

The U.S. Nuclear Regulatory Commission, Region II, determined that I did not pass the simulator portion of the operating test. This is the second attempt to apply for a Senior Reactor Operator (SRO) License due to a failure of the written examination the year prior. I was evaluated on the weeks of March 26, 2012 and April 9, 2012. I am requesting a hearing on the basis that a waiver for the operating test was not properly considered and once required to retake the Operating Test, the simulator portion was graded/accessed incorrectly. Since the submittal of the contention to the NRC for administrative review, additional information has been acquired. The applicant has obtained simulator data recorded from the crew scenarios, rough notes from the examiners and timelines that recorded events on the ES-D-2. This information will assist in identifying inconsistencies and errors made by the examiners in accessing the examination grades. The examiners comments were not consistent with the actual occurrences, similar comments were categorized differently to ensure maximum point deduction and pertinent information was left out of the comment descriptions to imply the applicant made an error. It is believed that the applicant was treated differently or assessed at a different level by the NRC examination Team, consisting of Michael Meeks, Mark Bates and Phil Capehart, due to a judgment formed the previous year. The effects of this assessment resulted in the denial of a SRO License.

### Description of Contention

I was initially a member of Hot License 16 at Plant Vogtle. The class consisted of 10 applicants (4 – RO and 6-SRO). 7 out of 10 applicants failed the written examination (1 also failed the Operating exam (SRO) – she later resigned from the company). Six applicants were expected to re-exam with the following class (Hot License 17). The company was to request waivers for the individuals, and was initially told (via telephone) that 1 applicant would not receive a waiver (Myself) and later 2 were being evaluated. The purpose of requesting the waiver is so the applicants would not be required to repeat the portions of the test that was already performed satisfactory.

According to the NRC's Regulation NUREG 1021, ES-204, D (Routine Waivers): *If an applicant failed only one portion of the site specific initial licensing examination (i.e., either the written examination overall, the SRO-only section of the written examination, the simulator operating test, the walk-through overall, or the administrative portion of the walk-through), the region may waive those examination areas that were passed.* Based on this statement, the applicant met the requirements to receive a routine waiver



unless the Examination Team uses its discretion to apply the term "may", at which time a justification is required.

In preparation for the upcoming examination, a request was sent to Michael Meeks to evaluate the status of the individuals from Hot License 16 and indicate whether or not a waiver would be approved. According to the email sent by Michael Meeks on **Tuesday, August 02, 2011 10:18 AM**, it stated:

*Sorry to be so long getting back to you. I have checked with Mark Bates (1) and Malcolm and have preliminary answers for you:*

1. *For C. Jenkins, L. Gordon, M. Sinkler III, A. Dyer, and S. Barefield: these would be routine waivers approved by Region II. These individuals would have the operating test portion of the exam waived, and would only need to take the written exam. When their applications are submitted, they would need to specify deficiencies (i.e. as noted in the last NRC exam) and the remedial training they did to correct these deficiencies.*
2. *For C. Smith, Region II would likely deny a waiver of the operating test portion of the exam. However, she could re-take the entire exam (both a complete operating exam and the written).*

**(1)– Note this is the simulator examiner from the current examination administered Mar/Apr 2012**

When Michael Meeks was asked again about who would receive waivers in a follow-up email (Sept 27, 2011), Meeks repeats the above response and **stresses** this information is based on **"preliminary answers insofar as we have not received/evaluated the actual applications"**. Notice above, that instructions are provided for the individuals that "would be granted waivers" (based on preliminary answers) and a recommendation was made for C.Smith to retake the entire exam (based on preliminary answers). Although it was determined that I would "not likely" receive the waiver, the company decided to submit the waiver and allow the NRC to formally deny the request, because this was not a definite response and the applicant was eligible to receive a waiver per NUREG 1021.

The applicant passed the previous years' simulator test with some margin (not minimum, an average of approximately 2.47 – based on a scale with the minimum of 1.8 and maximum of 3.0 ) and scored 100%



(pass) on the JPM portion, (see exam results). Another applicant from Hot License 16 passed the Simulator portion with great results and passed the JPM portion with the minimum score but he was granted a waiver. Although both failed the written, the applicants' written score was also higher/closer to passing than this applicant. In addition he was not one of the individuals that were initially being evaluated to determine if he would receive a waiver.

Another applicant received simulator grades that were slightly higher (average 2.55) but did not pass 100% on the JPM portion (unsatisfactory on 2 – the maximum “unsatisfactory” allowed to pass is 3). If the operating portion (simulator and JPM) were evaluated collectively it would appear that I was equivalent or at least comparable to the other applicants overall. If the exam results were not compared or considered, this implies that there was subjectivity in the decision to grant a waiver versus a standard evaluation process, to determine if an applicant should receive a waiver. If a waiver submittal and approval is allowed, then all candidates should be considered in the same manner with the same criteria. Care should be taken to prevent the appearance of an abuse of discretion.

It is understood that a waiver is granted on a case by case basis. Per 10 CFR 55.35: *“An applicant who has passed either the written examination or operating test and failed the other may request in a new application on Form NRC-398 to be excused from re-examination on the portions of the examination or test which the applicant has passed. The Commission may in its discretion grant the request, if it determines that sufficient justification is presented.”*

If the regional office decided to deny the waiver then per ES-204, Page 2 of 7: *“the regional office shall promptly notify the applicant in writing concerning the disposition of the request, and provide an explanation for the denial.”* The applicant was never **formally** evaluated for a waiver. The company representative submitted preliminary paperwork (NRC-398) to the current **examination team** to review prior to submitting it formally. The submittal of the preliminary paperwork was required per the NRC's regulation (NUREG-1021). The intent of the paperwork was to allow the team to ensure the paperwork was suitable for final certification and the applicant meets the requirements. When submitting the NRC-398 form for review it contains all the information that will be submitted to the Regional office for final approval. The only difference is it does not contain all the official signatures of senior management. My paperwork was sent and it was identical to all the other Hot License 16 personnel requesting a waiver of the Operating Test. All



applicants were required to physically review their NRC 398 form prior to submittal for review. In reviewing my information, I did verify that a request existed for a waiver of the operating exam. This form was submitted from Vogtle ~ Feb 23, 2012. Below is the information written included in the original license application (NRC 398), to identify the waiver request (box 4.f.2 for waiver of operating test was checked ) and remedial training to correct deficiencies from the previous examination.

***Item # 4.f.2: Passed all categories of the Operating test given from March 16-24, 2011.***

***Item # 13.g: Applicant has successfully completed a comprehensive remedial training program for SRO duties. The program included remedial training on areas of weakness identified in the denial letter dated May 9, 2011 and on the knowledge areas of the NRC K/A catalog (NUREG-1021) that an SRO applicant may be evaluated on. Applicant successfully completed a facility developed 100 question SRO written Audit examination.***

Unfortunately when this "preliminary" paperwork was sent for review, the examination team was aware that the company was actually submitting a waiver on my behalf. After the NRC Examination team received the waiver request (for review), it prompted a phone call to the Training personnel. Later the company (Vogtle) changed the application waiver request, after discussions created discomfort among Vogtle Training Staff. The NRC identifies that the call was made to determine if they changed their minds about submitting a waiver. The NRC 's Independent review does not identify at what point it was clear that the company was not to submit the waiver to prompt this call. Additionally it was stated that the box was checked in error. The applicant determined that the NRC also identified in that conversation that they would evaluate the waiver.....but the applicant may not be able take to exam because it may not be finished in time or could postpone the entire exam. This prompted the company to make a decision. In addition the applicant reviewed a chain of email correspondence that supports that a decision was being made on how to answer the phone call versus an immediate response that it was all in error. The applicant even recall a conversation with a staff member in which it was discussed that we are going to send it in and see if they will give you a waiver.

In July 2011, The NRC was sent a letter from Vogtle's VP requesting a waiver for all the applicants from Hot License 16 (this highlights their intent). The intent to request waivers for all the students was identified. It was my understanding, if the company submits the information in a timely manner, it



would meet the required time to evaluate the waiver status per their regulations. According a letter from the NRC, written to Vogtle's Vice President (VP) (dated October 21, 2011) it states: *"To permit timely NRC review and evaluation, your staff should submit preliminary reactor operator and senior reactor operator license applications, medical certifications, and **waiver requests** (if any) at least 30 days before the first examination date."* (This statement is also written in the NRC procedure NUREG 1021) If the VP was sent a letter identifying that a waiver request must be submitted 30 days prior to the test, then why was it a problem evaluating the request versus questioning it? Until this moment Vogtle's intent was to request a waiver, as identified to the applicant, as identified in the email (Aug 2011), as identified in a letter sent by the VP to request a waiver (July, 2011), and as identified when the preliminary NRC 398 form was submitted (Feb 2012). It is highly unlikely that a company would submit this information consistently for a period of time and suddenly change the intent to request a waiver unless there was some type of influence. It was inappropriate to put the company in a position that would leave them no other chose but to change the application to prevent upsetting the examiners.

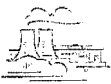
If time was an issue the NUREG 1021, ES 204 Section 2d states: "If time is too short to notify the applicant in writing before the examination date, the regional office shall notify the facility training representative by telephone concerning the disposition of the waiver request and provide a follow-up written response to the applicant."

The purpose of mentioning the history of the waiver submittal and response is to identify the examination team's familiarity with the applicant going into the examination. There was a **personal opinion** that was formed early on during the previous examination and this opinion apparently carried to the next years' examination (2012).

Furthermore, the assignment of the examiners from the previous examination also created the appearance of a conflict of interest. Michael Meeks and Phil Capehart were part of the previous exam team and returned

to examine Hot License 17. The NUREG 1021, ES 201 states: "The regional office shall not assign an examiner who failed an applicant on an operating test to administer any part of that applicants retake operating test."

It is understood that the applicant did not fail the operating test, but the applicant was required to retake the entire exam as if a failure had occurred because a waiver was highly discouraged. The examination team went above and beyond to ensure that a waiver was not achievable. The methods



[REDACTED]

used to prevent the evaluation of the waiver were very unusual, especially when a process is in place to address denying a waiver.

It would appear that the Simulator Examiner, Mark Bates, was newly assigned and could provide a new perspective, but he was consulted (see email, 8 months prior) by the previous exam team in reference to the applicants performance and/or their impression the previous year. He was also a part of the preliminary decision to deny the applicants' waiver. If the previous exam team formed a negative impression of the applicant and was able to provide that feedback to the current evaluator it is highly unlikely that the applicant was to be graded without prejudice. In addition the previous exam team was also present during the evaluation to further provide their feedback, as their procedure requires that immediately after completing the scenario set that they compare notes (NUREG 1021, ES 302) about the applicants. It is very possible that the examiner could have been influenced prior to, during and after the exam. NUREG 1021, ES 201 also states: "If an examiner is assigned to an examination that might appear to present a conflict of interest, the examiner shall inform his immediate supervision of the potential conflict. Such notifications should include the following information: anything that could affect the administration, performance, **evaluation or results of the examination.**" It is very possible that this familiarity could have affected the results.

Once I was notified that the NRC would not grant a waiver, it was my expectation that the examiners would administer the evaluation according the preapproved outline. In the past year, I was never on probation nor was I identified as an applicant with weaknesses in the program. My company and I were very confident based on my recent performance and was not concerned that I would have any problems during the operating test. I expected to receive a fair and impartial evaluation. Unfortunately I was shocked to discover that I was assessed as a "Fail" on the Simulator Exam. Once the denial letter was received, the comments were reviewed. Based on the comments, it was concluded that the applicant was graded with a higher level of scrutiny. If a higher level of scrutiny is applied then it is expected that more comments will be documented. However it is expected to be consistent between comments, consistent between crews and consistent between applicants. The understanding is that the examinations are expected to be administered based on a preapproved test outline. NUREG 1021 speak specifically about ensuring that the requirements/criteria is established prior to the administration of the examination. If the approved scenario



outline requires a specific action and the evaluator increases the level of detail needed to meet the objective (not identified on the outline) then he is essentially writing the exam based on the applicant's response while the examination is in progress or upon completion.

*NUREG 1021, ES 301 Preparing Initial Operating Test, page 18 states: After the NRC's chief examiner approves the operating test outlines, prepare the final simulator test materials by revising Form(s) ES-D-1 as requested by the NRC's chief examiner and completing a detailed operator action form (ES-D-2) for each event. All required operator actions (e.g., opening, closing, and throttling valves; starting and stopping equipment; raising and lowering level, flow, and pressure; making decisions and giving directions; acknowledging or verifying key alarms and automatic actions) shall be documented, and critical tasks shall be identified.*

Examples of the comments received were:

1. Not making a **recommendation** on an event that does not list the operating position that I held as the position being evaluated for the failure (comment 20). Especially when the documentation was not assessable to the applicant to further assist.
2. Not maintaining a parameter although failures initiated by the exam team prevented adjustments from occurring. Once the parameter was exceeded the failures stopped, allowing adjustments to the parameter (comment 18).
3. Some failures were complicated by the timing, the examiners were fully aware of what actions were about to take place each time due to a briefing that occurred prior to taking the action. If the examiner is aware that an action is imminent, why put a failure in at the same time?
4. Some comments were the same type of error but the comment was written to allow it to be used in a different category by leaving out information.
5. Quotes were taken out of context or written incorrectly to imply that the applicant did not understand, to allow point deduction.
6. Answers to questions were identified and quoted on the individual examination report that did not match the actual question asked during follow-up questioning. If the question on the exam



report was different than the actual question asked, it is misleading that the applicant did not meet the competency.

7. Some of the descriptions were incorrect as written.
8. Instance where the applicant performed the correct **action** but was downgraded because of a **statement**, although it was not listed as grading criteria. The evaluator went outside the Scenario outline for some comments.
9. Various communication comments were identified for the purpose of increasing the pass criteria for the remaining categories.
10. Discrepancies were discovered in which the evaluator made the error of reading the wrong digital meter yet deducted points based on his error.
11. Concluded that the evaluator did not collect enough data to support his argument and possibly made an error by read a meter incorrectly to determine when an action was required.

The discrepancies described above are the basis for this request. A skilled evaluator has the ability to fail even a strong candidate in the simulator, if desired. Note: No comments were identified from the emergency portion of the evaluation. The crew that I was evaluated with performed **all critical steps, procedure transition, protected all vital equipment and no actions compromised the health and safety of the public**. The issues brought up in this evaluation are not issues that imply that I am unable to perform the duties required of an SRO. Several tasks, where points were deducted, were met according to the criteria listed in the Scenario outline. Several comments were based on a standard that was established by the evaluator, not a preapproved standard. The applicant had strong results on the rest of the licensing exam to support being successful on the simulator portion. Typically a poor understanding of plant systems, procedures and integrated operations would be representative with poor results in all areas (to include the written and JPM's).

The candidate was much stronger and better prepared than the previous year. This is representative by reviewing the improvement in all other areas that were defined by a consistent standard (black and white criteria versus subjectivity). The simulator evaluation would imply that my performance significantly degraded, since the previous evaluation, after an additional year of training. In addition the scenarios were complicated by the timing of failures, at times causing the crew to deal with two issues at the same time and this was not the case with other crews. Some of the comments were very





subjective or lack the detailed understanding of how the plant operates based on different plant conditions created by the compression of time. This is the second example of when subjectivity prevailed in a decision that was not properly justified or poorly justified (first example – the waiver).

## Response to the NRC Review

The applicant submitted a request for an administrative review of the proposed denial. In this request several comments were identified that were incorrectly assessed. The NRC's findings were that the applicant made too many errors, exhibited numerous performance problems during the simulator exam and additionally they determined that more comments should have been added that differed from the original Individual Examination Report. The NRC review removed some comments and changed the original test outline by defining an error as being a critical task- 6 months after the original examination and known results was available. By doing this, that portion of the test was change from 1.99 to 1.66. Several ambiguous terms were used and the final grade sheet was not reported. It was my understanding that requesting a review meant that your comments of disagreement would be addressed and the comment would be evaluated to determine if they are valid **at a minimum**. Instead the review responded to one comment out of seven, changed the definition (to a critical task) of an error that was not contested, wrote a new comments (not sure how you can do that when you can't validate if the individual actually had understanding or not) and did not specifically respond to any of the other issues brought up. I am very curious if the team had no result in hand and was asked to define all critical tasks how many other applicants would be affected. I would definitely like to request that this issue is also addressed in the hearing. **Changes to the original testing guide should not be permitted.**

If the applicant did not meet the standard then the team should be able to prove that by comparing the results to the official testing outline that was administer to everyone. When a group has to make changes to the test outline, that implies that they do not have sufficient data to support the denial. The NRC review did not document the final results of the review (individual grade sheet) to determine if any of the contentions submitted were determined to be valid. In fact they decided to "only include a detailed discussion of the independent re-grading of one area (competency 3, Control Board Operations) ("which resulted in the applicants examination failure")." The original grading sheet determined that the applicant failed two sections: "Interpret/Diagnosis" as well as "Control Board Operations". The



[REDACTED]

decision to discuss “only Competency 3 (due to causing the applicants failure)” would imply that the other competency is now a pass and some of the comments were found to be supported resulting in a change to the Individual grade sheet. It is believed that the Review team decided not to document a response to the comments individually submitted because it would highlight the strange/unexplained behavior that occurred during the test (by the examiners) and the discrepancies noted in the write up that contradicted data and their own evaluators rough notes. Those issues are important because each time it occurred in the crew that the applicant was a part of. These issues are also important because it explains why the applicant felt that she was treated differently. Anyone can produce a document that states that a lot of errors occurred but if the “so-called” errors are not fortified with confirming data that can be reviewed then it is merely a subjective write-up.

The NRC identified that the independent review **mostly agreed** with the original grading of the applicants performance, yet it does differentiate what was found to be true or false. The original contention contained several instance in which the NRC evaluator incorrectly described the event, the NRC evaluators ordered failures that prevented manipulations, at times the crew was dealing with more than one issue (while other teams dealt with one issue at a time) and they required more detail (then required on the preapproved test outline) to meet the objective.

In comparison to the original grade sheet. Competency 3 changed in the following manner:

1. One comments was changed to a critical task – this comment was identified on the original grading sheet but was not identified as a critical task. By redefining it as a critical task it results in maximum point deduction. **If this was not changed to a critical task then it would have resulted in a passing grade for this competency.** How can a review team make a significant change to the grading criteria after administering the exam (with results in hand)? This is very disturbing!!
2. An additional comment was added that the applicant did not understand a controller although the independent review identifies that it agrees that the applicant explained the controllers function to the examiner in follow-up questioning ( again how can a team write a new comment when it is impossible to validate understanding by the applicant when the test is over). Essentially the review is saying that the previous comments were not good enough. So in response they utilize double the time allotted by their regulation (75 days allotted, over 160 days used) to search to find new comments and new criteria.



3. Two comments were removed – RWST Sludge mixing valve and the comment referencing exceeding a temperature deviation.

- The RWST comment was originally on the applicant's grade sheet, although no notes were identified in the evaluators rough notes, nor was the applicant questioned in reference to this comment. In fact this comment originated from another examiner that examined a different applicant. Somehow this comments was written up on my final individual report (expect more clarification) for a position that was not identified for evaluation of this event (as written on the original test outline). This comments basically deducted points because the evaluator felt that I should have made a "specific recommendation".
- The temperature deviation comment was a comment that identified that the applicant allowed a parameter to be exceeded. The issue with this comment was that the examiners put failures in place each time that the applicant requested permission to address the deviation. The applicant attempted to adjust this on more than one occasion, so it is unlikely that this was accidental. In fact the applicant can prove at least one of the attempts, with simulator data. Keep in mind that these failures were controlled by the NRC Exam Team and the other crew did not have the same issues with timing of failures.

It appears that the review did not address the original disagreement with the results (above is just a couple examples), instead the review focused on finding additional comments to sustain the failure. How can the review change the original test outline by changing an item to a critical task based on already knowing the outcome of the examination? The review team identified that the error/comments meets the definition of a critical task per NUREG 1021, Appendix D.1.a. However the team fails to illuminate that the same Appendix( D ), identifies that "Every required operator action should be included on Form ES-D-2, this is particularly important for critical task and other verifiable actions and behaviors that will provide a useful bases for evaluating the operators competence. All CT (critical task) shall be flagged in a manner that makes them apparent to the individual who will be administering the operating test." This was not listed as a critical task on the original test outline utilized in March 2012. It also states that the NRC and the licensee should review each critical task to ensure it is objective. This change in criteria (to a critical task) is identified 6 month after the completion of the examination. The entire reason for developing a test outline prior to the test is to ensure that an applicant is treated fairly. If a team can be formed an allowed to make these type of changes I'm confident that anyone can be



failed. The only request is that I am administered the same test given to everyone else, with the same criteria/standards, and the same level of scrutiny prior to knowing my results.

It should also be noted that the typical review requires 75 days per NUREG 1021. This NRC review utilized over double (over 160 days) the normally identified time. This review identified that the applicant was not treated differently although several of the comments originally submitted were not addressed. Those comments were the basis as to why the applicant felt that the exam was not properly assessed. By not addressing those comments the NRC avoids supporting any claims made by the applicant. The Independent review identified that the applicant made too many errors although they did not disclose any changes determined from the original grade. Are you counting the original errors, new error, are you deducted the unsupported errors, etc..... Their review identified that two comments were found for two additional areas "Procedures" and "directing operations" yet they again did not disclose what the comments were. Care should be taken in identifying that the applicants made too many error when some were due to the examiners preventing manipulations, changing the grading criteria after the completion of the test, having the applicant address simultaneous failure (when other teams did not have this issue), and examiner making errors in collecting/interpreting data from the wrong gauges (this was discovered after the review request),

Additionally the review identified that there were no instances of operating test waivers being requested and denied in the last three years in region II. It was noted that 33 waivers have been granted over the same period of time. Per the review, when the scores were compared the applicant was (according to the review completed by the NRC) significantly lower than any other scores for those individuals granted waivers in the past three years. Significantly lower is ambiguous terminology. The applicant has a copy of a classmates' results, that received a waiver, that are comparable to her results. Maybe additional explanation of the word significant could clear up this confusion.

### Response to evaluators in 2012 being unbiased

The review determined that the licensee (Vogtle) asked the chief examiner for the 2012 exam (Michael Meeks), to evaluate if region II would approve a waiver for C. Smith. After consulting with the Operator Licensing Chief that region II would likely deny the waiver. The examiner stated that because **he was not involved in the 2011 examination** (although he was physically present during the evaluation), he



simply followed the recommendation of the 2011 Chief Examiner and Examiner of Record when responding to this question. Again the applicant is confused because a FOIA request revealed a copy of an email between Michael Meeks, Phil Capehart and Malcolm Widmann, it identifies the following conversation (May 2, 2011 3:19 pm).

**Phil Capehart:** Michael, Malcolm has asked for input to the status of future (operating portions of the exam) waivers for the Vogtle retake exam. I wanted to get your input as to the individuals you examined and passed on the operating portion of the exam. **Of the 3 applicants that passed the operating portion of the exam but failed the written do you recommend that they receive waivers for the retake for the operating portion of the exam?** Malcolm is reviewing the 303's and would like to get back to Rick Brigdon ASAP.

**Michael Meeks:** I do not have any problems or concerns with granting waivers of the operating exam to the three individuals listed below that I examined (names blacked out)  
**I would recommend not granting waivers of the operating exam to (name blacked out) and C. Smith**  
So you know, while I am at the G-103 class this week, I will have access to all NRC accounts and drives during my class in the day; However the NRC laptop I have at the hotel is not working. I have access to the O drive here at region I if you need me to make changes to stuff or read other peoples changes.

**Phil Capehart to Malcolm Widmann:** *Malcolm I spoke with both Michael and Jay about the possibility of future waiver denials. The only individual that all 3 of us are in agreement about is Carla. Even though she passed the operating test portion, we would recommend a future waiver of this portion of the exam be denied.*

According the previously mentioned review conducted by the NRC, Michael Meeks states that he simply followed the recommendation of the 2011 Chief Examiner. In the above email he makes a recommendation that includes C Smith (to not receive a waiver). Throughout the review write-up, it continuously states that Michael Meeks played a relatively small role in examining the applicant in 2011 and that he did not read the 2011 results because he wanted to remain objective when examining the applicant in 2012. The above email contradicts the info reported by Michaels Meeks. The review implies that he did not have enough info to form an opinion in 2012 yet he provides a recommendation for a waiver request based on the 2011 exam. If he was not knowledgeable of the applicant's performance in 2011 why is he making a recommendation that she should not receive a waiver? If he was knowledgeable enough to form an opinion why did his answers reflect (during the review) that he had little knowledge of the applicant's history on the exam. Maybe Meeks believed that by specifically identifying that he did not read the 2011 report, it would gives the impression that he was unbiased. If



an individual is able to make a recommendation on something that is based on knowledge of the 2011 performance, then he cannot in good faith state that he had little knowledge of the applicants performance the previous year. One of these statements is incorrect, they cannot both be true!

The review states that Mark Bates had no opportunity to be biased through **direct observation** of her performance in 2011. Mark Bates did have an opportunity to form an opinion based on the feedback from the previous exam team. In fact the previous email identified that Mark Bates was consulted about the request for a waiver. He was a part of the decision to "likely deny" a waiver. Again how can an individual make that assessment without being knowledgeable about the performance in question. It does not matter if he physically observed it. If the previous exam team formed a negative impression of the applicant and was able to provide that feedback to the current evaluator it is highly unlikely that the applicant was to be graded without prejudice. In addition the previous exam team was also present during the evaluation to further provide their feedback, as their procedure requires that immediately after completing the scenario set that they compare notes (NUREG 1021, ES 302) about the applicants. It is very possible that the examiner could have been influenced prior to, during and after the exam. NUREG 1021, ES 201 also states: "If an examiner is assigned to an examination that might appear to present a conflict of interest, the examiner shall inform his immediate supervision of the potential conflict. Such notifications should include the following information: anything that could affect the administration, performance, **evaluation or results of the examination.**" It is very possible that this familiarity could have affected the results. Every individual that was apart of the 2012 examination can be linked to request that started in 2011 and requested recommendation in reference to the 2011 examination. It is dishonest to identify that the examiners were not knowledgeable or formed an opinion prior to the 2012 exam.



Charlissa C. Smith

Docket number: 55-23694

[REDACTED]

Again, the purpose of this document is to request a hearing per 10 CFR 2.103(b)(2). If a hearing is granted, the applicant would like to request that the NRC provides a final individual grade sheet with all final comments prior to the hearing. It is impossible to prepare a defense without disclosure of the final comments. This will also ensure that no additional changes can occur prior to the hearing.

If you have any questions, you can contact me at [REDACTED]

Sincerely,

Charlissa C. Smith