UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 07/30/08
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ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

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

In the Matter of	Docket No. IA-05-052
DAVID GEISEN	ASLBP No. 06-845-01-EA
	July 30, 2008

MEMORANDUM
(Summarizing Conference Call)

As scheduled, the Board conducted a conference call on July 21, 2008, for the purpose of discussing "the ramifications of some of the positions taken by the parties in order to determine in what manner and at what pace to move forward with th[is] proceeding." Notice and Order (Regarding Conference Call), July 17, 2008 (unpublished), at 1. The proceeding involves Mr. Geisen's challenge to the Staff's enforcement ruling, a challenge recently reactivated in the wake of the outcome of his parallel criminal trial in the United States District Court for the Northern District of Ohio. Given the long period in which this enforcement proceeding was in hiatus, Mr. Geisen seeks (see Tr. at 668-69) – and the Board aims to provide – a rapid hearing and decision on his challenge.

Prior to the conference call, the Board had first called for briefs on a variety of subjects[1] and then asked the parties to be prepared to address a number of questions.[2] During the call, it became apparent, inter alia, that the impact of the doctrine of collateral estoppel on the scope of the case did not lend itself to the relatively simple solution first suggested, in light of the parties'

[1] Order (Calling for Briefs), June 30, 2008 (unpublished), at 2.

[2] July 17 Notice and Order at 2-4.

differing views (see Tr. at 629-35, 668-70) as to what remained in controversy in light of Mr. Geisen's indication that he "does not intend to contest factual liability upon resumption of this case, merely the reasonableness of the punishment imposed."[3]

Given the nature of that controversy, and in light of the positive tone of the entire call, the parties concurred that they should confer in an effort to reach agreement on an approach to moving forward on the collateral estoppel matter and on other major topics discussed during the call.[4] See Tr. at 635-38, 670-71, 672-75. They also agreed to discuss the key matter Mr. Geisen wishes to put in issue, i.e., the length of the employment ban imposed by the enforcement order. See Tr. at 676-77.

The parties' discussions were to begin before the end of this month and were to continue as long as they thought it profitable to do so, with the Board being provided periodic, informal status updates. See Tr. at 675, 677-78, 680. The Board again encourages the parties to enter and to continue those discussions with the constructive spirit evidenced during the conference call (see Tr. at 680), and awaits their progress reports.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Rockville, Maryland
July 30, 2008

By Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

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

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[3] Brief of David C. Geisen in Response to Board's Order Dated June 30, 2008 (July 7, 2008) at 4, quoted in July 17 Order at 2.

[4] These involved such matters as the role of the transcript of the criminal case (Tr. at 626-29, 678); the source and extent of "uncontested facts" (Tr. at 629-31); the potential delayed impact of the pending appeal of the criminal conviction (Tr. at 638-39); the standard of review of the Staff enforcement punishment (Tr. at 639-48); the impact of the felony conviction, independent of any judicial or administrative bans, on Mr. Geisen's employment opportunities (Tr. at 679); and the likelihood that Mr. Geisen would be a witness herein (Tr. at 652-54).

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CERTIFICATE OF SERVICE

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

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Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 30th day of July 2008