

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

NRC STAFF OBJECTION TO
SUBMISSION OF TVA EXHIBIT 75

Pursuant to the request of the Atomic Safety and Licensing Board (Board) on September 13, 2002, the Tennessee Valley Authority (TVA) submitted via a September 30, 2002 letter redacted copies of TVA Exhibit Nos. 24, 39, 55, 56, 93, 94, 149, and Joint Exhibit Nos. 22 and 23. TVA also submitted summaries of TVA Exhibit Nos. 83-96, 109, and 100. The Nuclear Regulatory Commission (NRC) Staff has no objection to the redactions of TVA Exhibit Nos. 24, 39, 55, 56, 93, 94, 149, and Joint Exhibit Nos. 22 and 23. The Staff also does not object to the summaries of TVA Exhibit Nos. 83-96, 109 and 110. In the September 30, 2002 submission, TVA tendered TVA Exhibit No. 75, which had not previously been tendered during the course of the hearing. The Staff objects to the tender of TVA Exhibit No. 75 and requests that the Board deny TVA's request to admit that exhibit into evidence.

TVA Exhibit 75 is an extract from the Institute of Nuclear Power Operation's (INPO) written evaluation of the Sequoyah Nuclear Plant performed during the weeks of September 28 and October 5, 1992. See TVA Exhibit 75, p. CG 000116. TVA purports to introduce this evidence to support the September 9, 2002 testimony of Robert J. Beecken, arguing that this evidence tends to rebut the Staff's cross examination of Beecken and that it "corrects any false impression that

counsel's questions may have created." TVA Submission, p. 2. The Staff objects to the late introduction of TVA Exhibit 75 and requests that the Board reject admission of the exhibit.

TVA claims that TVA Exhibit 75 rebuts questions posed to Beecken by Staff counsel during cross examination. The appropriate time to raise such rebuttal evidence would have been during its redirect examination of Beecken. During cross examination, counsel for the Staff questioned Beecken regarding Joint Exhibit 33, which is a performance appraisal for Gary Fiser, dated September 9, 1992. See transcript p. 4828, line 14. This appraisal states on the first page, "There have been no Chemistry related findings by INPO for SQN. THIS IS A RECORD FOR SQN." Joint Exh. 33, p. 1. On redirect, TVA counsel attempted to rebut the information contained in the performance appraisal by questioning Beecken regarding his December 9, 1992 conversation with Fiser. See transcript p. 4845, line 1. Additionally, TVA counsel pointed to the transcript of the December 9, 1992 conversation in Joint Exhibit 27 to contradict the information contained in the performance appraisal. See transcript p. 4845, line 15. TVA did not use TVA Exhibit 75 during its redirect examination to rebut Staff's counsel's cross examination.

TVA had ample opportunity during this redirect to introduce TVA Exhibit 75 and question the witness about the information contained therein. Even if TVA had simply forgotten to introduce the exhibit at that time, the Board also gave each party the additional opportunity to introduce documents on September 13, 2002. TVA counsel took advantage of this opportunity to request that additional exhibits which had never been proffered be admitted into evidence. See transcript p. 5707, line 11. TVA counsel did not seek to introduce TVA Exhibit 75 at that time. TVA has only sought to introduce this exhibit now, over two weeks after the close of testimony and after any opportunity the Staff might have to question witnesses or provide rebuttal information to the exhibit.

Admission of TVA Exhibit 75 at this late date would prejudice the Staff because the Staff did not have the opportunity to cross examine Beecken or question any other witnesses about the exhibit. TVA attempts to explain the purpose of the exhibit in its submission, but absent

explanatory testimony by Beecken or another knowledgeable witness, there is no evidence that the exhibit supports TVA's argument. A statement by TVA counsel that a document "corrects any false impression" by the Staff's cross examination is not admissible evidence. Without testimony by Beecken that TVA Exhibit 75 is the INPO report under discussion during Beecken's December 9, 1992 conversation with Fiser, there is no evidence to support the admission of the document. Absent such testimony, the record fails to demonstrate that TVA Exhibit 75 is the document TVA purports it to be.

The Staff would also object to the admission of TVA Exhibit 75 because it is an extract of the INPO report rather than the entire report. The Staff is unwilling to accept what TVA deems to be the relevant excerpts without review of the entire report and the opportunity to question Beecken about any of the relevant areas of the complete report.

Finally, TVA claims in its submission that TVA Exhibit 75 rebuts the Staff's questions on cross examination. Just as TVA attempted to mislead the Board by having Mark Burzynski testify that the problem with the diesel generator fuel oil storage tanks should have been discovered by Gary Fiser, when in fact Fiser was not the Sequoyah Chemistry Manager at the time Burzynski claims the problem should have been discovered, TVA is again attempting to mislead the Board as to the true nature of the evidence in this case. The Staff questioned Beecken about Joint Exhibit 33, a performance appraisal dated September 9, 1992 which evaluated Fiser from approximately September 1991 to September 1992. The INPO evaluation that led to the report excerpts contained in TVA Exhibit 75 was not performed until late September and early October of 1992. See TVA Exhibit 75, p. CG 000116. Since the performance appraisal was written approximately a month prior to the INPO evaluation, the appraisal could not have been referencing the report excerpts contained in TVA Exhibit 75. Therefore, the document does not "correct any false impression" made during the Staff's cross examination and certainly does not rebut any testimony elicited during that examination.

For the above stated reasons, the Staff respectfully requests that the Board find TVA's tender untimely and prejudicial to the Staff and reject TVA Exhibit 75.

Respectfully submitted,

/RA/

Jennifer M. Euchner
Counsel for NRC Staff

Dated at Rockville, Maryland
this 7th day of October 2002

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF OBJECTION TO SUBMISSION OF TVA EXHIBIT 75" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 7th day of October, 2002.

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