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DOCKETED
USNRC

December 13, 2005 (2:09pm)

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ADJUDICATIONS STAFF

JOHN M. CLIFFORD*
BILLIE PIRNER GARDE**

*ALSO ADMITTED IN MD
**ALSO ADMITTED IN TX, WI

December 13, 2005

Lawrence McDade, Chair
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

E. Roy Hawkens
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Re: *In the Matter of* ANDREW SIEMASKZO,
IA-05-021; ASLB No. 05-839-02-EA

Dear Administrative Judges:

As you are aware, on December 6, 2005, the NRC Staff filed yet another Motion to Extend the Stay of the Proceeding in the above-styled matter. The Staff's Motion is again supported by an Affidavit from Department of Justice attorney Thomas T. Ballantine, which affidavit has been filed under seal. The issues are to be discussed during a conference call this Thursday, December 15, 2005, at 12:30 p.m., EST.

Mr. Siemaszko opposes the Staff's request for a further extension. His counsel would like to review the Ballantine affidavit in order to better frame their arguments and understand the position of the NRC Staff, at this time. This is important because, based on other communications between the Department of Justice (DOJ) and Mr. Siemaszko's criminal counsel, it is now abundantly clear that the DOJ's interest in Mr. Siemaszko is wholly unrelated to the facts now before the Board. The facts before the Board address conduct during the 12th Refueling Outage (12 RFO) at Davis-Besse, during the spring of 2000. It does not appear that the Department of Justice has any interest in the issues in which Mr. Siemaszko was involved during 12 RFO. Moreover, we understood that the Grand Jury expired on November 30, 2005. Yet, it now appears that the NRC and the DOJ are continuing investigations. Are these investigations being supervised by a Grand Jury, or is this investigation back to square one with the NRC?

TEMPLATE = SECY-03b

SECY-02

In order to have an understanding of these issues, we would like to review the Ballantine Affidavit in accordance with the attached proposed Protective Order previously submitted by Mr. Siemaszko on September 16, 2005, but modified to include the new Affidavit. (See, Attached Stipulated Protective Order (Department of Justice Affidavits). Another alternative would be for Mr. Siemaszko's counsel (who will be at the NRC all day on December 15, 2005 on other business), to review the Ballantine Affidavit, in chambers, under the terms of a limited protective order prior to the hearing.

Please advise.

Sincerely,

Billie P. Garde
Billie Pirner Garde
John M. Clifford *4/2*

Attachment

cc: Service List

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

Before Administrative Judges:

Lawrence G. McDade, Chairman
E. Roy Hawkens
Dr. Peter S. Lam

In the Matter of:

ANDREW SIEMASZKO

Docket No. IA-05-021

ASLBP No. 05-839-02-EA

December 13, 2005

**STIPULATED PROTECTIVE ORDER
(DEPARTMENT OF JUSTICE AFFIDAVITS)**

WHEREAS the Nuclear Regulatory Commission (NRC) Staff has submitted for *in camera* review an Affidavit from U.S. Attorney Thomas T. Ballantine in support of its August 19, 2005 Motion To Stay Proceedings; and, on September 8, 2005, submitted an additional Affidavit from Mr. Ballantine in further support of its Motion, as well as in response to inquiries made by the Atomic Safety and Licensing Board (Board) during the August 31, 2005 pre-hearing conference call. In addition, the NRC Staff has now submitted a third Affidavit from Mr. Ballantine, dated December 5, 2005, in support of its latest Motion to Extend Stay of Proceedings;

WHEREAS the NRC Staff has requested that the Affidavits only be made available to Mr. Siemaszko or his counsel in this proceeding under a proposed Protective Order;

WHEREAS Mr. Siemaszko and his counsel cannot respond to the Staff's argument in support of its request for an additional stay without reviewing the Affidavits and evaluating their contents, and desire to do so;

Now, therefore, the parties by and through their counsel agree as follows:

1. Mr. Siemaszko and his counsel will receive a copy of the August 18, September 8 and December 5, 2005 Affidavits, and any supplemental affidavits from Mr. Ballantine in support of the NRC Staff's request for a stay of these proceedings;

ATTACHMENT

2. Distribution of the Affidavits, and disclosure of their contents, will be limited to Mr. Siemaszko and his counsel, and their legal support staff, which shall also be bound by this Protective Order;
3. Mr. Siemaszko and his counsel agree to maintain the Affidavits and their contents in strict confidence and will not disclose them, or their contents, directly or indirectly, in whole or in part, to anyone except the minimum number of counsel and legal support staff engaged to represent Mr. Siemaszko, or the NRC staff;
4. Mr. Siemaszko and his representatives, and the NRC Staff and its representatives, who have access to the Affidavits shall take all reasonable precautions to ensure that the Affidavits are not distributed to unauthorized persons. Reasonable precautions include maintaining the Affidavits in a secure place and limited access to the Affidavits to persons authorized to receive access to them. Any person who has access to the Affidavits shall take all reasonable precautions to ensure that persons under their supervision or control comply with this Protective Order;
5. The Affidavits shall remain confidential until such time as the Department of Justice completes its investigation of potential criminal violations of law arising out of the Davis-Besse near miss event; the NRC Staff notifies Mr. Siemaszko and his counsel that there is no longer any necessity for compliance with the Order; or, until lifted by an Order of this Atomic Safety and Licensing Board.;
6. In the event that either party believes that a breach of this Protective Order has occurred, it will notify the other party and attempt to informally determine whether such breach has happened, and to cure the issue; and, if necessary, request that the Board hold a hearing to determine whether a breach has occurred and, if so, what the appropriate penalty shall be.

For Mr. Siemaszko:

Billie Pirner Garde
John M. Clifford
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For the NRC Staff:

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

Before Administrative Judges:
Lawrence G. McDade, Chairman
E. Roy Hawkens
Dr. Peter S. Lam

In the Matter of

ANDREW SIEMASZKO

Docket No. IA-05-021

ASLBP No. 05-839-02-EA

December 13, 2005

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Andrew Siemaszko's Letter to Board were served this 13th day of December, 2005, by the means indicated (electronic mail *; regular U.S. Mail **; facsimile ***), on the following:

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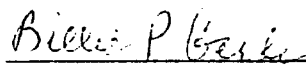
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Billie P. Garde *dk*
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