

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

REICH GEO-PHYSICAL, INC.

License No. 25-18304-01

Docket No. 30-14821

ASLBP No. 85-508-01-OT

TELEPHONE CONFERENCE CALL

Location: Bethesda, Maryland

Date: Monday, May 20, 1985

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ANN RILEY & ASSOCIATES

Court Reporters
1625 I St., N.W.

Suite 921

Washington, D.C. 20006
(202) 293-3950

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 BEFORE THE ADMINISTRATIVE LAW JUDGE
4

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6 In the Matter of: :License No. 25-18304-01
7 REICH GEO-PHYSICAL, INC. :Docket No. 30-14821
8 :ASLP No. 85-508-01-OT
9 -----

10 TELEPHONE CONFERENCE CALL
11

12 4350 East-West Highway
13 Fourth Floor
14 Bethesda, Maryland
15

16 Monday, May 20, 1985

17 The telephone conference call in the above-entitled
18 matter was convened at 11:30 a.m., pursuant to notice.
19

20 APPEARANCES:
21

22 IVAN SMITH, Esq.
23 Administrative Law Judge
24 Atomic Safety and Licensing Board
25 Bethesda, Maryland

1 APPEARANCES: (Continued)

2

3 For the NRC Staff:

4

STEPHEN G. BURNS, Esq.

5

Nuclear Regulatory Commission

6

Office Of Executive Legal Director

7

Washington, D. C. 20555

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9 Pro se:

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KEITH A. REICH

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Reich Geo-Physical, Inc.

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Billings, Montana

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P R O C E E D I N G S

JUDGE SMITH: All right, we are ready to proceed.

Gentlemen, I asked that you join me today in this telephone conference, so that we can prepare for the hearing requested by Mr. Reich.

I just have a few items I want to cover. One is that we want to set a date for the hearing. I am rather free throughout July and August. I can set it virtually any time during those two months.

Mr. Reich, what is your schedule?

MR. REICH: I can be pretty flexible. So, I guess we can discuss it. July and August, if I have a need, is far enough ahead that I can make arrangements to be free.

JUDGE SMITH: All right. Just a moment, please.

Mr. Burns?

MR. BURNS: If there is a need for a hearing, I think that basic timeframe is pretty good. I would suggest focusing in a little more in probably the last couple of weeks in July. I have talked to the two people who would be Staff witnesses, and I think August was going to be a problem with one of them. But the latter part of July would be acceptable, would be a good time.

You know, the week of the 22nd, or the week of the 29th, which gets in the first couple of days of August.

JUDGE SMITH: Is that all right with you, Mr. Reich?

1 MR. REICH: Yes, that will be all right.

2 JUDGE SMITH: All right, we will select the time for
3 the hearing somewhere within those two weeks, and I will
4 inform you of it soon.

5 MR. REICH: Okay.

6 JUDGE SMITH: I will do that perhaps this week, and
7 if you can have your witnesses freeze those two weeks,
8 Mr. Burns, that would be very helpful.

9 Which leads us into the next point. What type of
10 hearing are we talking about? Under our rules, Mr. Reich, we
11 do not follow the procedure that you might see in a regular
12 court proceeding, and that is there is no need for you to file
13 a formal answer before me as you would in a court. But, I do
14 have the responsibility of determining in advance, so I can be
15 prepared, what type of hearing it is going to be and what type
16 of issues will I be hearing?

17 You have filed a reply to the Notice of Violation.
18 If you wish, you can allow that to be your answer to the
19 charges before me, or, if you wish, you can file more formal
20 answers. Or really, if you prefer, you can just work it out
21 in a more informal way. And that is, work it out
22 point-by-point with the Staff and then inform me what the
23 issues will be.

24 In any event, I want some feeling for it.

25 As I recall your papers, you have admitted virtually

1 all of the facts. It is the implications of the facts that
2 you have trouble with. Is that right?

3 MR. REICH: That's right what you said, your Honor.

4 JUDGE SMITH: We are having trouble hearing you.
5 Could you start again and speak up?

6 MR. REICH: That's, right what you said, your Honor,
7 in my reply to the alleged violations. I don't think I have
8 much to add to it now. I feel that the penalty that was
9 leveled was more severe than what actually happened.

10 JUDGE SMITH: So essentially you are seeking a
11 reduction or an elimination of the penalty?

12 MR. REICH: Yes.

13 JUDGE SMITH: And you don't dispute the facts that
14 were sent out in the Notice of Violation?

15 MR. REICH: There was some violation or some neglect
16 or something in each of the violations. But, the severity is
17 what I am disputing.

18 JUDGE SMITH: All right. I think that is pretty
19 clear.

20 What type of case were you thinking of putting on,
21 Mr. Burns?

22 MR. BURNS: I would think -- before I start there, I
23 would think the Staff is in the latter phase of preparing a
24 Motion for Summary Disposition with respect to the case.

25 I realize that may be something easier to do with

1 respect to questions of whether objectively the facts that
2 constitute the violations occurred, versus whether the penalty
3 itself is appropriate.

4 Nonetheless, we think that it may be amenable to
5 summary disposition, and that would limit the time, little
6 time as it may be, that may be necessary for hearing.

7 But if we went to hearing, I would assume we would
8 probably have two witnesses. We would probably have the
9 inspector who conducted the inspections last year, and
10 probably one witness from the enforcement staff, associated
11 with the Office of Inspector and Enforcement Headquarters
12 Staff, who would testify as an expert with respect to
13 application of enforcement policy and relative significance of
14 the violation.

15 And that essentially will be the Staff's case.

16 I would assume, in view of our last experience, that
17 it might be a day's worth of hearings.

18 JUDGE SMITH: Mr. Reich, his reference to summary
19 disposition is, I think, a matter of important concern to
20 you. Under our procedures at the NRC and also in the court,
21 one party can move to have either the entire case decided, or
22 particular issues decided on filing of affidavits and
23 pleadings.

24 You, as I understand it, wish an opportunity to
25 appear personally before a judge and explain your reasons for

1 believing that the penalty was too severe.

2 MR. REICH: Yes, your Honor.

3 JUDGE SMITH: You might not get that opportunity if
4 they were to prevail on a summary disposition.

5 I'm not familiar with any summary dispositions in a
6 case so much involving an individual, such a small business as
7 this one. I am inclined to think that the effort involved in
8 a summary disposition might be greater than just going up to
9 Billings and listening to the people.

10 Perhaps you can dispense with the inspector if you
11 can get a stipulation that the facts were as set out in the
12 Notice of Violation, and come up with your I&E official who
13 will explain the enforcement philosophy and the significance.
14 I think that might make a very efficient hearing, and it would
15 satisfy my concerns.

16 I would have asked for some testimony as to the
17 health and safety significance of these violations, had you
18 not offered it.

19 Of course you are free, Mr. Burns, to file your
20 Motion for Summary Disposition. But as I sit here today I am
21 inclined to think that I would prefer just seeing Mr. Reich
22 and giving him his day in person before a judge, and being
23 given an opportunity myself to ask questions about the
24 significance of the asserted violations.

25 MR. BURNS: I will certainly take that into

1 consideration. I can speak to Mr. Reich after the conference
2 call with respect to stipulating certain facts. At least
3 those facts with respect -- which were alleged in the Notice
4 of Violation.

5 JUDGE SMITH: My experience is Summary Disposition
6 Notices require sometimes much more work than actually hearing
7 the evidence and deciding, because it is seldom that you give
8 all the information that I might like to have to decide it.

9 I think it is probably going to be more efficient
10 just to go to Billings and hear from everybody.

11 We have a procedure here, as the courts do, in which
12 you are entitled to seek information from each other before
13 the hearing. That is called discovery, Mr. Reich. You can
14 request information from the NRC Staff about their case by
15 several means. I suspect that it won't be necessary for you
16 to use any formal discovery processes. If you have any
17 information that you need about their case, you can request
18 it.

19 Mr. Burns, would you be satisfied with informal
20 requests?

21 MR. BURNS: Yes, we would agree to that.

22 JUDGE SMITH: So you are authorized -- both of you
23 are authorized to begin immediately, if you see a need, to
24 seek information from each other about the case.

25 Do you anticipate any need for that, Mr. Reich?

1 MR. REICH: I don't anticipate any need for the NRC

2 --

3 JUDGE SMITH: Did you say you do not anticipate any
4 need for any information from the NRC?

5 MR. REICH: That's right. I have a copy of their
6 violations, and I have responded. My response has not changed
7 as to what I feel about the violations.

8 JUDGE SMITH: All right.

9 If it does occur to you that you need information,
10 you may request it any time beginning now, and before the end
11 of June.

12 MR. REICH: Okay.

13 JUDGE SMITH: But, you have to do it before the end
14 of June.

15 MR. REICH: Okay. I don't anticipate needing any
16 information.

17 JUDGE SMITH: It would seem it would not be
18 necessary.

19 MR. BURNS: Judge Smith, just for my understanding
20 and clarification, discovery requests can be filed up until
21 the end of June. Discovery doesn't end in the sense that
22 responses must be filed and things like that?

23 That's the way I understood you that discovery
24 requests could be filed up until the last day of June.

25 JUDGE SMITH: I think that is probably the better

1 understanding of what I said. But I had really intended to
2 say that I think it should be completed before the end of
3 June.

4 MR. BURNS: Either way is acceptable to me.

5 JUDGE SMITH: If that is acceptable, let's say the
6 discovery requests must be filed so that response can be
7 completed by the end of June.

8 MR. BURNS: Okay.

9 JUDGE SMITH: Do you understand that, Mr. Reich?
10 you could not, on the day before the last day of June, send a
11 letter requesting a lot of information. You would have to get
12 it in early if you decide you needed it.

13 MR. REICH: Yes, your Honor, I understand that.

14 JUDGE SMITH: Okay, I think that just about takes
15 care of it.

16 Will you have counsel, Mr. Reich?

17 MR. REICH: No, I don't. I chose to represent
18 myself because of financial problems my business is in right
19 now. This is in my response.

20 I have consulted an attorney, but because of the
21 cost involved, I chose to represent myself.

22 JUDGE SMITH: Well, okay. There is a limit to how
23 much I can help you. However, I will try to inform you as to
24 your rights.

25 You will have a right, of course, to ask questions

1 of the witnesses, or witness as the case may be. You will
2 have a right to testify yourself under oath, and you will have
3 a right to talk, to make arguments.

4 And, I will advise you in the details of that as you
5 might need it. But, I cannot give you any practical advice or
6 strategy advice or anything of that nature.

7 MR. REICH: I understand that, your Honor.

8 JUDGE SMITH: I think a matter that should come to
9 your attention, however -- and Mr. Burns, please correct me if
10 I am wrong -- I have no authority to increase the amount of
11 the penalty.

12 MR. BURNS: That's correct.

13 JUDGE SMITH: I have authority only to reduce it or
14 to eliminate it.

15 MR. BURNS: Or to propose it in the amount
16 originally proposed, of course.

17 JUDGE SMITH: Yes.

18 Anything you want to know, Mr. Reich?

19 MR. REICH: Not necessarily that I want to know. I
20 have a comment to make.

21 JUDGE SMITH: All right.

22 MR. REICH: Since being cited with these violations
23 -- I also have a State's Office of License to operate with
24 radiation licensing in North Dakota. And their regulations
25 are similar to the regulations of the NRC. I have been

1 inspected two times since these violations. I think the
2 report was excellent. They were real satisfied with the way I
3 have turned my program around, and the safe manner I am
4 operating in.

5 I would like Mr. Burns to check with the State to
6 get their comments as to how I have been operating since these
7 violations, and take that into consideration as to the intense
8 penalty that he has imposed.

9 That is my comment.

10 MR. BURNS: Mr. Reich, do you have a special report
11 from North Dakota?

12 MR. REICH: I don't have a formal inspection
13 report. But, when they were in the field, they filled them
14 out even though they didn't send me a copy

15 I am sure you can get in touch with them and request
16 them.

17 MR. BURNS: I will pass that on to, certainly my
18 client in the regional office, the Office of Inspection and
19 Enforcement. But, I cannot promise that those will have an
20 effect on our view with respect to the appropriateness of
21 the civil penalty, at least from the Staff which proposed the
22 penalty.

23 MR. REICH: I understand that. I just wanted to
24 make that comment.

25 MR. BURNS: Okay. I will make the Office of

1 inspection and Enforcement and the Region II office aware of
2 that fact.

3 MR. REICH: Okay.

4 JUDGE SMITH: Mr. Reich, you do have the right to
5 have information of that nature that you think would be
6 relevant to my judgment, produced at the hearing. And it is
7 your responsibility to get it. But, the State of North Dakota
8 has to produce it.

9 MR. REICH: Okay.

10 JUDGE SMITH: I am sure they would cooperate.

11 Basically, you are asking Mr. Burns to do some of
12 your legwork for you. If his staff is familiar with the
13 people in North Dakota that can get it easily for you, it
14 would be a nice accommodation. Other than that, you can call
15 upon me to help you get that information, if they are not
16 cooperative.

17 MR. REICH: Okay.

18 JUDGE SMITH: I assume they will be cooperative,
19 however.

20 MR. REICH: I think they will, your Honor. I
21 believe that they will. Because it is inspections on my
22 company, I would have the right on how they see the operation
23 of --

24 JUDGE SMITH: If you cannot get the information you
25 need, you can either write or call me and I will do what is

1 necessary to produce that information for you in time for the
2 hearing.

3 MR. REICH: Okay.

4 JUDGE SMITH: But, you should do that promptly, say
5 within two weeks.

6 MR. REICH: All right, I will do it.

7 JUDGE SMITH: And then maybe Mr. Burns will have
8 some way to help you, too.

9 MR. REICH: Okay.

10 JUDGE SMITH: Is there anything further?

11 MR. BURNS: Yes, Judge Smith.

12 In looking at the procedural rules, the rules on
13 testimony seem to suggest that civil penalty proceedings, like
14 other enforcement proceedings, call for prefiled testimony.

15 Do you wish that here?

16 JUDGE SMITH: Prefiled testimony, Mr. Reich, in NRC
17 proceedings is that instead of the witness coming to the
18 hearing and testifying orally, the witness provides the
19 testimony in advance in writing. Then, when you get to the
20 hearing, he comes to the hearing, and then you can ask him
21 questions on his written testimony.

22 MR. REICH: I see.

23 JUDGE SMITH: Would you like to have that?

24 That would enable you to prepare somewhat more. I
25 think that would be helpful.

1 MR. REICH: Yes, I think it would be, too.

2 JUDGE SMITH: It would be helpful to me, Mr. Burns,
3 if you could get prefiled testimony in, say two weeks before
4 the date scheduled for the hearing.

5 MR. BURNS: Okay. That should be no problem.

6 JUDGE SMITH: If you need more time, I don't imagine
7 that that is a critical amount of time, but it would be a
8 comfortable amount, two weeks.

9 Now, do you want the same from Mr. Reich?

10 Mr. Reich, do you plan to testify to anything that
11 has not already been made known to the Staff?

12 MR. REICH: I don't believe so. I think my
13 testimony will pretty much be the same as my responses to
14 their violations.

15 JUDGE SMITH: Do you need written testimony from him
16 in that event, Mr. Burns?

17 MR. BURNS: I would think if it essentially covers
18 the matters which he has raised in defense of the Notice of
19 Violation, we obviously -- we have understood and evaluated
20 his response, and have our views with respect to it.

21 I think that perhaps if there is -- if not prefiled
22 testimony, if he would file maybe a brief statement or a
23 letter saying -- essentially reiterating that, "That I intend
24 to testify with respect to the matters as set forth in my
25 letter," or if there is other information that seems to go

1 beyond the scope, that might be all we would be looking for to
2 avoid any surprise.

3 JUDGE SMITH: Mr. Burns, I think you can rely upon
4 Mr. Reich's statement on this record. This is an official --

5 MR. BURNS: I understand that, Judge Smith.

6 I am just saying there may be something else.

7 JUDGE SMITH: Yes. If there is anything else you
8 wish to add, you shall bring that to Mr. Burns' attention by
9 the same schedule.

10 MR. REICH: Okay.

11 JUDGE SMITH: That's two weeks before the hearing.

12 MR. REICH: Okay.

13 MR. BURNS: That's all I am talking about. That is
14 all I was looking for.

15 JUDGE SMITH: And then, of course, you are bound by
16 the things you are saying today, Mr. Reich.

17 MR. REICH: Yes, I understand that.

18 JUDGE SMITH: You are bound by the oral rulings that
19 I am making today.

20 MR. REICH: I understand that, too.

21 JUDGE SMITH: Anything further?

22 MR. BURNS: Judge Smith, I presume you intend to
23 hold the hearing in Billings, Montana?

24 JUDGE SMITH: Yes. I understand there is a federal
25 building there, and we will get a suitable room for that

1 purpose.

2 MR. BURNS: Okay.

3 JUDGE SMITH: That is your request, isn't it,
4 Mr. Reich?

5 MR. REICH: Yes, your Honor, it is.

6 JUDGE SMITH: We will conduct it there.

7 If there is nothing further, then we will conclude
8 this prehearing conference.

9 Thank you gentlemen, goodbye.

10 MR. REICH: Thank you.

11 MR. BURNS: Thank you, sir.

12 (Whereupon, at 11:45 a.m., the telephone conference
13 was concluded.)

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1 CERTIFICATE OF OFFICIAL REPORTER

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4
5 This is to certify that the attached proceedings
6 before the United States Nuclear Regulatory Commission in the
7 matter of: Reich Geo-Physical, Inc.
8

9 Name of Proceeding: Telephone Conference Call
10

11 Docket No.: 30-14821

12 Place: Bethesda, Maryland

13 Date: Monday, May 20, 1985
14

15 were held as herein appears and that this is the original
16 transcript thereof for the file of the United States Nuclear
17 Regulatory Commission.
18

19 (Signature) Mimie Meltzer

(Typed Name of Reporter) Mimie Meltzer
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21
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23 Ann Riley & Associates, Ltd.
24
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