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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF
GENERAL
ADMINISTRATION

SERVED MAR - 2 2000

_____)
 In the Matter of)
)
 MICHEL A. PHILIPPON)
)
 (Denial of Senior Reactor)
 Operator License))
 _____)

Docket No. 55-32443-SP

CLI-00-03

MEMORANDUM AND ORDER

I. Introduction

The NRC Staff has petitioned the Commission to review a Presiding Officer's Initial Decision, LBP-99-44, 50 NRC ____ (Dec. 9, 1999), reversing the denial of the application by Michel A. Philippon for a senior reactor operator (SRO) license. Because we find the Presiding Officer erred in finding that the NRC Staff had waived its defense of Philippon's grade with respect to one competency rating factor, we reverse the decision and remand for further consideration.

II. Background

Philippon took his SRO exam in April, 1998, passing the written portion but failing the operating portion. He requested an informal review by a panel of NRC staff who were not involved in his original grading. The staff appeal panel raised Philippon's grade on several "competencies," but the overall grade was still below passing. The Chief of the Operator Licensing Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor

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Regulation, accepted the staff appeal panel's recommendation that Philippon's license application be denied. Philippon then sought a hearing before the Atomic Safety Licensing Board Panel. After an informal adjudication under 10 C.F.R. Part 2, Subpart L, the Presiding Officer increased Philippon's grade on two competencies, resulting in an overall passing grade.

The staff has appealed the Presiding Officer's Initial Decision with respect to one competency rating, competency C.4.c. The grade on that competency will make the difference whether Philippon passes or fails.

The simulator portion of the operating test consisted of three scenarios, each including five to nine events to which the shift crew were required to respond. Test Scenario 2-2, event eight, involved a leak in the residual heat removal suction line, which caused the torus water level to drop. This required the SRO candidate to enter an Emergency Operating Procedure (EOP 29.100.01), a procedure that directs personnel to try to isolate the leak and also to monitor the torus water level. Unbeknownst to the crew, the leak could not be isolated. While the leak was being addressed, the plant experienced a loss of offsite power (event nine), and the emergency diesel generator failed to start up automatically. This called for an Abnormal Operating Procedure (AOP 20.300.03) for manually starting a backup combustion turbine generator. The offsite power source powers various equipment, including the standby feedwater pump and the main turbine bypass valves, that can be used to cool and relieve pressure in the reactor pressure vessel.

These basic facts are not in dispute: Philippon directed the Balance of Plant operator to work on the generator startup. After performing only the first three steps, the Balance of Plant operator informed Philippon that the procedure would take too long to implement because the backup generator takes 10-15 minutes to warm up, and therefore offsite power could not be restored before emergency depressurization was required. Philippon allowed the Balance of

Plant operator to discontinue the AOP and directed him to other tasks relating to the torus water problem.

The staff contended before the Presiding Officer that, had Philippon instructed the Balance of Plant operator to complete other steps in the procedure while the generator was warming up rather than discontinuing the procedure, the offsite power could have been restored prior to emergency depressurization. This would allow a more controlled release of pressure from the reactor pressure vessel.

At issue in competency C.4.c. is whether the SRO candidate "ensured the safe, efficient implementation of procedures by the crew." The examiner, Hironori Peterson, found that Philippon violated the AOP by allowing the Balance of Plant operator to prematurely abandon attempts to restart the backup generator. Peterson gave Philippon a score of 1 out of a possible 3.

After considering the scenario, the examiner's comments, and the candidate's contentions, the staff appeal panel found Peterson's assessment too harsh. In its October 1, 1998 findings, "Review of Appeal by Michel Philippon Senior Reactor Operator Candidate-Fermi," the appeal panel concluded that with respect to Competency C.4.c.:

Abnormal Operating Procedure AOP 20.300.03, Loss of Offsite Power is a 'Continuous Use' procedure. However, as stated in the subsequent action note prior to Step 1, "at the discretion of the Control Room SRO [Philippon] steps of this procedure may be performed simultaneously." Although the candidate directed the [Balance of Plant operator] to "forget the procedure and monitor the Torus Water Level," subsequent action of the procedure should have been carried out ... Directing the actions of EOP 29.100.01 (Primary Containment Control and Secondary Containment and Rad Release) regarding the decreasing torus water level and the increasing reactor building sump levels was very important.

However, it appears the candidate, as SRO, failed to maintain command and control of the actions of the BOP to ensure implementation of a plant procedure that had been directed to be performed. Management Procedure MGA03, Enclosure A, Step A.2 states, "When one of the exit conditions specified in the

EOP flowchart is satisfied or it is determined that an emergency no longer exists, the operator exits the EOP flowchart" For the given plant condition EOP 29.100.01 was in effect and had not been exited at the time of the loss of power event. The Subsequent Actions of AOP 20.300.03 Loss of Offsite Power, were not immediate; and there were no immediate actions to be performed by the operators.

In summary the NRC assigns a rating of 2 ... for Competency C.4.c due to the candidate allowing a lapse in implementation of a procedure. [emphasis added]

The Presiding Officer said that the staff appeal panel had found a "lapse" in an EOP. The Presiding Officer refused to consider the staff's evidence and arguments concerning an AOP lapse, finding those arguments inconsistent with the appeal panel's conclusions and that the staff was limited to defending those conclusions. The Presiding Officer concluded that the staff, by taking a position contrary to the appeal panel's findings, had conceded that there was no lapse in the EOP. He therefore gave Philippon a score of 3, the highest possible score.

The staff maintains that the appeal panel's grade was based on Philippon's lapse in implementing the AOP, and that it provided sufficient evidence below that the actions taken by Philippon during his test were incorrect and constituted a lapse in the AOP.

III. The Presiding Officer Erred in Interpreting the Staff's Position

After careful review, we hold that the staff appeal panel found an AOP lapse, not an EOP lapse, and therefore the NRC staff did not depart from the appeal panel's findings in defending the case before the Presiding Officer on the ground that Philippon had not adhered to the AOP.

It appears that the Presiding Officer misunderstood the conclusions reached by the staff appeal panel. The Presiding Officer, apparently agreeing with Philippon,¹ found that the staff

¹ The Presiding officer was perhaps influenced by Philippon's argument on appeal, which claimed:

appeal panel had faulted Philippon for assigning the Balance of Plant operator to the offsite power problem, rather than for prematurely removing the operator from that procedure. The Presiding Officer then objected that "the Staff does not respond to Mr. Philippon's challenge to the appeal board's conclusion explaining how it scored his performance ... [but] goes off in an entirely different direction" by continuing to argue the error of removing the Balance of Plant operator from the offsite power procedure.

Although it is unfortunate that the staff appeal panel, in the final sentence of its findings, did not again specify in which procedure it found a lapse, it could not have been referring to the EOP, as Philippon and the Presiding Officer thought, but must have been referring to the AOP. The appeal panel mentioned no EOP lapse. On the other hand, the AOP was the "procedure" to which the appeal panel referred when it said that "although [Philippon] directed the BOP to 'forget the procedure and monitor the Torus Water Level,' subsequent action of the procedure should have been carried out" (emphasis added). The appeal panel also must have been referring to the AOP when it stated in its conclusions that the candidate "as SRO, failed to maintain command and control of the actions of the BOP to ensure implementation of a plant procedure that had been directed to be performed," because the AOP was the procedure that was not completed.

[the staff appeal panel's] conclusion was that because the first few steps of the Loss of Offsite Power abnormal operating procedure were directed to be performed, that a lapse occurred in performing the Torus low level portion of the Emergency Operating Procedure. The staff reviewer is suggesting that because the EOP had not been exited that any actions performed outside of the EOP resulted in a lapse in performing the EOP.

Philippon's appeal to the Licensing Board on Competency C.4.c contended that there had been no lapse in the EOP.

In addition, in the dispute between Philippon and the examiner on competency C.4.c, the issue was never whether an EOP lapse occurred. The staff appeal panel's findings summarized the examiner's position as follows:

The examiner contends the candidate was preoccupied with the Torus level problem and that he did not adequately prioritize actions needed to restore power to essential plant equipment. Rather than directing the BOP to expedite and perform the Loss of Off-site Power procedure, the candidate as SRO told the BOP to forget the procedure and monitor the torus water level.

The examiner, in other words, found an AOP violation. Nowhere in the appeal panel's conclusion is there any statement to suggest that the panel found, in the words of the Presiding Officer's Initial Decision, the "diametrically opposed" position that a fault actually occurred in following the EOP. If the panel were reaching a conclusion the exact opposite of the examiner's conclusion, it would undoubtedly have said so.

Furthermore, the Presiding Officer based his decision in part on a perceived discrepancy in the appeal panel's findings, but that discrepancy disappears if the panel's findings are interpreted correctly. The Presiding Officer's Initial Decision points to the appeal panel's findings on competency C.7.b in concluding that there was no lapse in the EOP. In grading Philippon's performance on competency C.7.b ("Directing Operations, Safe Directions") for scenario 2-2, events eight and nine, the appeal panel overturned the examiner's conclusions that there had been a lapse in the execution of the EOP 29.000.01, and increased Philippon's grade from a 1 to a 3.² The Presiding Officer reasoned that because the same scenario and events were being evaluated, a perfect score on competency C.7.b cannot be reconciled with

² Whereas the examiner had found that Philippon incorrectly directed a crew member to use safety relief valves (SRVs) to relieve the pressure in the reactor pressure vessel, resulting in a too-rapid depressurization, the appeal panel found both that using the SRVs was a method authorized by the EOP to reduce pressure and that a cooldown rate exceeding plant technical specifications was acceptable under the circumstances.

an imperfect score on competency C.4.c. In reality, however, this seeming discrepancy is no discrepancy at all, but simply further evidence that the appeal panel, in grading C.4.c, found a lapse in a different procedure than the one considered in competency C.7.b. The only way that the differing grades can be reconciled is by recognizing that the panel was evaluating Philippon's performance relating to two different procedures.

Finally, the statements in the appeal panel's conclusion on competency C.4.c that the EOP had not been exited, when taken in context, do not indicate that the lapse in question involved the EOP. The appeal panel commented on the importance of the EOP in the course of justifying its decision to increase Philippon's grade from a 1 to a 2. Statements that monitoring the torus water level (part of the EOP) was "very important," and that there was no immediate action to be taken on the AOP, were, logically, rationales why the appeal panel considered the AOP lapse a relatively minor one, warranting an increase in Philippon's grade. It is, therefore, evident that the lapse the staff appeal panel was discussing was the same AOP lapse that the examiner found.

For the foregoing reasons, the staff should not have been foreclosed from arguing before the Board that there had been a lapse in AOP implementation.

The Presiding Officer did not find that there was no lapse in Philippon's implementation of the AOP. Because the determination that Philippon should have a perfect grade was based not on a finding that there was no lapse at all, but on an interpretation of the appeal panel's findings that we find to be incorrect, we reverse the ruling and remand the case for consideration of whether there was a lapse in the implementation of the AOP warranting a grade of 2 on competency C.4.c.

IT IS SO ORDERED.



Dated at Rockville, Maryland
this 2nd day of March, 2000

For the Commission

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook". The signature is written in a cursive style with a long, sweeping tail.

Annette L. Vietti-Cook
Secretary of the Commission

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-00-03) 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.

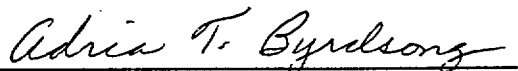
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Dated at Rockville, Maryland,
this 2nd day of March 2000