

RAS 12791

December 15, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

December 15, 2006 (8:47am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of

DAVID GEISEN

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Docket No. IA-05-052

ASLBP No. 06-845-01-EA

JOINT MOTION FOR ADOPTION OF PROPOSED CASE SCHEDULE

The parties, by and through their respective counsel, jointly move the Board to adopt a Proposed Case Schedule, as follows:

1. As directed by the Board, the parties have engaged in extensive and active good faith discussions in an effort to agree upon a Proposed Case Schedule for the above-captioned case.

2. With one exception, the parties were able to reach final agreement on all aspects of a Proposed Case Schedule. The one exception relates to the disclosure the Staff will provide regarding expert testimony on February 6, 2007. The parties' respective positions on that issue are as follows:

The Staff: The Staff believes that the express terms of the regulation requiring disclosure of a written expert report, in 10 C.F.R. 2.704(b), applies only to parties other than the Staff. Nevertheless, the Staff has offered to provide a statement in substantial compliance with that regulation with regard to expert testimony which will not be provided in the Staff's pre-filed testimony. With respect to pre-filed testimony, the Staff intends to comply with its regulatory obligations and provide the testimony in advance of the hearing to afford Mr. Geisen the opportunity to prepare any rebuttal.

Mr. Geisen: Counsel for Mr. Geisen does not believe that, in this type of enforcement proceeding, the requirements for disclosure and discovery of expert information should be limited

TEMPLATE = SECY-041

SECY-02

just to parties rather than the Staff, whether under 10 C.F.R. §§ 2.704, 2.709 or any other applicable regulation. Counsel for Mr. Geisen believe that the Staff should be required to disclose during discovery the substance of *all* expert testimony, whether pre-filed or presented live at the hearing. Counsel for Mr. Geisen believe that they need, and are entitled to, disclosure of such information for purposes of determining their own need for rebuttal expert testimony, making their own expert disclosures on February 12, 2007 and conducting informed depositions of the Staff's expert witnesses during the discovery phase of this proceeding. Staff's request to keep the subject matter and substance of its pre-filed expert testimony from Mr. Geisen until after the close of discovery would, among other things, prevent counsel for Mr. Geisen from deposing the Staff's experts on the substance of and basis for such testimony and would prejudice their cross-examination of such experts at the hearing.

3. A version of the Proposed Case Schedule reflecting NRC Staff's position on its February 6, 2007 expert disclosure obligations is attached as Exhibit 1. A version of the Proposed Case Schedule reflecting the position of counsel for Mr. Geisen on NRC Staff's February 6, 2007 expert disclosure obligations is attached as Exhibit 2.

4. As reflected in the Proposed Case Schedule, the parties have agreed, subject to the Board's approval, to move the deadline for NRC Staff to file a motion to compel regarding the November 29, 2006 production of documents by counsel for Mr. Geisen from December 15, 2006 until and including December 16, 2006 to allow for further meet and confer discussions regarding the underlying issues. The parties request that the Board approve the extension of the deadline for that event.

WHEREFORE, the parties jointly request that the Board grant their Motion and enter an order adopting the particular Proposed Case Schedule reflecting the Board's decision on the issue described in paragraph 2 above.

Respectfully submitted,

Lisa B. Clark
Michael A. Spencer
Counsel for NRC Staff

Richard A Hibey
Charles F. B. McAleer, Jr.
Andrew T. Wise
Matthew T. Reinhard
Counsel for David Geisen

Dated: December 15, 2006

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NUCLEAR REGULATORY COMMISSION

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) ASLBP No. 06-845-01-EA
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION FOR ADOPTION OF PROPOSED CASE SCHEDULE" in the above captioned proceeding have been served on the following persons by deposit in the United States Mail; as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**) on this 15th day of December, 2006.

Michael C. Farrar * **
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Chief Administrative Judge
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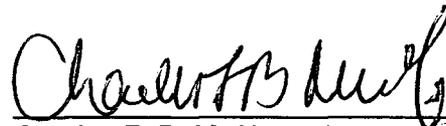
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Charles F. B. McAleer, Jr.
Counsel for Mr. David Geisen

EXHIBIT 1

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

PROPOSED CASE SCHEDULE

DATE	PARTY	EVENT
12/15/06	GEISEN	Counsel for Mr. Geisen serve NRC Staff with the statement of defenses, witnesses and documents described by the Board during hearings on November 14, 2006 and December 4, 2006.
12/15/06	GEISEN	Counsel for Mr. Geisen state whether they will provide substantive information in response to NRC Staff Interrogatory Nos. 16-20 and 22-29 and Requests for Admission Nos. 1-4. If so, Counsel for Mr. Geisen provides substantive responses.
12/15/06	NRC STAFF	NRC Staff supplements responses to Mr. Geisen's First Set of Interrogatories and First Request for Production of Documents in accordance with 10 C.F.R. § 2.704(c) and (e) and 10 C.F.R. § 2.709(a)(4).
12/19/06	GEISEN	File response to NRC Staff's 12/1/06 Motion to Compel.
12/22/06	ALL	File any motions to compel regarding 12/15/06 filings and responses.
12/22/06	NRC STAFF	File motion to compel concerning November 29, 2006, document production.
Date to Be Determined by Board (estimated 1/15/07)	ALL	Parties comply with any additional discovery required by Board based on motions to compel. Subject to on-going duty of supplementation, written discovery is complete.
1/16/07-2/20/07	ALL	Parties conduct fact and expert deposition discovery.

2/6/07	NRC STAFF	NRC Staff identifies any expert witnesses and discloses the following expert witness information: a statement of the opinions to be expressed (exclusive of the subject matter of the pre-filed expert testimony that NRC Staff will submit on February 22, 2007) and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
2/12/07	GEISEN	Mr. Geisen identifies any expert witnesses and discloses the following expert witness information: a statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
2/22/07	NRC STAFF	NRC Staff files any generic tutorial written testimony of non-fact, expert witnesses.
2/22/07	ALL	Parties file their respective pre-hearing statements containing roadmap of their case-in-chief, including names and addresses of all witnesses (exclusive of impeachment and rebuttal witnesses), deposition testimony to be presented, identification of hearing exhibits (exclusive of impeachment and rebuttal exhibits), identification of any non-rebuttal or non-impeachment evidence permitted under 10 C.F.R. § 2.711 and stipulations by the parties, if any.

2/28/07	ALL	Parties file pre-hearing motions, any deposition testimony counter-designations and any evidentiary objections.
3/5/07	ALL	Hearing on pre-hearing motions, deposition testimony and counter-designations and evidentiary objections.
3/7/07	ALL	Evidentiary hearing commences. (Two weeks set aside for hearing, i.e., until 3/21/07)
To Be Determined by Board (but in no event later than 3/30/07)	ALL	File proposed findings of fact and conclusions of law.

EXHIBIT 2

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

PROPOSED CASE SCHEDULE

DATE	PARTY	EVENT
12/15/06	GEISEN	Counsel for Mr. Geisen serve NRC Staff with the statement of defenses, witnesses and documents described by the Board during hearings on November 14, 2006 and December 4, 2006.
12/15/06	GEISEN	Counsel for Mr. Geisen state whether they will provide substantive information in response to NRC Staff Interrogatory Nos. 16-20 and 22-29 and Requests for Admission Nos. 1-4. If so, Counsel for Mr. Geisen provides substantive responses.
12/15/06	NRC STAFF	NRC Staff supplements responses to Mr. Geisen's First Set of Interrogatories and First Request for Production of Documents in accordance with 10 C.F.R. § 2.704(c) and (e) and 10 C.F.R. § 2.709(a)(4).
12/19/06	GEISEN	File response to NRC Staff's 12/1/06 Motion to Compel.
12/22/06	ALL	File any motions to compel regarding 12/15/06 filings and responses.
12/22/06	NRC STAFF	File motion to compel concerning November 29, 2006, document production.
Date to Be Determined by Board (estimated 1/15/07)	ALL	Parties comply with any additional discovery required by Board based on motions to compel. Subject to on-going duty of supplementation, written discovery is complete.
1/16/07-2/20/07	ALL	Parties conduct fact and expert deposition discovery.

2/6/07	NRC STAFF	NRC Staff identifies any expert witnesses and discloses the following expert witness information: a statement of the opinions to be expressed (including the subject matter of the pre-filed expert testimony that NRC Staff will submit on February 22, 2007) and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
2/12/07	GEISEN	Mr. Geisen identifies any expert witnesses and discloses the following expert witness information: a statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.
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2/28/07	ALL	Parties file pre-hearing motions, any deposition testimony counter-designations and any evidentiary objections.
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3/7/07	ALL	Evidentiary hearing commences. (Two weeks set aside for hearing, i.e., until 3/21/07)
To Be Determined by Board (but in no event later than 3/30/07)	ALL	File proposed findings of fact and conclusions of law.