



in response to Mr. Geisen's discovery requests. NRC Staff is fully able to prepare for and conduct upcoming deposition discovery in this case and to prepare for the March 7, 2007 hearing, especially given the vast amount of information NRC Staff has independently acquired through investigations, interviews and depositions over the five years since the events at issue. Nonetheless, NRC Staff has chosen to rehash the same arguments, based upon virtually the same cases the Board has considered and rejected as inconsistent with the specific posture of this case.

The NRC Staff's Motion for Preclusion ignores the fundamental simplicity of this case: NRC Staff has the burden of proving, through sufficient and competent evidence, one single allegation: that David Geisen -- not FENOC or its scores of employees and consultants -- knowingly and intentionally made false statements to the NRC regarding events and conditions at Davis-Besse. Since the lack of supporting evidence in NRC Staff's answers to Mr. Geisen's interrogatories accurately reflects the astonishing weakness of NRC Staff's case on that single issue, then it is perhaps not surprising that NRC Staff has resorted to a succession of speculative, hypothetical and wholly premature motions designed unfairly to disadvantage Mr. Geisen, an individual already burdened by NRC Staff's four-year investigatory head start, and collaboration with the Department of Justice.

For the reasons set forth below, the Board should deny NRC Staff's Motion for Preclusion and order deposition discovery to proceed in accordance with the proposed case schedule the parties jointly submitted to the Board on December 15 and was also the subject of the December 21 teleconference.

*Argument*

A. THE BOARD SHOULD DENY NRC STAFF'S MOTION FOR PRECLUSION.

The Board should deny NRC Staff's Motion for Preclusion for at least three basic reasons.

1. NRC Staff's Motion for Preclusion is Preempted by the Board's November 14 Ruling.

NRC Staff's Motion for Preclusion is essentially indistinguishable from its October 27 Renewed Motion for Stay in which it sought a broad preclusion order restricting the nature and extent of the evidence Mr. Geisen could present at the hearing in this case. The Motion for Preclusion cites many of the same cases and rehashes all of the same arguments that were before the Board on November 14, when the Board refused to grant NRC Staff's Renewed Motion for Stay.

In rendering its November 14 ruling, the Board explicitly recognized its obligation to fashion a fair proceeding that did not punish Mr. Geisen for the proper invocation of his Fifth Amendment privilege. November 14, 2006 Hearing Transcript at 359-360. Consistent with Second and Third Circuit cases balancing the relevant considerations, the Board ordered that (1) Mr. Geisen, through counsel, make a definitive statement of whether he was going to invoke the Fifth Amendment privilege ten days after the close of written discovery, and (2) Mr. Geisen's counsel file a statement of claims and defenses prior to the start of deposition discovery. *Id.* at 417-418. Mr. Geisen's counsel definitively re-affirmed Mr. Geisen's invocation of his Fifth Amendment privilege during a December 3 teleconference with the Board -- before the Board's stated deadline. Pursuant to a schedule jointly negotiated by the parties, Mr. Geisen's counsel submitted both a Statement of Claims and Defenses and supplemental discovery responses on December 15, 2006 ("December 15 submissions").

Mr. Geisen's December 15 submissions complied fully with the letter and the spirit of the Board November 14 ruling. They provided NRC Staff with extensive detail regarding Mr. Geisen's intended defenses, including lists of documentary support for specific claims. Indeed, Mr. Geisen's December 15 submissions were far more detailed than NRC Staff's discovery responses, discussion in section A3, *infra*, and enhanced NRC Staff's existing ability to conduct meaningful deposition discovery in this case.

Mr. Geisen, through counsel, has clearly stated his defense to the Staff's allegations as set forth in the Order: Mr. Geisen did not knowingly present materially false information to the NRC in connection with First Energy Nuclear Operating Company's written response to Bulletin 2001-01 or its oral communications with the NRC relating to those written responses. It is the same position that Mr. Geisen himself articulated throughout his lengthy sworn and transcribed interview with the NRC Office of Investigations and again in multiple interviews that are memorialized and in the possession of NRC Staff.<sup>1</sup>

Despite the clarity of the Board's November 14 ruling and Mr. Geisen's complete compliance with that ruling, NRC Staff now seeks the same sort of unspecified, broad relief at a stage in this proceeding when not a single deposition has been taken and when the hearing in this case is over two months away. If anything, the Board's rationale for denying NRC Staff preclusive relief on November 14 is even more applicable now in light of the December 15

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<sup>1</sup> At the November 14 hearing, there was extensive discussion about a February 2005 interview of Mr. Geisen by Department of Justice lawyers that was attended by three NRC investigators. Mr. Geisen's counsel articulated his position that Grand Jury secrecy rules should not preclude the Staff from having access to notes of that interview. November 14, 2006 Hearing Transcript at 327. But even if NRC Staff does not have those notes, it does have notes from numerous other interviews of Mr. Geisen including but not limited to a summary of Jack Martin's interview of Mr. Geisen (NRC026-2908), notes from Randy Rossomme's interview of Mr. Geisen (NRC026-2891-2898), and notes from an undated interview of Mr. Geisen (NRC026-2899-2905).

submissions by counsel for Mr. Geisen. As in the October 27 Motion for Stay, NRC Staff is desperately looking for a way to avoid having to put on its case at the hearing. Without any legitimate basis for renewing its request for a preclusion order, NRC Staff should be ordered to proceed with deposition discovery and to refrain from filing motions that serve no useful purpose and simply exacerbate the already substantial burden on Mr. Geisen and his counsel.

2. NRC Staff's Motion for Preclusion is wholly speculative and premature.

Even if NRC Staff's Motion for Preclusion were materially different than their Renewed Motion for Stay, it is still wholly speculative and premature. Without directly challenging the substance of the December 15 submissions, NRC Staff essentially asks the Board to enter an order -- over two months before the hearing and without a single deposition taken -- that would preclude counsel for Mr. Geisen from introducing unspecified evidence in support of an unspecified defense on the mere conjecture that NRC Staff might not have had notice of the unspecified defense. There is absolutely no sense in which the Board could possibly grant NRC Staff preclusive relief at this time without any substance or context and in the face of NRC Staff's wholly speculative fears. This is especially so when deposition discovery has not even commenced and witnesses, rather than counsel, have not had an opportunity to testify regarding the narrow question of Mr. Geisen's conduct, his knowledge, and his intent as to the events at issue.

3. The Parties' positions are now sufficiently established to allow both sides to engage in meaningful deposition discovery and to proceed to hearing.

In each of its various motions, NRC Staff feigns a lack of information and complains of severe prejudice in its ability to conduct discovery. Especially in light of Mr. Geisen's December 15 submissions, NRC Staff's professed ignorance simply is not true. Rather, both NRC Staff and Mr. Geisen have now provided and received sufficient information to allow for

comprehensive and meaningful deposition discovery. Mr. Geisen understands that, barring unforeseen developments in that deposition discovery, he will be expected to defend on the grounds set forth in his December 15 submissions. NRC Staff should likewise be expected to prosecute their case and attempt to meet their burden on the grounds set forth in their corresponding submissions.

The Board has already expressed its incredulity about NRC Staff's claim of an information imbalance favoring Mr. Geisen. November 14, 2006 Hearing Transcript at 342. Nothing that has occurred since November 14 alters the basic facts on that score. Over the last five years, NRC Staff has conducted a lengthy investigation into the events and circumstances at Davis-Besse in 2001. In the process, NRC Staff conducted numerous interviews, including interviews of Mr. Geisen. At the end of that long process, and with the assistance of scores of NRC investigators and employees, NRC Staff concluded in January 2006 that it had sufficient basis for the Commission to issue the January 4, 2006 Enforcement Order against Mr. Geisen debaring him from practicing his profession.<sup>2</sup> Simply stated, NRC Staff has all the information they need to conduct meaningful depositions in this case and to explore the basis for the defenses described in the December 15 submissions. NRC Staff's Motion for Preclusion fails to present any credible and detailed argument to the contrary.

NRC Staff complains that in the Statement of Claims and Defenses, Mr. Geisen, through counsel, references a position paper that was submitted by FENOC to the NRC in 2002. To be clear, counsel cited that position paper to NRC Staff's attention because it succinctly reviews the

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<sup>2</sup> Ironically, the NRC Staff that seeks again to prevent Mr. Geisen from introducing evidence at the hearing because of alleged discovery deficiencies is the same NRC Staff that has shrouded much of the information and documents underlying the January 4, 2006 Enforcement Order behind claims of deliberative process privilege and other privileges.

chronology of facts relevant to the allegations in the Order and discusses evidence showing that Mr. Geisen did not possess knowledge of information at times relevant to the submission of FENOC's responses. It does not contain "innumerable other claims and defenses" and citation to it is hardly an attempt by Mr. Geisen "to avoid his legitimate discovery obligations." Staff Motion for Preclusion at 6. The Staff's statements are either disingenuous or evidence a lack of familiarity with the FENOC document. The Board suggested during the November 14 hearing that NRC Staff had a right to know the essence of Mr. Geisen's defense. To the extent that the FENOC position paper details Mr. Geisen's lack of relevant knowledge or intent, consistent with Mr. Geisen's constant refrain in the December 15 submissions, it is cited to NRC Staff's attention.

Later, NRC Staff complains about Mr. Geisen's allegation in his Statement of Claims and Defenses that the "Staff cannot meet its burden of proof and has not set forth sufficient grounds to sustain the Order or the sanction imposed in its discovery." Staff Motion for Preclusion at 7. It cites to a Seventh Circuit case where a *plaintiff*, in response to a request to identify facts supporting its allegation of willful and wanton conduct, stated "[t]he evidence will show that the documents discovered in this case and the actions of these defendants were knowing and willing and wanton." *Id. citing In re Thomas Consol. Indus.*, 456 F.3d 719, 721 (7th Cir. 2006). Not surprisingly, the Court found that response inadequate. But that case is inapposite here, because a plaintiff who makes an affirmative allegation regarding willful conduct of a defendant (and bears the burden of proving that allegation) is different from a defendant who asserts that a plaintiff cannot meet its burden because facts evidencing a required element of proof do not exist. Contrary to NRC Staff's assertion, a failure of the moving party to sustain its burden of proof is a defense. And NRC Staff's argument on this point is unclear because they cannot be

arguing that Mr. Geisen should be precluded from arguing at the end of the evidence presentation at the Hearing that NRC Staff has failed to meet the burden of proof.

It is ironic that NRC Staff would raise the *Thomas Consolidated Industries* case to the Board, because its responses to Mr. Geisen's discovery requests more closely mirror those presented to the Seventh Circuit in that case. Counsel for Mr. Geisen propounded detailed interrogatories to the NRC Staff seeking the factual basis for various allegations against Mr. Geisen in the Order. NRC Staff's answers to Mr. Geisen's requests were unresponsive and undetailed in multiple respects, and most notably contained the rote repetition that information supporting allegations in the Order was "not within the knowledge of the Staff." NRC Staff's Answers to Mr. Geisen's First Set of Interrogatories (October 3, 2006)(answers to interrogatories 13, 14, 15, 16, 21, 22, and 24).

Counsel for Mr. Geisen identified these deficiencies to NRC Staff in a detailed letter dated November 30, 2006. *See* Letter from Charles F. B. McAleer, Jr. to Lisa B. Clark (November 30, 2006) (attached as Exhibit A). Since that time, NRC Staff has refused to supplement its responses. *See* Letter from Lisa B. Clark to Charles F. B. McAleer, Jr. (December 7, 2006) (attached as Exhibit B). We take this to mean NRC Staff does not possess any information or evidence responsive to Mr. Geisen's requests aside from the limited quantum cited in its initial response.<sup>3</sup> Given NRC Staff's consistent refrain regarding preclusion of claims not articulated in discovery and the Board's articulated response to those concerns, counsel for Mr. Geisen expect that the Hearing will be limited to allegations and evidence already identified by NRC Staff in its response to Mr. Geisen's interrogatories and discovery requests.

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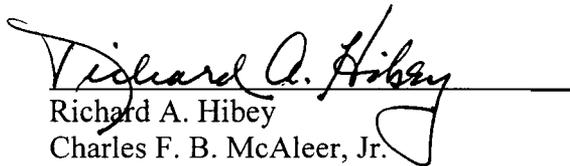
<sup>3</sup> This remains a remarkable position given the fact that NRC Staff issued an immediately effective order barring Mr. Geisen from employment in his chosen profession and branding him a threat to public health and safety.

Notwithstanding NRC Staff's approach to its discovery obligations, however, Mr. Geisen, through counsel, has provided a comprehensive statement of his defenses consistent with this Board's November 14 ruling. NRC Staff has ample information upon which to conduct meaningful deposition discovery and prepare for the hearing to which Mr. Geisen is entitled. A preclusion order is as unwarranted today as it was when the Board denied NRC Staff's earlier request for one.

#### Conclusion

For the foregoing reasons, and such other grounds as counsel for Mr. Geisen may present at any hearing on NRC Staff's Motion for Preclusion, Mr. Geisen respectfully requests that the Board deny NRC Staff's Motion for Preclusion.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Richard A. Hibey", is written over a horizontal line. The signature is fluid and extends slightly above and below the line.

Richard A. Hibey

Charles F. B. McAleer, Jr.

Andrew T. Wise

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*Counsel for David Geisen*

Dated: December 29, 2006

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 29<sup>th</sup> day of December, 2006, copies of the foregoing were served on the following persons by first-class mail, postage prepaid, as indicated by an asterisk (\*); and by electronic mail as indicated by a double asterisk (\*\*):

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Chief Administrative Judge  
Atomic Safety and Licensing Board  
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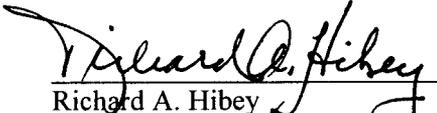
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Richard A. Hibey  
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**EXHIBIT A**



CHARLES F.B. MCALEER, JR.  
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November 30, 2006

**BY ELECTRONIC MAIL**

Lisa B. Clark, Esq.  
Office of General Counsel  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-15 D21  
Washington, D.C. 20555-0001

Re: *In The Matter Of David Geisen*  
IA-05-052, ASLBP No. 05-839-02-EA  
Before the Atomic Safety and Licensing Board

Dear Lisa:

As I have mentioned on several occasions, and as I further document below, NRC Staff's responses to Mr. Geisen's written discovery contained many objections and refusals to produce responsive information and documents, which we find unacceptable and unsupported by the rules. Moreover, whatever substantive information the NRC Staff provided was typically incomplete and non-responsive. The deficiencies in NRC Staff's discovery responses have been self-evident since NRC Staff served those responses. Please let me know whether you agree to cure the deficiencies.

Verification Of The Interrogatory Answers: The two persons who verified NRC Staff's answers to interrogatories -- Messrs. Kenneth O'Brien and Robert D. Starkey -- did so simply on the basis of "information and belief" and apparently with no personal knowledge, and neither person was identified in NRC Staff's Answer to Interrogatory No. 2 seeking identification of persons with knowledge of "any facts, events, circumstances, allegations, claims, contentions, opinions or defenses in the January 4, 2006 Enforcement Order, the Answer or this Enforcement Proceeding." See Affidavit of Kenneth O'Brien (October 2, 2006); Affidavit of Robert D. Starkey (October 2, 2006); see also NRC Staff's Answer to Interrogatory No. 2. Their verifications are insufficient, especially given NRC Staff's refusal to identify any persons who "supplied information to or communicated with [Mr. Starkey or Mr. O'Brien] relating to the preparation or drafting of" the answers to interrogatories (see NRC Staff's Answer to Interrogatory No. 5), the documents that they may have reviewed or relied upon "for the preparation and drafting" of the answers to interrogatories (*id.*) or the persons who NRC Staff knows or believes "are most knowledgeable relating to the substance of" each answer to interrogatory (see NRC Staff's Answer to Interrogatory No. 6).

Insufficiency of Answers to Interrogatories and Responses to Document Requests Generally: In many instances, NRC Staff did not include information that would be fully

responsive to the interrogatories and did not present any reason or justification for the omissions. NRC Staff also refused to produce documents in response to several documents requests and, for others, did not confirm its agreement to produce all responsive documents. These deficiencies, which are evident from NRC Staff's answers and responses to the written discovery, are briefly summarized on Attachment A. In the absence of any explanation for the omissions, we must interpret the lack of a full and complete response as a tacit admission by NRC Staff that it does not have any additional information responsive to the discovery requests, and we must further assume that NRC Staff does not have the evidence necessary to support the allegations made against Mr. Geisen in the January 4, 2006 Order. We will proceed on the basis of those assumptions, and will take appropriate actions, including possibly seeking summary disposition of this matter.

Where NRC Staff does provide a response to the interrogatories, NRC Staff frequently references various documents (including transcripts of witness interviews) without indicating what information within the documents is responsive to the interrogatory and where the information is located within the document. *See* Attachment A. That sort of response is clearly insufficient, in part because the answers to those questions are not readily apparent from the description of the documents or the documents themselves. *Cf.* Fed. R. Civ. P. 33(d). Moreover, such answers do not even rise to the level of detail that NRC Staff provided in response to written discovery in the *Moffitt* and *Miller* matters, in which NRC Staff at least provided some explanation regarding the cited documents that gave albeit minimal clues to the nature and location of the allegedly responsive information. Finally, such answers are unacceptable given NRC Staff's refusal to identify those persons who NRC Staff knows or believes are most knowledgeable regarding the substance of its answers. *See* Answer to Interrogatory No. 6.

Asserted Objections: NRC Staff asserted several objections to the discovery requests that are not well-founded and/or raise significant doubts over whether NRC Staff is providing full and complete information. The issues relating to those objections include the following:

On page 2 of its responses, NRC Staff states that its "responses are provided subject to each of the foregoing objections as well as the specific objections noted." As a practical matter, we need to know whether, on the basis of its general or specific objections, NRC Staff is withholding, or intends to withhold, from Mr. Geisen any information or documents of which NRC Staff has knowledge.

In paragraph 1 on page 1 of its Responses and Objections, NRC Staff states that its responses "are limited to the knowledge of the Staff and documents within the possession and control of the Staff" and that NRC Staff "does not have knowledge of, access to, or control of information within other offices of the NRC." On that basis, NRC Staff "objects to instructions and definitions which require responses on behalf of offices within the NRC other than the Staff." Frankly, the premises for that objection is implausible, and it is especially troubling given your objections to other interrogatories. *See* paragraph 3(d), below. Moreover, as a practical matter, we need to know whether, on the basis of this objection, NRC Staff is withholding or intends to withhold from Mr. Geisen any information or documents of which

NRC Staff has knowledge, regardless of whether such information or documents reside within another NRC office. Finally, we must have a list of the "other offices of the NRC" that you contend are beyond the control or access of NRC Staff so that we can seek further discovery, as well as any appropriate relief from the Board.

In paragraph 2 on pages 1-2 of its Responses and Objections, NRC Staff simply refuses to look for any potentially responsive information or documents that may exist on computer systems "beyond existing NRC document management systems such as computer archives and backup systems." As a result of that objection, we need to know the legal authority on which you base your position, especially given the fact that the underlying events allegedly occurred five years ago. We also need to have a precise description of the "existing NRC document management systems" referenced in the objection, including a description of the time period those systems cover.

As to the objection in paragraph 3 on page 2 of NRC Staff's Responses and Objections, I do not believe there is a proper basis for refusing to produce hard copies of responsive documents. We reserve our right to request inspection and copying of hard copies if and as we deem it necessary in this matter.

As to the objection in paragraph 4 on page 2 of NRC Staff's Responses and Objections, NRC Staff must provide information regarding responsive documents if it is aware that such documents have existed, regardless of whether those documents have remained in the possession, custody or control of the NRC Staff.

As to the objection in paragraph 5 on page 2 of NRC Staff's Responses and Objections, there is nothing within 10 C.F.R. § 2.705(b)(4) supporting NRC Staff's position. That provision states that the responding party must provide information that "will enable other parties to assess the applicability of the privilege or protection." It is a common and required practice to disclose the identities of all persons who received, or had access to, an allegedly privileged document in order to determine, among other things, whether the alleged privilege or protection has been waived by a disclosure to persons who are beyond the scope of the alleged privilege or protection and to obtain necessary discovery from such individuals.

As to a second aspect of the objection in paragraph 5 on page 2 of NRC Staff's Responses and Objections, NRC Staff claims that, "[c]onsistent with the practice of counsel for Mr. Geisen," NRC Staff "has not logged or specifically identified documents which constitute attorney-client communications, [sic] which contain attorney work product." It is not clear to us what time period(s) are covered by that "objection" or what categories of documents NRC Staff is refusing to catalogue. Based on the limited information provided, we certainly cannot conclude that NRC Staff is doing anything "consistent with the practice of counsel for Mr. Geisen." In that regard, we specifically described in Mr. Geisen's Initial Disclosures the categories of communications as to which we contend Mr. Geisen has no logging obligation, and we discussed that position with you in detail. In fact, you commented during a telephone conversation that you thought our position was correct. Absent further information from you,

Lisa Clark, Esq.  
November 30, 2006  
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therefore, we cannot accept on face value the position that NRC Staff has taken in this objection. We also specifically renew our prior requests for full and complete information regarding the documents that NRC Staff has withheld on the basis of privilege.

In response to several interrogatories, NRC Staff asserts that, “[p]ursuant [to] 10 C.F.R. § 2.709(c), the Staff may object to Document Requests on grounds that it is not relevant and ‘not necessary to a proper decision in the proceeding.’” Each of the interrogatories to which NRC Staff has asserted that objection clearly seek relevant information which is necessary to a proper decision in this proceeding. That said, it is not clear from the actual answers whether NRC Staff is actually withholding any information on the basis of this objection. Please clarify whether NRC Staff is doing so.

Supplementation: On page 2 of its responses, NRC Staff states that its responses “are given without prejudice to the Staff’s right to add, supplement, modify or otherwise change or amend the responses.” Please let me know whether and when NRC Staff will comply with its obligation under the rules (which you have characterized as a “right”) to supplement its initial disclosures and discovery responses with any new or additional information in the possession, custody or control of NRC Staff that is responsive to the written discovery requests.

Personal Privacy Privilege Assertions: Given the Board’s entry of its November 29, 2006 Protective Order regarding the production of documents and information withheld on the basis of personal privacy privilege, I would like to receive as soon as possible the redacted portions of the August 2003 OI Report that were the subject of the Board’s October 31, 2006 Order and all other documents that NRC Staff has been withholding on the basis of personal privacy privilege. In a previous conversation, you confirmed that you would be producing to us, under the terms of the Protective Order, all documents as to which NRC Staff has asserted personal privacy privileged. Please let me know when we will receive those documents.

I am available to discuss the foregoing with you if you have any questions. In the meantime, please let me know whether you intend to supplement your discovery responses, withdraw your objections and otherwise cure the deficiencies described above and in Attachment A.

Sincerely,



Charles F. B. McAleer, Jr.

Attachment

cc: Richard A. Hibey, Esq.  
Andrew T. Wise, Esq.  
Matthew T. Reinhard, Esq.

**ATTACHMENT A TO NOVEMBER 30, 2006 LETTER TO NRC STAFF**

INTERROGATORY NO.	DEFICIENCIES IN ANSWERS
1 (identification of persons with knowledge)	(pp. 3-19) NRC Staff improperly objects because responsive information might include identities of persons “whose basis of knowledge consists of general information disclosed to the public” and “the identity of <i>such</i> persons is not within the knowledge of the Staff.” Answer only identifies persons who have “knowledge relating to the claims charged in the Order” and does not attribute specific knowledge or categories of information to any listed person.
2 (identification of persons who have made any written or oral statements, communications or admissions); <i>see also</i> Request No. 15 (seeking documents relating to such statements, communications or admissions).	(p. 19) Similar objection to Interrogatory No. 1. NRC Staff improperly objects because responsive information might include “all any [sic] persons in the general public who may have made statements regarding the Order.” Answer does not provide <u>any</u> information but instead asserts that “the information necessary to answer this Interrogatory is sufficiently provided by the Staff’s response to Interrogatory No. 1,” which did not contain any of the information requested by Interrogatory No. 2. NRC Staff objects to the associated document request in its entirety.
3 (identification of opinion witnesses and expert-related information); <i>see also</i> Request No. 19 (seeking documents relating to such experts).	(pp. 20-21) Several objections, including relevance, timing, work product and beyond scope of 10 CFR § 2.709(a)(2). Answer does not provide <i>any</i> substantive information. (pp. 72-73) NRC Staff objects to the related document request.
4 (identification of persons whose testimony NRC Staff intends to subpoena, offer, proffer, present, introduce or rely upon); <i>see also</i> Request Nos. 16 and 17 (seeking documents relating to such witnesses).	(pp. 21) Several objections, including relevance, timing and work product. Answer does not provide <i>any</i> substantive information. (pp. 70-72) NRC Staff objects entirely to the related document requests.
5 (identification of persons who participated in answering interrogatories, including identification of communications, documents and actions relating to that process); <i>see also</i> Request Nos.	(pp. 21-23) <i>See</i> discussion above. Objections on the grounds of relevance and burden. Answer identifies nine persons, including 4 agents and 2 attorneys. None of the persons identified was listed as a person with knowledge in response to Interrogatory No. 1. Answer contains no identification of persons with whom they communicated

<p>21 (seeking documents relied upon, assembled, reviewed, obtained, considered, drafted or generated in preparing answers to the Interrogatories).</p>	<p>to draft the answers, documents they reviewed to prepare answers or actions they took to locate responsive information and documents. (p. 74) NRC Staff objects to the related document request in its entirety.</p>
<p>6 (identification of persons most knowledgeable about information responsive to each interrogatory)</p>	<p>(pp. 23-24) Objection on the grounds of work product. Other than stating that “persons with knowledge relevant to the answers to interrogatories are identified in the testimony and documents cited in the response,” the Answer contains no substantive information.</p>
<p>7 (identification of persons who were formally or informally interviewed by OI or with whom OI had communications during the investigation leading to the August 2003 OI Report); <i>see also</i> Request No. 28 (seeking all documents, memoranda, summaries, notes, transcripts, recordings and videotapes of interviews)</p>	<p>(p. 24) Answer does not answer or clarify whether OI communicated with or interviewed any person other than those listed on the referenced pages of the August 2003 OI Report. (p. 77) In response to document request, NRC Staff only addresses “interview reports and transcripts” and simply references its answers to the Interrogatories, which is not fully responsive.</p>
<p>8 (identification of persons with whom OIG communicated or who were interviewed by OIG); <i>see also</i> Request No. 28 (seeking all documents, memoranda, summaries, notes, transcripts, recordings and videotapes of interviews)</p>	<p>(pp. 24-25) Objection on grounds that OIG is separate from NRC Staff and “the Staff has neither the obligation nor the authority within the general NRC infrastructure to compel the production of information contained in OIG’s internal documents.” Answer fails to identify any responsive information that NRC Staff, in fact, currently has in its possession, custody or control. (p. 77) In response to document request, NRC Staff only addresses “interview reports and transcripts” and simply references its answers to the Interrogatories, which is not fully responsive.</p>
<p>9 (identification of persons with whom NRC communicated or who were interviewed by NRC); <i>see also</i> Request No. 28 (seeking all documents, memoranda, summaries, notes, transcripts, recordings and videotapes of interviews)</p>	<p>(pp. 25-26) Objections on several grounds. Answer proceeds to provide “a list of individuals within the Office of Enforcement (OE)” who had communications regarding preparation and issuance of the Order. Answer does not provide any information regarding the communications other than that they “were numerous and occurred over a period of weeks in late 2005.” Answer does not provide a substantive response to subparts a (date, time and location), b (identification of attendees and participants) or c (notes, memoranda, transcripts or documents relating to communications, with the exception of one document</p>

	withheld on the grounds of “deliberative process” privilege). (p. 77) In response to document request, NRC Staff only addresses “interview reports and transcripts” and simply references its answers to the Interrogatories, which is not fully responsive.
12 (identification of all relevant documents, communications or information sent to or received from the persons identified in answers to Interrogatory Nos. 1-11)	(pp. 31-32) Objection on erroneous ground that the term “you” was not defined in the Interrogatories ( <i>see</i> General Objection ¶ 4, at p. 6 of the Interrogatories). Other improper objections that interrogatory calls for legal conclusion regarding relevance, does not provide Staff with “the necessary direction to follow in response” and asks the Staff to “go on a ‘fishing trip.’” Answer does not contain any substantive response and simply cross-references the answers to Interrogatory Nos. 3, 5, 7, 8 and 9, which, as noted above, do not contain responsive, substantive information.
13 (seeking detailed information concerning any contention that Mr. Geisen wrote, inserted, added, proposed, revised, deleted or took any action relating to any words or text included in any draft of the September 4, 2001 written response by Davis-Besse, including identification of each word or text, a detailed description of Mr. Geisen’s actions, identification of documents relating to or reflecting such action and identification of persons who NRC Staff knows or believes have knowledge relating to the contention)	(pp. 32-33) According to NRC Staff, “the information that reveals each word or text Mr. Geisen may have written, inserted, added, proposed, revised or deleted relating to FENOC’s September 4, 2001 written response . . . is not within the knowledge of the Staff.” NRC Staff simply “contends that Mr. Geisen was involved in the process of formulation, preparation and submission of the September 4 Response.” Answer simply contains a list of testimony and documents, without specifying the location or substance of the responsive information in such testimony or documents. Answer also contains assertion that “[t]he persons with knowledge relating to this contention are identified” in the listed testimony and documents (again without specifying the location or substance of the responsive information) and in the answer to Interrogatory No. 1, which, as noted above, does not contain an attribution of specific knowledge to listed persons. Answer does not contain any of the information requested in subparts (a)-(e) of this Interrogatory.
14 (identical to Interrogatory No. 13 but directed to October 17, 2001 written response by Davis-Besse)	(pp. 34-36) Same type of deficient response as to Interrogatory No. 13.
15 (identical to Interrogatory No. 13 but directed to October 30, 2001 written response by Davis-Besse)	(pp. 36-38) Same type of deficient response as to Interrogatory No. 13.

<p>16 (identical to Interrogatory No. 13 but directed to any other written responses)</p>	<p>(pp. 38-39) NRC Staff states that “aside from the [three] oral briefings [allegedly made by Mr. Geisen to the NRC], the three referenced documents [in Interrogatory Nos. 12-15] form the basis for the issuance of the Order.” NRC Staff refers to, but does not identify, “other written submittals” in which Mr. Geisen may have been involved that might “support[] the Staff’s case regarding the submittals which form the basis of the Order.” NRC Staff refuses to answer this Interrogatory regarding such “other written submittals” on the grounds of attorney work product. Regarding persons with knowledge concerning such “other written submittals,” NRC refers to (but does not list) “the following documents,” as well as its otherwise non-responsive answer to Interrogatory No. 1. No responsive substantive information is contained in the answer.</p>
<p>17 (seeking detailed information regarding a specific allegation in the Order concerning “earlier information provided to the NRC”, including a detailed description of “the earlier information,” a detailed explanation of the contrary information, identification of all documents relating to the contention and identification of persons with knowledge relating to the contention)</p>	<p>(pp. 39-40) NRC Staff refers, without detail, to alleged “representations made by FENOC that the boric acid on the RPV head was attributable to flange leakage.” Aside from generally referencing one telephone call (i.e., an October 3, 2001 conference call), two presentations (i.e., on October 11 and November 9, 2001) and three documents (i.e., written submittals dated September 4, 2001, October 17, 2001 and October 30, 2001) that allegedly “support this claim,” NRC Staff does not provide the detailed information requested in this Interrogatory.</p>
<p>18 (seeking detailed information regarding a specific allegation in the Order concerning Mr. Geisen’s alleged knowledge of previous RPV head inspections,” including a detailed description of any alleged actions by Mr. Geisen relating to the contention and identification of each alleged “oral and written communication,” each document relating to the contention and each person having knowledge relating to the contention); <i>see also</i> Interrogatory Nos. 20 (relating to allegations concerning Mr. Geisen’s alleged knowledge); Request No.</p>	<p>(pp. 40-42) In its Answer, NRC Staff refers to, but does not identify or describe, “Mr. Geisen’s general duties and responsibilities” that “were such that he would have received and reviewed information regarding the condition of the RPV head.” NRC Staff asserts, without factual detail or support, that Mr. Geisen “was made aware from numerous sources” of certain information. NRC Staff asserts, without detail or support, that Mr. Geisen reviewed unspecified videos, photos, data and head inspection information. NRC Staff asserts, without factual detail or support, that Mr. Geisen “worked with and supervised” unidentified “others” who were “reviewing” unspecified “videos and photos of past inspections of the head.” NRC Staff asserts, without factual detail or support, that Mr. Geisen received unspecified “communications” from the unidentified “others”</p>

<p>30-31 (seeking all documents and things relating to Mr. Geisen's knowledge, state of mind or intention alleged in the Order).</p>	<p>regarding "the limited extent of past inspections of the head." Finally, NRC Staff claims that "[i]nformation supporting the above claims is included within, <i>but is not limited to</i>" certain listed testimony and documents, without specifying the location or substance of the responsive information in such testimony or documents. Nowhere does NRC Staff provide the information and detail requested by this Interrogatory. (p. 78) In response to the related document requests, NRC Staff simply refers to its otherwise non-responsive answers to Interrogatory Nos. 13-27 and then asserts an objection to the Requests. NRC Staff does not agree to produce all responsive documents).</p>
<p>19 (seeking detailed information regarding an allegation in the Order that Mr. Geisen made a certain statement)</p>	<p>(pp. 42-43) NRC Staff's Answer is based solely on a consultant's summary of an alleged March 27, 2002 interview with Mr. Geisen. NRC Staff does not identify the portions of the cited documents that allegedly contain the statement by Mr. Geisen, nor does NRC Staff identify <i>all</i> persons who supposedly have knowledge regarding the alleged statement.</p>
<p>20 (seeking detailed information regarding allegation in the Order that Mr. Geisen "knew that the licensee's written and oral responses to NRC Bulletin 2001-001 were incomplete and inaccurate," including identification each alleged "written and oral response," a detailed description of all facts and documents relating to Mr. Geisen's alleged knowledge, identification of each omission or inaccuracy of which Mr. Geisen allegedly had knowledge, identification of all documents relating to the contention and identification of persons with knowledge relating to the contention); <i>see also</i> Request No. 30, below.</p>	<p>(pp. 43-47) NRC Staff's "answer" consists of a string of "contentions" without any supporting detail or facts. NRC Staff simply cross-references its non-responsive answers to Interrogatory Nos. 13-15 (relating to certain written submissions by FENOC) and 18-19 (regarding Mr. Geisen's alleged knowledge of RPV vessel head inspections). <i>See</i> discussion above. NRC Staff then asserts that "the information which supports the Staff's contention that the information presented in the Bulletin responses was misleading, inaccurate and/or incomplete and Mr. Geisen's knowledge thereof is identified in response to Interrogatories 24-27," which, contrary to NRC Staff's representation, are not responsive. (For example, NRC Staff's answer to Interrogatory No. 26 simply cross-references its answer to this Interrogatory.) Finally, NRC Staff claims that its "contentions" are supported by certain listed testimony and documents, without specifying the location or substance of the responsive information in such testimony or documents. Nowhere does NRC Staff provide the information and detail requested by this Interrogatory.</p>

<p>21 (seeking detailed information regarding allegation in the Order that Mr. Geisen was allegedly “responsible for the information provided to the NRC by FENOC in response to the Bulletin,” including identification of each piece of information at issue for which Mr. Geisen was allegedly responsible, identification of all documents relating to the allegation and identification of all persons with knowledge relating to the allegation).</p>	<p>(pp. 47-48) Even though the interrogatory was tied to a specific allegation in the Order, Staff essentially objects to responding by stating that “[a] detailed description of every piece of information provided to the NRC by FENOC for which Mr. Geisen was responsible is not within the knowledge of the Staff.” Staff then simply (a) cross-references its otherwise non-responsive answers to Interrogatory Nos. 13-15 and 22, (b) lists various testimony and documents without any explanation and (c) asserts that the names of persons with knowledge regarding the allegation are listed in the testimony and documents or in the answer to Interrogatory No. 1. Nowhere does NRC Staff provide the information and detail requested by this Interrogatory.</p>
<p>22 (seeking detailed information regarding allegation in the Order that Mr. Geisen allegedly “participated in the development and presentation of information to the NRC during information briefings on October 3, October 11 and November 9, 2001,” including identification of each action and communication by Mr. Geisen, identification of all documents relating to the allegation and identification of all persons with knowledge relating to the allegation).</p>	<p>(pp. 48-51) NRC Staff simply restates its “conten[tion] that Mr. Geisen was <i>generally</i> involved in the process of formulation, preparation and submission of FENOC’s information and responses, whether in writing or in oral briefings.” NRC Staff claims that a “detailed description of every action that Mr. Geisen took or every communication he made” relating to this allegation “is not within the knowledge of the Staff.” NRC Staff then simply lists various testimony and documents without any explanation and asserts that the names of persons with knowledge regarding the allegation are listed in the testimony and documents or in the answer to Interrogatory No. 1. Nowhere does NRC Staff provide the information and detail requested by this Interrogatory.</p>
<p>23 (seeking detailed information regarding allegation in Order regarding a statement allegedly made by Mr. Geisen during an October 3, 2001 conference call, including identification of documents relating to the allegation and identification of all persons with knowledge relating to the allegation).</p>	<p>(pp. 52) NRC Staff lists various testimony and documents and asserts that the names of persons with knowledge regarding the allegation are listed in the testimony and documents or in the answer to Interrogatory No. 3 [sic]. NRC Staff’s Answer is not fully responsive to this Interrogatory.</p>
<p>24 (seeking detailed information regarding any incomplete, inaccurate, misleading or false</p>	<p>(pp. 52-56) NRC Staff objects to the term “information briefings as “vague” and undefined even though NRC Staff used that term on page 7 of the Order;</p>

<p>statements or communications during three information briefings alleged on page 7 of the Order, including identification and detailed description of each statement or communication, identification and description of omitted or falsely stated information, identification of all documents relating to the allegation and identification of all persons with knowledge relating to the allegation)</p>	<p>mischaracterizes the interrogatory supposedly asks for communications “beyond those which are the subject of the Order,” objects because the interrogatory “requests all documents that relate to the Staff’s contention,” complains because the “documentation relating to the subject of the Staff’s contention is extensive and <i>includes much information which is not within the knowledge, possession and control of the Staff,</i>” objects because searching for the documentation relating to the contention would be “unduly burdensome” and could somehow be “conducted by Mr. Geisen.” “Subject to” those objections, NRC Staff proceeds simply to state what it “claims” or “contends” without specific responsive information requested in the interrogatory or factual support. NRC Staff claims that “the factual basis for the claims described above” include (but is apparently not limited to) certain listed testimony and documents, without specifying the location or substance of the responsive information in such testimony or documents. NRC Staff does not identify the persons who allegedly have knowledge relating to the allegation.</p>
<p>25 (seeking detailed information relating to allegations on page 12 of the Order concerning FENOC’s October 30, 2001 Supplemental Response, including identification of documents relating to the allegation and identification of all persons with knowledge relating to the allegation.</p>	<p>(pp. 56-57) NRC Staff simply states what it “contend[s]” without specific responsive information requested in the interrogatory or factual support. NRC Staff then lists various documents and asserts that persons (apparently not an exclusive list) with knowledge regarding the allegation are listed in the documents.</p>
<p>26 (with reference to NRC Staff’s answer to Interrogatory No. 25, seeking detailed information relating to the allegation on pages 12-13 of the Order that “Mr. Geisen was aware that information contained in [the October 30, 2001 Supplemental Response] was materially incomplete and inaccurate,” including identification and description of “each fact or document relating to Mr. Geisen’s alleged state of mind,” identification of documents relating to the allegation and identification</p>	<p>(pp. 57-58). NRC Staff does not respond substantively to this Interrogatory and instead simply cross-references its otherwise non-responsive and insufficient answer to Interrogatory No. 20. <i>See</i> discussion above.</p>

<p>of all persons with knowledge relating to the allegation)</p>	
<p>27 (seeking detailed information relating to allegation on page 14 of the Order that Mr. Geisen engaged in “deliberate misconduct” by “deliberately provid[ing]” FENOC and NRC information that “he knew was not complete or accurate in all material respects,” including identification of each such piece of information, identification of each act of deliberate misconduct by Mr. Geisen, identification and description of each fact or document relating to Mr. Geisen’s alleged state of mind, identification of documents relating to the allegation and identification of persons with knowledge relating to the allegation).</p>	<p>(pp. 58). NRC Staff does not respond substantively to this Interrogatory and instead simply cross-references its otherwise non-responsive and insufficient answer to Interrogatory No. 20. <i>See</i> discussion above.</p>
<p>28 (seeking detailed information relating to the allegation on page 15 of the Order that there was a “pattern of deliberate inaccurate or incomplete documentation of information that was required to be submitted to the NRC,” including identification of each act or omissions that was part of the alleged pattern, identification of each person who committed each act or omission in the pattern, identification of documents relating to the allegation and identification of persons with knowledge relating to the allegation).</p>	<p>(pp. 58-59) NRC Staff argues that the alleged pattern “pertains to FENOC and not Mr. Geisen” and, on that basis “objects to providing the factual basis for that assessment on the grounds that it is not relevant to this enforcement proceeding.” Accordingly NRC Staff refused to answer this Interrogatory.</p>
<p>29(seeking detailed information relating to the allegation in the Order that Mr. Geisen’s alleged actions or omissions affected the health and safety of the public, including identification of</p>	<p>(pp. 59-60) NRC Staff simply repeats its conclusory allegations and states that “[d]ocuments which support the NRC’s issuance of the Order to Mr. Geisen, and which also support [NRC Staff’s] contention that he should be prohibited from NRC-licensed activities, are enumerated elsewhere in these responses. NRC Staff does not respond</p>

documents relating to the allegation and identification of persons with knowledge relating to the allegation).	substantively to this Interrogatory.
30 (seeking detailed information relating to NRC Staff's document retention procedures, practices policies and systems, including policies relating to electronic data); <i>see also</i> Request No. 31 (seeking documents and things relating to the document retention policies)	(p. 60) NRC Staff objects to this Interrogatory and simply refers to Management Directive 3.53 and NUREG0910. NRC Staff provides no other information and does not produce any documents relating to this Interrogatory.
31 (seeking detailed information relating to NRC Staff's assertion of privilege or protection for documents).	(pp. 60-61) NRC Staff objects to this Interrogatory and simply states that "no document for which a privilege has been asserted has been communicated to any person outside of the NRC." NRC Staff does not substantively respond to this Interrogatory.
<b>DOCUMENT REQUEST NO.</b>	<b>DEFICIENCIES IN RESPONSES</b>
4 (seeking production of documents "relating to the facts, events, circumstances, allegations, claims, contentions, opinions and defenses" in the Order, the Answer or this Enforcement Proceeding).	(pp. 62-63) NRC Staff improperly objects on grounds of overly broad, unduly burdensome and legal conclusion (allegedly requiring "a determination of the relevancy of each and every document and thing discovered in the course of the Staff's compilation." NRC Staff then proceeds to limit its response to only those documents "relevant to the specific interrogatory requests."
5 (seeking documents and things that are "referenced or alleged" in the Order)	(p. 63) NRC Staff improperly objects to this Request and simply cross-references the documents listed in its answers to Interrogatory Nos. 13-29.
6 (seeking documents and things relating to" the Order).	(p. 63-64) NRC Staff objects to this Request in its entirety and simply cross-references the documents listed in its otherwise non-responsive answers to Interrogatory Nos. 13-29.
7 (seeking documents that the NRC or Staff relied upon, assembled, reviewed, obtained, considered, drafted, prepared or generated in preparing" the Order).	(pp. 64-65) NRC Staff objections to this Request in its entirety and does not state that it will produce the requested documents.

<p>8 (seeking documents and things relating to the facts, events, circumstances, allegations, claims, contentions and opinions” in the OI Report), 9 (seeking all documents and things relating to” the OI Report), 10 (seeking documents and things that are referenced in” the OI Report), 11 (seeking documents and things relating to” the OI Report).</p>	<p>(p. 65-67) NRC Staff objects to these Requests in their entirety and simply cross-references its responses to Document Requests 1, 2 and 9 and its otherwise non-responsive answers to Interrogatory Nos. 7, 9 and 13-29.</p>
<p>12 (seeking documents and things that OI “relied upon, assembled, reviewed, obtained, considered, drafted, prepared or generated in preparing” the OI Report).</p>	<p>(pp. 67-68) NRC Staff objects to this Request and simply “refers to the OI report for identification as to the documents relied upon by OI in preparing the report which have been produced through mandatory disclosures in this proceeding.”</p>
<p>13 (seeking all documents and things on which you intend or expect to rely in support of any fact, allegation, claim, contention, opinion or defense in this Enforcement Proceeding, including all relevant documents, communications and information”).</p>	<p>(pp. 68) NRC Staff objects to this Request in its entirety and simply states that “[s]uch information will be disclosed <i>as necessary</i> by the Staff’s attorneys in proper accordance with all applicable regulations.”</p>
<p>14 (seeking relevant documents, communications and information sent or received by persons with knowledge of the allegations in this proceeding).</p>	<p>(pp. 68-69) NRC Staff objects to this Request in its entirety and simply cross-references the documents listed in its answers to Interrogatory Nos. 13-29.</p>
<p>17 (seeking documents relating to the topics described, included or contained in the Interrogatories)</p>	<p>(pp. 73-74) NRC Staff objects to this Request in its entirety.</p>
<p>24 (seeking documents produced in the Moffitt and Miller Enforcement Proceedings); 25 (seeking all documents disclosed in the Moffitt and Miller Enforcement Proceedings); 26 (seeking documents produced by non-parties in the Moffitt and Miller Enforcement Proceedings); 29</p>	<p>(pp. 75-78) NRC Staff references, but does not produce, or agree to produce, certain listed documents in unredacted form on the basis of personal privacy privilege. NRC Staff also does not confirm in its response that all documents produced or disclosed in the Moffitt and Miller Enforcement Proceedings have been or will be produced in this Enforcement Proceeding. NRC Staff also does not agree to produce copies of deposition transcripts in the Moffitt and Miller Enforcement Proceedings.</p>

<p>(seeking deposition transcripts in the Moffitt and Miller Enforcement Proceedings)</p>	
<p>25 (seeking documents and things that will be marked, identified, proffered, offered, presented, introduced, used, shown, referenced, demonstrated or relied upon at the hearing)</p>	<p>(pp. 77) NRC objects to this Request in its entirety on the ground of attorney work product.</p>
<p>30 (seeking all documents and things relating to David Geisen); 31 (seeking all documents and things relating to Mr. Geisen's knowledge, state of mind or intention alleged in the Order).</p>	<p>(pp. 78) NRC Staff objects to Request No. 30 in its entirety on the grounds that it is overly broad, unduly burdensome, seeks irrelevant information and seeks information that is "not in the possession, control or knowledge of the Staff. In response to Request No. 31, NRC Staff simply refers to its otherwise non-responsive answers to Interrogatory Nos. 13-27 and then asserts an objection to this Request. NRC Staff does not agree to produce all responsive documents.</p>

**EXHIBIT B**

December 7, 2006

Charles F.B. McAleer, Jr.  
Miller & Chevalier  
665 15<sup>th</sup> St. N.W., Suite 900  
Washington, D.C. 20005

Dear Chas:

This responds to your letter of November 30, 2006, in which you detail the issues you have with our interrogatory responses. Generally, we believe that our responses are adequate in form and substance. Specifically, with regard to these specific issues, we note the following:

1. Verification of Interrogatory Answers: Pursuant to 10 C.F.R. § 2.705((g), signatures on discovery responses constitutes certification that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, that the responsive disclosure is complete and correct, as of the time it is made. The signatures provided by the Staff individuals on the affidavits were intended to comply with and satisfy that requirement. The individuals identified in response to interrogatory five as having supplied information and participating in the preparation of the interrogatory responses all necessarily have knowledge relating to the claims in the enforcement order.

2. Insufficiency of Answers to Interrogatories and Responses to Document Requests Generally: The Staff identified or produced all responsive documents within the possession of the Staff at the time the responses were filed. The Staff will supplement its responses as additional information becomes known to the Staff. Our responses to your interrogatories are adequate and fully consistent with NRC practice for Staff discovery responses. Therefore, we will not address the "deficiencies" you have identified in the table attached to your response.

3. Asserted Objections: The Staff has not answered certain questions based on stated objections. If the Staff has withheld documents properly requested, the Staff has identified them and the reasons for withholding with the exception of attorney-client or attorney work product. We have not logged these communications or documents since the time when you identified that this was your practice in your mandatory disclosures.

In response to your discovery requests for information from the NRC Office of Inspector General, we explained the grounds for our objection and our reasons. See, response to Interrogatory five. The Staff did not identify any other responsive documents that were in the control or possession of any entity or subpart within the NRC but not under the possession or control of the Staff as defined in our interrogatory responses.

The Staff has searched for information on our NRC document management system, ADAMS, and on individual computer hard drives and e-mail archives. However, the Staff has not attempted to retrieve documents which have been deleted from our document record systems or hard drives. In response to your questions relating to the retention of documents, we note

that documents related to the development and drafting of the enforcement order were deleted by Staff consistent with the Staff's practice with regard to documents which are not required to be official agency records. With regard to your request that you be provided documents for inspection and copying, we note that pursuant to 10 C.F.R. § 2.705(b)(1), when any document is available from another source, such as the NRC web site, it is a sufficient response to an interrogatory for the Staff to identify the document. Therefore, the Staff is not required to produce documents for inspection and copying. However, should you identify specific documents you would like to inspect and copy please let me know and I will endeavor to accommodate your request.

We have determined that none of the documents for which we claim deliberative privilege was shared with any individual outside the Staff and, therefore, that we have not waived our privilege. Therefore, additional information such as you have requested is not necessary to determine whether our privilege has been waived.

4. **Supplementation:** The Staff will supplement its discovery responses as required of it pursuant the Commission's rules and regulations. We expect to supplement some time within the next two weeks.

5. **Personal Privacy Privilege Assertions.** The Staff is preparing to provide the redacted portions of the August 2003 OI Report under the Protective Order and will produce them within the next couple of days. In addition, the Staff will produce all documents listed on our personal privacy logs as soon as practicable. We hope to have all of this information to you by the end of this week.

Pursuant to the Board Order issued November 29, 2006, the Staff is attaching a copy of the August 2003 OI Report from which the personal privacy redactions have been removed. The attached document is identified by Bates numbers Redacted - 30235 to Redacted - 30468. We are currently working on providing you unredacted versions of the remainder of the documents listed on our personal privacy log and will produce them to you as soon as practicable. Please let me know if you have any questions regarding to foregoing.

Sincerely,

*/RA/*

Lisa B. Clark

Attachment: as stated