

DOCKETED
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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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1100 6th Street
Beaver, PA 15009
724-987-5877

May 28, 2009

Attention: Rulemakings and Adjudications Staff
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Sir or Madam:

I am writing you to formally request a hearing regarding the decision to not issue a Senior Reactor Operator (SRO) license.

I recently completed a SRO training program at Beaver Valley Power Station (BVPS) up to and including the NRC operating and written exams. I completed the exams on December 15th, 2008. After discussions with numerous members of the Operations staff, it had become clear that one of my most significant hiring promises was going to go unfulfilled. Rather than waste any more of the company's or my time, I formally resigned from BVPS. Grading of the exam was completed on January 6th, 2009. My docket number is 55-62335. BVPS later contacted Region I and directed that my application be withdrawn. The date of this contact is uncertain as I have received conflicting information from Region I and the Office of Nuclear Reactor Regulation.

On January 27th, 2009 I received a letter from Region I dated January 20th. The letter states that based on BVPS withdrawing my application, Region I stopped processing my application and will not issue the SRO license. The letter did not include any of the ES-303 forms typically sent to justify a denial of a license or any detail on the appeal process. The letter also clearly states that I passed all portions of the exam.

I sent a written reply to this letter on January 30th, 2009. I was contacted by Region I by telephone the week of February 9th, 2009. It was explained to me that the license is being denied because there was no need for the license. Region I followed through with a letter dated February 20th, 2009, reiterating the telephone discussion. Although I understand the concept of the need for a license, I can see no clear requirement to deny a license based on the Code of Federal Regulations or the Commission's own procedures, which are documented in NUREG 1021. Both documents support issuing the license. My justification is detailed in the following paragraphs:

I have reviewed 10CFR Part 55.33 regarding the requirements for the approval of an initial application. The letter dated January 20th stated that I had passed all portions of the examination. Furthermore, no medical conditions exist as outlined on NRC Form 396 that would "adversely affect the performance of assigned operator job duties or cause operational errors endangering public health and safety." Based on those facts, I have satisfied the requirements of 10CFR55.33, subpart (a).

I have reviewed 10CFR Part 55.51 regarding issuance of licenses. It states that I must meet the requirements "of the Act and its regulations" for a license to be issued. Therefore I have reviewed NUREG 1021, specifically ES-202 and ES-501. In those documents, I can find no rule or requirement that would prevent issuance of a license.

In the February 20th letter, it was explained that 10CFR 55.31(a)(4) requires the facility representative to sign the Form 398 to certify a "need for ... a senior operator to perform assigned duties." Form 398 was, in fact, signed by the senior management representative at BVPS as required. This section of the CFR is titled "How to apply." As none of the other sections of 10CFR55.31 are in dispute, I have satisfied all requirements of 10CFR55.31, and therefore successfully applied for a Senior Reactor Operator license.

May 28, 2009

In the February 20th letter, it was further stated that the statement signed by the BVPS representative supports a particular section of NUREG 1021. The section of interest is ES-202, "Preparing and Reviewing Operator Licensing Applications." Section C.1.h states that "The facility licensee is expected to inform the NRC's regional office in writing if it wishes to withdraw an application before the licensing process is complete." BVPS satisfied that requirement. This statement does not in any way require that an applicant who has completed all activities required by 10CFR55.51, 10CFR55.53, and NUREG 1021 be denied a license.

Furthermore, I understand that Region I has stopped processing my application based upon a request from First Energy Nuclear Operating Company (FENOC). This was done after grading had been completed. The statement in the January 20th letter that "Region I stopped processing your application" is inaccurate in that there was no more processing required. The grading was completed and a docket number assigned to me as of January 6th of this year. All that remains is to send the license.

Also, FENOC's withdrawal was done without my knowledge or consent. A review of NRC Form 398 indicates that I am the applicant, not FENOC. I did not and do not desire to have my application withdrawn.

Finally, I find the concept that there is no longer a need for the license to be incorrect. I have served the industry as a licensed SRO and then an operations training instructor since 1999. Having earned an NRC license remains the most critical qualification and documentation for companies to evaluate the capabilities of a potential employee. Also, companies use the criteria of "has or has held a license" as a prerequisite for some upper level management positions. As the majority of the industry uses pressurized water reactor technology, this ruling regarding my license prevents me from finding employment with approximately two thirds of the industry.

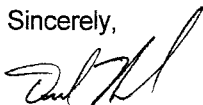
In summary, I contend that denying the license is contrary to federal law and not required by the written rules and regulations of the Commission. Also, it significantly affects my employment options as well as my ability to serve the industry.

As I stated in previous letters, my decision to resign from FENOC is in no way meant to show disregard for the NRC, the SRO license, or commercial nuclear power as a whole. I still believe in nuclear power and fully intend to continue my service to the industry. My resignation was based on unfulfilled hiring promises resulting in a significant degradation of my quality of life. I have spent two very long years dedicated to achieving the PWR SRO license. I could have chosen to remain employed at BVPS until the license was issued. As my classmates licenses were issued on January 20th, there exists only a short, arbitrary time span between their licensed status and my own. If I had spent those few days employed at BVPS, it would only have served to waste the company's time and resources as they put me through leadership training, firefighting training, etc. My family has endured significant sacrifice over the past years as I worked towards earning the SRO license. We continue to face adversity as the lack of a license prevents me from finding local employment.

Please advise me of the nature of the hearing process. If a face to face discussion is required, I will be in the Washington, D.C. area on June 22nd, 2009, and would be available to meet with you at this time. Also, please let me know if you require any additional evidence regarding this hearing. Region I will have a more complete set of documentation than what I currently have, but I will be happy to assist you in any way possible.

Thank you for your assistance in this matter.

Sincerely,

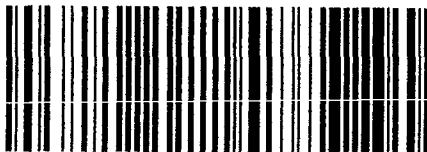


Dave Kuhl

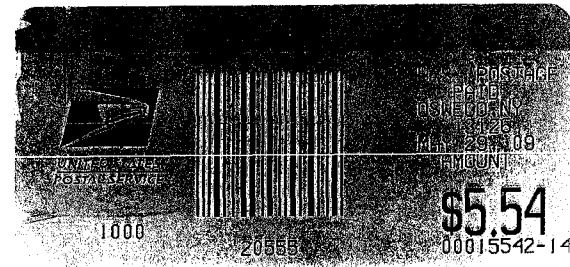
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OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL™



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