

# 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: Tuesday, July 2, 1985

Pages: 35 - 50

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REICH GEO-PHYSICAL, INC. : Docket No. 30-14821  
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TELEPHONE CONFERENCE CALL

4350 East-West Highway  
Fourth Floor  
Bethesda, Maryland  
Tuesday, July 2, 1985

The Telephone conference call in the above-entitled  
manner was convened at 9:58 o'clock, a.m., pursuant to notice.

BEFORE:

IVAN SMITH, ESQUIRE  
Administrative Law Judge  
Atomic Safety and Licensing Board  
Bethesda, Maryland

## 1 APPEARANCES:

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FOR THE NUCLEAR REGULATORY COMMISSION STAFF

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LILLIAN CUOCO, ATTORNEY-AT-LAW

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Nuclear Regulatory Commission

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Washington, D.C. 20555

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PRO SE:

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KEITH A. REICH

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Reich Geo-Physical, Incorporated

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Billings, Montana

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

(9:58 a.m.)

JUDGE SMITH: Good morning, Mr. Reich. Mr. Reich,  
are you there?

MR. REICH: Yes I am, Judge.

JUDGE SMITH: Ms. Cuoco, I had my volume down. I  
think I heard you. Are you there?

MS. CUOCO: Yes, I am.

JUDGE SMITH: We are reading to begin.

I suggest, Ms. Cuoco, that you give me a report.

MS. CUOCO: Okay, I will do that, Judge.

Just to recap our call last Friday on the 28th, for  
the record, the call on the 28th was initiated about 10:45  
last Friday morning by Judge Smith, because he had heard from  
both myself and Mr. Reich separately that morning concerning  
the status of our discussions.

Judge Smith indicated on the record that, although  
certain records had been available to the Staff when we  
conducted our inspection at Reich Geo-Physical, the Staff was  
now able to request certain documents through the discovery  
process since we were going to a hearing, and since I had  
indicated to Judge Smith that morning that I had been unable  
to get in touch with Mr. Reich throughout the week, Judge  
Smith asked when Mr. Reich and I would both be available for  
extended discussion, because there are still some outstanding

1 requests and issues that Mr. Reich and I need to discuss.

2 Principally, Mr. Reich had some objections to the  
3 discovery request the Staff had made, and as well, there was  
4 the issue of the financial condition of Reich Geo-Physical and  
5 whether or not that would be an issue in the hearing, and if  
6 so, whether the Staff was entitled to request the discovery it  
7 had on that issue.

8 We discussed with Judge Smith for a little bit the  
9 request for financial information. Mr. Reich had indicated  
10 that he did not see how that information was relevant. I had  
11 said, on behalf of the Staff, that the Staff would be willing  
12 to withdraw some or all of those requests for information,  
13 depending on how the financial clarification -- how the issue  
14 of financial condition might be clarified by Mr. Reich.

15 At that point, Judge Smith noted to Mr. Reich that,  
16 you know, of course, he did not need to provide the requested  
17 financial information to the Staff; he could object to those  
18 requests. However, Judge Smith cautioned that, to the extent  
19 Mr. Reich did not provide that information, he might very well  
20 be precluded at the hearing from raising the particular issues  
21 regarding financial condition as a defense, so his response  
22 now to the Staff's discovery might delimit his defense at the  
23 hearing.

24 Judge Smith also noted that the Staff request was in  
25 anticipation of a defense, and again, if the information was

1 not provided, it might very well limit the use of that  
2 defense.

3 Judge Smith has asked both Mr. Reich and I to try to  
4 work out our differences with respect to the discovery request  
5 and to report back to him -- he asked me to report back to  
6 him.

7 Judge Smith also suggested that we might consider  
8 some other alternatives at the time of the hearing to going  
9 through formal discovery now. One suggestion made was that  
10 the Staff go out a day or two early and take a look at the  
11 records Mr. Reich might -- we had requested, and handle it  
12 that way. If the hearing was handled in that matter, if  
13 discovery was handled in that manner, that might very well  
14 preclude prefiled testimony, which right now I guess the Staff  
15 is due to file on July 10th, and Judge Smith explained to  
16 Mr. Reich the advantage of prefiled testimony, of course being  
17 that you are able to see how the Staff is going to present its  
18 case prior to the hearing date.

19 We concluded the call with Judge Smith at that  
20 point, about 11:15 or so, and Mr. Reich and I continued our  
21 discussion.

22 We discussed on the phone the interrogatories that  
23 the Staff had requested of Reich Geo-Physical, and I think  
24 we've reached agreement on Interrogatories 1 through 10.

25 Mr. Reich indicated that he would provide records in



1 response to Interrogatories 1 through 3, 6 through 7, and 10.  
2 He would annotate his records in response to Interrogatory 4,  
3 and he would be providing a brief written description to the  
4 Staff in response to Interrogatories 5, 8 and 9, as well as  
5 any other records or documents that might aid in responding to  
6 those interrogatories.

7 Mr. Reich indicated he would not respond to  
8 Interrogatories 11 through 15, because he didn't see how the  
9 issues were relevant to the proceeding. We discussed --  
10 Mr. Reich and I discussed the issue of financial condition,  
11 and I believe the result of our discussions was that the issue  
12 Mr. Reich is raising is that the period of time he was not  
13 permitted to operate was time enough -- was penalty enough, if  
14 I am characterizing that correctly, and that is how I now  
15 understand what the defense is.

16 It is not, as I understand it, an inability to pay  
17 any penalty that might, indeed, be imposed.

18 We also discussed ~~not~~ briefly the request for  
19 admissions that the Staff ~~11~~ against Reich Geo-Physical on  
20 June 12th. I indicated to Mr. Reich that under the provisions  
21 of the Rules of Practice, he should respond to them in an  
22 affirmative or negative sense. Otherwise, the statements  
23 would stand as if he admitted them.

24 We also discussed very briefly the document  
25 stipulations which had been sent out early in June from the

1 Staff to Reich Geo-Physical. Mr. Reich indicated that he  
2 would sign those document stipulations; however, before he  
3 would do that, there was an additional document that he  
4 thought should be added to the list of 16. That additional  
5 document was a letter from Reich Geo-Physical to the NRC Staff  
6 requesting License Amendment Forms and Form 241 forms.

7 I explained to Mr. Reich that I had not -- I was not  
8 aware that that document was here at the NRC. We would  
9 certainly look for it. Mr. Reich indicated -- I asked  
10 Mr. Reich if he could possibly send me his copy of that  
11 particular document. At that point, Mr. Reich requested that,  
12 pursuant to discovery, I provide that document to him. I said  
13 I would try to, but again, I wasn't aware that it existed.

14 I then asked Mr. Reich if there were any other  
15 discovery requests he might have against the Staff, and he  
16 indicated at that point that he wasn't sure, but, you know, he  
17 may very well have some things that would come up in the next  
18 few weeks, and I emphasized to him that we were going to  
19 hearing very shortly, and that the Staff's interest -- we  
20 certainly wanted to respond and would respond to a duly  
21 requested discovery request, but we -- our interest was in  
22 resolving the discovery process quickly and not a few days  
23 before we go to hearing, to respond to discovery.

24 I think my conversation with Mr. Reich ended about  
25 that point. I reported briefly the contents of our



1 conversation back to Judge Smith and recommended that we have  
2 a conference call this morning.

3 JUDGE SMITH: Mr. Reich, do you have anything to add  
4 or to correct on Mrs. Cuoco's account?

5 MR. REICH: Just that it seems as though my request  
6 for that letter was not received too well. I asked for a copy  
7 of the letter with their stamped receipt date, and the answer  
8 I got, "I don't know if it's in the file." And I would like  
9 to have that letter. That's one of the only documents I've  
10 requested.

11 JUDGE SMITH: Do you have a copy of it, Mr. Reich?

12 MR. REICH: Yes.

13 JUDGE SMITH: Do you think that it may be possible  
14 for Ms. Cuoco to stipulate that your copy is authentic?

15 Do you have any doubts about the letter, Ms. Cuoco?

16 MS. CUOCO: Yes, I do, Judge Smith, which is why  
17 I've requested that Mr. Reich send it to me. I certainly  
18 don't -- I do not have a copy of the letter he is referring to  
19 right now. I have obviously had the Staff looking through the  
20 file for that letter. That has been done before, and we have  
21 not been able to locate it.

22 So I am concerned, at a minimum, I do not want to  
23 stipulate to any document until I've had a chance to see it,  
24 obviously, and as well, I want to confirm, before I stipulate  
25 to it, that we do have it here at the NRC, and our, you know,

1 inability to find it thus far has been some kind of mistake.

2 JUDGE SMITH: Mr. Reich has provided you with the  
3 details of the letter, has he, or the date?

4 MS. CUOCO: I generally know that it was in the 1981  
5 timeframe, but that's really all I know about it, and I know  
6 it was a request for amendment forms and for 241 forms.

7 If Mr. Reich could add anything else to that, that  
8 would be extremely helpful to me.

9 MR. REICH: That's what the request was for. And  
10 the reason I want a copy of theirs, Judge Smith, is to see  
11 when the date was that it was stamped received by the NRC.

12 JUDGE SMITH: All right. Why don't you tell  
13 Ms. Cuoco to whom the letter was addressed and the date of it?

14 MR. REICH: Okay. I don't know if I have it right  
15 now. I am still out of town. I have most of my records with  
16 me. I don't know if I have the exact date or who it was  
17 addressed to with me at this time.

18 JUDGE SMITH: Well, do you have any idea to whom you  
19 might have addressed it?

20 MR. REICH: I believe it was to Mr. Brown.

21 MS. CUOCO: Uh-huh. Mr. Brown?

22 MR. REICH: I'm sure it was Mr. Brown. I don't  
23 recall his first name.

24 MS. CUOCO: Yes. Mr. Brown of the Materials  
25 Licensing Branch?

1 MR. REICH: Yes, I think so.

2 MS. CUOCO: Okay. And was I correct, Mr. Reich,  
3 that it's the 1981 timeframe?

4 MR. REICH: That's right, yes.

5 MS. CUOCO: Okay.

6 JUDGE SMITH: Ms. Cuoco can do more than make a  
7 reasonable effort to find it. If it can't be found, then  
8 we'll worry about that at the time of the hearing. You will  
9 always be able to testify that you did send it, and see what  
10 happens.

11 It seems to me now that all of your problems have  
12 been resolved. I don't identify anything remaining, except  
13 your letter.

14 Is there anything else?

15 MR. REICH: I have something, Judge. Just from the  
16 conversation here this morning, I understand that there's  
17 going to be pretrial testimony. And along with the records I  
18 sent to Ms. Cuoco, I requested a copy of the pretrial  
19 testimony, along with the letter we just discussed.

20 MS. CUOCO: Yes.

21 MR. REICH: And since it isn't going to be conducted  
22 until July 10th and the hearing is scheduled on the 24th, I'm  
23 not going to have much time to review it.

24 JUDGE SMITH: I think you're going to -- I think  
25 that you have a misunderstanding of what is happening here.

1           A trial that you might be familiar with would  
2 consist of the witnesses on one side coming to the trial and  
3 taking the witness stand and testifying orally. Then you have  
4 an opportunity to cross-examine them or question them. And  
5 then you present your witnesses or testify yourself,

6           MR. REICH: Uh-huh.

7           JUDGE SMITH: At the NRC, we follow a practice which  
8 is intended to give you a benefit, and that is, instead of the  
9 NRC witnesses coming to Billings and testifying orally, they  
10 give you in advance a written testimony. They're not actually  
11 testifying down here. They are giving you in advance their  
12 testimony in writing, so that you are notified in advance as  
13 to what their testimony is going to be.

14           When they get to the hearing, they will be sworn,  
15 and they will adopt that written testimony as their testimony  
16 there. The time period is reasonable. It will be some two  
17 weeks before the hearing. It certainly is much, much more  
18 notice than you would receive if they came there and testified  
19 orally. The time period which is provided is provided by our  
20 rules and is approximately the same amount of time, and in any  
21 event, it cannot be prepared much earlier, because of the  
22 difficulty that Ms. Cuoco is having in getting the information  
23 she needs from you on discovery.

24           Did you understand that that was the nature of the  
25 testimony?

1 MR. REICH: Yeah, I think I understood everything  
2 there, Judge. I just, like I said, would like some time to  
3 review it. I can understand now where it's to my advantage,  
4 rather than having actual witnesses at the trial. I will have  
5 a little time to --

6 JUDGE SMITH: Well, the witnesses will be at the  
7 trial. They will actually come to the trial.

8 MR. REICH: I see.

9 JUDGE SMITH: And they will orally state that that  
10 testimony is their testimony.

11 MR. REICH: Okay.

12 JUDGE SMITH: But you, then, will already have known  
13 about it, and so you will have an opportunity to prepare your  
14 questions.

15 MR. REICH: Oh, I see. Okay.

16 JUDGE SMITH: That's the purpose of it.

17 MR. REICH: Uh-huh.

18 JUDGE SMITH: And I don't think that is an  
19 unreasonable amount of time. We have had much more complex  
20 cases in which that time amount has been adequate.

21 Are you making a formal request for more time?

22 MR. REICH: No, I'm not.

23 JUDGE SMITH: Okay. I think you will see the  
24 advantage of it when you receive the testimony. It tells you  
25 exactly what the Staff's case against you is. You will then



1 have your option of asking them questions about it or not.

2 You can say, you know, that you don't have any  
3 questions, and then take the witness stand yourself and  
4 explain your point of view.

5 MR. REICH: Okay.

6 JUDGE SMITH: Now do you plan to have any witnesses  
7 on your behalf?

8 MR. REICH: No, I don't think so.

9 JUDGE SMITH: Do you plan to testify?

10 MR. REICH: I believe so, yes. I think so right  
11 now.

12 JUDGE SMITH: All right. Then is there anything  
13 else that has to be resolved?

14 MR. REICH: Not on my part. I would like to have  
15 the documents, if they can be produced. I supplied them with  
16 all their requests, and I'd just like to have them supply me  
17 with mine.

18 MS. CUOCO: I certainly intend to do as much as I  
19 can, Mr. Reich, to locate that particular document. Like I  
20 said, I have the Staff looking in Washington and in NRC Region  
21 IV, looking for the particular document. The information  
22 you've give me this morning is very helpful, and, you know, we  
23 will certainly -- if we can find it, we will provide it to  
24 you, and if we cannot find it, we will certainly let you know.

25 That raises one other issue, Judge Smith. Mr. Reich

1 had indicated to me last week that he might have some other  
2 requests for information from us, and I wanted to just pursue  
3 that a little bit this morning, whether he will have some more  
4 information requests, and if so, in what timeframe.

5 MR. REICH: Right at this time, I don't know of any  
6 other information I'm going to request.

7 JUDGE SMITH: Well, I want to remind you, Mr. Reich,  
8 that we had originally issued an order during our first  
9 telephone conference that all requests for information must be  
10 in in time, so that they can be answered by June 30th.

11 MR. REICH: Uh-huh.

12 JUDGE SMITH: So if you have any more requests, the  
13 more you delay, the more likely it is that you won't get your  
14 answers.

15 MR. REICH: All right. I understand.

16 JUDGE SMITH: All right.

17 There is one other thing I want to make sure that  
18 Mr. Reich has understood. I heard the discussion that he  
19 wants a copy of the letter, or he wants a copy of the letter  
20 he sent. But later on, he said that he wants copies of the  
21 documents, and I don't know why you used the plural,  
22 Mr. Reich.

23 Is there more than one document that you're asking  
24 for?

25 MR. REICH: I think what I was referring to there,

1 Judge, was a copy of the letter, which I referred to as a  
2 document, and then also the pretrial testimony.

3 JUDGE SMITH: Oh, I see. All right.

4 MS. CUOCO: Yes, Mr. Reich, you certainly will be  
5 served -- you know, will receive a copy of the pretrial  
6 testimony.

7 Let me ask you now, will the -- as I said earlier,  
8 the pretrial testimony is due to be filed on July 10th, I  
9 believe -- will you be in Billings? I, you know, don't want  
10 to keep perpetuating this problem of sending documents to  
11 Billings and you are somewhere else.

12 MR. REICH: I think, if you could, I'd rather have  
13 you send it to where I'm at right now.

14 MS. CUOCO: Okay.

15 MR. REICH: If it's convenient for you. I'd get it  
16 as soon as possible.

17 MS. CUOCO: Okay. What I will do then is, I will  
18 make a point of sending a copy both to Billings, and if you  
19 could at some point call me back or give me where you are now,  
20 send a copy to both addresses.

21 MR. REICH: Okay. I'd appreciate that.

22 JUDGE SMITH: All right. Anything further?

23 MR. REICH: Not on my part, Judge.

24 MS. CUOCO: I don't believe so, Judge Smith.

25 Mr. Reich indicated that he had forwarded to me the discovery

1 request, the Staff discovery request -- was that last week,  
2 Mr. Reich?

3 MR. REICH: They were sent -- mailed out Saturday.

4 MS. CUOCO: Okay. And were they sent to Washington?

5 MR. REICH: To Washington, D.C., yes.

6 MS. CUOCO: Okay. Thank you. Because I will start  
7 looking for them, then.

8 JUDGE SMITH: All right. Thank you for joining me.  
9 That concludes our conference.

10 MS. CUOCO: Okay. Thank you, Judge Smith.

11 MR. REICH: Thank you.

12 [Whereupon, at 10:17 o'clock, a.m., the telephone  
13 conference 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, License No. 25-18304-01,  
ASLBP No. 85-508-01-OT  
12 Place: Bethesda, Maryland

13 Date: Tuesday, July 2, 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)

(Typed Name of Reporter)

Barbara Whitlock  
Barbara Whitlock

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24  
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