

United States Nuclear Regulatory Commission Official Hearing Exhibit	
Charlissa C. Smith (Denial of Senior Reactor Operator License)	
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NRC-005  
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 JOHN (JACK) MCHALE 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 John (Jack) McHale. I am employed as a Branch Chief in the Operator Licensing and Training Branch (IOLB), Division of Inspection and Regional Support (DIRS), Office of Nuclear Reactor Regulation (NRR), U.S. Nuclear Regulatory Commission (NRC), in Rockville, MD. A statement of my professional qualifications is attached as Exhibit NRC-040.

**Background**

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

A.2. I currently supervise the NRC headquarters branch responsible for oversight of the NRC's operator licensing program. My branch is responsible for establishing rules, standards, plans, and policy in the areas of training and operator licensing. Additionally, my

branch oversees the regional implementation of the licensed operator program, which includes interactions related to applicant requests for administrative reviews (appeals) of examination results.

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

A.3. I was the branch chief responsible for coordinating the staff administrative review of Ms. Smith's simulator test. In accordance with the instructions provided in NUREG-1021,<sup>1</sup> ES-502, Ms. Smith submitted her request to the Director, DIRS in NRR, to whom I organizationally report. As part of my official responsibilities, I performed an initial review of Ms. Smith's request for an administrative review and determined the approach to the review in accordance with NUREG-1021, ES-502 and Operator Licensing Manual Chapter (OLMC)-500, "Processing Requests for Administrative Reviews and Hearings."<sup>2</sup> I established the administrative staff panel to review the technical aspects of Ms. Smith's contentions and arranged for the independent Region 2 management review of the circumstances surrounding her concerns related to the potential waiver and examiner bias. Upon completion of the administrative panel review and independent management review, I supervised the preparation of an integrated response to Ms. Smith sustaining the denial of her license application. The response letter was signed by the Director, DIRS and sent to Ms. Smith on November 15, 2012.<sup>3</sup>

**Discussion**

Q.4. Please describe the Commission's requirements/standard procedures pertaining to the administrative review of Ms. Smith's simulator test.

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

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

<sup>3</sup> Exhibit CCS-014.

A.4. The Commission's standard procedures for administrative reviews of operator licensing examinations are contained in NUREG-1021,<sup>4</sup> ES-502 and OLMC-500.<sup>5</sup> In accordance with these procedures, upon receipt of a request from an applicant for an administrative review, the NRR operator licensing branch (IOLB) notifies the affected NRC regional office of the administrative review request, and sends an acknowledgement letter to the applicant. IOLB then determines whether to (1) review the appeal internally, (2) have the regional office review the appeal, or (3) convene a three-person appeal panel to review the applicant's contentions. As stated in OLMC-500, Option 3 might be appropriate for particularly complex or contentious cases.<sup>6</sup> If it is determined that an appeal panel will be used for the review, then the Chief, IOLB, in consultation with all the NRC Regions, will determine the make-up of the panel. The appeal panel shall consist of two certified examiners and a designated chairperson, usually a regional branch chief or a regional or IOLB senior examiner. The panel shall be impartial, i.e., it may include a representative from the affected region, but it will not include individuals involved with the applicant's licensing examination. For operating (including simulator) tests, the review shall evaluate the examiner's comments, the test that was administered, and the contentions and supporting documentation provided by the applicant or facility licensee. In accordance with OLMC-500, communications regarding the review are established and maintained with the affected region, in order to ensure the review results include input from the region, including the examiner of record. Based on the findings and recommendations from the review, IOLB will decide whether to sustain or overturn the applicant's license examination failure. The results will be approved by IOLB and signed out by the Director, DIRS, taking into account any input from the affected region and/or the examiner of record. The applicant is notified in writing of the results of the review.

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

<sup>5</sup> Exhibit CCS-030.

<sup>6</sup> *Id.* at 3.

Q.5. Did the Staff adhere to these requirements/standard procedures with respect to Ms. Smith? Please explain.

A.5. Yes. Upon receipt of Ms. Smith's request for an administrative review, the Staff conducted an initial evaluation of her contentions to determine the appropriate option for conducting the review. Due to the large number of technical issues contested and the complex nature of evaluating a simulator test based on records alone (none of the reviewers to be assigned would have witnessed the actual examination), IOLB decided, in accordance with OLMC-500, that convening a three-person appeal panel would be the most effective way to evaluate the technical aspects of Ms. Smith's contentions. Additionally, since Ms. Smith raised claims of examiner bias and concerns regarding a potential waiver of the simulator test, a review of these areas was warranted. In order to not distract the panel from the review of the technical issues, it was appropriate to assign a separate reviewer for these additional concerns. This approach is similar to that previously used in the case of an applicant request for administrative review of an operating test administered at McGuire Nuclear Station in 2000.<sup>7</sup>

A three-person panel to conduct the technical review was assembled in accordance with OLMC-500. Although OLMC-500 allows for a representative from the affected region (in this case Region 2) to be on the review panel, panel members were assigned from other NRC regions and headquarters to maximize impartiality. Donald Jackson, Chief of the Region 1 Operations Branch, was assigned as the panel chairperson. Additionally, Christopher Steely, a qualified Chief Examiner from Region 4 and David Muller, a qualified examiner from IOLB, were assigned as panel members. None of these individuals had any prior involvement in either of Ms. Smith's NRC examinations.

Consistent with the approach taken during the 2000 McGuire examination review mentioned above, an independent manager from Region 2 was assigned to review circumstances associated with potential waiver requests and examiner bias. Mr. Frank

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<sup>7</sup> Exhibit NRC-017.

Ehrhardt, Chief of Projects Branch 2, Region 2 Division of Reactor Projects was tasked with this portion of the review. Mr. Ehrhardt was selected based on his knowledge of Region 2 management practices, the operator licensing process and his organizational independence from the Region 2 Operations Branch examiners. (The Operations Branch is part of the Division of Reactor Safety and Mr. Ehrhardt is assigned to the Division of Reactor Projects.) As part of his independent review, Mr. Ehrhardt interviewed the Region II examiners that conducted the 2011 and 2012 Vogtle initial license examinations, assessed e-mail correspondence between the examiners and the facility licensee regarding potential waivers, reviewed the operator licensing docket file maintained by Region II for Ms. Smith, and conducted a comparison between the Region II examiners' assessments of Ms. Smith and the assessments of other applicants who took the Vogtle 2012 initial license examination.<sup>8</sup>

Mr. Ehrhardt completed his review of Ms. Smith's contentions related to the waiver process and examiner bias and provided the results to IOLB on September 4, 2012.<sup>9</sup> This review concluded that the applicant's contentions were unsubstantiated. Specifically, Mr. Ehrhardt concluded that (1) Ms. Smith "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 [her] behalf"; (2) Ms. Smith'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"; (3) Ms. Smith's "contention of bias by examiners in administering or evaluating her operating test is unsubstantiated"; and (4) Ms. Smith "was examined fairly, in a normal fashion, in accordance with the guidelines contained in NUREG-[1021]."<sup>10</sup>

The technical review panel completed its analysis and on October 25, 2012 provided to the Chief, IOLB a report detailing the recommendation that failure of the applicant's simulator

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<sup>8</sup> Exhibit NRC-014.

<sup>9</sup> *Id.*, Enclosure at 2.

<sup>10</sup> *Id.*, Enclosure at 9.

test be sustained.<sup>11</sup> The report provided to IOLB from the review panel addressed each of Ms. Smith's contentions set forth in the letter received by DIRS on June 5, 2012. The administrative review's disposition of each of the applicant's contentions fell into one of three categories, as indicated in the panel's report: (1) disagreed with the applicant and agreed with original grading – errors remain assigned to the rating factors per the original grading; (2) disagreed with the applicant and disagreed with the original grading – the reviewers agreed that the error was committed, but assigned it to a different rating factor or factors than the original grading; and (3) agreed with the applicant and disagreed with the original grading – no error was assessed to the applicant during the re-grading.

In case 1, where the review panel agreed with the original grading and errors remained assigned to the same rating factors in the same competencies, the disposition of these errors would not contribute to a change to the applicant's grade for these areas.

In case 2, the panel's administrative review of certain errors resulted in assigning those errors to a different rating factor or to an additional rating factor from the original grading. This assessment was made based on a review of the performance deficiency against the attributes contained in the Senior Reactor Operator (SRO) Competency Grading Worksheets for the Simulator Operating Test contained in NUREG-1021,<sup>12</sup> Form ES-303-4. In addition, NUREG-1021, ES-303.D.1.d states that the examiner should "Whenever possible, attempt to identify the root cause of the applicant's deficiencies and code each deficiency with no more than two different rating factors."<sup>13</sup> It is therefore possible, and in accordance with the examination standards, that an administrative reviewer could determine that a performance deficiency be appropriately assigned to more than one rating factor. Changes resulting in a revision to the number of errors assigned to a given rating factor would be expected to change the applicant's grade accordingly.

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<sup>11</sup> Exhibit CCS-037.

<sup>12</sup> Exhibit CCS-005A.

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

In case 3, where the panel did not believe the original performance deficiency should be held against the applicant, those errors would no longer contribute to any downgrading for that rating factor and competency. In her demand for hearing, Ms. Smith references two comments that “were removed,” namely comments related to the “RWST” and “temperature deviation.”<sup>14</sup> These errors were in fact removed from consideration in establishing the revised grade for the “Control Board Operations” competency since, in the opinion of the administrative review panel they should not have been assessed against the applicant.

In accordance with OLMC-500,<sup>15</sup> section D.1.c, communications between IOLB, the review panel and Region 2 were established and maintained to ensure the review results would include regional/examiner of record input. This input is especially important in the case of a simulator test review since the regional examiners were in fact the only NRC witnesses to the actual test. None of the review panel members had the benefit of observing the applicant first-hand, and instead could only rely upon the written record of the test and input from the witnessing examiners in arriving at their conclusions. Accordingly, the review panel’s conclusions and the outcome of Mr. Ehrhardt’s review were shared with Region 2 for comment before the final reply was made to the applicant from NRR, DIRS.

An overall pass/fail assessment was made based upon an evaluation of the review panel’s disposition of the applicant’s comments and a review of the other non-contested errors. IOLB used the results of the review panel’s determination and the assessment by Mr. Ehrhardt to prepare a response to Ms. Smith regarding the outcome of the re-grading of her simulator test.<sup>16</sup> The detailed analysis provided by the review panel<sup>17</sup> consisted of 36 pages addressing each of Ms. Smith’s contentions and supporting documentation, the examiner’s comments, and the panel’s overall assessment of the simulator test that was administered, as is specified in

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<sup>14</sup> Demand for Hearing (Dec. 5, 2012) at 11.

<sup>15</sup> Exhibit CCS-030.

<sup>16</sup> Exhibit CCS-014.

<sup>17</sup> Exhibit CCS-037.

NUREG-1021,<sup>18</sup> ES-502, section D.2.a. Due to the length of the panel's report, IOLB prepared a succinct summary of the pertinent issues leading to the decision to sustain Ms. Smith's simulator test failure and included it as an enclosure to the letter informing Ms. Smith of the results of the administrative review. The entire report prepared by Mr. Ehrhardt addressing the waiver and bias issues was enclosed in its entirety.

Q.6. How does Ms. Smith's case compare to other examples of administrative reviews?

A.6. As mentioned in the answer to Q5, the administrative review of Ms. Smith's simulator test was conducted in a manner similar to that in response to a McGuire Nuclear Station applicant's request in 2000. That case also involved technical aspects related to the applicant's performance during the simulator portion of the operating test and claims of examiner bias. As in Ms. Smith's case, the technical and bias reviews were conducted separately, with an independent regional manager handling the review of assertions of bias. The outcomes of both cases were essentially the same.

In her third statement of position, Ms. Smith takes issue with the fact that the administrative review panel considered non-contested items and contends that the NRC procedure for administrative reviews does not address non-contested items.<sup>19</sup> For operating tests, particularly the simulator portion, it is essential that all errors related to applicant performance be assessed in the aggregate to determine the overall pass/fail outcome. The scoring of the test is based on grades in several competency areas, each of which is based on several rating factors. The assignment of errors to the various rating factors is key to the grading process, and the interrelation of all errors is key to assessing the final outcome. Unless the test item under review is clearly independent of other items, it is entirely appropriate to assess all errors related to a rating factor or competency area to achieve the most accurate

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<sup>18</sup> Exhibit CCS-005A.

<sup>19</sup> Exhibit CCS-075 at 3.

review results. In its description of the administrative review process for operating tests, NUREG-1021<sup>20</sup> states at ES-502.D.2.a that “the test that was administered” be evaluated, which implies all relevant aspects of the test that could influence the outcome of the review. Additionally, OLMC-500<sup>21</sup> at the conclusion of section E.1.i, states that “upon determining the outcome for all contested test items, the reviewer(s) shall utilize NUREG-1021, ES-303 to determine the applicant’s overall operating test score based on the remaining test items.” Once again, it is imperative that the inter-relationship of all test items, both contested and non-contested, be factored into the overall re-grading. Utilizing this approach, it is possible for an applicant’s score to change in either direction, with the ultimate goal being accuracy and compliance with the NUREG-1021 grading standards. In the context of a simulator test, the only avenue an administrative reviewer has to make an accurate assessment is to review all documented information related to the applicant’s performance. Because the administrative reviewers did not have the benefit of having been an eyewitness to the applicant’s performance, it was crucial that they considered all relevant information when assessing a given rating factor or competency area. It would be inappropriate to ignore non-contested items that could provide insight into an applicant’s performance and affect the decision to sustain or overturn the original examination results.

The administrative review panel’s review of non-contested portions of the simulator test is consistent with NRC past precedent. For instance, in a 2005 administrative review, “based on the applicant’s previous contentions, and for completeness,” the NRC “examined all the applicant errors to assess the root causes and grading.”<sup>22</sup> After a detailed examination of the root causes of the uncontested errors, the review concluded that the RFs assigned by the examiners, RF 1.c. and RF 3.b., were incorrect and that the proper RFs were RF 1.a. and RF 3.c. In this way, the review panel affected a change in the applicant’s final score due to a

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

<sup>21</sup> Exhibit CCS-030.

<sup>22</sup> Exhibit NRC-020.

review of a non-contested portion of the simulator test. Also, the administrative review confirmed that the re-assigned errors were related to a critical task.

Q.7. What information did the staff provide Ms. Smith after the administrative review was complete?

A.7. In her third statement of position, Ms. Smith contends that she was basically furnished with “no documentation of how the review panel assessed the information.”<sup>23</sup> This statement is incorrect. As described in the answer to Q6 above, each of Ms. Smith’s contentions were addressed by the review panel. The panel’s report to NRR management reflects the disposition of each contested error and also how each would have impacted the grading.<sup>24</sup> When NRR’s final consolidated response to Ms. Smith<sup>25</sup> was prepared, due to the large number of contended errors, it was decided to focus the response on the chief reason the review panel believed the failure of the simulator test should be sustained, namely Competency Area 3 for “Control Board Operations.” The final response letter to Ms. Smith was not an attempt to hide information, as Ms. Smith suggests, but rather was focused on clearly stating the reason the independent review ultimately decided to sustain the failure. Other areas where the panel review may have mitigated errors were considered moot since failure of Competency Area 3 alone is sufficient ground to sustain the failure. I believe the intent of the OLMC-500 guidance was met in that the reason for sustaining the license denial was clearly communicated to Ms. Smith.

Also, with regard to furnishing a revised grade sheet for the entire simulator test, doing so would not serve any necessary purpose since the basis for sustaining the failure due to Ms. Smith’s performance in Competency Area 3 was clearly explained. The panel did not include a full grade sheet in its final report to NRR management, nor were they required to do so by OLMC-500. However, the panel did address and document every contention of Ms. Smith’s

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<sup>23</sup> Exhibit CCS-075 at 3.

<sup>24</sup> Exhibit CCS-037.

<sup>25</sup> Exhibit CCS-014.

along with a detailed analysis as described in OLMC-500. The intent of OLMC-500 operating test review documentation guidelines is satisfied if the NRC's rationale for supporting the results (pass/fail) is clearly articulated, which does not necessarily include development of a revised full examination grade sheet. In fact, due to the complex nature of simulator tests, OLMC-500 does not include an exact template to be used in preparing review details for simulator test failures. (The operating test sample review details specimen shown in Attachment 6 to OLMC-500 is based on a Job Performance Measure, which is a much more narrowly scoped test element than the simulator examination.) For simulator test administrative reviews, the general Attachment 6 example format is adapted to clearly articulate the results of the review. The more succinct response provided to Ms. Smith served the purpose of describing the basis for sustaining the original outcome and did in fact include a table reflecting the portion of the grade sheet related to the failed competency area. A review of a sample of past simulator test administrative review reports revealed that full revised grade sheets were not always provided to applicants. (In some cases they were, in others they were not.) However, in all of the examples reviewed, the reports explained the basis for sustaining the failures. Therefore, the grade sheet information provided in the response letter to Ms. Smith was within the range of past practices.

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Operator License Application) )  
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AFFIDAVIT OF JOHN (JACK) MCHALE CONCERNING THE CLAIM BY CHARLISSA C. SMITH  
THAT THE NRC IMPROPERLY DENIED HER SENIOR REACTOR OPERATOR LICENSE  
APPLICATION

I, John (Jack) McHale, 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)**

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Executed in Rockville, Maryland  
this 31st day of May, 2013