BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE

OF THE STATE OF UTAH

IN THE MATTER OF: **NUTORQUE ENGINE CORPORATION** **AMOS R. MANSFIELD**	~ ~ ~ ~ ~ ~ ~	**NOTICE OF PREHEARING CONFERENCES, SCHEDULING ORDERS AND NOTICE OF HEARING** Case No. SD-10-0052 Case No. SD-10-0053

BY THE ADMINISTRATIVE LAW JUDGE:

This adjudicative proceeding was initiated pursuant to the issuance of a July 29, 2010 notice of agency action. The notice recites a September 7, 2010 initial hearing was scheduled to be conducted before the Utah Securities Commission.

The Court conducted an initial prehearing teleconference with the Division - through legal counsel Jeffrey Buckner - and Amos R. Mansfield - on behalf of both Respondents - on September 7, 2010. The Court scheduled the Division's disclosure of the relevant and nonprivileged contents of its investigative file to Respondents by October 6, 2010. Respondents were ordered to file a supplemental response by that date and similarly provide documents to the Division as relevant to the claims and/or defenses in this proceeding.

The next prehearing teleconference was scheduled to be conducted on October 25, 2010. That teleconference was reset to be conducted on November 9, 2010. Respondents informed the Court and the Division that a packet of information was sent to the Division by electronic mail earlier that morning. However, Mr. Buckner had not yet received that information.

The Court ordered all documents were to be exchanged between the parties by November 30, 2010. The Court also scheduled the next prehearing teleconference to be conducted on December 6, 2010.

During the December 6, 2010 prehearing teleconference, Respondents stated the Order to Show Cause in this proceeding includes a reference to a 1990 Stipulation. Respondents also stated documents have been provided to the Division which pertain to that earlier agreement.

However, Respondents next stated that Keith Woodwell (Director of the Division of Securities) told Mr. Mansfield within the last week that reference to the 1990 Stipulation should be stricken and that charge should be dropped due to a lack of supporting evidence. Accordingly, Paragraph 12(c) of the Order to Show Cause is withdrawn.

Mr. Buckner informed the Court and Respondents that the Division has provided the relevant and nonprivileged contents of the investigative file to Respondents, but the Division has not

submitted its witness and exhibit list. The Court scheduled a concurrent submission by both parties of such lists by January 7, 2011. The Court granted leave to the Division to provide any remaining discovery sought by Respondents.

The Court thus granted Respondents leave until December 20, 2010 to provide written notice to the Division of any specific discovery still sought by Respondents. The Court and the parties reviewed the anticipated length of the hearing before the Commission in this proceeding. The Division informed the Court that four (4) hours would likely be needed for the presentation of the its case. Both parties agreed the hearing could be concluded in six (6) hours.

The Court thus scheduled the hearing before the Commission to commence at 9:00 a.m. on January 27, 2011. The Court informed both parties that the Court would issue any witness subpoenas as requested.

The Division submitted its witness and exhibit list on January 10, 2011. That list was mailed to Respondents on the same date. Respondents - through Mr. Mansfield - did not submit any written notice to the Division - as scheduled - of any specific discovery still being sought. Respondents - through Mr. Mansfield - also did not submit any witness and exhibit list to the Division as scheduled.

Mr. Mansfield sent a January 6, 2011 electronic mail message

to the Court and Mr. Buckner. He stated he would need complete discovery and the time to review that information before he could complete a witness and exhibit list. Respondents thus requested that an informal teleconference be conducted with the Division and the Court when it is convenient to discuss this case.

Mr. Mansfield left two (2) telephone messages for the Court between January 12, 2011 and January 18, 2011. The Court conducted a January 19, 2011 prehearing teleconference with the Division and Respondents. The Court initially acknowledged the telephone contacts made by Respondents. The Court apologized that a response did not occur within a brief time after the Court became aware of those contacts.

Upon the Court's inquiry, Mr. Mansfield confirmed he has not provided a witness and exhibit list to the Division. Mr. Mansfield also stated he has more documents which pertain to the claims and defenses in this case, but those documents have not been provided to the Division.

Mr. Buckner informed the Court and Respondents that the Division has provided all of the relevant and nonprivileged contents of the investigative file. He stated no documents have been held back by reason of any claimed privilege. Mr. Buckner further stated the Division is not aware of any other documents which it has that Respondents are seeking.

Mr. Mansfield stated he believes he has not received all

the discovery which is needed. Mr. Mansfield also stated he has explored the possibility of retaining legal counsel for this proceeding. Mr. Mansfield acknowledged he has not submitted any written request to the Division which specifically identifies whatever further discovery is sought.

Noting that any such request was due by December 20, 2010, Mr. Buckner reiterated there are no remaining documents for the Division to disclose. Upon the Court's inquiry, Mr. Buckner stated the Division is ready and prepared to go forward with the January 27, 2011 hearing.

Upon the Court's inquiry, Mr. Mansfield stated he has not yet retained legal counsel, but he fully expects to do so. Respondent stated he initially spoke with an attorney (William Fillmore) in June 2010 regarding this matter.

Mr. Mansfield also stated discovery is confusing, he believes not everything has been provided by the Division from its investigative file and he needs nore time in that regard. Mr. Mansfield also stated he is still preparing the written request for specific disclosure, but he has not yet defined what he seeks through discovery.

Based on Respondents' noncompliance with scheduled discovery deadlines, the Division contends Respondents' presentation of evidence during the hearing should be limited. The Court readily acknowledges Mr. Mansfield has twice failed to comply with

discovery required by the Court.

Moreover, the Court concludes no basis exists for any claim that full disclosure has not be made by the Division. Respondents' assertion that the January 27, 2011 hearing should be continued because more discovery is needed fails to recognize that Respondents have not properly utilized the time and means available to obtain desired discovery.

Thus, Respondents' request for a continuance of the January 27, 2011 hearing is dubious in certain respects. The schedule for discovery identified by this Court during the December 6, 2010 prehearing teleconference was not merely advisory. Prehearing deadlines are utilized to move a proceeding forward to resolution, either by settlement or through a hearing. Timely and open disclosure by both parties should be realized.

Any "eleventh hour" request for the continuance of a hearing is highly questionable when prompted by a desire for more time to finalize prehearing processes which should have already been completed. The Court also recognizes Respondents should have retained legal counsel - if desired - at an earlier stage of this proceeding.

Although the Order to Show Cause is not factually complex, the hearing before the Commission and any legal issues which may arise would likely be addressed in a more direct manner with less potential for confusion were Respondents represented by legal

counsel. The pace and direction of prior discovery illustrates a degree of repetition and piecemeal compliance which should be avoided in any hearing.

Based on the foregoing, the Court reluctantly informed the Division and Respondents that the January 27, 2011 hearing is continued. That hearing was rescheduled to be conducted, commencing at 10:00 a.m. on February 24, 2011. The Court scheduled the submission of an entry of appearance by legal counsel for Respondents. The Court also scheduled a prehearing conference to be conducted on February 3, 2011.

The Court further identified a final date for Respondents to submit a witness and exhibit list to the Division, accompanied by any written request for specific documents in the Division's possession. The Court also ordered that, should Respondents fail to timely make the disclosures set forth herein, the Court would address the Division's request to limit or exclude witnesses or documentary evidence offered by Respondents during the hearing. Alternatively, the Court would address a motion by the Division to enter Respondents' default.

The Court generally informed Mr. Woodwell of the foregoing on January 27, 2011. Mr. Woodwell informed that Court that the Commission is next scheduled to meet on March 17, 2011 and the hearing could be rescheduled for that date. The Court stated it would inform the parties of that singular change to the schedule

set forth herein.

Based on the foregoing, the Court now enters the following:

ORDER

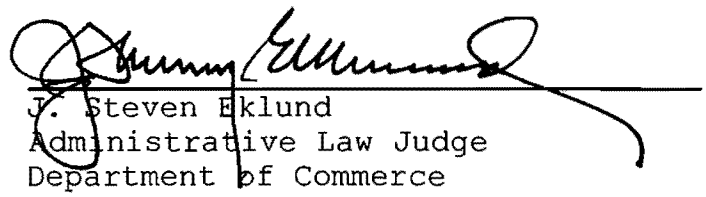
WHEREFORE, IT IS ORDERED the January 27, 2011 hearing in this proceeding is continued and will be conducted, commencing at 9:00 a.m. on March 17, 2011 in Room 451 (Fourth Floor) of the Heber Wells Building, 160 East 300 South, Salt Lake City. Utah.

It is further ordered an entry of appearance shall be filed with the Division by Respondents' legal counsel no later than February 3, 2011. The Court will contact respective counsel to conduct a prehearing teleconference on February 3, 2011 or as soon as possible thereafter.

Respondents' witness and exhibit list shall be submitted to the Division no later than February 10, 2011. Respondents shall similarly submit a written request for disclosure which specifies discoverable documents - if any - in the Division's possession. The Division shall provide a written response to that request by February 17, 2011.

Absent unforseen and exceptional circumstances, the Court will not entertain any request for a continuance of the March 17, 2011 hearing if there has been any noncompliance with this Order. Simply put, any lack of diligence or a failure to act in the nature set forth herein shall not warrant a postponement of the scheduled hearing.

Dated this 31st day of January 2010.

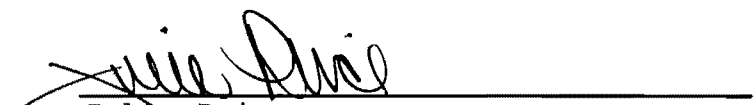


J. Steven Eklund
Administrative Law Judge
Department of Commerce

CERTIFICATE OF MAILING

I hereby certify that on the 31 day of January 2011, a copy of the **NOTICE OF PREHEARING CONFERENCES, SCHEDULING ORDERS AND NOTICE OF HEARING** was sent, by regular mail, postage prepaid, to NuTorque Engine Corporation and Amos R. Mansfield, 4080 Devonshire Dr. Provo, UT 84604.

A copy was hand delivered to Jeffrey Buckner, Assistant Attorney General, 160 East 300 South, 5th Floor, Salt Lake City, UT 84111; and similarly provided to Thomas Brady, Division of Securities, 160 East 300 South, 2nd Floor, Salt Lake City, UT 84111.



Julie Price
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