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FINAL REPLY:

Lynne Bernabei
Bernabei & Katz

David Lochbaum
Union of Concerned Scientists

TO:

Chairman Meserve

FOR SIGNATURE OF : ** PRI **

CRC NO: 01-0236

Chairman

DESC:

ROUTING:

Tennessee Valley Authority (Curtis Overall)

Travers
Paperiello
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Reiter
Craig
Burns
Reyes, RII
Congel, OE
Caputo, OI
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DATE: 05/07/01

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SPECIAL INSTRUCTIONS OR REMARKS:

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ADDRESSEE: RICHARD MESERVE
SUBJECT: TENNESSEE VALLEY AUTHORITY

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May 4, 2001

Dr. Richard A. Meserve, Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: TENNESSEE VALLEY AUTHORITY

Dear Chairman Meserve

We are writing to you to seek your help on a serious matter. In a recent order,¹ the US Department of Labor affirmed an earlier finding that the Tennessee Valley Authority (TVA) unlawfully retaliated against Mr. Curtis Overall for voicing nuclear safety concerns. Specifically, the DOL Administrative Review Board concluded:

We agree with the ALJ that the course of Overall's employment . . . readily supports the finding "that the only plausible and credible reason for adverse employment actions, i.e., transfer, layoff and refusal to recall, was a desire by TVA officials to retaliate against Overall and to prevent Overall from engaging in protected activities." Indeed, each "legitimate" reason posited by TVA for its actions . . . the weight of the evidence refuted. Having peeled away every explanation proffered, the ALJ found that only unlawful motivation remained.

That finding is by itself troubling, but when viewed in context of a pattern of behavior by TVA, it takes on truly frightening dimensions. That pattern involves TVA managers and supervisors unlawfully retaliating against workers who raise safety concerns. The evidence clearly shows that this pattern repeats again and again.

As you know, the DOL functions to "make whole" workers who have been unlawfully retaliated against, as it has done in the Overall case. The concern we bring to your attention is not the "wholeness" of these victims. It is the penchant for TVA to take unlawful actions that make holes that DOL must constantly fill and troubles us and should trouble you.

Mr. John Scalice, TVA's Chief Nuclear Officer and Executive Vice President, testified on April 26, 2001, during Mr. Overall's related DOL proceeding, that TVA disciplines or terminates its supervisors who discriminated against workers engaged in protected conduct. Mr. Scalice, on cross-examination, denied that Mr. Masoud Bajestani had been found by the DOL to have discriminated against a TVA whistleblower, or that TVA had promoted Mr. Joseph Bynum after having been found to have discriminated against Mr. William Jocher.

The following decisions — Jocher v. TVA, Case No. 94-ERA-24 (ALJ July 31, 1996), Klock v. TVA, Case No. 95-ERA-20 (ALJ Sept. 29, 1995), and Overall v. TVA, Case No. 97-ERA-53 (ARB Apr. 30, 2001) — refute Mr. Scalice's testimony. In fact, the TVA managers who discriminated against Mr. William Jocher, Mr. Robert Klock and Mr. Curtis Overall have all been promoted by TVA, not disciplined or terminated.

¹ US Department of Labor Administrative Review Board in Overall v. TVA, ARB 98-111, ALJ 97-ERA-53 (ARB Apr. 30, 2001).

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In Mr. Overall's case, the ARB named Messrs. Adair, Koehl and McCormick as having discriminated against Mr. Overall. Mr. Adair testified during his deposition on August 11, 2000, that TVA promoted him to the position of Manager of the Fossil Engineering Services in December 1999. Mr. Koehl, who was Mr. Overall's second-line supervisor in 1995, was subsequently promoted by TVA to the position of Plant Manager at Sequoyah Nuclear Power Plant.

In the Jocher v. TVA case, ALJ Hillyard found that Mr. Bynum, who was then TVA's Vice President of Nuclear Operations, discriminated against Mr. Jocher, a TVA nuclear whistleblower. After this tribunal issued its decision regarding Mr. Bynum's discrimination against Mr. Jocher, the NRC similarly determined that Mr. Bynum deliberately discriminated against Mr. Jocher. The NRC ordered that Mr. Bynum be "prohibited from any involvement in NRC-licensed activities for a period of five years." The NRC proposed a \$100,000 fine against TVA based upon the ALJ's finding that TVA and Mr. Bynum had retaliated against Mr. Jocher:

The violation is significant and is given a Severity Level I, the highest level of NRC violation, because it involved an act of employee discrimination by a senior corporate manager. . . . [The] impact of discrimination committed at this level has the potential to affect the environment throughout the company, and the NRC places a high value on the freedom of nuclear industry employees to raise potential safety concerns to licensee management or to the NRC.

Instead of disciplining or terminating Mr. Bynum, TVA promoted him. At the time of ALJ Hillyard's decision and the NRC's Order, Mr. Bynum was Vice President, Fossil Operations in the Fossil and Hydro Power organization at TVA, having transferred from TVA Nuclear. In 1998, one year after the NRC's Order and two years after the ALJ's decision, TVA promoted Mr. Bynum to Executive Vice President, Fossil Power Group.

TVA similarly promoted Mr. Bajestani, whom DOL ALJ Burke found discriminated against Mr. Klock, another TVA nuclear whistleblower. ALJ Burke found that Mr. Bajestani, who reported directly to Mr. Scalice, fired Mr. Klock only two weeks after Mr. Klock engaged in protected activity. Since Mr. Scalice was Mr. Bajestani's first-line supervisor, Mr. Scalice clearly ratified Mr. Bajestani's decision. ALJ Burke noted that Mr. Bajestani's testimony lacked credibility and was pretextual. ALJ Burke concluded that Mr. Bajestani's actions were motivated by Mr. Klock's reputation as a whistleblower. At that time, Mr. Bajestani was the test group lead for the NSSS Group (Nuclear Steam Supply System Group).

Once again, instead of disciplining Mr. Bajestani, TVA promoted him to Assistant Plant Manager at Watts Bar, then to Plant Manager at Browns Ferry Nuclear Plant, then to Site Vice President at Sequoyah Nuclear Plant, and most recently to Senior Vice President of Fossil Operations. Indeed, Mr. Bajestani now reports directly to Mr. Bynum. Mr. Scalice admitted that Mr. Bajestani had been promoted within TVA after allegations of discrimination were made against him.

Thus, contrary to the testimony of Mr. Scalice, TVA has failed to discipline or terminate its managers who were found by both the Department of Labor and the NRC to have retaliated against nuclear whistleblowers. Instead, Messrs. Adair, Bajestani, Bynum and Koehl have been promoted through the ranks to increasingly higher positions within TVA's upper management, as has Mr. Scalice, who ratified the discriminatory actions. Contrary to being a black mark on the record, being found to have unlawfully retaliated against a nuclear worker appears to be an express ticket up the TVA management chain.

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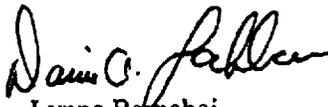
The DOL ALJ found that TVA management unlawfully discriminated against Jocher, Klock, and Overall. California has a "three strikes and you're in" policy for dealing with repeat offenders. With all of its strikes, TVA appears to favor bowling rather than baseball and seems intent on a perfect game.

We respectfully ask that you direct the NRC Inspector General to investigate how TVA has really dealt with its managers and supervisors who have discriminated against nuclear workers. As stated previously, Mr. Scalice testified that TVA has disciplined or terminated them. The evidence suggests otherwise.

This issue should concern the NRC because the NRC has a policy statement on a safety-conscious work environment. A licensee who consistently promotes managers who unlawfully discriminate against workers raising safety concerns probably lacks—among other things—a safety-conscious work environment.

We also request that you take a personal interest in the enforcement action decision by the NRC staff in this recent ruling by the DOL in Overall's case. The DOL concluded that three separate TVA management individuals discriminated against Mr. Overall. On the heels of the prior DOL cases involving TVA workers, it is unrealistic to think that these individuals were not aware that their actions were discriminatory. The NRC must hold nuclear plant management accountable for unlawful acts.

Sincerely,


for Lynne Bernabei
Bernabei & Katz
1773 T Street NW
Washington, DC 20036
(202) 745-1942


David Lochbaum
Union of Concerned Scientists
1707 H Street NW, Suite 600
Washington, DC 20006
(202) 223-6133