



**Issue Date: 26 May 2015**

Case Nos:                   2014-ERA-00006  
                                  2014-ERA-00007

In the Matter of:

WILLIAM M. BARKLEY *and*  
SHANNON K. ELLIOTT,

Complainants,

v.

DUKE ENERGY CAROLINAS, LLC  
and THE ATLANTIC GROUP, INC.,  
d/b/a DZ ATLANTIC,

Respondents.

**ORDER APPROVING SETTLEMENT AGREEMENT AND RELEASE  
AND  
ORDER DISMISSING COMPLAINT WITH PREJUDICE**

This proceeding arises from a complaint filed under the “whistle blower” protection provisions of the Energy Reorganization Act of 1974, U.S. Code, Title 42, § 5851 (“ERA”), and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 24 and Part 18. These claims were referred to the Office of Administrative Law Judges for formal hearing upon Complainants’ respective appeal of the Occupational Safety and Health Administration June 13, 2014, determination denying the respective complaints.

On May 15, 2015, the Parties filed a “Joint Motion for Approval of Settlement Agreement, Dismissal with Prejudice, and Confidential Treatment of Settlement Agreement.” The supporting document to the Motion was the “Settlement Agreement”, with Exhibits “A” through “G”, signed by the Complainants and the respective Parties’ agent.

Implementing Federal regulations at 29 CFR §24.111(d)(2) provides that “At any time after the filing of objections to the Assistant Secretary’s findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ, if the

case is before the judge, or by the ARB if the ARB has accepted the case for review. A copy of the settlement agreement must be filed with the administrative law judge or the ARB, as the case may be.” In reviewing the Settlement Agreement, the Administrative Law Judge must determine whether the terms of the agreement fairly, adequately and reasonably settle the Complainant’s allegations that the Respondent violated the ERA and are not against public policy. See Comments to Final Rule 29 CFR Part 24, 76 Fed. Reg. 2808, 2817-1818 (Jan. 18, 2011); *Bunn v. Foley*, NO. 89-ERA-5, 1989 WL 549902 (Secy, Sep. 29, 1989); *Fuchko and Yunker v. Georgia Power Co.*, Nos. 89-ERA-9, 89-ERA-10 at \*2 (Secy, Mar. 23, 1989); Once the settlement agreement is approved, it becomes the final action of the Secretary and may be enforced in United States district court pursuant to 29 CFR §24.111(e).

The ERA provides that pursuit of rights and remedies under the ERA does not diminish or affect any right available under other federal or state laws designed to redress the employee’s discharge or other discriminatory action taken by the employer against the employee, 42 U.S.C. §5851(h). However, when evaluating the appropriateness of actions under the ERA, any prior actions taken under other redress for the same events and course of conduct, including a collective bargaining agreement, must “be equitably structured such that it is offset by any arbitration award ordered for the same relief to avoid duplicative recovery.” *Lucia, Abernathy and Cowles v. American Airlines, Inc.*, Case Nos. 10-014 / 015 / 016, 2011 WL 4690625, \*7 (ARB Sep. 16, 2011)

After review of the Settlement Agreement and the administrative record, this Administrative Law Judge finds that the Settlement Agreement complies with the standards required under the ERA and is approved.

Accordingly, it is hereby **ORDERED** that –

1. The **Settlement Agreement is APPROVED.**
2. The Complaint is hereby **DISMISSED WITH PREJUDICE.**
3. The Settlement Agreement with Exhibits “A” through “G” is to be handled in a manner consistent with the restricted access provisions of 29 CFR §18.56 and pre-disclosure notice requirements of 29 CFR §70.26.

ALAN L. BERGSTROM  
Administrative Law Judge

ALB/jcb  
Newport News, Virginia