

RAS 3855

RELATED CORRESPONDENCE

January 24, 2002

DOCKETED 02/04/02

Brent R. Marquand, Esq. (E-mail and Regular Mail)
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37901-1401

SUBJECT: 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)

Dear Mr. Marquand:

I am writing in response to your letter of January 22, 2002, in which you requested additional responses to Tennessee Valley Authority's (TVA) first set of interrogatories. The Staff has reviewed your request and objects on three grounds. First, the discovery period closed on December 31, 2001 and your letter constitutes an additional discovery filing which should have been filed during the discovery period. The Staff did not object when TVA filed its Request for Admissions and Interrogatories at 4:20 P.M. on December 31, 2001, and willingly provided responses to these last minute discovery requests. However, the Staff does object to providing responses to the current request, as it came three weeks after the close of discovery and could have reasonably been filed during the discovery period. Second, NRC regulations at 10 C.F.R. 2.740b(b) provide the Staff with 14 days to respond to an interrogatory request. Your letter of two days ago requests a response within two days, arguing that TVA needs this information in order to support TVA's anticipated motion for summary judgment. TVA cannot unilaterally compel the Staff to respond to an interrogatory request within a shorter period than the 14 days provided for by the regulations. In addition, the fact that the deadline for the summary judgment motion is fast approaching is the fault of TVA; this request could have been made to the Staff at the close of discovery. Third, the alleged basis for your late request, namely that Staff counsel asserted to the ASLB some new position about the Staff's basis for the violation, is inaccurate. The Staff has maintained the same position throughout the three prehearing conferences and all phases of this case. The Staff's position has not changed; TVA is simply refusing to acknowledge the irrelevance of the Office of Investigations conclusions to the issues in this case.

Without waiving these objections, the Staff recognizes that it has a duty to supplement discovery responses as it receives new information. Therefore, the Staff is willing to provide the following information related to your request of January 22, 2002.

Interrogatories 1, 2, and 3: The Staff has supplemented its September 4, 2001 and September 14, 2001 responses to these interrogatories in its January 22, 2002 response to TVA's second set of interrogatories, response to Interrogatory 2. In addition, the Staff identifies the following information related to Fiser's protected activities. On August 16, 1993, Fiser, William Jocher, and D. R. Matthews sent a letter to Senator James Sasser detailing their

involvement in protected activities which resulted in retaliation against them by TVA. For Fiser, the safety related concerns identified in that letter include: PASS equipment availability and design problems; emergency diesel generator seven day storage tank problems; unacceptably low process chemistry equipment availability; and the inability of chemistry technicians to meet the three hour requirement for drawing a coolant sample from PASS during an accident. For further detail on these protected activities, see the Sasser letter.

Interrogatory 4: The Staff has provided additional information related to its contention that it was "more likely than not" that McGrath was aware of Fiser's 1993 complaint in its response to Interrogatory 9 of TVA's second set of interrogatories.

Interrogatory 8: The Staff provided a response to this interrogatory in its September 4, 2001 response to Interrogatory 1(c) of TVA's First Set of Interrogatories.

Interrogatories 9, 18, and 21: The Staff has provided responses to these interrogatories in its response to Interrogatory 21 of TVA's second set of interrogatories.

Interrogatory 13: The Staff contends that BP 102, dated September 30, 1993, does not state that a selection review board must be used to conduct interviews during the selection process.

Interrogatory 26: The Staff has provided a response to this interrogatory in its responses to Interrogatories 4, 5, and 6 of TVA's second set of interrogatories.

I would also like to address two other outstanding issues. TVA presented two proposed stipulations for the Staff's consideration. The December 31, 2001 stipulation is identical to TVA's Request for Admissions and Interrogatory, filed on the same date. Since the Staff has provided responses and admissions to that request, the Staff sees no need to duplicate work by filing an identical Joint Stipulation. Therefore, the Staff declines to sign the proposed stipulation. The January 4, 2002 proposed stipulation involves procedural matters rather than factual matters. The purpose of admissions and stipulations is so that parties do not have to present evidence at the hearing to prove statements upon which they are in agreement. This stipulation would not result in reducing the amount of evidence required at the hearing because it does not address any of the factual matters at issue. Therefore, the Staff declines to sign the proposed stipulation.

In our phone conversation of January 23, 2002, you requested that I discuss with Mr. Dambly the Staff's position on a possible TVA motion for an extension of time to file a motion for summary judgment. The Staff will oppose any such motion for an extension of time. As stated during the January 9, 2002 prehearing conference, the Staff does not believe that this is an appropriate case for summary disposition because there are many areas of disputed material facts. Although the ASLB has provided TVA with an option for filing a motion for summary judgment, the Staff maintains that TVA could decline to file such a motion if it is unable to meet the deadline imposed by the Board. Additionally, an extension for the filing of such a motion would result in the extension of the date on which the Staff's response is due. This would make the Staff's response to the summary judgment due the same week as the prehearing brief. Having to file two substantive briefs in the same week would place an undue burden on the Staff, while placing no such burden on TVA. Finally, the Staff is concerned that an extension of the date on which the summary judgment motion is due could result in a delay of the hearing

date, since the ASLB will need additional time to address the motion. The Staff objects to any action which would result in the rescheduling of the hearing. In addition, TVA has maintained for many months now that it had overwhelming evidence mandating a grant of summary judgment in its favor. If that were the case, TVA could have drafted its motion long ago and should not need a last minute extension and late-filed discovery to complete its motion. For these reasons, should TVA decide to pursue a motion for an extension of time to file a motion for summary judgment, the Staff will oppose that motion.

Sincerely,

/RA/

Jennifer M. Euchner
Counsel for NRC Staff

Having to file two substantive briefs in the same week would place an undue burden on the Staff, while placing no such burden on TVA. Finally, the Staff is concerned that an extension of the date on which the summary judgment motion is due could result in a delay of the hearing date, since the ASLB will need additional time to address the motion. The Staff objects to any action which would result in the rescheduling of the hearing. For these reasons, should TVA decide to pursue a motion for an extension of time to file a motion for summary judgment, the Staff will oppose that motion.

Sincerely,

Jennifer M. Euchner
Counsel for NRC Staff

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