

RAS 3841

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED 01/30/02

ATOMIC SAFETY AND LICENSING BOARD

SERVED 01/30/02

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

January 30, 2002

THIRD PREHEARING CONFERENCE ORDER
(Telephone Conference, January 9, 2002)

On January 9, 2002, the Atomic Safety and Licensing Board for this enforcement (civil penalty) proceeding conducted a telephone prehearing conference (Tr. 105-167). Participating, in addition to the three Licensing Board Administrative Judges, were Brent Marquand, Esq., John Slater, Esq. and Edward Vigluicci, Esq., for Tennessee Valley Authority (TVA), Licensee; Dennis C. Dambly, Esq. and Jennifer Euchner, Esq., for the NRC Staff; and Lee S. Dewey, Esq., Chief Counsel of the Atomic Safety and Licensing Board Panel (ASLBP).

Following is a brief description of various matters discussed:

1. Status of Discovery. Upon inquiry from the Board, the parties each indicated that there were outstanding discovery requests from each party, with responses from TVA due to be filed January 14, 2002, and responses from the Staff scheduled for January 22, 2002. The Board approved this schedule (Tr. 110).

2. Settlement Negotiations. The Board, in its Second Prehearing Conference Order dated November 28, 2001, had encouraged parties to attempt to settle both particular legal

issues and the entire proceeding. During this conference, the parties again indicated that they see no possibility of settlement of either the entire proceeding or discrete segments of the proceeding.

3. Motions for Summary Disposition. TVA strongly urged that motions for summary disposition (pursuant to 10 C.F.R. § 2.749) be used as the vehicle for resolving outstanding legal issues (Tr. 134, 136). The Licensing Board raised the applicability of a section of the Commission's Statement of Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 20 (1998), stating that "[b]oards should forgo the use of motions for summary disposition, except upon a written finding that such a motion will likely substantially reduce the number of issues to be decided, or otherwise expedite the proceeding." The Staff questioned whether either of these two goals could be achieved through summary disposition in this case. The Staff, however, acknowledged that, legally, the Policy Statement could not override the Rule in 10 C.F.R. § 2.749, so that if TVA wished to file such a motion, it should be permitted to do so.

The Licensing Board provided that, if TVA intends to file a motion for summary disposition, it must do so by no later than February 1, 2002 (Tr. 151). If TVA elects to file such a motion, a response by the Staff must be filed by February 20, 2002 (*id.*)

4. Pretrial Legal Briefs. Whether or not a summary disposition motion is filed, pretrial legal briefs on all issues shall be filed by both parties no later than March 1, 2002 (Tr. 133). Legal issues to be encompassed by such briefs include the definition of protected activities under 10 C.F.R. § 50.7, the standard of proof in dual motive cases, the relevance of remedy case law under the subject, and temporal proximity, as discussed during the conference (Tr. 126).

5. Lists of Witnesses and Documents. Parties shall file lists of proposed witnesses and documents to be utilized, both on direct examination and, if possible, cross-examination, by no later than March 29, 2002 (Tr. 150).

6. Hearing Dates. The evidentiary hearing is scheduled to commence on Tuesday, April 23, 2002, at a time and place to be later announced, in Chattanooga, Tennessee. It is expected that the hearing may extend for as long as 3 weeks—i.e., the weeks commencing on April 23, April 29, and May 6, 2002.

7. Status Conference. A telephone prehearing status conference is hereby scheduled for Tuesday, February 5, 2002, beginning at 10 a.m. EST. Parties and others wishing to participate should telephone (301) 231-5539, passcode 9598#, or (800) 638-8081, passcode 9598#, by 9:55 a.m. on that date.

IT IS SO ORDERED.

For the Atomic Safety and Licensing Board

/RA/

Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland
January 30, 2002

[Copies of this Prehearing Conference Order have been transmitted this date by e-mail to counsel for each party.]

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 THIRD PREHEARING CONFERENCE ORDER (TELEPHONE CONFERENCE, JANUARY 9, 2002) 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 THIRD PREHEARING CONFERENCE ORDER
(TELEPHONE CONFERENCE, JANUARY 9, 2002)

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 30th day of January 2002