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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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LBP-96-20
USNRC

ATOMIC SAFETY AND LICENSING BOARD

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Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Charles N. Kelber
Dr. David R. Schink

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

SERVED OCT 16 1996

In the Matter of

Docket No. IA 96-020

JUAN GUZMAN

ASLBP No. 96-715-03-EA

(Order Prohibiting Unescorted
Access or Involvement in
NRC-Licensed Activities)

October 16, 1996

MEMORANDUM AND ORDER
(Approving Settlement Agreement
and Dismissing Proceeding)

In a joint motion filed October 4, 1996, petitioners Juan and Laurene Guzman and the NRC staff ask the Licensing Board to approve an attached settlement agreement and dismiss this proceeding. Finding their settlement accord is consistent with the public interest, we approve the agreement and terminate this case.

At issue in this proceeding is an April 19, 1996 staff enforcement order issued in connection with Mr. Guzman's activities while employed as a contractor employee performing piping insulation work at Baltimore Gas and Electric Company's (BG&E) Calvert Cliffs Nuclear Power Plant, Units 1 and 2. The immediately effective order precludes Mr. Guzman for a period of five years from (1) any involvement in NRC-licensed activities; and (2) obtaining

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unescorted access to an NRC-licensed facility. The order further provides this five-year period began on October 18, 1994, the date on which BG&E revoked Mr. Guzman's unescorted access authorization and removed him from the protected area at the Calvert Cliffs facility for purported misrepresentations regarding his immigration status at that time. As the basis for its order, the staff relies on Mr. Guzman's alleged attempts to falsify background information regarding himself, including providing a fraudulent "green card" and social security card and denying that an arrest record obtained by submitting his fingerprints to the Federal Bureau of Investigation belonged to him. See 61 Fed. Reg. 18,630, 18,630-31 (1996).

In a one-paragraph letter dated April 29, 1996, Mr. Guzman and his spouse, Laurene, requested a hearing in accordance with 10 C.F.R. § 2.202 to contest the staff's April 1996 order. In its May 31, 1996 initial prehearing order the Board sought to convene an early July 1996 prehearing conference, but subsequently granted a series of postponements to provide the Guzmans with additional time to find an attorney.¹ Their efforts to obtain counsel,

¹ Because the Guzmans appeared to be in some financial distress, see, e.g., Reply to NRC Staff Response Dated July 10, 1996 (Aug. 2, 1996) at 1, and based on our belief that in this enforcement proceeding the overall efficiency of the adjudicatory process would be materially aided if the Guzmans had counsel, the Board provided the Guzmans with information on organizations that could assist them in

(continued...)

however, ultimately were unsuccessful. Accordingly, on August 28, 1996, the Board conducted a prehearing conference during which Mr. Guzman (aided by a United States Department of State-certified Spanish interpreter²) and Mrs. Guzman appeared pro se.

At the prehearing conference, the Board heard presentations on the pending issues of the staff's challenge to Mrs. Guzman's standing and the efficacy of the staff's immediate effectiveness determination.³ See Tr. at 9-64. The Board also considered the admissibility of certain "central litigation issues" proposed by the parties. We concluded, among other things, that we would permit the enforcement order to be challenged on the ground the five-year prohibition term is excessive when compared to other, similar cases. See Tr. at 68-70; see also Radiation Oncology Center at Marlton (Marlton, New Jersey), LBP-95-25, 42 NRC 237, 238-39 (1995). We also decided we wished to

¹(...continued)
obtaining free or reduced cost legal services. See Board Memorandum and Order (Scheduling Prehearing Conference) (Aug. 12, 1996) at 3 n.2 (unpublished); Board Memorandum and Order (Second Prehearing Order) (June 21, 1996) at 4 n.1 (unpublished).

² The terms and conditions governing the use of that interpreter were specified in an attachment to an August 26, 1996 Board issuance. See Board Memorandum (Use of Spanish Interpreter) (Aug. 26, 1996) attach. 1 (unpublished); see also Tr. at 3-6.

³ Because we approve the settlement reached by the participants, we need not resolve these issues.

receive additional submissions addressing the question of permitting litigation on the Guzman-proposed issue whether Mr. Guzman's status as a Mexican immigrant was a factor affecting the severity of the imposed prohibition. See Tr. at 70-73. Finally, the Board and the participants discussed future scheduling for the proceeding, which resulted in a directive that a sixty-day discovery period would begin immediately. See Tr. at 74-83. See also Board Order (Memorializing Filing Dates and Initiation of Discovery and Requesting Settlement Status Report) (Aug. 30, 1996) at 1-2 (unpublished).

Following the August 28 prehearing conference, the Guzmans and the staff initiated settlement discussions. To permit negotiations to continue, on September 9, 1996, the Guzmans and the staff asked that we hold the proceeding, including the discovery and issue briefing schedules, in abeyance through the end of September. We granted this request, as well as a September 25, 1996 motion to continue the schedule suspension through mid-October. Thereafter, the participants filed the joint settlement motion now before us.

Under the terms of the October 4, 1996 settlement agreement, the staff agrees to modify the April 1996 enforcement order to reduce from five to three years the term of the prohibition on Mr. Guzman having any involvement in NRC-licensed activities or seeking/obtaining unescorted

access to any NRC-licensed facility. Therefore, as revised, this prohibition would be in place until October 17, 1997. In addition, the settlement agreement provides that for a subsequent two-year period (i.e., October 17, 1997, through October 16, 1999), if Mr. Guzman seeks employment with any person whose operations he knows, or reasonably should know, involve NRC-licensed or regulated activity, prior to being hired he must provide that person with a copy of the April 1996 order and the settlement agreement. In turn, the Guzmans agree to withdraw their hearing request.

Pursuant to subsections (b) and (c) of section 161 of the Atomic Energy Act of 1954, 42 U.S.C. § 2201(b), (c), and 10 C.F.R. § 2.203, we have reviewed the participants' joint settlement agreement to determine whether approval of the agreement and termination of this proceeding is in the public interest. Based on that review, and according due weight to the position of the staff, we have concluded both actions are consonant with the public interest. We thus grant the participants' joint motion to approve the settlement agreement and dismiss this proceeding.

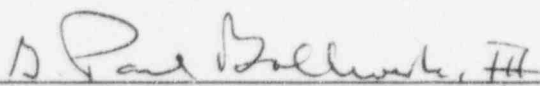
For the foregoing reasons, it is this sixteenth day of October 1996, ORDERED that:

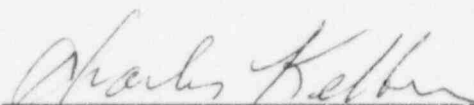
1. The October 4, 1996 joint motion of Juan and Laurene Guzman and the staff is granted and we approve their

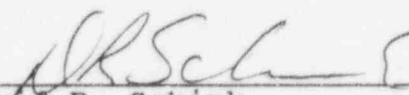
October 4, 1996 "Joint Settlement Agreement," which is attached to and incorporated by reference in this memorandum and order.

2. This proceeding is dismissed.

THE ATOMIC SAFETY
AND LICENSING BOARD


G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE


Charles N. Kelber
ADMINISTRATIVE JUDGE


David R. Schink
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 16, 1996

ATTACHMENT 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
JUAN GUZMAN)	Docket No. IA 96-020
)	ASLBP No. 96-715-03-EA
)	
(Order Prohibiting Unescorted Access or)	
Involvement in NRC-Licensed Activities))	

JOINT SETTLEMENT AGREEMENT

On April 19, 1996, the staff of the Nuclear Regulatory Commission (Staff) issued an Order Prohibiting Unescorted Access or Involvement in NRC-licensed Activities (Effective Immediately) to Juan Guzman. 61 Fed. Reg. 18,630. On April 29, 1996, Juan Guzman along with his spouse, Laurene Guzman, requested a hearing on the April 19, 1996 order.¹ In response to Mr. and Mrs. Guzman's hearing request, an Atomic Safety and Licensing Board was established on May 20, 1996. 61 Fed. Reg. 26,549.

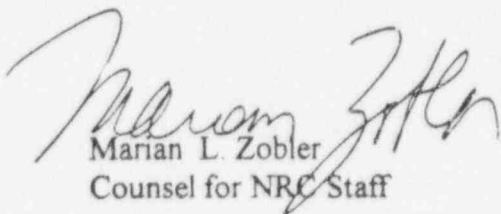
After discussions between the Staff and the Guzmans, both the Staff and the Guzmans agree that it is in their respective interests and in the public interest to settle this proceeding without further litigation, and agree to the following terms and conditions:

¹ Mrs. Guzman's right to participate in the proceeding was challenged by the Staff, and the issue of her status is pending before the Atomic Safety and Licensing Board.

1. Juan and Laurene Guzman agree to withdraw their request for a hearing, dated April 29, 1996.
2. The NRC Staff agrees to the modification of the Order Prohibiting Unescorted Access or Involvement in NRC-licensed Activities (Effective Immediately), dated April 19, 1996, as set forth in Paragraphs 3 and 4, below.
3. Juan Guzman agrees that from October 18, 1994, the date of his termination of unescorted access, until October 17, 1997, he is prohibited from seeking or obtaining unescorted access at any NRC-licensed facility and may not be involved in any NRC-licensed activities. For the purposes of this agreement, the term, "licensed activities" includes any and all activities which a licensee must or is permitted to perform in order to conduct activities authorized by its NRC-issued license, including those necessary to achieve compliance with all regulatory requirements imposed by the Commission.
4. Juan Guzman agrees that for two years following the three year prohibition, (that is, from October 17, 1997 to October 16, 1999), should he seek employment with any person (meaning an individual, a business, or other entity) whose operations he knows or reasonably should know involve any NRC-licensed or regulated activity, Mr. Guzman will provide a copy of the April 19, 1996 order and this agreement to that person prior to being hired, so that the person is aware of the Order in deciding whether to hire him.

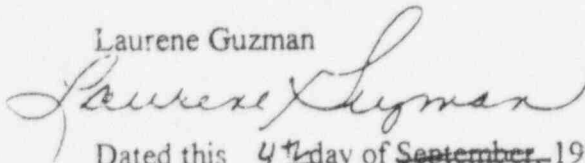
5. By signing this agreement, Mr. Guzman acknowledges his obligation, under federal statute and the Commission's regulations, to provide information to the NRC, an NRC licensee, or a contractor of an NRC licensee that is complete and accurate in all material respects. Mr. Guzman agrees that he will comply with all applicable NRC requirements.
6. Mr. Guzman acknowledges that he has read and fully understands the terms of this settlement agreement.
7. The Staff and Juan Guzman shall jointly move the Atomic Safety and Licensing Board designated in the above-captioned proceeding for an order approving this agreement and terminating this proceeding. Laurene Guzman shall file a notice of withdrawal of her hearing request at the same time the motion of the Staff and Mr. Guzman is filed. The terms of this agreement shall become effective upon approval of the Atomic Safety and Licensing Board.

Juan Guzman



Marian L. Zabler
Counsel for NRC Staff

Laurene Guzman



Dated this 4th day of ~~September~~, 1996
October

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

JUAN GUZMAN

Docket No.(s) IA-96-020

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&O (LBP-96-20)W/SETTLEMENT 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.

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

Administrative Judge
G. Paul Bollwerk, Chairman
Atomic Safety and Licensing Board
Mail Stop - T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

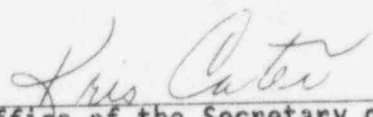
Administrative Judge
Charles N. Kelber
Atomic Safety and Licensing Board
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Mail Stop - 0-15 B18
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Washington, DC 20555

Juan Guzman
214 Pawney Lane
Lusby, MD 20657

Dated at Rockville, Md. this
16 day of October 1996


Office of the Secretary of the Commission