



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931

June 18, 2001

EA-98-327

Tennessee Valley Authority
ATTN: Mr. J. A. Scalice
Chief Nuclear Officer and
Executive Vice President
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

SUBJECT: APPARENT VIOLATIONS OF EMPLOYEE DISCRIMINATION
REQUIREMENTS (U.S. DEPARTMENT OF LABOR CASE NO. 1997-ERA-
0053)

Dear Mr. Scalice:

This is in reference to two apparent violations of NRC requirements prohibiting discrimination against employees who engage in protected activities, i.e., 10 CFR 50.7, Employee Protection. The apparent violations relate to Tennessee Valley Authority's (TVA) discriminatory actions against Mr. Curtis C. Overall at the Watts Bar Nuclear Plant. These apparent violations were discussed between Loren Plisco of the NRC and Larry Bryant of your staff on June 18, 2001.

The apparent violations are based on a U.S. Department of Labor (DOL) proceeding (1997-ERA-0053). The presiding Administrative Law Judge (ALJ) issued a Recommended Decision and Order on April 1, 1998, finding that TVA discriminated against Mr. Overall in violation of Section 211 of the Energy Reorganization Act. This finding was subsequently reviewed by the DOL's Administrative Review Board (ARB) (ARB Case No. 98-111 and 98-128). On April 30, 2001, the ARB issued a Final Decision and Order, adopting the ALJ's decision. A copy of the ALJ's Recommended Decision and Order, and the ARB's Final Decision and Order, are included as Enclosures 1 and 2, respectively.

The NRC staff has reviewed the DOL findings and conclude that the action taken against Mr. Overall resulted in two apparent violations of 10 CFR 50.7; (1) actions taken by TVA to arrange for the transfer of Mr. Overall to TVA Services, and (2) TVA's failure to re-employ Mr. Overall once he had been transferred to TVA Services, resulting in his eventual lay-off from that organization. Therefore, these apparent violations are being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions - May 1, 2000" (Enforcement Policy), NUREG-1600, as last amended on December 18, 2000. The current Enforcement Policy is included on the NRC's website at www.nrc.gov/OE. The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either (1) respond to the apparent violations within 30 days of the date of this letter, or (2) request a

predecisional enforcement conference. If a conference is held, it will be open for public observation. The NRC will also issue a press release to announce the conference. Please contact Paul Fredrickson at 404-562-4530 within seven days of the date of this letter to notify the NRC of your intended response.

Regardless of which option TVA chooses, you should be aware that the NRC normally relies on the DOL's findings in determining whether a violation occurred when such findings are based on an adjudicatory proceeding. The predecisional enforcement conference is not a forum to relitigate the DOL adjudicatory decision. Therefore, we do not expect you to discuss in any detail, either in a conference or in your written response, the factual conclusions forming the basis for the DOL decision. Rather, our primary interest is the action TVA has taken, or is planning to take, to address the environment for raising concerns at the Watts Bar Nuclear Plant, and any corrective actions taken by TVA to comply with the ALJ and ARB decisions in this case.

Should you choose to respond in writing, your response should be clearly marked as a "Response to An Apparent Violation" and should include for the apparent violations: (1) admission or denial of the apparent violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response should be submitted under oath or affirmation and may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate response is not received within the time specified, or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision.

In addition, please be advised that the number and characterization of the apparent violations may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to provide one) will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Sincerely,

/RA

Loren R. Plisco, Director
Division of Reactor Projects

Docket Nos. 50-390, 50-391
License No. NPF-90, CPPR-92

Enclosures and cc's: See Page 3

- Enclosures:
1. DOL ALJ's Recommended Decision and Order, dated April 1, 1998
 2. DOL ARB's Final Decision and Order, dated April 30, 2001

cc w/encls:

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TVA

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cc w/encls: Cont'd Page 4

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