

**RAS 12463**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 11/03/06**

ATOMIC SAFETY AND LICENSING BOARD  
Before Administrative Judges:

**SERVED 11/03/06**

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

In the Matter of  
DAVID GEISEN

Docket No. IA-05-052  
ASLBP No. 06-845-01-EA  
November 3, 2006

ORDER  
(Scheduling Oral Argument  
and  
Requesting the Participation of the Department of Justice)

In this enforcement proceeding, which stems from events of several years ago involving the Davis-Besse Nuclear Power Station in northwestern Ohio, the Board has before it the NRC Staff's October 27 motion to stay the proceeding, or for alternative relief. The premise of the Staff's motion is the impact upon the proceeding of Mr. Geisen's recent invocation of his 5th Amendment right against self-incrimination as justification for not responding to certain Staff discovery requests. Mr. Geisen's response to the motion was filed late last evening.

The question of the possible need for oral argument on the Staff's motion arose during the prehearing teleconference call held last week (Oct. 25 Tr. at 297-98, 300-03). During that discussion, we indicated that the parties should reserve 2:30 PM on Tuesday, November 7, for that purpose.

Upon review of the parties' briefs, the Board has now determined that oral argument should indeed prove beneficial. Accordingly, we CONFIRM that oral argument will be held on the date and at the time set out above. It will take place in the Board's hearing room at the NRC's Rockville Headquarters. Each side will be allotted 40 minutes.

In that connection, the Board thinks its understanding of the case and the issues could be greatly enhanced were the Staff to arrange for the availability of a lawyer from the Department of Justice, with which the Staff has been cooperating in the Davis-Besse matter (see our May 19, 2006, decision on the earlier stay motion, LBP-06-13, 63 NRC 523, 530, 532, 533) who could, using 10-15 minutes of the Staff's time, address – from personal knowledge, experience and practice – the precise outlines and ramifications of the positions advanced on page 8 (first 11 lines and footnote 20) of the Staff's October 27 motion for a stay. In that regard, the Board hereby advises both parties that the question as to the extent of any grand-jury-related-limitations on the Staff's affirmative presentation at an evidentiary hearing (as asserted on page 8) seems, at this point, to have the potential to weigh heavily on our decision on the pending stay motion. The parties will, of course, be free to support or to oppose that notion at the oral argument.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

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Michael C. Farrar, Chairman  
ADMINISTRATIVE JUDGE

*/RA/*

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E. Roy Hawkens  
ADMINISTRATIVE JUDGE

*/RA/*

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Nicholas G. Trikouros  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
November 3, 2006

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

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
DAVID GEISEN ) Docket No. IA-05-052  
 )  
 )  
(Enforcement Action) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (SCHEDULING ORAL ARGUMENT AND REQUESTING THE PARTICIPATION OF THE DEPARTMENT OF JUSTICE) 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 3<sup>rd</sup> day of November 2006