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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
DOCKETING & SERVICE
BR. 303H

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
21st CENTURY TECHNOLOGIES, INC.) Docket No. 030-30266
)
(Fort Worth, Texas))

JOINT PREHEARING REPORT

Pursuant to the Atomic Safety and Licensing Board's "Memorandum and Order (Initial Prehearing Order)," dated July 3, 1997, the staff of the Nuclear Regulatory Commission (Staff) and 21st Century Technologies, Inc. (Licensee) hereby submit a joint prehearing report.

A. Central Issues For Litigation

With two exceptions, which are noted below, the Staff and Licensee do not agree on the central issues of this proceeding. Therefore, the respective positions of the parties are set out separately.

1. Central Issues As Stated by Licensee

Licensee maintains that the central issue is:

- (1) Whether the pattern of NRC actions underlying the Order Imposing Civil Monetary Penalty and the Order itself are beyond the agency's jurisdiction. (Challenge is to all alleged violations.)

This is the primary issue upon which Licensee launched its appeal in the form of a

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Request for Hearing. This contention challenges both the NRC processes for exercise of jurisdiction (i.e., pattern of NRC actions) and the validity of the enforcement order as an instrument of that jurisdictional exercise.

This central issue raises factual issues which must be fully developed on the record.

Those issues include, but are not limited to:

- (2) What were the pattern of actions taken by the Staff in the licensing, investigative and enforcement divisions?
- (3) Were these actions within the scope of statutory authority granted to the Staff by the Atomic Energy Act of 1954, as amended?
- (4) Does the NRC have the right to impose and enforce license conditions which have no reasonable relationship to public health and safety?

Licensee's central issue also puts into controversy the Restatement of Violations set out in the Appendix (Evaluation and Conclusions) to the Order Imposing Civil Monetary Penalty.

For the convenience of the Board, in pertinent part it reads:

Restatement of Violations

- A. License No. 30-23697-01E authorizes the licensee to distribute SRB Technologies, Inc., Model PRH-800/G/200 sealed light sources.

Contrary to the above, from June to August 1995, the licensee distributed tritium sealed light sources from a manufacturer not authorized in the license. (01013)

- B. License Condition 10 of License No. 30-23697-01E authorizes the licensee to distribute sealed light sources in specified gunsights and in specified configurations.

Contrary to the above, from July to September 1995, the licensee distributed tritium sealed light sources in configurations not specified or otherwise authorized in the license. (01023)

These violations represent a Severity Level III problem (Supplement VI). Civil Penalty - \$7,500.

Use of the word “authorizes” and “authorized” in paragraphs A and B implies that the NRC had the jurisdiction to put the challenged requirements in the license. Licensee’s central issue challenges this jurisdiction and, therefore, raises the issue of the validity of the Restatement of Violations. Directly stated, the issue is:

- (5) Whether the Restatement of Violations is invalid because of a lack of agency jurisdiction?

In addition, the designation of a Severity Level III violation set out at the end of the Restatement of Violations may or may not become an issue. If the Board were to agree that the agency is without jurisdiction to do what it did, the question of propriety of the Level III designation would be moot. On the other hand, a ruling against the Licensee on the jurisdictional issue would leave in question the appropriateness of the Level III designation.

In this circumstance, it may be appropriate during the course of the hearing to address the Level III issue by asking:

- (6) Assuming jurisdiction exists, whether the facts and circumstances of this case warrant a designation of Severity Level III?*

As a separate issue related to the Level III question, it may also be necessary to address:

- (7) Whether the facts and circumstances of this case warrant a reduction or elimination of a Civil penalty?*

2. Central Issues As Stated by NRC Staff

- (1) Whether the facts set forth in the May 15, 1996, Notice of Violation and Proposed Imposition of Civil Monetary Penalty occurred as stated.
- (2) Whether the violations represent a Severity Level III problem and warrant a \$2,500 Civil Penalty.

* The Staff agrees that Issues 6 and 7 are appropriate issues for this proceeding.

B. Issues Amenable to a Dispositive Motion

The Licensee contends that none of the central issues are amenable to dispositive motion with discovery. This is because the total facts and circumstances must be set out on the record and be subject to cross examination in order to develop a sound basis for rendering a decision on jurisdictional issues.

The Staff believes that Licensee Issues 4 and 5 and Staff Issues 1 and 2 are amenable to a dispositive motion without discovery. The Staff believes the remainder of the issues are amenable to a dispositive motion with discovery.

C. Length of Discovery

The Licensee believes that discovery can be completed within 30 to 60 days from the start date depending on the availability of witnesses. Regarding the start date, the Licensee's counsel is committed to other business in Asia, the United States and Europe from the date of this filing until his return from Europe during the week of September 21, 1997. Therefore, the Licensee's counsel would beg the Board's indulgence not to start discovery before September 29, 1997, if any discovery is to be conducted.

The Staff estimates that 30 days would be sufficient for discovery.

D. Length of Evidentiary Hearing

The Licensee estimates the time it would take for an evidentiary hearing is one to two weeks. The Staff estimates that it would take 2-4 days.

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D. Settlement

Settlement discussions between the parties have been initiated and are ongoing.

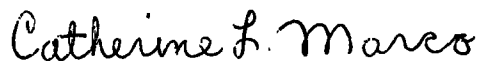
Respectfully submitted,

FOR 21ST CENTURY TECHNOLOGIES, INC.



James R. Tourtellotte
Counsel for 21st Century Technologies, Inc.

FOR THE NRC STAFF



Catherine L. Marco
Counsel for NRC staff

Dated this 5 th day of Aug., 1997

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CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT PREHEARING REPORT" in the above-captioned matter have been served on the following by deposit in the United States mail, first class, as indicated by asterisk or through deposit in the Nuclear Regulatory Commission's internal mail system this 5th day of August, 1997.

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