

June 22, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
DAVID B. KUHL II	)	Docket No. 55-62335-SP
	)	
	)	
(Denial of Senior Reactor	)	
Operator License Application)	)	
	)	

NRC STAFF RESPONSE TO DAVID B. KUHL'S REQUEST FOR HEARING

INTRODUCTION

This proceeding arises from a request for hearing filed by David B. Kuhl II that challenges the NRC Staff's denial of his application for a Senior Reactor Operator (SRO) license. The NRC Staff hereby files its response to Mr. Kuhl's request for a hearing.

BACKGROUND

On December 15, 2008, Mr. Kuhl completed an examination to receive an SRO license for the Beaver Valley Power Station (BVPS) in accordance with 10 C.F.R. Part 55. On January 2, 2009, before the NRC completed the grading and review of the exam, Mr. Kuhl resigned from his position at BVPS. Before learning of his resignation, the NRC finished reviewing the examination. On January 20, 2009, the NRC's Region I Staff informed Mr. Kuhl that although he passed the examination, the NRC would not issue him an SRO for BVPS in light of his resignation from that plant.

On March 27, 2009, Mr. Kuhl requested an informal review of the NRC's Region I Staff's decision. On May 13, 2009, after reviewing the matter, the NRC's Headquarters Staff informed Mr. Kuhl by letter that the NRC Staff sustained the denial of his application. The NRC noted

that 10 C.F.R. 55.31(a)(4) required an applicant to produce evidence that he or she had completed the facility licensee's requirements to be licensed and that the facility licensee had a need for the license. Because the facility licensee, First Energy Nuclear Operating Company (FENOC) had informed the NRC Staff that Mr. Kuhl had left his employment at BVPS, the NRC Staff found that Mr. Kuhl had not presented sufficient evidence to meet the requirements of 10 C.F.R. § 55.31(a)(4). Thus, the NRC Staff did not issue an SRO license to Mr. Kuhl for BVPS. By letter dated May 28, 2009, Mr. Kuhl filed a request for a hearing within twenty days of the denial.

On June 11, 2009, the Office of the Secretary forwarded the hearing request to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for appropriate action. On June 15, 2009, the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel issued an order establishing an Atomic Safety and Licensing Board to preside over this proceeding.

#### DISCUSSION

An applicant for a senior reactor operator license who desires a hearing on a denial of a license application must file a request for hearing within twenty days of the date of the notice of the denial. 10 C.F.R. § 2.103(b)(2). Mr. Kuhl filed the instant hearing request within the appropriate time limit. Therefore, the NRC Staff does not object to the hearing request.

Nonetheless, the NRC Staff notes that Mr. Kuhl has not demonstrated that the NRC's denial of the license application was unsupported or reflected an improper interpretation of applicable regulations.<sup>1</sup> Because this proceeding will not likely involve any material issues of

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<sup>1</sup> Indeed, the Commission has previously dismissed an appeal of an NRC Staff decision to deny an application for an SRO as moot when the applicant left his position at the facility for which he sought the SRO. Alfred J. Morabito, (Senior Operator License for Beaver Valley Power Station, Unit 1), CLI-88-4, 28 NRC 5, 5-6 (1988). As the Commission noted, "Under the Commission's rules, 10 CFR Part 55, possession of an operator's license is conditioned on there being a present need for the license. (continued. . .)

disputed fact, the NRC Staff intends to file, in compliance with the requirements of 10 C.F.R. § 2.323(b), either a motion to dismiss or a motion for summary disposition pursuant to 10 C.F.R. § 1205 once a hearing file for this proceeding is established.

CONCLUSION

For the reason set forth above, the NRC Staff does not object to Mr. Kuhl's request for hearing. However, Mr. Kuhl has not established that the NRC's decision to deny his application for an SRO license was improper or otherwise contrary to NRC regulation.

Respectfully submitted,

***Signed (electronically) by***

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(...continued)

Although Mr. Morabito has suggested . . . that the license be issued retroactively and then cancelled as of the date that the company withdrew its certification of need, we believe that this would be an empty exercise." *Id.* at 6.

The Commission also vacated the NRC Staff's denial of the SRO. But, in that case the facility licensee withdrew the application and the applicant did not object. *Id.* Although FENOC attempted to withdraw the application in this case, Mr. Kuhl objected. Under NRC regulations, only an applicant may withdraw an application. 10 C.F.R. § 2.108(a). The language of Part 55 clearly contemplates that the individual applying for the SRO is the applicant, not the facility licensee. Thus, FENOC's attempt to withdraw the application was ineffective under NRC regulations. As a result, an application remained pending before the agency, and the NRC had an obligation to act on that application in a timely manner under the Administrative Procedure Act. 5 U.S.C. § 558(c).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "NRC Staff Response to David B. Kuhl's Request for Hearing", dated June 22, 2009, have been served upon the following by the Electronic Information Exchange, this 22<sup>nd</sup> day of June, 2009:

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