

RAS 4245

DOCKETED  
USNRC

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

April 8, 2002 (3:56PM)  
OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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

**TENNESSEE VALLEY AUTHORITY'S MOTION IN LIMINE**

Pursuant to 10 C.F.R. § 2.730 (2001) and paragraph 4 of the February 13, 2002, fourth prehearing conference order, the Tennessee Valley Authority (TVA) moves for an order striking Edward J. Vigluicci, Esq., and Brent R. Marquand, Esq., as witnesses from the Nuclear Regulatory Commission (NRC) Staff's March 29, 2002, proposed witness list. As reasons therefor, TVA would show that the NRC Staff failed to disclose, upon repeated requests, during discovery the identity of Mr. Vigluicci or Mr. Marquand as persons having knowledge or information pertinent to the issues in this proceeding and it affirmatively stated that it would call those persons it deposed and Gary Fiser and Ronald O. Grover as witnesses.

In addition, the proposed testimony of Mr. Vigluicci is irrelevant and inadmissible under Rule 402, Fed. R. Evid., and further Mr. Vigluicci lacks the requisite personal knowledge to testify about the responses to August 24, 1993, letter from then Senator Jim Sasser and therefore should also be excluded under Rule 602, Fed. R. Evid. As to Mr. Marquand, NRC Staff seeks call him as to testify about undisputed matters and thus his testimony would be unnecessary, redundant, and cumulative.

Template = SECY-041

SECY-02

Pursuant to 10 C.F.R. § 2.713, due to the NRC Staff's naming Mr. Marquand as a potential witness in this matter, TVA also moves for an order from the Board confirming that Mr. Marquand may continue his representation of TVA in this proceeding consistent with all ethical constraints and with Disciplinary Rule 5-101 and 5-102.

TVA further moves for an order precluding NRC Staff exhibit Nos. 51 and 52 and other compact discs (CD) and transcripts prepared by the NRC Staff of tape recordings of conversations surreptitiously made by Gary Fiser and exhibit Nos. 182, 187, and 189 regarding grievance, selection, and reduction in force (RIF) policies. The NRC Staff's CDs and transcripts were never disclosed during discovery and are largely inaudible, replete with omissions, and inaccurate. This purported evidence is highly unreliable and therefore inadmissible and should be excluded under 10 C.F.R. § 2.743(c) (2001). The grievance, selection, and RIF policies are not relevant to the issues in this case and also should be excluded under 10 C.F.R. § 2.743(c).

In support of its motion in limine, TVA attaches hereto the declarations of G. Donald Hickman, Brent R. Marquand, and Edward J. Vigluicci, and excerpts from December 13, 2001, deposition of Wilson C. McArthur, excerpts from the November 22, 1999, Predecisional Enforcement Conference (PEC) of Mr. McArthur, and the November 22, 1999, PEC of Thomas McGrath.

The grounds for this motion are more fully set forth in TVA's brief in support of its motion in limine which is submitted herewith.

April 5, 2002

Office of the General Counsel  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, Tennessee 37902-1401  
Facsimile 865-632-6718

Of Counsel:  
David A. Repka, Esq.  
Winston & Strawn  
1400 L Street, NW  
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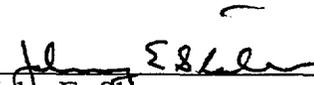
003693613

Respectfully submitted,

Maureen H. Dunn  
General Counsel

Thomas F. Fine  
Assistant General Counsel

Brent R. Marquand  
Senior Litigation Attorney

  
\_\_\_\_\_  
John E. Slater  
Senior Litigation Attorney  
Telephone 865-632-7878

Attorneys for TVA

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion in limine (with attached declarations and excerpts from the PEC conferences and from Dr. McArthur's deposition), proposed order, and supporting brief have been served by overnight messenger on the Board members and NRC Staff and by regular mail on the other persons listed below. Copies of the motion, proposed order, and brief, less the attachments which are being sent either by overnight or regular mail, have also been sent by e-mail to those persons listed below with e-mail addresses.

Administrative Judge  
Charles Bechhoefer, Chairman  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Two White Flint North  
11545 Rockville Pike  
Rockville, Maryland 20852-2738  
e-mail address: cxb2@nrc.gov

Administrative Judge  
Richard F. Cole  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
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11545 Rockville Pike  
Rockville, Maryland 20852-2738  
e-mail address: rfc1@nrc.gov

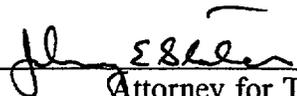
Administrative Judge  
Ann Marshall Young  
U.S. Nuclear Regulatory Commission  
Atomic Safety and Licensing Board Panel  
Two White Flint North  
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Office of Commission Appellate  
Adjudication  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

Mr. William D. Travers  
Executive Director of Operations  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

This 5th day of April, 2002.

  
\_\_\_\_\_  
Attorney for TVA

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

IN THE MATTER OF	)	Docket Nos. 50-390-CivP;
	)	50-327-CivP; 50-328-CivP;
TENNESSEE VALLEY AUTHORITY	)	50-259-CivP; 50-260-CivP;
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Sequoyah Nuclear Plant, Units 1 & 2;	)	
Browns Ferry Nuclear Plant,	)	EA 99-234
Units 1, 2, & 3)	)	

**DECLARATION OF G. DONALD HICKMAN**

G. Donald Hickman subscribes and declares:

1. I am employed by the Office of the Inspector General (OIG) of the Tennessee Valley Authority (TVA) as Acting Inspector General, a position I have held since November 26, 2001. Prior to that date, I was the Assistant Inspector General for Investigations, a position I held since April 1994. In the position of Assistant Inspector General for Investigations, I was responsible for overseeing the investigations the OIG conducts and the investigative records the OIG maintains. Prior to being assigned to the position of Assistant Inspector General, I held the position of Manager, Internal Investigations, OIG. Prior to coming to TVA in 1986, I was employed in the Federal Bureau of Investigation (FBI) for over eight years. My last position with the FBI was as Special Agent in the Washington, D.C., Field Office. The following statement is based on personal and official knowledge acquired in the performance of my official duties.

2. OIG is an independent unit within TVA which operates under the authority of the Inspector General Act of 1978, as amended, 5 U.S.C. app. at 1381-99,

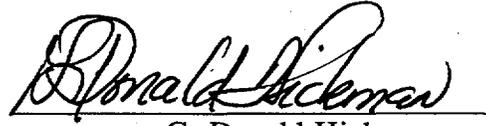
§§ 1-12 (2000). OIG is responsible for investigating, among other duties, allegations of misconduct by TVA employees. As an independent unit, OIG is solely responsible for determining the scope of its investigations and the methods used in those investigations. While other TVA organizations can and do request OIG to investigate matters of concern to those organizations, OIG conducts those investigations without any control or review by other TVA organizations.

3. I have read the Nuclear Regulatory Commission (NRC) Staff's representation that Edward J. Vigluicci, an attorney in TVA's Office of General Counsel (OGC), drafted the response to the August 24, 1993, letter from then Senator Jim Sasser to William L. Hinshaw, II, TVA's then Inspector General, seeking assistance regarding Gary Fiser's, William Jocher's, and D. R. Matthews' "concerns about management practices and the corrective action process at the Tennessee Valley Authority." A copy of the Senator Sasser August 24, 1993, letter is attached hereto as exhibit A.

4. A review of OIG records shows the OIG sent three responses to Senator Sasser, dated September 9 and October 22, 1993, and April 22, 1994. Copies of those responses are attached hereto as exhibits B, C, and D, respectively. I was involved in the preparation of each of those responses, either as the initial preparer or as a reviewer. Each of those letters was prepared and reviewed by OIG personnel. Based on its independence and reporting relationship to Congress, the OIG can and does communicate directly with Congress without seeking any input from TVA organizations, including OGC. To the best of my knowledge, Vigluicci did not draft, prepare, review, or comment on any of the responses to the Sasser letter before they were released.

5. Pursuant to 28 U.S.C. § 1746 (1994), I declare under penalty of perjury that the foregoing is true and correct .

Executed on this 4th day of April, 2002.

  
G. Donald Hickman

003693569

# United States Senate

WASHINGTON, DC 20510-4201

COMMITTEES

APPROPRIATIONS

BANKING, HOUSING,  
AND URBAN AFFAIRS

BUDGET—CHAIRMAN

GOVERNMENTAL AFFAIRS

August 24, 1993

Honorable William L. Hinshaw, II  
Inspector General  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, Tennessee 37902

Dear Inspector General Hinshaw:

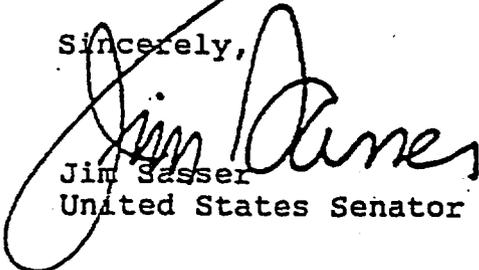
I have received the enclosed correspondence from Mr. W. F. Jocher, Mr. G. L. Fiser and Dr. D. R. Matthews regarding their concerns about management practices and the corrective action process at the Tennessee Valley Authority.

These gentlemen allege that the use of Significant Corrective Action Reports is discouraged to the extent that employees will not report problems to upper management officials for fear of retaliation. Specifically, these gentlemen indicate that changes in the status of their employment with TVA was a direct result of their efforts to bring problems to the attention of the appropriate officials.

I am very concerned about the events detailed in the enclosed letter, and I would appreciate your looking into these matters, being as helpful as possible to the concerns raised. I would further appreciate your providing me with a report.

Thank you for your courtesy and assistance.

Sincerely,



Jim Sasser  
United States Senator

Exhibit A

AJ 667

SEP 9 1993

The Honorable Jim Sasser  
United States Senate  
Washington, D.C. 20510-4201

Dear Senator Sasser:

This is in response to your August 24, 1993, letter in the interest of your constituents W. F. Jocher, G. L. Fiser, and Dr. D. R. Matthews. These gentlemen expressed concerns about management practices and the corrective action process at the Tennessee Valley Authority. Jocher and Matthews previously filed section 211, Energy Reorganization Act (ERA) complaints with the U. S. Department of Labor, Wage and Hour Administration, based on identical information provided to you.

The following information is provided for your consideration.

In keeping with an established policy, the OIG investigates section 211, Energy Reorganization Act complaints in parallel with the U.S. Department of Labor (DOL). Our purpose is to determine if a violation of the TVA Code occurred and to provide management relevant information which affords an opportunity for timely resolution of complaints prior to prolonged and expensive litigation in the DOL forum. Our findings address potential employee misconduct by TVA employees. We do not ascertain whether a violation of the ERA occurred since that responsibility is entrusted to the DOL.

My office initiated separate employee conduct investigations of circumstances surrounding the section 211, Energy Reorganization Act complaints of D. R. Matthews and W. F. Jocher on March 5, 1993, and July 13, 1993, respectively. To date, my office has not received a complaint from G. L. Fiser. My staff attempted to interview Fiser recently because he was implicated as a witness in the concerns of W. F. Jocher. Fiser is presently a full-time TVA employee who, on the advice of his legal representative, refused to submit to an interview with my staff. (The TVA Code prohibits an employee's refusal to cooperate with an OIG administrative inquiry. Consequently, we may recommend charging Fiser with insubordination if he refuses to cooperate with our inquiry.)

2D-133-37

SEP 14 1993

AJ 665

Exhibit B

SEP 14 1993	
Thomas	SBT

SEP 9 1993

Our parallel investigation of W. F. Jocher's section 211 complaint is continuing. The investigation is hampered by Jocher's refusal to meet with my staff to discuss his issues. (Jocher is no longer employed with TVA.) Jocher's attorney recommended that his client not cooperate with the OIG because he perceived Jocher's interests would not be well served in future litigation efforts against TVA. Nonetheless, we will continue our investigation of Jocher's concerns and will supplement our inquiry with information provided by Jocher in his August 16, 1993, letter to you. Your staff may assist me in this matter by encouraging Jocher to grant an interview to my staff at the earliest possible time.

On July 19, 1993, my office completed an employee conduct investigation of issues presented by D. R. Matthews. In our report, we established a clear nexus between Matthews' expression of staff views concerning the operation of the nuclear chemistry program at the Watts Bar Nuclear Plant and a decision to terminate Matthews (later changed to a demotion). In response to the OIG report, Oliver D. Kingsley, Jr., President of the TVA Generating Group, removed the offending manager from his position. The manager subsequently resigned his TVA employment. A decision regarding the status of D. R. Matthews is unsettled.

I have also been advised the Nuclear Regulatory Commission, Office of Investigation, Region II, Atlanta, Georgia, initiated two investigations based on identical information contained in the August 16, 1993, letter from Jocher, Fiser, and Matthews. The NRC inquiries involve alleged discriminatory treatment of Jocher by TVA management and alleged false or misleading information to the NRC by TVA in response to an NRC Notice of Violation. You may wish to contact the NRC regarding the status of these investigations.

Based on information provided in the August 16, 1993, letter from Jocher, Fiser, and Matthews, my staff will recontact Jocher and Fiser in an effort to obtain relevant information of employee misconduct. No contact is anticipated with Matthews because we completed a recent investigation of his concerns and management action is pending. I will provide you a summary of findings when our investigations are completed.

Thank you for referring this information for my review.

Sincerely,

Original Signed By  
William L. Hinshaw, II *WJ*

William L. Hinshaw, II  
Inspector General

GDH:LU

cc: Alan J. Carmichael, WT 11A-K (w/incoming)  
Edward S. Christenbury, ET 11-K (w/incoming)  
OIG File No. 2D-129  
OIG File No. 2D-133

bc: Craven Crowell, ET 12A-K (w/incoming)  
Oliver D. Kingsley, LP 6A-C (w/incoming)

OCT 27 1993

The Honorable Jim Sasser  
United States Senate  
Washington, D.C. 20510-4201

Dear Senator Sasser:

This is to provide you additional information about the Office of the Inspector General investigation of concerns raised by TVA employee D. R. Matthews. This is follow-up to my September 9, 1993, letter and a conversation on October 14, 1993, between Assistant Inspector General (Investigations) George T. Prosser and Kate Heatherington of your office.

As was previously mentioned in my September 9, 1993, letter, my office initiated separate employee conduct investigations of circumstances surrounding the Section 211, Energy Reorganization Act complaints of D. R. Matthews and W. F. Jocher on March 5, 1993, and July 13, 1993, respectively.

Since my initial letter to you, a Memorandum of Understanding and Agreement was entered into on September 16, 1993, between Matthews and TVA. Under the terms of the agreement, Matthews received a lump sum monetary settlement and accepted a position as a Chemistry Program Manager at Watts Bar Nuclear Plant. In return, Matthews agreed to release TVA and its representatives from any liability and to execute the appropriate papers to dismiss all pending proceedings against TVA.

Based on the agreement between Matthews and TVA, the Department of Labor, Wage and Hour Division, is taking no further action regarding Matthews' complaint under the Energy Reorganization Act in view of this Agreement.

Our investigation regarding W. F. Jocher's Section 211 complaint is continuing. I will provide you a summary of our findings when the investigation is completed.

Thank you for your interest in this matter.

Sincerely,  
Original Signed By  
William L. Hinshaw, II

William L. Hinshaw, II  
Inspector General

GDR:BBT:LU

cc: Alan J. Carmichael, WF 11A-K  
Edward S. Christenbury, ET 11E-K  
OIG File 2D-129  
OIG File 2D-133

bc: Craven Crowell, ET 12A-K  
Oliver D. Kingsley, LP 6A-C

1071D

Exhibit C

AJ 668



# SENSITIVE

The Honorable Jim Sasser

Page 2

APR 22 1994

regarding the extent of Jocher's performance problems. We made no recommendations to TVA management regarding Jocher's requested resignation.

Thank you for your interest in this matter. I hope you will contact our office if we can be of further assistance.

Sincerely,

Original Signed By  
George T. Prosser

George T. Prosser  
Inspector General

BBT:ABF:SAB

- cc: Edward S. Christenbury, ET 11H-K
- Ronald A. Loving, Washington
- OIG File No. 2D-129
- OIG File No. 2D-133
- bc: Craven Crowell, ET 12A-K
- Oliver D. Kingsley, LP 6A-C
- Brent Marquand, ET 11H-K

LETJASSE.DOC

AJ 670

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

IN THE MATTER OF	)	Docket Nos. 50-390-CivP;
	)	50-327-CivP; 50-328-CivP;
TENNESSEE VALLEY AUTHORITY	)	50-259-CivP; 50-260-CivP;
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(Watts Bar Nuclear Plant, Unit 1;	)	ASLBP No. 01-791-01-CivP
Sequoyah Nuclear Plant, Units 1 & 2;	)	
Browns Ferry Nuclear Plant,	)	EA 99-234
Units 1, 2, & 3)	)	

**DECLARATION OF BRENT R. MARQUAND**

Brent R. Marquand subscribes and declares:

1. I am employed as an attorney in the Office of the General Counsel of the Tennessee Valley Authority (TVA). I am lead counsel assigned to represent TVA in the subject litigation. I have personal and official knowledge of the matters stated herein.
2. I have been licensed to practice law by the State of Tennessee since October 1976 and remain an attorney in good standing. I have been admitted to practice before the Supreme Court of Tennessee, the United States District Courts for the Eastern and Western Districts of Tennessee, the United States Courts of Appeals for the Fifth, Sixth, Tenth, and Eleventh Circuits, and the United States Supreme Court.
3. Pursuant to Rule 8 of the Supreme Court of Tennessee, the Court adopted the Code of Professional Responsibility, including Disciplinary Rule (DR) 5-101 and 5-102 governing conflicts of interests of attorneys in the representation of their clients. The Nuclear Regulatory Commission (NRC) Staff has named me as a

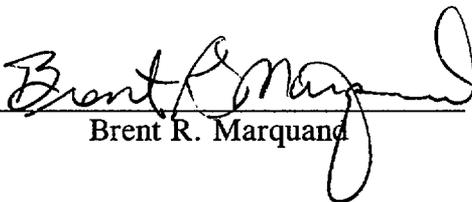
potential witness in this proceeding, even though I am lead counsel for TVA. I have reviewed the matters on which the NRC Staff seeks my testimony, and it is my opinion that my testimony would relate solely to uncontested matters.

4. I have fully disclosed to TVA management the possibility of my being required to testify in this proceeding and, after such full disclosure, TVA management has determined that my withdrawal from representation would work a substantial hardship on TVA because of my peculiar knowledge of the witnesses and facts of this case and my familiarity with Federal personnel and whistleblower law and knowledge of TVA organizations and personnel system. Accordingly, TVA management has requested that I continue my representation of TVA in this proceeding.

5. In my opinion, the testimony sought from me by the NRC Staff would not be prejudicial to TVA.

6. Pursuant to 28 U.S.C. § 1746 (1994), I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of April, 2002.

  
Brent R. Marquand

003693612

**UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING BOARD**

IN THE MATTER OF	)	Docket Nos. 50-390-CivP;
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(Watts Bar Nuclear Plant, Unit 1;	)	ASLBP No. 01-791-01-CivP
Sequoyah Nuclear Plant, Units 1 & 2;	)	
Browns Ferry Nuclear Plant,	)	EA 99-234
Units 1, 2, & 3)	)	

**DECLARATION OF EDWARD J. VIGLIUCCI**

Edward J. Viglucci subscribes and declares:

1. I am employed as a Senior Attorney in the Office of the General Counsel of the Tennessee Valley Authority (TVA). As Senior Attorney, my primary client is TVA's Nuclear organization. I have personal and official knowledge of the matters stated herein.

2. I have read the Nuclear Regulatory Commission (NRC) Staff's representation that I drafted the response to the August 24, 1993, letter from Senator Jim Sasser to William L. Hinshaw, II, TVA's then Inspector General, seeking assistance regarding Gary Fiser's, William Jocher's, and D. R. Matthews' "concerns about management practices and the corrective action process at the Tennessee Valley Authority." A copy of the Sasser letter is attached hereto as exhibit A. The NRC Staff's representation is incorrect. I made no such representation either to Dennis C. Dambly or Jennifer M. Euchner, counsel for the NRC Staff in this proceeding. Nor did I draft, prepare, review, or comment on any response to the Sasser letter.

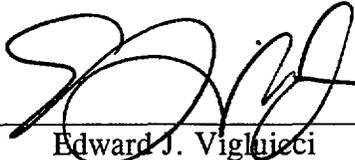
3. The OIG prepared three responses to the Sasser letter on September 9 and October 22, 1993, and April 22, 1994, respectively. Copies of the responses are attached as exhibits B, C, and D. The September 9 and October 22, 1993, responses were signed by Hinshaw, and the April 22, 1994, response was signed by George T. Prosser, who succeeded Hinshaw as Inspector General. I had no role in the preparation of either of the three responses to the Sasser letter. In addition, I did not, and was not asked by the OIG to, review or comment on any of the responses to the Sasser letter before they were released.

4. I acknowledge that I had a conversation with Dambly and Euchner; however, I told Dambly and Euchner that I am often involved with preparing and reviewing responses to congressional inquiries addressed to TVA which involve TVA's Nuclear organization because TVA Nuclear is my primary client. At no time during my conversation did I represent either to Dambly or Euchner that I was responsible for the preparation of any of the responses to the Sasser letter. Because the responses were prepared by the OIG, an opportunity to prepare or review the responses was not accorded to me, and I would not, and did not, contact any of my clients in TVA Nuclear in connection with the Sasser letter.

5. I disagree with the NRC Staff's representation that I have "testimony relevant to TVA's response to the issues raised in that letter and relevant to Fiser's protected activities, including what individuals he contacted to obtain the information required to respond to Senator Sasser's request." Since I had no involvement in responding to the Sasser inquiry, I did not obtain any information or contact any individual with respect to the OIG responses to the Sasser letter.

6. Pursuant to 28 U.S.C. § 1746 (1994), I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 4th day of April, 2002.

  
\_\_\_\_\_  
Edward J. Vigliucci

003693590

# United States Senate

WASHINGTON, DC 20510-4201

COMMITTEES  
APPROPRIATIONS  
BANKING, HOUSING,  
AND URBAN AFFAIRS  
BUDGET—CHAIRMAN  
GOVERNMENTAL AFFAIRS

August 24, 1993

Honorable William L. Hinshaw, II  
Inspector General  
Tennessee Valley Authority  
400 West Summit Hill Drive  
Knoxville, Tennessee 37902

Dear Inspector General Hinshaw:

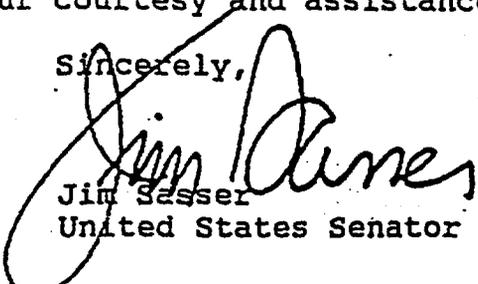
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Jim Sasser  
United States Senator

Exhibit A

AJ 667

SEP 9 1993

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United States Senate  
Washington, D.C. 20510-4201

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AD-133-37

SEP 14 1993

AJ 665

Exhibit B

SEP 14 1993	
Thomas	SBT

SEP 9 1993

Our parallel investigation of W. F. Jocher's section 211 complaint is continuing. The investigation is hampered by Jocher's refusal to meet with my staff to discuss his issues. (Jocher is no longer employed with TVA.) Jocher's attorney recommended that his client not cooperate with the OIG because he perceived Jocher's interests would not be well served in future litigation efforts against TVA. Nonetheless, we will continue our investigation of Jocher's concerns and will supplement our inquiry with information provided by Jocher in his August 16, 1993, letter to you. Your staff may assist me in this matter by encouraging Jocher to grant an interview to my staff at the earliest possible time.

On July 19, 1993, my office completed an employee conduct investigation of issues presented by D. R. Matthews. In our report, we established a clear nexus between Matthews' expression of staff views concerning the operation of the nuclear chemistry program at the Watts Bar Nuclear Plant and a decision to terminate Matthews (later changed to a demotion). In response to the OIG report, Oliver D. Kingsley, Jr., President of the TVA Generating Group, removed the offending manager from his position. The manager subsequently resigned his TVA employment. A decision regarding the status of D. R. Matthews is unsettled.

I have also been advised the Nuclear Regulatory Commission, Office of Investigation, Region II, Atlanta, Georgia, initiated two investigations based on identical information contained in the August 16, 1993, letter from Jocher, Fiser, and Matthews. The NRC inquiries involve alleged discriminatory treatment of Jocher by TVA management and alleged false or misleading information to the NRC by TVA in response to an NRC Notice of Violation. You may wish to contact the NRC regarding the status of these investigations.

Based on information provided in the August 16, 1993, letter from Jocher, Fiser, and Matthews, my staff will recontact Jocher and Fiser in an effort to obtain relevant information of employee misconduct. No contact is anticipated with Matthews because we completed a recent investigation of his concerns and management action is pending. I will provide you a summary of findings when our investigations are completed.

Thank you for referring this information for my review.

Sincerely,

Signature Signed By  
William L. Hinshaw, II

William L. Hinshaw, II  
Inspector General

GDH:LU

cc: Alan J. Carmichael, WT 11A-K (w/incoming)  
Edward S. Christenbury, ET 11-K (w/incoming)  
OIG File No. 2D-129  
OIG File No. 2D-133

bc: Craven Crowell, ET 12A-K (w/incoming)  
Oliver D. Kingsley, LP 6A-C (w/incoming)

OCI 22 1993

The Honorable Jim Sasser  
United States Senate  
Washington, D.C. 20510-4201

Dear Senator Sasser:

This is to provide you additional information about the Office of the Inspector General investigation of concerns raised by TVA employee D. R. Matthews. This is follow-up to my September 9, 1993, letter and a conversation on October 14, 1993, between Assistant Inspector General (Investigations) George T. Prosser and Kate Heatherington of your office.

As was previously mentioned in my September 9, 1993, letter, my office initiated separate employee conduct investigations of circumstances surrounding the Section 211, Energy Reorganization Act complaints of D. R. Matthews and W. F. Jocher on March 5, 1993, and July 13, 1993, respectively.

Since my initial letter to you, a Memorandum of Understanding and Agreement was entered into on September 16, 1993, between Matthews and TVA. Under the terms of the agreement, Matthews received a lump sum monetary settlement and accepted a position as a Chemistry Program Manager at Watts Bar Nuclear Plant. In return, Matthews agreed to release TVA and its representatives from any liability and to execute the appropriate papers to dismiss all pending proceedings against TVA.

Based on the agreement between Matthews and TVA, the Department of Labor, Wage and Hour Division, is taking no further action regarding Matthews' complaint under the Energy Reorganization Act in view of this Agreement.

Our investigation regarding W. F. Jocher's Section 211 complaint is continuing. I will provide you a summary of our findings when the investigation is completed.

Thank you for your interest in this matter.

Sincerely,  
Original Signed By  
William L. Hinshaw, II

William L. Hinshaw, II  
Inspector General

GDH:BBT:LU

cc: Alan J. Carmichael, WT 11A-K  
Edward S. Christenbury, ET 11E-K  
OIG File 2D-129  
OIG File 2D-133

bc: Craven Crowell, ET 12A-K  
Oliver D. Kingsley, LP 6A-C

1071D

Exhibit C

AJ 668

**SENSITIVE**

CONCERN RESOLUTION STAFF

APR 29 '94

Manager	SC	RC	ST	PL	LE
CMA Site Rep					
EPRI Site Rep					
SCM Site Rep					
WBEH Site Rep					
Securities					
Call					
CMA					
EPRI					
SCM					
WBEH					
COMMENTS					
MAIL FILE					

ODK  
 XC: PLR  
 MRH  
 DRK  
 GRB  
 MOM  
 OJZ

APR 22 1994

The Honorable Jim Sasser  
 United States Senate  
 Washington, DC 20510-4201

RECEIVED  
 CHATTANOOGA, TENN.  
 8-61  
 APR 25 1994  
 President, TVA Nuclear  
 and Chief Nuclear Officer

Dear Senator Sasser:

Please refer to William L. Hinshaw's letter to you dated October 22, 1993, regarding allegations made by William F. Jocher, a former Corporate Chemistry Manager at TVA. Jocher alleged TVA management forced him to resign because he expressed nuclear safety concerns. Jocher filed a complaint with the U.S. Department of Labor (DOL) under Section 211 of the Energy Reorganization Act (ERA) on June 29, 1993, claiming he was forced to resign for engaging in protected activities at a TVA nuclear facility. A decision in the case is pending with the DOL.

Based on a request from TVA management, my office initiated a parallel investigation of the circumstances surrounding the alleged adverse treatment of Jocher. A summary of our findings follows. It is based solely on our investigation and it does not conclude Jocher was terminated for raising safety concerns. We did not determine whether a violation of the ERA occurred since that responsibility is entrusted to DOL. Specifically, our purpose in conducting a parallel investigation with the DOL is to determine whether any current or former TVA employees violated the TVA Code and also to provide management relevant information affording an opportunity for timely resolution of DOL complaints.

Our investigation found no direct evidence showing Jocher was asked to resign because he raised safety concerns. Rather, management consistently stated Jocher was removed because of performance problems, and there is evidence supporting management's position. We found some contradictory evidence

Exhibit D

AJ 669

**SENSITIVE**

The Honorable Jim Sasser

Page 2

APR 22 1994

regarding the extent of Jocher's performance problems. We made no recommendations to TVA management regarding Jocher's requested resignation.

Thank you for your interest in this matter. I hope you will contact our office if we can be of further assistance.

Sincerely,

Original Signed By  
George T. Prosser

George T. Prosser  
Inspector General

BBT:ABF:SAB

- cc: Edward S. Christenbury, ET 11H-K
- Ronald A. Loving, Washington
- OIG File No. 2D-129
- OIG File No. 2D-133
- bc: Craven Crowell, ET 12A-K
- Oliver D. Kingsley, LP 6A-C
- Brent Marquand, ET 11H-K

LETSASSE.DOC

AJ 670

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**12/13/01: ITMO: Watts Bar Nuclear Plant: Depo: Wilson C. McArthur**

**PAGE 1 TO PAGE 123**

**NEAL R. GROSS & CO., INC.**

**(202) 234-4433**

---

**CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:**

**NEAL R. GROSS & CO., INC.  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, DC 20005  
Phone: (202) 234-4433  
FAX: (202) 387-7330**

you about this?

(2) **A All I can tell you, sir, is I was (3) interviewed quite often, so I can't tell you.**

(4) **Q I appreciate that, because you certainly (5) were. Somewhere in this time frame of Mr. Fiser's '93 (6) DOL complaint, did anybody ever make you aware that (7) Mr. Fiser was tape recording conversations?**

(8) **A Yes.**

(9) **Q Who told you that?**

(10) **A Legal.**

(11) **Q Who in Legal?**

(12) **A I believe it was Brent. Am I correct in (13) that?**

(14) **MR. MARQUAND: Probably.**

(15) **Q And what did they tell you?**

(16) **MR. MARQUAND: Objection, that's attorney- (17) client privilege.**

(18) **MR. DAMBLY: What you told him is not a (19) privilege.**

(20) **MR. MARQUAND: What we discussed is work (21) product and privilege and I object.**

(22) **MR. DAMBLY: Work product, what work (23) product?**

(24) **MR. MARQUAND: You've heard my response.**

(25) **MR. DAMBLY: Okay. I'd like an answer**

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(1) what you were told about the taping.

(2) **THE WITNESS: Well, my attorney has told (3) me not to respond to that, so I cannot respond.**

(4) **BY MR. DAMBLY:**

(5) **Q Now you discussed what you were told both (6) in your OI interview and at the PEC.**

(7) **A PEC?**

(8) **Q Predecision enforcement conference. To (9) the extent there's a privilege, it's been waived.**

(10) **I'd like to know what you were told and (11) what you were told not to do with Mr. Fiser.**

(12) **MR. MARQUAND: Before he responds, do you (13) want to show us what the response was that he made?**

(14) **BY MR. DAMBLY:**

(15) **Q Let me show you a statement you gave to (16) the Department of Labor in 1997 in regard to Mr. (17) Fiser's complaint of '96. And I'll first ask you - (18) it's dated April 24, 1997 and ask you to look at the (19) last page and tell me under "I have read this (20) statement and it is correct," whether that's your (21) signature.**

(22) **A That's my signature.**

(23) **Q Now let me give you the right page to look (24) at. It's on the fourth page of the document, the last (25) paragraph on the bottom says "Yes, I was told by**

Page 56

(1) **Legal/TVA to be very careful of Fiser because he was (2) recording people's conversations and I should be (3) sensitive of that."**

(4) **A Let me make an overall comment.**

(5) **MR. MARQUAND: Wait until he asks a (6) question.**

(7) **THE WITNESS: Okay.**

(8) **BY MR. DAMBLY:**

(9) **Q Do you recall signing that document and (10) making that statement?**

(11) **A There's something that goes along with (12) that that I need to say. This is the most (13) unintelligent human being I've ever dealt with in my (14) life.**

(15) **MR. MARQUAND: You're talking about (16) whoever interviewed you?**

(17) **THE WITNESS: Whoever wrote this. He (18) wrote this thing at least half a dozen times and (19) finally, out of total frustration, I signed it, (20) because I knew I was never going to get him out of my (21) office. But the guy could not get anything right. I (22) should have put a note on there, that's my mistake, to (23) say I don't know if anything in here is correct at (24) all.**

(25) **Q Well, do you recall telling him -**

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(1) **A I don't remember -**

(2) **MR. MARQUAND: Why don't you just read the (3) statement and tell him if that statement is correct.**

(4) **(The witness reviews the document.)**

(5) **THE WITNESS: I do not remember Legal (6) telling me to be very careful, they just said be (7) sensitive of the fact that you're being recorded. I (8) was told that - be sensitive of the fact that a tape (9) recording is - I don't remember - it may have (10) happened, but I do not remember the comment about be (11) very careful about what you say.**

(12) **BY MR. DAMBLY:**

(13) **Q Do you remember discussing it with Ms. (14) Benson when she interviewed you, the OI investigator (15) from NRC?**

(16) **A I don't remember. If you've got something (17) that says I did.**

(18) **Q We've read your statement and it's in (19) there. Do you recall ever seeing any transcripts that (20) were generated from those tapes?**

(21) **A We talked about that and I don't - I (22) remember being told they existed and I think somebody (23) flashed them in front of me, but I don't remember (24) sitting down and reviewing a number of transcripts. (25) If I did, it was very quickly to look at a page or two**

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(1) **or something. I did not in detail look at any (2) transcripts. I was told that there was not really (3) anything in there of any consequence.**

(4) **Q Who told you there was nothing of (5) consequence?**

(6) **A I don't remember.**

(7) **Q Who showed you the transcripts?**

(8) **A I don't remember that, I just know I saw (9) them.**

(10) **Q Do you recall during the enforcement (11) conference - and it's on page 48 of the transcript - (12) Mr. McNulty, who was the OI field office inspector, (13) said "Have you seen any transcripts of the tapes?" (14) And Mr. McArthur, "We did see some transcripts, it was (15) very hard to understand and the transcripts were not - (16) - nothing came out of any particular interest from (17) what I recall. I didn't hear all of them, but I heard (18) a number of them and read some transcripts."**

(19) **A All I remember is looking at a couple of (20) pages.**

(21) **Q Do you recall what was on those pages that (22) you looked at?**

(23) **A No.**

(24) **Q This is Fiser Exhibit 18, starting on page (25) 6, bottom of page 6 and it runs through I think the**

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(1) **rest of it, through page 81, purports to be (2) transcripts that Mr. Fiser typed up from his tapes. (3) If you could just take a look at that and tell me (4) whether - (5) A Gary Fiser typed these?**

(6) **Q Yes, that's my understanding. Can you (7) tell me - just look through, if you recall if that's (8) the document you looked at or was it in a different (9) format?**

(10) **MR. MARQUAND: It was in a different (11) format.**

(12) **A I don't remember. What document am I (13) looking at?**

(14) **MR. MARQUAND: If you'll look at the (15) second page, you'll see that this is - the second (16) page of the document you've got, it's got a title on (17) it and then he's referring to page 6 of this (18) particular document.**

(19) **THE WITNESS: I don't remember seeing (20) this document.**

(21) **BY MR. DAMBLY:**

(22) **Q Do you remember seeing the transcribed (23) portion, which is 6 through 81?**

(24) **MR. MARQUAND: The transcribed portion (25) begins on page 6 down at the bottom.**

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(1) **A Like I said, all I saw - I briefly looked (2) at a couple of pages.**

(3) **Q It was in a format different than**

this?

(4) **A It wasn't this.**

(5) **Q Okay.**

(6) **A I don't know who transcribed it.**

(7) **Q We asked for transcripts and were told (8) there weren't any. Do you know what it was -**

(9) **MR. MARQUAND: The same document appears (10) in a somewhat different format attached to the OIG - (11) to an OIG investigation. I don't know if that's what (12) he's talking about or not, but it looks a little (13) different.**

(14) **BY MR. DAMBLY:**

(15) **Q Did you ever discuss with anybody that you (16) were informed Mr. Fiser was taping you?**

(17) **A Did I discuss it with anybody?**

(18) **Q Anybody else at TVA, any other managers, (19) Mr. Kent, Mr. Cox, Mr. Corey, Bynum.**

(20) **A You know, it me it was obvious I was being (21) taped because I could tell when Gary came in that he (22) was taping me. And by the way, he asked questions, he (23) was trying to trap me into saying something, I could (24) tell that by the way he said things.**

(25) **Q It was obvious before you were told or**

Page 61

(1) after?

(2) **A After.**

(3) **Q Okay.**

(4) **A I didn't have any clue that he was doing (5) it beforehand. I thought it was a very rude thing for (6) any individual to do when I found out about it.**

(7) **I don't remember - I was very close to (8) Kent and people like, but I don't remember (9) specifically telling them that I was being taped, but (10) it's possible I did. I just don't - it wasn't (11) important to me, because I didn't think there was (12) anything I was going to say that would make that kind (13) of difference anyway.**

(14) **Q Did you change your interactions with Mr. (15) Fiser after you -**

(16) **A I'm sure I was more careful in what I (17) would say. He would ask me things, well, I don't like (18) that guy McGrath, what do you think - you know, (19) something like that. Well, I'm not going to respond (20) to that, I'm not going to talk about my boss to him.**

(21) **Q Would you have done that before you found (22) out he was taping?**

(23) **A I wouldn't have talked about - I don't (24) talk about my boss with other people.**

(25) **MR. MARQUAND: Except in this deposition.**

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(1) **THE WITNESS: Yeah, except in this**

(2) deposition.

(3) **MR. DAMBLY: Well, we haven't talked about (4) him yet.**

(5) **BY MR. DAMBLY:**

(6) **Q And that is your former boss, so you're (7) okay.**

(8) **A Yeah.**

(9) **Q After Mr. Fiser went - I guess he went (10) to the employee transition program when he was RIF'd?**

(11) **A That's correct, yeah.**

(12) **Q Do you know if he was surplusd or RIF'd?**

(13) **A No. I think he was RIF'd but again, I (14) don't know. My answer has to be I don't know.**

(15) **Q Okay. Do you recall a situation where Mr. (16) Kent out at Sequoyah wanted to - or considered (17) bringing Mr. Fiser back to Sequoyah while he was still (18) over in the employee transition program?**

(19) **A Yes, I remember that.**

(20) **Q Tell me what you remember about it.**

(21) **A I remember I was very surprised that he (22) was - he called me and asked me what I thought and I (23) said well, I had problems with Gary down here. My (24) position was not to tell Charles Kent what to do, I (25) could only give him my advice. And I said Gary has**

Page 63

(1) some - has had problems with me in the corporate (2) position down here, but you know Gary better than I do (3) because he's worked for you before.

(4) **And if I remember correctly, he asked me (5) to check around. So I talked with Keuter and Dan (6) Keuter didn't have much position and Joe Bynum felt he (7) didn't do a very good job at Sequoyah. That's (8) basically the information that I passed back to (9) Charles. But I did not make a recommendation that he (10) not hire Gary Fiser. Charles is a big boy, he could (11) do what he wanted to do.**

(12) **Q Do you remember any discussions after he (13) decided not to hire him, indicating it was probably a (14) good move he didn't?**

(15) **A No.**

(16) **Q Don't remember any discussions, anybody (17) make any comments that if Mr. Fiser went back to (18) Sequoyah, he'd be almost designed to fail?**

(19) **A No.**

(20) **Q Never heard any discussion about that at (21) all?**

(22) **A I don't think so.**

(23) **Q Did you have any involvement with the (24) settlement of Mr. Fiser's '93**

DOL complaint?

(25) **A I don't recall. Usually the technical**

Page 64

(1) **manager is not involved in settlements like that. I (2) may be asked my opinion, but I don't remember (3) anything. In fact, I don't know what the settlement (4) was. Is that the one where he came back?**

(5) **Q Right.**

(6) **A I don't - I was not involved in that (7) decision.**

(8) **Q Were you informed that he would be coming (9) back?**

(10) **A When he came back to corporate?**

(11) **Q Right.**

(12) **A I had to be at some point in time because (13) he'd be working for me. I don't -**

(14) **Q When he came back, did you have any (15) discussions with anybody about this was part of the (16) settlement or any mention of his DOL complaint as part (17) of why he was back?**

(18) **A I just understood he was coming back to (19) work in the chemistry group.**

(20) **Q Did you ever talk to Mr. Grover about how (21) that came about?**

(22) **A I don't think so. Usually I wouldn't - (23) to me, that was a hands off type thing, you just (24) didn't - you just stayed away from it.**

(25) **Q Do you remember any discussions with Mr.**

Page 65

(1) **McGrath about Fiser's return?**

(2) **A Other than he was coming back. I think (3) McGrath is the one that told me he was coming back.**

(4) **MR. MARQUAND: When was this that he came (5) back?**

(6) **MR. DAMBLY: '94.**

(7) **MR. MARQUAND: Who was he working for?**

(8) **THE WITNESS: All I know is I knew he was (9) coming back and he'd be in our organization, which was (10) fine with me.**

(11) **BY MR. DAMBLY:**

(12) **Q In '94, we were talking about earlier, (13) about a reorg in the technical operations position (14) that I guess was abolished and became radcon (15) management, remember that?**

(16) **A Uh-huh.**

(17) **Q Do you recall how that came about that you (18) became radcon manager?**

(19) **A John Maciejewski, who was my boss then, (20) called me down and said he had recommended to (21) management that they divide the organization into (22) radcon and chem-**

- [1]
- [2]
- [3]
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- [23]
- [24]
- [25]

CLOSED PREDECISIONAL ENFORCEMENT CONFERENCE

RE: GARY FISER

WILSON COOPER McARTHUR

November 22, 1999

1:10 p.m.

Nuclear Regulatory Commission  
 Atlanta Federal Center  
 Suite 23T-85  
 61 Forsyth Street, S.W.  
 Atlanta, Georgia

Colleen B. Seidl, RPR, CRR, CCR-8-1113

BROWN REPORTING, INC.  
 1740 PEACHTREE STREET, N.W.  
 ATLANTA, GEORGIA 30309  
 (404) 876-8979

(1) APPEARANCES:

- [2] MS. ANNE BOLAND, Region 2 Enforcement Officer, Atlanta
- [3] MR. DENNIS DAMBLY, Assistant General Counsel for Materials Litigation and Enforcement.
- [5] MR. LUIS REYES, Regional Administrator for the NRC Office, Atlanta
- [6] MR. LOREN PLISCO, Director of Division Rank of Projects.
- [8] MR. MICHAEL STEIN, Enforcement Specialist, Office of Enforcement, NRC.
- [9] MR. WILLIAM McNULTY, Field Office Director for the Office of Investigations
- [10] MR. VICTOR McCREE, Deputy Director for Reactor Safety in Region II
- [12] MS. CAROLYN EVANS, Regional Counsel.
- [13] MS. JENNIFER EUCHNER, Legal Internal GC
- [14] MR. SCOTT SPARKS, Senior Enforcement Specialist, Region 2.
- [15] MR. EDWARD VIGLIUCCI, Office of General Counsel
- [16] MR. BRENT MARQUAND, Office of General Counsel
- [17] MR. MARK BURZYNSKI, Re: Affairs
- [18] MR. EDWARD BOYLES, Manager, Corporate Human Resource Office for TVAM
- [20]
- [21]
- [22]
- [23]
- [24]
- [25]

AB000134

[1] Mr. Fiser. Were you ever aware of him tape  
 [2] recording anybody?  
 [3] MR. McARTHUR: Yes.  
 [4] MR. McNULTY: Can you tell me about  
 [5] that?  
 [6] MR. McARTHUR: All I know is, apparently  
 [7] it went over a long period of time and I was advised  
 [8] that he was taping our conversations, and that was  
 [9] the first I had heard about that.  
 [10] After that I was just aware that he was  
 [11] doing that and I thought it was a very  
 [12] unprofessional and sad situation to do that kind of  
 [13] thing, but I was aware.  
 [14] He would make it a point, which was  
 [15] unusual for him, to come in at lunchtime while I was  
 [16] eating a sandwich or something and he would ask a  
 [17] question like, "What do you think of Tom McGrath?"  
 [18] or, "What do you think of TVA?" And then I would  
 [19] become aware in my mind he was trying to get me to  
 [20] say something negative, I don't know why. I had no  
 [21] idea why he was doing that, because as I said, I  
 [22] thought it was very unprofessional. But that didn't  
 [23] change my opinion of his technical capability. I  
 [24] didn't like what was happening, but that's all I can  
 [25] tell you about that.

[1] MR. STEIN: I have two questions.  
 [2] MR. McNULTY: Can I follow up?  
 [3] MR. STEIN: Sure.  
 [4] MR. McNULTY: Do you recall when that  
 [5] occurred, the tapings?  
 [6] MR. McARTHUR: Do I recall one?  
 [7] MR. McNULTY: When?  
 [8] MR. McARTHUR: Oh. No, I don't know the  
 [9] exact time. I know that I've heard the tape, some  
 [10] of the tapes. I didn't hear them all.  
 [11] MR. McNULTY: Have you seen any  
 [12] transcripts of the tapes?  
 [13] MR. McARTHUR: We did see some  
 [14] transcripts. It was very hard to understand and the  
 [15] transcriptions were not — nothing came out of any  
 [16] particular interest, from what I recall. I didn't  
 [17] hear all of them, but I heard a number of them and  
 [18] read some transcripts.  
 [19] MR. McNULTY: Did you testify in any  
 [20] proceedings for TVA in regards to [REDACTED]  
 [21] MR. McARTHUR: Yes.  
 [22] MR. McNULTY: Did you review tapes of  
 [23] transcripts in preparation for that testimony?  
 [24] MR. McARTHUR: I don't think so. Not  
 [25] that I recall. I didn't know anybody was taping

[1] during that period of time.  
 [2] MR. STEIN: When you spoke with Mr. Corey  
 [3] and Mr. Kent about being on the Selection Panel,  
 [4] both indicated that they had a few weeks' notice in  
 [5] preparation for the panel.  
 [6] When you spoke to Mr. Cox about being on  
 [7] the panel, how much time do you remember?  
 [8] MR. McARTHUR: It was probably the RadCon  
 [9] Chemistry Peer Group meeting before, the month  
 [10] before, when we made the decision that — we made  
 [11] it, it wasn't my decision, it was the decision of  
 [12] the group that they would be the members and Cox  
 [13] indicated — we scheduled in conjunction with the  
 [14] next RadCon Chemistry meeting so we would have all  
 [15] the guys there. It was very difficult to get these  
 [16] three or four gentlemen together for anything.  
 [17] MR. STEIN: So Mr. Cox had about the same  
 [18] amount of time as Mr. Kent and Mr. Corey?  
 [19] MR. McARTHUR: Sure.  
 [20] MR. STEIN: I have another question and  
 [21] it has to do with Mr. McGrath. Mr. McGrath's input  
 [22] into — you said you were the Selecting Official?  
 [23] MR. McARTHUR: That's correct.  
 [24] MR. STEIN: You were completely  
 [25] independent of any input from Mr. McGrath or anybody

[1] else from TVA?  
 [2] MR. McARTHUR: That is correct. In fact,  
 [3] I went to Tom and said these are the people that we  
 [4] have selected. And if you knew Tom McGrath, you'd  
 [5] know that he trusts me. I felt that, a very strong  
 [6] sense of trust. He never said anything.  
 [7] MR. STEIN: Let's take a step back for a  
 [8] second. Can you explain to us why this was  
 [9] necessary?  
 [10] MR. McARTHUR: Like what?  
 [11] MR. STEIN: To take three managers and  
 [12] then to create two positions for those three  
 [13] managers? You know, budgetary —  
 [14] MR. McARTHUR: Well, we, TVA —  
 [15] MR. STEIN: Because we had been going  
 [16] along fine until Mr. McGrath.  
 [17] MR. McARTHUR: We're in a competitive  
 [18] business. I just got through last week spending  
 [19] three weeks in my new staff position of evaluating  
 [20] RadCon and Chemistry again. I went to all the  
 [21] sites, dealt with all the people and said, "What is  
 [22] the value of Corporate, is it a value add or not?"  
 [23] So we do this periodically and this is  
 [24] reorganization, which I think in our industry we are  
 [25] competitive. We're trying to, you know, to look at

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[1]  
[2]  
[3] CLOSED PREDECISIONAL ENFORCEMENT CONFERENCE  
[4]  
[5] RE: GARY FISER  
[6]  
[7] THOMAS McGRATH  
[8]  
[9]  
[10]  
[11] November 22, 1999  
[12] 10:05 a.m.  
[13]  
[14]  
[15]  
[16]  
[17] Nuclear Regulatory Commission  
Atlanta Federal Center  
Suite 23T-85  
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Atlanta, Georgia  
[18]  
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Office for TVAM  
[19]  
[20]  
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(1) would be informed that their positions were surplus  
(2) and that they might be subject to a reduction in  
(3) force at some point in time.

(4) So what would happen was that old jobs  
(5) would disappear, new jobs would reappear. Employees  
(6) in the old jobs did not have reassignment rights or  
(7) retrieve rights or anything like that to the new  
(8) jobs unless it was determined to be essentially  
(9) identical or similar under the OPM regulations that  
(10) Ed referred to. So if there was not a right to  
(11) reassignment to the new job, that is, if it wasn't  
(12) substantially similar, then the employees in the  
(13) surplus jobs would be subject to reduction in  
(14) force.

(15) They wouldn't have — the only employees  
(16) with retrieve rights or rollback rights are  
(17) employees under the bargaining units that are  
(18) covered by the contracts. Managers such as  
(19) Mr. Fiser and his peers do not have those rights  
(20) because they are not subject to the collective  
(21) bargaining agreement. Is that right, Ed?

(22) MR. BOYLES: That's correct.

(23) MR. DAMBLY: Then your managers are not  
(24) under the OPM regs?

(25) MR. MARQUAND: They are under the OPM

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(1) regs. We have to remember TVA is not a competitive  
(2) civil service. We're an excepted civil service, so  
(3) the managers don't have those types of retrieve  
(4) rights.

(5) MR. DAMBLY: Am I correct that Mr. Fiser  
(6) was the senior of the three?

(7) MR. MARQUAND: He had more TVA seniority  
(8) was my understanding.

(9) MR. McGRATH: Going on to how we handled  
(10) the Chemistry positions, Mr. McArthur and Mr. Grover  
(11) recommended that the two positions should be one to  
(12) support PWRs and one to support BWRs. Mr. Grover  
(13) with input from the incumbent Chemistry Specialist  
(14) prepared the position descriptions for those jobs.  
(15) I had no involvement in what the position  
(16) description said and I normally would not have any  
(17) involvement in position descriptions at that level.

(18) As we were proceeding toward advertising  
(19) them, Mr. Fiser came to Human Resources and he did  
(20) raise a concern that if we were to go ahead and  
(21) advertise those positions, that that would not be in  
(22) accordance with the settlement of his 1993 DOL  
(23) complaint.

(24) MR. STEIN: How do you know that? Who  
(25) informed you of this conversation that Mr. Fiser had

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(1) with HR?

(2) MR. McGRATH: I'll let Mr. Boyles tell  
(3) you. He came to Mr. Boyles and Mr. Boyles told him  
(4) that.

(5) MR. STEIN: I'm just thinking about  
(6) confidentiality and employees going to HR with  
(7) concerns, this type of concern, that would get back  
(8) to line management.

(9) MR. McGRATH: Well, we do keep things  
(10) confidential. At the time when he did come and  
(11) raise this was the first time that I ever knew, this  
(12) was in June of '96, that he had even submitted a DOL  
(13) complaint in 1993. So I had no knowledge of the  
(14) existence of that complaint prior.

(15) He brought it up and Mr. Boyles needed to  
(16) come to me because he was affecting the  
(17) reorganization. It was a decision that had been  
(18) made to post the positions. What Mr. Boyles told me  
(19) he was going to do is to bring this information to  
(20) our Labor Relations people who deal with the DOL and  
(21) OGC to look at this matter and give us advice.

(22) And, Ed, do you want to cover what you  
(23) did there?

(24) MR. BOYLES: Yes. After we had made the  
(25) decision to post the Chemistry positions, Ben Easley

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(1) came to my office and asked me if I would talk to  
(2) Gary Fiser. I agreed, and he went back and brought  
(3) Gary to the office. Gary told me that he had had a  
(4) DOL complaint previously and that as a part of that  
(5) complaint he had reached a settlement and was placed  
(6) in the position in Corporate Office, and that he  
(7) didn't agree with posting the job and that if we  
(8) posted the position, that he would file a second DOL  
(9) complaint.

(10) I told Gary that I would look at it, I  
(11) was not aware of this. We basically stopped the  
(12) process for a period of time. I contacted our Labor  
(13) Relations staff, they handle complaints, grievances  
(14) and DOL issues. I asked — I told them what was  
(15) going on and what Mr. Fiser had said to me and they  
(16) in turn contacted OGC to discuss what the settlement  
(17) was and how we should proceed.

(18) They came back to me shortly thereafter,  
(19) a day or so, and told me that they had talked to OGC  
(20) and that we should proceed as we were, that they'd  
(21) looked at the settlement and it didn't preclude, it  
(22) had no guarantee of a permanent position in the  
(23) organization.

(24) So after we got that feedback, I told  
(25) Mr. McGrath about it and we moved forward.

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[1] MR. STEIN: After meeting with him and  
[2] after you spoke with OGC and you got the  
[3] information, you proceeded with the posting and the  
[4] selection. What was the need to get back to  
[5] Mr. Fiser's management to discuss the threat of a  
[6] second DOL complaint?

[7] MR. BOYLES: I actually may have told Tom  
[8] McGrath before we even heard from OGC and from our  
[9] Legal Relations staff. I felt like he needed to  
[10] know what the issues were, we had a reorganization  
[11] going on, and I discussed this with him.

[12] MR. MARQUAND: I was contacted by Labor  
[13] Relations, who was asking whether or not the  
[14] previous settlement agreement guaranteed him a new  
[15] position and the question was basically, well, is he  
[16] guaranteed a position for life? I said, no, the  
[17] settlement agreement specifies a specific job he was  
[18] to be placed in.

[19] And I learned that after assuming the  
[20] Chemistry Program Manager position, that there had  
[21] been this subsequent reorganization and that he had  
[22] applied and been selected for a new position and  
[23] thus abandoned the previous position he had been  
[24] given in the settlement agreement. And the question  
[25] then was, does he have some right as a result of the

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[1] settlement agreement to a new position? And my  
[2] response back was no, the settlement agreement  
[3] provided the position he was to be given and if he  
[4] chose to abandon that or seek a different position  
[5] or if it was subsequent reorganization, there's no  
[6] guarantee of a position for life. And my advice was  
[7] that the right thing to do was to post the position  
[8] and to proceed with the selection without regard to  
[9] whether he filed the previous DOL complaint. He  
[10] should not have anything taken away from him and he  
[11] shouldn't have anything added to him by virtue of  
[12] the fact that he filed a complaint. You know, we  
[13] don't want to be unfair to him or unfair to anyone  
[14] else by virtue of the fact that he filed a DOL  
[15] complaint.

[16] MR. DAMBLY: Let me ask a question. Your  
[17] use of the term "abandoned the prior position that  
[18] he got," it's my understanding that position was  
[19] eliminated and he was forced to compete for a new  
[20] position.

[21] MR. MARQUAND: That's correct, and at the  
[22] time he chose not — I mean it's interesting that  
[23] when he decided to file a complaint in '96 and say  
[24] you're eliminating the position, eliminating my  
[25] position and that's unfair and I'm going to go file

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[1] a Department of Labor complaint, but in '94 when  
[2] they eliminated the Chemistry Program Manager and  
[3] combined to make it Chemistry and Environmental, he  
[4] did not choose at that time to say that's unfair.  
[5] He didn't choose —

[6] MR. DAMBLY: Of course. He got that job.

[7] MR. MARQUAND: But he didn't know ahead  
[8] of time. In this case before they even posted the  
[9] job, he said I'm going to file a Department of Labor  
[10] complaint if you even post it.

[11] MS. BOLAND: Were there numbers being  
[12] eliminated in that '94 reorg?

[13] MR. MARQUAND: I don't know that.

[14] MS. BOLAND: I mean clearly we were going  
[15] from three to two in the '96 reorg.

[16] MR. MARQUAND: I don't know if ultimately  
[17] they eliminated anyone in that reorganization or  
[18] not. The three chemistry — the three individuals  
[19] who had Chemistry Program Manager jobs all were  
[20] successful in obtaining a position in '94, but I  
[21] don't know if other individuals lost theirs.

[22] I know that from '94 on we have had an  
[23] enormous number of employees leave through early  
[24] outs.

[25] MR. STEIN: Mr. MarQuand, there's a very

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[1] big difference between 1994 and '96 and it has to do  
[2] with the line supervision. In 1994 he was reporting  
[3] to different first and second line supervisors than  
[4] he was in 1996.

[5] MR. MARQUAND: As I understand, in '94  
[6] Mr. McArthur was on the Selection Review Panel that  
[7] made the selection and, in fact, was the selecting  
[8] manager for that job.

[9] MR. STEIN: But he wasn't reporting to  
[10] Mr. McArthur in 1994.

[11] MR. MARQUAND: I don't recall who he was  
[12] reporting to, because at some time in '94 McArthur  
[13] was made the RadCon manager. But as I said,  
[14] Mr. McArthur was on that Selection Review Board and  
[15] was a selecting official in 1994 and was responsible  
[16] for selecting him.

[17] MS. BOLAND: Did I understand you to say,  
[18] Mr. Boyles, that you were not aware of Mr. Fiser's  
[19] DOL complaint until Mr. Easley came to you?

[20] MR. BOYLES: The previous?

[21] MS. BOLAND: The '93 complaint? Or when  
[22] was the first time you became aware of that?

[23] MR. BOYLES: I don't know if I knew  
[24] before. In Human Resources oftentimes we are  
[25] aware. I don't know if that was the first time I