

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

ATOMIC SAFETY AND LICENSING BOARD

August 29, 2006 (8:00am)

Before Administrative Judges:

— OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Michael C. Farrar, Chairman  
E. Roy Hawkens  
Nicholas G. Trikouras

\_\_\_\_\_  
In the Matter of )

) Docket No. IA-05-052

DAVID GEISEN )

) ASLBP No. 06-845-01-EA

**REPLY BRIEF IN SUPPORT OF DAVID GEISEN'S MOTION  
TO COMPEL THE PRODUCTION, OR ALTERNATIVELY THE  
IN CAMERA INSPECTION, OF AN UNREDACTED COPY OF THE  
OFFICE OF INVESTIGATIONS REPORT DATED AUGUST 22, 2003**

*Introduction*

Over three years after the August 2003 OI Report was issued and eight months after Mr. Geisen was both debarred and indicted, NRC Staff claims in its Opposition to the Motion to Compel that significant portions of the August 2003 OI Report are so sensitive that disclosure of an unredacted copy of the August 2003 OI Report to Mr. Geisen, even under a protective order restricting the use and disclosure of the August 2003 OI Report to this proceeding, will cause severe, but wholly unspecified, harm to the NRC enforcement processes. In making that argument, NRC Staff (a) continues to shroud the redacted material in secrecy that effectively restricts Mr. Geisen's ability to challenge the assertions of privilege, (b) cites caselaw that does not support its broad and selective use of privileges and (c) fails to articulate any specific harm that would result from disclosure of an unredacted version of the August 2003 OI Report.

TEMPLATE = SEC 4-021

SEC 4-02

Simply put, NRC Staff has failed to satisfy its burden to establish the existence and validity of any privilege protection for the August 2003 OI Report.

In contrast, Mr. Geisen has demonstrated the compelling need he has for the redacted material, including his due process rights to confront those who conducted the underlying investigation and who likely will be witnesses at some time during this proceeding. Permitting NRC Staff to withhold the redacted material would unfairly prejudice Mr. Geisen's ability to defend himself against the serious charges NRC Staff has made against him and would undermine the integrity of this entire enforcement proceeding. In the absence of any authority supporting its position, NRC Staff's dismissive attitude regarding Mr. Geisen's need for the redacted material is symptomatic of the predetermined, result-oriented nature of the underlying investigation.

For the additional reasons set forth below, and such other grounds as Mr. Geisen may present at the hearing of the Motion to Compel,<sup>1</sup> Mr. Geisen renews his request for the Board to grant the Motion to Compel and award him the relief requested therein.

1. The Cases Cited By NRC Staff Do Not Support Its Request For Permanent Protection Of The August 2003 OI Report Under The Deliberative Process Privilege: None of the NRC cases cited by the NRC Staff regarding the deliberative process privilege involved an enforcement order against an individual, let alone one imposing an immediate, five-year ban on any employment in the nuclear industry and subjecting the individual to potential criminal liability.<sup>2</sup> Moreover, the primary case on which NRC Staff relies is squarely inconsistent with

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<sup>1</sup> By Order dated August 25, 2006, the Board has scheduled a hearing on the Motion to Compel for September 6, 2006, commencing at 10:00 a.m. *See* Order (August 25, 2006).

<sup>2</sup> *See Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), CLI-94-5, 39 NRC 190, 197 (1994) (*Vogtle*) (an intervenor involving investigative report prepared by the NRC Office of  
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NRC Staff's particular assertion of the deliberative process privilege in this case.<sup>3</sup> Here, contrary to its position in *Vogtle*, NRC Staff is seeking permanent protection for the August 2003 OI Report, even though the enforcement decision was rendered over eight months ago. Nothing in *Vogtle* or the other cases cited by NRC Staff supports the unwarranted extension of the deliberative process privilege advocated by NRC Staff. If, as *Vogtle* instructs, the deliberative process privilege "is designed to foster the quality of the decision-making process" (39 NRC at 2202), then that qualified privilege should not shield the three-year old OI report in this case.

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Investigations in a license transfer proceeding); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-82-82, 16 NRC 1144 (1982) (*Shoreham I*) (in operating license proceeding, power company seeks documents relating to development of emergency planning documents from intervenor county government); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), ALAB-773, 19 NRC 1333 (1984) (*Shoreham*) (in continuing operating license proceeding, intervenor county government seeks production of documents from FEMA relating to emergency planning issues); *Entergy Nuclear Vermont Yankee, LLC* (Vermont Yankee Nuclear Power Station), LBP 05-33, 62 NRC 828 (2005) (in proceeding involving application for an extended power uprate, intervenor state government sought e-mails reflecting an exchange of questions and views by the Staff "regarding the nature and scope of the Staff's review of [the power company's] station black out coping strategy").

<sup>3</sup> See Opposition at 6-8, repeatedly citing the NRC's decision in *Vogtle*. *Vogtle* involved a license transfer proceeding in which an intervenor sought production of an OI report before the NRC had completed its deliberations on a possible enforcement action. 39 NRC at 192. NRC Staff opposed the request on the ground that the OI report should not be produced prior to the enforcement decision. *Id.* at 195 (noting NRC Staff's argument that "disclosure [of the OI report] before an enforcement decision had been reached could adversely affect the ability of the Staff and the Commission to deliberate concerning whether to institute an enforcement action against the Licensee.") Indeed, NRC Staff conceded that the entire OI report would be released as soon as the enforcement decision had been made. See, e.g., *id.* at 200, 202. In deciding whether to uphold the ASLB's decision requiring immediate disclosure of the OI Report, the Commission emphasized that "[p]ublic scrutiny properly focuses upon the agency's enforcement action and the evidence that forms the basis for that action." *Id.* at 199. Observing that it was "inappropriate to permit scrutiny of the evaluative statements of OI investigators . . . before the Commission itself has had the opportunity to deliberate on any potential enforcement action" (*id.*), the Commission upheld the applicability of the deliberative process privilege to "the opinion and analyses portions of the OI report" but found "no basis for withholding release of" any factual information in the report. *Id.* at 200. Because "the Commission's [enforcement decision was] imminent" (*id.*) and because there was "no urgency in this proceeding that cannot accommodate an additional minor delay in release of the report" (*id.* at 202), the Commission did not order the immediate production of the "opinion and analyses portions of the OI Report." *Id.* at 200. The Commission did order, however, that "[a]t the time of issuance of an enforcement action (or a decision to take no enforcement action) related to the matters within the scope of the investigation, the NRC staff shall make available to the parties for inspection and copying OI's report of investigation." *Id.* at 203.

2. NRC Staff Failed To Assert The Deliberative Process Privilege In A Sufficient And Timely Manner: NRC Staff's contention that Mr. Geisen received sufficient and timely detail regarding its assertion of the deliberative process privilege (*see, e.g.*, Opposition at 3 n. 5, 10) and that Mr. Geisen "exaggerates the nature of the redactions to the OI Report" (Opposition at 4) are incorrect and misleading. As demonstrated in the Motion to Compel, NRC Staff did not provide page-level detail regarding its privilege assertions until almost two months after serving its privilege logs and then only in response to repeated requests from counsel for Mr. Geisen. Even now, NRC Staff has failed to disclose routine privilege log information such as the identities of all persons or entities who received an unredacted copy of the August 2003 OI Report.<sup>4</sup> Most importantly, NRC Staff has given Mr. Geisen absolutely no basis on which to assess the accuracy of NRC Staff's *ipse dixit* claims regarding the nature and extent of the redacted material.<sup>5</sup> However beneficial the Board's *in camera* review of the August 2003 OI

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<sup>4</sup> A presumably unredacted copy of the August 2003 OI Report was sent to the U.S. Department of Justice and the U.S. Attorney's Office for the Northern District of Ohio. *See* August 2003 OI Report at 209 (indicating that "[t]he U.S. Attorney's Office in Toledo, Ohio, was appraised [sic] of the status of this investigation during a meeting on January 17, 2003" and that "[b]efore a decision is made on whether prosecution of these matters are warranted, OI was requested to provide the Report of Investigation to DOJ for review after compilation and analysis of the evidence was completed"); January 4, 2006 Order at 4 ("A copy of the OI report was provided to the U.S. Department of Justice, Office of the United States Attorney, Northern District of Ohio for review"); *see also* Board's May 19, 2006 Memorandum and Order (Denying Government's Request to Delay Proceedings) at 5 ("Upon completing its sixteen-month investigation, the OI issued a report on August 22, 2003, which was also referred to the United States Department of Justice (DOJ) and the United States Attorney for the Northern District of Ohio."). NRC Staff should be required to detail the date, recipient(s) and purpose of each disclosure of the unredacted August 2003 OI Report, including the disclosure to the U.S. Department of Justice and the U.S. Attorney's Office for the Northern District of Ohio.

<sup>5</sup> *See, e.g.*, Opposition at 4-5 (arguing that "[a]ll of the information evaluated in the Agent's Analysis comes from the OI Report exhibits that have been produced"); *id* at 8 (the "Agent's Analysis is the OI agents' distillation and analysis of evidence to assist the Staff in evaluating the enormous amount of evidence accumulated during the investigation," "[t]he selection of and distillation of evidence only reflects the opinions of the OI agents who authored the document," and the facts analyzed [in the Agent's Analysis] are inextricably intertwined with their opinion and analysis of the accumulated evidence"); *id* at 11 ("[r]equiring the Staff to disclose the Agent's Analysis would not provide Mr. Geisen with any new  
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Report may be in assessing the accuracy and validity of NRC Staff's assertions,<sup>6</sup> such a review is not a sufficient substitute for Mr. Geisen's right to view and analyze all potentially relevant evidence relating to the investigation that led to his debarment.

3. NRC Staff's Redactions Of Part III Of The August 2003 OI Report Are Improper:

NRC contends that the only portion of the OI Report that is relevant to this proceeding is Part III, because "[t]he allegations contained in the [January 4, 2006] Order against Mr. Geisen concern Davis-Besse's responses to [NRC Bulletin 2001-01] which are discussed only in Part III." Opposition at 3; *id.* at 4 (describing Part III as "the only portion of the report discussing Davis-Besse's Bulletin responses"). Leaving aside the relevancy of other portions of the August 2003 OI Report (*see* paragraph 4, *infra*), NRC Staff's redactions of Part III make no sense in light of the consolidated nature of the investigation regarding the eleven allegations in Part III. Moreover, NRC Staff's redactions of the "Agent's Analysis" sections in Part III represent a selective assertion of the deliberative process privilege by NRC Staff, which the law does not tolerate.

As NRC Staff itself acknowledges, Part III of the August 2003 OI Report relates to a single topic, namely FENOC's responses to NRC Bulletin 2001-01.<sup>7</sup> It reflects the results of a

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information other than particular OI agents' mental processes in making preliminary recommendations to the Staff on the evidence accumulated during the investigation.")

<sup>6</sup> See Opposition at page 1 (indicating that "the Staff has no objection to the Board conducting *in camera* inspection of an unredacted copy of the [August 2003 OI Report]"); Order (August 25, 2006) (requiring August 28, 2006 production of an unredacted copy of the August 2003 OI Report for *in camera* inspection); *see* NRC Staff's Notice of Filing Under Seal (August 28, 2006).

<sup>7</sup> Part III relates to eleven allegations made by the Office of Investigations regarding FENOC's responses to NRC Bulletin 2001-01. After a sixteen-month investigation which included interviews of over seventy-five persons, at least fifty-two of whom were FENOC employees, the Region III OI investigators who signed the August 2003 OI Report issued their findings and stated their conclusions regarding whether certain FENOC employees had "deliberately provided inaccurate and incomplete information to  
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consolidated investigation that resulted in adverse conclusions against multiple persons on ten of the eleven allegations in Part III. Any information that bears upon the underlying investigation -- including the identification of evidence that the OI agents found credible but did not result in any enforcement action -- may be relevant to Mr. Geisen's defense. Every step in the process by which the OI agents (and later NRC Staff) ultimately decided to assign culpability in Part III of the August 2003 OI Report to just five persons from among the scores of interviewees is potentially significant. Accordingly, NRC Staff's redactions of Part III of the August 2003 OI Report impede an otherwise valid search for the truth in this proceeding.

NRC Staff's redactions of Part III also represent an attempt by NRC Staff to assert the deliberative process privilege in a selective and improper manner. Virtually every line in the redacted August 2003 OI Report reflects some form of explicit or implicit judgment that the OI investigators formed in identifying, selecting, reviewing and evaluating the evidence they chose to summarize in the report. More specifically, however, the redacted version of Part III of the August 2003 OI Report contains eighty-nine sections entitled "Agent's Notes." See Appendix A attached hereto (describing each of the eighty-nine "Agent's Notes" contained in Part III of the redacted version of the August 2003 OI Report). As a review of Appendix A demonstrates, the "Agent's Notes" reflect a portion of the process by which the OI agents reached their findings,

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the NRC in response to NRC Bulletin 2001-01" in writings dated September 4, 2001, October 17, 2001 and October 20, 2001. According to the investigators, several FENOC employees "deliberately provided inaccurate and incomplete information" as to ten of the eleven allegations in Part III. See August 2003 OI Report at 135 (conclusion regarding Allegation III-1), at 197 (conclusion regarding Allegation III-2) and 201 (conclusion regarding Allegation III-3). However, only five names are reflected in the redacted version of the August 2003 OI Report -- Mr. Geisen, Prasoon Goyal, Steven Moffitt, Dale L. Miller and Andrew Siemaszko. According to NRC Staff, it redacted from Part III "the Agent's Analysis, OI Agents' analysis and conclusion on an allegation not substantiated by the Staff [presumably Allegation III-4 on pages 201-205], and, from the 'conclusion' sections only, the names of individuals against whom the Staff did not substantiate allegations." Opposition at 4.

and they include assessments of witness credibility and other critical facts. *See Vogtle*, 39 NRC at 199 (noting that the report at issue “contains OI’s evaluative and subjective conclusions on the evidence accumulated during the investigations” including “investigators’ ‘notes,’ providing evaluations of the reliability and significance of testimony.”) Contrary to NRC Staff’s contention in its Opposition (at p. 6 n.10), there is no functional distinction between the “Agent’s Analysis” and “Agent’s Notes” sections of Part III for purposes of the deliberative process privilege. Having disclosed eighty-nine instances in which the OI investigators expressly or impliedly commented upon the “reliance and significance” of the evidence gathered during the investigation, NRC Staff should not be allowed to engage in the selective assertion of privilege regarding other portions of the August 2003 OI Report to suit its own tactical purposes.

4. NRC Staff’s Redactions Of Other Parts Of The August 2003 OI Report Are Improper: NRC Staff’s attempt to limit the focus of its privilege assertions to the allegations addressed in Part III of the August 2003 OI Report is improper for several reasons. First, NRC attempts to obscure the fact that it redacted portions of the August 2003 OI Report other than Parts I, II and IV. Specifically, NRC Staff redacted portions of the Synopsis (pages 30003-05), the Table of Contents (30007-15), Details Of Investigation (30029-32) and Supplemental Information (30209-13). Second, there may be several respects in which findings and conclusions in Parts I, II and IV of the August 2003 Report bear upon the allegations against Mr. Geisen in Part III. For example, one of the persons found culpable with Mr. Geisen in Part III was Andrew Siemaszko, who the OI agents contended in Part II of the August 2003 OI Report “deliberately failed to accurately and/or completely document the as-left condition of the [reactor vessel head] and deliberately performed [reactor vessel head] cleaning activities without an approved [work order]” during the 12RFO at Davis-Besse in 2000. *See* August 2003 OI Report

at p. 8 (conclusion regarding Allegation II-1). Finally, the other parts of the August 2003 OI Report potentially have a bearing on Mr. Geisen's defense, especially if the quantum and quality of evidence that led to a finding that certain allegations were "unsubstantiated" bear any similarity to the quantum and quality of evidence on which the OI agents and NRC Staff based their conclusions against Mr. Geisen.<sup>8</sup>

5. NRC Staff's Contention That Information Is Available From Other Sources Is Incorrect: NRC Staff's contentions that "[t]he basis for the [January 4, 2006] Order is the evidence underlying the OI Report, not the OI Report itself" (Opposition at 5), that "the information Mr. Geisen seeks is reasonably obtainable from other sources" (*id.* at 3) and that "Mr. Geisen has received every piece of factual information in the Staff's possession" (*id.* at 14) lack both credibility and verification. The Opposition does not contain any evidence to support these assertions. As to the first contention, the January 4, 2006 Order makes clear that the August 2003 OI Report was indeed a central basis for the enforcement action against Mr. Geisen two years later. As to the second and third contentions, Mr. Geisen has no way of knowing whether all of the evidence gathered during the investigation has been disclosed to him in this investigation.

6. NRC Staff Has Failed To Demonstrate Any Harm That Would Result From Production Of An Unredacted Copy Of The August 2003 OI Report: The *only* mention by NRC Staff of any alleged "harm" from disclosure of the August 2003 OI Report is found in paragraph 3 of Guy P. Caputo's affidavit, where Mr. Caputo asserts that disclosure of the "Agent's Analysis" sections of the August 2003 OI Report "could" result in harm to the agency in one of

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<sup>8</sup> According to NRC Staff, "[u]nsubstantiated allegations include allegations investigated but not substantiated by the OI agents who conducted the investigation *and* allegations substantiated by the investigating OI agents, but not substantiated by the Staff." Opposition at 4 (emphasis in original).



three ways: (1) causing “confusion as to the actual policy and views of the NRC staff,” (2) “hinder[ing] the efficiency of the Staff” because “forced disclosure of their internal discussion could serve to chill future deliberations and could interfere with its ability to engage in free exchange of opinions and analyses prior to publishing our final decisions,” and (3) “imply[ing] or suggest[ing] that the opinions of Staff members involved in these communications were actually final decisions of the agency.” Mr. Caputo’s rote incantation of categories of harm often used in asserting the deliberative process privilege has absolutely no application to this case. Here, NRC Staff issued its enforcement action over two years after the OI investigation was completed, and there is no confusion that the January 4, 2006 Order embodies “the actual policy and views of the NRC staff.” Nor, given the issuance of the January 4, 2006 Order, is there any “implication” or “suggestion” that the opinions expressed in the August 2003 OI Report were “final decisions of the agency.” Indeed, it is readily apparent from the fact of the redactions themselves that the August 2003 OI Report, as well as the NRC Staff’s articulation of its doctrine of “unsubstantiated allegations” (*see* paragraph 4, above), that the August 2003 OI Report was not a “final decision” of the NRC.

Finally, it is impossible to imagine how disclosure now of an unredacted copy of the August 2003 OI Report would have a chilling effect on the OI Investigators or NRC Staff. The identities of the OI investigators and their supervisors who signed the August 2003 OI Report are already known, and those persons are likely to be witnesses at some time in this proceeding, regardless of whether an unredacted copy of the August 2003 OI Report is disclosed. It is also readily apparent from the redactions to the August 2003 OI Report that NRC Staff did not adopt certain conclusions that the OI investigators reached. Disclosure of those conclusions or the associated analyses in an unredacted copy of the August 2003 OI Report does not add to any

reluctance the OI investigators might have to report similar conclusions to NRC Staff in the future. In the final analysis, it is simply implausible to suggest that OI investigators or NRC Staff will fail or refuse to perform their assigned duties simply because an unredacted OI report is produced well after the enforcement action at issue.

In the absence of any risk of actual harm to NRC Staff from the disclosure of an unredacted copy of the August 2003 OI Report, NRC Staff has failed to satisfy its burden regarding the assertion of the deliberative process privilege.

7. NRC Staff's Assertion Of Personal Privacy Privilege Has No Factual Support:  
Absent from NRC Staff's Opposition is any demonstration that the persons whose names have been redacted from the August 2003 OI Report or who were the subject of allegedly "unsubstantiated allegations" have asserted any privacy interest or right regarding the August 2003 OI Report. Taking Part III of the August 2003 OI Report as an example, it is highly likely that the names redacted from the OI investigators' conclusions regarding the eleven allegations appear already in the unredacted text of the corresponding sections, and thus there is no compelling privacy interest to be protected. The fact that conflicting determinations were made by the OI Investigators and NRC Staff based on the same body of evidence and resulting in the allegations against certain persons being dismissed as "unsubstantiated" is highly relevant to Mr. Geisen and to the public interest in the integrity of this proceeding.<sup>9</sup> There is certainly no reason to shield such information from Mr. Geisen when the Board has ample authority and opportunity to enter appropriate protective orders restricting the use of any allegedly "private" information.

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<sup>9</sup> NRC Staff incorrectly accuses Mr. Geisen of misstating the applicable discovery standard. See Opposition at 13 n.20, citing 10 CFR § 2.705(b)(1). That rule, as well as its counterpart under the Federal Rules of Civil Procedure, expressly provides, in defining the scope of permissible discovery, that "[i]t is not a ground for objection that the information sought [in discovery] will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Respectfully Submitted,



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Dated: August 28, 2006

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 28<sup>th</sup> day of August, 2006, true and genuine copies of the foregoing were served on the following persons via email as indicated by an (\*) and by regular mail as indicated by an (\*\*):

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Charles F. B. McAleer, Jr.

# **APPENDIX A**

**(REPLY BRIEF IN SUPPORT OF DAVID GEISEN'S MOTION  
TO COMPEL THE PRODUCTION, OR ALTERNATIVELY THE  
*IN CAMERA* INSPECTION, OF AN UNREDACTED COPY OF THE  
OFFICE OF INVESTIGATIONS REPORT DATED AUGUST 22, 2003)**

## APPENDIX A

### LISTING OF "AGENT'S NOTES" APPEARING IN PART III OF REDACTED VERSION OF THE AUGUST 2003 OI REPORT

ALLEGATION/NOTE/PAGE	DESCRIPTION OF NOTES
Allegation III-1(A)	
87	Expresses opinion dismissing "these concerns" and draws a conclusion why a document "modification was deferred and never incorporated"
89	Drawing conclusion that "the effectiveness of any cleaning activity could not be verified"
89	Discussing why the agents reviewed certain draft of Davis-Besse's response, i.e., "because they provided insight into the licensees thought process and intentions in responding to the Bulletin."
90	Commenting upon the source of certain information and asserting which persons received or sent certain documents.
91	Comments regarding the previous presence and subsequent removal of certain language in selected documents, especially as it relates to comments in previous paragraph.
92-93	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
93	Draws a conclusion regarding whether Prasoon Goyal "was considered an expert in the area of nozzle cracking."
93	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
96	Comments regarding certain selective facts and documents relating to, and potentially rebutting or correcting, interview statements by witness recounted in preceding paragraph.
96	Commenting upon certain responses provided by Dale Wuokko
98	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
99	Commenting on whether certain portions of a draft response "remained consistent through issuance."
100	Drawing conclusion on Davis-Besse's thought process regarding finality of September 4, 2001 response.
Allegation III-1(B)	
103	Comments regarding certain selective facts and documents relating to, and potentially rebutting or correcting, interview statements by witness recounted in preceding paragraph.

104	Drawing conclusion regarding whether a "root cause evaluation was ever completed."
104	Drawing conclusion regarding whether certain confirmations were made or certain actions implemented.
104	Drawing conclusion regarding whether "any white streaks observed during 11RFO could have been caused by flange leakage from previous outages."
Allegation III-1(C)	
108	Commenting on selected fact allegedly relevant to statements in preceding paragraph.
109	Drawing conclusion that "most of the Davis-Besse personnel interviewed claimed they were unaware of the results of the CRD flange inspections conducted during the 1999 mid-cycle outage and believed that leaking flanges were a constant source of boric acid on the RVH over the years. Cites to allegedly contradictory fact regarding daily distribution of <u>The Outage Insider</u> ."
109	Drawing conclusion regarding why "five flanges were disassembled for inspection."
109	Comments regarding certain selective facts relating to, and potentially rebutting or correcting, alleged statements recounted in preceding paragraph.
110	Drawing conclusion that inspection during 12 RFO in 2000 "was inconclusive."
111	Drawing conclusion regarding whether "cleaning done during 12RFO would allow for a better inspection during the next outage."
112	Comments regarding the meaning of a certain term used by a witness in a document summarized in preceding paragraph.
112	Commenting on the "significance" of certain evidence and what an interviewee "appear[ed] to be acknowledging." Also commenting on interviewee's alleged inability "to recall any other specific details regarding the sentence in question."
115	Drawing conclusion regarding whether certain drafts indicate whether an interviewee remove certain information from Serial 2731.
116	Commenting on credibility of statements from certain interviewees based on a reference to a selected document cited by agents.
117	Comments regarding certain selective facts relating to, and potentially contradicting, interview statements by witness recounted in preceding paragraph.

117	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
118	Commenting on what a particular interviewee stated and indicating that “[a]lthough it is not clearly identified in the transcript [of the interview], the only response that did not identify a number for nozzles that could not be seen was Serial 2731.”
118	Expressing opinion that “Siemaszko’s testimony is very confusing regarding what information he saw or knew about flange leakage going into RFO.” Also, expressing opinion that “it is uncertain from the descriptions he provides whether he saw previous head
Allegation III-1(D)	
126	Drawing a conclusion that certain changes in a document were never made and that there was no further discussion regarding a change; citing selective document that relates to, and potentially contradicts, statement recounted in preceding paragraph.
128	Commenting on the use of certain terms and phrases “during the interviews with Davis-Besse personnel,” what “the crucial factor” was and the necessity of certain comparisons “in order to distinguish the condition of the head from one outage to the next. Expressing opinion that there would be “no way to determine new deposits or indications” in the absence of certain information or certain cleanings.
128	Drawing conclusions from certain comments by interviewee, i.e., that “the extent of the cleaning and/or the quality of the video would have to be questioned.”
130	Expressing opinion that Davis-Besse’s “lack of focus and concern for axial cracking, a tech spec violation regarding pressure boundary leakage, was prevalent throughout various testimonies.”
Allegation III-1(E)	
133	Attempting to correct an allegedly incorrect reference to a document by an interviewee.
134	Commenting on information regarding susceptibility of another facility to nozzle cracking.
Allegation III-2(A)	
136	Comments regarding certain selective facts and documents relating to statements recounted in preceding paragraph.
137	Comments regarding certain selective facts and documents relating to, and potentially rebutting or supplementing, statements recounted in preceding paragraph.



138	Extensive comments regarding certain selective facts and documents relating to, and potentially rebutting, statements by witness recounted in preceding paragraph.
139	Comments regarding certain selective facts and documents relating to, and potentially rebutting or supplementing, statements by witness recounted in preceding paragraph.
140	Expressing conclusion that a certain report was "used as the basis for the allowable interval of 7.5 years between a postulated initial leak due to an axial crack until a consequent circumferential crack would reach ASME Code Limits."
142	Making comments regarding the difficulty of discerning the meaning of certain notes on a document.
142	Expressing an assumption regarding the identification of a particular plant in a report.
142	Comments regarding certain selective facts and documents relating to, and potentially contradicting, statements by witness recounted in preceding paragraph.
143	Comments regarding a certain selective document and the absence of another document.
143	Commenting on the uncertainty of certain evidence.
144	Commenting on the invalidity of a certain argument.
145	Expressing an opinion on whether certain nozzles could not be viewed and why they could not be viewed (i.e., "because of boric acid crystal deposits").
146	Commenting on which persons had allegedly seen certain pictures and stating conclusion that certain boric acid "was caused by cracked nozzles."
147	Commenting on whether it was known if a certain interviewee added a certain work to his notes.
149	Comments regarding certain selective facts and documents relating to, and potentially rebutting, statements recounted in preceding paragraph.
149	Commenting on the significance of a certain statement in Serial 2735
150	Commenting on the absence of certain information in a particular document.
151	Comments regarding certain selective facts and documents relating to, and potentially rebutting, statements recounted in preceding paragraph.
151	Comments regarding certain selective facts and documents relating to, and potentially rebutting, statements recounted in preceding paragraph.
152	Expressing uncertainty regarding the purpose of a particular document.

153	Comments regarding certain selective facts and documents relating to, and potentially rebutting statements recounted in preceding paragraph.
154	Comments regarding certain selective facts and documents relating to, and potentially rebutting, statements recounted in preceding paragraph.
154	Comments regarding certain selective facts and documents relating to, and potentially rebutting, statements recounted in preceding paragraph.
155	Contrasting statements made by a certain interviewee regarding his lack of knowledge with certain statements in a draft document.
156	Expressing comment regarding evidence of nozzle cracking at allegedly "less-susceptible" plants.
156	Expressing comment regarding when an interviewee had first shown any videos to the NRC.
157	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
159	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
160	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
160	Expressing opinion regarding an alleged choice by Davis-Besse "to provide probabilistic [sic] estimates based upon projections and empirical data rather than present actual documentation/data from past flange and head inspections."
161	Comments regarding certain selective facts and documents relating to statements recounted in preceding paragraph.
162	Expressing opinion that Davis-Besse continued developing their NDE techniques "despite" a September 14, 2001 recommendation.
162	Expressing an opinion that a witness made a certain statement based on a single document selected by the agents.
163	Comments regarding certain selective facts and documents relating to statements recounted in preceding paragraph.
165	Drawing a conclusion regarding what two documents indicated.
166	Expressing an opinion regarding when a certain meeting took place based on certain documents selected by the agents.
166	Commenting on the projected cost of a shutdown.
168	Challenging credibility of an interviewee's denial by citing allegedly contradictory evidence.

168	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
169	Comments regarding certain selective facts and documents relating to, and potentially rebutting, interview statements by witness recounted in preceding paragraph.
170	Challenging credibility of an interviewee's denial by citing allegedly contradictory evidence.
171	Challenging credibility of an interviewee's denial by citing allegedly contradictory evidence.
172	Challenging credibility of an interviewee's denial by citing allegedly contradictory evidence.
172	Challenging credibility of an interviewee's denial by citing allegedly contradictory evidence.
173	Challenging credibility of an interviewee's denial by citing allegedly contradictory evidence.
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173	Challenging credibility of an interviewee's denial by citing allegedly contradictory evidence.
Allegation III-2(B)(1)	
181	Comments regarding certain selective facts and documents relating to videotape evidence and commenting upon alleged absence of a certain portion of the videotape.
183	Contrasting edits to a certain document selected by the agents.
Allegation III-2(B)(2)	
191	Comments regarding certain selective facts and documents relating to, and potentially rebutting statements recounted in preceding paragraph.
Allegation III-2(B)(3)	
195	Commenting on certain evidence and attributing documents to certain interviewees
195	Commenting on certain evidence and attributing documents to certain interviewees