

August 2, 2006 (4:09pm)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Michael C. Farrar, Chairman
E. Roy Hawkens
Nicholas G. Trikouros

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In the Matter of)	Docket No. IA-05-052
)	
DAVID GEISEN)	ASLBP No. 06-845-01-EA
)	
)	

JOINT STATUS REPORT

Pursuant to the Board's July 27, 2006 Order (Calling for a Status Report), NRC Staff and David Geisen ("Geisen"), by and through their respective counsel, submit this Joint Status Report regarding the issues described in the July 27, 2006 Order and state as follows:

A. Summary of Relevant Proceedings

On January 4, 2006, the NRC issued an order prohibiting Geisen's involvement in NRC-licensed activities for a period of five (5) years, effective immediately.

On January 19, 2006, Geisen and two other individuals were indicted in a proceeding pending in the United States District Court for the Northern District of Ohio, styled *U.S. v. David Geisen, et al.*, Case No. 3:06CR712 (N.D. Ohio) ("Criminal Proceeding").

On February 23, 2006, Geisen filed his Answer to the January 4, 2006 Order and requested an expedited hearing. On March 16, 2006, the Board was established to preside over the above-captioned matter.

On March 20, 2006, NRC Staff filed a Motion to Hold Proceeding in Abeyance, in which NRC Staff requested, among other things, "a stay of discovery and hearing rights during the regulatory proceeding to accommodate the needs of" the Criminal Proceeding. Geisen opposed NRC Staff's Motion to Hold Proceeding in Abeyance. On May 19, 2006, the Board entered an order denying NRC Staff's Motion to Hold Proceeding in Abeyance.

On May 31, 2006, NRC Staff filed a Petition for Interlocutory Review of the Board's May 19, 2006 Order. On June 9, 2006, Geisen filed an Opposition to NRC Staff's Petition for Interlocutory Review.

While NRC Staff's Petition for Interlocutory Review was pending before the NRC, on June 5, 2006, NRC Staff served their Initial Disclosure pursuant to 10 C.F.R. § 2.336(b). Additionally, on June 8, 2006, the Board held a status teleconference with the parties to discuss various scheduling matters.

On July 26, 2006, the Commission affirmed the Board's May 19, 2006 Order denying NRC Staff's Motion to Hold Proceeding in Abeyance.

On July 27, 2006, the Board entered an order directing the parties to submit this joint status report addressing the issues that the Board outlined during the June 8, 2006 status teleconference.

On July 28, 2006, Geisen served his Initial Disclosure pursuant to 10 C.F.R. § 2.704(a).

With respect to the Criminal Proceeding, the parties are currently in the discovery phase. The court has set October 20, 2006 as the deadline for filing pre-trial motions. No other deadlines, including a trial date, have been set in that case.

B. Summary of Parties' Agreements and Respective Positions

1. Resolution of Existing Privilege Disputes

In its Initial Disclosure (including supplements thereto), NRC Staff has asserted various privileges, including the deliberative process and personal privacy privileges. In letters dated June 20, 2006 and July 11, 2006, Geisen raised various issues concerning NRC Staff's assertion of the deliberative process and personal privacy privileges with respect to an Office of Investigations Report dated August 22, 2003 ("August 2003 OI Report"). NRC Staff responded in writing to those letters on July 12, 2006, declining to withdraw its assertion of those privileges. On July 19, 2006, Geisen responded to the NRC Staff's July 12, 2006 letter. The parties have also spoken about those issues during teleconferences on June 21, 2006 and July 31, 2006. It appears that, despite the foregoing efforts, the parties are unable to resolve, by agreement, the issues concerning NRC Staff's assertion of the deliberative process and personal privacy privileges as to the August 2003 OI Report. Accordingly, Geisen intends to file a motion to compel with respect to those issues.

Under the circumstances, the parties propose the following briefing schedule regarding Geisen's motion to compel concerning the August 2003 OI Report: Geisen will file and serve his motion to compel on or before August 11, 2006, and NRC Staff will file and serve its response thereto within the time required by 10 C.F.R. § 2.323(b). Since Geisen's motion to compel will involve privileges that NRC Staff has the burden of establishing, Geisen hereby requests, pursuant to 10 C.F.R. § 2.323(b), leave to file a reply brief within seven (7) days after NRC Staff files its response to Geisen's motion to compel. NRC Staff consents to Geisen's request to file a reply brief.

The parties agree that they preserve, and do not waive, their right to file other motions regarding privilege assertions, including such assertions in the Initial Disclosures and written discovery responses, during the course of discovery in this matter. The parties agree that the time limits set forth in 10 C.F.R. § 2.323 for filing motions to compel shall not apply to privilege disputes.

2. Proposed Schedule For Fact Discovery

The parties have agreed that they will exchange written discovery requests (including interrogatories, document requests and/or requests for admission) on September 1, 2006 or such earlier date as the parties may subsequently agree. The parties further agree that written responses to all written discovery requests shall be served within thirty (30) days of the service of the written discovery requests, notwithstanding any rules to the contrary.

The parties agree that deposition notices shall not be served until ten (10) days after the later of (a) the completion of all proceedings relating to Geisen's motion to compel regarding NRC Staff's privilege assertion as to the August 2003 OI Report (including issuance of the Board's ruling, any *in camera* review ordered by the Board and any appeal of the Board's ruling), (b) the production of any information or documents that NRC Staff may be ordered to produce as a result thereof or (c) the completion of written discovery.

The parties agree that the completion of all fact discovery should occur ninety (90) days after the later of the events described in paragraph 2(a)-(c), above.

The parties agree that disclosure and discovery of expert testimony should not occur until after the completion of all fact discovery.

Accordingly, the parties propose the following schedule for fact discovery:

ACTION	PARTY	DEADLINE
Serve Initial Written Discovery Pursuant to 10 C.F.R. § § 2.706, 707, 708, 709. Responses required within 30 days.	All Parties	September 1, 2006
Serve initial notices of deposition.	All Parties	No sooner than ten (10) days after the later of (a) the completion of all proceedings regarding Geisen's motion to compel (including any appeal related thereto), (b) Geisen's receipt of any information or documents produced by NRC Staff as a result thereof or (c) the completion of written discovery.
Completion of Fact Discovery	All Parties	Within ninety (90) days after the later of (a) the completion of all proceedings regarding Geisen's motion to compel (including any appeal related thereto), (b) Geisen's receipt of any information or documents produced by NRC Staff as a result thereof or (c) the completion of written discovery.

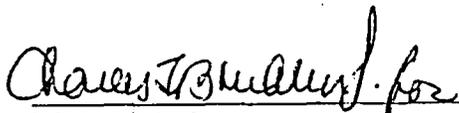
3. Expert Discovery and Motions for Summary Disposition

The parties agree that the Board should hold a status conference after the completion of fact discovery for purposes of (a) setting deadlines for the disclosure and discovery of expert witness testimony, (b) ascertaining whether a briefing schedule for motions for summary disposition pursuant to 10 C.F.R. §2.710 would be required and (c) setting other deadlines as necessary.

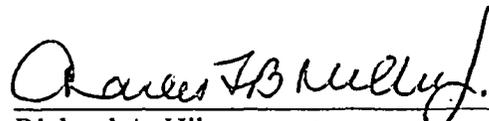
4. Setting Hearing Date

The parties agree that the Board should not set a hearing date at this time.

Respectfully Submitted,


Michael A. Spencer
Sara E. Brock
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Mail Stop: O-15 D21
Washington, D.C. 20555-0001
(301) 415-7000 (telephone)
(301) 415-3725 (facsimile)
Counsel for NRC Staff

(with permission)


Richard A. Hibey
Charles F. B. McAleer, Jr.
Andrew T. Wise
Matthew T. Reinhard
Miller & Chevalier Chartered
655 15th Street, N.W., Suite 900
Washington, D.C. 20005
(202) 626-5800 (telephone)
(202) 628-0858 (facsimile)
Counsel for David Geisen

Dated: August 2, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

Michael C. Farrar, Chairman
E. Roy Hawkens
Nicholas G. Trikouros

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In the Matter of)	Docket No. IA-05-052
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DAVID GEISEN)	ASLBP No. 06-845-01-EA
)	
_____)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, on the 2nd day of August, 2006, that copies of the parties' Joint Status Report in the above-captioned matter were served on the following persons via email as indicated by an (*) and by regular mail as indicated by an (**):

Office of the Secretary (*), (**)
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, D.C. 20005
E-mail: hearingdocket@nrc.gov

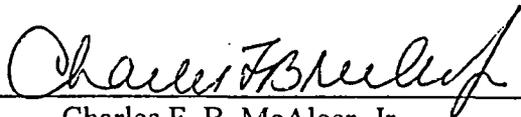
Michael C. Farrar (*), (**)
Administrative Judge, Chair
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555-0001
E-mail: mcf@nrc.gov

E. Roy Hawkens (*); (**)
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23

Washington, D.C. 20555-0001
E-mail: erh@nrc.gov

Nicholas G. Trikouros (*), (**)
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555-0001
E-mail: ngt@nrc.gov

Adjudicatory File (**)
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555



Charles F. B. McAleer, Jr.



MILLER & CHEVALIER
CHARTERED

655 FIFTEENTH STREET, N.W., SUITE 900
WASHINGTON, D.C. 20005-5701
202.626.5800 FAX: 202.628.0858
WWW.MILLERCHEVALIER.COM

CHARLES F.B. MCALEER, JR.
202.626.5963
cmcaleer@milchev.com

August 2, 2006

Michael C. Farrar, Chair
E. Roy Hawkens
Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555-0001

Re: *In The Matter Of David Geisen*
IA-05-052, ASLBP No. 05-839-02-EA
Before the Atomic Safety and Licensing Board

Dear Judges Farrar, Hawkens and Trikouros:

Enclosed for filing in the above-referenced matter is a Joint Status Report by David Geisen and NRC Staff, through their respective counsel. The parties are submitting this Joint Status Report pursuant to the Board's Order dated July 27, 2006. An electronic copy of the Joint Status Report was submitted to you today as well.

The parties appreciate your consideration of the enclosed Joint Status Report.

Sincerely yours,

Charles F. B. McAleer, Jr.
Counsel for David Geisen

Enclosure

cc: Michael A. Spencer, Esq. (w/encl.)
Sara E. Brock, Esq. (w/encl.)
Richard A. Hibey, Esq. (w/encl.)
Andrew T. Wise, Esq. (w/encl.)
Matthew T. Reinhard, Esq. (w/encl.)