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OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

September 20, 1999

IA 99-044

Thomas J. McGrath
[HOME ADDRESS REMOVED
PER 10 CFR 2.790]

SUBJECT: CONFIRMATION OF CLOSED ENFORCEMENT CONFERENCE
ARRANGEMENTS (OFFICE OF INVESTIGATIONS REPORT NO. 2-98-013)

Dear Mr. McGrath:

This is in reference to an investigation conducted by the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) initiated on April 29, 1998, and completed on August 4, 1999. The purpose of the OI investigation was to determine whether a former Tennessee Valley Authority (TVA) employee was subjected to discrimination as a result of engaging in protected activities. The investigation found that you discriminated against an individual employed by TVA, as a result of his engaging in protected activity. A copy of the synopsis to OI Report No. 2-98-013 is included as Enclosure 1 to this letter.

Based on our review of the investigative report, an apparent violation of the NRC's rule prohibiting deliberate misconduct, 10 CFR 50.5, has been identified. This rule prohibits any employee of a licensee from engaging in deliberate misconduct that causes a licensee to be in violation of any NRC requirement, in this case, 10 CFR 50.7, Employee Protection. 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.

On September 9, 1999, the conclusions of the investigation and the NRC's intention to conduct a closed predecisional enforcement conference were discussed with you. The NRC will contact you at a future date to determine a mutually agreeable time and date to conduct the closed conference. This conference will be closed in accordance with the NRC's Enforcement Policy, and will be transcribed.

The purpose of the conference is to discuss the apparent violation and the circumstances surrounding it, and give you an opportunity to provide your perspective on this issue and any other information that you believe is relevant to the NRC's enforcement determination. You are specifically invited to address the factors that the NRC would consider in determining whether enforcement action should be taken against you. These factors are described in Section VIII, "Enforcement Actions Involving Individuals," of the enclosed copy of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, (Enclosure 3).

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01-791-01

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the matter of TVAIDENTIFIED ☒RECEIVED ☒REJECTED ☐WITHDRAWN ☐DATE 9-11-02

Witness

McGrath

Clerk

R. Davis

If the NRC concludes that you deliberately caused or committed a violation of NRC requirements, the possible sanctions which may be pursued include a Notice of Violation, a civil penalty¹, or an order. An order may prohibit your involvement in NRC-licensed activities, require notice to the NRC before resuming involvement in NRC-licensed activities, or require other action. Accordingly, you should be prepared to address why the NRC should not issue an Order prohibiting you from participation in NRC-licensed activities.

An agenda for the conference is included as Enclosure 4. Although not required, you may provide the NRC a written reply to the apparent violation prior to or during the conference. In addition, as discussed with you, you may have an attorney or personal representative attend the conference but it should be understood that the NRC will address its questions to you. Furthermore, you are not required to attend the conference, but you should understand that if you do not, the NRC will make an enforcement decision on the basis of the information developed during the investigation.

You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding the apparent violation is required at this time.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures (with the home address removed) will be placed in the NRC Public Document Room. However, the NRC will delay placing a copy of this letter and the enclosures in the NRC Public Document Room (PDR) until an enforcement decision has been made. At that time, in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your address removed, and the enclosures, will be placed in the PDR.

Should you have any questions concerning this letter, please contact us.

Sincerely,

Original signed by C. Casto for LRP

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 Synopsis
2. Summary of OI Report
3. NRC Enforcement Policy
4. Agenda

¹ Civil penalties are not normally imposed on unlicensed individuals. See Footnote 10 of the NRC Enforcement Policy.

T. McGrath

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cc w/encls and home address removed (EICS TO HOLD):

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

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concerns provided by
Mr. Stein for R. Borchardt
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