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ATOMIC SAFETY AND LICENSING BOARD DISMISSES CHARGES IN GEISEN CASE REGARDING MISCONDUCT AT DAVIS-BESSE

A three-member panel of the Atomic Safety and Licensing Board (ASLB), in a 2-1 decision, has set aside all charges in the Nuclear Regulatory Commission enforcement hearing against former nuclear power plant engineer David Geisen, ending the proceeding before the Board and nullifying NRC sanctions that would prohibit Geisen's involvement in any agency-licensed activities.

The Geisen case stemmed from violations of NRC regulations associated with the significant reactor vessel head damage discovered in March 2002 at the Davis-Besse Nuclear Power Plant in Oak Harbor, Ohio. The NRC staff had charged Geisen and others with knowingly submitting false information regarding actions taken by FirstEnergy Nuclear Operating Company (FENOC) in maintaining the Davis-Besse reactor vessel head.

"We find that the Staff did not prove the charges it brought against Mr. Geisen by a preponderance of the evidence, and thus failed to establish that he engaged in deliberate misconduct," the majority opinion of Administrative Judges Michael C. Farrar and Nicholas G. Trikouras said. "Insofar as Mr. Geisen was concerned, we find that FENOC's submissions, although later stipulated to be false, were not contradictory to his then-understanding of the relevant situation and information."

The NRC originally issued an immediately effective Order to Geisen on Jan. 4, 2006, which ended his employment at another nuclear power plant and would have prohibited his involvement in agency-regulated activities for five years. He requested a hearing on the Order, which the ASLB granted but which the Commission held in abeyance during the Department of Justice's parallel criminal case against Geisen. A federal jury found him guilty in April 2008 of three counts of lying to the NRC, one count of which dealt with a document central to the agency's enforcement action. Geisen then requested the ASLB conclude its proceeding, which included an evidentiary hearing in December 2008 and post-hearing argument in March 2009. The ASLB panel's majority opinion found that the criminal conviction did not prevent Geisen from contesting the NRC action, due to differing legal standards. Administrative Judge E. Roy Hawkens issued a dissenting opinion, which concludes both that the NRC's sanctions were justified and that Geisen, upon completion of his five-year ban, is capable of resuming work in the nuclear industry.

“Because the standard of proof is much higher in a criminal proceeding ... than in this administrative enforcement proceeding ... Mr. Geisen’s criminal conviction *a fortiori* compels the conclusion here that he had knowledge [the information was false],” the Hawkens opinion said. “I find a preponderance of the evidence supports the conclusion that Mr. Geisen *knowingly* provided the NRC Staff with materially incomplete and inaccurate information.”

The parties in the Geisen case have 15 days to file any appeals with the NRC’s Commissioners, who act as the appellate body for ASLB decisions. The ASLB is the NRC’s quasi-judicial arm dealing with licensing and enforcement matters. More information about the ASLB can be found at: <http://www.nrc.gov/about-nrc/organization/aslbfuncdesc.html>.

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