

RAS 6062

50-390-CIVP et al. Joint Exhibit 44- Rec'd 4/23/02  
General Counsel



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET, SW, SUITE 23785  
ATLANTA, GEORGIA 30303-3415

SEP 27 '99

September 20, 1999

EA 99-234

ESC		
JEF		
ETV	Y	
Power		
File		

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: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS  
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-98-013)

Dear Mr. Scalice:

014073

This is in reference to an apparent violation of Nuclear Regulatory Commission (NRC) requirements prohibiting discrimination against employees who engage in protected activities, i.e., 10 CFR 50.7, Employee Protection. The apparent violation involves actions taken by Tennessee Valley Authority (TVA) against a former corporate employee. This apparent violation was discussed with Mr. Carl Singer, Senior Vice President, Nuclear Operations, on September 9, 1999.

The apparent violation is based on an investigation initiated by the NRC's Office of Investigations (OI) on April 29, 1998, and completed on August 4, 1999. The evidence developed during the investigation indicated that discrimination by two corporate level TVA managers was intentional and deliberate and was a factor in the non-selection of the employee for a position in 1996. Furthermore, the OI investigation found that discrimination was substantiated through a showing of disparate treatment of the employee. TVA took these actions, in part, in retaliation for the employee's protected activity, i.e., the filing of a Department of Labor (DOL) complaint in September 1993. A copy of the synopsis to OI Report No. 2-98-013 is included as Enclosure 1 to this letter.

The NRC staff's review of this matter indicates that the action taken against this individual was in apparent violation of 10 CFR 50.7. Therefore, this apparent violation is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. A summary of the OI report, which forms the basis for the NRC's conclusion that an apparent violation occurred, is included as Enclosure 2. The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation may change as a result of further NRC review.

As discussed with Mr. Singer of your staff, the NRC will conduct a closed predecisional enforcement conference at a time and date to be determined. You will be contacted in the future

ATTACHMENT C

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Template = SECY-028

SECY-02

CLEAR REGULATORY COMMISSION

Docket No. 50-390 Official Ex. No. Lat 44  
 In re TVA  
 Sent Joint IDENTIFIED   
 Received \_\_\_\_\_ RECEIVED \_\_\_\_\_  
 Forwarded \_\_\_\_\_ REJECTED \_\_\_\_\_  
 Closed \_\_\_\_\_ WITHDRAWN \_\_\_\_\_  
 Date 4/23/02 Witness \_\_\_\_\_  
BHM

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OFFICE OF THE SECRETARY  
RULEMAKING AND  
ADJUDICATIONS STAFF

2003-11-20 10:00 AM

to determine a mutually agreeable time and date for the conference. This conference will be closed to public observation in accordance with the Commission's program as discussed in the Enforcement Policy, and will be transcribed. The decision to hold a predecisional enforcement conference does not mean that the NRC has determined that violations have occurred or that enforcement action will be taken. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root causes, missed opportunities to identify the apparent violation sooner, corrective actions, significance of the issues, and the need for lasting and effective corrective action. In addition, this is an opportunity for you to point out any errors in our investigation findings and for you to provide any information concerning your perspectives on 1) the severity of the apparent violation, 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

In accordance with the Enforcement Policy, the employee who was the subject of the alleged discrimination will be provided an opportunity to participate in the predecisional enforcement conference. This participation will be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. The purpose of the employee's participation is to provide information to the NRC to assist in its enforcement decision.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

Should you have any questions concerning this letter, please contact me at (404) 562-4501.

Sincerely,

  
Loren R. Plisco, Director  
Division of Reactor Projects

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

Enclosures: 1. OI Report Synopsis  
2. Summary of OI Report

cc: (see page 3)

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cc w/ encls:

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County Executive  
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## SYNOPSIS

On April 29, 1998, the Office of Investigations, U.S. Nuclear Regulatory Commission, Region II, initiated this investigation to determine whether a former Tennessee Valley Authority (TVA) Corporate Chemistry manager was forced to resign from his position in 1996, as a result of engaging in protected activities.

Based upon the evidence developed during this investigation, it was determined that discrimination by two corporate level TVA managers was intentional and deliberate and was a factor in the nonselection of the alleged for a Chemistry position in 1996. Furthermore, discrimination was substantiated through a showing of disparate treatment of the alleged.

Approved for release on 9/16/99

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

se No. 2-1998-013

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Enclosure 1 .

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SUMMARY OF OFFICE OF INVESTIGATIONS (OI) REPORT 2-98-013

OI Report 2-98-013 involves a former Tennessee Valley Authority (TVA) Corporate Chemistry and Environmental Specialist (employee), who was not selected to fill one of two Chemistry Program Manager positions created during a 1996 reorganization at TVA. The employee allegedly was not selected to fill the position for engaging in protected activity.

The protected activity involved the employee's filing of a discrimination complaint with the Department of Labor (DOL) in September 1993, in which he alleged that TVA discriminated against him for raising safety concerns related to his activities as Chemistry and Environmental Superintendent at the Sequoyah Nuclear Power Plant. In his DOL complaint, the employee named as parties to his discrimination the individuals who served as Committee Member, Nuclear Safety Review Board (NSRB) and Chairman, NSRB in 1993.

The employee settled his 1993 DOL action with TVA prior to completion of a DOL fact finding investigation. As part of his settlement, the employee was appointed to the position of Corporate Program Manager, Technical Support in April 1994. During a July 1994 reorganization, this position was eliminated. However, the employee applied for and was selected to fill the position of Chemistry and Environmental Protection Program Manager, Operations Support at TVA corporate.

In late 1995 and early 1996, the two individuals who served as NSRB Committee Member and Chairman in 1993 and who were named as culpable parties in the employee's 1993 DOL complaint were placed as Radcon Chemistry Manager and Manager, Operations Support, the employee's first and second level management superiors.

Thereafter, in July 1996, the Operations Support group was reorganized. The three Chemistry and Environmental Protection Program Manager positions were eliminated. Two new Chemistry Program Manager positions were created and competitively posted. The employee applied for one of the two positions, but was not selected.

The evidence indicated that the selection process was contrived to preclude the selection of the employee to one of the Chemistry Program Manager positions. Further, the evidence revealed that the individual selected for the position of PWR, Chemistry Program Manager, was preselected for this position, and that this same individual could have been placed in a vacant site chemistry position. Such a placement would have resulted in all employees affected by the reorganization retaining their jobs. The evidence revealed that the request for placement of this individual at the site was rejected by the Manager, Operations Support.

The evidence also indicated that TVA subjected the employee to disparate treatment. In this regard, the evidence reflected that the individual appointed to the position of Radcon Chemistry Manager (a position created in mid-1996) was transferred to this position without competition in contravention of TVA policy, while the employee was required to compete for one of the two Chemistry Program Manager positions that were also created in 1996.

Enclosure 2

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