

October 11, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

October 13, 2006 (10:24am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of)

STEVEN MOFFITT)

) Docket No. IA-05-054

SERVED October 13, 2006

) ASLBP No. 05-8457-03-EA

GRANTED
For the Atomic Safety and
Licensing Board

Michael C. Lane

Chairman
10-13-06

JOINT MOTION TO SUSPEND DISCOVERY

INTRODUCTION

The Atomic Safety and Licensing Board's April 18, 2006, Initial Scheduling Order established a schedule for discovery in the above-captioned proceeding. The Board's April 18, 2006 Order was amended on August 24, 2006 to extend the date for completion of discovery from September 15 to October 13, 2006. The NRC Staff and Mr. Moffitt jointly move to suspend discovery in the above-captioned proceeding until December 12, 2006 to pursue alternative dispute resolution (ADR). Concurrent with this Motion, but by separate filing, Mr. Moffitt is withdrawing his request for an expedited hearing.¹

BACKGROUND

The Board's Initial Scheduling Order established the following discovery schedule:

1. All parties will make initial disclosures on or before April 26, 2006.
2. All written discovery (interrogatories, requests for admissions, document requests) will be served on or before June 1, 2006.
3. Replies to written discovery will be served on or before June 15, 2006².

¹ See Steven P. Moffitt's to and Request for Expedited Hearing on Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) (February 23, 2006).

² This date was later altered to June 30, 2006.

4. Discovery will be completed on or before September 15, 2006.³

In accordance with the Board's Order, the parties made initial disclosures by April 26, 2006 and served written discovery requests on June 1, 2006. The parties responded to written discovery on June 30, 2006. In July, the Staff began deposing individuals identified by Mr. Moffitt as likely to have information relevant to this proceeding. Counsel for Mr. Moffitt is deposing NRC employees the week of October 2, 2006.

DISCUSSION

The parties now jointly move to suspend discovery until December 12, 2006 in order to pursue ADR. Both parties believe that engaging in ADR might be helpful at this time. The parties will schedule an ADR session as soon as both parties are available. To allow time to prepare for and engage in ADR, the parties would like to suspend discovery.⁴ If the settlement discussions are successful, the parties will, in accordance with 10 C.F.R § 2.203, present a joint motion to settle the case and dismiss the proceeding.

If the attempts are unsuccessful, the parties will inform the Board and propose a date for completion of discovery. Both parties will seek to schedule additional depositions if settlement discussions are not successful.

The parties believe suspending discovery until December 12, 2006 will allow sufficient time to engage in settlement negotiations. The parties will file a status report in 30 days to advise the Board on progress in ADR.

Concurrent with this motion, but by separate filing, Mr. Moffitt is withdrawing his request for an expedited hearing.

CONCLUSION

³ This date was later altered to October 13, 2006. See Order Granting Motion to Amend Discovery Schedule (August 24, 2006).

⁴ The parties have agreed that suspension of discovery suspends the on-going duty to correct and supplement disclosures.

Therefore, the parties request that the Board suspend discovery in the above-captioned proceeding until December 12, 2006.

Respectfully Submitted,

/RA by Mary C. Baty/

Charles E. Mullins
Mary C. Baty
Counsel for NRC Staff

/RA for Jane G. Penny by Mary C. Baty/

Jane Gowen Penny
Thomas W. Scott
Counsel for Mr. Moffitt

Dated at Rockville, Maryland
this 11th day of October 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
STEVEN P. MOFFITT) Docket No. IA-05-054
)
)
(Enforcement Action))

CERTIFICATE OF SERVICE

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

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[Original signed by R.L. Giitter]
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Dated at Rockville, Maryland
this 13th day of October 2006