

Official Transcript of Proceedings
NUCLEAR REGULATORY COMMISSION

Title: Hearing ITMO Charlissa C. Smith

Docket Number: 55-23694-SP

ASLBP Number: 13-925-01-SP-BD01

Location: (teleconference)

Date: Tuesday, February 26, 2013

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

6 HEARING

7 -----x

8 In the Matter of: : Docket No

9 CHARLISSA C. SMITH : 55-23694-SP

10 : ASLBP No.

11 (Denial of Senior : 13-925-01-SP-BD01

12 Reactor Operator :

13 License) :

14 -----x

15 Tuesday, February 26, 2013

16
17 Teleconference18
19 BEFORE:

20 ALAN S. ROSENTHAL, Chair

21 RONALD M. SPRITZER, Administrative Judge

22 BRIAN K. HAJEK, Administrative Judge

23

24

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1 APPEARANCES:

2 On Behalf of the Petitioner

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8 On Behalf of the Nuclear Regulatory Commission

9 LLOYD SUBIN, ESQ.

10 of: U.S. Nuclear Regulatory Commission

11 Office of the General Counsel

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15
16 Also Present

17 NICOLE PICARD, Law Clerk

P R O C E E D I N G S

9:58 A.M.

JUDGE ROSENTHAL: This is Alan Rosenthal. With me on this conference call are Judges Spritzer and Hajek, as well as Nicole Picard, our law clerk.

This case involves the application of Ms. Smith or demand, rather, for a hearing on the denial of her application for a senior reactor operator license. In the Board's decision one week ago, the hearing demand was granted and the purpose of this conference is to deal with some of the procedural matters going forward.

Now I'd like to start off, if I might, with Ms. Smith. Do I take it that you are going to continue to represent yourself in this matter, rather than obtain counsel?

MS. SMITH: Your Honor, I am currently seeking counsel at this time.

JUDGE ROSENTHAL: Oh, you are?

MS. SMITH: Yes, Your Honor, I am.

JUDGE ROSENTHAL: Do you have any idea as to when you might hire counsel? Because this makes a considerable difference and I would think that if you anticipate obtaining counsel in the next week or so, what the Board might do is wait until counsel was

1 obtained before proceeding further.

2 So what is the current status of your
3 endeavor to obtain counsel?

4 MS. SMITH: Currently, Your Honor, I have
5 spoken with an attorney as quickly as yesterday. And
6 I am still actually discussing some of the details of
7 the case to determine if he's able to represent me.
8 So unfortunately, I can't give an absolute date as to
9 when officially I will have an attorney, but I am
10 currently seeking representation.

11 JUDGE ROSENTHAL: Well, in that
12 circumstance, I'll turn to -- who is speaking for the
13 staff this morning?

14 MR. SUBIN: Lloyd Subin, Your Honor.

15 JUDGE ROSENTHAL: Mr. Subin. Given this
16 information, what would be the staff's counsel as to
17 how the Board should proceed at this time?

18 MR. SUBIN: We would have no objection to
19 a delay, waiting and giving Ms. Smith some time to
20 obtain counsel before we go through all of the
21 procedural issues that her attorney may want to know
22 about.

23 JUDGE ROSENTHAL: Judge Spritzer?

24 JUDGE SPRITZER: Well, I guess the
25 question is how long do we wait? The longer we wait,

1 the more difficult it is -- the longer we would be
2 delaying having a hearing somewhere down the road. To
3 arrange for a hearing -- well, wherever it's going to
4 be, Georgia, it's going to take some effort. So
5 perhaps several weeks would be a time period or could
6 we go ahead and schedule at least a tentative hearing
7 date now or do we need to put all that off? I guess
8 that's the question for both the staff and Ms. Smith.

9 JUDGE ROSENTHAL: Before they respond,
10 Judge Hajek, do you want to add anything?

11 JUDGE HAJEK: Whatever is decided -- I
12 think Ms. Smith needs to give us a little idea of how
13 long that she anticipates it's going to take to, as I
14 understood her to say, to discuss the details with
15 this attorney and what is her projection as to whether
16 she in discussing the details, whether these details
17 being discussed with this attorney, is this strictly
18 to determine whether this attorney is going to be able
19 to represent her and depending upon the discussion, is
20 she going to move on to someone else potentially and
21 how long does it take on a per attorney basis going
22 through a series to make a determination of which will
23 represent her and if she is able to represent her.

24 So I guess my question is how long of a
25 process is that going to be relative to us scheduling

1 a potential hearing date?

2 JUDGE ROSENTHAL: I would like to add to
3 that this.

4 Ms. Smith, have you explained to the
5 counsel of the limited role that he would play in this
6 proceeding? This proceeding is going to be conducted
7 under the provisions of subpart L and those provisions
8 call for the questions being directed to the witnesses
9 by the members of the Board, although counsel for the
10 respective parties can suggest questions that they
11 would like to see asked.

12 Also, in these proceedings, there is no
13 discovery. So basically what it comes down to is that
14 the counsel submits a written presentation and can
15 respond to the presentation of the opposing party, but
16 the contribution of the lawyer is essentially in the
17 preparation of written documents and lining up
18 witnesses and this kind of thing.

19 Does this lawyer understand that?

20 MS. SMITH: Your Honor, no, I have not
21 provided that level of detail to the attorney.
22 Obviously, I am seeking an attorney to ensure that I'm
23 able to meet any administrative requirements to be
24 able to submit proof or documentation required to
25 prove the case. I wanted to make sure that I did not

1 leave the opportunity to have information not able to
2 be submitted based on not having the technical
3 competency of an attorney.

4 JUDGE ROSENTHAL: Well, I think you're
5 very well advised to be seeking counsel because these
6 proceedings are quite complex. And I think that legal
7 counsel is definitely desired.

8 You might want to call your perspective
9 counsel's attention to 10 CFR -- that's the Code of
10 Federal Regulations, Subpart L, because that sets
11 forth the procedures and that he or she would be
12 required to observe. And the CFR is actually on the
13 internet now, so it's very readily obtained. That's
14 Title 10 of the Code, Part 2, and it's Subpart L,
15 under Part 2.

16 JUDGE SPRITZER: And it's referred to in
17 our order that we issued on whatever day that was,
18 February 19th.

19 JUDGE ROSENTHAL: That's right. Well,
20 perhaps this strikes my colleagues and also the staff,
21 supposing that we give you Ms. Smith a period of two
22 weeks which to locate counsel and at the end of the
23 two weeks or actually if before the two weeks you have
24 retained counsel, you would then advise the Board of
25 that fact and we could then perhaps schedule more

1 rapidly a further conference. So in short, we're
2 giving you two weeks and -- but asking you if you have
3 retained counsel short of the two weeks, you promptly
4 notify us of that fact and also have the attorney
5 enter an appearance in the proceeding.

6 Staff, how does that strike you?

7 MR. SUBIN: No objection, Your Honor. It
8 sounds perfectly fine.

9 JUDGE ROSENTHAL: Okay. So is there
10 anything further at this point that you want to --

11 JUDGE SPRITZER: This is Judge Spritzer
12 again. I guess if we can reconvene shortly, we can
13 put off setting a date.

14 JUDGE ROSENTHAL: Yes.

15 JUDGE SPRITZER: Is that everyone's
16 preference? Certainly I don't have anything further.

17 JUDGE ROSENTHAL: Judge Hajek, anything
18 further at this point?

19 JUDGE HAJEK: I don't have anything
20 further, except I might just ask that we discuss or
21 depends on what Judge Spritzer just commented in terms
22 of -- if I think I heard the comment about what was
23 the eventual hearing date. Perhaps we should give a
24 little bit of guidance beyond the two weeks as to when
25 we might expect or hope to get to a formal hearing on

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1 the issues?

2 JUDGE ROSENTHAL: Well, we would first,
3 obviously, have to allow a period for the written
4 presentations. I would be hopeful that if Ms. Smith
5 is able to obtain counsel within the next two weeks
6 that we could go to hearing perhaps in early May. I
7 think that would be probably the earliest that we
8 could do consistent with providing a reasonable period
9 of time for the parties to submit their written
10 presentations. So I would like to shoot for that in
11 any case, the early part of May.

12 Anything further?

13 JUDGE SPRITZER: This is Judge Spritzer.
14 I don't have anything further.

15 JUDGE ROSENTHAL: Okay.

16 JUDGE HAJEK: I have nothing further.

17 JUDGE ROSENTHAL: Ms. Smith, anything
18 further from you at this point?

19 MS. SMITH: No, Your Honor. I don't have
20 anything further.

21 JUDGE ROSENTHAL: Okay, and staff?

22 MR. SUBIN: We may have issues with
23 getting some staff in early May. That would be the
24 only problem, but we can discuss this further when we
25 meet again, what kind of dates we're looking at.

1 JUDGE ROSENTHAL: Okay, and this would be
2 the staff members that were involved in the
3 examination and involved in the waiver determination,
4 is that --

5 MR. SUBIN: Yes, Your Honor.

6 JUDGE ROSENTHAL: I take it these are
7 Region II employees?

8 MR. SUBIN: Correct.

9 JUDGE ROSENTHAL: So why is there -- at
10 this point you're able to identify a possible problem
11 for early May?

12 MR. SUBIN: Possible, but until we set the
13 dates, I won't know.

14 JUDGE ROSENTHAL: Well, we'll have to set
15 them around that.

16 MR. SUBIN: Right. So I'll go back and
17 look at their schedules and when you give us a date,
18 we'll tell you.

19 JUDGE ROSENTHAL: All right, well, that's
20 what I would be shooting for is early May.

21 All right, Ms. Smith, so you understand
22 that you're to move forward with all possible
23 expedition to get counsel and we'll see where it
24 stands at the end of two weeks, but again, if you
25 retain counsel short of that, we're to be notified

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1 promptly to that effect. Okay?

2 Well, if there's nothing further, the
3 conference call is terminated.

4 Judge Hajek, you might stay with us for a
5 moment.

6 JUDGE HAJEK: Okay.

7 JUDGE ROSENTHAL: Thank you, everyone.

8 (Whereupon, at 10:11 a.m., the conference
9 call was concluded.)
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