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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 MICHAEL K. MEEKS 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 Michael K. Meeks. I am employed as a Senior Operations Engineer in Operations Branch 1, Division of Reactor Safety (DRS), Region II Office of the U.S. Nuclear Regulatory Commission (NRC), in Atlanta, Georgia. A statement of my professional qualifications is attached hereto, as Exhibit NRC-030.

**Background**

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

A.2. My principal responsibilities include the development, preparation, administration, and grading of initial licensed operator examinations in accordance with the requirements of

NUREG-1021, "Operator Licensing Examination Standards For Power Reactors,"<sup>1</sup> and the other regulations, standards, and guidance associated with NRC's operator licensing program. My duties also include responsibilities associated with the NRC's light-water reactor inspection program. I have led and participated on region-based teams conducting extensive evaluations and inspections of the licensed operator requalification programs at the Region II nuclear plants.

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

A.3. Ms. Smith first applied for a SRO license in 2011. I was assigned by Region II as one of the examiners for this 2011 Vogtle exam, along with Mr. P. Capehart as Chief Examiner and Mr. J. Hopkins as the third assigned examiner. Mr. Capehart is a senior operations engineer in Region II, and Mr. Hopkins was a senior reactor instructor at the NRC's Technical Training Center (TTC) located in Chattanooga, TN. As discussed below (in A.10), Mr. Capehart assigned Mr. Hopkins as Ms. Smith's examiner of record for the 2011 exam. Please note that Mr. Hopkins is now retired from the NRC.<sup>2</sup>

Before the 2011 Vogtle exam was administered I received permission from my supervisor, the Operations Branch chief, Mr. M. Widmann, to serve as the Chief Examiner "under instruction" (*i.e.*, in a training or qualification status) for the next scheduled Vogtle initial licensed operator exam in 2012. Examiners qualifying as Chief Examiner must successfully lead at least one initial examination team (under instruction), to include: (1) coordinating all the administrative activities involved in preparing for an initial examination assignment; (2) coordinating all on-site activities with the examination team members, the resident inspectors, and the facility contact; and (3) coordinating all the administrative activities associated with documenting and issuing the examination results. The "official" Chief Examiner of record assigned to the 2012 exam was Mr. M. Bates. Accordingly, during the 2012 Vogtle exam, I

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<sup>1</sup> Exhibit CCS-005A.

<sup>2</sup> Exhibit NRC-013 at 1.

performed the duties of the Chief Examiner under the supervision, guidance, and direction of Mr. Bates, as well as serving as a specific examiner of record for approximately one-third of the applicants in the class. Mr. B. Caballero was initially assigned as the third examiner on the 2012 Vogtle exam, but following a schedule change (discussed below), Mr. Caballero was replaced on the exam team with Mr. P. Capehart as the third examiner. In June, 2012, following the completion of the Vogtle exam, I was qualified as a Chief Examiner by the Regional Administrator of Region II.

**Discussion - Waiver**

Q.5. What is the purpose of this portion of your testimony?

A.5. Ms. Smith claims that the NRC improperly denied her 2012 SRO license application. The purpose of this portion of my testimony is to demonstrate that the Staff did properly discharge its duty in denying Ms. Smith's SRO license application, first by providing a chronological record of the issues associated with Ms. Smith's waiver argument, and then by responding to specific issues or contentions that Ms. Smith provided in her Prefiled Testimony on Statements of Position.<sup>3</sup>

Q.6. What procedures or policies does Region II follow for issuing operating test waivers?

A.6. Aside from the requirements of NUREG-1021, especially sections ES-201, ES-202, and ES-204, Region II does not have any further regional guidance for issuing waivers associated with initial licensed operator examinations.

Q.7. What are the requirements of NUREG-1021 section ES-201 concerning the issuance or denial of waivers associated with initial licensed operator exams?

A.7. ES-201 provides a broad overview of the sequence of events that are required to occur during the initial license exam process. The first specific requirement associated with waivers is in section C.2.c. of ES-201, which contains a bulleted list of items that are required to

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<sup>3</sup> Exhibit CCS-076.

be discussed during a phone call between the NRC's regional office (normally the assigned Chief Examiner) and the facility licensee's principal point-of-contact for examination development.<sup>4</sup> This phone call is often referred to as the "120-day" call, and results in the issuance of the "corporate notification letter," a sample of which may be seen as Attachment 4 of ES-201.<sup>5</sup> The final bulleted item states that the NRC will discuss:

the requirements (refer to 10 CFR 55.31) and guidelines (refer to ES-202) for submitting the license applications.<sup>6</sup>

Along with a specific discussion of the license applications (NRC Form 398s), as part of this discussion, most Chief Examiners in Region II will discuss any potential waivers with the facility licensee. The reason for conducting a waiver discussion at the very beginning of the formal exam development process is that any waiver request that is more than a "routine waiver" that can be approved by the Region (which will be discussed later) will require coordination between the Region and the NRC's Office of Nuclear Reactor Regulation (NRR) Operator Licensing and Training Branch (IOLB)—oftentimes referred to as the "program office"—via the "Operator Licensing Report on Interaction (ROI)" process. So, during a typical "120-day" call, the Chief Examiner would ask the facility licensee to determine if any non-routine waivers may be required; if so, to let the Region know as soon as possible (before the preliminary applications are submitted, if possible) to help facilitate the ROI process, if a ROI is required.

Section ES-201 briefly discusses preliminary applications in section C.2.g, which is quoted here:

Upon receiving the preliminary license applications, approximately 30 days before the examination date, the regional office shall review the applications in accordance with ES-202. In addition, the regional office shall evaluate any waiver requests in accordance with ES-204 to determine if the applicants meet the eligibility criteria specified in 10 CFR 55.31.<sup>7</sup>

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<sup>4</sup> Exhibit CCS-005A at ES-201, pp. 6-7.

<sup>5</sup> *Id.* at ES-201, pp. 22-23.

<sup>6</sup> *Id.* at ES-201, p. 7.

<sup>7</sup> *Id.* at ES-201, p. 8.

These “preliminary license applications” are unsigned copies of the NRC Form 398 with any supporting documentation, as needed for the license application; as well as copies of the NRC Form 396 with any supporting medical information, as may be required. As discussed below, the reason for requesting unsigned, preliminary copies of the license applications 30 days before the exam begins is to allow enough time for the NRC to review the applications, evaluate any waiver requests, and make any needed corrections. Based on my experience, it is rare for a facility licensee to submit 100% correct preliminary license applications; for example, typical deficiencies could include minor typographical errors, providing incomplete forms, or providing inadequate supporting documentation.

Once any corrections have been made, Form ES-201-1 task number 10 states “Final license applications due and Form ES-201-4 prepared (C.1.i; C.2.i; ES-202)” 14 days before exam administration begins.<sup>8</sup> When these final, signed applications are received, the Chief Examiner will review the applications against the preliminary versions in order to ensure the official final applications are correct and complete before signing the application, as required.

Q.8. What are the requirements of NUREG-1021 section ES-202 concerning the issuance or denial of waivers associated with initial licensed operator exams?

A.8. I would like to first refer to section C.1.a of ES-202, which contains the following discussion concerning applicants who are re-applying following a previous license denial, which was the case for Ms. Smith before the 2012 exam:

If the applicant is reapplying following a license denial, 10 CFR 55.35 applies, and the applicant must complete and submit a new Form 398; however, as discussed below, a new Form 396 may not be required. The applicant may file the second application 2 months after the date of the first final denial, a third application 6 months after the date of the second final denial, and successive applications 2 years after the date of each subsequent denial. Each new Form 398 shall describe the extent of the applicant’s additional training since the denial and shall include a certification by the facility licensee that the applicant is ready for reexamination.

If the applicant previously passed either the written examination or the operating test,

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<sup>8</sup> *Id.* at ES-201, p. 25.

he or she may request a waiver of that portion of the licensing examination. Such waivers are limited to the first re-application and must be requested within 1 year of the date on which the applicant completed the original examination. The NRC staff will also consider written examination waivers for ROs in good standing who prefer to take only the 25-question, SRO portion of the written examination when they apply to upgrade their licenses. Refer to ES-204 for a more detailed discussion of these and other waiver criteria.<sup>9</sup>

Note that the above section of the NUREG limits an operating test waiver request to the first re-application, and further limits that this first re-application must occur within one year of the original examination. Based on the scheduling of the 2011 and the 2012 Vogtle exams, all of the re-take applicants (including Ms. Smith) met these timing requirements. In my opinion, implicit in the rationale behind the limitation of a waiver request to the first re-application is the presumption that it is prudent to re-examine/re-evaluate an individual applicant, who has failed a license exam more than twice, on all phases of future examinations (*i.e.*, full operating test and written exam), irrespective of that applicant's performance on the previous examinations.

Section C.1.b of ES-202 continues the discussion of the license application process as follows:

Each new applicant (except those applying for an LSRO license or an SRO upgrade license at the same facility) must satisfactorily complete the NRC's generic fundamentals examination (GFE) section of the written operator licensing examination for the applicable reactor type (boiling- or pressurized-water) within 24 months before the date of application. Applicants who passed a GFE on the same reactor type more than 24 months before the date of application may request a waiver of the GFE in accordance with ES-204. Refer to ES-205 for more information on the GFE program.<sup>10</sup>

I have included the above reference in this discussion for the sake of technical accuracy and completeness, in that all of the re-take applicants for the 2012 Vogtle exam, including Ms. Smith, did not meet this 24-month GFE requirement. However, all of the re-take applicants for the 2012 exam, including Ms. Smith, requested a routine waiver of this requirement (discussed further below). The waiver request for the GFE is completely separate from a waiver request for

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<sup>9</sup> *Id.* at ES-202, pp. 3-4.

<sup>10</sup> *Id.* at ES-202, p. 5.

an operating exam, and as referenced below there are specific requirements in ES-204 to be considered for GFE waiver requests.

Section C.1.e of ES-202 amplifies the rationale behind the submission of preliminary applications that was discussed in section ES-201: (ref. NUREG-1021 ES-202, section C.1.e, p. 5 of 13)

As noted in ES-201, the facility licensee should submit preliminary, uncertified license applications and medical certifications for review by the NRC's regional office at least 30 days before the examination date. This will permit the NRC staff to make preliminary eligibility determinations, process the medical certifications, evaluate any waivers that might be appropriate, and obtain additional information, if necessary, while allowing the facility licensee to finish training the applicants before the certified applications are due.<sup>11</sup>

Finally, ES-202 section C.1.f. discusses the important requirement that a senior management representative at the facility licensee must agree with, and ultimately certify, an individual's final license application:

The facility licensee's senior management representative on site (i.e., an authorized representative of the facility licensee, such as the plant manager or site vice-president) must certify when an applicant has completed all of the facility licensee's requirements and commitments for the desired license level (i.e., experience, control manipulations, training, and medical). Such certification involves placing a check in Item 19.b of NRC Form 398, signing the form, and submitting it to the NRC's regional office at least 14 days before the examination date. The senior management representative must also sign Item B, "Certification," on NRC Form 396.

This section of the NUREG demonstrates that the submission and certification of the individual's license application is not completely up to the individual; rather, both the individual license applicant and the facility licensee must agree to the final version of the license application to be submitted to the NRC. This point is further re-emphasized by section C.1.h:

The facility licensee is expected to inform the NRC's regional office in writing if it wishes to withdraw an application before the licensing process is complete.<sup>12</sup>

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<sup>11</sup> *Id.* at ES-202, pp. 5-6.

<sup>12</sup> *Id.* at ES-202, p. 6.

Therefore, irrespective of the intent or desire of the individual applicant, the facility licensee may withdraw an individual's license application by formally notifying the NRC's regional office in writing.

Section C.2.a of ES-202 continues to further delineate the regional office's responsibilities in completing timely reviews of the preliminary applications:

The NRC's regional office shall review preliminary applications as soon as possible after they are received. In that way, the regional office can process the medical certifications, evaluate and resolve any waiver requests in accordance with ES-204, and obtain from the facility licensee any additional information that might be necessary in order to support the final eligibility determinations.<sup>13</sup>

Furthermore, section C.2.b. of ES-202 provides additional requirements for individual license applicants who are applying for a waiver, or reapplying after a previous examination failure:

If an applicant checks "no" in response to Items 12.a and 12.b, provides information that is not required, or indicates that exceptions or waivers have been taken (in Item 17 on NRC Form 398), the regional office shall review the application against the specific eligibility requirements and commitments applicable to the facility licensee and shall refer any eligibility issues (e.g., any failure to meet the minimum guidelines established by the NNAB or RG 1.8, Revision 3) and questions to the NRR operator licensing program office for resolution.

If the applicant is reapplying after a previous examination failure and license denial, the regional office shall evaluate the applicant's additional training to determine if the facility licensee made a reasonable effort to remediate the deficiencies that caused the applicant to fail the previous examination.<sup>14</sup>

Finally, section C.2.c of ES-202 provides direction for the disposition of any actions required following the preliminary application review:

The regional office may determine (1) that the preliminary application is incomplete, (2) more information is necessary to make a waiver determination, or (3) the applicant does not meet the requirements in 10 CFR 55.31. In such instances, the regional office will note the deficiencies and request that the facility licensee supply additional information when it submits the final, certified license application (or sooner if possible).

Conversely, the regional office may determine that the preliminary application is complete, and the applicant meets the eligibility requirements or is expected to meet the requirements pending the receipt of additional information. In such instances, the regional office shall enter the applicant's name, docket number,

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at ES-202, p. 8.

and examination requirements on the “List of Applicants” in accordance with ES-201.<sup>15</sup>

Lastly, section C.2.d. of ES-202 provides the direction for the disposition of the final, signed applications:

Upon receiving the final, certified license application, the reviewer shall evaluate any new information to ensure that the eligibility criteria are satisfied. If so, the reviewer shall check the “meets requirements” block at the bottom of NRC Form 398 and shall sign and date the form. If necessary, the reviewer shall add the applicant’s name and other data to the “List of Applicants” in accordance with ES-201. The reviewer shall also ensure that the list accurately reflects any examination waivers that may have been granted in accordance with ES-204.<sup>16</sup>

What I have shown with the ES-202 references are the specific requirements associated with the license applications that cross-link into the requirements of ES-204 specifically regarding the waiver process.

Q.9. What are the requirements of NUREG-1021 section ES-204 concerning the issuance or denial of waivers associated with initial licensed operator exams?

A.9. Please note that the entire section of ES-204 is devoted to processing waiver requests, and may need to be consulted to determine any additional details beyond those that I provide here, which are focused on the so-called “routine” operating test and GFE waiver process.

The Background section of ES-204 references 10 CFR 55.35(b), “Re-Applications,” which is appropriate to cite as follows:

(b) An applicant who has passed either the written examination or operating test and failed the other may request in a new application on Form NRC-398 to be excused from re-examination on the portions of the examination or test which the applicant has passed. The Commission may in its discretion grant the request, if it determines that sufficient justification is presented.

Note that the regulation is conditional regarding the request (“An applicant who has passed either the written examination or operating test and failed the other may request [emphasis

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

added] ... to be excused from re-examination on the portions of the examination or test which the applicant has passed”), and conditional regarding whether the request will be approved (“The Commission may [emphasis added] in its discretion grant the request, if [emphasis added] it determines that sufficient justification is presented.”) Therefore, a waiver is neither automatically requested nor automatically granted.

The Background section of ES-204 further describes the basis of the waiver request process:

In accordance with Title 10, Section 55.35, “Re-applications,” of the *Code of Federal Regulations* (10 CFR 55.35), and 10 CFR 55.47, “Waiver of Examination and Test Requirements,” an applicant may request to be excused from a written examination or an operating test. The NRC may waive any or all of the examination requirements if it determines that the applicant has presented sufficient justification. In an effort to expedite the resolution of applicant requests, the Office of Nuclear Reactor Regulation (NRR) has delegated the authority to grant routine waivers of certain operator licensing requirements to the NRC regional offices.<sup>17</sup>

The next section of ES-204 continues to specify that waiver requests are not the responsibility of the individual applicant only; rather, both the individual applicant and the facility licensee management must both agree on the waiver. Under ES-204 section C.1.a, “Responsibilities: Applicant/Facility Licensee” we read the following:

An applicant may request a waiver of a license requirement by checking the appropriate block in Item 4.f on NRC Form 398, “Personal Qualifications Statement: Licensee.” The applicant should also explain the basis for requesting the waiver in Item 17, “Comments.”<sup>18</sup>

The complementary aspect of the facility licensee’s approval is specified in the next paragraph:

The facility licensee’s senior management representative on site must certify the final license application, thereby substantiating the basis for the applicant’s waiver request.<sup>19</sup> [emphasis added]

To restate the point again, the facility licensee and the individual license applicant must both agree on the submitted waiver request.

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<sup>17</sup> *Id.* at ES-204, p. 1.

<sup>18</sup> *Id.* at ES-204, p. 1.

<sup>19</sup> *Id.*

Section D.1 of ES-204 of the NUREG lists the various cases of “routine waivers” where approval authority has been delegated from NRR to the regional offices. The first listed instance of a “routine waiver” is for waiving specific portions of the exam that had been previously passed, and re-states the first re-take exam/within one year requirement of ES-202:

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. This is only applicable for the first retake examination and only if it takes place within 1 year of the date on which the original examination was completed.<sup>20</sup>

Section D.1 of ES-204 also specifies that the regional office may handle the GFE requirements of the license application as a “routine” waiver without needing to obtain approval from NRR:

If an applicant passed the GFE more than 24 months before the date of license application, the regional office may waive the requirement to pass another GFE if the applicant meets any one of the following criteria (as explained in Item 17 on NRC Form 398):

- (1) The applicant terminated an RO or SRO license at a comparable (boiling- or pressurized-water) facility less than 24 months before the date of application and was up-to-date in the requalification program at the time of license termination.
- (2) Within the 24 months preceding the date of application, the applicant completed self-study or classroom instruction, as deemed necessary by the facility licensee, and passed a prior GFE that was randomly selected from among those contained on the NRC’s GFE Web page and administered, under controlled conditions, by the facility licensee.
- (3) Within the 24 months preceding the date of application, the applicant completed self-study or classroom instruction, as deemed necessary by the facility licensee, and passed a GFE prepared by the facility licensee in accordance with Section D of ES-205 and administered under controlled conditions.<sup>21</sup>

Again, to be clear: the evaluation of an operating test waiver request involves a separate evaluation from an evaluation of a GFE waiver request. I am including the above section of the

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<sup>20</sup> *Id.* at ES-204, p. 3.

<sup>21</sup> *Id.* at ES-204, p. 6.

NUREG only because Ms. Smith was granted a GFE waiver by Region II before the 2012 exam, based upon completion of method (2) above.

Once these “routine” waiver requests are received as part of the preliminary applications, how is the regional office required to respond? Section C.2 of ES-204 applies, and needs to be included in my testimony in its entirety:

- a. 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.
- b. The regional office may grant routine waivers identified in Section D.1 without first obtaining concurrence from the NRR operator licensing program office.

However, waivers of experience requirements, completion of training, or completion of examinations not specifically identified in Section D.1 must be approved by NRR. The regional office should evaluate the waiver request and forward its approval recommendation to the NRR operator licensing program office for concurrence.

The region does not require written concurrence from NRR to deny an applicant’s waiver request, but it should discuss its decision with the operator licensing program office before informing the applicant; formal concurrence may be desirable in some cases.

- c. If additional information is required to reach a decision on a waiver request, the regional office shall generally request the necessary information from the facility licensee in accordance with ES-202.
- d. Upon deciding to grant or deny a waiver, the regional office shall promptly notify the applicant in writing concerning the disposition of the request, and provide an explanation for the denial. If time is too short to notify the applicant in writing before the examination date, the regional office shall notify the facility training representative by telephone concerning the disposition of the waiver request and provide a followup written response to the applicant. The regional office shall include the NRR operator licensing program office on distribution for all waiver disposition letters.
- e. The region shall document the disposition of every waiver request, whether granted or denied, by completing the block designated “For NRC Use” on the applicant’s NRC Form 398 and by entering the data in the operator licensing tracking system (OLTS).
- f. NRC examiners assigned to a particular examination will be notified of approved waivers by the appropriate regional supervisor and by an entry on the list of applicants (Form ES-201-4).
- g. If the applicant is determined to be ineligible to take the licensing examination,

the regional office shall issue a denial letter in accordance with ES-202.<sup>22</sup>

Now that I have essentially read the applicable references into the record, so to speak, I would like to discuss how the Region II office applied these requirements during the 2012 Vogtle exam, and specifically regarding Ms. Smith, in the answers to further questions below.

Q.10. Did you have any input in the grading of the operating test for Ms. Smith's 2011 (first) NRC exam?

A.10. Although I was initially scheduled as the examiner-of-record for Ms. Smith, in order to remove any possible perception of a conflict of interest between Mr. Hopkins and another applicant (a former NRC employee trained, in part, by Mr. Hopkins), Mr. Capehart re-assigned Mr. Hopkins to be the examiner of record for Ms. Smith. Based on their performance during the administration of the 2011 operating test, two applicants (Ms. Smith and another applicant) stood out as the two weakest, or least competent, applicants in the class. Their performance was recognized to be well below the average, or normal, level that was displayed by the other applicants during the 2011 Vogtle exam, as well as below the average performance observed on other operating examinations.

For the typical operating test in Region II, we normally start the week by conducting simulator scenarios, and then move on to administer the JPM portion of the operating test. However, due to issues related to delays in completing the final validation of the 2011 Vogtle exam,<sup>23</sup> the JPMs were administered before the simulator scenarios. Although Ms. Smith did not fail any of the JPMs, the 2011 exam team did observe that several of her non-critical errors during the JPM portion of the exam (which we are required to document), such as mistakes in procedural usage, were also displayed during the simulator scenarios. This was an indication to the 2011 examiners that Ms. Smith might have more fundamental, or perhaps more deeply

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<sup>22</sup> *Id.* at ES-204, pp. 2-3.

<sup>23</sup> Exhibit NRC-046 at 1

rooted, performance issues underlying the various errors that we had observed during the operating test.<sup>24</sup>

After we had completed the administration of the 2011 exam, when we were helping Mr. Capehart prepare his exit meeting notes, we (the 2011 exam team) discussed the possibility that both of the two lower-performing applicants (including Ms. Smith) could potentially fail the simulator scenario portion.<sup>25</sup> I need to emphasize that it is a very rare occurrence for a single applicant to fail the simulator scenario portion of an operating test.

After returning to our offices, the 2011 exam team began to document the results of the exam on the ES-303-1 forms. During the 2011 exam, I administered administrative Job Performance Measure (JPM) “b” and in-plant JPM “i” to Ms. Smith. Although Ms. Smith successfully completed both JPMs that I had administered, she did make some non-critical errors during in-plant JPM “i.” Therefore, I submitted a draft write-up of JPM “i” to Mr. Hopkins for inclusion in the 303-1 forms that he completed for Ms. Smith.<sup>26</sup> I received a phone call from Mr. Hopkins about Ms. Smith’s performance in my office at some point late in April, 2011 (before I left Atlanta to attend G-103 training in Region I). Mr. Hopkins was completing his documentation of Ms. Smith’s ES-303-1, and was concerned that the numerical scores resulted in a pass of the simulator scenario portion of the operating test.<sup>27</sup> Mr. Hopkins reminded me of the errors Ms. Smith made during a particular simulator scenario involving the FR-H.1 (Loss of Secondary Heat Sink) emergency operating procedure (EOP), and stated his viewpoint that these were relatively serious errors that involved incorrect performance of EOPs. During this call, Mr. Hopkins asked my opinion if my supervisor, Mr. M. Widmann, would consider failing Ms. Smith on the simulator scenarios, even if the numerical scores did not reflect a failure. Please note that this approach is allowed by NUREG-1021; specifically, section ES-303 states:

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<sup>24</sup> *Id.* at 4-25 (this is the 303 documentation of Ms. Smith’s 2011 exam, reproduced in this exhibit and also available as a separate document in the hearing file).

<sup>25</sup> *Id.* at 1-3.

<sup>26</sup> *Id.* at 5, 11.

<sup>27</sup> *Id.* at 4-25.

If an applicant made an error with *serious safety consequences*, the examiner may recommend an operating test failure even if the grading instructions in Section D would normally result in a passing grade. Conversely, if an applicant made a number of errors with minimal or no safety consequences, the examiner may recommend that the applicant be granted a license even if the grading instructions in Section D would normally result in a failing grade. However, in either case, the examiner shall thoroughly justify and document the basis for the recommendation in accordance with Section D.3. Moreover, the NRC's regional office shall obtain written concurrence from the NRR operator licensing program office before completing the licensing action.<sup>28</sup>

I told Mr. Hopkins that I did not know of any Region II precedent for invoking this NUREG guidance, and provided my opinion that I did not believe that Mr. Widmann would want to pursue an operating test failure if the grading did not support it. However, I recommended that if he felt strongly about this issue, he should call and discuss it with Mr. Capehart and Mr. Widmann. Mr. Hopkins spoke directly with both Mr. Capehart and with Mr. Widmann, and discussed with both individuals the possibility of not passing Ms. Smith on the simulator scenarios, even though the competency scores did not directly support a simulator scenario failure. Mr. Hopkins ultimately decided not to pursue this approach.

After we completed our documentation for the 2011 Vogtle examination, and M. Widmann had made the final licensing decisions, three applicants out of ten were issued licenses; six applicants did not pass the written exam; and one applicant did not pass either the written exam or the operating exam.<sup>29</sup> Based on the poor pass rates, the facility licensee considered scheduling a retake examination for the individuals who had not passed before the regularly-scheduled 2012 exam in April. In order to assist with this process, the facility licensee asked Region II about the status of operating test waivers for the potential retake exam. Mr. Capehart sent me an email on Monday, May 2, 2011, when I was at the Region I office in Pennsylvania for a training class, that asked for my input on this waiver question.<sup>30</sup> I responded to Mr. Capehart with an email that I would recommend operating test waivers for the other

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<sup>28</sup> Exhibit CCS-005A at ES-303, p. 1.

<sup>29</sup> Exhibit NRC-046 at 2.

<sup>30</sup> Exhibit NRC-013 at 4.

operators mentioned in Mr. Capehart's email, but that I would not recommend an operating test waiver for Ms. Smith.<sup>31</sup> The next day, Tuesday May 3, 2011, Mr. Capehart sent an email to Mr. Widmann to inform him that the consensus recommendation of the 2011 Vogtle exam team was to recommend not granting a routine operating test waiver to Ms. Smith in the event that the facility licensee made such a request:

Malcolm [Widmann], I spoke with both Michael [Meeks] and Jay [Hopkins] about the possibility of future waiver denials. The only individual that all 3 of us are in agreement about is Carla [Smith]. Even though she passed the operating test portion, we would recommend a future waiver of this portion of the exam be denied.<sup>32</sup>

Please understand that NUREG-1021 does not provide any criteria for evaluating whether or not to grant a routine operating test waiver, neither quantitative nor qualitative. All three examiners from the 2011 exam agreed that Ms. Smith's performance, specifically on the simulator scenario portion, was poor enough to warrant additional evaluation if she were to retake an exam at a later date.<sup>33</sup> In my later testimony, I will make direct numerical comparisons between Ms. Smith's performance on the 2011 exam, the performance of the other operators who were granted a waiver from the 2011 exam, and the performance of all other operators from Region II who were granted an operating test waiver since 2005.

Q.11. Did the retake exam occur?

A.11. No, the facility licensee decided not to attempt a retake exam, and instead decided to have the re-take applicants from the 2011 exam take the already-scheduled 2012 exam. Because one applicant mentioned above from the 2011 exam had resigned from Vogtle, there were a total of six additional applicants to add to the 2012 Vogtle exam.

Q.12. Would you describe the timeline of events that occurred relating to waiver requests associated with the 2012 Vogtle exam?

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<sup>31</sup> *Id.* at 5-6.

<sup>32</sup> *Id.* at 5.

<sup>33</sup> Exhibit CCS-001 at 4-5.

A.12. At the end of the 2011 Vogtle exam operating test week, I let Mr. G. Wainwright, Vogtle's initial exam development lead, and other members of the Vogtle training staff know that I had been assigned as the Chief Examiner (under instruction) for the 2012 exam. With that assignment in mind, Mr. G. Gunn, Mr. Wainwright's supervisor, sent me an email on Tuesday, June 07, 2011, asking the NRC's opinion on operating test waivers for the 2011 class.<sup>34</sup> It is important to note that the facility licensee first identified three individuals "in which we are confident that we will request an Operating Exam waiver."<sup>35</sup> The email then lists three other names that "also passed the March 2011 Operating Exam; however, we are presently evaluating their status and are inquiring as to whether or not Region II would approve an Operating Exam waiver ...."<sup>36</sup> Ms. Smith's name is listed in this second group, showing that the facility licensee was not confident that her performance merited an operating exam waiver (otherwise, she would have been listed in the first group).

When Mr. Gunn sent this email, I was away from the regional office administering another initial license exam, and then immediately went on annual leave. Looking back at the timing of these emails, I now feel that it took me too long to respond to Mr. Gunn. In any event, before I responded, I talked with both Mr. Capehart and Mr. Widmann to ensure we (the region) gave a coordinated response to Mr. Gunn's request for input on how Region II would potentially evaluate waiver requests for the identified applicants. Based on Ms. Smith's performance on the 2011 exam, we decided to inform Vogtle that "Region II would likely deny a waiver of the operating test" for Ms. Smith.<sup>37</sup> This discussion, which included details of Ms. Smith's 2011 exam performance, took place between Mr. Widmann, Mr. Capehart, and me; Mr. Bates was not involved in this conversation. Knowing that I was not yet a qualified Chief Examiner, during our discussion Mr. Widmann stressed to me to convey to Vogtle that these were only

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<sup>34</sup> Exhibit NRC-013 at 5.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 10.

preliminary evaluations, and that our final decisions would have to be based upon an evaluation of the actual license applications and completing remedial training, in accordance with our processes in the NUREG. Mr. Widmann also told me that we were not in any way to discourage the facility licensee from submitting a waiver request for Ms. Smith—if they wanted to.

Before replying to Mr. Gunn, I also discussed our response with M. Bates, because as the Chief Examiner of record for the 2012 Vogtle exam, he needed to concur with the action I was taking. Mr. Bates and I did not discuss any details of Ms. Smith’s performance on the previous exam; rather, in much more general terms we discussed that the 2011 team had recommended to Mr. Widmann to not grant a waiver to one applicant out of six potential re-applications, that this was only a preliminary evaluation, and that our message was “we would likely deny a waiver.” Mr. Bates indicated that he would defer to the members of the 2011 exam team as to whether the applicants’ performance on the 2011 exam, combined with remedial training, warranted a waiver of the 2012 operating exam.<sup>38</sup> After these various discussions, I responded to Mr. Gunn’s email with an email on August 2, 2011, that provided Vogtle with Region II’s preliminary answers on the waiver issue. Regarding Ms. Smith, the email states:

Sorry to be so long getting back to you. I have checked with Mark Bates and Malcolm [Widmann] and have preliminary answers for you: [...]

2. For C. Smith, Region II would likely deny a waiver of the operating test portion of the exam. However, she could re-take the entire exam (both a complete operating exam and the written).<sup>39</sup>

This language (“Region II would likely deny a waiver”) was our consistent message to the facility licensee throughout the remaining process, as will be shown.

On Friday, September 9, 2011, Mr. Gunn replied to my email of August 2 and asked for additional clarification regarding the waivers.<sup>40</sup> Once again, before answering I consulted with Mr. Widmann and Mr. Bates, and informed them of my intention to essentially re-state the same

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<sup>38</sup> Exhibit NRC-043 at 3-4.

<sup>39</sup> *Id.* at 5.

<sup>40</sup> *Id.*

answer we had provided in the previous email. They concurred with this approach. I answered Mr. Gunn's email in an email on Tuesday, September 27, 2011, that stated, in part:

For C. Smith, Region II would likely deny a waiver of the operating test portion of the exam. However, she could re-take the entire exam (both a complete operating exam and the written). I had briefed regional management on the above individuals and received concurrence before I sent my earlier email; so they were "preliminary" answers insofar as we have not received/evaluated the actual applications.<sup>41</sup>

My intent with this email was to let Vogtle know that our first email, with preliminary assessments, was contingent upon our receipt and evaluation of the actual license applications—in accordance with the procedures and processes in the NUREG (as described above in my answers to questions). Mr. Gunn responded to my email soon after receipt on Tuesday, September 27, 2011, and acknowledged that he understood our position: "Thanks, I just wanted to verify that we were all on the same page."<sup>42</sup> Mr. Tucker's affidavit further confirms that he correctly understood this second email: "... and that only with submittal of actual license applications would the waiver decision be formally evaluated and determined."<sup>43</sup>

On Tuesday, October 12, 2011, Mr. Bates and I conducted the "120-day" phone call with Mr. Wainwright and Mr. T. Thompson from Vogtle. I spoke for most of the call, with Mr. Bates listening and adding additional information when necessary. During the call, we informed Vogtle that we were concerned with the large class size, which would potentially require us to conduct the exam over a three-week period. We emphasized that we would need to have additional or "spare" operating exam items drafted in case we had difficulties completing a daily schedule on time. We also asked Vogtle to keep us updated if the class size changed, because that would potentially change the minimum number of simulator scenarios we would have to review, validate, and administer. As described above in the answer to question Q.7, one of the items we discussed with Mr. Wainwright was the license application process, and whether

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 21.

<sup>43</sup> Exhibit CCS-002 at 4.

Vogtle needed to submit any non-routine waivers that might require us to generate a ROI with the program office. Based on the emails that were already sent between Mr. Gunn and me, I also specifically remember asking Mr. Wainwright what Vogtle's intentions were regarding Ms. Smith retaking the exam. Mr. Wainwright informed us that Vogtle did not intend to submit an operating test waiver request for Ms. Smith, and that she was to be given remedial training (including simulator time) that would prepare her for taking both the operating test and the written exam. Following the phone call, on October 21, 2011, Region II issued the corporate notification letter for the 2012 Vogtle exam.<sup>44</sup>

During the preparatory phases of the exam development process, we had frequent contacts with Mr. Wainwright to answer various questions, coordinate the receipt of the exam material submitted by Vogtle, and so forth. I remember asking Mr. Wainwright once or twice if there had been any changes to the class size. During these discussions over class size, I also remember asking Mr. Wainwright about Ms. Smith's status. Mr. Wainwright consistently informed us (Mr. Bates and me) that Ms. Smith was still working with the new class of applicants and was preparing to take both the operating test and the written exam. Towards the end of our exam development process, Mr. Wainwright notified us (M. Bates and me) that Vogtle would administer the facility licensee's final "audit" exam around the same time as our onsite "prep week" (the week of February 27, 2012), and that he expected to know the final results of who would be taking the NRC exam by the end of our prep week. Also, at some point before we went to Vogtle for our "prep week," Mr. Wainwright notified us that both the Vogtle Site Training Manager and the Vogtle Operations Training Supervisor had been re-assigned and replaced with different individuals.

Based on Mr. Tucker's testimony, I believe that we received the unsigned, preliminary license applications from Vogtle the week before prep week (that is, the week of February 20,

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<sup>44</sup> Exhibit CCS-018.

2012).<sup>45</sup> I don't remember specifically whether Mr. Bates or I was the first one to see that the preliminary application had block 4.f. checked to indicate an operating test waiver request for Ms. Smith.<sup>46</sup> Throughout the exam development process, Mr. Wainwright had done a good job keeping us notified about any changes from the facility licensee's standpoint, so M. Bates and I were surprised that we saw this block checked for Ms. Smith. Mr. Wainwright had told us on several occasions that Vogtle did not intend to submit an operating test waiver for her, so we thought that if Vogtle had changed its mind, Mr. Wainwright would have informed us if he knew about the change. Based on these considerations, Mr. Bates and I believed that Ms. Smith's preliminary application request for an operating test waiver was potentially an oversight, perhaps a "cut and paste" typographical mistake because all of the re-take applicants appeared the same.<sup>47</sup>

I decided to call Mr. Wainwright to determine the correct status of Ms. Smith's waiver request. I made the call from my office with Mr. Bates present, and reached Mr. Wainwright directly. I do not recall the specific date, but based on Mr. Tucker's record, the call probably occurred on Thursday, February 23, 2012.<sup>48</sup> I told Mr. Wainwright that the purpose of the call was to clarify the status of Ms. Smith's preliminary license application, because we had not expected to see a waiver request for her operating test. I reminded Mr. Wainwright about the previous emails with Mr. Gunn; that our position in those emails was that we would "likely deny" an operating test waiver for Ms. Smith; and that he had told us before that Vogtle did not intend to submit an operating test waiver for Ms. Smith—these were the reasons we had not expected to see the waiver request (for the operating test). I asked Mr. Wainwright to check with his management to determine if they did specifically intend to submit an operating test waiver for Ms. Smith, or if an oversight had occurred and they did not intend to submit a waiver. I asked

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<sup>45</sup> Exhibit CCS-002 at 4.

<sup>46</sup> Exhibit CCS-015 at 4.

<sup>47</sup> See Exhibit CCS-002 at 3.

<sup>48</sup> *Id.* at 4-5.

Mr. Wainwright to get back to us as soon as possible, because if they were formally submitting a waiver request, I would need the time to prepare our response, and potentially involve the program office.<sup>49</sup>

I believe that Mr. Wainwright called me back within a day or two. During that call, Mr. Wainwright told me that he had verified with site training management that Vogtle did not intend to submit an operating test waiver for Ms. Smith.<sup>50</sup>

When we received the final, signed applications on March 12, 2012, Ms. Smith's official Form 398 only requested a waiver for being greater than 24 months since she had passed the GFE exam, and did not request a waiver of the operating test. This final application was signed by Ms. Smith herself, the Vogtle Site Vice President, and the Vogtle Site Training Manager. Mr. Bates signed Ms. Smith's official Form 398 on March 13, 2012, and the region notified Ms. Smith via letter that her waiver request (for the GFE) was approved.

Q.13. Mr. Tucker, a member of Vogtle's operations training department, submitted an affidavit (CCS-002) in support of Ms. Smith's positions on the waiver issue. In this affidavit, Mr. Tucker states that he was the individual who prepared the preliminary license applications for the 2012 Vogtle exam.<sup>51</sup> Are you familiar with this document?

A.13. Yes, I reviewed this document in preparation for submitting my testimony.

Q.14. On p. 4 of this affidavit, Mr. Tucker stated that on "2/23/12 – The Vogtle Unit 1 & 2 program Training Supervisor was notified by the Vogtle Unit 1 & 2 Examination Supervisor that the NRC Chief Examiner for March/April 2012 license examinations stated that time was not available to process Carla's application with waiver request and likely denial prior to the scheduled examination dates pending."<sup>52</sup> During the phone call you mentioned above, do you remember stating that there was not enough time to process Ms. Smith's application?

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<sup>49</sup> Exhibit CCS-015 at 4.

<sup>50</sup> Exhibit CCS-002 at 5; Exhibit CCS-015 at 4.

<sup>51</sup> Exhibit CCS-002 at 3.

<sup>52</sup> *Id.* at 4.

A.14. No, as best as I can recall, during my phone call with Mr. Wainwright, I did not state we didn't have enough time to process an operating test waiver request for Ms. Smith. Recall in the above discussions over the NUREG references that the entire point of the preliminary applications is to ensure that there is adequate time to evaluate any issue that might arise. What I intended to convey was that if Vogtle had decided to submit an operating test waiver for Ms. Smith, I wanted to go ahead and begin our evaluation process as soon as possible, because—among the other requirements—I believed that we would need to coordinate with the IOLB program office. In other words, I did not want to wait until the final, signed applications were submitted to find out Vogtle's intention regarding Ms. Smith potential operating test waiver request; I preferred as much time (margin) as possible to ensure we were not rushed at the end trying to get everything finalized and approved. When I mentioned having enough time to prepare our response during the call, I was trying to let Mr. Wainwright understand why I was asking him to check with his management and get back to me in a day or two with their answer on this issue. Even if Vogtle had waited until the final signed applications were submitted, I believe we would have had enough time to evaluate the request, coordinate with the program office, and notify both the facility licensee and the individual license applicant. Also recall that ES-204 of the NUREG allows for a phone call to serve as a sufficient answer, in waiver request cases where time is running short.<sup>53</sup> When I spoke with Mr. Wainwright on the phone that day, I was not concerned that we would not have enough time to make an evaluation, if Vogtle had decided to submit an operating test waiver request for Ms. Smith.

Q.15. Did you mention this section of ES-204, covering notification by phone, during your call with Mr. Wainwright?

A.15. No, I do not believe that I did. Our conversation that day was relatively short, because the essential purpose of the call was simply to ask Mr. Wainwright to verify whether or not Vogtle was intending to request an operating test waiver for Ms. Smith. Given that I thought

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<sup>53</sup> Exhibit CSS-005A, ES-204 p. 2.

it was likely to have been an oversight, or mistake, to have checked the block for an operating test waiver for Ms. Smith on the preliminary application, I would not have gone into such specific details of the NUREG process; so, again, I do not believe I mentioned it.

Q.16. Did you have any other communications with Vogtle (such as with Mr. Wainwright, Mr. Tucker, or anyone else associated with the Vogtle training program); either via phone, email, or otherwise, that stated “time was not available to process [Ms. Smith’s] application”?<sup>54</sup>

A.16. No, aside from the two phone calls referenced above—between Mr. Wainwright and myself—there were no other communications that I know of between anyone in Region II and Vogtle that addressed the issue of Ms. Smith’s potential operating exam waiver request. I do not believe that I ever communicated directly with Mr. Tucker, either via phone or email. After the “120-day” phone call and issuance of the corporate notification letter, all of my phone calls and emails were routed to Mr. Wainwright, who was my principal point-of-contact with the facility on all matters concerning the exam.

Q.18. What would you have done if the answer had been different, if Mr. Wainwright had called you back the next day and told you, hypothetically, that the new Vogtle training management had changed their mind and decided to go ahead with an operating test waiver request for Ms. Smith?

A.18. I would have followed the process of ES-204 that is included as answer A.9 in my testimony above. Specific to Ms. Smith’s case, I believe that our process would include the following:

-I would first have performed a detailed review of Ms. Smith’s 303 forms documenting her performance on the (first) 2011 exam. I had deliberately refrained from reviewing Ms. Smith’s performance in detail before the 2012 exam in order to be as objective as possible.<sup>55</sup> I

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<sup>54</sup> Exhibit CCS-002 at 4.

<sup>55</sup> Exhibit CCS-001 at 5.

would also have notified Mr. Capehart that Vogtle had submitted an operating test waiver request for Ms. Smith, so that he, as the previous exam's Chief Examiner, could also assist in the evaluation process. I would have preferred to keep Mr. Bates outside of any detailed discussions of Ms. Smith's previous performance.

-I would then have requested a meeting with Mr. Widmann, hopefully with Mr. Capehart also present, to inform him that Vogtle had changed their position and was submitting an operating test waiver for Ms. Smith, and to coordinate with him our evaluative process going forward on this issue. In accordance with the NUREG processes detailed in the above sections, there is a good chance that we may have requested further information from Vogtle—perhaps a more detailed description of her re-training program, and/or an additional assessment of her performance during the re-training program.

-Although it is not an absolute requirement, I believe we would have discussed Ms. Smith's waiver request with the IOLB program office. This discussion may have been just a phone call between Mr. Widmann and Mr. McHale, the IOLB program office branch chief; or, the program office may have wanted us to obtain formal concurrence with them.

-We would then have prepared a letter to Ms. Smith to inform her of the final decision on her waiver requests. If the final decision had been to deny the operating test waiver request, in Mr. Widmann's hypothetical waiver letter to Ms. Smith, we would have provided the reasons for the denial.

Again, please remember that this discussion is in response to a purely hypothetical question. The facility licensee decided that they were not going to submit an operating test waiver request for Ms. Smith; therefore, the NRC never formally evaluated the operating test waiver request. When the facility licensee specifically contacted us asking for our evaluations on potential operating test waivers, our responses to the facility ("would likely deny an operating test waiver request for Ms. Smith") were clearly stated as preliminary answers only.

Q.19. In Ms. Smith's Prefiled Testimony on Statements of Position, she states that after an initial email, "No additional contact was made with the NRC in regard to a waiver for C. Smith."<sup>56</sup> (ref. CCS-076, p. 2) Do you believe this to be a correct statement?

A.19. No, as detailed above, I remember that there were several emails between myself and Mr. Gunn concerning the waiver issue before our "120 day" call. I discussed Ms. Smith's status during the "120 day" call and at least once or twice afterwards, with Mr. Wainwright. During these discussions, Mr. Wainwright consistently said that Vogtle was not going to submit an operating test waiver request for Ms. Smith.

Q.20. In Ms. Smith's Prefiled Testimony on Statements of Position, she states that "In response to the [preliminary license application] submittal, the NRC contacted the company via telephone. At the end of the conversation the [operating test] waiver for C. Smith was withdrawn." What is your response to this assertion?

A.20. In my opinion, based on all of my previous discussions with Mr. Wainwright, I believe that it was an oversight to have submitted a preliminary application for Ms. Smith as they did with an operating test waiver request checked and the exact same justification statement as was provided for the other re-take applicants. Based on our previous emails, Vogtle knew that the NRC had already identified having more concerns over Ms. Smith receiving an operating test waiver than the other re-take applicants. If they did intend to submit an operating test waiver for her, why didn't Vogtle provide additional justification with the preliminary application? The identical justification was included for all of the re-take applicants.<sup>57</sup> This was the reason, along with Mr. Wainwright's previous statements, why Mr. Bates and I considered the preliminary application to potentially be a "cut and paste" oversight. When I called Mr. Wainwright, I was simply attempting to verify whether or not Vogtle intended to submit the operating test waiver for Ms. Smith.

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<sup>56</sup> Exhibit CCS-076 at 2.

<sup>57</sup> Exhibit CCS-002 at 3.

Q.21. In Ms. Smith's Prefiled Testimony on Statements of Position, she states that "The final license application was submitted (March 2012) without a waiver request for C. Smith."<sup>58</sup> Do you believe this to be a correct statement?

A.21. I believe Ms. Smith is referring only to the operating test waiver request. To be precise, the final license application was submitted requesting a GFE waiver for Ms. Smith. The final, signed license application did not include an operating test waiver request for Ms. Smith. Region II granted Ms. Smith the GFE waiver.

Q.22. In Ms. Smith's Prefiled Testimony on Statements of Position, she states that "Grade comparison between the students and the pass criteria contradict the decision to likely deny the waiver if submitted."<sup>59</sup> What is your response to this assertion?

A.22. There is no criteria or guidance provided in the NUREG to determine qualitatively or quantitatively whether or not to grant or deny an operating test waiver request. Therefore, any metrics used to compare Ms. Smith's 2011 operating test performance against any other operator are simply one's personal opinion. In the absence of specific guidance, using grade comparison and pass criteria as a metric to compare performance is potentially misleading, because the applicable procedures do not specify these two criteria as the method to use. Again, no method is specified. Therefore, it is my professional opinion that grade comparison and pass criteria cannot solely be used to contradict the preliminary answer provided to Vogtle, that for Ms. Smith, the region would likely deny an operating test waiver. The reason that the region decided upon this position was that it was the best professional opinion of all three of the examiners who witnessed Ms. Smith's performance on the 2011 exam, who all independently recommended that Ms. Smith not be granted an operating test waiver, in consultation with the branch chief.<sup>60</sup>

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<sup>58</sup> Exhibit CCS-076 at 2.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> Exhibit CCS-001 at 1-2.

Q.23. In Ms. Smith's Prefiled Testimony on Statements of Position, she states that "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. The procedure does not provide guidance that the simulator is weighed heavier. The decision to weigh one portion heavier is not based on not [sic] factual data or procedure guidance."<sup>61</sup> What is your response to this assertion?

A.23. Again, we have to keep in mind that there are no criteria given in any procedure to evaluate an operating test waiver request. Therefore, Ms. Smith is technically correct to state that "the procedure does not provide guidance that the simulator is weighed heavier," but for completeness one must also state that the procedure does not preclude considering the simulator scenarios more heavily—there is no guidance for, or against, this consideration when evaluating operating test waiver requests. When the 2011 exam team considered the potential waiver request for Ms. Smith, all portions of her performance on the 2011 operating test were considered, but Ms. Smith is correct in stating that we considered her performance on the simulator scenarios more heavily than on the JPM portion. Why would we have done so?

First, NUREG-1021 does provide some guidance regarding the simulator scenario portion of the exam, as compared to the other portions of the operating test: "This [the simulator operating test] is the most performance-based aspect of the operating test and is used to evaluate the applicant's ability to safely operate the plant's systems under dynamic, integrated conditions."<sup>62</sup> Also, because the simulator scenario portion of the operating test is the only part of the operating test that involves a team, this is the only portion of the operating test that provides insight into a SRO applicant's skills and abilities regarding Competency 5 (Direct Shift Operations), and this portion of the test provides most of the insight into an applicant's skills and

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<sup>61</sup> Exhibit CCS-076 at 3.

<sup>62</sup> Exhibit CCS-005A at ES-301, p. 4.

abilities regarding Competency 4 (Communications). Furthermore, each individual JPM essentially focuses on one particular task or specific assessment; whereas any single simulator scenario will focus on all aspects of many different tasks, as a team, in real time, and therefore without some of the artificiality that is inherent in the performance of a discrete JPM. In Ms. Smith's prefiled testimony, she states: "In addition the chart compares the simulator and the JPM's [sic] 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."<sup>63</sup> I agree with Ms. Smith's statement insofar as it illustrates another reason why the 2011 exam team weighted the simulator scenario portion more heavily than the JPM portion.

Q.24. Along with Exhibit CCS-003, on pages 4-7 of Ms. Smith's Prefiled Testimony on Statements of Position, she discusses in some detail a comparison of the grades and pass criteria of her performance on the 2011 exam against the grades and pass criteria of the other operators from the 2011 exam that were granted operating test waivers.<sup>64</sup> In your professional opinion, what is your assessment of this comparison?

A.24. I must again state the essential point that there is no qualitative or quantitative criteria in any procedure that specifies how one must evaluate an operating test waiver request, and that, therefore, any comparison criteria provided by any individual is only that individual's opinion. Furthermore, note that the chart provided in one of Region II's binder tabs<sup>65</sup>, as well as the more detailed comparison of Ms. Smith's 2011 performance against the waivers granted by Region II over a seven-year period<sup>66</sup> were both created only after the 2012 Vogtle exam, and did not play any direct role in the preliminary determination that an operating test waiver would likely be denied for Ms. Smith.

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<sup>63</sup> Exhibit CCS-076 at 3.

<sup>64</sup> Exhibit CCS-003; Exhibit CCS-076 at 4-7.

<sup>65</sup> Exhibit NRC-013 at 3.

<sup>66</sup> Exhibit NRC-008.

As long as the above considerations are always kept in mind, it is my best professional opinion that if one is going to compare operators' performance for operating test waiver considerations, grade comparison and JPM pass rates must be two parts of one's metrics. I believe this is also Ms. Smith's position. However, in my opinion it is crucial to also compare the number of comments received on the various parts of the operating test as the third part of a complete indicator of performance on the operating exam. Ms. Smith does not include this metric in her assessments, and goes further to state: "The best justification that the exam team could provide was a discussion on the number of comments. The numbers of comments are not discussed as a part of the pass criteria in NUREG 1021."<sup>67</sup> How is the number of documented comments relevant to this discussion?

Ms. Smith is correct in that the number of documented comments does not directly relate to pass criteria in NUREG 1021. However, considering the simulator scenario portion, if an applicant's non-critical errors are assumed to randomly fall across all rating factors, the more documented comments (i.e., non-critical errors) an applicant makes, the lower that applicant's scores will be.<sup>68</sup> There is a difference in an applicant's score if a critical error is made, compared to a non-critical error; this is why one must also incorporate the simulator scenario rating factor grades along with the number of comments. For example, if you compare "Operator 32" with "Operator 33," both SRO applicants receive a numerical average score of 2.80 on the simulator scenarios; however, "Operator 32" had 2 total comments documented for the scenarios and "Operator 33" had 3 total comments documented for the scenarios.<sup>69</sup> This disparity is because "Operator 32" committed one error associated with a critical task; and "Operator 33" committed three non-critical errors. Another reason that one must also consider overall number of comments along with the grades on the scenarios is that there is no way to

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<sup>67</sup> Exhibit CCS-076 at 9.

<sup>68</sup> Exhibit CCS-005A at ES-303.

<sup>69</sup> Exhibit NRC-008.

achieve a rating factor score of less than one.<sup>70</sup> Therefore, an applicant could make two, three, four, or more non-critical errors associated with a given rating factor, and in every case still receive a score of “1” for that rating factor.<sup>71</sup> In my opinion, there is a significant difference in performance between an applicant who receives a score of “1” after committing two non-critical errors associated with a given rating factor, when compared with an applicant who receives a score of “1” after committing four (or more) non-critical errors associated with a given rating factor (RF). However, if one is only comparing numerical scores, both of the above hypothetical applicants would score the same. If one compares the numerical scores in conjunction with number of comments, one has a better assessment of performance. As a specific example, on Ms. Smith’s 303 documentation from the (first) 2011 exam, she was assigned a score of “1” for RF 2.c., “Procedures—Correct Use,” based on committing four non-critical errors.<sup>72</sup> Ms. Smith’s grade for RF 2.c. might not change, if she had hypothetically committed one less error, or additional errors, associated with procedural usage. Evaluating an applicant’s number of comments is also crucial for the JPM portion of the exam, which I discuss in the next paragraph.

On p. 5 of Ms. Smith’s Prefiled Testimony on Statements of Position, she states: “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.”<sup>73</sup> Later in her testimony, Ms. Smith reiterates that: “She was the only candidate in 2011 to make 100% on both sections of the JPM/walkthrough portion.”<sup>74</sup> These statements are correct in the limited sense that Ms. Smith did have a 100% pass rate on the JPMs in 2011. However, the statements are misleading if one were to read “make 100% on ... the JPM/walkthrough portion” to mean that she completed every JPM without making a single error. Such an assertion would be incorrect.

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<sup>70</sup> Exhibit CCS-005A at ES-303.

<sup>71</sup> *Id.* at ES-303, p. 5.

<sup>72</sup> Exhibit NRC-046 at 15-19.

<sup>73</sup> Exhibit CCS-076 at 5.

<sup>74</sup> *Id.* at 7.

In order to receive an unsatisfactory score on a JPM, an applicant must not complete a critical step in the JPM.<sup>75</sup> An applicant could hypothetically make any number of errors that are not associated with a JPM critical step; and if the applicant completes the critical steps and thus completes the assigned task, the applicant will receive a satisfactory score for that JPM and the examiner will document the errors as comments. Note that these documented comments on JPMs can be directly related to comments on the simulator scenarios; if an applicant had made a similar mistake during a scenario (as made during a JPM), that mistake would lead to a documented comment and a related down-grade in that applicant's score. If one examines Ms. Smith's performance on the JPMs on the 2011 exam with this insight, one notes that Ms. Smith received one comment related to an administrative JPM and five comments related to systems or in-plant JPMs. Therefore, in my professional opinion, one must temper the statement that Ms. Smith had a 100% pass rate on the JPMs with the acknowledgement that while so doing she committed six non-critical errors worthy of documentation. In this respect, to consider number of comments for both JPMs and simulator scenarios is to essentially create a metric that is directly proportional to the overall number of non-critical errors committed during the operating test. As I have discussed, this factor or metric (number of errors) must be used in conjunction with the rating factor scores on the simulator scenarios, and the pass/fail numbers of JPMs.

Q.25. In your professional opinion, how does Ms. Smith's performance on the 2011 Vogtle exam compare with other operators who received operating test waivers?

A.25. I would like to begin my answer by repeating that my comments are meant to be taken with this consideration in mind, that they only represent my own professional opinion. Furthermore, as mentioned above, let me be clear that such a detailed comparison of Ms. Smith's 2011 exam with other operators was not directly part of the initial determination that the region "would likely deny" a potential operating test waiver for Ms. Smith. Again, this

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<sup>75</sup> Exhibit CCS-005A at ES-303, pp. 3-4.

assessment was based upon the best professional opinion of all three 2011 examiners, arrived at independently of one another, and in coordination with the branch chief. No procedure requires a comparison to be performed.

If you compare Ms. Smith, as a SRO-instant applicant, directly against the other two instant SRO applicants (“Operator C” and “Operator D”) from the 2011 exam who were granted operating test waivers, Ms. Smith’s overall average RF grade was 2.47, as compared to 2.80 for “Operator C” and 2.90 for “Operator D.”<sup>76</sup> Considering that the grading scale for comparison has a small range of 1.00 to 3.00, I believe Ms. Smith’s performance was well below that of the other two instant SRO applicants under comparison. However, as detailed above, I believe you must also consider number of comments as a comparison metric as well. In this category, Ms. Smith had 12 overall comments on her 303 form, compared to 3 overall comments for “Operator C” and 2 overall comments for “Operator D.”<sup>77</sup> Based on number of comments received in the simulator scenarios, in my opinion Ms. Smith’s performance was significantly below that of the other two SROs.

On page 4 of her testimony, Ms. Smith takes exception to this approach to comparing performance: “Consider that Operator C has only 2 scenarios and C. Smith has 3 scenarios. The minimum number of scenarios required is two scenarios [for instant SRO applicants]. 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.”<sup>78</sup> I agree with Ms. Smith’s statements. However, we can factor in the number of simulator scenarios each applicant received. Assuming that an applicant would make the same number of mistakes on any given scenario (i.e., assuming that all scenarios are at approximately the same level of difficulty), one can determine a factor by dividing the total number of errors by the number of scenarios that the applicant was exposed to. Considering

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<sup>76</sup> Exhibit NRC-008.

<sup>77</sup> *Id.*

<sup>78</sup> Exhibit CCS-076 at 4.

that Ms. Smith had three scenarios in 2011, “Operator C” had two scenarios in 2011, and “Operator D” had three scenarios in 2011, the comparison is as follows: Ms. Smith makes comments at an average rate of 12/3 or 4 comments per scenario; “Operator C” makes comments at an average rate of 3/2 or 1.5 comments per scenario; and “Operator D” makes comments at an average rate of 2/3 or 0.67 comments per scenario. Again, per this metric, it is my opinion that Ms. Smith’s performance was well below the other two instant SROs from the 2011 Vogtle class who were granted operating test waivers.

Comparing JPM performance, on pass/fail numbers alone Ms. Smith does perform better than the other two SROs; Ms. Smith received a satisfactory score on all JPMs, whereas “Operator C” failed two admin JPMs and one systems/in-plant JPM. Ms. Smith performed better than “Operator C” in this respect. “Operator D” failed zero admin JPMs and one systems/in-plant JPM; so both Ms. Smith and “Operator D” performed equivalently on the admin JPMs, and Ms. Smith performed better on the systems/in-plant JPMs according to this metric. When you consider total number of JPM comments (as directly proportional to “total number of non-critical errors made”), Ms. Smith has six overall JPM comments, compared to six overall JPM comments for “Operator C” and four overall JPM comments for “Operator D.” More precisely, I would assess Ms. Smith as making zero critical errors and six non-critical errors associated with JPMs; “Operator C” made three critical errors and three non-critical errors associated with JPMs; and “Operator D” made one critical error and three non-critical errors associated with JPMs. Accordingly, I would assess that Ms. Smith performed better than “Operator C” on the JPMs, and that her performance was equivalent to, or slightly below, “Operator D” on the JPMs. However, as stated above, there are many reasons why one does not count the JPM portion as equivalent to the simulator scenario portion of the exam.

As compared to all applicants granted waivers on the 2011 Vogtle exam (including two RO applicants and one SRO upgrade applicant), Ms. Smith’s average simulator RF grade of 2.47 compares to an average simulator RF grade of 2.73 (this is a composite average of the five

other operators). Ms. Smith received 12 total simulator scenario comments; the average number of simulator comments for the other applicants was 3.60. Conservatively assuming that all other applicants only received 2 scenarios, Ms. Smith made errors at an average rate of 12/3 or 4 comments per scenario; the other applicants at a rate of 3.60/2 or 1.80 comments per scenario. Considering all three metrics above, in my opinion Ms. Smith's simulator scenario performance was significantly below that of the average 2011 Vogtle operator who was granted an operating test waiver. Looking at JPM performance, Ms. Smith failed zero admin JPMs, and the composite 2011 operator failed 1.00 admin JPMs; Ms. Smith received one admin JPM comment, and the composite 2011 operator received 1.40 admin JPM comments. For the systems and in-plant JPMs, Ms. Smith failed zero systems or in-plant JPMs, and the composite 2011 operator failed 1.00 systems or in-plant JPMs; Ms. Smith received five system/in-plant JPM comments, and the composite 2011 operator received 3.40 system/in-plant JPM comments.

One may also compare Ms. Smith's 2011 performance with that of the other instant SRO applicants across Region II (from ~2005 to the present day) who were granted operating test waivers. Ms. Smith's average simulator RF grade of 2.47 compares to an average simulator RF grade of 2.81 (this is a composite average of the nine other operators).<sup>79</sup> Ms. Smith received 12 total simulator scenario comments; the average number of simulator comments for the other Region II SRO-I applicants was 3.44. Conservatively assuming that all the other applicants only received 2 scenarios, Ms. Smith made errors at an average rate of 12/3 or 4 comments per scenario; the other applicants at a rate of 3.44/2 or 1.72 comments per scenario. Considering all three metrics above, in my opinion Ms. Smith's simulator scenario performance was below that of the average instant SRO applicant in Region II who was granted an operating test waiver. Looking at JPM performance, Ms. Smith failed zero admin JPMs, and the composite Region II instant SRO applicant failed 0.56 admin JPMs; Ms. Smith received one admin JPM

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<sup>79</sup> Exhibit NRC-008 at 1.

comment, and the composite Region II instant SRO operator received 0.78 admin JPM comments. For the systems and in-plant JPMs, Ms. Smith failed zero systems or in-plant JPMs, and the composite Region II instant SRO applicant failed 0.22 systems or in-plant JPMs; Ms. Smith received five system/in-plant JPM comments, and the composite Region II instant SRO applicant received 0.89 system/in-plant JPM comments. Based on these metrics, in my opinion Ms. Smith's 2011 simulator scenario performance was well below the average for Region II instant SRO applicants; and her JPM performance was slightly below the average for Region II instant SRO applicants, as well.

We may also compare Ms. Smith's 2011 performance with that of all applicants (RO and SRO) across Region II (from ~2005 to the present day) who were granted operating test waivers. Ms. Smith's average simulator RF grade of 2.47 compares to an average simulator RF grade of 2.85 (this is a composite average of 39 other operators, including the nine instant SRO applicants discussed in the above paragraph). Ms. Smith received 12 total simulator scenario comments; the average number of simulator comments for the composite Region II operator was 2.23. Conservatively assuming that all the other applicants only received 2 scenarios, Ms. Smith made errors at an average rate of  $12/3$  or 4 comments per scenario; the other applicants at a rate of  $2.23/2$  or 1.11 average comments per scenario. Considering all three metrics above, in my opinion Ms. Smith's simulator scenario performance was significantly below that of the average operator in Region II who was granted an operating test waiver. Looking at JPM performance, Ms. Smith failed zero admin JPMs, and the composite Region II operator failed 0.51 admin JPMs; Ms. Smith received one admin JPM comment, and the composite Region II operator received 0.69 admin JPM comments. For the systems and in-plant JPMs, Ms. Smith failed zero systems or in-plant JPMs, and the composite Region II operator failed 0.46 systems or in-plant JPMs; Ms. Smith received five system/in-plant JPM comments, and the composite Region II operator received 1.08 system/in-plant JPM comments. Based on these metrics, in my opinion Ms. Smith's 2011 simulator scenario performance was well below the average for

Region II operators overall; and her 2011 JPM performance was slightly below the average for Region II operators overall, as well.

Perhaps one could continue to provide comparisons and counter-comparisons; arguments and counter-arguments, again all based upon one's professional or personal opinion. In the end, however, given the benefit of hindsight, Ms. Smith's performance on the dynamic simulator portion of the 2012 exam, which after three scenarios resulted in the documentation of approximately 18 comments on the 303 form, retroactively supports the region's initial preliminary determination that her performance on the 2011 exam would likely warrant further evaluation on the 2012 exam.<sup>80</sup>

Q.26. In her exhibit CCS-003, and in prefiled testimony on statements of position, Ms. Smith draws comparisons regarding her 2011 scores on the written examination and the 2011 written exam scores of the other individuals who were granted operating test waivers. How did the region use the written examination grades in the preliminary assessment that Ms. Smith "would likely be denied" a potential operating test waiver request?

A.26. To the best of my knowledge, the written exam scores did not play any role in our determination, because all the re-take applicants had failed the 2011 written exam, and we knew that all of the re-take applicants would have to re-take the written exam in 2012. It is my professional opinion that the written exam and the operating exam are very dissimilar, and although they both examine an applicant's knowledge related to the operation of a specific nuclear plant, they essentially evaluate different knowledge, skills, and abilities. For the sake of technical accuracy, I would like to point out that in exhibit CCS-003, the SRO-upgrade applicant "Operator F" scored an 82.19 on the RO section of the written exam, which would have resulted in a "Pass" of that portion only, not a "Fail" as indicated on CCS-003. However, as Ms. Smith

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<sup>80</sup> Exhibit NRC-013 at 3; Exhibit CCS-045.

notes in CCS-003, the grading criteria for an SRO applicant on the written exam is not contingent upon a pass/fail evaluation of the RO portion only.<sup>81</sup>

**Discussion – Conflict of Interest**

Q.27. What is the purpose of this portion of your testimony?

A.27. The purpose of this section of my testimony is meant to address some of the issues raised by Ms. Smith associated with her Statement of Position 2: Conflict of Interest.

Q.28. What measures did you and/or the other examiners take before the 2012 exam, in order to ensure that Ms. Smith would be re-evaluated fairly?

A.28. As referenced in the above section, Vogtle initially considered scheduling a retake exam for the applicants that had failed in 2011, to be given before the next regularly scheduled exam in the spring of 2012. Ultimately, Vogtle decided not to attempt to give a specific retake exam, and the applicants who had failed the exam in 2011 were moved in with the class to be tested in the spring of 2012. Even without the re-take applicants, the 2012 Vogtle class size was relatively large, beginning with a class size of 21 total applicants. Ultimately, the 2012 Vogtle operating examination was administered to 17 applicants, and the written exam was administered to 22 applicants, including those re-taking only the written exam.

As shown in the revision 1 version of the region's internal FY2012 weekly schedule, the initial exam team consisted of M. Bates as the Chief Examiner, with B. Caballero and M. Meeks as the other two examiners.<sup>82</sup> There was a potential for the exam to require more than two full weeks to administer, due to the large number of applicants who were taking the operating test. Based upon the documentation burden after Vogtle's operating exam potentially conflicting with other NRC scheduling issues, the exam team changed, and B. Caballero was replaced on the Vogtle 2012 exam with P. Capehart. Mr. Capehart was the only qualified Region II examiner available at the time to be part of the 2012 Vogtle exam.

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<sup>81</sup> Exhibit CCS-003; Exhibit CCS-005A, Form ES-401-8.

<sup>82</sup> Exhibit NRC-031 at 3-4; Exhibit CCS-001 at 38-41.

When the final number and makeup of the applicant class was determined following the completion of the licensee “audit” exam, M. Bates and M. Meeks independently began development of the schedule for the operating test. These draft schedules were in a generic format (“I1, I2, I3” to designate “Instant SRO 1, Instant SRO 2, Instant SRO 3,” *etc.*) and did not include any applicant names. During the development of these generic schedules, M. Bates’ schedule worked better than M. Meeks’ schedule; however, M. Meeks asked M. Bates to modify his schedule so that any required surrogate operators would be in the BOP position, instead of the SRO position. Once the generic schedule had been set, M. Meeks randomly assigned applicant names to the positions in an inverse alphabetical order. Based on this methodology, Ms. Smith was assigned as “I2,” one of the instant SRO applicants who would be given two scenarios in the SRO position and one scenario in the Operator-at-the-Controls (OATC) position. A copy of this schedule is included in Binder Tab 03.<sup>83</sup> When Ms. Smith was associated with “I2,” the exam team purposely assigned M. Bates as the examiner of record for her. This was purposefully decided to ensure that there would be no direct carry-over, however inadvertent, on the part of Ms. Smith’s examiner of record from the previous 2011 exam, and the branch chief was notified of this decision.

Note that NUREG 1021, section ES-201 D.1.a states that: “The regional office shall not assign an examiner who failed an applicant on an operating test to administer any part of that applicant’s retake operating test.”<sup>84</sup> Although technically either Mr. Capehart or Mr. Meeks could have been assigned as Ms. Smith’s examiner of record, with the intent of this requirement in mind, as shown above M. Bates was intentionally assigned as Ms. Smith’s examiner of record.

As mentioned earlier, M. Bates was not directly involved in the decision associated with the region’s preliminary assessment of a “likely denial” of an operating test waiver for Ms. Smith,

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<sup>83</sup> Exhibit NRC-031 at 5-6.

<sup>84</sup> Exhibit CCS-005A at ES-201, p. 14.

insofar as Mr. Bates was not part of the detailed discussions within the region of Ms. Smith's 2011 performance. This was purposely done to ensure that M. Bates would independently evaluate Ms. Smith's performance without preconceived ideas based on her performance in 2011 on the previous exam. As detailed above, in his role of Chief Examiner, Mr. Bates was required to know about Ms. Smith's status as a re-take applicant who would potentially re-take both the operating test and the written exam. However, M. Bates took special effort not to review any 303 documentation or any other record of Ms. Smith's 2011 performance until after the 2012 exam report was issued.<sup>85</sup>

Q.29. In Ms. Smith's Prefiled Testimony on Statements of Position, she states: "Examiner (Bates) was assigned to C. Smith for the simulator portion and was included/present in discussions about C. Smith and her 2011 performance. This was an opportunity for Mark Bates to form an opinion prior to the 2012 exam."<sup>86</sup> Do you agree with this statement?

A.29. I do not agree that Mr. Bates was present in the discussions about Ms. Smith's 2011 performance that occurred in order to formulate a response to the questions regarding potential operating test waivers before the 2012 exam. As a reference for the first sentence, Ms. Smith cites a portion of my responses to Mr. Ehrhardt's fairness review: "After receiving this email, M. Meeks consulted with P. Capehart, J. Hopkins, M. Bates, and M. Widmann to formulate a consolidated response from the region."<sup>87</sup> It would be more precise to say that: "M. Meeks consulted [in detail concerning Ms. Smith's 2011 performance] with P. Capehart, J. Hopkins, and M. Widmann to formulate a consolidated response from the region; M. Meeks consulted [in only general terms] with M. Bates to notify him of the region's intentions regarding a consolidated response." On the next page of this document, I specified this point more clearly: "Furthermore, M. Bates was not directly involved in the discussions concerning Carla Smith's performance on the 2011 exam—the decision to likely deny a waiver was made by the

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<sup>85</sup> Exhibit NRC-031 at 2.

<sup>86</sup> Exhibit CCS-076 at 11.

<sup>87</sup> Exhibit CCS-001 at 1.

2011 exam team (P. Capehart, J. Hopkins, and M. Meeks), in consultation with the branch chief, independently of any input from M. Bates.”<sup>88</sup> I would like to be clear that at no time before the 2012 exam did I, or Mr. Capehart, discuss Ms. Smith’s 2011 performance with Mr. Bates. At no time during the administration of the 2012 exam did I, or Mr. Capehart, discuss Ms. Smith’s performance on the 2011 exam with Mr. Bates—instead, we were focused on correctly documenting all of our applicants’ performance on the 2012 exam (then in progress). Finally, during the documentation of the 2012 exam, at no time did I, or Mr. Capehart, discuss or compare in any way Ms. Smith’s 2011 performance or documentation with her 2012 performance or documentation. Ms. Smith’s performance on the 2011 exam was simply not relevant information; the 2011 exam was over, and it was our responsibility at the time to document the exam we had just completed.

Q.30. In Ms. Smith’s Prefiled Testimony on Statements of Position, she states: “Meeks went as far as to say it was because she was a danger to the public health. He believes she is a danger to public health but provides no examples of a releases [sic] to the public, damage to vital equipment or damage to the core.”<sup>89</sup> Why did you say that Ms. Smith was a “danger to the public health?”

A.30. The simple answer is, I did not say Ms. Smith was a danger to the public health. As a reference to the above contention, Ms. Smith cites the answers that I provided to Mr. Ehrhardt regarding his investigation into our actions during the 2012 exam. However, at no point in this document do I make any statement regarding Ms. Smith being a “danger to the public health.” Furthermore, I do not make this statement in any other document. In fact, I have never stated that Ms. Smith poses any danger to the public health.

I would like to explain the context of my answers to Mr. Ehrhardt. Specifically, when we were notified that Mr. Ehrhardt had been commissioned by Region II management to conduct

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<sup>88</sup> *Id.* at 2.

<sup>89</sup> Exhibit CCS-076 at 2.

an inquiry into whether or not we were biased in some way against Ms. Smith during the 2012 exam (in the July 2012 timeframe), the first thing we did was provide Mr. Ehrhardt with a hardcopy of the “Binder” that we had created before the informal review panel visited Atlanta in late June 2012. This document is included in the hearing file, with each individual chapter included as separate files.<sup>90</sup> Our binder document covers the various issues associated with this exam, including a copy of Ms. Smith’s 2011 ES-303-1 documentation, her 2012 ES-303-1 documentation, and a detailed comment-by-comment review of her performance on the 2012 exam. As an answer to one of Ms. Smith’s initial contentions for the informal review—that her errors were of little or no consequence and she did not fail any critical tasks<sup>91</sup>—in our binder we clearly specify that one of Ms. Smith’s 2012 comments should have been related to mis-performance of a critical task.<sup>92</sup> Accordingly, I knew that Mr. Ehrhardt already had detailed information concerning Ms. Smith’s performance on both the 2011 and 2012 exams, including a failed critical task with safety consequences; therefore, in my answers to his questions I did not need to provide specific examples.

In the document, I began by answering Mr. Ehrhardt’s first question, which concerned the operating test waiver issue, and specifically asked: “...what was the basis and threshold for granting the waiver(s)?”<sup>93</sup> After briefly summarizing the chronology and other issues involving the potential operating test waiver issue, my concluding paragraphs stated:

In hindsight, [Ms.] Smith's performance on the dynamic simulator portion of the 2012 exam, which led to documentation of approximately 18 comments on the 303 form, retroactively supports the region's position that her performance on the 2011 exam warranted additional evaluation on the 2012 exam.

To further answer question 1.a., the ultimate reason that [Ms.] Smith was not granted a waiver was public health and safety—all three examiners (M. Meeks, P. Capehart, and J. Hopkins) from the 2011 exam agreed that her performance on

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<sup>90</sup> Document ID Nos. 000013 through 000026.

<sup>91</sup> Exhibit CCS-034 at 2.

<sup>92</sup> Exhibit CCS-039 at 3-4.

<sup>93</sup> Exhibit CCS-001 at 1.

the 2011 exam, specifically the simulator scenario portion, was poor enough to warrant additional evaluation if she were to retake the exam at a later date.<sup>94</sup>

This answer was provided to an experienced NRC manager, who would recognize that my reference to public health and safety was related to the overall mission of the NRC.

The next question Mr. Ehrhardt asked was how Ms. Smith's performance on the 2011 examination differed from any applicants who were granted waivers. I linked my answer to this question with my answer from the first question:

Please reference above answer. Specifically, Carla's performance on the previous examination was different in that she was especially weak in the simulator scenarios. As detailed above, the dynamic simulator scenario portion of the exam carries extra weight because it is the most operationally valid evaluation of the applicants in actual conditions in real time.<sup>95</sup>

Then, in the next paragraph, I discuss that, in my best professional judgment, Ms. Smith's performance on the simulator scenarios appeared to be "unsafe." In context, when I wrote "unsafe" I intended for this to be linked with the previous answer—her performance was poor enough to warrant additional evaluation if she were to retake the exam. Quite simply, if there is any question concerning whether or not an applicant has the appropriate competencies, skills, knowledge, and abilities to safely operate a nuclear power plant, then it is prudent and entirely in accord with the NRC's mission to protect the public health and safety to re-evaluate a questionable applicant. The essential point I was attempting to make was that my recommendation to "likely not grant a waiver" was based upon my professional judgment and experience, and not based upon any other factor. I did not mean in any way to disparage Ms. Smith by using the term "unsafe," because any evaluation of "unsafe" is contingent upon the time in question—I was myself an "unsafe" operator before receiving the appropriate level of training and experience during my initial licensed operator training. To recommend that a waiver be denied, in order to re-evaluate a particular applicant, is also not a punitive action in

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<sup>94</sup> *Id.* at 3-4.

<sup>95</sup> *Id.*

any way; licensed operators are required to be re-examined every year on an operating exam during requalification training, and re-examined every two years on a written exam.

Q.31. In Ms. Smith's Prefiled Testimony on Statements of Position, she states: "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>96</sup> Do you agree with this statement?

A.31. Ms. Smith is correct that I did not review her 303-1 documentation from the 2011 exam before the 2012 exam. The last time I remember reviewing Ms. Smith's 2011 exam 303-1 forms (before the 2012 exam) was in August 2011, which was before my first email response to Mr. Gunn. I did not re-read the 2011 documentation again until after we completed documentation of the 2012 exam, and were preparing the "Binder" documents in preparation for the review panel's visit to Atlanta in late June 2012.<sup>97</sup> However, I do not believe that I stated anywhere that I "had little knowledge" of Ms. Smith's performance on the 2011 exam.

Q.32. What were the final results of the Region II examiner bias investigation?

A.32. Mr. Ehrhardt's complete review was incorporated as an attachment provided to Ms. Smith in the letter from Mr. Nieh.<sup>98</sup> The assigned Region II manager ultimately concluded the following:

The manager, after conducting an independent review of the applicant's contentions, reached the following conclusions:

- The applicant did not receive a waiver for the operating test portion of the Vogtle 2012 initial license examination because the facility licensee did not request a waiver on behalf of the applicant.
- The applicant's contention that examiners discouraged the facility licensee from requesting a waiver of the operating test portion of the Vogtle 2012 initial license examination is unsubstantiated.
- The applicant's contention of bias by examiners in administering or evaluating her operating test is unsubstantiated.

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<sup>96</sup> Exhibit CCS-076 at 12.

<sup>97</sup> Exhibit CCS-001 at 5.

<sup>98</sup> Exhibit CCS-068 at 10 et seq.

Furthermore, the manager determined that the applicant was examined fairly, in a normal fashion, in accordance with the guidelines contained in NUREG-0121.<sup>99</sup>

I would also like to point out that Mr. Bates provided a table of cross-referenced comments on the simulator scenarios and JPMs in his answers to Mr. Ehrhardt's questions, in support of our position that we graded all applicants on the 2012 Vogtle exam, including Ms. Smith, fairly and consistently.<sup>100</sup>

Q.33. Is there anything else that you would like to add as part of your testimony?

A.33. I would just like to state, clearly and unequivocally for the record, that my assessments of Ms. Smith during the 2011 and 2012 Vogtle exams (and all associated exam processes and activities) were based solely upon my best professional evaluation of her performance during those exams, and on no other consideration. I have never held any bias or prejudice of any kind against Ms. Smith, either in 2011 or in 2012; and I do not have any animosity, bias, or prejudice of any kind against Ms. Smith today. Thank you.

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<sup>99</sup> Exhibit NRC-014 at 11.

<sup>100</sup> Exhibit NRC-043 at 12-13.

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 MICHAEL K. MEEKS CONCERNING THE CLAIM BY CHARLISSA C. SMITH  
THAT THE NRC IMPROPERLY DENIED HER SENIOR REACTOR OPERATOR LICENSE  
APPLICATION

I, Michael K. Meeks, 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)**

Michael K. Meeks  
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Executed in Rockville, Maryland  
this 31st day of May, 2013