

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

DOCKETED
USNRC

August 28, 2002 (1:15PM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

TENNESSEE VALLEY AUTHORITY'S MOTION TO COMPEL

The Tennessee Valley Authority (TVA) moves to compel the Nuclear Regulatory Commission's Staff to pay the full witness fees and cost due to Wilson C. McArthur. As grounds for this motion, TVA would show that the Staff served a subpoena upon Dr. McArthur to appear and testify, that he did in fact appear to testify, but that the Staff refuses to pay his fees and mileage as required by law.

As the Board knows, the Staff requested the issuance of a subpoena to compel Dr. McArthur to testify at the hearing in this proceeding in Chattanooga, Tennessee. In order to comply with the subpoena, Dr. McArthur had to travel from his residence in Provo, Utah, to Chattanooga. When the Staff served the subpoena on Dr. McArthur, they did not tender any fees or mileage, nor did the Staff send him an airline ticket, offer to prepay his ticket, or even provide him any travel instructions. Instead, the Staff left Dr. McArthur entirely on his own in terms of how to travel to Chattanooga. Since the Staff had provided neither an airline ticket nor money with which to purchase one, Dr. McArthur redeemed his own frequent flier miles to obtain an airline ticket. After he had appeared and testified, Dr. McArthur submitted his

receipts with his request for travel reimbursement. A copy of the Staff's official travel authorization is attached hereto as Exhibit A. A copy of the travel voucher is attached as Exhibit B. The Staff initially valued Dr. McArthur's airline ticket at \$702. See Exhibit A, box 13B, and Exhibit B, box 16B. However, the Staff only paid him \$5 on account of that ticket. See Exhibit B, box 16B, and page 2.

The valuation of Dr. McArthur's airline ticket at \$702 is more than reasonable in light of the Staff's own comparison (Exhibit B at page 2) of the cost of a roundtrip between Salt Lake City, Utah, and Chattanooga at \$1,599.

The Staff is legally required to pay Dr. McArthur's fees and mileage. NRC regulations expressly provide that witnesses are to be paid the same fees and mileage as "paid to witnesses in the district courts of the United States" (10 C.F.R. § 2.720(d) (2002)). The United States Code provides that a witness who travels by common carrier is entitled to be paid for those expenses "at the most economical rate reasonably available" (28 U.S.C. § 1821 (c)(1) (2000)). That statute further requires a "receipt or *other evidence* of actual cost" (emphasis added). The purpose, of course, is to substantiate that an item of expense was actually incurred. Here, Dr. McArthur submitted a copy of his ticket, and there is no question that he used his own personal assets (frequent flier mileage) to obtain a ticket with a readily ascertainable value. Moreover, there is no question that the amount of reimbursement sought is the most economical rate, i.e., the \$702 rate determined by the Staff is substantially less than the comparison cost determined by the Staff. Furthermore, the Staff cannot be heard to argue that Dr. McArthur should have used his own personal funds and sought reimbursement when the Staff failed to prepay any ticket, advance mileage expenses, or to even provide any instructions.

For the foregoing reasons, the Staff should be ordered to pay Dr. McArthur the full value of the airline ticket he used to comply with the Staff's subpoena.

Respectfully submitted,


August 22, 2002

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General Counsel

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Washington, D.C. 20005

Attorneys for Tennessee Valley Authority

003697385

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion to compel has been served by regular mail on the persons listed below. Copies of the motion, less the exhibits have also been sent by e-mail to those persons listed below with e-mail addresses.

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

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


Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

Administrative Judge
Richard F. Cole
U.S. Nuclear Regulatory Commission
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Rockville, Maryland 20852-2738
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Dennis C. Dambly, Esq.
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Mr. William D. Travers
Executive Director of Operations
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852-2738

This 22d day of August, 2002.



Attorney for Tennessee Valley Authority

NRC FORM 278 (5-2000) NRCMD 14.1 U.S. NUCLEAR REGULATORY COMMISSION OFFICIAL TRAVEL AUTHORIZATION See NRC Management Directive 14.1 for detailed instructions for completing this form. All shaded areas must be completed. Form may be typed or handwritten.				1. AUTHORIZATION CODE <input checked="" type="checkbox"/> New <input type="checkbox"/> Blanket <input type="checkbox"/> Amend <input type="checkbox"/> Cancel <input type="checkbox"/> Regular		2. SOCIAL SECURITY NUMBER 263-48-4859		3. AUTHORIZATION NUMBER R271268	
TRAVELER INFORMATION									
4. NAME OF TRAVELER (First two initials and last name)				5. PHONE NO.		6. TRAVEL PURPOSE CODE		7. EMPLOYEE CODE	
W C McArthur				801-375-9799		7		NRC EMPLOYEE/CONSULTANT	
8. MAIL ADDRESS (P.O. Box, Street, or Office) (For travel advance)						9. FUND CODE		10. OTHER NON NRC FEDERAL EMPLOYEE	
2314 N 390 East						<input checked="" type="checkbox"/> X0200 <input type="checkbox"/> X0300 <input type="checkbox"/> OTHER		<input type="checkbox"/> COMMISSIONER <input checked="" type="checkbox"/> OTHER	
CITY			STATE		ZIP CODE				
Provo			UT		84604				
ACCOUNTING INFORMATION									
10. ESTIMATED COST		11. BY		12A. BUDGET ORGANIZATION CODE		12B. COST ORGANIZATION CODE		12C. JOB CODE	
DOMESTIC		2				7C		E7080	
FORDON									
13. TOTAL				14. TRAVEL DATES		15. NUMBER OF OFFICIAL TRAVEL DAYS ONLY			
\$ 1,311.00				START		END			
				05/01/2002		05/04/2002			
16. INTERAGENCY AGREEMENT NUMBER				17. CONSULTANT CONTRACT NUMBER				18. GRAND TOTAL	
								1,311.00	
ITINERARY					TRAVEL ADVANCE				
19. ACTUAL DUTY POINTS					20. ADVANCE REQUESTED				
A. FROM: Salt Lake City, UT					<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO \$ 0				
B. TO: Chattanooga, TN					SIGNATURE OF TRAVELER				
TO: * Actual Lodging -					M. Eichen for WCH				
TO: 30.00 N.E.					Wilson C. McArthur				
TO: \$255					21. ADVANCE ISSUED				
C. RETURN TO: Salt Lake City, UT					SIGNATURE OF RECIPIENT				
					BADGE NO.				
					DATE				
					7/5/02				
TRAVEL AUTHORITY									
Reimbursement for the items authorized below shall be limited to the allowances in NRCMD 14.1, the Federal Travel Regulations, and applicable Comptroller General Decisions.									
22. TRANSPORTATION				23. SUBSISTENCE (Specify rate in itinerary block above)					
DATE TICKET REQUIRED				<input type="checkbox"/> A. Per diem - Lodgings plus M & IE rate <input checked="" type="checkbox"/> B. Actual subsistence rate/adjacent area rate (justify in remarks) <input type="checkbox"/> C. Special per diem rate (justify in remarks)					
<input checked="" type="checkbox"/> A. Common Carrier Contact Carrier Non-use code: () <input checked="" type="checkbox"/> B. Taxi/Uber <input checked="" type="checkbox"/> C. Rental car (justify in remarks) <input type="checkbox"/> D. Government-owned vehicle <input type="checkbox"/> E. Excess baggage - No. of bags: <input type="checkbox"/> F. Other Special Conveyances (justify in remarks)				<input type="checkbox"/> A. Registration fee \$ <input type="checkbox"/> B. Miscellaneous expenses (Specify in remarks) <input type="checkbox"/> C. Annual leave to be used <input type="checkbox"/> D. Government Charge Card: <input type="checkbox"/> YES <input type="checkbox"/> NO (If no, explain in Block 25)					
USE OF PRIVATELY OWNED VEHICLE:				<input type="checkbox"/> A. Advantageous to Government (justify in remarks) cents per mile. <input type="checkbox"/> B. Not to exceed Cost of Common Carrier cents per mile. <input type="checkbox"/> C. Government vehicle available cents per mile. <input type="checkbox"/> D. Government vehicle assigned cents per mile.					
25. PURPOSE OF TRAVEL/REMARKS (Indicate item number to which answer applies.)				Subpoenaed by NRC as witness in the Tennessee Valley Authority Hearing. <i>OK PER JOHN WALKER</i> Transportation to/from airport/hotel/hearing. <i>Rental Car authorized for NRC employee</i> 23B. Actual rate of \$75.00. Authorization not submitted prior to travel.					
ADMINISTRATIVE MIXUP: NO AUTHORIZATION SUBMITTED PRIOR TO TRAVEL									
26. FOREIGN TRAVEL - CERTIFICATION OF FUNDS AVAILABILITY					27. FOREIGN TRAVEL - CERTIFICATION OF AUTHORIZATION				
Funds are sufficient to cover the total estimated cost.					The official travel described above has been reviewed and the expenses necessary to the performance thereof are authorized in accordance with the Federal Travel Regulations, as amended, NRC Management Directive 14.1, and under the conditions of this authorization.				
TITLE					DATE				
SIGNATURE					DATE				
28. ADMINISTRATIVE APPROVAL - The official travel described herein was reviewed and is necessary to accomplish the agency's programs and missions.					29. CERTIFICATION OF FUNDS / AUTHORIZATION - Funds are sufficient to cover the total estimated cost. The official travel described above has been reviewed and the expenses necessary to the performance thereof are authorized in accordance with the Federal Travel Regulations, as amended, NRC Management Directive 14.1, and under the conditions of this authorization.				
Associate General Counsel for					TITLE				
Hearings, Enforcement, and Administration					DATE				
SIGNATURE: Lawrence J. Chandler					SIGNATURE: [Signature]				
DATE: 7/5/02					DATE: 7/10/02				

Exhibit A

NRC FORM 64

(6-1999)
NRC-10 14.1
Exception to SF 1012
Approved by NARS 10-81

U.S. NUCLEAR REGULATORY COMMISSION

TRAVEL VOUCHER (PART 1)

FOLLOW INSTRUCTIONS

APPROVED BY OMB: NO. 3150-0182

EXPIRES: 06/30/2002

Estimated burden per response to comply with this voluntary collection request: 1 hour for NRC Forms 64 and 64A or 64B. NRC uses the information to authorize payment for official travel. Forward comments regarding burden estimate to the Records Management Branch (T-8 E8), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to bjs1@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NE08-10202, (3150-0182), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

1. AUTHORIZATION NUMBER R271268	2. SOCIAL SECURITY NO. 263-48-4859
3. NAME (Last, First, Middle Initial) McArthur, Wilson C.	4. OFFICE TELEPHONE 801-375-9799

5. MAILING ADDRESS (Include ZIP Code) 2314 N 390 East Provo, UT 84604

9. OFFICIAL DUTY STATION (City and State) Rockville, MD	10. RESIDENCE (City and State) Provo, UT
---	--

13. TYPE OF TRAVEL <input checked="" type="checkbox"/> CONUS/DOMESTIC <input type="checkbox"/> NONFOREIGN OUTSIDE CONUS <input type="checkbox"/> FOREIGN <input type="checkbox"/> COS	14. METHOD OF PAYMENT HEADQUARTERS TO BE PAID BY EFT <input type="checkbox"/> EFT PAYMENT TO ALTERNATE ACCOUNT <input type="checkbox"/> OTHER	15. AIRLINE ACCOMMODATIONS <input type="checkbox"/> FIRST CLASS <input type="checkbox"/> OTHER PREMIUM CLASS <input type="checkbox"/> FREE UPGRADE <input type="checkbox"/> NON-CONTRACT
---	--	--

17. TRANSPORTATION METHOD OF PAYMENT GTR/GTS ACCT/GOVT ISSUED CARD/CASH (Identify below)	18. CARRIER	19. TRANSPORTATION QTR OR TICKET NUMBER	20. AMOUNT
--	-------------	---	------------

21. TRAVELER'S CERTIFICATION. I HEREBY ASSIGN TO THE UNITED STATES ANY RIGHT I MAY HAVE AGAINST ANY PARTIES IN CONNECTION WITH REIMBURSABLE TRANSPORTATION CHARGES DESCRIBED ABOVE, PURCHASED UNDER CASH PAYMENT PROCEDURES.	TRAVELER'S INITIALS
--	---------------------

22. READ CAREFULLY (If voucher includes any of the following, mark the appropriate boxes.)

<input type="checkbox"/> REFUND DUE ON UNUSED TICKET, PARTIAL TICKET, AND/OR REFUND SLIP (Explain in Part 2 and attach to front of voucher)	CHECK NO.
<input type="checkbox"/> REMITTANCE ATTACHED IN THE AMOUNT OF: 3	

24. I CERTIFY THAT THIS VOUCHER IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT PAYMENT OR CREDIT HAS NOT BEEN RECEIVED BY ME.
--

SIGNATURE - TRAVELER Wilson C. McArthur for NRC	DATE 7/8/02
---	-----------------------

25. THIS VOUCHER IS APPROVED. Associate General Counsel for Hearings, Enforcement, and Administration
--

SIGNATURE - APPROVING OFFICIAL Lawrence J. Chandler	DATE 7/5/02
---	-----------------------

27. TRAVELER DESIGNATION I DESIGNATE _____ TO RECEIVE CASH PAYMENT OF THIS TRAVEL VOUCHER. I ACCEPT RESPONSIBILITY FOR THE PAYMENT ONCE THE IMPREST FUND CASHIER PROPERLY DISBURSES THE CASH TO MY DESIGNEE.

SIGNATURE - TRAVELER	DATE
----------------------	------

28. CASH PAYMENT OF TRAVEL VOUCHER (For Cashier Use)
--

RECEIVED CASH IN THE AMOUNT OF: \$	FOR
------------------------------------	-----

SIGNATURE	DATE	NRC BADGE NUMBER
-----------	------	------------------

29. THIS VOUCHER IS CERTIFIED CORRECT AND PROPER FOR PAYMENT
--

SIGNATURE - AUTHORIZED CERTIFYING OFFICER	DATE
---	------

30. ACCOUNTING CLASSIFICATION (For Division of Accounting and Finance Use)
--

A. COST	B. PURPOSE CODE	C. BFY	D. COST ORGANIZATION CODE	E. JOB CODE	F. (2110-S) SUBSISTENCE AND OTHER	G. (2120-D) COMMON CARRIER	H. TOTAL
DOMESTIC	7	2	7C	E7080	646.44	5.00	651.44
FOREIGN							

Exhibit B

* Fraudulent Claim - Falsification of an item in an expense account works a forfeiture of the Claim (28 U.S.C. 2514) and may result in a fine of not more than \$10,000 or imprisonment of not more than 5 years or both (18 U.S.C. 287; id. 1001)

* If long distance telephone calls are included, the Approving Official must have been authorized in writing by the head of the Department or Agency to be made by (31 U.S.C. 6002)

NRC FORM 64 (6-1999)

This form was designed using InForm

☐ TRAVELER'S COPY ☐ ADVANCE COPY ☐ MEMORANDUM ☐ AUTHORIZATION ☐ AUDIT ☐ FUNDS CONTROL

6. RECLAIM VOUCHER YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	7. VOUCHER STATUS PARTIAL <input type="checkbox"/> FINAL <input checked="" type="checkbox"/>
---	---

8. TRAVEL PERIOD(S)

A. FROM (MM/DD/YYYY) 04/30/2002	B. TO (MM/DD/YYYY) 05/04/2002
---	---

11. LEAVE TAKEN <input type="checkbox"/> ANNUAL <input type="checkbox"/> SICK <input checked="" type="checkbox"/> OTHER	12. COMPARATIVE TRAVEL X
--	--

18. EXPENSES CLAIMED (FROM NRC FORM 64A OR NRC FORM 64B)	
EXPENSES	AMOUNT CLAIMED

A. SUBSISTENCE AND OTHER EXPENSES	\$646.44
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B. PLANE, TRAIN, BUS (PAID BY TRAVELER)	5.00 \$702.00
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C. TOTAL CLAIM	651.44 \$1,348.44
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23. TRAVEL ADVANCE TOTAL ADVANCE RECEIVED (Traveler Must Complete)

ATM	\$ 0.00
-----	----------------

OTHER	\$0.00
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FOR EXAMINER USE	
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AMOUNT TO BE APPLIED	0
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BALANCE DUE	
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NET TO TRAVELER	651.44
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26. EXAMINER'S ADJUSTMENTS

EXAMINED BY Don Coward	DATE 7/25/02
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NRC FORM 64A
(5-1989)
NRCMD 14.1
Exception to SF 1012
Approved by NARS 10-81

U.S. NUCLEAR REGULATORY COMMISSION

TRAVEL VOUCHER (PART 2)
SCHEDULE OF EXPENSES AND AMOUNT CLAIMED
FOLLOW INSTRUCTIONS ON REVERSE OF FORM SET

NAME (Last, First, MI)		AUTHORIZATION NO.	DEPART FROM OFFICE	
			DATE (MM/DD/YY)	TIME
McArthur, Wilson C.		R271268	04/30/2002	11:00 <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M.
DATE	NATURE OF EXPENSE	AUTHORIZED MILEAGE	NUMBER OF MILES	AMOUNT CLAIMED
20 02		36.50		
	Official Business Travel on 5/1, 5/2, 5/3, and 5/11 (considered last day of travel). Personal Travel 4/30 and 5/4-10)			
4/30	LV: Residence via POA (Transportation to Airport paid by government AR: Salt Lake City Airport whether 4/30 or 5/1.)		47	17.16
	LV: Salt Lake City Airport via Delta #1592 AR: Atlanta Airport			
	PURPOSE: Subpoenaed by NRC as witness in the Tennessee Valley Authority Hearing.			
5/11	LV: Atlanta Airport via Delta #705 AR: Salt Lake City Airport <i>Air Fare</i>			500
	LV: Salt Lake City Airport via POA AR: Residence		47	17.16
	SUBSISTENCE: 55/30/85			
5/1	MI&E: 3/4 day @ \$30.00			22.50
	Lodging: 1 night @ \$75.00			75.00
5/2-3	MI&E: 2 days @ \$30.00			60.00
	Lodging: 2 nights @ \$75.00			150.00
5/11	MI&E: 3/4 day @ \$30.00			22.50
	OTHER			
	Rental Car: 4 days + miscellaneous charges <i>194.51</i>			194.51
	Parking at Hotel three days			27.00
	Hotel tax: 3 nights @ \$9.19			27.57
	2 Phone calls to residence @ \$4.00			8.00
	3 business phone calls @ \$0.50			1.50
	Parking at Airport in Salt Lake City: 4 days @ \$5.86			23.44
	COMPARISON			
	Roundtrip from Salt Lake City, UT to Chattanooga, TN: \$1,599.00 There is no contract carrier.			
	Hotel & Tax: Same @ \$252.57 MI&E: Same @ \$105			
	Rental Car: 4 days @ \$43.00 + miscellaneous charges: \$180.00 Phone Calls to residence: Same @ \$12.00			
	TOTAL COMPARISON: \$2158.57			651.44

GRAND TOTAL (Amount to be shown in Item 10.C, Part 1)

\$651.44