

October 11, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

October 11, 2006 (12:50 pm)

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

In the Matter of : Docket No. IA-05-054
: :
STEVEN P. MOFFITT : ASLBP No. 06-847-03-EA
: :
: :

**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.

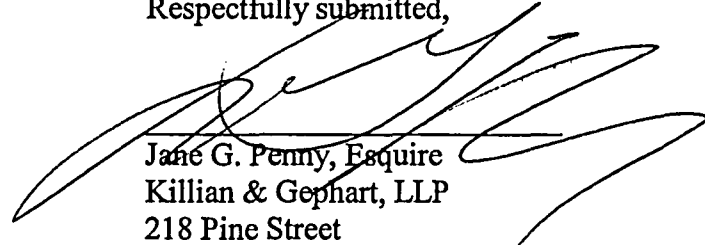
summarized as follows: Mr. Moffitt considers Mr. Geisen an essential witness; however, Mr. Geisen has no interest in testifying in Mr. Moffitt's "civil proceeding before the criminal charges against him are resolved" (October 2, 2006 Order at 2). Under the circumstances, Mr. Moffitt now formally moves 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

CERTIFICATE OF SERVICE

On October 11, 2006, copies of the attached Motion 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 Hawkens
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

Mary C. Baty, Esquire
Charles E. Mullins, 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: 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

Margaret Parish
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: map4@nrc.gov


Jane G. Penny, Esq.
Counsel for Steven P. Moffitt

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARDS

Before Administrative Judges:
Michael C. Farrar, Chairman
E. Roy Hawkens
Nicholas G. Trikouros

In the Matter of : Docket No. IA-05-054
: :
STEVEN P. MOFFITT : ASLBP No. 06-847-03-EA

ORDER

(Granting Motion to Withdraw Request for Expedited Hearing)

On October 11, 2006, Steven P. Moffitt filed, with the concurrence of the NRC Staff, a motion to withdraw his February 23, 2006 request for an expedited hearing on the Staff's January 4, 2006 Enforcement Order. In support, Mr. Moffitt indicates that he is willing to delay his hearing date because he needs additional time to complete the discovery process, and wishes to present the testimony of David C. Geisen, whom he considers an essential witness. Mr. Geisen has advised the Board that he does not wish to offer testimony in a civil proceeding, prior to the resolution of the criminal proceeding in which he is named. Under the circumstances, Mr. Moffitt believes that he will suffer greater harm if he adheres to the schedule he previously endorsed and risk presenting a defense that does not include Mr. Geisen's testimony on the substantive matters at issue. Accordingly, his motion to withdraw his request for an expedited hearing is hereby GRANTED.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Rockville, Maryland
October __, 2006

By Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE