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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 PRE-HEARING CONFERENCE

6

7 In the Matter of:

8 DAVID GEISEN

9

10 Rockville, Maryland

11 Thursday, June 8, 2006

12

13 The above-entitled conference was

14 convened telephonically and in room T-3B45 of White

15 Flint North, pursuant to notice, at 10:00 a.m.

16

17 BEFORE:

18

19 MICHAEL C. FARRAR, ASLBP Administrative Judge

20 E. ROY HAWKENS, ASLBP Administrative Judge

21 NICHOLAS G. TRIKOUROS, ASLBP Administrative Judge

22

23

24

25

1 APPEARANCES:

2 On Behalf of the Nuclear Regulatory Commission

3 Staff:

4 SARA E. BROCK, ESQ.

5 MICHAEL E. SPENCER, ESQ.

6 of: Office of the General Counsel

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8 U.S. Nuclear Regulatory Commission

9 Washington, D.C. 20555-0001

10

11 On Behalf of David Geisen:

12 RICHARD A. HIBEY, ESQ.

13 of: Miller & Chevalier

14 655 15th Street, N.W., Suite 900

15 Washington, D.C. 20005-5701

16

17 ALSO PRESENT:

18 Jonathan Rund, ASLBP Staff

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

2 (10:00 a.m.)

3 JUDGE FARRAR: We'll go on the record in

4 a status teleconference, the Geisen matter. This is

5 Mike Farrar. I'm the chairman of the licensing

6 board. I have with me here at headquarters my

7 colleagues, Roy Hawkens, Nick Trikouros, my fellow

8 judges, and John Rund, our law clerk.

9 For Mr. Geisen, who do we have?

10 MR. HIBEY: Richard Hibey and Matt

11 Reinhart.

12 JUDGE FARRAR: Thank you. And for the

13 NRC staff?

14 MS. BROCK: Sarah Brock and Michael

15 Spencer.

16 JUDGE FARRAR: All right. Thank you. I

17 know you're all busy so we won't take much of your

18 time. We just want to try to keep the case moving,

19 and see if there's anything we need to do to--Mr.

20 Hibey, are you going to be filing an opposition with

21 the Commission to the staff's motion for a stay?

22 MR. HIBEY: Yes, Your Honor.

23 JUDGE FARRAR: When will that be filed?

24 MR. HIBEY: I believe we have ten days,

25 and I'm not sure how that's counted, but somebody

1 counted it for me, and I believe that comes out to
2 somewhere around Monday. We are hoping to file on
3 Friday, meaning tomorrow.
4 JUDGE FARRAR: All right. Fine. All
5 right. And for now, since there's no stay in
6 existence, we plan to proceed as though there is no
7 stay. Of course if the Commission determines that
8 there should be a stay, we'll deal with that, if and
9 when we get to it.
10 We noticed the document exchange, the
11 other day, I guess that was earlier this week, on
12 the 5th.
13 Mr. Hibey, you now have staff documents
14 that they served on you, and sent us information
15 about, and you also have from the U.S. Attorney
16 inklings* of the open file discovery. Could you
17 elaborate on both of those a little, please.
18 MR. HIBEY: Yes, Your Honor. You should
19 know that I am, and have been at my circuit's
20 judicial conference, so I have not personally
21 eyeballed what has been sent by the staff but I
22 understand we received eight boxes of material. I
23 cannot be more descriptive as to the contents.
24 With respect to the submissions of the
25 Justice Department in the criminal case, we have

1 received--

2 JUDGE FARRAR: Mr. Hibey, are you still

3 there?

4 MR. RUND: It sounds like we may have

5 lost him.

6 JUDGE FARRAR: Okay. Then let's hold

7 on.

8 [Pause]

9 JUDGE FARRAR: Mr. Reinhart, can you--

10 MR. REINHART: I could continue to

11 elaborate--

12 JUDGE FARRAR: No, I meant, could you,

13 in case he thinks he's--well, I assume he'll know

14 soon enough that he's--

15 MR. REINHART: Yes. Unfortunately,

16 we're not in the [audio beep] right now.

17 MR. HIBEY: I'm sorry. We got cut off.

18 JUDGE FARRAR: Right, Mr. Hibey, we lost

19 you just as you were starting to say what the

20 Department of Justice had done.

21 MR. HIBEY: Exactly. We have received

22 from them several thousand pages of material and

23 many dozens of CDs, CDs I guess is what they call

24 them, of material, which we are processing as we

25 speak and attempting to absorb that material as

1 well. We are advised that the discovery, the
2 document, the paper discovery in the criminal case
3 has been completed. We are not in a position to
4 confirm that the discovery needs in that, in the
5 criminal case, or discovery in the criminal case has
6 been completed to our satisfaction.
7 I anticipate that this month we will be
8 submitting a discovery letter to the Justice
9 Department with very specific requests for material.
10 That's about as far as I could take it
11 this morning.
12 JUDGE FARRAR: All right. Let me,
13 before I ask staff if they have anything they want
14 to add, let me extend to the staff the board's
15 appreciation that you did jump in and beat the 30-
16 day deadline by a considerable amount. We
17 appreciated that in terms of moving the case along,
18 and the footnote in your papers to the Commission,
19 which indicated that you would adhere to that,
20 notwithstanding the filing of the paper with the
21 Commission.
22 So thank you for keeping the case
23 moving.
24 Ms. Brock, Mr. Spencer, is there
25 anything you want to add on the status of discovery?

1 MS. BROCK: Sure. I think we sent seven
2 or eight boxes over. We still have not served our
3 proprietary documents because we need a
4 nondisclosure agreement by somebody who I can send
5 them to.
6 JUDGE FARRAR: All right.
7 MS. BROCK: So that's still pending.
8 And we also haven't received any documents from Mr.
9 Geisen under 2704.
10 JUDGE FARRAR: All right. I think you
11 served a list of the proprietary--
12 MS. BROCK: We did; yeah.
13 JUDGE FARRAR: But you're holding those
14 until you get the statement.
15 MS. BROCK: Yes.
16 JUDGE FARRAR: Mr. Hibey, you said you'd
17 been away.
18 MR. HIBEY: I am away.
19 JUDGE FARRAR: You are away. There
20 won't be any problem getting that protective order
21 signed and--
22 MR. HIBEY: Oh, no. No, Your Honor.
23 JUDGE FARRAR: Fine. And in terms of
24 you making the mutual exchange, you'll be able to
25 attend to that when you're back, or--

1 MR. HIBEY: Well, I think probably the
2 safety thing for me to say at this point is that we
3 will meet our obligations. I do not have direct, in
4 front of me, to know precisely how that is spelled
5 out, and I don't know exactly how--this is my
6 ignorance but I'm professing to it right now.
7 That I don't know how rebuttal documents
8 are handled. I want to be sure that I have the
9 right not to turn over documents I intend to use in
10 the cross-examination of witnesses.
11 If there are documents I'm going to use
12 in a case in chief, I certainly would be prepared to
13 turn those over as of when they are identified or as
14 of when they are required to be identified.
15 MS. BROCK: Your Honor, may I speak to
16 that?
17 JUDGE FARRAR: Yes.
18 MS. BROCK: I think I can bring some
19 potential clarity. We've recently revised our Part
20 Two rules and this is a little bit of an oddity, but
21 as I think all the parties are aware, in general,
22 our rules are written more contemplating licensing
23 proceedings. And for a subpart D proceeding under--
24 for a subpart D proceeding, NRC staff discloses its
25 documents pursuant to 2.336, which requires us to

1 disclose within 30 days of the order granting the
2 hearing.
3 We went ahead with that disclosure.
4 Another party requires, discloses pursuant to 2.704,
5 are their initial disclosures, and that's supposed
6 to come 45 days after the issuance of a prehearing
7 conference order, following the initial prehearing
8 conference. It's thinking in terms of after
9 contentions are admitted.
10 JUDGE FARRAR: Right.
11 MS. BROCK: And so we weren't sure of
12 what, since we had initially asked for a stay, and
13 the timing of the case was somewhat thrown off, we
14 went ahead and when you asked us when we can serve,
15 we just went ahead and served them--I mean, our
16 documents are public anyway--and I'm fine with
17 whatever, comfortable with how Mr. Geisen wants to
18 serve the documents under 2704. We just would want,
19 then, time before discovery starts, before
20 interrogatories and the discovery starts, to review
21 them.
22 JUDGE FARRAR: All right. Ms. Brock, if
23 I remember correctly, and I don't have the other
24 files in front of me, in the Miller and Moffitt
25 proceedings, the issue in initial--I think we called

1 it the initial scheduling order, after you and Ms.
2 Penny agreed on a discovery schedule--didn't we
3 caption that initial scheduling order?
4 MS. BROCK: Right. We did.
5 JUDGE FARRAR: Okay. But we have not
6 done that in this proceeding.
7 MS. BROCK: Right. And Ms. Penny and I
8 simply agreed to do our document disclosure on the
9 same date.
10 JUDGE FARRAR: Right. So why don't we
11 do--because of the, this case was complicated with
12 the stay motion, why don't, when Mr. Hibey gets
13 back--oh, I take it then you and Mr. Hibey have not
14 started to talk about a discovery schedule?
15 MS. BROCK: No.
16 MR. HIBEY: That's correct.
17 MS. BROCK: I spoke with Mr. Wise a
18 couple weeks ago and he was going to examine the
19 obligations under 2704.
20 JUDGE FARRAR: Okay. Why don't we do
21 this, rather than us jump in, when Mr. Hibey gets
22 back, Mr. Hibey, if you would be good enough to call
23 the staff and see if, between the two of you, and
24 come up with a plan that would, you know make sense
25 in the circumstances for how you want to handle

1 this.

2 MR. HIBEY: We'll do it.

3 JUDGE FARRAR: Those who've practiced

4 before me in the PFS case know that the boards

5 generally prefer that the parties work this out, and

6 I see, I think it was in the newspaper yesterday,

7 some federal judge got so fed up with lawyers who

8 couldn't agree on anything, that he directed them to

9 play *rock paper scissors on the courthouse steps,

10 to decide where a deposition was going to be. So I

11 guess--

12 MR. HIBEY: It won't come to that, Your

13 Honor, believe me.

14 JUDGE FARRAR: I saw that story. But

15 the Commission probably would not like it, if we had

16 to enter an order like that against you.

17 MR. HIBEY: I'm confident we're going to

18 be able to work these things out. In fact, now that

19 Ms. Brock has reminded me, that Mr. Wise has already

20 begun discussions with her, it's clear to me all

21 this is going to be done in a very civilized

22 fashion.

23 JUDGE FARRAR: Right, and, you know

24 we've always been on the view here that you all can

25 work out a better system than we can impose on you,

1 if we have to.

2 MR. HIBEY: Exactly; yeah. We agree.

3 JUDGE FARRAR: Good. Then we'll leave

4 that to you all, and I guess at this point, even

5 though we have not issued a document styled initial

6 scheduling order, we would perhaps want to do that

7 after you come up with a plan. So Mr. Hibey, even

8 though your 45 days doesn't start to run until the

9 initial scheduling order, if you all can work out a

10 system, build that into an initial scheduling order,

11 and go from there. So if we--

12 MR. HIBEY: Yes, Your Honor.

13 JUDGE FARRAR: --can compress all this,

14 that would be more efficient and save some time down

15 the road, and so let's--I noticed, Ms. Brock, you

16 served some documents, are temporarily withholding

17 the proprietary ones, and then you had a variety of

18 privilege logs.

19 How do you all contemplate, within what

20 timeframe, any challenges by Mr. Hibey where he'd

21 say, all right, that's a qualified privilege but

22 here's my reasons for needing a particular document?

23 How do we set up a management plan to handle those?

24 Well, let me start, have you and Ms.

25 Penny, Ms. Brock, done any of that in the other

1 cases?

2 MS. BROCK: We didn't get any challenges

3 to our privilege. I think by our rules, the

4 challenge to a privileged document is due within ten

5 days of service of the list under F--more

6 [unintell]* according to regulations. But under--

7 what did you say it was?--two point--two three two?

8 JUDGE FARRAR: The usual business about

9 a motion--

10 MS. BROCK: Right. The 2323, the

11 motions must be made no later than ten days, and I

12 think in other proceedings that's been applied to

13 initial documents. All the hearings file in the

14 2336* disclosures are due within ten days, the

15 service of the--

16 JUDGE FARRAR: Well, it's due within,

17 the regulation which I don't have in front of me I

18 think says within ten days of the prehearing--

19 MS. BROCK: Right. Ten days of the

20 event that caused the--

21 JUDGE FARRAR: Right, and I think the

22 Vermont Yankee board said the triggering event is,

23 in fact, your service of the privilege log. I guess

24 that gets into--I know there were some concern in

25 that case, that when you get a privilege log that

1 contains only the information that they usually do
2 and the ability to challenge those, difficult to
3 challenge them right out of the box and particularly
4 when we're dealing with thousands and thousands of
5 documents. So maybe we need to talk about what, in
6 the circumstances of this case, would be a
7 reasonable time to file any privilege objections.
8 MR. REINHART: Your Honor, this is Mr.
9 Reinhart. If I may speak on that issue. We
10 received the privilege logs from staff on this
11 Monday, the 5th. There's at least four different
12 logs with over 42 pages of entries, combined with
13 the ten boxes of materials we received. I think I
14 would request that some sort of way to work within
15 the rule, perhaps with our other scheduling with Ms.
16 Brock, as to a schedule to find a mutually agreeable
17 time to challenge these entries.
18 It's going to be tough work and tough
19 justice to weigh through those within the next five
20 days and file a motion.
21 JUDGE FARRAR: Ms. Brock, what's your
22 thought on that?
23 MS. BROCK: I'm sorry. I'm slightly
24 caught offguard. I guess that's fine. I guess our
25 privilege logs probably are 42 pages, so compared to

1 the total number of documents, it's not that many
2 pages. Well, to a certain extent, we followed the
3 guidance in Vermont Yankee, so I think our privilege
4 logs are a little bit better than the ones that have
5 been found deficient there.
6 But I don't mind giving them a little
7 bit more time than the ten days. That's fine.
8 JUDGE FARRAR: Then why don't we include
9 that in your list of things to negotiate and I know,
10 again in the Vermont Yankee case, there was a
11 question of how do you know--in other words--
12 MR. HIBEY: That's right.
13 JUDGE FARRAR: I took a quick look at
14 these logs, and now, granted, I'm not an expert in
15 this kind of thing, but it looked to me like if I
16 were opposing counsel, I'd look at that, I might
17 say, hey, wait, that's something I need. If the
18 description isn't clear enough, wouldn't the first
19 thing be, Ms. Brock, pick up the phone and call you
20 and say, wait, I need to know more information about
21 that document to know whether I'm going to
22 [inaudible]*. Otherwise, we'd have a incalculable
23 number of motions filed with us where the counsel
24 seeking the documents doesn't really know what they
25 are and our first order of business would be to tell

1 him to talk to you. How do we work around all that?
2 MS. BROCK: I think that makes a lot of
3 sense. I guess what I would add--well, which might
4 be beneficial too, reviewing them--the sense in
5 which we followed the Vermont Yankee decision is one
6 of the things the staff was criticized for in that
7 case, was asserting a deliberative process privilege
8 without having senior management review of it.
9 In this case, prior to adding any
10 document to our deliberative process--we identified
11 documents potential for deliberative process, and
12 had them reviewed by either the director of the
13 Office of Investigations or the director of the
14 Office of Enforcement, and we actually ended up
15 releasing most of them, and so on that particular
16 privilege log, there's very few documents on it.
17 And I guess, actually, maybe this is the
18 answer, when I'm thinking about some of Ms. Penny's
19 document requests include things off of our
20 privilege log, and that's also a perfectly
21 acceptable way to handle it in my mind. It just was
22 we were trying to be sensitive to the board's
23 concerns from Vermont Yankee, that we had in that
24 case invented the rule.
25 JUDGE FARRAR: I appreciate that.

1 MS. BROCK: But if that's okay, I agree
2 with you, that it's a better way to work it out and
3 to discuss the documents prior to filing motions
4 over it.
5 JUDGE FARRAR: For example, you had one
6 log that was, had a lot of personnel files in it?
7 MS. BROCK: Yes.
8 JUDGE FARRAR: And I take it that that's
9 a qualified, not an unqualified privilege?
10 MS. BROCK: The personal privacy ones?
11 Yeah. Well, and, actually, on some of those we
12 would probably be willing to release them under a
13 protective order, if they want them, which I guess
14 is why you're saying it's better for us to work it
15 out. It's just that, in general, our documents,
16 when we release them, are released to the public.
17 JUDGE FARRAR: Right.
18 MS. BROCK: And so we started off by
19 putting things like personal privacy files on the
20 privilege log. I mean, in terms of specific ones,
21 it would obviously be somewhat document by document,
22 and I'd have to look at the Privacy Act to make sure
23 we didn't run afoul of that in giving it out. But I
24 think that that would fit in some of the uses of it.
25 JUDGE FARRAR: All right. Then Mr.

1 Hibey and Mr. Reinhart, or if this all makes--do you
2 want to address any of this?
3 MR. HIBEY: Well, I can only draw from
4 my experience, Your Honor, which, unhappily, until
5 now, has not included litigation with the staff.
6 But in my world, there would be a need to confer,
7 that would address specifically requests that we
8 would make regarding assertedly privileged material,
9 and an attempt would be made to come to some
10 resolution about documents that are covered by those
11 assertions.
12 I expect that that's what we would be
13 doing here. I think apparently you've had an
14 opportunity to look at the lists, and apparently
15 also my colleague, Mr. Reinhart, has had an
16 opportunity to look at them, and about the only
17 thing that I am hearing that suggests a commonality
18 of view is that they are lengthy, and that suggests,
19 to me, that there'll be a considerable amount of
20 time devoted to our looking at these lists and
21 attempting to discern what we can from the
22 descriptions contained therein.
23 To the extent the descriptions are
24 precise, then our discussions with the staff about
25 precisely described assertions of the privilege will

1 be that much more focused. Where the descriptions
2 are wanting, then I suppose, if our needs go in that
3 direction we'll want to know more. All of that
4 would be the subject of a meet and confer, and what
5 comes of that I suppose is anybody's guess on this
6 call as to whether we will press for the production
7 of material in certain categories or whether we will
8 simply stand down and move on to something else.
9 All of this by way of saying that we're
10 just going to have to block out a period of time
11 within which to deal with the staff on these things,
12 before we have to trouble the panel.
13 JUDGE FARRAR: Go ahead, Ms. Brock.
14 MS. BROCK: I agree with that, and it
15 occurred to me as Mr. Hibey was speaking, that some
16 of these things, since we prepared the documents for
17 disclosure, primarily with Ms. Penny in mind, and
18 then essentially duplicated them here, there's two
19 things that I should probably mention that might not
20 be obvious, which is one, part of the reason why
21 our--and I think this will be beneficial to
22 everybody in looking at them--part of the reason
23 that the personal privacy privilege log looks so
24 long, is that any document that has an A after the
25 Bate number, that reflects that there's a redacted

1 version, and so you received a redacted copy of that
2 document and we're essentially putting the
3 redactions on the personal privacy privilege log.
4 And, in general, our redactions were somewhat, were
5 not that significant, and we did not put on the
6 logs, though, any time we redacted somebody's Social
7 Security number or address out of a transcript, we
8 didn't actually put that on the log. We only put on
9 redactions that you might--it wasn't obvious, what
10 it was.
11 So I just offer that as clarity in terms
12 of what you're looking at, and if you have other
13 questions in going through that about kind of the
14 way it looks, any of the three of us would be happy
15 to explain further.
16 MR. HIBEY: I'm sure that's what it'll
17 come to, you know a discussion, and then for us to
18 assess whether the explanations, in their final
19 articulation, satisfy the situation. We're
20 obviously not going to press--the only words I can
21 think of right now are "for the hell of it." I
22 mean, we're going to look at everything, and if we
23 need something that we think is currently being
24 withheld, we'll ask for it.
25 MS. BROCK: Yes; that's fine.

1 JUDGE FARRAR: Let me then summarize
2 where I think we are. It sounds like, given what
3 both Ms. Brock and Mr. Hibey, Mr. Reinhart have
4 said, the "meet and confer" seems to be the next
5 order of business--
6 MR. HIBEY: Yes.
7 JUDGE FARRAR: --and that would be
8 working as part of this larger discussion that we
9 mentioned earlier, and given that that's going to
10 happen, then at least informally, it would say that
11 the events that would trigger the ten day period for
12 filing a motion have not yet happened. We don't
13 want to get into the Vermont Yankee situation, have
14 to make a formal ruling, one way or another, but if
15 the parties are in agreement, just through this
16 discussion today in the transcript, and then we
17 memorialize it, order later that the--not that
18 that's the way the regulation would be interpreted
19 for all time, but that the parties have in fact
20 agreed, that for purposes of the circumstances of
21 this case, the events have not yet happened that
22 would lead to the filing of a motion.
23 Is that acceptable to you, Ms. Brock?
24 MS. BROCK: Yes.
25 JUDGE FARRAR: And Mr. Hibey?

1 MR. HIBEY: It is, indeed. May I make a
2 comment, Your Honor. Perhaps something I should
3 have mentioned to you when you first asked me what
4 the state of discovery was. I'd like to expand my
5 response to give you a sense of what's happening in
6 the criminal case--
7 JUDGE FARRAR: All right.
8 MR. HIBEY: --because I think it has
9 some bearing on the issue we're talking about here.
10 We had a discovery cut-off date--strike that--a
11 motions, pretrial motion cut-off date, I believe
12 roughly the 24th of May.
13 JUDGE FARRAR: Right.
14 MR. HIBEY: The government, meaning the
15 prosecutors, and we, submitted a request, granted by
16 the magistrate judge, to convert that date into a
17 status conference call.
18 JUDGE FARRAR: Right.
19 MR. HIBEY: And as a result of that,
20 another status call has been scheduled for a date in
21 July. The precise date escapes me. In the interim,
22 the parties have also agreed with the court's
23 acquiescence to classify the case under the speedy
24 trial act, as complex and protracted.
25 JUDGE FARRAR: Right.

1 MR. HIBEY: Thereby relieving the
2 parties from the rigor of imposed deadlines, that
3 the rules of procedure provide for. I think the
4 key, for purposes of this discussion, is the
5 recognition in the order, that the court either has
6 signed or will be signing shortly, that this is a
7 complex and protracted litigation.
8 JUDGE FARRAR: Right.
9 MR. HIBEY: That I thought that I would
10 share that information with you in terms of the
11 judicial recognition that that's the kind of case
12 we're dealing with.
13 JUDGE FARRAR: Right.
14 MR. HIBEY: So I appreciate the
15 indulgence that I feel the board is giving us in
16 terms of allowing us to work out some of the
17 important details of discovery that attend this
18 case.
19 JUDGE FARRAR: All right. We appreciate
20 that. In that vein, expeditious consideration that
21 the case has to get is, I think we said mostly, you
22 know, a benefit to the person who's subject.
23 Second, thank you all for working it out. It'll end
24 up going much faster than us requiring you file
25 motions kind of in the dark, and us ruling on them

1 in the dark. While it appears that we're giving you
2 extra time, I think, in the long run, we're really
3 shortening the time that--
4 MR. HIBEY: I believe we are; yes.
5 JUDGE FARRAR: --the case would take.
6 Along those lines, is it too soon for us to say, all
7 right, let's meet and confer--and, you know, I know
8 you have to review the documents first, Mr. Hibey,
9 in the "meet and confer." Do you want to put an
10 ending date on which you would file something that
11 kind a summarizes your discussion and puts forward a
12 plan, both for how you're going to resolve all these
13 preliminary matters, and what your discovery
14 schedule would be?
15 MR. HIBEY: Well, I think it would be
16 premature, but I'll tell you what I'd like to do,
17 and you tell me whether you want to reduce that to
18 an order. I mean, we're here to abide by whatever
19 the board says. When I get back into town and I'm
20 at my desk, which is on Monday, I would like very
21 much the opportunity to pull my team together,
22 because as we speak, the only one in the office is
23 Mr. Reinhart.
24 JUDGE FARRAR: Right.
25 MR. HIBEY: And have us assess what we

1 want to do with as much specificity as possible.
2 Then I'll pick up the phone and call Ms. Brock, see
3 if we can't get together and deal with this thing.
4 I would say that when we lock in that date for a
5 meeting, you should know that.
6 JUDGE FARRAR: Right. So why don't you
7 tell us--yeah--when you and Ms. Brock have settled
8 on a date to try to resolve all this, let us know
9 about that.
10 MR. HIBEY: Right.
11 JUDGE FARRAR: And then after that
12 meeting, after you all have met, why don't you pick
13 a date and say, okay, we've got a lotta things that
14 we've agreed to work on, some are resolved, some are
15 not. We will report to the board with a scheduling
16 order or management plan by date X, you know, so you
17 all agree on a date--
18 MR. HIBEY: Yes, Your Honor.
19 JUDGE FARRAR: --and tell us, okay, you
20 don't have everything done, it's going to take a
21 week, six weeks to do that, but you will be sending
22 us a joint report on date X--
23 MR. HIBEY: Yes.
24 JUDGE FARRAR: --some time in the
25 future.

1 MR. HIBEY: Exactly.

2 JUDGE FARRAR: Ms. Brock, is that all

3 right?

4 MS. BROCK: Sure. That's fine. I mean,

5 we're happy, basically, to go along with any

6 reasonable schedule. We, as you all know, wanted to

7 stay the proceedings, so we're not pushing it to

8 move quickly.

9 JUDGE FARRAR: Right, and the reason I

10 pick a date is not that, there's anything magic

11 about that date, but we all sometimes work better

12 with some deadline looming ahead of us. So we

13 wouldn't, you know second-guess that date so much

14 as, you know that's something where we know the case

15 is on track.

16 MR. HIBEY: Yes.

17 JUDGE FARRAR: We won't get this

18 transcript right away, and we have some travel next

19 week, so we will not get out an immediate order

20 summarizing all this, but you all know what we've

21 agreed on.

22 MR. HIBEY: Yes.

23 JUDGE FARRAR: And I like your idea, Mr.

24 Hibey, notify us when you have a date for your "meet

25 and confer," and then, when that's done, that's the

1 date that you [inaudible]* with us.

2 Let me ask more questions. Last Friday,

3 the 2nd, the Commission handed down another

4 Siemazsko decision in the matter of the

5 discretionary intervention that had been given to

6 the Union of Concerned Scientists, and, in essence,

7 said the board had not been specific enough

8 [inaudible]* and it remanded for that lack of

9 specificity, told the board to go ahead and

10 reconsider that, notwithstanding today.

11 I notice in that decision that the Union

12 of Concerned Scientists didn't defend its own

13 participation. Mr. Siemazsko defended their

14 participation.

15 Are they lurking around this case? Is

16 this something that we were going to be called upon

17 to deal with? Or Mr. Hibey, your firm is in this by

18 yourself, or what's--I just don't want us to be

19 surprised, somewhere down the road, with some kind

20 of--

21 MR. HIBEY: Well, if you're going to be

22 surprised, so am I. No, I haven't seen--they have

23 not surfaced with me.

24 JUDGE FARRAR: Okay.

25 MR. HIBEY: I have no "handle" on that.

1 I don't anticipate their participation in this case.
2 JUDGE FARRAR: All right. Ms. Brock,
3 you wouldn't have any other information than that, I
4 assume?
5 MS. BROCK: No. The Union of Concerned
6 Scientists has long been interested in all matters
7 related to Davis-Besse, but if they filed an
8 intervention petition at this point they would be,
9 in this proceeding, they'd be well out of time and
10 need to meet the standards for a late-filed
11 petition.
12 JUDGE FARRAR: But you don't have any
13 factual information about any intentions they have,
14 or anything?
15 MS. BROCK: No.
16 JUDGE FARRAR: You know, I didn't want
17 to have us be surprised, later on, by something that
18 we might have been advised about now, and obviously
19 we have no--I'll put that on our list of things not
20 to worry about.
21 MR. HIBEY: Right.
22 JUDGE FARRAR: All right. Anything
23 else? Well, let me ask my colleagues if they have
24 anything they want to add. Anything additional you
25 want to bring to our discussion?

1 MR. HIBEY: No. Any questions I have on
2 my mind at this time, I think are best directed to
3 Ms. Brock, rather than to be raised with the court.
4 JUDGE FARRAR: Right. We appreciate
5 that. Ms. Brock, anything you all want to bring to
6 our attention?
7 MS. BROCK: The only thing I'd add, Your
8 Honor, is similar along your notes, of whether UCS
9 is lurking outside, is I think all the parties know
10 we issued five orders to individuals involved in
11 Davis-Besse, on January, was it 3rd or 4th? January
12 3rd or 4th.
13 JUDGE FARRAR: Right.
14 MS. BROCK: We granted every individual
15 involved in that an extension of time to respond to
16 the order.
17 JUDGE FARRAR: Right.
18 MS. BROCK: For four individuals, it was
19 30 days. For the fifth individual, it was more like
20 six months. And so that deadline's coming up. I
21 have no idea whether or not there'll be a hearing
22 request on that.
23 JUDGE FARRAR: Who was that?
24 MS. BROCK: Mr. Boyle.
25 JUDGE FARRAR: Okay.

1 MS. BROCK: And they didn't actually
2 bring the date in front of me. I think it's
3 something like July 5th.
4 JUDGE FARRAR: Okay. So was that an
5 immediately effective order?
6 MS. BROCK: Yes, it was.
7 JUDGE FARRAR: And that's still lurking
8 out there. But under our system, that could be
9 assigned to a brand new order or--
10 MS. BROCK: That's right; that's right.
11 It's not inextricably--
12 JUDGE FARRAR: No, I appreciate you
13 mentioning that that's out there. We don't see any
14 of the papers until, you know there's a request for
15 hearing that's, you know sent over to us. So we
16 were not aware of that. I appreciate you bringing
17 it to our attention.
18 So I think the board's point of view,
19 this is a good outcome to this call, and a good way
20 to proceed, to move as quickly as possible on your
21 own, solving as many things as you can before you
22 have to bring matters to our attention. I again
23 appreciate the cooperative attitude for bringing
24 this ahead as quickly as you all are able, on the
25 assumption--well, the fact that there is no stay in

1 existence now and that'll for the Commission to
2 determine when we get Mr. Hibey's response.
3 But we will just continue to go ahead.
4 We appreciate the cooperative attitude.
5 MR. HIBEY: I have one last question.
6 JUDGE FARRAR: Yes, sir?
7 MR. HIBEY: Your Honor, if you don't
8 mind, in the ordinary course, do I understand that
9 anything I file with the Commission the board gets,
10 or should I be directing something to you?
11 JUDGE FARRAR: I think as a courtesy,
12 most parties direct it to us. There may be a system
13 that gets it to us but I don't know how reliable
14 that is.
15 MR. HIBEY: All right. Well, then
16 you'll get courtesy copies from us.
17 JUDGE FARRAR: Yes, if you don't mind.
18 MR. HIBEY: Not at all.
19 JUDGE FARRAR: I think Ms. Brock, you
20 sent us a courtesy copy.
21 MS. BROCK: Yes, we always do. We don't
22 use the same certificate of service because you
23 serve the Commission through serving SECI* who you
24 send all filings to anyway.
25 JUDGE FARRAR: Yes. We appreciate that

1 cause it keeps us informed of what's going on. So
2 if you would do that, Mr. Hibey, just--
3 MR. HIBEY: You'll have it. You'll have
4 it, Your Honor.
5 JUDGE FARRAR: --to us also.
6 MR. HIBEY: Yes.
7 JUDGE FARRAR: So thank you all and we
8 look forward to moving forward with you in this same
9 spirit.
10 MR. HIBEY: Thank you.
11 MS. BROCK: Thank you.
12 JUDGE FARRAR: Thank you very much. At
13 this point, then, we will terminate the conference.
14 Thank you, Mr. Reporter. Ms. Brock.
15 MR. HIBEY: Thank you, Your Honor.
16 Goodbye.
17 (Off the record.)
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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Pre-Hearing Conference
In the Matter of
David Geisen

Docket Number: IA-05-052

Location: via teleconference

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Alex Patton
Official Reporter
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