

July 14, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

ANDREW SIEMASZKO

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)
)

Docket No. IA-05-021

ASLBP No. 05-839-02-EA

NRC STAFF STATUS REPORT

The Atomic Safety and Licensing Board issued an Order dated April 6, 2006 directing the Staff to file a status report at intervals not to exceed three months or whenever an event occurs that materially affects the scheduling in the criminal proceeding. We have been informed by Thomas Ballantine, Department of Justice, on July 14, 2006, as follows:

On June 20, 2006, the Government filed a "Joint Motion for Exclusion of Time Under the Speedy Trial Act" on behalf of all parties. Each of the defendants (Messrs. Geisen, Cook, and Siemaszko) have signed that motion and the United States is filing those signatures with the court. The motion requested that the court find that because of its complexity, this case should be declared complex for all Speedy Trial Act purposes and that the ends of justice require that the period of continuance from January 27 (date of the defendants' first appearance) through July 11, 2006, be excluded from the days charged against the Act's seventy-day speedy trial requirements. On July 7, 2006, the court granted the parties' joint motion (attached).

As ordered by the court on May 24, 2006, the parties held a telephone status conference on July 11, 2006. During the conference, the parties agreed to set a new motion deadline of October 20, 2006. As agreed during the conference, Government counsel will file a joint motion seeking exclusion of the period from July 11 through October 20 from the Speedy Trial Act, based on the court's earlier finding of complexity.

A trial date has not been set. Government counsel's estimates of (a) when a firm trial date will be set, (b) when government counsel believes that this case will be scheduled for trial, and (c) the estimated duration of the trial, have not changed since the Staff's April 20, 2006. The Government is not aware of any other information that may shed light on the likely schedule for the criminal proceeding.

Respectfully submitted,

/RA Mary C. Baty/

Sara E. Brock
Mary C. Baty
Counsel for NRC Staff

Dated at Rockville, Maryland
this 14th day of July, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Crim. No. 3:06-cr-00712-DAK
)	
DAVID GEISEN,)	United States Magistrate Judge
RODNEY COOK, AND)	Vernelis K. Armstrong
ANDREW SIEMASZKO)	

**JOINT MOTION FOR EXCLUSION OF TIME
UNDER THE SPEEDY TRIAL ACT**

The United States of America, by and through undersigned counsel, and the defendants, David Geisen, Rodney Cook and Andrew Siemaszko, by and through their respective counsel of record, Richard A. Hibey, John F. Conroy and Charles M. Boss, hereby stipulate and move this honorable court as follows:

1. The Indictment in this case was filed on January 19, 2006. Defendants first appeared before a judicial officer in this district on January 27, 2006 and February 1, 2006. On those dates, the Court set a motions deadline of March 24, 2006, and noted that the period of delay would be excluded from the time computations of the Speedy Trial Act, 18 U.S. Code §§ 3161, et seq.

2. On March 24, 2006, the United States and Defendants filed a Joint Motion For Extension of Time To File Motions, requesting that the motions deadline be extended through May 24, 2006. That motion represented that the ends of justice served by a continuance outweighed the best interest of the public and the defendant in a speedy trial because the case is so unusual or complex that it is unreasonable to expect adequate trial preparation within the usual time limits, (18 U.S.C. § 3161(h)(8)(B)(ii)), and because the regular schedule would deny

the defendants or the government continuity of counsel or effective preparation in less complex or unusual cases, (18 U.S.C. § 3161(h)(8)(B)(iv)). That Motion was granted.

3. On May 24, 2006, in a conference call with the Court, the parties agreed that defense counsel would be better able to propose a motions deadline after counsel had had an opportunity to better assess discovery in this case. The Court's subsequent Order of May 24, 2006 set a deadline of June 2, 2006 for completion of discovery, and set a conference call for July 11, 2006 to further discuss an appropriate motions deadline.

4. This case arose in the context of the operation and regulation of a nuclear power plant, both of which are unusual and complex. The government represents that the case resulted from a lengthy investigation and involves well in excess of 20,000 documents, many of which involve technical discussions regarding nuclear power plant engineering, operation, and management. The government is diligently producing those materials, mostly in electronic format. It will necessarily take significant time for counsel to assess how the materials fit into the case and to determine whether there are novel questions of fact or law that apply to it. In addition, Mr. Siemaszko has engaged new defense counsel and his receipt of discovery in this case has been delayed by the transition.

5. Pursuant to 18 U.S.C. § 3161(h)(8)(A), the Court may grant continuances regarding pre-trial matters based on findings that the ends of justice served by a continuance outweigh the best interest of the public and the defendant in a speedy trial. Section 3161(h)(8)(B) presents the factors, among others, which a judge shall consider in making an ends of justice determination. These factors include finding that the case is so unusual or complex, that it is unreasonable to expect adequate trial preparation within the usual time limits, (18 U.S.C. § 3161(h)(8)(B)(ii)).

6. The United States and Defendants stipulate that this case is so unusual and complex that it is unreasonable to expect adequate trial preparation within the usual time limits, and that the court should so find. The parties also note that the Supreme Court's recent Speedy Trial Act jurisprudence forbids prospective waivers of the act and reiterates the act's requirement that findings in support of an ends of justice finding be made on the record. Zedner v. United States, 126 S.Ct. 1976, 1987, 1989 (2006).

7. Based on the representations and authorities above, the undersigned ask that this court find that the ends of justice will be served by declaring that this case is a complex case for all purposes to be served by the Speedy Trial Act, such that the ends of justice require that the period of continuance from January 27 through July 11, 2006, be excluded from the days charged against the act's seventy-day speedy trial requirements.

IT IS SO STIPULATED.


/s/ Thomas T. Ballantine, Esq.
Attorney for Government

/s/ David Geisen

/s/ Richard Hibey, Esq.
Attorney for Defendant Geisen

/s/ Rodney Cook

/s/ John Conroy, Esq.
Attorney for Defendant Cook

/s/ Andrew Siemaszko

/s/ Charles Boss, Esq.
Attorney for Defendant Siemaszko

**IN THE UNITED STATES DISTRICT COURT
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DAVID GEISEN,)	United States Magistrate Judge
RODNEY COOK, AND)	Vernelis K. Armstrong
ANDREW SIEMASZKO)	

ORDER

Upon Joint Motion by the United States and Defendants, based upon its review of the Indictment and representations in the Joint Motion for Exclusion of Time Under The Speedy Trial Act, THE COURT FINDS that this case is sufficiently unusual and complex that it is unreasonable to expect adequate trial preparation within the usual time limits. This case concerns the operation of the Davis Besse Nuclear Power Station, and its regulation by the Nuclear Regulatory Commission, both of which are unusual and complex subjects for a criminal prosecution. The government represents that the case resulted from a lengthy grand jury investigation and involves well in excess of 20,000 documents, many of which involve technical discussions regarding nuclear power plant engineering, operation, and management. The government is now furnishing those documents in electronic format. Nevertheless, it will necessarily take far more than the 70 days otherwise allowed under the Speedy Trial Act for counsel to assess how the materials fit into the case, to determine what pretrial motions, if any, may be appropriate, and to prepare for trial.

Accordingly, IT IS HEREBY ORDERED that the time between January 24 and July 11, 2006, is excludable time under Speedy Trial Act because the ends of justice served by delay in this case outweigh the best interest of the public and defendants in a speedy trial because of the unusual and complex nature of this case, pursuant to 18 U.S.C. § 3161(h)(8)(A)&(B).

SO ORDERED:

Vernelis K. Armstrong
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA)	
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v.)	
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SO ORDERED:

/s/ Vernelis K. Armstrong
Vernelis K. Armstrong
United States Magistrate Judge

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

ANDREW SIEMASZKO

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IA-05-021

ASLBP No. 05-839-02-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF STATUS REPORT" 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 14th day of July, 2006.

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Mary C. Baty
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