

1 JUDGE YOUNG: Well, I think it's -- it's right
2 here in front of us in one of the -- in one of the exhibits.
3 So, I mean...

4 MR. MARQUAND: Raises questions; yes.

5 JUDGE YOUNG: One thing I would like to clarify
6 before we break, and that is you said that if they -- if
7 there was an attempt by management to reorganize and change
8 -- change -- you know, create new position descriptions a
9 month afterwards, that you and your staff would probably
10 look at that with heightened scrutiny, and you might -- it
11 follows from that, it seems like you might be forced to say
12 to management, "Look, you can't do this because it
13 doesn't..."

14 THE WITNESS: Doesn't smell good.

15 JUDGE YOUNG: Who said that? Okay, yeah, right.
16 It doesn't meet the smell test. I wasn't going to say that,
17 but...

18 THE WITNESS: Yeah, okay.

19 JUDGE YOUNG: Okay, so -- so obviously you and
20 your staff are sometimes put in a difficult position, it
21 sounds like.

22 THE WITNESS: Yes.

23 JUDGE YOUNG: So Mr. Dambly asked, well, what if -
24 - what would -- what would happen -- or he asked about if a
25 year later Mr. McGrath had wanted to take environmental out

1 or put it back in, create new position descriptions, you
2 know, at what point would you -- does your -- do you have
3 heightened scrutiny or at what point does -- does that
4 scrutiny come down to a level of just treating it like any
5 other reorganization?

6 THE WITNESS: From my perspective, and I give you
7 an example, that, you know, if someone has filed a -- a
8 previous DOL complaint, you know, I'll take a look at how
9 much they were awarded in a base comp review, and I'll take
10 a look to see...

11 JUDGE YOUNG: In a base comp review? What's that?

12 THE WITNESS: In a -- in a -- if we gave them
13 money for performance. You know, we're -- we're going
14 through the end of the year and we're making salary
15 adjustments. I -- I would go through and take a look at
16 anybody -- you know, who the folks who had filed complaints
17 before, and kind of what their status was, and how much they
18 were given, and what their rating was. And if I wasn't
19 satisfied with that, you know, I'd go ask some questions
20 about that. My boss had a sensitivity to that. If Mr.
21 McGrath would have come to us in a year and said, "You know,
22 I'm going to..."

23 JUDGE YOUNG: Your boss, Mr. Kingsley?

24 THE WITNESS: Mr. Kingsley.

25 If Mr. McGrath would have come back to me in a

1 year and said that, you know, "Hey, we're going to put these
2 two back together and I want to post all these jobs," and
3 all that, I would have gone to my boss and say, "You know,
4 we're going to investigate this. We're going to see what's
5 going on with it. I'm going to keep you posted on it."

6 He may have said to me, you know, "We're not going
7 to go do this. I'll look into this. We'll check into it."
8 But, you know, I would have had a pretty heightened sense of
9 awareness on this issue if anything would have occurred.

10 JUDGE YOUNG: Well, did you ever have any doubts
11 about the reorganization that took place in 1996, given that
12 a few years before the chemistry manager position did not
13 have environmental in it, and then environmental was added,
14 and then now it was being taken out?

15 THE WITNESS: I guess I didn't in that one because
16 I'd -- I'd been in -- you know, not only being as -- as just
17 the HR person, you know, I -- I sat at the table with the
18 chief nuclear officer and his other direct reports. I knew
19 where there -- there were problems in maintenance at
20 Sequoyah, or if there were -- in terms of performance. I
21 knew there were issues regarding we felt like we had lost
22 some focus on the environmental issues. And basically, you
23 know, we still had some chemistry problems, and there was
24 some discussion about was this kind of diluting the
25 chemistry folks' perspective and focus on what we needed

1 them on. And, you know, maybe having one -- asking a person
2 to go from BWR to a PWR when they may not have all that
3 expertise and the technology's different.

4 So I felt comfortable, from that standpoint, that
5 it was a business-driven decision and not a "out to get you"
6 decision, so to speak.

7 JUDGE YOUNG: Okay. Thank you.

8 BY MR. DAMBLY:

9 Q In that regard, in 1996 there's been testimony
10 that in the reorganization of the ops support organization
11 under Mr. McGrath, did it strike you as odd that not a
12 single person, out of whatever the 100-and-some people that
13 were in that organization, was doing the same job before and
14 after the reorg, except for Dr. McArthur, who was put in
15 that other position?

16 MR. MARQUAND: Objection, that's a
17 mischaracterization. Hasn't been any testimony to support
18 that.

19 MR. DAMBLY: Yes, there has. I've asked Mr.
20 Easley, I'm sure, and I think we asked Mr. McGrath, but I'm
21 not positive. Mr. Easley said there were no positions
22 rolled over, nobody went according to seniority. All of
23 them were posted, except McArthur's.

24 JUDGE YOUNG: If that's true...

25 THE WITNESS: I don't -- I don't know.

1 Q Well, if it's true, does that strike you -- is
2 that the normal practice, that if you reorganize an
3 organization, nobody's doing a similar function? Strike you
4 as odd?

5 A Well, you know, I did it in my human resource
6 organization, and I think there were, you know, maybe one or
7 two only that were carried over to the next organization. I
8 mean, you know, it can happen.

9 Q And if you write it that way, you avoid the messy
10 old RIF regs.

11 JUDGE YOUNG: Messy old what?

12 THE WITNESS: Is that a question?

13 MR. DAMBLY: RIF regs.

14 THE WITNESS: Is that a question?

15 MR. DAMBLY: Go ahead. Yes.

16 JUDGE YOUNG: Race?

17 MR. DAMBLY: Regs. The RIF regs.

18 JUDGE YOUNG: Regs.

19 BY MR. DAMBLY:

20 Q If you go ahead and just change the PDs, you get
21 to pick who you want to keep and who goes out the door.

22 A I don't agree with that; no.

23 Q Well, you do get to make the choices. You make
24 selections on who stays. You're not bound to follow the
25 regs, which will tell you who stays, if you just change the

1 PDs sufficiently.

2 A If you create new positions and we follow our
3 interpretation of the OPM regulations, you can be in a
4 situation that you -- you post and select positions. You
5 can also be in a position where you have people who have
6 rights to positions.

7 CHAIRMAN BECHHOEFER: You know, I have a follow-
8 up, which was really a follow-up to a question I asked
9 before, and that is percentage of functions between
10 positions and any guidelines there might be if positions
11 differ by -- well, let me use now the number 35 percent,
12 because that has actually -- has been referenced earlier in
13 this case, actually by Mr. Easley, who testified that if
14 position descriptions were more -- the way I understood it,
15 had more than a 35 percent difference, the new position had
16 to be advertised. But that less than that, you could carry
17 over a -- an employee into that position. And what I'm
18 referring to was actually on Page 1201 of the transcript.

19 THE WITNESS: Of Mr. Easley's transcript?

20 CHAIRMAN BECHHOEFER: Well, it happened -- it's
21 Page 1201 of the transcript of the proceeding, which
22 happened to be Mr. Easley.

23 And -- and from lines -- well, it was actually at
24 Line 12, the specific figure. Then later on there was a
25 statement that there were guidelines to this effect. And

1 that was what I was trying to establish.

2 THE WITNESS: I'm not...

3 CHAIRMAN BECHHOEFER: Mr. Easley said there were
4 some guidelines, and I wondered what they were. And I don't
5 think we have a copy, or at least a paper copy of the...

6 MR. MARQUAND: I think those instructions are part
7 of one of the tentative -- one of the proposed TVA exhibits,
8 includes TVA's specific instructions on the RIFs. They're
9 not in evidence yet, but one of the later witnesses will
10 testify to them.

11 MR. DAMBLY: That will be testified to today, I'm
12 sure.

13 CHAIRMAN BECHHOEFER: Well, what I was wondering
14 is, is that -- I was wondering about evidence of that 35
15 percent guideline. And, again, that's referred to on Page
16 1201, and it was referred to several times later the same
17 day. And Mr. Easley did mention that there were guidelines
18 to that effect. And, but he didn't have any available at
19 the time to put into evidence. And I was just wondering
20 about that.

21 BY MR. DAMBLY:

22 Q To your knowledge, Mr. Reynolds, are there any TVA
23 regs, guidelines that say 35 percent?

24 A I'm not aware of any.

25 MR. DAMBLY: And I think you'll hear from Mr.

1 Boyles he had a different -- it was along the majority of
2 the duties, I forget, or a preponderance, I think is the
3 term he'll be using.

4 JUDGE YOUNG: Just...

5 CHAIRMAN BECHHOEFER: I see. But the 35 percent
6 is in our record and...

7 MR. MARQUAND: It's in...

8 MR. DAMBLY: Right. It's what Mr. Easley said.

9 CHAIRMAN BECHHOEFER: Yeah. Right. Right.

10 MR. MARQUAND: Mr. Easley said, but counsel's
11 correct. I don't think I've ever seen a 35 percent number
12 in either OPM's regulations or TVA's instructions.

13 CHAIRMAN BECHHOEFER: I see. So this is...

14 MR. MARQUAND: I think that was his rule of thumb.

15 CHAIRMAN BECHHOEFER: I see. Okay.

16 JUDGE YOUNG: Just before we break, and actually
17 this sort of has something to do with the statement he made
18 about relevance earlier, Mr. Dambly. When you -- when you
19 said you made that offer to Mr. Fiser to -- you know, to
20 reduce your liability, potential liability, did you feel
21 that you had some potential liability in terms of -- of his
22 having been discriminated against?

23 THE WITNESS: No. I felt that -- I thought I had
24 a -- you know, I thought he had been treated fairly. I had
25 looked at from the standpoint that, you know, Mr. Fiser,

1 when I put him in that chemistry program manager position in
2 the '93 time frame to settle that initial complaint, and
3 then I looked at that when we combined chemistry and
4 environmental, that a decision was made to post those
5 positions, and Mr. Fiser had been raising the issues over
6 that. And then I looked at the decision to separate
7 chemistry and environmental and -- and follow the same
8 process that we had when we combined them, and we took them
9 apart, that I felt I had a good case or that I didn't --
10 hadn't treated him improperly.

11 And my issue was to -- you know, if I could have
12 made a case go away, I would have put it in as a settlement
13 offer to him, if I thought I had a bad case, and I'd said,
14 you know, "Here it is and here's a settlement offer." I
15 essentially said, you know, hey, here's a way for me -- I
16 thought I could limit my liability in the complaint. So
17 that's what I did.

18 JUDGE YOUNG: Okay. Anything more before...

19 CHAIRMAN BECHHOEFER: Anything more before we
20 break? Is an hour going to be enough? Let's aim for an
21 hour, 1:30.

22 (Whereupon, a luncheon recess was taken at
23 12:32 p.m., the hearing to resume at 1:30 p.m.)

AFTERNOON SESSION

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CHAIRMAN BECHHOEFER: Back on the record.

BY MR. DAMBLY:

Q Mr. Reynolds, you indicated that the position of Sequoyah chemistry manager was not eliminated back in '93; do you recall that?

A That's my understanding, yes, that it was not to be eliminated.

Q Now are you aware of a situation in '93 where Mr. Kent talked to Mr. Fiser when Fiser was in the ETP, about coming back to that position?

A I'm not aware of that situation. I've heard about it, but I'm not aware of it.

Q If Mr. Fiser was reduced from a position that wasn't eliminated and it was his position description of record, why didn't he have rights just to go back into that position?

A I really don't know. You know, that position had changed its reporting relationship and things like that. I mean without looking at it, I don't know the particulars of that situation. I know that the reporting relationship had changed, I don't know what else had changed in that situation.

Q In '93, there was a standardization of the organizations at the plant, is that correct?

1 A Yeah, we were moving to -- yes, we were trying to
2 standardize the organizations from Sequoyah to Watts Bar to
3 Browns Ferry, so that the structure would look the same,
4 same reporting relationship, same job titles, all that
5 stuff.

6 Q And when they put the standardized plan into
7 effect for Browns Ferry, do you recall what happened to Mr.
8 Sabados, who was the chemistry superintendent there?

9 A No, I do not.

10 Q Would it surprise you to know that he stayed in
11 place and went from a 9 to a 10?

12 A I'm not familiar with the situation, so --

13 Q You talked this morning about -- and I think Judge
14 Young asked you some follow up questions -- that somehow
15 Fiser's potential DOL complaint in '96 had something to do
16 with looking at McArthur's rights to the radcon chemistry
17 position.

18 A That's what I discussed. I think what triggered me
19 to look at McArthur -- and I don't remember the timing of
20 when I spoke with Mr. Fiser, I know Mr. Fiser was in the
21 organization, we had some issues going on. Also I was
22 dealing with a senior -- Mr. McArthur had been a senior
23 manager and that raised my sensitivity to that issue.

24 Q Do you know if the issue was brought by Mr.
25 McGrath to Mr. Boyles and that's how it got started?

1 A I don't know for sure. You know, I know Mr.
2 Boyles came to me about it, that they had an issue and they
3 needed to work through it.

4 Q Did Mr. Easley ever tell you he thought that that
5 position, the radcon chemistry manager position, should be
6 posted?

7 A No, he did not.

8 CHAIRMAN BECHHOEFER: Did any of your advisors at
9 the time give you that recommendation to post that position?

10 THE WITNESS: No. Mr. Boyles and Mr. Easley met
11 with me on that issue and their recommendation to me at that
12 time was that they felt that Mr. McArthur had rights to that
13 position as radcon chemistry manager.

14 BY MR. DAMBLY:

15 Q Now we looked this morning at Staff Exhibit 99,
16 which is the employee sequence or whatever from McArthur
17 that had all those lines for --

18 A Yes.

19 Q And it indicates that in 1996 there was a
20 promotion from 11 to senior, do you recall that?

21 A Yes.

22 Q In 1996, could you do a non-competitive promotion
23 from a grade 11 to a senior, PG-senior without posting?

24 A Potentially yes.

25 Q And how would you do that?

1 A You know, the first question you have to ask is is
2 it a vacant position. And in this determination, we didn't
3 believe it was a vacant position, that he had rights to that
4 position. So we didn't post it. I wouldn't post someone on
5 a temporary assignment or a rotation or those kind of
6 things, but if I had a vacant position, I think the guidance
7 at that time in the business practice was that we posted 1
8 through senior level positions.

9 Q So when Mr. Sorrell left that job, it wasn't -- a
10 vacancy wasn't created?

11 A I don't remember the timing of Mr. Sorrell
12 leaving. I know that when we went through the organization
13 and it was being restructured, it was determined that it
14 wasn't a vacant position because Mr. McArthur had rights to
15 it through the reorganization.

16 Q So if he had rights to it, was he occupying that
17 job when Mr. Sorrell was occupying that job? Was it double-
18 encumbered?

19 A I think Mr. Sorrell was in there in an acting role
20 at that point in time.

21 Q And why would you have an acting person doing a
22 job that someone else was apparently -- it was their
23 permanent position?

24 A Because at that point in time, Mr. McArthur was
25 the radcon manager.

1 Q And that was a grade 11 position?

2 A I don't know.

3 JUDGE YOUNG: In what capacity was he the radcon
4 manager, temporary or rotational or permanent or --

5 THE WITNESS: I don't know what the exact status
6 was in terms of was he in a permanent tenure or on a
7 temporary tenure or what he was at that time.

8 JUDGE YOUNG: Well, if he was permanent, would
9 that make a difference on whether he could skip back to a
10 job before that, a technical manager?

11 THE WITNESS: In my opinion, no, because I would
12 have had to go on his position description of record
13 contained in his personal history record.

14 BY MR. DAMBLY:

15 Q And just to follow up on that question, because I
16 was going to get to it; under TVA practice, if an employee
17 is in position X, okay?

18 A Uh-huh.

19 Q And position Y is created, there's a vacancy
20 posted or whatever, they apply for it, they go into position
21 Y, and subsequently position Z is created, which is similar
22 -- interchangeable if you will -- with position X. Do you
23 get rights to go back to a job that you formerly held, if
24 you took a job in between?

25 A You know, if you have been issued a new position

1 description for Y and you have -- let me do my math here --
2 if you're issued a new position description for Y and then Z
3 is created, you know, you'd go through the same evaluation
4 process, you know, how much -- were the jobs, a majority of
5 the activities carried over to Z and you'd make that
6 determination again, I'd have to go through that
7 determination again.

8 Q You'd make that determination between Y and Z, not
9 X and Z?

10 A Well, again, it depends on what the position
11 description of record would be.

12 Q Okay, assuming there was a position description
13 for job Y.

14 A Then it would be based off of position Y.

15 JUDGE YOUNG: If a person is officially in a
16 position, what would be the reason that they would not have
17 -- or could there ever be a situation where a person was
18 officially in one position but never got a job -- I'm
19 sorry, a position description on that position that they
20 were holding?

21 THE WITNESS: It could have happened. It is not
22 something that you like to have happen, but you know, I
23 think this is an example of where it did happen.

24 JUDGE YOUNG: So, it's almost like an accident
25 that someone never got around to doing a position

1 description?

2 THE WITNESS: I think I described it earlier as an
3 administrative error.

4 JUDGE YOUNG: And so if there's an administrative
5 error, then the party gets the benefit of that, if somebody
6 has forgotten to do a position description on their interim
7 job.

8 THE WITNESS: As in the case with Mr. McArthur,
9 you know, as a result of that administrative error of him
10 not being issued that, when you go and you have a situation
11 that may create a reduction in force, yeah, they would get
12 some benefit out of an administrative error if that
13 happened. You have to look at these things and be fair to
14 people about what's the appropriate thing and what can
15 happen in a proceeding that he may be engaged in.

16 BY MR. DAMBLY:

17 Q And in 1993, Mr. Fiser had the situation you're
18 talking about where he didn't have a position description
19 for the corporate chemistry manager position he was in.

20 A That is correct.

21 Q And in that case, he didn't get the benefit of the
22 error.

23 A I think he got the benefit of the error and then
24 when we went in and saw that there had been an error made,
25 we went and resolved his case with him. I think we treated

1 him fairly to try to resolve that issue.

2 Q And he was in the Sequoyah chemistry
3 superintendent position and the error would have put him
4 back in the chemistry superintendent position, which was a
5 PG-10 and not the PG-8 that you offered him.

6 A I think that we -- it was a PG-9 that he was --

7 Q That was upgraded as part of the reorganization
8 and Mr. Sabados was upgraded. That was testified to
9 yesterday.

10 A Okay.

11 MR. MARQUAND: Is counsel testifying or is he
12 going to let the witness answer the questions?

13 MR. DAMBLY: Well, he said he didn't know.

14 MR. MARQUAND: Well, after you cut him off and
15 told him what the answer ought to be.

16 JUDGE YOUNG: Did you have any further
17 explanation?

18 THE WITNESS: No.

19 BY MR. DAMBLY:

20 Q Okay, let's take a look at Joint Exhibit 63. Do
21 you recognize that document?

22 A Yes, I do, it's business practice 102, nuclear
23 power business practice, management and specialist selection
24 process.

25 Q And you're the one that issued it?

1 A Yes, I approved it to send it out.

2 Q And this was a mandatory requirement for
3 positions?

4 A This was our business practice on how we would
5 treat vacant positions in terms of the process that we would
6 use and go through, yes.

7 Q But it was a required --

8 A Yes, it was a required position for us to do.

9 Q It wasn't sort of guidance, you didn't have a
10 choice to follow this one or do something different?

11 A No. This was the way we wanted selections done in
12 the organization of vacant positions.

13 Q And it required posting of all vacant permanent
14 positions from PG-1 through PG-senior?

15 A Yes, it did, in 3.1.A.

16 Q And your reason that this didn't apply -- the
17 posting requirements didn't apply to the rad chem manager
18 position when McArthur went from an 11 to a senior was that
19 there wasn't a vacancy.

20 A True, I don't believe there was a vacant position.

21 Q You're aware in reduction in force situations that
22 you're governed by OPM regulations, people's rights to
23 positions, their retention standing, whatever, is based on
24 their official position.

25 A I think the TVA guidance document talks about it's

1 the official position description of record or something
2 like that.

3 Q But you understand you're determining rights based
4 on what an employee's job is at that point?

5 A My guidance and my interpretation is based on -- I
6 determine competitive levels based on the employee's
7 position description of record.

8 Q Right. And in a normal situation -- as you said,
9 it's an unusual situation otherwise -- people's position
10 description of record happens to be the position they're in.

11 A Typically, yes.

12 Q Did anybody tell you, from OGC or otherwise, that
13 you could determine employees' rights in a downsizing RIF by
14 using a document that you knew was not the position
15 description for the position they occupied?

16 A I want to make sure I understand what you're
17 asking.

18 Q What I'm asking is, you know employee X is in
19 position X. You look in his PHR or wherever you look, and
20 you see he's got a position description for position A,
21 which he's not in. Did somebody tell you you have to use
22 the position description for a job the person is not in to
23 determine what rights they have in a reduction in force?

24 A Yes, that's the interpretation I've been given.

25 Q From who?

1 A From the general counsel?

2 Q That general counsel?

3 A I mean there were guidelines given out, there were
4 some procedures in the -- I think they called them the
5 yellow and green books or gold and green books -- that
6 talked about using the position description of record.

7 Q I appreciate it says use the position description
8 of record, my question is did anybody tell you in a specific
9 case where the position description of record was clearly
10 for a position that the person wasn't in, you still have to
11 do that, even though you knew it was wrong.

12 A I guess my answer to that is yes.

13 Q And if you would turn to Joint 65.

14 CHAIRMAN BECHHOEFER: While we're still at Joint
15 63 -- and maybe it's on the other one too, but what is the
16 Nuclear Power Selection Guide referenced in the introductory
17 paragraph?

18 THE WITNESS: I'm not sure I can answer that
19 question for you. I mean, there may have been some
20 documents associated with it, but off the top of my head, I
21 don't remember what it would have been.

22 CHAIRMAN BECHHOEFER: I just wanted it for
23 clarification of what this document meant.

24 BY MR. DAMBLY:

25 Q And I guess if you would go to I guess two

1 documents over, to Joint Exhibit 65, are these the reduction
2 in force and layoff procedures, personnel manual instruction
3 that are applicable to TVA for RIFs back in the '96 time
4 frame?

5 A Yeah, these would have been applicable at that
6 point in time.

7 Q And if you would look on page 14, which down at
8 the bottom talks about competitive levels.

9 A Yes.

10 Q And if you follow over onto page 15, the top
11 paragraph there says, "In setting competitive levels,
12 determinations are not based on the personal qualifications
13 or performance levels of individual employees. The
14 determinations must be made solely on the content of
15 accurate, up-to-date job descriptions."

16 Now if that's a procedure you're required to
17 follow, how do you use a known inaccurate, not up-to-date
18 position description to determine competitive levels?

19 A Before we go into a reduction in force, I don't go
20 out and do an audit of job descriptions to make everybody --
21 to see if everything is up to date. A manager and an
22 employee have a responsibility to ensure that they have
23 accurate and up-to-date job descriptions also.

24 Q I understand that that's a requirement for the
25 manager and employee. I'm asking you when you come across

1 one like McArthur's where you know that's not in accordance
2 with the procedures, who told you you don't follow your
3 procedures? Who told you had to use the inaccurate, not up-
4 to-date job description?

5 A We were -- based on -- our guidance has been that
6 we use the job description of record.

7 Q And that guidance -- I mean, this is the document
8 that controls how TVA conducts RIFs, right?

9 A That's correct.

10 Q And in that document, it says solely on accurate,
11 up-to-date job descriptions.

12 JUDGE YOUNG: Which section are you referring to?

13 MR. MARQUAND: On the top of page 15.

14 MR. DAMBLY: On page 15, the top of the page, the
15 first paragraph.

16 JUDGE YOUNG: Thank you.

17 BY MR. DAMBLY

18 Q So this is the codification of the rules that you
19 follow when you conduct RIFs, is that correct?

20 A That is correct.

21 Q And this would have been approved by the General
22 Counsel's Office.

23 A I assume so, yes.

24 Q And it doesn't say the determinations must be
25 based solely on whatever PD you find in the person's PHR.

1 A No, it does not, but that's the guidance we've
2 been given.

3 Q Does that guidance sound consistent with the
4 written word that's down here?

5 A In determining competitive level, you look at the
6 job descriptions of record.

7 JUDGE YOUNG: What's PHR?

8 MR. DAMBLY: Personal history record.

9 JUDGE YOUNG: Okay, thank you.

10 MR. DAMBLY: It's somewhat analogous to an OPF.

11 JUDGE YOUNG: I remember now.

12 MR. DAMBLY: But not entirely.

13 CHAIRMAN BECHHOEFER: One further explanation of
14 this document. What is an employee on dual classification,
15 technically?

16 THE WITNESS: Is that page 14 or 15, Your Honor?

17 CHAIRMAN BECHHOEFER: 15 -- I'm sorry.

18 JUDGE COLE: About the middle of the page, just
19 above the middle of the page.

20 JUDGE YOUNG: Right after the references.

21 THE WITNESS: You may have -- I believe -- you may
22 have an employee who is, what we call a dual rate foreman
23 that occasionally you may have an electrician and when his
24 foreman is absent, we put in a classification called dual
25 rate foreman -- so that when the regular foreman is absent,

1 we put this dual rate up to supervise the crew. But what
2 this is talking about, if they're on a dual classification,
3 then they have to return back, so if we had a reduction in
4 force, he'd have the -- he wouldn't be compared with the
5 foreman, he'd go back to his classification of electrician.

6 CHAIRMAN BECHHOEFER: I see. Now that doesn't
7 apply to employees who are being circulated --

8 JUDGE YOUNG: Rotated?

9 CHAIRMAN BECHHOEFER: Yeah, that's the right word.

10 THE WITNESS: I do not believe so.

11 CHAIRMAN BECHHOEFER: I see.

12 BY MR. DAMBLY:

13 Q Now in terms of your business practice, Joint 63,
14 there is no differentiation in what latitude you have for
15 PG-senior positions than there are for 1 through 11?

16 A That's true. The document says that "All vacant,
17 permanent, i.e., duration one year or longer, PG-1 through
18 senior management and specialist positions must be posted
19 for not less than seven working days TVA-wide prior to being
20 filled." That's correct.

21 Q Now you said that's what the document said. Is it
22 a true statement as well that this document controls, that
23 the same rules apply for PG-senior position as do for 11 or
24 below?

25 A Yes. I mean we've had situations where we may

1 have rotated someone into a senior level position or we've
2 had a few instances where we may have created a waiver based
3 on -- to place maybe a candidate who was in the services
4 organization or ETP into a position, but typically our
5 practice was to post all PG-1 through senior levels.

6 JUDGE YOUNG: Where were you just reading from?

7 THE WITNESS: Excuse me, ma'am?

8 JUDGE YOUNG: Where were you just reading from?

9 THE WITNESS: I'm reading from Exhibit 63.

10 MR. DAMBLY: Joint Exhibit 63.

11 THE WITNESS: The first page of that, it would be
12 3.1 Advertising Management and Specialist Positions, right
13 under Instructions. I'm on Exhibit 63.

14 JUDGE YOUNG: And which section?

15 THE WITNESS: 3.1, 3.1.A specifically.

16 JUDGE YOUNG: The copy I have is not very good.
17 Wait a minute, I'm on the wrong exhibit -- sorry. Okay,
18 thank you.

19 CHAIRMAN BECHHOEFER: 3.1.A.

20 JUDGE YOUNG: Gotcha.

21 BY MR. DAMBLY:

22 Q And is there any difference when you're making
23 interchangeability determinations or looking at one job to
24 see if it's similar enough to the other, is there any
25 difference in how you do that for managers as how you do it

1 -- people managers versus non-people managers?

2 A I'm not sure I understand that question.

3 Q Do you have more latitude -- when you're
4 evaluating, do you apply different rules, you know, whether
5 it's preponderance or 35 percent, whatever rule of thumb
6 people are using that day. Is there a different rule that
7 applies when it's a manager in charge of individuals --
8 somebody who's got employee supervision management as
9 opposed to, you know, a chemistry program manager.

10 A No.

11 CHAIRMAN BECHHOEFER: Does the statement under
12 Joint Exhibit 63, paragraph 3.1.D, as in dog, where it
13 instructs that a position be posted or that someone pursue
14 other recruiting methods, is that an exception to the
15 posting requirements? And if so, what standards do you use
16 or may be used?

17 THE WITNESS: My interpretation of that is that
18 you can post the position -- what I might do is have a -- I
19 could have a manager of labor relations in my organization
20 today and I may choose to post that position and also at the
21 same time execute an external search to see what's out there
22 in the industry of someone I could do. So I think what it's
23 talking about is working a dual path on how you would go
24 about to fill that position. You survey to see if you have
25 qualified internal applicants, but also at the same time

1 doing an external search to see what's out in the industry
2 also.

3 CHAIRMAN BECHHOEFER: Right. But the paragraph
4 does say "and/or". Supposing you use "or", what does that
5 mean, is that an exception to posting requirements?

6 THE WITNESS: It could be that you might fill it
7 on a temporary basis. It could mean that you would see a
8 waiver to put an individual into the position from somebody
9 from the services organization. I mean those are
10 essentially the options available to you.

11 CHAIRMAN BECHHOEFER: I see, but these are -- from
12 this description, it indicates to me that you may not have
13 to post each position, which otherwise would require
14 posting, it seems that there are some exceptions that may be
15 applied administratively at least and you may just want to
16 clarify that. Because would this ever be used to avoid a
17 requirement for posting, if you determined that an
18 individual was qualified and should be placed in the
19 position and you decided not to post and to just speak to
20 the person personally, that's a different way of advertising
21 the availability perhaps, assuming you knew something of his
22 qualifications. Could you avoid posting under that
23 paragraph, sentence, guideline, whatever you may call it?

24 THE WITNESS: You could, but you'd have to obtain
25 a waiver as to why you were waiving the posting requirements

1 for that. I mean you could have someone who could be
2 uniquely qualified for a position -- I've got a situation
3 like that going on today in that I have some people who are
4 going to go down and help us work or do the completion of
5 Browns Ferry 1 when we begin that restart, who have worked
6 previously at Browns Ferry 1, have worked previously at the
7 Watts Bar startup, have a unique set of skills and
8 qualifications that nobody else in the organization has and
9 we're going through the process of getting waivers to place
10 them in those positions. So the waiver process is the only
11 way you could go through that unless you went through and
12 posted it and, you know, got all the internal candidates and
13 nobody was qualified for that position and then you found an
14 external candidate to do that.

15 Does that answer your question, Your Honor?

16 CHAIRMAN BECHHOEFER: Well, I'm just trying to get
17 some feel as to how perhaps positions might not have to be
18 posted if they arise and otherwise would fall in the general
19 statement defining which positions must be posted, which I
20 understand, for instance, change grade levels on occasion,
21 there are several groups of grade levels that were covered
22 by the posting requirement, and that was expanded
23 apparently, but I wondered whether this was a method of
24 avoiding the posting requirements for one reason or another,
25 perhaps administrative convenience.

1 THE WITNESS: No. I think we typically -- I mean
2 I don't know how many we do, but we do a large number of
3 postings every year, probably in the thousands, I would bet,
4 and you know, only through that waiver process will we put
5 someone into one of these positions, unless it's a temporary
6 or a rotational assignment.

7 CHAIRMAN BECHHOEFER: Well, I'm not talking about
8 that.

9 THE WITNESS: But, you know, we have to have a
10 waiver that's submitted through the organization and I have
11 to submit to the corporate organization for them to sign off
12 on.

13 CHAIRMAN BECHHOEFER: Are there many of them?

14 THE WITNESS: I maybe see five or ten a year.

15 CHAIRMAN BECHHOEFER: I see.

16 THE WITNESS: And, you know, it's typically if we
17 have an opportunity where we have a minority or a female or
18 if we have an employee who's been in the services
19 organization or an employee who's been displaced or it's
20 kind of a unique situation like I described with the Browns
21 Ferry 1 restart.

22 CHAIRMAN BECHHOEFER: I see. Well, I'm just
23 trying to get a feel about how these exceptions to posting,
24 waivers from posting requirements may occur or have occurred
25 in your organization.

1 THE WITNESS: Okay.

2 BY MR. DAMBLY:

3 Q If you would turn -- maybe we can clarify that --
4 I've given you book 8 of 8 of the staff exhibits and if we
5 could start with Staff Exhibit 152.

6 A Okay.

7 Q Are you familiar with this document?

8 A Can you give me a moment to look over it?

9 Q Sure.

10 (The witness reviews a document.)

11 A Yes, I'm familiar with this document.

12 Q Okay, and this document -- who is John Long?

13 A John Long at that time was a vice president for
14 employee work life, he's currently the senior vice president
15 of human resources for TVA.

16 Q And this -- I'm not sure what it's called because
17 it doesn't have the business practice number, but this
18 required that all vacancies from PG-1 through PG-senior be
19 announced TVA-wide, subject only -- and then they've got
20 waiver requirements under the provision; is that correct?

21 A That's correct.

22 Q And the waiver provisions generally speak to
23 people either in ETP or women and minorities, is that
24 accurate?

25 A It goes on to say where the filing the position

1 settles or resolves a formal complaint of appeal, like Mr.
2 Fiser's case would have been in 1993 or where it's impacted
3 by reorganizations with emphasis on minorities or females,
4 or the positions require unique qualifications, highly
5 technical, specialized skills like I described in the Browns
6 Ferry 1 situation.

7 Q Okay. And subsequently, if you'd turn to 153, do
8 you recognize that document?

9 A No, I do not.

10 Q Are you familiar with the Wes Motley case?

11 A Yes, I am.

12 Q What was that?

13 A I don't know that I can tell you the exact details
14 on it, but it was a -- as I understand it, it was a class
15 action suit filed by Mr. Wes Motley and others and I do not
16 know what the specific issue is but it revolved around the
17 promotional opportunities and advancement of women and
18 minorities in the TVA organization and TVA, once the suit
19 was filed, went through some discussion for the attorneys
20 for Mr Motley. One of the requirements that came out of
21 that was I think originally to post 1 through 8 and then it
22 moved to 1 through senior positions.

23 Q And if you look at Staff Exhibit 154, which is the
24 next one, and I believe you're shown as a cc on this one.

25 A Yes, I am.

1 Q That one just revised the waiver process, but
2 continued everything else from the March 23, 1993 memo; is
3 that correct?

4 A This one -- this just talks about a change to the
5 employees in the Career Skills Center and it says "All other
6 aspects of the approval process as outline in the March 23
7 memorandum remain unchanged."

8 Q And the March 23, that was the one we talked about
9 first, 152, that you were familiar with?

10 A Yes.

11 Q And both the March 23 and then the July 7, 1994,
12 which is 154, the one on July 7, 1994 were signed by Eva D.
13 Hall, Senior Vice President of Human Resources?

14 A Yes, it was.

15 Q Was she in a position superior to yours?

16 A She was the Senior Vice President of Human
17 Resources for TVA and I just worked for the nuclear
18 organization. She had a higher level position.

19 Q Higher level position and she could make binding
20 policy for all -- both TVA non-nuclear and nuclear?

21 A She had the responsibility to set TVA policy and
22 programs, yes.

23 Q And this was issued subsequent to -- the 154,
24 which is dated July 7, 1994, is subsequent to what we looked
25 at a minute ago, your business practice 102, which was

1 issued in September of '93?

2 A Do you know what document that was?

3 Q It's Joint 63.

4 A Yes, that's correct.

5 Q So in terms of posting requirements and waiver
6 requirements, the Staff Exhibit 152 and 154 would dictate
7 what those were, even if they somehow were inconsistent -- I
8 don't know if they are -- with your business practice; is
9 that correct?

10 A That's correct.

11 MR. DAMBLY: And at this point, Staff would move
12 152 -- Staff 152 and 154 into evidence.

13 CHAIRMAN BECHHOEFER: 152 and '4?

14 MR. DAMBLY: And '4. He didn't know about '3.

15 CHAIRMAN BECHHOEFER: Pardon?

16 MR. DAMBLY: He was not aware of '3.

17 CHAIRMAN BECHHOEFER: Okay.

18 MR. MARQUAND: No objection to Exhibits 152 and
19 154.

20 CHAIRMAN BECHHOEFER: The Board will accept,
21 without objection, staff offer of Staff Exhibits 152 and
22 154.

23 (The documents, heretofore marked
24 as Staff Exhibits 152 and 154, were
25 received in evidence.)

1 CHAIRMAN BECHHOEFER: Would you re-explain -- you
2 mentioned briefly -- exactly what the Career Skills Center
3 employees would be?

4 THE WITNESS: I think it might have been a time
5 when we changed the name of ETP, the employee transition
6 program.

7 CHAIRMAN BECHHOEFER: Oh.

8 THE WITNESS: I think that's what it was. It's
9 just a different name for it at that point in time.

10 CHAIRMAN BECHHOEFER: I see. Well, I just saw the
11 words.

12 THE WITNESS: Yeah.

13 BY MR. DAMBLY:

14 Q Was there a reduction in force of everybody in the
15 ETP when you set up the Career Skills Program?

16 A I think we just transferred them over.

17 Q Oh, okay.

18 A They maintained their own competitive level.

19 Q With respect to the two exhibits that we just
20 talked about, 152 and 154, which had waivers applicable in
21 certain situations and when they're minorities is
22 prominently featured, did anybody ever tell you you couldn't
23 apply waivers for -- or couldn't approve waivers for women
24 and minorities because it'd be reverse discrimination?

25 A I've had that issue discussed with me.

1 Q Have waivers been approved for women and
2 minorities?

3 A Yes.

4 Q If you know, are PG-senior positions at TVA
5 covered by OPM regs? And I don't know, I'm just asking.
6 SES positions are not covered, I don't know if your seniors
7 are.

8 A I don't know if they are for sure or not.

9 JUDGE YOUNG: Are senior management the same as
10 SES?

11 MR. DAMBLY: No.

12 THE WITNESS: No.

13 MR. DAMBLY: SES is federal --

14 JUDGE YOUNG: I heard you say SES.

15 MR. DAMBLY: I was talking by parallel, senior
16 executives in the competitive were excepted service.

17 JUDGE YOUNG: Right.

18 MR. DAMBLY: But at TVA, they didn't adopt that
19 system, I just didn't know --

20 THE WITNESS: I couldn't tell you for sure.

21 BY MR. DAMBLY:

22 Q Have you ever conducted a RIF at the senior level?

23 A I don't know if we have or not.

24 Q Do senior level individuals -- they serve at the
25 pleasure of the Board or do they have rights?

1 A I have seen that statement contained in letters
2 before, that they're serving at the pleasure of the Board.

3 CHAIRMAN BECHHOEFER: Is there any differentiation
4 between what will be known as political appointments more or
5 less in the federal government area, senior executive
6 service, and employees who are in that area who are more or
7 less career employees or judged as career employees? Or
8 doesn't TVA have any differentiation?

9 MR. MARQUAND: As a matter of law under the TVA
10 Act, the only political appointees are the Board of
11 Directors and now the Inspector General. TVA precludes, by
12 law, any appointments other than that based on politics.

13 CHAIRMAN BECHHOEFER: Thank you.

14 MR. MARQUAND: Has to be merit and efficiency.

15 CHAIRMAN BECHHOEFER: I was just seeing if there
16 was any analogy in the types of SES appointments that other
17 government agencies have.

18 BY MR. DAMBLY:

19 Q Basically you set up your own personnel system and
20 it's not modeled on the OPM system, is that correct?

21 MR. MARQUAND: If he knows what the OPM system is.

22 A I'm not sure I know what the OPM system is. I'm
23 just -- this is my first exposure to the federal government,
24 so I can't draw those comparisons.

25 Q For your position as Vice President, if the Board

1 says we don't want you as a vice president any more, what
2 rights do you have?

3 (Laughter.)

4 CHAIRMAN BECHHOEFER: He took president instead.

5 THE WITNESS: I could negotiate a severance
6 package I guess.

7 MR. DAMBLY: Five days a week.

8 THE WITNESS: My understanding is that if a
9 decision is made on my position that they want to sever my
10 employment, you know, I really don't know what my rights
11 are. I'm not really too concerned about it, I mean -- do
12 you know something I don't?

13 (Laughter.)

14 MR. DAMBLY: Downsizing everywhere.

15 THE WITNESS: Okay, you never know.

16 BY MR. DAMBLY:

17 Q Do you recall a situation in '95 or '96, I'm not
18 sure exactly what the date is, but it might have been early
19 '96 prior to the reorganization of the radcon chemistry
20 group or the operations support group actually, there was a
21 question of Mr. Harvey, who was in the headquarters
22 chemistry organization, going to Sequoyah?

23 A Yes, I am aware of that. I know there was some
24 discussion, you know, through kind of one of my normal
25 briefings and I believe it was Mr. Boyles, that there was a

1 move afoot to try to move Mr. Harvey to the Sequoyah
2 organization and, as I understood it and was briefed, there
3 was no position -- you know, they didn't have head count for
4 the job and he was just going to move somebody out there and
5 we stopped that from happening because you just can't move
6 somebody out there and put them in this permanent position.
7 Yeah, I was briefed on the situation.

8 Q Okay.

9 JUDGE YOUNG: When you say "we", who is "we"? You
10 say "we stopped that from happening".

11 THE WITNESS: I'm speaking about the HR
12 organization in general, my staff.

13 JUDGE YOUNG: So HR was asked for its opinion on
14 that and you --

15 THE WITNESS: I don't remember the particulars
16 about how it came up, I know it came to one of my staff
17 member's attention. Mr. Boyles briefed me on the issue and
18 we got engaged in the situation that they just couldn't
19 allow -- you know, they just couldn't transfer somebody out
20 there into a position, that we -- HR -- was not going to let
21 that happen, because it wasn't appropriate.

22 JUDGE YOUNG: There was not a what?

23 THE WITNESS: There wasn't a position, he didn't
24 have the head count for the position; you know, from what
25 we, HR, had heard at that point in time, that they were just

1 going to move this person out there and put them into some
2 job and not go through the posting requirements or any of
3 the processes that you would go through. And my
4 organization got involved with that and, you know, went to
5 the management and said, you know, this is not the way we're
6 going to operate, we're not going to do this.

7 BY MR. DAMBLY:

8 Q Now you said you were told there wasn't a position
9 out there, a vacancy.

10 A I don't think there was a position or a head count
11 for the position. I mean we controlled things from the
12 standpoint that at that time for us to try to be
13 competitive, if that organization had a head count of 20
14 people, they didn't go above 20 people.

15 Q The question I have, within TVA, do you have
16 something analogous to what I guess the rest of the federal
17 service would call a lateral transfer, where a person in a
18 PG-8 position takes another PG-8 position and you can do
19 that non-competitively because it's not a promotion, as long
20 as they're qualified?

21 A Not that I'm aware of, no.

22 Q You don't have the ability to take, say if Mr.
23 Fiser was a PG-8 in chemistry and in the corporate
24 organization a PG-8 radcon position opened up that he wanted
25 and he was qualified, would you still have to post that, you

1 couldn't just put him in it, non-competitively.

2 A Unless it was a rotation or a temporary assignment
3 we could, but if it was going to be a permanently filled
4 position, our recommendation would be that it be posted.
5 There could be circumstances of health or, you know, some
6 issues like that that we may examine, but I believe it would
7 need to be posted if it was a new position and the employee
8 was going to go into it, not just a straight lateral
9 transfer, as you referred to.

10 Q I'm not even suggesting that it's a new position,
11 just there was somebody that was a PG-8 radcon manager who
12 retired, moved on to greener pastures, whatever; you've got
13 an empty position sitting over here and you've got a PG-8
14 sitting over here that's interested in that job and meets
15 the quals and the manager would be more than happy to take
16 him.

17 A My recommendation is that we would post that
18 position.

19 Q Do you know if there's a requirement to do that?
20 Are we talking BP-102?

21 A 102 and these memos would tell us to do that.

22 Q Is there a difference between the situation I
23 talked about and -- are you familiar with the concept of
24 transfer of function?

25 A I'm familiar with it, I won't tell you I'm an

1 expert on it, but I'm familiar with it.

2 Q Generally what's a transfer of function?

3 A I always get transfer of function and transfer of
4 work mixed up. I believe transfer of function is that there
5 is work that has been being performed in one place and now
6 that work is going to be performed in another place.

7 Q Okay.

8 CHAIRMAN BECHHOEFER: Now previously we've heard
9 something about a transfer which was denominated as a direct
10 transfer and that was one where someone would want someone's
11 services at a different location and his -- the budget for
12 his existing position plus the allocation required for the
13 existing position would all be transferred, for instance,
14 from headquarters to one of the plant sites. Now would HR
15 or Personnel have to approve that?

16 THE WITNESS: We would be involved in that
17 decision and -- you know, situations like that, we typically
18 are involved in and make a determination of is it a directed
19 transfer. So yes, we would be involved in those decisions.

20 CHAIRMAN BECHHOEFER: But if a management official
21 instructed you to that he wished this transfer to take
22 place, you would, what, work through the paperwork?

23 THE WITNESS: Yes.

24 CHAIRMAN BECHHOEFER: That type of thing?

25 THE WITNESS: Yes.

1 JUDGE YOUNG: Let me just clear up one thing
2 before we move on from this. You just said a minute ago you
3 were familiar with the situation where there was an effort
4 to transfer -- I don't remember the name --

5 THE WITNESS: It's Mr. Harvey.

6 JUDGE YOUNG: -- Mr. Harvey out to Sequoyah. Were
7 you aware that connected with that was the idea -- well, the
8 knowledge that those three positions in corporate were going
9 to be reduced to two, so that there appear to be some people
10 who may have looked at this as a way to solve the problem,
11 because if Mr. Harvey went to Sequoyah, then that would do
12 away with the necessity to have one of those three people
13 lose their job?

14 THE WITNESS: I have heard that after the fact, I
15 did not hear it at that time. I mean as we've gone through
16 this proceeding, I've heard, you know, we could have
17 transferred Harvey out there and then that would have save
18 it. I did not hear it at the time that we were going
19 through that process. I don't know what the timing of it
20 was with the RIFs or anything like that.

21 JUDGE YOUNG: Would that have made a difference?

22 THE WITNESS: Would it have made a difference in
23 terms of would I have allowed Mr. Harvey to move out there?

24 JUDGE YOUNG: Right, in order to save a person's
25 job.

1 THE WITNESS: It wouldn't have made any difference
2 to me from the standpoint that, you know, I still couldn't
3 allow an organization just to pick somebody up and say we
4 want to pick this person up and move them because that
5 wouldn't have been the right thing to do and it wouldn't
6 have been -- you know, we wouldn't have been following the
7 procedures and processes that we had laid out.

8 JUDGE YOUNG: So on a transfer of functions -- and
9 maybe I'm getting lost here, but on a transfer of functions
10 or transfer of work, how could that ever occur if you have
11 to post it?

12 THE WITNESS: How can they transfer a function or
13 a transfer of work occur?

14 JUDGE YOUNG: Right, or does that not refer to the
15 person in the job, it just refers to the job? If you
16 transferred a position, a function, a position, the work
17 done by that position and a person is in the position -- and
18 a person is in that position -- if you transferred the
19 function, the work, et cetera, would the person who was in
20 the position in the first place go with the function to the
21 second place, or would that job be posted so that the person
22 would have to compete for the job with anybody else who
23 applied for it?

24 THE WITNESS: Your Honor, you're asking me a
25 really good question and I'm probably not technically

1 equipped well enough to answer that question for you. I
2 think there's some folks coming in in the next couple of
3 days who are much more versed in transfer of work and
4 transfer of function than I am that would probably give you
5 a lot better answer to that than I can. I'm not sure I can
6 answer it.

7 JUDGE YOUNG: Okay. There's just one more thing
8 I'd like to clarify, if you know the answer.

9 THE WITNESS: Okay.

10 JUDGE YOUNG: About this potential transfer of Mr.
11 Harvey that Mr. Dambly asked about. Were you involved in
12 any way with Mr. McGrath with regard to that requested
13 transfer?

14 THE WITNESS: No, I wasn't.

15 JUDGE YOUNG: Okay, do you recall who asked you
16 about it?

17 THE WITNESS: Asked me about moving him?

18 JUDGE YOUNG: Right.

19 THE WITNESS: Mr. Boyles who worked for me came to
20 me and told me it was going on. That's how I became aware
21 of it, I mean it's kind of a normal -- you know, my staff
22 would come to me on a day-to-day basis and say hey, we've
23 got this going on or here's an issue we've got and those
24 kind of things. Mr. McGrath never came to me and talked to
25 me about it.

1 JUDGE YOUNG: Mr. Boyles came to you, he was just
2 reporting to you?

3 THE WITNESS: Yeah, he reported to me.

4 JUDGE YOUNG: And did you say that he asked you
5 for advice or he just told you what he recommended and you
6 agreed with it or --

7 THE WITNESS: He told me he had an issue going on,
8 that they just wanted to pick him up and -- they just wanted
9 to pick Mr. Harvey up and transfer him out there and he told
10 me that -- he said "I don't agree with it" or something to
11 that effect. And I told him I concurred with his decision
12 and, you know, as we have always worked, he went and
13 implemented that and if he had any problems, that would come
14 out of it that he couldn't resolve, then he'd come back to
15 me and then we'd elevate it if we needed to.

16 JUDGE YOUNG: Thank you.

17 CHAIRMAN BECHHOEFER: Well, if either Mr. McArthur
18 or someone like Dr. McArthur had asked or directed you to
19 transfer Mr. Harvey and his function to Sequoyah, could you
20 have done that without going through any of the other
21 postings and other requirements?

22 THE WITNESS: I don't believe so.

23 CHAIRMAN BECHHOEFER: Including the function that
24 Mr. Harvey exercised at the headquarters or at corporate

25 THE WITNESS: I believe if we would have

1 transferred the function of Mr. Harvey and Mr. Fiser to the
2 site locations --

3 CHAIRMAN BECHHOEFER: Just one of them actually.

4 THE WITNESS: Well, if we would have transferred
5 that work, I believe what would happen is that's when
6 potentially a directed situation could occur.

7 CHAIRMAN BECHHOEFER: That's correct. That's what
8 I was referring to.

9 THE WITNESS: Okay.

10 CHAIRMAN BECHHOEFER: Really when I used the term
11 --

12 THE WITNESS: If we transferred the function,
13 yeah, or transferred the work, I guess it would be.

14 CHAIRMAN BECHHOEFER: Yeah.

15 JUDGE YOUNG: And so you're saying that could
16 occur, that would be permissible, or not?

17 THE WITNESS: Well, you know, my question would
18 have been if they would have said to me well, we're going to
19 transfer this work to Sequoyah, I would have then said well
20 what work are you transferring to Browns Ferry and who's
21 going to Browns Ferry.

22 CHAIRMAN BECHHOEFER: And the answer would be
23 nobody.

24 THE WITNESS: And I'd say well, you know what,
25 that stinks, and what's going on here. And I would ask some

1 questions about it and my staff would have looked into it.
2 I mean you couldn't say we're going to do this for Sequoyah,
3 you know, and then we've got to come back and ask questions
4 well why aren't you doing the same thing for Browns Ferry.
5 If you're transferring that work to the PWR sites, why not
6 transfer it to the BWR sites? That would make sense. So
7 we'd ask some questions about that.

8 JUDGE YOUNG: And if somebody said well, we're
9 doing it because we're trying to save somebody's job -- you
10 weren't asked that question then, but --

11 THE WITNESS: I was not asked that question, but I
12 wouldn't -- you know, when you're in a situation where, you
13 know, this reduction in force impacted 1000 people. You
14 know, if I would have done that for Mr. Harvey, to save Mr.
15 Fiser's position, I probably would have been in here anyway
16 over one of the other 980 people who had gotten RIF notices
17 and of the 150 who left. You know, why did you treat them
18 differently, why don't you do the same thing for me. I
19 can't do that.

20 JUDGE YOUNG: So you've been on the hot seat.

21 THE WITNESS: I'm pretty much always on the hot
22 seat.

23 BY MR. DAMBLY:

24 Q At TVA, if a person is in a PG-8 position and
25 there's a vacancy announcement, a VPA, and they apply on

1 that job and it's a PG-8 also, to it's grade-wise a lateral,
2 it's not a promotion, does the supervisor who would be
3 losing that subordinate have any say as to whether they
4 leave or not?

5 A Yeah, I believe on a lateral -- I'm trying to
6 think what the right word is -- I think we call it lateral
7 promotion -- no, that can't be right, a lateral transfer, I
8 think that's what we call it. If it's one job to the other
9 -- same grade level, same, you know, 8 to 8 or 7 to 7,
10 whatever, I think the releasing supervisor or the incumbent
11 supervisor, has a right to non-extend that offer to that
12 employee if it's just a lateral move.

13 Q Which one is the incumbent supervisor?

14 A If I worked in --

15 JUDGE YOUNG: The sending one, right?

16 THE WITNESS: Yeah, if corporate human resources
17 in Knoxville made an offer to one of my employees at the
18 same grade level, I wouldn't necessarily have to offer that
19 position, that new position, to my employee.

20 MR. DAMBLY: Okay.

21 THE WITNESS: Doesn't happen very often, but you
22 know, it happens on occasion. It happens more between one
23 nuclear site to the other for the same position, those kind
24 of things.

25 JUDGE COLE: Even if it was posted and they

1 applied?

2 THE WITNESS: Yeah, even if it was posted. If
3 it's a lateral move, they do not have to extend that offer.
4 Now they've got to go back and tell that employee, which is
5 always not the best conversation to have.

6 CHAIRMAN BECHHOEFER: The current supervision
7 would have to tell the employee.

8 THE WITNESS: Yeah, they'd have to go back and
9 tell that employee. I mean we've had those situations
10 occur.

11 JUDGE YOUNG: Now I'm confused again, I thought I
12 understood it. If you're the person's current supervisor
13 and another supervisor wants your employee, employee X, in a
14 job at the same grade and it's not done through posting, you
15 can block the transfer if you want to.

16 THE WITNESS: No, if it's done through posting.

17 MR. MARQUAND: It's just to keep people from
18 raiding the other organization and no benefit extended to
19 the employee.

20 THE WITNESS: If there's a pay grade --

21 JUDGE YOUNG: I'm sorry, wait a minute.

22 MR. MARQUAND: It's to keep one organization from
23 raiding the talent of another organization and the employee
24 doesn't really get a promotion for the in-house raiding.

25 JUDGE YOUNG: Okay, I understand that, but now

1 you've confused me again. What I understood you to say
2 before was -- first you said if it's not posted, the first
3 supervisor can block it.

4 MR. MARQUAND: No, if it's not a promotion.

5 JUDGE YOUNG: Which makes sense, if it's not a
6 promotion, it's a lateral, which would make sense.

7 MR. MARQUAND: A lateral selection, I think he
8 meant to say.

9 MR. DAMBLY: He didn't say he could block it if it
10 wasn't posted but I think he said if it's not posted, you
11 can't do it, period.

12 THE WITNESS: Right.

13 JUDGE YOUNG: You just simply can't do it.

14 THE WITNESS: Right, we don't just move people
15 around from the same grade level, you know, around the
16 organization.

17 JUDGE YOUNG: Well, okay --

18 CHAIRMAN BECHHOEFER: Even at the desire of the
19 particular person? I mean not a forced move or a forced
20 transfer, a transfer that someone seeks.

21 JUDGE YOUNG: Right. If I were in a PG-8 position
22 under you and Mr. Marquand had a PG-8 position that sounded
23 more exciting to me, I would not be allowed to apply for his
24 job?

25 THE WITNESS: No, you could apply on it and you

1 may interview and you may be the one that they want to make
2 the offer to, but when the offer comes to me as the
3 "releasing" or what would be releasing supervisor --

4 JUDGE YOUNG: You can say that you want me so much
5 that you'd keep me.

6 THE WITNESS: Right.

7 JUDGE YOUNG: Okay.

8 BY MR. DAMBLY:

9 Q Now look to your right, the big black book, TVA
10 Volume 1 of 11, TVA Hearing Exhibits, if you'd turn to
11 Exhibit 12, please.

12 A Twelve?

13 Q Twelve.

14 JUDGE YOUNG: TVA?

15 MR. DAMBLY: TVA-12. I think Mr. Kent described
16 this yesterday, but if you'd go to page 4 of that document.

17 THE WITNESS: Okay.

18 MR. DAMBLY: If you want to actually start at the
19 bottom of page 3, if you want to read for yourself this
20 sequence from July of '93 through the end -- take a second.

21 (The witness reviews a document.)

22 THE WITNESS: I've read it.

23 BY MR. DAMBLY:

24 Q And it's talking about the situation in '93 when
25 Mr. Fiser was in the ETP and the Sequoyah chemistry

1 superintendent position that he had rights to was still open
2 and they talked to him first. At the bottom of page 4 is
3 really what I was asking you about, starting July 20, 1993,
4 it says "Informed Wilson McArthur that I wanted Gordon Rich
5 to transfer to the SQN. Wilson agreed to the request and
6 would release him ASAP."

7 August 1993, "The vacancy announcement for the
8 site chemistry manager position posted -- two applicants,
9 Gary Fiser did not apply for the position."

10 August 20, 1993, "Gordon Rich was selected for the
11 position of site chemistry manager."

12 Do you normally go out and get approval to
13 transfer and release somebody before you post the position
14 and make a selection?

15 MR. MARQUAND: I'm going to object, this is a
16 misinterpretation. The witness yesterday indicated that's
17 not exactly what happened here and to represent to this
18 witness, I think that's an unfair question.

19 MR. DAMBLY: I don't recall him saying it didn't
20 happen, it's his document and he wrote it.

21 MR. MARQUAND: He said the man was loaned to him,
22 that that was what he meant when he said transfer. He said
23 he didn't use a term of art and he wasn't an HR person.

24 JUDGE YOUNG: Well, let me just ask you -- the
25 example I just gave you a minute ago where I worked for you,

1 I wanted to apply for a job in a different department but
2 you wanted me to stay for whatever reason, so you could
3 block my apply for that other job. Does that sound like this
4 is a comparable situation to that example, or not? And also
5 where would this idea of a loan fit in here?

6 THE WITNESS: I don't know if it's a comparable
7 situation or not, I don't know what grade level Mr. Rich was
8 and what the Sequoyah chemistry manager position was.

9 JUDGE YOUNG: Oh, you're right, it doesn't say
10 that.

11 THE WITNESS: So I don't really know that. You
12 know, it would not have been unusual in this situation for
13 the corporate chemistry organization to loan Mr. Rich to
14 Sequoyah to perform those duties. I think what's important
15 here in reading this series of events is that, you know,
16 July 20, these two managers are cutting a deal saying oh,
17 yeah, I want this person and then you notice the next entry,
18 it says on August 19, the vacancy announcement for the
19 position closed.

20 You know, we didn't just let them pick him up and
21 move him out there, we made the -- we went through a
22 selection process and posted the vacancy and followed the
23 process for it.

24 So, you know, there's 4000 people in the
25 organization, people talk every day. I mean, you know,

1 people call and say are you interested in this, are you
2 interested in that. I mean, those things happen, they
3 happen in TVA, they happen everywhere in the country.

4 JUDGE YOUNG: Well, if -- well, I won't
5 characterize what Mr. Dambly said, I'll let you ask it
6 again, maybe I misunderstood.

7 BY MR. DAMBLY:

8 Q Let me just ask it this way since counsel thinks
9 Mr. Kent said something different, but if I'm looking to
10 hire somebody, I've got a vacancy and I'm interested in
11 Judge Young and she works for you and it's a lateral. Is it
12 April for me to go ask her, are you interested in the job
13 and if she says yes, then go to you and say will you release
14 her for the job and then when you say yes, post and select
15 her. Does that make the posting and selection a bit of a
16 miss?

17 A Do I think it's appropriate? It is not the way I
18 operate. I think that -- you know, if you want to call and
19 talk to an employee and say hey, I've got a position coming
20 up and I'd like for you to apply for it -- you know, I don't
21 have a problem with that, but if it's detailed as the way
22 it's written here, I don't -- it's not the way I would want
23 to operate and I don't think it's appropriate, personally.

24 Q And that wouldn't be the intent of BP-102 that we
25 talked about?

1 A Not in my mind, no.

2 Q Everybody else that thought this was a legitimate
3 vacancy and put in the time and effort to apply and go
4 through the process --

5 A Well, I guess my bigger concern with this is that,
6 you know, you go and you post the vacancy and if you go
7 through the selection process, what about this person that
8 you've said to him, apply on this and we'll work this out,
9 and they come out and they're not the best qualified
10 candidate. That's the danger of doing this type of thing.

11 Q And when you say the best qualified candidate, how
12 would you define that?

13 A How would I define --

14 Q Define best qualified candidate.

15 A You know, that's a -- it's a job interview,
16 essentially it is -- in my opinion, you have to meet the
17 minimum qualifications of the position, you have to have
18 related experience to that position and, you know, it's a
19 subjective measure that someone makes a selection on that
20 says yeah, I think you're the best qualified candidate for
21 the position. We're subject to be challenged on every
22 selection that's made in the organization, so --

23 Q But when you're talking best qualified, assuming
24 I'm interested in Judge Young because I think she's got the
25 credentials and she can do what I need done in the position

1 and she's interested, she's going to meet the minimum quals.
2 There's a selection review board issue, but under your
3 business practice, the selection review board determination
4 is not binding, is that correct?

5 A It's a recommendation to the selecting manager.

6 Q And if I want her, even if that's not who they
7 recommend, I can still say I checked all the other stuff and
8 that's who I want.

9 A Typically if a manager doesn't go with a
10 recommendation of the selection board, I hear about those.

11 CHAIRMAN BECHHOEFER: Well, can you do anything
12 about it?

13 THE WITNESS: Excuse me?

14 CHAIRMAN BECHHOEFER: Can you do anything about it
15 once you hear?

16 THE WITNESS: You know, I talked a little bit
17 about my independence earlier today in my testimony.

18 CHAIRMAN BECHHOEFER: Right.

19 THE WITNESS: You know, when I settled Mr. Fiser's
20 complaint in '93 and I made him an offer of a job in '96, I
21 didn't go to Mr. McGrath and Mr. McArthur and say what I'm
22 going to do, you know, I went with my recommendation to the
23 chief nuclear officer and I think that's where my
24 independence comes from, is my reporting relationship and
25 who I work for, to be able to go in and do some of these

1 things. Just like today I work for the president and chief
2 operating officer. He expects me, if I see things that I
3 think are a little fishy, to do something about it and come
4 to him and say here's what I think we ought to do, Ike.

5 JUDGE YOUNG: Just to get back down to the level
6 of just nuts and bolts and back to the same example, I work
7 for you, but I want to apply for a job with Mr. Marquand. At
8 what point do you get involved? Do I have to go to you
9 before I apply and ask you may I apply?

10 THE WITNESS: No.

11 JUDGE YOUNG: I can apply and then if I'm
12 selected, then at that point you decide whether I'm allowed
13 to go or --

14 THE WITNESS: Actually what will happen, if you
15 applied on a position in TVA and it's outside of my
16 organization, say, --

17 JUDGE YOUNG: And it's the same level.

18 THE WITNESS: Same level. And they decided they
19 wanted to interview you, one of the other human resource
20 staff would contact my staff and say we have a request for
21 interview for Judge Young and my staff would bring that to
22 my attention that, hey, Judge Young has applied on this
23 position, she's wanting to go interview -- you know, based
24 on my needs in the organization, I may bring you in and say
25 hey, how come you want to interview for this job, you're an

1 integral part of the organization and I need you here; or I
2 might say, you know what, that'd probably be a great
3 opportunity for you, you need to go do that.

4 MR. MARQUAND: Broaden your horizons.

5 THE WITNESS: I don't now if I'd say that for
6 Brent, but --

7 JUDGE YOUNG: Okay, so that's how that would
8 occur.

9 THE WITNESS: That's how notification is made
10 prior to the interview process.

11 JUDGE YOUNG: Okay.

12 BY MR. DAMBLY:

13 Q Again, because this has been the subject of a bit
14 of discussion over the past months, it seems like now, but
15 on your business practice under -- which was Joint 63 again,
16 on the second page of BP-102 where it says Selecting the
17 Candidate --

18 JUDGE YOUNG: I'm sorry

19 MR. DAMBLY: It's 3.4 -- we're in Joint 63.

20 THE WITNESS: Which section was that, please?

21 MR. DAMBLY: 3.4, page 2.

22 THE WITNESS: Okay, I have it.

23 BY MR. DAMBLY:

24 Q Under Selecting the Candidate, it says A. "All
25 interviewers provide feedback to the immediately supervisor

1 of the vacant position on the results of their interview."
2 And then B. "The final candidate is selected by the
3 immediately supervisor, based on information contained in
4 personal history record, interview assessment results, a
5 thorough review of the qualifications of the candidates as
6 compared with the requirements of the position, input from
7 upper level management involved in the process, information
8 obtained from references and affirmative employment
9 considerations."

10 Now a lot of people have said you have to take
11 what the SRB says. This sounds to me like that's a small
12 part of what you're supposed to consider under this
13 practice. What was the intent when you wrote this?

14 A Well, the intent is that prior to the selection
15 board convening, that the selecting manager is going to go
16 through the employee's personnel history record, they're
17 going to do a -- have a matrix that looks at their
18 qualifications, they're going to identify what their minimum
19 quals are, what things they'd like to have -- as we call
20 them, must and wants -- and, you know, review the
21 candidates' qualifications, you know, done an informal --
22 kind of check them out, you know, what kind of performance
23 have they had, who have they worked for before, those kind
24 of things. And then take the information also from the
25 selection committee and input from -- once you get that

1 recommendation from the selection committee and you're
2 satisfied, you may be down to two candidates. You know,
3 selection boards will come out sometimes and say we've got
4 two candidates here that you can pick from. You know, you
5 go in and you talk to your boss and say hey, here's what I'm
6 thinking about doing and getting the input from them also.

7 Q And the screening process for going through the
8 qualifications and all, that's back under 3.2, it says --
9 3.2.C "Immediate supervisor of the position reviews the
10 applications and resumes and identifies the top candidates."

11 And then we get to 3.3 the interview, and then 3.4
12 doesn't say well, you've already done some screening, so you
13 don't bother to look at that again. It says you take the
14 interviews and you look at all the rest of the stuff again
15 to decide who is the best; is that correct?

16 A Yes. I think 3.4.B is a little redundant but,
17 yeah, that's what happens. Some of that is done up front in
18 the screening process.

19 Q And basing it on 3.4.D under D.2, "Vice Presidents
20 must approve the selection of any PG-8 and above manager."

21 That's irrespective of whether or not somebody
22 goes along with the SRB or goes back over and says well, I
23 know Joe, Joe did a great job, he's had outstanding
24 appraisals, he's gotten bonuses. He had a bad interview but
25 that's the man I need.

1 A I think it's just another check and balance into
2 the system.

3 Q Is there anything in here that says if you don't
4 take the SRB recommendation, you've got more hoops to jump
5 through than if you do?

6 A No, I don't believe so.

7 CHAIRMAN BECHHOEFER: Well, would there be some
8 requirement to go to a higher level of management to approve
9 taking a person who did not score highest in the SRB?

10 THE WITNESS: If they wanted to take someone --

11 CHAIRMAN BECHHOEFER: If they wanted to take
12 someone who was not the highest scorer.

13 THE WITNESS: Well, I think that's why we have the
14 vice presidents approving the selection, you know,
15 regardless if they were the highest scoring or lowest
16 scoring, the vice president over that organization still has
17 to approve that selection.

18 CHAIRMAN BECHHOEFER: So why would the process
19 then be any different for a, shall we say, winner or loser
20 on the SRB exam in terms of administrative approvals. Is it
21 just likely that the highest scorer would be more likely to
22 be approved?

23 THE WITNESS: Typically the highest rated person
24 is approved. Does that answer your question, sir?

25 CHAIRMAN BECHHOEFER: Well, if there were a desire

1 to hire one of the others instead of the highest scorer, is
2 the procedure any different for getting that person hired in
3 lieu of the high scorer?

4 THE WITNESS: No, it still would require that vice
5 president approval.

6 CHAIRMAN BECHHOEFER: Would it require any higher
7 level approval?

8 THE WITNESS: As the business practice is written,
9 no.

10 CHAIRMAN BECHHOEFER: I see; thank you.

11 MR. DAMBLY: Would this be a good time to throw on
12 the air conditioner?

13 CHAIRMAN BECHHOEFER: Yeah, I think it would be.

14 JUDGE YOUNG: Are we through with any of these?
15 Just out of curiosity.

16 MR. DAMBLY: I think we're -- we're certainly I
17 think through with the black one, the big TVA exhibit book.

18 JUDGE YOUNG: Okay.

19 CHAIRMAN BECHHOEFER: Let's take a 15 minute
20 break.

21 (A short recess was taken.)

22 CHAIRMAN BECHHOEFER: Back on the record. Mr.
23 Dambly.

24 MR. DAMBLY: Thank you.

25 BY MR. DAMBLY:

1 Q Mr. Reynolds, let's talk now about the reorg in
2 1994 that resulted in the chemistry positions -- I guess
3 chemistry program manager positions -- becoming chemistry
4 and environmental positions.

5 A I'm aware of that, yes.

6 Q And what was the purpose combining those two
7 functions?

8 A As I remember it, you know, as we were again in
9 that '93 time frame, we were looking at ways we could become
10 more efficient and reduce our head counts and things like
11 that. A proposal was put on the table to combine the
12 chemistry and environmental positions in the corporate
13 office and be able to reduce the head count needed to
14 support the work that was being done. We thought by
15 combining them, we could reduce that head count.

16 Q You would be able to do more with less people
17 because they'd be multi-functional.

18 A They'd be multi-skilled, yeah.

19 Q And you knew at the time that the selections were
20 made that the PDs themselves were actually inaccurate, the
21 employees were not going to be performing 50/50 between
22 chemistry and environmental, to start with.

23 A I wasn't aware of that. I mean I knew that there
24 were some employees who -- that there were employees who had
25 strengths in chemistry, there were employees who had

1 strength in the environmental issues and that the plan was
2 to get everybody up to the same level of speed.

3 Q Over some period of time.

4 A Yeah, to -- so they could all perform both
5 functions.

6 Q Now in '96 when the reorg occurred that eliminated
7 the environmental portion, first of all, do you know what
8 percentage of duties in environmental versus chemistry the
9 three chemists -- Chandra, Harvey and Fiser -- were
10 performing at that time?

11 A What percentage of --

12 Q Of duties they were performing, chemistry versus
13 environmental duties.

14 A No, I do not know.

15 Q When you evaluate for interchangeability purposes -
16 - positions -- and I think we talked about this before, it
17 has 10 functions on it, you don't necessarily assume that
18 each function is 10 percent of the duties.

19 A Not necessarily, no.

20 Q You would go check with the supervisor and say
21 okay, we've got these 10 duties, how much is this one, what
22 percentage of their time is in this effort and what
23 percentage of their function is on this effort?

24 A I believe a human resource officer would go to the
25 managers and say, you know, where are people performing

1 functions. I don't know if they'd break it down to a
2 percentage or something like that but they would say, you
3 know, are these primary -- what I have done in the past, are
4 they primary functions or secondary type functions.

5 CHAIRMAN BECHHOEFER: Well, when you made that
6 inquiry, would that be actual work done in the particular
7 positions rather than position description of
8 responsibilities for doing it?

9 THE WITNESS: Now we would base it off the
10 position description, not basically actual work done. I
11 mean when we had to make that determination, as Mr. Dambly
12 referred to, interchangeability or competitive level, we
13 would make that basis off of the position description, not
14 off the word of the supervisor.

15 BY MR. DAMBLY:

16 Q Would you agree that the employees first went into
17 the chemistry and environmental positions, to the extent
18 that those positions contemplated them doing an equal share
19 of chemistry and environmental, they were inaccurate for the
20 chemists in that they weren't doing half environmental work
21 and for the environmental person because she wasn't doing
22 half chemistry work?

23 A I don't think everybody was up to speed in both
24 areas, so you know, were they equally sharing that? I think
25 they were learning on the job and relying on the expertise

1 in the organization about how these things had to happen and
2 coming up to speed that way. I mean that was the plan for
3 people to get up to speed.

4 Q And what did you do to assure in '96 how far alone
5 that plan was when they decided to go back to chemistry and
6 separate environmental out?

7 A I didn't monitor any kind of training plan they
8 had for those folks or anything like that at that point in
9 time.

10 Q But did you do anything in 1996, discuss with Mr.
11 Boyles and Mr. Easley, any effort to make sure that the PDs
12 that they had at that point accurately reflected what their
13 duties and responsibilities were?

14 A I don't remember having any discussion with them
15 on that. You know, I've had the discussion with them about
16 the new position and the old position and what had happened
17 in the past when we combined them and what the history had
18 been there.

19 JUDGE YOUNG: Did that ever include any discussion
20 of making sure position descriptions were up to date, as
21 stated in the regulation that Mr. Dambly pointed you to
22 earlier?

23 THE WITNESS: In that specific situation?

24 JUDGE YOUNG: Uh-huh, in deciding whether a job
25 had to be posted or would be done through the RIF process.

1 THE WITNESS: As I talked about a little bit
2 earlier, you know, I didn't go out -- or my organization
3 didn't go out and do a pre-job audit, so to speak, before a
4 reduction in force was going to be conducted to see if
5 position descriptions were accurate and up to date.

6 And also, if I would have gone in -- you know, if
7 30 days before the reorganization is going to take place, I
8 don't think it's appropriate and I think there are some
9 regulations that I can't change a job description like 90
10 days before a reduction in force. So I don't think it would
11 have been appropriate if, you know, we would have gone in
12 and said we're going to conduct this reduction in force and
13 then rewrote everybody's job description, because it would
14 have been kind of the same --

15 JUDGE YOUNG: Well, how could you determine
16 whether they were up to date then?

17 THE WITNESS: You know, I have to rely on the
18 manager and the employee to say, hey, my job description is
19 inaccurate and I need it rewritten and up to date.

20 JUDGE YOUNG: Well, if Mr. Fiser was saying if you
21 post this job description, I'm going to file a Department of
22 Labor complaint because it's the same job I've been
23 performing, wouldn't that sort of implicitly be saying it's
24 not up to date, that the job description is wrong, it's not
25 what I'm really doing?

1 THE WITNESS: I'm not sure I can -- I mean, if an
2 employee comes to us and says their job description is not
3 up to date, our first response to them is, you know, get
4 with your manager, give us an accurate job description. We
5 probably re-evaluate somewhere between a couple hundred job
6 descriptions a year.

7 JUDGE YOUNG: In the context of RIFs or just
8 generally?

9 THE WITNESS: Just general.

10 JUDGE YOUNG: How many would you do in the context
11 of a reorg, RIF -- reorg/RIF?

12 THE WITNESS: I would tell you probably in '96,
13 there were probably 600 or 700 job descriptions redone.

14 JUDGE YOUNG: During the --

15 THE WITNESS: During the reorg that was going on
16 in the engineering organization and in the corporate office
17 preparing for the people to go into the new organization,
18 you know, either through transfers or selections.

19 JUDGE YOUNG: I'm not sure I'm understanding.

20 MR. MARQUAND: You were talking about auditing
21 position descriptions as opposed to rewriting new ones.

22 JUDGE YOUNG: Right. What I'm talking about is
23 solely for the purpose of making sure that job descriptions
24 are up to date so that you can decide whether to RIF or post
25 based on the most up to date job descriptions and maybe

1 that's sort of interpreting from the earlier regulations, I
2 don't have that in front of me right now, but how many times
3 have you done that?

4 THE WITNESS: I've probably never gone out and
5 audited job descriptions to see if they're up to date for a
6 RIF. I've had to go through and check to make sure we've
7 had job descriptions, but in terms of going in and doing an
8 audit of the functions and is this correct and are these the
9 things performed, I don't remember ever doing that.

10 JUDGE YOUNG: Has anybody besides Mr. Fiser ever
11 said -- ever challenged the posting of a position because
12 they're saying -- because they claim that the new job is the
13 same thing as their current --

14 THE WITNESS: Yeah, we've had that occur.

15 JUDGE YOUNG: And what happens in those other
16 situations?

17 THE WITNESS: It could be an MSPB complaint, I
18 could get a grievance from a represented employee, I could
19 get an EEO complaint.

20 JUDGE YOUNG: I mean what does your office do when
21 you get a challenge to the job description.

22 THE WITNESS: That I had rights to this position?

23 JUDGE YOUNG: Right.

24 THE WITNESS: We'll go back and we'll do another
25 review of it and feed the information back to the employee

1 about what we think our call was, whether it was right or
2 wrong or we made a mistake.

3 JUDGE YOUNG: So did you do that with Mr. Fiser?

4 THE WITNESS: I didn't meet with him, I believe my
5 staff met with him and said no, we think it's a new job and
6 it needs to be posted.

7 JUDGE YOUNG: While I'm talking to you -- and then
8 I'm going to try to refrain because I know the hour is
9 getting late -- but the allegation is retaliation for filing
10 a DOL complaint and you've mentioned several times that
11 you've been involved in a lot of them.

12 THE WITNESS: Yes, ma'am.

13 JUDGE YOUNG: Or that TVA has been involved in a
14 lot of them.

15 THE WITNESS: Yes, Your Honor.

16 JUDGE YOUNG: Just from your perception as sort of
17 an independent entity, have you observed any hostility or
18 resentment or whatever you want to call it against people
19 who file DOL complaints, sort of, you know, in people's
20 minds they become sort of a troublemaker? You know, all
21 this stuff in the news lately about Enron and whistle
22 blowers, you know, that once you get branded as a
23 troublemaker, you know, you'll never --

24 THE WITNESS: I don't believe so. I think -- you
25 know, I've been involved in a situation where we've had --

1 there was an assistant plant manager at Watts Bar whose
2 actions against an employee who raised some issues during
3 the startup of the Watts Bar plant, we felt were
4 inappropriate. The employee raised an issue at a meeting,
5 the manager's reactions to that were inappropriate, he was a
6 pretty high level person in the organization, and I drove up
7 to Watts Bar and gave him the opportunity to either resign
8 or be fired.

9 JUDGE YOUNG: You mean the supervisor, not the
10 whistleblower.

11 THE WITNESS: Yeah, the supervisor.

12 MR. DAMBLY: Too bad you clarified that.

13 (Laughter.)

14 MR. MARQUAND: Thank you.

15 THE WITNESS: So I don't think -- and you know, in
16 Mr. Fiser's case, you know, he'd worked three years in the
17 organization and I had not heard -- you know, as far as I
18 can remember, I think he got -- had satisfactory service
19 reviews. I can't remember what kind of pay increases or
20 monetary awards he received, but I didn't see anything that
21 would indicate to me that he was being ostracized or treated
22 differently in the organization. You know, having gone
23 through several enforcement conferences and -- I don't know
24 if you now Mr. Ebnetter, who was the regional administrator
25 -- you know, one of his questions to me was always, okay,

1 Mr. Reynolds, how do you know, how do you keep your finger
2 on things and how do you know. And that's why I would
3 watch, you know, what ratings they got on appraisals and I
4 would, you know, kind of take a look at somebody who had
5 filed a complaint about them on a selection, or just things
6 like that.

7 That's the best I can answer the question for you,
8 Your Honor.

9 JUDGE YOUNG: Thank you.

10 CHAIRMAN BECHHOEFER: Just one more clarification.
11 I assume from what you've said that HR for TVA, Personnel
12 Division, whatever, does not say annually or even at any set
13 period of time, review the adequacy of job descriptions,
14 without having any complaint filed or without having an
15 employee raise a question.

16 THE WITNESS: No, we do not go through an annual
17 audit process of does the job description match the duties.

18 CHAIRMAN BECHHOEFER: Or even like -- it doesn't
19 have to be annual, every two yrs --

20 THE WITNESS: No.

21 CHAIRMAN BECHHOEFER: No periodic review?

22 THE WITNESS: No, we do not. We rely on the
23 managers and the employees to keep the job descriptions
24 updated and accurate.

25 CHAIRMAN BECHHOEFER: I see.

1 BY MR. DAMBLY:

2 Q In making a determination on interchangeability, is
3 it appropriate to consider that there are more employees
4 than positions and if you don't post, they all don't get to
5 compete?

6 A Is it appropriate to consider that?

7 Q Yes, take that into consideration when you decide
8 are these the same jobs. I've got three people and there's
9 only going to be two left, so I have to call them different
10 or people won't get to compete. Is that an appropriate
11 consideration in making that determination?

12 JUDGE YOUNG: You have to what or people won't get
13 to compete?

14 MR. DAMBLY: Call them different, say they're
15 changed sufficiently to have to post rather than go through
16 RIF.

17 JUDGE YOUNG: Okay.

18 BY MR. DAMBLY:

19 Q Is that an appropriate consideration?

20 A I don't think it is, no.

21 Q Now when positions are being redone or PDs are
22 being redone, say during the ops support reorg, if Mr.
23 Grover said the revised PDs actually reflect what the
24 employees are doing now, should that be taken into account
25 in making an interchangeability determination?

1 A The revised PDs into the new organization?

2 Q In the new org. You got rid of the environmental
3 and we now have chemistry program manager, PWR and BWR. If
4 he says well that's the positions they've really been
5 occupying.

6 A Then Mr. Grover in is responsibilities should have
7 made changes to those job descriptions to make sure they
8 were accurate.

9 Q But if he tells you now they're accurate, do you
10 have to say too bad?

11 A I think there's some requirements in the
12 regulations that says in some period of time I cannot change
13 a job description in the middle of a RIF. I mean I don't
14 think it'd be appropriate that -- you know, how would it
15 look that we're sitting here with a potential reduction in
16 force and all of a sudden a manager pops up and says oh, you
17 know, wait a minute, these job descriptions have been wrong
18 all this time, this isn't the way -- gosh, I don't even like
19 the appearance of that. I don't think it's fair in
20 implementing a program.

21 Q But is that any more or less fair than making
22 determinations on position descriptions that don't reflect
23 what people are doing?

24 A It's at least consistent.

25 Q But the question was --

1 A I'm not choosing at that point in time, I'm
2 staying with, you know, here's the way I've done things and
3 I'm being consistent through that period of time, rather
4 than a manager popping up, you know, two weeks before a
5 reduction in force and say hey, you know what, his job has
6 never been right, here's what it really is. I'd think --
7 somebody asked me the question today about, you know, could
8 they manipulate it and get it to there. Well, that would be
9 a manipulation to do it that way and I don't think that
10 would be appropriate. You know, you've got to remember, I'm
11 dealing with 900 folks in this, not three. I mean that's
12 the perspective I've got to look at it from.

13 Q At the time -- you keep saying you've got 90 days
14 before a RIF or some period like that --

15 A It's 90 or 60 or 30 days, something like that.

16 Q Is that internal TVA or is that your understanding
17 of the regs?

18 A I think it may be a TVA interpretation, I'm not
19 sure.

20 Q The real question I was going to get to, when you
21 use a RIF, the PEC and some other things, in point of fact,
22 in say '96 when they did the reorg, they surplused certain
23 people to the employee transition program or whatever it was
24 called then, but the RIF was not conducted until a year
25 later, or wouldn't be conducted until a year later?

1 A Yeah, at some point later on.

2 Q So when was your understanding of when this 90
3 days or 60 days would start? Before the RIF that's a year
4 down the road or before the surplus?

5 A My understanding is it would be before the
6 surplus, you couldn't make those changes before a surplus.

7 Q As we talked about earlier, one of the reasons for
8 combining the chemistry and environmental functions in '94
9 was so that in diminishing resources, you'd have employees
10 better equipped to handle because they'd be multi-
11 functional.

12 A That's correct.

13 Q And so you combined those two. Does it strike you
14 as odd when actually the reduction came, you having done
15 that cost them jobs instead of saved jobs?

16 A At that point in time in what the organization had
17 been through in terms of the numbers that we were driving
18 down to, reductions in force every year did not surprise me.
19 I mean, they were somewhat expected in the organization.

20 Q I wasn't talking about whether the reduction
21 surprised you, but if the idea was we're going to take a
22 chemist and put him in a position that would build up his
23 environmental strengths so that somewhere when we have to
24 shrink down, we've got a person that can do two tasks, and
25 then you get to the point you're going to shrink down and

1 instead of saying well, this is great because now we've got
2 these multi-functional people, they go let's take the
3 environmental out and now you go out the door because you
4 accepted this other job -- does that strike you as kind of
5 counter-productive to what the intent was in the first
6 place?

7 A I mean it's unfortunate that it didn't work out.

8 Q And I think Judge Young asked you this, so I'll
9 ask it kind of quick, but when Mr. Fiser raised the issue
10 that, you know, the position that they're going to post is
11 the one they gave me in '94 in the settlement and it's the
12 one I'm doing now, we know you went and checked with I guess
13 Ms. Welch in OGC on whether he had rights because of the '94
14 settlement, but did you go and check to determine whether or
15 not the job that was being posted was in fact the job that
16 Mr. Fiser was performing in '96?

17 A You mean in '94?

18 Q No, in '96. He came in '96 when they were going
19 to do the reorg and posting and he talked to Boyles and
20 Boyles talked to you.

21 A Right.

22 Q And he said if they post this job, I'm going to
23 file a complaint because I got a settlement in '94 and the
24 position they're going to post is that one.

25 A Okay.

1 Q And I believe you also said -- and we'll ask Mr.
2 Boyles about it because it's in his DOL deposition -- and
3 it's the position that I'm in at the moment. You checked
4 out the '94 settlement issue, did you check out that it's
5 the position I'm in at the moment?

6 A No, I took the recommendation from my staff on
7 whether it was a post or he had rights to the position.

8 Q Well, if it was the position he was in at the
9 moment, he wouldn't have rights to it?

10 A He was in the chemistry and environmental
11 position.

12 Q But if that position was a chemistry position with
13 five percent environmental duties?

14 A I'd have to look at it, I mean you know, --

15 Q My question was did you look at it.

16 A I did not personally. As I did with Mr. McArthur,
17 I took the recommendation of my staff and I had them brief
18 me on it and I accepted their recommendation.

19 MR. DAMBLY: I have no more questions.

20 JUDGE YOUNG: Are we going to be -- we can go off
21 the record.

22 (Discussion off the record.)

23 CHAIRMAN BECHHOEFER: Back on the record.

24 CROSS EXAMINATION

25 BY MR. MARQUAND:

1 Q Mr. Reynolds, in 1993, you had responsibility for
2 nuclear power for Department of Labor complaints, you saw
3 Mr. Fiser's Department of Labor complaint, correct, at that
4 time?

5 A I saw it -- did you ask me did I see it?

6 Q Yes.

7 A Yes, I did.

8 Q Did you have any idea at that point in time
9 whether he was making any claims that Wilson McArthur or Tom
10 McGrath were discriminating against him at that time?

11 A No, I did not.

12 Q In 1996, you talked about the fact that the
13 reorganization was budget driven and that a lot of
14 organizations were being looked at and counsel asked you
15 about a reduction of 40 percent. Was there some direction
16 that that 40 percent reduction be carried out over a period
17 of years or how was that to be accomplished?

18 A The -- quite frankly, what we wanted to be able to
19 do is to get to the numbers that we had scheduled for the
20 year 2000 as quickly as possible. When we had gone to the
21 Board presentation, the chief nuclear officer, Oliver told,
22 you know, Mr. Crowell, who was chairman of the board at that
23 time, who was always kind of on Oliver a little bit about
24 continually reducing employees and Oliver said, look, I have
25 three priorities and one is to make us as competitive as

1 possible, improve the equipment reliability and his third
2 thing was to kind of heal the work force, stabilize the work
3 force, because it had been in such turmoil for about the
4 last eight, nine years with a lot of reductions in force.
5 We had taken it from, you know, 11,000 employees to 3500
6 employees, the work force had just been kind of continually
7 stirred up and he wanted to -- knew that for us to be
8 competitive and to go forward and achieve the kind of
9 operational excellence he was looking for, that we had to
10 stabilize that work force at that time. So there was no
11 mandate to go to that at once, but it was desired that we
12 get to those numbers as quickly as possible.

13 JUDGE YOUNG: Did you say heal before you said
14 stabilize, h-e-a-l?

15 THE WITNESS: Heal the work force. I mean there
16 had been a lot of --

17 JUDGE YOUNG: That's the word he used?

18 THE WITNESS: That's the word he used?

19 JUDGE YOUNG: Thanks.

20 BY MR. MARQUAND:

21 Q There'd been a lot of what?

22 A A lot of turmoil in the organization as a result
23 of the reductions in force.

24 Q Did that cause morale problems?

25 A Oh, morale problems -- you know, attachment that

1 point in time, I probably had 150 DOL complaints, I probably
2 had 300 or 400 EEO complaints, I probably had 1500
3 grievances. I mean that's all we were doing.

4 MR. DAMBLY: You talking about '96?

5 MR. MARQUAND: Talking about over a period of
6 years that...

7 A Over a period of time we've had large numbers of
8 complaints.

9 Q In '96, there's been a lot of discussion about
10 Wilson McArthur having a determination that he had rights to
11 the rad chem job. Did it come to your attention that there
12 were other people who had rights to new jobs in operations
13 support which were not posted?

14 A I'm not aware of any.

15 Q As far as you know, were all of the other jobs
16 posted?

17 A As far as I know.

18 JUDGE YOUNG: What all did that -- operations
19 support, what all did that encompass? I'm not clear. What
20 the...

21 MR. MARQUAND: That was Mr. McGrath's
22 organization. And I -- tell her what -- what functions --
23 the best of your knowledge, it included.

24 THE WITNESS: Well, obviously the rad con
25 chemistry, environmental, I think emergency preparedness

1 have been in there. There was...

2 JUDGE YOUNG: So it was not operations, it was
3 support of operations; is that...

4 THE WITNESS: Yeah, operations support. It was
5 you know, where a lot of technical program expertise was
6 retained in the organization that was used to go out to the
7 sites and help them solve problems.

8 JUDGE YOUNG: But the operations was something
9 different? Those were the people...

10 MR. MARQUAND: Yes.

11 JUDGE YOUNG: ...who were actually working to make
12 the...

13 MR. MARQUAND: You stated it correctly. It is
14 support of operations.

15 JUDGE YOUNG: Okay.

16 THE WITNESS: Support of operations. It would
17 be...

18 JUDGE YOUNG: Okay. I didn't know if it was
19 operations, slash...

20 THE WITNESS: ...a proper characterization of the
21 organization.

22 BY MR. MARQUAND:

23 Q Did it include maintenance and outage and diesel
24 generators and...

25 A Steam generator activities, those kind of things.

1 MR. DAMBLY: I think, Your Honor, that -- if you
2 all remember from the first week, that large document of 300
3 pages, thereabout, that was Mr. McGrath's old folder on
4 the...

5 MR. MARQUAND: Remember when we walked through his
6 large folder of all of the aspects of all of the
7 organizations that he reorganized. All right.

8 BY MR. MARQUAND:

9 Q There's been some discussion about Mr. Grover.
10 You know who Ron Grover is?

11 A Yes, I do.

12 Q All right. And there was a -- he made a request
13 to go to INPO, and he also said that he was given a new
14 developmental position description.

15 A He was.

16 Q Were you responsible in any part for either of
17 those?

18 A Yes.

19 Q Why did you -- why did you agree to send him to
20 INPO and give him a developmental position description?

21 A Mr. Grover was an individual that we had hired
22 externally. I think we'd used a recruiting firm to bring
23 him into the organization. Mr. Grover, you know, quite
24 frankly, was a United States Naval Academy graduate. He was
25 an African-American. He was, you know, a PG level employee

1 in the -- you know, I mean, he was a high level manager in
2 the organization. And I went to my boss and I said, you
3 know, "Let's look at this. We have gone outside and
4 recruited a minority candidate for a position. He's got --
5 you know, a naval academy graduate. He's worked at other
6 facilities." I said, "It is not the right thing to do to
7 send this person out the door. We need to see if we can
8 find an opportunity for him." And that's when we engaged in
9 some discussions with him about INPO, to try to broaden his
10 background just beyond chemistry, to maybe get him some
11 operations and maintenance experience and things like that.
12 So that was -- my recommendation was accepted on that.

13 Q Was your decision to send him to INPO and give him
14 this developmental position description based in any part
15 upon a conclusion that you'd made the wrong decision about
16 putting Wilson McArthur in the rad con -- rad chem job?

17 A No.

18 Q Could you have -- counsel asked you earlier -- I
19 believe you've got in front of you somewhere -- here we go,
20 Staff Exhibit 152. That's a memorandum from John Long
21 regarding the announcement of vacancies for manager and
22 specialist pay schedule.

23 A Okay, I've got it in front of me.

24 Q Could you have put Mr. Grover in the rad chem
25 position, the position you put -- that you determined that

1 Mr. -- Dr. McArthur had rights to, could you put Mr. Grover
2 in there without posting the job, pursuant to this document
3 that says you might be able to waive posting for minorities?

4 A No, I could not have, because it was not a vacant
5 position. Mr. McArthur had rights to that position.

6 Q So this document wouldn't even apply in that
7 situation?

8 A Would not be applicable.

9 Q Counsel asked you this morning, there was a lot of
10 confusion. We'll try to clear it up with Don Hickman, the
11 acting inspector general, about what documents the inspector
12 general sends out for review, whether exhibits or et cetera.
13 But let me ask you, did you see anything, other than the
14 inspector general's report, with respect to Mr. Fiser's '93
15 Department of Labor complaint? Did you see any exhibits or
16 attachments to that?

17 A No, I did not.

18 Q Did you see any exhibits or attachments with
19 respect to the inspector general's report with respect to
20 Mr. Fiser's '96 Department of Labor complaint?

21 A No, I did not.

22 Q In 1993, when Mr. Fiser was -- received the
23 surplus notice that was called to your attention, from the
24 chemistry superintendent job at Sequoyah.

25 A Yes.

1 Q Were you responsible for making the competitive
2 level determination at that time?

3 A No.

4 Q Did you have any responsibility for issuing him
5 that surplus notice?

6 A No.

7 Q Did you, your -- ultimately, Mr. Fiser, in
8 September of '93, filed a Department of Labor complaint, and
9 the issue -- the personnel issues came to your attention;
10 correct?

11 A It was after he was issued the notice. If it was
12 September, that's...

13 Q All right. After he filed his Department of Labor
14 complaint?

15 A That's when I got involved in his issues.

16 Q All right. At that point in time, did you,
17 yourself make an independent review of his personnel
18 situation?

19 A No.

20 Q How did you get involved?

21 A The complaint was filed. I believe Cathy Welch
22 was working for me at that time and she was handling the
23 complaints. She went and researched the situation for me
24 and came back to me and said, you know, "I think we've made
25 some mistakes here. We need to make -- we need to see it --"

1 can resolve this."

2 Q All right. Did she -- then did she explain what
3 those mistakes were in detail to you?

4 A In general, she told me that we had made some
5 mistakes regarding his reduction in force and, you know, he
6 was on assignment in the corporate office and...

7 Q But my question is: Did she tell you the precise
8 nature of the mistakes?

9 A No.

10 Q Okay. Earlier you were shown NRC Exhibit 99. If
11 you recall, that's the employee action reasons for Mr.
12 McArthur. It went line by line by line, that had all of the
13 personnel actions.

14 A Yes.

15 Q Does that document determine what the employee's
16 personnel position description of record is?

17 A No, it does not.

18 Q All right. Can you even discern, by looking at
19 that document, what the individual's position description
20 is?

21 A No.

22 Q Or the title of their job?

23 A No.

24 Q You were also shown NRC Exhibit 102, which was a
25 performance review and developmental plan for Wilson

1 McArthur for fiscal year '95, and it showed that he was a
2 rad con manager; do you recall that?

3 A Yes, I do.

4 Q Can you -- does that determine -- is that a
5 person's position description of record?

6 A No, it is not.

7 Q Is that -- you said -- I noticed this morning,
8 when you were asked questions about it, the question -- your
9 answer was, "Typically employees aren't appraised in jobs
10 they don't occupy, and typically they are not issued
11 performance objectives for positions they're not in." But
12 does it happen?

13 A Yes, it does occur.

14 Q You did say that -- you determined that
15 administrative error had been made with respect to Mr. Fiser
16 in '93; that he got the benefit of that error when you
17 settled?

18 A Yes.

19 Q And counsel asked you then, "Well, when you
20 determined that Dr. McArthur didn't have a position
21 description for this rad con manager position," he said,
22 "why didn't you just go ahead and RIF him?" If you'd made
23 an error or somebody'd made an error and there was no
24 position description, why wouldn't you have RIF'd Dr.
25 McArthur?

1 A I don't think it would have been the right thing
2 to do. I don't think it would have been fair.

3 Q And what were -- what would his rights have been
4 determined by reference to?

5 A His rights would have been determined by, you
6 know, what his position description of record was and what
7 the new position was and the evaluation we would have had to
8 have done there.

9 Q And if TVA had made a mistake and not issued him a
10 position description, who has the burden to bear with
11 respect to that administrative error, if there was one?

12 A TVA does. Me.

13 JUDGE YOUNG: Did I ask you before whether you had
14 ever had any other situations where somebody had an old
15 position description in a situation comparable or somewhat
16 comparable to Mr. McArthur's, where any disputes had arisen?

17

18 MR. MARQUAND: I think you did. And let me ask --
19 that raises one...

20 BY MR. MARQUAND:

21 Q Are you aware of a situation with respect to Mr.
22 Boyles, in which...

23 A Yeah, I think Ed -- when we did my reorganization
24 of human resources, Ed was working -- or Mr. Boyles was
25 working off an old job description.

1 Q And what happened?

2 A I issued Mr. Boyles a reduction in force notice
3 based off that old job, and it going away from the
4 organization.

5 JUDGE YOUNG: And what? What...

6 MR. MARQUAND: He got a RIF notice.

7 THE WITNESS: I issued him a reduction in force
8 notice as a result of him being on that old job description,
9 that old job description of record.

10 JUDGE YOUNG: Okay. I thought you said "going
11 away from the organization."

12 MR. MARQUAND: Yes, a RIF notice going away from
13 the organization.

14 JUDGE YOUNG: Oh, okay. I see.

15 THE WITNESS: Leaving the -- I'm sorry. Leaving
16 the organization.

17 JUDGE YOUNG: Just couldn't hear the words.
18 Thanks.

19 BY MR. MARQUAND:

20 Q Counsel asked you whether or not you looked at the
21 position descriptions and compared the position descriptions
22 with respect to Mr. Fiser, Dr. McArthur. Did you do that?

23 A No, I did not.

24 Q So how did that get done?

25 A Mr. Easley initially did it, and I don't know if

1 he and Mr. Boyles actually went through the specific job
2 descriptions, but they did they -- or Mr. Easley did the
3 initial evaluation of that.

4 Q And you kept -- you mentioned several times that
5 there was some 900 people affected in '96. Were the
6 position descriptions for those 900 people compared between
7 the position descriptions of positions they held, versus
8 position descriptions that were being rewritten?

9 A Yes.

10 Q Same process as Mr. Fiser and Dr. McArthur?

11 A Same process. We worked that off a big project
12 plan and had meetings about it and how we were going and how
13 many job descriptions we're rewriting and all that stuff,
14 because we...

15 Q This morning Judge Young asked you about the
16 situation coming up with Dr. McArthur, and why your staff
17 brought it to you. And you mentioned about the fact that
18 Gary Fiser threatened to file a Department of Labor
19 complaint, and then later, in response to counsel, I heard
20 you say something different. Do you recall what happened
21 about how that situation arose?

22 A I believe that prior to us affecting the
23 reorganization, Dr. McArthur raised an issue about, you
24 know, why do I have to post again or -- or why do I have to
25 bid on a job I've held before, or something like that, and

1 it caused them to go look at the complaint, or to go look at
2 the issue.

3 Q Was this before Mr. Fiser threatened to file a
4 Department of Labor...

5 A I think it was. I think I was -- had times off
6 this morning.

7 Q Okay.

8 JUDGE YOUNG: So that's what made you go back and
9 look at Mr. McArthur's situation?

10 THE WITNESS: Yes.

11 JUDGE YOUNG: And just while we're on that, let me
12 see if I understood about Mr. Boyles. You said Mr. Boyles
13 you RIF'd because he was working off an old job description,
14 and that was because you RIF'd the position that the old job
15 description went with or...

16 MR. MARQUAND: Yes.

17 THE WITNESS: In my real -- when I reorganized
18 human resource, I had -- Ed was working in another job. And
19 when we went back and did the comparison of, you know, the
20 new job that we were doing and all that, we realized that
21 Mr. Boyles was still working off an old job description. He
22 wasn't working off one of these jobs that we thought was
23 going to be or was currently being performed. So we had to
24 reduce him in force out of that organization. He had to
25 come in and bid, and bid on the job.

1 Q At the time of the reorganization, was he
2 performing the duties...

3 A Yes.

4 Q ...all of the duties -- all of the duties of the
5 old position description, or had his duties changed over
6 time?

7 A His duties had changed over time.

8 Q And so his position description was out of date?

9 A It was out of date.

10 Q And you still RIF'd him out of that old job
11 description?

12 A I still RIF'd him out of the old job description.

13 JUDGE YOUNG: Wait a minute. I'm not sure I --
14 I'm -- maybe I missed.

15 JUDGE COLE: So he had to go to an interview?

16 THE WITNESS: Yes.

17 JUDGE YOUNG: I understand that part. What I'm
18 trying to understand is he was working off the old -- he was
19 doing the functions of the old job description? No?

20 THE WITNESS: No. He was actually -- his duties,
21 over a period of time -- he'd had this old job description.

22 JUDGE YOUNG: Right.

23 THE WITNESS: And over a period of time he had
24 been performing different things.

25 JUDGE YOUNG: Right.

1 BY THE WITNESS:

2 A When I set up the new human resource organization,
3 we thought that what he was doing, you know, that these new
4 gradual duties that I'd been giving him were in one of the
5 new PDs in the organization.

6 Q And in his old PD?

7 A And in his old PD. But when we did the actual
8 comparison, they were different jobs. You know, we didn't -
9 - we didn't sit down and say, "Okay, well, here's Ed's old
10 job discretion. And here's what we want this new one to be.
11 And let's see if we can take all this stuff and put it in
12 here to make sure it fits Ed.

13 We went out and wrote the job, and here's what I
14 want it to do. And we thought, 'Well, you know, probably --
15 Ed could have the right to that job,' but when we did the
16 comparison, he did not. So we had to rethink...

17 Q In fact, his position description was out of date
18 with respect to the duties he was doing?

19 A That's correct.

20 JUDGE YOUNG: So the -- so the comparison was that
21 his old job description did not match the new job; whereas,
22 with Mr. McArthur, the old job description matched the new
23 job?

24 THE WITNESS: In my opinion, the majority of those
25 duties matched. The new one to the old one matched. And

1 then Mr. Boyles' didn't.

2 JUDGE YOUNG: So you went according to what the
3 old position said, rather than what the person was actually
4 doing?

5 THE WITNESS: Correct.

6 BY MR. MARQUAND:

7 Q And so was Mr. Boyles' situation more similar to
8 Mr. -- Dr. McArthur's situation, where he was -- had rights
9 to the new job, or was it more similar to Mr. Fiser's, where
10 counsel for the staff claims that the position description
11 was out of date, and therefore the job was determined to be
12 eliminated?

13 A It's more apt to Mr. Fiser's.

14 Q Okay.

15 CHAIRMAN BECHHOEFER: Well, just to clarify again,
16 if the new description -- job description picks up
17 everything in the old job description, hypothetically, now.
18 But also adds some newer, different duties, then can a
19 person holding the old job description be transferred to the
20 new job without competition?

21 A That is possible; yes.

22 Q And then, would it depend on how substantial the
23 adjustments were to what had been in the old, or how do you
24 calculate that?

25 A It could be. I mean, you know, my job might be a

1 good example of that. Right now, you know, I have human
2 resources, training, and safety. If my boss came to me and
3 said, "You know, what, Phil, we're going to give you
4 business services now." Probably when you would like at
5 that job you'd say, "You know what, he's performing the
6 majority of that work now. We're adding a new function in
7 here. We think he still needs to -- you know, he still has
8 rights to that position. We're just moving some work in.
9 It's the same kind of scenario as you've described.

10 CHAIRMAN BECHHOEFER: Yes. Yes. And that could
11 take place?

12 THE WITNESS: That could take place. Yes, sir.

13 CHAIRMAN BECHHOEFER: Yeah, right. Thank you.

14 BY MR. MARQUAND:

15 Q The one last question. With respect to TVA's
16 interpretation application of -- of at least how he -- TVA
17 nuclear applies the competitive level to terminations.

18 A I'm sorry, sir.

19 Q The competitive level determinations. That is,
20 the two jobs are basically -- that somebody has rights to
21 job because it's on the same competitive level. Do you
22 understand what I'm talking about?

23 A Yes.

24 Q To your knowledge, has that interpretation been
25 accepted? Is that the interpretation that the MSPB applies

1 when it reviews TVA cases?

2 MR. DAMBLY: I'm going to object to it because it
3 calls for a legal conclusion.

4 MR. MARQUAND: No, this is based on his
5 experience. He said he'd been -- he'd been involved in some
6 200 cases.

7 MR. DAMBLY: I mean, I -- I believe the MS -- the
8 case law can speak for itself.

9 MR. MARQUAND: Well, I mean, that's the
10 interpretation they use, and I'm asking if it's vindicated.
11 by the...

12 JUDGE YOUNG: You can argue the law; he can answer
13 what he knows from his experience.

14 CHAIRMAN BECHHOEFER: Yeah. I think you cannot
15 give a legal opinion about it, but you can answer the
16 question that was asked.

17 BY THE WITNESS:

18 A I've won cases using that -- those procedures and
19 that application and our interpretation of -- of those
20 regulations.

21 Q Thank you.

22 MR. MARQUAND: Nothing further, Your Honors.

23 MR. DAMBLY: I have a few.

24 REDIRECT EXAMINATION

25 BY MR. DAMBLY:

1 Q Counsel asked you about Staff Exhibit 152, the one
2 that requires...

3 A 152? Is that what you said, sir?

4 Q 152.

5 A Okay.

6 Q The one that requires posting, I think.

7 A Yes.

8 Q Would -- when Mr. Corey went from the rad con
9 manager at Browns Ferry in 1995, to the rad con chem
10 manager, from a PG-11 to a PG senior position without
11 posting a competition, was that consistent with the
12 requirements of Exhibit 152?

13 A I don't really remember the scenario of Mr. Corey.
14 I do remember that the -- when we combined the rad con and
15 chemistry organizations, we made a determination that moving
16 that function into the rad con organization, we felt like
17 that the Mr. Coreys and the Mr. Kents and -- I can't
18 remember who was at Watts Bar's -- at Watts Bar---excuse me--
19 --would have had rights to those positions. So they
20 wouldn't have been vacant.

21 Q All right. You made a determination that the rad
22 con manager at a site where there was a rad con manager and
23 a chemistry superintendent had rights to a newly created
24 higher level position over both of those?

25 A Over both of...

1 Q The rad con and the chemistry organizations?
2 That's what the rad-chem supervisor had.

3 A When we combined those organizations, we combined
4 them into one organization.

5 Q Yes.

6 A And...

7 Q Which had surviving -- because we've got the
8 chart, if you want to look at it, rad con manager and a
9 chemistry manager, and a rad con chemistry manager over
10 those two.

11 A I'd have to look at the chart. I mean, I don't --
12 I remember when we made the organizations; I do not remember
13 the details about how we went about that. I remember when
14 we combined the two organizations.

15 Q And when you did that combination, did chemistry
16 superintendent position Mr. Fiser had been in at Sequoyah
17 and the one Mr. Sabados had been in at Browns Ferry, were
18 reclassified as PG-10 positions? And Mr. Sabados went into
19 his, and Mr. Fiser didn't go into his. But that was the
20 same position? That was not the rad chem position?

21 A The chemistry job and the rad chem job are two
22 different jobs, if that's what you're asking me. Yeah.

23 Q Right. And then there was a rad chem supervisor
24 position created above those two?

25 A Are you referring to the rad con chemistry

1 manager?

2 JUDGE YOUNG: Right. I think he is.

3 Q This is Staff 12.

4 JUDGE YOUNG: Staff 12?

5 Q April 27, 1993, memo from Bynum that set forth the
6 standard of the organization.

7 A Okay, can you ask me the question again, please.

8 Q All right. When that organization was created, it
9 had at those plants previously a rad con manager and a
10 chemistry superintendent, or maybe it was a rad con
11 superintendent and a chemistry superintendent. And, at
12 least as I recall at Sequoyah, the chemistry position
13 reported to the ops manager on the operation side.

14 A I believe so.

15 Q Then they combined the two, and they kept the rad
16 con manager and the chemistry manager, and created a rad con
17 chemistry manager, which was a PG senior position. You're
18 telling me somebody made a determination that the rad con
19 manager had rights to the rad con chemistry function he'd
20 never been in charge of before? And it also picked up
21 environmental, as I recall.

22 A In the memo it talked about picking up
23 environmental. I don't remember the details of how they --
24 they went into that position.

25 JUDGE YOUNG: Does that -- is that the same thing

1 as your answer to Judge Bechhoefer's question about if this
2 person retains all the same responsibilities and adds more,
3 can it be determined that the person has rights to that
4 position?

5 THE WITNESS: It could be; yes. Similar to the
6 responses I gave to...

7 JUDGE YOUNG: And is that what you basically were
8 saying had happened with -- with Mr. Corey and Mr. Kent and
9 -- and I guess it was -- I don't know if it was...

10 THE WITNESS: I wasn't involved in those decision.
11 And so I'm really not sure what happened in those, about
12 what was in those organizations and not in those
13 organizations at those times.

14 BY MR. DAMBLY:

15 Q Now, you indicated, in response to a question from
16 Mr. Marquand, that in 1993 Mr. Fiser got the benefit of the
17 error because he -- you settled the case and gave him a
18 position; is that correct?

19 A Yes.

20 Q But the error was that he was reduced from a
21 position that still existed. Why did not to you put him in
22 the position, if you want to give him the benefit of the
23 error, why -- why didn't he go to the job that he had rights
24 to?

25 A You know, my position at that point in time, and

1 have response for the complaints, I was of the opinion that
2 Mr. Fiser had not been treated properly, and my objective
3 was to try to settle the complaint and put him in a position
4 where he did not suffer any compensation loss.

5 JUDGE YOUNG: Did you achieve that?

6 THE WITNESS: I believe Mr. Fiser went into a
7 lower-level position and retained his current salary. I
8 don't believe he had any salary reduction as a result of our
9 settlement.

10 BY MR. DAMBLY:

11 Q But if you placed him in the job that he had
12 rights to, it would have been a PG-10 job.

13 A I -- you know, I don't know. But...

14 MR. MARQUAND: Fiser signed the agreement, I
15 believe, didn't he, Counsel?

16 MR. DAMBLY: I'm not asking what he signed. We're
17 talking about you corrected the problem. The problem,
18 according to you, was he had a PD of record, which is the
19 official document here, that said he's the chemistry
20 superintendent at Sequoyah. So since that position existed--
21 --in fact, was upgraded, just like the one at Browns Ferry--
22 --why didn't you put him in where he belonged?

23 A I didn't look at it from that perspective. What I
24 looked at is I had a situation that wasn't right, and I
25 wanted to try to resolve their complaint with Mr. Fiser.

1 And I did that.

2 Q And you say -- you talked about Mr. Boyles, and he
3 had a position description that was out of date, and for a
4 job. And when you looked at the new organization and the
5 new positions, that position didn't exist, so you RIF'd it?

6 A Yeah, I issued him a RIF notice; yes.

7 Q And when you looked at Dr. McArthur's, he had a
8 position description of record for a position that had been
9 eliminated in 1994. Why didn't you give him a RIF notice?

10 A Because in the creation of a new corporate rad con
11 chemistry manager position, we felt like, and I accepted the
12 recommendation of my staff, of Mr. Easley and Mr. Boyles,
13 that there was -- that they felt like it was similar to the
14 job that he had, as job of record, and I concurred with
15 their recommendation, and we felt like he had rights to that
16 position.

17 Q In response to a question from Mr. Marquand, you
18 said the majority of the duties were the same; is that
19 right?

20 A Yes.

21 Q You also said that you never reviewed the PDs, so
22 how do you know that?

23 A And I'm -- excuse me, I don't mean to be flippant
24 about this, but, you know, I'm the human resource -- or vice
25 president of human resources for about the third largest

1 utility in the United States. It generates 29,000 megawatts
2 at \$7 billion in revenues. I do not have time, on a day-to-
3 day basis, even on issues that are sensitive, and
4 complaints, to go down and review individual position
5 descriptions. I pay people, you know, \$100,000 to do those
6 things. And for me to sit here and tell you that I sit down
7 on a day-to-day basis and do technician type work, I don't
8 do it.

9 Q And I didn't ask you if you did that work, I just
10 said -- Mr. Marquand asked you why did you think they were
11 the same, and you said because they had the majority of
12 duties were the same.

13 Q That was the recommendation from my staff.

14 Q But what you meant was your staff told you that
15 the majority of the duties were the same...

16 A My staff -- correct. My staff recommended that to
17 me.

18 Q And we looked at those two PDs this morning, and
19 the technical program manager's the one with 635 people
20 reporting to him in corporate-wide security and
21 environmental, where I guess emergency preparedness,
22 industrial safety, fire protection, none of which -- and out
23 of that 635, I think security was maybe 450 or so. None of
24 that survived. Does that sound like...

25 A It's probably the majority of it. Security was

1 probably the majority.

2 Q And so that all went away, and you thought that
3 was sufficiently interchangeable that he had rights to this
4 patients. But when Mr. Fiser dropped a minor function of
5 chemistry, which, from a position description that was
6 inaccurate to start with, there was no interchangeability
7 there.

8 JUDGE YOUNG: You mean environmental? When he
9 dropped the environmental?

10 MR. DAMBLY: The environmental.

11 Q In '96, when we went from chemistry and
12 environmental, back down to chemistry, and he dropped what,
13 according to his boss and according to all the site people
14 that have been here, was a very minor part of his job, there
15 wasn't sufficient interchangeability in that case to follow
16 the RIF regs.

17 A You know, I relied on the decisions of my staff to
18 make that determination. They came to me with the
19 recommendation. This is how they saw things and what their
20 recommendation was to me. And I accepted that
21 recommendation.

22 CHAIRMAN BECHHOEFER: Mr. Reynolds, one further
23 follow-up on your statement concerning the salary
24 comparability between the -- I think the PG-8 and the PG-10
25 positions. At the time this obviously was accurate, but

1 when you factor in future grade increases---I'm not sure
2 what the term would be---is it not true that the person in a
3 PG-8 would not ever get increases as much as that in a PG-
4 10, and that they would not stay comparable? That a person
5 in a PG-10 would rise faster, based on annual increases,
6 that type of thing, than a PG-8? And that -- the person in
7 the PG-8 would never be allowed to at least exceed the PG-8
8 range of -- of salaries that -- that occurred annually to
9 PG-8s?

10 A Ultimately, over time; yes. I mean, you're
11 correct in your analysis.

12 CHAIRMAN BECHHOEFER: So the PG-10 would
13 eventually pay more than the PG-8, is what I'm saying, even
14 though they...

15 THE WITNESS: Probably; yes.

16 CHAIRMAN BECHHOEFER: ...may have overlapped at
17 the time.

18 THE WITNESS: Probably. Ultimately, probably,
19 yeah, it would have been.

20 JUDGE YOUNG: In that...

21 BY MR. DAMBLY:

22 Q At the time Mr. Fiser was in the chemistry
23 superintendent position at Sequoyah, that was a PG-9, wasn't
24 it?

25 A I believe so.

1 JUDGE YOUNG: In that settlement, did any -- does
2 the management desires or -- or preferences place any
3 limitations on what -- how you could settle the case?

4 MR. MARQUAND: Do you mean does -- is Mr. Fiser
5 limited by management to how high he could rise?

6 JUDGE YOUNG: No, no. Was Mr. Reynolds, in
7 settling with Mr. Fiser in 1993, limited in any way by what
8 management wanted to achieve. I mean, in other words, did -
9 - when you wanted to give him back his job and he got an 8
10 instead of a 9 or a 10, whatever he was before, did that
11 result in any way from management not wanting you to give
12 him a 9 or 10?

13 THE WITNESS: No, I -- as I remember, Mr. Fiser
14 had never been very successful as a chemistry manager at the
15 Sequoyah Nuclear Plant. And why would I want to put him
16 back into a situation where he had not been successful
17 before, and he is a -- you know, my assessment is that, you
18 know, Gary was very bright technically, understood the
19 business, understand the working of the plant (sic) from a
20 chemistry perspective. But was somewhat ineffective in
21 being able to get things done and having that accountability
22 to get things done in the organization. So why would I, you
23 know, resolve a complaint with someone to put them back into
24 a position where they would have -- you know, I didn't think
25 that they could succeed. And I thought he could succeed in

1 the corporate chemistry job.

2 JUDGE YOUNG: I guess I was asking, in another
3 way, whether you took those kinds of things into
4 consideration, which you would have learned from the
5 management; right? I mean, I'm not trying to put any value
6 on it one way or the other, I'm just asking.

7 THE WITNESS: I don't know that I would have
8 learned it from the management, and that -- you know, did --
9 did somebody from management come down and say, you know,
10 "You can settle with him, Phil. But don't put him in the
11 corporate chemistry job -- or in the site chemistry job"?
12 No.

13 JUDGE YOUNG: I'm not trying to put any -- any
14 connotations, negative or positive, on it.

15 THE WITNESS: I understand.

16 JUDGE YOUNG: Just that -- whether you considered
17 anything other than just settling it. And it sounds like
18 you considered the fit for the job, wherever you got that
19 information.

20 THE WITNESS: What was best for Gary, is one of
21 the things I considered.

22 JUDGE YOUNG: Okay. Right.

23 THE WITNESS: You know, I looked at things in the
24 fossil organization and...

25 JUDGE YOUNG: Right.

1 THE WITNESS: ...other organizations in TVA.

2 BY MR. DAMBLY:

3 Q Just to follow up on something you said. You said
4 he wasn't successful at the...

5 A That's my opinion.

6 Q Based on what?

7 A You know, we have had numerous problems with
8 chemistry at Sequoyah. We have had, you know, several
9 problems with equipment. Just my general impression was, is
10 that he hadn't done a really good job in the Sequoyah
11 chemistry organization. That was my impression, as I said
12 earlier.

13 Q You didn't review any of his service reviews?

14 A I don't remember doing that; no.

15 Q And you didn't talk to any of his managers?

16 A No.

17 Q Now, Mr. Marquand asked you some questions about
18 Staff Exhibit 99, the list of, you know, one-line entries.

19 A Yes. Yes.

20 Q About whether it showed the PD of record.

21 A Correct.

22 Q It does, however, show the grade of the position
23 the person occupies at all times, doesn't it?

24 A I believe it does; yes.

25 Q And it shows, at least on one line, when somebody

1 was promoted?

2 A It has an action code for -- yes, it does. It has
3 an action code in there for what action you took.

4 Q So if you look at that, you can at least tell, if
5 you find a PD of record for a position that's at a grade
6 different than the entries that have been put in there, then
7 you know the PD is not for the position that the person is
8 occupying?

9 A I'm not sure I understand that question. Can you
10 rephrase it for me?

11 Q Yes.

12 A Okay.

13 Q The -- you indicated you've won some cases on the
14 PD of record theory.

15 A Yes.

16 Q Have you ever won a case at the MSPB where you
17 went in in a situation like Mr. Fiser was in in '93, when
18 you told us that was a loser, and you said to the board, "We
19 RIF'd this individual from their position description of
20 record knowing that that's not the job they were in.
21 They've been appointed to a different position, but we
22 reduced them from one they weren't in and didn't occupy
23 because the paperwork hadn't caught up"?

24 A No.

25 Q I wouldn't think so. No further questions.

1 A I wouldn't be that dumb to take that.

2 CHAIRMAN BECHHOEFER: Mr. Marquand, further
3 questions?

4 MR. MARQUAND: Yes, I do.

5 REXCROSS-EXAMINATION

6 BY MR. MARQUAND:

7 Q I want to walk through the sequence of documents.
8 If you'll look at Joint Exhibit 59.

9 A 59?

10 Q 59.

11 JUDGE YOUNG: Joint Exhibit 59?

12 MR. MARQUAND: 59.

13 Q That's Mr. Fiser's surplus notice he got in April
14 of '93; correct?

15 A Yeah, April 2nd, 1993.

16 Q Now, if you'll look at Joint Exhibit #60. What is
17 Joint Exhibit 60?

18 A Joint Exhibit 60 is...

19 Q Is that the RIF notice?

20 A It is. That's a RIF notice.

21 Q And the effect -- the date that it was sent to him
22 was August 13th, '93; right?

23 A Yes.

24 Q And the effective date is October 15th, '93?

25 A "You will be continued in work status through

1 October 15th, 1993."

2 Q All right. So unless something happened, Mr.
3 Fiser's TVA employment was terminated October 15th, '93;
4 correct?

5 A That's correct.

6 Q All right, now, the next document in sequence
7 would be staff exhibit -- NRC Exhibit 34. That's Mr.
8 Fiser's Department of Labor complaint, which is already in
9 record, September 23, '93; right?

10 A That's correct.

11 Q Now, before that Department of Labor complaint
12 came into TVA, had the issue of Mr. Fiser and his RIF come
13 to your attention? This is what brought it to your
14 attention; correct?

15 A No. Right. His complaint told me that he had had
16 a...

17 Q All right.

18 A ...there was an issue.

19 Q There has been previous testimony that Mr. Fiser's
20 Department of Labor complaint wasn't settled til April of
21 '94.

22 A I don't remember when it was settled.

23 Q All right. Assuming...

24 COURT REPORTER: Sorry, I couldn't hear you.

25 A I don't remember when it was settled.

1 Q Assuming that that's the testimony, when you
2 settled the complaint with Mr. Fiser, you not only offered
3 him a job, but you offered to bring him back to work;
4 correct?

5 A That's correct.

6 Q When you were negotiating with him, did Mr. Fiser
7 ask, in fact, to go back to Sequoyah as the chemistry
8 manager?

9 A No, not that I recall.

10 Q Thank you, Mr. Reynolds.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. DAMBLY:

13 Q Just a quick follow-up, since you -- going to the
14 RIF notice here that's 60, and we -- we looked at Staff
15 Exhibit 12 a minute ago, the standard organization plan. I
16 gave -- if you want to pull it out, you have it there. But
17 it's the one from Mr. Bynum dated April 27th, 1993.

18 A You said exhibit -- is it Staff Exhibit 12 or...

19 Q 12. Staff Exhibit 12. Okay, and if you look at
20 Staff 12, it tells you the standard organization was
21 implemented April 27th, 1993.

22 A The memo was issued April 27th, with --
23 implemented as quickly as possible.

24 Q All right. And that does indicate there's going
25 to be a chemistry manager position; correct?

1 A Yes, it does.

2 Q And so the RIF notice issued to Mr. Fiser some
3 five months later, four months later...

4 A Yes.

5 Q ...his termination notice says he's being
6 terminated from a position that actually was in existence?

7 A That's correct.

8 Q And we have had testimony previously. Let me read
9 you yesterday, Mr. Kent's testimony, see if it refreshes
10 your recollection what happened with Mr. Sabados.

11 Question: "Now, we discussed previously you
12 didn't recall what happened to the chemistry manager at
13 Browns Ferry. Do you recall?"

14 Answer: "Yes, I stated that. That's correct."

15 "Okay. And if you'd look down at the bottom of
16 Page 4, where it says the decision to upgrade the chemistry
17 manager position, and you go why it was upgraded, and the
18 last is Kent stated that John Sabados, the current chemistry
19 manager at Browns Ferry Nuclear Plant was a PG-9 until," in
20 quotes, "maybe days ago. Kent explained BFN is just now
21 beginning to implement the new organizational structure."

22 Does that indicate to you that Mr. Sabados was
23 also in a PG-9 chemistry position, and when they reorganized
24 and put in the new position or the new standard
25 organization, his position went from a nine to a ten?

1 A Yes, it does.

2 Q And so, if Mr. Fiser was in that position, he
3 would have gone from a nine to a ten?

4 A Yeah, I believe the positions were reevaluated
5 and...

6 Q And people were non-competitively upgraded in the
7 positions?

8 A I won't say non-competitive, because it could have
9 been a matter of the positions were refactored, you know,
10 through the job evaluation process. I mean, we have --
11 those things happen to us all the time.

12 Q It was a reclassification?

13 A It was a reclassification.

14 Q Right. And if Mr. Fiser had been in the chemistry
15 manager position that was a nine when it was reclassified to
16 a ten, he would have been in that position?

17 A Yes.

18 JUDGE YOUNG: Let me see...

19 MR. DAMBLY: Go ahead.

20 JUDGE YOUNG: I just -- let me see if I understand
21 what happened, following Exhibits 59 and 60. Exhibit 59,
22 joint -- I think it's Joint Exhibit 59, the position was
23 surplusd. The chemistry manager, PG-9, at Sequoyah was
24 surplusd.

25 THE WITNESS: That is correct.

1 JUDGE YOUNG: In April.

2 THE WITNESS: Or the notice says that; yes.

3 JUDGE YOUNG: Right. And then, for whatever
4 reason, it looks like it was put back in service, or
5 whatever the word is, because the August '93 letter -- well,
6 I'm sorry, it says, "elimination of your position." Was it
7 -- was it put back in service and then the position was
8 eliminated? Or -- and maybe I'm missing the...

9 MR. DAMBLY: The position was never eliminated; is
10 that correct?

11 THE WITNESS: The chemistry manager position was
12 actually never eliminated.

13 JUDGE YOUNG: Well, the -- okay, what I'm trying
14 to understand is if there's -- if there's one chemistry
15 manager PG-9 at Sequoyah in April 1993, and that chemistry
16 manager, PG-9 position was surplus, that means it no
17 longer existed?

18 THE WITNESS: Actually, what it is, is that we
19 screwed up. This is...

20 JUDGE YOUNG: Well, normally it means it no longer
21 exists; correct?

22 THE WITNESS: Normally that's what it would mean.
23 But...

24 JUDGE YOUNG: Okay.

25 THE WITNESS: ...this is where we have made the

1 error in handling Mr. Fiser.

2 JUDGE YOUNG: Okay. But, now -- but just -- what
3 I'm trying to understand is, but for the fact that you'd
4 made an error, this second letter of August 13th would have
5 been redundant because you'd already done away with the
6 position, so you don't eliminate it for the second time, do
7 you? Or do you?

8 THE WITNESS: It's -- I believe it's just the
9 actual notice of a reduction in force. It's -- I think it's
10 just a procedural thing where you give employees a notice
11 and then have to do it again, issue it again.

12 MR. MARQUAND: Correct. The regulations...

13 MR. DAMBLY: And if you look, Mr. Reynolds, at
14 Exhibit 59, which is the one before that, that's just the
15 notice of a transfer to the ETP; right?

16 THE WITNESS: Correct. Yes, it is.

17 MR. DAMBLY: And that tells him if he doesn't find
18 a job in a year, then there might be a RIF? And then, on
19 60, he actually got a notice some months later that he was
20 actually being RIF'd; is that correct?

21 THE WITNESS: That's what the documents say; yeah.
22 That's correct.

23 JUDGE YOUNG: Well, then, I'm not clear on some
24 things.

25 MR. MARQUAND: Your Honor, the -- the regulations

1 -- the OPM regulations require that in order to be separated
2 from federal employment in a reduction of force, you have to
3 be given a formal RIF notice...

4 JUDGE YOUNG: Right.

5 MR. MARQUAND: ... "X" number of days before the
6 effective date.

7 JUDGE YOUNG: Right.

8 MR. MARQUAND: And that's what Exhibit 60 was.

9 JUDGE YOUNG: Right.

10 MR. MARQUAND: It's the formal RIF notice.

11 JUDGE YOUNG: Right.

12 MR. MARQUAND: Exhibit 59 is an internal TVA
13 mechanism. He's still a TVA employee, but he goes to this
14 surplus organization.

15 JUDGE YOUNG: Okay. What -- here's what I
16 understood you to say earlier this morning that's confusing
17 me. I thought that the ETP was a place where -- well, maybe
18 I just assumed that if a person was going to lose their job,
19 they were put in the ETP as sort of an out placement
20 process.

21 And then, when you said that once they got in the
22 ETP, then they'd stay there, sort of indefinitely, until the
23 -- until they were RIF'd from the ETP. Then I -- then it
24 sounded more like a transfer to another job. And I thought
25 that you had said that the person is given a choice, when

1 they're RIF'd, to take the severance package or to go ETP.
2 And then once they went to ETP, if they were later RIF'd
3 from the ETP, they were just given the option of a severance
4 package. There weren't the choices. So...

5 MR. MARQUAND: Most of that's correct. But being
6 at ETP doesn't preclude somebody from being -- from finding
7 a job within TVA. In fact...

8 JUDGE YOUNG: Right.

9 MR. MARQUAND: ...many, many people...

10 JUDGE YOUNG: Right.

11 MR. MARQUAND: ...get a notice that says, "Your
12 job is being eliminated," and they then apply on other jobs
13 and are selected.

14 JUDGE YOUNG: Right. I know that. But what I'm -
15 - what I'm not understanding is, this notice of April 2nd
16 told him he was going to ETP.

17 MR. DAMBLY: Your Honor may have to look at the
18 second page...

19 JUDGE YOUNG: Earlier you had said...

20 MR. DAMBLY: ... you would see the top paragraph
21 on the second page, "If you choose to enter the ETP, and at
22 the end of six months you have not been placed in a
23 permanent TVA position or entered a training program which
24 will qualify you for another TVA position, your employment
25 will be terminated through a reduction in force

1 proceedings."

2 JUDGE YOUNG: Right. But I thought you had said
3 this morning that the reduction in force at that point would
4 be from the ETP, not from the regular job. This refers to
5 the regular job. So once they go into ETP, if they don't
6 get a job at the end of six months...

7 THE WITNESS: They have to be RIF'd back out of
8 their old organization.

9 JUDGE YOUNG: And then do they get another second
10 bite at ETP at that?

11 THE WITNESS: No. At that point they get the
12 severance option. They would have gotten the severance
13 option.

14 JUDGE YOUNG: So is that equivalent to being RIF'd
15 from ETP, like you talked about this morning?

16 THE WITNESS: No. No. And I -- I may have
17 confused you on that issue. Because at one point, when we
18 went to a "no RIF," where we didn't RIF anybody, that you
19 went into the services organization at that time, once you
20 went in there you stayed in there forever. There were no
21 conditions about how long you could be in there or all those
22 things.

23 JUDGE YOUNG: Right.

24 THE WITNESS: But you went to the ETP program in
25 this '93 time frame, and you had six months, find a job or,

1 you know, you could take this option of, you know, the
2 \$5,000, I think it is, and those kinds of things.

3 JUDGE YOUNG: Okay. It changed, in other words?

4 THE WITNESS: The policy changed regarding how we
5 handled -- just like the...

6 JUDGE YOUNG: Okay. So you no longer stayed in
7 ETP indefinitely and were RIF'd from ETP. Instead, you had
8 six months in ETP, and then you were RIF'd from your former
9 job if you hadn't found another job in the interim?

10 THE WITNESS: Correct.

11 JUDGE YOUNG: Okay. Now I understand.

12 MR. MARQUAND: And the reason you're RIF'd from
13 your former job is it's only an assignment to ETP. Just
14 like your job assignment, you continue to keep your old job
15 description and your previous salary. So you're still RIF'd
16 out of your old job.

17 JUDGE YOUNG: Okay. Basically, you explained it
18 by telling me that you changed -- there were two different
19 programs. Services and ETP were different.

20 THE WITNESS: Two different programs in ETP.

21 JUDGE YOUNG: Okay.

22 CHAIRMAN BECHHOEFER: I need a little more
23 clarification, now, then. Because would the severance
24 package then stem from the date you were assigned out of
25 ETP? Or would it -- or would it start from the date of...

1 original RIF notice?

2 THE WITNESS: Okay.

3 CHAIRMAN BECHHOEFER: That's what I was trying to
4 ascertain this morning.

5 JUDGE YOUNG: You mean the original surplus
6 notice?

7 THE WITNESS: Let me see if I can -- from '93 to
8 '96, how we handled employees whose positions were
9 eliminated, and the options available to them changed
10 slightly.

11 CHAIRMAN BECHHOEFER: Right.

12 THE WITNESS: And the severance packages changed
13 slightly. In '93 -- in April of '93, when Mr. Fiser was
14 given this notice of his transfer to the employee transition
15 program, what was available to him is that if he chose to
16 resign and separate from TVA in 30 days, he's going to
17 receive \$5,000; okay? When he goes in '96 and he chooses to
18 resign voluntarily, at that time, I believe, he had the
19 option of receiving a year's salary. And that was from the
20 date -- you know, he wouldn't go into the services
21 organization. He said, "Okay, I'm leaving, and I'm going to
22 leave the organization." And at that point, that's when
23 that year's salary -- we would pay them that year's salary.

24 JUDGE YOUNG: That's when the thing that you
25 described this morning was in effect?

1 THE WITNESS: Yes.

2 JUDGE YOUNG: Okay.

3 THE WITNESS: Then, when he -- if he would have
4 chosen to go into the services organization at that time,
5 then he would have gone in there, and anything that would
6 have happened after that point, the deal of a year's salary
7 was off. Because he accepted the assignment into the
8 services organization. Does that help you, Your Honor?

9 CHAIRMAN BECHHOEFER: Well, but then what happens?
10 In effect, if he went into the services organization, now,
11 this was -- this was his...

12 JUDGE YOUNG: He stays in there...

13 CHAIRMAN BECHHOEFER: ...now, this was his claim,
14 that if he went into the services organization, he would
15 forfeit at least the portion of the year's salary that he
16 was in the services organization for. In other words, that
17 the salary date would run from the year of the -- of the
18 formal RIF, I guess. And -- and any severance -- if he was
19 allowed to stay in the ETR or whatever it was called at that
20 moment in time, if he stayed there, his amount of time there
21 at his original salary would -- would be in lieu of any
22 portion of the severance package, so that the year would
23 start from the date he went into ETR, and when he was either
24 told to leave ETR or his ETR assignment ran out...

25 JUDGE YOUNG: ETP.

1 CHAIRMAN BECHHOEFER: I'm sorry. ETP assignment
2 ran out, he would then be entitled, in terms of severance,
3 only to the remaining portions of the year's salary...

4 MR. MARQUAND: Phil, is it...

5 CHAIRMAN BECHHOEFER: ...that he wasn't in the
6 transition organization, if you will.

7 MR. MARQUAND: Phil, is...

8 JUDGE YOUNG: Let me answer that. You -- you said
9 this morning that when he went into ETP, you stayed there
10 indefinitely unless you got RIF'd from ETP. And then if you
11 got RIF'd from ETP, you were again offered the year's
12 severance.

13 THE WITNESS: No. All you got was your severance
14 pay.

15 JUDGE YOUNG: Not a year's severance pay?

16 THE WITNESS: No. It would have been calculated -
17 - remember we talked about when I was going to get five days
18 for every week I worked? Remember I made that comment?

19 JUDGE YOUNG: Okay, so that's when...

20 THE WITNESS: When he was -- if he would have been
21 into the services organization, and he would have gotten a
22 reduction in force from there, he would have been eligible
23 for only the normal severance, which is...

24 JUDGE YOUNG: Okay.

25 THE WITNESS: ...five days pay for every year

1 worked.

2 MR. MARQUAND: But at that time, Phil, isn't that
3 when the chairman of the board made a Simulcast presentation
4 to all employees and said, "If you go into services, we're
5 not going to -- you've got a guarantee of a year..."

6 THE WITNESS: No more RIF's; yeah.

7 MR. MARQUAND: "...at least in there. So you've
8 got -- you can either take your year's money now, or you can
9 go to services..."

10 THE WITNESS: Services.

11 MR. MARQUAND: "...and be guaranteed a year in
12 services, which gives you the opportunity, during that time,
13 to seek further TVA employment, as well." So, I mean, he
14 could have gone to services, been guaranteed the year,
15 either way, and continued to seek other TVA employment
16 during that year in services.

17 JUDGE YOUNG: And what about the indefinite
18 staying on? Was that -- that included a stay in services of
19 just a year?

20 MR. MARQUAND: It was a guarantee of at least a
21 year. At least.

22 THE WITNESS: At least a year.

23 JUDGE YOUNG: Okay.

24 MR. DAMBLY: But actually, I believe, if you look
25 at Joint Exhibit 28 from Mr. Fiser, it says...

1 MR. MARQUAND: It's poorly worded, we agree.

2 MR. DAMBLY: ... "You are to report to TVA S
3 location to which you are to report prior to that date.
4 This assignment will end no later than the end of 19 --
5 fiscal 1997."

6 JUDGE YOUNG: Where are you reading?

7 MR. DAMBLY: I'm down in if you choose -- Option
8 B, "Be assigned to TVA services. Should you choose to elect
9 Option 1, you will be assigned to TVA services and are to
10 report..."

11 MR. MARQUAND: This is a different exhibit, Judge,
12 I believe.

13 MR. DAMBLY: Exhibit 28. Joint Exhibit 28.

14 JUDGE YOUNG: I'm looking at that.

15 MR. DAMBLY: Okay. It says...

16 JUDGE YOUNG: Where's the part about "no later
17 than" that you just read?

18 MR. DAMBLY: It's the third -- under Option B.
19 The third line.

20 JUDGE YOUNG: The third line. Okay.

21 MR. DAMBLY: "Will end no later than the end of
22 1997."

23 JUDGE YOUNG: Okay.

24 MR. DAMBLY: There's no way to read that to mean
25 that's the minimum time you get to stay there. That's

1 maximum; is that correct?

2 THE WITNESS: You know, it says this assignment
3 will end no later than the end of FY97.

4 JUDGE YOUNG: Which was when?

5 THE WITNESS: End of FY97 would be October -- or,
6 excuse me, September 30th, 1997. So about...

7 MR. DAMBLY: Thirteen (13) months?

8 THE WITNESS: ...13 months; yeah. This was, you
9 know, right before we would start the fiscal year.

10 JUDGE YOUNG: Okay.

11 CHAIRMAN BECHHOEFER: But he would -- in that
12 situation, he would have to stay for whatever the period of
13 time is, and would -- the way I read this, at least, you
14 could say you forfeited a severance. If you take one option
15 or another.

16 THE WITNESS: Well,...

17 CHAIRMAN BECHHOEFER: And -- and that is a
18 potential reading, at least, on my part; and certainly on
19 Mr. Fiser's part, because he read it that way.

20 THE WITNESS: I think the issue is, is that we
21 could -- you could have taken a year's salary at that point
22 in time, and left.

23 CHAIRMAN BECHHOEFER: Right. Right.

24 THE WITNESS: Or you could have continued to work
25 for a minimum of another 13 months...

1 JUDGE YOUNG: Maximum.

2 THE WITNESS: Maximum.

3 CHAIRMAN BECHHOEFER: Maximum.

4 THE WITNESS: To September 30th, 1997, which is a
5 year -- a little more than a year's salary, and look for
6 opportunities to continue your employment or bid on other
7 jobs or those kind of things. And then, subsequently, if
8 you come back and you get RIF'd, you're still going to get
9 that five days per year that you've worked at TVA in a
10 severance package.

11 CHAIRMAN BECHHOEFER: Yeah. Well, I guess Mr.
12 Fiser didn't interpret it that way, at least. He indicated
13 that's why he took the resignation.

14 MR. MARQUAND: There were all kinds of employee
15 meetings, weren't there, Mr. Reynolds, explaining all these
16 options and telling everybody what their rights were and
17 what severance was available under either alternative?

18 THE WITNESS: Yes. I answered a lot of questions
19 on that.

20 MR. DAMBLY: And if -- if he had taken this and
21 gone to the end of fiscal 1997, he would have been reduced
22 in force from his chemistry-environmental position?

23 THE WITNESS: I don't -- I don't know. Let's see.
24 Yeah, probably.

25 MR. DAMBLY: I mean, that -- that would have been

1 the only retention register you had for him?

2 THE WITNESS: That'd have been the retention
3 register he was on, chemistry-environmental.

4 JUDGE YOUNG: Thank you.

5 THE WITNESS: Thank you.

6 CHAIRMAN BECHHOEFER: Thank you, Mr. Reynolds.

7 THE WITNESS: You bet.

8 CHAIRMAN BECHHOEFER: While we have six minutes
9 left, you got another quick witness?

10 MR. MARQUAND: I thought Judge Young was ready to
11 go.

12 CHAIRMAN BECHHOEFER: With that, let's...

13 JUDGE YOUNG: Judge Bechhoefer -- never mind.

14 CHAIRMAN BECHHOEFER: With that, let's adjourn for
15 the day, and we'll be back Monday at 9:00.

16 (Whereupon, the hearing was adjourned at 4:55
17 p.m., the hearing to resume at 9:00 a.m. on
18 Monday, June 17, 2002.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Tennessee Valley Authority
Watts Bar Nuclear Plant,
Unit 1 Sequoyah Nuclear
Plant, Units 1 and 2 Browns
Ferry Nuclear Plant, Units
1,2,3

Docket Number: 50-390-CivP; ASLBP No: 01-
791-01-CivP

Location: Chattanooga, Tennessee

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

William Warren
William Warren
Official Reporter
Neal R. Gross & Co., Inc.

NEAL R. GROSS

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