

United States Nuclear Regulatory Commission Official Hearing Exhibit	
Charlissa C. Smith (Denial of Senior Reactor Operator License)	
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Submitted: May 31, 2013

May 31, 2013

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
CHARLISSA C. SMITH	)	Docket No. 55-23694-SP
	)	
(Denial of Senior Reactor	)	
Operator License Application)	)	
	)	

NRC STAFF TESTIMONY OF DONALD E. JACKSON CONCERNING THE CLAIM BY  
CHARLISSA C. SMITH THAT THE NRC IMPROPERLY DENIED HER SENIOR REACTOR  
OPERATOR LICENSE APPLICATION

**Introduction**

Q.1. Please state your name, occupation, and by whom you are employed.

A.1. My name is Donald E. Jackson. I am employed as Chief, Operations Branch, U.S. Nuclear Regulatory Commission (NRC), Region I, in King of Prussia, Pennsylvania. A statement of my professional qualifications is attached hereto, as Exhibit NRC-041.

**Background**

Q.2. Please describe the nature of your responsibilities on behalf of the NRC Staff (Staff).

A.2. I currently am the first-line supervisor for twelve (12) certified NRC licensed operator examiners, plus support staff, at the NRC's Region I office. As a part of my position, I have the responsibility to issue, deny, amend, and terminate operator and senior operator licenses for applicants in Region I, in accordance with Title 10, Section 55.33(a), of the Code of Federal Regulations (10 CFR 55.33(a)).

Q.3. Please explain what your duties have been in connection with the denial of the Senior Reactor Operator (SRO) license application of Charlissa C. Smith (Ms. Smith).

A.3. From June 19, 2012, to October 25, 2012, I served as the Informal Review Panel Chairman assigned to review and respond to Ms. Smith's request for an informal review.

Q.4. What is the purpose of your testimony?

A.4. Ms. Smith claims that the NRC improperly denied her 2012 SRO license application. Ms. Smith passed the 2012 written examination but failed the 2012 operating test. Ms. Smith argues that she would have passed the 2012 operating test, and thus had her 2012 SRO license application granted, but for one or more of the following alleged actions or omissions by the NRC Staff: (1) the NRC Staff allegedly should have waived her 2012 operating test, (2) the NRC Staff allegedly prevented her from requesting a waiver of the 2012 operating test, (3) the Region II evaluation of her 2012 operating test performance was allegedly influenced by bias based on her performance during her 2011 operating test, (4) the informal review panel re-grading of her 2012 operating test performance was allegedly influenced by bias based on the informal review panel's interaction with Region II, and (5) there allegedly were sufficient errors in both the grading and re-grading of her 2012 operating test performance that would change her grade from failing to passing.

The purpose of my testimony is to respond to Ms. Smith's assertions regarding the conduct of the informal review panel, including any alleged bias, and to demonstrate that the informal review panel properly conducted its re-grading activities, including the panel's final determination that Ms. Smith did not pass her 2012 operating test.

Q.5. Please describe how the informal review panel was formed and what NRC procedures are used for conducting informal reviews.

A.5. On June 5, 2012, the NRC's Office of Nuclear Reactor Regulation (NRR) received Ms. Smith's request for an informal NRC review of her operating test. Upon receipt, a cursory review of Ms. Smith's request was conducted by the staff of the NRC's Operator

Licensing and Training Branch (IOLB), NRR. Based upon the complexity of Ms. Smith's request, the IOLB staff decided to: (1) form an informal review panel, to assess Ms. Smith's contentions regarding the grading of her 2012 operating test; and (2) conduct a separate review of her contentions concerning examiner bias and her lack of an opportunity to request a waiver of the 2012 operating test.<sup>1</sup> In response to a request from John McHale, Chief, IOLB, on June 19, 2012, I assumed the duties of Chairman of the informal review panel, which consisted of myself; David Muller, Reactor Engineer (Chief Examiner qualified), IOLB; and Christopher Steely, Operations Engineer (Chief Examiner qualified), Operations Branch, NRC Region IV.

The informal review panel was formed and conducted in accordance with OLMC-500, "Processing Requests for Administrative Reviews and Hearings."<sup>2</sup>

Q.6. How was the panel review conducted?

A.6 The review panel was conducted in two distinct phases. The first phase consisted of a face to face meeting of the panel as a team from June 25-27, 2012, in a private conference room at the NRC's Region II office in Atlanta, Georgia. Prior to this face to face meeting, the informal review panel members were e-mailed a complete copy of Ms. Smith's appeal request, to allow them to review her contentions and ready themselves for the panel meeting. The second phase, to be discussed in answering question number 7 below, consisted of drafting the panel report to address Ms. Smith's informal review contentions, and to perform a complete re-grade of her 2012 dynamic simulator scenario operating test.

From the outset, it was determined to conduct the informal review panel in a non-biased way, and in an open and collaborative fashion between panel members.<sup>3</sup> In conducting the informal panel review, the focus was on addressing the validity (or non-validity) of each of Ms. Smith's contentions, with the understanding that the outcome of the contentions review would be used to determine revisions (if any) to her grading. In reviewing the grading of Ms. Smith,

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<sup>1</sup> Exhibit CCS-022; Exhibit NRC-016.

<sup>2</sup> Exhibit CCS-030.

<sup>3</sup> Exhibit NRC-016.

the panel sought to first determine what actually occurred during the dynamic simulator scenario events contested by Ms. Smith, especially in cases where Ms. Smith's version of events differed from the original NRC grading. Once the panel understood what occurred during the contested simulator scenario events, the panel then determined whether Ms. Smith committed an error or not, and to which rating factor(s) each error should be assigned, taking into account any mitigating factors provided by Ms. Smith in her appeal request, and taking into account the grading guidance contained in NUREG-1021, "Operator Licensing Examination Standards for Power Reactors," Rev. 9, Supp.1, Section ES-303.<sup>4</sup> In this way, the review panel used a grading process that was in accordance with NUREG-1021, particularly Section ES-303 D.1, which includes directions for examiners to:

- (1) "...label or highlight every action, response, note, or comment that may constitute a performance deficiency." (ES-303 D.1.c) and
- (2) "Review each simulator operating test performance deficiency. Using as a guide the competency and rating factor descriptions in Appendix D and on Form ES-303-3 (RO) or Form ES-303-4 (SRO), code each performance deficiency with the number and letter of the rating factor(s) it most accurately reflects (e.g., 4.a). Whenever possible, attempt to identify the root cause of the applicant's deficiencies and code each deficiency with no more than two different rating factors. However, one significant deficiency may be coded with additional rating factors if the error can be shown, consistent with the criteria in section D.3.b, to be relevant to each of the cited rating factors." (ES-301 D.1.d).

In addition to NUREG-1021 and Ms. Smith's appeal request, the review panel utilized the following documents to conduct their review:

- (1) Ms. Smith's original NRC grading<sup>5</sup>

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<sup>4</sup> Exhibit CCS-005A.

<sup>5</sup> Exhibit CCS-035.

(2) The grading of individuals who took the simulator scenario examination with Ms. Smith as part of her operating crews<sup>6</sup>

(3) Clean copies of the simulator scenarios that were used to examine Ms. Smith<sup>7</sup>

(4) A tabbed binder (14 tabs) prepared by NRC Region II personnel in response to Ms. Smith's appeal request<sup>8</sup>

(5) The rough notes made by the NRC examiners during Ms. Smith's simulator scenario operating test<sup>9</sup>

On the first day that the review panel met (Monday, June 25, 2012), the members of the panel introduced themselves, then the panel discussed the proposed processes of the review and the goals of the panel. In addition, a short meeting (about 15 minutes) with Region II Operations Branch staff was held to discuss how the panel would be conducted. Following the meeting with Region II personnel, for the remainder of the first day, and until about noon on the second day, the panel members discussed and analyzed each of the contentions made by Ms. Smith in her appeal request. During this first day and a half, the panel deliberated exclusively amongst themselves in a private conference room, with no Region II personnel present. As explained above, the purpose of this first day and a half of the review was to establish what happened during the contested scenario events and determine whether an error occurred or not. With regard to error determination, it should be noted that in Ms. Smith's appeal request, she often listed "no adverse consequence" as a mitigating factor for her original grading. However, "no adverse consequences" is not a criteria for determining if an error should be assessed in accordance with NUREG-1021, Section ES-303, Item D.2.b, which states, in part: "Keep in mind that the simulator test is generally graded based on competencies rather than

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<sup>6</sup> Exhibit NRC-047; Exhibit NRC-048.

<sup>7</sup> Exhibit NRC-049; Exhibit NRC-050; Exhibit NRC-051.

<sup>8</sup> Exhibit NRC-046; Exhibit NRC-013; Exhibit NRC-031; Exhibit NRC-032; Exhibit NRC-045; Exhibit NRC-033; Exhibit NRC-034; Exhibit NRC-024; Exhibit NRC-035; Exhibit NRC-036; Exhibit CCS-039; Exhibit NRC-037; Exhibit NRC-038; Exhibit NRC-039.

<sup>9</sup> Exhibit CCS-043; Exhibit CCS-054; Exhibit NRC-052; Exhibit CCS-050; Exhibit CCS-058; Exhibit NRC-044; Exhibit CCS-049; Exhibit NRC-022.

consequences; every error that reflects on an operator's competence is considered equal unless it is related to the performance of a critical task (as determined in accordance with ES-301 and Appendix D)."<sup>10</sup>

After the performance of the error determination, errors were analyzed by the panel and assigned to appropriate rating factors. For several of the apparent errors, however, members of the panel had questions concerning the sequence of events and/or other issues, which necessitated interviews with the Region II examiners who were present during Ms. Smith's simulator scenario examination. In addition, it should be noted that after the first day and a half of the panel meeting, there was not always complete agreement among the panel members regarding some of Ms. Smith's apparent errors. The panel worked through these issues to gain consensus on the correct grading. The documentation of this review was recorded on large flip charts<sup>11</sup> to facilitate discussion and interaction between the panel members, and these flip charts were not shared with Region II personnel.

During the afternoon of the second day of the panel meeting (Tuesday, June 26, 2012), the panel members interviewed the Region II examiners who were present during Ms. Smith's simulator scenario examination—Mark Bates, the examiner assigned to Ms. Smith; Phillip Capehart, assigned to a member of Ms. Smith's crew; and Michael Meeks, assigned to another member of Ms. Smith's crew. The purpose for this interview was to gather information associated with panel members' questions identified during the first day and a half of the panel meeting. During the interview, the Region II examiners also shared additional insights into Ms. Smith's performance, and provided their opinions on the contentions contained in her appeal request. This interaction was a vital aspect of the conduct of the panel as the panel needed answers to questions from staff who actually observed Ms. Smith's performance in the simulator.

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<sup>10</sup> Exhibit CCS-005A at ES-303, p. 5.

<sup>11</sup> Exhibit CCS-065. The first 13 pages represent the first day and a half of the panel meeting, pages 14-18 are error summaries performed on the last day (June 27) of the review.

On the third and final day of the panel meeting (Wednesday, June 27, 2012), information gathered from the interview with the Region II examiners, plus re-reviews of other examination documents, were used to answer any previous panel member questions. Following this activity, each of Ms. Smith's apparent errors associated with her appeal contentions were re-reviewed for error determination and rating factor assignment. As before, this review was performed without any Region II personnel present, and was documented and summarized using large flip charts. Upon completion, the panel determined a proposed response for each simulator scenario event whose grading Ms. Smith contested (i.e., agree, partially agree, or disagree with Ms. Smith, and why), and determined appropriate rating factor(s) associated with each error. Of particular note, it should be mentioned what was *not* completed upon the conclusion of the face to face meeting of the informal review panel:

(1) Errors documented in the original NRC grading of Ms. Smith's performance during the simulator scenario examination, but not contested by Ms. Smith in her appeal request, were not reviewed in detail during the face to face panel meeting. The focus of the panel meeting was to review, analyze, and address the contentions Ms. Smith made in her appeal request.

(2) As such, since all errors made by Ms. Smith during the simulator scenario examination must be taken into account to perform a complete a re-grade of that portion of her examination, the informal review panel at the conclusion of their meeting did not determine any revised rating factor scores, nor did the review panel complete a rigorous re-grade of Ms. Smith or make a pass/fail determination. These activities were completed after the face to face meeting, where any and all errors (as determined by the panel) committed by Ms. Smith during the simulator examination (contested and not contested) were reviewed and subjected to the grading criteria contained in NUREG-1021, Section ES-301 D.2b.

Q.7. Please describe the process for re-grading Ms. Smith and how her grades changed over the course of the review.

A.7. After the completion of the face to face meeting, the informal review panel began to draft a report to address Ms. Smith's appeal contentions and to re-grade her simulator scenario examination. Using the error determinations and rating factor assignments from the face to face panel meeting as a starting point, the first revision of this report<sup>12</sup> did not include any kind of re-grade, as demonstrated by: (1) the first revision did not include a revised grade sheet (Form ES-303-1), and (2) errors not contested by Ms. Smith had not been reviewed or incorporated. (Although perhaps confusing, the cover letter of the first revision indicated examination failure but was *only* used a "place holder.") Instead, the first revision of the panel report was written to allow panel members an early opportunity to review and comment on the proposed disposition of each of Ms. Smith's contentions, the error determinations made by the review panel, and the rating factor assignments. From the outset, the first revision of the review panel report was written as a starting point for future revisions.

Using the first revision of the panel report as a starting point, subsequent revisions to the panel report did typically include a complete re-grade of Ms. Smith's simulator scenario examination, by incorporating errors made by Ms. Smith (from her original NRC grading) that she did not contest. This re-grade was conducted in accordance with NUREG-1021, ES-303 D.2.b:

"Using Form ES-303-3 or ES-303-4, depending on the applicant's license level, and the following generic guidance, evaluate any deficiencies coded for the simulator test to determine a grade for every applicable rating factor (RF) and competency. Keep in mind that the simulator test is generally graded based on competencies rather than consequences; every error that reflects on an operator's competence is considered

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<sup>12</sup> Exhibit NRC-018.

equal unless it is related to the performance of a critical task (as determined in accordance with ES-301 and Appendix D).

- If there is no basis upon which to grade a rating factor (i.e., it is “not observed”), circle the “0” Weighting Factor, enter a RF Grade of “N/O,” and explain in accordance with Section D.3, below. Depending upon which RF is “N/O,” circle the appropriate Weighting Factor for each remaining RF applicable to that competency; the Weighting Factors for each competency must always add up to “1.” If more than one rating factor per competency or more than two rating factors overall are not observed, inform the NRC’s regional office management and consult the NRR operator licensing program office to determine whether the test supports a licensing decision. As discussed in ES-301, Competency 3 is optional for SRO upgrade applicants and may be scored as “N/O.” However, the examiner shall evaluate Competency 3 if the applicant rotated into an operating crew position that required the applicant to manipulate the controls.
- If an applicant performs activities related to a rating factor and makes no errors, circle an RF Score of “3” for that rating factor.
- If an applicant makes a single error related to a rating factor, circle a RF Score of “2” for that rating factor, unless the error related to a critical task, in which case a score of “1” would be required. Missing a critical task does not necessarily mean that the applicant will fail the simulator test, nor does success on every critical task prevent the examiner from recommending a failure if the applicant had other deficiencies that, in the aggregate, justify the failure based on the competency evaluations.
- If an applicant makes two errors related to a rating factor, circle a RF Score of “1” for that rating factor unless a score of “2” can be justified (and documented as discussed in Section D.3, below) based on correctly performing another activity (or activities) related

to the same rating factor; three or more errors generally require a score of “1,” regardless of the applicant’s compensatory actions.”

- Multiply each RF Score by its associated Weighting Factor to obtain a numerical measure (RF Grade) for the applicant’s performance on each rating factor. Then sum the RF Grades to obtain a Competency Grade for each competency and enter the corresponding numbers (or “N/O,” as appropriate) on page 3 of the RO or SRO applicant’s Form ES-303-1.
- For each competency on page 3 of Form ES-303-1, sum the rating factor grades and enter the resulting competency grade in the designated column. (The grades should range between 1 and 3.)
- Using the following evaluation criteria, determine whether the applicant’s overall performance on the simulator test is satisfactory or unsatisfactory, and document the grade by placing an “S” or a “U” in the Simulator Operating Test block of the Operating Test Summary on page 1 of Form ES-303-1. Enter “W” if this part of the operating test was waived in accordance with ES-204.
- If the grade for *all* competencies is greater than 1.8, the applicant’s performance is generally satisfactory.
- If the grade for Competency 4, Communications and Crew Interactions, is less than or equal to 1.8 but greater than 1.0, *and* the individual grades for *all* other competencies are 2.0 or greater, the applicant’s performance is satisfactory.
- If the grade for Competency 4 is 1.0, *or* the grade for any other competency is 1.8 or less, the applicant’s performance is unsatisfactory.<sup>13</sup>

As revisions to the panel report were drafted, each new revision built upon the preceding revision as a part of the deliberative process of the review panel, as new information and

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<sup>13</sup> Exhibit CCS-005A at ES-303, pp. 5-6.

insights were obtained. This resulted in changes from revision to revision, which affected the re-graded scores for Ms. Smith in two primary ways:

(1) The addition of the panel's determination that one of the errors committed by Ms. Smith was associated with a previously unidentified critical task. Although an early revision of the panel report<sup>14</sup> indicated that Ms. Smith had passed her simulator scenario examination, this version did not include the "critical" nature of the error committed by Ms. Smith. At this early stage of drafting the panel reports, the "critical" nature of this error was under review by the panel members, with an additional review provided by the IOLB staff in NRC headquarters.

(2) Changes in how errors committed by Ms. Smith were assigned to individual rating factors. These changes occurred as panel members sought to more carefully assign errors committed by Ms. Smith to the appropriate rating factors.

Just prior to developing the final revision<sup>15</sup> of the re-grade and panel report, the panel did consider input from the Region II Operations Branch staff.<sup>16</sup> As a result, the review panel did change one error's assignment of rating factors (for scenario 3, event 4, an affected rating factor was changed from 5.b to 5.d) and the panel added one affected rating factor for another error (scenario 6 event 4, a second error against rating factor 4.a was added). However, it should be noted that these changes made by the panel after consideration of comments from Region II did not impact the panel's final recommendation that Ms. Smith did not pass her simulator operating examination. It should also be noted that soliciting input from Region II during Ms. Smith's appeal review is in accordance with OLMC-500, "Processing Requests for Administrative Reviews and Hearings,"<sup>17</sup> item D.1.f, which states, in part, that "The results of all

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<sup>14</sup> Exhibit CCS-024.

<sup>15</sup> Typographical errors and other minor corrections (to include obtaining my signature) occurred during the final revisions to the review panel report, without any changes in grading. These final revisions to the panel report are found at Exhibit NRC-053, Exhibit NRC-054, and Exhibit CCS-037.

<sup>16</sup> Exhibit CCS-060.

<sup>17</sup> Exhibit CCS-030 (emphasis added).

administrative reviews will be approved by IOLB [Headquarters Operator Licensing and Training Branch] and signed out by the Director, DIRS [Division of Inspection and Regional Support], *taking into account any input from the affected region and/or examiner of record.*"

Q.8. What were the final results of the panel and how did the panel address each of Ms. Smith's original grading contentions?

A.8 The final version of the informal review panel report concluded that Ms. Smith did not pass her 2012 dynamic simulator examination and exhibited numerous performance problems during this portion of the examination.<sup>18</sup> Specifically, the panel report identified 20 total errors committed by Ms. Smith during her examination, as described below and arranged by competency area (S = scenario number, E = event number):

Competency 1: Interpretation/Diagnosis

1. In response to a failed pressurizer pressure instrument (PT-455)(S3, E4), Ms. Smith incorrectly believed and stated to her operating crew that she did not think the pressurizer heaters were operating properly, when in fact, they were. This error was assigned by the panel to rating factor (RF) 1.c, "Interpretation/Diagnosis—Understanding," in agreement with the Region II original grading.

2. In response to a failed pressurizer level instrument (LT-459)(S6, E4), Ms. Smith incorrectly believed (and stated to the examiner of record after the scenario was completed), that Flow Control Valve (FCV)-121 should not have been closing when its flow controller (FIC-121) was taken to automatic. This error was assigned by the panel to RF 1.c, "Interpretation/Diagnosis—Understanding," in agreement with the Region II original grading.

3. In response to a trip of an Electro-Hydraulic Control (EHC) pump (S3, E5), Ms. Smith incorrectly believed (and stated to the examiner of record after the scenario was completed), that the standby EHC pump should have automatically started. This error was assigned by the

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<sup>18</sup> Exhibit CCS-037.

panel to RF 1.d, “Interpretation/Diagnosis—Diagnose,” in agreement with the Region II original grading.

4. While directing a reduction in reactor power, in response to high vibrations on a feed pump (S6, E6), Ms. Smith incorrectly directed the manual insertion of control rods based upon incorrectly determining the difference between average reactor coolant system temperature and reference temperature. This error was not contested by Ms. Smith in her informal review request. This error was assigned by the panel to RF 1.d, “Interpretation/Diagnosis—Diagnose,” in agreement with the Region II original grading.

Competency 2: Procedures

5. In response to a failed pressurizer pressure instrument (PT-455)(S3, E4), Ms. Smith did not implement Procedure 18001-C step C8 correctly, which, in part, resulted in the pressurizer heaters remaining in manual control for the remainder of the simulator scenario. This error was assigned by the panel to RF 2.c, “Procedures—Correct Use,” and was an error added by the panel to the Region II original grading of Ms. Smith’s performance during this scenario event.

Competency 3: Control Board Operations. (The re-grading in this competency area ultimately resulted in the informal review panel’s determination that Ms. Smith did not pass her 2012 dynamic simulator operating test.)

6. As the Operator at the Controls (OATC), and in response to a failed pressurizer pressure instrument (PT-456) (S7, E5), Ms. Smith incorrectly operated the hand switch for the affected pressurizer power operated relief valve (PORV). This resulted in the PORV remaining open, instead of closed, for 30 seconds, until Ms. Smith was corrected by her Shift Supervisor (SS). This error was not contested by Ms. Smith in her informal review request, and was determined by the informal review panel to be a previously unidentified critical task error associated with RF 3.a, “Control Board Operations—Locate & Manipulate.” The critical nature

of this error was determined in accordance with NUREG-1021 , Appendix D, item D.1.a,<sup>19</sup> in that if not corrected by her SS, Ms. Smith would have allowed a loss of reactor coolant to continue (a degraded fission product barrier), which would have required an automatic reactor trip and safety injection to mitigate. The critical nature of this error was added by the panel to the Region II original grading of Ms. Smith's performance during this scenario event.

7. As the OATC, and in response to a failed temperature element to the letdown heat exchanger (TE-0130) (S7, E3), Ms. Smith incorrectly stated during this event that "the only thing we can do is call C&T [Clearance and Tagging] to get the TE [temperature element] fixed," instead of taking manual control of TIC-130. Ms. Smith did not take manual control of TIC-130 until directed by the SS. This demonstrated a lack of understanding, and was assigned by the panel to RF 3.b, "Control Board Operations—Understanding," and was an error added by the panel to the Region II original grading of Ms. Smith's performance during this scenario event.

8. As the OATC, in response to a failed temperature element to the letdown heat exchanger (TE-0130) (S7, E3), and after being directed by the SS, Ms. Smith incorrectly operated the associated flow controller (TIC-130), which resulted in auxiliary component cooling water not being restored to the letdown heat exchanger. This error was assigned by the panel to RF 3.c, "Control Board Operations—Manual Control," in agreement with the Region II original grading.

#### Competency 4: Communications

9 and 10. In response to a failed pressurizer level instrument (LT-459)(S6, E4), Ms. Smith incorrectly directed the Unit Operator to perform immediate operator actions, even though there were no immediate operator actions for this event. In addition, during this event, Ms. Smith incorrectly stated that controller FIC-121 was in automatic during a crew briefing, when the controller was actually in manual. The informal review panel assigned two errors to RF 4.a, "Communications—Clarity," in agreement with the Region II original grading.

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<sup>19</sup> Exhibit CCS-005B at Appendix D, p. 13.

11. As the OATC, and in response to a failed main feed water regulating valve and subsequent reactor trip (S7, E7), Ms. Smith incorrectly reported to the SS that pressurizer pressure was stable at 1020 psig, because Ms. Smith incorrectly checked and reported steam generator pressure. This error was assigned by the panel to RF 4.a, “Communications—Clarity,” in agreement with the Region II original grading.

12 and 13. During two separate scenario events (S3, E4; and S3, E1) Ms. Smith returned system controllers to automatic without first obtaining permission from the Shift Manager, which was contrary to a station procedure. The informal review panel assigned two errors to RF 4.b, “Communications—Crew & Others Informed,” in agreement with the Region II original grading.

14. During an auxiliary component cooling water pump failure (S6, E1), Ms. Smith as the SS failed to repeat back an important report from the Unit Operator that plant alarms were consistent with the pump failure (there were about a dozen alarms). This error was assigned by the panel to RF 4.c, “Communications—Receive Information,” in agreement with the Region II original grading.

#### Competency 5: Directing Operations

15. In response to a failed pressurizer level instrument (LT-459)(S6, E4), Ms. Smith directed that controller FIC-121 be returned to automatic, which initiated another transient and caused two alarms, while the crew was completing actions associated with another scenario event. This complicated overall plant recovery, this error was assigned by the panel to RF 5.b, “Directing Operations—Oversight,” and was an error added by the panel to the Region II original grading of Ms. Smith’s performance during this scenario event.

16. In response to a trip of an EHC pump (S3, E5), Ms. Smith did not solicit any information from her crew in her [incorrect] determination that the standby EHC pump should have automatically started. This error was assigned by the panel to RF 5.c, “Directing

Operations—Solicit Crew Feedback,” and was an error added by the panel to the Region II original grading of Ms. Smith’s performance during this scenario event.

17. In response to a failed pressurizer pressure instrument (PT-455)(S3, E4), Ms. Smith did not ensure that her directive to take pressurizer heaters to automatic was carried out by the OATC, and the pressurizer heaters remained in manual control for the remainder of the scenario. This error was assigned by the panel to RF 5.d, “Directing Operations—Monitor Crew Activities,” and was an error added by the panel to the Region II original grading of Ms. Smith’s performance during this scenario event.

Competency 6: Technical Specifications. These errors were not contested by Ms. Smith in her request for an informal review, and the review panel agreed with the original Region II grading.

18, 19, and 20. During 3 separate scenario events (S3, E4; S6, E4; and S7, E5), Ms. Smith did not correctly identify all of the applicable technical specification conditions that were applicable to degraded plant conditions. Three errors were assigned to RF 6.a, “Technical Specifications—Recognize and Locate.”

Taken together, the review panel determined revised scores for Ms. Smiths’ 2012 dynamic simulator operating test, in accordance with NUREG-1021, Section ES-303 D.2.b:

Competency/ Rating Factors	RF Weights	RF Scores	RF Grades	Comp. Grades
1. Interpretation/Diagnosis				
a. Recognize & Attend	0.20	3	0.60	2.4
b. Ensure Accuracy	0.20	3	0.60	
c. Understanding	0.30	2*	0.60	
d. Diagnose	0.30	2*	0.60	
2. Procedures				

a. Reference	0.30	3	0.90	2.6
b. EOP Entry	0.30	3	0.90	
c. Correct Use	0.40	2	0.80	
3. Control Board Operations				1.66
a. Locate & Manipulate	0.34	1	0.34	
b. Understanding	0.33	2	0.66	
c. Manual Control	0.33	2	0.66	
4. Communications				1.60
a. Clarity	0.40	1	0.40	
b. Crew & Others Informed	0.40	2*	0.80	
c. Receive Information	0.20	2	0.40	
5. Directing Operations				2.30
a. Timely & Decisive Action	0.30	3	0.90	
b. Oversight	0.30	2	0.60	
c. Solicit Crew Feedback	0.20	2	0.40	
d. Monitor Crew Activities	0.20	2	0.40	
6. Technical Specifications				2.20
a. Recognize and Locate	0.40	1	0.40	
b. Compliance	0.60	3	1.80	

\*--Indicates a score of 2 was awarded with a positive action coupled with 2 errors in the rating factor per NUREG 1021 ES-303

As a result of these revised scores, the informal review panel determined that Ms. Smith did not pass her 2012 dynamic simulator examination due to Ms. Smith's Competency 3 score

of 1.66. In accordance with NUREG-1021, Section ES-303 D.2.b,<sup>20</sup> with Ms. Smith's score of 1.60 for Competency 4, Ms. Smith would have needed all of the other competency (1, 2, 3, 5, and 6) scores, including the score for Competency 3, to have been greater than or equal to 2.0.

Q.9. Please address Ms. Smith's contention that the informal review panel was biased.

A.9. From the outset, it was determined to conduct the informal review panel in a non-biased way and to maintain an open mind with regard to the contentions raised by Ms. Smith in her informal review request. Although comments were received by Region II and other NRC staff members as the final versions of the panel report were being drafted, the majority of the panel's work—from the initial face to face meeting in Atlanta, to the error determinations, rating factor assignments, and most of the draft reports—was conducted solely by the panel without any outside input. Until the final versions of the panel reports were being drafted, Region II personnel served primarily as a source of factual information for the panel, instead of a source of recommendations or opinions. As the panel's work continued, it became clear that the majority of Ms. Smith's contentions contained in her informal review request did not merit mitigating any of the errors she committed during her 2012 dynamic simulator scenario examination per the grading guidance contained in per NUREG-1021 Section ES-303.<sup>21</sup> In fact, with regard to her original grading received by Region II, the panel determined on a number of occasions that Ms. Smith had committed additional errors, even though the outcome of a particular scenario event was unchanged. For example, as the OATC, in response to a failed temperature element to the letdown heat exchanger (TE-0130) (S7, E3), Ms. Smith incorrectly operated controller 1TIC-130, which resulted in auxiliary component cooling water not being restored to the letdown heat exchanger, and the SS correcting her. This was assigned only one error by the Region II staff, to RF 3.c, "Control Board Operations—Manual Control." However,

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<sup>20</sup> Exhibit CCS-005A.

<sup>21</sup> *Id.*

when reviewed by the panel, it was also clear that Ms. Smith incorrectly believed that taking manual control was not even a possible action for the given temperature element failure. Thus although the outcome for this event was unchanged, i.e., Ms. Smith did not restore cooling and had to be corrected by the SS, the review panel assessed two separate errors, one error for RF 3.c (consistent with Region II), and one error for RF 3.b, “Control Board Operations—Understanding.”

As further evidence of a lack of bias of the informal review panel, it is noted here that the review panel agreed or partially agreed with Ms. Smith regarding three errors documented by Region II that she contested. In agreeing with Ms. Smith on these occasions, the review panel changed these three errors documented by Region II into “non errors,” which meant that these three “non errors” no longer had any negative impact on any rating factor scores.

Although the informal review panel remained unbiased by Region II and other NRC staff members during its review, the panel was always concerned with upholding the primary mission of the NRC: protecting people and the environment. Ultimately, the panel determined that to carry out this mission and in accordance with the grading guidance contained in NUREG-1021 Section ES-303, that given the large number (20) and type of errors committed by Ms. Smith during her 2012 dynamic simulator operating test, that Ms. Smith did not pass this portion of her examination and should not be issued a NRC senior operator license.

### **Discussion**

Q.10. Are you familiar with Ms. Smith’s contentions with how the informal review panel was conducted?

A.10. Yes. Ms. Smith presented in her in her third Statement of Position that she disagreed with how the panel handled her request for an informal (administrative) review and

that in many instances the panel review was not conducted in accordance with NRC procedure.<sup>22</sup> She supported her view with six assertions:

(1) The panel review initially concluded that Ms. Smith passed her examination. To support this contention, Ms. Smith identified numerous e-mails and drafts of panel reports indicating that she had passed her examination.

(2) There was influence on the final outcome concluding that the review panel serves no purpose. The review was unreasonable in completion time, in that a typical review takes 75 days, and that the review for Ms. Smith took over 160 days.

(3) Several revisions continued until a denial was sustained.

In support of items (2) and (3), Ms. Smith contends that after the panel contacted Region II (after October 3, 2012), that the panel's direction appeared to change towards justifying her failure of the examination, including a review for additional performance problems to comment on. Ms. Smith contends that the original Region II examination team should not have been permitted to participate in the panel review, since the panel review is required to remain impartial and be independent. According to Ms. Smith, it appeared that the review panel's initial intent was to determine the correct grading, but that after draft reports indicated that she passed her examination, the intent changed to finding enough comments to sustain the failure.

(4) The review panel included a re-grade of non-contested items, which are not discussed in the procedure for conducting informal reviews. Ms. Smith goes on to state that if the panel did not review the "non-contested items" then they would have not been able to sustain her examination failure.

(5) The final letter sent to Ms. Smith did not respond to all of her contentions contained in her informal review request. Ms. Smith goes on to state that this indicated that the NRC was "hiding something" and denied Ms. Smith the right to review how the panel resolved her contentions

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<sup>22</sup> Exhibit CCS-076 at 16-19, 49-54.

(6) A final grade sheet was not provided to Ms. Smith, such that she had no documentation of how the panel assessed her informal review request.

Q.11. Can you please respond to Ms. Smith's contentions regarding the conduct of the informal review panel?

A.11. Yes, and I will respond to her contentions in the order that she presented them. But prior to addressing her contentions in detail, I cannot stress enough that I believe that the panel's final determination to deny Ms. Smith an SRO licensee was correct, irrespective of any process irregularities or bias claimed by Ms. Smith.

In response to items (1) through (3) above, some of the initial drafts of the panel report did document that Ms. Smith had passed her 2012 dynamic simulator operating test. But as discussed in my answer to question number 7 above (see pp. 8, 11, and 12), each revision to the panel report built upon the previous revision, and not all of the revisions included a formal re-grade. This was part of the panel's deliberative process and included incorporating any new information and insights, such as the critical nature of her failure to close a pressurizer PORV.

Ms. Smith is correct in her contention that the panel did receive input from Region II Operations Branch staff and from John McHale (Chief, IOLB) after October 3, 2013. However, contrary to Ms. Smith's contentions, receiving this type of input is not contrary to NRC procedure, as stated by items D.1.f and D.3.b contained in OLMC-500, where: (1) item D.1.f states, in part, that "The results of all administrative reviews will be approved by IOLB [renamed to IOLB around 2012; Headquarters Operator Licensing and Training Branch] and signed out by the Director, DIRS [Division of Inspection and Regional Support], *taking into account any input from the affected region and/or examiner of record;*" and (2) item D.3.b states that "*During an appeal panel review, the panel will establish and maintain communications with the affected region and IOLB, in order to ensure that the review results include regional and IOLB input.*"<sup>23</sup> In this regard, the appeal panel did remain impartial and independent, but per the above, the

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<sup>23</sup> Exhibit CCS-030 (emphasis added).

panel was required to obtain inputs from IOLB and from Region II, and could not simply ignore any additional information or insights from these other sources.

Ms. Smith is correct that the informal review conducted by the appeal panel did take over 160 days, and that a typical review is to be completed within 75 days.<sup>24</sup> However, this review was not typical, given its complexity and the nature and number (11) of Ms. Smith's informal review contentions regarding how her dynamic simulator examination was originally graded (which was the basis for using a panel instead of an individual reviewer, see OLMC-500 item D.1.b), and the fact that that the panel had to schedule around other commitments to travel and meet as a team. Ultimately, the length of time for the informal panel review was not relevant towards the grades Ms. Smith ultimately received, nor does it form any basis for granting or denying her a license as a result of this proceeding.

With regard to Ms. Smith's other contentions associated with items (1) through (3) above, I strongly disagree. In particular, I strongly disagree that the review panel served no useful purpose. I also strongly disagree with Ms. Smith's characterization that the review panel's intent changed from "correct grading" to "justifying a failure." What actually occurred was that as additional information/insights came to light, the panel conducted reviews concerning the merit, relevance, and validity of the new information/insights, and revised the draft panel reports as appropriate. Although Ms. Smith mischaracterizes this process, it is true that some of the new information/insights were a result of interactions with Region II staff and John McHale that occurred after October 3, 2012. As stated in the previous paragraph, however, these interactions with outside sources were in accordance with OLMC-500. Analogous to how the panel could not (and did not) ignore information/insights from Ms. Smith, as contained in her request for an informal review, the panel could not (and did not) ignore any information/insights that were discovered during the course of the review. In order to ensure

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<sup>24</sup> Exhibit CCS-005A at ES-502, p. 4.

that the panel's results accurately reflected Ms. Smith's performance on her 2012 dynamic simulator examination, all information concerning her performance was considered.

With regard to the panel's review of items not contested by Ms. Smith in her informal review request (item (4) of her contentions), she is correct that at least one item in OLMC-500 (item E.1.i) states, in part, to "re-grade the contested portion(s) of the operating test."<sup>25</sup> However, there is other guidance which suggests reviewing all aspects of her performance during the dynamic simulator examination, including: (1) OLMC-500 item E.1.f (v), which states to review a copy of the applicant's original grade report, (2) OLMC-500 item E.1.i, which states, in part, for the review to determine for the simulator operating test whether the competencies were appropriately scored; (3) OLMC-500 item E.1.i, which goes on to state, "Upon determining an outcome for all contested test items, the reviewer(s) shall utilize NUREG-1021, ES-303 to determine the applicant's overall operating test score based on the remaining [emphasis added] test items,"<sup>26</sup> and (4) most importantly, NUREG-1021 ES-502 D.2.a states that for operating tests, "the review shall evaluate the examiner's comments, the examination report, the test that was administered, and the contentions and supporting documentation provided by the applicant..."<sup>27</sup>

I stated that the last item (item (4)) concerning NUREG-1021 was of high importance, because it is stated as such on the very first page of OLMC-500, under item B, "If there is disagreement between this manual chapter and [NUREG-1021] ES-502, ES-502 will provide the acceptable practice." I also wish to stress that the purpose of any informal review is to (1) address any contentions made by the requester of the review, and then to (2) conduct a re-grade to determine if the license should be granted or denied (NUREG-1021 ES-502 D.2b, OLMC-500 E.1.i). As I stated earlier when answering question number 6, and in accordance with NUREG-1021 ES-303 D.2.b, in order to conduct a rigorous re-grade, all errors made by

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<sup>25</sup> Exhibit CCS-030 at 8.

<sup>26</sup> *Id.* at 8-9.

<sup>27</sup> Exhibit CCS-005A at ES-502, p. 4.

Ms. Smith during her 2012 dynamic simulator examination had to be considered. This is because each error affects one (or more) rating factor(s) and non-contested errors can affect the rating factor(s) impacted by errors that are contested, and that, simply put, all errors must be considered when determining final rating factor and competency scores. Given the fact that the dynamic simulator operating test is graded in this way, I disagree with Ms. Smith's view that the review panel should not have reviewed non-contested errors.

Prior to reviewing the non-contested errors, the panel did review all of Ms. Smith's grading contentions contained in her informal review request. On some occasions, the panel arrived at different results than the original grading. In three cases, the panel saw merit in Ms. Smith's contentions, and the original errors documented by Region II were revised to "non-errors" with no impact on any rating factors. In some cases, the panel identified additional errors and affected rating factors beyond what Region II identified. Given that the panel often times arrived at different results regarding the errors contested by Ms. Smith, the panel decided to review how her non-contested errors were graded, to ensure that the entire operating examination was properly graded. There certainly was the possibility that the panel could determine that one (or more) of the non-contested errors was actually a "non-error" or was assigned to an improper rating factor (or factors). This outcome, which would have likely worked to Ms. Smith's advantage, however, did not occur. Instead, as a result of reviewing the errors not contested by Ms. Smith, the panel agreed with Region II's grading of these errors, with one exception, namely, that Ms. Smith's failure to close a pressurizer PORV during scenario 7, event 5, constituted a missed, previously unidentified critical task. This missed, previously unidentified critical task did contribute to the panel's determination that Ms. Smith did not pass her 2012 dynamic simulator examination, and the panel's determination that her application for a license be denied.

Given the above (refer to the comments regarding competency 3 and the revised grade sheet in my answer to question 8 above), I do agree with Ms. Smith that if the panel had not

reviewed items not contested by Ms. Smith in her request for an informal review, then the panel would not have sustained her failure. But as explained above and in accordance with NUREG-1021, in order to conduct a rigorous re-grade, all errors made by Ms. Smith had to be considered. In conducting the panel review, the panel needed to ensure that all aspects of Ms. Smith's performance during her 2012 dynamic simulator examination were accurately reflected by the panel's re-grade. By contending that the review panel should have only reviewed items contested by her in her informal review request, Ms. Smith appears to be stating that the panel should have ignored relevant information related to her examination and her performance (re: the critical nature of closing a pressurizer PORV and stopping a loss of reactor coolant). Instead, Ms. Smith appears to be stating that the panel should have limited their review as suggested by Ms. Smith (i.e., which events she chose to contest), which would have introduced bias into the panel review process.

With regard to Ms. Smith's claim that the final letter sent to her did not respond to all of her contentions contained in her informal review request (contention (5)), did not include a final grade sheet (contention (6)), and was contrary to OLMC-500, she is correct in all three instances. In hindsight, this information should have been included in the NRC's letter back to her. However, I disagree with Ms. Smith's associated contentions that the NRC was "hiding something" and that Ms. Smith received no documentation of how the panel assessed her informal review request. I believe that John McHale, Chief, IOLB, may have additional insights into this matter, but what I do know is that the appeal panel report was 36 pages, and that the panel results had to be added to another report prepared by Region II, which addressed her contentions concerning examiner bias and the waiver process. So I believe that for the sake of brevity and to streamline efforts in getting a letter back to Ms. Smith, it was decided to only send Ms. Smith the section of the panel report which justified her examination failure (i.e., all discussions regarding competency area 3, "Control Board Operations"). So, Ms. Smith did

receive some information in the letter back to her, namely, that information which formed the basis for the panel's determination that she be denied a license.

Q.12. Are you familiar with Ms. Smith's current assertions concerning how her performance was graded for specific scenario events?

A.12. Yes. Ms. Smith presented grading contentions for specific scenario events in her Statements of Position (SOP) numbers 4-12.

Q.13. Can you please respond to these contentions?

A.13. Yes. But in regard to her assertions associated with SOPs 4-6, these SOPs involve errors documented originally by Region II, but which were subsequently determined to be (and changed to) "non errors" by the review panel. As such, I will be brief, and state that any information contained in SOPs 4-6 would not affect in any way the competency and rating factor scores determined by the review panel, nor would SOPs 4-6 change the panel's determination that Ms. Smith did not pass her 2012 dynamic simulator examination, since SOPs 4-6 involve panel-determined "non-errors."

With regard to SOP number 7, Ms. Smith made no arguments and provided no information in her testimony which would change how her performance during this event (S3, E5, EHC Pump Trip) was graded by the review panel. While it is true that Ms. Smith promptly directed the correct action to start the standby EHC pump, the information she provided in SOP number 7 still indicates that she believed during this event that the standby EHC pump should have automatically started as indicated by answering "yes" to a direct question by the examiner, and in directing that the automatic start feature of the standby pump be investigated. She also provided no information as to what EHC pressure was when she directed starting the standby pump, nor does she provide any corroborating evidence that the EHC low pressure alarm actually occurred (ALB20 D05). Additionally, the information provided Ms. Smith does not negate the fact that she did not involve members of her crew in her (incorrect) determination that the standby EHC pump should have started.

I would also like to respond to two other specific statements made by Ms. Smith in SOP number 7: (1) that the examiner's follow-up questions were inadequate, and (2) that somehow Ms. Smith is being improperly graded on this event due to the use of criteria not listed on the NRC D-2 forms for this event. First, the examiner's follow up questions ("Did the standby [pump] start? Should it have?") were simple, direct, and demonstrated that she had misdiagnosed an aspect of this event. Secondly, the NRC D-2 forms contain grading criteria based upon the proper performance by all the members of a crew, and are to be used as a guide when evaluating examinees. The NRC D-2 forms do not contain (nor could they contain) criteria for all the possible performance errors an examinee or a crew could make. In effect, in SOP number 7, Ms. Smith is asking anyone involved in this proceeding to ignore her incorrect diagnosis (and not involving her crew) simply because it wasn't listed on a NRC D-2 Form. This is contrary to NUREG-1021 ES-302 D.3.m and ES-303 D.1.a and c, which require examiners to document and evaluate every action, response, note, or comment that may constitute a performance deficiency.

With regard to SOP number 8, I do not agree with Ms. Smith's arguments in her testimony that her incorrect performance during this event was assigned to the wrong rating factor. Ms. Smith personally checked the difference between average reactor coolant system temperature and reference temperature and then incorrectly determined that control rods should be inserted (she "swapped" the two temperatures when subtracting them); this is consistent with an error for RF 1.d "Interpretation/Diagnosis—Diagnose." Additionally, her reactor operator had earlier made the same mistake, which also contributed to Ms. Smith directing that control rods be inserted, this is consistent with an error for RF 5.d, "Directing Operations—Monitor Crew Activities." With regard to how the panel graded Ms. Smith, however, neither the error that was assigned to RF 1.d, nor an additional error to RF 5.d affected the final outcome, as Ms. Smith would still receive passing scores in competency areas 1 and 5.

With regard to SOP number 9, Ms. Smith made no arguments and provided no information in her testimony which would change how her performance during this event (S7, E3, failed temperature element to the letdown heat exchanger (TE-0130)) was graded by the review panel. Regardless of Ms. Smith's position on the crew (OAC), the contents of the NRC D-2 forms for this event, or which activities the SS assigned to which crew members (e.g., monitor reactivity or respond to the TE-0130 failure), Ms. Smith did not refute: (1) that she verbally communicated to the SS that "the only thing we can do is call C&T [Clearance and Tagging] to get the TE [temperature element] fixed," instead of recommending taking manual control on TIC-130; and (2) when directed by the SS to take manual control on TIC-130, Ms. Smith incorrectly depressed the "up" arrow. For item (1), this still indicates an error which should be assigned to RF 3.b, "Control Board Operations—Understanding." As an additional comment, in Ms. Smith's request for an informal review, she stated that she provided this communication to the SS to indicate that there was "no associated AOP [abnormal operating procedure] entry" and that this statement did not indicate that there was nothing we could do. This does not appear to be correct, as there is an associated AOP for the TE-0130 failure, namely Vogtle Electric generating Plant Procedure 18022-C, "Loss of Auxiliary Component Cooling Water." For item (2), where Ms. Smith incorrectly depressed the "up" arrow (instead of correctly depressing the "down" arrow), this still indicates an error which should be assigned to RF 3.c, "Control Board Operations—Manual Control." Contrary to Ms. Smith's testimony, this error should not be coded to RF 3.a, "Control Board Operations—Locate & Manipulate," like her error in closing the pressurizer PORV. In contrast, the manual operation of TIC-130 is clearly associated with taking manual control of an automatic function, since letdown temperature is normally automatically controlled by TIC-130, so incorrect operation of TIC-130 should be assigned to RF 3.c. Pressurizer pressure, however, is not normally automatically controlled by the pressurizer PORVs, so incorrect operation of a pressurizer PORV should be assigned to a different RF, namely RF 3.a.

In response to Ms. Smith's claim, even though she may have been directed to monitor reactivity, that does not mean she is no longer accountable for incorrect actions (or lack of actions, such as recommending manual control) made by her crew. In particular, NUREG-1021, Appendix E, item E.4 states, in part, "If you recognize, but fail to correct, an erroneous decision, response, answer, analysis, action, or interpretation made by the operating team or crew, the examiner may conclude that you agree with the incorrect item."<sup>28</sup>

With regard to SOP number 10, Ms. Smith made no arguments and provided no information in her testimony which would change how her performance during this event (S6, E4, failed pressurizer level channel (LT-459)) was graded by the review panel. Although it appears that Ms. Smith, for the most part, directed the correct actions, her testimony did not specifically dispute the findings of the informal review panel. In particular and as documented in the informal review panel report, during this event Ms. Smith did not understand why FCV-121 went closed when FIC-121 was returned to automatic. This was documented by the examiner via a post scenario follow-up question:<sup>29</sup> "Was there a problem with FIC-121?" Ms. Smith's answer was: "It was closing and should not have closed since level was on program." This remains an error, and the panel appropriately assigned this error to RF 1.c, "Interpretation/Diagnosis—Understanding." With regard to event timing, I still agree with the findings of the review panel, in that the timing was reasonable, given that the next event (a failure of PT-508) occurred approximately 20 minutes after the failure of LT-459. I also did not read anything in Ms. Smith's testimony that would alter my view that her direction to place FIC-121 back to automatic was poorly timed, given that her crew had only just begun to address the PT-508 failure, and that this poor timing was indicative of an error in RF5.b, "Directing Operations--Oversight." While I understand the NUREG-1021 Appendix D guidance that Ms. Smith refers to about having too short of a time between events, 20 minutes to address a single

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<sup>28</sup> Exhibit CCS-005B at Appendix E, p. 5.

<sup>29</sup> Exhibit NRC-055 at 87.

failure is reasonable, and given the limited resources of the examiners, practical, since each simulator scenario on an NRC exam should last about 2 hours (S6 for Ms. Smith and her crew lasted approximately 2.5 hours). In addition, it is not uncommon on NRC exams to have some amount of overlap of scenario events, as this tests the decision making and prioritization abilities of a crew.

With regard to SOP number 11, Ms. Smith did not supply information in her testimony that would change how her performance during this event (S3, E4, failed pressurizer pressure channel (PT-455)) was graded by the review panel. Although in her testimony Ms. Smith provided information which appeared to indicate that she did during this event understand how the pressurizer heaters functioned, this information, in my view, does not supersede a statement she made during this event, “I do not think the heaters are operating properly” and her confusing direction provided to the OATC during this event.<sup>30</sup> In addition, the information provided by Ms. Smith in her testimony would not alter the panel’s determination that during this event, Ms. Smith committed an error in procedure use (assigned to RF 2.c, “Procedures—Correct Use”) and committed an error by not ensuring that the OATC carried out her directive to place all pressurizer heaters in automatic (assigned to RF 5.d, “Direct Shift Operations—Monitor Crew Activities”). For more details refer to the informal review panel report pages 12-14,<sup>31</sup> but in summary, there was a correct way via the procedure in effect (Vogtle Electric Generating Plant Procedure 18001-C, “Systems Instrumentation Malfunction”) to have returned the pressurizer heaters to automatic and remain within the prescribed pressure band. Concerning the information Ms. Smith provided in her testimony associated with “Operator V,” I could not verify whether this information was applicable (different operator, different simulator event) to Ms. Smith’s response to this event. In particular, although Operator V does appear to have left the

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<sup>30</sup> Exhibit NRC-056.

<sup>31</sup> Exhibit CCS-037.

hand switch for TV-129 in the divert position, it is not clear if Operator V was given different direction by the SS.

With regard to SOP number 12, Ms. Smith made no contentions and provided no information which would change how her performance during this event (S7, E5, failed pressurizer pressure instrument (PT-456) with failed auto closure of PORV block valve) was graded by the review panel. While it is true that Ms. Smith did not originally contest this error in her request for an informal review, I take issue with other items she presents in SOP number 12. Specifically:

(a) The review team did not change the action to close the pressurizer PORV to a critical task in order to generate enough points/comments to sustain Ms. Smith's examination failure. In fact, the consideration that closing the PORV was a critical task was first made during the face to face panel meeting in Atlanta, long before any new grades for Ms. Smith had been determined.<sup>32</sup> I have further discussions regarding how the panel remained unbiased in my answers to questions 6, 7, 9, and 11, but let me just re-state that in order to conduct a rigorous re-grade of her performance during her 2012 dynamic simulator examination per NUREG-1021 ES-303, all errors made by Ms. Smith during her 2012 dynamic simulator examination had to be considered. Given the way the panel had already reconsidered in many instances the grading Ms. Smith received by Region II on items which she contested (including classifying some of the original errors documented by Region II as "non errors" in Ms. Smith's favor), in the pursuit of an accurate re-grade and per NUREG-1021, the panel also reviewed errors which Ms. Smith did not contest.

(b) I do not lend any particular importance to the fact that Ms. Smith was withdrawing control rods when this event started. She was withdrawing control rods at this point in time in response to the very first event in this scenario, a power increase, which was initiated approximately 46 minutes earlier and completed more than 30 minutes earlier. Performing a

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<sup>32</sup> Exhibit CCS-065; see *also* portions of my answers to Questions 6 and 7 above.

routine rod withdrawal, in no way, lessens her responsibility to competently address the loss of a fission product barrier. It is simply not practical, possible, or appropriate for an NRC examination team to wait for equilibrium conditions to be established, following a power change, prior to moving on to the next event (NRC examination scenarios are designed to be approximately 2 hours in length). Additionally, to be a minimally competent licensed operator, it is expected that the applicant is proficient at multi-tasking.

(c) It is true that the original NRC D-2 Forms did not identify closing the pressurizer PORV as a critical task, and that the critical nature was only determined after by the review panel. This did not occur as Ms. Smith claims to justify examination failure, but instead occurred as the result of the panel reviewing all aspects of Ms. Smith's performance, including the content of the testing materials used (i.e., the simulator scenario NRC D-2 Forms). It seems that Ms. Smith appears to be stating that the panel should have ignored relevant information discovered during their review, i.e., that closing the pressurizer PORV and stopping a loss of reactor coolant was in fact a critical task, which is simply inconsistent with conducting an accurate re-grade of Ms Smith. In addition, I would like to state that making changes to an NRC examination even after the examination has been administered, given that new information is discovered, is entirely consistent with NUREG-1021 via two processes: (1) the post-examination comment process whereby facility licensee's can request examination changes (as described in ES-402 Section E, ES-403 (various sections), and ES-501 (various sections)); and (2) the process for informal (administrative) reviews and hearings (per ES-502). In fact, during the course of this proceeding, it is possible that changes to Ms. Smith's examination could be made, although I don't believe any information provided thus far by Ms. Smith supports any such changes.

(d) I disagree with Ms. Smith's arguments that closing the pressurizer PORV during this event somehow should not be considered a previously unidentified critical task per NUREG-1021 Appendix D criteria. The only Appendix D criterion that was not met was that closing the

PORV was not correctly labeled as a critical task on the original NRC D-2 Forms. As presented above, this was corrected by the review panel, since all other Appendix D criteria for closing the pressurizer PORV were met, including: (1) safety significance as a degraded fission product barrier (closing the PORV would prevent a reactor trip and safety injection actuation); (2) cuing (including alarms for high pressurizer pressure from the failed instrument, PORV discharge high temperature, PORV open, lowering pressurizer pressure from valid instruments, and indications for an open PORV and its block valve); (3) measurable performance indicators (taking the PORV hand switch or the PORV block valve hand switch to “closed”); and (4) performance feedback (examinee verifying success via PORV or block valve position indication, pressurizer pressure stabilizing, alarms clearing). In addition to the above, closing a pressurizer PORV has been labeled by the NRC as a critical task for other dynamic simulator scenario examinations, and I located one past precedent, an examination given at the Salem Nuclear generating Station in 2010.<sup>33</sup>

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<sup>33</sup> Exhibit NRC-057 at 256, 263.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
CHARLISSA C. SMITH ) Docket No. 55-23694-SP  
 )  
(Denial of Senior Reactor )  
Operator License Application) )  
 )

AFFIDAVIT OF DONALD E. JACKSON CONCERNING THE CLAIM BY CHARLISSA C. SMITH  
THAT THE NRC IMPROPERLY DENIED HER SENIOR REACTOR OPERATOR LICENSE  
APPLICATION

I, Donald Jackson, do hereby declare under penalty of perjury that my statements in  
the foregoing testimony and my statement of professional qualifications are true and correct to  
the best of my knowledge and belief.

**Executed in Accordance with 10 C.F.R. §  
2.304(d)**

Donald Jackson  
Chief, Operations Branch  
Division of Reactor Safety  
U.S. Nuclear Regulatory Commission, Region I  
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Executed in Rockville, Maryland  
this 31st day of May, 2013