

**RAS 12322**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 10/02/06**

ATOMIC SAFETY AND LICENSING BOARD

**SERVED 10/02/06**

Before Administrative Judges:

Michael C. Farrar, Chairman

E. Roy Hawkens

Nicholas G. Trikouros

In the Matter of

STEVEN P. MOFFITT

Docket No. IA-05-054

ASLBP No. 06-847-03-EA

October 2, 2006

ORDER

(Summarizing September 26 Prehearing Conference)

We held a prehearing conference call last week to discuss the next steps regarding taking the deposition of David Geisen in this enforcement proceeding against Steven Moffitt. This Order very briefly summarizes the decisions made during that teleconference. (The discussions that led to those actions are reflected in the 27-page Transcript of the September 22 call, and it is not our intent to rehearse them here.)

A month ago, this Board temporarily deferred resolution of whether and when Mr. Moffitt could take the deposition of Mr. Geisen, who is not only the subject of a related enforcement proceeding, but is also a defendant in a criminal action pending in federal district court. See our unpublished Order (Deferring Geisen Deposition Pendente Lite) of August 31, 2006. In his motion seeking to quash the subpoena for his deposition, Mr. Geisen had adverted, among other things, to the likelihood that he would refuse, on Fifth Amendment self-incrimination grounds, to answer any questions related to his previous employment at the Davis-Besse Nuclear Power Station.

At Davis-Besse, Mr. Geisen had reported to Mr. Moffitt during the occurrence, several years ago, of the reactor vessel head leakage and reporting problems that led to the proceedings referred to above. Mr. Moffitt has then, not surprisingly, stressed the importance

to his defense of obtaining, via formal discovery, information from Mr. Geisen. For his part, Mr. Geisen, equally naturally, indicates he has no interest in testifying in this civil proceeding before the criminal charges against him are resolved.

In somewhat analogous circumstances, we had earlier refused to quash the deposition of Rodney Cook herein. See our unpublished Order (Denying Motion to Quash Cook Subpoena) of August 16, 2006. Mr. Cook's deposition was eventually taken on September 12, and we received a copy of the Transcript thereof on September 21. In setting up last week's teleconference, we had in two September 25 e-mails advised the parties that they should, in preparing for the call, review both the Transcript of the Cook deposition and the Board's order denying Mr. Cook's motion to quash.

During the conference call, it became clear that time constraints are no longer of pressing concern in resolving the Geisen deposition matter (see, e.g., Tr. at 7, 16). In the first place, it appears the parties are going to need more time to complete the discovery process herein, now scheduled to end on October 13 (see Tr. at 18).

In that regard, a key step from Mr. Moffitt's standpoint was to be the taking of the deposition of Mr. Geisen (see Tr. at 9). But Mr. Geisen's criminal case continues, as it had been doing, to proceed slowly -- the date for filing pre-trial motions therein is October 20, and there is as yet no indication when a trial date might be set (and no "rocket docket" system is employed in that federal district court) (see Tr. at 16-17). As indicated above, the likelihood of obtaining any substantive information from Mr. Geisen in his deposition herein -- as evidenced by the Cook deposition (see Tr. at 10) and Mr. Geisen's counsel's approach (see Tr. at 12-13, 14-15, 20-21) -- seems virtually nil prior to the resolution of the criminal case (see Tr. at 25). And the time for taking Mr. Geisen's deposition in his own NRC enforcement proceeding -- where a refusal to testify may open the door to negative consequences for him -- appears some time off, that proceeding having been delayed at the outset by the need to address the

government's request that the NRC enforcement matter be held in abeyance until the criminal case was over (see LBP-06-13, 63 NRC 523 (May 19, 2006)), and the parties then having adopted a longer discovery process than in the companion NRC proceedings.

Faced with all these circumstances, it may end up that Mr. Moffitt will be forced to ask that his opportunity to challenge the Staff's enforcement order (and thus to seek the rescission of the currently-effective ban precluding him from employment in the regulated nuclear industry) be put off until the Geisen criminal case is resolved (see Tr. at 9, 16). Adding to the delay-inducing forces, Mr. Moffitt recently obtained new employment, which he does not wish to jeopardize in the short term with litigation-connected absences (see Tr. at 6-8).

It thus became clear during the teleconference that there was little practical reason to press ahead right now with the Geisen deposition (see Tr. at 8, 24). To the contrary, all parties agreed that, given the direction circumstances were taking them, no one's interests would be harmed were we to continue deferring any decision on the taking of the Geisen deposition for a longer period than first contemplated (see Tr. at 16, 19-20, 21-23).

On that understanding, the thrust of our August 31 deferral Order will remain in effect. As detailed during the teleconference, the parties will be filing appropriate scheduling and other motions with us from time to time (see Tr. at 26), while action on the proposed Geisen deposition will abide the parties' filing of further requests (see Tr. at 21, 26) or the Board's further inquiry.

It is so ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

Rockville, Maryland  
October 2, 2006

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Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

Copies of this Order were sent this date by e-mail transmission to counsel for the parties and to counsel for Mr. Geisen.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SUMMARIZING SEPTEMBER 26 PREHEARING CONFERENCE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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[Original signed by Evangeline S. Ngbea]

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Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 2<sup>nd</sup> day of October 2006