

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges:

DOCKETED 09/29/06

SERVED 09/29/06

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 29, 2006

ORDER

(Approving Proposed Settlement
and Dismissing Proceeding)

The parties to this enforcement proceeding, which arose out of the Davis-Besse reactor vessel head problems of several years ago, have entered into a formal Settlement Agreement and submitted a joint motion asking this Board to issue their proposed settlement order and thereby to dismiss the proceeding. In rejecting without prejudice an earlier joint motion seeking the same relief, we had anticipated this “early submittal of a renewed motion which meets the form and provides the substance required by the Agency’s regulations.” See p. 3 of our Order (Requiring Additional Information . . .), September 13, 2006 (unpublished). The motion now before us meets those conditions.

Given the long-standing NRC policy of encouraging parties’ settlement efforts, we are pleased to announce our approval of the settlement as proposed. In its current form, that agreement not only complies with agency regulations, including 10 C.F.R. §§ 2.203 and 2.338, but also is plainly seen to be in “the public interest.” Seqouyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 71 (1994); see also 10 C.F.R. § 2.203 (settlement “shall be subject to approval by” the Board, which “may order such adjudication of the issues as [it] may deem to be required in the public interest”); id. § 2.338(i) (to same effect).

Given the showing made by the joint motion and its accompanying documents, the substance of which we adopt, the public interest does not require the adjudication of any issues herein. In particular, we concur with the Staff's judgment that the talks Mr. Miller would give to particular audiences under the terms of the agreement are calculated to have a remarkable educational effect upon employees in the regulated nuclear industry who provide information that makes its way to the NRC Staff. And, given that the Staff (1) had, at an earlier juncture, acted forcefully on its then-belief that a far more onerous sanction had to be imposed on Mr. Miller to protect the public health and safety, and (2) is still actively prosecuting enforcement cases against others involved in the Davis-Besse matter, we have no reason to look behind the Staff's current judgment -- based on the interceding "voluminous discovery and interactions between the parties" (Joint Motion at 2) -- that, insofar as Mr. Miller is concerned, lesser measures are now seen as adequate for compliance and enforcement purposes.

With those prefatory observations, it is appropriate for us to rely upon the jointly-submitted proposed order by incorporating its terms -- consisting of eight numbered paragraphs (which include reference to the "Exhibit A" Settlement Agreement that we append hereto) -- in this Order, as follows:

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.

With all matters that were subject to adjudication herein having thus been amicably resolved in the public interest, the relief sought by the joint motion is hereby GRANTED, the controversy before us is TERMINATED in accordance with the Settlement Agreement (Exhibit A hereto), and the proceeding is DISMISSED.

It is so ORDERED.

THE ATOMIC SAFETY
AND LICENSING BOARD

/RA/

Michael C. Farrar, Chairman
ADMINISTRATIVE JUDGE

/RA/

E. Roy Hawkens
ADMINISTRATIVE JUDGE

/RA/

Nicholas G. Trikourous
ADMINISTRATIVE JUDGE

Rockville, Maryland
September 29, 2006

Copies of this Order were sent this date by e-mail transmission to counsel for the parties.

“EXHIBIT A”
to
September 29, 2006 Licensing Board Order:
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.

[As submitted to the Board, the foregoing Settlement Agreement was subscribed to by Counsel for the NRC Staff and Counsel for Mr. Miller]

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
DALE L. MILLER) Docket No. IA-05-053
)
)
(Enforcement Action))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (APPROVING PROPOSED SETTLEMENT AND DISMISSING PROCEEDING) (LBP-06-21) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Washington, DC 20555-0001

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[Original signed by Rebecca L. Giitter]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 29th day of September 2006