

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

October 8, 2020

ORDER

(Scheduling Oral Argument and Summarizing Prehearing Conference)

The Board will hear oral argument on Mr. Joseph Shea's September 22, 2020 motion to set aside the immediate effectiveness of an order issued by the NRC Office of Enforcement on August 24, 2020.<sup>1</sup> That Order prohibited Mr. Shea from any involvement in NRC-licensed activities for a period of 5 years and because of the significance of his wrongdoing, the Order was made effective immediately.<sup>2</sup> An oral argument on the immediate effectiveness of the Order will be held on Friday, October 16, 2020 at 10:00 A.M. Eastern Time via web conference.

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<sup>1</sup> 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); Order Prohibiting Involvement in NRC-Licensed Activities Immediately Effective (Aug. 24, 2020) (ADAMS Accession No. ML20219A676) [hereinafter Order]; In the Matter of Joseph Shea, Tennessee Valley Authority, Chattanooga, TN, 85 Fed. Reg. 53,423 (Aug. 28, 2020).

<sup>2</sup> Order at 4; 85 Fed. Reg. at 53,424.

An Initial Pre-Hearing Conference was held telephonically on September 30, 2020.<sup>3</sup> At the prehearing conference, Mr. Shea requested the opportunity to file a response to the NRC Staff's Answer.<sup>4</sup> The Board granted Mr. Shea's request and set October 5, 2020 as the deadline for such a response. The NRC Staff was given the opportunity to reply to Mr. Shea's response by October 13, 2020.<sup>5</sup> The NRC Staff and Mr. Shea agreed that this proceeding would be heard in two parts.<sup>6</sup> The first part will be an oral argument limited to the need for the immediate effectiveness of the Order.<sup>7</sup> The second part will be a Subpart G hearing addressing all issues, other than the immediate effectiveness of the Order, and will be held at a later date.<sup>8</sup>

The Board will use the Cisco WebEx web conference platform for this oral argument. Prior to the oral argument, the Board requires that the parties participate in a test with the Board using the Cisco WebEx platform to mitigate any potential technical issues during the oral argument. A Board representative will contact the participants by email with instructions on how to access Cisco WebEx. There will be a bridge line set up with listen-only access for members of the public. Members of the public who wish to listen to the conference may contact the Board's law clerk, Stephanie Fishman, at Stephanie.Fishman@nrc.gov, for the necessary listen-only access information.

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<sup>3</sup> Licensing Board Order (Scheduling Initial Prehearing Teleconference) (Sept. 29, 2020) (unpublished).

<sup>4</sup> 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).

<sup>5</sup> Tr. at 25–28, 33.

<sup>6</sup> Tr. at 9.

<sup>7</sup> See 10 C.F.R. § 2.202(c)(2)(i). No motion was made for live testimony to set aside the immediate effectiveness of the Order. Id. § 2.202(c)(2)(ii).

<sup>8</sup> Tr. at 9.

The oral argument will be transcribed, and the transcript will promptly be placed in the NRC's electronic hearing docket, where it may be accessed by the public.

The Commission's regulations set forth the burdens applicable to challenges to the immediate effectiveness of an order:<sup>9</sup>

The licensee or other person challenging the immediate effectiveness of an order bears the burden of going forward with evidence that the immediately effective order is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. The NRC staff bears the burden of persuading the presiding officer that adequate evidence supports the grounds for the immediately effective order and immediate effectiveness is warranted.<sup>10</sup>

Accordingly, for the October 16 Oral Argument, Mr. Shea should be prepared to show that the need for the immediate effectiveness of the Order is not based on adequate evidence.<sup>11</sup>

The NRC Staff should be prepared to show the need for the immediate effectiveness of the Order. Specifically, the NRC Staff "must demonstrate that adequate evidence . . . supports a conclusion that (1) the licensee violated a Commission regulation, and (2) the violation was 'willful,' or the violation poses a risk to 'the public health, safety, or interest' that requires immediate action."<sup>12</sup>

Participants will have 30 minutes to present their oral arguments to the Board. Mr. Shea will speak first and have 30 minutes to argue that the Order is not based on adequate evidence. He may divide this time to reserve part of his time to reply to the NRC Staff's oral argument. The NRC Staff will also have 30 minutes to present oral argument to the Board. Thereafter, the

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<sup>9</sup> See generally 10 C.F.R. § 2.202.

<sup>10</sup> 10 C.F.R. § 2.202(c)(2)(vi).

<sup>11</sup> The "adequate evidence" standard is not onerous. It consists of more than uncorroborated suspicion or accusation, but it does not rise to the level of preponderance of the evidence. Adequate evidence exists "when the facts and circumstances within the NRC staff's knowledge, of which it has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that the charges specified in the order are true[.]" Revisions to Procedures To Issue Orders: Challenges to Orders That Are Made Immediately Effective, 57 Fed. Reg. 20,194, 20,196 (May 12, 1992).

<sup>12</sup> Safety Light Corp. (Bloomsburg, Pa. Site), LBP-05-2, 61 NRC 53, 61 (2005) (citing 10 C.F.R. § 2.202(a)(1), (5)).

participants should be prepared to respond to the Board's questions on any aspect of the pleadings that bear on the immediate effectiveness of the Order.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

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William J. Froehlich, Chairman  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
October 8, 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 Oral Argument and Summarizing Prehearing Conference)** 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 8<sup>th</sup> day of October 2020.