

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

October 12, 2005 (11:15am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Title: ITMO David H. Hawes

Docket Number: 55-22685-SP; ASLBP No.: 05-840-01-SP

Location: (telephone conference)

Date: Thursday, October 6, 2005

Work Order No.: NRC-655

Pages 49-59

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

TEMPLATE = SECY-02

SECY-02

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

+

ATOMIC SAFETY AND LICENSING BOARD (ASLB)
CONFERENCE

-----x

IN THE MATTER OF: _____ :

DAVID H. HAWES :

(REACTOR OPERATOR LICENSE : Docket No. 55-22685-SP

FOR VOGTLE ELECTRIC : ASLBP No. 05-840-01-SP

GENERATING PLANT) :

-----X

Wednesday, October 6, 2005

The conference came to order telephonically at 1:30 p.m.

BEFORE:

JUDGE ANN MARSHALL YOUNG

JUDGE MICHAEL C. FARRAR

JUDGE PETER S. LAM

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 APPEARANCES:

2 On Behalf of Mr. Hawes:

3 DAVID H. HAWES, Pro Se
4 1522 Magnolia Church Road
5 Perkins, Georgia 30822
6 (478) 982-1496
7

8 On Behalf of the Nuclear Regulatory Commission:

9 SUSAN L. UTTAL, ESQ.
10 Office of the General Counsel
11 Mail Stop - O-15 D21
12 U.S. Nuclear Regulatory Commission
13 Washington, DC 20555-0001
14 (301) 415-1582
15 (301) 415-3725 fax
16

17 ALSO PRESENT:

18 SIEGFRIED GUENTHER
19 DEBORAH WOLF
20
21
22
23
24
25

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

P R O C E E D I N G S

(1:29 p.m.)

JUDGE YOUNG: Let's go on the record then.

I received a telephone call from Ms. Uttal after Mr. Hawes had also called the office this morning. And Ms. Uttal informed me that you have reached a settlement.

I appreciate your agreeing to go ahead with this conference so that you can tell us what your settlement is and we can sort of formally accept that and dispatch with any further proceedings in this case.

Is my understanding correct Mr. Hawes?

MR. HAWES: Yes, ma'am, it is.

JUDGE YOUNG: Very good. I want to congratulate -- we all want to congratulate both parties on reaching an agreement. Which one of you wants to tell me -- announce your settlement to me -- to us?

MS. UTTAL: Okay. Judge, this is Susan Uttal. I'll do it because I've had to also speak with Betina Terry, who is General Counsel for Southern Company, regarding whether the facility will buy into this because without their agreement, a lot of this can't be effectuated.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 JUDGE YOUNG: Right.

2 MS. UTTAL: And she called me right before
3 this conference to let me know that there was a small
4 glitch which I will get to. I don't think it's a deal
5 breaker. I just think it is something that has to be
6 worked out between the NRC and the facility.

7 JUDGE YOUNG: Okay.

8 MS. UTTAL: What we offered Mr. Hawes was
9 to waive the six-month waiting period required for the
10 third application. That's under 55.35. So he doesn't
11 have to wait the six months.

12 And we will waive the requirement that he
13 retake the entire test, permitting him just to take
14 the written examination and not have to retake the
15 operating test that he passed the last time around.

16 However, the waiver is contingent on Mr.
17 Hawes' full participation in the Licensed Reactor
18 Operator Re-qualification Program. And if he is not
19 already enrolled in the program then we would ask that
20 he make -- require that he make up anything he has
21 missed since the last time he took the test so that he
22 is all caught up since he hasn't -- it's been a while
23 since he has studied. And we want him to be up to
24 date.

25 Now this is the problem. The facility has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 told Ms. Terry that they don't allow non-licensed --
2 people who are non-licensed to take the re-qual
3 program. And perhaps there is some other program that
4 they have that they could have him sit in. And I
5 asked the facility people to get in touch with our
6 region to work this out.

7 It's the staff's position that we want him
8 sitting in on the re-qual program so that we make sure
9 -- and to pass all the tests in the re-qual program to
10 make sure that he is up to date and is fully capable
11 of taking on the duties because he's missed so much
12 time.

13 So that remains to be worked out between
14 the NRC and the licensee.

15 Further, we want him to take the written
16 exam prior to May 2007. That would be the two-year
17 limit. If he is unable to take the exam before May of
18 2007 because the facility hasn't offered it to him,
19 then he and the facility will have to apply for an
20 exemption to 5547. And they would have to get that
21 application in between May and July. And the staff
22 would look favorably upon such an application for an
23 exemption.

24 And if he misses those dates then he'll
25 have to take the entire exam again.

1 JUDGE YOUNG: Mr. Hawes, do you agree with
2 all that?

3 MR. HAWES: Yes, ma'am, I do.

4 JUDGE YOUNG: And just one other thing.
5 This morning in the call you made you spoke with a
6 staff person here, Karen Valloch. That's V-A-L-L-O-C-
7 H for the Court Reporter.

8 You had indicated to her that you were
9 still trying to get a lawyer but you did not have a
10 lawyer. Now since you don't have a lawyer, have you
11 had an opportunity or made use of any opportunity you
12 had to discuss this with anybody you might want to
13 discuss it with to make sure you understand all the
14 parts of the agreement?

15 For example, do you feel that you do
16 understand all the parts of the agreement? Do you
17 need any more consultation with anyone?

18 MR. HAWES: No, ma'am. The problem I was
19 having was that the ESGR, come to find out, they could
20 not represent me but they were giving me guidance if
21 that makes sense to you. They couldn't be my attorney
22 but they were giving me guidance.

23 And there was a Colonel Rypma who talked
24 to Ms. Uttal, I do believe, and he talked with me and
25 made sure I understood what was going on. But he just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 could not represent me in like this case, if that
2 makes sense to you.

3 JUDGE YOUNG: Yes, it does.

4 MR. HAWES: Okay.

5 JUDGE YOUNG: Just for my edification, I
6 can't recall, what does ESGR stand for?

7 MR. HAWES: That's the Employee Support
8 Guard and Reserve. It's the branch that handles these
9 problems from deployment between -- really it's
10 between employees and employers but they do also
11 handle cases with the government also.

12 JUDGE YOUNG: Okay. So you talked with
13 the Colonel and he also made sure that you understood
14 all of the parts of the agreement?

15 MR. HAWES: Yes.

16 MS. UTTAL: Your Honor, I have spoken to
17 Colonel Rypma. He's the ombudsman. And I gave him
18 the basic outline, which was the exemption from the
19 six-month waiting period, and waiving the requirement
20 that he take the operating test. The little details
21 that I filled in regarding the re-qual, I didn't give
22 to him because it wasn't fully worked out at that
23 time.

24 JUDGE YOUNG: Well, it sounds as though
25 you do need to dot those last Is and cross those last

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Ts. Can you tell us a time when you would be able to
2 notify us whether all that has been done? And do we
3 need to set another conference call? Or can you do it
4 in writing? And I'd guess I'd like to hear from both
5 of you on that.

6 MS. UTTAL: Well, Judge, I think that I
7 can do it in writing. I will touch base with all the
8 appropriate parties to make sure that the facility
9 will be prepared to meet the staff's requirements for
10 this settlement offer. And if they cannot, then Mr.
11 Hawes would have an opportunity to withdraw from the
12 settlement offer if it is not to his liking.

13 JUDGE YOUNG: Okay. Is that all right
14 with you, Mr. Hawes?

15 MR. HAWES: Yes, ma'am. It's just -- it
16 sounds to me like we've just got to work out the re-
17 qual part of this.

18 JUDGE YOUNG: Okay.

19 MS. UTTAL: And as to the time for the
20 taking of the exam and whether the licensee or the
21 staff will prepare a separate exam for Mr. Hawes, that
22 is not included in the settlement agreement. And that
23 remains to be worked out between the facility and the
24 NRC.

25 JUDGE YOUNG: Okay. And that's part of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the timing aspect of it?

2 MS. UTTAL: That's correct.

3 JUDGE YOUNG: Okay. So what would be a
4 good time for you all to get back to us? And I guess
5 if you're successful, we would like to have something
6 in writing signed by both of you. And if you're not
7 successful, notification that we need to get back on
8 course in the proceeding. What would be a good target
9 date for that?

10

11 MS. UTTAL: I would propose by next
12 Friday. Next week I'm out one day. And we don't have
13 -- we're all out on Monday. So I think the earliest
14 would be next Friday.

15 JUDGE YOUNG: That would be October 14th,
16 right?

17 MS. UTTAL: Yes.

18 JUDGE YOUNG: Well, if you're not able to
19 get us anything by then, let us know because I think
20 we support your settlement efforts. And it sounds as
21 though the re-qualification, Mr. Hawes, is in your
22 interest because it will help you pass the exam,
23 right?

24 MR. HAWES: Yes, ma'am, that's correct.

25 JUDGE YOUNG: Okay. Well so have I left

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 anything out that I need to address here?

2 JUDGE LAM: I do have something that I'd
3 like to express. This is Judge Lam. I look very
4 favorably on the proposed settlement agreement. I
5 think -- my opinion is that it seems very fair to Mr.
6 Hawes so that he'll have all the time to prepare and
7 not anything in his preparation. And I think it also
8 meets the duty and obligations of the staff of only
9 selecting qualified operators.

10 JUDGE FARRAR: This is Judge Farrar. I
11 would echo what Judge Lam said. This is a very
12 innovative and imaginative solution of the veterans
13 reemployment protections but also makes sure that only
14 people who are qualified to do so will operate our
15 reactors. I commend the staff for coming up with
16 this. And I'm sure that the company will find a way
17 to make it work.

18 MS. UTTAL: I believe that they will,
19 Judge. Apparently the company is very proud of Mr.
20 Hawes for his service to our country. And they're
21 willing to work with him however they can to
22 facilitate this.

23 JUDGE FARRAR: Those are excellent
24 thoughts. And we applaud the efforts that you all put
25 into this.

1 JUDGE YOUNG: We do. I join with Judge
2 Lam and Judge Farrar in their statements as well. And
3 so congratulations and good luck. And we will look
4 forward to hearing from you next Friday or if you need
5 more time, let us know.

6 All right. Then thank you all.

7 Does the Court Reporter need anything
8 further from us?

9 COURT REPORTER: Yes, can I get the
10 spelling of Colonel Rypma?

11 MS. UTTAL: Oh, I have no idea.

12 MR. HAWES: R-Y-P-M-A.

13 MS. UTTAL: Okay.

14 MR. HAWES: And Brett is his first name.

15 COURT REPORTER: Okay. And also Betina
16 Terry?

17 MS. UTTAL: B-E-N-T-I-N-A T-E-R-R-Y.

18 COURT REPORTER: Okay. That's all. Thank
19 you.

20 JUDGE YOUNG: Thank you all.

21 MS. UTTAL: Thank you.

22 MR. HAWES: Thank you.

23 JUDGE YOUNG: Good bye.

24 (Whereupon, the above-entitled conference
25 was concluded at 1:41 p.m.)

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of:

Name of Proceeding: In the Matter of

David H. Hawes

Docket Number: 55-22685-Sp

ASLBP No. 05-840-01-SP

Location: Teleconference

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
direction of the court reporting company, and that the
transcript is a true and accurate record of the
foregoing proceedings.



William Click
Official Reporter
Neal R. Gross & Co., Inc.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com