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JUL 17 2001

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D. C. 20555

In the Matter of) Docket Nos. 50-390
Tennessee Valley Authority)

RESPONSE TO NOTICE OF VIOLATIONS - WATTS BAR NUCLEAR PLANT
(WBN) - (U. S. DEPARTMENT OF LABOR CASE NO. 1997-ERA-0053)

This letter responds to Loren R. Plisco's letter to J. A. Scalice dated June 18, 2001, regarding two apparent violations of 10 CFR 50.7 in connection with the subject U. S. Department of Labor (DOL) case. As we informed you by telephone conversation on June 22, 2001, TVA is providing this written response in lieu of a predecisional enforcement conference.

TVA has carefully re-examined the circumstances which led to Curtis C. Overall's DOL complaint and has reviewed the decisions rendered by the DOL Administrative Law Judge (ALJ) and the DOL's Administrative Review Board (ARB). TVA continues to believe that no violations of Section 211 of the Energy Reorganization Act or 10 CFR §50.7 of the NRC's regulations occurred. We agree with the findings of TVA's Office of Inspector General which investigated this matter and found no evidence of any relationship between

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Mr. Overall's engaging in protected activity and his transfer to and later termination from TVA's Services organization. As you know, NRC notified TVA by letter dated March 5, 1998, that its Office of Investigations (OI) had also completed its investigation of the matter and that OI likewise did not substantiate that Mr. Overall was subjected to discriminatory treatment by TVA. Because TVA believes that DOL erred in its decision on several counts, TVA filed a "Petition for Review of Decision of the United States Secretary of Labor" in the United States Court of Appeals for the Sixth Circuit on June 27, 2001.

NRC's letter of June 18, 2001, stated that it did not expect TVA to discuss in any detail the factual conclusions forming the basis for the DOL decision. However, we believe it is important for NRC to understand some of the key reasons why TVA believes the DOL's decision is in error. Enclosure 1 to this letter briefly describes those reasons.

According to the June 18, 2001, letter, NRC's primary interest is in the action TVA has taken, or is planning to take, to address the environment for raising concerns at WBN. TVA would first note that the events which gave rise to Mr. Overall's complaint took place in 1995 and 1996, over five years ago, and TVA has devoted significant effort and resources at WBN to establish and maintain a workplace environment where employees feel free to raise concerns. By letter dated August 18, 1997, TVA described to NRC, among other things, the status of WBN's safety conscious work environment in response to DOL's early investigative findings involving Mr. Overall's complaint. Using a variety of methods including workplace training, site meetings, and site communications, TVA has been able to establish and successfully maintain a work setting at WBN in which employees feel free to raise concerns to management. TVA also uses several credible, objective means to monitor the work environment to ensure its integrity. Enclosure 2 to this letter describes the actions TVA has taken to address WBN's environment for raising concerns.

U.S. Nuclear Regulatory Commission

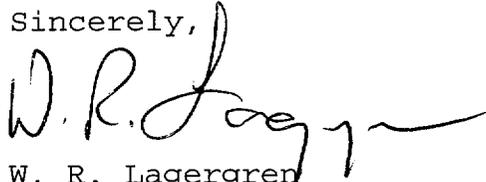
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Finally, NRC's letter asks that TVA address any corrective actions it has taken to comply with the ALJ and ARB decisions in this case. Enclosure 3 to this letter discusses those actions.

There are no regulatory commitments in this response. If you have any questions, or if I can provide any further information, please telephone me at 423 365-8767.

Sincerely,



W. R. Lagergren

Enclosures

Subscribed and sworn to me
this 17th day of July, 2001

E. Jeannette Love
Notary Public

My Commission Expires May 21, 2005

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cc (Enclosures):

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TVA Disagrees with the U. S. Department of Labor

TVA has filed a petition for review of the DOL decision in the United States Court of Appeals for the Sixth Circuit. TVA expects to show to the court that the DOL decision is flawed legally and is not based on the substantial evidence in the record.

While NRC has indicated that TVA should not "discuss, in any detail . . . the factual conclusions forming the basis for the DOL decision," there are a few principal points which we believe should be considered in this proceeding.

The central basis for the DOL decision is the determination that WBN management eliminated Mr. Overall's position in 1995 because of the safety concern he raised about the ice condenser in an April 1995 problem evaluation report (PER). However, the undisputed evidence of record showed that Mr. Overall's responsible management made the decision to eliminate a number of jobs in the WBN Technical Support organization in 1994, including the position held by Mr. Overall, many months before he issued the PER. That decision was never revisited, either for Mr. Overall or the others affected by the cutbacks, all of whom either left TVA or, like Mr. Overall, found other employment within TVA.

As noted above, Mr. Overall was selected for a position within TVA in its Services organization, a position he transferred into from his previous job at WBN. There is nothing in the record other than the sheerest of speculation which supports DOL's finding that any individual within WBN management had anything to do with the offer of that job to Mr. Overall. In 1996, TVA Services underwent a major reorganization which eliminated many positions, including all of the unit to which Mr. Overall was assigned. That decision was driven by TVA Services' budget constraints. The undisputed record shows that TVA Nuclear management had nothing to do with the decision to eliminate the unit in Services where Mr. Overall was employed, the decision which led to the reduction in force of a number of individuals, including Mr. Overall.

DOL connected TVA Nuclear to TVA Services' decision to eliminate Mr. Overall's job in 1996 by noting that Mr. Overall was unsuccessful in his attempts to market his expertise to either of TVA's ice condenser plants—WBN or the Sequoyah Nuclear Plant. However, the record shows that the individuals responsible for those decisions made them based on their own legitimate business reasons drawn from their plants' current situation, with no involvement of any of the WBN managers who had decided to eliminate Mr. Overall's position at WBN in 1994.

Watts Bar's Safety Conscious Work Environment

In the time since WBN fuel load and initial operation in 1995 and 1996, TVA has promoted a workplace culture that encourages employees to raise issues and concerns, safety related or otherwise, with supervisors and all levels of management. Various training sessions, site-wide meetings, staff and peer group meetings, site bulletins, posters, memoranda, and site news articles have been used to communicate the basic message that success at the plant is linked to open communication and each employee's willingness to discover, report, and resolve problems as quickly and effectively as possible. TVA's letter of August 18, 1997, described the level of effort and resources devoted to establishing and maintaining a safety conscious work environment within that timeframe. TVA has continued to build upon and reinforce that workplace environment up to the present.

A. TVA Continues to Take Direct Action to Maintain a Safety Conscious Work Environment

1. Workplace Training

TVA believes that workplace training plays an important role in helping both management and employees to understand the importance of open communication. For instance, TVA instituted a formal course entitled, "DO WHAT'S RIGHT, Building and Maintaining a Safety Conscious Work Environment," which was developed and provided to, among others, WBN supervisors and employees. The course was aimed at explaining the important role that open communication, including raising concerns, plays in maintaining workforce morale and promoting safety. The course explained the concept of chilling effect, how to identify barriers that prevent concerns from being raised, applying effective communication skills when raising, resolving, and providing feedback on concerns, and recognizing the impact that our behaviors have on work relationships and the results we achieve. The instructors for the course were a team of WBN managers and representatives from TVAN's Concerns Resolution Staff (CRS) who were trained and certified to teach the course.

In addition, the course's video introduction featured TVA's Chief Nuclear Officer, and a senior WBN manager was present during the course offerings to obtain and provide personal feedback. The initial roll-out of the course was completed in September 1999. However, when a workforce situation arose which indicated the need for specific, targeted training in a particular work group, this training was provided in June 2001 to address the matter.

To maintain effective work skills and keep proper focus, training must be periodically reinforced. In order to reinforce the importance of open communication in building effective work relationships, TVA's CRS recently developed a training course entitled, "MAINTAINING A SAFETY CONSCIOUS WORK ENVIRONMENT." This training stresses the importance of being able to identify problems without fear of retaliation. It reviews TVA's policy on maintaining a safety conscious work environment, reviews actual TVAN experiences in this area, and addresses various ways to maintain a healthy work environment. This training will be presented to WBN employees and contractors by the WBN Vice President and Plant Manager. It is targeted to begin next month and to be completed by the end of September 2001.

2. Site Communications

In addition to periodic training, it is important to promote open communication through the use of a variety of plant-wide media.

Site-wide bulletins and memoranda are used on a regular basis to carry the message that continued success depends upon each worker's ability and willingness to raise concerns freely and have them addressed free of intimidation, harassment, discrimination, or retaliation. Special attention is paid to any situation which could be viewed as detrimental to plant morale, or to avoid or correct any misimpression that could arise from a particular work-related event that could be perceived as having a chilling effect. Just as importantly, these bulletins and memoranda are used to periodically reinforce management's commitment to an open work environment. For instance, shortly after the current WBN Vice President assumed his position, he issued a site-

wide memorandum to WBN employees and contractors in which he stated his appreciation for the hard work being put forth by employees, encouraged them to raise concerns, and reminded supervisors of their responsibility to listen, objectively evaluate, and to take prompt action to address concerns and provide feedback to employees. He also reinforced the message of zero tolerance of acts of reprisal for identifying concerns.

Articles addressing the importance of open communications, mutual support, and the value of listening to others have been published in a WBN site news publication, "Watts New." Also used are site-wide postings and brochures promoting open communications and describing alternate paths of communication outside of line management. Using this variety of media, we believe that a consistent message supporting an environment for raising concerns is being provided to all WBN and contractor employees.

In regard to the specific case regarding Mr. Overall, TVA explained in its August 18, 1997, letter to NRC the specific actions it took at that time to address any potential chilling effect arising from the initial investigative findings of DOL's Wage & Hour Division. These actions included sending a site-wide memorandum from the WBN Vice President to all WBN employees entitled, "WATTS BAR EMPLOYEES AND CONTRACTORS ARE OUR MOST IMPORTANT RESOURCES" on June 27, 1997. This memorandum reinforced TVA's policy that employees have the right to express concerns without fear of retaliation.

On April 16, 1998, the WBN Vice President issued a site-wide bulletin in light of the decision by the DOL administrative law judge in the subject case. This bulletin entitled, "WATTS BAR EMPLOYEES AND CONTRACTORS CAN COMMUNICATE CONCERNS TO SUPERVISION AND NOT FEAR RETALIATION," stressed that the existence of a safety conscious work environment was critical to maintaining safe plant operations. The bulletin also cautioned that any reluctance to raise concerns "can erode the safety-consciousness of the work place and, thereby affect safety."

Most recently, on June 8, 2001, reacting in part to the decision of the DOL's Administrative Review Board in the subject case, TVA Nuclear's Chief Nuclear Officer (CNO) and Executive Vice President issued a *PentaGen Bulletin* to all TVA Nuclear employees and contractors entitled, "REINFORCING TVA NUCLEAR'S POLICY AGAINST DISCRIMINATION." This bulletin recognized the many accomplishments achieved within TVA's nuclear program, including record outages, long unit runs, and excellent safety records, but also recognized that communications are a critical facet of our success and must be protected. In light of the subject case, the CNO re-emphasized the importance of continuing to communicate openly, freely, and accurately without fear of retaliation. He also encouraged employees "to resolve their concerns with their line supervision up to and including me, if necessary" and stated his expectation that supervisors and managers "listen, objectively evaluate, and take prompt action to resolve concerns."

B. TVA Uses Several Reliable, Objective Indicators to Monitor WBN's Safety Conscious Work Environment

1. Employee Surveys

One of the principal means by which TVA monitors the work environment involves asking the employees directly about their willingness to raise concerns.

For over a decade, TVA Nuclear has relied upon the employee surveys performed by TVA's Office of Inspector General (OIG) which performs this service as part of its periodic audit and review of TVA's Concerns Resolution Program. These independent reviews cover TVAN's corporate offices and each of the operating nuclear plant sites, examining a randomly selected population of TVA and contractor employees. The surveys are conducted in confidence, in one-on-one interview sessions. The survey process and techniques were revised in 1994 to provide 95 percent confidence that TVAN's survey results would be within five percent of the total population results.

TVA's OIG surveys were conducted within TVAN, including WBN, in the July/August time frame of last year. Of the sample population of WBN employees and contractors interviewed, a full 100 percent indicated positively, that they would report a nuclear safety or quality concern. Also, an overwhelming 97.7 percent of WBN employees and 100 percent of contractors indicated that they would report a nuclear safety or quality concern to their supervisor. These results were very similar, within the statistical margin of error, to the survey data collected at WBN in June 1998 which recorded that 100 percent of employees and contractors responded positively to both questions.

In addition to the OIG surveys, TVAN's Concerns Resolution Staff and the contractor employee concerns programs give exiting employees the opportunity to provide comments in a number of areas using an exit questionnaire. In particular, a broadly worded question is posed to gauge the willingness of an individual to speak with his or her supervisor about any concerns, not limited to the expression of nuclear safety or quality concerns. WBN exit data through June of this year indicated that 94.8 percent of the exiting employees responded positively to this statement. Moreover, through June of this year a full 100 percent responded positively that if they had a nuclear safety or quality problem, they would report it. In comparison, last year's exit questionnaire response data indicated that 94.9 and 98.7 percent of employees responded positively to the respective questions.

Finally, TVA Nuclear carries out periodic surveys of its employees in determining each plant site's Safety Culture Index (CI) which is conducted to assess plant human performance status. This assessment uses the CI as the key leading indicator based on Performance Improvement International (PII) research and technology. The premise of the CI Survey is that the strength of an organization's current culture will dictate its future performance. Over the last four years in which this CI Survey has been performed at WBN, the CI value has

shown a continuous improvement in site human performance status, reflecting also a value that is indicative of an organizational culture that is self-improving. It is also important that several of the CI Survey questions inquire about topics closely linked to a worker's level of comfort and satisfaction with his or her work environment. In 2001, among the top ten survey questions in which the respondents answered "Strongly Agree" were the following three questions: "I would feel comfortable going to my supervisor with a concern," "People are encouraged to speak up, listen to each other, and communicate with each other," and "The management team encourages people to work together to solve problems and complete tasks."

2. Indirect Indicators

TVA also monitors several indicators such as, but not limited to, the number of DOL complaints, labor grievances, Merit System Protection Board (MSPB) complaints, Equal Employment Opportunity (EEO) complaints, and NRC allegations to help gauge the overall health of the work environment. We recognize that care must be used in viewing these indirect indicators in isolation because they often tend to lag actual work conditions and may be more sensitive to other than safety-related work setting issues such as worker dissatisfaction or upset in times of job restructuring or cutbacks. However, using these indirect indicators in conjunction with direct survey data can afford some additional insights into the workplace environment.

In general, the indirect indicators such as those mentioned above have showed an overall declining trend at WBN over the years. For example, insofar as DOL complaints are concerned, the number has decreased with two being filed in 1999, one being filed in 2000, and one being filed this year to date.* As another example, the

* In 1999, one of the DOL complaints was withdrawn by the complainant prior to DOL's initial OSHA investigation; in the other complaint OSHA ruled in TVA's favor and the matter has recently been adjudicated before an ALJ, that decision is pending. In 2000, OSHA decided the single case in TVA's favor and the complainant did not appeal. In 2001, the single complaint to date involved a TVA contractor, and OSHA recently ruled in favor of the contractor.

number of NRC allegations is also decreasing from ten in 1999, to five in 2000, and none so far in 2001.

3. NRC Inspection Results

TVA also relies upon the observations and inspections conducted by NRC to monitor the work environment. NRC inspectors are present at the site on a continuous basis and have frequent interaction with plant personnel at all levels. These inspectors have access to plant meetings and activities and have a good overall understanding of plant operations and the work environment.

NRC's most recent Problem Identification and Resolution Inspection (IR No. 50-390/01-06 and 50-391/01-06) is dated June 7, 2001, and examined, among other things, activities at WBN as they related to the identification and resolution of problems. Section 4(d) of the report is entitled, "Assessment of Safety-Conscious Work Environment." In describing the inspection scope, the report states that NRC's inspectors reviewed numerous audits, assessments, and issues in various documents such as problem identification reports and work orders. The inspectors also held discussions with numerous personnel at various levels in the organization to assess if a work environment existed that was conducive to the identification of nuclear safety issues. NRC's report states the following findings:

The inspectors determined that a safety conscious work environment was evident. Selected personnel interviewed stated that they would not hesitate to raise nuclear safety issues to their management. They also understood and believed that they could raise concerns without fear of retaliation by their management. The workers also stated that use of direct supervision was their preferred approach to raising issues, but there would be no hesitation to use other mechanisms such as the concerns resolution program or the NRC if the desired results were not achieved through normal reporting chains.

C. Conclusion

In consideration of the above, TVA believes that it has taken appropriate action to address the environment for raising concerns at WBN. TVA is aware of the importance of open communication, and has devoted significant effort and resources to establishing a work environment where employees feel free to raise concerns without fear of retaliation or discrimination. TVA promotes the message that continued success and safe operation is linked to each employee's ability and responsibility to raise and resolve concerns. TVA continuously monitors the health of the work environment, and will take appropriate action when necessary to address any impacts to that environment.

**Implementation of the Administrative Law Judge and
Administrative Review Board Decisions**

After the April 1, 1998, decision by the administrative law judge (ALJ) and as required by Section 211 of the Energy Reorganization Act (ERA), TVA reinstated Mr. Overall in a TVA position comparable to the one he last held in TVA Nuclear at the Watts Bar Nuclear Plant. TVA also paid Mr. Overall back pay, with applicable interest, and back benefits. Mr. Overall is still employed by TVA, although, as mutually agreed between TVA and Mr. Overall, he is now working in TVA's Fossil Power Group in Chattanooga, Tennessee.

The April 1, 1998, ALJ decision also recommended that Mr. Overall be paid \$50,000 in compensatory damages. Under Section 211 of the ERA, TVA was not required to pay that amount pending review by the Department of Labor's Administrative Review Board (ARB). The ARB's April 30, 2001, decision ordered TVA to pay the \$50,000 and TVA has done so.

The ALJ also awarded attorney's fees and costs to Mr. Overall's first attorney and his firm. The ARB awarded some additional attorney fees and costs for work before the ALJ. TVA has made arrangements with Overall's first attorney for the payment of those fees and costs. The ARB also provided for the award of additional attorney's fees and costs for work performed before it by Overall's first attorney and his current attorney. However, the ARB has not yet issued an order awarding a specific amount.