

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Safety Light Corporation, United States Radium Corp., USR Industries, Inc., USR Lighting, Inc., USR Chemicals, Inc., USR Metals, Inc., USR Natural Resources, Inc., Lime Ridge Industries, Inc., Metreal, Inc.

Docket No. 030-05980, 030-05982, 030-05981, 030-08335, 030-08444, ASLBP No. 89-590-01-UM

LOCATION: Bethesda, Maryland

DATE: Friday, October 27, 1989

PAGES: 73 - 105

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ANN RILEY & ASSOCIATES, LTD.

1612 K St. N.W., Suite 300
Washington, D.C. 20006
(202) 293-3950

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 -----X

4 In the Matter of: :

5 SAFETY LIGHT CORPORATION :

6 UNITED STATES RADIUM CORP. : Docket Nos. 030-05980

7 USR INDUSTRIES, INC. : 030-05982

8 USR LIGHTING, INC. : 030-05981

9 USR CHEMICALS, INC. : 030-08335

10 USR METALS, INC. : 030-08444

11 USR NATURAL RESOURCES, INC. : ASLBP No. 89-590-01-OM

12 LIME RIDGE INDUSTRIES, INC. :

13 METREAL, INC. :

14 -----X

15 Friday, October 27, 1989

16 Nuclear Regulatory Commission

17 4350 East West Highway

18 Bethesda, Maryland

19 The above-entitled matter came on for telephone

20 prehearing conference at 1:04 p.m., before the Atomic Safety

21 and Licensing Board, when were present:

22

23 BEFORE: HELEN F. HOYT, JUDGE

24 FREDERICK J. SHON, JUDGE

25 OSCAR H. PARIS, JUDGE

1 APPEARANCES:

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On behalf of the U.S. Nuclear Regulatory Commission:

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ROBERT M. WEISMAN, Esquire

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JOSEPH RUTBERG, Esquire

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On behalf of Safety Light Corporation:

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D. JANE DRENNAN, Esquire

11

Wunder, Ryan, Cannon & Thelen

12

1615 L Street, N.W., Suite 650

13

Washington, D.C. 20036

14

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On behalf of USR Industries, et. al.:

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17

GERALD CHARNOFF, Esquire

18

Shaw, Pittman, Potts & Trowbridge

19

2300 N Street, N.W.

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Washington, D.C. 20037

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P R O C E E D I N G S

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2 JUDGE HOYT: This is a telephone prehearing
3 conference conducted with the following parties: Mr. Gerald
4 Charnoff, representing USR Industries; Mr. Weismar with Mr.
5 Rutberg from the NRC Staff; and counsel for Safety Light, Ms.
6 Drennan.

7 The following people here on the Board are present:
8 Judge Hoyt, Judge Shon and Judge Paris.

9 The Reporter has the equipment on. As I understand
10 it, we are being recorded. Is that correct?

11 THE REPORTER: That is correct.

12 JUDGE HOYT: Thank you.

13 And we will ask each of the parties to identify
14 themselves each time that you speak. And the obvious reason
15 for that is that the Reporter does not know the sound of your
16 voice and would not know who to attribute the remarks to, were
17 you not to identify yourselves.

18 Thank you very much. And we will begin by, since Mr.
19 Charnoff has set up this call, sir, we will give you the first
20 opportunity here. Please.

21 MR. CHARNOFF: Thank you very much. This is Gerald
22 Charnoff speaking. I understand that the purpose of the phone
23 call is to consider the Board's request of a week ago Thursday
24 in our last prehearing conference, when I had raised the
25 question as to the suspension of the Immediate Effectiveness

1 Order, and there was some discussion at the prehearing
2 conference with respect to asking Mr. Weisman to ask the Staff,
3 his client, consider some form of stay for us while we are
4 challenging the jurisdiction and immediate effectiveness
5 questions.

6 I also forwarded to Mr. Weisman and Ms. Drennan and
7 the Board copies of an offer in good faith by my client to put
8 something on the table pending determination of the
9 jurisdictional and other questions which, if we were to lose on
10 that matter, would then immediately be deposited and be
11 available for use in connection with the site characterization
12 study or the purposes for the trust fund that SLC has been
13 setting up.

14 JUDGE HOYT: Mr. Charnoff, let me interrupt you at
15 this point. This is Judge Hoyt.

16 That is the situation that you have described that
17 was conveyed in a letter dated October 25, 1989 --

18 MR. CHARNOFF: Right.

19 JUDGE HOYT: -- addressed to Mr. Weisman, and served
20 on all the parties to this proceeding.

21 MR. CHARNOFF: That is correct.

22 JUDGE HOYT: Thank you.

23 MR. CHARNOFF: And then I heard this morning, and Mr.
24 Weisman can speak for himself, that the Staff was turning down
25 that proposal and offered a counteroffer, the elements of which

1 I noted to be that A, that if USR were to admit jurisdiction of
2 the NRC over it, and also accept full responsibility for
3 cleanup of the site, and if USR were to commit all available
4 assets to funding the trust, and if USR were to place no hold
5 on disbursing funds from the trust, the Staff would somehow or
6 other give us some more time undefined.

7 JUDGE HOYT: Let me interrupt again, at this point,
8 Mr. Charnoff. Hoyt here. You have not served that response on
9 the Board have you, Mr. Weisman?

10 MR. WEISMAN: No.

11 JUDGE HOYT: Very well. That's all right. I just
12 want to be sure that we have it understood it is not in the
13 record. Thank you.

14 My apologies again, Mr. Charnoff. Please continue,
15 sir.

16 MR. CHARNOFF: I was just going to conclude.

17 That was an oral response from Mr. Weisman. I
18 haven't seen anything in writing. And I advised Mr. Weisman
19 that I thought that that responsive counteroffer was not
20 responsive at all, and doesn't move the ball forward at all.
21 And I thought we ought to go ahead with the prehearing
22 conference today, which we had contemplated a week ago
23 Thursday. And that's where we're at.

24 I also understand the second agenda items may be a
25 document from Mr. Weisman, a copy of which the Board told me

1 this morning it had received, but I haven't yet received, which
2 relates to the production of documents.

3 But Mr. Weisman did advise me the other day that he
4 was going to send out a letter to the Board and hopefully to me
5 and Ms. Drennan, advising us of the status of the production of
6 the licensing documents, some of which we have received, but
7 not all of which have been given to us.

8 Those I think are the two issues on the table for
9 this afternoon's conference call.

10 JUDGE PARIS: Is that the fax?

11 JUDGE HOYT: Yes. That's his fax.

12 MR. CHARNOFF: Mr. Weisman may want to confirm my
13 representation of what he told me this morning, or disagree
14 with it. I hope I captured it correctly.

15 JUDGE HOYT: All right. I think, Mr. Charnoff, we
16 should permit Mr. Weisman to give us the Staff position so that
17 if there is anything not reflected in your remarks, he will
18 have an opportunity to put the staff position firmly on the
19 record at this point.

20 Mr. Weisman.

21 MR. WEISMAN: Your Honor?

22 JUDGE HOYT: Yes.

23 MR. WEISMAN: This is Mr. Weisman speaking.

24 JUDGE HOYT: Yes.

25 MR. WEISMAN: The Staff position with respect to Mr.

1 Charnoff's offer, or Mr. Charnoff's client's offer, rather, was
2 that though it was styled as a request to be treated
3 identically to Safety Light, in fact, the substance asked for
4 more benefits than what the Staff has allowed Safety Light.
5 And the primary, the Staff's primary concern is that Safety
6 Light has not challenged the Staff's jurisdiction. Safety
7 Light has at least appeared to acknowledge its responsibility
8 for the site, and appears to be cooperating with the staff as
9 best it can.

10 USR Industries, on the other hand, is not attempting,
11 does not appear to be attempting to comply with the August
12 Order.

13 Accordingly, in the Staff's view, granting any
14 extension of time or stay to USR would not further assist in
15 obtaining compliance with the Order. All it would do would be
16 to assist USR in its litigation. And that essentially is the
17 Staff's position.

18 MR. CHARNOFF: This is Gerry Charnoff. I do not
19 believe I characterized it or styled it, the request that we
20 put in, to be treated like Safety Light. We very specifically
21 recognized in my letter, which I don't have in front of me,
22 that we are and did challenge, and indicated to the Board we
23 are going to challenge, and the Board has agreed to a hearing
24 schedule to consider the challenges to jurisdiction and
25 immediate effectiveness, and clearly the going-in posture of my

1 client is that there are substantial and significant questions
2 in the areas identified in our pre-hearing conference last week
3 as issues for this hearing. And nowhere did I say that that
4 also is Safety Light's posture. Now the Staff has come back
5 and said you must drop all your challenges in order to get
6 considered.

7 Well, that is a possible Staff response, but it
8 certainly, to me, seems to be saying, please drop all your
9 defenses and just come along and join the party, fellows. And
10 we are not about to do that.

11 We think there are significant questions. And
12 frankly, if the NRC does not have jurisdiction over us, I can't
13 waive jurisdiction.

14 So that the Staff response, it seems to me, was
15 really not very thoughtful. I don't need adjectives to deal
16 with it. But it does seem to me that it is not responsive to
17 where I thought we were headed, which is, what do we do in the
18 meantime while the Board is considering questions that we
19 responsibly have brought up.

20 MR. WEISMAN: This is Mr. Weisman speaking. And I
21 think the Staff's responses, in the meantime, comply with the
22 Order.

23 JUDGE HOYT: All right. Anything else from either of
24 you two gentlemen?

25 [No response]

1 JUDGE HOYT: Ms. Drennan, I assume that, since this
2 is a difficulty between the two other counsel, you have nothing
3 to contribute to Safety Light's position. Is that correct?

4 MS. DRENNAN: Well, I just want to update you on
5 where we are right now.

6 JUDGE HOYT: I'm sorry, Ms. Drennan, we can't hear
7 you.

8 MS. DRENNAN: Can you hear me now?

9 JUDGE HOYT: Yes, that is better.

10 MS. DRENNAN: Judge Hoyt, I would like to update you
11 as to where we are right now.

12 Now, all the parties to the proceeding, Mr. Weisman
13 and I have to get together to finalize the trust agreement
14 before we can fund it.

15 I have finally gotten all the papers to the bank,
16 Security Trust Corporation. They are now the trustee, and they
17 are now the bank. And we still have the settlement agreement
18 itself to finalize.

19 As for the shipments of tritium, they have not yet
20 commenced, nor as the Secretary of the Department of Energy
21 approved their commencing.

22 He is having a meeting, the Secretary of Energy, with
23 his staff today, and will come out with a policy as to whether
24 the tritium shipments can commence.

25 Assuming that that response is yes, we can then have

1 the shipments commence on a regular basis after the hiatus at
2 the end of July, I think we are going to be able to sit down
3 with the NRC Staff and work out an actual schedule of payments.

4 If the Secretary of Energy continues to hold up the
5 shipment of tritium, we are going to be at somewhat of a
6 disadvantage in trying to project our payments.

7 So I am hoping by the end of the day that I am going
8 to be able to advise Mr. Weisman what our status is as to that.
9 I just wanted to make sure that you, Judge Hoyt, and Judges
10 Shon and Paris, understood what was also going on with Safety
11 Light.

12 JUDGE HOYT: Thank you, Mr. Drennan. Judge Shon, do
13 you have something you want to say?

14 [No response]

15 JUDGE HOYT: I must say that -- and this is Hoyt -- I
16 am disappointed in the failure of the parties, USR Industries
17 and the Staff, to reach some sort of an accommodation here. I
18 think, and I am going to be rather candid here, in saying that
19 I think that there have been some hardline positions taken.
20 And I don't know what has motivated the hardening of the
21 positions in there.

22 I must say I am disappointed and I cannot understand.
23 One thing, Mr. Weisman, that bothers me a great deal is that
24 the Staff is not telling us why it is you feel that USR
25 Industries is any more, or rather, let me back off of that and

1 put this in a different way.

2 I don't understand, from what the Staff has submitted
3 to us, what the problems you find with USR Industries and why
4 you can't reach something with them. You've done it with
5 Safety Light. And yet in here I hear nothing but some
6 conclusions that you've found that they have enacted, and I
7 believe the term was "in good faith." And I haven't seen any
8 bad faith demonstrated. And unless you can do that, Mr.
9 Weisman, I am at a loss to understand what it is that is so
10 hardening your positions. And I think that we want to know
11 that.

12 Judge Shon has something he wants to add here.

13 JUDGE SHON: Yes, I do. Mr. Weisman, when you do
14 address that, I would like you to address in particular another
15 point.

16 One of the things that you seem so adamant --

17 MR. WEISMAN: Pardon me, Judge Shon. Can you speak
18 up, please? I'm having difficulty.

19 JUDGE SHON: Yes. One of the things that the Staff,
20 your client, seems so adamant about is that USR Industries has
21 to agree that they have, that the Staff has jurisdiction. But
22 what is exactly the point of USR Industries' objection to this
23 whole proceeding. They don't think you do.

24 As to that being different from Safety Light, of
25 course it is. Safety Light's name is on the license, or at

1 least on the copies of the license you gave me. It is entirely
2 possible that maybe in this respect USR should be treated
3 differently.

4 Would you address that?

5 MR. WEISMAN: Yes. Robert Weisman speaking.

6 Judge Shon, I think that that is half of the Staff's
7 reasons. It is precisely that Safety Light admits
8 jurisdiction, and is attempting to comply, that is the primary
9 difference. USR is not attempting to comply with the Order.

10 JUDGE HOYT: Mr. Charnoff -- this is Hoyt -- why is
11 it that you are making this exception when USR Industries has
12 every right to announce, to state, to put forward any defense
13 they may have. And they say, if the ultimate determination is
14 that the jurisdiction of the Commission is over our industries,
15 then the money we are going to put up can stay there. However,
16 if at the end of that time, at the end of the case, when the
17 decision would be in favor, if it were to be in favor of USR
18 Industries, the money would be returned, and they want the
19 interest that would have accrued on the money. I think that is
20 a very reasonable assumption that a party would take.

21 Why is it that you demand that they waive their
22 right?

23 MR. CHARNOFF: Excuse me. This is Gerry Charnoff.
24 Judge Hoyt, I agree completely with your question.

25 JUDGE HOYT: Well, let's let Mr. Weisman answer it,

1 then.

2 MR. CHARNOFF: But you introduced it by saying "now,
3 Mr. Charnoff" and I just want to correct the transcript about
4 that.

5 JUDGE HOYT: Oh, very well. My apologies, then, Mr.
6 Charnoff. If I misspoke myself, I am addressing these remarks
7 --

8 MR. CHARNOFF: I was just correcting it for the tape.

9 JUDGE HOYT: Thank you. Thank you very much.

10 Mr. Weisman, did you understand that I was addressing
11 the remarks to you?

12 MR. WEISMAN: I certainly did.

13 JUDGE HOYT: Thank you, sir. Now, go ahead. And
14 thank you, Mr. Charnoff, for your correction.

15 MR. CHARNOFF: Thank you.

16 MR. WEISMAN: Robert Weisman speaking.

17 The primary bone of contention here is that the staff
18 has made a determination that a site characterization plan has
19 got to begin immediately. That is why the Order is immediately
20 effective. That is final agency action. Mr. Charnoff has
21 filed a Petition for Review in the Court of Appeals. But in
22 the interim, that immediately effective order should be
23 implemented.

24 The Staff is eager to begin characterizing this site
25 so we can fully understand the nature of the hazards on the

1 site. And it is that technical reason that makes it imperative
2 to be able to A, deposit money in the trust fund and B,
3 disburse that money to characterize the site.

4 JUDGE HOYT: Mr. Weisman, you are only going to get
5 \$20,000. You don't even have that yet in hand, because, as Ms.
6 Drennan has explained to us this morning, she is dealing with
7 final associations of making these things come up, these funds
8 to be made available. I'm sorry. I've muddled my words there.
9 But you don't have that \$20,000 from Safety Light.

10 Yet, here is USR Industries saying look, here is your
11 \$20,000 in addition which will be held in escrow until the
12 final determination of the challenges are made. Now, you are
13 going to have \$40,000 if you go with this. And you are going
14 to have \$20,000, hopefully, if Ms. Drennan's client does in
15 fact, and in good faith has apparently done so, made this money
16 available to you.

17 All right, go ahead.

18 MR. WEISMAN: My understanding is that the trust
19 agreement will be executed today and funded with \$20,000.

20 JUDGE HOYT: Right.

21 MR. WEISMAN: Now, the Staff is negotiating is Safety
22 Light for continuing payments. We have not yet met to decide
23 -- agree on what size payments will be acceptable, but that is
24 something that's a matter for negotiation within, the Staff
25 hopes, the next few weeks.

1 Our office has not given any indication that there
2 would be any additional payments.

3 JUDGE HOYT: Well, in your counter offer to him,
4 Mr. Weisman, did you ask for that?

5 MR. WEISMAN: Yes we did and Mr. Charnoff did reply
6 that he would ask his client once we had made an agreement with
7 Safety Light.

8 If he -- of course, Safety Light's financial
9 circumstances are completely different from USR's. If you USR
10 -- USR will have to make if they want to negotiate, they're
11 going to have to make the same kind of presentation to us, give
12 us the same kind of -- give us their financial background, so
13 that we have something to negotiate over.

14 The other matter is that Safety Light, the money in
15 the trust that Safety Light is funding, the Staff and Safety
16 Light, the trustee, rather, will be able to disburse to
17 initiate a characterization study.

18 JUDGE HOYT: I don't read, Mr. Weisman, anything, and
19 perhaps let me address this to Mr. Charnoff.

20 Mr. Charnoff, I don't read anything in your letter of
21 October 25 to Mr. Weisman, I don't read anything in there that
22 says that those funds which you would establish, i.e. the
23 \$20,000, could not be disbursed.

24 MR. CHARNOFF: No, I did say in the letter it would
25 be held in escrow until final determination.

1 JUDGE HOYT: Yes, I'm sorry, that's paragraph B,
2 isn't it, yes. All right, I'm sorry, go ahead.

3 MR. CHARNOFF: The only comment that I'd make is that
4 when Mr. Weisman said about future payments I said tell me what
5 you're going to be getting from Safety Light and I'll be glad
6 to talk about it. I have no idea whether we can go beyond what
7 we've talked about. Our financial condition. We're also
8 talking about company's that haven't recorded any profits for a
9 couple of years and they do have our tax returns which were
10 submitted to the Staff a couple of months, I guess, by the
11 previous counsel.

12 Apart from that, my issue is really very simple. I
13 don't know why they don't go to anybody on the street and say
14 put up some money for a fund. If they have no jurisdiction
15 over my clients, and that remains to be determined, then it
16 seems to me that if they're really very concerned about getting
17 on with the study, maybe the NRC ought to fund it if it's so
18 crucially important to get on with it and recover the funds
19 from us later if they have a right against us.

20 We don't think they have a right against us.

21 I was putting up with my client's consent a gesture
22 of good faith to show that there would be at least some
23 equivalence to the initial payment by Safety Light. I don't
24 know what else Safety Light will do in the future and when they
25 determine that with the NRC I'll be glad to look at that to see

1 whether we should add to our good faith commitment but I'm not
2 about to yield on the fundamental questions here of
3 jurisdiction until those matters are resolved. It's really
4 remarkable for a government agency to come against somebody
5 whom they may no jurisdiction over and say go put up some
6 money.

7 MR. WEISMAN: Mr. Weisman speaking. Clearly the
8 Staff is completely convinced that it has jurisdiction over USR
9 Industries or it would not have taken any action against USR
10 Industries.

11 JUDGE HOYT: Well, that's the question to be
12 determined, though, isn't it Mr. Weisman? That the Staff has
13 made that decision but I don't think there is any binding
14 decision elsewhere on it.

15 MR. WEISMAN: Yes, Your Honor, and of course that's
16 why we're in litigation.

17 JUDGE HOYT: Exactly. One moment.

18 [Short pause.]

19 JUDGE HOYT: I apologize for taking a delay here, but
20 the Board has determined that it will grant to USR Industries a
21 stay pending the decision of this Board as to whether or not
22 the NRC Staff does have jurisdiction over USR Industries. As
23 we've indicated to you gentlemen before, and Ms. Drennan, the
24 Board is unavailable to execute this order next week -- or, to
25 prepare this order next week, and we will do that on our first

1 day returning to this office, which will be November 13 -- I
2 beg your pardon, November 6. On that date we will send out the
3 written confirmation of this order that we are now issuing from
4 this Board.

5 MR. WEISMAN: Your Honor, Mr. Weisman speaking.

6 JUDGE HOYT: Yes.

7 MR. WEISMAN: I would object to that because the
8 Virginia Jobbers factors have not been addressed, the Staff has
9 not had an opportunity to reply to how those factors might
10 apply to this case and I would argue that Mr. Charnoff has not
11 addressed those factors to this Board and that those factors
12 must be addressed before the Board can grant a stay.

13 JUDGE SHON: Mr. Weisman, Section 10 CFR 2.788
14 specifically applies the Virginia Jobbers factors only to stays
15 of decisions on the parts of licensing boards and the appeal
16 boards. It has nothing said whatsoever as far as I can see,
17 I've looked the Section over pretty closely, it appears to me
18 to be completely silent on matters of stays with regard to
19 issuances of orders by officials and the Staff.

20 MR. WEISMAN: Judge Shon, I agree with that. No
21 provision that I could find applies to orders, stays granting
22 -- stays of orders of the Staff. I would propose that the
23 traditional four factors would apply to that, although I
24 suppose one could make the argument that if there is no section
25 in the regulations that allows the licensing board to grant a

1 stay, then the licensing board would not have authority to
2 grant a stay.

3 JUDGE SHON: 2.718.

4 MR. CHARNOFF: That's really odd given the fact that
5 the order -- this is Mr. Charnoff -- the orders carried with
6 them the opportunity to request a hearing and the counsel for
7 at least my clients at the time did indicate that they were
8 challenging immediate effectiveness as part of the order and it
9 does seem to me that that's inherently within the jurisdiction
10 of a licensing board.

11 MR. WEISMAN: Mr. Weisman speaking. I would reply to
12 that by saying the immediate effectiveness is final agency
13 action which is reviewable only in a Court of Appeal,
14 therefore, a stay of the immediate effectiveness should be
15 requested from the Court of Appeal, if a stay from the
16 immediate effectiveness is part of the order is what USR
17 Industries desires.

18 MR. CHARNOFF: We have the opportunity to go either
19 and we went into the Court of Appeal simply to protect our
20 rights but we also were going before the Board and we advised
21 the Board and the Staff of that a week ago Thursday.

22 MR. WEISMAN: I would also reply that the Virginia
23 Jobbers criteria would have to be satisfied whether you went
24 before the Court -- whether USR Industries went before the
25 Court of Appeal or before the licensing Board.

1 MR. CHARNOFF: Well, I'm content to say thank you to
2 the Board and that if the Board wishes us -- if you'll recall,
3 my proposal was to suspend the immediate effectiveness, that we
4 will with the briefs on jurisdiction and other matters also
5 file a request for a stay and we can discuss those criteria of
6 the Virginia Patrolling Jobbers in those briefs and the Board
7 can then consider it. I'm content to deal with that. I think
8 that's a fair way to deal with it.

9 MR. WEISMAN: Well, the Staff will be prepared to
10 address those criteria in short order.

11 JUDGE HOYT: One moment, please.

12 [Short pause.]

13 JUDGE HOYT: Very well, gentlemen, thank you for your
14 participation on that.

15 What the Board is willing to do is to permit --

16 MS. DRENNAN: May I ask for some clarification as to
17 the Board's order? Is this appropriate?

18 JUDGE HOYT: No -- just a moment, Ms. Drennan, let me
19 put this in and I think it may answer some of your questions.

20 The Board has elected to permit the filing of briefs
21 which will be in this office, delivered to us, by November the
22 6th, when the Board will return.

23 We will not issue, as we indicated earlier, any
24 orders anyway before that date and we would like to have the
25 arguments put forward in the briefs that you will submit to us

1 on November the 6th on the limited issue of whether the Board
2 can stay the order at this time -- or, stay the immediate
3 effectiveness of the order at this time.

4 We'll take those briefs separate from the other
5 briefs that are coming in somewhat later.

6 Now, does that answer your question, Ms. Drennan?

7 MS. DRENNAN: Well, Your Honor, I need just some
8 clarification. If you are staying the effectiveness of the
9 order until November 6th until briefs are filed to make some
10 determination on whether the Board can stay the effectiveness,
11 does that mean that the order -- the effectiveness of the order
12 is stayed for all parties until November 6th?

13 Mr. Charnoff's proposal has two prongs to it. First,
14 he doesn't want the Board to -- doesn't want the order to be
15 effective until he has the opportunity for the Board to exam
16 the jurisdictional issue.

17 JUDGE HOYT: Yes.

18 MS. DRENNAN: Secondly, if the Board should make a
19 finding that USR is subject to jurisdiction, the next question
20 is what should be the scope of any studies that are conducted?

21 The second issue is of particular importance to
22 Safety Light and impacts Safety Light, so when you're -- today
23 when you're making rulings I understand you're going to the
24 effectiveness, the immediate effectiveness of the order, I just
25 want to make it in my own mind, does this also stay it for

1 Safety Light until the briefs are filed? And are terminations
2 made by the NRC?

3 JUDGE HOYT: Mr. Weisman?

4 MR. WEISMAN: I --

5 JUDGE HOYT: Do you want to answer any of that?

6 MR. WEISMAN: Well, the Staff has before it a request
7 for extension of time of Safety Light. I think that, you know,
8 I would make the same argument that a stay should not be
9 granted to any of the parties without a brief -- without briefs
10 on the issues.

11 JUDGE HOYT: Well, then in effect you're saying that
12 you're agreeing with us, that we'll hold off on everything,
13 we'll stay everything until the briefs come in on the 5th on
14 this limited issue of whether or not we can issue the stay.

15 MR. WEISMAN: Well, no, I would not agree that the
16 order should be suspended pending receipt of the briefs. I
17 think that if the parties want to stay then they should submit
18 briefs, the Staff will reply, and a ruling made on that basis,
19 but I do not believe that a stay should be granted in the
20 absence of briefs on the issues.

21 JUDGE HOYT: Well, Mr. Weisman, I think you've given
22 us some Catch-22's but you haven't given us any answers. What
23 we're going to do is we're going to treat all the parties
24 equally here. If Ms. Drennan feels that she's going to have to
25 be covered by it then the Board will certainly -- certainly

1 feels that we will make any order that we issue -- any decision
2 we are giving you at this point are effective -- I'm sorry,
3 applicable to both sides, both USR and to Safety Light.

4 Therefore, the briefs that will be coming into us on November
5 6th will be addressing the issue and that time we will decide
6 whether or not we're going to issue this order as a result of
7 our decision here.

8 I must confess that I can't go but one direction and
9 that is either we do or we don't or we will or we won't and
10 what we're hearing here is you want one thing, Mr. Weisman, to
11 apply and it's going to be your way or no way and we're going
12 to have to find out what it is that the parties are having
13 problems with and maybe Mr. Charnoff can address that in his
14 brief and why he can't get the same result that was given to
15 the Safety Light people.

16 That is all we're going to give you on that
17 particular issue. Now, the next problem that we've got is the
18 letter that came in, Mr. Weisman, from you this morning by
19 fax --

20 MR. WEISMAN: Judge Hoyt?

21 JUDGE HOYT: Yes?

22 MR. WEISMAN: May I ask a clarification?

23 JUDGE HOYT: Go ahead.

24 MR. WEISMAN: On next Friday, do you want all the
25 parties to file briefs on the 6th of November?

1 JUDGE HOYT: I thought I said all the parties. If I
2 didn't, I certainly will say it at this time. All parties will
3 file a brief on November the 6th.

4 MR. WEISMAN: And that is addressed to the limited
5 issue of a stay?

6 JUDGE HOYT: Of the stay. You are correct.

7 MR. CHARNOFF: Of whether the Board can issue the
8 stay.

9 JUDGE HOYT: That's correct, the stay, which is what
10 this Board can do or cannot do, depending upon -- the stay's in
11 effect.

12 MS. DRENNAN: Your Honor, November 6th, I think, is
13 Monday. Is that correct?

14 JUDGE HOYT: That's correct. Mr. Weisman described
15 it as Friday but it is Monday the 6th and let me say that the
16 briefs will be delivered to this office, the Office of the
17 Board, by the close of business on November the 6th.

18 MR. WEISMAN: Thank you, Your Honor.

19 JUDGE SHON: This is Judge Shon. We want to address
20 whether the Board can, that is, is it ultra vires or not for
21 the Board to issue such a stay. Can we do so. We also want
22 you to address should we do so, that is, if you wish -- if you
23 believe they apply, address the Virginia Jobbers criteria in
24 that case.

25 JUDGE HOYT: All right, thank you, Judge Shon. That

1 does add some necessary material there.

2 Now, let's get back to the October 26th letter that
3 was served on the Board this morning and apparently Mr. Weisman
4 you got some document problems there, oversized drawings you
5 speak to, and some documents that are have a proprietary
6 confidential and undisclosed -- I'm sorry, proprietary and
7 confidential matters pertaining in them that you're asking not
8 distribute. I think that what we're going to do is we're going
9 to require that the original schedule that we set up of briefs
10 being due from you, Mr. Charnoff, on USR, on November the 8th,
11 we're going to ratchet this time forward for all events by one
12 week which will give us the following schedule.

13 The schedule of your brief will be due now on
14 November the 15th, 1989, the documentation that you speak to at
15 page 44 of the transcript.

16 Ms. Drennan, we will get from you not on November the
17 16th as originally scheduled but now on November the 24th.

18 The response of the NRC Staff to the USR brief we
19 will expect now on November -- correction, on December the 5th,
20 1989.

21 Mr. Charnoff, your rebuttal will be due on December
22 19, 1989.

23 Is that agreed to by all parties?

24 MR. CHARNOFF: That's fine, thank you.

25 JUDGE HOYT: Yes, very well. Mr. Weisman?

1 MR. CHARNOFF: Mr. Weisman's letter to you, was a
2 copy sent to me?

3 JUDGE HOYT: I don't see this copy addressed to you
4 specifically but the service list, which will I assume will be
5 delivered to you. Why you have not received it yet I don't
6 know and Mr. Weisman will you please see, sir, that that is
7 faxed down to Mr. Charnoff this afternoon no later.

8 MR. WEISMAN: Yes, Your Honor.

9 JUDGE HOYT: Thank you.

10 MR. WEISMAN: Both letters were to have been
11 distributed yesterday and I am a little bit at a loss. I will
12 certainly fax Mr. Charnoff and Ms. Drennan copies of that
13 letter as soon as this meeting is over.

14 JUDGE HOYT: I got the fax this morning at 9:43, so
15 apparently your office staff did not send it out as you had
16 directed on the 26th, Mr. Weisman, that's the time-date that
17 our machine put on it here.

18 MR. WEISMAN: Yes, yes.

19 JUDGE HOYT: Very well.

20 Are there any additional matters?

21 MR. CHARNOFF: No. Thank you very much. I
22 appreciate that.

23 MR. WEISMAN: I would like to make -- this is Mr.
24 Weisman -- I would like to make one more, ask one more
25 clarifying question.

1 And that is, if on November 6, Mr. Charnoff applies
2 the factors of Virginia Jobbers, the Staff believes the burden
3 is on the proponent and the Staff would request an opportunity
4 to respond to that portion of Mr. Charnoff's brief.

5 JUDGE HOYT: Well, we certainly can't deny you the
6 opportunity to respond, Mr. Weisman. The problem I am going to
7 see now developing is that you are going to want a week or ten
8 days or something to respond to that. I certainly think that
9 the issues have been so finely drawn by now that you would have
10 known, you would pretty much know what you are going to respond
11 anyway.

12 MR. WEISMAN: I will make a proposal, Judge Hoyt.

13 JUDGE HOYT: Try me.

14 MR. WEISMAN: The briefs are due on a Monday.

15 JUDGE HOYT: Right.

16 MR. WEISMAN: If we could respond by that Friday,
17 would that be acceptable?

18 JUDGE HOYT: Only, Mr. Weisman, with the
19 understanding that if you are going to take the additional
20 time, I guess what we might call the temporary stay will remain
21 in effect.

22 MR. WEISMAN: I think that the Staff would prefer to
23 have no temporary stay in effect and forego the opportunity to
24 respond.

25 [Pause]

1 MR. CHARNOFF: I assume -- this is Gerry Charnoff --
2 I assume there is some grave national urgency that this
3 temporary stay would upset, in your mind. I am at a loss to
4 understand what that is.

5 It seems to me the appropriate thing is for the Board
6 to do just what it is doing, which is temporarily staying this
7 until it gets the brief from the 6th, with the 10th, as you
8 wish, and decide what it wants to do with the Virginia
9 Petroleum Jobbers standard. It seems to me that that is a
10 reasonable way for the Board to try to understand what all the
11 issues are between us and at that point, either dissolve the
12 stay or continue it. I'm not sure where the public interest is
13 hurt by that.

14 MR. WEISMAN: Well, I suppose that there are -- this
15 is Mr. Weisman speaking again -- and I guess there are two
16 points to be made.

17 And the first is that the Staff believes that an
18 immediate stay without addressing the factors of Virginia
19 Jobbers is not appropriate.

20 JUDGE HOYT: Mr. Weisman, we are beyond that point.
21 We are at the point now that we are going to see in the brief
22 that will be filed that the USR Industries will address those
23 Virginia Jobber criteria. And we are beyond that point. Let's
24 talk to the next phase of the case.

25 MR. WEISMAN: All right. I guess the second point is

1 that the Staff thinks it is reasonable for the Staff to have an
2 opportunity to see Mr. Charnoff's arguments in order to form a
3 response to those arguments.

4 MR. CHARNOFF: I don't have an objection to that, as
5 long as everything is in suspense until then. This is Gerry
6 Charnoff speaking.

7 JUDGE HOYT: All right. Mr. Weisman, I don't want --
8 and the Board has indicated to me that they do not want to have
9 the Staff forego its opportunity. However, we are going to
10 maintain that the stay is in effect. This temporary suspension
11 of activities will be until you have had an opportunity to file
12 your brief, and we will give you until Friday the, well,
13 unfortunately, the 10th is holiday. Do you want to file it on
14 November 9?

15 MR. WEISMAN: We will file it on November 9.

16 JUDGE HOYT: All right. By the close of business on
17 November 9.

18 MR. WEISMAN: Yes, Your Honor.

19 JUDGE HOYT: All right.

20 MS. DRENNAN: And Your Honor, do I understand the
21 stay will be in effect until the Board rules?

22 JUDGE HOYT: That is correct.

23 MS. DRENNAN: Thank you, Your Honor.

24 JUDGE HOYT: Anything else?

25 [No response.]

1 JUDGE HOYT: All right. Do you have the new times?
2 And I have heard no complaints about that. So I take it that
3 the new scheduling order that you have received from us this
4 afternoon, you will proceed with that.

5 MR. CHARNOFF: Yes.

6 JUDGE HOYT: All right.

7 MR. CHARNOFF: That sounds reasonable to us, Your
8 Honor.

9 JUDGE HOYT: All right. Mr. Weisman, how about you,
10 sir?

11 MR. WEISMAN: Pardon? I think I missed something.
12 Could you please repeat?

13 JUDGE HOYT: Yes. We had given you the new dates of
14 November 15, 1989 for the brief by USA Industries that we
15 talked about at the first pre-hearing conference to be filed.
16 Then there were certain documentations and materials that were
17 to come in from Safety Light, and the original date was
18 November 16. That date will be ratcheted forward to November
19 24, 1989.

20 The NRC response to the brief of USR Industries,
21 which had been due originally on November 28, 1989 will now be
22 due ot us on December 5, 1989.

23 And the rebuttal by USR Industries, which had been
24 scheduled for December 12, 1989 will now be due in to the Board
25 on December 19, 1989.

1 MR. WEISMAN: Yes, I have that, and I have no
2 objection.

3 JUDGE HOYT: Very well. Thank you.

4 Ms. Drennan, anything from you further?

5 MS. DRENNAN: No, Your Honor. Thank you.

6 JUDGE HOYT: Do we have any additional matters? Does
7 the Board have anything?

8 [No response.]

9 JUDGE HOYT: The Board does not have any additional
10 questions. And unless there is some submission to us at this
11 time by other parties here, we will close this prehearing
12 conference that has been telephonically --

13 MR. CHARNOFF: This is Mr. Charnoff. We have no
14 other matters, except that we assume the Reporter will early
15 next week give us copies of the transcript of this conference.

16 JUDGE HOYT: We have put a five-day delivery time on
17 this, Mr. Charnoff.

18 MR. CHARNOFF: Thank you very much.

19 JUDGE HOYT: Very well.

20 MS. DRENNAN: I hope that -- excuse me. This is Jane
21 Drennan. I hope that I am also on the service list for the
22 transcript.

23 JUDGE HOYT: If you are on the service list for the
24 transcript, you will have had at some point of time, Ms.
25 Drennan, you will have submitted an order to the reporting

1 service. We do not distribute the transcripts. Those come
2 from a contractor.

3 MS. DRENNAN: I left the first hearing a little
4 early, and I had given them my card, and I just wasn't sure
5 whether they knew that I was on that list, that I had ordered
6 it or not, and I just wanted to make sure.

7 JUDGE HOYT: Let me inquire of the Reporter. Do you
8 have a Ms. Drennan for Safety Light?

9 [Judge Hoyt confers with the Court Reporter.]

10 Ms. Drennan, are you with us?

11 MS. DRENNAN: Yes.

12 JUDGE HOYT: Yes, the company that is recording these
13 hearings is Ann Riley and Associates, Limited on K Street in
14 Washington. And the telephone number is Area Code 202-293-
15 3950.

16 MS. DRENNAN: Thank you, Your Honor.

17 JUDGE HOYT: And you can order your transcript from
18 them. Our transcripts came in, I believe, yesterday here from
19 our prehearing conference, because we had a five-day order on
20 it.

21 MR. CHARNOFF: That is correct. We got ours
22 yesterday, too.

23 JUDGE HOYT: Mr. Weisman, did you get your copy?

24 MR. WEISMAN: Yes, we did, Your Honor.

25 JUDGE HOYT: Fine. How about you, Ms. Drenann?

1 MS. DRENNAN: No, I didn't. Your Honor, and that is
2 why I raised it this morning. I'll call them and make sure I
3 get the transcript.

4 JUDGE HOYT: Yes. You can get a copy of that
5 transcript both of the first prehearing conference and this
6 telephonically transcribed conference.

7 MS. DRENNAN: Yes, Your Honor. Thank you so much.

8 JUDGE HOYT: Thank you very much. And thank each of
9 the parties for your participation and your patience in getting
10 this call together. It has been a rather difficult time. We
11 thank also the reporting service who made a superhuman effort
12 to get out here to Bethesda from downtown Washington to do the
13 transcribing. And we appreciate their cooperation with us.

14 Thank you, ladies and gentlemen, for your
15 participation. This conference is concluded.

16 [Whereupon, at 1:54 p.m., the prehearing conference
17 was adjourned.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

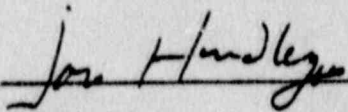
in the matter of:

NAME OF PROCEEDING: Safety Light Corporation

DOCKET NUMBER: 030-05980

PLACE OF PROCEEDING: Bethesda, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



JON HUNDLEY
Official Reporter
Ann Riley & Associates; Ltd.