

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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 RESPONSE TO TENNESSEE VALLEY AUTHORITY'S
REQUEST FOR ADMISSIONS AND INTERROGATORY

Pursuant to 10 C.F.R. § 2.742, the Nuclear Regulatory Commission (NRC) Staff hereby responds to the Tennessee Valley Authority's (TVA) request for admissions and interrogatory.

1. The Staff admits that Gary Fiser filed a June 25, 1996 Complaint with the Department of Labor (DOL), claiming that TVA discriminated against him in violation of Section 211 of the Energy Reorganization Act of 1978 (ERA), 42 U.S.C. § 5851 (1994).

2. The Staff objects to this request for admission on the ground that it is irrelevant to the matters at issue in this proceeding.

3. The Staff objects to this request for admission on the ground that it is irrelevant to the matters at issue in this proceeding.

4. The Staff objects to this request for admission on the ground that it is irrelevant to the matters at issue in this proceeding.

5. The Staff objects to this request for admission on the ground that it is irrelevant to the matters at issue in this proceeding.

6. The Staff objects to the first two sentences of this request for admission on the ground that they are irrelevant to the matters at issue in this proceeding. The Staff admits that

some TVA employees lost positions during 1994 to 1997 and that some employees were selected for positions and some TVA employees involuntarily lost positions and employment with TVA. The Staff neither admits nor denies that the employees selected for employment were selected for “new” positions created as a result of the reorganizations or that they lost their “old” positions.

7. The Staff denies that Fiser served as Chemistry Superintendent at Sequoyah Nuclear Plant from 1988 to 1992. The Staff neither admits nor denies that the Chemistry Superintendent position at Sequoyah from 1988 to 1992 reported to the Operations Superintendent and managed the Sequoyah Chemistry department because the Staff lacks the knowledge of the organizational structure of Sequoyah during that time period. The Staff denies that in 1992, Fiser’s Chemistry Superintendent position was classified to TVA’s PG schedule as a grade 9. The Staff admits that TVA’s PG schedule includes management and specialist positions which are classified from grade PG-1 to grade PG-SR.

8. The Staff neither admits nor denies that Sequoyah plant management perceived significant weaknesses in the Sequoyah Chemistry department because it lacks knowledge of what the perceptions of Sequoyah management were. The Staff neither admits nor denies that as a result of weaknesses, Sequoyah plant management proposed that Fiser be temporarily assigned to the Corporate Chemistry organization and that the Corporate Chemistry Manager be temporarily assigned to act as the Sequoyah Chemistry Superintendent because the reasons for this rotation of assignments are matters in dispute in this proceeding.

9. The Staff admits that Fiser’s 1996 ERA complaint states that he “never received any unfavorable evaluations of my performance from [sic] anyone at TVA” (compl. at 1). The Staff denies that it had been well documented that he was not successfully managing that organization. The Staff neither admits nor denies that Fiser was removed from the position of Sequoyah Chemistry Manager because he was not successfully managing that organization because that is a matter in dispute in this proceeding.

a. The Staff admits, without admitting the truth of such statements, that Fiser's January 6, 1989 performance evaluation rated his performance as "Adequate", the next to bottom category. The Staff admits, without admitting the truth of such statements, that the evaluation states:

The overall performance of the Chemistry Group is not acceptable. Although Mr. Fiser has expended a great deal of effort in developing an improvement program, very little implementation has taken place. Extensive effort will be required to make the necessary progress in 1989. [at 7].

.....
Mr. Fiser must become more aggressive in the performance of his duties. Many discrepancies in equipment and personnel performance should have been corrected in a more timely manner. Mr. Fiser has a tendency to wait for corporate assistance in many areas where assistance is either not required or forthcoming. [at 8].

The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

b. The Staff neither admits nor denies that Fiser's September 1989 employee appraisal continued to reflect the same problems because that is a matter in dispute in this proceeding. The Staff admits, without admitting the truth of such statements, that the excerpt of the Summary Statement quoted in this request for admission said:

Through this period he demonstrated continued weaknesses in aggressiveness and communication skills. Following specific discussions and coaching in these areas, I have noted improvements, although not to the degree I would have expected. Personnel-related action is not taken spontaneously. While actual chemistry results are good, the weaknesses noted last year persist. Material condition improvements of chemistry equipment is not being pushed adequately. [at 1].

The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

c. The Staff admits that in 1991, Fiser was rotated to the position of Outage Manager. The Staff neither admits nor denies that this rotation was an attempt by management to develop Fiser's leadership skills or that the length of the rotation was a "short period" because

the Staff lacks knowledge of management's motivation in rotating Fiser and lacks knowledge of the length of the rotation. The Staff neither admits nor denies that the hoped-for improvement did not occur and that the Summary Statement in his October 1991 evaluation reflected that his skills had not improved because these matters are in dispute in this proceeding. The Staff admits, without admitting the truth of such statements, that the Summary Statement in his October 1991 evaluation states:

[Fiser] [i]s having difficulty operating independently outside the Chemistry area. Is not using the authority of his position as an Outage Manager effectively. Will be given feedback and [his] performance will be monitored during the outage [at 1].

The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

d. The Staff admits, without admitting the truth of such statements, that the evaluation for the final fiscal quarter of 1991 states:

Efforts to prepare for the outage have been good overall, but Mr. Fiser is having difficulty operating independently. Was given several major activities to manage and was unable to effectively bring any to completion [at 9].

The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

10. The Staff denies that Fiser had weak performance evaluations and that the Chemistry Program was under Fiser's management during the entirety of 1991 and 1992. The Staff neither admits nor denies that deficiencies and weaknesses in the Sequoyah Chemistry Program became increasingly apparent during 1991 and early 1992. The Staff neither admits nor denies that the minutes of the May 22-23, 1991 NSRB meeting identified two critical items that needed to be addressed by Sequoyah Chemistry because the Staff lacks knowledge of whether these items were "critical". The Staff admits, without admitting the truth of such statements, that the minutes state, "Include proficiency parameters in training to ensure original design criteria can

be met in accordance with [NRC requirements].” The Staff admits, without admitting the truth of such statements, that the minutes mention “effluent analysis and pathway monitoring,” but notes that the minutes state that these were “discussed, and it was reported that they had been analyzed and were ‘trivial’.” The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

11. The Staff neither admits nor denies that the NSRB continued to note problems in the Sequoyah Chemistry program and that the minutes of the August 21-22, 1991 NSRB meeting show that the two previously identified issues had not been addressed because TVA did not provide the Staff with a copy of the August 21-22, 1991 NSRB meeting minutes. The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic. The Staff admits, without admitting the truth of such statements, that the Executive Summary of the November 20-21, 1991 NSRB meeting minutes states that “a number of site responses were incomplete, inaccurate, or did not address the specific NSRB concerns.” The Staff admits, without admitting the truth of such statements, that the minutes also state that:

significant problems existed in the Sequoyah Chemistry Program which, if not promptly corrected, could impact plant chemistry control. For example, required data trend analyses were not being performed, chemicals were purchased to incorrect specifications, some training some delinquent, and several procedure preparation and use deficiencies were identified.

The Staff denies that the NSRB found that Site Chemistry had still not addressed the issues of PASS training and unmonitored radiation release. The Staff notes that page 23 of the minutes states, with regard to unmonitored pathways, “The subcommittee believes that the issue is complete but is awaiting site management review and approval.” The Staff admits, without admitting the truth of such statements, that the minutes at page 21 state that there were weaknesses in the areas of “inadequate procedures, failure to follow procedures, unauthorized changes to QA records, lack of management oversight in laboratory operations, training

deficiencies, failure to perform required analyses, and poor data trending.” The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

12. The Staff denies that Fiser’s performance as Chemistry Manager was criticized a number of times, contrary to the implication in his 1996 ERA Complaint. The Staff admits, without admitting the truth of such statements, that the February 19-20, 1992 NSRB meeting minutes state that there were “deficiencies and weaknesses in the Sequoyah Nuclear Plant (SQN) Chemistry Program.” The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic. The Staff neither admits nor denies that the deficiencies and weaknesses required the intervention of the Plant Manager to develop and implement a corrective action plan because it lacks knowledge of this information.

13. The Staff admits that in March, 1992, Fiser was rotated to the Corporate Chemistry Manager position in Chattanooga, Tennessee. The Staff neither admits nor denies that the decision to remove Fiser from the Sequoyah Chemistry Superintendent position was made by Sequoyah plant management because this is a matter in dispute in this proceeding.

14. The Staff denies that the attachment to Fiser’s 1996 ERA Complaint confuses the reason that he was removed from the position of Sequoyah Site Chemistry Manager. The Staff neither admits nor denies that Fiser suggests that he was removed because his organization had discontinued providing certain chemistry data to the plant and, in January 1992, he refused to agree with the NSRB’s suggestion to resume providing that information because that is a matter in dispute in this proceeding. The Staff admits that data trending was identified as a deficiency by the NSRB in its minutes, but neither admits nor denies that this required intervention of upper management because it lacks knowledge of any actions taken by upper management on this matter. The Staff neither admits nor denies whether the NSRB minutes, which were furnished by TVA during discovery, are truthful, complete, or authentic. The Staff neither admits nor denies that Fiser was rotated from the Sequoyah Site Chemistry Manager position to the Corporate Chemistry

Manager position because of his weak management skills because this is a matter in dispute in this proceeding. The Staff admits, without admitting the truth of such statements, that the Summary Statement in Fiser's 1992 performance appraisal states:

[Fiser] was rotated from [Sequoyah] to the Corporate Manager of Chemistry position for 12 months. [Sequoyah] needs a different approach to solving problems in Chemistry and the rotation was initiated to face that issue.

The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

15. The Staff denies that the minutes of the NSRB's May 21-22, 1992 meeting show that Fiser was replaced as the Sequoyah Chemistry Manager because of the problems in his organization which needed to be corrected. The Staff admits, without admitting the truth of such statements, that the minutes to that meeting state:

At the previous NSRB meeting, weaknesses in the Sequoyah Chemistry Program were discussed which, if not corrected, could impact chemistry control. The Plant Manager approved a comprehensive plan to prioritize and implement corrective actions to improve the chemistry program. The Corporate Chemistry Manager was assigned as the Site Chemistry Manager at Sequoyah to manage those activities and implement the Chemistry Improvement Program [at 2].

The Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

16. The Staff objects to this request for admission on the ground that it is irrelevant to the matters at issue in this proceeding. Additionally, the Staff lacks knowledge of the size and involvement of these two organizations.

17. The Staff admits that some time during 1992, Fiser ceased performing the duties of the Corporate Chemistry Manager and was assigned to work as a Chemistry Program Manager also in the Corporate Chemistry organization. The Staff neither admits nor denies that this action occurred on November 23, 1992 because it lacks knowledge of the specific date of the action. The Staff neither admits nor denies that this action was taken because Fiser's management perceived

that he was having difficulties managing the Corporate Chemistry organization because this matter is in dispute in this proceeding. The Staff admits that Fiser was still assigned to the management and specialist pay schedule, but neither admits nor denies that Fiser no longer had supervisory responsibilities and provided technical expertise to the plants.

18. The Staff neither admits nor denies that Fiser's 1992 performance appraisal notes continued problems with his weak leadership skills while serving as Acting Corporate Chemistry Manager because this is a matter in dispute in this proceeding. The Staff admits, without admitting the truth of such statements, that the 1992 performance appraisal states: "[s]ometimes has to be motivated to fully accept and solve a problem;" "[h]as some difficulty in relating to site Chemistry managers;" "[f]ull knowledge of the Chemistry area needs to be developed;" and "[d]uring his tenure as Chemistry Manager these differences [a strong split among those employees he supervised] have not improved." The version of Fiser's 1992 performance appraisal provided to the Staff by TVA appears to be missing the page on which TVA asserts that the following quote appears: "technical leadership needs attention." Therefore, the Staff neither admits nor denies that the 1992 performance appraisal makes this statement based on lack of knowledge. Additionally, the Staff neither admits nor denies that this document, which was furnished by TVA during discovery, is authentic.

19. The Staff admits that the Corporate Chemistry Manager during the 1992 time frame reported to Dr. Wilson C. McArthur, Manager of Technical Programs. The Staff admits that McArthur was also responsible for Radiological Control, Environmental Protection, Protective Services, and Emergency Preparedness. The Staff neither admits nor denies that McArthur was responsible for the Environmental and Radiological Monitoring and Instrumentation facility because it lacks such knowledge. The Staff admits that the personnel files for McArthur furnished by TVA during discovery includes a position description in 1990 for the position of Manager of Technical

Programs. The Staff neither admits nor denies that the personnel files provided by TVA are accurate or complete or that the 1990 position description is authentic.

20. The Staff admits that TVA furnished during discovery a copy of procedures entitled "Personnel Manual Instruction, Reduction, PM Section 7," dated May 6, 1987. The Staff admits that the copy of these procedures provided by TVA define a RIF as the release of an employee from his competitive level for a number of reasons, including reorganization. The Staff admits that those procedures define competitive level and provide that one of the factors in determining competitive level is the qualifications as stated in the official job description. The Staff admits that the procedures state that the competitive level determinations should not be based on personal qualifications or performance levels. The Staff neither admits nor denies that these procedures accurately implement OPM requirements regarding RIFs.

21. The Staff admits that Fiser's rotation from the Sequoyah Chemistry Superintendent position to the Corporate Chemistry Manager position was designed to be temporary. The Staff neither admits nor denies that Fiser was not given an official position description reflecting his assignments in Corporate Chemistry or that his official position description of record continued to be as the Sequoyah Chemistry Superintendent because these matters are in dispute in this proceeding. The Staff denies that there is such a thing as an "official position description of record."

22. The Staff admits that in 1993, the Sequoyah Chemistry department was reorganized. The Staff neither admits nor denies that a Chemistry Manager position, grade PG-10, was created with greater responsibilities and accountabilities than Fiser's Chemistry Superintendent position which was eliminated because the facts surrounding the reorganization at Sequoyah are in dispute in this proceeding.

23. The Staff admits that Fiser received a RIF notice in 1993. The Staff neither admits nor denies that Fiser received the RIF notice because his official position description of record was

still as Sequoyah Chemistry Superintendent and that position was eliminated in the 1993 reorganization because this matter is in dispute in this proceeding.

24. The Staff objects to this request for admission on the ground that it is irrelevant to the matters at issue in this proceeding.

25. The Staff admits that on September 23, 1993, Fiser filed an ERA Complaint alleging discrimination in the elimination of the Sequoyah Chemistry and Environmental Superintendent position and his RIF. The Staff admits that on or about April 8, 1994, TVA reached an agreement with Fiser settling his ERA complaint. The Staff admits that under this agreement, Fiser was selected for the position of Program Manager, Technical Support, PG-8 in the Corporate Chemistry organization. The Staff admits that the Department of Labor did not issue a decision in that case.

26. The Staff objects to this request for admission on the ground that it is irrelevant to the matters at issue in this proceeding.

27. The Staff admits that TVA's Office of Inspector General (TVA OIG) investigated Fiser's 1993 ERA complaint and did not substantiate his allegations of discrimination. The Staff admits that McArthur was among those interviewed in that investigation.

28. The Staff admits that at the time of the settlement of Fiser's 1993 ERA complaint, the corporate chemistry and environmental functions were separate with each reporting to a different manager. The Staff admits that the settlement agreement provided that Fiser would be placed in a Chemistry Program Manager position. The Staff neither admits nor denies that the settlement agreement did not require Fiser to remain in that position nor preclude him from applying for or accepting other TVA positions. The Staff neither admits nor denies that the agreement did not guarantee the continued existence of the Chemistry Program Manager position, did not guarantee Fiser continued employment, and did not guarantee that his position would never be subject to a reorganization.

29. The Staff admits that the corporate Chemistry and Environmental organizations were combined into one organization under one supervisor as a result of a reorganization in summer of 1994. The Staff neither admits nor denies that “management” made this decision because it lacks knowledge as to who the decision makers were. The Staff admits that, as a result of this reorganization, there was one Chemistry and Environmental Manager position, for which Ronald Grover was selected. The Staff admits that the Chemistry Program Manager positions and the Environmental Protection Program positions were renamed as Chemistry and Environmental Protection Program Manager positions.

30. The Staff admits that during the 1994 reorganization, the position of Chemistry and Environmental Protection Manager was advertised and that Ronald O. Grover applied for, was selected for, and issued a position description which was placed in his official personnel file for the Chemistry and Environmental Protection Manager position. The Staff neither admits nor denies that the position of Radiological Control Manager was advertised.

31. The Staff admits that as a result of the 1994 reorganization, McArthur became the Radiological Control Manager. The Staff admits that a position description was drafted for that job. The Staff denies that the position description was never officially approved, issued to McArthur, or placed in his official personnel file. The Staff denies that McArthur’s official position description of record remained Manager of Technical Programs, and further denies that there is such a thing as an “official position description of record.”

32. The Staff admits that Alan Sorrell was assigned to work as the Manager of Chemistry, Environmental Protection, and Radiological Control on an acting basis. The Staff neither admits nor denies that Sorrell was not issued a position description reflecting that assignment since it was on an acting basis because it lacks such knowledge. The Staff neither admits nor denies that Sorrell never relocated to Chattanooga or that McArthur managed the

day-to-day function of those departments because it lacks such knowledge. The Staff neither admits nor denies that Sorrell left TVA effective December 1995 because it lacks such knowledge.

33. The Staff admits only that TVA is covered by OPM reduction in force regulations.

34. The Staff denies that the Chemistry and Environmental Protection Program Manager positions were significantly different from the previous Chemistry Program Managers positions which were being eliminated. The Staff denies that the incumbents of the positions being eliminated were not entitled to rollover into the new positions by virtue of Federal regulations. The Staff admits that TVA posted vacant position announcements for the new positions and held a competitive bidding process. The Staff admits that Fiser applied for and was a successful candidate for one of those new positions. The Staff denies that McArthur was one of the members of the selection review board that chose Fiser. The Staff admits that in the fall of 1994, Fiser's title changed from Chemistry Program Manager to Chemistry and Environmental Protection Program Manager.

35. The Staff admits that corporate TVAN underwent a reorganization and reduction in the summer and fall of 1996. The Staff admits that deposition testimony indicated that this reorganization was part of TVAN's workforce planning effort for the year 2001 and the budget planning process for Fiscal Year (FY) 1997. The Staff also admits that deposition testimony indicated that the goal for the year 2001 was for the overall corporate organization budget to be reduced by about 40 percent and that in the short term, the budget for the corporate organization was to be reduced by at least 17 percent. The Staff admits that deposition testimony indicated that these proposed reductions were for the overall organization and that some of the constituent organizations might be more, while some might be less. The Staff neither admits nor denies that this deposition testimony is accurate and truthful.

36. The Staff admits that when Don Moody, General Manager of Operations Support, which included the Radiological Control and Chemistry and Environmental Protection organizations,

became ill with cancer, Thomas J. McGrath was assigned to serve as the Acting General Manager in the fall of 1995.

37. The Staff admits that managers of each organization were asked to propose budget and staffing plans and that McGrath requested his subordinates to propose an organization supporting the year 2001 goal and a FY 1997 budget and organization. The Staff neither admits nor denies that the final decisions on their budget and staffing were made by their superiors because who made the final decisions is a matter in dispute in this proceeding. The Staff neither admits nor denies that McGrath requested that the Radiological Control and Chemistry Services organizations be combined under the existing but then vacant RadChem Manager position, thereby eliminating one level of management because this matter is in dispute in this proceeding.

38. The Staff denies that McArthur was "acting" as the Manager of Radiological Control. The Staff neither admits nor denies that Grover, Manager of Corporate Chemistry and Environment, and McArthur proposed an organizational structure that included combining their two staffs under one manager because that matter is in dispute in this proceeding. The Staff admits that the final organizational structure included two Chemistry Program Manager, PG-8, positions, one for Boiling Water Reactors (BWR) and one for Pressurized Water Reactors (PWR). The Staff neither admits nor denies that these new positions would enable the corporate organization to provide the sites with in-depth expertise to the plants because it lacks such knowledge. The Staff neither admits nor denies that the idea was to have a chemistry specialist for TVA's two BWRs at Browns Ferry and a chemistry specialist for TVA's three PWRs at Watts Bar and Sequoyah because it lacks such knowledge. The Staff admits that in the area of chemistry and environmental protection, the organization eliminated one PG-11 manager and two staff positions, a PG-7 and a PG-8 position. The Staff neither admits nor denies that the plan did not include the performance of any environmental functions by the corporate staff since those functions would be handled by the site organizations because the Staff lacks such knowledge.

39. The Staff admits that McArthur was installed as the RadChem Manager and that the position was not posted for competition. The Staff denies that Human Resources (HR) determined that the new position was sufficiently similar to McArthur's most recent position description of record that he was entitled to the position in accordance with TVA's interpretation of OPM regulations.

40. The Staff admits that Fiser helped draft the job description for the new PWR Chemistry Program Manager position. The Staff neither admits nor denies that he did so with an eye to his own qualifications. The Staff admits that deposition testimony indicates that the TVAN HR staff evaluated the new Chemistry Program Manager job descriptions and concluded that the new positions were significantly different than the old positions and that the incumbents of the old positions did not have a right to rollover into the new positions. The Staff neither admits nor denies that this deposition testimony is accurate and truthful. The Staff neither admits nor denies that TVA management, at the recommendation of HR, decided to post announcements for the positions and to allow employees to apply and compete for the jobs because who made the decision that the positions should be posted for competition is a matter in dispute in this proceeding.

41. The Staff admits that Fiser went to HR before the position was posted and raised the issue that the PWR Chemistry Program Manager position that TVA was proposing to advertise was the same position that he had been given in the 1994 settlement agreement of his 1993 Department of Labor complaint. The Staff also admits that Fiser stated that he would file an ERA complaint if TVA decided to post the position.

42. The Staff admits that there was deposition testimony that, before posting the PWR Chemistry Program Manager position, HR reevaluated whether the new positions were sufficiently similar to the existing Chemistry and Environmental Protection Program Manager positions so that the incumbents had a right under TVA's interpretation of OPM's regulations to the new positions. The Staff admits that there was deposition testimony that based on that reevaluation, HR confirmed

that the new positions were dissimilar and were required under TVA procedures to be advertised for competitive selection. The Staff also admits that there was deposition testimony that HR consulted with a Labor Relations specialist who received an opinion from TVA's Office of General Counsel that the settlement agreement of Fiser's 1993 ERA Complaint did not give him a right to the new position. The Staff neither admits nor denies that this deposition testimony is accurate or truthful.

43. The Staff admits that TVAN adopted a procedure, BP-102, approved on September 30, 1993 for filling vacant positions. The Staff denies that the copy of BP-102 furnished by TVA during discovery provides generally for a selection review board to make a recommendation after conducting structured job related interviews of qualified applicants.

44. The Staff admits that when Vacant Position Announcement No. 10703 for the PWR Chemistry Program Manager position was posted, but before the interviews or official selections were made, Fiser filed an ERA complaint on June 25, 1996. The Staff admits that the ERA complaint identified the posting of the PWR Chemistry Program Manager position as the adverse action that was taken against him by TVA in retaliation for protected activity.

45. The Staff neither admits nor denies that while the reorganization was under consideration and while the new position description was being drafted, Fiser was under the impression that one of his principle competitors for the job, Sam L. Harvey, would be accepting a position to work at Sequoyah and therefore would not be applying for the corporate PWR Chemistry Program Manager position. The Staff denies that Fiser did not object to the creation of the new position until after he learned that Harvey would not be going to Sequoyah and would be competing for that position.

46. The Staff admits that a selection review board was scheduled for July 18, 1996 to conduct interviews for all of the new positions in the Radiological Control and Chemistry organization. The Staff denies that this selection review board was "neutral." The Staff admits that

three candidates, including Fiser, were interviewed for the PWR Chemistry Program Manager position. The Staff admits that each of the candidates was asked the same questions by the review board. The Staff neither admits nor denies that the candidates' answers were scored independently by each member of the board because that matter is in dispute in this proceeding. The Staff admits that the score sheets provided by TVA during discovery show that Fiser was scored lower by each board member than the other two applicants and that based on the cumulative scores, the review board ranked Fiser third. The Staff admits that on July 31, 1996, McArthur selected E.S. Chandrasekeran for the BWR Chemistry Program Manager position and selected Harvey for the PWR Chemistry Program Manager position. The Staff neither admits nor denies that due to an arithmetical error, Harvey received the second highest score but in actuality received the highest total score from the board because this matter is in dispute in this proceeding. The Staff denies that the selection review board that recommended candidates for the PWR Chemistry Program Manager position was free of any animosity towards Fiser and that the board, not McGrath or McArthur, determined that complainant was not one of the two top-ranked candidates.

47. The Staff admits that Fiser was not selected for one of the new positions and that his previous position was eliminated effective the beginning of FY 1997. The Staff admits that he received an August 30, 1996 memorandum notifying him that he would be reassigned to TVA's Services Organization. The Staff admits that deposition testimony indicates that the TVA Services Organization was intended to allow employees whose positions had been eliminated and that the organization provided job opportunities both within and outside TVA in a manner similar to a contractor. The Staff neither admits nor denies that this deposition testimony is either accurate or truthful. The Staff admits that the memorandum that notified Fiser that he was being reassigned to the Services Organization also notified him that he would continue to have a TVA job at least through September 30, 1997. The Staff admits that Fiser resigned his TVA employment effective

September 5, 1996. The Staff admits that the August 30, 1996 memorandum notified Fiser that he qualified for a lump-sum payment equal to his salary for the entire 1997 fiscal year, severance pay, and the cash equivalent of his annual leave balance.

48. The Staff admits that TVA offered Fiser the PWR Chemistry Program Manager position on or about September 27, 1996. The Staff neither admits nor denies whether TVA made this offer even though TVA had decided to downsize its Corporate Chemistry organization and even though Fiser was only the third-ranked candidate for the position because the Staff lacks knowledge of TVA's motivation for making this offer. The Staff admits that Fiser rejected this offer. The Staff neither admits nor denies that the total paid to Fiser was more than \$100, 000 because it lacks knowledge of the amount of money Fiser received when he resigned his TVA employment.

49. The Staff admits that the May 14, 1996 entry on Fiser's "sequence of events," attached to his 1996 complaint, states that "Harvey told me that McGrath would not release him from the Corporate Chemistry Staff" to transfer to Sequoyah. The Staff admits that Harvey denies making such a statement and has testified that he was unaware who made the decision not to transfer him to Sequoyah or what the basis for the decision was. The Staff neither admits nor denies that these statements by Harvey are either accurate or truthful. The Staff neither admits nor denies that McGrath consulted with HR, which informed him that Harvey could not be transferred to Sequoyah consistent with TVA's interpretation of OPM's regulations because this matter is in dispute in this proceeding. The Staff neither admits nor denies that Sequoyah management was informed that if the site had a vacancy, it could be advertised and filled through the competitive process because that matter is in dispute in this proceeding. The Staff admits that Sequoyah did not advertise a vacant position at Harvey's level during that time.

50. The Staff admits that in the June 5, 1996 entry, Fiser wrote that David Voeller, the Watts Bar Chemistry Manager, told him that Harvey had called him and said that he would be working a lot closer with Voeller in the future because he would be one of the two chemists left in

corporate. The Staff admits that Harvey has testified that he made such a statement to Voeller, but that he did not have advance information about who would be selected and that Harvey testified that he was confident he was better qualified and would be selected. The Staff neither admits nor denies that this testimony is either accurate or truthful. The Staff admits that Fiser told Grover about Harvey's statement to Voeller and that Grover discussed the statement with Harvey. The Staff admits that Harvey called Voeller a week after the first conversation and told Voeller that he would be working with him a lot more (if he got the job) or not at all (if he did not get the job). The Staff also admits that Harvey told Voeller that if he was not selected, he would be contacting him for assistance with other employment.

51. The Staff admits that there was an "all hands" meeting conducted by McGrath on June 17, 1996. The Staff neither admits nor denies that Fiser had a conversation with Harvey after that meeting in which Fiser "blew up" at Harvey and accused him of being preselected and having been guaranteed the PWR Chemistry Program Manager job because that matter is in dispute in this proceeding. The Staff neither admits nor denies that Harvey told Fiser that he had not been preselected and that he had to apply for the position just like anybody else and the Fiser had written the job description with himself in mind by specifying the duties which he had been performing because these matters are in dispute in this proceeding. The Staff neither admits nor denies that Fiser said that he felt that someone was out to get him, but that "he knew how the system worked and he was going to take advantage of it" because that matter is in dispute in this proceeding.

Respectfully submitted,
/RA/

Jennifer M. Euchner
Counsel for NRC Staff

Dated at Rockville, Maryland
this 22nd day of January, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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) EA 99-234

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO TENNESSEE VALLEY AUTHORITY'S REQUEST FOR ADMISSIONS AND INTERROGATORY" in the above-captioned proceeding have been served on the following by deposit in the United States 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 22nd day of January, 2002.

Administrative Judge **
Charles Bechhoefer, Chairman
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Administrative Judge **
Richard F. Cole
U.S. Nuclear Regulatory Commission
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Administrative Judge **
Ann Marshall Young
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/RA/

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Counsel for NRC Staff