

August 2, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matters of	)	
	)	
DALE L. MILLER	)	Docket No. IA-05-053
	)	ASLBP No. 06-846-02-EA
&	)	
	)	
STEVEN P. MOFFITT	)	Docket No. IA-05-054
	)	ASLBP No. 06-847-03-EA
	)	

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 proceedings<sup>1</sup>, 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 John Cummings in order to ensure the Staff's ability to depose this individual on the date specified. Mr. Cummings served as a Staff Nuclear Engineer and as a Nuclear Engineering Supervisor at Davis-Besse. Mr. Cummings' testimony is relevant to the issues raised by this enforcement action. At Davis-Besse, Mr. Cummings was a subordinate of Mr. Moffitt and Mr. Andrew Siemaszko's direct supervisor. Mr. Cummings was identified as a person with relevant information by Mr. Moffitt in response to

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<sup>1</sup>The Staff recognizes that these proceedings have not been consolidated. However, for administrative convenience the Staff desires a subpoena covering both proceedings since Mr. Cook has been identified as a witness in both proceedings.

written discovery questions. Mr. Cummings was also referenced by Mr. Miller in his responses to written discovery questions

CONCLUSION

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

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 2<sup>nd</sup> day of August, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matters of:

DALE L. MILLER

and

STEVEN P. MOFFITT

Docket No. IA-05-053

ASLBP No. 06-846-02-EA

Docket No. IA-05-054

ASLBP No. 06-847-03-EA

TO:

John Cummings  
c/o James R. Wooley  
Stephen J. Schlegelmilch  
Baker & 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 24th day of August, 20 06 at 2:00 PM .

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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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S APPLICATION FOR THE ISSUANCE OF A SUBPOENA" in the above captioned proceedings 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 2<sup>nd</sup> day of August, 2006.

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

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

Office of the Secretary \* \*\*  
Attn: Rulemaking and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Mail Stop: O-16 C1  
Washington, D.C. 20555  
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*/RA/*

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Mary C. Baty  
Counsel for the NRC Staff