



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001**

January 13, 2003

EA-01-315  
EA-02-266

Tennessee Valley Authority  
ATTN: Mr. J. A. Scalice  
Chief Nuclear Officer and  
Executive Vice President  
6A Lookout Place  
1101 Market Street  
Chattanooga, TN 37402-2801

**SUBJECT: ALLEGED DISCRIMINATION AGAINST A CORPORATE NUCLEAR  
ENGINEERING MANAGER FOR PROVIDING INFORMATION TO THE NRC  
(OFFICE OF INVESTIGATIONS REPORT NO. 2-2000-035)**

Dear Mr. Scalice:

Enclosed for your information is the synopsis of the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) completed report regarding alleged discrimination by the Tennessee Valley Authority (TVA) against a former employee for engaging in protected activity. OI substantiated that TVA discriminated against the employee as a result of having engaged in protected activity.

Certain aspects of the subject OI case are related to a separate discrimination case that is currently before the Atomic Safety and Licensing Board (Board), Case No. 01-791-01-CivP. Because it is the NRC's desire to examine all relevant information, the NRC considers it appropriate to defer any decision to initiate enforcement action on the subject OI report until a decision has been reached by the Board.

As you may be aware, the NRC is subject to the general Statute of Limitations, 28 U.S.C. Section 2462, which provides that any action for enforcement of a civil penalty must be commenced within five years of when the claim first accrued. Based on our review of the circumstances of the subject OI report, it appears that the alleged discrimination may have occurred from early 1998 through 1999. Therefore, the five year Statute of Limitations as it applies to this case would expire in early 2003. Because of the protracted and indeterminate schedule for completion of ASLBP Case No. 01-791-01-CivP in conjunction with the Agency's review process of the subject OI report, we consider it unlikely that the Board will make a final determination in this matter so as to allow for the timely consideration of potential NRC enforcement action for the issue documented in OI Report 2-2000-035, should it ultimately be concluded that TVA discriminated against the individual.

In order for the NRC to continue to defer an Agency decision on the initiation of enforcement action on OI Report No. 2-2000-035, the NRC requests that TVA consider waiving the five year Statute of Limitations for the issue raised in the OI report. Should you agree to waive the five year Statute of Limitations, your right to appeal any imposition of civil penalties in this case would be preserved. In addition, your agreement to waive the five year Statute does not

constitute or infer in any way an admission of discrimination by TVA or its employees in this case.

In addition, as a separate but directly related concern, the NRC is considering the circumstances surrounding the same individual's inability to compete for a certain position during a reorganization in 1996. Information gathered during the OI investigations related to the ongoing hearing and during the hearing process itself indicates that the complainant may have been retaliated against for supporting a whistleblower. The statute of limitations has expired on this issue; however, based on the results of ASLBP Case No. 01-791-01-CivP, the NRC may initiate the enforcement process on this matter in conjunction with the issues discussed in OI Report 2-2000-035.

The NRC requests that TVA consider this request and inform my office in writing of your decision, with a copy to Mr. Luis A. Reyes in our Region II Office, within 14 days of receipt of this letter. Should you determine that it is not in TVA's best interest to waive the five year Statute of Limitations, the NRC will reconsider the need for initiation of enforcement action on OI Report No. 2-2000-035, based on information available to us at this time.

Should you have any questions regarding this request, please contact Nick Hilton, Senior Enforcement Specialist, at (301) 415-3055.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

**/RA/**

Frank Congel, Director  
Office of Enforcement

Docket Nos. 50-390, 50-327, 50-328,  
50-269, 50-260, 50-296  
License Nos. NPF-90, DPR-77, DPR-79,  
DPR-33, DPR-52, DPR-68

Enclosure: Synopsis to OI Report  
No. 2-2000-035

cc: (see page 3)

TVA

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cc:

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## SYNOPSIS

The Office of Investigations, U.S. Nuclear Regulatory Commission, Region II, initiated this investigation on December 29, 2000, following a complaint by a nuclear engineering manager at Tennessee Valley Authority (TVA) Corporate, that he was subjected to retaliation for providing information to the NRC.

The evidence gathered during this investigation substantiated the allegation that TVA illegally discriminated against the employee as a result of having engaged in protected activity. However, it was not substantiated that the TVA Office of the Inspector General retaliated against the employee as a result of having engaged in protected activity.

Approved for release on 1/6/3 - SES

Enclosure

~~NOT FOR PUBLIC DISCLOSURE WITHOUT APPROVAL OF  
FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION II~~