

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

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OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

EA-99-234

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: ORDER IMPOSING CIVIL MONETARY PENALTY - \$110,000
TENNESSEE VALLEY AUTHORITY

Dear Mr. Scalice:

This refers to your letters dated January 22, 2001, and March 9, 2001, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated February 7, 2000. Our letter and Notice described one violation of 10 CFR 50.7, "Employee Protection," which was described in NRC Office of Investigations (OI) Report No. 2-98-013. To emphasize the importance of a safety conscious work environment that is free of discriminatory employment actions, a civil penalty of \$110,000 was proposed.

In your response of January 22, 2001, you denied the violation and protested the proposed civil penalty. You contended that the reorganization of Tennessee Valley Authority (TVA) Nuclear in 1996, the elimination of the position of Chemistry and Environmental Protection Program Manager, Operations Support, and the selection of individuals to fill new positions were made solely for legitimate business reasons, and were not in any part taken as retaliation for the Chemistry and Environmental Protection Program Manager's engagement in protected activity.

Your letter of March 9, 2001, provided a supplemental response to our Notice, related to comments submitted to the NRC's Discrimination Task Group by a former NRC Office of Enforcement (OE) staff member. As background, on July 27, 2000, the NRC established a management-level review group to evaluate the NRC's processes used in the handling of discrimination allegations and violations of employee protection standards. The Discrimination Task Group is an ongoing effort whose overall objective is to develop recommendations for revisions to the regulatory requirements, the Enforcement Policy, or other Agency guidelines as appropriate. The former OE staff member's comments involve his perceptions that the NRC has lowered its threshold for taking enforcement action for discrimination, and fails to properly consider a licensee's position that adverse actions taken against their employees were done for legitimate business reasons. TVA considers these comments to be significant because the

ATTACHMENT A

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SECY-02

CLEAR REGULATORY COMMISSION

License No. SO-390 Official Exp. No. Joint 53

In the matter of TVA

Order Joint IDENTIFIED

Amended Joint RECEIVED

Reopened _____ REJECTED _____

Withdrawn _____ WITHDRAWN _____

Date _____ Witness _____

former OE staff member was involved in the subject escalated action taken against TVA, and because TVA's response of January 22, 2001, also raised these two issues.

After considering your responses, for the reasons given below and in the February 7, 2000, letter and Notice, we have concluded that the violation occurred as stated and that neither an adequate basis for withdrawing the violation, reducing the severity level, or mitigating or rescinding the civil penalty has been provided. In July 1996, TVA eliminated the Chemistry and Environmental Protection Program Manager's position in Operations Support, as part of a reorganization, and took subsequent actions to ensure that he was not selected for one of two new positions within Operations Support. TVA took these actions, at least in part, in retaliation for his involvement in protected activities. These activities included the identification of chemistry related nuclear safety concerns in 1991-1993, and the subsequent filing of a Department of Labor (DOL) complaint in September 1993 based, in part, on these chemistry related nuclear safety concerns. Certain TVA managers were aware of his protected activity when the selection process, designed by these same managers, failed to select him for one of the two new positions.

The selection process for the newly created Chemistry Program Manager positions in Operations Support was not in accordance with TVA's normal process. TVA's rationale for posting the Chemistry Program Manager position and requiring individuals to compete for selection, while filling the Radcon Chemistry Manager position without posting it in 1996, were inconsistent. In both cases, the individuals had previously performed the functions of the new positions they were seeking, yet in the case of the former Chemistry and Environmental Program Manager, he was not permitted to fill the position noncompetitively as had the Radcon Chemistry Manager. Moreover, TVA's explanations with respect to the decision making process for the filling of the Radcon Chemistry Manager position changed over time.

Regarding TVA's supplemental response of March 9, 2001, the NRC welcomes and intends to consider all information provided to the Discrimination Task Group by internal and external stakeholders in accomplishing the overall objective of developing recommendations for revisions to the regulatory requirements, the Enforcement Policy or other agency guidelines as appropriate. However, the NRC has concluded that your response provides no new information related to the specific circumstances of the Notice that would warrant a change in the subject enforcement action.

Accordingly, we hereby serve the enclosed Order on Tennessee Valley Authority imposing a civil monetary penalty in the amount of \$110,000. As provided in Section IV of the enclosed Order, payment should be made within 30 days in accordance with NUREG/BR-0254. In addition, at the time payment is made, a statement indicating when and by what method payment was made, is to be mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. We will review the effectiveness of your corrective actions during a subsequent inspection.

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosures will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,



William F. Kane
Deputy Executive Director
for Regulatory Programs

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. Order Imposing Civil Monetary Penalty
2. NUREG/BR-0254 Payment Methods (Licensee only)

cc w/o encl 2:

Karl W. Singer, Senior Vice President
Nuclear Operations
Tennessee Valley Authority
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801
Electronic Mail Distribution

Jack A. Bailey, Vice President
Engineering and Technical Services
Tennessee Valley Authority
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801
Electronic Mail Distribution

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Tennessee Valley Authority

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cc w/o encl 2 (con't):

General Counsel
Tennessee Valley Authority
ET 10H
400 West Summit Hill Drive
Knoxville, TN 37902
Electronic Mail Distribution

N. C. Kazanas, General Manager
Nuclear Assurance
Tennessee Valley Authority
5M Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801
Electronic Mail Distribution

Mark J. Burzynski, Manager
Nuclear Licensing
Tennessee Valley Authority
4X Blue Ridge
1101 Market Street
Chattanooga, TN 37402-2801
Electronic Mail Distribution

Edward L. Nanney, Director
Division of Radiological Health
TN Dept. of Environment and
Conservation
3rd Floor, LNC Annex
401 Church Street
Nashville, TN 37243-1532
Electronic Mail Distribution

County Executive
Hamilton County Courthouse
Chattanooga, TN 37402-2801

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

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Tennessee Valley Authority)	Docket Nos. 50-390, 50-327, 50-328,
Watts Bar Nuclear Plant, Unit 1)	50-269, 50-260, 50-296
Sequoyah Nuclear Plant, Units 1 & 2)	License Nos. NPF-90, DPR-77, DPR-79,
Browns Ferry Nuclear Plant, Units 1, 2 & 3)	DPR-33, DPR-52, DPR-68
)	EA 99-234

ORDER IMPOSING CIVIL MONETARY PENALTY

I

Tennessee Valley Authority (Licensee) is the holder of Operating License Nos. NPF-90, DPR-77, DPR-79, DPR-33, DPR-52, DPR-68, issued by the Nuclear Regulatory Commission (NRC or Commission) on February 7, 1996, September 17, 1980, September 15, 1981, December 20, 1973, August 2, 1974, and July 2, 1976. The licenses authorize the Licensee to operate Watts Bar Nuclear Plant, Unit 1, Sequoyah Nuclear Plant, Units 1 and 2, and Browns Ferry Nuclear Plant, Units 1, 2, and 3, in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed on August 4, 1999. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 7, 2000. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

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The Licensee responded to the Notice in letters dated January 22, 2001, and March 9, 2001. In its response, the Licensee denied the violation and protested the proposed imposition of a civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$110,000 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

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The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia, 30303-8931.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

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- (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and
- (b) whether, on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



William F. Kane
Deputy Executive Director
for Regulatory Programs

Dated at Rockville, Maryland
this 4th day of May 2001

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