

October 27, 2010

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Docket No. 30-20836-EA
MATTINGLY TESTING SERVICES, INC.)	
(Molt and Billings, Montana))	ASLBP No. 10-905-02-EA-BD01

AGREED-UPON PROPOSED SCHEDULE FOR FURTHER PROCEEDINGS

With its October 21, 2010 Order,¹ the Atomic Safety and Licensing Board (“Board”) directed the parties to this proceeding to confer and agree upon an expedited schedule for this Subpart G proceeding. The Staff of the Nuclear Regulatory Commission (“NRC Staff”), Mr. Ficek, and Ms. Thompson conferred and have agreed on a proposed schedule with the exception of the due date for the Staff’s initial hearing file. The schedule assumes that the Board will issue an order setting the initial schedule in the first week of November, 2010. The parties propose the following schedule:²

1. NRC Staff initial disclosures/ hearing file due. Mr. Ficek and Ms. Thompson propose November 12, 2010. The NRC Staff proposes November 19, 2010.

Mr. Ficek and Ms. Thompson point out that 10 C.F.R. § 2.336(b) requires the Staff to produce its initial disclosures 30 days from the date the hearing request was granted. Mr. Ficek’s hearing requests were granted on October 6, 2010, 30 days after which is November 5, 2010. Mr. Ficek and Ms. Thompson agree to a due date of

¹ Order (Granting Dayna Thompson’s Request to Participate in the License-Revocation Phase of the Proceeding as a Party, and Directing Parties to Negotiate a Schedule for Further Proceedings, as Discussed at Prehearing Telephone Conference), October 21, 2010.

² The proposed schedule reflects the parties’ positions to the best of the NRC Staff’s knowledge and understanding.

November 12, 2010, but not November 19, 2010, because they would like to have the full week before the Thanksgiving holiday to review the NRC Staff's documents.

The NRC Staff understands that Mr. Ficek and Ms. Thompson would like as much time as possible to review the NRC Staff's documents and is endeavoring to complete its initial disclosures and hearing file as quickly as possible, but is concerned that November 12, 2010 is not an achievable date. First, the NRC Staff is redacting a significant number of Office of Investigations documents in order to avoid withholding those documents in their entirety. Second, the Office of Investigations will be in a mandatory, all-hands meeting the week of November 1–5, 2010. Finally, lead counsel in this proceeding recently had a family emergency that kept her away from work for a week and a half and will continue to keep her out of town sporadically for the foreseeable future. Due to the significant number of lengthy documents that the NRC Staff must review for sensitive information and significant time constraints, the NRC Staff proposes that its initial hearing file be due November 19, 2010, which, while 44 days after Mr. Ficek's hearing requests were granted, is only 29 days after Ms. Thompson's hearing request was granted on October 21, 2010.

2. Mr. Ficek and Ms. Thompson's 10 C.F.R. § 2.704(a) disclosures due December 15, 2010.
3. Discovery, 10 C.F.R. §§ 2.704-2.709, complete on January 21, 2011.
4. Mr. Ficek and Ms. Thompson's 10 C.F.R. § 2.704(b) disclosures due February 2, 2011.
5. Motions for summary disposition due February 4, 2011.³
6. Presiding officer decisions on motions for summary disposition on or about February 28, 2011.

³ The parties agree that if there are no summary disposition motions, the next step in the proceeding, the optional prehearing conference, will be moved to an earlier date set by the Board. The Staff would point out that it offered to forgo summary disposition motions as well as pre-filed written testimony, but Mr. Ficek and Ms. Thompson preferred to keep those steps in the hearing process.

7. Optional prehearing conference on March 7, 2011 or on another date designated by the Board.
8. Mr. Ficek and Ms. Thompson's 10 C.F.R. § 2.704(c) disclosures due March 18, 2011.
9. All parties' pre-filed written testimony due April 1, 2011.
10. Hearing begins April 18, 2011.
11. NRC Staff's proposed findings of fact and conclusions of law due May 23, 2011.
12. Mr. Ficek and Ms. Thompson's proposed findings of fact and conclusions of law due June 2, 2011.
13. NRC Staff response to Mr. Ficek and Ms. Thompson's proposed findings of fact and conclusions of law filed due June 9, 2011.

Respectfully submitted,

/Signed (electronically) by/

Molly Barkman Marsh
Counsel for NRC Staff

Dated at Rockville, Maryland
this 27th day of October, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that "AGREED-UPON PROPOSED SCHEDULE FOR FURTHER PROCEEDINGS" was submitted to the Electronic Information Exchange (EIE) this 27th day of October, 2010, which to the best of my knowledge resulted in transmittal to those on the EIE Service List for the above-captioned proceeding.

Respectfully submitted,

/Signed (electronically) by/

Molly Barkman Marsh
Counsel for the NRC Staff

Dated in Rockville, Maryland
this 27th day of October, 2010