January 5, 2006

Ann Marshall Young, Chair
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Michael C. Farrar
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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

Dear Administrative Judges:

Enclosed please find the parties Joint Motion to Terminate the Proceeding containing a facsimile signature of Mr. Hawes. Mr. Hawes' original signature will be forwarded to the Office of the Secretary (SECY), with copies to the Board upon receipt.

Sincerely,

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

cc w/encls: David Hawes
Office of the Secretary
Office of Commission Appellate Adjudication
Atomic Safety and Licensing Board Panel

January 5, 2006

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
	)	
	)	ASLBP No. 05-840-01-SP
(Denial of Reactor Operator License)	)	

JOINT MOTION TO TERMINATE PROCEEDING

INTRODUCTION

Pursuant to 10 C.F.R. § 2.338, the NRC staff (Staff) and David H. Hawes respectfully submit this motion requesting that the Atomic Safety and Licensing Board (Board) terminate the above captioned proceeding based upon the parties having settled this matter, as evidenced by the attached Settlement Agreement, dated November 16, 2005.

DISCUSSION

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 by the Board on September 8, 2005.

The parties[1] to the above captioned proceeding, the staff and Mr. Hawes, engaged in negotiations and reached an agreement to settle this matter, as specified in the attached Settlement Agreement. The parties agreed that it is in the public interest to terminate this proceeding without further litigation and without reaching a conclusion on the merits. The

[1] 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.

Settlement Agreement requires Mr. Hawes to participate in RO classes and take and pass the written RO examination before being granted an RO license. The Settlement Agreement disposes of all matters at issue in this litigation, and is final as to all issues regarding the Staff's proposed denial of Mr. Hawes's RO license. It also provides that the parties will file a joint motion requesting the Board to approve this Settlement Agreement and terminate the proceeding.

Pursuant to 10 C.F.R. § 2.338(h)(4)(i), because a notice of hearing has not been issued in this matter, Board approval of the Settlement Agreement is not required. Therefore, the parties sole request is that the Board terminate this proceeding.

CONCLUSION

Inasmuch as the parties have settled the matters at issue in this proceeding, the parties request that the Board terminate this proceeding.

Respectfully submitted,

/RA/

Susan Uttal
Counsel for NRC staff

David H. Hawes

Dated at Rockville, Maryland
This 5th day of January, 2006.

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
	)	
	)	ASLBP No. 05-840-01-SP
(Denial of Reactor Operator License)	)	

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 parties[1] 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.

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[1] 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.

_____	***/RA/***_____
Date	Susan L. Uttal Counsel for the NRC staff
_____	***/RA/***_____
Date	David H. Hawes
_____	***/RA/***_____
Date	Bentina C. Terry General Counsel The Southern Company

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

PROPOSED ORDER TERMINATING PROCEEDING

The NRC staff (Staff) and David H. Hawes, the petitioner, have filed a joint motion for the termination of the above captioned proceeding, pursuant to 10 C.F.R. § 2.338, based upon the agreement between the parties to settle this matter. The proceeding stems from the Staff's June 20, 2005 proposed denial of Mr. Hawes's application for a reactor operator license for failure to pass the written examination. Under the proposed settlement, Mr. Hawes will be required to participate in a training program and to retake and pass the written reactor operator examination.

Pursuant to 10 C.F.R. § 2.338(h)(4)(i), Board approval of the Settlement Agreement is not required because notice of hearing has not been issued. The Board finds that

the Settlement Agreement otherwise meets the relevant requirements of 10 C.F.R. § 2.338. Therefore, the Board incorporates the settlement agreement into this Order and terminates the proceeding.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Ann Marshall Young, Chair

/RA/

Michael C. Farrar
ADMINISTRATIVE JUDGE

/RA/

Peter S. Lam
ADMINISTRATIVE JUDGE

Dated at Rockville, Maryland
This day of January, 2006

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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(Denial of Reactor Operator License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "JOINT MOTION TO TERMINATE PROCEEDING and PROPOSED ORDER TERMINATING PROCEEDING and SETTLEMENT AGREEMENT" in the above-captioned proceeding have been served on the following through deposit in the NRC's internal mail system, with copies by electronic mail, or, as indicated by asterisk, by deposit in the U.S. Postal Service, with copies by electronic mail, or, as indicated by a double asterisk, by deposit in the NRC's internal mail system, this 5th day of January, 2006 :

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

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

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

Atomic Safety and Licensing Board Panel**
Mail Stop: T-3F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Peter S. Lam
Administrative Judge
Atomic Safety and Licensing Board
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Washington, DC 20555-0001

/RA/

_____
Susan Uttal
Counsel for NRC Staff