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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATION
BOARD OF GOVERNORS

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	Docket No. 030-17711-EA
)	
NDT SERVICES, INC.)	License No. 52-19438-01
Caguas, Puerto Rico)	
)	EA 98-108

NRC STAFF'S MOTION FOR SCHEDULING ORDER

The NRC Staff hereby moves, pursuant to 10 C.F.R. § 2.730, for an order scheduling dates for the filing of a second answer and motion by NDT Services, Inc. (NDTS) to set aside the immediate effectiveness of the Order Suspending License (Effective Immediately) (Mar. 27, 1998)¹ (Suspension Order), and the filing of a response by the NRC Staff (Staff).

BACKGROUND

On March 27, 1998, the Staff issued the Suspension Order to NDTS, which required the immediate suspension of all licensed activities by NDTS. The Licensee filed an answer and request to set aside the immediate effectiveness of the Suspension Order by facsimile transmission to the NRC Operations Center on April 20, 1998. The answer was not submitted under oath or affirmation, and the request to set aside the immediate effectiveness was not supported by affidavits or other evidence, notwithstanding the requirements contained in 10 C.F.R. § 2.202.

¹63 Fed. Reg. 16,588-91 (1998).

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The Staff filed a response on April 27, 1998, with evidence in support of the Suspension Order, setting forth reasons why NDTS's request should be denied.

On May 1, 1998, during the first prehearing conference in this matter, the Atomic Safety and Licensing Board (Board) denied the request of NDTS to set aside the immediate effectiveness of the Suspension Order. However, the Board provided NDTS, which had not yet retained counsel, an opportunity to file another motion, with supporting affidavits or other evidence, that meets the standards specified by the Commission's regulations at 10 C.F.R. § 2.202(c)(2)(i). On the basis that NDTS was in the process of seeking counsel, the Board did not set a time certain by which NDTS would have to submit its revised motion.²

During the weeks of May 4 and May 11, 1998, the undersigned Counsel for the Staff and the Assistant Radiation Safety Officer (ARSO) for NDTS, Mr. John Rochelle, discussed by telephone the Licensee's interest in obtaining certain documents from the Staff, among other things. The undersigned informed Mr. Rochelle about the applicable regulations and provided general information as to how to file a request for the production of documents from the Staff. During the week of May 18 and into the following week, the undersigned attempted to reach Mr. Rochelle, or Mr. David Vaughn or Mr. Thomas Crossland (the Radiation Safety Officer and owner of NDTS, respectively) to discuss the status of NDTS's preparation of a second request to stay the Suspension Order, but was unsuccessful because the Licensee's telephone was not being answered during that time. Finally, during a telephone call made to Mr. Vaughn at a recently obtained new number, Mr. Vaughn informed the undersigned on May 29 that the Licensee was

²Transcript of Prehearing Conference (May 1, 1998) at 43.

fully intending to pursue filing a new answer and stay request, but would need until at least July 1, 1998, before it would be able to submit its pleadings.

DISCUSSION

An answer and stay request that comport with the Commission's regulations at 10 C.F.R. § 2.202 are critical fundamental pleadings by the Licensee that will have a substantial bearing on the course of this proceeding. These pleadings will determine which issues or charges are genuinely in dispute, if any. In turn, the scope of, and necessity for discovery can only be determined once it is truly known what is in dispute. Of course, matters that are admitted or not disputed by NDTS in its answer may be efficiently disposed of through a motion for summary disposition, thereby shortening the time necessary to prepare for and hold the hearing.

The Licensee has had a reasonable amount of time to retain counsel if it has chosen to do so. Given the Board's initial ruling that the Suspension Order remains immediately effective, the Staff does not object to NDTS's proposed deadline of July 1, 1998, by which the Licensee must file an answer and a request to set aside the immediate effectiveness of the Suspension Order (if it so chooses with respect to the latter) that comport with the Commission's regulations concerning oath or affirmation and supporting affidavits or other evidence, at 10 C.F.R. § 2.202. Therefore, the Staff moves for a scheduling order consistent with the foregoing. The Staff also moves that the scheduling order provide that any Staff response to a request for a stay be due in accordance with the provisions of 10 C.F.R. § 2.730(c) regarding motions and responses thereto, *i.e.*, fifteen days after the filing of NDTS's motion for a stay. Such a motion is essentially a motion for reconsideration of NDTS's original request for a stay which was filed on April 20, 1998, and

which the Board denied. Given that consideration of a second revised request for a stay is not provided for in the Commission's regulations, and given NDTs's own delay in submitting a revised request, there is no apparent reason to treat a second request as coming within the scope of the expedited schedule set forth in 10 C.F.R. § 2.202(c)(2)(i). In the alternative, the Staff would request that any response from the Staff be due no sooner than seven business days following the receipt of a request for a stay, in light of the upcoming Federal holiday on July 3, 1998, and Staff counsel's scheduled absence from the office from June 29 to July 2, 1998.

CONCLUSION

In consideration of the foregoing, the Staff's motion for a scheduling order should be granted, setting forth (1) July 1, 1998, as the date NDTs must file its answer, under oath or affirmation, and motion to set aside the immediate effectiveness of the Suspension Order, with supporting affidavits or other evidence, and (2) that any Staff response is due fifteen days after NDTs has filed its pleadings.

Respectfully submitted,



Steven R. Hom
Counsel for NRC Staff

Dated at Rockville, Maryland
this 3rd day of June 1998

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTION FOR SCHEDULING ORDER" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class; or as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system this 3rd day of June 1998.

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