

RAS 12124
RAS 12125

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 08/16/06

SERVED 08/16/06

ATOMIC SAFETY AND LICENSING BOARDS
Before Administrative Judges:

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

In the Matter of
DALE L. MILLER

Docket No. IA-05-053
ASLBP No. 06-846-02-EA
August 16, 2006

In the Matter of
STEVEN P. MOFFITT

Docket No. IA-05-054
ASLBP No. 06-847-03-EA
August 16, 2006

ORDER
(Denying Motion to Quash Cook Subpoena)

The Board received last evening, from the parties to these enforcement proceedings, replies to the August 3, 2006 motion filed by mail on behalf of Rodney M. Cook to quash the subpoena -- issued by the Board Chairman on July 11 at the behest of the NRC Staff -- requiring him to appear for a deposition this coming Monday, August 21. In light of the NRC Staff's expressed willingness to accommodate Mr. Cook as to the location of the deposition, we find the reasons proffered for quashing the deposition to be insufficiently persuasive to grant the motion.

To be sure, it may turn out that Mr. Cook will choose to exercise his Fifth Amendment privilege against self-incrimination as to some, if not all, of the questions posed during the deposition. But the Staff has represented that, applying governing legal standards regarding invocation of the privilege, the deposition may nonetheless yield some information relevant in these proceedings. Importantly, Mr. Miller also wants the deposition to proceed, representing

that Mr. Cook may be “the only reliable source” of certain information important to Mr. Miller’s defense. We also note that, unlike another situation in which we will soon be called upon to rule, there is not pending against Mr. Cook any civil enforcement proceeding in which it might be argued that any refusal to testify herein should result in the drawing of negative inferences.

Accordingly, the motion to quash Mr. Cook’s subpoena in toto is DENIED, conditioned upon the deposition being held at the location of Mr. Cook’s choosing. The subpoena previously issued shall be deemed modified to reflect that location in the event any change in location is determined too late to allow us to issue an amended subpoena. Similarly, the subpoena shall, if necessary, be deemed modified to reflect any subsequent agreement among the parties as to a change in time of, or conditions governing, the deposition.

It is SO ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARDS

/RA/

Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

/RA/

E. Roy Hawkens
ADMINISTRATIVE JUDGE

/RA by Michael C. Farrar for/

Nicholas G. Trikouros *
ADMINISTRATIVE JUDGE

Rockville, Maryland
August 16, 2006

* Judge Trikouros participated in this decision but was unavailable to sign this order.

Copies of this Order were sent this date by e-mail transmission to counsel for Messrs. Miller and Moffitt, to counsel for the NRC Staff, and to counsel for Mr. Cook. A courtesy copy will similarly be sent to counsel for another witness, David Geisen, who last evening filed a motion to quash a subpoena directed to him.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DALE L. MILLER) Docket No. IA-05-053
)
)
(Enforcement Action))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (DENYING MOTION TO QUASH COOK SUBPOENA) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Michael C. Farrar, Chair
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
E. Roy Hawkens
Atomic Safety and Licensing Board Panel
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Administrative Judge
Nicholas G. Trikouros
Atomic Safety and Licensing Board Panel
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218 Pine Street
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Harrisburg, PA 17108-0886

[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 16th day of August 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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STEVEN P. MOFFITT) Docket No. IA-05-054
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Dated at Rockville, Maryland
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