

19513

DOCKETED
USNRC

September 11, 1998

'98 SEP 14 A9:22

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE PRESIDING OFFICER

OFFICE OF SECRETARY
RULE MAKING AND
ADJUDICATIONS STAFF

In the Matter of)	
)	Docket No. 55-22234-SP
RANDALL L. HERRING)	
)	ASLBP No. 98-745-01-SP
(Denial of Senior Reactor Operator's)	
License Application))	

NUCLEAR REGULATORY COMMISSION STAFF
PRESENTATION IN SUPPORT OF DENIAL OF
SENIOR REACTOR OPERATOR LICENSE FOR RANDALL L. HERRING

INTRODUCTION

This proceeding concerns the denial of a senior reactor operator license for Randall L. Herring. It is governed by the informal hearing procedures set forth in 10 C.F.R. Part 2. Subpart L. See 10 C.F.R. § 2.1201(a)(2). Mr. Herring took the examination for a senior reactor operator (SRO) license on December 2 - 5 and 16 - 18, 1997. He passed the written and simulator portions of the examination, but performed unsatisfactorily on the walk-through portion of the examination. The NRC, in a letter dated May 18, 1998, informed Mr. Herring that the NRC proposed to deny his application for an SRO license.¹ On June 7, 1998, Mr. Herring filed a request for a hearing on the proposed denial of his SRO license, pursuant to 10 C.F.R. § 2.1205.

¹ Mr. Herring had been informed of the proposed denial of the license application by letter dated January 27, 1998. (Hearing File Item 22) On February 11, 1998, he requested an informal NRC staff review of the grading of the examination. (Hearing File Item 23) The May 18, 1998 letter was sent at the conclusion of the informal review process. (Hearing File Item 31)

D507

On August 14, 1998, Mr. Herring filed his written presentation. The Nuclear Regulatory Commission staff (Staff) hereby files its response to Mr. Herring's written presentation, consisting of the within brief and attached affidavits of D. Charles Payne² and Melvyn Leach of the NRC staff, and E. Thomas Beadle, Nuclear Instructor, Operator Training Center, Catawba Nuclear Station.

DISCUSSION

Section 107 of the Atomic Energy Act (AEA), 42 U.S.C. § 2137, requires the NRC to determine the qualifications of individuals applying for a reactor operator license, and authorizes the NRC to promulgate such regulations as are necessary to establish uniform conditions for licensing such individuals. The NRC regulations implementing Section 107 of the AEA are found in 10 C.F.R. Part 55. Pursuant to 10 C.F.R. § 55.4, a reactor "operator" is defined as "any individual licensed under this part to manipulate a control of a facility." A "senior operator" is defined in § 55.4 as "any individual licensed under this part to manipulate the controls of a facility and to direct the licensed activities of licensed operators."

The Commission's regulations in 10 C.F.R. § 55.33 require that applicants for SRO licenses pass both a written examination and an operating test. The operating test must be administered in a plant walk-through and a simulation facility, pursuant to 10 C.F.R.

² The attached affidavit signature page is a facsimile containing an unnotarized signature. A notarized affidavit will be filed shortly.

§ 55.45(b). The content of the operating test taken by applicants for SRO licenses is governed by 10 C.F.R. § 55.45(a), and

will be identified, in part, from learning objectives derived from a systematic analysis of licensed operator and senior operator duties performed by each facility licensee and contained in its training program and from information in the Final Safety Analysis Report, system description manuals and operating procedures, facility license and license amendments, License Event Reports, and other materials requested from the facility licensee by the Commission. The operating test, to the extent applicable, requires the applicant to demonstrate an understanding of and the ability to perform the actions necessary to accomplish a representative sample from among . . . 13 items.

To promote equitable and consistent administration of operator licensing examinations taken at different nuclear facilities, the Staff has published Interim Revision 8 of NUREG-1021, "Operator Licensing Examination Standards for Power Reactors," (NUREG-1021), which contains specific instructions and guidelines for developing, administering, and grading every aspect of the licensing examination. NUREG-1021, encourages licensees to develop licensing examinations for their own Reactor Operators (ROs) and SROs, to be approved and administered by the NRC, under a pilot program designed to determine whether 10 C.F.R. Part 55 should be amended to require licensees to develop their own licensing examinations. Catawba developed the licensing examination administered to Mr. Herring by the NRC.

As set forth in NUREG-1021, the walk-through portion of the operating test consists of two categories, A) Administrative Topics and B) Control Room Systems and Facility Walk-Through, and implements items 3, 4, and 7 through 12 that are identified in 10 C.F.R. § 55.45(a). (Administrative Topics implements items 9 through 12). According to the

Specific Instructions for Category A, "Administrative Topics," contained in NUREG-1021, section ES-301, every applicant is evaluated on four administrative topics (Conduct of Operations, Equipment Control, Radiation Control, and Emergency Plan), and "... SROs have more administrative responsibilities than ROs, so SRO applicants should be evaluated in greater depth on the administrative topics." NUREG-1021, section ES-301 at 10. Specifically, as to the level of knowledge expected of SROs relating to Topic A.4, "Emergency Plan," section ES-301 states at 11-12:

There are significant differences between the knowledge required of RO and SRO applicants in this area. RO applicants should be familiar with the emergency plan and with their plant-specific responsibilities under the emergency plan implementing procedures (EPIPS). SRO applicants, however, must demonstrate additional knowledge based upon their responsibility to direct and manage the implementation of the EPIPS during the initial phases of an emergency. Because of this, SRO applicants should have a more detailed understanding of the EPIPS, in general, and be familiar with event classification procedures, protective action recommendations, and communication requirements and methods.

The applicant is administered job performance measures (JPM) or specific questions designed so that the examiners can evaluate the applicant's competence in each administrative topic. In accordance with section ES-303, "Documenting and Grading Operating Tests Administered at Power Reactors," of NUREG-1021, applicants are graded either "S" (satisfactory) or "U" (unsatisfactory) on their knowledge and understanding of each administrative topic. If the applicant has a "U" in only one administrative topic, the examiner may fail the applicant in Category A, depending on the importance of the noted deficiency. If there are two or more "U"s, the applicant will fail Category A. NUREG-1021, section ES-303 at 4. In order to receive an "S", the applicant must be found to have

a satisfactory working knowledge and understanding of the topic with very good competence in operation of equipment and familiarity with equipment and procedures. A "U" is warranted in a topic if an applicant had difficulty answering questions and describing interactions of systems, shows a lack of familiarity with equipment and procedures, and is unable to answer questions or answers questions incorrectly or incompletely. NUREG-1021, ES-303 at 1. Mr. Herring's test for a Senior Reactor Operator license was conducted within the regulatory framework set forth above.

The Staff submits that Mr. Herring has failed to meet his burden of showing that the Staff incorrectly scored the operating portion of his test. *See Frank J. Calabrese, Jr. (Denial of Senior Reactor Operator License)*, LBP-97-16, 46 NRC 66, 68 (1997). "The NRC helps to ensure the health and safety of the public by requiring reactor operators to successfully demonstrate their knowledge of nuclear power plant operation before they are licensed." *Emerick S. McDaniel (Denial of Application for Reactor Operator License)*, LBP-96-17, 44 NRC 79, 80 (1996) (citations omitted). Mr. Herring failed to successfully demonstrate his knowledge. As more fully described in the affidavit of D. Charles Payne, attached hereto, Mr. Herring, in his answer to Topic A.2, question 1 of the examination, failed to follow the applicable Technical Specification (TS) and Design Basis Document (DBD). Despite his training in this area and despite the licensee's expectations regarding SRO actions, Mr. Herring did not refer to the appropriate DBD. His analysis, which found the Nuclear Service Water (RN) System operable in contravention of the TS and DBD, is, as more fully explained in the affidavits appended hereto, not correct. Therefore, the Staff was correct in finding his answer to be unsatisfactory. "[I]n undertaking the crucial

responsibility of operating, and directing others in the operation of, a nuclear power reactor, individuals like [the applicant] are expected to follow the procedures that have been established to ensure the safe operation of the facility." *Calabrese*, LBP-97-16, 46 NRC at 89. The established procedures here, as more fully explained in the attached affidavits of D. Charles Payne and E. Thomas Beadle, required a finding of inoperability, pursuant to the TS and the DBD.³ Mr. Herring's failure to follow the established procedures resulted in an answer - operability - that was incorrect under the circumstances, and, to this day, Mr. Herring still contends that his answer was and is correct. The Staff submits that Mr. Herring's answer, analysis and inability to comprehend that his answer is incorrect evince a poor understanding of the knowledge, abilities and functions of an SRO and a poor understanding of the procedures an SRO is required to follow. The safety impact of Mr. Herring's failing in this regard is significant, especially when applied to the numerous decisions regarding operability and other TS requirements which an SRO is expected to make during the course of his job. If each SRO decided individually not to follow applicable TSs and DBDs, as Mr. Herring did in this case, it would not be long before a plant was being operated outside of its design basis, TS, or the regulations.

³ Mr. Herring's previous assertion as to topic A.2, that he thought that he was restricted to references in the control room, (Hearing File Item 23B), is not supported by the examiner's recollection, the instructions given to him, or the procedure utilized in administering the test, as more fully discussed in the affidavit of D. Charles Payne. His assertion that he told the examiner, in his answer to question 1, that the valve in question had to be tagged closed with power removed are not supported by the examiner's contemporaneous notes or his recollection.

In his contention relating to Administrative Set 4.A.4 (the Emergency Plan question which required him to make a Protective Action Recommendation (PAR) based on a specified set of conditions during a general emergency and then reevaluate the PAR based on changed meteorological conditions), Mr. Herring alleges that the procedure he used was confusing and did not direct him to the correct table. As more fully addressed in the attached affidavit of D. Charles Payne, the Staff submits, *inter alia*, that if Mr. Herring had the required knowledge of the emergency procedures, he would have known that the table he used was incorrect. With sufficient knowledge he would have referred to the correct table, or, at the very least, he would have realized that he was evacuating too many Protective Action Zones considering the change in conditions. If he felt that the procedure was confusing, he should have raised the issue with the examiner. *See, e.g., McDaniel*, LBP-96-17, 44 NRC at 81-82 (ambiguity of test question alleged should be raised with examiner). *See also* NUREG-1021, Appendix E, Part A. 2 ("If you have any questions concerning the administration of any part of the examination, do not hesitate asking them before starting that part of the test") and Part C.1 ("If you are asked a question or directed to perform a task that is unclear, you should not hesitate to ask for clarification.").

It is impossible to test each license applicant under every situation to which he or she might have to respond as a senior reactor operator. The applicants are tested using questions containing a cross-section of situations that enable the Staff to draw inferences regarding the applicant's knowledge, ability and competence to safely operate the facility in accordance with the licensee's procedures, license and amendments. Given the nature

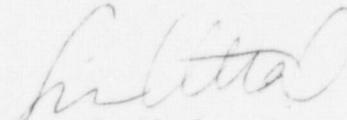
of Mr. Herring's errors, the Staff is not confident that he would comply with the facility licensee's approved procedures in other situations.

CONCLUSION

As set forth in the attached affidavits, the Staff conducted Mr. Herring's examination within the applicable regulatory framework. Mr. Herring's deficiencies in the Administrative Category topics - Equipment Control and Emergency Plan - were significant with potential adverse consequences, and evidenced a poor working knowledge and lack of familiarity with the licensee's procedures and requirements. Therefore, the Staff's decision to fail him on the Category A of the SRO examination was clearly justified. Mr. Herring's after-the-fact justification for his incorrect answers is not supported by the examiner's contemporaneous notes or recollection or by licensee procedures under which SROs are expected to operate.

The Staff's denial of Mr. Herring's SRO license should be sustained.

Respectfully submitted,



Susan L. Uttal
Counsel for NRC Staff

Dated at Rockville, Maryland
this 11th day of September, 1998