

DOCKETED
USNRC

October 13, 2006 (10:24am)

October 11, 2006

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

SERVED October 13, 2006

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

STEVEN P. MOFFITT

:
:
:
:
:

Docket No. IA-05-054

ASLBP No. 06-847-03-EA

GRANTED
For the Atomic Safety and
Licensing Board
Michael P. Laro
Chairman
10-13-06

MOTION TO WITHDRAW
REQUEST FOR EXPEDITED HEARING

INTRODUCTION

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 denying the Order's charges and requesting an expedited hearing pursuant to 10 C.F.R. 2.202(c)(1). With the Staff's concurrence pursuant to 10 C.F.R. § 2.323(b), Steven P. Moffitt now files the following Motion to withdraw his request for an expedited hearing.

BACKGROUND

On March 16, 2006, an Atomic Safety and Licensing Board was established to preside over Steven P. Moffitt's Enforcement Proceeding. By Order dated March 27, 2006, the Board granted Mr. Moffitt's request for an expedited hearing under 10 C.F.R. § 2.202(c)(1), holding that the hearing would be governed by the procedures set forth in 10 C.F.R. Part 2, Subpart G (10 C.F.R.

§§ 2.700-2.713). By Order dated April 18, 2006, the Board accepted the parties' initial schedule for discovery, approving September 15, 2006 as the date for completion of discovery. On August 24, 2006, the Board approved the parties' joint motion to extend the discovery completion date from September 15 to October 13, 2006. To date, the parties have reviewed extensive case documentation, exchanged and answered Interrogatories, and participated in thirty-four depositions, the majority of which were pertinent to Mr. Moffitt's enforcement case.¹

Throughout this proceeding, Mr. Moffitt has stated that his former direct subordinate, David C. Geisen, had discoverable information relevant to Mr. Moffitt's contention that he did not support or advance any misleading statements to the NRC.² On August 15, 2006, Mr. Geisen filed a Motion to Quash a subpoena issued by the Board for Mr. Geisen's testimony relative to Mr. Moffitt's contentions. On August 31, 2006, the Board deferred Mr. Geisen's deposition pendente lite. Following the August 31 Order, the Board conducted a prehearing conference call on September 26, 2006 to review the discovery scheduling issues impacting Staff, Mr. Moffitt, and Mr. Geisen. On October 2, 2006, the Board continued the effectiveness of the August 31 Order, deferring a decision on the taking of Mr. Geisen's deposition.

DISCUSSION

During the September 26, 2006 teleconference, counsel for Mr. Moffitt observed that Mr. Moffitt might have to ask the Board to delay his hearing on the January 4, 2006 Enforcement Order to accommodate the taking of additional discovery depositions, and the Staff's deposition of Mr. Geisen (October 2, 2006 Order at 3). As the Board noted, the current case status can be

¹ Depositions also focused upon contentions raised by Dale L. Miller, the subject of a separate enforcement order (Docket No. IA-05-053; ASLBP No. 06-846-02-EA). On September 29, 2006, the Board approved a settlement agreement reached by the parties.

² David C. Geisen is the subject of an enforcement order (Docket No. IA-05-052; ASLBP No. 06-845-01-EA), and a criminal action pending in federal district court.

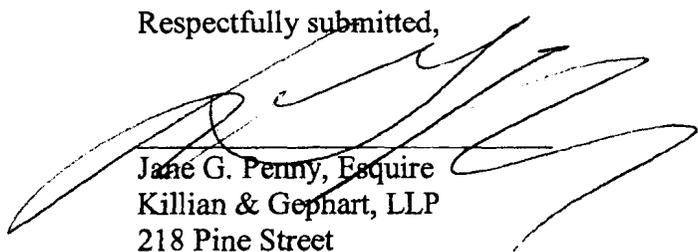
summarized as follows: Mr. Moffitt considers Mr. Geisen an essential witness; however, Mr. Geisen has no interest in testifying in Mr. Moffitt's "civil proceeding before the criminal charges against him are resolved" (October 2, 2006 Order at 2). Under the circumstances, Mr. Moffitt now formally moves the Board to permit him to withdraw his request for an expedited hearing on his Enforcement Order. Mr. Geisen's position has made it clear to Mr. Moffitt that he can no longer pursue the accelerated timetable he first sought, and he will suffer greater harm if he proceeds "expeditiously" without Mr. Geisen's testimony.

Concurrently with this Motion, Mr. Moffitt has joined with the Staff in filing a Motion to Suspend Discovery until December 12, 2006. The parties will use the suspension period, if granted, to pursue alternative dispute resolution, filing a report to the Board on their progress within the next thirty days. If settlement of Mr. Moffitt's proceeding cannot be reached without litigation, the parties intend to resume discovery (to the greatest extent possible) and present a revised scheduling Motion for the Board's consideration.

CONCLUSION

For the reasons stated above, Mr. Moffitt respectfully asks the Board to permit him to withdraw his request for an expedited hearing and lengthen the case milestones in accordance with the circumstances summarized in the Board's October 2, 2006 Order.

Respectfully submitted,



Jane G. Penny, Esquire
Killian & Gephart, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
jpenny@killiangephart.com
Counsel for Steven P. Moffitt

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

STEVEN P. MOFFITT

(Enforcement Action)

)
)
)
)
)
)

Docket No. IA-05-054

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (GRANTING MOTION TO WITHDRAW REQUEST FOR EXPEDITED HEARING) 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
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Administrative Judge
Nicholas G. Trikourous
Atomic Safety and Licensing Board Panel
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Sara E. Brock, Esq.
Mary C. Baty, Esq.
Office of the General Counsel
Mail Stop - O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Jane Gowen Penny, Esq.
Thomas W. Scott, Esq.
Killian & Gephart LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886

[Original signed by R.L. Giitter]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 13th day of October 2006