

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

William J. Froehlich, Chairman
Michael M. Gibson
Dr. Gary S. Arnold

In the Matter of

JOSEPH SHEA

(Order Prohibiting Involvement In NRC-
Licensed Activities Immediately Effective)

Docket No. IA-20-008-EA

ASLBP No. 20-968-04-EA-BD01

September 29, 2020

ORDER

(Scheduling Initial Prehearing Teleconference)

This proceeding arises from an August 24, 2020 Order by the NRC Office of Enforcement which found Mr. Joseph Shea violated the NRC Employee Protection Rule (contrary to 10 C.F.R. § 50.7) and engaged in deliberate misconduct (contrary to 10 C.F.R. § 50.5(a)(1)).¹ The Order prohibited Mr. Shea “from engaging in, supervising, directing or in any other way conducting NRC-licensed activities” for 5 years, effective immediately.² In response, on September 22, 2020, Mr. Shea filed an answer, a motion to set aside the immediate effectiveness of the Order, and a request for a hearing.³ On September

¹ Order Prohibiting Involvement in NRC-Licensed Activities Immediately Effective (Aug. 24, 2020) (ADAMS Accession No. 20219A676); In the Matter of Joseph Shea, Tennessee Valley Authority, Chattanooga, TN, 85 Fed. Reg. 53,423 (Aug. 28, 2020) [hereinafter Order].

² Order at 4; 85 Fed. Reg. at 53,424.

³ Joseph Shea’s Motion to Set Aside the Immediate Effectiveness of an Order Banning Him from Engaging in NRC-Licensed Activities, Answer, and Request for Hearing (Sept. 22, 2020) (ADAM Accession No. ML20266G394).

24, 2020, this Board was established to preside over this matter.⁴ And, on September 28, the NRC Staff filed a Response to Mr. Shea's Answer.⁵

Because Mr. Shea's Answer demands a hearing with respect to the NRC Staff's immediately effective order, the hearing must be conducted expeditiously, giving due consideration to the rights of the parties.⁶ The Board will, therefore, convene an initial prehearing conference, on Wednesday, September 30 at 11:00 AM ET, to develop a scheduling order to facilitate the fair and efficient resolution of the proceeding.

The parties should be prepared to address the following subjects during the initial prehearing conference with the Board:

1) Should the hearing in this case be bifurcated to address initially whether adequate evidence supports the "immediately effective" provision before determining whether the Office of Enforcement's order should be set aside in its entirety.⁷

2) Which subpart of 10 C.F.R. Part 2 do the parties wish to apply to the questions in this case? If the motion to set aside the immediate effectiveness of the Order is addressed separately, do the parties seek a proceeding under 10 C.F.R. Part 2, Subpart N for that initial determination? Do the parties request an evidentiary hearing under 10 C.F.R. Part 2, Subpart G, or 10 C.F.R. Part 2, Subpart L, or under some other Subpart?

3) A timeline for the conduct of the hearing(s) in this matter.

⁴ See Order; Establishment of Atomic Safety and Licensing Board Panel (Sept. 24, 2020) (ADAMS Accession No. ML20268C254).

⁵ NRC Staff Answer to Motion to Set Aside the Immediate Effectiveness of the Order and Answer to the Request for a Hearing (Sept. 28, 2020) (ADAMS Accession No. ML20272A298).

⁶ 10 C.F.R. § 2.202 (c)(1).

⁷ The parties may wish the Board to only consider the motion to set aside the immediate effectiveness of the Order in an expedited proceeding and address the overall conclusions and the five-year ban in a separate hearing at a later date. 10 C.F.R. § 2.202 (c)(2)(vi) sets forth the respective burdens of proof of each party.

4) Is there is any necessity for discovery and, if so, how much time is required for any such discovery?

5) Whether any party expects to assert a privilege or protected status for any information or documents in this proceeding and, if so, whether a protective order and/or a non-disclosure agreement is necessary or appropriate.

6) Where and by what means should the evidentiary hearing(s) be conducted?

The Board's law clerk will contact the parties to determine whether this initial prehearing will be by video conference call or by telephone conference call and will make the necessary logistical arrangements. Listen-only telephone access will also be made available for members of the public and the press. Interested persons may contact the Board's law clerk, Stephanie Fishman, at Stephanie.Fishman@nrc.gov, for the necessary access information.

Before the initial prehearing conference call, the parties shall confer in good faith to reach agreement on the foregoing issues, if practicable.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 29, 2020

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Mr. Joseph Shea) IA-20-008-EA
(Order Prohibiting Involvement in)
NRC-Licensed Activities))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER (Scheduling Initial Prehearing Teleconference)** have been served upon the following persons by Electronic Information Exchange.

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 29th day of September 2020.