

August 2, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matters of

DALE L. MILLER

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ASLBP No. 06-846-02-EA

Docket No. IA-05-053

NRC STAFF'S APPLICATION FOR THE ISSUANCE OF A SUBPOENA

INTRODUCTION

Pursuant to 10 C.F.R. § 2.702(a) of the Commission's regulations, the Staff of the Nuclear Regulatory Commission (Staff) requests that the Atomic Safety and Licensing Board (Board), designated in the above-captioned proceeding, issue a subpoena, attached hereto, requiring a certain individual, named below, to attend and give testimony at a deposition.

DISCUSSION

The Staff requests the Board to issue a subpoena for Frank W. Kennedy in order to ensure the Staff's ability to depose this individual on the date specified. Mr. Kennedy was a Senior Nuclear Technologist in the Regulatory Affairs Group at Davis-Besse. Mr. Kennedy's testimony is relevant to the issues raised by this enforcement action. Mr. Kennedy was assigned responsibility for drafting Davis-Besse's response to Bulletin 2001-01 until responsibility was transferred to Mr. Rodney Cook on or about August 10, 2001. Mr. Kennedy was identified as a person with relevant information by Mr. Miller in his initial disclosures and is referenced in Mr. Miller's responses to written discovery questions.

CONCLUSION

For the above stated reasons, the Staff requests the Board to issue the attached subpoena to Mr. Kennedy.

Respectfully submitted,

/RA by Mary C. Baty/

Sara E. Brock
Mary C. Baty
Michael A. Spencer
Counsel for the NRC Staff

Dated at Rockville, Maryland
this 2nd day of July, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matters of:

DALE L. MILLER

Docket No. IA-05-053

ASLBP No. 06-846-02-EA

TO:

Frank W. Kennedy
c/o James R. Wooley
Stephen J. Schlegelmilch
Bake & Hostetler
3200 National City Center
1900 East 9th Street
Cleveland, OH 44114-3485

YOU ARE HEREBY COMMANDED to appear to testify at a deposition in the
above-captioned proceeding
to be conducted at the Holiday Inn Express Hotel and Suites,
50 NE Catawba Road, Port Clinton, OH 43452 in the Catawba Board Room
on the 25th day of August, 20 06 at 9:00 AM.

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY: _____
Michael Farrar, Chairman ASLB

Date

ATTORNEY FOR THE NRC STAFF:

Sara E. Brock/ Mary C. Baty/ Michael A. Spencer

TELEPHONE: 301-415-8393/301-415-1324/301-415-4073

10 C.F.R. 2.702(f)

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena is issued, the presiding officer,

or, if he is unavailable, the Commission may:
(1) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) Condition denial of the motion on just and reasonable terms.

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

DALE L. MILLER

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ASLBP No. 06-846-02-EA

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S APPLICATION FOR THE ISSUANCE OF A SUBPOENA" 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 2nd day of August, 2006.

Michael C. Farrar * **

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Adjudicatory File *

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Office of the Secretary * **

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/RA/

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