

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**DOCKETED 01/09/06****RAS 10987****SERVED 01/09/06**

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

January 9, 2006

ORDER(Approving Settlement Agreement and Terminating Proceeding)

The NRC Staff and David H. Hawes have filed a joint motion to terminate this proceeding, involving David Hawes' request for hearing on the Staff's proposed denial of his application for a reactor operator license, based on the parties' Settlement Agreement filed January 5, 2006, with this Board. Joint Motion to Terminate Proceeding (Jan. 5, 2006); Settlement Agreement (Nov. 16, 2005). The parties have agreed upon two options for resolution of these matters, the selection to be determined by Vogtle Staff, both of which provide for training and reexamination, as well as exemption from certain regulatory requirements under certain circumstances. Settlement Agreement at 2-3.

Having previously raised with the parties the possibility of a settlement that might promote both the interest of assuring the safe operation of the Vogtle plant and any interests of Mr. Hawes as a member of the Georgia National Guard whose service in Iraq interrupted his previous testing for an operator license, *see, e.g.*, Tr. 15-19; *see also* Order (Granting Hearing, Setting Briefing Schedule and Telephone Conference, and Addressing Matters Discussed in September 1, 2005, Telephone Conference) (Sept. 8, 2005) [hereinafter Sept. 8. 2005 Order],

we commend the parties for achieving this agreement (also signed by the General Counsel for Vogtle owner, the Southern Company, in light of its involvement in the agreed-upon training and testing), which appears to us to address these interests in an effective and equitable manner.

In consideration of the preceding, we hereby approve the parties' Settlement Agreement,¹ incorporate it into this Order (see attached copy), and terminate this proceeding.

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
January 9, 2006²

¹We note that the Staff now urges that, as no actual notice of hearing was issued in this proceeding, approval by the Board may not be required under 10 C.F.R. § 2.338(i). However, as we did grant Mr. Hawes' hearing request (see Sept. 8, 2005 Order), and as we find the resolution of the case under the agreement to be appropriate and in keeping with earlier discussions with the parties, we likewise find our approval of the agreement — as contemplated by the express terms and conditions of that agreement (see Settlement Agreement at 1, 3) — to be appropriate under the circumstances.

²Copies of this Order were sent this date by e-mail transmission to all parties.

November 16, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
DAVID H. HAWES)	Docket No. 55-22685-SP
)	
(Denial of Reactor Operator License))	ASLBP No. 05-840-01-SP

SETTLEMENT AGREEMENT

On June 28, 2005, David H. Hawes filed a request for hearing, pursuant to 10 C.F.R. § 2.309, to contest the NRC staff's proposed denial of his application for a reactor operator (RO) license for failure to receive a passing grade on the written examination. The request for hearing was granted on September 8, 2005.

The parties³ to the above captioned proceeding, the NRC staff (Staff) and Mr. Hawes, have engaged in negotiation and agree that it is in the public interest to terminate this proceeding without further litigation and without reaching a conclusion on the merits, subject to the approval of the Atomic Safety and Licensing Board (Board).

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Mr. Hawes agrees to waive his right to a hearing in connection with this matter and waive any right to contest or otherwise appeal this Settlement Agreement once approved by the Board.

2. Mr. Hawes agrees that he did not receive a passing grade on the written examination.

³ Although not a party to the proceeding, because it will be involved in the training and testing of Mr. Hawes, Southern Company, the owner of Vogtle Electric Generating Plant, is a signatory to this agreement.

3. Mr. Hawes agrees that he will participate in one of the two alternatives discussed below.

4. Mr. Hawes understands and agrees that the decision regarding which alternative will be chosen will be made by the Vogtle staff.

5. First option:

a. Mr. Hawes agrees to retake the written RO examination in the spring of 2006.

b. The Staff agrees to exempt Mr. Hawes from the six (6) month waiting period required for a third application for an RO license, pursuant to 10 C.F.R. § 55.35. Mr. Hawes understands that the exemption will be contingent on Vogtle providing the necessary remedial training and sufficient justification for the exemption. He also understands that the date of the written examination must be agreed to by the Vogtle staff and depends on the availability of the resources of Vogtle and the Staff to prepare, review, approve and administer the examination.

c. Mr. Hawes agrees to immediately enter and fully participate in the licensed operator requalification training program, which must include all subject matter he has missed since taking the license exam last May. In addition, he agrees to take all the RO requalification examinations and operating tests given under that program as if he had received a license last May. Mr. Hawes agrees that depending on the timing of the retaken written examination and how much time has elapsed since the last time Mr. Hawes did a walk-through and simulator operating test, the Staff may expect the facility to administer a complete operating test within reasonable proximity, i.e. one month, of the retaken written examination.

6. Second option:

a. Mr. Hawes agrees that, as an alternative to Items 5a.-c. above, he can enroll in the initial license training program beginning early in 2006 and complete that program in its entirety in preparation for the NRC licensing examination currently scheduled for July 2007.

b. The Staff agrees that since Mr. Hawes' eligibility for a waiver of the operating test would expire prior to that, pursuant to 10 C.F.R. § 55.47, it will consider, and currently sees no reason why it would not grant, an exemption from taking the operating test pursuant to 10 C.F.R. § 55.11. Mr. Hawes understands that such exemption would be contingent on his successful completion of the facility's initial training program, including passing the final audit written examination, walk-through, and simulator operating test.

7. Mr. Hawes acknowledges that he has had the opportunity to seek counsel and to discuss the terms of this agreement with counsel if he so chose.

8. The Staff and Mr. Hawes understand and agree that this Settlement Agreement, and any releases under this Settlement Agreement, are limited to the parties to the above-captioned proceeding and to the Southern Company. This Settlement Agreement does not resolve any matters not contained herein.

9. The Staff and Mr. Hawes understand and agree that this Settlement Agreement disposes of all matters in issue in this litigation, and is final as to all issues regarding the Staff's proposed denial of Mr. Hawes' RO license.

10. Mr. Hawes and the Staff agree to file a joint motion requesting the Board to approve this Settlement Agreement and terminate the proceeding, pursuant to the Commission's regulations in 10 C.F.R. § 2.338. If this Settlement Agreement is not approved or is changed in any substantive manner by the Board, this Settlement Agreement may be voided by any party by giving written notice to the parties and the Board. The parties agree that under those circumstances and upon request they will negotiate in good faith to resolve differences.

IN WITNESS WHEREOF, Mr. Hawes, the Staff and Bentina Terry, General Counsel, The Southern Company, have caused this Settlement Agreement to be executed by the parties or their duly authorized representatives.

12/19/05
Date

/RA/
Susan L. Uttal
Counsel for the NRC staff

21 Nov. 05
Date

/RA/
David H. Hawes

12/06/05
Date

/RA/
Bentina C. Terry
General Counsel
The Southern Company

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 (APPROVING SETTLEMENT AGREEMENT AND TERMINATING PROCEEDING) (LBP-06-02) 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 9th day of January 2006