

November 6, 2006

Administrative Judge E. Roy Hawkens, Chair
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, DC 20555-0001

Administrative Judge Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
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Administrative Judge Michael C. Farrar
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, DC 20555-0001

In the Matter of
David Geisen
Docket No. IA-05-052; ASLBP No. 06-845-01-EA

Dear Administrative Judges:

Pursuant to the Board's Order of November 3, 2006, the Staff has contacted the Department of Justice (DOJ) prosecutors in the criminal case against Mr. Geisen to request their attendance at the oral argument scheduled to be held before this Board on November 7, 2006, at 2:30 p.m.. One of the attorneys is currently in Utah regarding another matter and the other attorney has an existing conflict in Norfolk, Virginia. These conflicts prevent their attendance tomorrow. However, at least one of the attorneys would be available to attend an oral argument on Tuesday, November 14. Accordingly, the Staff respectfully requests that the oral argument be rescheduled to that date to accommodate attendance by DOJ. The Staff has contacted counsel for Mr. Geisen and determined that this date would be acceptable.

It is our understanding from the Board's November 3 order that the Board would like the DOJ attorney to appear during 10-15 minutes of the staff's oral argument to answer questions – based on their personal knowledge, practice and experience – regarding the extent and nature of grand jury secrecy requirements and the sharing of DOJ investigatory materials with other government agencies. Specifically, they will be prepared to present DOJ's position regarding appropriate steps to be taken concerning (1) information collected during the DOJ investigation of matters related to the proceeding before this Board and (2) the work of the Office of Investigation agents and the Region III Senior Reactor Inspector with respect to the proceeding before this Board. Both topics would be addressed in light of Rule 6 of the Federal Rules of Criminal Procedure. The DOJ attorney would not discuss the underlying facts of the administrative proceeding or the criminal case.

E. Roy Hawkins
Nicholas G. Trikouros
Michael C. Farrar

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We are in receipt of the letter from Mr. Geisen's counsel of today's date, indicating that he would be seeking to cross-examine the DOJ attorney, if one appeared. The Staff understood the Board to be seeking a DOJ attorney in his capacity as an officer of the court, not as a testifying witness. The Staff and the DOJ attorneys agree that it would be inappropriate for the defendant in a criminal case to cross-examine his prosecutor in the context of a proceeding before this Board. The DOJ attorneys have asked the Staff to seek the Board's assurance that they will be appearing in their capacity as officers of the court to address the issues identified the Board in its November 3, 2006, order and to respond to questions from the Board only. Accordingly, the DOJ attorneys also seek assurance that they will not be placed under oath as witnesses or required to respond to questions from counsel.

Sincerely,

/RA by Lisa B. Clark/

Lisa B. Clark

cc: Richard A. Hibey
Matthew Reinhard
Andrew Wise