

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before the Licensing Board:

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

In the Matter of

JAMES CHAISSON

(Enforcement Action)

Docket No. IA-14-025-EA

ASLBP No. 14-932-02-EA-BD01

March 16, 2015

MEMORANDUM AND ORDER

(Memorializing March 11, 2015 Prehearing Conference)

Because of concerns triggered by a March 6, 2015 e-mail from Mr. Chaisson regarding the 10 C.F.R. § 2.704(c)(1)(i) witness list associated with his challenge to the July 2014 NRC staff enforcement order that is the genesis of this proceeding, the Licensing Board convened a telephone prehearing conference on March 11.<sup>1</sup> See Licensing Board Memorandum and Order (Scheduling Prehearing Conference) (Mar. 10, 2015) at 1–2 (unpublished) [hereinafter Conference Scheduling Order]; see also Tr. at 215–59. In addition to the matter of witness designation, that conference covered a number of other subjects, as outlined below.

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<sup>1</sup> A copy of Mr. Chaisson's March 6 e-mail to Board law clerk Matthew Zogby is included as Attachment A to this issuance. See E-Mail from James Chaisson to Matthew Zogby, Licensing Board Law Clerk (Mar. 6, 2015 06:31 p.m. Eastern Standard Time (EST)) [hereinafter March 6 E-Mail]. That same day, Mr. Chaisson sent a similar e-mail regarding witness designation to NRC staff counsel, which was copied to Board law clerk Zogby. As the Board indicated during the March 11 prehearing conference, some of the language used in those e-mails is not appropriate for this forum, whether in written or oral communications, and should not be used again. See Tr. at 223–25.

A. Use of the E-Filing System by Mr. Chaisson

During a February 23 telephone prehearing conference, Mr. Chaisson indicated that his computer hard drive had crashed and, because of financial limitations, he was unable to replace that computer. He stated that he thus was unable to use the agency's E-Filing system, although he did have Internet access and could send e-mails using one of his children's computers. Consequently, the Board asked Mr. Chaisson to contact the E-Filing system help desk to attempt to get reconnected to the system using that computer. See Licensing Board Memorandum and Order (Second Scheduling Order) (Feb. 27, 2015) at 2 (unpublished) [hereinafter Second Scheduling Order]. In his March 6 submission, however, Mr. Chaisson indicated that following the February 23 conference, an infection to the leg he previously injured in a motorcycle accident had resulted in his hospitalization, which precluded him from contacting the help desk. See March 6 E-Mail. During the March 11 prehearing conference, after receiving Mr. Chaisson's assurance that he currently is physically able to continue participating in this proceeding, the Board again requested that he act within the next several days to contact the E-Filing system help desk to see if he can get reconnected to the system. Mr. Chaisson indicated that, assuming a scheduled medical appointment on March 12 did not reveal any further complications, he would contact the help desk in the near future. See Tr. at 225–27.

As the Board pointed out during the March 11 conference, whether Mr. Chaisson is able to reconnect with the E-Filing system is procedurally important in this case because, if he cannot, the Board will need to afford him an exemption from the requirement to file pleadings using the E-Filing system and establish procedures for e-mail submission and service of

documents.<sup>2</sup> See Tr. at 227–28; see also 10 C.F.R. § 2.302(a), (g). Accordingly, by no later than Tuesday, March 17, 2015, Mr. Chaisson should advise the Board, by means of an e-mail to Board law clerk Matthew Zogby, and the staff about whether he has succeeded in reconnecting to the E-Filing system.

B. Witness Designation

As is outlined in the Board’s February 27 scheduling order, during the February 23 prehearing conference, the Board and the parties discussed establishing a schedule for submitting witness lists in accordance with 10 C.F.R. § 2.704(c)(1)(i). In connection with such disclosures, the Board sought to clarify for Mr. Chaisson, who is not represented by counsel and has previously expressed concerns about his financial situation, how he might go about obtaining the testimony of those witnesses he wished to designate, either voluntarily or through the use of subpoenas. See Second Scheduling Order at 3.

At that time, Mr. Chaisson indicated that he intended to contact several witnesses whom he hoped might voluntarily provide testimony in support of his case. Also, when the Board explained the process for compelling a witness to testify by subpoenaing the individual, Mr. Chaisson indicated that while there might be one or two witnesses he would like to subpoena, he could not afford to have a subpoena served or pay the applicable daily witness fee and travel costs. The Board then described a long-standing agency precedent, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-382, 5 NRC 603, 607–08 (1977), that addresses instances when a party wishing to subpoena a witness nonetheless asserts it can not do so because of financial difficulties. As the Board indicated, under this precedent, in the face of a “genuine need” for testimony regarding a “key issue” from a witness whose presence would need to be

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<sup>2</sup> During the February 23 prehearing conference, the staff declared that it would not object to the use of e-mail as a filing method going forward for any period during which Mr. Chaisson is unable use the E-Filing system. See Tr. at 149.

compelled, if the party wanting to call the witness would be unable to employ a subpoena for financial reasons, the Board can exercise its “sound discretion” to subpoena the individual in question as a Board witness. Because Mr. Chaisson stated that such circumstances existed in this instance, in setting a schedule for witness designations under section 2.704(c)(1)(i), the Board indicated that in providing the names and addresses of the witnesses he wished to call, relative to any witness he asserted would need to be subpoenaed, Mr. Chaisson could provide the Board with relevant information regarding his financial circumstances and the “genuine need” for the testimony of that witness concerning a “key issue” in this case. See Second Scheduling Order at 4–6.

In his March 6 witness designation submission, Mr. Chaisson indicated he would be the only witness appearing on his behalf.<sup>3</sup> According to Mr. Chaisson, the witnesses he contacted whom he thought would provide testimony voluntarily had declined to do so because of what he characterized as a concern about agency retaliation given their employment in the NRC-regulated nondestructive testing field. See March 6 E-Mail. He also did not identify or make any assertions regarding either of the witnesses he previously indicated he might wish to subpoena. In light of this communication, the Board wished to ensure that Mr. Chaisson fully understood the subpoena process. See Conference Scheduling Order at 2.

Accordingly, during the March 11 prehearing conference, the Board apprised Mr. Chaisson of the possibility of issuing a subpoena to a “reluctant” witness whose testimony he had hoped to obtain voluntarily. He declared, however, that he no longer wished to call those individuals. See Tr. at 238, 241–42. Additionally, when asked about the witnesses he

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<sup>3</sup> Although Mr. Chaisson’s March 6 e-mail does not provide an actual witness list, see March 6 E-Mail, as the staff recognized during the March 11 conference, he clearly does intend to testify in support of his challenge to the staff’s July 2014 enforcement order. See Tr. at 258–59.

previously stated he might want to subpoena, his response suggested there was some confusion regarding these witnesses relative to the staff's witness list.<sup>4</sup> To mitigate any uncertainty in this regard, the Board indicated it would afford Mr. Chaisson an additional opportunity to provide the name and address of any individual he wishes to call pursuant to a subpoena and, if Mr. Chaisson asserts he lacks the financial resources to subpoena that witness, to provide the information outlined in the Board's February 27 order regarding his financial capabilities and the need for that witness's testimony. See Tr. at 242–43; see also Second Scheduling Order at 5–6. Any such filing by Mr. Chaisson is due on or before Friday, March 20, 2015,<sup>5</sup> with any staff response to that filing due on or before Friday, March 27, 2015.<sup>6</sup> See Tr. at 243–44.

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<sup>4</sup> Mr. Chaisson appeared to be confusing (1) a February 27 Board-requested staff list of witnesses (which included the individuals previously mentioned by Mr. Chaisson) who had provided statements as part of the agency's investigation associated with the 2012 confirmatory order that led to the 2014 order now being challenged by Mr. Chaisson; and (2) the staff's March 6 section 2.704(c)(1)(I) witness list, which designated only NRC personnel as expected or possible evidentiary hearing witnesses. See Tr. at 239–40; see also Letter from James L. Maltese, NRC Staff Counsel, to Licensing Board attach. (Feb. 27, 2015) (Office of Investigations Report Witness List); NRC Staff List of Witnesses (Mar. 6, 2015).

<sup>5</sup> The Board also advised Mr. Chaisson that if he concluded with regard to this filing, or any other filing, that he would be unable to meet a Board-established schedule, in accord with 10 C.F.R. § 2.323(b) he needed to take the following steps as far in advance of the filing date as possible: (1) contact staff counsel and indicate that he intends to ask the Board for a filing date extension, state how much time he needs, and ask if the staff has any objection; and (2) make a written submission to the Board that requests the filing date be extended for a specified period of time, provides a reason for the requested extension, and states whether the staff does or does not object to the extension. See Tr. at 245–47.

<sup>6</sup> In this regard, during the prehearing conference the Board raised with the staff the question whether, to the degree any of Mr. Chaisson's potential witnesses are employed by companies licensed by the agency, the staff might be able to help make them available during the hearing. The staff indicated that it had no plans to call such individuals itself, but would consider the matter further. See Tr. at 232. The Board did request that the staff address this possibility in any filing it might make in response to any submission by Mr. Chaisson designating witnesses he would like subpoenaed. See Tr. at 247–48.

C. Submission of Prefiled Evidentiary Materials

During the March 11 prehearing conference, noting that the parties previously had indicated a preference for using prefiled direct testimony, the Board raised the question of whether they also contemplated filing prefiled rebuttal testimony and whether they preferred to make their prefiled submissions simultaneously or serially.<sup>7</sup> The staff declared a preference for prefiled rebuttal testimony and simultaneous rather than serial filings, to which Mr. Chaisson raised no objection. See Tr. at 249–51. The Board will bear in mind these preferences in establishing future hearing-related schedules.

D. Location and Date of the Hearing

Following up on the discussion at the February 23 prehearing conference, at the March 11 prehearing conference the Board indicated it has begun looking for possible hearing venues in the Orem/Provo, Utah area. The Board and the parties have been able to identify certain time frames that are not usable because of scheduling conflicts, and a topic at the next prehearing conference likely will be the specific dates for a two-day hearing in early to mid-June or July 2015. See Tr. at 252–54.

E. Settlement Discussions

The Board indicated during the March 11 conference that Judge Ryerson had advised that, based on his discussions with the parties, at this point further settlement discussions were suspended. The Board expressed its appreciation for his efforts and urged the parties that if

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<sup>7</sup> In this regard, the Board indicated that since Mr. Chaisson had the burden of going forward, if there were serial filings his direct prefiled testimony would be submitted first, followed by the staff's prefiled direct testimony, followed by prefiled rebuttal testimony from Mr. Chaisson. See Tr. at 250. For clarity, the Board would note that Mr. Chaisson's burden of going forward, as the hearing requestor must be distinguished from the burden of proof relative to sustaining the staff's order, which rests with the staff. See David Geisen, LBP-09-24, 70 NRC 676, 706 (2009), aff'd, CLI-10-23, 72 NRC 210 (2010).

there were any developments that one or both felt might provide the basis for further settlement talks, they should contact Judge Ryerson promptly. See Tr. at 254–55.

F. Next Prehearing Conference

Once the Board has received any filings by Mr. Chaisson and the staff regarding any witnesses Mr. Chaisson wishes to have the Board subpoena in accord with the Midland precedent, the Board will convene an additional prehearing conference to discuss further scheduling regarding prehearing evidentiary submissions, in limine motions, and the hearing date/location. It is likely this prehearing conference will be held sometime during the weeks of April 6 or April 13, 2015. Accordingly, when contacted by Board law clerk Matthew Zogby with suggested dates/times for this conference, the parties should be prepared to respond promptly regarding their availability.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

**/RA/**

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G. Paul Bollwerk, III, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland

March 16, 2015

## ATTACHMENT A



**From:** [James Chaisson](#)  
**To:** [Zogby, Matthew](#)  
**Subject:** Re: Board Scheduling Order  
**Date:** Friday, March 06, 2015 6:31:21 PM

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No Sir I have not been able to contact the help desk due to a infection I had in my leg which put me back in the hospital but I did have time to contact the people I was asking to write statements for myself but due to them still being in the NDT field they all REFUSED DUE THE REASON THEY ALL SAID LOOK AT HOW BAD I'M GETTING SCREWED OVER BY THE NRC WHEN I DONE NOTHING WRONG SO THEY DON'T WANT YA'LL GOING RUIN THEIR NAME THE SAME WAY YA'LL DONE MINE SO I HAVE NO WITNESSES TO PROVIDE ON MY BEHALF! SO ONCE AGAIN I'M ALONE SO I GUESS WE WILL JUST BATTLE IT OUT ALL I HAVE IS MY WORD AND ALL THE LIES I FOUND ON THE WITNESS STATEMENTS YA'LL HAVE ON YA'LL SIDE SO I GUESS ALL THAT'S LEFT IS THE HEARING!!

On Friday, March 6, 2015 2:17 PM, "Zogby, Matthew" <Matthew.Zogby@nrc.gov> wrote:

Mr. Chaisson,

I don't know if you have been able to get a hold of the NRC Help Desk to regain access to the NRC's e-filing system. It occurs to me that, if you haven't, then you might not have been able to read the order issued by the Board last week as a follow-up to our phone call. Please review the attached, to remind yourself of the items you committed to sending to the Board.

Sincerely,  
Matt Zogby

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**Matthew T Zogby**

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MEMORANDUM AND ORDER (Memorializing March 11, 2015 Prehearing Conference)** have been served upon the following persons by Electronic Information Exchange.

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

Dated at Rockville, Maryland,  
this 16<sup>th</sup> day of March, 2015