

January 20, 2013

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
CHARLISSA C. SMITH)	Docket No. 55-23694-SP
)	
)	
(Reactor Operator License for Vogtle Electric Generating Plant))	
)	

SUBJECT

**PETITIONER’S RESPONSE (MOTION FOR LEAVE) TO NRC STAFF REQUEST TO
DENY HEARING REQUEST**

Pursuant to 10 CFR 2.323(c), the petitioner answers to the NRC Staff to request to deny hearing request (motion for leave) dated January 10, 2013. The NRC Staff identifies that the Petitioner submitted additional filing and the Request for a Hearing should be denied because it fails to put forth an admissible contention. The request for a hearing was initiated based on the instructions provided in the Denial Letter issued by The NRC on November 15, 2012, page 1. The instructions provided in the letter stated, “Submit your request in writing” and no other references was listed as to submitting contentions and/or supporting documentations in the initial request. The Denial Letter provided contradicting instructions, needed to successfully request the opportunity to present a disagreement to the Atomic Safety and Licensing Board.

Discussion

I. Legal Standards Response

The NRC's Denial Letter was responded to as written. The information listed in the Denial Letter dated November 15, 2012, contradicts and omits information needed to request a hearing properly. The petitioner's request that all supporting documentation and information submitted in the response on January 6-7, 2013, is admissible.

The NRC Staff continues to argue that the petitioner's information and supporting documentation should be inadmissible on the bases that it should have been submitted in the original hearing request. The root cause of the NRC Staff's argument is the insufficient instructions provided by the NRC's Denial Letter dated November 15, 2012. The petitioner identifies that she was under the care of a doctor* during the time the response was required. The instructions listed in the document were utilized to meet that requirement due to the aggressive schedule with physician visits, ER visits, various procedures and hospitalizations. It is imperative that instructions provided by an organization should reflect the expected response versus misleading an individual with instructions that can potentially prevent the right of the individual to pursue the appeal process.

**See Documentation (Attachment 1) for description of illnesses/incapacitation from a medical professional.*

II. Ms. Smith's Request to file nonpublic documents seek to supplement the initial request for hearing with facts no in dispute and impermissible RESPONSE.

The petitioner requested to submit documents that contain information that may meet the requirements of the privacy act. The NRC Staff states that the following documents are impermissible, unnecessary and the facts are not in dispute: 1. July 13, 2011, letter signed by the licensees' Vice President stating that "SNC is submitting, in accordance with NUREG, ES 204, Section D.1.a, a request for waiver for the Operating Exam portion of the Initial License Exam" (This letter included the petitioners name). 2. A copy of the **preliminary** waiver (NRC 398) request submitted prior to Feb 23, 2012 (Exam administered in March).

The July 13, 2011, letter is to highlight the company's intent to request a waiver for the petitioner (as supported in the NRC Staff Response dated Jan 10, 2013, page 4). It will assist in presenting documentation for a timeline. This letter and various emails will show the intent was to submit a waiver up to the date that the preliminary paperwork was submitted. There is no physical documentation that supports a change in intent prior to the submittal of the NRC 398 Form. It is the NRC staffs position that the NRC contacted the licensee because an item was checked to request a waiver and the preliminary form **did not include supporting information** prompting a phone call to ask if it was intentional (NRC response dated Dec 31, 2012, page 4). The submittal of the preliminary form 398 is to present the document submitted and to compare the changes to the final form (which required the removal of more than the check to item 4.f.(2). This document was also identical to the other individuals requesting waivers. The submittal of documents discussed above show the actions initiated by the licensee to submit a waiver. The

intent appears to be clear (that the waiver was intentional) until the NRC made a phone call. The petitioner and staff disagree about the content of this conversation, but whatever was said in this conversation, this is the point in which the intent to submit a waiver appears to change. The petitioner request the submittal of the above documents is granted to support the waiver contention.

III. Ms. Smith's Reply Brief and January 7, 2013, filings Response.

A.

The NRC Staff identifies that the petitioner has not established good cause for filing additional factual material after the deadline and the Board should therefore disregard this information (NRC Staff response dated January 10, 2013, page 5). The petitioner uses the Reply brief to submit additional information due to the instructions provided in the denial letter. As stated earlier, the root cause of the NRC Staff's argument is the insufficient instructions provided by the NRC's Denial Letter dated November 15, 2012. The petitioner identifies that she was under the care of a doctor* during the time the response was required. The instructions listed in the **document** were utilized to meet that requirement due to the aggressive schedule with physician visits, ER visits, various procedures and hospitalizations. It is imperative that instructions provided by an organization should reflect the expected response versus misleading an individual with instructions that can potential prevent the right of the individual to pursuit the appeal process.

The NRC Staff further discussed the "factual material related to three contentions Ms. Smith propounded in her Request for a hearing" (NRC Response dated January 10, 2013, page 4). The

NRC Staff also discussed “she enumerated ten contentions with brief explanation that challenge the assessment of her operating test performance, most of which incorporate or depend entirely upon factual information not included in the request for hearing.” (NRC Response dated January 10, 2013, page 5)

The NRC Staff’s reference to the (three) contentions, need clarification at this point. The NRC Staff selected information from the original request for a hearing and determined a list of contentions. The original Request for a hearing (dated December 5, 2012) does not identify the items selected by the NRC staff as the “contentions”. The original hearing request submitted by the petitioner on December 5, 2012, identified the history of the events leading to the request for a hearing. The NRC Staff extracted three points of discussion and identified them as the contentions. The petitioners reply dated January 6, 2013, identified a list of Contentions with a brief explanation (page 3-5). These contentions were listed to clearly identify the petitioners intended items to be discussed if a hearing were granted. These contentions are also consistent with the “Example of the comments” listed from the examination, that were discussed in the original Hearing Request submitted on December 5, 2012 (on page 7-8). Comparing the list on the original Hearing Request submitted on December 5, 2012, page 7-8 and the Petitioners response dated January 6, 2013, page 3-5 will show that the descriptions are not different. The reference to the issues encountered are the same, the petitioners response dated January 6, 2013, simply matches the issues (identified in the original request Hearing Request submitted on December 5, 2012, by FEDEX (on page 7-8) with the appropriate comment from the final grade sheet. At end of that list (on the original Hearing request submitted December 5, 2013, page 8) it states “the discrepancies described above are the basis for this request”. Another reference is made to changing a task to critical (on the original Hearing request submitted on December 5,

2012) and this is discussed in contention 10 (petitioners response dated January 6, 2013, page 5).

The clarification about the contention is to ensure it is clear that the petitioner's contentions are specific to the waiver and examination comments (and changes occurring as a result of the independent review to the final grade sheet). The discussion of the personnel issues is to highlight the interaction prior to the waiver submittal and the administration of the examination. It also highlights that discrepancies were noted that did not support the grading of the simulator examination. It must be established that there was reason to suspect that the grading was not accurate by comparing to the standard set forth in NUREG 1021 and comparison of data to information that is factual.

The NRC Staff states Ms. Smith attached to her Reply Brief a copy of the **original** informal review request file with the NRC Staff, Attachment 1. This statement is in error. The attachment is an **updated** version of the original review with supporting documents incorporated into the write up. This was updated for purpose of submittal in the hearing appeal process. The original request for a hearing submitted December 5, 2012, page 1, states that since the submittal of the contentions to the NRC for an 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. This statement identifies the supporting documentation the petitioner will use to identify the comments in dispute. The petitioner request the submittal of Attachment 1 is granted to support the individual contention. In addition it is requested that the simulator data is permitted (it is also incorporated into the document) for submittal, this was cited in the original hearing request.

B.

The NRC Staff identifies that the filing submitted on January 7, 2013, should be disregarded by the Board.

1. A copy of the request for informal staff review is to identify the original contentions submitted to the NRC. This identifies the items disputed and presented to the NRC organization for review.
2. A copy of the informal review decision is to show how the contentions were not discussed in the final write-ups, new comments were written, the test outline changed to include a critical task and a final grade sheet was not provided to identify the final comments. The write-up is relevant because there is reference to some of the comments and the waiver issue.
3. A copy of written comments from the examiner provides actual data written by the individual examiners. This data can be used to compare to the final comments written by the examiner on the final grade sheet. This is important to identify any contradictions to their own notes.
4. A copy of Internal NRC Staff email communication regarding a potential request for a waiver. This dispute any claims that the 2012 Chief Examiner was not knowledgeable of the petitioners 2011 performance as the email illustrates that he recommend that C. Smith, should not receive a waiver. In the review Chief Examiner Michael Meeks stated that “he was not involved in the 2011 examination.”(Chief Examiner Michael Meeks provided a recommendation which is noted in the email communications) (INDEPENDENT REVIEW, Enclosure 2, page 4) based on the 2011.

5. A copy of email communications between the NRC Staff and the facility licensee highlights that the 2012 Simulator Evaluator Mark Bates consulted Chief Examiner Michael Meeks to determine who should receive waivers. The NRC Staff response dated December 31, 2012, page 12, states that Mark Bates was not directly involved in the response to the licensee regarding a potential waiver application. The email communication does show that Mark Bates was consulted. Consulting requires a detailed discussion from the individual's point of view. This is to dispute that Mark Bates was not knowledgeable of the petitioner's 2011 examination eight months prior to the 2012 examination. In addition this email identifies the response to an inquiry concerning a waiver request.

The above documents will assist in providing documentation to support some of the comments in contention. These comments make reference to addressing info identified in the review. The above documents will also prevent any claims by the 2012 examiners there was little knowledge of the previous year.

C.

The NRC Staff states that Ms. Smith does not demonstrate good cause for failure to submit supporting documentation by the required deadline response. The NRC Staff discusses that the petitioner submitted a non-public filing, an email that summarizes the communications between the facility licensee and Region II Staff regarding a potential waiver request for Ms. C. Smith. (NRC Staff response dated January 10, 2013, page 8) This email is important because it references the conversation (in which the NRC Staff contacted the licensee about the waiver). The email states that, "the 2012 Chief Examiner stated that time was not available to process the petitioner's application with a waiver request." The email also states he (email writer) does not

want the **NRC unduly upset**. Petitioner references two statements from NUREG 1021,(ES 201, page 8 and ES 204, page 2) (in the petitioner's response dated January 6, 2013, page 2) that 30 days prior to the test, waiver request shall be evaluated. If there is not enough time to notify the applicant in writing then the regional office shall notify the training rep by telephone and follow up with a written response to the applicant. This email is important to identify that the conversation in question (about if the waiver was intentionally sent) contained more dialogue than identified in the NRC Staff response dated December 31, 2012, page 4.

The NRC Staff states that the petitioner makes an equitable argument that she should be entitled to file a complete Hearing Request with adequate factual bases after the deadline because she was under the care of a doctor. The petitioner has signed and dated documentation provided by a medical professional.

Conclusion

The root cause of the NRC Staff's argument is the insufficient instructions provided by the NRC's Denial Letter dated November 15, 2012. The petitioner identifies that she was under the care of a doctor* during the time the response was required. The instructions listed in the **document** were utilized to meet that requirement. It is imperative that instructions provided by an organization should not contradict the required actions. It is requested that the Board considers the submittal of all documentation.

Respectfully,

Charlissa Smith

Attachment 1: Medical statement

Attachment1

Audrey Henderson M.D.
1109 Medical Center Drive, Suite 3
Augusta Georgia 30909-6644
Phone(706)860-4567 Fax(706)860-4489

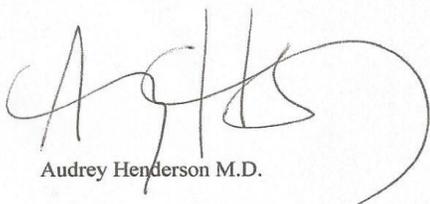
01/16/2013

To Whom It May Concern:

This is to verify that Ms Charlissa Smith was incapacitated and unable to work from November 1 to January 14. She has requested that I give you a detailed report of her course during this time. This patient presented with intractable nausea,vomiting, abdominal pain and diarrhea requiring three emergency room visits on November 5, November 11, and November 25. She was seen in physicians' offices on November 6,7,13, 19 and 27. She had procedures performed November 8,13,14 and 15.

She had surgery on November 28. She was released from the hospital November 29. She was seen by the surgeon December 3. She experienced new symptoms on December 4 and was readmitted to the hospital. She was released December 14. She was seen by specialists January 2, 9, and 10. She was unable to work until January 14 due to medication side effects, weakness and poor nutritional status. I hope this information is helpful. If further information is needed please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Henderson', with a large, sweeping flourish extending to the right.

Audrey Henderson M.D.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
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CHARLISSA C. SMITH) Docket No. 55-23694-SP
)
)
(Reactor Operator License for Vogtle)
Electric Generating Plant))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **PETITIONER'S RESPONSE (MOTION FOR LEAVE) TO NRC STAFF REQUEST TO DENY HEARING REQUEST** was provided to the NRC's Electronic Information Exchange for service to those individuals on the service list for this proceeding.

[Original signed by Charlissa Smith]

Dated at Grovetown, Ga
this 20 day of January 2013