

June 30, 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
	)	
	)	
(Reactor Operator License for Vogtle	)	
Electric Generating Plant)	)	

C. Smith's Response to the NRC Staffs Answer on the Statements of Position

C. Smith's Pre-file Testimony (CCS-076) serves as the document that identifies and explains the issues in dispute. This document is in response to NRC's Statement of Position and pre-filed testimony: The common theme throughout these documents is the NRC's misrepresentation of ambiguous statements in their procedures, consistently adding words to their procedures to change the intent, redefining their words used in email documentation and creatively writing information to give a different appearance of what actually occurred. The NRC has failed to prove that their evidence and testimony supports the denial of a license to Charlissa C. Smith. It is requested that the Board rule in her favor based on factual data that proves several comments were documented with inappropriate intentions and unjustified basis.

BACKGROUND

The NRC Staff attempts to identify that there is no legal remedy for several issues brought up by C. Smith. When assessing C. Smith's data, the NRC Staff considered each

United States Nuclear Regulatory Commission Official Hearing Exhibit	
In the Matter of:	Charlissa C. Smith (Denial of Senior Reactor Operator License)
	ASLBP #: 13-925-01-SP-BD01
	Docket #: 05523694
	Exhibit #: CCS-116-00-BD01
	Admitted: 7/17/2013
	Rejected:
	Other:
	Identified: 7/17/2013 Withdrawn: Stricken:

Statement of Position separately, to imply that the removal of that item would not cause a change in the outcome. The NRC Staff attempts to select which grading sheet is the final grading (Review Panel grade sheet versus original grade sheet)<sup>1</sup> that C. Smith is comments should be ruled on by the Board. Although when C. Smith requested a copy of the grade sheet, she was told that the purpose of the Review Panel was to determine the final outcome and not to provide a grade sheet.<sup>2</sup> C. Smith presentation of information is intended to be considered collectively as appropriate (specific to the exam comments). There is no one item or issue that led to the denial of C. Smith license application (Simulator Exam Failure). Several inappropriate actions occurred that collectively resulted in the denial of her license application, collectively led to the avoidance in processing her waiver and collectively led to the Administrative Review Team sustaining the denial. Several of the actions brought C. Smith to the conclusion that she was treated differently. Some of the behavior was recognized immediately and some discovered later. The ability to apply a standard that was not listed in the Testing Outline goes against all the rules of creating an un-bias exam. The Test Outline is adjustable according to the NRC Staff's spoken standards, meaning they can essentially re-write an exam during the administrating of the exam (or post exam). If the Test Outline can be altered as desired, expanded to include addition objectives and loosely tied to an unwarranted comment.....then the Testing Outline serves no purpose, nor does the guidance in procedure to follow the Test Outline.<sup>3</sup>

C. Smith's response is intended to further identify the changes in standard, inaccurate references to procedural guidance, intentional references to ambiguous statements that do not clearly support their data and additional actions that caused a collection of points to result in a

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<sup>1</sup>NRC-001 pg 119-120; pg 122

<sup>2</sup>CCS-038

<sup>3</sup>CCS-005A pg 131 "e"

license denial. The method to obtain these points should lead to question the credibility and integrity of the individuals involved. It should also lead to the conclusion that the comments were obtained in an unfair and inconsistent manner. These characteristics are important because they are the basis of the additional comments added to C. Smith's test without proper justification or documentation, ultimately leading to a license denial.

The information in this case should be reviewed as written with discretion. It should not be based on the attempted effort to translate and redefine the English language. Details written and provided after the appeal request should be viewed with a high level of scrutiny and not taken at face value for the explanation provided. The NRC argues that C. Smith has not met the requirement of 10 CFR 55.33. It should be noted that the evidence presented shows that a retake exam for C. Smith can be easily contaminated and unlikely to be administered in a fair manner. This has already been demonstrated by the unofficial backdoor conversations that occurred with the waiver request and the communications with the Review Team.

C. Smith has met the requirements of a valid passing score for all parts of the Operating Test in 2011, meaning that those requirements have already been demonstrated as documented and signed by Phil Capehart for Jay Hopkins on the 303-form-2011.<sup>4</sup> It should also be noted that C. Smith has met the requirements of a valid passing score for written portion of the test as documented and signed by Michael Meeks on the 303-form-2012.<sup>5</sup> It is evident that the barriers put in place by the examiners were an attempt to find an inappropriate way to keep C. Smith from obtaining a license. Assessing the validity of the comments is very important in determining the outcome of the decision. The discussion of the bias behavior is intended to explain the motive behind providing comments that do not fit the requirements of the testing

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<sup>4</sup>-CCS-007 page 1

<sup>5</sup>-CCS-045 page 1

outlines. The comments count against the grading, reducing the points until the license is denied. If it is found that the basis for the comments were unfair and inconsistent with the Testing Outline and NUREG 1021, then the comments should be removed. After all comments have been assessed (and comments with no validity removed) then this will identify what the outcome would have been had the examiners followed their guidance. It is requested that the Board consider all information collectively. Because the license denial was not based on one comment, the final outcome should also not be based on one comment.

C. Smith's analysis of the NRC Staff answer to her complaints is that they overinflated the issues with excessive details to cloud the relevant facts in an attempt to divert the attention away from the real issues. The NRC's position in this case has regressed from the intended purpose of addressing C. Smith license denial appeal to an obvious attempt to "Cover Their Tracks" for the sake of preventing unwanted attention to their misconduct.

#### NEW EVIDENCE BACKGROUND

Throughout this entire appeal process C. Smith identified that she was treated differently than her peers in the administration and grading of her Simulator Exam. C. Smith discusses that a standard was applied that was not consistent with NUREG 1021. C. Smith also presented information questioning the behaviors of the Exam Team when the facility made an attempt to submit a waiver request. Later in this process, C. Smith discovers that the Administrative Review Team constructed a letter, analysis report and grade sheet that she passed the Operating Test. C. Smith also discovers that after involvement from Region II (Exam Team), the document changed several times with the intent to sustain the denial. C. Smith presented several emails illustrating the attempts to accumulate more comments that did not stop until the denial was sustained (in grading).

It must be presented that on May 31, 2013, an email and affidavit written by Edwin Lea was introduced into C. Smith's hearing docket.<sup>6</sup> This email was dated December 12, 2012, and it contained information consistent with the allegations presented by C. Smith. It is unclear why this email was not presented in the hearing file prior to May 31, 2012, because it provides pertinent information that is relevant to C. Smith's case. This email discussed how Malcolm Wideman (Branch Chief) made the statement "***we did ourselves proud" in a branch meeting referencing the failure of a female SRO applicant.***"<sup>7</sup> It also discussed how the individuals involved with the failure were given awards.<sup>8</sup> Mr. Lea believed that Region II personnel involved in the denial of the license ***went through extreme measures to make sure the young lady would not receive a license based on failing the operations portion of the exam.***<sup>9</sup> Mr. Lea also stated that ***he believed that the guidance in NUREG 1021 was not adhered to.***<sup>10</sup> He furthered discussed that ***he believed that the young lady should not have been required to take the operating portion based on the successful completion of the operating section of the exam previously administered to her.*** These are the words of a seasoned examiner that has been a qualified license examiner since 1990 and works in the office with C. Smith's Exam Team. He obviously interprets the procedural guidance differently than the individuals involved in the license denial, yet they work for the same organization. His observations in the office led to the submittal of this email to his upper management (with Ho Nieh and John McHale cc'd).<sup>11</sup> In the email he points out "***that if you look at the paper trail/conversations associated with the failure of the applicant you will find that after the individual in***

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<sup>6</sup>-NRC-025, NRC-021

<sup>7</sup>-NRC-021

<sup>8</sup>-id

<sup>9</sup>-id

<sup>10</sup>-id

<sup>11</sup>-id

**headquarters were ready to suggest issuing a license, the individuals from Region II involved in the failure of the applicant went back and came up with additional comments to support a failure.**<sup>12</sup>” This is all consistent with the information/evidence already presented by C. Smith. Mr. Lea observation of the conversations and behaviors in the office resulted in an “**email of concern**” about the operation licensing activities in Region II. The email was dated December 12, 2012 and was not presented in the hearing file submitted by the NRC Staff until May 31, 2013. Mr. Lea wrote an affidavit dated May 29, 2013, and the email was presented into the hearing file along with the affidavit.

The affidavit of Mr. Lea discussed how he became curious after hearing conversations in the office and he began asking questions.<sup>13</sup> He decided to read the information that he could access. After reviewing the information he believed that C. Smith should not have been required to retake the operating portion of the exam and that the waiver denial was not warranted.<sup>14</sup> The individual also states that **he heard several operator licensing examiners concerning the failure of a SRO applicant, discussing how to write up the failure of the Operating Test such that the decision would not be overturned by headquarters during the appeal process.**<sup>15</sup> Again, recall how C. Smith identified that some information presented in her final exam report was not accurate and that some comments were fit into different competencies by changing the details of the actions. A justified denial should only require that you state the facts (consistent with the Test Outline) and present the factual details obtained in the simulator data to support your conclusion. A number of C. Smith’s comments are not based

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<sup>12</sup>-id

<sup>13</sup>-NRC-025 page 2

<sup>14</sup>-id page 2

<sup>15</sup>-NRC-021

on factual data that can be proven. A number of comments were based on statements (not incorrect actions) that were purposely misquoted and misrepresented.

The NRC Staff discusses that the information presented by Mr. Lea, was hearsay and second hand information.<sup>16</sup> C. Smith request that the Board consider the Department of Labor's discussion on its approach to Whistleblower Cases. 29 CFR 1983.107(b) (July 10, 2012): Whistleblowers often appear pro se and may be disadvantaged by strict adherence to formal rules of evidence.<sup>17</sup> Furthermore, hearsay evidence is often appropriate in Whistleblower cases, **as there often are no relevant documents or witnesses other than hearsay to prove discriminatory intent.** Mr. Lea essentially serves as a whistleblower in this case.

The individuals involved in all facets of the license denial (waiver, exam and review) have an interest in the conclusion of the case as it would cause considerable questions in their ethics, morals and values. They intend to protect their reputation, even if their actions are defined by inappropriate conduct. Mr. Lea has no interest and stands to gain nothing in bringing these "behind the scene" activities to light. This email and affidavit speaks volumes. A person who works for the same organization had concerns about the application of the process that existed in their office. Keep in mind that Mr. Lea is a fellow examiner in Region II and has been an examiner for over 20 years.<sup>18</sup> Mr. Lea is required to administer exams, grade exams, process waiver requests and interpret procedural guidance (NUREG 1021) in the same manner. For this individual to get involved, knowing that this could create an uncomfortable working environment with his peers, means that he observed behaviors outside of the norm.

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<sup>16</sup>-NRC-001 page 51

<sup>17</sup>-CCS-094

<sup>18</sup>-NRC-025 page 1

Mr. Lea's personal opinion is relevant to this case because these examiners are governed by the same procedures and should have the same interpretation.

## DISCUSSION

### I. LEGAL STANDARDS

The NRC Staff states "the Staff improperly discharges its duties with respect to the grading of an operating test if the grading is inappropriate or unjustified or if the grading stays too far afield of their twin goals of equitable and consistent examination administration thus becoming arbitrary or an abuse of discretion."<sup>19</sup>

C. Smith has provided evidence that inappropriate actions occurred in the beginning stages of the request for a waiver.<sup>20</sup> Those actions led to blocking the final submittal and avoidance in processing the waiver. In addition the examiners did in fact administer the exam in a different manner. A final note is that the Review Team initially concluded that C. Smith should pass the Operating Exam and the changes in the decision occurred after involvement from the Exam Team, again blocking the final actions required by the Review Team to overturn the decision.

The NRC discusses the case of Frank J Calabrese Jr., as a comparison to C. Smith's case. In Mr. Calabrese's case it was determined to be an "entirely reasonable exercise of decision-making authority and not an abuse of discretion."<sup>21</sup> The details of C. Smith's case are very different. In addition no information was provided in NRC Staff document to imply that the

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<sup>19</sup>-NRC-001 page 5

<sup>20</sup>-CCS-076

<sup>21</sup>-NRC-001 page 6

individual was required to retake the examination after passing, experienced issues during the administration of the exam or experienced influence from the Exam Team during an Administrative Review. This was merely an appeal based on the grading and no additional factors that would have a direct impact on the grading. The NRC Staff's mention of other licensing requirements is not the issue of this case. Mentioning the health requirements that the staff must assess prior to issuing a license is a small detail.<sup>22</sup> The important issue here is the determination of misconduct by the Exam Team and if it prevented the issuance of a license.

## II. ACTIONS RELATED TO 2012 SRO LICENSE APPLICATION WERE NOT CONSISTENT

A. The NRC Staff actions related to C. Smith's 2012 SRO license application were not consistent with 10CFR 55, NUREG 1021 or the Testing Outline. The NRC Staff attempts to divert the attention to the final license application not containing a waiver request. The NRC Staff would like one to forget all actions that preceded this document. In this document we will also find that additional conversations occurred prior to the infamous phone call in which the waiver request was withdrawn. C. Smith will also attempt to show Mr. Meeks personal interests in C. Smith's progress prior to the NRC examination and a portion of the conversation that occurred when the waiver was withdrawal.

NRC Staff says "even if the staff had received an operating test waiver request on behalf of Ms. Smith as a part of a new and final license (application as required), the staff would likely not have granted such a request."<sup>23</sup> The major issue associated with this entire process is the manner in which the waiver request was handled. The waiver request was handled in a manner that resulted in the NRC Exam Team influencing the facility to withdraw the waiver.

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<sup>22</sup>-10 CFR 55.33

<sup>23</sup>-NRC-001 page 8

When the waiver was received by the Exam Team, there was no explanation to justify contacting the facility. C. Smith will also show how the justification for contacting the facility has changed throughout these legal documents.

C. Smith was treated in a biased manner by the Exam Team. C. Smith has already shown evidence that the 2012 Simulator Examiner, Mark Bates was contaminated with the opinions of the other Exam Team members.<sup>24</sup> The NRC Staff attempts to divert the attention away from the emails and the statements written that identify Mark Bates involvement in the discussions about C. Smith prior to the exam. In the NRC Staff's response they argue that statements defined by the English language do not mean what is written. They make an attempt to rewrite a new definition of what those statements clearly say.<sup>25</sup> The important thing to remember about documentation is that it will not change, even if the statements made by people do change.

To further support that C. Smith was treated in a biased manner, C. Smith will show how the examiners were even bias in assigning her three scenarios versus two scenarios. The NRC Exam Team attempts to provide a convincing discussion on how C. Smith was assigned three scenarios.<sup>26</sup> The method described sounds as if it was unbiased, but once C. Smith reveals the names associated with this method it will be clear that she was treated in a biased manner.<sup>27</sup> A bias manner that infers that the final outcome of the Simulator Exam was planned before administering the test at the facility.

C. Smith will also provide exhibits with a side by side comparison of other crews that received the same scenarios. In providing this comparison it will be clear that the Exam Team

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<sup>24</sup>-CCS-001 page 1 and page 22

<sup>25</sup>-NRC-006 page 18, page 40

<sup>26</sup>-NRC-006 page 39, NRC-002 page 11-12

<sup>27</sup>-CCS-083

administered the exam in an inconsistent manner. Meaning that the other crews were given an opportunity to address the failures, come up with a course of action and execute the action. The major difference between their scenarios and C. Smith scenarios was that once the actions were complete there was a space in between the next event or failure. The NRC Staff provides an argument that simultaneous failures are permitted according to NUREG 1021.<sup>28</sup> The only issue is that the same standard of simultaneous failures was not provided to the other crews.

The NRC Staff makes an attempt to prove that the Administrative Review was conducted in a bias free manner. Their main argument to support this claim, is in reference to the staff's testimony.<sup>29</sup> C. Smith's method to support that her Administrative Review was not free from bias was by presenting emails written by the individuals that provided their testimony. Their testimony response contradicted the emails that were written by them. Their interest in this matter is to avoid the perception that the actions occurring during this review was inappropriate. C. Smith will reiterate that documentation written by these individuals will not change even if their statements do. If all emails are printed out and placed in chronological order, then the point of influence is very clear.<sup>30</sup> The NRC Staff tries to change the perception that the initial decision to issue a license for C. Smith is not true.

Mr. Lea's email to upper management, further supports this statement by identifying when the decision to issue the license was determined the individuals involved in the license denial went back and wrote more comments to support the failure.<sup>31</sup> C. Smith will also identify how Mark Bates attempted to influence the Administrative Review Team early on.<sup>32</sup>

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<sup>28</sup>-NRC-001 page 13

<sup>29</sup>-NRC-004, 005

<sup>30</sup>-CCS-013, 020, 022, 023, 025, 026, 028, 029, 031, 035, 059, 061, 062, 063, 064

<sup>31</sup>-NRC-021

<sup>32</sup>-CCS-080

The NRC Staff attempts to convince the board that the identification of the non-contested PORV comment was justified. They even refer to this event as the **“failed open”** pressurizer power operated relief valve (PORV). The use of the words **“failed open”** is a misleading statement because the PORV was not **“failed open”** in C. Smith’s scenario. The PORV was operating properly, it opened in response to the instrument failure. If the PORV were **“failed open”**, then the use of the hand switch would not respond. The NRC Staff uses the words **“failed open”** to allow them to later associate the failure with an exhibit that has a PORV in the **“failed open”** position that is listed as a critical task. Beware - this is not the same event. C. Smith will present additional information to support why the PORV was not critical as identified by the Exam Team in Statement of Position 12.

The NRC Staff discusses that the PORV was recognized as being a Critical Task at the earliest meeting with the Review Panel before any potential last-minute influence by Region II.<sup>33</sup> Another detail that is worthy of being pointed out is before the Review Panel of notes were written on the flip chart, they did have contact with the Region II Exam Team members while conducting interviews.<sup>34</sup> The Exam Team admits that details about the PORV were discussed as a part of the interviews. In fact Mark Bakes identifies this information in one of the binders that was provided to the Review Team.<sup>35</sup> The binder identified that the Exam Team forgot to document the PORV as a critical task. He also provided a document to an Admin Team member to consider after this meeting<sup>36</sup> that also identified the PORV as being critical and not being identified. The document also provide a detailed list of how C. Smith should have been graded.

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<sup>33</sup>-NRC-001 page 10

<sup>34</sup>-id page 40

<sup>35</sup>-id page 40, CCS-039

<sup>36</sup>-CCS-062, CCS-101

The Review Team did not come up with the information about the PORV and TE 130's added comment, independent of the Exam Team. In fact the initial draft was constructed with information selected from Mr. Bates document in reference to the extra comment about TE-130.<sup>37</sup>

#### B. No Remedy

An SRO License is only granted if the applicant passes the required Operating Test, proving that the applicant has learned to operate the facility competently and safely and..... to direct the licensed activities of license operators competently and safety. I'm sure that the NRC Staff would imply that C. Smith has not met the requirements to receive an SRO License. It must be noted that C. Smith has already met the passing requirements for the Operating Test in 2011.<sup>38</sup> And she met the requirements of the Written Test in 2012.<sup>39</sup> Based on that information alone C. Smith has the equivalent qualifications of the individuals that received waivers in 2012. If C. Smith did not receive inconsistent and unjustified comments on the Simulator Exam in 2012 she would have received a license in 2012. If C. Smith's review was performed correctly she would have been issued a license. If C. Smith was granted a waiver she would have been issued a license.

C. Smith's discussion on the inconsistencies of the exam, is not presented for the purpose of ruling that a license should be issued based on the examiners being bias. C. Smith presents the discussion about the bias behaviors to provide an explanation as to why the exam comments deviated far from the actual details of the scenario. It is to also identify that the Exam Team had a personal issue with C. Smith. C. Smith has already identified that the final grade

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<sup>37</sup>-CCS-080

<sup>38</sup>-CCS-007 page 1

<sup>39</sup>-CCS-045 page 1

was not based on one comment and the bias behavior has an effect on how the rating factors were applied. If an individual does not think highly of an examinee prior to the test then they will not give you the same benefit of the doubt when applying the scores. The final decision was based on several comments, so in turn the final decision should be based on several comments that are proven to be unwarranted. If the individual comments are found to be unjustified then their removal will result in the return of points to the final grades. Once a final list of comments are identified then the final score can be calculated to determine the outcome of the exam if it were properly scored and assessed.

### III. PROCESS FOR PREPARING, ADMINISTERING, AND EVALUATING OPERATING TEST

The Operating Test is divided into 2 sections.<sup>40</sup> C. Smith identified in her initial responses that the operating portion includes the Simulator, Admin Topics and Walk-Through. A failure of any of those three portions will result in an overall unsatisfactory on the Operating Test.<sup>41</sup> If any of the three portions are found to be unsatisfactory (It does not matter how well you do on one section) the overall license will be denied. C. Smith is simply identifying that an unsatisfactory on any of the identified 3 portions of the operating test will result in an overall unsatisfactory on the Operating Test. So in essence they have an equal weight on the final outcome of the license application.

The NRC Staff also discusses that the Chief Examiner must apply sound judgment to the facts in each case to avoid conflict of interest issues. The staff contends that the chief examiner took this into consideration by considering NUREG 1021 requirements that says the

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<sup>40</sup>-NRC-001 page 12, CCS-003

<sup>41</sup>-CCS-071 page 55-56(Example)

regional office shall not assigned an examiner that failed an applicant on the Operating Test to administer any part of that applicants retake Operating Test.<sup>42</sup> It is true that C. Smith did not fail the Operating Test in 2011. Keep in mind the details of this retake is different from any other case presented. Although C. Smith did not fail the Operating Test she was treated as if she failed it and was required to retake the entire exam. In addition the individuals that were part of her Exam Team in 2012 were essentially the same individuals who presented a case as to why she should not receive a waiver in 2011. In addition, denying a waiver (or likely) of the portion passed (Operating Test) is equivalent to the same consequences of failing the Operating Test. The comments made by the examiners have been clearly identified in statements, comments and binders. With that being said the NRC Exam Team presents the statement above on conflict of interest in regard to the failure of the test but they do not mention that this is not the only criteria identified under conflict of interest in NUREG 1021.<sup>43</sup>

The NRC Staff discusses the development of the examination, the layout of the crews and the typical titles. The NRC Staff also points out that the licensee facility develops the entire test. The NRC Chief Examiner reviews the test to ensure that it meets the guidance of NUREG 1021. It also discusses the criteria used in the grading. My disagreement is with the second mention of the statement that the “comments identified in the exam are utilized to determine future waiver request.” This is an opinionated statement and is not found in NUREG 1021. The NRC response document continues to discuss the grading standards and how rating factor are applied. C. Smith complaint is not that the exam itself was subjective. Its preparation and final product was constructed in an objective manner. When an objective test is deviated from then this discussion about its construction is a moot point.

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<sup>42</sup>-NRC-001 page 42-43

<sup>43</sup>-CCS-005 A page 52-53

#### IV. STATEMENT OF POSITION 1: PROCESSING THE WAIVER

The NRC staff discusses the results of the 2011 examination that was administered to C. Smith. C. Smith's 2011 Exam Team consisted of Jay Hopkins, Phil Capehart, and Michael Meeks. Several of the issues encountered in 2012 were also encountered in 2011. C. Smith experienced similar issues where comments were not reported accurately. C. Smith noticed during the scenarios that her peers made several errors that were not reported on the final documentation.<sup>44</sup> This is mentioned to point out the level of subjectivity that also existed in 2011. Although C. Smith felt (in 2011) that she was treated differently and that her comments were not accurate, it made no sense to contest the simulator exam because it was assessed with a passing score. In addition due to the high failure rate on the written test it would not change the outcome.

The NRC Staff also discusses that the examiners in 2011 independently stated that they would recommend the preliminary waiver be preliminarily denied.<sup>45</sup> The NRC Examiners misstated the word independently. Independent means 1) Not influenced by others in matters of opinion. 2) Not influenced by the thought or action of others. Mr. Meeks affidavit discusses in detail that Jay Hopkins contacted him and had a discussion that he felt that C Smith should not pass the simulator exam although she met the grading requirement.<sup>46</sup> He also discussed that Jay Hopkins wanted to apply a standard allowed in the procedure to fail C. Smith although the overall result was passing. He further discussed how he referred Jay Hopkins to contact Phil Capehart and Malcolm Wideman to discuss his position.<sup>47</sup> If this conversation is true as identified by Mr. Meeks then the decisions made (to recommend that C. Smith should not

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<sup>44</sup>-CCS-019

<sup>45</sup>-NRC-001 page 29

<sup>46</sup>-NRC-006 page 14-15

<sup>47</sup>-NRC-006 page 15

receive a waiver) by each individual was not independent. In his affidavit he testifies that this conversation occurred in April.<sup>48</sup> Mr. Capehart sent the email out in early May asking who should receive waivers.<sup>49</sup> If all of these individuals had already had this discussion via telephone then the email was simply a method to restate what had already been discussed. These circumstances do not meet the definition of independent. Just as a side note about the discussions that have occurred about C. Smith, keep in mind that all of these discussions were driven by Mr. Capehart and Mr. Meeks. There are no emails from Jay Hopkins, there is no written documentation from Jay Hopkins and Mr. Capehart signed for Jay Hopkins on C. Smith's 2011 license denial application.<sup>50</sup>

The NRC Staff continues their discussion by pointing out that C. Smith's performance stood out to all three examiners as one of the two least competent performances. C. Smith notices that the Exam Team has commented several times in their statements and affidavits about the individual that was failed in 2011. They have written statements to identify that C. Smith and other individual were the worst operators.<sup>51</sup> C. Smith is not certain as to why they continue to discuss this individual's performance especially since the appeal is in reference to C. Smith's performance. My assumption is that the Exam Team would like to create the impression that no bias existed with C. Smith because she was not the only individual identified as being below average. Because the Exam Team continues to mention this individual it may be important to note that C. Smith shares some common characteristics with this individual that was failed in 2011 on the Simulator Exam. C. Smith & the individual were both identified as weak contenders, C. Smith & the individual were essentially examined by the same Exam Team

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<sup>48</sup>-id-page 14-15

<sup>49</sup>-id-page 16

<sup>50</sup>-CCS-007 page 1

<sup>51</sup>-NRC-006 page 13, NRC-046 page 1 bottom sentence

members and C. Smith & the individual are both African-American females. This individual also identified that she encountered numerous issues during the administration of her exam in 2011.

The NRC Staff attempts to create the impression that C. Smith made several errors and was corrected several times by her crew members. C. Smith has identified that some comments were not properly presented in C. Smith's 2011 exam. Aside from the NRC Staff intentions to give the impression that no other crew members had to be corrected. In CCS-011 Operator B's Final Grade Sheet from 2011, on page 12, 14, and 16 this individual was corrected numerous times. It must be also noted that C. Smith was the individual that provided corrections to Operator B on page 14.<sup>52</sup> The NRC Examiners do not want to represent that it is normal for crew members to correct each other. Instead the Exam Team only wants to illuminate corrections made to C. Smith. This is to create the impression that C. Smith committed a higher number of errors. C. Smith was simply held to a different standard even in 2011.

The NRC Staff makes an attempt to shift the focus on the fact that a waiver request was not submitted on the final license application.<sup>53</sup> C. Smith does not make a claim that the final license application contained a waiver requests. Any further discussions about the final license application are irrelevant to the complaint. The complaint made by C. Smith is that the NRC Exam Team members blocked the final submittal by influencing the company during the preliminary submittal. C. Smith discovered this information after investigating the details of the waiver request, after her 2012 exam failure. C. Smith recognized that there were a lot of similarities two years in a row, and she realized that something was wrong. The NRC Staff argues that C. Smith says that her waiver request was submitted and not process according to the NRC Procedure. The NRC Staff is misleading in trying to create the perception that she is

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<sup>52</sup>-CCS-011 page 12, page 14, page 16

<sup>53</sup>-NRC-001 page 8

referring to the final NRC 398.<sup>54</sup> C. Smith's comment is specific to the actions performed to block the final NRC 398 Form. By blocking this NRC 398 Form in the preliminary stages, the process of denying the waiver formally was avoided. The process referred to is the steps required to formally write a response that requires a detailed explanation as to why the individual should not receive a waiver. This should clarify that C. Smith is in no way saying that the preliminary application was expected to be processed. C. Smith is saying that the formal process of addressing the waiver was avoided by blocking the final submittal. NUREG 1021 discusses that the evaluation of the waiver starts with the preliminary submittal 30 days prior to the examination.<sup>55</sup> If the NRC is successful in influencing the company to withdraw the waiver prior, then the final submittal will never happen. In turn the completion of the waiver request will not be completed. That is what happened here.

Michael Meeks affidavit attempts to justify his communications with the facility. Recall in past legal documents, final review result and statements that it was identified that the exam team had communication with the facility by email when it was identified that C. Smith "would not likely receive a waiver."<sup>56</sup> In those previous documents it identified that when the preliminary license application was sent that the exam team contacted the facility to determine if the submittal was intentional. C. Smith responded in previous legal documents that she was singled out even in that process because there was no justified reason to contact the facility. Also note that in a later legal document the NRC Staff responded that the facility was contacted because information was left off of the preliminary license application.<sup>57</sup> Also recall that the entire time C. Smith identified that there were other conversations that were occurring to include

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<sup>54</sup>-id-page27

<sup>55</sup>-CCS-005 A page 72 "e"

<sup>56</sup>-CCS-001 page 22

<sup>57</sup>-CCS-014 page 11, CCS-104 page 4, CCS-015 page 4-5

backdoor conversations” not accounted for. Michael Meeks says he does not recall the details of that conversation in his statement to Frank Ehrhardt.<sup>58</sup> Now Michael Meeks goes into a discussion about the conversations that occurred prior to the preliminary submittal.<sup>59</sup> Mr. Meeks makes an attempt to explain the additional conversations that were not identify earlier. The discussions in reference to the email sent have already been stated in several documents. There is no reason to restate the details of that information.

C. Smith however will discuss the additional information provided by Mr. Meeks about the October 12, 2011, phone call. Mr. Meeks now identifies that the facility was asked in this 120 day phone call if they intended to submit a waiver for C. Smith.<sup>60</sup> In Mr. Meeks affidavit he discusses the 120 day phone call and the contents of that phone call is governed by NUREG 1021.<sup>61</sup> He attempts to misrepresent that the procedure allows the examiner to question the facility intent to submit a waiver for an individual. He points out the last bullet of that section. This bullet does not say to ask the facility if an individual will submit a waiver the last bullet says to discuss the requirements for the application submittal.<sup>62</sup> C. Smith issue is not the misrepresentation of the last bullet on page 46, the issue is that if Mr. Meeks intended to deviate from the procedure then the documentation produced as a result of this phone call should have included the additional information that was discussed. In reviewing a copy of the letter that discusses this phone call from October 12, 2011, it only mentions that Mr. Bates contacted the facility representative and it discusses all of the other information listed in the procedure to be

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<sup>58</sup>-CCS-015 page 4 bottom 2 paragraphs

<sup>59</sup>-NRC-001 page 4, 19-22 Now Mr. Meeks Remembers.

<sup>60</sup>-NRC-001 page 19

<sup>61</sup>-NRC-006 page 4

<sup>62</sup>-CCS-005 A page 45-46, See CCS-021 page 2 Bottom Sentence-Mark Bates said he did not discuss waivers with the facility but he was a part of the 120 day phone call.

discussed.<sup>63</sup> In fact the documentation submitted to the company stated “that any waiver request should be submitted 30 days prior with preliminary applications.”<sup>64</sup> This is contradictory to the actual discussion that occurred. This statement is inviting any waiver request. NUREG 1021 allows the template to be altered as necessary to fit your situation.<sup>65</sup> If Mr. Meeks was a part of this conversation and did the majority of the talking as identified in his affidavit then why doesn’t this documentation reflect that. Are we saying that documentation is being produced does not reflect the actual discussions? These circumstances are very similar to C. Smith’s complaint that the documentation does not match what actually occurred. These statements cannot be validated as they were not properly reported in the documented letter sent to the company.

The NRC Staff states that the license facility displayed multiple indications that they did not intend to submit a waiver requests for C. Smith. C. Smith perception is the opposite. There were several indications that showed the Company’s intent was to submit the waiver. They sent a letter signed by the VP requesting a waiver in June 2011,<sup>66</sup> they sent an email inquiry about a waiver request,<sup>67</sup> and the preliminary license application<sup>68</sup> was sent. The only indication that a waiver request would not be sent was the unauthorized and previously undisclosed conversation that occurred with the facility representative.

According to Mr. Meeks, his latest explanation as to why he contacted the company is based on the conversation with the facility representative identifying that a waiver would not be submitted for C. Smith.<sup>68</sup> Mr. Meeks discusses that this was the reason that he was surprised

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<sup>63</sup>-CCS-018

<sup>64</sup>-id

<sup>65</sup>-CCS-005A, page 46 “d”

<sup>66</sup>-CCS-006, page 18

<sup>67</sup>-CCS-001, page 23

<sup>68</sup>-NRC-006 page 21-22

when he received the preliminary license application. He goes on to say that he suspected it was a “cut and paste error.”<sup>69</sup> Quick reminder: previous explanations were that they called because they thought it was a mistake because comments were left off of the application. Now the explanation is, that it was suspected to be a cut-and-paste error. *The NRC Staff points out C. Smith’s comment about singling her out, contending that there was justification. If this information is true then C. Smith’s response is that it doesn’t matter when she was singled out. If Mr. Meeks asked the facility on the 120 day call about C. Smith **specifically**, then she was still singled out.* Mr. Meeks intent with the phone call (occurring after the waiver request) was not to clarify the submittal but to remind the facility representative that he asked if a waiver would be submitted previously and he remind facility representative that they responded that a waiver would not be submitted.<sup>70</sup> If the supervisor Malcolm Wideman specifically identified to Mr. Meeks “not to influence the facility’s decision about submitting a waiver for C. Smith”<sup>71</sup> then this conversation should not have occurred. Anyone receiving a phone call of that nature would not submit the waiver even if it was intended. The staff discharged its duty when they contacted the facility for the purpose of having the waiver withdrawn with unnecessary influence.

C. Smith will now respond to NRC Staff’s comment on the number of comments received on the final grade sheet in 2011 in comparison to individuals granted waivers in the past. C. Smith has mentioned before that the comments on the final report are subjective as to what is reported. C. Smith identifies that she noticed other individuals making several mistakes that were not documented on their final report. Because additional information was not obtained during the 2011 Examination,<sup>72</sup> C. Smith can only comment on what is reported. It is

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<sup>69</sup>-NRC-006 page 21, CCS-015 page 4, CCS-104 page 4

<sup>70</sup>-NRC-006 page 21

<sup>71</sup>NRC-006 page 18

<sup>72</sup>-Examiner Notes and Simulator Data via FOIA

deceiving for the NRC Staff to discuss the number of comments when the facility, (because the test is written by the facility) number of scenarios and competencies are different. The chart created by the exam team has no merit because it does not note the **number of scenarios** that each individual has. Nor do the averages encompass any consideration on the **number of competencies** that each individual group is graded on (SRO versus RO). These are all important factors in the accuracy of reporting averages. Some individuals receive two scenarios while others received three. RO are graded in four competencies and the SROs are graded six competencies. The use of overall averages of everything disguises the individuals with a larger number of comments. If the NRC has granted one waiver to any individual in the past with a large number of comments (taking into consideration the number of scenarios and the number of competencies) then they should not be able to use this “comment” argument.

C. Smith noted an individual that was graded by Mr. Meeks and Mr. Bates that received eight comments on his simulator exam.<sup>73</sup> This individual was a Reactor Operator (RO). **This individual received eight comments and received a waiver.** Recall that this individual is only graded in four competencies/areas. C. Smith will present 3 examples that take most or all the information into consideration in comparison to the NRC’s comparison.

1. This example will not take the number of scenarios into consideration because the NRC does not report the number of scenarios (so it is unknown). Let’s do an average of the number of comments versus the number of competencies. The RO had eight comments that were from four competencies. If you divide the 8 comments by the four competencies he averaged 2 comments per competency. Ms. Smith had 12 comments and was graded in six competencies. If you divide the 12 comments by the number of

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<sup>73</sup>-CCS-071 page 92-94, 99-107

competencies the average is 2 comments per competency. Both candidates are equal with respect to average comments per competency. In this comparison, If the individual was granted a waiver than The NRC Staff's argument fails.

2. Let's say that this individual received **three** scenarios in comparison to C. Smith's three scenarios. If you were to determine the average number of comments per scenario you (8 comments divided by 3 scenarios) would find that he averaged 2.66 comments per scenario and C. Smith averaged 4 comments per scenario (12 comments divided by 3 scenarios). Next, if the comments per scenario were compared to the number of competencies graded in each scenario (because he is an RO and C. Smith is an SRO), it would look like this: For the individual, 2.66 comments per scenario divided by 4 competencies equals 0.66 comments per competency in each scenario. For C. Smith, 4 comments per scenario divided by 6 competencies equals 0.66 comments per competency in each scenario. Both candidates are equal with respect to average comments per competency in each of the scenarios. In this comparison, If the individual was granted a waiver than The NRC Staff's argument fails.
  
  3. Now let's make the same comparison if this individual received **two** scenarios in comparison to C. Smith's three scenarios. To determine the average number comments per scenario, for the individual, divide 8 comments by 2 scenarios to equal 4 comments per scenario. C. Smith's 12 comments divided by 3 scenarios to equal 4 comments per scenario. If the individual received 2 scenarios, notice here that both candidates are equal with respect to comments average per scenario.
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4. Next make a comparison to the average number of comments received in each scenario versus the number of competencies. The 4 comments per scenario received by the individual divided by the 4 competencies would equal an average of 1 comment per competency in each scenario. For C. Smith the 4 average comments divided by the 6 competencies would equal 0.66 comments per competency on each scenario. Based on the number of scenarios and competencies you will find that C. Smith averaged less comment per competency in each scenario than the individual. In this comparison, If the individual was granted a waiver than The NRC Staff's argument fails.

If the NRC decided to present their argument on the number of comments received in the scenarios, it would be fitting that the chart represented all information that is vital in making this comparison. This chart is not a balanced representation of all factors. The examiners discuss that if a waiver were submitted on behalf of C. Smith that it would have been denied based on their "professional opinions" and the fact that C. Smith did worst then the performance of individuals previously granted waivers. C. Smith would like to restate that the examiners interest in this case is to disguise any indications of misconduct. Here they provide their professional experience as to if C. Smith should have been granted a waiver. Mr. Lea provided his professional opinion, Mr. Lea read C. Smith's (same comments presented in the argument to deny the waiver) grade report.<sup>74</sup> His professional opinion was that C. Smith should not have been required to retake the examination and that she should have been granted a waiver. Keep in mind that Mr. Lea has been an examiner since 1990. His experience as an examiner exceeds the individuals experience as examiners by more than 10 years.<sup>75</sup> The NRC Exam Team's misrepresentation of averages fails to support their argument.

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<sup>74</sup>-NRC-025 page 2-3

<sup>75</sup>-NRC-025 page 1, NRC-030 page 1 bottom, NRC-029 page 1 bottom, NRC-028 bottom

## V. STATEMENT OF POSITION 2: CONFLICT OF INTEREST

The NRC Staff discusses that NUREG 1021 identifies personnel restrictions for an examiner that failed an applicant on a previous operating test. The NRC Staff mentions individuals being previously employed by the licensee facility, and examiners involved in the training of the applicants as examples of conflict of interest. The NRC Staff also point out that it's impossible to define criteria to anticipate every possible conflict of interest in that the region has to apply sound judgment to the facts in each case in order to prevent a conflict of interest. In citing all of this information the NRC Staff forgot to include the last items on that list:<sup>76</sup>

*If an examiner is assigned to an examination that might appear to present a conflict of interest, the examiner shall inform his or her immediate supervisor of the potential conflict. Such notifications should include the following information:*

- *the nature and extent of previous personal and professional relationships with the applicants*
- ***anything that could affect the administration, performance, evaluation, or results of the examination***
- ***anything that could create the appearance of a conflict of interest***

The examiners discuss their handling of the waiver as a case-by-case situation. But when applying conflict of interest they did not use the same logic. Obviously the decision to deny a candidate a waiver is unique in itself. Keep in mind that the waiver issues did not include just one examiner, it included the entire 2012 Exam Team as noted in emails

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<sup>76</sup>-CCS-005 A page 53

and statements. The entire Exam Team was in support of a waiver denial.(including M. Bates) Going into the 2012 exam C. Smith was placed in a position that would yield a low success rate regardless of her performance.

C. Smith will present some examples as to why the conflict of interest existed.

1. The most important issue is the returning examiners impression of C. Smith. Mr. Meeks revealed the details of his discussion with the other examiner and a desire to invoke a procedural item that allows an individual to be failed even if they meet the pass criteria.<sup>77</sup> The Exam Team from 2011 were very adamant about ensuring that C. Smith did not receive a waiver. These individuals went above and beyond to ensure that the waiver requests did not make it to the final submittal. Their involvement in this process (to this level) implies that this became a personal necessity. Due to their level of involvement and opinions, an assessment should have been perform to determine if their impression could affect the administration, performance, evaluation or results of the exam. Discussions should have also been raised to questions if this could give the appearance of a conflict of interest.
2. Another conflict of interest would be Mark Bates involvement with the exam team prior to the 2012 exam. The NRC Staff is attempting to create the impression that Mark Bates was not involved although there is an email and a statement from Mr. Meeks that directly associates him with discussions about C. Smith's 2011 performance.<sup>78</sup> If it was truly the region's intent to ensure that C Smith was given a fair exam, then Mark Bates would not have been included in any discussions to

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<sup>77</sup>-NRC-006 page 14

<sup>78</sup>-CCS-001 page 1, page 22

include updates.<sup>79</sup> It is impossible to avoid influencing an individual with the involvement described that included Mark Bates.

3. Another of conflict of interest would be the reassignment of Mr. Capehart as the third exam team member.<sup>80</sup> The initial set up of C. Smith's 2012 Exam Team would have contained two new examiners. When one examiner could not fulfill the obligation the best resolution that Region II could provide was to send a member that already had a negative opinion of C. Smith. The explanation provided was that no other examiners were available.<sup>81</sup> If the issue was of any concern to the region, they would have made rearrangements to the schedule to meet the requirements. C. Smith began her 2012 Exam with a minimum of a 66% bias against her. Yet the arguments provided by the NRC Staff, is that C. Smith was administered an exam in an unbiased fashion. Some of the details about the lineup of examiners leads one to wonder how much of the final outcome was preplanned.
4. Another conflict of interest would be Mr. Meeks discussions that occurred with the facility representative prior to the examination. Mr. Meeks identifies that he and Mark Bates received updates from the facility representative (outside of the 120 day phone call) identifying that a waiver request would not be submitted for C. Smith.<sup>82</sup> Why was this information is so important that it had to be continuously reiterated? Furthermore Mr. Meeks also identified that **he asked** the facility representative how C. Smith was doing in the class.<sup>83</sup> This personalized conversation shows that Mr. Meeks had a special interest in how

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<sup>79</sup>-NRC-006 page 19-23

<sup>80</sup>-CCS-001 page 7

<sup>81</sup>-NRC-006 page 38

<sup>82</sup>-NRC-006 page 20

<sup>83</sup>-NRC-006 page 20

C. Smith was doing in the class. (For remediation C. Smith had to retake the last portion of the class for 1 year) All applicants to include the individuals that received waivers from the 2011 exam were required to take a company test to secure their opportunity to take or retake the 2012 NRC Exam. If this test is not passed the facility will not send the applicant to take the NRC Exam. It is an exam similar to the NRC Exam (except it does not require approval by The NRC). For the individuals receiving the waiver they must take the portion they failed, everyone else has to take the entire exam administered by the facility. The facility exam is written, developed, administered and graded in accordance with NUREG 1021. Maybe Mr. Meeks interests was to track if C Smith would be a part of the 2012 Exam. All other applicants had the advantage of having no familiarity with their examiner. To include no periodic updates. For the record, C. Smith had a very strong standing in the 2012 Training Class in all areas (written, JPM's, Simulator). In addition, C. Smith passed all exams within the top percentage of the class. C. Smith had consistently strong performance on JPM's and Simulator practice. Some candidates were required to perform remedial training (for extra practice) based on performance each week. The extra training was to provide improvement on performance/testing on any area of weakness. C. Smith at no time was required remedial training while in class.

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Now that some examples of conflict of interest have been presented, let's discuss how the familiarity of this exam team had an effect on the administration, performance, evaluation and results of the exam. By deductive reasoning it is obvious that the appearance of conflict of interest already exist.

The exam team discusses how C. Smith was assigned three scenarios in an unbiased manner. Keep in mind that an applicant with three scenarios is more likely to receive more comments than with 2 scenarios. There is no benefit in having 3 scenarios because no method is used to compensate/average the final grade based on the number of scenarios. The NRC Staff makes an attempt to give the perception that the exam team treated C. Smith in an unbiased manner when she was assigned three scenarios. The Exam Team identifies in their affidavits that the method used to assign the scenarios were based on a designator and not the names of the individuals.<sup>84</sup>

Method as described by Mr. Bates and Mr. Meeks: These designators were placed in a chart (previous template) to identify the number of scenarios that the individual would receive. Then the designators were placed in order from 11....to....18 Then the class applicants (this example will only discuss the SRO assignment) names were placed in **Reverse Alphabetical Order**. An individual that reads those documents would only be able to see the reference to "Operator A, Operator B, Operator C, etc....." C. Smith has mentioned several times that the NRC Exam Team willfully misrepresents information and this is no exception. C. Smith has submitted a non-public document that lists the actual names of the participants in the 2012 Class. Exhibit CCS-083, presentation:

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<sup>84</sup>-NRC-006 page 39, NRC-002 page 11-12

1. Place those individuals in reverse alphabetical order as described by the NRC Exam Team ....then
2. Place the names next to the designators, as described by the NRC Exam Team.....you will find that C. Smith **should have been designated I 3.**

The importance of mentioning this misconception presented by the exam team is to point out that Operator U **was supposed to be designated I2.** He was coincidentally switched with **CHARLISSA SMITH.** (see Exhibit CCS-083) Another reason why this is important, is because if **CHARLISSA SMITH** was assigned the correct designation (I3) (as described in their methodology of the assignment) then she would have only had **TWO SCENARIOS.** How did an error of this magnitude occur? I'm sure that the Exam Team is knowledgeable enough to place names correctly in **"REVERSE ALPHABETICAL ORDER".** This leads to the conclusion that the intended outcome of the 2012 Exam was preplanned. Assigning 3 scenarios allow more opportunities to document comments.

C. Smith has already provided a discussion on how the comments provided in her Final 2012 Exam Report did not match the actual actions that occurred in the simulator. Due to the enormous deviation from the reality of the comments, it is obvious that the Exam Teams previous familiarity with C. Smith led to her being treated differently and assessed at a different level than her peers. The details of those issues from the 2012 Exam will be outline in Statement of Position's 4 through 12. The Exam Team's discussion about comparing the comments between members of the class do not eliminate the possibility of bias. The Exam Team has participated in more than one

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examination. They are knowledgeable enough to know that the easiest way to prove bias would be to show the variations in the write up's. With that in mind these examiners wrote these comments to ensure that similar comments were encountered between groups. Referencing the similarities between other students write up's are another attempt by the NRC Staff to divert the attention to something that gives a different perception. If the outcome was preplanned then the examiners expected that the denial would be challenged. In turn, they would ensure similarities in the comments existed. C. Smith's complaint is based on things done to interfere with expected actions, differences in the way that the exam was administer and comments based on information that was not properly documented and supported as expected in NUREG 1021.<sup>85</sup> The examiners actions are hidden in the simulator data. In the discussion about the individual comments from the 2012 Exam, C. Smith will provide factual simulator data to show the differences in the way the exam was administered and the willful misconduct in the examiners attempts to prevent actions.

Once the 2012 Examination was complete, the NRC Staff identifies that independent reviewers (at Region II) did not express concern that Mr. Bates assessment of C. Smith was unfair or that she was treated different.<sup>86</sup> C. Smith's response to this, is the Independent Review (at Region II) does not determine the validity of the information. They are reviewing the information as written. C. Smith on numerous occasions has identified that the comments written by the examiners were inaccurate. If the Independent Review (at Region II) is only looking at the information that the examiner presents than his conclusion will be based on what the examiner writes. As a reminder it must be identified that the Administrative Review Team threw out three comments on

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<sup>85</sup>-CCS-005A page139 "p"

<sup>86</sup>-NRC-002 page 17, page 60

the original grade sheet. The Independent Review at Region II could not have been very extensive.

The NRC Staff discusses the email and affidavit written by Mr. Lea. It is important to point out that Mr. Lea works in the same office as the other examiners that denied C. Smith a license in 2012. It is also important to remember that Mr. Lea has the same level of experience (and more) as an examiner and is governed by the same procedures as The Exam Team. The NRC Staff attempts to have Mr. Lea's testimony disregarded, because he identified that some information was not firsthand knowledge. The NRC Staff points out that Mr. Lea did not see any emails that were related to the waiver issues associated with this. Regardless of the emails that Mr. Lea may not have seen, this examiner discusses conversations observed stating that the exam had to be written up to ensure that it wasn't overturn by headquarters.<sup>87</sup> A sound and justified examination does not have to be written in a particular way. Stating the facts should be enough to support a reasonable failure. It must be also noted that Mr. Lea had no knowledge of anything until these conversations started to circulate throughout the Region. It is interesting how this secondhand information led him to confirm a lot of the things that he heard. In addition the NRC Staff discusses that this is a personal opinion. "Balanced against the weight of the evidence presented.....the single unsubstantiated opinion does not prove by clear evidence that C. Smith was improperly treated differently than any other applicant."<sup>88</sup> However if this information were considered in conjunction with all of the other information that has already been presented, it is very clear there is merit to Mr. Lea's email and affidavit. In referencing the whistleblower information, hearsay should not be solely relied upon to prove the case. Due to the details already presented, email and affidavit should hold enough weight to be

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<sup>87</sup>-NRC-025 page 2

<sup>88</sup>-NRC-001 page 51

considered. Whistleblowers “may be disadvantaged by strict adherence to formal rules of evidence.”<sup>89</sup> Furthermore hearsay evidence is often appropriate in whistleblower cases as there often are no relevant documents or witnesses other than hearsay to prove discriminatory intent.<sup>90</sup> Although Mr. Lea is not a party to a whistleblower case he is a whistleblower. Mr. Lea is also a credible source. C. Smith points out that the Simulator Test is very subjective. Having bias examiners will have an effect on the administration and evaluation of the Simulator Exam. The NRC Staff discusses the requirements of NUREG 1021, to process, prepare, administer and evaluate 2012 Operating Test. The NRC Staff mentions that adhering to the requirements of NUREG 1021 creates a bias free evaluation. The NRC Staff’s discussion to point out that based on previous standards, the grading of the Simulator Test was subjective and based on professional judgment.<sup>91</sup> Over time the standards have increased to allow the test to be more objective. In discussing the exam the NRC Staff goes into discussions about the rating factors. C. Smith would like to point out that there is still some subjectivity in their procedure. NUREG 1021 states that two comments will result in an RAF score of 1 unless a score of 2 can be justified based on documented correct performance of another activity related to the same rating factor.<sup>92</sup> In this case it allows the choice of assigning a 1 or a 2 based on if the examiner can justify correct performance occurred on another activity for the same thing.<sup>93</sup> If the examiner chooses not to identify or recognize that the action was performed correctly in another portion of the exam, then he can make a determination that 1 is more appropriate than 2. This is representative of what happened with C. Smith. Each time a decision was required as to whether she should receive a 1 or a 2, each time she received 1. During the review, rating factors was a big point of discussion and caused a lot of the grading to change. The Review

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<sup>89</sup>-CCS-094

<sup>90</sup>-id

<sup>91</sup>-NRC-001 page 53

<sup>92</sup>-CCS-005A page 145

<sup>93</sup>-id

Team identified that there were several scenarios in which there were no notes and it was clean.<sup>94</sup> Meaning that it was assumed C. Smith did not make errors on those portions of the scenarios. If you have an examiner with inappropriate intent then it should not be surprising that an effort would not be made to document any correct actions.

NRC Staff discusses the rigor required to develop and to construct an exam. If NUREG 1021 is followed then the final product will be an objective test. The examiners discuss the use of the Testing Outline and how the required actions are to be scripted. The Testing Outline gives you the details and the communications that are expected to occur during the scenario.

#### VI. STATEMENT OF POSITION 3: ALLEGATIONS THAT C. SMITH RECEIVED AN INADEQUATE ADMINISTRATIVE REVIEW

1. C. Smith identified emails in which the Review Team commented on administrative changes to a letter stating that she passed the Operating Exam. These emails were dated from September 20 through September 28. In addition the emails in question all ended with conversations like “good job”, “thanks for the support”, “fantastic effort”, you did an excellent job on this report.<sup>95</sup> A typical individual would assume the report is completed and that everyone involved is happy with the final product. See Exhibit CCS-082 for a detailed account of the email communications and the effect of the grading.
2. The NRC Staff defense is that the pass letter was never the final conclusion and that it was a draft. It was intended to have a continuous deliberation with the Review Panel.

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<sup>94</sup>-CCS-013

<sup>95</sup>-CCS-082

The NRC Staff now points out that the document changes occurred independent of the Exam Team.<sup>96</sup> After the panel was developed, they visited Region II to begin deliberation. The NRC Exam Team put together binders that included consolidated, hand-picked information that was in their notes. C. Smith's review of those notes found that the binders in reference to the PORV & TE-130 comment contain information identifying that the PORV should have been Critical.<sup>97</sup> The binders also stated that C. Smith lacked understanding of the TE-130 Controller. Appears that the NRC Staff's argument that the PORV & TE-130 comment were independent of the Exam Team fails. Here we find that the Exam Team (once again) provided information to the Review Team early on. The White Board deliberations that included these "add on" comments were because of the conversations pointing these items out to the Review Team<sup>98</sup> in addition to the binder constructed by the Exam Team.

C. Smith review also determined that the binders contained more than described. The examiners added information that was not in their notes. Ex: Carla was not monitoring Rx, the alarm came in, she was located in front of the controller. Basically these individuals wrote a document and filled in the blanks with information that they felt would make their position stronger. Beware-the information contained in the binders has added information, selected information and information that is not validated. The binders were written post exam after the appeal request and allegation of bias behavior. The Exam Team discusses C. Smith witnesses which were her crew members. They identify that they could not have provided the statements in accuracy because they did not collect notes and a large amount of time had passed since the event happened. The binders that were put together by the exam team has more information and details than what is actually written in their rough notes.<sup>99</sup> The question is how are they

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<sup>96</sup>-NRC-001 page 63

<sup>97</sup>-CCS-079, Review information to show the influence.

<sup>98</sup>-id

<sup>99</sup>-CCS-081

able to remember this level of detail about C. Smith's examination months after the exam was over and the information was not originally captured. Keep in mind that the individuals that were part of C. Smith's crew only saw the scenarios one time, what they recall is only one instance of that scenario. These examiners however watched several people perform the exact same scenario. Somehow they are able to pick out certain details that happened a long time ago that were never documented in their notes but if anyone else does the same thing it is not valid.

To further discuss what happened in the early stages of the Informal Review Process, The NRC Staff does not point out the conversations that occurred with the exam team. The Exam Team identifies in their affidavit that pointed out that the PORV should have been Critical.<sup>100</sup> TE-130 information was in the binder. The PORV & TE-130 (added comments) were not identified independent of the Exam Team. This also explain why they initially reviewed all grades.

Additionally Mark Bates sent the Review Team a document to show a different approach to grade C. Smith.<sup>101</sup> Mr. Bates sent that document in July and another document was sent to NRR in October. The documents were consistent in saying that a mistake occurred by not identifying the PORV as a Critical Task early on.<sup>102</sup> The NRC Exam Team would like for you to believe that they were not bias. The common factor at each level of this process is that the Exam Team continued to get involved to influence the opinions of other people. If the Exam Team had a justified failure there would be no need to put together binders, or have sidelined discussions because the documentation would speak for itself. The Exam Team ignored NUREG 1021's Guidance on supporting documentation.<sup>103</sup> Mr. Lea points out in his affidavit based on his

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<sup>100</sup>-NRC-002 page 40

<sup>101</sup>-CCS-062, CCS-101

<sup>102</sup>-CCS-079 and CCS-080

<sup>103</sup>-CCS-005A page 139 p

personal review and interpretation of the conversations associated with the failure of the applicant, led me to believe that individuals from Region II involved in the denial of the applicant license went back and came up with additional comments in its effort to bolster and support the failure.<sup>104</sup> This is a perfect example of what occurred to ensure that C. Smith would not receive a fair review. OL MC-500 identifies that the panel must be impartial, it will not include individuals involved in the applicant's license denial.<sup>105</sup> The procedure also states that the Appeal Panel must establish and maintain communications with the effective region in order to ensure that the results include regional and IOLB input. C. Smith again has not made a complaint about the region or IOLB's input. The issues is that individuals involved in the applicant's licensing exam failure were allowed to be a part of this review. They were also permitted to present documentation at different times to represent their opinion.<sup>106</sup> This is the same as being involved in the panel. The region did not put together the binders, the Exam Team did. The region did not write the document dated October 12, 2012, the Exam Team did. The region did not send a document on July 2 to give the panel an example of how C. Smith could have been graded harder, the Exam Team did.<sup>107</sup> The complaint is not against Region II input, it is against the Exam Team's involvement. If the Exam Team was permitted to represent the region then it totally defeats the purpose of placing the comment in the procedure. OLMC-500 say panel shall remain impartial but will not include individuals involved with the applicant's licensing examination. C. Smith agrees that Mr. John McHale made a good decision when he decided that the Review Panel would not include any individuals from Region II because he wanted to avoid the appearance of a conflict of interest.<sup>108</sup> However I do not understand why he can make

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<sup>104</sup>-NRC-025 page 3

<sup>105</sup>-CCS-030 page 3 "d"

<sup>106</sup>-CCS-080, CCS-060, CCS-101

<sup>107</sup>-CCS-062, CCS-101

<sup>108</sup>-NRC-005 page 4, NRC-001 page 61

this statement about the appearance of a conflict of interest but he sent an individual that was a part of Region II to conduct the investigation (if C. Smith was treated in a bias manner).<sup>109</sup> These individuals work in the same office. This individual is already bias. His personal impression and his personal relationship with these individuals already has impact on the outcome of that document. The only effective way to perform an investigation is to embark people who have no connection to the individuals that are involved. It should be recognized that there is no consistency about the appearance of conflict of interest. There was no concern about conflict of interest in assigning the individual to perform the investigation or when the same people return to re-grade C. Smith.

As mentioned earlier Mr. Bates tried to influence the Review Team in July. Mr. Bates sent an email to Review Team member that he would be sending a file for consideration by the end of the week.<sup>110</sup> On July 5<sup>th</sup> document was attached to an email. The email talks about how C. Smith said that she was graded harshly but if you look at this document you will see that she was actually graded lenient.<sup>111</sup> The intent of these post review documents were to give the perception that C. Smith made even more errors. The document mentioned the PORV being Critical. As a reminder the Exam Team told them, it is again sent via email (See Exhibit CCS-080). They were very persistent in ensuring that this was included. Mr. Mark Bates points out that he could have given C. Smith two comments for each error but he decided not to because he felt that it will treat her differently because they decided to only issue one comment per error to all the other applicants. The only reason this was in effect was because they had to ensure

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<sup>109</sup>-NRC-005 page 45

<sup>110</sup>-CCS-061

<sup>111</sup>-CCS-062

the people that were part of C. Smith's crew received the same comments. Providing comments would result in a failure of individuals that were of no interest. Obviously the intent was only to fail C. Smith. The Review Team issued more than one comment for each error. This is not equivalent to the standard that was applied to the individuals that were involved in the 2012 test however C. Smith passed based on the initial conclusion. The Review Team now says that was not their final conclusion but as I stated before their emails that ended in "fantastic Job", "good Job", "great effort". The impression is that it was over.<sup>112</sup> The Exam Team's documentation to memorialize their comments was titled Region II Recommendation/Comments on the "Final" independent panel document(See Exhibit CCS-060). If this was not the Review Team's final conclusion then this heading makes no sense. If this was a document that was still in progress it would not have been titled **COMMENTS ON FINAL INDEPENDENT PANEL DOCUMENT**. The NRC Staff is again, attempting to change the perception of the documentation in front of you. Also trying to convince you that what your eyes see is not what your eyes see. Remember, the documentation does not change even when the individuals story changes.

The NRC Staff discusses Review Team deliberations and schedule that occurred in Atlanta at Region II. The NRC Staff discusses the various versions of the pass or fail documents and how it was just a working document. Initially a document was put together, only to draft the information together and that there was no grade sheet.<sup>113</sup> The next draft of the report which is the revision where the cover letter stated that C. Smith passed (See Exhibit CCS-024). The NRC Staff stated that page 2 says C. Smith "did not pass". The first page was changed and the

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<sup>112</sup>-CCS-082 page 7. In addition, CCS-030, OLMC, page 6 says upon completion the appeal panel will forward its draft to IOLB (NRR) for review concurrence and routing to the director, DIR for approval. The email says this will clarify our stance to Region II and NRR when it is reviewed. The above information says when complete the draft will be reviewed by NRR. Because it was being reviewed, it was complete.

<sup>113</sup>-NRC-001

last two pages changed.(page 36 & 37) I'm sure that the grade sheet was not put together in error and page 36 of the document also says that C. Smith passed. Due to the overwhelming information that shows passing (in several different locations), deductive reasoning it could be assumed that the commented written on page 3 was not updated. Each revision was likely a updated version of the previous revision. Each change after the original was most likely deliberate. *Notice in the beginning of the review that the majority of the emails are coming from David Muller. After Region II, gets involved<sup>114</sup> The majority of the emails are from upper management (John McHale) and (Don Jackson). Less emails are from the actual panel members.*

The NRC Staff tries to create the perception that when the region provided its input the Review Team had already failed C. Smith. This is not true as demonstrated in Exhibit CCS-082. The exhibit put together by C. Smith will show every comment and the effect on the grading from revision to revision. The exhibit will show the grading changes based on NUREG 1021, even after the NRC Staff remove the grading sheet. Based on the information identified in NUREG 1021 C. Smith met the pass standard through revision 3. (including Rev3) Maybe by removing the grade sheet the individuals involved felt that it would not be possible to prove what the grading was. C. Smith had a passing score until John McHale responded in an email discussing the document provided by Region II Exam Team.<sup>115</sup> John McHale points out the comment that would cause the **Failure To Be Sustained**. This is also represented in the Exhibit CCS-059. The NRC Staff would like to believe the document provided by the Exam Team was not the pivotal moment in which the Review Team sustained the failure. C. Smith has shown that

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<sup>116</sup>-NRC-001 page 68

the next revision after this email sustained the failure and all pages supported that conclusion. The input provided by the Region II Exam Team was improper and had a direct effect on the impartiality of the Informal Review Team. The NRC Staff's argument that this was a continuous and gradual process fails. Region II Exam Team essentially re-graded C. Smith in the review.

The NRC Staff say that C. Smith faults the Review Team for taking input from the Region II. C. Smith does not fault the Review Team for taken input from the region, C. Smith faults the Review Team for taken input from the Exam Team as this was inappropriate. The NRC Staff would like to create the perception that OLMC-500 allow involvement from the Exam Team. The NRC Staff also mentions that OLMC-500 encourages obtaining input from the effective region by stating that my IOLB will establish and maintain communications with the effective region in order to ensure the review results include regional/examiner of record input. The NRC Staff's stance is that the Review Panel is not expected to remain strictly independent of the effective region or its examiners.<sup>116</sup> C. Smith would like to bring attention to the section of the procedure that the NRC Staff is referring to: page 3 of OLMC-500 (Exhibit CCS-030).

The first paragraph talks about the different choices in determining the method to perform the review. The first choice is that it can be done by an independent examiner from the region. The second choice is that the IOLB be will perform the review. The third choice is to convene a three-person panel. Mr. McHale chose to pick option number three, which is the three-person panel. The rest of the paragraph discusses that IOLB be normally performs the review. That person (the IOLB) would take into account any input from the Region and the Examiner of Record. I would like to point out that Mr. McHale did not choose option number two which

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<sup>116</sup>-NRC-001 page 68

would be the IOLB. The NRC Staff's reference is to the IOLB taking into account input from the Region and Examiner of Record.<sup>117</sup> Section "c" also talks about the IOLB. Section "d" specifically talk about if you chose the Appeal Panel. The rest of the paragraph discusses how the Appeal Panel is put together and that it must remain "impartial."<sup>118</sup> It does allow a representative from the Region but it specifically say that the individuals **involved with the applicant licensing examination cannot be involved**. Section "f" talks about how the Administrative Review will be approved by the IOLB, signed out by the director, taking into account any input from the effective Region and or Examiner of Record.<sup>119</sup> C. Smith would like to place emphasis on "and/or." All the other sections use the word "and" because they were talking about section one or two but this comment uses "and/or." C. Smith's interpretation is that based on what option was chosen for the review, this may be an "and" or an "or." If the selection was number three, the Review Panel would apply "or." If the selection were one or two "and" would apply. Now in discussing the comment that says the director in providing this approval must take into account any input from the effective Region and or Examiner of Record (Examiner). Because number 3 was selected the input should have come from the Region II only. Not the individuals involved in the test (Examiner of Record). If this was not the expectation then no statement of this nature would be in procedure. It would be absolutely ridiculous to place a statement in the procedure that says you are to remain impartial and not involved the individuals from the applicants licensing examination. Allowing the individuals to be involved causes issues like this case.

The NRC Staff discusses Administrative Review/and Formal Review versus Independent Review. The bottom line is that the Review Team should have remained independent of the

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<sup>117</sup>-CCS-030 page 3 "c"

<sup>118</sup>-CCS-030 page 3 "d"

<sup>119</sup>-CCS-030 page 3 "f"

Exam Team not Region II. In addition the NRC Staff was aware of the intent of the Review Team. In cases of selecting Options 1 and 2, it may not require as much independence. In the case of Option 3 it is intended to be independent. The Exam Team, the Review Team and the NRR are well aware of the requirements. The NRC Staff cannot claim ignorance to this. The Exam Team wrote a document titled "Region II Recommendations/Comments on the "Final" **Independent Review** Panel Document, October 12, 2012.<sup>120</sup> When the review results were reported to C. Smith, it also made reference to a "**Independent Review.**"(See Exhibit CCS-014, pg 1)

The NRC Staff points out that C. Smith disagreed with the Review Panel's re-grade of the non-contested items. The NRC Staff quotes C. Smith comment in which she identifies that the procedure requires that the informal review panel only re-grade those portions of the Simulator Test that are contested. The NRC Staff says that the argument does not take into account the entire paragraph. The NRC Staff says that upon determining an outcome for all contested test items the reviewer shall utilize NUREG 1021-ES 303 to determine the applicant overall Operating Test scores based on the remaining test items.<sup>121</sup> The NRC Staff talks about the ambiguous use of the word, "remaining test items." Questioning if the remaining test items should be re-graded or whether there grade should simply be retained. NUREG 1021-ES 303 does provide instructions on how to add up the score.<sup>122</sup> The NRC Staff refers attention to NUREG 1021 ES 502 stating that it gives more clear indications that the Informal Review means to do a complete re-grade of the Simulator Test. The NRC Staff again tries to cause confusion with this discussion. The NRC Staff states that ES 502 implies that the review shall

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<sup>120</sup>-CCS-060

<sup>121</sup>-NRC-001 page 70

<sup>122</sup>-CCS-005A page 145-146

include an evaluation of all aspects of the Simulator Test by broadly stating that reviews included valuation of “the examiner’s comments, the examiner report, the test that was administered, and the contentions of supporting documentation provided by the applicant or facility licensing.”<sup>123</sup>

C. Smith would like to bring attention to the NRC Staff’s statement that it implies that the review shall include **all aspects of the Simulator Test**. If you were to read the entire section of NUREG 1021, ES 502 you will find that no statement uses the term ALL In reference to the grading of the Operating Test.<sup>124</sup> The sentence that is pointed out ends with the words “and the contentions and supporting documentation provided by the applicant.” This more clearly implies that the first part of the sentence “the examiner comments, examination report, and test administered” is in reference to the contentions submitted by the applicant. To further support this interpretation you will find on the second page of the ES 502.<sup>125</sup> The instructions for the applicant to exercise his/her option to request an Administrative Review (Section C. b. (2) second paragraph) say “the applicants request for Administrative Review must **identified the items for which additional review is requested** and must include documentation supporting the items in content.”<sup>126</sup> These instructions provided to the applicant says provide information only for the items that **you are requesting (emphasis) review of**.<sup>127</sup> Notice here it speaks specifically about the items that you are requesting additional review for. It would be reckless for the NRC Staff to provide information to the applicant to only provide information for the items in question when their intent is to re-grade the entire test and not inform the individual. Just

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<sup>123</sup>-CCS-005A page 234

<sup>124</sup>-CCS-005A page 231-235

<sup>125</sup>-CCS-005A page 232

<sup>126</sup>-id

<sup>127</sup>-id

because an applicant does not contest a comment does not mean that they agree with. It may be that the applicant feels they do not have enough information to dispute it. This would not be logical to give up the applicant's right to provide additional information to other items when they are under the impression that you are only reviewing what was requested. Looking at the entire section of ES 502, it provides a better understanding of the statement identified by the NRC Staff.<sup>128</sup>

The NRC Staff tries to give an explanation to back up the reason that the review panel re-graded the entire test. They point out that "common sense would lead one to believe that a complete re-grade must be performed." At the same token common sense would lead one to believe that in this review, additional comments should not be added or a task change to critical after the test is over (and the results are known). If the NRC Staff believes that the entire Simulator Portion should be re-grade in an Administrative Review versus following the guidance that was laid out in their procedure OLMC-500, then maybe a request for a procedure change should occur for future reference. Currently OLMC-500 discusses only reviewing the Contested Portions and NUREG 1021 provides direction for the applicant to only provide information for the Contended Items. If the intent was to re-grade the entire exam there would be no differentiation between contested versus non-contested. The NRC Staff attempts to justify grading non-contested items by referencing a previous Informal Review. Referencing this previous Informal Review does not justify deviating procedural intent.<sup>129</sup> C. Smith does not know the details of this Informal Review but the bottom line is this was a PORV that failed open and

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<sup>128</sup>-id and page 231-235

<sup>129</sup>-NRC-001 page 71, NRC-020 page 9-10

the individual did not close the valve for 7 minutes. C. Smith's example is not a failed open PORV, and she did not have an opportunity to self-correct. In addition, an example does exist where the Informal Review, reviewed only the contested items (Exhibit CCS-036). In the 2005 Informal Review the NRC Staff points out that the applicant's final score was affected by the review of a non-contested item. Consistency is the only way to prove that a group is not bias. This shows that the results can be adjusted as needed.

### C. REQUIREMENTS TO DEMONSTRATE MINIMUM KNOWLEDGE

The NRC identifies that C. Smith has not met the requirements to demonstrate minimum knowledge of operating the facility.

1. Recall that C. Smith has already received a passing score on the Operating Test in 2011 that was signed by Phil Capehart for Jay Hopkins.<sup>130</sup> So she has already demonstrated that she possesses the minimum knowledge and understanding to safely operate the facility even with the rigorous grading that occurred. If this is not true then the individuals involved falsely signed a document stating that they recommend "Pass" for the Operating Test for C. Smith.<sup>131</sup> In the case of United States v. Andrew Siemaszko....., The NRC bought charges against this individual for falsifying documents in reference to actions performed on the Reactor Head at Davis Besse.<sup>132</sup> Now the individuals involved say that she should not have passed. The documentation provided says otherwise. This organization can sign documents with false intent but discipline others that do the same thing.

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<sup>130</sup>-CCS-007

<sup>131</sup>-id

<sup>132</sup>-CCS-096 page 10-14

2. If the inappropriate comments from the 2012 Exam were removed, C. Smith would have also passed the Simulator Exam in 2012.
3. In addition, it should be noted that the review panel determined initially that C. Smith should be issued a license as indicated in their Pass Letter<sup>133</sup> and corresponding emails prior to the second involvement with Region II Exam Team. In addition, if the inappropriate comments added by the Review Team were removed, the Review Panel would not be able to sustain the denial. The comments could be removed because they were added by deviating from the Procedural Requirements. The influence provided to the Administrative Review, and the incompleteness of the report demonstrates the extreme actions can occur when an Exam Team is trying to cover up misconduct.

The NRC Staff provides an explanation for taking well over 160 days to complete the Informal Review which generally takes 75 days. The NRC Staff reference testimony, exhibits, other filings, contentions, waiver contention, and bias were not general fare. C. Smith must point out that the number of contentions submitted were not out of the ordinary,<sup>134</sup> and that a separate individual performed the bias investigation. Frank Ehrhardt's investigation was submitted on September 4 (ML 12249A237) and the Review Panel's initial decision was completed at the end of September. The additional time was attributed to the changes in the grading that resulted in sustaining the denial after contact with the Exam Team. Exceeding 75 days is within reason, 160 days is excessive.

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<sup>133</sup>-CCS-024

<sup>134</sup>-CCS-036

## VII. STATEMENT OF POSITION 4 THROUGH 12: GRADING ARGUMENT

Prior to the discussion of position of statements 4 - 12, C. Smith has shown numerous examples of inappropriate, unjustified behaviors, and abuse of discretion. The previous Statement of Positions were actions that occurred prior to and after the examination. Because the behaviors were noted during those times, then the behaviors are consistent with the behaviors that occurred during the actual Exam in 2012. Statement of Positions 4 -12 are specific to the comments that were reported in the Final Grade Report. The Statement of Positions 4 - 12 should be assessed collectively and not on an individual basis. In addition, the behaviors that existed prior to the examination should be taken into consideration, as these behaviors continued throughout the administration of the exam.

### A. CONTESTED PERFORMANCE

#### 1. STATEMENT OF POSITION 4, SCENARIO 7, EVENT 1

This first paragraph is specific to the information that was reported and factual data. Review the comment on page 18 of Exhibit CCS-045 **as written** on the Original Final Grade Sheet.

- Fact: **It was reported** on the Grade Sheet that “the applicant allowed TAVG have to drop approximately 2.3°F below TREF after the power extension was suspended” and “TAVE trended downward for 40 minutes before reaching 2.3°F, at which time the applicant withdrew control rods and brought temp back within the directed control band.<sup>135</sup>” This does not discuss that C. Smith made an attempt to correct the temperature on more than one occasion. This does not discuss that C. Smith attempted at all. C. Smith discusses that she made more than one attempt.

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<sup>135</sup>-CCS-045 page 18

- Fact: C. Smith made an attempt to move rods to correct the temperature before it reached 2.3°F. Because the second attempt has been captured in Factual Simulator Data, at a minimum it is proven that C. Smith did attempt to correct the temperature. If it were not for the fact that C. Smith on the second attempt was able to move rods enough to be recorded in the Simulator Data, this information would also be disputed. Refer back to the original comment to verify that no info exist to report that C. Smith made an attempt.
- Recall in Mr. Lea's affidavit that he heard conversations between personnel involved in the 2012 Operating Tests say that they had to write it up in a way that could not be overturned by the headquarters if appealed.<sup>136</sup> This is the perfect example of a comment in which vital information was purposely left out to ensure that the objective could not be met.

Based on the bullets, if a comparison is of what was reported **versus** proven data that shows C. Smith attempted to correct the temperature. This alone shows that the comment was falsely misrepresented.

In response to the NRC Staff, C. Smith contends that she made more than one attempt to control temperature. Each attempt was interrupted by a failure that was put in place by the Exam Team. The intent was to prevent the manipulation. The NRC Staff attempts to shift your attention away from the contradicting statement reported on the Final Grade Sheet and shift your attention to the portion of the comment that says "accurate and timely manner." They attempt to create the impression that C. Smith had several opportunities to withdraw control

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<sup>136</sup>-NRC-021

rods and she failed to do so. The NRC Staff also falsely represents that C. Smith was in the vicinity of TE-130 and not monitoring temperature.<sup>137</sup> Then attention is directed to the examiners notes to prove that C. Smith did not attempt to make a rod withdrawal prior to Event 4. The NRC Staff is trying to create the perception that these were all opportunities for C. Smith to make a rod withdrawal. The NRC Staff is not illustrating that the initiation of a rod withdrawal is not permitted without the UO or permission from the SS.<sup>138</sup> If the UO and SS were involved in the events mentioned, C. Smith cannot make a rod withdrawal. This is a very important manipulation. This is not permitted independent of the crew. C. Smith has put together an exhibit to illustrate the documentation of the examiners.<sup>139</sup> The NRC Staff makes reference to the simultaneous collection of notes that occurred during the scenario. C. Smith would like to bring attention to the lack of notes that existed from 8:05 AM to 8:11 AM. C. Smith points out that she made an attempt to withdraw rods prior to Event 4. The NRC Staff identifies that none of the examiners have in their notes that C. Smith made any attempts to withdraw control rods. If the actions associated with the previous Event 3 was completed what was going on from 8:05 AM to 8:11 AM. Between three examiners, no notes were written from 8:05AM to 8:11AM. It is coincidental that the same time C. Smith identified that the rod withdrawal was attempted is the same time that no notes existed. C. Smith has been consistent in identifying the point in which the rod withdrawal request was made. (To include in her appeal to the NRC that was sent May 30, 2012). To further question the validity of the examiner notes, look at the layout of the notes written by Mark Bates. Exhibit CCS-093 on pages 6-8, note that the first page of Mark Bates notes are dated 3/27/2012 and contain no lines, the next pages have lines and are dated 3/26/2012, the last two pages are dated 3/27/2012. This could possibly be a rewrite of the notes.

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<sup>137</sup>-CCS-040 page 5, CCS-041 page 4

<sup>138</sup>-CCS-040 page 2, CCS-041 page 2

<sup>139</sup>-CCS-093

The NRC mentions the twin concept of equitable and consistent administration of the grading. Let's make some comparisons on how C. Smith's crew was administered this scenario and other crews were administered. If you notice C. Smith crew started with the lowest temperature of all the crews. This means that if the duration of the failures will cause the temperature to drop by 1.5°F and all of the crews were started at a higher temperature they would not exceed 2°F. Their starting points were all different. Review Exhibit CCS-092 and compare. The examiners are in direct control of this and they choose the point at which to start the first failure. This also means that if the other two crews did not make any attempts to withdraw control rods their temperature would not have exceeded 2°F deviation. C. Smith crew was the only crew that started at approximately -1°F. This means that C. Smith's crew was the only crew that was **required** to make a rod withdrawal to stay within 2°F. This scenario was set up to require C. Smith to demonstrate more competencies than the rest of her peers. One crew made no attempts to withdrawing rods and it was not necessary to remain within 2°F because they started at a much higher temperature. The other crew did make a control rod withdrawal but the difference was that no failure was put in place during their manipulations. If they failed to make a manipulation they still would have remained within 2°F. C. Smith crew was the only crew that had to make the manipulation to stay within 2°F deviation. C. Smith crew was also the only crew that received a failure at the same time of the manipulation. Knowing the importance of C. Smith's success in maintaining temperature the Exam Team put in the next failure. The root cause of this comment was the insertion of the failures that prevented the manipulation. C. Smith has proven inconsistency in administering the exam and that the information reported on the Final Grade Sheet was purposely misrepresented. This comment was removed when assed by the Review Panel.<sup>140</sup> This is clearly an abuse of discretion.

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<sup>140</sup>-CCS-037 page 22

## 2. STATEMENT OF POSITION 5-SCENARIO 3, EVENT 7

This first paragraph is specific to the information that was reported on the final report and factual data from the simulator. Review the comment on page 10 of Exhibit CCS-045 **as written** on the Original Final Grade Sheet.

- Fact: The individual exam report written by Mark Bates states “the applicant directed the Reactor Operator to block SI/SLI when Pressurizer Pressure was approximately 2007 PSIG, but her actions were not successful”; “the applicant stated that she thought Pressurize Pressure was 1998 PSIG”; “the SRO was downgraded in this competency because she did not ensure the appropriate interlock was met (Pressurizer Pressure below 2000 PSIG) when first attempting to block SI/SLI”
- Fact: At the times indicated by the Exam Team, RCS (emphasis added to RCS) (PT428) was reading 2007 PSIG, and Pressurizer (emphasis added to Pressurizer) was reading 1998 PSIG. (PT455, PT456, PT457, PT458) (Exhibit CCS-042)
- Fact: Mr. Bates and Mr. Capehart’s (Mr. Meeks was administering JPMs) notes indicate that RCS (emphasis added to RCS) was reading 2007 PSIG. (Exhibit CCS-043 page 63 and page 80)
- Fact: The Testing Outline indicates that the required Operator Actions is to check that Pressurizer (emphasis added to Pressurizer) pressure is less than 2000 PSIG.<sup>141</sup>
- Fact: The Testing Outline does not list P-11 as a required Operator Action.<sup>142</sup>

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<sup>141</sup>-CCS-043 page 63

<sup>142</sup>-id

Based on this information alone the Final Report as written is not consistent with the Simulator Data. The times collected from the examiner notes validate that the value was collected by the NRC Examiners from the wrong digital meter.(Exhibit CCS-042) In a previous event the Pressurizer Pressure Meter failed and the digital meter was switched to an alternate channel PT 457. PT 457 was reading 1998 PSIG as identified by C. Smith in the follow-up questioning. C. Smith did not make an error. This was an unusual response from the Simulator.

The NRC Staff is attempting to shift the attention to the P-11 Interlock. Just because C. Smith did not look at the P-11 Interlock initially does not mean that she lacked fundamental understanding. Notice that the Testing Outline does not identify this as a Required Operator Action. Also note that the Examiner wrote in the Final Document that the SRO was downgraded because the Interlock of 2000 PSIG was not made. (Exhibit CCS-045 page 10) Now that C. Smith has been able to prove that the information as reported was incorrect, the NRC Staff wants to change the reason that the comment was reported on the final report. It was inappropriate and unjustified because it is not supported by the Testing Outline. Going outside of what is written in the Testing Outline is moving from objective to subjective. To remain objective there has to be boundaries on what is tested. C. Smith clearly understands the requirements to perform an SI/SLI Block.

**Explanation of the Digital Indicator:** The NRC Staff does not appear to understand what is required to Block SI/SLI. The digital meter is a digital readout of **one** of the Pressurizer Pressure indicators. The Pressurizer Pressure indicators are too small to be read from the SS's location, away from the panel. (Exhibit CCS-105 page 1) The digital meter is tied to one of the Pressure Indicators. Meaning that, the Pressurizer Pressure indicator selected is identical and

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will be shown in a large digital number Pressurizer Pressure. Now the SS has a method to verify the Pressurizer Pressure. Normally PT 455 is the select Pressurizer Pressure indicator to be shown on the digital meter. Because PT 455 failed in the previous event the digital meter was switched over to read from PT 457. (Exhibit CCS-043 page 23)

**Explanation of P-11:** The three Pressurizer Pressure Indicators that feed P-11, are PT 455, PT 456, and PT 457. When two of these indicators (in any combination are less than 2000 PSIG) then the Block will be allowed. If you notice (Exhibit CCS-105 page 2) the picture shows the reference to 2000 PSIG for P-11. It also shows the boxes (this is not technical name, it is referred to as boxes to remain simplistic, the boxes represent bi-stables) have the names of the indicators that feed the indicators. When the pressure goes below 2000 PSIG, the P-11 boxes extinguishing separately as they go below 2000 PSIG. The problem that was encountered is that although the pressure was less than 2000 PSIG the boxes did not extinguish as expected. This is an unexpected response by the simulator. Again recall PT 455 was a failed instrument in a previous event (this is why it had a different pressure than the other two indicator), (Exhibit CCS-042-Reading 2500) meaning that PT 457 was selected to feed the digital pressure gauge. The information provided by C. Smith in the exhibit shows that PT 456 and PT 457 were less than 2000 PSIG.<sup>143</sup> This means that the two out of three requirement was met. Again the boxes did not respond as expected.

If the block was not attempted at 2000 PSIG then the Exam Team would have reported that C. Smith did not follow Procedural Guidance. C. Smith pointed out in the initial Statements of Position that a comment was applied in one instance for **not returning** a component back to auto and in the other instance C. Smith was penalized for **returning** the component back to auto as identified in the procedure. In both instances, the Testing Outline required Operator Actions had the valve returned to automatic.

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<sup>143</sup>-CCS-042

**Issues with Reporting the Comment:** The NRC Staff would like to create the perception that C. Smith has no understanding of the requirements to Block SI/SLI. C. Smith has already proven that the value reported on her Final Grade Report was not correct. C. Smith has also proven that the Examiners wrote the 2007 PSIG value from the RCS Meter. Although the information was collected from the wrong gauge (RCS), notice how this was not reported on the Final Grade Sheet to reflect that the 2007 PSIG value came from the RCS Gauge. Instead the source (RCS) was changed to reflect that the value came from the Pressurizer Pressure Gauge. The Examiner's willfully change this value knowing that the source came from the RCS Pressure Gauge. C. Smith data from the simulator supports that she met the requirement (less than 2000 PSIG) and also confirms that because she was less than 2000 PSIG, that the P-11 boxes obviously did not extinguish/respond as expected. The bottom line is if the indicators, were reading less 2000 PSIG (as proven) then the boxes should have extinguished as expected, especially when their information is fed from the previously mentioned indicators.

The NRC Staff further discuss that the simulator is maintained in accordance with ANSI/ANS - 3.5-1985.<sup>144</sup> The NRC Staff provides the perception that the simulator taken from full power to cold shutdown for testing proves that the block for SI/SLI (was operating) is included. The simulator is tested, however the simulator is an electronic device. Testing it does not mean that a malfunction or glitch cannot occur. Obviously this has been or can be a problem during the NRC Examinations because the NRC has an excerpt in their procedure that says if the simulator does not perform as expected to continue on and perform the actions based on the conditions. (Exhibit CCS-005 B, page 455 "I") In fact, the simulator has its own database accessible by the facility training personnel only to address the malfunctions/glitches that occur. If it were impossible for a malfunction to occur this statement would not be in NUREG 1021. The NRC obviously recognizes that this is a possible occurrence. In addition, the procedure

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used by the facility to perform the certification is NMP-TR-422, NMP-TR-422-001, NMP-TR-422-005 (Exhibit CCS-106, Exhibit CCS-107 and Exhibit CCS-108). In reviewing these procedures it was found that there was no information that identified that the boxes for P-11 are tested. It is moot to identify that the simulator is tested when no data is collected to prove that this particular issue was checked. In addition the simulator was capable of being blocked, the issue was that the P-11 was not responding to allow the block to occur once less than 2000 PSIG. The block was delayed. The final conclusion is that based on the Testing Outline, C. Smith met the requirement. In addition, based on the examiners notes, the simulator data, the examiners reported faulty information on the examination report. This comment was removed when assessed by the Review Panel. These were inappropriate and unjustified comments that support an abuse of discretion.

### 3. STATEMENT OF POSITION 6 – SCENARIO 7, EVENT 6

The grading standard has obviously changed on assigning competencies since 2011. C. Smith would like to present Exhibit CCS-010 page 10, as an example where an individual did not find a valve on the back panel, but his entire crew was not penalized. No one else in the crew received a comment. For SS information, see Exhibit CCS-009 and Exhibit CCS-019. C. Smith was a part of this crew and did not receive the comment. The NRC states in their documents “as a part of this event Ms. Smith, as OATC, was expected to know that the RWST/mixing isolation valves are designed to automatically close on RWST low level alarm ALB 06 – E04.”(Exhibit CCS-045 page 20) Notice that this sentence comes directly from the examiners write-up on C. Smith’s individual exam report. This is not a standard comment that is placed in

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every individual's report. The expected action/response that is written on the individual exam report is hand written by the examiner and varies from person to person. This was written after the test was over, and can contain anything that the examiner chooses to write. The official document for identifying the expected operator actions is the Testing Outline ES- D-1 and ES- D-2. Referencing the sentences that come from the exam report have no bearing on what should have occur. This is simply the examiner's opinion. However in theory this should match the Testing Outline. Notice that nothing on the testing outline supports that C. Smith should have this comment on her Grade Sheet. The comment that C Smith received was inappropriate because she was not listed as the individual to be graded for that event. Note that NUREG 1021 specifically identifies that the testing outline shall include all required actions.... Changes made to the Testing Outline, to include C. Smith's position after the test is over is inappropriate. C. Smith has already explained that the crew after diagnosing the failure that the majority of the time was utilize finding procedural guidance. (Exhibit CCS-040 page 3, Exhibit 041 page 2-3)

The NRC Staff attempts to create the impression that C. Smith was "sitting idle while the RWST was leaking." C. Smith was assigned directly by the SS to monitor reactivity.<sup>145</sup> This was C. Smith's assignment as issued by the supervisor. The NRC Staff further tries to alter C. Smith response by saying that operating the valve "was not her job but the job of the unit operator."<sup>146</sup> This is a testing environment, and the Testing Outline was constructed based on the Facility and The NRC's approval on the expected operator response. If there was a different expectation than it should have been documented. If there is no validity in identifying who is expected to respond to each failure and address it, then it makes no sense to identify by positions who is expected to respond. If it is expected to evaluate everyone on every single objective then every

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<sup>145</sup>-CCS-040 page 3

<sup>146</sup>-NRC-001 page 82

objective should be identified as a “crew” objective. (Notice how some events are identified by position and some events are identified as crew events) The NRC Staff states “forms ES–D–1 and ES–D–2 do not limit examiner discretion to identify performance deficiencies whenever they occur”; “rather, forms ES–D–1 and ES–to–2 provide for the examiners reference a script of only the “required operator actions” that must be performed by the successful completion of an event and not listing all of the possible performance deficiencies that the examiner may choose from when administering a specific event”; and “any action, or in action, maybe a performance deficiency if it demonstrates a weakness of the applicant with respect to the minimum knowledge and understanding required to safely operate the facility, not just those actions discuss on the forms ES–D–1 and ES–D–2.”<sup>147</sup> Maybe the NRC Staff can assist C. Smith in finding this guidance in NUREG 1021. The references provided by the NRC Staff do not support any of those comments. Comments found in NUREG 1021, ES 302 INSTRUCTIONS FOR ADMINISTERING THE OPERATING TESTS (Exhibit CCS-005A page131) say **the examiner is expected to administer the planned operating test in accordance with the prepared and approved walk-through test outlines (Forms ES-301-1, “Administrative Topics Outline,” and ES-301-2, “Control Room/In-Plant Systems Outline”) and simulator scenarios (Forms ES-D-1, “Scenario Outline,” and ES-D-2, “Required Operator Actions”).**

C. Smith does point out that the examiner did not ask for any follow-up questions in reference to the RWST event. This is believed to have been added later to increase the number of comments. Mr. Bates says that “the examiners did not ask follow-up questions regarding this situation because..... They determined that enough evidence already existed to determine the

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<sup>147</sup>-NRC-001 page 84

error”. Exhibit CCS-005A page 138 “m”, NUREG 1021, says “If an applicant performs as expected, the examiner may simply note in the left-hand column of the form the time when the expected actions occurred. However, if an applicant does not perform as expected, the examiner should note the applicant’s actions (or lack thereof) next to or below the expected action and follow up with appropriate questions after the simulator scenario is completed (refer to Section D.3.n). There was no notes and no follow-up.

The NRC Staff discusses that the comment was assigned contemporaneously to all members of her crew and to the members of other crews that demonstrated a similar weakness. Assigning this comment to another individual does not mean it was appropriate. This is another interesting point that the NRC Staff points out to validate the fairness of this comment. If this was truly believed then referencing the examiners exit notes will show that all crews had a problem with finding the RWST valves.<sup>148</sup> Review C. Smith’s Exhibit CCS-097 that identifies all individuals that received this scenario. Although it was identified in the exam exit that all crews had a problem, only two crews received the comment. By providing all of the individuals in one other crew with the same comment, the examiners likely felt that it would prove they were consistent in giving another individual in the same position as C. Smith a similar comment. But here we find that all crews had a problem. But all crews did not receive a comment. By pointing out the comments from the exit notes, it supports that an individual in C. Smith’s position did not received a comment. This not only shows questionable intent by assigning C. Smith the comment, but it also shows subjectivity by not assigning it to all crews. It also proves twin concept of equitable and consistent administration of the grading. Because all crews had a problem, it would only be consistent to provide all crews with the comment (all members of one crew received no comments). This comment was removed during the Review Panels assessment.<sup>149</sup>

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<sup>148</sup>-NRC-023 page 3, “15”

<sup>149</sup>-CCS-037 page 25

#### 4. STATEMENT OF POSITION 7-SCENARIO 3, EVENT 5

The NRC Staff states “since this direction was given before 1400 PSIG, EHC system pressure setpoint for the automatic start of the standby pump was reached, it could not be known whether the automatic start feature of the standby pump was operation.”<sup>150</sup> The NRC provides a long explanation to point out why they believe that C. Smith should have received a comment. The statement quoted here has no information provided in their notes to validate that it is true. C. Smith has already pointed out some issues with the documentation of their notes. NUREG 1021 has an expectation that the examiners collect documentation to support their notes. NUREG 1021 states: **If the applicants did not perform as expected, the examiner shall ask the simulator operator to provide copies of the logs, charts, and other materials that may be required after leaving the facility to evaluate and document the applicants’ performance. The examiner of record shall retain all documentation related to any operating test failure until the proposed denial becomes final or a license is issued. (Exhibit CCS-005A page 139 “p”)** This Procedural Guidance says to ask the Simulator Operator for documentation to document the applicant’s performance. If the examiner is asking the Simulator Operator for documentation that means it is documentation that is created by the simulator. This parameter is not a part of the items listed in the simulator data. However the IPC program associated with the simulator allows charts to be generated and printed to provide the information in the form of a chart. This gives the impression that the intent is not to rely solely on what the evaluator writes in his notes. C. Smith would expect that if an individual is denied a license that every aspect of the comments are provable facts. C. Smith’s comments

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<sup>150</sup>-CCS-045 page 8

are not that she failed to meet the objective but something she said that can't be proven (misrepresented by the Exam Team) was used to justify the comment.

The NRC Staff also attempts to change the objective. The Testing Outline clearly identifies that the objective is to start the second EHC pump before it causes a reactor/turbine trip at 1100 PSIG.<sup>151</sup> Regardless of if C. Smith was above or below 1400 PSIG, it is clear that she was nowhere near 1100 PSIG. Based on that information alone C. Smith met the objective of this comment as written. This comment is not appropriate and is unjustified. Justifying that C. Smith was above or below 1400 PSIG is a moot point because that was not the objective. The NRC Staff discusses an alarm that is expected to occur at 1500 PSIG. The Exam Team point out that this alarm did not occur. C. Smith would like to focus the attention to the NRC Examiners Notes. Notice that there is no documentation in their notes that say the alarm did not coming in.<sup>152</sup> **NUREG 1021, says "If an applicant performs as expected, the examiner may simply note in the left-hand column of the form the time when the expected actions occurred. However, if an applicant does not perform as expected, the examiner should note the applicant's actions (or lack thereof) next to or below the expected action. (Exhibit CCS-005A page 138 "m")** The review of their notes will reveal that nothing was noted to identify that the alarm did not come in. The alarm coming in is an expected response. So the alarm not coming in is in unexpected response. It is not acceptable to say that because you did not document anything in your notes about the alarm coming in, that it supports that the alarm did not come in. It is also unacceptable to rely on the word "several" to justify a license denial. The NRC Staff tries to say that the statements provided by the exam crew members were not credible because the information did not match their information. C. Smith has already pointed to some suspicious issues with the examiners notes (Exhibit CCS-093 page 6-8). Later in this

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<sup>151</sup>-CCS-048 page 5 (Event 5), page 28 at top

<sup>152</sup>-CCS-098 Review of Information

document another example of suspicion in their notes compared to the Simulator Data will be pointed out. The NRC Staff states that the C. Smith's Crew Member statement should be less credible because his testimony was provided weeks after the event and uncollaborated. The comment in reference to the alarm ALB 20–D05 **not coming in** is **not** documented in the Exam Team's notes. However after watching 15 scenarios at the facility the Exam Team were able to come back two months later (before the review teams arrival) and provide this extra detail (in the binders provided for the Review Team) that this alarm did not come in, having no notes to justify that detail. The difference between the NRC Exam Team and C. Smith's Crew Member is that he only has memories of three different scenarios. It would be a lot easier for him to keep up with the details of only three scenarios.

C. Smith has already pointed out information that was not credible in some of the other Statements of Positions. Questionable information in this comment stated that "after the scenario the applicant was asked to explain her directives."(Exhibit CCS-045 page 8) Mr. Bates examiner notes that list all follow-up questions asked does not have this question listed. He tries to tie the questions that he asked about the automatic start of the second EHC pump,<sup>153</sup> to explain why she started the pump. Identifying that the pump did not start does not translate into the reason why the pump was started. C. Smith points out the credibility of this information to show numerous contradicting statements provided by this individual. Because of his consistency it misrepresenting information, it should be noted, as a pattern in assessing the validity of other comments that are harder to prove.

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<sup>153</sup>-CCS-043 page 82 at bottom

An exam failure that has an impact on an individual's livelihood should not be based on something the examiners said that C. Smith said, it should be based on information that the examiners can prove with **factual data**. This is not an appropriate comment because 1) it was not the objective that was identified in the testing outline 2) the use of the word "several" does not define the point at which the pump was started 3) the examiners did not properly document the information as required by their procedure NUREG 1021 to prove the added information that deviates from the Test Outline.

#### 5. STATEMENT OF POSITION 8-SCENARIO 6, EVENT 6

C. Smith was the SS in this scenario. C. Smith asked the Reactor Operator if rods were operating properly. The Reactor Operator made an error assessing the temperature. In assessing this error he determine that the control rods were not operating properly. C. Smith glanced at the values (improperly validating the information). Based on that information C. Smith gave direction to insert control rods. Within minutes C. Smith, glanced the values again and noticed that the values were negative. She corrected the error and did not exceed any Operational Limits. C. Smith does not deny that this error occurred. C. Smith's complaint is that the error was assigned in an inappropriate manner, placing it anywhere else would have resulted in a passing score on this competency for C. Smith.

The NRC Staff states "Ms. Smith was assessed a performance deficiency because she incorrectly directed that control rods be taken to manual and inserted while TAVG was lowered."

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Notice in this statement “incorrectly directed,” to highlight that there is a competency titled Directing Operations. Yet the comment was assessed as a “diagnosis” issue. Nevertheless the NRC Staff points out the following questions to determine the correct assignment of the error.

- 1) Competency 1. d. States: did the applicant correctly interpret/diagnose plant conditions based on control room indications? *This was the competency that was assigned to the comment. The Reactor Operator provided the diagnosis for this error. C. Smith failure was not immediately recognizing the error however she did correct the situation within minutes.*
  - 2) Competency 5. d. States: did the applicant ensure the correct and timely activities (including diagnosis, procedural implementation and control Board operations) were carried out by the crew? *In parentheses this is asking did C. Smith ensure that certain actions were carried out by the crew. C. Smith identified that she failed to correct the reactor operators diagnosis, applied the procedure based on that information but within minutes identified that the control rods were incorrectly inserted (control board operation). Based on this comment the issues encountered closely resembled this competency. C. Smith did not ensure the Reactor Operator diagnosed the issue properly, C. Smith did not ensure procedure was initially applied properly and she did not ensure that the correct control board operation occurred. C. Smith did correct all the issues but they were not initially correct and the error caused a delay.*
  - 3) Competency 2. c. States: did the applicant use procedures correctly, including following procedure steps in correct sequence, abiding by procedural cautions and limitations, selecting correct paths on decision blocks, and correctly transitioning between procedures? *The reactor operator provided an incorrect diagnosis to C. Smith. Based on that information the correct procedure steps were not performed in accordance with*
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*the Testing Outline. C. Smith chose the wrong procedural steps. This competency more closely resembles the issue than the competency interpret and diagnose.*

The NRC Staff identifies that “Ms. Smith’s performance deficiency to RF 1.d. was appropriate and justified.” The NRC Staff does not explain why this is more appropriate than another competency, they simply restate the question associated with the competency. Discussing that two deficiencies could have been justified is a moot point because the Exam Team stated that they chose to apply one comment for each error.(Exhibit CCS-101 page 1) If this was the standard that was applied to all students than the discussion about additional deficiencies is irrelevant. To validate that point it means that the Exam Team is also stating that the other students could have received additional deficiencies. The NRC Staff also tries to provide a convincing argument that “C. Smith reached an independent diagnosis of the situation.” How can the NRC Staff conclude such a statement when the definition of independent means 1) not influenced or controlled by others in matters of opinion, conduct, etc.; thinking or acting for oneself: *an independent thinker* 2) not subject to another's authority or jurisdiction; autonomous; free: *an independent businessman.* 3) **not influenced by the thought or action of others**: *independent research.* This would have been an example of independent, if the information was not provided by the Reactor Operator. This is an unreasonable application for the definition of independent by the NRC Staff. The NRC Staff mentions “failure to correct an erroneous decision, response, answer, analysis, action, or interpretation made by another crew member may indicate that Ms. Smith agree with incorrect action or in action and should be held accountable.” C. Smith is holding herself accountable by admitting that an error occurred and that a comment should be documented. In admitting that an error occurred, that does not mean that C. Smith agrees that the NRC

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Staff should assign the error to a competency that is not appropriate. In addition the above comment does not provide C. Smith with any acknowledgment for self-correcting the error shortly afterwards.

#### 6. STATEMENT OF POSITION 9-SCENARIO 7, EVENT 3

This event resulted in C. Smith initially responding to the alarm only. Before being given an opportunity to diagnose the failure C. Smith was immediately returned to monitor reactivity.

Fact: The original comment on C. Smith Exam Report says that she did not take “any actions to manually control temperature, and also did not recommend to the SRO that she could take manual control of temperature.” In this comment C. Smith admits to the error that she manipulated the controller in the wrong direction. C. Smith did not fail to take manual control on the initial response because C. Smith was assigned to monitor reactivity. The issue with this comment is that C. Smith was expected to respond to this failure according to the Testing outline. Unfortunately when the SS intervened, C. Smith had no choice but to follow direction. This changes the expected actions. Later the SS directed C. Smith to perform an action. But the initial action of taking manual control could not be observed for this event/failure.(Exhibit CCS-005A page 148 “d”) NUREG 1021 states: Any simulator rating factor that is graded as “not observed” must also be explained in the documentation (e.g., did the simulator malfunction, **did an event not take place as planned, or did another applicant intercede?**). The Exam Team did not take into account that another applicant interceded by changing the assignment. The error was not associated with a failure to take manual control. The error was that the controller was manipulated initially in the wrong direction. The NRC Staff can’t even describe the event without using the word “manipulate.” This comment was inappropriately assigned to

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the wrong competency. C. Smith's comment was taken out of context because C. Smith was assisting in clarifying that it was not an AOP (Abnormal Operating Procedure) entry condition. AOP's provide the direction needed to fix a component or condition. Because TE-130 is not listed in an AOP, C. Smith was telling the SS that it can only be fixed by calling C & T. The NRC Staff willfully identified that C. Smith remain in the vicinity of TE-130. This is absolutely untrue.<sup>154</sup> In the previous Statement of Position, C. Smith identified how the Exam Team prepared binders for the Review Team. In preparing these binders it included additional information that was not written in the NRC Staff's Original Examiner Rough Notes. The additional information in this binder, was that C. Smith was located in front of TE-130 the entire time. This is another detail that was added two months after the exam was complete. The Exam Team provided detail to make the comment appear more authentic. If the Exam Team acknowledge that C. Smith was not in front of the TE-130 it would not support that she was not assigned to respond to the failure. By falsely reporting this information it creates the perception that C. Smith was assigned the TE-130 failure and that she failed to take manual control. Both Crew Team Members have written statements to testify to C. Smith's location during this failure. Both individuals support that C. Smith was not located in front of the TE-130 controller, outside of acknowledging the alarm and responding to the direction to open the valve.

The NRC Staff explains that the incorrect PORV manipulation is different from the incorrect manipulation of TE-130. It is not logical because both components have an automatic capability, during normal plant operations both components are normally in the automatic position. It is not logical because both items were taken initially in the wrong direction. It is not logical because the NRC Staff points out that the TE temperature input to the controller TE-130 was fail LOW and it was being maintained to the wrong temperature. In the PORV example the PORV was responding to a pressure failure that caused the automatic function to open the

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<sup>154</sup>-CCS-040 page 4-5, CCS-041 page 4

PORV, it was being maintained open based on the wrong pressure. The NRC Staff identifies that C. Smith uses “as an excuse, her statement that she was not assigned to respond the failure and the response was the UO’s. C. Smith is not using the assignment as an excuse. This is an examination environment, and it is important to note that C. Smith received comments for issues that were not within her control as well as issues that were outside of her control. If C. Smith is told not to respond to the failure and to monitor reactivity control then it is unclear what was expected to occur. There was no personnel or equipment safety issue associated with the assignment.

The NRC Staff uses the example of an Informal Review Decision from March 10, 2005. They make a comparison that this individual received a comment because they demonstrated lack of understanding by not recommending that a control valve failed in automatic could be taken to manual control. C. Smith was not the individual responding to the failed controller. So it is not an equivalent comparison to compare actions to an individual who was assigned to respond to the failure. This discussion does not validate the additional comment assigned by the Review Team. In order to make a fair comparison the circumstances need to be identical. In addition, in the Independent Review Team’s analysis they agreed that C. Smith explained how the controller worked to the examiner.<sup>155</sup> The NRC Staff would also like to create the perception that the additional comment added by the review panel, Competency 3.b. Control Board Operations – understanding was added with no influence by the Exam Team. C. Smith would like to point out Malcolm Widemanns statement in which he identified that the Exam Team put together binders in preparation for the Review Team’s arrival in Atlanta.<sup>156</sup> These binders that were put together contain information that was handpicked by the exam team to summarize their notes. The

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<sup>155</sup>-CCS-014 page 8, #6

<sup>156</sup>-NRC-027 page 2-3

binders also included additional information to the time lines that was not a part of their notes.<sup>157</sup> Competency 3.b. Control Board Operations – understanding was included in those binders as a potential comment that could be added (NRC-038) To further ensure that the review team considered their recommendations Mark Bates sent an email on July 5, 2012, that stated his position and how he felt that he could've graded C. Smith harder and that she was actually graded lenient.(Exhibit CCS-062) The document that was attached to that email was another attempt to influence the Review Team. This document summarized potential comments that could have been added.(Exhibit CCS-101) Based on that information, the NRC Staff has failed in creating the impression that the Review Team came up with these additional competency independent from the Exam Team. Not only did the Exam Team influence the Review Team they provided them with a list of competencies to choose from that could be added to C. Smith's Administrative Review.

#### 7. STATEMENT OF POSITION 10-SCENARIO, EVENT 4

This event began with the pressurizer level channel LT 459 failing low over 10 minutes.(Exhibit CCS-045 page 14) C. Smith performed all actions correctly in accordance with the Testing Outline. The NRC Staff discusses that "returning FIC – 121 to automatic too soon would result in a rapid lowering of charging." C. Smith must point out that there is no way to determine when a controller becomes unsaturated outside of placing it in automatic. In addition, this objective is not included in the Test Outline. The examiner states that C. Smith returned the controller back to automatic too soon and that she didn't understand that the controller was saturated. C. Smith would like to point out that there is no definition identified in his comment on "too soon."

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<sup>157</sup>-CCS-081

Fact: When reading the comment reported on the final examination report,(Exhibit CCS-045 page 14) the appearance is that C. Smith received a comment because she failed to recognize the reason the controller had an issue. This comment includes no details that a simultaneous failure was initiated requiring additional actions. The comment also identifies that C. Smith “did not understand that charging flow would lower due to the controller’s response to a high pressurizer level over several minutes.”

Fact: C Smith’s comment does not identify the amount of time that the controller was left in manual. Instead the comment makes use of ambiguous words “too soon.” The information written in the expected actions/response on the Final Exam Report, is not a template used on every applicant comment sheet. Expected actions/response are written/tailored by the examiner and varies from student to student. C. Smith’s expected actions/response stated “placing it back to automatic,” “too soon,” will result in a rapid lowering of charging.”<sup>158</sup>

Fact: C Smith’s Crew allowed the controller to stay in manual the longest before the next event. One of the crews received the next failure prior to returning the controller to automatic. Because the Exam Team moved on to the next failure, this crew was not assessed on their understanding of a saturated versus unsaturated controller.(Review Exhibit CCS-099)

Fact: C. Smith actions performed, to include taking FIC 121 back to manual, are the actions identified as expected operator actions in the Testing Outline. According to the Testing Outline (based on the steps) it was expected that the controller would close and that the applicant would take it back to manual.<sup>159</sup>

C. Smith believes that the use of the words “too soon” was used to create an impression that the controller was returned in a short period of time. Leaving out the actual amount of time the

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<sup>158</sup>-CCS-045, page 4 and see CCS-099, page 5

<sup>159</sup>-CCS-052, page 21

controller was in manual, would create a contradiction to the justification for the comment.

Recall that Mr. Lea identified that he heard conversations by the examiners that the failure had to be written up so that it could not be overturned by headquarters if appealed.<sup>160</sup> Pay close attention to the way this is written up. The amount of time that the controller was in manual was intentionally omitted in this write-up.(Exhibit CCS-045 page 14) However one of C. Smith's Crew Team Members that received a comment for the same event, that identified the amount of time that the controller was in manual. (18 minutes) (Exhibit CCS-057 page 10)

Prior to the briefing, C. Smith identified that the crew would perform a briefing while the controller stabilized (identical to allowing to become unsaturated). Notice that C. Smith selected this briefing after the step,<sup>161</sup> but prior to taking the controller back to automatic. If C. Smith had no understanding of a controller being saturated then she would have continued on with the procedural steps and taken the controller back to automatic. The procedure does not direct the user to perform a briefing or allow the controller to stabilize at this point in the procedure. C. Smith performed this briefing with no direction means that she understood that the next step could not be performed until the controller was allowed to stabilize.

C. Smith's crew allowed the controller to stay in manual for 18 minutes.(Exhibit CCS-099 page 5) In comparison to all the other crews, C. Smith's Crew allowed the controller to stay in manual the longest. If C. Smith had no understanding of this, why would she leave the controller in manual for 18 minutes? C. Smith had a briefing with her Crew Members. Evidence of that briefing is identified by the communication comment.(Exhibit CCS-045 page 24) In this crew briefing C. Smith identified that the controller will be taken back to automatic as soon as the briefing was over. The Examiners witnessed this briefing, the Examiners witnessed this direction

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<sup>160</sup>-NRC-025 page 2

<sup>161</sup>-CCS-052 page 21 Prior to Step D9 Briefing Occurred

and the Examiners still put the next failure in place. C. Smith would like to bring attention to the examiners affidavits that contain contradictions to the Simulator Data. According to the Examiners:<sup>162</sup> 1) PT 508 (next event/failure) occurred first and the Immediate Operator Actions were performed to address it 2) C. Smith **placed the FIC 121 Controller in automatic** after the Immediate Operator Actions for PT 508 3) approximately a minute and a half later the FIC 121 controller started to close.

That is incorrect or highly misrepresented. C. Smith has described several times that as FIC 121 Controller was taken to automatic, the PT 508 failure occurred (this failure timing was instructed by the exam team). FIC 121 Controller was already directed to be taken to automatic prior to the PT 508 failure. C. Smith's description of this event is as follows: 1) FIC 121 Controller was in process of being return to automatic when PT 508 failed at the same time (FIC 121 was placed in automatic) 2) Immediate Operator Actions were performed for PT 508 3) upon completion of Immediate Operator Actions FIC 121 Controller starts to close 4) the Reactor Operator was directed to place the controller in manual in accordance with the procedural guidance.(Review Exhibit CCS-100)

Based on the NRC Staff's description C. Smith caused the second transient. Based on C. Smith's description the NRC Staff caused the second transient by intentionally placing a failure in while actions were already in progress. Now let's see how the Simulator Data describes this situation.(Exhibit CCS-100) C. Smith would first like to point out that when FIC 121 Controller was taken to automatic **it did not immediately close**. There was a moment in which FIC 121 appeared to be maintaining flow and suddenly the valve started to close. If the examiner notes are reviewed it also shows that when it was taken to automatic it did not immediately

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<sup>162</sup>-NRC-002 page 29-32

close.(Exhibit CCS-100 page 2-4) Based on the Simulator Data an estimate can be made on the moment that FIC 121 was taken to automatic. You can also see the moment that the PT 508 failure caused a change in Main feed pump speed (this is when it is recognized by the crew). The testing outline description further supports that the failure will cause the Main feed pump speed to drop. If you look at the trend where the main feed pump speed slows down you will see that it is within seconds from the time that FIC 121 was taken to automatic. You will also see when the sudden drop in main feed pump speed changes and starts to increase. This change and increase represents the moment when the UO took manual control of the main feed pump and increased the speed to reestablish flow to the steam generators. (Exhibit CCS-100 starts at page 10) You will also see that when FIC 121 begins to close (by the sudden drop in flow).(Exhibit CCS-100 page 7) The NRC tries to create the perception that C. Smith created the transient by going back and performing additional actions that caused the issues. Looking at the Simulator Data it shows that there are contradictions in the Exam Team's timeline.

At the end of the scenario C. Smith was asked in follow-up questioning to walk the examiner through what happened would FIC 121.(this is translated as what happened). C. Smith pointed out that we were at the step to put the controller in automatic. Then the examiner asked if there was a problem with FIC 121. C. Smith identified that the controller was closing, and that it should not have, because we were at program. This is a correct statement because when a controller is returned back to automatic and it does not maintain, then it is not operating properly. This includes if the controller is saturated. A controller that is saturated is still a controller that is not operating properly. The intended function of this controller is to be able to maintain level in the pressurizer based on plant conditions. This question asked if there was a problem with FIC 121, the examiner did not ask C. Smith why she believed it was closing. The

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NRC Exam Team intentionally asked vague questions. Also keep in mind that Mr. Bates place C. Smith's crew in a position to spend minimal time further diagnosing FIC 121. Other crews were not posed with simultaneous failures that distract the crew.(Exhibit CCS-099)

In NRC Staff's response, they points out additional competencies that the exam team identified that were not documented on the final grade sheet. Then the NRC Staff compares that the NRC Review Panel identifies the same deficiencies. The NRC Staff is attempting to create the impression that these two teams came up with the same deficiencies independently. C. Smith would like to point out that the Exam Team provided a binder to the review team upon arrival in Atlanta. In addition Mr. Mark Bates sent an email to the Review Team member providing an attachment with the additional competencies that the Exam Team felt C. Smith should have received.<sup>163</sup> Based on this information, it doesn't appear that the two teams came out with the same deficiencies. It appears that the Exam Team came up with a list of additional deficiencies and provided that list to the Review Team. If you look at this document you will see that those competencies (PORV-Critical and TE-130-understanding) identified by the Review Team were a part of the comments sent by Mark Bates in that email.(Exhibit CCS-080)

The NRC Staff also identifies that C. Smith "was not downgraded for failing to return the controller to automatic, she was downgraded for failing to correct the return of the controller to automatic." The reference to the transient is misrepresented and C. Smith "did take saturation into consideration when she performed the briefing to allow it to stabilize." The NRC Staff references NUREG 1021 stating that the Testing Outline's "only provides a listing of the correct applicant actions, they do not provide an exhaustive list of the universal or possible incorrect applicant actions." Again may be the NRC Staff can assist C. Smith in finding this guide once in NUREG 1021. C. Smith's review of NUREG 1021 says: **The examiner is expected to**

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<sup>163</sup>-CCS-062, CCS-101

**administer the planned operating test in accordance with the prepared and approved Walk-Through Test Outlines (Forms ES-301-1, “Administrative Topics Outline,” and ES-301-2, “Control Room/In-Plant Systems Outline”) and simulator scenarios (Forms ES-D-1, “Scenario Outline,” and ES-D-2, “Required Operator Actions”).** What the NRC is describing is subjective, what C. Smith is describing is objective. The NRC Exam Team should have recognize/acknowledge that they made an error in putting the next failure in place. Instead they used it as an opportunity to collect additional comments for C. Smith.

Consistency: C. Smith would like to point out how the Exam Team administered this examination differently then the other crews.(Exhibit CCS-099) The other two crews made errors in taking FIC 121 initially to manual, C. Smith’s crew perform this properly.

One crew (Group 2) did not return the controller back to automatic because the Exam Team moved to the next failure. The exam team also moved to the next failure within a shorter period of time. If it was the Exam Team’s intent was evaluate the crews understanding of the saturation of the controller why did they move to the next failure so quickly with this crew. By moving to the next failure so quickly this crew would not receive any comments in connection to the controller. C. Smith’s group was not moved to the next failure for 18 minutes. This is a difference of 11 minutes then this crew. This does not show consistency in administering the exam. If C. Smith’s crew was accelerated to the next failure in the same amount of time or even close then this comment would not be on her final grade sheet. There has to be an explanation for the large deviation in comparison to this crew. Maybe the intent was to cause an issue.

Another example that illustrates the difference in how C. Smith was administered the exam, is the comparison of when the failures were put in place. This comparison is in reference to Group

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3. This group return the controller to automatic just as C. Smith's crew did. This crew returned the controller to automatic after being in manual for 8minutes. The major difference is when the crew returned the controller back to automatic there was no simultaneous failure.<sup>164</sup> In fact when the crew return the controller back to automatic there was a period of time allowed for the crew to respond to the controller closing, come up with a course of action and execute that action. C. Smith's crew did not get this luxury. C. Smith actions are compared to crews that received a failure, responded to the failure and was given enough time to prepare for the next failure. It is understandable that rare occasions may occur in which the timing of the failure is unintentional. Because C. Smith has had this to occur more than once, it is hard to believe that these issues were unintentional. This shows evidence that the twin concept of equitable and consistent administration of the grading was not followed.

#### 8. STATEMENT OF POSITION 11-SCENARIO 3, EVENT 4

In this event C. Smith chose to leave the heaters in manual based on plant conditions. The NRC Exam Team quoted Ms. Smith inaccurately. The NRC Exam Team tries to create the perception that C. Smith directed the Reactor Operator to perform an action and he would not perform it. This information is a misrepresentation of a discussion about the heaters. Keep in mind that the NRC Staff stated earlier that C. Smith said I don't think the heaters are operating properly. If C. Smith stated that, then the statement conflicts with C. Smith attempt to return the heaters back to automatic. If C. Smith felt that the heaters were not operable why would she attempt to take the heaters back to automatic. This comment is very disconnected. When C. Smith initially decided to maintain the heaters in manual she explained to the Reactor Operator why she was maintaining the heaters in manual (because the heaters would respond to the high pressurizer level and cause the heaters to energize. The heaters energizing in turn will cause

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<sup>164</sup>-CCS-099 page 4

the pressure to exceed the current procedural guidance). C. Smith did direct the Reactor Operator to return the heaters back to automatic. The Reactor Operator reminded C. Smith that because of the high level in the pressurizer that he would not be able to maintain the pressure. C. Smith discussion was about if the heaters should be left in manual. The discussions also included, to make sure we had some type of procedural guidance to support leaving the heaters in manual. The Exam Team purposely left off information about this conversation to give a different impression. There impression leads one to believe that the Reactor Operator was provided direction and ignore C. Smith. In actuality, at the end of this discussion it was decided collectively that we could justify leaving the heaters in manual based on procedural guidance from the high level in the pressurizer. This is the procedural guidance that Mr. Bates questions in his notes on “why is she controlling heaters in manual using.....”<sup>165</sup> The notes that he took validates that some type of discussion occurred about controlling the heaters in manual. If C. Smith did not have this conversation and was ignored as presented by the NRC Staff then there would be no notes questioning why heaters were being control by a different procedure. C. Smith did not believe at any time that the heaters were inoperable. This is another example of a comment that is justified based on something that C. Smith said and the Exam Team misrepresented it. A common theme between C. Smith’s comments is that she said something to support an incorrect understanding. The NRC Exam Team is providing a statement made by the applicant as their basis for justifying a comment.

C. Smith makes a comparison to Operator V leaving a hand switch in the divert position instead of returning it to the demin position. The NRC Staff states that Operator V did not demonstrate misunderstanding of the system. He kept the hand switch in demin for a valid reason. Maybe the NRC can provide the reference in the testing outline to support leaving the system in divert.

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<sup>165</sup>-CCS-043 page 79 (at top), page 82 “E4”, page 78 at 14:20

In this example Operator V is defended on his decision and C. Smith is penalized for her decision. In both examples the Testing Outline requires the valve to be return to its automatic/normal position. Discretion/subjectivity played a big part in the decision not to report this on his Final Grade Sheet.<sup>166</sup> C. Smith has already pointed out that she observed actions in 2011 and 2012 other applicants making errors but were not reported on the Final Grade Sheet. C. Smith understood the Pressurizer Pressure issue. However the examiners bias opinion of C. Smith creates a conflict of interest in determining the validity of the information that she provided. The Exam Team was not interested in determining if C. Smith was correct. The Exam Team was interested in collecting enough comments to justify a failure.

#### 9. STATEMENT OF POSITION-SCENARIO 7, EVENT 5

Fact: The Examiner identifies the error made by C. Smith. C. Smith does not deny that the error occurred. The Examiner provides no details in the comment on her Final Grade Sheet to indicate that an important manipulation was in progress at the time the failure was initiated.

C. Smith has Simulator Data to prove that this failure occurred at the exact same time that C. Smith was making a control Rod manipulation.(Exhibit CCS-092 page 2) Earlier in this response the NRC Staff points out that failures are put in place while the plant is stable. This manipulation occurred the exact same time that C. Smith manipulated Control Rods. There is a process required to withdrawal control rods. The process requires permission from the SS and a peer check from the UO. C. Smith believes that the Exam Team was making an effort to quickly place the failure in service to prevent C. Smith from having any documentation to prove that the manipulation was attempted. Fortunately this attempt was not successful and the simulator data recorded that the manipulation did occur. It should be considered that C. Smith initial conditions were different than other crews when responding to Event 5. All other crews

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<sup>166</sup>-CCS-057 Has no comment on this.

were not actively performing a manipulation.(Exhibit CCS-092 Entire Document ) C. Smith was placed in a position to transition from one manipulation, to diagnosing and responding to the next failure. C. Smith's response was different because her conditions were different. C. Smith recognizes that she made the error and has made no attempt to have the error removed. However the issue with this error is that the Review Team determined that the error was a Critical Task after the exam was over and after Region II appealed the decision to issue a license to C. Smith. This information provided is not to request that the error be removed. This information is being provided to defend the position that it was inappropriate to change this comment to a Critical Task in post review and that it does not meet the definition of a Critical Task.

C. Smith does not feel the need to restate the details in association with this error. However C. Smith will respond to the comments that were made by the NRC staff. The NRC staff discusses the informal review panels decision to change the PORV to a Critical Task although the Testing Outline did not identify it as a Critical Task. The NRC Staff comments that "though Ms. Smith does not contest that her failure to perform the required Immediate Operator Actions to closed the Pressurizer PORV and prevent a small loss of coolant accident is a performance deficiency, she argues that it is not a Critical Task."<sup>167</sup> C. Smith does not agree with the additional wording "prevent a loss of coolant accident." C. Smith explanation of a Critical Task and the identification of a critical task was encompassed in NUREG 1021, appendix D.<sup>168</sup> The NRC quotes "a critical task is defined as a task that has four elements: safety significant, cueing, measurable performance indicators and performance feedback." C. Smith pointed this out in her initial documentation that the assignment of a Critical Task requires these four elements. Those four elements were not provided as a part of the Review Team's report. In fact, notes in

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<sup>167</sup>-NRC-001 page 112

<sup>168</sup>-CCS-005B page 423-427

that report submitted by the Review Team, contain no detailed analysis for the PORV.<sup>169</sup> The only explanation provided was that it met the criteria of NUREG 1021. The NRC Staff's May 31<sup>st</sup> response is the first attempt to identify those elements. The Review Team identified (7 months later), that the measurable performance indicator is that either the PORV or the block valve are closed. This means that there is more than one method that was acceptable to respond to successfully meet the requirements of this item now defined as the Critical Task. The NRC Examiners position is "if an applicant is about to make an error, and the incorrect action or inaction is corrected by a teammate, the examiner is required to hold the applicant accountable for that error." The NRC Exam Team refers to:

Exhibit CCS-005B page 455, NUREG-1021, Appendix E, Part E, item 4,: Members of the operating team or crew (whether applicants or surrogates) **should perform peer checks in accordance with the facility licensee's procedures and practices**; non-crew members and NRC examiners will not what perform this function. However, **if you begin to make an error that is corrected by a peer checker, you will be held accountable** for the consequences of the potential error without regard to mitigation by the crew.

The error that C. Smith made was not in conjunction with a Peer Check. C. Smith was responding to abnormal plant conditions. The Immediate Operator Actions performed is intended to be performed without delay and without the controlling document in hand. This was

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<sup>169</sup>-CCS-037 (Compare the analysis on the other comments)

not an example of an Official Peer Check. A Peer Check is described in the Facility Licensee Procedure. The Exam Team has decided to call it a Peer Check because an individual that was a part of the team corrected the action. The Facility Procedure describes a Peer Check as follows:<sup>170</sup>

To be consistent from crew to crew the following is a clarification of the expectations of using the Peer Check tool in the Main Control Room (MCR):

- These instructions are for “daily activities” which means during normal operations. During transients or emergency response situations, the Peer Check tool should be used as much as possible but tempered with actions that need to be taken.

How to use the Peer Check tool:

- The performer self-checks the correct component which includes comparing it to the controlling document.
- The peer self-checks the correct component which includes comparing it to the controlling document.
- The performer and the peer agree on the action to take and on which component.

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<sup>170</sup>-CCS-109

- The peer observes the performer before and during execution to confirm the performer takes the correct action on the correction component.
- The performer executes the intended action on the correct component.
- If the performer's action is inconsistent with the intended action, the peer stops the performer.
- If the performer's action is consistent with the intended action the peer informs the performer that the action taken is correct.

The guidance above shows the steps to perform a Peer Check. The Exam Team's description of the event provides no indication that an Official Peer Check was in progress. The NUREG 1021 reference is slightly misrepresented.

If the altered use of Peer Check were permitted then by assuming the worst case scenario, one can only discuss this aspect from the failure to close the PORV. The NRC Staff has to make more assumptions, beyond C. Smith failing to close the PORV. There was still another action identified that would mitigate the pressure drop. That action would be closing the block valve. Because C. Smith was corrected there was not an opportunity to determine that C. Smith would not close the block valve. However the Examiners Notes reflect that C. Smith identified that the block valve did not close as expected.<sup>171</sup> C. Smith's recognition of the block valve failure to close as expected supports that she was monitoring the indications and was aware that an action would be required. It was not necessary to close the block valve because the PORV was taken to the closed position. Remember, The NRC Staff is essentially changing the layout of the Testing Outline. None of this information is identified in the Testing Outline nor has the Testing Outline been updated to reflect it.

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<sup>171</sup>-CCS-047 page 76 at time 08:18:17 C—R BV 456 did not close (this means that Carla said to Rodney BV 456 did not close)

C. Smith would like to point out the NRC's reference to "a failed open PORV is a Critical Task". First of all, the PORV in C Smith scenario/event was not an example of a failed open PORV. A failed open PORV means that the PORV inadvertently opened and/or cannot be closed with the handswitch. The NRC Staff starts their discussion by quoting ES – D –1, "pressurizer PT 456 fails high resulting in PORV 456 failing open and a block valve 8000B failure to auto close". The NRC staff attempts to misrepresent this component as being a "failed open PORV". Event 5 was a pressurizer pressure failure of the instrument PT – 456. PT 456 failed high and PORV 456 responded. Normally PORV 456 is fed by PT 456, meaning that PORV 456 response is based on the pressure from PT 456. There is an alternate indication that can feed PORV 456 in the event that PT 456 is not operable. That alternate indication comes from PT 458 if it is selected. If pressure increases, as indicated on PT 456 (if selected) PORV 456's automatic function will respond at 2315 PSIG by opening to lower the pressure. In this event, PORV 456 responded as expected. There was not an issue with PORV 456, the issue was with PT 456. Because **PT 456's reading failed high**, the PORV essentially thought that pressure was high and opened.

It may be important to mention that (Exhibit CCS-005B page 426) NUREG 1021, appendix D, page 15 has a section called "Critical task as generic safety task". This provides guidance on determining if an action is a critical task. This section starts off by stating:

Avoid assigning the CT (Critical Task) designation to generic task that has safety significant but do not meet all of the criteria required to identify a critical task.

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**NUREG 1021, Appendix D, page 15 states: Taking manual control of an automatic safety system qualifies as a CT only if the auto initiation feature fails to work. It is then safety significant for the crew to take manual actions, as plant conditions clearly indicate that an automatic action should have occurred and did not. \*\*\*PORV 456's auto initiation feature did not fail to work. PORV 456 auto initiation responded as expected.**

The NRC Staff compares C. Smith's error to the accident at 3 Mile Island. It may be important to identify that there were several factors leading to the accident at 3 Mile Island.(Exhibit CCS-095) There was an issue on the secondary side that prevented the main feed pumps from sending water to the steam generators that remove heat from the reactor core (cooling). This caused the pressure to increase on the primary side, and the PORV's opened to reduce the pressure. When the pressure lowered below the setpoint the PORV did not close as expected (stuck open). The Operators did not know/understand that their instrumentation was identifying that the PORVS were in a stuck open condition. The Operators also did not recognize that they were experiencing a loss of coolant accident. The Operators took a series of actions that made the condition worse. The Operators reduce the emergency coolant water being pumped into the primary system. Without the proper water flow the nuclear fuel began to overheat and began to melt.

The PORV in C. Smith's scenario was operating properly. The NRC Staff intentionally uses the words "failed open." The use of the word failed open is to create the perception that the PORV opening in C. Smith's scenario is the same as the PORV being failed open. It is also intended to associate the PORV in C. Smith's scenario so that the NRC Staff can make a comparison to

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a previous Simulator Exam with a stuck open PORV or independent review decision. Exhibit NRC – 024 Illustrates a Testing Outline that involves a failed open PORV. Notice the difference in this Testing Outline.<sup>172</sup> C. Smith’s scenario was not the same comparison. On the example provided, the initiating cue is that the PORV itself opens. In C. Smith’s scenario the PORV open because of the instrument failure.

**NUREG 1021, Appendix D, page 15 states: Taking manual control of an automatic safety system qualifies as a CT only if the auto initiation feature fails to work. It is then safety significant for the crew to take manual actions, as plant conditions clearly indicate that an automatic action should have occurred and did not. *\*\*\*This Testing Outline requires taking manual control because the PORVs auto initiation feature failed to work in this example. It qualifies as a Critical Task.***

The NRC Staff provided Exhibit NRC 20 as an example of an Informal Review to compare again to C. Smith scenario. In this scenario it stated “As part of the scenario, the 1A SG PORV failed open and would not close on demand to terminate the cool down.”<sup>173</sup> In addition the operator in this scenario did not recognize that the PORV was open for seven minutes. C. Smith was corrected immediately, this individual had an opportunity to self-correct the error. This 7 minutes is not an equal comparison. The NRC Staff provides another example in which the failure was the actual PORV. This is not an example of a PORV that was operable. The identification as a Critical Task in this example was identified based in the auto initiation feature failing. Based on the above guidance it does meet the definition of a Critical Task. Again the NRC provides an example that is not equivalent to the error that C. Smith made.

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<sup>172</sup> Compare NRC-024 to CCS-046 page 27-32 page (Event 4), page 16-17

<sup>173</sup>-NRC-020 page 9-10

The NRC challenges C. Smith statement that the PORV was added as a critical task to find enough points to sustain the failure. The NRC refers attention to the flipcharts that were taken during the very first meeting of the Informal Review Panel. The NRC Staff points out that the flipchart notes made mention of the pressurizer PORV. The Review Panel wrote “make sure closing PORV not critical, ES – D – 2 says no but not stopping a local or perhaps is critical by Westinghouse guidance. The NRC staff also identifies that there is no merit to Ms. Smith argument. But pointing this information out the perception is that the Review Panel considered the PORV as a Critical Task on the very first meeting that occurred in Atlanta. The NRC Staff would like for the belief to be that this determination was made independent of the Exam Team’s input.(See Exhibit CCS-079) C. Smith pointed out on October 3, 2012 that contact between Region II occurred (likely included the Exam Team too) and the direction of the Review Team changed after this appeal.(Exhibit CCS-082) It is important that C. Smith also point out:

- Malcolm Widmann’s affidavit stated the team (Exam Team) “was requested on three (3) days’ notice to develop supporting documentation of the applicant’s performance. The Team built a binder of information to support the IRT review and for this effort they were given an award.”(Exhibit CCS-027) The binders mentioned above are in reference to the first meeting referred to, by the NRC Staff.
  - A tabbed binder (14 tabs) prepared by NRC Region II personnel in response to Ms. Smith’s appeal request. During the interview, the Region II Examiners also shared additional insights into Ms. Smith’s performance, and provided their opinions on the contentions contained in her appeal request.(Exhibit CCS-079)
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- The Exam Team's affidavit: The Region II Exam Team discovered their grading error when preparing to be interviewed by the Informal Review Panel, and provided documentation of the PORV CT to the Informal Review Panel as part of the "Binder" document 11.<sup>174</sup> During those interviews, the Region II Exam Team admitted to the Review Panel that the PORV error should have been designated as a CT error.

These examples pointed out show that the review team did not come up with this reference to the PORV independently. The PORV being a Critical Task was pointed out to them by involvement from the Exam Team. In actuality the Exam Team attempted to influence the Review Team the very first day. Regardless of what the Independent Review Team's actions were later, they did not add this comment until involvement with Region II (likely including the Exam Team) on October 3, 2012.

The NRC states that C. Smith is arguing over substance and claiming that a Critical Task is made critical by labeling it as a Critical Task. C. Smith is saying that a Critical Task meets the requirements of the procedure. The NRC Staff is saying that by simply titling an error as critical, it is a Critical Task. Procedural requirements were not met to identify this as a Critical Task prior to the exam. Due to the nature of the accusations, it is very likely that this error was coded as critical because the Review Team had a hard time sustaining the denial. At the end of the review every comment played a significant role. The NRC Staff points out that labeling is for the benefit of the examiner and not to definitely determine what is a Critical Task. The NRC Staff also states "it does not state that a Critical Task that satisfies these criteria (safety significance, cue, performance indicator and feedback) must also be labeled as a Critical Task in order to be a critical task." Appendix D provides the guidance to determine if an action meets the Task, it is expected to be tagged as a Critical Task. NUREG 1021 requirements of a Critical Task.

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<sup>174</sup>-NRC-002 page 40

states (Exhibit CCS-005B page 414) **All CTs shall be flagged in a manner that makes them apparent to the individuals who will be administering the operating test (e.g., by using underlines, asterisks, or bold type), and the measurable performance indicators shall be identified. When possible, set points and other parameters should be included to provide an objective method for evaluating the operators' performance.**

C. Smith contends that the PORV error was an error, not a Critical Task. This is nothing more than tactic by the Exam Team members to sustain the denial. C. Smith specifically stated the Exam Team, not the Review Team because it is very obvious that the Exam Team has orchestrated everything that has happened prior to, during and after C. Smith's exam.

#### B. NON-CONTESTED PERFORMANCE DEFICIENCIES

The NRC staff's reference to the additional deficiencies noted after the exam is irrelevant because the NRC Exam Team's interest in this case is for the sake of disguising their own misconduct. Identifying that both teams came up with additional assessments is a moot point when the Review Team was given direction by the Exam Team on the numerous occasions. The Exam Team provided documentation for them to follow that contained their recommendations on adding additional comments. Referencing this information has no validity when the information originated from the exam team.

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C. REGION II EXAMINERS AND INFORMAL REVIEW PANEL DETERMINED THAT MS. SMITH FAILED THE SIMULATOR TEST

1. THE FINAL SIMULATOR TESTS GRADE DETERMINE BY REGION II EXAMINERS.

The NRC Staff provides an account of grades submitted for the Final Examination. The examiners identify that they could not justify increasing the score or the rating factors from 1 to 2. Keep in mind that this particular statement is left to examiner discretion. If the examiner chooses not to justify a 2, then it is a personal choice. In light of the allegations provided in this case, this information should not be taken at face value.

2. THE FINAL SIMULATOR TEST GRADES DETERMINE BY THE REVIEW PANEL

This is interesting that the Review Team submit a Final Grade Sheet. Recall that C. Smith requested a copy of a Final Grade Sheet at the conclusion of her Review Panel. C. Smith was told that a Final Grade Sheet was not generated as a part of the Review Panel.(Exhibit CCS-038) Although it is proven that the Review Panel at some point had a Grade Sheet, the NRC Staff now submit a Grade Sheet. C. Smith is requesting that no consideration is given to this document. This document was produced after Region II constructed a document recommending changes to the competencies and requesting that the denial be sustained. This document was produced as a result of that request. C. Smith would like to point out that Competency 3 changed enormously in comparison to the Original Grade. The Review Team removed two comments in that competency replaced it with a Critical Task and added new comment. There was absolutely no consistency during these deliberations.

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#### D. C. SMITH DOES CONTEST THE COMMUNICATION COMMENTS

C. Smith did not provide a Statement of Position in regards to the Communication Comments. It does not mean that C. Smith is in agreement with the Communication Comments. C. Smith is requesting that the Communication Comments are assessed for validity. The only issue with the dispute of Communication Comments is that some are simply “my word against yours.” C. Smith hopes that the defense provided throughout this document will show a pattern of malicious intent by the Exam Team. With that in mind it would likely explain the numerous Communication Comments. C. Smith does not admit to the Competency 4 Grade of 1.60.

The NRC Staff determined that C. Smith has a requirement to prove that the comments identified in Competency 3 are not justified. The NRC Staff has now decided to select which grading sheet to use. The items discussed by the NRC Staff are based on the Independent Review Team’s Assessment. When making a comparison to Competency 3 on the Original Grade Sheet and Competency 3 on the Independent Review Team’s Grade Sheet they look entirely different. Recall that C. Smith requested a Final Grade Sheet from John McHale at the conclusion of the Review Panel’s decision. C. Smith has already proven that the Exam Team contaminated the Review Team’s early on as well as in the end. The procedure for conducting Administrative Reviews clearly states that there is to be no involvement from the individuals that were part of the applicant’s Licensing Exam. All documents beyond October 12, 2013, should not be considered by this panel. C. Smith has clearly proven that the Review Team was ready to issue a license for C. Smith. Mr. Lea also identifies that a license was going to be issued to C. Smith.<sup>175</sup> The individuals involved in these inappropriate actions are now concerned about

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<sup>175</sup>-NRC-021

the perception and possible consequences of this misconduct. C. Smith's request that the Board determine the appropriate Grade Sheet to base this testimony upon. It is not fitting that the NRC chooses which Grade Sheet is determine to be the Final Grade Sheet.

### CLOSING

The NRC Staff consistently operates within the scope of vague and ambiguous terms. At times they hid behind the clear guidance provided in regulations and procedures, although their actions do not match their guidance. Other times they misrepresent the information presented. When no guidance (clear or ambiguous) can be found to support their findings, they justify their points of view with previous examples that do not follow the guidance outlined in their procedures and try to pass this information off as being right because it has been done before.

These behaviors are indicative of a group of individuals that have operated in this manner for a long time. Their knowledge of this guidance is not used for the sake of remaining objective but to disguise improper conduct associated with being subjective. C. Smith's request that the Board consider all of her complaints and discussion in Exhibit CCS-076, Exhibit CCS-075 and the document. C. Smith is asking that the Statements of Position be looked at collectively when appropriate for the sake of showing a pattern of misconduct among the NRC Exam Team. C. Smith request that her successful completion of the operating test as well as the successful completion of the written test be taken into consideration when determining if she met the requirements of 10 CFR 55.33 Comments from the 2012 Exam that are found to be inappropriate and unjustified are requested to be removed and Final Grade recalculated.

C. Smith respectfully request that the Board explore their options in determining the appropriate legal remedy within their capabilities, assess the information and all facets of this exam process (before, during and after). Based on that information C. Smith also respectfully request that the Board rule in her favor and issue a Senior Reactor Operator License.

Respectfully

Charlissa C. Smith

June 30,, 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
	)	
	)	
(Reactor Operator License for Vogtle	)	
Electric Generating Plant)	)	

AFFIDAVIT

This Affidavit is to identify that the information submitted in **C. Smith's Response to the NRC's Staff Answer on Statements of Position** is true and accurate to the best of my knowledge. It is submitted to identify my issues and concerns with the examination process administered by the Nuclear Regulatory Commission, Region II.

The exhibits that I will provide include charts generated from Simulator data during the 2012 examination. I testify that this information contained in this document is accurate and obtained from a credible source.

[Original signed by Charlissa Smith]

Dated at Grovetown, Ga  
this 30<sup>th</sup> day of June 2013

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
)  
CHARLISSA C. SMITH ) Docket No. 55-23694-SP  
)  
)  
(Reactor Operator License for Vogtle )  
Electric Generating Plant) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **C. Smith's Response to the NRC Staff Answer on the Statements of Position** was provided to the NRC's Electronic Information Exchange for service to those individuals on the service list for this proceeding.

[Original signed by Charlissa Smith]

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Dated at Grovetown, Ga  
this 30<sup>th</sup> day of June 2013