

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

Before Administrative Judges:

Paul S. Ryerson, Chairman
Alan S. Rosenthal
Michael F. Kennedy

In the Matter of DAVID B. KUHLM, II (Denial of Senior Reactor Operator License)

Docket No. 55-62335-SP
ASLBP No. 09-891-01-SP-BD01
July 1, 2009

ORDER
(Regarding Telephone Conference)

Before the Licensing Board is a request for hearing filed by David B. Kuhl, II. Mr. Kuhl's request for hearing concerns the denial of his application for a senior reactor operator (SRO) license for the Beaver Valley Power Station (BVPS). Although the NRC Staff has not opposed Mr. Kuhl's request for hearing, the Board wishes to schedule a teleconference to hear argument on whether this proceeding is moot.

I. Background

On May 13, 2009, NRC headquarters staff informed Mr. Kuhl by letter that it was denying his SRO license application, sustaining NRC Region I's earlier decision not to issue the license. Mr. Kuhl filed a request for hearing on May 28, 2009 challenging the denial of his application.¹ Upon referral from the Commission, this Board was established to preside over the proceeding.² The NRC Staff filed an answer on June 22, 2009, in which it stated that Mr. Kuhl

¹ See Letter from David Kuhl, to Office of the Secretary, U.S. NRC, at 1-2 (May 28, 2009) (ADAMS Accession No. ML091600242) [hereinafter Hearing Request].

² See Commission Referral Memorandum (June 11, 2009) (unpublished); Establishment of Atomic Safety and Licensing Board, 74 Fed. Reg. 29,243 (June 19, 2009).

filed his request within the appropriate time limit and that it did not oppose Mr. Kuhl's hearing request.³

The following facts appear undisputed: On December 15, 2008, Mr. Kuhl completed an examination to receive an SRO license for BVPS.⁴ On January 2, 2009, before the NRC completed grading the examination, Mr. Kuhl resigned from his position at BVPS.⁵ Although the NRC subsequently concluded that Mr. Kuhl passed the examination, it has not issued him an SRO for BVPS.⁶

II. Teleconference

The Board is concerned that there might be no remedy for Mr. Kuhl's claim, regardless of its merit. Any SRO license is "limited to the facility for which it is issued."⁷ Mr. Kuhl no longer works at BVPS, however, and has expressed no plans to attempt to return. Moreover, no SRO license for the BVPS that Mr. Kuhl might be awarded could be active, as (not having been at the facility for six months) Mr. Kuhl could not have performed the functions of an operator or senior operator for the necessary minimum number of hours during each calendar quarter.⁸ In somewhat similar circumstances, where an applicant proposed that an SRO be both issued and cancelled retroactively, the Commission declined to engage in such "an empty exercise."⁹

³ See NRC Staff Response to David B. Kuhl's Request for Hearing (June 22, 2009) at 2-3 [hereinafter NRC Staff Answer].

⁴ See Hearing Request at 1; NRC Staff Answer at 1.

⁵ See Hearing Request at 1; NRC Staff Answer at 1.

⁶ See Hearing Request at 1; NRC Staff Answer at 1.

⁷ 10 C.F.R. § 55.53(b).

⁸ See id. § 55.53(e).

⁹ Alfred J. Morabito (Senior Operator License for Beaver Valley Power Station, Unit 1), CLI-88-4, 28 NRC 5, 6 (1988).

The Board will convene a teleconference on Monday, July 20, 2009, beginning at 10:00 a.m. Eastern Daylight Time to hear argument on whether Mr. Kuhl's request for hearing should be dismissed as moot. The Board anticipates that the teleconference will last less than one hour.

The Board's law clerk, Emily Krause, will send an e-mail to Mr. Kuhl and counsel for the NRC Staff containing the telephone number and pass code for participating in the teleconference. Although members of the public may not participate, any member of the public desiring to listen to the conference may call or e-mail Ms. Krause (301-415-7466 or Emily.Krause@nrc.gov) no later than Friday, July 17, 2009 to obtain the telephone number and appropriate pass code.

It is so ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹⁰

/RA/

Paul S. Ryerson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
July 1, 2009

¹⁰ Copies of this order were sent this date by the agency's E-filing system to (1) David B. Kuhl, II; and (2) counsel for the NRC Staff.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER (REGARDING TELEPHONE CONFERENCE) have been served upon the following persons by Electronic Information Exchange.

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DAVID B. KUHL, II - DOCKET NO. 55-62335-SP
ORDER (REGARDING TELEPHONE CONFERENCE)

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[Original signed by Nancy Greathead]
Office of the Secretary of the Commission

Dated at Rockville, Maryland
this 1st day of July 2009