

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

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

In the Matter of
DAVID GEISEN

Docket No. IA-05-052-EA
ASLBP No. 06-845-01-EA
November 14, 2008

MEMORANDUM AND ORDER
(Regarding Witnesses and Exhibits)

As indicated in our November 3 Memorandum and Order, much was accomplished during the October 23 prehearing teleconference. Two matters touched on there deserve further attention during the ongoing accelerated preparations for the hearing.

1. Witnesses. If they have not already done so, the parties should set a mutually agreeable deadline (no later than Wednesday, December 3) for exchanging their final witness lists. The brief outlines of their presentations previously set for filing on December 3¹ should be accompanied (unless these items are available earlier) by (1) that final witness list and (2) the final version of the proposed joint stipulation (upon which, at last word, the parties had nearly reached agreement).

2. Exhibits. The Transcripts of the federal court criminal trial are proving valuable in the Board's preparation for the upcoming NRC hearing. The parties are encouraged to call our

¹ In that regard, with the last brief on the collateral estoppel question arriving Wednesday, November 26, it is unlikely that the Board will be able, prior to the Wednesday, December 3, due date of the outlines of their respective cases, to give the parties more than tentative guidance on how that principle will ultimately be applied (see also Nov. 3 Order at 3-4, referring to Tr. at 703-06, 730-31). Any such guidance is, therefore, not likely to affect the content of the outlines.

attention informally to any exhibits from the criminal trial that would similarly aid our preparation. The parties may provide us any such exhibits by (1) furnishing the ADAMS accession number; (2) transmitting them to us electronically; or (3) sending us a hard copy.

As to the Exhibits expected to become part of the NRC's evidentiary record, the Board wishes to proceed, as it has done in previous cases, in a two-stage fashion. The first stage involves our receiving on Wednesday, December 3, an electronic list of all of the party's proposed Exhibits, and courtesy copies of any Exhibits to which our attention has not previously been directed per one of the three options set out at the top of this page. If those Exhibits exist electronically, they are to be submitted to us² as such, each in a separate e-file, and in PDF format if available, so long as we are also furnished one hard copy – appropriately bound, and tabbed if necessary – of any complex Exhibit, containing on its first page an informal notation of the sponsoring party's name and the Exhibit number. If such Exhibits do not exist electronically, four such hard copies should be furnished.

Second, to avoid the delay incurred when evidentiary proceedings have to stop while the Court Reporter formally marks numerous exhibits for identification, all documentary exhibits intended to be utilized at the hearing should be formally pre-marked by their sponsor. For this purpose, the Board will provide to each party in the early part of Thanksgiving week a rubber stamp (layout appended hereto) that will reflect the case name and docket number, and provide space for the party to insert, before the hearing commences, its name ("Geisen," "Staff" or "Joint"); and the Exhibit # (starting with "1" in each of the three instances).³ (Other blanks on the stamp will be filled in by Board personnel, in the manner described in footnote 5, below, as the hearing progresses.)

² All e-submissions should be sent not only to the three Board members but also to our law clerk, Johanna Thibault.

³ The stamp imprint should be placed in the upper right-hand corner of the Exhibit if possible; if not, any location on the first page is acceptable.

Except for Exhibits newly-arising during the hearing (for which an original and six copies should be provided to the Board),⁴ each party should, at the time of formally presenting an Exhibit, put forward the original, only two copies, and on a CD an electronic copy in PDF format if available.⁵ The two hard copies are destined for elsewhere in the agency's record system; for purposes of conducting the trial, the Board will rely upon its pre-supplied courtesy copies.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD
/RA/

Rockville, Maryland
November 14, 2008

By Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

APPENDIX: STAMP LAYOUT

U.S. NRC
In re DAVID GEISEN _____ Exhibit # _____
Docket # 1A-05-052

Date Marked for ID: _____, 2008 (Tr. p. _____)
Date Offered in Ev: _____, 2008 (Tr. p. _____)
Through Witness/Panel: _____
Action: ADMITTED REJECTED WITHDRAWN
Date: _____, 2008 (Tr. p. _____)

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

⁴ The filing requirements described herein do not cover whatever arrangements the parties make as to exchanging Exhibits between themselves.

⁵ Although, at their initial appearance at a trial, Exhibits are usually presented to the Court Reporter "to be marked for identification," that step will have already been taken by the party, and the Court Reporter will not be involved in any physical handling of the exhibits. Instead, while it may be appropriate to use the classic phraseology for purposes of the record, the pre-marked exhibits should simply be handed to Board personnel serving as Court Clerk for this purpose, who will be responsible for entering all the other markings called for by the stamp.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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DAVID GEISEN

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Docket No. IA-05-052

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMORANDUM AND ORDER (REGARDING WITNESSES AND EXHIBITS) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission
Office of the Secretary of the Commission
Mail Stop O-16C1
Washington, DC 20555-0001

U.S. Nuclear Regulatory Commission.
Atomic Safety and Licensing Board Panel
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Administrative Judge
Michael C. Farrar, Chair

Administrative Judge
E. Roy Hawkens

Administrative Judge
Nicholas G. Trikouros

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[Original signed by Christine M. Pierpoint]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 14th day of November 2008