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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. James H. Carpenter
Dr. Peter A. Morris

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SERVED JUN - 2 1992

In the Matter of

ALABAMA POWER COMPANY

(Joseph M. Farley Nuclear
Plant, Units 1 and 2)

Docket No. 50-348-CivP
50-364-CivP

ASLBP No. 91-626-02-CivP

June 1, 1992

MEMORANDUM AND ORDER

(Closing Evidentiary Record;
Establishing Schedule and Guidelines
for Proposed Findings and Conclusions)

At the May 21, 1992 conclusion of the portion of the hearing on the parties' rebuttal and surrebuttal testimony, we advised the parties that before closing the record in this proceeding we would afford them until May 29, 1992, to review the exhibits in evidence to ensure they were complete and accurate.¹ See Tr. 2302. We have received only one proposed revision. As described its May 28, 1992 letter to the Board, Alabama Power Company (APCo) advises us of several uncontested corrections to its "significant events" vertical time line. At the request of the Board, APCO

¹ We memorialized that directive in a May 22, 1992 memorandum and order. A footnote to that memorandum and order indicated it was being sent to the parties by rapifax that date; however, due to an administrative oversight it was not sent by rapifax until May 26.

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submitted this document as an adjunct + APCo Exhibit 62, a horizontal time line. We acknowledge receipt of this corrected version of the vertical time line, which is not in evidence as an exhibit. Further, this being the parties' only proposed correction, we declare the evidentiary record in this proceeding to be closed.

Also at the conclusion of the rebuttal/surrebuttal portion of the evidentiary hearing, we conferred with the parties regarding the schedule for filing their proposed findings of fact and conclusions of law. See Tr. 2302-07. In line with that discussion, we establish the following schedule for those submissions:

Staff Proposed Findings and Conclusions	Friday, July 31, 1992
APCo Proposed Findings and Conclusions	Friday, October 2, 1992
Staff Reply to APCo Proposed Findings and Conclusions	Wednesday, November 4, 1992

These filings should be served by overnight express mail or other comparable method to ensure receipt by the Board and opposing counsel by the next business day.

The parties' proposed findings and conclusions should conform to the format requirements set forth in 10 C.F.R. § 2.754(c). In addition to a printed (hardcopy) version of their proposed findings and conclusions, the parties should

supply the Board with an electronic version in WordPerfect 5.1 on either 3.5 inch or 5.25 inch diskettes.

As we also advised the parties at the close of the May 21 hearing session, we have prepared a set of guidelines for their proposed findings and conclusions. Those guidelines are attached to this memorandum and order. While we expect the parties to address the matters set forth in these guidelines, they are not intended to restrict the parties from submitting proposed findings and conclusions regarding any matter that was properly placed in controversy in this proceeding.

Finally, we request that on or before Monday, June 8, 1992, each of the parties submit an updated exhibit list incorporating the exhibits utilized during the rebuttal/surrebuttal portion of the evidentiary hearing.

It is so ORDERED.²

FOR THE ATOMIC SAFETY
AND LICENSING BOARD



G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland

June 1, 1992

² Copies of this memorandum and order with the attached guidelines are being provided to the parties by rapifax this date.

BOARD GUIDELINES FOR PARTIES' PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING
FARLEY ENVIRONMENTAL QUALIFICATION CIVIL PENALTY CASE

To aid the Board in preparing its decision on the validity of the civil penalty at issue in this proceeding, we request that in their proposed findings of fact and conclusions of law, the parties address the following matters, with appropriate citations to the evidentiary record and/or legal authorities:

- I. General Issues on Enforcement of Environmental Qualification Requirements -- each matter should be addressed in the context of the proceeding as a whole.
 - A. The allocation of the burden of proof in this proceeding and the standard of review that governs the Board's consideration of the staff's August 15, 1988 Notice of Violation and Proposed Imposition of Civil Penalty (NOV/PICP) (Staff Exh. 2) and its August 21, 1990 Order Imposing Civil Monetary Penalty (OICMP) (Staff Exh. 3).
 - B. The role of "safety significance" in assessing a civil penalty under 10 C.F.R. § 50.49; Generic Letter 85-15 (Staff Exh. 7); the Modified Enforcement Policy, Generic Letter 88-07 (Staff Exh. 4); section 234 of the Atomic Energy Act, 42 U.S.C. § 2282; and 10 C.F.R. Part 2, App. C.
 - C. In determining whether a particular type of equipment is "unqualified" under the Modified Enforcement Policy, Generic Letter 88-07, whether there is any significance to the distinction between a staff finding of lack of qualification based upon evidence supporting an affirmative determination that the equipment will not operate in the relevant accident environment (e.g., documentation in the qualification file or otherwise available to the staff indicates that the equipment has failed or cannot pass appropriate qualification testing) as opposed to a finding that the equipment lacks qualification because the licensee's qualification files (and other appropriate sources) provide insufficient information to address all staff qualification concerns.

- D. The extent to which, in asking the Board to rule on the sufficiency of the alleged violations of the Commission's regulatory requirements as set forth in the NOV/PICP and in seeking to have the OICMP regarding the Farley facility sustained or nullified, the staff and APCo are limited to those factual and legal assertions that each set forth in the NOV/PICP, the OICMP, or APCo's November 14, 1988 response to the NOV/PICP (Staff Exh. 15).
 - E. In the context, for example, of the 1984 safety evaluation report (SER) for the Farley facility (APCo Exh. 21), what is the significance of an SER conclusion that an environmental qualification (EQ) program or approach was found acceptable vis a vis later inspection findings by the staff that particular types of equipment are unqualified.
 - F. Whether (and to what degree) undocumented engineering judgment is an appropriate factor in any qualification determination under the Modified Policy Statement, Generic Letter 88-07.
 - G. Whether (and to what degree) walkdowns are a relevant tool for the identification of qualification deficiencies under the Modified Policy Statement, Generic Letter 88-07.
- II. Qualification of Equipment Generally -- should be addressed for each type of equipment whose qualification is at issue.
- A. Whether (and why) the particular type of equipment is required to be environmentally qualified in accordance with 10 C.F.R. § 50.49.
 - B. To the degree it is in issue, the environmental conditions predicted to be present when the particular type of equipment must perform its safety function, see 10 C.F.R. § 50.49(j)(2), and the basis establishing those are the pertinent conditions for the particular type of equipment as of November 30, 1985.
 - C. The specific circumstances demonstrating whether or not APCo "clearly knew" or "clearly should have known" about the allegedly incomplete qualification of each type of equipment at issue

on or before November 30, 1985. This should encompass:

1. For each type of equipment at issue, an itemized listing of the particular documents (e.g., information notices, inspection reports, safety evaluation reports, 1987 Sandia seminar information, etc.) or other evidence that is alleged to support or negate any staff finding that APCo "clearly knew" or "clearly should have known" about the alleged lack of qualification for that equipment. In delineating those materials, the parties should provide the Board with:
 - a. References (page number(s) and paragraph number(s)) to the particular portions of the documents relied upon, and
 - b. Citations to where the materials relied upon are referenced in the NOV/PICP, the OICMP, and/or APCo's response to the NOV/PICP.
 2. With regard to each of the materials specified under II.C.1, an analysis of why that particular information supports or negates any staff finding that APCo "clearly knew" or "clearly should have known" of the alleged lack of qualification with regard to the particular type of equipment. An analysis regarding any evidence supporting or negating an allegation that APCo "clearly should have known" of a lack of qualification for a type of equipment should address its significance relative to each of the relevant factors set forth in Part II of the Modified Policy Statement, Generic Letter 88-07.
 3. The particular impact of walkdowns (or lack thereof) relative to APCo's knowledge of equipment qualifications deficiencies for each type of equipment at issue.
- D. Whether APCo provided the NRC staff with sufficient information to demonstrate the qualification of each type of equipment at issue as of November 30, 1985. This should encompass:

1. With regard to qualification documentation, for each type of equipment at issue, an itemized listing of the relevant documentation that was available to and/or reviewed by NRC inspectors during the relevant inspection period (which should be defined) and an analysis of why this documentation does or does not demonstrate the qualification of the equipment. The analysis should include references to the portion of the NOV/PICP and/or the OICMP or to the portions of APCo's response to the NOV/PICP that support the analysis. In addition, the parties should include an explanation of:
 - a. Taking into account the staff's explanation regarding acceptable qualification documentation, see Tr. 771-75, whether each listed item of documentation was in the Farley qualification files at the time of the inspection so as to be eligible for consideration to establish equipment qualification under the Modified Policy Statement, Generic Letter 88-07.
 - b. If a listed item of documentation was not in the Farley qualification files at the time of the inspection, taking into account the staff's explanation regarding acceptable qualification documentation, see Tr. 2257-63, whether it existed or was developed during the relevant inspection period or was otherwise available to the inspectors so it could be utilized in determining whether the equipment was qualified so as to render a prior qualification deficiency "not sufficiently significant" within the meaning of Part III of the Modified Policy Statement, Generic Letter 88-07.
 - c. If the documentation does not qualify for consideration under II.D.1.a. or b., whether there is any other basis that warrants its consideration, consistent with the Modified Policy Statement, Generic Letter 88-07.

2. With regard to undocumented engineering judgment, for each type of equipment at issue, an explanation as follows:
 - a. If APCo seeks to support a qualification determination for a type of equipment on the basis of undocumented engineering judgment, it should
 - i. Delineate the undocumented engineering judgment made in support of qualification of that equipment,
 - ii. Explain when the staff was made or became aware of that judgment, and
 - iii. Provide an analysis of the sufficiency of each such judgment in establishing the qualification of the equipment in question.
 - b. If the staff opposes an APCo assertion that undocumented engineering judgment, in whole or in part, supports a qualification determination relative to a particular type of equipment, it should provide an analysis of the relevance and sufficiency of each such judgment in establishing qualification.
- E. In APCo's proposed findings and conclusions and in the staff's response thereto, with regard to the opposing party's discussion of guideline matters II.C. and II.D., identify any portion of its supporting arguments or factual assertions that are untimely, so as to be outside the scope of this proceeding, and explain why they are untimely.
- F. With regard to each type of equipment at issue, whether its alleged lack of qualification is based upon an affirmative conclusion that the equipment will not operate properly in the relevant accident environment (e.g., documentation in the qualification file or otherwise available to the staff indicates that the equipment has failed or cannot pass appropriate qualification testing) or upon APCo's failure to have in its qualification files (or otherwise properly available) the

documentation necessary to satisfy all the staff's concerns regarding the qualification of the equipment.

III. Determination of the Farley Civil Penalty Amount

A. Base Civil Penalty -- In accordance with Part IV.A of the Modified Enforcement Policy, Generic Letter 88-07, provide an explanation of the appropriate aggregation category for the alleged significant violations. This should include:

1. For each type of equipment at issue, identification of the specific number of systems and components affected by the alleged qualification violation.
2. Relative to the specification of the number of systems and components under III.A.1, the appropriate aggregation category (A, B, or C) for the alleged significant violations.
3. The effect upon the analysis in III.A.2. of the staff's determination not to pursue Limitorque motor valve mixed grease and aluminum housed limit switches and entrance seals for Target Rock head vent solenoid valves as bases for the Farley civil penalty.

B. Mitigation and Escalation Factors -- Under Part IV.B. of the Modified Enforcement Policy, Generic Letter 88-07, the appropriate mitigation and escalation amounts for the base civil penalty imposed by the OICMP. This should include a discussion of the following factors, as relevant:

1. Giving appropriate consideration to each type of equipment at issue, whether (and why) the alleged qualification violation was identified and reported promptly by APCo and whether (and why), in the aggregate, APCo's actions in this regard do or do not merit any particular percentage of mitigation or escalation of the base civil penalty.
2. Giving appropriate consideration to each type of equipment at issue, whether (and why) APCo put forth its best efforts to complete qualification by the November 30, 1985

deadline and whether (and why), in the aggregate, APCo's actions in this regard do or do not merit any particular percentage of mitigation or escalation of the base civil penalty.

3. Giving appropriate consideration to each type of equipment at issue, what corrective actions were taken by APCo to achieve full compliance (including the time taken to make an operability or qualification determination, the quality of any supporting analysis, and the nature and extent of the APCo's efforts to come into compliance), and whether (and why), in the aggregate, APCo's actions in this regard do or do not merit any particular percentage of mitigation or escalation of the base civil penalty.
4. Giving appropriate consideration to each type of equipment at issue, whether and to what extent the duration of any violation was significantly below 100 days and whether (and why), in the aggregate, this does or does not merit any particular percentage of mitigation of the base civil penalty.

IV. Qualification of Specific Types of Equipment -- with regard to the listed types of equipment, in the context of discussing the qualification of each of the type of equipment under the relevant portions of II.A.-F., provide an analysis relative to the following particular items.

A. V-type Splices

Why should the results of the Wyle Test 17947-01 (APCo Exh. 39) be found applicable or inapplicable to the Farley V-type splices, including an analysis of whether the splices utilized in the test were sufficiently representative of the V-type splices at the Farley facility?

B. 5-to-1 Pigtail Splices on Hydrogen Recombiners

What is the basis in the evidentiary record for concluding that moisture would or would not prevent successful operation of the hydrogen recombiners when

they are called upon to function during the relevant time in the appropriate environmental profile?

C. Chico A/Raychem Seals

With respect to the eleven concerns purportedly raised by the staff, as summarized by APCo in its surrebuttal testimony regarding the Chico A/Raychem Seals, fol. Tr. 1780, at 82-84,

1. When did the staff identify each concern to APCo?
2. Was this identification timely in terms of making the concern a matter properly at issue in this proceeding?
3. In the context of the discussion called for under II.F. relative to this type of equipment, to what extent is each staff concern the basis for a finding that the equipment will not operate in the relevant accident environment as opposed to a finding that APCo has failed to provide the documentation necessary to address all staff concerns regarding the qualification of this type of equipment?

D. States and GE Terminal Blocks in Instrumentation Circuits

1. Are the terminal blocks properly categorized as falling within category 2.b. of Appendix E of NUREG-0588, Rev. 1 (Staff Exh. 23), for loss of coolant accidents (LOCAs) and main steam line break (MSLB) accidents?
2. If the terminal blocks properly fall within category 2.b. for LOCA and MSLB accidents, is APCo required to show that the terminal blocks are qualified for any other design basis accidents? In this regard, each party should explain what evidence in the record supports its conclusion.

E. Limitorque Valve Operators

What is the basis in the evidentiary record for concluding that the Limitorque valve operators would or would not perform their intended function during the

appropriate design basis accident environmental profile without T-drains installed.

F. GEMS Level Transmitter

1. Based upon the evidentiary record, is the matter of the silicone oil levels in the GEMS level transmitters properly considered an EQ problem or a maintenance deficiency? If the latter, is it subject to enforcement action under the Modified Policy Statement, Generic Letter 88-07?
2. What is the basis in the evidentiary record for concluding that the alleged equipment qualification deficiency relating to the silicon oil levels in the GEMS level transmitters did or did not exist on November 30, 1985?

G. Premium RB Grease

What was the basis for concluding, prior to the NOV/PICP, that mixing Premium RB with Chevron grease would or would not lead to an incompatible mixture?

PROCEDURAL NOTES:

1. Any finding of fact or conclusion of law (or series of findings or conclusions) intended to address one or more of the guideline matters should include a parenthetical citation to the particular guideline.
2. If a party concludes that, within the framework of its proposed findings and conclusions, addressing any of the guideline matters would disrupt the effective presentation of its position, it should file a separate pleading addressing those matters.
3. The Board reserves the right, after reviewing the proposed findings of fact and conclusions of law of either party, to set forth supplemental or additional guidelines for the discussion of particular matters in any remaining 10 C.F.R. § 2.754 filings.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

ALABAMA POWER COMPANY

(Joseph M. Farley Nuclear Plant,
Units 1 and 2)

Docket No.(s) 50-348/364-C1VP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (CLOSING EVID. RCRD...) 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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Docket No.(s)50-348/364-CIVP
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Dated at Rockville, Md. this
2 day of June 1992

Office of the Secretary of the Commission