

RAS 6149

50-390ENP, et. al. Staff Exhibit 34 - Rec'd 4/30/02

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OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Gary L. Fiser

September 23, 1993

Mrs. Carol Merchant
Department of Labor
Wage and Hour Division
Room #123
710 Locust Street
Knoxville, Tennessee 37902

Re: Gary L. Fiser v. Tennessee Valley Authority

Dear Mrs. Merchant:

I was hired by the Tennessee Valley Authority (TVA) in August of 1987, as an M6 Program Manager in the corporate chemistry group. In April 1988, I was promoted to the position of Superintendent of Chemistry and Environmental, Sequoyah Nuclear Plant, a PG-9 position which I held until April 2, 1993, when, in violation of Federal Regulations pertaining to reductions in force, I was personally surplused but my job continued on. Since that day, I have been in a non-work status in TVA's Employee Transition Program (ETP). It has now become apparent that TVA's reason for lying about "surplusing" my position at Sequoyah Nuclear Plant, which essentially resulted in my termination, was unlawful and was in violation of 42 U.S.C. § 5851. In actuality, TVA determined to surplus me because of the fact that I or people under my direction had found and/or documented and/or reported and/or corrected problems which affected plant safety at Sequoyah. My basis for arriving at this conclusion is the result of numerous interviews with my manager, Dr. Wilson McArthur; the past Plant Manager of Sequoyah, Mr. Robert Beecken; the past Vice President of Sequoyah, Mr. Jack Wilson; and my Human Resource Officer, Mr. Ben Easley; and others.

On April 2, 1993, my supervisor, Mr. W. F. Jocher, presented me with a letter from Mr. Joe Bynum, Vice President, Nuclear Power Operations, stating that I was being placed in ETP because my position as Superintendent of the Chemistry and Environmental group at Sequoyah was determined to be surplus (Exhibit A). (Both my immediate supervisor, Mr. W. F. Jocher, and his supervisor, Dr. Wilson McArthur, were very dismayed about the decision to place me in ETP, and expressed their disagreement with this decision publicly and in front of witnesses.) If that

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SECY-02

Template = SECY-028

NUCLEAR REGULATORY COMMISSION

Docket No. 50-390 Official Ex. No. Staff 34
In the matter of TVA
Staff IDENTIFIED
Applicant _____ RECEIVED _____
Intervenor _____ REJECTED _____
Cont'g Off'r _____
Contractor _____ DATE _____
Other 4/30/02 Witness _____
Reporter BHM

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Mrs. Carol Merchant
October 23, 1993
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position was abolished, it was done so in name only and as a pretext to get rid of me. An April 27, 1993, memo also authored by Mr. Bynum clearly stated that there would be a Chemistry Manager at Sequoyah (Exhibit B).

The new position of Chemistry Manager is for all practical purposes the same as that of Superintendent of Chemistry and Environmental, a job which I held for several years at Sequoyah. This fact was borne out when I was offered the Chemistry Manager job at Sequoyah on July 6, 1993 by the Rad/Chem Manager Mr. Charles Kent, and the new Sequoyah Plant Manager Mr. Ken Powers. This offer was in fact coordinated through ETP management, specifically Mr. Ron Brock and Mr. Jim Manis, but was withdrawn when, according to Sequoyah's Personnel Manager, Mr. Al Black, "It was blocked at the highest level".

In an interview with Plant Manager, Mr. Rob Beecken, on December 9, 1992, Mr. Beecken stated that one of the reasons that he did not want me back at Sequoyah--I had been rotated to a position in corporate chemistry in March 1992 but without a change of job title or description and was scheduled to return to position at Sequoyah in March 1993--was because of "[t]he monitor effluent calculations not accounting for the vacuum." In 1982 the Nuclear Regulatory Commission (NRC) sent technical information to all nuclear sites (I&E Bulletin) that warned of conditions that could compromise containment radiation monitor setpoints. The bulletin was distributed to chemistry and engineering for an evaluation. The 1982 evaluation was not adequately performed since personnel at Sequoyah did not consider the impact that negative pressure in the noble gas chamber would have on monitor readings. They apparently only considered the impact on monitor flow indication and radioactive iodine readings. This erroneous evaluation was performed fully five years before I accepted employment with TVA. After I assumed my position at Sequoyah, I was informed several times by plant chemistry and engineering personnel in direct response to my questions that radiation monitor readings had been properly established, and did in fact correct for negative pressure. Subsequently, a Significant Corrective Action Report (SCAR) was initiated delineating the problem as well as the necessary corrective actions to bring the monitor into compliance.

Mr. Beecken was not at all pleased with the fact that the issue was reported and documented, his position being that he wanted it fixed without reporting it.

Another reason Mr. Beecken cited for not wanting me back was "[t]he filter change-out scenario". In this case, personnel who

AJ000135

may or may not have been under my supervision--they reported to me on the organization chart but I was on another temporary assignment in the plant at the time--discovered that a containment radiation monitor had been improperly aligned after sampling activities. Once the problem was discovered, appropriate notifications were made as I had previously instructed them, and the incident was entered into the corrective action process using the SCAR. This action is required by Sequoyah procedures as well as federal law. Mr. Beecken was upset because the radiation monitor could have been reset without being reported and no one would have been the wiser. Doing so would have avoided the SCAR process but would have been irresponsible and counter to NRC and TVA regulations.

Thus, even though I was not directly responsible for either of the underlying conditions leading to those situations, I was charged with them by Mr. Beecken. However, whether or not I was actually responsible for them, Mr. Beecken thought I was, and he determined to deny me my job because of the reporting process having been initiated. Therefore, I am suffering reprisals for finding, documenting, reporting and fixing a preexisting problem associated with a radiation monitor required to be operable by USNRC Technical Specifications. Further, to take action against me for reporting problems via the corrective action process is an example of a repressive management structure that seeks to conceal problems. This can only result in problems being suppressed instead of being handled in a forthright manner which would seek to address the root cause and prevent recurrence.

As another example, Bill Jocher and I determined that Sequoyah chemistry personnel could not meet NRC's three-hour requirement for conducting post-accident sampling analyses (Exhibit C). It was our view that NRC had established a three-hour requirement while others in higher positions at SQN, including Site Vice President Jack Wilson, disagreed. Mr. Jocher requested permission from his supervisor, Dr. McArthur, to contact NRC through corporate licensing for clarification on the three-hour constraint. NRC confirmed the three-hour limit, and we conducted exercises to determine the training level of the chemistry staff. Seventy-five percent of the chemistry technicians failed to perform their post accident sampling/analysis activities within the three-hour requirement, and some of them were not able to complete these critical activities at all. These test results were anticipated and predictable in that management had previously surplused all degreed chemistry instructors and converted the training lab into a storage room in an ill-advised attempt to cut costs. Without recurring training to reinforce fundamental concepts, post accident sampling proficiency as well

Mrs. Carol Merchant

September 23, 1993

Page 4

as other technician skills deteriorated to alarming levels. Subsequent measurements by the Institute of Nuclear Power Operations (INPO) as well as Corporate Chemistry confirmed this condition at considerable cost to TVA Nuclear Program head Mr. O. D. Kingsley, who had previously advised the TVA Board of Directors to the contrary.

Our test results revealed the bankruptcy of management's efforts at cost cutting, and the findings were reported. Such revelations are not well received at TVA.

Further, I was constantly in the position of being understaffed and under-budgeted. My pointing this out at various times to my superiors met with rebuke, notwithstanding Mr. Kingsley's promises to TVA Chairman Mr. John Waters that certain equipment deficiencies noted by INPO would be corrected. Including these items in the budget time after time only to have them deleted or deferred by higher management brought about a recurrent finding condition by various audit groups that kept opening and closing this particular item. Bringing up the sorry state of TVA's equipment maintenance repair program was always met with disfavor and contributed to my current situation.

Denial of my job at Sequoyah and my being surplusd were actions taken by the highest levels in the TVA nuclear management structure. In early July 1993, I was offered the position of Chemistry Manager at Sequoyah by the Chemistry Radcon Manager, Mr. Charles Kent, after I had interviewed with the new plant manager, Mr. Ken Powers. I was given a start date, a salary, and the proceedings were coordinated through the appropriate ETP Managers. A few days later, I was told that I apparently had a "target" on my back because persons high up in the nuclear organization had protested my job offer directly to the new Sequoyah Site Vice President, Mr. Fennech. I believe that TVA's decision to not consummate my job offer as Chemistry Manager at Sequoyah in July was another violation of 42 U.S.C. § 5851.

Also, at one point in the personnel evaluation process, my manager, Dr. McArthur, had me rated very high in comparison to his other direct reports, only to have Mr. Dan Keuter, Vice President of Operations Services, personally intervene and mandate that I be given no pay increase. In spite of the opposition raised by my direct supervisor, and in the presence of my Human Resource Officer, Mr. Ben Easley, Keuter ordered Dr. McArthur to place me in a position which would result in no pay increase, and made it clear that it was his (Keuter's) decision. Two other senior chemistry managers from two different TVA locations were victimized by similar retaliatory actions on

AJ000138

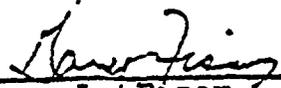
Mrs. Carol Merchant
September 23, 1993
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the part of TVA management for reporting and documenting safety-related issues. Actions of this type appear to be the norm as contrasted to the exception and receive their impetus from the highest levels of TVA nuclear management. This is indicative of a systemic problem within the agency versus an isolated occurrence. Interestingly, while I was the Chemistry and Environmental Superintendent at Sequoyah, the program received outstanding grades as a result of each INPO evaluation. Nevertheless, the types of events recorded above were deemed by upper management as either embarrassing to them or of greater significance than running a good overall chemistry program.

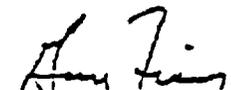
As an employee in TVA's nuclear power program, I am required by federal law to report and document issues related to the safe operation of the facility. To do so at TVA's Sequoyah Nuclear Plant is to invite reprisals in the form of unexplained demotions (Exhibit D), pay cuts in spite of one's performance and irrespective of the direct input from one's supervisor, and eventually the loss of employment. TVA has historically taken action against employees for reporting safety issues with apparent immunity from NRC, an agency for whom they have patent disregard.

As I mentioned earlier, the facts and issues are extremely well documented, and I look forward to sharing this with you, as well as imparting other insights into this case to you and/or members of your staff.

Sincerely yours,


Gary L. Fiser

I hereby designate Mr. Charles W. Van Beke, Wagner, Myers, and Sanger, P.C., 1801 Plaza Tower, 800 S. Gay Street, Knoxville, Tennessee, 37929, as my attorney in this matter.


Gary L. Fiser

Date: 9-25-93