

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

JOINT MOTION TO POSTPONE DISCOVERY
AND HOLD PROCEEDING IN ABEYANCE

INTRODUCTION

The parties to this proceeding, the Staff of the U.S. Nuclear Regulatory Commission (“NRC Staff”), Mr. Mark Ficek, and Ms. Dayna Thompson (collectively, “the parties”) respectfully request that the Board postpone discovery and hold this proceeding in abeyance. The parties have agreed to enter into negotiations in order to attempt to settle the two orders at issue in this proceeding.

BACKGROUND

On September 2, 2010, the NRC Staff issued an Order Revoking License (Effective Immediately) to Mattingly Testing Services, Inc. (“MTS” or “licensee”).¹ On that same day, the Staff also issued an order to Mark Ficek, President and Owner of MTS, prohibiting him from any involvement in NRC-licensed activities, effective immediately, for a period of seven years from the date of the order.² On September 22, 2010, Dayna C. Thompson requested in a letter to the NRC a hearing regarding whether the MTS Order should be sustained, and also that the presiding officer set aside the immediate effectiveness of the MTS Order. On the same day, Mr. Ficek filed requests for hearing on both the MTS Order and the Ficek Order.

¹ Order Revoking License (Effective Immediately) EA-10-100 (Sept. 2, 2010) (ML102440234) (“MTS Order”); In the Matter of Mattingly Testing Services, Inc. Molt, MT; Order Revoking License (Effective Immediately), 75 Fed. Reg. 55,360 (Sept. 10, 2010).

² Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) IA-10-028 (Sept. 2, 2010) (ML102440353) (“Ficek Order”); In the Matter of Mark M. Ficek; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately), 75 Fed. Reg. 55,366 (Sept. 10, 2010).

On October 6, 2010, the Board issued an Order denying Ms. Thompson's request to set aside the immediate effectiveness of the MTS Order. Also on October 6, 2010, the Board issued an Order granting Mr. Ficek's hearing requests and scheduling a prehearing teleconference on October 20, 2010. On October 21, 2010, the Board issued an Order reflecting the results of the prehearing teleconference, granting Ms. Thompson's hearing request and ordering the Staff to file an agreed-upon proposed schedule for the hearing process. On October 27, 2010, the Staff filed the agreed-upon schedule. On October 28, 2010, the Board issued an Order setting November 12, 2010, as the deadline for the Staff's initial disclosures/hearing file.

DISCUSSION

While Mr. Ficek stated to the Board during the October 20, 2010 prehearing teleconference that he was not interested in pursuing settlement,³ Mr. Ficek and Ms. Thompson have since been in contact with counsel for the NRC Staff and have proposed that the parties engage in settlement negotiations in order to disposition the MTS Order and Ficek Order without a hearing. The NRC Staff agrees that discussions among the parties may prove fruitful.

For that reason, the parties believe that it would be in the best interest of all for discovery to be postponed and the hearing held in abeyance so that efforts may be focused primarily on settlement negotiations. The parties further believe that granting this motion will not prevent the Board from efficiently moving forward if efforts to settle this matter are unsuccessful.

Accordingly, the NRC Staff, Mr. Ficek, and Ms. Thompson jointly move that the Board issue an order postponing discovery and holding the hearing in abeyance. The parties have not yet made arrangements for settlement discussions, but will schedule them expeditiously and will jointly advise the Board of the status of their efforts in written reports with the Board every 30 days beginning December 8, 2010.

³ Transcript of Mattingly Testing Service, Inc. Pre-hearing Conference at 25 (Oct. 20, 2010).

CONCLUSION

The NRC Staff, Mr. Ficek, and Ms. Thompson respectfully request that the Board postpone discovery and hold the proceeding in abeyance while they engage in settlement negotiations.

Respectfully submitted,

/Signed (electronically) by/

Molly Barkman Marsh
Counsel for the NRC Staff

/Executed in accord with 10 C.F.R. § 2.304(d)/

Dayna Thompson⁴

Dated at Rockville, MD
this 4th day of November, 2010

⁴ On November 3, 2010, Mr. Ficek informed Ms. Thompson and Staff counsel via e-mail that he agrees to this motion and that Ms. Thompson may act as his representative for filing.

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CERTIFICATE OF SERVICE

I hereby certify that "JOINT MOTION TO POSTPONE DISCOVERY AND HOLD PROCEEDING IN ABEYANCE" was submitted to the Electronic Information Exchange (EIE) this 4th day of November, 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 4th day of November, 2010