

**RELATED CORRESPONDENCE**

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION**

**DOCKETED  
USNRC**

**BEFORE THE ATOMIC SAFETY AND LICENSING BOARD** 01 AUG -6 P 3 :25

IN THE MATTER OF )  
)  
TENNESSEE VALLEY AUTHORITY )  
)  
(Watts Bar Nuclear Plant, Unit 1; )  
Sequoyah Nuclear Plant, Units 1 & 2; )  
Browns Ferry Nuclear Plant, Units 1, )  
2 & 3) )  
)

Docket Nos. 50-390-CivP;  
50-327-CivP; 50-328-CivP;  
50-259-CivP; 50-260-CivP;  
50-296-CivP  
  
ASLBP No. 01-791-01-CivP  
  
EA 99-234

OFFICE OF SECRETARY  
RULEMAKING  
ADJUDICATIONS STAFF

**TENNESSEE VALLEY AUTHORITY'S FIRST  
SET OF INTERROGATORIES**

Pursuant to 10 C.F.R. §§ 2.720(h)(2)(ii), 2.740, and 2.740b, and the July 19, 2001, prehearing conference conducted by the designated Atomic Safety and Licensing Board Panel and the Chief Administrative Law Judge, the Tennessee Valley Authority (TVA) hereby requests that Nuclear Regulatory Commission (NRC) staff answer the following interrogatories under oath, in writing, separately, in the fullest detail possible, and send the answers to TVA's Office of the General Counsel, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1401.

**Instructions**

1. If privilege is claimed as a ground for not answering the interrogatory or if the interrogatory is otherwise objected to, describe the legal and/or factual basis for the claim of privilege or other objection to the interrogatory or interrogatory part in sufficient detail so as to permit the Atomic Safety and Licensing Board (Board) to adjudicate the validity of the claim or objection, and identify all documents which refer or relate to the information requested.

2. When an interrogatory requires NRC staff to “state the basis” of or “describe” or give the “description” of a particular claim, contention, or allegation, give a complete factual summary, organized chronologically, in which the identity of all persons, facts, dates, and documents are included.

3. If documents are produced in response to any interrogatory, expressly identify the interrogatory to which they pertain and identify the official custodian of the documents.

4. If an interrogatory is not answered in full, please state the reasons for not answering, describe the steps taken to secure complete information, and detail the information which is available to NRC staff regarding the unanswered portions.

5. For each interrogatory, identify all documents that support, refer, or relate to the subject matter of each interrogatory and the answer thereto.

### **Interrogatories**

1. State the factual basis of your contention on page 3 of the February 7, 2000, Notice of Violation (NOV) and Proposed Imposition of Civil Penalty that Thomas J. McGrath was “knowledgeable and critical of Fiser’s 1991-1993 protected activity involving chemistry related safety concerns.” Your answer should include:

(a) The specific “protected activity involving chemistry related safety concerns” in which Fiser was involved, the nature of his involvement, the dates of his involvement, the identity of all documents pertinent to his alleged protected activities, the identity of each person you contend had knowledge of such activity, and the date and manner in which each such person became aware of such activity.

(b) All evidence showing how and when McGrath became knowledgeable of Fiser's alleged protected activity, the identity of all persons with information as to how or when McGrath acquired such knowledge, and the identity of all documents pertinent to McGrath's knowledge of Fiser's alleged protected activity.

(c) The facts upon which you base your conclusion that McGrath was "critical" of Fiser's alleged protected activity. Please describe in detail each and every instance in which McGrath was critical of Fiser's alleged protected activity as defined by you in response to subsection (a) above, including the dates, locations, persons present, the substance of all oral communications, and the identity of all written documents pertinent to such alleged criticism.

2. State the factual basis of your contention on page 3 of the NOV and Proposed Imposition of Civil Penalty that Wilson C. McArthur was "knowledgeable and critical of Fiser's 1991-1993 protected activity involving chemistry related safety concerns." Your answer should include:

(a) The specific "protected activity involving chemistry related safety concerns" in which Fiser was involved, the nature of his involvement, the dates of his involvement, the identity of all documents pertinent to his alleged protected activities, the identity of each person you contend had knowledge of such activity, and the date and manner in which each such person became aware of such activity.

(b) All evidence showing how and when McArthur became knowledgeable of Fiser's alleged protected activity, the identity of all persons with information as to how or when McArthur acquired such knowledge, and the identity of all documents pertinent to McArthur's knowledge of Fiser's alleged protected activity.

(c) The facts upon which you base your conclusion that McArthur was "critical" of Fiser's alleged protected activity. Please describe in detail each and every instance in which McArthur was critical of Fiser's alleged protective activity as defined by you in response to subsection (a) above, involving the dates, locations,

persons present, the substance of all oral communications, and the identity of all written documents pertinent to such alleged criticism.

3. With respect to the assertion on page 3 of the NOV that McGrath's and McArthur's actions with regard to Fiser's alleged protected activity in 1991-1993 were part of the "information developed associated with the 1993 DOL case," specifically identify and describe in detail all such "information developed associated with the 1993 DOL case." Your answer should include the identity of each pertinent document.

4. Identify each person referred to on page 3 of the NOV who was interviewed by the Department of Labor (DOL) as a part of the proceedings instituted as a result of Fiser's 1993 complaint.

5. State when the DOL investigative file on Fiser's 1993 complaint was first reviewed by the NRC staff involved in issuing the subject NOV. Identify all information and documents in the DOL investigative file on Fiser's 1993 complaint considered by the NRC staff in issuing the NOV.

6. State when the TVA Inspector General's file on Fiser's 1993 complaint was first reviewed by the NRC staff involved in issuing the subject NOV. Identify all information and documents in the Inspector General's investigative file on Fiser's 1993 complaint considered by the NRC staff in issuing the NOV.

7. State the factual basis for the conclusion in the NOV at 2-3 that the reorganization of Operations Support was motivated by a retaliatory animus by McGrath. Identify all pertinent documents, identify each person with information regarding such conclusion, and state the information you impute to each such person.

8. Do you contend that McGrath ever made any statements evidencing such animus? If, so, state the substance of such statements and identify the time, date, and place such statements were made and all persons present when such statements were made.

9. State whether you contend that the newly created position of Chemistry Program Manager (PWR) was interchangeable under OPM regulations with the Chemistry and Environmental Program Manager position held by Fiser so that the new position did not require posting, and if so, state the basis for your contention. Identify all pertinent documents, identify each person with information regarding such conclusion, and state the information you impute to each such person.

11. State the factual basis for the conclusion on page 3 of the NOV that it is “likely that an individual was preselected for one of the Chemistry Program Manager positions.”

12. State the basis for your contention on page 3 of the NOV that the conversation among certain members of the Selection Review Board (SRB) prior to the interviews for the Chemistry Program Manager positions was “[o]f particular relevance” to your determination that Fiser was discriminated against.

13. State whether you contend that an SRB was a required element of the selection process for the Chemistry Program Manager positions and, if so, state the basis for your contention.

14. Identify all of the “other reasons” which were relied upon, as stated on page 3 of the NOV, in “conclud[ing] that discrimination was at least a factor in Mr. Fiser’s non-selection.” Separately state the detailed factual basis which you contend supports such “other reasons.” Identify all pertinent documents, identify each person with information regarding such conclusion, and state the information you impute to each such person.

15. State whether you contend as stated on page 3 of the NOV that “TVA’s explanations with respect to the decision making process for the filling of the Radcon Chemistry Manager position changed over time,” and if so, state the basis for your contention. Identify the decision making process which is referred to, each individual you contend was part of that decision making process, the explanations

which you contend changed, and the times at which you contend they changed.

Identify all pertinent documents, identify each person with information regarding such conclusion, and state the information you impute to each such person.

16. State whether you contend as stated on page 17 of the July 30, 1999, Office of Investigations (OI) report No. 2-1998-013 that “McGrath decided that the new positions needed to be advertised.” If so, state the details and factual basis for your contention.

17. State the factual basis for your contention that retaliatory animus played a part in the decision to post the new PWR position. Identify each person with knowledge of such information, identify the information you attribute to each such person, and identify all documents pertinent to this contention.

18. Do you contend that the position which was filled by McArthur should have been posted. If so, identify each person with knowledge of such information, identify the information you attribute to each such person, and identify all documents pertinent to this contention.

19. State your contention as to the significance of Jack W. Cox, Jr.’s inability to remember the reason he declined to serve on the SRB.

20. State your contention as to the reason or reasons Cox declined to serve on the SRB. Identify each fact and document pertinent to that contention. Identify each person who has knowledge or information regarding the reason Cox declined to serve on the SRB.

21. State whether you contend that the rankings by the SRB in which Fiser was ranked lowest by all three members of the Board should be disregarded in determining if there was a preselection. If so, state the detailed factual basis for such contention. Identify each and every fact and document pertinent to such contention, identify each individual who you contend has information pertinent to such contention, and identify the information which you impute to each individual.

22. State whether you contend as stated on page 17 of OI report No. 2-1998-013 that Cox was eliminated from participating on the SRB, and if so, state the detailed factual basis for your contention. Identify all pertinent documents, identify each person with information regarding such conclusion, and state the information you impute to each such person.

23. State whether you contend as stated on page 17 of OI report No. 2-1998-013 that “McGrath indicated that the intent of the SRB was to have a fair selection process, in which no one had past knowledge or involvement with Fiser’s DOL complaints,” and, if so, state the detailed factual basis of your contention.

24. State whether you contend as stated on page 17 of OI report No. 2-1998-013 that “McGrath prevented the transfer of Harvey from a Corporate Chemistry Position to a Sequoyah Chemistry position,” and if so, state the detailed factual basis of your contention. Identify all pertinent documents, identify each person with information regarding such conclusion and state the information you impute to each such person.

25. State whether you contend that a Sequoyah Chemistry position existed at the time McGrath allegedly prevented Harvey from taking such a position, and if so, state the detailed factual basis for your contention.

26. Do you contend that McGrath could have transferred Harvey, or allowed Harvey to transfer to Sequoyah consistent with TVA and Federal regulations, and authorized headcounts and budgets. If so, state the basis of your contention and identify all pertinent documents, identify each person with information regarding such conclusion, and state the information you impute to each such person.

27. Identify all documents in the custody of the NRC, including OI, or elsewhere, which refer or relate to OI Case No. 2-93-068 and/or Fiser’s 1993 DOL complaint.

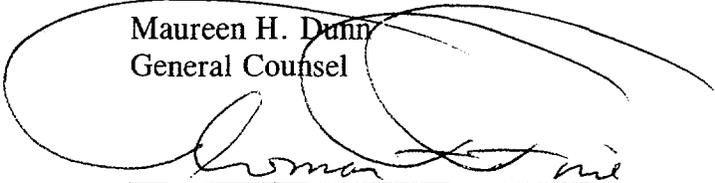
28. Identify all documents in the custody of the NRC, including OI, or elsewhere, which refer or relate to OI Case No. 2-1998-013 and/or Fiser's 1996 DOL complaint. To the extent not previously identified, identify all documents pertinent to the NRC staff's contentions in this proceeding or the contentions of TVA's defenses and identify all documents the NRC staff intends to rely on in this case.

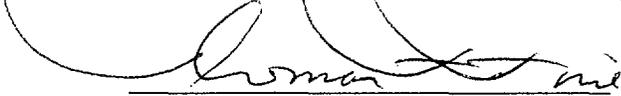
29. Identify each individual with knowledge or information on which the NRC staff will rely in this case, particularly noting those individuals the NRC staff intends to call as witnesses at the hearing before the Atomic Safety and Licensing Board.

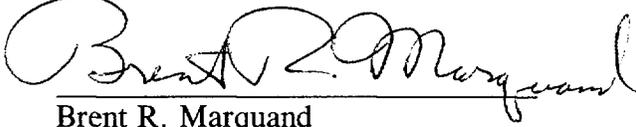
30. Identify the legal standard which you believe applies to actions under 10 C.F.R. § 50.7 (2001). Specifically, state the legal standard the NRC applies to result in a finding of discrimination. Identify all documents in the custody of the NRC, including the Office of the General Counsel, or elsewhere which discuss or

analyze the legal standard being applied, or which may have been applied in the past,  
in making a determination under 10 C.F.R. § 50.7.

Respectfully submitted,

  
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Attorneys for TVA

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing interrogatories have been served on the NRC staff by electronic mail and by overnight messenger to the following:

Administrative Judge  
Charles Bechhoefer, Chairman  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Two White Flint North  
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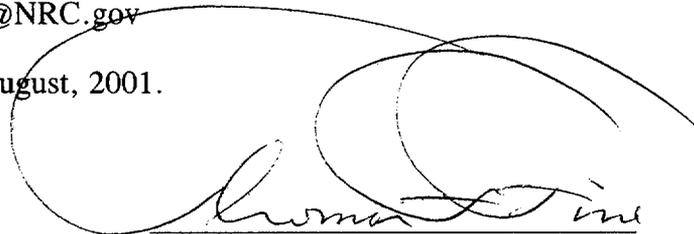
Administrative Judge  
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U.S. Nuclear Regulatory Commission  
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This 3rd day of August, 2001.



Attorney for TVA