

III.

The Scheduling Order in this proceeding, issued August 11, 2004, requires Respondents to disclose expert witnesses by October 13, 2004. The Scheduling Order also requires Respondents to furnish copies of transcripts of prior testimony of the disclosed experts. Scheduling Order, Additional Provisions, ¶ 11.

Pursuant to Rule 3.21 of the Commission's Rules of Practice, the Administrative Law Judge must enter a scheduling order that "establishes a schedule of proceedings, including a plan of discovery." 16 C.F.R. § 3.21(c)(1). Pursuant to Rule 3.21, the "Administrative Law Judge may grant a motion to extend any deadline or time specified in this scheduling order only upon a showing of good cause." 16 C.F.R. § 3.21(c)(2). "In determining whether to grant the motion, the Administrative Law Judge shall consider any extensions already granted, the length of the proceedings to date, and the need to conclude the evidentiary hearing and render an initial decision in a timely manner." *Id.* In addition, pursuant to Rule 3.42(c), "Administrative Law Judges shall have the duty . . . to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order." 16 C.F.R. § 3.42(c).

Good cause is demonstrated if a party seeking to extend a deadline demonstrates that a deadline cannot reasonably be met despite the diligence of the party seeking the extension. *Bradford v. Dana Corp.*, 249 F.3d 807, 809 (8th Cir. 2001); *Sosa v. Airprint Systems, Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992); Fed. R. Civ. P. 16 Advisory Committee Notes (1983 amendment). In the October 12, 2004 Order granting a joint motion for an extension, the parties were advised that "when requesting an extension based on good cause, the reasons therefore shall be specifically explained in the motion – general statements will not suffice."

Respondents have not demonstrated good cause for failing to provide copies of transcripts to Complaint Counsel within the time limits set by the Scheduling Order. Respondents have been or should have been aware of the requirement of providing transcripts of expert witnesses since the Scheduling Order was issued over two months ago on August 11, 2004. Respondents have not demonstrated that they used due diligence to meet this requirement of the Scheduling Order nor have they demonstrated that an extension of two weeks is necessary to provide the overdue transcripts.

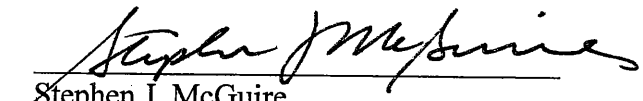
Pursuant to the Scheduling Order, the transcripts at issue were to be provided to Complaint Counsel by October 13, 2004. Respondents mailed their Motion on October 13, 2004. The Motion was received by the Office of Administrative Law Judges ("OALJ") on October 14, 2004 and was filed with the Office of the Secretary on October 15, 2004. Respondents did not explain why they waited until the last minute to file their request for an extension. In the October 12, 2004 Order in this proceeding, the parties were advised that they "shall provide timely service of all motions to the OALJ." The parties risk waiving their right to file a pleading if they wait until the last minute to request an extension and the extension is denied.

IV.

The parties are hereby notified that any subsequent requests for an extension of time for filing a pleading shall be filed on or before the date on which the pleading is due. In the event that a request for an extension is not filed timely, that request may be denied. Failure to abide by the dates established in the Scheduling Order may result in a waiver of rights in the proceeding. Further, the parties are cautioned that extensions of time will not be granted, absent a showing of good cause, if granting the extension would alter or affect other dates established in the Scheduling Order. *In re Dura Lube Corp.*, 1999 FTC Lexis 250, *1 (July 21, 1999).

Although Respondents have not demonstrated good cause for the extension, they represent that Complaint Counsel does not oppose an extension of one week. Therefore, Respondents' motion is **GRANTED in part and DENIED in part**. Respondents shall provide the required transcripts to Complaint Counsel by October 20, 2004.

ORDERED:



Stephen J. McGuire
Chief Administrative Law Judge

Date: October 18, 2004