

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

December 9, 2020

INITIAL SCHEDULING ORDER

This Board held an Initial Pre-Hearing Conference for the above-captioned docket on September 30, 2020.¹ At that conference, counsel for the NRC Staff and Mr. Shea agreed to bifurcate this proceeding with the first phase to address the motion to set aside the immediate effectiveness of the Enforcement Order and with the second phase to address the merits of the Enforcement Order.² Mr. Shea requested, and the NRC Staff did not object to, a Subpart G hearing to address whether the Enforcement Order should be sustained.³

In the first phase of this proceeding, a majority of this Board granted the motion to set aside the immediate effectiveness of the Enforcement Order.⁴ This Initial Scheduling Order addresses the timeline for the second phase, the Subpart G evidentiary hearing.

¹ Licensing Board Order (Scheduling Initial Prehearing Teleconference) (Sept. 29, 2020) (ADAMS Accession No. ML20273A304) at 2 (unpublished).

² Tr. at 8.

³ Tr. at 15.

⁴ LBP-20-11, 92 NRC at ___ (slip op.) (Nov. 3, 2020) (pending before the Commission).

On November 6, 2020, the Board requested that counsel for the parties discuss and agree on preliminary procedural and logistical matters for the scheduling and conduct of the evidentiary hearing.⁵ The parties submitted a joint proposed schedule for the conduct of the evidentiary hearing pursuant to Subpart G procedures.⁶ The joint response of the parties to the Board's order generally follows the Subpart G milestone schedule.⁷

Below, we adopt the joint proposed schedule and provide procedures based on the parties' joint response.

- A. Board Question (1): Whether the referral to the Commission of the immediate effectiveness of the Enforcement Order might have any impact on the scheduling of the hearing in this matter.

The parties agree that the referral to the Commission of the immediate effectiveness of the Enforcement Order has no impact on scheduling pre-hearing milestones (e.g., parties' initial disclosures and the discovery period).⁸ However, the parties state, "[i]f the Commission has not ruled on the immediate effectiveness of the Enforcement Order by the close of discovery, the schedule for filing any motions for summary disposition and for the evidentiary hearing should be paused until such a ruling[.]"⁹ Although the Board adopts the jointly proposed procedural schedule, the deadlines for filing motions for summary disposition and the date for the evidentiary hearing will not be tolled by Commission action or inaction on the immediate effectiveness issue. The Board will, however, entertain proposed changes to the procedural

⁵ Licensing Board Order (Establishing Procedures for Evidentiary Hearing) (Nov. 6, 2020) (ADAMS Accession No. ML20311A293) (unpublished).

⁶ Joint Response of the Parties to the Board's Order (Nov. 18, 2020) (ADAMS Accession No. ML20323A111) [hereinafter Joint Response].

⁷ See 10 C.F.R. Pt. 2, App. B § I.

⁸ Joint Response at 1.

⁹ Id.

schedule in this case in response to a motion by one or both of the parties, consistent with 10 C.F.R. § 2.323(a)(2).

B. Board Question (3): The need for and preparation of a Protective Order.

The parties agreed to prepare a proposed protective order that they will submit to the Board prior to the start of discovery.¹⁰ Discovery in a Subpart G proceeding is governed by 10 C.F.R. §§ 2.704–2.709. Initial disclosures are contemplated by 10 C.F.R. § 2.704, and the parties propose to make initial disclosures by February 18, 2021. In consideration of the foregoing, the Board directs the parties to file a joint protective order (if they deem one to be necessary) no later than February 3, 2021 (i.e., 15 days prior to the deadline for making initial disclosures).

C. Board Question (6): How the location of the parties, their counsel, and prospective witnesses might affect the eventual selection of a venue for the hearing or whether the hearing will be conducted virtually.

The parties propose that the Board set the date for the evidentiary hearing and, if possible, to hold it in-person at that time. If an in-person hearing is not possible due to COVID-19, then the parties agree to participate in a virtual hearing. If an in-person hearing is held, the determination of the location should be deferred until the parties have a better understanding of what witnesses might be called and the witnesses' location(s).¹¹ The Board adopts the parties' proposed evidentiary hearing dates of November 15–19, 2021. The Board also adopts the parties' proposed pre-hearing conference date of September 7, 2021, at which time the Board will determine whether the hearing can be held in-person and if so, where. The Board will then confirm by subsequent order the date, the location and manner in which the evidentiary hearing will be held.

¹⁰ Id. at 2.

¹¹ Id. at 3.

D. Board Question (7): Other matters that counsel may wish to bring to the Board's attention (Discovery Stipulations).

The parties state that they are conferring on discovery stipulations and will propose any stipulations to the Board in the near future.¹² The Board directs that any discovery stipulations be filed with the Board no later than February 3, 2021 (i.e., 15 days prior to the date initial disclosures are due).

Initial disclosures, consistent with 10 C.F.R. § 2.704(a), are due Thursday, February 18, 2021. Section 2.704(a)(3) sets forth the disclosure requirements:

A party is not excused from making its disclosures because it has not fully completed its investigation of the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. The duty of disclosure is continuing. A disclosure update must be made every month after initial disclosures on a due date selected by the presiding officer, unless the parties agree upon a different due date or frequency. The disclosure update shall be limited to documents subject to disclosure under this section and does not need to include documents that are developed, obtained, or discovered during the two weeks preceding the due date. Disclosure updates shall include any documents subject to disclosure that were not included in any previous disclosure update. The duty to update disclosures relevant to a disputed issue ends when the presiding officer issues a decision resolving that disputed issue¹³

E. Jointly Proposed Schedule for the Conduct of the Evidentiary Hearing

The parties' proposed schedule, as modified by the Board above, is adopted for the evidentiary hearing in this proceeding. The initial hearing schedule for this proceeding is attached as Appendix A.

The Board understands that modification of the schedule may be appropriate based on future developments. Any motion for an extension or enlargement of time or other modification should be filed within ten (10) days of the date on which the party learns of the facts and circumstances establishing the need for an extension or modification.¹⁴ The movant must first

¹² Id.

¹³ 10 C.F.R. § 2.704(a)(3).

¹⁴ Id. § 2.323(a)(2).

attempt to resolve the issue with the other party, and if unable to do so must include the certification required by 10 C.F.R. § 2.323(b) stating that the party made a sincere effort to contact the other party and to resolve the issues raised in the motion.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

William J. Froehlich, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
December 9, 2020

Appendix A

Procedural Schedule In the Matter of Joseph Shea, Docket No. IA-20-008-EA

Milestone	Date	Action
Trigger Date	Monday, 01-04-21	
	Wednesday, 02-03-21	Protective Order and Discovery Stipulations due
Within 45 days of the Trigger Date	Thursday, 02-18-21	Initial disclosures due
Within 145 days of the Trigger Date	Friday, 05-14-21	Discovery Complete
Within 155 days of the Trigger Date	Friday, 06-11-21	Motions for summary disposition due
Within 235 days of the Trigger Date	Friday, 08-27-21	Presiding Officer decisions on motions for summary disposition
Within 245 days of the Trigger Date	Tuesday, 09-07-21	Prehearing conference (optional); presiding officer sets schedule for remainder of proceeding
Within 275 days of the Trigger Date	Wednesday, 10-06-21	Written testimony and pre-trial briefs filed
Within 300 days of the Trigger Date	Monday, 11-01-21	Reply testimony and reply pre-trial briefs filed
Within 315 days of the Trigger Date	Monday – Friday, 11-15-21 to 11-19-21	In-person evidentiary hearing
Within 30 days of the end of the hearing and close of evidentiary record	Monday, 12-20-21	Proposed findings of fact and conclusions of law
Within 90 days of the end of evidentiary hearing and closing of record	Thursday, 02-17-22	Presiding Officer issues initial decision

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Mr. Joseph Shea
(Order Prohibiting Involvement in
NRC-Licensed Activities)

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IA-20-008-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing INITIAL SCHEDULING ORDER 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 9th day of December 2020.