

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Pre-Hearing Conference
In the Matter of Dr. James E. Bauer

Docket Number: IA-95-011
ASLBP No.: 94-696-05-EA

Location: Rockville, Maryland

Date: Wednesday, October 11, 1995

Work Order No.: NRC-355

Pages 1-10

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD
PRE-HEARING CONFERENCE

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In the matter of: : Docket No. IA-95-011
DR. JAMES E. BAUER :
: ASLBP No. 94-696-05-EA
(Order Prohibiting Involvement :
in NRC-Licensed Activities) :

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Wednesday, October 11, 1995

Hearing Room T 3B45
Two White Flint North
11545 Rockville Pike
Rockville, Maryland

The above-entitled matter came on for hearing,
pursuant to notice, at 1:00 p.m.

BEFORE:

G. PAUL BOLLWERK, III Chairman
DR. CHARLES N. KELBER Administrative Judge
DR. PETER S. LAMB Administrative Judge

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APPEARANCES:

On Behalf of Dr. James E. Bauer:

MARCY COLKITT, ESQ.
P.O. Box 607
Indiana, PA 15701
(412) 463-3570

On Behalf of the Nuclear Regulatory Commission:

MARIAN L. ZOBLER, ESQ.
of: U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
(202) 415-1572

ALSO PRESENT:

CATHERINE MAREO

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

(1:04 p.m.)

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CHAIRMAN BOLLWERK: Good morning. This afternoon we're here to conduct an initial pre-hearing conference in the James E. Bauer proceeding. This proceeding involves a challenge by Dr. Bauer to a May 1994 immediately effective NRC staff order. Among other things, that order prohibits Dr. Bauer from any involvement in licensed activities for a period of five years.

The staff bases its order on various instances of purported conduct by Dr. Bauer while using licensed materials at the Indiana Regional Cancer Center located in Indiana, Pennsylvania.

By order issued October 2nd, 1995, we scheduled this pre-hearing conference to have the staff give us an update on the current status of the criminal investigation being conducted by the Office of the United States Attorney for the Western District of Pennsylvania. The investigation in question involves Dr. Bauer's activities at the Indiana Regional Cancer Center.

The status of that investigation is of significance to this proceeding because acting at the request of both parties by order issued July 18th, 1994 we stayed discovery in this proceeding as a result of that

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1 investigation.

2 Over the course of the last 15 months, staff
3 has filed 19 status reports on the investigation, most
4 recent on September 29th, 1995. In its September 29th
5 report, the staff stated the investigation is now
6 complete, but there still has not been a determination by
7 the United States Attorney's Office as to whether to
8 decline or initiate prosecution of Dr

9 Bauer. The staff's report stated that the
10 decision would be made soon. And in this regard, it has
11 come to the Board's attention this morning that there has
12 been a recent development concerning the prosecution
13 decision.

14 Before we begin hearing the parties'
15 presentations on the current status of the criminal
16 prosecution, I'd like to introduce the Board members. To
17 my right is Dr. Charles Kelber. Dr. Kelber, a physicist,
18 is a full-time member of the Atomic Safety and Licensing
19 Board panel. To my left is Dr. Peter Lamb. Dr. Lamb, who
20 is a nuclear engineer, also is a full-time member of the
21 panel. My name is Paul Bollwerk. I'm an attorney and the
22 Chairman of the Licensing Board.

23 At this point I'd like to have counsel for the
24 parties identify themselves for the record. Why don't we
25 start with counsel for the petitioner, Dr. Bauer, and then

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1 go to the staff counsel?

2 MS. COLKITT: Good afternoon. My name is
3 Marcy Colkitt. I am counsel for Dr. James E. Bauer.

4 MS. ZOBLER: Good afternoon. My name is
5 Marian Zobler. I'm counsel for the NRC staff.

6 CHAIRMAN BOLLWERK: All right. As I mentioned
7 before, apparently there have been some developments with
8 regard to the status of the prosecution. And maybe Ms.
9 Zobler would like to fill us in on that.

10 MS. ZOBLER: Of course, Your Honor. Yesterday
11 I spoke on the phone to the Assistant U.S. Attorney who is
12 in charge of the investigation, the criminal
13 investigation. She informed me that a decision had been
14 made about whether to initiate a prosecution. She said
15 that they have declined to seek an indictment and that she
16 would put that in writing in the form of a letter to the
17 NRC within the next few days, as soon as she's able to,
18 and that when that occurs, I will provide copies of this
19 letter to the Board as well as to the parties in this
20 proceeding.

21 CHAIRMAN BOLLWERK: All right. It would seem
22 depending on what the letter says -- do you have any
23 response to that, Ms. Colkitt, in terms of what your
24 understanding is?

25 MS. COLKITT: That's also my understanding.

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1 CHAIRMAN BOLLWERK: All right. That would
2 seem at least, again, I guess depending on what the letter
3 says to remove the matter that had been delaying discovery
4 in this case. Do either of the parties -- is it time now
5 to begin to set dates in terms of discovery and moving
6 forward with dispositive motions after discovery, a
7 hearing, et cetera?

8 MS. COLKITT: Well, Your Honor, back in
9 November and December of 1994, 11 months ago, Ms. Zobler
10 and I discussed a settlement of this matter. If you will
11 recall, at that time we settled the IRCC matter, which was
12 the licensee matter relating to the conduct of Dr. Bauer
13 relative to the use of strontium.

14 The reason we were not able to settle the In
15 Re: James Bauer matter was because of the pending
16 criminal investigation. And now that that has been
17 cleared, I anticipate that the parties will be able to
18 settle this promptly.

19 CHAIRMAN BOLLWERK: Ms. Zobler, any comments
20 on Ms. Colkitt's representations?

21 MS. ZOBLER: Other than that she correctly
22 represents the status of our settlement discussions. We
23 had gotten very close, but that we did have the criminal
24 investigation.

25 And I would say also that we could continue

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1 the discussions under the assumption that a letter from
2 the Assistant U.S. Attorney would be forthcoming and would
3 satisfy any concerns that Ms. Colkitt's client would have
4 regarding the criminal investigation.

5 CHAIRMAN BOLLWERK: Once Ms. Colkitt has
6 received the letter, how long do you think it's going to
7 take you to discuss the settlement and move forward and
8 reach some kind of decision?

9 MS. COLKITT: Well, I think once I get the
10 letter, it's something that I can probably get back to Ms.
11 Zobler in a couple of days with a decision.

12 CHAIRMAN BOLLWERK: And is it at that point
13 that you have to start negotiating again or do you think
14 things are going --

15 MS. COLKITT: Well, I think we are pretty
16 close. And I don't think that there will be a lot. I
17 think we'll be able to resolve it. I'm highly confident
18 that we'll be able to resolve it.

19 MS. ZOBLER: And I would agree for the staff,
20 Your Honor, that it would be very minimal discussions, if
21 any.

22 CHAIRMAN BOLLWERK: All right. Why don't the
23 parties do this, then, and I'll put this in an order to
24 formalize it. Once Ms. Colkitt has received the letter,
25 why don't you inform us of that fact? And I guess we'll

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1 get a copy of the letter as well one way or another.

2 Within 14 days after that, why don't you file
3 with the Board a joint status report? And if that happens
4 to be a settlement motion, that's fine or a status report
5 that indicates that negotiations are ongoing. And in that
6 status report include whatever information you think is
7 relevant in terms of the proceeding going forward.

8 If it looks like settlement negotiations are
9 going to be continuing, you think it can be settled, let
10 us know. Do you think there's a problem? Do you think we
11 need to begin to set dates in terms of discovery? Why
12 don't you let us know that?

13 Is that acceptable to the parties?

14 MS. COLKITT: That would be fine. My only
15 other thought would be if this is something we get done
16 prior to that, would you have a problem if we submitted a
17 motion for settlement prior to the 14 days?

18 CHAIRMAN BOLLWERK: Absolutely not. If you
19 reach settlement within 2 days, 10 hours, whatever it is,
20 feel free to file your motion at that point. All right?

21 MS. COLKITT: All right.

22 CHAIRMAN BOLLWERK: But 14 days is simply to
23 give you some time in case there are some problems that
24 develop.

25 MS. COLKITT: Okay.

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1 MS. ZOBLER: That would be fine with the
2 staff, Your Honor.

3 MS. COLKITT: Thank you.

4 CHAIRMAN BOLLWERK: As I say, we'll enter an
5 order today or tomorrow formalizing this, but why don't
6 you go ahead and proceed on that assumption that that's
7 what it will say.

8 Anything else either of the parties need to
9 bring to our attention?

10 MS. ZOBLER: Nothing for the staff.

11 MS. COLKITT: No. I would just like to thank
12 the Board for putting the stay to this matter. And
13 hopefully now we can get it resolved.

14 I think just sort of I guess for further
15 licensees or for future individuals, I would suggest that
16 the pendency of a criminal investigation -- and sometimes
17 it takes a long time. And this comes back to my -- I have
18 a thing about getting things closed up. And I just think
19 that sometimes we need to keep in mind that the quicker
20 things can get resolved -- lots of times settlements can
21 get settled quicker. Of course, in this case, we couldn't
22 control it. It was up to the U.S. Attorney.

23 But it's highly unlikely that when there's a
24 pending criminal matter out there that's unresolved, that
25 any licensees in my opinion are less likely to want to

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1 proceed with a matter. And I think it was very helpful
2 that the Board did sort of stay after that and request
3 that the U.S. Attorney provide updates.

4 I think that's very helpful. And I think it
5 brought this thing to a conclusion quicker than it would
6 have otherwise. And on behalf of Dr. Bauer, I thank you.

7 CHAIRMAN BOLLWERK: Anything else, Ms. Zabler?

8 MS. ZOBLER: Nothing, Your Honor.

9 CHAIRMAN BOLLWERK: If not, then we stand
10 adjourned.

11 (Whereupon, the foregoing matter was concluded
12 at 1:12 p.m.)

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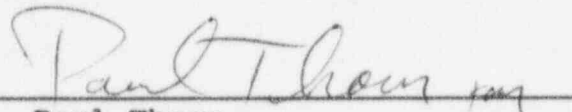
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Pre-Hearing Conference in the matter of Dr. James E. Bauer

Docket Number: IA-95-011
ASLBP No: 94-696-05-EA

Place of Proceeding: Rockville, MD

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.



Paul Thorn
Official Reporter
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