

September 22, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
DALE L. MILLER

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Docket No. IA-05-053  
ASLBP No. 06-846-02-EA

JOINT MOTION TO ISSUE AN ORDER AND DISMISS THE PROCEEDING

On August 24, 2006, the Board granted the Parties' motion to amend the discovery schedule to provide time for the parties to engage in the Alternative Dispute Resolution Process. See Order (Granting Motion to Extend Discovery). The parties have reached an agreement upon which to settle the case. On September 11, 2006, the parties moved the Board to dismiss the case. On September 13, 2006, the Board refused to accept the Settlement as filed by the parties. See Order (Requiring Additional Information Regarding Proposed Settlement). This filing is in response to the September 13, 2006 Order. The parties hereby renew their request, in accordance with 10 CFR § 2.203, to accept the attached Settlement Agreement and dismiss the proceeding.

The parties believe that the attached Settlement Agreement is in the public interest. Stated in general terms, the purpose of the NRC's enforcement program is to deter noncompliance with regulatory requirements and to encourage prompt comprehensive corrective actions.<sup>1</sup> At the time the NRC Staff initiated this enforcement process, it was the Staff's view that the action taken was an appropriate and effective way to achieve these goals in light of the enforcement tools available and the facts as the Staff understood them. Mr. Miller

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<sup>1</sup> See Enforcement Policy at <http://www.nrc.gov/what-we-do/regulatory/enforcement/enforc-pol.pdf>.

vigorously disputed these conclusions. Since that time, voluminous discovery and interactions between the parties have resulted in the mutual conclusion that the settlement proposed can adequately achieve the goals of the parties, weighing the corrective actions proposed and the likely risks and resource costs to both parties from proceeding to fully litigate the Staff's initial order. In light of the foregoing, no further adjudication is required in the public interest, and, accordingly, the Board should approve the Settlement Agreement and dismiss the proceeding.

Respectfully Submitted,

***/RA by Sara Brock/***

Sara E. Brock  
Mary C. Baty  
Michael A. Spencer  
Counsel for the NRC Staff

***/RA by Sara Brock for Jane Penny/***

Jane Penny  
Counsel for Dale L. Miller

Dated at Rockville, MD  
this 22<sup>nd</sup> day of September, 2006

September 22, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
DALE L. MILLER

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Docket No. IA-05-053  
ASLBP No. 06-846-02-EA

SETTLEMENT AGREEMENT

1. On January 4, 2006, the Staff issued an Order (Effective Immediately) Prohibiting Involvement in NRC Licensed Activities to Mr. Dale Miller, a former employee of Davis-Besse Nuclear Power Plant.

2. On February 23, 2006, Mr. Miller properly and timely answered the Order, denied the allegations in the Order, and requested an expedited hearing.

3. On March 16, 2006, the Atomic Safety and Licensing Board with jurisdiction over Mr. Miller's hearing request was established.

4. On March 20, 2006, the Staff answered the hearing request, and agreed that Mr. Miller was entitled to a hearing.

5. On March 27, 2006, the Board granted Mr. Miller's hearing request.

6. The Order issued on January 4, 2006 to Mr. Dale Miller will be superceded by an Order approving and incorporating this Agreement.

7. Within forty-five days of the date of the Order approving and incorporating this agreement, Mr. Miller agrees to provide to the Director, Office of Enforcement, a letter explaining his understanding of the significance of the role of the Compliance Supervisor in ensuring that all communications with the NRC contain complete and accurate information. The letter will further explain what Mr. Miller has learned from his experiences at Davis-Besse in the

Fall of 2001 about the duties, responsibilities of, and expectations for, a Compliance Supervisor to ensure that the licensee's actions are consistent with its responsibility to ensure that consideration of the public's health and safety is paramount in all situations and communications, especially those that may involve potential financial or business conflicts. The content of this letter will be coordinated with Agency Enforcement staff.

8. Mr. Miller agrees to make every effort to be a presenter at the next meeting of the North American Young Generation in Nuclear (an organization of individuals age 35 and younger, working throughout the fields of nuclear science and technology). His presentation will be consistent with the letter addressed in Paragraph 7. The NRC agrees to assist Mr. Miller with becoming a presenter if necessary.

9. Mr. Miller agrees to be a presenter at the next practicable Licensing Forum (an annual, widely attended, forum sponsored by the Nuclear Energy Institute to discuss opportunities to improve the effectiveness and efficiency of the NRC licensing process). His presentation will be consistent with the letter addressed in paragraph 7.

10. In consideration of the above terms, and in light of new information developed both during the discovery process and during the confidential Alternative Dispute Resolution session on September 8, 2006, the NRC Staff acknowledges that it no longer has a concern about the reliability and trustworthiness of Mr. Miller and believes that the health and safety of the public will be adequately protected if Mr. Miller is allowed to resume involvement in licensed activities. In the parties' view, Mr. Miller's presentations as provided in items 8 and 9 will convey both his personal experiences and the lessons learned to a large group of individuals within the regulated community that would not otherwise have had the benefit of such detailed highlighting of important regulatory principles and required actions for persons representing regulated entities. Such communications will have a positive benefit to achieving the regulatory goals embodied in NRC's enforcement policy.

11. In light of the above agreements, the parties agree that all further procedural steps before the Licensing Board and any right to challenge or contest the validity of the order entered into in accordance with the agreement, and all rights to seek judicial review or otherwise to contest the validity of the order are expressly waived.

12. The parties further agree that the order accepting the settlement agreement has the same force and effect as an order made after a full hearing.

13. It is also agreed by the parties that all matters required to be adjudicated as part of this proceeding have been resolved upon the Licensing Board's approval of this agreement and the parties agree that the proceeding, ASLB-06-846-02-EA, should be dismissed upon the Licensing Board's approval of this agreement.

Respectfully Submitted,

***/RA by Sara Brock/***

Sara E. Brock  
Mary C. Baty  
Michael A. Spencer  
Counsel for the NRC Staff

***/RA by Sara Brock for Jane Penny/***

Jane Penny  
Counsel for Dale L. Miller

Dated at Rockville, MD  
this 22<sup>nd</sup> day of September, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Michael C. Farrar, Chairman

E. Roy Hawkens

Nicholas G. Trikouros

In the Matter of

DALE L. MILLER

Docket No. IA-05-053

ASLBP No. 06-846-02-EA

September \_\_, 2006

ORDER

(Accepting Settlement Agreement and Dismissing Proceeding)

1. On January 4, 2006, the Staff issued an Order (Effective Immediately) Prohibiting Involvement in NRC Licensed Activities to Mr. Dale Miller, a former employee of Davis-Besse Nuclear Power Plant.
2. On February 23, 2006, Mr. Miller properly and timely answered the Order, denied the allegations in the Order, and requested an expedited hearing.
3. On March 16, 2006, this Licensing Board was established.
4. On March 20, 2006, the Staff answered the hearing request, and agreed that Mr. Miller was entitled to a hearing.
5. On March 27, 2006, the Board granted Mr. Miller's hearing request.
6. The Order issued on January 4, 2006 to Mr. Dale Miller is superceded by this Order.
7. The Settlement Agreement, attached as Exhibit A to this Order, is hereby incorporated into this Order.

8. Upon review of the Settlement Agreement, the Licensing Board is satisfied that its terms reflect a fair and reasonable settlement of this matter, in keeping with the objectives of the NRC's Enforcement Policy, and that no further adjudication of any matter is required in the public interest. Accordingly, all matters required to be adjudicated as part of this proceeding have been resolved and the proceeding, ASLB-06-846-02-EA, is, therefore, dismissed.

IT IS SO ORDERED.

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Michael C. Farrar  
ADMINISTRATIVE JUDGE

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E. Roy Hawkens  
ADMINISTRATIVE JUDGE

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Nicolas G. Trikouros  
ADMINISTRATIVE JUDGE

Dated in Rockville, MD  
this \_\_\_ Day of September, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
DALE L. MILLER ) Docket No. IA-05-053  
 )  
 ) ASLBP No. 06-846-02-EA  
 )

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION TO ISSUE AN ORDER AN DISMISS THE PROCEEDING", "SETTLEMENT AGREEMENT", and "ORDER (Accepting Settlement Agreement and Dismissing Proceeding)" in the above captioned proceeding have been served on the following persons by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission internal mail system as indicated by an asterisk (\*); and by electronic mail as indicated by a double asterisk (\*\*) on this 22<sup>nd</sup> day of September, 2006.

Michael C. Farrar \* \*\*  
Administrative Judge, Chair  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
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E. Roy Hawken \* \*\*  
Chief Administrative Judge  
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Office of the Secretary \* \*\*  
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*/RA/*

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Counsel for the NRC Staff