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NUCLEAR REGULATORY COMMISSION

Title: In the Matter of James Chaisson
Enforcement Action

Docket Number: IA-14-025-EA

ASLBP Number: 14-932-02-EA-BD01

Location: teleconference

Date: Tuesday, August 26, 2014

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

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PRE-HEARING CONFERENCE

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In the Matter of: : Docket No.

JAMES CHAISSON : IA-14-025-EA

(Enforcement Action) : ASLBP No.

-----x 14-932-02-EA-BD01

Tuesday, August 26, 2014

Teleconference

BEFORE:

ALEX S. KARLIN, Chair

MICHAEL M. GIBSON, Administrative Judge

DR. GARY S. ARNOLD, Administrative Judge

1 APPEARANCES:

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7 On Behalf of the Nuclear Regulatory Commission

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1 ALSO PRESENT:

2 VIVIAN CAMPBELL, NRC Region IV

3 ROB CARPENTER, NRC Office of Enforcement

4 TWANA ELLIS, ASLBP Administrative Assistant

5 TAHIRIH SOLOMON, NRC Office of Investigations

6 ONIKA WILLIAMS, ASLBP Law Clerk

7 MATTHEW ZOGBY, ASLBP Law Clerk

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P-R-O-C-E-E-D-I-N-G-S

10:33 a.m.

CHAIRMAN KARLIN: Okay. So as I said to the court reporter, we are on the record and I want to welcome everyone on the call.

In a minute I'll ask everybody to introduce themselves, but at first we want to go through some preliminary stuff that needs to be covered as just a matter of legal technicalities.

So I want to recite a little bit of the history. On July 11th of this year, 2014, Ms. Holahan, who is the NRC enforcement director -- she's the acting director, issued an order against Mr. Chay-sin.

Mr. Chay-sin, am I pronouncing your name correctly? How is pronounced?

MR. CHAISSON: It's actually pronounced like using an S instead of a C. It's Shess-on.

CHAIRMAN KARLIN: Shess-on?

MR. CHAISSON: But you're very -- yes, you're very close. You're closer than anyone else that's ever been.

CHAIRMAN KARLIN: Shess-on? Okay.

MR. CHAISSON: Yes, sir.

CHAIRMAN KARLIN: Please correct me if I

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1 get it wrong, but Shess-on.

2 So Ms. Holahan issued an order against Mr.
3 Chaisson on July 11th, 2014.

4 On July 18th, Mr. Chaisson sent an email
5 challenging the order. And you requested an expedited
6 hearing, Mr. Chaisson. So it stood that way for a
7 couple weeks. And on August 13th of this year this
8 Board of three judges was created. We were selected
9 and created to handle this case and this hearing.

10 And the next day, on August 14th, we
11 issued an order convening this conference call, saying
12 we need to have a conference call to plan this thing
13 out. So the purpose of this call today is not to have
14 the hearing. This is not the hearing itself, but this
15 is -- purpose of the call today is to plan the hearing
16 and to nail down the arrangements for the hearing,
17 things like where we're going to have it and when
18 we're going to have it and what it's going to cover
19 and what it won't cover. So that's the purpose of
20 today's call, sort of a planning session and to get
21 some stuff, preliminary stuff resolved.

22 Again, sort of for the record, I want to
23 recite that this case is called in the matter of James
24 Chaisson, and it is IA-14-025-EA. EA means
25 enforcement action. And it's the ASLBP No. 14-932-02-

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1 EA-BD01.

2 For the record, today's date is August
3 26th, 2014 and we're doing this call telephonically.
4 So the judges are in a conference room in Rockville,
5 Maryland. Mr. Maltese, I guess NRC staff is in a
6 conference room over in Rockville as well?

7 MR. MALTESE: That's correct, Your Honor.

8 CHAIRMAN KARLIN: And, Mr. Chaisson, where
9 are you presently located, sir?

10 MR. CHAISSON: I am currently located at
11 the moment in a town called Dickinson, South Dakota.

12 CHAIRMAN KARLIN: Okay. Dickinson?

13 MR. CHAISSON: Yes, sir. Dickinson.

14 CHAIRMAN KARLIN: Dickinson?

15 MR. CHAISSON: Yes, sir.

16 CHAIRMAN KARLIN: Okay. Now, good. We're
17 going go along here, Mr. Chaisson, and if you have any
18 questions or something you need to raise that you
19 don't understand that I've said or somebody else said,
20 please let us know, okay, and we'll try to explain it.

21 MR. CHAISSON: Yes, sir.

22 CHAIRMAN KARLIN: Okay. Are you with us
23 so far, though?

24 MR. CHAISSON: Yes, sir.

25 CHAIRMAN KARLIN: Okay. All right. So

1 let's just go on to introductions. I'll introduce the
2 Board here. The Board, the Atomic Safety and
3 Licensing Board consists of three judges. Michael
4 Gibson is one of the judges. He's a legal background.
5 He's a lawyer by training and he's been a judge here
6 for quite a few years. Gary Arnold is another one of
7 our judges. He's sitting here right now. And he's a
8 scientist and technical judge, and he's been here for
9 a good number of years also. And then there's me. My
10 name is Alex Karlin and I'm also a lawyer by training,
11 and I've been a judge here for about 10 years. And so
12 those are the three judges who together we constitute
13 "the Board." We'll talk about it as "the Board," Mr.
14 Chaisson.

15 MR. CHAISSON: Sure.

16 CHAIRMAN KARLIN: We also have Matthew
17 Zogby. He's a lawyer who works with us and he is what
18 we call a law clerk. And so he's been helping us.
19 And occasionally he might end up talking with you, Mr.
20 Chaisson, about arrangements for telephone calls and
21 stuff like that.

22 MR. CHAISSON: Yes, sir.

23 CHAIRMAN KARLIN: I believe you spoke with
24 Mr. Zogby briefly.

25 I believe you also spoke with Onika

1 Williams. She's another lawyer and law clerk we have,
2 and she is actually leaving us in a couple weeks, so
3 Mr. Zogby is now taking over as to be any kind of
4 contact point with this Board, Mr. Chaisson.

5 MR. CHAISSON: I'm sorry, I -- I --

6 CHAIRMAN KARLIN: Okay. And we also have
7 Twana Ellis. She's our administrative assistant, and
8 basically she runs the show around here and we just
9 try to --

10 (Laughter)

11 CHAIRMAN KARLIN: Next, Mr. Chaisson,
12 you're here on the call. Do you have anyone else with
13 you, sitting with you, helping you out or anything?

14 MR. CHAISSON: No, sir.

15 CHAIRMAN KARLIN: Okay. Is there anything
16 you want to say just to introduce yourself?

17 MR. CHAISSON: My -- my name is James
18 Chaisson. I've been in the NPD industry since 1984
19 and, you know, I started in the small town of Amelia,
20 Louisiana. And, you know, just raised up through this
21 industry and acquired, you know, quite a few different
22 certifications and, you know, this is the, since 1984,
23 the only infraction that I've ever had against my name
24 and I just didn't agree with, you know, the way things
25 were handled during that first hearing.

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1 CHAIRMAN KARLIN: Okay. Well, very good.
2 Now in terms of the staff -- now, the order was issued
3 by the acting NRC enforcement director, Ms. Patricia
4 Holahan.

5 And, Mr. Maltese, you're representing the
6 NRC and the enforcement director in this matter?

7 MR. MALTESE: That's correct, Your Honor.

8 CHAIRMAN KARLIN: Could you introduce the
9 rest of your team or any other NRC people on the line?

10 MR. MALTESE: Yes, also with me here in
11 Rockville are Mauri Lemoncelli and Catherine Scott
12 from the Office of the General Counsel. We also have
13 Rob Carpenter from the Office of Enforcement and
14 Tahirih Solomon from the Office of Investigations on
15 the line. And I believe we also have one or two
16 individuals from Region IV who have called in, and I
17 would ask them to introduce themselves at this time.

18 MS. CAMPBELL: Vivian Campbell in Region
19 IV.

20 CHAIRMAN KARLIN: Okay, Ms. Campbell.
21 Anyone else with you?

22 MS. CAMPBELL: No, sir.

23 CHAIRMAN KARLIN: Okay. All right. Thank
24 you very much. So we got a goodly number of people
25 from the NRC on the line. And, okay. Thank you for

1 introducing yourself.

2 Who will be the spokesman for the
3 enforcement director? Is that you, Mr. Maltese?

4 MR. MALTESE: Yes, for the large part.

5 CHAIRMAN KARLIN: Okay. Good. Because we
6 don't want a bunch of people ganging up here. Kind of
7 one-on-one would be a fairer way to do it.

8 Okay. That's good. Got the introductions
9 underway. Now, the next thing, sort of just a little
10 housekeeping matter, I guess administrative. Now, I'm
11 going to repeat this a bunch of times, but this is not
12 the hearing. The purpose of this call is to plan the
13 hearing, to figure out time, date, things like that.

14 And I want to ask, Mr. Chaisson, you've
15 read our August 14th order?

16 MR. CHAISSON: Yes, sir.

17 CHAIRMAN KARLIN: Good. Good. Because
18 it's important that you read that carefully. There's
19 a lot of stuff in there. And we're going to sort of
20 follow that order. Do you have a copy of it with you?

21 MR. CHAISSON: Not -- I would have to --
22 like I might be able to -- I got my laptop, but I
23 would have to use my phone for the WiFi.

24 CHAIRMAN KARLIN: Okay. Well --

25 MR. CHAISSON: I'm not able to pull it up.

1 CHAIRMAN KARLIN: Oh, okay. Well, we're
2 going to follow that, some of that order, because
3 there's a number of topics in there. So --

4 MR. CHAISSON: Yes.

5 CHAIRMAN KARLIN: -- in the future you may
6 want to keep that in mind.

7 MR. CHAISSON: Then but I'll just -- I do
8 have a copy of the 2012 order printed out on me.

9 CHAIRMAN KARLIN: Okay. Well, that's
10 good, but what we have issued is kind of what -- our
11 script for today is what we're going to try to cover.
12 So we'll cover it anyway and hopefully you can follow
13 along pretty well.

14 MR. CHAISSON: Yes, I might give it try
15 and see if I can pull it up. Since it is saved on my
16 computer, I might be able to pull it up.

17 CHAIRMAN KARLIN: Oh, okay. All right.

18 MR. CHAISSON: I might -- you know, I read
19 it over and over again. I'll know what it says.

20 CHAIRMAN KARLIN: Okay. Good. Good.
21 That's good, because there's a lot of work to do here.

22 MR. CHAISSON: Yes, sir.

23 CHAIRMAN KARLIN: I'm going to repeat,
24 though, there's going to be a transcript done of this
25 call. It will be written out by the court reporter.

1 And that transcript is going to be filed in the NRC's
2 Electronic Hearing Docket, okay, probably in a week or
3 two. And you can go look at that, Mr. Chaisson, and
4 everybody can go look at it and go over what was said,
5 what we committed to, what we talked about. And
6 that's a good way to sort of cover the topic again and
7 understand it. So you might want to check that out.

8 MR. CHAISSON: Yes, sir.

9 CHAIRMAN KARLIN: Okay. All right. Next
10 then, before we get to the specific topics, we want to
11 talk a little bit and explain to you, Mr. Chaisson,
12 particularly what the role of this Board is. Who are
13 we? Because you asked for a hearing. We're going to
14 give you a hearing and want to sort of tell you a
15 little bit about who we are.

16 As I said before, we're three judges.
17 We're going to decide this case. This Board, the
18 judges of the Atomic Safety and Licensing Board are
19 separate and independent from the NRC enforcement
20 director, Ms. Holahan, and we're separate from Mr.
21 Maltese and the other people on the NRC staff. Under
22 the law it is prohibited for us to talk with them. We
23 can't talk with the staff, we can't talk with Mr.
24 Maltese, we can't talk with Ms. Holahan or anybody,
25 and they can't talk with us about this case. And the

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1 only exceptions are if something that we say here
2 today -- so we're in open communication in front of
3 you. That's okay. We can talk with them in open
4 court.

5 They can also send written pleadings and
6 stuff to us, but they have to send you a copy. So you
7 get to see what they're saying, what they're filing.
8 And if we end up issuing a ruling, of course you get
9 to see what we're filing.

10 And there's another exception that's
11 basically if we got to set up a conference call or
12 call you up to see if you're available at 8:00 a.m. or
13 12:00 p.m., or whatever it is. That kind of minor
14 sort of logistical calls are okay. So Mr. Zogby may
15 from time to time contact you on that kind of thing,
16 and that's okay. So we can't talk with the staff, we
17 can't talk with Holahan, we can't talk with Mr.
18 Maltese, and they can't talk with us.

19 And the same goes for you, Mr. Chaisson.
20 We are not allowed under the law to talk with you
21 about anything substantive on this case and you're not
22 allowed to call us about anything substantive on this
23 case at all. But the same exception apply. Obviously
24 you can talk here today, in open court we'll call it,
25 in front of everybody. And you can also file things

1 in the electronic hearing docket or whatever, and
2 everybody gets to see that.

3 So the whole idea is that we're separate
4 from the staff and separate from you so that there
5 will be some fairness here. There's going to be no
6 secret communications by either side or with either
7 side and both sides in this thing are going to get an
8 equal shot at being heard. We're going to have a
9 hearing and you're going to be heard. The same thing
10 is we're not allowed to talk with you, you're not
11 allowed to talk with us. And the same thing is we're
12 not allowed to help you and we're not allowed to help
13 the staff, either. We're neutral. We're the judges
14 here. We're the umpires. We're neutral. We can't
15 talk with either side and we can't help either side.

16 MR. CHAISSON: That's what I was asking
17 for.

18 CHAIRMAN KARLIN: Well, I hope we can give
19 it to you. We're planning to give you a fair hearing,
20 sir. And so, you've asked for a hearing and we're
21 going to give you a hearing. It's going to be a
22 public process. The public will be invited. If you
23 have anybody you want to invite or be there, they can
24 come. And each side gets to present their evidence.
25 And then we're going to issue a decision and that

1 decision is going to be binding. So this is going to
2 be your shot, Mr. Chaisson, to put your stuff together
3 and to present it in a package that we can understand
4 and we'll try to do a fair way of looking at it and
5 issuing a ruling.

6 And if we issue a ruling, we issue a
7 decision, if you don't like it, you can go and appeal.
8 You can say I don't like what that Board did. I want
9 to go to the Commissioners. And so you can appeal to
10 the Commissioners if you don't like it. But we're
11 going to give it a straight shot and do our best to do
12 this thing fairly and promptly, and that sort of
13 thing.

14 Mr. Chaisson, do you have any questions or
15 do you understand?

16 MR. CHAISSON: Yes, I was going to ask you
17 if you or any of the other two judges have any, you
18 know, knowledge of this field, knowledge in the field
19 of NDP that, you know, X-ray and --

20 CHAIRMAN KARLIN: Well, we are not experts
21 in X-ray or radiology, but we have the regulations,
22 this Code of Federal Regulations.

23 MR. CHAISSON: Okay.

24 CHAIRMAN KARLIN: And we have some
25 familiarity with that. And if there's anything you

1 want to tell us about it when the times comes, when
2 the evidence is presented, we want you to present
3 anything you think would be helpful to us making a
4 decision. As I say, we're -- but we are not
5 radiologists or ND technicians or experts.

6 MR. CHAISSON: Yes, sir. Well, that's
7 fine with me.

8 CHAIRMAN KARLIN: Okay. Anything else you
9 guys want to say?

10 (No audible response)

11 CHAIRMAN KARLIN: Okay. So, all right.
12 So that's kind of the background of what this Board is
13 and who we are and where we're coming from.

14 Okay. Now the agenda for today; we're
15 just getting to the agenda, is to go through some
16 topics. And on August 14th we issued this order
17 scheduling this call. We said, okay, we're going to
18 have a telephone call. And on page 3 of that order we
19 listed a bunch of topics that we thought we needed to
20 cover, would be good to cover. We listed 21 specific
21 topics and they're 1, 2, 3, 4. And we're kind of
22 going to go through those 1, 2, 3, 4. And we're going
23 to hear from both sides about your thoughts on those
24 topics. We want to hear from you.

25 And then we have this sort of catch-all

1 one at the end, which is topic No. 22, which says
2 anything else, other. And we kind of left that for
3 ourselves to -- we needed to add anything. And we've
4 thought about it a little bit since then and we figure
5 there's at least one topic we do want to add. We'll
6 add it at the end. We're going to give you a head's
7 up right now so you might be thinking about it. And
8 the topic, I guess we'd call it, is the Fifth
9 Amendment Right Against Self-Incrimination. Under the
10 Fifth Amendment to the United States Constitution it
11 says no person, quote, "shall be compelled in any
12 criminal case to be a witness against himself," close
13 quote. That's the Fifth Amendment right against self-
14 incrimination.

15 Now, this case is not a criminal case, Mr.
16 Chaisson. I want to make that clear. This is not a
17 criminal case. This is an administrative case. I
18 mean, it's serious, but it's not a criminal case. But
19 the question we want to think about a little bit is
20 could it possibly lead to a criminal case? Is there
21 any possibility that the staff or anybody else might
22 want to bring a criminal case? And if that's the
23 possibility, we want to ask the staff and we want to
24 ask you, Mr. Chaisson, about whether and how the Fifth
25 Amendment might apply, does apply, that sort of thing.

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1 We'll get to that topic later. So as just sort of a
2 head's up, we wanted to just say that's a topic we
3 want to cover as topic No. 22.

4 MR. CHAISSON: Okay.

5 CHAIRMAN KARLIN: Okay. Now are you with
6 me, Mr. Maltese?

7 MR. MALTESE: Yes, Your Honor.

8 CHAIRMAN KARLIN: Okay. Now, so we got 22
9 topics on the agenda. That's pretty much. But I want
10 to ask both of you now, both sides -- Mr. Maltese, let
11 me start with you. Do you have any other topics or
12 things that you think we ought to cover today?

13 MR. MALTESE: No, Your Honor.

14 CHAIRMAN KARLIN: Okay. Mr. Chaisson, do
15 you have any other things you think we need to talk
16 about here in this planning session?

17 MR. CHAISSON: No, sir.

18 CHAIRMAN KARLIN: Okay. Well, then we'll
19 just go right down the line here with the 22 topics.
20 And I'm going to go to the order now. I'm looking at
21 the order on page 3 that we sent out there on August
22 14th and talk about the topics.

23 The first question is counsel. Now, I
24 wanted to ask, Mr. Chaisson, whether you have a
25 lawyer, whether you have access to a lawyer, whether

1 are you going to try to get a lawyer on this matter.

2 MR. CHAISSON: I've got an advisor that
3 I've talked to over this. You know, like I said, I've
4 been in the industry since '84 and I know quite a few
5 Level 3s in this industry. And what that is is pretty
6 much the highest ranking you can get in here. And,
7 you know, I'm going under their advice right now.
8 Like I said, sir, I am just recently getting back to
9 work thanks to the letter that was posted on my name.
10 I couldn't get no one to even talk to me. Finally, I
11 got a couple of companies to talk to me and give me a
12 job, but then the minute I was getting hired, the next
13 thing I know I got an NRC investigators coming over
14 and the companies would -- you know, two companies let
15 me go right away. You know, and that was just the
16 beginning of this year. And that was after me being
17 unemployed for 10 months. You know, trying to raise
18 three children on unemployment isn't easy.

19 CHAIRMAN KARLIN: All right. Well, we're
20 going to get to all that stuff and --

21 MR. CHAISSON: But I'm going to try. If
22 I feel I need to, yes, sir. You know, from this
23 hearing, you know, from this setting up this hearing,
24 you know, I'm going to let them people I know, you
25 know, know what happened today and then if they advise

1 me to, yes, sir, I will do my best to afford one.

2 CHAIRMAN KARLIN: Well, lawyers are pretty
3 expensive and I understand.

4 MR. CHAISSON: Yes, sir.

5 CHAIRMAN KARLIN: You'll probably figure
6 out that this is pretty complicated stuff and I think
7 you ought to think about seeing if you can get --
8 sometimes you can hire lawyers who will provide legal
9 services without charging you. Sounds amazing, but it
10 is possible. And for example, in Bismarck, North
11 Dakota -- I don't know where you're located exactly,
12 but --

13 MR. CHAISSON: I'm close to that.

14 CHAIRMAN KARLIN: -- there's a Legal
15 Services of North Dakota that's located there, and
16 we'll give you their telephone number if you got a
17 pencil.

18 MR. CHAISSON: Yes, sir.

19 CHAIRMAN KARLIN: 1 (800) 634-5263.

20 MR. CHAISSON: 5263. Okay.

21 CHAIRMAN KARLIN: And I don't know whether
22 they have free legal services to certain people who
23 qualify or not, but you might want to check into that
24 kind of thing if you -- because -- you might want to
25 check into it, that's all I'm saying. This is

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1 complicated stuff and you -- we can't give you a
2 lawyer. This is not a criminal case. We can't
3 appoint a lawyer for you. But that's all I'm saying.
4 It's pretty tough to do this by yourself without some
5 legal help.

6 MR. CHAISSON: Yes, sir.

7 CHAIRMAN KARLIN: But do what you need --
8 best you can.

9 MR. CHAISSON: That's all I can do.

10 CHAIRMAN KARLIN: Right. Now on that sort
11 of the same topic, I wanted to see if you sort of
12 understand, a lot of the -- in our order we talk a lot
13 about the Code of Federal Regulations, CFR. Are you
14 familiar with that, Mr. Chaisson?

15 MR. CHAISSON: Yes, sir, I have been
16 getting more and more -- you know, I have -- like I
17 said, I've got a lady who actually gave me my RSO
18 license in the State of Texas, who she's been helping
19 me out quite a bit on, you know, what are my next
20 steps and, you know, what guideline and all that to
21 follow.

22 CHAIRMAN KARLIN: Okay.

23 MR. CHAISSON: And she's the one who
24 helped me get this set up.

25 CHAIRMAN KARLIN: Okay. Well, that's

1 good. I mean, the Code of Federal Regulations is part
2 of the law. Okay?

3 MR. CHAISSON: Yes, sir.

4 CHAIRMAN KARLIN: That's the law we've got
5 to follow. And you go online and it's out there on
6 the Internet. It's put out there by the -- what's
7 called the Government Printing Office. The Federal
8 Government has a Government Printing office. Okay?

9 MR. CHAISSON: Yes, sir.

10 CHAIRMAN KARLIN: And if you get online,
11 like [www.gpo](http://www.gpo.gov) -- the Government Printing Office --
12 gpo.gov. And that's the website. And if you get on
13 there, you can -- there you -- there's a whole bunch
14 of stuff, but if you look there, you'll see it's got
15 the Code of Federal Regulations and you go to 10 CFR.
16 CFR stands for Code of Federal -- and then you can
17 find the regs that we're talking -- we're citing here
18 in this order and the regs that are going to govern
19 how we run this hearing and how we decide your case.
20 So that would be important for you to study up on that
21 stuff.

22 MR. CHAISSON: I will get on that website
23 this afternoon when I get back to the motel. Yes,
24 sir.

25 CHAIRMAN KARLIN: Okay. Good. Good.

1 MR. CHAISSON: Thank you.

2 CHAIRMAN KARLIN: Now, let's go to
3 question No. 2, which was a question about the
4 effective date and whether or not the 2014 order is
5 currently in effect.

6 Now, Mr. Maltese, as I understand it from
7 Ms. Holahan's letter of August 14th the staff agrees
8 that the 2014 order is not currently in effect. Is
9 that right?

10 MR. MALTESE: That's right, Your Honor,
11 yes.

12 CHAIRMAN KARLIN: Okay. And do I
13 understand also that the staff's position is that
14 therefore the 2012 order is still in effect?

15 MR. MALTESE: Yes, our position is that
16 the 2012 confirmatory order -- the requirements of
17 that remain in effect.

18 CHAIRMAN KARLIN: Okay. That sounds
19 logical to me. Do you have anything on that, Mr. --
20 well, let me just go on to the next topic, which is
21 topic No. 3. And part of that topic is -- now, the
22 2012 order is still in effect, right?

23 MR. CHAISSON: Yes, sir.

24 CHAIRMAN KARLIN: Now, the question is,
25 Mr. Chaisson, your activities are currently -- what

1 are your current duties and activities? You're
2 working for a company that's in North Dakota and
3 you're working in North Dakota?

4 MR. CHAISSON: Yes, sir. Yes, sir. I am
5 with a company called Code Inspection out of Louisiana
6 and they perform NDP services and they hired me to
7 come up here as a field auditor before -- or it was
8 June 16th, but you know, they hired -- they brought me
9 up here before June 16th to interpret film for the
10 crews out here because they're all young guys and
11 don't have the experience I have on field
12 interpretation. And they was having trouble with the
13 clients, of, you know, these hands making bad calls.
14 So I came up here as that.

15 But I had -- prior to that I had sent in
16 an application and a form to the State of Oklahoma to
17 get my state card again to be allowed to perform
18 radiography again. On June 16th I went to Oklahoma
19 City and took the exam and scored an 80 -- granted,
20 you know, the card, but now with all of this going on,
21 I'm having Oklahoma -- they sent me my letter stating
22 that I passed the exam and I am recertified. But I
23 haven't received my card from them yet stating, you
24 know, to have it physically on me, but I do have the
25 letter. But currently I am still doing film

1 interpretation, but on certain days I have been, you
2 know, operating the source.

3 CHAIRMAN KARLIN: Okay. Now, let me ask,
4 Mr. Maltese, is it my understanding that the
5 activities that Mr. Chaisson just described are okay
6 and permissible under the terms of the 2012 order?

7 MR. MALTESE: Yes, Your Honor, the staff
8 position is that since Mr. Chaisson is not performing
9 in a supervisory capacity or as a radiation safety
10 officer, his current responsibilities are not
11 prohibited.

12 CHAIRMAN KARLIN: Okay. Thank you. So
13 you heard that, Mr. Chaisson? And you've got that
14 letter from Ms. Holahan, so --

15 MR. CHAISSON: Yes, sir.

16 CHAIRMAN KARLIN: -- you're okay for the
17 moment here.

18 MR. CHAISSON: Yes, sir.

19 CHAIRMAN KARLIN: Okay. All right.
20 That's good to get that understood.

21 Let me turn to the fourth topic on our
22 list. And here's where we ask the question about
23 stay, whether the Board has the authority to issue a
24 stay and that sort of that. Now, I want to explain to
25 you, Mr. Chaisson, what a stay is.

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1 You know, you ask in your letters and
2 stuff -- you ask -- you wrote an email on August 4th,
3 and I'm looking at it now. And you wrote it and you
4 said, quote, "I have just sent my request for a
5 hearing like Mr. Ivan had instructed me to do. I hope
6 this will be acceptable." And then go on to say,
7 quote, "I also want to request for myself to be
8 allowed to continue working to provide for my family
9 until the hearing is granted."

10 Okay. So in legal terminology what you
11 asked for was kind of like you wanted to be allowed to
12 continue working until the hearing and a decision was
13 rendered. And we call that a request for a stay and
14 to us -- for us to order -- stop everything. But it
15 sounds like that problem has been solved by the letter
16 that Ms. Holahan sent to you and what Mr. Maltese just
17 said.

18 MR. CHAISSON: Yes, sir.

19 CHAIRMAN KARLIN: So I think we're okay
20 there. We don't really need to talk a whole lot about
21 the stay.

22 MR. CHAISSON: All right.

23 CHAIRMAN KARLIN: Kind of what we'd call
24 in legal talk moot. That issue is moot. It's no
25 longer relevant or important. It's covered.

1 But there is one part about this thing
2 that may be relevant, you know, should talk about.
3 You asked for an expedited hearing. And we're ready
4 to give you one, and that's fine, but I'm not sure
5 whether maybe the pressure is off on you a little,
6 because --

7 MR. CHAISSON: Yes, sir.

8 CHAIRMAN KARLIN: -- you've been allowed
9 to keep working. So maybe the need to have this
10 hearing right away is a little bit less.

11 MR. CHAISSON: Yes, sir, it is.

12 JUDGE ARNOLD: This is Judge Arnold.
13 Before we come to that conclusion, I want to ask Mr.
14 Chaisson about his Oklahoma certificate. When you get
15 that certificate are you going to be wanting to do
16 radiography itself?

17 MR. CHAISSON: Well, yes, sir. I mean,
18 the letter -- like I said, I had spoke to the woman
19 who trained me to be a radiation safety officer, Ms.
20 Laurie McGowan out of Deer Park, Texas. And I spoke
21 to her extensively on this. And, you know, I told her
22 I had received my letter stating that, you know, I
23 passed the exam and that Oklahoma stated that they
24 needed some background history on me to issue the card
25 to me, you know, physically give me my card.

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1 Well, what I did was send them my old card
2 from the State of Texas showing that I was a trainer
3 status, which means that in radiography at the Level
4 2, that's the highest you can go as a trainer. Your
5 next step is to go to a Level 3.

6 So with this question I had asked was I
7 legal to work with the letter stating that, you know,
8 I have passed my exam and I am recertified to perform
9 radiography and she said I was within the legal field
10 of continued -- you know, to do radiography with that
11 letter until I received my card.

12 So with that being said, I have spoke to
13 a fellow, Mr. Michael Reed. He is with the Oklahoma
14 Department of Environmental Quality over getting --
15 receiving my card. Because he received my -- well,
16 you know, my history and sees that I have the
17 experience to get the card. But now he told me that
18 he needed to have a hearing with me and the Nuclear
19 Regulatory Commission.

20 And I had spoke to Ms. -- who was that I
21 had spoke to? It was Ms. Patricia on this. And I
22 asked if she would be willing to do that and she told
23 me that they didn't -- she informed me that they
24 wasn't the reason why the guy wasn't sending me my
25 card. It wasn't nothing to do with them, that they

1 didn't send him a letter stating, you know, that they
2 was suspending my license and that they was on the
3 2014 order.

4 So I called Mr. Michael Reed back on that
5 and he said, you know, I am certified. They didn't
6 pull my card, but he still wants to have a conference
7 with the NRC. But I can't get no one to cooperate
8 with me to get on the phone with this man and let him
9 know that I am still under the 2012 order. I am
10 allowed to have my card.

11 You know, yes, sir, your question is --
12 yes, I want to perform radiography again. I mean,
13 this is what I do, sir. I've been doing it since '84
14 and, you know, I love this job.

15 JUDGE ARNOLD: Okay. Let me then ask the
16 NRC staff, under the 2012 order what do they see as
17 the current restrictions upon Mr. Chaisson performing
18 radiography, both in Agreement States and states under
19 NRC jurisdiction?

20 MR. MALTESE: Your Honor, I would point to
21 in particular -- in paragraph 4 of the 2012
22 confirmatory order Mr. Chaisson is prohibited for a
23 four-year period from working for any NRC licensee as
24 an area supervisor, a radiation safety officer or in
25 any other supervisory position excluding radiographer

1 while in NRC jurisdiction. And that includes working
2 for an Agreement State licensee that's working in NRC
3 jurisdiction under reciprocity, but this does not
4 prohibit Mr. Chaisson from performing radiography per
5 se.

6 JUDGE ARNOLD: Basically you're saying he
7 would have to be supervised?

8 MR. MALTESE: Yes.

9 JUDGE ARNOLD: He could not himself be the
10 supervisor?

11 MR. MALTESE: Correct.

12 CHAIRMAN KARLIN: Well, Mr. Maltese, let
13 me just probe that a little more. I'm looking at the
14 letter from Ms. Holahan of August 14, 2014. And looks
15 like a pretty good letter. And I'm looking at the
16 second paragraph of that letter. I don't know if you
17 have that in front of you or could get it. And so you
18 say the letter says, look, you're still subject to the
19 2012 order, Mr. Chaisson. And I think that's correct.
20 And then you talk about -- the letter talks about what
21 that means. And I'm going to read that paragraph.

22 Quote, "Some of the other provisions
23 related to your work status contained in the September
24 10, 2012 confirmatory order continue to (1) prevent
25 you from working for any licensee as an area

1 supervisor, radiation safety officer or any
2 supervisory position while in NRC jurisdiction." So
3 it only applies to NRC jurisdiction.

4 Now let me ask, let's say Mr. Chaisson is
5 working in North Dakota. And North Dakota is an
6 Agreement State, right?

7 MR. CHAISSON: Yes, sir.

8 JUDGE GIBSON: Mr. Maltese, that's right?

9 MR. MALTESE: Yes, Your Honor.

10 CHAIRMAN KARLIN: You with me?

11 MR. MALTESE: I think I understand where
12 you're going, Your Honor, and --

13 CHAIRMAN KARLIN: So my question is is he
14 -- he's in -- let's say he's working for a company
15 that's in -- let's just assume for the moment he was
16 working for a company that's licensed in -- that's in
17 North Dakota and has got a license from North Dakota
18 and he's working in North Dakota. Does the 2012 order
19 prohibit him from being a supervisor in North Dakota
20 for a North Dakota licensee, of an Agreement State?
21 Looks like the answer is no. It doesn't prohibit him
22 from doing that.

23 MR. MALTESE: Your Honor, I'd like to take
24 one minute to confer with my colleagues at the moment.

25 CHAIRMAN KARLIN: Okay.

1 MR. MALTESE: All right. Thank you.

2 (Attorneys conferring)

3 MR. MALTESE: Your Honor, the staff
4 position is that because Mr. Chaisson is working for
5 an NRC licensee, the NRC licensee is within NRC's
6 jurisdiction regardless of the physical location where
7 the work is being performed.

8 CHAIRMAN KARLIN: Yes. Yes, I understand
9 that. So if he's working for an NRC licensee, then
10 NRC jurisdiction applies wherever his physical
11 location is, right?

12 MR. MALTESE: That's correct.

13 CHAIRMAN KARLIN: And, Mr. Chaisson,
14 you're working -- what's the company you're working
15 for now? Code Inspections? Is that what you said?

16 MR. CHAISSON: Yes, sir. Code Inspection
17 and Testing out of Lafayette, Louisiana.

18 CHAIRMAN KARLIN: Okay. And Louisiana is
19 an Agreement State or a non-Agreement State?

20 MR. CHAISSON: They are an Agreement
21 State, sir.

22 CHAIRMAN KARLIN: Is that correct, Mr.
23 Maltese?

24 MR. MALTESE: I don't have the map with
25 me, Your Honor. I guess I'd have to go off-line and

1 look that up in a minute.

2 CHAIRMAN KARLIN: Okay. Let's assume that
3 it is an Agreement State. So he's working for a
4 company that's --

5 MR. CHAISSON: Licensed in Louisiana, yes,
6 sir.

7 CHAIRMAN KARLIN: By an Agreement State,
8 but he's working in North Dakota. Is that where your
9 physical location is for your work, Mr. Chaisson?

10 MR. CHAISSON: Yes, sir.

11 CHAIRMAN KARLIN: And North Dakota is also
12 an Agreement State, is that right, Mr. Maltese?

13 MR. MALTESE: Yes, Your Honor.

14 CHAIRMAN KARLIN: So is he subject to the
15 2012 order when he's working for an Agreement State
16 licensee and he's working in a different Agreement
17 State?

18 MR. MALTESE: The answer to that, Your
19 Honor, would depend on whether Code Inspection is an
20 NRC licensee. That's a question that we will have to
21 look into.

22 CHAIRMAN KARLIN: Okay. All right. Well,
23 the main point I guess is that he is okay doing what
24 he's doing now, which is not the radiation supervisory
25 position. And I'm not sure what the meaning --

1 whether he's allowed to do other things as well, but
2 we're not going to try to resolve that here today, I
3 guess.

4 But I look at your letter, Ms. Holahan's
5 letter and she says four points: (1) prevent you from
6 working from a licensee while in an NRC jurisdiction;
7 (2) require you to inform people of four years of any
8 employment with an NRC licensee; (3) require to notify
9 the NRC or working in a Agreement State licensee
10 performing work in NRC jurisdiction; and (4) require
11 you to provide a copy. So it all hinges on NRC
12 jurisdiction. And quite frankly, I'm not fully sure
13 what that all means at the moment, but maybe we don't
14 need to worry about it because at the moment Mr.
15 Chaisson is okay working where he is at the job he's
16 doing currently.

17 But part of the issue we're kind of
18 getting back to is maybe some of the heat is off and
19 the need for a super expedited hearing may not be as
20 urgent from Mr. Chaisson's perspective, in any event.
21 But that's up to him. We're going to do what we need
22 to do to get him a hearing as soon as we can.

23 Let's move to No. 5 on the list of topics.
24 Electronic filing. Mr. Chaisson, I understand, and
25 you don't need to go into it, because I saw some of

1 your correspondence and your emails that you had a
2 tough time figuring out how to file your stuff
3 according to NRC's electronic filing system. But it
4 looks like you've got -- you finally got something
5 filed and you're doing okay.

6 MR. CHAISSON: Yes, sir.

7 CHAIRMAN KARLIN: Are you able to handle
8 the e-filing system now? Are you getting the help you
9 need?

10 MR. CHAISSON: Yes, sir. Yes, sir. Mr.
11 Ivan was very helpful. Like I said in my letter, I
12 stated that, you know, I turned over -- I gave him
13 control of my laptop and, you know, it was like four
14 to five times that we tried. And then finally me and
15 Mr. Ivan got together and he went right and fixed the
16 problem with the -- that was on their end, not mine.
17 And once we got it fixed, the same day he fixed it I
18 filed my request for a hearing immediately right
19 after.

20 CHAIRMAN KARLIN: Okay. Well, that's
21 good. I know it can be tough doing some of this
22 stuff. Most of the time you got lawyers who are kind
23 of familiar with the system and have figured it out.
24 For a new person to figure it out is not always easy.
25 And they do have a help line there.

1 MR. CHAISSON: Yes, sir.

2 CHAIRMAN KARLIN: And I urge you to work
3 with them. And it's good that you got it, because
4 there's going to be other filings you're going to have
5 to do and we're going to be sending -- whenever we
6 issue an order or something, it's going to be sent to
7 that Electronic Information Exchange, EIE, or EHD, and
8 you're going to have to get it that way. That's
9 the --

10 (Simultaneous speaking)

11 MR. CHAISSON: Yes, sir.

12 CHAIRMAN KARLIN: -- stuff and that's how
13 you're going to submit stuff.

14 MR. CHAISSON: Yes, sir.

15 CHAIRMAN KARLIN: And if you have any
16 super problems with it, you might let Mr. Zogby know.
17 If you're trying to file something -- we're going to
18 set some deadlines about when stuff has to be filed
19 and you go to take those deadlines -- everybody's got
20 to take those deadlines pretty seriously. But you got
21 to work with Mr. Ivan or whoever it is to make sure
22 you can get your stuff filed in a fair way so we
23 can -- we want you to get your stuff filed so we can
24 read it and rely on it and use it.

25 MR. CHAISSON: Yes, sir.

1 CHAIRMAN KARLIN: Okay. So we're going to
2 assume unless we hear otherwise from you that you can
3 deal with the electronic filing system, and you kind
4 of got it figured out.

5 MR. CHAISSON: Yes, sir.

6 CHAIRMAN KARLIN: Okay. That's good.
7 Topic No. 6. We call that Subpart G. Now, as we
8 tried to explain in this order, the regulations, the
9 Code of Federal Regulations that deal with our
10 hearings, how we do our hearings, set up a couple
11 different tracks or different ways to do the hearings.
12 And for enforcement cases like this one; this is an
13 enforcement case against you, Mr. Chaisson, the
14 regulations say that we will follow the Subpart G
15 procedures. And the exception is you agree, if
16 everybody agrees, Mr. Maltese and you agree to use
17 some other procedures, a procedure like Subpart L.

18 Now, I'm not really in a position to be
19 able to explain all the details of what the
20 differences are, but I think as a general proposition
21 Subpart G is sort of the default procedures for
22 enforcement cases. And they're probably a little
23 better for you, but it's kind of you have to decide
24 that.

25 So let me ask Mr. Maltese first. Any

1 thoughts there on G or L, Mr. Maltese?

2 MR. MALTESE: Your Honor, the staff is
3 prepared to proceed under Subpart G, which is, as you
4 mentioned, typical for enforcement cases.

5 CHAIRMAN KARLIN: Okay, Mr. Maltese.

6 We're going to go under G unless you feel
7 you want to go under L and convince Mr. Maltese that
8 he wants to go under L. You with me so far? Mr.
9 Chaisson?

10 MR. CHAISSON: Yes. Yes.

11 CHAIRMAN KARLIN: Okay.

12 MR. CHAISSON: So this Subpart G and
13 Subpart L that you're speaking of, would that be under
14 the Code of Federal Regulations?

15 CHAIRMAN KARLIN: Absolutely. Yes, sir.
16 In fact, if you go to the first page -- let me give
17 you the numbers. Subpart G; and this is the way you
18 find it, is like 10 CFR Section --

19 MR. CHAISSON: Yes, sir.

20 CHAIRMAN KARLIN: -- 2.700. Okay? That's
21 Subpart G.

22 MR. CHAISSON: Okay.

23 CHAIRMAN KARLIN: And it's got 2.700,
24 2.701, 2.703, 04, 05. All the 700 regs, 2.700 regs,
25 that's Subpart G. It starts a little -- it says this

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1 is Subpart G and then it goes into these regs. And
2 those are the regs that normally govern enforcement
3 cases. And so that's what we use in this case, too.

4 MR. CHAISSON: All right.

5 CHAIRMAN KARLIN: Okay. Topic No. 7, we
6 asked whether there's any dispute that Mr. Chaisson is
7 entitled to a hearing. And the staff has agreed that
8 you're entitled to a hearing, so there's no doubt
9 about it, you're entitled to a hearing. So that's
10 covered.

11 Next topic is No. 8, and No. 8 and No. 9
12 kind of go together, but No. 8 is important. This is
13 an important one, Mr. Chaisson. We need to hear from
14 you and we need to hear from Mr. Maltese also. We'll
15 probably start with Mr. Maltese. And this is like the
16 content of the -- all right. You're going to have a
17 hearing. Okay. Now what's the topic? What's going
18 to be in the hearing? What are the contents of the
19 hearing? What are you arguing about? You know,
20 what's the argument?

21 For example -- let me just talk about it.
22 I look at the 2014 order. You've been issued an order
23 by Ms. Holahan, the 2014 order. And you want a
24 hearing on that order. You say I don't agree with
25 that 2014 order. I want to get a hearing on that 2014

1 order. And the 2014 order says, and I'm going to sort
2 of paraphrase it here -- they allege -- Ms. Holahan
3 alleges in that order that you made three violations,
4 Mr. Chaisson. And what she says is -- what she's
5 dinging you on is three things and I'm going to read
6 it.

7 Quote, "The NRC determined that contrary
8 to the requirements of the confirmatory order Mr.
9 Chaisson failed to (1) complete a 40-hour formal
10 training course designed for qualifying radiation
11 safety officers; and (2) a 40-hour formal training
12 course that meets or exceeds the requirements of 10
13 CFR 34.43 training within 18 months of the
14 confirmatory order; and (3) in addition, Mr. Chaisson
15 failed to submit an article to Region IV Director of
16 Division of Nuclear Materials Safety within 18
17 months."

18 So those are the three things that order
19 says you violated, Mr. Chaisson. One, you didn't do
20 40 hours training. Two, you didn't do another 40
21 hours training. And three, you didn't do an article,
22 write an article. And as I understand it, you want a
23 hearing because you disagree with that?

24 MR. CHAISSON: Yes, sir. Yes, sir.

25 CHAIRMAN KARLIN: Okay. All right. Well

1 then, so that's going to be the issue. Now as I
2 understand, you also want a hearing because you think
3 that the penalty, the three years suspension is not
4 fair or too much, or something like that?

5 MR. CHAISSON: Yes, sir.

6 CHAIRMAN KARLIN: Okay. Now, that I think
7 -- Mr. Maltese, what do you see the scope of the
8 hearing -- I mean, we've listed some topics here and
9 do you see anything in here that you have any issues
10 with, or how do you see the scope of this hearing?

11 MR. MALTESE: Your Honor, the staff's
12 position is that the scope of the hearing should be
13 limited to whether the 2014 order was justified and
14 appropriate. And that would bring in the issues
15 essentially that have been listed from (a) through
16 (d).

17 CHAIRMAN KARLIN: (a) through (d)? Yes.
18 And for example, what about (g), whether the 2014
19 order accurately represents what Mr. Chaisson agreed
20 to? It sounds like what is submitted so far -- and
21 he's kind of saying in part that's not -- it may not
22 be entirely accurate. The 2012 order may not actually
23 reflect what -- because apparently there was an
24 agreement in principle that he signed and then there
25 was a confirmatory order that was issued. And those

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1 are two different things. Is that right, Mr. Maltese?

2 MR. MALTESE: Yes, Your Honor. On August
3 31st, 2012 Mr. Chaisson executed a consent and a
4 hearing waiver that consented to the issuance of the
5 confirmatory order and waived his rights, waived the
6 right to request a hearing on the confirmatory order,
7 so we would consider the issues with the scope of the
8 2012 order to be closed.

9 CHAIRMAN KARLIN: Well, is that consent
10 that you're talking about kind of this one sentence
11 blank check that he just says, ah, you know, I
12 consent, or does it have any details of --

13 MR. CHAISSON: Correct.

14 CHAIRMAN KARLIN: Mr. Maltese? Does that
15 agreement that you're talking about have the details
16 of what he's consenting to?

17 (No audible response)

18 CHAIRMAN KARLIN: Mr. Maltese?

19 MR. MALTESE: Well, the order itself has
20 the details.

21 CHAIRMAN KARLIN: But he didn't sign that.

22 MR. CHAISSON: No, sir.

23 CHAIRMAN KARLIN: Let me ask it this way,
24 Mr. Maltese: Mr. Chaisson's signature on the consent
25 and hearing waiver is dated August 30th, but the order

1 itself is dated the 10th of September, or 11 days
2 later. So did he really see that order before he
3 signed this consent and hearing waiver form?

4 MR. CHAISSON: The hearing waiver form was
5 signed before the formal issuance of the order, but
6 Mr. Chaisson participated in the ADR process, and
7 following the ADR process signed the agreement and
8 principle and signed the consent and hearing waiver
9 form. And so he did consent to the terms that were in
10 place in that confirmatory order.

11 CHAIRMAN KARLIN: Okay. Well, that's
12 going to be an issue maybe that will come up in the
13 hearing as how he signed what looks like to me a
14 statement that doesn't have any specifics on it. So
15 I consent to whatever you want to issue. Just issue
16 it.

17 MR. CHAISSON: Yes.

18 CHAIRMAN KARLIN: And after the fact he's
19 saying, well, wait a second. I didn't consent to
20 that.

21 MR. CHAISSON: Yes, sir.

22 CHAIRMAN KARLIN: But I don't know. I
23 don't know. But I think that (g) may -- we're not
24 going to decide it here today. We're going to think
25 about it and hear both sides and then we're going to

1 issue an order that lays out what we're going to have
2 the hearing about. But right now I'm just thinking
3 that (g), which is whether the order accurately
4 reflects what he agreed to, might be fair game.

5 Now, let's ask Mr. -- Mr. Chaisson, do you
6 want to say anything at this point without going into
7 too much detail?

8 MR. CHAISSON: Without getting into too
9 much detail, sir, you hit the nail right on the head.
10 You know, what -- when I had -- you know, when all
11 this -- it started in 2009. I spoke to, you know, an
12 NRC investigator. And then I never heard nothing
13 about it again until 2012, and that's when I received
14 the letter stating that that was the end of my license
15 for five years. And, you know, I was in the middle of
16 some, you know, personal things with my children and
17 their mother.

18 But anyway, you know, I wasn't explained
19 fully of what they were trying to do. And then like
20 I said, they told me just -- I said -- I told them I
21 couldn't -- at that time presently I couldn't afford
22 to go to Austin the hearing. That's where they wanted
23 to hold it was in Austin, even though I lived in Utah,
24 you know, that I was not able to afford the expense to
25 go there. And they explained to me that if I wrote in

1 detail, you know, the letter of -- a letter to them of
2 what happened, that that letter and the original
3 investigative letter from 2009 when this incident
4 happened would be submitted on my behalf.

5 Well, when I get the order stating that
6 they're suspending me for three years, five years, you
7 know, the original NRC investigator's findings were
8 never -- it's like they disappeared.

9 CHAIRMAN KARLIN: Right.

10 MR. CHAISSON: Yes.

11 CHAIRMAN KARLIN: Well, yes. All right.
12 So that's all --

13 MR. CHAISSON: No, I was -- I feel I was
14 treated very unfairly by the NRC, you know, due to my
15 background and my history. I've been doing this since
16 '84, like I stated, sir, and I've been audited I can't
17 tell you how many times by different state agencies,
18 by the NRC, and I've never had one single infraction
19 on my name.

20 CHAIRMAN KARLIN: We're going to get to
21 that when we get to the hearing.

22 MR. CHAISSON: But, yes, we agree about
23 what was put in that confirmatory order. No, sir.

24 CHAIRMAN KARLIN: Well, all right. Well,
25 that will be maybe something you guys want to fight

1 about and try to convince us one way or the other.
2 The staff believes it was -- the confirmatory order,
3 2012 order does accurately reflect the deal, and you
4 say it doesn't. But it does appear that you guys
5 reached some sort of agreement supposedly in 2012 and
6 the staff is kind of saying you reached agreement and
7 you didn't perform it. You didn't comply. And you're
8 saying, well, I did comply or I partially complied.
9 So that will be the hearing.

10 MR. CHAISSON: Correct.

11 CHAIRMAN KARLIN: That's not for here
12 today.

13 MR. CHAISSON: Yes, sir.

14 CHAIRMAN KARLIN: Now, the other thing,
15 Mr. Maltese -- and I want to talk about EE&F for a
16 minute, and that's kind of the question here. The
17 2014 order is saying, look, Mr. Chaisson did not
18 comply with the 2012. Now, and because of that and
19 some other things, I guess, Ms. Holahan, the
20 Enforcement Division director has said she's going to
21 suspend him for three years and she's going to impose
22 some additional stuff, the NRC is going to impose some
23 additional stuff for four more years. And part of the
24 issue may be here, well, is that too onerous of a
25 penalty or a sanction to be imposed on Mr. Chaisson

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1 for the infractions in question? Sort of this is not
2 liability so much. It's like the punishment phase.
3 What's a fair amount be imposed upon Mr. Chaisson for
4 what he did?

5 Now, one way to look at it is, well, the
6 only thing we're going to look at is he didn't do the
7 40 hours, he didn't do the 40 hours, he didn't do the
8 article. And if we look at it that way, we will judge
9 the onerousness or the severity or the -- what -- of
10 the penalty in light of those three things, and only
11 in light of those three things. The alternative is to
12 say, well, the original alleged infractions and
13 violations are relevant because they give us a
14 foundation upon which to assess how serious this
15 problem is or these alleged violations were.

16 Do you see that, Mr. Maltese? How should
17 we approach that? Don't those things come in in terms
18 of figuring out if the penalty or sanctions were
19 appropriate?

20 MR. MALTESE: I think, Your Honor, the
21 staff's position is that to the extent that the order
22 refers to or relies on the original violation as sort
23 of the justification for setting the penalty, that
24 that would not bring that original violation into the
25 scope of this current hearing. And I would draw an

1 analogy to -- for example, in the criminal context on
2 a half sentence for a repeat offender which wouldn't
3 allow a defendant to re-contest the original
4 violation.

5 CHAIRMAN KARLIN: Yes. Okay. Well, all
6 right. Well, that's your -- let me ask this: In the
7 2014 order in the *Federal Register*; and I've read it,
8 you recite that the original violations Mr. Chaisson
9 was cited for back in 2012 involved violations of
10 certain NRC regulations like 10 CFR 34., you know,
11 whatever -- I'm sorry, 30.10(a)(1), deliberate
12 misconduct in violation of 30.10(a)(1). Is there any
13 particular regulation that you're citing that supports
14 the 2014 order, or is it just that he didn't abide by
15 the 2012 order? Is there any regulatory -- as far as
16 I can tell, this 2014 order does not cite any
17 regulation that he violated.

18 MR. MALTESE: It would be the -- I'm
19 sorry, Your Honor, give me one moment, please to
20 confer with my colleagues.

21 (Attorneys conferring)

22 MR. MALTESE: Your Honor, the staff view
23 is that Mr. Chaisson's violation of the 2012 order
24 invokes our authority under the Atomic Energy Act
25 which allows us -- if we lose reasonable assurance,

1 gives us authority to issue orders under Section 161
2 of the AEA.

3 CHAIRMAN KARLIN: So it's a general
4 authority to issue orders under Section 161 of the
5 Atomic Energy Act?

6 MR. MALTESE: That's correct.

7 CHAIRMAN KARLIN: And does have the phrase
8 "reasonable assurance" in it?

9 MR. MALTESE: I don't have the answer to
10 that right at this moment.

11 CHAIRMAN KARLIN: Okay. All right. Well,
12 all right. That's good to know. I don't think it
13 does, but we'll look at it and -- okay. It's just we
14 need to think about whether we just do not cover
15 anything about the 2012 or whether it comes in as
16 relevant at least to the appropriateness of the
17 penalty in question. I mean, on the one hand that's
18 a pretty significant penalty.

19 On the other hand, Mr. Chaisson, you
20 should know; and I think you do know, because you're
21 in this field, the NRC -- and we take this very
22 seriously, proper management and storage of
23 radiological materials is very critical, especially in
24 this age of --

25 MR. CHAISSON: Yes, sir.

1 CHAIRMAN KARLIN: -- sabotage and that
2 sort of thing. So this is very serious stuff and --

3 MR. CHAISSON: Yes, sir.

4 CHAIRMAN KARLIN: -- I think we all we all
5 got to know that.

6 All right. Well, is there anything else
7 you want to talk about?

8 MR. CHAISSON: Well, I feel that, you
9 know, the 2012 order, that they're so, you know,
10 strictly stating that the -- you know, shouldn't have
11 any relevance but it has all the relevance to this
12 because, you know, there's a lot of things, like I
13 said when I stated that, they, you know, was not -- I
14 wasn't given a fair treatment on that at all. The
15 reason why I agreed to that 2012 order was because
16 they had already suspended me for five years. When I
17 did get a mediation, they gave me a mediator who
18 didn't have the slightest idea what he was mediating
19 over. You know, nothing about --

20 CHAIRMAN KARLIN: Let me just stop you
21 there and say -- there are a couple things: One is
22 we're not going to get into what was said in the
23 mediation.

24 MR. CHAISSON: Yes, sir.

25 CHAIRMAN KARLIN: I don't think that we

1 can do that. For example, there are Federal Rules of
2 Evidence and they talk about mediation being
3 confidential. Federal Rule of Evidence 408, I think
4 it is. I used to be a mediator 25 years ago for
5 awhile.

6 MR. CHAISSON: Oh, okay.

7 CHAIRMAN KARLIN: And it's important that
8 that be confidential. And so I think we got to be
9 careful about not getting into he said, she said about
10 what was said there. But we can perhaps talk about
11 whether the confirmatory order in 2012 accurately
12 reflects what you agreed to, not into the details of
13 why you agreed to it or what you said or what you
14 felt.

15 MR. CHAISSON: Yes, sir.

16 CHAIRMAN KARLIN: It's like if you agreed
17 to it, we don't want to hear about why you agreed to
18 it. You just agreed to it. And that's the deal --

19 MR. CHAISSON: Yes, sir.

20 CHAIRMAN KARLIN: -- and you got to live
21 up to it.

22 MR. CHAISSON: Yes, sir.

23 CHAIRMAN KARLIN: And so, and I'm not sure
24 we're going to get into whether or not you really --

25 COURT REPORTER: Hello. This is the court

1 reporter.

2 CHAIRMAN KARLIN: -- stored the stuff
3 properly way back in 2009. I don't think we can --

4 COURT REPORTER: Hi. This is the court
5 reporter. I just have a quick note.

6 CHAIRMAN KARLIN: Beg pardon?

7 COURT REPORTER: Mr. Chaisson, if you
8 could please refrain from speaking when the Judge is
9 speaking. I can't get an accurate transcript that
10 way.

11 MR. CHAISSON: Yes, sir.

12 CHAIRMAN KARLIN: Fair enough. Fair
13 enough. That was the court reporter. That was the
14 reporter talking. So he's trying to take us all down.
15 And it's fair enough. I think I was just as much at
16 fault as you were, Mr. Chaisson.

17 So anyway, I think Judge Gibson has a
18 question or something that he wants to ask.

19 JUDGE GIBSON: Yes, Mr. Maltese, do I
20 understand correctly that there was an allegation in
21 the original 2012 proceeding that Mr. Chaisson had
22 engaged in deliberate misconduct?

23 MR. MALTESE: That's correct, Your Honor.

24 JUDGE GIBSON: Okay. Was there ever any
25 finding that he had done so?

1 MR. MALTESE: Yes. Yes, and that was --
2 the staff investigation substantiated that, and that
3 was the basis for the original 2012 prohibitory order.

4 JUDGE GIBSON: Okay. And how was that
5 finding made? Was that made on the record or was that
6 essentially the result of an investigation by the
7 staff for the staff that was put in the original order
8 that was then mediated?

9 MR. MALTESE: One second, Your Honor.

10 (Pause)

11 MR. MALTESE: Your Honor, there was an
12 independent investigation conducted by the Office of
13 Investigations. It was then referred to the Office of
14 Enforcement which led to the 2012 prohibitory order
15 after the issuance of which Mr. Chaisson requested the
16 ADR at which out of that came the 2012 confirmatory
17 order.

18 JUDGE GIBSON: Okay. And in the
19 confirmatory order is there a recitation of deliberate
20 misconduct?

21 MR. MALTESE: I was under the impression
22 that the confirmatory order does give background. If
23 you'd take one moment, I'll pull that up in front of
24 me.

25 Your Honor, on page 2 of paragraph 2 of

1 the confirmatory order it refers to the deliberate
2 misconduct. It says on apparent violation of
3 Deliberate Misconduct Rule, 10 CFR 30.2.

4 JUDGE GIBSON: Okay. And that was an
5 allegation that the staff made, is that correct?

6 MR. MALTESE: It was a result of the
7 staff's -- of the Office of Investigations' --

8 JUDGE GIBSON: Correct. Correct.

9 MR. MALTESE: -- verification, yes.

10 JUDGE GIBSON: Right. And this is a
11 "whereas," right?

12 MR. MALTESE: (No audible response)

13 JUDGE GIBSON: In the "whereas" it says
14 that you and Mr. Chaisson have agreed to disagree on
15 whether he engaged in deliberate misconduct, right?

16 MR. CHAISSON: Yes.

17 JUDGE GIBSON: Is that right, Mr. Maltese?

18 MR. MALTESE: Could you point me to --

19 JUDGE GIBSON: Page 5, second full
20 paragraph.

21 MR. MALTESE: Yes. Yes, that is the text
22 of the order. And the staff's position is that there
23 was a violation of the Deliberate Misconduct Rule.

24 JUDGE GIBSON: Correct. I understand that
25 that is your claim, but Mr. Chaisson has never

1 admitted to engaging in deliberate misconduct, is that
2 correct?

3 MR. MALTESE: (No audible response)

4 JUDGE GIBSON: And in fact there's a
5 specific recitation that the two of you agreed to
6 disagree on whether he had engaged in deliberate
7 misconduct, is that correct?

8 MR. MALTESE: That's correct, although the
9 staff position would be that in terms of whether or
10 not the conditions of the confirmatory order were
11 binding on Mr. Chaisson, whether or not the staff
12 agreed with Mr. Chaisson on that would not be relevant
13 to the current prohibitory order.

14 JUDGE GIBSON: Is there any allegation in
15 the 2014 order about deliberate misconduct?

16 MR. MALTESE: No, there is not, Your
17 Honor.

18 JUDGE GIBSON: Okay. And I think we're
19 all in agreement that Mr. Chaisson is not a licensee,
20 correct?

21 MR. MALTESE: No, he does not individually
22 possess an NRC license.

23 JUDGE GIBSON: Okay. Now, are you
24 maintaining that that is relevant to this proceeding
25 now, Mr. Maltese?

1 MR. MALTESE: Could you clarify, Your
2 Honor, what is relevant?

3 JUDGE GIBSON: Yes. Yes, are you claiming
4 that -- well, let me rephrase that. Is whether Mr.
5 Chaisson engaged in deliberate misconduct relevant to
6 the 2014 proceeding?

7 MR. MALTESE: No, it is not, Your Honor.

8 JUDGE GIBSON: Okay. I think that's all
9 I have for right now. Thank you.

10 MR. CHAISSON: Can I say something?

11 CHAIRMAN KARLIN: Yes. Yes, Mr. Chaisson.

12 MR. CHAISSON: You know, yes, sir, Your
13 Honor, I'm glad you found that little paragraph
14 because that was definitely, you know, what we had
15 came up with. We agreed to disagree due to the fact
16 that, you know, that's what the whole 2012 enforcement
17 action was over, the deliberate act. And now, that --
18 you know, I didn't understand everything whenever they
19 told me this. You know, I wasn't allowed to go
20 through this ADR and request any of them hearings.
21 You know, because I figured, you know, the truth would
22 be told, but it wasn't.

23 So a lot of that was due to my ignorance
24 of, you know, the hearing process, but I feel it has
25 a lot of relevance to this 2014 order, you know, due

1 to the fact that this is -- it all stemmed from that
2 accusation right there. So I think the two-thousand
3 just -- that should be relevant to this hearing.

4 CHAIRMAN KARLIN: Well, Mr. Chaisson, this
5 is Judge Karlin.

6 MR. CHAISSON: Yes, sir.

7 CHAIRMAN KARLIN: One of the things you
8 seem to be saying is that the 2012 order does not
9 correctly reflect the agreement you had at the time.

10 MR. CHAISSON: Correct.

11 CHAIRMAN KARLIN: Now, okay, when we get
12 to the hearing, you're going to have to explain that
13 and you're going to have to talk about that. I mean,
14 you're going to have to -- what I think you're going
15 to need to do is go through the 2012 order and you're
16 going to have to -- paragraph by paragraph and you're
17 going to say --

18 MR. CHAISSON: Yes.

19 CHAIRMAN KARLIN: -- you're going to have
20 to tell us which parts of that order you say are
21 inaccurate, that don't truly reflect the deal.

22 MR. CHAISSON: Okay.

23 CHAIRMAN KARLIN: I don't necessarily why
24 you cut a deal, but apparently there was a deal that
25 you all came up with. I mean, originally they had --

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1 2012 the staff imposed a three-year ban on you. And
2 you didn't like that you and you asked for ADR, and
3 you got an ADR. And after the ADR was over with, you
4 got -- that was cut in half. It was down to 18 months
5 you were banned. So, all right. You got something
6 out of it.

7 Now, you had -- and if you say that
8 there's something in that 2012 order that is incorrect
9 about what you agree to, you need to identify that
10 specifically. We just can't go around guessing which
11 part you've -- and they said you have to do a -- write
12 an article. Do you agree that the deal was you'd
13 write an article? They said you had to have 40 hours
14 of training. Did you agree that you agreed to do 40
15 hours of training? You know, those are the things
16 we're going to have to know. What do you say you
17 didn't agree to that's in that order?

18 That's kind of -- so I'm trying to help
19 you figure out how we're going to prepare for this
20 hearing. We don't want you to go through it right
21 now, but I'm just saying we're going to have to know
22 more specifically when we get to the hearing and
23 you're going to have to tell us more specifically.

24 JUDGE ARNOLD: All right. This Judge
25 Arnold and I do have a question for Mr. Maltese. Do

1 you consider that the conditions of the current 2014
2 order would be within the scope of the hearing?

3 MR. MALTESE: Yes, they would be, Your
4 Honor.

5 JUDGE ARNOLD: Okay. On page 8, paragraph
6 B, the current --

7 CHAIRMAN KARLIN: Of what?

8 JUDGE ARNOLD: -- of the current 2014
9 order it states, "In addition, at that meeting,"
10 meaning Mr. Chaisson, "shall verbally attest to the
11 corrective actions he has taken to address his
12 deliberate misconduct."

13 Now, being that the 2012 order said you
14 agreed to disagree on whether it was deliberate,
15 doesn't that pull in the deliberateness of the
16 misconduct into this current hearing?

17 MR. MALTESE: Our position is that it
18 wouldn't, Your Honor. In this paragraph, yes, the
19 staff is characterizing the violation, the activity
20 between 2009 and 2010 as deliberate misconduct, which
21 the staff persists it was. And we acknowledge that we
22 disagreed with Mr. Chaisson on that. And that's all
23 that is meant there, that it would address the events
24 that occurred between that time. And that's not an
25 occasion to reexamine at this point whether or not it

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1 was deliberate misconduct.

2 JUDGE ARNOLD: It looks to me as though as
3 you're wanting him to acknowledge it is deliberate.

4 MR. CHAISSON: Yes.

5 CHAIRMAN KARLIN: And I guess part of the
6 -- this is Judge Karlin. Now, part of the hearing
7 that we're going to have -- might also cover, as I
8 understand it from the 2014 order -- Mr. Maltese, you
9 talk about -- well, you recite, the order recites that
10 he, Mr. Chaisson, called NRC up and he kind of talked
11 about getting an extension of time to do this
12 training. And in fact, he put something in writing,
13 I guess, to ask for an extension apparently.

14 And I'm not asking anybody to tell us
15 right now, but we can't tell whatever happened to that
16 request for an extension, whether it was granted,
17 denied, whatever. But those are kind of things that
18 might -- Mr. Chaisson, you might also want to be able
19 to put in and say what happened to that? That may be
20 relevant to whether or not the penalty being imposed
21 here, three years plus four years, is appropriate or
22 fair or too much or too little, or something like
23 that. So we're interested in that. Whatever happened
24 to the request for extension and how did that all pan
25 out in the end?

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1 And again, I don't want an answer right
2 now, but I think it's relevant to what maybe the
3 hearing should be about, or at least part of what the
4 hearing should cover.

5 MR. CHAISSON: Yes, sir.

6 CHAIRMAN KARLIN: Is there anything else
7 we need to say? Mr. Maltese, let me just ask you one
8 more thing on the content of the hearing and the scope
9 of the hearing. We've pretty much covered it here.
10 Was there anything more you have there?

11 MR. MALTESE: We have nothing further at
12 this time, Your Honor.

13 CHAIRMAN KARLIN: Mr. Chaisson, do you
14 have anything further on the content of what the
15 hearing is going to be about, or have we covered it
16 pretty good?

17 MR. CHAISSON: I think we covered it
18 pretty good, sir.

19 CHAIRMAN KARLIN: All right. We tried to
20 flange it out and see what was what. So, okay.

21 Now, let's go to topic No. 10, which is
22 discovery. Mandatory disclosures. Now, I've sort of
23 got to explain this a little bit, Mr. Chaisson, to
24 you. The staff knows all about this kind of thing,
25 but we're going to issue an order. After this

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1 conference call we've got to sit down and write up an
2 order that kind of reflects what the Board decides
3 here as to what the hearing is going to be about, what
4 you've argued, what do you want to raise? Now keep in
5 mind that the staff has the burden of proof. They
6 have to prove. They have alleged you violated certain
7 things. They have alleged that you should be subject
8 to a certain penalty, and they're going to have to
9 prove that. They have the burden of proof. But you
10 also have to raise a -- you say, no, I disagreed. And
11 so you're going to have to fill that in.

12 Now, so we're going to issue an order that
13 says what this hearing is going to be about, the
14 issues for the hearing. And once we do that, then
15 each side has to submit their documents to the other
16 side. This is not a game of got you. Each side has
17 got to disclose to the other side any documents they
18 have like emails or letters. Or if you say you wrote
19 an article, then maybe you want to submit a copy of
20 that article that you wrote and submit it to the NRC.
21 Those are the kind of documents. You've got to submit
22 those things to the other side and they, the NRC
23 staff, Mr. Maltese and people he's working with have
24 got to submit over to you these documents. We call
25 that mandatory disclosures. And we've got to figure

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1 out when the mandatory disclosures should be.

2 The regulations talk about 45 days after
3 we issue the order. So let's say we issue the order
4 in two weeks or three weeks. And then 45 days later
5 each side is supposed to submit their documents to the
6 other side. You don't submit them to us at that
7 point. You submit them to the other side so everybody
8 can see what everybody's got.

9 And we're thinking if you want an
10 expedited hearing -- now, there's going to be some
11 work involved. I don't know how much in the way of
12 documents each side has. I suspect, Mr. Maltese, you
13 may have fewer and the staff may have more. So maybe
14 I should ask Mr. Maltese this question first, because
15 I think -- and Mr. Chaisson has asked for an expedited
16 hearing.

17 How quickly, Mr. Maltese, can the staff be
18 prepared to produce the mandatory disclosures?

19 MR. MALTESE: The staff would seek the 45
20 days that are allotted by the regulations.

21 CHAIRMAN KARLIN: The full 45 days?

22 MR. MALTESE: Yes, Your Honor.

23 CHAIRMAN KARLIN: Even in light of his
24 request for an expedited hearing?

25 MR. MALTESE: Well, in consideration of

1 the fact that the order is not immediately effective
2 and in consideration of the multiple locations of
3 documents and the time it will take to gather that, we
4 think the full 45 days would be necessary.

5 CHAIRMAN KARLIN: All right. Okay. Mr.
6 Chaisson, turning to you. Now, as I'm trying to
7 explain here, once we issue this order -- let's say we
8 issue it on September 15th. I don't know. Just pull
9 that out of the air, for example. So you would have
10 to get all your documents your together, emails,
11 whatever pieces of paper you've got, the test scores
12 that you think are important, anything you think is
13 important, put all those documents together and ship
14 them over electronically, probably, to Mr. Maltese.
15 How much time do you need to get your stuff together
16 and send it?

17 MR. CHAISSON: Sir, I could -- I would
18 say, because I have all my documents together, within
19 two weeks. And that's giving me a lot of time.
20 Because I have, you know, extensively -- since this --
21 since she called me that one day, Ms. Patricia
22 Holahan, I have, you know, made sure I went back to
23 each and every company and got all the proper
24 documentation. And I've got, you know, like I said --
25 like you said, emails. And then I also have --

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1 there's a lot of text messages from the companies of
2 disputing their findings that they are trying to state
3 in this 2014 order, you know, claiming I've done more
4 and more damage.

5 But I've got all of my documentation, you
6 know, ready to go. That's what I explained to her in
7 detail that just I wasn't going to -- I am aware of
8 what I have to do that, you know, I have been trained
9 extensively about the hearings and the process by, as
10 I said, this wonderful lady, Ms. Laurie McGowan. And
11 at this time I told them we'll go. I'm prepared. I
12 can -- that's why I'm saying I really would like a lot
13 of these 2012 accusations to be allowed to be, you
14 know, brought up in this hearing because I'd have a
15 lot of proof to dispute all their findings.

16 CHAIRMAN KARLIN: Well, okay. All right.
17 Two weeks. That's good. That's pretty quick.

18 Now, let me just -- I'm not saying we're
19 going to get into all of the details of what happened
20 in 2010 and 2011 and 2009.

21 MR. CHAISSON: Yes, sir.

22 CHAIRMAN KARLIN: We'll issue an order
23 that lays it out, tries to lay it out for you as
24 clearly as possible. But just let me ask, is the need
25 for an expedited hearing kind of a little relaxed now

1 because you're able to work and provide for your
2 children and that sort of thing?

3 MR. CHAISSON: Definitely, sir. I would
4 agree with that 100 percent. You know, that was my
5 main concern was -- you know, now I was finally to
6 start providing for my children again without, you
7 know, unemployment and, you know, having to -- you
8 know, I was literally on the verge of being homeless.
9 Now that, you know, I have found companies that, you
10 know, do look at my history and not just this letter
11 and they have gave me employment, you know, I feel
12 comfortable now that -- you know, now that I am
13 allowed to do that -- I mean, it's all I've ever tried
14 doing. You know, I've been a single parent for 12
15 years. So, you know, that's my main goal is my
16 children.

17 CHAIRMAN KARLIN: All right. Did you have
18 something, Judge?

19 JUDGE GIBSON: Yes. Mr. Maltese, is it
20 going to take you 45 days to get this together because
21 you're going to need to --

22 COURT REPORTER: Hello. This is the court
23 reporter.

24 (Simultaneous speaking)

25 JUDGE GIBSON: -- pull together all these

1 documents that would reflect any --

2 MS. ELLIS: I'm sorry, Mr. Court Reporter,
3 could you speak again?

4 COURT REPORTER: Hi. Could the current
5 speaker identify them self, please?

6 JUDGE GIBSON: Yes, I'm sorry. This is
7 Judge Michael Gibson. I'm sorry. Sorry. Sorry,
8 court reporter.

9 Mr. Maltese, is the 45 days going to be
10 necessary for you to be sure that you pull together
11 all the documents that would regard the events that
12 gave rise to the 2012 and the 2014 order?

13 MR. MALTESE: Yes, in part, Your Honor,
14 given that at this point we're uncertain of what the
15 scope of the hearing will be, that that would
16 potentially be involved. We will also have to
17 potentially go through documents and -- for
18 redactions, if there are privacy information of third
19 parties, the original violations also involving what
20 -- Mr. Chaisson's deliberate misconduct, but the
21 licensee's violation of one of the increased controls
22 orders with potentially a security issue. And so
23 that's another situation where we have to comb through
24 and potentially either withhold or do redactions. And
25 so, in light of that, that's basically the reason why

1 45 days seems appropriate to the staff.

2 JUDGE GIBSON: Okay. I just wanted to be
3 sure, because you had said something about what the
4 scope was, and I thought we discussed a minute ago
5 that the scope at this point is going to go back to
6 these deliberate misconduct allegations which would
7 require that the information that gave rise to them
8 would have to be disclosed. And I just wanted to be
9 sure that -- whether that ultimately becomes part of
10 that case is something we'll be deciding later, I
11 guess, but at least initially the dragnet, if you
12 will, for all this information is pretty wide.

13 MR. MALTESE: And, Your Honor, I would
14 just like to repeat for the record the staff's
15 position is that the scope of the hearing should be
16 limited to the circumstances surrounding the issuance
17 of the 2014 order.

18 CHAIRMAN KARLIN: We'll decide that and
19 focus on that in our order that we issue. We
20 understand your position. This is Alex Karlin, Judge
21 Karlin speaking. So, okay? Judge Gibson?

22 JUDGE GIBSON: (No audible response)

23 CHAIRMAN KARLIN: Okay. All right. So
24 the mandatory disclosures timing, we got that question
25 answered.

1 Now, we're going to talk about questions
2 11 and 12. They kind of go together. And again, I
3 need to explain a little bit, Mr. Chaisson. In
4 addition to the mandatory disclosures each side has to
5 automatically -- on the day we set, they have to
6 automatically disgorge and provide to the other side
7 all the documents that are relevant to the issues that
8 are being fought about. Okay. That's kind of a
9 starting point. Automatic mandatory disclosures.

10 In addition to the mandatory disclosures,
11 the Subpart G regulations have some procedures in
12 there that allow, under certain circumstances, each
13 side to kind of interrogate the other side a little
14 bit before the hearing, outside of the hearing. For
15 example, as we tried to explain in the order under
16 certain circumstances either side can file
17 interrogatories, written questions that they say,
18 okay, I want the other side to answer these written
19 questions. Give me an answer. And you write the
20 questions up and you send them to the other side and
21 they have to answer those questions within a certain
22 amount of time.

23 And likewise, under certain circumstances
24 people can take the deposition of the other side. For
25 example, the staff might be able to haul you in and

1 get you under oath in some place in Salt Lake City, or
2 Bismarck, North Dakota, or wherever and ask you
3 questions orally under oath that you've got to answer
4 under oath. And that all happens before the hearing
5 ever starts just so they can find out what you're
6 going to say. And you can maybe ask them the same
7 thing and ask some questions of them, if you ask for
8 a deposition or you ask for the interrogatories.

9 Now, there are rules. You got to read the
10 rules about that. We'll try to cite those ones in our
11 order. But here's the question, I guess, and I can
12 start with Mr. Maltese.

13 Mr. Maltese, given that this is a Subpart
14 G proceeding that provides for such active discovery,
15 we'll call it, do you contemplate that you -- are you
16 planning -- would you -- are you able to -- going to
17 file interrogatories or do any of that stuff? I would
18 hope we could dispense with that, but I just want to
19 find out what your take is, Mr. Maltese.

20 MR. MALTESE: Yes, Your Honor. It's not
21 100 percent certain at this point because we don't
22 know yet the specific issues to be litigated at the
23 hearing, but the staff does contemplate that we may
24 seek some form of discovery with Mr. Chaisson.
25 Interrogatories, perhaps a deposition and there may be

1 documents in Mr. Chaisson's possession that we become
2 aware of. And so at this point I can't say
3 specifically which manners of discovery that we'll be
4 seeking.

5 CHAIRMAN KARLIN: Okay. That's a fair
6 enough answer. You're not sure, but you may,
7 depending.

8 Mr. Chaisson, have you thought about this
9 and what is your position on whether you think -- this
10 is where it would really help to have a lawyer, but
11 you don't have one. But what's your position on this
12 active discovery, question No. 12 on the order?

13 MR. CHAISSON: I would have -- I'd have to
14 agree with Mr. Maltese that, yes, there should be
15 things that I'm sure, you know, I get you all -- Your
16 Honor was saying what the case is going to be heard
17 on. But, yes, I'm sure there's some questions I might
18 have for them of, you know, what happened to certain
19 documentation and such.

20 CHAIRMAN KARLIN: Okay. That's fair
21 enough. Now, what this all means; and I'm going to
22 sort of talk about it to Mr. Chaisson specifically, is
23 we're going to -- when we issue our order in the next
24 couple weeks, we're going to have to build some time
25 in, maybe 30 days, maybe 60 days. More delays in the

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1 hearing because there's got to be time for you all to
2 do this discovery. So we're going to come up with an
3 amount of time and where you get a shot at doing this
4 discovery stuff and getting it done. We'll set a
5 deadline. And so what that ends up doing, however, is
6 delaying the hearing because you've got to have some
7 time to do that. Okay.

8 MR. CHAISSON: Yes, well, I agree with
9 that.

10 CHAIRMAN KARLIN: Okay. Question 13;
11 we'll go to that, timing of supplements to the
12 responses. I don't think we need to talk about that
13 a whole lot, but one of the things, Mr. Chaisson, is
14 there is these mandatory disclosures. Like I'm
15 telling you, you've got to disclose to them on a
16 certain date any documents you've got that are
17 relevant to the issues and that are being fought
18 about. And then what the regs say is -- and every
19 month thereafter you have to update. And if there's
20 any new documents that you get a hold of that are
21 relevant to the thing, then you sort have got to
22 automatically submit them every month until we have
23 the hearing.

24 MR. CHAISSON: I understand.

25 CHAIRMAN KARLIN: So we'll probably just

1 keep it at every month, but we -- if -- because it's
2 going to take a little longer than we initially maybe
3 thought. You on board with that, Mr. Maltese?

4 MR. MALTESE: Yes, Your Honor. We don't
5 anticipate that there will be much in the way of
6 ongoing disclosures after our initial mandatory
7 disclosures, so --

8 CHAIRMAN KARLIN: Yes.

9 MR. MALTESE: -- once a month would seem
10 appropriate.

11 CHAIRMAN KARLIN: Yes, that makes sense.
12 It doesn't sound like this kind of enforcement case
13 there's a lot of new stuff being generated, new
14 documents or something.

15 All right. No. 14, claims of
16 confidentiality are privilege. This probably is more
17 for the staff than anything, for Mr. Maltese, but if
18 -- for example, Mr. Chaisson, if you had a lawyer,
19 then you could have confidential discussions with your
20 lawyer and you could write your lawyer letters and you
21 could write emails or whatever. And a lot of that
22 stuff would probably be confidential. You wouldn't
23 ever have to show it to anybody else. You got to show
24 all your documents except ones that are confidential.
25 Now, you don't have a lawyer so that may not be

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1 relevant here.

2 But on the staff side I want to ask, Mr.
3 Maltese, do you -- I think I know the answer because
4 from what you said a little earlier -- is there
5 anything you see there's a claim of confidentiality or
6 privilege or redactions or that sort of thing?

7 MR. MALTESE: Yes, Your Honor. And as you
8 mentioned, I alluded to that earlier that we foresee
9 there may be redactions necessary for privacy or for
10 security issues and potentially documents withheld
11 also based on the deliberative process privilege, for
12 example,

13 CHAIRMAN KARLIN: Okay. Well, I'll just
14 say one thing: If you've got a document that you
15 think is privileged in some way, shape or form, or
16 some part of it is privileged in some -- you're going
17 to redact parts of it, keep the redactions down to a
18 minimum. We don't want the whole document redacted
19 out just because one sentence there may have some
20 privacy information or some deliberative discussion or
21 something like that.

22 And then do we need a protective order,
23 whereby Mr. Chaisson gets to see this stuff under the
24 cover of a protective order? What do you think, Mr.
25 Maltese? Is there going to be a lot of stuff, or

1 pretty minimal?

2 MR. MALTESE: It's difficult to say. I
3 can't say at this point, Your Honor. We don't believe
4 a protective order is necessary in this case. We
5 would be willing to prepare a privilege log.

6 CHAIRMAN KARLIN: Yes, that would be
7 appropriate. Yes.

8 JUDGE GIBSON: Mr. Maltese, the one thing
9 I would say is you mentioned something about security
10 and that there might be redactions made because of
11 security. I would just ask that you give some thought
12 to the possibility that unless there is something that
13 were Mr. Chaisson to sign a protective order, he could
14 see that material that would otherwise be excluded
15 because of security concerns.

16 MR. MALTESE: I understand, Your Honor.
17 Yes.

18 JUDGE GIBSON: We certainly want to
19 minimize what is going to be excluded from this
20 proceeding.

21 CHAIRMAN KARLIN: Yes. Okay. I think
22 that's good on 14.

23 No. 15, motion for summary disposition.
24 I'm not going to go into a big explanation here, Mr.
25 Chaisson, about that, but my impression is it's

1 probably not going to be productive here to have
2 motions for summary disposition because there are
3 factual issues that may be in dispute significant
4 enough that it's probably not going to be useful.

5 Mr. Maltese, do you have any position on
6 that one way or the other?

7 MR. MALTESE: Your Honor, the staff view
8 is it's unlikely that we would be filing a motion for
9 a summary disposition.

10 CHAIRMAN KARLIN: Yes, okay. No. 16,
11 deadlines for rehearing filings. Okay. Now, Mr.
12 Chaisson, we've got to talk about this a little bit.
13 All right. Now we're going down the pike and we've
14 got certain things. We're going to issue an order in
15 about two weeks, three weeks, and it's going to lay
16 down a bunch of deadlines. And the first deadline
17 will be when you have to make your mandatory
18 disclosures. And the second deadline will be when you
19 have to finish up with your discovery, if you want to
20 do any discovery.

21 And then maybe the third deadline or
22 somewhere in there sometime thereafter we're going to
23 be coming down to the hearing, and we're going to get
24 to the hearing. And before the hearing each side has
25 to submit to us their evidence in writing, what they

1 think is important, what they think is key. So you
2 have to submit any exhibits. If you think some email
3 is real important or you think some letter from
4 Oklahoma is relevant or something, you got to submit
5 that ahead of time, ahead of the hearing in writing.
6 And also you have to -- if you have something you want
7 to say, Mr. Chaisson, you want to testify to, you've
8 got to write your testimony in writing and put it down
9 and submit it to us ahead of time. So we have to set
10 a deadline for the prehearing filings. And we're
11 going to be setting a deadline for that, but we don't
12 know exactly when that should be.

13 Let me ask Mr. Maltese first. After the
14 deadline for the active discovery has been passed, how
15 soon thereafter are you going to be prepared to submit
16 the initial -- the pre-filing, the initial statement
17 of facts and testimony?

18 MR. MALTESE: (No audible response)

19 CHAIRMAN KARLIN: Mr. Maltese?

20 MR. MALTESE: Yes, Your Honor. Again, I
21 would say that it's difficult to say based on -- it
22 sort of depends on the scope of the hearing, but I
23 think within 60 days would be the appropriate
24 timeline.

25 CHAIRMAN KARLIN: Okay. Sixty days.

1 We're getting into February in North Dakota now. It's
2 going to be --

3 (Laughter)

4 MR. CHAISSON: Yes, solid ice.

5 CHAIRMAN KARLIN: Maybe it won't be.
6 Maybe it will be springtime. I don't know. Okay.
7 Mr. Chaisson, do you have any other thoughts on that
8 or take on how long? I mean, I'm not sure it should
9 take that long, but we want to be fair here, so --

10 MR. CHAISSON: Yes, sir.

11 CHAIRMAN KARLIN: Do you have any feel for
12 how long it would take you to put your stuff together
13 and submit your pre-hearing filings, everything you've
14 got? This is your shot.

15 MR. CHAISSON: So this would be -- now,
16 one question on this: Would I be submitting this
17 stuff electronically or through the mail?

18 CHAIRMAN KARLIN: Electronically is the
19 way it's supposed to be done.

20 MR. CHAISSON: Right.

21 CHAIRMAN KARLIN: That could be faster in
22 some ways, if you --

23 (Simultaneous speaking)

24 MR. CHAISSON: Yes, sir. Yes, sir. Well,
25 I mean, like I said, like you had mentioned earlier,

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1 you know, my need for the expedited hearing since I am
2 allowed to work is a lot relaxed. But I mean, like I
3 said, sir, since that hearing and, you know, that --
4 the whole time I was laid off, you know, on
5 unemployment for 10 months, I foreseen something like
6 this coming up, so I have all my documentation, you
7 know, pretty much at hand. So I would just have, you
8 know, the issue of scanning them and downloading them
9 and getting them on the EIE filing system to submit to
10 you all and Mr. Maltese.

11 CHAIRMAN KARLIN: Okay.

12 MR. CHAISSON: But I don't see no more
13 than I'd say maybe three weeks tops on that, possibly
14 sooner.

15 CHAIRMAN KARLIN: Okay. All right. Well,
16 all right. That's good to know. All right. We'll
17 take that and figure out -- try to set up a deadline
18 for that stuff that's there.

19 Now, next couple of items is the date of
20 the evidentiary hearing and the place for the actual
21 hearing. Now, we're talking. Now, we're getting down
22 the hearing. This is --

23 MR. CHAISSON: Yes.

24 CHAIRMAN KARLIN: We finally got there.

25 And --

1 MR. CHAISSON: Yes, sir.

2 CHAIRMAN KARLIN: And I don't think it's
3 going to be all that productive to talk about specific
4 dates right now, because we're going to have work all
5 this out. But it looks like it will be some months
6 away. It's going to be three, four, five, six months
7 out before we --

8 (Simultaneous speaking)

9 MR. CHAISSON: Yes.

10 CHAIRMAN KARLIN: So we don't think we
11 ought to talk about the dates for the hearing, but
12 maybe we ought to talk about the place. Now, Mr.
13 Chaisson, where is your home? I mean, well, you've
14 got three children. I mean, where do you think would
15 be most convenient or where you do you think the
16 hearing ought to be? Because we're probably -- I
17 mean, you could have it here in Washington, D.C. Come
18 and visit, you know, on your nickel. Or we could have
19 it some place a little more closer to you. But you're
20 going to have to be there and --

21 MR. CHAISSON: Yes, sir.

22 CHAIRMAN KARLIN: Where is home for you?
23 Where would this be convenient for you?

24 MR. CHAISSON: It would be in the State of
25 Utah, sir.

1 CHAIRMAN KARLIN: Utah?

2 MR. CHAISSON: Yes, sir.

3 CHAIRMAN KARLIN: You mean we don't get to
4 go to New Orleans?

5 MR. CHAISSON: No, sir. I left New
6 Orleans in two-thousand -- it was 2007 when I took my
7 children to Rock Springs, Wyoming just to give them a
8 different aspect of life, you know, because what they
9 was born to wasn't a good one. So I was just trying
10 to put some positives into their life and that's when
11 I decided to make that move.

12 CHAIRMAN KARLIN: All right. Well, so
13 you're suggesting Utah. That's your home? Is that
14 your --

15 MR. CHAISSON: Yes, sir. I live 35 miles
16 south of Salt Lake City. And I don't know why down-
17 on-the-bayou boy who's been raised with duck feet
18 loves the snow and the mountains, but I do.

19 CHAIRMAN KARLIN: Well, there's some
20 pretty stuff, pretty mountains there in Utah. Okay.
21 Utah. Salt Lake City. That's where you had the ADR
22 a couple of years ago, I guess, right?

23 MR. CHAISSON: Correct.

24 CHAIRMAN KARLIN: Okay. North Dakota is
25 not where you want to go?

1 MR. CHAISSON: No, sir.

2 CHAIRMAN KARLIN: All right. The staff --
3 Mr. --

4 MR. CHAISSON: If I am -- if I do decide
5 to hire an attorney, you know, that would be the place
6 where I'd hire one out of.

7 CHAIRMAN KARLIN: Where, out of Salt Lake?

8 MR. CHAISSON: Yes, sir.

9 CHAIRMAN KARLIN: Okay. Well, fine.
10 That's fine. That's where your preference is.

11 Mr. Maltese, you have any thoughts or
12 preferences one way or the other of where the hearing
13 should be?

14 MR. MALTESE: Your Honor, the staff would
15 be prepared to support a hearing wherever the Board
16 decides. We would hold out the possibility of -- not
17 foreclose the possibility of Rockville and in
18 consideration of the costs of getting all the staff
19 and our witnesses out to a location that's -- if there
20 were some provision for a teleconference or video
21 conferencing, that might also be a possibility.

22 CHAIRMAN KARLIN: I'm sorry, you're
23 talking about Rockville. And then what was the other
24 possibility?

25 MR. MALTESE: I said that potentially we

1 would suggest perhaps if there were available options
2 for video conferencing in consideration of the cost of
3 a hearing in another location.

4 CHAIRMAN KARLIN: Yes. Yes, we've done
5 some of that in the past, video conferencing, Mr.
6 Chaisson, where you would talk by video, but there are
7 issues with that in terms of maybe the credibility of
8 the witnesses, and that sort of thing is important.
9 And that could make it more important to sit down and
10 see people in person. So I think we've got to think
11 about that.

12 JUDGE ARNOLD: Especially is that the case
13 with Subchapter G?

14 CHAIRMAN KARLIN: Subpart G. Yes, Subpart
15 G. And also, Mr. Chaisson, if we have this thing in
16 Salt Lake City, earlier in the call I gave you a
17 telephone number for like legal services for -- that
18 might have free lawyers who might be able to help. I
19 mean, that's a long shot, but you might try it. But
20 obviously if you're going to be in Salt Lake City,
21 then the people -- Bismarck, North Dakota people
22 aren't going to be much help. You'd probably need to
23 talk with -- call up the county bar association, call
24 up the law schools. You can look it up. There are --
25 got to be some law schools and some other people and

1 you might some legal support there. But you've got to
2 investigate the Salt Lake City, Utah community.

3 MR. CHAISSON: Yes, sir.

4 CHAIRMAN KARLIN: As I understand it --
5 for example, legal aid in Salt Lake City, Matt Zogby
6 just sort of pulled up on the computer. Here's a
7 phone number for a legal aid in Salt Lake City.

8 MR. CHAISSON: Okay.

9 CHAIRMAN KARLIN: Got your pencil?

10 MR. CHAISSON: Yes, sir.

11 CHAIRMAN KARLIN: (800) 662-4245.

12 MR. CHAISSON: Okay.

13 CHAIRMAN KARLIN: And I'm not saying
14 they're going to be able to help you or be willing to
15 help you or do it for free. I don't know, but you
16 might -- there may be some resources out there that
17 could be of assistance and you might want --

18 MR. CHAISSON: Yes, sir, there are
19 probably right there close to BYU University and they
20 have a great law school there. And my -- the man I
21 friends you know, the man I live -- I'm purchasing my
22 house from, he's a -- he's got very good contacts
23 there. So, yes, I feel like I'm going to get a lot
24 more legal aid there than any other place being that
25 that's my place of residence and being a single

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1 parent.

2 CHAIRMAN KARLIN: Okay.

3 MR. CHAISSON: You know, they look at that
4 very highly.

5 CHAIRMAN KARLIN: Okay. That's good.
6 That's good. Okay. Enough said there.

7 I think we just ought to jump down to
8 question No. 20, which is settlement. I always got to
9 ask this question, and I think it's a good one. Is
10 there any chance you guys can get together and settle
11 this thing or try to settle this thing? I mean, we
12 always encourage that if it's possible.

13 Mr. Maltese? And maybe it's tough in this
14 situation, but what is your assessment?

15 MR. MALTESE: Your Honor, the staff would
16 be amenable to discussing options for settlement.

17 CHAIRMAN KARLIN: Okay. Mr. Chaisson,
18 what's your thought on trying to settle this thing
19 with the staff?

20 MR. CHAISSON: I would have no problem
21 with, you know, discussing that option at all. You
22 know, I'd sure like to get this put behind me and
23 continue moving forward, sir.

24 CHAIRMAN KARLIN: Well, okay. I mean,
25 that's good. I think there's a couple of things. If

1 it's possible, I would encourage you all to contact
2 each other and to talk about an attempt to settle this
3 thing amongst yourselves.

4 Another option is if both sides request
5 it, we can have a settlement judge appointed. Not one
6 of the three of us. The three judges here, Gibson,
7 Arnold and Karlin, we're going to decide this case
8 when it goes to hearing. But we could get some other
9 judge who's -- we've got a bunch of judges here, Mr.
10 Chaisson, and we'd get some other judge appointed if
11 you all requested to try to mediate and help settle
12 this thing. That's one option, a way to go in terms
13 of trying to settle the thing, get somebody else
14 involved, a settlement judge.

15 So, Mr. Maltese, may I ask you to sort of
16 take it under your obligation to have a separate call
17 with Mr. Chaisson and see if you all want to ask for
18 a settlement judge or whether you want to pursue
19 anything in terms of settlement?

20 MR. MALTESE: Yes, Your Honor. And we're
21 mindful of, I think it's 2.705(f), which provides for
22 a contact between the parties after the prehearing
23 order to discuss issues including settlement. So that
24 will take place.

25 CHAIRMAN KARLIN: Excellent. Excellent.

1 And I don't know whether you all -- I mean, the staff
2 has this contract with Cornell to do the ADR stuff,
3 right? And is that kind of ADR still available once
4 the enforcement case has already commenced? Is that
5 contract still available to contact them if that's
6 what Mr. Chaisson wanted to do and you wanted to do?

7 MR. MALTESE: That is certainly not off
8 the table, Your Honor.

9 CHAIRMAN KARLIN: Okay. That's a
10 possibility. So there's different ways you can talk
11 settlement. One, Mr. Chaisson, you can just talk to
12 each other and try to work something out. Two, you
13 can come to us and say we want you to appoint a
14 settlement judge to try to help us work it out. And
15 three is maybe you can go back to Cornell and have one
16 of those ADRs appointed, one of those -- a neutral or
17 mediator appointed to help you out with that.

18 But in any event, nobody is going to force
19 you to settle one way or the other. It's got to be
20 mutually agreed. And we're not going to slow down
21 this hearing because of any settlement. This train is
22 leaving the station and we're going to have a hearing
23 at some point as soon as we can. And if you guys want
24 to settle this thing, that would be great. But if you
25 can't, we'll have a hearing.

1 So, Mr. Maltese, I hope you'll take a
2 little initiative, as I know you will, and make
3 initial contact with Mr. Chaisson about it and see if
4 you guys have anything you want to do on that.

5 Let's see. We're on 21 right now, legal
6 authority. And this was a question about what the
7 authority is. And I think Judge Arnold maybe has a
8 question about that. I think maybe Judge Gibson does
9 as well.

10 JUDGE ARNOLD: Let me ask --

11 CHAIRMAN KARLIN: Judge Arnold is speaking
12 now.

13 JUDGE ARNOLD: Let me ask Mr. Maltese.
14 The way I read both of these orders, they're
15 essentially stating down the terms and conditions,
16 what Mr. Chaisson has to do in order to get back into
17 the good graces of the NRC, but if he should decide
18 that he can continue his current work without being
19 involved in NRC licensing activities that there's
20 really nothing in these orders that he has to do. Is
21 that basically correct?

22 MR. MALTESE: I would agree with that,
23 Your Honor, that the order only governs Mr. Chaisson's
24 activities to the extent that he is seeking to
25 participate in NRC licensed activities, yes.

1 JUDGE ARNOLD: Okay. And the other thing
2 is both the 2012 and the 2014 order, when it gets down
3 to telling him what he has to do, uses the sentence,
4 "Accordingly, pursuant to Sections 81, 161(b), 161(i),
5 161(o), 182 and 186 of the Atomic Energy Act," and so
6 on, so on. And I was just trying to figure out
7 exactly what in there gives you this authority? Now,
8 Section 182 has to do with license application and 186
9 has to do with revocation of license. And I didn't
10 see that they were in any way relevant. So is this
11 just a boilerplate statement you use in the orders, or
12 is it all relevant?

13 MR. CHAISSON: That statement discusses
14 our general authority under the Atomic Energy Act to
15 issue orders.

16 JUDGE ARNOLD: Oh, okay. So it's not
17 specific to this case. I'd have to look through all
18 of that to figure out what gave you the authority.

19 MR. MALTESE: I would direct you chiefly
20 to 161(i) and to 10 CFR 2.202.

21 JUDGE ARNOLD: Okay. Thank you very much.

22 CHAIRMAN KARLIN: I think we're down to
23 the bottom here, which is this additional issue about
24 the Fifth Amendment that we mentioned at the beginning
25 sort of. And I guess the Board is concerned -- I

1 might want to address this more starting with Mr.
2 Maltese. Well, Mr. Chaisson, too. I mean, all right.
3 The Fifth Amendment to the U.S. Constitution says no
4 person, quote, "shall be compelled in any criminal
5 case to be a witness against himself."

6 Now, as we said, this is not a criminal
7 case; it is an administrative case, but kind of a
8 concern could it possibly lead to a criminal case?
9 Now, the NRC, we've had cases before; the Geisen case
10 is one of them, where the Fifth Amendment came up.
11 And that was a case where Mr. Geisen was actually
12 being prosecuted in a criminal matter at the same time
13 that the NRC was going after him. So the Fifth
14 Amendment clearly was relevant and attached.

15 But here's the problem -- and, Mr.
16 Chaisson, I'm going to address this to you. Here's
17 the problem: If we ask you a question, the Board asks
18 you a question or the NRC staff asks you a question,
19 a general rule, you've got to answer it, and you've
20 got to answer it truthfully. And if you don't answer
21 it truthfully, you could get into more trouble because
22 there's laws that say if you lie on the stand and
23 stuff like that, or you don't tell the truth, you
24 could be liable -- you just doubled down on your
25 penalty. It could be --

1 (Simultaneous speaking)

2 MR. CHAISSON: Yes, sir.

3 CHAIRMAN KARLIN: -- action. So if the
4 Board or NRC asks you a question, general rule, you've
5 got to answer it, and you've got to answer it
6 truthfully. Now, there's an exception where you don't
7 have to answer it if you think it might incriminate
8 you. Then you don't need to answer it. You can say
9 I assert my right under the Fifth Amendment not to
10 answer the question at all. And that right under the
11 Fifth Amendment only applies if you have some
12 reasonable apprehension that there might be a criminal
13 case. Doesn't have to actually be a criminal case.
14 You might be a criminal case.

15 So here's the question I want to talk to
16 Mr. Maltese about: Is there any current thought,
17 suggestion, plan by the NRC to go criminal with this
18 or with anything else Mr. Chaisson might say in the
19 course of this proceeding?

20 MR. MALTESE: There is that potential,
21 Your Honor. I would note that there is a current
22 investigation being conducted by the Independent
23 Office of Investigations separate from this order and
24 that we do have an MOU with the Department of Justice
25 that allows for those investigations to be referred.

1 CHAIRMAN KARLIN: Okay. So you're
2 suggesting that there is a potential? Okay. Well,
3 that's very important for us to know.

4 Now, has the NRC staff at any prior
5 occasion during this process informed Mr. Chaisson of
6 his Fifth Amendment right against self-incrimination?

7 MR. MALTESE: I don't have an answer for
8 that, Your Honor.

9 CHAIRMAN KARLIN: Okay. Mr. Chaisson, has
10 anyone --

11 MR. CHAISSON: No, sir, they haven't.

12 CHAIRMAN KARLIN: I'm sorry. I couldn't
13 hear you.

14 MR. CHAISSON: I said, no, sir, they sure
15 haven't. They've never informed me of my Fifth
16 Amendment right.

17 CHAIRMAN KARLIN: Okay. Well, I think we
18 talked about this before, the Board, and what we
19 thought -- because we can't decide this thing right
20 here and now, but I think it would be real good if,
21 Mr. Maltese, you could have the staff submit something
22 about the Fifth Amendment right, which is we want you,
23 if you could, address is there simply no possibility
24 that there could be any criminal action or criminal
25 pursued on this thing? Then the Fifth Amendment

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1 probably doesn't apply. But we need you to address is
2 there any possibility or potential that there could be
3 a further criminal type of enforcement against Mr.
4 Chaisson either by the NRC or -- and this may be
5 harder -- or the Department of Justice or the U.S.
6 Attorney's Office, or something like that. So please
7 try to address that.

8 And then also give us legally your take on
9 whether the Fifth Amendment right against self-
10 incrimination attaches in this context, during this
11 proceeding. I'd also like you to address whether or
12 not you have previously -- anyone on the staff says
13 that they have previously advised Mr. Chaisson of his
14 right against self-incrimination. And I guess that's
15 about it. I don't know. But we need something that
16 you can submit in let's say a week. How about next
17 Wednesday, like September -- because of Labor Day
18 Weekend coming up, next Wednesday will give you a
19 little bit more time, the 3rd of September. Mr.
20 Maltese, we'd like you to do that. Would that be --

21 MR. MALTESE: We're certainly prepared to
22 brief the Board. Given vacation schedules around the
23 Labor Day Weekend and our need to get in touch with
24 the Office of Investigations and potentially others
25 who have knowledge on this, I would request perhaps an

1 additional week. Would be appreciated, but not
2 necessarily.

3 CHAIRMAN KARLIN: The 10th of September?
4 Yes, okay. I don't think that's going to be an issue.
5 So 9/10 or September 10th you'll submit something.

6 And I guess, Mr. Chaisson, we'll give you
7 a week to respond. If you want to read what Mr.
8 Maltese has submitted, then you've got another seven
9 days to file something in response. I mean, I'm not
10 sure whether you -- you don't really have to, but if
11 you've got something to say about it, that's your
12 shot. Say it on September 17th.

13 We'll lay this out in the order. Well,
14 I'm not even sure whether the order will be out at
15 that point. I think it will. But we're just telling
16 you right now September 10th staff is going to submit
17 its brief on -- and it's going to have some factual
18 stuff in there, too, Mr. Maltese, about what has
19 happened and what is contemplated. And then the
20 September 17th Mr. Chaisson will have an opportunity
21 to file something in writing with us responding to
22 that. Because we need some help in terms of thinking
23 this through because we don't want -- we want to have
24 Mr. Chaisson aware of his rights.

25 Now, you don't have to assert your rights,

1 but you have your rights on that. And again, this is
2 another reason why you might want to think about
3 having a lawyer. The last guy who ran into this, Mr.
4 Geisen, he had a lawyer and that was helpful for him
5 to know when to assert it and when not, and that sort
6 of thing. Okay.

7 MR. CHAISSON: Correct.

8 CHAIRMAN KARLIN: Okay. Judge Gibson?

9 JUDGE GIBSON: Yes, I just wanted to add,
10 Mr. Maltese, that since you've been given an
11 additional week there, I think it's important to
12 address this issue of the deliberate misconduct
13 allegation and the fact that in this 2014 order, as
14 Judge Arnold read it, you specifically asked Mr.
15 Chaisson to address that very issue. And I think it's
16 important for us to know whether the scope of
17 deliberate misconduct under this order is co-extensive
18 with potential criminal liability or Mr. Chaisson.
19 Could you do that, Mr. Maltese?

20 MR. MALTESE: A little clarification I
21 think is necessary, Your Honor. Are you asking
22 whether or not a criminal case could result from the
23 initial deliberate misconduct from 2009, 2010?

24 JUDGE GIBSON: Not only that, but as well
25 what you put in the 2014 order, because as Judge

1 Arnold read it just a minute ago, the 2014
2 specifically asked Mr. Chaisson to address that very
3 point.

4 MR. MALTESE: I can state right now, Your
5 Honor, that the facts and circumstances that gave rise
6 to the original 2012 prohibitory order would not at
7 this point be referred to the Department of Justice
8 for a criminal case. So that is all in the past.

9 JUDGE GIBSON: All right. Well, that
10 would be a good thing to put in that brief to us.

11 MR. MALTESE: I'm sorry, that had already
12 been referred to the Department of Justice and it did
13 not result in a criminal review.

14 JUDGE GIBSON: Okay.

15 CHAIRMAN KARLIN: So I believe that would
16 be something to recite in the brief that you're going
17 to file, if you would please, Mr. Maltese.

18 MR. MALTESE: Yes, Your Honor. Thank you.

19 CHAIRMAN KARLIN: Okay. Thank you.

20 Okay. I think we're kind of done. Hold
21 on a second. We just want to have a little conference
22 here. I'm going to put it on mute. Please stand by,
23 please.

24 (Pause)

25 CHAIRMAN KARLIN: Okay. We're back on the

1 line here. Sorry for the delay.

2 Let me just say one of the things, Mr.
3 Chaisson -- as we understand it, in your current job
4 what you're doing now -- and the staff is okay with,
5 and they've said that here on this call and I think
6 they said that in their letter to you, Ms. Holahan's
7 letter of August 14th.

8 Now, if you contemplate changing your
9 state where you're working or the company you're
10 working for or the duties that you're doing, and if
11 you have any uncertainty as to whether that's
12 permissible or not under the terms of the 2012 order,
13 we would encourage you to talk with the NRC to find
14 out what they think, the NRC staff, Mr. Maltese or Ms.
15 Holahan, or whoever your contact is, and to work that
16 out to make sure it's okay. We don't want you going
17 off and doing something that the NRC thinks you're not
18 supposed to be doing. They may be right; they may be
19 wrong. And if you find there's some problem on that
20 issue, whether you're allowed to work in Oklahoma or
21 whatever, that you can't sort out with the staff --
22 agreement one way or the other, I think you all, both
23 sides ought to come back to us and let us know what
24 the issue is and whether there's a problem. Okay, Mr.
25 Chaisson?

1 MR. CHAISSON: Yes, sir. I understand
2 that fully. Yes, sir.

3 CHAIRMAN KARLIN: Mr. Maltese, are you
4 okay with that? I mean, we don't want him
5 inadvertently going off and doing something that's
6 problematic or being prohibited from doing something
7 that he actually is okay to do.

8 MR. MALTESE: Yes, sir, Your Honor, and I
9 would note that that is within the spirit of the 2012
10 confirmatory order's requirement to notify the NRC of
11 his employment.

12 CHAIRMAN KARLIN: Yes, okay. Okay. Good.
13 Yes, we just don't want anybody going off and creating
14 -- having a new problem.

15 All right. Where do we go from here?
16 This is sort of the end. Where do we go from here?
17 And here's what's going to happen: The staff is going
18 to submit, Mr. Maltese is going to something on the
19 Fifth Amendment on September 10th. Mr. Chaisson has
20 a shot at submitting a response on September 17th.
21 And these deadlines are important, so you've got to
22 meet them, Mr. Chaisson.

23 MR. CHAISSON: Yes, sir, Your Honor.

24 CHAIRMAN KARLIN: So the 10th and the
25 17th. Okay. That's cool. That's going to happen.

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1 Meanwhile, this Board, the three of us are
2 going to go back and talk about what we heard here
3 today and we're going to issue an initial scheduling
4 order. It's going to be the schedule, but we're going
5 to try to lay out as best we can from what we know
6 right now of when we're going to get to this hearing
7 and how we're going to get to the hearing. And this
8 initial scheduling order will set out the scope of the
9 hearing, what's going to be covered and what isn't
10 going to be covered and the issues that we think are
11 going to be covered. And it will probably be pretty
12 broad, pretty general. It's all going to lay out the
13 scope.

14 Okay. And then we're going to set a date
15 when each side has to do the mandatory disclosures.
16 That order will have a date in it that will say this
17 is the deadline and you got to get all your act
18 together and make your disclosures. You all talked
19 about 45 days after that order. Maybe that will be
20 the good time. You said two weeks, Mr. Chaisson, so
21 we'll see what we're going to do on that.

22 Then each side will study all those
23 documents. And the order will set a date as to when
24 you have to submit your written evidence to the Board,
25 the exhibits and the emails and all that stuff under

1 oath. And I don't think we're going to be able to
2 schedule an exact date and time and place for the
3 hearing at the moment. We'll probably have it --
4 well, I don't know where we'll have it, but Salt Lake
5 City or whatever. Rockville maybe. But at some point
6 we'll set up a time frame, a general time frame.
7 Let's say the second week in February, or the first
8 week in December, or the last week in April. I don't
9 know what it works out to be. I'm not real good at
10 math.

11 And then at some point we're going to hold
12 a hearing and we're going to issue a decision. And in
13 the meantime Mr. Maltese and Mr. Chaisson are going to
14 talk a little bit about whether you can try to settle
15 this thing, whether you want us to appoint a
16 settlement judge, or I can get Judge Hawkins to
17 appoint a settlement judge, or any other way to do it.

18 So anyway, the main thing is we're going
19 to issue an order in a couple weeks, two, three weeks
20 that will lay a bunch of this stuff out and schedule
21 the hearing. And I think by the end of this call, Mr.
22 Chaisson, you realize this hearing isn't going to be
23 in September. It's more likely to be sometime next
24 year, I guess, by the time we get around to all these
25 things.

1 MR. CHAISSON: Yes, Your Honor.

2 CHAIRMAN KARLIN: But at least you're able
3 to keep working during the interim.

4 MR. CHAISSON: Correct. Correct.

5 CHAIRMAN KARLIN: Is there anything else
6 any of the judges want to say?

7 Mr. Zogby, have I missed anything?

8 MR. ZOGBY: (No audible response)

9 CHAIRMAN KARLIN: Okay. Is there anything
10 else, Mr. Maltese, you want to say, the staff wants to
11 say?

12 MR. MALTESE: No, Your Honor.

13 CHAIRMAN KARLIN: Mr. Chaisson, you get
14 the last word. Any questions you have that you think
15 we need to cover or anything you don't understand?

16 MR. CHAISSON: No, sir. I'm understanding
17 everything that's going on. Like I said, I've been
18 working with Ms. Laurie McGowan a lot lately, so, you
19 know, I took notes. I've got -- she sent some pages
20 here of notes I've took throughout this whole hearing,
21 so I'm pretty sure I'll be in good shape.

22 CHAIRMAN KARLIN: Okay. Now, remember
23 also there's going to be a transcript of this hearing
24 that's going to be up on the website, the NRC Web site
25 in about a week or two. So you might want to look at

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1 that and you -- refresh you. Just in case your notes
2 are not totally clear, you can go back and look at
3 that.

4 All right. Well --

5 MR. CHAISSON: Will that transcript be
6 emailed to us as well, or it will just be posted on
7 the website?

8 CHAIRMAN KARLIN: I think you will get an
9 e-link, the website. The NRC hearing docket will send
10 you an email and they'll say the transcript has been
11 posted.

12 MR. CHAISSON: Okay.

13 CHAIRMAN KARLIN: I'm pretty sure they'll
14 do that.

15 MR. ZOGBY: And then you'll have to -- I'm
16 sorry, this is Matthew Zogby, the law clerk. And then
17 I believe then you'll have to enter your credentials
18 that you got in your digital certificate.

19 CHAIRMAN KARLIN: Right, your name and
20 your --

21 MR. ZOGBY: And you'll be able to download
22 it.

23 MR. CHAISSON: Yes, sir. Yes, sir. Mr.
24 Ivan had showed me how. I've got all that saved on my
25 laptop, so I understand how to do it.

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1 CHAIRMAN KARLIN: Okay. I think that's
2 all. I'm sorry we went over two hours. That was a
3 lot longer than I thought. We appreciate your
4 patience and hopefully this has been helpful. It's
5 been helpful to us, anyway.

6 MR. CHAISSON: Yes, it's been real
7 helpful.

8 CHAIRMAN KARLIN: Thank you, Mr. Chaisson.
9 Thank you, Mr. Maltese.

10 We will now adjourn this call. Thank you.
11 Bye.

12 MR. CHAISSON: You're welcome, sir.
13 Goodbye.

14 (Whereupon, the above-entitled matter went
15 off the record at 12:54 p.m.)
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