

RAS 12181

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 08/31/06

RAS 12182

ATOMIC SAFETY AND LICENSING BOARDS
Before Administrative Judges:
Michael C. Farrar, Chairman
E. Roy Hawken
Nicholas G. Trikouros

SERVED 08/31/06

In the Matter of

DALE L. MILLER

Docket No. IA-05-053

ASLBP No. 06-846-02-EA

August 31, 2006

In the Matter of

STEVEN P. MOFFITT

Docket No. IA-05-054

ASLBP No. 06-847-03-EA

August 31, 2006

ORDER

(Deferring Geisen Deposition Pendente Lite)

Before us is an August 15 motion by David Geisen -- who is the subject of an enforcement order he is challenging in a companion proceeding -- to quash the subpoena the Board had issued, at the Staff's behest, requiring him to appear for a deposition in these proceedings on September 11. In certain respects, the issue about the deposition is one of timing (albeit one that implicates substantive rights),¹ so earlier this month we suggested that counsel in the three companion cases confer in an attempt to resolve the matter of that timing amicably (see pp. 3-4 of our unpublished order of August 25 in the Geisen proceeding, referring to a matter first discussed in a conference call held on August 17).

¹ The Staff's desire to take Mr. Geisen's deposition on September 11 was in large measure linked to the then-operative mid-September deadline for the completion of discovery in these proceedings (see p. 2, below). But Mr. Geisen urged that such timing of his deposition herein would be inconsistent with the timing planned for discovery in his own proceeding, and could implicate his Fifth Amendment right not to incriminate himself. Further, Mr. Geisen urged that he should be provided the opportunity, before being deposed, to review the unredacted Office of Investigations Report (if indeed he establishes a right to do so (see p. 2, below)).

In the cover e-mail transmitting that order to all counsel, we asked to be notified, before noon today, as to the outcome of their discussions on that scheduling matter. In the interim, responses to the motion to quash were filed on August 28 by the NRC Staff (opposing the motion but indicating a willingness to re-schedule) and by Mr. Moffitt (indicating a need for the deposition, a tolerance for some delay, and a concern about expedition's related impacts).

We have just received the "brief joint report" we requested. It indicates that the parties were not able to resolve the timing issue amicably, and that we must therefore rule upon the pending motion to quash. That motion, however, presents novel and perhaps difficult issues, which we are not in position to resolve before the return date of the subpoena, September 11.

A number of events bearing upon the merits of the motion are in flux. For one, after the pending motion was filed, and at the parties' joint request, we extended the discovery deadlines herein from September 15 to October 13 (see Orders dated August 24). For another, we will be hearing oral argument September 6 on Mr. Geisen's motion (in his proceeding) to compel the production of the redacted portions of the OI Report, a matter which forms part of the basis for his opposition to being deposed (in these proceedings) now. We expect to rule upon that motion well in advance of the new October 13 deadline for the completion of discovery herein.

In all the circumstances, and because the filings indicate no party would object to or be harmed by a brief delay, the prudent course is simply -- without intimating a view on the merits of the pending motion -- to DEFER the taking of the deposition pendente lite. We announce that decision now, so that the parties can alter their travel and related plans in orderly fashion.

It is SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARDS
/RA/

Rockville, Maryland
August 31, 2006

By Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

Copies of this Order were sent this date by e-mail transmission to counsel for Messrs. Miller and Moffitt, for the NRC Staff, and for the recipient of the subpoena.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DALE L. MILLER) Docket No. IA-05-053
)
)
(Enforcement Action))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (DEFERRING GEISEN DEPOSITION PENDENTE LITE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Michael C. Farrar, Chair
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 31st day of August 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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STEVEN P. MOFFITT) Docket No. IA-05-054
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