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| United States Nuclear Regulatory Commission Official Hearing Exhibit              |   |
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| In the Matter of:   | Charlissa C. Smith<br>(Denial of Senior Reactor Operator License) |
|  | ASLBP #: 13-925-01-SP-BD01  |
|   | Docket #: 05523694  |
|   | Exhibit #: CCS-076-00-BD01  |
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# CCS-076

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

May 01, 2013

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

|  |   |                        |
|--|---|------------------------|
| CHARLISSA C. SMITH   | ) |                        |
|  | ) | Docket No. 55-23694-SP |
|  | ) |                        |
|  | ) |                        |
| (Reactor Operator License for Vogtle<br>Electric Generating Plant) | ) |                        |
|  | ) |                        |

SUBJECT: PREFILED TESTIMONY ON STATEMENTS OF POSITION

This document is constructed to illustrate the disagreement with the waiver process, examination process, and independent review in association with the denial of a Senior Reactor Operator License application for Charlissa Smith. Several issues were encountered during the process that resulted in the denial of due process at different phases of the 2012 examination period. The denial of Due Process occurred prior to, during and after the 2012 exam. These issues will be outlined in separate statements of position with supporting documentation/exhibits. The waiver process has one statement of position, the examination process has ten statements of position and the independent review has one statement of position associated with it. A total of twelve statements of position will be presented. A common thread between several of these situations is that the NRC Staff deliberately and consistently operates outside of their procedures and policies. They give the appearance to the public eye that all applicants will be given fair opportunities in requesting waivers, evaluating exams as well as appeals. The NRC Staff's opinion outweighs corresponding documentation. In other words, the outcome of the exam can match the opinion of the exam team even if they cannot justify it with documentation. They are permitted to poorly document comments and utilize their "word or (expected) integrity" to fill in the gaps even if there is no information collected or it cannot be proven.

## Statement of position 1: Processing the waiver request

### Introduction

1. The first statement of position is related to the submittal of the waiver. The issues associated with the waiver are as follows:
  - a. Grade comparison between the students and the pass criteria contradict the decision to deny the waiver if submitted.
  - b. The NRC contacted the facility to question the submittal of the waiver versus processing it according to their procedure. The NRC does not provide a valid justification as to why C. Smith was singled out and the facility was contacted to determine if the submittal was intentional.

### Background

C. Smith along with five other individual failed the written test in 2011. All six individuals passed the simulator and walkthrough portion of the operating test. An email was sent requesting a response from the NRC as to who they were willing to grant waivers for on the upcoming retake examination<sup>1</sup>. C. Smith was identified as “not likely” to be granted a waiver. It was also stated that “she could retake the entire exam”. No additional contact was made with the NRC in regard to a waiver for C. Smith. The company submitted the preliminary license application paperwork indicating a waiver request for all six students in Feb 2012<sup>2</sup>. In response to the submittal, the NRC contacted the company via telephone. At the end of the conversation the waiver for C. Smith was withdrawn. The final license application was submitted (March 2012) without a waiver request for C. Smith.

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<sup>1</sup>Exhibit CCS-001, page 22- 23

<sup>2</sup>Exhibit CCS-002

## Statement of position 1: Processing the waiver request

### Discussion

- a. Grade comparison between the students and the pass criteria contradict the decision to likely deny the waiver if submitted. A chart was constructed to better visualize the results of the grading on the Operating test<sup>3</sup>. The Operating test includes the “Simulator”, “Admin Topic” and “Walkthrough Overall”<sup>4</sup>. An unsatisfactory on either portions (admin topic, walkthrough overall or the simulator) will result in a failure of the entire examination<sup>5</sup>. When considering approving a waiver, it would be assumed that all portions of the operating test would be considered. According to the evaluator notes: The evaluators decided to weight the simulator portion heavy when considering the waiver<sup>6</sup>. The procedure does not provide guidance that the simulator is weighed heavier. The decision to weigh one portion heavier is not based on not factual data or procedure guidance. The examiners relied on a chart constructed to compare the applicant’s number of comments although there is no mention of the number of scenarios that each applicant performed. It is impossible to make a comparison about the number of comments when some applicants had 2 scenarios and others had 3 scenarios. In addition the chart compares the simulator and the JPM’s when these are two totally different portions. The JPMs in total are only 15 tasks. One Simulator Scenario will have over 15 tasks and the applicants have 2 to 3 Scenarios. So this is not a fair comparison. The operator compared to in the chart only had 2 scenarios. All three grades received during the operating test (Admin, Walkthrough and Simulator) have the same ability to cause a failure overall. In making a comparison between operators, based on grades, C. Smith should have been comparable. Note: **Use Exhibit CCS-003 when reviewing the upcoming comparisons to better visualize.**

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<sup>3</sup>Exhibit CCS-003

<sup>4</sup>Exhibit CCS-004 and Reference to the form 303 illustrated in Exhibit CCS-004 is in Exhibit CCS-005, page 145, 1<sup>st</sup> paragraph

<sup>5</sup>Exhibit CCS-005A, page 144 (paragraph 6 and 7) and page 146 paragraph 3

<sup>6</sup>Exhibit CCS-001, page 3, 1<sup>st</sup> paragraph under the chart

## Statement of position 1: Processing the waiver request

### Comparison between Operators:

#### 1) Comparison to Operator C (Senior Reactor Operator Candidate)

|             | <u>C. Smith</u> <sup>7</sup> | <u>Operator C</u> <sup>8</sup> |  |
|-------------|------------------------------|--------------------------------|--|
| Admin Topic | 100%                         | 60%                            | Minimum Score needed to pass: 60%                              |
| Walkthrough | 100%                         | 80%                            | Minimum Score needed to pass: 80%                              |
| Simulator   | 2.5, 2.2, 2.3, 2, 2.8, 3     | 3, 2.2, 3, 2.6, 3, 3           | Minimum Score needed to pass: greater than 1.8 in each section |

Analysis on simulator grades: Operator C performs better than C. Smith in the simulator. Consider that Operator C has only 2 scenarios<sup>9</sup> and C. Smith has 3 scenarios. The minimum number of scenarios required is two scenarios. There is no reduction in the number of comments if an additional scenario is required. Having three scenarios means more opportunities to receive comments that count against the grading. C. Smith does not make the minimum score on the simulator<sup>10</sup>. If you compare the average of the scores for comparison purposes C. Smith = 2.47 and Operator C = 2.80.

Analysis on walkthrough grades: C. Smith performs better than Operator C on the “admin topics” and the “walkthrough topics”. Operator C makes the minimum score on the “admin topic” and the “walkthrough topics”<sup>11</sup>, Unsatisfactory in either areas will result in an overall failure if not met.

<sup>7</sup>Exhibit CCS-007, page 2-3 and Exhibit CCS-005 pg144 paragraph 6&7 For Pass Criteria

<sup>8</sup>Exhibit CCS-008, page 2-3

<sup>9</sup>Exhibit CCS-008, page 10-12-Look at the top of the page for scenario numbers, he only participated in two scenarios for minimum score to pass

<sup>10</sup>Exhibit CCS-005A, See pass criteria for simulator on page 146, paragraph 3

<sup>11</sup>Exhibit CCS-003-Look at chart and refer to pass criteria for minimum score to pass (reference on chart)

## Statement of position 1: Processing the waiver request

Analysis on the written: Although both candidates failed the written test. If it were considered then C. Smith receives a higher score on the written exam than Operator C. C. Smith performed better on the “reactor operator” portion as well as the “senior reactor operator” portion. Operator C made an 82.19 on the Reactor Operator portion and C. Smith made an 84.93 on the reactor operator portion. Operator C made a 52 on the Senior Reactor Operator portion and C. Smith made 64.<sup>12</sup>

Overall Analysis in Comparison to Operator C: There are four grades received during the exam that have the potential to cause an overall failure of the test if performed unsatisfactory in any section. The four grades received are from the written, simulator, admin topics and walkthrough. It is already known that all 2011 candidates failed the written portion. If a side by side comparison was used then it should be noted that C. Smith performed better than Operator C in three out of four areas. (written, admin topic and walkthrough)<sup>13</sup>. If the pass standard in NUREG 1021 were used then it should be noted that C. Smith passed all portions of the operating test based on that standard. She was the only candidate in 2011 to make 100% on both sections of the JPM/Walkthrough portion.

### 2) Comparison to Operator A and Operator B (Reactor Operator Candidates)

|             | <u>C. Smith (SRO)<sup>14</sup></u> | <u>Operator A (RO)<sup>15</sup></u> | <u>Operator B(RO)<sup>16</sup></u> |                                   |
|-------------|------------------------------------|-------------------------------------|------------------------------------|-----------------------------------|
| Admin Topic | 100%                               | 75%                                 | 75%                                | Score needed to pass for SRO: 60% |
|             |                                    |                                     |                                    | Score needed to pass for RO: 50%  |
| Walkthrough | 100%                               | 87%                                 | 87%                                | Score needed to pass for SRO: 80% |
|             |                                    |                                     |                                    | Score needed to pass for RO: 80%  |

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<sup>12</sup>Exhibit CCS-003-Review chart and pass criteria at the bottom of the chart

<sup>13</sup>Exhibit CCS-003

<sup>14</sup>Exhibit CCS-007, page 2-3 percentage used as written in NUREG 1021 (page 144) or # correct divided by total administered

<sup>15</sup>Exhibit CCS-010, page 2-3

<sup>16</sup>Exhibit CCS-011, page 2-3

## Statement of position 1: Processing the waiver request

Simulator 2.5, 2.2, 2.3, 2, 2.8, 3    3.0, 2.2, 2, 3    2.4, 2.2, 2.7, 3    Score needed to pass: greater than 1.8 in  
all sections

Analysis on simulator grades: Operator A and Operator B perform slightly better than C. Smith in the simulator. Operator A and Operator B are Reactor Operator Candidates and only receives grades for 4 areas in the simulator portion.<sup>17</sup> If you compare the average of the scores for comparison purposes C. Smith = 2.47 and Operator A = 2.55 and Operator B = 2.58. Note that C. Smith requested an administrative review to appeal the exam results. During the Admin Review an investigation was performed and it was stated: The manager did find 33 instances over the last three years when the region granted waivers of the operating test (11SRO, 22RO). The manager compared the simulator test competency scores and determined that the applicant (C. Smith) scores were overall **significantly** lower<sup>18</sup>. The grades above are not significantly lower and does not support that statement.

Analysis on walkthrough grades: C. Smith performs better than Operator A and Operator B on the admin topics and the Walkthrough topics.<sup>19</sup>

Analysis on the written: Although all candidates failed the written test. Operator A and Operator B were only required to take the Reactor Operator portion of the written exam. If the written score were also considered then C. Smith receives a higher score than Operator A and Operator B on the reactor operator portion of the exam. C. Smith scores 84.93%, Operator A scores 75.34% (This is close to 10 points higher) and Operator B scores 79.45%.<sup>20</sup>

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<sup>17</sup>Exhibit CCS-005B, pg 427-429 List of competencies for Reactor Operator & Senior Reactor Operator

<sup>18</sup>Exhibit CCS-014, page 13 paragraph 1

<sup>19</sup>Exhibit CCS-003

<sup>20</sup>Exhibit CCS-003

## Statement of position 1: Processing the waiver request

Overall Analysis in Comparison to Operator A and Operator B: There are four grades received during the exam that will cause an overall failure of the test if performed unsatisfactory in any section. The four grades received are from the written, simulator, admin topics and walkthrough. If a side by side comparison was used then it should be noted that C. Smith performed better than Operator A and Operator B in three out of four areas. If a comparison to the pass criteria in NUREG 1021 were used then it should be noted that C. Smith made the maximum score on the “admin topics” and “walkthrough overall”. She was the only candidate in 2011 to make 100% on both sections of the JPM/walkthrough portion.<sup>21</sup>

b. The NRC contacted the facility to question the submittal of the waiver versus processing it according to their procedure. Approximately 30 days prior to the examination, Vogtle sent preliminary license applications to the NRC Examiners for review. When received the examiners contacted Vogtle to question if the submittal was intentional.<sup>22</sup> Consider that the waiver request was evaluated by the same examiners from the 2011 exam and the 2012 examiner was present during the discussions.<sup>23</sup> The disagreement with questioning of the waiver is as follows:

- 1) The examiner’s had no valid explanation for selecting and questioning C. Smith’s application with a waiver request. All the forms from the personnel that requested waivers were identical with the exception of the personal information.<sup>24</sup> Michael Meeks identifies in a statement that he or Mark Bates was the first to notice that block 17 was checked for a waiver for Carla, and he called.<sup>25</sup> If everyone’s form was reviewed without question then the same standard should have been applied for C. Smith. There is disagreement in regard to the content of this conversation. However, contacting Vogtle.

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<sup>21</sup>Exhibit CCS-003

<sup>22</sup>Exhibit CCS-014, page 13 paragraph 4

<sup>23</sup>Exhibit CCS-001, page 1. Consulted with P. Capehart, J. Hopkins, M. Bates & M. Widmann to formulated a consolidated response from the Region. M. Bates was C. Smith’s 2012 Examiner.

<sup>24</sup>Exhibit CCS-002

<sup>25</sup>Exhibit CCS-015, page 4

## Statement of position 1: Processing the waiver request

about one student without a valid reason gives the impression that there was more intent than to question the submittal.

- 2) Region II's formal responses, procedures and policies **do not** give the impression that the **request/submittals** of a waiver will be questioned. Consider that the waiver evaluation starts when the preliminary license application is submitted.<sup>26</sup> If the final NRC 398 is blocked, the examiners would not be required to evaluate a waiver for C. Smith. The examples below illustrate that an applicant may request a waiver, and it will be processed **regardless of the outcome**: The examples also show that the NRC produces documents to give the impression that candidates have the opportunity to be assessed for a waiver.
- The NRC Staff sent C. Smith a 2011 denial letter that stated: Because you passed the administrative/systems/simulator operating test administered to you from March 16-24, 2011, **you may request a waiver of that portion**.<sup>27</sup> – This does not sound like it will be questioned if submitted. It actually invites C. Smith to make a request.
  - NUREG 1021, ES 204, states: The regional office will **evaluate waiver requests on a case-by-case** basis against the waiver criteria discussed in Section D of this examination standard.<sup>28</sup> Section D states: 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.<sup>29</sup>

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<sup>26</sup>Exhibit CCS-005A, page 47, 2g

<sup>27</sup>Exhibit CCS-016, page 1, See "a"

<sup>28</sup>Exhibit CCS-005A, page 83, 2a

<sup>29</sup>Exhibit CCS-005A, page 84, D.1.a

## Statement of position 1: Processing the waiver request

This does not sound like the submittal will be questioned.

- 10 CFR 55.35(b) states: 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.<sup>30</sup> The Commission may in its discretion grant the request, if it determines that sufficient justification is presented. This does not sound like the submittal will be questioned.
- In a letter to Vogtle's Vice President from the NRC Staff 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<sup>31</sup>. This does not sound like **any** submittal will be questioned.

### Conclusion

The basic criteria to receive a waiver were met.<sup>32</sup> No standard evaluation process was used to evaluate that a waiver would "likely be denied" for C. Smith. The best justification that the exam team could provide was a discussion on the number of comments.<sup>33</sup> The numbers of comments are not discussed as a part of the pass criteria in NUREG 1021. In addition the number of comments reported on the final grade is not representative of the number of actual errors that occurred in the actual exam.<sup>34</sup> This is very subjective as

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<sup>30</sup>Exhibit CCS-017

<sup>31</sup>Exhibit CCS-018, page 2, paragraph 3

<sup>32</sup>Exhibit CCS-005, page 84

<sup>33</sup>Exhibit CCS-001, page 3 and page 4

<sup>34</sup>Exhibit CCS-019

## Statement of position 1: Processing the waiver request

to what is reported. Comparison of the grades to the pass criteria was the least mention topic when explaining why C. Smith would not be granted a waiver.<sup>35</sup> Then it was decided that the simulator was the area heavily weighted.<sup>36</sup> Although the operating test is based on 3 areas (admin topics, walkthrough and simulator) that have an equal effect on the outcome if failed. When the company submitted the preliminary waiver request it was questioned versus processed. The questionable evaluation process and questioning of the waiver are examples of the denial of due process. Due process was denied because the waiver evaluation was not performed after a conversation initiated by the NRC examiners. If the preliminary applications were submitted for review then any comment should have been exclusive to only errors related to the document that need to be corrected.

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<sup>35</sup>Exhibit CCS-001, page 1-3

<sup>36</sup>Exhibit CCS-014, page 12, Second to the last paragraph; also review exhibit CCS-071 page 92 – 107 from FOIA 2013-0195(Requesting a copy of all individuals granted waivers for failing a portion of the test. This operator received 8 comments on the simulator exam in four competency areas, and 4 comments with one unsat task on the JPM/Walkdown. He was granted a waiver of the operating test.

## Statement of position 2: Conflict of Interest

2. The second statement of position is the conflict of interest not addressed as identified in the testing procedure NUREG 1021.<sup>37</sup> This is important because the simulator portion is very subjective. If the judgments of the examiners are flawed prior to the exam, it is unlikely for them to give the applicant a fair and equal exam. The disagreement is with the NRC's knowledge of:
- a. The strong opinions formed about C. Smith by the 2011 exam team. Two of those previous exam team members were returned to evaluate C. Smith in 2012.
  - b. The original exam team for 2012 was to include one previous examiner from 2011. Changes in the exam team resulted in two previous examiners returning in 2012.
  - c. Examiner (Bates) was assigned to C. Smith for the simulator portion and was included/present in discussions about C. Smith and her 2011 performance.<sup>38</sup> This was an opportunity for Mark Bates to form an opinion prior to the 2012 exam.

### Background

The 2011 examination team included Phil Caphart, Michael Meeks and Jay Hopkins. The 2012 examination team included Phil Capehart, Michael Meeks and Mark Bates. The 2012 examiners formed a strong opinion of C. Smith prior to the 2012 examination. Those opinions led to several issues in the examination that resulted in unfair practices to accumulate comments on the final examination that were not warranted. C. Smith was put in a position to be evaluated by an exam team that consisted of 2 out of 3 examiners from the previous year. Each member of the 2012 examination team formed or was exposed to opinions about C. Smith prior to the exam.<sup>39</sup> Linking them to these discussions supports exposure to the opinions formed about C. Smith. If it was expected to allow her to start from a blank page<sup>40</sup> then the expected simulator examiner should not have been exposed to these conversations.

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<sup>37</sup>Exhibit CCS-005A, page 52-53, Section D

<sup>38</sup>Exhibit CCS-001, page 1

<sup>39</sup>Exhibit CCS 001, page 1-4 and Exhibit CCS-006

<sup>40</sup>Exhibit CCS-001, page 5, answer to question #4

## Statement of position 2: Conflict of Interest

### Discussion

Examples of the disagreements are listed below:

- a. Opinions were formed at the time of the waiver discussions but no justification was provided as to why a waiver would be denied.<sup>41</sup> After the request for an Administrative Review, Capehart and Meeks both wrote statements on their reason for not granting a waiver. Those statements presented strong opinions that do not support that C. Smith would be a given fair opportunity (equivalent to the other candidates) if they re-examined her.<sup>42</sup> Meeks went as far as to say it was because she was a danger to the public health.<sup>43</sup> He believes she is a danger to public health but provides no examples of a releases to the public, damage to vital equipment or damage to the core. A comment of this magnitude does not support that the applicant can start anywhere close to a blank sheet of paper if re-examined by this examiner. The results of the 2012 Examiner Bias investigation stated that Examiner Meeks did not review her 2011 results to imply he had little knowledge of C. Smith's 2011 Exam.<sup>44</sup> His statements submitted to the investigator does not imply that he had little knowledge. This is an example of how a significant comment/opinion that could possibly raise questions about examiner bias on the 2012 exam was not included in the final report of the investigation.

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<sup>41</sup>Exhibit CCS-001, page 16-18 and 22

<sup>42</sup>Exhibit CCS-006 and CCS 001, page 3(bottom) & page 4

<sup>43</sup>Exhibit CCS 001, page 3(bottom) and page 4

<sup>44</sup>Exhibit CCS-014, page 13 paragraph 3, page 15 paragraph 3

## Statement of position 2: Conflict of Interest

- b. The 2012 examination team originally consisted of 2 new examiners (Caballero and Bates) and 1 previous examiner (Meeks). One of the new examiners (Caballero) could not participate in the 2012 examination<sup>45</sup>. Instead of replacing Caballero with a new examiner, he was replaced with a previous examiner (Capehart) that already had a strong opinion of C. Smith.<sup>46</sup> Yet examiners expected C. Smith to “start from a blank sheet of paper as much as possible”.<sup>47</sup> This does not support that C. Smith would start with a clean slate.
- c. Mark Bates was the simulator examiner for C. Smith on the 2012 examination. He was identified as one of the individuals consulted about the waiver for C. Smith in 2011.<sup>48</sup> He claims little knowledge of the 2011 examination although he was included in discussions about the waiver.<sup>49</sup> The discussions include two examiners (Capehart and Meeks) that strongly opposed granting C. Smith a waiver. Meeks consulted with Capehart, Hopkins, Widemann and Bates to formulate a consolidated response from the region.<sup>50</sup> If the applicant was expected to start from a blank sheet of paper, then Examiner Bates should not have been exposed to the opinions of his peers. After the examination C. Smith received comments that were creatively written, inaccurate and several other issues were encountered. The inaccurate statements were written to justify

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<sup>45</sup>Exhibit CCS-001, page 7

<sup>46</sup>Exhibit CCS-006

<sup>47</sup>Exhibit CCS 001, page 5

<sup>48</sup>Exhibit CCS-001, page 22

<sup>49</sup>Exhibit CCS-001, page 1 and CCS-021, page 2-3

<sup>50</sup>Exhibit CCS-001, page 1

## Statement of position 2: Conflict of Interest

comments and deduct enough points to fail C. Smith on the simulator portion of the exam. More details will be provided in the upcoming statements of position.

### Conclusion

Prior to the exam Capehart and Meeks strongly disagreed with granting a waiver for C. Smith. When changes to the exam team occurred, it was not changed to provide a less bias atmosphere for C. Smith. In addition the new examiner was included in discussions about C. Smith. The NRC expected that all of these conditions prior to the test would yield a fair and balance exam for C. Smith. Keep in mind that Mark Bates was assigned as the simulator examiner for C. Smith but the entire exam team provides feedback on all candidates.<sup>51</sup>

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<sup>51</sup>Exhibit CCS-005A, page 139, second paragraph (o)

### Statement of position 3: Inadequate Administrative Review

3. The third statement of position is the disagreement with the handling of the administrative review. This statement of position is pertinent because the license denial was not considered final and the NRC provides an opportunity to appeal these results before finalized.<sup>52</sup> This was a separate opportunity for C. Smith to appeal the denial and utilize due process to determine if the denial was warranted. The items of disagreement are as follow:
- a. The review initially concluded that C. Smith passed the exam.
  - b. There was influence on the final outcome concluding that the review team serves no purpose. The review was unreasonable in the completion time. An administrative review typically takes 75 days. This review took over 160 days.
  - c. Several revisions continued until a denial was sustained.
  - d. Review panel included a re-grade of non-contested items. Non-contested items are not discussed in their procedure.
  - e. The final letter sent to C. Smith did not provide information on all the contested items submitted. Their procedure provides guidance to report the results to the applicant.
  - f. A final grade sheet was not provided to C. Smith with the second denial letter. C. Smith basically had no documentation of how the review panel assessed the information.

#### Background

The 2012 examination report was sent to C. Smith denying the SRO license application. She requested an administrative review. This was identified as an option in the denial letter, if there was a disagreement with

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<sup>52</sup>Exhibit CCS-033, page 1 last bullet

## Statement of position 3: Inadequate Administrative Review

the decision.<sup>53</sup> A review panel was formed to evaluate the failure.<sup>54</sup> The review team's initial conclusion was to grant the SRO license to C. Smith. The process took 2-3 months. A draft was sent out as an attachment to an email<sup>55</sup> dated September 20, 2012 indicating a pass letter.<sup>56</sup> Comments were provided that were consistent to that document through September 28, 2012.<sup>57</sup> In an email dated October 3, 2012 the panel shifted to looking for "additional" comments. The email started off identifying "after reviewing all of the info from region II".<sup>58</sup> A change in the conclusion and a denial letter was produced within a short period of time. See page 49-54 of this document for a more detailed timeline.

- a. An appeal panel was put together to performed a review of the license denial.<sup>59</sup> The team initially concluded that the applicant passed the examination.<sup>60</sup> The team also constructed a pass letter that responded to all contentions submitted.<sup>61</sup> The process took approximately 2-3 months. The emails dated September 28, 2012 gave the impression that the review was complete because the members commented on the "fantastic effort" and the "excellent job"<sup>62</sup> on the report. They also wrote emails identifying that they could justify a pass with the changes made<sup>63</sup>. The review team came in contact with the Region II Examiners because Emails dated October 3, 2012, indicate that the review team was reviewing a "table of other errors" from Region II. Later we will also find that Mark Bates was named in an email as the person to call to discuss any questions. After the October 3<sup>rd</sup> email,

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<sup>53</sup>Exhibit CCS-033, page 1

<sup>54</sup>Exhibit CCS-022

<sup>55</sup>Exhibit CCS-023-Note: The board was notified via Nicole Picard that the attachment to this email was named "VogtleSROSimscenappeal2012.docx". When it was reported on the hearing file, the name was different. The file name on the hearing index is "VogtleSimscenappeal20121.pdf" it is unknown why the name is different. This information was confirmed through the Office of General Counsel for the NRC by David Cylowski, that the documents VogtlesSROSimscenappeal2012.docx is the same document as (ML13079A352) VogtleSimscenappeal20121.pdf.

<sup>56</sup>Exhibit CCS-024-Attachment from Exhibit CCS-023

<sup>57</sup>Exhibit CCS-025, CCS-026, CCS-027, CCS-028

<sup>58</sup>Exhibit CCS-029

<sup>59</sup>Exhibit CCS-022

<sup>60</sup>Exhibit CCS-023

<sup>61</sup>Exhibit CCS-024

<sup>62</sup>Exhibit CCS-028 & Exhibit CCS-026

<sup>63</sup>Exhibit CCS-013

### Statement of position 3: Inadequate Administrative Review

comments started to focus on finding more comments.<sup>64</sup> An email was sent titled “Vogtle Appeal – look for additional hits” implying that the review team was looking for additional comments.<sup>65</sup>

- b. The panel was expected to remain impartial as identified in their procedure for Admin Reviews.<sup>66</sup>

There was influence on the final outcome causing one to conclude that the review team serves no purpose. Email’s dated October 3, 2012 stated: I have been reviewing RII’s “table of other errors” and “after reviewing all of the info from region II”.<sup>67</sup> These are the first emails in which the direction of the panel appears to change. On an email dated October 7, 2012 it stated “I have reframed the panel’s role in this review such that it is limited to addressing how each of the errors were disposition”. It also stated that “You have my verbal recommendation on how the final grade should shake out”. Also “Once Region II’s comments are reviewed and incorporated, I will re-submit to you with a short cover letter”.<sup>68</sup> All of these Emails imply that a change of intent occurred. The issue is that these comments originated from the Region II Exam team. The Exam Team should not have been permitted to participate in the “independent review” as identified in their procedure.<sup>69</sup> Mark Bates was specifically named to contact for questions.<sup>70</sup> The abrupt change does not constitute a recommendation. This last minute change obviously contributed to the review taking over 160 days to complete. This influence within the organization contradicts informing an applicant that they can request a review of their license denial. *Note : Additional information was provide at a later date, a timeline with that additional information is on page 49 -53 of this document. The timeline describes in detail how the pass letter changed from pass to fail, after contact with the region.*

- c. After the Review Panel’s initial conclusion to pass the applicant, the document was revised several

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<sup>64</sup>Exhibit CCS-029 and CCS 031

<sup>65</sup>Exhibit CCS-029

<sup>66</sup>Exhibit CCS-030, page 3

<sup>67</sup>Exhibit CCS-020 and Exhibit 029

<sup>68</sup>Exhibit CCS-032

<sup>69</sup>Exhibit CCS-030, page 3, D.I.d; Exhibit CCS-060 is a copy of the document sent to appeal the results

<sup>70</sup>Exhibit CCS-059

<sup>71</sup>Exhibit CCS-029

### Statement of position 3: Inadequate Administrative Review

times to incorporate additional changes. The initial changes were incorporated and the applicant still passed the simulator exam.<sup>71</sup> Several emails imply that these revisions continued until the final grade incorporated enough comments to result in a sustained denial. The appearance is that initially the intent was to **determine the correct grading**. After disclosing the draft the intent changed to **find enough comments to sustain the failure**.

- d. The Review Panel performed a re-grade of the **non-contested items**. The Admin Review Procedure identifies to re-grade the **contested items**.<sup>72</sup> The panel went outside the requirements of their procedure. On the email dated October 3, 2012, the panel member identifies that he modified the grading and that he has now determined that C. Smith missed a critical task.<sup>73</sup> See the original contentions submitted and note that this was a non-contested item.<sup>74</sup> If the team did not go to the non-contested items they would not have been able to sustain the failure of that competency. The review team relied on a standard that was not provided in their procedure for conducting an Administrative Review. The same panel member that identified that a non-contested item was now a critical task identified in a previous email that "I am a bit hesitant to change things that the applicant did not contest".<sup>75</sup> His hesitance is likely due to the lack of reference to non-contested items in the procedure. See the example of a previous review that does not review the non-contested items.<sup>76</sup>
- e. The decision was changed within a short period and a denial letter was drafted. The letter was revised several times. The original denial letter sent to management for signatures included the response to each contention.<sup>77</sup> When the final document was sent to C. Smith<sup>78</sup> it did

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<sup>72</sup>Exhibit CCS-030, page 8-9 "i"

<sup>73</sup>Exhibit CCS-031-This is the point when the exam team was looking for additional comments, this changed the test outline, allowed enough points to be accumulated to justify their new position (to fail the applicant)

<sup>74</sup>Exhibit CCS-034, page 3-The porv comment was identified on page 19 of C. Smith's 2012 Exam Report (Exhibit CCS-045)

<sup>75</sup>Exhibit CCS-035, item #2

<sup>76</sup>Exhibit CCS-036, page 2 to see what was reviewed-Can skim the report to see that those items addressed were contested.

<sup>77</sup>Exhibit CCS-037-Can skim through document to see how all contentions were discussed.

<sup>78</sup>Exhibit CCS-014, page 4-9

### Statement of position 3: Inadequate Administrative Review

not respond to each contention as required by the Admin review procedure.<sup>79</sup> The denial letter's response included an answer to one comment contested, a comment that was not contested and it added a new comment.<sup>80</sup> Someone in the NRC Organization decided not to disclose to C. Smith the response to her appeal. This gives the appearance that something is being hidden. Consider this hearing process is the first time that the petitioner has seen a response to the submitted contentions. The NRC's response in the denial letter was "In lieu of covering each of the applicants contentions and re-grade in detail, for the sake of brevity, we only included a detailed discussion of the independent re-grade of competency 3".<sup>81</sup> Brevity was not used in the example of an admin review that responded to all of the contentions, this was approximately a 50 page document (Exhibit CCS-036). Their procedure does not support this. It states to: Depending on the overall results, the reviewers shall prepare a cover letter transmitting the review results to the applicant, as shown in attachment 2, 3, or 4. The details of the review will be presented as an enclosure or enclosures to the cover letter. "In all cases, each of the applicants contentions will be addressed as discussed below<sup>82</sup>...." C. Smith was denied the right to review the analysis and final conclusion of the submitted contentions. This is another example of the denial of due process.

- f. A final grade sheet was not provided after the final document was produced. The admin review procedure identified that the review detail should include the applicants original grade score and the revised score.<sup>83</sup> John Mchale, NRR representative, was contacted at the conclusion of this review to request a copy of the final grade sheet. His response was: "As an administrative review, it was not necessary to prepare a new grading sheet, but rather focus on how reviewed areas could potentially result in a different outcome from the original grading".<sup>84</sup> C. Smith at that time did not have

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<sup>79</sup>Exhibit CCS-030, page 5 (bottom-3a), page 10 (top-2c-2e), page 11 "For operating test"

<sup>80</sup>Exhibit CCS-014, page 4-9

<sup>81</sup>Exhibit CCS-014, page 4 paragraph 3

<sup>82</sup>Exhibit CCS-030, page 9 (last paragraph), page 10 (top paragraph)

<sup>83</sup>Exhibit CCS-030, page 10(2d)

<sup>84</sup>Exhibit CCS-038, page 5, Consider that a final grade sheet was provided in the pass letter and the revision afterwards – See exhibit CCS-070 for the grade sheets, page 2 -3. It was a conscious decision to remove the grade sheet

### Statement of position 3: Inadequate Administrative Review

any exposure to the NRC's procedure on Administrative Reviews. Notice how C. Smith attempts to get more details/information about the final outcome and is left with very little information.

#### Conclusion

The examiners opinion is very subjective. The judgment of the examiner should be representative of the documentation/data from the exam. The review team looks at this information and makes a determination if the documentation supports that the failure should be sustained. The independent review teams initial conclusion was that C. Smith should have passed.<sup>85</sup> There is a reason why this conclusion suddenly changed.

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<sup>85</sup>Exhibit CCS-023

## Statement of position 4: Tavg-Tref comment on page 18

### Introduction

4. The fourth statement of position is the disagreement with the assessment of the comment on page 18 of the individual exam report for C. Smith.<sup>86</sup> The disagreement with this comment is as follows:
- a. The examiner does not reflect that C. Smith attempted to correct the temperature deviation twice and each time the manipulation was interrupted by a failure under the control of the examiners.
  - b. A manipulation was in progress when the next failure was put in place by the exam team.

### Background

The applicant held the position of Reactor Operator (RO) for this scenario. The Shift Supervisor (SS) identified to the applicant (C. Smith) to maintain Tavg within 2F of Tref. The first failure was put in place when the deviation was approximately 1 F ( in other words, the crew started at 1 F meaning that there was only a 1F margin before reaching the 2F limit). This would require the withdrawal of control rods at some point to maintain the deviation within 2F. After addressing two failures ( at approx 1.6F deviation) the applicant requested permission and was granted permission to adjust control rods. *Note: Withdrawing control rods, has two requirements – 1) request permission from the supervisor, 2) request a peer check. This discussion occurred prior to making the attempt, so the evaluators were aware of the manipulation that was about to occur.* The first attempt to adjust the deviation was interrupted by the failure of the NSCW fan tripping. The SS directed the applicant to stop the withdrawal to address the failure. After the failure was address, the applicant requested again to withdraw control rods (now at approx 1.9 F deviation) and was granted permission a second time. On the second attempt to adjust the deviation, rods were moved one step and while this evolution was in progress, another failure occurred (pressurizer pressure channel). The SS directed again that the withdrawal stop to address the failure. Upon completion of the last failure, the Temp deviation exceeded 2F, reaching a max of 2.3F.

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<sup>86</sup>Exhibit CCS-045, page 18

## Statement of position 4: Tavg-Tref comment on page 18

### Discussion

- a. The examiners comment does not identify that the applicant attempted on **two** occasions to adjust the deviation prior to reaching 2.3°F. Each time the applicant requested to withdraw control rods and was granted permission, a failure occurred (Malfunction was requested/controlled by the NRC Examiners), causing the Shift Supervisor to suspend the rod withdrawal.<sup>87</sup> The timing of each failure was directed completely by the NRC lead examiner with the concurrence of the other examiners. They were in direct communication with the simulator operator. If the intent was to evaluate the control of temperature, a reasonable amount of time should have been given to control RCS temperature. The examiners knew that this manipulation was progress. If they were evaluating that competency then placing the next failure in place cuts short the observers ability to evaluate the operators response and may be prejudicial to a fair evaluation as identified in NUREG 1021, App D.<sup>88</sup> Putting a failure in place to prevent a manipulation makes it impossible to meet the grading criteria.
- b. C. Smith was in progress of withdrawing control rods when the next failure was put in place. This caused a unexpected reaction to the next failure.(Statement of Position #12) Advancing to the next event happened numerous times while an action was in progress. The examiners write: At approximately 0818 Carla began what was intended as a 3 step outward rod pull. Rods were moved by 1 step due to the initiating of event 5. At time 08:18:02 Event #5 was initiated.<sup>89</sup> If the ability to control temperature was being evaluated then it makes more sense to allow the applicant to complete the manipulation versus sabotaging it.

### Conclusion

The applicant (C. Smith) understood the requirements to maintain 2 F  $t_{avg}/t_{ref}$  deviation. However C. Smith could not make adjustments with additional failures in progress. This comment was outside of the control of the applicant and should not have been utilized to impose a penalty on the final exam results.

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<sup>87</sup>Exhibit CCS-040-See #3 and Exhibit CCS 041- see #3

<sup>88</sup>Exhibit CCS-005, page 416, last paragraph

<sup>89</sup>Exhibit CCS-039, page 2, 1<sup>st</sup> paragraph

## Statement of position 5 : Comment on Page 10

### Introduction

5. The fifth statement of position is the disagreement with the assessment of the comment on page 10 of the individual exam report for C. Smith<sup>90</sup>. The disagreement with this comment is as follows
- a. Examiners collected their information from the wrong meter. The 2007 psig value came from the RCS Pressure digital meter. The correct value should have been collected from the Pressurizer Pressure digital meter.
  - b. The error had to be discovered prior to reporting on the final exam report because the final report used the words "Pressurizer Pressure". The examiners notes and simulator data show that the 2007 psig value came from the "RCS Pressure".

### Background

C. Smith reached step 12 of procedure 19030-C and asked the RO if pressurizer pressure was less than 2000 psig. The RO's response was no and he identified that we were currently at a value slightly above the set point. C. Smith directed the RO to notify her when pressure was less than 2000 psig so that SI/SLI can be blocked. As soon as the pressure was less than 2000 psig, the RO notified C. Smith that **Pressurizer** pressure was at 1998 psig. C. Smith looked at the Pressurizer Pressure digital gauge on PR 455 to verify the 1998 psig. C. Smith immediately directed the RO to block SI/SLI. When the RO attempted to block the SI/SLI, C. Smith identified that the block did not occur. The C. Smith directed the required blocks later when met by an alternate indication. Although the block did not occur when expected, the end result was that the block was accomplished. Consider that this is not a normal simulator response.

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<sup>90</sup>Exhibit CCS-045, page 10

## Statement of position 5 : Comment on Page 10

### Discussion

- a. The applicant was able to obtain simulator data recorded from the scenario via a FOIA request. In reviewing the data it was found that at the same time C. Smith identified/concurred that the **pressurizer** pressure was 1998 psig, there was a corresponding value of 2007 psig for **RCS** Pressure<sup>91</sup>. The examiners collected a value from the wrong gauge. They were looking at the RCS pressure digital gauge, PI 428<sup>92</sup>. Additionally, the examiners notes stated **RCS Pressure** was equal to “2007#”<sup>93</sup>. The RCS Pressure digital gauge looks similar to the Pressurizer Pressure digital gauge and the RCS Pressure gauge is labeled “RCS Pressure”<sup>94</sup>. The significance of the gauge used is that the SI/SLI block is based on the pressure from the Pressurizer pressure meter not the RCS Pressure meter. Step 12b says “PZR pressure – less than 2000 psig”<sup>95</sup>.
- b. If the examiners would have looked at the correct gauge they would have identified that the pressurizer pressure was 1998 psig, implying that there was an abnormal issue with the simulator. It is very interesting that two values (1998 psig and 2007 psig) presented in the comment description happen to be displayed on two different meters at the exact same time. The simulator did not respond as expected and the crew responded with alternate indications to accomplish the task as expected per NUREG 1021, Appendix E<sup>96</sup>. It should be noted that although the wrong information was recorded in the rough notes during the exam<sup>97</sup>, it was obviously recognized at some point. The information was changed to reflect the correct pressure source on the final exam report<sup>98</sup>. If it were

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<sup>91</sup>Exhibit CCS-042-Consolidate info to evaluate and See Exhibit CCS-041 item #6

<sup>92</sup>Exhibit CCS-044-Picture of RCS Gauge

<sup>93</sup>Exhibit CCS-043, page 63 and See page 80 “RCSP=2006.9”

<sup>94</sup>Exhibit CCS-044-Picture of gauges

<sup>95</sup>Exhibit CCS-043, page 63-This step is identified in the test outline that the examiners use to document their notes

<sup>96</sup>Exhibit CCS-005B, page 455, part E #1

<sup>97</sup>Exhibit CCS-043, page 63 and See page 80 “RCSP=2006.9”

<sup>98</sup>Exhibit CCS-045, page 10-The examiners notes contradict where the value came from, his notes say RCS but his final report say Pressurizer (1<sup>st</sup> sentence under Applicant Action/Response)

## Statement of position 5 : Comment on Page 10

recognized that the wrong pressure was indicated in the examiners notes, it would be expected that the examiners would have determine that this was not a justified comment for the final grade sheet. In other words if RCS pressure was written in their notes, they should not have change the info on the final comment to reflect the correct pressure source (Pressurizer) with the incorrect value.

### Conclusion

The NRC Examiners made an error in assessing that the block was attempted at the wrong time. Their notes clearly identify that the info was collected from the wrong meter. This was not a fair assessment of the SI/SLI block when the wrong information was used to make the assessment. Consider that each comment counts as points deducted, even if the comment is unwarranted.

## Statement of position 6 : Comment on Page 20

### Introduction

6. The sixth statement of position is the disagreement with the assessment of the comment on page 20 of the individual exam report for C. Smith<sup>99</sup>. The disagreement with this comment is as follows:
- a. This comment was not justified because it was not consistent with the Required Operator Actions identified in the ES-D-1 and ES-D-2. The Examiners went outside of the Simulator Testing guide to obtain this comment.
  - b. This comment can only be justified if the unevaluated position received a comment similar to this for **all** events.
  - c. The examiners did not ask any follow-up questions nor did he write any notes about this event for C. Smith

### Background

C. Smith as the Reactor Operator (RO) acknowledged ALB06-E04 (RWST Lo level), and was directed by the Shift Supervisor (SS) to monitor Reactivity while the Unit Operator (UO) responded to the failure. C. Smith to the extent possible did assist the UO and SS by monitoring trends and updating the SS on the status. After diagnosing the issue the SS and UO were aware that the sludge mixing valves did not isolate and that they were located on the QPCP<sup>100</sup>. Their discussion was to close the valves with procedure guidance because the ARP did not address stopping the pump manually. The additional time used was to find the correct procedure guidance to isolate the sludge mixing valves and stop the associated pumps.

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<sup>99</sup>Exhibit CCS-045, page 20

<sup>100</sup>Exhibit CCS-040 and Exhibit CCS 041-item #4

## Statement of position 6 : Comment on Page 20

### Discussion

- a. The Test outline, ES-D-1, identifies that the verifiable actions require the Unit Operator (UO) (shift position being evaluated) to manually close the RWST sludge mixing valves to stop the leakage<sup>101</sup>. However the grading criteria was extended to include C. Smith's position. This resulted in a comment that deducted points. Although C. Smith's position was not intended to be evaluated according to the test outline (outside of initial response)<sup>102</sup>, she was evaluated and received deductions that were contradictory to the expectations. Even the event description on ES-D-2, "Required Operator Actions" identifies that the UO will find the valve that failed to close and the UO will close the valves and the leak will be terminated<sup>103</sup>. No details exist in the Test Outline to identify that C. Smith's position will receive a comment for an action that was not performed by the other positions.
- b. If this criteria is used, the expectation is that each time C. Smith received a comment, the position not evaluated should also have a corresponding comment for not making a recommendation. This should be consistent for all the other events where C. Smith received a comment (outside of this event) for the entire examination. It is not consistent to choose when to apply this standard especially when it is not supported by the test outline. Identifying that other crews with the same position received the comment does not justify it. NUREG 1021 identifies that the examiner is expected to administer the planned operating test in accordance with the prepared and approved test outlines<sup>104</sup>.

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<sup>101</sup>Exhibit CCS-046, page 5, Event #6

<sup>102</sup>Exhibit CCS-046, page 33-36

<sup>103</sup>Exhibit CCS-046 page33-36-top paragraph of each page summarizes what is expected during the scenario

<sup>104</sup>Exhibit CCS-005A, page131, 2<sup>nd</sup> paragraph (e)

## Statement of position 6 : Comment on Page 20

- c. It must be noted that Mark Bates did not have one comment on his rough notes-that C. Smith did anything incorrect nor did he ask any follow-up question in reference to this comment<sup>105</sup>. This supports that this was not a concern to the evaluator and likely added later to increase the number of comments. Consider that each comment deducts points even if the comment is not warranted. *NUREG 1021, ES 302 (Administering Operating Test to initial license Applicants),D.3.m, states: If an applicant does not perform as expected, the examiner should note the applicants actions (or lack thereof) next to or below the expected action and follow up with appropriate questions after the simulator scenario is completed<sup>106</sup>.* If it were a concern then the evaluator would have questioned the applicant (C. Smith) to assess her competency. Instead a comment was written and an assessment of her competency was made with no follow up questioning. Anything written is strictly opinion.

### Conclusion

Remember each comment counts as a deduction on the examination, regardless of its validity. If the examiner selects unwarranted comments like this one, then he can easily deduct enough points to result in a failure. It is irrelevant to point out that another applicant has the same comment on another crew. This comment is not justified for any individual that held the RO position and was not being evaluated. This was not identified as a “crew” event. The approved outline was unofficially adjusted to include the RO position. It is unrealistic to identify that the applicant made an error because she did not make a specific recommendation to the crew when this same standard is not applied to all failures for the duration of the exam.

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<sup>105</sup>Exhibit CCS-047, page 32-35, page 76 (bottom), page 77 (top), page 79-80 notice no questions were asked about RWST

<sup>106</sup>Exhibit CCS-005A, page 138, See M

## Statement of position 7: Comment on Page 8

### Introduction

7. The seventh statement of position is the disagreement with the assessment of the comment on page 8 of the individual exam report for C. Smith<sup>107</sup>. The disagreement with this comment is as follows:
- a. The testing outline (ES-D-1 and ES-D-2) objectives and actions to be evaluated are based on starting the standby ECH pump prior to 1100 psig before it causes a turbine trip (which causes a reactor trip). This criteria was met.
  - b. The examiner stated that the correct actions were performed for the wrong reason. The examiners justification for this comment has no supporting data in his notes to support this.
  - c. The examiners could not assess the pressure that the EHC standby pump was started because the gauge cannot be seen from a distance. Their locations were too far to make this assessment.

### Background

The event starts with an alarm on the electrical panel (due to the EHC main pump trip). The Reactor Operator (RO) quickly reports to C Smith that the EHC pump tripped. There were no alarms on ALB20 illuminated when the EHC pump was recognized as being in a tripped condition (in other words it was diagnosed early before the panel alarmed). C. Smith directed the Unit Operator (UO) to pull the Annunciator Response Procedure (ARP) for ALB20 D05 HYD FLUID LO PRESS because it was the anticipated alarm. As the ARP was reviewed, the alarm came in for ALB20 D05 as expected at 1500 psig to warn the operator that EHC pressure was dropping.

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<sup>107</sup>Exhibit CCS-045, page 8

## Statement of position 7: Comment on Page 8

The ARP 17020-1 “Initial Operator Action” states<sup>108</sup>:

1. If a reactor trip occurs, Go to 19000-C
2. **Verify** standby EHC Fluid Pump is on, if needed

Shortly after the alarm came in, the applicant directed the UO to start the standby EHC pump. The crew responded quickly and the second pump was placed in service in a timely matter. C.Smith did not mention anything in regard to the operability of the EHC standby pump until the issue of having one EHC pump tripped was addressed. C.Smith requested afterwards that C&T take a look at the EHC pump because it should have started automatically.

### Discussion

- a. The examiners comment references that the EHC Standby pump was started prior to 1400 psig<sup>109</sup>. Based on that info alone the objective in accordance with ES-D-1 and ES-D-2 was met. *Per NUREG 1021; ES-302, Page 3 of 12: The examiner is expected to administer the planned operating test in accordance with the **prepared and approved walk-through test outlines** (Forms ES-301-1, “Administrative Topics Outline,” and ES-301-2, “Control Room/In-Plant Systems Outline”) and simulator scenarios (**Forms ES-D-1, “Scenario Outline,” and ES-D-2, “Required Operator Actions”**). Examiners shall document every significant aspect of each applicant’s performance for later evaluation, **but they shall not use the applicant’s unplanned actions and statements to displace any part of the planned operating test**<sup>110</sup>. The ES-D-1 and ES-D-2 objective was to start the pump before it causes a reactor trip at 1100 psig<sup>111</sup>. The examiner used a statement that had nothing to do with the objective, to change the criteria of the planned operating test.*

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<sup>108</sup>Exhibit CCS-048, page 32-ARP instructions apart of the testing outline, See 3.0

<sup>109</sup>Exhibit CCS-045, page 8

<sup>110</sup>Exhibit CCS-005A, page 131, See “e”

<sup>111</sup>Exhibit CCS-048, page 5, See Event #5, page 28-33, See Event description at the top of each page and details on each page

## Statement of position 7: Comment on Page 8

- b. The examiner states that the applicant **was downgraded because she misdiagnosed that the pressure dropped** below 1400 psig, when she started the EHC standby pump. This assessment was because she made a **statement** requesting that C&T investigate why the EHC Standby pump did not start as expected. This a moot point because the objective noted in the test outline is to make sure the pump is started before it causes a Turbine trip (which causes a Reactor trip). This was performed as noted in the examiners comment<sup>112</sup>. Notice the ES-D-1 and ES-D-2 grading criteria discusses starting the EHC standby pump before 1100 psig<sup>113</sup>. In fact there were no numbers or values written in the evaluator's notes to justify if his new grading criteria was met<sup>114</sup>. In other comments, the evaluator wrote a number or value to support his conclusion. The evaluator has no proof that the comment made by C. Smith was incorrect. He collected no data to support his conclusion. NUREG 1021, ES 302, states "If the applicant did not perform as expected, the examiner shall ask the simulator operator to provide copies of the logs, charts and other materials that may be required after leaving the facility to evaluate and document the applicants' performance. The examiner of record shall retain all documentation related to any operating test failure until the proposed denial becomes final or a license is issued<sup>115</sup>." Take into consideration that each comment counts as points deducted even if the comment is unwarranted. C. Smith was not asked why she started the pump. This is another example of where the examiner evaluates C. Smith's competency based on his opinion and not based on adequate follow-up questions. Review the Questions asked by the examiner<sup>116</sup>, *Examiner Mark Bates note page titled "Post scenario" that listed all the questions asked and the applicant answers. The questions that were asked about the EHC pump per his notes were very specific: Question: Did the standby auto start? Applicant answer: No Question:*

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<sup>112</sup>Exhibit CCS-045, page 8 "the applicant correctly directed the start of the standby pump"

<sup>113</sup>Exhibit CCS-048, page 5-event 5, page 28-33, See Event description at the top of each page and detail on each page

<sup>114</sup>Exhibit CCS-043, page 27-32, page 78 (bottom of page), page 82 (bottom question)

<sup>115</sup>Exhibit CCS-005A, page 139 See "p"

<sup>116</sup>Exhibit CCS-043, page 82

## Statement of position 7: Comment on Page 8

*Should it have? Applicant answer: Yes. There was not a question in his notes that says “explain your directives?” (as the question stated in the comments in the grading report<sup>117</sup>) (He also writes “explains why later she call C&T.”) He quoted the applicant correctly but she was answering a different question and he made an assumption of what she was thinking.*

### Conclusion

The discussion about the standby pump appears to have more focus than the objectives identified in the test outline. In addition the examiners notes taken during the exam do not provide adequate details to justify that the starting of the pump did not meet his new criteria. In all other comments where the examiner believed that the wrong actions took place, he documented some type of number to back up his conclusion. On this event there is no number written in his notes to justify this comment. The importance of starting the pump prior to it causing a trip was no longer the behavior being evaluated instead the grading criteria was the discussion about the auto start and it being misdiagnosed. Misdiagnosed, yet no documentation was collected to assess this as an error nor was the applicant properly questioned during the follow-up. The criteria provided in the test outline, was approved by the NRC Exam team. If additional criteria, was to be evaluated then it should have been identified in the final testing outline (ES-D-1 and ES-D-2) as supported by NUREG 1021.

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<sup>117</sup>Exhibit CCS-045, page 8-Says “The applicant was asked to explain your directives”-This is not indicated in his notes

## Statement of position 8: Comment on Page16

### Introduction

8. The eighth statement of position is the disagreement with the assessment of the comment on page 16 of the individual exam report for C. Smith<sup>118</sup>. There is no disagreement that an error occurred. The disagreement with this comment is:
- a. The examiner incorrectly categorized this comment as a “Diagnose” error under 1.d. Diagnose on the individual exam report.

### Background

The crew received an alarm for a pump that was experiencing excessive vibrations. After C. Smith reviewed the procedure it was determined that the plant had to be quickly down powered to protect the pump. The procedure used to perform this action was 18013-C “Rapid downpower”. During the process of lowering power the RO was asked if “rods were operating properly”. The Reactor Operator(RO) identified that rods should be stepping in<sup>119</sup>. *Note: Earlier in the scenario a meter that provides a parameter called “temp deviation or Tav<sub>g</sub>/Tref”, had an input to fail and this meter was no longer operable. In the beginning of the rapid downpower the SS put two points on a computer screen for the RO to keep track of the “temp deviation” using a manual method because the normal method or meter (UT-0495) was not operable. The two points had to be subtracted to determine the temp deviation.* The RO diagnosed that rods should be stepping in because when he subtracted the two numbers (points) on the computer screen, they equaled greater than 1.5 F, which is the setpoint that rods will step in automatically. The error was that the numbers were inverted and it actually equaled **negative** 1.5 (rods only step in when **positive** 1.5). The RO took the absolute value<sup>120</sup>. The RO pointed out that rods were not moving.

C. Smith provided direction to the operators based on the information reported and the guidance in the procedure. When the RO provided the information, C. Smith quickly looked at the two points

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<sup>118</sup>Exhibit CCS-045, page 16

<sup>119</sup>Exhibit CCS-049, page 26-Notes say: O-S (OATC says to SS)(C. Smith was SS) Questioned if rods should have moved and see exhibit CCS-040 – item 5

<sup>120</sup>Exhibit CCS-050, page 92-This is the answer provided by the RO when Examiner Meeks asked a follow-up question

## Statement of position 8: Comment on Page16

and verified that they did equal greater than 1.5F (In quickly glancing at the numbers, C. Smith also inverted the numbers). At that point C. Smith followed the procedural guidance based on the information provided and directed the RO to insert rods manually up to 5 steps at a time<sup>121</sup>.

The RO asked if we could wait to insert rods (he wanted to making sure that rods were not operating). The operating limit on the temp deviation was 6F<sup>122</sup>, so it was not a problem to allow the RO to make sure that rods were not stepping. The RO notified C. Smith that he wanted to step rods in and he was told to go ahead. After inserting Rods the first time, C. Smith noticed that the numbers on the computer screen did not adjust as expected. As the RO began to insert rods a second time C. Smith stopped him and pointed out that the “we were cold”<sup>123</sup>. Once the error was identified the issue was corrected and the crew did not exceed the operational limit of 6F<sup>124</sup>.

### Discussion

- a. The examiner states in his write up that the applicant was downgraded in this competency because she incorrectly directed that control rods be placed in manual and then directed that rods be inserted. This is not an example of Diagnose. *Diagnose is defined as: 1.To recognize by signs and symptoms; 2.To diagnose a disease or condition; 3.To analyze the cause or nature of the problem.* Directing an action is **not** an example of diagnosing it. This is example of the misuse of subjectivity. The disagreement with this comment is that the examiner left information out of the description to give the impression that C. Smith performed all actions in this scenario with no assistance from the crew. In actuality information was provided by the Reactor Operator. He **diagnosed** that there was an issue with the control rods. By not mentioning who identified this

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<sup>121</sup>Exhibit CCS-051, procedure 18013, page 4 step 7b-Go to the right if the answer is no-answer RO gave was no

<sup>122</sup>Exhibit CCS-052, page 37-See Operational limits (6F) – This chart is based on the data provided in the simulator data from the 2012 exam

<sup>123</sup>Exhibit CCS-054, page 85-top of page

<sup>124</sup>Exhibit CCS-053-Graph from simulator data

## Statement of position 8: Comment on Page16

issue, it allowed the examiner to “fit” this comment under **competency#1: Interpretation/Diagnosis**; subcategory: **d. Diagnose**. If this comment were placed under any other competency or subcategory it would have resulted in a passing score for this competency.

It is important to note that the Reactor Operator (RO) or the Unit Operator (UO) are the individuals that directly operate the equipment located on the Control Board in the Simulator. They are in direct contact with the controls, gauges, and hand switches that are located on the Control Board and they are responsible for operating this equipment. Because they are in direct contact they typically diagnose and notify the SS of any equipment issues. Based on the info provided, the SS should verify the information, decide a course of action, reference the correct procedure, and provide direction to the operators. In this scenario the RO made the error of diagnosing that rods were not operating properly.

C. Smith made the of error of **incorrectly verifying the information** provided, however the error was caught by C. Smith and corrected within minutes. When this information was written as a comment, notice how the examiner starts off omitting the entire discussion prior to inserting rods<sup>125</sup>. The examiner starts his comment by discussing the current conditions and then points out that C. Smith directed the RO to insert rods. In another SRO's (Operator R) comment that was very similar, the RO incorrectly diagnosed a similar issue<sup>126</sup>. It was identified in Operator R's comment that the RO provided incorrect information to Operator R<sup>127</sup>. Operator R provided direction based on the

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<sup>125</sup>Exhibit CCS-045, page 16-Applicant Action/Response

<sup>126</sup>Exhibit CCS-055, page 7

<sup>127</sup>Exhibit CCS-055, page 7

## Statement of position 8: Comment on Page16

information provided and procedural guidance. Operator R caught the error in a hour but his comment was categorized under “procedures”<sup>128</sup>. The circumstances are almost exact but categorized was very differently.

NUREG 1021 discusses that the evaluator should determine the root cause when coding the deficiency with the rating factor that it most accurately reflects<sup>129</sup>. If the examiner writes the comment in a manner that it gives a different appearance, it essentially allows him to move the points around as desired based on how he writes up the comments. If points are deducted from a test, it is expected that it is accurate in its descriptions and properly coded. It is interesting how details were similar for another crew (RO reported incorrect information to the SS) and on the SS’s comment’s, the examiner did not omit the information about who diagnosed the problem<sup>130</sup> This comment for C. Smith appears to be more appropriate for coding under the competencies “ensuring accuracy”, “directing operations” or “procedure usage”.

### Conclusion

The disagreement is not if a comment should have been documented, the disagreement is that the comment as written leaves a lot of information out so that it could be fit under a different category. It is requested that the board review this comment and analyze the categorization of “diagnose”.

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<sup>128</sup>Exhibit CCS-055, page 3 and page 7-(page 3 shows “procedure” competency has a comment on page 7)

<sup>129</sup>Exhibit CCS-005A, page 143, See “d”

<sup>130</sup>Exhibit CCS-055, page 7

## Statement of position 9: Comment on Page 21

### Introduction

9. The ninth statement of position is the disagreement with the assessment of the comment on page 21 of the individual exam report for C. Smith<sup>131</sup>. There is no disagreement that an error occurred. The disagreement with this comment is:
- a. C. Smith was not assigned to address the failure, it was identified that she failed to take manual control when she was assigned to a different task. As a result the examiner categorized this comment as a failure to take “manual control”
  - b. The testing outline identified that C. Smith’s position was expected to address the failure. The assignment by the SS changed the expected response and the change in assignment was outside of the control of the C. Smith because she was not the supervisor.
  - c. C. Smith did make the error of manipulating the TE 130 in the wrong direction. This was equivalent to the error made with the comment on page 19, taking a hand switch to the wrong direction. Although equivalent the categorization was different.
  - d. The independent panel wrote a new comment that the individual “did not understand”.

### Background

Several alarms illuminated and the Reactor Operator (RO) (C. Smith) walked from the C Panel to the A Panel to acknowledge the alarms. The Shift Supervisor (SS) directed her to go back to the C panel and monitor reactivity. The Unit Operator (UO) was then assigned to address the failure and to pull the ARP and investigate the alarms. The UO walked from his normal location in front of the B Panel to the A Panel to diagnose the failure. Neither, the SS or Unit Operator (UO) was aware of what caused the failure. C. Smith as the Reactor Operator (RO) notified the SS (while at the C Panel) that the failure was due to TE130 failing low.

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<sup>131</sup>Exhibit CCS-045, page 21

## Statement of position 9: Comment on Page 21

C. Smith identified to the SS that the only way to get this fixed was to contact C&T, **consider that C. Smith was not assigned to respond to the failure**, she was only identifying the method to repair the controller.

### Discussion

- a. C. Smith was not assigned to address the failure<sup>132</sup>, it was identified that she failed to take manual control when she was assigned to a different task. The disagreement with this comment is the examiner left information out of the description to give the impression that C. Smith was still assigned to diagnose the failure and **failed to take manual control** of temperature with TE130. She was assigned to monitor Reactivity and the UO was told to respond to the failure<sup>133</sup>. C. Smith notified the SS of the failure when the crew members could not figure it out.
- b. The testing outline identified that C. Smith's position was expected to address the failure. The assignment by the SS changed the expected response. The change in assignment was outside of the control of the C. Smith because she was not the supervisor. The examiners did not intervene nor did they take it into consideration that she was not assigned. The grading criteria category was applied as if she was still assigned. The SS is responsible for assigning the board personnel. If you are assigned to perform an action by the SS, you are expected to perform it unless it will comprise safety or damage equipment. During the review, it was identified that she was in the vicinity of the controller the entire time. Consider that the size of the control room is a small area. Misuse of the word vicinity for this event was not true as presented<sup>134</sup>. The location of C. Smith was in front of the C. Panel until directed to open TV 130.
- c. C. Smith did make the error of manipulating the TE 130 in the wrong direction. This was equivalent to the error made with the comment on page 19<sup>135</sup>. The error was taking a hand switch to the wrong

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<sup>132</sup>Exhibit CCS-040 and CCS-041-item #7

<sup>133</sup>Exhibit CCS-040 and CCS-041-item #7

<sup>134</sup>Exhibit CCS-056-Picture of Control Room layout

<sup>135</sup>Exhibit CCS-045, page 19

## Statement of position 9: Comment on Page 21

direction. Although equivalent the categorization was different. This was an error of manipulation. By not mentioning who was assigned to respond, it allowed the examiner to “fit” this comment under **competency #3: Control Board Operations**; subcategory: **c. Manual control**. If this comment were placed under any other competency it would have resulted in a passing score for this competency

- d. The independent panel wrote a new comment that the individual did not understand. But the analysis report shows that they did agree that the applicant correctly explained to the examiner how the controller works<sup>136</sup>.

### Conclusion

The description of this comment was written to give a false appearance of the actual occurrences. The write up is based on the examiners describing that C. Smith failed to perform an action that she was expected to perform. Although the comment detail omits that she was assigned a different position. When this comment went before the review board, the evaluators could not recall if the direction was provided by the SS to monitor reactivity<sup>137</sup>. It was emphasized by the examiners that C. Smith was still in the close vicinity of the controller<sup>138</sup>. C. Smith was not in the area nor was she assigned to diagnose the failure and determine the correct course of action.

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<sup>136</sup>Exhibit CCS-014, page 7-8, Sec #6 under analysis at the top and bottom of page 8

<sup>137</sup>Exhibit CCS-014, page 8, See #1 at top of page

<sup>138</sup>Exhibit CCS-014, page 8, Sec #1-this is a misuse of words to give a false appearance and that is untrue. See Exhibit CCS-041, item 7 and exhibit CCS-040, item 6

## Statement of Position 10: Comment on page 14

### Introduction

10. The tenth statement of position is the disagreement with the assessment of the comment on page 14 of the individual exam report for C. Smith<sup>139</sup>. The disagreement with this comment is as follows:

- a. The actions required by the testing outline were performed. This includes when the FIC 121 controller did not maintain at the end of the event. The testing outlines shows that the RNO (response not obtained) was the expected operator response.
- b. The examiners also placed another failure in place before the current event was complete. The previous event should be complete before moving to the next event.

### Background

The **actions completed by the crew** were: 1) manual control was taken of FIC 121 and pressurizer lever was stabilized by the OATC/Reactor Operator (RO), 2) control channels were swapped, 3) FIC 121 was returned to automatic after being in manual for 18 minutes. Prior to returning the FIC 121 controller to automatic a briefing was performed, during that briefing it was discussed that the controller would be placed in auto after the briefing. As the FIC 121 controller was returned to auto, the next event's failure occurred (PT 508), requiring the other operator (Unit Operator) to respond. The FIC 121 controller that was returned to auto began to close and the Reactor Operator was directed to return the controller back to manual.

### Discussion

- a. The testing outline requirements for the Simulator Exam are listed in ES-D-1 and ES-D-2. These are the approved outlines used by the NRC examiners to administer the exam. **Scenario outline, ES-D-1** requirements for this event are: OATC (Reactor Operator) manually control charging flow using FIC 121 or manually isolates letdown if flashing of letdown occurs<sup>140</sup>. **Required Operator Actions, ES-D-2** requirements are:

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<sup>139</sup>Exhibit CCS-045, page 14

<sup>140</sup>Exhibit CCS-052, page 4-See Event #4

## Statement of Position 10: Comment on page 14

PRZR level channel LT 459 will slowly fail low over -10 minutes. The OATC will take 1) manual control of FIC 121 to stabilize charging and PRZR level, 2) swap control channels, 3) return charging flow to automatic<sup>141</sup>. When the controller was taken back to automatic, and the controller began to close the actions listed in ES-D-2 were still performed correctly as written in the Required Operator Action.

Required Operator Actions in ES-D-2 identify that the following actions should occur<sup>142</sup>: 1) (D9) Pressurizer level control to auto –This controller was taken to auto after 18 minutes. 2) (D10) Check Pressurizer level is maintained by auto control – This is when the controller started to close meaning that it was not maintaining program 3) RNO (D10) Maintain Pressurizer level using manual control– Pressurizer level was taken to manual and maintained in manual . All actions were performed as written in the testing outlines.

The examiners also placed another failure in place before the current event was complete C. Smith's crew was addressing the end of event 4 and the beginning of event 5 (new/next failure) at the same time. If the examiners were still evaluating the response to event #4, then they should not have moved to event #5 without completing event #4. This is not the first example that C. Smith's crew was posed with simultaneous actions. *NUREG 1021, Appendix D, page 5, last paragraph states: Too short a time between malfunctions may mask the effects of a particular malfunction and divert the operators' attention. This cuts short the observers' ability to evaluate the operators' response to the earlier malfunction and may be prejudicial to a fair evaluation*<sup>143</sup>. ***If event #4 was still being evaluated then the exam team should not have moved to event #5.***

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<sup>141</sup>Exhibit CCS-052, page 19-24, See the event description at the top of each page

<sup>142</sup>Exhibit CCS-052, page 21 See step D9 and D10-this is the expected action under applicant actions or behavior

<sup>143</sup>Exhibit CCS-005B, page 416 last paragraph

## Statement of Position 10: Comment on page 14

### Conclusion

The examiners justification of this comment is not that the criteria was not met but that the applicant (C. Smith) did not understand. Performing the actions, as expected, supported that C. Smith understood. The more important question is: If the examiners were still evaluating event #4, what was their justification for moving to event #5's failure?. Consider that each comment deducts points, even if the comment is unwarranted. This is an example of a comment that was unwarranted, yet used on the final grade sheet. The examiners attempted to divert the operators attention by causing them to address two issues at the same time. NUREG 1021, Appendix D, page 3 states that a well crafted scenario should flow from event to event, giving the operators sufficient time in each event to analyze what has happened, evaluate the consequences of their action (or inaction), assign a priority to the event given the existing plant conditions, and determine a course of action. Exercise care that one event does not fully mask the symptoms of another because operators could overlook the malfunction and cause the event or competency coverage for scenario set to be deficient<sup>144</sup>.

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<sup>144</sup>Exhibit CCS-005B, page 414, 1<sup>st</sup> paragraph

## Statement of Position 11: Comment on Page 12

### Introduction

11. The eleventh statement of position is the disagreement with the assessment of the comment on page 12 of the individual exam report for C. Smith<sup>145</sup>. The same stand was not applied between comments.

The disagreement with this comment is:

- a. The examiners identified that the applicant thought that the heaters were not operating properly. This is not a true statement.
- b. In the FIC 121 comment (statement of opinion 10), C. Smith was penalized for not understanding the expected response of FIC 121 when returning it to automatic<sup>146</sup>. In this comment the expected response of the heaters was taken into consideration (prior to returning to automatic) and a penalty was imposed.
- c. Another applicant (operator V) was expected to take a hand switch back to its normal position in another scenario based on the testing outline (ES-D-1 and ES-D-2)<sup>147</sup>. Operator V was the SRO for scenario 7, event 3.<sup>148</sup> ES-D-2 says “when letdown temperature is restored, return TV 129 to the demin position. He decided to leave the hand switch in the manual position and was not penalized<sup>149</sup>.”

### Background

The applicant entered 18001 – C, Section C and performed all steps with the exception of directing pressurizer heaters to be placed in automatic. When the Shift Supervisor (SS) (C. Smith) reached step C8b to place heaters in automatic, it was stated that we were going to wait to place heaters in automatic. The remainder of the procedure was finished and the RO was directed to return the heaters to auto. He

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<sup>145</sup>Exhibit CCS-045, page 12

<sup>146</sup>Exhibit CCS-045, page 14

<sup>147</sup>Exhibit CCS-046, page 3, Event #3, “realign TV-129 through the demins”, page 16, #3 “When let down temperature is restored, return 1-TV-129 to the demin position

<sup>148</sup>Exhibit CCS-057, page 20-See top of page for assignments to verify this Operator V

<sup>149</sup>Exhibit CCS-057, page 6-15-This is all comments reported for the simulator. Each comment deducts points. Notice that operator V does not have a comment about leaving the handswitch in the divert position although the testing outline has it returning the handswitch to the demin position

## Statement of Position 11: Comment on Page 12

reminded the SS (C. Smith) that the level was still high and that he could not maintain the pressure between 2220 and 2250 psig. After further discussion it was decided to leave the heaters in manual until Pressurizer Level lowered to less than a 5% deviation. This would prevent the heaters from energizing, which would causing the Pressurizer Pressure to exceed the procedural band of 2220 – 2250 psig.

### Discussion

- a. The examiners justification for this comment was that the pressurizer pressure system was operating properly and the applicant believed that it was not operating properly. The applicant did not at any time believe that the Pressurizer Pressure system was not operating properly. The applicant discussed the heater justification during the scenario as well as after the scenario as indicated in their notes<sup>150</sup>. Notices that Examiner M. Bates writes: “Is Carla thinking that the panel will cause heaters to come on if they are placed in auto”<sup>151</sup>. This is correct the heaters would come on if the heaters are placed in auto. This confirms that he heard this discussion about the heaters. The examiners assumed that the discussion about heaters coming on was incorrect. They were functioning properly but if taken to auto the other system Pressurizer Level system would have caused the heaters to come on. It was explained to M. Bates that the heaters were between two systems.
- b. This is also an example of changing standards. In the comment for FIC 121, on page 14 the examiner penalizes C. Smith for not taking into consideration the conditions affecting the controller.<sup>152</sup> The FIC 121 comments states that the applicant was downgraded because she did not understand that charging flow would lower due to the controller’s response to a high

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<sup>150</sup>Exhibit CCS-043, page 82-See “E4”-The follow-up question and answer does not give the impression that the applicant thought the heater were inoperable. The applicant answer was about the conditions of the plant.

<sup>151</sup>Exhibit CCS-043, page 79 (top)

<sup>152</sup>Exhibit CCS-045, page 14

## Statement of Position 11: Comment on Page 12

pressure level over several minutes. This comment in comparison is the opposite. C. Smith takes into consideration that because of the high level from the Pressurizer Level system, heaters would come on if they were taken back to automatic. This would cause a rapid increase in pressure. The FIC 121 comment from the examiner stated that the controller should have been left in manual based on the expected response<sup>153</sup>. This comment is saying that the heaters should be taken back to auto (even though there was an expected response)<sup>154</sup>. If C. Smith is penalized here then she should not have been penalized in the FIC121 comment or vice versa.

- c. Consideration for not returning a component to its automatic position is given to other applicants but not to C. Smith. In another scenario, Operator V - was expected to return the hand switch for TV 129 to the "demin" position once the alarm cleared as identified in the testing outline<sup>155</sup>. He decided to leave the hand switch in the "divert" position. Operator V was questioned about this action by his evaluator<sup>156</sup> but did not even receive a comment on his final grade sheet<sup>157</sup>.

### Conclusion

As an SRO you are expected to make decisions based on conditions, and expected response. You are not expected to blindly follow the procedure, especially when conditions change. In this case the applicant would have to decide to **exceed the parameter** or **leave the heaters in manual**. Either way, the procedure would have to be deviated from due to the conditions of the plant. The decision and reason to deduct points would be based on the discretion and understanding of the examiner. Consider that C. Smith has alleged that she was held to a higher standard than the other applicants. That has a direct effect on discretion.

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<sup>153</sup>Exhibit CCS-045, page 14

<sup>154</sup>Exhibit CCS-045, page 12

<sup>155</sup>Exhibit CCS-046, page 16 #2, page 3 Event #3 under verifiable actions

<sup>156</sup>Exhibit CCS-058, page 63

<sup>157</sup>Exhibit CCS-057, page 6-15-notice that no comment reported from this event

## Statement of Position 12: Comment on Page 19

12. The twelfth statement of position is the disagreement with the assessment of the comment on page 19 of the individual exam report for C. Smith<sup>158</sup>. The disagreement with this comment is:
- a. This comment was not originally contested to the NRC when a request for a review was performed. When the review team could not generate enough points/comments to sustain the failure they turned to changing the testing outline for a non-contested comment. Their procedure only addresses the review of contested items<sup>159</sup>. The team went outside of the requirements of their procedure to change this to a critical task.
  - b. The applicant did not contest the comment because an error was made by initially taking the hand switch to the wrong direction. Keep in mind that the applicant was withdrawing control rods at the time of the failure requiring the manipulation of the hand switch. When the failure did occur the applicant had to stop the rod withdrawal and now refocus on a new issue. Consider that C. Smith has presented more than one example of her crew being in the middle of one action when another failure was put in place by the exam team.
  - c. The review team identifies that the error was associated with a critical task in accordance with NUREG 1021, Appendix D, item D1a.<sup>160</sup> The team fails to illuminate that the same Appendix ( D ),

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<sup>158</sup>Exhibit CCS-045, page 19

<sup>159</sup>Exhibit CCS-030, page 8, last paragraph "i"

<sup>160</sup>Exhibit CCS-005B, page 424

## Statement of Position 12: Comment on Page 19

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.”*<sup>161</sup> **This was not listed as a critical task on the original test outline utilized in March 2012**<sup>162</sup>. This change in criteria (to a critical task) is identified 6 months after the completion of the examination and applicant actions are already known. The entire reason for developing a test outline prior to the test is to ensure that an applicant is treated fairly. Consider again that this change occurred when the review team could not generate enough points to sustain the failure<sup>163</sup>. Recall that a follow-up email was sent out identifying that the PORV comment was “now a missed critical task”<sup>164</sup>. Changes to non-contested items are not discussed in their procedure.

- d. NUREG 1021 Appendix D also discusses that a critical task must have the following to be a critical task: safety significance, cueing, measurable performance indicator and performance feedback<sup>165</sup>. Measurable performance indicator will identify what actions are acceptable to meet the critical task. No additional information was identified to meet this criteria. The appendix also states to avoid assigning the critical task designation to generic tasks that have safety significance but do not meet all the criteria required to identify a critical task<sup>166</sup>. Critical task are also expected to be identified. The review team essential changed the criteria of an objective to critical and did not consider if it fully met all the requirements.

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<sup>161</sup>Exhibit CCS-005B, page 414, 4<sup>th</sup> paragraph

<sup>162</sup>Exhibit CCS-046, page 2 “T5”, See the bottom of page 2 for an example of a designated critical task

<sup>163</sup>Exhibit CCS-029-Email illustrating that the Review Team was looking for more comments

<sup>164</sup>Exhibit CCS-031-4<sup>th</sup> sentence

<sup>165</sup>Exhibit CCS-005B, page 424-426

<sup>166</sup>Exhibit CCS-005B, page 426, #2

## Statement of Position 12: Comment on Page 19

### Conclusion

NUREG 1021 specifically discusses the importance of ensuring that the test outline details are approved and all required actions, critical task are identified prior to the administration of the test<sup>167</sup>. It is obvious that this adjustment occurred due to the desire to find additional comments.

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<sup>167</sup>Exhibit CCS-005A, page 119, "f"

The insertion of this timeline was added based on information that was not available to C. Smith until April 25, 2012. This will further explain Region II's involvement in the independent review based on email communications. Procedure OLMC-500 allows input from the region. However, the exam teams involvement contradicts their procedure and it being independent. They should not have been involved in providing feedback or providing a document identifying how they believe that the results should be documented. This will provide a timeline of the events to explain the actions that occurred.

- June 19, 2012 3:08 pm. John Mchale decided to form a review panel to look at C. Smith's Submittal versus allowing the Region to review it.<sup>168</sup>
- July 2012 - Communications are made to obtain the necessary documents for the review,<sup>169</sup> Region II examiner Marks Bates submits a document (post exam) to show the review team that he could have graded her harsher. *If the documentation for the exam is sufficient to support the denial then this should not be necessary.*
- Review panel meets and writes notes about the comments from C. Smith Exam.<sup>170</sup>
- September 20, 2012 at 4:01 pm David Muller (head panel member) sent an email to John Mchale, Donald Jackson, and Chris Steely that "even if the panel did not toss out some of the errors the applicant still would have passed."<sup>171</sup> Attached to the email is a copy of a draft letter stating that C. Smith passed the exam and the document responded to all contentions sent in.<sup>172</sup> This document contains the cover letter, the analysis performed, a new grade sheet and copies of the applicants contentions, meeting procedural requirements.

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<sup>168</sup>Exhibit CCS-022

<sup>169</sup>Exhibit CCS-061 and Exhibit CCS-062

<sup>170</sup>Exhibit CCS-065-Copy of notes from the meeting

<sup>171</sup>Exhibit CCS-023

<sup>172</sup>Exhibit CCS-024

- September 26, 2012 at 8:06 am Chris Steely (panel member) replied that he will send his comments on tomorrow<sup>173</sup>
- September 26, 2012 at 3:36 pm Chris Steely sends his comments on the draft (that indicated C. Smith passed the exam).<sup>174</sup> *There is an attachment to this email – it is administrative comments.* Chris Steely also comments that “you did an excellent job on this report”.
- September 26, 2012 at 5:10 pm Donald Jackson (panel chairman) identifies to expand on the scoring to “clarify our stance” to RII and NRR management.<sup>175</sup> *This is still in reference to the pass letter and everyone is in agreement that they can support passing C. Smith on the exam.*
- September 27, 2012 10:43 am David Muller sends an email to Donald Jackson saying that he can clarify the scores of 2 when two errors occur because of the scenarios that were clean<sup>176</sup> this means that C. Smith showed *competency in other scenario events* (meaning there were scenarios that the examiners did not write notes – indicating that C. Smith did them properly)
- September 28, 2012 at 08:58 am Donald Jackson sends his comments on the draft<sup>177</sup> (that indicated C. Smith passed the exam). His comments were also administrative in nature and he ended the email by saying “fantastic effort” and “thanks for the support”. (Sounds like the review is over)
- NO EMAILS UNTIL OCTOBER 3<sup>RD</sup>, OBVIOUSLY COMMUNICATION WAS BY PHONE OR IN PERSON

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<sup>173</sup>Exhibit CCS-025

<sup>174</sup>Exhibit CCS-026 and Exhibit CCS-027

<sup>175</sup>Exhibit CCS-013

<sup>176</sup>Exhibit CCS-013

<sup>177</sup>Exhibit CCS-028

- October 3, 2012 at 8:43 am Donald Jackson sends an email to David Muller titled “ Region II Appeal” asking if he got the final recommendation to Jack (John Mchale)<sup>178</sup>
- October 3, 2012 at 9:35 am David Muller responds that he has been reviewing RII’s “**table of other errors**” to see if additional rating factors would be affected.<sup>179</sup> *Recall on September 20-27<sup>th</sup> all members supported the passing of C. Smith.*
- October 3 2012 at 12:09 pm David Muller sends out an email titled “**Vogtle appeal-Look for additional hits**”. At the end of this email he says “**OVERALL GRADING IMPACT: APPLICANT STILL PASSES, competency scores drop but still passes.**<sup>180</sup> *Sounds like a discussion occurred requesting more comments and the grading is being massaged, to justify a new outcome.*
- October 3, 2012 at 3:34 pm David Muller sends an email to Donald Jackson with an attachment. He says that this is “another rough draft” and he did modify the grading a bit.<sup>181</sup> *The attachment is different because the cover letter changed to reflect that the **denial** is being sustained AND THAT C SMITH DID NOT PASS. If you look at the last page of that document you will see that the grading scores have lowered but they do not meet failure criteria yet. The second to the last page still says that the applicant has passed although the cover page says something different. Obviously the decision was made that C. Smith’s denial would be sustained and they are now working to make the grading match that decision. One would think it would be the other way around.....that the grading outcome would dictate the decision to sustain or overturn the failure.*

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<sup>178</sup>Exhibit CCS-020

<sup>179</sup>Exhibit CCS-020

<sup>180</sup>Exhibit CCS-029

<sup>181</sup>Exhibit CCS-031 and Exhibit CCS-066, compare Exhibit CCS-066 to Exhibit CCS-024(PASS LETTER) and note how the 1<sup>st</sup> page change to denial “wording” and the last two pages show that enough points are not accumulated to fail the exam, passing requires >1.8 in each area.

- October 7, 2012 10:05 am Donald Jackson sends an email to John Mchale with Rev 2 of the sustained denial letter attached to the email. Donald Jackson says that he “reframed the panels role” and “you have my verbal recommendation on how the final grading should shake out.”<sup>182</sup> *This attachment to the email is different because the grade sheet has now been removed and the reference to “you did not pass” has been removed- it is assumed that the team had a hard time justifying the denial. And the last page does not identify if the applicant passed or failed. It is not known why the grade sheet was removed but it appears to be deliberate. At this point someone has decided not to report the info on how the re-grade turned out.*
- October 16, 2012 11:22 am John Mchale sends an email to Donald Jackson that says “**What I think will be critical to the overall outcome is RF assignment of the second error related to Scenario 7, Event 3, TE 130 fails low (original comment 21/panel report p25/attached R-2 feedback item G). With that shift, plus the PORV critical error, the failure would be sustained based on Control Board Ops and dismissing the Tave, SI Block, and Immediate action comm errors probably don’t matter**”. He also says you can call Mark Bates (C. Smith 2012 examiner) to discuss any questions.<sup>183</sup> *There is obviously some discussion about reporting the items that the team felt were not errors. Mark Bates should be included in these discussions because he was C. Smith simulator evaluator in 2012.*
- October 16, 2012 at 2:01 pm Donald Jackson responds by contacting David Muller and Chris Steely (with an attachment from the NRC disagreeing with the final conclusion of the review team and they strongly urge that the denial be sustained. The attachment was clearly written by the exam team–this was the information that John Mchale referred to in the above bullet) with the email from John McHale included and he requested a conference call.<sup>184</sup>
- October 23, 2012 12:37 pm David Muller send Rev 4 to Donald Jackson<sup>185</sup>.

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<sup>182</sup>Exhibit CCS-032 and Exhibit CCS-067

<sup>183</sup>Exhibit CCS-059- attached R-2 feedback is in reference to Exhibit CCS-060

<sup>184</sup>Exhibit CCS-059 and Exhibit CCS-060

<sup>185</sup>Exhibit CCS-063 and Exhibit CCS-069-Notice the number of pages in Rev 4 and how it is a complete report on the appeal results. The changes in this document are to competency 3b – the panel is finally able to obtain enough points to meet fail criteria. Consider that the PORV was a non-contested item and should not have been eligible to be changed. Also consider that this is after the recommendation from the exam team pleading to sustain the failure.

- November 1, 2012 11:16 am John Mchale attaches the letter for C. Smith with the fairness review attached. He ask that it be put in a concurrence package form.<sup>186</sup> Notice how the attachment now changes to only inform C. Smith of 15% of her Contentions. 85% was removed from Rev 4. The agency willfully decided not to report the results as required by their procedure. Leaving C. Smith with little to no information about her appeal. This is supposed to be an open organization.
- November 16, 2012 C. Smith receives the results.
- November 19, 2012 7:30am C. Smith contacts John Mchale because she was not provided any explanation on 85% of the contention and she did not even know the final grading. C. Smith requested a grade sheet.<sup>187</sup>
- November 19, 2012 12:00 pm John Mchale responded that it was not necessary to prepare a new grading sheet.<sup>188</sup>

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<sup>186</sup>Exhibit CCS-064 and Exhibit CCS-068-Notice how the attachment now changes to only inform C. Smith of 15% of her Contentions. 85% was removed from Rev 4. The agency willfully decided not to report the results as required by their procedure. Leaving C. Smith with little to no information about her appeal.

<sup>187</sup>Exhibit CCS-038, page 5

<sup>188</sup>Exhibit CCS-038, page 5

### Final Conclusion

In conclusion C. Smith has only requested to be treated equivalent to her peers. It was not expected that she would be held to a different standard in 2012. C. Smith did not challenge the issues associated with the waiver. She trusted that the NRC organization would treat her fairly in 2012 despite the issues encountered. Instead she was treated differently and the comments were not correctly and accurately reported. This organization is posed with a serious responsibility but that does not mean that it should be given a “blank check” to do whatever they chose to do. This includes using guidelines to their advantage and ignoring them to their advantage. There should be one set standard. If the NRC organization knew that the examiners formed an opinion of C. Smith then they should not have been permitted to return and re-grade her or provide unnecessary influence in the independent review. It is apparent that the organization is supportive of any information communicated even if it is not factual. This leads to question why the organization sends out documentation that waivers can be applied for, that testing outlines must be completed prior to the exam for the examiner to follow, that the appeals are welcome to challenge a decision and that a panel will **independently** review your disagreement. If the individuals in charge of the exam have “employee relations” type issues then each individual is subject to their discretion even if it is flawed. If those same individuals are permitted to put together a document pleading to change a decision then they are essentially given a blank check. Especially if this can be done when the process is outside of their region. This process does not protect an individual from unequal treatment. Regardless of the outcome it is expected that everyone is given a uniform assessment that is accurate and untainted. C. Smith alleged that she was graded at a higher level than her peers. See exhibit CCS-070 to perform a side by side comparison of the grading sheet reported to C. Smith initially, the grade sheet reported in the pass letter and the grade sheet attached to Rev 1 of the denial letter. The only changes in grading (from Rev 1 to Rev 4), was the Control Board Operations (after contact with the exam team) changing to 1.66. Notice how much the grading changed in the test overall. The grades in the initial report were significantly lower than the grades in the



latter report. This further confirms that C. Smith was graded at a higher level than her peers. She was denied due process in the admin review when the exam team was allowed to weigh in on the final decision. She was essentially regarded by the same exam team. It is C. Smith's Constitutional Right as outlined in the Fifth and Fourteenth Amendments to be given due process. The Fifth Amendment protects C. Smith from abuse of government authority by not allowing her to "be deprived of life, liberty, or property, without due process of law." The Fourteenth Amendment says "*nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*" It is requested that the information provided is used to assess the validity of this failure and overturn/remove any comments and decisions that do not support the factual data provided to support a license denial for C. Smith.

Respectfully,

Charlissa Smith

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
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 **Prefiled Testimony on the Statements of Position** 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]

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Dated at Grovetown, Ga  
this 1<sup>st</sup> day of May 2013