

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

**DOCKETED 09/08/05**

**RAS 10434**

**SERVED 09/08/05**

ATOMIC SAFETY AND LICENSING BOARD PANEL

Before Administrative Judges:

Ann Marshall Young, Chair  
Michael C. Farrar  
Peter S. Lam

In the Matter of

DAVID H. HAWES  
(Reactor Operator License for  
Vogtle Electric Generating Plant)

Docket No. 55-22685-SP

ASLBP No. 05-840-01-SP

September 8, 2005

ORDER

(Granting Hearing, Setting Briefing Schedule and Telephone Conference, and Addressing Matters Discussed in September 1, 2005, Telephone Conference)

A telephone conference was held September 1, 2005, in this proceeding involving David Hawes' request for hearing with regard to the Staff's proposed denial of his application for a reactor operator license. The following matters were addressed during this conference:

1. Without conceding any issues relating to the merits of this proceeding, the Staff withdrew its objection to Mr. Hawes' hearing request. Tr. 36-37. The Board therefore GRANTS Mr. Hawes' request for hearing.

2. Issues regarding any rights Mr. Hawes may have as a member of the Georgia National Guard who was mobilized for Operation Iraqi Freedom (as noted in his hearing request) pursuant to the Servicemembers Civil Relief Act of 2003, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and related rules (see 69 Fed. Reg. 56266 (Sept. 20, 2004); see *also, e.g.*, 69 Fed. Reg. at 56274; 56286, § 1002.5(d)(1)(ii)), and how any such rights relate to this proceeding, will be addressed in briefs to be filed by the parties according to the following schedule: The Staff will file its brief on September 21, and Mr. Hawes will file his brief through counsel on October 3, 2005. See Tr. 12-16, 29, 37-38.

3. Another telephone conference will be held in this proceeding on October 6, 2005, starting at 1:30 p.m. Tr. 42-44. At this conference, among other things the type of hearing under 10 C.F.R. Part 2 that should be held in this proceeding will be discussed, and, if possible, a hearing date will be set. Tr. 44-45. The parties will be notified of the call-in procedure for this conference prior to October 6.

4. Mr. Hawes appeared without counsel, stating that he is working through the Department of Labor and Employee Support, Guard and Reserve in having counsel appointed to represent him in this proceeding, but that the process for this had not yet been completed. Tr. 4-5. Mr. Hawes was encouraged to obtain counsel as soon as possible, and advised to assure that his counsel is fully apprised of, and has all documents related to, this proceeding, see Tr. 8-10, 15, 19-20, 26, 31, 36, 39-40, including the transcript of the September 1 hearing, available through the NRC ADAMS system (ADAMS accession number ML052500114). See Tr. 4-5, 20, 24-25, 29. Information on ADAMS may be obtained from the NRC website, [www.nrc.gov](http://www.nrc.gov), and the NRC public documents room, at 1-800-397-4209.

5. The issue of the timing of any retaking of the written portion of the operator examination was discussed, including 10 C.F.R. § 55.35, the waiver-within-two-year provision at 10 C.F.R. § 55.47, and the exemption provision at 10 C.F.R. § 55.11. Tr. 6-12. The Staff and Mr. Hawes indicated a willingness to consider such a retaking outside the standard time limits as a possible means of settling some or all of this proceeding, to be done concurrently with continuing activities in this proceeding. Tr. 18-19, 38-40. In addition, the parties were offered the opportunity to have a settlement judge appointed to assist them in mediating a possible settlement of this proceeding. Tr. 18-19, 37-40.

6. Mr. Hawes indicated that he had been informed of the possibility of being called up again in response to the devastation following Hurricane Katrina, and agreed to inform the Board and Staff counsel of this as soon as possible if it occurs. The Staff agreed to hold this

proceeding in abeyance pending Mr. Hawes' return from any such deployment, should it occur. Tr. 20-23. Also, should this occur, Mr. Hawes or his counsel will notify the Board and Staff whether it will be possible to go forward at least with the briefs discussed in paragraph 2 above. Tr. 43.

7. The possible involvement of Vogtle plant management, through counsel, in this proceeding in one manner or another was addressed, and the parties indicated they would talk with Southern Nuclear counsel regarding this and notify the Board. Tr. 40-41. Southern Nuclear counsel may also wish to participate in the October 6 telephone conference set above.

It is so ORDERED.

THE ATOMIC SAFETY  
AND LICENSING BOARD

*/RA/*

---

Ann Marshall Young, Chair  
ADMINISTRATIVE JUDGE

*/RA/*

---

Michael C. Farrar  
ADMINISTRATIVE JUDGE

*/RA/*

Peter S. Lam  
ADMINISTRATIVE JUDGE

Rockville, Maryland  
September 8, 2005<sup>1</sup>

---

<sup>1</sup>Copies of this Order were sent this date by e-mail transmission to all parties.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
DAVID H. HAWES ) Docket No. 55-22685-SP  
)  
)  
(Reactor Operator License for )  
Vogtle Electric Generating Plant) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (GRANTING HEARING, SETTING BRIEFING SCHEDULE AND TELEPHONE CONFERENCE, AND ADDRESSING MATTERS DISCUSSED IN SEPTEMBER 1, 2005, TELEPHONE CONFERENCE) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Ann M. Young, Chair  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Michael C. Farrar  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Administrative Judge  
Peter S. Lam  
Atomic Safety and Licensing Board Panel  
Mail Stop - T-3 F23  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Susan L. Uttal, Esq.  
Kathryn L. Winsberg, Esq.  
Office of the General Counsel  
Mail Stop - O-15 D21  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

David H. Hawes  
1522 Magnolia Church Road  
Perkins, GA 30822

[Original signed by Evangeline S. Ngbea]

\_\_\_\_\_  
Office of the Secretary of the Commission

Dated at Rockville, Maryland  
this 8<sup>th</sup> day of September 2005