

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
JAMES CHAISSON) Docket No. IA-14-025-EA
)
) ASLBP No. 14-932-02-EA-BD01
)

NRC STAFF RESPONSE TO BOARD REQUEST
FOR REPORT REGARDING JOINT SETTLEMENT AGREEMENT

On May 4, 2015, the Atomic Safety and Licensing Board (Board) issued a Memorandum and Order (Requesting Staff Report Regarding Joint Settlement Agreement), requesting the NRC Staff (Staff) to provide information regarding James Chaisson's status and its effect if any on the pending joint motion seeking approval of the parties' settlement agreement.¹ The Board requested that the Staff provide its response to the Board no later than May 18, 2015.²

The Staff last spoke with Mr. Chaisson on Friday, May 8, 2015. At that time, Mr. Chaisson informed Staff's counsel that he was required to attend a sentencing hearing in Utah on Monday, May 11, regarding a criminal matter. Although Mr. Chaisson indicated that he did not anticipate any jail time as a result of the hearing, the Staff's attempts to contact Mr. Chaisson after the court date were unsuccessful. Based on an internet search of publicly available sources, the Staff believes that Mr. Chaisson is currently incarcerated.

Notwithstanding his recent apparent incarceration, Mr. Chaisson has failed to respond to the Board's Orders on several occasions to schedule for a teleconference regarding the parties' joint motion.³ As a hearing participant, Mr. Chaisson has the responsibility to communicate with the Board and parties, when necessary, in order to fulfill his obligations related to the hearing.

¹ See Joint Motion to Approve Settlement Agreement and Terminate Proceeding (Apr. 17, 2015).

² See Memorandum and Order (Requesting Staff Report Regarding Joint Settlement Agreement) (May 4, 2015) at 2.

³ See Memorandum and Order (Rescheduling Prehearing Conference and Suspending Evidentiary Hearing Schedule) (Apr. 29, 2015) at 2.

As the Board noted in its recent Order, a failure of any party to uphold their responsibilities as a hearing participant may result in a default judgement.⁴

The Staff respects Mr. Chaisson's right to a hearing in this proceeding.⁵ Further, the Staff has made its best efforts to accommodate Mr. Chaisson's sometimes unpredictable availability as a *pro se* litigant. The Staff recognizes that the Board is ultimately responsible for the management of the proceeding and has the authority to issue a default judgement in this proceeding.⁶ Despite Mr. Chaisson's current status, the Staff believes that a settlement agreement with Mr. Chaisson can still be achieved. Therefore, to the extent the Board declines to issue a default judgment against Mr. Chaisson, the Staff requests that the Board defer ruling on the joint motion until Mr. Chaisson can attend a teleconference with the Board and parties to discuss the proposed settlement agreement. The Board has indicated its position that a teleconference is necessary prior to taking action on the parties' joint motion.⁷ As Mr. Chaisson's understanding of the terms and effect of the settlement agreement are paramount to successful implementation of the settlement agreement, the Staff supports holding the teleconference requested by the Board.

As an additional matter, the Staff notes that Mr. Chaisson's hearing request has effectively stayed the Staff's July 2014 enforcement order, permitting Mr. Chaisson to engage in

⁴ See *id.* at 3 (citing 10 C.F.R. § 2.320).

⁵ See *In the Matter of James Chaisson*, 79 Fed. Reg. 42,057 (Jul. 18, 2014) (informing Mr. Chaisson of his right to request a hearing).

⁶ See 10 C.F.R. §§ 2.332, 2.320. The Staff notes that incarceration, by itself, should not relieve Mr. Chaisson from the possibility of a default judgement. See *e.g.*, *Jones v. Phipps*, 39 F.3d 158, 163 (7th Cir. 1994) (“[A] jailed litigant ought to be treated neither worse, nor better, than any other party when it comes to the conduct of litigation unless some special circumstance of confinement interferes with her ability to manage legal affairs . . .”). The Staff notes that dispositive motions, such as motions for summary disposition, are not permitted per the Board's initial scheduling order. See *James Chaisson* (Enforcement Action), LBP-14-11, 80 NRC 125, 135 (2014).

⁷ See Memorandum and Order (Rescheduling Prehearing Conference and Suspending Evidentiary Hearing Schedule) (Apr. 29, 2015) at 2-3.

unrestricted licensed activity during the pendency of the hearing.⁸ Permitting this stay to continue indefinitely would be inequitable, should Mr. Chaisson return to performing licensed activities after his incarceration without completing his responsibilities related to his hearing request.⁹ Accordingly, the Staff requests that the Board uphold the Staff's enforcement Order unless and until Mr. Chaisson can engage with the Board and Staff to resume his responsibility with respect to the hearing.

Therefore, the Staff respectfully requests that the Board defer ruling on the joint motion pending Mr. Chaisson's release from incarceration and participation in a teleconference with the Board and the Staff to discuss the terms of the settlement agreement. The Staff also requests the Board to return this matter to the *status quo ante* and uphold the Staff's July 2014 enforcement order to the extent that Mr. Chaisson should be prohibited from engaging in licensed activities until he can resume and fulfil his responsibilities as a participant in this proceeding.

Respectfully submitted,

/RA/

Christopher C. Hair
Counsel for NRC Staff

⁸ See NRC Staff Answer to Request for Hearing (Aug. 5, 2014) at 1 n.3.

⁹ Presumably, Mr. Chaisson would be unable to engage in licensed activities while incarcerated. Accordingly, the Staff is solely concerned with his post-incarceration activities.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "NRC STAFF RESPONSE TO BOARD REQUEST FOR REPORT REGARDING JOINT SETTLEMENT AGREEMENT," dated May 18, 2015, has been served over the Electronic Information Exchange, the NRC's E-Filing System, this 18th day of May 2015.

/Signed (electronically) by/

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