

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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|---|---|--------------------------------------|
| In the Matter of |) | |
| |) | Docket Nos. 50-390-CivP; 50-327-CivP |
| TENNESSEE VALLEY AUTHORITY |) | 50-328-CivP; 50-259-CivP |
| (Watts Bar Nuclear Plant, Unit 1 |) | 50-260-CivP; 50-296-CivP |
| Sequoyah Nuclear Plant, Units 1 & 2 |) | 50-260-CivP; 50-296-CivP |
| Browns Ferry Nuclear Plant, Units 1,2 &3) |) | |
| |) | ASLBP No. 01-791-01-CivP |
| |) | |
| |) | EA 99-234 |

NRC STAFF'S APPLICATION FOR THE ISSUANCE OF SUBPOENAS

INTRODUCTION

Pursuant to 10 C.F.R. § 2.720(a) of the Commission's regulations, the Staff of the Nuclear Regulatory Commission (Staff) requests that the Atomic Safety and Licensing Board (Board), designated in the above-captioned proceeding, issue subpoenas, attached hereto, requiring Sam Harvey and Wilson McArthur to attend and give testimony at depositions.

DISCUSSION

The Staff requests the Board to issue a subpoena for Sam Harvey in order to ensure the Staff's ability to depose this individual on the date specified. Mr. Harvey is a former employee of the licensee, the Tennessee Valley Authority (TVA), and his testimony is relevant to the issues raised by this enforcement action. Mr. Harvey is a former Chemistry Manager at TVA and was selected for the position for which Mr. Fiser alleged he should have been selected. In addition, this case involves an allegation that Mr. Harvey was preselected for his position and Mr. Harvey has information relevant to that allegation. The issuance of a subpoena will ensure that the Staff is able to depose this key witness.

The Staff requests the Board to issue a subpoena for Wilson McArthur in order to ensure the Staff's ability to depose this individual on the date specified. Dr. McArthur is a retired employee of TVA and the NRC has issued a Notice of Violation to Dr. McArthur in this enforcement proceeding. Dr. McArthur provided testimony to both the Department of Labor (DOL) investigator and the NRC Office of Investigations (OI) special agent in this case. In addition, he provided a further statement to the NRC at a Predecisional Enforcement Conference on November 22, 1999. These statements indicate that his testimony will provide relevant information on the selection process used in determining whether the Chemistry Manager position should be posted, on why Mr. Harvey was selected over Mr. Fiser, and on Mr. Fiser's protected activities. The issuance of a subpoena will ensure that the Staff is able to depose this key witness.

CONCLUSION

For the above stated reasons, the Staff requests the Board to issue the attached subpoenas to Sam Harvey and Wilson McArthur.

Respectfully submitted,

/RA/

Jennifer M. Euchner
Counsel for NRC Staff

Dated at Rockville, Maryland
this 27th day of November, 2001.

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Sequoyah Nuclear Plant, Units 1 & 2) ASLBP No. 01-791-01-CivP
Browns Ferry Nuclear Plant, Units 1, 2, 3))
) EA 99-234

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S APPLICATION FOR THE ISSUANCE OF SUBPOENAS" in the above-captioned proceeding has been served on the following persons by express overnight mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 27th day of November, 2001.

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/RA/

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