

June 21, 2000

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

In the Matter of )  
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MICHEL A. PHILIPPON )

) Docket No. 55-32443-SP  
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)  
)

(Denial of Senior Reactor Operator  
License Application)

JOINT MOTION FOR ORDER APPROVING AND  
INCORPORATING STIPULATION FOR SETTLEMENT OF  
PROCEEDING AND TERMINATING PROCEEDING

The NRC Staff and Mr. Michel A. Philippon hereby jointly move the Presiding Officer for an order approving and incorporating the accompanying Stipulation for Settlement of Proceeding, executed by both parties, and terminating this proceeding.

Presently, this 10 C.F.R. Part 2, Subpart L matter is before the Presiding Officer pursuant to the Commission's remand decision in CLI-00-03, *Michel A. Philippon* (Denial of Senior Reactor Operator License), CLI-00-03, 51 NRC \_\_\_\_, slip op. (Mar. 2, 2000). The parties have now agreed that settlement of this proceeding is warranted.

In summary, under the proposed settlement, Mr. Philippon agrees to undergo a Senior Reactor Operator (Instant) dynamic simulator operating test, prepared by the facility licensee. A member of the Region III Staff will be present to observe the test. The test will be designed for Mr. Philippon to demonstrate his qualifications to perform adequately as a senior reactor operator, as well as a reactor operator. Both the licensee and the NRC Staff will evaluate Mr. Philippon's performance; both must conclude that Mr. Philippon's performance is satisfactory in order for Mr. Philippon to be issued a senior reactor operator license.

The parties note that pursuant to 10 C.F.R. § 2.1241, settlements are encouraged by the Commission. The NRC Staff and Mr. Philippon believe that the instant settlement is fair and reasonable, will provide adequate assurance that Mr. Philippon is competent to receive a senior reactor operator license, and is in the public interest.

CONCLUSION

In consideration of the foregoing, the NRC Staff and Mr. Michel A. Philippon jointly move the Presiding Officer for an order approving and incorporating the accompanying Stipulation for Settlement of Proceeding, and terminating this proceeding.

Respectfully submitted,



Steven R. Horn  
Counsel for NRC Staff

Michel A. Philippon  
Pro Se

Dated at Rockville, Maryland  
this 26<sup>th</sup> day of June 2000

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In consideration of the foregoing, the NRC Staff and Mr. Michel A. Philippon jointly move the Presiding Officer for an order approving and incorporating the accompanying Stipulation for Settlement of Proceeding, and terminating this proceeding.

Respectfully submitted,

Steven R. Horn  
Counsel for NRC Staff

*Michel A. Philippon*

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Pro Se

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STIPULATION FOR SETTLEMENT OF PROCEEDING

WHEREAS, in April 1998, Mr. Michel A. Philippon took an examination as required by 10 C.F.R. § 55.33 for a senior reactor operator license for the Fermi 2 facility; and

WHEREAS, the NRC Staff issued a proposed denial of the license on May 20, 1998, based on its conclusion that Mr. Philippon failed to pass the operating test portion of the examination; and

WHEREAS, following additional reviews by the NRC Staff, including an NRC Staff Appeal Panel, of Mr. Philippon's examination performance, Mr. Philippon was informed by letter dated October 4, 1998, that he did not pass the operating test; and

WHEREAS, Mr. Philippon filed a timely hearing request on October 16, 1998, which resulted in an initial decision by a Presiding Officer (LBP-99-44), dated December 9, 1999; and

WHEREAS, the NRC Staff filed a Petition for Review of LBP-99-44 on December 23, 1999; and

WHEREAS, the Commission reversed LBP-99-44 and remanded this matter for further consideration in CLI-00-03, dated March 2, 2000; and

WHEREAS, the NRC Staff and Mr. Philippon have stipulated and agreed to the following provisions for the settlement of the above-captioned proceeding, subject to the approval of the Presiding Officer; and

WHEREAS, Mr. Philippon is willing to withdraw his hearing request dated October 16, 1998, waive his hearing and appeal rights with respect to the grading of his performance on the April 1998 examination, and jointly move with the NRC Staff to terminate this proceeding, in consideration of the terms and provisions of this Stipulation; and

WHEREAS, the terms and provisions of this Stipulation, once approved by the Presiding Officer, shall be incorporated by reference into an order, as that term is used in subsections (b) and (o) of section 161 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. § 2201;

NOW THEREFORE, IT IS STIPULATED AND AGREED between the NRC Staff and Mr. Michel A. Philippon as follows:

1. As soon as can be reasonably arranged between the NRC Staff, Mr. Philippon, and the licensee for the Fermi 2 facility, Detroit Edison Company, but no later than three months from the date of the Presiding Officer's approval of this Stipulation, unless a subsequent time is agreed to by Mr. Philippon, Mr. Philippon shall undergo a Senior Reactor Operator (Instant) dynamic simulator operating test, as specified below, prepared by the licensee for the Fermi 2 facility, that will be observed by an NRC Staff member from Region III who has not otherwise been involved in this proceeding or the grading of any prior examination taken by Mr. Philippon. The dynamic simulator operating test shall be administered consistent with NUREG-1021, Revision 8, ES-302, "Administering Operating Tests to Initial License Applicants," and Appendix E, "Policies and Guidelines for Taking NRC Examinations," Part E - Simulator Test Guidelines (Category C), and shall comprise two scenarios, one in which Mr. Philippon shall demonstrate his qualifications to perform adequately as a senior reactor operator, and the second in which Mr. Philippon shall demonstrate his qualifications to perform adequately as a reactor operator.

The scenarios shall be developed in accordance with NUREG-1021, Revision 8, "Operator Licensing Examination Standards for Power Reactors," ES-301, "Preparing Initial Operating Tests," Section D., and shall be reviewed and approved by the NRC Staff, in accordance with NUREG-1021, ES-301, Section C.2., prior to the administration of the test.

2. Mr. Philippon's performance on the above simulator operating test shall be evaluated by the NRC Staff and the licensee in consultation with each other, in accordance with NUREG-1021, Revision 8, Operator Licensing Examination Standards for Power Reactors, ES-303, "Documenting and Grading Initial Operating Tests."

3. In reaching its decision on whether to issue a senior reactor operator license to Mr. Philippon pursuant to this settlement, the NRC Staff shall take into consideration the licensee's evaluation of Mr. Philippon's test performance. The NRC Staff shall issue a senior reactor operator license to Mr. Philippon without undue delay if the Staff determines that Mr. Philippon's performance on the above simulator operating test was satisfactory, and the licensee also determines that Mr. Philippon's performance was satisfactory. Mr. Philippon shall not be adversely graded in any scenario in which he is acting as a senior reactor operator for inappropriate actions of his crew that were contrary to his directions when such directions were consistent with plant operating procedures or technical specifications, or for inappropriate actions or inactions of his crew that could not have reasonably been anticipated or reasonably addressed by Mr. Philippon. If the NRC Staff and/or the licensee determine that Mr. Philippon's performance was unsatisfactory, no license shall be granted to Mr. Philippon in connection with this settlement, and Mr. Philippon shall have no right of appeal regarding the determination made pursuant to this settlement.

4. Mr. Philippon withdraws his hearing request dated October 16, 1998, and waives his hearing and appeal rights with respect to the grading of his performance on the April 1998 examination.

5. Nothing in this settlement shall preclude Mr. Philippon from applying or reapplying for a license as allowed and provided for under 10 C.F.R. Part 55.

FOR THE NRC STAFF

*Arnold Horn*

Date: *6/21/00*

MICHEL A. PHILIPPON

\_\_\_\_\_

Date:

5. Nothing in this settlement shall preclude Mr. Philippon from applying or reapplying for a license as allowed and provided for under 10 C.F.R. Part 65.

FOR THE NRC STAFF

\_\_\_\_\_

Date:

MICHEL A. PHILIPPON

*Michel A. Philippon*

Date: 6/21/00

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

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MICHEL A. PHILIPPON ) Docket No. 55-32443-SP  
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License Application) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION FOR ORDER APPROVING AND INCORPORATING STIPULATION FOR SETTLEMENT OF PROCEEDING AND TERMINATING PROCEEDING" and "STIPULATION FOR SETTLEMENT OF PROCEEDING" in the above-captioned proceeding have been served on the following by deposit in the Nuclear Regulatory Commission's internal mail system, or as indicated by a single asterisk by U.S. mail, first class, or as indicated by a double asterisk by hand delivery, this 21<sup>st</sup> day of June 2000:

Administrative Judge  
Thomas S. Moore  
Presiding Officer  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
FAX: 301-415-5595

Administrative Judge  
Dr. Charles N. Kelber  
Special Assistant  
Atomic Safety and Licensing Board  
Mail Stop T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Michel A. Philippon\*  
13871 Capernall Road  
Carleton, MI 48117  
FAX (Fermi control room):  
(313) 256-4718

Office of Commission Appellate  
Adjudication  
Mail Stop: OWFN-16 C-1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Adjudicatory File (2)  
Atomic Safety and Licensing Board  
Mail Stop: T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Atomic Safety and Licensing Board  
Panel  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Secretary (2) \*\*  
Attn: Rulemakings and  
Adjudications Staff  
Mail Stop: OWFN-16 C1  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

  
Steven R. Hom  
Counsel for NRC Staff