

RAS C-21

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USNRC

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF  
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November 3, 2008

**VIA ELECTRONIC MAIL**

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

Dear Ms. Clark:

We write in response to your letter dated October 31, 2008.

On October 29, 2008 we provided the Staff with our Second Supplemental Responses to the Staff's Interrogatories (the "Response"). The Response consisted of extensive statements setting forth Mr. Geisen's position on the contested issues that will be before the Board during the hearing presently set for December 8, 2008. It provided the Staff with ample information to conduct a meaningful deposition of Mr. Geisen, which is presently set for November 17, 2008.<sup>1</sup> Instead of using the information, along with the wealth of facts recorded through the three-year-long OI investigation and the recent criminal trial to prepare for the deposition and hearing, the Staff has chosen to engage in more procedural jockeying designed to delay the hearing. Your latest demand, that we engage in the burdensome and time consuming exercise of ticking and tying the information provided in the Response and Mr. Geisen's extensive prior sworn testimony to the specific subparts of your interrogatories is unreasonable and unjustified and we decline to do so.

In 2006, prior to Mr. Geisen's criminal trial, the Staff propounded 41 interrogatories that consisted of over four-hundred subparts. Contrary to the representation in your letter, we

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<sup>1</sup> With regard to the deposition, we note that we indicated that Mr. Geisen would be available for that deposition on November 10, 2008 -- the first day of the week that the Board designated for the deposition to occur. The Staff indicated that the 10<sup>th</sup> was not workable and the deposition was accordingly set for the 17<sup>th</sup>. Your letter suggests we have "tentatively" set that date. We have committed to that date. Mr. Geisen has made travel arrangements and adjusted his work schedule. We will not alter that date as a result of the Staff's continuing efforts to delay this case.

TEMPLATE - SECY-043

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Lisa B. Clark, Esq.  
November 3, 2008  
Page 2

objected to the interrogatories on a number of grounds, including the fact that the interrogatories were “unreasonable and too numerous” and “overly burdensome and/or would involve undue financial expense...” See, David Geisen’s Objections and Answers to NRC Staff’s First Set of Interrogatories. After the conclusion of the criminal trial, we sought, in good faith, to streamline the discovery process and facilitate the commencement of the expedited hearing to which Mr. Geisen is entitled. Despite the fact that the Staff’s interrogatories are clearly violate of both the spirit and the language of Federal Rule of Civil Procedure 33(a), which allows a party to serve no more than 25 written interrogatories, *including all discrete subparts*,<sup>2</sup> we provided the Response, which cover the relevant issues over 17 pages of text. We did not, as you suggest in your letter “simply refer to sworn testimony that Mr. Geisen has to the NRC Office of Investigations or in the criminal trial.” 10/31/08 letter at 1. As we committed to do in the conference call with the Board on October 23, 2008, we comprehensively responded to the relevant subject matters addressed in your interrogatories even though we did not submit a specific response to each of the hundreds of interrogatory subparts. We did not tie the Response answers to each of the interrogatory subparts. Instead, we organized the Response to ensure that the Staff could readily determine which relevant issue was addressed in each individual statement. The examples that you have cited in your letter demonstrate why the Response is more than adequate to inform the Staff of Mr. Geisen’s position and why further submissions ordered pursuant to the framework imposed by the Staff in the interrogatories would be nothing more than make-work designed to delay the process.

Interrogatories six, seven, and eight ask, in multiple ways, about Mr. Geisen’s involvement in, and knowledge of, the RPV head inspections in the refueling outages in 1996, 1998, and 2000. The Response sets forth what Mr. Geisen’s activities at the plant were during each of the outages and also describe when he came to learn facts about those outages. It is hard to believe that the Staff needs Mr. Geisen to specifically answer “no” to each of the one hundred and thirty-two subparts of interrogatories six, seven, and eight in order to understand the statements Mr. Geisen made in the Response and in both his OI interview and trial testimony -- that he was not involved in the inspection or cleaning in any the outages (except for a brief involvement in 12RFO detailed in item 3 of the Response), did not see videotapes or photographs of the inspections or cleanings until October of 2001, and did not understand the extent of the problems when he made statements to the NRC in connection with FENOC’s bulletin responses. If the Staff has questions about Mr. Geisen’s position notwithstanding the

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<sup>2</sup> We recognized that the Commission’s rules do not specifically limit the number of interrogatories the Staff may propound. However, the Board is clearly authorized to impose a limit on interrogatories and it is axiomatic that the Federal Rules provide appropriate guidelines for interpreting NRC discovery rules.

MILLER  
CHEVALIER

Lisa B. Clark, Esq.  
November 3, 2008  
Page 3

Response, his OI interview, and his trial testimony, you have seven hours of a deposition to resolve those questions.

The Staff issued its immediately-effective Order against Mr. Geisen in January 2006. It then repeatedly sought to deny Mr. Geisen his right to an expedited hearing. Your present position makes it clear that one of two things is true: either the Staff issued the Order with no understanding of its own allegations based on the hope that it would, thereafter, find the necessary quantum of evidence to sustain its action or the Staff is feigning ignorance now in the face of a huge collection of facts and prior statements in order to further delay a proceeding it initiated at great cost to Mr. Geisen. Either approach is unfair to Mr. Geisen. We stand by our previous Response.

Sincerely,

/s/

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Richard A. Hibey  
Andrew T. Wise  
Counsel for David C. Geisen

DECLARATION OF DAVID C. GEISEN

I hereby declare, under penalty of perjury, that the factual statements contained in the foregoing answers are true and correct based on my knowledge, information and belief.



David C. Geisen

## Docket, Hearing

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**From:** Secy  
**Sent:** Monday, November 03, 2008 10:34 AM  
**To:** Hearing Docket  
**Subject:** FW: In the Matter of David Geisen; Docket No. IA-05-052  
**Attachments:** Geisen declaration page.TIF; Letter 11-3-08.pdf

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**From:** Wise, Andrew [mailto:awise@milchev.com]  
**Sent:** Monday, November 03, 2008 10:16 AM  
**To:** Lisa Clark; Shahram Ghasemian; Kimberly Sexton; Catherine Marco  
**Cc:** Mike Farrar; Nicholas Trikourous; Roy Hawkens; Johanna Thibault; Libby Perch; Secy; Hibey, Richard  
**Subject:** RE: In the Matter of David Geisen; Docket No. IA-05-052

Attached please find Mr. Geisen's response to the Staff's 10/31/08 letter and Mr. Geisen's executed declaration page for the Second Supplemental Answers to the Staff's Interrogatories.

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