

October 7, 2002

Administrative Judge
Charles Bechhoefer, Chairman
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Administrative Judge
Ann Marshall Young
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Administrative Judge
Richard Cole
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

In the Matter of
TENNESSEE VALLEY AUTHORITY
(Watts Bar Nuclear Plant, Unit 1;
Sequoyah Nuclear Plant, Units 1 & 2;
Browns Ferry Nuclear Plant, Units 1, 2, & 3)
Docket Nos. 50-390-CivP, 50-327-CivP, 50-328-CivP,
50-259-CivP, 50-260-CivP, 50-296-CivP

Dear Administrative Judges:

In response to the August 22, 2002 Motion to Compel filed by the Tennessee Valley Authority (TVA), the Nuclear Regulatory Commission (NRC) Staff determined that it could not provide additional compensation to Dr. Wilson McArthur for his testimony in this proceeding. Pursuant to a request by the Atomic Safety and Licensing Board (Board) that the Staff conduct further inquiry into this matter, the Staff referred this issue to the attorneys within the Office of the General Counsel (OGC) who provide legal advice to the Travel Management Branch, which made the original determination that the NRC cannot reimburse McArthur for the value of frequent flyer miles, other than the \$5.00 out-of-pocket expense identified on the ticket receipt.

The review conducted by those attorneys supports the Staff position that the agency is unable to authorize further reimbursement to McArthur under 28 U.S.C. § 1821. The NRC lacks the statutory authority to pay a witness for expenses that have not actually been incurred. The use of frequent flyer miles does not result in payment of actual expenses by the user, other than the fee charged by the airline for cashing in the miles. Additionally, the statute permits payment of a mileage allowance only when a witness travels by privately owned vehicle, not when a witness travels by common carrier. Absent statutory authority to pay for a travel allowance, the attorneys advised that the certifying official cannot properly certify the payment of an additional travel allowance to McArthur for the use of his frequent flyer miles.

C. Bechhoefer
R. Cole
A. Young

-2-

October 7, 2002

Based on the above advice, the Staff requests that the Board deny TVA's August 22, 2002 Motion to Compel the Staff to pay additional travel expenses to McArthur.

Sincerely,

/RA/

Jennifer M. Euchner
Counsel for NRC Staff

cc: Brent Marquand, Tennessee Valley Authority
John Slater, Tennessee Valley Authority
David Repka, Winston & Strawn