

RAS 105M7

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

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ADJUDICATIONS STAFF

Title: ITMO David H. Hawes

Docket Number: 55-22685-SP; ASLBP No.: 05-840-01-SP

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TEMPLATE = SECY-02

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On Behalf of Mr. Hawes:

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## P R O C E E D I N G S

(1:29 p.m.)

JUDGE YOUNG: Let's go on the record then.

I received a telephone call from Ms. Uttal after Mr. Hawes had also called the office this morning. And Ms. Uttal informed me that you have reached a settlement.

I appreciate your agreeing to go ahead with this conference so that you can tell us what your settlement is and we can sort of formally accept that and dispatch with any further proceedings in this case.

Is my understanding correct Mr. Hawes?

MR. HAWES: Yes, ma'am, it is.

JUDGE YOUNG: Very good. I want to congratulate -- we all want to congratulate both parties on reaching an agreement. Which one of you wants to tell me -- announce your settlement to me -- to us?

MS. UTTAL: Okay. Judge, this is Susan Uttal. I'll do it because I've had to also speak with Betina Terry, who is General Counsel for Southern Company, regarding whether the facility will buy into this because without their agreement, a lot of this can't be effectuated.

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JUDGE YOUNG: Right.

MS. UTTAL: And she called me right before this conference to let me know that there was a small glitch which I will get to. I don't think it's a deal breaker. I just think it is something that has to be worked out between the NRC and the facility.

JUDGE YOUNG: Okay.

MS. UTTAL: What we offered Mr. Hawes was to waive the six-month waiting period required for the third application. That's under 55.35. So he doesn't have to wait the six months.

And we will waive the requirement that he retake the entire test, permitting him just to take the written examination and not have to retake the operating test that he passed the last time around.

However, the waiver is contingent on Mr. Hawes' full participation in the Licensed Reactor Operator Re-qualification Program. And if he is not already enrolled in the program then we would ask that he make -- require that he make up anything he has missed since the last time he took the test so that he is all caught up since he hasn't -- it's been a while since he has studied. And we want him to be up to date.

Now this is the problem. The facility has

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1 told Ms. Terry that they don't allow non-licensed --  
2 people who are non-licensed to take the re-qual  
3 program. And perhaps there is some other program that  
4 they have that they could have him sit in. And I  
5 asked the facility people to get in touch with our  
6 region to work this out.

7 It's the staff's position that we want him  
8 sitting in on the re-qual program so that we make sure  
9 -- and to pass all the tests in the re-qual program to  
10 make sure that he is up to date and is fully capable  
11 of taking on the duties because he's missed so much  
12 time.

13 So that remains to be worked out between  
14 the NRC and the licensee.

15 Further, we want him to take the written  
16 exam prior to May 2007. That would be the two-year  
17 limit. If he is unable to take the exam before May of  
18 2007 because the facility hasn't offered it to him,  
19 then he and the facility will have to apply for an  
20 exemption to 5547. And they would have to get that  
21 application in between May and July. And the staff  
22 would look favorably upon such an application for an  
23 exemption.

24 And if he misses those dates then he'll  
25 have to take the entire exam again.

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1 JUDGE YOUNG: Mr. Hawes, do you agree with  
2 all that?

3 MR. HAWES: Yes, ma'am, I do.

4 JUDGE YOUNG: And just one other thing.  
5 This morning in the call you made you spoke with a  
6 staff person here, Karen Valloch. That's V-A-L-L-O-C-  
7 H for the Court Reporter.

8 You had indicated to her that you were  
9 still trying to get a lawyer but you did not have a  
10 lawyer. Now since you don't have a lawyer, have you  
11 had an opportunity or made use of any opportunity you  
12 had to discuss this with anybody you might want to  
13 discuss it with to make sure you understand all the  
14 parts of the agreement?

15 For example, do you feel that you do  
16 understand all the parts of the agreement? Do you  
17 need any more consultation with anyone?

18 MR. HAWES: No, ma'am. The problem I was  
19 having was that the ESGR, come to find out, they could  
20 not represent me but they were giving me guidance if  
21 that makes sense to you. They couldn't be my attorney  
22 but they were giving me guidance.

23 And there was a Colonel Rypma who talked  
24 to Ms. Uttal, I do believe, and he talked with me and  
25 made sure I understood what was going on. But he just

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1 could not represent me in like this case, if that  
2 makes sense to you.

3 JUDGE YOUNG: Yes, it does.

4 MR. HAWES: Okay.

5 JUDGE YOUNG: Just for my edification, I  
6 can't recall, what does ESGR stand for?

7 MR. HAWES: That's the Employee Support  
8 Guard and Reserve. It's the branch that handles these  
9 problems from deployment between -- really it's  
10 between employees and employers but they do also  
11 handle cases with the government also.

12 JUDGE YOUNG: Okay. So you talked with  
13 the Colonel and he also made sure that you understood  
14 all of the parts of the agreement?

15 MR. HAWES: Yes.

16 MS. UTTAL: Your Honor, I have spoken to  
17 Colonel Rypma. He's the ombudsman. And I gave him  
18 the basic outline, which was the exemption from the  
19 six-month waiting period, and waiving the requirement  
20 that he take the operating test. The little details  
21 that I filled in regarding the re-qual, I didn't give  
22 to him because it wasn't fully worked out at that  
23 time.

24 JUDGE YOUNG: Well, it sounds as though  
25 you do need to dot those last Is and cross those last

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1 Ts. Can you tell us a time when you would be able to  
2 notify us whether all that has been done? And do we  
3 need to set another conference call? Or can you do it  
4 in writing? And I'd guess I'd like to hear from both  
5 of you on that.

6 MS. UTTAL: Well, Judge, I think that I  
7 can do it in writing. I will touch base with all the  
8 appropriate parties to make sure that the facility  
9 will be prepared to meet the staff's requirements for  
10 this settlement offer. And if they cannot, then Mr.  
11 Hawes would have an opportunity to withdraw from the  
12 settlement offer if it is not to his liking.

13 JUDGE YOUNG: Okay. Is that all right  
14 with you, Mr. Hawes?

15 MR. HAWES: Yes, ma'am. It's just -- it  
16 sounds to me like we've just got to work out the re-  
17 qual part of this.

18 JUDGE YOUNG: Okay.

19 MS. UTTAL: And as to the time for the  
20 taking of the exam and whether the licensee or the  
21 staff will prepare a separate exam for Mr. Hawes, that  
22 is not included in the settlement agreement. And that  
23 remains to be worked out between the facility and the  
24 NRC.

25 JUDGE YOUNG: Okay. And that's part of

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1 the timing aspect of it?

2 MS. UTTAL: That's correct.

3 JUDGE YOUNG: Okay. So what would be a  
4 good time for you all to get back to us? And I guess  
5 if you're successful, we would like to have something  
6 in writing signed by both of you. And if you're not  
7 successful, notification that we need to get back on  
8 course in the proceeding. What would be a good target  
9 date for that?

10

11 MS. UTTAL: I would propose by next  
12 Friday. Next week I'm out one day. And we don't have  
13 -- we're all out on Monday. So I think the earliest  
14 would be next Friday.

15 JUDGE YOUNG: That would be October 14th,  
16 right?

17 MS. UTTAL: Yes.

18 JUDGE YOUNG: Well, if you're not able to  
19 get us anything by then, let us know because I think  
20 we support your settlement efforts. And it sounds as  
21 though the re-qualification, Mr. Hawes, is in your  
22 interest because it will help you pass the exam,  
23 right?

24 MR. HAWES: Yes, ma'am, that's correct.

25 JUDGE YOUNG: Okay. Well so have I left

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1 anything out that I need to address here?

2 JUDGE LAM: I do have something that I'd  
3 like to express. This is Judge Lam. I look very  
4 favorably on the proposed settlement agreement. I  
5 think -- my opinion is that it seems very fair to Mr.  
6 Hawes so that he'll have all the time to prepare and  
7 not anything in his preparation. And I think it also  
8 meets the duty and obligations of the staff of only  
9 selecting qualified operators.

10 JUDGE FARRAR: This is Judge Farrar. I  
11 would echo what Judge Lam said. This is a very  
12 innovative and imaginative solution of the veterans  
13 reemployment protections but also makes sure that only  
14 people who are qualified to do so will operate our  
15 reactors. I commend the staff for coming up with  
16 this. And I'm sure that the company will find a way  
17 to make it work.

18 MS. UTTAL: I believe that they will,  
19 Judge. Apparently the company is very proud of Mr.  
20 Hawes for his service to our country. And they're  
21 willing to work with him however they can to  
22 facilitate this.

23 JUDGE FARRAR: Those are excellent  
24 thoughts. And we applaud the efforts that you all put  
25 into this.

1 JUDGE YOUNG: We do. I join with Judge  
2 Lam and Judge Farrar in their statements as well. And  
3 so congratulations and good luck. And we will look  
4 forward to hearing from you next Friday or if you need  
5 more time, let us know.

6 All right. Then thank you all.

7 Does the Court Reporter need anything  
8 further from us?

9 COURT REPORTER: Yes, can I get the  
10 spelling of Colonel Rypma?

11 MS. UTTAL: Oh, I have no idea.

12 MR. HAWES: R-Y-P-M-A.

13 MS. UTTAL: Okay.

14 MR. HAWES: And Brett is his first name.

15 COURT REPORTER: Okay. And also Betina  
16 Terry?

17 MS. UTTAL: B-E-N-T-I-N-A T-E-R-R-Y.

18 COURT REPORTER: Okay. That's all. Thank  
19 you.

20 JUDGE YOUNG: Thank you all.

21 MS. UTTAL: Thank you.

22 MR. HAWES: Thank you.

23 JUDGE YOUNG: Good bye.

24 (Whereupon, the above-entitled conference  
25 was concluded at 1:41 p.m.)

CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission  
in the matter of:

Name of Proceeding: In the Matter of

David H. Hawes

Docket Number: 55-22685-Sp

ASLBP No. 05-840-01-SP

Location: Teleconference

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