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USNRC

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

October 23, 2002 (1:31PM)

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 RESPONSE  
IN SUPPORT OF THE ADMISSION  
OF TVA EXHIBIT NO. 75

On September 30, 2002, respondent Tennessee Valley Authority (TVA) tendered into evidence TVA Exhibit 75, a copy of the written evaluation by the Institute of Nuclear Power Operation (INPO) of TVA's Sequoyah Nuclear Plant performed during the weeks of September 28 and October 5, 1992. The NRC Staff has now filed an objection to that exhibit asserting that it "did not have the opportunity to cross examine Beecken or question any other witnesses about the exhibit" and "because it is an extract . . . [t]he 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" (Staff Obj. at 2, 3). The Staff's excuses are without merit and the exhibit should be received into evidence.

The Staff's argument that the exhibit is an extract is based on a flawed premise. TVA Exhibit 75 is a copy of the entire INPO report, not an extract. Although TVA's submission mistakenly referred to TVA Exhibit 75 as an "extract" instead of calling it a "copy," an examination of the document shows that it is, in fact,

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complete. (We apologize for the Staff's confusion on this matter.) Second, an extract of the chemistry-related portion of the document has already been received into evidence as a part of TVA Exhibit 48, marked as Bates Nos. AJ320-335 (See tr. 607, l. 19-25, tr. 611, l. 6 - tr. 612, l. 8, tr. 613, l. 3-7). If the Staff felt they needed to question Beecken about those matters they should have done so when he was on the stand. There are only two matters of note in TVA Exhibit 75 that are not included in TVA Exhibit 48, both of which are in the Executive Summary (Bates Nos. AA254-55): (1) the statement that the evaluation was conducted "during the weeks of September 28 and October 5, 1992," prior to the tape-recorded Beecken-Fiser conversation on December 9, 1992, and (2) the fact that one of the "most significant" findings by INPO was the "long-standing chemistry equipment and instrumentation problems." Neither matter is subject to any dispute or requires an explanation by any witness.

Finally, the Staff argues that TVA is "attempting to mislead the Board" (Obj. at 3) and that TVA Exhibit 75 "does not 'correct any false impression' made during the Staff's cross examination" (*id.*). The Staff is wrong on both counts.

TVA's September 30 submission pointed out (at 2) that Beecken testified that he became critical of Fiser's management skills, in part, due to findings by INPO. The submission also pointed out that on Beecken's cross-examination, counsel for the NRC Staff tried to show that INPO had not made any Chemistry findings at Sequoyah.<sup>1</sup> However, the INPO report, TVA Exhibit 75, clearly refutes the false impression the Staff was trying to create. The Staff simply argues that because the INPO evaluation was written after the performance appraisal, it does not "'correct any false impression'" (Obj. at 3). They are incorrect. The INPO report shows that,

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<sup>1</sup> Staff counsel pointed out that Joint Exhibit 32, Fiser's Fiscal Year 1991 performance appraisal, did not indicate that Fiser was responsible for any INPO-identified chemistry problems (tr. 4825, l. 18-22; tr. 4826, l. 15-18). Staff counsel then asked Beecken whether Joint Exhibit 33, Fiser's Fiscal Year 1992 performance appraisal, said anything about the 1992 INPO visit (tr. 4827, l. 15-20).

contrary to the implication of the Staff's questions, INPO did make findings about Sequoyah chemistry prior to the Beecken-Fiser December 9, 1992, conversation. If the Staff was not trying to show that Beecken's testimony about INPO making Sequoyah chemistry findings was false, why did they challenge whether "one of the problems that [Beecken] had with Mr. Fiser's performance was that INPO had raised repeated problems" (tr. 4825, l. 18-20).

TVA Exhibit 75 is relevant, material, and self-authenticating. The substance of the exhibit is already in the record as part of TVA Exhibit 48 and there is no need for either party to offer any evidence to further explain or authenticate it. The exhibit should be admitted into evidence.

Respectfully submitted,

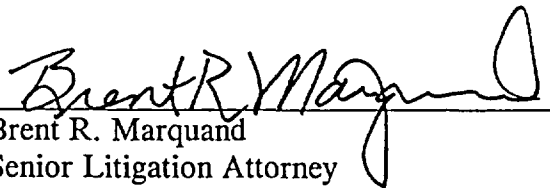
October 18, 2002

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I hereby certify that copies of the foregoing response have been served on the persons listed below by regular mail. Copies of the response have also been sent by e-mail to those persons listed below with e-mail addresses.

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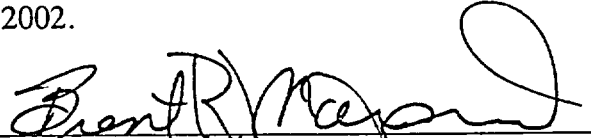
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This 18th day of October, 2002.

  
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