do
9 that. This is a public proceeding.

10 You should be able to have the information
11 you provide on the record.

12 Having said that, we can't countenance
13 emails that contain that kind of language. It just is
14 not appropriate. So I am going to give you some
15 advice, something to think about, particularly with
16 respect to emails, that seems to be where this issue
17 is arising.

18 Before you send that email, count to five
19 or better yet, count to ten, look at the document. If
20 it contains something you wouldn't put in writing to
21 a minister, to a priest or a rabbi, then take it out,
22 put something else in there. It is not appropriate to
23 put in the email to the Licensing Board and to the
24 parties in this proceeding.

25 All right. The same goes for any language

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1 that you might use during the hearing. We have never
2 had an issue with anything that we have discussed in
3 a prehearing conference with you.

4 I am assuming that that is going to be the
5 case going forward. But, please, sir, don't make --
6 I don't want to have this conversation again. I think
7 -- I think I have made myself clear, but let me ask
8 you. Do you understand what I am saying?

9 MR. CHAISSON: Just -- yes, Your Honor.
10 Yes, sir.

11 JUDGE BOLLWERK: Okay. Then, we will let
12 this pass along and we won't have to bring it up
13 again. I am sure. I appreciate that.

14 All right. Let's talk a second about
15 computer issues. And I know that you have the
16 infection. You ended up back in the hospital. That
17 caused a problem with you having enough time to do the
18 sort of things we talked about in our last prehearing
19 conference.

20 But I think it would be important, again,
21 to at least for you to make an attempt to get
22 reconnected through the efileing system. And I am
23 wondering if, over the next several days you might
24 have an opportunity -- I recognize you have a doctor's
25 appointment tomorrow, but you might have an

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1 opportunity to call the NRC help desk and perhaps try
2 to reconnect to the efilng system.

3 MR. CHAISSON: This is James Chaisson.
4 Yes, sir, depending on how my appointment goes
5 tomorrow because my leg just seems to be continuously
6 swelling, so I don't know what he is going to want to
7 do.

8 JUDGE BOLLWERK: Okay. All right. Well,
9 we will bear that in mind. If -- maybe you can do us
10 a favor again. If that appears that it is going to be
11 a problem in terms of your ability to reconnect, we do
12 need to do -- we need to handle efilng a different
13 way in terms of where you are sending the email that
14 is coming into the Board.

15 So, at this point, I am going to wait to
16 hear from you about your ability to reconnect with the
17 efilng system. And, again, if you can't do it this
18 week, if you could do it early next week, whenever
19 that -- I think we sent you the 800 number and also
20 the -- the hours of the help desk.

21 They are expecting your call. I have been
22 involved with that system for a long time and I helped
23 -- at one point, I helped set it up in terms of the
24 procedural side, and I know the folks that run it, and
25 I talked with them and sent them emails. They are

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1 expecting your call. They are very willing to help
2 you if they can.

3 So, I would urge you, when you have the
4 time to get back in touch with them and let's see if
5 we can't get you reconnected.

6 What it is going to involve, as I
7 understand it, is probably putting a new digital
8 certificate that they would issue to you on your son's
9 computer, since that seems to be -- I guess I should
10 check and make sure. It is still the case that your
11 -- the one computer you are using is your son's. Is
12 that correct?

13 MR. CHAISSON: This is James Chaisson.
14 Yes, sir, that is correct.

15 JUDGE BOLLWERK: All right. Well, again,
16 if you can do that, I think it would help the
17 proceeding move forward. If you can't do that,
18 hopefully by the beginning of next week, you can --
19 you can tell us that is going to be the case, that we
20 need to provide you with some different directions in
21 terms of how efilings is going to be handled, or emails
22 are going to be handled in terms of things that are
23 sent to the Board and the other parties, because we
24 need to keep the office and the secretary apprised of
25 what is going on and right now that is not happening,

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1 as well as getting emails to all three of the Board
2 Members, rather than just our law clerk, which is not
3 happening, as well.

4 So, again, I would urge you, make an
5 effort if you can, to get in contact with the efilng
6 folks, but if that, for whatever reason, can't happen,
7 I will go out on a limb one more time and have you
8 send our law clerk, Matt Zogby, as well as a copy NRC
9 staff with an email indicating that you are having a
10 problem and we will proceed from there.

11 Is that clear?

12 MR. CHAISSON: Yes, sir. This is James
13 Chaisson.

14 JUDGE BOLLWERK: Okay. Thank you very
15 much.

16 All right. Let's talk for a second about
17 the main substantive reason that we are having this
18 prehearing conference, which is the question about
19 obtaining witnesses.

20 We had a fairly lengthy discussion ten
21 days ago, two weeks ago, I guess it was or earlier --
22 more than two weeks, about the possibility that you
23 would -- you had witnesses that you thought would
24 appear on your behalf or might have some information
25 to provide that would be useful to your case, you --

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1 we talked a little bit about a subpoena, which is the
2 way to compel a witness to appear and be sworn in and
3 give testimony.

4 You thought that there may be some folks
5 that would be willing to appear perhaps voluntarily.
6 We talked a little bit about opportunity to give the
7 staff access to those witnesses, but with -- the email
8 that you provided us last Friday, indicated that you
9 felt there was a problem having those individuals
10 appear on your behalf.

11 And maybe you can give us a little more
12 information about what the issue is.

13 MR. CHAISSON: This is James Chaisson.
14 Yes, sir. The issue is, they are still in the NDT
15 field and they don't want to be harassed by the NRC or
16 have any kind of charges brought against them like
17 they said that, you know, plain and simple is, this is
18 how they provide for their families, like I was
19 providing for my family, and they don't want to get
20 involved with any repercussions.

21 And, like they said, everybody can say
22 what they want, but being that you all are Government,
23 they can figure out and do what you all want and there
24 is nothing they can do about it. So, they don't want
25 to get involved.

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1 JUDGE BOLLWERK: Okay.

2 MR. CHAISSON: And that is the bottom
3 line.

4 JUDGE BOLLWERK: All right. Thank you.
5 I appreciate the clarification.

6 Let me say -- I mentioned originally that
7 in the Charlissa Smith case, she had actually -- I
8 think I had mentioned this. If I haven't, this is, in
9 fact, what happened.

10 She actually had some witnesses that she
11 wanted to appear on her behalf that -- I think --
12 well, I will use the term "friendly witnesses." They
13 were probably going to provide evidence that would be
14 supportive of her case, and -- but they wanted a
15 subpoena for the purpose of basically being able to
16 show it to their employer so that their employer would
17 know that they needed to take the time off to appear
18 in the case.

19 They were local witnesses. They did not
20 have to travel, so that is a question of travel cost
21 in not coming, nor were they asking to be compensated
22 in any way. So, they were really no cost witnesses
23 for her, but simply folks that, if they had -- wanted
24 a subpoena in their hand to be able to make sure that
25 they had no issues with their employer in terms of

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1 their testimony.

2 I take it from what you just said that
3 they probably -- the witnesses you are talking about
4 in terms of the folks that you had hoped would appear
5 on your behalf probably don't fall into that category.
6 Is that true?

7 MR. CHAISSON: That is true, sir. No,
8 they are -- more of them are actually -- well, they
9 both own the company that I used to work for.

10 JUDGE BOLLWERK: All right.

11 MR. CHAISSON: And they -- and they said
12 they had the problem of, you know, presenting anything
13 to their boss because they are the bosses. They --
14 that is the problem. Like I said, they own a company
15 and they do radioactive material work and they don't
16 want to get involved in anything that you have
17 backlash on them, and I don't blame them.

18 JUDGE BOLLWERK: All right. So, it
19 strikes me that we are in a -- potentially in a
20 different situation where the witnesses either -- and
21 you had mentioned, I guess, another individual, either
22 reluctant, or in the case of the two witnesses you
23 just mentioned, or potentially I will use the term
24 again, sort of just as a shorthand, an unfriendly
25 witness, one that would potentially give evidence that

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1 you believe will be -- will support your case, but the
2 witness, nonetheless, might not want to appear because
3 they may have something different to say.

4 So, with respect to those individuals,
5 there is something I should have raised with the staff
6 before, and I apologize for not doing this. We have
7 really gotten ahead of the game.

8 But, I think, in all these individuals, as
9 we have heard Mr. Chaisson describe them, are all NRC
10 licensees or companies or employees of companies that
11 are NRC licensees.

12 Is there any way the staff could get --
13 could have these individuals appear?

14 MR. MALTESE: Well, we don't know, Your
15 Honor. We don't know the identity of these
16 individuals and we would not -- we had not considered
17 calling -- calling individuals as witnesses who are
18 not supporting the staff case.

19 JUDGE BOLLWERK: All right.

20 MR. MALTESE: We would need more
21 information.

22 JUDGE BOLLWERK: Okay. All right. Fair
23 enough.

24 Well, Mr. Chaisson, one of the things that
25 we did the last time when we talked was describe the

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1 process by which subpoenas are generally issued.
2 Normally, it is done by the party. As we -- as we
3 indicated, the party is then responsible for having
4 the subpoena served.

5 The party is also responsible for paying
6 any expenses of the witnesses. But we also indicated
7 that there is an appeal board case that goes back into
8 the Seventies, that indicates that if there is an
9 instance where the Licensing Board finds that there is
10 a genuine need for a witness on a key issue and that
11 the party that wishes to call that witness is unable
12 to afford to have the subpoena issued, that the Board
13 can call them as a Board witness.

14 That, frankly, would apply to a witness,
15 whether they were, as I described, unfriendly or
16 reluctant in either case.

17 But, what we don't have is -- at this
18 point, anyway, what the staff has just said, they
19 don't have, either, is the information about who these
20 witnesses are and what they might have to say that
21 would make them -- put their testimony in the category
22 of being testimony for which there is a general -- a
23 genuine, excuse me, need relative to a key issue.

24 You didn't really say anything about that,
25 even though I think our order tried to describe in

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1 some detail what that would involve as well as you
2 provided an example of an affidavit that we would --
3 that you would need to submit to indicate that you
4 cannot afford to have these subpoenas issued on your
5 behalf.

6 I guess my question for you at this point
7 is, given the discussion we have just had, do you
8 wish, sir, to have another opportunity to make such a
9 showing or a filing?

10 MR. CHAISSON: Not -- this is James
11 Chaisson. No, I don't. I am just -- I am just trying
12 to get this all put behind me. You all -- I mean,
13 like I said, I don't want to interfere with anyone
14 else's way to provide for their family like mine has
15 been.

16 So, you know, I have talked to them and
17 after talking to the NRC staff, I mean, the only way
18 their testimony would come into effect would be if the
19 original hearing -- the original -- excuse me, the
20 original finding, you know, not just the 2012 order,
21 but from what the 2012 order extended from, the
22 original case would be heard and if that is not going
23 to be done, then I don't have a -- excuse me, but I
24 don't have a chance in heck at this case, you know,
25 because if we are just going to go off of the 2012

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1 order, then I don't have a chance.

2 I am trying to get the original hearing
3 heard again, which I wasn't present at when they had
4 just, you know, which I did go through that
5 arbitration, but I wasn't told that I could reject
6 that.

7 I wasn't informed of that at no time.
8 They violated my constitutional rights from the very
9 beginning, which no one seems to care about.

10 JUDGE BOLLWERK: Well, I will suggest to
11 you maybe that you -- there are two different issues
12 that you are raising and that we are talking about
13 here.

14 One is the witnesses that you believe are
15 necessary to support your case. The other question
16 is, are those witnesses, in the view of another party,
17 appropriate for -- appropriate to be allowed to
18 present evidence to the Licensing Board.

19 Those are separate issues. You, sir, have
20 the right to designate anyone you want as a witness.
21 The staff, then, will have the opportunity to convince
22 the Board, either in the form of a motion in limine,
23 or if the witnesses were to be subpoenaed, to try to
24 what is called, quash the subpoena to basically come
25 in and object to the Board and having the subpoena

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1 enforced, that these individuals should not be allowed
2 to testify.

3 But those are two separate things. So,
4 what -- the question I am asking you now, sir, is do
5 you wish to designate or try to designate and make,
6 based on the appropriate showings these individuals as
7 people that you would like to have called in this
8 case.

9 Can we put it on mute one second?

10 (Short pause.)

11 JUDGE BOLLWERK: So, one of the things
12 Judge Gibson has just pointed out to me, and I think
13 it is important also that you recall this, is that, in
14 the Board's original prescheduling order, they
15 indicated that the scope of the proceeding was --
16 would be -- would go to, at least, in part, to the
17 initial order, the 2012 order to the degree that the
18 2014 order is based on the staff's finding that there
19 was some kind of deliberate misconduct involved.

20 So, the Board has made that ruling, sir.
21 Now, the breadth of that reason in terms of how it
22 applies to individual witnesses, it is an entirely
23 different matter, and it is something that I think I
24 just indicated, will be litigated -- is potentially
25 going to be litigated as the case moves on.

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1 The point -- the only thing I am asking to
2 focus on now is do you have witnesses that, if you
3 could call them, you would want to have them testify
4 on your behalf, or be in this case?

5 MR. CHAISSON: This is James Chaisson.
6 No, sir, I don't.

7 JUDGE BOLLWERK: Well, the only person,
8 then, that you are interested in having testify in
9 your behalf is you?

10 MR. CHAISSON: James Chaisson. Yes, sir.

11 JUDGE BOLLWERK: All right. Then, I think
12 I --

13 JUDGE ARNOLD: This is Judge Arnold. I
14 just wanted to make sure that Mr. Chaisson understands
15 that within the -- what Judge Bollwerk just said is,
16 within the scope of this hearing is whether the
17 original misconduct was deliberate or not because the
18 -- the order in 2012 states that the staff and Mr.
19 Chaisson had agreed to disagree on whether it was
20 deliberate and since that claim by the staff that it
21 was deliberate impacts the current order, it is
22 something that can be litigated in this hearing.

23 So, do you understand that, Mr. Chaisson,
24 the deliberateness of it, of the original order is a
25 -- within the scope?

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1 MR. CHAISSON: This is James Chaisson.
2 Yes, sir, I do, but the only person that I had
3 employed with me at that time was a Michael Hill who
4 would be the witness to state that, you know, I done
5 all we was told to do. I have no way of reaching or
6 I have no knowledge of where this young man resides
7 anymore.

8 JUDGE ARNOLD: Okay.

9 JUDGE BOLLWERK: All right. Let me also
10 just clarify one other thing. I think I understand
11 what you said, but just to make sure.

12 There is an individual, Mr. Denton and Mr.
13 Steen, two individuals, I guess, that you had
14 mentioned previously that you felt might have
15 something to say that would be relevant or you would
16 want to ask some questions?

17 This is a question of cross-examination as
18 well. You have the opportunity to cross-examine the
19 witnesses that you felt might be appropriate to have
20 them subpoenaed and brought to testify before the
21 Board.

22 I take it that these individuals are not
23 individuals, Mr. Denton and Mr. Steen, that you at
24 this point do not want to call, either?

25 MR. CHAISSON: This is James Chaisson. I

1 had notice on the -- on the Board's witness, I know
2 that they have them listed as witnesses so to my
3 understanding, it was like you just said, I would be
4 able to cross-examine them, you know, because of the
5 NRC has them listed as their witnesses.

6 JUDGE BOLLWERK: I am going to clarify
7 here, but the staff list of witnesses I have which was
8 filed last Friday includes five individuals, two that
9 the staff expects to call and three that it might
10 call, all of which are -- just let me check -- NRC
11 employees.

12 So, at this point -- and I will let Mr. --
13 I will let the staff counsel speak to this. I don't
14 think they intend to present anyone other than NRC
15 staff employees as witnesses.

16 Is that true?

17 MR. MALTESE: Your Honor, this is Jim
18 Maltese. That is correct, Your Honor. I think the
19 individuals that Mr. Chaisson was referring to were
20 interviewed as part of the office -- by the Office of
21 Investigations as part of their investigation report,
22 but the staff does not plan to call those individuals
23 as witnesses for the hearing.

24 JUDGE BOLLWERK: All right. So, Mr.
25 Chaisson, what he is saying is basically the five

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1 individuals, all NRC employees that are on that list
2 are the only individuals the staff would be willing --
3 is going -- is planning on calling at this point,
4 which means that, in theory, Mr. Denton and Mr. Stein
5 are not going to be appearing at the hearing unless,
6 as we indicated I think, last week, you believe that
7 there is a genuine need for their testimony on a key
8 issue, you can demonstrate that to the Board, making
9 a showing in that respect to the Board.

10 And so, I go back to my original question.
11 Do you still want the opportunity to make that showing
12 with respect to those two individuals, one or either
13 of them?

14 MR. CHAISSON: Yes, sir. I mean, being
15 Mr. Steen was the manager, yes, I would like to show
16 that, yes, his testimony would be, you know,
17 beneficial in my behalf because of the statements that
18 were -- from the statements I read that he made.

19 You know, my phone records contradict
20 everything he claimed that he, you know -- was done.
21 My phone records prove the opposite.

22 JUDGE BOLLWERK: All right.

23 MR. CHAISSON: So, yes.

24 JUDGE BOLLWERK: Okay.

25 MR. CHAISSON: I am sure his testimony --

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1 yes, his testimony would definitely be.

2 JUDGE BOLLWERK: Okay. So, again, let me
3 just make sure we are all on the same page here, and
4 I don't want anyone -- any misunderstandings.

5 What you are -- at this point, at least as
6 you explained it to us, declining to do is to name
7 anyone that I would all a reluctant witness, i.e.,
8 someone that you thought might be able to come in, but
9 has now declined to do so.

10 And I mention, sir, that if a subpoena is
11 issued for a person and it is a valid subpoena, they
12 don't have a choice. They have to show up or they can
13 be found in contempt of court if they don't.

14 So, again, it is a question of whether it
15 is a valid subpoena. That is a different issue. But
16 if that subpoena is issued and it is a valid subpoena,
17 whether they want to show up or not, they have to come
18 and they have to raise their hand and they have to
19 tell the truth.

20 So, you could -- we could still issue
21 subpoenas for those folks. Again, if you don't want
22 to issue the subpoenas, if the Board can be shown that
23 there is a genuine need for their testimony on a key
24 issue.

25 But I think at this point you are not

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1 interested in having those individuals appear.

2 MR. CHAISSON: No. The other individuals
3 I am not, but Mr. Steen I am because, you know, like
4 I said, due to the fact that I can disprove everything
5 he claimed on -- on the initial finding.

6 JUDGE BOLLWERK: All right. Okay. So, we
7 are sort of back to where we were two weeks ago when
8 we issued the order, which is, if you wish to have Mr.
9 Steen and/or Mr. Denton -- I don't know what -- this
10 is up to you entirely, sir.

11 I am not -- the Board is not trying to
12 litigate this case for you. We are just trying to
13 explain the procedural parameters here. If there are
14 -- those individuals that you think are important to
15 your case to the degree there is a genuine need for
16 their testimony, that there is a key issue that they
17 are going to be testifying about, you need to give us
18 a filing indicating that.

19 Accompanying that filing would need to be
20 the affidavit or in the form of the affidavit that we
21 provided you indicating that you could not afford to
22 issue the subpoenas, if you wish the Board to call
23 them as Board witnesses. Is that clear on what you
24 need to do?

25 MR. CHAISSON: Yes, sir.

1 JUDGE BOLLWERK: Okay. And again, this is
2 all in the order, but I have got -- I want to make it
3 -- make it clear that there is no misunderstanding.

4 How soon could you do that? For instance,
5 I am thinking -- could you do it by a week from
6 Friday?

7 MR. CHAISSON: Yes, sir. Yes, sir. I can
8 get the affidavit done and I will -- like I said, I
9 have no more -- you know, but that order depends on
10 what the doctor sees in my leg tomorrow --

11 JUDGE BOLLWERK: Well, that is a good
12 point and I will come back to that in a second. But
13 let's -- let's assume for present purposes that you
14 are going to make -- you are in good physical -- good
15 enough physical condition to go ahead and make this
16 filing.

17 It is due then, and I will issue a
18 confirmatory order in this regard, by next Friday,
19 which would be the -- sorry -- the 20th. I wrote this
20 down, and now I have got to find it. The 20th, that
21 you need to make that filing.

22 And again, I think we have indicated
23 pretty clearly what the parameters of the filing are,
24 but -- and you can specify whatever witnesses that you
25 think are appropriate. Having said that, you need to

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1 understand that this is sort of -- this is actually an
2 extraordinary measure the Board is taking,
3 potentially.

4 This is not something that gets done very
5 often. So, you should make sure that you can make a
6 good showing with respect to any witnesses you want to
7 designate.

8 Then, I think, as we indicated in the
9 order previously, we will give the staff a week to
10 respond. I think it is pretty clear at this point
11 what the legal parameters are here.

12 You don't know exactly what Mr. Chaisson's
13 factual showings are going to be, but I think a week
14 is enough time to respond. If you feel that that is
15 not appropriate, let -- let me know -- let me know now
16 and we will basically set it for a week unless I hear
17 something different from you at this point.

18 Anything the staff wants to say?

19 MR. MALTESE: This is Jim Maltese. We
20 have no objections to that plan, Your Honor.

21 JUDGE BOLLWERK: All right. Thank you
22 very much.

23 All right. So, what we have coming
24 forward now is, Mr. Chaisson, by the end of next week,
25 you are going to try and do two things. One of those

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1 things is that you are going to -- if you have --
2 again, if your health permits, you are going to
3 contact our help desk and try to get yourself
4 reconnected to the efilng system.

5 One of the reasons that is important is
6 now we have a filing due and it would be better for
7 you to make that filing through efilng than through
8 sending emails.

9 If that can't happen, please let us know
10 early next week, if possible. In terms of your
11 ability to reconnect -- whether you are reconnected or
12 not, by next Friday at this point you have a filing
13 due where -- that you need to explain to the Board
14 along the lines of the order that we issued on the
15 27th of February, why there is a genuine need for one
16 or more witnesses that you believe have testimony that
17 they -- the Board needs to hear on a key issue.

18 Let me make one other point about it. And
19 the staff, then, will have a week to respond to that.
20 That would be the staff responding on the 27th of
21 March.

22 Let me make -- bring up one -- at least
23 one other subject that is related to this, and that is
24 extensions of time. If, Mr. Chaisson, I think the
25 staff is well-aware of this, but we will go through

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1 it, anyway.

2 If at some point next week, you feel,
3 because of your health or some other reason you cannot
4 meet the filing date that we set for next Friday, do
5 not wait until the last minute or let that date go by
6 without sending us some information.

7 You need, before that filing date, to do
8 two things. If you think you need more time, you
9 should contact staff counsel by email, tell them that
10 you need to ask the Board for more time, how much time
11 you think you need, and ask the staff whether they
12 object.

13 MR. CHAISSON: Okay.

14 JUDGE BOLLWERK: Is that clear? This is
15 in a rule. It is 2.32 -- Section 2.323-B. All right.
16 It is in the rule. They will then send you a response
17 promptly, I am going to assume, that indicates whether
18 the staff does or doesn't object to your request.

19 You, then, need to contact the Board with
20 the information about, "I am sorry. I think I am
21 going to be late. The reason I am going to be late is
22 X. I have contacted the staff. They indicated I need
23 more time. The staff does or doesn't object."

24 And you need to let the Board know that in
25 a filing. Okay. And again, that filing should be

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1 before the due date, not on the due date, and as far
2 ahead of the due date as possible. All right?

3 MR. CHAISSON: This is James Chaisson.
4 Yes, sir.

5 JUDGE BOLLWERK: Okay. And this, frankly,
6 applies to any instances in the future where you think
7 you need more time. We are going to be under a filing
8 date, so we are going to be setting going forward. In
9 fact, a number of them as we get towards the
10 evidentiary hearing.

11 So, -- so be aware of that. All right?

12 MR. CHAISSON: This is James Chaisson.
13 Yes, sir.

14 JUDGE BOLLWERK: Okay. Let me also
15 mention one other procedural side of this process so
16 that you are not surprised about how -- some things
17 that may occur. I just want to make you aware of
18 them.

19 First of all, I think -- I am hoping that
20 one of the things the staff is going to address in its
21 filing in response to your filing is the degree to
22 which the staff could or could not help make these
23 witnesses available that you are going to designate.

24 They have indicated they will think about
25 it and give us a response, and I would hope they would

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1 be able to put it in that filing.

2 You should be aware, sir, that I mentioned
3 before, however, that if the Board should decide to
4 issue the subpoenas on your behalf, the staff will
5 have an opportunity to object to those subpoenas, and
6 that, in turn, may involve not only filings with the
7 Board, but it may involve filings with the Commission.

8 And, in the end, the Commission has the
9 last say in terms of this agency about whether those
10 subpoenas do or do not go forward if the Board should
11 decide to issue them. So, I just want to make you
12 aware of that.

13 You will have an opportunity to
14 participate in that process, as well, but that is
15 something that could take some time to -- to work
16 through, but -- and I just want to make you aware of
17 that so you are not surprised if that, in fact -- if
18 this should play out that way.

19 I am not saying any of this is going to
20 happen, because, frankly, we haven't seen your filing.
21 We don't know, frankly, if we are going to be willing
22 to issue any subpoenas on your behalf.

23 So, -- but just be aware that that is
24 something that could occur if, down the road, the
25 Board should act to each of those subpoenas.

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1 Any questions that you might have, sir?

2 MR. CHAISSON: This is James Chaisson.

3 No, sir.

4 JUDGE BOLLWERK: All right. Let me see if
5 there is any that the staff has at this point.

6 MR. MALTESE: This is Jim Maltese.
7 Nothing, Your Honor.

8 JUDGE BOLLWERK: All right. Let me just
9 mention a couple of other things. We mentioned about
10 having a prehearing conference.

11 Shortly after the filings by the staff and
12 Mr. Chaisson about witnesses, that would still be our
13 plan. In the order that we issue memorializing this
14 prehearing conference, we will give you some sense of
15 when that might be, as well.

16 At that point, we may well be looking at
17 beginning to set some more definitive dates in terms
18 of the filing of testimony, statements of position,
19 prefiled exhibits.

20 Again, the prefiled exhibits are
21 documentary material that -- that the parties want the
22 Board to consider, not only testimony, spoken or
23 written, but also documents of some kind.

24 One thing that we didn't talk about last
25 time, in terms of the -- and I think both parties

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1 indicated they probably would prefer to file prefiled
2 testimony, but it is the order of what the expressed
3 testimony would come in.

4 Would it be simultaneous, meaning both
5 parties file direct testimony and then, if there is
6 going to be rebuttal, both parties file rebuttal
7 testimony or, if the testimony would be serial.

8 Generally, the way that would happen, Mr.
9 Chaisson -- and the staff may be aware of this -- is,
10 since you have the burden at least of moving forward
11 in the case, your testimony would come in first,
12 testimony.

13 The staff would then file its testimony.
14 Then you would have an opportunity to file some
15 additional testimony in rebuttal for that.

16 Let me see, first from the staff, if they
17 have any preferences as to how the testimony comes in.

18 MR. MALTESE: Your Honor, this is Jim
19 Maltese. We would prefer the testimony to be filed
20 simultaneously.

21 JUDGE BOLLWERK: All right. Mr. Chaisson,
22 anything you want to say in that regard? And again,
23 if you have any questions about what I just said, let
24 me know and I will explain it again.

25 MR. CHAISSON: James Chaisson. This, no.

1 JUDGE BOLLWERK: All right. Do you have
2 any preference one way or the other?

3 MR. CHAISSON: James Chaisson. Again, no,
4 sir, I don't.

5 JUDGE BOLLWERK: Okay. And I heard --
6 again, I think what the staff was indicating is both
7 direct -- a direct set of testimony and a set of
8 rebuttal testimony is what you would contemplate?

9 MR. MALTESE: Yes, Your Honor, that is
10 correct.

11 JUDGE BOLLWERK: All right. Okay.

12 So, what that means, Mr. Chaisson, is you
13 and the staff will be filing your direct testimony,
14 the evidence that you wish to put into the case first,
15 and then both parties will have an opportunity within
16 a period of time to file what is called rebuttal
17 testimony, which could be spoken -- well, I shouldn't
18 say "spoken." Written testimony, as well as
19 additional evidentiary documents in response to the
20 other party's direct testimony. So, you will have two
21 opportunities.

22 That, then, will be part of what we put
23 into the record as the evidentiary hearing, and then
24 what the cross-examination by the parties would
25 proceed on the basis of that testimony.

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1 I should mention, as well, that the
2 possibility exists for what we call in limine motions
3 relative to that testimony and those exhibits, which
4 are motions by either party saying, "The testimony
5 that the -- from this witness goes beyond what the
6 scope of the hearing is."

7 So, that is a possibility, as well. That
8 is still, under the rules, something we can consider
9 setting up a schedule for.

10 All right. Let me also mention that we
11 really haven't moved forward much in terms of a date
12 for an evidentiary hearing. We actually have found
13 some courtroom space in Orem, Utah, which I think
14 would be fairly close to Mr. Chaisson for the week of
15 June 22nd.

16 We aren't, I don't think, ready to move
17 forward with that yet because I think there is still
18 a lot that could happen here in terms of filing, so I
19 need to start tying up a courtroom before we have some
20 certainty as to which direction we are headed.

21 But, we are making an effort to find space
22 out in the vicinity of Mr. Chaisson to conduct the
23 hearing. So, I just wanted to make the parties aware
24 of that.

25 MR. MALTESE: Your Honor, this is Jim

1 Maltese for the staff. The NRC -- one our -- one of
2 the witnesses we were planning to call is -- well, we
3 have a couple of witness conflict with the June 22nd
4 date.

5 JUDGE BOLLWERK: Okay.

6 MR. MALTESE: I just wanted to -- because
7 I know we are not at the point where we are nailing
8 down --

9 JUDGE BOLLWERK: No, that is good to know,
10 because that will -- that will come into play. So, if
11 you -- it is better we know sooner rather than later.
12 We can keep -- keep looking around, but I appreciate
13 the information.

14 MR. MALTESE: Okay. And I would go ahead
15 and offer that the first week of June would be
16 available. I know, there are additional steps that we
17 are talking about that might make that the dates of
18 all of the things that need to be filed may not line
19 up correctly, but if that ends up working out, that
20 would be -- I would understand.

21 JUDGE BOLLWERK: Well, I think that what
22 we are facing -- and that may be a little aggressive,
23 but we will have -- we will see. I mean, we haven't
24 set any of these in. And again, once we get Mr.
25 Chaisson and the staff's filings on each of these --

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1 the question of his witnesses, then I think things may
2 become a little clearer and we can move forward from
3 there.

4 But, I appreciate the -- I appreciate the
5 input.

6 Anything, Mr. Chaisson, from you on the
7 hearing venue or the dates at this point?

8 MR. CHAISSON: This is James Chaisson.
9 No, sir, either one of them would be fine with me.

10 JUDGE BOLLWERK: All right.

11 JUDGE GIBSON: Mr. Chaisson, this is Judge
12 Gibson. Will you -- does your job doctor think you
13 will be out of a wheelchair by June 22?

14 MR. CHAISSON: This is James Chaisson.
15 Yes, sir. That is what we are pushing for, hoping to
16 get me better and start using crutches by the end of
17 this month or the beginning of next month.

18 JUDGE BOLLWERK: Okay. All right. And
19 that would actually be better for you, certainly, but
20 what we can -- I mean, we can certainly accommodate an
21 hour it needs to occur.

22 So, one last thing I will mention. I
23 understand from Judge Ryerson that he doesn't believe
24 at this point that settlement negotiations going
25 forward are going to be fruitful. I certainly thank

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1 him for his efforts on behalf of both the Board and
2 the parties.

3 Having said that, as the case goes on, you
4 all can certainly renegotiate, as it were, talk with
5 one another, talk with Judge Ryerson. He is certainly
6 willing to talk with either party or both parties at
7 any point.

8 He is available to you all for that
9 purpose. So, as this goes -- as this case moves
10 forward, things are going to change, lots of things are
11 going to happen. The parties' positions and how you
12 feel your case is going, you are going to change.

13 Don't be reluctant to -- to contact Judge
14 Ryerson if you believe there is a basis for reaching
15 a settlement. As I indicated before, my experience is
16 it is something you all could reach an agreement on,
17 it is probably going to be better for at least one
18 party, and maybe both, than anything the Board comes
19 up with, so -- in terms of making a decision on the
20 evidentiary record.

21 So, again, I hope you will consider that
22 in the future and remember that Judge Ryerson is
23 available if you need to -- to talk with him.

24 At this point, let me see if there is
25 anything else that either of the parties want to bring

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1 to the Board's attention.

2 Staff?

3 MR. MALTESE: No, Your Honor. This is Jim
4 Maltese. Nothing at this time.

5 JUDGE BOLLWERK: All right. Mr. Chaisson?

6 MR. CHAISSON: This is James Chaisson.
7 No, sir. Nothing at this time.

8 JUDGE BOLLWERK: Okay. And again, I am
9 sorry for the short notice on setting this up, but we
10 felt it was appropriate and necessary to talk with you
11 today. I think we have gotten some good information.

12 Remember, sir, you have a filing due a
13 week from Friday. You are also going to be trying to
14 contact the efilings desk. If that is not going to
15 happen with the efilings desk, please let Mr. Zogby
16 know so we can move forward with setting some kind of
17 an alternative filing system by email.

18 Also, if you are going to have a problem
19 making next Friday's filing date for health or other
20 reasons, please, I hope you will follow -- and I will
21 repeat them in the order that we put out, follow the
22 steps that we indicated are necessary in terms of
23 contacting the staff if you need more time and then
24 contacting the Board.

25 All right. Let me see. Judge Gibson,

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1 anything you need to say?

2 JUDGE GIBSON: No.

3 JUDGE BOLLWERK: Judge Arnold?

4 JUDGE ARNOLD: No.

5 JUDGE GIBSON: I do.

6 JUDGE BOLLWERK: Go ahead, Judge --

7 JUDGE GIBSON: Mr. Maltese, this is Judge
8 Gibson. I am curious. You indicated that some of
9 your witnesses might have a conflict the week of June
10 22. Would you -- are those witnesses largely
11 duplicative or is each of these witnesses necessary to
12 testify on an individual element of your case?

13 MR. MALTESE: No. I am afraid not, Your
14 Honor. One of those witnesses is one of the key
15 witnesses that we -- we will definitely call at the
16 hearing.

17 The other is a witness that we listed that
18 we -- we may call and that will sort of depend on --
19 on the filings, but it could be necessary information.

20 JUDGE GIBSON: Okay. Okay. Thank you.

21 JUDGE BOLLWERK: All right. Anything else
22 from the parties?

23 (No response.)

24 JUDGE BOLLWERK: The staff?

25 MR. MALTESE: No, Your Honor.

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1 JUDGE BOLLWERK: Mr. Chaisson?

2 MR. CHAISSON: This is James Chaisson.
3 No, Your Honor.

4 JUDGE BOLLWERK: All right. Thank you.
5 Anything from the Board?

6 JUDGE ARNOLD: No.

7 JUDGE BOLLWERK: Anybody else?

8 (No response.)

9 JUDGE BOLLWERK: All right. Then, thank
10 you very much for making yourselves available on such
11 notice. We appreciate the opportunity to talk with
12 you.

13 Mr. Chaisson, I am hopeful that we will be
14 hearing from you in the next ten days on what
15 witnesses you want to call.

16 And, let me just raise one thing. I take
17 it is clear to the staff, although Mr. Chaisson did
18 not file a formal witness list, but he intends to call
19 himself.

20 MR. MALTESE: Yes, Your Honor. This is
21 Jim Maltese. We assumed that and we are operating
22 under that assumption.

23 JUDGE BOLLWERK: All right.

24 MR. MALTESE: And we have no objection.

25 JUDGE BOLLWERK: So, we won't make him

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1 make any additional filings in that -- Mr. Chaisson
2 make any additional filings in that regard, then.

3 MR. MALTESE: Not necessary, Your Honor.

4 JUDGE BOLLWERK: Okay. Thank you.

5 All right. Then, I think we are done for
6 today. Again, thank you, everyone.

7 (Whereupon, the conference call was
8 concluded at 3:48 p.m.)

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