

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

'92 AUG 11 P3:11

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
ALABAMA POWER COMPANY) Docket Nos. 50-348-CivP
(Joseph M. Farley Nuclear Plant,) 50-364-CivP
Units 1 and 2))
) (ASLBP NO. 91-626-02-CivP)

JOINT MOTION OF THE NRC STAFF AND ALABAMA POWER COMPANY
FOR APPROVAL OF SETTLEMENT AGREEMENT
AND TERMINATION OF PROCEEDING

The NRC Staff and Alabama Power Company jointly move the Atomic Safety and Licensing Board to approve the Settlement Agreement attached to this Joint Motion and terminate this proceeding pursuant to 10 C.F.R. § 2.203 of the Commission's regulations. The Settlement Agreement has been accepted and executed by both parties. The parties both believe that termination of this proceeding on the basis of the Settlement Agreement is in the public interest. The parties request that the Board, in accordance with § 2.203, enter an order

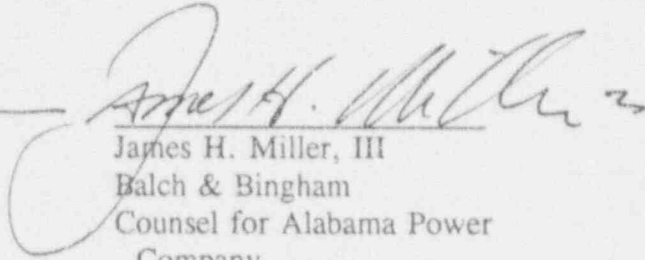
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approving the terms of the Settlement Agreement and terminating this proceeding. A proposed Order is enclosed for the Board's consideration.

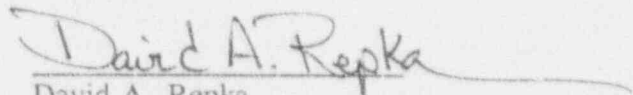
Respectfully submitted,



Richard G. Bachmann
Counsel for NRC Staff



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



David A. Repka
Winston & Strawn
Counsel for Alabama Power
Company

Dated this th6 day of August, 1992.

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OFFICE OF SECRETARY
DIRECTING SERVICE
Docket Nos. 50-348-CivP
50-364-CivP

(ASLBP NO. 91-626-02-CivP)

SETTLEMENT AGREEMENT

WHEREAS, on August 21, 1990, the Nuclear Regulatory Commission Staff (NRC Staff") issued an "Order Imposing Civil Monetary Penalty" ("Order") assessing Alabama Power Company ("APCo") \$450,000 (EA 88-40) for alleged violations at APCo's Farley Nuclear Plant of the Commission's environmental qualification rules; and

WHEREAS, on November 16, 1990, APCo requested an enforcement hearing on the matter of EA 88-40 in order to present to an Atomic Safety and Licensing Board ("Board") testimony and evidence to contest the alleged violations and the Order as not justified under the Commission's Modified Enforcement Policy applicable to "first round" equipment environmental qualification ("EQ") inspections; and

WHEREAS, as a result of the ongoing hearing, the technical and enforcement policy issues inherent in the subject enforcement action have been ventilated in full, in numerous depositions, hundreds of pages of written testimony, and three weeks of oral testimony, and

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there is an increased understanding on the part of both parties of the positions, views, and objectives of the other; and

WHEREAS, as a result of the hearing and the increased understanding derived therefrom, the parties believe that settlement of this matter is in their mutual and respective best interests.

NOW, THEREFORE, in consideration of the sum of \$150,000, to be paid by APCo to the Treasurer of the United States within 5 days of the date of the Board's approval of this Settlement Agreement, the parties agree as follows:

1. The Order dated August 21, 1990 regarding the Notice of Violation dated August 15, 1988 (EA 88-40) is rescinded. The ongoing litigation on EA 88-40 is, upon approval of the Atomic Safety and Licensing Board, terminated. This Settlement Agreement constitutes final disposition of the matters giving rise to EA 88-40 and this litigation. The NRC Staff will assert no further enforcement claims, in any form or forum, related to the matters addressed in EA 88-40 and the underlying inspection reports. APCo will not pursue any further hearings on, or judicial review of, this matter.

2. This proceeding involves numerous complex issues of a technical nature, as well as numerous issues regarding the application of the Modified Enforcement Policy to the facts of this case. Due to the nature of the Modified Enforcement Policy, the proceeding also centers

around facts and knowledge as of November 30, 1985, which is almost seven years ago. The parties agree that there remain differences of opinion on many of the issues raised by EA 88-40. However, the parties agree that these issues are highly fact dependent and resolution would in most instances, at this time, be academic given the changes to the plant made by APCo as discussed in Paragraph 3 below. Accordingly, compromise and settlement of the matter are in the mutual best interests of APCo and the NRC Staff, as well as the public interest. The strong interest in compromise and settlement has also been recognized by the Atomic Safety and Licensing Board presiding in this case in its Memorandum and Order of July 10, 1992.

3. The NRC Staff continues to believe that its technical positions were appropriate, that violations of 10 C.F.R. § 50.49 occurred, and that a civil monetary penalty is warranted. The NRC Staff acknowledges that the violations cited in EA 88-40 did not pose an immediate threat to public health and safety. However, the violations, in the NRC Staff's view, resulted from a failure of APCo's equipment documentation to demonstrate that certain equipment was environmentally qualified by the November 30, 1985 compliance deadline. The NRC Staff recognizes that, with respect to Farley Nuclear Plant, APCo met the requirements of 10 C.F.R. § 50.49 by the actions taken in 1987 and 1988 before, during, and immediately following the inspection, as referenced in Paragraph 4. Continued prosecution of this enforcement action would result in no further corrective actions by APCo.

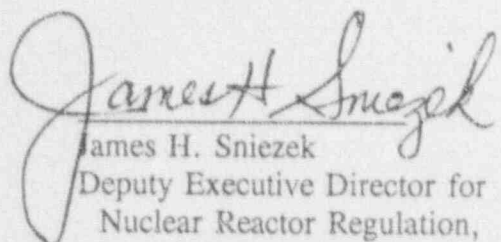
4. APCo by this Settlement Agreement does not agree with the NRC Staff's basis for its findings of violations and assessment of a civil penalty under the Modified Enforcement Policy. Nonetheless, APCo recognized in 1987 the need for improvement in qualification documentation generally, relative to the state of the art. APCo understands that the NRC Staff during its inspection in 1987 was not satisfied with the status of qualification documentation for the items of equipment in controversy. Although APCo did not and does not agree that equipment changes were necessary for operational or safety purposes, APCo understood the NRC Staff's dissatisfaction in 1987 and, at that time, APCo made significant changes to equipment in the plant to assure that equipment was installed for which mutually acceptable qualification documentation was available. In order to comply with NRC Staff expectations in 1987 and 1988, APCo devoted considerable resources in implementing EQ Task Team and EQ Task Force initiatives that resulted in substantial upgrades -- in both content and format -- to the Farley Nuclear Plant EQ documentation.

5. The parties understand and acknowledge that this Settlement Agreement is the result of a compromise and shall not for any purpose be construed as an admission of any regulatory violation or as a concession that no such violation occurred. Instead, this Settlement Agreement has been entered into in recognition of the corrective actions taken and in order to terminate further controversy respecting the alleged EQ violations at Farley Nuclear Plant. This subject enforcement action, EA 88-40, will not be considered as part of the NRC Staff's future Systematic Assessment of Licensee Performance for Farley Nuclear Plant, or as a basis for

determining a civil penalty amount in any future enforcement cases involving Southern Nuclear Operating Company or its affiliates.

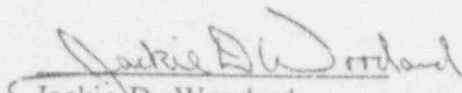
6. The NRC Staff and the Company will jointly move the Board to approve this Settlement Agreement and to terminate this proceeding. If the Settlement Agreement is not approved or is changed in any substantive manner by the Board, it may be voided by either party. The parties agree that under these circumstances and upon request they will negotiate in good faith to resolve differences.

IN WITNESS WHEREOF, APCo and the NRC Staff have caused this Settlement Agreement to be executed by their duly authorized representatives.



James H. Sniezek
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations & Research
Office of the Executive Director
of Operations

Dated: August 4, 1992



Jackie D. Woodard
Vice President
Southern Nuclear Operating Company
Farley Project
Agent for Alabama Power Company

Dated: August 6, 1992

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "JOINT MOTION OF THE NRC STAFF AND ALABAMA POWER COMPANY FOR APPROVAL OF SETTLEMENT AGREEMENT AND TERMINATION OF PROCEEDING" in the above-captioned proceeding have been served by Federal Express on the following as indicated by an asterisk and otherwise by deposit in the United States Mail, First Class, this 6th day of August, 1992:

G. Paul Bollwerk, III*
Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James H. Carpenter*
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Peter A. Morris*
Administrative Judge
10825 South Glen Road
Potomac, MD 20854
Washington, D.C. 20005
Office of the Secretary (2)
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attn: Docketing and Service Section

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

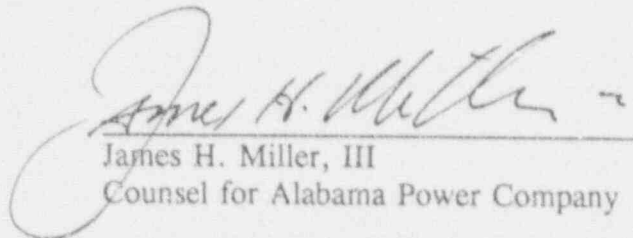
Eugene J. Holler, Esq.*
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Adjudicatory File (2)
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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Inc.
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Birmingham, AL 35201

James Lieberman, Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Regional Administrator
U.S. Nuclear Regulatory Commission
Region II
101 Marietta Street
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Atlanta, GA 30323


James H. Miller, III
Counsel for Alabama Power Company