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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'90 JAN 16 P4:10

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
ALABAMA POWER COMPANY)	Docket Nos. 50-348-CivP
)	50-364-CivP
(Joseph M. Farley Nuclear Plant,)	
Units 1 and 2))	(ASLBP No. 89-591-01-CivP)

SETTLEMENT AGREEMENT

A. Background

1. On March 28, 1989, the NRC Staff issued an Order Imposing a Civil Monetary Penalty ("Order") of \$75,000 against the Alabama Power Company ("Company") for an alleged violation at the Farley Nuclear Plant, Units 1 and 2. The NRC Staff's enforcement action (EA 88-113) was based on an alleged violation of Farley Plant Technical Specification 3.5.2.

2. The NRC Staff specifically asserted in the Order a Severity Level III violation, based on the alleged inoperability at both Units 1 and 2 of the A train of an emergency core cooling system ("ECCS") subsystem. The Staff alleged that the subsystems were inoperable in the recirculation mode due to the presence of substantial amounts of hydrogen gas in the cross-over piping from the RHR pumps to the charging pump suction. It is the Company's position that the hydrogen gas was first discovered and identified by the licensee on February 26, 1988,

and was promptly reported to the NRC. It is the NRC Staff's position that the Company should have known of the hydrogen gas problem as far back as 1979.

3. The alleged Technical Specification violation that was the basis for the Order was originally proposed in an NRC Notice of Violation and Proposed Imposition of Civil Penalty dated August 3, 1988 ("Notice of Violation"). At that time, the NRC Staff alleged a Severity Level III violation and proposed a Civil Penalty of \$100,000.

4. In accordance with NRC regulations, the Company denied the alleged violation in a response dated October 3, 1988. Based on its analyses, it is the position of the Company that the ECCS subsystem was not inoperable due to the presence of hydrogen gas, and thus, that no Technical Specification violation occurred.

5. The Company asserts that it was not anticipated through engineering analyses using conventional laws of physics that significant quantities of hydrogen gas could accumulate in the emergency core cooling system during normal operation. The Company also asserts that a newly identified phenomenon associated with fluid flow turbulence can result in larger than expected hydrogen gas accumulations unless the system is specifically designed to preclude such accumulations. While acknowledging that some gas did accumulate in greater quantities than desirable, the Company maintains that the charging pumps were capable of performing their intended function. The Company

bases its position on independent analyses made by Westinghouse and by a nationally recognized and respected pump consultant. The Staff does not agree with the assertion that the charging pumps were operable and maintains that, with the information available, the Company should have earlier addressed the gas accumulation problem. In addition, it is the Staff's position that more specific, detailed and timely investigation, analyses and documentation should have resulted in earlier identification of the previously unidentified phenomenon as a potential source for gas accumulation so that appropriate actions could have been taken to preclude any subsequent question of subsystem operability due to this effect.

6. The NRC Staff's March 28, 1989, Order rejected the Company's arguments that a violation did not occur. However, the NRC Staff mitigated the Civil Penalty to \$75,000 in recognition of the Company's prior good performance in the area of plant operations.

7. Following issuance of the Order, the Company requested that the NRC Staff reconsider its Order, and met with the Staff on May 10, 1989, to provide additional technical information to support the Company's position. The Staff, on May 25, 1989, informed the Company by letter that it was unable to conclude that pump operability had been assured. The Staff concluded that the \$75,000 Civil Penalty would be imposed.

8. Under 10 C.F.R. § 2.205, an NRC licensee has the right to contest in a hearing any imposition of a civil penalty for

alleged violations of the NRC's requirements. This hearing is conducted before the Atomic Safety and Licensing Board, with appeals possible to the NRC Commissioners.

9. In accordance with the Commission's regulations, on June 1, 1989, the Company filed a formal request for hearing on this enforcement action (EA 88-113). The Company specifically requested that a hearing be held on the issues of:

- a. Whether, on February 26, 1988, the A train ECCS subsystem charging pumps on Units 1 and 2 were inoperable for use in the recirculation mode, and accordingly whether, the train A ECCS subsystem was rendered inoperable; and
- b. Whether the Order imposing a Severity Level III violation and escalated Civil Penalty of \$75,000 is justified under the circumstances of this case.

10. Since that time, an Atomic Safety and Licensing Board has been convened, and the parties to this proceeding have been conducting discovery. This has involved requests for production of documents, and the taking of depositions in Washington, D.C., and Newark, New Jersey.

11. Both parties have retained technical consultants and have been vigorously pursuing their legal rights. Further depositions are anticipated, possibly including depositions of witnesses in California, New Hampshire, Alabama, Washington, D.C., and Spain.

B. Agreement

1. The alleged violation of Technical Specification 3.5.2, based on inoperability of the ECCS subsystem, is

withdrawn by the NRC Staff. The parties agree that there is a difference of opinion on this issue and that, in the present circumstances, compromise and settlement of the matter is in the interest of both, as well as the interest of the public. The parties agree that the question of operability in this proceeding is highly fact dependent and the precedential value of resolving the operability issue through litigation is limited. Therefore the parties conclude that under the circumstances of this case, this Settlement Agreement best serves the interest of both parties and the purposes of the Atomic Energy Act and NRC regulations.

2. The Company acknowledges that gas was observed in the subsystem at Farley Unit 2 as early as 1979. The various gas anomalies observed since that time at Farley have been the result of various circumstances and the solutions for each occurrence were possibly different, depending upon the specific circumstances and root cause of each.
3. For purposes of settlement, the Company acknowledges that a violation of 10 C.F.R. Part 50, Appendix B, Criterion XVI occurred, which in this instance does not involve imposition of a civil penalty.
4. The Company has implemented modifications to provide added assurance of operability of this subsystem. The Company reaffirms its operational philosophy that,

consistent with its license conditions, when confronted with information or conditions that raise an operability question or that present previously unidentified conditions or phenomena, it will evaluate the information or conditions to determine whether there is a potential impact on plant operations, and, if so, will establish whether or not relevant structures, systems, and components are capable of performing their intended function and will comply with applicable Technical Specification requirements or take such other licensing action as may be appropriate.

5. This Settlement Agreement constitutes a full settlement of issues raised in the request for hearing filed by the Company in this case. The Company agrees to forego its rights under the Atomic Energy Act and NRC regulations to further pursue the hearing requested on this matter or to otherwise contest the matters raised in EA 88-113 or addressed in this Settlement Agreement. The NRC Staff agrees that it will take no further enforcement actions arising out of the facts and circumstances addressed in EA 88-113 and in this Settlement Agreement.
6. The Company and the NRC Staff will submit to the presiding Atomic Safety and Licensing Board ("Board") for approval the attached press release (Exhibit A) to announce this Settlement Agreement.

7. This Settlement Agreement shall not constitute: evidence in any proceeding; an admission with respect to any allegations made in the Notice of Violation or the Order, as issued; any fact or conclusion of law with respect to any matter alleged in or arising out of the Notice of Violation or Order, as issued; or the admission or evidence of any wrongdoing or misconduct or liability on the part of the Company, any director, officer, or affiliated person, except as described herein, and more particularly Paragraph B.3 of this Agreement.
8. The Notice of Violation and the Order, as issued, shall have no precedential effect and are hereby declared null and void. Specifically, without limiting the breadth and scope of the foregoing, the parties agree and intend that neither of these documents will be considered in any way in the NRC Staff's Systematic Assessment of Licensee Performance for Alabama Power Company.
9. The NRC Staff and the Company will jointly move the Board to approve this Settlement Agreement and to terminate this proceeding. If the Settlement Agreement is not approved or is changed in any substantive manner by the Board, it shall be voidable by either party. The

parties agree that under these circumstances and upon request they will negotiate in good faith to resolve differences.

Bernard M. Bordenick
Bernard M. Bordenick
Counsel for NRC Staff

James H. Miller, III
James H. Miller, III
Baich & Bingham
Counsel for Alabama Power
Company

Nicholas S. Reynolds
Nicholas S. Reynolds
Bishop, Cook, Purcell &
Reynolds
Counsel for Alabama Power
Company

Dated at Washington, D.C.
this 12th day of January, 1990.

PRESS RELEASE

**NRC STAFF AND ALABAMA POWER COMPANY
SETTLE ENFORCEMENT PROCEEDINGS**

The Nuclear Regulatory Commission's Atomic Safety and Licensing Board has approved the settlement of a proceeding between the NRC staff and Alabama Power Company regarding a \$75,000 fine for an alleged violation of technical specification requirements governing operation of Alabama Power's Farley Nuclear Plant near Dothan, Ala.

In August 1988, the NRC Staff alleged that, under certain circumstances, components of the emergency core cooling system in both Farley Units 1 and 2 would be inoperable because of the accumulation of hydrogen gas in the system piping. Alabama Power maintained that the system was operable and capable of performing its intended function.

The settlement calls for the withdrawal of the allegation of the violation of technical specifications involving operability of a portion of the emergency core cooling system, and withdrawal of the \$75,000 fine imposed by the staff. Alabama Power has acknowledged violation of requirements governing quality assurance.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND TERMINATION OF THE PROCEEDING" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 12th day of January, 1990:

John H. Frye, III
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Judge Walter H. Jordan
Administrative Judge
Atomic Safety and Licensing Board
881 West Outer Drive
Oak Ridge, Tennessee 37830

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U.S. Nuclear Regulatory Commission
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Docketing and Service Section
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Washington, D.C. 20555

Dr. James H. Carpenter
Administrative Judge
Atomic Safety and Licensing
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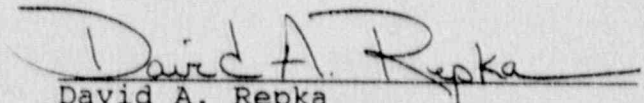
Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20005

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

James Lieberman
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David A. Repka
Counsel for Alabama Power
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