

June 23, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
ANDREW SIEMASZKO ) Docket No. IA-05-021  
 )  
 ) ASLBP No. 05-839-02-EA  
 )

JOINT MOTION TO ISSUE AN ORDER ACCEPTING SETTLEMENT  
AND DISMISSING THE PROCEEDING

On March 19, 2009, the Board held a status conference call to determine what course of action Mr. Siemaszko wished to pursue with respect to his challenge to the NRC enforcement order of April 21, 2005, as amended on October 17, 2006, (“Order”) in light of the outcome of his criminal case.<sup>1</sup> The Board granted the parties sixty days to discuss the possibility of settlement before scheduling the next status conference.<sup>2</sup> During that time, the parties engaged in productive settlement discussions but were not able to reach a final agreement. On May 20, 2009, the Board held a second status conference call to update the Board on the parties’ discussions during the previous sixty days and to determine how this case would proceed during the pendency of Mr. Siemaszko’s Sixth Circuit appeal.<sup>3</sup> The Board granted the parties another thirty days to continue settlement discussions before scheduling the next status conference.<sup>4</sup>

The parties have now reached an agreement upon which to settle the case that serves the public interest and achieves the goals of the parties without the resource costs that stem

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<sup>1</sup> “Notice and Order (Scheduling Telephonic Status Conference)” (Feb. 27, 2009).

<sup>2</sup> See Status Conference ITMO Andrew Siemaszko (Mar. 19, 2009) (ML09084023).

<sup>3</sup> “Notice and Order (Scheduling Telephonic Status Conference)” (May 15, 2009).

<sup>4</sup> “Order (Summary of May 20, 2009 Telephonic Status Conference)” (May 21, 2009).

from further litigation of the Staff's Order. The parties hereby request that the Board, in accordance with 10 CFR § 2.203, 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 protect the public health and safety and the environment, deter noncompliance with regulatory requirements, and to encourage prompt comprehensive corrective actions.<sup>5</sup> Consistent with the NRC's Enforcement Policy, the NRC issued an Order barring Mr. Siemaszko from involvement in NRC-licensed activities for a period of five years, commencing 90 days after the effective date of the Order, because the NRC lost confidence in Mr. Siemaszko were he to continue to work in NRC-licensed activities. In the NRC's judgment, the public health, safety and interest required Mr. Siemaszko to be prohibited from involvement in NRC-licensed activities for a period of five years.

Mr. Siemaszko has now agreed to not work in any capacity, paid or unpaid, in NRC-licensed activities for a period of five years, commencing the date the Order was issued on April 21, 2005. Under the terms of the Order imposed, and consistent with NRC regulations, Mr. Siemaszko's five-year ban would not have even begun until after the conclusion of this litigation. Because Mr. Siemaszko has averred that he has not worked in any capacity, paid or unpaid, in NRC-licensed activities since September 18, 2002, the NRC Staff will consider Mr. Siemaszko's five year debarment as being effective from the initial date of the enforcement Order, April 21, 2005; thus, Mr. Siemaszko's period of debarment from NRC licensed activities will run from April 21, 2005 until April 21, 2010.

The NRC Staff believes that having Mr. Siemaszko serve out the rest of the debarment

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<sup>5</sup> See Enforcement Policy at <http://www.nrc.gov/what-we-do/regulatory/enforcement/enforc-pol.pdf>.

period as if the Order were effective from the date of its issuance serves the public interest, is consistent with the NRC's Enforcement Policy, and satisfies the NRC's underlying concerns about Mr. Siemaszko's trustworthiness and reliability with respect to the incident at Davis-Besse. Furthermore, weighing the terms of the Settlement Agreement, the best possible outcome of an administrative proceeding for both parties, and the resource costs to both parties from further litigation of the Staff's Order demonstrates that the attached Settlement Agreement is in the public interest. 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/*

Kimberly A. Sexton  
Counsel for the NRC Staff

Dated at Rockville, MD  
this 23rd day of June, 2009

*/Original Signed By/*

Billie Pirner Garde  
Counsel for Andrew Siemaszko

Dated at Anchorage, AK  
this 23rd day of June, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
ANDREW SIEMASZKO ) Docket No. IA-05-021  
 )  
 ) ASLBP No. 05-839-02-EA  
 )

SETTLEMENT AGREEMENT

1. On April 21, 2005, the Staff issued an Order Prohibiting Involvement in NRC-Licensed Activities (“Order”) to Mr. Andrew Siemaszko, a former employee of Davis-Besse Nuclear Power Plant. The NRC Staff alleged that Mr. Siemaszko engaged in deliberate misconduct that caused inaccurate and incomplete information to be provided to the NRC concerning conditions at the Davis-Besse reactor in violation of 10 C.F.R. § 50.5, “Deliberate misconduct,” and the Order prohibited Mr. Siemaszko from engaging in NRC-licensed activities for a period of five years. By the terms of the Order, the prohibition was to be effective 90 days from the date of the Order unless a hearing request was granted by the Atomic Safety and Licensing Board (“Board”).

2. Mr. Siemaszko answered the Order, denied the allegations in the Order, and requested a hearing. On May 19, 2005, the Atomic Safety and Licensing Board established by the Commission to preside over Mr. Siemaszko’s enforcement proceeding granted Mr. Siemaszko’s hearing request.

3. On October 17, 2006, the NRC Staff amended the Order prohibiting Mr. Siemaszko’s involvement in NRC-licensed activities to include additional allegations wherein Mr. Siemaszko caused inaccurate and incomplete information to be provided to the NRC. These instances were cited to provide additional support for the 10 C.F.R. § 50.5, “Deliberate misconduct,” violation and the five year ban imposed by the original Order. On October 30, 2006, Mr. Siemaszko answered the amendment, denied the additional allegations in the

amendment, and requested consolidation of the pending matters for a hearing on the proposed enforcement action. Mr. Siemaszko's request for hearing on the additional charges and consolidation was granted by the Board.

4. Mr. Siemaszko was criminally indicted for making false statements and concealing material information concerning some of the same matters that were the subject of the Order. At the Staff's request, the hearing on the Order was deferred pending the outcome of the criminal proceeding. On August 26, 2008, Mr. Siemaszko was convicted by a federal district court jury of three counts of the indictment and acquitted on two. On February 6, 2009, he was sentenced to three years probation on each count, to run concurrently, and fined \$4,500. As a condition of his probation, he may not work in any capacity in the nuclear industry for three years without prior approval of his probation officer.

5. The Staff and Mr. Siemaszko have engaged in negotiations and determined that it is in the public interest to terminate this proceeding without further litigation subject to the following stipulations.

THE PARTIES AGREE AND STIPULATE AS FOLLOWS:

A. Mr. Siemaszko's five year debarment will be effective from the date of the April 21, 2005 Order, terminating on April 21, 2010. All other terms of the Order remain in effect, including the requirement that Mr. Siemaszko notify the Director, Office of Enforcement, U.S. NRC, within 20 days of accepting his first employment offer involving NRC-licensed activities following the termination of the debarment. In this notification, Mr. Siemaszko shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

B. Mr. Siemaszko has not worked in any capacity, paid or unpaid, in NRC-licensed activities from September 18, 2002 through the date of this Settlement Agreement. Pursuant to

this Settlement Agreement, Mr. Siemaszko will continue not working in any capacity, paid or unpaid, in NRC-licensed activities through April 21, 2010.

C. The parties will submit this Settlement Agreement to the Board for approval with a joint motion requesting approval of the settlement and termination of the proceeding with prejudice based on the resolution of matters in this settlement agreement. This Settlement Agreement will become effective upon its execution by both parties; however, the agreement is contingent upon approval by the Board pursuant to 10 C.F.R. § 2.203. Upon approval by the Board, this Settlement Agreement will have the same force and effect as an Order made after a full hearing.

D. 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 Settlement Agreement, and all rights to seek judicial review or otherwise to contest the validity of the Order are expressly waived.

IN WITNESS WHEREOF, Mr. Siemaszko and the NRC Staff have caused this Settlement Agreement to be executed by their duly authorized representatives on this 23rd day of June, 2009.

***/RA/***

Kimberly A. Sexton  
Counsel for the NRC Staff

***/Original Signed By/***

Billie Pirner Garde  
Counsel for Andrew Siemaszko

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Lawrence G. McDade, Chairman  
E. Roy Hawkens  
Nicholas G. Trikouros

In the Matter of  
ANDREW SIEMASZKO

Docket No. IA-05-021-EA  
ASLBP No. 05-839-02-EA  
June \_\_, 2009

ORDER

(Accepting Proposed Settlement and Dismissing Proceeding)

1. On April 21, 2005, the Staff issued an Order Prohibiting Involvement in NRC-Licensed Activities that was not made immediately effective to Mr. Andrew Siemaszko, a former employee of Davis-Besse Nuclear Power Plant. On April 22, 2005, Mr. Siemaszko timely answered the order, denied the allegations in the order, and requested a hearing.

2. On May 18, 2005, an Atomic Safety and Licensing Board was established to preside over Mr. Siemaszko's hearing request. On May 19, 2005, the Board granted Mr. Siemaszko's hearing request.

3. On October 17, 2006, the NRC Staff amended the April 21, 2005 order prohibiting Mr. Siemaszko's involvement in NRC-licensed activities. On October 30, 2006, Mr. Siemaszko answered the amendment, denied the additional allegations in the amendment, and requested consolidation of the pending matters for a hearing on the proposed enforcement action.

4. On August 26, 2008, Mr. Siemaszko was convicted by a federal district court jury on three counts of making false statements to, and concealing material information from, the United States government. On February 9, 2009, Mr. Siemaszko was sentenced to three years

probation on each count, to run concurrently, and fined \$4,500. As a condition of his probation, he may not work in any capacity in the nuclear industry for three years without prior approval of his probation officer.

5. The enforcement order issued on April 21, 2005 to Mr. Andrew Siemaszko, and amended on October 17, 2006, is modified by this Order approving and incorporating the Settlement Agreement.

6. The Settlement Agreement, attached hereto, is hereby incorporated into this Order.

7. 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-05-839-02-EA, is, therefore, dismissed.

IT IS SO ORDERED.

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Lawrence G. McDade  
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 June, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

ANDREW SIEMASZKO )

) Docket No. IA-05-021

) ASLBP No. 05-839-02-EA

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION TO ISSUE AN ORDER ACCEPTING SETTLEMENT AND DISMISSING THE PROCEEDING", "SETTLEMENT AGREEMENT", and "ORDER (Accepting Proposed Settlement 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 23rd day of June, 2009.

Administrative Judge \* \*\*

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*/RA/*

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