

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

John A. Scalice
Chief Nuclear Officer and Executive Vice President, TVA Nuclear

March 9, 2001

Dr. Frank J. Congel, Director
Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2739

Dear Dr. Congel:

In the Matter of)	Docket Nos. 50-390	50-259
Tennessee Valley Authority)	50-327	50-260
		50-328	50-296

SUPPLEMENTAL REPLY TO A NOTICE OF VIOLATION (NOV) -
SUPPLEMENTAL ANSWER TO A NOTICE OF VIOLATION (PROPOSED
IMPOSITION OF CIVIL PENALTY) - NUCLEAR REGULATORY COMMISSION'S
(NRC) OFFICE OF INVESTIGATIONS (OI) REPORT NO. 2-98-013 -
ENFORCEMENT ACTION 99-234

The purpose of this letter is to bring to your attention significant new information that has recently been made available to TVA. TVA responded to the subject NOV and Proposed Imposition of Civil Penalty on January 22, 2001. However, since the time of TVA's response, a member of NRC's Office of Enforcement submitted comments to the NRC's Discrimination Task Group which gave substantial support to several of the matters raised by TVA in its January 22, 2001 response. In particular, TVA's response discussed the fact that the NRC's evidentiary standard for a finding of retaliation has been significantly lowered to an in part/reasonable inference test that is unfair and unsupported as a matter of good law or policy. In addition, TVA's response explained in clear detail the actions that were taken in regard to the nonselection of a former employee, Gary Fiser, and that these actions were taken for nondiscriminatory, legitimate reasons in accordance with 10 CFR 50.7(d).

Dr. Frank J. Congel

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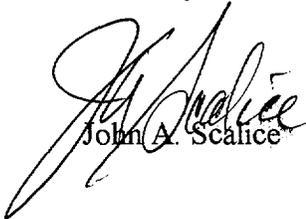
Enclosure 1 of this letter is a copy of the comments submitted by Michael Stein dated February 7, 2001. Mr. Stein describes himself as the "Former NRC Discrimination Enforcement Specialist." In the attached document, Mr. Stein states that the "Discrimination Enforcement Program at the NRC has lost its credibility because, (1) the NRC threshold for taking enforcement actions for discrimination has been lowered by OGC [NRC's Office of General Counsel] to almost zero, and (2) the NRC plays little heed to licensee's positions and arguments with regard to legitimate business reasons for taking adverse actions against their employees"

Mr. Stein's observations are especially significant because he served as the NRC Office of Enforcement's Discrimination Enforcement Specialist in the subject escalated action taken against TVA, as well as the individual escalated enforcement actions taken against the two managers involved in the case. Enclosures 2, 3, and 4 list Mr. Stein's participation in each of three predecisional enforcement conferences. It is also noteworthy that the two most significant matters raised by TVA in the enforcement proceedings, that is, the improper standard of evidence used by NRC and the NRC's failure to consider the legitimate reasons for what took place, were specifically cited by Mr. Stein as shortcomings in the discrimination enforcement process.

In light of this significant disclosure, we respectfully request that NRC address these matters in its response to TVA's Reply and Answer to the subject NOV.

If you have any questions, please call me at (423) 751-8682.

Sincerely,



John A. Scalice

Enclosures

cc (Enclosures):

Mr. Luis A. Reyes
Regional Administrator
U. S. Nuclear Regulatory Commission
Region II
61 Forsyth Street, SW, Suite 23T85
Sam Nunn Atlanta Federal Center
Atlanta, GA 30303-8931

cc: Continued on page 3

Dr. Frank J. Congel

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March 9, 2001

cc (Enclosures):

Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
One White Flint, North
11555 Rockville Pike
Rockville, Maryland 20852-2739

Nils J. Diaz, Commissioner
U.S. Nuclear Regulatory Commission
One White Flint, North
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Greta J. Dicus, Commissioner
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Edward McGaffigan, Jr., Commissioner
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Jeffrey S. Merrifield, Commissioner
U.S. Nuclear Regulatory Commission
One White Flint, North
11555 Rockville Pike
Rockville, Maryland 20852-2739

ENCLOSURE 1

COMMENTS FROM MICHAEL STEIN TO NRC'S DISCRIMINATION TASK GROUP

From: Michael Stein
To: <nrcprep@nrc.gov>
Date: Wed, Feb 7, 2001 4:34 PM
Subject: Discrimination Task Group

Below is the result of your feedback form. It was submitted by Michael Stein (michael.stein@ferc.fed.us) on Wednesday, February 7, 2001 at 16:34:06

Affiliation: Former NRC Discrimination Enforcement Specialist

Comments: As I stated in my Differing Professional View, Differing Professional Opinion, 2.206 Petition, and Petition for Rulemaking, the Discrimination Enforcement Program at the NRC has lost its credibility because:

- 1) the NRC threshold for taking enforcement action for discrimination has been lowered by OGC to almost zero.
- 2) the NRC pays little heed to licensee's positions and arguments with regard to legitimate business reasons for taking adverse actions against their employees.
- 3) Ever since the Millstone discrimination enforcement actions, OGC has coopted enforcement decisions at the NRC previously left to the staff.

My Petition for Rulemaking to open hearings to any NOV recipient receiving an enforcement action for discrimination or for wrongdoing under the misconduct rule remains unanswered after almost a year and a half.

To fix this problem- adopt my rulemaking proposal, return to the but for standard for discrimination cases, and most importantly, stop OGC from fishing for discrimination cases.

Thank you for this opportunity to comment on a program I worked on for almost 5 years. Feel free to post my comments on your website and you can use my name.

Mike Stein

Submit2: Submit comments

ENCLOSURE 2

EXCERPT FROM TVA'S PREDECISIONAL ENFORCEMENT CONFERENCE TRANSCRIPT
DECEMBER 10, 1999

[1] PREDECISIONAL ENFORCEMENT CONFERENCE
 [2] TENNESSEE VALLEY AUTHORITY

[4] Re: Gary L. Fiser

[5] D.O.L. Complaint

[9] December 10, 1999
 [10] 1:05 p.m.

[11] 61 Forsyth Street
 [12] Atlanta, Georgia

[23] Janet K. Wilson, CCR-B-1108, RPR

[24] BROWN REPORTING, INC.
 1740 PEACHTREE STREET
 ATLANTA, GEORGIA 30309-2335
 [25] (404) 876-8979

[1] MR. REYES: Let's go on the record.
 [2] Good afternoon. My name is Luis
 [3] Reyes. I'm the regional administrator for
 [4] the Nuclear Regulatory Commission Region II
 [5] office. This afternoon we will conduct a
 [6] predecisional enforcement conference between
 [7] the NRC and TVA which is closed to public
 [8] observation and is being transcribed. The
 [9] subject of the conference is an apparent
 [10] violation to 10 CFR 50.7 involving
 [11] discrimination against Mr. Gary L. Fiser, a
 [12] former TVA employee in the corporate
 [13] chemistry department.

[14] Now, this is the third enforcement
 [15] conference in this case. The first two
 [16] enforcement conferences were with individuals
 [17] since the agency could take actions against
 [18] individuals themselves. This particular
 [19] conference is with TVA, the entity that —
 [20] the organization.

[21] Now, following the presentation by TVA
 [22] and follow-up questions by the NRC, Mr. Fiser
 [23] will be given the opportunity to make a
 [24] statement regarding his position and interest
 [25] in this case. Following Mr. Fiser's

[1] statement, TVA will be provided an
 [2] opportunity to make a rebuttal statement. I
 [3] wish to emphasize that although Mr. Fiser is
 [4] attending this conference, he is not a
 [5] participant during the main portion of the
 [6] conference. The interaction will be between
 [7] TVA and the NRC. However, to ensure that all
 [8] relevant positions and facts are expressed in
 [9] this meeting, the NRC wishes, to hear from Mr.
 [10] Fiser in this case.

[11] Although TVA will have the opportunity
 [12] for a rebuttal brief, there is no opportunity
 [13] being provided in this forum for direct
 [14] exchange or questioning between Mr. Fiser and
 [15] TVA.

[16] Does everybody understand the protocol
 [17] of this proceeding? Mr. Fiser?

[18] MR. FISER: Yes.

[19] MR. REYES: Any questions from TVA or
 [20] Mr. Fiser on the protocol? Okay. The agenda
 [21] of the predecisional enforcement conference
 [22] is shown on the view-a-graph.

[23] Following my brief opening remarks, Ms.
 [24] Anne Boland, the Region II enforcement
 [25] officer sitting to my right, will discuss the

[1] agency's enforcement policy very briefly. I
 [2] will then provide introductory remarks
 [3] concerning my perspective on the events to be
 [4] addressed today. Then Mr. Loren Plisco to my
 [5] left, the director of the Division of Reactor
 [6] Projects, will discuss the apparent
 [7] violation. TVA will then be given an
 [8] opportunity to respond to the apparent
 [9] violation.

[10] Following your presentation, I plan to
 [11] take a break so that the NRC can briefly
 [12] review what it has heard and determine if we
 [13] have any follow-up questions.

[14] What I'd like to do is, we have a lot
 [15] of attendees, and I'm not sure that everybody
 [16] knows all the participants. So I'd like to
 [17] go around the room and have everybody state
 [18] their name and their title. Counsel?

[19] MS. EVANS: Carolyn Evans, regional
 [20] counsel.

[21] MR. DAMBLY: Dennis Dambly, assistant
 [22] general counsel for materials litigation and
 [23] enforcement.

[24] MR. PLISCO: Loren Plisco, director of
 [25] Division of Reactor Projects, Region II.

MR. REYES: Luis Reyes. I'm the regional administrator for the NRC office in Atlanta.

MS. BOLAND: Anne Boland. I'm the Region II enforcement officer.

MR. STEIN: Mike Stein, I'm a discrimination enforcement specialist for NRC.

MR. McNULTY: William McNulty, I'm the field office director for the Office of Investigations.

MR. SPARKS: Scott Sparks, senior enforcement specialist, Region II.

MR. FISER: I'm Gary Fiser, unemployed.

MR. COX: I'm Jack Cox, Watts Bar training manager, former radiological and chemistry manager for Watts Bar.

MR. ROGERS: My name is Rick Rogers, and I'm with Sequoyah TVA, and I'm a system engineering manager at Sequoyah.

MR. COREY: John Corey, manager of radiological chemistry controls at Browns Ferry Nuclear Plant TVA.

MR. KENT: I'm Charles Kent. I'm the



(1) attorney, OGC.

(2) MR. de MIRANDA: Oscar de Miranda, (3) Region II senior allegation coordinator.

(4) MS. BENSON: Diane Benson, special (5) agent, Office of Investigations, Atlanta.

(6) MS. BOLAND: I'd like to take just a (7) few minutes to go through the enforcement (8) policy.

(9) After an apparent violation is (10) identified, in this case an apparent

(11) violation of 50.7 is assessed in accordance (12) with commission policy which has been

(13) published in New Reg 1600. New Reg 1600 has (14) been recently revised on November the 9th,

(15) 1999 to publish some provisions to our (16) policy. I only have a copy available — also

(17) for you, Mr. Fiser. There has been no (18) significant changes in the enforcement policy

(19) as republished that affect this particular (20) proceeding, however.

(21) The NRC assessment process involves (22) categorizing the apparent violation into one

(23) of four severity levels based on the safety (24) significance of the issue. For cases where

(25) there is a potential for escalated

(1) manager of radiological and chemistry (2) controls at Sequoyah Nuclear Plant TVA.

(3) MR. REYNOLDS: Phil Reynolds, vice (4) president nuclear support, TVA.

(5) MR. BOYLES: Ed Boyles, human resource (6) manager, TVA nuclear corporate office.

(7) MR. SCALICE: John Scalice, chief (8) nuclear officer at TVA.

(9) MS. WESTBROOK: Melissa Westbrook, (10) human resource consultant, TVA nuclear (11) office.

(12) MR. MARQUAND: Brent Marquand, senior (13) litigation attorney, TVA Office of General (14) Counsel.

(15) MR. BURZYNSKI: Mark Burzynski, TVA (16) corporate licensing manager.

(17) MR. VILIGUICI: My name is Ed (18) Viliguici, senior nuclear licensing counsel, (19) Office of the General Counsel.

(20) MS. GREEN: Donna Green, TVA labor (21) relations consultant.

(22) MR. McCREE: My name is Victor McCree. (23) I'm the deputy director for reactor safety, (24) OGC.

(25) MS. EUCHNER: Jennifer Euchner,

(1) enforcement action; that is, where the (2) severity level of the apparent violation may

(3) be categorized as severity level 1, 2 or 3, a (4) predecisional enforcement conference of this

(5) nature is typically conducted.

(6) There are three primary enforcement (7) sanctions available to the NRC, and they

(8) include notices of violation, civil (9) penalties, and orders.

(10) In this particular case, the decision (11) to hold this predecisional enforcement

(12) conference is based on the conclusions of our (13) Office of Investigations as the result of its

(14) investigation of the process underlying Mr. (15) Fiser's D.O.L., Department of Labor,

(16) complaint. This is essentially the last step (17) of the investigatory process before the staff

(18) makes an informative decision.

(19) The purpose of this conference today is (20) not to negotiate an enforcement sanction.

(21) Our purpose here today is to obtain (22) information directly from TVA that will

(23) assist the NRC staff and also Mr. Fiser in (24) determining the appropriate enforcement

(25) action in this case, such as an understanding

ENCLOSURE 3

EXCERPT FROM McARTHUR'S PREDECISIONAL ENFORCEMENT CONFERENCE TRANSCRIPT
NOVEMBER 22, 1999

[1]
[2]
[3] CLOSED PREDECISIONAL ENFORCEMENT CONFERENCE
[4] RE: GARY FISER
[5]
[6]
[7] WILSON COOPER McARTHUR
[8]
[9]
[10] 
[11] November 22, 1999
[12] 1:10 p.m.
[13]
[14]
[15]
[16]
[17] Nuclear Regulatory Commission
Atlanta Federal Center
Suite 23T-85
61 Forsyth Street, S.W.
Atlanta, Georgia
[19]
[20]
[21]
[22] Colleen B. Seidl, RPR, CRR, CCR-B-1113
[23]
BROWN REPORTING, INC.
[24] 1740 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30309
[25] (404) 876-8979

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Atlanta
[3] MR. DENNIS DAMBLY, Assistant General Counsel for
[4] Materials Litigation and Enforcement.
[5] MR. LUIS REYES, Regional Administrator for the NRC
Office, Atlanta
[6] MR. LOREN PLISCO, Director of Division Rank of
[7] Projects.
[8] MR. MICHAEL STEIN, Enforcement Specialist, Office of
Enforcement, NRC.
[9] MR. WILLIAM McNULTY, Field Office Director for the
[10] Office of Investigations
[11] MR. VICTOR McCREE, Deputy Director for Reactor
Safety in Region II
[12] MS. CAROLYN EVANS, Regional Counsel.
[13] MS. JENNIFER EUCHNER, Legal Internal GC
[14] MR. SCOTT SPARKS, Senior Enforcement Specialist,
[15] Region 2.
[16] MR. EDWARD VIGLIUCCI, Office of General Counsel
[17] MR. BRENT MARQUAND, Office of General Counsel
[18] MR. MARK BURZYNSKI, Re: Affairs
[19] MR. EDWARD BOYLES, Manager, Corporate Human Resource
Office for TVAM
[20]
[21]
[22]
[23]
[24]
[25]

ENCLOSURE 4

EXCERPT FROM McGRATH'S PREDECISIONAL ENFORCEMENT CONFERENCE TRANSCRIPT
NOVEMBER 22, 1999

[1]
[2]
[3] CLOSED PREDECISIONAL ENFORCEMENT CONFERENCE
[4] RE: GARY FISER
[5]
[6]
[7] THOMAS McGRATH
[8]
[9]
[10]
[11] November 22, 1999
[12] 10:05 a.m.
[13]
[14]
[15]
[16]
[17] Nuclear Regulatory Commission
Allanta Federal Center
Suite 23T-85
61 Forsyth Street, S.W.
Atlanta, Georgia
[19]
[20]
[21]
[22] Colleen B. Seidl, RPR, CRR, CCR-8-1113
[23]
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[24] 1740 PEACHTREE STREET, N.W.
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[1] APPEARANCES:
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Atlanta
[3] MR. DENNIS C. DAMBLY, Assistant General Counsel for
[4] Materials Litigation and Enforcement.
[5] MR. LUIS REYES, Regional Administrator for the NRC
Office, Atlanta
[6] MR. LOREN PLISCO, Director of Division Rank of
[7] Projects.
[8] MR. MICHAEL M. STEIN, Enforcement Specialist, Office
of Enforcement, NRC.
[9] MR. WILLIAM MCNULTY, Field Office Director for the
[10] Office of Investigations
[11] MR. VICTOR MCCREE, Deputy Director for Reactor
Safety in Region II
[12] MS. CAROLYN EVANS, Regional Counsel.
[13] MS. JENNIFER EUCHNER, Legal Internal GC
[14] MR. SCOTT SPARKS, Senior Enforcement Specialist,
[15] Region 2.
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[17] MR. BRENT MARQUAND, Office of General Counsel, TVA
[18] MR. JAMES BOYLES, Manager, Corporate Human Resource
Office for TVAM
[19]
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