

July 26, 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
)
(Denial of Senior Reactor)
Operator License Application))
)

NRC STAFF RESPONSE TO THE BOARD ORDER OF JULY 24, 2013

BACKGROUND

On July 17 and 18, 2013, a merits evidentiary hearing was conducted in the above-captioned proceeding. During the July 18, 2013 hearing session, the Board called as a Board-listed witness, Edwin Lea (Mr. Lea).¹ Mr. Lea was called to testify at 3:41 pm, which was shortly before the hearing facilities would no longer be available to the parties and the Board.² In his testimony, Mr. Lea went beyond the information provided in his pre-filed written affidavit.³ Mr. Lea also provided to the Board, *sua sponte*, a three-page document on the grading of Ms. Smith's Senior Reactor Operator (SRO) simulator test, developed by him during the previous month.⁴ The Board marked this document for identification as Board Exhibit BRD-013, but did not, at that time, share it with the parties.⁵ The Board recognized that the Nuclear Regulatory Commission (NRC) staff (Staff) had not had an opportunity to review or respond to either this document or Mr. Lea's testimony.⁶ Accordingly, the Board held that the hearing record would

¹ See Tr. at 663.

² See *Id.*

³ Compare *id.* at 663-712 with Exhibit NRC-025 (Lea Affidavit).

⁴ See Tr. at 693-94, 703.

⁵ See *Id.* at 699.

⁶ See *Id.* at 700, 712.

remain open, providing the Staff with an opportunity to respond to BRD-013 and Mr. Lea's testimony.⁷

DISCUSSION

The Staff has no objection to the Board Order of July 24, 2013, admitting BRD-013 into the record, provided that the Staff has a reasonable opportunity to submit and also have admitted into the record a filing with affidavits in rebuttal to BRD-013 and Mr. Lea's July 18, 2013 testimony. The Staff believes that this request is reasonable because the Staff was unable to review and respond to BRD-013 or Mr. Lea's July 18, 2013 testimony, which went beyond the information provided in his pre-filed affidavit. The Staff requests three weeks, or until August 16, 2013, to submit this rebuttal.

CONCLUSION

In conclusion, the Staff has no objection to the Board Order of July 24, 2013, admitting BRD-013 into the record, provided that the Staff is granted an opportunity to submit by August 16, 2013, and have admitted into the record, a rebuttal filing with accompanying affidavits.

As required under 10 C.F.R. § 2.323(b), counsel for the Staff contacted Ms. Smith regarding the issue raised in this motion. Ms. Smith stated that she plans to oppose the motion.

Respectfully submitted,

/Signed (electronically) by/

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⁷ *Id.*

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CERTIFICATE OF SERVICE

Pursuant to 10 C.F.R § 2.305, I hereby certify that the foregoing NRC STAFF RESPONSE TO THE BOARD ORDER OF JULY 24, 2013, dated July 26, 2013, has been served upon the Electronic Information Exchange, the NRC's E-Filing System, in the above captioned proceeding, this 26th day of July, 2013.

/Signed (electronically) by/

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Dated at Rockville, Maryland
this 26th day of July, 2013