

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Prehearing Conference ITMO Steven Moffitt

Docket Number: IA-05-054

Location: (telephone conference)

DOCKETED
USNRC

September 28, 2006 (11:44am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Date: Tuesday, September 26, 2006

Work Order No.: NRC-1268

Pages 1-27

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

TEMPLATE = SECY-032

SECY-02

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

+ + + + +

ATOMIC SAFETY AND LICENSING BOARD

+ + + + +

PREHEARING CONFERENCE

IN THE MATTER OF: ||
STEVEN P. MOFFITT ||
Enforcement Action ||

Docket No. 1A-05-054

Tuesday, September 26, 2006
Telephone Conference Call

The above-entitled matter came on for
hearing, pursuant to notice, at 4:00 p.m.

BEFORE:

- MICHAEL C. FARRAR Chair
- E. ROY HAWKENS Administrative Judge
- NICHOLAS G. TRIKOUROS Administrative Judge

1 APPEARANCES:

2 On Behalf of Mr. Moffitt:

3 JANE G. PENNY, Esq.

4 Killian & Gephart, LLP

5 218 Pine Street

6 P.O. Box 886

7 Harrisburg, PA 17108-0886

8

9 On Behalf of Mr. Geisen:

10 RICHARD HIBEY, Esq.

11 Miller & Chevalier

12 655 15th Street, NW

13 Suite 900

14 Washington, DC 20005

15 On Behalf of the Nuclear Regulatory Commission:

16 MARY C. BATY, Esq.

17 SARA E. BROCK, Esq.

18 Office of the General Counsel

19 Mail Stop O-15 D21

20 U.S. Nuclear Regulatory Commission

21 Washington, DC 20555-0001

22 NRC STAFF PRESENT:

23 LISA CLARK

24 MARGARET PARRISH

25

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

4:04 P.M.

JUDGE FARRAR: This is Mike Farrar, the Chairman of the Board overseeing the enforcement case involving Stephen Moffitt. We're here to discuss in that case the question involving taking the deposition of David Geisen who is subject to another enforcement proceeding as well as the Defendant in a criminal proceeding.

Before we go any further, I'm here at NRC Headquarters. I have with my brother Judges, Roy Hawkens and Nick Trikouros and our newest law clerk, Meg Parish.

For Mr. Moffitt, whom do we have?

MS. PENNY: Jane Penny, Your Honor.

JUDGE FARRAR: Thank you, Ms. Penny.

MS. BATY: And Mary Baty for the Staff.

JUDGE FARRAR: All right. And for Mr. Geisen?

MR. HIBEY: Richard Hibey, Your Honor.

JUDGE FARRAR: Thank you, Mr. Hibey. Some time ago Mr. Geisen moved to quash the subpoena for his deposition in the Moffitt proceeding. We temporarily deferred taking that deposition in an order dated August 31st. Since that time, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 deposition of Rodney Cook has been taken in the
2 Moffitt proceeding and it was taken on September 12th.
3 We had refused to quash the subpoena for his
4 deposition in an order dated August 16th.

5 Before we get started, let me just ask a
6 very preliminary question.

7 Ms. Baty, I think all the subpoenas we've
8 signed in all these cases for depositions have been at
9 the instance of the Staff. Is that just as a matter
10 of convenience that you and Mr. Penny, for example,
11 agree on the taking of a deposition and you file it
12 just because you're located here or does that mean
13 it's your deposition? Help us with that.

14 MS. BATY: Well, Your Honor, it is our
15 deposition. We are noticing deposition either by
16 subpoena or just with a Notice of Deposition for
17 individuals that Mr. Moffitt identified either in his
18 initial disclosures or in his answers to
19 interrogatories as likely to have relevant information
20 on the proceeding. So we have been requesting the
21 depositions so far.

22 JUDGE FARRAR: All right, and Ms. Penny,
23 explain to me how this system works. I take it those
24 are people you're also interested in, but you just tag
25 along, in effect on the Staff's subpoena? Is that how

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 it works?

2 MS. PENNY: Actually, Your Honor, there
3 are several members of the staff that have agreed to
4 be available for deposition called by me who have not
5 obviously demanded subpoenas and also Staff and I have
6 agreed to confer -- we feel we've missed on or two
7 individuals and I may request to subpoena in that
8 situation.

9 JUDGE FARRAR: All right.

10 MS. PENNY: We're trying to work together
11 as best we can and to notify each other.

12 JUDGE FARRAR: Okay.

13 JUDGE HAWKENS: Can I ask a question?
14 This is Judge Hawkens.

15 Ms. Baty, has it been your experience,
16 have you ever declined to seek a subpoena if somebody
17 who is similarly situated to Mr. Moffitt asks for one?

18 MS. BATY: Your Honor, can I take a
19 moment? I need to confer.

20 JUDGE HAWKENS: Sure.

21 MS. BATY: Thank you.

22 (Pause.)

23 MS. BATY: Your Honors, I understand that
24 we've been asking for subpoenas of individuals that we
25 would like to speak to and we would decline, if Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Penny asked us to seek a subpoena for someone.
2 However, Ms. Penny can request a subpoena for an
3 individual, if there's someone that she would like to
4 speak to, she can make a request as well. It's not
5 just the Staff that has the right to request on that,
6 as I understand the rules.

7 JUDGE FARRAR: Thanks, Ms. Baty. You've
8 all, I take it have had an opportunity, at least since
9 yesterday to look at the deposition of Rodney Cook
10 that was taken on September 12th. Ms. Baty, in light
11 of what happened there, what's your position now on
12 going ahead with the deposition of Mr. Geisen?

13 MS. BATY: Well, Your Honor, we would like
14 to go forward with the deposition of Mr. Geisen. We
15 would like to get him on the record that he is not
16 available to answer our questions on topics related to
17 Mr. Moffitt's case.

18 And I believe that Ms. Penny feels the
19 same way, that she would also like to speak with Mr.
20 Geisen and I think that's where our position is at
21 this point. However, I'll leave it there.

22 MS. PENNY: Your Honor, this is Jane
23 Penny. What I should add is that I have approached
24 Staff about agreeing to seek continuance. Mr. Moffitt
25 just assumed a new position. I was concerned about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the scheduling of his deposition because he has to
2 take several job-related trips and has some
3 conferences.

4 We also have a few depositions that we're
5 having a little difficulty with scheduling. And I had
6 suggested to Staff since Mr. Moffitt was requesting
7 this and since he understood he was the reason why
8 things could not be expedited, that we would ask the
9 Board to consider giving us some additional time.
10 That may also enure to Mr. Geisen's benefit. I'm not
11 trying to hide here, but I surely would like to be
12 able to have Mr. Geisen deposed by the Staff because
13 Mr. Moffitt considers an essential witness.

14 On the other hand, I don't want act during
15 this call as though the pressure is still on the way
16 it was. Mr. Moffitt has to take to step back with his
17 new position and is more than willing to accommodate
18 the schedule of others.

19 JUDGE FARRAR: That's a new position,
20 obviously, outside of the nuclear industry?

21 MS. PENNY: Oh, yes it is. It is outside
22 of the nuclear industry with the same company and he
23 has a rather steep learning curve.

24 And he just gave me several dates right
25 away that he would be unavailable and made me

1 concerned about pushing anyone. I was looking at a
2 schedule as difficult as his.

3 JUDGE FARRAR: You mean you would want him
4 with you when you're deposing --

5 MS. PENNY: No, I'm sorry to interrupt.
6 I thought his deposition time would be coming up and
7 that's what made me concerned that I'm pressing
8 others. I have a client who would not be able to be
9 deposed within the next two and a half to three weeks.

10 JUDGE FARRAR: We weren't aware of that,
11 that his deposition time is coming up.

12 MS. PENNY: It's approaching.

13 JUDGE FARRAR: In his own case.

14 MS. PENNY: Correct.

15 JUDGE FARRAR: And you're facing the
16 October 15th target date for finishing.

17 MS. PENNY: Which I had wanted until now
18 I'm going to have to come in and apologize to all for
19 pushing that. So I didn't want to mislead anyone to
20 think they had the pressure I had caused still upon
21 them and if it gives Mr. Geisen additional time to
22 evaluate what to do, I can scarcely object.

23 JUDGE FARRAR: Thank you. That's helpful
24 to us to have that information. I guess we have a
25 larger question which is suppose we went ahead with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Mr. Geisen's deposition or found some other way to
2 resolve that and he elected as his counsel has
3 suggested he might, elected not to testify. Is his
4 testimony so crucial to you that in light of Mr.
5 Moffitt's current position you would say let's hold
6 the whole thing off until after Mr. Geisen's criminal
7 case?

8 MS. PENNY: I'm afraid I would have to
9 seriously consider that. My preliminary thought would
10 be try to schedule as much as I could until I was
11 ready, but I'm very concerned about how having Mr.
12 Geisen. I don't think I could make an effective case
13 for Mr. Moffitt.

14 JUDGE FARRAR: Okay. So even though Mr.
15 Moffitt is not the subject of the criminal proceeding,
16 your ability -- what you're saying is your ability to
17 mount a defense may -- well, you may have to put
18 expedition aside in order to be better prepared
19 substantively for Mr. Geisen's deposition?

20 MS. PENNY: That's beautifully phrased.
21 I'm very concerned about that.

22 JUDGE FARRAR: Okay. Mr. -- well, let me
23 just get back to the Staff. When we didn't quash Mr.
24 Cook's deposition, we indicated that the Staff had
25 represented that the deposition may nonetheless yield

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 some information relevant in the proceedings and
2 notwithstanding that would probably claim the fifth or
3 something.

4 We have an impression of what happened at
5 that deposition. Can you share with us your
6 impression? If I recall correctly the fellow answered
7 about what his name was and that was it.

8 MS. BATY: Your Honor, I would agree that
9 that's an accurate characterization of the deposition.
10 However, the Staff was able to create a record that
11 Mr. Cook was not available on those topics and so that
12 he cannot come back later on and say that yes, he
13 would have been willing to answer questions on that
14 topic.

15 Another thing to consider is that Mr. Cook
16 was more important to the proceeding of Mr. Miller.
17 that proceeding has now been -- we now have the
18 settlement before you.

19 JUDGE FARRAR: Right.

20 MS. BATY: So we might also argue in the
21 case of Mr. Geisen, given his importance to that to
22 Mr. Moffitt's proceeding that we might want to
23 challenge some of his invocation of the fifth
24 amendment privilege and for you to review and we would
25 need a record in order to have something for you to

1 review.

2 JUDGE FARRAR: All right. So I take it
3 from what you just said or can I take it from what you
4 just said that you're not going to pursue against Mr.
5 Cook whatever you need to do going to us or the
6 Commission and eventually the Department of Justice in
7 a Federal District Court to get, to try to compel Mr.
8 Cook to answer any of those questions?

9 MS. BATY: Yes, Your Honor, that is
10 correct. I can't speak, of course, for Ms. Penny on
11 the matter, but the Staff does not intend to compel ,
12 try to compel Mr. Cook to speak.

13 JUDGE FARRAR: Okay, Ms. Penny, are you
14 intending to do that?

15 MS. PENNY: Well, Your Honor, all my hopes
16 are directed toward the Board approving a settlement
17 for Mr. Moffitt. Mr. Cook is far less important in
18 the Moffitt case and I believe I can find another
19 witness to discuss the general areas he would have
20 been as crucial to Miller as Mr. Geisen is to Moffitt.

21 JUDGE FARRAR: In your experience, doing
22 this for 20 years or so --

23 MS. PENNY: Thank you for the reduction.

24 (Laughter.)

25 MS. PENNY: I want everyone to hold to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that.

2 (Laughter.)

3 JUDGE FARRAR: The Staff cited the Hoffman
4 case, a 1951 Supreme Court case and as I read that,
5 the Supreme Court sure seemed to indicate that there's
6 precious little room to compel a witness to testify.
7 They said it's -- a witness who is the subject of a
8 pending criminal indictment, they said it has to be
9 perfectly clear that the witness is mistaken and the
10 answers cannot possibly have a tendency to incriminate
11 him. Is Hoffman still the law, Ms. Penny?

12 MS. PENNY: Yes, Your Honor. And quite
13 frankly for me it came down to something as simple as
14 if you really want to call a witness when in Moffitt's
15 case you don't need him and in Miller's case, if he
16 changed his mind, I would exceedingly grateful. So I
17 just looked at it in strictly practical terms that
18 there would be no good for me to pursue him further.

19 JUDGE FARRAR: Pursue Mr. Cook further?

20 MS. PENNY: Correct.

21 JUDGE FARRAR: Right. And does the Staff
22 agree that Hoffman is still the law?

23 MS. BATY: Yes, Your Honor.

24 JUDGE FARRAR: Okay. Mr. Hibey, you've
25 come close to saying that Mr. Geisen will exercise his

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 fifth amendment right. Is one way to avoid having to
2 go to deposition for you to file some affidavit or
3 stipulation that says those are your instructions to
4 him and that is, in fact, that he will do? Is that
5 something that the criminal bar does from time to
6 time?

7 MR. HIBEY: The criminal bar encounters
8 the issue of the compulsion to testify in the context
9 of Grand Jury proceedings and where the Government
10 feels the need for the testimony of an individual who
11 asserts the fifth amendment, that individual is given
12 use immunity under 18 U.S.C. Section 6001. Otherwise,
13 the practices vary in the circuit and the practice has
14 run the gamut of sending a letter that says if you
15 determine that you wish to bring my client before the
16 Grand Jury, he will assert his right to remain silent.
17 That letter is accepted and the witness is not called.

18 In other instances, prosecutors with
19 attitudes have been free to require the presence of
20 that witness before the Grand Jury to have him invoke
21 his privilege enough times for the prosecutor finally
22 to get the message. And the proceeding terminates at
23 that point.

24 JUDGE FARRAR: How about in a civil case
25 where a witness is like we have here where a witness

1 is the subject of a pending criminal case. Are
2 agreements regularly reached? And let me tell you
3 what's on the Board's mind. Mr. Geisen has a new job
4 and we hate to bring him in here if all that's going
5 to happen is what happened at the Cook deposition.

6 We hate to have all of you go out there,
7 three or four lawyers, a day and a half each, and to
8 have -- to just have happened what happened at the
9 Cook deposition. We're looking at some way that we
10 can accomplish the same thing, whether it's by written
11 stipulations or agreements, whether it's by doing a
12 phone deposition. In other words, if we're going to
13 go ahead with the deposition, can we condition it so
14 it's less, rather than more burdensome?

15 Ms. Penny, I mean you and Mr. Hibey have
16 long experience in this. Is there any procedure like
17 that that would satisfy you? I know you'd like to
18 depose Mr. Geisen and get him to talk about what he
19 knows. but is that a vain hope in the current context
20 or do we need to have Mr. Hibey give you an agreement
21 or a statement that he is going to, in fact, instruct
22 his client to behave as Mr. Cook did?

23 MS. PENNY: Realistically, Your Honor, I
24 had not called Mr. Geisen. The Staff had. They had
25 issued the subpoena there. I had realized, however,

1 that there was nothing I could do in this situation if
2 Mr. Geisen were to assert his fifth amendment
3 privilege. Gripping from me could not change that
4 process.

5 JUDGE FARRAR: Does it help you at all if
6 Mr. Hibey, in other words, your under the
7 understanding and he has suggested it fairly strongly
8 that those are going to be his instructions to his
9 client. Does it help you at all to have that
10 confirmed by some sort of stipulation or agreement or
11 affidavit or whatever?

12 MS. PENNY: Well, Your Honor, I suppose to
13 bring closure to it so that I can then approach the
14 Board about scheduling for Mr. Moffitt. My first
15 inclination was to wait a while and see if that's what
16 he really had to do.

17 That's why I had wanted to announce Mr.
18 Moffitt's flight schedule changes right now and our
19 need to seek additional time to accomplish all the
20 depositions that we can.

21 JUDGE FARRAR: So you don't mind Mr.
22 Moffitt's -- let me see if I understand you. You need
23 more time to conclude the discovery process. You
24 particularly need more time before you put Mr. Moffitt
25 on the stand, but you could go ahead and have Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Moffitt's deposition taken before Mr. Geisen's and
2 then see where thing stand then. Is that what you're
3 suggesting?

4 MS. PENNY: I certainly could. I could
5 wait a long time, simply hoping that I could have Mr.
6 Geisen. Now the Staff may have another idea, but I
7 don't see that I have much other choice. And if I
8 could possibly get him under any circumstances, I'd be
9 thrilled.

10 JUDGE HAWKENS: Ms. Penny, Judge Hawkens
11 here. Can you quantify "long time" just to give us a
12 feel? Are you talking four months, six months?

13 MS. PENNY: Your Honor, I feel that I
14 can't present an adequate hearing if I don't have Mr.
15 Geisen's testimony and I am concerned that may have to
16 be at the end of the criminal trial.

17 JUDGE FARRAR: Mr. Hibey, do we have any
18 more information on the criminal trial which seemed to
19 be proceeding quite slowly last time we checked?

20 MR. HIBEY: No change in information. Let
21 me remind the panel that there's a motion deadline of
22 the 20th of October for us, the Defendant, to file our
23 pre-trial motions. Thereafter, that practice will
24 play itself out under the rules and we may or may not
25 get a hearing from the Court which will ultimately

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 rule on the motions that will be filed. Thereafter,
2 I am sure a trial date will be set.

3 JUDGE FARRAR: Are they just like south of
4 here in Alexandria, they have a rocket docket that it
5 will be on then?

6 MR. HIBEY: The rocket docket exists only,
7 thankfully, in Alexandria.

8 (Laughter.)

9 MS. PENNY: Well done, Mr. Hibey.

10 (Laughter.)

11 MR. HIBEY: No justice is served
12 elsewhere, according to the rules and due process as
13 we were trained.

14 JUDGE FARRAR: Mr. Hibey, just answer the
15 factual questions, no editorial.

16 (Laughter.)

17 MR. HIBEY: What you've got, you've
18 pressed a hot button with me.

19 The fact of the matter is, Your Honor, in
20 all seriousness, Toledo does not have a rocket docket.

21 JUDGE HAWKENS: Ms. Penny, Judge Hawkens
22 again. You had mentioned that you wouldn't or you'd
23 be willing to accede to a continuance pending Mr.
24 Moffitt's availability for deposition. Can you tell
25 me when approximately when Mr. Moffitt may be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 available?

2 MS. PENNY: Your Honor, I'll easily be
3 able to work that out with Staff. I mean I had been
4 concerned that he'd have a two and a half, three week
5 problem. He certainly can be made available well
6 prior to the criminal trial.

7 JUDGE HAWKENS: But prior to October 15.

8 MS. PENNY: I am concerned that I will
9 have to request an extension beyond October 15, yes.

10 JUDGE FARRAR: Well, I mean don't be
11 concerned from our point of view. We've said from the
12 beginning the rules call for an expedited hearing, but
13 I think everyone has conceded and we sure start with
14 that proposition that the expedited hearing is for
15 your client's benefits since he was under an
16 immediately effective order.

17 And now we have a job here to do to make
18 sure people aren't being lackadaisical and the thing
19 is dragging along for no reason, but if, as you've
20 indicated here, you have good and sufficient reasons
21 for asking for an extension, I don't see us
22 interposing ourselves as long as everyone is working
23 diligently and there are good reasons for extensions.
24 That will be fine with us.

25 MS. PENNY: I appreciate that, Your Honor,

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and obviously I've run this all before the Staff and
2 we certainly have been talking about it within the
3 last 10 days.

4 JUDGE FARRAR: Okay, is there --
5 obviously, we were happy to see that the Miller
6 proceeding was settled and we'll deal with those
7 papers in short order. It's not giving away any
8 secrets that papers certainly look fine on their face,
9 so that should be a done deal in a couple of days.

10 Is there any prospect of settling the
11 Moffitt proceeding?

12 MS. PENNY: I'd say there's always the
13 hope, Your Honor.

14 I'm an eternal optimist. I see it as a
15 different situation than Mr. Miller, I must confess.

16 JUDGE FARRAR: Right. Ms. Baty, you've
17 heard what we've said so far, given all this
18 discussion. Can you tell us where this leaves the
19 Staff in terms of moving forward? There's the old
20 story which I won't bore you with of which the punch
21 line is the horse might fly within a year. Ms. Penny
22 is saying maybe if we defer things, something will
23 happen that will help solve our problem. In light of
24 that, does it make sense to just keep deferring the
25 Geisen deposition?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BATY: Your Honor, the Staff is
2 deferring the Geisen deposition. The Staff has been
3 working with Ms. Penny to complete discovery and work
4 out various timing issues. So we're perfectly
5 agreeable to prolong your decision or postpone your
6 decision on Mr. Geisen's deposition or postpone Mr.
7 Geisen's decision as needed.

8 JUDGE FARRAR: Okay, so you would go
9 ahead, finish up the rest of discovery, take Mr.
10 Moffitt's deposition whenever it becomes reasonably
11 convenient to do so and then we could get together
12 again and see what at that point whether there's any
13 prospect of getting the Geisen deposition, getting
14 something substantive out of it or deciding just to
15 put this case on the shelf until the Geisen trial is
16 over. That's more -- that's not really a question.

17 Mr. Hibey --

18 MR. HIBEY: Your Honor.

19 JUDGE FARRAR: Would it help things or
20 would it be premature to get something more of a
21 commitment from you about what your instructions to
22 your client will be? You've come close to saying what
23 your instructions will be, but would you prefer not to
24 be pinned down right now?

25 MR. HIBEY: The latter. I prefer not to

1 be pinned down at this time.

2 JUDGE FARRAR: Okay. Hold on, let us
3 confer here for a moment.

4 MR. HIBEY: Yes.

5 (Pause.)

6 JUDGE FARRAR: All right, we're back on
7 the record here. The three Judges have conferred. Do
8 I take it then that no -- neither the parties to the
9 Moffitt case nor counsel for Mr. Geisen would object
10 if we just, in effect, continued the order we issued
11 on August 31st which simply deferred the Geisen
12 deposition temporarily and we just kept that order in
13 effect and awaited further word from the parties after
14 the discovery in the Moffitt case including the
15 Moffitt deposition is taken and then if somebody wants
16 to reactivate that deposition, the Geisen deposition,
17 file a paper with us and then we'll take another look
18 at it.

19 Ms. Baty, is that all right -- satisfy
20 you?

21 MS. BATY: Your Honor, that's acceptable
22 to Staff, however, I think we would like to leave Mr.
23 Moffitt to be very last, but Mr. Geisen, we're willing
24 to wait. So what you propose is acceptable that at
25 this point we don't need a decision and we can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 postpone and you can leave the order. Staff would be
2 agreeable to leaving the order from August in place or
3 September, excuse me, in place.

4 JUDGE FARRAR: But then what you're saying
5 is if Ms. Penny comes to you and says okay, I need a
6 little more time to get Mr. Moffitt ready, you're
7 going to say take as long as you want because we don't
8 want to depose until after we've deposed Mr. Geisen?

9 MS. BATY: That's correct.

10 JUDGE FARRAR: Ms. Penny, how does that
11 sound to you?

12 MS. PENNY: Well, Your Honor, that sounds
13 wonderful, obviously, but still I'll continue to agree
14 that the Board's order should be in effect. I'll
15 continue to work with the Staff to get as much done as
16 possible under these difficult circumstances.

17 JUDGE FARRAR: Mr. Hibey, is that all
18 right with you?

19 MR. HIBEY: Yes, Your Honor, it's all
20 right with me.

21 JUDGE FARRAR: All right, and so that --
22 this is a matter of style in Miller and Moffitt, is
23 that correct?

24 MR. HIBEY: Right, this has nothing to do
25 with the Geisen case or our pending motions in Geisen.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE FARRAR: Right. What I just said
2 for the Moffitt case is acceptable to you?

3 MR. HIBEY: Yes, Your Honor.

4 JUDGE FARRAR: Then in terms of the Geisen
5 case, we still have in front of us your motion to
6 compel production of the redacted portions?

7 MR. HIBEY: Yes, Your Honor.

8 JUDGE FARRAR: The OI report, we had hoped
9 to have that decision out by this Friday. We will not
10 make that self-imposed target and with some travel
11 coming up it may be a couple of weeks yet.

12 MR. HIBEY: Yes, Your Honor.

13 JUDGE FARRAR: Just for your planning
14 purposes.

15 Then there's nothing else pending in front
16 of us except the Miller, the renewed Miller
17 settlement, is that correct?

18 MS. PENNY: Yes, Your Honor, that's
19 correct.

20 JUDGE FARRAR: We'll get that out very
21 shortly.

22 All right, then unless -- is there
23 anything else? What we are now inclined to do is just
24 put out an order. I don't know exactly how it will be
25 worded, but it will extend our August 31st deferral

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 order.

2 JUDGE HAWKENS: Judge Hawkens here again.
3 Ms. Penny, I asked you this before and I wasn't clear
4 on your answer. It may be because you didn't provide
5 a time line, but as far as when you contemplate Mr.
6 Moffitt's availability, can you provide some time
7 frame for that, very, very rough, but I'm looking at
8 is it six months or greater or less?

9 MS. PENNY: Well, Your Honor, I had simply
10 assumed that I would delay his presumed deposition
11 from two and a half to three weeks. I was talking
12 from my own knowledge of his current unavailability.

13 Staff will obviously be the ones who can
14 predict the exact time, but I just had intended to go
15 forward where that I was going to have to ask for a
16 short period of delay.

17 I think what I am concerned about is
18 whether his deposition matters so much that Mr.
19 Geisen, as far as Mr. Moffitt's request for an
20 expedited hearing, he needed Mr. Moffitt as a witness
21 and I think that's where I may have caused some
22 confusion, talking about a time line. With Mr. Geisen
23 must decide to be unavailable, as he has the right,
24 and that's certainly going to affect any time table I
25 present to the Board.

1 JUDGE HAWKENS: I understand. I'm just
2 trying to get a handle on the length of the -- or the
3 likely length of the continuance. It sounds like
4 until Mr. Moffitt is deposed or scheduled to be
5 deposed, we will not be presented with further papers
6 on the availability of Mr. Geisen for deposition.

7 MS. PENNY: I would agree, Your Honor.
8 The only thing I think we will present papers on is
9 asking the Board to continue our discovery date of
10 October 13, so we can complete a few other depositions
11 that are still out there and troubling us.

12 JUDGE FARRAR: And Ms. Penny, I take it
13 from the Cook deposition, maybe we've been over this,
14 but I just want to make sure we're not missing
15 anything, from the Cook deposition and what we
16 understand about the Hoffman case, there's no sense
17 ordering the Geisen deposition because if you went out
18 to Mr. Geisen's place and again, based on your years
19 of experience, you're not going to get -- you don't
20 have any hope of getting anything out of that
21 deposition?

22 MS. PENNY: Your Honor, he might shut the
23 door in my face, although he's much too polite. I
24 don't have any hope. He calls the shots as I see it.

25 JUDGE FARRAR: Okay, well, then I think

1 our path is clear to just extend the Geisen
2 deposition, hold that off further temporarily, however
3 long that means and we'll just await word from you all
4 on your different motions and again, we -- it's a
5 situation we wish didn't occur because Mr. Moffitt is
6 in a sense being penalized because of Mr. Geisen's
7 exercise of his fifth amendment rights, but that's Mr.
8 Geisen's rights and if it's your strategic decision to
9 wait that out, I think we have to respect that.

10 Is there -- before we adjourn the call,
11 anybody have any -- counsel have any comments they
12 want to bring to our attention?

13 MS. BATY: Nothing from the Staff, Your
14 Honor.

15 JUDGE FARRAR: All right, Ms. Penny?

16 MS. PENNY: Nothing, Your Honor, thank
17 you.

18 JUDGE FARRAR: Mr. Hibey?

19 MR. HIBEY: Nothing, Your Honor, thank
20 you.

21 JUDGE FARRAR: All right, well, keep us
22 posted, either -- when you need something done, file
23 motions and when something happens, either in the
24 Geisen criminal case, somebody will just keep us
25 advised so that we know what's happening and although

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 no action may be required, we would appreciate it and
2 with that, we thank you for joining together on the
3 call on fairly short notice. Thank you.

4 (Whereupon, at 4:43 p.m., the prehearing
5 conference was concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

CERTIFICATE

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

Name of Proceeding: Prehearing Conference ITMO
Steven Moffitt

Docket Number: IA-05-054

Location: (Telephone Conference)

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.



Eric Mollen
Official Reporter
Neal R. Gross & Co., Inc.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com