

PREDECISIONAL ENFORCEMENT CONFERENCE AGENDA

TENNESSEE VALLEY AUTHORITY

DECEMBER 10, 1999, 1:00 PM

NRC REGION II OFFICE, ATLANTA, GEORGIA

- I OPENING REMARKS AND INTRODUCTIONS
 L. Reyes, Regional Administrator
- II NRC ENFORCEMENT POLICY
 A. Boland, Region II Enforcement Officer
- III SUMMARY OF THE ISSUE
 L. Reyes, Regional Administrator
- IV APPARENT VIOLATION
 L. Plisco, Director
 Division of Reactor Projects
- V TVA PRESENTATION
- VI BREAK / NRC CAUCUS
- VII NRC FOLLOW-UP QUESTIONS
- VIII PRESENTATION BY MR. FISER
- IX REBUTTAL PRESENTATION BY TVA
- X CLOSING REMARKS
 L. Reyes, Regional Administrator

Enclosure 3

NOTE: The apparent violation discussed at this predecisional enforcement conference is subject to further review and subject to change prior to any resulting enforcement decision.

APPARENT VIOLATION

10 CFR 50.7 prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. The activities which are protected include, but are not limited to, testifying at any Federal proceeding regarding any provision related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

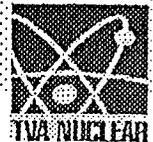
The Tennessee Valley Authority (TVA) discriminated against Mr. Gary L. Fiser, a former corporate employee, for engaging in protected activities. Specifically, in July 1996, TVA eliminated Mr. Fiser's position of Chemistry and Environmental Protection Program Manager, Operations Support, as part of a reorganization and downsizing, and took subsequent actions to ensure that Mr. Fiser was not selected for the new positions within Operations Support. TVA took these actions, in part, in retaliation for Mr. Fiser's involvement in protected activity. Namely, his filing of a Department of Labor complaint in September 1993, in which Mr. Fiser claimed that TVA discriminated against him for raising safety concerns.

NOTE: The apparent violation discussed at this predecisional enforcement conference is subject to further review and subject to change prior to any resulting enforcement decision.

Predecisional Enforcement Conference

Tennessee Valley Authority
December 10, 1999

Enclosure 4



Agenda



- Introduction and Background
- TVA Assessment of Proposed Enforcement Action
 - Culpable Parties
 - Disparate Treatment
 - Contrived Selection Process
 - Pre-Selection
 - Vacant Sequoyah Position
- Summary
- Closing Remarks

Introduction



- TVA Conducted a Prompt and Thorough Review of the Issues Raised in Mr. Fiser's 1996 Complaint
- TVA Re-Reviewed These Issues At the Time of OI's Investigation and Again Upon Release of the OI Report Summary
- TVA Does Not Agree With the Conclusions Reached in the OI Report Summary

Background



- TVAN's 1996 Reorganization
 - Achievement of Five Operating Nuclear Units
 - 1988-1996 Employee Reductions
 - Widespread Changes Associated With 1996 TVAN Reorganizations and Surplusing of Employees
 - Impacted Employees Had Options
- Role of TVAN Human Resources
 - TVAN Managers Are Not Expected To Be Experts On Personnel Matters
 - Human Resources Provides “Subject Matter Expertise” on TVA Rules, Policies, Practices on Personnel Matters

McGrath and McArthur Were Not Named As Culpable Parties



- OI Report Summary States That Mr. McGrath and Dr. McArthur Were ‘Named As Culpable Parties’ in Mr. Fiser's 1993 DOL Complaint
- The OI Report Summary Is Incorrect
 - McGrath Not Named Personally or by Position
 - McGrath Not Interviewed by DOL or TVA Inspector General
 - McGrath Unaware of the Complaint Until Informed by TVAN Human Resources in 1996
 - McGrath Unaware of Characterization of Culpability Until Recent Receipt of NRC Letter Regarding This Enforcement Action
 - McArthur Not Named As Culpable Party; Instead, Favorably Portrayed As Supporter of Fiser

Fiser Not Subjected to Disparate Treatment



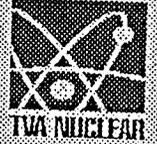
- OI Report Summary States That Dr. McArthur's Appointment Contravened TVA Policy
- Dr. McArthur's Appointment Was Made in Accordance With OPM Regulations on Job Rights
 - Human Resources Evaluated Position Descriptions in Accordance With OPM Regulations, Including McArthur's and Fiser's
 - Decision to Post New Chemistry Positions Based on Review of Job Description of Record (Fiser's) and New Job Description
 - Decision That McArthur Entitled to Position Based on Comparison of His Job Description of Record and Existing Job Description
 - No Disparate Treatment; Both Cases Evaluated Using Same Process Without McGrath's or McArthur's Involvement

Selection Process Was Not Contrived



- OI Report Summary States the Selection Process Was Contrived to Preclude Selection of Mr. Fiser
- Selection Process Was Fair and Conducted in Accordance With TVAN Procedures
 - Structured Selection Process Followed
 - TVAN Posting and Selection Process Described in Business Practice 102
 - Process Includes Application Screening, Application Evaluations, Structured Interviews, and Final Selection
 - Augmented With Additional Reviews Before and After 1996 DOL Complaint Was Filed
 - McGrath Not a Party to Selection Review Board; McArthur Observed but Did Not Vote or Influence Board Members

Selection Process Was Not Contrived



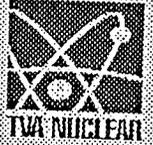
- Selection Review Board Used To Conduct Interviews
 - Selection Review Board Process and Briefing Books Consistent With Standard TVAN Practice
 - Standard Set of Questions Prepared and the Same Board Member Asked Same Questions of Each Interviewee
 - No Collaboration of Interview Scores
 - Results of PWR Chemistry Selection Review Board Interviews Not Different From Results of Other Board Interview Results
 - McArthur's Selection Decisions Consistent with Selection Review Board Results in Every Case
 - No Pressure Placed on Selection Review Board to Non-Select Fiser

Selection Process Was Not Contrived



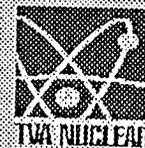
- Selection Review Board Used To Conduct Interviews
 - Selection Board Membership Recommended by Rad Con and Chemistry Peer Team and Accepted by McArthur
 - Selection Review Board Had Three Qualified Members (Rogers, Corey, and Kent) and an Independent Facilitator From Human Resources (Westbrook)
 - Cox Removed Himself Because of Schedule Conflict
 - McArthur Tried to Get Watts Bar Assistant Plant Manager As Substitute
 - Qualified Substitute (Rogers) Found to Support Selection Schedule

There Was No Pre-Selection



- OI Report Summary States That Mr. Harvey Was Pre-Selected
- No Pre-Selection Occurred
 - McGrath and McArthur Denied Any Pre-Selection of Harvey
 - Harvey Declaration Provides Important Perspective on Conversations That Occurred Between Harvey and Watts Bar Chemistry Manager
 - Structured TVA Selection Process Used (and Augmented) to Fill New Positions in Organization

No Vacant Position at Sequoyah



- OI Report Summary States That Mr. Harvey Could Have Been Placed in Vacant Position at Sequoyah
- No Comparable Vacant Position at Sequoyah
- Corporate Chemistry Functions (Involving Multiple Positions) Would Not Be Transferred to the Sites
 - Kent Inquired Whether Harvey's Position Could Be Transferred to Sequoyah
 - Pursued With McGrath Who Confirmed With Human Resources That Single Position Could Not Be Transferred



Summary

- OI Report Summary Is Incorrect Regarding Culpable Parties
- McArthur's Appointment and Decision to Post the Chemistry Positions Were Made in Accordance With OPM Regulations - No Disparate Treatment
- Selection Process Was Not Contrived; Instead, Selection Process Was Fair and Conducted in Accordance With TVAN Procedures
- No Pre-Selection Occurred
- No Comparable Vacant Position at Sequoyah

Closing Remarks



- Notwithstanding Our Position on This Particular Case, TVA Continues to Take Actions to Ensure an Effective Environment Exists for Employees to Raise Safety Concerns
- TVA Met With Region II Staff on June 11, 1999 to Discuss These Initiatives and Results Achieved
- Some of the Key Initiatives Include the Following:
 - Star 7 Employee Training
 - TVAN “Do What’s Right - Building and Maintaining a Safety Conscious Work Environment” Employee Training
 - TVAN Employee Bulletin Reinforcing TVA Nuclear’s Policy Against Discrimination

Closing Remarks



- Results Achieved From TVA Initiatives:
 - Significant and Sustained Reduction in Number of NRC Allegations and Employee Complaints With Outside Organizations
 - Most Recent Employee Survey Indicated Very Favorable Response to Question of Willingness to Report Nuclear Safety or Quality Issue to Supervisor
 - Employee Exit Interview Results for 1999 Indicate Over 95 Percent Responded Favorably When Asked About Freedom to Discuss Any Concern With Supervisor
- Continued Management Commitment to Maintain an Environment Where Employees Feel Free to Raise Safety Concerns

Gary L. Fiser
[REDACTED]

September 23, 1993

Mrs. Carol Merchant
Department of Labor
Wage and Hour Division
Room #123
710 Locust Street
Knoxville, Tennessee 37902

Re: Gary L. Fiser v. Tennessee Valley Authority

Dear Mrs. Merchant:

I was hired by the Tennessee Valley Authority (TVA) in August of 1987, as an M6 Program Manager in the corporate chemistry group. In April 1988, I was promoted to the position of Superintendent of Chemistry and Environmental, Sequoyah Nuclear Plant, a PG-9 position which I held until April 2, 1993, when, in violation of Federal Regulations pertaining to reductions in force, I was personally surplused but my job continued on. Since that day, I have been in a non-work status in TVA's Employee Transition Program (ETP). It has now become apparent that TVA's reason for lying about "surplusing" my position at Sequoyah Nuclear Plant, which essentially resulted in my termination, was unlawful and was in violation of 42 U.S.C. § 5851. In actuality, TVA determined to surplus me because of the fact that I or people under my direction had found and/or documented and/or reported and/or corrected problems which affected plant safety at Sequoyah. My basis for arriving at this conclusion is the result of numerous interviews with my manager, Dr. Wilson McArthur; the past Plant Manager of Sequoyah, Mr. Robert Beecken; the past Vice President of Sequoyah, Mr. Jack Wilson; and my Human Resource Officer, Mr. Ben Easley; and others.

On April 2, 1993, my supervisor, Mr. W. F. Jocher, presented me with a letter from Mr. Joe Bynum, Vice President, Nuclear Power Operations, stating that I was being placed in ETP because my position as Superintendent of the Chemistry and Environmental group at Sequoyah was determined to be surplus (Exhibit A). (Both my immediate supervisor, Mr. W. F. Jocher, and his supervisor, Dr. Wilson McArthur, were very dismayed about the decision to place me in ETP, and expressed their disagreement with this decision publicly and in front of witnesses.) If that

position was abolished, it was done so in name only and as a pretext to get rid of me. An April 27, 1993, memo also authored by Mr. Bynum clearly stated that there would be a Chemistry Manager at Sequoyah (Exhibit B).

The new position of Chemistry Manager is for all practical purposes the same as that of Superintendent of Chemistry and Environmental, a job which I held for several years at Sequoyah. This fact was borne out when I was offered the Chemistry Manager job at Sequoyah on July 6, 1993 by the Rad/Chem Manager Mr. Charles Kent, and the new Sequoyah Plant Manager Mr. Ken Powers. This offer was in fact coordinated through ETP management, specifically Mr. Ron Brock and Mr. Jim Manis, but was withdrawn when, according to Sequoyah's Personnel Manager, Mr. Al Black, "It was blocked at the highest level".

In an interview with Plant Manager, Mr. Rob Beecken, on December 9, 1992, Mr. Beecken stated that one of the reasons that he did not want me back at Sequoyah--I had been rotated to a position in corporate chemistry in March 1992 but without a change of job title or description and was scheduled to return to my position at Sequoyah in March 1993--was because of "[t]he radmonitor effluent calculations not accounting for the vacuum." In 1982 the Nuclear Regulatory Commission (NRC) sent technical information to all nuclear sites (I&E Bulletin) that warned of conditions that could compromise containment radiation monitor setpoints. The bulletin was distributed to chemistry and engineering for an evaluation. The 1982 evaluation was not adequately performed since personnel at Sequoyah did not consider the impact that negative pressure in the noble gas chamber would have on monitor readings. They apparently only considered the impact on monitor flow indication and radioactive iodine readings. This erroneous evaluation was performed fully five years before I accepted employment with TVA. After I assumed my position at Sequoyah, I was informed several times by plant chemistry and engineering personnel in direct response to my questions that radiation monitor readings had been properly established, and did in fact correct for negative pressure. Subsequently, a Significant Corrective Action Report (SCAR) was initiated delineating the problem as well as the necessary corrective actions to bring the monitor into compliance.

Mr. Beecken was not at all pleased with the fact that the issue was reported and documented, his position being that he wanted it fixed without reporting it.

Another reason Mr. Beecken cited for not wanting me back was "[t]he filter change-out scenario". In this case, personnel who

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may or may not have been under my supervision--they reported to me on the organization chart but I was on another temporary assignment in the plant at the time--discovered that a containment radiation monitor had been improperly aligned after sampling activities. Once the problem was discovered, appropriate notifications were made as I had previously instructed them, and the incident was entered into the corrective action process using the SCAR. This action is required by Sequoyah procedures as well as federal law. Mr. Beecken was upset because the radiation monitor could have been reset without being reported and no one would have been the wiser. Doing so would have avoided the SCAR process but would have been irresponsible and counter to NRC and TVA regulations.

Thus, even though I was not directly responsible for either of the underlying conditions leading to those situations, I was charged with them by Mr. Beecken. However, whether or not I was actually responsible for them, Mr. Beecken thought I was, and he determined to deny me my job because of the reporting process having been initiated. Therefore, I am suffering reprisals for finding, documenting, reporting and fixing a preexisting problem associated with a radiation monitor required to be operable by USNRC Technical Specifications. Further, to take action against me for reporting problems via the corrective action process is an example of a repressive management structure that seeks to conceal problems. This can only result in problems being suppressed instead of being handled in a forthright manner which would seek to address the root cause and prevent recurrence.

As another example, Bill Jocher and I determined that Sequoyah chemistry personnel could not meet NRC's three-hour requirement for conducting post-accident sampling analyses (Exhibit C). It was our view that NRC had established a three-hour requirement while others in higher positions at SQN, including Site Vice President Jack Wilson, disagreed. Mr. Jocher requested permission from his supervisor, Dr. McArthur, to contact NRC through corporate licensing for clarification on the three-hour constraint. NRC confirmed the three-hour limit, and we conducted exercises to determine the training level of the chemistry staff. Seventy-five percent of the chemistry technicians failed to perform their post accident sampling/analysis activities within the three-hour requirement, and some of them were not able to complete these critical activities at all. These test results were anticipated and predictable in that management had previously surplused all degreed chemistry instructors and converted the training lab into a storage room in an ill-advised attempt to cut costs. Without recurring training to reinforce fundamental concepts, post accident sampling proficiency as well

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as other technician skills deteriorated to alarming levels. Subsequent measurements by the Institute of Nuclear Power Operations (INPO) as well as Corporate Chemistry confirmed this condition at considerable cost to TVA Nuclear Program head Mr. O. D. Kingsley, who had previously advised the TVA Board of Directors to the contrary.

Our test results revealed the bankruptcy of management's efforts at cost cutting, and the findings were reported. Such revelations are not well received at TVA.

Further, I was constantly in the position of being understaffed and under-budgeted. My pointing this out at various times to my superiors met with rebuke, notwithstanding Mr. Kingsley's promises to TVA Chairman Mr. John Waters that certain equipment deficiencies noted by INPO would be corrected. Including these items in the budget time after time only to have them deleted or deferred by higher management brought about a recurrent finding condition by various audit groups that kept opening and closing this particular item. Bringing up the sorry state of TVA's equipment maintenance repair program was always met with disfavor and contributed to my current situation.

Denial of my job at Sequoyah and my being surplusd were actions taken by the highest levels in the TVA nuclear management structure. In early July 1993, I was offered the position of Chemistry Manager at Sequoyah by the Chemistry Radcon Manager, Mr. Charles Kent, after I had interviewed with the new plant manager, Mr. Ken Powers. I was given a start date, a salary, and the proceedings were coordinated through the appropriate ETP Managers. A few days later, I was told that I apparently had a "target" on my back because persons high up in the nuclear organization had protested my job offer directly to the new Sequoyah Site Vice President, Mr. Fennech. I believe that TVA's decision to not consummate my job offer as Chemistry Manager at Sequoyah in July was another violation of 42 U.S.C. § 5851.

Also, at one point in the personnel evaluation process, my manager, Dr. McArthur, had me rated very high in comparison to his other direct reports, only to have Mr. Dan Keuter, Vice President of Operations Services, personally intervene and mandate that I be given no pay increase. In spite of the opposition raised by my direct supervisor, and in the presence of my Human Resource Officer, Mr. Ben Easley, Keuter ordered Dr. McArthur to place me in a position which would result in no pay increase, and made it clear that it was his (Keuter's) decision. Two other senior chemistry managers from two different TVA locations were victimized by similar retaliatory actions on

Mrs. Carol Merchant

September 23, 1993

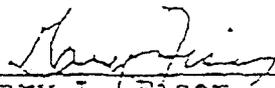
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the part of TVA management for reporting and documenting safety-related issues. Actions of this type appear to be the norm as contrasted to the exception and receive their impetus from the highest levels of TVA nuclear management. This is indicative of a systemic problem within the agency versus an isolated occurrence. Interestingly, while I was the Chemistry and Environmental Superintendent at Sequoyah, the program received outstanding grades as a result of each INPO evaluation. Nevertheless, the types of events recorded above were deemed by upper management as either embarrassing to them or of greater significance than running a good overall chemistry program.

As an employee in TVA's nuclear power program, I am required by federal law to report and document issues related to the safe operation of the facility. To do so at TVA's Sequoyah Nuclear Plant is to invite reprisals in the form of unexplained demotions (Exhibit D), pay cuts in spite of one's performance and irrespective of the direct input from one's supervisor, and eventually the loss of employment. TVA has historically taken action against employees for reporting safety issues with apparent immunity from NRC, an agency for whom they have patent disregard.

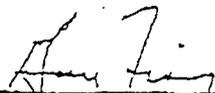
As I mentioned earlier, the facts and issues are extremely well documented, and I look forward to sharing this with you, as well as imparting other insights into this case to you and/or members of your staff.

Sincerely yours,



Gary L. Fiser

I hereby designate Mr. Charles W. Van Beke, Wagner, Myers, and Sangex, P.C., 1801 Plaza Tower, 800 S. Gay Street, Knoxville, Tennessee, 37929, as my attorney in this matter.



Gary L. Fiser

Date: 9-25-93



Bulletin from TVA Nuclear

October 19, 1999

All TVA Nuclear Employees and Contractors

REINFORCING TVA NUCLEAR'S (TVAN) POLICY AGAINST DISCRIMINATION

The Nuclear Regulatory Commission (NRC) has recently announced the results of an Office of Investigations report which found discrimination against a former corporate manager in 1996. This event provides an opportunity for me to reinforce TVAN's policy against discrimination in the workplace.

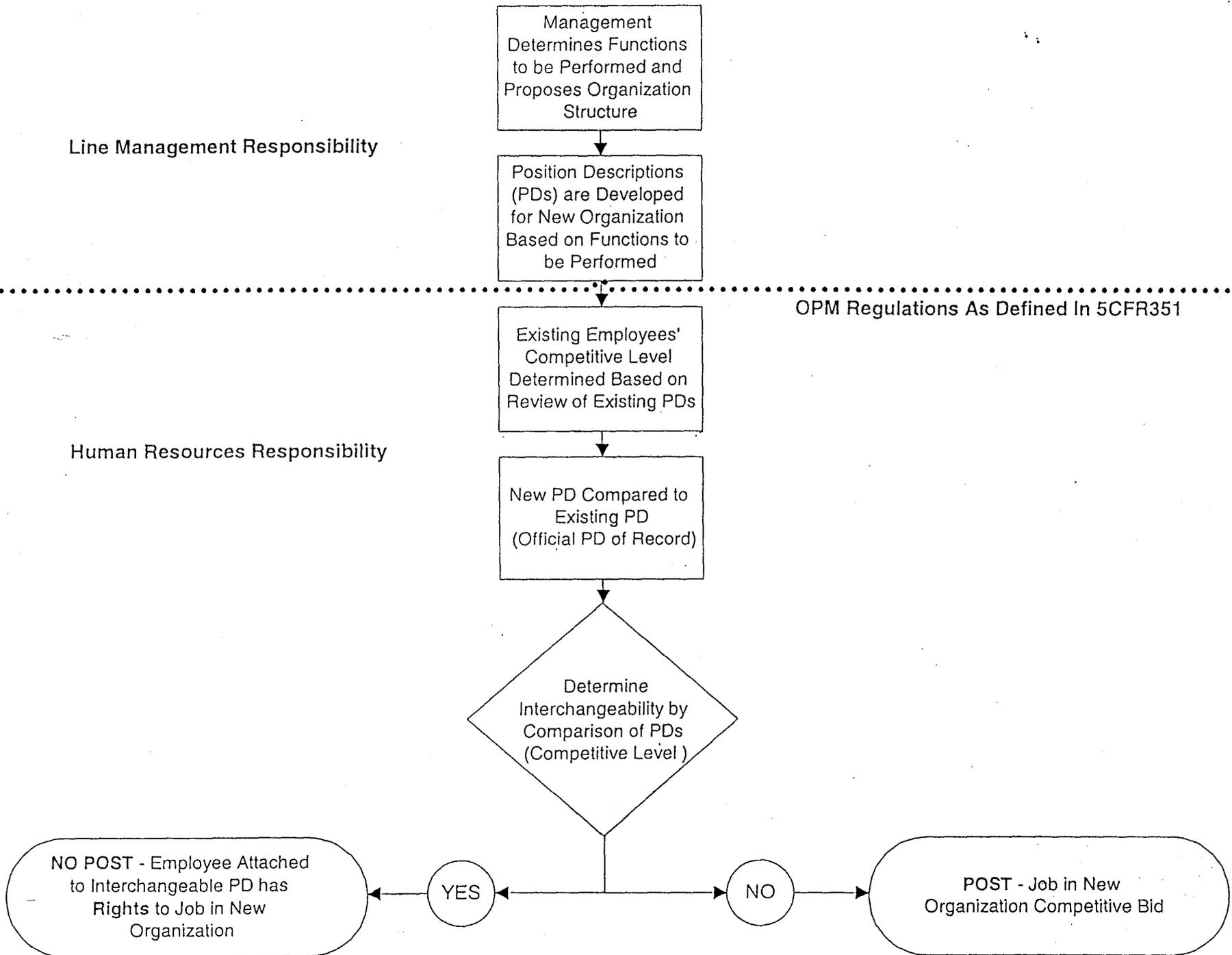
For TVAN to remain an industry leader we must continue to place a high level of emphasis on resolving all problems, especially those related to the safe and reliable operation of our nuclear units. For that reason, we must take whatever action is appropriate to protect each of our employees and the lines of communication which have been developed to raise and resolve problems. TVAN management works every day to maintain a safety-conscious work environment in which employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their safety significance, and are appropriately resolved with timely feedback to employees. Open lines of communication are a significant priority to me and to TVAN management. Violations of TVAN's discrimination policy are subject to disciplinary action, up to and including termination.

I encourage each employee to continue to resolve problems or concerns with supervision, up to and including me, if necessary. I personally hold supervisors responsible for listening, objectively evaluating, and taking prompt action to resolve problems and concerns. In addition, TVAN maintains a Concerns Resolution Staff and contractor Employee Concern Programs as alternate avenues for reporting concerns. As always, employees may report concerns directly to the TVA Office of the Inspector General and the NRC. It is essential, however, that you continue to assume responsibility for actively participating in TVAN's problem identification and resolution process. In doing so, you play a very important role in the success of our nuclear program.

A handwritten signature in cursive script, reading 'John A. Scalice', is positioned above the typed name.

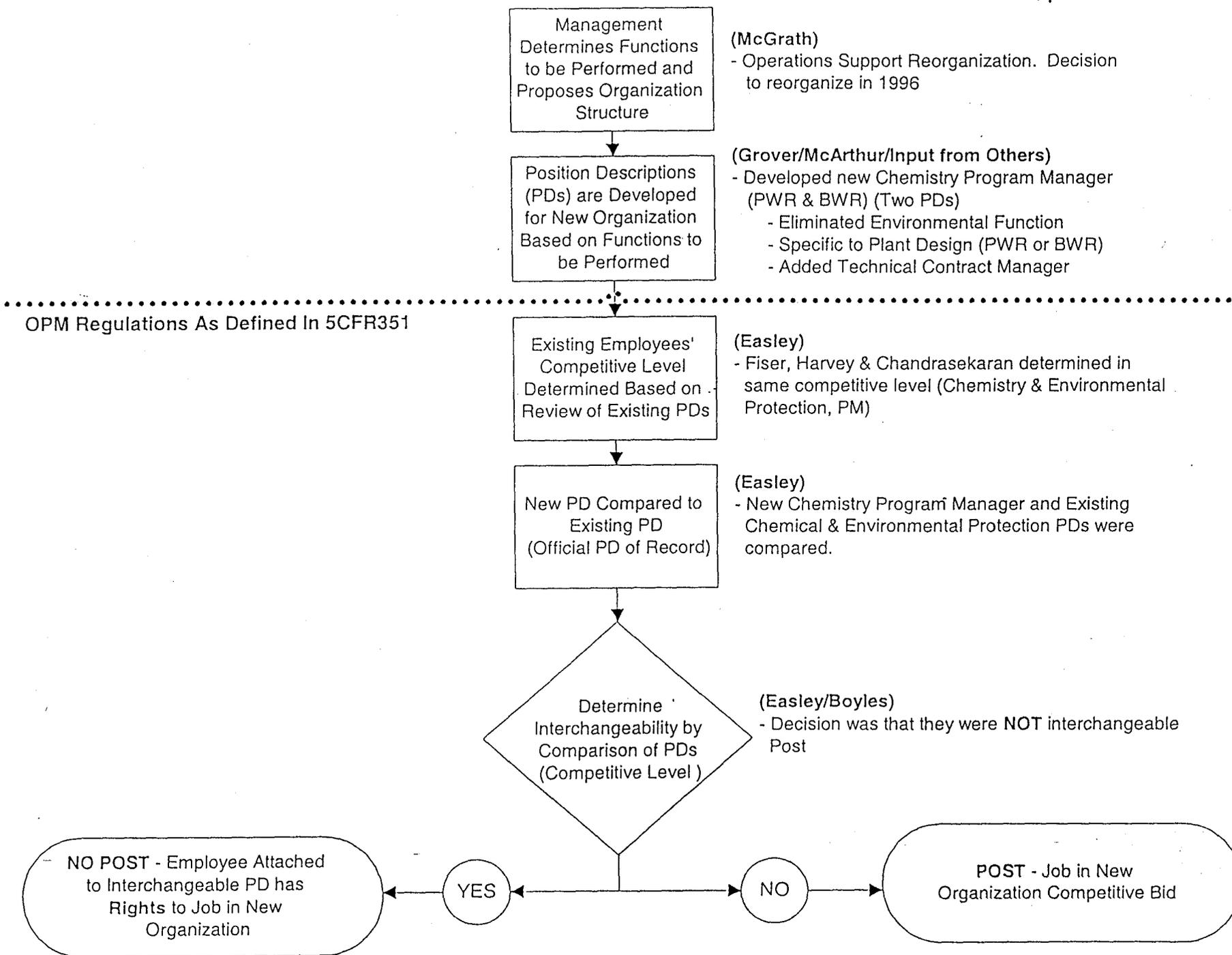
John A. Scalice
Chief Nuclear Officer and
Executive Vice President, TVA Nuclear
LP 6A-C

Decision "To Post" or "Not to Post"



Decision "To Post" or "Not to Post"

FISER SCENARIO



Decision "To Post" or "Not to Post"

MCARTHUR SCENARIO

(McGrath)

- Operations Support Reorganization

(McGrath)

- Used existing PD Radiological Control and Chemistry Control Manager position (Sorrell Retirement)
 - RadCon
 - Chemistry
 - Environmental/Radwaste
 - ERMI

(Easley/Boyles)

- PD of record was Technical Programs Manager (1990)
 - RadCon
 - Chemistry/Environmental
 - EP
 - Industrial Safety
 - ERMI

- Protective Services

(Easley/Boyles)

- Compared 1990 PD to Radiological Control and Chemistry Control PD

(Boyles)

- Decision was that they WERE interchangeable. McArthur had rights to job

FISER SCENARIO

(McGrath)

- Operations Support Reorganization. Decision to reorganize in 1996

(Grover/McArthur/Input from Others)

- Developed new Chemistry Program Manager (PWR & BWR) (Two PDs)
 - Eliminated Environmental Function
 - Specific to Plant Design (PWR or BWR)
 - Added Technical Contract Manager

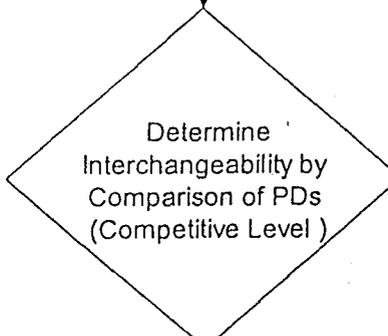
OPM Regulations As Defined In 5CFR351

Management Determines Functions to be Performed and Proposes Organization Structure

Position Descriptions (PDs) are Developed for New Organization Based on Functions to be Performed

Existing Employees' Competitive Level Determined Based on Review of Existing PDs

New PD Compared to Existing PD (Official PD of Record)



(Easley)

- Fiser, Harvey & Chandrasekaran determined in same competitive level (Chemistry & Environmental Protection, PM)

(Easley)

- New Chemistry Program Manager and Existing Chemical & Environmental Protection PDs were compared.

(Easley/Boyles)

- Decision was that they were NOT interchangeable Post

NO POST - Employee Attached to Interchangeable PD has Rights to Job in New Organization

YES

NO

POST - Job in New Organization Competitive Bid

JULY 18, 1996 SELECTION REVIEW BOARD RESULTS
PWR CHEMISTRY PROGRAM MANAGER (VPA 10703)

Question No.	<u>John Corey</u>			<u>Charles Kent</u>			<u>H.R. (Rick) Rogers</u>		
	Candidate B	Candidate A	Fiser	Candidate B	Candidate A	Fiser	Candidate B	Candidate A	Fiser
1	10	8.5	7	8	9	7.5	8	9	5
2	9	8.7	7	8	9	7	9	9	5
7	10	8.5	7.5	8.5	9	7	9	8	5
9	9.5	9	7.8	8	9	7	8	8	7
11	9.5	9	7	8.5	8.5	7	8	9	6
12	9	9	7.5	9	9.5	7.5	8	9	6
15	10	8.5	7	8.5	9	6	8	8	5
16	8.5	8	7	8.5	8	7	8	8	5
17	9	9	8	9	9.5	8	9	9	
Subtotal:	84.5	78.2	65.8	76	80.5	64	75	77	51
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Total Score:	Candidate A 235.7	Candidate B 235.5	Gary L. Fiser 180.8
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BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
IA 99-043

DECLARATION OF SAM L. HARVEY

Sam L. Harvey declares and says:

1. I am making this declaration to document the facts surrounding the Gary Fiser case and my involvement. First let me state that the conclusion that TVA was at fault was already made by the Department of Labor (DOL) prior to its investigation. The DOL investigator was biased and never could get my statement correct. From the first time I met with him, he couched the questions in such a way as to slant them toward a conclusion that Gary Fiser was treated badly. Every time the investigator brought my statement back to me for review and approval, the sentences were reworded to support this conclusion. At no time was the investigator ever objective in wanting "just the facts." I finally marked up the last draft copy of my statement in red and signed it since it was patently obvious that he was not going to state it the way I gave it to him.
2. I was never interviewed by the Nuclear Regulatory Commission about the Gary Fiser case and/or my involvement in the case.
3. Regarding the events in question, I was, from the very beginning (1991), told that the Corporate Chemistry staff would continue to shrink as improvements were made and the redesign of programs were brought up to industry standards. This was obvious also from the fact that Gary Fiser and E. S. Chandrasekaran were told to rewrite the job descriptions for only a PWR Program Manager and a BWR Program Manager just prior to the announcement of a reorganization. When the new job descriptions were sent to me for review (I was on assignment at Sequoyah for steam generator chemical cleaning), I protested to Ron Grover (my manager at the time) that the job descriptions were intentionally written to exclude me because the responsibilities that I had were divided between the two positions and were written strongly in favor of Gary Fiser and E. S. Chandrasekaran. It should have come as no surprise to anyone when it was announced that the Corporate Radiation Protection and Chemistry staffs would be merged into a single group and that there would only be two chemistry positions.

4. Several very interesting things were occurring at this time that need to be brought to light. First, prior to the announcement of the new Corporate Radiation Protection and Chemistry organization, Ron Grover came to me and stated that I needed to talk to Wilson McArthur about "wasn't he ready to retire," and, secondly, Sequoyah wanted me to move to the site. Ron Grover thought this was a good idea so everyone would have a job. After the announcement, Gary Fiser came up to me and stated that the jobs were predetermined and, further, that Tom McGrath was out to get him because of a previous incident between them. Gary Fiser made no mention of any problems he had with Wilson McArthur. Gary Fiser also stated that "he did not care because he knew how the system worked and he was going to get his licks in." I informed Gary that I knew no such thing about the job being predetermined (because I had been on assignment at Sequoyah for the last six months) except that it seemed to me he was the one being pre-selected because he wrote the job description. Gary Fiser stated, "that was right because Ron Grover told him to because I was not supposed to come back from Sequoyah." I believe this statement, that I was not supposed to come back from Sequoyah, makes it clear that there were some maneuverings going on here and that the problems for Gary Fiser started to arise when it was discovered my staying at Sequoyah was not going to be the case.
5. Gary Fiser then proceeded to tell me and others around him that he did not want to work for TVA, and that he was going to take the year's salary and leave. I believe that Gary Fiser took the action of filing a DOL complaint prior to the jobs being posted in order to obtain financial gain and to manipulate the system for this end, as he had originally stated.
6. I believe that Gary Fiser had to post on the job, and then not get the job, in order to support his DOL complaint. I believe that Gary Fiser purposely did not prepare for and address the review board with his best effort. I believe his intention all along was to put on a show to get what he wanted, which was to get out of TVA with as much money as possible.
7. Finally, the statement by Dave Voeller, who was at that time the Chemistry Manager at Watts Bar, and who stated that prior to the interviews I told him the job was mine, was simply not true. My statement was, "I will be seeing more of you or not at all and I believe it will be more." I do not believe that statement translates to the fact that I was promised the job. Arrogance on my part, maybe. But remember that Gary Fiser was making it known at this point that he does not want to work for TVA anymore. I was assuming that I would not have much competition for the PWR position because Gary Fiser was saying he did not want the job. The week after I made this statement to Dave Voeller I was informed that he was saying that I told him I was promised the job. I made a point of contacting Voeller again and explained it in no uncertain terms that I was not promised anything by anybody, and I repeated my

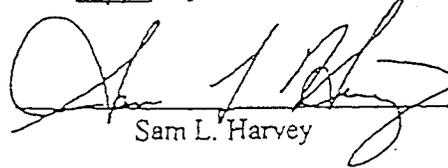
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statement to him, "I will be seeing more of you or not at all."

8. The sad part of all this is that this type of behavior at TVA is one of the main reasons I sought employment elsewhere. It was a mockery to me that this type of behavior could go on year after year, to make a joke out of the truth and to abuse a system put in place to deal with real injustices. During my tenure at TVA, there were only a few people I met with high moral standards and dealt with me with integrity. One of these people was Wilson McArthur. He was always straight with me and never pulled his punches. Because of my respect for him, I listened - even when it was not what I wanted to hear - because I knew he truly cared for the people who worked for him and wanted to help make them better employees and better people. Throughout this whole Gary Fiser matter, Wilson McArthur was the only manager that took the time to sit me down and look me in the eye and ask me if these allegations and statements were true. I will forever respect him for that.

Pursuant to 28 U.S.C. Section 1746 (1994), I declare under penalty of perjury that to the best of my knowledge and belief the foregoing is true and correct.

This 19th day of November, 1999.

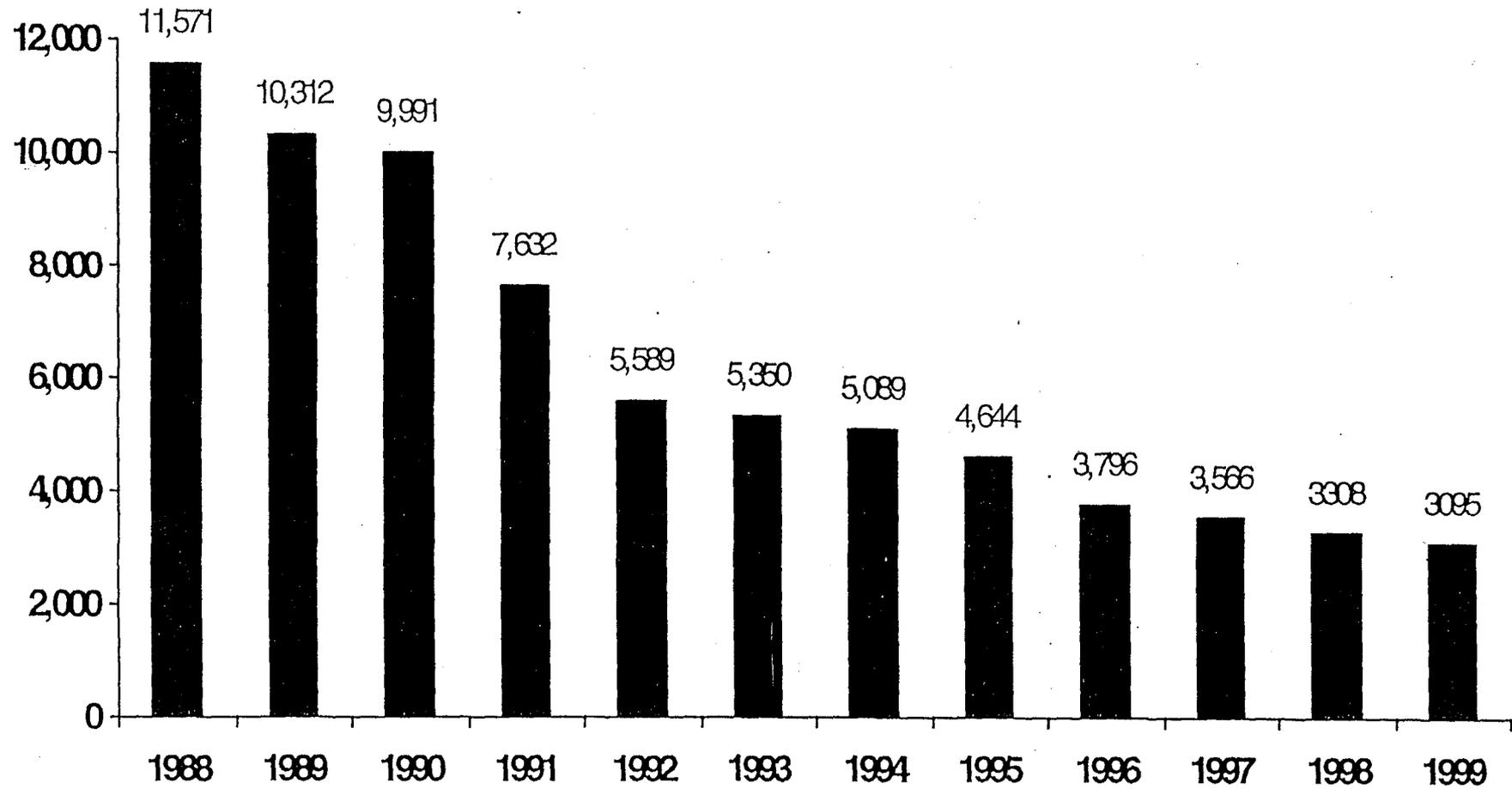


Sam L. Harvey

**TVA Nuclear Management/Specialist Selection Process
Business Practice 102**

<u>BUSINESS PRACTICE</u>	<u>ACTIONS TAKEN</u>
Advertise Positions	VPA 10703 posted 6/13/96
Process Applications	VPA 10703 closed 6/25/96
HR Screening (Late/Minimum Qualifications)	Six applications screened by HR 6/96
Supervisor Selects Candidates for Interview (Experience/Education/Performance in Identified Competencies)	McArthur identifies candidates for interviews 6/96
Structured Interviews Using Job-Related Selection Criteria developed by the Selecting Supervisor	Selection Review Board meets to conduct interviews 7/18/96
Selection Board Feedback to Selecting Supervisor	Selection Review Board rates candidates. Results forwarded to McArthur
Selecting Supervisor Makes Selection Based on information in Personnel History Record - Feedback, Etc.	McArthur selects Harvey for VPA 10703 consistent with Selection Review Board results
Job Offer	Offer made by Human Resources. Harvey accepts position of Chemistry Program Manager (PWR). Effective 8/5/96

TVA Nuclear Staffing Levels 1988 - Current





Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

December 15, 1999

Ms. Anne T. Boland, Director
U.S. Nuclear Regulatory Commission
Enforcement & Investigations Coordination Staff
Region II
61 Forsyth Street, SW, Suite 23T85
Atlanta, Georgia 30303-8931

Dear Ms. Boland:

**ADDITIONAL INFORMATION ASSOCIATED WITH CLOSED ENFORCEMENT
CONFERENCE (OFFICE OF INVESTIGATIONS REPORT NO. 2-98-013)**

This responds to NRC's request that TVA provide additional information in connection with the subject enforcement conference held in the NRC Region II office in Atlanta on December 10, 1999. Specifically, the NRC asked that TVA provide additional information on three matters. First, NRC asked that TVA address, and provide applicable case law in support of, TVA's process of arriving at competitive level determinations as well as its practice of declaring positions to be surplus. Secondly, NRC asked that TVA describe the impacts on headcount that the 1996 TVA Nuclear reorganization had on its corporate staff, especially those associated with the Operations Support organization. Thirdly, NRC asked that TVA describe the reporting relationship of the Nuclear Safety Review Board Chairman.

Enclosures 1, 2, and 3 address each of these topics, respectively. Because this information is provided in connection with a closed enforcement conference not subject to public observation, we ask that you protect the information contained in this letter in accordance with the closed enforcement policy process.

Ms. Anne T. Boland

Page 2

December 15, 1999

If there is any further information that would be of help to you , or if you have any questions, please do not hesitate to call me at (423) 751-2508.

Sincerely,

Mark J. Burzynski

Mark J. Burzynski

Manager

Nuclear Licensing

Enclosures

TVA's Practice of Declaring Positions to Be Surplus

As discussed at the December 10 conference, TVA has adopted measures to ameliorate the difficulties encountered by employees who may lose their TVA employment when their services are no longer needed. OPM's regulations authorize an agency to conduct a reduction in force (RIF) when there is a surplus of employees, lack of work, or shortage of funds. When an agency conducts a RIF it must follow the regulations in 5 CFR part 351. However, an agency is not required to conduct a RIF simply because there is a surplus of employees, lack of work, or shortage of funds. Further, unless an employee's TVA employment is terminated in a RIF, the OPM regulations in 5 CFR part 351 are inapplicable to TVA's determination that a position is surplus.

In the past, rather than conducting a RIF, TVA chose to declare positions surplus and reassign the employees to its Services organization (also known at other times as the Employee Transition Program and Career Transition Services). Because employees who are assigned to Services are kept in their previous position, grade, and salary, the MSPB and the Court of Appeals for the Federal Circuit have ruled that TVA's action in declaring a position surplus and assignment of the employee to Services is not appealable under the RIF regulations in 5 CFR pt. 351 (1999). *Crain v. Merit Sys. Protection Bd.* No. 98-3015, 178 F.3d 1308 (Table) (Nov. 13, 1998), *aff'g* No. AT-3443-96-0939-I-1 (Mar. 12, 1997) (A copy of this unreported decision is enclosed); *Tankesley v. TVA*, 54 M.S.P.R. 147, 150-51 (1992) ("Although the agency announced that the appellant's position was surplus as a result of a reorganization and he was assigned to the ETP for a period to last 6 months, there is no evidence to show that these actions on the agency's part constituted a RIF.").

As held in both the *Crain* and *Tankesley* cases, TVA's decisions on selections are not appealable to MSPB. Thus, in a reorganization such as the 1996 reorganization of the corporate Chemistry and Environmental Protection organization, where existing positions were declared surplus and new positions were created and advertised, the selections for the new positions are not subject to OPM's regulations governing RIFs or selections.

Even though TVA's decision to surplus an employee's position and to assign the employee to Services is not appealable to the MSPB, TVA does attempt to make such decisions based on the employee's retention standing as determined by 5 CFR part 351. When TVA assigns employees to Services it is aware that the assignment will not last forever and that if the employee is unsuccessful in finding another position, either inside or outside of TVA, a RIF may eventually occur. Because retention standing in a RIF is determined as of the effective date of a RIF (5 CFR § 351.506 (1999)), assignments to Services are made based on an assumed RIF at some point in the future. Thus, when

conducting a reorganization which involves the establishment of new positions, TVA must first determine whether any such new position should or should not be placed in the same competitive level as existing positions. If a new position is in the same competitive level as an existing position, an incumbent could have retention standing with respect to the new position, in which case TVA would not assign the individual to Services. Conversely, if a new position is not in the same competitive level as an existing position, an incumbent would not have retention standing for the new position and would be subject to being assigned to Services. An individual whose position is declared to be surplus, but who successfully competes for a different position would not remain in the same competitive level. An individual who is unsuccessful in finding another position, would remain on the retention register and could be subject to a RIF at some later date.

TVA Makes Competitive Level Determinations by Using the Most Recent Position Description of Record.

TVA Nuclear Human Resources (HR) decided that the position of Chemistry and Environmental Protection Program Manager was not mutually interchangeable with the new positions of Chemistry Program Manager (PWR) and Chemistry Program Manager (BWR) so as to require the positions to be placed in the same competitive level in accordance with 5 CFR § 351.403 (1999). The consequence of that decision was that incumbents of the first position did not have a right by virtue of their retention standing to the new positions which were advertised for competition.

HR likewise decided that Wilson McArthur's position description of record was sufficiently similar to the position description for Manager, Radiological Control, Chemistry and Environmental that the two positions would be on the same competitive level in accordance with 5 CFR § 351.403(a). In making both determinations, NHR utilized the most recent position descriptions without regard to the personal qualifications of the incumbent employees or the duties or details to which they had been assigned from time to time.

The Office of Personnel Management (OPM) established the standard which TVA follows to determine which positions should be included in a competitive level (5 CFR § 351.403). The test for inclusion involves whether the positions are *mutually interchangeable* and the focus is on the position descriptions -- not the qualifications of the incumbents. *Kline v. TVA*, 805 F.Supp. 545, 548 (E.D.Tenn. 1992), *aff'd* 46 MSPR 193 (1990) ("Whether two jobs are similar enough, in the respects specified by the regulation, to be in the same competitive level is determined by the position descriptions (PDs) which state the qualifications and duties required by those jobs."); *Estrin v. Social Security Admin.*, 24 M.S.P.R. 303, 307 (1984) ("[A]ppellant's ability to perform the duties of a specific position does not establish that the position is interchangeable, since it is the qualifications set forth in the official position description, not the qualifications of an employee, which determine the composition of the competitive level."); *Holliday v.*

Department of Army, 12 M.S.P.R. 358, 362 (1982) (“The fact that appellant may have been able to perform the duties of both positions adequately does not establish their mutual interchangeability for it is the qualifications required by the duties of the position, as set forth in the official position description, and not the personal qualifications possessed by a specific incumbent, that determine the composition of a competitive level. See FPM Chapter 351, subchapter 2-3a(2). Therefore, as noted by the presiding official, while the two positions may function almost identically, the fact that one of them requires different and greater skills and training justifies separate competitive levels.”).

Merit Systems Protection Board (MSPB) cases support TVA’s use of the last position description of record in determining an employee’s competitive level. In *Townsel v. TVA*, 36 M.S.P.R. 356, 360, (1988), the employee, who had been reduced in force as an M-3 General Foreman, argued that he was actually “performing the duties of a Planner, M-3, a position not affected by the reduction in force, and that his competitive level should have been determined by his actual duties rather than his official position description.” The MSPB upheld his RIF, stating:

The Board has long held that it is the official position occupied by an individual which determines the competitive level in which he is properly placed [36 M.S.P.R. at 360].

See generally PETER BROIDA, A GUIDE TO MERIT SYSTEMS PROTECTION BOARD LAW AND PRACTICE at 1928-33 (1999).

The question was asked at the December 10, 1999, predecisional enforcement conference whether the Chemistry Program Manager (PWR) position should not be in the same competitive level as the previous Chemistry and Environmental Program Manager position since the qualifications and responsibilities of the new position appeared to be a subset of the previous position. TVA pointed out that in order to be on the same competitive level the two positions must be mutually interchangeable. The fact that one position may include fewer responsibilities but more specialized qualifications defeats that interchangeability. For example in *Trahan v. TVA*, 31 M.S.P.R. 391 (1986), an employee with the position description of Civil Engineer, SC-4, argued that his position should have been placed in the same competitive level as the position of Civil Engineer (Hanger), SC-4. The MSPB noted that the two positions were similar but that the latter position required additional specialized training. Based on its review of the position descriptions, the MSPB held that TVA had properly established the employee’s competitive level (*id.* at 393). See also *Holliday v. Department of Army*, 12 M.S.P.R. at 362 holding that “mutual interchangeability” is required for positions to occupy the same competitive level.

During the December 10 conference, TVA pointed out that although Wilson McArthur was assigned as the Manager of Radiological Control, he was not issued a position description for that job. The question was raised as to the appropriateness of using his most recent position description of record to establish his competitive level. TVA’s

practice of using the most recent position description of record is consistent with TVA's reading of MSPB precedent. *Bjerke v. Department of Educ.*, 25 M.S.P.R. 310 (1994), is on point. In that case, the appellant Bjerke was reduced from a GS-15 to a GS-14 in a RIF. He argued that Kermoian, who had more seniority, was improperly placed in his GS-15 competitive level. Prior to the RIF, a classification survey determined that Kermoian should have been classified at the GS-14 level. Before he could be reclassified, a moratorium was placed on downgrades. Both Kermoian and Bjerke "were detailed to various positions with unclassified duties while remaining in their official position descriptions of record at the GS-15 grade level" (25 M.S.P.R. at 311-12). The MSPB found both employees were properly placed in the same competitive level since "[I]n the absence of some positive action by the proper authority to change his *official assignment of record*, Kermoian's position remained at the GS-15 level" (*id.* at 313; emphasis added unless otherwise noted). The MSPB also held that his assignment to other duties did not affect his competitive level since "*an employee, while detailed, as here, remains the official incumbent of his most recent position of record*" (*id.*).

Griffin v. Department of Navy, 64 M.S.P.R. 561 (1994), is also directly on point. In that case the agency RIFed an employee it had placed in a competitive level based on the duties being performed by the employee while on a temporary promotion, rather than the duties of his permanent position. The MSPB held the RIF improper:

An employee's competitive level in a RIF is based on his *official position of record*. [citation omitted] When an employee is detailed to or acting in a position, his competitive level is determined by his permanent position and not the one to which he detailed or in which he is acting [64 M.S.P.R. at 563].

See also Jicha v. Department of Navy, 65 M.S.P.R. 73, 77 (1994) ("Where an employee is detailed to or acting in a position, his competitive level is not determined by the position to which he is detailed or in which he is acting. . . . The competitive level in which an employee is placed is determined by the duties and qualifications required of the incumbent, as set forth in the official position description.").

TVA Nuclear Corporate 1996 Re-Organization Impact on Headcount

<u>TVAN</u> <u>Corporate Organization</u>	<u>Headcount</u> <u>Before</u>	<u>Headcount</u> <u>After</u>
Nuclear Operations (Acting GM - T. McGrath)	71	58
<i>Nuclear Training</i>	7	6
<i>Maintenance & Tech Support</i>	20	16 ¹
<i>Chemistry & Environmental</i>	5	3
<i>Radiation Control</i>	5	5
<i>ERMI</i>	19	16
<i>Operations Outage & Fire Protection</i>	4	1
<i>Performance Assessment</i>	11	11
Human Resources	42	31
OWCP	34	21
Tech Services	107	63
<i>ISO</i>	88	48
<i>Security</i>	9	6
<i>Emergency Prep</i>	10	9
Nuclear Assurance	44	34
Business Services	22	22
Nuclear Projects	156	194
<i>Nuclear Fuels</i>	22	19
<i>Corporate Engineering</i>	117	167 ²
<i>Contracts</i>	7	0
<i>Materials</i>	10	8

¹ "After Headcount" includes five (5) positions for the newly formed Steam Generator Support organization.

² Headcount in Corporate Engineering increased in Chattanooga due to the centralization of Engineering Design from the nuclear sites.

NSRB Job Responsibilities and Reporting Relationships

Thomas J. McGrath was NSRB Chairman from 1989 until 1997. Within this time frame, the Chairman of the NSRB reported to the Vice President, Engineering and Technical Services (previously Vice President, Nuclear Assurance & Licensing). The Chairman of the NSRB also had a dotted line reporting relationship to the Chief Nuclear Officer.

During the time of his tenure as NSRB Chairman, Mr. McGrath also held positions with other responsibilities within the TVA Nuclear corporate organization. Up until July 1995, these functions included Corporate Contracts, Materials, Administrative Support, Nuclear Fuels, and Support Staffs. He had no direct management responsibilities over the nuclear plant sites, including any site Chemistry organization.

In July 1995 Mr. McGrath's duties were limited to that of NSRB Chairman. However, in October 1995 he was assigned to support the General Manager, Operations Support in the Corporate organization because of the illness of the incumbent, Donald Moody. After the death of Mr. Moody in March 1996, Mr. McGrath was made Acting General Manager, Operations Support.

**December 10, 1999
NRC Region II's Closed
Predecisional Enforcement Conference
With TVA: Atlanta, Georgia**

**Presentation by:
Gary L. Fiser**

Enclosure 5

December 10, 1999

Gary L. Fiser

About 12 years ago I received a call from TVA's Corporate Chemistry Manager. He wanted me to come to TVA and help out in the restart and recovery efforts in their Nuclear Power Chemistry Program. They had been shut down for some time due to safety concerns. I resisted, and he continued to pitch the company finally asking that my wife and I fly out to see the area. I told him that I would, but that I felt bad about it because there was no reason for me to leave Arkansas, and I felt that I was taking their money for nothing. Following months of persuasion, I decided to leave Arkansas and the 14 years I spent there, and joined TVA's Nuclear Power Program recovery effort in September of 1987.

Over the past 7 years, I have been performing in my mind a root cause determination. This root cause was to determine exactly where, when and why my professional career began to unravel right before my eyes. In the beginning I was unconcerned, believing that honesty, truthfulness, and hard work would exonerate me. I had always been told that sooner or later the truth would surface and truth would win. I still believe that, "but not necessarily in this life".

Several years ago, I was asked to perform a pre-INPO assessment of the Chemistry Program at Sequoyah Nuclear Plant. This was in anticipation of a site INPO evaluation scheduled to be performed in 1992. My instructions from Bill Lagergren, the Operations Manager at Sequoyah, were as follows: "I want you to do the assessment using the INPO criteria, and I want you to be very critical. If the INPO documents and guidelines tell you to do something, and you don't do it for whatever reason, I want that documented. If the INPO guidelines say for you to do something a particular way and your program accomplishes the same thing a different way, document it. In the same manner, even if they say to do something, and you accomplish it in what you feel is a superior manner, document that as well."

What he was looking for was a list of discrepancies. Then after the list was compiled, Bill sat down with us and participate in the review process. He wanted to provide detached and objective input as to what really needed to be fixed prior to the INPO visit. He made it very plain that the list was for our internal use only; it would not be going any further, barring the discovery of some condition(s) adverse to quality.

I followed his instructions to the letter, and the resulting list was some 120 or 130 items. Mr. Lagergren was delighted with my effort, remarking several times how pleased he was that I had provided exactly what he wanted. Out of the long list of items only about a half dozen actually resulted in some tweaking of the Chemistry Program prior to INPO's arrival.

Unfortunately, what to one man was a job well done, was to another a job undone. Shortly after I submitted the results of the pre-assessment to Mr. Lagergren, Mr. John LaPointe, Sequoyah's Vice President, called Dr. Don Adams and me into his office on a Saturday, and lit into us for four hours. He was livid, yelling, cursing, swearing and levied all kinds of accusations against the chemistry program and me. The end result (**and this is critical**) was that he instructed me to enter every one of the items into TROI, Sequoyah's computerized system for Tracking and Reporting of Open Items. As we walked away from his office, I heard him reporting in to his supervisor, Mr. Joe Bynum, that he felt Sequoyah was ready for the upcoming INPO assessment, with the exception of the Chemistry section. Note: Remember that name, Joe Bynum, it will be coming up a lot.

Note: Well, LaPoint was wrong. My review was a resounding success, and at the conclusion of the INPO assessment for the first time ever INPO said there were no findings and no concerns with Sequoyah's Chemistry's Program.

I told you that entering this information into TROI was a critical step. Once this huge list of open items appeared in TROI, every auditing and oversight group in TVA was unleashed on Sequoyah Chemistry, and me in particular, with a vengeance. What for Mr. Lagergren was a source for giving me a performance bonus became a festering tumor for others that ultimately lead to the loss of my position, THREE TIMES. I can state with certainty, that using the corrective action process at TVA is tantamount to professional suicide. NRC, TAKE NOTE: I can assure you beyond reasonable doubt that the chilling effect flourishes in TVA's Nuclear Program.

The FIRST TIME I lost my position was back in 1993 when Mr. Joe Bynum placed me in TVA's Employee Transition Program (ETP). In a letter from Joe Bynum I was told that they no longer needed a Chemistry Superintendent, and therefore my job had been eliminated. Shortly after being placed in ETP, another letter from Mr. Joe Bynum was circulated stating that the Chemistry Superintendent position at Sequoyah was being reinstated. He had lied when he said the job had been eliminated, this was only pretext used to get rid of me! Not only was it being reinstated, but the position was being upgraded from a PG 9 to a PG 10.

Let me hasten to point out that this is the same Joe Bynum that TVA removed from their Nuclear Program after losing Mr. Bill Jocher's DOL and NRC cases. NRC's investigation of Bill Jocher's

case revealed that Bynum had lied under oath. TVA however chose to retain Mr. Bynum's services, simply moving him into the non-nuclear program. Today Mr. Bynum continues to be handsomely rewarded by TVA; he continues to enjoy the benefits of employment, retirement, salary increases and annual incentive bonuses since that time.

The fact of the matter is that even if you get caught doing the wrong thing, as long as it benefits TVA in the process, you get to keep your job and even get a raise. If however you do the right thing, like use the Corrective Action Process to document problems, you will find yourself harassed right out of a job.

At first I was delighted to hear about my position being upgraded, thinking that they would follow the rules, bring me out of ETP, place me in my job, and give me a raise! It did not happen. I was interviewed for the "new" position and offered the job on the spot by Mr. Charles Kent the department head and the new Sequoyah Plant Manager. I was given a raise commensurate with a PG 10 position. Charles Kent told me that he knew all that had gone on before. He knew I had been unjustly treated, that it was wrong, and that he had already brought the new Sequoyah Plant Manager up to speed on my case. They were both in agreement that I should be reinstated. Charles told me to lay low, stay quiet, and he would get this thing done quietly and quickly before those who masterminded the previous shenanigans had a chance to find out what was going on. This is all documented.

Shortly thereafter, Charles Kent called me back out to Sequoyah, and told me that it was not going to work out. He said that others had found out about his plan, and it was like he had kicked a hornet's nest. He said it would be unfair for him to subject me to the kind of treatment that was in store for me. I was summarily discharged back to TVA's Employee Transition Program. The same guys that targeted me before, guys that still today enjoy the benefits of a TVA employment, Joe Bynum and Wilson McArthur and Tom McGrath got another chance to teach me a lesson, and for the SECOND TIME I lost my position.

Wilson McArthur found out about Kent's plan to reinstate me, and he personally informed Joe Bynum of Sequoyah's intentions. Bewildered and dejected, I went to McArthur's office (thinking he was my friend) and told him what had happened and that I was going to find out who had been hiding in the bushes and shooting me in the back. McArthur confessed that he was the one who told Bynum. Shocked, I asked him why he would do that, and he simply stated that Joe had to know. The truth is that Bynum, McArthur and McGrath were all three responsible for having me removed in the first place.

Following these developments I filed a complaint with the Department of Labor, which was settled in 1993. In order to keep from being terminated, I reluctantly agreed to a settlement offer. I was not only denied the PG 10, but also was removed from the Sequoyah Chemistry program, and busted from a PG 9 to a PG 8. I was very much reluctant to take this offer until a chance face to face meeting with the Director of Human Resources, Mr. Phil Reynolds. Mr. Reynolds reassured me that all those responsible for my demise had been reassigned or in some way moved out of my chain of command, and I could come back without fear of reprisals. He personally encouraged me to "put all this behind me" and get back to work.

Note: For the record, NRC never performed a thorough investigation of this first complaint. Mr. Vorse was assigned the case, but following the initial meeting never once contacted me, never answered a single phone call, never returned a phone call, or acknowledged a fax, letters, anything! For years I have wondered if I would have been spared further misery if he had done his job. I call on NRC's IG to investigate the disposition of this former case.

After approximately a year in this lower job, following the death of my General Manager Mr. Don Moody, Mr. Tom McGrath, Chairman of the Nuclear Safety Review Board and Wilson McArthur a long standing member of the Nuclear Safety Review Board were directly in my chain of command. These two underlings of Joe Bynum, professional thugs, dusted off their old bag of dirty tricks, and you guessed it, I was for the THIRD TIME surreptitiously reorganized out of another position. I was in line for my third and final lesson from these guys.

Older and wiser now, I recognized what was going on early in the development stages, and hoping to avoid trouble, went to Human Resources to discuss my concerns directly to the Personnel Department, specifically Mr. Ed Boyles and Mr. Phil Reynolds. I told them plainly, in advance, what McGrath and McArthur were scheming. I also told them what I would be forced to do if this course of action was not turned around. The Human Resource Department, specifically Mr. Phil Reynolds and Mr. Ed Boyles, chose to stand aside and abide by the dictates of McGrath and McArthur, with Mr. Oliver Kingsley in full knowledge and support. Therefore, I submitted a second DOL complaint.

Phil Reynolds met with me and told me that he would allow me to keep my job, working for McArthur and McGrath, if I would drop the DOL complaint. I refused, knowing that short of having in my hand hard and fast DOL and NRC rulings on this case, I would be in for the same treatment again.

As a matter of routine with the filing the DOL complaint, I met with TVA's IG. I carefully went over the evidence that I had to date, and the inspector documented the conversation and said he

would look into it. The report he submitted was a farce. It was filled with remarks like, "He said one thing, and they said something different. Therefore, I could not decide who was telling the truth." It was laughable. Notice that this "investigative" body, having command of the same set of facts as DOL and NRC, was incapable of dealing with those facts. NRC and DOL had no problem understanding what went on, and got to the bottom of the matter, at least preliminarily. Never, never, never, trust what you hear from TVA's Inspector General.

Thanks to Ms. Benson, NRC in concert with DOL has successfully and correctly arrived at the preliminary conclusion that TVA has once again discriminated against an employee engaging in protected activities. I find it incomprehensible that I am standing before this group. Do you realize that TVA has discriminated against and removed three Chemistry Managers for engaging in protected activities?

I can remember not too long ago when Dr. Ralph Matthews, Chemistry Superintendent at Watts Bar Nuclear Plant, was removed from his position for refusing to be pressured into signing off on a start up plan he knew did not meet commitments made by TVA to NRC. He filed a complaint, you investigated and sure enough, Dr. Matthews was right, but he never again served another day as the Chemistry Superintendent at Watts Bar. TVA sent out a form letter stating that they would not tolerate this type of discrimination, and that people should feel free to voice concerns without fear of reprisals, etc.

Shortly thereafter we see Mr. Bill Jocher, TVA's Corporate Chemistry Manager, being removed from his position, and he too filed a complaint. This also resulted in DOL and NRC rulings against TVA, and here comes that form letter again stating that TVA will not tolerate discrimination. I can remember reading it again, and saying to myself, "I'll bet TVA learned their lesson this time. Surely the intimidation and harassment of employees for raising safety concerns will stop now."

Well here we are again. I wonder if TVA has already circulated that stupid little letter around, and lied again after this case? TVA lies when they state that they will not tolerate discrimination. TVA lies when they say that people should feel free to submit concerns, and use the corrective action process. TVA lies when they say that they will deal seriously with those who discriminate against employees. Check it out, McArthur, McGrath and Bynum are still gainfully employed by TVA!

NRC and TVA, you have no credibility when it comes to the protection of those who raise concerns using the Corrective Action Process. Indeed, it is now to the point that it appears there is collusion between your agencies. How could NRC allow the systematic destruction of people

like me to continue? TVA, have you hired an independent consulting firm to come in and interview your employees to verify that everyone has a warm feeling about submitting safety concerns? If you did, please tell me that it is not the same one that verified everything was OK in the past! By the way, strangely enough, the consulting firm never asked for my opinion!

How many times is it going to take? Let me state this as plainly as I know how. **FIRST**, TVA should be assessed the maximum fine possible for this case. **SECOND**, TVA has no business holding a license to operate a nuclear power facility until they can prove with reasonable assurance that the intimidation, harassment, and ruin of individuals raising legitimate safety issues is no longer tolerated. **THIRD**, NRC should insist that I be made whole again and force TVA to reinstate me at or above a PG 10 level which they denied me, with no loss of pay, no loss in benefits, and no break in service. This, and only this, would send them a resounding message that there are consequences to illegal behavior.

THE ISSUANCE OF LETTERS AND INDEPENDENT VERIFICATION BY CONSULTING FIRMS FUNCTIONING AT TVA'S DIRECTION IS NOT SUFFICIENT PROOF! IT IS ALL LIES, AND SHOULD NOT BE TOLERATED BY YOU, NRC, UNLESS YOU TOO ARE WILLING TO STAND ASIDE AND ALLOW THE CHILLING EFFECT TO RUN ITS COURSE.

Well NRC, what are you going to do this time? Anything short of the maximum enforcement possible with my reinstatement means TVA has beat the system again. Nothing else will result in a change to TVA's heart of hearts? History has repeated itself three times for me personally and for three chemistry managers. You call us down here years after the fact with a "preliminarily" ruling in my favor. Now they can once again repeat their old line, "These problems happened years ago, the people responsible have been reassigned to the non-nuclear program, or left TVA. We are better now; we take discrimination very seriously, and we will not tolerate it any more". It is all lies, I know it and so do you! Are you going to let them get away with it again?

Well, what about me? What about the guy that thinks right will win, the cream will rise to the top, truth triumphs, and on and on and on? Let me tell you about me. I signed a settlement, and after paying taxes, and attorney's fees, etc, I had enough money to last about _____. You would think this would be sufficient time to find replacement employment. My first try was at INPO, I filled out an application, and did the telephone interview thing. Everything was going so well, and then I hit a brick wall. While I was in the process of being scheduled for an interview, the INPO person handling my application went to the people in their own chemistry department asking for verbal references from anyone who knew me. Dr. Jim Corbin, one of the chemistry evaluators, said something like this, "Well, I don't really know the facts, but I do know that TVA

has been trying for years to get rid of him." Needless to say, I never got the interview, and every attempt since then is met with rejection. This blackballing is real, tangible, purposeful, and undeniable.

Other interesting facts:

- My wife is not insurable due to a congenital heart defect. We were not allowed to purchase health insurance using TVA's group retirement plan.
- I cannot find work in the Chattanooga area that will pay me what I was making.
- I am faced with the fact that I must sell my home in the very near future.
- My son has been indelibly scared by the fact that someone can do the right thing and suffer so long and so markedly.
- Retirement for me is now out of the question.

This is what happens to someone who does the right thing at TVA. On the other hand, the person who lies under oath gets a new job, gets a raise and bonuses every year; all the benefits an agency the size of TVA can afford. To TVA I must say that my hat is off to you. You won! It may appear from the proceedings here that I may be winning, but I will not. I cannot provide for my family, I cannot provide for retirement, I cannot even hold on to my house. Your goal was to silence and get rid of me, and you met your objective. You may have to pay a fine, but what is that to you? When you compare TVA's net worth to mine, the maximum fine for them would be like fining me a penny. No wonder there is no real change!

I am most concerned with the fact that many people had to stand up on my behalf and tell the truth, not counting the costs, in order for TVA to have been found guilty, at least preliminarily. I fear for their future in TVA's Nuclear Program, for they will face the same intimidation and harassment as I was subjected to **if this preliminary ruling does not stand**. I was going to mention their names in this presentation, but I do not feel that TVA can be trusted with that information. I know TVA has already made life miserable for some. I was going to give the list to NRC, but I fear it would end up in TVA's hands, so TVA could "make sure they were properly treated." I have decided to keep it confidential, and should TVA make further attempts to ruin their lives, as they have mine, I will make it public at that time. It probably will not matter, for as we have already seen once TVA decides to harass and intimidate someone with clear resolve to run him or her off, they will be dauntless on their mission.

I HAVE TROUBLE UNDERSTANDING HOW IT IS THAT TVA CONTINUES TO GET AWAY WITH THE SYSTEMATIC ASSASSINATION OF THE CAREERS OF THEIR EMPLOYEES. NRC has been ineffective at preventing this. NRC's IG should investigate why you have not taken stronger enforcement before now. It is your job to see to it that this does not happen. How is it that you allow them to continue to get away with it? Again, there is the appearance of collusion. Three chemistry managers, and all three times TVA sends the same form letter around saying the same thing, make the same promises, and issue the same hollow threats to managers who may contemplate discriminating against those who raise concerns. Do you believe them this time?

Let's face the facts! A fine for TVA is exactly what they would like to settle for at this juncture. It not only means nothing to them monetarily, but they can say all this happened years ago, and they are therefore absolved culpability. What TVA does not want is for you to insist that they reinstate me. This would encourage their employees, showing them that the system works, and that NRC has credibility and clout. It could be proved that the little guy could win. This must be a terrifying thought for TVA.

What was my sin, my crime? I was tried and found guilty by members of the Nuclear Safety Review Board, of all things, Tom McGrath and Wilson McArthur. I was found guilty of performing the letter and spirit of Bill Lagergren's wishes. I did not create the problems, I simply discovered them. Since taking the Sequoyah Chemistry Superintendent back in 1988, I had found a thousand problems, probably more. Never once do I recall receiving the third degree for finding and fixing problems. But when I placed the list in TROI, and the problems entered the public domain, all hell broke loose. That remains the root cause of the unraveling of my professional career.

I left a secure position at Arkansas Nuclear One; to go to TVA and I contributed to their recovery effort. I also brought every aspect of Sequoyah's Chemistry Program solidly into INPO's "Best Plant" category. I never had even one INPO finding while I was in charge of the program. (The first INPO evaluation came 6 weeks after I was placed in charge of Sequoyah's chemistry group. The data had already been sent to INPO and so the six findings in that evaluation were, or should have been, charged to the previous chemistry administration). I succeeded, but it has cost me my career and a future in Nuclear Power, and my family has paid an unspeakable price.

In TVA's employ, doing the wrong thing is a vehicle for continued prosperous employment:

- Lying under oath

- Making life miserable for and participating in the ruin of those who uncover problems
- Protecting the TVA's at any cost
- Standing aside when you know Federal Law is being violated

What was my sin? I did the right thing! I conclude with this quote, "For what credit is there if, when you sin and are harshly treated, you endure it with patience? But if when you do what is right and suffer for it you patiently endure it, this finds favor with God." 1 Peter 2:20.