

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Hearing ITMO Alexander Abrahams  
Denial of Reactor Operator License

Docket Number: 55-71371-SP

ASLBP Number: 16-947-01-SP-BD01

Location: teleconference

Date: Monday, June 27, 2016

Work Order No.: NRC-2471

Pages 1-11

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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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SCHEDULING AND CASE MANAGEMENT CONFERENCE

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In the Matter of: : Docket No.  
ALEXANDER ABRAHAMS : 55-71371-SP  
: ASLBP No.  
(Denial of Reactor : 16-947-01-SP-BD01  
Operator License) :

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Monday, June 27, 2016

Teleconference

BEFORE:

PAUL S. RYERSON, Chair  
E. ROY HAWKENS, Administrative Judge  
DR. GARY S. ARNOLD, Administrative Judge

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APPEARANCES :

On Behalf of the Nuclear Regulatory Commission

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

(11:10 a.m.)

JUDGE RYERSON: Okay, let's go on the record. Welcome, everyone. We're here on the matter of Alexander Abrahams' demand for a hearing on the denial of his reactor operator license.

And I'm Judge Ryerson. I chair the particular Board that's been established to hear this matter. And I'm here with Judge Hawkins and Judge Arnold, and also our clerk, Jennifer Scro.

Before we take the formal appearances of counsel, I'd just like to go over a couple of details. We, of course, have a reporter on the line who will be taking a transcript of this proceeding. And so, if you would try to remember to identify yourself when you speak, you will make the job easier for the reporter.

We have created some listen-only lines for members of the public. There may have been some confusion about which line was which, but do be aware that the public has an opportunity to listen to this, as well as look at the transcript later if anyone wishes to do that.

For the issues we're talking about today, there should not be any need to discuss personal medical information. And so I would remind all

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1 participants on this call, which is on the record,  
2 please do not do that. Again, I don't think the  
3 issues we're talking about today will require that.

4 Before we take the appearances of the  
5 parties, any comments from my fellow judges? Judge  
6 Arnold? Judge Hawkens? Okay, let's begin.

7 As far as I'm aware, Mr. Abrahams is not  
8 on the call. Is that correct? Any -- Mr. Abrahams,  
9 are you there?

10 (No response)

11 JUDGE RYERSON: Okay. Well, let's take  
12 the appearance of whoever is going to be speaking  
13 primarily for the staff, the NRC staff.

14 MR. WACHUTKA: Your Honor, this is Jeremy  
15 Wachutka. I will be representing the NRC staff and  
16 also David Roth will be representing the staff with  
17 me.

18 JUDGE RYERSON: Okay, thank you. Well, I  
19 think in the absence of Mr. Abrahams, it still would  
20 be useful, while we have everyone, to go through what  
21 we had planned to go through and we can talk after  
22 that a bit about what makes sense in terms of  
23 proceeding from here.

24 The first point is, as the Board looked at  
25 this case, we all thought this might be --

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1 (Telephone tone)

2 JUDGE RYERSON: Yes, who joined the call?  
3 Hello?

4 MS. BUCHANAN: Hello, this is Theresa  
5 Buchanan from the Nuclear Regulatory Commission  
6 Operator Licensing Branch.

7 JUDGE RYERSON: Operator -- okay. That's  
8 fine.

9 We're talking about why the Board members  
10 thought that this might be an appropriate case to ask  
11 for appointment of a settlement judge.

12 The NRC staff has contended that Mr.  
13 Alexander's hearing demand was filed late. The staff  
14 also says that the demand is not sufficiently  
15 specific.

16 But regardless of the merits of those  
17 arguments, and the Board is not expressing any view  
18 today about the merits of those arguments, the staff  
19 also acknowledges that Mr. Alexander has the right to  
20 supplement his application with new information at any  
21 time.

22 And, in fact, if the application were to  
23 be denied again with that new information, that would  
24 restart the clock for a further hearing request. So,  
25 there doesn't seem to be any dispute about that. And

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1 so, as a practical matter, this proceeding is in  
2 something of a stalemate, it seems to us. Therefore  
3 --

4 (Telephone tone)

5 JUDGE RYERSON: Yes, who just joined the  
6 call? Hello? No one?

7 Anyway, as I was saying, the Board,  
8 therefore, asked the question, would it be useful to  
9 have a settlement judge outside of adjudicatory  
10 context, somebody who is not ultimately, perhaps,  
11 going to have to decide the case, to just sit down  
12 with the parties and see if it's possible for Mr.  
13 Alexander to obtain a doctor's letter that would be  
14 satisfactory to the staff.

15 That process, obviously, could be done  
16 with confidentiality and there would be no  
17 communication between the settlement judge and the  
18 judges who would, might, ultimately be deciding the  
19 case on the merits.

20 So, what's the -- assuming that Mr.  
21 Abrahams, Abraham, can be reached eventually, and we  
22 had some problems with the codes here, what's the  
23 staff's view on whether a brief period of time to see  
24 if a settlement judge would be effective, whether  
25 that's worth doing?

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1 MR. WACHUTKA: Your Honor, Jeremy Wachutka  
2 from the NRC staff. Of course, as per the  
3 regulations, it would have to be a joint motion  
4 between the parties for a settlement judge. But the  
5 NRC staff would be agreeable to such an arrangement.

6 The NRC staff believes that, for the scope  
7 of the, as you said, for the scope for the settlement  
8 proceeding, the settlement negotiation, the staff  
9 couldn't negotiate about whether the application, as  
10 it currently stands, is sufficient. The staff is  
11 bound to that insufficient and the staff isn't willing  
12 negotiate that.

13 However, as you mentioned also, in 10 CFR  
14 Part 55 Section 31(c), there's also the option of  
15 supplementing the application. And so, with denial  
16 letters, the staff tried to make clear that it had a  
17 specific reason for denying and the specific reason  
18 was a medical reason.

19 And so, we think if settlement  
20 negotiations were conducted, there could be a way to  
21 say, your current application is not sufficient.  
22 However, there are actions that you could take and you  
23 could get together and to discuss exactly what those  
24 actions would have to be.

25 And so, Mr. Abrahams, if you successfully

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1 did these actions, then we could find the application  
2 is sufficient and we could issue an operator license.  
3 So when it's limited to that scope, Your Honor, the  
4 NRC staff would be amenable to a settlement  
5 negotiation.

6 JUDGE RYERSON: Okay. Well, as you point  
7 out, the rule says that there must be a joint  
8 application here. I take it, then, that if we are  
9 able to reach Mr. Abraham and he is also interested in  
10 having a settlement judge appointed, we can deem that  
11 a joint application and we will ask for the  
12 appointment of a settlement judge.

13 I think if that happens, my sense would be  
14 that we ought to have a fairly short time period to  
15 see whether that is a productive exercise, maybe 20  
16 days or so. If the settlement judge feels that the  
17 discussions are useful and should be continued, of  
18 course, he could ask for additional time.

19 So, that's where we're kind of coming out,  
20 I think. And I will say, then, that if we are not  
21 able to reach Mr. Abraham or if he does not wish to  
22 have a settlement judge appointed, then we will decide  
23 the case on the present record.

24 Mr. Abraham did not file a timely reply.  
25 I suppose if he wishes to pursue this, we would

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1 probably schedule an argument at that time for further  
2 consideration of what is on the record now. But I  
3 think, one way or the other, I think it's in  
4 everyone's interest to try to move this particular  
5 matter along promptly.

6 So, basically, where we are is that the  
7 Board will endeavor to reach Mr. Abraham. At least in  
8 part, I think, it's our fault, perhaps not having  
9 given, left with him, the correct number.

10 And again, if we are unable to reach him,  
11 we will simply decide the case on the current record.  
12 And if we are able to reach him and he consents to a  
13 settlement judge, we will deem that a joint motion and  
14 file an appropriate order or request for appointment  
15 of a settlement judge.

16 So, I think that's where we are. I think  
17 that probably concludes our business today. Judge  
18 Hawkens, anything further? Judge Arnold, any --  
19 staff, any comments at this point?

20 MR. WACHUTKA: Your Honor, the staff would  
21 just say, if Mr. Abrahams wants to challenge the  
22 current denial and say that my current application is  
23 sufficient, then we don't think that would be valid to  
24 go to negotiation.

25 But if he wants to say, if he wants to

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1 negotiate how he could make his application  
2 sufficient, we would like to engage in negotiations  
3 and come up with a plan forward by which he could make  
4 his application sufficient. Similar to the 55.31(c)  
5 process.

6 And the only other question that the staff  
7 had, would this affect a stay of the proceeding such  
8 that we would go off, we'd do settlement negotiation.  
9 If they weren't successful, then we would come back  
10 before this Board again and then we would argue the  
11 admissibility argument, because that staff doesn't  
12 want to forfeit its admissibility argument.

13 JUDGE RYERSON: Yes. No, when you say the  
14 admissibility argument, do you mean the adequacy of  
15 the hearing demand?

16 MR. WACHUTKA: Yes. The staff filing that  
17 the hearing demand shouldn't be admitted because it  
18 was late and also because it didn't specify a facially  
19 plausible reason.

20 JUDGE RYERSON: Yes. No, we clearly  
21 understand. You're not waiving those arguments at  
22 all.

23 And again, that's one reason why I suggest  
24 a relatively short time frame, if we have a settlement  
25 judge, to try to see whether that works and we would

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1 then expect to reach a decision on the current record,  
2 considering both of your arguments, very promptly  
3 thereafter.

4 MR. WACHUTKA: Okay, the staff is ready  
5 proceed in negotiations whenever Mr. Abrahams is.

6 JUDGE RYERSON: All right. Well, we will  
7 be back in some form on that after we attempt to reach  
8 Mr. Abraham. Judge Hawkens?

9 JUDGE HAWKENS: This is Judge Hawkens.  
10 I'm wondering, has there been any communication  
11 between the staff and Mr. Abrahams since he filed his  
12 demand email?

13 MR. WACHUTKA: No, Your Honor, there  
14 hasn't. We provided him with the denial letters and  
15 I think he, before he applied it, submitted his  
16 hearing demand, he communicated with Becky, you know,  
17 just to help him with the technical aspect, but the  
18 staff hasn't talked to him about his denial otherwise.

19 JUDGE HAWKENS: Thank you.

20 JUDGE RYERSON: Okay, thank you. All  
21 right. If no one else has anything further, we stand  
22 adjourned. Thank you.

23 (Whereupon, the above-entitled matter was  
24 concluded at 11:22 a.m.)

25