

November 6, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
STEVEN P. MOFFITT

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Docket No. IA-05-054

ASLBP No. 06-847-03-EA

JOINT MOTION TO ISSUE AN ORDER AND DISMISS THE PROCEEDING

In keeping with the parties' October 11, 2006 motion to suspend discovery to provide time for the parties to engage in the Alternative Dispute Resolution Process,¹ the parties have reached an agreement upon which to settle the case that serves the public interest and achieves the goals of the parties without the likely risks and resource costs to both parties from proceeding to fully litigate the Staff's initial order. The parties hereby request, in accordance with 10 CFR § 2.203, that the Board accept the attached Settlement Agreement and dismiss the proceeding.

The parties believe that the attached Settlement Agreement (Agreement) is in the public interest. Stated in general terms, the purpose of the NRC's enforcement program is to deter noncompliance with regulatory requirements and to encourage prompt comprehensive corrective actions.² Consistent with the NRC's enforcement policy, Mr. Moffitt agrees that, by virtue of his position, as Director of Technical Services, he was responsible for misinformation provided to the NRC during the Fall of 2001 related to NRC Bulletin 2001-01, and has agreed to take corrective actions that will serve both to deter others and encourage compliance with NRC

¹ See *Order* (Granting Motion to Suspend Discovery), October 13, 2006.

² See Enforcement Policy at <http://www.nrc.gov/what-we-do/regulatory/enforcement/enforc-pol.pdf>.

regulations in the future. The NRC Staff believes that having Mr. Moffitt acknowledge responsibility and agree to undertake corrective actions serves the public interest, is consistent with the NRC's enforcement policy, and satisfies the NRC's underlying concerns about Mr. Moffitt's trustworthiness and reliability with respect to the incident at Davis-Besse. Furthermore, weighing the corrective actions proposed and the likely risks and resource costs to both parties from proceeding to fully litigate the Staff's initial order demonstrates that the attached Agreement serves the public interest. In light of the foregoing, the parties believe that no further adjudication is required in the public interest, and, accordingly, the Board should approve the Settlement Agreement and dismiss the proceeding.

Respectfully Submitted,

/RA by Mary C. Baty/

Charles E. Mullins
Mary C. Baty
Michael A. Spencer
Counsel for the NRC Staff

/RA by Mary C. Baty for Jane Penny/

Jane Penny
Counsel for Steven P. Moffitt

Dated at Rockville, MD
this 6th day of November, 2006

November 6, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

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SETTLEMENT AGREEMENT

1. On January 4, 2006, the Staff issued an Order (Effective Immediately) Prohibiting Involvement in NRC Licensed Activities to Mr. Steven P. Moffitt, a former employee of Davis-Besse Nuclear Power Plant.

2. On February 23, 2006, Mr. Moffitt properly and timely answered the Order, denied the allegations in the Order, and requested an expedited hearing.

3. On March 16, 2006, the Atomic Safety and Licensing Board with jurisdiction over Mr. Moffitt's hearing request was established.

4. On March 20, 2006, the Staff answered the hearing request, and agreed that Mr. Moffitt was entitled to a hearing.

5. On March 27, 2006, the Board granted Mr. Moffitt's request for a hearing.

6. The parties agree that the Order issued on January 4, 2006 to Mr. Moffitt will be superseded by an Order approving and incorporating this Agreement.

7. Mr. Moffitt agrees that, by virtue of his position as Director of Technical Services, he was responsible for misinformation communicated to the NRC during the Fall of 2001 related to NRC Bulletin 2001-01. Mr. Moffitt agrees the NRC was misled by FirstEnergy's oral and written submissions to the NRC during the Fall of 2001 related to Bulletin 2001-01.

8. Mr. Moffitt agrees to take the following corrective actions:
 - a. Mr. Moffitt agrees not to seek employment in NRC-licensed activities prior to January 4, 2008.
 - b. Subsequent to January 4, 2008, Mr. Moffitt agrees not to seek or hold a position at a nuclear power facility or with its corporate parent, as either a manager or a supervisor, above the first-line supervisor level prior to January 4, 2010.
 - c. Mr. Moffitt agrees to use his best efforts to make a presentation to the INPO Senior Nuclear Plant Manager (SNPM) training course regarding lessons learned from the incident at Davis-Besse for directors and future directors of nuclear power facilities.
 - d. Mr. Moffitt agrees to use his best efforts to make a presentation to an NRC leadership development program regarding lessons learned from the incident at Davis-Besse. The NRC Staff agrees to make every effort to arrange said presentation.
9. With regard to the presentations to the SNPM training course and the NRC Leadership Development Program:
 - a. Mr. Moffitt agrees to provide drafts of his presentations to the Director of the Office of Enforcement for review prior to making the presentation.
 - b. Mr. Moffitt will use his best efforts to make presentations to the NRC class for at least the next two years, from the date of this Agreement.
 - c. Mr. Moffitt will use his best efforts to make four presentations to the SNPM course over the next two years, from the date of this Agreement.

10. With regard to Mr. Moffitt's employability:
 - a. Mr. Moffitt may engage in sales of products and services to nuclear facilities.
 - b. Mr. Moffitt's current position complies with the terms of this Agreement.
 - c. Consistent with Item 8.b, Mr. Moffitt can hold any position with his current employer after January 4, 2008.

11. The corrective actions listed in Item 8 are sufficient to satisfy the NRC's underlying concerns with Mr. Moffitt's trustworthiness and reliability regarding the incident at Davis-Besse. Furthermore, the NRC Staff believes Mr. Moffitt's acceptance of responsibility and agreement to undertake corrective actions serves the public interest.

12. Mr. Moffitt agrees to cooperate with any on-going investigations or proceedings in connection with the incident at Davis-Besse.³

13. The NRC Staff agrees to provide copies of this Agreement to the licensees for the Fermi, Perry, and Davis-Besse nuclear power stations for their information and consideration in regard to the Personnel Access Data System (PADS) for access authorization.

14. In light of the above, the parties agree that all further procedural steps before the Licensing Board and any right to challenge or contest the validity of the order entered into in accordance with the Agreement, and all rights to seek judicial review or otherwise to contest the validity of the order are expressly waived.

15. The parties further agree that the order accepting the Agreement has the same force and effect as an order made after a full hearing.

³ Although Mr. Moffitt acknowledges responsibility as Director of Technical Services for misinformation provided to the NRC in the Fall of 2001 in connection with NRC Bulletin 2001-01, the Staff's position is that others identified in separate proceedings also provided misinformation to the NRC. The Staff is actively pursuing action against those individuals.

16. It is also agreed by the parties that all matters required to be adjudicated as part of this proceeding have been resolved upon the Licensing Board's approval of this agreement and the parties agree that the proceeding, ASLB-06-847-03-EA, should be dismissed upon the Licensing Board's approval of this Agreement.

Respectfully Submitted,

/RA by Mary C. Baty/

Charles E. Mullins
Mary C. Baty
Michael A. Spencer
Counsel for the NRC Staff

/RA by Mary C. Baty for Jane Penny/

Jane Penny
Counsel for Steven P. Moffitt

Dated at Rockville, MD
this 6th day of November, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael C. Farrar, Chairman

E. Roy Hawkens

Nicholas G. Trikouros

In the Matter of

STEVEN P. MOFFITT

Docket No. IA-05-054

ASLBP No. 06-847-03-EA

November __, 2006

ORDER

(Accepting Settlement Agreement and Dismissing Proceeding)

1. On January 4, 2006, the Staff issued an Order (Effective Immediately) Prohibiting Involvement in NRC Licensed Activities to Mr. Steven P. Moffitt, a former employee of Davis-Besse Nuclear Power Plant.

2. On February 23, 2006, Mr. Moffitt properly and timely answered the Order, denied the allegations in the Order, and requested an expedited hearing.

3. On March 16, 2006, this Licensing Board was established.

4. On March 20, 2006, the Staff answered the hearing request, and agreed that Mr. Moffitt was entitled to a hearing.

5. On March 27, 2006, the Board granted Mr. Moffitt's hearing request.

6. The Order issued on January 4, 2006 to Mr. Steven P. Moffitt is superceded by this Order.

7. The Settlement Agreement, attached as Exhibit A to this Order, is hereby incorporated into this Order.

8. Upon review of the Settlement Agreement, the Licensing Board is satisfied that its terms reflect a fair and reasonable settlement of this matter, in keeping with the objectives of the NRC's Enforcement Policy, and that no further adjudication of any matter is required in the public interest. Accordingly, all matters required to be adjudicated as part of this proceeding have been resolved and the proceeding, ASLB-06-847-03-EA, is, therefore, dismissed.

IT IS SO ORDERED.

Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

E. Roy Hawkens
ADMINISTRATIVE JUDGE

Nicolas G. Trikouros
ADMINISTRATIVE JUDGE

Dated in Rockville, MD
this ___ Day of November, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION TO ISSUE AN ORDER AN DISMISS THE PROCEEDING", "SETTLEMENT AGREEMENT", and "ORDER (Accepting Settlement Agreement and Dismissing Proceeding)" in the above captioned proceeding have been served on the following persons by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission internal mail system as indicated by an asterisk (*); and by electronic mail as indicated by a double asterisk (**) on this 6th day of November, 2006.

Michael C. Farrar * **
Administrative Judge, Chair
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555-0001
E-Mail: mcf@nrc.gov

Nicholas G. Trikourous * **
Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555-0001
E-Mail: ngt@nrc.gov

E. Roy Hawkens * **
Chief Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555-0001
E-Mail: erh@nrc.gov

Office of the Secretary * **
Attn: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, D.C. 20555
E-mail: hearingdocket@nrc.gov

Adjudicatory File *
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3 F23
Washington, D.C. 20555

Jane G. Penny * **
Thomas W. Scott * **
Killian & Gephart, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
E-mail: jpenny@killiangephart.com
tscott@killiangephart.com

Office of Commission Appellate Adjudication *
U.S. Nuclear Regulatory Commission
Mail Stop: O-16 C1
Washington, D.C. 20555

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
E-Mail: map4@nrc.gov

Libby Perch * **
Board Staff
Atomic Safety and Licensing Board Panel
Mail Stop: T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: emp1@nrc.gov

/RA by Mary C. Baty/

Mary C. Baty
Counsel for the NRC Staff