

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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COMMISSIONERS:

Shirley Ann Jackson, Chairman
Greta J. Dicus
Nils J. Diaz
Edward McGaffigan, Jr.

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

In the Matter of)
)

21st CENTURY TECHNOLOGIES, INC.)
)

(Fort Worth, Texas))
)

SERVED FEB 19 1998

Docket Nos. 030-30266 & 030-30266 CivP
License No. 42-23850-02E
EA 96-170, Confirmatory Order

CLI-98-01

MEMORANDUM AND ORDER

On January 20, 1998, the NRC Staff and the Licensee, successor to Innovative Weaponry, Inc., which initiated this proceeding, filed a Joint Motion For Termination of this proceeding. For the reasons given below, we grant the Motion.

BACKGROUND

On May 15, 1996, the Director of the NRC's Office of Enforcement issued a Notice of Violation and Proposed Imposition of Civil Penalty, and an immediately effective Confirmatory Order that modified 21st Century Technologies' license to require that the Licensee develop and implement certain written procedures, and develop, and submit for NRC approval, training and audit plans. The Confirmatory Order stated that the Licensee had committed to these actions at a predecisional enforcement conference and licensing meeting, and that the Licensee's attorney had agreed to the Order in a telephone call. 61 Fed. Reg. 25,694-95 (May 22, 1996). The Order gave affected persons other than the Licensee 20 days to request a

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hearing on the Order. On June 14, 1996, the Licensee filed a request for a hearing on the Confirmatory Order, contending, among other things, that the Confirmatory Order "amount[ed] to unjustifiable regulatory duress."

On June 26, 1996, the Commission issued an order that directed the Licensee to file the bases for its contentions, and to state whether the Licensee had in fact consented to the Confirmatory Order, and if so, why such consent should not have the legal effect of waiving the Licensee's hearing rights. In response to the Commission's order, the Licensee argued that the license conditions it had violated were "irrelevant to public health and safety" and "therefore beyond the jurisdiction of the NRC to regulate." Licensee's September 30, 1996, Response to Commission Order to Particularize Contentions, at 6-10. On October 15, 1996, the NRC Staff filed an Answer to the Licensee's Response, opposing the Licensee's request for a hearing, arguing, in part, that the Licensee had failed to show that the Confirmatory Order was not based on the protection of public health and safety, and citing our remark in Advanced Medical Systems, Inc., CLI-94-6, 39 NRC 285, 312 (1994), that "[t]he Commission's safety regulations and license conditions reflect the Commission's considered judgment as to what is required to protect the public."

On October 18, 1996, the Staff issued an "amendment" that terminated the one license and issued a new one. The new one contained a license condition that incorporated the substantive requirements of the Confirmatory Order. On December 12, 1996, the NRC Staff filed a motion to terminate this proceeding on the grounds that the license issued on October 18 contained the Confirmatory Order's substantive requirements on training, audits, and procedures, and that the challenge to the Confirmatory Order was therefore moot. The Licensee opposed the Staff's motion to terminate the proceeding.

At the same time that the Licensee had been challenging the Confirmatory Order, the Licensee had also been challenging the Staff's imposition of a civil penalty. The Licensee

answered the May 15, 1996, Notice of Violation and Proposed Imposition of Civil Penalty on October 1, 1996. On April 10, 1997, the Staff issued an Order Imposing Civil Monetary Penalty -- \$2,500, having mitigated the proposed civil penalty by \$5,000 in light of the fact that "no adverse consequences to public health and safety actually occurred in this matter." Order Imposing Civil Monetary Penalty, Appendix at 3-4. The Licensee asked for a hearing on the civil penalty, giving the same reasons for opposing the civil penalty that the Licensee had given for opposing the Confirmatory Order. A licensing board was established to hear the civil penalty proceeding. 62 Fed. Reg. 34,718 (June 27, 1997).

In the proceeding on the civil penalty, the Staff and the Licensee succeeded in reaching a Joint Settlement Agreement, which provides, among other things, that the civil penalty will be reduced to \$2,000, and that the Staff will make itself available to meet with the Licensee to discuss possible changes to the license "to address the Licensee's needs" Joint Settlement Agreement at 3. On January 12, 1998, the Board that had been established to rule on the Licensee's challenge to the civil penalty approved the settlement and terminated the proceeding on the civil penalty. 21st Century Technologies, Inc., LBP-98-1, 47 NRC ____.

THE JOINT MOTION TO TERMINATE

On the basis of the settlement in the civil penalty proceeding, the Licensee asked on January 20, 1998, that it be allowed to withdraw its request for a hearing on the Confirmatory Order. On the same day, the Licensee and the Staff filed their Joint Motion for termination of the proceeding on the Confirmatory Order. The Motion argues that the Licensee's withdrawal of its request for a hearing on the Confirmatory Order is good cause for termination of the proceeding. The Motion also notes that the requirements imposed by the Confirmatory Order will remain in effect if this proceeding is terminated.

We agree with the parties that the settlement in the civil penalty proceeding, and the Licensee's request to withdraw, are good cause for terminating this proceeding on the Confirmatory Order. The fundamental issue in both proceedings was the same, namely, whether certain conditions in 21st Century Technologies' license were adequately justified on health and safety grounds. See Licensee's September 30, 1996, Response to Commission Order to Particularize Contentions, at 6-7. See also the Licensing Board's September 24, 1997, Prehearing Conference Order, at 2. Thus, an approved settlement in the one proceeding and termination of that proceeding would seem to call for an end to the other proceeding also. Moreover, the Commission looks with favor upon settlements. Sequoyah Fuels Corp., CLI-97-13, 46 NRC 195, 205 (1997). The Licensing Board in the civil penalty proceeding, exercising authority under 10 C.F.R. § 2.203, has concluded that the settlement is "in full accord with the public interest" See 21st Century Technologies, Inc., LBP-98-1, 47 NRC ____ (slip op. at 2) (January 12, 1998). We see no reason to disagree. For example, as the parties point out in their Joint Motion to us, the settlement does not lessen any of the safety requirements now applicable to the Licensee. Moreover, the terms of the settlement hold out the prospect that the Staff and the Licensee will be able to reach mutually agreeable license terms. Therefore, we will not undertake sua sponte review of the Licensing Board's approval of the settlement. Under these circumstances, to deny the parties' Joint Motion to terminate the proceeding on the Confirmatory Order could undermine a settlement judged to be in the public interest.

CONCLUSION

For the reasons given above, the parties' Joint Motion to Terminate the Confirmatory Order proceeding is hereby granted and the proceeding terminated.

It is so ORDERED.



Dated at Rockville, Maryland
this 19th day of February, 1998

For the Commission,

A handwritten signature in cursive script, appearing to read "John C. Hoyle".

JOHN C. HOYLE
Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
21ST CENTURY TECHNOLOGIES, INC.

(Order Imposing Civil Monetary
Penalty)

Docket No.(s) 30-30266-CIVP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMM MEMO & ORDER -- CLI-98-1 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this
19 day of February 1998

Adria T. Byrdson
Office of the Secretary of the Commission

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of
INNOVATIVE WEAPONRY, INCORPORATED
(Albuquerque, New Mexico)

Docket No.(s) 30-30266

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Dated at Rockville, Md. this
19 day of February 1998

Adria T. Byrdson
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