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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Ann Marshall Young

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

November 28, 2001

SECOND PREHEARING CONFERENCE ORDER
(Telephone Conference, November 14, 2001)

On November 14, 2001, the Atomic Safety and Licensing Board conducted a telephone prehearing conference (Tr. 62-104). Participating, in addition to the three Licensing Board Administrative Judges, were Brent Marquand, Esq., Barbara Maxwell, Esq., John Slater, Esq., and Edward Vigluicci, Esq., for Tennessee Valley Authority (Licensees); and Dennis C. Dambly, Esq., and Jennifer M. Euchner, Esq., for the NRC Staff. This was the second prehearing conference conducted by the Board in this proceeding, with rulings and discussion from the first being memorialized in the Licensing Board's Prehearing Conference Order (Telephone Conference, 7/19/01), dated August 1, 2001 (unpublished).

1. Schedules. In our previous Prehearing Conference Order, we adopted a schedule (proposed jointly by both parties) under which discovery would terminate on December 14, 2001 and Motions for Summary Disposition would be filed by no later than February 1, 2002. At the request of both parties, based primarily on their need to depose numerous persons, the

Board extended the discovery period to Monday, December 31, 2001 (Tr. 78-79). Any motions for summary disposition or pre-trial briefs (see discussion below), shall be filed no later than March 1, 2002 and possibly sooner, depending on the status of the case as of January 9, 2001 (Tr. 82-88).

2. Resolution of Legal Issues. The Board inquired concerning the progress of the parties in resolving legal issues. These issues include the definition of “protected activities” under 10 C.F.R. § 50.7, the standard of proof in “dual motive” cases, and the relevance of “remedy” case law on this subject. As for whether separate briefing of these questions by the parties would be useful, TVA suggested, and the Staff agreed, that summary disposition motions filed after the conclusion of discovery would be a suitable vehicle for resolving these questions (Tr. 67, 68). Alternatively, Judge Young advised the parties that, except where all facts relevant to particular issues are clearly not in dispute such that summary disposition motions might expedite the resolution of any or all issues in the case, these issues might be addressed more efficiently through prehearing stipulations of fact together with pretrial briefs (Tr. 77-83), and both parties agreed.

3. Prehearing Telephone Conference. In order to assure that the case is progressing appropriately, the Licensing Board scheduled a telephone prehearing conference for Wednesday, January 9, 2002, beginning at 10:00 a.m. est (Tr. 81). At this conference, the parties shall report on their progress on arriving at stipulations of fact, the best method(s) for resolving outstanding legal issues, any remaining discovery questions, and other relevant matters. The Board will also consider other pretrial questions (including, to the extent appropriate, the establishment of filing dates for lists of witnesses and documents on which the parties will rely, and hearing dates).

4. Settlement. Noting that the Commission encourages settlement in cases of this type (see 10 C.F.R. § 2.205(g)), the Board also requested the parties to report on possible settlement of any issues in the case at the January 9, 2002 telephone conference.

* * *

It is so ORDERED.

For the Atomic Safety and Licensing Board

/RA/

Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
November 28, 2001

[Copies of this Memorandum and Order have been transmitted this date by e-mail to counsel for each of the parties.]

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
TENNESSEE VALLEY AUTHORITY) Docket Nos. 50-390-CIVP,
) 50-327/328-CIVP and
(Watts Bar Nuclear Plant, Unit 1;) 50-259/260/296-CIVP
)
Sequoyah Nuclear Plant, Units 1 & 2; and)
)
Browns Ferry Nuclear Plant, Units 1, 2 & 3))
(Order Imposing Civil Monetary Penalty))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB SECOND PREHEARING CONFERENCE ORDER (TELEPHONE CONFERENCE, NOVEMBER 14, 2001) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution.

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Docket Nos. 50-390-CIVP
50-327/328-CIVP and
50-259/260/296-CIVP
LB SECOND PREHEARING CONFERENCE
ORDER (TELEPHONE CONFERENCE,
NOVEMBER 14, 2001)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 28th day of November 2001