

November 22, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
DAVID GEISEN) Docket No. IA-05-052
) ASLBP No. 06-845-01-EA
)
)

NRC STAFF'S REQUEST FOR LEAVE TO RESPOND TO DAVID GEISEN'S REPLY IN SUPPORT OF HIS APPLICATION FOR AWARD OF ATTORNEY'S FEES

Pursuant to 10 C.F.R. § 12.306,¹ the Staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby requests that the Atomic Safety and Licensing Board ("Board") grant the Staff leave to file the attached response to David Geisen's Reply in Support of His Application for Award of Attorneys' Fees.² As explained below, Mr. Geisen's Reply includes new arguments and documentation not included in his original Application,³ which relate to showings Mr. Geisen

¹ 10 CFR § 12.306(a) states that "on the request of either the applicant or the NRC counsel . . . the adjudicative officer may order further proceedings, such as . . . additional written submissions . . ." The regulations state that such further proceedings shall be held "only when necessary for full and fair resolution of the issues." 10 C.F.R. § 12.306(a). Further, such a request "shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues." 10 C.F.R. § 12.306(b). The discussion in the text of the request addresses these requirements. Although not contemplated in Part 12, in light of the similarities to Part 2 motions practice, the Staff consulted with counsel for Mr. Geisen, who indicated that he does not oppose this request; however, he stated that he intends to request leave to reply to the Staff's response. At the present time, the Staff does not believe that Mr. Geisen should be afforded such an opportunity because, as the Staff stated in its Answer and in the attached response, Mr. Geisen should have submitted the information about his indemnification from his previous employer and supporting documentation for the award claimed at the outset.

² David Geisen's Reply in Support of His Application for Award of Attorneys' Fees (Nov. 12, 2010) ("Reply").

³ David Geisen's Application for Award of Attorney's Fees (Sept. 27, 2010) ("Application").

must make in order to receive an award under the Equal Access to Justice Act (“EAJA”).⁴ Specifically, these arguments and documentation relate to Mr. Geisen’s eligibility for an EAJA award and the reasonableness of the fees claimed. If this information had been included in Mr. Geisen’s Application, as 10 C.F.R. Part 12 and the EAJA require, the Staff would have had the opportunity to address this information fully in its Answer. Because the Staff was prevented from doing so at the outset, the Staff now requests the opportunity to respond to the issues of Mr. Geisen’s eligibility to receive an award under the EAJA and Part 12 and the reasonableness of the fees claimed.

BACKGROUND

On September 27, 2010, David Geisen filed his Application before the Board for an award of attorney’s fees under the EAJA and 10 C.F.R. Part 12. On October 27, 2010, the Staff filed an Answer,⁵ stating that Mr. Geisen’s Application should be denied for the following reasons: (1) the EAJA and Part 12 do not apply to NRC enforcement adjudications; (2) even if the EAJA and Part 12 apply to Mr. Geisen’s proceeding, Mr. Geisen is not eligible to recover attorney’s fees because he has not demonstrated that he actually incurred those fees; (3) Mr. Geisen has not submitted a “full documentation of the fees and expenses . . . for which an award is sought” as required by 10 C.F.R. § 12.203; and (4) even if Mr. Geisen is otherwise eligible to recover under the EAJA, he cannot recover any fees or expenses because the Staff’s position was substantially justified. On November 12, 2010, 46 days after the original filing deadline, Mr. Geisen filed a Reply to the Staff’s Answer. Included with Mr. Geisen’s Reply were approximately 400 pages of invoices billing Mr. Geisen’s former employer, FirstEnergy Nuclear

⁴ 5 U.S.C. § 504.

⁵ NRC Staff’s Response in Opposition to David Geisen’s Application for Award of Attorney’s Fees (Oct. 27, 2010) (“Answer”).

Operating Company ("FENOC"), for \$4,187,416.05 in attorney's fees and expenses associated with Mr. Geisen's criminal trial and the NRC enforcement proceeding.⁶

DISCUSSION

Both the EAJA and the NRC's implementing regulations impose a strict 30-day filing deadline for applications for attorney's fees.⁷ As explained in the Staff's Answer, Mr. Geisen's original Application did not comply with the requirements of the EAJA or Part 12.⁸ Mr. Geisen's Application did not provide any explanation or excuse for the failure to adhere to the regulatory requirements, nor did Mr. Geisen request leave from the Board for an extension of time.⁹ Instead, Mr. Geisen provided supplemental information in a 431-page Reply, 46 days after the filing deadline. In his Reply, Mr. Geisen did not provide any explanation for his initial failures, but simply assumed, without justification, that the failures were cured.¹⁰

⁶ Reply Exhibit 1.

⁷ See 5 U.S.C. § 504(a)(2) ("A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application . . ."); 10 C.F.R. § 12.304 (stating that applications may "in no case" be filed "later than 30 days after the date on which a decision [on the merits] . . . becomes final and unappealable, both within the NRC and to the courts.")

⁸ Pursuant to 10 C.F.R. § 12.203, the application "shall be accompanied by full documentation of the fees and expenses" claimed, and "[a] separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, and any expenses for which reimbursement is sought."

⁹ While Mr. Geisen did note in his Application that a claim for attorney expenses would be "submitted as soon as possible" because they had "yet to be fully determined," Mr. Geisen did not request leave from the Board for an extension of time. According to Reply Exhibit 1, attorney expenses are billed on the same invoices as the attorney and paralegal fees submitted monthly to FENOC. Therefore, there would appear to be no reasonable basis for Mr. Geisen's delayed submittal.

¹⁰ See *e.g.*, Reply at 2 fn.6, 16 fn.58. There is no apparent reason why the itemized invoices, attached at Exhibit 1 to the Reply, could not have been submitted with the original application, as the most recent invoice was dated September 22, 2010, and the Application was filed on September 27, 2010.

Mr. Geisen should not be permitted to wait until the eleventh hour (or the 76th day) to submit information that was required to be submitted within 30 days while merely stating that any and all deficiencies are “cured.” The EAJA, NRC regulations, and supporting case law specified what was required to be filed in an EAJA fee application, and Mr. Geisen failed to do so. For this reason alone, the Application should be rejected. If, however, the Board accepts the supplemental information and decides to entertain the Application, the Staff should be afforded a right to respond.

Mr. Geisen bears the burden of showing that he incurred fees¹¹ and that those fees were reasonable.¹² Contrary to these requirements, not only did Mr. Geisen’s Application fail to provide any (let alone sufficient) supporting documentation to justify the fees claimed, but Mr. Geisen also failed to disclose that FENOC had already paid his attorney’s fees and expenses in full, at the attorneys’ normal hourly rates, under an indemnification agreement. Although the Staff appended to its Answer a letter from 2002 indicating that Mr. Geisen might be indemnified, the Staff could not claim with certainty that the indemnification agreement was still in force during the pendency of the NRC proceeding or that Mr. Geisen’s attorney’s fees had actually been paid. Therefore, although the Staff raised the existence of the indemnification agreement and its likely significance in its Answer, the Staff was not able to fully address the issue at that time. Now that Mr. Geisen has acknowledged the existence of the indemnification agreement in his Reply, and has made new arguments supporting an award of fees that take into account the indemnification agreement,¹³ the Staff requests an opportunity to respond to those arguments.

¹¹ *SEC v. Comserv Corp.*, 908 F.2d 1407, 1412 (8th Cir. 1990).

¹² *Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 970 (D.C. Cir. 2004).

¹³ Reply at 15-21.

The Staff also renews the request made in its Answer¹⁴ for an opportunity to address the reasonableness of the fees that Mr. Geisen claims, as documented in Exhibit 1 of his Reply.

In summary, Mr. Geisen's showing on these issues in his Application consisted merely of a claim for \$258,187.50 based on 3,442.5 hours multiplied by \$75 and a declaration that Mr. Geisen's net worth was less than \$2 million. As such, his showing was deficient and Mr. Geisen's attempt to provide the necessary supporting material is fatally late. In any event, Mr. Geisen's Reply serves as no mere cure of minor defects, or response to Staff arguments; instead, it serves as the entire basis of his argument for the grant of attorney's fees. Without this Reply, Mr. Geisen's Application provides absolutely no detail upon which the Board could grant an award of fees. Had Mr. Geisen submitted the required information at the outset, the Staff would have had the opportunity to respond. Because Mr. Geisen, in essence, turned his initial Application into a placeholder for his actual application, the Staff should be permitted an opportunity (in the event the Board does not outright reject Mr. Geisen's Application) to respond to Mr. Geisen's eligibility to recover under the EAJA and Part 12 and the reasonableness of Mr. Geisen's claimed fees and expenses.

¹⁴ Answer at 11 fn.41. As stated in the Answer, the Staff's request was intended as a placeholder to allow a fair opportunity to respond if and when Mr. Geisen provided the required supporting documentation.

CONCLUSION

For the reasons set forth above, the Staff respectfully requests that the Board grant the Staff's request to respond to Mr. Geisen's Reply with the attached Response.

Respectfully submitted,

/RA by Kimberly A. Sexton/

Kimberly A. Sexton
Marcia J. Simon
Counsel for the NRC Staff

Dated at Rockville, Maryland,
this 22nd day of November, 2010.

November 22, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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DAVID GEISEN)	Docket No. IA-05-052
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NRC STAFF'S RESPONSE TO DAVID GEISEN'S REPLY IN SUPPORT OF HIS APPLICATION FOR AWARD OF ATTORNEY'S FEES

The Staff of the U.S. Nuclear Regulatory Commission ("Staff") hereby responds to David Geisen's Reply in Support of His Application for Award of Attorneys' Fees.¹ Specifically, the Staff responds to Mr. Geisen's eligibility to receive an award under the EAJA and Part 12 and the reasonableness of the fees claimed. For the reasons discussed below, and in the Staff's Answer,² Mr. Geisen is ineligible to receive an award of attorney's fees under the EAJA because his fees and expenses were already paid in full under an indemnification agreement with his former employer.³ If, however, the Board determines that an award is appropriate, Mr. Geisen's fee demand is excessive and should be greatly reduced.

BACKGROUND

On September 27, 2010, David Geisen filed his Application before the Board for an award of attorney's fees under the EAJA and 10 C.F.R. Part 12. On October 27, 2010, the Staff

¹ David Geisen's Reply in Support of His Application for Award of Attorneys' Fees (Nov. 12, 2010) ("Reply").

² NRC Staff's Response in Opposition to David Geisen's Application for Award of Attorney's Fees (Oct. 27, 2010) ("Answer").

³ Reply at 3, 15-16, Exhibit 1.

filed an Answer, stating that Mr. Geisen's Application should be denied for the following reasons: (1) the EAJA and Part 12 do not apply to NRC enforcement adjudications; (2) even if the EAJA and Part 12 apply to Mr. Geisen's proceeding, Mr. Geisen is not eligible to recover attorney's fees because he has not demonstrated that he actually incurred those fees; (3) Mr. Geisen has not submitted a "full documentation of the fees and expenses . . . for which an award is sought" as required by 10 C.F.R. § 12.203; and (4) even if Mr. Geisen is otherwise eligible to recover under the EAJA, he cannot recover any fees or expenses because the Staff's position was substantially justified. On November 12, 2010, 46 days after the original filing deadline, Mr. Geisen filed a Reply to the Staff's Answer. Included with Mr. Geisen's Reply were approximately 400 pages of invoices billing Mr. Geisen's former employer, FirstEnergy Nuclear Operating Company ("FENOC"), for \$4,187,416.05 in attorney's fees and expenses associated with Mr. Geisen's criminal trial and the NRC enforcement proceeding.⁴

DISCUSSION

I. Mr. Geisen Did Not Incur Attorney's Fees or Expenses

Mr. Geisen omitted from his Application the crucial fact that the entirety of his \$4,187,416.05 in legal fees and expenses were at all times paid for by Mr. Geisen's former employer, FirstEnergy Nuclear Operating Company ("FENOC"), pursuant to an indemnification agreement.⁵ Had Staff counsel not appended to its Answer the September 24, 2002, letter that indicated Mr. Geisen might be indemnified, it is unclear whether this integral piece of information would have ever come to light. Moreover, had the Staff, in its Answer, not brought this issue forward, the Board very easily could have been left with the impression that a man with an

⁴ Reply Exhibit 1.

⁵ See Reply at 15-16 and Exhibit 1. It is apparent from the invoices in Reply Exhibit 1 that FENOC was billed monthly for all of the fees and expenses associated with Mr. Geisen's NRC and federal criminal proceedings.

individual estimated net worth of \$299,325 as of January 4, 2006,⁶ was fully responsible for the extensive cost of his defense.

In its Answer, the Staff cited federal appellate cases holding that a person whose fees are paid by an employer under an indemnification agreement has not incurred fees under the EAJA. Although Mr. Geisen concedes that the Staff accurately presented these cases, he nonetheless argues that despite the indemnification he should be deemed to have incurred fees under the EAJA. In support of this argument, Mr. Geisen cites decisions from the Federal Circuit and the Seventh Circuit in which the courts found that individuals whose fees were paid by *insurance companies* had incurred fees under the EAJA.⁷ However, as Mr. Geisen has acknowledged, the cases involving insurance companies are distinguishable from indemnification cases because, unlike a party who is indemnified, an insured party pays premiums for the protection of insurance coverage.⁸ Thus, unlike a party who is indemnified,

⁶ Application at Exhibit A.

⁷ Reply at 16, citing *United States v. Thouvenot, Wade & Moerschen, Inc.*, 596 F.3d 378, 383 (7th Cir. 2010), *Ed A. Wilson, Inc., v. General Services Administration*, 126 F.3d 1406, 1410 (Fed. Cir. 1997). In *Thouvenot*, the Seventh Circuit decided the case on the issue of substantial justification, but proceeded to briefly address the issue of fees paid by liability insurance although it was “not strictly necessary.” *Thouvenot*, 596 F.3d at 383. Mr. Geisen also cites cases from the Eleventh Circuit and Eighth Circuit, which have held that individuals whose fees were paid by non-profit legal services organizations, or who were represented by *pro bono* attorneys, were eligible to recover under the EAJA. Reply at 16 n.60, citing *Watford v. Heckler*, 765 F. 2d 1562 (11th Cir. 1985), *Cornella v. Schweiker*, 728 F.2d 978 (8th Cir. 1984). These cases have no relevance to Mr. Geisen’s situation, since Mr. Geisen’s fees were paid by FENOC, not by a non-profit legal services organization, and Mr. Geisen’s attorneys did not represent him *pro bono*. Moreover, implicit in these decisions is the assumption that the *pro bono* organization or attorney will receive the fees. See *Cornella*, 728 F.2d at 986 (noting that “[i]f attorneys’ fees to *pro bono* organizations are not allowed in litigation against the federal government, it would more than likely discourage involvement by these organizations in such cases, effectively reducing access to the judiciary for indigent individuals.”) (emphasis added). There is no need for Mr. Geisen’s attorneys to receive a fee award under the EAJA when they have already been compensated in full at rates which far exceed the EAJA limits. Such an award—effectively, a “bonus” for the attorneys—would not comport with the purpose of EAJA.

⁸ Reply at 18-19.

“the insured can be viewed as having incurred legal fees insofar as they have paid for legal services in advance as a component of the . . . insurance premiums.”⁹

In contrast, the Eighth Circuit decision in *SEC v. Comserv* is directly on point.¹⁰ In *Comserv*, the court examined “whether [the party] actually paid his own legal expenses.”¹¹ In *Comserv*, as in Mr. Geisen’s case, the attorneys directly billed the former employer, and the former employer paid the attorneys.¹² Thus, like the party in *Comserv*, Mr. Geisen “was never exposed to unconditional liability for legal fees” in his litigation with the NRC.¹³ Despite the clear distinction between his situation and the insurance cases, Mr. Geisen argues that the “better analysis” is the Seventh Circuit’s analysis in *Thouvenot*,¹⁴ which held that the EAJA applicant was not entitled to an award because the Government’s case was substantially justified.¹⁵ However, the discussion of the employer reimbursement issue in *Thouvenot* was not germane

⁹ *Ed A. Wilson, Inc.*, 126 F.3d at 1410; *see also Thouvenot*, 596 F.3d at 383 (“the cost of the defense, to the extent borne by the insurance company, is the cost that the insured paid for, just as he would have paid a lawyer for his defense had he had no insurance.”)

¹⁰ 908 F.2d 1407 (8th Cir. 1990). In *Comserv*, the main issue the court addressed was whether a prevailing party whose legal fees had been paid pursuant to an indemnification agreement with his former employer had “incurred” fees under the EAJA. 908 F.2d at 1413. Mr. Geisen correctly notes that in *Comserv*, the court mentioned the potential problem of “stand-in” litigants who seek fees under EAJA in order to pass them on to an ineligible party. Reply at 19, citing *Comserv*, 908 F.2d at 1416. However, this concern does not detract from the applicability of *Comserv*’s holding to Mr. Geisen’s situation because the bases of the holding were that the fee applicant “did not incur legal liability for attorneys’ fees” and that “the fee-deterrent-removal purpose of EAJA would not be served by an award of fees to an individual whose fees are fully paid by a noneligible organization.” *Comserv*, 908 F.2d at 1416.

¹¹ *Id.* at 1413.

¹² *Id.*

¹³ *Id.*

¹⁴ Reply at 19.

¹⁵ *Thouvenot*, 596 F.3d at 383.

to the resolution of the case.¹⁶ Mr. Geisen has not explained how dicta in an analogous case outweighs the holding of a case that is directly on point.

Further, Mr. Geisen's argument that "it can reasonably be argued that [he] is in the same position as the insured in that, instead of money, he exchanged the performance of his duties for the protection of the company if the performance of those duties resulted in his involvement in a proceeding against the government,"¹⁷ is unavailing. Mr. Geisen did not exchange his services to FENOC for future indemnification; Mr. Geisen exchanged his services to FENOC for a salary.¹⁸ Mr. Geisen did not then, like an insured to an insurer, pay that money to FENOC in exchange for indemnification.

Mr. Geisen also attempts to distinguish his situation by arguing that his indemnification agreement could have been terminated if FENOC, in its sole discretion, at any time determined that he engaged in deliberate misconduct.¹⁹ However, even after Mr. Geisen was convicted in 2007 for violating 18 U.S.C § 1001, FENOC continued to pay his attorney fees.²⁰ Because FENOC did not at that time, or subsequently, terminate his indemnification agreement, it is reasonable to conclude that FENOC never contemplated not paying Mr. Geisen's attorney fees.

¹⁶ *Id.* (stating that "[i]t is not strictly necessary for us to decide the issue" of whether an award of attorney fees under the EAJA can include fees incurred by the party's liability insurer). Moreover, the court's discussion of the indemnification issue focuses primarily on contingent arrangements such as liability insurance, where the insured pays premiums in exchange for coverage of potential future legal fees. *Id.* This is not Mr. Geisen's situation.

¹⁷ Reply at 21.

¹⁸ Mr. Geisen has not provided any evidence that such protection was an expected benefit, or that he was even aware of the potential that FENOC would indemnify him in the event that the NRC or DOJ took action against him.

¹⁹ Reply at 20.

²⁰ Reply Exhibit 1; *see also* Reply at 15-16 (acknowledging that "the fees for the work performed by [Mr. Geisen's attorneys] *were paid* by Mr. Geisen's former employer, [FENOC], pursuant to an indemnification agreement") (emphasis added).

More importantly, Mr. Geisen's argument is effectively moot, for the fact remains that Mr. Geisen's attorneys have been paid in full for their services, to the tune of \$4+ million.²¹ Apparently, Mr. Geisen has never been, and currently is not, under obligation to repay fees to his attorneys or to FENOC. Therefore, Mr. Geisen has not demonstrated that he has incurred fees in this matter.²² As the Eighth Circuit noted, the "primary intent of Congress in creating EAJA" was "to diminish the deterrent effect of the expense involved in seeking review of, or defending against, unreasonable government action."²³ The appropriate inquiry, therefore, is "whether [a party] would, as a practical matter, have been deterred from litigating had it been known that a fee-shifting award was not available upon a successful conclusion."²⁴ Because of his indemnification agreement, Mr. Geisen was not such a party. Therefore, to award him attorney's fees would be contrary to the manifest purpose of the EAJA. Rather, to award fees would result in either a *de facto* award of damages to Mr. Geisen or a windfall "bonus" to his attorneys, neither of which is consistent with the purpose of the EAJA.

²¹ Given that his attorney fees have been paid in full, Mr. Geisen's assertion that "[d]enying him a fee award in this case is particularly unjust as it would, in effect, punish him for being victorious," Reply at 21, is bewildering.

²² *United States v. Paisley*, 957 F.2d 1161, 1164 (4th Cir. 1992); *Comserv*, 908 F.2d at 1416; see also *Morrison v. Commissioner of Internal Revenue*, 565 F.3d 658, 662 (9th Cir. 2009) (holding that, under a fee-shifting provision in the tax code similar to the EAJA, "a taxpayer can 'incur' attorneys' fees if he assumes either (1) a noncontingent obligation to repay the fees advanced on his behalf at some later time; or (2) a contingent obligation to repay the fees in the event of their eventual recovery.").

²³ *Comserv*, 908 F.2d at 1415 (citations omitted); see also *Spencer v. NLRB*, 712 F.2d 539, 549-50 (D.C. Cir. 1983), cert. denied, 466 U.S. 936 (stating that "the central objective of the EAJA . . . was to encourage relatively impecunious private parties to challenge unreasonable or oppressive government behavior by relieving such parties of the fear of incurring large litigation expenses.").

²⁴ *Paisley*, 957 F.2d at 1164.

II. If the Board Determines that an Award is Appropriate, Mr. Geisen's Fee Demand is Excessive and Should be Reduced

For the reasons stated above, and in the Staff's Answer, Mr. Geisen is not entitled to an award of attorney's fees under the EAJA. If, however, the Board rejects the Staff's arguments and determines that an award is appropriate, the award should be substantially reduced.

As the staff stated in its Answer, Mr. Geisen has the burden of establishing the reasonableness of his fee request.²⁵ To meet this burden, Mr. Geisen's "supporting documentation 'must be of sufficient detail and probative value to enable the court to determine with a high degree of certainty that such hours were actually and reasonably expended.'"²⁶ In *Role Models*, the D.C. Circuit analyzed in detail the applicant's documentation, highlighting various deficiencies. These included, among other things, lumping together multiple tasks, records lacking adequate detail, and billing for time spent dealing with individuals whose roles in the case were not explained.²⁷ Mr. Geisen's documentation is rife with examples of exactly that type of documentation, which is not sufficient under the EAJA and Part 12. The discussion below contains a few illustrative examples; in addition, the Staff is providing three tables (Attachments 1, 2 and 3) delineating additional examples for the period 2005-2006.²⁸

A. Mr. Geisen's Claimed Attorney and Paralegal Fees Should be Greatly Reduced

Mr. Geisen requests \$296,662.50 in attorney and paralegal fees, which represents 3,442 hours of attorney time and 513 hours of paralegal time for the period from April 2005 through

²⁵ See Answer at 2, 8-10, citing *Role Models America, Inc. v. Brownlee*, 353 F.3d 962, 970 (D.C. Cir. 2004).

²⁶ *Id.* (internal citations omitted).

²⁷ *Id.* at 971-72.

²⁸ The examples provided in the attached tables should not be viewed as an exhaustive list, but rather as a reflection of what the Staff was able to identify within a limited 10-day period. The Staff expects that other instances of deficiencies in documentation will be found throughout Exhibit 1.

August 2010. The invoices provided in Exhibit 1 of the Reply include time spent on Mr. Geisen's federal criminal trial and his NRC enforcement proceeding. Many of the charges in the invoices to FENOC represent time entries that include elements of both of these proceedings, making it impossible to differentiate between the two. For example, on March 27, 2006, Mr. Hibey billed 4.5 hours for the following tasks: "Attention to order from NRC; conference with M. Reinhard and A. Wise; edit and finalize pleading in criminal case; analysis of Rod Cook interviews."²⁹ Another example occurs on June 12, 2006, when Mr. Hibey billed 5.5 hours of work for a "team meeting regarding NRC discovery; attention to materials in criminal case."³⁰ Regarding specific tasks or motions before the federal court, Mr. Geisen, for example, claims fees associated with time spent on a severance motion and also the Speedy Trial Act.³¹

There are also many charges related to the NRC's enforcement proceedings against Steven Moffitt and Dale Miller, which were entirely separate from the NRC's action against Mr. Geisen.³² For instance, there are a substantial number of hours claimed in 2006 regarding an August 9, 2006 Staff application for the issuance of a subpoena for Mr. Geisen in the *Miller* and *Moffitt* proceedings.³³ There are also a number of hours that appear to be spent in consultation

²⁹ Reply Exhibit 1, page 8 of April 28, 2006 Invoice No. 288072.

³⁰ Reply Exhibit 1, page 5 of July 31, 2006 Invoice No. 289748.

³¹ See e.g., Reply Exhibit 1, page 5 of July 31, 2006 Invoice No. 289748; Reply Exhibit 1, page 10 of November 22, 2006 Invoice No. 291960.

³² Although based on the same underlying incident, all parties (Geisen, Miller, and Moffitt) opposed consolidation when suggested by the Board early on in the proceedings. See Prehearing Conference Transcript at 8-12 (March 22, 2006).

³³ NRC Staff's Application for the Issuance of a Subpoena (Aug. 9, 2006) (ML0624103081). Further, as the Staff stated in its August 28, 2006 response to Mr. Geisen's motion to quash the subpoena: "Mr. Geisen's testimony is necessary to illuminate important matters in the *Moffitt* and *Miller* proceedings and the Staff intends to depose him for that purpose. The Staff is not attempting to circumvent the discovery schedule in the *Geisen* proceeding." NRC Staff Opposition to Motion to Quash Subpoena Issued to David Geisen (Aug. 28, 2006) (ML0624102922).

with Jane Penny, counsel for Messrs. Moffitt and Miller. Because these two proceedings are entirely separate from the NRC's action against Mr. Geisen, he should not be allowed to recover those attorney's fees.

Finally, many of the entries are simply too vague to determine reasonableness. For instance, Mr. Hibey often bills for such tasks as "attention to materials."³⁴ There are also a number of entries simply reflecting team meetings, conference calls, client meetings, or reviewing documents, none of which specify that these are related to the NRC enforcement case.³⁵

B. Generally Claimed Disbursements Should Not be Reimbursed

Mr. Geisen also requests \$22,778.83 in "disbursements" to cover expenses associated with the NRC proceeding. Some expenses include items such as "Copying," "Lexis/Westlaw" research, and "Telephone" calls without any reference to Mr. Geisen's NRC proceeding. For example, in 2006, Mr. Geisen's attorneys billed \$2,815.30 in copying expenses, \$35.35 in telephone and courier expenses, and \$6,129.40 in Lexis and Westlaw expenses. Without evidence showing that these expenses were spent on the NRC proceeding, the Board should not allow expenses such as these to be reimbursed.

There are similar issues with the claimed travel expenses. For example, counsel for Mr. Geisen claim \$3,211.04 in travel expenses in 2006. That cost represents expenses associated with three attorneys' one-night trip to Ohio. But, there is no explanation for the trips, nor is it reflected in the billing statement that the trips are associated with the NRC proceeding. Without

³⁴ See e.g., Reply Exhibit 1 pages 2, 9, 11 of August 31, 2006 Invoice No. 290294.

³⁵ See e.g., Reply Exhibit 1, pages 5, 6 of August 31, 2006 Invoice No. 290294; Reply Exhibit 1, page 3 of September 27, 2006 Invoice No. 290777.

such documentation or justification, such expenses should be excluded.³⁶ Further, much of the amount actually claimed for the overnight trips appears to be grossly excessive and should therefore be disallowed for that reason as well. For example, one attorney claimed \$231.07 in “FB&E,” which presumably stands for food, beverage, and entertainment. Another attorney, however, only claimed \$60.20. There is also a significant discrepancy in the transportation and lodging expenses for the three attorneys, with expenses claimed that range from \$484.53 for one to \$1,743.56 for another.³⁷

CONCLUSION

For the reasons stated above, and in the Staff’s Answer, Mr. Geisen is not eligible for a fee award under the EAJA because, among other things, his attorney fees and expenses have already been paid in full under an indemnification agreement with his former employer. Furthermore, even if the Board disagrees and determines that an award is appropriate, that award should be substantially reduced.

Respectfully submitted,

/RA by Kimberly A. Sexton/

Kimberly A. Sexton
Marcia J. Simon
Counsel for the NRC Staff

Dated at Rockville, Maryland,
this 22nd day of November, 2010.

³⁶ See *Role Models*, 353 F.3d at 971.

³⁷ Also, a \$57.77 “executive sedan service” is listed for the approximately five-mile trip from the attorneys’ office to Reagan National Airport.

ATTACHMENT 1

Date	Individual	Hours	Description
4/21/2005 ¹	Hibey	1.5	<ul style="list-style-type: none"> Review NRS's NOVs and Press Release Telephone conference with W. Gardner and with J. Conroy
1/4/2006	Wise	4.5	<ul style="list-style-type: none"> Telephone conference with J. Conroy Telephone conference with J. Burge Review documents regarding conversations with Stricken, Poole Review documents regarding client proffer
1/4/2006	Reinhard	4.5	<ul style="list-style-type: none"> Meet with A. Wise regarding criminal proceedings
1/5/2006	Hibey	1	<ul style="list-style-type: none"> Telephone conference with D. Geisen regarding DPA and government prosecutive intentions
1/6/2006	Wise	4.25	<ul style="list-style-type: none"> Meeting with M. Reinhard and telephone conference with R. Hibey regarding conversations with USA White
1/9/2006	Wise	3.25	<ul style="list-style-type: none"> Finalize letter to G. White and revised DPA
1/10/2006	Wise	3.75	<ul style="list-style-type: none"> Review documents regarding client proffer session with prosecutors
1/11/2006	Hibey	1	<ul style="list-style-type: none"> Telephone conference with J. Messerman and T. Matthews regarding discussions with U.S. Attorney
1/11/2006	Wise	4.5	<ul style="list-style-type: none"> Review documents regarding NRC order, government's DPA
1/18/2006	Wise	5.75	<ul style="list-style-type: none"> Telephone conference with D. Jenkins, W. Gardner, others regarding indemnification issues and strategy for NRC response
1/23/2006	Wise	3.25	<ul style="list-style-type: none"> Review indictment, review interview memoranda Telephone conference with client and K. Geisen regarding indictment and arraignment Telephone call with chambers of Mag. J. Armstrong regarding arraignment and pre-trial contact
1/24/2006	Wise	2.75	<ul style="list-style-type: none"> Communication with client regarding arraignment Review indictment and research issues regarding multiplicity and pleading of section 1001 claims
2/16/2006	Wise	6.75	<ul style="list-style-type: none"> Review J. Penny drafts of answers for Moffitt and Miller
2/22/2006	Wise	4.5	<ul style="list-style-type: none"> Meeting with R. Hibey, M. Reinhard regarding NRC answer, criminal discover
2/23/2006	Wise	4.75	<ul style="list-style-type: none"> Review Moffitt and Miller NRC answers
2/23/2006	Reinhard	3.5	<ul style="list-style-type: none"> Review FENOC by-laws

¹ Although the hours associated with this date do not have a check mark next to it, denoting that recovery is sought, 1.5 hours is claimed on page 2 of Exhibit 1 for April 2005.

Date	Individual	Hours	Description
3/27/2006	Hibey	4.5	<ul style="list-style-type: none"> Edit and finalize pleading in criminal case Analysis of Rod Cook interviews
4/5/2006	Wise	5.5	<ul style="list-style-type: none"> Review Grand Jury transcripts
4/10/2006	Wise	4.75	<ul style="list-style-type: none"> Review Grand Jury transcripts
4/11/2006	Wise	6.5	<ul style="list-style-type: none"> Review Grand Jury transcripts
4/11/2006	Reinhard	6	<ul style="list-style-type: none"> Review Grand Jury transcripts
5/30/2006	Wise	4.5	<ul style="list-style-type: none"> Meeting with R. Hibey regarding NRC matter and criminal discovery issues
6/1/2006	Wise	6.25	<ul style="list-style-type: none"> Review draft motion regarding complex case designation Telephone call with J. Conroy regarding same
6/1/2006	Harriot	.75	<ul style="list-style-type: none"> Present and discuss research on summary witness in 6th Circuit
6/5/2006	Hibey	6.5	<ul style="list-style-type: none"> Attention to materials
6/5/2006	Archer	2	<ul style="list-style-type: none"> Review reports Perform research
6/12/2006	Hibey	5.5	<ul style="list-style-type: none"> Attention to materials in criminal case
6/13/2006	Wise	7	<ul style="list-style-type: none"> Review and edit motion regarding Speedy Trial Act Review case regarding STA
6/14/2006	Hibey	4.5	<ul style="list-style-type: none"> Review materials Attend team meeting
6/14/2006	Wise	6	<ul style="list-style-type: none"> Attend team meeting
6/16/2006	Wise	8	<ul style="list-style-type: none"> Emails and telephone calls with AUSA Ballantine and Stricken regarding Speedy Trial Act issues
6/16/2006	Archer	2.25	<ul style="list-style-type: none"> Perform research
6/20/2006	Wise	5.5	<ul style="list-style-type: none"> Telephone call with client regarding NRC and DoJ proceedings, related licensing inquiries
6/21/2006	Wise	6.25	<ul style="list-style-type: none"> Review documents regarding licensing issues and impact upon NRC and DoJ proceedings Transmit documents to DoJ regarding STA motion
6/23/2006	McAleer	6.5	<ul style="list-style-type: none"> Conference with L. Butler regarding various document issues Telephone to, memoranda to and from A. Wise regarding supplementation, appearance issues
7/3/2006	Hibey	2	<ul style="list-style-type: none"> Attention to materials
7/11/2006	McAleer	4.25	<ul style="list-style-type: none"> Attend meeting with R. Hibey, A. Wise, M. Reinhard regarding various issues
7/11/2006	Wise	7	<ul style="list-style-type: none"> Conference call with Mag. J. Armstrong regarding criminal case E-mail correspondence with client regarding case issues
7/11/2006	Reinhard	1.5	<ul style="list-style-type: none"> Status conference Team meeting
7/13/2006	McAleer	1	<ul style="list-style-type: none"> Review (extensive) Moffitt/Miller disclosures Docket monitoring

Date	Individual	Hours	Description
7/17/2006	Hibey	6.5	<ul style="list-style-type: none"> Attention to materials
7/17/2006	McAleer	.75	<ul style="list-style-type: none"> Memoranda (several) from and to R. Hibey regarding NRC Staff request for deposition, invocation of 5th amendment at deposition in Moffitt and Miller cases
7/19/2006	Hibey	4.5	<ul style="list-style-type: none"> Attention to materials
7/19/2006	McAleer	8.25	<ul style="list-style-type: none"> Telephones to, from and with, memoranda to and from (many) L. Butler regarding monitoring of Moffitt and Miller docket, file issues
7/19/2006	Wise	5	<ul style="list-style-type: none"> Review documents Communication with client regarding meetings, case issues
7/26/2006	McAleer	5.25	<ul style="list-style-type: none"> Memoranda to and from (several) A. Wise regarding materials relating to Foster Review same
8/1/2006	McAleer	4.75	<ul style="list-style-type: none"> Telephone to and memorandum from L. Butler regarding Moffitt and Miller discovery requests Prepare for meeting with FENOC attorneys regarding various issues Travel to and attend meeting with FENOC attorneys Conferences with R. Hibey, et al. regarding same
8/2/2006	Hibey	8	<ul style="list-style-type: none"> Meeting with client Review of documents
8/2/2006	McAleer	6.75	<ul style="list-style-type: none"> Teleconference and conference with R. Hibey regarding NRC Order, indictment, other documents
8/3/2006	McAleer	8.25	<ul style="list-style-type: none"> Telephones from (2) and with M. Spencer regarding request for deposition of D. Geisen in Moffitt and Miller matters Memoranda (several) regarding Moffitt and Miller discovery requests
8/4/2006	McAleer	5.25	<ul style="list-style-type: none"> Teleconferences with (2), memorandum from L. Butler regarding Cook Motion to Quash in Moffitt and Miller matters
8/7/2006	McAleer	2.75	<ul style="list-style-type: none"> Teleconference with M. Spencer (NRC) regarding request for deposition of D. Geisen in Moffitt and Miller matters Memorandum to A. Wise regarding list of upcoming depositions in Moffitt and Miller matters Memorandum from (2) and conference with L. Butler regarding obtaining Cook Motion to Quash

Date	Individual	Hours	Description
8/8/2006	McAleer	2.75	<ul style="list-style-type: none"> • Draft (begin) (extensive) letter to M. Spencer (NRC) regarding NRC request for deposition of D. Geisen in Moffitt and Miller matters • Memoranda (several) to and from A. Wise, R. Hibey regarding draft letter • Conference with R. Hibey regarding same, 8/4 teleconference with J. Penny • Revise and formalize letter to M. Spencer (NRC) • Memorandum to M. Spencer (NRC) regarding same
8/8/2006	McAleer	3.25	<ul style="list-style-type: none"> • Memorandum from and to A. Wise regarding Cook Motion to Quash, possible Geisen motion to quash • Review Cook Motion to Quash • Memorandum to R. Hibey, A. Wise regarding same
8/9/2006	McAleer	4.75	<ul style="list-style-type: none"> • Memorandum to J. Penny, J. Conroy regarding 8/8 letter to NRC on Geisen deposition, 8/15 teleconference • Memorandum from (2) and to L. Butler, A. Wise regarding Moffitt/Miller docket issues • Teleconferences (2) with M. Spencer (NRC) regarding filing of subpoena application for deposition of D. Geisen, acceptance of service • Teleconferences and memorandum with team regarding same • Review memorandum from M. Spencer attaching subpoena application
8/12/2006	McAleer	1	<ul style="list-style-type: none"> • Memoranda from and to E. O'Keefe, F. Dakka regarding pleadings for R. Hibey • Review memorandum from R. Hibey • Review memoranda from A. Wise regarding exhibits for drafting Motion to Quash, draft Motion to Quash
8/14/2006	McAleer	3.25	<ul style="list-style-type: none"> • [various items related to the Motion to Quash and NRC subpoena of David Geisen and Moffitt/Miller proceedings]
8/14/2006	McAleer	4.5	<ul style="list-style-type: none"> • Memoranda (many) to and from J. Penny, J. Conroy, R. Hibey, et al. regarding 8/15 teleconference to discuss status of Moffitt/Miller discovery • Memoranda and conferences regarding logistics for 8/15 teleconference • Review memoranda from and to M. Reinhard, R. Hibey regarding article in Ohio paper • Memoranda from and to R. Malet regarding certificate of service, other issues for draft Motion to Quash

Date	Individual	Hours	Description
8/15/2006	McAleer	2.25	<ul style="list-style-type: none"> [various items related to the Motion to Quash and NRC subpoena of David Geisen and Moffitt/Miller proceedings]
8/15/2006	McAleer	4.75	<ul style="list-style-type: none"> [various items related to the Motion to Quash and NRC subpoena of David Geisen and Moffitt/Miller proceedings]
8/16/2006	McAleer	3.5	<ul style="list-style-type: none"> [various items related to the Motion to Quash and NRC subpoena of David Geisen]
8/16/2006	McAleer	3.75	<ul style="list-style-type: none"> [various items related to the Motion to Quash and NRC subpoena of David Geisen]
8/16/2006	Reinhard	2	<ul style="list-style-type: none"> Telephone conference with J. Conroy regarding Cook deposition Review NRC Order regarding Cook
8/17/2006	McAleer	4.25	<ul style="list-style-type: none"> [various items related to the Motion to Quash and NRC subpoena of David Geisen]
8/17/2006	Wise	2.75	<ul style="list-style-type: none"> Review documents, review orders and pleadings regarding motion to quash subpoena
8/21/2006	McAleer	3.75	<ul style="list-style-type: none"> [various items related to the Motion to Quash and NRC subpoena of David Geisen]
8/22/2006	Hibey	3.5	<ul style="list-style-type: none"> Attention to information regarding deposition in Miller/Moffitt matter Telephone conference with C. McAleer
8/22/2006	McAleer	2.25	<ul style="list-style-type: none"> [various items related to the Motion to Quash and NRC subpoena of David Geisen] Teleconferences with (2), memorandum to R. Hibey regarding revisions to J. Penny text Memorandum to J. Penny regarding proposed text
8/22/2006	McAleer	2.75	<ul style="list-style-type: none"> Teleconference with R. Hibey regarding 8/23 meeting with J. Conroy Memorandum regarding same Review memoranda (several) from and to R. Malet, R. Hibey, others regarding Goyal and Wuokko depositions in Moffitt and Miller matters
8/22/2006	Wise	7	<ul style="list-style-type: none"> Review NRC Orders and NRC Staff filings regarding Motion to Compel and Motion to Quash Legal research Document review
8/22/2006	Reinhard	.5	<ul style="list-style-type: none"> Telephone call from T. Matthews regarding deposition testimony
8/23/2006	Hibey	7.5	<ul style="list-style-type: none"> Team meeting Meeting with co-counsel Telephone call to C. Boss Attention to grand jury materials

Date	Individual	Hours	Description
8/23/2006	McAleer	1.75	<ul style="list-style-type: none"> • Teleconferences (4) with A. Wise, M. Reinhard, others regarding meeting to discuss NRC Opposition, criminal motions • Assemble and review documents in preparation for meeting with J. Conroy, et al.
8/23/2006	McAleer	4	<ul style="list-style-type: none"> • Conference (extensive) with J. Conroy, R. Hibey, et al. regarding criminal motions issues
8/25/2006	Wise	3.75	<ul style="list-style-type: none"> • E-mail and phone call with L. Frazier regarding indictment challenge issues
8/28/2006	Hibey	5	<ul style="list-style-type: none"> • Attentions to grand jury materials • Conference with C. McAleer and M. Reinhard
8/29/2006	McAleer	6.5	<ul style="list-style-type: none"> • Memorandum from and to A. Wise regarding meeting • Memorandum from R. Hibey regarding same • Teleconference with, memoranda from and to T. Matthews regarding continued status discussion, copy of deposition transcript in Moffitt/Miller proceeding • Teleconference with S. Brock regarding meet and confer discussion on Motion to Quash • Memorandum to and from R. Hibey regarding same
8/30/2006	McAleer	4.75	<ul style="list-style-type: none"> • Memoranda from and to R. Malet regarding same, Moffitt/Miller docket issues
8/31/2006	McAleer	5.5	<ul style="list-style-type: none"> • Review memoranda from Judge Farrar regarding order concerning Motion to Quash, including postponement pending further proceedings, and order regarding NRC Staff request for extension of disclosure time • Review memorandum from L. Butler regarding Moffitt/Miller filings
9/6/2006	Wise	9	<ul style="list-style-type: none"> • Legal research regarding indictment issues
9/6/2006	Reinhard	7.5	<ul style="list-style-type: none"> • Meeting with R. Hibey and L. Prager regarding indictment • Meeting with A. Wise regarding meeting with D. Geisen
9/7/2006	Hibey	7.5	<ul style="list-style-type: none"> • Meeting with client
9/7/2006	McAleer	5.25	<ul style="list-style-type: none"> • Review memorandum from A. Wise regarding agenda for meeting with D. Geisen • Assemble and review documents in preparation for meeting with D. Geisen • Attend (extensive) meeting with D. Geisen, R. Hibey, others
9/7/2006	Wise	10	<ul style="list-style-type: none"> • Meeting with client • Legal research regarding indictment issues

Date	Individual	Hours	Description
9/8/2006	Hibey	7.5	<ul style="list-style-type: none"> Meeting with client Team meeting regarding 1001 issues Telephone conference with T. Matthews
9/8/2006	McAleer	4.75	<ul style="list-style-type: none"> Attend (extensive) meeting with D. Geisen, R. Hibey, others Review memorandum from L. Butler regarding Moffitt/Miller dockets
9/12/2006	Wise	4.75	<ul style="list-style-type: none"> Review NRC dockets and related documents Legal research regarding multiplicity issues Review GJ transcripts
9/14/2006	McAleer	1.5	<ul style="list-style-type: none"> Memorandum from (2) and to R. Malet regarding Moffitt/Miller docket entries, posting
9/14/2006	Wise	4	<ul style="list-style-type: none"> Legal research
9/20/2006	McAleer	2	<ul style="list-style-type: none"> Teleconference (extensive) with J. Penny regarding status of depositions, several other issues Memoranda from and to (many) J. Penny regarding deposition transcripts, Board order regarding Miller settlement, other documents Review attachments to same Memoranda from and to J. Penny regarding Penny deposition chart, list of additional potential depositions Memorandum to R. Hibey, others regarding Penny deposition chart
9/20/2006	McAleer	1.75	<ul style="list-style-type: none"> Memoranda to and from, conferences with R. Malet regarding deposition transcripts from Moffitt and Miller matters Several memoranda to and from R. Hibey, others regarding 9/27 meeting with J. Penny to discuss NRC depositions, other issues Memoranda to and from J. Penny regarding 9/27 meeting
9/20/2006	McAleer	3.75	<ul style="list-style-type: none"> Draft (extensive) memorandum summarizing teleconference with and status information from J. Penny Memorandum to R. Hibey, et al. regarding same Prepare for status meeting Conference with R. Hibey, others regarding J. Penny issues, process for drafting Geisen's answers to written discovery, other issues Review NRC filing regarding Cook deposition transcript
9/20/2006	Wise	6	<ul style="list-style-type: none"> Draft and revise letter to DoJ Ballantine regarding discovery Review GJ transcripts and exhibits

Date	Individual	Hours	Description
9/21/2006	McAleer	1.75	<ul style="list-style-type: none"> • Memoranda to and from R. Hibey regarding analysis of deposition transcripts from Moffitt and Miller matters
9/25/2006	McAleer	5.25	<ul style="list-style-type: none"> • [various items related to the Motion to Quash and NRC subpoena of David Geisen]
9/25/2006	Wise	6.75	<ul style="list-style-type: none"> • Review NRC Board email regarding Tuesday hearing • Review R. cook deposition transcript and related order • Review pleadings regarding motion to quash subpoena • Legal research regarding motions issues • Review documents
9/26/2006	Hibey	4.5	<ul style="list-style-type: none"> • Conference call with J. Penny • Meeting with J. Conroy • Conference call with NRC judges • Attention to materials
9/26/2006	McAleer	5.5	<ul style="list-style-type: none"> • [various items related to the Motion to Quash and NRC subpoena of David Geisen] • Review J. Conroy letter regarding discovery issues in criminal case
9/26/2006	Wise	7	<ul style="list-style-type: none"> • Conference call with NRC Board regarding client deposition • Meeting with R. Hibey regarding same • Conference call/meeting with J. Penny, J. Conroy regarding NRC proceedings of Moffitt/Miller
9/26/2006	Reinhard	2.25	<ul style="list-style-type: none"> • Meet to prepare for NRC telephone call • NRC telephone hearing • Edit motion on multiplicity
9/27/2006	Hibey	4.5	<ul style="list-style-type: none"> • Meeting with J. Penny and J. Conroy • Review materials
9/27/2006	McAleer	3.75	<ul style="list-style-type: none"> • Assemble and review documents and pleadings for materials with J. Penny, J. Conroy • Conference with R. Hibey, J. Conroy, others regarding various issues • Conference (extensive) with R. Hibey, J. Penny, J. Conroy, M. Reinhard, A. Wise regarding various issues
9/27/2006	Reinhard	3.5	<ul style="list-style-type: none"> • Meet with J. Penny, R. Hibey, A. Wise and J. Conroy regarding NRC strategy and discovery
9/29/2006	McAleer	2.75	<ul style="list-style-type: none"> • Review memorandum and attachment from R. Hibey regarding Board approval of Miller settlement

Date	Individual	Hours	Description
9/29/2006	Wise	2.5	<ul style="list-style-type: none"> Review NRC dockets regarding Moffitt and Miller Review legal research regarding Fifth Amendment invocation Legal research regarding severance
10/1/2006	McAleer	2.5	<ul style="list-style-type: none"> Review memorandum from R. Hibey regarding entry of Miller order, referral of Moffitt to ADR
10/2/2006	McAleer	8.25	<ul style="list-style-type: none"> Telephone to and with, memorandum from A. Wise regarding assertion of Fifth Amendment, discovery response issues, review of D. Geisen diskettes Review memorandum from M. Farrar (NRC Board) regarding order reflecting 9/26 telehearing Review order regarding same
10/4/2006	McAleer	1.25	<ul style="list-style-type: none"> Memorandum from and to R. Hibey, A. Wise regarding 10/5 meeting
10/5/2006	Wise	8.75	<ul style="list-style-type: none"> Review and edit multiplicity motion, review legal research regarding legislative history and related issues Review Siemaszko and Cook statements with regard to severance motion Review documents and transcripts Telephone call with client
10/6/2006	Hibey	4.5	<ul style="list-style-type: none"> Conference with A. Wise regarding issues in draft motion Telephone conference with C. McAleer
10/6/2006	McAleer	2.5	<ul style="list-style-type: none"> Teleconference with, memorandum from R. Hibey regarding structure modification information
10/9/2006	Hibey	3	<ul style="list-style-type: none"> Attention to materials
10/9/2006	Wise	5.75	<ul style="list-style-type: none"> Legal research and document review regarding severance motion Outline and review Siemaszko statements and recent documents Conference with M. Reinhard Review press regarding Siemaszko interviews and statements
10/9/2006	Reinhard	1	<ul style="list-style-type: none"> Meet with A. Wise regarding motions Review multiplicity motion
10/10/2006	Reinhard	.25	<ul style="list-style-type: none"> Meet with A. Wise and telephone call with A. Wise regarding motions
10/11/2006	Hibey	5.5	<ul style="list-style-type: none"> Meeting with team regarding recent motions and proposed filing Attention to materials
10/11/2006	McAleer	3.75	<ul style="list-style-type: none"> Review memorandum from R. Hibey regarding Moffitt filing
10/11/2006	Wise	7.75	<ul style="list-style-type: none"> Outline and draft severance motion Legal research regarding same

Date	Individual	Hours	Description
10/12/2006	Hibey	3.5	<ul style="list-style-type: none"> • Attention to materials • Conference with A. Wise
10/12/2006	McAleer	1.75	<ul style="list-style-type: none"> • Review facsimile from DOJ regarding criminal action
10/12/2006	Wise	7	<ul style="list-style-type: none"> • Draft and edit severance motion, legal research and edits regarding multiplicity motion, telephone call with J. Conroy regarding same, review J. Conroy comments regarding same • Conference with M. Reinhard • Review Cook and Siemaszko OI statements and issues relating to motion
10/13/2006	McAleer	1.5	<ul style="list-style-type: none"> • Telephones with (2) and to, memorandum from and to (several) R. Hibey regarding DOJ expert opinion disclosures • Review disclosure
10/13/2006	Wise	7.75	<ul style="list-style-type: none"> • Draft and edit severance motion, legal research regarding same • Review discovery letters regarding bill of particulars and scheme allegations in Count 1, legal research regarding bill of particulars issues
10/16/2006	Hibey	4	<ul style="list-style-type: none"> • Meeting of team regarding both cases • Attention to materials
10/16/2006	McAleer	4.75	<ul style="list-style-type: none"> • Memorandum from and to R. Malet regarding additional Moffitt/Miller deposition transcripts, revised witness chart • Review Moffitt motion to withdraw
10/16/2006	Reinhard	5	<ul style="list-style-type: none"> • Team meeting
10/17/2006	McAleer	1.5	<ul style="list-style-type: none"> • Review memoranda (2) regarding Ballentine, Conroy letters
10/17/2006	Reinhard	3	<ul style="list-style-type: none"> • Draft and edit Geisen motions • Meet with A. Wise regarding motions
10/18/2006	McAleer	1.25	<ul style="list-style-type: none"> • Review memoranda (several) regarding Siemaszko order, 10/19 meeting with J. Conroy, letter in criminal action and filing of joint motion to extend motions deadline on discovery and stay issues
10/18/2006	Wise	7	<ul style="list-style-type: none"> • Draft and edit motions, legal research regarding same • Meeting with R. Hibey and M. Reinhard regarding multiplicity and severance issues • Review documents
10/18/2006	Reinhard	2	<ul style="list-style-type: none"> • Edit motions • Meet with R. Hibey and A. Wise regarding motions
10/19/2006	McAleer	3.5	<ul style="list-style-type: none"> • Review memoranda (2) regarding Siemaszko issues

Date	Individual	Hours	Description
10/19/2006	Wise	7.75	<ul style="list-style-type: none"> Meeting with R. Hibey, M. Reinhard, J. Conroy regarding motions edits and revisions Legal research regarding multiplicity issues Edit motions Review documents
10/19/2006	Reinhard	3.5	<ul style="list-style-type: none"> Meet with J. Conroy, A. Wise and R. Hibey regarding motions Edit and finalize motions
10/24/2006	Hibey	1	<ul style="list-style-type: none"> Team meeting
10/24/2006	Wise	7.75	<ul style="list-style-type: none"> Draft and edit motion for bill of particulars legal research regarding same Review documents
10/25/2006	Wise	8.5	<ul style="list-style-type: none"> Draft and edit motion regarding bill of particulars Telephone call with J. Conroy regarding same Legal research, document review
11/3/2006	Wise	8	<ul style="list-style-type: none"> Review USDC Order and Conroy motion for extension of deadlines for reply
11/6/2006	McAleer	5.5	<ul style="list-style-type: none"> Review memoranda from M. Reinhard regarding Ohio articles
11/7/2006	Wise	7.25	<ul style="list-style-type: none"> Legal research regarding Brady and Bruton issues in advance of reply filings Legal research regarding 6(e) issues
11/8/2006	Wise	8.25	<ul style="list-style-type: none"> Legal research regarding 6(e) violations and remedies
11/9/2006	Wise	7	<ul style="list-style-type: none"> Conference with R. Hibey regarding 6(e) issues Review cases and treatises regarding 6(e) issues Review GJ testimony and OI transcripts
11/15/2006	Hibey	5.5	<ul style="list-style-type: none"> Telephone conference with J. Penny Review Geisen statements to DOJ/NRC
11/15/2006	Wise	15	<ul style="list-style-type: none"> Telephone call with AUSA T. Ballentine regarding discovery Review DoJ discovery correspondence
11/16/2006	Wise	6	<ul style="list-style-type: none"> Legal research regarding outstanding motions issues in USDC case Review documents
11/17/2006	McAleer	2.75	<ul style="list-style-type: none"> Revise and finalize Opposition and Cross-Motion
11/17/2006	Wise	7	<ul style="list-style-type: none"> Review government oppositions to Motions (x4), review cases regarding same
11/20/2006	Hibey	4	<ul style="list-style-type: none"> Review materials and opposition pleadings Conference with C. McAleer Telephone conference with J. Penny
11/20/2006	McAleer	2.75	<ul style="list-style-type: none"> Review (continued) (extensive) NRC Staff discovery responses in Moffitt and Miller matters for potential deficiency issues

Date	Individual	Hours	Description
11/20/2006	Wise	8.5	<ul style="list-style-type: none"> Review government responses to motions to sever defendants, motion to dismiss counts, motion to compel discovery
11/21/2006	Hibey	4	<ul style="list-style-type: none"> Review materials Conference with A. Wise and M. Reinhard regarding oppositions
11/21/2006	Wise	8.25	<ul style="list-style-type: none"> Conference with R. Hibey and M. Reinhard regarding opposition Review government responses to motions and review cases related to defense response
11/21/2006	Reinhard	1.25	<ul style="list-style-type: none"> Meet with A. Wise and R. Hibey regarding response to oppositions Telephone call with D. Ferraro regarding document review
11/22/2006	Wise	5.75	<ul style="list-style-type: none"> Legal research regarding response to government opposition to motion to dismiss counts
11/24/2006	McAleer	2.75	<ul style="list-style-type: none"> Continue reviewing discovery responses in Moffitt and Miller matters
11/27/2006	McAleer	6.25	<ul style="list-style-type: none"> Review memorandum from R. Hibey regarding Miller dismissal issues
11/27/2006	Wise	8.25	<ul style="list-style-type: none"> Legal research and draft outlines for motions replies Review government briefs and cited cases Telephone conference with R. Hibey regarding same Meeting with M. Reinhard regarding same Review documents
11/28/2006	Hibey	5	<ul style="list-style-type: none"> Review materials Conference with A. Wise
11/28/2006	Wise	7	<ul style="list-style-type: none"> Review cases and documents Draft outline for motions replies
12/1/2006	McAleer	1.25	<ul style="list-style-type: none"> Memorandum to and from (several), conferences with R. Malet regarding 11/29 document production issues, including assembling DOJ and UCS documents
12/1/2006	Reinhard	2	<ul style="list-style-type: none"> Edit and circulate replies to pending motions
12/4/2006	Hibey	6.5	<ul style="list-style-type: none"> Review, edit, and finalize pleadings Telephone conference with counsel regarding case
12/4/2006	Reinhard	3.5	<ul style="list-style-type: none"> Finalize and file replies to various motions Review government expert report

Date	Individual	Hours	Description
12/5/2006	McAleer	4	<ul style="list-style-type: none"> Review (extensive) DOJ and UCS documents Draft Exhibit A (regarding list of DOJ and UCS documents) Draft Exhibit B (list of proprietary documents withheld from production) Draft Exhibit C (privilege log) Memoranda (several) to and from, conferences with R. Malet regarding draft Exhibits
12/5/2006	McAleer	1.75	<ul style="list-style-type: none"> Review memorandum from R. Malet regarding new Moffitt filings
12/5/2006	Wise	7	<ul style="list-style-type: none"> Finalize and file reply regarding bill of particulars
12/5/2006	Reinhard	1	<ul style="list-style-type: none"> Review filing in criminal matters
12/8/2006	McAleer	2.25	<ul style="list-style-type: none"> Review memorandum from R. Malet regarding DOJ production of interview notes
12/11/2006	Wise	7	<ul style="list-style-type: none"> Review GJ transcripts Tele. call with T. Ballantine regarding reply briefs and discovery issues
12/12/2006	Hibey	4.5	<ul style="list-style-type: none"> Analyze materials
12/12/2006	Wise	6.75	<ul style="list-style-type: none"> Review transcripts from Miller and Moffitt proceedings Meeting with R. Hibey regarding strategy issues Review GJ transcripts
12/13/2006	Hibey	6	<ul style="list-style-type: none"> Analyze materials
12/13/2006	McAleer	2.75	<ul style="list-style-type: none"> Review memorandum from R. Hibey regarding Moffitt pleadings
12/13/2006	Wise	7.25	<ul style="list-style-type: none"> Meeting with R. Hibey regarding content of disclosures and 5A waiver issues
12/14/2006	Hibey	6.5	<ul style="list-style-type: none"> Review materials
12/14/2006	McAleer	2.5	<ul style="list-style-type: none"> Memoranda from and to R. Hibey regarding schedule issue pertaining to striking expert witness
12/14/2006	McAleer	2.25	<ul style="list-style-type: none"> Review memorandum from R. Hibey regarding documents and information from J. Penny
12/18/2006	Wise	6	<ul style="list-style-type: none"> Review NRC Miller and Moffitt transcripts and related documents
12/19/2006	Wise	7	<ul style="list-style-type: none"> Review documents regarding testimony of K. Byrd and R. Rishel and PRA models, meeting with R. Hibey regarding same issues and development of trial theories and examinations Review transcripts and new materials from J. Penny Telephone call with T. Ballantine regarding case issues and discovery
12/19/2006	Reinhard	2.5	<ul style="list-style-type: none"> Meet with A. Wise and R. Hibey regarding technical issues and criminal trail
12/20/2006	Wise	7.5	<ul style="list-style-type: none"> Review transcripts of OI Miller and Moffitt depositions

Date	Individual	Hours	Description
12/20/2006	Reinhard	2.5	<ul style="list-style-type: none">• Meet with R. Hibey and A. Wise regarding criminal trial preparation and October meeting with NRA T.A.S.
12/21/2006	Hibey	6.5	<ul style="list-style-type: none">• Review and analyze materials
12/28/2006	Hibey	1.5	<ul style="list-style-type: none">• Edit and finalize pleading
TOTAL		847.5	

ATTACHMENT 2

Date	Individual	Hours	Description
3/8/2006	Butler	1.75	<ul style="list-style-type: none"> Meet with M. Reinhard, A. Wise regarding status of database project, Grand Jury transcripts, and IKON Statement of Work
6/5/2006	Butler	7.25	<ul style="list-style-type: none"> Prepare incoming documents and CDs received via DOJ letter dated June 2 for IKON processing Review and log June 5 materials received Review Siemaszko and Cook database searches
6/6/2006	Butler	7.25	<ul style="list-style-type: none"> Review Siemaszko and Cook database searches
6/7/2006	Butler	7	<ul style="list-style-type: none"> Review Siemaszko and Cook database searches
6/13/2006	Butler	4.5	<ul style="list-style-type: none"> Incoming documents: review, log and prepare documents/CDs received from NRC and DOJ for processing by IKON
6/15/2006	Butler	7	<ul style="list-style-type: none"> Preparation of Grand Jury exhibits per R. Hibey request
6/19/2006	Butler	6.5	<ul style="list-style-type: none"> Grand Jury exhibits: discuss organization of with R. Malet
6/27/2006	Butler	7.25	<ul style="list-style-type: none"> Grand Jury Exhibits, NRC OI Interviews/Transcripts, NRC OI Report Exhibits: organization of
8/22/2006	Malet	5.5	<ul style="list-style-type: none"> Complete case law and authority binder project per request of C. McAleer Make additions to Miller and Moffitt docket spreadsheets reflecting pleadings, transcripts, and orders Retrieve application for a subpoena to Goyal and notice of deposition for Wuokko per request of C. McAleer
9/8/2006	Butler	5.25	<ul style="list-style-type: none"> Miller and Moffitt dockets: update/review of Client meeting: organization of materials for Retrieval and organization of requested cases per C. McAleer Goyal case: review Pacer for suit per M. Reinhard
9/12/2006	Butler	6.5	<ul style="list-style-type: none"> Miller and Moffitt dockets: review for updates
9/12/2006	Malet	5.75	<ul style="list-style-type: none"> Create electronic folders containing all Miller and Moffitt attachments on NRC docket list Create spreadsheet containing list of 2006 subpoenas regarding Miller and Moffitt
10/3/2006	Malet	8.5	<ul style="list-style-type: none"> Check for updates on Miller and Moffitt dockets per request of L. Butler
10/9/2006	Malet	6.75	<ul style="list-style-type: none"> Check for updates on Miller and Moffitt dockets per request of L. Butler

Date	Individual	Hours	Description
10/26/2006	Bulter	9.5	<ul style="list-style-type: none"> • Miller/Moffitt NRC disclosure documents: discussion and review of organization (per C. McAleer request) with D. Nunley • Miller/Moffitt dockets: review of NRC site for updates • Discuss same with R. Malet
11/9/2006	Butler	9.75	<ul style="list-style-type: none"> • Bill of Particulars: file motion per A. Wise request
11/28/2006	Butler	4	<ul style="list-style-type: none"> • Region III employees: review Grand Jury transcripts regarding per M. Reinhard request
11/29/2006	Butler	9	<ul style="list-style-type: none"> • Grand Jury exhibits: requested exhibits for attorney review per M. Reinhard
11/30/2006	Butler	9.25	<ul style="list-style-type: none"> • Local Court Rules: review filing of sealed documents per M. Reinhard
TOTAL		128.25	

NOTE: This table represents the most egregious examples of deficiencies in documentation for paralegal hours charged in 2006. The Staff believes, however, that all 388.75 of the charged paralegal hours in 2006 are deficient due to vagueness.

ATTACHMENT 3

Date	Expense	Amount	Description
2/8/2006	Travel	\$633.91	Travel – Matthew Reinhard Transportation/Lodging Expenses for Toledo OH 01/31 – 02/01/06
2/8/2006	Travel Meals	\$231.07	Travel Meals – Matthew Reinhard FB&E for Toledo OH 01/31-02/01/06
2/13/2006	Travel	\$484.53	Travel – Andrew Wise Transportation/Lodging Expenses for Toledo OH 01/31-02/01/06
2/13/2006	Travel Meals	\$60.20	Travel Meals – Andrew Wise FB&E for Toledo OH 01/31-02/01/06
2/24/2006	Local Transportation/Taxi	\$57.77	Local Transportation/Taxi – Sunny's Executive Sedan Service, Inc. From: M&C DC Office, To: DCA, Res. #103536, 1/31/06
Various	Copying	\$5.60	March 30,2006 Invoice
Various	Lexis/Westlaw	\$410.24	March 30,2006 Invoice
2/24/2006	Local Courier	\$6.95	Local Courier From: Miller & Chevalier To: 1111 Penn Tracking Number: mc3622
3/7/2006	Travel	\$1,743.56	Travel – Richard A. Hibey Transportation/Lodging Expenses for Cleveland OH 01/31-02/01/06
Various	Copying	\$3.90	April 28, 2006 Invoice
Various	Lexis/Westlaw	\$5,719.16	April 28, 2006 Invoice
Various	Telephone	\$17.20	April 28, 2006 Invoice
Various	Copying	\$136.80	May 25, 2006 Invoice
Various	Telephone	\$11.20	May 25, 2006 Invoice
Various	Copying	\$64.00	June 29, 2006 Invoice
Various	Copying	\$1,009.60	July 31, 2006 Invoice
Various	Copying	\$926.70	August 31, 2006 Invoice
Various	Copying	\$668.70	September 27, 2006 Invoice

Total – Challenged Expenses by Category (2006)	Total Amount
Travel Expenses	\$3,211.04
Copying Expenses	\$2,815.30
Telephone/Courier Expenses	\$35.35
Lexis/Westlaw Expenses	\$6,129.40
TOTAL	\$12,191.09

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
)
 DAVID GEISEN) Docket No. IA-05-052
)
) ASLBP No. 06-845-01-EA
)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S REQUEST FOR LEAVE TO RESPOND TO DAVID GEISEN'S REPLY IN SUPPORT OF HIS APPLICATION FOR AWARD OF ATTORNEY'S FEES" and "NRC STAFF'S RESPONSE TO DAVID GEISEN'S REPLY IN SUPPORT OF HIS APPLICATION FOR AWARD OF ATTORNEY'S FEES" in the above captioned proceeding have been served on the following persons by deposit in the United States Mail; through deposit in the Nuclear Regulatory Commission internal mail system as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**) on this 22nd day of November, 2010.

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/RA/

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