

RAS 12202  
12203

**RELATED CORRESPONDENCE**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

August 28, 2006 (10:14am)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

In the Matters of

DALE L. MILLER

STEVEN P. MOFFITT

:  
:  
:  
:  
:  
:  
:

Docket No. IA-05-053  
ASLBP No. 06-846-02-EA

Docket No. IA-05-054  
ASLBP No. 06-847-03-EA

**STEVEN P. MOFFITT'S ANSWER TO MOTION TO QUASH  
SUBPOENA ISSUED TO DAVID GEISEN**

INTRODUCTION

On August 15, 2006, David Geisen filed a Motion to Quash a discovery subpoena issued by the Board on August 9, 2006. The subpoena directed him to appear to testify at a deposition in the above-captioned proceedings to be conducted at the U.S. Nuclear Regulatory Commission Headquarters in Rockville Maryland on September 11, 2006 at 9:30 a.m.. Steven P. Moffitt files the following Answer in response to Mr. Geisen's Motion to Quash.

BACKGROUND

On January 4, 2006, the U.S. Nuclear Regulatory Commission issued an Order prohibiting Steven P. Moffitt from involvement in NRC-licensed activities for a period of five years. The Enforcement Order charged that Mr. Moffitt deliberately presented or allowed to be presented information to the NRC that was not complete and accurate and that he deliberately withheld material information over the course of Davis-Besse's response to NRC Bulletin 2001-01, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles". On February 23, 2006, Mr. Moffitt filed an Answer affirmatively denying the Order's charges and requesting an expedited hearing pursuant to 10 C.F.R. 2.202(c)(1). In conformance with the Board's Initial

TEMPLATE = SECY-043

SECY-02

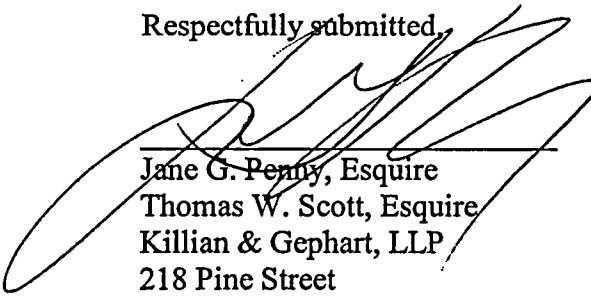
Scheduling Order dated April 18, 2006, Mr. Moffitt filed Initial Discovery Disclosures on April 23, 2006. Throughout his Initial Disclosures to the NRC Staff, Mr. Moffitt identified Mr. Geisen as likely to have discoverable information in support of Mr. Moffitt's February 23, 2006 Answer disputing the allegations made in the NRC's January 4, 2006 Enforcement Order. Mr. Moffitt reported that Mr. Geisen had discoverable information concerning Mr. Moffitt's contention that he attributed any boric acid residue present on Davis-Besse's reactor pressure vessel (RPV) head to leaking control rod drive mechanism flanges and, for reasons identified in his Answer, did not regard boric acid residue on the RPV head as an immediate safety issue. Mr. Moffitt listed Mr. Geisen as possessing information that no misleading statements were made to the NRC during an October 3, 2001 teleconference in which both participated, and Mr. Moffitt did not cause or make any misleading statements to the NRC Commissioners' Technical Assistants during an October 11, 2001 presentation. In addition, Mr. Moffitt stated that Mr. Geisen had discoverable information that Davis-Besse provided more complete and accurate information to the NRC through supplemental Bulletin-related correspondence, head inspection videos, and expert crack growth analysis.

Mr. Moffitt regards Mr. Geisen's testimony as critical to his own defense against the January 4, 2006 Enforcement Order's charges, because the Order alleges that he allowed Mr. Geisen (his direct subordinate) to convey information to the NRC, which Mr. Moffitt knew at the time was incomplete and inaccurate. Through depositions conducted to date, other potential case witnesses have identified Mr. Geisen as possessing significant technical information about the subjects directly in contention. In short, Mr. Moffitt considers Mr. Geisen's testimony as necessary to a full and fair decision in his enforcement case.

## DISCUSSION

Based upon the Board's August 16, 2006 Order, denying the Motion to Quash the July 11, 2006 subpoena directed to non-party Rodney M. Cook, the Board may compel Mr. Geisen to appear for a deposition in these enforcement proceedings. As counsel is well aware, however, Mr. Geisen may have no recourse other than to assert the rights guaranteed him pursuant to the Fifth Amendment to the U. S. Constitution, because he is a party to a separate enforcement action, *In the Matter of David Geisen*, 1A-05-052, ASLBP 06-845-01-EA, and a defendant named in an indictment filed in the United States District Court for the Northern District of Ohio. In that Mr. Moffitt views Mr. Geisen as a witness essential to his own defense, Mr. Moffitt would agree to delay the deposition of Mr. Geisen to a date that would maximize the possibility of Mr. Geisen's providing substantive testimony. Should Mr. Geisen elect to assert his Fifth Amendment rights, however, Mr. Moffitt may have to approach the Board to re-evaluate his request for an expedited hearing. With this prospect in mind and in deference to the Board's August 25, 2006 suggestion, the undersigned will endeavor to consult with counsel for Mr. Geisen and the NRC Staff in an attempt to resolve this scheduling conundrum.

Respectfully submitted,



Jane G. Penny, Esquire  
Thomas W. Scott, Esquire  
Killian & Gephart, LLP  
218 Pine Street  
P.O. Box 886  
Harrisburg, PA 17108-0886  
[jpenny@killiangephart.com](mailto:jpenny@killiangephart.com)  
[tscott@killiangephart.com](mailto:tscott@killiangephart.com)  
Counsel for Dale L Miller and Steven P.  
Moffitt

CERTIFICATE OF SERVICE

On August 28, 2006, copies of the attached "Answer to Motion to Quash" were served on the following persons through the U. S. mail, and electronic mail (where indicated\*):

Administrative Judge  
Michael C. Farrar, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
\*E-mail: mcf@nrc.gov

Administrative Judge  
E. Roy Hawkins  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
\*E-mail: erh@nrc.gov

Sara E. Brock, Esquire  
Mary C. Baty, Esquire  
Michael A. Spencer, Esquire  
Office of the General Counsel  
Mail Stop: O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
\*E-mail: seb2@nrc.gov  
E-mail: mcb1@nrc.gov

Richard Hibey, Esquire  
MILLER & CHEVALIER  
655 15th Street, NW  
Suite 900  
Washington, DC 20005  
\*E-mail: rhibey@milchev.com

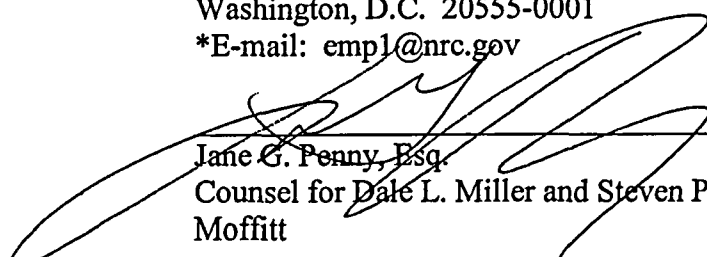
Administrative Judge  
Nicholas G. Trikouros  
Atomic Safety and Licensing Board Panel  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
\*E-mail: ngt@nrc.gov

Office of Commission Appellate Adjudication  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, D.C. 20555-0001

Office of the Secretary  
Attn: Rulemaking and Adjudications Staff  
Mail Stop: O-16 C1  
Washington, D.C. 20555-0001  
\*Email: hearingdocket@nrc.gov

Adjudicatory File  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555-0001

Libby Perch  
Board Law Clerk  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Mail Stop: T-3 F23  
Washington, D.C. 20555-0001  
\*E-mail: emp1@nrc.gov

  
Jane G. Penny, Esq.  
Counsel for Dale L. Miller and Steven P. Moffitt