

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

Before Administrative Judges:

Alex S. Karlin, Chairman
Michael M. Gibson
Dr. Gary S. Arnold

In the Matter of JAMES CHAISSON
--

Docket No. IA-14-025-EA

ASLBP No. 14-932-02-EA-BD01

August 14, 2014

ORDER
(Scheduling Initial Prehearing Conference)

This is to notify James P. Chaisson and Patricia K. Holahan, Acting Director, Office of Enforcement of the U.S. Nuclear Regulatory Commission (NRC Enforcement Director) that the Board will conduct an initial prehearing conference on August 26, 2014, at 10:30 am EDT. The purpose of the conference is to develop a schedule that will achieve a fair and just resolution of this matter as expeditiously as possible. This initial prehearing conference is required under the U.S. Code of Federal Regulations (C.F.R.). 10 C.F.R. §§ 2.329, 2.332. After the conference, the Board will issue a schedule for this proceeding. The conference will be conducted via telephone and each party, or the party's authorized representative, shall participate.

Prior to the initial prehearing conference call, the parties should familiarize themselves with the hearing procedures and regulations that typically govern NRC enforcement actions (known as 10 C.F.R. "Subpart G" proceedings). These regulations include 10 C.F.R. §§ 2.202, 2.310, 2.323, 2.329, 2.332, 2.333, 2.334, 2.338, 10 C.F.R. Subpart G (especially 10 C.F.R. §§ 2.704, 2.705, 2.709, 2.711-713) and the model milestones for Subpart G proceedings specified in Appendix B to 10 C.F.R. Part 2.

RECENT BACKGROUND

The recent background of this matter is as follows: On July 11, 2014, the NRC Enforcement Director issued an order to Mr. Chaisson prohibiting him from involvement in NRC licensed activities.¹ The 2014 Order alleges that Mr. Chaisson failed to comply with certain provisions of a confirmatory order issued by the NRC Enforcement Director in 2012 (2012 Order). The 2014 Order was published in the Federal Register on July 18, 2014. Id. The 2014 Order stated that Mr. Chaisson had 30 days within which to request or demand a hearing. Id. at 42,060.

On July 18, 2014, Mr. Chaisson sent an e-mail to NRC requesting an “expedited hearing.”² It appears that Mr. Chaisson has had considerable difficulty in complying with the NRC’s electronic filing requirements.³ Mr. Chaisson has also asked “that I be allowed to preform [sic] radiography until my hearing is granted so I can continue to provide for my family.” Id. at 2. The effective date of the 2014 Order is somewhat unclear. It stated that “[i]n the absence of any demand or request for hearing . . . the provisions . . . [of the 2014 Order] shall be effective and final 30 days after the date of issuance of this Order.” 79 Fed. Reg. at 42,061.

This Board was created on August 13, 2014.⁴

¹ In the Matter of James Chaisson, 79 Fed. Reg. 42,057 (July 18, 2014) (2014 Order).

² Email from James Chaisson to NRC Hearing Docket (July 18, 2014).

³ Email from James Chaisson to NRC Hearing Docket (Aug. 4, 2014 at 12:02 am) at 1.

⁴ In the Matter of James Chaisson (Establishment of Atomic Safety and Licensing Board) (Aug. 13, 2014) (unpublished).

TOPICS FOR INITIAL PREHEARING CONFERENCE CALL

The parties should be prepared to address the following matters at the initial prehearing conference call:

1. Counsel: Does Mr. Chaisson have access to a lawyer? If he intends to obtain a lawyer, when will the lawyer file an appearance?
2. Effective Date: Does the Staff deem the 2014 Order to be currently in effect? If so, when did it go into effect?
3. Immediate Impact of 2014 Order: What are Mr. Chaisson's duties in his current employment? Are those duties prohibited by the 2012 Order? Are those duties prohibited by the 2014 Order?
4. Stay: Does the Board have the authority to issue a stay of the 2014 Order? Given the fact that the demand for hearing was submitted on July 18, 2014, and this Board was not created until August 13, 2014, is the 2014 Order, de facto, an "immediately effective order" under 10 C.F.R. § 2.202(c)(2)? What criteria must be met in order for the Board to issue such a stay? Has Mr. Chaisson met those criteria? Should Mr. Chaisson have the opportunity to file a motion for a stay?
5. Electronic Filing: Will Mr. Chaisson be able to comply with the electronic filing requirements of the NRC's "E-Filing System" under 10 C.F.R. § 2.302(g)? Is there "good cause" for the Board to exempt him from those requirements? See 10 C.F.R. § 2.303(g)(2)–(4). If so, what alternative filing requirements should be imposed?
6. Subpart G: The regulations state that adjudicatory proceedings on enforcement matters "must be conducted under the procedures of subpart G . . . unless all parties agree and jointly request that the proceeding be conducted under the procedures of subpart L or subpart N"

10 C.F.R. § 2.310(b). We will proceed under Subpart G unless the parties unanimously agree otherwise.⁵

7. Hearing: Is there any dispute that Mr. Chaisson is entitled to a hearing?

8. Content of Hearing – Scope of the Hearing: What is the appropriate scope of the hearing?

For example, does the scope include:

- a. Whether Mr. Chaisson complied with the requirements of the 2014 Order;
- b. Whether the NRC Enforcement Director's finding that she "lack[s] the requisite reasonable assurance that Mr. Chaisson can be relied upon, at this time, to comply with the Commission's requirements and that the health and safety of the public will be protected" (79 Fed. Reg. at 42,058) is justified;
- c. Whether, based on the evidence adduced at the hearing, the Board has the requisite "reasonable assurance";
- d. Whether the sanctions imposed by the 2014 Order are too onerous;
- e. Whether the 2012 Order was justified;
- f. Whether Mr. Chaisson actually violated the NRC requirements as alleged in the 2012 Order; and/or
- g. Whether the 2012 Order accurately represents what Mr. Chaisson agreed to in the mediation process.

9. Content of Hearing – Disputed Issues: What are the specific disputed issues that Mr. Chaisson seeks to have adjudicated at the evidentiary hearing?

10. Discovery – Timing of Mandatory Disclosures: The regulations specify that the NRC Enforcement Director and Mr. Chaisson must disclose certain information and documents to

⁵ Given that Mr. Chaisson has no lawyer and is representing himself, the Board will scrutinize any agreement or consent by him purporting to waive or abandon any of his substantive or procedural rights. We will look to see if any such consent or waiver is fully informed. In this regard, Counsel for the NRC Enforcement Director should be especially scrupulous in informing Mr. Chaisson of the nature and extent of the rights that he is asked to waive or abandon.

each other “within 45 days after the issuance of a prehearing conference order following the initial prehearing conference” See, e.g., 10 C.F.R. § 2.704(a)(3). For example, within 45 days the NRC Enforcement Director must provide Mr. Chaisson with a copy of all NRC Staff documents that are “relevant to the disputed issues alleged with particularity in the pleadings” 10 C.F.R. § 2.709(a)(6)(i)(A). Likewise, within 45 days Mr. Chaisson must provide certain information and documents to the NRC Enforcement Director. See 10 C.F.R. § 2.704(a). In the interests of expediting this proceeding, should the Board shorten the 45 day deadline? What is the earliest date within which each party can file such mandatory disclosures?

11. Discovery by NRC: Does the NRC Enforcement Director intend to pursue any discovery against Mr. Chaisson? If so, describe it and explain how long you expect it to take.

12. Discovery by Mr. Chaisson: NRC regulations prescribe that, with certain constraints, Mr. Chaisson may pursue discovery against the NRC Enforcement Director. See 10 C.F.R. § 2.709 (“Discovery against NRC staff”). For example, Mr. Chaisson may file written questions (referred to as “interrogatories”) that the Board may require the NRC Enforcement Director to answer. In addition, Mr. Chaisson may require a member of the NRC Enforcement Director’s staff to attend a prehearing meeting where he can require that staff member answer questions orally under oath (this is referred to as a “deposition”). Does Mr. Chaisson intend to pursue any such discovery? If so, describe any planned discovery and explain how long it is expected to take.

13. Timing of Supplements to Responses: Each party has a duty to supplement and update its disclosures. See 10 C.F.R. §§ 2.704(e), 2.709(a)(6)(B)(ii). In light of Mr. Chaisson’s request for an expedited hearing, should the frequency of supplementation/updating be shortened from monthly to bi-weekly?

14. Claims of Confidentiality or Privilege: Does either party claim that any of its relevant documents are confidential, privileged, or otherwise protected in any way? If so, please explain. Do we need to issue a protective order?

15. Motions for Summary Disposition: In the interest of conducting an expedited hearing, should we prohibit motions for summary disposition under 10 C.F.R. § 2.710?
16. Deadlines for Prehearing Filings: Before the evidentiary hearing can be conducted, each party will be required to submit certain prehearing filings to the Board. These filings consist of all documents that support the party's position, including (a) a Statement of Position, (b) the written testimony (under oath or affirmation) of any witnesses, and (c) copies of all other written evidence (such as reports, emails, or other exhibits) that the party wants the Board to consider when it makes its decision. The Board will issue an order specifying the deadline for submitting these documents. What should the deadline be?
17. Dates of Evidentiary Hearing: The evidentiary hearing will be held after the parties submit, and the Board has read, all of the prehearing filings. When should the evidentiary hearing be held? Are there any known scheduling constraints?
18. Place of Evidentiary Hearing: Where should the evidentiary hearing be held?
19. Amendment and Clarification of Pleadings: Is it necessary or desirable for either party to amend its pleadings in accordance with 10 C.F.R. § 2.329(c)(2)?
20. Settlement: Are the parties interested in trying to compromise and settle this matter? Would it help if the Board arranged for the appointment of a settlement judge?
21. Legal Authority: Does the NRC Enforcement Director have legal authority to issue an order that is binding on a person not involved in NRC licensed activities or Agreement State licensed activities under 10 C.F.R. § 150.20 reciprocity? If so, what is that authority?
22. Other: Any other procedural or scheduling matters that the Board may deem appropriate.

The Board intends to cover (briefly) all of the foregoing topics during the initial prehearing conference call, and each party should be prepared to state its position on these matters and to discuss them. The parties need to reserve at least two hours for the conference call. On or before August 18, 2014, each party should contact Matt Zogby at 301-415-5880 to obtain the

telephone number and pass code for the initial prehearing conference call. Members of the public or media who wish to listen to this conference call may do so, and should contact Mr. Zogby at the above number for the requisite information.

Finally, in light of the fact that Mr. Chaisson has no lawyer (at this point) and is representing himself in this matter, we remind the lawyers in this case of their duty of candor, e.g., their duty to disclose to this tribunal any relevant information and/or legal authority that is adverse to the position of their client. Rule 3.3(a)(3) of the American Bar Association's Model Rules of Professional Conduct states:

A lawyer shall not knowingly . . . fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

The duty of candor is inherent in 10 C.F.R. §§ 2.303(d) and 2.314 and is especially important in cases, such as this one, where the subject of the enforcement action is not represented by counsel.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Alex S. Karlin, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 14, 2014

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Mr. James Chaisson) IA-14-025-EA
)
(Enforcement Action))

CERTIFICATE OF SERVICE

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

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, DC 20555-0001

Alex S. Karlin, Chair
Administrative Judge
E-mail: alex.karlin@nrc.gov

Michael M. Gibson
Administrative Judge
E-mail: michael.gibson@nrc.gov

Dr. Gary S. Arnold
Administrative Judge
E-mail: gary.arnold@nrc.gov

U.S. Nuclear Regulatory Commission
Office of Commission Appellate Adjudication
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: ocaamail@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the General Counsel
Mail Stop: O-15D21
Washington, DC 20555-0001
Catherine Scott, Esq.
Mauri Lemoncelli, Esq.
Christopher Hair, Esq.
James Maltese, Esq.
E-mail: catherine.scott@nrc.gov
mauri.lemoncelli@nrc.gov
christopher.hair@nrc.gov
james.maltese@nrc.gov

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop: O-16C1
Washington, DC 20555-0001
E-mail: hearingdocket@nrc.gov

James Chaisson
E-mail: xrayjames01@yahoo.com

[Original signed by Brian Newell]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 14th day of August, 2014